

1 JONES & MAYER
Paul R. Coble, Esq. SBN: 128173
2 Harold W. Potter, Esq. SBN: 120107
3 3777 N. Harbor Blvd.
Fullerton, California 92835
4 Tel: (714) 446-1400
Fax: (714) 446-1448
5 Attorneys for Defendants,
City of Costa Mesa and Thomas Hatch
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Exempt from filing fees pursuant to Gov't Code § 6103.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 14 2011

ALAN CARLSON, Clerk of the Court

BY: E. SUTTER DEPUTY CLERK

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

10 COSTA MESA CITY EMPLOYEES'
11 ASSOCIATION,

12 Plaintiff,

13 v.

14 CITY OF COSTA MESA, a municipal
15 corporation; THOMAS HATCH, Chief
16 Executive Officer for the City of Costa
Mesa; and DOES 1 through XX, inclusive,

17 Defendants.
18
19

Case No. 30-2011 00475281

ASSIGNED FOR ALL PURPOSES TO
JUDGE TAM NOMOTO SCHUMANN, DEPT. C-10

**DEFENDANTS' ANSWER TO
PLAINTIFF'S VERIFIED
COMPLAINT**

20
21 **COMES NOW** the City of Costa Mesa and Thomas Hatch, Defendants herein,
22 Answering the verified Complaint as follows:
23

- 24 1. In response to Paragraph 1 of the Complaint, Defendants admit the allegations
25 contained therein.
26 2. In response to Paragraph 2 of the Complaint, Defendants admit the allegations
27 contained therein.
28 3. In response to Paragraph 3 of the Complaint, Defendants admit the allegations

- 1 contained therein.
- 2 4. In response to Paragraph 4 of the Complaint, Defendants lack sufficient information
3 on which to either admit or deny the remaining allegations contained therein and on that
4 basis deny the remaining allegations contained therein.
- 5 5. In response to Paragraph 5 of the Complaint, Defendants lack sufficient information
6 on which to either admit or deny the allegations contained therein and on that basis deny
7 each and every allegation contained therein.
- 8 6. In response to Paragraph 6 of the Complaint, Defendants admits that the issued
9 layoff notices to City employees on or about March 17, 2011 but deny each and every
10 other allegation contained therein.
- 11 7. In response to Paragraph 7 of the Complaint, Defendants deny each and every
12 allegation contained therein.
- 13 8. In response to Paragraph 8 of the Complaint, Defendants lack sufficient information
14 on which to either admit or deny the allegations contained therein and on that basis deny
15 each and every allegation contained therein.
- 16 9. In response to Paragraph 9 of the Complaint, Defendants deny each and every
17 allegation contained therein.
- 18 10. In response to Paragraph 10 of the Complaint, Defendants deny each and every
19 allegation contained therein.
- 20 11. In response to Paragraph 11 of the Complaint, Defendants deny each and every
21 allegation contained therein.
- 22 12. In Response to Paragraph 12 of the Complaint, Defendants lack sufficient
23 information on which to either admit or deny the allegations contained therein and on
24 that basis deny each and every allegation contained therein.
- 25 13. In response to Paragraph 10 of the Complaint, Defendants lack sufficient
26 information on which to either admit or deny the allegations contained therein and on
27 that basis deny each and every allegation contained therein.
- 28 14. In response to Paragraph 11 of the Complaint, Defendants lack sufficient

1 information on which to either admit or deny the allegations contained therein and on
2 that basis deny each and every allegation contained therein.

3 15. In response to Paragraph 12 of the Complaint, Defendants deny each and every
4 allegation contained therein.

5 16. In response to Paragraph 13 of the Complaint, Defendants deny each and every
6 allegation contained therein.

7 17. In response to Paragraph 14 of the Complaint, Defendants deny each and every
8 allegation contained therein.

9 18. In response to Paragraph 15 of the Complaint, Defendants lack sufficient
10 information on which to either admit or deny the allegation contained therein and on that
11 basis denies the allegation contained therein.

12 19. In response to Paragraph 16 of the Complaint, Defendants deny each and every
13 allegation contained therein.

14 20. In response to Paragraph 17 of the Complaint, Defendants deny each and every
15 allegation contained therein.

16 21. In response to Paragraph 18 of the Complaint, Defendants deny each and every
17 allegation contained therein.

18 22. In response to Paragraph 19 of the Complaint, Defendants deny each and every
19 allegation contained therein.

20 23. In response to Paragraph 20 of the Complaint, Defendants deny each and every
21 allegation contained therein.

22 24. In response to Paragraph 21 of the Complaint, Defendants deny each and every
23 allegation contained therein.

24 25. In response to Paragraph 22 of the Complaint, Defendants admit each and every
25 allegation contained therein.

26 26. In response to Paragraph 23 of the Complaint, Defendants lack sufficient knowledge
27 to either confirm or deny the allegations contained therein and on that basis deny each
28 and every allegation contained therein.

1 27. In response to Paragraph 24 of the Complaint, Defendants deny each and every
2 allegation contained therein.

3 28. In response to Paragraph 25 of the Complaint, Defendants deny each and every
4 allegation contained therein.

5 29. In response to Paragraph 26 of the Complaint, Defendants deny each and every
6 allegation contained therein.

7 30. In response to Paragraph 27 of the Complaint, Defendants deny each and every
8 allegation contained therein.

9 31. In response to Paragraph 28 of the Complaint, Defendants deny each and every
10 allegation contained therein.

11 32. In response to Paragraph 29 of the Complaint, Defendants deny each and every
12 allegation contained therein.

13 **AFFIRMATIVE DEFENSES**

14 **FIRST AFFIRMATIVE DEFENSE**

15 (Failure to State a Claim)

16 33. The Complaint fails to state any claim upon which relief can be granted against
17 DEFENDANTS.

18 **SECOND AFFIRMATIVE DEFENSE**

19 (Complaint Uncertain)

20 34. Each and all of the purported causes of action set forth in the complaint are
21 uncertain, ambiguous and unintelligible.

22 **THIRD AFFIRMATIVE DEFENSE**

23 (Failure to Mitigate Damages)

24 35. PLAINTIFF has failed to diligently mitigate its damages.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 (Plaintiff's Negligence of Other Legal Fault)

27 36. DEFENDANTS allege that PLAINTIFF'S claims for damages, if any, are barred
28 by PLAINTIFF'S negligence, or other legal fault of PLAINTIFF and/or by the

1 negligence or other legal fault of persons and entities other than DEFENDANTS.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 (Lawful Conduct)

4 37. DEFENDANTS assert that their conduct and that of their officials, employees
5 and/or agents were at all times reasonable and lawful under the circumstances.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 (No Damages Suffered)

8 38. DEFENDANTS allege PLAINTIFF did not suffer damage attributable to any act
9 of omission of DEFENDANT and/or any of DEFENDANT'S officials, employees
10 and/or agents, and that any damages alleged are attributable to causes other than any acts
11 of omissions of DEFENDANTS and/or their officials, employees and/or agents.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 (Waiver)

14 39. As a matter of fact and law, PLAINTIFF has waived any and all claims related to
15 the DEFENDANTS' actions or omissions in this matter.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 (Laches)

18 40. By reason of PLAINTIFF'S own conduct, including unreasonable delay,
19 PLAINTIFF is barred under the doctrine of laches from obtaining any relief against
20 these answering DEFENDANTS.

21 **NINTH AFFIRMATIVE DEFENSE**

22 (Estoppel)

23 41. By reason of PLAINTIFF'S own conduct, representations, omissions and delays,
24 PLAINTIFF is estopped from claiming any recovery against these answering
25 DEFENDANTS.

26 **TENTH AFFIRMATIVE DEFENSE**

27 (Good Faith)

28 42. DEFENDANTS and/or its officials, employees and/or agents acted in good faith

1 and without malice, and neither directly nor indirectly performed any acts which would
2 constitute a violation of any laws or regulations or a violation of any right, contractual or
3 otherwise, or any duty owed to PLAINTIFF.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 (Privilege)

6 43. The conduct of these answering DEFENDANTS was at all times justified and
7 privileged.

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 (No Known Damages)

10 44. The measure of PLAINTIFF'S damages, if any, are based upon guesswork,
11 speculation, and conjecture.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 (Unclean Hands)

14 45. Each and all of the purported causes of action in PLAINTIFF'S Complaint are
15 barred by the doctrine of unclean hands due to PLAINTIFF'S own actions not in good
16 faith.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 (Common Law Qualified Immunity from Suit)

19 46. DEFENDANTS assert that they are shielded from liability by common law
20 qualified immunities.

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 (State Law Qualified Immunity from Suit)

23 47. DEFENDANTS assert that they are shielded by state law qualified immunities for
24 performance of discretionary functions.

25 **SIXTEENTH AFFIRMATIVE DEFENSE**

26 (No Violation of Clearly Established Constitutional Rights)

27 48. DEFENDANTS assert that the acts PLAINTIFF alleges to have occurred did not
28 violate clearly established constitutional rights of PLAINTIFF of which a reasonable

1 person would have known.

2 **SEVENTEENTH AFFIRMATIVE DEFENSE**

3 (Acting in Good Faith, No Violation of Law)

4 49. DEFENDANTS assert that they and their officials, employees and/or agents acted
5 in good faith and neither directly nor indirectly performed any acts whatsoever which
6 would constitute a violation of any laws or regulations or a violation of any right or any
7 duty owed to PLAINTIFF.

8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

9 (Not Separate Legal Entity)

10 50. DEFENDANTS assert that the Police Chief Executive Officer Thomas Hatch may
11 not be sued as a separate legal entity from the which is also a party in the above-
12 referenced matter.

13 **NINETEENTH AFFIRMATIVE DEFENSE**

14 (Reasonable and/or Exigent Circumstances)

15 51. That at all times pertinent herein, DEFENDANTS and their officials, employees
16 and/or agents were performing their duties in a reasonable manner consistent with the
17 exigent circumstances that emerged or existed at the time. In all manners, the actions of
18 said DEFENDANTS and/or their officials, employees and/or agents were reasonable and
19 proper based upon the exigent circumstances that existed at the time.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 (Immunity)

22 52. That pursuant to California Government Code § 821.6, DEFENDANTS and/or the
23 individual employees of DEFENDANTS are immune from liability for malicious
24 prosecution or injury caused by their instituting or prosecuting any judicial or
25 administrative proceeding within the scope of their employment, even if they acted
26 maliciously and without probable cause.

27 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

28 (Contributory Negligence)

1 53. That PLAINTIFF was himself negligent, and that negligence contributed as a
2 proximate and legal cause to his injury and damages. Recovery herein is therefore
3 diminished and barred to the degree of that negligence.

4 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

5 (Act or Omission of Other)

6 54. DEFENDANTS and/or their officials, employees and/or agents, as public
7 employees are not liable for any act or omission, exercising due care, in the execution or
8 enforcement of any law, and DEFENDANTS, as a public entity, are not liable as to
9 matters for which its employees are immune from liability.

10 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

11 (Discretion)

12 55. DEFENDANTS and/or its officials, employees and/or agents, as public
13 employees, are not liable for an injury resulting from acts of omissions where the act or
14 omission was a result of the exercise of the discretion vested in it/him/her, and
15 DEFENDANTS, as a public entity, are not liable as to matters for which its officials,
16 employees, and/or agents are immune from liability.

17 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

18 (Assumption of Risk)

19 56. To the extent that PLAINTIFF suffered any detriment, the risk of such detriment
20 was assumed by PLAINTIFF.

21 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

22 (Qualified Immunity)

23 57. DEFENDANTS and/or their officials, employees and/or agents are officers and
24 entitled to qualified immunity as they acted as reasonable officers and believed their
25 actions relating to PLAINTIFF was lawful in light of clearly established law and
26 information the individual officers possessed at the time of their actions.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Discretionary Acts)

58. That the acts of any DEFENDANT and/or its officials, employees and/or agents at all times mentioned herein were discretionary acts. Therefore, DEFENDANTS and their officials, employees and/or agents employees are immune from liability pursuant to Government Code sections 820.2 and 815.2.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No Policy, Practice or Custom)

59. That no policy, practice or custom of, or carried out by, DEFENDANTS, or promulgated by any policy maker of DEFENDANTS existed and/or served to deprive PLAINTIFF of their constitutional rights.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Good Faith)

60. That at all times pertinent herein, DEFENDANTS and/or their officials, employees and/or agents were and are presently, duly qualified and herein engaged in the performance of their regularly assigned duties, and, further, these individual officials, employees, and/or agents at all times herein acted in good faith and without malice.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Within Scope of Employment)

61. All actions taken by DEFENDANTS and/or their officials, employees and/or agents during the incident complained of were within the scope of their employment and jurisdiction in the good-faith belief that their actions were reasonable, proper and lawful.

THIRTIETH AFFIRMATIVE DEFENSE

(Immunity)

62. That these DEFENDANTS and/or its officials, employees, and/or agents are immune from liability pursuant to Govt. Code §845.6.

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THIRTY-FIRST AFFIRMATIVE DEFENSE

(Failed to Exhaust all Administrative Remedies)

63. DEFENDANTS assert that Plaintiff has failed to exhaust all administrative remedies available to him.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Adequate Remedy Available)

64. DEFENDANTS assert that Plaintiff has an adequate remedy in the ordinary course of law.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Non-Justiciable Political Question)

65. DEFENDANTS assert that the issues raised in PLAINTIFF'S complaint are non-justiciable political questions.

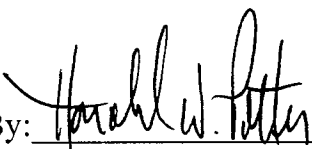
WHEREFORE, Defendants pray that:

- 1. PLAINTIFF'S Complaint be dismissed in its entirety.
- 2. PLAINTIFF take nothing.
- 3. DEFENDANTS be awarded their costs, including reasonable attorney's fee, together with such other relief as the Court may deem appropriate.

Date: June 13, 2011

Respectfully Submitted

Jones & Mayer

By: 

 Harold W. Potter
 Attorneys for Defendants

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 3777 North Harbor Boulevard, Fullerton, CA 92835.

On **June 13, 2011**, I served the within **DEFENDANTS' ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT**, on the interested parties in said action by placing a true and correct copy or the original thereof enclosed in a sealed envelope, **addressed as follows**, and delivered by one or more of the means set forth below:

Richard A. Levine, Esq.
Jonathan L. Endman, Esq.
Silver, Hadden, Silver, Wexler & Levine
1428 Second Street, Suite 200
P. O. Box 2161
Santa Monica, CA 90407-2161
310-393-1486
310-395-5801 (Fax)

[Via Mail] By depositing said envelope with postage thereon fully prepaid in the United States mail at La Habra, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at La Habra, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit of mailing in affidavit.

[Personal Delivery] I caused the above referenced document(s) to be delivered to the addressee(s).

[Overnight Delivery] I caused the above referenced document(s) to be delivered to an overnight delivery service, for delivery to the addressee(s).

[Via Facsimile] I caused the above referenced document(s) to be transmitted to the named person(s) to the fax number(s) set forth above.

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

Executed on **June 13, 2011**, at Fullerton, California.


RITA J. ALGER