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7 Attorneys for Defendants
8 CITY AND COUNTY OF SAN FRANCISCO,
JAMES F. CUNNINGHAM,
9 ELIZABETH A. MARON, and
RICHARD E. PATE

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 RAHINAH IBRAHIM, an individual,
14 Plaintiff,
15 vs.

Case No. C06-0545 WHA

**DEFENDANTS CITY AND COUNTY
OF SAN FRANCISCO'S, JAMES
CUNNINGHAM'S, ELIZABETH
MARON'S, AND RICHARD PATE'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

16 DEPARTMENT OF HOMELAND
17 SECURITY; MICHAEL CHERTOFF, in
his official capacity as the Secretary Of
18 The Department of Homeland Security;
TOM RIDGE, in his official capacity as
19 the former Secretary of the Department of
Homeland Security;
20 TRANSPORTATION SECURITY
ADMINISTRATION; KIP HAWLEY, in
21 his official capacity as Administrator of
the Transportation Security
22 Administration; DAVID M. STONE, in
his official capacity as Acting
23 Administrator of the Transportation
Security Administration; TERRORIST
24 SCREENING CENTER; DONNA A.
BUCELLA, in her official capacity as
25 Director of the Terrorist Screening Center;
NORM MINETA, in his official capacity
26 as Secretary of Transportation; FEDERAL
AVIATION ADMINISTRATION;
27 MARION C. BLAKEY, in her official
capacity as Administrator of the Federal
28 Aviation Administration; FEDERAL

DEMAND FOR JURY TRIAL

Date Action Filed: January 27, 2006
Trial Date: None Set

BUREAU OF INVESTIGATION;
ROBERT MUELLER, in his official
capacity as Director of the Federal Bureau
of Investigation; SAN FRANCISCO
AIRPORT; CITY OF SAN FRANCISCO;
COUNTY OF SAN FRANCISCO;
COUNTY OF SAN MATEO; SAN
FRANCISCO POLICE DEPARTMENT;
UAL CORPORATION; UNITED
AIRLINES; DAVID NEVINS, an
individual; RICHARD PATE, an
individual; JOHN BONDANELLA, an
individual; JOHN CUNNINGHAM, an
individual; ELIZABETH MARON, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

Defendants City and County of San Francisco¹ ("CCSF"), James F. Cunningham, Elizabeth
A. Maron, and Richard E. Pate ("defendants") respond to plaintiff's Complaint as follows:

THE COURT LACKS JURISDICTION

"Plaintiff brings this lawsuit to challenge defendants' administration, management and
implementation of the "No-Fly List," a list circulated to commercial airlines and security personnel
with instructions to detain and question any passenger whose name matches or is similar to one on
the No-Fly List." (Complaint ¶ 31.) This Court does not have jurisdiction over challenges to the no-
fly list. 49 U.S.C. § 46110(a). In this case, because plaintiff resides in the country of Malaysia
(Complaint ¶ 4), jurisdiction is vested with the United States Court of Appeals for the District of
Columbia Circuit. *Id.*

RESPONSE TO AVERMENTS

1. Responding to the introductory statement, defendants admit that plaintiff brought this
action under the listed code sections for the reasons stated. Defendants otherwise
incorporate their responses to the specific averments made in the Complaint below.

¹ Defendant City and County of San Francisco is the properly named defendant for the
following improperly identified defendants: San Francisco International Airport, City of San
Francisco, County of San Francisco, and San Francisco Police Department. Defendant City and
County of San Francisco ("CCSF") responds on behalf of each of the above improperly identified
defendants. *See* San Francisco Charter (1996), Article I, sections 1.100, 1.101; Article 4, sections
4.115, 4.127.

- 1 2. Responding to the allegations in paragraph two of the Complaint, defendants admit
2 that the acts alleged in the Complaint are alleged to have occurred in the judicial
3 district. Defendants otherwise deny the allegations in paragraph two of the
4 Complaint.
- 5 3. Responding to the allegations in the paragraph three of the Complaint, defendants
6 admit that if jurisdiction were proper in this action, assignment of this action to the
7 San Francisco Division would be proper because the acts alleged in the Complaint are
8 alleged to have occurred in the County of San Mateo. Defendants otherwise deny the
9 allegations in paragraph three of the Complaint.
- 10 4. Responding to the allegations in paragraph four of the Complaint, defendants lack
11 sufficient information to enable them to form a belief as to the truth of the allegations
12 in this paragraph and, on that basis, defendants deny the allegations.
- 13 5. Responding to the allegations in paragraph five of the Complaint, defendants lack
14 sufficient information to enable them to form a belief as to the truth of the allegations
15 in this paragraph and, on that basis, defendants deny the allegations.
- 16 6. Responding to paragraph six of the Complaint, defendants lack sufficient information
17 to enable them to form a belief as to the truth of the allegations in this paragraph and,
18 on that basis, defendants deny the allegations.
- 19 7. Responding to the allegations in paragraph seven of the Complaint, defendants lack
20 sufficient information to enable them to form a belief as to the truth of the allegations
21 in this paragraph and, on that basis, defendants deny the allegations.
- 22 8. Responding to the allegations in paragraph eight of the Complaint, defendants lack
23 sufficient information to enable them to form a belief as to the truth of the allegations
24 in this paragraph and, on that basis, defendants deny the allegations.
- 25 9. Responding to the allegations in paragraph nine of the Complaint, defendants lack
26 sufficient information to enable them to form a belief as to the truth of the allegations
27 in this paragraph and, on that basis, defendants deny the allegations.
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1 10. Responding to the allegations in paragraph ten of the Complaint, defendants lack
2 sufficient information to enable them to form a belief as to the truth of the allegations
3 in this paragraph and, on that basis, defendants deny the allegations.

4 11. Responding to the allegations in paragraph eleven of the Complaint, defendants lack
5 sufficient information to enable them to form a belief as to the truth of the allegations
6 in this paragraph and, on that basis, defendants deny the allegations.

7 12. Responding to the allegations in paragraph twelve of the Complaint, defendants lack
8 sufficient information to enable them to form a belief as to the truth of the allegations
9 in this paragraph and, on that basis, defendants deny the allegations.

10 13. Responding to the allegations in paragraph thirteen of the Complaint, defendants lack
11 sufficient information to enable them to form a belief as to the truth of the allegations
12 in this paragraph and, on that basis, defendants deny the allegations.

13 14. Responding to the allegations in paragraph fourteen of the Complaint, defendants lack
14 sufficient information to enable them to form a belief as to the truth of the allegations
15 in this paragraph and, on that basis, defendants deny the allegations.

16 15. Responding to the allegations in paragraph fifteen of the Complaint, defendants lack
17 sufficient information to enable them to form a belief as to the truth of the allegations
18 in this paragraph and, on that basis, defendants deny the allegations.

19 16. Responding to the allegations in paragraph sixteen of the Complaint, defendants lack
20 sufficient information to enable them to form a belief as to the truth of the allegations
21 in this paragraph and, on that basis, defendants deny the allegations.

22 17. Responding to the allegations in paragraph seventeen of the Complaint, defendants
23 lack sufficient information to enable them to form a belief as to the truth of the
24 allegations in this paragraph and, on that basis, defendants deny the allegations.

25 18. Responding to the allegations in paragraph eighteen of the Complaint, defendants
26 admit that San Francisco International Airport is an international airport located in
27 San Mateo County. Defendants deny that San Francisco International Airport is an
28

1 entity that can be named as a defendant in this lawsuit; the proper entity is the City
2 and County of San Francisco.

3 19. Responding to the allegations in paragraph nineteen of the Complaint, defendants
4 admit that the San Francisco Police Department is a department of the City and
5 County of San Francisco, and the CCSF is a is a municipal entity. Defendants deny
6 that the “City of San Francisco” is an entity that can be named as a defendant in this
7 lawsuit; the proper entity is the City and County of San Francisco.

8 20. Responding to the allegations in paragraph twenty of the Complaint, defendants admit
9 that the San Francisco Police Department is a department of the City and County of
10 San Francisco, and the CCSF is a is a municipal entity. Defendants deny that the
11 “County of San Francisco” is an entity that can be named as a defendant in this
12 lawsuit; the proper entity is the City and County of San Francisco.

13 21. Defendants admit the allegations in paragraph twenty-one of the Complaint.

14 22. Responding to the allegations in paragraph twenty-one of the Complaint, defendants
15 admit the San Francisco Police Department, among others, has jurisdiction over
16 certain events that occur at San Francisco International Airport. Defendants deny that
17 the “San Francisco Police Department” is an entity that can be named as a defendant
18 in this lawsuit; the proper entity is the City and County of San Francisco.

19 23. Responding to the allegations in paragraph twenty-three of the Complaint, defendants
20 lack sufficient information to enable them to form a belief as to the truth of the
21 allegations in this paragraph and, on that basis, defendants deny the allegations.

22 24. Responding to the allegations in paragraph twenty-four of the Complaint, defendants
23 lack sufficient information to enable them to form a belief as to the truth of the
24 allegations in this paragraph and, on that basis, defendants deny the allegations.

25 25. Responding to the allegations in paragraph twenty-five of the Complaint, defendants
26 lack sufficient information to enable them to form a belief as to the truth of the
27 allegations in this paragraph and, on that basis, defendants deny the allegations.

28 26. Defendants admit the allegations in paragraph twenty-six of the Complaint.

1 27. Defendants admit the allegations in paragraph twenty-seven of the Complaint.

2 28. Defendants admit the allegations in paragraph twenty-eight of the Complaint.

3 29. Responding to the allegations in the allegations in paragraph twenty-nine of the
4 Complaint, defendants lack sufficient information to enable them to form a belief as
5 to the truth of the allegations in this paragraph and, on that basis, defendants deny the
6 allegations.

7 30. Responding to the allegations in the allegations in paragraph thirty of the Complaint,
8 defendants lack sufficient information to enable them to form a belief as to the truth
9 of the allegations in this paragraph and, on that basis, defendants deny the allegations.

10 31. Responding to the allegations in paragraph thirty-one of the Complaint, defendants
11 admit that plaintiff brings this lawsuit to challenge the no-fly list. Defendants
12 otherwise lack sufficient information to enable them to form a belief as to the truth of
13 the allegations in this paragraph and, on that basis, defendants deny the allegations.

14 32. Responding to the allegations in the allegations in paragraph thirty-two of the
15 Complaint, defendants lack sufficient information to enable them to form a belief as
16 to the truth of the allegations in this paragraph and, on that basis, defendants deny the
17 allegations.

18 33. Responding to the allegations in the allegations in paragraph thirty-three of the
19 Complaint, defendants lack sufficient information to enable them to form a belief as
20 to the truth of the allegations in this paragraph and, on that basis, defendants deny the
21 allegations.

22 34. Responding to the allegations in the allegations in paragraph thirty-four of the
23 Complaint, defendants lack sufficient information to enable them to form a belief as
24 to the truth of the allegations in this paragraph and, on that basis, defendants deny the
25 allegations.

26 35. Responding to the allegations in the allegations in paragraph thirty-five of the
27 Complaint, defendants admit that security directives and the no-fly list are provided
28 to law enforcement agencies. Otherwise, defendants lack sufficient information to

1 enable them to form a belief as to the truth of the allegations in this paragraph and, on
2 that basis, defendants deny the allegations.

3 36. Responding to the allegations in the allegations in paragraph thirty-six of the
4 Complaint, defendants lack sufficient information to enable them to form a belief as
5 to the truth of the allegations in this paragraph and, on that basis, defendants deny the
6 allegations.

7 37. Responding to the allegations in paragraph thirty-seven of the Complaint, defendants
8 admit that plaintiff was detained at San Francisco International Airport on January 2,
9 2005. Otherwise defendants lack sufficient information to enable them to form a
10 belief as to the truth of the allegations in this paragraph and, on that basis, defendants
11 deny the allegations.

12 38. Responding to the allegations in paragraph thirty-eight of the Complaint, defendants
13 lack sufficient information to enable them to form a belief as to the truth of the
14 allegations in this paragraph and, on that basis, defendants deny the allegations.

15 39. Responding to the allegations in paragraph thirty-nine of the Complaint, defendants
16 lack sufficient information to enable them to form a belief as to the truth of the
17 allegations in this paragraph and, on that basis, defendants deny the allegations.

18 40. Responding to the allegations in paragraph forty of the Complaint, defendants admits
19 that plaintiff was at San Francisco International Airport on January 2, 2005.
20 Otherwise defendants lack sufficient information to enable them to form a belief as to
21 the truth of the allegations in this paragraph and, on that basis, defendants deny the
22 allegations.

23 41. Responding to the recital in paragraph forty-one of the Complaint, defendants admit
24 that the San Francisco Police Department received a phone call that plaintiff was on
25 the no-fly list, that defendant Pate checked to determine whether plaintiff was on the
26 no-fly list, that defendant Cunningham arrived at the airport terminal, that the San
27 Francisco Police Department was told not to allow plaintiff to board her flight and to
28 contact the FBI, and that the FBI told the San Francisco Police Department to detain

1 plaintiff for further investigation by the FBI. Otherwise, defendants lack sufficient
2 information to enable them to form a belief as to the truth of the allegations in this
3 paragraph and, on that basis, defendants deny the allegations.

4 42. Responding to the allegations in paragraph forty-two of the Complaint, defendants
5 lack sufficient information to enable them to form a belief as to the truth of the
6 allegations in this paragraph and, on that basis, defendants deny the allegations.

7 43. Responding to the allegations in paragraph forty-three of the Complaint, defendants
8 admit that defendant Cunningham handcuffed plaintiff at the terminal for
9 transportation to the San Francisco International Airport substation, and that she was
10 taken to the substation. Otherwise, defendants lack sufficient information to enable
11 them to form a belief as to the truth of the allegations in this paragraph and, on that
12 basis, defendants deny the allegations.

13 44. Responding to the allegations in paragraph forty-four of the Complaint, defendants
14 admit that a female officer, defendant Maron, was called to search plaintiff at the
15 substation, and did so, and that the FBI was informed of plaintiff's detention.
16 Defendants otherwise lack sufficient information to enable them to form a belief as to
17 the truth of the allegations in this paragraph and, on that basis, defendants deny the
18 allegations.

19 45. Responding to the allegations in paragraph forty-five of the Complaint, defendants
20 admit that plaintiff was at the substation for approximately two hours and that when
21 plaintiff told the San Francisco Police Department that she was not feeling well,
22 paramedics were called so that medical attention could be immediately provided.
23 Defendants also admit that medical attention, including any necessary medication,
24 was provided. Defendants otherwise lack sufficient information to enable them to
25 form a belief as to the truth of the allegations in this paragraph and, on that basis,
26 defendants deny the allegations.

27 46. Responding to the allegations in paragraph forty-six of the Complaint, defendants
28 admit that the FBI instructed the San Francisco Police Department to release plaintiff,

1 and the San Francisco Police Department did so. Defendants otherwise lack
2 sufficient information to enable them to form a belief as to the truth of the allegations
3 in this paragraph and, on that basis, defendants deny the allegations.

4 47. Responding to the allegations in paragraph forty-seven of the Complaint, defendants
5 lack sufficient information to enable them to form a belief as to the truth of the
6 allegations in this paragraph and, on that basis, defendants deny the allegations.

7 48. Responding to the allegations in paragraph forty-eight of the Complaint, defendants
8 admit that plaintiff filed a claim with the City and County of San Francisco on July 1,
9 2005 and the claim was denied on September 8, 2005. Otherwise defendants lack
10 sufficient information to enable them to form a belief as to the truth of the allegations
11 in this paragraph and, on that basis, defendants deny the allegations.

12 49. Responding to the recital in paragraph forty-nine of the Complaint, defendants
13 incorporate their responses to the paragraphs referenced in this paragraph.

14 50. Defendants deny the allegations in paragraph fifty of the Complaint.

15 51. Responding to the allegations in paragraph fifty-one of the Complaint, defendants
16 lack sufficient information to enable them to form a belief as to the truth of the
17 allegations in this paragraph and, on that basis, defendants deny the allegations.

18 52. Responding to the allegations in paragraph fifty-two of the Complaint, defendants
19 lack sufficient information to enable them to form a belief as to the truth of the
20 allegations in this paragraph and, on that basis, defendants deny the allegations.

21 53. Defendants deny the allegations in paragraph fifty-three of the Complaint.

22 54. Defendants deny the allegations in paragraph fifty-four of the Complaint.

23 55. Responding to the recital in paragraph fifty-five of the Complaint, defendants
24 incorporate their responses to the paragraphs referenced in this paragraph.

25 56. Defendants deny the allegations in paragraph fifty-six of the Complaint.

26 57. Defendants deny the allegations in paragraph fifty-seven of the Complaint.
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1 58. Responding to the allegations in paragraph fifty-eight of the Complaint, defendants
2 lack sufficient information to enable them to form a belief as to the truth of the
3 allegations in this paragraph and, on that basis, defendants deny the allegations.

4 59. Responding to the allegations in paragraph fifty-nine of the Complaint, defendants
5 lack sufficient information to enable them to form a belief as to the truth of the
6 allegations in this paragraph and, on that basis, defendants deny the allegations.

7 60. Responding to the allegations in paragraph sixty of the Complaint, defendants lack
8 sufficient information to enable them to form a belief as to the truth of the allegations
9 in this paragraph and, on that basis, defendants deny the allegations.

10 61. Defendants deny the allegations in paragraph sixty-one of the Complaint.

11 62. Defendants deny the allegations in paragraph sixty-two of the Complaint.

12 63. Responding to the recital in paragraph sixty-three of the Complaint, defendants
13 incorporate their responses to the paragraphs referenced in this paragraph.

14 64. Defendants deny the allegations in paragraph sixty-four of the Complaint.

15 65. Responding to the allegations in paragraph sixty-five of the Complaint, defendants
16 lack sufficient information to enable them to form a belief as to the truth of the
17 allegations in this paragraph and, on that basis, defendants deny the allegations.

18 66. Responding to the allegations in paragraph sixty-six of the Complaint, defendants
19 admit that plaintiff was detained at the airport substation for over of two hours.
20 Otherwise, defendants lack sufficient information to enable them to form a belief as
21 to the truth of the allegations in this paragraph and, on that basis, defendants deny the
22 allegations.

23 67. Responding to the allegations in paragraph sixty-seven of the Complaint, defendants
24 lack sufficient information to enable them to form a belief as to the truth of the
25 allegations in this paragraph and, on that basis, defendants deny the allegations.

26 68. Defendants deny the allegations in paragraph sixty-eight of the Complaint.

27 69. Defendants deny the allegations in paragraph sixty-nine of the Complaint.
28

1 70. Responding to the recital in paragraph seventy of the Complaint, defendants
2 incorporate their responses to the paragraphs referenced in this paragraph.

3 71. Defendants deny the allegation in paragraph seventy-one of the Complaint.

4 72. Responding to the allegations in paragraph seventy-two of the Complaint, defendants
5 deny that plaintiff was unlawfully searched or arrested. Otherwise, defendants lack
6 sufficient information to enable them to form a belief as to the truth of the allegations
7 in this paragraph and, on that basis, defendants deny the allegations.

8 73. Responding to the allegations in paragraph seventy-three of the Complaint,
9 defendants lack sufficient information to enable them to form a belief as to the truth
10 of the allegations in this paragraph and, on that basis, defendants deny the allegations.

11 74. Responding to the allegations in paragraph seventy-four of the Complaint, defendants
12 lack sufficient information to enable them to form a belief as to the truth of the
13 allegations in this paragraph and, on that basis, defendants deny the allegations.

14 75. Defendants deny the allegations in paragraph seventy-five of the Complaint.

15 76. Defendants deny the allegations in paragraph seventy-six of the Complaint.

16 77. Responding to the recital in paragraph seventy-seven of the Complaint, defendants
17 incorporate their responses to the paragraphs referenced in this paragraph.

18 78. Defendants deny the allegations in paragraph seventy-eight of the Complaint.

19 79. Responding to the allegations in paragraph seventy-nine of the Complaint, defendants
20 lack sufficient information to enable them to form a belief as to the truth of the
21 allegations in this paragraph and, on that basis, defendants deny the allegations.

22 80. Responding to the allegations in paragraph eighty of the Complaint, defendants lack
23 sufficient information to enable them to form a belief as to the truth of the allegations
24 in this paragraph and, on that basis, defendants deny the allegations.

25 81. Responding to the allegations in paragraph eighty-one of the Complaint, defendants
26 lack sufficient information to enable them to form a belief as to the truth of the
27 allegations in this paragraph and, on that basis, defendants deny the allegations.

28 82. Defendants deny the allegations in paragraph eighty-two of the Complaint.

1 83. Defendants deny the allegation in paragraph eighty-three of the Complaint.

2 84. Responding to the recital in paragraph eighty-four of the Complaint, defendants
3 incorporate their responses to the paragraphs referenced in this paragraph.

4 85. Defendants deny the allegations in paragraph eighty-five of the Complaint.

5 86. Responding to the allegations in paragraph eighty-six of the Complaint, defendants
6 lack sufficient information to enable them to form a belief as to the truth of the
7 allegations in this paragraph and, on that basis, defendants deny the allegations.

8 87. Responding to the allegations in paragraph eighty-seven of the Complaint, defendants
9 lack sufficient information to enable them to form a belief as to the truth of the
10 allegations in this paragraph and, on that basis, defendants deny the allegations.

11 88. Responding to the allegations in paragraph eighty-eight of the Complaint, defendants
12 lack sufficient information to enable them to form a belief as to the truth of the
13 allegations in this paragraph and, on that basis, defendants deny the allegations.

14 89. Defendants deny the allegations in paragraph eighty-nine of the Complaint.

15 90. Defendants deny the allegations in paragraph ninety of the Complaint.

16 91. Responding to the recital in paragraph ninety-one of the Complaint, defendants
17 incorporate their responses to the paragraphs referenced in this paragraph.

18 92. Responding to the allegations in paragraph ninety-two of the Complaint, defendants
19 lack sufficient information to enable them to form a belief as to the truth of the
20 allegations in this paragraph and, on that basis, defendants deny the allegations.

21 93. Defendants deny the allegations in paragraph ninety-three of the Complaint.

22 94. Defendants deny the allegations in paragraph ninety-four of the Complaint.

23 95. Defendants deny the allegations in paragraph ninety-five of the Complaint.

24 96. Defendants deny the allegations in paragraph ninety-six of the Complaint.

25 97. Defendants deny the allegations in paragraph ninety-seven of the Complaint.

26 98. Responding to the recital in paragraph ninety-eight of the Complaint, defendants
27 incorporate their responses to the paragraphs referenced in this paragraph.

28 99. Defendants deny the allegations in paragraph ninety-nine of the Complaint.

1 100. Defendants deny the allegations in paragraph one hundred of the Complaint.

2 101. Defendants deny the allegations in paragraph one hundred and one of the Complaint.

3 102. Defendants deny the allegations in paragraph one hundred and two of the Complaint.

4 103. Responding to the allegations in paragraph one hundred and three of the Complaint,
5 defendants lack sufficient information to enable them to form a belief as to the truth
6 of the allegations in this paragraph and, on that basis, defendants deny the allegations.

7 104. Defendants deny the allegations in paragraph one hundred and four of the Complaint.

8 105. Defendants deny the allegations in paragraph one hundred and five of the Complaint.

9 106. Responding to the recital in paragraph one hundred and six of the Complaint,
10 defendants incorporate their responses to the paragraphs referenced in this paragraph.

11 107. Defendants deny the allegations in paragraph one hundred and seven of the
12 Complaint.

13 108. Defendants deny the allegations in paragraph one hundred and eight of the
14 Complaint.

15 109. Responding the allegations in paragraph one hundred and nine of the Complaint,
16 defendants admit that plaintiff was detained at the San Francisco International Airport
17 substation for over two hours. Otherwise defendants deny the allegations in this
18 paragraph of the Complaint.

19 110. Defendants deny the allegations in paragraph one hundred and ten of the Complaint.

20 111. Defendants deny the allegations in paragraph one hundred and eleven of the
21 Complaint.

22 112. Responding to the recital in paragraph one hundred and twelve of the Complaint,
23 defendants incorporate their responses to the paragraphs referenced in this paragraph.

24 113. Defendants deny the allegations in paragraph one hundred and thirteen of the
25 Complaint.

26 114. Defendants deny the allegations in paragraph one hundred and fourteen of the
27 Complaint.
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1 115. Responding to the allegations in paragraph one hundred and fifteen, including
2 subparagraphs (a)–(g), defendants admit that plaintiff was handcuffed at San
3 Francisco International Airport on January 2, 2005, and was subjected to a search by
4 a female officer, Officer Maron. Otherwise defendants deny the allegations in this
5 paragraph of the complaint.

6 116. Responding to the recital in paragraph one hundred and sixteen of the Complaint,
7 defendants incorporate their responses to the paragraphs referenced in this paragraph.

8 117. Defendants deny the allegations in paragraph one hundred and seventeen of the
9 Complaint.

10 118. Defendants deny the allegations in paragraph one hundred and eighteen of the
11 Complaint.

12 119. Defendants deny the allegations in paragraph one hundred and nineteen of the
13 Complaint.

14 120. Responding to the allegations in paragraph one hundred and twenty, including
15 subparagraphs (a)–(g), defendants admit that plaintiff was handcuffed at San
16 Francisco International Airport on January 2, 2005, and was subjected to a search by
17 a female officer, Officer Maron. Otherwise defendants deny the allegations in this
18 paragraph of the complaint.

19 121. Responding to the recital in paragraph one hundred and twenty-one of the Complaint,
20 defendants incorporate their responses to the paragraphs referenced in this paragraph.

21 122. Responding to the allegations in paragraph one hundred and twenty-two of the
22 Complaint, defendants admit that an actual controversy exists. Otherwise defendants
23 deny the allegations in this paragraph of the Complaint.

24 123. Defendants deny the allegation paragraph one hundred and twenty-three of the
25 Complaint.

26 Responding to the prayer for relief set forth at page 20 (lines 1-12), defendants deny that
27 plaintiff has been damaged in any sum or at all as a consequence of any action by defendants, or the
28

1 agents or employees of defendants, deny that plaintiff is entitled to any relief at all and deny any
2 wrongdoing.

3 WHEREFORE, defendants pray for judgment as hereafter set forth.

4 Defendants also alleges the following affirmative defenses:

5 **FIRST AFFIRMATIVE DEFENSE**

6 **(Jurisdiction)**

7 As a separate and affirmative defense to the Complaint and to each and every allegation
8 contained therein, defendants allege that this Court lacks jurisdiction over the subject matter of the
9 Complaint.

10 **SECOND AFFIRMATIVE DEFENSE**

11 **(Failure to State a Claim)**

12 As a separate and affirmative defense to the Complaint and to each and every allegation
13 contained therein, defendants allege that the Complaint and each and every allegation contained
14 therein, whether considered singly or in any combination, fails to state a claim upon which relief can
15 be granted.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Lack of Malice)**

18 As a separate and affirmative defense to the Complaint and to each and every allegation
19 contained therein, defendants allege that at all times and places mentioned in the Complaint,
20 defendants acted without malice and with a good faith belief in the propriety of their conduct.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 **(Actions in Good Faith)**

23 As a separate and affirmative defense to the Complaint and to each and every allegation set
24 forth therein, defendants allege that at all times mentioned in the Complaint, defendants performed
25 and discharged in good faith each and every obligation, if any, owed to plaintiff
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1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Privileged and Justified Conduct)**

3 As a separate and affirmative defense to the Complaint and to each and every allegation
4 contained therein, defendants allege that their conduct at all times material herein was privileged
5 and/or justified under applicable law.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(Immunities under California Law)**

8 As a separate and affirmative defense to the Complaint and to each and every allegation
9 contained therein, defendants assert the various immunities conferred upon defendants pursuant to
10 the California Government Code, and other applicable provisions of law including, but not limited
11 to, those contained in Division 3.6 of Title 1 of the California Government Code.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 **(Failure to File a Claim)**

14 As a separate and affirmative defense to the Complaint and to each and every claim
15 contained therein, defendants allege that this action (or at least part of it) is barred due to plaintiff's
16 failure to file a sufficient claim as required by California Government Code § 910 et seq. and other
17 applicable provisions of law.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 **(Unclean Hands)**

20 As a separate and affirmative defense to the Complaint and to each and every allegation
21 contained therein, defendants allege that the Complaint is barred by the doctrine of unclean hands.

22 **NINTH AFFIRMATIVE DEFENSE**

23 **(Waiver)**

24 As a separate and affirmative defense to the Complaint and to each and every allegation
25 contained therein, defendants allege that, by his conduct, plaintiff has waived any right to recover
26 any relief by the Complaint.

1 **TENTH AFFIRMATIVE DEFENSE**

2 **(Failure to Mitigate Damages)**

3 As a separate and affirmative defense to the Complaint and to each and every allegation
4 contained therein, defendants allege that plaintiff has failed to use due diligence to mitigate his
5 damages, if any.

6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 **(Exercise of Due Care in Execution and Enforcement of the Law)**

8 As a separate and affirmative defense to the Complaint and to each and every allegation
9 contained therein, defendants allege that any liability of defendants is barred by the provisions of
10 California Government Code sections 815, 815.2, 820.2 and 820.4, and other applicable provisions
11 of law and each of them, since any liability of defendants would have resulted from the acts or
12 omissions, if any, by public employees in the exercise of due care in the execution and enforcement
13 of the law.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 **(Exercise of Discretion)**

16 As a separate and affirmative defense to the Complaint and to each and every allegation
17 contained therein, defendants allege that they are not liable under the provisions of California
18 Government Code sections 815, 815.2 and/or 820.2, and other applicable provisions of law and each
19 of them, in that any damages to plaintiff as alleged in the Complaint would have resulted from acts
20 or omission committed in the exercise of discretion vested in public employees.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 **(Qualified Immunity)**

23 As a separate and affirmative defense to the Complaint and to each and every allegation
24 therein, defendants allege that the actions complained of are protected by the doctrine of qualified
25 immunity as set forth in *Anderson v. Creighton*, 107 S. Ct. 3034 (1984), and related cases.
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1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Failure to State a Claim under *Monell*)**

3 As a separate and affirmative defense to the Complaint and to each and every allegation
4 therein, defendants allege that the Complaint fails to state a federal civil rights claim against
5 defendants under the doctrine announced in *Monell v. Department of Social Services*, 436 U.S. 658
6 (1978).

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 **(Consent or Exigent Circumstances Existed)**

9 Defendants allege that any or all searches or seizures of plaintiff's property or person were
10 legally justified as plaintiff consented and/or exigent circumstances existed.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 **(Comparative Negligence)**

13 Defendants allege that plaintiff was negligent in and about the matters and activities alleged
14 in said complaint; that said negligence contributed to and was a proximate cause of plaintiff's alleged
15 injuries and damages, if any, or was the sole cause thereof; and that if plaintiff is entitled to recover
16 damages against this defendants by virtue of said complaint, these defendants prays that the recovery
17 be diminished or extinguished by reason of the negligence of the plaintiff in proportion to the degree
18 of fault attributable to the plaintiff.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 **(Plaintiff's Conduct was a Proximate Cause)**

21 Defendants allege that at all times mentioned in Plaintiff's Complaint herein, plaintiff acted
22 in a careless, reckless, wanton and negligent manner in and about the matters set forth in the
23 complaint; that such careless, reckless, wanton and negligent conduct proximately contributed to the
24 injuries and damages, if any, sustained or claimed by plaintiff; and that as a consequence, plaintiff's
25 claims are barred.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Probable Cause)

Defendants allege that at all times material hereto the officers of the San Francisco Police Department named herein had reasonable and/or probable cause to detain and restrain plaintiff, based on Sections of the California Penal Code and/or on information received from others.

NINETEENTH AFFIRMATIVE DEFENSE

(Scope of Employment)

Defendant City and County alleges that it is not liable for any acts or omission of its employees that occurred outside of those employees' scope of employment.

WHEREFORE, defendants pray for judgment as follows:

1. That plaintiff take nothing from defendants;
2. That the Complaint be dismissed with prejudice;
3. That defendants recover costs of suit herein, including attorney's fees; and
4. For such other relief as is just and proper.

DEMAND FOR JURY TRIAL

To the extent this Court has jurisdiction and plaintiff's claims are legal (rather than equitable), defendants demand a jury trial.

Dated: April 17, 2006

DENNIS J. HERRERA
 City Attorney
 JOANNE HOEPER
 Chief Trial Deputy
 RONALD P. FLYNN
 Deputy City Attorney

- Signed -

By: _____
 RONALD P. FLYNN
 Attorney for Defendants
 CITY AND COUNTY OF SAN FRANCISCO,
 JAMES F. CUNNINGHAM,
 ELIZABETH A. MARON, and
 RICHARD E. PATE