

1 DIANE B. WEISSBURG, Esq. (SBN 237136)
 2 **WEISSBURG LAW FIRM**
 3 12240 Venice Blvd., Suite 22
 4 Los Angeles, CA 90066
 5 Tel: 310/390-0807; Fax: 310/390-0560
 6 E-mail: dbw_law@msn.com
 7 Attorney for PLAINTIFF, JEFFREY JEROME WHITSON

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

10	JEFFREY JEROME WHITSON,	)	CASE NO.: 2:15-cv-8694
11		)	VERIFIED COMPLAINT FOR
12	Plaintiff,	)	DAMAGES FOR:
13	v.	)	1. UNLAWFUL CUSTOM
14		)	AND PRACTICE UNDER
15	SANTA BARBARA COUNTY, a	)	SECTION 42 U.S.C. § 1983;
16	Government Entity; SANTA BARBARA	)	2. NEGLIGENT
17	COUNTY SHERIFF'S DEPARTMENT, a	)	SUPERVISION;
18	Government Entity; JAKE THOMAS	)	3. CONSPIRACY TO
19	MALONE, individually, jointly, severally,	)	VIOLATE CIVIL RIGHTS
20	and in his official capacity as a Santa	)	4. VIOLATION OF
21	Barbara County Sheriff's Deputy;	)	INFORMATION
22	SERGEANT GARNICA, individually,	)	PRACTICES ACT UNDER
23	jointly, severally, and in his official capacity	)	CALIFORNIA CIVIL
24	as a Santa Barbara County Sheriff's	)	CODE § 1798
25	Sergeant; CORPORAL CARDENAS	)	5. INTENTIONAL
26	individually, jointly, severally, and in his	)	INFLECTION OF
27	official capacity as a Santa Barbara County	)	EMOTIONAL DISTRESS
28	Sheriff's Corporal; and DOES 1-10,	)	6. INJUNCTIVE RELIEF
	Defendants	)	DEMAND FOR JURY TRIAL;
		)	AND DEMAND FOR
		)	PUNITIVE DAMAGES

1 Plaintiff alleges:

2 **JURISDICTION AND VENUE**

3 1. This civil rights action seeks compensatory and punitive damages from
4 Defendants for violating Plaintiff’s various rights under the United States
5 Constitution and state law and is brought pursuant to 42 U.S.C. § 1983, et seq., and
6 the Fifth and Fourteenth Amendments to the United States Constitution, for personal
7 injuries and violation of constitutional rights by Defendants Jake Thomas Malone
8 (“Malone”), Sergeant Garnica (“Garnica”), Corporal Cardenas (“Cardenas”), Santa
9 Barbara County (“County”), its Sheriff’s Department, (“SBSD”), and Defendants
10 DOES 1-10. Jurisdiction of this court is invoked under 28 U.S.C. §§ 1343, (1), (2),
11 (3), and (4), § 1331, and § 1367. Further, the Court has pendent jurisdiction and
12 supplemental jurisdiction over the state law claims alleged in this Complaint
13 pursuant to 28 U.S.C. § 1367.

14 2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all
15 incidents, events, and occurrences giving rise to this action occurred in the Central
16 District.

17 **GENERAL ALLEGATIONS**

18 3. Plaintiff, Jeffrey Whitson (“Whitson” or “Plaintiff”), is a United States
19 citizen, and was at all material times mentioned herein a resident of the County of
20 Kern, State of California.

21 4. Defendant County is a public entity existing under the laws of the State of
22 California and is the employer of the individual defendants named above.

23 5. Defendant Santa Barbara County Sheriff’s Department is a Department of
24 Defendant County.

25 6. Plaintiff is informed and believes and therefore alleges that Defendant
26 Malone was a peace officer, agent, and employee of County at SBSB, and was at all
27 material times mentioned herein a resident of the County of Santa Barbara, State of
28 California.

1 7. Plaintiff is informed and believes and therefore alleges that Defendant
2 Garnica was a peace officer, agent, and employee of County at SBSD and was at all
3 material times mentioned herein a resident of the County of Santa Barbara, State of
4 California.

5 8. Plaintiff is informed and believes and therefore alleges that Defendant
6 Cardenas was a peace officer, agent, and employee of County at SBSD and was at
7 all material times mentioned herein a resident of the County of Santa Barbara, State
8 of California.

9 9. At all times mentioned herein Defendants DOES 1 through 10 were
10 employees of Defendant County, and in doing the acts hereinafter described acted
11 under color of law within the course and scope of their employment, and with the
12 complete authority and ratification of their principal, County and SBSD. The acts of
13 all defendants and each of them, were also done under the color and pretense of the
14 statutes, ordinances, regulations, customs and usages of the State of California.
15 DOES 1 through 10 are sued individually, and in their capacities as employees of
16 the County or SBSD.

17 10. Defendant DOE 1 was at all times material herein the policymaker for
18 said County and responsible for the promulgation and implementation of policies,
19 rules, regulations and procedures for Santa Barbara Sheriff's Department and its
20 officers.

21 11. Said policymaker(s) was also responsible at the County level for setting
22 policy, rules, regulations and procedures as to hiring, training, supervising,
23 retraining, discipline and termination of persons engaged in information
24 management and access to information management regarding persons in County
25 computer systems, and the jail management databases.

26 12. The true names or capacities, whether individual, corporate, associate
27 or otherwise, of Defendants named herein as DOES 1-10 are unknown to Plaintiff,
28 who therefore sues these Defendants by such fictitious names pursuant to *Code of*

1 *Civil Procedure* § 474 and FRCP 15. Plaintiff will seek leave to amend this
2 complaint to show the true names and capacities of these Defendants when they have
3 been ascertained. Plaintiff is informed and believes and therefore alleges that all
4 defendants sued herein as DOES are in some manner responsible for the acts and
5 injuries alleged herein.

6 13. Plaintiff is informed and believes and therefore alleges that at all times
7 mentioned herein, Defendants Malone, Garnica, Cardenas and DOES 1-10 were
8 responsible for the unlawful conduct and resulting injury because they personally
9 participated in the conduct, acted jointly or in concert with others who did so, or
10 authorized, acquiesced, or failed to take action to prevent the unlawful conduct.
11 Each said defendant was acting in the course and scope of their employment and
12 acting under color of law.

13 14. Plaintiff is informed and believes and therefore alleges that at all times
14 mentioned herein, County and SBSB was at all times ultimately responsible for the
15 hiring, training, supervision, and discipline of Defendants Malone, Garnica and
16 Cardenas, and was responsible for the violation of Plaintiff's rights alleged herein.

17 15. Plaintiff is informed and believes and therefore alleges that at all times
18 mentioned herein each of the Defendants was the agent, servant and/or employee of
19 each of the remaining Defendants and were, in doing the acts herein alleged, acting
20 within the course and scope of this agency and/or employment and with the
21 permission, consent and authority of their co-defendants, and each of them, and each
22 is responsible in some manner for the occurrences hereinafter alleged; and that
23 Plaintiff's injuries were proximately caused by the actions of each.

24 16. Plaintiff is informed and believes and therefore alleges that at all times
25 herein mentioned each Defendant aided, abetted, condoned, permitted, willfully
26 ignored, approved, authorized and/or ratified the unlawful acts hereinafter described.

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1 17. As a proximate result of Defendants' deprivation of federal and state civil
2 rights, Plaintiff has suffered, continues to suffer, and will suffer, general and special
3 damages and is entitled to exemplary and punitive damages and attorney fees.

4 18. Defendants Malone, Garnica, and Cardenas are directly liable for
5 Plaintiff's injuries under state law and federal law pursuant to 42 U.S.C. § 1983 and
6 are sued in their individual capacities for damages only. At all times mentioned
7 herein, each individual defendant was a duly appointment SBSD officer employed
8 as such by Defendant County and/or SBSD, and each individual defendant acted in
9 the course and scope of such employment and acted under color of law, and with the
10 permission of County and SBSD.

11 19. On July 6, 2015, Plaintiff's counsel filed a comprehensive and timely
12 claims for damages with the County and SBSD for the injuries alleged herein,
13 pursuant to Government Code § 910. Exhibit 1, attached hereto and incorporated
14 herein by reference. That claim was denied by the County Risk Management
15 Department on November 4, 2015. Exhibit 2, attached hereto and incorporated
16 herein by reference. Therefore, Plaintiff has complied with all requirements of *Gov't*
17 *Code* §800 et seq.

18 **FACTUAL ALLEGATIONS**

19 20. Plaintiff Jeffrey Whitson is, and at all times relevant to this Complaint is,
20 residing in the County of Kern, is a 29 year-old United States Citizen who is a
21 veteran of the United States Marine Corps, and is currently in the Reserves. He is
22 currently pursuing his Master's Degree in Geology.

23 21. Plaintiff is the father of a child that was born to Malone's wife, Jennifer
24 Malone, in 2007. Plaintiff was not informed about the existence of the child until
25 February 2015, when Defendant Jake Malone and Jennifer Malone sought out
26 Plaintiff to tell him he had a son.

27 22. Plaintiff is currently involved in an action in Family Court in the Superior
28 Court of Santa Barbara County that the Malones' are party to. A trial on the adoption

1 matter, and other parentage, custody, and visitation issues was conducted on various
2 dates from September 9, 2015 through November 2, 2015, County of Santa Barbara
3 Superior Court Case No. 15FL00172.

4 23. On or about May 2015, during the deposition of Jake Malone, Plaintiff
5 first learned that Malone had accessed the Santa Barbara Sheriff's Department
6 databases to obtain information personal information regarding Plaintiff, while on
7 County time, and at his County computer terminal, as part of his duties for County
8 and SBSD.

9 24. Plaintiff is informed and believes and therefore alleges that on or about
10 January 2015, Malone improperly, and without lawful authorization, used his
11 government issued user name and password while on duty to access the SBSD jail
12 management systems for personal information regarding Plaintiff for his own
13 personal use, and personal reasons. There was no legitimate law enforcement
14 purpose for Malone to access the information regarding Plaintiff. Information in
15 these databases must currently, and was at all relevant times required to, be used
16 exclusively for official criminal justice business. Lawful access to these databases
17 is currently, and was at all relevant times, governed by federal, state and local laws.

18 25. Plaintiff is informed and believes and therefore alleges that Malone is
19 employed by SBSD as a custody deputy and is currently working at the jail in Goleta.

20 26. Until 2015, Plaintiff had not been in Santa Barbara County since 2011.

21 27. At the time Jake Malone accessed Plaintiff's information on the jail
22 databases, Plaintiff was not an inmate or a prisoner, and he had not been in custody
23 since on or about 2006 or 2007.

24 28. Plaintiff is informed and believes and therefore alleges that Malone's
25 wife, Jennifer Malone, provided Jake Malone with Whitson's name.

26 29. Plaintiff is informed and believes and therefore alleges that Malone got
27 access to Plaintiff's old arrest record, including his contact information and property
28

1 information; full name; address; social security number; family history and contact
2 information for family members and medical history.

3 30. Plaintiff is informed and believes and therefore alleges that the
4 information on the jail database that Malone used is shared with other governmental
5 agencies, and that Malone's entry of Plaintiff's name on that database triggered an
6 inquiry request that was accessible to other government agencies.

7 31. Plaintiff is informed and believes and therefore alleges that Malone
8 knowingly and willingly shared all confidential information obtained with his wife,
9 Jennifer Malone, for the personal benefit of Jake Malone and his wife.

10 32. Plaintiff is informed and believes and therefore alleges that Malone
11 knowingly and willingly shared this confidential information with Sergeant Garnica,
12 Corporal Cardenas, and others including Robert R. Walmsley, Esq., who was not
13 representing the Malones' at the time of the illegal access of Plaintiff's personal
14 information.

15 33. Malone had no lawful reason to access or disclose information regarding
16 Plaintiff to any other person, including but not limited to, Sergeant Garnica, Corporal
17 Cardenas, Jennifer Malone or Robert R. Walmsley, Esq., or members of his office
18 staff.

19 34. Plaintiff is informed and believes and therefore alleges that Malone later
20 used - and continues to use - Plaintiff's confidential information in the parentage and
21 custody court case referenced above, as well as other matters, including, but not
22 limited to obtaining financial information about plaintiff. A substantial or
23 motivating factor for Malone's action against Plaintiff was to threaten and deter
24 Plaintiff from pursuing his rights in the care and custody of his son, and the pending
25 family law matters.

26 35. Plaintiff is informed and believes and therefore alleges that because
27 Malone works for the County as a custody deputy, he has daily access to the jail
28 databases with government issued clearances, as well as a user name and password

1 as part of his normal routine. His access to this databases is subject to County
2 policies that are supposed to restrict its access to work-related reasons and require
3 all users to maintain the confidentiality of such information as necessary to perform
4 their duties. Nonetheless, in contravention of any existing County policy, Malone
5 accessed the databases while on duty to obtain information pertaining to Plaintiff.
6 Malone then used this and other obtained information to eventually support an
7 adoption petition, for the son of Plaintiff and Malone's wife, and other purposes.

8 36. Plaintiff is informed and believes and therefore alleges that Malone was
9 authorized by SBSB and County to access all government databases on an ongoing
10 and daily basis. Malone was required as part of his official duties, to access the jail
11 databases which then feed information to other government databases at the Federal
12 and State levels. While acting under the pretense of performing in the course and
13 scope of his official duties, Malone accessed the databases during normal working
14 hours, using SBSB and County government computers and equipment. Malone had
15 full authorization of SBSB and County to use that equipment in the course and scope
16 of his duties. Malone was required to use those databases as part of his job duties
17 and responsibilities for every inmate in the Jail Systems. Malone has his own user
18 name, and a password supplied by the SBSB and County. Because Malone's status
19 as a County employee and peace officer enabled him to access the information, he
20 invoked the powers of his office to accomplish the offensive acts. Therefore,
21 however improper Malone's actions were, they clearly related to the performance of
22 his official duties.

23 37. Plaintiff is informed and believes and therefore alleges that but for his
24 employment as a peace officer with SBSB, and County, required to access these
25 databases as part of his required duties, Malone would not have been able to access
26 Plaintiff's confidential information in state, federal and county databases in the
27 manner in which he did in January 2015. Malone acted or purported to act in the
28

1 | official performance of his duties as a peace officer when he unlawfully accessed
2 | Plaintiff and his family members' confidential information.

3 | 38. Plaintiff is informed and believes and therefore alleges that this access
4 | was gained while Malone was under the direct supervision of Defendants Garnica
5 | and Cardenas.

6 | 39. Plaintiff is informed and believes and therefore alleges that Garnica and
7 | Cardenas were aware of Malone's improper use of the databases.

8 | 40. Plaintiff is informed and believes and therefore alleges that Defendants
9 | Malone, Garnica and Cardenas had full knowledge that the unauthorized use of the
10 | database violated Plaintiff and his family's rights under federal and California laws.

11 | 41. Plaintiff is informed and believes and therefore alleges that the
12 | unauthorized access of the government databases was done during SBSD business
13 | hours and from County facilities with the knowledge and consent of the County and
14 | SBSD.

15 | 42. Plaintiff is informed and believes and therefore alleges that Defendant
16 | County and SBSD was aware of these incidents, but failed to take appropriate action.

17 | 43. Plaintiff is informed and believes and therefore alleges that at all times
18 | herein mentioned, in doing the acts hereinafter described, Malone acted within the
19 | course and scope of this employment with the permission of his superiors, and with
20 | the consent of his superiors, the County, and the SBSD.

21 | 44. Plaintiff is informed and believes and therefore alleges that County is
22 | vicariously liable for Malone's conduct as alleged herein due to the fact that at all
23 | relevant times mentioned herein, that at the time Malone was accessing Whitson's
24 | information Malone was purporting to be a peace officer and exercising his official
25 | responsibilities.

26 | 45. Plaintiff is informed and believes and therefore alleges that no discipline
27 | of Malone took place regarding Defendants' misuse of Whitson or his family's
28 | personal information.

1 46. Plaintiff is informed and believes and therefore alleges that Defendants
2 violated *Penal Code* § 502(c) in knowingly accessing Whitson and his family's
3 personal computer information without permission from Whitson and/or his family
4 members, and is guilty of a public offense, subject to fines and/or imprisonment.

5 47. Plaintiff is informed and believes and therefore alleges that Defendants
6 violated *Penal Code* § 13300, which identifies who has lawful access to personal
7 and criminal history information.

8 48. Violation of *Penal Code* § 13300 is a misdemeanor, pursuant to Penal
9 code §§ 13302-13304. Section 13303 states: "Any person authorized by law to
10 receive a record or information obtained from a record who knowingly furnishes the
11 record or information to a person who is not authorized by law to receive the record
12 or information is guilty of a misdemeanor."

13 49. Pursuant to *Gov't Code* § 11019.9, state agencies, which includes County
14 Police Departments are required to enact and to maintain a privacy policy and to
15 designate an employee to be responsible for the policy, in adherence with the
16 Information Practices Act of 1977 (*Civil Code* § 1798 et seq.)

17 50. Plaintiff is informed and believes and therefore alleges that there was no
18 policy or procedure in place preventing the prior and continuing misuse of these
19 government databases.

20 51. Plaintiff is informed and believes and therefore alleges that there was no
21 training provided to Malone, Garnica, Cardenas, and other employees on the subject
22 of personal use of the government databases. Malone alleged at the time of his
23 deposition that he was unsure as to whether or not there was such a policy regarding
24 using the databases for personal use; further, he had never seen policy regarding such
25 matters.

26 52. Plaintiff is informed and believes and therefore alleges that at all times
27 mentioned herein each of the Defendants was the agent, servant and/or employee of
28 each of the remaining Defendants and were, in doing the acts herein alleged in bad

1 faith and with knowledge that their conduct violated well established and settled law,
2 acting within the course and scope of this agency and/or employment and with the
3 ratification, permission, approval, consent and authority of their co-defendants and
4 each of them, and each is responsible in some manner for the occurrences hereinafter
5 alleged; and that Plaintiff's injuries were proximately caused by the actions of each.

6 53. Plaintiff is informed and believes and therefore alleges that in engaging
7 in the conduct alleged herein, Defendants acted with the intent to injure, vex, annoy
8 and harass Plaintiff, and subjected Plaintiff to cruel and unjust hardship in conscious
9 disregard of Plaintiff's rights, with the intention on the part of the Defendants of
10 thereby depriving Plaintiff of his legal rights and otherwise causing Plaintiff injury.

11 54. Use of the jail databases is highly restricted and limited by law to matters
12 of public safety. Malone, Garnica and Cardenas were aware that the jail database
13 they had access to was for official business only. Their access of the records systems
14 was improper and contrary to law, which has resulted in damage to Plaintiff and his
15 family members, and has prejudiced their rights under the state and federal laws and
16 constitutions. Further, it has violated Plaintiff's constitutional rights to due process
17 of law and privacy.

18 55. The above-described wrongful acts of Defendants violated the right of
19 Plaintiff and his family members to be secure in their/his person and effects against
20 unreasonable search and seizure under the Fourth and Fourteenth Amendments to
21 the Constitution of the United States.

22 56. At all times herein mentioned, the rights and privileges of Plaintiff and his
23 family members described above were clearly and well established.

24 57. Plaintiff is informed and believes and therefore alleges that at all times
25 herein mentioned, Defendants, and each of them, willfully and maliciously
26 conspired, agreed and reached a mutual understanding among themselves to subject
27 Whitson and his family members to invasion of privacy, in derogation of his federal
28 constitutional rights and privileges.

1 58. The above-mentioned federal and state laws imposed upon any person a
2 legal duty to use due care. Especially, peace officers had the fundamental duty to
3 obey and carry out the laws of this state irrespective of their source, be it a
4 constitution, statute, or duly promulgated regulation, order or judgment.

5 59. In addition, every Defendant owed a legal duty of care imposed by the
6 rules, regulations and policies if they exist, of the SBSB and County to Plaintiff, and
7 his family members.

8 60. At all times herein mentioned, each of the Defendants had the power and
9 duty to restrain the other Defendants and prevent them from violating the law and
10 the rights of Plaintiff, but each of the Defendants failed and refused to perform that
11 duty, failed and refused to restrain the other Defendants, and thereby became a party
12 to the injuries inflicted upon Plaintiff.

13 61. Defendants, and each of them, knew, or should have known, that their
14 failure to exercise due care would cause Plaintiff severe emotional distress. The
15 injury to Plaintiff was foreseeable.

16 62. The acts of the individual peace officer Defendants was intentional and
17 malicious and done for the purpose of causing Whitson to suffer severe humiliation,
18 intimidation, mental anguish, and emotional and physical distress. Defendants'
19 conduct in confirming and ratifying those acts was done with knowledge that
20 Plaintiff's emotional and physical distress would thereby increase, and were done
21 with a wanton and reckless disregard of the consequences to Plaintiff.

22 63. Public entity Defendant County of Santa Barbara is also liable under the
23 doctrine of Respondeat Superior for state law claims.

24 64. Defendant's policies and procedures regarding the jail database system
25 are non-existent and deficient to the extent they are non-existent, and were applied
26 to Whitson and his family members in a deficient manner, thereby violating his
27 privacy rights.

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1 65. It was the policy and/or custom of County and SBSB to inadequately
2 supervise and train its peace officers, including the Defendant officers, thereby
3 failing to adequately discourage further constitutional violations on the part of its
4 peace officers. The County did not require appropriate in-service training or re-
5 training of officers who were known to have engaged in police misconduct.

6 66. As a result of the above described policies and customs, peace officers in
7 the employ of County, and SBSB, including the Defendants herein, believed that
8 their actions would not be properly monitored by supervisory officers and that
9 misconduct would not be investigated or sanctioned, but would be tolerated, and
10 allowed to continue.

11 **FIRST CAUSE OF ACTION**

12 [42 U.S.C. § 1983 Constitutional Violations--

13 Unlawful Custom and Practice By Plaintiff Against All Defendants)

14 67. Plaintiff realleges Paragraphs 1 through 66 as though set forth herein
15 verbatim, and by this reference incorporates the same herein and makes each a part
16 hereof.

17 68. Defendants County and SBSB proximately caused Plaintiff's injuries and
18 is liable under state law and under principles set forth in *Monell v. Department of*
19 *Social Services*, 436 U.S. 658 (1978). County and SBSB is responsible for the
20 actions, omissions, policies, procedures, practices and customs of its various agents
21 and agencies.

22 69. As a result of the acts alleged above, particularly the County and SBSB's
23 woefully inadequate policies and procedures governing access to government
24 databases, Plaintiff is entitled to damages pursuant to Title 42 U.S.C. § 1983, et seq.,
25 in an amount to be proven at trial.

26 70. Defendant County has possessed the power and authority to adopt policies
27 and prescribe rules, regulations and practices affecting the operation of SBSB, and
28 County, and particularly said Department's Jail System, Internal Investigations, and
Training and Personnel Divisions and other operations subdivision presently

1 unidentified to Plaintiff, and their tactics, methods, practices, customs, and usages
2 related to internal investigations, personnel supervisions and records maintenance
3 by its rank and file.

4 71. At all times relevant to the facts alleged herein, County was responsible
5 for assuring that the actions, omissions, policies, procedures, practices and customs
6 of its employees complied with the laws and the Constitutions of the United States
7 and of the State of California.

8 72. At all times herein mentioned, Defendants, and each of them, were
9 employees acting under the SBSB and/or County direction and control, who
10 knowingly and intentionally promulgated, maintained, applied, enforced and ratified
11 the continuation of policies, customs, practices and usages in violation of the Fourth
12 and Fourteenth Amendment to the United States Constitution, which customs,
13 policies, practices and usages at all times herein mentioned required and encouraged
14 the employment, deployment and retention of persons as peace officers who have
15 demonstrated their corruption, frauds, dishonesty, and numerous other serious
16 abuses of their powers as peace officers in the employment.

17 73. County and SBSB knowingly maintains and permits official sub-rosa
18 policies or customs of permitting the occurrence of the kinds of wrongs set forth
19 above, by deliberate indifference to police abuses, failing and refusing to impartially
20 investigate, discipline or prosecute peace officers who commit acts of felonious
21 dishonesty, each ratified and approved by County and SBSB.

22 74. On information and belief, the unconstitutional policies, practices, and
23 customs promulgated, sanctioned or tolerated by County and SBSB include, but are
24 not limited to:

25 (a) Inadequately training and educating officers in the use of government
26 databases; and failing to enforce a privacy policy required by *Gov't Code* § 11019.9
27 with respect to use of government databases;

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1 (b) Refusing to enforce established administrative procedures to insure the
2 integrity of the private information of individuals listed in the jail and other Federal
3 and State databases;

4 (c) Employing and retaining as County peace officers and other personnel,
5 such as Malone, Garnica, and Cardenas, who County at all times material herein
6 knew or reasonably should have known had propensities for abusing their authority
7 and for illegally accessing government databases for their own personal use;

8 (d) Inadequately supervising, training, controlling, and assigning County
9 peace officers and other personnel, such as Malone, Garnica and Cardenas, who
10 County and SBSB at all times material herein knew or reasonably should have
11 known had the aforementioned propensities and character traits;

12 (e) Maintaining grossly inadequate procedures for reporting, investigating,
13 reviewing, disciplining and controlling intentional misconduct by County and SBSB
14 peace officers, including Malone, Garnica, and Cardenas;

15 (f) Failing to discipline SBSB and County officers for misconduct,
16 including but not limited to unlawful access of government databases, including
17 discipline that is so slight as to be out of proportion to the magnitude of the
18 misconduct, and other inadequate discipline that is tantamount to encouraging
19 misconduct;

20 (g) Ratifying the intentional misconduct of its peace officers; and

21 (h) Encouraging, accommodating, or facilitating a "blue code of silence,"
22 "blue shield," "blue wall," "blue curtain," "blue veil," or simply "code of silence,"
23 pursuant to which peace officers do not report other officers' errors, misconduct, or
24 crimes. Pursuant to this code of silence, if questioned about an incident of
25 misconduct involving another officer, while following the code, the officer being
26 questioned will claim ignorance of the other officer's wrongdoing.

27 75. On information and belief, County, SBSB and DOES 1-10, together with
28 other County Supervisors, determined that the conduct of Malone, Garnica and

1 Cardenas was within policy. County supervisors ratified the illegal conduct of
2 Malone, Garnica, and Cardenas.

3 76. On information and belief, Malone, Garnica, and Cardenas were not
4 disciplined, reprimanded, retrained, suspended, or otherwise penalized in connection
5 with the violation of informational privacy of Whitson and/or his family members.

6 77. When Malone searched the jail databases for information about Plaintiff
7 and/or his family, he violated Plaintiff's right to privacy as guaranteed under the
8 Fourth Amendment to the United States Constitution and applied to state actors by
9 the Fourteenth Amendment.

10 78. In abusing his position as a custody deputy, Malone acted under color
11 of state law in his invasion of the informational privacy of Plaintiff via the
12 government databases.

13 79. The acts and conduct of all Defendants, as described above, were
14 committed under color of state law, pursuant to official written and unwritten policy
15 and custom of County and SBSB. Said policy and custom included knowingly
16 failing to adequately train employees on proper and authorized use of confidential
17 information on government databases, and failing to adequately supervise
18 employees. County and SBSB knew or should have known that injury would result
19 from this custom and policy.

20 80. Defendants knowingly, recklessly, or with deliberate indifference to
21 Whitson's rights, maintained, fostered, condoned, approved of, and/or ratified an
22 official policy, practice, procedure, or custom of permitting the occurrence of
23 wrongful conduct as described herein, and/or improperly, inadequately, and with
24 deliberate indifference and reckless disregard to the constitutional or other federal
25 rights of persons, failed to properly train, supervise, monitor, or take corrective
26 action with respect to their employees' wrongful conduct as described herein, so that
27 each one of them is legally responsible for all of the injuries and/or damages
28 sustained by Whitson.

1 81. County, and SBSB, has woefully inadequate and unlawful policies,
2 customs and habits of improper and inadequate oversight of access to the jail
3 databases, as well as access to Federal and State databases. These unlawful customs,
4 policies and habits proximately caused the injuries and constitutional violations
5 described above. Accordingly, Plaintiff has suffered a severe invasion of this
6 privacy and has suffered severe emotional distress. Plaintiff has also incurred
7 significant expenses, including attorney's fees. Plaintiff is therefore entitled to
8 general and compensatory damages pursuant to Title 42 U.S.C. § 1983, et seq., in an
9 amount to be proven at trial.

10 82. As a result of their misconduct, all of the Defendants are liable for
11 Plaintiff's injuries, either because they were integral participants in the wrongful
12 access to private information, or because they failed to intervene to prevent these
13 violations.

14 83. These Defendants also proximately caused Plaintiff's injuries by
15 integrally participating or failing to intervene in the illegal obtaining of unauthorized
16 data, and by engaging in other acts and/or omissions described below.

17 84. In doing the acts and failing and omitting to act as hereinafter described,
18 Defendants Malone, Garnica, Cardenas and DOES 1-10 were acting on the implied
19 and actual permission and consent of SBSB and County.

20 85. As a proximate result of the foregoing, Whitson has suffered, and
21 continues to suffer, mental and emotional distress in that Defendants' conduct as
22 described above has affected his fundamental vested rights and violated his
23 constitutional right to privacy. He is entitled to and demands an award of exemplary
24 and punitive damages against Defendants, jointly and severally, under *Civil Code* §
25 3294 or any other law (except as to Defendants SBSB, and County), as well as
26 attorney fees. Damages exceed the minimal jurisdiction of this Court in an amount
27 subject to proof at time of trial.

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SECOND CAUSE OF ACTION

Negligent Supervision

(By Plaintiff Against County, SBSD, Garnica, Cardenas and DOES 1-10)

86. Plaintiff repeats and realleges each and every allegation in Paragraphs 1 through 66, and 68 through 85, inclusive, of this Complaint and incorporates the same by reference, as though fully set forth herein.

87. Plaintiff is informed and believes and based therefore alleges that as the supervisors of Malone, Garnica and Cardenas had, and did exercise, supervisory authority over Malone, while engaged in, and required by, the course and scope of their employment during SBSD business hours.

88. Plaintiff is informed and believes and based therefore alleges that Malone's unauthorized use of the government databases was done during his regular business hours, ostensibly while Malone was engaged in the course and scope of his employment and performing his required official duties to SBSD and the County as a Custody Deputy.

89. Plaintiff is informed and believes and based therefore alleges that the SBSD, County, Garnica, and Cardenas had actual and/or constructive knowledge that Malone was using the time and resources of the County, and SBSD to gather information for the personal use of himself and his wife, and while acting as a state actor when logging in to these government databases.

90. Garnica and Cardenas knew, or in the exercise of due care should have known, that Malone had a propensity, character trait and practice, while purporting to act under color of law, for dishonesty and corruption.

91. Notwithstanding such knowledge, Defendants County, SBSD, Garnica and Cardenas negligently, carelessly and recklessly hired, employed, retained and failed to properly supervise, train and control Malone as a peace officer and assigned said Defendant to duties which enabled him to violate federal and state

1 law, and County and SBSB policies, including, but not limited to, unauthorized
2 access of government databases, all while purporting to act under the color of law.

3 92. Furthermore, by continuing to employ Malone, failing to condemn his
4 unauthorized use of government databases to obtain confidential information, and
5 by allowing him to abuse his position, Garnica, Cardenas, SBSB, and County
6 therefore ratified Malone's acts; thus the SBSB and County are both independently
7 liable as a principal for the tortious acts of Malone as described herein.

8 93. As a direct and proximate result of the foregoing, Plaintiff has been
9 damaged as recited above and demands and is entitled to the damages recited in
10 the First Cause of Action, including, but not limited to, general and punitive
11 damages (except as to Defendants County and SBSB).

12 **THIRD CAUSE OF ACTION**

13 Conspiracy to Interfere with Civil Rights (42 U.S.C. § 1985)

14 (By Plaintiff Against All Defendants)

15 94. Plaintiff repeats and realleges each and every allegation in Paragraphs
16 1 through 66, 68 through 85, and 87 through 93, inclusive, of this Complaint and
17 incorporates the same by reference, as though fully set forth herein.

18 95. Commencing on or about January 2015, Malone, Garnica and Cardenas,
19 while working for the Santa Barbara Sheriff's Department and acting within the
20 course and scope of their duties, conspired with one another and with Jennifer
21 Malone to violate Plaintiff's right to informational privacy under 42 U.S.C. § 1985
22 (3) by allowing access to be gained to the jail, county, federal and state databases
23 for personal purposes. Defendants carried out and perpetrated the mutually
24 supportive conspiracy to deprive Plaintiff of his rights to full and equal benefits of
25 all laws.

26 96. Malone, Garnica, and Cardenas, while working for the Santa Barbara
27 Sheriff's Department and acting within the course and scope of their duties,
28

1 intentionally injured Whitson, as well as his family members, and intentionally
2 violated Whitson and his family members rights.

3 97. Defendants' felonious and unconstitutional acts and omissions as herein
4 before alleged proximately caused Plaintiff damage, harm and loss.

5 98. As a direct and proximate result of the foregoing, Plaintiff has been
6 damaged as recited above and demands and is entitled to the damages recited in the
7 First Cause of Action, including, but not limited to, general and punitive damages
8 (except as to Defendant County, and SBSB).

9 **FOURTH CAUSE OF ACTION**

10 Violation of Information Practices Act Under *Civil Code* § 1798

11 (By Plaintiff Against All Defendants)

12 99. Plaintiff repeats and realleges each and every allegation in Paragraphs 1
13 through 66, 68 through 85, 87 through 93, and 95 through 98, inclusive, of this
14 Complaint and incorporates the same by reference, as though fully set forth herein.

15 100. The state Constitution gives each citizen an "inalienable right" to pursue
16 and obtain privacy. *California Constitution*, Article 1, section 1.

17 101. Defendants violated the Information Practices Act (*Civil Code* §§ 1798
18 et seq.) (IPA), which prohibits disclosure of personal information, such as
19 employment history information, by any state agency except under certain
20 circumstances, including the situation where disclosure of information is relevant
21 and necessary.

22 102. Defendants' unauthorized access of personal details, including
23 information about Whitson, Whitson's family members, current and prior
24 residences, employment history, school history, arrest history, and medical history,
25 constituted a public disclosure of private facts and was highly offensive and
26 objectionable, judged by a reasonable person standard.

27 103. Malone admitted Whitson was not in custody when he accessed these
28 government databases and that he disclosed Whitson's personal information to

1 persons not authorized by law, and or persons not required to have Whitson's
2 information.

3 104. As a direct and proximate result of the foregoing, Plaintiff has been
4 damaged as recited above and demands and is entitled to the damages recited in the
5 First Cause of Action, including, but not limited to, general and punitive damages
6 (except as to Defendants SBSD, and County).

7 **FIFTH CAUSE OF ACTION**

8 Intentional Infliction Of Emotional Distress

9 (By Plaintiff Against All Defendants)

10 105. Plaintiff repeats and realleges each and every allegation in Paragraphs
11 1 through 66, 68 through 85, 87 through 93, 95 through 98, and 100 through 104,
12 inclusive, of this Complaint and incorporates the same by reference, as though fully
13 set forth herein.

14 106. On or about January 2015 and thereafter, Plaintiff was entitled to the
15 duty of due care by Defendants, and each of them, including, but not limited to, the
16 duty to protect the informational privacy of Plaintiff and to only access the computer
17 databases and/or other information retention and retrieval systems accessible to law
18 enforcement for official purposes.

19 107. On or about January 2015 and thereafter, Defendants, and each of them,
20 unlawfully allowed Plaintiff's personal information to be accessed, and conspired
21 among themselves to cover up their lawlessness and corruption without any
22 investigation in violation of *Penal Code* § 502(c), *Penal Code* §13300, and *Gov't*
23 *Code* § 11019.9.

24 108. In doing the aforementioned, Defendants' conduct was intentional,
25 outrageous, malicious, and done for the purpose of or with reckless disregard for the
26 consequences of their misconduct, causing Plaintiff to suffer emotional suffering and
27 mental distress, fear, anxiety, and extreme mental anguish.

28 ///

1 109. By perpetrating, sanctioning, tolerating and ratifying the outrageous
 2 conduct and other wrongful acts, Defendants County, Sergeant Garnica, Corporal
 3 Cardenas, SBSD, and DOES 1-10 acted with intentional, reckless, and callous
 4 disregard for Plaintiff's constitutional rights. Furthermore, the policies, practices,
 5 and customs implemented, maintained, and still tolerated by Defendants County,
 6 SBSD, Sergeant Garnica, Corporal Cardenas, and DOES 1-10, were affirmatively
 7 linked to and were a significantly influential force behind the injuries of Plaintiff.

8 109. As a direct and proximate result of the foregoing, Plaintiff has suffered,
 9 and continues to suffer, mental and emotional distress and is entitled to and demands
 10 damages against Defendants jointly and severally, as recited in the First Cause of
 11 Action, including, but not limited to, general and punitive damages (except as to
 12 Defendant SBSD, and County).

13 REQUEST FOR INJUNCTIVE RELIEF
 14 [42 U.S.C. § 1983, et seq. and California Law]

15 110. Pursuant to the provisions of the federal law and 42 U.S.C. section 1983
 16 et seq., as well as Federal and California law, and in light of the constitutional
 17 violations and customs, policies and practices of the SBSD, and County as alleged
 18 above, Plaintiff respectfully requests that the Court issue a permanent injunction
 19 requiring the Santa Barbara County and SBSD, to Order (1) Defendants' policies,
 20 practices, and customs violate the United States Constitution, and State law and also
 21 seek an injunction requiring Defendants (1) to remedy such violations, including
 22 removal of Plaintiff's name from all government databases that may prevent him
 23 from obtaining, government clearances etc.; (2) to provide all persons unlawfully
 24 accessed in County and SBSD government databases with notice of the reasons and
 25 bases for that unlawful inclusion; and (3) to provide Plaintiff with the opportunity to
 26 contest inclusion in those federal, statewide, and county databases. Plaintiff seeks
 27 this or other equitable relief deemed appropriate by the Court according to proof
 28 made at the time of trial in this case.

ATTORNEY FEES AND COSTS

111. Plaintiff is entitled to an award of attorney fees and costs under 42 U.S.C. § 1988(b).

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

- 1. For a permanent injunction as described in paragraph 110 above and/or other equitable relief according to proof at trial;
- 2. For general and compensatory damages according to proof at trial;
- 3. For exemplary damages according to proof at trial (except as to Defendant SBSB, and County);
- 4. For punitive damages as provided by law, in an amount to be proved against each individual Defendant;
- 5. For costs of suit herein, including reasonable attorney's fees pursuant to 42 U.S.C §1988 and *California Civil Code* §§ 52, and 52.1; and
- 6. For such other and further relief as the Court deems proper and just.

Dated: November 6, 2015

DIANE B. WEISSBURG 

DIANE B. WEISSBURG
Attorney for Plaintiff
Jeffrey Whitson

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Plaintiff hereby demands a jury trial in this action as to those claims for which a jury trial is appropriate.

Dated: November 6, 2015

DIANE B. WEISSBURG 

DIANE B. WEISSBURG
Attorney for Plaintiff
Jeffrey Whitson

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I have read the foregoing Complaint and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am an officer a partner a _____ of _____, a party to this action, and I am authorized to make this verification for and on its behalf. I am informed and believe, and on that ground allege, that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am one of the attorneys for _____, a party to this action. Such party is absent from the aforesaid county where such attorneys have their offices, and I make this verification for and on behalf of such party for that reason. I am informed and believe, and on that ground allege, that the matters stated in the foregoing document are true.

Executed on November 5, 2015, at Bakersfield, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



JEFFREY WHITSON