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8 UNITED STATE DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 MICHAEL WEBER, MARY PRUITT, RODNEY) NO. C 04 05161 FMS
WARE, RACHEL DELUCCI-YOUNGBERG,)
12 JAMES BLAIR, THINH T. LAM, RUBEN RIVAS,) DEFENDANT KEN JAMES'
JASON CRAIG, LINDA WALKER, ALL OF US OR) ANSWER TO COMPLAINT
13 NONE, and AMERICANS FOR SAFE ACCESS,)
14 Plaintiffs,) DEMAND FOR JURY TRIAL
vs.)
15)
16 BILL LOCKYER, Attorney General of California; EVA)
STEINBERGER, Assistant Bureau Chief for DNA)
Programs, California Department of Justice; LANCE)
17 GIMA, Chief of the Bureau of Forensic Services,)
California Department of Justice Laboratory;)
18 CHARLES C. PLUMMER, Sheriff Alameda County;)
WARREN E. RUPF, Sheriff, Contra Costa County;)
19 LOU BLANAS, Sheriff, Sacramento County; JIM)
POPE, Sheriff, Shasta County; MICHAEL)
20 HENNESSEY, Sheriff, San Francisco County;)
ALBERT NAJERA, Chief of Police, City of)
21 Sacramento; KEN JAMES, Chief of Police, City of)
Emeryville, and HEATHER J. FONG, Chief of Police,)
22 City of San Francisco,)
23 Defendants.)
24)

25 Comes now defendant Ken James and in answer to the complaint on file herein admits, and alleges as
26 follows:

27 In answer to the allegations of paragraph 1 of the complaint, this defendant has no information or belief
28 to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies both

1 generally and specifically, each and every, all and singular, the allegations contained therein.

2 In answer to the allegations of paragraph 2 of the complaint, this defendant admits that ballot measure
3 Proposition 69 was passed by California voters. Defendant denies both generally and specifically all other
4 allegations contained in paragraph 2.

5 In answer to the allegations of paragraph 3 of the complaint, this defendant has no information or belief
6 to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies both
7 generally and specifically, each and every, all and singular, the allegations contained therein.

8 In answer to the allegations of paragraph 4 of the complaint, this defendant has no information or belief
9 to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies both
10 generally and specifically, each and every, all and singular, the allegations contained therein.

11 In answer to the allegations of paragraph 5 of the complaint, defendant is without knowledge or
12 information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that
13 basis denies each and every allegation contained therein.

14 In answer to the allegations of paragraph 6 of the complaint, defendant is without knowledge or
15 information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that
16 basis denies each and every allegation contained therein.

17 In answer to the allegations of paragraph 7 of the complaint, defendant is without knowledge or
18 information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that
19 basis denies each and every allegation contained therein.

20 In answer to the allegations of paragraph 8 of the complaint, defendant is without knowledge or
21 information sufficient to form a belief as to the truth of the allegations contained in said paragraph, and on that
22 basis denies each and every allegation contained therein.

23 In answer to the allegations of paragraph 9 of the complaint, defendant Ken James admits that he is an
24 employee of the City of Emeryville and performs official duties within the State of California. As to all of the
25 remaining allegations contained in this paragraph, except as so admitted, defendant is without sufficient
26 knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 9,
27 and on that basis denies each and every allegation contained therein.

28 In answer to the allegations of paragraph 10 of the complaint, defendant is without sufficient knowledge

1 or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis
2 denies each and every allegation contained therein.

3 In answer to the allegations of paragraph 11 of the complaint, defendant is without sufficient knowledge
4 or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis
5 denies each and every other allegation contained therein.

6 In answer to the allegations of paragraph 12 of the complaint, this defendant has no information or
7 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
8 both generally and specifically, each and every, all and singular, the allegations contained therein.

9 In answer to the allegations of paragraph 13 of the complaint, this defendant has no information or
10 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
11 both generally and specifically, each and every, all and singular, the allegations contained therein.

12 In answer to the allegations of paragraph 14 of the complaint, this defendant has no information or
13 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
14 both generally and specifically, each and every, all and singular, the allegations contained therein.

15 In answer to the allegations of paragraph 15 of the complaint, this defendant has no information or
16 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
17 both generally and specifically, each and every, all and singular, the allegations contained therein.

18 In answer to the allegations of paragraph 16 of the complaint, this defendant has no information or
19 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
20 both generally and specifically, each and every, all and singular, the allegations contained therein.

21 In answer to the allegations of paragraph 17 of the complaint, this defendant has no information or
22 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
23 both generally and specifically, each and every, all and singular, the allegations contained therein.

24 In answer to the allegations of paragraph 18 of the complaint, this defendant has no information or
25 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
26 both generally and specifically, each and every, all and singular, the allegations contained therein.

27 In answer to the allegations of paragraph 19 of the complaint, this defendant has no information or
28 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies

1 both generally and specifically, each and every, all and singular, the allegations contained therein.

2 In answer to the allegations of paragraph 20 of the complaint, this defendant has no information or
3 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
4 both generally and specifically, each and every, all and singular, the allegations contained therein.

5 In answer to the allegations of paragraph 21 of the complaint, this defendant has no information or
6 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
7 both generally and specifically, each and every, all and singular, the allegations contained therein.

8 In answer to the allegations of paragraph 22 of the complaint, this defendant has no information or
9 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
10 both generally and specifically, each and every, all and singular, the allegations contained therein.

11 In answer to the allegations of paragraph 23 of the complaint, this defendant has no information or
12 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
13 both generally and specifically, each and every, all and singular, the allegations contained therein.

14 In answer to the allegations of paragraph 24 of the complaint, this defendant has no information or
15 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
16 both generally and specifically, each and every, all and singular, the allegations contained therein.

17 In answer to the allegations of paragraph 25 of the complaint, defendant admits the allegations
18 contained therein.

19 In answer to the allegations of paragraph 26 of the complaint, this defendant has no information or
20 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
21 both generally and specifically, each and every, all and singular, the allegations contained therein.

22 In answer to the allegations of paragraph 27 of the complaint, this defendant has no information or
23 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
24 both generally and specifically, each and every, all and singular, the allegations contained therein.

25 In answer to the allegations of paragraph 28 of the complaint, this defendant has no information or
26 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
27 both generally and specifically, each and every, all and singular, the allegations contained therein.

28 In answer to the allegations of paragraph 29 of the complaint, this defendant has no information or

1 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
2 both generally and specifically, each and every, all and singular, the allegations contained therein.

3 In answer to the allegations of paragraph 30 of the complaint, this defendant has no information or
4 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
5 both generally and specifically, each and every, all and singular, the allegations contained therein.

6 In answer to the allegations of paragraph 31 of the complaint, this defendant has no information or
7 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
8 both generally and specifically, each and every, all and singular, the allegations contained therein.

9 In answer to the allegations of paragraph 32 of the complaint, this defendant has no information or
10 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
11 both generally and specifically, each and every, all and singular, the allegations contained therein.

12 In answer to the allegations of paragraph 33 of the complaint, this defendant has no information or
13 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
14 both generally and specifically, each and every, all and singular, the allegations contained therein.

15 In answer to the allegations of paragraph 34 of the complaint, defendant admits the allegations
16 contained therein.

17 In answer to the allegations of paragraph 35 of the complaint, this defendant has no information or
18 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
19 both generally and specifically, each and every, all and singular, the allegations contained therein.

20 In answer to the allegations of paragraph 36 of the complaint, this defendant has no information or
21 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
22 both generally and specifically, each and every, all and singular, the allegations contained therein.

23 In answer to the allegations of paragraph 37 of the complaint, this defendant has no information or
24 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
25 both generally and specifically, each and every, all and singular, the allegations contained therein.

26 In answer to the allegations of paragraph 38 of the complaint, this defendant has no information or
27 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
28 both generally and specifically, each and every, all and singular, the allegations contained therein.

1 In answer to the allegations of paragraph 39 of the complaint, this defendant has no information or
2 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
3 both generally and specifically, each and every, all and singular, the allegations contained therein.

4 In answer to the allegations of paragraph 40 of the complaint, this defendant has no information or
5 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
6 both generally and specifically, each and every, all and singular, the allegations contained therein.

7 In answer to the allegations of paragraph 41 of the complaint, this defendant has no information or
8 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
9 both generally and specifically, each and every, all and singular, the allegations contained therein.

10 In answer to the allegations of paragraph 42 of the complaint, this defendant has no information or
11 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
12 both generally and specifically, each and every, all and singular, the allegations contained therein.

13 In answer to the allegations of paragraph 43 of the complaint, this defendant has no information or
14 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
15 both generally and specifically, each and every, all and singular, the allegations contained therein.

16 In answer to the allegations of paragraph 44 of the complaint, this defendant has no information or
17 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
18 both generally and specifically, each and every, all and singular, the allegations contained therein.

19 In answer to the allegations of paragraph 45 of the complaint, this defendant has no information or
20 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
21 both generally and specifically, each and every, all and singular, the allegations contained therein.

22 In answer to the allegations of paragraph 46 of the complaint, this defendant has no information or
23 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
24 both generally and specifically, each and every, all and singular, the allegations contained therein.

25 In answer to the allegations of paragraph 47 of the complaint, defendant admits the allegations
26 contained therein.

27 In answer to the allegations of paragraph 48 of the complaint, defendant admits that Proposition 69
28 amended Sections 295 et seq. of the California Penal Code. Except as otherwise admitted, defendant is

1 without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained
2 in paragraph 48, and on that basis denies each and every allegation contained therein.

3 In answer to the allegations of paragraph 49 of the complaint, defendant admits the allegations
4 contained therein.

5 In answer to the allegations of paragraph 50 of the complaint, this defendant has no information or
6 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
7 both generally and specifically, each and every, all and singular, the allegations contained therein.

8 In answer to the allegations of paragraph 51 of the complaint, this defendant has no information or
9 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
10 both generally and specifically, each and every, all and singular, the allegations contained therein.

11 In answer to the allegations of paragraph 52 of the complaint, this defendant has no information or
12 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
13 both generally and specifically, each and every, all and singular, the allegations contained therein.

14 In answer to the allegations of paragraph 53 of the complaint, this defendant has no information or
15 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
16 both generally and specifically, each and every, all and singular, the allegations contained therein.

17 In answer to the allegations of paragraph 54 of the complaint, this defendant has no information or
18 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
19 both generally and specifically, each and every, all and singular, the allegations contained therein.

20 In answer to the allegations of paragraph 55 of the complaint, this defendant has no information or
21 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
22 both generally and specifically, each and every, all and singular, the allegations contained therein.

23 In answer to the allegations of paragraph 56 of the complaint, this defendant has no information or
24 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
25 both generally and specifically, each and every, all and singular, the allegations contained therein.

26 In answer to the allegations of paragraph 57 of the complaint, this defendant has no information or
27 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
28 both generally and specifically, each and every, all and singular, the allegations contained therein.

1 In answer to the allegations of paragraph 58 of the complaint, this defendant has no information or
2 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
3 both generally and specifically, each and every, all and singular, the allegations contained therein.

4 In answer to the allegations of paragraph 59 of the complaint, this defendant has no information or
5 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
6 both generally and specifically, each and every, all and singular, the allegations contained therein.

7 In answer to the allegations of paragraph 60 of the complaint, this defendant has no information or
8 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
9 both generally and specifically, each and every, all and singular, the allegations contained therein.

10 In answer to the allegations of paragraph 61 of the complaint, this defendant has no information or
11 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
12 both generally and specifically, each and every, all and singular, the allegations contained therein.

13 In answer to the allegations of paragraph 62 of the complaint, this defendant incorporates herein by
14 reference each and every admission, denial, and allegation of the answer to the allegations contained in
15 defendant's answer to paragraphs 1 through 61 of the complaint.

16 In answer to the allegations of paragraph 63 of the complaint, defendant admits the allegations
17 contained therein.

18 In answer to the allegations of paragraph 64 of the complaint, this defendant has no information or
19 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
20 both generally and specifically, each and every, all and singular, the allegations contained therein.

21 In answer to the allegations of paragraph 65 of the complaint, this defendant has no information or
22 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
23 both generally and specifically, each and every, all and singular, the allegations contained therein.

24 In answer to the allegations of paragraph 66 of the complaint, this defendant incorporates herein by
25 reference each and every admission, denial, and allegation of the answer to the allegations contained in
26 defendant's answer to paragraphs 1 through 65 of the complaint.

27 In answer to the allegations of paragraph 67 of the complaint, defendant admits the allegations
28 contained therein.

1 In answer to the allegations of paragraph 68 of the complaint, this defendant has no information or
2 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
3 both generally and specifically, each and every, all and singular, the allegations contained therein.

4 In answer to the allegations of paragraph 69 of the complaint, this defendant has no information or
5 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
6 both generally and specifically, each and every, all and singular, the allegations contained therein.

7 In answer to the allegations of paragraph 70 of the complaint, this defendant incorporates herein by
8 reference each and every admission, denial, and allegation of the answer to the allegations contained in
9 defendant's answer to paragraphs 1 through 69 of the complaint.

10 In answer to the allegations of paragraph 71 of the complaint, defendant admits the allegations
11 contained therein.

12 In answer to the allegations of paragraph 72 of the complaint, this defendant has no information or
13 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
14 both generally and specifically, each and every, all and singular, the allegations contained therein.

15 In answer to the allegations of paragraph 73 of the complaint, this defendant has no information or
16 belief to enable him to answer said allegations, and for that reason and basing his denial on that ground, denies
17 both generally and specifically, each and every, all and singular, the allegations contained therein.

18 WHEREFORE, defendant prays that plaintiffs take nothing by way of the complaint on file herein and
19 that defendant has judgment for its costs, attorneys' fees and for such other and further relief as the court deems
20 proper.

21 FIRST AFFIRMATIVE DEFENSE

22 AS AND FOR A FIRST, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

23 That the complaint does not state facts sufficient to constitute a cause of action against this answering
24 defendant.

25 SECOND AFFIRMATIVE DEFENSE

26 AS AND FOR A SECOND, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

27 Plaintiffs were guilty of willful misconduct and wanton and reckless behavior in and about the matters
28 and events set forth in said complaint; and that said willful misconduct and wanton and reckless behavior

1 contributed to the injuries and damages alleged, if any there were.

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5 THIRD AFFIRMATIVE DEFENSE

6 AS AND FOR A THIRD, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

7 Defendant Ken James was, at all times, duly qualified, appointed and acting police officer of City of
8 Emeryville and peace officer of the State of California and in accordance with the Constitution of the United
9 States and the State of California and the laws of the United States and the laws of the State of California; and
10 at all times mentioned herein, said officer was engaged in the performance of his regularly assigned duties within
11 the scope of his duties as peace officer of the City of Emeryville.

12 FOURTH AFFIRMATIVE DEFENSE

13 AS AND FOR A FOURTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

14 This answering defendant acted in good faith and with a reasonable belief that the actions were lawful
15 and further did not directly or indirectly perform any acts whatsoever which would constitute a breach of any
16 duty owed to plaintiffs.

17 FIFTH AFFIRMATIVE DEFENSE

18 AS AND FOR A FIFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

19 The acts of this answering defendant were lawful and proper and in all respects was reasonable and
20 legal.

21 SIXTH AFFIRMATIVE DEFENSE

22 AS AND FOR A SIXTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

23 The facts alleged in the Complaint do not involve any custom, practice, procedure or regulation of
24 defendant, which gives rise to a violation of a constitutional right pursuant to Monell v. New York City
25 Department of Social Services, 436 U.S. 658 (1978).

26 SEVENTH AFFIRMATIVE DEFENSE

27 AS AND FOR A SEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT

28 ALLEGES:

1 Plaintiffs' purported "class action" is barred pursuant to Emeryville Municipal Code §1-6.02(b).

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4 EIGHTH AFFIRMATIVE DEFENSE

5 AS AND FOR A EIGHTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

6 Plaintiffs cannot establish necessary pre-requisites for class certification, pursuant to Cal. Civil Code
7 §§382; 1780-1784, or any other laws of the State of California.

8 NINTH AFFIRMATIVE DEFENSE

9 AS AND FOR A NINTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

10 Plaintiffs' claim fails to state facts sufficient to establish a violation of equal protection under local, state
11 or federal law.

12 TENTH AFFIRMATIVE DEFENSE

13 AS AND FOR A TENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

14 Defendant is informed and believes that the complaint and each cause of action thereof is barred by the
15 doctrines of laches, unclean hands, waiver and estoppel.

16 ELEVENTH AFFIRMATIVE DEFENSE

17 AS AND FOR AN ELEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
18 ALLEGES:

19 Plaintiffs' complaint fails to establish facts sufficient to establish a community of interest in the elements
20 of the class claim.

21 TWELFTH AFFIRMATIVE DEFENSE

22 AS AND FOR A TWELFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
23 ALLEGES:

24 All of Ken James' actions are privileged.

25 THIRTEENTH AFFIRMATIVE DEFENSE

26 AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
27 ALLEGES:

28 Ken James has a qualified immunity against all of the claims contained in the complaint.

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FOURTEENTH AFFIRMATIVE DEFENSE

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AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT

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ALLEGES:

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Ken James has an absolute immunity against all claims contained in the complaint.

7

WHEREFORE, defendant prays that plaintiffs take nothing by way of the complaint on file herein and

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that defendant has judgment for its costs, attorneys' fees and for such other and further relief as the court deems

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proper.

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Dated: December _____, 2004.

LOW, BALL & LYNCH

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By _____
DALE L. ALLEN, JR.
MARK F. HAZELWOOD

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DEMAND FOR JURY TRIAL

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Defendant Ken James hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of

16

Civil Procedure as to all issues or claims for which a jury trial is allowed.

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Dated: December _____, 2004.

LOW, BALL & LYNCH

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By _____
DALE L. ALLEN, JR.
MARK F. HAZELWOOD
Attorneys for Defendant
KEN JAMES

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PROOF OF SERVICE

I am over the age of eighteen (18) years and not a party to the within action. I am employed at Low, Ball & Lynch, 505 Montgomery Street, 7th Floor, San Francisco, California 94111.

On the date indicated below, I served the following documents enclosed in a sealed envelope on the listed addresses:

DOCUMENT: DEFENDANT KEN JAMES' VERIFIED ANSWER TO COMPLAINT; DEMAND FOR JURY TRIAL

ADDRESSES: SEE ATTACHED SERVICE LIST

- (BY MAIL)** I placed a true copy, enclosed in a sealed, postage paid envelope, and deposited same for collection and mailing at San Francisco, California, following ordinary business practices, addressed as set forth below.
- (BY PERSONAL SERVICE)** I caused each such envelope to be delivered by hand to the addressees noted above or on the attachment herein by _____ Legal Services.
- (BY FACSIMILE)** I caused the said document to be transmitted by Facsimile transmission to the number indicated after the addresses noted above or on the attachment herein.
- (BY OVERNIGHT COURIER)** I caused each such envelope addressed to the parties to be deposited in a box or other facility regularly maintained by the overnight courier or driver authorized by the overnight courier to receive documents.
- (BY CERTIFIED MAIL/RETURN RECEIPT REQUESTED)** I placed a true copy, enclosed in a sealed, postage-paid envelope, and deposited same for collection and mailing at San Francisco, California, following ordinary business practices, addressed as set forth below.

I am readily familiar with this law firm's practice for the collection and processing of documents for regular and certified mailing, overnight mail, and facsimile transaction, and said document(s) are deposited with the United States Postal Service or overnight courier depository on the same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California on December 28, 2004.

_____/S/
Danielle Costes

SERVICE LIST

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