

1 FRED M. PLEVIN (SBN 126185)  
KARIN K. SHERR (SBN 229423)  
2 **PAUL, PLEVIN, SULLIVAN & CONNAUGHTON** LLP  
401 B Street, Tenth Floor  
3 San Diego, California 92101-4232  
Telephone: 619-237-5200  
4 Facsimile: 619-615-0700

5 Attorneys for Defendants  
CHAPMAN UNIVERSITY and THE BOARD OF  
6 TRUSTEES OF CHAPMAN UNIVERSITY

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **SOUTHERN DIVISION**

11 U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

12 Plaintiff,

13 v.

14 CHAPMAN UNIVERSITY and THE  
15 BOARD OF TRUSTEES OF CHAPMAN  
UNIVERSITY, and DOES 1 - 10,  
16 INCLUSIVE,

17 Defendants.

CASE NO. SACV 10-1419-JST (RNBx)

**DEFENDANTS' ANSWER TO PLAINTIFF'S  
COMPLAINT**

Dept: \_\_\_\_\_  
Judge: Hon. Josephine Staton Tucker  
Complaint Filed: September 20, 2010  
Trial Date: None set

18  
19 Defendants Chapman University and The Board of Trustees of Chapman University  
20 (collectively "Defendants"<sup>1</sup>) answer the Complaint filed in this matter by the U.S. Equal  
21 Employment Opportunity Commission ("EEOC" or "Plaintiff") as follows:

22 **NATURE OF THE ACTION AND JURISDICTION**

23 To the extent that this Paragraph contains conclusions of law, no response is required. To  
24 the extent that a response to this Paragraph is deemed required, Defendants admit that Plaintiff

25  
26 <sup>1</sup> Defendants answer the Complaint without waiving their right to file an appropriate motion or  
27 otherwise seek relief from the Court on the ground that The Board of Trustees of Chapman University is  
28 not a property party to this action.

1 purports to bring this action on behalf of Stephanie Dellande, Ph.D. (“Dellande”) against  
2 Chapman University and The Board of Trustees of Chapman Univeristy, which Defendants will  
3 argue at the appropriate time to be improper and inconsistent with the legal standards for Title VII  
4 actions. Defendants admit Dellande was denied tenure and promotion to the position of Associate  
5 Professor. Defendants deny the remaining allegations in this Paragraph.

6 **JURISDICTION AND VENUE**

7 1. Defendants admit that this case arises under the federal statutes specified therein,  
8 but deny that they have violated any such statutes.

9 2. To the extent that this Paragraph contains conclusions of law, no response is  
10 required. To the extent that a response to this Paragraph is deemed required, Defendants admit  
11 that Dellande was employed within the County of Orange but deny the remaining allegations in  
12 Paragraph 2.

13 **PARTIES**

14 3. To the extent that this Paragraph contains conclusions of law, no response is  
15 required. To the extent that a response to this Paragraph is deemed required, Defendants admit  
16 Plaintiff is an agency of the United States of America and has the authority to bring an action  
17 under Title VII. Defendants deny the remaining allegations in Paragraph 3.

18 4. For the puposes of jurisdiction, Defendants admit that Chapman University is a  
19 California corporation doing business in Orange County, California, and is a private, non-profit  
20 university. Defendants deny the remaining allegations in Paragraph 4.

21 5. Defendants admit that Chapman University was Dellande’s employer. Defendants  
22 deny the remaining allegations in Paragraph 5.

23 6. Defendants admit that during the period Dellande was employed by Chapman  
24 University, the university employed fifteen or more persons. Defendants deny the remaining  
25 allegations in Paragraph 6.

26 7. To the extent that this Paragraph contains conclusions of law, no response is  
27 required. To the extent that a response to this Paragraph is deemed required, Defendants deny  
28 each and every allegation in Paragraph 7.

1 8. To the extent that this Paragraph contains conclusions of law, no response is  
2 required. To the extent that a response to this Paragraph is deemed required, Defendants deny  
3 each and every allegation in Paragraph 8.

4 **CONDITIONS PRECEDENT**

5 9. Defendants admit that Dellande filed a charge of discrimination against Chapman  
6 University alleging a violation of Title VII more than thirty days prior to filing this lawsuit.  
7 Except as herein admitted, Defendants deny each and every allegation in Paragraph 9.

8 10. Defendants admit Plaintiff issued a Letter of Determination to Chapman University  
9 finding reasonable cause to believe Dellande was discriminated against because of her race.  
10 Except as herein admitted, Defendants deny each and every allegation in Paragraph 10.

11 11. Defendants admit that prior to Plaintiff filing the lawsuit, Chapman University  
12 attempted to engage in good faith efforts to resolve the dispute through informal methods. Except  
13 as herein admitted, Defendants deny each and every allegation in Paragraph 11.

14 12. To the extent that this Paragraph contains conclusions of law, no response is  
15 required. To the extent that a response to this Paragraph is deemed required, Defendants deny  
16 each and every allegation in Paragraph 12.

17 **STATEMENT OF CLAIMS**

18 13. Defendants admit, on information and belief, that Dellande possesses a Ph.D. in  
19 Marketing from the University of California, Irvine; an M.B.A. from the University of California  
20 Riverside; and a B.S. in Medical Technology from Loyola University. Defendants admit that  
21 Dellande was employed as an Assistant Professor of Marketing at The George L. Argyros School  
22 of Business & Economics of Chapman University beginning in 2001. Except as herein admitted,  
23 Defendants deny each and every allegation in Paragraph 13.

24 14. Defendants admit that before Dellande submitted her letter of intent to apply for  
25 tenure and promotion, she had received annual evaluations, some of which contained positive  
26 comments. Defendants state that all documents describing Dellande's job performance speak for  
27 themselves. Defendants deny the remaining allegations in Paragraph 14.

28 15. Defendants admit the allegations in Paragraph 15.

1 16. Defendants admit that in 2006, Dellande submitted her letter of intent to apply for  
2 tenure and promotion to Associate Professor. Defendants further admit that on October 12, 2006,  
3 the Faculty Review Committee submitted its recommendation to the Provost to deny tenure.  
4 Except as herein admitted, Defendants deny each and every allegation in Paragraph 16.

5 17. Defendants admit that on June 28, 2008, the Chapman University Board of  
6 Trustees affirmed the denial of tenure to Dellande. Defendants further admit that four external  
7 reviewers made recommendations that were favorable for Dellande, and that the Faculty  
8 Personnel Council recommended Dellande for tenure at Chapman University. Defendants further  
9 admit that, as with any unsuccessful tenure candidate, when her fixed term tenure track  
10 employment contract expired, she was offered a final, one-year term contract. Except as herein  
11 admitted, Defendants deny each and every allegation in Paragraph 17.

12 18. Defendants deny each and every allegation in Paragraph 18.

13 19. Defendants deny each and every allegation in Paragraph 19.

14 20. Defendants deny each and every allegation in Paragraph 20.

15 21. Defendants deny each and every allegation in Paragraph 21.

16 22. Defendants deny each and every allegation in Paragraph 22.

17 **PRAYER FOR RELIEF**

18 Responding to Plaintiff's Prayer for Relief, Defendants deny that Plaintiff or Dellande  
19 have been damaged in any amount or are entitled to any of the relief requested in the Prayer, or  
20 any of its subparts.

21 **AFFIRMATIVE DEFENSES**

22 In asserting the following defenses, Defendants do not assume the burden of proof as to  
23 matters for which Plaintiff bears the burden.

24 **FIRST AFFIRMATIVE DEFENSE**

25 **(Failure to Exhaust Administrative Remedies)**

26 The Complaint is barred, in whole or in part, because Dellande failed to fully, properly,  
27 and timely exhaust pre-filing requirements including, but not limited to, internal remedies and/or  
28 pre-filing administrative remedy procedures under Title VII.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SECOND AFFIRMATIVE DEFENSE**

**(Laches)**

The Complaint is barred, in whole or in part, by the doctrine of laches.

**THIRD AFFIRMATIVE DEFENSE**

**(Failure to Fulfill Conditions Precedent)**

The Complaint is barred, in whole or in part, because Plaintiff failed to properly fulfill responsibilities precedent to bringing a Title VII claim including, but not limited to, its statutory obligation to conciliate.

**FOURTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

Dellande failed to take all reasonable steps to avoid or mitigate her alleged damages, which damages could have been avoided, in whole or in part, had she taken such reasonable steps, and Plaintiff is therefore barred, in whole or in part, from recovering monetary damages on her behalf from Defendants.

**FIFTH AFFIRMATIVE DEFENSE**

**(No Punitive Damages)**

Without conceding Defendants have a duty to prove that punitive damages are inappropriate, Defendants allege that Plaintiff's Complaint fails to state facts sufficient to support an award of punitive damages.

**SIXTH AFFIRMATIVE DEFENSE**

**(No Punitive Damages)**

Without conceding Defendants have a duty to prove that punitive damages are inappropriate, recovery of punitive damages is unconstitutional under various provisions of the United States Constitution including, but not limited to, the Due Process Clause of the Fifth Amendment and section 1 of the Fourteenth Amendment. In addition, the recovery of punitive damages against Defendants is unconstitutional under various provisions of the California Constitution including, but not limited to, the Excessive Fines Clause of section 17 of article I and the Due Process Clause of section 1 of article I.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SEVENTH AFFIRMATIVE DEFENSE**

**(Legitimate, Non-Discriminatory Reasons)**

Defendants allege that Plaintiff's claim is barred because there were legitimate, non-discriminatory reasons for each employment action concerning Dellande.

**RESERVATION OF ADDITIONAL AFFIRMATIVE DEFENSES**

Defendants are informed and believe and thereon allege that they may have additional, as yet unasserted, defenses to Plaintiff's Complaint. Defendants specifically reserve the right to assert additional defenses as deemed appropriate at a later time.

**PRAYER**

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff takes nothing by reason of its Complaint or any claims stated therein;
2. That Plaintiff's complaint and each cause of action contained therein be dismissed against Defendants with prejudice;
3. That Defendants be awarded attorneys' fees and costs of suit incurred herein pursuant to all applicable provisions of law; and
4. For such other relief as the Court deems just and proper.

Dated: November 16, 2010

PAUL, PLEVIN, SULLIVAN &  
CONNAUGHTON LLP

By: /s/ Fred M. Plevin  
FRED M. PLEVIN  
KARIN K. SHERR  
Attorneys for Defendants  
CHAPMAN UNIVERSITY and THE  
BOARD OF TRUSTEES OF CHAPMAN  
UNIVERSITY

1 *U.S. Equal Employment Opportunity Commission v. Chapman University and The Board of*  
2 *Trustees of Chapman University*  
3 United States District Court, Central District of California, Southern Division  
4 Case No. SACV 10-1419-JST (RNBx)

4 **PROOF OF SERVICE**

5 I, the undersigned, hereby declare that I am over the age of eighteen years and not a party  
6 to this action. I am employed, or am a resident of, the County of San Diego, California, and my  
7 business address is: Paul, Plevin, Sullivan & Connaughton LLP, 401 B Street, Tenth Floor, San  
8 Diego, California 92101.

9 On November 16, 2010, I caused to be served the following document(s):

10 • **DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT**

11 on the interested party (ies) in this action by placing a true copy thereof and addressed as follows:

12 Anna Y. Park  
13 Michael Farrell  
14 Connie K. Liem  
15 U.S. Equal Employment Opportunity Commission  
16 255 East Temple Street, Fourth Floor  
17 Los Angeles, CA 90012  
18 (213) 894-1083 – Telephone  
19 (213) 894-1301 – Facsimile  
20 lado.legal@eeoc.gov

21 Attorneys for Plaintiff  
22 U.S. Equal Employment Opportunity Commission

- 23  (By **MAIL SERVICE**) I then sealed each envelope and, with postage thereon fully  
24 prepaid postage, I placed each for deposit with United States Postal Service, this same  
25 day, at my business address shown above, following ordinary business practices.
- 26  (By **PERSONAL SERVICE**) I delivered such envelope by hand to the office of the  
27 addressee.
- 28  (By **FACSIMILE**) I transmitted the documents by facsimile machine, pursuant to  
California Rules of Court, Rule 2.306. The facsimile machine I used complied with Rule  
2.301 and no error was reported by the machine. The transmitting facsimile machine  
number is (619) 615-0700. The fax number of the party being served is listed above.  
Pursuant to Rule 2.306, I caused the machine to print a transmission record of the  
transmission, a copy of which is attached to this declaration.
- (By **OVERNIGHT DELIVERY**) I deposited in a box or other facility regularly  
maintained by the express service carrier, or delivered to a courier or driver authorized by  
the express service carrier to receive documents, in an envelope or package with delivery  
fees paid or provided for, and addressed on whom it is to be served pursuant to Code of  
Civil Procedure section 1013(c).
- (By **E-MAIL OR ELECTRONIC TRANSMISSION**) Based on a court order or an  
agreement of the parties to accept service by e-mail or electronic transmission, I caused  
the documents to be sent to the person(s) at the e-mail addresses listed above. I did not

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

- (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (Federal) I declare that I am employed by the office of a member of the bar of this court at whose direction the service was made.

Executed November 16, 2010, at San Diego, California.

  
\_\_\_\_\_  
Wendy Roan