

Fee Exempt - Public Entity, Gov. Code § 6103

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13 CITY OF LA VERNE, PETER JANKOWSKI, and
14 MICHAEL THOMPSON

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 LA VERNE FIREFIGHTERS’
18 ASSOCIATION, LOCAL 3624, a labor
19 association; and VICTOR AMEZCUA,
20 DAVID BENSON, MICHAEL BENTZ,
21 DAVID BONNANO, LARRY
22 CAMPBELL, JOHN CONNOLLY,
23 KYLE DIAZ, SAM DOMINICK,
24 MITCH FOWLKES, ANDRE FLORES,
25 DAVID GARCIA, ANDREW GLAZE,
26 JOHN GRAPENTIN, KEVIN
27 GREENWAY, TODD
28 HAROUTUNIAN, ADAM HECHT,
FRANK HERNANDEZ, LEONARD
KILMAN, JOE MANCINO, TIM
MARINO, DANNY MONTOYA,
TRAVIS MOORE, STEPHEN PAIGE,
STEPHEN QUEZADA, CORY
THOMPSON, VLADIMIR TRUBIN,
ADRIAN VILLARREAL, JAMES
WILFONG, and KEVIN WILTON,

Plaintiffs,

CASE NO.: 2:17-CV-08743-GW (AFMx)

*[Assigned to Honorable Georg H. Wu,
Courtroom 9D]*

**ANSWER BY CITY OF LA VERNE,
PETER JANKOWSKI, AND MICHAEL
THOMPSON TO PLAINTIFFS’ FIRST
AMENDED COMPLAINT; DEMAND
FOR JURY TRIAL**

COMPLAINT FILED: December 4, 2017
TRIAL DATE: NDS

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1 vs.
 2 CITY OF LA VERNE, a municipal
 3 corporation; PETER JANKOWSKI, an
 4 individual; MICHAEL THOMPSON an
 5 individual; and DOES 1 through 10,
 6 inclusive,
 7
 8 Defendants.

8 Defendants CITY OF LA VERNE (“CITY”), PETER JANKOWSKI
 9 (“JANKOWSKI”), and MICHAEL THOMPSON (“THOMPSON” and hereinafter
 10 collectively referred to as “DEFENDANTS”) now answers the First Amended Complaint
 11 for Damages for Retaliation Based on Exercise of First Amendment Rights (42 U.S.C. §
 12 1983) filed by Plaintiffs LA VERNE FIREFIGHTERS’ ASSOCIATION, LOCAL 3624,
 13 VICTOR AMEZCUA, DAVID BENSON, MICHAEL BENTZ, DAVID BONNANO,
 14 LARRY CAMPBELL, JOHN CONNOLLY, KYLE DIAZ, SAM DOMINICK, MITCH
 15 FOWLKES, ANDRE FLORES, DAVID GARCIA, ANDREW GLAZE, JOHN
 16 GRAPENTIN, KEVIN GREENWAY, TODD HAROUTUNIAN, ADAM HECHT,
 17 FRANK HERNANDEZ, LEONARD KILMAN, JOE MANCINO, TIM MARINO,
 18 DANNY MONTOYA, TRAVIS MOORE, STEPHEN PAIGE, STEPHEN QUEZADA,
 19 CORY THOMPSON, VLADIMIR TRUSIN, ADRIAN VILLARREAL,
 20 JAMES WILFONG, and KEVIN WILTON (hereinafter collectively referred to as
 21 “Plaintiffs”) in Case Number 2:17-CV-8743-GW-AFM and denies any and all such
 22 allegations, and further admits or denies the specific allegations of the First Amended
 23 Complaint (“Complaint”) and states all applicable affirmative defenses, as follows:

JURISDICTION AND VENUE

- 24
- 25 1. Answering Paragraph 1 of the Complaint, DEFENDANTS, admit the
 - 26 allegations in this Paragraph.
 - 27 2. Answering Paragraph 2 of the Complaint, DEFENDANTS, admit the
 - 28 allegations in this Paragraph.

PARTIES

1
2 3. Answering Paragraph 3 of the Complaint, upon information and belief,
3 DEFENDANTS admit the allegations in this paragraph.

4 4. Answering Paragraph 4 of the Complaint, upon information and belief,
5 DEFENDANTS admit the allegations in this paragraph.

6 5. Answering Paragraph 5 of the Complaint, DEFENDANTS admit the
7 allegations in this paragraph.

8 6. Answering Paragraph 6 of the Complaint, DEFENDANTS admit the
9 allegations in this paragraph.

10 7. Answering Paragraph 7 of the Complaint, DEFENDANTS admit the
11 allegations in this paragraph.

12 8. Answering Paragraph 8 of the Complaint, DEFENDANTS admit the
13 allegations in this paragraph.

14 9. Answering Paragraph 9 of the Complaint, DEFENDANTS admit the
15 allegations in this paragraph.

16 10. Answering Paragraph 10 of the Complaint, DEFENDANTS admit the
17 allegations in this paragraph.

18 11. Answering Paragraph 11 of the Complaint, DEFENDANTS admit the
19 allegations in this paragraph.

20 12. Answering Paragraph 12 of the Complaint, DEFENDANTS admit the
21 allegations in this paragraph.

22 13. Answering Paragraph 13 of the Complaint, DEFENDANTS admit the
23 allegations in this paragraph.

24 14. Answering Paragraph 14 of the Complaint, DEFENDANTS admit the
25 allegations in this paragraph.

26 15. Answering Paragraph 15 of the Complaint, DEFENDANTS admit the
27 allegations in this paragraph.

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1 16. Answering Paragraph 16 of the Complaint, DEFENDANTS admit the
2 allegations in this paragraph.

3 17. Answering Paragraph 17 of the Complaint, DEFENDANTS admit the
4 allegations in this paragraph.

5 18. Answering Paragraph 18 of the Complaint, DEFENDANTS admit the
6 allegations in this paragraph.

7 19. Answering Paragraph 19 of the Complaint, DEFENDANTS admit the
8 allegations in this paragraph.

9 20. Answering Paragraph 20 of the Complaint, DEFENDANTS admit the
10 allegations in this paragraph.

11 21. Answering Paragraph 21 of the Complaint, DEFENDANTS admit the
12 allegations in this paragraph.

13 22. Answering Paragraph 22 of the Complaint, DEFENDANTS admit the
14 allegations in this paragraph.

15 23. Answering Paragraph 23 of the Complaint, DEFENDANTS admit the
16 allegations in this paragraph.

17 24. Answering Paragraph 24 of the Complaint, DEFENDANTS admit the
18 allegations in this paragraph.

19 25. Answering Paragraph 25 of the Complaint, DEFENDANTS admit the
20 allegations in this paragraph.

21 26. Answering Paragraph 26 of the Complaint, DEFENDANTS admit the
22 allegations in this paragraph.

23 27. Answering Paragraph 27 of the Complaint, DEFENDANTS admit the
24 allegations in this paragraph.

25 28. Answering Paragraph 28 of the Complaint, DEFENDANTS admit the
26 allegations in this paragraph.

27 29. Answering Paragraph 29 of the Complaint, DEFENDANTS admit the
28 allegations in this paragraph.

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1 30. Answering Paragraph 30 of the Complaint, DEFENDANTS admit the
2 allegations in this paragraph.

3 31. Answering Paragraph 31 of the Complaint, DEFENDANTS admit the
4 allegations in this paragraph.

5 32. Answering Paragraph 32 of the Complaint, DEFENDANTS admit the
6 allegations in this paragraph.

7 33. Answering Paragraph 33 of the Complaint, DEFENDANTS admit the
8 allegations in this paragraph.

9 34. Answering Paragraph 34 of the Complaint, DEFENDANTS admit the
10 allegations in this paragraph.

11 35. Answering Paragraph 35 of the Complaint, DEFENDANTS admit the
12 allegations in this paragraph.

13 36. Answering Paragraph 36 of the Complaint, DEFENDANTS deny knowledge
14 or information sufficient to admit or deny the allegations within this paragraph.

15 37. Answering Paragraph 37 of the Complaint, DEFENDANTS deny knowledge
16 or information sufficient to admit or deny the allegations within this paragraph.

17 38. Answering Paragraph 38 of the Complaint, DEFENDANTS deny knowledge
18 or information sufficient to admit or deny the allegations within this paragraph.

19 **ALLEGATIONS COMMON TO THE CLAIMS FOR RELIEF**

20 39. Answering Paragraph 39 of the Complaint, DEFENDANTS deny each and
21 every allegation contained therein.

22 40. Answering Paragraph 40 of the Complaint, DEFENDANTS admit that the
23 CITY has approximately 30,000 residents, is situated in the Los Angeles metropolitan
24 area, in eastern Los Angeles County, and maintains its own fire department.
25 DEFENDANTS deny knowledge or information sufficient to admit or deny the allegation
26 that most cities in the County of comparable size have contracted with the County for
27 provision of their fire services and whether the Plaintiff Firefighters are proud to be
28 firefighters and serve their community, and have always made the most of the resources

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1 available. DEFENDANTS deny that the CITY has struggled with meeting the financial
2 and capital requirements necessary for a fire department and that CITY revenues,
3 personnel and equipment have become inadequate to meet increased safety needs of the
4 CITY.

5 41. Answering Paragraph 41 of the Complaint, DEFENDANTS deny each and
6 every allegation contained therein.

7 42. Answering Paragraph 42 of the Complaint, DEFENDANTS deny each and
8 every allegation contained therein.

9 43. Answering Paragraph 43 of the Complaint, DEFENDANTS deny
10 JANKOWSKI put public relations above public safety and that Station 3 was ever
11 intended to be staffed as a full engine company. DEFENDANTS admit that it is staffed
12 with an ambulance, Engineer-Paramedic, Firefighter-Paramedic, and had no engine
13 company.

14 44. Answering Paragraph 44 of the Complaint, DEFENDANTS admit that
15 Station 3 was built before JANKOWSKI was appointed Chief, and deny the remaining
16 allegations contained therein.

17 45. Answering Paragraph 45 of the Complaint, DEFENDANTS deny each and
18 every allegation contained therein.

19 46. Answering Paragraph 46 of the Complaint, DEFENDANTS deny each and
20 every allegation contained therein.

21 47. Answering Paragraph 47 of the Complaint, DEFENDANTS deny knowledge
22 or information sufficient to admit or deny the allegations within this paragraph.

23 48. Answering Paragraph 48 of the Complaint, DEFENDANTS deny
24 JANKOWSKI began retaliating against the ASSOCIATION as soon as he learned that the
25 ASSOCIATION was supporting Kendrick's opponent and deny that participating in
26 political activities is permitted under the Memorandum of Understanding between the
27 CITY and the ASSOCIATION. DEFENDANTS admit that on February 16, 2017, there
28 was an open public forum for candidates.

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1 49. Answering Paragraph 49 of the Complaint, DEFENDANTS admit that Chief
2 Horine attended the forum, having been assigned the duty of Fire Marshal, that the
3 ASSOCIATION filed a grievance related to JANKOWSKI allegedly barring members
4 from the forum, and that the CITY’S Fire Marshal attended the event, while off-duty.
5 DEFENDANTS deny knowledge or information sufficient to admit or deny the
6 allegations within this paragraph relating to Horine’s conversation. DEFENDANTS deny
7 that Horine did not perform any fire marshal duties while at the event.

8 50. Answering Paragraph 50 of the Complaint, DEFENDANTS deny knowledge
9 or information sufficient to admit or deny the allegations concerning Mayor Kendrick
10 making false and derogatory statements or expressing his anger. DEFENDANTS deny
11 that the day after the election, JANKOWSKI told GRAPENTIN, “looks like you guys are
12 batting a thousand on supporting the wrong candidates.”

13 51. Answering Paragraph 51 of the Complaint, DEFENDANTS admit the
14 meeting occurred, but deny the remaining allegations contained within this paragraph.

15 52. Answering Paragraph 52 of the Complaint, DEFENDANTS admit that there
16 was a Vote of No Confidence in JANKOWSKI, but deny knowledge or information
17 sufficient to admit or deny the remaining allegations contained within this paragraph.

18 53. Answering Paragraph 53 of the Complaint, DEFENDANTS admit GLAZE
19 delivered the vote to the City Council and JANKOWSKI on or about May 8, 2017, and
20 deny the remaining allegations contained within this paragraph.

21 54. Answering Paragraph 54 of the Complaint, DEFENDANTS deny the
22 allegations contained within this paragraph.

23 55. Answering Paragraph 55 of the Complaint, DEFENDANTS admit that
24 disciplinary proceedings were initiated against MONTROYA and BONNANO, but deny
25 the remaining allegations contained within this paragraph.

26 56. Answering Paragraph 56 of the Complaint, DEFENDANTS deny the
27 allegations contained within this paragraph.

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1 57. Answering Paragraph 57 of the Complaint, DEFENDANTS admit that
2 JANKOWSKI instructed three Battalion Chiefs to follow and equally enforce the
3 Department's Standard Operating Procedures, and deny the remaining allegations
4 contained within this paragraph.

5 58. Answering Paragraph 58 of the Complaint, DEFENDANTS deny the
6 allegations contained within this paragraph.

7 59. Answering Paragraph 59 of the Complaint, DEFENDANTS admit that
8 MONTOYA is a 16-year veteran of the Department, he was given a letter of intent to
9 discipline on or about May 11, 2017, which identified the allegations against him, and
10 deny the remaining allegations contained within this paragraph.

11 60. Answering Paragraph 60 of the Complaint, DEFENDANTS admit
12 MONTOYA contested the allegations in the letter of intent to discipline and that
13 following the Skelly hearing, several items were removed from the final written
14 reprimand and deny the remaining allegations contained within this paragraph.

15 61. Answering Paragraph 61 of the Complaint, DEFENDANTS admit that
16 JANKOWSKI drafted a majority of the Notice of Discipline, but deny the remaining
17 allegations contained within this paragraph.

18 62. Answering Paragraph 62 of the Complaint, DEFENDANTS deny the
19 allegations contained within this paragraph.

20 63. Answering Paragraph 63 of the Complaint, DEFENDANTS, upon
21 information and belief, admit that MONTOYA retained counsel, paid for by the
22 ASSOCIATION, appealed JANKOWSKI'S disciplinary reprimand letter, and that
23 MONTOYA'S attorney wrote to and urged Russi to dismiss the discipline on or about
24 September 15, 2017. It is also admitted that on or about September 19, 2017, the CITY
25 dismissed the discipline, but DEFENDANTS deny the remaining allegations contained
26 within this paragraph.

27 64. Answering Paragraph 64 of the Complaint, DEFENDANTS admit that
28 BONNANO is an Engineer-Paramedic and an 18-year veteran of the Department.

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1 DEFENDANTS deny the remaining allegations contained within this paragraph.

2 65. Answering Paragraph 65 of the Complaint, DEFENDANTS admit that
3 THOMPSON removed the badge from BONNANO’S unattended, uniform shirt for
4 security purposes. DEFENDANTS deny knowledge or information sufficient to admit or
5 deny the allegations concerning what BONNANO thought or did in search of the badge.
6 DEFENDANTS deny the remaining allegations contained within this paragraph.

7 66. Answering Paragraph 66 of the Complaint, DEFENDANTS admit the
8 allegations contained within this paragraph.

9 67. Answering Paragraph 67 of the Complaint, DEFENDANTS admit there was
10 a meeting on or about May 8, 2017, between JANKOWSKI, BONNANO, THOMPSON,
11 and GREENWAY regarding BONNANO’S badge, but DEFENDANTS deny that there
12 was any breach of confidentiality as further CITY ratification of any retaliation.

13 68. Answering Paragraph 68 of the Complaint, DEFENDANTS admit
14 BONNANO told JANKOWSKI his version of events concerning his badge, but
15 DEFENDANTS deny the remaining allegations contained within this paragraph.

16 69. Answering Paragraph 69 of the Complaint, DEFENDANTS admit
17 BONNANO was counselled concerning his sideburn length, but deny the remaining
18 allegations contained within this paragraph.

19 70. Answering Paragraph 70 of the Complaint, DEFENDANTS admit that
20 BONNANO’S evaluation included a low grade of “N” for needs improvement and that it
21 is not a disciplinary action and cannot be appealed under the Memorandum of
22 Understanding, but deny the remaining allegations contained within this paragraph.

23 71. Answering Paragraph 71 of the Complaint, DEFENDANTS admit that
24 GLAZE is the President of the ASSOCIATION, and deny the remaining allegations
25 contained within this paragraph.

26 72. Answering Paragraph 72 of the Complaint, DEFENDANTS admit that
27 GLAZE requested to stay at Station 1, which was denied. DEFENDANTS deny the
28 remaining allegations contained within this paragraph.

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1 73. Answering Paragraph 73 of the Complaint, DEFENDANTS deny the
2 allegations the contained within this paragraph.

3 74. Answering Paragraph 74 of the Complaint, DEFENDANTS admit GLAZE
4 has signed up for overtime shifts, all of which he did not receive, and deny the remaining
5 allegations contained within this paragraph.

6 75. Answering Paragraph 75 of the Complaint, DEFENDANTS admit HECHT is
7 a Captain and a 17-year veteran of the Department, that on May 20, 2017, he responded to
8 a call for service at the University of La Verne, and that he was counselled concerning his
9 demeanour on the radio. DEFENDANTS deny the remaining allegations contained
10 within this paragraph.

11 76. Answering Paragraph 76 of the Complaint, DEFENDANTS admit that
12 THOMPSON apologized to HECHT for his error concerning the radio communications,
13 and deny the remaining allegations contained within this paragraph.

14 77. Answering Paragraph 77 of the Complaint, DEFENDANTS admit that on or
15 about June 20, 2017, THOMSPON gave HECHT his yearly evaluation and deny the
16 remaining allegations contained within this paragraph.

17 78. Answering Paragraph 78 of the Complaint, DEFENDANTS admit that
18 WILTON is an Engineer-Paramedic and 18-year veteran of the Department, that after
19 May 2017, he was on the active list for promotion to Captain, served as an acting Captain,
20 and that an active list is a list of firefighters who have passed the promotional tests for
21 promotion to the next rank, which runs for one year, with two potential six-month
22 extensions. DEFENDANTS deny the remaining allegations contained within this
23 paragraph.

24 79. Answering Paragraph 79 of the Complaint, DEFENDANTS admit the
25 allegations contained within this paragraph.

26 80. Answering Paragraph 80 of the Complaint, DEFENDANTS deny the
27 allegations contained within this paragraph.

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1 81. Answering Paragraph 81 of the Complaint, DEFENDANTS deny knowledge
2 or information sufficient to admit or deny the allegations contained within this paragraph.

3 82. Answering Paragraph 82 of the Complaint, DEFENDANTS generally admit
4 the allegations contained in this paragraph except to the extent that it is denied that
5 JANKOWSKI abruptly reversed his previous statements about the Captain’s list and/or
6 that any actions were retaliatory in nature.

7 83. Answering Paragraph 83 of the Complaint, DEFENDANTS deny the
8 allegations contained within this paragraph.

9 84. Answering Paragraph 84 of the Complaint, DEFENDANTS admit that a new
10 Captain’s test was held in or about September and October 2017, and that WILTON
11 ranked in the “B” band following this testing. DEFENDANTS deny the remaining
12 allegations contained in this paragraph.

13 85. Answering Paragraph 85 of the Complaint, DEFENDANTS admit that
14 VILLAREAL is a firefighter, has been with the Department for four years, and that on or
15 about January 24, 2017, he had a pending Firefighter-2 application awaiting
16 JANKOWSKI’S verification that he had completed all necessary requirements.
17 DEFENDANTS deny the remaining allegations contained within this paragraph.

18 86. Answering Paragraph 86 of the Complaint, DEFENDANTS admit that
19 Firefighter-Paramedic MARINO is an Association Board member and that he was denied
20 some overtime shifts he had requested. DEFENDANTS deny the remaining allegations
21 contained within this paragraph.

22 87. Answering Paragraph 87 of the Complaint, DEFENDANTS admit
23 GRAPENTIN is an Engineer-Paramedic, an Association Board Member, that on
24 July 18, 2017, and that he made an appointment with THOMPSON to see his personnel
25 file at Fire Station 1, which was not available at Station 1 on July 19, 2017.
26 DEFENDANTS deny the remaining allegations contained within this paragraph.

27 88. Answering Paragraph 88 of the Complaint, DEFENDANTS admit that six
28 Association members, MARINO, HERNANDEZ, HAROUTUNIAN, MOORE, PAIGE,

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1 and KILMAN were involved in a medical response on or about April 7, 2017, which was
2 investigated by the Los Angeles County Emergency Services Agency. DEFENDANTS
3 deny knowledge or information sufficient to admit or deny the remaining allegations
4 contained within this paragraph.

5 89. Answering Paragraph 89 of the Complaint, DEFENDANTS admit that an
6 investigation was commenced as to the April 7, 2017 medical response, and deny the
7 remaining allegations contained within this paragraph.

8 90. Answering Paragraph 90 of the Complaint, DEFENDANTS deny knowledge
9 or information sufficient to admit or deny the allegations contained within this paragraph,
10 with the exception of the allegation that in or about June 2017, the ASSOCIATION filed a
11 complaint with the CITY regarding the conduct of Horine and THOMPSON related to
12 QUEZADA.

13 91. Answering Paragraph 91 of the Complaint, DEFENDANTS admit that
14 BENTZ is an Association member, hired in July 2015 as a firefighter, and who became a
15 full Firefighter-Paramedic on or about July 16, 2016. DEFENDANTS deny the remaining
16 allegations contained within this paragraph.

17 92. Answering Paragraph 92 of the Complaint, DEFENDANTS admit that
18 JANKOWSKI delivered a May 3, 2017 letter to GLAZE on or about May 8, 2017,
19 concerning the ASSOCIATION’S failure to obtain advance permission before holding the
20 prior two meetings. DEFENDANTS deny the remaining allegations contained within this
21 paragraph.

22 93. Answering Paragraph 93 of the Complaint, DEFENDANTS deny the
23 allegations contained within this paragraph.

24 94. Answering Paragraph 94 of the Complaint, DEFENDANTS deny knowledge
25 or information sufficient to admit or deny the allegations contained within this paragraph.

26 95. Answering Paragraph 95 of the Complaint, DEFENDANTS deny the
27 allegations contained within this paragraph.

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1 96. Answering Paragraph 96 of the Complaint, DEFENDANTS admit the
2 allegations contained within this paragraph.

3 97. Answering Paragraph 97 of the Complaint, DEFENDANTS deny knowledge
4 or information sufficient to admit or deny the allegations contained within this paragraph.

5 98. Answering Paragraph 98 of the Complaint, DEFENDANTS deny that the
6 Fire Department has always sent full engine companies to assist in wildfire responses and
7 that when the fire season of 2017 arrived, the Department was fully staffed and capable of
8 sending an engine to wildfires. DEFENDANTS admit the remaining allegations
9 contained within this paragraph.

10 99. Answering Paragraph 99 of the Complaint, DEFENDANTS deny knowledge
11 or information sufficient to admit or deny the allegations concerning whether the 2017 fire
12 season was one of the worst in more than a century. DEFENDANTS admit that cities
13 from all over the state (and from other states, as well) sent engines and strike teams to
14 assist fires in both Northern and Southern California. DEFENDANTS deny the remaining
15 allegations contained within this paragraph.

16 100. Answering Paragraph 100 of the Complaint, DEFENDANTS deny
17 knowledge or information sufficient to admit or deny the allegations concerning
18 MONTOYA'S conversation with Department dispatchers and what the dispatchers said.
19 DEFENDANTS deny that the remaining allegations contained within this paragraph.

20 101. Answering Paragraph 101 of the Complaint, DEFENDANTS deny the
21 allegations contained within this paragraph.

22 102. Answering Paragraph 102 of the Complaint, DEFENDANTS admit that in
23 April or May 2017, JANKOWSKI spoke with Laurie Sepke of Pomona Valley Hospital
24 and deny the remaining allegations contained within this paragraph.

25 103. Answering Paragraph 103 of the Complaint, DEFENDANTS deny
26 knowledge or information sufficient to admit or deny the allegations concerning the
27 amount of money made each year at the City's Fourth of July fireworks show for the
28 ASSOCIATION or what the ASSOCIATION had already solicited, as well as whether

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1 local businesses lost trust in the ASSOCIATION. DEFENDANTS deny the remaining
2 allegations contained in this paragraph.

3 104. Answering Paragraph 104 of the Complaint, DEFENDANTS admit that there
4 was a sewage problem at Station 1 on or about July 14, 2017, and that the CITY
5 contracted with an outside company for the specific purposes of cleaning up the sewage
6 problem. DEFENDANTS deny the remaining allegations contained within this
7 paragraph.

8 105. Answering Paragraph 105 of the Complaint, DEFENDANTS admit the
9 Department’s Policy Manual (Section 303.1.1) provides that firefighters shall not clean up
10 “raw sewage incidents” and that an exposure report was filled out by a firefighter.
11 DEFENDANTS deny the remaining allegations contained within this paragraph.

12 106. Answering Paragraph 106 of the Complaint, DEFENDANTS deny
13 knowledge or information sufficient to admit or deny the allegations contained in this
14 paragraph.

15 107. Answering Paragraph 107 of the Complaint, DEFENDANTS deny
16 knowledge or information sufficient to admit or deny the allegations contained in this
17 paragraph.

18 108. Answering Paragraph 108 of the Complaint, DEFENDANTS deny the
19 allegations contained in this paragraph.

20 109. Answering Paragraph 109 of the Complaint, DEFENDANTS admit that the
21 ASSOCIATION repeatedly requested that JANKOWSKI act to remediate and clean the
22 station following the sewage problem. DEFENDANTS deny the remaining allegations
23 contained in this paragraph.

24 110. Answering Paragraph 110 of the Complaint, DEFENDANTS deny the
25 allegations contained in this paragraph.

26 111. Answering Paragraph 111 of the Complaint, DEFENDANTS deny the
27 allegations contained in this paragraph.

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1 112. Answering Paragraph 112 of the Complaint, DEFENDANTS deny the
2 allegations contained in this paragraph.

3 113. Answering Paragraph 113 of the Complaint, DEFENDANTS admit that the
4 ASSOCIATION filed a Tort Claim with the City on or about August 21, 2017, and that
5 the Claim detailed some of the allegations contained within the Complaint.
6 DEFENDANTS deny knowledge or information sufficient to admit or deny the
7 allegations concerning the reasons why the ASSOCIATION filed the Tort Claim.
8 DEFENDANTS deny the remaining allegations contained within this paragraph.

9 114. Answering Paragraph 114 of the Complaint, DEFENDANTS deny the
10 allegations contained within this paragraph.

11 115. Answering Paragraph 115 of the Complaint, DEFENDANTS admit
12 MONTOYA appealed JANKOWSKI’S disciplinary reprimand letter, and that
13 MONTOYA’S attorney wrote to and urged Russi to dismiss the discipline on or about
14 September 15, 2017. It is also admitted that on or about September 19, 2017, the CITY
15 dismissed the discipline, but DEFENDANTS deny the remaining allegations contained
16 within this paragraph.

17 116. Answering Paragraph 116 of the Complaint, DEFENDANTS deny the
18 allegations contained within this paragraph.

19 117. Answering Paragraph 117 of the Complaint, DEFENDANTS admit that
20 BONNANO’S evaluation included a low grade of “N” for needs improvement and that it
21 is not a disciplinary action and cannot be appealed under the Memorandum of
22 Understanding, but deny the remaining allegations contained within this paragraph.

23 118. Answering Paragraph 118 of the Complaint, DEFENDANTS admit that there
24 were over the summer and fall of 2017, multiple severe wildfires in both Southern and
25 Northern California. DEFENDANTS deny knowledge or information sufficient to admit
26 or deny when MONTOYA discussed the issue with the Department’s dispatch and what
27 was told to MONTOYA. DEFENDANTS deny the remaining allegations contained
28 within this paragraph.

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1 119. Answering Paragraph 119 of the Complaint, DEFENDANTS admit that
2 PLAINTIFFS served their Tort Claim on the CITY on or about August 21, 2017, and that
3 PLAINTIFFS’ counsel wrote to Russi on or about October 10, 2017, outlining that
4 JANKOWSKI was not deploying engines for wildfire strikes. DEFENDANTS deny the
5 remaining allegations contained in this paragraph.

6 120. Answering Paragraph 120 of the Complaint, DEFENDANTS deny that
7 JANKOWSKI refused to make engines available for strike teams. DEFENDANTS admit
8 the remaining allegations contained within this paragraph.

9 121. Answering Paragraph 121 of the Complaint, DEFENDANTS admit the
10 allegations concerning what GLAZE said at the November 6, 2017 City Council meeting.
11 DEFENDANTS deny the remaining allegations contained in this paragraph.

12 122. Answering Paragraph 122 of the Complaint, DEFENDANTS admit that in
13 the spring of 2017, the ASSOCIATION has been engaged in contract discussions with the
14 CITY regarding the Memorandum of Understanding, set to expire in the summer of 2017,
15 and that on or about September 18, 2017, the CITY presented a written proposal to the
16 ASSOCIATION. DEFENDANTS deny the remaining allegations contained within this
17 paragraph.

18 123. Answering Paragraph 123 of the Complaint, DEFENDANTS admit that a
19 Captain’s test was held on or about October 25, 2017, that BONNANO received a failing
20 grade, and that WILTON received a “B” band grade. DEFENDANTS deny the remaining
21 allegations contained within this paragraph.

22 124. Answering Paragraph 124 of the Complaint, DEFENDANTS deny
23 knowledge or information sufficient to admit or deny the allegations contained within this
24 paragraph.

25 125. Answering Paragraph 125 of the Complaint, DEFENDANTS deny the
26 allegations contained within this paragraph.

27 126. Answering Paragraph 126 of the Complaint, DEFENDANTS admit
28 PLAINTIFFS filed their initial Complaint in this action on December 4, 2017, and deny

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1 the remaining allegations contained within this paragraph.

2 127. Answering Paragraph 127 of the Complaint, DEFENDANTS admit there was
3 a City Council meeting on or about December 4, 2017, in which GLAZE spoke
4 concerning the issues that led to the No Confidence Vote and that a lawsuit had been filed.
5 DEFENDANTS deny the remaining allegations contained in this paragraph.

6 128. Answering Paragraph 128 of the Complaint, DEFENDANTS deny
7 knowledge or information sufficient to admit or deny the allegations contained within this
8 paragraph.

9 129. Answering Paragraph 129 of the Complaint, DEFENDANTS deny
10 knowledge or information sufficient to admit or deny the allegations contained within this
11 paragraph.

12 130. Answering Paragraph 130 of the Complaint, DEFENDANTS deny
13 knowledge or information sufficient to admit or deny the allegations contained within this
14 paragraph.

15 131. Answering Paragraph 131 of the Complaint, DEFENDANTS deny the
16 allegations contained within this paragraph.

17 132. Answering Paragraph 132 of the Complaint, DEFENDANTS deny the
18 allegations contained within this paragraph.

19 133. Answering Paragraph 133 of the Complaint, DEFENDANTS deny
20 knowledge or information sufficient to admit or deny the allegations contained within this
21 paragraph.

22 134. Answering Paragraph 134 of the Complaint, DEFENDANTS deny the
23 allegations contained within this paragraph.

24 135. Answering Paragraph 135 of the Complaint, DEFENDANTS deny the
25 allegations contained within this paragraph.

26 136. Answering Paragraph 136 of the Complaint, DEFENDANTS admit
27 JANKOWSKI proposed eliminating an Engineer position from the Department.
28 DEFENDANTS deny the remaining allegations contained within this paragraph.

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1 137. Answering Paragraph 137 of the Complaint, DEFENDANTS admit CITY
2 adopted proposed cut, but deny the remaining allegations contained within this paragraph.

3 138. Answering Paragraph 138 of the Complaint, DEFENDANTS admit the
4 allegations contained within this paragraph.

5 139. Answering Paragraph 139 of the Complaint, DEFENDANTS admit that the
6 CITY takes pride in holding its annual Christmas Parade where Department personnel
7 drive through the CITY’S streets, handing out candy, peanuts, and fruit. DEFENDANTS
8 deny the remaining allegations contained within this paragraph.

9 140. Answering Paragraph 140 of the Complaint, DEFENDANTS deny
10 knowledge or information sufficient to admit or deny the allegations contained within this
11 paragraph.

12 141. Answering Paragraph 141 of the Complaint, DEFENDANTS admit the
13 allegations contained within this paragraph.

14 142. Answering Paragraph 142 of the Complaint, DEFENDANTS deny the
15 allegations contained within this paragraph.

16 143. Answering Paragraph 143 of the Complaint, DEFENDANTS admit that
17 JANKOWSKI wrote that the Parade was suffering from a “lack of volunteer signups by
18 members of the Firefighters Association” and that citizen recruits were needed.
19 DEFENDANTS deny the remaining allegations contained within this paragraph.

20 144. Answering Paragraph 144 of the Complaint, DEFENDANTS deny the
21 allegations contained within this paragraph.

22 145. Answering Paragraph 145 of the Complaint, DEFENDANTS admit that
23 JANKOWSKI wrote to GLAZE concerning the forced-hire/staffing needs and situation.
24 DEFENDANTS deny the remaining allegations contained within this paragraph.

25 146. Answering Paragraph 146 of the Complaint, DEFENDANTS deny the
26 allegations contained within this paragraph.

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1 147. Answering Paragraph 147 of the Complaint, DEFENDANTS admit the
2 majority of allegations contained within this paragraph, but deny that the review contained
3 “vague and reputationally damaging insinuations.”

4 148. Answering Paragraph 148 of the Complaint, DEFENDANTS admit that the
5 performance evaluation was signed by Horine. DEFENDANTS deny the remaining
6 allegations contained within this paragraph.

7 149. Answering Paragraph 149 of the Complaint, DEFENDANTS deny the
8 allegations contained within this paragraph.

9 150. Answering Paragraph 150 of the Complaint, DEFENDANTS deny the
10 allegations contained within this paragraph.

11 151. Answering Paragraph 151 of the Complaint, DEFENDANTS deny the
12 allegations contained within this paragraph.

13 **CLAIM FOR RELIEF**

14 **(Retaliation Based on Exercise of Right to Free Speech and Association**
15 **in Violation of 42 U.S.C. §1983)**
16 **(Against All DEFENDANTS)**

17 152. Answering Paragraph 152 of the Complaint, DEFENDANTS incorporate and
18 reallege their specific answers to all preceding paragraphs as if set forth within.

19 153. Answering Paragraph 153 of the Complaint, DEFENDANTS admit that
20 JANKOWSKI was permitted to act as the final policymaking authority when it came to
21 certain decisions regarding the Fire Department. DEFENDANTS deny the remaining
22 allegations contained within this paragraph.

23 154. Answering Paragraph 154 of the Complaint, DEFENDANTS deny the
24 allegations contained within this paragraph.

25 155. Answering Paragraph 155 of the Complaint, DEFENDANTS deny the
26 allegations contained within this paragraph.

27 156. Answering Paragraph 156 of the Complaint, DEFENDANTS deny the
28 allegations contained within this paragraph.

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1 157. Answering Paragraph 157 of the Complaint, DEFENDANTS deny the
2 allegations contained within this paragraph.

3 158. Answering Paragraph 158 of the Complaint, DEFENDANTS deny the
4 allegations contained within this paragraph.

5 159. Answering Paragraph 159 of the Complaint, DEFENDANTS deny the
6 allegations contained within this paragraph.

7 160. Answering Paragraph 160 of the Complaint, DEFENDANTS deny the
8 allegations contained within this paragraph.

9 161. Answering Paragraph 161 of the Complaint, DEFENDANTS deny the
10 allegations contained within this paragraph.

11 **PRAYER FOR RELIEF**

12 Answering Paragraphs 1, 2, 3, 4, 5, 6, and 7 in this section, DEFENDANTS deny
13 that PLAINTIFFS are entitled to any of the relief requested.

14 **AFFIRMATIVE DEFENSES**

15 DEFENDANTS allege the following affirmative defenses to the Complaint. In
16 asserting these affirmative defenses, DEFENDANTS do not assume the burden to
17 establish any fact or proposition where that burden is properly imposed on PLAINTIFFS:

- 18 1. The Complaint fails to state facts sufficient to constitute a cause of action
19 against these answering DEFENDANTS;
- 20 2. PLAINTIFFS have failed to state a claim upon which relief may be granted;
- 21 3. PLAINTIFFS have failed to mitigate their own damages;
- 22 4. PLAINTIFFS are estopped by their own conduct to assert the allegations in
23 the Complaint;
- 24 5. The PLAINTIFFS' claims are barred by laches;
- 25 6. PLAINTIFFS have suffered no damages as a result of the acts complained of;
- 26 7. If any damages were sustained by PLAINTIFFS, which DEFENDANTS
27 deny, said damages were proximately caused by the negligence of PLAINTIFFS and/or
28 third parties other than DEFENDANTS and the liability of all responsible parties, named

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1 or unnamed, should be apportioned according to their relative degrees of fault, and the
2 liability of DEFENDANTS, if any, should be reduced accordingly and apportioned
3 pursuant to California Civil Code sections 1431 through 1437;

4 8. PLAINTIFFS do not have a case or controversy as required by federal law.
5 If the DEFENDANTS’ alleged conduct is found to have been wrongful, which
6 DEFENDANTS deny and continues to deny, then PLAINTIFFS’ claims are barred by the
7 doctrine of unclean hands;

8 9. DEFENDANTS acted in good faith and did not directly or indirectly perform
9 any acts whatsoever which would constitute a violation of any rights possessed by
10 PLAINTIFFS, or any duty owed to PLAINTIFFS;

11 10. None of the alleged acts or omissions of DEFENDANTS were a substantial
12 factor in bringing about the alleged damages and losses alleged by PLAINTIFFS and,
13 therefore, were not a contributing cause, but instead, were superseded by the acts and/or
14 omissions of PLAINTIFFS and others which were independent, intervening, and
15 proximate causes of the damages and losses alleged by PLAINTIFFS;

16 11. PLAINTIFFS action against DEFENDANTS is barred by the qualified
17 good-faith immunity;

18 12. PLAINTIFFS’ action against DEFENDANTS is barred by qualified
19 immunity;

20 13. PLAINTIFFS’ action against DEFENDANTS is barred by the fact that they
21 did not deliberately and intentionally violate PLAINTIFFS’ rights and was not
22 deliberately indifferent;

23 14. DEFENDANTS allege that they are immune from liability because their acts,
24 if any, were performed in good faith and without malice;

25 15. The CITY alleges that it is immune from liability because the actions of the
26 CITY’S officers, if any, were objectively reasonable under the circumstances facing the
27 officers;

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1 16. The DEFENDANTS are not liable to PLAINTIFFS in that they discharged
2 with reasonable diligence all mandatory duties;

3 17. PLAINTIFFS are barred from any exemplary or punitive damages as to any
4 act or conduct as may be shown on the part of the CITY pursuant to the statutes, case law,
5 and Constitutions of California and the United States;

6 18. DEFENDANTS alleges that because there was no underlying constitutional
7 violation, DEFENDANTS cannot be liable for any federal claim;

8 19. PLAINTIFFS lack standing to sue;

9 20. Neither a public entity nor any of its agents or employees, pursuant to
10 Government Code sections 818 and 822.2, are liable for any injury caused by any
11 misrepresentation by an employee of a public entity, whether or not such a
12 misrepresentation be negligent or intentional;

13 21. Any and all acts or omissions of DEFENDANTS and/or their agents or
14 employees which allegedly caused the wrongs set forth in the Complaint were the result
15 of the exercise of discretion vested in them and, therefore, these Defendants are not liable
16 to PLAINTIFFS for any of the alleged injuries or damages pursuant to Government Code
17 section 820.2;

18 22. That the PLAINTIFFS' Complaint is not brought in good faith and with
19 reasonable cause and is frivolous in nature, thereby entitling these answering
20 DEFENDANTS to all reasonable expenses incurred in the defense of this action,
21 including attorney's fees and costs, from both the PLAINTIFFS and PLAINTIFFS'
22 counsel, pursuant to Code of Civil Procedure sections 128.5 and 1038;

23 23. At all times relevant to this litigation, PLAINTIFFS engaged in provocative
24 acts, conduct, and/or words such that the conduct of these answering DEFENDANTS
25 relating to the PLAINTIFFS was reasonable, necessary, and of a consequential nature;

26 24. At no time relevant to this litigation did DEFENDANTS violate any statute
27 or enactment designed or intended to protect the PLAINTIFFS against the harm for which
28 the PLAINTIFFS seek damages, nor was any statute or enactment specified by the

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1 PLAINTIFFS in their Complaint designed to create a civil cause of action for a person in
2 the PLAINTIFFS' position;

3 25. A public entity and its employees are immune from liability for money
4 damages in the absence of express statutory authority;

5 26. These answering DEFENDANTS are not liable for any injury resulting from
6 an act or omission of an employee of this answering party pursuant to Government Code
7 section 815.2;

8 27. These answering DEFENDANTS are immune from liability under
9 Government Code section 815, in that the specific acts so alleged were performed within
10 the scope of their official duties;

11 28. DEFENDANTS have never taken any action with a conscious disregard of
12 PLAINTIFFS' rights, and have not engaged in any conduct with respect to PLAINTIFFS
13 which would constitute oppression, fraud or malice, nor have DEFENDANTS ratified or
14 approved any such act or acts of others;

15 29. At no time relevant to this litigation were the PLAINTIFFS deprived of life,
16 liberty, or property thereby precluding PLAINTIFFS from maintaining their causes of
17 action for violation of his civil rights. *Daniels v. Williams*, (1986) 447 U.S. 327; *Parratt*
18 *v. Taylor*, (1981) 451 U.S. 527;

19 30. At no time relevant to this litigation did PLAINTIFFS sustain any violation
20 of their civil rights pursuant to a governmental habit or custom thereby precluding
21 PLAINTIFFS from maintaining a cause of action for violation of their civil rights. *Monell*
22 *v. Dept. of Social Services*, (1978) 436 U.S. 658;

23 31. At no time relevant to this litigation was the Due Process Clause of the
24 United States Constitution implicated because the conduct of DEFENDANTS was, at
25 most, a mere negligent act of an official causing unintended loss of or injury to life,
26 liberty, or property and PLAINTIFFS is therefore precluded from maintaining causes of
27 action for violations of their civil rights. *Daniels v. Williams* (1986) 447 U.S. 327;

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1 32. At all times relevant to this litigation, DEFENDANTS were performing
2 discretionary functions and DEFENDANTS’ conduct did not violate any established
3 statutory or constitutional rights of which a reasonable person would have known and
4 PLAINTIFFS are thereby precluded from maintaining their causes of action for violation
5 of their civil rights. *Harlow v. Fitzgerald*, (1981) 457 U.S. 800;

6 33. The imposition of sanctions against DEFENDANTS, their agents, or
7 employees for conduct alleged by PLAINTIFFS would constitute a violation of the Due
8 Process Clause of both state and federal constitutions;

9 34. PLAINTIFFS’ claims are barred by the defense of after acquired evidence;

10 35. To the extent that the Complaint and any cause of action alleged therein
11 alleges emotional and/or physical injury, any recovery is barred and preempted by the
12 exclusive remedy of the California Worker’s Compensation Act, Labor Code sections
13 3600, et seq.; and

14 36. DEFENDANTS presently have insufficient knowledge or information on
15 which to form a belief as to whether it may have additional, as yet unstated defenses
16 available. DEFENDANTS reserve the right to assert additional defenses that are revealed
17 by further investigation or discovery.

18 **PRAYER**

19 **WHEREFORE**, DEFENDANTS pray for judgment or relief against PLAINTIFFS
20 as follows:

21 1. That the claims against DEFENDANTS be dismissed, with prejudice, and
22 that the PLAINTIFFS take nothing;

23 2. That DEFENDANTS be awarded their attorney’s fees, costs, and
24 disbursements incurred in defending this matter; and

25 3. For such other and further relief, including declaratory, equitable relief, and
26 damages, as this Court deems just and proper.

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DEMAND FOR JURY TRIAL

Defendants CITY OF LA VERNE, PETER JANKOWSKI, and
MICHAEL THOMPSON hereby demand a trial by jury pursuant to Federal Rules of Civil
Procedure, Rule 38, and Central District of California Local Rules, Rule 38-1.

DATED: March 15, 2018 GROSSBERG & HOEHN

By: /s/ Scott J. Grossberg
SCOTT J. GROSSBERG
LAUREL A. HOEHN
JACOB M. RAMIREZ
Attorneys for Defendants
CITY OF LA VERNE, PETER JANKOWSKI,
and MICHAEL THOMPSON

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