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5 Attorneys for Defendant  
Santa Cruz City Schools, erroneously  
6 sued and served herein as Santa Cruz  
School District  
7

8  
9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA San Jose

11  
12 ERNESTINA SALDANA-NEILY,

13 Plaintiff,

14 vs.

15 SANTA CRUZ SCHOOL DISTRICT,

16 Defendant.  
17

No. C 02 4795 JF RS

ANSWER OF DEFENDANT SANTA CRUZ  
CITY SCHOOLS TO COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF:  
DENIAL OF DISABLED ACCESS TO PUBLIC  
SCHOOL FACILITIES; TITLE II OF THE  
AMERICANS WITH DISABILITIES ACT;  
VIOLATION OF § 504 OF REHABILITATION  
ACT OF 1973; GOVERNMENT CODE §  
4450; CALIFORNIA CIVIL CODE §§ 54 AND  
54.1

18 DEMAND FOR JURY TRIAL  
19

20 COMES NOW defendant SANTA CRUZ CITY SCHOOLS, erroneously sued and  
21 served herein as Santa Cruz School District, and in answer to plaintiff's Complaint for  
22 Damages and Injunctive Relief; Denial of Disabled Access to Public School Facilities; Title  
23 II of the Americans with Disabilities Act; Violation of § 504 of Rehabilitation Act of 1973;  
24 Government Code § 4450; California Civil Code §§ 54 and 54.1, admits, denies and  
25 alleges as follows:

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1 **INTRODUCTION**

2 **I.**

3 Answering the allegations contained in paragraph 1 of the Introduction of said  
4 complaint, said defendant admits that plaintiff is a parent of a child enrolled in the Soquel  
5 Cooperative Nursery Preschool Program, through the Santa Cruz School District Adult  
6 Education Parent Program, and is a wheelchair user; except as specifically admitted  
7 herein, defendant alleges that it has no information or belief upon the subjects contained  
8 therein sufficient to enable it to answer any of said allegations and, placing its denial on  
9 that ground, denies each and every, all and singular, generally and specifically, said  
10 allegations and the whole thereof.

11 **II.**

12 Answering the allegations contained in paragraph 2 of the Introduction of said  
13 complaint, said defendant alleges that it has no information or belief upon the subjects  
14 contained therein sufficient to enable it to answer any of said allegations and, placing its  
15 denial on that ground, denies each and every, all and singular, generally and specifically,  
16 said allegations and the whole thereof.

17 **PARTIES**

18 **I.**

19 Answering the allegations contained in paragraph 7 of the Parties of said complaint,  
20 said defendant alleges that it has no information or belief upon the subjects contained  
21 therein sufficient to enable it to answer any of said allegations and, placing its denial on  
22 that ground, denies each and every, all and singular, generally and specifically, said  
23 allegations and the whole thereof.

24 **II.**

25 Answering the allegations contained in paragraph 8 of the Parties of said complaint,  
26 said defendant admits that Defendant Santa Cruz School District is a public entity subject  
27 to Title II of the American Disabilities Act of 1990, to section 504 of the Rehabilitation Act of  
28 1973, and to the requirements of California State law. Except as specifically admitted

1 herein, the allegations contained in paragraph 8 of said complaint constitute a legal opinion  
2 and/or conclusion, and on that basis, defendant denies each and every, all and singular,  
3 generally and specifically, said allegations and the whole thereof.

4 **III.**

5 Answering the allegations contained in paragraph 9 of the Parties of said complaint,  
6 said defendant alleges that it has no information or belief upon the subjects contained  
7 therein sufficient to enable it to answer any of said allegations and, placing its denial on  
8 that ground, denies each and every, all and singular, generally and specifically, said  
9 allegations and the whole thereof.

10 **GOVERNMENT CLAIM FILED**

11 **I.**

12 Answering the allegations contained in paragraph 10 of the Government Claim Filed  
13 of said complaint, said defendant admits that plaintiff made a timely claim for damages to  
14 the Santa Cruz School District on April 30, 2002, and that this claim was rejected; except  
15 as specifically admitted herein, defendant denies each and every, all and singular,  
16 generally and specifically, said allegations and the whole thereof.

17 **FACTUAL STATEMENT**

18 **I.**

19 Answering the allegations contained in paragraph 11 of the Factual Statement of  
20 said complaint, said defendant admits that plaintiff Ernestina Saldana-Neily is a mother and  
21 two of her children have attended defendant's Soquel Cooperative Nursery Preschool  
22 Programs, which work in conjunction with the Santa Cruz School District Adult Education  
23 Parent Program to provide parenting programs and day care for preschool aged children in  
24 the district; that as part of the district's condition of enrollment for the preschool,  
25 participating parents must attend some seminars and classes provided by the district that  
26 the preschool attended by plaintiff is wheelchair accessible; and that on or about  
27 November 6, 2001, Defendant scheduled a meeting for parents to be held at Harbor High  
28 School in the City of Soquel; except as specifically admitted herein, defendant alleges that

1 it has no information or belief upon the subjects contained therein sufficient to enable it to  
2 answer any of said allegations and, placing its denial on that ground, denies each and  
3 every, all and singular, generally and specifically, said allegations and the whole thereof.

4 **II.**

5 Answering the allegations contained in paragraph 12 of the Factual Statement of  
6 said complaint, said defendant admits that at some point plaintiff asked for directions to the  
7 restrooms and was directed to an adjacent building for a restroom; except as specifically  
8 admitted herein, defendant alleges that it has no information or belief upon the subjects  
9 contained therein sufficient to enable it to answer any of said allegations and, placing its  
10 denial on that ground, denies each and every, all and singular, generally and specifically,  
11 said allegations and the whole thereof.

12 **III.**

13 Answering the allegations contained in paragraph 13 of the Factual Statement of  
14 said complaint, said defendant admits that plaintiff spoke with the theater manager and her  
15 daughter's teacher, Karen Gurr, to let them know she would have to locate an accessible  
16 restroom; that plaintiff was told that the only accessible restrooms on campus were located  
17 on the upper portion of the campus; and that the theater manager offered to assist plaintiff  
18 to use the faculty restrooms; except as specifically admitted herein, defendant alleges that  
19 it has no information or belief upon the subjects contained therein sufficient to enable it to  
20 answer any of said allegations and, placing its denial on that ground, denies each and  
21 every, all and singular, generally and specifically, said allegations and the whole thereof.

22 **IV.**

23 Answering the allegations contained in paragraph 14 of the Factual Statement of  
24 said complaint, said defendant admits that plaintiff agreed to try and use the faculty  
25 restrooms with the assistance of the theater manager and Karen Gurr, and that the  
26 manager and Ms. Gurr attempted to lift plaintiff onto the toilet, but were unable to transfer  
27 her onto the toilet; except as specifically admitted herein, defendant alleges that it has no  
28 information or belief upon the subjects contained therein sufficient to enable it to answer

1 any of said allegations and, placing its denial on that ground, denies each and every, all  
2 and singular, generally and specifically, said allegations and the whole thereof.

3 **V.**

4 Answering the allegations contained in paragraph 15 of the Factual Statement of  
5 said complaint, said defendant admits that two men attending the parenting class were  
6 summoned to help plaintiff, and helped plaintiff back onto her wheelchair; except as  
7 specifically admitted herein, defendant alleges that it has no information or belief upon the  
8 subjects contained therein sufficient to enable it to answer any of said allegations and,  
9 placing its denial on that ground, denies each and every, all and singular, generally and  
10 specifically, said allegations and the whole thereof.

11 **VI.**

12 The allegations contained in paragraph 16 of said Factual Statement of said  
13 complaint constitute a legal opinion and/or conclusion, and on that basis, defendant denies  
14 each and every, all and singular, generally and specifically, said allegations and the whole  
15 thereof.

16 **VII.**

17 Answering the allegations contained in paragraph 17 of the Factual Statement of  
18 said complaint, said defendant denies each and every, all and singular, generally and  
19 specifically, said allegations and the whole thereof.

20 **VIII.**

21 Answering the allegations contained in paragraph 18 of the Factual Statement of  
22 said complaint, said defendant alleges that it has no information or belief upon the subjects  
23 contained therein sufficient to enable it to answer any of said allegations and, placing its  
24 denial on that ground, denies each and every, all and singular, generally and specifically,  
25 said allegations and the whole thereof.

26 **FIRST CAUSE OF ACTION**  
27 **DISCRIMINATION IN VIOLATION OF TITLE II**  
28 **OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

**I.**

1 Answering the allegations contained in paragraph 19 of the First Cause of Action of  
2 said complaint, which incorporates paragraphs 1 through 18 of the Introduction, said  
3 defendant refers to its answers to said paragraphs and by such reference incorporates the  
4 same herein to have the same force and effect as if set forth fully at length.

5 **II.**

6 Answering the allegations contained in paragraph 20 of the first cause of action of  
7 said complaint, said defendant admits that plaintiff was entitled to the protections of the  
8 provisions of Title II of the Americans with Disabilities Act of 1990; except as specifically  
9 admitted herein, defendant alleges that it has no information or belief upon the subjects  
10 contained therein sufficient to enable it to answer any of said allegations and, placing its  
11 denial on that ground, denies each and every, all and singular, generally and specifically,  
12 said allegations and the whole thereof.

13 **III.**

14 Answering the allegations contained in paragraphs 22, 23 and 24 of the first cause  
15 of action of said complaint, said defendant denies each and every, all and singular,  
16 generally and specifically, said allegations and the whole thereof.

17 **SECOND CAUSE OF ACTION**  
18 **VIOLATION OF §504 OF THE REHABILITATION ACT OF 1973**

19 **I.**

20 Answering the allegations contained in paragraph 25 of the second cause of action  
21 of said complaint, which incorporates paragraphs 1 through 24 of the Introduction and first  
22 cause of action, said defendant refers to its answers to said paragraphs and by such  
23 reference incorporates the same herein to have the same force and effect as if set forth  
24 fully at length.

25 **II.**

26 Answering the allegations contained in paragraphs 27, 28, and 29 of the second  
27 cause of action of said complaint, said defendant denies each and every, all and singular,  
28 generally and specifically, said allegations and the whole thereof.

1 **THIRD CAUSE OF ACTION**  
2 **VIOLATION OF CALIFORNIA**  
3 **GOVERNMENT CODE §4450 et seq., and §11135**

4 **I.**

5 Answering the allegations contained in paragraph 30 of the third cause of action of  
6 said complaint, which incorporates paragraphs 1 through 29 of the Introduction, first and  
7 second causes of action, said defendant refers to its answers to said paragraphs and by  
8 such reference incorporates the same herein to have the same force and effect as if set  
9 forth fully at length.

10 **II.**

11 Answering the allegations contained in paragraphs 31, 32 and 33 of the third cause  
12 of action of said complaint, said defendant denies each and every, all and singular,  
13 generally and specifically, said allegations and the whole thereof.

14 **FOURTH CAUSE OF ACTION**  
15 **FOR VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS**  
16 **(§§54 AND 54.1 CIVIL CODE)**

17 **I.**

18 Answering the allegations contained in paragraph 34 of the fourth cause of action of  
19 said complaint, which incorporates paragraphs 1 through 33 of the Introduction, first,  
20 second, and third causes of action, said defendant refers to its answers to said paragraphs  
21 and by such reference incorporates the same herein to have the same force and effect as  
22 if set forth fully at length.

23 **II.**

24 Answering the allegations contained in paragraphs 35, 36, and 37 of the fourth  
25 cause of action of said complaint, said defendant denies each and every, all and singular,  
26 generally and specifically, said allegations and the whole thereof.

27 **III.**

28 Answering the allegations contained in paragraph 38 of the fourth cause of action of  
said complaint, said defendant alleges that it has no information or belief upon the subjects  
contained therein sufficient to enable it to answer any of said allegations and, placing its

1 denial on that ground, denies each and every, all and singular, generally and specifically,  
2 said allegations and the whole thereof.

3 **AFFIRMATIVE DEFENSES**

4 AND FOR A FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO SAID  
5 COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

6 That said complaint does not state facts sufficient to constitute a cause of action.

7 AND FOR A SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO  
8 SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

9 That said complaint is barred by the statute of limitations; to wit, the provisions of  
10 Code of Civil Procedure sections 338, 339, and 340.

11 AND FOR A THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO SAID  
12 COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

13 That plaintiff's claims herein are barred by the equitable doctrine of unclean hands.

14 AND FOR A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO  
15 SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

16 That it has no independent knowledge, as of the filing of this answer, of the facts  
17 allegedly constituting the causes of action in plaintiff's complaint, and based thereon,  
18 hereby respectfully requests leave of court to amend this answer to include those  
19 affirmative defenses that are revealed during the course of this defendant's discovery.

20 AND FOR A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO SAID  
21 COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

22 That there has been no violation of the Unruh Civil Rights Act, in that the condition  
23 of defendant's property is not discriminatory, but is caused by the structure of the building  
24 and/or the natural condition of the grounds, and the relief sought by plaintiff would require  
25 construction, alteration, or structural modifications of the building or buildings in which  
26 defendant's establishment is located.

27 AND FOR A SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO SAID  
28 COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:



1 That plaintiff cannot establish intentional and arbitrary discrimination, and therefore  
2 fails to state a cause of action for violation of the Americans with Disabilities Act, the  
3 Rehabilitation Act of 1973, or the Unruh Act.

4 AND FOR A SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO  
5 SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

6 That plaintiff cannot establish that she was denied access on any particular  
7 occasion.

8 AND FOR AN EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO  
9 SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

10 That plaintiff cannot establish that she suffered actual damage as a result of  
11 defendant's actions or omissions.

12 AND FOR A NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO SAID  
13 COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

14 That plaintiff was contributorily negligent or otherwise at fault, that such negligence  
15 or fault contributed to the damages, if any, and that plaintiff's recovery should therefore be  
16 reduced to the extent of her negligence or fault.

17 AND FOR A TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO SAID  
18 COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

19 That plaintiff's complaint, and each cause of action therein, fails to state facts  
20 sufficient to permit the award of attorneys' fees or costs.

21 AND FOR A ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO  
22 SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

23 That the modifications demanded by plaintiff would fundamentally alter the nature of  
24 goods, services, facilities, privileges, advantages, or accommodations provided by  
25 defendant.

26 AND FOR A TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO  
27 SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:  
28

1 That plaintiff had full access to defendant's bathroom facilities through alternative  
2 methods.

3 AND FOR A THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
4 TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT  
5 ALLEGES:

6 That the injunctive relief sought by plaintiff is structurally impracticable.

7 AND FOR A FOURTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
8 TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT  
9 ALLEGES:

10 That the cost of barrier removal demanded by plaintiff is disproportionate to the  
11 alteration of the property, if any, during the relevant time periods.

12 AND FOR A FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO  
13 SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

14 That plaintiff failed subsequent to the occurrence described in her complaint to  
15 properly mitigate the damages and thereby is precluded from recovering those damages  
16 which could have reasonably been avoided by the exercise of due care on the plaintiff's  
17 part.

18 AND FOR A SIXTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO  
19 SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

20 That defendant has made reasonable accommodations for the disabilities of its  
21 students and parents.

22 AND FOR AN SEVENTEENTH SEPARATE AND DISTINCT AFFIRMATIVE  
23 DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,  
24 DEFENDANT ALLEGES:

25 The services, programs, and/or any activities complained of in plaintiff's complaint,  
26 when viewed in their entirety, are readily accessible to and usable by individuals with  
27 disabilities.

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1 AND FOR A EIGHTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
2 TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT  
3 ALLEGES:

4 That it is not required by law to make each of the existing facilities, or portions of its  
5 existing facilities, accessible to and usable by individuals with disabilities.

6 AND FOR AN NINETEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
7 TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT  
8 ALLEGES:

9 That the remedy sought by plaintiff would result in an undue financial and  
10 administrative burden to defendant.

11 AND FOR A TWENTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO  
12 SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

13 That the conditions plaintiff complains of do not prevent from her successfully and  
14 meaningfully participating in the programs offered by defendant, or receiving the benefit of  
15 those programs.

16 AND FOR A TWENTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
17 TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT  
18 ALLEGES:

19 That plaintiff cannot show her disability was the sole reason for defendant's actions.

20 AND FOR A TWENTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO  
21 SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

22 That plaintiff had full knowledge of some or all of the risks of the injuries complained of,  
23 but voluntarily assumed those risks and is not entitled to recover for injuries allegedly  
24 resulting from the voluntary and knowing assumption of those risks.

25 AND FOR A TWENTY-THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
26 TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT  
27 ALLEGES:

28 That plaintiff's action is, in whole or in part, barred by the claims presentation

1 requirements of the California Tort Claims Act including (but not limited to) the provisions of  
2 California Government Code sections 905, 905.2, 945.4, and 911.2.

3 AND FOR A TWENTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE  
4 DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,  
5 DEFENDANT ALLEGES:

6 That any and all acts or omissions of this answering defendant and its agents and  
7 employees, which allegedly caused the injuries or damages alleged in said complaint were  
8 the result of an exercise of discretion vested in them. This answering defendant is,  
9 therefore, not liable for the injuries or damages complained of pursuant to Government  
10 Code sections 815.2(b) and 820.2.

11 AND FOR A TWENTY-FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
12 TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT  
13 ALLEGES:

14 This answering defendant was under no mandatory duty imposed by law which was  
15 designed to protect against the risk of the particular injury, if any, suffered by plaintiff as a  
16 result of the alleged incident or incidents described in the complaint.

17 AND FOR A TWENTY-SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
18 TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT  
19 ALLEGES:

20 That any and all mandatory duties imposed upon the defendant, the failure of which  
21 allegedly gave rise to the incident alleged in the complaint or allegedly caused the injuries  
22 complained of, were exercised with reasonable diligence and, therefore, defendant is not  
23 liable for the alleged injuries pursuant to Government Code section 815.6.

24 AND FOR A TWENTY-SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE  
25 DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,  
26 DEFENDANT ALLEGES:

27 That this answering defendant is immune from liability for the injuries or damages  
28 allegedly caused by the act or omission of another person pursuant to California

1 Government Code sections 815.2(b) and 820.8.

2 AND FOR A TWENTY-EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE  
3 DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,  
4 DEFENDANT ALLEGES:

5 That said defendant is immune from liability herein pursuant to the provisions of  
6 California Government Code sections 815 and 820 and related sections thereof.

7 AND FOR A TWENTY-NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
8 TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT  
9 ALLEGES:

10 That plaintiff's action is barred by the immunities and defenses afforded by sections  
11 840-960.8 of the California Government Code.

12 AND FOR A THIRTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO  
13 SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT ALLEGES:

14 That the defendant is immune from liability for any injuries or damages allegedly  
15 caused by the defendant's failure to inspect any property to determine whether the  
16 property complies with or violates any enactment or contains or constitutes a hazard to  
17 health or safety, pursuant to California Government Code section 818.6.

18 AND FOR A THIRTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE  
19 TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF, DEFENDANT  
20 ALLEGES:

21 That plaintiff's request for injunctive relief is moot in light of the ongoing district-wide  
22 modernization and construction project that will affect the subject facilities.

23 AND FOR A THIRTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE  
24 DEFENSE TO SAID COMPLAINT, AND EACH CAUSE OF ACTION THEREOF,  
25 DEFENDANT ALLEGES:

26 That the ADA and related regulations recognize alternative methods of making  
27 programs and services accessible, other than physical alteration of facilities.

28

1 WHEREFORE, said answering defendant prays for judgment against plaintiff, for  
2 costs of suit incurred herein, and for such other and further relief as to the court may seem  
3 just and proper.

4

5 DATED: November 6, 2002

HOGE, FENTON, JONES & APPEL, INC.

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By \_\_\_\_\_

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James R. Hawley  
Attorneys for Defendant  
Santa Cruz City Schools

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**DEMAND FOR JURY TRIAL**

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Defendant hereby demands a jury for all claims for which a jury is permitted.

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DATED: November 6, 2002

HOGE, FENTON, JONES & APPEL, INC.

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By \_\_\_\_\_

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James R. Hawley  
Attorneys for Defendant  
Santa Cruz City Schools

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