

1 DANA McRAE, State Bar No. 142231  
County Counsel, County of Santa Cruz  
2 JASON M. HEATH, State Bar No. 180501  
Office of the County Counsel  
3 Assistant County Counsel  
701 Ocean Street, Room 505  
4 Santa Cruz, California 95060  
Telephone: (831) 454-2049  
5 Fax: (831) 454-2115

6 **Attorneys for Defendant County of Santa Cruz**

7 SUPERIOR COURT OF CALIFORNIA

8 COUNTY OF SANTA CRUZ

10 PAUL CAROTA and SUSAN CAROTA, 11 Plaintiffs, 12 v. 13 COUNTY OF SANTA CRUZ, a Political Body, 14 and DOES 1 through 50, inclusive, 15 Defendants.	Case No. CV 161890  <b>COUNTY'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT</b>
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18 Defendant County of Santa Cruz, ("County") answers the unverified First Amended  
19 Complaint of Paul Carota and Susan Carota (the "complaint") as follows:

20 Pursuant to Section 431.30, subdivision (d) of the Code of Civil Procedure, the County  
21 denies each and every allegation contained in the complaint.

22 **SEPARATE DEFENSES**

23 **SEPARATE DEFENSE NO. 1:** The complaint and each cause of action therein fail to allege facts  
24 sufficient to constitute a cause of action.

25 **SEPARATE DEFENSE NO. 2:** All happenings and events, damages and injuries, if any there  
26 were, referred to in the complaint were proximately caused and contributed to by the negligence and  
27 unreasonable conduct of plaintiffs and others, each and all of whom failed to exercise ordinary care  
28 at the times and places alleged in the complaint.

1 **SEPARATE DEFENSE NO. 3:** To the extent that plaintiffs recover damages on any claim, the  
2 County is entitled to have the amount abated, apportioned, or reduced to the extent that any other  
3 party's negligence or unreasonable conduct caused or contributed to damages, if any there were. To  
4 the extent that plaintiffs herein seek recovery on any common law tort theory, any liability for  
5 common law tort must be diminished in proportion to the amount of fault attributable to plaintiffs  
6 and others.

7 **SEPARATE DEFENSE NO. 4:** The complaint is barred by plaintiffs' failure to exhaust their  
8 administrative remedies under the Government Tort Claims Act.

9 **SEPARATE DEFENSE NO. 5:** If and to the extent that the allegations of the complaint attempt to  
10 enlarge upon the facts and contentions set forth in any tort claim that plaintiffs filed, the complaint  
11 fails to state a cause of action and is barred by Government Code sections 905.2, 911.2 and 950.2.

12 **SEPARATE DEFENSE NO. 6:** The complaint and each cause of action therein are barred by any  
13 applicable statute of limitations.

14 **SEPARATE DEFENSE NO. 7:** The County is immune from the complaint under any applicable  
15 immunity set forth within the California Tort Claims Act, Government Code sections 810 et seq.,  
16 including but not limited to sections 830 *et seq.*

17 **SEPARATE DEFENSE NO. 8:** The complaint and each cause of action therein may be barred, or  
18 any recovery thereon may be reduced, to the extent that plaintiffs failed to mitigate injury and  
19 damages.

20 **SEPARATE DEFENSE NO. 9:** Any and all acts, omissions, conditions, events and occurrences  
21 which plaintiffs allege constituted or contributed to a nuisance, if the aforementioned did in fact  
22 occur or exist, occurred or existed prior to plaintiffs obtaining a right to quiet enjoyment of their  
23 property, and plaintiffs came to the nuisance, if any there was.

24 **SEPARATE DEFENSE NO. 10:** To the extent that plaintiffs suffered detriment, such was  
25 unavoidable. No person is responsible for that which no person can control. (Civil Code, § 3526.)

26 **SEPARATE DEFENSE NO. 11:** The complaint and each cause of action therein are barred by the  
27 doctrine of estoppel related to plaintiffs' conduct.

1 **SEPARATE DEFENSE NO. 12:** The complaint and each cause of action therein are barred  
2 because plaintiffs have settled and released in writing their claims against the County.

3 **SEPARATE DEFENSE NO. 13:** The damages alleged in the complaint herein are subject to a set-  
4 off either partially or in full.

5 **SEPARATE DEFENSE NO. 14:** The complaint is barred by the doctrine of unclean hands.

6 **SEPARATE DEFENSE NO. 15:** Because the cross-complaint is couched in conclusory terms, the  
7 County cannot fully anticipate all affirmative defenses that may be applicable to this matter.  
8 Accordingly, the right to assert separate affirmative defenses, if and to the extent such affirmative  
9 defenses are applicable, is hereby reserved.

10 WHEREFORE, defendant County of Santa Cruz prays as follows:

11 1. That judgment be entered in favor of defendant and against plaintiffs on the complaint as  
12 a whole, and each cause of action therein, and that plaintiffs take nothing by way of the complaint;

13 2. That the complaint, and each cause of action therein, be dismissed with prejudice;


14 3. That defendant be awarded the costs, expenses and attorney fees incurred in this action;

15 and

16 4. That the court grant such additional relief as it deems proper.

17 Dated: April 21, 2009

DANA McRAE, COUNTY COUNSEL

18  
19 By: 

JASON M. HEATH

Assistant County Counsel

Attorneys for Defendant County of Santa  
Cruz

1 **PROOF OF SERVICE**

2 I, the undersigned, state that I am a citizen of the United States and employed in the County  
3 of Santa Cruz, State of California. I am over the age of 18 years and not a party to the within action.  
4 My business address is 701 Ocean Street, Room 505, Santa Cruz, California 95060. On the date set  
5 out below, I served a true copy of the following on the person(s)/entity(ies) listed below:

6 **COUNTY'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

7  by **service by mail** by placing said copy enclosed in a sealed envelope and depositing the sealed  
8 envelope with the United States Postal Service with the postage fully prepaid.

9  by **service by mail** by placing said copy enclosed in a sealed envelope and placing the envelope  
10 for collection and mailing on the date and at the place shown below following our ordinary business  
11 practices. I am readily familiar with this business's practice for collecting and processing  
12 correspondence for mailing. On the same day that correspondence is placed for collection and  
13 mailing, it is deposited in the ordinary course of business with the United States Postal Service with  
14 postage fully prepaid.

15  by **personal service** at a.m./p.m. at \_\_\_\_\_.

16  by **express or overnight mail** by depositing a copy in a post office, mailbox, sub-post office,  
17 substation, mail chute, or other like facility regularly maintained by the United States Postal Service  
18 for receipt of express mail or a mailbox, mail chute, or other like facility regularly maintained by an  
19 overnight mail company, in a sealed envelope, with express mail postage paid addressed to the  
20 below listed person(s).

21  by **express or overnight mail** by arranging for pick-up by an employee of an express/overnight  
22 mail company on:

23  by **facsimile service** at the number listed below and have confirmation that it was received by:

24 **John S. Perkins**  
25 **Law Offices Of John S. Perkins**  
26 **75 E. Santa Clara Street, Suite 1400**  
27 **San Jose, CA 95113**

*(Attorney For Plaintiffs)*

28 I declare under penalty of perjury that the foregoing is true and correct. Executed on April  
29 21, 2009, at Santa Cruz, California.

  
\_\_\_\_\_  
MARIA VARGAS