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20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 PETER MCFARLAND,

23 Plaintiff,

24 v.

25 COUNTY OF MARIN, JUSTIN ZEBB, ERIN  
26 MITTENTHAL, and DOES 1-50, inclusive.

27 Defendants.

28 Case No.:

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF UNDER 42 U.S.C. §§  
1983, 1988**

***JURY TRIAL DEMANDED***

COMES NOW PLAINTIFF, Peter McFarland, who complains of defendants, and each of them, and alleges as follows:

**JURISDICTION & VENUE**

1. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343.



STATEMENT OF FACTS

11. Shortly before midnight on June 29, 2009, Mr. McFarland, then 64-years old, and his wife Pearl McFarland returned to their home in Woodacre after attending a fundraiser.<sup>1</sup>

12. Mr. McFarland had consumed alcohol that evening, and Pearl drove home. When they arrived at their home the walk lights were out. Mr. McFarland went to get a flashlight. As he was going down the steps in the dark he fell and hurt himself. His wife was unable to help him into the house and she called for medical assistance.

13. Marin County Firefighters and Paramedics responded to the McFarland residence. They helped Mr. McFarland into his home. Mr. McFarland declined their offer to take him to the hospital and signed the appropriate forms declining further medical assistance. Mr. McFarland's fall rendered this elderly man, who had a heart condition and was a pancreatic-cancer survivor, vulnerable. The officers were aware of Mr. McFarland's condition, as Pearl McFarland informed defendants Zebb and Mittenthal about Mr. McFarland's ongoing heart problems and his treatment by a cardiologist.

14. During the firefighters' and paramedics' treatment of Mr. McFarland, two Deputy Sheriffs—defendants Justin Zebb and Erin Mittenthal—arrived and entered the McFarland home without the McFarlands' consent and without a warrant.

15. Mr. McFarland inquired why the deputies had entered his home, as they were neither called nor in possession of a warrant. Upon receiving no satisfactory basis for the deputies' in-home intrusion, Mr. McFarland protested and told the deputies to leave his residence. Then, defendant Zebb pulled out his Taser (Electronic Control Device), turned it on, and pointed it at Mr. McFarland, and told Mr. McFarland to sit on his couch. Mr. McFarland complied, and told defendant Zebb to put the Taser away.

16. After several complaints Mr. McFarland said he would accompany the officers to the hospital if he could change his clothes because his pants were torn. Defendant Zebb told Mr.

<sup>1</sup> The events underlying this Complaint began shortly before midnight on June 29, 2009, and then carried over to the early morning of June 30, 2009. For ease of reference, Mr. McFarland will refer to June 29 as the relevant date, and by that reference includes the events that transpired in the early morning hours of June 30.

1 McFarland that changing his clothes was not an option. Defendant Zebb repeatedly told Mr.  
2 McFarland that he was not under arrest and that he was not going to be arrested. Defendant Zebb  
3 told Mr. McFarland to stand up in order to be brought to the hospital against his wishes. Mr.  
4 McFarland sat up in the couch on the edge of the cushion and then stood up. Defendant Zebb  
5 then fired his Taser at Mr. McFarland. Both probes hit Mr. McFarland in the chest. Mr.  
6 McFarland fell forward onto the ground. He landed on his side, writhing in pain. Defendant  
7 Zebb twice activated the Taser again—a second and third time—while Mr. McFarland was  
8 subdued on the ground. Mr. McFarland was then placed in handcuffs.

9 17. Mr. McFarland, who was handcuffed, was lying on the floor and further protested  
10 the police actions. After a minute of lying in pain, Mr. McFarland moved his feet. Defendant  
11 Zebb activated a fourth five-second cycle, delivering additional electric charges to Mr.  
12 McFarland. Several minutes later Mr. McFarland was taken to jail.

13 18. The deputies created an audio/visual recording of the incident, a DVD of which  
14 was presented to Mr. McFarland by the Marin County District Attorney's Office in discovery  
15 during the criminal resisting arrest case captioned *People v. McFarland*, Case Nos. CR165653A;  
16 SO09003934. (Those charges, initiated by defendants Zebb and Mittenthal, were ordered  
17 dismissed following an Order issued by the Marin County Superior Court (Simmons, J.) granting  
18 Mr. McFarland's Fourth Amendment challenge to defendants Zebb's and Mittenthal's warrantless  
19 entry into his home.) A true and correct copy of that DVD is attached hereto as **Exhibit A**. The  
20 contents of **Exhibit A** are incorporated by reference, as if fully narrated in the body of this  
21 complaint.

22 19. Defendants Zebb and Mittenthal had no lawful basis to arrest Mr. McFarland.  
23 Nevertheless, defendants Zebb and Mittenthal unlawfully arrested Mr. McFarland in his home.

24 20. No physical force and no Taser activations were reasonable or necessary to  
25 subdue, detain, or arrest Mr. McFarland, even if defendants had a lawful basis to subdue, detain  
26 or arrest Mr. McFarland (which they did not).

27 21. Defendants unlawfully retaliated against Mr. McFarland in response to his  
28 protesting their police misconduct and for his exercise of his First and Fourth Amendment rights.

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**STATEMENT OF DAMAGES**

22. Plaintiff suffered general damages including pain, fear, anxiety, embarrassment, humiliation, and violation of his constitutional rights in an amount to be determined according to proof.

23. As a result of the acts and/or omissions alleged herein, plaintiff has incurred and may continue to incur medical treatment and related expenses in amounts to be determined according to proof.

24. The acts and omissions of defendants Justin Zebb and Erin Mittenthal were willful, wanton, reckless, malicious, oppressive and/or done with a conscious or reckless disregard for the rights of plaintiff. Plaintiff therefore prays for an award of punitive and exemplary damages against these individual defendants according to proof.

25. Plaintiff has retained private counsel to represent him in this matter and is entitled to an award of attorneys' fees and costs.

**CAUSES OF ACTION**  
**FIRST CAUSE OF ACTION**

[42 U.S.C. §1983 – UNLAWFUL ENTRY, FALSE ARREST AND EXCESSIVE FORCE]

26. Plaintiff hereby alleges and incorporates by reference as though fully set forth herein all prior paragraphs of this Complaint.

27. At the conduct described herein, defendants Zebb and Mittenthal acted willfully, wantonly, maliciously, oppressively, and with conscious disregard and deliberate indifference to McFarland's rights.

28. Defendants Zebb and Mittenthal, jointly and severally, violated the plaintiff's clearly-established right to be free from an unlawful, warrantless entry into his home, as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Under all the circumstances presented at the McFarland residence on June 29, 2009, an objectively reasonable officer would have known that there was no fair probability that McFarland had committed or was committing any crime, and an objectively reasonable officer

1 would have known that he/she was not permitted to enter Mr. McFarland's home without a  
2 warrant under these circumstances.

3 29. Defendants Zebb and Mittenthal, jointly and severally, violated the plaintiff's  
4 clearly-established right to be free from unlawful arrest as protected by the Fourth, Fifth and  
5 Fourteenth Amendments to the United States Constitution. Under all the circumstances presented  
6 at the McFarland residence on June 29, 2009, an objectively reasonable officer would have  
7 known that there was no lawful basis to arrest Mr. McFarland.

8 30. Defendants Zebb and Mittenthal, jointly and severally, violated the plaintiff's  
9 clearly-established right to be free from an intentional and unreasonable use of excessive force  
10 under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Under all  
11 the circumstances presented at the McFarland residence on June 29, 2009, an objectively  
12 reasonable officer would have known that the use of a Taser upon Mr. McFarland was excessive,  
13 and could have led to Mr. McFarland's serious injury and/or death, and an objectively reasonable  
14 officer would not have discharged a Taser against Mr. McFarland even once.

15 31. Defendants' misconduct was so closely related to the deprivation of the plaintiff's  
16 rights as to be the moving force that caused his ultimate injuries.

17 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

18 **SECOND CAUSE OF ACTION**

19 [42 U.S.C. §1983 – MUNICIPAL LIABILITY]

20 32. Plaintiff hereby re-alleges and incorporates by reference as though fully set forth  
21 herein all prior paragraphs of this Complaint.

22 33. The acts or omissions of defendants as alleged herein regarding unlawful entry,  
23 false arrest, and the use of excessive force were, upon information and belief, caused by (1)  
24 inadequate and arbitrary training, supervision, and discipline of officers by the MCSO; (2)  
25 MCSO's failure to promulgate appropriate policies with respect to (a) in-home warrantless  
26 intrusions, (b) lawful arrests, and (c) appropriate uses of force, including the use of Tasers; (3) the  
27 deliberate indifference of the MCSO to warrantless intrusions, false arrest, and use of excessive  
28 force, and (4) customs or *de facto* policies of the MSCO, and were (5) ratified by final decision

1 makers of the MSCO. These failures and actions constitute deliberate indifference on the part of  
2 the MSCO to its obligations to insure the preservation and protection of an individual's  
3 constitutional rights. Upon information and belief, defendant Marin County knew or should have  
4 known that its acts and omissions would likely result in a violation of the Fourth, Fifth and  
5 Fourteenth Amendment rights of a person in McFarland's situation. Upon information and  
6 belief, defendant Marin County's acts and omissions were a substantial factor in the deprivation  
7 of McFarland's constitutional rights and the injuries he suffered.

8 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

9 **THIRD CAUSE OF ACTION**

10 [42 U.S.C. §1983 – RETALIATION FOR PROTECTED SPEECH]

11 34. Plaintiff hereby re-alleges and incorporates by reference as though fully set forth  
12 herein all prior paragraphs of this Complaint.

13 35. At the conduct described herein, defendants Zebb and Mittenthal acted willfully,  
14 wantonly, maliciously, oppressively, and with conscious disregard and deliberate indifference to  
15 McFarland's rights.

16 36. As alleged in this complaint, defendants violated plaintiff's rights to freedom of  
17 expression through speech and conduct under the First and Fourteenth Amendments to the United  
18 States Constitution by, among other things, assaulting, battering and intimidating plaintiff, and  
19 arresting him without cause and through the use of excessive force.

20 37. The plaintiff's protected speech and conduct of protesting police misconduct and  
21 exercising his First and Fourth Amendment rights, and the defendants' goal to chill and punish  
22 plaintiff's lawful speech and conduct, was the motivating basis for the defendants' actions.

23 38. Defendants' misconduct was so closely related to the deprivation of the plaintiff's  
24 rights as to be the moving force that caused his ultimate injuries.

25 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

[42 U.S.C. §1983 – MUNICIPAL LIABILITY]

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2  
3 39. Plaintiff hereby re-alleges and incorporates by reference as though fully set forth  
4 herein all prior paragraphs of this Complaint.

5 40. The acts or omissions of defendants as alleged herein regarding defendants'  
6 unlawful responses to plaintiff's protected speech and conduct were, upon information and belief,  
7 caused by (1) inadequate and arbitrary training, supervision, and discipline of officers by the  
8 MCSO; (2) MCSO's failure to promulgate appropriate policies with respect to respecting an  
9 individual's lawful exercise of his First and Fourth Amendment rights; (3) the deliberate  
10 indifference of the MCSO; and (4) customs or *de facto* policies of the MSCO, and were (5)  
11 ratified by final decision makers of the MSCO. These failures and actions constitute deliberate  
12 indifference on the part of the MSCO to its obligations to insure the preservation and protection  
13 of an individual's constitutional rights. Upon information and belief, defendant Marin County  
14 knew or should have known that its acts and omissions would likely result in a violation of the  
15 First, Fourth, Fifth and Fourteenth Amendment rights of a person in McFarland's situation.  
16 Upon information and belief, defendant Marin County's acts and omissions were a substantial  
17 factor in the deprivation of Mr. McFarland's constitutional rights and the injuries he suffered.

18 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

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**PRAYER FOR RELIEF**

Plaintiff prays for relief as follows:

1. For compensatory damages and other economic damages according to proof;
2. For general damages according to proof;
3. For an award of exemplary or punitive damages against the individual defendants;
4. For an award of attorney's fees and costs as permitted by law;
5. For injunctive relief designed to remedy the unlawful practices alleged herein; and
6. For such other and further relief as the Court may deem necessary and appropriate.

**JURY TRIAL DEMANDED**

Plaintiff hereby requests a jury trial on all issues so triable.

Dated: August 20, 2010

**COLEMAN & BALOGH LLP  
SCOTT LAW FIRM**

By: 

John Houston Scott  
Ethan A. Balough  
Attorneys for Plaintiff