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Attorneys for Defendant, County of Kings

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF KINGS**

**UNLIMITED JURISDICTION – HANFORD DIVISION**

ROBERT WAGGLE, an Individual,	)	CASE NO. 21C-0282
Plaintiff,	)	
vs.	)	<b>DEFENDANT'S ANSWER TO</b>
	)	<b>PLAINTIFF'S COMPLAINT FOR</b>
	)	<b>DAMAGES</b>
COUNTY OF KINGS, an entity of unknown	)	Complaint Filed: September 8, 2021
origin; and DOES 1-50, Inclusive,	)	Trial Date: TBD
Defendants.	)	<b>Public Entity Exempt from Filing Fees</b>
	)	<b>Pursuant to Government Code Section 6103</b>

Defendant, County of Kings, responds to Plaintiff Robert Waggle's ("Plaintiff")  
Complaint for damages on file herein as follows:

**I. GENERAL DENIAL**

Defendant generally denies each and every allegation, all and singular, conjunctively  
and disjunctively, contained in Plaintiff's Complaint and the alleged causes of action therein  
contained, denying specifically that Plaintiff has been damaged in the sums prayed for, or any  
other sum or in any amount whatsoever or at all, by reason of the matters therein referred to.

**II. AFFIRMATIVE DEFENSES**

AND AS FOR A FIRST AND SEPARATE AFFIRMATIVE DEFENSE, Defendant  
alleges that at all times and places referred to in Plaintiff's Complaint on file herein, and the  
causes of action therein, Plaintiff has failed to state facts sufficient to constitute a cause of  
action for which relief can be granted. *Code of Civil Procedure* § 430.10(e).

1 AND AS FOR A SECOND AND SEPARATE AFFIRMATIVE DEFENSE, Defendant  
2 alleges that the causes of action alleged in the Complaint are barred by the applicable statutes of  
3 limitations.

4 AND AS FOR A THIRD AND SEPARATE AFFIRMATIVE DEFENSE, Defendant  
5 alleges that the causes of action alleged in the Complaint are barred because Plaintiff failed to  
6 timely file a Government Tort Claim.

7 AND AS FOR A FOURTH AND SEPARATE AFFIRMATIVE DEFENSE, Defendant  
8 alleges that the causes of action alleged in the Complaint are barred because Plaintiff failed to  
9 timely file an administrative complaint with the Department of Fair Employment and Housing.

10 AND AS FOR A FIFTH AND SEPARATE AFFIRMATIVE DEFENSE, Defendant  
11 alleges that at all times and places referred to in Plaintiff's Complaint on file herein, all of  
12 Defendant's acts affecting the terms and/or conditions of Plaintiff's employment were done in  
13 good faith and motivated by legitimate, non-retaliatory, and non-discriminatory reasons and/or  
14 as a result of a business necessity.

15 AND AS FOR A SIXTH AND SEPARATE AFFIRMATIVE DEFENSE, Defendant  
16 alleges that at all times and places referred to in Plaintiff's Complaint on file herein, and the  
17 causes of action therein alleged, Defendant's actions were based on bona fide factors.

18 AND AS FOR A SEVENTH AND SEPARATE AFFIRMATIVE DEFENSE,  
19 Defendant alleges that Plaintiff's Complaint and causes of action therein alleged are barred by  
20 the doctrine of laches. *Civil Code* § 3527.

21 AND AS FOR AN EIGHTH AND SEPARATE AFFIRMATIVE DEFENSE, Defendant  
22 alleges that Plaintiff's Complaint and causes of action therein alleged are barred by Plaintiff's  
23 willful misconduct.

24 AND AS FOR A NINTH AND SEPARATE AFFIRMATIVE DEFENSE, Defendant  
25 alleges that at all times and places referred to in Plaintiff's Complaint on file herein, and the  
26 causes of action therein alleged, Plaintiff has failed to mitigate the alleged damages, if any,  
27 which Plaintiff claims to have sustained, and recovery should be barred or diminished  
28 accordingly.

1 AND AS FOR A TENTH AND SEPARATE AFFIRMATIVE DEFENSE, Defendant  
2 alleges that at all times and places referred to in Plaintiff's Complaint on file herein, and the  
3 causes of action therein alleged, that Defendant's legal responsibility and/or liability, if any,  
4 with respect to non-economic damages shall be limited to the percentage of fault attributable to  
5 this answering Defendant, and that a separate judgment shall be rendered apportioning fault.

6 AND AS FOR AN ELEVENTH AND SEPARATE AFFIRMATIVE DEFENSE,  
7 Defendant alleges that at all times and places referred to in Plaintiff's Complaint on file herein,  
8 and the causes of action therein alleged, Plaintiff was negligent in and about those matters  
9 alleged in the Complaint and said negligence directly and proximately contributed to the  
10 happening of the incident, and to the injuries and damages if any, sustained by the Plaintiff.  
11 The negligence of the Plaintiff should be compared to the total negligence and/or fault, if any,  
12 for the purpose of reducing the Plaintiff's recovery.

13 AND AS FOR A TWELVTH AND SEPARATE AFFIRMATIVE DEFENSE,  
14 Defendant alleges that at all times and places referred to in the Complaint on file herein, and the  
15 causes of action therein alleged, Plaintiff consented to the acts of which Plaintiff now  
16 complains.

17 AND AS FOR A THIRTEENTH AND SEPARATE AFFIRMATIVE DEFENSE,  
18 Defendant alleges that Plaintiff's Complaint and causes of action therein alleged are barred in  
19 whole or part because Defendant exercised reasonable care to prevent and correct harassing  
20 behavior, if any, and Plaintiff unreasonably failed to take advantage of any preventive or  
21 corrective opportunities provided by the employer or to otherwise avoid harm.

22 AND AS FOR A FOURTEENTH AND SEPARATE AFFIRMATIVE DEFENSE,  
23 Defendant alleges that Plaintiff's Complaint and causes of action therein alleged are barred in  
24 whole or part because Plaintiff's sole and exclusive remedy is workers' compensation  
25 insurance. *Labor Code* §§ 3200-6208.

26 AND AS FOR A FIFTEENTH AND SEPARATE AFFIRMATIVE DEFENSE,  
27 Defendant alleges that Plaintiff's Complaint and causes of action therein alleged are barred by  
28 Plaintiff's failure to exhaust Defendant's internal complaint procedures.

1 AND AS FOR A SIXTEENTH AND SEPARATE AFFIRMATIVE DEFENSE,  
2 Defendant alleges that Plaintiff's Complaint and causes of action therein alleged are barred by  
3 the doctrine of unclean hands.

4 AND AS FOR A SEVENTEENTH AND SEPARATE AFFIRMATIVE DEFENSE,  
5 Defendant alleges that Plaintiff's Complaint and causes of action therein alleged are barred by  
6 Plaintiff's failure to exhaust the administrative remedies provided by California law for persons  
7 aggrieved or claiming to be aggrieved by an administrative action.

8 AND AS FOR AN EIGHTEENTH AND SEPARATE AFFIRMATIVE DEFENSE,  
9 Defendant alleges that Plaintiff's Complaint and causes of action therein alleged contain no  
10 allegations to establish that Plaintiff has exhausted administrative remedies for his FEHA claims  
11 as required by California law. See, *Johnson v. City of Loma Linda* (2000) 24 CA.4th 61, 70;  
12 *Okoli v. Lockheed Technical Operations Co.* (1995) 36 CA.4th 1607, 1613. Accordingly,  
13 Plaintiff's FEHA's claims are barred.

14 AND AS FOR A NINETEENTH AND SEPARATE AFFIRMATIVE DEFENSE,  
15 Defendant alleges that by failing to timely report the alleged harassment, discrimination, and  
16 retaliation, if any, Plaintiff is estopped from seeking relief for such claims.

17 AND AS FOR A TWENTIETH AND SEPARATE AFFIRMATIVE DEFENSE,  
18 Defendant alleges that at all times and places referred to in Plaintiff's Complaint on file herein,  
19 the causes of action therein alleged are barred in whole or in part by the doctrine of avoidable  
20 consequences.

21 AS AND FOR A TWENTY-FIRST AND SEPARATE AFFIRMATIVE DEFENSE,  
22 Defendant alleges that any and all acts of Defendant, and/or its agents and employees which  
23 allegedly caused the injury complained of were the result of the exercise of discretionary  
24 authority vested in them. Therefore, Defendant is not liable to plaintiff or for his damages, if  
25 any, pursuant to the provisions of Government Code section 820.2 and 815, 815.2, 815.6, and  
26 935.

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1 AS AND FOR A TWENTY-SECOND AND SEPARATE AFFIRMATIVE DEFENSE,  
2 Defendant alleges that Plaintiff's Complaint is fatally defective to the extent that it attempts to  
3 state claims and/or facts not fairly reflected in a timely-filed Government Tort Claim.

4 AS AND FOR A TWENTY-THIRD AND SEPARATE AFFIRMATIVE DEFENSE,  
5 Defendant is not liable to Plaintiff based upon a theory of common law, and Defendant is  
6 immune from such claims pursuant to Government Code section 815.

7 AS AND FOR A TWENTY-FOURTH AND SEPARATE AFFIRMATIVE DEFENSE,  
8 Defendant claims a reduction in any judgment for medical expenses pursuant to Government  
9 Code section 985.

10 AS AND FOR A TWENTY-FIFTH AND SEPARATE AFFIRMATIVE DEFENSE,  
11 Defendant alleges, upon information and belief, that it cannot fully anticipate all affirmative  
12 defenses which may be application to this action based on the allegations used in the Complaint.

13 Accordingly, Defendant expressly reserves the right to assert such additional defenses to  
14 the extent that such defenses may become applicable.

15 **III. PRAYER**

16 WHEREFORE, Defendant prays:

- 17 1. That the Plaintiff take nothing by reason of his Complaint filed herein;  
18 2. For costs of suit incurred, herein;  
19 3. For attorney's fees; and,  
20 4. For such other and further relief as the court may deem just and proper.

21  
22 DATED: October 19, 2021

WEAKLEY & ARENDT  
A Professional Corporation

23  
24 By: /s/ Leslie M. Dillahunty  
25 James J. Arendt  
26 Ashley N. Reyes  
27 Leslie M. Dillahunty  
28 Attorneys for Defendant



1 **PROOF OF SERVICE**

2 I, the undersigned, hereby certify that I am employed in the County of Fresno, State of  
3 California, over the age of eighteen years and not a party to the within action; my business address is  
5200 North Palm Avenue, Suite 211, Fresno, California 93704.

4 On the date set forth below, I placed in a sealed envelope and served a true copy of the within

5 **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES**

6 addressed as follows:

7 John A. Girardi, Esq.  
8 LAW OFFICES OF JOHN GIRARDI  
29900 Hawthorne Boulevard  
9 Rolling Hills Estates, CA 90274

Lawrence J. Lennemann, Esq.  
LAW OFFICE OF LAWRENCE J. LENNEMANN  
29900 Hawthorne Boulevard  
Rolling Hills Estates, CA 90274

10 Tel: (310) 265-5787  
E-mail: john@johngirardilaw.com

Tel: (310) 265-5788  
E-mail: lennemann@att.net

11  
12 Attorneys for Plaintiff, Robert Waggle

13  
14 ☐ BY OVERNIGHT COURIER I caused such envelope(s) to be delivered via overnight  
courier service to the addressee(s) designated.

15 ☒ BY ELECTRONIC DELIVERY I caused said document to be delivered electronic email to  
16 the offices of the above addressees.

17 ☒ BY MAIL I am readily familiar with the business practice at my place of business for  
18 collection and processing of correspondence for mailing with the United States Postal Service.  
Correspondence so collected and processed is deposited in the ordinary course of business.

19 I caused each envelope, with postage fully prepaid, to be placed in the United States mail, at  
20 Fresno, California.

21 ☐ BY HAND I caused to be hand delivered each envelope to the office listed above.

22 ☐ BY FACSIMILE I served the above-mentioned document from Facsimile Machine No.:  
(559) 221-5262 to the interested parties at the facsimile numbers listed above.

23 I declare that I am employed in the office of a member of the bar of this court at whose  
24 direction the service was made. I declare under penalty of perjury that the foregoing is true and  
correct, and that this proof of service was executed at Fresno, California, on October 19, 2021.

25  
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Carol Mathis