

1 ROBERT S. BREWER, JR.  
 United States Attorney  
 2 KYLE W. HOFFMAN  
 United States Attorney  
 3 California Bar No. 176095  
 Office of the U.S. Attorney  
 4 880 Front Street, Room 6293  
 San Diego, CA 92101  
 5 Tel: (619) 546-7651  
 Fax: (619) 546-5678  
 6 Email: [kyle.hoffman@usdoj.gov](mailto:kyle.hoffman@usdoj.gov)  
 Attorneys for Defendant  
 7 United States of America

8  
 9  
 10 **UNITED STATES DISTRICT COURT**  
**SOUTHERN 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-MSB**

**DEFENDANT UNITED STATES OF  
 AMERICA’S ANSWER TO  
 PLAINTIFF’S SECOND AMENDED  
 COMPLAINT**

16  
 17  
 18  
 19  
 20  
 21 COMES NOW Defendant the United States of America (“Defendant”), by and  
 22 through its attorneys, Robert S. Brewer, Jr., United States Attorney, and Kyle W. Hoffman,  
 23 Assistant United States Attorney, and hereby files its Answer to Plaintiff’s Second  
 24 Amended Complaint (SAC):

25 **PARTIES**

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

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

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

7           4.     Answering Paragraph 4 of Plaintiff’s SAC, Defendant admits that Quintin  
8 Clarke, at the relevant times, was an officer for the United States Customs and Border  
9 Protection and was acting within the course and scope of his duty as a law enforcement  
10 agent of the United States government. As to the remainder of the paragraph’s allegations,  
11 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
12 those allegations, and so denies them.

13          5.     Answering Paragraph 5 of Plaintiff’s SAC, Defendant admits that Teresa  
14 Andrade, at the relevant times, was an officer for the United States Customs and Border  
15 Protection and was acting within the course and scope of her duty as a law enforcement  
16 agent of the United States government. As to the remainder of the paragraph’s allegations,  
17 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
18 those allegations, and so denies them.

19          6.     Answering Paragraph 4 of Plaintiff’s SAC, Defendant admits that Rolando  
20 Morillo – not R. Marillo – at the relevant times, was an officer for the United States Customs  
21 and Border Protection and was acting within the course and scope of her duty as a law  
22 enforcement agent of the United States government. As to the remainder of the paragraph’s  
23 allegations, Defendant is without knowledge or information sufficient to form a belief as to  
24 the truth of those allegations, and so denies them.

25          7.     Answering Paragraph 7 of Plaintiff’s SAC, Defendant admits that Thomas  
26 Ferguson, at the relevant times, was an officer for the United States Customs and Border  
27 Protection and was acting within the course and scope of his duty as a law enforcement  
28 agent of the United States government. As to the remainder of the paragraph’s allegations,

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

3 8. Answering Paragraph 8 of Plaintiff's SAC, Defendant admits that Hector  
4 Ibarra, at the relevant times, was an officer for the United States Customs and Border  
5 Protection and was acting within the course and scope of his duty as a law enforcement  
6 agent of the United States government. As to the remainder of the paragraph's allegations,  
7 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
8 those allegations, and so denies them.

9 9. Answering Paragraph 9 of Plaintiff's SAC, Defendant admits that Noel  
10 Angeles, the relevant times, was an officer for the United States Customs and Border  
11 Protection and was acting within the course and scope of his duty as a law enforcement  
12 agent of the United States government. As to the remainder of the paragraph's allegations,  
13 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
14 those allegations, and so denies them.

15 10. Answering Paragraph 10 of Plaintiff's SAC, Defendant admits that Carlos  
16 Fierro, at the relevant times, was an officer for the United States Customs and Border  
17 Protection and was acting within the course and scope of his duty as a law enforcement  
18 agent of the United States government. As to the remainder of the paragraph's allegations,  
19 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
20 those allegations, and so denies them.

21 11. Answering Paragraph 11 of Plaintiff's SAC, Defendant admits that John  
22 Delgado, at the relevant times, was an officer for the United States Customs and Border  
23 Protection and was acting within the course and scope of his duty as a law enforcement  
24 agent of the United States government. As to the remainder of the paragraph's allegations,  
25 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
26 those allegations, and so denies them.

27 12. Answering Paragraph 12 of Plaintiff's SAC, Defendant admits that Chantelle  
28 McCulloch, at the relevant times, was an officer for the United States Customs and Border

1 Protection and was acting within the course and scope of her duty as a law enforcement  
2 agent of the United States government. As to the remainder of the paragraph's allegations,  
3 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
4 those allegations, and so denies them.

5 13. Answering Paragraph 13 of Plaintiff's SAC, Defendant admits that Alphonso  
6 Stephenson, Jr., at the relevant times, was an officer for the United States Customs and  
7 Border Protection and was acting within the course and scope of his duty as a law  
8 enforcement agent of the United States government. As to the remainder of the paragraph's  
9 allegations, Defendant is without knowledge or information sufficient to form a belief as to  
10 the truth of those allegations, and so denies them.

11 14. Answering Paragraph 14 of Plaintiff's SAC, Defendant admits that James  
12 Calapan, at the relevant times, was an officer for the United States Customs and Border  
13 Protection and was acting within the course and scope of his duty as a law enforcement  
14 agent of the United States government. As to the remainder of the paragraph's allegations,  
15 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
16 those allegations, and so denies them.

17 15. Answering Paragraph 15 of Plaintiff's SAC, Defendant admits that Kevin  
18 Guisinger, at the relevant times, was an officer for the United States Customs and Border  
19 Protection and was acting within the course and scope of his duty as a law enforcement  
20 agent of the United States government. As to the remainder of the paragraph's allegations,  
21 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
22 those allegations, and so denies them.

23 16. Answering Paragraph 16 of Plaintiff's SAC, Defendant admits that Raul Cano,  
24 at the relevant times, was an officer for the United States Customs and Border Protection  
25 and was acting within the course and scope of his duty as a law enforcement agent of the  
26 United States government. As to the remainder of the paragraph's allegations, Defendant  
27 is without knowledge or information sufficient to form a belief as to the truth of those  
28 allegations, and so denies them.

1           17. Answering Paragraph 17 of Plaintiff’s SAC, Defendant admits that W.  
2 Thomas, at the relevant times, was an officer for the United States Customs and Border  
3 Protection and was acting within the course and scope of his duty as a law enforcement  
4 agent of the United States government. As to the remainder of the paragraph’s allegations,  
5 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
6 those allegations, and so denies them.

7           18. Answering Paragraph 18 of Plaintiff’s SAC, Defendant admits that Esther  
8 Calderon, at the relevant times, was an officer for the United States Customs and Border  
9 Protection and was acting within the course and scope of his duty as a law enforcement  
10 agent of the United States government. As to the remainder of the paragraph’s allegations,  
11 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
12 those allegations, and so denies them.

13           19. Answering Paragraph 19 of Plaintiff’s SAC, Defendant admits that Sean  
14 Zeeck, at the relevant times, was an officer for the United States Customs and Border  
15 Protection and was acting within the course and scope of his duty as a law enforcement  
16 agent of the United States government. As to the remainder of the paragraph’s allegations,  
17 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
18 those allegations, and so denies them.

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

22           21. Answering Paragraph 21 of Plaintiff’s SAC, Defendant alleges that this paragraph  
23 contains a definition, to which no answer is required. To the extent an answer is required,  
24 Defendant denies the allegations in this paragraph.

25           22. Answering Paragraph 22 of Plaintiff’s SAC, Defendant alleges that this  
26 paragraph contains legal conclusions, to which no answer is required. To the extent an  
27 answer is required, Defendant denies the allegations in this paragraph.

28



1           31. Answering Paragraph 31 of Plaintiff’s SAC, Defendant is without knowledge  
2 or information sufficient to form a belief as to the truth of those allegations, and so denies  
3 them.

4           32. Answering Paragraph 32 of Plaintiff’s SAC, Defendant admits the substantial  
5 truth of the allegations of this paragraph.

6           33. Answering Paragraph 33 of Plaintiff’s SAC – as this Paragraph apparently  
7 concerns what Plaintiff believes about procedures at the Port of Entry for accommodating  
8 emergencies, or medical or disability issues, rather than what those procedures actually are  
9 – Defendant is without knowledge or information sufficient to form a belief as to the truth  
10 of those allegations, and so denies them.

11           34. Answering Paragraph 34 of Plaintiff’s SAC, Defendant admits that on  
12 September 22, 2016, Plaintiff entered the United States at the San Ysidro Port of Entry (SYS  
13 POE) through the SENTRI lane, presented his passport and another document, and was sent  
14 to secondary inspection. As to the remainder of the paragraph’s allegations, Defendant is  
15 without knowledge or information sufficient to form a belief as to the truth of those  
16 allegations, and so denies them.

17           35. Answering Paragraph 35 of Plaintiff’s SAC, Defendant denies that Officer  
18 Morillo made the statements contained in this paragraph. As to the remainder of the  
19 paragraph’s allegations, Defendant is without knowledge or information sufficient to form  
20 a belief as to the truth of those allegations, and so denies them.

21           36. Answering Paragraph 36 of Plaintiff’s SAC, Defendant is without knowledge  
22 or information sufficient to form a belief as to the truth of those allegations, and so denies  
23 them.

24           37. Answering Paragraph 37 of Plaintiff’s SAC, Defendant admits that CBP  
25 Officer Morillo wrote a report about his September 22, 2016 interactions with Plaintiff. As  
26 to any remaining allegations of this paragraph, 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           38. Answering Paragraph 38 of Plaintiff’s SAC, Defendant is without knowledge  
2 or information sufficient to form a belief as to the truth of those allegations, and so denies  
3 them.

4           39. Answering Paragraph 39 of Plaintiff’s SAC, Defendant admits that on  
5 September 23, 2016, Plaintiff entered the United States at the SYS POE through the  
6 SENTRI lane, and was sent to secondary inspection. As to the remainder of the paragraph’s  
7 allegations, Defendant is without knowledge or information sufficient to form a belief as to  
8 the truth of those allegations, and so denies them.

9           40. Answering Paragraph 40 of Plaintiff’s SAC, Defendant is without knowledge  
10 or information sufficient to form a belief as to the truth of those allegations, and so denies  
11 them.

12           41. Answering Paragraph 41 of Plaintiff’s SAC, Defendant is without knowledge  
13 or information sufficient to form a belief as to the truth of those allegations, and so denies  
14 them.

15           42. Answering Paragraph 42 of Plaintiff’s SAC, Defendant is without knowledge  
16 or information sufficient to form a belief as to the truth of those allegations, and so denies  
17 them.

18           43. Answering Paragraph 43 of Plaintiff’s SAC, Defendant admits that Officer  
19 Ferguson spoke with Plaintiff at the SYS POE on September 23, 2016. As to the remainder  
20 of the paragraph’s allegations, Defendant is without knowledge or information sufficient to  
21 form a belief as to the truth of those allegations, and so denies them.

22           44. Answering Paragraph 44 of Plaintiff’s SAC, Defendant denies the allegations of  
23 this paragraph.

24           45. Answering Paragraph 45 of Plaintiff’s SAC, Defendant admits that on  
25 September 23, 2016, Plaintiff again entered the United States at the SYS POE through the  
26 SENTRI lane, and was sent to secondary inspection. As to the remainder of the paragraph’s  
27 allegations, Defendant is without knowledge or information sufficient to form a belief as to  
28 the truth of those allegations, and so denies them.



1           46. Answering Paragraph 46 of Plaintiff’s SAC, Defendant admits that on  
2 September 23, 2016, Plaintiff again entered the United States at the SYS POE through the  
3 SENTRI lane, and was sent to secondary inspection. As to the remainder of the paragraph’s  
4 allegations, Defendant is without knowledge or information sufficient to form a belief as to  
5 the truth of those allegations, and so denies them.

6           47. Answering Paragraph 47 of Plaintiff’s SAC, Defendant is without knowledge  
7 or information sufficient to form a belief as to the truth of those allegations, and so denies  
8 them.

9           48. Answering Paragraph 48 of Plaintiff’s SAC, Defendant is without knowledge  
10 or information sufficient to form a belief as to the truth of those allegations, and so denies  
11 them.

12           49. Answering Paragraph 49 of Plaintiff’s SAC, Defendant is without knowledge  
13 or information sufficient to form a belief as to the truth of those allegations, and so denies  
14 them.

15           50. Answering Paragraph 40 of Plaintiff’s SAC, Defendant is without knowledge  
16 or information sufficient to form a belief as to the truth of those allegations, and so denies  
17 them.

18           51. Answering Paragraph 51 of Plaintiff’s SAC, Defendant admits that Plaintiff  
19 was warned that if he continued to use the SENTRI lines without being properly enrolled  
20 in the SENTRI program (which Plaintiff was not), he would be fined. As to the remainder  
21 of the paragraph’s allegations, Defendant is without knowledge or information sufficient to  
22 form a belief as to the truth of those allegations, and so denies them.

23           52. Answering Paragraph 52 of Plaintiff’s SAC, Defendant admits that Plaintiff paid  
24 a \$5,000 fine for repeated unauthorized use of the SENTRI lanes, which fine was later  
25 mitigated to \$500. As to the remainder of the paragraph’s allegations, Defendant is without  
26 knowledge or information sufficient to form a belief as to the truth of those allegations, and  
27 so denies them.

28

1           53. Answering Paragraph 53 of Plaintiff’s SAC, Defendant admits that Plaintiff  
2 received a receipt for payment of the \$5,000 fine. Defendant denies the remaining  
3 allegations of this paragraph.

4           54. Answering Paragraph 54 of Plaintiff’s SAC, Defendant is without knowledge  
5 or information sufficient to form a belief as to the truth of those allegations, and so denies  
6 them.

7           55. Answering Paragraph 55 of Plaintiff’s SAC, Defendant is without knowledge  
8 or information sufficient to form a belief as to the truth of those allegations, and so denies  
9 them.

10          56. Answering Paragraph 56 of Plaintiff’s SAC, Defendant is without knowledge  
11 or information sufficient to form a belief as to the truth of those allegations, and so denies  
12 them.

13          57. Answering Paragraph 57 of Plaintiff’s SAC, Defendant is without knowledge  
14 or information sufficient to form a belief as to the truth of those allegations, and so denies  
15 them.

16          58. Answering Paragraph 58 of Plaintiff’s SAC, Defendant is without knowledge  
17 or information sufficient to form a belief as to the truth of those allegations, and so denies  
18 them.

19          59. Answering Paragraph 59 of Plaintiff’s SAC, Defendant is without knowledge  
20 or information sufficient to form a belief as to the truth of those allegations, and so denies  
21 them.

22          60. Answering Paragraph 60 of Plaintiff’s SAC, Defendant denies the allegations  
23 of this paragraph.

24          61. Answering Paragraph 61 of Plaintiff’s SAC, Defendant is without knowledge  
25 or information sufficient to form a belief as to the truth of those allegations, and so denies  
26 them.

27          62. Answering Paragraph 62 of Plaintiff’s SAC, Defendant admits that on October  
28 31, 2016, Plaintiff departed the Otay Mesa Port of Entry in an ambulance. As to the

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

3 63. Answering Paragraph 663 of Plaintiff's SAC, Defendant admits that Plaintiff  
4 used the SENTRI lane without authorization on November 1, 2016. As to the remaining  
5 allegations in the paragraph, Defendant is without knowledge or information sufficient to  
6 form a belief as to the truth of those allegations, and so denies them.

7 64. Answering Paragraph 64 of Plaintiff's SAC, Defendant is without knowledge  
8 or information sufficient to form a belief as to the truth of Plaintiff's allegations concerning  
9 his perceptions of how the officers reacted to his claim of crisis. As to the remaining  
10 allegations of this paragraph, Defendant denies them.

11 65. Answering Paragraph 65 of Plaintiff's SAC, Defendants admit that Plaintiff  
12 locked the doors and rolled up the windows of his vehicle in the secondary inspection area.  
13 As to the remaining allegations in the paragraph, Defendant is without knowledge or  
14 information sufficient to form a belief as to the truth of those allegations, and so denies  
15 them.

16 66. Answering Paragraph 66 of Plaintiff's SAC, Defendant is without knowledge  
17 or information sufficient to form a belief as to the truth of those allegations, and so denies  
18 them.

19 67. Answering Paragraph 67 of Plaintiff's SAC, Defendant denies the allegations  
20 of this paragraph.

21 66. Answering Paragraph 66 of Plaintiff's SAC, Defendant denies the allegations  
22 of this paragraph.

23 69. Answering Paragraph 69 of Plaintiff's SAC, Defendant denies the allegations  
24 of this paragraph.

25 70. Answering Paragraph 70 of Plaintiff's SAC, Defendant admits that Plaintiff  
26 left his car keys at the SYS POE. As to the remaining allegations in the paragraph,  
27 Defendant is without knowledge or information sufficient to form a belief as to the truth of  
28 those allegations, and so denies them.

1           71. Answering Paragraph 71 of Plaintiff’s SAC, Defendant is without knowledge  
2 or information sufficient to form a belief as to the truth of those allegations, and so denies  
3 them.

4           72. Answering Paragraph 72 of Plaintiff’s SAC, Defendant admits that Plaintiff’s  
5 vehicle was held to secure payment of the penalty he incurred for repeated unauthorized use  
6 of the SENTRI lanes. As to the remaining allegations in the paragraph, Defendant is without  
7 knowledge or information sufficient to form a belief as to the truth of those allegations, and  
8 so denies them

9           73. Answering Paragraph 73 of Plaintiff’s SAC, Defendant is without knowledge  
10 or information sufficient to form a belief as to the truth of those allegations, and so denies  
11 them.

12           74. Answering Paragraph 74 of Plaintiff’s SAC, Defendant is without knowledge  
13 or information sufficient to form a belief as to the truth of those allegations, and so denies  
14 them.

15           75. Answering Paragraph 75 of Plaintiff’s SAC, Defendant is without knowledge  
16 or information sufficient to form a belief as to the truth of those allegations, and so denies  
17 them.

18           76. Answering Paragraph 76 of Plaintiff’s SAC, Defendant is without knowledge  
19 or information sufficient to form a belief as to the truth of those allegations, and so denies  
20 them.

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

24           78. Answering Paragraph 78 of Plaintiff’s SAC, Defendant is without knowledge  
25 or information sufficient to form a belief as to the truth of those allegations, and so denies  
26 them.

27           79. Answering Paragraph 79 of Plaintiff’s SAC, Defendant admits that Plaintiff’s  
28 attorney discussed Plaintiff’s case with CBP Attorney Erik Gantzel; Defendant denies,

1 however, CBP Attorney Erik Gantzel at any time indicated to Plaintiff's attorney that  
2 Gantzel possessed the authority to waive fines, return Plaintiff's car, or grant reasonable  
3 accommodations. As to any remaining allegations in the paragraph, Defendant is without  
4 knowledge or information sufficient to form a belief as to the truth of those allegations, and  
5 so denies them.

6 80. Answering Paragraph 80 of Plaintiff's SAC, Defendant admits that the Fines,  
7 Penalties and Forfeitures office responded to Plaintiff's petition for remission or mitigation,  
8 by mitigating the \$5,000 penalty to \$500, and refunding \$4,500 to Plaintiff.

9 81. Answering Paragraph 81 of Plaintiff's SAC, Defendant admits that the Fines  
10 Penalties and Forfeitures office mitigated Plaintiff's \$10,000 fine to \$1,000, and required a  
11 hold harmless agreement as a condition of such mitigation, but denies that the mitigation  
12 decision or hold harmless agreement asked Plaintiff to plead guilty to any charges.

13 82. Answering Paragraph 82 of Plaintiff's SAC, Defendant admits that the phone  
14 conference mentioned in this paragraph occurred. As to the remaining allegations in the  
15 paragraph, Defendant is without knowledge or information sufficient to form a belief as to  
16 the truth of those allegations, and so denies them.

17 83. Answering Paragraph 83 of Plaintiff's SAC, Defendant admits that Plaintiff  
18 crossed the border as a pedestrian on December 2, 2017, and that he was sent for a secondary  
19 inspection. 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, and  
21 so denies them.

22 84. Answering Paragraph 84 of Plaintiff's SAC, Defendant denies the allegations  
23 of this paragraph.

24 85. Answering Paragraph 85 of Plaintiff's SAC, Defendant is without knowledge  
25 or information sufficient to form a belief as to the truth of those allegations, and so denies  
26 them.

27 86. Answering Paragraph 86 of Plaintiff's SAC, Defendant admits that CBP  
28 provided Plaintiff with a letter in response to his request for accommodation, outlining the

1 procedures he should follow at the border's pedestrian entry for CBP to accommodate his  
2 disability. As to the remaining allegations in the paragraph, Defendant is without  
3 knowledge or information sufficient to form a belief as to the truth of those allegations, and  
4 so denies them.

5 87. Answering Paragraph 87 of Plaintiff's SAC, Defendant denies the allegations  
6 of this paragraph.

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

9 88. Answering Paragraph 68 of Plaintiff's SAC, Defendant re-alleges the  
10 foregoing paragraphs as if fully set forth herein.

11 89. Paragraph 21 of Plaintiff's SAC, no answer is required. To the extent an answer  
12 is required, Defendant denies the allegations in this paragraph.

13 90. Answering Paragraph 90 of Plaintiff's SAC, Defendant alleges that this  
14 paragraph contains Plaintiff's legal conclusions, to which no answer is required. To the  
15 extent this paragraph contains any allegations to which an answer is required, Defendant  
16 denies them.

17 91. Answering Paragraph 91 of Plaintiff's SAC, Defendant denies the allegations  
18 in this paragraph.

19 92. Answering Paragraph 92 of Plaintiff's SAC, Defendant admits that on  
20 September 22, 2016 CBP Officer Morillo wrote a report about his interactions with Plaintiff.  
21 As to any remaining allegations of this paragraph, Defendant is without knowledge or  
22 information sufficient to form a belief as to the truth of those allegations, and so denies  
23 them.

24 93. Answering Paragraph 93 of Plaintiff's SAC, Defendant is without knowledge  
25 or information sufficient to form a belief as to the truth of those allegations, and so denies  
26 them.

27 94. Answering Paragraph 94 of Plaintiff's SAC, Defendant admits that on  
28 September 23, 2016 CBP officers had to complete inspection and deal with Plaintiff's

1 repeated SENTRI lane violations, and so Johnson was not immediately free to enter the  
2 country. As to any remaining allegations of this paragraph, Defendant is without  
3 information sufficient to form a belief as to the truth of those allegations, and so denies  
4 them.

5 95. Answering Paragraph 95 of Plaintiff's SAC, Defendant admits that Plaintiff  
6 entered the United States on October 31, 2016, via unauthorized use of the SENTRI lane.  
7 As to the allegation that Plaintiff experienced an anxiety attack, Defendant is without  
8 knowledge or information sufficient to form a belief as to the truth of that allegation, and  
9 so denies it. As to the remaining allegations of this paragraph, Defendant denies them.

10 96. Answering Paragraph 96 of Plaintiff's SAC, Defendant admits that on  
11 November 1, 2016, CBP seized Plaintiff's vehicle to secure payment of a \$10,000 penalty  
12 for his repeated, unauthorized use of the SENTRI lane, that Plaintiff was unable to use the  
13 vehicle after it was seized, and on that date, November 1, 2016, Plaintiff departed the SYS  
14 POE with paramedics. As to the remaining allegations of this paragraph, Defendant denies  
15 them.

16 97. Answering Paragraph 97 of Plaintiff's SAC, Defendant denies Plaintiff entered  
17 the United States through pedestrian lanes on December 1, 2017, but admits that he entered  
18 on December 2, 2017. As to the remaining allegations of this paragraph, Defendant denies  
19 them.

20 98. Answering Paragraph 98 of Plaintiff's SAC, Defendant denies the allegations  
21 in this paragraph.

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

23 99. Answering Paragraph 99 of Plaintiff's SAC, Defendant re-alleges the  
24 foregoing paragraphs as if fully set forth herein

25 100. Answering Paragraph 100 of Plaintiff's SAC, Defendant alleges that this  
26 paragraph contains legal conclusions to which no answer is required. To the extent an  
27 answer is required, Defendant denies the allegations in this paragraph.

28

1           101. Answering Paragraph 101 of Plaintiff’s SAC, Defendant is without knowledge  
2 or information sufficient to form a belief as to the truth of those allegations, and so denies  
3 them.

4           102. Answering Paragraph 102 of Plaintiff’s SAC, Defendant alleges that this  
5 paragraph contains legal assumptions, conclusions, and/or opinions, to which no answer is  
6 required. To the extent an answer is required, Defendant denies the allegations in this  
7 paragraph.

8           103. Answering Paragraph 103 of Plaintiff’s SAC, Defendant denies the allegations  
9 in this paragraph.

10           104. Answering Paragraph 104 of Plaintiff’s SAC, Defendant denies the allegations  
11 in this paragraph.

12           105. Answering Paragraph 105 of Plaintiff’s SAC, Defendant denies the allegations  
13 in this paragraph.

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

15           106. Answering Paragraph 106 of Plaintiff’s SAC, Defendant re-alleges the  
16 foregoing paragraphs as if fully set forth herein.

17           107. Answering Paragraph 107 of Plaintiff’s SAC, Defendant denies the allegations  
18 in this paragraph.

19           108. Answering Paragraph 108 of Plaintiff’s SAC, Defendant denies the allegations  
20 in this paragraph.

21           109. Answering Paragraph 109 of Plaintiff’s SAC, Defendant alleges that this  
22 paragraph contains legal conclusions to which no answer is required. To the extent an  
23 answer is required, Defendant denies the allegations in this paragraph.

24           110. Answering Paragraph 110 of Plaintiff’s SAC, Defendant alleges that this  
25 paragraph contains legal conclusions to which no answer is required. To the extent an  
26 answer is required, Defendant denies the allegations in this paragraph.

27           111. Answering Paragraph 111 of Plaintiff’s SAC, Defendant denies the allegations  
28 in this paragraph.



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

112. Answering Paragraph 112 of Plaintiff's SAC, Defendant re-alleges the foregoing paragraphs as if fully set forth herein.

113. Answering Paragraph 113 of Plaintiff's SAC, Defendant admits and alleges that CBP officers lawfully detained Plaintiff during the border inspection process on October 31, 2016 and December 2, 2017. As to any remaining allegations of this paragraph, Defendant denies them.

114. Answering Paragraph 114 of Plaintiff's SAC, Defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations, and so denies them.

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

116. Answering Paragraph 116 of Plaintiff's SAC, Defendant alleges that this paragraph contains legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

117. Answering Paragraph 117 of Plaintiff's SAC, Defendant denies the allegations in this paragraph.

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

118. Answering Paragraph 118 of Plaintiff's SAC, Defendant re-alleges the foregoing paragraphs as if fully set forth herein.

119. Answering Paragraph 119 of Plaintiff's SAC, Defendant alleges that this paragraph contains legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

120. Answering Paragraph 120 of Plaintiff's SAC, Defendant denies the allegations in this paragraph.

1           121. Answering Paragraph 121 of Plaintiff’s SAC, 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           122. Answering Paragraph 122 of Plaintiff’s SAC, Defendant denies the allegations  
5 in this paragraph.

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

7           123. Answering Paragraph 123 of Plaintiff’s SAC, Defendant re-alleges the  
8 foregoing paragraphs as if fully set forth herein.

9           124. Answering Paragraph 124 of Plaintiff’s SAC, Defendant admits that on  
10 November 1, 2016, CBP seized Plaintiff’s vehicle to secure payment of a \$10,000 penalty  
11 for his repeated, unauthorized use of the SENTRI lane, and that Plaintiff was unable to use  
12 the vehicle after it was seized. As to the remaining allegations of this paragraph, Defendant  
13 denies them.

14           125. Answering Paragraph 125 of Plaintiff’s SAC, Defendant admits that on  
15 November 1, 2016, CBP seized Plaintiff’s vehicle to secure payment of a \$10,000 penalty  
16 for his repeated, unauthorized use of the SENTRI lane, and that Plaintiff was unable to use  
17 the vehicle after it was seized. As to the remaining allegations of this paragraph, Defendant  
18 denies them.

19           126. Answering Paragraph 126 of Plaintiff’s SAC, Defendant admits that on  
20 November 1, 2016, CBP seized Plaintiff’s vehicle to secure payment of a \$10,000 penalty  
21 for his repeated, unauthorized use of the SENTRI lane, and that Plaintiff was unable to use  
22 the vehicle after it was seized. As to the remaining allegations of this paragraph, Defendant  
23 denies them.

24           127. Answering Paragraph 127 of Plaintiff’s SAC, Defendant alleges that this  
25 paragraph contains legal conclusions, to which no answer is required. To the extent an  
26 answer is required, Defendant denies the allegations in this paragraph.

27           128. Answering Paragraph 128 of Plaintiff’s SAC, Defendant denies the allegations  
28 in this paragraph.

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

129. Answering Paragraph 129 of Plaintiff's SAC, Defendant re-alleges the foregoing paragraphs as if fully set forth herein.

130. Answering Paragraph 130 of Plaintiff's SAC, Defendant denies the allegations in this paragraph.

131. Answering Paragraph 131 of Plaintiff's SAC, Defendant denies the allegations in this paragraph.

132. Answering Paragraph 132 of Plaintiff's SAC, Defendant alleges that this paragraph contains legal conclusions, to which no answer is required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

133. Answering Paragraph 133 of Plaintiff's SAC, Defendant denies the allegations in this paragraph.

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

134. Answering Paragraph 134 of Plaintiff's SAC, Defendant re-alleges the foregoing paragraphs as if fully set forth herein.

135. Answering Paragraph 135 of Plaintiff's SAC, Defendant alleges that this paragraph contains legal conclusions, to which no answer is required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

136. Answering Paragraph 136 of Plaintiff's SAC, Defendant alleges that this paragraph contains legal conclusions, to which no answer is required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

137. Answering Paragraph 137 of Plaintiff's SAC, Defendant denies the allegations in this paragraph.

138. Answering Paragraph 138 of Plaintiff's SAC, Defendant denies the allegations in this paragraph.

139. Answering Paragraph 139 of Plaintiff's SAC, Defendant alleges that this paragraph contains legal conclusions, to which no answer is required. To the extent an answer is required, Defendant denies the allegations in this paragraph.

1 140. Answering Paragraph 140 of Plaintiff's SAC, Defendant denies the allegations  
2 in this paragraph.

3 **Prayer for Relief**

4 1. Answering Paragraphs A-G of Plaintiff's SAC/Prayer for Relief, Defendant  
5 alleges that this paragraph contains Plaintiff's requests for relief, to which no answer is  
6 required. To the extent an answer is required, Defendant denies the allegations in this  
7 paragraph.

8 **ADDITIONAL AND AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

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

28

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

4           9.     Defendants asserts, as an affirmative defense, California Civil Code, §  
5 1431.2(a), which provides: In any action for personal injury, property damage, or wrongful  
6 death, based upon principles of comparative fault, the liability of each defendant for non-  
7 economic damages shall be several only and shall not be joint. Each defendant shall be  
8 liable only for the amount of non-economic damages allocated to that defendant in direct  
9 proportion to that defendant's percentage of fault, and a separate judgment shall be rendered  
10 against that defendant for that amount.

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

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

15          12.    Plaintiff has alleged only speculative future damages that do not constitute  
16 compensable damages.

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

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

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

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

26          17.    Defendant's actions were privileged under federal and state law.  
27  
28

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

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

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

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

8           22. Plaintiff is not entitled to prejudgment interest from Defendant or  
9 otherwise.

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

14 Dated: March 16, 2020

Respectfully submitted,

15

16

ROBERT S. BREWER, JR.  
United States Attorney

17

18

19

/s/Kyle W. Hoffman

20

KYLE W. HOFFMAN  
Assistant United States Attorney  
Attorneys for Defendant  
United States of America

21

22

23

24

25

26

27

28