

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

KATIE MOTHERSHED,	)	
	)	
AND	)	
	)	
GINA JAKSETIC,	)	
	)	Cause No. 17SL-CC03242
Plaintiffs,	)	
	)	Division No. 4
vs.	)	
	)	
FOUNDATION CARE, LLC, ET AL.,	)	
	)	
Defendants.	)	

**NOTICE OF RECEIPT OF PLAINTIFFS' RIGHT TO SUE**

COME NOW Plaintiffs Katie Mothershed and Gina Jaksetic, by and through their attorneys, and provide to this Court Notices of Right to Sue that Plaintiffs have obtained from the Missouri Commission on Human Rights. See attached Exhibits 1, 2, 3, and 4.

Respectfully submitted,

DOBSON, GOLDBERG, BERNS & RICH, LLP

By           /s/Nicole A. Matlock            
 Jerome J. Dobson, #32099  
 Nicole A. Matlock, #66894  
 5017 Washington Place, Third Floor  
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Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned certifies that on December 18, 2017, the foregoing document was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system and/or by regular mail, postage prepaid, upon the following:

Susan Bassford Wilson  
Robert Orbals  
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7733 Forsyth Blvd., Suite 1325  
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[swilson@constangy.com](mailto:swilson@constangy.com)  
[rortbals@constangy.com](mailto:rortbals@constangy.com)

/s/Nicole A. Matlock



MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
**MISSOURI COMMISSION ON HUMAN RIGHTS**

ERIC R. GREITENS  
GOVERNOR

ANNA S. HUI  
ACTING DEPARTMENT DIRECTOR

SARA NELL LAMPE  
COMMISSION CHAIRPERSON

ALISA WARREN, PH.D.  
EXECUTIVE DIRECTOR

December 1, 2017

Katie Mothershed  
78 Julie Drive  
Glen Carbon, IL 62034

RE: Mothershed vs. Foundation Care, LLC et al  
FE-6/17-27625 560-2017-01411

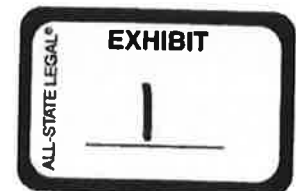
FE-6/17-27625  
Administrative User/Records

Electronically Filed - St Louis County - December 18, 2017 - 11:43 AM

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This letter indicates your right to bring a civil action within 90 days of this notice against the respondent(s) named in the complaint. Such an action may be brought in any circuit court in any county in which the unlawful discriminatory practice is alleged to have occurred but it must be brought no later than two years after the alleged cause occurred or its reasonable discovery. Upon issuance of this notice, the MCHR is terminating all proceedings relating to the complaint. No person may file or reinstate a complaint with the MCHR after the issuance of a notice of right to sue relating to the same practice or act. You are hereby notified of your right to sue the Respondent(s) named in your complaint in state circuit court. **THIS MUST BE DONE WITHIN 90 DAYS OF THE DATE OF THIS NOTICE OR YOUR RIGHT TO SUE IS LOST.**

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(continued on next page)



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TDD/TTY: 1-800-735-2966 (TDD) Relay Missouri: 711  
www.labor.mo.gov/mohumanrights E-Mail: mchr@labor.mo.gov

RE: Mothershed vs. Foundation Care, LLC et al  
FE-6/17-27625 560-2017-01411

Respectfully,



Alisa Warren, Ph.D.  
Executive Director

Foundation Care, LLC  
Michael Schultz; Daniel Blakeley

Insperity, Inc.  
545 E. John Carpenter Frwy, Ste. 1200  
Irving, TX 75062

Centenne Corp. Centene Plaza  
AcariaHealth Solutions  
7700 Forsyth Blvd. #800  
St. Louis, MO 63105

Nicole A. Matlock  
5017 Washington Place, Third Floor  
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*Via email*

Kenya Leonard  
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MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
**MISSOURI COMMISSION ON HUMAN RIGHTS**

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ACTING DEPARTMENT DIRECTOR

SARA NELL LAMPE  
COMMISSION CHAIRPERSON

ALISA WARREN, PH.D.  
EXECUTIVE DIRECTOR

December 1, 2017

Gina Jaksetic  
445 N. Harrison Ave.  
Kirkwood, MO 63122

RE: Jaksetic vs. Foundation Care, LLC et al  
FE-6/17-27629 560-2017-01412

FE-6/17-27629  
Administrative User/Records

Electronically Filed - St Louis County - December 18, 2017 - 11:43 AM

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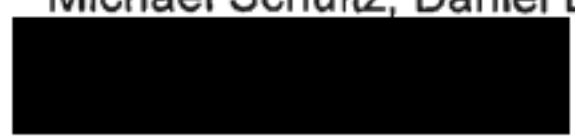
RE: Jaksetic vs. Foundation Care, LLC et al  
FE-6/17-27629 560-2017-01412

Respectfully,



Alisa Warren, Ph.D.  
Executive Director

Foundation Care, LLC  
Michael Schultz; Daniel Blakeley



Insperity, Inc.  
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Irving, TX 75062

Centenne Corp. Centene Plaza  
AcariaHealth Solutions  
7700 Forsyth Blvd. #800  
St. Louis, MO 63105

Nicole A. Matlock  
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*Via email*

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**MISSOURI COMMISSION ON HUMAN RIGHTS**

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SARA NELL LAMPE  
COMMISSION CHAIRPERSON

ALISA WARREN, PH.D.  
EXECUTIVE DIRECTOR

December 1, 2017

Katie Mothershed  
78 Julie Drive  
Glen Carbon, IL 62034

RE: Mothershed vs. Insperity, Inc. et al  
FE-6/17-27626 560-2017-01417

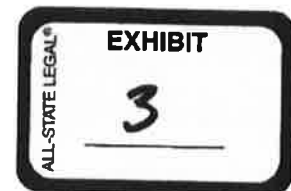
FE-6/17-27626  
Administrative User/Records

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RE: Mothershed vs. Insperity, Inc. et al  
FE-6/17-27626 560-2017-01417

Respectfully,



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Insperity, Inc.  
545 E. John Carpenter Frwy, Ste. 1200  
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Michael Schultz; Daniel Blakeley  


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*Via email*

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ANNA S. HUI  
ACTING DEPARTMENT DIRECTOR

SARA NELL LAMPE  
COMMISSION CHAIRPERSON

ALISA WARREN, PH.D.  
EXECUTIVE DIRECTOR

December 1, 2017

Gina Jaksetic  
445 N. Harrison Ave.  
Kirkwood, MO 63122

RE: Jaksetic vs. Insperity, Inc. et al  
FE-6/17-27630 560-2017-01420

FE-6/17-27630  
Administrative UserRecords

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RE: Jaksetic vs. Insperity, Inc. et al  
FE-6/17-27630 560-2017-01420

Respectfully,



Alisa Warren, Ph.D.  
Executive Director

Insperity, Inc.  
545 E. John Carpenter Frwy, Ste. 1200  
Irving, TX 75062

Foundation Care, LLC  
Michael Schultz; Daniel Blakeley

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4. Defendant admits it is a limited partnership formed under the laws of Texas that does business in St. Louis County, Missouri. Defendant further admits that Inspirity was Plaintiffs' co-employer for a portion of Plaintiffs' employment with Foundation Care. All other allegations contained in Paragraph 4 are denied.

5. Defendant admits Michael Schultz is male. Upon information and belief, Defendant further admits that Schultz resided in Missouri and was a partial owner of Foundation Care. All other allegations contained in Paragraph 5 are denied.

6. Defendant admits Daniel Blakeley is male. Upon information and belief, Defendant further admits that Blakeley resided in Missouri and was a partial owner of Foundation Care. All other allegations contained in Paragraph 6 are denied.

7. The allegations contained in Paragraph 7 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

8. Upon information and belief, Foundation Care employs more than six individuals within the State of Missouri. The remaining allegations contained in Paragraph 8 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

9. Defendant admits it co-employs more than six individuals with Foundation Care within the State of Missouri. The remaining allegations contained in Paragraph 9 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

10. The allegations contained in Paragraph 10 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

11. The allegations contained in Paragraph 11 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

12. Upon information and belief, Defendant admits that Foundation Care hired Mothershed in May 2012, and that Mothershed worked for Foundation Care until April 17, 2017. Defendant further admits that during her employment, the positions Mothershed held included director of pharmacy and the senior director of pharmacy and clinical operations. All other allegations contained in Paragraph 12 are denied.

13. The allegations contained in Paragraph 13 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

14. Defendant admits that during her employment, Mothershed was supervised by Blakeley. All other allegations contained in Paragraph 14 are denied.

15. Upon information and belief, Defendant admits that Foundation Care hired Jaksetic in June 2004, and that Jaksetic worked for Foundation Care until April 17, 2017. Defendant further admits that during her employment, the positions Jaksetic held included senior director of healthcare client and consumer relations and the director of reimbursement. All other allegations contained in Paragraph 15 are denied.

16. The allegations contained in Paragraph 16 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

17. Defendant admits that during her employment, Jaksetic was supervised by Blakeley. All other allegations contained in Paragraph 17 are denied.

18. Defendant denies the allegations contained in Paragraph 18.

19. Defendant denies the allegations contained in Paragraph 19.

20. Defendant denies the allegations contained in Paragraph 20.

21. Defendant denies the allegations contained in Paragraph 21.

22. Defendant denies the allegations contained in Paragraph 22.

23. Defendant denies the allegations contained in Paragraph 23.

24. Defendant denies the allegations contained in Paragraph 24.

25. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 25, and therefore denies the same.

26. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 26, and therefore denies the same.

27. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 27, and therefore denies the same.

28. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 28, and therefore denies the same.

29. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 29, and therefore denies the same.

30. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 30 and therefore denies the same.

31. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 31, and therefore denies the same.

32. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 32, and therefore denies the same.

33. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 33, and therefore denies the same.

34. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 34, and therefore denies the same.

35. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 35, and therefore denies the same.

36. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 36, and therefore denies the same.

37. Defendant admits that both Plaintiffs worked on February 22 and 23, 2017. Defendant further admits that both Plaintiffs were granted leave until April 17, 2017. All other allegations contained in Paragraph 37 are denied.

38. Defendant admits that Plaintiffs' counsel notified Foundation Care that Plaintiffs alleged they had been constructively discharged in April 2017. All other allegations contained in Paragraph 38 are denied.

39. Defendant denies the allegations contained in Paragraph 39.

40. Defendant denies the allegations contained in Paragraph 40.

41. Upon information and belief, Defendant admits that on June 2, 2017, Mothershed filed a Charge of Discrimination with the Missouri Commission on Human Rights ("MCHR") that alleged sex discrimination. All other allegations contained in Paragraph 41 are denied.

42. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 42 are denied.

43. Upon information and belief, Defendant admits that on June 2, 2017, Jaksetic filed a Charge of Discrimination with the MCHR that alleged sex discrimination. All other allegations contained in Paragraph 43 are denied.

44. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 44 are denied.

45. Defendant denies the allegations contained in Paragraph 45.

46. Defendant denies the allegations contained in Paragraph 46.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant denies the allegations contained in Paragraph 48, including the prayer for relief.

**COUNT II: Wrongful Discharge in Violation of Public Policy**

49. Defendant incorporates its responses and denials to Paragraphs 1 – 6 and 12 – 40 as if fully restated herein.

50. The allegations contained in Paragraph 50 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

51. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 51, and therefore denies the same.

52. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 52, and therefore denies the same.

53. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 53, and therefore denies the same.

54. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 54, and therefore denies the same.

55. Defendant denies the allegations contained in Paragraph 55.

56. Defendant denies the allegations contained in Paragraph 56.



57. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 57, and therefore denies the same.

58. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 58, and therefore denies the same.

59. Defendant denies the allegations contained in Paragraph 59.

60. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 60, and therefore denies the same.

61. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 61, and therefore denies the same.

62. Defendant denies the allegations contained in Paragraph 62.

63. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 63, and therefore denies the same.

64. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 64, and therefore denies the same.

65. Defendant denies the allegations contained in Paragraph 65.

66. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 66, and therefore denies the same.

67. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 67, and therefore denies the same.

68. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 68, and therefore denies the same.

69. Defendant denies the allegations contained in Paragraph 69.

70. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 70, and therefore denies the same.

71. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 71, and therefore denies the same.

72. Defendant denies the allegations contained in Paragraph 72.

73. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 73, and therefore denies the same.

74. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 74, and therefore denies the same.

75. Defendant denies the allegations contained in Paragraph 75.

76. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 76, and therefore denies the same.

77. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 77, and therefore denies the same.

78. Defendant denies the allegations contained in Paragraph 78.

79. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 79, and therefore denies the same.

80. Defendant denies the allegations contained in Paragraph 80.

81. Defendant denies the allegations contained in Paragraph 81.

82. Defendant denies the allegations contained in Paragraph 82.

83. Defendant denies the allegations contained in Paragraph 83.

84. Defendant denies the allegations contained in Paragraph 84.

85. Defendant denies the allegations contained in Paragraph 85.

86. Defendant denies the allegations contained in Paragraph 86.

87. Defendant denies the allegations contained in Paragraph 87.

88. Defendant denies the allegations contained in Paragraph 88, including the prayer for relief.

**COUNT III: False Imprisonment**

89. – 100. Count III (Paragraphs 89 – 100) is not directed to Defendant Insperity, and therefore no response is required; but to the extent a response is required, Defendant denies the allegations contained in Paragraphs 89 – 100, including the prayer for relief.

**COUNT IV: Assault**

101. – 110. Count IV (Paragraphs 101 – 110) is not directed to Defendant Insperity, and therefore no response is required; but to the extent a response is required, Defendant denies the allegations contained in Paragraphs 101 – 110, including the prayer for relief.

**COUNT V: Sex Discrimination in Violation of the Missouri Human Rights Act**

111. Defendant incorporates its responses and denials to Paragraphs 1 – 40 as if fully restated herein.

112. Defendant denies the allegations contained in Paragraph 112.

113. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 113, and therefore denies the same.

114. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 114, and therefore denies the same.

115. Defendant denies the allegations contained in Paragraph 115.

116. Upon information and belief, Defendant admits that on June 2, 2017, Jaksetic filed a Charge of Discrimination with the MCHR that alleged sex discrimination. All other allegations contained in Paragraph 116 are denied.

117. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 117 are denied.

118. Defendant denies the allegations contained in Paragraph 118.

119. Defendant denies the allegations contained in Paragraph 119.

120. Defendant denies the allegations contained in Paragraph 120.

121. Defendant denies the allegations contained in Paragraph 121, including the prayer for relief.

Defendant denies each and every allegation of fact, conclusion of law, or other matter contained in the Petition that has not been expressly admitted herein, including the prayers for relief.

### **DEFENSES**

1. Some or all of Plaintiff's Petition fails to state a claim against Defendant upon which relief can be granted by this Court.

2. All events which occurred more than 180 days prior to the filing of Plaintiffs' charges of employment discrimination with the MCHR are untimely and not properly assertable in this action; nor are the Plaintiffs entitled to relief in this action for any events which occurred more than 180 days prior to the filing of their respective charges of discrimination.

3. As explained in Defendants' Partial Motion for Summary Judgment, Plaintiffs' claims under the MHRA are barred as Plaintiffs have failed to exhaust their administrative

remedies and have not received a Notice of Right to Sue. Accordingly, Plaintiffs' claims are barred to the extent that this Court lacks subject matter and/or other jurisdiction over all or portions of Plaintiffs' Petition.

4. Defendant asserts that Plaintiffs were at-will employees and, therefore, Plaintiffs were subject to discharge at any time, with or without cause, so long as said discharge was not for an unlawful reason.

5. Plaintiffs have not suffered any legally cognizable damage.

6. Plaintiffs failed to state a claim for the recovery of punitive damages upon which relief may be granted. Further, their claims for punitive damages are unconstitutional.

7. To the extent that Plaintiffs were involved in any improper activities during their employment, or failed to properly notice and act upon any such activities, Plaintiffs are estopped from recovering for their claims.

8. Plaintiffs are estopped from claiming damages associated with the termination of their employment because both employees voluntarily resigned.

9. Any amount which Plaintiffs claim are due and owing to Plaintiffs for lost wages and other employment benefits must be mitigated and reduced by the amount of wages and benefits Plaintiffs earned (including unemployment compensation benefits), or through the exercise of reasonable diligence could have earned, during the period for which lost wages and benefits are sought by Plaintiffs. Plaintiffs further must mitigate all damages and to the extent Plaintiffs have failed to do so, Plaintiffs' damage claims must be reduced.

10. Defendant is entitled to recover its costs of court and attorneys' fees for the defense of Plaintiffs' action because portions of this action are frivolous and without foundation in law or in fact.

11. To the extent Defendant discovers during the course of this action that Plaintiffs engaged in any conduct which would warrant or would have warranted discharge under Foundation Care's policy, Plaintiffs' right to recover damages beyond the date of such discovery will be cut off. *See McKennon v. Nashville Banner Publishing Company*, 513 U.S. 352, 115 S. Ct. 879 (1995).

12. Defendant's conduct and actions were at all times undertaken in good faith, and without malice or ill-will toward the Plaintiffs.

13. Any and all actions taken by Defendant affecting Plaintiffs were taken for reasons other than Plaintiffs' sex, refusal to perform an illegal act, and/or reporting of an illegal act.

14. Plaintiffs cannot demonstrate severe and pervasive conduct altered the conditions of their employment. Further, although Defendant denies that Plaintiffs were exposed to a hostile work environment, Defendant asserts that reasonable care was exercised to prevent and correct promptly any harassing behavior, and that Plaintiffs unreasonably failed to take advantage of any preventive or corrective opportunity provided or to avoid harm otherwise. *See Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761-63 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775, 790, 807 (1998).

15. To the extent Plaintiffs complained to Defendant about alleged unlawful treatment or conduct, immediate and adequate steps were taken to investigate Plaintiffs' complaints.

16. To the extent Plaintiff Jaksetic's wages were less than those of Defendant's employees of the opposite sex for equal work and functions, such reduced wage was the result of a seniority system, a merit system, a system which measures earnings by quantity or quality of production, hours worked, and/or a pay differential based on factors other than sex.

17. At all times relevant hereto, Foundation Care and Insuperity had specific policies against unlawful discrimination and harassment in the work place and such polices were well-known to employees.

18. Plaintiffs consented (either expressly or implicitly) to any and all actions by Defendant, which are made the basis for Plaintiffs' lawsuit, if any such actions are found to have taken place.

19. Plaintiffs cannot maintain an action for wrongful discharge in violation of public policy where they are provided a statutory remedy for the specific wrong alleged. The MHRA is the exclusive remedy for all claims of unlawful employment practices.

20. To the extent Plaintiffs' MHRA claims exceed the amounts permissible under the MHRA, all such claims are subject to the limitations of applicable statutory caps existing at law.

21. Plaintiff's claims are subject to all amendments to the MHRA that went into effect on August 28, 2017.

22. Because no discovery has yet occurred in this action, Defendant reserves the right to assert further defenses as appropriate.

WHEREFORE, Defendant respectfully prays that the Court enter a judgment providing that:

1. Plaintiffs' claims in this action be dismissed in their entirety, with prejudice;
2. Defendant be awarded the costs incurred in the defense of Plaintiffs' claims, including its reasonable attorneys' fees;
3. Defendant be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted this 17th day of November, 2017.

CONSTANGY, BROOKS, SMITH & PROPHETE, LLP

/s/Susan Bassford Wilson

Susan Bassford Wilson, #60621

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Attorneys for Defendants



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this the 17th day of November, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorney of record:

Jerome J. Dobson  
Nicole A. Matlock  
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St. Louis, MO 63108  
(314) 621-8363  
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nmatlock@dobsongoldberg.com

Attorney for Plaintiff

/s/ Susan Bassford Wilson  
Attorney for Defendant



4. Defendant lacks sufficient information to admit or deny the allegations contained in Paragraph 4, and therefore denies the same.

5. Defendant admits Michael Schultz (“Schultz”) is a male citizen of the United States who resides in Missouri. Defendant further admits that Schultz was a partial owner of Foundation Care during Plaintiffs’ employment with Foundation Care. All other allegations contained in Paragraph 5 are denied.

6. Defendant admits he is a male who resides in St. Louis County, Missouri. Defendant further admits that he was a partial owner of Foundation Care during Plaintiffs’ employment with Foundation Care. All other allegations contained in Paragraph 6 are denied.

7. The allegations contained in Paragraph 7 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

8. Defendant admits that Foundation Care currently employs more than six individuals within the State of Missouri. The remaining allegations contained in Paragraph 8 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

9. Defendant lacks sufficient information to admit or deny the allegations contained in Paragraph 9, and therefore denies the same.

10. The allegations contained in Paragraph 10 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

11. The allegations contained in Paragraph 11 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

12. Defendant admits that Foundation Care hired Mothershed in May 2012, and that Mothershed worked for Foundation Care until April 17, 2017. Defendant further admits that

during her employment, the positions Mothershed held included director of pharmacy and the senior director of pharmacy and clinical operations. All other allegations contained in Paragraph 12 are denied.

13. The allegations contained in Paragraph 13 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

14. Defendant admits that during her employment, Mothershed was supervised by Blakeley. All other allegations contained in Paragraph 14 are denied.

15. Defendant admits that Foundation Care hired Jaksetic in June 2004, and that Jaksetic worked for Foundation Care until April 17, 2017. Defendant further admits that during her employment, the positions Jaksetic held included senior director of healthcare client and consumer relations and the director of reimbursement. All other allegations contained in Paragraph 15 are denied.

16. The allegations contained in Paragraph 16 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

17. Defendant admits that during her employment, Jaksetic was supervised by Blakeley. All other allegations contained in Paragraph 17 are denied.

18. Defendant denies the allegations contained in Paragraph 18.

19. Defendant denies the allegations contained in Paragraph 19.

20. Defendant denies the allegations contained in Paragraph 20.

21. Defendant denies the allegations contained in Paragraph 21.

22. Defendant denies the allegations contained in Paragraph 22.

23. Defendant denies the allegations contained in Paragraph 23.

24. Except the deny that any hostile behavior occurred, Defendant lacks sufficient information to admit or deny the allegations contained in Paragraph 24, and therefore denies the same.

25. Defendant denies the allegations contained in Paragraph 25.

26. Defendant denies that he carried a firearm to work without authorization. All other allegations contained in Paragraph 26 are denied.

27. Upon information and belief, Defendant admits that Schultz, Blakeley, Jaksetic, and Mothershed met in Jaksetic's office on February 21, 2017. Defendant further admits that both Mothershed and Schultz spoke loudly during this meeting. All other allegations contained in Paragraph 27 are denied.

28. Except to admit the February 21, 2017 meeting concerned employee personnel files, Defendant denies the allegations contained in Paragraph 28.

29. Defendant denies the allegations contained in Paragraph 29.

30. Except to admit that Mothershed was upset during this meeting, Defendant denies the allegations contained in Paragraph 30.

31. Defendant denies the allegations contained in Paragraph 31.

32. Defendant denies the allegations contained in Paragraph 32.

33. Except to admit that Mothershed was upset during this meeting, Defendant denies the allegations contained in Paragraph 33.

34. Defendant denies the allegations contained in Paragraph 34.

35. Defendant denies the allegations contained in Paragraph 35.

36. Except to admit that Defendant spoke to Mothershed following the February 21, 2017 meeting, Defendant denies the allegations contained in Paragraph 36.

37. Defendant admits that both Plaintiffs worked on February 22 and 23, 2017. Defendant further admits that both Plaintiffs were granted leave until April 17, 2017. All other allegations contained in Paragraph 37 are denied.

38. Defendant admits that Plaintiffs' counsel notified Foundation Care that Plaintiffs alleged they had been constructively discharged in April 2017. All other allegations contained in Paragraph 38 are denied.

39. Defendant denies the allegations contained in Paragraph 39.

40. Defendant denies the allegations contained in Paragraph 40.

41. Upon information and belief, Defendant admits that on June 2, 2017, Mothershed filed a Charge of Discrimination with the Missouri Commission on Human Rights ("MCHR") that alleged sex discrimination. All other allegations contained in Paragraph 41 are denied.

42. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 42 are denied.

43. Upon information and belief, Defendant admits that on June 2, 2017, Jaksetic filed a Charge of Discrimination with the MCHR that alleged sex discrimination. All other allegations contained in Paragraph 43 are denied.

44. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 44 are denied.

45. Defendant denies the allegations contained in Paragraph 45.

46. Defendant denies the allegations contained in Paragraph 46.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant denies the allegations contained in Paragraph 48, including the prayer for relief.

**COUNT II: Wrongful Discharge in Violation of Public Policy**

49. – 88. Count II (Paragraphs 49 – 88) is not directed to Defendant Blakeley, and therefore no response is required; but to the extent a response is required, Defendant denies the same, including the prayer for relief.

**COUNT III: False Imprisonment**

89. Defendant incorporates his responses and denials to Paragraphs 1 – 6 and 12 – 40 as if fully restated herein.

90. The allegations contained in Paragraph 90 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

91. Except to admit that Schultz, Blakeley, Jaksetic, and Mothershed met in Jaksetic's office on February 21, 2017, Defendant denies the allegations contained in Paragraph 91.

92. Defendant denies the allegations contained in Paragraph 92.

93. Defendant denies the allegations contained in Paragraph 93.

94. Defendant denies the allegations contained in Paragraph 94.

95. Defendant denies the allegations contained in Paragraph 95.

96. Defendant denies the allegations contained in Paragraph 96.

97. Except to admit that February 21, 2017, and the date when this action was filed are less than two years apart, Defendant denies the allegations contained in Paragraph 97.

98. Defendant denies the allegations contained in Paragraph 98.

99. Defendant denies the allegations contained in Paragraph 99.

100. Defendant denies the allegations contained in Paragraph 100, including the prayer for relief.

**COUNT IV: Assault**

101. – 110. Count IV (Paragraphs 100 – 110) is not directed to Defendant Blakeley, and therefore no response is required; but to the extent a response is required, Defendant denies the same, including the prayer for relief.

**COUNT V: Sex Discrimination in Violation of the Missouri Human Rights Act**

111. Defendant incorporates his responses and denials to Paragraphs 1 – 40 as if fully restated herein.

112. Defendant denies the allegations contained in Paragraph 112.

113. Defendant denies the allegations contained in Paragraph 113.

114. Defendant lacks sufficient information to admit or deny the allegations contained in Paragraph 114, and therefore denies the same.

115. Defendant denies the allegations contained in Paragraph 115.

116. Upon information and belief, Defendant admits that on June 2, 2017, Jaksetic filed a Charge of Discrimination with the MCHR that alleged sex discrimination. All other allegations contained in Paragraph 116 are denied.

117. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 117 are denied.

118. Defendant denies the allegations contained in Paragraph 118.

119. Defendant denies the allegations contained in Paragraph 119.

120. Defendant denies the allegations contained in Paragraph 120.

121. Defendant denies the allegations contained in Paragraph 121, including the prayer for relief.



Defendant denies each and every allegation of fact, conclusion of law, or other matter contained in the Petition that has not been expressly admitted herein, including the prayers for relief.

### DEFENSES

1. Some or all of Plaintiff's Petition fails to state a claim against Defendant upon which relief can be granted by this Court.

2. All events which occurred more than 180 days prior to the filing of Plaintiffs' charges of employment discrimination with the MCHR are untimely and not properly assertable in this action; nor are the Plaintiffs entitled to relief in this action for any events which occurred more than 180 days prior to the filing of their respective charges of discrimination.

3. As explained in Defendants' Partial Motion for Summary Judgment, Plaintiffs' claims under the MHRA are barred as Plaintiffs have failed to exhaust their administrative remedies and have not received a Notice of Right to Sue. Accordingly, Plaintiffs' claims are barred to the extent that this Court lacks subject matter and/or other jurisdiction over all or portions of Plaintiffs' Petition.

4. Defendant asserts that Plaintiff was an at-will employee and, therefore, Plaintiff was subject to discharge at any time, with or without cause, so long as said discharge was not for an unlawful reason.

5. Plaintiffs have not suffered any legally cognizable damage.

6. Plaintiffs failed to state a claim for the recovery of punitive damages upon which relief may be granted. Further, their claims for punitive damages are unconstitutional.

7. To the extent that Plaintiffs were involved in any improper activities during their employment, or failed to properly notice and act upon any such activities, Plaintiffs are estopped from recovering for their claims.

8. Plaintiffs are estopped from claiming damages associated with the termination of their employment because both employees voluntarily resigned.

9. Any amount which Plaintiffs claim are due and owing to Plaintiffs for lost wages and other employment benefits must be mitigated and reduced by the amount of wages and benefits Plaintiffs earned (including unemployment compensation benefits), or through the exercise of reasonable diligence could have earned, during the period for which lost wages and benefits are sought by Plaintiffs. Plaintiffs further must mitigate all damages and to the extent Plaintiffs have failed to do so, Plaintiffs' damage claims must be reduced.

10. Defendant is entitled to recover its costs of court and attorneys' fees for the defense of Plaintiffs' action because portions of this action are frivolous and without foundation in law or in fact.

11. To the extent Defendant discovers during the course of this action that Plaintiffs engaged in any conduct which would warrant or would have warranted discharge under Company policy, Plaintiffs' right to recover damages beyond the date of such discovery will be cut off. *See McKennon v. Nashville Banner Publishing Company*, 513 U.S. 352, 115 S. Ct. 879 (1995).

12. Defendant's conduct and actions were at all times undertaken in good faith, and without malice or ill-will toward the Plaintiffs.

13. Any and all actions taken by Defendant affecting Plaintiffs were taken for reasons other than Plaintiffs' sex, refusal to perform an illegal act, or reporting of an illegal act.

14. Plaintiffs cannot demonstrate severe and pervasive conduct altered the conditions of their employment. Further, although Defendant denies that Plaintiffs were exposed to a hostile work environment, Defendant asserts that reasonable care was exercised to prevent and correct promptly any harassing behavior, and that Plaintiffs unreasonably failed to take advantage of any preventive or corrective opportunity provided or to avoid harm otherwise. *See Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761-63 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775, 790, 807 (1998).

15. To the extent Plaintiffs complained to Defendant about alleged unlawful treatment, immediate and adequate steps were taken to investigate Plaintiffs' complaints.

16. To the extent Plaintiff Jaksetic's wages were less than those of Defendant's employees of the opposite sex for equal work and functions, such reduced wage was the result of a seniority system, a merit system, a system which measures earnings by quantity or quality of production, hours worked, and/or a pay differential based on factors other than sex.

17. At all times relevant hereto, Foundation Care and Insperity had specific policies against unlawful discrimination and harassment in the work place and such policies were well-known to employees.

18. Plaintiffs consented (either expressly or implicitly) to any and all actions by Defendant, which are made the basis for Plaintiffs' lawsuit, if any such actions are found to have taken place.

19. The MHRA is the exclusive remedy for all claims of unlawful employment practices.

20. To the extent Plaintiffs' MHRA claims exceed the amounts permissible under the MHRA, all such claims are subject to the limitations of applicable statutory caps existing at law.

21. Plaintiffs were not employees of Defendant under the MHRA as amended, and to the extent that any claim asserted by Plaintiffs is predicated upon the existence of an employer-employee relationship between Plaintiffs and Defendant, the same should be dismissed.

22. Plaintiff's claims are subject to all amendments to the Missouri Human Rights Act that went into effect on August 28, 2017.

23. Because no discovery has yet occurred in this action, Defendant reserves the right to assert further defenses as appropriate.

WHEREFORE, Defendant respectfully prays the Court enter a judgment providing that:

1. Plaintiffs' claims in this action be dismissed in their entirety, with prejudice;
2. Defendant be awarded the costs incurred in the defense of Plaintiffs' claims, including his reasonable attorneys' fees;
3. Defendant be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted this 6th day of November, 2017.

CONSTANGY, BROOKS, SMITH & PROPHETE, LLP

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Attorneys for Defendants

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 6, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorney of record:

Jerome J. Dobson  
Nicole A. Matlock  
5017 Washington Place, Third Floor  
St. Louis, MO 63108  
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[jdobson@dobsongoldberg.com](mailto:jdobson@dobsongoldberg.com)  
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Attorney for Plaintiff

/s/ Susan Bassford Wilson  
Attorney for Defendant



4. Defendant lacks sufficient information to admit or deny the allegations contained in Paragraph 4, and therefore denies the same.

5. Defendant admits he is a male citizen of the United States who resides in Missouri. Defendant further admits that he was a partial owner of Foundation Care during Plaintiffs' employment with Foundation Care. All other allegations contained in Paragraph 5 are denied.

6. Defendant admits Daniel Blakeley ("Blakeley") is male who resides in St. Louis County, Missouri. Defendant further admits that Blakeley was a partial owner of Foundation Care during Plaintiffs' employment with Foundation Care. All other allegations contained in Paragraph 6 are denied.

7. The allegations contained in Paragraph 7 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

8. Defendant admits that Foundation Care currently employs more than six individuals within the State of Missouri. The remaining allegations contained in Paragraph 8 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

9. Defendant lacks sufficient information to admit or deny the allegations contained in Paragraph 9, and therefore denies the same.

10. The allegations contained in Paragraph 10 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

11. The allegations contained in Paragraph 11 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

12. Defendant admits that Foundation Care hired Mothershed in May 2012, and that Mothershed worked for Foundation Care until April 17, 2017. Defendant further admits that

during her employment, the positions Mothershed held included director of pharmacy and the senior director of pharmacy and clinical operations. All other allegations contained in Paragraph 12 are denied.

13. The allegations contained in Paragraph 13 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

14. Defendant admits that during her employment, Mothershed was supervised by Blakeley. All other allegations contained in Paragraph 14 are denied.

15. Defendant admits that Foundation Care hired Jaksetic in June 2004, and that Jaksetic worked for Foundation Care until April 17, 2017. Defendant further admits that during her employment, the positions Jaksetic held included senior director of healthcare client and consumer relations and the director of reimbursement. All other allegations contained in Paragraph 15 are denied.

16. The allegations contained in Paragraph 16 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

17. Defendant admits that during her employment, Jaksetic was supervised by Blakeley. All other allegations contained in Paragraph 17 are denied.

18. Defendant denies the allegations contained in Paragraph 18.

19. Defendant denies the allegations contained in Paragraph 19.

20. Defendant denies the allegations contained in Paragraph 20.

21. Defendant denies the allegations contained in Paragraph 21.

22. Defendant denies the allegations contained in Paragraph 22.

23. Defendant denies the allegations contained in Paragraph 23.



24. Except the deny that any hostile behavior occurred, Defendant lacks sufficient information to admit or deny the allegations contained in Paragraph 24, and therefore denies the same.

25. Defendant denies the allegations contained in Paragraph 25.

26. Defendant denies that he carried a firearm to work without authorization. All other allegations contained in Paragraph 26 are denied.

27. Upon information and belief, Defendant admits that Schultz, Blakeley, Jaksetic and Mothershed met in Jaksetic's office on February 21, 2017. Defendant further admits that both Mothershed and Schultz spoke loudly during this meeting. All other allegations contained in Paragraph 27 are denied.

28. Except to admit the February 21, 2017, concerned employee personnel files, Defendant denies the allegations contained in Paragraph 28.

29. Defendant denies the allegations contained in Paragraph 29.

30. Except to admit that Mothershed began crying during this meeting, Defendant denies the allegations contained in Paragraph 30.

31. Defendant denies the allegations contained in Paragraph 31.

32. Defendant denies the allegations contained in Paragraph 32.

33. Except to admit that Mothershed began crying during this meeting, Defendant denies the allegations contained in Paragraph 33.

34. Defendant denies the allegations contained in Paragraph 34.

35. Defendant denies the allegations contained in Paragraph 35.

36. Defendant lacks sufficient information to admit or deny the allegations contained in Paragraph 36, and therefore denies the same.

37. Defendant admits that both Plaintiffs worked on February 22 and 23, 2017. Defendant further admits that both Plaintiffs were granted leave until April 17, 2017. All other allegations contained in Paragraph 37 are denied.

38. Defendant admits that Plaintiffs' counsel notified Foundation Care that Plaintiffs alleged they had been constructively discharged in April 2017. All other allegations contained in Paragraph 38 are denied.

39. Defendant denies the allegations contained in Paragraph 39.

40. Defendant denies the allegations contained in Paragraph 40.

41. Upon information and belief, Defendant admits that on June 2, 2017, Mothershed filed a Charge of Discrimination with the Missouri Commission on Human Rights ("MCHR") that alleged sex discrimination. All other allegations contained in Paragraph 41 are denied.

42. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 42 are denied.

43. Upon information and belief, Defendant admits that on June 2, 2017, Jaksetic filed a Charge of Discrimination with the MCHR that alleged sex discrimination. All other allegations contained in Paragraph 43 are denied.

44. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 44 are denied.

45. Defendant denies the allegations contained in Paragraph 45.

46. Defendant denies the allegations contained in Paragraph 46.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant denies the allegations contained in Paragraph 48, including the prayer for relief.

**COUNT II: Wrongful Discharge in Violation of Public Policy**

49. – 88. Count II (Paragraphs 49 – 88) is not directed to Defendant Schultz, and therefore no response is required; but to the extent a response is required, Defendant denies the same, including the prayer for relief.

**COUNT III: False Imprisonment**

89. – 100. Count III (Paragraphs 89 – 100) is not directed to Defendant Schultz, and therefore no response is required; but to the extent a response is required, Defendant denies the same, including the prayer for relief.

**COUNT IV: Assault**

101. Defendant incorporates his responses and denials to Paragraphs 1 – 6 and 12 – 40 as if fully restated herein.

102. The allegations contained in Paragraph 102 constitute legal conclusions to which no response is required; but the extent a response is required, Defendant denies the same.

103. Except to admit that Schultz, Blakeley, Jaksetic, and Mothershed met in Jaksetic's office on February 21, 2017, Defendant denies the allegations contained in Paragraph 103.

104. Defendant denies the allegations contained in Paragraph 104.

105. Defendant denies the allegations contained in Paragraph 105.

106. Defendant denies the allegations contained in Paragraph 106.

107. Except to admit that February 21, 2017, and the date when this action was filed are less than two years apart, Defendant denies the allegations contained in Paragraph 107.

108. Defendant denies the allegations contained in Paragraph 108.

109. Defendant denies the allegations contained in Paragraph 109.

110. Defendant denies the allegations contained in Paragraph 110, including the prayer for relief.

**COUNT V: Sex Discrimination in Violation of the Missouri Human Rights Act**

111. Defendant incorporates his responses and denials to Paragraphs 1 – 40 as if fully restated herein.

112. Defendant denies the allegations contained in Paragraph 112.

113. Defendant denies the allegations contained in Paragraph 113.

114. Upon information and belief, Defendant may have reassigned an employee. All other allegations contained in Paragraph 114 are denied.

115. Defendant denies the allegations contained in Paragraph 115.

116. Upon information and belief, Defendant admits that on June 2, 2017, Jaksetic filed a Charge of Discrimination with the MCHR that alleged sex discrimination. All other allegations contained in Paragraph 116 are denied.

117. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 117 are denied.

118. Defendant denies the allegations contained in Paragraph 118.

119. Defendant denies the allegations contained in Paragraph 119.

120. Defendant denies the allegations contained in Paragraph 120.

121. Defendant denies the allegations contained in Paragraph 121, including the prayer for relief.

Defendant denies each and every allegation of fact, conclusion of law, or other matter contained in the Petition that has not been expressly admitted herein, including the prayers for relief.

## DEFENSES

1. Some or all of Plaintiff's Petition fails to state a claim against Defendant upon which relief can be granted by this Court.

2. All events which occurred more than 180 days prior to the filing of Plaintiffs' charges of employment discrimination with the MCHR are untimely and not properly assertable in this action; nor are the Plaintiffs entitled to relief in this action for any events which occurred more than 180 days prior to the filing of their respective charges of discrimination.

3. As explained in Defendants' Partial Motion for Summary Judgment, Plaintiffs' claims under the MHRA are barred as Plaintiffs have failed to exhaust their administrative remedies and have not received a Notice of Right to Sue. Further, Plaintiffs' claims are barred to the extent that this Court lacks subject matter and/or other jurisdiction over all or portions of Plaintiffs' Petition.

4. Defendant asserts that Plaintiff was an at-will employee and, therefore, Plaintiff was subject to discharge at any time, with or without cause, so long as said discharge was not for an unlawful reason.

5. Plaintiffs have not suffered any legally cognizable damage.

6. Plaintiffs failed to state a claim for the recovery of punitive damages upon which relief may be granted. Further, their claims for punitive damages are unconstitutional.

7. To the extent that Plaintiffs were involved in any improper activities during their employment, or failed to properly notice and act upon any such activities, Plaintiffs are estopped from recovering for their claims.

8. Plaintiffs are estopped from claiming damages associated with the termination of their employment because both employees voluntarily resigned.

9. Any amount which Plaintiffs claim are due and owing to Plaintiffs for lost wages and other employment benefits must be mitigated and reduced by the amount of wages and benefits Plaintiffs earned (including unemployment compensation benefits), or through the exercise of reasonable diligence could have earned, during the period for which lost wages and benefits are sought by Plaintiffs. Plaintiffs further must mitigate all damages and to the extent Plaintiffs have failed to do so, Plaintiffs' damage claims must be reduced.

10. Defendant is entitled to recover its costs of court and attorneys' fees for the defense of Plaintiffs' action because portions of this action are frivolous and without foundation in law or in fact.

11. To the extent Defendant discovers during the course of this action that Plaintiffs engaged in any conduct which would warrant or would have warranted discharge under Company policy, Plaintiffs' right to recover damages beyond the date of such discovery will be cut off. *See McKennon v. Nashville Banner Publishing Company*, 513 U.S. 352 (1995).

12. Defendant's conduct and actions were at all times undertaken in good faith, and without malice or ill-will toward the Plaintiffs.

13. Any and all actions taken by Defendant affecting Plaintiffs were taken for reasons other than Plaintiffs' sex, refusal to perform an illegal act, or reporting of an illegal act.

14. Plaintiffs cannot demonstrate severe and pervasive conduct altered the conditions of their employment. Further, although Defendant denies that Plaintiffs were exposed to a hostile work environment, Defendant asserts that reasonable care was exercised to prevent and correct promptly any harassing behavior, and that Plaintiffs unreasonably failed to take advantage of any preventive or corrective opportunity provided or to avoid harm otherwise. *See Burlington*

*Industries, Inc. v. Ellerth*, 524 U.S. 742, 761-63 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775, 790, 807 (1998).

15. To the extent Plaintiffs complained to Defendant about alleged unlawful treatment, immediate and adequate steps were taken to investigate Plaintiffs' complaints.

16. To the extent Plaintiff Jaksetic's wages were less than those of Defendant's employees of the opposite sex for equal work and functions, such reduced wage was the result of a seniority system, a merit system, a system which measures earnings by quantity or quality of production, and/or a pay differential based on factors other than sex.

17. At all times relevant hereto, Foundation Care and Insuperity had specific policies against unlawful discrimination and harassment in the work place and such polices were well-known to employees.

18. Plaintiffs consented (either expressly or implicitly) to any and all actions by Defendant, which are made the basis for Plaintiffs' lawsuit, if any such actions are found to have taken place.

19. The MHRA is the exclusive remedy for all claims of unlawful employment practices.

20. To the extent Plaintiffs' MHRA claims exceed the amounts permissible under the MHRA, all such claims are subject to the limitations of applicable statutory caps existing at law.

21. Plaintiffs were not employees of Defendant under the MHRA as amended, and to the extent that any claim asserted by Plaintiffs is predicated upon the existence of an employer-employee relationship between Plaintiffs and Defendant, the same should be dismissed.

22. Plaintiff's claims are subject to all amendments to the Missouri Human Rights Act that went into effect on August 28, 2017.

23. Because no discovery has yet occurred in this action, Defendant reserves the right to assert further defenses as appropriate.

WHEREFORE, Defendant respectfully prays that the Court enter a judgment providing that:

1. Plaintiffs' claims in this action be dismissed in their entirety, with prejudice;
2. Defendant be awarded the costs incurred in the defense of Plaintiffs' claims, including his reasonable attorneys' fees;
3. Defendant be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted this 6th day of November, 2017.

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Attorneys for Defendants



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 6, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorney of record:

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Attorney for Plaintiff

/s/ Susan Bassford Wilson  
Attorney for Defendant



4. Upon information and belief, Foundation Care admits that Insuperity was Plaintiffs' co-employer for a portion of Plaintiffs' employment with Foundation Care. All other allegations contained in Paragraph 4 are denied.

5. Defendant admits Michael Schultz ("Schultz") is a male citizen of the United States who resides in Missouri. Defendant further admits that Schultz was a partial owner of Foundation Care during Plaintiffs' employment with Foundation Care. All other allegations contained in Paragraph 5 are denied.

6. Defendant admits Daniel Blakeley ("Blakeley") is a male citizen of the United States who resides in St. Louis County, Missouri. Defendant further admits that Blakeley was a partial owner of Foundation Care during Plaintiffs' employment with Foundation Care. All other allegations contained in Paragraph 6 are denied.

7. The allegations contained in Paragraph 7 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

8. Defendant admits that Foundation Care currently employs more than six individuals within the State of Missouri. The remaining allegations contained in Paragraph 8 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

9. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 9, and therefore denies the same.

10. The allegations contained in Paragraph 10 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

11. The allegations contained in Paragraph 11 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

12. Defendant admits that Foundation Care hired Mothershed in May 2012, and that Mothershed worked for Foundation Care until April 17, 2017. Defendant further admits that during her employment, the positions Mothershed held included director of pharmacy and the senior director of pharmacy and clinical operations. All other allegations contained in Paragraph 12 are denied.

13. The allegations contained in Paragraph 13 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

14. Defendant admits that during her employment, Mothershed was supervised by Blakeley. All other allegations contained in Paragraph 14 are denied.

15. Defendant admits that Foundation Care hired Jaksetic in June 2004, and that Jaksetic worked for Foundation Care until April 17, 2017. Defendant further admits that during her employment, the positions Jaksetic held included senior director of healthcare client and consumer relations and the director of reimbursement. All other allegations contained in Paragraph 15 are denied.

16. The allegations contained in Paragraph 16 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

17. Defendant admits that during her employment, Jaksetic was supervised by Blakeley. All other allegations contained in Paragraph 17 are denied.

18. Defendant denies the allegations contained in Paragraph 18.

19. Defendant denies the allegations contained in Paragraph 19.

20. Defendant denies the allegations contained in Paragraph 20.

21. Defendant denies the allegations contained in Paragraph 21.

22. Defendant denies the allegations contained in Paragraph 22.

23. Defendant denies the allegations contained in Paragraph 23.

24. Except the deny that any hostile behavior occurred, Defendant lacks sufficient information to admit or deny the allegations contained in Paragraph 24, and therefore denies the same.

25. Defendant denies the allegations contained in Paragraph 25.

26. Defendant denies that Schultz or Blakeley carried a firearm to work without authorization. All other allegations contained in Paragraph 26 are denied.

27. Defendant admits that Schultz, Blakeley, Jaksetic, and Mothershed met in Jaksetic's office on February 21, 2017. Defendant further admits that both Mothershed and Schultz spoke loudly during this meeting. All other allegations contained in Paragraph 27 are denied.

28. Except to admit the February 21, 2017 meeting concerned employee personnel files, Defendant denies the allegations contained in Paragraph 28.

29. Defendant denies the allegations contained in Paragraph 29.

30. Except to admit that Mothershed began crying during this meeting, Defendant denies the allegations contained in Paragraph 30.

31. Defendant denies the allegations contained in Paragraph 31.

32. Defendant denies the allegations contained in Paragraph 32.

33. Except to admit that Mothershed began crying during this meeting, Defendant denies the allegations contained in Paragraph 33.

34. Defendant denies the allegations contained in Paragraph 34.

35. Defendant denies the allegations contained in Paragraph 35.

36. Except to admit that Blakeley spoke to Mothershed following the February 21, 2017 meeting, Defendant denies the allegations contained in Paragraph 36.

37. Defendant admits that both Plaintiffs worked on February 22 and 23, 2017. Defendant further admits that both Plaintiffs were granted leave until April 17, 2017. All other allegations contained in Paragraph 37 are denied.

38. Defendant admits that Plaintiffs' counsel notified Foundation Care that Plaintiffs alleged they had been constructively discharged in April 2017. All other allegations contained in Paragraph 38 are denied.

39. Defendant denies the allegations contained in Paragraph 39.

40. Defendant denies the allegations contained in Paragraph 40.

41. Upon information and belief, Defendant admits that on June 2, 2017, Mothershed filed a Charge of Discrimination with the Missouri Commission on Human Rights ("MCHR") that alleged sex discrimination. All other allegations contained in Paragraph 41 are denied.

42. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 42 are denied.

43. Upon information and belief, Defendant admits that on June 2, 2017, Jaksetic filed a Charge of Discrimination with the MCHR that alleged sex discrimination. All other allegations contained in Paragraph 43 are denied.

44. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 44 are denied.

45. Defendant denies the allegations contained in Paragraph 45.

46. Defendant denies the allegations contained in Paragraph 46.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant denies the allegations contained in Paragraph 48, including the prayer for relief.

**COUNT II: Wrongful Discharge in Violation of Public Policy**

49. Defendant incorporates its responses and denials to Paragraphs 1 – 6 and 12 – 40 as if fully restated herein.

50. The allegations contained in Paragraph 50 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

51. Except to admit that Foundation Care is a licensed pharmacy in Missouri, the allegations contained in Paragraph 51 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

52. Except to admit that Schultz is a licensed pharmacist, the allegations contained in Paragraph 52 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

53. Except to admit that Blakeley is a licensed pharmacist and was the pharmacist-in-charge for Foundation Care during Plaintiffs' employment, the allegations contained in Paragraph 53 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

54. Defendant denies the allegations contained in Paragraph 54.

55. Defendant denies the allegations contained in Paragraph 55.

56. Defendant denies the allegations contained in Paragraph 56.

57. Defendant denies the allegations contained in Paragraph 57.

58. Defendant denies the allegations contained in Paragraph 58.

59. Defendant denies the allegations contained in Paragraph 59.

60. Defendant denies the allegations contained in Paragraph 60.

61. Defendant denies the allegations contained in Paragraph 61.

62. Defendant denies the allegations contained in Paragraph 62.

63. Defendant denies the allegations contained in Paragraph 63.

64. Defendant denies the allegations contained in Paragraph 64.

65. Defendant denies the allegations contained in Paragraph 65.

66. Defendant denies the allegations contained in Paragraph 66.

67. Defendant denies the allegations contained in Paragraph 67.

68. Defendant denies the allegations contained in Paragraph 68.

69. Defendant denies the allegations contained in Paragraph 69.

70. Defendant denies the allegations contained in Paragraph 70.

71. Defendant denies the allegations contained in Paragraph 71.

72. Defendant denies the allegations contained in Paragraph 72.

73. Defendant denies the allegations contained in Paragraph 73.

74. Defendant denies the allegations contained in Paragraph 74.

75. Defendant denies the allegations contained in Paragraph 75.

76. Except to admit that Defendant did not notify other states of an agreement reached with the State of Kansas, Defendant denies the allegations contained in Paragraph 76.

77. Defendant denies the allegations contained in Paragraph 77.

78. Defendant denies the allegations contained in Paragraph 78.

79. Defendant denies the allegations contained in Paragraph 79.

80. Defendant denies the allegations contained in Paragraph 80.

81. Defendant denies the allegations contained in Paragraph 81.



82. Defendant denies the allegations contained in Paragraph 82.

83. Defendant denies the allegations contained in Paragraph 83.

84. Defendant denies the allegations contained in Paragraph 84.

85. Defendant denies the allegations contained in Paragraph 85.

86. Defendant denies the allegations contained in Paragraph 86.

87. Defendant denies the allegations contained in Paragraph 87.

88. Defendant denies the allegations contained in Paragraph 88, including the prayer for relief.

### **COUNT III: False Imprisonment**

89. Defendant incorporates its responses and denials to Paragraphs 1 – 6 and 12 – 40 as if fully restated herein.

90. The allegations contained in Paragraph 90 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

91. Except to admit that Schultz, Blakeley, Jaksetic, and Mothershed met in Jaksetic's office on February 21, 2017, Defendant denies the allegations contained in Paragraph 91.

92. Defendant denies the allegations contained in Paragraph 92.

93. Defendant denies the allegations contained in Paragraph 93.

94. Defendant denies the allegations contained in Paragraph 94.

95. Defendant denies the allegations contained in Paragraph 95.

96. Defendant denies the allegations contained in Paragraph 96.

97. Except to admit that February 21, 2017, and the date when this action was filed are less than two years apart, Defendant denies the allegations contained in Paragraph 97.

98. Defendant denies the allegations contained in Paragraph 98.

99. Defendant denies the allegations contained in Paragraph 99.

100. Defendant denies the allegations contained in Paragraph 100, including the prayer for relief.

**COUNT IV: Assault**

101. Defendant incorporates its responses and denials to Paragraphs 1 – 6 and 12 – 40 as if fully restated herein.

102. The allegations contained in Paragraph 102 constitute legal conclusions to which no response is required; but to the extent a response is required, Defendant denies the same.

103. Except to admit that Schultz, Blakeley, Jaksetic, and Mothershed met in Jaksetic's office on February 21, 2017, Defendant denies the allegations contained in Paragraph 103.

104. Defendant denies the allegations contained in Paragraph 104.

105. Defendant denies the allegations contained in Paragraph 105.

106. Defendant denies the allegations contained in Paragraph 106.

107. Except to admit that February 21, 2017, and the date when this action was filed are less than two years apart, Defendant denies the allegations contained in Paragraph Defendant denies the allegations contained in Paragraph 107.

108. Defendant denies the allegations contained in Paragraph 108.

109. Defendant denies the allegations contained in Paragraph 109.

110. Defendant denies the allegations contained in Paragraph 110, including the prayer for relief.

**COUNT V: Sex Discrimination in Violation of the Missouri Human Rights Act**

111. Defendant incorporates its responses and denials to Paragraphs 1 – 40 as if fully restated herein.

112. Defendant denies the allegations contained in Paragraph 112.

113. Defendant denies the allegations contained in Paragraph 113.

114. Upon information and belief, Schultz may have reassigned an employee. All other allegations contained in Paragraph 114 are denied.

115. Defendant denies the allegations contained in Paragraph 115.

116. Upon information and belief, Defendant admits that on June 2, 2017, Jaksetic filed a Charge of Discrimination with the MCHR that alleged sex discrimination. All other allegations contained in Paragraph 116 are denied.

117. Defendant admits that the attached document speaks for itself. All other allegations contained in Paragraph 117 are denied.

118. Defendant denies the allegations contained in Paragraph 118.

119. Defendant denies the allegations contained in Paragraph 119.

120. Defendant denies the allegations contained in Paragraph 120.

121. Defendant denies the allegations contained in Paragraph 121, including the prayer for relief.

. Defendant denies each and every allegation of fact, conclusion of law, or other matter contained in the Petition that has not been expressly admitted herein, including the prayers for relief.

## DEFENSES

1. Some or all of Plaintiff's Petition fails to state a claim against Defendant upon which relief can be granted by this Court.

2. All events which occurred more than 180 days prior to the filing of Plaintiffs' charges of employment discrimination with the MCHR are untimely and not properly assertable in this action; nor are the Plaintiffs entitled to relief in this action for any events which occurred more than 180 days prior to the filing of their respective charges of discrimination.

3. As explained in Defendants' Partial Motion for Summary Judgment, Plaintiffs' claims under the MHRA are barred as Plaintiffs have failed to exhaust their administrative remedies and have not received a Notice of Right to Sue. Accordingly, Plaintiffs' claims are barred to the extent that this Court lacks subject matter and/or other jurisdiction over all or portions of Plaintiffs' Petition.

4. Defendant asserts that Plaintiff was an at-will employee of Foundation Care and, therefore, Plaintiff was subject to discharge at any time, with or without cause, so long as said discharge was not for an unlawful reason.

5. Plaintiffs have not suffered any legally cognizable damage.

6. Plaintiffs failed to state a claim for the recovery of punitive damages upon which relief may be granted. Further, their claims for punitive damages are unconstitutional.

7. To the extent that Plaintiffs were involved in any improper activities during their employment, or failed to properly notice and act upon any such activities, Plaintiffs are estopped from recovering for their claims.

8. Plaintiffs are estopped from claiming damages associated with the termination of their employment because both employees voluntarily resigned.

9. Any amount which Plaintiffs claim are due and owing to Plaintiffs for lost wages and other employment benefits must be mitigated and reduced by the amount of wages and benefits Plaintiffs earned (including unemployment compensation benefits), or through the exercise of reasonable diligence could have earned, during the period for which lost wages and benefits are sought by Plaintiffs. Plaintiffs further must mitigate all damages and to the extent Plaintiffs have failed to do so, Plaintiffs' damage claims must be reduced.

10. Defendant is entitled to recover its costs of court and attorneys' fees for the defense of Plaintiffs' action because portions of this action are frivolous and without foundation in law or in fact.

11. To the extent Defendant discovers during the course of this action that Plaintiffs engaged in any conduct which would warrant or would have warranted discharge under Company policy, Plaintiffs' right to recover damages beyond the date of such discovery will be cut off. *See McKennon v. Nashville Banner Publishing Company*, 513 U.S. 352, 115 S. Ct. 879 (1995).

12. Defendant's conduct and actions were at all times undertaken in good faith, and without malice or ill-will toward the Plaintiffs.

13. Any and all actions taken by Defendant affecting Plaintiffs were taken for reasons other than Plaintiffs' sex, refusal to perform an illegal act, or reporting of an illegal act.

14. Plaintiffs cannot demonstrate severe and pervasive conduct altered the conditions of their employment. Further, although Defendant denies that Plaintiffs were exposed to a hostile work environment, Defendant asserts that reasonable care was exercised to prevent and correct promptly any harassing behavior, and that Plaintiffs unreasonably failed to take advantage of any preventive or corrective opportunity provided or to avoid harm otherwise. *See Burlington*

*Industries, Inc. v. Ellerth*, 524 U.S. 742, 761-63 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775, 790, 807 (1998).

15. To the extent Plaintiffs complained to Defendant about alleged unlawful treatment or conduct, immediate and adequate steps were taken to investigate Plaintiffs' complaints.

16. To the extent Plaintiff Jaksetic's wages were less than those of Defendant's employees of the opposite sex for equal work and functions, such reduced wage was the result of a seniority system, a merit system, a system which measures earnings by quantity or quality of production, hours worked, and/or a pay differential based on factors other than sex.

17. At all times relevant hereto, Foundation Care and Insperity had specific policies against unlawful discrimination and harassment in the work place and such policies were well-known to employees.

18. Plaintiffs consented (either expressly or implicitly) to any and all actions by Defendant, which are made the basis for Plaintiffs' lawsuit, if any such actions are found to have taken place.

19. Plaintiffs cannot maintain an action for wrongful discharge in violation of public policy where they are provided a statutory remedy for the specific wrong alleged. The MHRA is the exclusive remedy for all claims of unlawful employment practices.

20. To the extent Plaintiffs' MHRA claims exceed the amounts permissible under the MHRA, all such claims are subject to the limitations of applicable statutory caps existing at law.

21. Plaintiffs were not employees of Defendant under the MHRA as amended, and to the extent that any claim asserted by Plaintiffs is predicated upon the existence of an employer-employee relationship between Plaintiffs and Defendant, the same should be dismissed.

22. Plaintiff's claims are subject to all amendments to the Missouri Human Rights Act that went into effect on August 28, 2017.

23. Because no discovery has yet occurred in this action, Defendant reserves the right to assert further defenses as appropriate.

WHEREFORE, Defendant respectfully prays that the Court enter a judgment providing that:

1. Plaintiffs' claims in this action be dismissed in their entirety, with prejudice;
2. Defendant be awarded the costs incurred in the defense of Plaintiffs' claims, including his reasonable attorneys' fees;
3. Defendant be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted this 6th day of November, 2017.

CONSTANGY, BROOKS, SMITH & PROPHETE, LLP

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Attorneys for Defendants

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 6, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorney of record:

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