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FILED
CLERK OF SUPERIOR COURT
CENTRAL JUDICIAL DISTRICT

2018 JUN 22 A 10:47

JUN 22 '18 AM 10:21
CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

5 Attorneys for Defendant CITY OF LEMON GROVE
6
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10 **CENTRAL JUDICIAL DISTRICT**

11 CHRISTOPHER WILLIAMS,
12 Plaintiff,

13 vs.

14 DAVID ARAMBULA; CITY OF LEMON
GROVE; and DOES 1 through 1,000,
15 Defendants.

) CASE NO.: 37-2018-00023369-CU-
PO-CTL

) DEFENDANT CITY OF LEMON
GROVE'S ANSWER TO
COMPLAINT

) *IMAGED FILED*

) Action Filed: May 11, 2018
Trial Date: None Set

16
17 COMES NOW Defendant, CITY OF LEMON GROVE, and answers the Complaint of
18 Plaintiff, CHRISTOPHER WILLIAMS, on file herein as follows:

19 **I.**

20 **GENERAL DENIAL**

21 Pursuant to the provisions of Section 431.30 of the California Code of Civil Procedure, this
22 answering Defendant denies generally and specifically each, every and all of the allegations in said
23 Complaint, and the whole thereof, including each and every purported cause of action contained
24 therein. This answering Defendant further denies that Plaintiff has or will sustain damages in the
25 amount alleged or in any amount whatsoever.

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ANSWER TO COMPLAINT

1 II.

2 **AFFIRMATIVE DEFENSES**

3 **AS AND FOR A FIRST, SEPARATE AND AFFIRMATIVE**
4 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
5 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

6 **CONTRIBUTORY NEGLIGENCE OF PLAINTIFF**

7 That at all times and places set forth in the Complaint, Plaintiff failed to exercise ordinary
8 care on his own behalf, which negligence and carelessness was a proximate cause of some portion,
9 up to and including the whole thereof, of the injuries and damages complained of in this action.
10 Plaintiff's recovery therefore against this answering Defendant should be barred or reduced
11 according to principles of comparative negligence.

12 **AS AND FOR A SECOND, SEPARATE AND AFFIRMATIVE**
13 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
14 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

15 **COMPARATIVE FAULT OF CO-DEFENDANTS**

16 At all times and places set forth in the Complaint, parties Defendant, other than this
17 answering Defendant, failed to exercise ordinary care on their own behalf, which negligence and
18 carelessness was a proximate cause of some portion, up to and including the whole thereof, of the
19 injuries and damages complained of by Plaintiff in this action. The fault, if any, of this answering
20 Defendant should be compared with the fault of the other Defendants and damages, if any, should
21 be apportioned among the Defendants in direct relation to each Defendant's comparative fault. This
22 answering Defendant should be obligated to pay only such damages, if any, which are directly
23 attributable to her percentage of comparative fault. To require this answering Defendant to pay any
24 more than her percentage of comparative fault violates the equal protection and due process clauses
25 of the Constitution of the United States and the Constitution of the State of California.

26 **AS AND FOR A THIRD, SEPARATE AND AFFIRMATIVE**
27 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
28 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

NEGLIGENCE ON THE PART OF THIRD PARTIES

That any injuries or damages which may have been sustained by Plaintiff were the proximate
result of the negligence of third parties. For this reason, if Plaintiff has been damaged, aside from

1 any reduction of damages attributable to his own negligence, the damages must be apportioned
2 among the parties to this action in proportion to their respective degrees of fault.

3 **AS AND FOR A FOURTH, SEPARATE AND AFFIRMATIVE**
4 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
5 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

6 **NEGLIGENCE OF PLAINTIFF'S EMPLOYER (Witt v. Jackson)**

7 That at all times and places set forth in the Complaint, Plaintiff was working in the course
8 and scope of his employment and said company was insured as required under the Workers
9 Compensation Act. As a result of his injuries, Plaintiff received benefits pursuant to the Workers
10 Compensation scheme. To the extent Plaintiff's employer failed to exercise ordinary care on
11 Plaintiff's behalf, allowed an unsafe place to exist in which Plaintiff was required to work or
12 otherwise created conditions such as to create a peculiar risk of harm to Plaintiff, the sole or
13 concurrent negligence of Plaintiff's employer and co-workers, entitles Defendant herein to a
14 reduction in any judgment against her in direct proportion to the comparative fault of said employer
15 up to and including the entire amount of such benefits paid on behalf of Plaintiff.

16 **AS AND FOR A FIFTH, SEPARATE AND AFFIRMATIVE**
17 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
18 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

19 **STATUTES OF LIMITATION**

20 That as against this answering Defendant, Plaintiff's action is barred by the provisions of
21 sections 335.1, 337, 338, and 339 of the California Code of Civil Procedure, and any other
22 applicable statutes of limitations.

23 **AS AND FOR A SIXTH, SEPARATE AND AFFIRMATIVE**
24 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
25 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

26 **ASSUMPTION OF RISK**

27 That the perils or dangers, if any, existing at the time of Plaintiff's alleged injuries, if any,
28 were open and obvious and known to Plaintiff who nevertheless conducted himself in such a manner
so as to expose himself to said perils and dangers, if any, and by so doing, assumed all the risks
attendant thereto.

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1 **AS AND FOR A SEVENTH, SEPARATE AND AFFIRMATIVE**
2 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
3 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

4 **IMPLIED ASSUMPTION OF RISK**

5 Prior to the event in which the Plaintiff was allegedly injured as a result of Defendant's
6 negligence, the Plaintiff by his conduct impliedly assumed the risk of a known and appreciated
7 danger, and thus may not recover damages from Defendant for that injury.

8 **AS AND FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE**
9 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
10 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

11 **FAILURE TO MITIGATE**

12 The Plaintiff has failed to exercise reasonable care and diligence to avoid loss and to
13 minimize damages and, therefore, Plaintiff may not recover for losses which could have been
14 prevented by reasonable efforts on his own part, or by expenditures that might reasonably have been
15 made. Therefore, Plaintiff's recovery, if any, should be reduced by the failure of the Plaintiff to
16 mitigate his damages.

17 **AS AND FOR A NINTH, SEPARATE AND AFFIRMATIVE**
18 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
19 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

20 **EXCLUSIVE REMEDY RULE**

21 Pursuant to Labor Code §3601 and §3602, Plaintiff is barred from recovering from this
22 answering Defendant under the worker's compensation exclusive remedy rule. Furthermore, the
23 Court lacks jurisdiction over this matter due to the exclusive remedy rule and the assertion made by
24 Plaintiff that he was an employee of this Defendant.

25 **AS AND FOR A TENTH, SEPARATE AND AFFIRMATIVE**
26 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
27 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

28 **NOT RESPONSIBLE FOR ACTS OF DOES**

This answering Defendant is not legally responsible for the acts and/or omissions of those
defendants named herein as DOES 1 through 1,000.

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1 **AS AND FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE**
2 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
3 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

4 **FAILURE TO STATE A CAUSE OF ACTION**

5 The Complaint and every purported cause of action therein fails to set forth facts sufficient
6 to state a cause of action.

7 **AS AND FOR A TWELFTH, SEPARATE AND AFFIRMATIVE**
8 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
9 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

10 **NO CONSENT**

11 That at no time mentioned herein did this answering Defendant consent to accept any
12 responsibility, in any manner whatsoever, for intentional acts of Co-Defendants.

13 **AS AND FOR A THIRTEENTH, SEPARATE AND AFFIRMATIVE**
14 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
15 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

16 **ESTOPPEL**

17 The Plaintiff has engaged in conduct with respect to the activities and/or property which are
18 the subject of the Complaint, and by reason of said activities and conduct, is estopped from asserting
19 any claim or damages or seeking any other relief against this answering Defendant.

20 **AS AND FOR A FOURTEENTH, SEPARATE AND AFFIRMATIVE**
21 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
22 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

23 **WAIVER**

24 The Plaintiff has engaged in conduct and activities sufficient to constitute a waiver of any
25 alleged breach of contract, negligence or any other conduct, if any, as set forth in the Complaint.

26 **AS AND FOR A FIFTEENTH, SEPARATE AND AFFIRMATIVE**
27 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
28 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

LACHES

Due to its tardiness in asserting its purported right to recover, Plaintiff's claim should be
barred by the equitable doctrine of laches.

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1 **AS AND FOR A SIXTEENTH, SEPARATE AND AFFIRMATIVE**
2 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
3 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

4 **UNCLEAN HANDS**

5 By virtue of Plaintiff's unlawful, immoral, careless, negligent and other wrongful conduct,
6 Plaintiff should be barred from recovering against this answering Defendant by the equitable
7 doctrine of unclean hands.

8 **AS AND FOR A SEVENTEENTH, SEPARATE AND AFFIRMATIVE**
9 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
10 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

11 **PUBLIC ENTITY -- LIABILITY BY STATUTE ONLY**

12 Pursuant to the provisions of Government Code Section 815, neither an employee of a public
13 entity or a public entity is liable for any injury, whether such public employee, or any other person,
14 unless there is express statutory liability for the said act or omission. Any such statutory liability
15 is subject to any statutorily-provided immunity of the public entity, and is further subject to any
16 defenses that would be available to the public entity if it were a private person.

17 **AS AND FOR AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE**
18 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
19 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

20 **DISCRETIONARY IMMUNITY (ENTITY)**

21 Pursuant to the provisions of Government Code Sections 820.2 and 815.2(b), a public entity
22 is not liable for any injury resulting from the act or omission of its employee where the act or
23 omission was a result of the exercise of the discretion vested in that public employee, whether or
24 not such discretion was abused.

25 **AS AND FOR A NINETEENTH, SEPARATE AND AFFIRMATIVE**
26 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
27 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

28 **PUBLIC ENTITY IMMUNE WHERE EMPLOYEE IS IMMUNE**

Pursuant to the provisions of Government Code Section 815.2(b), a public entity is not liable
for any injury resulting from an act or omission of an employee of the public entity where the
employee is immune from liability.

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1 **AS AND FOR A TWENTIETH, SEPARATE AND AFFIRMATIVE**
2 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
3 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

4 **INDEPENDENT CONTRACTOR IMMUNITY**

5 Pursuant to the provisions of Government Code Section 815.4, a public entity is not liable
6 for any injury resulting from the act or omission of an independent contractor of the public entity
7 if the public entity would not have been liable for the injury had the act or omission been that of an
8 employee of the public entity.

9 **AS AND FOR A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE**
10 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
11 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

12 **IMMUNITY FOR ACTS OF OTHERS**

13 Pursuant to Government Code Sections 820.8 and 815.2(b) neither a public entity nor a
14 public employee is liable for an injury caused by the act or omission of another person.

15 **AS AND FOR A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE**
16 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
17 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

18 **ENFORCEMENT IMMUNITY**

19 Pursuant to the provisions to Government Code Section 818.2, a public entity is not liable
20 for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.

21 **AS AND FOR A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE**
22 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
23 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

24 **LICENSING IMMUNITY**

25 Pursuant to Government Code Section 818.4, a public entity is not liable for an injury caused
26 by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny,
27 suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where
28 the public entity or an employee of the public entity is authorized by enactment to determine
whether or not such authorization should be issued, denied, suspended or revoked.

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1 **AS AND FOR A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE**
2 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
3 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

4 **IMMUNITY FROM PUNITIVE DAMAGES (ENTITY)**

5 The Plaintiff herein is barred from any recovery of punitive or exemplary damages from the
6 herein answering Defendant public entity in that said defendant, as a public entity, is immune from
7 liability for such damages, pursuant to the provisions of Government Code Section 818.

8 **AS AND FOR A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE**
9 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
10 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

11 **UNTIMELY FILING AFTER CLAIMS REJECTION**

12 Pursuant to Section 945.6 of the Government Code, Plaintiff is barred from recovering
13 damages for claims and causes of actions not submitted timely.

14 **AS AND FOR A TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE**
15 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
16 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

17 **FAILURE TO PRESENT CLAIM**

18 Plaintiff has failed to comply with the provisions of Government Code Section 945.4 in that
19 he failed to file a timely claim with Defendant CITY OF LEMON GROVE.

20 **AS AND FOR A TWENTY-SEVENTH, SEPARATE AND AFFIRMATIVE**
21 **DEFENSE, THIS ANSWERING DEFENDANT IS INFORMED**
22 **AND BELIEVES AND THEREON ALLEGES AS FOLLOWS:**

23 **RIGHT TO ASSERT ADDITIONAL AFFIRMATIVE DEFENSES**

24 This answering Defendant presently has insufficient knowledge or information upon which
25 to form a belief as to whether she may have additional, as-yet unstated, affirmative defenses. This
26 answering Defendant reserves herein the right to assert additional affirmative defenses in the event
27 discovery indicates to do so would be appropriate.

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1 WHEREFORE, this answering Defendant prays that Plaintiff take nothing by way of his
2 Complaint on file herein, that judgment be entered in the within action in favor of this answering
3 Defendant and against the Plaintiff upon the issues of the Complaint, together with an award to this
4 Defendant of attorneys' fees and costs of suit herein incurred, and such other and further relief as
5 the Court deems just.

6
7 Dated: June 20, 2018

HORTON, OBERRECHT, KIRKPATRICK & MARTHA

8 By:  _____

9 Kimberly S. Oberrecht,
10 Heidi K. Williams,
11 Attorneys for Defendant CITY OF LEMON
12 GROVE
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1 Kimberly S. Oberrecht [C.S.B. No. 190794]
2 Heidi K. Williams [C.S.B. No. 297428]
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6 (619) 232-1183 * (619) 696-5719 [facsimile]

RECEIVED BUSINESS OFFICE 9
COURT DIVISION
JUN 22 10:22 AM '18
A 10:48
CLERK SUPERIOR COURT
SAN DIEGO COUNTY, CA

Attorneys for Defendant CITY OF LEMON GROVE

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10 **CENTRAL JUDICIAL DISTRICT**

11 CHRISTOPHER WILLIAMS,)	CASE NO.: 37-2018-00023369-CU-
12 Plaintiff,)	PO-CTL
13 vs.)	DECLARATION OF PROOF OF
14 DAVID ARAMBULA; CITY OF LEMON)	SERVICE
14 GROVE; and DOES 1 through 1,000,)	IMAGED FILED
15 Defendants.)	

17 I am employed in the County of San Diego, State of California. I am over the age of eighteen years
18 and am not a party to the within entitled action; my business address is 225 Broadway, Suite 2200,
San Diego, California 92101.

19 On **June 21, 2018**, I served the following documents:

20 **DEFENDANT CITY OF LEMON GROVE'S ANSWER TO COMPLAINT**

21 on all interested parties in this action by placing the true copies thereof to be delivered as listed
22 below:

23 Cory J. Briggs, Esq.
24 Anthony N. Kim, Esq.
25 BRIGGS LAW CORPORATION
26 99 "C" Street, Suite 111
Upland, CA 91786
Tel: (909) 949-7115; Fax: (909) 949-7121
Attorney for Plaintiff CHRISTOPHER WILLIAMS

27 **BY MAIL:** I enclosed the documents in a sealed envelope or package addressed to the
28 persons listed on the attached service list. I placed the envelope for collection and mailing,
following our ordinary business practices. I am readily familiar with this business's practice for
collecting and processing correspondence for mailing. On the same day that correspondence is

1 placed for collection and mailing, it is deposited in the ordinary course of business with the United
2 States Postal Service, in a sealed envelope with postage fully prepaid. I am employed in the county
where the mailing occurred. The envelope or package was placed in the mail at San Diego,
California.

3 **BY FAX TRANSMISSION:** Based on an agreement of the parties to accept service by fax
4 transmission, I faxed the documents to the persons listed on the attached service list. No error was
reported by the fax machine that I used. A copy of the record of the fax transmission will be
maintained with the original document in this office.

5 **BY ELECTRONIC MAIL:** I caused the above-listed document(s) to be transmitted by
6 electronic transmission, addressed to all parties appearing on the attached service list for the above-
entitled case. The service transmission was reported as complete and a copy of the email receipt
will be maintained with the original document in this office.

7 **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package
8 provided by an overnight delivery carrier and addressed to the persons at the addresses in the
attached 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 delivery carrier.

9 **PERSONAL SERVICE VIA MESSENGER SERVICE :** I served the documents by
10 placing them in an envelope or package addressed to the persons in the attached service list and
providing them to a professional messenger service for service.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct. Executed on **June 21, 2018.**

12 
13 _____
Tara L. Frank