

1 DANA JOHN MCCUNE, STATE BAR #82525
2 DOMINIC A. QUILLER, STATE BAR #274057
3 McCUNE & HARBER, LLP
4 515 South Figueroa Street, Suite 1100
5 Los Angeles, California 90071
6 Telephone: (213) 689-2500/Facsimile: (213) 689-2501
7 dmccune@mccuneharber.com and dquiller@mccuneharber.com

8 Attorneys for Defendant, SEACOAST GRACE CHURCH

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

11 JULIE POOLE LUSK,

12 Plaintiff,

13 v.

14 SEACOAST GRACE CHURCH; KENNETH
15 McCALL; and DOES 3-20,

16 Defendants.

Case No: 30-2020-01140195-CU-PO-CJC
Assigned to Judge Gregory H. Lewis, Dept C26
(Complaint filed on June 6, 2020)

**ANSWER TO FIRST AMENDED
COMPLAINT**

Trial Date: None Assigned

17
18
19
20 Defendant, SEACOAST GRACE CHURCH hereby responds to the First Amended Complaint
21 of plaintiff, for itself alone, and for no other defendant as follows:

22
23 The First Amended Complaint in the above matter being unverified, and pursuant to §431.30 of
24 the *Code of Civil Procedure*, this answering defendant denies generally and specifically, each and every
25 allegation of plaintiff's First Amended Complaint, and deny that plaintiff suffered damages in any sum.

26 ///

27 ///

1 **AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S FIRST**
2 **AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

3 The First Amended Complaint fails to state facts sufficient to constitute a cause of action
4 against this answering defendant.

5
6 **AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S FIRST**
7 **AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

8 At the time of the accident referred to in plaintiff's First Amended Complaint, the plaintiff's
9 negligent or at fault and failed to use that degree of care and caution which a reasonably prudent person
10 would have used under the same or similar circumstances; that plaintiff's negligence or fault must be
11 compared with the negligence or fault of this answering defendant as well as that of any other persons
12 and parties, and that any award to the plaintiff must be reduced by the amount that the plaintiff's
13 negligence or fault contributed to her injuries and damages.

14
15 **AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S FIRST**
16 **AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

17 All events in connection with the accident alleged in the First Amended Complaint and any
18 resulting injuries or damages, were contributed to and proximately caused by the negligence of plaintiff
19 in that she failed to exercise ordinary care for her own safety under the circumstances, thereby barring
20 the plaintiff from any recovery.

21
22 **AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S**
23 **FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

24 At the time and place of the incidents alleged in the complaint, plaintiff knew of the dangers and
25 risks incident to her activity, but nevertheless freely and voluntarily exposed herself to all risks of harm
26 and thus assumed all risk of harm incidental thereto. Therefore, each claim therein is barred by the
27 doctrine of primary and secondary assumption of the risk.

28 ///

1 **AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF’S FIRST**
2 **AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

3 By the exercise of reasonable effort, plaintiff could have mitigated the amount of damages, if
4 any there were, but plaintiff failed and refused, and continues to fail and refuse to exercise a reasonable
5 effort to mitigate damages and therefore plaintiff is barred from seeking recovery of those damages.

6
7 **AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF’S**
8 **FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT**
9 **ALLEGES:**

10 Neither this answering defendant nor any of its agents or employees was aware of any such
11 purported or alleged dangerous propensities of such employee, if any, or had actual or constructive
12 notice of such alleged dangerous propensity and therefore this answering defendant is immune from
13 any liability based upon such lack of notice.

14
15 **AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF’S**
16 **FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

17 The plaintiff’s claim is barred by laches.

18
19 **AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF’S**
20 **FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

21 Plaintiff has failed to fulfill the necessary elements to utilize the doctrine of delayed discovery.

22
23 **AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF’S FIRST**
24 **AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

25 Plaintiff is barred by the applicable statutes of limitation, including, but not limited to *Code of*
26 *Civil Procedure* §340 and *Government Code* requirements for filing a claim for damages and lawsuits,
27 if any.

28 ///

1 **AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF’S FIRST**
2 **AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

3 The parents and or guardians of plaintiff negligently, carelessly and recklessly supervised,
4 monitored, controlled and instructed the minor plaintiff so as to legally cause and contribute to her
5 injuries and damages, if any.

6
7 **AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF’S**
8 **FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

9 The injuries and damages, if any, sustained by plaintiff at the time or times and place or places
10 alleged in the complaint were a direct and proximate result of the acts, omissions, or negligence of third
11 parties not within the knowledge or control of this answering defendant, and were sustained, if at all,
12 without any negligence on the part of this answering defendant.

13
14 **AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF’S**
15 **FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

16 Plaintiff has failed to fulfill the necessary elements to utilize the theory of equitable estoppel.

17
18 **AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO**
19 **PLAINTIFF’S FIRST AMENDED COMPLAINT, THIS ANSWERING**
20 **DEFENDANT ALLEGES:**

21 This answering defendant is not responsible for the acts and omissions of any employee which
22 occurred outside the course and scope of that employee’s duties and responsibilities as an employee of
23 this Church.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S**
2 **FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

3 The injuries and damages alleged by plaintiff, if any, were proximately caused by the
4 negligence and liability of other parties, and defendant requests that an allocation of such negligence
5 and liability be made among such other parties, and that if any liability is found on the part of
6 defendant, that judgment against defendant be only in the amount which is proportionate to the extent
7 and percentage by which defendant's acts or omissions contributed to plaintiff's injuries or damages.
8

9 **AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S**
10 **FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

11 Defendant is informed and believes, and on that basis alleges that the injuries and damages
12 sustained by Plaintiff, if any, were the direct and proximate result of the intervening and superseding
13 actions, including the criminal actions, of third parties, whether named or unnamed, and not this
14 answering defendant.

15 **AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S**
16 **FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

17 To the extent individuals named and/or unnamed in the Complaint were employees of
18 SEACOAST GRACE CHURCH, and to the extent that they committed any of the acts alleged in the
19 First Amended Complaint (which supposition is denied and is stated solely for the purpose of this
20 affirmative defense), they were acting outside the course and scope of their employment and were not
21 transacting the business of the SEACOAST GRACE CHURCH at that time.
22

23 **AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO**
24 **PLAINTIFF'S FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT**
25 **ALLEGES:**

26 Defendant is informed and believes, and on that basis alleges that parties both served and
27 unserved, named and unnamed, and the plaintiff are in some manner or percentage responsible for
28

1 plaintiff's non-economic damages, if they occurred and if any, and defendant requires an order from the
2 trier of fact setting forth separate judgments, against each and every party, named and unnamed, served
3 and unserved, and plaintiff, for the amount of all non-economic damages that may be recovered by
4 plaintiff in direct proportion to the percentage of fault of each party, named and unnamed, served and
5 unserved, and plaintiff, pursuant to California *Civil Code* §1431.2.

6
7 **AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO**
8 **PLAINTIFF'S FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT**
9 **ALLEGES:**

10 This answering defendant did not have constructive, or actual, notice of KENNETH McCALL's
11 alleged propensity to commit sexual abuse of a minor.

12
13 **AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S**
14 **FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

15 Given that the allegations against KENNETH McCALL occurred during his employment by
16 North Long Beach Brethren Church, Seacoast Grace Church is exempt from liability by principles of
17 successor liability. *Hernandez v. Enterprise Rent-A-Car Co. of S.F.*, 37 Cal.App.5th 187 (2019).

18
19 **AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE TO PLAINTIFF'S**
20 **FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT ALLEGES:**

21 At the time of the allegations set forth in the complaint, KENNETH McCALL was employed by
22 North Long Beach Brethren Church and not Seacoast Grace Church.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO**
2 **PLAINTIFF’S FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT**
3 **ALLEGES:**

4 Seacoast Grace Church cannot be liable for sexual battery because as an entity, it did not
5 commit sexual battery nor did it ratify any conduct by KENNETH McCALL, assuming that ratification
6 would be a viable theory in this case, which it is not.

7
8 **AS A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO**
9 **PLAINTIFF’S FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT**
10 **ALLEGES:**

11 Seacoast Grace Church cannot be liable for sexual harassment because as an entity, it did not
12 commit sexual harassment nor did it ratify any conduct by KENNETH McCALL, assuming that
13 ratification would be a viable theory in this case, which it is not.

14
15 **AS A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO**
16 **PLAINTIFF’S FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT**
17 **ALLEGES:**

18 Seacoast Grace Church cannot be liable for gender violence under *Civil Code* §51.9 because as
19 an entity, it did not commit gender violence nor did it ratify any conduct by KENNETH McCALL,
20 assuming that ratification would be a viable theory in this case, which it is not.

21
22 **AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO**
23 **PLAINTIFF’S FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT**
24 **ALLEGES:**

25 This answering defendant did not violate the Tom Bane Civil Rights Act as it took no steps to
26 interfere with plaintiff’s Constitutional or statutory rights.

27 ///

28 ///

1 **AS A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO**
2 **PLAINTIFF’S FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT**
3 **ALLEGES:**

4 This answering defendant did not violate the Ralph Civil Rights Act.

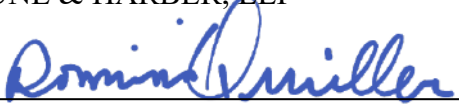
5
6 **AS A TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO**
7 **PLAINTIFF’S FIRST AMENDED COMPLAINT, THIS ANSWERING DEFENDANT**
8 **ALLEGES:**

9 This answering defendant did not ratify the conduct of KENNETH McCALL, if any.

10
11 **WHEREFORE**, this answering defendant prays that plaintiff take nothing by reason of her
12 First Amended Complaint and that this answering defendant be given judgment for its costs of suit
13 incurred herein, to be incurred, and for such other and further relief as the Court deems just and proper.

14 DATED: August 28, 2020

McCUNE & HARBER, LLP

15
16 By:  _____
17 DANA JOHN MCCUNE, ESQ.
18 DOMINIC A. QUILLER, ESQ.
19 Attorneys for Defendant, SEACOAST GRACE
20 CHURCH

MCCUNE & HARBER, LLP
515 SOUTH FIGUEROA ST.
LOS ANGELES, CA 90071
(213) 689-2500
Fax (213) 689-2501

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
) ss.
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address is 515 South Figueroa Street, Suite 1100, Los Angeles, California 90071.

On August 28, 2020, I served the foregoing document described as **ANSWER TO FIRST AMENDED COMPLAINT**, on the interested parties by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

 X **BY ELECTRONIC MAIL:** I caused to be transmitted a true and correct copy of the above-entitled document(s) to recipients noted via electronic service at the recipient’s office. This is necessitated during the declared national emergency and governor’s executive order due to the Coronavirus (COVID-19) pandemic because staff in this office is working remotely, and is unable to send physical mail as usual. Therefore, the document(s) referenced above is/are served only by using electronic mail..

 BY MAIL: I served the documents by enclosing them in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business’s practice of collection and processing of 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.

 BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the office of the addressee(s).

 BY FACSIMILE TRANSMISSION: The facsimile machine I used complied with California Rules of Court 2.301 and no error was reported by the machine. Pursuant to rule 2.306(h), I caused the machine to print a record of the transmission, a copy of which is attached to this proof of service.

 BY OVERNIGHT DELIVERY: I caused the above-referenced document(s) to be delivered via overnight delivery, for delivery to the above address(es).

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

 (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 28, 2020, at Los Angeles, California.



COLLEEN P. AOYS
caoy@mcconeharber.com

MCCUNE & HARBER, LLP
515 SOUTH FIGUEROA ST.
LOS ANGELES, CA 90071
(213) 689-2500
Fax (213) 689-2501

SERVICE LIST FOR LUSK, JULIE V. SEACOAST GRACE CHURCH

1
2
3 Matthew S. Ingles, Esq.
4 Deborah S. Mallgrave, Esq.
5 Desiree N. Murray, Esq.
6 Greenberg Gross, LLP
7 601 South Figueroa Street, 30th Floor
8 Los Angeles CA 90017
9 (949) 383-2800/ Fax (949) 383-2801
10 mingles@ggtriallaw.com, dmallgrave@ggtriallaw.com, dmurray@ggtriallaw.com
11 Co-Counsel for Plaintiff, JULIE POOLE LUSK

12
13 Michael Reck, Esq.
14 Michael G. Finnegan, Esq.
15 Jennifer E. Stein, Esq.
16 Jeff Anderson & Associates
17 11812 San Vicente Boulevard, Suite 503
18 Los Angeles CA 90049
19 310) 357-2425/ Fax (651) 297-6543
20 mreck@andersonadvocates.com, mike@andersonadvocates.com, jennifer@andersonadvocates.com
21 Co-Counsel for Plaintiff, JULIE POOLE LUSK

22
23
24
25
26
27
28
8/19/20 ss

MCCUNE & HARBER, LLP
515 SOUTH FIGUEROA ST.
LOS ANGELES, CA 90071
(213) 689-2500
Fax (213) 689-2501