

1 JAN I. GOLDSMITH, City Attorney
2 DANIEL F. BAMBERG, Assistant City Attorney
3 TIMOTHY C. STUTLER, Chief Deputy City Attorney
4 California State Bar No. 131794
5 Office of the City Attorney
6 1200 Third Avenue, Suite 1100
7 San Diego, California 92101-4100
8 Telephone: (619) 533-5800
9 Facsimile: (619) 533-5856

6 Attorneys for Defendants NEAL N. BROWDER
and CITY OF SAN DIEGO

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 S.R. NEHAD, an individual, K.R.	}	Case No. 15cv1386 WQH (NLS)
11 NEHAD, an individual, ESTATE OF		}
12 FRIDOON RAWSHAN NEHAD,	}	
13 Plaintiffs,		}
14 v.	}	
15 NEAL N. BROWDER, an individual,		}
16 CITY OF SAN DIEGO, a municipality,	}	
17 and DOES 1 through 10, inclusive,		}
Defendants.	}	

18 COME NOW Defendants Neal N. Browder (“Officer Browder”) and City of
19 San Diego, by and through their attorneys, San Diego City Attorney Jan I.
20 Goldsmith and Chief Deputy City Attorney Timothy C. Stutler, and answer
21 Plaintiffs’ “First Amended Complaint for: (1) Deprivation of Civil Rights Under 42
22 U.S.C. § 1983 (Fourth Amendment); (2) Deprivation Of Civil Rights Under 42 U
23 .S.C. § 1983 (Fourteenth Amendment); (3) Deprivation of Civil Rights (Cal. Civ.
24 Code § 52.1) (4) Assault and battery; (5) Negligence; and (6) Wrongful Death”
25 (“FAC”).

26 1. Responding to Paragraph 1 of the FAC, Defendants admit that on
27 April 30, 2015, Officer Browder was acting under color of authority in his capacity
28 as a San Diego police officer, when he shot Fridoon Rawshan Nehad (“Plaintiffs’

1 Decedent”), and that Plaintiffs’ Decedent later died of injuries sustained in the
2 incident. Defendants deny that Plaintiffs’ Decedent was unarmed. Except as
3 expressly admitted, Defendants deny, generally and specifically, each, all and every
4 allegation contained in said Paragraph.

5 2. Responding to Paragraph 2 of the FAC, Defendants admit that a
6 private party or parties captured video footage showing some of the shooting scene
7 during the incident and that the San Diego Police Department (“SDPD”) has copies
8 of the footage. Defendants are without knowledge or information sufficient to form
9 a belief as to the truth of the remainder of the allegations therein contained, and
10 based thereon, deny, generally and specifically, each, all and every remaining
11 allegation contained in said Paragraph.

12 3. Responding to Paragraph 3 of the FAC, Defendants admit that one or
13 more individuals have viewed the video footage referenced in Paragraph 2.
14 Defendants are without knowledge or information sufficient to form a belief as to
15 the truth of the remainder of the allegations contained in Paragraph 3, and based
16 thereon, deny, generally and specifically, each, all and every remaining allegation
17 contained in said Paragraph.

18 4. Responding to Paragraph 4 of the FAC, Defendants admit that Officer
19 Browder was wearing a body camera at the time of the shooting, which was not
20 activated, and that he did not know whether the on-scene security cameras were
21 functioning. Except as expressly admitted, Defendants deny, generally and
22 specifically, each, all and every allegation contained in said Paragraph, and
23 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
24 the part of Defendants, or any agents, employees, officials, officers, offices,
25 agencies, departments or divisions of the City of San Diego.

26 5. Responding to Paragraph 5 of the FAC, Defendants admit that
27 Plaintiffs in this action allege violation of their civil rights under 42 U.S.C. § 1983,
28 the Fourth and Fourteenth Amendments to the United States Constitution, and state

1 law. Defendants are without knowledge or information sufficient to form a belief
2 as to the truth of the remaining allegations therein contained, and based thereon,
3 deny, generally and specifically, each, all and every allegation contained in said
4 Paragraph, and specifically deny any unlawful, unconstitutional, or otherwise
5 wrongful conduct on the part of Defendants, or any agents, employees, officials,
6 officers, offices, agencies, departments or divisions of the City of San Diego.

7 6. Responding to Paragraph 6 of the FAC, Defendants admit the
8 following: the City of San Diego has provided the KECO video to Plaintiffs,
9 subject to a Court-issued protective order – and that the City and SDPD previously
10 declined to provide the footage until such time as was required by the Federal Rules
11 of Civil Procedure governing disclosure and discovery in this action, other
12 governing rules of law, or Court order, subject to such protective orders as the
13 Court may deem appropriate. Defendants are without knowledge or information
14 sufficient to form a belief as to the truth of the remainder of the allegations therein
15 contained, and based thereon, deny, generally and specifically, each, all and every
16 remaining allegation contained in said Paragraph.

17 7. Responding to Paragraph 7 of the FAC, Defendants admit the
18 following: that Plaintiffs filed this action on June 24, 2015, that Plaintiffs sought a
19 court order allowing them to subpoena the KECO Video prior to the
20 commencement of discovery in the action, that Defendants entered into joint
21 motions and agreements regarding the video and other evidence and documents
22 which are set forth in publically filed court papers, and that Defendants have
23 complied with all of their agreements and court-issued protective orders in this
24 case.

25 8. Responding to Paragraph 8 of the FAC, Defendants affirmatively
26 allege that said Paragraph contains jurisdictional allegations that present legal
27 conclusions and questions of law to be determined solely by the Court, to which no
28 response is required. To the extent a response is required, Defendants admit that

1 Plaintiffs filed an administrative claim with the City, which was denied prior to the
2 filing of the FAC. Except as expressly admitted, Defendants deny, generally and
3 specifically, each, all and every allegation contained in said Paragraph.

4 9. Responding to Paragraph 9 of the FAC, Defendants affirmatively
5 allege that said Paragraph contains jurisdictional allegations that present legal
6 conclusions and questions of law to be determined solely by the Court, to which no
7 response is required. To the extent a response is required, Defendants are without
8 knowledge or information sufficient to form a belief as to the truth of the
9 allegations therein contained, and based thereon, deny, generally and specifically,
10 each, all and every remaining allegation contained in said Paragraph.

11 10. Responding to Paragraph 10 of the FAC, Defendants are without
12 knowledge or information sufficient to form a belief as to the truth of the
13 allegations therein contained, and based thereon, deny, generally and specifically,
14 each, all and every allegation contained in said Paragraph.

15 11. Responding to Paragraph 11 of the FAC, Defendants affirmatively
16 allege that said Paragraph contains jurisdictional and venue allegations that present
17 legal conclusions and questions of law to be determined solely by the Court, to
18 which no response is required. To the extent a response is required, Defendants
19 admit that Officer Browder is a citizen of the United States of America and that
20 venue is proper in the Southern District of California. Except as expressly
21 admitted, Defendants deny, generally and specifically, each, all and every
22 allegation contained in said Paragraph.

23 12. Responding to Paragraph 12 of the FAC, Defendants affirmatively
24 allege that said Paragraph contains legal conclusions and argument, to which no
25 answer is required. To the extent a response is required, Defendants admit that the
26 SDPD is a department of the City of San Diego, that the City of San Diego is a
27 municipality, and that a municipality is generally responsible for the actions of its
28 police officers in the course and scope of their employment. Except as expressly

1 admitted, Defendants deny, generally and specifically, each, all and every
2 allegation contained in said Paragraph, and specifically deny any unlawful,
3 unconstitutional, or otherwise wrongful conduct on the part of Defendants, or any
4 agents, employees, officials, officers, offices, agencies, departments or divisions of
5 the City of San Diego.

6 13. Responding to Paragraph 13 of the FAC, Defendants are without
7 knowledge or information sufficient to form a belief as to the truth of the
8 allegations therein contained, and based thereon, deny, generally and specifically,
9 each, all and every allegation contained in said Paragraph.

10 14. Responding to Paragraph 14 of the FAC, Defendants affirmatively
11 allege that said Paragraph contains jurisdictional allegations that present legal
12 conclusions and questions of law to be determined solely by the Court, to which no
13 response is required. To the extent a response is required, Defendants admit that
14 Plaintiffs purport to seek relief and assert jurisdiction in this action pursuant to the
15 various laws cited in said Paragraph. Except as expressly admitted, Defendants
16 deny, generally and specifically, each, all and every allegation contained in said
17 Paragraph, and specifically deny any unlawful, unconstitutional, or otherwise
18 wrongful conduct on the part of Defendants, or any agents, employees, officials,
19 officers, offices, agencies, departments or divisions of the City of San Diego.

20 15. Responding to Paragraph 15 of the FAC, Defendants admit that
21 Plaintiffs purport to seek the relief alleged in said Paragraph. Except as expressly
22 admitted, Defendants deny, generally and specifically, each, all and every
23 allegation contained in said Paragraph, specifically deny any unlawful,
24 unconstitutional, or otherwise wrongful conduct on the part of Defendants, or any
25 agents, employees, officials, officers, offices, agencies, departments or divisions of
26 the City of San Diego, and specifically deny that Plaintiffs are entitled to any relief
27 whatsoever.

28 ///

1 16. Responding to Paragraph 16 of the FAC, Defendants affirmatively
2 allege that said Paragraph contains venue allegations that present legal conclusions
3 and questions of law to be determined solely by the Court, to which no response is
4 required. To the extent a response is required, Defendants admit that venue is
5 proper in this Court.

6 17. Responding to Paragraph 17 of the FAC, Defendants affirmatively
7 allege that they are without knowledge or information sufficient to form a belief as
8 to the truth of the allegations therein contained, and based thereon, deny, generally
9 and specifically, each, all and every allegation contained in said Paragraph.

10 18. Responding to Paragraph 18 of the FAC, Defendants affirmatively
11 allege that they are without knowledge or information sufficient to form a belief as
12 to the truth of the allegations therein contained, and based thereon, deny, generally
13 and specifically, each, all and every allegation contained in said Paragraph.

14 19. Responding to Paragraph 19 of the FAC, Defendants affirmatively
15 allege that they are without knowledge or information sufficient to form a belief as
16 to the truth of the allegations therein contained, and based thereon, deny, generally
17 and specifically, each, all and every allegation contained in said Paragraph.

18 20. Responding to Paragraph 20 of the FAC, Defendants affirmatively
19 allege that they are without knowledge or information sufficient to form a belief as
20 to the truth of the allegations therein contained, and based thereon, deny, generally
21 and specifically, each, all and every allegation contained in said Paragraph.

22 21. Responding to Paragraph 21 of the FAC, Defendants affirmatively
23 allege that they are without knowledge or information sufficient to form a belief as
24 to the truth of the allegations therein contained, and based thereon, deny, generally
25 and specifically, each, all and every allegation contained in said Paragraph.

26 22. Responding to Paragraph 22 of the FAC, Defendants affirmatively
27 allege that they are without knowledge or information sufficient to form a belief as

28 ///

1 to the truth of the allegations therein contained, and based thereon, deny, generally
2 and specifically, each, all and every allegation contained in said Paragraph.

3 23. Responding to Paragraph 23 of the FAC, Defendants affirmatively
4 allege that they are without knowledge or information sufficient to form a belief as
5 to the truth of the allegations therein contained, and based thereon, deny, generally
6 and specifically, each, all and every allegation contained in said Paragraph.

7 24. Responding to Paragraph 24 of the FAC, Defendants affirmatively
8 allege that they are without knowledge or information sufficient to form a belief as
9 to the truth of the allegations therein contained, and based thereon, deny, generally
10 and specifically, each, all and every allegation contained in said Paragraph.

11 25. Responding to Paragraph 25 of the FAC, Defendants affirmatively
12 allege that they are without knowledge or information sufficient to form a belief as
13 to the truth of the allegations therein contained, and based thereon, deny, generally
14 and specifically, each, all and every allegation contained in said Paragraph.

15 26. Responding to Paragraph 26 of the FAC, Defendants affirmatively
16 allege that they are without knowledge or information sufficient to form a belief as
17 to the truth of the allegations therein contained, and based thereon, deny, generally
18 and specifically, each, all and every allegation contained in said Paragraph.

19 27. Responding to Paragraph 27 of the FAC, Defendants affirmatively
20 allege that they are without knowledge or information sufficient to form a belief as
21 to the truth of the allegations therein contained, and based thereon, deny, generally
22 and specifically, each, all and every allegation contained in said Paragraph.

23 28. Responding to Paragraph 28 of the FAC, Defendants admit that shortly
24 after midnight on the morning of April 30, 2015, Plaintiffs' Decedent was in and
25 around the Hi-Lite Bookstore at 3203 Hancock Street, San Diego, California.
26 Defendants are without knowledge or information sufficient to form a belief as to
27 the truth of the remainder of the allegations therein contained, and based thereon,

28 ///

1 deny, generally and specifically, each, all and every remaining allegation contained
2 in said Paragraph.

3 29. Responding to Paragraph 29 of the FAC, Defendants admit that shortly
4 after midnight on the morning of April 30, 2015, the SDPD received a 911 call in
5 which the caller reported a male at or around the Hi-Lite Bookstore was threatening
6 people with a knife; that the SDPD responded by dispatching officers to the scene;
7 and that Officer Browder was the first officer to arrive at the scene, shortly after
8 midnight.

9 30. Responding to Paragraph 30 of the FAC, Defendants admit the
10 following: that as Officer Browder's marked black and white patrol car neared the
11 Hi-Lite Bookstore, Plaintiffs' Decedent emerged from the shadows of an alley near
12 the bookstore and headed directly for Officer Browder; that Plaintiffs' Decedent
13 brandished a metallic pen that appeared to be a knife; that by the time Officer
14 Browder was able to react to the actions of Plaintiffs' Decedent by getting out of his
15 car, yelling at Plaintiffs' Decedent to drop "it" or "the knife," and drawing his
16 sidearm, Plaintiffs' Decedent had closed the substantial distance between himself
17 and Officer Browder to between 10 and 15 feet; that immediately upon drawing his
18 sidearm, Officer Browder fired, hitting Plaintiffs' Decedent once in the chest; and
19 that Plaintiffs' Decedent was later pronounced dead by a physician at UCSD
20 Medical Center. Defendants affirmatively allege that they are without knowledge
21 or information sufficient to form a belief as to the truth of the allegations regarding
22 the purported actions, opinions, and statements of a, "KECO employee who saw the
23 KECO Video," and based thereon, deny, generally and specifically, each, all and
24 every remaining allegation contained in said Paragraph, and specifically deny any
25 unlawful, unconstitutional, or otherwise wrongful conduct on the part of
26 Defendants, or any agents, employees, officials, officers, offices, agencies,
27 departments or divisions of the City of San Diego.

28 ///

1 31. Responding to Paragraph 31 of the FAC, Defendants admit that by the
2 time Officer Browder was able to react to the actions of Plaintiffs' Decedent by
3 getting out of his car, yelling at Plaintiffs' Decedent to drop "it" or "the knife," and
4 drawing his sidearm, Plaintiffs' Decedent had closed the substantial distance
5 between himself and Officer Browder to between 10 and 15 feet; that immediately
6 upon drawing his sidearm, Officer Browder fired, hitting Plaintiffs' Decedent once
7 in the chest. Defendants affirmatively allege that they are without knowledge or
8 information sufficient to form a belief as to the truth of the allegations regarding the
9 purported actions, opinions, and statements of a, "KECO employee who saw the
10 video," and based thereon, deny, generally and specifically, each, all and every
11 remaining allegation contained in said Paragraph, and specifically deny any
12 unlawful, unconstitutional, or otherwise wrongful conduct on the part of
13 Defendants, or any agents, employees, officials, officers, offices, agencies,
14 departments or divisions of the City of San Diego.

15 32. Responding to Paragraph 32 of the FAC, Defendants admit that within
16 a minute of Officer Browder's arrival at the scene, the following occurred: as
17 Officer Browder's marked black and white patrol car neared the Hi-Lite Bookstore,
18 Plaintiffs' Decedent emerged from the shadows of an alley near the bookstore and
19 headed directly for Officer Browder; Plaintiffs' Decedent brandished a metallic pen
20 that appeared to be a knife; by the time Officer Browder was able to react to the
21 actions of Plaintiffs' Decedent by getting out of his car, yelling at Plaintiffs'
22 Decedent to drop "it" or "the knife," and drawing his sidearm, Plaintiffs' Decedent
23 had closed the substantial distance between himself and Officer Browder to
24 between 10 and 15 feet; and immediately upon drawing his sidearm, Officer
25 Browder fired, hitting Plaintiffs' Decedent once in the chest. Except as expressly
26 admitted, Defendants deny, generally and specifically, each, all and every
27 allegation contained in said Paragraph, and specifically deny any unlawful,
28 unconstitutional, or otherwise wrongful conduct on the part of Defendants, or any

1 agents, employees, officials, officers, offices, agencies, departments or divisions of
2 the City of San Diego.

3 33. Responding to Paragraph 33 of the FAC, Defendants admit the
4 following: Officer Browder was equipped with a body worn camera at the time of
5 the shooting; and that it was not activated at the time of the shooting. Except as
6 expressly admitted, Defendants deny, generally and specifically, each, all and every
7 allegation contained in said Paragraph, and specifically deny any unlawful,
8 unconstitutional, or otherwise wrongful conduct on the part of Defendants, or any
9 agents, employees, officials, officers, offices, agencies, departments or divisions of
10 the City of San Diego.

11 34. Responding to Paragraph 34 of the FAC, Defendants admit that the
12 SDPD acknowledges that its efforts to equip, train, and regulate its officers
13 regarding the use of new technology like body worn cameras is an ongoing,
14 evolving process, and that the SDPD continuously seeks to improve its procedures
15 and policies regarding such issues as when cameras are to be activated and not
16 activated. Except as expressly admitted, Defendants deny, generally and
17 specifically, each, all and every allegation contained in said Paragraph, and
18 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
19 the part of Defendants, or any agents, employees, officials, officers, offices,
20 agencies, departments or divisions of the City of San Diego.

21 35. Responding to Paragraph 35 of the FAC, Defendants admit that the
22 current SDPD Procedure regarding body worn cameras provides that, "Officers are
23 strongly encouraged to inform citizens that they are being recorded in an effort to
24 de-escalate potential conflicts," and contains detailed provisions regarding training
25 and use of the cameras, and provisions regarding violations of the Procedure.
26 Except as expressly admitted, Defendants deny, generally and specifically, each, all
27 and every allegation contained in said Paragraph, and specifically deny any
28 unlawful, unconstitutional, or otherwise wrongful conduct on the part of

1 Defendants, or any agents, employees, officials, officers, offices, agencies,
2 departments or divisions of the City of San Diego.

3 36. Responding to Paragraph 36 of the FAC, Defendants deny, generally
4 and specifically, each, all and every allegation contained in said Paragraph, and
5 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
6 the part of Defendants, or any agents, employees, officials, officers, offices,
7 agencies, departments or divisions of the City of San Diego.

8 37. Responding to Paragraph 37 of the FAC, Defendants affirmatively
9 allege that said Paragraph's statements regarding the evidentiary value of the
10 footage are legal conclusions, legal argument, and evidentiary theories, to which no
11 answer is required. To the extent that a response is required, Defendants admit that
12 video evidence is often pertinent to issues, admissible, and useful to the fact finder
13 in civil actions. Defendants are without knowledge or information sufficient to
14 form a belief as to the truth of the remainder of the allegations therein contained,
15 and based thereon, deny, generally and specifically, each, all and every remaining
16 allegation contained in said Paragraph.

17 38. Responding to Paragraph 38 of the FAC, Defendants admit the
18 following: the City of San Diego has provided the KECO Video to Plaintiffs,
19 subject to a Court-issued protective order, and that the City and SDPD previously
20 declined to provide the footage until such time as was required by the Federal Rules
21 of Civil Procedure governing disclosure and discovery in this action, other
22 governing rules of law, or Court order, subject to such protective orders as the
23 Court may deem appropriate. Defendants are without knowledge or information
24 sufficient to form a belief as to the truth of the remainder of the allegations therein
25 contained, and based thereon, deny, generally and specifically, each, all and every
26 remaining allegation contained in said Paragraph.

27 39. Responding to Paragraph 39 of the FAC, Defendants affirmatively
28 allege that they are without knowledge or information sufficient to form a belief as

1 to the truth of the allegations therein contained, and based thereon, deny, generally
2 and specifically, each, all and every allegation contained in said Paragraph.

3 40. Responding to Paragraph 40 of the FAC, Defendants admit the
4 following: Plaintiffs filed this action on June 24, 2015; Plaintiffs sought a court
5 order allowing them to subpoena the KECO video prior to the commencement of
6 discovery in the action; Defendants entered into joint motions and agreements
7 regarding the video and other evidence and documents which are set forth in
8 publically filed court papers; and Defendants have complied with all of their
9 agreements and the Court's orders in this case.

10 41. Responding to Paragraph 41 of the FAC, Defendants incorporate
11 herein their responses to the preceding paragraphs of this Answer. To the extent
12 further response is required to the allegations contained in said Paragraph,
13 Defendants deny the allegations contained therein.

14 42. Responding to Paragraph 42 of the FAC, Defendants affirmatively
15 allege that said Paragraph contains jurisdictional allegations that present legal
16 conclusions and questions of law to be determined solely by the Court, to which no
17 response is required. To the extent a response is required, Defendants admit that
18 Plaintiffs purport to seek relief in this action pursuant to the various laws cited in
19 said Paragraph. Except as expressly admitted, Defendants deny, generally and
20 specifically, each, all and every allegation contained in said Paragraph, and
21 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
22 the part of Defendants, or any agents, employees, officials, officers, offices,
23 agencies, departments or divisions of the City of San Diego.

24 43. Responding to Paragraph 43 of the FAC, Defendants affirmatively
25 allege that said Paragraph contains jurisdictional allegations that present legal
26 conclusions and questions of law to be determined solely by the Court, to which no
27 response is required. To the extent a response is required, Defendants are without
28 knowledge or information sufficient to form a belief as to the truth of the

1 allegations therein contained, and based thereon, deny, generally and specifically,
2 each, all and every allegation contained in said Paragraph.

3 44. Responding to Paragraph 44 of the FAC, Defendants affirmatively
4 allege that said Paragraph contains legal conclusions and legal argument, to which
5 no answer is required. To the extent a response is required, Defendants admit that
6 Plaintiffs' Decedent died from injuries sustained when Officer Browder shot him,
7 and that firing some weapons can constitute the use of deadly force in some
8 situations. Defendants deny the following: that deadly force was unwarranted in
9 this case; that Plaintiffs' Decedent was unarmed; and that Plaintiffs' Decedent did
10 not appear to, and did not, threaten Officer Browder and others with deadly force.
11 Except as expressly admitted, Defendants deny, generally and specifically, each, all
12 and every remaining allegation contained in said Paragraph, and specifically deny
13 any unlawful, unconstitutional, or otherwise wrongful conduct on the part of
14 Defendants, or any agents, employees, officials, officers, offices, agencies,
15 departments or divisions of the City of San Diego.

16 45. Responding to Paragraph 45 of the FAC, Defendants deny, generally
17 and specifically, each, all and every allegation contained in said Paragraph, and
18 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
19 the part of Defendants, or any agents, employees, officials, officers, offices,
20 agencies, departments or divisions of the City of San Diego.

21 46. Responding to Paragraph 46 of the FAC, Defendants affirmatively
22 allege that said Paragraph contains legal conclusions and argument, to which no
23 answer is required. To the extent a response is required, Defendants admit that
24 Officer Browder acted under color of law and within the course and scope of his
25 employment with the City of San Diego and the SDPD in all his dealings with
26 Plaintiffs' Decedent, and that a municipality is generally responsible for the actions
27 of its police officers in the course and scope of their employment. Except as
28 expressly admitted, Defendants deny, generally and specifically, each, all and every

1 allegation contained in said Paragraph, and specifically deny any unlawful,
2 unconstitutional, or otherwise wrongful conduct on the part of Defendants, or any
3 agents, employees, officials, officers, offices, agencies, departments or divisions of
4 the City of San Diego.

5 47. Responding to Paragraph 47 of the FAC, Defendants affirmatively
6 allege that said Paragraph contains legal conclusions and argument, to which no
7 answer is required. To the extent a response is required, Defendants admit that
8 Officer Browder fired a single round from his sidearm, striking Decedent in the
9 chest; and that Decedent died from his gunshot injury. Defendants are without
10 knowledge or information sufficient to form a belief as to the truth of the remainder
11 of the allegations therein contained, and based thereon, deny, generally and
12 specifically, each, all and every remaining allegation contained in said Paragraph.

13 48. Responding to Paragraph 48 of the FAC, Defendants deny, generally
14 and specifically, each, all and every allegation contained in said Paragraph, and
15 specifically deny that the Estate of Plaintiffs' Decedent is entitled to any relief
16 whatsoever.

17 49. Responding to Paragraph 49 of the FAC, Defendants deny, generally
18 and specifically, each, all and every allegation contained in said Paragraph, and
19 specifically deny that the Estate of Plaintiffs' Decedent is entitled to any relief
20 whatsoever, and specifically deny any unlawful, unconstitutional, or otherwise
21 wrongful conduct on the part of Defendants, or any agents, employees, officials,
22 officers, offices, agencies, departments or divisions of the City of San Diego.

23 50. Responding to Paragraph 50 of the FAC, Defendants incorporate
24 herein their responses to the preceding paragraphs of this Answer. To the extent
25 further response is required to the allegations contained in said Paragraph,
26 Defendants deny the allegations contained therein.

27 51. Responding to Paragraph 51 of the FAC, Defendants affirmatively
28 allege that said Paragraph contains jurisdictional allegations that present legal

1 conclusions and questions of law to be determined solely by the Court, to which no
2 response is required. To the extent a response is required, Defendants admit that
3 Plaintiffs purport to seek relief in this action pursuant to the various laws cited in
4 said Paragraph. Except as expressly admitted, Defendants deny, generally and
5 specifically, each, all and every allegation contained in said Paragraph, and
6 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
7 the part of Defendants, or any agents, employees, officials, officers, offices,
8 agencies, departments or divisions of the City of San Diego.

9 52. Responding to Paragraph 52 of the FAC, Defendants affirmatively
10 allege that said Paragraph contains legal conclusions and legal argument, to which
11 no answer is required. To the extent a response is required, Defendants admit that
12 Plaintiffs' Decedent died from injuries sustained when Officer Browder shot him,
13 and that firing some weapons can constitute the use of deadly force in some
14 situations. Defendants deny the following: that deadly force was unwarranted in
15 this case; that Plaintiffs' Decedent was unarmed; and that Plaintiffs' Decedent did
16 not appear to, and did not, threaten Officer Browder and others with deadly force.
17 Except as expressly admitted, Defendants deny, generally and specifically, each, all
18 and every remaining allegation contained in said Paragraph, and specifically deny
19 any unlawful, unconstitutional, or otherwise wrongful conduct on the part of
20 Defendants, or any agents, employees, officials, officers, offices, agencies,
21 departments or divisions of the City of San Diego

22 53. Responding to Paragraph 53 of the FAC, Defendants affirmatively
23 allege that said Paragraph contains legal conclusions, questions of law and
24 Plaintiffs' theory of the case, to which no answer is required. To the extent a
25 response is required, Defendants are without knowledge or information sufficient to
26 form a belief as to the truth of the allegations therein contained, and based thereon,
27 deny, generally and specifically, each, all and every allegation contained in said
28 Paragraph, and specifically deny any unlawful, unconstitutional, or otherwise

1 wrongful conduct on the part of Defendants, or any agents, employees, officials,
2 officers, offices, agencies, departments or divisions of the City of San Diego.

3 54. Responding to Paragraph 54 of the FAC, Defendants affirmatively
4 allege that said Paragraph contains legal conclusions and argument, to which no
5 answer is required. To the extent a response is required, Defendants admit that
6 Officer Browder acted under color of law and within the course and scope of his
7 employment with the City of San Diego and the SDPD in all his dealings with
8 Plaintiffs' Decedent, and that a municipality is generally responsible for the actions
9 of its police officers in the course and scope of their employment. Except as
10 expressly admitted, Defendants deny, generally and specifically, each, all and every
11 allegation contained in said Paragraph, and specifically deny any unlawful,
12 unconstitutional, or otherwise wrongful conduct on the part of Defendants, or any
13 agents, employees, officials, officers, offices, agencies, departments or divisions of
14 the City of San Diego.

15 55. Responding to Paragraph 55 of the FAC, Defendants affirmatively
16 allege that said Paragraph contains legal conclusions, questions of law and
17 Plaintiffs' theory of the case, to which no answer is required. To the extent a
18 response is required, Defendants admit that Officer Browder fired a single round
19 from his sidearm, striking Decedent in the chest; and that Decedent died from his
20 gunshot injury. Except as expressly admitted, Defendants deny, generally and
21 specifically, each, all and every allegation contained in said Paragraph, and
22 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
23 the part of Defendants, or any agents, employees, officials, officers, offices,
24 agencies, departments or divisions of the City of San Diego.

25 56. Responding to Paragraph 56 of the FAC, Defendants deny, generally
26 and specifically, each, all and every allegation contained in said Paragraph, and
27 specifically deny that Plaintiffs are entitled to any relief whatever.

28 ///

1 57. Responding to Paragraph 57 of the FAC, Defendants deny, generally
2 and specifically, each, all and every allegation contained in said Paragraph,
3 specifically deny that Plaintiffs are entitled to any relief whatsoever, and
4 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
5 the part of Defendants, or any agents, employees, officials, officers, offices,
6 agencies, departments or divisions of the City of San Diego.

7 58. Responding to Paragraph 58 of the FAC, Defendants incorporate
8 herein their responses to the preceding paragraphs of this Answer. To the extent
9 further response is required to the allegations contained in said Paragraph,
10 Defendants deny the allegations contained therein.

11 59. Responding to Paragraph 59 of the FAC, Defendants affirmatively
12 allege that said Paragraph contains jurisdictional allegations that present legal
13 conclusions and questions of law to be determined solely by the Court, to which no
14 response is required. To the extent a response is required, Defendants admit that
15 the constitutional provisions and statutes cited by Plaintiffs protect important rights
16 and interests. Except as expressly admitted, Defendants deny, generally and
17 specifically, each, all and every allegation contained in said Paragraph, and
18 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
19 the part of Defendants, or any agents, employees, officials, officers, offices,
20 agencies, departments or divisions of the City of San Diego.

21 60. Responding to Paragraph 60 of the FAC, Defendants deny, generally
22 and specifically, each, all and every allegation contained in said Paragraph,
23 specifically deny that Plaintiffs are entitled to any relief whatsoever, and
24 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
25 the part of Defendants, or any agents, employees, officials, officers, offices,
26 agencies, departments or divisions of the City of San Diego.

27 61. Responding to Paragraph 61 of the FAC, Defendants deny, generally
28 and specifically, each, all and every allegation contained in said Paragraph, and

1 specifically deny that Plaintiffs are entitled to any relief whatsoever, and
2 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
3 the part of Defendants, or any agents, employees, officials, officers, offices,
4 agencies, departments or divisions of the City of San Diego.

5 62. Responding to Paragraph 62 of the FAC, Defendants affirmatively
6 allege that said Paragraph contains legal conclusions and argument, to which no
7 answer is required. To the extent a response is required, Defendants admit that
8 Officer Browder acted within the course and scope of his employment with the City
9 of San Diego in all his dealings with Plaintiffs' Decedent, and that a municipality is
10 generally responsible for the actions of its police officers in the course and scope of
11 their employment. Except as expressly admitted, Defendants deny, generally and
12 specifically, each, all and every allegation contained in said Paragraph, and
13 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
14 the part of Defendants, or any agents, employees, officials, officers, offices,
15 agencies, departments or divisions of the City of San Diego.

16 63. Responding to Paragraph 63 of the FAC, Defendants deny, generally
17 and specifically, each, all and every allegation contained in said Paragraph,
18 specifically deny that Plaintiffs are entitled to any relief whatsoever, and
19 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
20 the part of Defendants, or any agents, employees, officials, officers, offices,
21 agencies, departments or divisions of the City of San Diego.

22 64. Responding to Paragraph 64 of the FAC, Defendants incorporate
23 herein their responses to the preceding paragraphs of this Answer. To the extent
24 further response is required to the allegations contained in said Paragraph,
25 Defendants deny the allegations contained therein.

26 65. Responding to Paragraph 65 of the FAC, Defendants deny, generally
27 and specifically, each, all and every allegation contained in said Paragraph,
28 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on

1 the part of Defendants, or any agents, employees, officials, officers, offices,
2 agencies, departments or divisions of the City of San Diego.

3 66. Responding to Paragraph 66 of the FAC, Defendants deny, generally
4 and specifically, each, all and every allegation contained in said Paragraph,
5 specifically deny that Plaintiffs are entitled to any relief whatsoever, and
6 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
7 the part of Defendants, or any agents, employees, officials, officers, offices,
8 agencies, departments or divisions of the City of San Diego.

9 67. Responding to Paragraph 67 of the FAC, Defendants deny, generally
10 and specifically, each, all and every allegation contained in said Paragraph,
11 specifically deny that Plaintiffs are entitled to any relief whatsoever, and
12 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
13 the part of Defendants, or any agents, employees, officials, officers, offices,
14 agencies, departments or divisions of the City of San Diego.

15 68. Responding to Paragraph 68 of the FAC, Defendants affirmatively
16 allege that said Paragraph contains legal conclusions and argument, to which no
17 answer is required. To the extent a response is required, Defendants admit that
18 Officer Browder acted within the course and scope of his employment with the City
19 of San Diego in all his dealings with Plaintiffs' Decedent, and that a municipality is
20 generally responsible for the actions of its police officers in the course and scope of
21 their employment. Except as expressly admitted, Defendants deny, generally and
22 specifically, each, all and every allegation contained in said Paragraph, and
23 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
24 the part of Defendants, or any agents, employees, officials, officers, offices,
25 agencies, departments or divisions of the City of San Diego.

26 69. Responding to Paragraph 69 of the FAC, Defendants incorporate
27 herein their responses to the preceding paragraphs of this Answer. To the extent

28 ///

1 further response is required to the allegations contained in said Paragraph,
2 Defendants deny the allegations contained therein.

3 70. Responding to Paragraph 70 of the FAC, Defendants affirmatively
4 allege that said Paragraph contains legal conclusions and argument, to which no
5 answer is required. To the extent a response is required, Defendants admit that
6 California law imposes a general duty to use reasonable care to prevent harm to
7 oneself or to others. Except as expressly admitted, Defendants deny, generally and
8 specifically, each, all and every allegation contained in said Paragraph, and
9 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
10 the part of Defendants, or any agents, employees, officials, officers, offices,
11 agencies, departments or divisions of the City of San Diego.

12 71. Responding to Paragraph 71 of the FAC, Defendants deny, generally
13 and specifically, each, all and every allegation contained in said Paragraph, and
14 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
15 the part of Defendants, or any agents, employees, officials, officers, offices,
16 agencies, departments or divisions of the City of San Diego.

17 72. Responding to Paragraph 72 of the FAC, Defendants deny, generally
18 and specifically, each, all and every allegation contained in said Paragraph,
19 specifically deny that Plaintiffs are entitled to any relief whatsoever, and
20 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
21 the part of Defendants, or any agents, employees, officials, officers, offices,
22 agencies, departments or divisions of the City of San Diego.

23 73. Responding to Paragraph 73 of the FAC, Defendants affirmatively
24 allege that said Paragraph contains legal conclusions and argument, to which no
25 answer is required. To the extent a response is required, Defendants admit that
26 Officer Browder acted within the course and scope of his employment with the City
27 of San Diego in all his dealings with Plaintiffs' Decedent, and that a municipality is
28 generally responsible for the actions of its police officers in the course and scope of

1 their employment. Except as expressly admitted, Defendants deny, generally and
2 specifically, each, all and every allegation contained in said Paragraph, and
3 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
4 the part of Defendants, or any agents, employees, officials, officers, offices,
5 agencies, departments or divisions of the City of San Diego.

6 74. Responding to Paragraph 74 of the FAC, Defendants incorporate
7 herein their responses to the preceding paragraphs of this Answer. To the extent
8 further response is required to the allegations contained in said Paragraph,
9 Defendants deny the allegations contained therein.

10 75. Responding to Paragraph 75 of the FAC, Defendants affirmatively
11 allege that said Paragraph contains legal conclusions and argument, to which no
12 answer is required. To the extent a response is required, Defendants admit that
13 California law imposes a general duty to use reasonable care to prevent harm to
14 oneself or to others. Except as expressly admitted, Defendants deny, generally and
15 specifically, each, all and every allegation contained in said Paragraph, and
16 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
17 the part of Defendants, or any agents, employees, officials, officers, offices,
18 agencies, departments or divisions of the City of San Diego.

19 76. Responding to Paragraph 76 of the FAC, Defendants deny, generally
20 and specifically, each, all and every allegation contained in said Paragraph, and
21 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
22 the part of Defendants, or any agents, employees, officials, officers, offices,
23 agencies, departments or divisions of the City of San Diego.

24 77. Responding to Paragraph 77 of the FAC, Defendants affirmatively
25 allege that said Paragraph contains legal conclusions, questions of law and
26 Plaintiffs' theory of the case, to which no answer is required. To the extent a
27 response is required, Defendants admit that Officer Browder fired a single round
28 from his sidearm, striking Decedent in the chest; and that Decedent died from his

1 gunshot injury. Except as expressly admitted, Defendants deny, generally and
2 specifically, each, all and every allegation contained in said Paragraph, and
3 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
4 the part of Defendants, or any agents, employees, officials, officers, offices,
5 agencies, departments or divisions of the City of San Diego.

6 78. Responding to Paragraph 78 of the FAC, Defendants deny, generally
7 and specifically, each, all and every allegation contained in said Paragraph,
8 specifically deny that Plaintiffs are entitled to any relief whatsoever, and
9 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
10 the part of Defendants, or any agents, employees, officials, officers, offices,
11 agencies, departments or divisions of the City of San Diego.

12 79. Responding to Paragraph 79 of the FAC, Defendants affirmatively
13 allege that said Paragraph contains legal conclusions and argument, to which no
14 answer is required. To the extent a response is required, Defendants admit that
15 Officer Browder acted within the course and scope of his employment with the City
16 of San Diego in all his dealings with Plaintiffs' Decedent, and that a municipality is
17 generally responsible for the actions of its police officers in the course and scope of
18 their employment. Except as expressly admitted, Defendants deny, generally and
19 specifically, each, all and every allegation contained in said Paragraph, and
20 specifically deny any unlawful, unconstitutional, or otherwise wrongful conduct on
21 the part of Defendants, or any agents, employees, officials, officers, offices,
22 agencies, departments or divisions of the City of San Diego.

23 80. Responding to Paragraph 1 of Plaintiffs' Prayer for Relief, Defendants
24 affirmatively allege that said Paragraph is part of a prayer for relief to which no
25 responsive pleading is required. To the extent that said paragraph is deemed to
26 allege facts to which a response is required, Defendants deny, generally and
27 specifically, each, all and every allegation contained in said Paragraph, and
28 specifically deny that Plaintiffs are entitled to any relief whatsoever.

1 81. Responding to Paragraph 2 of Plaintiffs’ Prayer for Relief, Defendants
2 affirmatively allege that said Paragraph is part of a prayer for relief to which no
3 responsive pleading is required. To the extent that said paragraph is deemed to
4 allege facts to which a response is required, Defendants deny, generally and
5 specifically, each, all and every allegation contained in said Paragraph, and
6 specifically deny that Plaintiffs are entitled to attorneys’ fees, costs, interest, or any
7 other relief whatsoever.

8 **AFFIRMATIVE AND OTHER DEFENSES**

9 1. This Court is without subject matter jurisdiction over Plaintiffs’
10 claims.

11 2. The FAC, and each claim asserted therein, fails to state a claim upon
12 which relief can be granted.

13 3. Plaintiffs failed to adequately mitigate their damages, if any, and any
14 recovery or any other award to which they are entitled should be reduced
15 accordingly.

16 4. Plaintiffs’ FAC fails to state facts sufficient to constitute a cause of
17 action against these answering Defendants.

18 5. Income taxes must be deducted from all alleged past and future lost
19 earnings, if any.

20 6. To the extent the events of which Plaintiffs complain were undertaken
21 by Defendants, Defendants deny any unlawful, unconstitutional, or otherwise
22 wrongful motive and would have taken the same actions absent unlawful,
23 unconstitutional, or otherwise wrongful motive.

24 7. All future damages, if any, must be reduced to present value.

25 8. Plaintiffs are not entitled to pretrial interest.

26 9. Plaintiffs are not entitled to declaratory or injunctive relief, or
27 prejudgment interest.

28 ///

1 10. Officer Browder is not liable for his acts or omissions, while
2 exercising due care, in the execution or enforcement of any law.

3 11. Public employees are not liable for an injury caused by the act or
4 omission of another person.

5 12. Defendants are not liable for punitive damages.

6 13. The conduct in question did not constitute a violation of a federally
7 protected right.

8 14. At all times, Officer Browder acted reasonably and did not know that
9 his conduct violated clearly established statutory or constitutional rights of which a
10 reasonable person would have known; his conduct was reasonable, lawful, based on
11 probable cause and within the scope of his official duties and employment; and he
12 is therefore entitled to qualified immunity.

13 15. Plaintiffs' Decedent was negligent in and about the matters alleged in
14 the FAC and said carelessness on his part proximately contributed to the happening
15 of the alleged incident, injuries and damages complained of, if any such exist.

16 16. Any and all acts of Defendants at or near the time alleged in the FAC
17 were reasonable and said Defendants had reasonable cause to act in the manner they
18 did.

19 17. At the time of the initial contact, the Officer Browder was acting
20 within the scope of his employment and had probable cause to believe that
21 Plaintiffs' Decedent was engaging in, or had just engaged in, a prohibited activity.
22 During the contact, Officer Browder was acting within the scope of his employment
23 and had probable cause to believe that said person had committed a crime.

24 18. If Plaintiffs are entitled to recover for any damages suffered at the time
25 and place alleged, then the total amount of damages to which Plaintiffs would
26 otherwise be entitled should be reduced in proportion to the amount of fault
27 attributable to Plaintiffs' Decedent, or to a third person or persons, which fault
28 directly and proximately contributed to Plaintiffs' alleged damages.

1 19. Pursuant to California Government Code section 985, any judgment
2 entered herein may be reduced for collateral source payments paid or obligated to
3 be paid for services or benefits that were provided before trial commenced.

4 20. At the time of the contact, Officer Browder attempted to persuade
5 Plaintiffs' Decedent to follow directions and in doing so, only used force necessary
6 for the occasion.

7 21. Officer Browder was at all times alleged in the FAC performing
8 duties, in good faith, impartially, fairly and as required by law under conditions
9 required by law.

10 22. Plaintiffs do not have standing to seek relief for each and every cause
11 of action, as set forth in the FAC.

12 23. Plaintiffs' injuries and damages, if any, were the result of the exercise
13 of the discretion vested in Defendant City of San Diego, and/or the officers, agents
14 and/or employees of the public entity, and there is no liability therefore, pursuant to
15 the California Code, including the California Government Code, sections 815.2(b)
16 and 820.2.

17 24. The answering Defendants and/or public employees are not liable for
18 the acts and conduct of Plaintiffs' Decedent which caused the underlying events at
19 issue in the FAC to occur and, but for such acts, the events alleged in the FAC
20 would not have occurred, and/or Plaintiffs' Decedent would not have been involved
21 or engaged or otherwise subject to the matters alleged in Plaintiffs' FAC, including
22 any citation, detention, apprehension, arrest, or control or force, if any, or otherwise
23 having sustained the matters alleged, including any and all injuries, inconvenience
24 and damages alleged in the FAC.

25 25. On or before the date of the subject incident, Plaintiffs' Decedent
26 knew or reasonably should have known the hazards or dangers involved in his
27 actions and, as a result, voluntarily assumed the risk in and about the matters
28 alleged in the FAC.

1 26. Plaintiffs' Decedent acted wrongfully in the matters complained of and
2 Plaintiffs are thus barred totally or partially by the doctrine of unclean hands from
3 receiving the relief requested.

4 27. Defendant City of San Diego is immune from liability in that a public
5 entity is not liable for an injury arising out of its acts or omissions or of a public
6 employee, in the absence of a statute declaring such liability.

7 28. Defendant City of San Diego is not liable for an injury arising out of
8 an act or omission of its employees, where the subject employee is immune from
9 liability.

10 29. Defendant City of San Diego, its agents and employees, and the
11 Defendant Police Officers are not liable while acting within the scope of their duties
12 for injuries resulting from judicial or administrative proceedings.

13 30. Officer Browder reasonably believed that Plaintiffs' Decedent was
14 going to harm him or others, and used only the amount of force that was reasonably
15 necessary to protect himself or others.

16 31. The FAC and/or certain counts, claims and/or causes of action therein
17 is/are barred by operation of law, including the applicable statute of limitations for
18 the claims, causes of action or counts, and/or applicable claims presentation
19 requirements for each, any and/or the causes, counts or claims under California law,
20 including but not limited to the following: that Plaintiffs failed to timely file their
21 causes, counts or claims and/or complaint as against certain Defendants and/or that
22 Plaintiffs failed to comply with the claims presentation requirements, and/or late
23 claims presentation requirements set forth in Government Code section 901, et seq.

24 32. Replacing DOE Amendments with named Police Officers does not
25 comply with Federal Rules of Civil Procedure 15.

26 33. Defendants reserve the right to allege and does affirmatively allege
27 and state the avoidance and affirmative defenses set forth in Rule 8 as if fully set
28 forth herein, and particularly including assumption of risk, contributory negligence,

1 negligence, estoppel, latches, collateral estoppel and/or res judicata, statute of
2 limitations and waiver.

3 34. Defendants hereby give notice that they intend to rely on such other
4 and further affirmative defenses as may become apparent during discovery in this
5 action and reserve the right to amend this Answer to assert any such defenses.

6 WHEREFORE, these answering Defendants pray judgment as follows:

- 7 1. Plaintiffs take nothing by their FAC;
8 2. Defendants receives their costs of suit incurred herein; and
9 3. Such other relief as the court deems proper

10 **JURY TRIAL DEMAND**

11 Defendants demand a trial by jury in this action pursuant to Federal Rules of
12 Civil Procedure, Rule 38(b).

13 Dated: August 13, 2015 JAN I. GOLDSMITH, City Attorney

14
15 By /s/ Timothy C. Stutler
16 Timothy C. Stutler
17 Chief Deputy City Attorney

18 Attorneys for Defendants NEAL N.
19 BROWDER and CITY OF SAN
20 DIEGO

21 TStutler@sandiego.gov
22
23
24
25
26
27
28