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7 Attorneys for Defendant
CITY OF PLEASANT HILL and OFFICER KUHN

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 JENNIFER FINK-CARVER and JASON
12 FINK,

13 Plaintiffs,

14 vs.

15 CITY OF PLEASANT HILL POLICE
16 OFFICER KUHN, CITY OF PLEASANT
HILL, and, DOES 1-20,

17 Defendants.

Case No. C21-00664 JSW

**DEFENDANTS' ANSWER TO
PLAINTIFFS' COMPLAINT**

18
19 Defendants CITY OF PLEASANT HILL and City of Pleasant Hill Police Department
20 OFFICER KUHN ("Defendants") respond as follows to Plaintiffs' Complaint for Damages
21 ("Complaint"). Defendants demand a jury trial in this action.

22 **INTRODUCTION**

23 Defendants neither admit nor deny the allegations in the Introduction portion of Plaintiffs'
24 Complaint as alleged in Paragraphs 1 through 8, because it includes contentions and legal matters
25 not proper for admission or denial.

26 **JURISDICTION AND VENUE**

27 1. Defendants admit that the venue is proper as the alleged incident occurred in Contra
28 Costa County, within the Northern District of California, as alleged in Paragraphs 9 through 12.

1 Defendants neither admit nor deny the remaining allegations in Paragraphs 9 through 12 because it
2 includes contentions and legal matters not proper for admission or denial.

3
4 **IDENTIFICATION OF PARTIES**

5 2. Defendants neither admit nor deny the allegations in Paragraph 13 because it
6 includes contentions and legal matters not proper for admission or denial, nor do Defendants have
7 any personal knowledge of those contentions.

8 3. Defendants neither admit nor deny the allegations in Paragraph 14 because it
9 includes contentions and legal matters not proper for admission or denial, nor do Defendants have
10 any personal knowledge of those contentions.

11 4. Defendants admit that the CITY OF PLEASANT HILL is Defendant OFFICER
12 KUHN’s employer. Defendants neither admit nor deny the remaining allegations in Paragraph 15
13 because it includes contentions and legal matters not proper for admission or denial.

14 5. Defendants admit that the CITY OF PLEASANT HILL is a municipal and/or public
15 entity existing under the laws of the State of California, and operating in the County of Contra
16 Costa, as alleged in Paragraph 16. Defendants neither admit nor deny the remaining allegations in
17 Paragraph 16 because it includes contentions and legal matters not proper for admission or denial.

18 6. Defendants admit that the CITY OF PLEASANT HILL is Defendant OFFICER
19 KUHN’s employer. Defendants neither admit nor deny the remaining allegations in Paragraph 17
20 because it includes contentions and legal matters not proper for admission or denial.

21 7. Defendants neither admit nor deny the allegations in Paragraph 18 through 19
22 because they include contentions and legal matters not proper for admission or denial.

23 **FACTS GIVING RISE TO THE COMPLAINT**

24 8. In answering the allegations in Paragraphs 20 through 25, Defendants respond as
25 follows: On May 9, 2020 at approximately 9:30 p.m., Pleasant Hill Police Department (“PHPD”)
26 responded to a call reporting an active physical altercation in progress between family members at
27 169 Hookston Road in Pleasant Hill. Gary Armas, 52, 5’ 10”, 175 lbs., who had a black eye reported
28 that his fiancée, Jennifer Carver Fink, 48, 5’ 3”, 165 lbs., whom he had lived with for the past seven

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1 years, had punched him in his left eye with a closed fist four to five times after she got mad at him
2 for punching the television set, breaking it. Later, Mr. Armas sister, Brooke Armas, arrived and a
3 verbal argument ensued with Ms. Fink. There was some indication to officers that a firearm could
4 be in the residence. When PHPD arrived on scene, officers attempted to make contact with Ms.
5 Fink, who refused to come to the door of the residence. PHPD officers gave her numerous
6 commands to exit the residence and police canine announcements, commanding her to exit the
7 residence or the canine would be deployed to apprehend her. She did not comply with the PHPD
8 commands. The unsearched Ms. Fink then physically resisted the officers and refused to remove
9 her hand from her waistband area where a weapon could be concealed in her loose fitting clothing.
10 The canine was deployed and made contact with her which allowed officers to control her.

11 8. After Ms. Fink was taken into custody, a male arrived on scene (later identified as
12 her brother, Mr. Fink). Mr. Fink yelled profanities at Mr. Armas, ran past the officers, aggressively
13 slammed open the screen door and tried to enter the home. Mr. Fink refused to comply with officer
14 commands to get back. The unsearched Mr. Fink then physically resisted PHPD officers efforts to
15 control him. As a result, the police canine was deployed and made contact with him. Ultimately,
16 Mr. Fink was also arrested and taken into custody. A search incident to the arrest resulted in the
17 recovery of a pistol from the bedroom of the residence. After his arrest, Mr. Fink admitted he
18 grabbed the police canine by its mouth area, and said the dog was a “bitch”. Mr. Fink refused
19 medical attention and refused transportation by ambulance to the hospital. He was cited for
20 violation of Penal Code section 148, and released on scene. Ms. Fink received medical treatment
21 on scene for her canine injuries, and was transported by ambulance to the hospital for further
22 medical treatment. After receiving medical treatment, she was later transported to jail and booked
23 for a violation of Penal Code section 275.5(a). Ms. Fink’s mother advised PHPD officers that her
24 daughter and Mr. Armas had a history of domestic violence incidents, including previous incidents
25 where Mr. Armas had self-inflicted injuries and claimed that Ms. Fink had caused them.
26 Defendants neither admit nor deny the remaining allegations in Paragraphs 20 through 25 because
27 they include contentions and legal matters not proper for admission or denial.

STATEMENT OF DAMAGES

1 9. Defendants neither admit nor deny Plaintiffs’ Statement of Damages of the
2 Complaint, which includes Paragraphs 26 through 32, as they include contentions and legal matters
3 not proper for admission or denial.

4 **JURY TRIAL DEMAND**

5 10. Defendants neither admit nor deny the allegations in Plaintiff’s Jury Trial Demand
6 section which includes Paragraph 33 because they include contentions and legal matters not proper
7 for admission or denial.

8 **COMPLIANCE WITH CALIFORNIA TORT CLAIMS ACT**

9 10a. Defendants admit that Plaintiffs submitted a claim(s), but neither admit nor deny the
10 remainder of the allegations in Plaintiffs’ Compliance with California Tort Claims Act section
11 which includes Paragraph 34 because they include contentions and legal matters not proper for
12 admission or denial.

13 **CAUSES OF ACTION**

14 **FIRST CLAIM FOR RELIEF**

15 **BY PLAINTIFF JENNIFER FINK-CARVER**

16 **42 U.S.C. § 1983 – FOURTH AMENDMENT VIOLATIONS -UNREASONABLE FORCE
UNLAWFUL SEIZURE, AND UNLAWFUL ARREST
(AGAINST DEFENDANT KUHN)**

17 11. In answering Paragraphs 35 through 38, Defendants incorporate by reference their
18 responses to Paragraphs 1 through 34 of Plaintiffs’ Complaint.

19 12. Except as to matters previously admitted, Defendants deny the remaining allegations
20 in Paragraphs 35 through 38 of Plaintiffs’ Complaint.

21 **SECOND CLAIM FOR RELIEF**

22 **BY PLAINTIFF JENNIFER FINK-CARVER**

23 **42 U.S.C. § 1983 – Supervisory Liability, Monell
(AGAINST DEFENDANTS CITY OF PLEASANT HILL and DOES 1-20)**

24 13. In answering Paragraphs 39 through 44, Defendants incorporate by reference their
25 responses to Paragraphs 1 through 34 of Plaintiffs’ Complaint.

26 14. Except as to matters previously admitted, Defendants deny the remaining allegations
27 in Paragraphs 39 through 44 of Plaintiffs’ Complaint.

28 **THIRD CLAIM FOR RELIEF**

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**BY PLAINTIFF JENNIFER FINK-CARVER
NEGLIGENCE
(AGAINST ALL DEFENDANTS)**

15. In answering Paragraphs 45 through 50, Defendants incorporate by reference their responses to Paragraphs 1 through 34 of Plaintiffs' Complaint.

16. Except as to matters previously admitted, Defendants deny the remaining allegations in Paragraphs 45 through 50 of Plaintiffs' Complaint.

**FOURTH CLAIM FOR RELIEF
BY PLAINTIFF JENNIFER FINK-CARVER
ASSAULT
(AGAINST ALL DEFENDANTS)**

17. In answering Paragraphs 51 through 57, Defendants incorporate by reference their responses to Paragraphs 1 through 34 of Plaintiffs' Complaint.

18. Except as to matters previously admitted, Defendants deny the remaining allegations in Paragraphs 51 through 57 of Plaintiffs' Complaint.

**FIFTH CLAIM FOR RELIEF
BY PLAINTIFF JENNIFER FINK-CARVER
BATTERY
(AGAINST ALL DEFENDANTS)**

19. In answering Paragraphs 58 through 64, Defendants incorporate by reference their responses to Paragraphs 1 through 34 of Plaintiffs' Complaint.

20. Except as to matters previously admitted, Defendants deny the remaining allegations in Paragraphs 58 through 64 of Plaintiffs' Complaint.

**SIXTH CLAIM FOR RELIEF
BY PLAINTIFF JENNIFER FINK-CARVER
CALIFORNIA CIVIL CODE §§ 52, 52.1
BANE ACT VIOLATION
(AGAINST ALL DEFENDANTS)**

21. In answering Paragraphs 65 through 70, Defendants incorporate by reference their responses to Paragraphs 1 through 34 of Plaintiffs' Complaint.

22. Except as to matters previously admitted, Defendants deny the remaining allegations in Paragraphs 65 through 70 of Plaintiffs' Complaint.

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SEVENTH CLAIM FOR RELIEF
BY PLAINTIFF JASON FINK
42 U.S.C. § 1983 – FOURTH AMENDMENT VIOLATIONS -UNREASONABLE FORCE
UNLAWFUL SEIZURE, AND UNLAWFUL ARREST
(AGAINST DEFENDANT KUHN)

23. In answering Paragraphs 71 through 74, Defendants incorporate by reference their responses to Paragraphs 1 through 34 of Plaintiffs’ Complaint.

24. Except as to matters previously admitted, Defendants deny the remaining allegations in Paragraphs 71 through 74 of Plaintiffs’ Complaint.

EIGHTH CLAIM FOR RELIEF
BY PLAINTIFF JASON FINK
42 U.S.C. § 1983 – Supervisory Liability, Monell
(AGAINST DEFENDANTS CITY OF PLEASANT HILL and DOES 1-20)

25. In answering Paragraphs 75 through 80, Defendants incorporate by reference their responses to Paragraphs 1 through 34 of Plaintiffs’ Complaint.

26. Except as to matters previously admitted, Defendants deny the remaining allegations in Paragraphs 75 through 80 of Plaintiffs’ Complaint.

NINTH CLAIM FOR RELIEF
BY PLAINTIFF JASON FINK
NEGLIGENCE
(AGAINST ALL DEFENDANTS)

27. In answering Paragraphs 81 through 86, Defendants incorporate by reference their responses to Paragraphs 1 through 34 of Plaintiffs’ Complaint.

28. Except as to matters previously admitted, Defendants deny the remaining allegations in Paragraphs 81 through 86 of Plaintiffs’ Complaint.

TENTH CLAIM FOR RELIEF
BY PLAINTIFF JASON FINK
ASSAULT
(AGAINST ALL DEFENDANTS)

29. In answering Paragraphs 87 through 93, Defendants incorporate by reference their responses to Paragraphs 1 through 34 of Plaintiffs’ Complaint.

30. Except as to matters previously admitted, Defendants deny the remaining allegations in Paragraphs 87 through 93 of Plaintiffs’ Complaint.

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ELEVENTH CLAIM FOR RELIEF
BY PLAINTIFF JASON FINK
BATTERY
(AGAINST ALL DEFENDANTS)

31. In answering Paragraphs 94 through 100, Defendants incorporate by reference their responses to Paragraphs 1 through 34 of Plaintiffs' Complaint.

32. Except as to matters previously admitted, Defendants deny the remaining allegations in Paragraphs 94 through 100 of Plaintiffs' Complaint.

TWELFTH CLAIM FOR RELIEF
BY PLAINTIFF JASON FINK
CALIFORNIA CIVIL CODE §§ 52, 52.1
BANE ACT VIOLATION
(AGAINST ALL DEFENDANTS)

33. In answering Paragraphs 101 through 106, Defendants incorporate by reference their responses to Paragraphs 1 through 34 of Plaintiffs' Complaint.

34. Except as to matters previously admitted, Defendants deny the remaining allegations in Paragraphs 101 through 106 of Plaintiffs' Complaint.

PRAYER FOR RELIEF

35. Defendants neither admit nor deny Plaintiffs' prayer for relief portion of the Complaint, which includes subparts 1 through 6, as they include contentions and legal matters not proper for admission or denial.

AFFIRMATIVE DEFENSES

1. AS FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that Plaintiffs' Complaint fails to state cognizable legal theories and/or facts sufficient to constitute cognizable legal theories against Defendants.

2. AS FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that Plaintiffs failed to state facts sufficient to support a prayer for punitive damages and/or exemplary damages against any Defendant.

3. AS FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that Plaintiffs had full knowledge of all the risks, dangers, and hazards, if any there were, and nevertheless, voluntarily and with full appreciation of the amount of danger involved in his actions

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1 and the magnitude of the risk involved, assumed the risk of injuries and damages to themselves.

2 4. AS FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants
3 allege that at all times and places mentioned in Plaintiffs' Complaint, Plaintiffs failed to mitigate
4 the amount of their damages, if any. The damages claimed by Plaintiffs could have been mitigated
5 by due diligence on their part or by one acting under similar circumstances. Plaintiffs' failure to
6 mitigate is a bar or limit to their recovery under their Complaint.

7 5. AS FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege
8 that the sole proximate cause of the injuries and damages, if any, allegedly suffered by Plaintiffs
9 was the negligence and fault of themselves or others, or on the part of any person or entity for
10 whose acts or omissions Defendants are not legally or otherwise responsible, or, in the alternative,
11 that the negligence and fault of themselves or others in and about the matters alleged in the
12 Complaint herein proximately contributed to the happening of the incident and to the injuries, loss
13 and damages complained of, if any there were, and said negligence on the part of Plaintiffs or
14 others requires that any damages awarded to Plaintiffs shall be diminished in proportion to the
15 amount of fault attached to the Plaintiffs and/or others.

16 6. AS FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege
17 that Plaintiffs and/or others, by virtue of their own conduct and omissions, have enhanced and
18 materially contributed to the damages, if any there may be, allegedly sustained by Plaintiffs as a
19 result of the acts or omissions complained of herein.

20 7. AS FOR A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants
21 allege that at all times herein mentioned, the acts complained of, if any there were, were privileged
22 under applicable federal and state statutes and/or case law.

23 8. AS FOR AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants
24 allege that at all times herein mentioned, Defendants are immune from liability herein pursuant to
25 the provisions of California Government Code Sections 810 through 996.6.

26 9. AS FOR A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege
27 that at all times herein mentioned, all actions taken by the Defendants (and/or any other officers
28 named herein at any time) was/were reasonable under the circumstances and taken under a good

1 faith belief that the actions were not unlawful and the Defendants are therefore immune under the
2 “good faith immunity” and/or qualified immunity doctrine.

3 10. AS FOR A TENTH SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege
4 that Defendants shall only be responsible for damages, if any, in an amount determined pursuant to
5 and in accordance with Proposition 51 (Civil Code Section 1431.2).

6 11. AS FOR AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
7 Defendants allege that the alleged acts or omissions of the Defendants (and/or any other officers
8 named herein at any time), were based upon the officers’ reasonable cause to believe that they had
9 reasonable suspicion to detain and/or probable cause to arrest Plaintiffs and the Defendants used
10 reasonable force to effect the detention and/or arrest to prevent the escape and overcome the
11 resistance of Plaintiffs, and for the safety of the lives of themselves and others; and the Defendants
12 are therefore immune by virtue of the provisions of Sections 836.5(a) and 836.5(b) of the Penal
13 Code.

14 12. AS FOR A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants
15 allege that only such reasonable force as was necessary and lawful under the circumstances was
16 used by the Defendants in relation to their contact with Plaintiffs.

17 13. AS FOR A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
18 Defendants allege that to the extent Plaintiffs allege or assert matters not contained in a legally
19 sufficient claim filed by them, this action is barred by the claims requirement set forth in California
20 Government Code Section 905 et seq.

21 14. AS FOR A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
22 Defendants allege that the matters complained of by Plaintiffs, if committed by the Defendants,
23 were consented to by Plaintiffs.

24 15. AS FOR A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants
25 allege that at or about the time of the alleged event, the Defendants were presented with and had in
26 their possession sufficient facts to constitute reasonable suspicion for a detention and/or probable
27 cause for the arrest of Plaintiffs.

28 16. AS FOR A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

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1 Defendants allege that Plaintiffs have failed to state a cause of action in that each of the causes of
2 action as alleged herein is barred by provisions of Sections 312 through 362 of the California Code
3 of Civil Procedure.

4 17. AS FOR A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
5 Defendants allege that Plaintiffs have no standing to bring this civil action and/or some of the claims
6 alleged in this action.

7 18. AS FOR AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
8 Defendants allege that there is no statutory or other basis for the attorney's fees sought by Plaintiffs.

9 19. AS FOR A NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE,
10 Defendants allege that the Defendants were acting in good faith in respect to the acts and/or
11 omissions alleged in the Complaint.

12 20. AS AND FOR A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,
13 Defendants allege that Plaintiffs, himself, herself, or themselves were violent, combative,
14 threatening, and/or furtive towards the Defendant peace officers, and the Defendant peace officers
15 acted in self-defense and/or per their sworn duty to take Plaintiffs into custody, in relation to any
16 claimed use of force.

17 21. AS AND FOR AN TWENTY-FIRST, SEPARATE AND AFFIRMATIVE
18 DEFENSE, Defendants allege that they reasonably relied upon dispatch reporting and records,
19 public records and/or information of the State of California, other law enforcement related
20 databases and other sources of information, in taking the action against Plaintiffs, making their
21 conduct reasonable and lawful under the circumstances.

22 22. AS AND FOR A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE
23 DEFENSE, these answering Defendants allege that they are immune from liability herein pursuant
24 to the absolute privilege of Civil Code Section 47(b).

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Defendants pray for the following relief:

- 27 1. That Plaintiffs take nothing by way of their Complaint herein;
28

