JAN I. GOLDSMITH, City Attorney
DANIEL F. BAMBERG, Assistant City Attorney
JOE CORDILEONE, Chief Deputy City Attorney SBN 73606
KRISTIN M. J. ZLOTNIK, Deputy City Attorney SBN 190694
RAYNA A. STEPHAN, Deputy City Attorney SBN 135001
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Telephone: (619) 533-5800
Facsimile: (619) 533-5856

Attorneys for Defendant CITY OF SAN DIEGO

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

MICHELLE TYLER, an individual, and KATHERINE RAGAZZINO, an individual, Plaintiffs, v. CITY OF SAN DIEGO; ROBERT FILNER, individually and as the former Mayor of the City of San Diego; and DOES 1 through 10 inclusive, Defendants.	Case No. 37-2014-00082976-CU-PO-CTL **DEFENDANT CITY OF SAN DIEGO'S NOTICE OF DEMURRER AND DEMURRER** **[IMAGED FILE]** I/C Judge: Joel R. Wohlfeil Dept.: 73 Date: March 28, 2014 Time: 9:00 a.m. Cmplt Filed: January 10, 2014 Trial: Not Set

PLEASE TAKE NOTICE that on **March 28, 2014,** at **9:00 a.m.**, or as soon thereafter as the matter can be heard in Department 73 of the above-entitled court, located at 330 West Broadway, San Diego, California, Defendant City of San Diego (City) will, and hereby does, demur to Plaintiffs' Complaint on file herein. The demurrer is based on this notice, supporting points and authorities, the pleadings on file in this action, and upon such oral argument as may be presented at the hearing on this matter.

City demurs generally to the Complaint and specifically and specially demurs to all Plaintiffs' Causes of Action, because they fail to set forth sufficient facts to constitute a cause of action pursuant to Code of Civil Procedure section 430.10(e).

/////

Further, all Plaintiffs' Causes of Action fail to specifically plead facts showing City's statutory liability or facts sufficient to show the Causes of Action lie outside the breadth of any applicable statutory immunity.

Dated: February 18, 2014

JAN I. GOLDSMITH, City Attorney

By _____ for
Joe Cordileone
Chief Deputy City Attorney
Attorney for Defendant
CITY OF SAN DIEGO

JAN I. GOLDSMITH, City Attorney
DANIEL F. BAMBERG, Assistant City Attorney
JOE CORDILEONE, Chief Deputy City Attorney SBN 73606
KRISTIN M. J. ZLOTNIK, Deputy City Attorney SBN 190694
RAYNA A. STEPHAN, Deputy City Attorney SBN 115001
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Telephone: (619) 533-5800
Facsimile: (619) 533-5856

Attorneys for Defendant CITY OF SAN DIEGO

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

MICHELLE TYLER, an individual, and KATHERINE RAGAZZINO, an individual, Plaintiffs, v. CITY OF SAN DIEGO; ROBERT FILNER, individually and as the former Mayor of the City of San Diego; and DOES 1 through 10 inclusive, Defendants.	Case No. 37-2014-00082976-CU-PO-CTL **DEFENDANT CITY OF SAN DIEGO'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS DEMURRER** **[IMAGED FILE]** I/C Judge: Joel R. Wohlfeil Dept.: 73 Date: March 28, 2014 Time: 9:00 a.m. Cmplt Filed: January 10, 2014 Trial: Not Set

Defendant City of San Diego (City) submits these points and authorities in support of its demurrer to each cause of action in the Complaint.

I. Summary of Plaintiffs' Allegations Assumed to Be True

At all relevant times, Plaintiff Katherine Ragazzino (Ragazzino) was a veteran and Plaintiff Michelle Tyler (Tyler) was Ragazzino's VA Caregiver. (Comp. ¶ 12.) Ragazzino suffered from several medical conditions and was not receiving federal benefits she needed due to improper classification by the U.S. Veterans Administration. (¶ 11.)

Tyler and Ragazzino knew, and saw, Robert Filner (Filner) when he was a congressman [not as a mayor] on the House Veterans Affairs Committee. (¶ 15.) In late 2012, Filner was elected Mayor of San Diego. (¶ 14.) On June 11, 2013, Plaintiffs met with Filner at City Hall seeking help getting VA benefits that were denied Ragazzino because of VA errors. Filner, Ragazzino, Tyler, and the City's Veterans Representative were present. (¶ 16-18.)

At the end of the meeting, Filner asked Ragazzino and the City's Veterans Representative to step outside. (¶ 20.) When Tyler and Filner were alone, Tyler says Filner made inappropriate sexual comments to her and touched and rubbed her arm repeatedly. Tyler says that Filner said that he would help Ragazzino if Tyler and he dated. Tyler says he **implied** that he wanted her to perform personal sexual favors for him. (¶ 21.) She says she refused, left the room, grabbed Ragazzino's arm and told her they needed to leave right away. Then **Tyler** told Ragazzino what had occurred. (¶ 22-23.) Tyler's statement caused Ragazzino to become very distraught. (¶ 24.) **Filner never said or did anything inappropriate to Ragazzino or in Ragazzino's presence.**

II. The Causes of Action

The allegations resulted in four causes of action: 1) Common Law Battery (Tyler only against Filner only); 2) Statutory Sexual Harassment (Civ. Code § 51.9 – Tyler only against City and Filner); 3) Negligent Infliction of Emotional Distress (NIED – Ragazzino only against Filner [note: the City was probably omitted from this claim in error, the allegations are clearly against the City]); and 4) Common Law Negligence (both Plaintiffs against the City and Filner). Although the first and third causes of action for Battery and NIED are not alleged against the City, this demurrer addresses all four causes of action, because it appears that Plaintiffs want to hold the City liable for each under the doctrine of *respondeat superior* or some other theory.

III. Plaintiffs' Causes of Action for Battery and Sexual Harassment Fail – City Cannot Be Vicariously Liable for an Employee's Sexual Misconduct

Plaintiffs' first cause of action sets forth a claim for common law battery. While this cause of action is asserted only against Filner on the face of the Complaint and not the City, other allegations in the Complaint indicate that Plaintiffs seek to hold the City vicariously liable for battery under the doctrine of *respondeat superior.*

Plaintiffs' second cause of action is for statutory sexual harassment against both defendants under Civil Code section 51.9. Employer liability under Section 51.9 may be remised on the basis of vicarious liability. Both claims fail to state facts constituting a cause of action against City because they plead intentional torts with no causal nexus to Filner's official duties; the misconduct is completely outside the scope of his employment.

Under the doctrine of *respondeat superior*, an employer may be vicariously liable for torts committed by employees within the scope of employment. *See, e.g., Perez v. Van Groningen & Sons, Inc.*, 41 Cal.3d 962 (1986). While an employee's willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of *respondeat superior*, an intentional tort that has no causal nexus to the employee's work will fall outside the scope of employment. *See Lisa M., supra* at 297 (citing *Carr v. Wm. C. Crowell Co.*, 28 Cal.2d 652, 654 (1946)). Moreover, the scope of employment does not extend to an employee's malicious or tortious conduct if the employee substantially deviates from the employment duties for personal purposes. *See Farmers Ins. Grp. v. Cnty. of Santa Clara*, 11 Cal. 4th 992, 1004–05 (1995). Significantly, "[i]f an employee's tort is personal in nature, mere presence at the place of employment and attendance to occupational duties prior or subsequent to the offense will not give rise to a cause of action against the employer under the doctrine of *respondeat superior*." *Alma W. v. Oakland Unified School Dist.*, 123 Cal. App. 3d 133, 138 (1981). Note that Filner fully completed all discussions with the parties related to helping Ragazzino and excused her and the City's Veterans Representative **before** any improper conduct is alleged. (¶ 20.)

In the case of public entity employers, this view has been reinforced by the legislature in the language of the Gov. Claims Act. Significantly, Gov. Code § 815(f) states, "[i]t is the intent of the Legislature that elected officials assume full fiscal responsibility for their conduct which constitutes an intentional tort not directly related to their official duties committed for which the public entity they represent may also be liable, while maintaining fair compensation for those persons injured by such conduct." An intentional tort must arise from and directly relate to an elected official's performance of his or her official duties in order for a public entity to be held vicariously liable for the action. Gov. Code § 815(b). Moreover, Gov. Code § 815.3(b) states that, **"acts or omissions constituting sexual harassment shall not be deemed to arise from, and to directly relate to, the elected official's official duties."** (Emphasis added.)

A. Battery Is Not Within The Scope Of Employment Of An Elected Official

"A battery is an intentional and offensive touching of a person who has not consented to the touching." *Conte v. Girard Orthopaedic Surgeons Med. Grp., Inc.*, 107 Cal. App. 4th 1260,

1266 (2003) (citing *Rains v. Superior Court*,150 Cal.App.3d 933, 938 (1984)). As noted above, "*[r]espondeat superior* liability requires that the risk of the tort have been engendered by conduct, 'typical of or broadly incidental to,' or, viewed from a somewhat different perspective, 'a generally foreseeable consequence of,' the [City's] enterprise." *Lisa M., supra* at 300. Here, Plaintiffs allege that Filner "intended to and did engage in intentional, unconsented, and offensive physical contact or touching of Tyler" *viz.* **he rubbed her arm.** (¶ 21.) Filner's decision to "engage in conscious exploitation of [Tyler] did not arise out of the performance of the [meeting], although the circumstances of the [meeting] made it possible." *Id.,* at 300. Note Plaintiffs admit the official business of the meeting was concluded and Filner asked all but Tyler to leave. (¶ 20.) Furthermore, Defendant Filner's managerial and official duties as Mayor in no way required him to engage in such conduct, nor did they create a foreseeable risk that such contact was likely. Thus, since "the assault was not motivated or triggered off by anything in the employment activity but was the result of only propinquity and lust, there should be no liability." *Id.*, at 302 (quoting *Lyon v. Carey*, 533 F.2d 649, 655 (D.C.Cir.1976)).

B. Sexual Harassment Is Not within an Elected Official's Scope of Employment

In the second cause of action, based on Civ. Code § 51.9, Plaintiffs allege that Filner made "sexual advances, solicitations, or requests for sexual compliance by Tyler, or engaged in verbal, visual or physical conduct of a sexual and hostile nature based on female gender that were unwelcome and severe." (¶ 43.) But nothing pleaded supports a conclusion that the sexual misconduct had any plausible nexus to Filner's official duties. "Employees do not act within the scope of employment when they abuse job-created authority over others for purely personal reasons." *Farmers, supra* at 996. Here, if true, the alleged misconduct was motivated by Filner's lustful desires unrelated to his job duties, and was in direct violation of the City's sexual harassment policy. The conduct was in no way "engendered by events or conditions relating to any employment duties or tasks; nor are they necessary to the employees' comfort, convenience, health, or welfare while at work." *Farmers, supra* at 1003-04.

In *Farmers Ins. Group v. County of Santa Clara*, 11 Cal. 4th 992 (1995), the State Supreme Court held that, other than sexual misconduct by on-duty police officers against

members of the public, sexual misconduct directed against third parties is not within the scope of employment, even though the acts occurred during work hours on the employer's premises. *Id.*, at 1003-04. Such misconduct is motivated by personal reasons unrelated to job duties, and directly violates sexual harassment policies. *Id.* Accused parties' power over the plaintiffs, even as a supervisor and trainee, was in no way comparable to the extraordinary power police officers exercise over members of the public. *Id.* at 1017 ("[P]olice officers occupy a unique position of trust in our society. They are given the authority to detain, to arrest and to use deadly force if necessary.") The court noted that, despite a hierarchal relationship where the public employee is "afforded a high degree of authority over the victim," there is no parallel between such supervisory authority and "the formidable, official authority at issue." *Id.* at 1012. The mere presence of a relationship of a hierarchical nature where, at least in the eyes of the victim, the wrongdoer's authority might be considered very great, does not alone justify application of *respondeat superior. Id.* at 1013.[1]

Plaintiffs may argue that a Mayor has "special authority" making sexual misconduct a particular risk incidental to his employment, comparable to the authority enjoyed by police. However, direct liability for police officer sexual misconduct is based on the special power officers have to **detain, arrest, use force,** *etc. Id.* at 1003–04. (citing *Mary M. v. City of Los Angeles*, 54 Cal. 3d 202 (1991)). A Mayor's authority to commit *quid pro quo* harassment is no different than that of any supervisor in an institution's hierarchy. *Farmers, supra,* at 1012.

IV. The Second Cause of Action Is Missing Three Key Elements

A. Special Relationship Must Exist

A key element of all claims under Civil Code § 51.9 is some kind of special or business relationship. The first thing the legislature says about this statute is: "The Legislature finds and declares that sexual harassment occurs not only in the workplace, but in relationships between providers of **professional services and their clients**." (Historical and Statutory Notes, Civ. Code

[1] As noted above, this sentiment has been reinforced by the California legislature in the context of indemnification of public employees: "[A]cts or omissions constituting sexual harassment shall not be deemed to arise from, and to directly relate to, the elected official's official duties." Gov. Code § 815(b).

§ 51.9; emphasis added.) Not every interface between two human beings can be, or should be, regulated. Civ. Code § 51.9 is not so broad in scope as Plaintiffs would like it to be. The very title of the statute refers to "business, service and professional relationships."

Under Section 51.9, (emphasis added) the Plaintiff must prove:

> (a)(1) There is a business, service, or professional relationship between the plaintiff and defendant. Such a relationship may exist between a plaintiff and a person, including, but not limited to, any of the following persons:
> (A) Physician, psychotherapist, or dentist. ...
> (B) Attorney, holder of a master's degree in social work, real estate agent, real estate appraiser, accountant, banker, trust officer, financial planner loan officer, collection service, building contractor, or escrow loan officer.
> (C) Executor, trustee, or administrator.
> (D) Landlord or property manager.
> (E) Teacher.
> (F) A relationship that is **substantially similar** to any of the above.

Plaintiffs' relationship is the same as all other citizens of San Diego. They are among 1.3 million constituents. As a matter of law, the statute doesn't include a relationship like the one between Filner and the Plaintiffs. Each of the situations contemplated by the statute, has some kind of extraordinary obligation owed by the harasser to the victim. In each, the relationship is a continuing one: social workers, doctors, attorneys, executors, trustees. There, as with a job, the victim is forced to interact with the harasser. There was only a single interaction between Filner and the Plaintiffs. They never met with a San Diego Mayor before or since![2]

B. The Conduct Must be Pervasive or Severe

The second thing that the Plaintiffs must allege and prove is that the conduct was "**pervasive or severe.**"[3] The case of *Hughes v. Pair* 46 Cal.4th 1035 (2009), provides an excellent outline of what **is not** actionable conduct. In *Hughes*, the facts alleged were far more severe than anything pleaded here. Still, the California Supreme Court upheld summary judgment for the defendant because a) his acts were not "pervasive" or "severe," b) the

---

[2] The relationship between Tyler and Ragazzino is what the statute addresses. A relationship between nurse and patient is the service or professional relationship that imposes statutory liability. *C.R. v. Tenet Healthcare Corp.* 169 Cal.App.4th 1094 (2009).

[3] Civ. Code § 51.9(a)(2) requires proof that the "defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome **and pervasive or severe.**" (Emphasis added.)

defendant did not commit "*quid pro quo* sexual harassment," c) his conduct was neither extreme nor outrageous, and d) the plaintiff did not experience severe emotional distress.

The *Hughes* case is extremely helpful and well worth a thorough review by the Court. For example, even if this Court were to find that a "business relationship" under the statute existed, then the Court must utilize the same standards as are used under FEHA or Title VII, and:

> ...the relevant inquiry is whether the alleged sexually harassing conduct was sufficiently pervasive or severe as to alter the conditions of the business relationship. This inquiry must necessarily take into account the nature and context of the particular business relationship.

Id., at 1048. *Hughes* did not suffer "*quid pro quo* sexual harassment." There was no claim that the defendant followed through on "a crude statement" demanding sexual favors in exchange for a benefit to her. The court ruled these "allegations are insufficient to establish *quid pro quo* sexual harassment, however, because they amount at most to unfulfilled threats." *Id.* at 1050.

> Nor was defendant's alleged conduct "severe" within the meaning of Civil Code section 51.9. As noted earlier, [citation] employment law acknowledges that an isolated incident of harassing conduct may qualify as "severe" when it consists of "a *physical* assault or the threat thereof." [Citations; italics in Hughes.] Here, plaintiff contends that defendant threatened her with physical violence when he told her at the museum: "I'll get you on your knees eventually. I'm going to fuck you one way or another." We disagree with plaintiff's characterization. Although vulgar and highly offensive, this remark, which was made in the presence of other people attending a private showing at a museum, would not plausibly be construed by a reasonable trier of fact as a threat to commit a sexual assault on plaintiff. [Citation.] ... But such a threat will not support a claim under section 51.9 for the hostile environment form of sexual harassment, because it does not constitute "severe" harassing conduct.

Id. at 1049. In this case, as in *Hughes*, "Plaintiff has not alleged that, because she rejected his sexual overtures, defendant thereafter followed through" with any threat. *Id.* at 1050. Physical harm was **never a consideration.** Section 51.9 requires **a concerted pattern of harassment of a repeated, routine or a generalized nature, or, in the case of an isolated incident, a physical assault or the threat thereof.** *Ramirez v. Wong* 188 Cal.App.4th 1480, 1488 (2010). Plaintiffs have alleged neither. Regardless of any other element, they cannot allege a violation of Section 51.9.

C. The Third Missing Element

Another essential element of the statute is "an inability by the plaintiff to easily terminate the relationship. (Civ. Code § 51.9(a)(3).) Although Plaintiffs make the conclusory statement that Tyler was not free to end the relationship, her description of the actual events proves that, not only was she free to end the relationship, **she actually did end the relationship. She walked out the door!** There was a single interface that could not have lasted more than a minute or two. Without describing how she did it, Tyler admits she "was able to free herself," from Filner's clutches. (¶ 23.) Instantly, "she grabbed Ms. Ragazzino's arm and told her that they need to get out of there right away." (¶ 23.) And they did. In other words, after a single brief interface, Tyler demonstrated she had the **ability** "to easily terminate the relationship."

V. The Third and Fourth Causes of Action Fail Because the City Is Immune from Liability for Common Law Negligence

Liability against a public entity is confined to the statutory scheme of the Gov. Claims Act. Sections 815(a) and 815.6 require an authorizing statute or enactment before a governmental entity can be liable in tort ("except as otherwise provided by statute a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person"). This section establishes that public entity tort liability is exclusively statutory and that the City may not be held directly liable for "common law negligence." *Van Kempen v. Hayward Area Park, etc.*, Dist. 23 Cal. App. 3d 822, 825 (1972); *People Ex Rel. Dept. of Transportation v. Superior Court*, 5 Cal. App. 4th 1480, 1484 (1992). Additionally, liability cannot be based on the general negligence provisions of Civil Code section 1714. *Zelig v. County of Los Angeles*, 27 Cal. 4th 1112, 1132 (2002).

As "the negligent causing of emotional distress is not an independent tort but the tort of negligence," these principles apply to Plaintiffs' claim for general negligence, as well as their claim for negligent infliction of emotional distress. *Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 984 (1993); *Delfino v. Agilent Technologies*, Inc., 145 Cal.App.4th 790, 818 (2007); *Catsouras v. Dept. of California Highway Patrol*, 181 Cal.App.4th 856, 875–876 (2010). Here, Plaintiffs have not identified any statute allowing a suit for direct negligence or NIED against the City. Absent citation to a statute authorizing their direct liability claims against the

City for NIED or common law negligence, an action for direct liability against the City fails. *C.A. v. William S. Hart Union High Sch. Dist.*, 53 Cal. 4th 861, 872 (2012).

VI. The Third Cause of Action Fails to Support A Claim For Bystander NIED because Ragazzino Was Not Present at the Scene of the Alleged Act

While the third cause of action names only Filner, language within the cause of action makes it clear that Plaintiffs are alleging liability against the City as well. But neither Filner nor the City ever said or did anything to Ragazzino. The Court should rule now that no claim can be stated against either Filner or the City for NIED. Plaintiffs already admit that Ragazzino never witnessed the trauma allegedly inflicted on Tyler.

The claim fails based on hornbook law. "'Direct victim' cases are cases in which the plaintiff's claim of emotional distress is not based upon witnessing an injury to someone else, but rather is based upon the violation of a duty owed directly to the plaintiff." *Wooden v. Raveling*, 61 Cal.App.4th 1035, 1038 (1998). Ragazzino is not a "direct victim."

Alternatively, if the plaintiff witnesses another being injured and suffers as a result of that, it is considered "Bystander NIED." The plaintiff **must** allege that she was present at the scene of the injury when it occurred and was aware that the victim was being injured. (CACI 1621.) Ragazzino alleges that she was not present at the scene of Tyler's injury. She does not allege she was a direct victim of Filner and she does not allege that she heard or saw Filner do anything improper. If anyone caused her injury, it was her friend Tyler. Tyler knew she was an especially fragile individual and Tyler had a special relationship with her as her caregiver. Despite that knowledge and that special relationship, Tyler chose to shock her friend with a lurid representation of what she considered to be wrongdoing on the part of the Mayor.

The NIED claim is Ragazzino was harmed learning of harm to her nurse. But Ragazzino was not physically present to witness the trauma, an essential element of bystander NIED is omitted. Thus, the complaint fails to state facts that constitute a cause of action for Bystander NIED and she can never cure that defect.

VII. The Complaint Fails to Allege a Cause of Action against the City for Negligence under Vicarious Liability, because No Duty or Breach thereof is Established

In their fourth cause of action, Plaintiffs want to hold the City vicariously liable for the negligent actions of its employees that were within the scope of employment, such as for failing to properly supervise or train Filner. There are two problems with this theory. First, every case that ever found liability against any employer did so based upon the fact that the employer had control over the hiring and supervision of the employee who harmed the plaintiff. In this case however, the City did not "hire" Filner, he was elected. And it had no authority whatever to "supervise" or "train" him. Filner was an elected official. The difficulty in getting him out of office demonstrates how little control the City had. He could only be removed by way of a recall instituted by the public, not the City Council. See also S.D. Muni. Code. The City had no authority over him and therefore it cannot be responsible for his negligence (if any).

The second essential element in every single case based upon negligent hiring or training is the fact that a special relationship existed between the governmental entity and the plaintiff. For example, in *C.A. v. William S. Hart Union High Sch. Dist.*, 53 Cal. 4th 861, 872-3 (2012), a student brought an action against a school district because his status as a student created a "special relationship" between him and the district. These Plaintiffs cannot allege such a relationship. See also *Catsouras v. Dept. of California Highway Patrol*, 181 Cal.App. 4th 856, 882 (2010) ("As in all recovery for negligence, the potential plaintiff must be a person to whom the defendant owes a duty recognized by the law."). There is no case law suggesting that a special relationship exists between such supervisory employees and the general public, merely by virtue of their being public officials. *Id.*

VIII. CONCLUSION

The City's demurrer should be sustained without leave to amend.

Dated: February 18, 2014

JAN I. GOLDSMITH, City Attorney

By _____ for
Joe Cordileone
Chief Deputy City Attorney
Attorneys for Defendant
CITY OF SAN DIEGO

JAN I. GOLDSMITH, City Attorney
DANIEL F. BAMBERG, Assistant City Attorney
JOE CORDILEONE, Chief Deputy City Attorney SBN 73606
KRISTIN M. J. ZLOTNIK, Deputy City Attorney SBN 190694
RAYNA A. STEPHAN, Deputy City Attorney SBN 135001
Office of the City Attorney, Civil Division
1200 Third Avenue, Suite 1100
San Diego, California 92101
(619) 533-5800; Fax (619) 533-5856
Attorneys for Defendant City of San Diego

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DECLARATION OF SERVICE

Case Name: Michelle Tyler and Katherine Ragazzino v. City of San Diego, et al.
SDSC Case No. 37-2014-00082976-CU-PO-CTL

I, the undersigned declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned service occurred. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business. I served the following document(s)

DEFENDANT CITY OF SAN DIEGO'S NOTICE OF DEMURRER AND DEMURRER; DEFENDANT CITY OF SAN DIEGO'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER

in this action by placing the true copies thereof enclosed in a sealed envelope addressed as follows:

Carla DiMare, Esq.
LAW OFFICE OF CARLA DIMARE, P.C.
P. O. Box 1668
Rancho Santa Fe, CA 92067
Telephone: (858) 775-0707
Attorneys of Record for Plaintiff MICHELLE TYLER

[X] **(BY MAIL)** I placed it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practices.

[ ] **(BY EMAIL)** Pursuant to agreement between the parties, I served the above listed documents by transmitting via email to the internet address listed above. I did not receive within a reasonable period of time after the transmission any electronic message or other indication that the transmission was unsuccessful.

PROOF OF SERVICE

[ ] **(BY ELECTRONIC SERVICE VIA LEXISNEXIS FILE & SERVE)** On _____, I caused such document(s) to be electronically served through LexisNexis File & Serve for the above-entitled case on designated recipients. Upon completion of said transmission of said documents, a certified receipt is issued to filing party acknowledging receipt by LexisNexis File & Serve. Once LexisNexis File & Serve has served all designated recipients, proof of electronic service is returned to the filing party. This service complies with CCP § 1010.6. The file transmission was reported as complete and a copy of the "LexisNexis File & Serve Transaction Receipt" page will be maintained with the original document(s) in our office.

[ ] **(BY FAX)** On _____, I transmitted the above-described document by facsimile machine to the listed fax number. The transmission originated from facsimile phone number (619) 533-5856 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto. [CCP section 1013(e); CRC Rule 2008].

[ ] **(BY OVERNIGHT DELIVERY)** I caused the envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s). [CCP section 1013]

[ ] **BY PERSONAL SERVICE)** I served the individual named by personally delivering the copies to the offices of the addressee.
Time of delivery: _____ a.m./p.m. Person served: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 18, 2014 at San Diego, California.

Chela Madere

Chela Madere

PROOF OF SERVICE