



1 deny the allegations and therefore, deny allegations.

2 5. Defendants admit Plaintiff filed this lawsuit. Defendants have  
3 insufficient knowledge and information to admit or deny the other allegations, and  
4 therefore, deny allegations.

5 6. Defendants have insufficient knowledge and information to admit or  
6 deny the allegations, and therefore, deny allegations.

7 7. Defendants admit allegations.

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2 111. Defendants have insufficient knowledge and information to admit or  
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4 112. This paragraph consists entirely of conclusions of law to which no  
5 response is required.

6 113. Defendants admit allegations.

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7           128. Defendants deny allegations.

8           129. This paragraph consists entirely of conclusions of law to which no  
9 response is required.

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8 157. This paragraph consists entirely of conclusions of law to which no  
9 response is required.

10 158. Defendants have insufficient knowledge and information to admit or  
11 deny the allegations, and therefore, deny allegations.

12 159. Defendants admit Plaintiff has a right to demand a jury trial. Defendants  
13 have insufficient knowledge and information to admit or deny the other allegations,  
14 and therefore, deny allegations.

15 160. This paragraph consists entirely of conclusions of law to which no  
16 response is required.

17 161. This paragraph consists entirely of conclusions of law to which no  
18 response is required.

19 162. This paragraph consists entirely of conclusions of law to which no  
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**AFFIRMATIVE DEFENSES**

Defendants assert the following Affirmative Defenses to the Plaintiff’s claims:

**I.**

**(Qualified Immunity)**

Defendant BRANDON LOPEZ and any other employees are immune from liability under the doctrine of qualified immunity.

**II.**

**(Contributory Negligence/Comparative Fault of Plaintiff)**

Plaintiff was careless and negligent, and Plaintiff’s conduct contributed to or caused the happening of the alleged incident, injury and damages.

**III.**

**(Failure to Mitigate)**

Plaintiff’s recovery is barred for failure to mitigate any alleged damages.

**IV.**

**(Assumption of Risk)**

Plaintiff’s claims are barred by the primary assumption of risk doctrine.

**V.**

**(Res judicata)**

Plaintiff’s claims are barred by the doctrine of res judicata.

**VI.**

**(Estoppel)**

Plaintiff’s claims are barred by the doctrine of estoppel.

**VII.**

**(Laches)**

Plaintiff’s claims are barred by the doctrine of laches.

**VIII.**

**(Unclean Hands)**

1 Plaintiff's claims are barred by the doctrine of unclean hands.

2 **IX.**

3 **(Lack of Standing)**

4 Plaintiff does not have standing to sue.

5 **X.**

6 **(Failure to Comply with Claim Requirements)**

7 Plaintiff failed to comply with the claims presentations requirements set forth  
8 in California Government Code section 901 et seq., including Sections 905, 910,  
9 910.6, 910.8, 911.2, 922.4, 915, 915.2, and 945.4.

10 **XI.**

11 **(Negligence of Others)**

12 Defendants are immune from liability, under Government Code section  
13 820.8, in that Plaintiff's injuries, if any, were proximately caused by an act or  
14 omission of a third person or persons.

15 **XII.**

16 **(Discretionary Immunity)**

17 Defendants are immune, under Government Code section 820.2, because any  
18 act or omission was the result of discretion.

19 **XIII.**

20 **(Good Faith)**

21 Defendants are immune, under California Government Code section 820.6,  
22 for acting in good faith.

23 **XIV.**

24 **(Immunity for Failing to Enforce Law)**

25 Defendants are immune, under California Government Code section 818.2,  
26 for failing to enforce any law.

27 **XV.**

28 **(Privileged Publication)**

1 Defendants are immune, under California Civil Code section 47, because any  
2 communication was privileged.

3 **XVI.**

4 Plaintiff's Complaint fails to state facts sufficient to constitute a cause of  
5 action against these answering defendants.

6 **XVII.**

7 Defendant, City of San Diego, its agents and employees, and the Defendant  
8 police officers acted in good faith and with a reasonable belief that their conduct  
9 was lawful and necessary.

10 **XVIII.**

11 Defendant, City of San Diego, is immune from liability in that a public entity  
12 is not liable for an injury arising out of its acts or omissions or of a public  
13 employee, in the absence of a statute declaring such liability.

14 **XIX.**

15 Defendant, City of San Diego, is not liable for an injury arising out of an act  
16 or omission of its employees, where the subject employee is immune from liability.

17 **XX.**

18 Defendant, City of San Diego, and its agents and employees are not liable for  
19 punitive damages.

20 **XXI.**

21 Defendant, City of San Diego, its agents and employees, and the Defendant  
22 police officers are not liable for injuries resulting from acts or omissions which  
23 were an exercise of discretion in the absence of a statute declaring such liability.

24 **XXII.**

25 Defendant, City of San Diego, its agents and employees, and the Defendant  
26 police officers are not liable for the execution or enforcement of the California  
27 Penal Code where due care is exercised.

28 **XXIII.**

1 Defendant, City of San Diego, its agents and employees, and the Defendant  
2 police officers are not liable for violation of the plaintiffs' civil rights in that the  
3 alleged wrongful acts were not under color of any statute, ordinance, regulation,  
4 custom or usage of the City of San Diego.

5 **XXIV.**

6 At the time of the contact, Defendant City of San Diego's agents and  
7 employees attempted to persuade Plaintiffs to follow directions and in doing so,  
8 only used force, if any existed, necessary for the occasion.

9 **XXV.**

10 Plaintiffs themselves were negligent in and about the matters alleged in the  
11 Complaint and said carelessness on his own part proximately contributed to the  
12 happening of the alleged incident, injuries and damages complained of, if any such  
13 exist.

14 **XXVI.**

15 Defendant, City of San Diego, its agents and employees, and the Defendant  
16 police officers were at all times alleged in the Complaint performing duties required  
17 by law under conditions required by law.

18 **XVII.**

19 Any and all acts of the defendant, City of San Diego, its agents and  
20 employees, and the Defendant police officers at or near the time alleged in the  
21 Complaint were reasonable and said defendants had reasonable cause to act in the  
22 manner they did.

23 **XVIII.**

24 At the time of the initial contact, the Defendant police officers were acting  
25 within the scope of their employment and had probable cause to believe Plaintiff  
26 was engaged in, was about to engage in, or had just engaged in, a prohibited  
27 activity. During the contact, the Defendant police officers were acting within the  
28

1 scope of their employment and had probable cause to believe that said Plaintiff had  
2 committed a crime.

3 **XXIX.**

4 The Court is without jurisdiction over the certain claims in the complaint  
5 which therefore fails as a matter of law, as against this answering defendant, and  
6 each Defendant.

7 **XXX.**

8 Plaintiffs do not have standing to seek relief for each and every cause of  
9 actions, as set forth in the Complaint.

10 **XXXI.**

11 The answering Defendants and/or a public employee are not liable for their  
12 acts or omissions, while exercising due care, in the execution or enforcement of any  
13 law, including pursuant to a California or federal code or law, including pursuant to  
14 the California Government Code, including sections 820.4 and/or 815.2.

15 **XXXII.**

16 The answering Defendants and/or public employees are not liable for an  
17 injury caused by the act or omission of another person, including pursuant to the  
18 California Government Code, including section 820.8.

19 **XXXIII.**

20 The answering Defendants and/or a public employees are not liable for  
21 plaintiff's own acts and conduct which caused the underlying events at issue in the  
22 complaint to occur, and but for the acts of the plaintiff, the events alleged in the  
23 complaint would not have occurred, and/or plaintiff would not have been involved  
24 or engaged or otherwise subject to the matters alleged in Plaintiff's Complaint,  
25 including any detention, apprehension, arrest, or control or force, if any, or  
26 otherwise having sustained the matters alleged, including any and all injuries,  
27 inconvenience and damages alleged in the Complaint.

28 **XXXIV.**



1 and all defenses that would be available to a private person pursuant to Government  
2 Code sections 815(a) and 815(b).

3 **XLII.**

4 If Plaintiff is entitled to recover for any damages suffered at the time and  
5 place alleged, then the total amount of damages to which Plaintiff would otherwise  
6 be entitled should be reduced in proportion to the amount of fault attributable to  
7 Plaintiff, or to a third person or persons, which fault directly and proximately  
8 contributed to Plaintiff's alleged damages.

9 **XLIII.**

10 Defendant CITY OF SAN DIEGO is not liable for common law negligence  
11 and is only liable pursuant to statute by operation of California Government Code  
12 section 815.

13 **XLIV.**

14 Defendant City of San Diego's agents and employees reasonably believed  
15 that Plaintiff was going to harm them and/or others and used only the amount of  
16 force that was reasonably necessary to protect themselves and/or others.

17 **DEMAND FOR JURY TRIAL**

18 Defendants demand a trial by jury in this action under Federal Rules of Civil  
19 Procedure, Rule 38(d).

20 **PRAYER**

21 WHEREFORE, Defendants pray for judgment as follows:

- 22 1. Plaintiff takes nothing by his Complaint;  
23 2. That judgment be entered in favor of Defendants;  
24 3. Defendants be awarded their costs of suit; and  
25 4. For such other relief as the court deems proper.

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Dated: May 14, 2025

HEATHER FERBERT, City Attorney

By   
Elizabeth L.A. Biggerstaff  
Deputy City Attorney

Attorneys for Defendants  
City of San Diego and  
SDPD Officer Brandon Lopez