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| **Josh Stein**  **Attorney General** |  |
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|  |  |

DATE

NAME

ADDRESS 1

ADDRESS 2

Re: TITLE OF LAWSUIT

COURT AND DOCKET NUMBER

**RESPONSIVE ACTION REQUIRED**

Dear NAME:

You have been named as a defendant in the above-referenced lawsuit. You should carefully review the allegations made against you in the Complaint. **You must take prompt action in response to this letter in order to protect your legal rights.**

According to the information provided to this Office, all of the activities that form the basis of the claims against you occurred while you were employed with AGENCY and in the scope and course of that employment. **Please note: I am not your attorney at this time, but this letter is intended to explain the procedures under which you may request representation and the conditions upon which representation might be provided to you**.

The North Carolina Defense of State Employees Act, codified at Chapter 143, Article 31A, of the North Carolina General Statutes, permits current or former employees of the State to request legal representation for the defense of any civil or criminal action brought against them in their official or individual capacity. Please understand that a request to be provided a defense to this action by the State is just that—a request. If you make a request to be represented by the State, the Attorney General still must review the facts underlying the legal action against you to determine whether State law allows your request to be honored.

It is the obligation of the North Carolina Attorney General to determine if any grounds for refusal of representation listed in N.C. Gen. Stat. § 143-300.4 apply to the circumstances of this case that would prevent representation of you in this case. By law the State cannot provide a defense to you if the Attorney General determines:

(1) the acts allegedly committed by you and upon which the lawsuit are based were not within the scope and course of your State employment,

(2) the acts allegedly committed by you and upon which the lawsuit are based involved actual fraud, corruption, or actual malice on your part,

(3) providing a defense to you would result in an ethical conflict of interest between you and the State, or

(4) providing a defense would not be in the State’s best interests.

**Either your failure to request that the State provide a defense for you, or the Attorney General’s determination that you lawfully may not be provided a defense, will make you—not the State—responsible both for defending yourself and your interests in this lawsuit as well as for paying any monetary judgment that may be awarded against you by the court.**

If you request to be defended by the State, and if the Attorney General determines the State may lawfully provide for your defense, one or more staff attorneys from the Attorney General’s Office will be assigned to represent you and the other defendants in this lawsuit. If at any point a conflict of interest develops between you and other defendants in this lawsuit such that continued representation of you and other defendants by the same attorneys is impracticable or ethically prohibited, appropriate action will be taken to ensure that all defendants are fully represented by attorneys in this Office. **Additionally, be aware that the Attorney General is always representing the State’s interests, even in representation of you in this suit.**

Please note that the Attorney General has a continuing obligation to withdraw representation if at any time during the lawsuit additional information is received by this Office that indicates that the State may not provide for your defense for one of the four reasons listed above. If facts come to light that during the course of the lawsuit that indicate you were acting outside the course and scope of employment or were engaged in malfeasance or wanton neglect of duty, your representation can be terminated. Also please note that any representation of you will be contingent upon your full and continuing cooperation with the attorney or attorneys assigned to represent you. Your failure to promptly and fully cooperate with the attorneys representing you may lead to the Attorney General’s immediate withdrawal from your representation.

As part of your representation under the Defense of State Employees Act, the State will pay any money judgment entered against you up to the maximum allowed by the State Tort Claims Act. Excess insurance coverage may also be available through the State to cover any monetary judgment and additional coverage may also be available from any personal insurance you may have purchased. Because the State, through the North Carolina Department of Public Safety, assumes responsibility for any money judgment that may be entered against you, the State makes all final decisions on legal strategy, including final decisions regarding settlement of any claims or taking the case to trial. By requesting and accepting representation, you acknowledge that the State has full authority to make all final decisions on the legal strategy of the case. Further, any request for representation by this Office is made with the understanding that while any information you share with the attorneys representing you is protected by attorney-client privilege, that information may be shared with AGENCY and the State’s excess insurance carrier in order to make fully informed decisions regarding risk and settlement.

You should be aware that in the course of this representation, information may come to light that could lead to an employment investigation and discipline. The allegations of the Complaint may also arise from situations where disciplinary action has already been taken or where employees have resigned. State employees are not automatically disqualified from Attorney General representation in these situations; such situations are considered on a case-by-case basis. However, you must disclose any employee discipline (or a resignation) related to the conduct alleged against you on the form below. That discipline may be used to evaluate whether you are entitled to a defense. **If you request representation by the State in this matter, it is with the understanding that you waive any conflict should this Office subsequently be called on to represent** AGENCY **in connection with any disciplinary action against you arising from the facts complained of in the Complaint.**

Again, you are not required to request representation by this Office. If you choose to not request representation, or if a determination is made that this Office cannot represent you for one of the four reasons listed above, you will bear full responsibility for all of your costs associated with this litigation, including costs of legal representation and responsibility for any money judgment that may be entered against you.

If you have any questions regarding the information in this letter, you may, at your own expense, consult with an independent attorney prior to requesting a defense. Please complete and sign the form below to indicate whether or not you desire to have the State provide for your defense in this lawsuit and return the form no later than five business days from the date you receive this letter. Only then can a determination be made regarding your representation. **If we do not receive this form from you within 14 days of mailing, we will interpret that to mean that you are not requesting representation by this Office under the Defense of State Employees Act.**

Additionally, please notify me immediately if you are served with the summons and Complaint in this lawsuit. The date of service determines the date upon which a response to the Complaint must be filed.

Thank you for your prompt attention to this matter. Please do not hesitate to contact me at XXXXX if you have any questions.

Very truly yours,

ATTORNEY NAME

ATTORNEY TITLE

TITLE OF LAWSUIT

COURT AND DOCKET NUMBER

I, NAME, have read and understand the contents of the foregoing letter from NAME OF ATTORNEY, TITLE OF ATTORNEY regarding the above-reference lawsuit.

*(Choose only one option by placing a check mark on the line preceding the option chosen.)*

\_\_\_\_\_\_ **I DO request to be provided a defense to this lawsuit under at State expense and consistent with the terms described in the letter to me dated** DATE**.**

I understand that my request must be evaluated by the Attorney General to determine whether the State lawfully may provide me a defense in this action and that I will be informed if a defense cannot be provided.

Disciplinary action taken against me (if any): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_**I DO NOT request to be provided a defense to this action at State expense.** I understand that by declining to be provided a defense by the State, I become solely responsible for defending myself in this lawsuit, including answering the complaint, appearing in court and paying any money judgment that may be entered against me.

(Signature) (Date)

Mailing Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Email Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Best Phone Number for Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Return the original copy of this form by U.S. Mail to:

Paralegal contact info

*In addition to mailing this form, please send a copy by email to XXXXX or by facsimile to XXXXX.*