

1 PETER P. EDRINGTON, Esq. (074355)  
JAMES M. MARZAN, Esq. (133931)  
2 EDRINGTON, SCHIRMER & MURPHY LLP  
2300 Contra Costa Boulevard, Suite 450  
3 Pleasant Hill, CA 94523-3936  
Telephone: (925) 827-3300  
4 Facsimile: (925) 827-3320

5 Attorneys for Defendants CITY OF PINOLE, TIM CAUWELS  
(inadvertently sued herein as TIM COUWELS),  
6 CHRIS FODOR, ZACH BLUME and PAUL M. CLANCY

7  
8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 IFETAYO R. AZIBO-BOYNTON, an  
12 individual; and the estate of LEVI B.  
BOYNTON, JR., by and through personal  
13 representative, IFETAYO R. AZIBO-  
BOYNTON,  
14

15 Plaintiffs,

16 vs.

17 CITY OF PINOLE, a city governmental  
entity; CITY OF RICHMOND, a city  
18 governmental entity; TIM COUWELS, an  
individual; CHRIS FODOR, an individual;  
19 ZACH BLUME, an individual; PAUL M.  
CLANCY, an individual; CHRIS MAGNUS,  
20 an individual; and DOES 1-50, inclusive,

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

CASE NO.: C10-04151 JL

**DEFENDANTS CITY OF PINOLE, TIM  
CAUWELS, CHRIS FODOR, ZACH  
BLUME AND PAUL M. CLANCY'S  
ANSWER TO PLAINTIFFS' COMPLAINT**

**(JURY TRIAL DEMANDED)**

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

**JURY TRIAL DEMAND**

Defendants hereby demand a jury trial in this case.

**ANSWER**

COME NOW defendants CITY OF PINOLE, TIM CAUWELS (inadvertently sued herein as TIM COUWELS), CHRIS FODOR, ZACH BLUME and PAUL M. CLANCY, and in answer to plaintiffs' Complaint, respond as follows:

1. As to allegations of Paragraph 1, defendants respond that they lack sufficient information to admit said allegations and therefore deny them.

2. Answering Paragraph 2, defendants respond that they lack sufficient information to admit said allegations and therefore deny them.

3. Answering Paragraph 3, defendants admit that the CITY OF PINOLE is a governmental entity, duly organized and existing under the laws of the State of California in the County of Contra Costa, that its police department is the Pinole Police Department and that it employs PAUL M. CLANCY, TIM CAUWELS, CHRIS FODOR, ZACH BLUME. Defendants deny any wrongful actions, deny any violation of decedent's or plaintiff's civil rights and deny plaintiff is entitled to any recovery or award of damages.

4. Answering Paragraph 4, defendants admit that the CITY OF RICHMOND is a governmental entity, duly organized and existing under the laws of the State of California, in the County of Contra Costa, that its police department is the Richmond Police Department and that it employs CHRIS MAGNUS. Defendants deny any wrongful actions, deny any violation of decedent's or plaintiffs' civil rights and deny plaintiffs are entitled to any recovery or award of damages.

5. Answering Paragraph 5, defendants admit that TIM CAUWELS is a Sergeant with the CITY OF PINOLE Police Department. Defendants deny any wrongful actions, deny any violation of decedent's or plaintiffs' civil rights and deny plaintiffs are entitled to any recovery or award of damages.

6. As to the allegations of Paragraph 6, defendants admit that CHRIS FODOR is

1 employed as a Corporal with the CITY OF PINOLE Police Department. Defendants deny any  
2 wrongful actions, deny any violation of decedent's or plaintiffs' civil rights and deny plaintiffs are  
3 entitled to any recovery or award of damages.

4 7. As to the allegations of Paragraph 7, defendants admit that ZACK BLUME is  
5 employed as a police officer for the CITY OF PINOLE. Defendants deny any wrongful actions,  
6 deny any violation of decedent's or plaintiffs' civil rights and deny plaintiffs are entitled to any  
7 recovery or award of damages.

8 8. As to the allegations of Paragraph 8, defendants admit that PAUL M. CLANCY is  
9 employed as the Chief of Police for the CITY OF PINOLE. Defendants deny any wrongful  
10 actions, deny any violation of decedent's or plaintiffs' civil rights and deny plaintiffs are entitled to  
11 any recovery or award of damages.

12 9. As to the allegations of Paragraph 9, defendants admit that CHRIS MAGNUS is the  
13 Chief of Police for the CITY OF RICHMOND. Defendants deny any wrongful actions, deny any  
14 violation of decedent's or plaintiffs' civil rights and deny plaintiffs are entitled to any recovery or  
15 award of damages.

16 10. As to the allegations of Paragraph 10, defendants deny any wrongdoing, deny any  
17 violation of decedent's or plaintiffs' civil rights and deny plaintiffs are entitled to any recovery or  
18 award of damages. As to the remainder of the allegations of Paragraph 10, defendants respond that  
19 they lack sufficient information to admit said allegations and therefore deny them.

20 11. As to the allegations of Paragraph 11, defendants deny any wrongdoing, deny any  
21 violation of decedent's or plaintiffs' civil rights and deny plaintiffs are entitled to any recovery or  
22 award of damages.

23 12. As to the allegation of Paragraph 12, defendants admit that plaintiffs presented a  
24 governmental claim to the CITY OF PINOLE on March 12, 2010.

25 13. As to the allegations of Paragraph 13, defendants respond that they lack sufficient  
26 information to admit said allegations and therefore deny them.

27 14. As to the allegations of Paragraphs 14 and 15, defendants respond that during the  
28

1 early morning hours of September 12, 2009, decedent and two of his friends, Charles Davis and  
2 DeVauria Clay-Holland, were driving within the CITY OF PINOLE to commit a carjacking and  
3 armed robbery. They saw a Jeep Cherokee parked in the parking lot of the McDonald's Restaurant  
4 in Pinole with an occupant inside; decedent and Davis then carjacked the vehicle at gunpoint while  
5 Clay-Holland waited parked nearby. They then drove the Jeep Cherokee to Clay-Holland's  
6 girlfriend's apartment where decedent, Davis and Clay-Holland ransacked the interior of the Jeep  
7 Cherokee for valuables. Decedent, Davis and Clay-Holland then decided to drive to San Francisco  
8 to commit a robbery. Corporal Fodor initially observed a vehicle matching the description of the  
9 carjacked vehicle in the area of San Pablo Avenue and Tara Hills Road in Pinole. Cpl. Fodor  
10 called in the vehicle's license plate to dispatch, which confirmed it was the vehicle stolen in the  
11 carjacking. Cpl. Fodor followed the Jeep Cherokee westbound on San Pablo Avenue but did not  
12 activate his emergency lights and siren at that time. Cpl. Fodor was instructed by Sergeant Tim  
13 Cauwels to wait until a sufficient number of units were on scene before affecting a traffic stop.  
14 Once Sgt. Cauwels and Officer Zach Blume arrived on scene, Sgt. Cauwels radioed to activate  
15 lights and sirens. After the police emergency lights and sirens were activated, the carjacked  
16 vehicle failed to stop and continued traveling on the Richmond Parkway and then Atlas Road in  
17 the CITY OF RICHMOND. While on Atlas road, the carjacked vehicle began to slow down and  
18 the vehicle doors opened at least once. According to Davis and Clay-Holland, a decision was  
19 made to slow the vehicle so all of the occupants could jump from the moving vehicle to evade  
20 arrest while the police continued to follow the Jeep Cherokee. The Jeep Cherokee slowed down  
21 but before decedent, Davis and Clay-Holland could jump from the vehicle, it went off of the  
22 roadway and into a ravine. Sgt. Cauwels exited his squad car and began moving towards the  
23 location of where the Jeep Cherokee came to a rest. As he did, Sgt. Cauwels heard a gunshot  
24 coming from the direction of the carjacked vehicle; the bullet sailed by the left side of his head. In  
25 fear for his life and the lives of the other officers, Sgt. Cauwels returned fire. Cpl. Fodor and  
26 Officer Blume also returned fire, fearing for their lives and the lives of other officers.

27 Defendant denies that it caused the Jeep Cherokee to go off of the road and into a ravine.  
28

1 Defendants deny any wrongdoing, deny that any of decedent's or plaintiffs' civil rights were  
2 violated and deny plaintiffs are entitled to any recovery or award of damages. The remaining  
3 allegations of these Paragraphs are denied for lack of information and belief to permit defendants  
4 to respond. Defendants further object to allegations in these Paragraph as being vague and  
5 ambiguous.

6 15. As to the allegations of Paragraph 16, defendants deny that they used excessive  
7 force in attempting to apprehend the carjacking suspect, LEVI B. BOYNTON, JR. Shots were  
8 fired from the direction of the vehicle that decedent had carjacked. Officers were legally justified  
9 in returning fire in defense of themselves and others present.

10 16. As to the allegations of Paragraph 17, defendants deny each and every allegation  
11 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
12 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

13 17. Answering the allegations of Paragraph 18, defendants deny each and every  
14 allegation contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or  
15 plaintiffs' civil rights were violated and deny plaintiffs are entitled to any recovery or award of  
16 damages.

17 18. As to the allegations of Paragraph 19, defendants deny each and every allegation  
18 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
19 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

20 19. As to the allegations of Paragraph 20, defendants deny each and every allegation  
21 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
22 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

23 20. As to the allegations of Paragraph 21, defendants deny each and every allegation  
24 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
25 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

26 21. As the allegations of Paragraph 22, defendants deny each and every allegation  
27 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
28

1 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

2 22. As to the allegations of Paragraph 23, defendants deny each and every allegation  
3 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
4 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

5 23. As to the allegations of Paragraph 24, defendants deny each and every allegation  
6 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
7 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

8 24. As to the allegations of Paragraph 25, defendants deny each and every allegation  
9 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
10 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

11 25. As to the allegations of Paragraph 26, defendants deny each and every allegation  
12 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
13 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

14 26. As to the allegations of Paragraph 27, defendants deny each and every allegation  
15 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
16 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

17 27. As to the allegations of Paragraph 28, defendants deny each and every allegation  
18 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
19 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

20 28. As to the allegations of Paragraph 29, defendants deny each and every allegation  
21 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
22 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

23 29. As to the allegations of Paragraph 30, defendants deny each and every allegation  
24 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
25 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

26 30. As to the allegations of Paragraph 31, defendants deny each and every allegation  
27 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
28

1 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

2 31. As to the demand for a jury trial in this action contained in Paragraph 32,  
3 defendants also demand a jury trial.

4 32. As to the allegations of Paragraph 33, defendants incorporate by reference their  
5 answers to the allegations in Paragraphs 1 through 32.

6 33. As to the allegations of Paragraph 34, defendants deny any wrongdoing, deny that  
7 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
8 recovery or award of damages.

9 34. As to the allegations of Paragraph 35, defendants deny any wrongdoing, deny that  
10 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
11 recovery or award of damages.

12 35. As to the allegations of Paragraph 36, defendants deny any wrongdoing, deny that  
13 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
14 recovery or award of damages.

15 36. As to the allegations of Paragraph 37, defendants deny any wrongdoing, deny that  
16 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
17 recovery or award of damages.

18 37. As to the allegations of Paragraph 38, defendants deny any wrongdoing, deny that  
19 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
20 recovery or award of damages.

21 38. As to the allegations of Paragraph 39, defendants incorporate by reference their  
22 answers to the allegations in Paragraphs 1 through 38.

23 39. As to the allegations of Paragraph 40, defendants deny any wrongdoing, deny that  
24 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
25 recovery or award of damages.

26 40. As to the allegations of Paragraph 41, defendants deny any wrongdoing, deny that  
27 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
28

1 recovery or award of damages.

2 41. As to the allegations of Paragraph 42, defendants deny any wrongdoing, deny that  
3 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
4 recovery or award of damages.

5 42. As to the allegations of Paragraph 43, defendants incorporate by reference their  
6 answers to the allegations in Paragraphs 1 through 42.

7 43. As to the allegations of Paragraph 44, defendants deny any wrongdoing, deny that  
8 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
9 recovery or award of damages.

10 44. As to the allegations of Paragraph 45, defendants deny any wrongdoing, deny that  
11 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
12 recovery or award of damages.

13 45. As to the allegations of Paragraph 46, defendants incorporate by reference their  
14 answers to the allegations in Paragraphs 1 through 45.

15 46. As to the allegations of Paragraph 47, defendants deny any wrongdoing, deny that  
16 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
17 recovery or award of damages.

18 47. As to the allegations of Paragraph 48, defendants deny any wrongdoing, deny that  
19 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
20 recovery or award of damages.

21 48. As to the allegations of Paragraph 49, defendants deny any wrongdoing, deny that  
22 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
23 recovery or award of damages.

24 49. As to the allegations of Paragraph 50, defendants deny any wrongdoing, deny that  
25 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
26 recovery or award of damages.

27 50. As to the allegations of Paragraph 51, defendants deny any wrongdoing, deny that  
28



1 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
2 recovery or award of damages.

3 51. As to the allegations of Paragraph 52, defendants deny any wrongdoing, deny that  
4 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
5 recovery or award of damages.

6 52. As to the allegations of Paragraph 53, defendants deny any wrongdoing, deny that  
7 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
8 recovery or award of damages.

9 53. As to the allegations of Paragraph 54, defendants incorporate by reference their  
10 answers to the allegations in Paragraphs 1 through 53.

11 54. As to the allegations of Paragraph 55, defendants deny any wrongdoing, deny that  
12 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
13 recovery or award of damages.

14 55. As to the allegations of Paragraph 56, defendants deny any wrongdoing, deny that  
15 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
16 recovery or award of damages.

17 56. As to the allegations of Paragraph 57, defendants incorporate by reference their  
18 answers to the allegations in Paragraphs 1 through 56.

19 57. As to the allegations of Paragraph 58, defendants deny each and every allegation  
20 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
21 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

22 58. As to the allegations of Paragraph 59, defendants deny each and every allegation  
23 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
24 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

25 59. As to the allegations of Paragraph 60, defendants deny each and every allegation  
26 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
27 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

28

1           60.     As to the allegations of Paragraph 61, defendants deny any wrongdoing, deny that  
2 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
3 recovery or award of damages.

4           61.     As to the allegations of Paragraph 62, defendants deny any wrongdoing, deny that  
5 any of decedent's or plaintiffs' civil rights guaranteed under the Fourth and/or Fourteenth  
6 Amendment were violated and deny plaintiffs are entitled to any recovery or award of damages.

7           62.     As to the allegations of Paragraph 63, defendants deny any wrongdoing, deny that  
8 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
9 recovery or award of damages.

10          63.     As to the allegations of Paragraph 64, defendants incorporate by reference their  
11 answers to the allegations in Paragraphs 1 through 63.

12          64.     As to the allegations of Paragraph 65, defendants respond that they lack sufficient  
13 information to admit said allegations and therefore deny them. Defendants deny any wrongdoing,  
14 deny that any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled  
15 to any recovery or award of damages.

16          65.     As to the allegations of Paragraph 66, defendants admit that decedent did not file a  
17 legal action before his death. Defendants deny any wrongdoing, deny that any of decedent's or  
18 plaintiffs' civil rights were violated and deny plaintiffs are entitled to any recovery or award of  
19 damages.

20          66.     As to the allegations of Paragraph 67, defendants deny any wrongdoing, deny that  
21 decedent's or plaintiffs' civil rights were violated and deny that plaintiffs are entitled to any  
22 recovery or award of damages.

23          67.     As to the allegations of Paragraph 68, defendants deny any wrongdoing, deny that  
24 any of decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any  
25 recovery or award of damages.

26          68.     As to the allegations of Paragraph 69, defendants incorporate by reference their  
27 answers to the allegations in Paragraphs 1 through 68.

28

1            69.    As to the allegations of Paragraph 70, defendants deny any wrongdoing, deny they  
2 were negligent, deny that decedent's or plaintiffs' civil rights were violated and deny that plaintiffs  
3 are entitled to any recovery or award of damages.

4            70.    As to the allegations of Paragraph 71, defendants deny any wrongdoing, deny they  
5 were negligent, deny that decedent's or plaintiffs' civil rights were violated and deny that plaintiffs  
6 are entitled to any recovery or award of damages.

7            71.    As to the allegations of Paragraph 72, defendants deny any wrongdoing, deny they  
8 were negligent, deny that decedent's or plaintiffs' civil rights were violated and deny that plaintiffs  
9 are entitled to any recovery or award of damages.

10           72.    As to the allegations of Paragraph 73, defendants deny any wrongdoing, deny they  
11 were negligent, deny that decedent's or plaintiffs' civil rights were violated and deny that plaintiffs  
12 are entitled to any recovery or award of damages.

13           73.    As to the allegations of Paragraph 74, defendants deny any wrongdoing, deny they  
14 were negligent, deny that decedent's or plaintiffs' civil rights were violated and deny that plaintiffs  
15 are entitled to any recovery or award of damages.

16           74.    As to the allegations of Paragraph 75, defendants incorporate by reference their  
17 answers to the allegations in Paragraphs 1 through 74.

18           75.    As to the allegations of Paragraph 76, defendants deny any wrongdoing, deny they  
19 were negligent, deny that decedent's or plaintiffs' civil rights were violated and deny that plaintiffs  
20 are entitled to any recovery or award of damages.

21           76.    As to the allegations of Paragraph 77, defendants deny any wrongdoing, deny they  
22 were negligent, deny that decedent's or plaintiffs' civil rights were violated and deny that plaintiffs  
23 are entitled to any recovery or award of damages.

24           77.    As to the allegations of Paragraph 78, defendants deny any wrongdoing, deny they  
25 were negligent, deny that decedent's or plaintiffs' civil rights were violated and deny that plaintiffs  
26 are entitled to any recovery or award of damages.

27           78.    As to the allegations of Paragraph 79, defendants deny any wrongdoing, deny they  
28

1 were negligent, deny that decedent's or plaintiffs' civil rights were violated and deny that plaintiffs  
2 are entitled to any recovery or award of damages.

3 79. As to the allegations of Paragraph 80, defendants incorporate by reference their  
4 answers to the allegations in Paragraphs 1 through 79.

5 80. As to the allegations of Paragraph 81, defendants deny each and every allegation  
6 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
7 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

8 81. As to the allegations of Paragraph 82, defendants deny each and every allegation  
9 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
10 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

11 82. As to the allegations of Paragraph 83, defendants deny each and every allegation  
12 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
13 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

14 83. As to the allegations of Paragraph 84, defendants deny each and every allegation  
15 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
16 rights were violated and deny plaintiff are entitled to any recovery or award of damages.

17 84. As to the allegations of Paragraph 85, defendants deny each and every allegation  
18 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
19 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

20 85. As to the allegations of Paragraph 86, defendants deny each and every allegation  
21 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
22 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

23 86. As to the allegations of Paragraph 87, defendants deny each and every allegation  
24 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
25 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

26 87. As to the allegations of Paragraph 88, defendants deny each and every allegation  
27 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
28

1 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

2 88. As to the allegations of Paragraph 89, defendants deny each and every allegation  
3 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
4 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

5 89. As to the allegations of Paragraph 90, defendants incorporate by reference their  
6 answers to the allegations in Paragraphs 1 through 89.

7 90. As to the allegations of Paragraph 91, defendants deny each and every allegation  
8 contained in said Paragraph, deny any wrongdoing, deny they were negligent, deny that any of  
9 decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any recovery  
10 or award of damages.

11 91. As to the allegations of Paragraph 92, defendants deny each and every allegation  
12 contained in said Paragraph, deny any wrongdoing, deny they were negligent, deny that any of  
13 decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any recovery  
14 or award of damages.

15 92. As to the allegations of Paragraph 93, defendants deny each and every allegation  
16 contained in said Paragraph, deny any wrongdoing, deny they were negligent, deny that any of  
17 decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any recovery  
18 or award of damages.

19 93. As to the allegations of Paragraph 94, defendants deny each and every allegation  
20 contained in said Paragraph, deny any wrongdoing, deny they were negligent, deny that any of  
21 decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any recovery  
22 or award of damages.

23 94. As to the allegations of Paragraph 95, defendants deny each and every allegation  
24 contained in said Paragraph, deny any wrongdoing, deny they were negligent, deny that any of  
25 decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any recovery  
26 or award of damages.

27 95. As to the allegations of Paragraph 96, defendants deny each and every allegation  
28

1 contained in said Paragraph, deny any wrongdoing, deny they were negligent, deny that any of  
2 decedent's or plaintiffs' civil rights were violated and deny plaintiffs are entitled to any recovery  
3 or award of damages.

4 96. As to the allegations of Paragraph 97, defendants incorporate by reference their  
5 answers to the allegations in Paragraphs 1 through 96.

6 97. As to the allegations of Paragraph 98, defendants deny each and every allegation  
7 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
8 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

9 98. As to the allegations of Paragraph 99, defendants deny each and every allegation  
10 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
11 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

12 99. As to the allegations of Paragraph 100, defendants incorporate by reference their  
13 answers to the allegations in Paragraphs 1 through 99.

14 100. As to the allegations of Paragraph 101, defendants deny each and every allegation  
15 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
16 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

17 101. As to the allegations of Paragraph 102, defendants deny each and every allegation  
18 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
19 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

20 102. As to the allegations of Paragraph 103, defendants deny each and every allegation  
21 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
22 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

23 103. As to the allegations of Paragraph 104, defendants deny each and every allegation  
24 contained in said Paragraph, deny any wrongdoing, deny that any of decedent's or plaintiffs' civil  
25 rights were violated and deny plaintiffs are entitled to any recovery or award of damages.

26 104. As to the allegations of Paragraph 105, defendants incorporate by reference their  
27 answers to the allegations in Paragraphs 1 through 104.

28

1 105. As to the allegations of Paragraph 106, defendants deny each and every allegation  
2 contained in said Paragraph, deny any wrongdoing and deny plaintiffs are entitled to any recovery  
3 or award of damages.

4 106. As to the allegations of Paragraph 107, defendants deny each and every allegation  
5 contained in said Paragraph, deny any wrongdoing and deny plaintiffs are entitled to any recovery  
6 or award of damages.

7 **AFFIRMATIVE DEFENSES**

8 **QUALIFIED IMMUNITY**

9 AS AND FOR A SEPARATE AFFIRMATIVE DEFENSE to the Complaint and the  
10 causes of action asserted therein, defendants allege that the individually named defendants, as  
11 public employees, are immune under the common law doctrine of qualified immunity.

12 AS AND FOR A FURTHER, SEPARATE AFFIRMATIVE DEFENSE to the Complaint  
13 and the causes of action asserted therein, defendants allege that they are immune from suit for  
14 damages under 42 U.S.C. Section 1983 under the Eleventh Amendment to the Constitution of the  
15 United States.

16 **FAILURE TO STATE A CAUSE OF ACTION**

17 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
18 defendants allege that plaintiffs' Complaint fails to state a cause of action against said defendants.

19 **STATUTE OF LIMITATIONS**

20 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
21 defendants allege that plaintiffs' causes of action are barred by California Code of Civil Procedure  
22 Section 335.1 and 340(c).

23 **THIRD PARTY NEGLIGENCE**

24 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
25 defendants allege that certain persons and entities not presently named in this action as plaintiffs or  
26 defendants were careless and negligent in and about the matters alleged in the Complaint and that  
27 the carelessness and negligence on the part of said persons and entities proximately contributed to  
28

1 the happening of the incident and to plaintiff's injuries, and to plaintiff's loss and damages  
2 complained of, if any there were.

3 **PLAINTIFF'S COMPARATIVE NEGLIGENCE**

4 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
5 defendants deny any wrongdoing, negligence, or liability on their part. However, should it be  
6 determined that defendants are liable, then defendants further allege that plaintiffs/decedent also  
7 contributed to his own injuries and losses, if any there were, and by virtue of the decision in the  
8 case of Li v. Yellow Cab Company (1975) 13 Cal.3d 804, defendants ask that any judgment  
9 entered against them be proportionally reduced to the extent that plaintiffs'/decedent's own  
10 negligence proximately contributed to his own injuries, death and/or losses, if any there were.

11 **FAILURE TO MITIGATE**

12 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
13 defendants allege that plaintiffs were bound to exercise reasonable care and diligence to avoid loss  
14 and to minimize damages, if any there were, and that the plaintiffs may not recover for losses  
15 which could have been prevented by reasonable efforts on their part or by expenditures that they  
16 might reasonably have made.

17 **PRIVILEGED ACTS**

18 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
19 defendants allege that the acts set forth in the Complaint are privileged.

20 **NO VIOLATION OF CONSTITUTIONAL RIGHTS**

21 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
22 defendants allege that decedent/plaintiffs were not deprived of any constitutional right, whether  
23 federal or state, at any time, as alleged herein.

24 **LAWFUL DETENTION**

25 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
26 these defendants allege that the decedent was detained as the circumstances were such to indicate  
27 to a reasonable person in a like position that such a course of action was called for in the proper  
28



1 discharge of the officers' duties. The officers had a good faith suspicion warranting detention of  
2 the decedent for investigative reasons. The officers had a rational belief that the plaintiff was  
3 connected to criminal activity and that the detention of decedent was necessary for reasonable  
4 investigative procedures.

5 **SELF-DEFENSE/DEFENSE OF OTHERS**

6 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
7 these defendants allege they acted in self-defense and in defense of the lives of others.

8 **GOVERNMENT CODE SECTION 820.2 and 815.2(b)**

9 AS AND FOR A FURTHER SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
10 defendants allege that to the extent the acts complained of were within the discretion of public  
11 employees, defendants are immune from liability pursuant to the provisions of Government Code  
12 Sections 820.2 and 815.2(b).

13 **GOVERNMENT CODE SECTION 905**

14 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
15 defendants allege that plaintiffs' action is barred to the extent that plaintiffs have failed to comply  
16 with Government Code Section 905.

17 **GOVERNMENT CODE SECTION 900, ET SEQ.**

18 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
19 defendants allege that plaintiffs' Complaint exceeds the scope of their claim, both in respect to  
20 theories of liability asserted and to injuries and damages claimed. It is therefore barred pursuant to  
21 Government Code Section 900, et seq.

22 **GOOD FAITH IMMUNITY**

23 AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint,  
24 defendants allege that at all times relevant herein, defendants acted with a good faith belief that its  
25 actions were proper and lawful and did not violate clearly established law, and consequently,  
26 defendants are entitled to immunity.

27 ///

28

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

**PUNITIVE DAMAGES**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendants are immune from claims for punitive damages, pursuant to California Government Code Section 818, and under federal law.

**CALIFORNIA GOVERNMENT CODE IMMUNITIES**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendants allege that they are immune from suit herein under applicable California immunity statutes, including, but not limited to, California Government Code sections 815.2, 818, 818.2, 818.4, 818.8, 820.2, 820.4, 820.6, 820.8, 821, 821.2, 821.6, 821.8, and 822.2.

**WILLFUL CONTRIBUTORY NEGLIGENCE**

AS AND FOR A FURTHER, SEPARATE, AFFIRMATIVE DEFENSE to the Complaint, defendants allege that plaintiffs/decedent was willfully careless and negligent in and about the matters alleged in the Complaint and that said willful carelessness and negligence on said plaintiffs'/decedent's own part proximately contributed to the happening of the incident and to the injuries and to the loss and damages complained of, if any there were.

**PRAYER**

WHEREFORE, defendants pray for relief as follows:

1. That plaintiffs take nothing by this action;
2. That plaintiffs' prayer for costs and attorney's fees be denied;
3. That plaintiffs be ordered to pay defendants' attorney's fees and costs incurred in the defense of this action; and,
4. For any such relief that justice requires and this Court deems proper.

DATED: January 12, 2011

EDRINGTON, SCHIRMER & MURPHY LLP

By           /s/Peter P. Edrington          

Peter P. Edrington  
Attorney for Defendants CITY OF PINOLE, TIM CAUWELS, CHRIS FODOR, ZACH BLUME and PAUL M. CLANCY