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 GREG CORRALES, JOHN SYME

7 UNITED STATES DISTRICT COURT
 8
 9 NORTHERN DISTRICT OF CALIFORNIA

10 ADAM SNYDER and JADE SANTORO,

Case No. Case No. C03-4927 JSW

11 Plaintiffs,

12 vs.

**ANSWER OF DEFENDANT DAVID
 ROBINSON TO FIRST AMENDED
 COMPLAINT FOR DAMAGES;
 DEMAND FOR TRIAL BY JURY**

13 CITY AND COUNTY OF SAN
 14 FRANCISCO, EARL SANDERS,
 individually and in his official capacity as
 15 Chief of Police for the San Francisco
 Police Department, ALEX FAGAN, SR.,
 16 individually and in his official capacity as
 Deputy Chief of Police for the San
 17 Francisco Police Department, DAVID
 ROBINSON, individually and in his
 18 official capacity as Deputy Chief of Police
 for the San Francisco Police Department,
 19 GREG CORRALES, individually and in
 his official capacity as Captain of the San
 20 Francisco Police Department, JOHN
 SYME, individually and in his official
 21 capacity as Sergeant of the San Francisco
 Police Department, and DOES 1 through
 22 20, et al.,

23 Defendants.

1 Defendant DAVID ROBINSON (“Defendant”) responds to the First Amended Complaint
2 for Damages (“Complaint”) filed by Plaintiffs ADAM SNYDER and JADE SANTORO
3 (collectively, “Plaintiffs”) in this action as follows:

4 1. Paragraph 1 of the Complaint contains no factual allegations, but rather Plaintiffs’
5 legal theories and conclusions concerning jurisdiction and venue, statements to which no
6 response is required. To the extent that a response is deemed required, Defendant denies that he
7 committed any “unlawful acts and practices” alleged in the Complaint. Defendant admits that
8 San Francisco is within the judicial district of this Court. Defendant lacks sufficient information
9 and belief to admit or deny the remaining allegations in Paragraph 1, and on that basis denies
10 each and every remaining allegation.

11 2. Defendant lacks sufficient information and belief to admit or deny the allegations
12 in Paragraph 2 of the Complaint, and on that basis denies each and every such allegation.

13 3. Defendant admits the allegations set forth in Paragraph 3 of the Complaint.

14 4. Defendant admits the allegation in the first sentence of Paragraph 4 of the
15 Complaint that PRENTICE EARL SANDERS was the Chief of Police for the San Francisco
16 Police Department (“SFPD”). Defendant lacks sufficient information and belief to admit or deny
17 the remaining allegations in the first sentence of Paragraph 4 of the Complaint, because the
18 phrase “at all relevant times,” is vague and ambiguous. On this basis, Defendant denies the
19 remaining allegations in the first sentence of Paragraph 4. The phrase “at all times” in the last
20 sentence of Paragraph 4 is similarly vague and ambiguous. The remainder of Paragraph 4
21 contains no factual allegations, but rather Plaintiffs’ legal theories and conclusions, statements to
22 which no response is required. To the extent a response is deemed required, Defendant denies
23 each and every remaining allegation in Paragraph 4.

24 5. Defendant denies the allegations in the first sentence of Paragraph 5 of the
25 Complaint that ALEX FAGAN, SR., was a “Deputy Chief of Police” for the SFPD. Alex Fagan,
26 Sr. was the Captain of Northern Station before he became Assistant Chief. Defendant lacks
27 sufficient information and belief to admit or deny the remaining allegations in the first sentence
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1 of Paragraph 5 because the phrase “at all relevant times,” is vague and ambiguous. On this basis,
2 Defendant denies the remaining allegations in the first sentence of Paragraph 5. The phrase “at
3 all times” in the last sentence of Paragraph 5 is similarly vague and ambiguous. The remainder
4 of Paragraph 5 contains no factual allegations, but rather Plaintiffs’ legal theories and
5 conclusions, statements to which no response is required. To the extent a response is deemed
6 required, Defendant denies the remaining allegations in Paragraph 5.

7 6. Defendant admits the allegation in the first sentence of Paragraph 6 of the
8 Complaint that he was a Deputy Chief of Police for the SFPD. Defendant lacks sufficient
9 information and belief to admit or deny the remaining allegations in the first sentence of
10 Paragraph 6, because the phrase “at all relevant times,” is vague and ambiguous. On this basis,
11 Defendant denies the remaining allegations in the first sentence of Paragraph 6. The phrase “at
12 all times” in the second sentence of Paragraph 6 is similarly vague and ambiguous. Defendant
13 denies that he was “either a policy maker or final decision maker for the City and County of San
14 Francisco.” The remainder of Paragraph 6 contains no factual allegations, but rather Plaintiffs’
15 legal theories and conclusions, statements to which no response is required. To the extent a
16 response is deemed required, Defendant denies the remaining allegations in Paragraph 6.

17 7. Defendant admits the allegations in the first sentence of Paragraph 7 of the
18 Complaint that GREG CORRALES was a Captain in the SFPD. Defendant lacks sufficient
19 information and belief to admit or deny the remaining allegations in the first sentence of
20 Paragraph 7 because the phrase “at all relevant times,” is vague and ambiguous. On this basis,
21 Defendant denies the remaining allegations in the first sentence of Paragraph 7. The phrase “at
22 all times” in the second sentence of Paragraph 7 is similarly vague and ambiguous. The
23 remainder of Paragraph 7 contains no factual allegations, but rather Plaintiffs’ legal theories and
24 conclusions, statements to which no response is required. To the extent a response is deemed
25 required, Defendant denies the remaining allegations in Paragraph 7.

26 8. Defendant admits the allegations in the first sentence of Paragraph 8 of the
27 Complaint that JOHN SYME was a Sergeant in the SFPD. Defendant lacks sufficient
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1 information and belief to admit or deny the remaining allegations in the first sentence of
2 Paragraph 8 because the phrase “at all relevant times,” is vague and ambiguous. On this basis,
3 Defendant denies the remaining allegations in the first sentence of Paragraph 8. The phrase “at
4 all times” in the second sentence of Paragraph 8 is similarly vague and ambiguous. The
5 remainder of Paragraph 8 contains no factual allegations, but rather Plaintiffs’ legal theories and
6 conclusions, statements to which no response is required. To the extent a response is deemed
7 required, Defendant denies the remaining allegations in Paragraph 8.

8 9. Defendant denies the allegation in Paragraph 9 of the Complaint that Defendant
9 “engaged in the conduct described in this complaint.” The remainder of Paragraph 9 of the
10 Complaint contains no factual allegations, but rather Plaintiffs’ legal theories and conclusions,
11 statements to which no response is required. To the extent a response is deemed required,
12 Defendant lacks sufficient information and belief to admit or deny the allegations which are
13 vague and on this basis, denies each and every remaining allegation in Paragraph 9.

14 10. Defendant lacks sufficient information and belief to admit or deny the allegations
15 in Paragraph 10 of the Complaint and on this basis, denies each and every remaining allegation
16 in Paragraph 10.

17 11. Defendant denies the allegation in Paragraph 11 of the Complaint that he is
18 “responsible in some manner for the damages alleged” in the Complaint. Defendant lacks
19 sufficient information and belief to admit or deny the remaining allegations in Paragraph 11, and
20 on that basis denies each and every remaining allegation in Paragraph 11.

21 12. Paragraph 12 of the Complaint contains no factual allegations, but rather
22 Plaintiffs’ demand for a jury trial, a statement to which no response is required.

23 13. Defendant denies each and every allegation set forth in Paragraph 13 of the
24 Complaint.

25 14. Defendant denies each and every allegation set forth in Paragraph 14 of the
26 Complaint.

1 15. Defendant denies each and every allegation set forth in Paragraph 15 of the
2 Complaint.

3 16. Defendant denies each and every allegation set forth in Paragraph 16 of the
4 Complaint.

5 17. Paragraph 17 contains no factual allegations but rather, Plaintiff's legal theories
6 and conclusions, statements to which no response is required. To the extent a response is
7 deemed necessary, Defendant denies each and every allegation in Paragraph 17.

8 18. Defendant admits the allegations in Paragraph 18 of the Complaint that: on
9 November 20, 2002, Alex Fagan, Jr., David Lee and Matthew Tonsing were employed as police
10 officers for the SFPD; and on November 20, 2002, there was a party celebrating the elevation of
11 ALEX FAGAN, SR. Defendant denies that the elevation was to the position of "Deputy Chief."
12 The elevation of Alex Fagan, Sr. was to the position of Assistant Chief. Defendant lacks
13 sufficient information and belief to admit or deny the remaining allegations in Paragraph 18, and
14 on this basis denies each and every remaining allegation in Paragraph 18.

15 19 - 21. Defendant lacks sufficient information and belief to admit or deny the
16 allegations set forth in Paragraphs 19 through 21 of the Complaint, and on that basis denies each
17 and every allegation in Paragraphs 19 through 21.

18 22. Defendant denies the allegations in Paragraph 22 of the Complaint.

19 23. Defendant denies the allegations in the first sentence of Paragraph 23 of the
20 Complaint.

21 23(a). Defendant lacks sufficient information and belief to admit or deny the
22 allegations set forth in Paragraph 23(a) and on that basis denies each and every allegation
23 contained in Paragraph 23(a) of the Complaint.

24 23(b). Defendant lacks sufficient information and belief to admit or deny the
25 allegations set forth in Paragraph 23(b) and on that basis denies each and every allegation
26 contained in Paragraph 23(b) of the Complaint.

27 24. Defendant denies the allegations in Paragraph 24 of the Complaint.

1 25. Defendant lacks sufficient information and belief to admit or deny the allegations
2 in Paragraph 25 concerning the actions and intentions of unnamed “other officials of the City and
3 County of San Francisco,” and on that basis denies each and every such allegation in Paragraph
4 25. Defendant denies each and every remaining allegation in Paragraph 25.

5 26. Defendant lacks sufficient information and belief to admit or deny the allegations
6 in Paragraph 26 concerning the alleged release of SANTORO’s criminal arrest records, and on
7 that basis denies each and every such allegation. Defendant denies each and every remaining
8 allegation in Paragraph 26 of the Complaint.

9 27. Defendant admits the allegations in Paragraph 27 of the Complaint that: Lt. Dutto
10 was a member of the SFPD for 27 years and that Lt. Dutto was transferred from the SFPD’s
11 General Works Department to the SFPD's Vice Detail. Defendant denies each and every
12 remaining allegation in Paragraph 27.

13 28. In response to Paragraph 28 of the Complaint, Defendant realleges and
14 incorporates by reference his answers to Paragraphs 1 through 27 of the Complaint, as though
15 fully set forth herein.

16 29 - 37. Paragraphs 29 through 37 contain no factual allegations but rather Plaintiffs’
17 legal theories and conclusions, statements to which no response is necessary. To the extent a
18 response is deemed necessary, Defendant denies each and every allegation in Paragraphs 29
19 through 37.

20 38. In response to Paragraph 38 of the Complaint, Defendant realleges and
21 incorporates by reference his answers to Paragraphs 1 through 27, 34 and 35 of the Complaint, as
22 though fully set forth herein.

23 39 - 42. Paragraphs 39 through 42 of the Complaint contain no factual allegations, but
24 rather Plaintiffs’ legal theories and conclusions, statements to which no response is required. To
25 the extent a response is deemed required, Defendant denies each and every allegation in
26 Paragraphs 39 through 42.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 (No Damage To Plaintiffs)

3 As and for a separate, distinct affirmative defense to the Complaint, Defendant denies
4 that Plaintiffs have been damaged in any sum or sums, or otherwise, or at all, by reason of any
5 act or omission of Defendant.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 (Failure to Comply With California Tort Claims Act)

8 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
9 that to the extent Plaintiffs failed to comply with provisions of the California Tort Claims Act of
10 the California Government Code (Government Code §810 *et seq.*), Plaintiffs' Complaint is
11 barred.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 (Good Faith)

14 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
15 that Defendant and his agents were at all times material hereto acting with both subjective and
16 objective good faith, such that any claim for relief that Plaintiffs may have is barred by law.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 (Estoppel)

19 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges that by
20 reason of Plaintiffs' own acts and omissions, Plaintiffs are estopped from seeking any recovery
21 from Defendant by reason of the allegations set forth in the Complaint.

22 **NINTH AFFIRMATIVE DEFENSE**

23 (Unclean Hands)

24 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
25 that the Complaint and each cause of action therein are barred by the doctrine of unclean hands.

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1 **TENTH AFFIRMATIVE DEFENSE**

2 (Waiver)

3 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
4 that by reason of Plaintiffs’ own acts and omissions, Plaintiffs have waived any right to recovery
5 from Defendant by reason of the allegations set forth in the Complaint.

6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 (Common Law Immunity)

8 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
9 that Defendant, as a member of the SFPD, is immune from any liability therein under the
10 common law doctrine of immunity of police officers executing statutes in good faith, which
11 statutes are presumed valid at the time of such execution.

12 **TWELFTH AFFIRMATIVE DEFENSE**

13 (No Constitutional Violation)

14 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
15 that the Complaint fails to state a violation of any of the provisions of the United States
16 Constitution cited by Plaintiffs and applicable to this action.

17 **THIRTEENTH AFFIRMATIVE DEFENSE**

18 (No Discrimination Against Plaintiffs)

19 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
20 that Defendant in no way based his decisions and actions at issue herein, or his treatment of
21 Plaintiffs, on any group or identification to which Plaintiffs might belong including race, gender,
22 sexual orientation, political affiliation, political beliefs, or any other classification. At all times,
23 Defendant and his agents acted properly in valid law enforcement activities.

24 **FOURTEENTH AFFIRMATIVE DEFENSE**

25 (Qualified/Absolute Immunity)

26 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
27 that he enjoys qualified immunity, and/or absolute immunity against each and every one of
28 Plaintiffs’ federal claims.

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 (Discretionary Immunity)

3 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
4 that he enjoys discretionary immunity pursuant to California Government Code §820.2 against
5 each and every one of Plaintiffs’ state claims.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 (Frivolous Lawsuit)

8 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
9 that Plaintiffs’ maintenance of this action is frivolous, vexatious and unreasonable, thereby
10 entitling Defendant to sanctions and appropriate remedies (including without limitation
11 attorney’s fees) against Plaintiffs.

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 (No Intent to Harm)

14 As a separate and affirmative defense to the Complaint and to each and every allegation
15 contained therein, Defendant alleges that at all times and places mentioned in the Complaint,
16 Defendant acted without malice and with a good faith belief in the propriety of their conduct, and
17 did not intend to harm or deprive Plaintiffs of any rights under federal or state constitutions, or
18 federal or state statutes.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 (Discharge of Duties in Good Faith)

21 As a separate and affirmative defense to the Complaint and to each and every allegation
22 set forth therein, Defendant alleges that at all times mentioned in the Complaint, Defendant
23 performed and discharged in good faith each and every obligation, if any, owed to Plaintiffs.

24 **NINETEENTH AFFIRMATIVE DEFENSE**

25 (Privilege, Justification)

26 As a separate and affirmative defense to the Complaint and to each and every allegation
27 contained therein, Defendant alleges that his conduct at all times material herein was privileged
28 and/or justified under applicable law.

1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 (Supervening Events)

3 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
4 that any injury suffered by Plaintiffs was caused by supervening events over which Defendant
5 had no control.

6 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

7 (Comparative Negligence)

8 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges by
9 way of a plea of comparative negligence that Plaintiffs were negligent in and about the matters
10 and activities alleged in said Complaint; that said negligence contributed to and was a proximate
11 cause of Plaintiffs' alleged injuries and damages, if any, or was the sole cause thereof; and that if
12 Plaintiffs are entitled to recover damages against this Defendant by virtue of said Complaint,
13 Defendant prays that the recovery be diminished or extinguished by reason of the negligence of
14 the Plaintiffs in proportion to the degree of fault attributable to the Plaintiffs.

15 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

16 (Plaintiffs' Recklessness)

17 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
18 that at all times mentioned in Plaintiffs' Complaint herein, Plaintiffs acted in a careless, reckless,
19 wanton and negligence manner in and about the matters set forth in the Complaint; that such
20 careless, reckless, wanton and negligent conduct proximately contributed to the injuries and
21 damages, if any, sustained or claimed by Plaintiffs; that as a consequence, Plaintiffs' claims are
22 barred.

23 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

24 (Fault of Others)

25 As and for a separate, distinct affirmative defense to the Complaint, Defendant alleges
26 that the fault of persons other than Defendant contributed to and proximately caused the
27 occurrence; and that under the principles formulated in the case of American Motorcycle
28 Association v. Superior Court (1978) 20 Cal. 3d 578, Defendants pray that the percentage of

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DEMAND FOR JURY TRIAL

Defendant DAVID ROBINSON hereby demands a jury trial.

DATED: June 8, 2005

Respectfully Submitted,

Moscone, Emblidge & Quadra LLP

By: _____ /s/
JAMES A. QUADRA
LINA R. GUILLEN

Attorneys for PRENTICE EARL SANDERS,
DAVID ROBINSON, GREG CORRALES, and
JOHN SYME

1 **PROOF OF SERVICE**

2 I, Laura Helland, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to the
4 within entitled action.

5 On June 8, 2005, I served the attached:

- 6 • **ANSWER OF DEFENDANT PRENTICE EARL SANDERS TO FIRST
7 AMENDED COMPLAINT FOR DAMAGES; DEMAND FOR TRIAL BY JURY**

8 on the interested party(ies) named below:

9 Eric M. Safire, Esq.
10 Law Offices of Eric M. Safire
2431 Fillmore Street
San Francisco, California 94115

11 I served the attached document(s) in the manner indicated below:

12 **BY MAIL:** I caused true and correct copy(ies) of the above documents to be placed and sealed in
13 envelope(s) addressed to the addressee(s) named above and, following ordinary business practices, placed
14 said envelope(s) at the Law Offices of Moscone, Emblidge & Quadra, LLP, 180 Montgomery, Ste. 1240,
San Francisco, California, 94104, for collection and mailing with the United States Postal Service and there
is delivery by the United States Post Office at said address(es). In the ordinary course of business,
correspondence placed for collection on a particular day is deposited with the United States Postal Service
that same day.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed June 8, 2005, at San Francisco, California.

18 _____
19 /s/
Laura Helland