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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**04/13/2017** at 01:15:00 PM

Clerk of the Superior Court  
By Richard Day, Deputy Clerk

Attorneys for Defendant  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF SAN DIEGO & IMPERIAL  
COUNTIES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

REBECCA RAUBER, an individual,

Plaintiff,

v.

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF SAN DIEGO &  
IMPERIAL COUNTIES, INC., a  
California corporation; and DOES 1  
through 10, inclusive,

Defendants.

Case No. 37-2017-00008664-CU-WT-CTL

Judge: Hon. Katherine A. Bacal  
Dept.: C-69

**ANSWER TO COMPLAINT**

Complaint Filed: March 10, 2017  
Trial Date: None Set

Defendant AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SAN DIEGO &  
IMPERIAL COUNTIES, INC. ("Defendant") submits the following response to the unverified  
Complaint filed by Plaintiff REBECCA RAUBER ("Plaintiff").

**GENERAL DENIAL**

Pursuant to the provisions of the California Code of Civil Procedure section 431.30(d),  
Defendant denies generally and specifically each and every allegation contained in Plaintiff's  
Complaint. In addition, Defendant denies that Plaintiff has sustained, or will sustain, any loss or  
damage in the manner or amount alleged, or otherwise, by reason of any act or omission, or any  
other conduct or absence thereof on the part of Defendant, or at all.

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1 **AFFIRMATIVE DEFENSES**

2 As separate and distinct affirmative defenses to Plaintiff's Complaint, Defendant alleges as  
3 follows:

4 **FIRST AFFIRMATIVE DEFENSE**

5 Plaintiff's Complaint fails to state any claim upon which relief can be granted against  
6 Defendant.

7 **SECOND AFFIRMATIVE DEFENSE**

8 Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel,  
9 applicable statutes of limitations laches, and/or unclean hands.

10 **THIRD AFFIRMATIVE DEFENSE**

11 All actions taken by Defendant toward Plaintiff were for legitimate, good faith, justified,  
12 nondiscriminatory, and non-retaliatory business reasons.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 The Complaint and each cause of action set forth therein cannot be maintained because,  
15 without admitting that it engaged in any of the acts alleged, Defendant alleges that any conduct  
16 and/or statements attributed to it by Plaintiff were justified, made in good faith, for legitimate non-  
17 discriminatory and non-retaliatory reasons, were truthful, and/or were privileged pursuant to  
18 California law including, but not limited to, California Civil Code section 47.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 The Complaint and each cause of action set forth therein cannot be maintained against  
21 Defendant because, at all relevant times, Defendant acted reasonably and in good faith, based upon  
22 all relevant facts and circumstances known by it at the time it acted.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 If Plaintiff in fact suffered any damages or injuries, such damages or injuries must be reduced  
25 or diminished by amounts received or receivable by Plaintiff in the exercise of reasonable diligence  
26 as income or in lieu of earned income, or in satisfaction of any liability owed by or on behalf of  
27 Defendant in this action.

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**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the exclusive remedies under the California Workers' Compensation Act in that her alleged injuries involve compensable injuries which occurred, if at all, when she was subject to the compensation provisions of the California Workers' Compensation Act and when she was performing services growing out of and incidental to her employment and the alleged injuries were proximately caused by the employment.

**EIGHTH AFFIRMATIVE DEFENSE**

If Plaintiff has suffered any damages, such damages were proximately caused by factors other than the actions of Defendant or anyone acting on its behalf.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's damages for emotional distress, if any, are barred in that conduct by Defendant neither contravened any established public policy nor exceeded the inherent risks of employment.

**TENTH AFFIRMATIVE DEFENSE**

Without admitting that Plaintiff is entitled to any recovery, Defendant alleges that any recovery to which Plaintiff might be entitled must be reduced because of Plaintiff's failure to mitigate her damages, if any.

**ELEVENTH AFFIRMATIVE DEFENSE**

Any conduct of Defendant's managers and supervisors was protected by the managerial privilege and all actions taken with respect to Plaintiff's employment were undertaken and exercised with proper managerial discretion and/or justified by legitimate and substantial business reasons.

**TWELFTH AFFIRMATIVE DEFENSE**

Any unlawful or other wrongful acts attributed to any person(s) employed by Defendant were outside the course and scope of the employment of the employee, and were not authorized, ratified, or condoned by Defendant, nor did Defendant know or have reason to be aware of such alleged conduct.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Defendant exercised reasonable care to prevent, and/or promptly correct any discriminatory or otherwise unlawful behavior; (2) Plaintiff unreasonably failed to take advantage of any preventive

1 or corrective opportunities provided by said Defendant or to otherwise avoid harm; and (3) the  
2 reasonable use of Defendant's procedures would have prevented the harm that Plaintiff allegedly  
3 suffered.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 Defendant implemented, and at all relevant times maintained, a bona fide policy against  
6 unlawful discrimination; therefore, Defendant is not vicariously liable for punitive damages based on  
7 the alleged misconduct of Defendant's employees.

8 **FIFTEENTH AFFIRMATIVE DEFENSE**

9 Plaintiff's Complaint fails to state facts sufficient to set forth a cause of action for punitive  
10 damages.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 The provisions of California law providing for the award of punitive or exemplary damages,  
13 and the substantive rules, procedures and standards for determining the amount and/or whether to  
14 award such damages, and if so, in what amount, violate the due process and equal protection rights  
15 of Defendant under the Constitutions of the United States and the State of California.

16 **SEVENTEENTH AFFIRMATIVE DEFENSE**

17 Plaintiff's Complaint is barred because Plaintiff failed to exhaust her administrative  
18 remedies, the allegations in the Complaint fall outside the scope of any administrative charges  
19 Plaintiff filed and/or Plaintiff otherwise failed to comply with the statutory prerequisites to the  
20 bringing of this action, pursuant to the FEHA, California Government Code section 12900 et seq.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 Defendant is informed and believe that a reasonable opportunity for investigation and  
23 discovery will reveal, and on that basis, allege, that Plaintiff's claims are barred, and/or her recovery  
24 of any damages is barred or diminished, by after-acquired evidence of misconduct which, if known  
25 by Defendant, would have been cause for Plaintiff's termination.

26 **NINETEENTH AFFIRMATIVE DEFENSE**

27 The Complaint, and each of its causes of action, is barred because Defendant did not engage  
28 in the alleged discrimination or retaliation set forth in the Complaint, but even assuming for the sake

1 of argument that Defendant did, Defendant would have taken the same employment actions in any  
2 event for legitimate, non-discriminatory, non-retaliatory, non-pretextual reasons.

3 **TWENTIETH AFFIRMATIVE DEFENSE**

4 The decisions Plaintiffs challenge were based on reasonable business factors other than  
5 age and gender.

6 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

7 Defendants alleges that the Complaint and each cause of action set forth  
8 therein are barred, to the extent that they are unreasonable and/or filed in bad faith and/or are  
9 frivolous in nature. For these reasons, an award of attorneys' fees and costs may be justified against  
10 Plaintiff pursuant to California law including, but not limited to, California Code of Civil Procedure  
11 section 128.5.

12 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

13 Defendant alleges that Plaintiff's claims are barred by her own breaches of duty owed to  
14 Defendants including but not limited to, those set forth in California Labor Code sections 2854,  
15 2856-2859.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 Defendant alleges that the Private Attorney General Act ("PAGA") imposes excessive fines  
18 in violation of Amendment 8 of the California Constitution.

19 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

20 Defendant alleges that the purported cause of action under the PAGA is barred to the extent  
21 Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, seek penalties beyond the  
22 "initial" violation as described in California Labor Code section 2699(f)(2).

23 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

24 The purported cause of action under the PAGA is barred to the extent it seeks to recover  
25 penalties on behalf of individuals who are not "aggrieved employees."

26 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

27 Defendant alleges that the fines imposed by PAGA violate substantive due process  
28 guaranteed by Article I, section 7 of the California Constitution and the Fourteenth Amendment of

1 the United States Constitution.

2 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

3 Defendant alleges that the Complaint and each and every purported cause of action contained  
4 therein is barred to the extent Plaintiff, and any person on whose behalf relief is sought, failed to  
5 satisfy the notice and exhaustion requirements under PAGA, and to the extent that Plaintiff  
6 otherwise have failed to exhaust administrative remedies.

7 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

8 Defendant alleges that the purported cause of action under the PAGA is barred to the extent  
9 private actions seeking PAGA penalties manifest an unlawful delegation of executive authority.

10 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

11 Defendant alleges that Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, are  
12 not entitled to recovery of penalties under PAGA to the extent that such penalties are sought in  
13 addition to penalties for the same claims and such duplicative recovery is barred and constitutes  
14 unjust enrichment.

15 **THIRTIETH AFFIRMATIVE DEFENSE**

16 Plaintiff was not a whistleblower for the purposes of Labor Code section 1102.5

17 **ADDITIONAL AFFIRMATIVE DEFENSES**

18 As a separate and distinct affirmative defense, Defendants state that they do not presently  
19 know all facts concerning the conduct of Plaintiff and her claims sufficient to state all affirmative  
20 defenses at this time. Defendants will seek leave of this Court to amend this Answer should they  
21 later discover facts demonstrating the existence of additional affirmative defenses.

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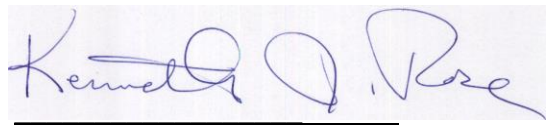
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WHEREFORE, Defendant prays for judgment as follows:

1. That the entire Complaint be dismissed with prejudice;
2. That it be awarded its reasonable attorneys' fees and costs;
3. That Plaintiff take nothing by way of her Complaint; and
4. For such other and further relief that the Court deems just and proper.

Dated: April 13, 2017



KENNETH J. ROSE  
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THE ROSE GROUP, APLC

Attorneys for Defendant  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF SAN DIEGO &  
IMPERIAL COUNTIES, INC.