

1 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 2 CHERYL ADAMS, State Bar #164194
 Chief Trial Deputy
 3 WARREN METLITZKY, State Bar #220758
 Deputy City Attorney
 4 Fox Plaza
 1390 Market Street, Sixth Floor
 5 San Francisco, California 94102-5408
 Telephone: (415) 554-3916
 6 Facsimile: (415) 554-3837
 E-Mail: warren.metlitzky@sfgov.org

7 Attorneys for Defendants
 8 CITY AND COUNTY OF SAN FRANCISCO,
 GREG SUHR in his official capacity,
 9 CHRISTOPHER O'BRIEN, DANIEL DUDLEY
 AND BRIAN STANSBURY

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 11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

14 LORENZO ADAMSON, an individual,
 15 Plaintiff,
 16 vs.

Case No. 13-cv-5233 DMR
 DEFENDANTS' ANSWER TO PLAINTIFF'S
 COMPLAINT FOR DAMAGES; JURY TRIAL
 DEMANDED

17 CITY OF SAN FRANCISCO, a municipal
 corporation; GREG SUHR, individually and in
 18 his official capacity as Chief of Police for the
 CITY OF SAN FRANCISCO;
 19 CHRISTOPHER O'BRIEN, individually and
 in his official capacity as a Police Officer for
 20 the CITY OF SAN FRANCISCO; DANIEL
 DUDLEY, individually and in his official
 21 capacity as a Police Officer for the CITY OF
 SAN FRANCISCO; BRIAN STANSBURY,
 22 individually and in his official capacity as a
 Police Officer for the CITY OF SAN
 23 FRANCISCO and DOES 1-50, inclusive; in
 their individual and/or official capacities as
 24 police officers for the CITY OF SAN
 FRANCISCO,
 25 Defendants.

1 Defendants CITY AND COUNTY OF SAN FRANCISCO, GREG SUHR, sued in his official
2 capacity, CHRISTOPHER O'BRIEN, DANIEL DUDLEY and BRIAN STANSBURY ("defendants")
3 answer plaintiff's Complaint For Damages ("complaint") as follows:

4 **INTRODUCTION**

5 1. The allegations contained in paragraph 1 are prefatory, to which no response is
6 required. To the extent necessary, defendants deny the prefatory allegations contained in paragraph 1.

7 **JURISDICTION**

8 2. The allegations contained in paragraph 2 are conclusions of law to which no response is
9 required. To the extent that a response is required, defendants responds as follows: Defendants admit
10 that jurisdiction and venue are proper.

11 **PARTIES**

12 3. Defendants lack knowledge or information sufficient to form a belief as to the truth of
13 the allegations contained in paragraph 3.

14 4. Defendants admit that the City and County of San Francisco ("the City") is a municipal
15 corporation, and that the Police Department is a department of the City.

16 5. Defendants admit that defendant Greg Suhr is the Chief of Police of the City and was
17 the Chief of Police at the time of this incident.

18 6. Defendants admit that defendant Daniel Dudley is and was at the time of this incident a
19 San Francisco Police Officer.

20 7. Defendants admit that defendant Christopher O'Brien is and was at the time of this
21 incident a San Francisco Police Officer.

22 8. Defendants admit that defendant Brian Stansbury is and was at the time of this incident
23 a San Francisco Police Officer.

24 9. The allegations contained in paragraph 9 are conclusions of law to which no response is
25 required.

26 10. The allegations contained in paragraph 10 are conclusions of law to which no response
27 is required.

1 11. The allegations contained in paragraph 10 are conclusions of law to which no response
2 is required.

3 12. The allegations contained in paragraph 12 are conclusions of law to which no response
4 is required.

5 13. The allegations contained in paragraph 13 are conclusions of law to which no response
6 is required.

7 **FACTS**

8 14. Defendants admit that Lorenzo Adamson was operating a vehicle in San Francisco on
9 May 30, 2013. The individual defendants lack knowledge or information sufficient to form a belief as
10 to the truth of the other allegations contained in paragraph 14.

11 15. Defendants admit that at the scene there was a vehicle carrying Adamson and another
12 vehicle carrying the three defendant officers. Defendants lack knowledge or information sufficient to
13 form a belief as to the truth of the allegations contained in paragraph 15.

14 16. Defendants admit there was some communication with plaintiff by a San Francisco
15 Police Officer. Defendants further admit that Officer Stansbury's badge includes the word
16 "Stansbury." Defendants deny the remainder of the allegations contained in paragraph 16.

17 17. Defendants admit that Mr. Adamson left the vehicle. Defendant deny the remainder of
18 the allegations contained in paragraph 17.

19 18. Defendants deny the allegations contained in paragraph 18.

20 19. Defendants deny the allegations contained in paragraph 19.

21 20. Defendants admit that officers took plaintiff's weapon from him, and that other officers
22 arrived on scene. Defendants deny the remainder of the allegations contained in paragraph 20.

23 21. Defendants deny the allegations contained in paragraph 21.

24 22. Defendants admit that plaintiff was cited for violations of Penal Code Section 148 and
25 26708 and traffic violations. Defendants deny the remainder of the allegations contained in paragraph
26 22.

27 23. Defendants deny the allegations contained in paragraph 23.

1 **DAMAGES**

2 24. Defendants deny the allegations contained in paragraph 24.

3 25. Defendants lack knowledge or information sufficient to form a belief as to the truth of
4 the allegations contained in paragraph 25, and on that basis deny the allegations.

5 26. Defendants lack knowledge or information sufficient to form a belief as to the truth of
6 the allegations contained in paragraph 26, and on that basis deny the allegations.

7 27. The allegations contained in paragraph 27 are conclusions of law to which no response
8 is required.

9
10 **FIRST CAUSE OF ACTION**

11 **(42 U.S.C. §1983)**

12 **(Against Defendant Officers STANSBURY, DUDLEY, O'BRIEN and DOES 1-25)**

13 28. Defendants incorporate their responses to paragraphs 1 through 27 as though set forth
14 in full.

15 29. The allegations contained in paragraph 29 are conclusions of law to which no response
16 is required. To the extent necessary, the allegation are denied.

17 30. The allegations contained in paragraph 30 are conclusions of law to which no response
18 is required. To the extent necessary, the allegations are denied.

19 **SECOND CAUSE OF ACTION**

20 **(Monell)**

21 **(42 U.S.C. §1983)**

22 **(Against CITY, CHIEF and DOES 26-50)**

23 31. Defendants incorporate their responses to paragraphs 1 through 30 as though set forth
24 in full.

25 32. Defendants deny the allegations contained in paragraph 32.

26 33. Defendants deny the allegations contained in paragraph 33.

27 34. Defendants deny the allegations contained in paragraph 34.

28 35. Defendants deny the allegations contained in paragraph 35.

36. Defendants deny the allegations contained in paragraph 36.

1 37. The allegations contained in paragraph 3 are conclusions of law to which no response is
2 required. To the extent necessary, the allegations are denied.

3 38. The allegations contained in paragraph 38 are conclusions of law to which no response
4 is required. To the extent necessary, the allegations are denied.

5 **THIRD CAUSE OF ACTION**
6 **(Violation of State Statutory Rights)**
7 **(Violation of CALIFORNIA CIVIL CODE §51.7)**
8 **(Against Defendants STANSBURY, DUDLEY, O'BRIEN and DOES 1-25)**

9 39. Defendants incorporate their responses to paragraphs 1 through 38 as though set forth
10 in full.

11 40. Defendants deny the allegations in paragraph 40.

12 41. The allegations contained in paragraph 41 are conclusions of law to which no response
13 is required. To the extent necessary, the allegations are denied.

14 42. Defendants deny the allegations in paragraph 42.

15 **FOURTH CAUSE OF ACTION**
16 **(Violation of California Civil Code 52.1)**
17 **(Against Defendants STANSBURY, DUDLEY, O'BRIEN and DOES 1-25)**

18 43. Defendants incorporate their responses to paragraphs 1 through 42 as though set forth
19 in full.

20 44. Defendants deny the allegations in paragraph 44.

21 45. Defendants deny the allegations in paragraph 45.

22 46. The allegations contained in paragraph 46 are conclusions of law to which no response
23 is required.

24 47. The allegations contained in paragraph 47 are conclusions of law to which no response
25 is required.

26 **FIFTH CAUSE OF ACTION**
27 **(Assault and Battery)**
28 **(Against Defendants STANSBURY, DUDLEY, O'BRIEN and DOES 1-25)**

48. Defendants incorporate their responses to paragraphs 1 through 47 as though set forth
in full.

49. Defendants deny the allegations in paragraph 49.

1 **PRAYER**

2 1. With respect to the allegations contained in this paragraph, defendants respond as
3 follows: plaintiff's prayer sets forth plaintiff's legal conclusions and opinions and plaintiff's
4 interpretation of law to which no response is required.

5 2. With respect to the allegations contained in this paragraph, defendants respond as
6 follows: plaintiff's prayer sets forth plaintiff's legal conclusions and opinions and plaintiff's
7 interpretation of law to which no response is required.

8 3. With respect to the allegations contained in this paragraph, defendants respond as
9 follows: plaintiff's prayer sets forth plaintiff's legal conclusions and opinions and plaintiff's
10 interpretation of law to which no response is required. Defendants are informed and believe that Mr.
11 Adamson is still alive, and therefore deny plaintiff's allegation that he is legally entitled to funeral and
12 burial expenses.

13 4. With respect to the allegations contained in this paragraph, defendants respond as
14 follows: plaintiff's prayer sets forth plaintiff's legal conclusions and opinions and plaintiff's
15 interpretation of law to which no response is required.

16 5. With respect to the allegations contained in this paragraph, defendants respond as
17 follows: plaintiff's prayer sets forth plaintiff's legal conclusions and opinions and plaintiff's
18 interpretation of law to which no response is required.

19 6. With respect to the allegations contained in this paragraph, defendants respond as
20 follows: plaintiff's prayer sets forth plaintiff's legal conclusions and opinions and plaintiff's
21 interpretation of law to which no response is required.

22 7. With respect to the allegations contained in this paragraph, defendants respond as
23 follows: plaintiff's prayer sets forth plaintiff's legal conclusions and opinions and plaintiff's
24 interpretation of law to which no response is required.

25 8. With respect to the allegations contained in this paragraph, defendants respond as
26 follows: plaintiff's prayer sets forth plaintiff's legal conclusions and opinions and plaintiff's
27 interpretation of law to which no response is required.

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 **(Failure to State a Claim)**

4 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that the
5 Complaint fails to state facts sufficient to constitute a claim against each defendant.

6 **SECOND AFFIRMATIVE DEFENSE**

7 **(Statute of Limitations)**

8 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that the
9 Complaint and each and every cause of action therein is barred by the statute of limitations as set forth
10 in California Code of Civil Procedure § 335 et seq., California Government Code § 945.6, and other
11 applicable statutes of limitations.

12 **THIRD AFFIRMATIVE DEFENSE**

13 **(Failure to Mitigate Damages)**

14 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that the
15 Complaint and each and every cause of action therein is barred because plaintiff failed to use
16 reasonable diligence to mitigate damages allegedly sustained by them, and said failure bars or reduces
17 the recovery, if any from defendants.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 **(Causation)**

20 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that any
21 act or omission on the part of defendants or their agents, was not the legal cause of plaintiff's alleged
22 injuries.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 **(No Damage To Plaintiff)**

25 As and for a separate, distinct affirmative defense to the Complaint, defendants deny that
26 plaintiff has been damaged in any sum or sums, or otherwise, or at all, by reason of any act or
27 omission of defendants.

28

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Failure to Comply With California Tort Claims Act)**

3 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that to
4 the extent plaintiff failed to comply with provisions of the California Tort Claims Act of the California
5 Government Code (Government Code §810 et seq.), plaintiff's Complaint is barred.

6 **SEVENTH AFFIRMATIVE DEFENSE**

7 **(Good Faith)**

8 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that
9 defendants and his agents were at all times material hereto acting with both subjective and objective
10 good faith, such that any claim for relief that plaintiff may have is barred by law.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 **(Estoppel)**

13 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that by
14 reason of plaintiff's own acts and omissions, plaintiff is estopped from seeking any recovery from
15 defendants by reason of the allegations set forth in the Complaint.

16 **NINTH AFFIRMATIVE DEFENSE**

17 **(Unclean Hands)**

18 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that the
19 Complaint and each cause of action therein are barred by the doctrine of unclean hands.

20 **TENTH AFFIRMATIVE DEFENSE**

21 **(Waiver)**

22 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that by
23 reason of plaintiff's own acts and omissions, plaintiff has waived any right to recovery from
24 defendants by reason of the allegations set forth in the Complaint.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 **(Common Law Immunity)**

27 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that
28 defendants are immune from any liability therein under the common law doctrine of immunity of

1 officers executing statutes in good faith, which statutes are presumed valid at the time of such
2 execution.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 **(No Constitutional Violation)**

5 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that the
6 Complaint fails to state a violation of any of the provisions of the United States Constitution cited by
7 plaintiff and applicable to this action.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 **(No Discrimination Against Plaintiff)**

10 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that they
11 in no way based their decisions and actions at issue herein, or their treatment of plaintiff, on any group
12 or identification to which plaintiff might belong including race, gender, sexual orientation, political
13 affiliation, political beliefs, or any other classification. At all times, defendants and their agents acted
14 properly in valid law enforcement activities.

15 **FOURTEENTH AFFIRMATIVE DEFENSE**

16 **(Qualified/Absolute Immunity)**

17 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that they
18 enjoy qualified immunity, and/or absolute immunity against each and every one of plaintiff's federal
19 claims.

20 **FIFTEENTH AFFIRMATIVE DEFENSE**

21 **(Discretionary Immunity)**

22 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that they
23 enjoys discretionary immunity pursuant to California Government Code §820.2 against each and every
24 one of plaintiff's state claims.

25 **SIXTEENTH AFFIRMATIVE DEFENSE**

26 **(Frivolous Lawsuit)**

27 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that
28 plaintiff's maintenance of this action is frivolous, vexatious and unreasonable, thereby entitling

1 defendants to sanctions and appropriate remedies (including without limitation attorney's fees) against
2 plaintiff.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 **(No Intent to Harm)**

5 As a separate and affirmative defense to the Complaint and to each and every allegation
6 contained therein, defendants allege that at all times and places mentioned in the Complaint,
7 defendants acted without malice and with a good faith belief in the propriety of their conduct, and did
8 not intend to harm or deprive plaintiff of any rights under federal or state constitutions, or federal or
9 state statutes.

10 **EIGHTEENTH AFFIRMATIVE DEFENSE**

11 **(Discharge of Duties in Good Faith)**

12 As a separate and affirmative defense to the Complaint and to each and every allegation set
13 forth therein, defendants allege that at all times mentioned in the Complaint, defendants performed and
14 discharged in good faith each and every obligation, if any, owed to plaintiff.

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 **(Privilege, Justification)**

17 As a separate and affirmative defense to the Complaint and to each and every allegation
18 contained therein, defendants allege that their conduct at all times material herein was privileged
19 and/or justified under applicable law.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 **(Supervening Events)**

22 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that any
23 injury suffered by plaintiff was caused by supervening events over which defendants had no control.

24 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

25 **(Comparative Negligence)**

26 As and for a separate, distinct affirmative defense to the Complaint, defendants allege by way
27 of a plea of comparative negligence that plaintiff was negligent in and about the matters and activities
28 alleged in said Complaint; that said negligence contributed to and was a proximate cause of plaintiff's

1 alleged injuries and damages, if any, or was the sole cause thereof; and that if plaintiff is entitled to
2 recover damages against these defendants by virtue of said Complaint, defendants pray that the
3 recovery be diminished or extinguished by reason of the negligence of the plaintiff in proportion to the
4 degree of fault attributable to plaintiff.

5 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

6 **(Plaintiff's Recklessness)**

7 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that at
8 all times mentioned in plaintiff's Complaint herein, plaintiff acted in a careless, reckless, wanton and
9 negligence manner in and about the matters set forth in the Complaint; that such careless, reckless,
10 wanton and negligent conduct proximately contributed to the injuries and damages, if any, sustained or
11 claimed by plaintiff; that as a consequence, plaintiff's claims are barred.

12 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

13 **(Fault of Others)**

14 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that the
15 fault of persons other than defendants contributed to and proximately caused the occurrence; and that
16 under the principles formulated in the case of *American Motorcycle Association v. Superior Court*, 20
17 Cal. 3d 578 (1978), defendants pray that the percentage of such contribution be established by special
18 verdict or other procedure, and that defendants' ultimate liability be reduced to the extent of such
19 contribution.

20 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

21 **(Statutory Immunity)**

22 The City and its employees are immune from all liability alleged in the complaint and each and
23 every cause of action therein pursuant to Government Code Sections 815(b); 815.2(b); 815.4; 818.4;
24 818.6, 818.7; 818.8; 820(b); 820.2; 820.4; 820.6; 820.8; 821; 821.2; 821.4; 821.6; 821.8; 822; 822.2;
25 830.2; 830.4; 830.6; 830.8; 830.9; 831; 831.2; 831.25; 831.3; 831.4; 831.5; 831.6; 831.7; 831.8;
26 835.4; 840.6; 844.6; 845; 845.2; 845.4; 845.6; 845.8; 846; 850; 850.2; 850.4; 854.8; 855; 855.2; 855.4;
27 855.6; 855.8; 856; 856.2; 856.4; California Vehicle Code sections 16004 and 17004.7; California
28 Penal Code sections 142, 148, 409, 834a, 834, 835, 835a, 836, 844, 845, 847, 849, 1531 and 1532;

1 California Welfare and Institutions Code sections 5150, 5113, 5153, 5154, 5173; and Civil Code
2 section 43.5 and related provisions of these code sections and interpretative case law.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 **(Self Defense And Defense Of Others)**

5 Defendants allege that if in fact any force was used against plaintiff, said use of force was the
6 lawful exercise of the right of self-defense and defense of the public and privileged and/or justified by
7 law, and any recovery pursuant to said use of force is barred.

8 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

9 **(Res Judicata and Claim Splitting)**

10 The complaint and each and every cause of action therein is barred by res judicata and the case
11 law prohibiting a plaintiff from “splitting” claims or causes of action. *Ferraro v. Southern Cal. Gas*
12 *Co.*, 102 Cal.App.3d 33, 41 (1980).

13 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

14 **(Laches)**

15 Plaintiff has unnecessarily delayed in protecting the right or rights asserted and have
16 unreasonably delayed in bringing this action, and are therefore guilty of laches and are consequently
17 not entitled to the relief sought.

18 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

19 **(Assumption Of The Risk)**

20 Plaintiff had full knowledge of the risk involved in the activity in which plaintiff was engaged
21 at the time of the occurrence of the incident set forth in the complaint. Plaintiff voluntarily assumed
22 all the risks incident to the activity engaged in at the time and place mentioned in the complaint, and
23 the loss or damage, if any, sustained by plaintiff was caused by those risks.

24 **TWENTY NINTH AFFIRMATIVE DEFENSE**

25 **(Criminal Conviction Bars Claims)**

26 As and for a separate, distinct affirmative defense to the Complaint, defendants allege that all
27 of plaintiff's claims are precluded due to the existence of a criminal conviction inconsistent with the
28 alleged unlawful behavior underlying this suit.

1 **ADDITIONAL AFFIRMATIVE DEFENSES**

2 Defendants presently have insufficient knowledge or information on which to form a belief as
3 to whether it may have additional, as yet unstated, defenses available. Defendants reserve the right to
4 assert additional defenses in the event that discovery indicates that they would be appropriate.

5 WHEREFORE, Defendants pray for judgment as follows:

- 6 1. That plaintiff takes nothing from defendants;
7 2. That the Complaint against defendants be dismissed with prejudice;
8 3. That defendants recover their costs of suit herein, including attorneys' fees; and
9 4. For such other relief as is just and proper:

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11 Dated: December 20, 2013

DENNIS J. HERRERA
City Attorney
CHERYL ADAMS
Chief Trial Deputy
WARREN METLITZKY
Deputy City Attorney

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13
14
15 By: /s/ Warren Metlitzky
16 WARREN METLITZKY

17 Attorneys for Defendants
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