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6 Attorneys for Defendant JOSE HUIZAR

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

10
11 PAULINE MEDINA,

12 Plaintiff,

13 vs.

14 JOSE HUIZAR, an individual; CITY OF LOS
ANGELES, a municipality; and DOES 1-10,
15 inclusive,

16 Defendants.

Case No. 18STCV03011

[Assigned for All Purposes to:
Hon. Barbara A. Meiers, Dept. 12]

**DEFENDANT JOSE HUIZAR'S ANSWER
TO PLAINTIFF'S COMPLAINT**

Action Filed: October 31, 2018
Trial Date: None Set

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19 Defendant JOSE HUIZAR hereby responds to the verified Complaint of Plaintiff PAULINE
20 MEDINA ("Plaintiff") and admits, denies and otherwise pleads as follows:

21 **GENERAL DENIAL**

22 Pursuant to the provisions of Code of Civil Procedure sections 431.30 and 466, Defendant
23 denies generally and specifically each and every material allegation contained in the Complaint, and
24 responds only to the Sixth and Seventh Causes of Action, as those are the only two alleged against
25 this Answering Defendant. Defendant specifically denies that Plaintiff has been injured in any sum
26 therein alleged, or at all, and that Plaintiff is entitled to the relief sought in his Complaint, or to any
27 other relief.

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FIRST AFFIRMATIVE DEFENSE

[Failure to State Facts]

1. The Complaint fails to state facts sufficient to constitute a cause of action or claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

[Not Severe or Pervasive]

2. The conduct complained of was not severe or pervasive.

THIRD AFFIRMATIVE DEFENSE

[Failure to Exhaust Administrative Remedy]

3. The Complaint is barred, in whole or in part, by failure to exhaust prerequisite administrative, statutory and/or judicial remedies.

FOURTH AFFIRMATIVE DEFENSE

[No Liability for Aiding or Abetting]

4. This Answering Defendant cannot be liable on an aiding and abetting theory as a matter of law. *Fiol v. Doellstadt* (1996) 50 Cal.App.4th 1318.

FIFTH AFFIRMATIVE DEFENSE

[Estoppel]

5. This answering Defendant believes that after an appropriate amount of discovery, any recovery on Plaintiff's claim is barred by Plaintiff's own conduct.

SIXTH AFFIRMATIVE DEFENSE

[Proximate Cause]

6. Any act or failure to act by Answering Defendant was not the proximate cause of any injuries allegedly suffered by Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

[No Intent to Injure]

7. Any recovery on the Complaint or portions thereof is barred by the fact that there was no intent to injure Plaintiff.

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EIGHTH AFFIRMATIVE DEFENSE

[Unclean Hands]

8. This Answering Defendant believes that after an appropriate amount of discovery, it will be able to establish them that any recovery on the Complaint is barred, in whole or in part, by Plaintiff's unclean hands.

NINTH AFFIRMATIVE DEFENSE

[No Malice, Oppression, or Fraud]

9. Any acts or omissions to act, were not the result of oppression, fraud or malice as such terms are defined by Cal. Civil Code § 3294.

TENTH AFFIRMATIVE DEFENSE

[No Severe Emotional Distress]

10. Defendant believes that after reasonable discovery, he will be able to show that Plaintiff suffered no severe emotional distress.

ELEVENTH AFFIRMATIVE DEFENSE

[Statute of Limitations]

11. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part by the applicable statutes of limitations, including, but not limited to, California Code of Civil Procedure §§ 340 and 335.1 and California Government Code §§ 911.2, 12960 and 12965.

TWELFTH AFFIRMATIVE DEFENSE

[Managerial]

12. All actions taken by Defendant were business or personnel management decisions and thus, not actionable.

THIRTEENTH AFFIRMATIVE DEFENSE

[After Acquired Evidence]

13. Defendant alleges that this action may be barred and/or Defendant's liability may be limited by after acquired evidence of Plaintiff's conduct or misconduct.

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FOURTEENTH AFFIRMATIVE DEFENSE

[No Duty]

14. This Answering Defendant owed no duty to Plaintiff.

FIFTEENTH AFFIRMATIVE DEFENSE

[Failure to File Timely Administrative Complaint]

15. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that Plaintiff has failed to file a timely complaint pursuant to California Government Code § 12960(d) and the California Tort Claims Act pursuant to Government Code §§810-996.6.

SIXTEENTH AFFIRMATIVE DEFENSE

[Failure to Exhaust Internal Procedures]

16. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that Plaintiff failed to exhaust the internal procedures that were available to resolve the claims alleged therein.

SEVENTEENTH AFFIRMATIVE DEFENSE

[Immunity for Discretionary Acts]

17. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that neither a public entity nor a public employee is liable for any injury resulting from his or her act or omission which was the result of the exercise of the discretion vested in them pursuant to California Government Code §§ 815(b), 815.2(b), 815.3, 818.2, 818.8, 820.2, 820.4, 820.6, 920.8, 821, 821.6, and 822.2, and Civil Code § 47.

EIGHTEENTH AFFIRMATIVE DEFENSE

[Performance of Official Duty]

18. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that it is presumed that the official duty has been regularly performed by Defendant Jose Huizar in the absence of contrary proof pursuant to California Evidence Code § 664.

NINETEENTH AFFIRMATIVE DEFENSE

[Avoidable Consequences Doctrine]

19. Without admitting that Plaintiff has sustained any damages or detriment, or that

1 Defendant Jose Huizar is liable to Plaintiff in any manner whatsoever, Defendant Jose Huizar is
2 informed and believes and thereon alleges that Plaintiff unreasonably failed to take advantage of
3 preventative and corrective opportunities, thereby precluding and/or limiting Plaintiff's recovery,
4 if any, and further, that Defendant Jose Huizar exercised reasonable care to preclude and correct
5 the behavior complained of by Plaintiff, if any.

6 **TWENTIETH AFFIRMATIVE DEFENSE**

7 **[Frivolous Claims]**

8 20. Plaintiff's Complaint, and each cause of action set forth therein, are frivolous and
9 known by Plaintiff to be frivolous and without foundation in fact or law. Defendant Jose Huizar is
10 informed and believes and thereon alleges that this lawsuit is being pursued in bad faith for
11 vexatious reasons for the purpose of harassing Defendant Jose Huizar. Accordingly Defendant,
12 Jose Huizar is entitled to attorney's fees and other appropriate costs and expenses.

13 WHEREFORE, Defendant JOSE HUIZAR prays that:

- 14 1. Plaintiff take nothing by way of her Complaint;
- 15 2. That judgment be in favor of Defendant;
- 16 3. Defendant be awarded attorneys' fees and costs of suit incurred herein; and
- 17 4. For such other and further relief as the court deems just and proper.

18
19 DATED: January 3, 2019

BALLARD ROSENBERG GOLPER & SAVITT, LLP

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21 By: Linda Miller Savitt
22 LINDA MILLER SAVITT
23 JAMES H. DEMERJIAN
24 Attorneys for Defendant JOSE HUIZAR
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PROOF OF SERVICE

**Medina v. Huizar, et al.
LASC Case No. 18STCV03011**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 15760 Ventura Boulevard, Eighteenth Floor, Encino, CA 91436.

On January 4, 2019, I served true copies of the following document(s) described as **DEFENDANT JOSE HUIZAR'S ANSWER TO PLAINTIFF'S COMPLAINT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

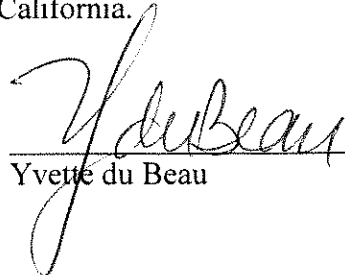
BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List. I am "readily familiar" with Ballard Rosenberg Golper & Savitt, LLP's practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Encino, California, on that same day following ordinary business practices.

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

BY PERSONAL SERVICE: I personally delivered the document(s) to the person at the addresses listed in the Service List. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

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

Executed on January 4, 2019, at Encino, California.



Yvette du Beau

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SERVICE LIST
Medina v. Huizar, et al.
18STCV03011

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