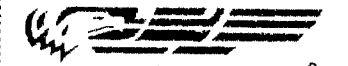


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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ORANGE—CENTRAL JUSTICE CENTER**

14
15 CITY OF IRVINE,
16 Plaintiff,
17 v.
18 ALL AMERICAN ASPHALT and DOES 1-10,
inclusive,
19 Defendants.
20

Case No. 30-2020-01153015-CU-MC-CJC
[Hon. Gregory H. Lewis, Dept. C26]

**DEFENDANT ALL AMERICAN
ASPHALT'S VERIFIED ANSWER TO
PLAINTIFF CITY OF IRVINE'S
COMPLAINT FOR PUBLIC
NUISANCE ABATEMENT,
INJUNCTION, EQUITABLE RELIEF
AND CIVIL PENALTIES**

Complaint Filed: July 28, 2020
Trial Date: None Set

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ANSWER

Pursuant to California Code of Civil Procedure sections 431.30 and 446, Defendant All American Asphalt (“AAA”) hereby submits its verified answer to Plaintiff the City of Irvine’s (“Plaintiff” or “City”) Complaint for Public Nuisance Abatement, Injunction, Equitable Relief and Civil Penalties (“Complaint”) as follows:

INTRODUCTION

1. In response to the allegations contained in Paragraph 1 of the Complaint, those allegations are argument and conclusions of law requiring no answer, but to the extent they contain assertions of fact, AAA denies such allegations. AAA specifically denies that it is knowingly permitting the facility at 10671 Jeffrey Road, Irvine, California to operate in violation of State and local laws, regulations and standards.

2. In response to the allegations contained in Paragraph 2 of the Complaint, those allegations are argument and conclusions of law requiring no answer, but to the extent they contain assertions of fact, AAA denies such allegations. AAA specifically denies that it is knowingly permitting the facility at 10671 Jeffrey Road, Irvine, California to operate in violation of State and local laws, regulations and standards.

3. In response to the allegations contained in Paragraph 3 of the Complaint, AAA admits that it is operating at asphalt plant at 10671 Jeffrey Road, Irvine, California and provides products to its clients from that plant. AAA denies the remaining allegations in Paragraph 3.

4. In response to the allegations contained in Paragraph 4 of the Complaint, those allegations are argument and conclusions of law requiring no answer, but to the extent they contain assertions of fact, AAA denies such allegations.

GENERAL ALLEGATIONS

5. In response to the allegations contained in Paragraph 5 of the Complaint, AAA lacks sufficient information to admit or deny the allegations contained in Paragraph 5 and, on that basis, denies such allegations.

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1 violated SCAQMD rules and regulations or State or local provisions, including the Irvine
2 Municipal Code.

3 13. In response to the allegations contained in Paragraph 13 of the Complaint,
4 the documents referenced therein speak for themselves. AAA denies that it has violated
5 SCAQMD rules and regulations or State or local provisions, including the Irvine Municipal
6 Code. The remaining allegations in Paragraph 13 are argument, including Plaintiff's self-serving
7 characterizations of the documents, and conclusions of law requiring no answer, but to the extent
8 they contain assertions of fact, AAA denies such allegations.

9 14. In response to the allegations contained in Paragraph 14 of the Complaint,
10 AAA lacks sufficient information to admit or deny the allegations contained in Paragraph 14
11 and, on that basis, denies such allegations.

12 15. In response to the allegations contained in Paragraph 15 of the Complaint,
13 AAA lacks sufficient information to admit or deny the allegations contained in Paragraph 15
14 and, on that basis, denies such allegations.

15 16. In response to the allegations contained in Paragraph 16 of the Complaint,
16 AAA lacks sufficient information to admit or deny the allegations contained in Paragraph 16
17 and, on that basis, denies such allegations.

18 **OVERVIEW OF APPLICABLE LAW**

19 17. In response to the allegations contained in Paragraph 17 of the Complaint,
20 those allegations are argument and conclusions of law requiring no answer, but to the extent they
21 contain assertions of fact, AAA denies such allegations.

22 18. In response to the allegations contained in Paragraph 18 of the Complaint,
23 those allegations are argument and conclusions of law requiring no answer, but to the extent they
24 contain assertions of fact, AAA denies such allegations.

25 19. In response to the allegations contained in Paragraph 19 of the Complaint,
26 those allegations are argument and conclusions of law requiring no answer, but to the extent they
27 contain assertions of fact, AAA denies such allegations.

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1 public nuisance theory.

2 **FOURTH AFFIRMATIVE DEFENSE**

3 (Lawful Operation)

4 4. AAA is informed and believes and thereon alleges that the Complaint and each
5 and every cause of action alleged therein fails because AAA operated its business lawfully
6 pursuant to, among other things, the Irvine Municipal Code, applicable zoning laws, and duly
7 issued permits. *See, e.g.,* Civil Code § 3482; Code Civ. Proc. § 731a; *Dina v. People ex rel.*
8 *Dep't of Transp.*, 151 Cal. App. 4th 1029, 1052–53 (2007).

9 **FIFTH AFFIRMATIVE DEFENSE**

10 (Consent)

11 5. AAA is informed and believes and thereon alleges that Plaintiff is barred from
12 any recovery because it consented to the alleged acts and omissions that give rise to the
13 Complaint.

14 **SIXTH AFFIRMATIVE DEFENSE**

15 (Intervening and Superseding Acts of Others)

16 6. AAA is informed and believes and thereon alleges that any damages allegedly
17 suffered by Plaintiff were proximately caused by the intervening and superseding actions of
18 others, which intervening and superseding actions bar or diminish Plaintiff's recovery, if any,
19 against AAA.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 (Unclean Hands)

22 7. The Complaint, and each purported cause of action therein, is barred by the
23 equitable doctrine of unclean hands. Plaintiff has unclean hands and is barred from enforcing
24 the claims set forth in the Complaint.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 (Waiver)

27 8. The Complaint, and each purported cause of action therein, is barred because
28 Plaintiff consented to the conduct upon which the claims are based, and waived its right to
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1 enforce the claims set forth in the Complaint. Plaintiff waived any objection to any of the acts
2 complained of in the Complaint and is barred from recovery herein.

3 **NINTH AFFIRMATIVE DEFENSE**

4 (Laches)

5 9. The Complaint, and each purported cause of action therein, is barred by the
6 equitable doctrine of laches.

7 **TENTH AFFIRMATIVE DEFENSE**

8 (Estoppel)

9 10. The Complaint, and each purported cause of action therein, is barred by the
10 doctrine of estoppel.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 (Justification)

13 11. AAA is informed and believes and thereon alleges that its conduct with regard to
14 the matters alleged in the Complaint was justified, and by reason of the foregoing, Plaintiff is
15 barred from any recovery against AAA.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 (Failure to Do Equity)

18 12. AAA is informed and believes and thereon alleges that Plaintiff failed to do
19 equity in the matters alleged in the Complaint, and any recovery by Plaintiff must be diminished
20 or barred by reason thereof.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 (Waiver, Excuse, and Release)

23 13. AAA is informed and believes and thereon alleges that any purported obligation
24 alleged in the Complaint which AAA may have owed to Plaintiff has been excused, released, or
25 waived by virtue of actions of Plaintiff.

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2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 (Proportionate Fault)

4 14. If Plaintiff sustained any loss under the circumstances alleged in the Complaint,
5 which is denied, AAA is liable only for that portion of damages, if any, which corresponds to
6 AAA's degree of fault or responsibility, and AAA is not liable for damages attributable to the
7 responsibility, negligence or fault of Plaintiff or of any other person or entity, whether named or
8 unnamed in the Complaint.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 (No Duty)

11 15. There is no legal relationship upon which any duty could possibly be owed by
12 AAA to Plaintiff, and therefore, Plaintiff's causes of action fail as a matter of law.

13 **SIXTEENTH AFFIRMATIVE DEFENSE**

14 (Failure to Mitigate)

15 16. Plaintiff has failed to exercise reasonable efforts to minimize or avoid any
16 damages that are alleged to have been caused by AAA; by reason thereof, Plaintiff is barred, in
17 whole or in part, from recovering damages from AAA, and the liability AAA to Plaintiff, if any,
18 should be apportioned, denied or reduced accordingly.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 (No Causation)

21 17. Plaintiff's damages, if any, were caused solely, directly and proximately by the
22 acts or omissions of Plaintiff or third parties, not by any acts or omissions of AAA, its agents, or
23 employees.

24 **EIGHTEENTH AFFIRMATIVE DEFENSE**

25 (Ratification)

26 18. Plaintiff by its acts, conduct, and/or omissions, has ratified the acts, conduct and
27 omissions, if any, of AAA and Plaintiff is barred from seeking any relief from the AAA.

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2 **NINETEENTH AFFIRMATIVE DEFENSE**

3 (Statute of Limitations)

4 19. The Complaint, and each purported cause of action therein, is barred by the
5 applicable statute of limitations.

6 **TWENTIETH AFFIRMATIVE DEFENSE**

7 (Uncertainty)

8 20. The Complaint, and each purported cause of action therein, fails because the
9 allegations are uncertain, ambiguous and unintelligible and therefore preclude AAA from being
10 able to fully ascertain which conduct is alleged to give rise to which purported cause of action.

11 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

12 (Good Faith)

13 21. AAA is informed and believes and thereon alleges that it acted in good faith in
14 any and all interactions with Plaintiff and did not directly or indirectly perform any acts
15 whatsoever which would constitute a violation of any rights of Plaintiff or any duty, if any, owed
16 to Plaintiff.

17 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

18 (Right to Assert Additional Affirmative Defenses)

19 22. AAA lacks sufficient knowledge and information regarding the facts alleged by
20 Plaintiff and discovery in this matter may reveal bases for additional affirmative defenses.
21 AAA, therefore, reserve the right to plead additional affirmative defenses at a later time if such
22 defenses are appropriate based on information that becomes available at a later time.

23 **WHEREFORE**, AAA prays as follows:

- 24 1. That Plaintiff take nothing by way of its Complaint;
 - 25 2. That Plaintiff be granted no relief in this action;
 - 26 3. That the Complaint be dismissed in its entirety with prejudice;
 - 27 4. That AAA recover its costs of suit herein, including reasonable attorneys' fees, as
- 28 permitted by law; and

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5. That the Court award such other and further relief to AAA that it deems appropriate.

Dated: October 9, 2020

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Matthew Williamson
Matthew Williamson
Attorneys for Defendant
ALL AMERICAN ASPHALT

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VERIFICATION

I am the Asphalt Plant Manager for All American Asphalt (“AAA”), a party to this action. I am authorized to make this verification for and on behalf of AAA. I have read the foregoing **DEFENDANT’S VERIFIED ANSWER TO PLAINTIFF CITY OF IRVINE’S COMPLAINT FOR PUBLIC NUISANCE ABATEMENT, INJUNCTION, EQUITABLE RELIEF AND CIVIL PENALTIES** and know its contents. I am informed and believe and on that ground allege that the matters stated in it are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Corona, California on this 6th day of October 2020.



John Gardner

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1 **PROOF OF SERVICE**

2 I, Marla L. Chung, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I
4 am over the age of eighteen years and not a party to the within-entitled action. My business
5 address is 2049 Century Park East, Suite 1700, Los Angeles, California 90067. On October 9,
6 2020, I served a copy of the within document(s):

7 **DEFENDANT ALL AMERICAN ASPHALT'S VERIFIED ANSWER TO
8 PLAINTIFF CITY OF IRVINE'S COMPLAINT FOR PUBLIC NUISANCE
9 ABATEMENT, INJUNCTION, EQUITABLE RELIEF AND CIVIL PENALTIES**

- 10 by transmitting via facsimile the document(s) listed above to the fax number(s) set forth
11 below on this date before 5:00 p.m.
- 12 by placing the document(s) listed above in a sealed envelope with postage thereon fully
13 prepaid, the United States mail at Los Angeles, California addressed as set forth below.
- 14 by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air
15 bill, and causing the envelope to be delivered to an agent for delivery.
- 16 by personally delivering the document(s) listed above to the person(s) at the address(es) set
17 forth below.
- 18 by transmitting via e-mail or electronic transmission the document(s) listed above to the
19 person(s) at the e-mail address(es) set forth below.

20 Rutan & Tucker, LLP
 21 Jeffrey T. Melching
 22 Noam Duzman
 23 Lauren Palley
 24 611 Anton Boulevard, Suite 1400
 25 Costa Mesa, CA 92626-1931
 26 Tel: 714-641-5100 Fax: 714-546-9035
 27 E-Mail: jmelching@rutan.com;
 28 nduzman@rutan.com; lpalley@rutan.com

Attorneys for Plaintiff City of Irvine

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on October 9, 2020, at Los Angeles, California.

/s/ Marla Chung
Marla Chung

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