

1 RICHARD DOYLE, City Attorney (#88625)
 NORA FRIMANN, Chief Trial Attorney (#93249)
 2 ROBERT BURCHFIEL, Sr. Deputy City Attorney (#112318)
 Office of the City Attorney
 3 200 East Santa Clara Street
 San José, California 95113-1905
 4 Telephone Number: (408) 535-1900
 Facsimile Number: (408) 998-3131
 5 E-Mail Address: cao.main@sanjoseca.gov

6 Attorneys for Defendant, CITY OF SAN JOSE

7
 8 UNITED STATES DISTRICT COURT
 9 COUNTY OF SANTA CLARA
 10 SAN JOSE DIVISION

11
 12 CHIN-LI MOU,
 13 Plaintiff,
 14 v.
 15 CITY OF SAN JOSE, SAN JOSE PUBLIC
 LIBRARY EDUCATION PARK BRANCH,
 16 Defendants.

Case Number: C07-05740 RS

**DEFENDANT CITY OF SAN JOSE'S
 ANSWER TO PLAINTIFF'S
 COMPLAINT FOR VIOLATION OF
 CIVIL RIGHTS, FIRST, EIGHTH AND
 FOURTEENTH AMENDMENTS OF
 THE UNITED STATES
 CONSTITUTION**

JURY TRIAL DEMANDED

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 18
 19 Defendant City of San Jose hereby responds to the Complaint in the above-entitled
 20 matter as follows:

21 1. Answering Paragraph 1 of Plaintiff's Complaint, Defendant City of San Jose
 22 admits that the City of San Jose is a public entity under the laws of the state of California
 23 and located within the County of Santa Clara. Defendant City of San Jose also admits
 24 that if Plaintiff has properly plead and alleged claimed of violation of the United States
 25 Constitution, the United States Federal Court, Northern District of California, San Jose
 26 Division would be the proper Court for this action.

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1 further that Plaintiff failed to exercise any care for Plaintiff's own safety and such
2 carelessness and negligence on the part of Plaintiff proximately caused and contributed to
3 the alleged damage, detriment, or injuries sustained by Plaintiff, if any, and that Plaintiff's
4 recovery should therefore either be barred or reduced to the extent of Plaintiff's
5 negligence.

6 **THIRD AFFIRMATIVE DEFENSE**

7 3. As and for a Third Affirmative Defense, Defendant alleges that any harm
8 Plaintiff suffered was the result of a negligent or otherwise wrongful conduct of persons
9 other than this Defendant and that the conduct of persons other than this Defendant was
10 the sole and proximate cause of the injuries and damages alleged by Plaintiff.

11 **FOURTH AFFIRMATIVE DEFENSE**

12 4. As and for a Fourth Affirmative Defense, Defendant alleges that they are
13 immune from the state law causes of action pursuant to Government Code sections 800-
14 1000, including but not limited to sections 820.2, 820.4, 820.8, 821.6, 821.8, and 822.2.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 5. As and for a Fifth Affirmative Defense, Defendant alleges that Plaintiff's
17 Complaint is barred in that Plaintiff failed to comply with the claims filing provision of
18 Government Code Section 900, et seq.

19 **SIXTH AFFIRMATIVE DEFENSE**

20 6. As and for a Sixth Affirmative Defense, Defendant alleges that Plaintiff has
21 failed to mitigate his damages, if any.

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1 WHEREFORE, Defendant prays:

- 2 1. That Plaintiff take nothing by his Complaint;
- 3 2. That Plaintiff's Complaint be dismissed with prejudice;
- 4 3. That Defendant be awarded its cost of suit, including attorneys' fees incurred
- 5 herein; and
- 6 4. For such other further relief as the Court deems proper.
- 7

8 Respectfully submitted,

9 Dated: December 6, 2007

RICHARD DOYLE, City Attorney

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11 By: 

12 ROBERT BURCHFIEL
Sr. Deputy City Attorney

13 Attorney for Defendant,
14 CITY OF SAN JOSE

15 **REQUEST FOR JURY TRIAL**

16 Defendant City of San Jose hereby requests a jury trial in this action.

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18 Respectfully submitted,

19 Dated: December 6, 2007

RICHARD DOYLE, City Attorney

20

21 By: 

22 ROBERT BURCHFIEL
Sr. Deputy City Attorney

23 Attorney for Defendant,
24 CITY OF SAN JOSE

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1 **PROOF OF SERVICE**

2 CASE NAME: Mou v. CSJ, et al.

3 CASE NO.: C07-05740 RS

4 I, the undersigned declare as follows:

5 I am a citizen of the United States, over 18 years of age, employed in Santa Clara
6 County, and not a party to the within action. My business address is 200 East Santa Clara
7 Street, San Jose, California 95113-1905, and is located in the county where the service
8 described below occurred.

9 On December 6, 2007, I caused to be served the within:

10 **DEFENDANT CITY OF SAN JOSE'S ANSWER TO PLAINTIFF'S**
11 **COMPLAINT FOR VIOLATION OF CIVIL RIGHTS**

12 by MAIL, with a copy of this declaration, by depositing them into a sealed envelope,
13 with postage fully prepaid, and causing the envelope to be deposited for collection
14 and mailing on the date indicated above.

15 I further declare that I am readily familiar with the business' practice for collection
16 and processing of correspondence for mailing with the United States Postal
17 Service. Said correspondence would be deposited with the United States Postal
18 Service that same day in the ordinary course of business.

19 Addressed as follows:

20 Ms. Chin-Li Mou
21 4141 Boneso Circle
22 San Jose, CA 95134
23 Telephone: (408) 954-8085

24 Plaintiff in Pro Se

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct. Executed on December 6, 2007, at San Jose, California.

27 
28 Cecilia McDaniel