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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10
11 PETER KNOWLES,
12 Plaintiff,
13 v.

14 CITY OF BENICIA, Police Chief SANDRA
15 SPAGNOLI, City Manager JIM ERICKSON,
16 Sergeant FRANK HARTIG, Sergeant BOB
17 OETTINGER, Sergeant CHRIS BIDOU,
18 Sergeant SCOTT PRZEKURAT, Officer JOHN
19 MCFADDEN, Officer MARK MENESINI,
20 Officer JAMES LAUGHTER, Officer KEVIN
ROSE, Officer JASON EAKIN, Officer, TED
21 CRIADO, Officer JAKE HEINEMEYER, and
22 DOES I through XXX, inclusive,
23 Defendants.

Case No.
**COMPLAINT FOR VIOLATION OF
CIVIL RIGHTS**
JURY TRIAL DEMANDED

INTRODUCTION

Between December 2007 and May 2008, members of the Benicia Police Department repeatedly harassed Plaintiff PETER KNOWLES, in violation of his rights under the First, Fourth, and Fourteenth Amendments to the Constitution of the United States. On three separate occasions, Benicia Police Department officers unlawfully entered and searched Plaintiff’s private residence, without a warrant or exigent circumstances, twice arresting Plaintiff.

On December 23, 2007, Defendants entered Plaintiff’s private residence without a warrant, and lacking exigent circumstances justifying a warrantless intrusion, and arrested him for driving under the influence. The Appellate Division of the Superior Court of Solano decided that Benicia Police Department officers had violated Plaintiff’s Fourth Amendment rights and reversed the criminal conviction against Plaintiff.

On April 30, 2008, in the middle of the night and without probable cause or a warrant, Benicia Police Department officers stormed the docked boat Plaintiff was living on. The officers kicked in a locked door, pointed their weapons at Plaintiff, and yelled “shoot him,” before retreating into the night without any formal arrest or charges being made. On May 30, 2008, Defendants once again searched Plaintiff’s residence without a warrant and then affected a warrantless arrest inside his residence. In addition to these events, following the December 23, 2007 incident, Plaintiff routinely was followed and stopped by Benicia Police Department officers whether in a car or on foot, and on multiple occasions threatened and told to leave town.

As a result of this harassment, and fearing for his life, Plaintiff was forced to move out of the City of Benicia, where he was employed as Harbor Master of the Benicia Marina and which was adjacent to the California Maritime Academy, where Plaintiff was a student. The harassment has caused Plaintiff to suffer from physical injuries and emotional distress including post-traumatic stress disorder, to incurred substantial legal fees to defend against criminal charges, and to suffer additional pecuniary loss including legal fees and the negative impact that the arrests, none of which have led to convictions, have had on his ability to secure employment in his field of study, maritime and port security.

JURISDICTION AND VENUE

1
2 1. This action is brought pursuant to 42 U.S.C. § 1983 for violations of the First,
3 Fourth, and Fourteenth Amendments to the United States Constitution. The court has
4 jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

5 2. The claims alleged herein arose in the City of Benicia, County of Solano,
6 California. Therefore, venue in the Eastern District of California and is proper pursuant to 28
7 U.S.C. § 1391(b)(2).

8 **PARTIES**

9 3. Plaintiff PETER KNOWLES is a citizen of the United States, and a resident of the
10 City of Sacramento, County of Sacramento, and State of California. PETER KNOWLES is
11 presently a free person and brings this action on his own behalf.

12 4. Defendant CITY OF BENICIA is a public entity, duly organized and existing
13 under the laws of the State of California. Under its authority, Defendant CITY OF BENICIA
14 operates the Benicia Police Department.

15 5. Defendant Police Chief SANDRA SPAGNOLI was at all times relevant hereto, the
16 Chief of the Benicia Police Department. As such, she is the responsible party for supervising the
17 training, instruction, discipline, control and conduct of Defendant police officers. She is also
18 charged with promulgating all orders, rules, instructions and regulations of the Benicia Police
19 Department including but not limited to those orders, rules, instructions and regulations
20 concerning the authority to conduct warrantless searches and arrests. Defendant SPAGNOLI is
21 sued in her official and individual capacities.

22 6. Defendant City Manager JIM ERICKSON was at all times relevant hereto, the City
23 Manager for the City of Benicia. As such he is responsible for supervising and informing the
24 City of Benicia Police Chief. Defendant ERICKSON is sued in his official and individual
25 capacities.

26 7. Defendant FRANK HARTIG was a Sergeant in the Benicia Police Department at
27 all times relevant hereto. In committing the acts and omissions alleged herein, Defendant
28 HARTIG was acting under color of state law and within the course and scope of his employment

1 as a sergeant in the Benicia Police Department. As a sergeant, Defendant HARTIG was an
2 official with final policy-making authority regarding the supervision, discipline, training and
3 equipping of officers for the Benicia Police Department. Defendant HARTIG is sued in his
4 official and individual capacities.

5 8. Defendant BOB OETTINGER was a Sergeant in the Benicia Police Department at
6 all times relevant hereto. In committing the acts and omissions alleged herein, Defendant
7 OETTINGER was acting under color of state law and within the course and scope of his
8 employment as a sergeant in the Benicia Police Department. As a sergeant, Defendant
9 OETTINGER was an official with final policy-making authority regarding the supervision,
10 discipline, and training of officers for the Benicia Police Department. Defendant OETTINGER
11 is sued in his official and individual capacities.

12 9. Defendant JAMES LAUGHTER was an officer in the Benicia Police Department
13 at all time relevant hereto. In committing the acts and omissions alleged herein, Defendant
14 LAUGHTER was acting under color of state law and within the course and scope of his
15 employment as an officer in the Benicia Police Department. Defendant LAUGHTER is sued in
16 his official and individual capacities.

17 10. Defendant CHRIS BIDOU was an officer in the Benicia Police Department at all
18 time relevant hereto. In committing the acts and omissions alleged herein, Defendant BIDOU
19 was acting under color of state law and within the course and scope of his employment as an
20 officer in the Benicia Police Department. Defendant BIDOU is sued in his official and
21 individual capacities.

22 11. Defendant JOHN MCFADDEN was an officer in the Benicia Police Department at
23 all time relevant hereto. In committing the acts and omissions alleged herein, Defendant
24 MCFADDEN was acting under color of state law and within the course and scope of his
25 employment as an officer in the Benicia Police Department. Defendant MCFADDEN is sued in
26 his official and individual capacities.

27 12. Defendant MARK MENESINI was an officer in the Benicia Police Department at
28 all time relevant hereto. In committing the acts and omissions alleged herein, Defendant

1 MENESINI was acting under color of state law and within the course and scope of his
2 employment as an officer in the Benicia Police Department. Defendant MENESINI is sued in
3 his official and individual capacities.

4 13. Defendant KEVIN ROSE was an officer in the Benicia Police Department at all
5 times relevant hereto. In committing the acts and omissions alleged herein, Defendant ROSE
6 was acting under color of state law and within the course and scope of his employment as an
7 officer in the Benicia Police Department. Defendant ROSE is sued in his official and individual
8 capacities.

9 14. Defendant SCOTT PRZEKURAT was a Sergeant in the Benicia Police Department
10 at all time relevant hereto. In committing the acts and omissions alleged herein, Defendant
11 PRZEKURAT was acting under color of state law and within the course and scope of his
12 employment as an officer in the Benicia Police Department. Defendant PRZEKURAT is sued in
13 his official and individual capacities.

14 15. Defendant JASON EAKIN was an officer in the Benicia Police Department at all
15 times relevant hereto. In committing the acts and omissions alleged herein, Defendant EAKIN
16 was acting under color of state law and within the course and scope of his employment as an
17 officer in the Benicia Police Department. Defendant EAKIN is sued in his official and individual
18 capacities.

19 16. Defendant TED CRIADO was an officer in the Benicia Police Department at all
20 times relevant hereto. In committing the acts and omissions alleged herein, Defendant CRIADO
21 was acting under color of state law and within the course and scope of his employment as an
22 officer in the Benicia Police Department. Defendant CRIADO is sued in his official and
23 individual capacities.

24 17. Defendant JAKE HEINEMEYER was an officer in the Benicia Police Department
25 at all times relevant hereto. In committing the acts and omissions alleged herein, Defendant
26 HEINEMEYER was acting under color of state law and within the course and scope of his
27 employment as an officer in the Benicia Police Department. Defendant HEINEMEYER is sued
28 in his official and individual capacities.

1 18. Plaintiff KNOWLES is ignorant of the true names and capacities of defendants
2 sued herein as DOES I through XXX, and therefore sues said defendants by such fictitious
3 names. Plaintiff KNOWLES is informed and believes and therefore alleges on information and
4 belief, that each of them is responsible in some manner for the injuries and damages alleged
5 herein. Plaintiff KNOWLES therefore sues DOES I through XXX, by such fictitious names and
6 will seek leave to amend this complaint to add their true names when the same have been
7 ascertained. DOES I through XXX are sued in their official and individual capacities.

8 19. At all times mentioned herein, the Defendants named in paragraphs 5 through 18,
9 and each of them, acted within the course and scope of their employment.

10 20. At all times mentioned herein, the Defendants, and each of them, acted under color
11 of state law.

12 21. Plaintiff KNOWLES is informed and believes, and on that basis alleges, that each
13 Defendant acted in concert with and as an agent of each other Defendant.

14 **FACTUAL ALLEGATIONS**

15 22. Commencing on or about August 2007, Plaintiff moved to the CITY OF BENICIA
16 to attend classes at the California Maritime Academy (“CMA”) in Vallejo, California, where he
17 studied Global Studies and Maritime Affairs with a concentration on Maritime Law and Security
18 and was elected to the position of Executive Student Body President in February 2008.

19 23. While enrolled at the CMA, and at all times relevant to this action, Plaintiff was
20 employed as Harbormaster for the Benicia Harbor Corporation, which operates the Benicia
21 Marina. Plaintiff also served as an intern with the United States Secret Service in 2007 and as a
22 Security Officer for A Secure Choice Inc. from 2004 to 2006.

23 24. Shortly after moving to the City of Benicia, Plaintiff became the target of Benicia
24 Police Department scrutiny. On numerous occasions, prior to December 23, 2007, Plaintiff
25 observed Benicia Police Department patrol cars following him while he drove and driving past
26 his residence.

1 25. Between December 23, 2007 and May 30, 2008, after which Plaintiff moved out of
2 the City of Benicia, the Benicia Police Department scrutiny escalated, resulting in numerous
3 warrantless searches and arrests, as described below.

4 **December 23, 2007 Search and Arrest**

5 26. Plaintiff is informed and believes that Defendant HARTIG alleges the following:
6 On or about 12:06 A.M. on December 23, 2007, Defendant HARTIG was in the process of
7 issuing a citation to an unrelated motorist. Defendant HARTIG then observed a Jeep leave an
8 adjacent parking lot. Defendant HARTIG finished writing the citation to the motorist and
9 radioed a description of the Jeep. Defendant HARTIG then began to search for the Jeep, which
10 was now out of sight. Defendant HARTIG did not observe the Jeep's license plate number. A
11 few minutes later, Defendant HARTIG observed what he thought was the same Jeep traveling in
12 the opposite direction. Defendant HARTIG turned around and pursued what he only suspected
13 was the same Jeep, but once again lost sight of it and was unable to observe a license plate
14 number. Acting "on a hunch" Defendant HARTIG turned onto Devonshire Road and allegedly
15 observed a Jeep pulling into a residential garage on Stuart Court in the City of Benicia. At no
16 time did Defendant HARTIG turn on his siren or lights or otherwise attempt to stop the Jeep.

17 27. At approximately 12:15 A.M., Plaintiff KNOWLES was inside the garage of his
18 personal residence at 1753 Stuart Court, Benicia California 94510 ("1753 Stuart Court").
19 Defendant HARTIG entered the garage of Plaintiff's personal residence at 1753 Stuart Court.
20 Defendant HARTIG did not knock, did not announce his presence, and did not request
21 permission to enter Plaintiff's residence. Plaintiff is informed and believes that Defendant
22 HARTIG did not have a warrant to arrest Plaintiff or to search his residence.

23 28. Immediately upon entering Plaintiff KNOWLES' residence at 1753 Stuart Court,
24 Defendant HARTIG placed Plaintiff in handcuffs. Defendant HEINEMEYER, who had arrived
25 at the location, then kicked Plaintiff's legs and pressed Plaintiff's face into the hood of Defendant
26 HARTIG's patrol car. Plaintiff was placed under arrest and taken to the Benicia Jail by
27 Defendant MCFADDEN, where he was booked for driving under the influence ("DUI") and a
28 blood sample was extracted from Plaintiff.

1 29. While Defendant MCFADDEN drove Plaintiff to the jail, he operated the patrol car
2 in a reckless manner, speeding, running traffic lights and stop signs in an apparent attempt to
3 obtain a blood sample as quickly as possible. Defendant MCFADDEN also refused to secure
4 Plaintiff with a seat belt in the patrol car, despite the fact that Plaintiff was secured in handcuffs,
5 which Defendant McFadden failed to double lock causing the handcuffs to tighten.

6 30. Despite being safely parked in his garage, Plaintiff's car was towed from his home
7 and impounded. This resulted in charges of \$200.00 for towing and storage, \$130.00 in vehicle
8 release fees by the Benicia Police Department, and a \$400.00 registered owner after-hours
9 response and vehicle recovery charge.

10 31. Plaintiff is informed and believes that in 2005, the City of Benicia was cited in a
11 Solano County grand jury report for failing to promulgate a policy to determine when vehicles
12 should be towed, and in response, then Chief of Police James E. Trimble responded that the City
13 did not require such a policy.

14 32. Plaintiff's December 23, 2007 arrest was reported in the Benicia Herald on or
15 around January 1, 2008.

16 33. On or around April 2008, Plaintiff's license was preliminarily suspended for four
17 months by the DMV, pending his trial on the DUI charge. The suspension lasted until August
18 2008.

19 34. On or about September 30, 2008, the Superior Court of the State of California for
20 Solano County held a hearing and denied Plaintiff's motion to suppress evidence obtained as a
21 result of Defendant HARTIG's unlawful entry into Plaintiff's garage on December 23, 2007.
22 Plaintiff plead no contest to criminal charges for DUI in order to immediately appeal the denial
23 of the motion to suppress evidence.

24 35. Plaintiff was sentenced to two days in the county jail, placed on summary
25 probation for three years, ordered to pay a fine of \$1,482.00 and administrative fees of \$230.00,
26 his driver's license was suspended, and he was ordered to enroll in the First Offender DUI
27 program. The Superior Court stayed the fine, fees, and sentence pending an appeal of the denial
28

1 of the motion to suppress evidence, but did not stay the requirement that Plaintiff's license be
2 suspended and that he attend DUI classes at a cost of \$594.00.

3 36. On or about September 30, 2008, Plaintiff timely filed a notice of appeal of the
4 denial of his suppression motion to the Appellate Division of the Superior Court of Solano,
5 California. During the pendency of this appeal, a period of over seven months, Plaintiff's license
6 remained suspended, causing him to incur substantial costs and expenses to obtain alternative
7 transportation.

8 37. On or about April 17, 2009, the Appellate Division of the Superior Court of
9 Solano, California, overturned Plaintiff's September 30, 2008 conviction on the grounds that
10 Defendant HARTIG had violated Plaintiff's Fourth Amendment rights by entering into
11 Plaintiff's residence without a warrant and without sufficient exigent circumstances to justify
12 entry into Plaintiff's residence without a warrant. *People of the State of California v. Knowles*,
13 Case No. VCR200106, Opinion of the Court, April 17, 2009. **Exhibit A** hereto. Specifically,
14 the Appellate Division held that "[t]he People have not shown the existence of any exigency
15 making [the] warrantless entry reasonable.... All evidence seized after Officer Hartig crossed
16 the threshold of Appellant's garage is suppressed." *Id.* at 7. The Appellate Division remanded to
17 the trial court for further proceedings consistent with this ruling.

18 38. On May 22, 2009, on remand, the case against Plaintiff was dismissed for lack of
19 evidence and Plaintiff's driver's license was reinstated.

20 39. In total, Plaintiff incurred over \$18,173.68 in legal fees to successfully defend
21 against the criminal charges resulting from the December 23, 2007 arrest. Additionally,
22 Plaintiff's car insurance rates have increased dramatically as a result of the DUI charge.

23 40. Plaintiff has incurred \$2,956.92 in legal fees and continues to incur additional legal
24 fees in his efforts to correct his record with the California Department of Justice and Department
25 of Motor Vehicles to reflect that the DUI conviction was overturned. To date, the DMV has not
26 removed the terms of probation associated with the vacated conviction, and continues to report
27 multiple license suspensions arising as a result of violations of certain restrictions associated with
28 the probation (such as a lapse in insurance coverage for even a single day). As recently as

1 August 2009, Plaintiff's license was suspended when his insurance company dropped coverage
2 due to the DMV license suspensions. The insurance company electronically notified the DMV
3 of the lapse in coverage, causing an additional license suspension which lasted for one week.

4 **January 3, 2008 Traffic Stop**

5 41. On or about January 3, 2008, Plaintiff observed a Benicia Police Department patrol
6 car parked outside his place of employment, the Benicia Marina. Plaintiff is informed and
7 believes that this patrol car was occupied by Defendant OETTINGER. Aware that the patrol car
8 was parked outside his place of employment, when Plaintiff later left the Marina in his car he
9 was careful to obey all traffic laws. Nevertheless, Plaintiff was promptly pulled over by
10 Defendant OETTINGER.

11 42. Defendant OETTINGER proceeded verbally to abuse Plaintiff and brandished his
12 firearm. Defendant OETTINGER accused Plaintiff of reckless driving and instructed Plaintiff to
13 "leave town." Defendant OETTINGER also threatened to arrest Plaintiff and tow his car
14 "again," indicating that Defendant OETTINGER was aware that Plaintiff had been previously
15 arrested on December 23, 2007.

16 43. Following this unreasonable traffic stop, ominous threats and unreasonable show of
17 force; Plaintiff was released without receiving any citation.

18 **March 26, 2008 Surveillance**

19 44. On or about the night of March 26, 2008, Plaintiff was walking the grounds of the
20 Benicia Marina where he was employed as Harbormaster. Plaintiff observed a Benicia Police
21 Department vehicle following him. Plaintiff is informed and believes that the police vehicle was
22 operated by Defendant BIDOU.

23 45. Plaintiff entered an area of the Marina that does not permit vehicle traffic, at which
24 time Defendant BIDOU began to follow Plaintiff on foot and attempted to interrogate Plaintiff,
25 though he never asked Plaintiff to stop. Based on Plaintiff's previous interactions with the
26 Benicia Police Department, including the threats to "leave town" on January 3, 2008, Plaintiff
27 refused to speak to Defendant BIDOU.

April 30, 2008 Warrantless Search and Arrest

1
2 46. On or about the night of April 30, 2008, Plaintiff was renting and residing on a boat
3 docked in the Benicia Marina, the *Saucy Wench*. Plaintiff was renting the *Saucy Wench* from the
4 owner of the Marina, John Ash. Plaintiff typically spent several nights a week on the boat.

5 47. The *Saucy Wench* is a 38 foot Erickson Sailboat, which at all relevant times did not
6 have an engine. The cabin of the *Saucy Wench* contains a bedroom, a bathroom, a refrigerator
7 and other appliances and was hooked to an on-shore power source. An electronic key card was
8 required to gain entrance to the dock area where the *Saucy Wench* and other docked watercraft
9 were located.

10 48. At around midnight, as Plaintiff walked along the sidewalk leading towards the
11 Marina and the *Saucy Wench*, he once again observed that he was being followed by a Benicia
12 Police Department patrol car. However, Defendant police officers did not attempt to stop
13 Plaintiff, who continued walking home to the *Saucy Wench*.

14 49. Plaintiff entered the secure gated area where the *Saucy Wench* was docked and then
15 continued on to the *Saucy Wench*. Shortly after Plaintiff entered the cabin of the *Saucy Wench*,
16 Defendants BIDOU, LAUGHTER, MENESINI, and at least two other unnamed Benicia Police
17 Department officers appeared on the dock near the boat.

18 50. Defendants BIDOU, LAUGHTER, MENESINI, and two additional officers then
19 boarded the *Saucy Wench* and began making physical threats against Plaintiff and demanding
20 that he exit the cabin of the boat. Defendant officers threatened Plaintiff with a tazer and a police
21 dog.

22 51. Based on Plaintiff's prior interactions with the Benicia Police Department,
23 including having been told to leave town, Plaintiff feared for his safety should he exit the cabin
24 of the boat. Accordingly, Plaintiff contacted a friend who is a police officer for another
25 municipality by cell phone to seek advice on how to react to officers' demands.

26 52. While Plaintiff was still on the phone, members of the Benicia Police Department
27 kicked in the door to the cabin area of the *Saucy Wench*. In kicking in the door to the cabin of
28 the *Saucy Wench*, Defendants broke the frame of the door and the door itself. At no time did

1 Plaintiff consent to Defendants boarding or entering the cabin of the *Saucy Wench*. Plaintiff is
2 informed and believes that Defendants did not have a search or arrest warrant.

3 53. Defendants BIDOU, MENESINI, and other Benicia Police Department officers
4 then entered the cabin area and pointed their guns at Plaintiff. One officer shouted “shoot him,”
5 causing Plaintiff to fear that he would be killed.

6 54. The officers forced Plaintiff out of his bed and searched his person and the cabin
7 area of the boat. Plaintiff was held with his arms behind his back and was not free to leave the
8 *Saucy Wench*.

9 55. When Plaintiff inquired as to why he was being detained, Defendants stated that
10 Plaintiff had run from them. Plaintiff had at no time run from Defendants and Defendants had
11 never attempted to detain him prior to boarding the boat.

12 56. Defendant MENESINI then began to scream at Plaintiff in what Plaintiff believes
13 was an effort to incite Plaintiff to fight Defendant MENESINI. When Plaintiff declined to react
14 to Defendant MENESINI’s provocations and instead demanded to know why he was being
15 detained, Defendant MENESINI repeatedly yelled “Don’t be a fucking pussy!” to Plaintiff.
16 Defendant CHRIS BIDOU said to Plaintiff that if he moved out of Benicia, these types of
17 interactions would cease.

18 57. After completing their search, Defendant BIDOU ordered the remaining
19 Defendants to leave the boat, and Plaintiff was released. As Defendants left the *Saucy Wench*,
20 Defendant BIDOU ominously instructed Plaintiff to “go back to sleep.”

21 58. Plaintiff was not cited or arrested in conjunction with this incident.

22 59. The following morning of April 30, 2008, Plaintiff and John Ash, owner of the
23 Benicia Harbor Corporation and the *Saucy Wench*, met with Benicia City Attorney Heather
24 McLaughlin and City Manager Jim Erickson regarding the Benicia Police Department’s actions
25 the preceding night and on another occasion. Despite this meeting, neither Plaintiff nor Mr. Ash
26 has received an explanation of the Benicia Police Department’s actions. Mr. Ash sent a follow
27 up letter recapitulating the meeting to Mr. Erickson, copied to Ms. McLaughlin, on May 12,
28 2008 requesting further explanation, but received no response.

1 60. As a result of the psychological trauma associated with the events of April 30,
2 2008, including having multiple police officers draw their weapons on Plaintiff and shouting
3 “shoot him!,” Plaintiff has suffered from recurring nightmares and has been diagnosed with post-
4 traumatic stress disorder (“PTSD”).

5 **May 8, 2008 Harassment**

6
7 61. On or about May 8, 2008, Plaintiff was riding in the passenger seat of a friend’s car
8 while waiting in the drive-thru of a Taco Bell in Benicia. Defendant MENESINI approached the
9 car Plaintiff was sitting in without his headlights on and sounded the siren. Defendant
10 MENESINI pulled his patrol car next to the car in which Plaintiff sat and proceeded to look
11 inside the vehicle and question Plaintiff and the driver.

12 62. Plaintiff is informed and believes that Defendant MENESINI did not realize that
13 Plaintiff was in the car until Plaintiff recognized him as the same officer who had attempted to
14 provoke a physical confrontation during the April 30, 2008 incident on the *Saucy Wench*.
15 Plaintiff confronted Defendant MENESINI, stating that he recognized Defendant MENESINI
16 from the April 30, 2008 incident aboard the *Saucy Wench*. Defendant MENESINI then left the
17 Taco Bell at a high rate of speed.

18 63. Neither Plaintiff nor the driver were cited or arrested in connection with this event.

19 **May 30, 2008 Warrantless Search and Arrest**

20 64. On or about the night of May 30, 2008, Plaintiff was at his home when he heard a
21 loud knock on the door. Plaintiff looked out the window of his residence and observed a group
22 of between four and five Benicia Police officers standing at the front door, including Defendants
23 ROSE, EAKIN, and CRIADO. Defendant ROSE observed Plaintiff looking out the window and
24 yelled to him to “open the door.”

25 65. Plaintiff feared, in light of his experience on April 30, 2008, that if he did not open
26 the door, the officers would kick it in. Accordingly, Plaintiff opened the front door but left the
27 screen door closed and remained inside his residence. The officers instructed Plaintiff to come
28 outside. In response, Plaintiff requested to know what was going on.

1 66. When Plaintiff inquired as to why he should come outside, Defendant ROSE
2 opened the screen door and physically pulled Plaintiff out of his residence. Plaintiff was then
3 handcuffed and advised that he was being placed under arrest for “vehicle theft.” Plaintiff asked
4 the Defendant officers whether they had a warrant for his arrest, and he was informed that they
5 did not.

6 67. After placing Plaintiff in handcuffs, Defendants began to search the residence.
7 Plaintiff asked whether Defendants had a warrant to search his house, and was similarly advised
8 that they did not. At no time were Defendants given consent to search Plaintiff’s residence.

9 68. Defendants proceeded to search the entire condominium, though Plaintiff only
10 rented a single bedroom. In conducting the search, Defendants trashed the condominium
11 dumping the contents of closets and drawers onto the floor. Plaintiff was informed during the
12 search that Defendants were searching for the keys to the allegedly stolen vehicle. Defendants
13 never searched the garage attached to the condominium and there were no vehicles on the
14 premises.

15 69. Plaintiff was then transported to the City Jail. While detained at the City Jail,
16 Plaintiff asked Defendant LAUGHTER what car had allegedly been stolen. Defendant
17 LAUGHTER replied that the allegedly stolen vehicle belonged to Plaintiff’s friend, classmate,
18 and co-worker, Charles Hendricks. Defendant LAUGHTER further stated that at that time
19 Mr. Hendricks was in possession of both his keys and his car.

20 70. Plaintiff is informed and believes that at the conclusion of the warrantless search of
21 Plaintiff’s residence, Defendants either knew that Plaintiff was not in possession of the keys to
22 the allegedly stolen vehicle, or that Defendants could have ascertained the location of the keys if
23 Defendants had exercised reasonable diligence in performing their duties and not neglected to
24 make reasonable and necessary factual investigation. Nevertheless, Defendants continued with
25 the invasive, unreasonable, and ultimately unsuccessful warrantless search before transporting
26 Plaintiff to the County Jail, where Plaintiff was forced to spend the night after being booked for
27 felony vehicle theft charges.

28

1 71. While Plaintiff was detained in the County Jail over night, he was assaulted by an
2 inmate and in the course of defending himself; Plaintiff sustained a fracture to his right hand,
3 which resulted in medical expenses of \$350.56, and considerable pain.

4 72. Plaintiff also incurred non-refundable expenses of \$2,015.00 in bail bondsman
5 fees. Plaintiff further incurred additional legal fees associated with preparing for a potential
6 defense against the Vehicle Theft charges.

7 73. Plaintiff's May 30, 2008 arrest for vehicle theft was reported in the Benicia Herald
8 on June 8, 2008.

9 74. The charges against Plaintiff were dropped by the Solano County District Attorney
10 on June 4, 2008. Plaintiff is informed and believes that the Benicia Police Department
11 subsequently attempted to recharge Plaintiff with lesser charges stemming from this incident,
12 which were also rejected by the District Attorney's office. Mr. Hendricks later informed the
13 Benicia Police Department that he did not want to pursue criminal charges related to this
14 incident.

15 75. On or about June 2008, as a result of the substantial and continued harassment
16 experienced by Plaintiff between December 2007 and May 2008, Plaintiff was forced to move
17 from Benicia. Plaintiff relocated to Vallejo, California, increasing his living and commuting
18 expenses, and now guards his address for fear that the Benicia Police Department will seek him
19 out for further harassment.

20 76. In May 2009, Plaintiff graduated from the CMA earning a Bachelor of Arts in
21 Global Studies and Maritime Affairs with a concentration in Maritime Law and Security.

22 77. Plaintiff is informed and believes that the vast majority of employment
23 opportunities in Plaintiff's field of study at the CMA are available through United States
24 government security agencies, which require completion of extensive background screening. As
25 a result of the DUI and Vehicle Theft arrest records, Plaintiff KNOWLES has been unable to
26 secure employment in maritime and port security. Plaintiff is currently employed as an election
27 campaign manager and part-time Harbormaster at the Benicia Marina, which pay significantly
28

1 lower wages than a maritime or port security position for which Plaintiff would otherwise be
2 qualified for.

3 78. On October 21, 2009, Plaintiff submitted a request for documents to the CITY OF
4 BENICIA under the California Public Records Act, Cal. Govt. Code §§6250, *et. seq.* City
5 Attorney Heather McLaughlin responded to this request on October 28, 2009. The response
6 indicated that the Benicia Police Department has no policies, procedures, or training materials or
7 curriculum regarding the circumstances under which a private citizen may be arrested without a
8 warrant or the chain of command or supervisor approval for such arrests.

9
10 **FIRST CLAIM FOR RELIEF**
11 **42 U.S.C. § 1983**
12 **Violation of the Fourth and/or Fourteenth Amendments to the**
13 **Constitution:**
14 **Unlawful Search, Seizure, and Arrest Without Probable Cause or**
15 **Warrant on December 23, 2007**
16 **(Against Defendant HARTIG, HEINEMEYER and DOES I through**
17 **XXX in their individual and official capacities)**

18 For his cause of action against Defendants HARTIG, HEINEMEYER, and DOES I-XXX,
19 Plaintiff states:

20 79. Plaintiff realleges and incorporates by reference paragraphs 1 through 78 of this
21 complaint as though fully set forth therein.

22 80. As found by the Appellate Division of the Superior Court of Solano on April 17,
23 2009, as a result of Defendants' acts as described above at paragraphs 26 through 40, Defendants
24 HARTIG, HEINEMEYER, and DOES I-XXX deprived Plaintiff of his clearly established right
25 to be free from unlawful searches and seizures in his private residence, in violation of the Fourth
26 and/or Fourteenth Amendments to the United States Constitution. Specifically, during the course
27 of Defendant HARTIG's entry into Plaintiff KNOWLES' private residence and subsequent arrest
28 on December 23, 2007, Defendant HARTIG and DOES I-XXX violated Plaintiff KNOWLES'
constitutionally protected rights by:

- a. Failing to obtain a search or arrest warrant to enter Plaintiff's private residence;

1 b. Making a warrantless entry into Plaintiff's private residence in the absence
2 of exigent circumstances making such entry reasonable under the Fourth
3 Amendment to the United States Constitution;

4 c. Arresting Plaintiff in his private residence without a warrant.

5 81. Plaintiff KNOWLES was subjected to the deprivation of rights by Defendants
6 HARTIG, HEINEMEYER, and DOES I-XXX, acting or pretending to act under color of state
7 law and of statutes, or ordinances, regulations, customs and usages of the law of the United
8 States, State of California and of the County of Solano which rights include, but are not limited
9 to, privileges and immunities secured to Plaintiff KNOWLES by the Constitution and laws of the
10 United States. By reason of the acts specified herein Defendant HARTIG, HEINEMEYER, and
11 DOES I-XXX violated the constitutional rights of Plaintiff KNOWLES, including those
12 provided in the Fourth and Fourteenth Amendments to the U.S. Constitution.

13 82. As a direct and proximate result of this conduct, Plaintiff KNOWLES has suffered
14 and will continue to suffer from psychological harm, mental distress, humiliation,
15 embarrassment, fear, and defamation of his character and reputation and has suffered personal
16 injury and emotional distress and incurred general damages for the deprivation of his
17 constitutional rights. These damages include but are not limited to costs and expenses in
18 connection with the towing and impoundment of his car, costs of obtaining alternative
19 transportation during the eight month period in which his license was suspended, \$594.00 to
20 attend DUI classes, \$18,173.68 in legal fees in defending against criminal charges resulting from
21 the December 23, 2007 arrest, \$3,000 in ongoing legal fees to attempt to correct his DMV record,
22 lost wages resulting from the negative impact of these criminal proceedings on his ability to
23 obtain employment in his chosen field of study (port and harbor security), and additional special
24 damages in the future in an amount that cannot yet be determined.

25 WHEREFORE, Plaintiff KNOWLES prays for relief as set forth below.
26
27
28

1 **SECOND CLAIM FOR RELIEF**
2 **42 U.S.C. § 1983**
3 **Violation of the Fourth and/or Fourteenth Amendments to the**
4 **Constitution:**
5 **Unlawful Search and Seizure Without Probable Cause or Warrant on**
6 **April 30, 2008**
7 **(Against Defendants MENESINI, BIDOU, LAUGHTER**
8 **and DOES I through XXX in their individual and official capacities)**

9 For his cause of action against Defendants MENESINI, BIDOU, LAUGHTER, and
10 DOES I-XXX, Plaintiff states:

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

13 84. On April 30, 2008, as described above at paragraphs 46 through 60, Defendants
14 deprived Plaintiff of his clearly established right to be free from unlawful searches and seizures
15 in his private residence, in violation of the Fourth and/or Fourteenth Amendments to the United
16 States Constitution. Specifically, during the course of Defendants' entry into Plaintiff
17 KNOWLES' private residence aboard the *Saucy Wench* on April 30, 2008, Defendants violated
18 Plaintiff KNOWLES' constitutionally protected rights by:

- 19 a. Failing to obtain a search warrant to enter Plaintiff's private residence;
- 20 b. Making a warrantless entry and search of Plaintiff's private residence in the
21 absence of exigent circumstances making such entry reasonable under the
22 Fourth Amendment to the United States Constitution;
- 23 c. Using unreasonable force in kicking in the door to the cabin aboard the
24 *Saucy Wench* and threatening Plaintiff with deadly force.

25 85. Plaintiff KNOWLES was subjected to the deprivation of rights by these
26 Defendants MENESINI, BIDOU, LAUGHTER and DOES I through XXX, acting or pretending
27 to act under color of state law and of statutes, or ordinances, regulations, customs and usages of
28 the law of the United States, State of California and of the County of Solano which rights
include, but are not limited to, privileges and immunities secured to Plaintiff KNOWLES by the
Constitution and laws of the United States. By reason of the acts specified herein these

1 Defendants have violated the constitutional rights of Plaintiff KNOWLES, including those
2 provided in the Fourth and Fourteenth Amendments to the U.S. Constitution.

3 86. As a direct and proximate result of the conduct of these Defendants, Plaintiff
4 KNOWLES has suffered and will continue to suffer from psychological harm, mental distress,
5 humiliation, embarrassment, fear, and defamation of his character and reputation and has
6 suffered personal injury and emotional distress and incurred general damages for the deprivation
7 of his constitutional rights.

8 WHEREFORE, Plaintiff KNOWLES prays for relief as set forth below.
9

10 **THIRD CLAIM FOR RELIEF**
11 **42 U.S.C. § 1983**
12 **Violation of the Fourth and/or Fourteenth Amendments to the**
13 **Constitution:**
14 **False Arrest without Probable Cause or Warrant on April 30, 2008**
15 **(Against Defendants MENESINI, BIDOU, LAUGHTER and**
16 **DOES I through XXX in their individual and official capacities)**

17 For his cause of action against Defendants MENESINI, BIDOU, LAUGHTER, and
18 DOES I through XXX, Plaintiff states:

19 87. Plaintiff realleges and incorporates by reference paragraphs 1 through 86 of this
20 complaint as though fully set forth therein.

21 88. On April 30, 2008, as described above at paragraphs 46 through 60, Defendants
22 deprived Plaintiff of his clearly established right to be free from unlawful arrest without probable
23 cause or a warrant, in violation of the Fourth and/or Fourteenth Amendments to the United States
24 Constitution. Specifically, during the course of Defendant's entry into Plaintiff KNOWLES'
25 private residence aboard the *Saucy Wench* on April 30, 2008, Defendants violated Plaintiff
26 KNOWLES' constitutionally protected rights by:

- 27 a. Unlawfully detaining Plaintiff at gunpoint and physically restraining
28 Plaintiff in his private residence aboard the *Saucy Wench*, without probable
cause or a search warrant and in the absence of exigent circumstances
making such detention reasonable under the Fourth Amendment to the
United States Constitution;

1 b. Threatening Plaintiff with unnecessary force.

2 89. Plaintiff KNOWLES was subjected to the deprivation of rights by these
3 Defendants MENESINI, BIDOU, LAUGHTER and DOES I through XXX, acting or pretending
4 to act under color of state law and of statutes, or ordinances, regulations, customs and usages of
5 the law of the United States, State of California and of the County of Solano which rights
6 include, but are not limited to, privileges and immunities secured to Plaintiff KNOWLES by the
7 Constitution and laws of the United States. By reason of the acts specified herein these
8 Defendants have violated the constitutional rights of Plaintiff KNOWLES, including those
9 provided in the Fourth and Fourteenth Amendments to the U.S. Constitution.

10 90. As a direct and proximate result of the conduct of these Defendants, Plaintiff
11 KNOWLES has suffered and will continue to suffer from psychological harm, mental distress,
12 humiliation, embarrassment, fear, and defamation of his character and reputation and has
13 suffered personal injury and emotional distress and incurred general damages for the deprivation
14 of his constitutional rights.

15 WHEREFORE, Plaintiff KNOWLES prays for relief as set forth below.

16
17 **FOURTH CLAIM FOR RELIEF**
18 **42 U.S.C. § 1983**
19 **Violation of the Fourth and/or Fourteenth Amendments to the**
20 **Constitution:**
21 **Unlawful Search, Seizure and Arrest Without Probable Cause or**
22 **Warrant on May 30, 2008**
23 **(Against Defendants PRZEKURAT, ROSE, EAKIN, CRIADO,**
24 **and DOES I through XXX in their individual and official capacities)**

25 For his cause of action against Defendants PRZEKURAT, ROSE, EAKIN, CRIADO, and
26 DOES I through XXX, Plaintiff states:

27 91. Plaintiff realleges and incorporates by reference paragraphs 1 through 90 of this
28 complaint as though fully set forth therein.

 92. On May 30, 2008, as described above at paragraphs 64 through 74, Defendants
deprived Plaintiff of his clearly established right to be free from unlawful searches, seizures and
arrest in his private residence, in violation of the Fourth and/or Fourteenth Amendments to the

1 United States Constitution. Specifically, Defendants ROSE, EAKIN, CRIADO, PRZEKURAT,
2 and DOES I through XXX violated Plaintiff KNOWLES' constitutionally protected rights by:

- 3 a. Failing to obtain a search or arrest warrant to enter Plaintiff's private
4 residence;
- 5 b. Making a warrantless entry into Plaintiff's private residence in the absence
6 of exigent circumstances making such entry reasonable under the Fourth
7 Amendment to the United States Constitution;
- 8 c. Conducting a destructive search of Plaintiff's residence; and
- 9 d. Arresting Plaintiff in his residence without a warrant and without exigent
10 circumstances justifying such a warrantless arrest.

11 93. Defendants deprived Plaintiff of his clearly established right to be free from
12 unlawful searches, seizures, and arrest in his private residence, in violation of the Fourth and/or
13 Fourteenth Amendments to the United States Constitution. Specifically, the investigation
14 conducted by the Defendants and their actions taken thereon were taken in bad faith or, in the
15 alternative, negligently, and Plaintiff was damaged by reason thereof in at least the following
16 respects:

- 17 a. Loss of personal freedom;
- 18 b. Payments necessary for bond and expenses of defense, including attorneys'
19 fees;
- 20 c. Pain and suffering, both physical and emotional; and
- 21 d. Loss of reputation in the community of Benicia, California and in Solano
22 County, California.

23 94. Plaintiff KNOWLES was subjected to the deprivation of rights by these
24 Defendants, acting or pretending to act under color of state law and of statutes, or ordinances,
25 regulations, customs and usages of the law of the United States, State of California and of the
26 County of Solano which rights include, but are not limited to, privileges and immunities secured
27 to Plaintiff KNOWLES by the Constitution and laws of the United States. By reason of the acts
28

1 specified herein Defendants violated the constitutional rights of Plaintiff KNOWLES, including
2 those provided in the Fourth and Fourteenth Amendments to the U.S. Constitution.

3 95. As a proximate result of the conduct of these Defendants, Plaintiff KNOWLES has
4 suffered and will continue to suffer from psychological harm, mental distress, humiliation,
5 embarrassment, fear, and defamation of his character and reputation and has suffered personal
6 injury and emotional distress and incurred general damages for the deprivation of his
7 constitutional rights, including but not limited to attorney's fees, medical expenses, and non-
8 refundable bail bondsman expenses.

9 WHEREFORE, Plaintiff KNOWLES prays for relief as set forth below.

10
11 **FIFTH CLAIM FOR RELIEF**
12 **42 U.S.C. § 1983**
13 **Violation of the First Amendment to the Constitution:**
14 **Right to Access the Courts**
15 **(Against Defendants SPAGNOLI, ERICKSON, HARTIG,**
16 **OETTINGER, BIDOU, PRZEKURAT, MCFADDEN, MENISINI,**
17 **LAUGHTER, ROSE, EAKIN, CRIADO, HEINEMEYER, and**
18 **DOES I through XXX in their individual and official capacities)**

15 For his cause of action against Defendants SPAGNOLI, ERICKSON, HARTIG,
16 OETTINGER, BIDOU, PRZEKURAT, MCFADDEN, MENISINI, LAUGHTER, ROSE,
17 EAKIN, CRIADO, HEINEMEYER, and DOES I through XXX, Plaintiff states:

18 96. Plaintiff realleges and incorporates by reference paragraphs 1 through 95 of this
19 complaint as though fully set forth therein.

20 97. Plaintiff is informed and believes, and on that basis alleges, that many of
21 Defendants acts following December 23, 2007 such as those described at paragraphs 41 through
22 74, were in retaliation for Plaintiff KNOWLES' attempts to avail himself of his clearly
23 established First Amendment rights, including to access the courts by defending against the DUI
24 charges arising from the December 23, 2007 arrest and protesting to the City Manager and City
25 Attorney of Benicia the unlawful search and seizure on April 30, 2008.

26 98. As a proximate result of the conduct of Defendants, Plaintiff KNOWLES suffered
27 personal injury and emotional distress and incurred general damages for the deprivation of his
28 constitutional rights.

1 WHEREFORE, Plaintiff KNOWLES prays for relief as set forth below.

2
3 **SIXTH CLAIM FOR RELIEF**
4 **42 U.S.C. § 1983**
5 **Violation of the Fourth and/or Fourteenth Amendments to the**
6 **Constitution:**
7 **Right to be Free from Police Harassment and Intimidation**
8 **(Against Defendants SPAGNOLI, ERICKSON, HARTIG,**
9 **OETTINGER, BIDOU, PRZEKURAT, MCFADDEN, MENISINI,**
10 **LAUGHTER, ROSE, EAKIN, CRIADO, HEINEMEYER, and**
11 **DOES I through XXX in their individual and official capacities)**

12 For his cause of action against Defendants SPAGNOLI, ERICKSON, HARTIG,
13 OETTINGER, BIDOU, PRZEKURAT, MCFADDEN, MENISINI, LAUGHTER, ROSE,
14 EAKIN, CRIADO, HEINEMEYER, and DOES I through XXX, Plaintiff states:

15 99. Plaintiff realleges and incorporates by reference paragraphs 1 through 98 of this
16 complaint as though fully set forth therein.

17 100. Plaintiff is informed and believes that Defendants acted together to violate the
18 Fourth Amendment and other civil rights of the Plaintiff by subjecting him to repeated
19 surveillance, searches, seizures, and arrests.

20 101. Defendants deprived Plaintiff of his clearly established right to be free from police
21 harassment, in violation of the Fourth and/or Fourteenth Amendments to the United States
22 Constitution.

23 102. Plaintiff KNOWLES was subjected to the deprivation of these rights by
24 Defendants SPAGNOLI, ERICKSON, HARTIG, OETTINGER, BIDOU, PRZEKURAT,
25 MCFADDEN, MENISINI, LAUGHTER, ROSE, EAKIN, CRIADO, HEINEMEYER, and
26 DOES I through XXX, acting or pretending to act under color of state law and of statutes, or
27 ordinances, regulations, customs and usages of the law of the United States, State of California
28 and of the County of Solano which rights include, but are not limited to, privileges and
immunities secured to Plaintiff KNOWLES by the Constitution and laws of the United States.
By reason of the acts specified herein these Defendants have violated the constitutional rights of
Plaintiff KNOWLES, including those provided in the Fourth and Fourteenth Amendments to the
U.S. Constitution.

1 103. As a proximate result of the conduct of these Defendants, Plaintiff KNOWLES has
2 suffered and will continue to suffer from psychological harm, mental distress, humiliation,
3 embarrassment, fear, and defamation of his character and reputation and has suffered personal
4 injury and emotional distress and incurred general damages for the deprivation of his
5 constitutional rights, including those damages plead in paragraphs 82, 86, 90, 95, and 98 above.

6 WHEREFORE, Plaintiff KNOWLES prays for relief as set forth below.

7
8 **SEVENTH CLAIM FOR RELIEF**
9 **42 U.S.C. § 1983**
10 **Violation of the First, Fourth, and/or Fourteenth Amendments**
11 **to the Constitution:**
12 **Failure to Supervise and Train Adequately Benicia Police**
13 **Department Officers**
14 **(Against Defendants CITY OF BENICIA, SPAGNOLI, ERICKSON**
15 **and DOES I through XXX in their official capacities)**
16 **(Monell Claim)**

17 104. Plaintiff realleges and incorporates by reference paragraphs 1 through 103, and
18 especially paragraphs 31, 59, and 78, as though fully set forth herein. The allegations contained
19 in paragraphs 105 through 106 below will likely have evidentiary support after a reasonable
20 opportunity for further investigation or discovery.

21 105. Defendants CITY OF BENICIA, SPAGNOLI, ERICKSON, and DOES I through
22 XXX, under color of law, intentionally, negligently, and with complete and deliberate
23 indifference to Plaintiff's rights, proximately caused Plaintiff to be deprived of his constitutional
24 rights including but not limited to the First, Fourth, and Fourteenth amendments, by:

- 25 a. Failure properly to supervise the training and conduct of Defendant Police
26 Officers despite constructive or actual knowledge of unlawful actions by
27 Defendant Police Officers;
- 28 b. Failure to appoint, promote, train, supervise and discipline Defendant Police
Officers who enforce the laws in effect in the City of Benicia and who
would protect the constitutional rights of the people of the City of Benicia;
- c. Failure properly and adequately to train the officers in the Benicia Police
Department in investigative techniques and procedures;

- d. Failure to enforce the provisions of the Constitution of the United States concerning the warrantless search, seizure, and arrest of citizens in their private residence;
- e. Maintaining a policy and custom of harassing certain residents of the City of Benicia by subjecting them to warrantless searches, seizures, and arrests and failing to address this failure despite being informed of such policy and custom; and
- f. Failing to issue any policy whatsoever, or issuing vague, confusing, and contradictory policies, concerning the warrantless search, seizure, and arrest of citizens in their private residence, inconsistent with the requirements of the fourth, and Fourteenth Amendments of the United States Constitution.
- g. Condoning the open and notorious systematic harassment of Plaintiff in violation of his rights under the Constitution of the United States.

106. As a proximate result of the conduct of these Defendants, Plaintiff KNOWLES has suffered and will continue to suffer from psychological harm, mental distress, humiliation, embarrassment, fear, and defamation of his character and reputation and has suffered personal injury and emotional distress and incurred general damages for the deprivation of his constitutional rights including those damages pled in paragraphs 82, 86, 90, 95, and 98 above.

WHEREFORE, Plaintiff KNOWLES prays for relief as set forth below.

PRAYER FOR RELIEF

Wherefore, Plaintiff KNOWLES prays for judgment against Defendants as follows:

- 1. For compensatory damages in an amount according to proof;
- 2. For punitive damages against individual defendants only, in amounts according to proof;
- 3. For reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and as otherwise authorized by statute or law;
- 4. For costs of suit;
- 5. Declaratory and injunctive relief; and

1 6. For such other and further relief as the court deems just and proper.
2

3 Dated: December 16, 2009

Respectfully submitted,

4 ROSEN, BIEN & GALVAN, LLP

5
6 By: /s/ Sanford Jay Rosen
7 SANFORD JAY ROSEN
8 Attorneys for Plaintiff
9 PETER KNOWLES

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial.

12 Dated: December 16, 2009

Respectfully submitted,

13 ROSEN, BIEN & GALVAN, LLP

14
15 By: /s/ Sanford Jay Rosen
16 SANFORD JAY ROSEN
17 Attorneys for Plaintiff
18 PETER KNOWLES
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EXHIBIT A

ENDORSED FILED
Clerk of the Superior Court

APR 17 2009

By *Joan Taylor*
DEPUTY CLERK

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO
APPELLATE DIVISION**

**PEOPLE OF THE STATE OF)
CALIFORNIA,)
Plaintiff and Respondent)
vs.)
PETER KNOWLES,)
Defendant and Appellant.)**

**CASE NO. VCR200106
Lower Court Case No.VCR195521
OPINION OF THE COURT**

The State charged Appellant Peter Knowles with violating Vehicle Code §23109(a) (speed contest) and §§23152a&(b) (driving under the influence of alcohol or drugs). Appellant moved to suppress the evidence. Following a denial of his motion, Appellant pled guilty to §23152(a), filing a timely notice of appeal of the denial of his suppression motion the same day.

Facts

Just after midnight on December 23, 2007, Officer Frank Hartig stood in the parking lot of a gas station writing a citation when the sound of a revving engine and tires breaking traction drew his attention. He observed the offending vehicle to be a red Jeep and watched it accelerate away. As it went past him, the vehicle slowed a bit.

1 He looked at the driver and the driver "kind of" looked his way. Then the vehicle
2 accelerated to an estimated 60mph onto a stretch of road posted 35mph. Officer
3 Hartig then radioed a description of the Jeep to dispatch, finished his citation and
4 drove off to find the Jeep, which was out of sight. Hartig searched for it, driving along
5 Military and South Hampton Road, but without seeing it. In the area of West 7th and
6 South Hampton, Hartig spotted what he believed was the Jeep coming in the opposite
7 direction. He looked at the Jeep, but could not see inside it. Officer Hartig assumed
8 the driver saw him and accelerated away at perhaps just over 35 mph. Officer Hartig
9 broadcast his sighting to other police units in the direction the Jeep was traveling. As
10 soon as he was able, Hartig turned around and tried to catch up to the Jeep. The other
11 police radioed that they saw nothing. Officer Hartig assumed that the Jeep had turned
12 onto a side road off South Hampton. He turned onto Devonshire, and in his words: "I
13 took a hunch and went down the first court, and that's when I observed tail lights
14 pulling into a residence on Stuart Court." The Jeep had entered a residential garage.

15 Officer Hartig parked his vehicle, ran into the garage where he pulled the driver
16 out of the Jeep, handcuffed him, and walked him out of the garage and back to his
17 police vehicle. After arresting Appellant, Officer Hartig smelled alcohol. A later blood
18 alcohol test confirmed a blood alcohol level in excess of the legal limit of .08%. No
19 signs of intoxication were observed while Appellant was driving.

20 Issues

- 21 1. Did the trial court commit procedural error in allowing the prosecution to
22 argue an additional justification to the warrantless entry to that proffered
23 in its written opposition to Appellant's motion to suppress?
- 24 2. Did the trial court commit substantive error in finding the warrantless
25 entry lawful?

26 Discussion

27 Section 1538.5 procedure.

28 The People, in its written opposition to Appellant's motion to suppress, argued
that the officer found Appellant "parked in the driveway" and was "detained" based

1 upon a reasonable suspicion that the driver had had committed a Vehicle Code
2 offense, a traffic violation. The People did not address the correct location of the car
3 (in the garage) nor any justification of the warrantless entry into the garage based
4 upon evasion, hot pursuit, or any other theory.

5 At the hearing, the trial court, sua sponte, mentioned the theory of "fresh
6 pursuit" and put the matter over for further briefing on both "fresh pursuit" and
7 "exigency."

8 In *People v Williams* (1999) 20 C4th 119, the California Supreme Court held
9 that when defendants move to suppress evidence, they "... must set forth the factual
10 and legal bases for the motion, but they satisfy that obligation, at least in the first
11 instance, by making a prima facie showing that the police acted without a warrant. The
12 prosecution then has the burden of proving some justification for the warrantless
13 search or seizure, after which, defendants can respond by pointing out any
14 inadequacies in that justification. Defendants who do not give the prosecution
15 sufficient notice of these inadequacies cannot raise the issue on appeal. "[T]he scope
16 of issues upon review must be limited to those raised during argument This is an
17 elemental matter of fairness in giving each of the parties an opportunity adequately to
18 litigate the facts and inferences relating to the adverse party's contentions." (at 136.)
19 (Citing *Wilder v Superior Court* (1979) 92 CA3d 90 and *People v. Manning* (1973) 33
20 Cal. App. 3d 586.

21 What is required is that the parties receive a full hearing on the merits of the
22 motion. Suppression motions are decided on the evidence presented and not on the
23 pleadings. Although it was the court that raised the possible justifications of hot
24 pursuit and/or exigency, there is no rule prohibiting a court from doing so. Appellant
25 received a full evidentiary hearing and was allowed to fully argue all raised issues.
26 There was no procedural error.

A review of a trial court's ruling on a motion to suppress is governed by well-settled principles. In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. The trial court's resolution of each of these inquiries is subject to appellate review. The court's resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. Finally, its ruling on the third, which is a mixed fact-law question that is predominantly one of law, is also subject to independent review. *People v. Ayala* (2000) 23 Cal.4th 225, 255.

The facts: In concluding that police entry into the Appellant's garage¹ without a warrant was legally justified, the trial court found that Officer Hartig witnessed an instance of speeding that could have been reckless driving or an exhibition of speed. The trial court further found that Officer Hartig believed that Appellant was attempting to avoid him. Evidence in the record supports the finding that Officer Hartig witnessed a vehicle code violation.

However, the record does not support an objective finding that Appellant was attempting to flee from or evade Officer Hartig. The record contains only the officer's subjective impressions--that Appellant "kind of looked" in his direction and that he looked at the driver, could not see into the vehicle, and assumed Appellant saw him. The record contains no evidence that Appellant even knew police were looking for his Jeep,² but only describes Officer Hartig's quest for the Jeep up and down various

¹ No one takes issue with here with a warrantless entry into a garage rather than a house. The Supreme Court long ago extended the Fourth Amendment's protection to garages. *Taylor v. United States*, 286 U.S. 1, 6 (1932). "We can conceive of no reason to distinguish a garage, where people spend time, work, and store their possessions, from a den or a kitchen, where people spend time, work, and store their possessions. Simply put, a person's garage is as much a part of his castle as the rest of his home." *U.S. v. Oaxaca*, 233 F.3rd 1154, 1157 (9th Cir.2000).

² Hartig used the term of art, "evade", which has a technical meaning in the Vehicle Code. §2800.1 says:

1 streets. Though the record is not specific as to time, the description of Officer Hartig's
2 search suggests a substantial lapse in time. The one time Officer Hartig encountered
3 the moving Jeep, it was going the other direction, and there was never any opportunity
4 to try to stop the Appellant as he was driving. The trial court's finding that Appellant
5 was evading police is based solely on the officer's subjective belief, and is not
6 supported by objective evidence. The subjective beliefs of police are immaterial in
determining probable cause. *People v. Limon* (1993) 17 Cal.App.4th 524, 539.

7 The law: The Fourth Amendment prohibits a warrantless entry into a suspect's
8 home to make an arrest absent consent or exigent circumstances. *People v Ramey*
9 (1976) 16 C3d 263. "The presumption of unreasonableness that attaches to a
10 warrantless entry into the home can be overcome by a showing of one of the few
11 specifically established and well-delineated exceptions to the warrant requirement
12 [citation], such as "hot pursuit of a fleeing felon, or imminent destruction of evidence, . .
13 . or the need to prevent a suspect's escape, or the risk of danger to the police or to
14 other persons inside or outside the dwelling" [citation]." *People v. Thompson* (2006) 38
Cal.4th 811, 817-818.

15 The trial court ruled as followed:

16 "I think even the speeding is a factor that the officer can consider
17 in deciding whether the defendant's vehicle was reckless driving,
18 and that as he pursued and tried to locate the defendant, his
19 behavior was reasonable, once he saw the vehicle that, in his
20 mind, fled him, had pulled into the garage, the officer can go in for
21 the purposes of investigating a reckless driving or an exhibition of
22 speed. The officer can go in, identify the defendant and
investigate, and it's at that point that he noticed symptoms of
alcohol intoxication, et cetera, and also began a DUI investigation.
The Court finds the entry into the garage and into the vehicle
appropriate. The Court will deny the motion to suppress."

23 While not explicit as to the rule of law being applied, it can be inferred that the court

24 Any person who, while operating a motor vehicle and with the intent to evade, willfully flees or
25 otherwise attempts to elude a pursuing peace officer's motor vehicle, is guilty of a misdemeanor if all of
the following conditions exist:

26 (a) The peace officer's motor vehicle is exhibiting at least one lighted red lamp visible from the
27 front and the person either sees or reasonably should have seen the lamp.

(b) The peace officer's motor vehicle is sounding a siren as may be reasonably necessary.

28 (c) The peace officer's motor vehicle is distinctively marked.

relied upon the "hot pursuit." A type of exigent circumstances has been recognized where a car is stopped on a public place, "but the suspect retreats into a private place in an attempt to thwart the arrest." *People v. Lloyd* (1989) 216 Cal.App.3rd 1425, 1428. In *Lloyd* the defendant's refusal to comply with lawful detention for traffic violations justified "hot pursuit" into house to prevent defendant from frustrating arrest. The Court permitted the intrusion "to prevent the suspect from frustrating the arrest which had been set in motion in a public place," finding that it constituted a proper exception to the warrant requirement. *Lloyd*, at 1429. "The hot pursuit exception to the warrant requirement only applies when officers are in 'immediate' and 'continuous' pursuit of a suspect from the scene of the crime. [Citations.] In addition, the critical time for determining whether any exigency exists is the moment the officer makes the warrantless entry." *U.S. v. Johnson*, 256 F.3rd 895, 907 (9th Cir. 2001). In analyzing this issue, a reviewing court must keep in mind that, "as with all exceptions to the warrant requirement, the courts must ever be on their guard to keep the 'hot pursuit' justification within firm and narrow bounds: 'the exception must not be permitted to swallow the rule' [citation]." *People v. Escudero* (1979) 23 Cal.3rd 800, 811.

This is not a case of hot pursuit. Police never actually followed the Jeep. Emergency lights were never activated. There is no evidence that Appellant knew an officer was even looking for him. There was only a hunt and a find on a hunch by a law officer with good instincts. Appellant did not resist a prior attempt to detain him. Appellant did not retreat into his house in an effort to avoid arrest. Appellant was not a fleeing felon. The officer's interest in entering the garage was to arrest Appellant for a traffic violation. Appellant had already arrived home and presented no threat to public safety. Nor was there further chance for escape.


Nor can destruction or disappearance of evidence provide an exigent justification for the warrantless search. The danger that evidence will dissipate over time in DUI cases is a real concern. However, at the time Officer Hartig entered into the residence and arrested Appellant, he was unaware of any use of alcohol. He had no probable cause to believe that Appellant had engaged in a DUI offense; indeed, his

(d) The peace officer's motor vehicle is operated by a peace officer, ... and that peace officer is wearing a distinctive uniform.

1 only belief was that Appellant had committed the traffic violations of breaking traction,
2 exhibiting speed, and perhaps driving recklessly, for which there was no evidence to
3 be lost. It was only after the warrantless entry and arrest that Officer Hartig discovered
4 *objective signs of intoxication.*

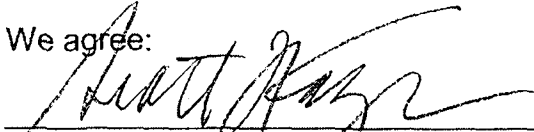
5 A warrantless entry into a residence is presumptively unreasonable under the
6 Fourth Amendment. The People have not shown the existence of any exigency
7 making such warrantless entry reasonable. The motion to suppress should have been
8 granted. All evidence seized after Officer Hartig crossed the threshold of Appellant's
9 garage is suppressed. The matter is remanded to the trial court for further proceedings
10 consistent with this ruling.


11 Date: April 6, 2009



CYNDA RIGGINS UNGER,
PRESIDING JUDGE OF THE APPELLATE DIVISION OF
THE SUPERIOR COURT

14 We agree:

15 
16 SCOTT L. KAYS,
JUDGE OF THE SUPERIOR COURT

17 
18 PETER B. FOOR,
19 JUDGE OF THE SUPERIOR COURT

Case No.VCR200106

CERTIFICATE OF MAILING

I, the undersigned, certify under penalty of perjury that I am a Deputy clerk for the above-entitled Court and not a party to the within action; that I am familiar with the County of Solano's procedure for collection and processing of correspondence for mailing with the United States Postal Service. This document will be deposited with the United States Postal Service on the same day as the execution of this document in the ordinary course of business. This document was sealed and placed for collection and mailing on the same day as the execution of this document at the address given for deposit in the United States Postal Service and following ordinary business practices. Said envelope was addressed to the attorneys for the parties, or the parties, as shown below:

Document mailed: **OPINION OF THE COURT**

Supervising En Banc Appeal Judge
Cynda R. Unger
(Via Inter-office mail)

District Attorney
Attention: Susanne Mathews
321 Tuolumne Street
Vallejo, Ca 94590
(Via Inter-Office Mail)

Judge Scott L. Kays
(via Inter-office mail)

Peter Knowles
1753 Stuart Court
Benicia, Ca 94510

Judge Peter B. Foor
(via Inter-office mail)

Thomas Gill
Attorney At Law
300 Tuolumne Street
Vallejo, Ca 94590

DATED: April 20, 2009

BRIAN K. TAYLOR, Clerk of the Court

By: 
K. Taylor, En Banc Appeal Clerk