

1 DENNIS J. HERRERA, State Bar #139669  
City Attorney  
2 JOANNE HOEPER, State Bar #114961  
Chief Trial Attorney  
3 INGRID M. EVANS, State Bar # 179094  
DAVID B. NEWDORF, State Bar #172960  
4 Deputy City Attorneys  
Fox Plaza  
5 1390 Market Street, Sixth Floor  
San Francisco, California 94102-5408  
6 Telephone: (415) 554-3884  
Facsimile: (415) 554-3837  
7 E-Mail: ingrid.evans@sfgov.org

8 Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO,  
9 SAN FRANCISCO SHERIFF'S DEPARTMENT  
and SAN FRANCISCO COUNTY SHERIFF MICHAEL HENNESSEY  
10

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 MARY BULL, JONAH ZERN, and all  
14 others similarly situated,

15 Plaintiffs,

16 vs.

17 CITY AND COUNTY OF SAN  
FRANCISCO, SAN FRANCISCO  
18 SHERIFF'S DEPARTMENT, SAN  
FRANCISCO COUNTY SHERIFF  
19 MICHAEL HENNESSEY, IN HIS  
INDIVIDUAL AND OFFICIAL  
20 CAPACITY, AND SAN FRANCISCO  
COUNTY SHERIFF'S DEPUTIES DOES  
21 1 THROUGH 150,

22 Defendants.

Case No. C03-1840 CRB

**DEFENDANTS' ANSWER TO  
PLAINTIFFS' FIRST AMENDED  
CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

23  
24 Come now defendants City and County of San Francisco and San Francisco County  
25 Sheriff Michael Hennessey, in his official capacity (collectively "answering defendants" or  
26 "defendants") (San Francisco Sheriff's Department was erroneously sued and is a subdivision of  
27 the City and County of San Francisco) and answer Plaintiffs' First Amended Class Action  
28 Complaint and Demand for Jury Trial as follows:

- 1 1. The allegations in the Introduction constitute legal conclusions and therefore do not  
2 require a response.
- 3 2. The allegations of paragraph 1 constitute legal conclusions and therefore do not  
4 require a response.
- 5 3. The allegations of paragraph 2 constitute legal conclusions and therefore do not  
6 require a response.
- 7 4. The allegations of paragraph 3 constitute legal conclusions and therefore do not  
8 require a response.
- 9 5. These answering defendants admit that Plaintiffs Mary Bull, Jonah Zern, Lisa  
10 Giampaoli, Marcy Corneau, Alexis Bronson, Micky Mangosing, Charli Johnson,  
11 Leigh Fleming and Laura Timbrook were arrested during said time period. These  
12 answering defendants deny the remaining allegations contained in paragraph 4.
- 13 6. These answering defendants deny the allegations contained in paragraph 5.
- 14 7. These answering defendants admit the allegations contained in paragraph 6 except  
15 that Sheriff Michael Hennessey was at all relevant times acting in his official  
16 capacity.
- 17 8. These answering deny the allegations contained in paragraph 7. Defendants are  
18 without sufficient information to assess paragraph no. 7 because plaintiffs have  
19 failed to identify San Francisco County Sheriff Deputies.
- 20 9. These answering defendants are without sufficient knowledge or information to  
21 form a belief as to the allegations contained in paragraphs 8, and on that basis  
22 denies each and every such allegation.
- 23 10. These answering defendants admit that the City and County of San Francisco is  
24 political sub-division of the State of California. These answering defendants are  
25 without sufficient knowledge or information to form a belief as to truth of the  
26 allegations contained in paragraphs 9, and on that basis denies each and every such  
27 allegation.
- 28

- 1 11. These answering defendants are without sufficient knowledge or information to  
2 form a belief as to truth of the allegations contained in paragraphs 10, and on that  
3 basis denies each and every such allegation.
- 4 12. These answering defendants deny the allegations contained in paragraph 11 of the  
5 complaint.
- 6 13. These answering defendants are without sufficient knowledge or information to  
7 form a belief as to truth of the allegations contained in paragraphs 12, and on that  
8 basis denies each and every such allegation.
- 9 14. These answering defendants deny the allegations contained in paragraph 13 of the  
10 complaint.
- 11 15. These answering defendants deny the allegations contained in paragraph 14 of the  
12 complaint.
- 13 16. These answering defendants deny the allegations contained in paragraph 15 of the  
14 complaint.
- 15 17. These answering defendants deny the allegations contained in paragraph 16 of the  
16 complaint.
- 17 18. These answering defendants deny the allegations contained in paragraph 17 of the  
18 complaint.
- 19 19. These answering defendants deny the allegations contained in paragraph 18 of the  
20 complaint.
- 21 20. These answering defendants deny the allegations contained in paragraph 19 of the  
22 complaint.
- 23 21. These answering defendants deny the allegations contained in paragraph 20 of the  
24 complaint.
- 25 22. These answering defendants deny the allegations contained in paragraph 21 of the  
26 complaint.
- 27 23. These answering defendants deny the allegations contained in paragraph 22 of the  
28 complaint.

1 24. These answering defendants deny the allegations contained in paragraph 23 of the  
2 complaint.

3 25. These answering defendants deny the allegations contained in paragraph 24 of the  
4 complaint.

5 26. These answering defendants deny the allegations contained in paragraph 25 of the  
6 complaint.

7 27. These answering defendants deny the allegations contained in paragraph 26 of the  
8 complaint.

9 28. These answering defendants deny the allegations contained in paragraph 27 of the  
10 complaint.

11 29. These answering defendants deny the allegations contained in paragraph 28 of the  
12 complaint.

13 30. These answering defendants deny the allegations contained in paragraph 29 of the  
14 complaint.

15 31. These answering defendants admit that Plaintiff Mary Bull filed a government  
16 claim and that it was denied on April 7, 2003. The remaining allegations contained  
17 in paragraph 20 of the complaint are denied.

18 32. These answering defendants deny the allegations contained in paragraph 31 of the  
19 complaint.

20 33. These answering defendants deny the allegations of paragraph 32 of the complaint.

21 34. These answering defendants deny the allegations of paragraph 33 of the complaint.

22 35. These answering defendants deny the allegations of paragraph 34 of the complaint.

23 36. The allegations of paragraph 35 constitute a legal conclusions and therefore do not  
24 require a response. To the extent a response is required, these answering  
25 defendants deny each and every allegation.

26 37. The allegations of paragraph 36 constitute a legal conclusions and therefore do not  
27 require a response. To the extent a response is required, these answering  
28 defendants deny each and every allegation.

1 38. With respect to the allegations contained in paragraph 37, these answering  
2 defendants deny that plaintiffs have been damaged in any sum or sums, or  
3 otherwise, or at all, by reason of any act, omission or premises of these defendants.  
4 The remaining allegations constitute legal conclusions and therefore do not require  
5 a response. To the extent a response is required, these answering defendants deny  
6 each and every allegation.

7 39. With respect to the allegations contained in paragraph 38, these answering  
8 defendants deny that plaintiffs have been damaged in any sum or sums, or  
9 otherwise, or at all, by reason of any act, omission or premises of these defendants.  
10 The remaining allegations constitute legal conclusions and therefore do not require  
11 a response. To the extent a response is required, these answering defendants deny  
12 each and every allegation.

13 40. These answering defendants deny the allegations of paragraph 39 of the complaint.

14 41. These answering defendants deny the allegations of paragraph 40 of the complaint.

15 42. The allegations contained in paragraph 41 constitute legal conclusions and  
16 therefore do not require a response.

17 43. The allegations contained in paragraph 42 constitute legal conclusions and  
18 therefore do not require a response.

19 44. The allegations contained in paragraph 43 constitute legal conclusions and  
20 therefore do not require a response.

21 45. The allegations contained in paragraph 44 constitute legal conclusions and  
22 therefore do not require a response.

23 46. These answering defendants deny the allegations of paragraph 45 of the complaint.

24 47. These answering defendants deny the allegations of paragraph 46 of the complaint.

25 48. These answering defendants deny the allegations of paragraph 47 of the complaint.

26 49. These answering defendants deny the allegations of paragraph 48 of the complaint.

27 50. These answering defendants deny the allegations of paragraph 49 of the complaint.  
28

1 51. The allegations contained in paragraph 50 constitute legal conclusions and  
2 therefore do not require a response.

3 52. The allegations contained in paragraph 51 constitute legal conclusions and  
4 therefore do not require a response.

5 53. The allegations contained in paragraph 52 constitute legal conclusions and  
6 therefore do not require a response.

7 54. The allegations contained in paragraph 53 constitute legal conclusions and  
8 therefore do not require a response.

9 55. The allegations contained in paragraph 54 constitute legal conclusions and  
10 therefore do not require a response.

11 56. These answering defendants deny the allegations of paragraph 55 of the complaint.

12 57. The allegations contained in paragraph 56 constitute legal conclusions and  
13 therefore do not require a response.

14 58. These answering defendants deny the allegations of paragraph 57 of the complaint.

15 59. These answering defendants deny the allegations of paragraph 58 of the complaint.

16 60. These answering defendants deny the allegations of paragraph 59 of the complaint.

17 61. These answering defendants deny the allegations of paragraph 60 of the complaint.

18 62. These answering defendants deny the allegations of paragraph 61 of the complaint.

19 **SEPARATE AFFIRMATIVE DEFENSES**

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

21 Defendants allege that the complaint fails to state facts sufficient to constitute a cause of  
22 action against the defendants.

23 **AFFIRMATIVE DEFENSE**

24 **(Third Party Immunity)**

25 Defendants are a public public entity and/or employee and alleges the complaint and each  
26 and every cause of action therein is barred by the doctrine of third party immunity set forth in  
27 section 820.8 of the Government Code.  
28

1 **AFFIRMATIVE DEFENSE**

2 **(Comparative Negligence)**

3 Defendants allege that plaintiff was negligent in and about the activities alleged in the  
4 complaint; that said negligence contributed and was a proximate cause of plaintiff's alleged  
5 injuries and damages, if any, or was the sole cause thereof; and that if plaintiff is entitled to  
6 recover damages against defendants, then defendants pray that the recovery be diminished or  
7 extinguished by reason of the negligence of plaintiff in proportion to the degree of fault  
8 attributable to plaintiff.

9 **AFFIRMATIVE DEFENSE**

10 **(Discretionary Immunity)**

11 Defendants are a public entity and/or public employee and alleges the complaint and each  
12 and every cause of action therein is barred by the doctrine of discretionary immunity set forth in  
13 section 820.2 of the Government Code.

14 **AFFIRMATIVE DEFENSE**

15 **(Estoppel)**

16 By reason of plaintiff's own acts and omissions, plaintiff is estopped from seeking any  
17 recovery from defendants by reason of the allegations set forth in the complaint.

18 **AFFIRMATIVE DEFENSE**

19 **(Justified Use of Force)**

20 The complaint and each cause of action therein is barred because the use of force against  
21 the plaintiff by defendants and the employees of the City, if any, was privileged and justified.

22 **AFFIRMATIVE DEFENSE**

23 **(Justified Incarceration)**

24 The complaint and each cause of action therein is barred because defendants were legally  
25 justified to detain, arrest and incarcerate the plaintiff.

1 **AFFIRMATIVE DEFENSE**

2 **(Immunity)**

3 Defendants allege the provisions of the California Tort Claims Act of the California  
4 Government Code (Government Code §810 et seq.) as a measure of the duty of the City and  
5 County of San Francisco and its employees.

6 **AFFIRMATIVE DEFENSE**

7 **(Justification)**

8 Defendants allege that the City and its employees had legal justification for all of their  
9 actions and omissions and therefore the complaint and each and every cause of action therein is  
10 barred.

11 **AFFIRMATIVE DEFENSE**

12 **(Failure to Mitigate Damages)**

13 Defendants allege that the complaint and each and every cause of action there in is barred  
14 because plaintiff failed to mitigate damages.

15 **AFFIRMATIVE DEFENSE**

16 **(No Monell Liability)**

17 The complaint fails to state a federal civil rights claim against the defendants under the  
18 doctrine announced in *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

19 **AFFIRMATIVE DEFENSE**

20 **(Denial of Damages)**

21 Defendants deny that plaintiff has been damaged in any sum or sums, or otherwise, or at  
22 all, by reason of any act or omission by defendants.

23 **AFFIRMATIVE DEFENSE**

24 **(Qualified Immunity)**

25 As a separate defense, defendantss including the employees of the City including Sheriff  
26 Michael Hennessey and Sheriff deputies, are immune from any liability and protected against the  
27 burden of litigation under the doctrine of qualified immunity and the common law immunities  
28 protecting peace officers, prosecutors and public officials.



**AFFIRMATIVE DEFENSE**

**(Immunity from Exemplary Damages)**

Defendants are a public entity and/or employees of a public entity and therefore immune from liability for exemplary damages pursuant to provisions of section 818 of the California Government Code.

**AFFIRMATIVE DEFENSE**

**(No Respondeat Superior Liability)**

The City alleges that it is not liable for any acts or omissions of its employees which occurred outside of those employees' scope of employment with the City.

**AFFIRMATIVE DEFENSE**

**(Failure to Comply With Tort Claims Act)**

Defendants allege the plaintiff failed to comply with the requirements of the California Tort Claims Act of the California Government Code and therefore all claims of the plaintiff are barred.

**AFFIRMATIVE DEFENSE**

**(Lack of Actual Knowledge)**

Plaintiff has insufficient evidence to prove that defendants had actual knowledge of a serious risk of harm to plaintiff and disregarded such knowledge.

**AFFIRMATIVE DEFENSE)**

**(Good Faith Immunity)**

Defendants plead that the was acting without malice in good faith at all relevant times and therefore enjoy good faith immunity from suit.

**AFFIRMATIVE DEFENSE**

**(Government Code §820.4)**

California Government Code Section 820.4 provides that a public employee is not liable for injuries inflicted by his or her acts or omissions committed "in the execution or enforcement of any law" while exercising due care.

**AFFIRMATIVE DEFENSE**

**(Sheriff is not a "person" under 42 USC §1983)**

Defendants allege that he is not liable under 42 U.S.C. § 1983 because sheriffs are not "persons" within the meaning of section 1.

**AFFIRMATIVE DEFENSE**

**(Statute Of Limitations)**

The complaint and each cause of action therein is barred by the applicable statutes of limitation including without limitation Government Code section 945.6 and California Code of Civil Procedure Sections 335 et seq. and Chapter 3 of Title 2 of the California Code of Civil Procedure.

**AFFIRMATIVE DEFENSE**

**(Assumption Of The Risk)**

Plaintiff had full knowledge of the risk involved in the activity in which plaintiff was engaged at the time of the occurrence of the incident set forth in the complaint. Plaintiff voluntarily assumed all the risks incident to the activity engaged in at the time and place mentioned in the complaint, and the loss or damage, if any, sustained by plaintiff was caused by those risks.

**AFFIRMATIVE DEFENSE**

**(Statutory Immunity)**

The City and its employees are immune from all liability alleged in the complaint and each and every cause of action therein pursuant to Government Code Sections 815(b); 815.2(b); 815.4; 818.4; 818.6, 818.7; 818.8; 820(b); 820.2; 820.4; 820.6; 820.8; 821; 821.2; 821.4; 821.6; 821.8; 822; 822.2; 830.2; 830.4; 830.6; 830.8; 830.9; 831; 831.2; 831.25; 831.3; 831.4; 831.5; 831.6; 831.7; 831.8; 835.4; 840.6; 844.6; 845; 845.2; 845.4; 845.6; 845.8; 846; 850; 850.2; 850.4; 854.8; 855; 855.2; 855.4; 855.6; 855.8; 856; 856.2; 856.4; California Vehicle Code Sections 16004 and 17004.7; and related provisions of these code sections and interpretative case law.

1 **AFFIRMATIVE DEFENSE**

2 **(Res Judicata and Claim Splitting)**

3 The complaint and each and every cause of action therein is barred by res judicata and the  
4 case law prohibiting a plaintiffs from “splitting” claims or causes of action. Ferraro v. Southern  
5 Cal. Gas Co., 102 Cal.App.3d 33, 41 (1980).

6 **AFFIRMATIVE DEFENSE**

7 **(Waiver)**

8 By conduct, representations and omissions, plaintiff has waived, relinquished and/or  
9 abandoned any claim for relief against these defendants respecting the matters which are the  
10 subject of the complaint.

11 **AFFIRMATIVE DEFENSE**

12 **(Laches)**

13 Plaintiff has unnecessarily delayed in protecting the right or rights asserted and has  
14 unreasonably delayed in bringing this action, and is therefore guilty of laches and is  
15 consequently not entitled to the relief sought.

16 **AFFIRMATIVE DEFENSE**

17 **(Prison Litigation Reform Act)**

18 Defendants allege that all or some of plaintiff's claims for relief are barred by the Prison  
19 Litigation Reform Act, including but not limited to the requirement of exhaustion of  
20 administrative remedies and grievance procedures and other applicable provisions of 42 U.S.C. §  
21 1997.

22 **AFFIRMATIVE DEFENSE**

23 **(Discharge of Obligations)**

24 As a separate and affirmative defense to the Complaint and to the alleged violations of 42  
25 U.S.C. §1983, defendants allege that at all times mentioned in the Complaint, defendants  
26 performed and discharged in good faith each and every obligation, if any, owed to plaintiff.

1 **AFFIRMATIVE DEFENSE**

2 **(Exhaustion of Remedies)**

3 As a separate and affirmative defense to the Complaint and to the alleged violations of 42  
4 U.S.C. §1983, defendants allege that plaintiff has failed to exhaust administrative and/or  
5 contractual remedies.

6 **AFFIRMATIVE DEFENSE**

7 **(Privilege, Justification)**

8 As a separate and affirmative defense to the Complaint and to the alleged violations of 42  
9 U.S.C. §1983, defendants allege that defendants' conduct at all times material herein was  
10 privileged and/or justified under applicable law.

11 **AFFIRMATIVE DEFENSE**

12 **(Conformance)**

13 As a separate and affirmative defense to the Complaint and to each and every allegation  
14 contained therein, defendants allege that plaintiff's purported state law causes of action alleged  
15 in the complaint are limited to the allegations contained in any government claim plaintiff may  
16 have presented, and that, to the extent the complaint attempts to enlarge or expand upon the  
17 allegations asserted in such government claim, if any, the complaint fails to state a cause of  
18 action and is barred pursuant to California Government Code Sections 905, 905.2, 910, 911,  
19 945.4, 950.2 and related provisions.

20 **AFFIRMATIVE DEFENSE**

21 **(Reasonable Cause)**

22 Defendants allege that at all times material to this action, Defendants' had reasonable  
23 cause, and acted properly in valid law enforcement activities.

24 **AFFIRMATIVE DEFENSE**

25 **(Violations of Penal Code)**

26 Defendants allege that plaintiffs violated Penal Code Sections 594, 647(a) and 647(b)  
27 and other violations of the penal code, and that plaintiffs voluntarily assumed all risks,  
28

1 responsibility and liability for the injuries which were the natural and probable cause of violating  
2 such sections of the California Penal Code.

3 **AFFIRMATIVE DEFENSE**

4 **(Reckless and Wanton)**

5 AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
6 DEFENSE, these answering defendants allege that at all times mentioned in the Complaint,  
7 plaintiffs acted in a careless, reckless, wanton and negligent manner in and about the matters set  
8 forth in the Complaint; that such careless, reckless, wanton and negligent conduct proximately  
9 contributed to the injuries and damages, if any, sustained or claimed by plaintiffs; that as a  
10 consequence, plaintiffs' claims are barred.

11 **AFFIRMATIVE DEFENSE**

12 **(Consent)**

13 Defendants allege that at all times relevant to plaintiffs' Complaint herein, plaintiffs  
14 knowingly, voluntarily and willingly consented to the search of his/her person, if, in fact, any  
15 search was done.

16 **AFFIRMATIVE DEFENSE**

17 **(Proposition 51 & Contribution)**

18 Defendants allege that in the event that Defendants are found to be liable – which liability  
19 is specifically denied and stated merely for the purposes of this affirmative defense – such  
20 liability, if any, for non-economic damages shall be several and not joint, pursuant to the Fair  
21 Responsibility Act of 1986 (Proposition 51) as set forth in Civil Code Section 1431 et seq.  
22 Defendants request that the trier of fact be instructed that the amount of non-economic damages  
23 be allocated in direct proportion to the percentage of fault, if any, assessed against each person or  
24 entity to which the Fair Responsibility Act applies and that a separate judgment be rendered in  
25 the amount of such non-economic damages attributable to that person or entity. Defendants are  
26 entitled to contribution from parties that contributed to and proximately caused the occurrence.

1 **AFFIRMATIVE DEFENSE**

2 **(Failure to Mitigate Damages)**

3 Defendants allege that the Complaint and each and every cause of action therein are  
4 barred because Plaintiff failed to exercise reasonable care and diligence to mitigate her alleged  
5 damages.

6 **AFFIRMATIVE DEFENSE**

7 **(Arrest Justified)**

8 Defendants allege as follows:

- 9 A. That at all times material to the complaint, San Francisco was and is a municipal corporation  
10 duly organized and existing by virtue of the laws of the State of California;
- 11 B. That at all times material to the complaint, certain of San Francisco's employees and agents  
12 were peace officers and police officers employed by San Francisco; and at all times material  
13 to the Complaint, were acting in the course and scope of their public office, service,  
14 employment and agency;
- 15 C. That at all times material to the Complaint, Defendants acted in accordance with and  
16 pursuant to California Penal Code Sections 142, 148, 834, 835, 835a, 837, 847 and 849;
- 17 D. That at all times material to the Complaint, certain of San Francisco's employees and agents  
18 had reasonable and probable cause to believe that Plaintiff committed one or more violations  
19 of the California Penal Code and California Health and Safety Code;
- 20 E. That at all times material to the Complaint, Defendants were acting in good faith and without  
21 malice pursuant to the provisions of California Civil Code Section 43.5(a) and California  
22 Government Code Sections 815, 815.2(b), 818, 820.2, 821.6, 844, 844.6 and 845.4; and

23 That as a consequence of the above, Defendants are immune from liability in this action,  
24 and that Plaintiff's causes of action alleged in the Complaint against Defendants are barred by  
25 law.

**AFFIRMATIVE DEFENSE**

**(Probable Cause for Detention and Arrest of Plaintiff)**

Defendants allege that at all times material to this action, Defendants had reasonable and probable cause to detain, restrain and arrest Plaintiff based upon her violations of the California Penal Code and Health and Safety Code.

**AFFIRMATIVE DEFENSE**

The named plaintiffs in this purported class action, and each of them, are not adequate class representatives, and are not representative of any class of putative plaintiffs.

**AFFIRMATIVE DEFENSE**

This lawsuit is not appropriate for class action treatment, because a class action will not and cannot be a more efficient, expeditious or just method of resolving the claims alleged in this action.

**AFFIRMATIVE DEFENSE**

This lawsuit is not appropriate for class action treatment because common questions of law and fact do not predominate.

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 attorneys' fees; and
4. For such other relief as is just and proper.

\\ \

\\ \

\\ \

\\ \

\\ \

\\ \

\\ \

\\ \

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Civil Local Rule 3-6,  
defendants demand a jury trial.

Dated: January 22, 2004

DENNIS J. HERRERA  
City Attorney  
JOANNE HOEPER  
Chief Trial Attorney  
INGRID M. EVANS  
DAVID B. NEWDORF  
Deputy City Attorneys

By: /s/ \_\_\_\_\_  
INGRID M. EVANS

Attorneys for Defendants  
CITY AND COUNTY OF SAN FRANCISCO,  
SAN FRANCISCO SHERIFF'S DEPARTMENT  
and SAN FRANCISCO COUNTY SHERIFF  
MICHAEL HENNESSEY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28