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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 FRANKLIN ARMORY, INC., and
CALIFORNIA RIFLE & PISTOL
11 ASSOCIATION, INCORPORATED,
12
13 Petitioners-Plaintiffs,

13 v.

14 CALIFORNIA DEPARTMENT OF
JUSTICE, ROBERT A. BONTA, in his
15 official capacity as Attorney General for the
State of California, and DOES 1-10,
16

17 Respondents-Defendants.

Case No.: 20STCP01747

[Assigned for all purposes to the Honorable
James C. Chalfant; Department 85]

**PLAINTIFFS AND PETITIONERS’
NOTICE OF DEMURRER AND
DEMURRER TO AND MOTION TO
STRIKE RESPONDENTS’ ANWER TO
THE FIRST, SECOND, AND EIGHTH
CAUSES OF ACTION TO THE SECOND
AMENDED COMPLAINT**

[Filed concurrently with Memorandum of
Points and Authorities; Declaration of Anna
M. Barvir in Support of Petitioners’ Demurrer
and Motion to Strike [CCP § 430.41(a)]; and
[Proposed] Order]

Hearing Date: October 14, 2021
Hearing Time: 9:30 a.m.
Department: 85

Action Filed: May 27, 2020

1 **NOTICE OF DEMURRER AND MOTION TO STRIKE**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT on October 14, 2021, at 9:30 a.m., or as soon thereafter
4 as the matter may be heard in Department 85 of the above-entitled court, located at 111 North Hill
5 Street, Los Angeles, CA, 90012, before Judge James Chalfant, Petitioners-Plaintiffs Franklin
6 Armory, Inc. and California Rifle and Pistol Association, Incorporated (“Petitioners”) will and do
7 demur to and move to strike Respondents-Defendants’ Answer to the First, Second, and Eighth
8 Causes of Action of the Second Amended Complaint.


9 Petitioners’ demurrer is brought pursuant to Code of Civil Procedure section 430.20,
10 subdivisions (a)-(b), while the motion to strike is brought pursuant to section 436, subdivisions (a)-
11 (b). First, the entire pleading should be stricken because it is not verified as required by section
12 1089. (Code Civ. Proc., § 436, subd. (b).) Alternatively, all of the State’s affirmative defenses,
13 except Affirmative Defense Nos. 1, 2, and 43, are subject to demurrer because they state
14 insufficient facts to constitute a defense and are also “uncertain.” (*Id.*, § 430.20, subds. (a)-(b).)
15 Further, Affirmative Defense Nos. 3 through 53 should be stricken because they are either
16 irrelevant to the claims currently unstayed or they are otherwise improper. (*Id.*, §436, subd. (a).)

17 As explained in the concurrently filed Declaration of Anna M. Barvir, this demurrer and
18 motion to strike is made following unsuccessful attempts to meet and confer with the State about
19 this matter in compliance with sections 430.41, subdivision (a), and 435.5, subdivision (a).

20 The demurrer and motion to strike is based on this notice of demurrer and motion to strike,
21 the attached demurrer and motion to strike, the accompanying memorandum of points and
22 authorities filed in support, the concurrently filed Declaration of Anna M. Barvir, all pleadings and
23 papers on file, and upon other oral and documentary evidence as may be presented at the time of the
24 hearing.

25 Dated: August 4, 2021

MICHEL & ASSOCIATES, P.C.

26 

27 Anna M. Barvir
28 Attorneys for Petitioners-Plaintiffs

1 **DEMURRER AND MOTION TO STRIKE**

2 Pursuant to section 436, subdivision (b) of the Code of Civil Procedure, Plaintiffs-
3 Petitioners Franklin Armory, Inc., and California Rifle & Pistol Association, Incorporated
4 (“Petitioners”), hereby move to strike the answer filed by Respondents-Defendants California
5 Department of Justice and Attorney General Robert A. Bonta (“the State”) in its entirety because it
6 is not verified as required by section 1089 of the Government Code, as set forth more fully in the
7 Memorandum of Points and Authorities, filed concurrently herewith.

8 Pursuant to section 430.20, subdivisions (a)-(b), of the Code of Civil Procedure, Petitioners
9 hereby demur to the Third through Forty-Second and Forty-Fourth through Fifty-Third
10 “Affirmative Defenses”¹ in the State’s Answer on the following grounds, as set forth more fully in
11 the attached Memorandum of Points and Authorities.

12 Pursuant to section 436, subdivisions (a)-(b) of the Code of Civil Procedure, Petitioners
13 also move to strike the State’s Third through Fifty-Third affirmative defenses on the following
14 grounds, as set forth more fully in the accompanying Memorandum of Points and Authorities.

15 **Third Affirmative Defense – Demurrer and Motion to Strike**

16 1. The Third Affirmative Defense, which reads in full, “[t]he second amended
17 complaint and each and every cause of action stated therein are barred by the applicable statute of
18 limitations,” fails to state sufficient facts to constitute a defense to the First, Second, or Eighth
19 Causes of Action. (Code Civ. Proc., § 430.20, subd. (a).)

20 2. The Third Affirmative Defense, as pleaded in the answer on file, is uncertain. (Code
21 Civ. Proc., § 430.20, subd. (b).)

22 3. The Third Affirmative Defense should also be stricken as improper because it is
23 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

24 **Fourth Affirmative Defense – Demurrer and Motion to Strike**

25 4. The Fourth Affirmative Defense, which reads in full, “[t]he second amended
26

27 ¹ As will be explained in the accompanying memorandum of points and authorities, Petitioners
28 contend that some of these are not valid affirmative defenses. But all are listed here for the sake of
completion.

1 complaint, and each and every cause of action contained therein, is barred, in whole or in part,
2 because Plaintiffs lack standing,” fails to state sufficient facts to constitute a defense to the First,
3 Second, or Eighth Causes of Action. (Code Civ. Proc., § 430.20, subd. (a).)

4 5. The Fourth Affirmative Defense, as pleaded in the answer on file, is uncertain.
5 (Code Civ. Proc., § 430.20, subd. (b).)

6 **Fifth Affirmative Defense – Demurrer and Motion to Strike**

7 6. The Fifth Affirmative Defense, which reads in full, “[t]he second amended
8 complaint and each cause of action alleged therein are barred by Plaintiffs’ failure to join a
9 necessary or indispensable party or parties,” fails to state sufficient facts to constitute a defense to
10 the First, Second, or Eighth Causes of Action. (Code Civ. Proc., § 430.20, subd. (a).)

11 7. The Fifth Affirmative Defense, as pleaded in the answer on file, is uncertain. (Code
12 Civ. Proc., § 430.20, subd. (b).)

13 **Sixth Affirmative Defense – Demurrer and Motion to Strike**

14 8. The Sixth Affirmative Defense, which reads in full, “[t]o the extent applicable, the
15 second amended complaint, and each cause of action therein, are barred by the doctrine of res
16 judicata,” fails to state sufficient facts to constitute a defense to the First, Second, or Eighth causes
17 of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

18 9. The Sixth Affirmative Defense, as pleaded in the answer on file, is uncertain. (Code
19 Civ. Proc., § 430.20, subd. (b).)

20 **Seventh Affirmative Defense– Demurrer and Motion to Strike**

21 10. The Seventh Affirmative Defense, which reads in full, “[t]o the extent applicable,
22 the second amended complaint, and each cause of action therein, are barred by the doctrine of
23 collateral estoppel,” fails to state sufficient facts to constitute a defense to the First, Second, or
24 Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

25 11. The Seventh Affirmative Defense, as pleaded in the answer on file, is uncertain.
26 (Code Civ. Proc., § 430.20, subd. (b).)

27 **Eighth Affirmative Defense – Demurrer and Motion to Strike**

28 12. The Eighth Affirmative Defense, which reads in full, “[t]o the extent applicable, the

1 second amended complaint, and each cause of action therein, are preempted or otherwise
2 precluded by federal law, court orders, rulings and judgments,” fails to state sufficient facts to
3 constitute a defense to the First, Second, or Eighth causes of action to the Second Amended
4 Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

5 13. The Eighth Affirmative Defense, as pleaded in the answer on file, is uncertain.
6 (Code Civ. Proc., § 430.20, subd. (b).)

7 **Ninth Affirmative Defense – Demurrer and Motion to Strike**

8 14. The Ninth Affirmative Defense, which reads in full, “[t]o the extent applicable, the
9 second amended complaint, and each cause of action therein, are barred by the doctrines of
10 mootness and lack of ripeness,” fails to state sufficient facts to constitute a defense to the First,
11 Second, or Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20,
12 subd. (a).)

13 15. The Ninth Affirmative Defense, as pleaded in the answer on file, is uncertain.
14 (Code Civ. Proc., § 430.20, subd. (b).)

15 **Tenth Affirmative Defense – Demurrer and Motion to Strike**

16 16. The Tenth Affirmative Defense, which reads in full, “[t]he second amended
17 complaint, and each and every cause of action contained therein, are barred by the doctrine of
18 laches,” fails to state sufficient facts to constitute a defense to the First, Second, or Eighth causes
19 of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

20 17. The Tenth Affirmative Defense, as pleaded in the answer on file, is uncertain.
21 (Code Civ. Proc., § 430.20, subd. (b).)

22 **Eleventh Affirmative Defense – Demurrer and Motion to Strike**

23 18. The Eleventh Affirmative Defense, which reads in full, “[t]he second amended
24 complaint is barred by the doctrine of unclean hands, as well as other applicable equitable
25 doctrines,” fails to state sufficient facts to constitute a defense to the First, Second, or Eighth
26 causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

27 19. The Eleventh Affirmative Defense, as pleaded in the answer on file, is uncertain.
28 (Code Civ. Proc., § 430.20, subd. (b).)

1 20. The Eleventh Affirmative Defense should be stricken as improper because it
2 presents more than one affirmative defense and because it is duplicative of other affirmative
3 defenses. (Code Civ. Proc., § 436, subd. (a).)

4 **Twelfth Affirmative Defense – Demurrer and Motion to Strike**

5 21. The Twelfth Affirmative Defense, which reads in full, “[t]he second amended
6 complaint, and each and every cause of action stated therein, are barred by the doctrines of
7 estoppel and/or waiver,” fails to state sufficient facts to constitute a defense to the First, Second, or
8 Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

9 22. The Twelfth Affirmative Defense, as pleaded in the answer on file, is uncertain.
10 (Code Civ. Proc., § 430.20, subd. (b).)

11 23. The Twelfth Affirmative Defense should be stricken as improper because it
12 presents more than one affirmative defense. (Code Civ. Proc., § 436, subd. (a).)

13 **Thirteenth Affirmative Defense – Demurrer and Motion to Strike**

14 24. The Thirteenth Affirmative Defense, which reads in full, “[t]o the extent applicable,
15 the second amended complaint and each cause of action therein are barred by the failure to precede
16 the action with a claim as required by various Government Code sections, including but not limited
17 to 945.4, 911.2, 905.2, 950.2, and 810 et seq.,” fails to state sufficient facts to constitute a defense
18 to the First, Second, or Eighth causes of action to the Second Amended Complaint. (Code Civ.
19 Proc., § 430.20, subd. (a).)

20 25. The Thirteenth Affirmative Defense, as pleaded in the answer on file, is uncertain.
21 (Code Civ. Proc., § 430.20, subd. (b).)

22 26. The Thirteenth Affirmative Defense should be stricken because it is irrelevant to the
23 unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

24 27. The Thirteenth Affirmative Defense should be stricken as improper because it is
25 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

26 **Fourteenth Affirmative Defense – Demurrer and Motion to Strike**

27 28. The Fourteenth Affirmative Defense, which reads in full, “Defendants have not
28 deprived Plaintiffs of any right guaranteed by law,” fails to state sufficient facts to constitute a

1 defense to the First, Second, or Eighth causes of action to the Second Amended Complaint. (Code
2 Civ. Proc., § 430.20, subd. (a).)

3 29. The Fourteenth Affirmative Defense, as pleaded in the answer on file, is uncertain.
4 (Code Civ. Proc., § 430.20, subd. (b).)

5 30. The Fourteenth Affirmative defense should be stricken as improper because, even if
6 the State could plead additional facts, it would not constitute a cognizable affirmative defense.
7 (Code Civ. Proc., § 436, subd. (a).)

8 **Fifteenth Affirmative Defense – Demurrer and Motion to Strike**

9 31. The Fifteenth Affirmative Defense, which reads in full, “Plaintiffs’ claims are
10 barred in whole or in part because the alleged acts or practices of Defendants do not constitute an
11 illegal act or practice,” fails to state sufficient facts to constitute a defense to the First, Second, or
12 Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

13 32. The Fifteenth Affirmative Defense, as pleaded in the answer on file, is uncertain.
14 (Code Civ. Proc., § 430.20, subd. (b).)

15 33. The Fifteenth Affirmative defense should be stricken as improper because, even if
16 the State could plead additional facts, it would not constitute a cognizable affirmative defense.
17 (Code Civ. Proc., § 436, subd. (a).)

18 **Sixteenth Affirmative Defense – Demurrer and Motion to Strike**

19 34. The Sixteenth Affirmative Defense, which reads in full, “Plaintiffs are not entitled
20 to mandamus relief because there is no clear, present, and ministerial duty on the part of
21 Defendants, Plaintiffs do not have a clear, present, and beneficial right to the performance of that
22 duty, defendants have discretion that cannot be directed by the courts, and an adequate remedy
23 exists at law for Plaintiffs,” fails to state sufficient facts to constitute a defense to the First, Second,
24 or Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd.
25 (a).)

26 35. The Sixteenth Affirmative Defense, as pleaded in the answer on file, is uncertain.
27 (Code Civ. Proc., § 430.20, subd. (b).)

28 36. The Sixteenth Affirmative defense should be stricken as improper because, even if

1 the State could plead additional facts, it would not constitute a cognizable affirmative defense.
2 (Code Civ. Proc., § 436, subd. (a).)

3 37. If it does constitute a cognizable affirmative defense, the Sixteenth Affirmative
4 Defense should be stricken as improper because it presents more than one affirmative defense and
5 because it is duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

6 **Seventeenth Affirmative Defense – Demurrer and Motion to Strike**

7 38. The Seventeenth Affirmative Defense, which reads in full, “Defendants at all times
8 were acting legitimately in accordance with statutory requirements[;] Defendants neither owed nor
9 breached any duty under law to Plaintiffs,” fails to state sufficient facts to constitute a defense to
10 the First, Second, or Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc.,
11 § 430.20, subd. (a).)

12 39. The Seventeenth Affirmative Defense, as pleaded in the answer on file, is uncertain.
13 (Code Civ. Proc., § 430.20, subd. (b).)

14 40. The Seventeenth Affirmative defense should be stricken as improper because, even
15 if the State could plead additional facts, it would not constitute a cognizable affirmative defense.
16 (Code Civ. Proc., § 436, subd. (a).)

17 **Eighteenth Affirmative Defense – Demurrer and Motion to Strike**

18 41. The Eighteenth Affirmative Defense, which reads in full, “[a] writ of mandate may
19 not compel a public official to do an act which violates his or her statutory duty,” fails to state
20 sufficient facts to constitute a defense to the First, Second, or Eighth causes of action to the Second
21 Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

22 42. The Eighteenth Affirmative Defense, as pleaded in the answer on file, is uncertain.
23 (Code Civ. Proc., § 430.20, subd. (b).)

24 43. The Eighteenth Affirmative defense should be stricken as improper because, even if
25 the State could plead additional facts, it would not constitute a cognizable affirmative defense.
26 (Code Civ. Proc., § 436, subd. (a).)

27 44. If it does constitute a cognizable affirmative defense, the Eighteenth Affirmative
28 Defense should be stricken as improper because it is duplicative of other affirmative defenses.

1 (Code Civ. Proc., § 436, subd. (a).)

2 **Nineteenth Affirmative Defense – Demurrer and Motion to Strike**

3 45. The Nineteenth Affirmative Defense, which reads in full, “[t]he second amended
4 complaint and each and every cause of action stated therein, are barred because at all relevant
5 times, Defendants actions were taken to satisfy applicable constitutional, judicial, and statutory
6 mandates[;] Defendants are therefore not liable for any injury or damages, if any there were,” fails
7 to state sufficient facts to constitute a defense to the First, Second, or Eighth causes of action to the
8 Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

9 46. The Nineteenth Affirmative Defense, as pleaded in the answer on file, is uncertain.
10 (Code Civ. Proc., § 430.20, subd. (b).)

11 47. The Nineteenth Affirmative defense should be stricken as improper because, even if
12 the State could plead additional facts, it would not constitute a cognizable affirmative defense.
13 (Code Civ. Proc., § 436, subd. (a).)

14 48. If it does constitute a cognizable defense, the Nineteenth Affirmative Defense
15 should be stricken as improper because it is duplicative of other affirmative defenses. (Code Civ.
16 Proc., § 436, subd. (a).)

17 **Twentieth Affirmative Defense – Demurrer and Motion to Strike**

18 49. The Twentieth Affirmative Defense, which reads in full, “[t]here are superseding
19 and intervening actions from third parties[;] Plaintiffs failed to allege and/or have not stated facts
20 sufficient to show an affirmative causal link between Defendants’ actions and/or omissions and the
21 alleged violation of Plaintiffs’ rights,” fails to state sufficient facts to constitute a defense to the
22 First, Second, or Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., §
23 430.20, subd. (a).)

24 50. The Twentieth Affirmative Defense, as pleaded in the answer on file, is uncertain.
25 (Code Civ. Proc., § 430.20, subd. (b).)

26 51. The Twentieth Affirmative Defense should be stricken as improper because it is
27 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

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1 **Twenty-First Affirmative Defense – Demurrer and Motion to Strike**

2 52. The Twenty-First Affirmative Defense, which reads in full, “[t]he second amended
3 complaint is barred because Defendants were not aware of any wrongful conduct, and had no
4 reason to be aware of any wrongful conduct, if any there were,” fails to state sufficient facts to
5 constitute a defense to the First, Second, or Eighth causes of action to the Second Amended
6 Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

7 53. The Twenty-First Affirmative Defense, as pleaded in the answer on file, is
8 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

9 54. The Twenty-First Affirmative defense should be stricken as improper because, even
10 if the State could plead additional facts, it would not constitute a cognizable affirmative defense.
11 (Code Civ. Proc., § 436, subd. (a).)

12 55. If it does constitute a cognizable affirmative defense, the Twenty-First Affirmative
13 Defense should be stricken because it is irrelevant to the unstayed causes of action. (Code Civ.
14 Proc., § 436, subd. (a).)

15 **Twenty-Second Affirmative Defense – Demurrer and Motion to Strike**

16 56. The Twenty-Second Affirmative Defense, which reads in full, “[t]o the extent
17 Defendants were aware of any wrongful conduct, if any there was, Defendants exercised
18 reasonable care to prevent and correct promptly any wrongful conduct, if any there was,” fails to
19 state sufficient facts to constitute a defense to the First, Second, or Eighth causes of action to the
20 Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

21 57. The Twenty-Second Affirmative Defense, as pleaded in the answer on file, is
22 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

23 58. The Twenty-Second Affirmative defense should be stricken as improper because,
24 even if the State could plead additional facts, it would not constitute a cognizable affirmative
25 defense. (Code Civ. Proc., § 436, subd. (a).)

26 59. If it does constitute a cognizable affirmative defense, the Twenty-Second
27 Affirmative Defense should be stricken as improper because it is duplicative of other affirmative
28 defenses. (Code Civ. Proc., § 436, subd. (a).)

1 **Twenty-Third Affirmative Defense – Demurrer and Motion to Strike**

2 60. The Twenty-Third Affirmative Defense, which reads in full, “[t]o the extent
3 applicable, Defendants are immune from suit under public entity immunity pursuant to, but not
4 limited to, Government Code §§ 815, 815.2, 818, 818.2, 818.8, 820.4, 820.8, 821,” fails to state
5 sufficient facts to constitute a defense to the First, Second, or Eighth causes of action to the Second
6 Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

7 61. The Twenty-Third Affirmative Defense, as pleaded in the answer on file, is
8 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

9 62. The Twenty-Third Affirmative Defense should be stricken because it is irrelevant to
10 the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

11 63. The Twenty-Third Affirmative Defense should be stricken as improper because it
12 presents more than one affirmative defense and because it is duplicative of other affirmative
13 defenses. (Code Civ. Proc., § 436, subd. (a).)

14 **Twenty-Fourth Affirmative Defense – Demurrer and Motion to Strike**

15 64. The Twenty-Fourth Affirmative Defense, which reads in full, “Defendants allege
16 that they did not act with the requisite intent to deprive Plaintiffs of statutory or constitutional
17 rights or to cause any other injury[;] Defendants therefore allege that they are immune from
18 liability,” fails to state sufficient facts to constitute a defense to the First, Second, or Eighth causes
19 of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

20 65. The Twenty-Fourth Affirmative Defense, as pleaded in the answer on file, is
21 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

22 66. The Twenty-Fourth Affirmative defense should be stricken as improper because,
23 even if the State could plead additional facts, it would not constitute a cognizable affirmative
24 defense. (Code Civ. Proc., § 436, subd. (a).)

25 **Twenty-Fifth Affirmative Defense – Demurrer and Motion to Strike**

26 67. The Twenty-Fifth Affirmative Defense, which reads in full, “Plaintiffs have
27 suffered no actual injury due to Defendants’ conduct,” fails to state sufficient facts to constitute a
28 defense to the First, Second, or Eighth causes of action to the Second Amended Complaint. (Code

1 Civ. Proc., § 430.20, subd. (a).)

2 68. The Twenty-Fifth Affirmative Defense, as pleaded in the answer on file, is
3 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

4 69. The Twenty-Fifth Affirmative defense should be stricken as improper because,
5 even if the State could plead additional facts, it would not constitute a cognizable affirmative
6 defense. (Code Civ. Proc., § 436, subd. (a).)

7 70. The Twenty-Fifth Affirmative defense should be stricken as improper because,
8 even if the State could plead additional facts, it would not constitute a cognizable affirmative
9 defense. (Code Civ. Proc., § 436, subd. (a).)

10 **Twenty-Sixth Affirmative Defense – Demurrer and Motion to Strike**

11 71. The Twenty-Sixth Affirmative Defense, which reads in full, “[i]f any wrongful
12 activity occurred, or if Plaintiffs suffered any injury or damages, it was caused by other parties or
13 persons over whom Defendants had no control,” fails to state sufficient facts to constitute a
14 defense to the First, Second, or Eighth causes of action to the Second Amended Complaint. (Code
15 Civ. Proc., § 430.20, subd. (a).)

16 72. The Twenty-Sixth Affirmative Defense, as pleaded in the answer on file, is
17 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

18 73. The Twenty-Sixth Affirmative Defense should be stricken as improper because it is
19 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

20 **Twenty-Seventh Affirmative Defense – Demurrer and Motion to Strike**

21 74. The Twenty-Seventh Affirmative Defense, which reads in full, “[t]o the extent that
22 the second amended complaint herein attempts to predicate liability upon any public entity,
23 Defendants, or any agent or employee thereof for purported negligence in retention, hiring,
24 employment, training, or supervision of any public employee, liability is barred by Government
25 Code sections 815.2 and 820.2 and *Herndon v. County of Marin*, 25 Cal.App.3d 933, 935-36
26 (1972), *reversed on other grounds by Sullivan v. County of Los Angeles*, 12 Cal.3d 710 (1974); by
27 the lack of any duty running to Plaintiffs; by the fact that any such purported act or omission is
28 governed exclusively by statute and is outside the purview of any public employees’ authority; and

1 by the failure of any such acts or omissions to be the proximate cause of any injury alleged in the
2 second amended complaint,” fails to state sufficient facts to constitute a defense to the First,
3 Second, or Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20,
4 subd. (a).)

5 75. The Twenty-Seventh Affirmative Defense, as pleaded in the answer on file, is
6 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

7 76. The Twenty-Seventh Affirmative defense should be stricken as improper because,
8 even if the State could plead additional facts, it would not constitute a cognizable affirmative
9 defense. (Code Civ. Proc., § 436, subd. (a).)

10 77. If it does constitute a cognizable affirmative defense, the Twenty-Seventh
11 Affirmative Defense should be stricken as improper because it presents more than one affirmative
12 defense and because it is duplicative of other causes of action. (Code Civ. Proc., § 436, subd. (a).)

13 78. If it does constitute a cognizable affirmative defense, the Twenty-Seventh
14 Affirmative defense should be stricken as incomprehensible. (Code Civ. Proc., § 436, subd. (a).)

15 **Twenty-Eighth Affirmative Defense – Demurrer and Motion to Strike**

16 79. The Twenty-Eighth Affirmative Defense, which reads in full, “[t]o the extent
17 applicable, the Second Amended Complaint and each cause of action alleged therein are barred
18 because the actions complained of were justified and privileged under, but not limited to, the
19 litigation privilege and that described in California Civil Code § 47, as well as the official
20 information privilege, and the *Noerr-Pennington* doctrine,” fails to state sufficient facts to
21 constitute a defense to the First, Second, or Eighth causes of action to the Second Amended
22 Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

23 80. The Twenty-Eighth Affirmative Defense, as pleaded in the answer on file, is
24 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

25 81. The Twenty-Eighth Affirmative defense should be stricken as improper because it
26 presents more than one affirmative defense. (Code Civ. Proc., § 436, subd. (a).)

27 **Twenty-Ninth Affirmative Defense – Demurrer and Motion to Strike**

28 82. The Twenty-Ninth Affirmative Defense, which reads in full, “[a]ny and all alleged

1 happenings and events, damages and injuries, if any there were, were proximately caused and
2 contributed to by the negligence or otherwise wrongdoing of Plaintiffs and others, each of whom
3 failed to exercise ordinary care at the times and places alleged in the second amended complaint,”
4 fails to state sufficient facts to constitute a defense to the First, Second, or Eighth causes of action
5 to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

6 83. The Twenty-Ninth Affirmative Defense, as pleaded in the answer on file, is
7 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

8 84. The Twenty-Ninth Affirmative defense should be stricken as improper because,
9 even if the State could plead additional facts, it would not constitute a cognizable affirmative
10 defense. (Code Civ. Proc., § 436, subd. (a).)

11 85. If it does constitute a cognizable affirmative defense, the Twenty-Ninth
12 Affirmative Defense should be stricken as improper because it is duplicative of other affirmative
13 defenses. (Code Civ. Proc., § 436, subd. (a).)

14 **Thirtieth Affirmative Defense – Demurrer and Motion to Strike**

15 86. The Thirtieth Affirmative Defense, which reads in full, “Plaintiffs’ claim for
16 damages is barred to the extent that Plaintiffs had a duty to mitigate, but failed to mitigate, their
17 damages,” fails to state sufficient facts to constitute a defense to the First, Second, or Eighth
18 causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

19 87. The Thirtieth Affirmative Defense, as pleaded in the answer on file, is uncertain.
20 (Code Civ. Proc., § 430.20, subd. (b).)

21 88. The Thirtieth Affirmative defense should be stricken as improper because, even if
22 the State could plead additional facts, it would not constitute a cognizable affirmative defense.
23 (Code Civ. Proc., § 436, subd. (a).)

24 89. If it does constitute a cognizable affirmative defense, the Thirtieth Affirmative
25 Defense should be stricken because it is irrelevant to the unstayed causes of action. (Code Civ.
26 Proc., § 436, subd. (a).)

27 **Thirty-First Affirmative Defense – Demurrer and Motion to Strike**

28 90. The Thirty-First Affirmative Defense, which reads in full, “[t]he second amended

1 complaint, and each and every cause of action stated therein, fail to state facts upon which an order
2 of attorneys' fees can be granted, and any attorneys' fees are limited by law," fails to state
3 sufficient facts to constitute a defense to the First, Second, or Eighth causes of action to the Second
4 Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

5 91. The Thirty-First Affirmative Defense, as pleaded in the answer on file, is uncertain.
6 (Code Civ. Proc., § 430.20, subd. (b).)

7 92. The Thirty-First Affirmative defense should be stricken as improper because, even
8 if the State could plead additional facts, it would not constitute a cognizable affirmative defense.
9 (Code Civ. Proc., § 436, subd. (a).)

10 **Thirty-Second Affirmative Defense – Demurrer and Motion to Strike**

11 93. The Thirty-Second Affirmative Defense, which reads in full, "[t]he second
12 amended complaint and each cause of action alleged therein for declaratory relief are barred
13 because there is no present and actual controversy between the parties," fails to state sufficient
14 facts to constitute a defense to the First, Second, or Eighth causes of action to the Second
15 Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

16 94. The Thirty-Second Affirmative Defense, as pleaded in the answer on file, is
17 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

18 95. The Thirty-Second Affirmative defense should be stricken as improper because,
19 even if the State could plead additional facts, it would not constitute a cognizable affirmative
20 defense. (Code Civ. Proc., § 436, subd. (a).)

21 96. If it does constitute a cognizable affirmative defense, the Thirty-Second Affirmative
22 Defense should be stricken because it is irrelevant to the unstayed causes of action. (Code Civ.
23 Proc., § 436, subd. (a).)

24 **Thirty-Third Affirmative Defense – Demurrer and Motion to Strike**

25 97. The Thirty-Third Affirmative Defense, which reads in full, "Defendant is not liable
26 for injuries, if any there were, caused by independent contractors, holders of licenses, permits, or
27 other authorizations, or third parties[] (Gov. Code, §§ 815.2, 815.4, and 820.8[])," fails to state
28 sufficient facts to constitute a defense to the First, Second, or Eighth causes of action to the Second

1 Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

2 98. The Thirty-Third Affirmative Defense, as pleaded in the answer on file, is
3 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

4 99. The Thirty-Third Affirmative Defense should be stricken because it is irrelevant to
5 the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

6 100. The Thirty-Third Affirmative Defense should be stricken as improper because it is
7 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

8 **Thirty-Fourth Affirmative Defense – Demurrer and Motion to Strike**

9 101. The Thirty-Fourth Affirmative Defense, which reads in full, “Defendant is not
10 vicariously liable for any act or omission of any other person, by way of respondeat superior or
11 otherwise[] (Gov. Code, §§ 815.2, 820.8[]),” fails to state sufficient facts to constitute a defense to
12 the First, Second, or Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc.,
13 § 430.20, subd. (a).)

14 102. The Thirty-Fourth Affirmative Defense, as pleaded in the answer on file, is
15 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

16 103. The Thirty-Fourth Affirmative Defense should be stricken because it is irrelevant to
17 the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

18 104. The Thirty-Fourth Affirmative Defense should be stricken as improper because it is
19 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

20 **Thirty-Fifth Affirmative Defense – Demurrer and Motion to Strike**

21 105. The Thirty-Fifth Affirmative Defense, which reads in full, “Defendant is immune
22 from liability for any injury or damages, if any there were, resulting from the adoption of or the
23 failure to adopt an enactment or from the failure to enforce law[] (Gov. Code, §§ 815.2, 818.2 and
24 821[]),” fails to state sufficient facts to constitute a defense to the First, Second, or Eighth causes
25 of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

26 106. The Thirty-Fifth Affirmative Defense, as pleaded in the answer on file, is uncertain.
27 (Code Civ. Proc., § 430.20, subd. (b).)

28 107. The Thirty-Fifth Affirmative Defense should be stricken because it is irrelevant to

1 the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

2 108. The Thirty-Fifth Affirmative Defense should be stricken as improper because it is
3 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

4 **Thirty-Sixth Affirmative Defense – Demurrer and Motion to Strike**

5 109. The Thirty-Sixth Affirmative Defense, which reads in full, “Defendant is not liable
6 for any injury or damages, if any there were, resulting from decisions with respect to licenses,
7 permits, approvals, orders and other authorizations[] (Gov. Code, §§ 818.4 and 821.2[]),” fails to
8 state sufficient facts to constitute a defense to the First, Second, or Eighth causes of action to the
9 Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

10 110. The Thirty-Sixth Affirmative Defense, as pleaded in the answer on file, is
11 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

12 111. The Thirty-Sixth Affirmative Defense should be stricken because it is irrelevant to
13 the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

14 **Thirty-Seventh Affirmative Defense – Demurrer and Motion to Strike**

15 112. The Thirty-Seventh Affirmative Defense, which reads in full, “Defendant is not
16 liable for any injury or damages, if any there were, resulting from failure to discharge any
17 mandatory duties as reasonable diligence was exercised to discharge any duty there may have
18 been[] (Gov. Code, § 815.6[]),” fails to state sufficient facts to constitute a defense to the First,
19 Second, or Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20,
20 subd. (a).)

21 113. The Thirty-Seventh Affirmative Defense, as pleaded in the answer on file, is
22 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

23 114. The Thirty-Seventh Affirmative Defense should be stricken because it is irrelevant
24 to the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

25 115. The Thirty-Seventh Affirmative Defense should be stricken as improper because it
26 is duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

27 **Thirty-Eighth Affirmative Defense – Demurrer and Motion to Strike**

28 116. The Thirty-Eighth Affirmative Defense, which reads in full, “Defendant is not

1 liable for any injury or damages, if any there were, for failure to inspect or for a negligent
2 inspection of property owned or controlled by a third party[] (Gov. Code, §§ 818.6 and 821.4[]),”
3 fails to state sufficient facts to constitute a defense to the First, Second, or Eighth causes of action
4 to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

5 117. The Thirty-Eighth Affirmative Defense, as pleaded in the answer on file, is
6 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

7 118. The Thirty-Eighth Affirmative Defense should be stricken because it is irrelevant to
8 the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

9 **Thirty-Ninth Affirmative Defense – Demurrer and Motion to Strike**

10 119. The Thirty-Ninth Affirmative Defense, which reads in full, “[t]he complaint and
11 each cause of action therein are barred by the statute of limitations of Code of Civil Procedure
12 section 342 [relating to claims against public entities] and Government Code sections 945.4 and
13 945.6,” fails to state sufficient facts to constitute a defense to the First, Second, or Eighth causes of
14 action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

15 120. The Thirty-Ninth Affirmative Defense, as pleaded in the answer on file, is
16 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

17 121. The Thirty-Ninth Affirmative Defense should be stricken because it is irrelevant to
18 the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

19 122. The Thirty-Ninth Affirmative Defense should be stricken as improper because it is
20 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

21 **Fortieth Affirmative Defense – Demurrer and Motion to Strike**

22 123. The Fortieth Affirmative Defense, which reads in full, “the complaint and each
23 cause of action therein are barred and this court is without jurisdiction as there has been a failure to
24 exhaust administrative remedies,” fails to state sufficient facts to constitute a defense to the First,
25 Second, or Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20,
26 subd. (a).)

27 124. The Fortieth Affirmative Defense, as pleaded in the answer on file, is uncertain.
28 (Code Civ. Proc., § 430.20, subd. (b).)

1 125. The Fortieth Affirmative Defense should be stricken as improper because it is
2 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

3 **Forty-First Affirmative Defense – Demurrer and Motion to Strike**

4 126. The Forty-First Affirmative Defense, which reads in full, “[t]he answering public
5 entity is immune from suit pursuant to Government Code section 815 to the extent that the
6 complaint and each cause of action therein attempt to state a cause of action not provided by
7 statute against a public entity,” fails to state sufficient facts to constitute a defense to the First,
8 Second, or Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20,
9 subd. (a).)

10 127. The Forty-First Affirmative Defense, as pleaded in the answer on file, is uncertain.
11 (Code Civ. Proc., § 430.20, subd. (b).)

12 128. The Forty-First Affirmative Defense should be stricken as improper because it is
13 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

14 **Forty-Second Affirmative Defense – Demurrer and Motion to Strike**

15 129. The Forty-Second Affirmative Defense, which reads in full, “[a]ll acts of
16 defendants, if any there were, occurred in the proper exercise of police powers,” fails to state
17 sufficient facts to constitute a defense to the First, Second, or Eighth causes of action to the Second
18 Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

19 130. The Forty-Second Affirmative Defense, as pleaded in the answer on file, is
20 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

21 **Forty-Third Affirmative Defense – Motion to Strike**

22 131. The Forty-Third Affirmative Defense, which reads in full, “Defendants have not
23 deprived any person of any right, privilege or immunity guaranteed by the California
24 Constitution,” should be stricken because it is irrelevant. (Code Civ. Proc., § 436, subd. (a).)

25 **Forty-Fourth Affirmative Defense – Demurrer and Motion to Strike**

26 132. The Forty-Fourth Affirmative Defense, which reads in full, “[a]t all relevant times,
27 defendant exercised due care and acted only in the execution or enforcement of the law,” fails to
28 state sufficient facts to constitute a defense to the First, Second, or Eighth causes of action to the

1 Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

2 133. The Forty-Fourth Affirmative Defense, as pleaded in the answer on file, is
3 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

4 134. The Forty-Fourth Affirmative defense should be stricken as improper because, even
5 if the State could plead additional facts, it would not constitute a cognizable affirmative defense.
6 (Code Civ. Proc., § 436, subd. (a).)

7 135. If it does constitute a cognizable affirmative defense, the Forty-Fourth Affirmative
8 Defense should be stricken as improper because it is duplicative of other affirmative defenses.
9 (Code Civ. Proc., § 436, subd. (a).)

10 **Forty-Fifth Affirmative Defense – Demurrer and Motion to Strike**

11 136. The Forty-Fifth Affirmative Defense, which reads in full, “[t]here is no liability for
12 any injury or damages, if any there were, resulting from an exercise of discretion vested in a public
13 employee, whether or not such discretion be abused[] (Gov. Code, §§ 815.2, 820.2[]),” fails to
14 state sufficient facts to constitute a defense to the First, Second, or Eighth causes of action to the
15 Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

16 137. The Forty-Fifth Affirmative Defense, as pleaded in the answer on file, is uncertain.
17 (Code Civ. Proc., § 430.20, subd. (b).)

18 138. The Forty-Fifth Affirmative Defense should be stricken because it is irrelevant to
19 the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

20 139. The Forty-Fifth Affirmative Defense should be stricken as improper because it is
21 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

22 **Forty-Sixth Affirmative Defense – Demurrer and Motion to Strike**

23 140. The Forty-Sixth Affirmative Defense, which reads in full, “[t]here is no liability in
24 that the acts alleged in the complaint, if done at all, were done in the execution and enforcement of
25 the law while exercising due care[] (Gov. Code, §§ 815.2, 820.4[]),” fails to state sufficient facts to
26 constitute a defense to the First, Second, or Eighth causes of action to the Second Amended
27 Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

28 141. The Forty-Sixth Affirmative Defense, as pleaded in the answer on file, is uncertain.

1 (Code Civ. Proc., § 430.20, subd. (b).)

2 142. The Forty-Sixth Affirmative Defense should be stricken because it is irrelevant to
3 the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

4 143. The Forty-Sixth Affirmative Defense should be stricken as improper because it is
5 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

6 **Forty-Seventh Affirmative Defense – Demurrer and Motion to Strike**

7 144. The Forty-Seventh Affirmative Defense, which reads in full, “[t]here is no liability
8 for any injury or damages, if any there were, resulting from acts done in good faith and without
9 malice under the apparent authority of any enactment, even though said enactment be
10 unconstitutional, invalid, or inapplicable[] (Gov. Code, §§ 815.2, 820.6[)],” fails to state sufficient
11 facts to constitute a defense to the First, Second, or Eighth causes of action to the Second
12 Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

13 145. The Forty-Seventh Affirmative Defense, as pleaded in the answer on file, is
14 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

15 146. The Forty-Seventh Affirmative Defense should be stricken because it is irrelevant
16 to the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

17 147. The Forty-Seventh Affirmative Defense should be stricken as improper because it is
18 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

19 **Forty-Eighth Affirmative Defense – Demurrer and Motion to Strike**

20 148. The Forty-Eighth Affirmative Defense, which reads in full, “[t]here is no liability
21 for any injury or damages, if any there were, caused by a misrepresentation by any public
22 employee, whether such misrepresentation was negligent or intentional or not[] (Gov. Code, §§
23 818.8, 822.2[)],” fails to state sufficient facts to constitute a defense to the First, Second, or Eighth
24 causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

25 149. The Forty-Eighth Affirmative Defense, as pleaded in the answer on file, is
26 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

27 150. The Forty-Eighth Affirmative Defense should be stricken because it is irrelevant to
28 the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

1 151. The Forty-Eighth Affirmative Defense should be stricken as improper because it is
2 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

3 **Forty-Ninth Affirmative Defense – Demurrer and Motion to Strike**

4 152. The Forty-Ninth Affirmative Defense, which reads in full, “[t]here is no liability for
5 injury or damages, if any there were, caused by the instituting or prosecuting of any judicial or
6 administrative proceeding[] (Gov. Code, §§ 815.2, 821.6[]),” fails to state sufficient facts to
7 constitute a defense to the First, Second, or Eighth causes of action to the Second Amended
8 Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

9 153. The Forty-Ninth Affirmative Defense, as pleaded in the answer on file, is uncertain.
10 (Code Civ. Proc., § 430.20, subd. (b).)

11 154. The Forty-Ninth Affirmative Defense should be stricken because it is irrelevant to
12 the unstayed causes of action. (Code Civ. Proc., § 436, subd. (a).)

13 155. The Forty-Ninth Affirmative Defense should be stricken as improper because it is
14 duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

15 **Fiftieth Affirmative Defense – Demurrer and Motion to Strike**

16 156. The Fiftieth Affirmative Defense, which reads in full, “[i]nsofar as defendants have
17 approved or reviewed subordinates’ acts or determinations, such review and approval was done in
18 a legislative, judicial, or quasi-judicial capacity, within the scope of discretion, with due care, and
19 with a reasonable and good faith belief that such actions were in accordance with the Constitution
20 and laws of the United States,” fails to state sufficient facts to constitute a defense to the First,
21 Second, or Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20,
22 subd. (a).)

23 157. The Fiftieth Affirmative Defense, as pleaded in the answer on file, is uncertain.
24 (Code Civ. Proc., § 430.20, subd. (b).)

25 158. The Fiftieth Affirmative defense should be stricken as improper because, even if the
26 State could plead additional facts, it would not constitute a cognizable affirmative defense. (Code
27 Civ. Proc., § 436, subd. (a).)

28 159. If it does constitute a cognizable affirmative defense, the Fiftieth Affirmative

1 defense should be stricken as improper because it presents more than one affirmative defense.
2 (Code Civ. Proc., § 436, subd. (a).)

3 **Fifty-First Affirmative Defense – Demurrer and Motion to Strike**

4 160. The Fifty-First Affirmative Defense, which reads in full, “Defendants have not
5 adopted a rule, regulation, order, or standard of general application subject to the Administrative
6 Procedure Act’s notice and comment provisions. (Gov Code, sections 11340.5, 11342.600.)
7 Insofar as defendants has [sic] promulgated any rule or regulation or directive, such promulgation
8 was done within the scope of discretion, in good faith, with due care, and with the intent that such
9 rule or regulation or directive conforms in all respects to the Constitution and laws of the United
10 States,” fails to state sufficient facts to constitute a defense to the First, Second, or Eighth causes of
11 action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

12 161. The Fifty-First Affirmative Defense, as pleaded in the answer on file, is uncertain.
13 (Code Civ. Proc., § 430.20, subd. (b).)

14 162. The Fifty-First Affirmative defense should be stricken as improper because, even if
15 the State could plead additional facts, it would not constitute a cognizable affirmative defense.
16 (Code Civ. Proc., § 436, subd. (a).)

17 163. If it does constitute a cognizable affirmative defense, the Fifty-First Affirmative
18 defense should be stricken as improper because it presents more than one affirmative defense and
19 because it is duplicative of other affirmative defenses. (Code Civ. Proc., § 436, subd. (a).)

20 **Fifty-Second Affirmative Defense – Demurrer and Motion to Strike**

21 164. The Fifty-Second Affirmative Defense, which reads in full, “[i]ndividual State of
22 California official/employee defendants, including former Attorney General Becerra, are entitled
23 to absolute and/or qualified immunity,” fails to state sufficient facts to constitute a defense to the
24 First, Second, or Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., §
25 430.20, subd. (a).)

26 165. The Fifty-Second Affirmative Defense, as pleaded in the answer on file, is
27 uncertain. (Code Civ. Proc., § 430.20, subd. (b).)

28 166. The Fifty-Second Affirmative defense should be stricken as improper because it

1 presents more than one affirmative defense. (Code Civ. Proc., § 436, subd. (a).)

2 **Fifty-Third Affirmative Defense – Demurrer and Motion to Strike**

3 167. The Fifty-Third Affirmative Defense, which reads in full, “[b]ecause Plaintiffs’
4 second amended complaint is couched in conclusory terms, answering Defendants cannot fully
5 anticipate all affirmative defenses that may apply in this case; [i]n addition, information disclosed
6 during discovery and investigation may indicate additional defenses that apply in this case[;]
7 accordingly, Defendants reserve the right to supplement, alter or amend this answer to add
8 additional defenses,” fails to state sufficient facts to constitute a defense to the First, Second, or
9 Eighth causes of action to the Second Amended Complaint. (Code Civ. Proc., § 430.20, subd. (a).)

10 168. The Fifty-Third Affirmative Defense, as pleaded in the answer on file, is uncertain.
11 (Code Civ. Proc., § 430.20, subd. (b).)

12 169. The Fifty-Third Affirmative defense should be stricken as improper because, even
13 if the State could plead additional facts, it would not constitute a cognizable affirmative defense.
14 (Code Civ. Proc., § 436, subd. (a).)

15 170. If it does constitute a cognizable affirmative defense, the Fifty-Third Affirmative
16 defense should be stricken as improper because it presents more than one affirmative defense.
17 (Code Civ. Proc., § 436, subd. (a).)

18 Dated: August 4, 2021

MICHEL & ASSOCIATES, P.C.

19 

20 _____
21 Anna M. Barvir
22 Attorneys for Petitioners-Plaintiffs
23
24
25
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27
28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County, California.
5 I am over the age eighteen (18) years and am not a party to the within action. My business address
6 is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

7 On August 4, 2021, I served the foregoing document(s) described as

8 **PLAINTIFFS AND PETITIONERS' NOTICE OF DEMURRER AND DEMURRER TO
9 AND MOTION TO STRIKE RESPONDENTS' ANWER TO THE FIRST, SECOND, AND
10 EIGHTH CAUSES OF ACTION TO THE SECOND AMENDED COMPLAINT**

11 on the interested parties in this action by placing

12 [] the original
13 [X] a true and correct copy

14 thereof by the following means, addressed as follows:

15 Benjamin Barnouw
16 Deputy Attorney General
17 Email: Ben.Barnouw@doj.ca.gov
18 Kenneth G. Lake
19 Deputy Attorney General
20 Email: Kenneth.Lake@doj.ca.gov
21 Alexis Diamond
22 Deputy Attorney General
23 Email: Alexis.Diamond@doj.ca.gov
24 California Department of Justice
25 300 South Spring Street, Suite 1702
26 Los Angeles, CA 90013
27 *Attorney for Respondents-Defendants*

28 X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by electronic
transmission through One Legal. Said transmission was reported and completed without
error.

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

Executed on August 4, 2021, at Long Beach, California.



Laura Palmerin