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United States of America

10  
11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 MARCO A. REYES,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA;  
17 CBP OFFICERS WILLIAM WALKER,  
18 JACQUE ALLEN, DAVID NASSER,  
AND DOE CBP OFFICERS 4-30,  
19 INDIVIDUALLY AND IN THEIR  
OFFICIAL CAPACITIES, inclusive,

20 Defendants.

Case No.: 20-cv-1752-WQH-LL

**ANSWER TO SECOND AMENDED  
COMPLAINT BY UNITED STATES  
OF AMERICA**

21 Defendant United States of America (hereinafter "Defendant") hereby answers  
22 Plaintiff's Second Amended Complaint ("SAC") as follows:

23 **I. INTRODUCTION**

24 1. In answer to paragraph 1 of the SAC, Defendant alleges that the allegations  
25 therein constitute Plaintiff's characterization of his claim or legal conclusions to which no  
26 answer is required. To the extent an answer is required, said allegations are denied.

27 **II. JURISDICTION AND VENUE**



1           13. In answer to paragraph 13 of the SAC, Defendant alleges that it is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations  
3 contained therein and based thereon, denies generally and specifically each of those  
4 allegations.

5           14. In answer to paragraph 14 of the SAC, Defendant alleges that it is without  
6 knowledge or information sufficient to form a belief as to the truth of the allegations  
7 contained therein and based thereon, denies generally and specifically each of those  
8 allegations.

9           15. In answer to paragraph 15 of the SAC, Defendant alleges that it is without  
10 knowledge or information sufficient to form a belief as to the truth of the allegations  
11 contained therein and based thereon, denies generally and specifically each of those  
12 allegations.

13           16. In answer to paragraph 16 of the SAC, Defendant denies that Plaintiff did not  
14 hear Officer Jacque Allen’s initial instructions to step out of his car. During his deposition,  
15 Plaintiff admitted, under oath, that he heard Officer Allen’s initial instructions to step out  
16 of his car.

17           17. In answer to paragraph 17 of the SAC, Defendant denies, generally and  
18 specifically, each of the allegations and characterizations therein.

19           18. In answer to paragraph 18 of the SAC, Defendant admits that Plaintiff exited  
20 his vehicle stood by the trunk of his vehicle, rather than following the CBP Officers’  
21 instructions and proceeding to the safe area along with the other drivers. To the extent not  
22 expressly admitted, Defendant denies, generally and specifically, all other allegations in  
23 Paragraph 18.

24  
25           19. In answer to paragraph 19 of the SAC, Defendant denies, generally and  
26 specifically, each, all, and every allegation contained therein.

27           20. In answer to paragraph 20 of the SAC, Defendant denies, generally and  
28 specifically, each, all, and every allegation contained therein.

1           21. In answer to paragraph 21 of the SAC, Defendant alleges that it is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations  
3 contained therein and based thereon, denies generally and specifically each of those  
4 allegations.

5           22. In answer to paragraph 22 of the SAC, Defendant denies, generally and  
6 specifically, each, all, and every allegation contained therein.

7           23. In answer to paragraph 23 of the SAC, Defendant denies, generally and  
8 specifically, each, all, and every allegation contained therein.

9           24. In answer to paragraph 24 of the SAC, Defendant denies, generally and  
10 specifically, each, all, and every allegation contained therein.

11           25. In answer to paragraph 25 of the SAC, Defendant denies, generally and  
12 specifically, each, all, and every allegation contained therein.

13           26. In answer to paragraph 26 of the SAC, Defendant denies, generally and  
14 specifically, each, all, and every allegation contained therein.

15           27. In answer to paragraph 27 of the SAC, Defendant alleges that it is without  
16 knowledge or information sufficient to form a belief as to the truth of the allegations  
17 contained therein and based thereon, denies generally and specifically each of those  
18 allegations.

19           28. In answer to paragraph 28 of the SAC, Defendant alleges that it is without  
20 knowledge or information sufficient to form a belief as to the truth of the allegations  
21 contained therein and based thereon, denies generally and specifically each of those  
22 allegations.

23           29. In answer to paragraph 29 of the SAC, Defendant denies, generally and  
24 specifically, each, all, and every allegation contained therein.

25           30. In answer to paragraph 30 of the SAC, Defendant denies, generally and  
26 specifically, each, all, and every allegation contained therein.

27           31. In answer to paragraph 31 of the SAC, Defendant denies, generally and  
28 specifically, each, all, and every allegation contained therein.

1           32. In answer to paragraph 32 of the SAC, Defendant alleges that it is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations  
3 contained therein and based thereon, denies generally and specifically each of those  
4 allegations.

5           33. In answer to paragraph 33 of the SAC, Defendant alleges that it is without  
6 knowledge or information sufficient to form a belief as to the truth of the allegations  
7 contained therein and based thereon, denies generally and specifically each of those  
8 allegations.

9           34. In answer to paragraph 34 of the SAC, Defendant denies, generally and  
10 specifically, each, all, and every allegation contained therein.

11           35. In answer to paragraph 35 of the SAC, Defendant denies, generally and  
12 specifically, each, all, and every allegation contained therein.

13           36. In answer to paragraph 36 of the SAC, Defendant denies, generally and  
14 specifically, each, all, and every allegation contained therein.

15           37. In answer to paragraph 37 of the SAC, Defendant admits that Plaintiff struck  
16 Officer Walker in the neck and, in response, Officer Walker used reasonable and lawful  
17 force to take Plaintiff to the ground. To the extent not expressly admitted, Defendant  
18 denies, generally and specifically, all other allegations and characterizations in Paragraph  
19 37.

20           38. In answer to paragraph 38 of the SAC, Defendant denies, generally and  
21 specifically, each, all, and every allegation contained therein.

22           39. In answer to paragraph 39 of the SAC, Defendant denies, generally and  
23 specifically, each, all, and every allegation contained therein.

24  
25           40. In answer to paragraph 40 of the SAC, Defendant denies, generally and  
26 specifically, each, all, and every allegation contained therein.

27           41. In answer to paragraph 41 of the SAC, Defendant denies, generally and  
28 specifically, each, all, and every allegation contained therein.

1           42. In answer to paragraph 42 of the SAC, Defendant denies, generally and  
2 specifically, each, all, and every allegation contained therein.

3           43. In answer to paragraph 43 of the SAC, Defendant denies, generally and  
4 specifically, each, all, and every allegation contained therein.

5           44. In answer to paragraph 44 of the SAC, Defendant denies, generally and  
6 specifically, each, all, and every allegation contained therein.

7           45. In answer to paragraph 45 of the SAC, Defendant denies, generally and  
8 specifically, each, all, and every allegation contained therein.

9           46. In answer to paragraph 46 of the SAC, Defendant denies, generally and  
10 specifically, each, all, and every allegation contained therein.

11           47. In answer to paragraph 47 of the SAC, Defendant denies, generally and  
12 specifically, each, all, and every allegation contained therein.

13           48. In answer to paragraph 48 of the SAC, Defendant alleges that it is without  
14 knowledge or information sufficient to form a belief as to the truth of the allegations  
15 contained therein and based thereon, denies generally and specifically each of those  
16 allegations.

17           49. In answer to paragraph 49 of the SAC, Defendant denies, generally and  
18 specifically, each, all, and every allegation contained therein.

19           50. In answer to paragraph 50 of the SAC, Defendant denies, generally and  
20 specifically, each, all, and every allegation contained therein.

21           51. In answer to paragraph 51 of the SAC, Defendant alleges that it is without  
22 knowledge or information sufficient to form a belief as to the truth of the allegations  
23 contained therein and based thereon, denies generally and specifically each of those  
24 allegations.

25           52. In answer to paragraph 52 of the SAC, Defendant alleges that it is without  
26 knowledge or information sufficient to form a belief as to the truth of the allegations  
27 contained therein and based thereon, denies generally and specifically each of those  
28 allegations.

1           53. In answer to paragraph 53 of the SAC, Defendant alleges that it is without  
2 knowledge or information sufficient to form a belief as to the truth of the allegations  
3 contained therein and based thereon, denies generally and specifically each of those  
4 allegations.

5           54. In answer to paragraph 54 of the SAC, Defendant admits that Plaintiff was  
6 interviewed by federal officials but denies all other allegations contained in paragraph 54.

7           55. In answer to paragraph 55 of the SAC, Defendant admits that it retained a copy  
8 of Plaintiff's post-Miranda interview, but denies that there is, or ever was, a video recording  
9 of Plaintiff's assault of Officer Walker, of Plaintiff's subsequent arrest, or of any other  
10 interactions between Plaintiff and CBP Officers on August 1, 2018. To the extent not  
11 expressly admitted, Defendant denies all other allegations contained in paragraph 55.

12           56. In answer to paragraph 56 of the SAC, Defendant alleges that it is without  
13 knowledge or information sufficient to form a belief as to the truth of the allegations  
14 contained therein and based thereon, denies generally and specifically each of those  
15 allegations.

16           57. In answer to paragraph 57 of the SAC, Defendant denies, generally and  
17 specifically, each, all, and every allegation contained therein.

18           58. In answer to paragraph 58 of the SAC, Defendant admits that Officers Walker,  
19 Allen, and Nasser gave written statements regarding Plaintiff's assault on Officer Walker  
20 and Plaintiff's subsequent arrest. To the extent not expressly admitted, Defendant denies  
21 all other allegations in Paragraph 58.

22           59. In answer to paragraph 59 of the SAC, Defendant denies, generally and  
23 specifically, each, all, and every allegation contained therein. During his deposition,  
24 Plaintiff admitted, under oath, that he made physical contact with Officer Walker before he  
25 was taken to the ground and arrested.

26           60. In answer to paragraph 60 of the SAC, Defendant admits the substantial truth  
27 of the allegations contained therein.

28           61. In answer to paragraph 61 of the SAC, Defendant denies, generally and

1 specifically, each, all, and every allegation contained therein.

2 62. In answer to paragraph 62 of the SAC, Defendant alleges that it is without  
3 knowledge or information sufficient to form a belief as to the truth of the allegations  
4 contained therein and based thereon, denies generally and specifically each of those  
5 allegations.

6 63. In answer to paragraph 63 of the SAC, Defendant admits that Plaintiff was not  
7 prosecuted for assaulting Officer Walker, or for any other crime relating to his interaction  
8 with CBP Officers on August 1, 2018. To the extent not expressly admitted, Defendant  
9 denies the allegations in Paragraph 63.

10 64. In answer to paragraph 64 of the SAC, Defendant denies, generally and  
11 specifically, each, all, and every allegation contained therein.

12 65. In answer to paragraph 65 of the SAC, Defendant denies, generally and  
13 specifically, each, all, and every allegation contained therein.

14 66. In answer to paragraph 66 of the SAC, Defendant alleges that it is without  
15 knowledge or information sufficient to form a belief as to the truth of the allegations  
16 contained therein and based thereon, denies generally and specifically each of those  
17 allegations.

18 67. In answer to paragraph 67 of the SAC, Defendant alleges that it is without  
19 knowledge or information sufficient to form a belief as to the truth of the allegations  
20 contained therein and based thereon, denies generally and specifically each of those  
21 allegations.

22 68. In answer to paragraph 68 of the SAC, Defendant admits that, in response to  
23 Plaintiff's Complaint herein, the Civil Division of the U.S. Attorneys' Office for the  
24 Southern District of California has investigated, and continues to investigate, Plaintiff's  
25 claims. Defendant alleges that it is without knowledge or information sufficient to form a  
26 belief as to the truth of the remaining allegations contained therein and based thereon, denies  
27 generally and specifically each of those allegations.

28 69. In answer to paragraph 69 of the SAC, Defendant alleges that it is without



1 knowledge or information sufficient to form a belief as to the truth of the allegations  
2 contained therein and based thereon, denies generally and specifically each of those  
3 allegations.

4 70. In answer to paragraph 70 of the SAC, Defendant denies, generally and  
5 specifically, each, all, and every allegation contained therein.

6 71. In answer to paragraph 71 of the SAC, Defendant alleges that it is without  
7 knowledge or information sufficient to form a belief as to the truth of the allegations  
8 contained therein and based thereon, denies generally and specifically each of those  
9 allegations.

10 72. In answer to paragraph 72 of the SAC, Defendant denies, generally and  
11 specifically, each, all, and every allegation contained therein.

12 **V. CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION:**

14 ***Bivens* action: Excessive Force**

15 **(William Walker, Jacque Allen, David Nasser, and Unknown CBP Officer Does 4-30)**

16 73-79. In answer to paragraphs 73-79 of the SAC, Defendant alleges that no answer  
17 is required to said paragraphs inasmuch as there are no charging allegations directed to this  
18 answering Defendant. To the extent an answer is required, Defendant denies said  
19 allegations.

20 **SECOND CAUSE OF ACTION:**

21 ***Bivens* action: Excessive Force**

22 **(William Walker, Jacque Allen, David Nasser, and Unknown CBP Officer**  
23 **Does 4-30)**

24 80-86. In answer to paragraphs 80-86 of the SAC, Defendant alleges that no answer  
25 is required to said paragraphs inasmuch as there are no charging allegations directed to this  
26 answering Defendant. To the extent an answer is required, Defendant denies said  
27 allegations.  
28

**THIRD CAUSE OF ACTION:**

***Bivens* action: Falsification of Evidence**

**(William Walker, Jacque Allen, David Nasser, and Unknown CBP Officer  
Does 4-30)**

87-93. In answer to paragraphs 87-93 of the SAC, Defendant alleges that no answer is required to said paragraphs inasmuch as there are no charging allegations directed to this answering Defendant. To the extent an answer is required, Defendant denies said allegations.

**FOURTH CAUSE OF ACTION:**

**Rehabilitation Action (29 U.S.C. §701 et seq.)**

**(United States of America)**

94. In answer to paragraph 94 of the SAC, Defendant alleges that no answer is required to said paragraph inasmuch as there are no charging allegations.

95. In answer to paragraph 95 of the SAC, Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and based thereon, denies generally and specifically each of those allegations.

96. In answer to paragraph 96 of the SAC, Defendant alleges that said paragraph contains legal conclusions, as to which no answer is required. To the extent an answer is required, Defendant denies each and every allegation contained therein.

97. In answer to paragraph 97 of the SAC, Defendant alleges that said paragraph contains legal conclusions, as to which no answer is required. To the extent an answer is required, Defendant denies each and every allegation contained therein.

98. In answer to paragraph 97 of the SAC, Defendant alleges that said paragraph contains legal conclusions, as to which no answer is required. To the extent an answer is required, Defendant denies each and every allegation contained therein.

99. In answer to paragraph 99 of the SAC, Defendant denies, generally and specifically, each, all, and every allegation contained therein.



1 allegations.

2 111. In answer to paragraph 111 of the SAC, Defendant denies, generally and  
3 specifically, each, all, and every allegation contained therein.

4 **SIXTH CAUSE OF ACTION:**

5 **FTCA: Assault**

6 **(United States of America)**

7 112. (Erroneously referred to as ¶ 84). In answer to paragraph 112 of the SAC,  
8 Defendant alleges that no answer is required to said paragraph inasmuch as there are no  
9 charging allegations directed to this answering Defendant. To the extent an answer is  
10 required, Defendant denies said allegations.

11 113. (Erroneously referred to as ¶ 85). In answer to paragraph 113 of the SAC,  
12 Defendant denies, generally and specifically, each, all, and every allegation contained  
13 therein.

14 114. (Erroneously referred to as ¶ 86). In answer to paragraph 114 of the SAC,  
15 Defendant denies, generally and specifically, each, all, and every allegation contained  
16 therein.

17 115. (Erroneously referred to as ¶ 87). In answer to paragraph 115 of the SAC,  
18 Defendant denies, generally and specifically, each, all, and every allegation contained  
19 therein.

20 116. (Erroneously referred to as ¶ 88). In answer to paragraph 116 of the SAC,  
21 Defendant admits the substantial truth of the allegations contained therein.

22 117. (Erroneously referred to as ¶ 89). In answer to paragraph 117 of the SAC,  
23 Defendant admits the substantial truth of the allegations contained therein.

24 **SEVENTH CAUSE OF ACTION:**

25 **FTCA: Battery**

26 **(United States of America)**

27 118. (Erroneously referred to as ¶ 90). In answer to paragraph 118 of the SAC,  
28 Defendant alleges that no answer is required to said paragraph inasmuch as there are no

1 charging allegations directed to this answering Defendant. To the extent an answer is  
2 required, Defendant denies said allegations.

3 119. (Erroneously referred to as ¶ 91) In answer to paragraph 119 of the SAC,  
4 Defendant denies, generally and specifically, each, all, and every allegation contained  
5 therein.

6 120. (Erroneously referred to as ¶ 92). In answer to paragraph 120 of the SAC,  
7 Defendant denies, generally and specifically, each, all, and every allegation contained  
8 therein

9 121. (Erroneously referred to as ¶ 93). In answer to paragraph 121 of the SAC,  
10 Defendant admits the substantial truth of the allegations contained therein.

11 122. (Erroneously referred to as ¶ 94). In answer to paragraph 122 of the SAC,  
12 Defendant denies, generally and specifically, each, all, and every allegation contained  
13 therein.

14 **EIGHTH CAUSE OF ACTION:**

15 **FTCA: Negligence**

16 **(United States of America)**

17 123. (Erroneously referred to as ¶ 95). In answer to paragraph 123 of the SAC,  
18 Defendant alleges that no answer is required to said paragraph inasmuch as there are no  
19 charging allegations directed to this answering Defendant. To the extent an answer is  
20 required, Defendant denies said allegations.

21 124. (Erroneously referred to as ¶ 96). In answer to paragraph 124 of the SAC,  
22 Defendant alleges that said paragraph contains legal conclusions, as to which no answer is  
23 required. To the extent an answer is required, Defendant denies each and every allegation  
24 contained therein.

25 125. (Erroneously referred to as ¶ 97). In answer to paragraph 125 of the SAC,  
26 Defendant denies, generally and specifically, each, all, and every allegation contained  
27 therein.

28 126. (Erroneously referred to as ¶ 98). In answer to paragraph 126 of the SAC,

1 Defendant admits the substantial truth of the allegations contained therein.

2 127. (Erroneously referred to as ¶ 99). In answer to paragraph 127 of the SAC,  
3 Defendant denies, generally and specifically, each, all, and every allegation contained  
4 therein.

5 **NINTH CAUSE OF ACTION:**

6 **FTCA: Bane Act (California Civil Code § 52.1)**

7 **(United States of America)**

8 128. (Erroneously referred to as ¶ 100). In answer to paragraph 128 of the SAC,  
9 Defendant alleges that there are no charging allegations contained therein.

10 129. (Erroneously referred to as ¶ 101). In answer to paragraph 129 of the SAC,  
11 Defendant denies, generally and specifically, each, all, and every allegation contained  
12 therein

13 130. (Erroneously referred to as ¶ 102). In answer to paragraph 130 of the SAC,  
14 Defendant denies, generally and specifically, each, all, and every allegation contained  
15 therein.

16 131. (Erroneously referred to as ¶ 103). In answer to paragraph 131 of the SAC,  
17 Defendant admits the substantial truth of the allegations contained therein.

18 132. (Erroneously referred to as ¶ 104). In answer to paragraph 132 of the SAC,  
19 Defendant denies, generally and specifically, each, all, and every allegation contained  
20 therein.

21 **TENTH CAUSE OF ACTION:**

22 **FTCA: Intentional Infliction of Emotional Distress**

23 **(United States of America)**

24 133. (Erroneously referred to as ¶ 105). In answer to paragraph 133 of the SAC,  
25 Defendant alleges that there are no charging allegations.

26 134. (Erroneously referred to as ¶ 106). In answer to paragraph 134 of the SAC,  
27 Defendant denies, generally and specifically, each, all, and every allegation contained  
28 therein.

1 135. (Erroneously referred to as ¶ 107). In answer to paragraph 135 of the SAC,  
2 Defendant denies, generally and specifically, each, all, and every allegation contained  
3 therein.

4 136. (Erroneously referred to as ¶ 108). In answer to paragraph 136 of the SAC,  
5 Defendant admits the substantial truth of the allegations contained therein.

6 137. (Erroneously referred to as ¶ 109). In answer to paragraph 137 of the SAC,  
7 Defendant denies, generally and specifically, each, all, and every allegation contained  
8 therein.

9 138. (Erroneously referred to as ¶ 110). In answer to paragraph 138 of the SAC,  
10 Defendant denies, generally and specifically, each, all, and every allegation contained  
11 therein.

12 **PUNITIVE DAMAGES:**

13 **(William Walker, Jacque Allen, David Nasser, and Unknown CBP Officer**  
14 **Does 4-30)**

15 139. (Erroneously referred to as ¶ 111). In answer to paragraph 139 of the SAC,  
16 Defendant alleges that no answer is required to said paragraph inasmuch as there are no  
17 charging allegations directed to this answering Defendant, to the extent an answer is  
18 required, Defendant denies said allegations.

19 140. (Erroneously referred to as ¶ 112). In answer to paragraph 140 of the SAC,  
20 Defendant alleges that no answer is required to said paragraph inasmuch as there are no  
21 charging allegations directed to this answering Defendant, to the extent an answer is  
22 required, Defendant denies said allegations.

23 141. (Erroneously referred to as ¶ 113). In answer to paragraph 141 of the SAC,  
24 Defendant alleges that no answer is required to said paragraph inasmuch as there are no  
25 charging allegations directed to this answering Defendant, to the extent an answer is  
26 required, Defendant denies said allegations.

27 142. (Erroneously referred to as ¶ 114). In answer to paragraph 142 of the SAC,  
28 Defendant alleges that no answer is required to said paragraph inasmuch as there are no

1 charging allegations directed to this answering Defendant, to the extent an answer is  
2 required, Defendant denies said allegations.

3 **VI.**

4 **RELIEF REQUESTED**

5 The remainder of Plaintiff's SAC represents a prayer for relief to which no response  
6 is required. To the extent an answer is required, Defendant denies, generally and  
7 specifically, each, all and every allegation contained therein.

8 **VII.**

9 **JURY DEMAND**

10 Plaintiff is not entitled to a jury trial under the Federal Tort Claims Act. *See* 28  
11 U.S.C. § 2402.

12 **VIII.**

13 **AFFIRMATIVE AND OTHER DEFENSES**

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

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

18 2. Any injuries sustained by Plaintiff were caused in whole, or in part, by and  
19 through his own carelessness and negligence.

20 3. The injuries and damages alleged by Plaintiff were not caused by a negligent  
21 or wrongful act or omission on the part of any employee or agent of Defendant.

22 4. To the extent any employee of the United States used force with respect to  
23 Plaintiff, that employee was justified in the use of force, and the force used was reasonable  
24 under the circumstances.

25 5. The liability of Defendant, if any, and responsible parties, named or unnamed,  
26 if any, should be apportioned according to their respective degrees of fault, and any liability  
27 should be reduced accordingly.

28 6. Plaintiff's claims are barred or diminished as a result of his failure to exercise



1 reasonable care in mitigating his damages.

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

4 8. Plaintiff has alleged only speculative future damages that do not constitute  
5 compensable damages.

6 9. All future damages, if any, must be reduced to present value.

7 10. Income taxes must be deducted from the alleged past and future lost earnings,  
8 if any.

9 11. In the event Defendant is found liable, which Defendant expressly denies,  
10 Defendant is entitled to an offset against damages, if any, for all amounts received by  
11 Plaintiff from the United States of America and its agencies by reason of Plaintiff's alleged  
12 injuries.

13 12. The actions of Defendant's employees were privileged under federal and state  
14 law.

15 13. Plaintiff had knowledge of and voluntarily assumed the risk of all that  
16 transpired.

17 15. Plaintiff is not entitled to attorney's fees from Defendant or otherwise.

18 16. Plaintiff is not entitled to general or punitive damages from Defendant.

19 17. Plaintiff is not entitled to prejudgment interest from Defendant or otherwise.

20 18. To the extent that the SAC could be construed in any way to assert a common  
21 law tort claim against the individual named Defendants, that claim is barred by 28 U.S.C.  
22 § 2679. The only proper defendant in an FTCA action is the United States of America.

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1           WHEREFORE, having fully answered all counts of the SAC, Defendant prays that  
2 Plaintiff takes nothing by way of his Complaint against it, that the same be dismissed, and  
3 that judgment be awarded in favor of Defendant, together with costs and such other and  
4 further relief as the Court deems appropriate in this case.

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6           DATED: October 21, 2021

Respectfully submitted,

7           RANDY S. GROSSMAN  
8           Acting United States Attorney

9           *s/ David B. Wallace*  
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11          DAVID B. WALLACE  
12          Assistant United States Attorney  
13          BRETT NORRIS  
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