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*Exempt from Filing Fee
Per Gov't Code § 6103*

5 Attorneys for Defendants
6 COUNTY OF RIVERSIDE, KELLI CATLETT, SAM KALOUSTIAN,
7 DANIEL DELIMON, and LISA DIMARIA

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF RIVERSIDE

11 JANE DOE II, an individual,)
12)
13 Plaintiff,)
14 vs.)
15)
16 COUNTY OF RIVERSIDE, a public entity;)
17 KELLI CATLETT, in her personal and official)
18 capacity; SAM KALOUSTIAN, in his personal)
19 and official capacity; DANIEL DELIMON, in)
20 his personal and official capacity; LISA)
21 DIMARIA, in her personal and official capacity)
22 and DOES 1 through 10, inclusive,)
23 Defendants.)

CASE NO.: CVRI2103362
[Assigned to Hon. Craig G. Riemer,
Dept. 1]

**DEFENDANT COUNTY OF
RIVERSIDE'S ANSWER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

*Complaint Filed 7/12/21
First Amended Complaint Filed 12/3/21
Second Amended Complaint Filed
3/22/22*

20 COMES NOW, Defendant COUNTY OF RIVERSIDE (hereinafter "County") and
21 answers the Second Amended Complaint ("Complaint") of Plaintiff ALYSIA CHANDLER
22 herein as follows:

23 1. Under the provisions of section 431.30(d), California Code of Civil Procedure,
24 Defendant County denies each, every and all of the allegations in said Second Amended
25 Complaint, and the whole thereof, and deny that Plaintiff has sustained damages in the sum or
26 sums alleged, or in any other sum or sums, or at all.

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1 2. Further answering the Second Amended Complaint on file herein, and the whole
2 thereof, Defendant County denies that Plaintiff has sustained any injury, damage, or loss, if any,
3 by reason of any act or omission on the part of this answering Defendant.

4 **FIRST AFFIRMATIVE DEFENSE - FRIVOLOUS**

5 3. This action is frivolous, and was filed without any good faith basis or reasonable
6 cause or belief that a justifiable controversy existed under the facts or law, thus this answering
7 party is entitled to reasonable costs and expenses, including attorney fees, incurred in defending
8 this action, under California Code of Civil Procedure sections 128.5, 128.7, 1021.7, and 1038.

9 **SECOND AFFIRMATIVE DEFENSE - CONCLUSORY ALLEGATIONS**

10 4. Because the Complaint is couched in conclusory terms, this answering party
11 cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly,
12 this party reserves the right to assert additional affirmative defenses, if and to the extent they are
13 applicable to this action.

14 **THIRD AFFIRMATIVE DEFENSE - LACK OF SPECIFICITY**

15 5. The Complaint's allegations, causes of action, and/or claims are barred, because
16 they are not pled with the required level of specificity for statutorily-based causes of action or
17 claims, and they lack the specificity to displace the applicable immunity doctrines covering
18 public entities and/or their employees. Additionally, the entirety of the Complaint is uncertain,
19 ambiguous, and unintelligible under California Code of Civil Procedure section 430.10(f) in that
20 the allegations lack the specificity to apprise the answering party or parties of the nature, source,
21 and extent of the cause of action.

22 **FOURTH AFFIRMATIVE DEFENSE -**

23 **INTERVENING AND SUPERCEDING CAUSE**

24 6. If in fact Plaintiff was damaged in any manner whatsoever, that said damage, if
25 any, was a direct and proximate result of the intervening and superseding actions on the part of
26 other parties and not of Defendant County, and that such intervening and superseding actions of
27 said other parties bar recovery herein on behalf of Plaintiff.

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FIFTH AFFIRMATIVE DEFENSE - INDEMNIFICATION

7. Defendant County is entitled to a right of indemnification by apportionment against all other parties and persons whose negligence contributed proximately to the happening of the claimed accident or alleged injuries.

SIXTH AFFIRMATIVE DEFENSE - CONTRIBUTION

8. Defendant County is entitled to a right of contribution from any person whose negligence proximately contributed to the happening of the claimed accident or alleged injuries if any Plaintiff should receive a verdict against any answering party.

SEVENTH AFFIRMATIVE DEFENSE - FAILURE TO MITIGATE

9. Plaintiff has failed to mitigate the damages, if any, which Plaintiff has sustained, and to exercise reasonable care to avoid the consequences of harms, if any, in that, among other things, Plaintiff has failed to use reasonable diligence in caring for any injuries, failed to use reasonable means to prevent aggravation of any injuries and failed to take reasonable precautions to reduce any injuries and damages.

EIGHTH AFFIRMATIVE DEFENSE - PROPORTIONATE FAULT

10. Defendant County’s liability, if any, for Plaintiff’s non-economic damages is limited to the answering party’s proportionate share of fault in accordance with California Civil Code section 1431.2 and any damages awarded to any Plaintiff against such answering party should be reduced accordingly.

NINTH AFFIRMATIVE DEFENSE - COLLATERAL SOURCE

11. To the extent that any Plaintiff has received collateral source payments before the trial of this action, Defendant County reserves the right to move for a reduction of any verdict rendered in the amount of the collateral source payments pursuant to the provisions of California Government Code section 985.

TENTH AFFIRMATIVE DEFENSE - STATUTE OF LIMITATIONS

12. The Complaint’s allegations, causes of action, and claims are barred by failure to file a timely and appropriate complaint under the applicable statutes of limitations including, but not limited to the provisions of California Code of Civil Procedure sections 313, 335.1, 340, 342,

1 and/or 42 U.S.C. § 1988.

2 **ELEVENTH AFFIRMATIVE DEFENSE - ESTOPPEL**

3 13. The instant action is barred by the doctrine of estoppel.

4 **TWELFTH AFFIRMATIVE DEFENSE - WORK COMPENSATION**

5 **AS EXCLUSIVE REMEDY**

6 14. Any recovery is barred because of the exclusive remedy provisions of the
7 Worker's Compensation statutory scheme.

8 **THIRTEENTH AFFIRMATIVE DEFENSE - RES JUDICATA**

9 15. The action is barred by the doctrine of res judicata.

10 **FOURTEENTH AFFIRMATIVE DEFENSE - FAILURE TO EXHAUST**

11 **ADMINISTRATIVE REMEDIES**

12 16. Defendant County alleges that the operative complaint and each of the purported
13 claims for relief therein are barred because of a failure to timely and fully exhaust administrative
14 remedies as required by law.

15 **FIFTEENTH AFFIRMATIVE DEFENSE - ALLEGATIONS DIFFER**

16 **FROM ADMINISTRATIVE CHARGE**

17 17. Defendant County alleges that the operative complaint and each of the purported
18 claims for relief may not be maintained to the extent they exceed or differ from the allegations of
19 an administrative charge filed with the appropriate administrative agency.

20 **SIXTEENTH AFFIRMATIVE DEFENSE - CLAIMS ARE TIME**

21 **BARRED ON DATE OF FILING OF ADMINISTRATIVE CHARGE**

22 18. Defendant County alleges that the operative complaint and each of the purported
23 claims for relief therein are time-barred based on the date of the filing of the administrative
24 charge.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE - BONA FIDE**

26 **OCCUPATIONAL QUALIFICATION**

27 19. The decision to take the alleged adverse employment action was lawful in that it
28 was based on a bona fide occupational qualification and, in particular, Defendant County had a

1 reasonable basis for believing that substantially all members of the protected group were unable
2 to safely and efficiently perform the job; that it was impossible or highly impractical to consider
3 whether each employee was able to safely and efficiently perform the job; and that it was
4 impossible or highly impractical for defendant to rearrange job responsibilities to avoid using
5 protected status as a job requirement.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE - BUSINESS**

7 **NECESSITY/JOB RELATEDNESS**

8 20. The alleged wrongful conduct is lawful because it was necessary to Defendant
9 County's business and, in particular, that the purpose of the action was to operate the business
10 safely and efficiently; and Defendant County's employment practice or selection policy
11 substantially accomplished this business purpose.

12 **NINETEENTH AFFIRMATIVE DEFENSE - UNDUE HARDSHIP**

13 21. Any and all of the proffered accommodations would create an undue hardship to
14 the operation of the answering party's business.

15 **TWENTIETH AFFIRMATIVE DEFENSE - AVOIDABLE CONSEQUENCES**

16 22. Defendant County alleges that policies were maintained that prohibit
17 discrimination and harassment as well as having an effective complaint procedure in place. Had
18 Plaintiff made proper use of that procedure and complied with those policies, Plaintiff could have
19 avoided all or part of the damages claimed in this action. Thus, the claims are barred in whole or
20 in part by the doctrine of avoidable consequences.

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE - PREVENTION AND**
22 **CORRECTION OF ALLEGED UNLAWFUL CONDUCT**

23 23. Plaintiff failed to take advantage of and exhaust the preventive or corrective
24 opportunities provided by Defendant County, including its internal grievance procedure.
25 Defendant County exercised reasonable care to prevent and correct promptly any acts of
26 discrimination, harassment, or retaliation. Defendant County maintains and enforces policies
27 prohibiting discrimination, harassment and retaliation against its employees. These policies
28 encourage employees to come forward with complaints of discrimination, harassment, and

1 retaliation and provide for discipline (including termination) of any employee (including
2 supervisors) found to have violated the policies prohibiting discrimination, harassment, and
3 retaliation.

4 **TWENTY-SECOND AFFIRMATIVE DEFENSE - ACTIONS DONE**
5 **PURSUANT TO MANAGEMENT'S DISCRETION, AND/OR**
6 **WAS FAIR, HONEST, DONE IN GOOD FAITH**

7 24. Any and all conduct complained about and attributed to defendant, or its agents or
8 employees, was a just and proper exercise of management's discretion on the part of the
9 Defendant County, or its agents or employees, and was undertaken for a fair and honest reason
10 and regulated by good faith and probable cause under circumstances existing at the time.

11 **TWENTY-THIRD AFFIRMATIVE DEFENSE -**
12 **REASONABLE CARE IN RESPONSE**

13 25. Assuming arguendo that Defendant County knew or should have known Plaintiff
14 and/or any other allegedly aggrieved employee was subjected to unlawful discrimination,
15 harassment, or retaliation, Defendant County exercised reasonable care to prevent and
16 immediately correct any alleged behavior.

17 **TWENTY-FOURTH AFFIRMATIVE DEFENSE - ACTION**
18 **WOULD HAVE BEEN TAKEN ANYWAY**

19 26. Without conceding that any unlawful factors motivated by Defendant County's
20 conduct towards Plaintiff or any other allegedly aggrieved employee, Plaintiff is barred from
21 recovering any damages on behalf of himself or herself or any allegedly aggrieved employee, or
22 any recovery must be reduced, to the extent that Defendant would have taken the same action
23 even if illegitimate motives had not been considered.

24 **TWENTY-FIFTH AFFIRMATIVE DEFENSE -**
25 **AFTER ACQUIRED EVIDENCE**

26 27. The doctrine of after-acquired evidence limits and reduces any damages otherwise
27 recoverable in this case.

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1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE -**

2 **IMMUNITY FOR DISCRETIONARY ACTS**

3 28. Except as otherwise provided by statute, a public employee is not liable for an
4 injury resulting from his or her act or omission, where the act or omission was the result of the
5 exercise of the discretion vested in him or her, whether or not such discretion be abused.

6 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE - CALIFORNIA**

7 **GOVERNMENT CODE IMMUNITIES**

8 29. To the extent not previously stated, Defendant County is immune from liability
9 pursuant to the provisions of the California Government Code, including but not limited to,
10 sections 815, 815.2, 818.6, 818.8, 820.2, 820.4, 820.8, 821.6, and 822.2; the provisions of the
11 California Penal Code, including but not limited to, sections 836.5, 837, and 847; and pursuant to
12 *Kinney v. County of Contra Costa* (1970) 8 Cal.App.3d 761 and *Arpin v. Santa Clara Valley*
13 *Transportation Agency* (9th Cir. 2001) 261 F.3d 912.

14 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE - AFTER ACQUIRED EVIDENCE**

15 30. The doctrine of after-acquired evidence limits and reduces any damages otherwise
16 recoverable in this case.

17 **TWENTY-NINTH AFFIRMATIVE DEFENSE - NON-COMPLIANCE WITH**

18 **CALIFORNIA TORT CLAIMS ACT**

19 31. The Complaint, and each alleged cause of action therein, is barred for failure to
20 comply with the procedural requirements of the California Torts Claim Act.

21 **THIRTIETH AFFIRMATIVE DEFENSE - FAILURE TO FILE TORT**

22 **CLAIM; UNTIMELY AND INAPPROPRIATE TORT CLAIM**

23 32. This answering party is not liable for the damages, if any, alleged in the
24 Complaint by reason of the provisions of Government Code sections 905.2, 910, 911.2, 945.8,
25 945.6, and 946.6, and/or similar, related, or superseding provisions or otherwise filing a Tort
26 Claim. Furthermore, this Court lacks jurisdiction to hear this case pursuant to California Code of
27 Civil Procedure section 430.10(a) because the Plaintiff failed to file a claim with the Defendant,
28 a governmental entity, within six months after the action accrued.

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THIRTY-FIRST AFFIRMATIVE DEFENSE - CAUSES OF ACTION

NOT STATED IN TORT CLAIM

33. The Complaint, and each alleged cause of action, and/or claims and allegations are barred to the extent they are not stated in any Government Tort Claim.

THIRTY-SECOND AFFIRMATIVE DEFENSE- DEFENDANTS NOT

NAMED IN TORT CLAIM

34. The Complaint, and each alleged cause of action, and/or claims and allegations are barred against any answering party who was not named or identified in any Government Tort Claim.

THIRTY-THIRD AFFIRMATIVE DEFENSE -

PREJUDGMENT INTEREST

35. This answering public entity is immune from the imposition of any prejudgment interest under California Civil Code section 3291.

WHEREFORE, Defendant County prays:

- 1. The Court finds that the claim is frivolous, unreasonable, and groundless and will accordingly assess each Plaintiff for the answering party's attorney's fees pursuant to California Code of Civil Procedure sections 128.7, 1021.7, and 1038 and/or 42 U.S.C. section 1988;
- 2. That judgment be entered in favor of this answering party;
- 3. For costs of suit herein including attorneys' fees pursuant to Code of Civil Procedure section 128.6;
- 4. Such other and further relief as this Court deems just and proper.

DATED: April 21, 2022 SMITH LAW OFFICES, LLP

By /s/ Karen L. Capasso
Douglas C. Smith
Karen L. Capasso
Attorneys for Defendants
COUNTY OF RIVERSIDE, KELLI CATLETT,
SAM KALOUSTIAN, and LISA DIMARIA

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

3 I am employed in the County of Riverside, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 4001 Eleventh Street, Riverside, CA
92501.

5 On **April 21, 2022**, I served the foregoing document described as:

6 **DEFENDANT COUNTY OF RIVERSIDE'S ANSWER TO PLAINTIFF'S**
7 **SECOND AMENDED COMPLAINT**

8 on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed
9 envelope addressed as follows:

10 See Attached Proof of Service List.

11 (BY MAIL)

12 I deposited such envelope in the United States Mail at Riverside, California. The
13 envelope was mailed with postage thereon fully prepaid.

14 As follows: I am "readily familiar" with the firm's practice of collection and
15 processing correspondence for mailing. Under that practice it would be deposited
16 with U.S. postal service on that same day with postage thereon fully prepaid at
17 Riverside, California in the ordinary course of business. I am aware that on
18 motion of the party served, service is presumed invalid if postal cancellation date
19 or postage meter date is more than one day after date of deposit for mailing in
20 affidavit.

21 (BY ELECTRONIC MAIL) I caused the foregoing document to be served electronically
22 by electronically mailing a true and correct copy through Smith Law Offices' electronic
23 mail system to the e-mail address(es) of each interested party, as stated above, and the
24 transmission was reported as complete and no error was reported.

25 (BY PERSONAL SERVICE) I caused to be delivered each such document by hand to
26 each addressee as set forth above.

27 (VIA FEDERAL EXPRESS)

28 By depositing the envelope in the box regularly maintained by Federal Express in
an envelope designated by Federal Express with delivery fees paid, as addressed
below.

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

Executed on **April 21, 2022**, at Riverside, California



JILL SZALONEK

PROOF OF SERVICE - MAILING LIST

Case: Doe v. County of Riverside, et al.
Court Case No.: CVRI2103362
Our File: RVC-521

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