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7 Attorneys for Defendants CALIFORNIA PUBLIC UTILITIES
COMMISSION, MICHAEL PICKER and LIANE M. RANDOLPH
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 KAREN CLOPTON,
12 Plaintiff,
13 v.
14 CALIFORNIA PUBLIC UTILITIES
COMMISSION, MICHAEL PICKER,
15 CARLA J. PETERMAN, LIANE M.
RANDOLPH, MARTHA GUZMAN
16 ACEVES, CLIFFORD
RECHTSCHAFFEN,
17 Defendants.
18

Case No.: CGC-17-563082

Complaint Filed: December 13, 2017
FAC Filed: March 8, 2018

**ANSWER TO FIRST AMENDED
COMPLAINT**

(*Exempt from filing fees pursuant to Gov.
Code, § 6103.)

19 Defendants CALIFORNIA PUBLIC UTILITIES COMMISSION, MICHAEL PICKER,
20 and LIANE M. RANDOLPH answer Plaintiff's First Amended Verified Complaint
21 ("Complaint") as stated below.

22 Former Defendants Carla Peterman, Martha Guzman Aceves and Clifford Rechtschaffen
23 were dismissed from this action in this Court's May 29, 2018 order regarding Defendants'
24 Demurrer to the First Amended Complaint. That order granted Plaintiff leave to amend the
25 Complaint to state a viable claim against those Defendants, and Plaintiff did not do so.

26 1. Answering paragraph 1, Defendants deny that they retaliated against Plaintiff.
27 Defendants admit that the CPUC terminated Plaintiff's employment. Regarding each and every
28 remaining allegation in paragraph 1, Defendants lack information or belief as to the truth of those

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Superior Court of California,
County of San Francisco
06/28/2018
Clerk of the Court
BY: BOWMAN LIU
Deputy Clerk

1 allegations and therefore deny them on that basis.

2 2. Answering paragraph 2, Defendants admit that Plaintiff did not agree with the
3 appointment of a CPUC administrative law judge. Defendants deny the remaining allegations in
4 paragraph 2.

5 3. Answering paragraph 3, Defendants admit that Plaintiff directly addressed what
6 she considered to be racial issues to the Commissioners and that she provided implicit bias
7 training. Defendants deny each and every remaining allegation in paragraph 2.

8 4. Defendants admit the allegations in paragraph 4.

9 5. Defendants admit the allegations in paragraph 5.

10 6. Defendants admit the allegations in paragraph 6.

11 7. Defendants admit the allegations in paragraph 7.

12 8. Defendants admit the allegations in paragraph 8.

13 9. Defendants admit the allegations in paragraph 9.

14 10. Defendants lack information or belief as to the truth of the allegations in paragraph
15 10 and therefore deny them on that basis.

16 11. Defendants admit the allegations in paragraph 11.

17 12. Defendants admit the allegations of paragraph 12.

18 13. Defendants deny the allegations in paragraph 13.

19 14. Defendants lack information or belief as to the truth of the allegations in paragraph
20 14 and therefore deny them on that basis.

21 15. Defendants admit that in January 2014, Carol Brown emailed Plaintiff to inform
22 her that Mr. Peevey wanted Judge John Wong assigned to the PG&E case. Defendants lack
23 information or belief as to the truth of the remaining allegations in paragraph 15 and therefore
24 deny them on that basis.

25 16. Defendants lack information or belief as to the truth of the allegations in paragraph
26 16 and therefore deny them on that basis.

27 17. Answering paragraph 17 of the Complaint, Defendants admit that Plaintiff
28 expressed a belief that a CPUC attorney was telecommuting for her CPUC job at the same time

1 that she was allegedly working at her husband's law office. Defendants lack information or belief
2 as to the truth of the allegations regarding what Plaintiff believed, and therefore deny them on that
3 basis. Defendants deny the remaining allegations in this paragraph.

4 18. Defendants admit the allegations in paragraph 18.

5 19. Defendants admit the allegations in paragraph 19.

6 20. Defendants lack information or belief as to the truth of the allegations in paragraph
7 20 and therefore deny them on that basis.

8 21. Defendants admit that Plaintiff expressed her opinion to Commissioner Picker that
9 Michael Colvin should not be appointed to an administrative law judge position. Defendants lack
10 information or belief as to the truth of the allegations regarding what Plaintiff believed, and
11 therefore deny them on that basis. Defendants deny the remaining allegations in this paragraph.

12 22. Defendants admit that Plaintiff expressed her opinion to Timothy Sullivan that
13 Michael Colvin should not be appointed to an administrative law judge position. Defendants lack
14 information or belief regarding Plaintiff's alleged motivations for that opinion. Defendants deny
15 the remaining allegations in paragraph 22.

16 23. Defendants deny the allegations in paragraph 23.

17 24. Defendants admit that Plaintiff expressed her disagreement with Amy Yip
18 Kikugawa's appointment. Defendants lack information or belief regarding Plaintiff's alleged
19 motivations for that opinion. Defendants deny the remaining allegations in paragraph 24.

20 25. Defendants admit that Plaintiff requested that Mr. Colvin's appointment be
21 withdrawn. Defendants deny the remaining allegations in paragraph 25.

22 26. Defendants admit the allegations in paragraph 26.

23 27. Defendants admit that Plaintiff, along with several other people, received
24 anonymous, hateful letters, and that despite conducting an investigation into the matter, the
25 CPUC never learned the identity of the sender or senders.

26 28. Answering paragraph 28, Defendants lack information or belief as to the truth of
27 the allegation that Plaintiff "believed her actions were necessary to remedy violations of state and
28 federal laws prohibiting discrimination on the basis of race and to prevent such violations from

1 occurring in the future,” and therefore deny it on that basis. Defendants admit the remaining
2 allegations in paragraph 28, except that Defendants deny that Plaintiff’s mentioning of “implicit
3 bias and race discrimination concerns” occurred “on a regular basis.”

4 29. Defendants admit the Plaintiff communicated with the CPUC’s Human Resources
5 Department regarding a statement made during a training provided by an outside trainer that
6 Plaintiff considered to reflect archaic and debunked anthropological theories about race. Except
7 as admitted herein, Defendants deny the remaining allegations in paragraph 29.

8 30. Defendants lack information or belief as to the truth of the allegations in paragraph
9 30 and therefore deny them on that basis.

10 31. Defendants deny the allegations in paragraph 31.

11 32. Answering paragraph 32, Defendants admit that the CPUC issued a Notice of
12 Adverse Action –Dismissal to Plaintiff on June 30, 2017, that was originally to be effective July
13 28, 2017 and later became effective August 25, 2017. Defendants deny each and every remaining
14 allegation in paragraph 32.

15 33. Defendants admit that Plaintiff filed a California Whistleblower Protection Act
16 complaint with the State Personnel Board. Defendants deny each and every remaining allegation
17 in paragraph 33.

18 34. Defendants admit that on October 5, 2017, the State Personnel Board issued a
19 “Dismissal with Leave to Amend.” Defendants deny each and every remaining allegation in
20 paragraph 34.

21 35. [The First Amended Complaint does not contain a paragraph 35.]

22 36. Defendants lack information or belief as to the truth of the allegations in paragraph
23 36 and therefore deny them on that basis.

24 37. Defendants lack information or belief as to the truth of the allegations in paragraph
25 37 and therefore deny them on that basis.

26 38. Defendants incorporate by reference their responses to paragraphs 1-37 above.

27 39. Defendants deny the allegations in paragraph 39.

28 40. Defendants incorporate by reference their responses to paragraphs 1-39 above.

- 1 41. Defendants deny the allegations in paragraph 41.
2 42. Defendants incorporate by reference their responses to paragraphs 1-41 above.
3 43. Defendants deny the allegations in paragraph 43.
4 44. Defendants incorporate by reference their responses to paragraphs 1-43 above.
5 45. Defendants deny the allegations in paragraph 45.
6 46. Defendants deny the allegations in paragraph 46.
7 47. Defendants deny the allegations in paragraph 47.

8 **PRAYER FOR RELIEF**

9 Answering Plaintiff's Prayer for Relief, Defendants deny that Plaintiff is entitled to any
10 monetary, declaratory, affirmative, injunctive, or relief and generally deny each and every
11 allegation contained in the prayer and request for relief.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 1. As a first affirmative defense, Defendants allege that the Complaint fails to state
15 facts sufficient to constitute any cause of action against Defendants.

16 **SECOND AFFIRMATIVE DEFENSE**

17 2. As a second affirmative defense, Defendants allege that the Complaint fails to state
18 any claim for violation of the Fair Employment and Housing Act.

19 **THIRD AFFIRMATIVE DEFENSE**

20 3. As a third affirmative defense, Defendants allege that the CPUC has established
21 and enforced, at all relevant times, policies prohibiting discrimination and retaliation.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 4. As a fourth affirmative defense, Defendants allege that Plaintiff's claims are
24 barred in whole or in part by the doctrine of estoppel.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 5. As a fifth affirmative defense, Defendants allege Plaintiff is barred from seeking
27 any damages from purported physical or emotional injuries allegedly suffered as a result of her
28 employment in that the sole and exclusive remedy in this respect is governed by the Worker's

1 Compensation Act (Labor Code § 3200 et seq.).

2 **SIXTH AFFIRMATIVE DEFENSE**

3 6. As a sixth affirmative defense, Defendants allege that all of Plaintiff's causes of
4 action in her Complaint are barred by Plaintiff's failure to comply fully and timely with the
5 statutory prerequisites necessary to maintain any or all of the causes of action brought under the
6 Fair Employment and Housing Act, California Government Code section 12900 et seq.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 7. As a seventh affirmative defense, Defendants allege that Plaintiff has failed to
9 exhaust her administrative remedies under any applicable local, state, or federal policies,
10 regulations, procedures, or laws.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 8. As an eighth affirmative defense, Defendants allege that even "but for" any alleged
13 discriminatory or retaliatory motives, the actions taken regarding Plaintiff's employment would
14 have been the same.

15 **NINTH AFFIRMATIVE DEFENSE**

16 9. As ninth affirmative defense, Defendants allege that some or all of Plaintiff's
17 claims are barred by the privileges and immunities applicable to public employees and agencies,
18 including, but not limited to, California Government Code sections 815, 815.2, 815.6, 818.2, 820,
19 820.2, 820.4, 820.6, 820.8, 820.9, 821, 821.6, 822.2, and/or other statutory or common law
20 privileges or immunities.

21 **TENTH AFFIRMATIVE DEFENSE**

22 10. As a tenth affirmative defense, Defendants allege that Plaintiff's claims, and each
23 of them, are barred by the applicable statutes of limitations, including, but not limited to,
24 Government Code sections 12960 and 12965.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 11. As an eleventh affirmative defense, Defendants allege that Plaintiff is not entitled
27 to attorneys' fees or costs and has failed to state a claim for attorney's fees or costs.

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TWELFTH AFFIRMATIVE DEFENSE

12. As a twelfth affirmative defense, Defendants allege that Plaintiff had a duty to mitigate her damages but has failed to mitigate any damages to which she may be entitled.

THIRTEENTH AFFIRMATIVE DEFENSE

13. As a thirteenth affirmative defense, Defendants allege that Plaintiff's causes of action, and each of them, are barred on the ground that Defendants had good faith, legitimate, non-discriminatory and non-retaliatory business reasons, which were not a pretext for discrimination or retaliation, for each and every employment action regarding Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

14. As a fourteenth affirmative defense, Defendants allege that at all times mentioned in the Complaint, Defendants acted in conformity with applicable constitutional law, state and federal laws, ordinances, regulations, and policies.

FIFTEENTH AFFIRMATIVE DEFENSE

15. As an fifteenth affirmative defense, Defendants allege that Plaintiff's alleged injuries, losses, or damages were proximately caused by a superseding and intervening cause.

SIXTEENTH AFFIRMATIVE DEFENSE

16. As a sixteenth affirmative defense, Defendants allege that the Plaintiff's causes of action, and each of them, are barred by laches.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. As a seventeenth affirmative defense, Defendants allege that the Plaintiff's causes of action, and each of them, are barred by the doctrines of unclean hands or waiver.

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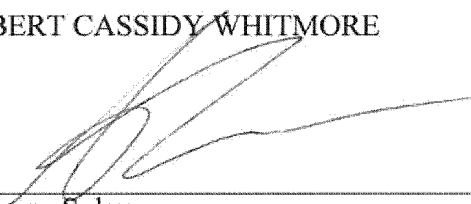
EIGHTEENTH AFFIRMATIVE DEFENSE

18. As an eighteenth separate and affirmative defense, Defendants allege that, to the extent during the course of this litigation CPUC acquires any evidence of wrongdoing by Plaintiff and the wrongdoing would have materially affected the terms and conditions of Plaintiff's employment or would have resulted in Plaintiff's employment being terminated, such after-acquired evidence shall bar Plaintiff's claim on liability or damages or shall reduce such claim or damages as provided by law.

Dated: June 27, 2018

LIEBERT CASSIDY WHITMORE

By:



Suzanne Solomon
Juliana Kresse
Attorneys for Defendants CALIFORNIA PUBLIC
UTILITIES COMMISSION, MICHAEL PICKER
and LIANE M. RANDOLPH

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: **400 Capitol Mall, Suite 1260, Sacramento, CA 95814.**

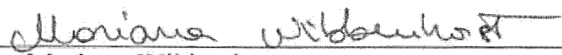
On **June 28, 2018**, I served the foregoing document(s) described as **DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT** in the manner checked below on all interested parties in this action addressed as follows:

Mr. Dan Siegel
Siegel, Yee & Brunner
475 14th Street, Suite 500
Oakland, CA 94612
Telephone: 510.839.1200
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- (BY ELECTRONIC SERVICE)** By transmitting the document listed above to be Electronically served through File & Serve Xpress to the parties on the Service List maintained by File & Serve Xpress for this matter.

Executed on **June 28, 2018**, at Sacramento, California.

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


Mariana Wibbenhorst