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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David M. Shaby II SBN 97871 David M. Shaby & Associates APC 11949 Jefferson Blvd., Suite 104 Culver City, CA 90230  TELEPHONE NO.: 310-827-7171 FAX NO.: 310-822-8529 E-MAIL ADDRESS: David@ds4law.com ATTORNEY FOR (Name) Justice Aviation, Inc.	FOR COURT USE ONLY  <b>CONFORMED COPY ORIGINAL FILED</b> Superior Court of California County of Los Angeles  <b>FEB 17 2016</b>  Sherri R. Carter, Executive Officer/Clerk By Lesley McCowen, Deputy  CASE NUMBER: 16R00754
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 1725 Main Street MAILING ADDRESS: 1725 Main Street CITY AND ZIP CODE: Santa Monica, 90401 BRANCH NAME: West Judicial District-Santa Monica	
Plaintiff: City of Santa Monica Defendant: Justice Aviation, Inc.	
<b>ANSWER—UNLAWFUL DETAINER</b>	

1. Defendant (each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs): Justice Aviation, Inc.

answers the complaint as follows:

2. Check ONLY ONE of the next two boxes:

a.  Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.)

b.  Defendant admits that all of the statements of the complaint are true EXCEPT:

(1) Defendant claims the following statements of the complaint are false state paragraph numbers from the complaint or explain below or on form MC-025:  Explanation is on MC-025, titled as Attachment 2b(1).

6(a)(2), rent was adjusted over time per schedule; 7(b)(2), 30-day notice contrary to state law; 9, fixed term lease expired, tenancy was by month-to-month; 11, fair rental value based on month-to-month is inflated and unreasonable; 15.3 Defendant denies the allegations of Attach 15 as vague & ambiguous;

(2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (state paragraph numbers from the complaint or explain below or on form MC-025):

Explanation is on MC-025, titled as Attachment 2b(2).

4; 6(d); 8(a)(3);

3. AFFIRMATIVE DEFENSES (NOTE: For each box checked, you must state brief facts to support it in item 3k (top of page 2).)

a.  (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.

b.  (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.

c.  (nonpayment of rent only) On (date); February 1, 2016 before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.

d.  Plaintiff waived, changed, or canceled the notice to quit.

e.  Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.

f.  By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.

g.  Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):

(Also, briefly state in item 3k the facts showing violation of the ordinance.)

h.  Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.

i.  Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (A temporary restraining order, protective order, or police report not more than 180 days old is required naming you or your household member as the protected party or a victim of these crimes.)

j.  Other affirmative defenses are stated in item 3k.

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## 3. AFFIRMATIVE DEFENSES (cont'd)

- k. Facts supporting affirmative defenses checked above (*identify facts for each item by its letter from page 1 below or on form MC-025*):
- Description of facts is on MC-025, titled as Attachment 3k.

## 4. OTHER STATEMENTS

- a.  Defendant vacated the premises on (*date*):
- b.  The fair rental value of the premises alleged in the complaint is excessive (*explain below or on form MC-025*):
- Explanation is on MC-025, titled as Attachment 4b.  
Plaintiff's refusal enter into rental agreement on more than a month to month basis diminishes the commercial value of the property by an amount yet to be determined but more than 50% of demand.
- c.  Other (*specify below or on form MC-025 in attachment*):
- Other statements are on MC-025, titled as Attachment 4c.

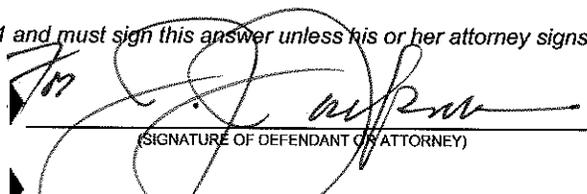
## 5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.
- b. costs incurred in this proceeding.
- c.  reasonable attorney fees.
- d.  that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
- e.  Other (*specify below or on form MC-025*):
- All other requests are stated on MC-025, titled as Attachment 5e.  
conform its practices to the consent agreement with the Federal Aviation Administration prohibiting acts unreasonably and unfairly discriminating against airport fixed base operators to foster development of the property as an airport facility.

6. Number of pages attached: - 2 -**UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code §§ 6400—6415)**

7. (*Must be completed in all cases.*) An unlawful detainer assistant  did not  did for compensation give advice or assistance with this form. (*If defendant has received any help or advice for pay from an unlawful detainer assistant, state*):
- a. Assistant's name: \_\_\_\_\_ b. Telephone No.: \_\_\_\_\_
- c. Street address, city, and zip code: \_\_\_\_\_
- d. County of registration: \_\_\_\_\_ e. Registration No.: \_\_\_\_\_ f. Expires on (*date*): \_\_\_\_\_

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

David M. Shaby II  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF DEFENDANT OR ATTORNEY)
\_\_\_\_\_  
(TYPE OR PRINT NAME)\_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)**VERIFICATION**

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

Justice Aviation, Inc. by Joseph Justice,  
(TYPE OR PRINT NAME) President

  
(SIGNATURE OF DEFENDANT)

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ATTACHMENT (Number): -1-*(This Attachment may be used with any Judicial Council form.)*

Attachment 2b(1) 15.4 Plaintiff has unreasonably and unfairly discriminated against Defendant per its consent agreement with the FAA; 15.5 see 15.4; 15.6 as a matter of law 30-days notice is inadequate notice; 15.7 as a matter of law 30-days notice is inadequate notice; 15.8 Defendant tendered rent to Plaintiff who subsequently returned said payment to Defendant; 15.9 Plaintiff unreasonably and unfairly withholding consent; 15.10, Plaintiff has unreasonably and unfairly discriminated against Defendant per its consent agreement with the FAA for its own reasons and chosen to retaliate against Defendant for its participation in litigation to exercise its rights.

## Attachment 3k

3d: Plaintiff waived, changed, or canceled the notice to quit, by sending billing to defendant for February rent on 2/2/16

3e: Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant because defendant seeks to enforce its 1st amendment and other Civil rights against plaintiff and is a principal (Plaintiff) in multiple legal actions against plaintiff. Defendants Civil rights have been violated pursuant to 42 U.S.C. §1983

3f: By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States pursuant to 42 U.S.C. §1983 and/or California. The action is retaliatory against defendant because defendant seeks to enforce its 1st amendment and other Civil rights against plaintiff and is a principal (Plaintiff) in multiple legal actions against plaintiff. Plaintiff also conspires to interfere with defendants civil rights pursuant to 42 U.S. Code § 1985(2), as eviction is being pursued by Plaintiff as to have the effect of causing or otherwise forcing defendant to drop out of multiple legal actions wherein defendant seeks to enforce its civil rights against plaintiff.

3g: Plaintiff's demand for possession violates Article VI section 640 of the Santa Monica City Charter. Pursuant to section 640, only the city council has the authority to issue such a notice to quit related to Santa Monica Airport (where defendant is located). Thus, the issue would have required notice on the city council agenda, presentation by city staff, public discussion and a vote at a city council meeting as part of its regular business. No such actions were ever undertaken by the Santa Monica city council.

3k: Other affirmative defenses are stated in item 3k.

- 1) Improper Notice to quit pursuant to CC §1946.1(b). A landlord must give a 60-day notice to a tenant or resident who has resided on the premises for one year or more. Defendant has been a tenant since 2008.
- 2) Failure to show cause for termination pursuant to California state law in the Notice to quit (and/or in this action). Because Defendant has been a tenant since 2008 (more than a year), plaintiff must show good cause as to why it issued the notice to quit. Plaintiff has failed to show any cause as to why it seeks to evict defendant in this action.
- 3) Notice to quit is invalid due to lack of authority by issuer. As the Plaintiff is a city, it needed to follow its own procedures as outlined in its city charter and municipal code. Pursuant to Article VI section 640 of the Santa Monica City Charter, only the city council had the authority to approve the notice/eviction (as discussed above). Then, it would have needed to direct the appropriate city staff to issue the notice pursuant to 2.12.160 to 2.12.180. As the notice was issued and signed off by Rick Cole, who is not the appropriate city staff and, who lacks any authority to issue such a notice, it is not complaint with city charter or other procedures under the municipal code.

*(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)*

Page 1 of 2*(Add pages as required)*

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ATTACHMENT (Number): -2-

(This Attachment may be used with any Judicial Council form.)

4) Retaliatory Eviction. Plaintiff seeks to evict defendant because defendant is engaged in enforcing its civil rights against plaintiff and is currently involved in 3 legal actions against plaintiff. Notice to quit was issued just weeks after both successful results in one legal action, service of a second action and the announcement of a possible third action (which has now been undertaken against plaintiff)

5) Bad Faith. Plaintiff has consistently refused to enter into a new rental agreement. Plaintiff knew for numerous years that the rental agreement with defendant would expire on June 30, 2015 (along with all other rental agreements related to all tenants at Santa Monica airport). Plaintiff had engaged over a very long period of time in discussions with defendant to renew or otherwise extend the rental agreement, but has subsequently failed and/or has gone back on its agreement to renew. Such bad faith has also been demonstrated with many other aviation tenants at the airport.

6) Discrimination. Plaintiffs' failure renew or otherwise extend the rental agreement amounts to discrimination because Plaintiff has federal obligations to give preference to aviation business located on Santa Monica airport, yet it has failed to renew or extend any aviation leases, while it has renewed or extended leases related to non-aviation businesses. Such failure amounts to a violation of Defendants Civil rights pursuant to 42 U.S.C. §1983.

7) Plea in Abatement. Pursuant to section 430.10, subdivision (c), Defendant responds to the instant complaint by an affirmative defense in its answer, i.e. there is an earlier action filed before the instant action now pending between the same parties on the same claims, specifically a Part 16 action filed before the Federal Aviation Administration, (FAA). (Lawyers Title [(1984)] 151 Cal.App.3d [455,] 459; Childs v. Eltinge [(1973)] 29 Cal.App.3d [843,] 848.) Resolution of the claims presently before the FAA and a determination thereon are dispositive of the causes of action herein; are the same for purposes of pleas in abatement; and would be a complete bar to the instant action by determining that the Plaintiff herein lacked authority under the conditions present herein to terminate the tenancy of the Defendant.

8) Claims set forth by the Plaintiff herein are Res Judicata precluding it as a party from re litigating the tenancy issue that has been finally determined by a court or administrative agency of competent jurisdiction. (Whittlesey v. Aiello (2002) 104 Cal.App.4th 1221, 1226.) The issue decided in the prior adjudication is identical to the issue in the present action; the judgment on the merits of that issue has resolved the controversy in favor of the Defendant and against the Plaintiff, the same party against whom the doctrine was asserted was a party to the prior adjudication.

9) For such other and further relief as this court may deem appropriate

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

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(Add pages as required)

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**PROOF OF SERVICE**  
1013(a)(3) CCP  
**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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.

On February 17, 2016, I served the foregoing document(s) described as: **DEFENDANT JUSTICE AVIATION'S ANSWER TO COMPLAINT FOR UNLAWFUL DETAINER** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

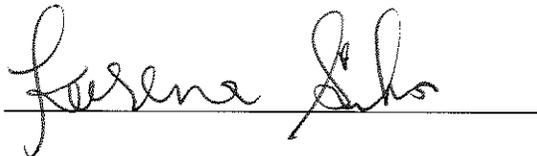
MARSHA JONES MOUTIRE, City Attorney  
Ivan O. Campbell, Deputy City Attorney  
1685 Main Street, Rm 310  
Santa Monica, CA 93301

(X) **BY MAIL** As follows: 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 at Los Angeles, California 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 is more than one day after date of deposit for mailing affidavit.

(X) **BY PERSONAL SERVICE BY FAX** I caused the above entitled document(s) to be personally served on the above shown parties by facsimile transmission on the date shown below by confirming the fax phone number with the law office shown above then (a) transmitting it via the fax machine within this office, and (b) receiving a receipt from the machine within this office confirming all documents sent were in fact properly received.

( ) **PERSONAL SERVICE** I caused such envelope to be delivered by hand to the offices of the addressee.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 17, 2016 at Culver City, California.



Defendant's Answer to Unlawful Detainer