

Dan R. Larsen (4865)
Chris Martinez (11152)
Jon Williams (16194)
DORSEY & WHITNEY LLP
111 South Main Street
Twenty-First Floor
Salt Lake City, Utah 84111
Telephone: (801) 933-7360
larsen.dan@dorsey.com

Brett L. Tolman (8821)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah, 84145-0385
Telephone: (801) 532-1500
btolman@rqn.com

Attorneys for Plaintiff Kirk Torgensen

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

<p>KIRK TORGENSEN, Plaintiff, vs. SIM GILL; CHOU COLLINS; SAMUEL P. SUTTON; FRED BURMEISTER; CORTNEY NELSON; SALT LAKE COUNTY; and SALT LAKE COUNTY DISTRICT ATTORNEYS' OFFICE Defendants.</p>	<p style="text-align: center;">COMPLAINT AND JURY DEMAND</p> <p>Case No.: 2:18-cv-00816-PMW Judge: Paul M. Warner</p>
--	---

Plaintiff Kirk Torgensen (“**Torgensen**”) complains against Defendants Sim Gill; Chou Collins; Samuel P. Sutton; Fred Burmeister; Cortney Nelson; Salt Lake County; and Salt Lake County District Attorneys’ Office (collectively, “**Defendants**”) as follows:

NATURE OF THE CASE

1. This is a civil rights action for violations of federal and state constitutional rights under 42 U.S.C. § 1983 and the Utah constitution.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Kirk Torgensen is a resident of Volusia County in the State of Florida, and is a natural born citizen of the United States.

3. Defendant Salt Lake County District Attorney Sim Gill (“**Gill**”) was acting under color of state law in his individual and official capacities as the elected District Attorney of Salt Lake County, and was responsible for the policies, practices and customs of the Office of Salt Lake County District Attorney.

4. Upon information and belief, defendant Chou Collins (“**Collins**”) is a resident of Salt Lake County, State of Utah, and was acting under color of state law in her individual and official capacities as a Deputy District Attorney for Salt Lake County, and was responsible for supervising and implementing the policies, practices and customs of the Office of Salt Lake County District Attorney.

5. Upon information and belief, defendant Samuel P. Sutton (“**Sutton**”) is a resident of Salt Lake County, State of Utah, and was acting under color of state law in his individual and official capacities as a Deputy District Attorney for Salt Lake County, and was responsible for supervising and implementing the policies, practices and customs of the Office of Salt Lake County District Attorney.

6. Upon information and belief, defendant Fred Burmeister (“**Burmeister**”) is a resident of Salt Lake County, State of Utah, and was acting under color of state law in his individual and official capacities as a Deputy District Attorney for Salt Lake County, and was responsible for supervising and implementing the policies, practices and customs of the Office of Salt Lake County District Attorney.

7. Upon information and belief, defendant Cortney Nelson (“**Nelson**”) is a resident of Salt Lake County, State of Utah, and was acting under color of state law in his individual and official capacities as an investigator for the Office of District Attorney for Salt Lake County.

8. Defendant Salt Lake County is a municipal corporation organized and existing under and by virtue of the laws of the State of Utah.

9. Defendant Salt Lake County District Attorney’s Office (also referred to as “**DA’s Office**”) is a department of Salt Lake County in the State of Utah responsible for prosecution of all felony criminal matters in Salt Lake County.

10. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1331 and 1332 and 42 U.S.C. §§ 1983 and 1988.

11. Venue is proper pursuant to 28 U.S.C. § 1391 because some or all of the defendants reside in the District of Utah, and all substantial events giving rise to the claims occurred within this judicial district.

GENERAL ALLEGATIONS

12. The claims arise from Torgensen's arrest and incarceration in the Salt Lake County Jail on a material witness warrant leading up to the criminal jury trial of former Utah Attorney General John Swallow. In 2014, two former Utah Attorney Generals, Mark Shurtleff and John Swallow, were criminally charged by the Salt Lake County District Attorney for alleged public corruption consisting of a "pay to play" scheme involving people who had dealings with the Utah Attorney General's Office (also referred to as "**AG's Office**"). They were both accused of trading favors and access to rich businessmen, improperly accepting money, golf getaways and rides on private planes and a luxury houseboat. Needless to say, this was the biggest political corruption scandal in modern Utah history and was a regular story in the print and television news media for more than two years.

13. In his capacity as Chief Criminal Deputy of the Utah Attorney General's Office, Torgensen obtained information as early as 2011 regarding suspicious activities involving then Attorney General Shurtleff and John Swallow. Shortly thereafter, Torgensen and other officials in the AG's Office determined that these suspicious activities should be reviewed by an independent law enforcement agency due to an obvious conflict within the AG's Office.

14. Sometime in 2011, Torgensen provided all information to the Utah State Department of Public Safety ("**DPS**") and requested an independent review. That request was granted and DPS assigned the matter to agent Scott Nesbitt to conduct an investigation. The FBI later joined the DPS investigation of Shurtleff and Swallow

15. About the same time, Torgensen also provided the suspicious information to Troy Rawlings, Davis County Attorney, and requested that he assist with the independent

investigation. The requests for an independent investigation were done with tremendous risk to Torgensen due to his appointed position as the Chief Criminal Deputy to Shurtleff.

Because Torgensen served in an appointed position as Chief Deputy, Shurtleff could terminate his appointment, and therefore his employment, for no reason and without cause.

16. As the DPS and FBI investigations progressed, Torgensen was contacted by the FBI for an interview sometime in early 2015. Torgensen willingly met with the FBI and provided information regarding their ongoing investigation of Shurtleff and Swallow.

17. Around the spring of 2015, Torgensen was asked by Salt Lake County District Attorney prosecutors, Collins and Burmeister, to meet with them regarding his potential testimony in a related criminal matter involving Tim Lawson, an alleged accomplice of Shurtleff. Torgensen willingly agreed to meet with Collins and Burmeister, spending several hours helping them prepare their criminal case against Lawson. During this meeting, Collins and Burmeister communicated that Torgensen would be a cooperating witness in the Lawson case, and that they looked forward to his assistance in their case against Shurtleff as well. This criminal case ended when Lawson died before trial.

18. Also in early 2015, Torgensen willingly met with prosecutors Collins and Burmeister to provide information about a potential case being investigated involving John Swallow, the then Attorney General for the state of Utah. After that meeting, Torgensen did not hear again from these prosecutors until January, 2017, just before his illegal arrest on a material witness warrant.

19. In early 2016, Torgensen participated in an interview with Paul Cassell and Fran Wikstrom, attorneys hired by Sean Reyes, the current Utah Attorney General, as part of a

separate internal investigation into the practices of the Utah Attorney General's Office.

Torgensen willingly met with them for more than 8 hours, answering every question. The comprehensive investigative report found that Torgensen had gone to great lengths to perform his job ethically, even under extreme pressure created by Shurtleff and Swallows' suspicious activities.

20. During the course of these events, Torgensen's appointment as the Chief Criminal Deputy was terminated by the newly appointed Attorney General, Sean Reyes. Due to his inability to find new employment in Utah, Torgensen and his wife relocated to Florida.

21. In August of 2016, the Torgensen family developed a plan to rent their Florida beach condo during the upcoming winter season while they traveled internationally during February and March of 2017. At the time, Torgensen was unaware that a Utah court had set the criminal trial of John Swallow for February 10, 2017 through March 3, 2017. Nor was he aware that the criminal prosecutors considered him a material witness for the prosecution. Torgensen had not heard anything from Collins or Burmeister for almost a year. In fact, he was never contacted by prosecutors via telephone, email or otherwise, specifically regarding the investigation and prosecution of Swallow after meeting with them almost a year before. Any other prior discussions with them were in connection with the separate cases against Lawson and Shurtleff.

22. In early January 2017, Scott Reed, an Assistant Attorney General and a personal friend of Torgensen, received a subpoena to testify at the upcoming Swallow trial. In the process of being served with his witness subpoena, Reed was informed that Collins and Burmeister also wanted to talk with Torgensen. When this information was relayed to

Torgensen, he told Reed to let Collins and Burmeister know that he would be coming to Utah between January 7-10, 2017 for his mother's funeral and burial service, and that he would be happy to talk to them while in Salt Lake.

23. Shortly thereafter, Reed provided Torgensen's cell number and email address to Collins, but he did not know Torgensen's home address in Florida. Reed also informed Collins that Torgensen was going to be out-of-the-country for about 6 weeks in February and March, 2017. Reed also advised Collins that Torgensen was going to be in Salt Lake City for a few days between Friday, January 6th through 9th for Torgensen's mother's funeral service, and that Torgensen would be staying at Reed's residence in West Jordan, Utah.

24. Torgensen's mother's funeral service was to be held on Saturday, January 7, 2017 and the burial was to be held on Monday, January 9, 2017.

25. Upon his arrival in Salt Lake on January, 6, 2017, Torgensen telephoned Collins to talk about the prosecution's interest in calling him as a witness at the Swallow trial. Torgensen expressed his surprise that they wanted to call him as a witness since prosecutors had not contacted him in more than a year. Collins informed Torgensen that the Swallow trial was scheduled for February, just a little over a month away. Torgensen explained to Collins that he had planned an international vacation months before, and some of those commitments could not be canceled without losing travel reservations and deposit money. Collins told Torgensen to cancel his commitments and to try and get his money back. Torgensen attempted to do so on January 7th, even though it was the day of his mother's funeral service.

26. On January 8, 2017, Nelson, an investigator for the DA's Office, appeared at Reed's home to serve Torgensen with a trial subpoena. According to the subpoena, Torgensen

was commanded to appear at 7:45 a.m. at the Salt Lake County District Attorney's Office, 111 East Broadway, Suite 400, on each of the following dates: February 7th -10th, 14th -17th, 21st – 24th and 28th – March 3rd, 2017. Torgensen accepted the subpoena in Reed's presence, but declined to sign the subpoena because he did not want to represent that he could appear on all of the requested dates before working out the scheduling conflict with the prosecutors.

27. Torgensen explained to Nelson that he had out-of-the-country travel plans from February 8th through March 16th, that he had talked with Collins about the scheduling conflict, and that if prosecutors wanted to reimburse him the costs to change his travel plans, he would be willing to attend the trial. Torgensen also informed Nelson that he would be in Salt Lake City January 30th through February 1st, 2017 to testify as an expert witness in a different matter. He would be willing to accommodate the prosecution by allowing his witness testimony to be preserved via videotape before trial.

28. During the conversation, he assured Nelson, "If they want to do whatever they have to do to preserve my testimony, I'm happy to do that. I don't have a problem with that." Torgensen made it clear to Nelson that as a prosecutor for 30 years: (1) he fully intended to comply with the subpoena; (2) he fully understood his obligation to appear under the subpoena; and (3) he fully understood the procedure for procuring witnesses to testify at a criminal trial. At the end of the discussion, he said, "I'm happy to accommodate you guys. I'll do whatever it takes." At no time did Torgensen tell Nelson that he did not intend to honor the subpoena or appear for the trial.

29. On the evening of January 8, 2017, Nelson reported to Collins: (a) that Torgensen had told him he would be unavailable for the trial because he would be out of the country on a

6-week trip; and (b) that Torgensen would not give Nelson his home address in Florida, and (c) would not sign to acknowledge receipt of the subpoena.

30. On January 9, 2017, the morning of his mother's burial, Torgensen again talked with Collins to explain that he was unable to obtain a refund for his booked travel, but again proposed to Collins that he would provide videotaped testimony when he would again be in Salt Lake City testifying as an expert witness in a federal case at the end of January, 2017. He explained that he would be flexible regarding timing, so long as it did not conflict with his travel plans. Collins brushed off his idea, would not commit to pay for his travel expenses and cancelation fees, and told Torgensen to focus on getting a refund for his travel plans. Again, Torgensen worked on getting a refund, even though it was the day of his mother's burial.

31. Despite Torgensen's assurances to Nelson and Collins that he would do whatever it takes to accommodate the prosecution's need for his testimony at trial, Collins directed Sutton to apply for a material witness warrant for Torgensen.

32. At the time, Utah Rule of Criminal Procedure 7Cd) provided that "[w]hen a magistrate has good cause to believe that any material witness would not appear and testify unless bond is required, the magistrate may fix a bond . . . for the appearance of the witness." Only after the witness "fails or refuses to post the bond with the clerk of the court" can the magistrate issue a warrant and commit the witness to jail. *Id.* On the other hand, if the "witness does provide bond when required, the witness may be examined and cross-examined before the magistrate in the presence of the defendant and the testimony shall be recorded." *Id.* If the witness is unavailable or fails to appear at any subsequent hearing or trial when

ordered to do so, the recorded testimony may be used at the hearing or trial in lieu of the personal testimony of the witness. Utah R. Crim. P. 7(1)(1)(4).

33. The material witness warrant prepared by defendants commanded the Sheriff of Salt Lake County or any peace Officer authorized to serve arrest warrants “to arrest Kirk Torgensen ... forthwith as a material witness in the above matter and place him in the Salt Lake County Jail until he can be brought before the Court or before the nearest or most accessible magistrate for setting bail requested in the amount of \$100,000.”

34. In support of the application for material witness warrant, Collins, Burmeister and Sutton prepared and filed an Affidavit of Courtney Nelson. The Affidavit falsely represented that Torgensen refused to honor the subpoena, refused to return from his scheduled international vacation and refused to attend the scheduled jury trial.

35. The Affidavit purposefully and intentionally omitted Torgensen’s material statements to Nelson that he: (1) fully understood his obligation to appear under the subpoena; (2) fully intended to comply with the subpoena; (3) was scheduled to return to Salt Lake City at the end of January to testify as an expert in another matter; (4) would be happy to accommodate the prosecution by submitting to a videotaped deposition to preserve his trial testimony; (5) was engaged in ongoing discussions with Collins to coordinate travel reimbursements if it was necessary to return from vacation; and (6) was willing to “do whatever it takes” to provide the witness testimony required by the subpoena.

36. The Affidavit also made no mention whether defendants had followed Utah procedures to request a bond *prior to* issuance of a material witness warrant pursuant to Utah R. Crim. P., Rule 7. Nor did the Affidavit address whether Torgensen had been given the

opportunity to fail or refuse to post a bond—which is a prerequisite for a material witness warrant pursuant to Rule 7. Nor did it mention that Torgensen had specifically agreed to be examined and cross-examined before a magistrate in the presence of the defendant so the testimony could be recorded for use at trial.

37. About an hour after returning from his mother's burial on January 9th, seven armed federal agents appeared at Reed's home with a material witness arrest warrant for Torgensen. Torgensen was shocked that the agents were there to take him into custody, and asked the agents to get Collins on the phone.

38. During a lengthy telephone call, Torgensen assured Collins that: (1) he would provide his trial testimony, one way or another; (2) he would never leave her "high and dry;" (3) he would provide Collins his Florida home address to secure an Interstate Witness Rendition Warrant if she wanted, and (4) it was completely unnecessary to arrest him to secure his attendance at the Swallow trial. He promised Collins that if the DA's Office would provide an airline ticket to return to Utah for the Swallow trial, he would return from his vacation to testify.

39. During the conversation, Collins repeatedly said she was "scared" that he would not appear at trial. In response, Torgensen assured Collins that he would honor the subpoena and promised to be in her Office the very next morning to work out the details. Collins responded she would not be in her Office the next day, and offered no other alternatives other than arresting him as a material witness and putting him in jail until trial in February. At no time did Collins discuss the alternative of requiring a statutory surety bond to assure Torgensen's attendance at trial.

40. Scott Reed, Patty Reed and all seven FBI agents were present and listening to this telephone conversation with Collins. At the end of the telephone call, Collins told Torgensen that she needed to speak with Burmeister and would call back shortly. Approximately three minutes later, Collins called back and instructed the federal agents to arrest Torgensen. At no point did Collins offer to pay Torgensen's travel expenses to return to Utah for the Swallow trial, seek to require a surety bond to assure Torgensen's attendance at trial, or agree to take Torgensen's videotaped trial testimony. Prior to and during these events, Collins was aware that Torgensen was represented by attorney Brett Tolman, the former U.S. Attorney for the state of Utah. At no time did Collins reach out to Tolman to discuss Torgensen's material witness testimony, to make arrangements to preserve his testimony, or to assure his appearance to testify at trial.

41. After being arrested, Torgensen was transported to the Salt Lake County Jail. At the jail, he was booked, his mugshot was taken and his fingerprints were collected as if he was a criminal. Torgensen was forced to strip out of all his clothing in front of jail staff and placed in the general jail population with inmates arrested and booked on serious criminal charges, some of which he may have prosecuted. During the booking process, another inmate became unruly and jail staff hit him to the point that an ambulance was called to transport the inmate for medical care. Torgensen was placed in a locked cell with another inmate who was being held on serious felony charges. In light of the fact that Torgensen had been a long time prosecutor and also the Director of Adult Probation and Parole for the state of Utah, he was extremely concerned for his personal safety in the jail. These dramatic experiences all

occurred on the same day that Torgensen attended the burial of his mother, as Collins and the other defendants well knew.

42. Throughout the arrest and incarceration process, Torgensen was treated like a common criminal, including wearing an orange jail jumpsuit, having his hands shackled behind his back and having to walk with his legs shackled at the ankles. He was treated with disrespect by jail personnel, including being cross-checked with a baton while being told to "face the f*cking wall".

43. The next day, Torgensen was transported from the jail to the courthouse and forced to shuffle into the courtroom with his hands and feet shackled before the news media while they took pictures of Torgensen in his jail clothes, which pictures were of course published on the front page of the newspaper, shown on local television outlets and republished in the national media.

44. Shortly thereafter, attorneys and colleagues from across the country attempted to contact Torgensen to express their personal disbelief about his arrest and incarceration as a material witness for the prosecution. These colleagues were people in the law enforcement community which Torgensen had worked with for years to earn their trust and respect, and included the very people Torgensen was working with to find new employment opportunities. Family, friends and classmates also saw the news coverage of Torgensen shackled in his jail jumpsuit like a dangerous criminal. At the time, Torgensen was newly married and his wife's family saw the jail pictures and national news coverage. Needless to say, all of this caused great humiliation and emotional pain to Torgensen.

45. As a direct result of being arrested, jailed and paraded before the media, Torgensen became deeply depressed which eventually required medical intervention. Because his ankles were shackled so tightly while being forced to shuffle while walking, Torgensen suffered injury to his left Achilles tendon, which required medical attention for chronic swelling and pain.

46. Because Torgensen cooperated at all times with law enforcement, agreed to cooperate with prosecutors in the Swallow prosecution, and perceived that his testimony was potentially exculpatory for Swallow, Torgensen reasonably believes that his arrest was intended to intimidate and pressure him to testify in a manner consistent with the prosecution's view of the case.

47. After spending a day in jail, Tolman and his law partner Matthew Lewis successfully obtained Torgensen's release following an emergency hearing before the state trial judge. At the hearing, Tolman pointed out the prosecution's blatant disregard of the statutory and constitutional procedures for securing a material witness arrest warrant. Had the court not ordered Torgensen's release, he would likely have remained in jail until the Swallow trial in February, or would have been required to post a \$100,000 bail bond.

48. As agreed, Torgensen returned to Utah on February 10th, 2017 to testify at the Swallow trial. After all of this trouble and effort, the prosecution elicited no inculpatory evidence during Torgensen's direct examination. Overall, Torgensen spent less than an hour on the witness stand, mostly on cross-examination by the Swallow defense.

49. On March 2, 2017, Swallow was acquitted on all counts. All criminal charges were dismissed against Shurtleff.

50. While officials from the DA's Office have conceded error in obtaining the material witness arrest warrant for Torgensen, the DA's Office has failed to reimburse Torgensen for his attorney's fees or compensate him for the economic and non-economic damages caused by these unlawful and traumatic events.

FIRST CAUSE OF ACTION
(FOURTH AMENDMENT VIOLATION)

51. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

52. 42 U.S.C. §1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivations of any rights, privileges, or immunities secured by the constitution shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress...

53. Defendants at all times relevant hereto, were acting under the color of state law in their capacity as agents, officers, or employees of the Office of the Salt Lake County District Attorney, and their acts or omissions were conducted within the scope of their official duties or employment.

54. The actions of defendants described above subjected plaintiff to the deprivations of his rights, privileges and immunities secured by the Fourth Amendment to the United States Constitution, without probable cause, and defendants are therefore liable for any damages recoverable under 42 U.S.C. § 1983.

55. Any reasonable law enforcement officer, criminal prosecutor or criminal justice professional, including defendants, knew or should have known that their conduct was a

violation of clearly established law at that time. *See Stewart v. Donges*, 915 F.2d 572, 582–83 (10th Cir. 1990) (“[W]e hold that at the time defendant submitted his affidavit and arrested plaintiff, it was a clearly established violation of plaintiff’s Fourth and Fourteenth Amendment rights to knowingly or recklessly omit from an arrest affidavit information which, if included, would have vitiated probable cause”); *City of Indianapolis v. Edmond*, 531 U.S. 32, 37, 47 (2000) (“The Fourth Amendment requires that searches and seizures be reasonable [R]easonableness under the Fourth Amendment is predominantly an objective inquiry”); *Bacon v. United States*, 449 F.2d 933 (9th Cir. 1971) (cited favorably in *U.S. v. Deffenbaugh Industries, Inc.*, 957 F.2d 749 (10th Cir. 1992)) (holding that an arrest warrant was invalid because it was objectively unreasonable to believe that the witness would not comply with a subpoena based on nothing more than suppositions and a weak report by a law enforcement employee); *Perkins v. Click*, 148 F. Supp. 2d 1177 (D. N.M. 2001) (finding that “any reasonable sheriff would have recognized that the arrest of a potential witness, simply because she is a potential witness, violates the most basic rights provided by the Fourth Amendment. If a suspect in a crime may not be arrested in the absence of probable cause to believe the suspect has committed the crime, a mere witness to the crime may surely not be arrested absent a showing that the witness plans to shirk her statutory duty to provide testimony.”)

56. Defendants’ unlawful misconduct was objectively unreasonable and undertaken intentionally with willful indifference to plaintiff’s constitutional rights.

57. To the extent any of these constitutional deprivations require a showing of specific intent and/or motive, defendants acted intentionally, maliciously, and/or with reckless disregard for the natural and probable consequences of their actions.

58. As a result of this violation, plaintiff suffered physical and emotional injuries, including but not limited to those associated with deprivation of liberty, severe emotional distress and suffering, severe and permanent mental distress, turmoil, anxiety, depression, insomnia, embarrassment, and humiliation, and loss of income entitling him to compensatory and special damages to be determined at trial.

59. Plaintiff is further entitled to attorney fees and costs pursuant to 42 U.S.C. § 1988, pre-judgment interest and costs as allowable by federal law.

60. Because the aforesaid actions were done intentionally or committed with reckless or callous disregard for the plaintiff's constitutional rights, plaintiff is entitled to an award of punitive damages.

61. The Salt Lake County District Attorney's Office's interrelated policies, practices and customs, separately and/or together, were implemented with deliberate indifference, and were the direct and proximate cause of injury and damage to plaintiff's rights guaranteed by the United States Constitution.

62. The existence of these interrelated policies, practices and customs can be inferred from the pattern of police and prosecutorial misconduct like that alleged herein.

63. Gill was at all relevant times a policymaker responsible for the established policies, procedures, customs, and/or practices for the DA's Office.

64. Gill has created and tolerated an atmosphere of lawlessness having developed and maintained long-standing, department- wide customs, policies, procedures, practices, and/or failed to properly train and/or supervise its prosecutors and officers in a manner amounting to deliberate indifference to the constitutional rights of Plaintiff.

65. In light of the duties and responsibilities of law enforcement officers and prosecutors that participate in the preparation and approval of arrest warrants for material witnesses, the need for specialized training and supervision is so obvious, and the inadequacy of training and/or supervision is so likely to result in the violation of constitutional and federal rights such as those described herein, that the failure to provide such specialized training and supervision is deliberately indifferent to those rights.

66. The deliberate indifference to training and supervision by defendant Gill resulted from a conscious or deliberate choice to follow a course of action from among various reasonable alternatives available to defendants, and was the moving force in the constitutional violations complained of by plaintiff.

67. To the extent that the Salt Lake County District Attorney's Office has subsequently changed its policies, training and practices relating to the preparation and approval of arrest warrants for material witnesses, plaintiff was a catalyst in bringing about those changes to defendants' unconstitutional policies and practices, and is therefore entitled to an award of fees and costs pursuant to 42 U.S.C. § 1988.

SECOND CAUSE OF ACTION
(UTAH CONSTITUTION, ARTICLE I, § 14)

68. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

69. The Utah Constitution at Article I, Section 14 provides that:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

70. The actions of defendants described above subjected plaintiff to the deprivations of his rights, privileges and immunities secured by Article I, Section 14 of the Utah Constitution, without probable cause, and defendants are therefore liable for any damages.

71. Any reasonable law enforcement officer or criminal justice professional, including defendants, knew or should have known that their conduct was a violation of clearly established law at that time.

72. To the extent any of these constitutional deprivations require a showing of specific intent and/or motive, defendants acted intentionally, maliciously, and/or with reckless disregard for the natural and probable consequences of their actions.

73. Defendants' unlawful misconduct was objectively unreasonable and undertaken intentionally with willful indifference to plaintiff's constitutional rights.

74. As a result of this violation, plaintiff suffered physical and emotional injuries, including but not limited to those associated with deprivation of liberty, severe emotional distress and suffering, severe and permanent mental distress, turmoil, anxiety, depression, insomnia, embarrassment, and humiliation, and loss of income entitling him to compensatory and special damages to be determined at trial.

75. Plaintiff is further entitled to an award attorney fees, costs, pre-judgment interest and costs as allowable by Utah law.

76. The aforesaid actions were done intentionally or committed with reckless or callous disregard for the Plaintiffs' rights under the Utah Constitution, and therefore plaintiff is entitled to an award of punitive damages.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment as to the causes of action set forth above and against defendants and each of them as follows:

1. Compensatory damages associated with deprivation of liberty, severe emotional distress and suffering, severe and permanent mental distress, turmoil, anxiety, depression, insomnia, embarrassment, and humiliation, loss of enjoyment of life and other pain and suffering on all claims allowed by law in an amount determined by a jury.
2. Economic losses, including lost wages, medical expenses, legal expenses and costs, and all related expenses in an amount determined by a jury.
3. Reasonable attorneys' fees and the costs recoverable as a prevailing party under 42 U.S.C. §1988, including expert witness fees on all claims allowed by law.
4. Punitive damages in an amount to be determined at trial, but in no event, not less than twice the amount of the compensatory damage award.
5. Pre- and post-judgment interest at the lawful rate.
6. Any further relief that this court deems just and proper, and any other appropriate relief at law and equity.

JURY TRIAL DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury on all issues so triable.

[signature page follows]

DATED this 18th day of October, 2018.

DORSEY & WHITNEY LLP

By: /s/ Dan R. Larsen
Dan R. Larsen

RAY QUINNEY & NEBEKER P.C.

By: /s/ Brett L. Tolman
Brett L. Tolman
Attorneys for Plaintiff

Plaintiff's Address:
Kirk Torgensen
5300 S. Atlantic Avenue, #16502
New Smyrna Beach, FL 32169