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Attorney for Defendants

DESERT HEALTHCARE DISTRICT;

KAY HAZEN; and KATHY GRECO

*Exempt from filing fee -
Government code sections 6103 & 26857*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE - DESERT DISTRICT

MICHAEL R. SOLOMON,

Plaintiff,

v.

DESERT HEALTHCARE DISTRICT;
KAY HAZEN, an individual; KATHY
GRECO; an individual; DOES 1 through
100, inclusive,

Defendants.

Case No.: PSC 1503643

ICJ: Hon. David M. Chapman

DEPT: PS2

**DEFENDANTS DESERT
HEALTHCARE DISTRICT; KAY
HAZEN and KATHY GRECO'S
ANSWER TO COMPLAINT**

COMPLAINT FILED: August 7, 2015

TRIAL DATE: None set

Defendants DESERT HEALTHCARE DISTRICT, a public entity, KAY HAZEN
(Chief Executive Officer of Desert Healthcare District) and KATHY GRECO (Director of
Desert Healthcare District) severing themselves from all other parties, for themselves alone,
answer the Plaintiff MICHAEL R. SOLOMON's Complaint on file herein, as follows:

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GENERAL DENIAL

I.

Under the provisions of California Code of Civil Procedure sections 431.30 and 446, Defendants deny generally each, every and all of the allegations in said Complaint, and the whole thereof, including each and every purported cause of action contained therein, including a denial of sums and amounts alleged, to be alleged, or otherwise.

II.

Further answering said Complaint, and the whole thereof, including each and every purported cause of action contained therein, Defendants deny that Plaintiff has sustained, or will sustain, any injury, damage or loss by reason of any act, omission, negligence, whether active or passive, express or implied breach of warranty, contract, or any other conduct or absence thereof on the part of Defendants, or any agent, servant, or employee of Defendants, acting within the scope of employment, and deny Defendants were negligent, careless, reckless, acted unlawfully or were guilty of any other wrongful, or culpable act or omission whatsoever.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

III.

As a separate affirmative defense to the Complaint on file herein, Defendants allege that the Complaint, and each cause of action thereof, fails to allege facts or other allegations sufficient to constitute a cause of action against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Plaintiff's Comparative Fault)

IV.

As a separate affirmative defense to the Complaint on file herein, Defendants are informed and believe and thereon allege, that the damages, if any, sustained or suffered by Plaintiff in the action on file herein, were proximately caused and contributed to by the

1 negligence of Plaintiff, in that Plaintiff failed to exercise ordinary, reasonable care and
2 caution concerning the matters alleged in said Complaint, which negligence bars recovery
3 and/or reduces Plaintiff's recovery in proportion to the percentage of Plaintiff's negligence,
4 and fault of Plaintiff.

5 **THIRD AFFIRMATIVE DEFENSE**

6 **(Comparative Fault of Others)**

7 **V.**

8 As a separate affirmative defense to the Complaint on file herein, Defendants are
9 informed and believe and thereon allege that if Defendants are in any way held responsible
10 for the damages claimed herein by Plaintiff, that the damages so sustained were proximately
11 caused and contributed to by primary and active fault, or the culpable acts, omissions and
12 fault of persons and entities other than Defendants, which persons and entities include each
13 and every party to this action, and Defendants therefore allege that any and all damages
14 awarded herein should be apportioned between all such responsible parties pursuant to the
15 doctrines of comparative negligence, total indemnity and partial indemnity.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 **(No Joint and Several Liability for Non-Economic Losses)**

18 **VI.**

19 As a separate affirmative defense to the Complaint on file herein, these answering
20 Defendants deny that defendants were responsible for Plaintiff's damages in the incident
21 alleged in the Complaint on file herein. However, if liability is found, these answering
22 Defendants may be held liable only for the amount of non-economic damages allocated to
23 these answering Defendants in direct proportion to these answering Defendants' percentage
24 of fault, pursuant to Civil Code section 1431.2.

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FIFTH AFFIRMATIVE DEFENSE

(No Legal Cause)

VII.

As a separate affirmative defense to the Complaint on file herein, Defendants are informed and believe and thereon allege that the acts, omissions, if any, of Defendants herein were not the legal cause of the losses, damage or injuries alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

VIII.

As a separate affirmative defense to the Complaint on file herein, Defendants are informed and believe and thereon allege that Plaintiff has failed, refused and neglected to reasonably mitigate Plaintiff's damages, which bars or diminishes any recovery herein by Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

(Legitimate, Non Discriminatory Reasons)

IX.

As a separate affirmative defense to the Complaint on file herein, these answering Defendants allege that their alleged improper conduct, if any, was motivated by legitimate, non-discriminatory reasons.

EIGHTH AFFIRMATIVE DEFENSE

(General Governmental Immunity)

X.

As a separate affirmative defense to the Complaint on file herein, Defendants allege that the Complaint, and each and every cause of action herein, is barred by the provisions of California Government Code sections 815, 815.2(b), 820(b), 820.2. and 820.8.

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TWELFTH AFFIRMATIVE DEFENSE
(Immunity from Punitive Damages - Government Code Section 818)

XIV.

As a separate affirmative defense to the Complaint on file herein, these answering Defendants assert the immunity afforded by Government Code section 818 prohibiting the award of punitive damages against a public entity.

THIRTEENTH AFFIRMATIVE DEFENSE
(Punitive Damages)

XV.

The imposition of punitive or exemplary damages against these answering Defendants would violate Defendants' constitutional rights under the Due Process clauses in the Fifth and Fourteenth Amendments to the Constitution of the United States, the Excessive Fines clause in the Eighth Amendment to the Constitution of the United States, the Double Jeopardy clause in the Fifth Amendment to the Constitution of the United States, similar provisions in applicable State Constitutions, and/or the common law and public policies of pertinent States, and/or applicable statutes and court rules, in the circumstances of this litigation, including but not limited to:

- (1) imposition of such punitive damages by a jury which (a) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of such a punitive damages award, (b) is not adequately and clearly instructed on the limits of punitive damages imposed by the principles of deterrence and punishment, (c) is not expressly prohibited from awarding punitive damages, or determining the amount of an award thereof, in whole or in part, on the basis of invidiously discriminatory characteristics, including the corporate status, wealth, or state of residence of Defendants, (d) is permitted to award punitive damages under a standard for determining liability for such damages which is vague and arbitrary and does not define with sufficient clarity the conduct or mental state which makes punitive damages permissible, and (e) is not subject to trial court and appellate

1 judicial review for reasonableness and the furtherance of legitimate purposes on the basis of
2 objective standards;

3 (2) imposition of such punitive damages, and determination of the amount of an
4 award thereof, where applicable state law is impermissibly vague, imprecise, or inconsistent;

5 (3) imposition of such punitive damages, and determination of the amount of an
6 award thereof, employing a burden of proof less than clear and convincing evidence;

7 (4) imposition of such punitive damages, and determination of the amount of an
8 award thereof, without bifurcating the trial and trying all punitive damages issues only if and
9 after the liability of Defendants has been found on the merits;

10 (5) imposition of such punitive damages, and determination of the amount of an
11 award thereof, under any state's law subject to no predetermined limit, such as a maximum
12 multiple of compensatory damages or a maximum amount; and/or

13 (6) imposition of such punitive damages, and determination of the amount of an
14 award thereof, based on anything other than Defendants' conduct in connection with the sale
15 of the products alleged in this litigation, or in any other way subjecting Defendants to
16 impermissible multiple punishment for the same alleged wrong.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 **(California Code of Civil Procedure Section 425.16)**

19 **XVI.**

20 As a separate affirmative defense to the Complaint on file herein, Defendants assert
21 that California Code of Civil Procedure Section 425.16 which authorizes motions to strike
22 lawsuits designed against public participation provides immunity for this matter. Defendants
23 reserve the right to file a motion to strike pursuant to California Code of Civil Procedure
24 Section 425.16, which also authorizes the payment of attorneys' fees and would serve as a
25 bar to action.

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FIFTEENTH AFFIRMATIVE DEFENSE

XVII.

(Non-Privileged Source)

As a separate affirmative defense of the Complaint on file herein, Defendants assert that the information provided to Defendants was from a non-privileged source and is not subject to California Civil Code § 1798, et seq., which serves as a bar to this action.

SIXTEENTH AFFIRMATIVE DEFENSE

(Defendants Are Not Subject to California Civil Code § 1798, et seq.)

XVIII.

As a separate affirmative defense to the Complaint on file herein, Defendants assert that they are not a covered agency or individual subject to the statutory scheme of California Civil Code § 1798 regarding the Information Practices Act.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Improper Form)

XIX.

As a separate affirmative defense to the Complaint on file herein, Defendants assert that any claim of a HIPAA violation does not create a civil cause of action, and serves as a bar to this proceeding.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Immunity Pursuant to Government Code § 820.9)

XX.

As a separate affirmative defense to the Complaint on file herein, Defendants assert that California Government Code § 820.9 provides immunity to Defendant Kay Hazen, and serves as a bar to this action.

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NINETEENTH AFFIRMATIVE DEFENSE

(Reservation)

XXI.

The Defendants presently have insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet, unstated affirmative defenses available. The Defendants reserve herein the right to assert additional defenses in the event that the discovery indicates they would be appropriate.

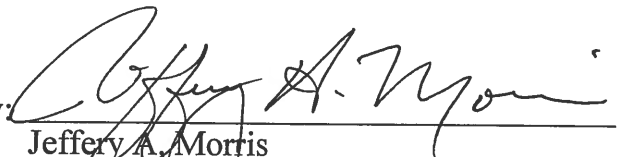
PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment against Plaintiff as follows:

1. That Plaintiff's Complaint, and each purported cause of action, be dismissed with prejudice, and that judgment be entered for the Defendants;
2. That Plaintiff take nothing by way of his Complaint;
3. That Defendants be awarded costs of suit incurred herein, including reasonable attorney fees; and,
4. For such other further relief as the Court may deem just and proper.

Dated: September 22, 2015

STUTZ ARTIANO SHINOFF & HOLTZ
A Professional Corporation

By: 
 Jeffrey A. Morris
 Corv R. Lacy
 Attorney for Defendants DESERT
 HEALTHCARE DISTRICT; KAY HAZEN;
 and KATHY GRECO

1 **STUTZ ARTIANO SHINOFF & HOLTZ**

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9 Attorney for Defendants
10 DESERT HEALTHCARE DISTRICT;
11 KAY HAZEN; and KATHY GRECO

*Exempt from filing fee -
Government code sections 6103 & 26857*

12 ***Solomon v. Desert Healthcare District, et al.***
13 **Riverside County Superior Court Case No. PSC 1503643**

14 I am and was at all times herein mentioned over the age of 18 years and not a party to
15 the action in which this service is made. At all times herein mentioned I have been
16 employed in the County of Riverside in the office of a member of the bar of this court at
17 whose direction the service was made. My business address is 43513 Ridge Park Drive,
18 Temecula, California 92590.

19 On September 22, 2015, I served the following document(s): **DEFENDANTS**
20 **DESERT HEALTHCARE DISTRICT; KAY HAZEN and KATHY GRECO's**
21 **ANSWER TO COMPLAINT**

22 **BY MAIL:** by depositing in the United States Postal Service mail box at 43513 Ridge
23 Park Drive, Temecula, California 92590, a true copy thereof in a sealed envelope with
24 postage thereon fully prepaid and addressed as follows:

25 **ATTORNEY FOR PLAINTIFF**

26 Clark Garen, Esq.
27 Law Offices of Clark Garen
28 P.O. Box 1790
Palm Springs, CA 92263
Tel: (760) 668-7777
Fax: (760) 288-4080
Email: clarkgaren@msn.com

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

Executed on September 22, 2015 at Temecula, California.


Ruth Ann Elphic