

CIV-150401-CIV-DS1411180-AFS-133102



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**Answer Filed by COUNTY OF SAN BERNARDINO;
party represented by BURKE, WILLIAMS &
SORENSEN LLP.**



NEW FILE



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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

APR 01 2015

BY *Burke*
 RYAN WILSON, DEPUTY

5 Attorneys for Defendant
 6 COUNTY OF SAN BERNARDINO

7
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF SAN BERNARDINO

10
 11 TIM JORDAN; BRIAN MOLER; JEFF
 WETMORE,

Case No. CIVDS1411180

12 Plaintiffs,

**DEFENDANT COUNTY OF SAN
 BERNARDINO'S ANSWER TO
 PLAINTIFFS' SECOND AMENDED
 COMPLAINT**

13 v.

14 COUNTY OF SAN BERNARDINO; and
 15 DOES 1 through 10, INCLUSIVE,

JFAP: Honorable Bryan F. Foster
 Dept. S35

16 Defendants.

Action Filed: July 25, 2014
 Trial Date: None

17
 18 Defendant **COUNTY OF SAN BERNARDINO** ("Defendant") hereby answers Plaintiffs,
 19 **TIM JORDAN, BRIAN MOLER, and JEFF WETMORE's** unverified Second Amended
 20 Complaint (the "Complaint"), and alleges as follows:

GENERAL DENIAL

21
 22 1. Pursuant to the provisions of Code of Civil Procedure Section 431.30(d),
 23 Defendant denies, both generally and specifically, each and every allegation, matter or fact
 24 contained in said Complaint and the whole thereof, and further specifically denies that Plaintiffs
 25 have been injured or damaged in any sum whatsoever or are entitled to any relief in any form,
 26 whether legal or equitable, from Defendant.

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 LA #4839-2122-4226 v1
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Defendant also pleads the following separate and additional defenses to the Complaint:

FIRST AFFIRMATIVE DEFENSE

(Failure to State Sufficient Facts and Uncertainty)

2. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that the Complaint, and each alleged cause of action therein, fails to state facts sufficient to constitute a cause of action against Defendant and is uncertain.

SECOND AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

3. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that the Plaintiffs' causes of action are barred because Plaintiffs failed to exhaust their administrative remedies by not permitting the applicable administrative agencies to investigate and/or attempt to resolve this matter.

THIRD AFFIRMATIVE DEFENSE

(Barred by Statute of Limitations)

4. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that Plaintiffs' claims are barred in whole or in part by any and all applicable statutes of limitations.

FOURTH AFFIRMATIVE DEFENSE

(Statute of Frauds)

5. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts, without admitting that Defendant engaged in any of the acts or conduct attributed to Defendant in the Complaint, that Plaintiffs' claims are barred in whole or in part by the Statute of Frauds.

FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

6. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that Plaintiffs are estopped by their own acts and/or

1 omissions from asserting the claims alleged in the Complaint and obtaining the relief requested
2 therein.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 **(Waiver)**

5 7. As a separate and affirmative defense to the Complaint, and to each alleged cause
6 of action contained therein, Defendant asserts that Plaintiffs have waived their rights, if any, to
7 pursue this action against Defendant.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 **(Immunity for Non-Statutory Liability)**

10 8. Pursuant to the provisions of Government Code § 815, a public entity is not
11 liable for any injury, whether such injury arises out of an act or omission of the public entity
12 or a public employee, or any other person, unless there is express statutory liability for the
13 said act or omission, and even such statutory liability is subject to any statutory immunity of
14 the public entity, and is further subject to any defenses that would be available to the public
15 entity if it were a private person.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 **(Immunity for Act or Omission of Employee Where Employee Is Immune)**

18 9. Pursuant to the provisions of Government Code § 815.2(b), a public entity is
19 not liable for any injury resulting from an act or omission of an employee of the public entity
20 where the employee is immune from liability.

21 **NINTH AFFIRMATIVE DEFENSE**

22 **(Immunity for Discretionary Acts or Omissions)**

23 10. Pursuant to the provisions of California Government Code § 820.2 and 815.2(b),
24 Defendant is immune from liability insofar as any injury to Plaintiffs was a result of an act or
25 omission by any employee of Defendant when the employee's act or omission was the result of
26 the exercise of discretion vested in the employee, whether or not such discretion be abused.

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TENTH AFFIRMATIVE DEFENSE

(Any Mandatory Duty Performed With Reasonable Diligence)

11. Pursuant to the provisions of California Government Code § 815.6, Defendant is immune from liability in that any mandatory duties imposed upon Defendant were exercised with reasonable diligence.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

12. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that if Plaintiffs sustained any damages as a result of the allegations set forth in the Complaint, such damages are the result of Plaintiffs' failure to take reasonable efforts to mitigate the damages already suffered.

TWELFTH AFFIRMATIVE DEFENSE

(Independent Cause)

13. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that any damages allegedly suffered by Plaintiffs were caused or contributed to by persons and causes other than Defendant, including Plaintiffs, thereby eliminating or reducing any alleged liability of Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

(Defendant Fully Performed All Duties and Obligations Owed to Plaintiff)

14. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that any duty or obligation, contractual, statutory or otherwise, which Plaintiffs claim were owed to them by Defendant has been fully and faithfully performed, satisfied and/or discharged.

FOURTEENTH AFFIRMATIVE DEFENSE

(Defendant's Actions were Conducted in Good Faith)

15. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts, without admitting that Defendant engaged in any of the acts or conduct attributed to Defendant in the Complaint, that any and all actions of

1 Defendant with regard to Plaintiffs were conducted in good faith and without fraud, oppression or
2 malice against Plaintiffs or their rights, thereby precluding any and all claims for punitive or
3 exemplary damages.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 **(Legitimate, Business-Related Actions by Defendant Based on Good Faith)**

6 16. As a separate and affirmative defense to the Complaint, and to each alleged cause
7 of action contained therein, Defendant asserts that the Complaint, and each purported cause of
8 action contained therein, fails to state facts sufficient to constitute a cause of action because any
9 decisions with respect to Plaintiffs were made by Defendant primarily or solely for legitimate,
10 business-related reasons and were reasonably based on the facts as Defendant understood them.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 **(Laches)**

13 17. As a separate and affirmative defense to the Complaint, and to each alleged cause
14 of action contained therein, Defendant asserts that Plaintiffs' claims are barred by the equitable
15 doctrine of laches.

16 **SEVENTEENTH AFFIRMATIVE DEFENSE**

17 **(Unclean Hands)**

18 18. As a separate and affirmative defense to the Complaint, and to each alleged cause
19 of action contained therein, Defendant asserts that Plaintiffs' claims are barred by the doctrine of
20 unclean hands.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 **(Privilege)**

23 19. As a separate and affirmative defense to the Complaint, and to each alleged cause
24 of action contained therein, Defendant asserts that any and all acts alleged to have been
25 committed by Defendant or Defendant's agents were absolutely or qualifiedly privileged.

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NINETEENTH AFFIRMATIVE DEFENSE

(Consent)

20. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts, without admitting that Defendant engaged in any of the acts or conduct attributed to Defendant in the Complaint, that any and all actions of Defendant with regard to Plaintiffs were consented to by Plaintiffs.

TWENTIETH AFFIRMATIVE DEFENSE

(Bona Fide Occupational Qualification)

21. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts, without admitting that Defendant engaged in any of the acts or conduct attributed to Defendant in the Complaint, that Defendant had a bona fide occupational qualification.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

22. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts, without admitting that Defendant engaged in any of the acts or conduct attributed to Defendant in the Complaint, that any actions taken by Defendant regarding Plaintiffs, if any, were justified by the doctrine of after-acquired evidence.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Failure to Use Internal Complaint Procedures)

23. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts, without admitting that Defendant engaged in any of the acts or conduct attributed to Defendant in the Complaint, that Plaintiffs' claims are barred in whole or in part by Plaintiffs' failure to notify Defendant of the alleged unlawful conduct and/or to allow Defendant to investigate or remedy the alleged unlawful conduct.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(Failure to Perform)

24. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that Plaintiffs' claims are barred in that they failed to perform their job responsibilities and/or obligations existing under statute.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Violation of Any Constitutional Provision, State Statute or Regulation)

25. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that Plaintiffs' causes of action are barred because Defendant did not violate any constitutional provision, state statute, regulation, or other substantial public policy of the State of California as alleged in the Complaint.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Workers' Compensation Exclusivity)

26. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts, without admitting that Defendant engaged in any of the acts or conduct attributed to Defendant in the Complaint, that Plaintiffs' claims are barred in whole or in part by the doctrine of workers' compensation exclusivity.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Defendant Exercised Reasonable Care)

27. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts, without admitting that Defendant engaged in any of the acts or conduct attributed to Defendant in the Complaint, that Defendant exercised reasonable care, and properly took all steps necessary to prevent and correct any violations of any constitutional provision, state statute, regulation, or other substantial public policy of the State of California, and Plaintiffs unreasonably failed to take advantage of any preventative or corrective opportunities or to otherwise avoid harm.

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TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Good Cause)

28. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that any actions taken by Defendant regarding Plaintiffs, if any, were taken for good cause.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No Duty)

29. As a separate and affirmative defense to the Complaint, and to each and every alleged cause of action contained therein, the Defendant asserts, without admitting that Defendant engaged in any of the acts or conduct attributed to Defendant in the Complaint, that Defendant owed no duty to Plaintiffs as described in the Complaint.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Failure to Take Reasonable Steps to Avoid Harm or Consequences)

30. As a separate and affirmative defense to the Complaint, and to each and every alleged cause of action contained therein, Defendant asserts, without admitting that Defendant engaged in any of the acts or conduct attributed to Defendant in the Complaint, that Plaintiffs' claims and damages are barred in whole or in part by Plaintiffs' failure to take reasonable and necessary steps to avoid the harm and/or consequences he allegedly suffered.

THIRTIETH AFFIRMATIVE DEFENSE

(Same Decision -- Legitimate Reason, *Harris v. City of Santa Monica* (2013) 56 Cal. 4th 203)

31. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts, without admitting that it engaged in the conduct alleged in Plaintiffs' Complaint, that it had legitimate, nondiscriminatory reasons for the actions undertaken in connection with Plaintiffs' employment. If it is found that the actions were motivated by both discriminatory and nondiscriminatory reasons, the nondiscriminatory reasons, alone, would have induced Defendant to make the same decisions at the same time.

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THIRTY-FIRST AFFIRMATIVE DEFENSE

(Allegations Outside the Scope of the DFEH Complaint)

32. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that Plaintiffs' causes of action are barred to the extent they were not made the subject of a timely charge filed with the Department of Fair Employment and Housing.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action for Attorneys' Fees)

33. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that Plaintiffs fail to state a cause of action for attorneys' fees.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Defendant is Entitled to Attorneys' Fees)

34. As a separate and affirmative defense to the Complaint, and to each alleged cause of action contained therein, Defendant asserts that the Complaint lacks foundation and is unreasonable, thus Defendant is entitled to recover attorneys' fees and costs expended in defending this action pursuant to Government Code Section 12965(b) and Code of Civil Procedure Section 128.7.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

35. Defendant reserves the right to assert additional defenses as they become known through discovery in this matter.

DEMAND FOR JURY TRIAL

Defendant hereby demands a trial before a jury on all issues presented by Plaintiffs' Complaint triable to a jury.

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WHEREFORE, Defendant prays for entry of judgment as follows:

1. That Plaintiffs take nothing by their Complaint;
2. That judgment be entered in favor of Defendant;
3. That Defendant be awarded costs of suit including attorneys' fees; and
4. For such other relief as the court may deem just and proper.

Dated: March 31, 2015

BURKE, WILLIAMS & SORENSEN, LLP

By: 

Susan E. Coleman
Paloma P. Peracchio

Attorneys for Defendant
COUNTY OF SAN BERNARDINO

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

Tim Jordan, Brian Moler, and Jeff Wetmore v. County of San Bernardino, et al.,
Case No. CIVDS1411180

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 444 South Flower Street, Suite 2400, Los Angeles, California 90071.

On March 31, 2015, I served the document described as **DEFENDANT'S ANSWER TO SECOND AMENDED COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Christopher L Gaspard
Gaspard, Castillo, Harper, APC
3333 Concoors Street
Building 4, Suite 4100
Ontario, CA 91764
(909) 466-5600 - Office

Attorneys for Plaintiffs,
TIM JORDAN, BRIAN MOLER, and JEFF WETMORE

(BY MAIL) I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I placed such envelope with postage thereon prepaid in the United States mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY ELECTRONIC MAIL) I emailed such document to the offices of the addressee at the following email address: chris@policeattorney.com

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Excuted on March 31, 2015 at Los Angeles, California.



Bernadette C. Antle