

1	additional affirmative defenses that discovery indicates are proper.			
2	FIRST AFFIRMATIVE DEFENSE			
3	1. Defendants allege that the Complaint fails to state facts sufficient to constitute a			
4	cause of action.			
5	SECOND AFFIRMATIVE DEFENSE			
6	2. At the time and place of the occurrence alleged in the Complaint, Plaintiff failed to			
7	exercise ordinary care on her own behalf for her own safety. That negligence caused the injury			
8	and damage, if any, that he sustained. Consequently, Plaintiff's right to recover should be			
9	diminished by her proportional share of fault.			
10	THIRD AFFIRMATIVE DEFENSE			
11	3. Defendants' liability for non-economic damages, if any, is limited to that			
12				
	percentage of those damages which are in direct proportion of Defendants' percentage of fault in			
13	accordance with Civil Code section 1431.2(a).			
14	FOURTH AFFIRMATIVE DEFENSE			
15	4. Plaintiff's cause of action is barred by the doctrine of unclean hands.			
16	<u>FIFTH AFFIRMATIVE DEFENSE</u>			
17	5. Plaintiff's cause of action for negligence is barred or her recovery should be			
18	diminished because the alleged damage was caused by Plaintiff's failure to exercise ordinary care			
19	on her own behalf for her own safety.			
20	SIXTH AFFIRMATIVE DEFENSE			
21	6. At the time and place referred to in the Complaint, and before such event, Plaintiff			
22	knew, appreciated and understood each and every risk involved in placing herself in the position			
23	which he then assumed, and willingly, knowingly and voluntarily assumed each of such risks,			
24	including, but not limited to, the risk of suffering personal bodily injury.			
25	SEVENTH AFFIRMATIVE DEFENSE			
26	7. Plaintiff has failed to mitigate the damages, if any, which Plaintiff has sustained,			
27	and to exercise reasonable care to avoid the consequences of harms, if any, in that, among other			
28	things, Plaintiff has failed to use reasonable diligence in caring for any injuries, failed to use			
	4830-2131-3174.1 2			
	DEFENDANTS' ANSWER TO COMPLAINT			

MANNING & KASS ELLROD, RAMIREZ, TRESTER LLP

reasonable means to prevent aggravation of any injuries and failed to take reasonable precautions
 to reduce any injuries and damages.

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## **EIGHTH AFFIRMATIVE DEFENSE**

8. Plaintiff has failed to exercise reasonable care and diligence to avoid loss and to
minimize the damages, if any, which plaintiff suffered. Plaintiff has failed to exercise reasonable
efforts on her part or to reasonably have made expenditures which could have prevented the losses
which Plaintiff allegedly suffered.

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## **NINTH AFFIRMATIVE DEFENSE**

9 9. Plaintiff's cause of action for negligence is barred or Plaintiff's recovery should be
10 reduced because any injuries or damages were proximately caused by the negligence and other
11 legal fault of persons or entities other than Defendants.

## **TENTH AFFIRMATIVE DEFENSE**

13 10. The damages sustained by Plaintiff, if any, were proximately caused by the acts,
14 omissions, negligence, fraud and/or breach of obligations by persons other than Defendants and
15 beyond Defendants' supervision and control.

### **ELEVENTH AFFIRMATIVE DEFENSE**

17 11. The causes of action alleged in the Complaint are barred by the applicable statutes
18 of limitations, including, but not limited to the provisions of Code of Civil Procedure sections
19 335.1, 337, 337.1, 337.15, 338(a), 338(b), 338(d), 339, 340(3) and/or 343.

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# **TWELFTH AFFIRMATIVE DEFENSE**

Defendants are informed, believe, and thereon allege that it may have other separate and/or
additional defenses of which it is not aware, and hereby reserves the right to assert them by
amendment to this Answer as discovery continues.

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### **TWELFTH AFFIRMATIVE DEFENSE**

Defendants are informed and believe, and thereon allege, that at all times relevant, Plaintiff was uninsured, and/or did not carry the minimum required liability limits required by law and, as such, is not entitled to general damages pursuant to California Civil Code Section 3333.3.

28 WHEREFORE, Defendants pray for judgment as follows:

4830-2131-3174.1 <u>3</u> DEFENDANTS' ANSWER TO COMPLAINT

	1 2 3 4 5 6 7 8 9 10	2.	Plaintiff take nothing by reason of the Complaint on file herein; For costs of suit incurred herein; and For such other and further relief as this Court may deem just and proper. MANNING & KASS ELLROD, RAMIREZ, TRESTER LLP By: David V. Roth Arthur Khurin Attorneys for Defendants, BRUCE ROBERT BROGDEN and
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		4830-2131-3174.1	4 DEFENDANTS' ANSWER TO COMPLAINT

Processing		
<ul> <li>STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO</li> <li>At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is One California Street, Suite 900, San Francisco, CA 94111.</li> <li>Do May 7, 2019, I served true copies of the following document(s) described as DEFENDANTS' ANSWER TO COMPLAINT on the interested parties in this action as follows:         <ul> <li>Alison E. Cordova, Esq.</li> <li>Alison E. Cordova, Esq.</li> <li>Attorney for Plaintiff, LAURA OWENS</li> <li>COTCHETT, PITRE &amp; McCARTHY, LLP San Francisco Airport Office Center 840 Malcoin Road, Suite 200</li> <li>By MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the prisons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Manning &amp; Kass, Ellrod, Ramirez, Trester LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at San Francisco, California.</li> </ul> </li> <li>BY BLECTRONICS SERVICE: I electronically served the document(s) described above is the &amp; ServicyPress, on the recipients designated on the Transaction Receipt located on the File &amp; ServeXPress website and authorizing service of documents.</li> <li>I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</li> <li>Executed on May 7, 2019, at San Francisco. California.</li> <li>Diada Norton</li> </ul>		
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