

ORIGINAL

1 HOLLY O. WHATLEY, State Bar No. 160259
HWhatley@chwlaw.us
2 PAMELA K. GRAHAM, State Bar No. 216309
PGraham@chwlaw.us
3 COLANTUONO, HIGHSMITH & WHATLEY, PC
790 E. Colorado Boulevard, Suite 850
4 Pasadena, California 91101-2109
Telephone: (213) 542-5700
5 Facsimile: (213) 542-5710

**Exempt from Filing Fees
Government Code § 6103**

FILED
Superior Court of California
County of Los Angeles

AUG 17 2018

Sherril K. Carter, Executive Officer/Clerk
By Rita Nazaryan, Deputy
Rita Nazaryan

6 MICHAEL N. FEUER, State Bar No. 111529
7 DANIEL WHITLEY, State Bar No. 175146
OFFICE OF THE CITY ATTORNEY
8 200 North Main Street, 916 City Hall East
Los Angeles, California 90012
9 Telephone: (213) 473-6875
10 Facsimile: (213) 473-6818

11 Attorneys for Defendant
12 CITY OF LOS ANGELES

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**
16

17 LORIN M. ENGQUIST and ANGELICA G.
DIVINAGRACIA dba FUN FIT FACTORY, on
18 behalf of themselves and all others similarly
situated,

19 Plaintiffs,

20 v.

21 CITY OF LOS ANGELES,

22 Defendant.
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CASE NO. BC591331
Unlimited Jurisdiction

(Assigned to Hon. Ann I. Jones – Dept. 11)

**CITY OF LOS ANGELES' ANSWER TO
UNVERIFIED FIRST AMENDED CLASS
ACTION COMPLAINT**

Complaint Filed: August 13, 2015
FAC Filed: July 16, 2018

FILED

Colantuono, Highsmith & Whatley, PC
790 E. COLORADO BOULEVARD, SUITE 850
PASADENA, CA 91101-2109

Colantuono, Highsmith & Whalley, PC
790 E. COLORADO BOULEVARD, SUITE 850
PASADENA, CA 91101-2109

1 Defendant City of Los Angeles ("City") hereby answers the unverified First Amended Class
2 Action Complaint ("FAC") filed by Plaintiffs Lorin M. Engquist, Angelica G. Divinagracia dba Fun
3 Fit Factory, and David Bernstein ("Plaintiffs"), filed on behalf of themselves and all other similarly
4 situated taxpayers. Defendant City hereby admits, denies, and alleges as follows.

5 **GENERAL DENIAL**

6 Pursuant to Code of Civil Procedure section 431.30, subdivision (d), the City denies each and
7 every allegation of the FAC, and further denies any and all wrongful conduct, whether or not alleged
8 in the FAC. The City further denies that Plaintiffs have been, or will be, damaged in the manner
9 alleged in the FAC or in any other manner by reason of any act or omission on the part of the City or
10 any of the City's agents, officers, or employees. The City further denies that Plaintiffs are entitled to
11 any relief of any kind or nature from the City.

12 **AFFIRMATIVE DEFENSES**

13 The City further submits the following defenses to the FAC, and each and every claim
14 therein, without assuming or undertaking any burden of proof not otherwise assigned by law, and
15 without admitting any allegations in the FAC. The City is informed and believes, and upon such
16 information and belief alleges as follows:

17 **FIRST AFFIRMATIVE DEFENSE**

18 **(Failure to State a Claim)**

19 1. AS A SEPARATE DEFENSE, the FAC fails to state a claim or cause of action upon
20 which relief can be granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 **(Equitable Estoppel)**

23 2. AS A FURTHER SEPARATE DEFENSE, Plaintiffs are estopped by action of law or
24 by conduct from maintaining the FAC or any cause of action in the FAC to the extent Plaintiffs
25 committed acts and/or omissions that bar or reduce their ability to pursue these claims against the
26 City.

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PASADENA, CA 91101-2109

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THIRD AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

3. AS A FURTHER SEPARATE DEFENSE, the FAC and each and every cause of action therein is barred in whole or in part because Plaintiffs have failed to seek, pursue, or exhaust their administrative remedies.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Comply with Government Claims Act Requirements)

4. AS A FURTHER SEPARATE DEFENSE, the FAC and each and every cause of action therein is barred by Plaintiffs' failure to comply with the claim presentation requirements of the Government Claims Act.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

5. AS A FURTHER SEPARATE DEFENSE, Plaintiffs have waived the right to maintain the FAC or any cause of action in the FAC to the extent Plaintiffs have committed acts or omissions that waive their ability to pursue these claims against the City.

SIXTH AFFIRMATIVE DEFENSE

(Laches)

6. AS A FURTHER SEPARATE DEFENSE, the claims asserted in the FAC are prohibited by the doctrine of laches because of Plaintiffs' prejudicial delay in asserting them.

SEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

7. AS A FURTHER SEPARATE DEFENSE, the claims asserted in the FAC are barred by the applicable statute of limitations including, but not limited to, Code of Civil Procedure section 338.

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1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(Standing)**

3 8. AS A FURTHER SEPARATE DEFENSE, Plaintiffs lack standing to bring or
4 maintain this action.

5 **NINTH AFFIRMATIVE DEFENSE**

6 **(Additional Defenses)**

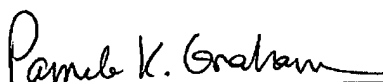
7 9. The City has insufficient information and knowledge at present on which to form a
8 belief as to whether it may have additional, as yet unstated, defenses to this suit. The City reserves
9 the right to assert additional defenses if further investigation indicates such affirmative defenses
10 would be appropriate.

11 WHEREFORE, Defendant City prays for judgment as follows:

- 12 1. That the Court issue judgment against Plaintiffs on the entire FAC;
- 13 2. That the FAC be dismissed with prejudice;
- 14 3. That Plaintiffs take nothing by this action; and
- 15 4. For such other and further relief as the Court deems just and proper.

16 DATED: August 17, 2018

17 **COLANTUONO, HIGHSMITH & WHATLEY, PC**

18 

19 HOLLY O. WHATLEY
20 PAMELA K. GRAHAM
21 Attorneys for Defendant
22 CITY OF LOS ANGELES

Colantuono, Highsmith & Whatley, PC
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PASADENA, CA 91101-2109

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PROOF OF SERVICE

Engquist, et al. v. City of Los Angeles
LASC Case No. BC591331

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Blvd., Suite 850, Pasadena, California 91101-2109.


On **August 17, 2018**, I served the document(s) described as: **CITY OF LOS ANGELES' ANSWER TO UNVERIFIED FIRST AMENDED CLASS ACTION COMPLAINT**, on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

VIA ELECTRONIC SERVICE: I electronically transmitted a copy of the within documents in a pdf or word processing format via **CASE ANYWHERE** to those persons noted above at their respective electronic service address pursuant to Cal. Rules of Court, Rule 2.251(g) on the date set forth.

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

Executed on **August 17, 2018**, at Pasadena, California.



Angelo McCabe

Colantuono, Highsmith & Whatley, PC
790 E. COLORADO BOULEVARD, SUITE 850
PASADENA, CA 91101-2109

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SERVICE LIST

Engquist, et al. v. City of Los Angeles
LASC Case No. BC591331

<p>Rachele R. Byrd Marisa C. Livesay Brittany N. Dejong WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP 750 B Street, Suite 2770 San Diego, CA 92101 Tel. (619) 239-4599 Fax. (619) 234-4599 byrd@whafh.com manifold@whafh.com livesay@whafh.com dejong@whafh.com</p> <p><i>Attorneys for Plaintiffs</i></p>	<p>Jon A. Tostrud TOSTRUD LAW GROUP, P.C. 1925 Century Park East, Suite 2125 Los Angeles, CA 90067 Tel. (310) 278-2600 Fax. (310) 278-2640 jtostrud@tostrudlaw.com</p> <p><i>Attorneys for Plaintiffs</i></p>
<p>Daniel W. Krasner WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP 270 Madison Avenue New York, NY 10016 Tel. (212) 545-4600 Fax. (212) 545-4653 krasner@whafh.com</p> <p><i>Attorneys for Plaintiffs</i></p>	

Colantuono, Highsmith & Whatley, PC
790 E. COLORADO BOULEVARD, SUITE 860
PASADENA, CA 91101-2109