

EXHIBIT A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MARK PETERSON, an individual,

Plaintiff,

NO. 17-2-0346639

vs.

AMENDED COMPLAINT

CITY OF YAKIMA, a local governmental
Entity; TONY O'ROURKE, an individual
human; MARK SOPTICH, an individual
human, and ANTHONY DOAN, an individual
human,

Defendants.

The plaintiff, MARK PETERSON, by and through his attorneys of record herein,
CROTTY & SON LAW FIRM, PLLC and WITHERSPOON KELLEY, alleges, claims and
prays as follows:

I. PARTIES

1. At all relevant times, MARK PETERSON ("Peterson" and/or "plaintiff") was an
individual residing in Yakima County.

2. At all relevant times, plaintiff has been the owner and operator of a business
known as H&H Furniture, Inc. ("H&H"). At all relevant times, H&H has operated a store
located at 211 and 213 West Yakima Avenue, Yakima, WA 98902 ("H&H Building"), which is
located within Yakima County.

1 3. At all relevant times, the CITY OF YAKIMA (individually referred to as "the
2 City", and jointly referred to with the other defendants as "defendants") has been a local
3 governmental entity located within Yakima County.

4 4. At all relevant times, TONY O'ROURKE (individually referred to as
5 "O'Rourke", and jointly referred to with the other defendants as "defendants") is an individual
6 who resided in Yakima County. O'Rourke was employed by the City as the City's Manager
7 when the acts and omissions that form the basis of this Complaint occurred. As of the present
8 date, O'Rourke is no longer employed by the City.

9 5. At all relevant times, MARK SOPTICH (individually referred to as "Soptich",
10 and jointly referred to with the other defendants as "defendants") is an individual and was
11 employed by the City as a Deputy Fire Chief. At present date, Soptich is no longer employed
12 by the City.

13 6. At all relevant times, ANTHONY DOAN (individually referred to as "Doan",
14 and jointly referred to with the other defendants as "defendants") is an individual who resided in
15 Yakima County. Doan was employed by the City as a fire inspector when the acts and
16 omissions that form the basis of this Complaint occurred.

17 **II. JURISDICTION AND VENUE**

18 7. The Court has jurisdiction pursuant to RCW 2.08.010 as the amount demanded
19 exceeds three hundred dollars.

20 8. Venue is appropriate under RCW 4.12.020(2) because the Defendants are public
21 officers or persons specifically appointed to execute their duties on behalf of the City, and under
22 RCW 4.12.020(3) because the injuries giving rise to this Amended Complaint occurred in
23 Yakima County, and because one or more of the defendants resides in Yakima County.

24 **III. FACTS**

25 9. Peterson was born in Fairbanks, Alaska and raised in Yakima, Washington.
26 Peterson has owned and operated H&H since 1988.

27 10. Peterson has served as an advocate for Yakima business owners for decades.
28 Peterson's advocacy and leadership activities include, but are not limited to:

1 a. Serving as the Council Chair of the National Federation of Independent
2 Business ("NFIB") for Washington State, an organization dedicated to giving small and
3 independent businesses a voice in government actions.

4 b. Serving as the Chairman of the Forward Yakima Initiative ("FYI"), a
5 business friendly, pro-growth, community-oriented organization dedicated to improving
6 Yakima by identifying and supporting quality candidates for public office.

7 c. Serving as member and office of the Westside Merchants, an
8 organization dedicated to representing the business owners' interests and concerns west of Front
9 Street to 16th Ave in the core business district of Yakima.

10 d. Serving as a member and President of the Yakima County Crime
11 Stoppers, an international organization dedicated to assisting local law enforcement agencies in
12 the apprehension of wanted felons.

13 11. Peterson's advocacy and leadership has, at times, put him at odds with the City
14 and its elected and appointed officials, over development plans that Peterson believed would
15 negatively impact Yakima's business community. For instance, Peterson was an outspoken
16 critic of the City's proposal to build an underpass on Yakima Avenue in 2001, which would
17 have stopped traffic on Yakima Ave, the main downtown thoroughfare for up to 2 years while
18 constructed and eliminating the front street Historical District and negatively impacted Yakima
19 businesses on Yakima Ave. Peterson's leadership in opposition to the underpass project was
20 instrumental in the project's eventual defeat and abandonment.

21 12. For years, Peterson regularly attended City Council Meetings, attended other
22 public meetings, and spoke on the radio to voice his concerns, or the concerns of organizations
23 he is affiliated with. Through these activities, and countless others, Peterson is regarded as a
24 spokesperson and leading social activist, voicing concerns for business interests.

25 13. In 2013, the City retained consultants to create a Downtown Master Plan
26 ("Master Plan") to direct future Yakima development and redesign downtown. A controversial,
27 key component of the Plan was the proposed creation of a Yakima Downtown Plaza ("Plaza").

28 14. The Master Plan was championed by O'Rourke. O'Rourke advocated for the
plan in the local newspaper and on various radio stations in the summer and fall of 2013.

1 15. During the 2013 timeframe, the City provided few details about the Master Plan.
2 However, early design concepts showed the complete elimination of the large public parking lot
3 located between 2nd Street and 3rd Street, as well as a significant reduction of traffic and
4 capacity on Yakima Avenue—the main road that services Peterson's business. Access and
5 parking are key to the survival and livelihood of the many existing small businesses in
6 downtown Yakima, including Peterson's. This was the same issue Peterson had with the
7 Underpass project.

8 16. In the fall of 2013, Peterson began organizing a concerted effort to obtain more
9 information about the Master Plan and its impact on Yakima businesses, and then to oppose the
10 Master Plan. Based upon information and belief, O'Rourke was aware of Peterson's opposition.

11 17. On October 14, 2013 at a public meeting of the Westside Merchants, Peterson
12 confronted the head of Economic Development for the City, Sean Hawkins, regarding the
13 Master Plan. Peterson called into question the Master Plan and the effect the Master Plan would
14 have on traffic and businesses in Yakima. Peterson's interactions with Hawkins turned
15 contentious.

16 18. Peterson, through emails, organized an open meeting of business owners and
17 other concerned citizens to discuss the Master Plan and counter the City's rush to pass and
18 implement the Master Plan. The invitation was sent out to several individuals and open to all
19 that wanted to attend. That first meeting occurred on October 30, 2013. O'Rourke, city council
20 members, and other city officials were aware of Peterson's organized opposition. Based upon
21 information and belief, between November 1 and November 4, 2013, city council members and
22 O'Rourke identified Peterson by name and opposed his opinions and beliefs on talk radio
23 programs.

24 19. On November 4, 2013, Peterson held another meeting in which a response to the
25 Master Plan was formulated. At that meeting, a plan was made among Peterson and several of
26 his group members to (1) attend the November 5, 2013 meeting at Second Street Grill, at which
27 O'Rourke was set to address a group of business owners in Yakima, and (2) speak at the City
28 Council meeting on the evening of November 5, 2013. Based upon information and belief, the
October 30 and November 4 meetings were attended by some individuals that were friends or

1 acquaintances of O'Rourke. And upon information and belief at least one of these individuals
2 informed O'Rourke of Peterson's activities at the October 30 and November 4 meetings.

3 20. On the morning of November 5, 2013, Peterson and others in his group attended
4 the meeting at Second Street Grill. During the meeting, Peterson and the other community
5 members voiced their opposition to the controversial plaza idea that O'Rourke was
6 spearheading on behalf of the City. Peterson acted as the *de facto* spokesperson for the group.
7 Even though O'Rourke seemed to be expecting Peterson (and his crew) to show up at the
8 Second Street Grill meeting, O'Rourke nonetheless expressed a hostile demeanor toward
9 Peterson.

10 21. Shortly after the meeting concluded on November 5, 2013, Doan appeared at the
11 H&H Building. Doan claimed to be conducting an annual fire code inspection. However,
12 throughout 2012 and during the initial eleven-plus months of 2013, no one from the City had
13 made any attempt to conduct any fire code inspections of the H&H Building.

14 22. Doan purported to conduct a complete inspection of the H&H Building on
15 November 5, 2013; however, Doan was so unprepared he was unaware of the second story in
16 the 213 W. Yakima building (a full 6,000 square feet), and further, was unaware that the
17 business also operated out of the 211 W. Yakima building. Doan noted several alleged fire
18 code violations. Most of the alleged violations were quite trivial in nature and were resolved
19 immediately without any expense. However, and by contrast, Doan also contended that the
20 basement ceiling lacked a fire-resistant coating/covering as supposedly required by the fire
21 code. In the resulting inspection sheet, Doan also recommended that the Deputy City Fire Chief,
22 (Soptich) inspect the H&H Building.

23 23. Doan's inspection result was directly at odds with previous fire inspections that
24 occurred in 2003, 2007, 2008, 2009, 2010 and 2011, which stated "no violations noted," "no
25 problems found," and/or did not require a fire-resistant coating/covering. The cost to install a
26 fire-resistant coating/covering would have been as high as \$100,000.00.

27 24. Peterson was not present during Doan's inspection on November 5, 2013.
28 However, the manager of the H&H Furniture location informed Doan that previous fire code
inspectors (as well as fire fighters) previously determined that no coating/covering was

1 necessary for the basement ceiling. Doan dismissed the manager's comments and insisted that
2 no determination to that effect had previously been made.

3 25. Later in the evening of November 5, 2013, Peterson attended a City Council
4 meeting and voiced his concerns relating to the Master Plan. Peterson, as a ringleader, was the
5 first of many to address the Council. O'Rourke, as City Manager, was in attendance.

6 26. As a follow-up, Doan sent a letter to Peterson on November 18, 2013. Doan's
7 letter insisted that a coating/covering had to be installed. Doan's letter referenced and attached
8 a letter written eleven (11) years earlier (dated September 23, 2002) which had been written by
9 a previous City inspector, Mary C. Valladares (who is no longer employed by the City). Ms.
10 Valladares's prior letter likewise indicated that the ceiling required a coating/covering.

11 27. Upon receiving Doan's letter, Peterson – just like the manager of H&H Furniture
12 previously – told Doan that previous fire code inspectors, and also actual fire fighters
13 themselves, had already and repeatedly determined that no coating/covering was necessary.
14 Peterson further told Doan that subsequent to Ms. Valladares's letter, the City determined and
15 told Peterson that no changes were necessary to the basement ceiling. In that regard, Peterson
16 told Doan that inspection reports in recent years, such as 2010 and 2011, found no problems
17 with respect to the building and its basement ceiling even though no coating/covering had been
18 installed. As before, Doan dismissed this possibility and insisted that no determination to that
19 effect had previously been made.

20 28. O'Rourke and Soptich were already directly involved with the inspections of the
21 H&H Building. For example, but perhaps not exclusively, Soptich authored a highly suspect
22 "Memorandum" to O'Rourke, dated January 21, 2014, which, in part, concerned the inspections
23 of the H&H Building. Notably, Soptich's Memorandum said, "Due to H&H Furniture's
24 uncooperative nature, the City will now go and seek an administrative warrant in order to
25 conduct a detailed inspection." Thus, defendants O'Rourke and Soptich knew and believed that
26 a search warrant was necessary if the fire code inspector had (literally or allegedly) been refused
27 voluntary entry to conduct an inspection.

28 29. In direct contradiction of Soptich's Memorandum and Defendants' understanding
that a warrant was necessary, on January 31, 2014, Doan again appeared at the H&H Building

1 location without a warrant, supposedly to re-inspect the basement ceiling in order to confirm
2 whether the coating/covering had been installed. Prior to this inspection, Peterson exchanged
3 multiple emails with Doan and asked that, prior to the next visit and inspection, that Doan make
4 an appointment and provide additional documentation, so that Peterson could be present for the
5 search and inspection of Peterson's business. Doan did not attempt to make an appointment
6 prior to the January 31, 2014 inspection. Upon entering the building, Doan insisted on speaking
7 with Peterson. The manager informed Doan that Peterson was not present at the time, and the
8 manager suggested that Doan coordinate a date with Peterson if Doan wanted to meet with him.
9 Doan then left the premises without going downstairs to look at the basement ceiling.
Thereafter, Doan made no attempt to coordinate a meeting date with Peterson.

10 30. The January 31, 2014 "inspection" was a set-up and served as the basis for the
11 improper criminal charges filed against Peterson.

12 31. Doan authored a report dated February 3, 2014, which he signed on February 4,
13 2014. That report summarized Doan's findings, including that the basement ceiling supposedly
14 required a coating/covering and that Peterson had allegedly not cooperated with Doan's
15 inspection efforts. The notion that Peterson had supposedly refused to allow Doan to inspect
16 the basement ceiling was preposterous. Peterson was not present on the subject date (*i.e.*,
17 January 31, 2014) when Doan was allegedly denied access to the basement by Peterson.
18 Notably, the report attached provisions of Section 104.3 of the International Fire Code,
19 including that "[i]f entry [to conduct an inspection] is refused, the fire code official has recourse
20 to every remedy provided by law to secure entry" (bracketed changes added). Based upon
21 information and belief, this report was created for the express purpose of seeking criminal
charges against Peterson.

22 32. Doan's report was forwarded to Soptich. As a Deputy Fire Chief, Soptich was a
23 superior to Doan. Soptich approved Doan's report and did not recommend or direct that any
24 changes be made to the report.

25 33. A copy of Doan's report was also forwarded to O'Rourke. As the City Manager
26 at the time, O'Rourke was a superior to Doan. O'Rourke did not recommend or direct that any
27 changes be made to the report.

1 34. Contrary to Soptich's Memorandum and to the law, the City never sought nor
2 obtained any type of search warrant for entry and/or inspection of the H&H Furniture location.
3 Nevertheless, the defendants recommended and demanded that the City's prosecuting attorneys
4 file a criminal case against Peterson.

5 35. On February 10, 2014, a criminal case was filed by the City against Peterson.
6 The case was filed in Yakima Municipal Court. The case number was PA14-0003.

7 36. Peterson was charged with a criminal misdemeanor for allegedly violating
8 Yakima Municipal Code section 10.05.025(H) by allegedly not allowing a fire code inspector
9 (specifically defendant Doan) entry to inspect the H&H Furniture location (on January 31,
10 2014). The criminal complaint alleged that Peterson supposedly had "refus[ed] to allow the
11 Code Administration Manager or any of his/her authorized representatives entry to inspect" the
12 building on January 31, 2014.

13 37. During pendency of the criminal case, it was demanded that Peterson plead
14 guilty, pay a fine and serve jail time. This was an outrageous demand. Peterson and his
15 attorney implored the City to evaluate the facts objectively and to be reasonable. Those
16 requests fell on deaf ears.

17 38. Peterson was required to attend more than ten preliminary court hearings during
18 pendency of the criminal case. He was informed that if he missed any court hearing, a bench
19 warrant would be issued for his arrest. This was time-consuming and caused Peterson to incur
20 substantial attorneys' fees.

21 39. The prosecution was made public through various media outlets and Peterson
22 was humiliated and publicly embarrassed by the improper allegation that he was engaged in
23 criminal conduct.

24 40. During pendency of the criminal case, Peterson submitted, *via* his attorney, a
25 request for discovery to the City. Also during pendency of the criminal case, Peterson filed, on
26 his own, a Public Records Request with the City's record clerks. In response to Peterson's
27 criminal discovery request, the City did not produce a copy of any inspection report from 2010
28 or 2011. Nor did the City produce (in response to the criminal discovery requests) any
document showing that Doan's visit to H&H on November 5, 2013, was part of a regularly

1 scheduled fire inspection scheme in which H&H was simply "next up" on the list. Likewise, in
2 response to Peterson's Public Records Request, the City did not produce a copy of any
3 inspection report from 2010 or 2011.

4 41. The criminal case was dismissed with prejudice and without any finding of
5 liability or culpability against Peterson. The dismissal occurred pursuant to a written "Order of
6 Dismissal" dated November 26, 2014.

7 42. The dismissal occurred after Peterson, via his counsel, filed a motion entitled
8 "Defendant's Second Motion Seeking Order of Dismissal" on October 30, 2014. That motion
9 argued and demonstrated, *inter alia*, that no crime had occurred because if an occupant (either
10 literally or allegedly) does not voluntarily consent to an inspection, the City must obtain a
11 search warrant for the subject inspection, which the City had never done vis-à-vis the H&H
12 Furniture location.

13 43. Upon receiving Peterson's motion, the City, *via* its prosecuting attorneys, filed
14 its own motion entitled "Ex-Parte Motion to Dismiss with Prejudice" on November 26, 2014.
15 That motion noted, *inter alia*, "we do agree with the defense assertion that either a warrant or
16 consent was required to search, or in this case inspect, private spaces." On that basis, the City
17 joined Peterson in "request[ing] that the . . . matter be dismissed with prejudice."

18 44. On or about October 21, 2016, after Peterson had prevailed on the criminal case,
19 Soptich appeared at the H&H Furniture building and renewed the demand that Peterson install a
20 coating/covering on the basement ceiling. Like Doan before him, Soptich relied on Ms.
21 Valladares's 2002 letter for the basis as to why the coating/covering was supposedly required.

22 45. A meeting, in the basement, then occurred between Soptich, fire code inspector
23 Steve Manske, Peterson, Peterson's attorney and the H&H Furniture manager. During this
24 meeting, Peterson and the manager once again insisted that inspection reports from recent years,
25 such as 2010 and 2011, existed and that those reports found no problems with respect to the
26 building and its basement ceiling - - - even though no coating/covering had been installed. Like
27 Doan before him, Soptich dismissed this possibility and insisted that no determination to that
28 effect had previously been made. Soptich affirmatively declared that he had searched the

1 records and that no such prior inspection reports existed. Soptich accused Peterson of lying
2 about the existence of the prior inspection reports.

3 46. During this meeting, Soptich said that irrespective of any prior inspection reports
4 and/or what such reports might say, he would never allow the basement to be used as a
5 showroom unless the expensive coating/covering was installed.

6 47. After the basement meeting with Soptich, Peterson was able to obtain copies of
7 the inspection reports from 2010 and 2011 (as well as copies of other documents). Those copies
8 were obtained informally by Peterson and/or his lawyer. By contrast, the copies were not
9 formally provided by the City's record clerks, prosecuting attorneys and/or Soptich.

10 48. The 2010 and 2011 inspection report both show that the "No Violations Noted"
11 box is affirmatively checked, and the fire code inspector (Chuck Heath) also handwrote "No
12 problems found."

13 49. After obtaining copies of the 2010 inspection report and the 2011 inspection
14 report, Peterson met with the new City manager Cliff Moore.

15 50. During this meeting, Peterson summarized the harassment and persecution he
16 had suffered, and was continuing to experience. Peterson also showed copies of the 2010
17 inspection report and the 2011 inspection report to Mr. Moore. Mr. Moore was surprised to see
18 those documents, and he asked for copies of them. Peterson refused to provide copies to Mr.
19 Moore, and instead told Mr. Moore that as the new City manager he should be able to obtain
20 copies directly from the City's record clerks.

21 51. Following the meeting between Peterson and Mr. Moore, a letter was sent by Jeff
22 Cutter, as City attorney, to Peterson. That letter was dated January 6, 2017. Mr. Cutter's letter
23 indicated that Peterson would not be required to install a coating/covering. In this regard, the
24 letter said the following: "At this point, given the number of years the building has been in place
25 and lack of information as to when the basement use changed from storage to showroom, we are
26 not mandating that you make any of the corrective options."

27 52. However, Mr. Cutter's letter also indicated that the City might later reverse its
28 determination and, yet again, attempt to force Peterson to install a coating/covering. In this

1 regard, the letter said the following: "Please know that the City of Yakima reserves all
2 authorized means to enforce its life safety codes in any necessary circumstance."

3 53. Contrary to one statement in Mr. Cutter's letter, the basement has been used as a
4 showroom, and not for storage, throughout the time that Peterson has operated H&H Furniture
5 and also during the time that the building was owned and used by the predecessor.

6 54. Because Mr. Cutter's letter indicated that the City might later reverse its decision
7 and, yet again, attempt to force Peterson to install a coating/covering, Peterson remains in an
8 uncertain position. Peterson lives in constant fear that City personnel will continue to harass
9 him and continue to try and impose costly remodeling obligations that are unnecessary and
10 contrary to Mr. Cutter's letter. Peterson continues to fear that if another city inspector arrives
11 when he is not there, he may again, be subjected to life altering and highly disruptive criminal
12 prosecution. Peterson fears that if he speaks out against the City or opposing a city official, the
13 City will "coincidentally" decide to enforce this code provision, just as it did in 2013.

14 55. The value and marketability of Peterson's building has been adversely impacted
15 due to the City's actions and omissions.

16 56. On May 22, 2017, Peterson, via his attorney, mailed two separate "City of
17 Yakima Tort Claim Form[s]" to the City. Those forms were mailed via certified mail with
18 return receipt requested under mailing number 7016-0750-0000-5502-7579. The City received
19 the mailed forms, as confirmed by the executed return receipt that was received back by
20 Peterson's attorney, but refused to engage in any settlement discussions with Peterson.

21 **IV. First Cause of Action**
22 **(First Amendment Retaliation; 42 U.S.C. § 1983)**

23 57. Peterson is a citizen of the United States and, under the First Amendment to the
24 U.S. Constitution, has the right to free expression, the right to petition the government, the right
25 to peaceably assemble, and the right to free association.

26 58. Peterson exercised the aforementioned rights when he publicly opposed
27 Defendant O'Rourke's legislative and municipal agenda, when he organized business leaders to
28 attend private and public meetings regarding Defendant O'Rourke's agenda, wrote emails to

1 gather opposition to Defendant O'Rourke's agenda, and engaged in other constitutionally
2 protected activity in opposition to Defendant O'Rourke's agenda.

3 59. Defendant City of Yakima, through the joint, coordinated, and intentional acts of
4 Defendants O'Rourke, Soptich, and Doan, responded to Peterson's protected activities by
5 investigating, harassing, and threatening Peterson. Defendants intentionally engaged in conduct
6 that would lead to Peterson being criminally charged, without probable cause. The criminal
7 prosecution was made public through various media outlets and Peterson was humiliated and
8 publicly embarrassed by Defendants' improper allegations that he was a criminal or engaged in
9 criminal conduct

10 60. Defendants' continue to embark on a retaliatory course of conduct evidenced
11 most recently by the City's October 2016 inspection of H&H and the City's refusal to clear Mr.
12 Peterson of any and all fire code related wrongdoing (as it relates to H&H's basement ceiling)
13 as shown by Mr. Cutter's January 6, 2017 letter.

14 61. Peterson's protected activities were a motivating factor in the Defendants'
15 conduct.

16 62. Defendants' retaliatory actions would chill a person of ordinary firmness from
17 continuing to engage in the protected activities.

18 63. As a result of Defendants' retaliatory actions, Peterson suffered economic
19 damages, including the costs and attorneys' fees incurred in the criminal proceeding, lost
20 business revenue, lost personal income, and lost valuation of business assets. Plaintiff also
21 suffered emotional distress, anguish, embarrassment, stress, and anxiety.

22 **V. Second Cause of Action**
23 **(Fourth Amendment – Wrongful Prosecution; 42 U.S.C. § 1983)**

24 64. The Fourth Amendment to the U.S. Constitution prohibits any warrants from
25 issuing without probable cause. The Fourth Amendment prohibits any state from prosecuting a
26 criminal matter against an individual without having probable cause.

27 65. Defendants' conduct and allegations resulted in the City initiating the criminal
28 prosecution of Peterson for allegedly violating Fire Code – YMC 10.05.015(H).

1 66. Defendants, each individually and collectively, made statements, provided the
2 alleged evidence, and agreed to testify at trial as to the alleged criminal conduct. The
3 Defendants knew that Peterson was not guilty and that they should have obtained a warrant
4 prior to initiating or supporting the criminal action. Defendants intentionally failed to obtain the
5 warrant. Defendants otherwise engaged in other actions that supported and encouraged the
6 criminal prosecution of Peterson with the knowledge that he was not guilty of the crime and that
7 no probable cause existed to prosecute Peterson.

8 67. The City lacked probable cause to initiate the criminal proceeding, as a warrant
9 was required before a person could be found guilty of the alleged violation, and no one from the
10 City sought to obtain the warrant before the criminal proceedings were commenced.

11 68. The criminal proceedings ended in Peterson's favor as the case was ultimately
12 dismissed, on the eve of trial, when the City finally admitted that a warrant was necessary to
13 inspect the premises and that it failed to obtain a warrant prior to initiating prosecution.

14 69. The Defendants' actions in initiating, supporting, and otherwise furthering the
15 criminal prosecution was done for a purpose other than bringing Peterson to justice.

16 70. As a consequence, Peterson suffered a significant deprivation of liberty when he
17 was required to attend numerous court proceedings, when he was threatened with imprisonment
18 and jail time, and when he was forced to spend thousands of dollars to defend a criminal
19 prosecution that did not have probable cause.

20 71. As a result of Defendants' retaliatory actions, Peterson suffered economic
21 damages, including costs and attorneys' fees incurred in the criminal proceeding, lost business
22 revenue, lost personal income, and lost valuation of business assets. Peterson also suffered
23 emotional distress, anguish, embarrassment, stress, and anxiety.

24 **VI. Third Cause of Action**
25 **(Fourth Amendment Retaliation; 42 U.S.C. § 1983)**

26 72. Peterson was criminally charged with failing to permit a city fire inspection
27 within his business.

28 73. Peterson never refused or denied Defendant Tony Doan from inspecting the
publicly accessible areas of his business.

1 74. Peterson, however, requested that prior to the next inspection of the premises,
2 which could include the private areas of the business, that Defendant Doan make an
3 appointment and provide sufficient documentation related to the inspections and alleged
4 violation.

5 75. Peterson also requested that an appointment be made so that Peterson would be
6 present for the inspection and meeting. Peterson made this request, prior to giving consent for
7 an unlimited search, so that he could be present and prepared for the search.

8 76. In making these reasonable requests, Peterson was asserting his Fourth
9 Amendment right to be free from unreasonable searches and seizures. Peterson was asserting
10 his right to know the reasons and basis for the inspection and search, prior to providing consent
11 to search the private areas of the business.

12 77. In response, Defendants failed to accommodate the reasonable requests of
13 Peterson. Defendant did not pursue a warrant to inspect the premises, which was required by
14 city, state and federal law, and instead prosecuted Peterson for alleged criminal activity.

15 78. Defendants knew that a warrant was necessary prior to initiating criminal
16 charges, failed to seek a warrant, and moved forward with the prosecutions despite knowing that
17 a warrant was needed and never obtained.

18 79. Peterson's assertion of his Fourth Amendment rights was a substantial or
19 motivating factor in the Defendants' conduct and decision to criminally prosecute Peterson.

20 80. Defendants' retaliatory actions would chill a person of ordinary firmness from
21 continuing to engage in the protected activities.

22 81. As a result of Defendants' retaliatory actions, Peterson suffered economic
23 damages, including costs and attorneys' fees incurred in the criminal proceeding, lost business
24 revenue, lost personal income, and lost valuation of business assets. Peterson also suffered
25 emotional distress, anguish, embarrassment, stress, and anxiety.

26 **VII. Fourth Cause of Action**
27 **(Fourteenth Amendment – Due Process; 42 U.S.C. § 1983)**

28 82. The Fourteenth Amendment protects against being subjected to criminal charges
without due process of law.

1 83. Peterson was deprived of his rights under the Fourteenth Amendment to the
2 Constitution when Defendants continued their investigation of Peterson despite knowing that
3 Peterson was innocent, or despite having a deliberate indifference to Peterson's innocence.

4 84. Defendants knew that a warrant was required to search the premises of Peterson's
5 business and knew that a warrant was required before initiating the criminal prosecution against
6 Peterson.

7 85. Defendants failed to obtain a warrant to search the premises and, nonetheless,
8 initiated criminal prosecutions.

9 86. The criminal prosecution was initiated without probable cause and the
10 Defendants knew that a warrant was required and acted with intentional disregard or deliberate
11 indifference to the Peterson's innocence.

12 87. Defendants continued their investigation of Peterson despite the fact that they
13 knew that the plaintiff was innocent or was deliberately indifferent to Peterson's innocence, and
14 the results of the investigation were used to criminally charge and prosecute Peterson.

15 88. As a result of Defendants' actions, Peterson suffered economic damages,
16 including costs and attorneys' fees incurred in the criminal proceeding, lost business revenue,
17 lost personal income, and lost valuation of business assets. Peterson also suffered emotional
18 distress, anguish, embarrassment, stress, and anxiety.

19 **VIII. Fifth Cause of Action**
20 **(Monell Liability – Ratification)**

21 89. Defendants Soptich and Doan were employees of the City of Yakima and, at all
22 relevant times, were acting under the color of state law.

23 90. Defendants' actions deprived Peterson of his First, Fourth, and Fourteenth
24 Amendment rights.

25 91. Defendant O'Rourke was the City Manager and, at all relevant times, was acting
26 under the color of state law.

27 92. Defendant O'Rourke had final policy making authority for the City as to all
28 actions taken in regard to the Peterson investigation and prosecution.



1 93. Defendant O'Rourke ratified Defendants Soptich's and Doan' unlawful and
2 unconstitutional acts and approved their acts and the basis for their acts.

3 **IX. Sixth Cause of Action**
4 **(Monell Liability – Final Policymaker)**

5 94. Defendant Tony O'Rourke was the City Manager of the City and was the final
6 policymaker.

7 95. The acts of Defendant O'Rourke deprived Peterson of his rights arising out of the
8 First, Fourth, and Fourteenth Amendments to the U.S. Constitution as alleged in causes of
9 action one through four.

10 96. Defendant O'Rourke had final policymaking authority concerning these acts.

11 97. Defendant O'Rourke engaged in these acts while he was acting as a final
12 policymaker.

13 98. Defendant O' Rourke's actions as a final policymaker deprived Peterson of his
14 rights arising out of the First, Fourth, and Fourteenth Amendments to the U.S. Constitution as
15 alleged in causes of action one through four.

16 99. To the extent the City takes the position that O'Rourke was not the final policy
17 maker, then the City Council, in essence, served as a de facto rubber stamp of O'Rourke's
18 actions by either knowingly sanctioning O'Rourke's violations of the U.S. Constitution or being
19 deliberately indifferent to O'Rourke's violations of the U.S. Constitution.

20 100. As a result of Defendants' actions, Peterson suffered economic damages,
21 including the costs and attorneys' fees incurred in the criminal proceeding, lost business
22 revenue, lost personal income, that lost valuation of business assets. Peterson also suffered
23 emotional distress, anguish, embarrassment, stress, and anxiety.

24 **X. Seventh Cause of Action**
25 **(Common Law Civil Conspiracy)**

26 101. Two or more of the Defendants conspired together for the unlawful purpose of
27 depriving Peterson of his civil rights arising out of the First, Fourth, and Fourteenth Amendment
28 to the U.S. Constitution.

1 102. Defendants also sought to fine, investigate, and criminally prosecute Peterson for
2 allegedly obstructing a fire investigation by unlawful means—by prosecuting without probable
3 cause and without obtaining a warrant, which is a violation of city, state, and federal law.

4 103. The conspirators entered into an agreement to accomplish the conspiracy.

5 104. As a result of conspirators' actions, Peterson suffered economic damages,
6 including costs and attorneys' fees incurred in the criminal proceeding, lost business revenue,
7 lost personal income, and lost valuation of business assets. Peterson also suffered emotional
8 distress, anguish, embarrassment, stress, and anxiety.

9
10 **XI. Eighth Cause of Action**
11 **(Malicious Prosecution)**

12 105. The acts and omissions of the defendants toward Peterson constitute the tort of
13 malicious prosecution.

14 106. The criminal case against Peterson was instituted and/or continued by the
15 defendants. Defendants O'Rourke, Soptich and Doan each and all recommended and demanded
16 that the City criminally prosecute Peterson. They each and all did so while acting as employees
17 of the City. The City instituted and/or continued the criminal case against Peterson.

18 107. Probable cause was always lacking, both for the commencement of the criminal
19 case against Peterson and/or for its continuation. By operation of law, "[a] prima facie case of
20 want of probable cause is established by proof that the proceedings were dismissed in favor of
21 the plaintiff". See e.g., *Youker v. Douglas County*, 162 Wn. App. at 461, 258 P.3d at 67. The
22 criminal case was dismissed with prejudice and without any finding of liability or culpability
23 against Peterson. Accordingly, Peterson is entitled to a legal presumption that probable cause
24 was lacking.

25 108. The criminal case against Peterson was instituted and/or continued through
26 malice. By operation of law, "[m]alice may be inferred from lack of probable cause and from
27 proof that the investigation or prosecution was undertaken with improper motives or reckless
28 disregard for the plaintiff's rights." See e.g., *Youker v. Douglas County*, 162 Wn. App. at 464,
258 P.3d at 68. As alleged above, probable cause never existed. Moreover, defendants
O'Rourke, Soptich and Doan acted with improper motives and reckless disregard for Peterson's

1 rights. They knew that a search warrant was necessary and they each and all also knew that a
2 search warrant had not been obtained. Regardless, they still recommended and demanded that
3 the City criminally prosecute Peterson. They harassed Peterson in retaliation due to his
4 opposition to the controversial plaza idea. In bad faith, they sought to impose a very significant
5 and expensive remodeling obligation on Peterson that had previously been determined
6 unnecessary. They refused to consider prior determinations by fire code inspectors and also
7 refused to provide Peterson with copies of the 2010 inspection report and/or the 2011 inspection
8 report. Accordingly, an inference of malice exists.

9 109. The criminal case against Peterson was terminated on the merits in favor of
10 Peterson and/or was abandoned by the City.

11 110. On a *respondeat superior* basis, the City is liable for the tort of malicious
12 prosecution committed against Peterson by defendants O'Rourke, Soptich and/or Doan while
13 they were employees of the City.

14 111. On a direct personal basis, defendants O'Rourke, Soptich and Doan are each and
15 all liable for the tort of malicious prosecution.

16 112. As a result of defendants' actions, Peterson suffered economic damages,
17 including costs and attorneys' fees incurred in the criminal proceeding, lost business revenue,
18 lost personal income, and lost valuation of business assets. Peterson also suffered emotional
19 distress, anguish, embarrassment, stress, and anxiety.

20 XII. PRAYER FOR RELIEF

21 WHEREFORE, Plaintiff prays for relief as follows:

22 1. Compensatory Damages, including the full and fair amount that will fairly
23 compensate Plaintiff for any and all injuries that were caused by Defendants' unlawful
24 infringement on Plaintiff's Constitutional rights.

25 2. Economic Damages, including compensation for attorneys' fees incurred in
26 defending the underlying criminal action, attorneys' fees incurred in bringing this action, lost
27 business revenue, lost wages, lost valuation to the business or business assets, and any and all
28 other economic damages suffered by Plaintiff resulting from Defendants' unlawful acts.

3. Non-Economic Damages, including compensation for physical, mental, emotional pain, suffering, stress, anguish, humiliation, and loss of a normal life.

4. Punitive Damages: Plaintiff asserts that all of the unlawful actions by Defendants O'Rourke, Doan, and Soptich as described above were done with malicious and reckless disregard for Plaintiff's Constitutional Rights. Therefore, Plaintiff is seeking punitive damages in an amount to be determined at trial by a jury of Plaintiff's peers.

Dated this 9th day of July, 2018.

WITHERSPOON • KELLEY

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