Rayma Church, SBN 154897
Ryan D. Libke, SBN 193742
**EMERSON · CHURCH**
2520 WEST SHAW LANE, SUITE 102
FRESNO, CALIFORNIA 93711-2765
Telephone: (559) 432-7641
Facsimile: (559) 432-7639
www.lawemerson.com

E-FILED
5/23/2016
FRESNO COUNTY SUPERIOR COURT
By: J. Phillips, Deputy

Attorneys for Defendant, DIOCESE OF FRESNO EDUCATION CORPORATION (erroneously sued as ST. ANTHONY'S CATHOLIC SCHOOL)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

UNLIMITED CIVIL DIVISION

| | |
|---|---|
| J.M., A MINOR, BY AND THROUGH HIS GUARDIAN AD LITEM, J.M.; and L.V., A MINOR, AND THROUGH HIS GUARDIAN AD LITEM, L.V.,<br><br>Plaintiffs,<br><br>vs.<br><br>ST. ANTHONY'S CATHOLIC SCHOOL; and DOES 1 TO 25, inclusive,<br><br>Defendants. | Case No. 16CECG00562<br><br>**DEFENDANT'S ANSWER TO COMPLAINT**<br><br>COMPLAINT FILED: February 23, 2016 |

Defendant, DIOCESE OF FRESNO EDUCATION CORPORATION (erroneously sued as ST. ANTHONY'S CATHOLIC SCHOOL ("Defendant"), answers the Complaint filed by Plaintiffs, J.M., A MINOR, BY AND THROUGH HIS GUARDIAN AD LITEM, J.M.; and L.V., A MINOR, AND THROUGH HIS GUARDIAN AD LITEM, L.V. ("Plaintiffs"), and admits, denies and alleges as follows:

Defendant denies each and every, all and singular, the allegations contained in the Complaint, specifically denying that Plaintiffs have been damaged in any sum or sums prayed for or at all by reason of the matters therein referenced.

///

///

**FIRST AFFIRMATIVE DEFENSE**

**Failure to State a Cause of Action**

Defendant alleges that the Complaint does not state facts sufficient to constitute a cause of action against Defendant.

**SECOND AFFIRMATIVE DEFENSE**

**Statute of Limitations**

Defendant alleges that the Complaint, and each cause of action alleged therein, is barred by the applicable statutes of limitations, including, but not limited to, Code of Civil Procedure sections 312, 316, 317, 335. 1, 338, 340, 340.1, 340.2, 340.3 and 343.

**THIRD AFFIRMATIVE DEFENSE**

**No Duty Owed to Plaintiffs**

Defendant alleges that at all times and places referred to in the Complaint, such actions are barred by reason of the fact that Defendant owed and owe no duty to Plaintiffs.

**FOURTH AFFIRMATIVE DEFENSE**

**Comparative Negligence**

Defendant alleges that at all times and places referred to in the Complaint, Plaintiffs were negligent in and about the matters therein alleged, and said negligence directly and proximately contributed to the happening of the alleged incident, the alleged causes of action, and to the damages, if any, thereby sustained.

**FIFTH AFFIRMATIVE DEFENSE**

**Acts of Others**

Defendant alleges that the sole and proximate cause of the alleged incident giving rise to this action was due to the acts and/or omissions of persons or entities other than Defendant.

**SIXTH AFFIRMATIVE DEFENSE**

**Penal Code § 11172**

Defendant may not be sued from having made a report pursuant to Article 2.5, Chapter 2, Title 1, Part 4 of the Penal Code.

**SEVENTH AFFIRMATIVE DEFENSE**

**Failure to Mitigate**

Defendant allege that Plaintiffs could have mitigated and reduced the amount of claimed damages by the exercise of reasonable efforts; however, Plaintiffs failed to exercise such reasonable efforts at mitigation, all to Defendant's detriment.

**EIGHTH AFFIRMATIVE DEFENSE**

**Civil Code § 1431.2**

Defendant alleges that under the law of comparative negligence and the provisions of Civil Code section 1431.2, Defendant should be required to pay only in proportion to its own negligence, if any, by way of any judgment in the above matter.

**NINTH AFFIRMATIVE DEFENSE**

**Unclean Hands**

Defendant alleges that the Complaint is barred by the doctrine of unclean hands.

**TENTH AFFIRMATIVE DEFENSE**

**Reservation of Defenses**

Defendant hereby reserves the right to assert any additional defenses as may be applicable to this action.

Defendant prays that Plaintiffs take nothing by reason of the Complaint and that Defendant be hence dismissed with an award of costs in its favor.

DATED: May 20, 2016

EMERSON · CHURCH

By _____
Rayma Church
Ryan D. Libke
Attorneys for Defendant,
DIOCESE OF FRESNO EDUCATION CORPORATION