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8 Attorneys for Defendant
 9 CITY OF UKIAH and UKIAN CHIEF OF POLICE
 10 JUSTIN WYATT

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 GERARDO MAGDALENO, by and
 14 through his Guardian Ad Litem, PEDRO
 15 FRANCISCO MAGDALENO,

16 Plaintiff,

17 v.

18 CITY OF UKIAH, JUSTIN WYATT,
 19 SAUL PEREZ, JORDAN MILLER,
 20 ALEX COWAN, ANDY PHILLIPS, and
 21 DOES 1-25, inclusive.

22 Defendants.

Case No. 3:21-cv-02609-RMI

**DEFENDANTS CITY OF UKIAH AND
 JUSTIN WYATT'S ANSWER TO
 PLAINTIFF'S FIRST AMENDED
 COMPLAINT**

23 Comes now defendants CITY OF UKIAH and JUSTIN WYATT ("Defendants") and in
 24 answer to the first amended complaint on file herein admit, and allege as follows:

JUSRISDICTION & VENUE

25 1. In answer to the allegations of paragraph 1 of the complaint, these defendants have
 26 no information or belief to enable them to answer said allegations, and for that reason and basing
 27 their denial on that ground, deny both generally and specifically, each and every, all and singular,
 28 the allegations contained therein.

2. Admitted.

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PARTIES

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- 3. Admitted.
- 4. Admitted.
- 5. Admitted.
- 6. Admitted.
- 7. Admitted.
- 8. Admitted.
- 9. Admitted.
- 10. Admitted.

11. In answer to the allegations of paragraph 11 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

12. In answer to the allegations of paragraph 12 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

STATEMENT OF FACTS

13. In answer to the allegations of paragraph 13 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

14. In answer to the allegations of paragraph 14 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny 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, these defendants have no information or belief to enable them to answer said allegations, and for that reason and

1 basing their denial on that ground, deny both generally and specifically, each and every, all and
2 singular, the allegations contained therein.

3 16. In answer to the allegations of paragraph 16 of the complaint, these defendants
4 have no information or belief to enable them to answer said allegations, and for that reason and
5 basing their denial on that ground, deny both generally and specifically, each and every, all and
6 singular, the allegations contained therein.

7 17. In answer to the allegations of paragraph 17 of the complaint, these defendants
8 have no information or belief to enable them to answer said allegations, and for that reason and
9 basing their denial on that ground, deny both generally and specifically, each and every, all and
10 singular, the allegations contained therein.

11 18. In answer to the allegations of paragraph 18 of the complaint, these defendants
12 have no information or belief to enable them to answer said allegations, and for that reason and
13 basing their denial on that ground, deny both generally and specifically, each and every, all and
14 singular, the allegations contained therein.

15 19. In answer to the allegations of paragraph 19 of the complaint, these defendants
16 have no information or belief to enable them to answer said allegations, and for that reason and
17 basing their denial on that ground, deny both generally and specifically, each and every, all and
18 singular, the allegations contained therein.

19 20. In answer to the allegations of paragraph 20 of the complaint, these defendants
20 have no information or belief to enable them to answer said allegations, and for that reason and
21 basing their denial on that ground, deny both generally and specifically, each and every, all and
22 singular, the allegations contained therein.

23 21. In answer to the allegations of paragraph 21 of the complaint, these defendants
24 have no information or belief to enable them to answer said allegations, and for that reason and
25 basing their denial on that ground, deny both generally and specifically, each and every, all and
26 singular, the allegations contained therein.

27 22. Admitted.

28 23. In answer to the allegations of paragraph 23 of the complaint, these defendants

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1 have no information or belief to enable them to answer said allegations, and for that reason and
2 basing their denial on that ground, deny both generally and specifically, each and every, all and
3 singular, the allegations contained therein.

4 24. In answer to the allegations of paragraph 24 of the complaint, these defendants
5 have no information or belief to enable them to answer said allegations, and for that reason and
6 basing their denial on that ground, deny both generally and specifically, each and every, all and
7 singular, the allegations contained therein.

8 25. In answer to the allegations of paragraph 25 of the complaint, these defendants
9 have no information or belief to enable them to answer said allegations, and for that reason and
10 basing their denial on that ground, deny both generally and specifically, each and every, all and
11 singular, the allegations contained therein.

12 26. Admitted.

13 27. In answer to the allegations of paragraph 27 of the complaint, these defendants
14 have no information or belief to enable them to answer said allegations, and for that reason and
15 basing their denial on that ground, deny both generally and specifically, each and every, all and
16 singular, the allegations contained therein.

17 28. In answer to the allegations of paragraph 28 of the complaint, these defendants
18 have no information or belief to enable them to answer said allegations, and for that reason and
19 basing their denial on that ground, deny both generally and specifically, each and every, all and
20 singular, the allegations contained therein.

21 29. In answer to the allegations of paragraph 29 of the complaint, these defendants
22 have no information or belief to enable them to answer said allegations, and for that reason and
23 basing their denial on that ground, deny both generally and specifically, each and every, all and
24 singular, the allegations contained therein.

25 30. Admitted.

26 31. In answer to the allegations of paragraph 31 of the complaint, these defendants
27 have no information or belief to enable them to answer said allegations, and for that reason and
28 basing their denial on that ground, deny both generally and specifically, each and every, all and

1 singular, the allegations contained therein.

2 32. In answer to the allegations of paragraph 32 of the complaint, these defendants
3 have no information or belief to enable them to answer said allegations, and for that reason and
4 basing their denial on that ground, deny both generally and specifically, each and every, all and
5 singular, the allegations contained therein.

6 33. In answer to the allegations of paragraph 33 of the complaint, these defendants
7 have no information or belief to enable them to answer said allegations, and for that reason and
8 basing their denial on that ground, deny both generally and specifically, each and every, all and
9 singular, the allegations contained therein.

10 34. In answer to the allegations of paragraph 34 of the complaint, these defendants
11 have no information or belief to enable them to answer said allegations, and for that reason and
12 basing their denial on that ground, deny both generally and specifically, each and every, all and
13 singular, the allegations contained therein.

14 35. In answer to the allegations of paragraph 35 of the complaint, these defendants
15 have no information or belief to enable them to answer said allegations, and for that reason and
16 basing their denial on that ground, deny both generally and specifically, each and every, all and
17 singular, the allegations contained therein.

18 36. In answer to the allegations of paragraph 36 of the complaint, these defendants
19 have no information or belief to enable them to answer said allegations, and for that reason and
20 basing their denial on that ground, deny both generally and specifically, each and every, all and
21 singular, the allegations contained therein.

22 37. In answer to the allegations of paragraph 37 of the complaint, these defendants
23 have no information or belief to enable them to answer said allegations, and for that reason and
24 basing their denial on that ground, deny both generally and specifically, each and every, all and
25 singular, the allegations contained therein.

26 38. In answer to the allegations of paragraph 38 of the complaint, these defendants
27 have no information or belief to enable them to answer said allegations, and for that reason and
28 basing their denial on that ground, deny both generally and specifically, each and every, all and

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1 singular, the allegations contained therein.

2 39. In answer to the allegations of paragraph 39 of the complaint, these defendants
3 have no information or belief to enable them to answer said allegations, and for that reason and
4 basing their denial on that ground, deny both generally and specifically, each and every, all and
5 singular, the allegations contained therein.

6 40. In answer to the allegations of paragraph 40 of the complaint, these defendants
7 have no information or belief to enable them to answer said allegations, and for that reason and
8 basing their denial on that ground, deny both generally and specifically, each and every, all and
9 singular, the allegations contained therein.

10 **STATEMENT OF DAMAGES**

11 41. In answer to the allegations of paragraph 41 of the complaint, these defendants
12 have no information or belief to enable them to answer said allegations, and for that reason and
13 basing their denial on that ground, deny both generally and specifically, each and every, all and
14 singular, the allegations contained therein.

15 42. In answer to the allegations of paragraph 42 of the complaint, these defendants
16 have no information or belief to enable them to answer said allegations, and for that reason and
17 basing their denial on that ground, deny both generally and specifically, each and every, all and
18 singular, the allegations contained therein.

19 43. In answer to the allegations of paragraph 43 of the complaint, these defendants
20 deny both generally and specifically, each and every, all and singular, the allegations contained
21 therein.

22 44. In answer to the allegations of paragraph 44 of the complaint, these defendants
23 have no information or belief to enable them to answer said allegations, and for that reason and
24 basing their denial on that ground, deny both generally and specifically, each and every, all and
25 singular, the allegations contained therein.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION

[42 U.S.C. § 1213(1)(B); 29 U.S.C. § 794 – Title II of the Americans with Disabilities Act (ADA) and Rehabilitation Act (“RA”) – Wrongful Arrest –AGAINST THE CITY OF UKIAH]

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

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

47. In answer to the allegations of paragraph 47 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

48. In answer to the allegations of paragraph 48 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

49. In answer to the allegations of paragraph 49 of the complaint, this defendant has no information or belief to enable them to answer said allegations, and for that reason and basing its denial on that ground, denies both generally and specifically, each and every, all and singular, the allegations contained therein.

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

51. In answer to the allegations of paragraph 51 of the complaint, this defendant has

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1 no information or belief to enable them to answer said allegations, and for that reason and basing
2 its denial on that ground, denies both generally and specifically, each and every, all and singular,
3 the allegations contained therein.

4 **SECOND CAUSE OF ACTION**

5 [42 U.S.C. § 1213(1)(B); 29 U.S.C. § 794 – Title II of the Americans with Disabilities Act
(ADA) and Rehabilitation Act (“RA”) – Excessive Force –AGAINST THE CITY OF UKIAH]

6 52. In answer to the allegations of paragraph 52 of the complaint, this defendant has
7 no information or belief to enable them to answer said allegations, and for that reason and basing
8 its denial on that ground, denies both generally and specifically, each and every, all and singular,
9 the allegations contained therein.

10 53. In answer to the allegations of paragraph 53 of the complaint, these defendants
11 deny both generally and specifically, each and every, all and singular, the allegations contained
12 therein.

13 54. In answer to the allegations of paragraph 54 of the complaint, these defendants
14 have no information or belief to enable them to answer said allegations, and for that reason and
15 basing their denial on that ground, deny both generally and specifically, each and every, all and
16 singular, the allegations contained therein.

17 **THIRD CAUSE OF ACTION**

18 [42 U.S.C. § -FALSE ARREST/FALSE IMPRESONMENT – AGAINST SAUL PEREZ,
JORDAN MILLER, ALEX COWAN, ANDY PHILLIPS, AND DOES 1-25]

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

23 56. In answer to the allegations of paragraph 56 of the complaint, these defendants
24 deny both generally and specifically, each and every, all and singular, the allegations contained
25 therein.

26 57. In answer to the allegations of paragraph 57 of the complaint, these defendants
27 have no information or belief to enable them to answer said allegations, and for that reason and
28 basing their denial on that ground, deny both generally and specifically, each and every, all and

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1 singular, the allegations contained therein.

2 58. In answer to the allegations of paragraph 58 of the complaint, these defendants
3 have no information or belief to enable them to answer said allegations, and for that reason and
4 basing their denial on that ground, deny both generally and specifically, each and every, all and
5 singular, the allegations contained therein.

6 **FOURTH CAUSE OF ACTION**

7 [42 U.S.C. § - FOURTH AMDENDMENT - EXCESSIVE FORCE - AGAINST SAUL PEREZ,
8 JORDAN MILLER, ALEX COWAN, ANY PHILLIPS, AND DOES 1-25]

9 59. In answer to the allegations of paragraph 59 of the complaint, these defendants
10 have no information or belief to enable them to answer said allegations, and for that reason and
11 basing their denial on that ground, deny both generally and specifically, each and every, all and
12 singular, the allegations contained therein.

13 60. In answer to the allegations of paragraph 60 of the complaint, these defendants
14 have no information or belief to enable them to answer said allegations, and for that reason and
15 basing their denial on that ground, deny both generally and specifically, each and every, all and
16 singular, the allegations contained therein.

17 61. In answer to the allegations of paragraph 61 of the complaint, these defendants
18 have no information or belief to enable them to answer said allegations, and for that reason and
19 basing their denial on that ground, deny both generally and specifically, each and every, all and
20 singular, the allegations contained therein.

21 62. In answer to the allegations of paragraph 62 of the complaint, these defendants
22 have no information or belief to enable them to answer said allegations, and for that reason and
23 basing their denial on that ground, deny both generally and specifically, each and every, all and
24 singular, the allegations contained therein.

25 63. In answer to the allegations of paragraph 63 of the complaint, these defendants
26 have no information or belief to enable them to answer said allegations, and for that reason and
27 basing their denial on that ground, deny both generally and specifically, each and every, all and
28 singular, the allegations contained therein.

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FIFTH CAUSE OF ACTION

[42 U.S. Code § 1983 - INADEQUATE TRAINING – AGAINST JUSTIN WYATT AND THE CITY OF UKIAH]

64. In answer to the allegations of paragraph 64 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

65. In answer to the allegations of paragraph 65 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

66. In answer to the allegations of paragraph 66 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

67. In answer to the allegations of paragraph 67 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

68. In answer to the allegations of paragraph 68 of the complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

DEMAND

Defendants demand a Jury Trial.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

Defendants, in answer to the allegations of the unverified complaint on file herein, denies each and every allegation of said complaint, and in this connection, defendant denies that plaintiff has been injured or damaged in any of the sums mentioned in the complaint or in any other amount by reason of any act or omission of this defendant.

SECOND AFFIRMATIVE DEFENSE

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

That plaintiff was himself negligent and careless in and about the matters and events set forth in the complaint, and that said negligence contributed to his alleged injuries and/or damages. A verdict of the jury in favor of plaintiff, if any, which may be rendered in this case must therefore be reduced by the percentage that plaintiff's negligence contributed to the accident and injuries complained of, if any there were.

THIRD AFFIRMATIVE DEFENSE

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

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

FOURTH AFFIRMATIVE DEFENSE

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

Plaintiff's cause of action is barred by reason of the provisions of California Code of Civil Procedure sections 335.1, 340, and 343.

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FIFTH AFFIRMATIVE DEFENSE

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

Plaintiff’s cause of action is barred by the statute(s) of limitations as set forth in Government Code Sections 901, 945.4, 945.6, 945.8, and all other applicable statutes of limitations.

SIXTH AFFIRMATIVE DEFENSE

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

Plaintiff failed to mitigate his damages.

SEVENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

Plaintiff was guilty of willful misconduct and wanton and reckless behavior in and about the matters and events set forth in said complaint; and that said willful misconduct and wanton and reckless behavior contributed to the injuries and damages alleged, if any there were.

EIGHTH AFFIRMATIVE DEFENSE

AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

The plaintiff willfully and wrongfully provoked the altercation in which he was involved, and said provocation by plaintiff was a cause of the injuries and damages allegedly sustained.

NINTH AFFIRMATIVE DEFENSE

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

This answering defendant, a public entity, is immune from liability pursuant to California Government Code sections 800 et seq.

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TENTH AFFIRMATIVE DEFENSE

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

Any and all acts or omissions of, its agents and employees, which allegedly caused the injury at the time and place set forth were the result of an exercise of discretion vested in them.

ELEVENTH AFFIRMATIVE DEFENSE

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

At all times mentioned in the complaint, CITY OF UKIAH is not liable for any of these acts or omissions alleged in the complaint because the complaint only alleges that CITY OF UKIAH is liable based on the acts or omissions of others.

TWELFTH AFFIRMATIVE DEFENSE

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

Defendant CITY OF UKIAH alleged employees mentioned in plaintiff’s complaint were, at all times, duly qualified, appointed and acting police officers of City of Ukiah and peace officers of the State of California and in accordance with the Constitution of the United States and the State of California and the laws of the United States and the laws of the State of California; and at all times mentioned herein, said officers were engaged in the performance of their regularly assigned duties within the scope of their duties as peace officers of the City of Ukiah.

THIRTEENTH AFFIRMATIVE DEFENSE

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

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

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FOURTEENTH AFFIRMATIVE DEFENSE

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

In this connection probable cause existed to believe that plaintiff had committed a public offense and, therefore, probable cause existed to detain and/or arrest plaintiff Gerardo Magdaleno.

FIFTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT DEFENSE,
DEFENDANT ALLEGES:

At all times relevant to this litigation, plaintiff was subject to restraint as was reasonably necessary for his detention and/or arrest.

SIXTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT DEFENSE,
DEFENDANT ALLEGES:

At all times relevant to this litigation, reasonable cause existed to believe that plaintiff had committed a public offense and, therefore, reasonable force was used to effect plaintiff's arrest, to prevent escape or to overcome resistance.

SEVENTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT DEFENSE,
DEFENDANT ALLEGES:

This answering defendant is immune from liability pursuant to the provisions of §§ 815, 815.2, 818, 820.2, 820.4, 820.6, 820.8, 820.9, 821.6, 844.6, and 845.6 of the Government Code of the State of California.

EIGHTEENTH AFFIRMATIVE DEFENSE

AS AND FOR AN EIGHTEENTH, SEPARATE AND DISTINCT DEFENSE,
DEFENDANT ALLEGES:

Defendants are immune from 42 U.S.C. §1983 liability pursuant to the doctrine of qualified immunity. See *White v. Pauly*, 137 S. Ct. 548 (2017), *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011) and *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

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NINETEENTH AFFIRMATIVE DEFENSE

AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT DEFENSE,
DEFENDANT ALLEGES:

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

TWENTIETH AFFIRMATIVE DEFENSE

AS AND FOR A TWENTIETH, SEPARATE AND DISTINCT DEFENSE,
DEFENDANT ALLEGES:

Plaintiff has wholly failed to plead facts which give rise to any colorable claim for punitive or exemplary damages against defendants, nor do any such facts exist.

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

Plaintiff's claims for punitive or exemplary damages violate defendants' right to procedural due process, substantive due process, and protection from "excessive" fines as guaranteed by the Fifth, Fourteenth, and Eighth Amendments to the United States Constitution, respectively, and the Constitution of the State of California.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

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

WHEREFORE, defendant CITY OF UKIAH prays that plaintiff takes nothing by way of
the complaint on file herein and that defendant has judgment for his costs, attorneys' fees and for
such other and further relief as the court deems proper.

Respectfully submitted,

Dated: December 16, 2021

ALLEN, GLAESSNER,
HAZELWOOD & WERTH, LLP

By: /s/ Dale. L. Allen, Jr.
DALE L. ALLEN, JR.
Attorneys for Defendant
CITY OF UKIAH and UKIAN CHIEF OF
POLICE JUSTIN WYATT

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