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15

16

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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20 JAMES JENKINS, SHAWN PICKETT,  
AND ARNOLD THREETS,

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Plaintiffs,

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v.

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24 CITY OF RICHMOND, a California  
Governmental Entity,

25

Defendant.

26

CASE NO. C 08-03401 MHP

**STIPULATION AND [PROPOSED] ORDER  
PERMITTING DEFENDANT TO FILE  
FIRST AMENDED ANSWER**

27

IT IS HEREBY STIPULATED, by and between the parties hercto, that Defendant in this

28

C 08-03401 MHP

STIPULATION AND [PROPOSED] ORDER PERMITTING DEFENDANT TO FILE FIRST AMENDED  
ANSWER  
1218080

1 action may file the First Amended Answer to First Amended Complaint, a copy of which is  
2 attached hereto.

3 IT IS SO STIPULATED.

4  
5 DATED: April 14, 2009

MEYERS, NAVE, RIBACK, SILVER & WILSON

6  
7 By: Reiche Lee  
8 Arthur A. Hartinger  
9 Geoffrey Spellberg  
10 Reiche Lee  
11 Attorneys for Defendant  
12 CITY OF RICHMOND

10 1218080.1

THE DOLAN LAW FIRM

11  
12 By: R Pusey  
13 Christopher Dolan  
14 Rachel Pusey  
15 Attorneys for Plaintiffs  
16 JAMES JENKINS, SHAWN PICKETT and  
17 ARNOLD THREETS

17 ORDER

18 PURSUANT TO STIPULATION BETWEEN THE PARTIES, the Court hereby grants  
19 Defendant leave to file its First Amended Answer to First Amended Complaint for Damages.

20 IT IS SO ORDERED.

21  
22  
23 Dated: 4/15/2009

24 By: Marilyn H. Patel  
25  
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27  
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8 Attorneys for Defendant  
CITY OF RICHMOND  
9

10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**  
14

15 JAMES JENKINS, SHAWN PICKETT, AND  
16 ARNOLD THREETS,

17 Plaintiffs,

18 v.  
19

20 CITY OF RICHMOND, a California  
21 Governmental Entity; and DOES 1 through 50,  
inclusive,

22 Defendant.  
23  
24

CASE NO. C 08-03401 MHP

**DEFENDANT'S FIRST AMENDED  
ANSWER TO FIRST AMENDED  
COMPLAINT FOR DAMAGES**

1. Discrimination Based Upon Race in Violation Title VII of the Civil Rights Act of 1964, as Amended § 701 *et seq.*, 42 U.S.C. 2000(e) *et seq.*
2. Retaliation in Violation of Title VII of the Civil Rights Act of 1964, as Amended, § 701 *et seq.*, 42 U.S.C. 2000(e) *et seq.*
3. Discrimination Based Upon Race in Violation of Civil Rights Act of 1991, 42 U.S.C. § 1981 *et seq.*
4. Retaliation in Violation of Civil Rights Act of 1991, 42 U.S.C. § 1981 *et seq.*

25  
26 Defendant CITY OF RICHMOND (hereinafter "Defendant") hereby answers and responds  
27 to the First Amended Complaint filed by JAMES JENKINS, SHAWN PICKETT, ARNOLD  
28 THREETS AND CLEVELAND BROWN (hereinafter "Plaintiffs") as follows:

1 **Jurisdiction**

2 1. Admitted.

3 2. Admitted.

4 3. Admitted.

5 4. Admitted.

6 5. Admitted.

7 6. Admitted.

8 7. Admitted. That plaintiffs make that assertion but Defendant denies that there is any  
9 amount in controversy.

10 **Intradistrict Assignment**

11 8. Admitted.

12 **Parties to the Civil Action**

13 9. Defendant admits that Plaintiff JENKINS is an African-American, male adult  
14 natural person. Defendant is without sufficient knowledge or information to form a belief as to the  
15 truth of the remaining allegations contained in said paragraph, and on that basis denies those  
16 allegations.

17 10. Defendant admits that Plaintiff PICKETT is an African-American, male adult  
18 natural person. Defendant is without sufficient knowledge or information to form a belief as to the  
19 truth of the remaining allegations contained in said paragraph, and on that basis denies those  
20 allegations.

21 11. Defendant admits that Plaintiff THREEETS is an African-American, male adult  
22 natural person. Defendant is without sufficient knowledge or information to form a belief as to the  
23 truth of the remaining allegations contained in said paragraph, and on that basis denies those  
24 allegations.

25 12. Defendant admits that Plaintiff BROWN is an African-American, male adult  
26 natural person. Defendant is without sufficient knowledge or information to form a belief as to the  
27 truth of the remaining allegations contained in said paragraph, and on that basis denies those  
28 allegations.



1 contained in said paragraph, and on that basis denies those allegations.

2 **Facts Common to All Causes of Action**

3 24. Denied. The Plaintiffs are employed by the Richmond Police Department.

4 25. Defendant admits that the ranks are correctly stated and that the Plaintiffs are  
5 employed by the Richmond Police Department.

6 26. Defendant admits that three Plaintiffs filed DFEH charges and the fourth filed  
7 EEOC charges and received right to sue letters, but denies all other allegations in this paragraph.

8 27. Defendant denies each and every allegation contained therein.

9 28. Defendant admits that Plaintiffs filed a civil complaint in Contra Costa County  
10 Superior Court in March of 2007. With respect to the remaining allegations contained therein,  
11 defendant denies each and every allegation.

12 29. Defendant denies each and every allegation contained therein.

13 30. Defendant admits that Deputy Chief Medina was designated to attend the  
14 Academy, but could not do so. The remaining allegations are denied.

15 31. Defendant denies these allegations.

16 32. Defendant admits that THREETS sent a memo. The remaining allegations are  
17 denied.

18 33. Defendant admits that Plaintiff JENKINS applied and tested for a promotion to  
19 Captain in December 2007 – January 2008. With respect to the remaining allegations contained  
20 therein, defendant denies each and every allegation.

21 34. Defendant admits that Plaintiff PICKETT applied and tested for a promotion to  
22 Captain in December 2007 – January 2008. With respect to the remaining allegations contained  
23 therein, defendant denies each and every allegation.

24 35. Defendant admits that Plaintiff THREETS applied and tested for a promotion to  
25 Captain in December 2007 – January 2008. With respect to the remaining allegations contained  
26 therein, defendant denies each and every allegation.

27 36. Defendant denies each and every allegation contained therein.

28 37. Defendant admits that Sergeant Allwyn Brown, an African-American sergeant, was

1 promoted. With respect to the remaining allegations contained therein, defendant denies each and  
2 every allegation.

3 38. Defendant denies each and every allegation contained therein.

4 39. Defendant denies each and every allegation contained therein.

5 40. Defendant admits that a counseling memorandum was given, but the remaining  
6 allegations are denied. Defendant denies having retaliated against Plaintiff THREEETS in any  
7 manner.

8 41. Defendant denies these allegations.

9 42. Defendant admits that Plaintiff THREEETS was in the Administrative Services  
10 Bureau but was later transferred. The remaining allegations of this paragraph are denied.

11 43. Defendant denies these allegations.

12 44. Defendant admits that Plaintiff BROWN made inaccurate statements and filed for  
13 worker's compensation. The remaining allegations are denied.

14 45. Defendant denies these allegations.

15 46. Defendant denies these allegations.

16 47. Defendant denies these allegations.

17 48. Defendant denies these allegations.

18 49. Defendant admits that Brown met with an investigator and that as of today's date  
19 the report has not been concluded.

20 50. Defendant admits that Richmond supports Chief Magnus but denies the remaining  
21 allegations.

22 51. Defendant denies the allegations of this paragraph.

23 **First Cause of Action**

24 **Discrimination Based on Race (42 U.S.C.A. § 2000e-2)**

25 **(Against Defendant RICHMOND and/or Does 1-50)**

26 52. Defendant incorporates by reference each and every response to Paragraphs 1  
27 through 51 above.

28 53. Defendant denies each and every allegation contained therein.

- 1 54. Defendant denies each and every allegation contained therein.  
2 55. Defendant denies each and every allegation contained therein.  
3 56. Defendant denies each and every allegation contained therein.  
4 57. Defendant denies each and every allegation contained therein.  
5 58. Defendant denies each and every allegation contained therein.

6 **Second Cause of Action**

7 **Retaliation in Violation of Title VII (42 U.S.C.A. § 2000e)**

8 **(Against Defendant RICHMOND and/or Does 1-50)**

9 59. Defendant incorporates by reference each and every response to Paragraphs 1  
10 through 58 above.

11 60. Defendant admits that Plaintiffs have the right to be free from discrimination and  
12 harassment, but deny the remaining allegations.

- 13 61. Defendant denies each and every allegation contained therein.  
14 62. Defendant denies each and every allegation contained therein.  
15 63. Defendant denies each and every allegation contained therein.  
16 64. Defendant denies each and every allegation contained therein.  
17 65. Defendant denies each and every allegation contained therein.

18 **Third Cause of Action**

19 **Discrimination Based on Race (42 U.S.C.A. § 1981)**

20 **(Against Defendant RICHMOND and/or Does 1-50)**

21 66. Defendant incorporates by reference each and every response to Paragraphs 1  
22 through 65 above.

- 23 67. Defendant denies each and every allegation contained therein.  
24 68. Defendant denies each and every allegation contained therein.  
25 69. Defendant denies each and every allegation contained therein.  
26 70. Defendant denies each and every allegation contained therein.  
27 71. Defendant denies each and every allegation contained therein.  
28 72. Defendant denies each and every allegation contained therein.



1 **Fourth Cause of Action**

2 **Retaliation Based on Race (42 U.S.C.A. § 1981)**

3 **(Against Defendant RICHMOND and/or Does 1-50)**

4 73. Defendant incorporates by reference each and every response to Paragraphs 1  
5 through 72 above.

6 74. Defendant denies each and every allegation contained therein.

7 75. Defendant denies each and every allegation contained therein.

8 76. Defendant denies each and every allegation contained therein.

9 77. Defendant denies each and every allegation contained therein.

10 78. Defendant denies each and every allegation contained therein.

11 79. Defendant denies each and every allegation contained therein.

12 **AFFIRMATIVE DEFENSES**

13 **I.**

14 AS AND FOR A FIRST AFFIRMATIVE DEFENSE, Defendant alleges that the First  
15 Amended Complaint fails to state a claim upon which relief can be granted.

16 **II.**

17 AS AND FOR A SECOND AFFIRMATIVE DEFENSE, Defendant alleges that the  
18 injuries and damages of which Plaintiffs complain, if any, resulted from the acts and/or omissions  
19 of plaintiffs themselves or of others, and without any fault on the part of defendant.

20 **III.**

21 AS AND FOR A THIRD AFFIRMATIVE DEFENSE, Defendant alleges that it is immune  
22 from liability by operation of California and/or federal laws in that City employees and/or agents  
23 acted in good faith and in the proper exercise of their discretionary authority.

24 **IV.**

25 AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, Defendant alleges that it is  
26 entitled to the other privileges, immunities and protections afforded under applicable California  
27 law, including but not limited to, Government Code Sections 815 et seq.

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**V.**

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, Defendant alleges that all actions taken by City employees and/or agents were undertaken in good faith and with the reasonable belief that said actions were valid, necessary and constitutionally proper.

**VI.**

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, Defendant alleges that City employees and/or agents used only the means necessary to implement legitimate City business decisions, and to exercise the City's lawful rights.

**VII.**

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiffs themselves were careless and/or negligent, and did not exercise ordinary care, caution and/or prudence to avoid the alleged events of which they complain, and further assumed the risks of the events or incidents, and that said conduct was the proximate cause of the injuries and damages alleged.

**VIII.**

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiffs' claims and the resulting injuries and damages they allege herein are barred to the extent that the claims exceed the scope of the administrative complaints they filed with the California Department of Fair Employment and Housing and/or the Equal Employment Opportunity Commission.

**IX.**

AS AND FOR A NINTH AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiffs' claims for damages are barred to the extent that they failed to mitigate them.

**X.**

AS AND FOR A TENTH AFFIRMATIVE DEFENSE, Defendant alleges that it is entitled to absolute or qualified immunity and/or privilege to the extent that the conduct of its employees or agents was mandated, authorized and/or directed by agency, municipal, and state laws.

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**XI.**

AS TO THE ELEVENTH AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiffs' complaint herein and each of their claims is vague and set forth in conclusory terms and as such, this answering Defendant cannot fully anticipate all affirmative defenses that may be applicable.

**XII.**

AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE, Defendant alleges that it is entitled to qualified immunity under applicable federal law.

WHEREFORE, Defendant prays that:

- 1. Plaintiffs take nothing by their First Amended Complaint;
- 2. Defendant has judgment against Plaintiffs;
- 3. Defendant be awarded its costs of suit; and
- 4. For such other and further relief as the Court may deem proper.

**XIII.**

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE, Plaintiffs' claims are barred by their failure to exhaust administrative and/or contractual remedies.

**VX.**

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE, Plaintiffs' claims are barred by the equitable doctrines of laches, unclean hands, res judicata and/or estoppel.

**XV.**

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE, Plaintiffs' claims are barred by the applicable statute of limitations.

**XVI.**

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE, Plaintiffs' claims are barred by the doctrines of waiver, estoppel and consent.

**XVII.**

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE, Plaintiffs' claims, to the extent they seek damages for physical, mental and emotional distress, are barred by California Labor Code sections 3600 et. seq, which provides that Workers' Compensation is Plaintiffs'

1 exclusive remedy.

2 **XVIII.**

3 AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE, if Plaintiffs are entitled to  
4 damages for any loss suffered or sustained, which is denied, then the total amount of damage to  
5 which Plaintiffs would otherwise be entitled shall be limited in whole or in part by the doctrine of  
6 after acquired evidence.

7 Dated: April 14, 2009

MEYERS NAVE RIBACK SILVER & WILSON

8

By: /s/ Geoffrey Spellberg  
Geoffrey Spellberg  
Attorneys for Defendant  
CITY OF RICHMOND

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