1	FRED J. KNEZ, ESQ. SBN 94038 LAW OFFICES OF FRED J. KNEZ	
3	18493 Halter Ln Post Office Box 70090 Riverside, CA 92513	SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE
4	Telephone: (951) 789-1832 Facsimile: (951) 780-1480	FEB 16 2006
5	Attorney for Defendants, MATTHEW GREY, RICK GAY and KASIA GAY	b
7		
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
9	IN AND FOR THE COUNTY OF RIVERSIDE	
10		
11	TEDD W. MASON,) CASE NO: RIC 443002
12	Plaintiffs,	Assigned for all purposes to: Hon. Edward D. Webster, Dpt 5
13	vs.) ANSWER OF DEFENDANT KASIAGAY
14 15	MATTHEW GREY, RICK GAY, KASIA GAY, RIVERSIDE UNIFIED SCHOOL DISTRICT, and DOES 1 through 25	TO UNVERIFIED COMPLAINT OF TEDD W. MASON
16	Defendants.)) Complaint Filed: 1-10-06) Trial Date: None
17	GOLFGAVOVA P. G. J. AVAGYARAYA A. G. H. A. B. G. J. A.	
18	COMES NOW, Defendant KASIAGAY and, for himself and no other Defendant, responds to	
19	the unverified Complaint of TEDD W. MASON, as follows:	
20	Pursuant to <u>Code of Civil Procedure</u> § 431.30, this answering Defendant denies, generally and specifically, each and every allegation contained in Plaintiff's unverified Complaint, and the whole	
21 22	thereof, and further denies that as a proximate result of any conduct on the part of this answering	
23	Defendant, Plaintiff has been injured or damaged in the sum or sums alleged, or at all.	
24	AFFIRMATIVE DEFENSES	
25	FIRST AFFIRMATIVE DEFENSE	
26	(Failure to State Claim Upon Which Relief Can Be Granted)	
27	1. As a First Affirmative Defense, this answering Defendant asserts that Plaintiff's	
28	, J	
	ANSWER OF DEFENDANT KASIA GAY TO UNVERIFIED COMPLAINT OF TEDD W. MASON	
I		

allegations within the unverified Complaint fail to state a claim upon which relief can be granted and fails to state facts sufficient to state a cause of action against this answering Defendant.

SECOND AFFIRMATIVE DEFENSE

(Estoppel)

2. As a Second Affirmative Defense, this answering Defendant is informed and believes and based thereon alleges that Plaintiff engaged in conduct and activities with respect to the subject of this litigation, and incidents which are the subject of Plaintiff's unverified Complaint, and by reason of said activities and conduct Plaintiff is estopped from asserting any claims for damages or seeking any other relief against this answering Defendant.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

3. As a Third Affirmative Defense, this answering Defendant asserts that Plaintiff himself acted improperly in connection with the events alleged in his unverified Complaint and, as such, is not entitled to recover any damages or damages as alleged in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

4. As a Fourth Affirmative Defense, this answering Defendant alleges that Plaintiff, though under a duty to do so, has failed and neglected to mitigate his alleged damages, and, therefore, cannot recover against this answering Defendant whether as alleged or otherwise.

FIFTH AFFIRMATIVE DEFENSE

(Intervening Cause)

5. As a Fifth Affirmative Defense, this answering Defendant is informed and believes, and based thereon alleges that if Plaintiff has suffered or sustained any damage or injury, either as alleged in his unverified Complaint or at all, the damage or injury was directly or proximately attributable to the negligence, fault or acts of other parties or entities, whether or not parties to this action, and damages to Plaintiff, if any, should be reduced in proportion to the amount of negligence and/or fault attributable to such other persons or entities, whether or not parties to this action.

3

4

5

6 7

8

10

9

11 12

13

14

15

16

17 18

19

20 21

22

23 24

25 26

27

28

SIXTH AFFIRMATIVE DEFENSE

(Justification)

As a Sixth Affirmative Defense, this answering Defendant alleges that Plaintiff engaged 6. in conduct and activities with respect to the subject of this litigation, and by reason thereof, the conduct of this answering Defendant was justified, and Plaintiff is barred from any recovery against this answering Defendant.

SEVENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

7. As a Seventh Affirmative Defense, this answering Defendant is informed and believes and on that basis alleges that Plaintiff expressly, voluntarily, and knowingly assumed all risks about which he complains in his Complaint and, therefore, is barred either totally or to the extent of said assumption, of any alleged damages claimed in Plaintiff's unverified Complaint.

EIGHTH AFFIRMATIVE DEFENSE

(Comparative Fault of Third Parties)

8. As an Eighth Affirmative Defense, this answering Defendant is informed and believes and on that basis alleges that the incident and the injuries, if any allegedly suffered by Plaintiff in the incident or incidents alleged in the unverified Complaint of Plaintiff, were proximately caused or contributed to by the negligence of Third Parties (not the Plaintiff and not this answering Defendant or any members of this answering Defendant's family) and that said Third Parties failed to exercise reasonable care at or prior to the time of said incidence, and by reason thereof any recovery by Plaintiff against this answering Defendant must be reduced by the amount equal to the proportionate fault of said Third Parties.

NINTH AFFIRMATIVE DEFENSE

(Conduct Was Justified)

9. As a Ninth Affirmative Defense, this answering Defendant is informed and believes and on that basis alleges that the conduct of this answering Defendant in regard to the matters alleged in the Complaint was justified, and by reason of the foregoing, Plaintiff is barred from any recovery against

TENTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

10. As a Tenth Affirmative Defense, this answering Defendant is informed and believes and on that basis alleges that at all times mentioned herein, Plaintiff was negligent, careless, reckless, and unlawfully conducted himself so as to directly or proximately contribute to the happening of the incident and the occurrence of the alleged damages, if any, all of which said negligence bars either completely or partially the recovery sought by Plaintiff herein.

ELEVENTH AFFIRMATIVE DEFENSE

(Apportionment of Fault)

11. As an Eleventh Affirmative Defense, this answering Defendant is informed and believes and on that basis alleges that this answering Defendant is not legally responsible in any manner with respect to the damages and injuries claimed by Plaintiff in his unverified Complaint. However, if this answering Defendant is found to be legally responsible, then this answering Defendant provisionally alleges that his legal responsibility is not the sole and proximate cause of the injuries alleged by Plaintiff, and that the damages awarded to Plaintiff, if any, are to be apportioned according to the respective fault and legal responsibility of all parties, persons, and entities, or the agents, servants, and employees who contributed to and/or caused said injury, according to proof at trial.

TWELFTH AFFIRMATIVE DEFENSE

(No Entitlement to Attorney Fees)

12. As a Twelfth Affirmative Defense, this answering Defendant is informed and believes and on that basis alleges that the Prayer in the unverified Complaint of Plaintiff for attorney fees is not supported by any contract or statute which would authorize the recovery of attorney fees against this answering Defendant and Plaintiff's unverified Complaint fails to allege any facts which would entitle Plaintiff to recover attorney fees should Plaintiff prevail in this case.

1///

27 | //

THIRTEENTH AFFIRMATIVE DEFENSE

(Reservation of Right to Amend)

13. As a Thirteenth Affirmative Defense, this answering Defendant personally has insufficient knowledge and/or information upon which to form a belief as to whether there may be additional, as yet unstated Affirmative Defenses available. Therefore, this answering Defendant reserves the right to assert additional defenses in the event that discovery indicates that such additional defenses would be appropriate.

WHEREFORE, this answering Defendant prays for judgment as follows:

- 1. Plaintiff take nothing by reason of Plaintiff's unverified Complaint;
- 2. This answering Defendant be awarded costs of suit incurred herein; and,
- 3. For such other and further relief as the Court deems just and proper.

DATED: February 16, 2006

Respectfully submitted,

BY:

Attorney for Defendant, KASIAGAY

2

3 4

5

7

8

10

11

12

13

14 15

16

17

18 19

20 21

22

2324

25

2627

28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Riverside, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 18493 Halter Lane, PO Box 70090, Riverside, CA 92513.

On February 16, 2006, I served the foregoing document described as **ANSWER OF DEFENDANT KASIAGAY TO UNVERIFIED COMPLAINT OF TEDD W. MASON** on all parties to this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Attorneys for Plaintiff, TEDD W. MASON

Attorneys for Defendant: RIVERSIDE SCHOOL

WILLIAM C. KENNEDY, ESQ. KENNEDY and ASSOCIATES

KENNEDY and ASSOCIATES 4001 Eleventh St.

Riverside, CA 92501 Fax:

THOMPSON & COLEGATE PO Box 1299

3610 14th St. Riverside, CA 92502

Fax:

____(BY FACSIMILE TRANSMISSION) I caused said document to be served via facsimile transmission on the parties as noted above.

____(BY PERSONAL DELIVERY) I caused said document to be served via personal delivery on the parties as noted above.

DISTRICT

XXXXX(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Riverside, California.

(BY FED EXP) I placed a true and correct copy thereof in Federal Express envelope(s) with air bill(s) addressed as indicated above, sealing said envelopes, and placing them for collection by Federal Express on that same date following the ordinary business practices of the Law Offices of Fred J. Knez, at is place of business at Riverside, California.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the US Postal service or at a collection box of Federal Express which ever is noted above on the same day in the ordinary course of business.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Dated February 16, 2006 at Riverside, California.

Myra L. KNEZ