

1 RUTAN & TUCKER LLP  
M. Katherine Jenson (State Bar No. 110772)  
2 kjenson@rutan.com  
Robert S. Bower (State Bar No. 70234)  
3 rbower@rutan.com  
S. Daniel Harbottle (State Bar No. 156442)  
4 dharbottle@rutan.com  
611 Anton Boulevard, Fourteenth Floor  
5 Costa Mesa, California 92626-1950  
Telephone: 714-641-5100  
6 Facsimile: 714-546-9035

7 JOHN L. FELLOWS III (State Bar No. 103968)  
City Attorney  
8 jfellows@torrnet.com  
3031 Torrance Boulevard  
9 Torrance, CA 90503-5059  
Telephone: (310) 618-5810  
10 Direct Dial: (310) 618-5817  
Facsimile: (310) 618-5813  
11  
12 Attorneys for Defendants, CITY OF  
TORRANCE, et al

13  
14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

16 DAVID W. SPEARS,

17 Plaintiff,

18 v.

19 CITY OF TORRANCE, a governmental  
entity; JOHN J. NEU, individually and in  
20 his capacity as Chief of Police; FRANK  
SCOTTO, individually and in his capacity  
21 as Mayor; GENE BARNETT, individually  
and in his capacity as Council Member;  
22 TOM BREWER, individually and in his  
capacity as Council Member, GENE  
23 DREVINO, individually and in her capacity  
as Council Member; PAUL M.  
24 NOWATKA, individually and in his  
capacity as Council Member; BILL  
25 SUTHERLAND, individually and in his  
capacity as Council Member; HOPE  
26 WITKOWSKY, individually and in her  
capacity as Council Member,

27 Defendants.  
28

Case No. CV08-03686 ODW (SSx)

ASSIGNED FOR ALL PURPOSES TO  
JUDGE  
DEPARTMENT

**ANSWER TO COMPLAINT FOR  
DAMAGES**

Date Action Filed: June 5, 2008  
Trial Date: Not Assigned

1 Defendants CITY OF TORRANCE, JOHN J. NEU, FRANK SCOTTO, GENE  
2 BARNETT, TOM BREWER, GENE DREVNO, PAUL M. NOWATKA, BILL  
3 SUTHERLAND, HOPE WITKOWSKY (collectively, "Defendants") answer the  
4 allegations in the "Complaint for Damages" (the "Complaint") filed by Plaintiff David W.  
5 Spears ("Plaintiff") as follows:

6 1. In response to the allegations contained in Paragraph No. 1 of the Complaint,  
7 Defendants allege that the jurisdictional provisions of 28 U.S.C. § 1983, *et seq.*, speak for  
8 themselves. Except as expressly admitted herein, Defendants deny generally and  
9 specifically each and every allegation contained in Paragraph No. 1 of the Complaint.

10 2. Defendants have no information or belief sufficient to enable them to  
11 respond to the allegations contained in Paragraph No. 2 of the Complaint, and basing their  
12 denial upon that ground, deny each and every allegation contained therein.

13 3. Defendants have no information or belief sufficient to enable them to  
14 respond to the allegations contained in Paragraph No. 3 of the Complaint, and basing their  
15 denial upon that ground, deny each and every allegation contained therein.

16 4. Defendants have no information or belief sufficient to enable them to  
17 respond to the allegations contained in Paragraph No. 4 of the Complaint, and basing their  
18 denial upon that ground, deny each and every allegation contained therein.

19 5. In response to the allegations contained in Paragraph No. 5 of the Complaint,  
20 Defendants respond that Defendant City of Torrance is a California Charter City. Except  
21 as expressly admitted herein, Defendants deny generally and specifically each and every  
22 allegation contained in Paragraph No. 5 of the Complaint.

23 6. In response to the allegations contained in Paragraph No. 6 of the Complaint,  
24 Defendants admit the allegations therein.

25 7. In response to the allegations contained in Paragraph No. 7 of the Complaint,  
26 Defendants admit that John J. Neu is the Chief of Police for Defendants City of Torrance  
27 and a resident of the County of Los Angeles. Except as expressly admitted herein,  
28 Defendants deny generally and specifically each and every allegation contained in

1 Paragraph No. 7 of the Complaint.

2 8. In response to the allegations contained in Paragraph No. 8 of the Complaint,  
3 Defendants admit that Frank Scotto is the Mayor of Defendants City of Torrance and a  
4 resident of the County of Los Angeles. Except as expressly admitted herein, Defendants  
5 deny generally and specifically each and every allegation contained in Paragraph No. 8 of  
6 the Complaint.

7 9. In response to the allegations contained in Paragraph No. 9 of the Complaint,  
8 Defendants admit that Gene Barnett, Tom Brewer, Gene Drevno, Paul M. Nowatka, Bill  
9 Sutherland and Hope Witkowsky are currently City Council members of Defendant City of  
10 Torrance and residents of the County of Los Angeles. As of July 1, 2008, Defendants  
11 Drevno, Nowatka, and Witkowsky will no longer be members of the City Council. Except  
12 as expressly admitted herein, Defendants deny generally and specifically each and every  
13 allegation contained in Paragraph No. 9 of the Complaint.

14 10. Defendants deny generally and specifically each and every allegation  
15 contained in Paragraph No. 10 of the Complaint.

16 11. In response to the allegations contained in Paragraph No. 11 of the  
17 Complaint, Defendants admit that the Defendants, in doing the acts described, were acting  
18 within the course and scope of their employment. Because the remaining allegations are  
19 conclusions of law, Defendants deny each and every remaining allegation contained  
20 therein.

21 12. Defendants have no information or belief sufficient to enable them to  
22 respond to the allegations contained in Paragraph No. 12 of the Complaint, and basing  
23 their denial upon that ground, deny each and every allegation contained therein.

24 13. Defendants have no information or belief sufficient to enable them to  
25 respond to the allegations contained in Paragraph No. 13 of the Complaint, and basing  
26 their denial upon that ground, deny each and every allegation contained therein.

27 14. Defendants have no information or belief sufficient to enable them to  
28 respond to the allegations contained in Paragraph No. 14 of the Complaint, and basing

1 their denial upon that ground, deny each and every allegation contained therein.

2 15. In response to the allegations contained in Paragraph No. 15 of the  
3 Complaint, Defendants generally and specifically deny that Plaintiff has no access to  
4 police protection while performing his duties or when he is off duty. As to other  
5 allegations in Paragraph No. 15, Defendants have no information or belief sufficient to  
6 enable them to respond to the allegations contained in Paragraph No. 15 of the Complaint,  
7 and basing their denial upon that ground, deny each and every allegation contained therein.

8 16. Defendants have no information or belief sufficient to enable them to  
9 respond to the allegations contained in Paragraph No. 16 of the Complaint, and basing  
10 their denial upon that ground, deny each and every allegation contained therein.

11 17. In response to the allegations contained in Paragraph No. 17 of the  
12 Complaint, Defendants allege that the language of Complaint Exhibit A speaks for itself.  
13 As to other allegations in Paragraph No. 17, Defendants have no information or belief  
14 sufficient to enable them to respond to the allegations contained in Paragraph No. 17 of the  
15 Complaint, and basing their denial upon that ground, deny each and every allegation  
16 contained therein.

17 18. In response to the allegations contained in Paragraph No. 18 of the  
18 Complaint, Defendants allege that the terms of Penal Code section 12050(a)(1)(B) and  
19 *Complaint Exhibit B* speak for themselves. Defendants admit that Plaintiff applied to  
20 Defendant City of Torrance for a Concealed Carry Weapon permit in July 2007. As to  
21 other allegations in Paragraph No. 18, Defendants have no information or belief sufficient  
22 to enable them to respond to the allegations contained in Paragraph No. 18 of the  
23 Complaint, and basing their denial upon that ground, deny each and every allegation  
24 contained therein.

25 19. In response to the allegations contained in Paragraph No. 19 of the  
26 Complaint, Defendants allege that the terms of Penal Code section 12050 speak for  
27 themselves. Except as expressly admitted herein, Defendants deny generally and  
28 specifically each and every allegation contained in Paragraph No. 19 of the Complaint.

1           20. In response to the allegations contained in Paragraph No. 20 of the  
2 Complaint, Defendants allege that the terms of Penal Code section 12050 speak for  
3 themselves, and further allege that Plaintiff has not shown good cause for issuance of a  
4 CCW permit. As to the remaining allegations of Paragraph 20 of the Complaint,  
5 Defendants have no information or belief sufficient to enable them to respond to the  
6 allegations contained in Paragraph No. 20, and basing their denial upon that ground, deny  
7 each and every allegation contained therein.

8           21. In response to the allegations contained in Paragraph No. 21 of the  
9 Complaint, Defendants allege that the language of Complaint Exhibit C speaks for itself.  
10 Except as expressly admitted herein, Defendants deny generally and specifically each and  
11 every allegation contained in Paragraph No. 21 of the Complaint.

12           22. In response to the allegations contained in Paragraph No. 22 of the  
13 Complaint, Defendants allege that the language of Complaint Exhibit C speaks for itself.  
14 Defendants admit that the policy summary does not contain any indication of a long-  
15 standing practice of the City's chiefs of police not to issue CCW permits to citizens, and  
16 affirmatively allege that Defendants have no such long-standing practice. Except as  
17 expressly admitted herein, Defendants deny generally and specifically each and every  
18 allegation contained in Paragraph No. 22 of the Complaint.

19           23. In response to the allegations contained in Paragraph No. 23 of the  
20 Complaint, Defendants allege that the language of Complaint Exhibit D speaks for itself.  
21 Except as expressly admitted herein, Defendants deny generally and specifically each and  
22 every allegation contained in Paragraph No. 23 of the Complaint.

23           24. In response to the allegations contained in Paragraph No. 24 of the  
24 Complaint, Defendants admit that Plaintiff's application to for a Concealed Carry Weapon  
25 permit was denied by Defendant City of Torrance. Defendants further allege that the  
26 language of Complaint Exhibit E speaks for itself. Except as expressly admitted herein,  
27 Defendants deny generally and specifically each and every allegation contained in  
28 Paragraph No. 24 of the Complaint.

1           25. In response to the allegations contained in Paragraph No. 25 of the  
2 Complaint, Defendants allege that the language of Complaint Exhibit F speaks for itself.  
3 Except as expressly admitted herein, Defendants deny generally and specifically each and  
4 every allegation contained in Paragraph No. 25 of the Complaint.

5           26. In response to the allegations contained in Paragraph No. 26 of the  
6 Complaint, Defendants allege that the language of Complaint Exhibit F speaks for itself.  
7 Except as expressly admitted herein, Defendants deny generally and specifically each and  
8 every allegation contained in Paragraph No. 26 of the Complaint.

9           27. Because the allegations in Paragraph No. 27 of the Complaint are  
10 conclusions of law, Defendants deny each and every allegation contained therein.

11           28. Because the allegations in Paragraph No. 28 of the Complaint are  
12 conclusions of law, and because the requirement for psychological testing is authorized by  
13 the "Standard Application for License to Carry a Concealed Weapon," which is the  
14 recommended form by the California Attorney General, Defendants deny each and every  
15 allegation contained therein.

16           29. In response to the allegations contained in Paragraph No. 29 of the  
17 Complaint, Defendants allege that the language of *Salute v. Pitchess* 61 Cal.App.3d 557  
18 (1976) speaks for itself. Except as expressly admitted herein, Defendants deny generally  
19 and specifically each and every allegation contained in Paragraph No. 29 of the Complaint.

20           30. In response to the allegations contained in Paragraph No. 29 of the  
21 Complaint, Defendants allege that the language of *Guillory v. County of Orange*, 61  
22 Cal.App.3d 557 (1976) speaks for itself. Except as expressly admitted herein, Defendants  
23 deny generally and specifically each and every allegation contained in Paragraph No. 30 of  
24 the Complaint.

25           31. Defendants deny generally and specifically each and every allegation  
26 contained in Paragraph No. 31 of the Complaint.

27           32. In response to the allegations contained in Paragraph No. 32 of the  
28 Complaint, Defendants allege that the language of Complaint Exhibit G speaks for itself.

1 Defendants have no information or belief sufficient to enable them to respond to the  
2 allegations contained in Paragraph No. 32 of the Complaint regarding the Department of  
3 Justice, and basing their denial upon that ground, deny each and every one of those  
4 allegations. Defendants deny generally and specifically each and every remaining  
5 allegation contained in Paragraph No. 32 of the Complaint.

6 33. In response to the allegations contained in Paragraph No. 33 of the  
7 Complaint, Defendants allege that the language of Complaint Exhibit H speaks for itself.  
8 Defendants deny generally and specifically each and every remaining allegation contained  
9 in Paragraph No. 33 of the Complaint.

10 34. Defendants deny generally and specifically each and every allegation  
11 contained in Paragraph No. 34 of the Complaint.

12 35. Defendants deny generally and specifically each and every allegation  
13 contained in Paragraph No. 35 of the Complaint.

14 36. In response to Paragraph No. 36, Defendants reallege and incorporate by  
15 reference as if fully set forth herein all above responsive allegations.

16 37. In response to the allegations contained in Paragraph No. 37 of the  
17 Complaint, Defendants allege that the language of 42 U.S.C. § 1983 speaks for itself.  
18 Except as expressly admitted herein, Defendants deny generally and specifically each and  
19 every allegation contained in Paragraph No. 37 of the Complaint.

20 38. Defendants deny generally and specifically each and every allegation  
21 contained in Paragraph No. 38 of the Complaint.

22 39. Defendants deny generally and specifically each and every allegation  
23 contained in Paragraph No. 39 of the Complaint.

24 40. Defendants deny generally and specifically each and every allegation  
25 contained in Paragraph No. 40 of the Complaint.

26 41. Defendants deny generally and specifically each and every allegation  
27 contained in Paragraph No. 41 of the Complaint.

28 42. Defendants deny generally and specifically each and every allegation

1 contained in Paragraph No. 42 of the Complaint.

2 **AFFIRMATIVE DEFENSES**

3 **FIRST AFFIRMATIVE DEFENSE**

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

5 43. As a first separate and distinct affirmative defense, Defendants allege that the  
6 Complaint fails to state a claim upon which relief may be granted or sufficient facts to  
7 constitute a claim for relief against Defendants.

8 **SECOND AFFIRMATIVE DEFENSE**

9 **(Res Judicata / Collateral Estoppel)**

10 44. As a second separate and distinct affirmative defense, Defendants allege that  
11 the allegations in the Complaint are barred under the doctrines of res judicata and/or  
12 collateral estoppel.

13 **THIRD AFFIRMATIVE DEFENSE**

14 **(Failure to Exhaust Administrative Remedies)**

15 45. As a third separate and distinct affirmative defense, Defendants allege that  
16 the allegations in the Complaint are barred for failure to exhaust available administrative  
17 remedies.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 **(Immunity)**

20 46. As a fourth separate and distinct affirmative defense, Defendants allege that  
21 City is protected from liability by absolute immunity.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 **(Standing)**

24 47. As an fifth separate and distinct affirmative defense, Defendants allege that  
25 Plaintiff lacks standing to bring the challenge under the Second Amendment as set forth in  
26 the Complaint.

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**SIXTH AFFIRMATIVE DEFENSE**

**(MOOTNESS)**

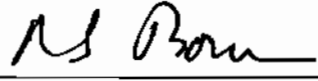
48. As a sixth separate and distinct affirmative defense, Defendants allege that Plaintiff's action is moot in that his employer, the City of Lynwood, has stated that it does not believe that its revenue collectors need to be in possession of a firearm during the course of carrying out their duties for the City, and has also stated that it would not approve of its revenue collectors carrying firearms during the course of their duties due to liability issues.

WHEREFORE, Defendants pray for judgment against the Plaintiff as follows:

1. That Plaintiff obtain no relief by reason of its Complaint;
2. That the Complaint be denied in its entirety;
3. That judgment be entered in favor of Defendants; and
4. For such other and further relief as the Court deems just and proper.

Dated: June 30, 2008

RUTAN & TUCKER, LLP  
M. KATHERINE JENSON  
ROBERT S. BOWER  
S. DANIEL HARBOTTLE

By: 

Robert S. Bower  
Attorneys for Defendants  
CITY OF TORRANCE, et al

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**PROOF OF SERVICE BY MAIL**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Fourteenth Floor, Costa Mesa, California 92626-1931.

On June 30, 2008, I served on the interested parties in said action the within:

**ANSWER TO COMPLAINT FOR DAMAGES**

by placing a true copy thereof in sealed envelope(s) addressed as stated below:

Terry A. Nelson, Esq.	Counsel for Plaintiff
Nelson & Lawless	
2134 Main Street, Suite 130	Telephone: 714-960-7584
Huntington Beach, CA 92648	Facsimile: 714-960-9115

In the course of my employment with Rutan & Tucker, LLP, I have, through first-hand personal observation, become readily familiar with Rutan & Tucker, LLP's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice I deposited such envelope(s) in an out-box for collection by other personnel of Rutan & Tucker, LLP, and for ultimate posting and placement with the U.S. Postal Service on that same day in the ordinary course of business. If the customary business practices of Rutan & Tucker, LLP with regard to collection and processing of correspondence and mailing were followed, and I am confident that they were, such envelope(s) were posted and placed in the United States mail at Costa Mesa, California, that same date. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on June 30, 2008, at Costa Mesa, California.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

\_\_\_\_\_  
Lauren Ramey  
(Type or print name)

\_\_\_\_\_  
  
(Signature)