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JUL 11 2014
SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
BY [Signature] DEPUTY

7 **Attorneys for PLAINTIFFS, VIRGINIA DAILY & MICHAEL J. CONGDON**

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF FRESNO

11 **VIRGINIA DAILY**, An Individual; and)
12 **MICHAEL J. CONGDON**, An)
13 Individual,)

13 Plaintiff,)

14 vs.)

15 **COUNTY OF FRESNO**, a Public)
16 Entity; **LIBERTY ANIMAL**)
17 **CONTROL SERVICES**, a California)
18 Limited Liability Corporation; and)
19 **DOES 1-50**, inclusive,)

18 Defendants.)

CASE NO: **14 CE CG 01 97 6**

COMPLAINT FOR DAMAGES #035
192195

1. WHISTLE BLOWER
RETALIATION, California Labor
Code §1102.5 et seq.
2. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY

JURY TRIAL DEMANDED

20 **NATURE OF THE CASE**

21 1. Plaintiffs **VIRGINIA DAILY** and **MICHAEL J. CONGDON** (hereinafter
22 referred to as "Plaintiffs") hereby allege that Defendants **COUNTY OF FRESNO** and
23 **LIBERTY ANIMAL CONTROL SERVICES** (hereinafter "Defendants") engaged in
24 employment practices that are unlawful and contrary to the California Labor Code and in
25 violation of public policy.

26 2. This case is subject to the jurisdiction of this court pursuant to the
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1 California Labor Code and California Code of Civil Procedure. The amount of damages
2 sought, while not fully determined, exceeds amount for unlimited jurisdiction.

3 3. Venue is proper in this county because the employment relationship
4 between Plaintiffs and Defendants arose and was performed in Fresno County, California.

5 4. At all relevant times herein, Plaintiff Virginia Daily, is and was, a resident of
6 the County of Fresno, State of California.

7 5. At all relevant times herein, Plaintiff Michael J. Congdon, is and was, a
8 resident of the County of Fresno, State of California.

9 6. At all relevant times herein, Defendant County of Fresno, is and was, a
10 business and governmental entity, doing business in the County of Fresno and
11 throughout the state, and organized and existing pursuant to the Constitution and laws of
12 the State of California.

13 7. At all relevant times herein, Defendant Liberty Animal Control Services, is
14 and was, a California Limited Liability Corporation located in the County of Fresno, doing
15 business throughout Fresno County and organized and existing pursuant to the
16 Constitution and laws of the State of California.

17 8. Each Defendant has directly or indirectly or through an agent or other
18 person exercised control over the wages, hours, or working conditions of Plaintiffs.

19 9. Each Defendant directly or indirectly or through an agent or other person
20 engaged, suffered, or permitted to work each Plaintiffs.

21 10. The true names and capacities, whether individual, corporate, partnership,
22 associate or otherwise, of Defendants sued herein as DOES 1 through 50, inclusive, are
23 currently unknown to Plaintiff, who therefore sues said Defendants by such fictitious
24 names. Plaintiff is informed and believes, and based thereon alleges, that each of the
25 Defendants designated herein as a DOE is legally responsible in some manner for the
26 events and happenings referred to herein, and caused injury and damage proximately
27 thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of court to amend this
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1 Complaint to show the true names and capacities of the Defendants designated herein as
2 DOES 1 through 50 when the same have been ascertained. Whenever in this complaint
3 reference is made to "Defendants," such allegation shall be deemed to mean the acts of
4 Defendants acting individually, jointly, and/or severally.

5 11. Except as hereinafter specifically described, Defendants and each of them,
6 are and were the agents and/or employees of the other Defendants, and in acting as
7 described herein were acting within the scope of their authority or employment as agents
8 and/or employees thereof, and with the permission and consent of the other Defendants.

9 12. On or about March 2012, the Central California Society for the Prevention of
10 Cruelty to Animals ("CCSPCA") informed Defendant County of Fresno that it was
11 terminating its contract on September 30, 2012.

12 13. A Request for Proposals was distributed by Defendant County of Fresno,
13 and requested bids for services necessary to address the County's animal control needs.
14 In response to the County's Request for Proposals, Charles Wilkins, a licensed
15 veterinarian, Karen Wilkins, his wife, and Daniel Bailey created Defendant Animal
16 Control Services, LLC (hereinafter "Defendant Liberty"). This corporation did not exist,
17 and was created for the purpose of providing control services and emergency care that
18 Defendant County of Fresno is required to do under California State law and County
19 Ordinance.

20 14. At all relevant times herein, Charles Wilkins, Karen Wilkins and Daniel
21 Bailey, were, and are, officers, directs or managing agents withing the meaning of Cal. Civ.
22 Code. §3294.

23 15. In September of 2012, Edward L. Moreno, M.D., M.P.H., Director-Health
24 Officer, Department of Public Health, recommended that Defendant County of Fresno's
25 Board of Supervisors approve an agreement with Defendant Liberty Animal Control
26 Services, LLC.

27 16. Veterinary Wilkins, Karen Wilkins, and Daniel Bailey then became the three
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1 main officers and beneficiaries of the three year contract with Defendant County of
2 Fresno. On information and belief, Defendant County of Fresno hired Wilkins without
3 assessing his credentials or noting that he had been disciplined by the California
4 Veterinary Board for negligent care of animals. Defendant County of Fresno also held
5 Bailey out as a State Certified Animal Humane Officer. Plaintiffs are informed and
6 believe that Bailey is not a State Certified Animal Humane Officer.

7 17. Defendant County of Fresno established a temporary animal shelter at the
8 former Coroner facility at 760 W. Nielsen Ave., Fresno, California. This property is
9 owned by Defendant County of Fresno. Defendant County of Fresno also provided vans,
10 kennels, a portable office, an intake facility, washing/drying equipment, food storage,
11 fans, stainless steels tables, carts, office equipment, storage racks and other tools to
12 Defendant Liberty. Without these tools, neither Defendant Liberty, their staff nor
13 Plaintiffs can perform most, if not all, of their duties.

14 18. Defendant County of Fresno also provided volunteers to Defendant Liberty,
15 and, on information and belief, assumed responsibility for their volunteer activities.
16 Without these volunteers, Defendant Liberty would not be able to perform all of their
17 duties.

18 19. On or around January 2013, Plaintiff Congdon started working for
19 Defendants as an animal control officer and maintained that position until he was
20 terminated.

21 20. On or around January 2013, Plaintiff Daily started working for Defendants.
22 She worked as an office manager, and remained in that position until she was terminated.

23 21. As employees of Defendants, Plaintiffs were entitled to all of
24 the benefits provided by Defendants' personnel policies, procedures and practices.

25 22. At all relevant times herein, Plaintiffs were duly qualified and
26 performed their employment duties in a satisfactory manner.

27 23. From the beginning, Plaintiffs were asked to sign a "Check Pickup Slip" and
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1 time cards labeling, on information and belief, Defendants as their employer.

2 24. Plaintiff Congdon was also issued a Defendant County of Fresno Vehicle Use
3 Permit that held him out as an employee and authorized him to “use a county vehicle on
4 official business.” To use the County Vehicle, Plaintiff Congdon received several policies
5 and directives from Defendant County of Fresno directing, controlling and regulating his
6 use of the County Vehicle. He was also directed to report any accident to Defendant
7 County of Fresno, and to never “admit liability.” He was also subject to personal liability
8 and other penalties to Defendant County of Fresno for any damages to the vehicle
9 through any alleged negligence or illegal activity.

10 25. Owing to his work as an animal control officer, Plaintiff Congdon
11 performed most of his duties using Defendant County of Fresno’s vehicles and tools. In
12 fact, he spent more than approximately 50% using these tools to perform his duties.

13 26. Owing to her work as an office manager, Plaintiff Daily performed most, if
14 not all, of her duties at Defendant County of Fresno’s 760 W. Nielsen Ave. property.

15 27. Throughout the Plaintiffs’ employment, Defendant Liberty engaged in the
16 following unlawful practices:

- 17 • Mass euthanasia of animals, including the use of cruel and unusual methods
18 to kill the animals like starvation, in-fighting, low dosage injections, spread
19 of disease and infection, and the unlawful use of intra-cardiac injections on
20 conscious animals;
- 21 • Instructing staff to kill animals in front of other live animals;
- 22 • Underreporting the number of animals that were being euthanized and
23 murdered for profit without exploring any options or affording the animals
24 any reasonable level of treatment;
- 25 • Instructing employees and other staff to misrepresent when and how the
26 animals were killed, including lying to the owners of animals who came to
27 the rescue in search of their dogs;

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- The starvation of sheltered animals, including numerous failures to provide any food or only two bags of food, ranging from 20 to 50 pound bags, for approximately 200 dogs in one day. Naturally, this led to death matches between starving animals;
- Threatening employees that they would be fired if they became injured trying to stop a fight between starving dogs;
- Instructing employees not to use euthanasia medicine, and to let the animals die “naturally” of disease or malnourishment in order to save money regardless of the needless suffering and pain of the animals. This includes the mixing of new mothers and their puppies with sick dogs therefore assuring infection of the puppies with diseases;
- The coupling of dangerous dogs with pacified dogs encouraged fights, and the deaths of weaker and susceptible animals;
- Advancing the spread of diseases like Parvo and Distemper through below standard medical care and the failure to sanitize the shelter as required by law, including pairing healthy animals with sick animals and allowing the animals to sleep in their own feces because they did not buy cleaning supplies nor otherwise maintain clean facilities;
- Misrepresenting that the animals were, in fact, being vaccinated for diseases like Parvo and Distemper;
- Instructing employees to falsify hold records, and encouraging them to label healthy animals as sick, harmless animals as dangerous and adoptable animals as unadoptable animals in order to kill them;
- Advancing the use of tax payer funds to support high salaries for management, and therefore undercapitalizing the shelter;
- The misuse of tax payer dollars, including the syphoning of these funds for the personal use by Daniel Bailey, Charles Wilkins and Karen Wilkins;

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- The use of County Vehicles for personal benefit;
- The use of County Vehicles, property, funds and tools to perform animal control services for other cities like Fowler, Firebaugh, Selma and Parlier;
- Misrepresenting, on information and belief, their status as an IRS 501(c)(3) corporation, and receiving donations from the public as such;
- Reselling of public donations, and pocketing the profits for personal use when the sheltered animals needed vaccines, food and a clean space to live;
- The double billing of veterinary services by Charles Wilkins, and his use of County property, tools and contracts to dispose of dogs he euthanized in his private practice;
- Misrepresentation of Fresno County Sheriff phone calls as attended to, and responded when in fact, Bailey stayed home;
- Misrepresentation of dogs as adoptable, and healthy, when, in fact, they were sick. This cost thousands of dollars to the people and shelters who adopted these animals, and threatened the spread of disease throughout the cities and homes where these dogs were adopted.

28. Defendant County of Fresno ratified the above mentioned acts by:

- Working together with Defendant Liberty to develop guidelines and procedures for the shelter, enabling and allowing it to fall below the standard of care;
- Participating in decisions regarding Defendant Liberty's internal policies and service delivery model;
- Undercapitalizing Defendant Liberty, and allowing Defendant Liberty to "shelter" more than 200 animals per month when the contract clearly stated that the facilities could house approximately 100 animals per month;
- Approving a three year contract with Defendant Liberty, a group of unqualified individuals, and then ratifying their below-standard care and

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the mass euthanization of animals in a cruel and inhumane manner by labeling Defendant Liberty's unlawful practices as challenges in a new "startup";

- Allowing County property to be used for the personal gain of the individuals managing Defendant Liberty;
- Granting Defendant Liberty the right to use the morgue to house animals in a safe and unsanitary manner, and providing them with trailers to house large numbers of animals in dangerous and diseased riddled conditions;
- Failing to conduce good faith and effective inspections of Defendant Liberty's treatment and care of the animals by advising managerial staff about inspection **BEFORE** they occurred;
- Allowing Hank Gill, a Fresno County Health and Safety Official, to develop a friendship with Daniel Bailey, including alcoholic drinking sessions **AFTER** the alleged inspections at the premises;
- Consciously disregarding the health hazards of unvaccinated animals;
- Deterring current and former employees of Defendant Liberty, from complaining about the unlawful practices they witnessed.

29. Notwithstanding the representations by Defendant County of Fresno that weekly inspections are being conducted to supervise and direct Defendant Liberty's operations, there are still complains of mass euthanization and spread of disease.

30. Throughout their employment, the Plaintiffs complained about the unlawful acts of Defendants.

31. On or around late June or early July 2013, Plaintiff Congdon witnessed a pit bull on a penal code hold being unlawfully euthanized. He immediately expressed his opposition. When he complained to Wilkins and Bailey, they told him to let it go. He later talked to the employee who euthanized the pit bull. This employee revealed that Wilkins and Bailey directed him to lie to anyone, including the Fresno County District

1 Attorney's Office, by telling them that the dog died of a heart attack. In fact, when the
2 owner of the pit bull and the Fresno County District Attorney's Office called, both were
3 informed that the dog died of heart attack.

4 32. Plaintiff Congdon then proceeded to complain to Bailey and Wilkins.
5 Bailey then told Plaintiff Congdon that he was out of line, and to watch his back. In
6 response, Plaintiff Congdon told Bailey that he would not commit perjury.

7 33. A few days later, he was terminated from his employment under the pretext
8 that Defendant County of Fresno decided to stop "funding" his position. Notwithstanding
9 the alleged lack of funds, Plaintiff Congdon's final check included a \$1 dollar raise.

10 34. With respect to Plaintiff Daily, she began to complain about the
11 substandard veterinary care and inhumane living conditions of the animals from the
12 beginning of her employment. As a veterinary tech and long-standing member of the
13 animal rescue community, she believed she could change things. Her complaints,
14 however, were ignored. She witnessed and opposed Veterinary Wilkin's decision to turn
15 free medical help turned away because he wanted to charge for his services, and also
16 opposed the unlawful taking of an animal with a distraught owner by Bailey to his home.
17 As a result of her constant complaints, she began to experience retaliation when her hours
18 were cut and her work related records/belongings started disappearing from her work
19 desk.

20 35. On or about September 5, 2013, Plaintiff Daily complained to Bailey about
21 the violations of California laws, regulations and codes regarding the care and inhumane
22 treatment of animals; the mass killings; the illegal sweeps; the lack of basic medical help,
23 vaccinations on intake, and health checks for the animals; the disappearance of
24 donations; the alteration of her records; the acceptance of donations as 501c3 non-profit
25 corporation; lies to the public about the real use of donations and the care of specific
26 animals; and Bailey's humane officer status. She told him that she was going to disclose
27 these issues to a government agency. In response, Bailey told her to hold on and that he
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1 would set up a meeting between Veterinary Wilkins, Ms. Wilkins, Plaintiff Daily and
2 himself the following Monday to talk about these issues.

3 36. The following Monday, the meeting never took place. Instead, a few hours
4 after the meeting was supposed to take place, Ms. Wilkins fired Plaintiff Daily alleging
5 that Defendant County of Fresno's Board of Supervisors cut Plaintiff Daily's funding for
6 her job. Plaintiff Daily never heard of any cuts, and her job was not eliminated.

7 37. Plaintiffs are further informed and believe that other employees have also
8 suffered adverse employment actions and/or threatened with such actions as a result of
9 their opposition of Defendant Liberty's unlawful practices.

10 **FIRST CAUSE OF ACTION**
11 **WHISTEBLOWER RETALIATION AGAINST ALL DEFENDANTS**
12 **CALIFORNIA LABOR CODE §1102.5 et al**

13 38. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
14 though fully set forth herein.

15 39. Plaintiffs had a reasonable belief that Defendants were violating a state or
16 federal statute, or a violation or noncompliance with a state or federal rule or regulation
17 when they complained, amongst other things, about the unlawful mass euthanization of
18 animals; the cruel and inhumane killing of hundreds of healthy animals; the use of below
19 standard medical care; the syphoning and misuse of tax payer dollars and donations; the
20 manipulation and falsification of records; the death of an animal in a criminal hold; the
21 unlawful taking of an animal with an owner; and violations of California holding periods
22 and veterinary cares laws.

23 40. Defendants created, adopted and enforced a rule, regulation or policy
24 preventing an employee from disclosing information to a government or law enforcement
25 agency when each of the Plaintiffs was fired after they stood up to the Defendants, and
26 through Defendant County of Fresno's ratification of Defendant Liberty's unlawful and
27 inhumane practices.

28 41. Defendants and each of them failed to develop and implement policies and

1 procedures for prompt and proper investigation of allegations of inhumane treatment of
2 the animals and retaliation against employees for disclosing information to a government
3 or law enforcement agency. Defendants had reasonable cause to believe that the
4 information disclosed a violation of state or federal statute, or violation or noncompliance
5 with a state or federal regulation.

6 42. Plaintiffs also refused to participate in an activity that would have resulted
7 in a violation of state or federal statute, or a violation or noncompliance with a state or
8 federal regulation including, among other things, when Plaintiff Congdon refused to lie
9 about the death of the pit bull on hold and when Plaintiff Daily opposed, complained and
10 refused to advance Defendants' unlawful practices.

11 43. In subjecting Plaintiffs to the unlawful actions described above,
12 Defendants willfully, knowingly and intentionally retaliated against Plaintiffs. As a direct
13 and proximate result, Plaintiffs have suffered and will continue to suffer pain and
14 emotional distress. Plaintiffs are thereby entitled to general and compensatory damages
15 in amounts to be proven at trial.

16 44. As a direct and proximate result of Defendants' willful, knowing and
17 intentional retaliation against them, Plaintiffs have further suffered and will continue to
18 suffer a loss of earnings and/or other employment benefits and job opportunities.
19 Plaintiffs are thereby entitled to general and compensatory damages in amounts to be
20 proven at trial.

21 45. Plaintiffs are informed and believe, and based thereon alleges, that the
22 outrageous conduct of Defendant Liberty as described above was done with malice, fraud
23 and oppression and with conscious disregard for their rights and with the intent, design
24 and purpose of injuring them. Defendant Liberty, through its officers, managing agents
25 and/or its supervisors, authorized, condoned and/or ratified the unlawful conduct of the
26 other employees. By reason thereof, Plaintiffs are entitled to punitive or exemplary
27 damages from Defendant Liberty in a sum according to proof at trial.

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1 46. As a further, direct and proximate result of Defendants' violations, Plaintiffs
2 have been compelled to retain the services of counsel in an effort to enforce the terms and
3 conditions of their employment relationship with Defendant.

4 **SECOND CAUSE OF ACTION**
5 **Wrongful Termination in Violation of Public Policy**
6 **Against Defendant Liberty and Does 1-50**

7 47. Plaintiffs repeat and reallege by reference each and every allegation and
8 incorporate the same herein.

9 48. Plaintiffs are informed and believe that on July 2013 and September 2013
10 they were terminated for complaining and opposing Defendant Liberty's rule, regulation,
11 or policy of preventing employees from disclosing information to a government or law
12 enforcement agency and for their refusal to participate in unlawful practices.

13 49. Plaintiffs are informed and believe that they were terminated for
14 complaining and opposing workplace practices that were cruel to the animals and
15 contrary to public safety and unsafe to employees, customers, and volunteers.

16 50. It is the public policy of the State of California, as expressed in the California
17 Labor Code §1102.5, *et seq.*, that employees be free retaliation in the workplace.

18 51. It is the public policy of the State of California, as expressed in the California
19 Labor Code §6310, *et seq.*, and Article I, §28, of the California Constitution, that the
20 promotion of public safety and exposure of unsafe workplace practices that can have
21 harmful effects to employees is protected.

22 52. It is the public policy of the State of California, as expressed, in the Penal
23 Codes Sections 597 *et al*, 597a, 597e, 597f, 597t, 597u, and 597v, amongst others, that
24 animals shall be afforded human treatment.

25 53. As a direct and proximate result of Defendant Liberty's willful, knowing and
26 intentional retaliation against them, Plaintiffs suffered pain and emotional distress.
27 Plaintiffs are thereby entitled to general and compensatory damages in amounts to be
28 proven at trial.

1 54. As a direct and proximate result of Defendant Liberty's willful, knowing and
2 intentional retaliation against them, Plaintiffs have further suffered and will continue to
3 suffer a loss of earnings and/or other employment benefits and job opportunities.
4 Plaintiffs are thereby entitled to general and compensatory damages in amounts to be
5 proven at trial.

6 55. Plaintiffs are informed and believe, and based thereon alleges, that the
7 outrageous conduct of Defendant Liberty as described above was done with malice, fraud
8 and oppression and with conscious disregard for their rights and with the intent, design
9 and purpose of injuring them. Defendant Liberty, through its officers, managing agents
10 and/or its supervisors, authorized, condoned and/or ratified the unlawful conduct of the
11 other employees. By reason thereof, Plaintiffs are entitled to punitive or exemplary
12 damages from Defendant Liberty in a sum according to proof at trial.

13 **WHEREFORE, PLAINTIFFS** seek judgement against Defendants as follows:

14 **AS TO THE FIRST CAUSE OF ACTION:**

- 15 1. For compensatory and general damages, according to proof;
- 16 2. For lost earnings, past and future, according to proof;
- 17 3. For interest as allowed by law;
- 18 4. For a penalty against Defendant Liberty in an amount not exceeding
19 \$10,000 for each violation of Cal. Lab. Code §1102.5, *et al*;
- 20 4. For costs of suit incurred herein, including expert witness fees;
- 21 5. For attorneys' fees as allowed by law, including but not limited to California
22 Government Code of Civil Procedure 1021, *et al*;
- 23 6. For such other and further relief that the Court may deem just and proper.

24 **AS TO THE SECOND CAUSE OF ACTION:**

- 25 1. For compensatory and general damages, according to proof;
- 26 2. For lost earnings, past and future, according to proof;
- 27 3. For punitive or exemplary damages, according to proof;

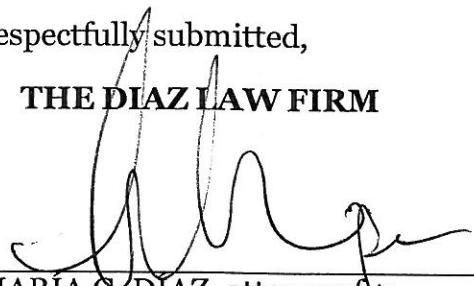
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- 4. For interest as allowed by law;
- 5. For attorneys' fees as allowed by law, including but not limited to California Government Code of Civil Procedure 1021, *et al*;
- 6. For such other and further relief that the Court may deem just and proper.

DATED: July 11, 2014

Respectfully submitted,

THE DIAZ LAW FIRM

By: 

MARIA G. DIAZ, attorney for
Plaintiffs MICHAEL CONGDON & VIRGINIA
DAILY