

1 **CARMEN A. TRUTANICH**, City Attorney (SBN 86629x)
 2 **LAURIE RITTENBERG**, Assistant City Attorney (SBN 106683)
 3 **JOHN CARVALHO**, Deputy City Attorney (SBN 189895)
 4 Email: john.carvalho@lacity.org
 5 **CASEY CHON**, Deputy City Attorney (SBN 232384)
 6 Email: casey.chon@lacity.org
 7 200 N. Main Street, City Hall East, 9th Floor, Rm. 916
 8 Los Angeles, CA 90012-4129
 9 Telephone (213) 473-6878
 10 Facsimile (213) 473-6818

11 Attorneys for Defendant CITY OF LOS ANGELES

12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14
 15 HOLLYWOOD CHARACTERS, an
 16 unincorporated association, MATTHIAS
 17 BALKE, MELISSA BEITHAN, PAUL
 18 HARRELL, TERRELL "TONY"
 19 TOMEY,

20 Plaintiffs,

21 v.

22 CITY OF LOS ANGELES, a municipal
 23 entity, OFFICER CHACON (Badge #
 24 36926), OFFICER GONZALES (Badge #
 25 37578), OFFICER MACHADO (Badge #
 26 37048), OFFICER JORDAN (Badge #
 27 32285), OFFICER ROTKOWSKI (Badge
 28 # 40290) and DOES 1-10, all in their
 official and individual capacities,

Defendants.

CASE NO. CV 10-5848 DDP (CWx)

**ANSWER OF DEFENDANT CITY OF
LOS ANGELES**

1 COMES NOW Defendant CITY OF LOS ANGELES (“Defendant”), and in
2 answering the Plaintiffs’ Complaint, for itself and for no other parties, admits, denies, and
3 alleges as follows:

4 **Jurisdiction and Venue**

5 1. In response to paragraph 1, Defendant admits jurisdiction is properly
6 asserted.

7 2. In response to paragraph 2, Defendant admits it is located within the District
8 and that venue is properly asserted.

9 **Statement of Facts**

10 3. In response to paragraph 3, Defendant denies each and every allegation
11 therein other than the sentences beginning at 2:22 and ending at 2:25 which Defendant
12 admits.

13 4. In response to paragraph 4, Defendant denies each and every allegation
14 contained therein other than the date and approximate location of Plaintiffs’ arrests and
15 that Plaintiffs were wearing costumes at the time.

16 5. In response to paragraph 5, Defendant admits the date, approximate time and
17 location of the arrest, that Tomey was arrested wearing a costume at the time, and the
18 names of the arresting officers. Defendant denies the other allegations.

19 6. In response to paragraph 6, Defendant denies each and every allegation
20 therein.

21 7. In response to paragraph 7, “After approximately 10 minutes,” is without
22 context and therefore unintelligible. Defendant is without sufficient knowledge or
23 information to form a belief as to the truth of the remaining allegations, and on that basis
24 denies each and every remaining allegation.

25 8. In response to paragraph 8, Defendant denies each and every allegation
26 therein.

27 9. In response to paragraph 9, Defendant admits that Balke, Beithan and
28 Harrell were arrested on June 4, 2010 and transported. Defendant denies each and every

1 remaining allegation.

2 10. In response to paragraph 10, Defendant admits that Balke and Harrell were
3 arrested on June 4, 2010, transported and booked. Defendant is without sufficient
4 knowledge or information to form a belief as to the truth of the remaining allegations, and
5 on that basis denies each and every remaining allegation.

6 11. In response to paragraph 11, Defendant admits that Beithan was arrested on
7 June 4, 2010, transported and booked. Defendant is without sufficient knowledge or
8 information to form a belief as to the truth of the remaining allegations, and on that basis
9 denies each and every remaining allegation.

10 12. In response to paragraph 12, Defendant denies the allegation contained in
11 the first paragraph. Defendant admits the charges were dropped. Defendant is without
12 sufficient knowledge or information to form a belief as to the truth of the remaining
13 allegations, and on that basis denies each and every remaining allegation.

14 13. In response to paragraph 13, Defendant is without sufficient knowledge or
15 information to form a belief as to the truth of the allegations contained therein, and on
16 that basis denies each and every allegation.

17 14. In response to paragraph 14, Defendant denies each and every allegation
18 contained therein.

19 15. In response to paragraph 15, Defendant denies each and every allegation
20 contained therein.

21 16. In response to paragraph 16, Defendant is without sufficient knowledge or
22 information to form a belief as to the truth of the allegations contained therein, and on
23 that basis denies each and every allegation.

24 17. In response to paragraph 17, Defendant denies each and every allegation
25 contained therein.

26 **Parties**

27 18. In response to paragraph 18, Defendant is without sufficient knowledge or
28 information to form a belief as to the truth of the allegations contained therein, and on

1 that basis denies each and every allegation.

2 19. In response to paragraph 19, Defendant admits the arrest and that the charges
3 were ultimately dropped. Defendant is without sufficient knowledge or information to
4 form a belief as to the truth of the remaining allegations, and on that basis denies each
5 and every remaining allegation.

6 20. In response to paragraph 20, Defendant admits the arrest. Defendant is
7 without sufficient knowledge or information to form a belief as to the truth of the
8 remaining allegations, and on that basis denies each and every remaining allegation.

9 21. In response to paragraph 21, Defendant admits the arrest and that the charges
10 were ultimately dropped. Defendant is without sufficient knowledge or information to
11 form a belief as to the truth of the remaining allegations, and on that basis denies each
12 and every remaining allegation.

13 22. In response to paragraph 22, Defendant admits the arrest. Defendant is
14 without sufficient knowledge or information to form a belief as to the truth of the
15 remaining allegations, and on that basis denies each and every remaining allegation.

16 **Defendants**

17 23. In response to paragraph 23, Defendant admits the allegations.

18 24. In response to paragraph 24, Defendant admits the allegations.

19 25. In response to paragraph 25, Defendant admits the allegations.

20 26. In response to paragraph 26, Defendant admits the allegations.

21 27. In response to paragraph 27, Defendant admits the allegations.

22 28. In response to paragraph 28, Defendant admits the allegations.

23 29. In response to paragraph 29, Defendant is without sufficient knowledge or
24 information to form a belief as to the truth of the allegations contained therein, and on
25 that basis denies each and every allegation.

26 **First Cause of Action**

27 30. In response to paragraph 30, Defendant incorporates by this reference, as
28 though fully set forth at length herein, its responses to the complaint set forth in

1 paragraphs 1 through 29, inclusive.

2 31. In response to paragraph 31, Defendant denies each and every allegation
3 contained therein.

4 32. In response to paragraph 32, Defendant denies each and every allegation
5 contained therein.

6 33. In response to paragraph 33, Defendant denies each and every allegation
7 contained therein.

8 **Second Cause of Action**

9 34. In response to paragraph 34, Defendant incorporates by this reference, as
10 though fully set forth at length herein, its responses to the complaint set forth in
11 paragraphs 1 through 33, inclusive.

12 35. In response to paragraph 35, Defendant denies each and every allegation
13 contained therein.

14 36. In response to paragraph 36, Defendant denies each and every allegation
15 contained therein.

16 37. In response to paragraph 37, Defendant denies each and every allegation
17 contained therein.

18 **Third Cause of Action**

19 38. In response to paragraph 38, Defendant incorporates by this reference, as
20 though fully set forth at length herein, its responses to the complaint set forth in
21 paragraphs 1 through 37, inclusive.

22 39. In response to paragraph 39, Defendant denies each and every allegation
23 contained therein.

24 40. In response to paragraph 40, Defendant denies each and every allegation
25 contained therein.

26 41. In response to paragraph 41, Defendant denies each and every allegation
27 contained therein.

28 42. In response to paragraph 42, Defendant admits the allegation.

1 43. In response to paragraph 43, Defendant is without sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained therein, and on
3 that basis denies each and every allegation.

4 44. In response to paragraph 44, Defendant denies the allegation.

5 **Fourth Cause of Action**

6 45. In response to paragraph 45, Defendant incorporates by this reference, as
7 though fully set forth at length herein, its responses to the complaint set forth in
8 paragraphs 1 through 44, inclusive.

9 46. In response to paragraph 46, Defendant denies the allegation.

10 47. In response to paragraph 47, Defendant denies each and every allegation
11 contained therein.

12 48. In response to paragraph 48, Defendant denies each and every allegation
13 contained therein.

14 **Fifth Cause of Action**

15 49. In response to paragraph 49, Defendant incorporates by this reference, as
16 though fully set forth at length herein, its responses to the complaint set forth in
17 paragraphs 1 through 48, inclusive.

18 50. In response to paragraph 50, Defendant denies that plaintiffs' rights were
19 violated.

20 51. In response to paragraph 51, Defendant denies each and every allegation
21 contained therein.

22 52. In response to paragraph 52, Defendant denies each and every allegation
23 contained therein.

24 **Sixth Cause of Action**

25 53. In response to paragraph 53, Defendant incorporates by this reference, as
26 though fully set forth at length herein, its responses to the complaint set forth in
27 paragraphs 1 through 52, inclusive.

28 ///

1 54. In response to paragraph 54, Defendant denies each and every allegation
2 contained therein.

3 55. In response to paragraph 55, Defendant denies each and every allegation
4 contained therein.

5 **Defendant’s Affirmative Defenses**

6 **FIRST AFFIRMATIVE DEFENSE**

7 Plaintiffs have failed to state a claim upon which relief can be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 If Plaintiffs were injured at all, it was from the actions of others.

10 **THIRD AFFIRMATIVE DEFENSE**

11 Defendant has no custom or policy to deprive plaintiffs of their constitutional
12 rights under the California or United States Constitutions.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 Plaintiffs cannot show imminent threat of irreparable injury.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 The balance of hardships weigh in Defendant’s favor.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 Plaintiffs are unlikely to prevail on the merits.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 The public interest will not be advanced by granting the relief requested by
21 plaintiffs.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 A public entity is not liable for any act or omission of a named defendant not
24 acting within the course and scope of duties as an employee of the public entity.

25 **NINTH AFFIRMATIVE DEFENSE**

26 The damages alleged were directly and proximately caused and contributed to by
27 the negligence of other persons, and the extent of damages sustained, if any, should be
28 reduced in proportion to the amount of said negligence.

SIXTEENTH AFFIRMATIVE DEFENSE

Los Angeles Municipal Code Section 41.18(a) is a content neutral, valid time, place and manner regulation, which is narrowly tailored to address significant government interests.

SEVENTEENTH AFFIRMATIVE DEFENSE

Los Angeles Municipal Code Section 41.18(a) is interpreted and enforced equally along Hollywood Boulevard.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant is protected from liability under the doctrine of qualified immunity because Defendant and/or its employees conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

WHEREFORE, Defendant prays that:

1. The Complaint be dismissed;
2. The application for injunctive relief be denied;
3. Plaintiffs take nothing by this proceeding;
4. Defendant recover its reasonable attorneys’ fees and costs; and
5. The Court awards such other relief as it considers proper.

Date: September 16, 2010

CARMEN A. TRUTANICH, City Attorney
LAURIE RITTENBERG, Assistant City Attorney
JOHN CARVALHO, Deputy City Attorney
CASEY CHON, Deputy City Attorney

_____/s/_____
By JOHN CARVALHO, Deputy City Attorney