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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

12 JAMES BLAIR;

13 Plaintiff,

14 v.

15 CITY OF EMERYVILLE, a municipal corporation;
16 EMERYVILLE POLICE DEPARTMENT, an entity
17 entity of unknown form; EPD SERGEANT
18 COLLIER, in his official and individual capacities;
19 and DOES 1-20,

20 Defendants.

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) Civil Action No.

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) **COMPLAINT FOR DAMAGES,**
) **DECLARATORY RELIEF,**
) **PRELIMINARY INJUNCTION,**
) **AND PERMANENT INJUNCTION**

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) **DEMAND FOR JURY TRIAL**
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I. INTRODUCTION

1. This is a civil rights action arising from unconstitutional and unlawful actions taken by the Emeryville Police Department (“EPD”) in response to the humanitarian cultivation of medical marijuana by Plaintiff James Blair (“Blair”). Plaintiff seeks damages from the defendants for injuries suffered as a result of the unlawful seizure and arrest conducted by the EPD at Blair’s residence on December 9, 2003. In addition, plaintiff seeks declaratory and injunctive relief to restrain defendants

from conducting similar such unlawful seizures and arrests in the future. Plaintiff Blair also seeks reasonable compensation for the medical marijuana and cultivation equipment unlawfully taken from him.

2. Plaintiff claims that defendants' actions deprived him of his right to be free from unreasonable searches and seizures, his right against false arrest and imprisonment, his right not to be deprived of property or liberty without due process of law, and his right to just compensation for property taken for public use, all guaranteed by the Constitution of the State of California. In addition, plaintiff alleges state law claims for violation of California Civil Code §§ 51.7 and 52.1, conversion, return of property, false arrest and imprisonment, negligence, abuse of process, deliberate indifference to medical needs, and intentional infliction of emotional distress, all relating to the police malfeasance complained of herein.

II. JURISDICTION

3. Jurisdiction is based on Article VI, Section 10 of the California Constitution; Civil Code §§ 51.7 & 52.1; Code of Civil Procedure § 88; Government Code § 12960, and Penal Code §§ 1536, 1538.5 and 1540.

4. On April 27, 2004, plaintiff Blair filed an administrative claim with the City of Emeryville, in compliance with California Government Code §§ 910 *et seq.* That claim was rejected by the City on June 15, 2004.

III. VENUE

5. The claims alleged herein arose in the City of Emeryville, State of California. Therefore, venue properly lies in the Superior Court of the State of California in and for the County of Alameda. (*See* Code of Civil Procedure §§ 392, 394 & 395(a)).

IV. THE PARTIES

A. Plaintiff

6. Plaintiff JAMES BLAIR (“Blair”) is, and was, on December 9, 2004, a resident of the City of Emeryville, who lawfully resided in the premises located at 4600 Adeline Street, Apartment 116, Emeryville, California. On December 9, 2004, Blair cultivated marijuana on the recommendation of his physician to alleviate symptoms associated with a serious neck injury, in accordance with California Health & Safety Code § 11362.5 (“the Compassionate Use Act”).

B. Defendants

7. Defendant CITY OF EMERYVILLE is, and at all times mentioned herein was, a municipal corporation duly organized and existing under the laws of the State of California.

8. Defendant EMERYVILLE POLICE DEPARTMENT (“EPD”) is, and at all times mentioned herein was, a department within the City of Emeryville, which is owned and operated by it.

9. Defendant EPD SERGEANT COLLIER (Star No. 274) is, and at all times mentioned herein was, an employee of the EPD, acting under the color of law within the scope of his employment, who participated in the execution of the police misconduct complained of herein.

10. Plaintiff is ignorant of the true names and/or capacities sued herein as DOES 1 through 20, inclusive, and therefore sue said defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and therefore alleges that each of the Doe defendants is legally responsible and liable for the injuries and damages hereinafter set forth, and that each of said defendants proximately caused said injuries and damages by reason of their negligence, breach of duty, negligent supervision, management or control, violation of constitutional and legal rights, or by reason of other personal, vicarious or imputed negligence, fault, or breach of duty, whether severally or jointly, or whether

based upon agency, employment, or control upon any act or omission. Plaintiff will ask leave to amend this complaint to insert further charging allegations when such facts are ascertained.

11. Each of the defendants, including defendants DOES 1 through 20, caused and is responsible for the below-described unlawful conduct and resulting injuries by, among other things, personally participating in the unlawful conduct or acting jointly or conspiring with others who did so; by authorizing, acquiescing in or setting in motion policies, plans or actions that led to the unlawful conduct; by failing to take action to prevent the unlawful conduct; by failing and refusing with deliberate indifference to plaintiff's rights to initiate and maintain adequate training and supervision; and by ratifying the unlawful conduct that occurred by agents and officers under their direction and control, including failing to take remedial or disciplinary action.

12. In doing the acts alleged herein, defendants and each of them, including defendants DOES 1 through 20, were on duty as police officers, in uniform, armed, with badges, and, thus, were acting within the scope and course of their employment with the City of Emeryville and the EPD. (*See Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 213-21, 285 Cal.Rptr. 99; *White v. County of Orange* (1985) 166 Cal.App.3d 566, 571-72, 212 Cal.Rptr. 493).

13. In doing the acts alleged herein, defendants and each of them, including defendants DOES 1 through 20, had a duty to protect the health and safety of the plaintiff, and they failed to exercise due care in the enforcement of that duty.

14. In doing the acts alleged herein, defendants and each of them, including defendants DOES 1 through 20, acted as the agent, servant, employee, partner, joint-venturer, co-conspirator and/or in concert with each of said other defendants; and in engaging in the conduct hereinafter alleged, were acting with the permission, knowledge, consent and ratification of their co-defendants, and each of them.

15. In doing the acts alleged herein, defendants and each of them, on information and belief, were personally aware of the possibility of personal injury, destruction of property, and denial of liberty and due process, which could and did result from the alleged misconduct of the defendants.

IV. FACTS APPLICABLE TO ALL CAUSES OF ACTION

16. On November 4, 1996, California voters passed Proposition 215, which is codified as the Compassionate Use Act at California Health & Safety Code § 11362.5 (“the Compassionate Use Act”), to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” without criminal penalty. (*See* Cal. Health & Safety Code § 11362.5(b)(1)).

17. Two years earlier, in 1994, Blair suffered a broken neck from a driving accident, which left him fully paralyzed with muscle spasms so severe that he had to be strapped down to a gurney or chair twenty-four hours a day. While in intensive care at a St. Petersburg, Florida hospital, Blair was told by a friend that marijuana was effective in treating muscle spasms. After overcoming his initial skepticism, Blair tried marijuana and, almost immediately, his spasms began to subside. Now, Blair has regained control over most of his body, but still needs to use marijuana daily to control involuntary muscle spasms.

18. Plaintiff Blair later obtained a written recommendation from his physician to use marijuana for this medical purpose. At all times mentioned herein, Plaintiff Blair possessed appropriate written documentation of his doctor’s recommendation.

19. Under the authority of the Compassionate Use Act, Plaintiff Blair cultivated marijuana in his apartment to treat his medical condition on the recommendation of a physician in accordance with California law. To this end, he expended considerable sums of money and labor to construct his indoor garden.

20. Despite the legality of this conduct, the Emeryville Police Department (“EPD”), on December 9, 2003, executed a search warrant at Blair’s residence, which resulted in the seizure of approximately thirty (30) marijuana plants cultivated by him for his personal medical use.

21. While executing the search warrant, EPD Sergeant Bowman forced Blair’s front door open, slammed him against the wall and used a wristlock technique to evict him from the apartment.

22. Once alone in the apartment, Sergeant Bowman, Defendant Sergeant Collier and DOES 1 through 15 ransacked Blair’s indoor medical marijuana garden.

23. One as-yet-unidentified officer, DOE 1, tore down Blair’s physician’s recommendation to use marijuana for medical use, which was posted on the wall of the grow room, crumpled it into a ball and tossed it into the corner.

24. The officers omitted any mention of Blair’s status as a medical marijuana patient or his physician’s recommendation in their police reports or the return on the search warrant, despite copies of the recommendation posted on the door and wall to the grow room and Blair’s drawing their attention to the Compassionate Use Act (Cal. Health & Safety Code § 11362.5).

25. EPD Officer Mayorga and DOES 2 through 5 arrested Blair and transported him to the Oakland Police Department where he spent approximately the next twelve hours before being released in the middle of the night.

26. On December 22, 2004, a complaint was issued against Blair for cultivating marijuana, in violation of Health and Safety Code section 11358, and for possession of marijuana for sale, in violation of Health and Safety Code section 11359. Also on the date, a warrant was issued for Blair’s arrest.

27. Three weeks later, on January 9, 2004, the Berkeley Police stopped Blair for having an expired registration and, when they found that he had an outstanding warrant based on the December 9, 2004, incident, they arrested him and took him into custody. Blair spent approximately the next

forty (40) hours in custody. Deprived of his medical marijuana, Blair suffered muscle spasms so severe that he could hardly walk and, later, he lost control over his bowels.

28. In or about January and February, 2004, Blair's attorney and physician made telephone calls and sent faxes to the prosecutor to make the prosecutor aware of and confirm Blair's status as a qualified medical marijuana patient. After receiving such communications, the prosecution dismissed the charges against Blair.

29. On April 20, 2004, Blair filed a motion for return of property with the assistance of his attorney.

30. That same day, the Honorable Carol Brosnihan of the Alameda Superior Court ordered the return of the medical marijuana plants and cultivation equipment seized from Blair in December 9, 2004. (*See People v. Blair*, Case No. 493835).

31. On or about April 21, 2004, Blair presented the written order for the return of his property to EPD Sergeant Collier and two other EPD officers and, later, City Attorney Michael Biddle. The property, however, was not returned.

32. By letter dated June 28, 2004, the EPD notified Blair that the "City of Emeryville was a victim of a burglary of an off-site secured storage facility at which items taken from your possession were stored." The same letter informed Blair that the EPD was prepared to return the property that remained in its control.

33. On September 23, 2004, the Emeryville Police Department returned a fraction of the marijuana plants taken from Blair on December 9, 2003. The plants had deteriorated, with the buds cut from them, and were unusable. Blair did not receive most of his cultivation equipment, including his grow lamps, pH meters, ballasts, air filters, timers, and pumps, which were ordered returned by the Court.

34. At no time during the events described above did Plaintiff Blair commit any criminal offense under the laws of the State of California.

35. The defendant police officers were aware of Blair's status as a medical marijuana patient and they did not have any probable cause or legal justification to seize Blair's lawfully possessed property or to arrest him.

36. As a direct and proximate result of the conduct of defendants described herein, the named individual plaintiff has been denied his constitutional, statutory and legal rights as stated below, and has suffered, continues to suffer, and will in the future suffer general and special damages, including but not limited to, mental and emotional distress, physical injuries and bodily harm, pain, fear, humiliation, embarrassment, discomfort, and anxiety, and medical and related expenses.

37. Defendants' acts were willful wanton, malicious and oppressive and done with conscious disregard and deliberate indifference to plaintiff's rights.

38. Defendants' policies, practices, conduct, and acts alleged herein have resulted and will continue to result in irreparable injury to plaintiff, including but not limited to violations of their constitutional, statutory and common law rights. Plaintiff has no plain, adequate or complete remedy at law to address the wrongs described herein. Plaintiff intends in the future to exercise their rights under the Compassionate Use Act to cultivate and possess marijuana for medical use on the recommendation of a physician in accordance with California law. Defendants' conduct described herein has created fear, anxiety and uncertainty among plaintiff with respect to his exercise now and in the future of these statutory and other constitutional rights, and with respect to their physical security and safety. Plaintiff, therefore, seeks injunctive relief from this Court, to ensure that plaintiff and persons similarly situated will not suffer violations of their rights from defendants' illegal and unconstitutional policies, customs and practices, as described herein.

39. An actual controversy exists between plaintiff and defendants in that plaintiff contends that the policies, practices and conduct of defendants alleged herein are unlawful and unconstitutional, whereas plaintiff is informed and believe that defendants contend that said policies, practices and conduct are lawful and constitutional. Plaintiff seeks a declaration of rights with respect to this controversy.

40. Plaintiff has exhausted all of his administrative remedies.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION--CONVERSION

(AGAINST ALL DEFENDANTS)

41. Plaintiff realleges and incorporates by reference paragraphs 1 through 40 of this complaint as though fully set forth herein.

42. Plaintiff Blair owned and legally possessed the cultivation equipment and medical marijuana plants growing on his property on December 9, 2003.

43. On or about December 9, 2003, Defendants Sergeant Collier and DOES 1 through 15 entered Plaintiff's property, removed approximately thirty (30) marijuana plants and his cultivation equipment, and converted the same to their own use and/or the use of the EPD.

44. Plaintiff Blair did not consent to the removal of his property and demanded its return.

45. Defendants' actions were without right or justification and constituted the conversion of Plaintiff Blair's property under the common law of California.

46. Defendants acted maliciously and in bad faith in that they knew or should have known that their actions were wrongful.

47. As a direct and proximate result of defendants' conversion, Plaintiff Blair has sustained a loss of the use of his personal property, extreme emotional distress, mental anguish,

physical pain and suffering, lost labor, and Plaintiff Blair has expended numerous hours in pursuit of the converted property, as is more fully set forth below.

48. Under Government Code § 820(a), the individual officer defendants are liable for their own misconduct.

49. Under Government Code § 815.2(a), the public entity employers are vicariously liable for conduct performed by the individual officers within the scope and course of their employment.

SECOND CAUSE OF ACTION--TAKINGS/INVERSE CONDEMNATION

Violation of California Constitution, Article I, Section 19

(AGAINST ALL DEFENDANTS)

50. Plaintiff realleges and incorporates by reference paragraphs 1 through 49 of this complaint as though fully set forth herein.

51. On December 9, 2003, and at all times mentioned herein, Plaintiff Blair was the legal resident of Apartment 116, 4600 Adeline Street, Emeryville, California, including the cultivation equipment and medical marijuana plants growing on said property.

52. On or about December 9, 2004, Defendants Sergeant Collier and and/or DOES 1 through 15 took Plaintiff's medical marijuana and cultivation equipment for public use without a legitimate public health or safety interest.

53. Plaintiff has received no monetary compensation for the damage to his property.

54. In doing the aforesaid acts, defendants violated Plaintiff's right to just compensation for property taken or damaged for public use without a legitimate public health or safety interest under article I, section 19 of the California Constitution.

55. As a proximate result of the aforesaid acts, Plaintiff has suffered a loss of personal and real property, and damage to his real property, as is more fully set forth below.

THIRD CAUSE OF ACTION--UNREASONABLE SEARCH AND SEIZURE

Violation of California Constitution, Article I, § 13

(AGAINST ALL DEFENDANTS)

56. Plaintiff realleges and incorporates by reference paragraphs 1 through 55 of this complaint as though fully set forth herein.

57. Plaintiff Blair legally resided in the apartment located at Apartment 116, 4600 Adeline Street, Emeryville, California, at all relevant times.

58. On or about December 9, 2004, Defendants Sergeant Collier and DOES 1 through 15 entered Plaintiff's residence, without his consent and seized his lawfully possessed medical marijuana and cultivation equipment.

59. The officers were aware of, but disregarded, Plaintiff's status as a qualified medical marijuana patient. His physician's recommendation to use marijuana for medical purposes was posted on the door and wall to Plaintiff's grow room. DOE 1 tore a copy of the physician's recommendation from the wall of the grow room, crumpled it into a ball, and threw it onto the floor.

60. In doing the aforementioned acts, defendants, and each of them, violated Plaintiff's rights to be free from unreasonable searches and seizures and/or excessive force under article I, section 13 of the California Constitution.

61. As a direct and proximate result of this unreasonable search and seizure and use of excessive force, Plaintiff suffered extreme emotional distress, mental anguish, physical pain and suffering, and loss of property, as is more fully set forth below.

62. Under Government Code § 820(a), the individual officer defendants are liable for their own misconduct.

63. Under Government Code § 815.2(a), the public entity employers are vicariously liable for conduct performed by the individual officers within the scope and course of their employment.

FOURTH CAUSE OF ACTION--ABUSE OF PROCESS

(AGAINST ALL DEFENDANTS)

64. Plaintiff realleges and incorporates by reference paragraphs 1 through 63 of this complaint as though fully set forth herein.

65. Plaintiff Blair legally resided in the apartment located at Apartment 116, 4600 Adeline Street, Emeryville, California, at all relevant times.

66. On or about December 9, 2004, Defendants Sergeant Collier and DOES 1 through 15 entered Plaintiff's residence, without his consent and seized his lawfully possessed medical marijuana and cultivation equipment.

67. The officers were aware of, but disregarded, Plaintiff's status as a qualified medical marijuana patient. His physician's recommendation to use marijuana for medical purposes was posted on the door and wall to Plaintiff's grow room. DOE 1 tore a copy of the physician's recommendation from the wall of the grow room, crumpled it into a ball, and threw it onto the floor.

68. None of the defendants officers mentioned Plaintiff's status as a medical marijuana patient or his physician's recommendation in their police reports or return to the search warrant.

69. Defendants, and each of them, executed the search warrant and the criminal justice process for an improper purpose and they acted with malice.

70. In doing the aforementioned acts, defendants, and each of them, committed an abuse of process.

71. As a direct and proximate result of this abuse of process, Plaintiff suffered extreme emotional distress, mental anguish, physical pain and suffering, loss of property and labor, and incurred attorney fees, as is more fully set forth below.

72. Under Government Code § 820(a), the individual officer defendants are liable for their own misconduct.

73. Under Government Code § 815.2(a), the public entity employers are vicariously liable for conduct performed by the individual officers within the scope and course of their employment.

FIFTH CAUSE OF ACTION--FALSE ARREST/IMPRISONMENT

Violation of California Constitution, Article I, § 13

(AGAINST ALL DEFENDANTS)

74. Plaintiff realleges and incorporates by reference paragraphs 1 through 73 of this complaint as though fully set forth herein.

75. On or about December 9, 2004, Plaintiff was seized and arrested by Defendants Sergeant Collier and DOES 1 through 15 while at his residence when Plaintiff had not committed any crime or public offense.

76. Defendants Sergeant Collier and/or DOES 1 through 15 intentionally restrained Plaintiff and delivered him to the City Jail where he was imprisoned overnight.

77. Plaintiff did not consent to the detention.

78. Defendants were aware of, but disregarded Plaintiff's status as a qualified medical marijuana patient.

79. In doing the aforesaid acts, defendants, and each of them, violated Plaintiff's right to be free from unreasonable seizures of his person under article I, section 13 of the California Constitution.

80. As a direct and proximate result of this unreasonable seizure of his person, Plaintiff suffered extreme emotional distress, mental anguish, physical pain and suffering, and loss of property and labor, as is more fully set forth below.

81. Under Government Code § 820(a), the individual officer defendants are liable for their own misconduct.

82. Under Government Code § 815.2(a), the public entity employers are vicariously liable for conduct performed by the individual officers within the scope and course of their employment.

SIXTH CAUSE OF ACTION--FALSE ARREST/IMPRISONMENT

Common Law

(AGAINST ALL DEFENDANTS)

83. Plaintiff realleges and incorporates by reference paragraphs 1 through 82 of this complaint as though fully set forth herein.

84. On or about December 9, 2004, Plaintiff was seized and arrested by Defendants Sergeant Collier and DOES 1 through 15 while at his residence when Plaintiff had not committed any crime or public offense.

85. Defendants Sergeant Collier and/or DOES 1 through 15 intentionally restrained Plaintiff and delivered him to the City Jail where he was imprisoned overnight.

86. Plaintiff did not consent to the detention.

87. Defendants were aware of, but disregarded Plaintiff's status as a qualified medical marijuana patient.

88. In doing the aforesaid acts, defendants, and each of them, falsely arrested and imprisoned Plaintiff under the common law of California.

89. As a direct and proximate result of this unreasonable seizure of his person, Plaintiff suffered extreme emotional distress, mental anguish, physical pain and suffering, loss of property and labor, and incurred attorney fees, as is more fully set forth below.

90. Under Government Code § 820(a), the individual officer defendants are liable for their own misconduct.

91. Under Government Code § 815.2(a), the public entity employers are vicariously liable for conduct performed by the individual officers within the scope and course of their employment.

SEVENTH CAUSE OF ACTION--DUE PROCESS

Violation of California Constitution, Article I, § 7(a)

(AGAINST ALL DEFENDANTS; DECLARATORY AND INJUNCTIVE RELIEF ONLY)

92. Plaintiff realleges and incorporates by reference paragraphs 1 through 91 of this complaint as though fully set forth herein.

93. Defendants' above-described conduct violated Plaintiff's right not to be deprived of property or liberty without due process of law under article I, section 7(a) of the California Constitution.

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EIGHTH CAUSE OF ACTION--BANE CIVIL RIGHTS ACT

Violation of California Civil Code § 52.1

(AGAINST ALL DEFENDANTS)

94. Plaintiff realleges and incorporates by reference paragraphs 1 through 93 of this complaint as though fully set forth herein.

95. Under article I, section 19 of the California Constitution, Plaintiff has the right to just compensation for property taken or damaged for public use without a legitimate public health or safety interest.

96. Under article I, section 7(a) of the California Constitution, Plaintiff has the right not to be deprived of property or liberty without due process of law.

97. Under article I, section 13 of the California Constitution, Plaintiff has the right to be free from unreasonable searches and seizures and the use of excessive force.

98. Under Health & Safety Code § 11362.5(b)(1), “seriously ill Californians have the right to obtain and use marijuana for medical purposes. . . .”

99. Defendants’ above-described conduct constituted interference with, and attempted interference, by threats, intimidation and coercion, with Plaintiff’s peaceable exercise and enjoyment of these rights secured by the Constitution and laws of the State of California, in violation of California Civil Code § 52.1.

100. As a direct and proximate result of Defendants’ interference with Plaintiff’s constitutional and statutory rights, Plaintiff suffered extreme emotional distress, mental anguish, physical pain and suffering, loss of property and labor, and incurred attorney fees, as is more fully set forth below.

101. Under Government Code § 820(a), the individual officer defendants are liable for their own misconduct.

102. Under Government Code § 815.2(a), the public entity employers are vicariously liable for conduct performed by the individual officers within the scope and course of their employment.

NINTH CAUSE OF ACTION--NEGLIGENCE

(AGAINST DEFENDANTS DOES 16-20, EPD AND CITY OF EMERYVILLE)

103. Plaintiff realleges and incorporates by reference paragraphs 1 through 102 of this complaint as though fully set forth herein.

104. Defendants EPD, the City of Emeryville, and DOES 16 through 20 had a duty of care to the Plaintiff and to the public to use reasonable care in their hiring, training, supervision, discipline and retention of the defendant officers.

105. Defendants, and each of them, breached this duty of care to the Plaintiff and the public in their hiring, supervision, training, discipline, and retention of the defendant officers who committed the torts described above.

106. As a direct and proximate result of the negligence of these defendants, Plaintiff suffered extreme emotional distress, mental anguish, physical pain and suffering, and loss of property and labor, as is more fully set forth below.

107. Under Government Code § 820(a), the individual officer defendants are liable for their own misconduct.

108. Under Government Code § 815.2(a), the public entity employers are vicariously liable for conduct performed by the individual officers within the scope and course of their employment.

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TENTH CAUSE OF ACTION--INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(AGAINST ALL DEFENDANTS)

109. Plaintiff realleges and incorporates by reference the allegations of the paragraphs 1 through 108 of this complaint as though fully set forth herein.

110. The conduct set forth above was extreme and outrageous and an abuse of the position of Defendant Sergeant Collier and DOES 1 through 15. Said conduct was intended to cause severe emotional distress, or was done in conscious disregard of the probability of causing such distress.

111. The foregoing conduct did, in fact, cause Plaintiff to suffer extreme emotional distress. As a proximate result of said conduct, Plaintiff suffered embarrassment, anxiety, humiliation and emotional distress.

112. Under Government Code § 820(a), the individual officer defendants are liable for their own misconduct.

113. Under Government Code § 815.2(a), the public entity employers are vicariously liable for conduct performed by the individual officers within the scope and course of their employment.

VI. STATEMENT OF DAMAGES

114. As a direct and proximate result of the wrongful acts and/or omissions of the Defendants, as set forth above, Plaintiff has sustained the following injuries and damages:

- a. Physical pain and mental anguish, past and present;
- b. Severe emotional distress, humiliation, fear, and embarrassment;
- c. Loss of property and labor, and costs of replacing property and labor;
- d. Time and effort to secure the return of property unlawfully taken;
- e. Past and future medical expenses; and
- f. Attorney's fees.

115. The actions of Defendants were malicious or oppressive, and amounted to gross negligence and a reckless disregard for the Plaintiff, and justify the imposition of exemplary damages upon these Defendants in order to encourage and ensure that these Defendants, as well as other police officers, will not repeat the same, or substantially similar conduct.

WHEREFORE, the Plaintiff prays for damages as follows:

- a. That this Court declare the rights of all parties;
- b. Compensatory damages, including, but not limited to general and special damages, according to proof at trial;
- c. Exemplary and punitive damages;
- d. Treble damages for each violation of the Bane Civil Rights Act, as provided by Civil Code §§ 52(a) & 52.1;
- e. Reasonable attorney's fees;
- f. Costs of suit incurred herein;
- g. That this Court issue an order requiring Defendants to show cause why they should not be enjoined, as hereinafter set forth;
- h. That this Court issue a preliminary injunction, and a permanent injunction, enjoining Defendants and their agents, servants, and employees, and all persons acting under and in concert with, or for them, from continuing to violate the statutory and constitutional rights of qualified medical marijuana patients to be free from unreasonable searches and seizures; and

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i. All other compensatory, equitable and declaratory relief as this Court deems just.

Respectfully submitted, this ___ day of December, 2004.

JOSEPH D. ELFORD
Attorney for Plaintiff
JAMES BLAIR

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial of this action.

DATED:

JOSEPH D. ELFORD
Attorney for Plaintiff
JAMES BLAIR

VERIFICATION

I, James Blair, do declare as follows:

That I am a Plaintiff in the above-entitled action. I have read the foregoing Complaint for Damages, Injunctive and Declaratory Relief, and for a Preliminary Injunction; Demand for Jury Trial, and I know its contents.

I declare, therefore, that the matters stated in the foregoing document are true of my own knowledge, except as to matters which are stated on information and belief, and as to those matters, I believe them to be true. Those matters I aver are what I know to be true.

I declare under penalty of perjury under the law of the United States that the foregoing is true and correct.

Executed on this __ day of December, 2004.

JAMES BLAIR
Plaintiff