

1 JAN I. GOLDSMITH, City Attorney
2 PAUL COOPER, Assistant City Attorney
3 JOE CORDILEONE, Chief Deputy City Attorney
4 California State Bar No. 73606
5 Office of the City Attorney
6 1200 Third Avenue, Suite 1100
7 San Diego, California 92101-4100
8 Telephone: (619) 533-5800
9 Facsimile: (619) 533-5856

10 Attorneys for Defendant
11 CITY OF SAN DIEGO

F I L E D
Clerk of the Superior Court

AUG 01 2013

By: _____ Deputy

2013 AUG -1 P 3:51
AUG 1 '13 PM 2:47

EXEMPT FROM FEES PER
GOV. CODE § 6103
TO THE BENEFIT OF THE CITY
OF SAN DIEGO

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

10 IRENE McCORMACK JACKSON

11 Plaintiff,

12 v.

13 CITY OF SAN DIEGO, ROBERT ("BOB")
14 FILNER, *et al.*

15 Defendants.

) Case No. 37-2013-00058613-CU-OE-CTL

) DEFENDANT CITY OF SAN DIEGO'S
) ANSWER TO COMPLAINT

) I/C Judge: Richard Strauss

) Dept.: 75

) Comp. filed: July 22, 2013

) Trial date: None set

16 Pursuant to CCP § 446, Defendant City of San Diego (hereafter "Defendant" or "City"),
17 for itself alone, answers Plaintiff's complaint as follows:

18 1. As permitted by law with unverified complaints, Defendant denies each and every
19 material allegation of the complaint and puts Plaintiff to her proof. Further, on information and
20 belief Defendant denies that Plaintiff has been damaged in any manner or amount or at all as a
21 result of any act or omission by Defendant.

22 2. On information and belief Defendant alleges Plaintiff's complaint, in whole or in
23 part, is barred by statutory immunities found in the California Tort Claims Act (Gov. Code §§
24 810 *et seq.*), including but not limited to the immunities provided in Government Code sections
25 815, 815.2, 818.8, 820.2, 820.4, 820.6, 821.6 and 822.2.

26 3. On information and belief Defendant alleges Plaintiff cannot establish a *prima*
27 *facie* case of sexual harassment.
28

1 4. On information and belief Defendant alleges some or all of Plaintiff's claims are
2 barred by the doctrine of laches.

3 5. On information and belief, Defendant alleges the facts alleged fail to state a claim
4 against this Defendant.

5 6. At all times, this Defendant acted in good faith, without malice, and took the
6 actions it did for legitimate non-discriminatory and non-retaliatory reasons.

7 7. This Defendant based all employment decisions regarding Plaintiff's employment
8 on legitimate non-discriminatory reasons.

9 8. This Defendant had legitimate, non-discriminatory reasons for each of its actions.

10 9. No act or omission of this Defendant was done with harassing intent, purpose, or
11 motive.

12 10. No act or omission of this Defendant was done with discriminatory or retaliatory
13 intent, purpose, or motive.

14 11. On information and belief this Defendant alleges Plaintiff has sustained no
15 damages from the purported conduct claimed in the Complaint, and to the extent that Plaintiff
16 claims any damages, Plaintiff has failed to mitigate her damages as required by law.

17 12. On information and belief this Defendant alleges Plaintiff's claims are barred, in
18 whole or in part, by Plaintiff's failure to act with reasonable skill, diligence and cooperation in
19 attending to and carrying out the duties and responsibilities as required by Plaintiff's
20 employment.

21 13. On information and belief, this Defendant alleges the Complaint, and each
22 purported cause of action set forth therein, fails to state facts sufficient to entitle Plaintiff to an
23 award of general damages, special damages, exemplary or punitive damages, or attorneys' fees
24 and costs against this Defendant.

25 14. This Defendant did not engage in any conduct that was the legal cause of any
26 alleged damages suffered by Plaintiff.

27 15. This Defendant complied with all obligations under the law with respect to
28 preventing harassment and discrimination in the workplace.

1 16. On information and belief this Defendant alleges Plaintiff's claims are barred, and
2 Plaintiff is barred from seeking any damages from the purported physical or emotional injuries
3 allegedly suffered as a result of her employment in that the sole and exclusive remedy in this
4 respect is governed by the California Workers' Compensation Act. (Cal. Lab. Code, §§ 3600, *et*
5 *seq.*)

6 17. On information and belief this Defendant alleges Plaintiff's claims against
7 Defendant are barred, in whole or in part, by the applicable statutes of limitation, including, but
8 not limited to, those set forth in Government Code sections 12960 and 12965 and Code of Civil
9 Procedure sections 335.1, 338, 339, and 340.

10 18. On information and belief this Defendant alleges some or all of Plaintiff's claims
11 are barred because of her failure to fully, properly, and timely exhaust pre-filing requirements,
12 including but not limited to exhaustion of internal remedies, claim notices under the
13 Government Tort Claims Act, pre-filing administrative remedy procedures under the Fair
14 Employment and Housing Act and/or other administrative remedies.

15 19. On information and belief this Defendant alleges the injuries and/or damages
16 alleged in Plaintiff's Complaint, if they in fact exist, were legally caused by, occurred and/or were
17 contributed to by Plaintiff's own acts, failures to act and/or misconduct.

18 20. On information and belief this Defendant alleges that it exercised reasonable care
19 to prevent and promptly correct any discriminatory or harassing behavior in the workplace and
20 the Plaintiff unreasonably failed to take advantage of, or unreasonably delayed in taking
21 advantage of, any preventive or corrective opportunities provided by the City or to avoid harm
22 otherwise and Plaintiff thereby violated the rule of avoidable consequences, also known as the
23 *Ellerth/Faragher* defense. *State Dept. of Health Services v. Sup. Ct.* (2003) 31 Cal. 4th 1026.

24 21. On information and belief this Defendant alleges some or all of Plaintiff's claims
25 are barred because she is judicially estopped from asserting those claims.

26 22. On information and belief this Defendant alleges some or all of Plaintiff's claims
27 are barred by the doctrine of "Accord and Satisfaction" and related concepts.
28

1 23. On information and belief this Defendant alleges Plaintiff has waived some or all
2 of her claims.

3 24. On information and belief this Defendant alleges some or all of Plaintiff's claims
4 are barred by the doctrine of unclean hands.

5 25. On information and belief this Defendant alleges some or all of Plaintiff's claims
6 are barred by the doctrine(s) of collateral estoppel and/or *res judicata*.

7 26. On information and belief this Defendant alleges Plaintiff has released some or all
8 of her claims.

9 27. On information and belief, this Defendant alleges that it may have additional, as
10 yet unasserted, defenses to Plaintiff's complaint or the causes of action pled against it.
11 Accordingly, Defendant specifically reserves the right to assert additional defenses as deemed
12 appropriate at a later time.

13 WHEREFORE, Defendant City of San Diego prays for judgment as follows:

14 1. That Plaintiff take nothing by reason of her complaint or any claims stated
15 therein;

16 2. That Plaintiff's complaint and each cause of action contained therein be dismissed
17 against this Defendant with prejudice;

18 3. That this Defendant be awarded its attorneys' fees and costs of suit incurred
19 herein pursuant to all applicable provisions of law; and

20 4. For such other relief as the Court deems just and proper.

21 Dated: August 1, 2013

JAN I. GOLDSMITH, City Attorney

22

23

24

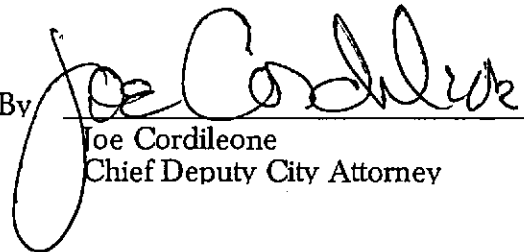
25

26

27

28

By



Joe Cordileone
Chief Deputy City Attorney

FILED
CIVIL BUSINESS OFFICE 11
DIVISION

2013 AUG -1 P 3:57

SUPERIOR COURT
SAN DIEGO COUNTY, CA
AUG 1 13 PM 2:47

1 JAN I. GOLDSMITH, City Attorney
2 PAUL E. COOPER, Assistant City Attorney
3 JOE CORDILEONE, Chief Deputy City Attorney
4 California State Bar No. 73606
5 Office of the City Attorney, Civil Division
6 1200 Third Avenue, Suite 1620
7 San Diego, California 92101
8 (619) 533-5800; Fax (619) 533-5856
9 Attorneys for City of San Diego

7 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

8 DECLARATION OF
9 SERVICE

Case Name: McCormack Jackson, Irene v. City of San Diego
Case No. 2013-00058613-CU-OE-CTL

10 I, the undersigned declare that I am, and was at the time of service of the papers herein
11 referred to, over the age of eighteen years and not a party to the action; and I am employed in the
12 County of San Diego, California, in which county the within-mentioned service occurred. My
13 business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

14 I further declare that I am readily familiar with the business' practice for collection and
15 processing of correspondence for mailing with the United States Postal Service; and that the
16 correspondence shall be deposited with the United States Postal Service this same day in the
17 ordinary course of business. I served the following document(s)

15 **DEFENDANT CITY OF SAN DIEGO'S ANSWER TO COMPLAINT**

16 in this action by placing the true copies thereof enclosed in a sealed envelope addressed as
17 follows:

18
19 Harvey Berger, Esq.
20 Pope, Berger & Williams, LLP
21 3555 Fifth Avenue, Suite 300
22 San Diego, CA 92103
23 Telephone: (619) 234-1222
24 Facsimile: (619) 236-9677
25 Attorneys of Record for Defendant ROBERT
26 ("BOB") FILNER

Gloria Allred, Esq.
Nathan Goldberg, Esq.
ALLRED, MAROKO & GOLDBERG
6300 Wilshire Blvd., Suite 1500
Los Angeles, CA 90048-5217
Telephone: (323) 653-6530
Facsimile: (323) 653-1660
Attorneys of Record for Plaintiff IRENE
McCORMACK JACKSON

24 Mayor Bob Filner
25 202 "C" Street, 11th Floor
26 San Diego, A 92101
27 Telephone: (619) 236-6330
28

1 [X] (BY MAIL) I placed it for collection and mailing with the United States Postal Service
2 this same day, at my address shown above, following ordinary business practices.

3 [] (BY EMAIL) Pursuant to agreement between the parties, I served the above listed
4 documents by transmitting via email to the internet address listed above. I did not receive
5 within a reasonable period of time after the transmission any electronic message or other
6 indication that the transmission was unsuccessful.

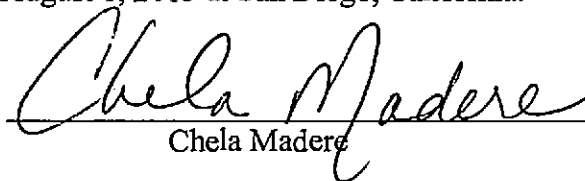
7 [] (BY ELECTRONIC SERVICE VIA LEXISNEXIS FILE & SERVE) On
8 _____, I caused such document(s) to be electronically served through
9 LexisNexis File & Serve for the above-entitled case on designated recipients. Upon
10 completion of said transmission of said documents, a certified receipt is issued to filing
11 party acknowledging receipt by LexisNexis File & Serve. Once LexisNexis File & Serve
12 has served all designated recipients, proof of electronic service is returned to the filing
13 party. This service complies with CCP § 1010.6. The file transmission was reported as
14 complete and a copy of the "LexisNexis File & Serve Transaction Receipt" page will be
15 maintained with the original document(s) in our office.

16 [] (BY FAX) On _____, I transmitted the above-described document by
17 facsimile machine to the listed fax number. The transmission originated from facsimile
18 phone number (619) 533-5856 and was reported as complete and without error. The
19 facsimile machine properly issued a transmission report, a copy of which is attached
20 hereto. [CCP section 1013(e); CRC Rule 2008].

21 [] (BY OVERNIGHT DELIVERY) I caused the envelope(s) to be delivered overnight
22 via an overnight delivery service in lieu of delivery by mail to the addressee(s).
23 [CCP section 1013]

24 [] (BY PERSONAL SERVICE) I served the individual named by personally
25 delivering the copies to the offices of the addressee.
26 Time of delivery: _____ a.m./p.m. Person served: _____

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct. Executed on August 1, 2013 at San Diego, California.


Chela Madero