

WOODRUFF, SPRADLIN & SMART, APC  
DANIEL K. SPRADLIN - State Bar No. 82950  
dspradlin@wss-law.com  
CYNTHIA W. KOLE - State Bar No. 133120  
ckole@wss-law.com  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626-7670  
Telephone: (714) 558-7000  
Facsimile: (714) 835-7787

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

NOV 25 2014

V. LOPEZ

Attorneys for Defendants COUNTY OF RIVERSIDE, a public entity; PAUL ZELLERBACH, SEAN LAFFERTY, JEFFREY VAN WAGENEN, and TRICIA FRANSDAL, as employees of COUNTY OF RIVERSIDE, a public entity, and as individuals

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF RIVERSIDE, PALM SPRINGS BRANCH

CHRISTOPHER ROSS,

Plaintiff,

v.

COUNTY OF RIVERSIDE; PAUL ZELLERBACH, as an individual and as the District Attorney; SEAN LAFFERTY, as an individual and as an Assistant District Attorney; DAVID GREENBERG, as an individual and as the Chief Deputy District Attorney; JEFFREY VAN WAGENEN, as an individual and as an Assistant District Attorney; TRICIA FRANSDAL, as an individual and as a Deputy District Attorney,

Defendants.

CASE NO.: P.S.C. 1403729

ASSIGNED FOR ALL PURPOSES TO  
THE HONORABLE DAVID CHAPMAN  
DEPARTMENT: P52

**DEFENDANTS COUNTY OF  
RIVERSIDE, PAUL ZELLERBACH,  
SEAN LAFFERTY, JEFFREY VAN  
WAGENEN, and TRICIA  
FRANSDAL'S ANSWER TO  
COMPLAINT**

HEARING DATES PENDING:

Type: Case Management Conference  
Date: January 6, 2015  
Time: 8:30 a.m.

DATE ACTION FILED: July 10, 2014  
TRIAL DATE: None

COMES NOW Defendants COUNTY OF RIVERSIDE, a public entity; PAUL ZELLERBACH, SEAN LAFFERTY, JEFFREY VAN WAGENEN, and TRICIA FRANSDAL, as employees of COUNTY OF RIVERSIDE, a public entity, and as individuals to answer the unverified Complaint for damages of Plaintiff CHRISTOPHER ROSS as follows:

1 Under and pursuant to the provisions of section 431.30 of the Code of Civil Procedure  
2 of the State of California, these answering Defendants, in answer to all causes of action of  
3 the complaint, and the whole thereof, deny each and every, all and singular, of the  
4 allegations contained therein; and further expressly deny that as a proximate result of any act  
5 or omission on the part of these answering Defendants, that Plaintiff has suffered or  
6 sustained any injuries, losses or damages in the amount alleged, in any amount whatsoever,  
7 or at all.

8 **FIRST AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

9 As an affirmative defense, Defendants allege that each cause of action contained in  
10 the complaint fails to state facts sufficient to constitute a cause of action.

11 **SECOND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

12 As an affirmative defense, Defendants allege Plaintiff is in violation of the  
13 Government Claims Act, in that no sufficient claim was timely filed with Defendant County  
14 of Riverside. Accordingly, Plaintiff's claims are barred.

15 **THIRD AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

16 As an affirmative defense, Defendants allege that Defendants are not liable for the  
17 damages, if any, alleged in the complaint by reason of the provisions of Government Code  
18 section 815.2(a) and (b), in that a public entity is not liable for an injury resulting from an act  
19 or omission of an employee of the public entity where the employee is immune from  
20 liability.

21 **FOURTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

22 As an affirmative defense, Defendants allege that, pursuant to Government Code  
23 sections 815.2 and 815.6, any and all mandatory duties imposed on Defendants, and  
24 Defendants' agents or employees, the failure of which allegedly created the condition at the  
25 time and place which is the subject of this complaint, were exercised with reasonable  
26 diligence and, therefore, Defendants are not liable to Plaintiff for the alleged injuries.

27 **FIFTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

28 As an affirmative defense, Defendants allege that, pursuant to the provisions of

Government Code section 822.2, section 815.2 and section 818.8, a public entity and its employees, officers and agents are immune from tort liability for negligent or intentional misrepresentations made while acting in the scope of employment.

**SIXTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that, pursuant to the provisions of Government Code sections 820.2 and 815.2, a public entity and its employees, officers and agents are not responsible for injury or damage resulting from an act or omission that was a result of the exercise of discretion vested in such officer, employee or agent, whether or not such discretion was abused.

**SEVENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that Plaintiff is barred from recovery herein, in whole or in part, by reason of failure to mitigate damages.

**EIGHTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that the complaint is barred under the provisions of Code of Civil Procedure sections 335.1 Personal Injury, 338 Liability Created by Statute, and 340 Liability Created by Statute for Penalty or Forfeiture.

**NINTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that Plaintiff failed to exhaust administrative remedies by not sufficiently alleging facts in the DFEH complaint to support the causes of action pled in the Complaint.

**TENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that the complaint is barred under the statute of limitations set forth by the provisions of Government Code section 12960.

**ELEVENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that it took all reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring in the workplace.

///

**TWELFTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

Plaintiff's Complaint is barred by the bona fide occupational qualification defense.

**THIRTEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that at no time did it cause Plaintiff to suffer any adverse employment actions or damages.

**FOURTEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that all employment actions and decisions relating to Plaintiff were based on legitimate, non-discriminatory business reasons and necessity and were not intended nor designed, and were not pretext for, discrimination, retaliation, or harassment.

**FIFTEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that Plaintiff failed to avail himself of Defendant County of Riverside's internal complaint procedure to report allegations of harassment, discrimination and retaliation and therefore his claims for harassment, discrimination, and retaliation are barred.

**SIXTEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that the conduct alleged in the complaint in support of Plaintiff's claim of harassment is neither severe nor pervasive enough to constitute harassment in violation of the California Fair Employment and Housing Act ("FEHA").

**SEVENTEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that Plaintiff did not suffer harassment or discrimination based on a protected class or disability and claims for harassment and discrimination are therefore barred.

**EIGHTEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Plaintiff did not engage in a protected activity and could therefore not have been retaliated against.

///

**NINETEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege there was no causal connection between the alleged protected activity and the alleged adverse employment action.

**TWENTIETH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that Plaintiff fails to allege facts sufficient to state a cause of action in that Labor Code §§ 3601 and 3602 provide that Plaintiff's sole and exclusive remedy shall be compensation pursuant to the Workers' Compensation Act..

**TWENTY-FIRST AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that, pursuant to the provisions of Government Code section 818, a public entity cannot be liable for damages awarded under section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing a defendant.

**TWENTY-SECOND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that the acts, actions and conduct of Plaintiff and third parties directly and proximately caused Plaintiff's injuries and/or damages, if any. Therefore, Plaintiff is not entitled to damages or any other relief from Defendants.

**TWENTY-THIRD AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that Plaintiff never reported a violation of state or federal law or a violation of or noncompliance with a local, state, or federal rule or regulation to any Defendants or to any other public agency while employed by Defendant County of Riverside.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that the Plaintiff's Complaint is barred due to his inability to perform a job or to perform a job safely.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

As an affirmative defense, Defendants allege that at all times, relevant to the incident alleged in Plaintiff's Complaint, Plaintiff alleges that he was no longer qualified to perform

1 the job functions which were an essential part of his specific job description. Therefore,  
2 Plaintiff was not "otherwise qualified" to perform the requirements of his job consistent with  
3 the necessity for which he was hired.

4 **TWENTY-SIXTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

5 As an affirmative defense, Defendants allege that Plaintiff's alleged requested  
6 accommodation was unreasonable.

7 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

8 As an affirmative defense, Defendants allege that the alleged requested  
9 accommodation would cause undue hardship to Defendant's business.

10 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

11 As an affirmative defense, Defendants allege that Plaintiff abandoned and/or  
12 voluntarily resigned his employment and therefore his claims are barred.

13 **TWENTY-NINETH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

14 As an affirmative defense, Defendants allege that Plaintiff failed to exhaust  
15 administrative and judicial remedies available regarding job abandonment and/or voluntary  
16 resignation and therefore his claims are barred.

17 **THIRTIETH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

18 As an affirmative defense, Defendants allege that Plaintiff failed to engage in good  
19 faith in the interactive process.

20 **THIRTY-FIRST AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

21 As an affirmative defense, Defendants allege that Plaintiff is in violation of the  
22 Government Claims Act, in that the instant action was filed more than six months after the  
23 denial of Plaintiff's claim. Accordingly, the complaint is barred.

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

25 As an affirmative defense, Defendants allege that an action for damages is barred in  
26 that a challenge to the discretionary judgment of the governing body of a public entity in an  
27 administrative hearing matter may only be made pursuant to the state administrative  
28 mandamus writ action.

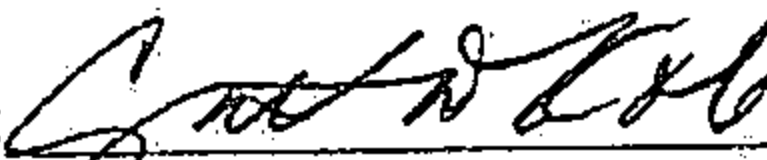
1 **THIRTY-THIRD AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

2 As an affirmative defense, Defendants allege that Plaintiff's prayer for relief is barred  
3 by Plaintiff's unclean hands.

4 WHEREFORE, Defendants pray that Plaintiff take nothing by way of his complaint  
5 and that said Defendants be dismissed with costs herein incurred and for such other and  
6 further relief as the Court deems just and proper.

7 DATED: November 24, 2014

WOODRUFF, SPRADLIN & SMART, APC

8  
9 By: 

10 DANIEL K. SPRADLIN

11 CYNTHIA W. KOLE

12 Attorneys for Defendants COUNTY OF

13 RIVERSIDE, a public entity; PAUL

14 ZELLERBACH, SEAN LAFFERTY, JEFFREY

15 VAN WAGENEN, and TRICIA FRANS DAL,

16 as employees of COUNTY OF RIVERSIDE, a

17 public entity, and as individuals  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

WOODRUFF, SPRADLIN  
& SMART  
ATTORNEYS AT LAW  
COSTA MESA

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

I am over the age of 18 and not a party to the within action; I am employed by WOODRUFF, SPRADLIN & SMART in the County of Orange at 555 Anton Boulevard, Suite 1200, Costa Mesa, CA 92626-7670.

On November 25, 2014, I served the foregoing document(s) described as DEFENDANTS COUNTY OF RIVERSIDE, PAUL ZELLERBACH, SEAN LAFFERTY, JEFFREY VAN WAGENEN, and TRICIA FRANSDAL'S ANSWER TO COMPLAINT

☒ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☒ (BY MAIL) I placed said envelope(s) for collection and mailing, following ordinary business practices, at the business offices of WOODRUFF, SPRADLIN & SMART, and addressed as shown on the attached service list, for deposit in the United States Postal Service. I am readily familiar with the practice of WOODRUFF, SPRADLIN & SMART for collection and processing correspondence for mailing with the United States Postal Service, and said envelope(s) will be deposited with the United States Postal Service on said date in the ordinary course of business.

☐ (BY ELECTRONIC SERVICE) by causing the foregoing document(s) to be electronically filed using the Court's Electronic Filing System which constitutes service of the filed document(s) on the individual(s) listed on the attached mailing list.

☐ (BY OVERNIGHT DELIVERY) I placed said documents in envelope(s) for collection following ordinary business practices, at the business offices of WOODRUFF, SPRADLIN & SMART, and addressed as shown on the attached service list, for collection and delivery to a courier authorized by \_\_\_\_\_ to receive said documents, with delivery fees provided for. I am readily familiar with the practices of WOODRUFF, SPRADLIN & SMART for collection and processing of documents for overnight delivery, and said envelope(s) will be deposited for receipt by \_\_\_\_\_ on said date in the ordinary course of business.

☐ (BY FACSIMILE) I caused the above-referenced document to be transmitted to the interested parties via facsimile transmission to the fax number(s) as stated on the attached service list.

☐ (BY PERSONAL SERVICE) I delivered such envelope(s) by hand to the offices of the addressee(s).

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

Executed on November 25, 2014 at Costa Mesa, California

  
Shelly Steeber

1                    **CHRISTOPHER ROSS v. COUNTY OF RIVERSIDE, et al.**  
2                    **SUPERIOR COURT FOR COUNTY OF RIVERSIDE, PALM SPRINGS BRANCH**  
3                    **CASE NO.: P.S.C. 1403729**  
4                    **ASSIGNED FOR ALL PURPOSES TO:**  
5                    **HONORABLE DAVID CHAPMAN, DEPT. P52**  
6                    **SERVICE LIST**

7                    Chris Heikus Weaver, Esq.  
8                    Aitken Campbell Heikus Weaver, LLP  
9                    3890 Eleventh Street, Suite 210  
10                    Riverside, CA 92501  
11                    Telephone: (951) 530-4840  
12                    Facsimile: (951) 344-1762  
13                    chris@achwlaw.com

14                    Attorneys for Plaintiff  
15                    **CHRISTOPHER ROSS**

WOODRUFF, SPRADLIN  
& SMART  
ATTORNEYS AT LAW  
COSTA MESA