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12 Attorneys for Defendants  
13 NBC UNIVERSAL MEDIA, LLC (erroneously  
14 sued as NBC Universal) and  
15 GREG DAWSON

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SAN DIEGO

18 DORIAN HARGROVE,

19 Plaintiff,

20 v.

21 NBC UNIVERSAL, a public corporation; GREG  
22 DAWSON, an individual; CHUCK  
23 WESTERHEIDE, an individual; and DOES 1-10,  
24 inclusive,

25 Defendants.

Case No.: 37-2022-00021527-CU-OE-CTL

[Assigned for all purposes to Hon. Timothy B.  
Taylor, Dept. C-72]

**ANSWER FILED ON BEHALF OF  
DEFENDANT NBCUNIVERSAL MEDIA, LLC  
TO PLAINTIFF DORIAN HARGROVE'S  
UNVERIFIED COMPLAINT FOR DAMAGES**

**IMAGED FILE**

Complaint filed: June 6, 2022  
Trial Date: Not Assigned

26 **TO THE HONORABLE COURT, PLAINTIFF DORIAN HARGROVE, AND TO HIS**  
27 **ATTORNEYS OF RECORD:**

28 Defendant NBCUNIVERSAL MEDIA, LLC (erroneously sued as "NBC Universal")  
("Defendant"), on behalf of itself and for no other defendant, hereby responds to Plaintiff DORIAN  
HARGROVE's ("Plaintiff") unverified Complaint for Damages ("Complaint") as follows:

///

1 **GENERAL DENIAL**

2 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant NBCUniversal  
3 Media, LLC (erroneously sued as “NBC Universal”) generally and specifically denies each and every  
4 allegation contained in the Complaint, and each cause of action in said Complaint, and denies that Plaintiff  
5 has been damaged in any sum, or at all, by reason of any act or omission on the part of Defendant.

6 **AFFIRMATIVE DEFENSES**

7 As separate and distinct affirmative defenses to Plaintiff’s Complaint and the causes of action  
8 alleged therein, and to each of them, Defendant alleges as follows:

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Cause of Action)**

11 1. The Complaint as a whole, and each purported cause of action alleged therein, fails to state  
12 facts sufficient to constitute a cause of action against Defendant upon which relief may be granted.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(No Entitlement to Punitive Damages)**

15 2. Plaintiff is precluded from recovering exemplary or punitive damages from Defendant  
16 under the applicable provisions of law. Specifically, California Civil Code section 3294 precludes Plaintiff  
17 from recovering exemplary or punitive damages because Plaintiff has failed to plead and cannot establish  
18 facts sufficient to support allegations of malice, oppression, fraud, or despicable conduct.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Punitive Damages Unconstitutional)**

21 3. Although Defendant denies that it has committed or has responsibility for any act that  
22 could support the recovery of punitive damages in this lawsuit, if any, to the extent any such act is found,  
23 recovery of punitive damages against Defendant is unconstitutional under numerous provisions of the  
24 United States Constitution and the California Constitution.

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1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(No Officers, Directors, or Managing Agents)**

3 4. Plaintiff's claims are barred, in whole or in part, because Plaintiff is not entitled to recover  
4 punitive or exemplary damages from Defendant on the grounds that none of Defendant's employees,  
5 officers, directors, or managing agents committed the alleged acts, nor authorized them, nor ratified them.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 **(Failure to Comply with Conditions Precedent)**

8 5. To the extent discovery may disclose a factual basis for this defense, Plaintiff's claims  
9 are barred, in whole or in part, because Plaintiff has failed to comply with the necessary conditions  
10 precedent for bringing this action, including, but not limited to, compliance with any and all applicable  
11 state or federal laws.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 **(Administrative Exhaustion)**

14 6. To the extent discovery may disclose a factual basis for this defense, Plaintiff's claims  
15 are barred, in whole or in part, because Plaintiff failed to exhaust the administrative remedies required  
16 under any and all applicable state and/or federal laws, including, but not limited to, the California Fair  
17 Employment and Housing Act (FEHA) and California Government Code sections 12960 and 12965.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 **(Statutes of Limitation)**

20 7. To the extent discovery may disclose a factual basis for this defense, Plaintiff's claims  
21 are barred, in whole or in part, by the applicable statute of limitations including, but not limited to,  
22 California Code of Civil Procedure sections 338 and 340(a) and California Government Code sections  
23 12960 and 12965.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Failure to Mitigate Damages)**

26 8. To the extent discovery may disclose a factual basis for this defense, Plaintiff is barred  
27 from recovering any damages, or any recovery must be reduced, by virtue of Plaintiff's failure to exercise  
28 reasonable diligence to mitigate his alleged damages.

1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Offset)**

3 9. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,  
4 is barred in whole or in part because Defendant is entitled to an offset for any monies Plaintiff received  
5 from any source after Plaintiff ceased to be employed by Defendant under the doctrine prohibiting double  
6 recovery set forth by *Witt v. Jackson* (1961) 57 Cal.2d 57 and its progeny.

7 **TENTH AFFIRMATIVE DEFENSE**

8 **(After Acquired Evidence)**

9 10. To the extent discovery may disclose information which could serve as a basis for the  
10 termination of Plaintiff's employment, Plaintiff is barred from recovery by the after-acquired evidence  
11 doctrine.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 **(Avoidable Consequences)**

14 11. Plaintiff's allegations of discrimination, harassment, and retaliation are barred, or any  
15 recovery of damages is precluded, because Plaintiff unreasonably failed to take advantage of available  
16 preventive or corrective opportunities or to avoid harm otherwise. (*State Dept. of Health Servs. v. Superior*  
17 *Court of Sacramento County* (2000) 31 Cal.4th 1026.)

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 **(Exercise of Reasonable Care)**

20 12. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,  
21 is barred in whole or in part because Defendant exercised reasonable care to prevent and correct promptly  
22 any alleged harassing, discriminatory or retaliatory behavior.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 **(Privileged, Good Faith, & Justified Conduct)**

25 13. Any recovery on Plaintiff's Complaint is barred because Defendant's conduct was  
26 privileged and/or justified under California law and for valid business reasons. Any and all conduct of  
27 which Plaintiff complains and that is attributed to Defendant was a just and proper exercise of Defendant's  
28

1 discretion and was undertaken for a fair and honest reason regulated by good faith and probable cause  
2 under the circumstances existing at all times mentioned in Plaintiff's Complaint.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 **(Legitimate Business Justification)**

5 14. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,  
6 is barred because, assuming *arguendo* that discriminatory and/or retaliatory reasons had been a motivating  
7 factor in any employment decisions toward Plaintiff, Defendant would have made the same employment  
8 decisions toward Plaintiff in any case for legitimate, non-discriminatory business reasons.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 **(Mixed Motive Defense)**

11 15. Recovery on Plaintiff's Complaint, or any purported cause of action alleged therein, is  
12 barred because, assuming *arguendo* that discriminatory and/or retaliatory reasons had been a substantial  
13 motivating factor in any employment decisions toward Plaintiff, legitimate, non-discriminatory business  
14 reasons were also substantial motivating factors for taking any such adverse employment action against  
15 Plaintiff, and Defendant would have made the same employment decisions toward Plaintiff without any  
16 regard for any prohibited or unlawful factor. Therefore, Plaintiff is not entitled to reinstatement, back pay,  
17 or damages.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 **(Failure to Perform Responsibilities)**

20 16. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,  
21 is barred by Plaintiff's failure to satisfactorily perform his job responsibilities and otherwise conduct  
22 himself in accordance with the standards and policies of Defendant.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 **(No Discrimination, Harassment, or Retaliation)**

25 17. Defendant did not discriminate/retaliate against or harass Plaintiff on the basis of his  
26 physical disability, mental disability, medical condition, age, and/or any other unlawful grounds.

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1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 **(Policies Prohibiting Discrimination, Harassment and Retaliation)**

3 18. To the extent Plaintiff bases his Complaint on any theory of discrimination, harassment,  
4 or retaliation, any recovery on Plaintiff's Complaint, and each purported claim for relief alleged therein,  
5 is barred in whole or in part because, at all times relevant, Defendant had policies and practices in place  
6 to prevent discrimination, harassment, and retaliation in the workplace, and Plaintiff unreasonably failed  
7 to take advantage of any preventative or corrective opportunities provided by Defendant or to otherwise  
8 avoid any alleged harm. (*State Dept. of Health Servs. v. Superior Court (McGinnis)* (2000) 31 Cal.4th  
9 1026.)

10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 **(Failure to Use Ordinary Care)**

12 19. Any recovery on Plaintiff's Complaint, and each purported claim for relief alleged  
13 therein, is barred, in whole or in part, by California Labor Code sections 2854 and 2856 in that Plaintiff  
14 failed to use ordinary care and diligence in the performance of his duties and failed to comply substantially  
15 with the reasonable directions of his employer.

16 **TWENTIETH AFFIRMATIVE DEFENSE**

17 **(Contributory Fault)**

18 20. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,  
19 is barred in whole or in part by Plaintiff's own contributory or comparative fault.

20 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

21 **(At-Will Employee)**

22 21. Defendant alleges that Plaintiff was, at all times during his employment with Defendant,  
23 an at-will employee.

24 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

25 **(Plaintiff Failed to Act in Good Faith)**

26 22. Any recovery on Plaintiff's Complaint, or any purported claim for relief alleged therein,  
27 is barred in that Plaintiff failed to act in good faith toward and deal fairly with Defendant so as to not  
28 deprive Defendant of or injure Defendant's right to receive the benefits of any alleged employment

1 relationship between Plaintiff and Defendant.

2 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

3 **(Res Judicata and Collateral Estoppel)**

4 23. To the extent discovery may disclose a factual basis for this defense, Defendant alleges  
5 that some or all of Plaintiff's claims are barred on grounds of res judicata and collateral estoppel.

6 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

7 **(No Proximate Cause)**

8 24. Any recovery on Plaintiff's Complaint, and each purported claim for relief alleged  
9 therein, is barred, in whole or in part, because injuries that Plaintiff alleges in his Complaint, and in each  
10 and every purported claim for relief alleged therein, if they exist at all, resulted from a cause not  
11 proximately caused by or related to any act or omission by Defendant.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 **(Equitable Doctrines)**

14 25. To the extent discovery may disclose a factual basis for this defense, Plaintiff's claims  
15 are barred, in whole or in part, by the doctrines of laches, estoppel, waiver, *in pari delicto*, and unclean  
16 hands.

17 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

18 **(No Protected Activity and No Nexus)**

19 26. Any recovery on Plaintiff's Complaint, and each purported cause of action alleged  
20 therein, is barred because Plaintiff did not engage in any protected activity, and there is no nexus between  
21 any alleged protected activity, and Defendant's alleged conduct.

22 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

23 **(No Notice or Complaint Regarding Discrimination, Harassment, or Retaliation)**

24 27. Plaintiff's claims for discrimination, harassment, and retaliation are barred because  
25 Defendant did not receive notice from Plaintiff that any employee or managing agent of Defendant had  
26 allegedly engaged in any discriminatory, harassing, or retaliatory actions against Plaintiff based upon his  
27 physical disability, mental disability, medical condition, age, or for any other reason and Plaintiff  
28 unreasonably failed to complain of any alleged unlawful conduct to take advantage of the preventative or

1 corrective opportunities available and/or otherwise avoid harm.

2 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

3 **(Good Faith Investigation)**

4 28. To the extent Plaintiff ever complained about or raised concerns regarding alleged  
5 conduct in violation of Defendant’s company policy against unlawful discrimination, harassment, or  
6 retaliation (which he did not), Defendant took reasonable steps to investigate and address such allegations  
7 or concerns.

8 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

9 **(Arbitration Agreement)**

10 29. Any recovery on Plaintiff’s Complaint, and each purported cause of action alleged therein,  
11 is barred in whole or in part because this Court lacks jurisdiction, and/or that Plaintiff’s claims are barred,  
12 because Plaintiff entered into an arbitration agreement with Defendant as it relates to the claims asserted  
13 by Plaintiff, and this matter must proceed to binding arbitration.

14 **THIRTIETH AFFIRMATIVE DEFENSE**

15 **(Attorney’s Fees and Costs)**

16 30. Defendant has engaged attorneys to represent it in defense of Plaintiff’s frivolous,  
17 unfounded, and unreasonable action, and Defendant is thereby entitled to an award of reasonable  
18 attorneys’ fees and costs pursuant to Government Code section 12965 upon judgment in its favor.

19 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

20 **(Additional Affirmative Defenses)**

21 31. As a separate and affirmative defense, Defendant alleges that Defendant presently has  
22 insufficient knowledge or information on which to form a belief as to whether it may have additional, as  
23 yet unstated, defenses available. Defendant reserves the right to assert additional defenses in the event  
24 discovery indicates they would be appropriate.

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1 WHEREFORE, Defendant prays for judgment as follows:

- 2 1. That Plaintiff take nothing by his Complaint;
- 3 2. That the Complaint be dismissed in its entirety with prejudice;
- 4 3. That Plaintiff be denied each and every demand and prayer for relief contained in the
- 5 Complaint;
- 6 4. For costs of suit incurred herein, including reasonable attorney's fees pursuant to California
- 7 Government Code section 12965; and
- 8 5. For such other and further relief as the Court may deem just and proper.
- 9

10 DATED: August 17, 2022

JACKSON LEWIS P.C.



11

12 By: \_\_\_\_\_

13 Adrienne L. Conrad  
14 Jaclyn M. Reinhart  
15 Raina Sharma  
16 Attorneys for Defendants  
17 NBC UNIVERSAL MEDIA, LLC (erroneously  
18 sued as NBC Universal) and  
19 GREG DAWSON

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4864-2594-8972, v. 4

SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO		COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Adrienne L. Conrad (SBN 318776) Jaclyn M. Reinhart (SBN 317622) Raina Sharma (SBN 334237) JACKSON LEWIS P.C. 225 Broadway, Suite 2000 San Diego, California 92101 Adrienne.conrad@jacksonlewis.com; Jaclyn.reinhart@jacksonlewis.com; raina.sharma@jacksonlewis.com		Telephone No. Tel: 619.573.4900 Fax: 619.573.4901
SHORT CASE TITLE Dorian Hargrove v. NBC Universal, et al.		JUDGE: Timothy B. Taylor DEPT.: C-72
ATTORNEYS FOR DEFENDANTS NBC Universal Media, LLC and Greg Dawson		Case No.: 37-2022-00021527-CU-OE-CTL

## PROOF OF SERVICE

I, the undersigned, am over 18 years of age, employed in the County of San Diego, California, in which the within-mentioned service occurred; and that I am not a party to the subject cause of action. My business address is 225 Broadway, Suite 2000, San Diego, California 92101. On August 17, 2022, I served the following documents:

### **ANSWER FILED ON BEHALF OF DEFENDANT NBCUNIVERSAL MEDIA, LLC TO PLAINTIFF DORIAN HARGROVE'S UNVERIFIED COMPLAINT FOR DAMAGES**

#### ***Counsel for Plaintiff***

Marlea F. Dell'Anno  
Dell'Anno Law Firm, APC  
9844 Scripps Ranch Blvd., #314  
San Diego, CA 92101  
Tel: (619) 302-5711  
Fax: (619) 924-3624  
Email: [mfd@dellannolaw.com](mailto:mfd@dellannolaw.com)

- BY ELECTRONIC SERVICE.** Pursuant to San Diego County Superior Court General Order No. 010121-22(A), and Cal. Rules of Court, rule 2.251(c), I served the document(s) listed above via electronic mail (e-mail) to the electronic notification address(es) set forth above on this date. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- BY U.S. MAIL.** I placed or caused to be placed, the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Diego, addressed as set forth above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 17, 2022

---

Cheri Haynes  
Cheri.haynes@jacksonlewis.com

1 Adrienne L. Conrad (SBN 318776)  
2 Jaclyn M. Reinhart (SBN 317622)  
3 Raina Sharma (SBN 334237)  
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12 Attorneys for Defendants  
13 NBC UNIVERSAL MEDIA, LLC (erroneously  
14 sued as NBC Universal) and  
15 GREG DAWSON

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SAN DIEGO

18 DORIAN HARGROVE,

19 Plaintiff,

20 v.

21 NBC UNIVERSAL, a public corporation; GREG  
22 DAWSON, an individual; CHUCK  
23 WESTERHEIDE, an individual; and DOES 1-10,  
24 inclusive,

25 Defendants.

Case No.: 37-2022-00021527-CU-OE-CTL

[Assigned for all purposes to Hon. Timothy B.  
Taylor, Dept. C-72]

**ANSWER FILED ON BEHALF OF  
DEFENDANT NBCUNIVERSAL MEDIA, LLC  
TO PLAINTIFF DORIAN HARGROVE'S  
UNVERIFIED COMPLAINT FOR DAMAGES**

**IMAGED FILE**

Complaint filed: June 6, 2022  
Trial Date: Not Assigned

26 **TO THE HONORABLE COURT, PLAINTIFF DORIAN HARGROVE, AND TO HIS**  
27 **ATTORNEYS OF RECORD:**

28 Defendant NBCUNIVERSAL MEDIA, LLC (erroneously sued as "NBC Universal")  
("Defendant"), on behalf of itself and for no other defendant, hereby responds to Plaintiff DORIAN  
HARGROVE's ("Plaintiff") unverified Complaint for Damages ("Complaint") as follows:

///

1 **GENERAL DENIAL**

2 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant NBCUniversal  
3 Media, LLC (erroneously sued as “NBC Universal”) generally and specifically denies each and every  
4 allegation contained in the Complaint, and each cause of action in said Complaint, and denies that Plaintiff  
5 has been damaged in any sum, or at all, by reason of any act or omission on the part of Defendant.

6 **AFFIRMATIVE DEFENSES**

7 As separate and distinct affirmative defenses to Plaintiff’s Complaint and the causes of action  
8 alleged therein, and to each of them, Defendant alleges as follows:

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Cause of Action)**

11 1. The Complaint as a whole, and each purported cause of action alleged therein, fails to state  
12 facts sufficient to constitute a cause of action against Defendant upon which relief may be granted.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(No Entitlement to Punitive Damages)**

15 2. Plaintiff is precluded from recovering exemplary or punitive damages from Defendant  
16 under the applicable provisions of law. Specifically, California Civil Code section 3294 precludes Plaintiff  
17 from recovering exemplary or punitive damages because Plaintiff has failed to plead and cannot establish  
18 facts sufficient to support allegations of malice, oppression, fraud, or despicable conduct.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Punitive Damages Unconstitutional)**

21 3. Although Defendant denies that it has committed or has responsibility for any act that  
22 could support the recovery of punitive damages in this lawsuit, if any, to the extent any such act is found,  
23 recovery of punitive damages against Defendant is unconstitutional under numerous provisions of the  
24 United States Constitution and the California Constitution.

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1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(No Officers, Directors, or Managing Agents)**

3 4. Plaintiff's claims are barred, in whole or in part, because Plaintiff is not entitled to recover  
4 punitive or exemplary damages from Defendant on the grounds that none of Defendant's employees,  
5 officers, directors, or managing agents committed the alleged acts, nor authorized them, nor ratified them.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 **(Failure to Comply with Conditions Precedent)**

8 5. To the extent discovery may disclose a factual basis for this defense, Plaintiff's claims  
9 are barred, in whole or in part, because Plaintiff has failed to comply with the necessary conditions  
10 precedent for bringing this action, including, but not limited to, compliance with any and all applicable  
11 state or federal laws.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 **(Administrative Exhaustion)**

14 6. To the extent discovery may disclose a factual basis for this defense, Plaintiff's claims  
15 are barred, in whole or in part, because Plaintiff failed to exhaust the administrative remedies required  
16 under any and all applicable state and/or federal laws, including, but not limited to, the California Fair  
17 Employment and Housing Act (FEHA) and California Government Code sections 12960 and 12965.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 **(Statutes of Limitation)**

20 7. To the extent discovery may disclose a factual basis for this defense, Plaintiff's claims  
21 are barred, in whole or in part, by the applicable statute of limitations including, but not limited to,  
22 California Code of Civil Procedure sections 338 and 340(a) and California Government Code sections  
23 12960 and 12965.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Failure to Mitigate Damages)**

26 8. To the extent discovery may disclose a factual basis for this defense, Plaintiff is barred  
27 from recovering any damages, or any recovery must be reduced, by virtue of Plaintiff's failure to exercise  
28 reasonable diligence to mitigate his alleged damages.

1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Offset)**

3 9. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,  
4 is barred in whole or in part because Defendant is entitled to an offset for any monies Plaintiff received  
5 from any source after Plaintiff ceased to be employed by Defendant under the doctrine prohibiting double  
6 recovery set forth by *Witt v. Jackson* (1961) 57 Cal.2d 57 and its progeny.

7 **TENTH AFFIRMATIVE DEFENSE**

8 **(After Acquired Evidence)**

9 10. To the extent discovery may disclose information which could serve as a basis for the  
10 termination of Plaintiff's employment, Plaintiff is barred from recovery by the after-acquired evidence  
11 doctrine.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 **(Avoidable Consequences)**

14 11. Plaintiff's allegations of discrimination, harassment, and retaliation are barred, or any  
15 recovery of damages is precluded, because Plaintiff unreasonably failed to take advantage of available  
16 preventive or corrective opportunities or to avoid harm otherwise. (*State Dept. of Health Servs. v. Superior*  
17 *Court of Sacramento County* (2000) 31 Cal.4th 1026.)

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 **(Exercise of Reasonable Care)**

20 12. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,  
21 is barred in whole or in part because Defendant exercised reasonable care to prevent and correct promptly  
22 any alleged harassing, discriminatory or retaliatory behavior.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 **(Privileged, Good Faith, & Justified Conduct)**

25 13. Any recovery on Plaintiff's Complaint is barred because Defendant's conduct was  
26 privileged and/or justified under California law and for valid business reasons. Any and all conduct of  
27 which Plaintiff complains and that is attributed to Defendant was a just and proper exercise of Defendant's  
28

1 discretion and was undertaken for a fair and honest reason regulated by good faith and probable cause  
2 under the circumstances existing at all times mentioned in Plaintiff's Complaint.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 **(Legitimate Business Justification)**

5 14. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,  
6 is barred because, assuming *arguendo* that discriminatory and/or retaliatory reasons had been a motivating  
7 factor in any employment decisions toward Plaintiff, Defendant would have made the same employment  
8 decisions toward Plaintiff in any case for legitimate, non-discriminatory business reasons.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 **(Mixed Motive Defense)**

11 15. Recovery on Plaintiff's Complaint, or any purported cause of action alleged therein, is  
12 barred because, assuming *arguendo* that discriminatory and/or retaliatory reasons had been a substantial  
13 motivating factor in any employment decisions toward Plaintiff, legitimate, non-discriminatory business  
14 reasons were also substantial motivating factors for taking any such adverse employment action against  
15 Plaintiff, and Defendant would have made the same employment decisions toward Plaintiff without any  
16 regard for any prohibited or unlawful factor. Therefore, Plaintiff is not entitled to reinstatement, back pay,  
17 or damages.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 **(Failure to Perform Responsibilities)**

20 16. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,  
21 is barred by Plaintiff's failure to satisfactorily perform his job responsibilities and otherwise conduct  
22 himself in accordance with the standards and policies of Defendant.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 **(No Discrimination, Harassment, or Retaliation)**

25 17. Defendant did not discriminate/retaliate against or harass Plaintiff on the basis of his  
26 physical disability, mental disability, medical condition, age, and/or any other unlawful grounds.

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28 ///

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 **(Policies Prohibiting Discrimination, Harassment and Retaliation)**

3 18. To the extent Plaintiff bases his Complaint on any theory of discrimination, harassment,  
4 or retaliation, any recovery on Plaintiff's Complaint, and each purported claim for relief alleged therein,  
5 is barred in whole or in part because, at all times relevant, Defendant had policies and practices in place  
6 to prevent discrimination, harassment, and retaliation in the workplace, and Plaintiff unreasonably failed  
7 to take advantage of any preventative or corrective opportunities provided by Defendant or to otherwise  
8 avoid any alleged harm. (*State Dept. of Health Servs. v. Superior Court (McGinnis)* (2000) 31 Cal.4th  
9 1026.)

10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 **(Failure to Use Ordinary Care)**

12 19. Any recovery on Plaintiff's Complaint, and each purported claim for relief alleged  
13 therein, is barred, in whole or in part, by California Labor Code sections 2854 and 2856 in that Plaintiff  
14 failed to use ordinary care and diligence in the performance of his duties and failed to comply substantially  
15 with the reasonable directions of his employer.

16 **TWENTIETH AFFIRMATIVE DEFENSE**

17 **(Contributory Fault)**

18 20. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein,  
19 is barred in whole or in part by Plaintiff's own contributory or comparative fault.

20 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

21 **(At-Will Employee)**

22 21. Defendant alleges that Plaintiff was, at all times during his employment with Defendant,  
23 an at-will employee.

24 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

25 **(Plaintiff Failed to Act in Good Faith)**

26 22. Any recovery on Plaintiff's Complaint, or any purported claim for relief alleged therein,  
27 is barred in that Plaintiff failed to act in good faith toward and deal fairly with Defendant so as to not  
28 deprive Defendant of or injure Defendant's right to receive the benefits of any alleged employment



1 relationship between Plaintiff and Defendant.

2 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

3 **(Res Judicata and Collateral Estoppel)**

4 23. To the extent discovery may disclose a factual basis for this defense, Defendant alleges  
5 that some or all of Plaintiff's claims are barred on grounds of res judicata and collateral estoppel.

6 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

7 **(No Proximate Cause)**

8 24. Any recovery on Plaintiff's Complaint, and each purported claim for relief alleged  
9 therein, is barred, in whole or in part, because injuries that Plaintiff alleges in his Complaint, and in each  
10 and every purported claim for relief alleged therein, if they exist at all, resulted from a cause not  
11 proximately caused by or related to any act or omission by Defendant.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 **(Equitable Doctrines)**

14 25. To the extent discovery may disclose a factual basis for this defense, Plaintiff's claims  
15 are barred, in whole or in part, by the doctrines of laches, estoppel, waiver, *in pari delicto*, and unclean  
16 hands.

17 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

18 **(No Protected Activity and No Nexus)**

19 26. Any recovery on Plaintiff's Complaint, and each purported cause of action alleged  
20 therein, is barred because Plaintiff did not engage in any protected activity, and there is no nexus between  
21 any alleged protected activity, and Defendant's alleged conduct.

22 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

23 **(No Notice or Complaint Regarding Discrimination, Harassment, or Retaliation)**

24 27. Plaintiff's claims for discrimination, harassment, and retaliation are barred because  
25 Defendant did not receive notice from Plaintiff that any employee or managing agent of Defendant had  
26 allegedly engaged in any discriminatory, harassing, or retaliatory actions against Plaintiff based upon his  
27 physical disability, mental disability, medical condition, age, or for any other reason and Plaintiff  
28 unreasonably failed to complain of any alleged unlawful conduct to take advantage of the preventative or

1 corrective opportunities available and/or otherwise avoid harm.

2 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

3 **(Good Faith Investigation)**

4 28. To the extent Plaintiff ever complained about or raised concerns regarding alleged  
5 conduct in violation of Defendant’s company policy against unlawful discrimination, harassment, or  
6 retaliation (which he did not), Defendant took reasonable steps to investigate and address such allegations  
7 or concerns.

8 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

9 **(Arbitration Agreement)**

10 29. Any recovery on Plaintiff’s Complaint, and each purported cause of action alleged therein,  
11 is barred in whole or in part because this Court lacks jurisdiction, and/or that Plaintiff’s claims are barred,  
12 because Plaintiff entered into an arbitration agreement with Defendant as it relates to the claims asserted  
13 by Plaintiff, and this matter must proceed to binding arbitration.

14 **THIRTIETH AFFIRMATIVE DEFENSE**

15 **(Attorney’s Fees and Costs)**

16 30. Defendant has engaged attorneys to represent it in defense of Plaintiff’s frivolous,  
17 unfounded, and unreasonable action, and Defendant is thereby entitled to an award of reasonable  
18 attorneys’ fees and costs pursuant to Government Code section 12965 upon judgment in its favor.

19 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

20 **(Additional Affirmative Defenses)**

21 31. As a separate and affirmative defense, Defendant alleges that Defendant presently has  
22 insufficient knowledge or information on which to form a belief as to whether it may have additional, as  
23 yet unstated, defenses available. Defendant reserves the right to assert additional defenses in the event  
24 discovery indicates they would be appropriate.

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1 WHEREFORE, Defendant prays for judgment as follows:

- 2 1. That Plaintiff take nothing by his Complaint;
- 3 2. That the Complaint be dismissed in its entirety with prejudice;
- 4 3. That Plaintiff be denied each and every demand and prayer for relief contained in the
- 5 Complaint;
- 6 4. For costs of suit incurred herein, including reasonable attorney's fees pursuant to California
- 7 Government Code section 12965; and
- 8 5. For such other and further relief as the Court may deem just and proper.
- 9

10 DATED: August 17, 2022

JACKSON LEWIS P.C.



11

12 By: \_\_\_\_\_

13 Adrienne L. Conrad  
14 Jaclyn M. Reinhart  
15 Raina Sharma  
16 Attorneys for Defendants  
17 NBC UNIVERSAL MEDIA, LLC (erroneously  
18 sued as NBC Universal) and  
19 GREG DAWSON

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4864-2594-8972, v. 4

SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO		COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Adrienne L. Conrad (SBN 318776) Jaclyn M. Reinhart (SBN 317622) Raina Sharma (SBN 334237) JACKSON LEWIS P.C. 225 Broadway, Suite 2000 San Diego, California 92101 Adrienne.conrad@jacksonlewis.com; Jaclyn.reinhart@jacksonlewis.com; raina.sharma@jacksonlewis.com	Telephone No. Tel: 619.573.4900 Fax: 619.573.4901	
SHORT CASE TITLE Dorian Hargrove v. NBC Universal, et al.		JUDGE: Timothy B. Taylor DEPT.: C-72
ATTORNEYS FOR DEFENDANTS NBC Universal Media, LLC and Greg Dawson		Case No.: 37-2022-00021527-CU-OE-CTL

## PROOF OF SERVICE

I, the undersigned, am over 18 years of age, employed in the County of San Diego, California, in which the within-mentioned service occurred; and that I am not a party to the subject cause of action. My business address is 225 Broadway, Suite 2000, San Diego, California 92101. On August 17, 2022, I served the following documents:

### ANSWER FILED ON BEHALF OF DEFENDANT NBCUNIVERSAL MEDIA, LLC TO PLAINTIFF DORIAN HARGROVE'S UNVERIFIED COMPLAINT FOR DAMAGES

#### **Counsel for Plaintiff**

Marlea F. Dell'Anno  
Dell'Anno Law Firm, APC  
9844 Scripps Ranch Blvd., #314  
San Diego, CA 92101  
Tel: (619) 302-5711  
Fax: (619) 924-3624  
Email: [mfd@dellannolaw.com](mailto:mfd@dellannolaw.com)

- BY ELECTRONIC SERVICE.** Pursuant to San Diego County Superior Court General Order No. 010121-22(A), and Cal. Rules of Court, rule 2.251(c), I served the document(s) listed above via electronic mail (e-mail) to the electronic notification address(es) set forth above on this date. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- BY U.S. MAIL.** I placed or caused to be placed, the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Diego, addressed as set forth above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 17, 2022

---

Cheri Haynes  
Cheri.haynes@jacksonlewis.com

1 Noah J. Woods, Bar No. 264823  
nwoods@littler.com  
2 LITTLER MENDELSON, P.C.  
501 W. Broadway, Suite 900  
3 San Diego, California 92101.3577  
Telephone: 619.232.0441  
4 Fax No.: 619.232.4302

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**08/22/2022** at 04:59:00 PM  
Clerk of the Superior Court  
By Melinda McClure, Deputy Clerk

5 Attorneys for Defendant  
CHUCK WESTERHEIDE  
6

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10 DORIAN HARGROVE,  
11 Plaintiff,

12 v.

13 NBC UNIVERSAL, a public corporation; GREG  
14 DAWSON, an individual; CHUCK  
15 WESTERHEIDE, an individual; and DOES 1-10,  
inclusive,

16 Defendants.

Case No. 37-2022-00021527-CU-OE-CTL

ASSIGNED FOR ALL PURPOSES TO HON.  
TIMOTHY TAYLOR, DEPT. C-72

**ANSWER FILED ON BEHALF OF  
DEFENDANT CHUCK WESTERHEIDE  
TO PLAINTIFF DORIAN HARGROVE'S  
UNVERIFIED COMPLAINT FOR  
DAMAGES**

Trial Date: Not Yet Set  
Complaint Filed: June 6, 2022

1 TO THE HONORABLE COURT, PLAINTIFF DORIAN HARGROVE, AND TO HIS  
2 ATTORNEYS OF RECORD:

3 Defendant CHUCK WESTERHEIDE (“Defendant”), on behalf of himself and for no other  
4 defendant, hereby responds to the First and Second Causes of Action in Plaintiff DORIAN  
5 HARGROVE’s (“Plaintiff”) unverified Complaint for Damages (“Complaint”), which are the only  
6 causes of action brought against him, and the General Allegations in support of those causes of action,  
7 as follows:

8 **GENERAL DENIAL**

9 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant generally and  
10 specifically denies each and every allegation contained in the Complaint, and each cause of action in  
11 said Complaint, and denies that Plaintiff has been damaged in any sum, or at all, by reason of any act  
12 or omission on the part of Defendant.

13 **AFFIRMATIVE DEFENSES**

14 As separate and distinct affirmative defenses to Plaintiff’s Complaint and the causes of action  
15 alleged therein, and to each of them, Defendant alleges as follows:

16 **FIRST AFFIRMATIVE DEFENSE**

17 **(Failure to State a Cause of Action)**

18 1. The Complaint as a whole, and each purported cause of action alleged therein, fails to  
19 state facts sufficient to constitute a cause of action against Defendant upon which relief may be  
20 granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 **(No Entitlement to Punitive Damages)**

23 2. Plaintiff is precluded from recovering exemplary or punitive damages from Defendant  
24 under the applicable provisions of law. Specifically, California Civil Code section 3294 precludes  
25 Plaintiff from recovering exemplary or punitive damages because Plaintiff has failed to plead and  
26 cannot establish facts sufficient to support allegations of malice, oppression, fraud, or despicable  
27 conduct.

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**THIRD AFFIRMATIVE DEFENSE**

**(Punitive Damages Unconstitutional)**

3. Although Defendant denies that it has committed or has responsibility for any act that could support the recovery of punitive damages in this lawsuit, if any, to the extent any such act is found, recovery of punitive damages against Defendant is unconstitutional under numerous provisions of the United States Constitution and the California Constitution.

**FOURTH AFFIRMATIVE DEFENSE**

**(Managerial Immunity)**

4. Any injuries Plaintiff allegedly sustained as a result of any action by Defendant are barred by the doctrine of managerial immunity.

**FIFTH AFFIRMATIVE DEFENSE**

**(Failure to Comply with Conditions Precedent)**

5. To the extent discovery may disclose a factual basis for this defense, Plaintiff’s claims are barred, in whole or in part, because Plaintiff has failed to comply with the necessary conditions precedent for bringing this action, including, but not limited to, compliance with any and all applicable state or federal laws.

**SIXTH AFFIRMATIVE DEFENSE**

**(Administrative Exhaustion)**

6. To the extent discovery may disclose a factual basis for this defense, Plaintiff’s claims are barred, in whole or in part, because Plaintiff failed to exhaust the administrative remedies required under any and all applicable state and/or federal laws, including, but not limited to, the California Fair Employment and Housing Act (FEHA) and California Government Code sections 12960 and 12965.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Statutes of Limitation)**

7. To the extent discovery may disclose a factual basis for this defense, Plaintiff’s claims are barred, in whole or in part, by the applicable statute of limitations including, but not limited to, California Code of Civil Procedure sections 338 and 340(a) and California Government Code sections 12960 and 12965.

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**EIGHTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate Damages)**

8. To the extent discovery may disclose a factual basis for this defense, Plaintiff is barred from recovering any damages, or any recovery must be reduced, by virtue of Plaintiff’s failure to exercise reasonable diligence to mitigate his alleged damages.

**NINTH AFFIRMATIVE DEFENSE**

**(Offset)**

9. Any recovery on Plaintiff’s Complaint, or any purported cause of action alleged therein, is barred in whole or in part because Defendant is entitled to an offset for any monies Plaintiff received from any source after Plaintiff ceased to be employed by Defendant under the doctrine prohibiting double recovery set forth by *Witt v. Jackson* (1961) 57 Cal.2d 57 and its progeny.

**TENTH AFFIRMATIVE DEFENSE**

**(After Acquired Evidence)**

10. To the extent discovery may disclose information which could serve as a basis for the termination of Plaintiff’s employment, Plaintiff is barred from recovery by the after-acquired evidence doctrine.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Avoidable Consequences)**

11. Plaintiff’s allegations of discrimination and harassment are barred, or any recovery of damages is precluded, because Plaintiff unreasonably failed to take advantage of available preventive or corrective opportunities or to avoid harm otherwise. (*State Dept. of Health Servs. v. Superior Court of Sacramento County* (2000) 31 Cal.4th 1026.)

**TWELFTH AFFIRMATIVE DEFENSE**

**(Exercise of Reasonable Care)**

12. Any recovery on Plaintiff’s Complaint, or any purported cause of action alleged therein, is barred in whole or in part because Defendant exercised reasonable care to prevent and correct promptly any alleged harassing or discriminatory behavior.

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**THIRTEENTH AFFIRMATIVE DEFENSE**

**(No Discrimination or Harassment)**

13. Defendant did not discriminate against or harass Plaintiff on the basis of his physical disability, mental disability, medical condition, age, and/or any other unlawful grounds.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Privileged, Good Faith, & Justified Conduct)**

14. Any recovery on Plaintiff’s Complaint is barred because Defendant’s conduct was privileged and/or justified under California law and for valid business reasons. Any and all conduct of which Plaintiff complains and that is attributed to Defendant was a just and proper exercise of Defendant’s discretion and was undertaken for a fair and honest reason regulated by good faith and probable cause under the circumstances existing at all times mentioned in Plaintiff’s Complaint.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Legitimate Business Justification)**

15. Any recovery on Plaintiff’s Complaint, or any purported cause of action alleged therein, is barred because, assuming arguendo that discriminatory reasons had been a motivating factor in any employment decisions toward Plaintiff, Defendant would have made the same employment decisions toward Plaintiff in any case for legitimate, non-discriminatory business reasons.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Mixed Motive Defense)**

16. Recovery on Plaintiff’s Complaint, or any purported cause of action alleged therein, is barred because, assuming arguendo that discriminatory reasons had been a substantial motivating factor in any employment decisions toward Plaintiff, legitimate, non-discriminatory business reasons were also substantial motivating factors for taking any such adverse employment action against Plaintiff, and Defendant would have made the same employment decisions toward Plaintiff without any regard for any prohibited or unlawful factor. Therefore, Plaintiff is not entitled to reinstatement, back pay, or damages.

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1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 **(Failure to Perform Responsibilities)**

3 17. Any recovery on Plaintiff’s Complaint, or any purported cause of action alleged  
4 therein, is barred by Plaintiff’s failure to satisfactorily perform his job responsibilities and otherwise  
5 conduct himself in accordance with the standards and policies of Defendant.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7 **(Policies Prohibiting Discrimination, Harassment and Retaliation)**

8 18. To the extent Plaintiff bases his Complaint on any theory of discrimination or  
9 harassment, any recovery on Plaintiff’s Complaint, and each purported claim for relief alleged therein,  
10 is barred in whole or in part because at all times relevant, Defendant NBC Universal (“NBC”) had  
11 policies and practices in place to prevent discrimination and harassment in the workplace, and Plaintiff  
12 unreasonably failed to take advantage of any preventative or corrective opportunities provided by NBC  
13 or to otherwise avoid any alleged harm. (*State Dept. of Health Servs. v. Superior Court (McGinnis)*  
14 (2000) 31 Cal.4th 1026.)

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 **(Failure to Use Ordinary Care)**

17 19. Any recovery on Plaintiff’s Complaint, and each purported claim for relief alleged  
18 therein, is barred, in whole or in part, by California Labor Code sections 2854 and 2856 in that Plaintiff  
19 failed to use ordinary care and diligence in the performance of his duties and failed to comply  
20 substantially with the reasonable directions of his employer.

21 **TWENTIETH AFFIRMATIVE DEFENSE**

22 **(Contributory Fault)**

23 20. Any recovery on Plaintiff’s Complaint, or any purported cause of action alleged  
24 therein, is barred in whole or in part by Plaintiff’s own contributory or comparative fault.

25 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

26 **(At-Will Employee)**

27 21. Defendant alleges that Plaintiff was, at all times during his employment with NBC, an  
28 at-will employee.

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 **(Res Judicata and Collateral Estoppel)**

3 22. To the extent discovery may disclose a factual basis for this defense, Defendant alleges  
4 that some or all of Plaintiff's claims are barred on grounds of res judicata and collateral estoppel.

5 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

6 **(No Proximate Cause)**

7 23. Any recovery on Plaintiff's Complaint, and each purported claim for relief alleged  
8 therein, is barred, in whole or in part, because injuries that Plaintiff alleges in his Complaint, and in  
9 each and every purported claim for relief alleged therein, if they exist at all, resulted from a cause not  
10 proximately caused by or related to any act or omission by Defendant.

11 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

12 **(Equitable Doctrines)**

13 24. To the extent discovery may disclose a factual basis for this defense, Plaintiff's claims  
14 are barred, in whole or in part, by the doctrines of laches, estoppel, waiver, in *pari delicto*, and unclean  
15 hands.

16 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

17 **(No Protected Activity and No Nexus)**

18 25. Any recovery on Plaintiff's Complaint, and each purported cause of action alleged  
19 therein, is barred because Plaintiff did not engage in any protected activity, and there is no nexus  
20 between any alleged protected activity, and Defendant's alleged conduct.

21 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

22 **(No Notice or Complaint Regarding Discrimination or Harassment)**

23 26. Plaintiff's claims for discrimination, harassment, and retaliation are barred because  
24 Defendant NBC did not receive notice from Plaintiff that any employee or managing agent of  
25 Defendant had allegedly engaged in any discriminatory, harassing, or retaliatory actions against  
26 Plaintiff based upon his physical disability, mental disability, medical condition, age, or for any other  
27 reason and Plaintiff unreasonably failed to complain of any alleged unlawful conduct to take advantage  
28 of the preventative or corrective opportunities available and/or otherwise avoid harm.

1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 **(Arbitration Agreement)**

3 27. Any recovery on Plaintiff’s Complaint, and each purported cause of action alleged  
4 therein, is barred in whole or in part because this Court lacks jurisdiction, and/or that Plaintiff’s claims  
5 are barred, because Plaintiff entered into an arbitration agreement with Defendant NBC as it relates to  
6 the claims asserted by Plaintiff, and this matter must proceed to binding arbitration.

7 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

8 **(Attorney’s Fees and Costs)**

9 28. Defendant has engaged attorneys to represent it in defense of Plaintiff’s frivolous,  
10 unfounded, and unreasonable action, and Defendant is thereby entitled to an award of reasonable  
11 attorneys’ fees and costs pursuant to Government Code section 12965 upon judgment in its favor.

12 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

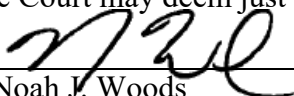
13 **(Additional Affirmative Defenses)**

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15 insufficient knowledge or information on which to form a belief as to whether it may have additional,  
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- 20 2. That the Complaint be dismissed in its entirety with prejudice;
- 21 3. That Plaintiff be denied each and every demand and prayer for relief contained in the  
22 Complaint;
- 23 4. For costs of suit incurred herein, including reasonable attorney’s fees pursuant to  
24 California Government Code section 12965; and
- 25 5. For such other and further relief as the Court may deem just and proper.

26 Dated: August 22, 2022

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 28 \_\_\_\_\_  
 Noah J. Woods  
 LITTLER MENDELSON, P.C.  
 Attorneys for Defendant  
 CHUCK WESTERHEIDE

4891-6472-7855.1 / 117170-1001