

1 Roger P. Bingham, Esq. (SBN 165231)
WHEATLEY BINGHAM & BAKER LLP
2 Attorneys At Law
462 Stevens Avenue, Suite 109
3 Solana Beach, California 92075
Email: rpb@rbinghamlaw.com
4 Telephone: (858) 350-0504
Facsimile: (858) 350-0506
5

6 Attorneys for Defendants SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a
public entity; SAN DIEGO TROLLEY, INC., a California Corporation; SAN
7 DIEGO TRANSIT CORPORATION, a California corporation; UNIVERSAL
PROTECTION SERVICE GP, INC., a California corporation; BILL BUCK, an
8 individual; CHRIS MINER, an individual

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ALLEN KOKA, an individual,
12 Plaintiff,

13 v.

14 SAN DIEGO METROPOLITAN
TRANSIT SYSTEM, a public entity,
15 SAN DIEGO TROLLEY, INC., a
California corporation; SAN DIEGO
16 TRANSIT CORPORATION, a
California corporation; UNIVERSAL
17 PROTECTION SERVICE GP, INC., a
California corporation; NMS
18 MANAGEMENT SERVICES, INC., a
California Corporation; BILL BUCK,
19 an individual; CHRIS MINER, an
individual; and DOES 1-20, inclusive,

20 Defendants.
21

CASE NO. 15 CV 0763 AJB KSC

ANSWER OF DEFENDANTS
SAN DIEGO METROPOLITAN
TRANSIT SYSTEM, SAN
DIEGO TROLLEY, INC., SAN
DIEGO TRANSIT
CORPORATION, UNIVERSAL
PROTECTION SERVICE GP,
INC., BILL BUCK AND CHRIS
MINER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT FOR
DAMAGES

JUDGE: ANTHONY J.
BATTAGLIA
COURTROOM: 3B [Schwartz]
COMPLAINT FILED: 04/07/15

[DEMAND FOR JURY TRIAL]

22 Defendants SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a public
23 entity; SAN DIEGO TROLLEY, INC., a California Corporation; SAN DIEGO
24 TRANSIT CORPORATION, a California corporation; UNIVERSAL
25 PROTECTION SERVICE GP, INC., a California corporation; BILL BUCK, an
26 individual; CHRIS MINER, an individual (hereinafter collectively referred to as
27 "Defendants"), respond to the First Amended Complaint for Damages for: (1)
28 Violation of Civil Rights (42 U.S.C. §1983); (2) *Monell* Claim (42 U.S.C. §1983);

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 (3) Violation of Cal. Civil Code §52.1 (Bane Act); Violation of Cal. Civil Code
2 §51.7; (5) Battery; (6) Assault; (7) False Imprisonment/False Arrest; (8) Intentional
3 Infliction of Emotional Distress; (9) Negligence; and (10) Negligent Hiring,
4 Supervision, and Retention of Employees (hereinafter referred to as the “First
5 Amended Complaint”), and in so doing, hereby demand a jury, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. Answering the First Amended Complaint, Defendants admit that the
9 allegations in the First Amended Complaint comport to be a civil rights action
10 seeking compensatory and punitive damages from Defendants for seizing, arresting,
11 and purportedly beating Plaintiff in violation of his Civil Rights under federal and
12 state law. Defendants deny any liability and/or culpability and contend Defendants
13 acted within the specifications of the law and otherwise adhered to all legal
14 principles and guidelines in detaining, arresting and taking Plaintiff into custody.

15 **II.**

16 **JURISDICTION AND VENUE**

17 2. Answering the First Amended Complaint, Defendants admit that federal
18 jurisdiction can be established based on 42 U.S.C. §1983. Defendants nevertheless
19 deny that the pleadings alleged in the First Amended Complaint raise a violation of
20 Plaintiff’s civil and constitutional rights sufficient to establish federal jurisdiction.

21 3. Answering the First Amended Complaint, Defendants admit that subject
22 matter jurisdiction can be established as to Plaintiff’s state law claims based on 28
23 U.S.C. §1367. Defendants nevertheless deny that the pleadings alleged in the First
24 Amended Complaint raise a violation of the civil and constitutional rights sufficient
25 to establish federal jurisdiction over Plaintiff’s state law claims.

26 ///

27 ///

28 ///

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 4. Answering the First Amended Complaint, Defendants admit that venue
2 is proper in this District pursuant to 28 U.S.C. §1391(b). Defendants nevertheless
3 deny that the pleadings alleged in the First Amended Complaint raise a violation of
4 the civil and constitutional rights to establish federal jurisdiction.

5 **III.**

6 **GENERAL ALLEGATIONS**

7 5. Answering at page 2:18-25 of the First Amended Complaint,
8 Defendants admit that Defendant NMS Management Services, Inc. (NMS) is a
9 company that contracts with Defendant San Diego Metropolitan Transit System
10 (“MTS”) to provide janitorial services to MTS property. Defendants also admit that
11 Plaintiff is not originally from the United States and has dark hair, dark complexion
12 and speaks with a heavy foreign accent. Defendants are without sufficient
13 knowledge or information to form a belief as to the truth of the remaining allegations
14 and on that basis deny each and every remaining allegation contained in the
15 paragraph.

16 6. Answering at pages 2:26-3:3 of the First Amended Complaint,
17 Defendants admit that Defendant San Diego Metropolitan Transit System (“MTS”)
18 is a California public entity under the laws of the State of California with its
19 principal office located at 1255 Imperial Avenue, 10th Floor, in San Diego,
20 California 92101, and it provides public bus/rail services but deny the remainder of
21 the allegations contained in the paragraph.

22 7. Answering at page 3:4-8 of the First Amended Complaint, Defendants
23 admit that San Diego Trolley, Inc. (“SDTI”) is an operating subsidiary of Defendant
24 MTS which provides public light rail services in the County of San Diego but deny
25 the remainder of the allegations contained in the paragraph.

26 8. Answering at page 3:9-13, of the First Amended Complaint, Defendants
27 admit that Defendant San Diego Transit Corporation (“SDTC”) is an operating
28 subsidiary of Defendant MTS which provides public bus transportation in the

1 County of San Diego, but deny the remainder of the allegations contained in the
2 paragraph.

3 9. Answering at page 3:14-18 of the First Amended Complaint,
4 Defendants admit that Defendant MTS owned, operated, leased and/or maintained
5 the property located at 1255 Imperial Avenue, San Diego, California 92101, but
6 deny the remainder of the allegations contained in the paragraph.

7 10. Answering at page 3:19-26 of the First Amended Complaint,
8 Defendants admit that Defendant MTS possessed the power and authority to adopt
9 policies and prescribe rules, regulations and practices affecting the operation of MTS
10 and its subsidiaries SDTI and SDTC, but deny the remainder of the allegations
11 contained in the paragraph.

12 11. Answering at pages 3:27-4:4 of the First Amended Complaint,
13 Defendants deny that Defendants Bill Buck (“Buck”) and Chris Miner (“Miner”)
14 were employed by MTS and/or its subsidiaries as “transit officers” and Defendants
15 are otherwise without sufficient knowledge or information to form a belief as to the
16 truth of the remaining allegations contained therein, and on that basis deny each and
17 every allegation contained in the paragraph.

18 12. Answering at page 4:5-13 of the First Amended Complaint, Defendants
19 admit that Defendant Universal Protection Services GP, Inc. (“UPS”), is a California
20 corporation, qualified to do business in California and is under contract with
21 Defendant MTS to provide security services but Defendants are otherwise without
22 sufficient knowledge or information to form a belief as to the truth of the allegations
23 contained therein, and on that basis deny each and every allegation contained in the
24 paragraph.

25 13. Answering at page 4:14-17 of the First Amended Complaint,
26 Defendants deny each and every allegation contained in the paragraph.

27 14. Answering at page 4:18-23 of the First Amended Complaint,
28 Defendants admit that Defendant NMS is a California corporation, qualified to do

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 business in California, and is under contract with Defendant MTS to provide
2 cleaning services to MTS property. Defendants are nevertheless without sufficient
3 knowledge or information to form a belief as to the truth of the remaining allegations
4 contained therein, and on that basis deny each and every remaining allegation
5 contained in the paragraph.

6 15. Answering at pages 4:24-5:2 of the First Amended Complaint,
7 Defendants are without sufficient knowledge or information to form a belief as to the
8 truth of the allegations contained therein, and on that basis deny each and every
9 allegation contained in the paragraph.

10 16. Answering at page 5:3-8 of the First Amended Complaint, Defendants
11 deny each and every allegation contained in the paragraph.

12 17. Answering at page 5:9-12 of the First Amended Complaint, Defendants
13 deny each and every allegation contained in the paragraph and submit that Plaintiff is
14 *not* entitled to recover punitive/exemplary damages against a public entity pursuant
15 to California Government Code §818.

16 18. Answering at page 5:13-15 of the First Amended Complaint,
17 Defendants admit Plaintiff filed a Government Claim with MTS on January 28,
18 2015, which was rejected by MTS on February 10, 2015, but Defendants deny the
19 remainder of the allegations contained in the paragraph.

20 19. Answering at page 5:16-18 of the First Amended Complaint,
21 Defendants admit the incident(s) occurred on or about November 13, 2014 on MTS
22 premises, but Defendants deny the remainder of the allegations contained in the
23 paragraph.

24 20. Answering at page 5:19-23 of the First Amended Complaint,
25 Defendants deny each and every allegation contained in the paragraph.

26 21. Answering at page 5:24-26 of the First Amended Complaint,
27 Defendants admit that Plaintiff was recently hired by NMS as an employee and did
28 not have an identification card on his person at the time of the incident. Defendants

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

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

4 22. Answering at pages 5:27-6:4 of the First Amended Complaint,
5 Defendants are without sufficient knowledge or information to form a belief as to the
6 truth of the allegations contained therein, and on that basis deny each and every
7 allegation contained in the paragraph.

8 23. Answering at page 6:5-9 of the Complaint, Defendants admit that
9 Defendants Buck and Miner contacted Plaintiff in a private/restricted area on MTS
10 property, and requested Plaintiff advise as what was the nature of his business and/or
11 authority in being on said property but Defendants deny each and every remaining
12 allegation contained in the paragraph.

13 24. Answering at page 6:10-12 of the First Amended Complaint,
14 Defendants deny each and every allegation contained in the paragraph.

15 25. Answering at page 6:13-15 of the First Amended Complaint,
16 Defendants admit that Defendants Buck and Miner requested Plaintiff's
17 identification and Plaintiff was unable to produce the requisite identification card but
18 Defendants deny the remainder of the allegations contained in the paragraph.

19 26. Answering at page 6:16-17 of the First Amended Complaint,
20 Defendants admit that Defendants Buck and Miner informed Plaintiff that he
21 required proper authorization/identification to be on the premises and was otherwise
22 trespassing but Defendants deny the remainder of the allegations contained in the
23 paragraph.

24 27. Answering at page 6:18-24 of the First Amended Complaint,
25 Defendants admit that Defendants Buck and Miner allowed Plaintiff to utilize his
26 cellular telephone to call his brother but Defendants deny the remainder of the
27 allegations contained in the paragraph.

28 ///

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 28. Answering at pages 6:25-7:7 of the First Amended Complaint,
2 Defendants deny each and every allegation contained in the paragraph.

3 29. Answering at page 7:8-17 of the First Amended Complaint, Defendants
4 admit that Plaintiff was detained by Defendants Buck and Miner for not having the
5 appropriate authorization/identification in a restricted area which was a violation of
6 MTS regulations/ordinances but Defendants deny the remainder of the allegations
7 contained in the paragraph.

8 30. Answering at page 7:18-20 of the First Amended Complaint,
9 Defendants admit that Defendants Buck and Miner instructed Plaintiff that he was
10 going to be issued a citation for trespassing and Defendant Buck prepared the
11 citation but Defendants deny the remainder of the allegations contained in the
12 paragraph.

13 31. Answering at page 7:21-25 of the First Amended Complaint,
14 Defendants admit that an NMS supervisor arrived on scene while Defendant Buck
15 was preparing/issuing the citation to Plaintiff but Defendants deny the remainder of
16 the allegations contained in the paragraph.

17 32. Answering at pages 7:26-8:5 of the First Amended Complaint,
18 Defendants admit that Plaintiff was detained and/or taken into custody after the
19 NMS supervisor arrived on scene but Defendants deny the remainder of the
20 allegations contained in the paragraph.

21 33. Answering at page 8:6-10 of the First Amended Complaint, Defendants
22 admit that Plaintiff's brother arrived on scene and was directed to back away and to
23 not interfere with the detention of Plaintiff but Defendants deny the remainder of the
24 allegations contained in the paragraph.

25 34. Answering at page 8:11-15 of the First Amended Complaint,
26 Defendants admit that Plaintiff requested to leave but was instructed he could not
27 depart until after the citation was issued and Plaintiff was subsequently taken into

28 ///

1 custody based on his noncompliance, but Defendants deny the remainder of the
2 allegations contained in the paragraph.

3 35. Answering at page 8:16-18 of the First Amended Complaint,
4 Defendants admit Defendant Buck instructed Plaintiff he needed to sign the citation
5 before he could be released, but Defendants deny the remainder of the allegations
6 contained in the paragraph.

7 36. Answering at page 8:19-24 of the First Amended Complaint,
8 Defendants admit Plaintiff refused to sign the citation, but Defendants deny the
9 remainder of the allegations contained in the paragraph.

10 37. Answering at pages 8:25-9:2 of the First Amended Complaint,
11 Defendants admit Defendant Buck instructed Plaintiff that he needed to sign the
12 citation before being released, but Defendants deny the remainder of the allegations
13 contained in the paragraph.

14 38. Answering at page 9:3-4 of the First Amended Complaint, Defendants
15 deny each and every allegation contained in the paragraph.

16 39. Answering at page 9:5-10 of the First Amended Complaint, Defendants
17 deny each and every allegation contained in the paragraph.

18 40. Answering at page 9:11-12 of the First Amended Complaint,
19 Defendants deny each and every allegation contained in the paragraph.

20 41. Answering at page 9:13-17 of the First Amended Complaint,
21 Defendants deny each and every allegation contained in the paragraph.

22 42. Answering at page 9:18-25 of the First Amended Complaint,
23 Defendants admit Plaintiff's brother (Qooka) was instructed to back away and was
24 ultimately taken into custody, handcuffed and placed in an SUV but Defendants
25 deny each and every remaining allegation in the paragraph.

26 ///

27 ///

28 ///

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 43. Answering at page 9:26-28 of the First Amended Complaint,
2 Defendants admit Plaintiff was properly taken to the ground and handcuffed where
3 his legs were bound to keep him from kicking but Defendants deny each and every
4 remaining allegation in the paragraph.

5 44. Answering at page 10:1-3 of the First Amended Complaint, Defendants
6 admit Defendants Buck and Miner were wearing body cameras which captured
7 certain parts of the incident but Defendants deny each and every remaining
8 allegation in the paragraph.

9 45. Answering at page 10:4-10 of the First Amended Complaint,
10 Defendants admit Defendant Buck's body camera fell off during the incident but
11 Defendants deny each and every remaining allegation in the paragraph.

12 46. Answering at page 10:11-18 of the First Amended Complaint,
13 Defendants admit Defendant Buck's body camera was picked up and placed on the
14 hood of a vehicle and there is a reference on the audio portion of the tape to the
15 camera being "still hot" but Defendants deny each and every remaining allegation in
16 the paragraph.

17 47. Answering at page 10:19-20 of the First Amended Complaint,
18 Defendants admit that an ambulance was summoned to the scene but Defendants
19 deny each and every remaining allegation in the paragraph.

20 48. Answering at page 10:21-27 of the First Amended Complaint,
21 Defendants admit Plaintiff was transported on a gurney to the emergency room by
22 paramedics but Defendants deny each and every remaining allegation in the
23 paragraph.

24 49. Answering at page 11:1-3 of the First Amended Complaint, Defendants
25 admit Defendant Buck issued Plaintiff a citation for: (1)
26 resisting/delaying/obstructing a public officer; and (2) entering MTS property not
27 open to the public.

28 ///

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 50. Answering at page 11:4-10 of the First Amended Complaint,
2 Defendants admit San Diego Police Officer Pierre-Autoine issued a citation to
3 Plaintiff for battery against a transit employee but Defendants do not have sufficient
4 knowledge or information to form a believe as to the truth of the remaining
5 allegations contained in the paragraph and on that basis deny the remaining
6 allegations contained therein.

7 51. Answering at page 11:11-13 of the First Amended Complaint,
8 Defendants lack sufficient knowledge or information to form a belief as to the truth
9 of the allegations contained in this paragraph, and on that basis deny each and every
10 allegation contained therein.

11 52. Answering at page 11:14-16 of the First Amended Complaint,
12 Defendants lack sufficient knowledge or information to form a belief as to the truth
13 of the allegations contained in this paragraph, and on that basis deny each and every
14 allegation contained therein.

15 53. Answering at page 11:17-18 of the First Amended Complaint,
16 Defendants lack sufficient knowledge or information to form a belief as to the truth
17 of the allegations contained in this paragraph, and on that basis deny each and every
18 allegation contained therein.

19 54. Answering at page 11:19-20 of the First Amended Complaint,
20 Defendants admit Defendant MTS dismissed the charges against Plaintiff but
21 Defendants deny each and every remaining allegation contained in the paragraph.

22 55. Answering at page 11:21-28 of the First Amended Complaint,
23 Defendants lack sufficient knowledge or information to form a belief as to the truth
24 of the allegations contained in this paragraph, and on that basis deny each and every
25 allegation contained therein.

26 56. Answering at page 12:1-5 of the First Amended Complaint, Defendants
27 admit Defendants MTS/SDTI “investigated” the matter and did not discipline or
28 reprimand Defendants Buck and Miner but Defendants lack sufficient knowledge or

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

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

3 57. Answering at pages 12:6-9 of the First Amended Complaint,
4 Defendants deny each and every allegation contained in this paragraph.

5 **IV.**

6 **FIRST CAUSE OF ACTION**

7 **(42 U.S.C. § 1983 – Violation of Civil Rights - Excessive Force,
8 Unreasonable Seizure of Person, False Arrest, and Conspiracy to
9 Deprive Civil Rights)**

10 **(Against Defendants Buck, Miner and Does 1 through 20)**

11 58. Answering at page 12:15-17 of the First Amended Complaint,
12 Defendants Buck, Miner and Does 1 through 20 incorporate herein by reference, as
13 set forth in full, Defendants’ answers in paragraphs 1 through 57, inclusive as set
14 forth above.

15 59. Answering at page 12:18-25 of the First Amended Complaint,
16 Defendants Buck, Miner and Does 1 through 20 deny each and every allegation
17 contained in the paragraph.

18 60. Answering at pages 12:26-13:2 of the First Amended Complaint,
19 Defendants Buck, Miner and Does 1 through 20 deny each and every allegation
20 contained in the paragraph.

21 61. Answering at page 13:3-7 of the First Amended Complaint, Defendants
22 Buck, Miner and Does 1 through 20 deny each and every allegation contained in the
23 paragraph and that there is any basis for awarding said relief to Plaintiff and/or
24 Plaintiff is entitled to said relief.

25 62. Answering at page 13:8-12 of the First Amended Complaint,
26 Defendants Buck, Miner and Does 1 through 20 deny each and every allegation
27 contained in the paragraph.

28 ///

///

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

V.

SECOND CAUSE OF ACTION

**(*Monell* Violation – Unlawful Custom and Practice Under
42 U.S.C. §1983)**

[Against Defendants MTS, SDTI, SDTC and UPS]

63. Answering at page 13:17-19 of the First Amended Complaint, Defendants MTS, SDTI, SDTC and UPS incorporate herein by reference, as set forth in full, Defendants’ answers in paragraphs 1 through 62, inclusive as set forth above.

64. Answering at page 13:20-27 of the First Amended Complaint, Defendants admit MTS, and SDTI/SDTC as subsidiaries of MTS, are public entities who possess authority to adopt policies and prescribe rules/practices affecting the operation of MTS, SDTI and SDTC relating to training, discipline, investigations, personnel supervision, records maintenance and use of force. Defendants MTS, SDTI, SDTC and UPS deny each and every remaining allegation in the paragraph.

65. Answering at page 14:1-2 of the First Amended Complaint, Defendants MTS, SDTI, SDTC and UPS deny each and every allegation contained in this paragraph.

66. Answering at pages 14:3-15:2 of the First Amended Complaint, Defendants MTS, SDTI, SDTC and UPS deny each and every allegation contained in this paragraph.

67. Answering at page 15:3-7 of the First Amended Complaint, Defendants MTS, SDTI, SDTC and UPS admit that Defendants Buck and Miner were employees of SDTI who were acting within the course and scope of their employment at the time of the incident, but deny each and every remaining allegation contained in the paragraph.

68. Answering at page 15:8-10 of the First Amended Complaint, Defendants MTS, SDTI, SDTC and UPS deny each and every allegation contained in this paragraph.

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 69. Answering at page 15:11-15 of the First Amended Complaint,
2 Defendants MTS, SDTI, SDTC and UPS deny each and every allegation contained
3 in this paragraph and that there is any basis for awarding said relief to Plaintiff
4 and/or Plaintiff is entitled to said relief.

5 **VI.**

6 **THIRD CAUSE OF ACTION**

7 **Violation of Cal. Civil Code §52.1 (Bane Act)**

8 **[Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-**
9 **20]**

10 70. Answering at page 15:19-21 of the First Amended Complaint,
11 Defendants incorporate herein by reference, as set forth in full, Defendants' answers
12 in paragraphs 1 through 69, inclusive as set forth above.

13 71. Answering at page 15:22-26 of the First Amended Complaint,
14 Defendants deny each and every allegation contained in this paragraph.

15 72. Answering at pages 15:27-16:2 of the First Amended Complaint,
16 Defendants submit that the allegations contained in this paragraph are vague,
17 ambiguous and otherwise incomprehensible and Defendants deny each and every
18 allegation contained therein on these grounds.

19 73. Answering at page 16:3-6 of the First Amended Complaint, Defendants
20 deny each and every allegation contained in this paragraph.

21 74. Answering at page 16:7-11 of the First Amended Complaint,
22 Defendants deny each and every allegation contained in this paragraph or that there
23 is any basis for awarding said relief to Plaintiff and/or Plaintiff is entitled to said
24 relief.

25 75. Answering at page 16:12-16 of the First Amended Complaint,
26 Defendants deny each and every allegation contained in this paragraph or that
27 Plaintiff is entitled to recover punitive/exemplary damages from MTS, SDTI and/or
28 SDTC as public entities pursuant to California Government Code §818.

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

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

VII.

FOURTH CAUSE OF ACTION

Violation of Cal. Civil Code § 51.7

[Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-20]

76. Answering at page 16:20-22 of the First Amended Complaint, Defendants incorporate herein by reference, as set forth in full, Defendants’ answers in paragraphs 1 through 75, inclusive as set forth above.

77. Answering at page 16:23-24 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph.

78. Answering at page 16:25-27 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph.

79. Answering at page 17:1-3 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph.

80. Answering at page 17:4-6 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph.

81. Answering at page 17:7-11 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph.

82. Answering at page 17:12-17 of the First Amended Complaint, Defendants deny that Defendants Buck, Miner and Does 1 through 20 engaged in any inappropriate conduct and/or conspired to violate the law and/or rules, regulations, policies, practices or customs of Defendants MTS, SDTI, SDTC and/or UPS. Defendants further deny each and every remaining allegation contained in this paragraph.

83. Answering at page 17:18-22 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph or that there is any basis for awarding said relief to Plaintiff and/or Plaintiff is entitled to said relief.

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 84. Answering at page 17:23-27 of the First Amended Complaint,
2 Defendants deny each and every allegation contained in this paragraph or that
3 Plaintiff is entitled to recover punitive/exemplary damages from MTS, SDTI and/or
4 SDTC as public entities pursuant to California Government Code §818.

5 **VIII.**

6 **FIFTH CAUSE OF ACTION**

7 **Battery**

8 **[Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-**
9 **20]**

10 85. Answering at page 18:4-6 of the First Amended Complaint, Defendants
11 incorporate herein by reference, as set forth in full, Defendants' answers in
12 paragraphs 1 through 84, inclusive as set forth above.

13 86. Answering at page 18:7-8 of the First Amended Complaint, Defendants
14 deny each and every allegation contained in this paragraph.

15 87. Answering at page 18:9-10 of the First Amended Complaint,
16 Defendants deny they committed a battery to Plaintiff and otherwise deny each and
17 every remaining allegation contained in this paragraph.

18 88. Answering at page 18:11-14 of the First Amended Complaint,
19 Defendants deny each and every allegation contained in this paragraph.

20 89. Answering at page 18:15-19 of the First Amended Complaint,
21 Defendants deny each and every allegation contained in this paragraph or that there
22 is any basis for awarding said relief to Plaintiff and/or Plaintiff is entitled to said
23 relief.

24 90. Answering at page 18:20-24 of the First Amended Complaint,
25 Defendants deny each and every allegation contained in this paragraph or that
26 Plaintiff is entitled to recover punitive/exemplary damages from MTS, SDTI and/or
27 SDTC as public entities pursuant to California Government Code §818.

28 ///

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

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

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

IX.

SIXTH CAUSE OF ACTION

Assault

[Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-20]

91. Answering at page 19:4-6 of the First Amended Complaint, Defendants incorporate herein by reference, as set forth in full, Defendants’ answers in paragraphs 1 through 90, inclusive as set forth above.

92. Answering at page 19:7-9 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph.

93. Answering at page 19:10-13 of the First Amended Complaint, Defendants deny they committed an assault against Plaintiff and therefore deny each and every remaining allegation contained in this paragraph.

94. Answering at page 19:14-18 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph or that there is any basis for awarding said relief to Plaintiff and/or Plaintiff is entitled to said relief.

95. Answering at page 19:19-23 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph or that Plaintiff is entitled to recover punitive/exemplary damages from MTS, SDTI and/or SDTC as public entities pursuant to California Government Code §818.

X.

SEVENTH CAUSE OF ACTION

False Imprisonment/False Arrest

[Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-20]

1 96. Answering at page 20:4-6 of the First Amended Complaint, Defendants
2 incorporate herein by reference, as set forth in full, Defendants’ answers in
3 paragraphs 1 through 95, inclusive as set forth above.

4 97. Answering at page 20:7-8 of the First Amended Complaint, Defendants
5 deny each and every allegation contained in this paragraph.

6 98. Answering at page 20:9-11 of the First Amended Complaint,
7 Defendants deny each and every allegation contained in this paragraph.

8 99. Answering at page 20:12-13 of the First Amended Complaint,
9 Defendants admit that Plaintiff did not consent to the stop and/or detention but deny
10 said consent was required under the circumstances and/or law.

11 100. Answering at page 20:14-17 of the First Amended Complaint,
12 Defendants deny each and every allegation in this paragraph.

13 101. Answering at page 20:18-19 of the First Amended Complaint,
14 Defendants deny each and every allegation in this paragraph.

15 102. Answering at page 20:20-21 of the First Amended Complaint,
16 Defendants deny that there was a “false arrest” or that Plaintiff suffered
17 injuries/damages as a result of a “false arrest.” Defendants deny each and every
18 remaining allegation in this paragraph.

19 103. Answering at page 20:22-25 of the First Amended Complaint,
20 Defendants deny each and every allegation in this paragraph.

21 104. Answering at pages 20:26-21:2 of the First Amended Complaint,
22 Defendants deny each and every allegation in this paragraph or that there is any basis
23 for awarding said relief to Plaintiff and/or Plaintiff is entitled to said relief.

24 105. Answering at page 21:3-7 of the First Amended Complaint, Defendants
25 deny each and every allegation contained in this paragraph or that Plaintiff is entitled
26 to recover punitive/exemplary damages from MTS, SDTI and/or SDTC as public
27 entities pursuant to California Government Code §818.

28 ///

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

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

XI.

EIGHTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

[Against Defendants MTS, SDTI, SDTC, UPS, Buck, Miner, and Does 1-20]

106. Answering at page 21:11-13 of the First Amended Complaint, Defendants incorporate herein by reference, as set forth in full, Defendants’ answers in paragraphs 1 through 105, inclusive as set forth above.

107. Answering at page 21:14-15 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph.

108. Answering at page 21:16-18 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph.

109. Answering at page 21:19-20 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph.

110. Answering at page 21:21-26 of the First Amended Complaint, Defendants deny each and every allegation in this paragraph or that there is any basis for awarding said relief to Plaintiff and/or Plaintiff is entitled to said relief.

XII.

NINTH CAUSE OF ACTION

Negligence

[Against All Defendants]

111. Answering at page 22:4-6 of the First Amended Complaint, Defendants incorporate herein by reference, as set forth in full, Defendants’ answers in paragraphs 1 through 110, inclusive as set forth above.

112. Answering at page 22:7 of the First Amended Complaint, Defendants admit that a general duty of care was owed to Plaintiff.

113. Answering at page 22:8-11 of the First Amended Complaint, Defendants deny each and every allegation contained in this paragraph.

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 114. Answering at page 22:12-16 of the First Amended Complaint,
2 Defendants admit that Defendant MTS breached its duty of care in failing to
3 adequately train and supervise Plaintiff and failing to issue Plaintiff an identification
4 card prior to commencing employment at the MTS property. Defendants are
5 nevertheless without sufficient knowledge or information to form a belief as to the
6 truth of the remaining allegations contained therein, and on that basis deny each and
7 every remaining allegation contained in the paragraph.

8 115. Answering at page 22:17-20 of the First Amended Complaint,
9 Defendants deny each and every allegation contained in this paragraph.

10 116. Answering at page 22:21-25 of the First Amended Complaint,
11 Defendants deny each and every allegation in this paragraph or that there is any basis
12 for awarding said relief to Plaintiff and/or Plaintiff is entitled to said relief.

13 **XIII.**

14 **TENTH CAUSE OF ACTION**

15 **Negligent Hiring, Supervision and Retention of Employees**

16 **[Against Defendants MTS, SDTI, SDTC and UPS]**

17 117. Answering at page 23:5-7 of the First Amended Complaint, Defendants
18 MTS, SDTI, SDTC and UPS incorporate herein by reference, as set forth in full,
19 Defendants' answers in paragraphs 1 through 116, inclusive as set forth above.

20 118. Answering at page 23:8-14 of the First Amended Complaint,
21 Defendants MTS, SDTI, SDTC and UPS deny each and every allegation contained
22 in this paragraph.

23 119. Answering at page 23:15-17 of the First Amended Complaint,
24 Defendants MTS, SDTI, SDTC and UPS deny each and every allegation contained
25 in this paragraph.

26 120. Answering at pages 23:18-27 of the First Amended Complaint,
27 Defendants MTS, SDTI, SDTC and UPS deny each and every allegation contained
28 in this paragraph.

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 121. Answering at page 24:1-4 of the First Amended Complaint, Defendants
2 MTS, SDTI, SDTC and UPS deny each and every allegation contained in this
3 paragraph.

4 122. Answering at page 24:5-11 of the First Amended Complaint,
5 Defendants MTS, SDTI, SDTC and UPS deny each and every allegation in this
6 paragraph or that there is any basis for awarding said relief to Plaintiff and/r Plaintiff
7 is entitled to said relief.

8 **AFFIRMATIVE DEFENSES**

9 For a further, separate answer in defense to the First Amended Complaint, and
10 to each and every alleged cause of action contained therein, Defendants allege the
11 following affirmative defenses:

12 **FIRST AFFIRMATIVE DEFENSE**

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

14 1. Plaintiff’s First Amended Complaint fails to state a claim upon which
15 relief can be granted.

16 **SECOND AFFIRMATIVE DEFENSE**

17 **(Unclean Hands)**

18 2. Each of Plaintiff’s purported causes of action is barred by Plaintiff’s
19 unclean hands.

20 **THIRD AFFIRMATIVE DEFENSE**

21 **(Mitigation of Damages)**

22 3. Plaintiff has failed and refused, and continues to fail and refuse, to take
23 reasonable or adequate steps to mitigate, alter, reduce or otherwise diminish the
24 damages, if any, suffered by Plaintiff. By reason of the foregoing, Plaintiff is barred
25 from recovery of such damage, if any.

26 ///

27 ///

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

FOURTH AFFIRMATIVE DEFENSE

(Contributory Negligence)

4. Plaintiff, by his actions and conduct, has failed to exercise reasonable care and diligence on his own behalf, thereby causing or contributing to his alleged damages. Plaintiff’s recovery against Defendants, if any, must be reduced by the proportion or damages caused by his own acts and conduct.

FIFTH AFFIRMATIVE DEFENSE

(Negligence of Others)

5. To the extent Plaintiff has suffered any damages as alleged in the First Amended Complaint, the damages were caused by the negligence or fault of persons and entities other than Defendants. Plaintiff’s right of recovery from Defendants, if any, must be reduced accordingly.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Causal Connection)

6. The First Amended Complaint fails to allege a causal connection between the damages alleged therein and any act or omission attributable to Defendants.

SEVENTH AFFIRMATIVE DEFENSE

(No Damages Suffered)

7. Plaintiff has not suffered any damages as a result of any actions or omissions of Defendants, and Plaintiff is thus barred from asserting any cause of action against Defendants.

EIGHTH AFFIRMATIVE DEFENSE

(Estoppel)

8. Plaintiff, by his acts, omissions, representations and course of conduct, are estopped from pursuing any remedies against Defendants.

///

///

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

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

NINTH AFFIRMATIVE DEFENSE

(Waiver)

9. Through his conduct, Plaintiff has voluntarily and knowingly waived and relinquished any rights Plaintiff had to seek the relief alleged in the First Amended Complaint.

TENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

10. Defendants allege that Plaintiff did, and with full knowledge of the consequences and dangers incident thereto, voluntarily exposed himself to all the matters and things alleged in the First Amended Complaint, and did thereby assume the risk generally incident thereto.

ELEVENTH AFFIRMATIVE DEFENSE

(Standing)

11. Plaintiff has no standing to bring this action.

TWELFTH AFFIRMATIVE DEFENSE

(Proximately Caused)

12. Plaintiff's alleged injuries and alleged damages, if any, were proximately caused and contributed to by Plaintiff's own conduct.

THIRTEENTH AFFIRMATIVE DEFENSE

(Fails to State Defendants' Conduct was Justified)

13. The First Amended Complaint and the whole thereof, including each and every purported cause of action alleged therein, fails to state a cause of action against Defendants in that Defendants' conduct at all relevant times was justified, fair and reasonable under the circumstances.

FOURTEENTH AFFIRMATIVE DEFENSE

(Defendants Acted in Good Faith)

14. The First Amended Complaint and the whole thereof, including each and every purported cause of action alleged therein, fails to state a cause of action

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 against Defendants in that Defendants acted in good faith at all times relevant
2 thereto.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 **(Defendants Breached no Statutory or other Legal Duty)**

5 15. Defendants breached no statutory or other legal duty to Plaintiff with
6 respect to any of the matters complained about in the First Amended Complaint.

7 **SIXTEENTH AFFIRMATIVE DEFENSE**

8 **(Legally or Proximately Cause)**

9 16. Defendants’ alleged acts and conduct described in the First Amended
10 Complaint did not actually, legally or proximately cause any of the alleged damages
11 Plaintiff seeks to recovery.

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 **(Lawful Actions)**

14 17. The First Amended Complaint and the whole thereof, including each
15 and every purported cause of action alleged therein, fails to state a cause of action
16 against Defendants in that all actions by Defendants were lawful under the given
17 circumstances.

18 **EIGHTEENTH AFFIRMATIVE DEFENSE**

19 **(Pattern of Conduct)**

20 18. The First Amended Complaint fails to state a cause of action against
21 Defendants in that no pattern of conduct is alleged.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 **(Legitimate Nondiscriminatory Reasons)**

24 19. Defendants had legitima.

25 **TWENTIETH AFFIRMATIVE DEFENSE**

26 **(Third Persons)**

27 20. Defendants are informed and thereon allege, that Plaintiff’s damages, if
28 any, were proximately caused or contributed to by the conduct of unnamed third

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 persons or entities, and to the extent such damages, if any, were caused in whole or
2 in part by the conduct of unnamed third persons, then the alleged damages named in
3 the First Amended Complaint should be reduced accordingly in proportion to any
4 finding of a contributory fault on the part of named third persons.

5 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

6 **(Discharge Duties)**

7 21. At all times relevant hereto, Defendants discharged all applicable duties
8 owed to Plaintiff.

9 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

10 **(Absence of Official Policy or Custom)**

11 22. The First Amended Complaint fails to state an official policy or custom
12 by Defendants so as to give rise to Section 1983 liability under *Monell v. Dept. of*
13 *Social Services*.

14 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

15 **(Absence of Decision by Policymaker)**

16 23. The First Amended Complaint fails to state a decision by a municipal
17 final policymaker sufficient to trigger Section 1983 liability under *Monell v. Dept. of*
18 *Social Services*.

19 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

20 **(Continuing Violation Doctrine)**

21 24. The First Amended Complaint fails to state a continuing violation of a
22 constitutional guarantee so as to give rise to Section 1983 liability under *Monell v.*
23 *Dept. of Social Services*.

24 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

25 **(Adequate Hiring, Training and Supervision)**

26 25. Defendants adequately hired, trained and supervised employees
27 regarding the protection of the constitutional rights and guarantees in order to avoid
28 a deprivation of the same.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Reservation of Other Affirmative Defenses)

26. Defendants presently have insufficient knowledge or information upon which to form a belief as to whether it may have additional affirmative defenses available. Defendants reserve the right to assert additional affirmative defenses in the event discovery or further analysis indicates that additional unknown or unstated affirmative defenses would be applicable.

PRAYER

WHEREFORE, Defendants pray as follows:

1. That Plaintiff take nothing by way of general/special damages against Defendants by way of this action;
2. That Plaintiff be denied or is otherwise not entitled to punitive/exemplary damages against Defendants;
3. That judgment be entered in favor of Defendants in this action;
4. That Defendants recover their attorneys’ fees and costs of suit incurred herein; and
5. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY

Defendants demand trial by jury of all triable issues in this action.

Dated: December 15, 2015

WHEATLEY BINGHAM & BAKER LLP

By: s/ Roger Bingham
ROGER P. BINGHAM
Attorneys for Defendants
**SAN DIEGO METROPOLITAN
TRANSIT SYSTEM**, a public entity;
SAN DIEGO TROLLEY, INC., a
California Corporation; **SAN DIEGO
TRANSIT CORPORATION**, a
California corporation; **UNIVERSAL
PROTECTION SERVICE GP, INC.**, a
California corporation; **BILL BUCK**, an
individual; **CHRIS MINER**, an
individual

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

1 Roger P. Bingham, Esq. (SBN 165231)
WHEATLEY BINGHAM & BAKER LLP
2 Attorneys At Law
462 Stevens Avenue, Suite 109
3 Solana Beach, California 92075
Email: rpb@rbinghamlaw.com
4 Telephone: (858) 350-0504
Facsimile: (858) 350-0506
5

6 Attorneys for Defendants SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a
public entity; SAN DIEGO TROLLEY, INC., a California Corporation; SAN
7 DIEGO TRANSIT CORPORATION, a California corporation; UNIVERSAL
PROTECTION SERVICE GP, INC., a California corporation; BILL BUCK, an
8 individual; CHRIS MINER, an individual

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ALLEN KOKA, an individual,

12 Plaintiffs,

13 v.

14 SAN DIEGO METROPOLITAN
TRANSIT SYSTEM, a public entity,
15 SAN DIEGO TROLLEY, INC., a
California corporation; SAN DIEGO
16 TRANSIT CORPORATION, a
California corporation; UNIVERSAL
17 PROTECTION SERVICE GP, INC.,
a California corporation; NMS
18 MANAGEMENT SERVICES, INC.;
BILL BUCK, an individual; CHRIS
19 MINER, an individual; and DOES 1-
20, inclusive,

21 Defendants.

CASE NO. 15 CV 0763 AJB KSC

CERTIFICATE OF SERVICE

Judge: Anthony J. Battaglia
Magistrate Judge: Karen S. Crawford
[Complaint Filed: 04/07/15]

22 I, the undersigned, declare as follows:

23 I am, and was at that time of service of the papers herein referred to, over the
age of 18 years, and not a party to the action; and I am employed in the County of
24 San Diego, California. My business address is 462 Stevens Avenue, Suite 109,
Solana Beach, California 92075.
25

26 On the day of service set forth below, I served the document(s) listed below:

27 **DOCUMENT(s) SERVED: ANSWER OF DEFENDANTS SAN**
DIEGO METROPOLITAN TRANSIT
SYSTEM, SAN DIEGO TROLLEY, INC.,
28 **SAN DIEGO TRANSIT CORPORATION,**
UNIVERSAL PROTECTION SERVICE

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504

GP, INC., BILL BUCK AND CHRIS MINER TO PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES.

DATE OF SERVICE: December 15, 2015

X By electronic service: I am familiar with the United States District Court, Southern District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the court. The court's cm/ecf system will generate a notice of electronic filing (nef) to the filing party, the assigned judge, and any registered users in the case. The nef will constitute service of the document. Registration as a cm/ecf user constitutes consent to electronic service through the court's transmission facilities. Under said practice, the following cm/ecf users were served:

_____ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Solana Beach, California addressed as set forth below:


RECIPIENT(S):

R. Dale Dixon, Jr., Esq. Law Offices of Dale Dixon 402 West Broadway, Ste. 1500 San Diego, CA 92101 T: (858) 688-6292; Fax: (866) 677-5598 Email: dale@daledixonlaw.com	Attorneys for Plaintiff ALLEN KOKA
---	---------------------------------------

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 15, 2015, at Solana Beach, California.


ESTER P. VARGAS, CCLS

WHEATLEY BINGHAM & BAKER LLP
462 Stevens Avenue, Suite 109
Solana Beach, California 92075
Telephone: (858) 350-0504