

1 MICHAEL A. FARBSTEIN (SB# 107030)
H. ANN LIROFF (SB# 113180)
2 FARBSTEIN & BLACKMAN
A Professional Corporation
3 411 Borel Avenue, Suite 425
San Mateo, California 94402-3518
4 Telephone: (650) 554-6200
Facsimile: (650) 554-6240
5 Email: maf@farbstein.com
Email: hal@farbstein.com
6

7 Attorneys for Defendants
PETALUMA ANIMAL SERVICES FOUNDATION and JEFF CHARTER
8

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 MARK SCOTT, MISTY GUY, KATHY)
12 SOUSA,)

13 Plaintiffs,)

14 vs.)

15 PETALUMA ANIMAL SERVICES)
16 FOUNDATION, JEFF CHARTER, and)
DOES 1 through 10, inclusive,)

17 Defendants.)
18

CASE NO. 3:18-cv-07829-JSC

**ANSWER TO COMPLAINT BY
DEFENDANTS PETALUMA ANIMAL
SERVICES FOUNDATION AND JEFF
CHARTER**

DEMAND FOR JURY

Complaint Filed: December 31, 2018
Trial Date: Not yet assigned

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20 In answer to the Complaint in the above captioned action, the Defendants PETALUMA
21 ANIMAL SERVICES FOUNDATION and JEFF CHARTER (hereinafter collectively
22 “Defendants”) alleges as follows:
23

24 **PARTIES AND JURISDICTION**

25 1. Defendants deny each and every allegation in the Complaint except those specifically
26 admitted in this Answer.
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1 2. With respect to the allegations in Paragraphs 1-3 of the Complaint, inclusive, Defendants
2 lack sufficient information to form an opinion as to the truthfulness of the allegations contained
3 in those paragraphs, and therefore deny them in their entirety.

4 3. With respect to the allegations contained in Paragraph 4 and 5 of the Complaint,
5 inclusive, Defendants admit the allegations of those paragraphs, with the exception of the use of
6 the word “purported” in Paragraph 5, line 20, which Defendants deny to be the case specifically.

7 4. With respect to the allegations in Paragraph 6 of the Complaint, Defendants admit that,
8 at all times relevant, Defendant Jeff Charter was a resident of the State of California and, as
9 Executive Director of Defendant Petaluma Animal Services Foundation (“PASF”), he was a
10 supervisor and chief managing employee of PASF. With the exception of this limited admission,
11 Defendants deny each and every, all and singular, the remaining allegations of said paragraph.

12 5. With respect to the allegations in Paragraph 7 of the Complaint, Defendants admit that
13 Plaintiffs were employed in Sonoma County, within this judicial district. With the exception of
14 this limited admission, Defendants lack sufficient information to form an opinion as to the
15 truthfulness of the allegations contained in those paragraphs, and therefore deny them in their
16 entirety.

17 6. With respect to the allegations in Paragraphs 8 of the Complaint, Defendants lack
18 sufficient information to form an opinion as to the truthfulness of the allegations contained in
19 this paragraph, and therefore deny them in their entirety.

20 7. With respect to the allegations in Paragraphs 9 of the Complaint, Defendants lack
21 sufficient information to form an opinion as to the truthfulness of the allegations contained in
22 this paragraph, and therefore deny them in their entirety.

23 8. With respect to the allegations in Paragraphs 10 of the Complaint, Defendants lack
24 sufficient information to form an opinion as to the truthfulness of the allegations contained in
25 this paragraph, and therefore deny them in their entirety.

26 **FACTUAL BACKGROUND**

27 9. With respect to the allegations of Paragraph 11 of the Complaint, Defendants admit the
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1 allegations of that Paragraph.

2 10. With respect to the allegations of Paragraph 12 of the Complaint, Defendants admit that
3 Plaintiff Mark Scott was initially hired as an Animal Control Officer in September 2012, and
4 that at the outset, he performed his duties in an acceptable manner. With the exception of this
5 limited admission, Defendants deny each and every, all and singular, the remaining allegations
6 of this Paragraph, specifically that Plaintiff Mark Scott was ever demoted at all, or terminated
7 due to protected activity complaints.

8 11. With respect to the allegations of Paragraph 13 of the Complaint, Defendants admit that
9 Plaintiff Misty Guy was a former Customer Service Representative and Volunteer Coordinator
10 at PASF, and that at the outset she performed her duties in an acceptable manner. With the
11 exception of this limited admission, Defendants deny each and every, all and singular, the
12 remaining allegations of this Paragraph, specifically that Defendant Jeff Charter took any
13 inappropriate pictures of Plaintiff's body at any time.

14 12. With respect to the allegations of Paragraph 14 of the Complaint, Defendants admit that
15 Plaintiff Kathy Sousa was hired as a former cat care coordinator in August 2012 , and that at the
16 outset she performed her duties in an acceptable manner. With this limited exception, Defendants
17 deny each and every, all and singular, the remaining allegations of this Paragraph, specifically
18 that she was terminated after she made internal complaints of harassment and complaints to the
19 various governmental agencies as to wages and racially or sexually inappropriate practices of
20 Defendants.

21 13. With respect to the allegations of Paragraph 15 of the Complaint, Defendants deny each
22 and every, all and singular, the allegations of this Paragraph in their entirety.

23 14. With respect to the allegations of Paragraph 16 of the Complaint, Defendants deny each
24 and every, all and singular, the allegations of this Paragraph in their entirety.

25 15. With respect to the allegations of Paragraph 17 of the Complaint, Defendants deny each
26 and every, all and singular, the allegations of this Paragraph in their entirety.

27 16. With respect to the allegations of Paragraph 18 of the Complaint, Defendants deny each
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1 and every, all and singular, the allegations of this Paragraph in their entirety.

2 17. With respect to the allegations of Paragraph 19 of the Complaint, Defendants deny each
3 and every, all and singular, the allegations of this Paragraph in their entirety.

4 18. With respect to the allegations of Paragraph 20 of the Complaint, Defendants deny each
5 and every, all and singular, the allegations of this Paragraph in their entirety.

6 19. With respect to the allegations of Paragraph 21 of the Complaint, Defendants deny each
7 and every, all and singular, the allegations of this Paragraph in their entirety.

8 20. With respect to the allegations of Paragraph 22 of the Complaint, Defendants were aware
9 of the complaints made to the Board of Directors and the City of Petaluma after the fact, With
10 the exception of this limited admission, Defendants deny each and every, all and singular the
11 remaining allegations of this Paragraph.

12 21. With respect to the allegations of Paragraph 23 of the Complaint, Defendants deny each
13 and every, all and singular, the allegations of this Paragraph in their entirety.

14 22. With respect to the allegations of Paragraph 24 of the Complaint, Defendants deny each
15 and every, all and singular, the allegations of this Paragraph in their entirety.

16 23. With respect to the allegations of Paragraph 25 of the Complaint, Defendants deny each
17 and every, all and singular, the allegations of this Paragraph in their entirety.

18 24. With respect to the allegations of Paragraph 26 of the Complaint, Defendants deny each
19 and every, all and singular, the allegations of this Paragraph in their entirety.

20 25. With respect to the allegations of Paragraph 27 of the Complaint, Defendants lack
21 sufficient information to form an opinion as to the truthfulness of these allegations, and therefore
22 deny them in their entirety.

23 26. With respect to the allegations of Paragraph 28 of the Complaint, Defendants deny each
24 and every, all and singular, the allegations of this Paragraph in their entirety.

25 27. With respect to the allegations of Paragraph 29 of the Complaint, Defendants lack
26 information sufficient to form an opinion as to the truthfulness of the allegations of this
27 Paragraph, and therefore deny them in their entirety.

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1 28. With respect to the allegations of Paragraph 30 of the Complaint, Defendants deny each
2 and every, all and singular, the allegations of this Paragraph in their entirety.

3 29. With respect to the allegations of Paragraph 31 of the Complaint, Defendants deny each
4 and every, all and singular, the allegations of this Paragraph in their entirety.

5 30. With respect to the allegations of Paragraph 32 of the Complaint, Defendants lack
6 information sufficient to form an opinion as to the truthfulness of the allegations of this
7 Paragraph, and therefore deny them in their entirety.

8 31. With respect to the allegations of Paragraph 33 of the Complaint, Defendants lack
9 information sufficient to form an opinion as to the truthfulness of the allegations of this
10 Paragraph, and therefore deny them in their entirety.

11 32. With respect to the allegations of Paragraph 34 of the Complaint, Defendants lack
12 information sufficient to form an opinion as to the truthfulness of the allegations of this
13 Paragraph, and therefore deny them in their entirety.

14 33. With respect to the allegations of Paragraph 35 of the Complaint, Defendants lack
15 information sufficient to form an opinion as to the truthfulness of the allegations of this
16 Paragraph, and therefore deny them in their entirety.

17 34. With respect to the allegations of Paragraph 36 of the Complaint, Defendants deny each
18 and every, all and singular, the allegations of this Paragraph in their entirety.

19 35. With respect to the allegations of Paragraph 37 of the Complaint, Defendants deny each
20 and every, all and singular, the allegations of this Paragraph in their entirety; and specifically
21 allege that Plaintiffs conduct in seeking an award of the government contract to service the
22 animal shelter in the City of Petaluma for themselves was deliberate, false and done in a
23 malicious attempt to destroy their employer at the time, PASF, and for their own gain.

24 **FIRST CAUSE OF ACTION**

25 (Violations of the FLSA, 29 U.S.C. Section 215 – Defendant PASF)

26 36. With respect to the allegations of Paragraph 38 of the Complaint, Defendants incorporate
27 by reference into this response their responses to Paragraphs 1 through 37, inclusive, as if fully
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1 set forth herein.

2 37. With respect to the allegations of Paragraph 39 of the Complaint, Defendants admit that
3 FLSA has anti-retaliation provisions. With this limited exception, Defendants deny each and
4 every, all and singular, the remaining allegations of this Paragraph.

5 38. With respect to the allegations of Paragraph 40 of the Complaint, Defendants admit that
6 Plaintiffs made complaints concerning compensation to the California Labor Commissioner's
7 office after their terminations. With the exception of this limited admission, Defendants deny
8 any other aspect, express or implied of this Paragraph.

9 39. With respect to the allegations of Paragraph 41 of the Complaint, Defendants admit that
10 they became aware of the complaints of Plaintiffs when the complaints were served upon them
11 by the Labor Commissioner's Office. With the exception of this limited admission, Defendants
12 deny any other aspect, express or implied of this Paragraph.

13 40. With respect to the allegations of Paragraph 42 of the Complaint, Defendants deny each
14 and every, all and singular, the allegations of this Paragraph in their entirety.

15 41. With respect to the allegations of Paragraph 43 of the Complaint, Defendants deny each
16 and every, all and singular, the allegations of this Paragraph in their entirety.

17 42. With respect to the allegations of Paragraph 44 of the Complaint, Defendants deny each
18 and every, all and singular, the allegations of this Paragraph in their entirety.

19 43. With respect to the allegations of Paragraph 45 of the Complaint, Defendants deny each
20 and every, all and singular, the allegations of this Paragraph in their entirety.

21 **SECOND CAUSE OF ACTION**

22 (Violations of FEHA-Discrimination – Defendant PASF)

23 44. With respect to the allegations of Paragraph 46 of the Complaint, Defendants incorporate
24 by reference their responses to Paragraphs 1 through 45, inclusive, as if fully set forth herein.

25 45. With respect to the allegations of Paragraph 47 of the Complaint, Defendants admit that
26 Government Code Section 12940 *et. seq.* prohibits unlawful discrimination. With the exception
27 of this limited admission, Defendants deny any express or implied implication that they engaged
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1 in such unlawful conduct.

2 46. With respect to the allegations of Paragraph 48 of the Complaint, Defendants deny each
3 and every, all and singular, the allegations of this Paragraph in their entirety.

4 47. With respect to the allegations of Paragraph 49 of the Complaint, Defendants deny each
5 and every, all and singular, the allegations of this Paragraph in their entirety.

6 48. With respect to the allegations of Paragraph 50 of the Complaint, Defendants deny each
7 and every, all and singular, the allegations of this Paragraph in their entirety.

8 49. With respect to the allegations of Paragraph 51 of the Complaint, Defendants deny each
9 and every, all and singular, the allegations of this Paragraph in their entirety.

10 50. With respect to the allegations of Paragraph 52 of the Complaint, Defendants deny each
11 and every, all and singular, the allegations of this Paragraph in their entirety.

12 **THIRD CAUSE OF ACTION**

13 (Violations of FEHA-Retaliation – Defendant PASF)

14 51. With respect to the allegations of Paragraph 53 of the Complaint, Defendants incorporate
15 by reference their responses to Paragraphs 1 through 52, inclusive, as if fully set forth herein.

16 52. With respect to the allegations of Paragraph 54 of the Complaint, Defendants admit that
17 Government Code Section 12940 (h) prohibits unlawful retaliation against an employee engaged
18 in protected activities. With the exception of this limited admission, Defendants deny any
19 express or implied implication that they engaged in such unlawful conduct.

20 53. With respect to the allegations of Paragraph 55 of the Complaint, Defendants deny each
21 and every, all and singular, the allegations of this Paragraph in their entirety.

22 54. With respect to the allegations of Paragraph 56 of the Complaint, Defendants deny each
23 and every, all and singular, the allegations of this Paragraph in their entirety.

24 55. With respect to the allegations of Paragraph 57 of the Complaint, Defendants deny each
25 and every, all and singular, the allegations of this Paragraph in their entirety.

26 56. With respect to the allegations of Paragraph 58 of the Complaint, Defendants deny each
27 and every, all and singular, the allegations of this Paragraph in their entirety.
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1 57. With respect to the allegations of Paragraph 59 of the Complaint, Defendants deny each
2 and every, all and singular, the allegations of this Paragraph in their entirety.

3 **FOURTH CAUSE OF ACTION**

4 (Violations of the California Labor Code-Retaliation – Defendant PASF)

5 58. With respect to the allegations of Paragraph 60 of the Complaint, Defendants incorporate
6 by reference their responses to Paragraphs 1 through 59, inclusive, as if fully set forth herein.

7 59. With respect to the allegations of Paragraph 61 of the Complaint, Defendants admit that
8 California Labor Code Sections 96, 98 and 1102.5 (erroneously cited in the Complaint as
9 Government Code sections) prohibit unlawful retaliation against an employee for opposing an
10 unlawful employment practice. With the exception of this limited admission, Defendants deny
11 any express or implied implication that they engaged in such unlawful conduct.

12 60. With respect to the allegations of Paragraph 62 of the Complaint, Defendants deny each
13 and every, all and singular, the allegations of this Paragraph in their entirety.

14 61. With respect to the allegations of Paragraph 63 of the Complaint, Defendants deny each
15 and every, all and singular, the allegations of this Paragraph in their entirety.

16 62. With respect to the allegations of Paragraph 64 of the Complaint, Defendants deny each
17 and every, all and singular, the allegations of this Paragraph in their entirety.

18 63. With respect to the allegations of Paragraph 65 of the Complaint, Defendants deny each
19 and every, all and singular, the allegations of this Paragraph in their entirety.

20 **FIFTH CAUSE OF ACTION**

21 (Failure to Pay Overtime, All Wages Owed & Accurate Wage Statements-FLSA,
22 29 U.S.C. Section 207, California Labor Code Sections 201 *et. seq.*, 8 California Code
23 of Regulations Section 11010 – Defendant PASF)

24 64. With respect to the allegations of Paragraph 66 of the Complaint, Defendants incorporate
25 by reference their responses to Paragraphs 1 through 65, inclusive, as if fully set forth herein.

26 65. With respect to the allegations of Paragraph 67 of the Complaint, Defendants deny each
27 and every, all and singular, the allegations of this Paragraph in their entirety.
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1 66. With respect to the allegations of Paragraph 68 of the Complaint, Defendants deny each
2 and every, all and singular, the allegations of this Paragraph in their entirety.

3 **SIXTH CAUSE OF ACTION**

4 (Violations of FEHA-Harassment – Defendants PASF, Jeff Charter)

5 67. With respect to the allegations of Paragraph 69 of the Complaint, Defendants incorporate
6 by reference their responses to Paragraphs 1 through 68, inclusive, as if fully set forth herein.

7 68. With respect to the allegations of Paragraph 70 of the Complaint, Defendants admit that
8 Government Code Section 12940 *et. seq.* prohibits unlawful harassment. With the exception of
9 this limited admission, Defendants deny any express or implied implication that they engaged in
10 such unlawful conduct.

11 69. With respect to the allegations of Paragraph 71 of the Complaint, Defendants deny each
12 and every, all and singular, the allegations of this Paragraph in their entirety.

13 70. With respect to the allegations of Paragraph 72 of the Complaint, Defendants deny each
14 and every, all and singular, the allegations of this Paragraph in their entirety.

15 71. With respect to the allegations of Paragraph 73 of the Complaint, Defendants deny each
16 and every, all and singular, the allegations of this Paragraph in their entirety.

17 72. With respect to the allegations of Paragraph 74 of the Complaint, Defendants deny each
18 and every, all and singular, the allegations of this Paragraph in their entirety.

19 **SEVENTH CAUSE OF ACTION**

20 (Violations of the False Claims Act, 31 U.S.C. Section 3730 – Defendant PASF)

21 73. With respect to the allegations of Paragraph 75 of the Complaint, Defendants incorporate
22 by reference their responses to Paragraphs 1 through 74, inclusive, as if fully set forth herein.

23 74. With respect to the allegations of Paragraph 76 of the Complaint, Defendants deny each
24 and every, all and singular, the allegations of this Paragraph in their entirety.

25 75. With respect to the allegations of Paragraph 77 of the Complaint, Defendants deny each
26 and every, all and singular, the allegations of this Paragraph in their entirety.

27 76. With respect to the allegations of Paragraph 78 of the Complaint, Defendants deny each
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1 and every, all and singular, the allegations of this Paragraph in their entirety.

2 77. With respect to the allegations of Paragraph 79 of the Complaint, Defendants deny each
3 and every, all and singular, the allegations of this Paragraph in their entirety.

4 78. With respect to the allegations of Paragraph 80 of the Complaint, Defendants deny each
5 and every, all and singular, the allegations of this Paragraph in their entirety.

6 **EIGHTH CAUSE OF ACTION**

7 (Defamation/False Light – Defendant PASF and DOES 1 to 10)

8 79. With respect to the allegations of Paragraph 81 of the Complaint, Defendants incorporate
9 by reference their responses to Paragraphs 1 through 80, inclusive, as if fully set forth herein.

10 80. With respect to the allegations of Paragraph 82 of the Complaint, Defendants deny each
11 and every, all and singular, the allegations of this Paragraph in their entirety.

12 81. With respect to the allegations of Paragraph 83 of the Complaint, Defendants deny each
13 and every, all and singular, the allegations of this Paragraph in their entirety.

14 82. With respect to the allegations of Paragraph 84 of the Complaint, Defendants deny each
15 and every, all and singular, the allegations of this Paragraph in their entirety.

16 83. With respect to the allegations of Paragraph 85 of the Complaint, Defendants deny each
17 and every, all and singular, the allegations of this Paragraph in their entirety.

18 84. With respect to the allegations of Paragraph 86 of the Complaint, Defendants deny each
19 and every, all and singular, the allegations of this Paragraph in their entirety.

20 85. With respect to the allegations of Paragraph 87 of the Complaint, Defendants deny each
21 and every, all and singular, the allegations of this Paragraph in their entirety.

22 86. In response to the Plaintiff's Prayer for Relief, the Defendants deny that Plaintiffs
23 are entitled to the specified relief, or to any relief at all.

24 **AFFIRMATIVE DEFENSES**

25 Defendants allege the following as separate affirmative defenses to the Plaintiffs' claims
26 without assuming the burden of proof, where such burden is otherwise on the Plaintiffs under
27 applicable federal or state procedural law. Defendants reserve the right to add additional
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1 affirmative defenses should it becomes aware of such during the course of discovery.

2 87. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
3 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that the Complaint, and each
4 cause of action herein, fails to state facts sufficient to constitute a cause of action.

5 88. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
6 AND EACH CAUSE OF ACTION THEREOF, Defendants assert on information and belief that
7 Plaintiffs, have failed, refused and/or neglected to mitigate or avoid the damages complained of,
8 if any.

9 89. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
10 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that Plaintiffs have not suffered
11 any losses as a result of any misconduct of Defendants.

12 90. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
13 AND EACH CAUSE OF ACTION THEREOF, Defendants assert on information and belief that
14 all or portions of the claims set forth in the Complaint are barred by the applicable statute of
15 limitations.

16 91. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
17 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that information acquired after
18 the adverse employment action is, in and of itself, a sufficient basis for the conduct taken in this
19 action by Defendants, or otherwise bars or reduces Plaintiffs' claims of damages.

20 92. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
21 AND EACH CAUSE OF ACTION THEREOF, Defendants assert on information and belief that
22 Plaintiffs knowingly and intentionally destroyed evidence that would implicate them in a conflict
23 of interest and improper activities during of the course of their employment and thereafter.

24 93. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
25 AND EACH CAUSE OF ACTION THEREOF, Defendants assert on information and belief that
26 Plaintiffs knowingly engaged in spoliation of evidence for which Defendants are entitled to an
27 adverse jury instruction at a minimum and sanctions pursuant to a motion at a later date.
28

1 94. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
2 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that their conduct was a lawful
3 exercise of their management discretion, because, Plaintiffs' own bad faith misconduct
4 proximately caused their own terminations.

5 95. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
6 AND EACH CAUSE OF ACTION THEREOF, Defendants assert, on information and belief,
7 that, to the extent Plaintiffs seek damages or recover for injuries that arise from injuries
8 compensable under the California Workers Compensation Act, said claims are barred, subject to
9 apportionment and/or limited by the exclusive remedy of California Labor Code Section 3601, et
10 seq.

11 96. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
12 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that Plaintiffs' claims are
13 barred by the equitable doctrine of unclean hands.

14 97. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
15 AND EACH CAUSE OF ACTION THEREOF, Defendants assert on information and belief that
16 Plaintiffs' claims are barred by the doctrine of estoppel.

17 98. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
18 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that any and all conduct about
19 which Plaintiffs now complain was a just and proper exercise of management discretion on the
20 part of Defendants and their agents and employees undertaken for a fair and honest reason and
21 regulated by good faith under the circumstances then existing.

22 99. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
23 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that the incidents complained
24 of were proximately caused and/or contributed to by the sole or concurrent negligence and/or acts
25 or omissions of persons or entities other than Defendants, including Plaintiffs herein. Defendants
26 therefore pray that the court compare the negligence and/or acts or omissions of all persons,
27 firms, corporations and/or entities of any kind which proximately caused or contributed to the
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1 incidents complained of herein and the injuries, if any, sustained by Plaintiffs herein, and that the
2 court award damages, if any, against Defendants only in proportion to each of their percentages of
3 fault, if any, in accordance with applicable law, including but not limited to Civil Code sections
4 1430 through 1432.

5 100. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
6 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that Plaintiffs were negligent
7 in and about the matters alleged in the Complaint, and that said negligence of Plaintiffs was the
8 sole and/or partial proximate cause of the damages herein, if any there were.

9 101. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
10 AND EACH CAUSE OF ACTION THEREOF, Defendants assert on information and belief that
11 Plaintiffs were guilty of a breach of contract, bad faith, or other misconduct which would preclude
12 a right of recovery or diminish, on a comparative basis, Plaintiffs' right of recovery.

13 102. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
14 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that Plaintiffs' Complaint, and
15 each cause of action therein, is barred by the doctrine of laches.

16 103. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
17 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that Plaintiffs' recovery herein
18 is barred or reduced by the doctrine of equitable setoff.

19 104. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
20 AND EACH CAUSE OF ACTION THEREOF, Defendants assert Plaintiffs have been paid
21 properly for all hours worked, including overtime, and that rest and meal breaks were authorized
22 and permitted for non-exempt employees, including Plaintiffs Misty Guy and Kathy Sousa.

23 105. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
24 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that Plaintiff Mark Scott was
25 an exempt employee who is not entitled to overtime, rest or meal breaks to which the statutorily
26 nonexempt Plaintiffs are entitled; and therefore any claims for overtime, rest or meal breaks
27 attributed to him fail as a matter of law.
28

1 106. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
2 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that all of Plaintiffs alleged
3 claims of harassment, and alleged racially or sexually insensitive conduct were thoroughly
4 investigated and addressed properly without any repercussions as to any of the Plaintiffs.

5 107. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
6 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that at no time was Plaintiff
7 Mark Scott demoted; he was given a comparable job at an equal pay based upon a legitimate
8 reorganization. Further, he was not terminated based upon complaints that he made as to racially
9 insensitive remarks or complaints to any government agency. Rather, his termination was related
10 to a conflict of interest that arose when he and the other Plaintiffs while employed by PASF,
11 orchestrated a takeover of the City of Petaluma account for their personal gain, by making false
12 and defamatory allegations against Defendants to Defendant PASF's detriment..

13 108. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
14 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that the Federal False Claims
15 Act does not apply to any of the allegations contained in Plaintiffs' Complaint, as the allegations
16 that the Plaintiffs made were false from the inception and calculated to harm PASF and Jeff
17 Charter. They were unrelated to fraudulent charges to a government agency; and no action was
18 undertaken against Plaintiffs as a result of their false claims to the City of Petaluma.

19 109. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
20 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that they made no false
21 statements as to Plaintiffs whatsoever. Any statements that were made were true and truth is a
22 defense to the alleged defamation/false light contentions.

23 110. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
24 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that Plaintiff Misty Guy cannot
25 show the elements of constructive termination, as she voluntarily resigned her employment and
26 refused to cooperate in the claim of sexual harassment that she asserted before she left.
27
28

1 111. AS A SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE COMPLAINT
2 AND EACH CAUSE OF ACTION THEREOF, Defendants assert that Plaintiff Mark Scott was
3 not demoted. Rather, his position changed as a result of a company reorganization and his
4 subsequent termination was related to his misconduct in engaging in a direct conflict of interest
5 designed to harm PASF while he was employed by it.

8 DATED: June 3, 2019

FARBSTEIN & BLACKMAN
A Professional Corporation

By: _____ /s/
Michael A. Farbstein
H. Ann Liroff
Attorneys for Defendants
PETALUMA ANIMAL SERVICES
FOUNDATION and JEFF CHARTER

DEMAND FOR JURY TRIAL

The Defendants herein demand a jury for the issues to be tried in this matter.

18 DATED: June 3, 2019

FARBSTEIN & BLACKMAN
A Professional Corporation

By: _____ /s/
Michael A. Farbstein
H. Ann Liroff
Attorneys for Defendants
PETALUMA ANIMAL SERVICES
FOUNDATION and JEFF CHARTER