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FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
UNLIMITED CIVIL DIVISION

ROBERT WILLIAMS.

Plaintiff,

vs.

ROCKY MUNSON, an individual;
RIVERBEND MHP, LLC, a California
limited liability company; and DOES 1
through 60, inclusive,

Defendants.

Case No. 14 CE CG 02754

**FIRST AMENDED COMPLAINT
FOR RETALIATORY EVICTION,
BREACH OF THE IMPLIED
COVENANT OF QUIET
ENJOYMENT, SLANDER,
ASSAULT, BATTERY AND
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

Plaintiff ROBERT WILLIAMS ("Plaintiff") alleges as follows:

1. Plaintiff is, and that all times herein mentioned was, an individual residing in Fresno County, California.

2. Plaintiff is informed and believes and based thereon alleges that Defendant ROCKY MUNSON (hereinafter "Munson") is, and at all times herein mentioned was, an individual residing in Sanger, Fresno County, California.

3. Plaintiff is informed and believes and thereon alleges that Defendant RIVERBEND MHP, LLC. (hereinafter "Riverbend") is, and at all times herein mentioned was, a California limited liability company doing business in Fresno County and owns the

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1 Riverbend Mobile Home Park in the City of Sanger, Fresno County, California, more
2 particularly described in Exhibit A hereto (the "Riverbend Property").

3 4. Plaintiff is ignorant of the true names and capacities of Defendants
4 sued herein as DOES 1 through 70, inclusive, and therefore sues these Defendants by such
5 fictitious names. Plaintiff will amend this complaint to allege their true names and capacities
6 when ascertained. Plaintiff is informed and believes, and on the basis of such information
7 and belief alleges, that each of the fictitiously-named Defendants is indebted to Plaintiff as
8 herein alleged and that Plaintiff's rights against such fictitiously-named Defendants arise
9 from such indebtedness.

10 5. Plaintiff is informed and believes, and on that basis alleges, that at all
11 times, each of the Defendants, including the DOE Defendants, were and are the agent,
12 employee, employer, joint venturer, representative, alter ego, and/or partner of one or more
13 of the remaining Defendants and were, in performing the acts alleged or to be alleged, acting
14 within the scope of such relationship and/or is in some other way responsible for the acts of
15 one or more of the other Defendants.

16 GENERAL ALLEGATIONS

17 6. In or about, October 2010, Plaintiff and his wife, Kimberly Williams,
18 moved into the Riverbend Park located at 17604 East Kings Canyon Road #MH51, Sanger,
19 County of Fresno, State of California, 93657.

20 7. From October 2010 until early 2012, both Plaintiff and his wife were
21 good, quiet tenants who, from the very inception of their tenancy at the Riverbend Park,
22 always paid the monthly rent on time and abided by all of the Riverbend Park rules.

23 8. On or about, January 3, 2012, Plaintiff was walking at night over a
24 bridge located on the Riverbend Property when he tripped and fell, injuring his back.

25 9. Plaintiff's back injury resulted in a personal injury suit initiated by him
26 against Riverbend.

27 10. In or about, April 2012, Plaintiff began to be harassed by Munson, the
28 Riverbend Park property manager. **Munson exercised substantial discretionary authority**

1 over vital aspects of Riverbend's business that constitutes him as being a managing
2 agent of Riverbend based on the fact that he was in charge of managing all of the day to
3 day operations of Riverbend Park, had the authority to enforce the rules and
4 regulations of Riverbend Park, had the authority to fine tenants when the tenants broke
5 any of Riverbend Park's rules and regulations, was the first point of contact and would
6 handle all tenant complaints, and had the discretion to exceed Riverbend's standards
7 and create an 'implicit local policy' to disregard Riverbend's standards and create an
8 environment at Riverbend Park that was not kind to those tenants that sued to
9 vindicate their rights.

10 11. The harassment started with simple things like ignoring Plaintiff's
11 request for a new gas meter, letting Plaintiff's 250 gallon propane tank run out on
12 two occasions, and not giving Plaintiff notice that his water would be shut off on multiple
13 occasions.

14 12. Between the months of September 2012 and December 2012, Munson
15 began using "white-out" and changing figures on Plaintiff's monthly rental statements.

16 13. In or about, April 2013, Munson's harassment of Plaintiff escalated.
17 Munson began to initiate verbal yelling matches with Plaintiff and repeatedly made
18 unfounded telephone calls to the Sheriff's Department on Plaintiff.

19 14. Between the months of April 2013 and September 2013, Munson
20 called the Sheriff's Department approximately thirty times on Plaintiff accusing Plaintiff of
21 actions that he did not commit.

22 15. Prior to the January 3, 2012, accident, Munson had never called the
23 Sheriff's Department on Plaintiff nor did Plaintiff ever suffer any harassment from Munson.

24 16. On or about September 12, 2013, Munson escalated his actions
25 towards Plaintiff even further when he walked up to Plaintiff while he was resting on a pole
26 located in a Riverbend Park common area, punched him in the back knowing that Plaintiff
27 had injured his back after he fell on the bridge, spit in his face, and told him that he was no
28

1 longer allowed in any of the Riverbend Park's common areas and that Plaintiff is no longer
2 allowed to walk "where everyone else can."

3 17. On or about September 20, 2013, Plaintiff received an eviction notice
4 **on his door** from Riverbend. Plaintiff took the eviction notice to his attorney and was
5 informed that the eviction notice was not even a legal document.

6 18. On or about November 3, 2013, Plaintiff was standing in one of the
7 Riverbend Park common areas when Munson came up to him and told him that if he did not
8 leave the area he would "physically remove him."

9 19. On or about, February 16, 2014, Plaintiff settled the personal injury
10 suit initiated by him against Riverbend.

11 20. On or about, February 19, 2014, Riverbend filed an unlawful detainer
12 action against Plaintiff.

13 21. The unlawful detainer complaint alleged numerous false accusations
14 against Plaintiff, including:

- 15 a. Plaintiff and his wife, Kimberly Williams, would engage in loud arguments
16 and disturb other park tenants;
- 17 b. Plaintiff flashed his bare buttocks and used profanity against another park
18 tenant and her five year old daughter;
- 19 c. Plaintiff regularly used profanity in the presence of other park tenants and
20 their children;
- 21 d. Plaintiff had marijuana plants in his mobile unit;
- 22 e. Plaintiff had threatened park management;
- 23 f. Plaintiff drove excessively fast in Riverbend Park; and
- 24 g. Plaintiff's dog would run around loose in the common areas of Riverbend
25 Park.

26 22. Between February and April, 2014, Munson told numerous tenants of
27 Riverbend Park and a Sheriff that the allegations in the unlawful detainer were true.
28

1 23. These slanderous statements, specifically the one that alleged that
2 Plaintiff exposed himself to a young child, caused Plaintiff to fear for his life due to his
3 association with certain individuals that hold strong beliefs against those that willingly
4 expose themselves to young children.

5 24. Plaintiff was so humiliated by the allegations and the fact that Munson
6 had told many tenants of Riverbend Park that they were true that Plaintiff began to suffer
7 from severe emotional distress. The allegations caused so much stress and grief in Plaintiff's
8 life that it was a substantial factor in his split from his wife.

9 25. On or about March 1, 2014, Munson, allegedly under the direction of
10 Riverbend, refused to accept Plaintiff's monthly rent check. **Riverbend had no valid reason**
11 **to refuse to accept Plaintiff's rent check. Plaintiff was current on his rent on March 1,**
12 **2014, and had not broken any terms of his lease or engaged in any conduct that would**
13 **warrant evicting him. Riverbend's refusal to accept Plaintiff's rent on March 1, 2014,**
14 **was solely in retaliation against Plaintiff for his personal injury suit he brought against**
15 **Riverbend after he injured his back. Munson stated to Plaintiff that he could not accept**
16 **his rent due to the unlawful detainer action that had been filed on February 19, 2014.**

17 26. On or about May 19, 2014, the unlawful detainer action was dismissed
18 without prejudice on the court's own motion after Riverbend failed to appear at the hearing.

19 27. On or about May 23, 2014, Plaintiff attempted to bring his rent
20 current, since the unlawful detainer action filed on February 19, 2014, had been
21 dismissed, by handing his rent check to Munson in his office but Munson, again allegedly
22 under the direction of Riverbend, refused to take it. Again, Riverbend had no valid reason
23 to refuse to accept Plaintiff's rent check. Plaintiff tendered a check in full for all back
24 rent that Munson and Riverbend had failed to accept previously allegedly due to the
25 unlawful detainer filed on February 19, 2014, and had not broken any terms of his lease
26 or engaged in any conduct that would warrant evicting him. Riverbend's refusal to
27 accept Plaintiff's rent on May 23, 2014, was solely in retaliation against Plaintiff for his
28 personal injury suit he brought against Riverbend after he injured his back.

1 28. On or about May 31, 2014, Munson placed a copy of Plaintiff's
2 previous rent balance, along with current rent due, as was standard procedure for monthly
3 rent receipts to be paid, on Plaintiff's door.

4 29. On or about June 2, 2014, Plaintiff, along with his friend, Cassandra
5 Martin, went back to Munson's office to attempt to **bring his rent current** again. Upon
6 entering the office, Plaintiff noticed there was a gun placed on the desk next to Munson;
7 Munson dialed 911, and claimed he was in fear for his life and would have to shoot Plaintiff.
8 Munson repeated this statement nine times while on the phone. Munson continued to refuse
9 to accept Plaintiff's rent check. Again, Riverbend had no valid reason to refuse to accept
10 Plaintiff's rent check. Plaintiff tendered a check in full for all back rent that Munson
11 and Riverbend had failed to accept previously allegedly due to the unlawful detainer
12 filed on February 19, 2014, and Plaintiff had not broken any terms of his lease or
13 engaged in any conduct that would warrant evicting him. In addition, Riverbend's
14 refusal to accept Plaintiff's rent on May 23, 2014, was solely in retaliation against
15 Plaintiff for the personal injury suit he brought against Riverbend after he injured his
16 back.

17 30. The act of placing a copy of Plaintiff's past due rent and a bill for
18 the month of June on Plaintiff's door was done solely for the purpose of baiting Plaintiff
19 to go into Munson's office where Munson would be waiting for him with a gun placed
20 on the desk for the purpose of harassing and intimidating Plaintiff.

21 31. On or about June, 2014, Plaintiff moved out of Riverbend Park
22 because he could no longer take the constant harassment inflicted upon him by Munson.

23 32. On or about, July 1, 2014, Plaintiff complained to Robert Bogatov
24 (hereinafter "Bogatov"), regarding Munson's harassment towards him. Bogatov was
25 the offsite manager of Riverbend and alleged owner of 49% of Riverbend. As a result of
26 Bogatov's position as offsite manager and his ownership interest in Riverbend he is an
27 officer, director or managing agent of Riverbend.
28

1 33. Bogatov informed Plaintiff that his hands were tied, that he
2 "cannot touch you," which Plaintiff took to meaning that Bogatov could not get
3 involved with Plaintiff's issues and that there was nothing he could do to help Plaintiff
4 in regards to his issues with Munson. When Plaintiff asked him why he could not help
5 him, Bogatov did not respond. Plaintiff asked if it had to do with Riverbend and
6 Bogatov nodded his head "yes."

7 34. By refusing to address Plaintiff's complaints about Munson,
8 Bogatov ratified the actions of Munson on behalf of Riverbend. Munson remained
9 employed at Riverbend Park as property manager after Plaintiff complained about him
10 to Bogatov. The continued employment of Munson by Riverbend was done with a
11 conscious disregard for the rights or safety of other tenants of Riverbend Park.

12 35. On or about August 2014, Plaintiff and some other residents of
13 Riverbend Park were engaged in a protest outside Riverbend Park when a man approached
14 Plaintiff and referred to himself as "Doug."

15 36. Doug asked Plaintiff what was going on and Plaintiff responded that
16 he was protesting against Riverbend Park.

17 37. Doug then asked Plaintiff "how much would it take to make it go
18 away?" Plaintiff responded that he would like a public apology, acknowledgment that the
19 allegations in the unlawful detainer complaint were false and money for his pain and
20 suffering.

21 38. Doug then told Plaintiff, in front of other witnesses, "you know that
22 they are going to shoot you" and "I need to go check on my bridge" before he walked off
23 towards the bridge that Plaintiff injured himself on in January 2012.

24 39. Upon arriving at the bridge, Doug encountered Plaintiff's wife,
25 Kimberly Williams. Doug approached Mrs. Williams and addressed her by name and told her
26 to "wish your husband good luck."

27 40. Doug then left the Riverbend Park property.

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FIRST CAUSE OF ACTION

(Retaliatory Eviction against Rocky Munson, Riverbend MHP, LLC., and Does 1-10)

41. Plaintiff refers to and incorporates paragraphs 1 through 40, inclusive, as though fully set forth herein.

42. All claims asserted herein against Riverbend are presented pursuant to Riverbend's vicarious liability for acts and omissions of Riverbend employees undertaken in the course and scope of their employment.

43. As a matter of public policy, the law protects tenants against "retaliatory eviction" – i.e., actual or constructive eviction (or certain other adverse action against tenants) motivated by intent to, in effect, "punish" tenants for their exercise of legally-protected rights. (See *Barela v. Super. Ct.* (1981) 30 Cal.3d 244, 249 – "retaliatory eviction doctrine is founded on the premise that a landlord may normally evict a tenant for any reason or for no reason at all, but he may not evict for an improper reason...")

44. Besides the fundamental public policy against retaliatory evictions, specific statutes have been enacted to expressly prohibit retaliatory eviction.

45. The California Fair Employment and Housing Act ("FEHA") independently proscribes specified discriminatory "retaliatory evictions." The FEHA makes it unlawful for landlords to "harass, evict or otherwise discriminate" when the "dominant" purpose is retaliation against persons who have asserted their rights under the FEHA (See Cal. Govt. § 12955(f)).

46. California Civil Code section 1942.5, subdivision (c) makes it "unlawful" for landlords to evict (or increase rents or decrease housing services), or threaten to do so, "for the purpose of retaliating against" tenants because they have engaged in or exercised any of the following activities or rights...:

b. Any lawful rights: "Lawfully and peaceably" exercising "any rights under the law." (Cal. Civ. § 1942.5(c)).

47. 42 USCA § 3617 also prohibits retaliatory evictions. It is a violation "to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of,

1 or on account of his having exercised or enjoyed, or on account of his having aided or
2 encouraged any other person in the exercise or enjoyment of any right granted or protected
3 by... (§3604 – discriminatory rental housing practices).”

4 48. Munson, Riverbend and Does 1 through 10 intentionally retaliated and
5 discriminated against and harassed and evicted Plaintiff in retaliation for and because of
6 Plaintiff’s personal injury action for injuries he suffered due to the dilapidated condition of
7 the bridge located on the Riverbend Park property.

8 49. The retaliatory eviction of Plaintiff by Munson, Riverbend and Does 1
9 through 10 was done within the 180-day protective period provided by California Civil Code
10 section 1942.5(a) and thus an inference of retaliatory eviction and prima facie case is
11 established and the burden of proof is shifted to Munson, Riverbend and Does 1 through 10
12 to produce evidence of “good faith” motive and good faith ground or lawful cause for the
13 eviction unrelated to retaliation against the tenant for the tenant having exercised his legal
14 rights. (*Western Land Office, Inc. v. Cervantes* (1985) 175 Cal.App.3d 724.) Plaintiff was
15 served with an unlawful detainer complaint three days after he was awarded damages in his
16 personal injury action against Riverbend. In addition, Plaintiff was never subjected to
17 harassment by Munson on any occasion prior to Plaintiff hurting his back when he fell on the
18 bridge in January 2012.

19 50. As a proximate result of the violation by Munson, Riverbend and Does
20 1 through 10 of all the Plaintiff’s rights as set forth herein, Plaintiff has sustained damages in
21 an amount to be established by proof at the time of trial.

22 51. Munson, Riverbend and Does 1 through 10 acted with full knowledge
23 of the consequences thereof and of the damage being caused by Plaintiff and with outrageous
24 retaliatory motive. The conduct of Munson was both oppressive and malicious within the
25 meaning of Civil Code Section 3294, in that it subjected Plaintiff to cruel and unjust hardship
26 in willful and conscious disregard of Plaintiff’s rights, health, and safety, thereby entitling
27 Plaintiff to an award of punitive damages. **Plaintiff also is entitled to reasonable attorneys’**
28 **fees and costs in accordance with Civil Code § 1942.5.**

1 52. Riverbend is personally guilty of oppression and malice against
2 Plaintiff because after Plaintiff brought a personal injury action against Riverbend, it
3 retaliated against him by attaching an inadequate and non-legal eviction notice on
4 Plaintiff's door for the purpose of harassing him, filed an unlawful detainer action
5 against Plaintiff that contained numerous false accusations, directed Munson to no
6 longer accept Plaintiff's rent checks, and ratified the conduct of Munson when one of its
7 managing agents, Bogatov, refused to assist Plaintiff with his problems with Munson.

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9 SECOND CAUSE OF ACTION

10 (Breach of Implied Covenant of Quiet Enjoyment Against Rocky Munson,
11 Riverbend MHP, LLC., and Does 11 through 20)

12 53. Plaintiff refers to and incorporates paragraphs 1 through 52, inclusive,
13 as though fully set forth herein.

14 54. All claims asserted herein against Riverbend are presented pursuant to
15 Riverbend's vicarious liability for acts and omissions of Riverbend employees undertaken in
16 the course and scope of their employment.

17 55. As a result of the misconduct of Munson, **the ratification of**
18 **Munson's actions by Bogatov on behalf of Riverbend** and Does 11 through 20 as alleged
19 herein above, Plaintiff was deprived of the utility, quiet enjoyment and expected benefits of
20 living peaceably and safely in Plaintiff's home and of Plaintiff's legal right to habitable
21 living quarters such that Plaintiff was forced to vacate the Riverbend Park.

22 56. As a direct and proximate result of Munson, Riverbend and Does 11
23 through 20's aforementioned intentional and willful acts and omissions, Plaintiff lost
24 substantial use and quiet enjoyment of his dwelling place, suffering damages and losses.

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THIRD CAUSE OF ACTION

(Slander Against Rocky Munson, Riverbend MHP, LLC., and Does 21 through 30)

57. Plaintiff refers to and incorporates paragraphs 1 through 56, inclusive, as though fully set forth herein.

58. All claims asserted herein against Riverbend are presented pursuant to Riverbend's vicarious liability for acts and omissions of Riverbend employees undertaken in the course and scope of their employment.

59. Plaintiff is informed and believes that Munson, Riverbend and Does 21 through 30, within one year prior to the commencement of this action and continuing on to the present day, slandered Plaintiff by making to other persons not party to this action false and unprivileged publications, orally uttered, which charges Plaintiff with committing the crime of exposing himself to a minor child.

60. As a proximate result of these slanders, Plaintiff has been directly injured in respect to his personal reputation and has suffered loss of reputation, shame, mortification and injury in amounts that are currently not known to Plaintiff but which are estimated to exceed \$25,000.

61. The words spoken by Munson to other tenants of Riverbend Park falsely accusing Plaintiff of exposing himself to a minor child was spoken with malice and oppression in that they were published with hatred and ill will toward Plaintiff and with the intent to vex, harass and annoy Plaintiff.

62. As a direct and proximate result of the slanders, Plaintiff is entitled to recover punitive damages against defendants as a result of the **Munson** having engaged in oppressive and malicious conduct within the meaning of Civil Code 3294 **and Riverbend** ratifying Munson's conduct when one of its owners/managing agents, Bogatov, refused to assist Plaintiff when Plaintiff complained to him about the way Munson was treating him.

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FOURTH CAUSE OF ACTION

(Assault Against Rocky Munson, Riverbend MHP, LLC., and Does 31 through 40)

63. Plaintiff refers to and incorporates paragraphs 1 through 62, inclusive, as though fully set forth herein.

64. All claims asserted herein against Riverbend are presented pursuant to Riverbend's vicarious liability for acts and omissions of Riverbend employees undertaken in the course and scope of their employment.

65. On or about June 2, 2014, Plaintiff entered the management office of Riverbend Park to attempt to pay his rent to Munson after Munson had previously refused to accept his rent check.

66. Shortly after Plaintiff walked into the office, Munson dialed 911, placed a gun on the desk and informed the 911 operator that he was in fear for his life and may have to shoot Plaintiff, with the intent to place Plaintiff in apprehension of imminent harmful or offensive contact.

67. Plaintiff was actually and reasonably in fear of the imminent harmful or offensive contact threatened by Munson.

68. As a direct and proximate result of the aforementioned assault, Plaintiff sustained compensatory damages in an amount to be proven at trial. Such damages include, but are not limited to, pain and suffering and emotional distress.

69. In performing the acts alleged, defendants, and each of them, acted with malice and/or oppression by subjectively intending to cause Plaintiff harm or consciously disregarding a high risk of the probability that such harm would occur and are therefore liable for punitive damages. Plaintiff is entitled to recover punitive damages against the defendants as a result of defendants having engaged in and ratified oppressive and/or malicious conduct within the meaning of Civil Code § 3294.

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FIFTH CAUSE OF ACTION

(Battery Against Rocky Munson, Riverbend MHP, LLC., and Does 41 through 50)

70. Plaintiff refers to and incorporates paragraphs 1 through 69, inclusive, as though fully set forth herein.

71. All claims asserted herein against Riverbend are presented pursuant to Riverbend's vicarious liability for acts and omissions of Riverbend employees undertaken in the course and scope of their employment.

72. On or about, September 12, 2013, Plaintiff was resting on a pole in a Riverbend Park common area.

73. Munson saw Plaintiff in the common area and became enraged since Munson had previously informed Plaintiff that he was no longer allowed to be in any of the Riverbend Park common areas.

74. Munson intentionally struck Plaintiff when he punched Plaintiff in the back with his fist knowing that Plaintiff suffered from a back injury and spit in his face, causing Plaintiff to sustain harmful and/or offensive contact. Such contact included, but was not limited to, punching and spitting on Plaintiff.

75. As a direct and proximate result of the conduct alleged hereinabove, Plaintiff sustained damages in an amount to be proven at trial. Such damages include pain and suffering and emotional distress. Plaintiff seeks compensation for said damages in an amount to be proven at trial.

76. In performing the acts alleged, Munson acted with malice and/or oppression by subjectively intending to cause Plaintiff harm or consciously disregarding a high risk of the probability that such harm would occur and defendants are therefore liable for punitive damages. Plaintiff is entitled to recover punitive damages against the defendants as a result of defendants having engaged in and ratified oppressive and/or malicious conduct within the meaning of Civil Code § 3294.

SIXTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress Against Rocky Munson, Riverbend MHP, LLC., and Does 51 through 60)

77. Plaintiff refers to and incorporates paragraphs 1 through 76, inclusive, as though fully set forth herein.

78. All claims asserted herein against Riverbend are presented pursuant to Riverbend's vicarious liability for acts and omissions of Riverbend employees undertaken in the course and scope of their employment.

79. The conduct of Munson, Riverbend and Does 61 through 70 alleged above were intentional, illegal and unreasonable acts meant to and which caused severe emotional distress, fright, shock and mental disturbance in Plaintiff, and which caused Plaintiff to suffer damages in an amount which is currently not known by Plaintiff but which Plaintiff estimates will exceed the sum of \$25,000.

80. Plaintiff is entitled to recover punitive damages against the defendants as a result of defendants having engaged in and ratified oppressive and/or malicious conduct within the meaning of Civil Code § 3294.

WHEREFORE, Plaintiff seeks relief and judgment against the Defendants, and each of them, as follows:

1. Special damages according to proof but of no less than \$25,000;
2. General damages according to proof but of no less than \$25,000;
3. For an award of exemplary or punitive damages according to proof;
4. For reasonable attorney fees according to proof;
5. For costs of suit; and
6. For such other and further legal and/or equitable relief as the court may deem proper.

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DATED: December 22, 2014.

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