

1 James R. Touchstone, SBN 184584
Denise L. Rocawich, SBN 232792
2 Ryan R. Jones, SBN 228935
jrt@jones-mayer.com; dlr@jones-mayer.com;
3 rrj@jones-mayer.com
JONES & MAYER
4 3777 North Harbor Boulevard
Fullerton, CA 92835
5 Telephone: (714) 446-1400 / Facsimile: (714) 446-1448

6 Attorneys for Defendants
CITY OF FULLERTON
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 DAVID TOVAR, an individual

12 Plaintiff,

13 vs.

14 CITY OF FULLERTON,
FULLERTON POLICE
15 DEPARTMENT, DOE OFFICERS
OF THE FULLERTON POLICE
16 DEPARTMENT and DOES 1 through
10, inclusive,

17 Defendants.
18

Case No: SACV 13-00453 DOC (ANx)

**DEFENDANTS' ANSWER TO
SECOND AMENDED COMPLAINT**

[Complaint filed: March 19, 2013]

ANSWER TO SECOND AMENDED COMPLAINT

Answering Plaintiff's Second Amended Complaint for (1) Violation of Civil Rights Under Color of Law Pursuant to 42 U.S.C. § 1983, 1985, 1986 and 1988; (2) Violation of California Civil Code § 51.7; (3) Violation of California Civil Code § 52.1; (4) Assault; (5) Battery; and (6) Negligence, Defendants City of Fullerton¹ and Officer Bryan Bybee (collectively "Fullerton Defendants"), admit, deny, and allege as follows:

INTRODUCTION

1. Answering paragraph 1 of the Second Amended Complaint, insofar as the allegations of this paragraph contain legal conclusions, no answer is required. To the extent an answer is required, Fullerton Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis deny each and every allegation contained therein.

2. Answering paragraph 2 of the Second Amended Complaint, insofar as the allegations of this paragraph contain legal conclusions, no answer is required. To the extent an answer is required, Fullerton Defendants deny each and every allegation contained in paragraph 2 of the Second Amended Complaint.

JURISDICTION

3. Answering paragraph 3 of the Second Amended Complaint, insofar as the allegations of this paragraph contain legal conclusions, no answer is required. To the extent an answer is required, Fullerton Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis deny each and every allegation contained therein.

4. Answering paragraph 4 of the Second Amended Complaint, Fullerton Defendants admit that this Court has jurisdiction to hear the claims under 42

¹ The Fullerton Police Department was erroneously sued as a separate entity.

1 U.S.C. § 1983, 1985, 1986 and 1988, and pursuant to the original jurisdiction
2 afforded under 28 U.S.C. § 1331. Except as so admitted, Fullerton Defendants
3 deny each and every allegation contained in paragraph 4.

4 5. Answering paragraph 5 of the Second Amended Complaint, Fullerton
5 Defendants are admit that this Court currently has supplemental jurisdiction to hear
6 the state law claims. Except as so admitted, Fullerton Defendants are deny each
7 and every allegation contained in paragraph 5.

8 9 VENUE

10 6. Answering paragraph 6 of the Second Amended Complaint, Fullerton
11 Defendants admit that venue is proper, though Plaintiff's reference to 28 U.S.C. §
12 1891 is misplaced. This is likely a simple typographical error as 28 U.S.C. § 1391
13 is the correct citation. Fullerton Defendants are admit the stated location of the
14 bicycle accident. Except as so admitted, Fullerton Defendants deny each and every
15 allegation contained in paragraph 6.

16 17 PARTIES

18 7. Answering paragraph 7 of the Second Amended Complaint, Fullerton
19 Defendants are without sufficient knowledge or information to form a belief as to
20 the truth of the allegations, and on that basis deny each and every allegation
21 contained in paragraph 8 of the Second Amended Complaint.

22 8. Answering paragraph 8 of the Second Amended Complaint, Fullerton
23 Defendants admit the allegations in paragraph 8.

24 9. Answering paragraph 9 of the Second Amended Complaint, insofar as
25 the allegations of this paragraph contain legal conclusions, no answer is required;
26 to the extent an answer is required, Fullerton Defendants admit the Fullerton Police
27 Department is a department of the City of Fullerton. The Police Department is not
28 a separate entity from the City of Fullerton. Except as so admitted, Fullerton

1 Defendants deny each and every allegation contained in paragraph 9.

2 10. Answering paragraph 10 of the Second Amended Complaint, insofar
3 as the allegations of this paragraph contain legal conclusions, no answer is
4 required. To the extent an answer is required, Fullerton Defendants admit that
5 Officer Bybee was employed by the Fullerton Police Department at all times
6 relevant to the Second Amended Complaint. Except as so admitted, Fullerton
7 Defendants deny each and every allegation contained in paragraph 10.

8 11. Answering paragraph 11 of the Second Amended Complaint, insofar
9 as the allegations of this paragraph contain legal conclusions, no answer is
10 required. To the extent an answer is required, Fullerton Defendants are without
11 sufficient knowledge or information to form a belief as to the truth of the
12 allegations, and on that basis deny each and every allegation contained therein.

13 12. Answering paragraph 12 of the Second Amended Complaint, insofar
14 as the allegations of this paragraph contain legal conclusions, no answer is
15 required. To the extent an answer is required, Fullerton Defendants deny each and
16 every allegation contained in paragraph 12 of the Second Amended Complaint.

17 13. Answering paragraph 13 of the Second Amended Complaint, insofar
18 as the allegations of this paragraph contain legal conclusions, no answer is
19 required. To the extent an answer is required, Fullerton Defendants are without
20 sufficient knowledge or information to form a belief as to the truth of the
21 allegations, and on that basis deny each and every allegation contained therein.

22 14. Answering paragraph 14 of the Second Amended Complaint, insofar
23 as the allegations of this paragraph contain legal conclusions, no answer is
24 required. To the extent an answer is required, Fullerton Defendants are without
25 sufficient knowledge or information to form a belief as to the truth of the
26 allegations, and on that basis deny each and every allegation contained therein.

27 15. Answering paragraph 15 of the Second Amended Complaint, insofar
28 as the allegations of this paragraph contain legal conclusions, no answer is

1 required. To the extent an answer is required, Fullerton Defendants are without
2 sufficient knowledge or information to form a belief as to the truth of the
3 allegations, and on that basis deny each and every allegation contained therein.

4
5 **FACTUAL ALLEGATIONS**

6 16. Answering paragraph 16 of the Second Amended Complaint,
7 Fullerton Defendants admit that Officer Bybee encountered Plaintiff on his bicycle
8 on August 11, 2012 at approximately 11:45 p.m. on Valencia Ave. near Harbor
9 Blvd. in Fullerton, CA. Officer Bybee was driving an unmarked police vehicle
10 equipped with emergency lights and siren and wearing a full Fullerton Police
11 uniforms, including a badge and patches on each shoulder at the time of the
12 encounter with Plaintiff. Except as so admitted, Fullerton Defendants deny each
13 and every allegation contained in paragraph 16.

14 17. Answering paragraph 17 of the Second Amended Complaint,
15 Fullerton Defendants admit that Plaintiff did not stop and rode his bicycle down an
16 alleyway off of Harbor Blvd. near Ash. Fullerton Defendants admit that Officer
17 Bybee followed the Plaintiff. Except as so admitted, Fullerton Defendants deny
18 each and every allegation contained in paragraph 17.

19 18. Answering paragraph 18 of the Second Amended Complaint,
20 Fullerton Defendants admit that the vehicle driven by Officer Bybee impacted
21 Plaintiff's bicycle. Except as so admitted, Fullerton Defendants deny each and
22 every allegation contained in paragraph 18.

23 19. Answering paragraph 19 of the Second Amended Complaint,
24 Fullerton Defendants are without sufficient knowledge or information to form a
25 belief as to the truth of the allegations, and on that basis deny each and every
26 allegation contained in paragraph 19 of the Second Amended Complaint.

27 20. Answering paragraph 20 of the Second Amended Complaint,
28 Fullerton Defendants deny each and every allegation contained in paragraph 20 of

1 the Second Amended Complaint.

2 21. Answering paragraph 21 of the Second Amended Complaint,
3 Fullerton Defendants are without sufficient knowledge or information to form a
4 belief as to the truth of the allegations, and on that basis deny each and every
5 allegation contained in paragraph 21 of the Second Amended Complaint.

6 22. Answering paragraph 22 of the Second Amended Complaint, insofar
7 as the allegations of this paragraph contain legal conclusions, no answer is
8 required. To the extent an answer is required, Fullerton Defendants admit that
9 Officer Bybee was employed by the Fullerton Police Department at the time the
10 vehicle he was driving impacted Plaintiff's bicycle. Except as so admitted,
11 Fullerton Defendants deny each and every allegation contained in paragraph 22.

12 23. Answering paragraph 23 of the Second Amended Complaint,
13 Fullerton Defendants are without sufficient knowledge or information to form a
14 belief as to the truth of the allegations, and on that basis deny each and every
15 allegation contained therein.

16 24. Answering paragraph 24 of the Second Amended Complaint,
17 Fullerton Defendants are without sufficient knowledge or information to form a
18 belief as to the truth of the allegations, and on that basis deny each and every
19 allegation contained therein.

20 25. Answering paragraph 25 of the Second Amended Complaint, insofar
21 as the allegations of this paragraph contain legal conclusions, no answer is
22 required. To the extent an answer is required, Fullerton Defendants deny each and
23 every allegation contained therein.

24 26. Answering paragraph 26 of the Second Amended Complaint, insofar
25 as the allegations of this paragraph contain legal conclusions, no answer is
26 required. To the extent an answer is required, Fullerton Defendants admit that the
27 vehicle driven by Officer Bybee impacted Plaintiff's bicycle. Except as so
28 admitted, Fullerton Defendants deny each and every allegation in paragraph 26 of

1 the Second Amended Complaint.

2 27. Answering paragraph 27 of the Second Amended Complaint, insofar
3 as the allegations of this paragraph contain legal conclusions, no answer is
4 required. To the extent an answer is required, Fullerton Defendants deny each and
5 every allegation contained in paragraph 27 of the Second Amended Complaint.

6 28. Answering paragraph 28 of the Second Amended Complaint, insofar
7 as the allegations of this paragraph contain legal conclusions, no answer is
8 required. To the extent an answer is required, Fullerton Defendants admit that the
9 vehicle driven by Officer Bybee impacted Plaintiff's bicycle. Except as so
10 admitted, Fullerton Defendants deny each and every allegation in paragraph 28 of
11 the Second Amended Complaint.

12 29. Answering paragraph 29 of the Second Amended Complaint, insofar
13 as the allegations of this paragraph contain legal conclusions, no answer is
14 required. To the extent an answer is required, Fullerton Defendants deny each and
15 every allegation in paragraph 29 of the Second Amended Complaint.

16 30. Answering paragraph 30 of the Second Amended Complaint, insofar
17 as the allegations of this paragraph contain legal conclusions, no answer is
18 required. To the extent an answer is required, Fullerton Defendants deny each and
19 every allegation in paragraph 30 of the Second Amended Complaint.

20 31. Answering paragraph 31 of the Second Amended Complaint, insofar
21 as the allegations of this paragraph contain legal conclusions, no answer is
22 required. To the extent an answer is required, Fullerton Defendants deny each and
23 every allegation in paragraph 31 of the Second Amended Complaint.

24 32. Answering paragraph 32 of the Second Amended Complaint, insofar
25 as the allegations of this paragraph contain legal conclusions, no answer is
26 required. To the extent an answer is required, Fullerton Defendants deny each and
27 every allegation in paragraph 32 of the Second Amended Complaint.

28 33. Answering paragraph 33 of the Second Amended Complaint, insofar

1 as the allegations of this paragraph contain legal conclusions, no answer is
2 required. To the extent an answer is required, Fullerton Defendants deny each and
3 every allegation contained in paragraph 33 of the Second Amended Complaint.

4 34. Answering paragraph 34 of the Second Amended Complaint, insofar
5 as the allegations of this paragraph contain legal conclusions, no answer is
6 required. To the extent an answer is required, Fullerton Defendants deny each and
7 every allegation contained in paragraph 34 of the Second Amended Complaint.

8 35. Answering paragraph 35 of the Second Amended Complaint,
9 Fullerton Defendants are without sufficient knowledge or information to form a
10 belief as to the truth of the remaining allegations, and on that basis deny each and
11 every allegation contained in paragraph 35 of the Second Amended Complaint.

12 36. Answering paragraph 36 of the Second Amended Complaint, insofar
13 as the allegations of this paragraph contain legal conclusions, no answer is
14 required. To the extent an answer is required, Fullerton Defendants deny each and
15 every allegation contained in paragraph 36 of the Second Amended Complaint.

16 37. Answering paragraph 36 of the Second Amended Complaint,
17 Fullerton Defendants admit that Plaintiff filed a government claim with the City of
18 Fullerton, dated August 29, 2012, which was received by the City on or about
19 September 4, 2012, and that Exhibit "A" appears to be a copy of said claim.
20 Fullerton Defendants admit that Plaintiff filed his Second Amended Complaint on
21 or about March 19, 2013. Insofar as the allegations of this paragraph contain legal
22 conclusions, no answer is required. To the extent an answer is required, except as
23 so admitted, Fullerton Defendants deny each and every allegation contained in
24 paragraph 37 of the Second Amended Complaint.

25
26 **FIRST CAUSE OF ACTION**

27 38. Paragraph 38 of the Second Amended Complaint merely incorporates
28 by reference the allegations of previous paragraphs. In answering paragraph 38,

1 Fullerton Defendants incorporate their respective admissions and denials to each
2 such paragraph enumerated above.

3 39. Answering paragraph 39 of the Second Amended Complaint, insofar
4 as the allegations of this paragraph contain legal conclusions, no answer is
5 required. To the extent an answer is required, Fullerton Defendants are without
6 sufficient knowledge or information to form a belief as to the truth of the
7 allegations, and on that basis deny each and every allegation contained therein.

8 40. Answering paragraph 40 of the Second Amended Complaint, insofar
9 as the allegations of this paragraph contain legal conclusions, no answer is
10 required. To the extent an answer is required, Fullerton Defendants deny each and
11 every allegation contained in paragraph 40 of the Second Amended Complaint.

12 41. Answering paragraph 41 of the Second Amended Complaint, insofar
13 as the allegations of this paragraph contain legal conclusions, no answer is
14 required. To the extent an answer is required, Fullerton Defendants admit that
15 Officer Bybee was employed by the Fullerton Police Department on August 11,
16 2012. Except as so admitted, Fullerton Defendants deny each and every allegation
17 contained in paragraph 41 of the Second Amended Complaint.

18 42. Answering paragraph 42 of the Second Amended Complaint, insofar
19 as the allegations of this paragraph contain legal conclusions, no answer is
20 required. To the extent an answer is required, Fullerton Defendants deny each and
21 every allegation contained in paragraph 42 of the Second Amended Complaint.

22 43. Answering paragraph 43 of the Second Amended Complaint, insofar
23 as the allegations of this paragraph contain legal conclusions, no answer is
24 required. To the extent an answer is required, Fullerton Defendants deny each and
25 every allegation contained in paragraph 43 of the Second Amended Complaint.

26 44. Answering paragraph 44 of the Second Amended Complaint, insofar
27 as the allegations of this paragraph contain legal conclusions, no answer is
28 required. To the extent an answer is required, Fullerton Defendants deny each and

1 every allegation contained in paragraph 44 of the Second Amended Complaint.

2 45. Answering paragraph 45 of the Second Amended Complaint, insofar
3 as the allegations of this paragraph contain legal conclusions, no answer is
4 required. To the extent an answer is required, Fullerton Defendants deny each and
5 every allegation contained in paragraph 45 of the Second Amended Complaint.

6 46. Answering paragraph 46 of the Second Amended Complaint, insofar
7 as the allegations of this paragraph contain legal conclusions, no answer is
8 required. To the extent an answer is required, Fullerton Defendants deny each and
9 every allegation contained in paragraph 46 of the Second Amended Complaint.

10 47. Answering paragraph 47 of the Second Amended Complaint, insofar
11 as the allegations of this paragraph contain legal conclusions, no answer is
12 required. To the extent an answer is required, Fullerton Defendants deny each and
13 every allegation contained in paragraph 47 of the Second Amended Complaint.

14 48. Answering paragraph 48 of the Second Amended Complaint, insofar
15 as the allegations of this paragraph contain legal conclusions, no answer is
16 required. To the extent an answer is required, Fullerton Defendants deny each and
17 every allegation contained in paragraph 42 of the Second Amended Complaint.

18 49. Answering paragraph 49 of the Second Amended Complaint, insofar
19 as the allegations of this paragraph contain legal conclusions, no answer is
20 required. To the extent an answer is required, Fullerton Defendants deny each and
21 every allegation contained in paragraph 49 of the Second Amended Complaint.

22 50. Answering paragraph 50 of the Second Amended Complaint, insofar
23 as the allegations of this paragraph contain legal conclusions, no answer is
24 required. To the extent an answer is required, Fullerton Defendants deny each and
25 every allegation contained in paragraph 50 of the Second Amended Complaint.

26 51. Answering paragraph 51 of the Second Amended Complaint, insofar
27 as the allegations of this paragraph contain legal conclusions, no answer is
28 required. To the extent an answer is required, Fullerton Defendants deny each and

1 every allegation contained in paragraph 51 of the Second Amended Complaint.

2
3 52. Answering paragraph 52 of the Second Amended Complaint, insofar
4 as the allegations of this paragraph contain legal conclusions, no answer is
5 required. To the extent an answer is required, Fullerton Defendants deny each and
6 every allegation contained in paragraph 52 of the Second Amended Complaint.

7
8 **SECOND CAUSE OF ACTION**

9 53. Paragraph 53 of the Second Amended Complaint merely incorporates
10 by reference the allegations of previous paragraphs. In answering paragraph 53,
11 Fullerton Defendants incorporate their respective admissions and denials to each
12 such paragraph enumerated above.

13 54. Answering paragraph 54 of the Second Amended Complaint, insofar
14 as the allegations of this paragraph contain legal conclusions, no answer is
15 required. To the extent an answer is required, Fullerton Defendants deny each and
16 every allegation contained in paragraph 54 of the Second Amended Complaint.

17 55. Answering paragraph 55 of the Second Amended Complaint, insofar
18 as the allegations of this paragraph contain legal conclusions, no answer is
19 required. To the extent an answer is required, Fullerton Defendants deny each and
20 every allegation contained in paragraph 55 of the Second Amended Complaint.

21 56. Answering paragraph 56 of the Second Amended Complaint,
22 Fullerton Defendants deny each and every allegation contained in paragraph 56 of
23 the Second Amended Complaint.

24 57. Answering paragraph 57 of the Second Amended Complaint,
25 Fullerton Defendants deny each and every allegation contained in paragraph 57 of
26 the Second Amended Complaint.

27 58. Answering paragraph 58 of the Second Amended Complaint,
28 Fullerton Defendants deny each and every allegation contained in paragraph 58 of

1 as the allegations of this paragraph contain legal conclusions, no answer is
2 required. To the extent an answer is required, Fullerton Defendants deny each and
3 every allegation contained in paragraph 65 of the Second Amended Complaint.

4 66. Answering paragraph 66 of the Second Amended Complaint, insofar
5 as the allegations of this paragraph contain legal conclusions, no answer is
6 required. To the extent an answer is required, Fullerton Defendants deny each and
7 every allegation contained in paragraph 66 of the Second Amended Complaint.

8 67. Answering paragraph 67 of the Second Amended Complaint, insofar
9 as the allegations of this paragraph contain legal conclusions, no answer is
10 required. To the extent an answer is required, Fullerton Defendants deny each and
11 every allegation contained in paragraph 67 of the Second Amended Complaint.

12 68. Answering paragraph 68 of the Second Amended Complaint,
13 Fullerton Defendants are without sufficient knowledge or information to form a
14 belief as to the truth of the allegations, and on that basis deny each and every
15 allegation contained therein.

16 69. Answering paragraph 69 of the Second Amended Complaint, insofar
17 as the allegations of this paragraph contain legal conclusions, no answer is
18 required. To the extent an answer is required, Fullerton Defendants deny each and
19 every allegation contained in paragraph 69 of the Second Amended Complaint.

20 70. Answering paragraph 70 of the Second Amended Complaint, insofar
21 as the allegations of this paragraph contain legal conclusions, no answer is
22 required. To the extent an answer is required, the City is without sufficient
23 knowledge or information to form a belief as to the truth of the allegations, and on
24 that basis deny each and every allegation contained therein.

25 71. Answering paragraph 71 of the Second Amended Complaint, insofar
26 as the allegations of this paragraph contain legal conclusions, no answer is
27 required. To the extent an answer is required, Fullerton Defendants deny each and
28 every allegation contained in paragraph 71 of the Second Amended Complaint.

1 the Second Amended Complaint.

2 59. Answering paragraph 59 of the Second Amended Complaint, insofar
3 as the allegations of this paragraph contain legal conclusions, no answer is
4 required. To the extent an answer is required, Fullerton Defendants deny each and
5 every allegation contained in paragraph 59 of the Second Amended Complaint.

6 60. Answering paragraph 60 of the Second Amended Complaint, insofar
7 as the allegations of this paragraph contain legal conclusions, no answer is
8 required. To the extent an answer is required, Fullerton Defendants deny each and
9 every allegation contained in paragraph 60 of the Second Amended Complaint.

10 61. Answering paragraph 61 of the Second Amended Complaint, insofar
11 as the allegations of this paragraph contain legal conclusions, Fullerton Defendants
12 deny each and every allegation contained in paragraph 61 of the Second Amended
13 Complaint.

14 62. Answering paragraph 62 of the Second Amended Complaint, insofar
15 as the allegations of this paragraph contain legal conclusions, no answer is
16 required. To the extent an answer is required, Fullerton Defendants deny each and
17 every allegation contained in paragraph 62 of the Second Amended Complaint.

18
19 **THIRD CAUSE OF ACTION**

20 63. Paragraph 63 of the Second Amended Complaint merely incorporates
21 by reference the allegations of previous paragraphs. In answering paragraph 63,
22 Fullerton Defendants incorporate their respective admissions and denials to each
23 such paragraph enumerated above.

24 64. Answering paragraph 64 of the Second Amended Complaint, insofar
25 as the allegations of this paragraph contain legal conclusions, no answer is
26 required. To the extent an answer is required, Fullerton Defendants deny each and
27 every allegation contained in paragraph 64 of the Second Amended Complaint.

28 65. Answering paragraph 65 of the Second Amended Complaint, insofar

72. Answering paragraph 72 of the Second Amended Complaint, insofar as the allegations of this paragraph contain legal conclusions, no answer is required. To the extent an answer is required, the City is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis deny each and every allegation contained therein.

73. Answering paragraph 73 of the Second Amended Complaint, insofar as the allegations of this paragraph contain legal conclusions, no answer is required. To the extent an answer is required, Fullerton Defendants deny each and every allegation contained in paragraph 73 of the Second Amended Complaint.

FOURTH CAUSE OF ACTION

74. Paragraph 74 of the Second Amended Complaint merely incorporates by reference the allegations of previous paragraphs. In answering paragraph 74, Fullerton Defendants incorporate their respective admissions and denials to each such paragraph enumerated above.

75. Answering paragraph 75 of the Second Amended Complaint, Fullerton Defendants admit that Government Code Section 820 speaks for itself. Except as so expressly admitted, Fullerton Defendants deny each and every allegation therein.

76. Answering paragraph 76 of the Second Amended Complaint, Fullerton Defendants admit that Government Code Section 815.2 speaks for itself. Except as so expressly admitted, Fullerton Defendants deny each and every allegation therein.

77. Answering paragraph 77 of the Second Amended Complaint, Fullerton Defendants admit that Civil Code Section 1714(a) speaks for itself. Except as so expressly admitted, Fullerton Defendants deny each and every allegation therein.

78. Answering paragraph 78 of the Second Amended Complaint, insofar

1 as the allegations of this paragraph contain legal conclusions, no answer is
2 required. To the extent an answer is required, Fullerton Defendants admit that the
3 referenced sections speak for themselves. Except as so expressly admitted,
4 Fullerton Defendants deny each and every allegation therein.

5 79. Answering paragraph 79 of the Second Amended Complaint,
6 Fullerton Defendants admit that Officer Bybee encountered Plaintiff on his bicycle
7 on August 11, 2012 at approximately 11:45 p.m. on Valencia Ave. near Harbor
8 Blvd. in Fullerton, CA. Officer Bybee was driving an unmarked police vehicle
9 equipped with emergency lights and siren and wearing a full Fullerton Police
10 uniforms, including a badge and patches on each shoulder at the time of the
11 encounter with Plaintiff. Except as so admitted, Fullerton Defendants deny each
12 and every allegation contained in paragraph 79.

13 80. Answering paragraph 80 of the Second Amended Complaint, insofar
14 as the allegations of this paragraph contain legal conclusions, no answer is
15 required. To the extent an answer is required, Fullerton Defendants admit that
16 Officer Bybee was employed by Fullerton Police Department on August 11, 2012.
17 Except as so admitted, Fullerton Defendants deny each and every claim in
18 paragraph 80 of the Second Amended Complaint.

19 81. Answering paragraph 81 of the Second Amended Complaint, insofar
20 as the allegations of this paragraph contain legal conclusions, no answer is
21 required. To the extent an answer is required, the City is without sufficient
22 knowledge or information to form a belief as to the truth of the allegations, and on
23 that basis deny each and every allegation contained therein.

24 82. Answering paragraph 82 of the Second Amended Complaint, insofar
25 as the allegations of this paragraph contain legal conclusions, no answer is
26 required. To the extent an answer is required, Fullerton Defendants deny each and
27 every allegation contained in paragraph 82 of the Second Amended Complaint.

28

FIFTH CAUSE OF ACTION

83. Paragraph 83 of the Second Amended Complaint merely incorporates by reference the allegations of previous paragraphs. In answering paragraph 83, Fullerton Defendants incorporate their respective admissions and denials to each such paragraph enumerated above.

84. Answering paragraph 84 of the Second Amended Complaint, Fullerton Defendants admit that Government Code Section 820 speaks for itself. Except as so expressly admitted, Fullerton Defendants deny each and every allegation therein.

85. Answering paragraph 85 of the Second Amended Complaint, Fullerton Defendants admit that Government Code Section 815.2 speaks for itself. Except as so expressly admitted, Fullerton Defendants deny each and every allegation therein.

86. Answering paragraph 86 of the Second Amended Complaint, Fullerton Defendants admit that Civil Code Section 1714(a) speaks for itself. Except as so expressly admitted, Fullerton Defendants deny each and every allegation therein.

87. Answering paragraph 87 of the Second Amended Complaint, insofar as the allegations of this paragraph contain legal conclusions, no answer is required. To the extent an answer is required, Fullerton Defendants admit that the referenced sections speak for themselves. Except as so expressly admitted, Fullerton Defendants deny each and every allegation therein.

88. Answering paragraph 88 of the Second Amended Complaint, Fullerton Defendants admit that Officer Bybee encountered Plaintiff on his bicycle on August 11, 2012 at approximately 11:45 p.m. on Valencia Ave. near Harbor Blvd. in Fullerton, CA. Officer Bybee was driving an unmarked police vehicle equipped with emergency lights and siren and wearing a full Fullerton Police

1 uniforms, including a badge and patches on each shoulder at the time of the
2 encounter with Plaintiff. Except as so admitted, Fullerton Defendants deny each
3 and every allegation contained in paragraph 88.

4 89. Answering paragraph 89 of the Second Amended Complaint, insofar
5 as the allegations of this paragraph contain legal conclusions, no answer is
6 required. To the extent an answer is required, Fullerton Defendants admit that
7 Officer Bybee was employed by Fullerton Police Department on August 11, 2012.
8 Except as so admitted, Fullerton Defendants deny each and every allegation
9 contained in paragraph 89 of the Second Amended Complaint.

10 90. Answering paragraph 90 of the Second Amended Complaint, insofar
11 as the allegations of this paragraph contain legal conclusions, no answer is
12 required. To the extent an answer is required, Fullerton Defendants deny each and
13 every allegation contained in paragraph 90 of the Second Amended Complaint.

14 91. Answering paragraph 91 of the Second Amended Complaint, insofar
15 as the allegations of this paragraph contain legal conclusions, no answer is
16 required. To the extent an answer is required, Fullerton Defendants deny each and
17 every allegation contained in paragraph 91 of the Second Amended Complaint.

18 92. Answering paragraph 92 of the Second Amended Complaint, insofar
19 as the allegations of this paragraph contain legal conclusions, no answer is
20 required. To the extent an answer is required, Fullerton Defendants are without
21 sufficient knowledge or information to form a belief as to the truth of the
22 allegations, and on that basis deny each and every allegation contained therein.

23 93. Answering paragraph 93 of the Second Amended Complaint, insofar
24 as the allegations of this paragraph contain legal conclusions, no answer is
25 required. To the extent an answer is required, Fullerton Defendants deny each and
26 every allegation contained in paragraph 93 of the Second Amended Complaint.

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SIXTH CAUSE OF ACTION

94. Paragraph 94 of the Second Amended Complaint merely incorporates by reference the allegations of previous paragraphs. In answering paragraph 94, Fullerton Defendants incorporate their respective admissions and denials to each such paragraph enumerated above.

95. Answering paragraph 95 of the Second Amended Complaint, insofar as the allegations of this paragraph contain legal conclusions, no answer is required. To the extent an answer is required, Fullerton Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis deny each and every allegation contained therein.

96. Answering paragraph 96 of the Second Amended Complaint, insofar as the allegations of this paragraph contain legal conclusions, no answer is required. To the extent an answer is required, Fullerton Defendants admit that Officer Bybee was employed by the Fullerton Police Department on August 11, 2012. Except as so admitted, Fullerton Defendants deny each and every allegation contained in paragraph 96 of the Second Amended Complaint.

97. Answering paragraph 97 of the Second Amended Complaint, insofar as the allegations of this paragraph contain legal conclusions, no answer is required. To the extent an answer is required, Fullerton Defendants admit that Officer Bybee encountered Plaintiff on his bicycle on August 11, 2012 at approximately 11:45 p.m. on Valencia Ave. near Harbor Blvd. in Fullerton, CA. Officer Bybee was driving an unmarked police vehicle equipped with emergency lights and siren and wearing a full Fullerton Police uniforms, including a badge and patches on each shoulder at the time of the encounter with Plaintiff. Except as so admitted, Fullerton Defendants deny each and every allegation contained in paragraph 97.

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2 98. Answering paragraph 98 of the Second Amended Complaint, insofar
3 as the allegations of this paragraph contain legal conclusions, no answer is
4 required. To the extent an answer is required, Fullerton Defendants deny each and
5 every allegation contained in paragraph 98 of the Second Amended Complaint.

6 99. Answering paragraph 99 of the Second Amended Complaint, insofar
7 as the allegations of this paragraph contain legal conclusions, no answer is
8 required. To the extent an answer is required, Fullerton Defendants are without
9 sufficient knowledge or information to form a belief as to the truth of the
10 allegations, and on that basis deny each and every allegation contained therein.

11 100. Answering paragraph 100 of the Second Amended Complaint, insofar
12 as the allegations of this paragraph contain legal conclusions, no answer is
13 required. To the extent an answer is required, Fullerton Defendants deny each and
14 every allegation contained in paragraph 100 of the Second Amended Complaint.
15

16 **AFFIRMATIVE DEFENSES**

17 In addition to each of the admissions and denials set forth above, Fullerton
18 Defendants assert the following affirmative defenses. The assertion of an
19 affirmative defense shall not negate, by any means, Plaintiff's burden of proof on
20 any element of his claims.
21

22 **FIRST AFFIRMATIVE DEFENSE**

23 (Failure to State a Claim for Relief)

24 101. Fullerton Defendants allege that neither the Second Amended
25 Complaint, nor any claim for relief asserted therein, asserts facts sufficient to
26 constitute a claim against Fullerton Defendants.
27
28

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2 **SECOND AFFIRMATIVE DEFENSE**

3 (Assumption of Risk)

4 102. Fullerton Defendants allege that Plaintiff voluntarily assumed all
5 risks, responsibility and liability for the alleged injuries or damages, if any,
6 sustained by Plaintiff.

7
8 **THIRD AFFIRMATIVE DEFENSE**

9 (Claims Barred by Govt. Code § 815)

10 103. Fullerton Defendants allege that each and every state-law claim for
11 relief contained in Plaintiff's Second Amended Complaint is barred by the
12 provisions of Government Code section 815. Specifically, except as otherwise
13 provided by statute, a public entity is not liable for an injury, whether such injury
14 arises out of an act or omission of the public entity or a public employee or any
15 other person.

16
17 **FOURTH AFFIRMATIVE DEFENSE**

18 (Claims Barred by Govt. Code § 815.2)

19 104. Fullerton Defendants allege that each and every state-law claim for
20 relief contained in Plaintiff's Second Amended Complaint is barred by the
21 provisions of Government Code section 815.2. Specifically, except as otherwise
22 provided by statute, a public entity is not liable for an injury resulting from an act
23 or omission of an employee of the public entity where the employee is immune
24 from liability.

25
26 **FIFTH AFFIRMATIVE DEFENSE**

27 (Claims Barred by Govt. Code § 818.2)

28 105. Fullerton Defendants allege that each and every state-law claim for

1 relief contained in Plaintiff's Second Amended Complaint is barred by the
2 provisions of Government Code section 818.2. Specifically, a public entity is not
3 liable for an injury caused by adopting or failing to adopt an enactment or by
4 failing to enforce any law.

5
6 **SIXTH AFFIRMATIVE DEFENSE**

7 (Claims Barred by Govt. Code § 820.2)

8 106. Fullerton Defendants allege that each and every state-law claim for
9 relief contained in Plaintiff's Second Amended Complaint is barred by the
10 provisions of Government Code section 820.2. Specifically, except as otherwise
11 provided by statute, a public employee is not liable for an injury resulting from his
12 act or omission where the act or omission was the result of the exercise of the
13 discretion vested in him/her, whether or not such discretion be abused.

14
15 **SEVENTH AFFIRMATIVE DEFENSE**

16 (Claims Barred by Govt. Code § 820.4)

17 107. Fullerton Defendants allege that each and every state-law claim for
18 relief contained in Plaintiff's Second Amended Complaint is barred by the
19 provisions of Government Code section 820.4. Specifically, a public employee is
20 not liable for his/her act or omission, exercising due care, in the execution or
21 enforcement of any law.

22
23 **EIGHTH AFFIRMATIVE DEFENSE**

24 (Claims Barred by Govt. Code § 820.6)

25 108. Fullerton Defendants allege that each and every state-law claim for
26 relief contained in Plaintiff's Second Amended Complaint is barred by the
27 provisions of Government Code section 820.6. Specifically, if a public employee
28 acts in good faith, without malice, and under the apparent authority of an

1 enactment that is unconstitutional, invalid or inapplicable, he/she is not liable for
2 an injury caused thereby except to the extent that he/she would have been liable
3 had the enactment been constitutional, valid and applicable.

4
5 **NINTH AFFIRMATIVE DEFENSE**

6 (Claims Barred by Govt. Code § 820.8)

7 109. Fullerton Defendants allege that each and every state-law claim for
8 relief contained in Plaintiff's Second Amended Complaint is barred by the
9 provisions of Government Code section 820.8. Specifically, except as otherwise
10 provided by statute, a public employee is not liable for an injury caused by the act
11 or omission of another person.

12
13 **TENTH AFFIRMATIVE DEFENSE**

14 (Claims Barred by Govt. Code § 821)

15 110. Fullerton Defendants allege that each and every state-law claim for
16 relief contained in Plaintiff's Second Amended Complaint is barred by the
17 provisions of Government Code section 821. Specifically, a public employee is
18 not liable for an injury caused by his/her adoption of or failure to adopt an
19 enactment or by his/her failure to enforce an enactment.

20
21 **ELEVETH AFFIRMATIVE DEFENSE**

22 (Claims Barred by Govt. Code § 845)

23 111. Fullerton Defendants allege that each and every state-law claim for
24 relief contained in Plaintiff's Second Amended Complaint is barred by the
25 provisions of Government Code section 845. Specifically, neither a public entity
26 nor a public employee is liable for failure to establish a police department or
27 otherwise to provide police protection service or, if police protection service is
28 provided, for failure to provide sufficient police protection service.

1
2 **TWELFTH AFFIRMATIVE DEFENSE**

3 (Claims Barred by Govt. Code § 845.8)

4 112. Fullerton Defendants allege that each and every state-law claim for
5 relief contained in Plaintiff's Second Amended Complaint is barred by the
6 provision of Government Code section 845.8. Specifically, neither a public entity,
7 nor a public employee is liable for any injury caused by (1) an escaping or escaped
8 prisoner; (2) an escaping or escaped arrested person; or (3) a person resisting
9 arrest.

10
11 **THIRTEENTH AFFIRMATIVE DEFENSE**

12 (Avoidable Consequences)

13 113. The alleged damages asserted by Plaintiff in the Second Amended
14 Complaint are barred, either in whole or in part, by the doctrine of avoidable
15 consequences. State Department of Health Services v. Superior Court, 31 Cal.4th
16 1026, 6 Cal. Rptr. 3d 441 (2003).

17
18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 (Speculative Damages)

20 114. Plaintiff's claims for damages are barred, either in whole or in part,
21 because Plaintiff's purported damages are remote, speculative and/or unavailable
22 as a matter of law.

23
24 **FIFTEENTH AFFIRMATIVE DEFENSE**

25 (Lawful Conduct)

26 115. Fullerton Defendants allege that their conduct was at all times
27 reasonable and lawful under the circumstances.
28

1
2 **SIXTEENTH AFFIRMATIVE DEFENSE**

3 (No Policy, Practice or Custom)

4 116. Fullerton Defendants allege that no policy, practice or custom of, or
5 carried out by, the City, or promulgated by any policy maker of the City existed
6 and/or served to deprive Plaintiff of his constitutional rights.

7
8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 (Failure of Complaint to Match Claim)

10 117. Fullerton Defendants allege that Plaintiff's state law claims are barred
11 by his failure to comply with the claim provisions of Government Code section
12 900, et seq., for the failure of the claim to match the Complaint.

13
14 **EIGHTEENTH AFFIRMATIVE DEFENSE**

15 (Waiver)

16 118. Fullerton Defendants allege that Plaintiff has engaged in conduct and
17 activities sufficient to constitute a waiver of any alleged duty, act or omission of
18 any nature by Fullerton Defendants, which waiver serves to preclude any recovery
19 here sought by Plaintiff.

20
21 **NINETEENTH AFFIRMATIVE DEFENSE**

22 (Laches)

23 119. Fullerton Defendants allege that each and every claim for relief
24 contained in Plaintiff's Second Amended Complaint is barred by the equitable
25 doctrine of laches.

1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 (Failure to Mitigate Damages)

3 120. Fullerton Defendants allege that that though under a duty to do so,
4 Plaintiff have failed and neglected to mitigate the alleged damages, and therefore
5 cannot recover against Fullerton Defendants whether as alleged, or otherwise.
6 Fullerton Defendants are informed and believe and thereon allege that Plaintiff
7 failed to exercise his duty to mitigate and limit his damage claim as to Fullerton
8 Defendants, which acts and omissions by Plaintiff have estopped Plaintiff from
9 asserting any claim for damages or seeking the relief requested against Fullerton
10 Defendants.

11
12 **TWENTY SECOND AFFIRMATIVE DEFENSE**

13 (Estoppel)

14 121. Fullerton Defendants allege that each and every claim for relief
15 contained in Plaintiff's Second Amended Complaint is barred by the equitable
16 doctrine of estoppel.

17
18 **TWENTY SECOND AFFIRMATIVE DEFENSE**

19 (Unclean Hands)

20 122. Fullerton Defendants allege that each and every claim for relief
21 contained in Plaintiff's Second Amended Complaint is barred by the equitable
22 doctrine of unclean hands.

23
24 **TWENTY THIRD AFFIRMATIVE DEFENSE**

25 (Legal and/or Proximate Cause)

26 123. Fullerton Defendants allege that their acts were not the legal and/or
27 proximate cause of any of the damages alleged by Plaintiff.
28

TWENTY FOURTH AFFIRMATIVE DEFENSE

(Acts or Omissions of Plaintiff)

124. Fullerton Defendants allege that, to the extent Plaintiff suffered any damages, they were caused solely by the actions or omissions of Plaintiff.

TWENTY FIFTH AFFIRMATIVE DEFENSE

(Comparative Negligence)

125. Fullerton Defendants allege that each and every claim for relief stated in Plaintiff's Second Amended Complaint is barred and/or subject to offset and reduction by virtue of the comparative negligence of Plaintiff.

TWENTY SIXTH AFFIRMATIVE DEFENSE

(Apportionment)

126. Fullerton Defendants allege that, if Plaintiff suffered or sustained any loss of damages as alleged in the Second Amended Complaint, such loss or damage was proximately caused and contributed to by persons or entities other than Fullerton Defendants. The liability of all defendants, named or unnamed, should be apportioned according to the relative degrees of fault, and the liability of Fullerton Defendants should be reduced accordingly.

TWENTY SEVENTH AFFIRMATIVE DEFENSE

(Offset)

127. Fullerton Defendants allege that any amount for which it is held liable and owing to Plaintiff is offset by any and all amounts recovered by Plaintiff from any other responsible parties, such that Fullerton Defendants' liability will be reduced in an amount corresponding to those recovered by Plaintiff from such other responsible parties.

1 **TWENTY EIGHTH AFFIRMATIVE DEFENSE**

2 (Vehicle Code section 17004.1)

3 128. Fullerton Defendants allege that each and every state-law claim for
4 relief contained in Plaintiff's Second Amended Complaint is barred by the
5 provision of Vehicle Code section 17004.1. Specifically, a public employee is not
6 liable for civil damages on account of personal injury to or death of any person or
7 damage to property resulting from the operation, in the line of duty, of an
8 authorized emergency vehicle while responding to an emergency call or when in
9 the immediate pursuit of an actual or suspected violator of the law, or when
10 responding to but not upon returning from a fire alarm or other emergency call.

11
12 **TWENTY NINTH AFFIRMATIVE DEFENSE**

13 (Claim for relief Barred by Govt. Code § 844.6)

14 129. Fullerton Defendants allege that each and every state-law claim for
15 relief contained in Plaintiffs' Second Amended Complaint is barred by the
16 provisions of Government Code section 844.6. Specifically, a public entity is not
17 liable for an injury to any prisoner.

18
19 **THIRTIETH AFFIRMATIVE DEFENSE**

20 (Claims Barred Due to Exercise of Reasonable Force)

21 130. Fullerton Defendants allege that each and every claim for relief
22 contained in Plaintiff's Second Amended Complaint is barred because, at all times
23 mentioned therein, Fullerton Defendants allege that no more force, if any, was used
24 on Plaintiff's person than was necessary to effect detention, overcome any
25 resistance thereto, prevent escape thereon, and prevent injury to Fullerton
26 Defendants and others, and that such force, if any, was reasonable under the
27 circumstances.

1
2
3
4 **THIRTY FIRST AFFIRMATIVE DEFENSE**

5 (Claims Barred Due to Reasonable and Probable Cause to Detain Plaintiff)

6 131. Fullerton Defendants allege that each and every claim for relief
7 contained in Plaintiff's Second Amended Complaint is barred because, at all times
8 mentioned therein, Fullerton Defendants had reasonable and probable cause to
9 detain and restrain Plaintiff.
10

11 **THIRTY SECOND AFFIRMATIVE DEFENSE**

12 (Qualified Immunity)

13 132. Fullerton Defendants allege that each and every claim for relief
14 contained in Plaintiff's Second Amended Complaint is barred because the
15 individual Fullerton Defendants are entitled to qualified immunity.
16

17 **THIRTY THIRD AFFIRMATIVE DEFENSE**

18 (Claims Barred by the Doctrines of Collateral Estoppel and Res Judicata)

19 133. Fullerton Defendants reserve as an affirmative defense that Plaintiff's
20 claims are barred by the doctrines of collateral estoppel and res judicata as
21 announced in Heck v. Humphrey, 512 U.S. 477 (1994).
22

23 **THIRTY FOURTH AFFIRMATIVE DEFENSE**

24 (Reservation of Additional Affirmative Defenses)

25 134. Fullerton Defendants allege that they are without sufficient
26 information as to the nature and scope of Plaintiff's causes of action as to be able
27 to be fully assess and set forth all potentially-applicable affirmative defenses in this
28 matter. Accordingly, the City hereby reserve the right to allege additional

1 affirmative defenses as further information becomes known.

2
3 **PRAYER FOR RELIEF**
4

5 WHEREFORE, Fullerton Defendants pray as follows:

6 1. That Plaintiff take nothing by reason of his Second Amended
7 Complaint, and that judgment be entered in favor of Fullerton Defendants.

8 2. That Fullerton Defendants be awarded costs of suit and attorney's fees
9 incurred in defense of this action pursuant to 42 U.S.C. § 1988 and other legal
10 grounds; and

11 3. For such other and further relief as the Court deems just and proper.
12

13 Dated: March 26, 2014

Respectfully submitted,

14 JONES & MAYER
15

16 By:/s/ Denise L. Rocawich

17 JAMES R. TOUCHSTONE

18 DENISE L. ROCAWICH

Attorneys for City of Fullerton and
Officer Bryan Bybee
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