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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 **DON McCOMAS**

Civil Action No. _____

11 Plaintiff

COMPLAINT FOR

12 vs.

Violation of Civil Rights
Monell Claim

13 **CITY OF ROHNERT PARK and DAVID
RODRIGUEZ**

DEMAND FOR JURY TRIAL

14 Defendants
15 _____

16 Plaintiff Don McComas, by and through his undersigned attorneys, hereby brings this
17 action under 42 U.S.C. § 1983 and common law against Defendants City of Rohnert Park and
18 Rohnert Park Police Officer David Rodriguez to redress his civil and legal rights as follows:

19 **GENERAL ALLEGATIONS**

20 1. Plaintiff seeks relief under the Civil Rights Act of 1871, as amended, codified in 42
21 U.S.C. § 1983, for violation of his rights secured by the United States Constitution, including the
22 First and Fourteenth Amendments, and by the laws and Constitution of the State of California.

23 2. Plaintiff seeks compensatory and exemplary damages, injunctive relief, an award of
24 costs, attorney fees, and such other and further relief as this Court deems just and proper.

1 **JURISDICTION AND VENUE**

2 3. This action is brought under 42 U.S.C. §§ 1983 and 1988. Jurisdiction is conferred on
3 this Court by 28 U.S.C. §§ 1331 and 1343, this being an action seeking redress for the violation
4 of Plaintiff’s constitutional and civil rights.

5 4. Plaintiff further invokes this Court’s supplemental jurisdiction, under 28 U.S.C. § 1367,
6 over any and all state law claims and as against all parties so related to claims in this action
7 within this Court’s original jurisdiction that they form part of the same case or controversy.

8 5. Venue in this district is proper in the Northern District of California under 28 U.S.C. §
9 1391(b) and (c) in that defendant City of Rohnert Park is administratively located within this
10 district, and the events giving rise to this claim occurred within the Northern District.

11 **PARTIES**

12 6. Plaintiff Don McComas is, and at all times mentioned in this complaint was, citizen of
13 the United States, residing in the City of Rohnert Park, County of Sonoma, State of California.

14 7. At all relevant times, Defendant City of Rohnert Park was a municipal entity created
15 and authorized under the laws of the State of California. It is authorized by law to maintain a
16 police department, which acts as its agent in the area of law enforcement. Defendant City of
17 Rohnert Park was at all relevant times the public employer of Defendant David Rodriguez.

18 8. At all relevant times, Defendant David Rodriguez was a duly appointed and acting
19 officer, servant, employee, and agent of the City of Rohnert Park Department of Public Safety, a
20 municipal agency of Defendant City of Rohnert Park.

21 **NOTICE OF CLAIM**

22 9. Plaintiff timely filed a Government Tort Claim with the City of Rohnert Park, setting
23 forth the facts underlying Plaintiff’s claims against the City of Rohnert Park and Rohnert Park
24 Police Officer David Rodriguez.

1 20. Plaintiff Don McComas responded, "No. I haven't done anything."

2 21. Defendant Officer Rodriguez removed his firearm from its holster and held it in a
3 ready position as he advanced towards Plaintiff Don McComas in a threatening manner.

4 22. Plaintiff Don McComas immediately removed his left hand from his pocket and
5 placed the contents of his pocket on his own vehicle.

6 23. Defendant Officer Rodriguez continued to advance towards Plaintiff Don McManus
7 in a threatening manner while holding his firearm at a ready position at his side.

8 24. Plaintiff Don McComas retreated in fear as Officer Rodriguez continued to approach
9 Mr. McComas with his gun drawn.

10 25. Plaintiff Don McComas repeated that he had done nothing and asked Officer
11 Rodriguez why Officer Rodriguez had gotten out of his vehicle.

12 26. Defendant Officer Rodriguez stated, "You are taking a picture of me, I am taking a
13 picture of you." Officer Rodriguez made this statement while standing on the sidewalk in front of
14 Plaintiff Don McComas' home brandishing a firearm.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF RIGHT TO FREEDOM OF SPEECH**

17 **(Against Police Officer David Rodriguez)**

18 27. The contents of the above paragraphs are incorporated herein by reference as if fully
19 set forth herein.

20 28. By his conduct, as described herein, and acting under color of state law to deprive
21 Plaintiff of his right to freedom of speech, assembly, and association under the First and
22 Fourteenth Amendments, Officer David Rodriguez is liable for violation of 42 U.S.C. § 1983,
23 which prohibits the deprivation under color of state law of rights secured under the United States
24 Constitution.

1 29. Officer David Rodriguez has violated Plaintiff’s First Amendment rights to assembly,
2 speech, and association by repeatedly threatening Plaintiff with a firearm in retaliation for
3 Plaintiff’s exercise of his free speech and by threatening Plaintiff with a firearm in retaliation for
4 Plaintiff exercising his right to record police activity. Defendant Officer David Rodriguez’s
5 actions were taken in direct retaliation for Plaintiff’s exercising his First Amendment rights.

6 30. As a consequence of Officer David Rodriguez’s actions, Plaintiff has suffered
7 violations of his First and Fourteenth Amendment rights to free speech, assembly, and
8 association, including the right to record police activity. Plaintiff fears that he will be subject to
9 similar unlawful acts by Officer David Rodriguez or other members of the Rohnert Park
10 Department of Public Safety done to limit and prevent his First Amendment protected activities.

11 31. As a proximate result of Officer David Rodriguez’s unlawful actions, Plaintiff has
12 suffered damages including physical, mental, and emotional injury and pain, mental anguish,
13 suffering, humiliation, and embarrassment.

14 **SECOND CAUSE OF ACTION**

15 ***MONELL CLAIM***

16 **(Against City of Rohnert Park)**

17 32. The contents of the above paragraphs are incorporated herein by reference as if fully
18 set forth herein.

19 33. All of the acts and omissions by Police Officer David Rodriguez described above
20 were carried out under policies and practices of Defendant City of Rohnert Park that existed at
21 the time of the conduct alleged, and were engaged in with the full knowledge, consent, and
22 cooperation and under the supervisory authority of Defendant City of Rohnert Park and its
23 agency, the City of Rohnert Park Department of Public Safety.

24 34. Defendant City of Rohnert Park, by its policy-making agents, servants, and

1 employees, authorized, sanctioned and/or ratified Defendant David Rodriguez' wrongful acts;
2 and/or failed to prevent or stop those acts; and/or allowed or encouraged those acts to continue.

3 35. The acts complained of were carried out by Defendant David Rodriguez in his
4 capacity as a police officer under the customs, policies, usages, practices, procedures, and rules
5 of Defendant City of Rohnert Park and the Rohnert Park Department of Public Safety.

6 36. The aforementioned customs, practices, procedures, and rules of Defendant City of
7 Rohnert Park and the Rohnert Park Department of Public Safety include, but are not limited to:
8 (1) threatening to use force against citizens in retaliation for the content of their speech in public
9 forums; and (2) threatening to use force against citizens in retaliation for exercising their right to
10 record police activity.

11 37. The existence of these unlawful de facto policies and/or well-settled and widespread
12 customs and practices is known to, encouraged, and/or condoned by supervisory and policy-
13 making officials of Defendant City of Rohnert Park and the Rohnert Park Department of Public
14 Safety including Officer David Rodriguez.

15 38. The constitutional violations by the City of Rohnert Park, through the actions of the
16 Rohnert Park Department of Public Safety and Police Officer David Rodriguez, were
17 proximately caused by the policies, practices, and/or customs developed, implemented, enforced,
18 encouraged, and sanctioned by Defendant City of Rohnert Park, including the failure to: (1)
19 adequately supervise and train its officers and agents, including Officer David Rodriguez,
20 thereby failing to adequately discourage constitutional violations on the part of its officers and
21 agents; and (2) properly monitor and discipline its officers, including Officer David Rodriguez.

22 39. Defendants' unlawful actions were done willfully, knowingly, and with the specific
23 intent to deprive Plaintiff of his constitutional rights under the First and Fourteenth Amendments
24 to the U.S. Constitution.

1 40. Defendants have acted with deliberate indifference to Plaintiff's constitutional rights.
2 As a proximate result of these acts, Plaintiff's constitutional rights have been violated, which
3 caused him to suffer physical, mental, and emotional injury and pain, mental anguish, suffering,
4 humiliation, and embarrassment.

5 41. Plaintiff has no adequate remedy at law and will suffer serious irreparable harm to his
6 constitutional rights unless Defendants are enjoined from continuing their unlawful practices,
7 policies, and/or customs that have proximately caused these abuses to occur.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff Don McComas prays for judgment against Defendants as
10 follows:

- 11 1. An injunction enjoining defendants from engaging in conduct to unlawfully disrupt,
12 disperse, interfere with, or prevent the lawful First Amendment activities described herein;
- 13 2. An award of compensatory damages;
- 14 3. An award of exemplary damages;
- 15 4. An award of attorney fees under 42 U.S.C. § 1988;
- 16 5. An award of costs of suit under 42 U.S.C. §§ 1920 and 1988; and
- 17 6. For other such other and further relief as the Court deems appropriate and just.

18
19 Dated: May 18, 2016

BECK LAW PC

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21 by: /s/Evan Livingstone
Evan Livingstone
Attorneys for Plaintiff Don McComas
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
DON McCOMAS
(b) County of Residence of First Listed Plaintiff Sonoma
(c) Attorneys (Firm Name, Address, and Telephone Number)
BECK LAW P.C.
2681 Cleveland Ave
Santa Rosa, CA 95403 (707) 576-7175

DEFENDANTS
CITY OF ROHNERT PARK and DAVID RODRIGUEZ
County of Residence of First Listed Defendant Sonoma
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excludes Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
TORTS
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury - Medical Malpractice
PERSONAL INJURY
365 Personal Injury - Product Liability
367 Health Care/Pharmaceutical Personal Injury Product Liability
368 Asbestos Personal Injury Product Liability
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
LABOR
710 Fair Labor Standards Act
720 Labor/Management Relations
740 Railway Labor Act
751 Family and Medical Leave Act
790 Other Labor Litigation
791 Employee Retirement Income Security Act
FORFEITURE/PENALTY
625 Drug Related Seizure of Property 21 USC 881
690 Other
BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
PROPERTY RIGHTS
820 Copyrights
830 Patent
840 Trademark
SOCIAL SECURITY
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS—Third Party 26 USC 7609
OTHER STATUTES
375 False Claims Act
376 Qui Tam (31 USC 3729(a))
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
850 Securities/Commodities/Exchange
890 Other Statutory Actions
891 Agricultural Acts
893 Environmental Matters
895 Freedom of Information Act
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes
REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property
CIVIL RIGHTS
440 Other Civil Rights
441 Voting
442 Employment
443 Housing/Accommodations
445 Amer. w/Disabilities - Employment
446 Amer. w/Disabilities - Other
448 Education
PRISONER PETITIONS
Habeas Corpus:
463 Alien Detainee
510 Motions to Vacate Sentence
530 General
535 Death Penalty
Other:
540 Mandamus & Other
550 Civil Rights
555 Prison Condition
560 Civil Detainee - Conditions of Confinement

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. §§ 1983, 1988; 28 U.S.C. § 1367 (as to any supplemental state claims)
Brief description of cause:
Violation of plaintiff's right to freedom of speech, assembly and association and Monell claim.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ injunction
CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE DOCKET NUMBER

DATE 05/18/2016 SIGNATURE OF ATTORNEY OF RECORD /s/Evan Livingstone

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPROVED BY JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.