

NO FEE GOVT CODES SEC. 6183
AMOUNT RECOVERABLE PURSUANT
TO 6103.5 GC § 755
PLUS A ONE TIME ADMINISTRATIVE FEE UPON JUDGEMENT
IF THE PARTY BECOMES A JUDGEMENT CREDITOR

1 WOODRUFF, SPRADLIN & SMART, APC
2 DANIEL K. SPRADLIN - State Bar No. 82950
3 dspradlin@wss-law.com
4 555 Anton Boulevard, Suite 1200
5 Costa Mesa, CA 92626-7670
6 Telephone: (714) 558-7000
7 Facsimile: (714) 835-7787

8 Attorneys for Defendant
9 CITY OF TORRANCE, a public entity

FILED
Superior Court of California
County of Los Angeles

NOV 10 2015

Sherri R. Carter, Executive Officer/Clerk
By Ishayla Chambers, Deputy
Ishayla Chambers

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

12 JUSTIN CLIFT by and through his Guardian
13 Ad Litem STEPHANIE CLIFT and
14 STEPHANIE CLIFT,

15 Plaintiffs,

16 v.

17 HERBERT R. HIRSCHMANN, CITY OF
18 TORRANCE, TORRANCE UNIFIED
19 SCHOOL DISTRICT, and DOES 1 TO 50,
20 Inclusive,

21 Defendants.

CASE NO.: BC597405

ASSIGNED FOR ALL PURPOSES TO
THE HONORABLE HOWARD L. HALM
DEPARTMENT: 93

**ANSWER OF DEFENDANT CITY OF
TORRANCE TO PLAINTIFFS'
COMPLAINT FOR DAMAGES**

HEARING DATES PENDING:
Type: Final Status Conference
Date: March 29, 2017
Time: 10:00 a.m.

Type: Trial
Date: April 14, 2017
Time: 8:30 a.m.

Type: OSC re Dismissal
Date: October 15, 2018
Time: 8:30 a.m.

DATE ACTION FILED: October 14, 2015

22 COMES NOW Defendant CITY OF TORRANCE, a public entity, to answer the
23 unverified complaint for damages of Plaintiffs JUSTIN CLIFT by and through his Guardian
24 Ad Litem STEPHANIE CLIFT and STEPHANIE CLIFT, as follows:

25 Under and pursuant to the provisions of section 431.30 of the Code of Civil Procedure
26 of the State of California, this answering Defendant, in answer to all causes of action of the

WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

1 complaint, and the whole thereof, denies each and every, all and singular, of the allegations
2 contained therein; and further expressly denies that as a proximate result of any act or
3 omission on the part of this answering Defendant, that the Plaintiff has suffered or sustained
4 any injuries, losses, or damages in the amount alleged, in any amount whatsoever, or at all.

5 **FIRST AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

6 As an affirmative defense, Defendant alleges that each cause of action contained in
7 the complaint fails to state facts sufficient to constitute a cause of action.

8 **SECOND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

9 As an affirmative defense, Defendant alleges that the acts, actions, and conduct of the
10 Plaintiffs and/or third parties directly and proximately caused Plaintiffs' injuries and/or
11 damages, if any. Therefore, Plaintiffs are not entitled to damages or any other relief from
12 Defendant.

13 **THIRD AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

14 As an affirmative defense, Defendant alleges that the conduct, misconduct and/or
15 negligence of Plaintiffs caused and contributed to any alleged damages which may have been
16 sustained by Plaintiffs, and by reason thereof, Plaintiffs should be barred from recovery, or
17 in the alternative, should have any recovery diminished by the amount or percentage that
18 said conduct, misconduct, or negligence caused or contributed to the alleged damages,
19 should they be proven.

20 **FOURTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

21 As an affirmative defense, Defendant alleges that any and all events and happenings,
22 injuries and damages, if any, alleged in the complaint were proximately caused and
23 contributed to by Plaintiffs in that Plaintiffs assumed all risks and hazards by engaging in the
24 course and conduct that resulted in Plaintiffs' injuries, if any.

25 **FIFTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

26 As an affirmative defense, Defendant alleges that Defendant is not liable for the
27 damages, if any, alleged in the complaint by reason of the provisions of Government Code
28 section 815.2(a) and (b), in that a public entity is not liable for an injury resulting from an act

WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

1 or omission of an employee of the public entity where the employee is immune from
2 liability.

3 **SIXTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

4 As an affirmative defense, Defendant alleges that, pursuant to Government Code
5 sections 815.2 and 815.6, any and all mandatory duties imposed on Defendant, and
6 Defendant's agents or employees, the failure of which allegedly created the condition at the
7 time and place which is the subject of this complaint, were exercised with reasonable
8 diligence and, therefore, Defendant is not liable to Plaintiffs for the alleged injuries.

9 **SEVENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

10 As an affirmative defense, Defendant alleges that, pursuant to the provisions of
11 Government Code section 818.6, a public entity and its employees, officers, and agents are
12 immune from tort liability caused by their failure to make an inspection, or by reason of
13 making an inadequate or negligent inspection of any property.

14 **EIGHTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

15 As an affirmative defense, Defendant alleges that, pursuant to the provisions of
16 Government Code sections 820.2 and 815.2, a public entity and its employees, officers, and
17 agents are not responsible for injury or damage resulting from an act or omission that was a
18 result of the exercise of discretion vested in such officer, employee, or agent, whether or not
19 such discretion was abused.

20 **NINTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

21 As an affirmative defense, Defendant alleges that, pursuant to the provisions of
22 Government Code sections 820.8 and 815.2, a public entity and its employees, officers, and
23 agents are immune from tort liability for injuries caused by the act or omission of another
24 person.

25 **TENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

26 As an affirmative defense, Defendant alleges that, pursuant to the provisions of
27 Government Code sections 821.4 and 815.2, a public entity and its employees, officers, and
28 agents are immune from liability for injuries caused by their failure to make an inspection, or

1 by reason of making an inadequate or negligent inspection, of property alleged to have been
2 the cause of injury to Plaintiffs.

3 **ELEVENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

4 As an affirmative defense, Defendant alleges that the defect, if any, alleged to exist
5 would be trivial or insignificant in nature in view of the surrounding circumstances pursuant
6 to the provisions of Government Code section 830.2.

7 **TWELFTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

8 As an affirmative defense, Defendant is informed and believes, and on such
9 information and belief alleges that, pursuant to the provisions of Government Code section
10 830.6, the condition of the property as alleged to exist in the complaint on file herein existed
11 by reason of a plan or design of a construction of, or an improvement to, public property
12 which was approved in advance of the construction or improvement by appropriate
13 employees or legislative bodies.

14 **THIRTEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

15 As an affirmative defense, Defendant alleges that pursuant to Government Code
16 sections 830.4 and 830.8, a public entity is not liable for failure to provide regulatory traffic
17 control signals, stop signs, yield signs, right-of-way signs, speed restriction signs, or
18 distinctive roadway markings.

19 **FOURTEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

20 As an affirmative defense, Defendant alleges that, pursuant to the provisions of
21 Government Code section 835.4, a public entity and its employees, officers, and agents are
22 immune from liability for injuries caused by a condition of property where such condition
23 was created by reasonable acts or omissions.

24 **FIFTEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

25 As an affirmative defense, Defendant alleges that Defendant is not liable for the
26 damages, if any, alleged in the complaint in that Defendant did not have notice of any
27 dangerous condition within the meaning of Government Code section 835(b) and neither had
28 knowledge of the existence of any such condition nor should have known of any condition of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

a dangerous character.

SIXTEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION

As an affirmative defense, Defendant alleges that, pursuant to Government Code sections 835.4(a) and (b), 840.6(a) and (b), and 815.2, any and all acts or omissions of Defendant, or the agents and employees of Defendant which allegedly created the condition of the property at the time and place mentioned in the complaint which is the subject of this action were reasonable, and, therefore, Defendant is not liable to Plaintiffs for any of the alleged damages.

SEVENTEENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION

As an affirmative defense, Defendant alleges that Plaintiffs are barred from recovery herein, in whole or in part, by reason of failure to mitigate damages.

WHEREFORE, Defendant prays that Plaintiffs take nothing by way of their complaint and that said Defendant be dismissed with costs herein incurred and for such other and further relief as the Court deems just and proper.

DATED: November 9, 2015

WOODRUFF, SPRADLIN & SMART, APC

By: Daniel K. Spradlin
DANIEL K. SPRADLIN
Attorneys for Defendant
CITY OF TORRANCE, a public entity

WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

3 I am over the age of 18 and not a party to the within action; I am employed by
4 WOODRUFF, SPRADLIN & SMART in the County of Orange at 555 Anton Boulevard,
Suite 1200, Costa Mesa, CA 92626-7670.

5 On November 10, 2015, I served the foregoing document(s) described as
6 ANSWER OF DEFENDANT CITY OF TORRANCE TO PLAINTIFFS' COMPLAINT
FOR DAMAGES

7 by placing the true copies thereof enclosed in sealed envelopes addressed as stated on
8 the attached mailing list;

9 by placing the original a true copy thereof enclosed in sealed envelopes
addressed as follows:

10 **(BY MAIL)** I placed said envelope(s) for collection and mailing, following ordinary
11 business practices, at the business offices of WOODRUFF, SPRADLIN & SMART,
12 and addressed as shown on the attached service list, for deposit in the United States
Postal Service. I am readily familiar with the practice of WOODRUFF, SPRADLIN
13 & SMART for collection and processing correspondence for mailing with the United
States Postal Service, and said envelope(s) will be deposited with the United States
Postal Service on said date in the ordinary course of business.

14 **(BY ELECTRONIC SERVICE)** by causing the foregoing document(s) to be
15 electronically filed using the Court's Electronic Filing System which constitutes
service of the filed document(s) on the individual(s) listed on the attached mailing list.


16 **(BY OVERNIGHT DELIVERY)** I placed said documents in envelope(s) for
17 collection following ordinary business practices, at the business offices of
WOODRUFF, SPRADLIN & SMART, and addressed as shown on the attached
18 service list, for collection and delivery to a courier authorized by
_____ to receive said documents, with delivery fees
19 provided for. I am readily familiar with the practices of WOODRUFF, SPRADLIN
& SMART for collection and processing of documents for overnight delivery, and
20 said envelope(s) will be deposited for receipt by _____ on
said date in the ordinary course of business.

21 **(BY FACSIMILE)** I caused the above-referenced document to be transmitted to the
22 interested parties via facsimile transmission to the fax number(s) as stated on the
attached service list.

23 **(BY PERSONAL SERVICE)** I delivered such envelope(s) by hand to the offices of
24 the addressee(s).

25 (State) I declare under penalty of perjury under the laws of the State of California
that the above is true and correct.

26 Executed on November 10, 2015 at Costa Mesa, California.

27
28 
Debra C. Koppel

JUSTIN CLIFT, etc., et al. v. HERBERT HIRSCHMANN, et al.
LOS ANGELES SUPERIOR COURT, CENTRAL DISTRICT

CASE #: BC597405

**ASSIGNED FOR ALL PURPOSES TO:
THE HONORABLE HOWARD L. HALM, DEPT. 93
SERVICE LIST**

Mindy S. Bish, Esq.
BISH LAW
22505 Market Street, Suite 104
Newhall, California 91321-2935
Telephone: (661)-735-1847
Facsimile: (661) 735-1857
mindvbishlaw@gmail.com

Attorneys for Plaintiffs
**JUSTIN CLIFT by and through his
Guardian Ad Litem STEPHANIE
CLIFT and STEPHANIE CLIFT**

10/16/15

WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28