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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 COLONEL ROBERT FRANK AND
9 TIM STEBBINS,

10 Plaintiffs,

Case No:

11 vs.

COMPLAINT
Jury Demanded

12 CITY OF HENDERSON;
13 CHIEF JUTTA CHAMBERS, in her
individual capacity; SERGEANT
14 JEFFREY FARLEY; DOES 1 through 10,
inclusive,

15 Defendants.

16 _____ /
17 COMES NOW, Plaintiffs, COL. (USAF RET.) ROBERT FRANK AND TIM
18 STEBBINS, by and through their attorney of record, CAL J. POTTER, III, ESQ., of POTTER
19 LAW OFFICES, and for their causes of action against the Defendants, and each of them, jointly
and severally, asserts and alleges as follows:

20 **JURISDICTION AND VENUE**

21 1. This case arises under 42 U.S.C. §1983, the First, Fourth and Fourteenth
22 Amendments to the United States Constitution, and various state-law governmental tort statutes.
23 Jurisdiction in this Honorable Court is conferred by 28 U.S.C. §§ 1331 and 1343. Plaintiffs'
24 state-law claims are within the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

25 2. Venue is proper in the Southern Division of the District of Nevada pursuant to 28
26 U.S.C. § 1391 as the underlying acts, omissions, events injuries and related facts upon which the
27 present action are based, occurred in the County of Clark, State of Nevada.

28 ...

PARTIES

1
2 3. Plaintiffs COL. (RET.) ROBERT FRANK and TIM STEBBINS are adults
3 qualified to bring suit on their own behalf and are citizens of the United States and residents of
4 the State of Nevada.

5 4. Defendants, City of Henderson, (“Henderson”) is a governmental entity organized
6 and existing under the laws of the State of Nevada. In this case, Henderson acted through agents,
7 employees, and servants, including their policymakers and through Defendant Chief Jutta
8 Chambers (herein “Chief Chambers”), the Chief of the Henderson Police Department and her
9 individual capacity only. Defendant Sergeant Jeffrey Farley (“Sgt. Farley”) was employed as a
10 police officer with the City of Henderson. He is sued in his individual capacity.

11 5. At all times, Defendant City of Henderson, possessed the power and authority to
12 adopt policies and prescribe rules, regulations, and practices affecting all facets of the training,
13 supervision, control, employment, assignment and removal of individual members of the
14 Henderson Police Department (herein “HPD”), including those individuals charges with serving
15 as investigators for the Detective Bureau of the Henderson Police Department and to assure that
16 they seek warrants for arrests based upon affidavits that contain truthful and factually correct
17 statements with the laws and constitutions of the United States and of the State of Nevada.

18 6. At all times mentioned herein Defendants Chief Chambers and Sgt. Farley and
19 Does 1-10, were residents within the County of Clark, State of Nevada.

20 7. Plaintiffs are informed and believe, and thereupon allege, that at all times
21 mentioned herein Defendants Chambers and Farley, and Does 1-10, were employees, agents
22 and/or servants of the City of Henderson, and acted within the course and scope of said
23 employment, agency and/or service, and possessed the power and authority and were charged by
24 law with the responsibility to enact policies and to prescribe rules and practices concerning the
25 operation of the Henderson Police Department, and concerning the means by which the
26 investigation of the citizen complaints are reviewed and investigated.

27 ...

28 ...

- 1 a. Filing factually inaccurate and/or factually incorrect affidavits for arrest
- 2 warrants that violates the holding of Franks v. Delaware and its progeny;
- 3 b. Failing to adequately train, supervise, and control deputies, civilian
- 4 employees or volunteers in the arts of law enforcement;
- 5 c. Failing to adequately discipline deputies or civilian employees in the belief
- 6 that they can violate the rights of persons such as the Plaintiffs in this
- 7 action with impunity, and that such conduct will not adversely benefits;
- 8 d. Condoning and encouraging Officers and civilian employees in the belief
- 9 that they can violate the rights of persons such as the Plaintiffs in this
- 10 action with impunity, and that such conduct will not adversely affect their
- 11 opportunities for promotion and other employment benefits.

12 13. Plaintiffs are informed and believe, and on the basis of such information and
13 belief alleges, that defendants City of Henderson, Chief Chambers, and Does 1-10, ordered,
14 authorized, acquiesced in, tolerate, or permitted other defendants herein to engage in the
15 unlawful and unconstitutional violations based either on a deliberate plan by defendants or on
16 defendant's deliberate indifference, gross negligence, or reckless disregard ti the safety, security,
17 and constitutional and statutory rights of the Plaintiffs FRANK and STEBBINS.

18 **B. THE AFFIDAVIT FOR WARRANT**

19 14. Plaintiffs FRANK and STEBBINS were arrested subsequent to the issuance of a
20 warrant which relied upon an affidavit comprised of false statements which were made
21 knowingly and intentionally, or with a reckless disregard for the truth by Sgt. Farley.

22 **I. Affidavit as to Tim Stebbins**

23 15. The Affidavit specifically names Plaintiff, TIM STEBBINS, as the subject of the
24 accusations.

25 16. The Affidavit accuses Plaintiff, STEBBINS of making knowingly false
26 statements to the police. However, the Plaintiff did not make any false statements to the police,
27 and certainly no false statements the Plaintiff STEBBINS knew to be false.

28 ...

1 17. In the Affidavit, Sgt. Farley lists several false and misleading statements in an
2 attempt to justify why Plaintiff should be arrested. Sgt. Farley's false statements were made
3 knowingly and intentionally, or with a reckless disregard for the truth. Additionally, Sgt. Farley
4 includes several irrelevant statements, in an attempt to cloud the issues. The said statements by
5 Sgt. Farley are willful, malicious and intentional.

6 18. Specifically, Sgt. Farley's Affidavit was false in the following ways:

7 a. The lower portion of page 1 and top portion of page 2 only refer to
8 statements by Robert Frank - no statements that Plaintiff Tim Stebbins
9 made. Thus the Affidavit cannot be used to justify the arrest of TIM
10 STEBBINS.

11 b. Sgt. Farley's reference to a "tax memorandum" from Mr. Gary Porter.
12 accuses Robert Frank of certain things. There are no charges against
13 Plaintiff TIM STEBBINS, thus there cannot be any probable cause that
14 can be used to justify a warrant for TIM STEBBINS' arrest.

15 c. Sgt. Farley failed to provide evidence that TIM STEBBINS made a
16 knowingly false statement.

17 d. At the bottom of page 2 Sgt. Farley stated the document in question "could
18 not be considered a forgery" if the excess assessments were returned as
19 promised. Despite the fact that Plaintiffs' provided Sgt. Farley with
20 documentation showing the surplus assessments were not returned, none
21 of the documents provided to Sgt. Frank by the Plaintiffs were false.

22 e. In the first full paragraph on page 3 Sgt. Farley states at that meeting he
23 determined the excess for the year 2007 was \$665,856 from 2006 and
24 2007 tax returns. He goes on to state "It was explained that the 2007
25 excess would have been spent in 2008 to cover part of the costs related to
26 the opening of a new facility".

27 I. Sgt. Farley knew or should have known there was no
28 documentation to support the claim of any intention to spend the

1 money as claimed.

2 ii. Sgt. Farley had 2008 Tax Planning Guidelines approved by the
3 board that do not show any intention to apply the 2007 surplus in
4 2008 in any way.

5 iii. Sgt. Farley had the 2008 Budget Presentation presented to and
6 ratified by homeowners that does not show any intention to apply
7 the 2007 surplus in 2008 in any way.

8 iv. Sgt. Farley had the 2008 Consolidated budget that does not show
9 any intention to apply the 2007 surplus in 2008 in any way.

10 v. Sgt. Farley should have challenged the legitimacy of this claim.

11 vi. There was no basis for probable cause to arrest TIM STEBBINS as
12 a result of Sgt. Farley's false Affidavit.

13 f. Also on page 3 Sgt. Farley stated: "by using the excess to cover expenses,
14 it is applied to the 2008 assessments by not requiring an assessment
15 increase to cover expenses".

16 I. Sgt. Farley knew or should have known this was not true.

17 ii. Sgt. Farley had the 2008 Budget Presentation presented to and
18 ratified by homeowners. Those documents clearly show a major
19 increase in assessments for 2008 and that at least part of the
20 increased assessment was intended to cover "the costs related to
21 the opening of a new facility".

22 iii. Sgt. Farley should have challenged the legitimacy of this claim.

23 iv. There was no basis for probable cause to arrest TIM STEBBINS as
24 a result of Sgt. Farley's false Affidavit.

25 g. Further on page 3 Sgt. Farley stated "since the new facility would not be
26 realized the board decided to reduce the assessments of all members by
27 \$100 in the final quarter of 2008 and that resulted in an approximate
28 \$700,000. He then concludes and states: "approximate \$700,000 reduction

1 in assessments clearly offsetting the \$665,856 excess collected in 2007".

2 I. Sgt. Farley knew or should have known this was not true.

3 ii. Sgt. Farley knew or should have known his conclusion had no
4 merit.

5 iii. Sgt. Farley had Budget documents and meeting minutes that clearly
6 show the approximate \$700,000 did not come from application of
7 the 2007 excess.

8 iv. Sgt. Farley provided no documentation showing any application of
9 the 2007 excess in 2008 in any way.

10 v. In fact Sgt. Farley had "requested a copy of the 2008 Budget which
11 reflects the application of the excess monies to members
12 assessments". The 2008 budget supplied to Sgt. Farley does not
13 show any application of the 2007 excess in 2008 in any way.

14 h. Continuing on page 3, in the fourth full paragraph, Sgt. Farley claims he
15 was provided "further documentation showing Tim Stebbins' suggestion
16 the document in question was a forgery was without merit in the form of
17 an "independent audit conducted for the Sun City Anthem Association,
18 Inc.".

19 I. Sgt. Farley knew or should have known this document provides no
20 information concerning the application of any of the 2007 excess in
21 2008 in any way.

22 ii. Sgt. Farley provided no documentation from that audit showing or
23 demonstrating any application of the 2007 surplus in 2008.

24 iii. If Sgt. Farley was incapable of understanding what this document
25 says and does not say he should not have asserted it had anything
26 to do with the truthfulness of any of TIM STEBBINS' statements.

27 iv. Without any such evidence, there was no basis for probable cause
28 to arrest TIM STEBBINS.

1 I. In the fifth and sixth full paragraphs on page 3, continuing in the first full
2 paragraph on page 4 Sgt. Farley makes statements related only to Mr.
3 Robert Frank and have nothing to do with TIM STEBBINS or anything
4 TIM STEBBINS did or was alleged to have done.

5 j. In the second full paragraph on page 4 Sgt. Farley refers to a posting on a
6 web site. The matter in question was a political statement. Sgt. Farley
7 states: "It could be construed that this criminal report and subsequent
8 investigation are being used to injure the reputation of standing board
9 members". That statement is ridiculous and it provides no evidence that
10 TIM STEBBINS provided any false or knowingly false information to the
11 police department, nor that TIM STEBBINS committed any crime.

12 19. Sgt. Farley's Affidavit failed to demonstrate that the Plaintiffs provided any false
13 information and certainly not any information Plaintiffs' knew to be false. Sgt. Farley used false
14 and misleading statements and misdirection, to fabricate a false Affidavit For Warrant in a
15 malicious manner to have TIM STEBBINS unjustly arrested.

16 20. Sgt. Farley's Affidavit failed to provide probable cause for the arrest of TIM
17 STEBBINS.

18 **II. Affidavit as to Robert Frank**

19 21. The Affidavit specifically names Plaintiff, ROBERT FRANK, as the subject of
20 the accusations.

21 22. The Affidavit accuses Plaintiff, FRANK of making knowingly false statements to
22 the police. However, the Plaintiff did not make any false statements to the police, and certainly
23 no false statements the Plaintiff FRANK knew to be false.

24 23. In the Affidavit, Sgt. Farley lists several alleged false and misleading statements
25 in an attempt to justify why Plaintiff should be arrested. Sgt. Farley's false statements were made
26 knowingly and intentionally, or with a reckless disregard for the truth. Additionally, Sgt. Farley
27 includes several irrelevant statements, in an attempt to cloud the issues. The said statements by
28 Sgt. Farley are willful, malicious and intentional.

- 1 24. Specifically, Sgt. Farley’s Statements were false in the following ways:
- 2 a. Sgt. Farley knew, or should have known, that Board President Berman and
- 3 Board Secretary Cooper did not apply the credit/surplus funds to the
- 4 following year’s member assessments.
- 5 b. Sgt. Farley knew, or should have known, that the Board did not have
- 6 unilateral right to refuse to return the declared millions of dollars of
- 7 surpluses to the homeowner members after the board approved the
- 8 resolution to comply with IRS Revenue Ruling 70-604.
- 9 c. Sgt. Farley knew, or should have known, that the \$3.7 million surplus at
- 10 the end of tax year 2007 was never returned or credited to the homeowners
- 11 as stated by the Board resolution and income tax return.
- 12 d. Sgt. Farley knew, or should have known, that The Board did not have the
- 13 right to spend all of the accumulated surpluses in any way that the Board
- 14 wished in the following years, but needed homeowners approval.
- 15 e. Sgt. Farley knew, or should have known, that the Board did not have the
- 16 right to accumulate such surpluses over a period of years without paying
- 17 taxes or complying with IRS 70-604.
- 18 f. Sgt. Farley knew, or should have known, that ROBERT FRANK at no
- 19 time filed a false report, nor committed any crime whatsoever.
- 20 g. Sgt. Farley failed to offer any support for his erroneous conclusion that
- 21 ROBERT FRANK “knew the report to be false.”
- 22 h. Sgt. Farley made a false statement when he claimed that “Mr. Frank and
- 23 Mr. Stebbins indicate that since there was no meeting of owners, the
- 24 resolution is a forgery, falsely claiming to represent the desires,
- 25 sentiments, choices, and opinion of the homeowners.” In actuality, the
- 26 Plaintiffs’ assertion has never been proven to be incorrect or false. The
- 27 Board demonstrated that the subject resolution was false by failing to
- 28 return the surplus funds in the subsequent tax year, and by disclosing it

1 had done the very same thing in previous years. The IRS has supported the
2 Plaintiff's petition.

3 i. When Sgt. Farley discusses the portion beginning with "a coversheet titled
4 'Expert Advice Was Sought, BUT IGNORED'", Sgt. Farley willfully
5 avoids a key point of information in that the Board claimed they did
6 consult with the members, but they did not give the expert all of the
7 available information, nor was the expert allowed to meet with Plaintiffs.
8 Additionally, it is not clear that the expert actually signed the letter. It is
9 also a fact that the expert was not made aware of chronic abuses of
10 willfully overcharging assessments and not returning and/or not crediting
11 surplus assessments year after year.

12 j. Sgt. Farley falsely asserts the "This coversheet significantly misrepresents
13 the content of Mr. Porter's Analysis of the Law." In fact, Sgt. Farley
14 admitted that he was not technically or professionally qualified to
15 unilaterally state the opinions and judgments which Sgt. Farley did.

16 k. Further, Sgt. Farley's affidavit is false in that the Affidavit disregards the
17 IRS letter concerning the surpluses.

18 l. Sgt. Farley made a false statement when he said "As a board member, Mr.
19 Frank knew the Association sought 'expert' advice and that the expert
20 advice supported the application of the revenue ruling. . . . this is a clear
21 misrepresentation of fact." Mr. FRANK had no prior knowledge of that
22 letter before it was dumped on him by surprise at a board meeting. Mr.
23 Frank consulted with experts prior to filing his police report.

24 m. Sgt. Farley made another false statement when he said "It was established
25 that the Board of Directors has the authority to make the elections." In
26 fact, Sgt. Farley unilaterally declared that he had been convinced by the
27 Board of his conclusion. Sgt. Farley refused to listen to Plaintiffs' contrary
28 arguments and further refused to enlist the assistance of a qualified

1 professional to assist in the investigation.

2 n. Sgt Farley's blind assertion that "they (Plaintiffs) presented documentation
3 that was too general to establish that the assessments were not applied as
4 stated" is an arbitrary conclusion, made by an unqualified mind, and
5 further demonstrates Sgt. Farley's bias and efforts to obtain an arrest
6 warrant based upon false information.

7 o. At page 3 of the Affidavit, Sgt. Farley, when discussing the 2007 tax
8 return, commits a series of false statements and misdirection. Sgt. Farley
9 omits the fact that the Board raised assessments in 2008 by \$160 to a total
10 of \$1,100.00 annually.

11 p. Sgt. Farley's assertion beginning at "by using the excess to cover
12 expenses, it is applied to the 2008 assessments by not requiring an
13 assessment increase to cover expenses . . ." is another false statement
14 because IRS RR 70-604 does not allow surplus from one year to be used to
15 "cover expenses."

16 q. Sgt. Farley's assertion that "it clearly demonstrates he (FRANK) had
17 knowledge that more than \$700,000.00 was returned to the homeowners in
18 the form of an assessment reduction in 2008" distorts the truth. What was
19 owned to the members was \$160 of unnecessary 2008 assessments PLUS
20 \$3.85 million of accumulated surpluses from prior years. The total credited
21 to homeowners should have been about \$4.98 million or about \$598 each.

22 r. Sgt. Farley's statement "the documentation clearly demonstrating that Mr.
23 Frank's and Stebbins' allegation that the resolution was a forgery is
24 without any merit ..." is knowingly false because the audit firm cannot
25 produce an independent audit when it has performed Sun City Anthem
26 audits since 1999 and the firm appears to have directly participated in the
27 apparent crimes.

28 s. Sgt. Farley makes more false and misleading statements when he says" it

1 was also made clear that the Board of Directors puts forth significant effort
2 to keep the homeowners informed as the financial status and plans of the
3 association. Mr Frank even presented slides from a power point
4 presentation conducted by the Association to the homeowners to inform
5 them of budgeting plans.” In actuality, the Board did everything it could to
6 pump out false and misleading information to members to try to keep a lid
7 on the uncovered financial mismanagement and unrefunded millions.

8 t. The following section, beginning at “Based on these documents...” once
9 again demonstrates the Sgt. Farley’s Affidavit is filled with materially
10 false statements. In actuality, the documents provide no evidence to prove
11 that the Plaintiffs made any false statements. This portion also
12 demonstrates that Sgt. Farley elected to recite the story of the wrongdoers
13 rather than conduct an adequate, independent investigation.

14 u. Sgt. Farley’s statement that “Those past concerns do not directly relate to
15 this case” is misinformed, false and misleading. Nearly every one of Mr.
16 Frank’s past concerns directly related to financial mismanagement and
17 fraud. The specific case of failing to return the surplus assessments had
18 been a major dispute for approximately three years and the record shows
19 he did everything possible to avoid filing the police report.

20 25. Sgt. Farley failed to conduct any independent investigation, or to provide any facts
21 or independent professional opinions to support his unilateral conclusions. On the contrary, Sgt.
22 Farley only met with the Board members.

23 26. That there was no basis for probable cause to arrest ROBERT FRANK as a result
24 of Sgt. Farley’s false Affidavit.

25 **C. PLAINTIFFS FRANK AND STEBBINS ARE ARRESTED AS A RESULT OF SGT. FARLEY’S**
26 **FALSE AFFIDAVIT**

27 27. Plaintiffs Frank and Stebbins were unlawfully arrested, falsely imprisoned, and
28 forced to perform a “perp walk” as a result of Sgt. Farley’s false Affidavit and Chief Chambers,

1 Does 1-10, and HPD's failure to properly investigate police reports, and supervise and train its
2 employees and its failure to promulgate and enforce appropriate policing policies concerning the
3 arrest of citizens who file criminal complaints against officers of homeowners associations.

4 **D. VOLUNTARY DISMISSAL OF SGT. FARLEY'S MALICIOUS PROSECUTION**

5 28. On March 13, 2012, the City of Henderson voluntarily dismissed the charges
6 against Mr. Frank. (See attached exhibit A).

7 29. Additionally, the City Attorney and the Judge who issued the warrant were
8 recused.

9 **E. BOARD SETTLEMENT WITH THE IRS**

10 30. Recently the Board of Sun City Anthem settled with IRS over the misconduct of
11 which Plaintiffs' reported.

12 31. The Association was required to pay the IRS \$112,987 in 2007 income taxes plus
13 interest of \$32,002.66. The settlement represents a 92% reduction from the amount demanded by
14 the IRS in January, 2011, which was \$1,344,821 plus interest. In exchange for settlement, the
15 IRS dropped its claim for tax penalties. The IRS is expected to proceed to audit the 2008, 2009
16 and 2010 tax returns.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF CIVIL RIGHTS PURSUANT TO 42 U.S.C. § 1983**

19 32. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth
20 here.

21 33. By the actions and omissions described above, Chief Chambers, Sgt. Farley, and
22 Does 1-10, as well as other officers employed by or acting on behalf of Defendant HPD, violated
23 42 USC § 1983, depriving Plaintiffs of the following clearly-established and well-settled
24 constitutional rights protected by the First, Fourth, and Fourteenth Amendments to the United
25 States Constitution:

- 26 a. The right of Plaintiffs to petition their government about their government;
27 b. The right to be free from unreasonable seizure as secured by the Fourth
28 and Fourteenth Amendments;

- c. The right to be free from unlawful arrest;
- d. The right to Due Process; and,
- e. All other rights as set forth herein.

34. Defendants subjected Plaintiffs to their wrongful conduct, depriving Plaintiffs of rights described herein, knowingly, maliciously, and with conscious and reckless disregard for whether the rights of Plaintiffs, and others would be violated by their acts and/or omissions.

35. As a direct and proximate result of Defendants act and/or omissions as set forth above, Plaintiffs sustained injuries and damages as set forth above.

36. The conduct of Defendants, and Does 1-10 entitles Plaintiffs to punitive damages and penalties allowable under 42 USC §1983 and applicable Nevada Statutes.

37. Plaintiffs are also entitled to costs and attorneys fees under 42 USC § 1988 and applicable Nevada statutes.

SECOND CAUSE OF ACTION

MONELL CLAIM/MUNICIPAL LIABILITY PURSUANT TO 42 U.S.C. § 1983

38. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth here.

39. The unconstitutional actions and/or omissions of Chief Chambers, and Does 1-10, as well as other officers employed by or acting on behalf of Defendant HPD, on information and belief, were pursuant to the following customs, policies, practices, and/or procedures of HPD, stated in the alternative, which were directed, encouraged, allowed, and/or ratified by policy-making officers of HPD:

- a. To tolerate the failure to adequately investigate police reports ;
- b. To tolerate and allow the unlawful arrests of citizens;
- c. To fail to use appropriate and generally accepted law enforcement procedures in handling citizen complaints;
- d. To deprive citizens of their right to petition their government about their government ;
- e. To deny citizens their right to Due Process and other constitutional rights

1 as set forth herein;

2 f. To cover-up violations of constitutional rights by any or all of the
3 following:

4 I. By failing to properly investigate and/or evaluate complaints ;

5 ii. By ignoring and/or failing to properly and adequately investigate
6 and discipline unconstitutional or unlawful police activity;

7 iii. By allowing, tolerating, and/or encouraging police officers to: fail
8 to file complete and accurate police reports; file false police
9 reports; make false statements; intimidate, bias and/or “coach”
10 witnesses to give false information and/or to attempt to bolster
11 officers’ stories; and/or obstruct or interfere with investigations of
12 unconstitutional or unlawful police conduct, by withholding and/or
13 concealing material information;

14 g. To allow, tolerate, and/or encourage a “code of silence” among law
15 enforcement officers and police department personnel, whereby an officer
16 or member of the department does not provide adverse information against
17 a fellow officer or member of the department; and,

18 h. To use or tolerate inadequate, deficient, and improper procedures for
19 handling, investigating, and reviewing complaints of citizens.

20 40. Defendant HPD, Chief Chambers, and Does 1-10 failed to properly hire, train,
21 instruct, monitor, supervise, evaluate, investigate, and discipline Defendants Sgt. Farley, and
22 Does 1-10, and other HPD personnel, with deliberate indifference to Plaintiffs’ constitutional
23 rights, which were thereby violated as described above.

24 41. The unconstitutional actions and/or omissions of Chief Chambers, Sgt. Farley,
25 and Does 1-10, as well as other officers employed by or acting on behalf of Defendant HPD, as
26 described above, were approved, tolerated, and/or ratified by policy-making officials of HPD.
27 Plaintiffs are informed and believe, and thereupon allege, the details of this incident have been
28 revealed to the authorized policy makers within HPD, and that such policy makers have direct

1 knowledge of the fact that the arrest of Plaintiffs was not justified. Notwithstanding this
2 knowledge, the authorized policy makers within HPD have approved Defendants Sgt. Farley and
3 Does 1-10 arrest and the basis for that arrest. By so doing, the authorized policy makers within
4 HPD have shown affirmative agreement with the individual defendant officers' actions, and have
5 ratified the unconstitutional acts of the individual defendants.

6 42. The aforementioned customs, policies, practices, and procedures, the failures to
7 adequately hire, train, instruct, monitor, supervise, evaluate, investigate, and discipline, as well as
8 the unconstitutional orders, approvals, ratification and toleration or wrongful conduct by
9 Defendants HPD, Chief Chambers, and Does 1-10, were a moving force and/or proximate cause
10 of the deprivations of Plaintiffs' clearly-established and well-settled constitutional rights in
11 violation of 42 USC § 1983, as more fully set forth above.

12 43. Defendants subjected Plaintiffs to their wrongful conduct, depriving Plaintiffs of
13 rights described herein, knowingly, maliciously, and with conscious and reckless disregard for
14 whether the rights and safety of Plaintiffs and others would be violated by their acts and/or
15 omissions.

16 44. As a direct and proximate result of the unconstitutional actions, omissions,
17 customs, policies, practices, and procedures. Defendants HPD, Chief Chambers, and Does 1-10
18 as described above, Plaintiffs sustained serious and permanent injuries and are entitled to
19 damages, penalties, costs and attorney fees as set forth above, and punitive damages against
20 Defendants Chief Chambers, Sgt. Farley, and Does 1-10 in their individual capacities.

21 **THIRD CAUSE OF ACTION**

22 **SUPERVISORY LIABILITY PURSUANT TO 42 U.S.C. § 1983**

23 45. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth
24 here.

25 46. Chief Chambers and Does 1-10 are directly liable for the acts of Sgt. Farley, and
26 Does 1-10, for failing to enforce the laws of the State of Nevada and the regulations of the
27 Henderson Police Department pertaining to the need for probable cause to detain and arrest an
28 individual. Chief Chambers is the policy maker for the Henderson Police Department.

1 47. Chief Chambers, Sgt. Farley, and Does 1-10 denied Plaintiffs Frank and Stebbins
2 their First Amendment right to petition their government about their government.

3 48. Chief Chambers and Does 1-10 have the duty and responsibility to implement and
4 enforce the guidelines, procedures, and regulations of the Henderson Police Department and to
5 train and supervise the conduct of the employees of the Henderson Police Department to ensure
6 they are properly trained in the arrest and legal basis for the detention of individuals.

7 49. Chief Chambers' and Does' 1-10 failure to enforce the laws of the State of
8 Nevada and the regulations of the Henderson Police Department encouraged and caused
9 constitutional violations by the aforementioned officers and the refusal to allow Plaintiffs to
10 petition their government about their government

11 50. Plaintiffs Frank and Stebbins are thus entitled to compensatory damages, general
12 and special, resulting from the protracted violation of the aforementioned constitutional rights
13 under 42 U.S.C. § 1983.

14 51. Plaintiffs Frank and Stebbins have been forced to pursue this action in search of
15 justice and to enforce the provisions of 42 U.S.C. § 1983 and are therefore entitled to be awarded
16 reasonable attorney's fees as part of their costs pursuant to 41 U.S.C. § 1988.

17 52. That as a direct result of the acts and omissions of the Defendants, and each of
18 them, Plaintiffs Frank and Stebbins were caused to suffer physical and mental injury, pain and
19 suffering, and severe emotional distress and other related costs, including but not limited to
20 attorney fees in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00).

21 **FOURTH CAUSE OF ACTION**

22 **PENDANT STATE TORT CLAIM FOR MALICIOUS PROSECUTION**

23 53. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth
24 here.

25 54. Defendants initiated, procured the institution of and actively participated in the
26 continuation of a criminal proceeding against Plaintiffs Frank and Stebbins for approximately
27 eighteen months.

28 55. Defendants lacked probable cause to commence said proceeding.

1 56. Defendants acted with malice towards retired senior citizens over the age of
2 seventy.

3 57 The criminal proceeding terminated in Plaintiffs Frank and Stebbins favor.

4 58. Plaintiffs Frank and Stebbins suffered injury to their reputation, humiliation,
5 embarrassment, mental suffering, financial damages, and inconvenience, all proximately caused
6 by Defendants' actions.

7 59. One remains "seized," within the meaning of the Fourth Amendment, as long as a
8 prosecution remains pending. Therefore, the time to file a § 1983 action based on malicious
9 prosecution begins to run upon dismissal of the criminal charges.

10 60. As a direct and proximate result of the malicious prosecution and the gross
11 negligence and carelessness and other improper conduct of Defendants, and each of them,
12 Plaintiffs Frank and Stebbins are entitled to special damages that Plaintiffs incurred and punitive
13 damages in an amount in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00).

14 61. As a further result of Defendants' conduct, Plaintiffs have had to retain the
15 services of attorneys in this matter, and therefore, seeks reimbursement for attorney's fees and
16 costs.

17 **FIFTH CAUSE OF ACTION**

18 **PENDANT STATE TORT CLAIM FOR**

19 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS ("IIED")**

20 62. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth
21 here.

22 63. Defendant Sgt. Farley's and Does' 1-10, false arrest and false imprisonment of
23 Plaintiffs Frank and Stebbins was extreme and outrageous causing Plaintiffs to suffer emotional
24 distress and was done without probable cause. Plaintiffs were "stripped down" and handcuffed,
25 behind their backs, to a vertical bar for over four hours.

26 64. As a direct and proximate result of Defendants' intentional infliction of emotional
27 distress upon Plaintiffs, They have incurred special and general damages in an amount to be
28 shown at trial, and are further entitled to punitive damages.

1 be highly offensive to any reasonable person. Plaintiffs live in a homeowner community of
2 approximately 12,000 residents and Plaintiffs are frequently reminded of the arrest status by
3 community bloggers.

4 76. Defendants had knowledge, or acted in reckless disregard as to the falsity of the
5 publicized matter and the false light in which was Plaintiffs were placed.

6 77. That as a direct result of the acts and omissions of the Defendants, and each of
7 them, Plaintiffs were caused to suffer physical and mental injury, pain and suffering, and severe
8 emotional distress and other related costs, including but not limited to attorney fees in excess of
9 SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00).

10 **EIGHTH CAUSE OF ACTION**

11 **PENDANT STATE TORT CLAIM FOR FALSE ARREST & FALSE IMPRISONMENT**

12 78. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth
13 here.

14 79. Defendants' acts intended to confine Plaintiffs within boundaries fixed by
15 Defendants.

16 80. Defendants' acts directly resulted in confinement of Plaintiffs.

17 81. Plaintiffs were conscious of the confinement and were harmed by said
18 confinement.

19 82. Plaintiffs suffered physical injuries and emotional distress, including humiliation,
20 indignity and disgrace as well as joint and muscle pain experienced by elders, over the age of
21 seventy, who were forced to sit in a damp jail for over four hours while handcuffed and clad in
22 undergarments.

23 83. Defendants' conduct of arresting Plaintiffs without legal probable cause
24 constitutes false arrest and false imprisonment .

25 84. As a direct and proximate result of Defendants conduct, Plaintiffs have incurred
26 special and general damages in an amount to be shown at the time of trial.

27 85. Defendants' conduct was committed intentionally, maliciously, and with
28 conscious disregard to the constitutional rights of Plaintiffs warranting the imposition of punitive

1 damages.

2 86. As a direct and proximate result of the false imprisonment and the gross
3 negligence and carelessness and other improper conduct of Defendants, and each of them,
4 Plaintiffs are entitled to special and punitive damages in an amount in excess of SEVENTY
5 FIVE THOUSAND DOLLARS (\$75,000.00).

6 87. As a further result of Defendants' conduct, Plaintiffs have had to retain the
7 services of attorneys in this matter, and therefore, seeks reimbursement for attorney's fees and
8 costs.

9 **NINTH CAUSE OF ACTION**

10 **RESPONDEAT SUPERIOR FOR PENDANT STATE TORT CLAIMS**

11 88. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth here.

12 89. That Defendant HPD is liable for the tortious acts of Defendant Chief Chambers, Sgt.
13 Farley, and Does 1-10, under the theory of Respondeat Superior.

14 90. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs
15 experienced damages and is entitled to compensation for their pain, suffering, and other related costs
16 in excess of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00).

17 91. As a further and direct result of the Defendants conduct Plaintiffs have incurred and
18 will continue to incur in the future, incidental expenses in a sum to be proven at trial.

19 92. It has been necessary for Plaintiffs to obtain services of an attorney to prosecute this
20 action and Plaintiffs are entitled to an award of attorney's fees and costs of suit incurred herein.

21 WHEREFORE, Plaintiffs pray for judgment as follows:

- 22 A. For compensatory and general damages in a sum in excess of \$75,000.00 for each of
23 the above-stated causes of action;
- 24 B. For exemplary damages, in a sum in excess of \$75,000.000;
- 25 C. For punitive damages in a sum of excess of \$75,000.00; as to non-public defendants
26 and individual capacity public defendants;
- 27 D. For legal pre-judgment interest, at the highest rate allowable;
- 28 E. For reasonable attorney fees and costs of suit; and

1 F. For any such further relief this Court deems appropriate in the premises.

2 DATED this 16th day of November, 2012

3 POTTER LAW OFFICES

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5 By /s/ Cal J. Potter, III, Esq.
6 CAL J. POTTER, III, ESQ.
7 Nevada Bar No. 1988
8 1125 Shadow Lane
9 Las Vegas, Nevada 89102
10 *Attorney for Plaintiffs*

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