

7/11/00

LOMBARDI, LOPER & CONANT, LLP
Lake Merritt Plaza
1999 Harrison Street, Suite 2600
Oakland, CA 94612-3541

FAXED

1 MATTHEW S. CONANT, State Bar No. 94920
msc@llcllp.com
2 MARIA M. LAMPASONA, State Bar No. 259675
mlampasona@llcllp.com
3 LOMBARDI, LOPER & CONANT, LLP
Lake Merritt Plaza
4 1999 Harrison Street, Suite 2600
Oakland, CA 94612-3541
5 Telephone: (510) 433-2600
Facsimile: (510) 433-2699

6 Attorneys for Defendant
7 ALDON SMITH

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10
11 RONNDALE ESPORLAS,
12 Plaintiff,

13 v.

14 ALDON SMITH, DELANIE WALKER,
15 DOES 1 THROUGH 100,
16 Defendants.

Case No. 113CV252373
ANSWER TO COMPLAINT

FILED
07/11/00
David H. Yamashita
Chief Executive Officer
OK 1435, 00
TL 1435, 10
Case: 113 CV 252373

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18 COMES NOW defendant ALDON SMITH and in answer to the complaint on file herein
19 denies generally and specifically, each and every, all and singular, the allegations contained
20 therein.

21 AS A FURTHER, SEPARATE ANSWER AND AFFIRMATIVE DEFENSE TO THE
22 COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:

23 That the complaint on file herein does not state facts sufficient to constitute a cause of
24 action against this answering defendant.

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31167-42979 MSC 647770.1

ANSWER TO COMPLAINT

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1 AS A SECOND, SEPARATE ANSWER AND AFFIRMATIVE DEFENSE TO THE
2 COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:

3 Should plaintiff recover damages against defendant, said defendant is entitled to have the
4 amount abated, reduced or eliminated to the extent plaintiff's negligence caused or contributed to
5 his own injuries and damages, if any.

6 AS A THIRD, SEPARATE ANSWER AND AFFIRMATIVE DEFENSE TO THE
7 COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:

8 Plaintiff failed to mitigate damages which he contends he suffered and are therefore
9 barred from recovery.

10 AS A FOURTH, SEPARATE ANSWER AND AFFIRMATIVE DEFENSE TO THE
11 COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:

12 At the time and place of the incident alleged in plaintiff's complaint, plaintiff knew of the
13 dangers and risks to his undertaking, but nevertheless, freely and voluntarily exposed himself to
14 all risks of harm incidental thereto, and therefore assumed all such risks of harm.

15 AS A FIFTH, SEPARATE ANSWER AND AFFIRMATIVE DEFENSE TO THE
16 COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:

17 At all times and places mentioned in plaintiff's complaint, this answering defendant
18 alleges that plaintiff's injuries and / or damages were proximately caused or contributed to by the
19 negligent or other tortuous conduct of persons other than this answering defendant, and that any
20 damages recoverable by plaintiff from this answering defendant must be diminished in proportion
21 to the amount of fault attributable to these other persons.

22 AS A SIXTH, SEPARATE ANSWER AND AFFIRMATIVE DEFENSE TO THE
23 COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:

24 The complaint and each cause of action alleged therein are vague, ambiguous and
25 uncertain.

26 AS A SEVENTH, SEPARATE ANSWER AND AFFIRMATIVE DEFENSE TO THE
27 COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:

28 The complaint and each cause of action alleged therein fails to state facts sufficient to

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ANSWER TO COMPLAINT

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1999 Harrison Street, Suite 2500
Oakland, CA. 94612-3541

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constitute a cause of action for punitive damages against this answering defendant.

AS AN EIGHTH, SEPARATE ANSWER AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:

The complaint and each cause of action alleged therein fails to state facts sufficient to constitute a cause of action for attorneys' fees or pre-judgment interest.

AS A NINTH, SEPARATE ANSWER AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:

That the plaintiff by his acts and / or omissions engaged in willful misconduct and that willful misconduct precludes this action and, further, that willful misconduct was a proximate cause of the incident and damages, if any, sustained by plaintiff.

WHEREFORE, this answering defendant prays judgment that plaintiff take nothing by reason of the complaint on file herein; that it be hence dismissed with costs of suit incurred herein, and for such other and further relief as to the court may deem proper.

Dated: September 17, 2013

LOMBARDI, LOPER & CONANT, LLP

By: 
MATTHEW S. CONANT