

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
Marilyn R. MORIARTY, SB# 89818
2 E-mail: Marilyn.moriarty@lewisbrisbois.com
JULIE R. DANN, SB# 206650
3 E-Mail Julie.Dann@lewisbrisbois.com
701 B Street, Suite 1900
4 San Diego, California 92101
Telephone: 619.233.1006
5 Facsimile: 619.233.8627

6 Attorneys for Rady Children’s Hospital -
San Diego
7
8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 KATHARINE PRECOTT, an
individual, and KATHARINE
13 PRESCOTT, on behalf of KYLER
PRESCOTT, a deceased minor,

14
15 Plaintiff,

16 vs.

17 RADY CHILDREN’S HOSPITAL –
SAN DIEGO

18
19 Defendants.
20

CASE NO. 16-cv-02408-BTM (JMA)

Honorable Barry Ted Moskowitz

**ANSWER OF DEFENDANT RADY
CHILDREN’S HOSPITAL-SAN
DIEGO TO PLAINTIFFS’ FIRST
AMENDED COMPLAINT**

DEMAND FOR JURY TRIAL

Action Filed: July 1, 2016
Trial Date: None Set

21 COMES NOW Defendant Rady Children’s Hospital-San Diego (herein
22 “Defendant” also herein “RCHSD”) and answer the First Amended Complaint filed
23 by Plaintiffs Katharine Prescott, an individual, and Katharine Prescott, on behalf of
24 Kyler Prescott, (herein “Plaintiffs”) as follows:

25 **INTRODUCTION**

26 1. For its answer to paragraph 1, Defendant admits that the medical records
27 reflect Kyler Prescott, a 14-year-old transgender patient, was evaluated and
28 examined in RCHSD’s emergency department on April 5, 2015 after being brought

1 to the emergency department due to self-inflicted wounds/cuts. The medical
2 records reflect a 5150 hold was placed on April 5, 2015 and Kyler Prescott was
3 subsequently admitted to the Child and Adolescent Psychiatry Services unit on April
4 6, 2015. The medical records reflect a physician discharged the patient on April 7,
5 2015. As to the remaining allegations in paragraph 1, Defendant denies each and
6 every other remaining allegation contained therein based on lack of sufficient
7 information and belief. Defendant denies any legal wrongdoing and denies that
8 Plaintiffs are entitled to any relief whatsoever. This answering Defendant denies that
9 any of its actions or inactions constituted any alleged statutory violation.

10 2. For its answer to paragraph 2, to the extent that paragraph 2 contains
11 statements and conclusions of law, a response is not required. To the extent that said
12 paragraph contains factual allegations, Defendant denies each and every other
13 remaining allegation contained thereon based on lack of sufficient information and
14 belief. Defendant denies any legal wrongdoing and denies that Plaintiff Katharine
15 Prescott, an individual, is entitled to any relief whatsoever. As to purported claims
16 based on alleged violation of Government Code section 11135, any and all claims
17 on behalf of Kyler Prescott were dismissed by the Court in its ruling dated May 11,
18 2018, ECF No. 36.

19 3. For its answer to paragraph 3, to the extent that paragraph 3 contains
20 statements and conclusions of law, a response is not required. The statutes speak for
21 themselves. To the extent that said paragraph contains factual allegations,
22 Defendant denies each and every other remaining allegation contained thereon based
23 on lack of sufficient information and belief. Defendant denies any legal wrongdoing
24 and denies that Plaintiffs are entitled to any relief whatsoever.

25 4. For its answer to paragraph 4, to the extent that paragraph 4 contains
26 statements and conclusions of law, a response is not required. The statutes speak
27 for themselves. To the extent that said paragraph contains factual allegations,
28 Defendant denies the allegations in paragraph 4. This answering Defendant denies

1 that any of its actions or inactions constituted any alleged statutory violation.
2 Defendant denies any legal wrongdoing and denies that Plaintiffs are entitled to any
3 relief whatsoever.

4 5. For its answer to paragraph 5, Defendant states that paragraph 5 contains
5 statements and conclusions of law. As such a response is not required. The statutes
6 speak for themselves. To the extent that said paragraph contains factual allegations,
7 Defendant denies the allegations in paragraph 5. This answering Defendant denies
8 that any of its actions or inactions constituted any alleged statutory violation.
9 Defendant denies any legal wrongdoing and denies that Plaintiffs are entitled to any
10 relief whatsoever. As to purported claims based on alleged violation of Government
11 Code section 11135, any and all claims on behalf of Kyler Prescott were dismissed
12 by the Court in its ruling dated May 11, 2018, ECF No. 36.

13 6. For its answer to paragraph 6, Defendant states that paragraph 6 contains
14 statements and conclusions of law. As such a response is not required. The statute
15 speaks for itself. To the extent that said paragraph contains factual allegations,
16 Defendant denies the allegations contained therein based on lack of sufficient
17 information and belief. Defendant denies any legal wrongdoing and denies that
18 Plaintiffs are entitled to any relief whatsoever.

19 7. For its answer to paragraph 7, Defendant states that paragraph 7 contains
20 statements and conclusions of law. As such a response is not required. The statute
21 speaks for itself. To the extent that said paragraph contains factual allegations,
22 Defendant denies the allegations contained therein based on lack of sufficient
23 information and belief. Defendant denies any legal wrongdoing and denies that
24 Plaintiffs are entitled to any relief whatsoever.

25 8. For its answer to paragraph 8, Defendant denies the allegations in
26 paragraph 8. This answering Defendant denies that any of its actions or inactions
27 constituted any alleged statutory violation. Defendant denies any legal wrongdoing
28 and denies that Plaintiffs are entitled to any relief whatsoever. As to purported

1 claims based on alleged violation of Government Code section 11135, any and all
2 claims on behalf of Kyler Prescott were dismissed by the Court in its ruling dated
3 May 11, 2018, ECF No. 36.

4 9. For its answer to paragraph 9, Defendant denies the allegations in
5 paragraph 9. This answering Defendant denies that any of its actions or inactions
6 constituted any alleged statutory violation. Defendant denies any legal wrongdoing
7 and denies that Plaintiffs are entitled to any relief whatsoever.

8 10. For its answer to paragraph 10, Defendant denies the allegations in
9 paragraph 10. This answering Defendant denies that any of its actions or inactions
10 constituted any alleged statutory violation. Defendant denies any legal wrongdoing
11 and denies that Plaintiffs are entitled to any relief whatsoever.

12 11. For its answer to paragraph 11, Defendant denies the allegations in
13 paragraph 11. Answering Defendant asserts that its care and treatment of Kyler
14 Prescott was appropriate and/or reasonable. This answering Defendant denies that
15 any of its actions or inactions constituted any alleged statutory violation. Defendant
16 denies any legal wrongdoing and denies that Plaintiffs are entitled to any relief
17 whatsoever.

18 12. For its answer to paragraph 12, Defendant denies the allegations
19 contained therein based on lack of sufficient information and belief.

20 **JURISDICTION AND VENUE**

21 13. For its answer to paragraph 13, Defendant denies the allegations
22 contained therein based on lack of sufficient information and belief.

23 14. For its answer to paragraph 14, Defendant denies the allegations
24 contained therein based on lack of sufficient information and belief.

25 15. For its answer to paragraph 15, Defendant admits that it has its
26 principal place of business within this District. As to the remaining allegations,
27 Defendant denies the allegations contained therein based on lack of sufficient
28 information and belief.

THE PARTIES

1
2 16. For its answer to paragraph 16, Defendant denies the allegations
3 contained therein based on lack of sufficient information and belief.

4 17. For its answer to paragraph 17, Defendant denies the allegations
5 contained therein based on lack of sufficient information and belief.

6 18. For its answer to paragraph 18, Defendant states that paragraph 18
7 contains statements and conclusions of law. As such a response is not required.
8 Defendant admits that it is a nonprofit healthcare organization with its principal
9 place of business located at 3020 Children’s Way, San Diego, CA 92123 and that it
10 provides services to the public. As to the remaining allegations, Defendant denies
11 the allegations contained therein based on lack of sufficient information and belief.

12 19. For its answer to paragraph 19, Defendant admits that it runs its Child
13 and Adolescent Psychiatry Services (“CAPS”) program which includes treatment to
14 patients who need psychiatric treatment.

15 20. For its answer to paragraph 20, Defendant states that paragraph 20
16 contains statements and conclusions of law. As such a response is not required.
17 Defendant admits that [http://www.rchsd.org/documents/2014/04/dept-of-pediatrics-](http://www.rchsd.org/documents/2014/04/dept-of-pediatrics-report-2011-13.pdf)
18 [report-2011-13.pdf](http://www.rchsd.org/documents/2014/04/dept-of-pediatrics-report-2011-13.pdf) page 6 sets forth information regarding insurance provider
19 breakdown and the document speaks for itself. Defendant admits that
20 <https://siera.oshpd.ca.gov/financialdisclosure.aspx> contains financial disclosure
21 reports and the documents speak for themselves. Defendant admits that a website
22 exists at <https://taggs.hhs.gov/SearchRecip>. Defendant admits that it filed a federal
23 tax Form 990 for 2013 and the document speaks for itself. As to the remaining
24 allegations, Defendant denies the allegations contained therein based on lack of
25 sufficient information and belief. As to purported claims based on alleged violation
26 of Government Code section 11135, any and all claims on behalf of Kyler Prescott
27 were dismissed by the Court in its ruling dated May 11, 2018, ECF No. 36.

28 21. For its answer to paragraph 21, Defendant states that paragraph 21

1 contains statements and conclusions of law. As such a response is not required.
2 Defendant admits that it employs healthcare providers including employees who
3 interacted with Kyler Prescott in April 2015. Defendant denies physicians are
4 employees of RCHSD. RCHSD admits that prior to April 2015, Kyler received care
5 through the Gender Management Clinic. Defendant admits the website at
6 <https://www.rchsd.org/programs-services/endocrinology-diabetes/services/gender->
7 [management-clinic/](https://www.rchsd.org/programs-services/endocrinology-diabetes/services/gender-) regarding Programs & Services > Endocrinology / Diabetes >
8 Services > Gender Management Clinic indicates that Defendant believes children
9 and adolescents with gender dysphoria and related issues deserve to have a medical
10 home at Rady Children’s Hospital-San Diego. As to the remaining allegations,
11 Defendant denies the allegations contained therein based on lack of sufficient
12 information and belief.

13 **GENDER IDENTITY AND GENDER DYSPHORIA IN CHILDREN**

14 22. For its answer to paragraph 22, Defendant denies the allegations
15 contained therein based on lack of sufficient information and belief.

16 23. For its answer to paragraph 23, Defendant denies the allegations
17 contained therein based on lack of sufficient information and belief.

18 24. For its answer to paragraph 24, Defendant denies the allegations
19 contained therein based on lack of sufficient information and belief.

20 25. For its answer to paragraph 25, Defendant denies the allegations
21 contained therein based on lack of sufficient information and belief.

22 26. For its answer to paragraph 26, Defendant denies the allegations
23 contained therein based on lack of sufficient information and belief.

24 27. For its answer to paragraph 27, Defendant denies the allegations
25 contained therein based on lack of sufficient information and belief.

26 28. For its answer to paragraph 28, Defendant denies the allegations
27 contained therein based on lack of sufficient information and belief.

28 29. For its answer to paragraph 29, Defendant denies the allegations

1 contained therein based on lack of sufficient information and belief.

2 30. For its answer to paragraph 30, Defendant denies the allegations
3 contained therein based on lack of sufficient information and belief.

4 31. For its answer to paragraph 31, Defendant denies the allegations
5 contained therein based on lack of sufficient information and belief.

6 32. For its answer to paragraph 32, Defendant denies the allegations
7 contained therein based on lack of sufficient information and belief.

8 33. For its answer to paragraph 33, Defendant admits that the medical
9 records reflect that Kyler Prescott was seen in the Gender Management Clinic in
10 September 2014 by an endocrinologist and the medical records reflect the plan was
11 to start depot-Lupron in October 2014. As to the remaining allegations, Defendant
12 denies the remaining allegations contained therein based on lack of sufficient
13 information and belief.

14 34. For its answer to paragraph 34, Defendant denies the allegations
15 contained therein based on lack of sufficient information and belief.

16 35. For its answer to paragraph 35, Defendant denies the allegations
17 contained therein based on lack of sufficient information and belief.

18 36. For its answer to paragraph 36, Defendant denies the allegations
19 contained therein based on lack of sufficient information and belief.

20 **DEFENDANT’S WRONGFUL CONDUCT**

21 37. For its answer to paragraph 37, Defendant admits that the medical
22 records reflect that Kyler Prescott was examined in the RCHSD emergency
23 department on April 5, 2015, a 5150 hold was in place and subsequently Kyler
24 Prescott was admitted to the Child and Adolescent Psychiatry Services unit April 6,
25 2015. As to the remaining allegations, Defendant denies the allegations contained
26 therein based on lack of sufficient information and belief.

27 38. For its answer to paragraph 38, Defendant denies the allegations based
28 on lack of sufficient information and belief to the extent they conflict with Kyler

1 Prescott's medical record, which speaks for itself. As to the remaining allegations,
2 Defendant denies the allegations contained therein based on lack of sufficient
3 information and belief.

4 39. For its answer to paragraph 39, Defendant denies the allegations
5 contained therein based on lack of sufficient information and belief.

6 40. For its answer to paragraph 40, Defendant denies the allegations
7 contained therein based on lack of sufficient information and belief.

8 41. For its answer to paragraph 41, this answering Defendant denies staff
9 repeatedly misgendered Kyler Prescott and denies staff actively denied and ignored
10 Kyler Prescott's sex and gender identity. As to the remaining allegations, Defendant
11 denies the allegations contained therein based on lack of sufficient information and
12 belief. Answering Defendant asserts that its care and treatment of Kyler Prescott
13 was appropriate and/or reasonable. This answering Defendant denies that any of its
14 actions or inactions constituted any alleged statutory violation.

15 42. For its answer to paragraph 42, Defendant denies the allegations
16 contained therein based on lack of sufficient information and belief.

17 43. For its answer to paragraph 43, this answering Defendant denies staff
18 misgendered Kyler Prescott causing Kyler Prescott serious harm. As to the
19 remaining allegations, Defendant denies the allegations contained therein based on
20 lack of sufficient information and belief. Answering Defendant asserts that its care
21 and treatment of Kyler Prescott was appropriate and/or reasonable. This answering
22 Defendant denies that any of its actions or inactions constituted any alleged statutory
23 violation.

24 44. For its answer to paragraph 44, Defendant denies the allegations
25 contained therein based on lack of sufficient information and belief. Answering
26 Defendant asserts that its care and treatment of Kyler Prescott was appropriate
27 and/or reasonable. This answering Defendant denies that any of its actions or
28 inactions constituted any alleged statutory violation.

1 45. For its answer to paragraph 45, Defendant denies it blocked Katherine
2 Prescott's phone number and denies that Kyler Prescott suffered severe emotional
3 distress and harm and Katharine Prescott was traumatized and continues to be
4 traumatized as the result of any action or inaction on the part of answering
5 Defendant. As to the remaining allegations contained therein Defendant denies
6 them based on lack of sufficient information and belief. Answering Defendant
7 asserts that its care and treatment of Kyler Prescott was appropriate and/or
8 reasonable.

9 46. For its answer to paragraph 46, Defendant denies the allegations
10 contained therein.

11 47. For its answer to paragraph 47, Defendant denies the allegations
12 contained therein. Defendant denies staff repeatedly misgendered Kyler Prescott
13 causing Kyler Prescott severe harm. Defendant denies it blocked Katherine
14 Prescott's phone number. Answering Defendant asserts that its care and treatment
15 of Kyler Prescott was appropriate and/or reasonable.

16 48. For its answer to paragraph 48, Defendant denies it engaged in
17 unlawful discriminatory actions. As to the remaining allegations, Defendant denies
18 the allegations contained therein based on lack of sufficient information and belief.

19 49. For its answer to paragraph 49, Defendant denies it engaged in
20 unlawful discrimination. As to the remaining allegations, Defendant denies the
21 allegations contained therein based on lack of sufficient information and belief.

22 50. For its answer to paragraph 50, Defendant admits Kyler Prescott was
23 discharged on April 7, 2015 and no longer on a 5150 hold. As to any remaining
24 allegations contained therein, Defendant denies the allegations contained therein
25 based on lack of sufficient information and belief.

26 51. For its answer to paragraph 51, Defendant denies it engaged in
27 unlawful discriminatory actions. As to the remaining allegations, Defendant denies
28 the allegations contained therein based on lack of sufficient information and belief.

1 to any relief whatsoever.

2 58. In response to paragraph 58, Defendant states that paragraph 58
3 contains statements and conclusions of law. As such a response is not required. To
4 the extent the paragraph contains factual allegations against Defendant, Defendant
5 denies the allegations contained therein based on lack of sufficient information and
6 belief. Defendant denies any legal wrongdoing and denies that Plaintiffs are entitled
7 to any relief whatsoever.

8 59. In response to paragraph 59, Defendant states that paragraph 59
9 contains statements and conclusions of law. As such a response is not required. To
10 the extent the paragraph contains factual allegations against Defendant, Defendant
11 denies the allegations contained therein based on lack of sufficient information and
12 belief. Defendant denies any legal wrongdoing and denies that Plaintiffs are entitled
13 to any relief whatsoever.

14 60. In response to paragraph 60, Defendant denies the allegations contained
15 therein.

16 61. In response to paragraph 61, Defendant denies the allegations contained
17 therein.

18 62. Defendant admits that Plaintiffs' First Amended Complaint includes
19 requests for relief. Defendant denies any legal wrongdoing and denies that Plaintiffs
20 are entitled to any relief whatsoever.

21 **SECOND CAUSE OF ACTION**

22 63. In response to paragraph 63, Defendant re-alleges and incorporates by
23 reference its responses to paragraphs 1 – 62 of Plaintiffs' First Amended Complaint
24 as set forth above.

25 64. In response to paragraph 64, Defendant states that paragraph 64
26 contains statements and conclusions of law. As such a response is not required. To
27 the extent the paragraph contains factual allegations against Defendant, such
28 allegations are denied. Defendant denies any legal wrongdoing and denies that

1 Plaintiffs are entitled to any relief whatsoever.

2 65. In response to paragraph 65, Defendant states that paragraph 65
3 contains statements and conclusions of law. As such a response is not required. To
4 the extent the paragraph contains factual allegations, Defendant denies the
5 allegations contained therein based on lack of sufficient information and belief.

6 66. In response to paragraph 66, Defendant states that paragraph 66
7 contains statements and conclusions of law. As such a response is not required. To
8 the extent the paragraph contains factual allegations against Defendant, Defendant
9 denies the allegations contained therein based on lack of sufficient information and
10 belief. Defendant denies any legal wrongdoing and denies that Plaintiffs are entitled
11 to any relief whatsoever.

12 67. In response to paragraph 67, Defendant admits that Kyler Prescott was
13 a patient of RCHSD and that RCHSD provides medical care to the public.

14 68. In response to paragraph 68, Defendant states that paragraph 68
15 contains statements and conclusions of law. As such a response is not required. To
16 the extent the paragraph contains factual allegations against Defendant, Defendant
17 denies the allegations contained therein. Defendant denies any legal wrongdoing and
18 denies that Plaintiffs are entitled to any relief whatsoever.

19 69. In response to paragraph 69, Defendant denies the allegations contained
20 therein.

21 70. In response to paragraph 70, Defendant denies the allegations contained
22 therein.

23 71. In response to paragraph 71, Defendant denies the allegations contained
24 therein.

25 72. Defendant admits that Plaintiffs' First Amended Complaint includes
26 requests for relief. Defendant denies any legal wrongdoing and denies that Plaintiffs
27 are entitled to any relief whatsoever.

28

THIRD CAUSE OF ACTION

1 73. In response to paragraph 73, Defendant re-alleges and incorporates by
2 reference its responses to paragraphs 1 – 72 of Plaintiffs’ First Amended Complaint
3 as set forth above.

4 74. In response to paragraph 74, Defendant states that paragraph 74
5 contains statements and conclusions of law. As such a response is not required. To
6 the extent the paragraph contains factual allegations against Defendant, such
7 allegations are denied based on lack of sufficient information and belief. Defendant
8 denies any legal wrongdoing and denies that Plaintiffs are entitled to any relief
9 whatsoever.

10 75. In response to paragraph 75, Defendant states that paragraph 75
11 contains statements and conclusions of law. As such a response is not required. To
12 the extent the paragraph contains factual allegations, Defendant denies the
13 allegations contained therein based on lack of sufficient information and belief.
14 Defendant denies any legal wrongdoing and denies that Plaintiffs are entitled to any
15 relief whatsoever.

16 76. In response to paragraph 76, Defendant states that paragraph 76
17 contains statements and conclusions of law. As such a response is not required. To
18 the extent the paragraph contains factual allegations against Defendant, Defendant
19 denies the allegations contained therein based on lack of sufficient information and
20 belief. Defendant denies any legal wrongdoing and denies that Plaintiffs are entitled
21 to any relief whatsoever.

22 77. In response to paragraph 77, Defendant admits that Kyler Prescott was
23 a patient of RCHSD and that RCHSD provides medical care to the public.

24 78. In response to paragraph 78, Defendant states that paragraph 78
25 contains statements and conclusions of law. As such a response is not required. To
26 the extent the paragraph contains factual allegations against Defendant, Defendant
27 denies the allegations contained therein. Defendant denies any legal wrongdoing
28 and denies that Plaintiffs are entitled to any relief whatsoever.

1 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 83,
2 Defendant states that paragraph 83 contains statements and conclusions of law. As
3 such a response is not required. To the extent the paragraph contains factual
4 allegations against Defendant, Defendant denies the allegations contained therein
5 based on lack of sufficient information and belief. Defendant denies any legal
6 wrongdoing and denies that Plaintiff is entitled to any relief whatsoever.

7 85. As to purported claims based on alleged violation of Government Code
8 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
9 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 85,
10 Defendant states that paragraph 85 contains statements and conclusions of law. As
11 such a response is not required. To the extent the paragraph contains factual
12 allegations against Defendant, Defendant admits that it receives financial assistance
13 from the State of California.

14 86. As to purported claims based on alleged violation of Government Code
15 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
16 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 86,
17 Defendant states that paragraph 86 contains statements and conclusions of law. As
18 such a response is not required. To the extent the paragraph contains factual
19 allegations against Defendant, Defendant denies the allegations contained therein.
20 Defendant denies any legal wrongdoing and denies that Plaintiff Katharine Prescott,
21 an individual, is entitled to any relief whatsoever.

22 87. As to purported claims based on alleged violation of Government Code
23 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
24 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 87,
25 Defendant states that paragraph 87 contains statements and conclusions of law. As
26 such a response is not required. To the extent the paragraph contains factual
27 allegations against Defendant, Defendant denies the allegations contained therein.
28 Defendant denies any legal wrongdoing and denies that Plaintiff Katharine Prescott,

1 an individual, is entitled to any relief whatsoever.

2 88. As to purported claims based on alleged violation of Government Code
3 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
4 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 88,
5 Defendant denies the allegations contained therein.

6 89. As to purported claims based on alleged violation of Government Code
7 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
8 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 89,
9 Defendant denies the allegations contained therein.

10 90. As to purported claims based on alleged violation of Government Code
11 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
12 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 90,
13 Defendant states that paragraph 90 contains statements and conclusions of law. As
14 such a response is not required. To the extent the paragraph contains factual
15 allegations, Defendant denies the allegations contained therein. Defendant denies
16 any legal wrongdoing and denies that Plaintiff Katharine Prescott, an individual, is
17 entitled to any relief whatsoever.

18 91. As to purported claims based on alleged violation of Government Code
19 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
20 Court in its ruling dated May 11, 2018, ECF No. 36. Defendant admits that
21 Plaintiffs' First Amended Complaint includes requests for relief. Defendant denies
22 any legal wrongdoing and denies that Plaintiffs are entitled to any relief whatsoever.

23 **FIFTH CAUSE OF ACTION**

24 92. As to purported claims based on alleged violation of Government Code
25 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
26 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 92,
27 Defendant re-alleges and incorporates by reference its responses to paragraphs 1 –
28 91 of Plaintiffs' First Amended Complaint as set forth above.

1 93. As to purported claims based on alleged violation of Government Code
2 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
3 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 93,
4 Defendant states that paragraph 93 contains statements and conclusions of law. As
5 such a response is not required. To the extent the paragraph contains factual
6 allegations against Defendant, such allegations are denied based on lack of sufficient
7 information and belief. Defendant denies any legal wrongdoing and denies that
8 Plaintiff Katharine Prescott, an individual, is entitled to any relief whatsoever.

9 94. As to purported claims based on alleged violation of Government Code
10 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
11 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 94,
12 Defendant states that paragraph 94 contains statements and conclusions of law. As
13 such a response is not required. To the extent the paragraph contains factual
14 allegations, Defendant denies the allegations contained therein based on lack of
15 sufficient information and belief. Defendant denies any legal wrongdoing and
16 denies that Plaintiff Katharine Prescott, an individual, is entitled to any relief
17 whatsoever.

18 95. As to purported claims based on alleged violation of Government Code
19 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
20 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 95,
21 Defendant states that paragraph 95 contains statements and conclusions of law. As
22 such a response is not required. To the extent the paragraph contains factual
23 allegations against Defendant, Defendant denies the allegations contained therein
24 based on lack of sufficient information and belief. Defendant denies any legal
25 wrongdoing and denies that Plaintiff Katharine Prescott, an individual, is entitled to
26 any relief whatsoever.

27 96. As to purported claims based on alleged violation of Government Code
28 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the

1 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 96,
2 Defendant states that paragraph 96 contains statements and conclusions of law. As
3 such a response is not required. To the extent the paragraph contains factual
4 allegations against Defendant, Defendant admits that it receives financial assistance
5 from the State of California.

6 97. As to purported claims based on alleged violation of Government Code
7 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
8 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 97,
9 Defendant states that paragraph 97 contains statements and conclusions of law. As
10 such a response is not required. To the extent the paragraph contains factual
11 allegations against Defendant, Defendant denies the allegations contained therein.
12 Defendant denies any legal wrongdoing and denies that Plaintiff Katharine Prescott,
13 an individual, is entitled to any relief whatsoever.

14 98. As to purported claims based on alleged violation of Government Code
15 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
16 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 98,
17 Defendant states that paragraph 98 contains statements and conclusions of law. As
18 such a response is not required. To the extent the paragraph contains factual
19 allegations against Defendant, Defendant denies the allegations contained therein.
20 Defendant denies any legal wrongdoing and denies that Plaintiff Katharine Prescott,
21 an individual, is entitled to any relief whatsoever.

22 99. As to purported claims based on alleged violation of Government Code
23 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
24 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 99,
25 Defendant denies the allegations contained therein.

26 100. As to purported claims based on alleged violation of Government Code
27 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
28 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 100,

1 Defendant denies the allegations contained therein.

2 101. As to purported claims based on alleged violation of Government Code
3 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
4 Court in its ruling dated May 11, 2018, ECF No. 36. In response to paragraph 101,
5 Defendant states that paragraph 101 contains statements and conclusions of law. As
6 such a response is not required. To the extent the paragraph contains factual
7 allegations, Defendant denies the allegations contained therein. Defendant denies
8 any legal wrongdoing and denies that Plaintiff Katharine Prescott, an individual, is
9 entitled to any relief whatsoever.

10 102. As to purported claims based on alleged violation of Government Code
11 section 11135, any and all claims on behalf of Kyler Prescott were dismissed by the
12 Court in its ruling dated May 11, 2018, ECF No. 36. Defendant admits that
13 Plaintiffs' First Amended Complaint includes requests for relief. Defendant denies
14 any legal wrongdoing and denies that Plaintiffs are entitled to any relief whatsoever.

15 **SIXTH CAUSE OF ACTION**

16 103. In response to paragraph 103, Defendant re-alleges and incorporates by
17 reference its responses to paragraphs 1 – 102 of Plaintiffs' First Amended
18 Complaint as set forth above.

19 104. In response to paragraph 104, Defendant states that paragraph 104
20 contains statements and conclusions of law. As such a response is not required. To
21 the extent the paragraph contains factual allegations against Defendant, such
22 allegations are denied based on lack of sufficient information and belief. Defendant
23 denies any legal wrongdoing and denies that Plaintiffs are entitled to any relief
24 whatsoever.

25 105. In response to paragraph 105, Defendant states that paragraph 105
26 contains statements and conclusions of law. As such a response is not required. To
27 the extent the paragraph contains factual allegations, Defendant denies the
28 allegations contained therein based on lack of sufficient information and belief.

1 Defendant denies any legal wrongdoing and denies that Plaintiffs are entitled to any
2 relief whatsoever.

3 106. In response to paragraph 106, Defendant states that paragraph 106
4 contains statements and conclusions of law. As such a response is not required. To
5 the extent the paragraph contains factual allegations against Defendant, Defendant
6 denies the allegations contained therein. Defendant denies any legal wrongdoing
7 and denies that Plaintiffs are entitled to any relief whatsoever.

8 107. In response to paragraph 107, Defendant denies the allegations
9 contained therein. Defendant denies it made false claims. Defendant denies any
10 legal wrongdoing and denies that Plaintiffs are entitled to any relief whatsoever.

11 108. In response to paragraph 108, Defendant states that paragraph 108
12 contains statements and conclusions of law. As such a response is not required. To
13 the extent the paragraph contains factual allegations against Defendant, Defendant
14 denies the allegations contained therein. Defendant denies any legal wrongdoing
15 and denies that Plaintiffs are entitled to any relief whatsoever.

16 109. In response to paragraph 109, Defendant denies the allegations
17 contained therein.

18 110. In response to paragraph 110, Defendant states that paragraph 110
19 contains statements and conclusions of law. As such a response is not required. To
20 the extent the paragraph contains factual allegations against Defendant, Defendant
21 denies the allegations contained therein. Defendant denies any legal wrongdoing
22 and denies that Plaintiffs are entitled to any relief whatsoever.

23 111. In response to paragraph 111, Defendant denies the allegations
24 contained therein.

25 112. In response to paragraph 112, Defendant states that paragraph 112
26 contains statements and conclusions of law. As such a response is not required. To
27 the extent the paragraph contains factual allegations against Defendant, Defendant
28 denies the allegations contained therein. Defendant denies any legal wrongdoing

1 and denies that Plaintiffs are entitled to any relief whatsoever.

2 113. In response to paragraph 113, Defendant states that paragraph 113
3 contains statements and conclusions of law. As such a response is not required. To
4 the extent the paragraph contains factual allegations against Defendant, Defendant
5 denies the allegations contained therein. Defendant denies any legal wrongdoing
6 and denies that Plaintiffs are entitled to any relief whatsoever.

7 114. Defendant admits that Plaintiffs' First Amended Complaint includes
8 requests relief. Defendant denies any legal wrongdoing and denies that Plaintiffs
9 are entitled to any relief whatsoever.

10 **SEVENTH CAUSE OF ACTION**

11 115. As to Kyler's Prescott's FAL claims, such claims were dismissed as
12 recognized by the Court in its ruling dated May 11, 2018, ECF No. 36. In response
13 to paragraph 115, Defendant re-alleges and incorporates by reference its responses
14 to paragraphs 1 – 114 of Plaintiffs' First Amended Complaint as set forth above.

15 116. As to Kyler's Prescott's FAL claims, such claims were dismissed as
16 recognized by the Court in its ruling dated May 11, 2018, ECF No. 36. In response
17 to paragraph 116, Defendant states that paragraph 116 contains statements and
18 conclusions of law. As such a response is not required. To the extent the paragraph
19 contains factual allegations, Defendant denies the allegations contained therein that
20 Defendant engaged in false advertising. Defendant denies any legal wrongdoing
21 and denies that Plaintiffs are entitled to any relief whatsoever.

22 117. As to Kyler's Prescott's FAL claims, such claims were dismissed as
23 recognized by the Court in its ruling dated May 11, 2018, ECF No. 36. In response
24 to paragraph 117, Defendant denies the allegations contained therein. Defendant
25 denies it made false claims. Defendant denies any legal wrongdoing and denies that
26 Plaintiffs are entitled to any relief whatsoever.

27 118. As to Kyler's Prescott's FAL claims, such claims were dismissed as
28 recognized by the Court in its ruling dated May 11, 2018, ECF No. 36. In response

1 to paragraph 118, Defendant denies the allegations contained therein.

2 119. As to Kyler's Prescott's FAL claims, such claims were dismissed as
3 recognized by the Court in its ruling dated May 11, 2018, ECF No. 36. In response
4 to paragraph 119, Defendant denies the allegations contained therein.

5 120. As to Kyler's Prescott's FAL claims, such claims were dismissed as
6 recognized by the Court in its ruling dated May 11, 2018, ECF No. 36. In response
7 to paragraph 120, Defendant denies the allegations contained therein.

8 121. As to Kyler's Prescott's FAL claims, such claims were dismissed as
9 recognized by the Court in its ruling dated May 11, 2018, ECF No. 36. In response
10 to paragraph 121, Defendant states that paragraph 121 contains statements and
11 conclusions of law. As such a response is not required. To the extent the paragraph
12 contains factual allegations, Defendant denies the allegations contained therein.
13 Defendant denies any legal wrongdoing and denies that Plaintiff Katharine Prescott,
14 an individual, is entitled to any relief whatsoever.

15 122. As to Kyler's Prescott's FAL claims, such claims were dismissed as
16 recognized by the Court in its ruling dated May 11, 2018, ECF No. 36. In response
17 to paragraph 122, Defendant states that paragraph 122 contains statements and
18 conclusions of law. As such a response is not required. To the extent the paragraph
19 contains factual allegations, Defendant denies the allegations contained therein.
20 Defendant denies any legal wrongdoing and denies that Plaintiff Katharine Prescott,
21 an individual, is entitled to any relief whatsoever.

22 123. As to Kyler's Prescott's FAL claims, such claims were dismissed as
23 recognized by the Court in its ruling dated May 11, 2018, ECF No. 36. In response
24 to paragraph 123, Defendant states that paragraph 123 contains statements and
25 conclusions of law. As such a response is not required. To the extent the paragraph
26 contains factual allegations, Defendant denies the allegations contained therein.
27 Defendant denies any legal wrongdoing and denies that Plaintiff Katharine Prescott,
28 an individual, is entitled to any relief whatsoever.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH AFFIRMATIVE DEFENSE

4. Without admitting any of the allegations of the First Amended Complaint, this answering Defendant on information and belief conditionally and provisionally alleges that it has the right to elect to introduce evidence of any amounts paid or payable, if any, as a benefit to the Plaintiff, pursuant to California Civil Code section 3333.1.

FIFTH AFFIRMATIVE DEFENSE

5. Without admitting any of the allegations of the First Amended Complaint, this answering Defendant on information and belief conditionally and provisionally alleges that any award for damages, if any, for non-economic losses cannot exceed the amount specified in California Civil Code section 3333.2.

SIXTH AFFIRMATIVE DEFENSE

6. Without admitting any of the allegations of the First Amended Complaint, this answering Defendant on information and belief conditionally and provisionally alleges that if there is any award for future damages, if any, in excess of that amount specified in California Code of Civil Procedure section 667.7, then in that event Defendant has the right to elect payment in whole or in part as specified in California Code of Civil Procedure section 667.7.

SEVENTH AFFIRMATIVE DEFENSE

7. In any event and purely for the purposes of alleging this defense, any purported damages allegedly caused by this answering Defendant is subject to a set off either partially or in the full amount of the purported damages.

EIGHTH AFFIRMATIVE DEFENSE

8. This answering Defendant on information and belief denies that it is liable with respect to the damages claimed by Plaintiffs in their First Amended Complaint, but if this answering Defendant is found to be liable, this answering Defendant on information and belief conditionally alleges that its conduct is not the sole and proximate cause of the incident and that the damages awarded the



1 Plaintiffs, if any, are to be apportioned according to the respective fault of the
2 parties or their agents who contributed to and/or caused the complained of incident
3 according to proof presented at the time of trial.

4 **NINTH AFFIRMATIVE DEFENSE**

5 9. This answering Defendant on information and belief alleges that
6 Defendant's policy, practices and decisions with respect to Plaintiffs were at all
7 times based on legitimate, non-discriminatory, business and clinical reasons.

8 **TENTH AFFIRMATIVE DEFENSE**

9 10. This answering Defendant on information and belief alleges that
10 incident described in Plaintiffs' First Amended Complaint, as well as the injuries,
11 losses and damages allegedly sustained by Plaintiff, were proximately caused by
12 intervening and superseding causes and forces which were beyond the control of this
13 answering Defendant and which, in the exercise of reasonable prudence, were not
14 and could not be anticipated or foreseen by said answering Defendant.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 11. This answering Defendant on information and belief alleges that
17 Plaintiffs' action herein is barred by the provisions of California Civil Code section
18 1714.8, in that the injuries and damages complained of by Plaintiffs, if any, were
19 solely as the result of the natural course of a disease or condition and/or expected
20 result of reasonable treatment rendered for the disease or condition by this
21 answering Defendant.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 12. This answering Defendant alleges on information and belief that its
24 actions with respect to Plaintiffs were at all times reasonable and undertaken in good
25 faith and consistent with the applicable statutes and enforceable regulations.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 13. This answering Defendant is informed and believes and based thereon
28 Plaintiffs' claims are barred by the doctrines of estoppel, unclean hands, waiver

1 and/or laches.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 14. This answering Defendant is informed and believes and based thereon
4 alleges that Plaintiffs cannot show that similarly situated individuals, outside the
5 protected class, were treated more favorably.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 15. This answering Defendant is informed and believes and based thereon
8 alleges that any injury, damage or loss suffered by the Plaintiffs were proximately
9 caused by the negligent or willful failure of the Plaintiffs to follow the advice and
10 instructions of attending physicians and nurses, and in otherwise failing to exercise
11 ordinary care.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 16. In the event this answering Defendant is found to be liable (which
14 supposition is denied and merely stated for the purpose of this affirmative defense),
15 that any liability of this answering Defendant, if any, for the amount of non-
16 economic damages shall be allocated to this answering Defendant in direct
17 proportion to this answering Defendant's percentage of fault, if any, according to the
18 Fair Responsibility Act of 1986, California Civil Code §1431.1 and §1431.2,
19 respectively.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 17. Plaintiffs failed to exercise reasonable care and diligence to avoid loss
22 and to minimize damages and, therefore, Plaintiffs may not recover for losses which
23 could have been prevented by reasonable efforts on their own part, or by
24 expenditures that might reasonably have been made. Therefore, Plaintiffs' recovery,
25 if any, should be reduced by the failure of Plaintiffs to mitigate the claimed
26 damages.

27 **EIGHTEENTH AFFIRMATIVE DEFENSE**

28 18. Answering Defendant asserts by way of affirmative defense the

1 applicable provisions of California Business & Professions Code section 6146.

2 **NINETEENTH AFFIRMATIVE DEFENSE**

3 19. Section 1557 is preempted by other law(s).

4 **TWENTIETH AFFIRMATIVE DEFENSE**

5 20. Section 1557 is unconstitutionally vague and/or the Affordable Care
6 Act may be deemed unconstitutional.

7 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8 21. Plaintiffs failed to exhaust their administrative remedies.

9 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

10 22. At all times relevant Defendant met all federal and state statutory and
11 regulatory obligations owed to Plaintiffs and therefore Plaintiffs' First Amended
12 Complaint is barred. Defendant alleges that Plaintiff's First Amended Complaint and
13 each purported claim for relief alleged therein are barred because Defendant
14 performed all contractual, statutory, and other duties owed to Plaintiffs under
15 applicable law.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 23. Defendant alleges that Plaintiffs lack standing to assert the claims
18 alleged in the First Amended Complaint.

19 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

20 24. Defendants allege that Plaintiffs' First Amended Complaint failed to
21 state a claim upon which injunctive and/or equitable relief can be granted against
22 Defendant.

23 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

24 25. Defendant alleges that Plaintiffs' First Amended Complaint and each
25 purported claim for relief alleged therein are barred because Defendant acted
26 reasonably, honestly, in good faith, and in a non-discriminatory manner at all
27 material times based on all relevant facts and circumstances known by it at the time
28 it so acted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWENTY-SIXTH AFFIRMATIVE DEFENSE

26. Defendant denies that any employee of Defendant denied any care to Tyler Prescott or otherwise discriminated against Plaintiffs in any care, treatment or other action. The care and treatment provided was reasonable under the circumstances and conformed to the standard of care and that Defendant did not violate any legal duties owed to Plaintiffs.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27. Any action taken by Defendant was reasonably necessary for the normal operation of its business and was based on legitimate, reasonable and nondiscrimination reasons and justifications, and specifically not for any discriminatory animus.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

28. Defendant alleges that the goods and services provided at Defendant’s facility to the public, including Plaintiff, are accessible to and usable by persons with disabilities as required under federal and state law, including without limitation, the Unruh Act, California Civil Code Sections 51, et sq., the Blind and Other Physically Disabled Persons Act, California Civil Code Section 52, et seq., and all other disability access statutes, rules and regulations.

TWENTY-NINTH AFFIRMATIVE DEFENSE

29. Defendant contends that to the extent that any of Plaintiffs’ claims require an element of intent, Defendant did not engage in intentional discrimination entitling Plaintiffs to recovery of damages. Defendant acted at all times in good faith.

THIRTIETH AFFIRMATIVE DEFENSE

30. Plaintiffs’ First Amended Complaint, and each and every claim contained therein, is barred, in whole or in part, because Defendant’s policies or practices bear a reasonable relation to commercial objectives appropriate to an enterprise serving the public.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRTY-FIRST AFFIRMATIVE DEFENSE

31. Plaintiffs’ First Amended Complaint is barred by Plaintiffs’ failure to comply with jurisdictional, procedural and/or administrative prerequisites before filing this action.

THIRTY-SECOND AFFIRMATIVE DEFENSE

32. This answering Defendant is informed and believes and based thereon alleges that all risks and dangers, if any, relating to the accident referred to in the First Amended Complaint, had been seen, understood, recognized, fully appreciated and fully known to Plaintiffs prior to and at the time of the incident referred to in the First Amended Complaint, and that Plaintiffs voluntarily accepted said risks, thereby assuming the risk of any and all injuries or damages which might or did result from the incident referred to in the First Amended Complaint, and as such, Plaintiffs are thereby barred from any recovery herein.

THIRTY-THIRD AFFIRMATIVE DEFENSE

33. Defendant’s actions regarding Plaintiffs were at all times based upon legitimate, non-discriminatory reasons unrelated to Kyler Prescott’s sex and/or gender identity.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

34. Although this answering Defendant expressly alleges that it is not guilty of any wrongdoing and is not responsible for any damages claimed by Plaintiffs it alleges alternatively that if Plaintiffs, suffered any damages proximately caused by this Defendant, said damages could and should have been mitigated by reasonable efforts on the part of the Plaintiffs. Due to Plaintiffs’ failure to take reasonable steps to prosecute and/or defend Plaintiffs’ interests, Plaintiffs’ damages have been exacerbated wholly due to Plaintiffs’ own fault and that of Plaintiffs’ agents, and attorneys, and therefore Plaintiffs are barred from obtaining recovery from this Defendant for any such damages.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRTY-FIFTH AFFIRMATIVE DEFENSE

35. Plaintiffs have no claim for false representations or misrepresentation as no statements made were false or actionable.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

36. This answering Defendant alleges that its conduct toward Plaintiffs, of which Plaintiffs complain, was at all times relevant, justified, privileged or otherwise reasonable.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

37. Plaintiffs’ First Amended Complaint fails to allege and cannot allege that Plaintiffs justifiably relied on representation made by this answering Defendant.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

38. Plaintiffs’ claim under Business & Professions Code section 17200 legally fails in that Plaintiffs have no standing to sue, suffered no injury in fact and Defendant did not engage in any unfair business practice as defined by Section 17200 et. seq

THIRTY-NINTH AFFIRMATIVE DEFENSE

39. The First Amended Complaint and the purported cause of action contained therein, are barred because the recovery from Defendant would result in Plaintiffs’ unjust enrichment.

FORTIETH AFFIRMATIVE DEFENSE

40. As a separate affirmative defense, Defendant alleges that if Plaintiffs were damaged in any sum or sums alleged, which Defendant denies, Defendant’s alleged acts or omissions were not a proximate cause of said damages.

FORTY-FIRST AFFIRMATIVE DEFENSE

41. This answering defendant did not engage in any conduct which was willful, fraudulent, malicious, or oppressive toward Plaintiffs.

FORTY-SECOND AFFIRMATIVE DEFENSE

42. This answering Defendant is informed and believes and thereon alleges



1 that its actions were not willful, malicious, fraudulent, oppressive, intentional, or
2 tortious and Plaintiffs' claim is not authorized pursuant to California Civil Code
3 section 3294. Plaintiffs' First Amended Complaint, and each and every cause of
4 action set forth therein alleged against Defendant, fails to state facts sufficient to
5 recover punitive or exemplary damages.

6 **FORTY-THIRD AFFIRMATIVE DEFENSE**

7 43. Plaintiffs' claim for punitive and/or exemplary damages is
8 unconstitutional because it seeks to impose an excessive fine within the meaning of
9 the Excessive Fines Clause of the Eighth Amendment to the Constitution of the
10 United States and/or Section 17 of Article I of the Constitution of the State of
11 California and/or is unconstitutional because it violates the Due Process Clause of
12 the Fourteenth Amendment of the Constitution of the United States and/or Section 7
13 of Article I of the Constitution of the State of California.

14 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

15 44. Defendant cannot fully anticipate all affirmative defenses that may be
16 applicable to this action based upon the conclusory/general terms used in Plaintiffs'
17 First Amended Complaint. Accordingly, this answering Defendant expressly
18 reserves the right to assert additional defenses as applicable.

19
20 WHEREFORE, this answering Defendant prays for judgment against
21 Plaintiffs as follows:

- 22 1. That the Court refuse the declaratory and/or injunctive relief requested
23 by Plaintiffs;
- 24 2. That Plaintiffs take nothing by way of the First Amended Complaint;
- 25 3. That Plaintiffs' First Amended Complaint and the claim therein be
26 dismissed with prejudice and judgment be entered in the within action
27 in favor of this answering Defendant and against the Plaintiffs upon the
28 issues of the First Amended Complaint;

