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10 *Attorneys for Defendants* **CITY OF LOS ANGELES, MIKE FOSTER and**
11 **KEVIN PALMER**

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **WILLIAM GAGAN, SHAWN NEE;**

15 **Plaintiffs,**

16 **vs.**

17 **CITY OF LOS ANGELES, CHIEF**
18 **CHARLIE BECK, individually and in**
19 **his official capacity, LIEUTENANT**
20 **GAVIN, SERGEANT RUDY VIDAL,**
21 **OFFICER FOSTER, OFFICER**
22 **PALMER, DOES 1-10,**

23 **Defendants.**

CASE NO.: CV13-08088 DSF (SSx)

Hon. Dale S. Fischer, Ctrm. 840, Roybal
Mag. Suzanne H. Segal, Ctrm. 23, 3rd Fl.

DEFENDANTS CITY OF LOS
ANGELES, MIKE FOSTER AND
KEVIN PALMER'S ANSWER TO
PLAINTIFFS' COMPLAINT
FOR DAMAGES; DEMAND FOR
JURY TRIAL

24 **COMES NOW DEFENDANTS, CITY OF LOS ANGELES, MIKE FOSTER and**
25 **KEVIN PALMER** answer Plaintiffs' Complaint in the above-entitled action, for
26 themselves alone and for no other party, hereby admit, deny, and allege as follows:

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1 **JURISDICTION AND VENUE**

- 2 1. Answering Paragraph 1, Defendants admit the allegations stated therein.
3 2. Answering Paragraph 2, Defendants admit the allegations stated therein.
4 3. Answering Paragraph 3, Defendants admit the allegations stated therein.

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6 **INTRODUCTION**

- 7 4. Answering Paragraph 4, Defendants admit Plaintiff Gagan was arrested
8 on September 29, 2012, but denies the remainder of the allegations contained therein.
9 5. Answering Paragraph 5, Defendants admit Mr. Nee was taken into custody
10 on June 2, 2013, but deny the remainder of the allegations contained therein.
11 6. Answering paragraph 6, Defendants deny the allegations contained
12 therein.
13 7. Answering paragraph 7, Defendants deny the allegations contained
14 therein.
15 8. Answering paragraph 8, Defendants deny the allegations contained
16 therein.

17 **PARTIES**

- 18 9. Answering paragraph 9, Defendants lack sufficient information and belief
19 upon which to answer the allegations contained therein, and on that basis deny the
20 allegations.
21 10. Answering paragraph 10, Defendants lack sufficient information and belief
22 upon which to answer the allegations contained therein, and on that basis deny the
23 allegations.
24 11. Answering paragraph 11, Defendants admit the City of Los Angeles is a
25 public entity, as well as the existence of the City Charter. Defendants deny the
26 remainder of the allegations contained therein.
27 12. Answering paragraph 12, Defendants admit Charlie Beck is the Chief of
28 Police of the LAPD and a policymaker. Defendants deny the remaining allegations

1 contained therein.

2 13. Answering paragraph 13, Defendants admit Lieutenant Gavin is a
3 supervisor in the Los Angeles Police Department. Defendants deny the remaining
4 allegations contained therein.

5 14. Answering paragraph 14, Defendants lack sufficient information and belief
6 upon which to answer the allegations contained therein, and on that basis deny the
7 allegations.

8 15. Answering paragraph 15, Defendants deny the allegations contained
9 therein.

10 16. Answering paragraph 16, Defendants lack sufficient information and belief
11 upon which to answer the allegations contained therein, and on that basis deny the
12 allegations.

13 17. Answering paragraph 17, Defendants lack sufficient information and belief
14 upon which to answer the allegations contained therein, and on that basis deny the
15 allegations.

16 18. Answering paragraph 18, Defendants lack sufficient information and belief
17 upon which to answer the allegations contained therein, and on that basis deny the
18 allegations.

19 19. Answering paragraph 19, Defendants lack sufficient information and belief
20 upon which to answer the allegations contained therein, and on that basis deny the
21 allegations.

22 20. Answering paragraph 20, Defendants lack sufficient information and belief
23 upon which to answer the allegations contained therein, and on that basis deny the
24 allegations.

25 **STATEMENT OF FACTS**

26 21. Answering paragraph 21, Defendants deny the allegations contained
27 therein.

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1 22. Answering paragraph 22, Defendants deny the allegations contained
2 therein.

3 23. Answering paragraph 23, Defendants deny the allegations contained
4 therein.

5 24. Answering paragraph 24, Defendants deny the allegations contained
6 therein.

7 25. Answering paragraph 25, Defendants deny the allegations contained
8 therein.

9 26. Answering paragraph 26, Defendants deny the allegations contained
10 therein.

11 27. Answering paragraph 27, Defendants deny the allegations contained
12 therein.

13 28. Answering paragraph 28, Defendants deny the allegations contained
14 therein.

15 29. Answering paragraph 29, Defendants deny the allegations contained
16 therein.

17 30. Answering paragraph 30, Defendants deny the allegations contained
18 therein.

19 31. Answering paragraph 31, Defendants deny the allegations contained
20 therein.

21 32. Answering paragraph 32, Defendants deny the allegations contained
22 therein.

23 33. Answering paragraph 33, Defendants deny the allegations contained
24 therein.

25 34. Answering paragraph 34, Defendants deny the allegations contained
26 therein.

27 35. Answering paragraph 35, Defendants deny the allegations contained
28 therein.

1 36. Answering paragraph 36, Defendants deny the allegations contained
2 therein.

3 37. Answering paragraph 37, Defendants deny the allegations contained
4 therein.

5 38. Answering paragraph 38, Defendants deny the allegations contained
6 therein.

7 39. Answering paragraph 39, Defendants deny the allegations contained
8 therein.

9 40. Answering paragraph 40, Defendants deny the allegations contained
10 therein.

11 **MONELL ALLEGATIONS**

12 41. Answering paragraph 41, Defendants deny the allegations contained
13 therein.

14 42. Answering paragraph 42, Defendants deny the allegations contained
15 therein.

16 43. Answering paragraph 43, Defendants deny the allegations contained
17 therein.

18 44. Answering paragraph 44, Defendants deny the allegations contained
19 therein.

20 45. Answering paragraph 45, Defendants deny the allegations contained
21 therein.

22 46. Answering paragraph 46, Defendants deny the allegations contained
23 therein.

24 46A. Answering paragraph 46A, Defendants deny the allegations contained
25 therein.

26 46B. Answering paragraph 46B, Defendants deny the allegations contained
27 therein.

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1 46C. Answering paragraph 46C, Defendants deny the allegations contained
2 therein.

3 46D. Answering paragraph 46D, Defendants deny the allegations contained
4 therein.

5 46E. Answering paragraph 46E, Defendants deny the allegations contained
6 therein.

7 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 47. Answering paragraph 47, Defendants admit both Plaintiffs have filed Tort
9 Claims.

10 **FIRST CAUSE OF ACTION**

11 **Violation of the Fourth Amendment (42 U.S.C. §1983)**

12 **(Against all Defendants)**

13 48. Answering paragraph 48, which incorporates by reference the allegations
14 of other paragraphs of the pleading, Defendants to the same extent incorporate by
15 reference the answers provided herein to those paragraphs.

16 49. Answering paragraph 49, Defendants deny the allegations contained
17 therein.

18 50. Answering paragraph 50, Defendants deny the allegations contained
19 therein.

20 51. Answering paragraph 51, Defendants deny the allegations contained
21 therein.

22 52. Answering paragraph 52, Defendants deny the allegations contained
23 therein.

24 53. Answering paragraph 53, Defendants deny the allegations contained
25 therein.

26 54. Answering paragraph 54, Defendants deny the allegations contained
27 therein.

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SECOND CAUSE OF ACTION

Violation of the Fourth Amendment (42 U.S.C. §1983)

(Against all Defendants)

55. Answering paragraph 55, which incorporates by reference the allegations of other paragraphs of the pleading, Defendants to the same extent incorporate by reference the answers provided herein to those paragraphs.

56. Answering paragraph 56, Defendants deny the allegations contained therein.

THIRD CAUSE OF ACTION

Retaliation in Violation of the First Amendment (42 U.S.C. §1983)

(Against all Defendants)

57. Answering paragraph 57, which incorporates by reference the allegations of other paragraphs of the pleading, Defendants to the same extent incorporate by reference the answers provided herein to those paragraphs.

58. Answering paragraph 58, Defendants deny the allegations contained therein.

59. Answering paragraph 59, Defendants deny the allegations contained therein.

60. Answering paragraph 60, Defendants deny the allegations contained therein.

FOURTH CAUSE OF ACTION

Retaliation of California Constitution Art. I §2, 3, Cal. Civ. Code 52.1

(Against all Defendants)

61. Answering paragraph 61, which incorporates by reference the allegations of other paragraphs of the pleading, Defendants to the same extent incorporate by reference the answers provided herein to those paragraphs.

62. Answering paragraph 62, Defendants deny the allegations contained therein.

1 63. Answering paragraph 63, Defendants deny the allegations contained
2 therein.

3 64. Answering paragraph 64, Defendants deny the allegations contained
4 therein.

5 **FIFTH CAUSE OF ACTION**

6 **Retaliation of California Constitution Art. I §13, Cal. Civ. Code 52.1**

7 **(Against all Defendants)**

8 65. Answering paragraph 65, which incorporates by reference the allegations
9 of other paragraphs of the pleading, Defendants to the same extent incorporate by
10 reference the answers provided herein to those paragraphs.

11 66. Answering paragraph 66, Defendants deny the allegations contained
12 therein.

13 67. Answering paragraph 67, Defendants deny the allegations contained
14 therein.

15 68. Answering paragraph 68, Defendants deny the allegations contained
16 therein.

17 **SIXTH CAUSE OF ACTION**

18 **False Arrest and/or False Imprisonment**

19 **(Against all Defendants)**

20 69. Answering paragraph 69, which incorporates by reference the allegations
21 of other paragraphs of the pleading, Defendants to the same extent incorporate by
22 reference the answers provided herein to those paragraphs.

23 70. Answering paragraph 70, Defendants deny the allegations contained
24 therein.

25 71. Answering paragraph 71, Defendants deny the allegations contained
26 therein.

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SEVENTH CAUSE OF ACTION

Violation of Privacy Protection Act, 42 U.S.C. §2000aa(a)

(Against the City of Los Angeles and Lieutenant Gavin)

72. Answering paragraph 72, which incorporates by reference the allegations of other paragraphs of the pleading, Defendants to the same extent incorporate by reference the answers provided herein to those paragraphs.

73. Answering paragraph 73, Defendants deny the allegations contained therein.

74. Answering paragraph 74, Defendants deny the allegations contained therein.

EIGHTH CAUSE OF ACTION

Negligence

(Against all Defendants)

75. Answering paragraph 75, which incorporates by reference the allegations of other paragraphs of the pleading, Defendants to the same extent incorporate by reference the answers provided herein to those paragraphs.

76. Answering paragraph 76, Defendants deny the allegations contained therein.

77. Answering paragraph 77, Defendants deny the allegations contained therein.

78. Answering paragraph 78, Defendants deny the allegations contained therein.

79. Answering paragraph 79, Defendants deny the allegations contained therein.

79a. Answering paragraph 79a, Defendants deny the allegations contained therein.

79b. Answering paragraph 79b, Defendants deny the allegations contained therein.

1 79c. Answering paragraph 79c, Defendants deny the allegations contained
2 therein.

3 79d. Answering paragraph 79d, Defendants deny the allegations contained
4 therein.

5 79e. Answering paragraph 79e, Defendants deny the allegations contained
6 therein.

7 79f. Answering paragraph 79f, Defendants deny the allegations contained
8 therein.

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10 **AFFIRMATIVE DEFENSES**

11 As separate and distinct affirmative defenses, Defendants allege each of the
12 following:

13 **FIRST AFFIRMATIVE DEFENSE**

14 The force used against Plaintiffs, if any, was caused and necessitated by the
15 actions of Plaintiffs, and was reasonable and necessary for self defense.

16 **SECOND AFFIRMATIVE DEFENSE**

17 The force used against Plaintiffs, if any, was caused and necessitated by the
18 actions of Plaintiffs, and was reasonable and necessary for the defense of others.

19 **THIRD AFFIRMATIVE DEFENSE**

20 The claims are barred by the statute of limitations set forth in California Code
21 of Civil Procedure § 340(3).

22 **FOURTH AFFIRMATIVE DEFENSE**

23 The state claims are barred for Plaintiffs' failure to comply with the provisions
24 of the California Tort Claims Act, Government Code § 910 et seq.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 Plaintiffs are barred from recovering punitive damages against the Officers in
27 their official capacity.

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1 **SIXTH AFFIRMATIVE DEFENSE**

2 The action is barred by the doctrine of res judicata.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 Defendants' actions are privileged pursuant to Civil Code § 47.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 As to the federal claims and theories of recovery, the answering Defendants
7 are protected from liability under the doctrine of qualified immunity, because
8 Defendants' conduct did not violate clearly established statutory or constitutional
9 rights of which a reasonable person would have known.

10 **NINTH AFFIRMATIVE DEFENSE**

11 The answering Defendants are immune from liability for all damages sustained
12 after the prosecutor initiated criminal charges, pursuant to Smiddy v. Varney, 803
13 F.2d 1469 (9th Cir. 1986), and Jackson v. City of San Diego, 121 Cal.App.3d 579
14 (1981).

15 **TENTH AFFIRMATIVE DEFENSE**

16 As to the federal claims and theories of recovery, the answering Defendants
17 are protected from liability under the doctrine of witness immunity.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 Defendant City of Los Angeles is immune from the imposition of punitive
20 damages.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 Defendants are immune from liability pursuant to the provisions of each of the
23 following California statutes, each of which is set forth as a separate and distinct
24 affirmative defense:

25 Government Code §§ 815.2, 818, 818.8, 829.2, 821.6, 822.2, and 845.

26 Penal Code §§ 836.5 and 847.

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1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 Defendants allege that on file in this action, nor any of the alleged causes of
3 action therein, state facts sufficient to constitute a cause of action on which relief can
4 be granted against Defendants.

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 Defendants allege there was reasonable suspicion to detain both Plaintiffs on
7 the dates alleged in the Complaint.

8 **FIFTHTEENTH AFFIRMATIVE DEFENSE**

9 Defendants allege there was probable cause to arrest both Plaintiffs on the
10 dates alleged in the Complaint.

11
12 Defendants hereby reserve the right to amend this Answer in accordance with
13 the Federal Rules of Civil Procedure.

14
15 **PRAYER FOR RELIEF**

16 W H E R E F O R E, Defendants **CITY OF LOS ANGELES, MIKE**
17 **FOSTER, and KEVIN PALMER** pray for judgment as follows:

- 18 1. That Plaintiffs take nothing by this action;
19 2. That the action be dismissed;
20 3. That Defendants be awarded costs of suit;
21 4. That Defendants be awarded other and further relief as the Court may
22 deem just and proper, including an award of attorney's fees pursuant to 42 U.S.C. §
23 1988.

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DEMAND FOR JURY TRIAL

Defendants **CITY OF LOS ANGELES, MIKE FOSTER, and KEVIN PALMER** demand and request a trial by jury in this matter.

DATED: February 20, 2014. **MICHAEL N. FEUER**, City Attorney
JAMES P. CLARK, Chief Deputy City Attorney
CORY M. BRENTÉ, Assistant City Attorney

By /s/ - Surekha A. Pessis
SUREKHA A. PESSIS, Deputy City Attorney

Attorneys for Defendants **CITY OF LOS ANGELES,
MIKE FOSTER and KEVIN PALMER**