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 10 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

11 CAREY L. JOHNSON,
 12
 Plaintiff,
 13
 v.
 14 UNITED STATES OF AMERICA, ET
 AL.,
 15
 Defendants.

Case No.: 18-cv-2178-BEN-WVG

**DEFENDANT’S ANSWER TO
 PLAINTIFF’S FIRST AMENDED
 COMPLAINT**

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 20 COMES NOW Defendant the United States of America, by and through its
 21 attorneys, Robert S. Brewer, Jr., United States Attorney, and Kyle W. Hoffman,
 22 Assistant United States Attorney, and hereby files its Answer to Plaintiff’s First
 23 Amended Complaint (FAC):

24
 25 **PARTIES**

26 1. Answering Paragraph 1 of Plaintiff’s FAC, Defendant is without
 27 knowledge or information sufficient to form a belief as to the truth of those allegations,
 28 and so denies them.

1 2. Answering Paragraph 2 of Plaintiff's FAC, Defendant admits the
2 substantial truth of the allegations in this paragraph.

3 3. Answering Paragraph 3 of Plaintiff's FAC, Defendant admits that Customs
4 and Border Protection is an operational component of the Department of Homeland
5 Security, and that CBP operates in San Diego County. As to the remainder of the
6 paragraph's allegations, Defendant denies them.

7 4. Answering Paragraph 4 of Plaintiff's FAC, Defendant is without
8 knowledge or information sufficient to form a belief as to the truth of those allegations,
9 and so denies them.

10 5. Answering Paragraph 5 of Plaintiff's FAC, Defendant is without
11 knowledge or information sufficient to form a belief as to the truth of those allegations,
12 and so denies them.

13 6. Answering Paragraph 6 of Plaintiff's FAC, Defendant is without
14 knowledge or information sufficient to form a belief as to the truth of those allegations,
15 and so denies them.

16 **JURISDICTION AND VENUE**

17 7. Answering Paragraph 7 of Plaintiff's FAC, Defendant alleges that this
18 paragraph contains legal conclusions, to which no answer is required. To the extent an
19 answer is required, Defendant denies the allegations in this paragraph.

20 8. Answering Paragraph 8 of Plaintiff's FAC, Defendant alleges that this
21 paragraph contains legal conclusions as to subject matter jurisdiction to which no
22 answer is required. To the extent an answer is required, Defendant denies the
23 allegations in this paragraph.

24 9. Answering Paragraph 9 of Plaintiff's FAC, Defendant alleges that this
25 paragraph contains legal conclusions as to venue to which no answer is required. To
26 the extent an answer is required, Defendant denies the allegations in this paragraph.
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1 10. Answering Paragraph 10 of Plaintiff's FAC, Defendant admits that
2 Plaintiff submitted a claim that Customs and Border Protection received on or about
3 March 1, 2018.

4 11. Answering Paragraph 11 of Plaintiff's FAC, Defendant is without
5 knowledge or information sufficient to form a belief as to the truth of those allegations,
6 and so denies them.

7 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

8 12. Answering Paragraph 12 of Plaintiff's FAC, Defendant is without
9 knowledge or information sufficient to form a belief as to the truth of those allegations,
10 and so denies them.

11 13. Answering Paragraph 13 of Plaintiff's FAC, Defendant is without
12 knowledge or information sufficient to form a belief as to the truth of those allegations,
13 and so denies them.

14 14. Answering Paragraph 14 of Plaintiff's FAC, Defendant is without
15 knowledge or information sufficient to form a belief as to the truth of those allegations,
16 and so denies them.

17 15. Answering Paragraph 15 of Plaintiff's FAC, Defendant admits the
18 substantial truth of the allegations of this paragraph.

19 16. Answering Paragraph 16 of Plaintiff's FAC – as this Paragraph apparently
20 concerns what Plaintiff knows or believes about procedures at the Port of Entry for
21 accommodating emergencies, or medical or disability issues, rather than what those
22 procedures actually are – Defendant is without knowledge or information sufficient to
23 form a belief as to the truth of those allegations, and so denies them.

24 17. Answering Paragraph 17 of Plaintiff's FAC, Defendant admits that on
25 September 22, 2016, Plaintiff entered the United States at the San Ysidro Port of Entry
26 (SYS POE) through the SENTRI lane, presented his passport and another document,
27 and was sent to secondary inspection. As to the remainder of the paragraph's
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1 allegations, Defendant is without knowledge or information sufficient to form a belief
2 as to the truth of those allegations, and so denies them.

3 18. Answering Paragraph 18 of Plaintiff's FAC, Defendant denies that Officer
4 Murillo made the statements contained in this paragraph. As to the remainder of the
5 paragraph's allegations, Defendant is without knowledge or information sufficient to
6 form a belief as to the truth of those allegations, and so denies them.

7 19. Answering Paragraph 19 of Plaintiff's FAC, Defendant is without
8 knowledge or information sufficient to form a belief as to the truth of those allegations,
9 and so denies them.

10 20. Answering Paragraph 20 of Plaintiff's FAC, Defendant admits that on
11 September 23, 2016, Plaintiff entered the United States at the SYS POE through the
12 SENTRI lane, and was sent to secondary inspection. As to the remainder of the
13 paragraph's allegations, Defendant is without knowledge or information sufficient to
14 form a belief as to the truth of those allegations, and so denies them.

15 21. Answering Paragraph 21 of Plaintiff's FAC, Defendant is without
16 knowledge or information sufficient to form a belief as to the truth of those allegations,
17 and so denies them.

18 22. Answering Paragraph 22 of Plaintiff's FAC, Defendant is without
19 knowledge or information sufficient to form a belief as to the truth of those allegations,
20 and so denies them.

21 23. Answering Paragraph 23 of Plaintiff's FAC, Defendant admits that Officer
22 Ferguson spoke with Plaintiff at the SYS POE on September 23, 2016. As to the
23 remainder of the paragraph's allegations, Defendant is without knowledge or
24 information sufficient to form a belief as to the truth of those allegations, and so denies
25 them.

26 24. Answering Paragraph 24 of Plaintiff's FAC, Defendant denies the allegations
27 of this paragraph.
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1 25. Answering Paragraph 25 of Plaintiff's FAC, Defendant admits that on
2 September 23, 2016, Plaintiff again entered the United States at the SYS POE through
3 the SENTRI lane, and was sent to secondary inspection. As to the remainder of the
4 paragraph's allegations, Defendant is without knowledge or information sufficient to
5 form a belief as to the truth of those allegations, and so denies them.

6 26. Answering Paragraph 26 of Plaintiff's FAC, Defendant admits that on
7 September 23, 2016, Plaintiff again entered the United States at the SYS POE through
8 the SENTRI lane, and was sent to secondary inspection. As to the remainder of the
9 paragraph's allegations, Defendant is without knowledge or information sufficient to
10 form a belief as to the truth of those allegations, and so denies them.

11 27. Answering Paragraph 27 of Plaintiff's FAC, Defendant is without
12 knowledge or information sufficient to form a belief as to the truth of those allegations,
13 and so denies them.

14 28. Answering Paragraph 28 of Plaintiff's FAC, Defendant is without
15 knowledge or information sufficient to form a belief as to the truth of those allegations,
16 and so denies them.

17 29. Answering Paragraph 29 of Plaintiff's FAC, Defendant is without
18 knowledge or information sufficient to form a belief as to the truth of those allegations,
19 and so denies them.

20 30. Answering Paragraph 30 of Plaintiff's FAC, Defendant is without
21 knowledge or information sufficient to form a belief as to the truth of those allegations,
22 and so denies them.

23 31. Answering Paragraph 31 of Plaintiff's FAC, Defendant admits that
24 Plaintiff was warned that if he continued to use the SENTRI lines without being
25 properly enrolled in the SENTRI program (which Plaintiff was not), he would be fined.
26 As to the remainder of the paragraph's allegations, Defendant is without knowledge or
27 information sufficient to form a belief as to the truth of those allegations, and so denies
28 them.

1 32. Answering Paragraph 32 of Plaintiff’s FAC, Defendant admits that Plaintiff
2 paid a \$5,000 fine for repeated unauthorized use of the SENTRI lanes, which fine was
3 later mitigated to \$500. As to the remainder of the paragraph’s allegations, Defendant
4 is without knowledge or information sufficient to form a belief as to the truth of those
5 allegations, and so denies them.

6 33. Answering Paragraph 33 of Plaintiff’s FAC, Defendant admits that
7 Plaintiff received a receipt for payment of the \$5,000 fine. Defendant denies the
8 remaining allegations of this paragraph.

9 34. Answering Paragraph 34 of Plaintiff’s FAC, Defendant is without
10 knowledge or information sufficient to form a belief as to the truth of those allegations,
11 and so denies them.

12 35. Answering Paragraph 35 of Plaintiff’s FAC, Defendant is without
13 knowledge or information sufficient to form a belief as to the truth of those allegations,
14 and so denies them.

15 36. Answering Paragraph 36 of Plaintiff’s FAC, Defendant is without
16 knowledge or information sufficient to form a belief as to the truth of those allegations,
17 and so denies them.

18 37. Answering Paragraph 37 of Plaintiff’s FAC, Defendant is without
19 knowledge or information sufficient to form a belief as to the truth of those allegations,
20 and so denies them.

21 38. Answering Paragraph 38 of Plaintiff’s FAC, Defendant is without
22 knowledge or information sufficient to form a belief as to the truth of those allegations,
23 and so denies them.

24 39. Answering Paragraph 39 of Plaintiff’s FAC, Defendant is without
25 knowledge or information sufficient to form a belief as to the truth of those allegations,
26 and so denies them.

27 40. Answering Paragraph 40 of Plaintiff’s FAC, Defendant denies the
28 allegations of this paragraph.

1 41. Answering Paragraph 41 of Plaintiff's FAC, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of those allegations,
3 and so denies them.

4 42. Answering Paragraph 42 of Plaintiff's FAC, Defendant admits that on
5 October 31, 2016, Plaintiff departed the Otay Mesa Port of Entry in an ambulance. As
6 to the remaining allegations in the paragraph, Defendant is without knowledge or
7 information sufficient to form a belief as to the truth of those allegations, and so denies
8 them.

9 43. Answering Paragraph 43 of Plaintiff's FAC, Defendant admits that
10 Plaintiff used the SENTRI lane without authorization on November 1, 2016. As to the
11 remaining allegations in the paragraph, Defendant is without knowledge or information
12 sufficient to form a belief as to the truth of those allegations, and so denies them.

13 44. Answering Paragraph 44 of Plaintiff's FAC, Defendant is without
14 knowledge or information sufficient to form a belief as to the truth of Plaintiff's
15 allegations concerning his perceptions of how the officers reacted to his claim of crisis.
16 As to the remaining allegations of this paragraph, Defendant denies them.

17 45. Answering Paragraph 45 of Plaintiff's FAC, Defendants admit that
18 Plaintiff locked the doors and rolled up the windows of his vehicle in the secondary
19 inspection area. As to the remaining allegations in the paragraph, Defendant is without
20 knowledge or information sufficient to form a belief as to the truth of those allegations,
21 and so denies them.

22 46. Answering Paragraph 46 of Plaintiff's FAC, Defendant is without
23 knowledge or information sufficient to form a belief as to the truth of those allegations,
24 and so denies them.

25 47. Answering Paragraph 47 of Plaintiff's FAC, Defendant denies the
26 allegations of this paragraph.

27 48. Answering Paragraph 48 of Plaintiff's FAC, Defendant denies the
28 allegations of this paragraph.

1 49. Answering Paragraph 49 of Plaintiff's FAC, Defendant denies the
2 allegations of this paragraph.

3 50. Answering Paragraph 50 of Plaintiff's FAC, Defendant admits that
4 Plaintiff left his car keys at the SYS POE. As to the remaining allegations in the
5 paragraph, Defendant is without knowledge or information sufficient to form a belief
6 as to the truth of those allegations, and so denies them.

7 51. Answering Paragraph 51 of Plaintiff's FAC, Defendant is without
8 knowledge or information sufficient to form a belief as to the truth of those allegations,
9 and so denies them.

10 52. Answering Paragraph 52 of Plaintiff's FAC, Defendant admits that
11 Plaintiff's vehicle was held to secure payment of the penalty he incurred for repeated
12 unauthorized use of the SENTRI lanes. As to the remaining allegations in the
13 paragraph, Defendant is without knowledge or information sufficient to form a belief
14 as to the truth of those allegations, and so denies them

15 53. Answering Paragraph 53 of Plaintiff's FAC, Defendant is without
16 knowledge or information sufficient to form a belief as to the truth of those allegations,
17 and so denies them.

18 54. Answering Paragraph 54 of Plaintiff's FAC, Defendant is without
19 knowledge or information sufficient to form a belief as to the truth of those allegations,
20 and so denies them.

21 55. Answering Paragraph 55 of Plaintiff's FAC, Defendant is without
22 knowledge or information sufficient to form a belief as to the truth of those allegations,
23 and so denies them.

24 56. Answering Paragraph 56 of Plaintiff's FAC, Defendant is without
25 knowledge or information sufficient to form a belief as to the truth of those allegations,
26 and so denies them.

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1 57. Answering Paragraph 57 of Plaintiff's FAC, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of those allegations,
3 and so denies them.

4 58. Answering Paragraph 58 of Plaintiff's FAC, Defendant is without
5 knowledge or information sufficient to form a belief as to the truth of those allegations,
6 and so denies them.

7 59. Answering Paragraph 59 of Plaintiff's FAC, Defendant admits that Plaintiff's
8 attorney discussed Plaintiff's case with CBP Attorney Erik Gantzel; Defendant denies,
9 however, CBP Attorney Erik Gantzel at any time indicated to Plaintiff's attorney that
10 Gantzel possessed the authority to waive fines, return Plaintiff's car, or grant reasonable
11 accommodations. As to any remaining allegations in the paragraph, Defendant is
12 without knowledge or information sufficient to form a belief as to the truth of those
13 allegations, and so denies them.

14 60. Answering Paragraph 60 of Plaintiff's FAC, Defendant admits that the
15 Fines, Penalties and Forfeitures office responded to Plaintiff's petition for remission or
16 mitigation, by mitigating the \$5,000 penalty to \$500, and refunding \$4,500 to Plaintiff.

17 61. Answering Paragraph 61 of Plaintiff's FAC, Defendant admits that the
18 Fines Penalties and Forfeitures office mitigated Plaintiff's \$10,000 fine to \$1,000, and
19 required a hold harmless agreement as a condition of such mitigation, but denies that
20 the mitigation decision or hold harmless agreement asked Plaintiff to plead guilty to any
21 charges.

22 62. Answering Paragraph 62 of Plaintiff's FAC, Defendant admits that the
23 phone conference mentioned in this paragraph occurred. As to the remaining
24 allegations in the paragraph, Defendant is without knowledge or information sufficient
25 to form a belief as to the truth of those allegations, and so denies them.

26 63. Answering Paragraph 63 of Plaintiff's FAC, Defendant admits that
27 Plaintiff crossed the border as a pedestrian on December 2, 2017, and that he was sent
28 for a secondary inspection. As to the remaining allegations in the paragraph, Defendant

1 is without knowledge or information sufficient to form a belief as to the truth of those
2 allegations, and so denies them.

3 64. Answering Paragraph 64 of Plaintiff's FAC, Defendant denies the
4 allegations of this paragraph.

5 65. Answering Paragraph 65 of Plaintiff's FAC, Defendant is without
6 knowledge or information sufficient to form a belief as to the truth of those allegations,
7 and so denies them.

8 66. Answering Paragraph 66 of Plaintiff's FAC, Defendant admits that CBP
9 provided Plaintiff with a letter in response to his request for accommodation, outlining
10 the procedures he should follow at the border's pedestrian entry for CBP to
11 accommodate his disability. As to the remaining allegations in the paragraph,
12 Defendant is without knowledge or information sufficient to form a belief as to the truth
13 of those allegations, and so denies them.

14 67. Answering Paragraph 67 of Plaintiff's FAC, Defendant denies the
15 allegations of this paragraph.

16 **First Cause of Action (Bivens: Unlawful Seizure and Use of Excessive Force**
17 **in Violation of the Fourth Amendment)**

18 68. Answering Paragraph 68 of Plaintiff's FAC, Defendant re-alleges the
19 foregoing paragraphs as if fully set forth herein.

20 69. Answering Paragraph 69 of Plaintiff's FAC, Defendant alleges that this
21 paragraph contains Plaintiff's legal conclusions, to which no answer is required. To the
22 extent this paragraph contains any allegations to which an answer is required, Defendant
23 denies them.

24 70. Answering Paragraph 70 of Plaintiff's FAC, Defendant denies the
25 allegations in this paragraph.

26 71. Answering Paragraph 71 of Plaintiff's FAC, Defendant admits that
27 Plaintiff entered the United States on October 31, 2016, via unauthorized use of the
28 SENTRI lane. As to the allegation that Plaintiff experienced an anxiety attack,

1 Defendant is without knowledge or information sufficient to form a belief as to the truth
2 of that allegation, and so denies it. As to the remaining allegations of this paragraph,
3 Defendant denies them.

4 72. Answering Paragraph 72 of Plaintiff's FAC, Defendant admits that on
5 November 1, 2016, CBP seized Plaintiff's vehicle to secure payment of a \$10,000
6 penalty for his repeated, unauthorized use of the SENTRI lane, that Plaintiff was unable
7 to use the vehicle after it was seized, and that on that date, November 1, 2016, Plaintiff
8 departed the SYS POE with paramedics. As to the remaining allegations of this
9 paragraph, Defendant denies them.

10 73. Answering Paragraph 73 of Plaintiff's FAC, Defendant denies Plaintiff
11 entered the United States through pedestrian lanes on December 1, 2017, but admits
12 that he entered on December 2, 2017. As to the remaining allegations of this paragraph,
13 Defendant denies them.

14 74. Answering Paragraph 74 of Plaintiff's FAC, Defendant denies the
15 allegations in this paragraph.

16 **Second Cause of Action (Violation of Section 504 of Rehab Act)**

17 75. Answering Paragraph 75 of Plaintiff's FAC, Defendant re-alleges the
18 foregoing paragraphs as if fully set forth herein

19 76. Answering Paragraph 76 of Plaintiff's FAC, Defendant alleges that this
20 paragraph contains legal conclusions to which no answer is required. To the extent an
21 answer is required, Defendant denies the allegations in this paragraph.

22 77. Answering Paragraph 77 of Plaintiff's FAC, Defendant is without
23 knowledge or information sufficient to form a belief as to the truth of those allegations,
24 and so denies them.

25 78. Answering Paragraph 78 of Plaintiff's FAC, Defendant alleges that this
26 paragraph contains legal assumptions, conclusions, and/or opinions, to which no answer
27 is required. To the extent an answer is required, Defendant denies the allegations in this
28 paragraph.

1 79. Answering Paragraph 79 of Plaintiff's FAC, Defendant denies the
2 allegations in this paragraph.

3 80. Answering Paragraph 80 of Plaintiff's FAC, Defendant denies the
4 allegations in this paragraph.

5 81. Answering Paragraph 81 of Plaintiff's FAC, Defendant denies the
6 allegations in this paragraph.

7 **Third Cause of Action (FTCA: Assault and Battery)**

8 82. Answering Paragraph 82 of Plaintiff's FAC, Defendant re-alleges the
9 foregoing paragraphs as if fully set forth herein.

10 83. Answering Paragraph 83 of Plaintiff's FAC, Defendant denies the allegations
11 in this paragraph.

12 84. Answering Paragraph 84 of Plaintiff's FAC, Defendant denies the allegations
13 in this paragraph.

14 85. Answering Paragraph 85 of Plaintiff's FAC, Defendant alleges that this
15 paragraph contains legal conclusions to which no answer is required. To the extent an
16 answer is required, Defendant denies the allegations in this paragraph.

17 86. Answering Paragraph 86 of Plaintiff's FAC, Defendant alleges that this
18 paragraph contains legal conclusions to which no answer is required. To the extent an
19 answer is required, Defendant denies the allegations in this paragraph.

20 87. Answering Paragraph 87 of Plaintiff's FAC, Defendant denies the
21 allegations in this paragraph.

22 **Fourth Cause of Action (FTCA: False Arrest)**

23 88. Answering Paragraph 88 of Plaintiff's FAC, Defendant re-alleges the
24 foregoing paragraphs as if fully set forth herein.

25 89. Answering Paragraph 89 of Plaintiff's FAC, Defendant admits and alleges
26 that CBP officers lawfully detained Plaintiff during the border inspection process on
27 October 31, 2016 and December 2, 2017. As to any remaining allegations of this
28 paragraph, Defendant denies them.

1 90. Answering Paragraph 90 of Plaintiff's FAC, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of those allegations,
3 and so denies them.

4 91. Answering Paragraph 91 of Plaintiff's FAC, Defendant alleges that this
5 paragraph contains legal conclusions to which no answer is required. To the extent an
6 answer is required, Defendant denies the allegations in this paragraph.

7 92. Answering Paragraph 92 of Plaintiff's FAC, Defendant alleges that this
8 paragraph contains legal conclusions to which no answer is required. To the extent an
9 answer is required, Defendant denies the allegations in this paragraph.

10 93. Answering Paragraph 93 of Plaintiff's FAC, Defendant denies the
11 allegations in this paragraph.

12 **Fifth Cause of Action (FTCA: Negligence/Gross Negligence)**

13 94. Answering Paragraph 94 of Plaintiff's FAC, Defendant re-alleges the
14 foregoing paragraphs as if fully set forth herein.

15 95. Answering Paragraph 95 of Plaintiff's FAC, Defendant alleges that this
16 paragraph contains legal conclusions to which no answer is required. To the extent an
17 answer is required, Defendant denies the allegations in this paragraph.

18 96. Answering Paragraph 96 of Plaintiff's FAC, Defendant denies the
19 allegations in this paragraph.

20 97. Answering Paragraph 97 of Plaintiff's FAC, Defendant alleges that this
21 paragraph contains legal conclusions to which no answer is required. To the extent an
22 answer is required, Defendant denies the allegations in this paragraph.

23 98. Answering Paragraph 98 of Plaintiff's FAC, Defendant denies the
24 allegations in this paragraph.

25 **Sixth Cause of Action (FTCA: Conversion)**

26 99. Answering Paragraph 99 of Plaintiff's FAC, Defendant re-alleges the
27 foregoing paragraphs as if fully set forth herein.

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1 100. Answering Paragraph 100 of Plaintiff's FAC, Defendant admits that on
2 November 1, 2016, CBP seized Plaintiff's vehicle to secure payment of a \$10,000
3 penalty for his repeated, unauthorized use of the SENTRI lane, and that Plaintiff was
4 unable to use the vehicle after it was seized. As to the remaining allegations of this
5 paragraph, Defendant denies them.

6 101. Answering Paragraph 101 of Plaintiff's FAC, Defendant admits that on
7 November 1, 2016, CBP seized Plaintiff's vehicle to secure payment of a \$10,000
8 penalty for his repeated, unauthorized use of the SENTRI lane, and that Plaintiff was
9 unable to use the vehicle after it was seized. As to the remaining allegations of this
10 paragraph, Defendant denies them.

11 102. Answering Paragraph 102 of Plaintiff's FAC, Defendant admits that on
12 November 1, 2016, CBP seized Plaintiff's vehicle to secure payment of a \$10,000
13 penalty for his repeated, unauthorized use of the SENTRI lane, and that Plaintiff was
14 unable to use the vehicle after it was seized. As to the remaining allegations of this
15 paragraph, Defendant denies them.

16 103. Answering Paragraph 103 of Plaintiff's FAC, Defendant alleges that this
17 paragraph contains legal conclusions, to which no answer is required. To the extent an
18 answer is required, Defendant denies the allegations in this paragraph.

19 104. Answering Paragraph 104 of Plaintiff's FAC, Defendant denies the
20 allegations in this paragraph.

21 **Seventh Cause of Action (FTCA: Intentional Infliction of Emotional**
22 **Distress)**

23 105. Answering Paragraph 105 of Plaintiff's FAC, Defendant re-alleges the
24 foregoing paragraphs as if fully set forth herein.

25 106. Answering Paragraph 106 of Plaintiff's FAC, Defendant denies the
26 allegations in this paragraph.

27 107. Answering Paragraph 107 of Plaintiff's FAC, Defendant denies the
28 allegations in this paragraph.

1 108. Answering Paragraph 108 of Plaintiff's FAC, Defendant alleges that this
2 paragraph contains legal conclusions, to which no answer is required. To the extent an
3 answer is required, Defendant denies the allegations in this paragraph.

4 109. Answering Paragraph 109 of Plaintiff's FAC, Defendant denies the
5 allegations in this paragraph.

6 **Eighth Cause of Action (Unruh Act, Calif. Civil Code § 52.1)**

7 110. Answering Paragraph 110 of Plaintiff's FAC, Defendant re-alleges the
8 foregoing paragraphs as if fully set forth herein.

9 111. Answering Paragraph 111 of Plaintiff's FAC, Defendant alleges that this
10 paragraph contains legal conclusions, to which no answer is required. To the extent an
11 answer is required, Defendant denies the allegations in this paragraph.

12 112. Answering Paragraph 112 of Plaintiff's FAC, Defendant alleges that this
13 paragraph contains legal conclusions, to which no answer is required. To the extent an
14 answer is required, Defendant denies the allegations in this paragraph.

15 113. Answering Paragraph 113 of Plaintiff's FAC, Defendant denies the
16 allegations in this paragraph.

17 114. Answering Paragraph 114 of Plaintiff's FAC, Defendant denies the
18 allegations in this paragraph.

19 115. Answering Paragraph 115 of Plaintiff's FAC, Defendant alleges that this
20 paragraph contains legal conclusions, to which no answer is required. To the extent an
21 answer is required, Defendant denies the allegations in this paragraph.

22 116. Answering Paragraph 116 of Plaintiff's FAC, Defendant denies the
23 allegations in this paragraph.

24 **Prayer for Relief**

25 1. Answering Paragraphs A-G of Plaintiff's FAC/Prayer for Relief,
26 Defendant alleges that this paragraph contains Plaintiff's requests for relief, to which
27 no answer is required. To the extent an answer is required, Defendant denies the
28 allegations in this paragraph.

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2 **ADDITIONAL AND AFFIRMATIVE DEFENSES**

3 All allegations not here before specifically admitted, denied, or modified, are
4 hereby denied. For further and separate answer, Defendant alleges as follows:

5 1. The Court lacks jurisdiction over the subject matter of this action.

6 2. The FAC fails to state a claim upon which relief can be granted to the
7 plaintiff against Defendant the United States under the Federal Tort Claims Act
8 (FTCA), see 28 U.S.C. §§ 1346(b), 2671-80, as averred in the complaint or otherwise,
9 for the reason that if said defendant were a private person, it would not be liable to
10 plaintiffs in accordance with the law of the State of California.

11 3. The United States has not waived its sovereign immunity to suit under
12 California Civil Code § 52.1, whether sued thereon under the FTCA or otherwise.

13 4. Any injury or injuries, damage or damages sustained by Plaintiff were
14 caused in whole or in part by and through his own carelessness and negligence.

15 5. The acts or omissions of others, which were the sole proximate causes of
16 any injury, damage, or loss to the plaintiff, superseded any acts or omissions of
17 Defendant.

18 6. Plaintiff's request for trial by jury is improper and barred by statute as to
19 defendant United States of America. See 28 U.S.C. § 2402.

20 7. Any injury or damage alleged by Plaintiff was not proximately caused by
21 a negligent or wrongful act or omission on the part of any employee or agent of the
22 United States of America.

23 8. The liability of Defendant, if any, and other responsible parties, named or
24 unnamed, if any, should be apportioned according to their respective degrees of fault,
25 and any liability should be reduced accordingly.

26 9. Defendants asserts, as an affirmative defense, California Civil Code, §
27 1431.2(a), which provides: In any action for personal injury, property damage, or
28 wrongful death, based upon principles of comparative fault, the liability of each

1 defendant for non-economic damages shall be several only and shall not be joint. Each
2 defendant shall be liable only for the amount of non-economic damages allocated to
3 that defendant in direct proportion to that defendant's percentage of fault, and a separate
4 judgment shall be rendered against that defendant for that amount.

5 10. Plaintiff's claims are barred or diminished as a result of his failure to
6 exercise reasonable care in mitigating his damages.

7 11. Plaintiff's recovery, if any, is limited to the amount of the claim the
8 Plaintiff presented administratively. See 28 U.S.C. § 2675(b).

9 12. Plaintiff has alleged only speculative future damages that do not constitute
10 compensable damages.

11 13. All future damages, if any, must be reduced to present value.

12 14. Income taxes must be deducted from the alleged past and future lost
13 earnings, if any.

14 15. In the event Defendant is found liable, which Defendant expressly denies,
15 Defendant is entitled to an offset against damages, if any, for all amounts received by
16 plaintiffs from the United States of America and its agencies, and also from all collateral
17 sources, by reason of plaintiff's alleged injuries.

18 16. Plaintiff fails to state a claim upon which relief can be granted, particularly
19 as to Causes of Action 6 and 8.

20 17. Defendant's actions were privileged under federal and state law.

21 18. To the extent Defendant or any of its agents or employees used force, they
22 used only reasonable force, and the force used was reasonably necessary under the
23 circumstances with which they were confronted.

24 19. Plaintiff had knowledge of and voluntarily assumed the risk of all that
25 transpired. Plaintiff's injuries or damages, if any, arose out of such risks.

26 20. Plaintiff is not entitled to attorney's fees from Defendant or otherwise.

27 21. Plaintiff is not entitled to general or punitive damages from Defendant.

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1 22. Plaintiff is not entitled to prejudgment interest from Defendants or
2 otherwise.

3 WHEREFORE, Defendant, having fully answered Plaintiff's FAC filed herein,
4 prays that Plaintiff takes nothing by reason of his suit herein, that judgment be rendered
5 in favor of Defendant, for costs of suit herein incurred, and for such other and further
6 relief as this Court may deem proper.

7 Dated: April 16, 2019

Respectfully submitted,

8
9 ROBERT S. BREWER, JR.
10 United States Attorney

11
12 */s/Kyle W. Hoffman*

13 KYLE W. HOFFMAN
14 Assistant United States Attorney
15 Attorneys for Defendant
16 United States of America
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