

1 RICHARD DOYLE, City Attorney (#88625)  
 NORA FRIMANN, Chief Trial Attorney (#93249)  
 2 MICHAEL R. GROVES, Senior Deputy City Attorney (#85620)  
 CLIFFORD S. GREENBERG, Senior Deputy City Attorney (#122612)  
 3 Office of the City Attorney  
 151 West Mission Street  
 4 San Jose, California 95110  
 Telephone: (408) 277-4454

5 Attorneys for Defendants  
 6 CITY OF SAN JOSE, CHAD MARSHALL, WILLIAM LANSDOWNE,  
 THOMAS WHEATLEY and ROBERT L. DAVIS

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8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

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11 ESTATE OF CAU BICH TRAN, TOMMY  
 BUI, a minor, by and through his  
 12 Guardian ad Litem, DANG QUANG BUI,  
 TONI BUI, a minor, by and through his  
 13 Guardian ad Litem, DAN QUANG BUI,  
 NGUYEN THI HOANG, and KIM MANH  
 14 TRAN,

CASE NO.: C03-04997

**DEFENDANTS' ANSWER TO FIRST  
 AMENDED COMPLAINT FOR  
 DAMAGES**

**JURY TRIAL DEMANDED**

Plaintiffs,

vs.

17 CITY OF SAN JOSE, CHAD  
 MARSHALL, individually and in his  
 18 capacity as a police officer for the City of  
 San Jose, WILLIAM LANSDOWNE,  
 19 individually and in his official capacity as  
 Chief or the San Jose Police Department,  
 20 THOMAS WHEATLEY, individually and  
 in his official capacity as Acting Chief of  
 21 the San Jose Police Department,  
 ROBERT L. DAVIS, individually and in  
 22 his official capacity as Chief of the San  
 Jose Police Department, and DOES 1  
 23 through 50,

Defendants.

24

25 In answer to the First Amended Complaint on file herein, Defendants, CITY OF SAN  
 26 JOSE, CHAD MARSHALL, WILLIAM LANSDOWNE, THOMAS WHEATLEY, and ROBERT L.  
 27 DAVIS respond as follows:

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1           1.       In answer to Paragraph 1 of the First Amended Complaint, Defendants admit  
2 that Plaintiffs claim federal and state law violations but deny the substance of such claims.  
3 Defendants admit that the Court has jurisdiction over the federal claims.

4           2.       In answer to Paragraph 2 of the First Amended Complaint, Defendants admit  
5 that venue is proper.

6           3.       In answer to Paragraph 3 of the First Amended Complaint, Defendants  
7 acknowledge that Plaintiffs demand a jury trial.

8           4.       In answer to Paragraph 4 of the First Amended Complaint, Defendants are  
9 without information and belief as to the allegations contained therein, and on that basis, deny  
10 such allegations.

11          5.       In answer to Paragraph 5 of the First Amended Complaint, Defendants are  
12 without information and belief as to the allegations contained therein, and on that basis, deny  
13 such allegations.

14          6.       In answer to Paragraph 6 of the First Amended Complaint, Defendants are  
15 without information and belief as to the allegations contained therein, and on that basis, deny  
16 such allegations.

17          7.       In answer to Paragraph 7 of the First Amended Complaint, Defendants are  
18 without information and belief as to the allegations contained therein, and on that basis, deny  
19 such allegations.

20          8.       In answer to Paragraph 8 of the First Amended Complaint, Defendants are  
21 without information and belief as to the allegations contained therein, and on that basis, deny  
22 such allegations.

23          9.       In answer to Paragraph 9 of the First Amended Complaint, Defendants admit  
24 that the City of San Jose is a public entity and that the San Jose Police Department is a  
25 Department of the City of San Jose.

26          10.      In answer to Paragraph 10 of the First Amended Complaint, Defendants admit  
27 that Chad Marshall was a police officer employed by the City of San Jose at the time of the  
28

1 subject incident, and was acting in the course and scope of his employment as such.

2 Defendants deny the remainder of the allegations contained in Paragraph 10.

3 11. In answer to Paragraph 11 of the First Amended Complaint, Defendants admit  
4 that William Lansdowne was the Police Chief of the City of San Jose at the time of the subject  
5 incident. Defendants deny the remainder of the allegations contained in Paragraph 11.

6 12. In answer to Paragraph 12 of the First Amended Complaint, Defendants admit  
7 that after the subject incident Thomas Wheatley was named Acting Police Chief of the City of  
8 San Jose. Defendants deny the remainder of the allegations contained in Paragraph 12.

9 13. In answer to Paragraph 13 of the First Amended Complaint, Defendants admit  
10 that on or about January 22, 2003, Robert L. Davis was sworn in as Chief of Police of the City  
11 of San Jose. Defendants deny the remainder of the allegations contained in Paragraph 13.

12 14. In answer to Paragraph 14 of the First Amended Complaint, Defendants are  
13 without information and belief as to the allegations contained therein, and on that basis, deny  
14 such allegations.

15 15. In answer to Paragraph 15 of the First Amended Complaint, Defendants deny  
16 such allegations.

17 16. In answer to Paragraph 16 of the First Amended Complaint, Defendants admit  
18 that Officer Chad Marshall shot Cau Bich Tran. Defendants deny the remainder of the  
19 allegations contained therein.

20 17. In answer to Paragraph 17 of the First Amended Complaint, Defendants are  
21 without information and belief as to the allegations contained therein, and on that basis, deny  
22 such allegations.

23 18. In answer to Paragraph 18 of the First Amended Complaint, Defendants are  
24 without information and belief as to the allegations contained therein, and on that basis, deny  
25 such allegations.

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1           19.    In answer to Paragraph 19 of the First Amended Complaint, Defendants are  
2 without information and belief as to the allegations contained therein, and on that basis, deny  
3 such allegations.

4           20.    In answer to Paragraph 20 of the First Amended Complaint, Defendants deny  
5 such allegations.

6           21.    In answer to Paragraph 21 of the First Amended Complaint, Defendants deny  
7 such allegations.

8           22.    In answer to Paragraph 22 of the First Amended Complaint, Defendants deny  
9 such allegations.

10          23.    In answer to Paragraph 23 of the First Amended Complaint, Defendants deny  
11 such allegations.

12          24.    In answer to Paragraph 24 of the First Amended Complaint, Defendants deny  
13 such allegations.

14          25.    In answer to Paragraph 25 of the First Amended Complaint, Defendants deny  
15 such allegations.

16          26.    In answer to Paragraph 26 of the First Amended Complaint, Defendants deny  
17 such allegations.

18          27.    In answer to Paragraph 27 of the First Amended Complaint, Defendants deny  
19 such allegations.

20          28.    In answer to Paragraph 28 of the First Amended Complaint, Defendants deny  
21 such allegations.

22          29.    In answer to Paragraph 29 of the First Amended Complaint, Defendants deny  
23 such allegations.

24          30.    In answer to Paragraph 30 of the First Amended Complaint, Defendants deny  
25 such allegations.

26          31.    In answer to Paragraph 31 of the First Amended Complaint, Defendants deny  
27 such allegations.

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1           32.    In answer to Paragraph 32 of the First Amended Complaint, Defendants  
2 respond to the incorporated allegations as set forth previously.

3           33.    In answer to Paragraph 33 of the First Amended Complaint, Defendants deny  
4 such allegations.

5           34.    In answer to Paragraph 34 of the First Amended Complaint, Defendants deny  
6 such allegations.

7           35.    In answer to Paragraph 35 of the First Amended Complaint, Defendants deny  
8 such allegations.

9           36.    In answer to Paragraph 36 of the First Amended Complaint, Defendants  
10 respond to the incorporated allegations as set forth previously.

11          37.    In answer to Paragraph 37 of the First Amended Complaint, Defendants deny  
12 such allegations.

13          38.    In answer to Paragraph 38 of the First Amended Complaint, Defendants deny  
14 such allegations.

15          39.    In answer to Paragraph 39 of the First Amended Complaint, Defendants deny  
16 such allegations.

17          40.    In answer to Paragraph 40 of the First Amended Complaint, Defendants  
18 respond to the incorporated allegations as set forth previously.

19          41.    In answer to Paragraph 41 of the First Amended Complaint, Defendants deny  
20 such allegations.

21          42.    In answer to Paragraph 42 of the First Amended Complaint, Defendants  
22 respond to the incorporated allegations as set forth previously.

23          43.    In answer to Paragraph 43 of the First Amended Complaint, Defendants deny  
24 such allegations.

25          44.    In answer to Paragraph 44 of the First Amended Complaint, Defendants  
26 respond to the incorporated allegations as set forth previously.

27          45.    In answer to Paragraph 45 of the First Amended Complaint, Defendants deny  
28 such allegations.

1           46.    In answer to Paragraph 46 of the First Amended Complaint, Defendants deny  
2 such allegations.

3           47.    In answer to Paragraph 47 of the First Amended Complaint, Defendants deny  
4 such allegations.

5           48.    In answer to Paragraph 48 of the First Amended Complaint, Defendants deny  
6 such allegations.

7           49.    In answer to Paragraph 49 of the First Amended Complaint, Defendants  
8 respond to the incorporated allegations as set forth previously.

9           50.    In answer to Paragraph 50 of the First Amended Complaint, Defendants deny  
10 such allegations.

11          51.    In answer to Paragraph 51 of the First Amended Complaint, Defendants deny  
12 such allegations.

13          52.    In answer to Paragraph 52 of the First Amended Complaint, Defendants deny  
14 such allegations.

15          53.    In answer to Paragraph 53 of the First Amended Complaint, Defendants  
16 respond to the incorporated allegations as set forth previously.

17          54.    In answer to Paragraph 54 of the First Amended Complaint, Defendants deny  
18 such allegations.

19          55.    In answer to Paragraph 55 of the First Amended Complaint, Defendants deny  
20 such allegations.

21          56.    In answer to Paragraph 56 of the First Amended Complaint, Defendants deny  
22 such allegations.

23          57.    In answer to Paragraph 57 of the First Amended Complaint, Defendants deny  
24 such allegations.

25          58.    In answer to Paragraph 58 of the First Amended Complaint, Defendants deny  
26 such allegations.

27          59.    In answer to Paragraph 59 of the First Amended Complaint, Defendants deny  
28 such allegations.



1 AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, these answering Defendants allege  
2 that Plaintiffs' First Amended Complaint is barred in that Plaintiffs failed to comply with the  
3 claims filing provisions of Government Code § 900, et seq.

4 AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, these answering Defendants  
5 allege that Plaintiffs' First Amended Complaint is barred by the applicable statutes of  
6 limitation.

7 AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE, these answering Defendants  
8 allege that their conduct was privileged and not wrongful since they were acting in self-  
9 defense.

10 AS FOR A NINTH AFFIRMATIVE DEFENSE, these answering Defendants allege that  
11 their conduct was privileged and not wrongful since they were acting in the defense of others.

12 AS FOR A TENTH AFFIRMATIVE DEFENSE, these answering Defendants allege that  
13 the shooting of the decedent was the result of her negligent and/or criminal conduct and that  
14 said actions of decedent were the sole and proximate cause of the injuries and damages  
15 alleged by the Plaintiffs in this case.

16 AS FOR AN ELEVENTH AFFIRMATIVE DEFENSE, these answering Defendants  
17 allege that the individual Defendants, including those who are presently designated as Does,  
18 are entitled to immunity from Plaintiffs' First Amended Complaint by virtue of the provisions of  
19 Government Code of the State of California, Section 800 through 1000, including, but not  
20 limited to Sections 820.2, 820.4, 820.6, 820.8, 821, 821.6 and 822.2.

21 AS FOR A TWELFTH AFFIRMATIVE DEFENSE, these answering Defendants allege  
22 that the shooting of decedent was lawful and justified under the facts of the case.

23 AS FOR A THIRTEENTH AFFIRMATIVE DEFENSE, these answering Defendants  
24 allege that they are protected by the affirmative defenses provided by California Penal Code  
25 Sections 197, 834(a), 835 and 835(a).

26 WHEREFORE, these answering Defendants pray:

- 27 1. That Plaintiffs take nothing by their Amended Complaint;
- 28 2. That Plaintiffs' First Amended Complaint be dismissed with prejudice;

