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17 CITY OF BERKELEY and CHRISTINE DANIEL

18
19 UNITED STATES DISTRICT COURT
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA
21
22

19 CTIA – THE WIRELESS ASSOCIATION,

20 Plaintiff,

21 vs.

22 CITY OF BERKELEY, CHRISTINE
23 DANIEL, CITY MANAGER OF CITY OF
24 BERKELEY,

25 Defendants.

NO. C15-02529 EMC

DEFENDANTS CITY OF BERKELEY AND
CHRISTINE DANIEL'S ANSWER TO
COMPLAINT

26 Defendants City of Berkeley and Christine Daniel (collectively "Defendants") answer
27 plaintiff's Complaint as follows:
28

1 1. Answering Paragraph 1, Defendants admit that the City of Berkeley is entitled to
2 its opinions. Defendants deny the balance of the allegation.

3 2. Answering Paragraph 2, the paragraph contains only legal argument and/or
4 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
5 the allegation and reserve their right to brief the Court on legal standards and arguments at the
6 proper time.

7 3. Answering Paragraph 3, Defendants admit that RF energy can cause harmful
8 effects, and that the FCC has established safety standards to limit the RF energy emissions from
9 cell phones. Defendants further admit that cell phones sold in the United States must comply
10 with those standards. Defendants deny the allegation to the extent it is legal argument and/or
11 conclusions that are not a proper allegation in a complaint and reserve their right to brief the
12 Court on legal standards and arguments at the proper time. Defendants deny the balance of the
13 allegation.

14 4. Answering Paragraph 4, Defendants admit the ordinance contains the quoted
15 language. Defendants deny the allegation to the extent it is legal argument and/or conclusions
16 that are not a proper allegation in a complaint and reserve their right to brief the Court on legal
17 standards and arguments at the proper time. Defendants deny the balance of the allegation.

18 5. Answering Paragraph 5, Defendants deny the allegation.

19 6. Answering Paragraph 6, Defendants deny the allegation to the extent it is legal
20 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
21 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
22 the balance of the allegation.

23 7. Answering Paragraph 7, Defendants deny the allegation to the extent it is legal
24 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
25 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
26 the balance of the allegation.

27 8. Answering Paragraph 8, Defendants deny the allegation to the extent it is legal
28 argument and/or conclusions that are not a proper allegation in a complaint and reserve their

1 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
2 the balance of the allegation.

3 9. Answering Paragraph 9, Defendants have no information about what other cities
4 may or may not do in the future and on that basis deny the allegation. Defendants further deny
5 the allegation to the extent it is legal argument and/or conclusions that are not a proper allegation
6 in a complaint and reserve their right to brief the Court on legal standards and arguments at the
7 proper time. Defendants deny the balance of the allegation.

8 10. Answering Paragraph 10, Defendants deny the allegation.

9 11. Answering Paragraph 11, Defendants deny the allegation to the extent it is legal
10 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
11 right to brief the Court on legal standards and arguments at the proper time.

12 JURISDICTION AND VENUE

13 12. Answering Paragraph 12, Defendants admit this Court has subject matter
14 jurisdiction.

15 13. Answering Paragraph 13, Defendants admit the CTIA has associational standing.

16 14. Answering Paragraph 14, Defendants admit it is subject to the personal
17 jurisdiction of this Court.

18 15. Answering Paragraph 15, Defendants admit its City Manager is subject to the
19 personal jurisdiction of this Court, but deny she is relevant to this suit.

20 16. Answering Paragraph 16, Defendants admit venue is proper.

21 17. Answering Paragraph 17, Defendants admit the action is properly assigned to the
22 San Francisco or Oakland Division of this Court.

23 PARTIES

24 18. Answering Paragraph 18, Defendants admit the allegation.

25 19. Answering Paragraph 19, Defendants admit the allegation.

26 20. Answering Paragraph 20, Defendants admit the allegation.

27 21. Answering Paragraph 21, Defendants admit the allegation.

FACTUAL ALLEGATIONS

22. Answering Paragraph 22, Defendants admit the allegation.

23. Answering Paragraph 23, Defendants admit the electromagnetic energy used by cell phones is sometimes referred to as “RF energy.”

24. Answering Paragraph 24, Defendants admit the allegation.

25. Answering Paragraph 25, Defendants admit cell phones use “electromagnetic radiation” and admit the balance of the allegation is a partial characterization of radio spectrum energy.

26. Answering Paragraph 26, Defendants admit that scientists have distinguished ionizing from non-ionizing radiation. Defendants have no basis for determining whether the term “radiation” is used colloquially to imply “radiation,” and on that basis denies the allegation. Defendants admit ionizing and non-ionizing radiation have different biological effects.

27. Answering Paragraph 27, Defendants admit the allegation.

28. Answering Paragraph 28, Defendants admit non-ionizing radiation cannot remove electrons from atoms. Defendants deny that the only known adverse health effect of non-ionizing radiation is a “thermal effect.” Defendants admit plaintiff’s description of thermal effects. Defendants deny the allegation to the extent it is legal argument and/or conclusions that are not a proper allegation in a complaint and reserve their right to brief the Court on legal standards and arguments at the proper time. Defendants deny the balance of the allegation.

29. Answering Paragraph 29, Defendants admit the allegation.

30. Answering Paragraph 30, Defendants admit the IEEE has adopted a procedure for setting safety standards for RF radiation. Defendants deny the cited source asserts that “there are no adverse effects on the body below that threshold, regardless of how long or how intense the exposure to RF energy.” Defendants deny the allegation to the extent it is legal argument and/or conclusions that are not a proper allegation in a complaint and reserve their right to brief the Court on legal standards and arguments at the proper time. Defendants deny the balance of the allegation.

31. Answering Paragraph 31, Defendants admit the allegation.

1 32. Answering Paragraph 32, Defendants admit that federal agencies have
2 jurisdiction to regulate the safety of cell phones but deny the remainder of the allegation.

3 33. Answering Paragraph 33, the paragraph contains only legal argument and/or
4 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
5 the allegation and reserve their right to brief the Court on legal standards and arguments at the
6 proper time.

7 34. Answering Paragraph 34, the paragraph contains only legal argument and/or
8 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
9 the allegation and reserve their right to brief the Court on legal standards and arguments at the
10 proper time.

11 35. Answering Paragraph 35, the paragraph contains only legal argument and/or
12 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
13 the allegation and reserve their right to brief the Court on legal standards and arguments at the
14 proper time.

15 36. Answering Paragraph 36, Defendants admit that Congress and the FCC have
16 regulated wireless communication services, including cell phones, but deny the balance of the
17 allegation to the extent they are not legal argument and/or conclusions that are not a proper
18 allegation in a complaint and reserve their right to brief the Court on legal standards and
19 arguments at the proper time.

20 37. Answering Paragraph 37, the paragraph contains only legal argument and/or
21 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
22 the allegation and reserve their right to brief the Court on legal standards and arguments at the
23 proper time.

24 38. Answering Paragraph 38, the paragraph contains only legal argument and/or
25 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
26 the allegation and reserve their right to brief the Court on legal standards and arguments at the
27 proper time.
28

1 39. Answering Paragraph 39, Defendants admit Congress enacted FCC relevant
2 legislation in 1993. To the extent the remaining statements are not legal argument and/or legal
3 conclusions or opinions to which Defendants need not respond, Defendants deny the remainder
4 of the allegation.

5 40. Answering Paragraph 40, the paragraph contains only legal argument and/or
6 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
7 the allegation and reserve their right to brief the Court on legal standards and arguments at the
8 proper time.

9 41. Answering Paragraph 41, the paragraph contains only legal argument and/or
10 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
11 the allegation and reserve their right to brief the Court on legal standards and arguments at the
12 proper time.

13 42. Answering Paragraph 42, the paragraph contains only legal argument and/or
14 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
15 the allegation and reserve their right to brief the Court on legal standards and arguments at the
16 proper time.

17 43. Answering Paragraph 43, the paragraph contains only legal argument and/or
18 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
19 the allegation and reserve their right to brief the Court on legal standards and arguments at the
20 proper time.

21 44. Answering Paragraph 44, the paragraph contains only legal argument and/or
22 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
23 the allegation and reserve their right to brief the Court on legal standards and arguments at the
24 proper time.

25 45. Answering Paragraph 45, the paragraph contains only legal argument and/or
26 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
27 the allegation and reserve their right to brief the Court on legal standards and arguments at the
28 proper time.

1 46. Answering Paragraph 46, the paragraph contains only is argument and/or
2 conclusions is not a proper allegation in a Complaint and for that reason Defendants deny the
3 allegation and reserve their right to brief the Court on legal standards and arguments at the
4 proper time.

5 47. Answering Paragraph 47, the paragraph contains only legal argument and/or
6 conclusions is not a proper allegation in a Complaint and for that reason Defendants deny the
7 allegation and reserve their right to brief the Court on legal standards and arguments at the
8 proper time.

9 48. Answering Paragraph 48, the paragraph contains only legal argument and/or
10 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
11 the allegation and reserve their right to brief the Court on legal standards and arguments at the
12 proper time.

13 49. Answering Paragraph 49, the paragraph contains only legal argument and/or
14 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
15 the allegation and reserve their right to brief the Court on legal standards and arguments at the
16 proper time.

17 50. Answering Paragraph 50, the paragraph contains only legal argument and/or
18 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
19 the allegation and reserve their right to brief the Court on legal standards and arguments at the
20 proper time.

21 51. Answering Paragraph 51, the paragraph contains only legal argument and/or
22 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
23 the allegation and reserve their right to brief the Court on legal standards and arguments at the
24 proper time.

25 52. Answering Paragraph 52, the paragraph contains only legal argument and/or
26 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
27 the allegation and reserve their right to brief the Court on legal standards and arguments at the
28 proper time.

1 53. Answering Paragraph 53, the paragraph contains only legal argument and/or
2 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
3 the allegation and reserve their right to brief the Court on legal standards and arguments at the
4 proper time.

5 54. Answering Paragraph 54, the paragraph contains only legal argument and/or
6 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
7 the allegation and reserve their right to brief the Court on legal standards and arguments at the
8 proper time.

9 55. Answering Paragraph 55, the paragraph contains only legal argument and/or
10 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
11 the allegation and reserve their right to brief the Court on legal standards and arguments at the
12 proper time.

13 56. Answering Paragraph 56, the paragraph contains only legal argument and/or
14 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
15 the allegation and reserve their right to brief the Court on legal standards and arguments at the
16 proper time.

17 57. Answering Paragraph 57, the paragraph contains only legal argument and/or
18 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
19 the allegation and reserve their right to brief the Court on legal standards and arguments at the
20 proper time.

21 58. Answering Paragraph 58, the paragraph contains only legal argument and/or
22 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
23 the allegation and reserve their right to brief the Court on legal standards and arguments at the
24 proper time.

25 59. Answering Paragraph 59, the paragraph contains only legal argument and/or
26 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
27 the allegation and reserve their right to brief the Court on legal standards and arguments at the
28 proper time.

1 60. Answering Paragraph 60, the paragraph contains only legal argument and/or
2 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
3 the allegation and reserve their right to brief the Court on legal standards and arguments at the
4 proper time.

5 61. Answering Paragraph 61, the paragraph contains only legal argument and/or
6 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
7 the allegation and reserve their right to brief the Court on legal standards and arguments at the
8 proper time.

9 62. Answering Paragraph 62, the paragraph contains only legal argument and/or
10 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
11 the allegation and reserve their right to brief the Court on legal standards and arguments at the
12 proper time.

13 63. Answering Paragraph 63, the paragraph contains only legal argument and/or
14 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
15 the allegation and reserve their right to brief the Court on legal standards and arguments at the
16 proper time.

17 64. Answering Paragraph 64, the paragraph contains only legal argument and/or
18 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
19 the allegation and reserve their right to brief the Court on legal standards and arguments at the
20 proper time.

21 65. Answering Paragraph 65, the paragraph contains only legal argument and/or
22 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
23 the allegation and reserve their right to brief the Court on legal standards and arguments at the
24 proper time.

25 66. Answering Paragraph 66, the paragraph contains only legal argument and/or
26 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
27 the allegation and reserve their right to brief the Court on legal standards and arguments at the
28 proper time.

1 67. Answering Paragraph 67, the paragraph contains only legal argument and/or
2 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
3 the allegation and reserve their right to brief the Court on legal standards and arguments at the
4 proper time.

5 68. Answering Paragraph 68, the paragraph contains only legal argument and/or
6 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
7 the allegation and reserve their right to brief the Court on legal standards and arguments at the
8 proper time.

9 69. Answering Paragraph 69, the paragraph contains only legal argument and/or
10 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
11 the allegation and reserve their right to brief the Court on legal standards and arguments at the
12 proper time.

13 70. Answering Paragraph 70, the paragraph contains only legal argument and/or
14 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
15 the allegation and reserve their right to brief the Court on legal standards and arguments at the
16 proper time.

17 71. Answering Paragraph 71, the paragraph contains only legal argument and/or
18 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
19 the allegation and reserve their right to brief the Court on legal standards and arguments at the
20 proper time.

21 72. Answering Paragraph 72, the paragraph contains only legal argument and/or
22 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
23 the allegation and reserve their right to brief the Court on legal standards and arguments at the
24 proper time.

25 73. Answering Paragraph 73, the paragraph contains only legal argument and/or
26 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
27 the allegation and reserve their right to brief the Court on legal standards and arguments at the
28 proper time.

1 74. Answering Paragraph 74, the paragraph contains only legal argument and/or
2 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
3 the allegation and reserve their right to brief the Court on legal standards and arguments at the
4 proper time.

5 75. Answering Paragraph 75, the paragraph contains only legal argument and/or
6 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
7 the allegation and reserve their right to brief the Court on legal standards and arguments at the
8 proper time.

9 76. Answering Paragraph 76, the paragraph contains only legal argument and/or
10 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
11 the allegation and reserve their right to brief the Court on legal standards and arguments at the
12 proper time.

13 77. Answering Paragraph 77, the paragraph contains only legal argument and/or
14 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
15 the allegation and reserve their right to brief the Court on legal standards and arguments at the
16 proper time.

17 78. Answering Paragraph 78, Defendants has no basis for evaluating what
18 "maximizes customer experience" and therefore lacks sufficient information to admit or deny the
19 allegation and on that basis denies the allegation.

20 79. Answering Paragraph 79, Defendants deny the allegation.

21 80. Answering Paragraph 80, Defendants deny the allegation.

22 81. Answering Paragraph 81, Defendants admit quoted material appears in the cited
23 document but denies the balance of the allegation.

24 82. Answering Paragraph 82, Defendants deny the allegation.

25 83. Answering Paragraph 83, the paragraph contains only legal argument and/or
26 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
27 the allegation and reserve their right to brief the Court on legal standards and arguments at the
28 proper time.

1 84. Answering Paragraph 84, Defendants admit quoted material appears in the cited
2 document but denies the balance of the allegation.

3 85. Answering Paragraph 85, Defendants admit the Ordinance does not repeat the
4 statements in manufacturers' existing consumer disclosures. Defendants deny the balance of the
5 allegation.

6 86. Answering Paragraph 86, Defendants deny the allegation.

7 87. Answering Paragraph 87, Defendants admit quoted material appears in the cited
8 document but denies the balance of the allegation.

9 88. Answering Paragraph 88, Defendants admit the allegation.

10 89. Answering Paragraph 89, Defendants admit that on May 12, 2015 the City
11 Council voted on an action item to "Adopt first reading of an Ordinance requiring cell phone
12 retailers to provide a notice with each sale or lease concerning the carrying of cell phones, and
13 adding Berkeley Municipal Code Chapter 9.96." Defendants deny the balance of the allegation.

14 90. Answering Paragraph 90, Defendants admit that on May 12, 2015 at a public
15 meeting of the Berkeley City Council Lawrence Lessig spoke regarding the ordinance and
16 mentioned the letter from 195 scientists, as did Dr. Joel Moskowitz. Defendants also admit that
17 members of the public spoke at that same meeting. Defendants deny the balance of the
18 allegation.

19 91. Answering Paragraph 91, Answering Paragraph 90, Defendants admit that on
20 May 12, 2015 at a public meeting of the Berkeley City Council Lawrence Lessig spoke
21 regarding the ordinance and cited a study of Berkeley residents. Defendants also admit that
22 Defendants admit quoted material appears in the cited document. Defendants deny the balance
23 of the allegation.

24 92. Answering Paragraph 92, Defendants admit that the out of context and
25 incomplete quoted material appears in the cited document. Defendants deny the balance of the
26 allegation.

27 93. Answering Paragraph 93, Defendants admit that the out of context and quoted
28 material appears in the cited document. Defendants deny Councilmember Anderson was

1 providing any argument to describe the City's substantial interest in the Ordinance. Defendants
2 deny the balance of the allegation.

3 94. Answering Paragraph 94, Defendants admit that on May 26, 2015, the Berkeley
4 City Council unanimously voted to adopt second reading of Ordinance No. 7,404-N.S. requiring
5 cell phone retailers to provide a notice with each sale or lease concerning the carrying of cell
6 phones, and adding Berkeley Municipal Code Chapter 9.96.

7 95. Answering Paragraph 95, Defendants deny the allegation.

8 96. Answering Paragraph 96, Defendants admit Defendants admit that the out of
9 context and incomplete quoted material appears in the cited document. Defendants deny the
10 balance of the allegation.

11 97. Answering Paragraph 97, Defendants deny the allegation to the extent it is legal
12 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
13 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
14 the balance of the allegation.

15 98. Answering Paragraph 98, Defendants admit that the out of context and
16 incomplete quoted material appears in the cited document. Defendants deny the balance of the
17 allegation.

18 99. Answering Paragraph 99, Defendants has no basis for knowing what CTIA
19 members believe. Defendants deny that the "vast majority of manufacturers" do not disclose
20 separation distances. Defendants deny such procedures are unrelated to "safety standards."
21 Defendants admit that the FCC's purpose in mandating the disclosure of SAR testing procedures
22 is to give consumers the opportunity "to ensure that their actual exposure does not exceed the
23 SAR measurement obtained during testing."

24 100. Answering Paragraph 100, Defendants admit that the out of context and
25 incomplete quoted material appears in the cited document. Defendants deny the balance of the
26 allegation.

27 101. Answering Paragraph 101, Defendants deny the allegation.
28

1 102. Answering Paragraph 102, Defendants admit that the out of context and
2 incomplete quoted material appears in the cited document. Defendants deny the balance of the
3 allegation.

4 103. Answering Paragraph 103, Defendants deny the allegation.

5 104. Answering Paragraph 104, Defendants admit that the out of context and
6 incomplete quoted material appears in the cited document. Defendants deny the balance of the
7 allegation.

8 105. Answering Paragraph 105, Defendants deny the allegation.

9 106. Answering Paragraph 106, Defendants admit that the out of context and
10 incomplete quoted material appears in the cited document. Defendants deny the balance of the
11 allegation.

12 107. Answering Paragraph 107, the paragraph contains only legal argument and/or
13 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
14 the allegation and reserve their right to brief the Court on legal standards and arguments at the
15 proper time.

16 108. Answering Paragraph 108, Defendants deny the allegation to the extent it is legal
17 argument and/or conclusions that are not proper allegation in a complaint and reserve their right
18 to brief the Court on legal standards and arguments at the proper time. Defendants deny the
19 balance of the allegation.

20 109. Answering Paragraph 109, Defendants deny the substantive portion of the
21 ordinance is false, misleading, or controversial.

22 110. Answering Paragraph 110, Defendants deny the allegation.

23 111. Answering Paragraph 111, Defendants admit that "exposure in excess of FCC
24 limits might result." Defendants deny the balance of the allegation.

25 112. Answering Paragraph 112, Defendants admit RF energy is not ionizing radiation.
26 Defendants deny the balance of the allegation.

27 113. Answering Paragraph 113, Defendants admit the ordinance asserts that there is a
28 potential risk of exceeding SAR limits, depending on how the phone is used. Defendants admit

1 that the ordinance asserts children are more likely to exceed SAR limits, given how children
2 typically use their phones. Defendants deny these statements are inaccurate. Defendants deny
3 the allegation to the extent it is legal argument and/or conclusions that are not proper allegation
4 in a complaint and reserve their right to brief the Court on legal standards and arguments at the
5 proper time. Defendants deny the balance of the allegation.

6 114. Answering Paragraph 114, Defendants admit the allegation.

7 115. Answering Paragraph 115, Defendants admit the allegation.

8 116. Answering Paragraph 116, Defendants admit the allegation.

9 117. Answering Paragraph 117, Defendants admit the Ordinance was to go into effect
10 June 25, 2015 but the City has agreed to stay the enforcement of the Ordinance pending
11 resolution of this lawsuit.

12 **COUNT 1**

13 118. Answering Paragraph 118, Defendants incorporate the preceding paragraphs by
14 reference.

15 119. Answering Paragraph 119, Defendants admit the allegation.

16 120. Answering Paragraph 120, the paragraph contains only legal argument and/or
17 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
18 the allegation and reserve their right to brief the Court on legal standards and arguments at the
19 proper time.

20 121. Answering Paragraph 121, Defendants deny the allegation to the extent it is legal
21 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
22 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
23 the balance of the allegation.

24 122. Answering Paragraph 122, Defendants deny the allegation to the extent it is legal
25 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
26 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
27 the balance of the allegation.
28

1 123. Answering Paragraph 123, Defendants deny the allegation to the extent it is legal
2 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
3 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
4 the balance of the allegation.

5 124. Answering Paragraph 124, Defendants deny the allegation to the extent it is legal
6 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
7 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
8 the balance of the allegation.

9 125. Answering Paragraph 125, Defendants deny the allegation.

10 126. Answering Paragraph 126, Defendants deny the allegation.

11 127. Answering Paragraph 127, Defendants deny the allegation to the extent it is legal
12 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
13 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
14 the balance of the allegation.

15 128. Answering Paragraph 128, Defendants deny the allegation to the extent it is legal
16 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
17 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
18 the balance of the allegation.

19 129. Answering Paragraph 129, Defendants deny the allegation to the extent it is legal
20 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
21 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
22 the balance of the allegation.

23 130. Answering Paragraph 130, Defendants deny the allegation.

24 131. Answering Paragraph 131, Defendants deny the allegation.

25 132. Answering Paragraph 132, Defendants deny the allegation.

26 133. Answering Paragraph 133, Defendants deny the allegation to the extent it is legal
27 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
28

1 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
2 the balance of the allegation.

3 134. Answering Paragraph 134, Defendants deny the allegation to the extent it is legal
4 argument and/or conclusions that are not a proper allegation in a complaint and reserve their
5 right to brief the Court on legal standards and arguments at the proper time. Defendants deny
6 the balance of the allegation.

7 135. Answering Paragraph 135, Defendants deny the allegation.

8 **COUNT 2**

9 136. Answering Paragraph 136, Defendants incorporate the preceding paragraphs by
10 reference.

11 137. Answering Paragraph 137, the paragraph contains only legal argument and/or
12 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
13 the allegation and reserve their right to brief the Court on legal standards and arguments at the
14 proper time.

15 138. Answering Paragraph 138, the paragraph contains only legal argument and/or
16 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
17 the allegation and reserve their right to brief the Court on legal standards and arguments at the
18 proper time.

19 139. Answering Paragraph 139, Defendants deny the allegation.

20 140. Answering Paragraph 140, Defendants deny the allegation.

21 141. Answering Paragraph 141, Defendants deny the allegation.

22 142. Answering Paragraph 142, Defendants deny the allegation.

23 **COUNT 3**

24 143. Answering Paragraph 143, Defendants incorporate the preceding paragraphs by
25 reference.

26 144. Answering Paragraph 144, the paragraph contains only legal argument and/or
27 conclusions that are not a proper allegation in a Complaint and for that reason Defendants deny
28

1 the allegation and reserve their right to brief the Court on legal standards and arguments at the
2 proper time. Defendants admit the allegation.

3 145. Answering Paragraph 145, Defendants deny the allegation.

4 **COSTS AND ATTORNEYS' FEES**

5 146. Defendants neither admit nor deny plaintiff's jury demand as set forth in
6 Paragraph 146.

7 WHEREFORE, Defendants pray that:

- 8 1. the Court gives judgment for Defendants;
9 2. the Court award Defendants costs of suit herein incurred;
10 3. that plaintiff take nothing by its Complaint; and
11 4. for such other and further relief as the Court may deem proper.

12 Dated: June 30, 2015.

Respectfully submitted:

13 ZACH COWAN, City Attorney

14
15 By: /s/ Zach Cowan
16 ZACH COWAN
Attorneys for Defendants

17 Dated: June 30, 2015.

18 By: /s/ Lester Lawrence Lessig
19 LESTER LAWRENCE LESSIG III
Attorneys for Defendants CITY OF
20 BERKELEY and CHRISTINE DANIEL

21 Dated: June 30, 2015.

22 By: /s/ Robert Charles Post
23 ROBERT CHARLES POST
Attorneys for Defendants CITY OF
24 BERKELEY and CHRISTINE DANIEL