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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BRADLEY MONTGOMERY,

Plaintiff,

vs.

CITY OF COSTA MESA; DANA
POTTS; and DOES 1 through 10,
inclusive,

Defendants.

) Case No.

) **COMPLAINT FOR DAMAGES FOR:**

-) 1. Violation Of 42 U.S.C. § 1983; Fourth
) Amendment Rights – Excessive /
) Unreasonable Force;
) 2. Violation Of 42 U.S.C. § 1983;
) Failure To Properly Train / Hire / Fire
) / Discipline;
) 3. Violation Of 42 U.S.C. § 1983;
) Custom, Practice and/or Policy.

) **JURY TRIAL DEMANDED**
)
)

COMES NOW Plaintiff Bradley Montgomery and shows this honorable court the
following:

COMPLAINT FOR DAMAGES

JURISDICTIONAL ALLEGATIONS

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2 1. As this action is brought under 42 U.S.C. § 1983, this court has jurisdiction
3 over this case under its federal question jurisdiction pursuant to 28 U.S.C. § 1331.
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5 2. As the incidents complained of in this action occurred within the territorial
6 jurisdiction of this court, venue properly lies in this court pursuant to 28 U.S.C. §
7 1391(b)(2).
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GENERAL ALLEGATIONS

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10 3. Plaintiff Bradley Montgomery, hereinafter referred to as “MONTGOMERY” or
11 “Plaintiff MONTGOMERY,” is a natural person, who, at all times complained of in this
12 action, resided within the County of Orange.
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14 4. Defendant City of Costa Mesa hereinafter also referred to as “CITY” is a
15 municipal entity located in the State of California; within the territorial jurisdiction of this
16 court.
17

18 5. Defendant Dana Potts, hereinafter also referred to as “POTTS”, is, and at all
19 times complained of herein, was, a peace officer employed by the Costa Mesa Police
20 Department, acting as an individual person under the color of state law, in his individual
21 capacity and was acting in the course of and within the scope of his employment with
22 Defendant CITY.
23

24 6. Defendants DOES 1 through 6, inclusive, are sworn peace officers and / or
25 police officers and/or investigators and/or Special Officers and/or a dispatchers and/or
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1 some other public officer, public official or employee of defendant CITY and/or
2 otherwise employed by the Costa Mesa Police Department, who in some way committed
3 some or all of the tortious actions (and constitutional violations) complained of in this
4 action, and/or are otherwise responsible for and liable to plaintiff for the acts complained
5 of in this action, whose identities are, and remain unknown to plaintiff, who will amend
6 his complaint to add and to show the actual names of said DOE defendants when
7
8 ascertained by plaintiff.
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11 7. At all times complained of herein, DOES 1 through 6, inclusive, were acting
12 as individual persons acting under the color of state law, pursuant to their authority as
13 sworn peace officers and/or Special Officers and/or Supervisors (i.e. Sergeants,
14 Lieutenants, Captains, Commanders, etc.) and/or dispatchers, employed by the Costa
15 Mesa Police Department, and were acting in the course of and within the scope of their
16 employment with defendant CITY.
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19 8. Defendants DOES 7 through 10, inclusive, are sworn peace officers and/or
20 the Chief and/or Assistant Chiefs and/or Commanders and/or Captains and/or Lieutenants
21 and/or Sergeants and/or other Supervisory personnel and/or policy making and/or final
22 policy making officials, employed by the Costa Mesa Police Department and/or
23 defendant City of Costa Mesa, who are in some substantial way liable and responsible
24 for, or otherwise proximately caused and/or contributed to the occurrences complained of
25 by plaintiff in this action, such as via supervisory liability (i.e. failure to properly
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1 supervise, improperly directing subordinate officers, approving actions of subordinate
2 officers), via bystander liability (failing to intervene in and stop unlawful actions of their
3 subordinates and/or other officers), and such as by creating and/or causing the creation of
4 and/or contributing to the creation of the policies and/or practices and/or customs and/or
5 usages of the Costa Mesa Police Department for, *inter alia*,: 1) using excessive force; and
6 2) for covering up the tortious conduct of Costa Mesa Police Department officers.
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9 9. At all times complained of herein, DOES 7 through 10, inclusive, were
10 acting as individual persons acting under the color of state law, pursuant to their authority
11 as the Chief and/or the Assistant Chief and/or Captains and/or Lieutenants and/or
12 Sergeants and/or other Supervisory personnel and/or policy making and/or final policy
13 making officials with the Costa Mesa Police Department, and/or some other public
14 official(s) with defendant CITY, and were acting in the course of and within the scope of
15 their employment with defendant CITY.
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19 10. At all times complained of herein, defendants DOES 7 through 10, inclusive,
20 were acting as individual persons under the color of state law; under and pursuant to their
21 status and authority as peace officers and/or Supervisory peace officers (as described
22 herein, above and below), and/or policy making peace officers, with the Costa Mesa
23 Police Department and/or otherwise with defendant CITY.
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26 11. In addition to the above and foregoing, defendants POTTS and DOES 1
27 through 6, inclusive, acted pursuant to a conspiracy, agreement and understanding and
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1 common plan and scheme to deprive the plaintiff of his federal Constitutional and
2 statutory rights, and California constitutional and statutory state law rights, as complained
3 of in this action.
4

5 12. Defendants POTTS and DOES 1 through 6, inclusive, acted in joint and
6 concerted action to deprive the plaintiff of those rights as complained of herein; all in
7 violation of 42 U.S.C. § 1983, and otherwise in violation of United States (Constitutional
8 and statutory) law and California (Constitutional and statutory) state law.
9

10 13. Said conspiracy / agreement / understanding / plan / scheme / joint action /
11 concerted action, above-referenced, was a proximate cause of the violation of the
12 plaintiff's federal and state constitutional and statutory rights, as complained of herein.
13
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15 **FIRST CAUSE OF ACTION**
16 **VIOLATION OF 42 U.S.C. § 1983**
17 **Violation of Fourth Amendment Rights -**
18 **Excessive/Unreasonable Use of Force on Person**
(Against POTTS and DOES 1 through 6, inclusive)

19 14. Plaintiff hereby realleges and incorporates by reference the allegations
20 set forth in paragraphs 1 through 13, inclusive, above, as if set forth in full herein.
21

22 15. On August 14, 2018, Costa Mesa Police Department Officer POTTS and
23 DOES 1 through 6, inclusive, responded to a call for service which apparently alleged
24 that an individual was trying to break into a residence.
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26 16. POTTS and DOES 1 through 6, inclusive, apparently began searching the area
27 for the suspect.
28

1 17. POTTS and DOES 1 through 6, inclusive, then encountered MONTGOMERY
2 walking in the area.

3 18. MONTGOMERY was not attempting to break into homes and was not engaged
4 in any other unlawful or dangerous conduct.

5 19. Immediately after encountering MONTGOMERY, and without warning,
6 POTTS fired a single round from his handgun at MONTGOMERY. The bullet struck
7 MONTGOMERY in the stomach area.
8

9 20. Immediately after firing his weapon at MONTGOMERY, POTTS exclaimed,
10 “Oh shoot!”
11

12 21. MONTGOMERY did not pose a threat to anyone at the time that POTTS shot
13 him.
14

15 22. POTTS and DOES 1 through 6, inclusive, did not warn MONTGOMERY prior
16 to shooting him even though they had a reasonable opportunity to do so.
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18 23. POTTS and DOES 1 through 6, inclusive, did not have any reason to believe
19 that MONTGOMERY was a threat to anyone.
20

21 24. MONTGOMERY was taken to the hospital where he was treated for serious
22 injuries from the bullet wound. MONTGOMERY survived the shooting.
23

24 25. As a direct and proximate result of the actions of Defendants POTTS and
25 DOES 1 through 6, inclusive, as complained of herein, MONTGOMERY: 1) was
26 substantially physically, mentally and emotionally injured; 2) suffered great mental and
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1 emotional pain, suffering and distress, 4) incurred medical and psychological costs, bills
2 and expenses and 3) incurred other special and general damages and expenses in an
3 amount to be proven at trial which is in excess of \$2,000,000.00.
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5 26. The actions of said defendants, and each of them, as complained of herein, were
6 committed maliciously, oppressively and in reckless disregard of MONTGOMERY's
7 constitutional rights, sufficient for an award of punitive / exemplary damages against all
8 defendants and each of them, save Defendant CITY, in an amount to be proven at trial
9 which is in excess of \$1,000,000.00.
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12 **SECOND CAUSE OF ACTION**
13 **VIOLATION OF 42 U.S.C. § 1983**
14 **FEDERAL CLAIM FOR FAILURE TO PROPERLY TRAIN AND FOR**
15 **FAILURE TO PROPERLY HIRE / FIRE / DISCIPLINE**
16 **(Against CITY)**

17 27. Plaintiff hereby realleges and incorporates by reference the allegations set
18 forth in paragraphs 1 through 26, inclusive, above, as if set forth in full herein.

19 28. As complained of herein above, the acts of Defendants POTTS and DOES
20 1 through 6, inclusive, deprived MONTGOMERY of his rights under the laws of the
21 United States and The United States Constitution.

22 29. The training policies of CITY were not adequate to train its peace officer
23 employees to properly and lawfully handle situations similar to the one they were
24 presented with when they confronted MONTGOMERY. Specifically, CITY failed to
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1 properly train their peace officers on the use of reasonable force and the circumstances
2 in which it is lawful and reasonable to use deadly force.

3 30. Prior to August 14, 2018, CITY was aware of the violent propensities of
4 POTTS, and failed to discipline, terminate and/or train them.

5 31. CITY was aware of a previous unreasonable and unlawful use of deadly
6 force by POTTS in which he fired his weapon at an unarmed man in 2012. CITY failed
7 to properly train and or discipline POTTS for the 2012 shooting.
8

9 32. CITY was deliberately indifferent to the obvious consequences of its failure
10 to train, discipline and/or terminate its peace officer employees adequately.
11

12 33. The failure of CITY to provide adequate training, discipline and/or
13 terminate its officers caused the deprivation of MONTGOMERY's rights by Defendants
14 POTTS and DOES 1 through 6, inclusive.
15

16 34. CITY's failure to train, discipline, and/or terminate is closely related to the
17 deprivation of MONTGOMERY's rights as to be the moving force that ultimately
18 caused MONTGOMERY's injuries.
19

20 35. As a direct and proximate result of the actions of defendants POTTS and
21 DOES 1 through 6, inclusive, as complained of herein, MONTGOMERY: 1) was
22 substantially physically, mentally and emotionally injured; 2) suffered great mental and
23 emotional pain, suffering and distress, 4) incurred medical and psychological costs, bills
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1 and expenses and 3) incurred other special and general damages and expenses in an
2 amount to be proven at trial which is in excess of \$2,000,000.00.

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4 **THIRD CAUSE OF ACTION**
5 **[VIOLATION OF 42 U.S.C. § 1983]**
6 **Municipal Liability – Unconstitutional Official Policy, Practice, Or Custom**
7 **(Against Defendant CITY)**

8 36. Plaintiff hereby realleges and incorporates by reference the allegations set
9 forth in paragraphs 1 through 35 inclusive, above, as if set forth in full herein.

10 37. As shown above, the actions of Defendants POTTS and DOES 1 through 6,
11 inclusive, deprived the plaintiff of his particular rights under the United States
12 Constitution and under the California Constitution, as described above.

13 38. At all times complained of herein, Defendants POTTS and DOES 1 through
14 6, inclusive, were acting pursuant to the policies, customs, usages and practices of the
15 Costa Mesa Police Department / defendant CITY: 1) for using excessive force upon
16 persons, including excessive deadly force; 2) providing inadequate training policies
17 regarding the use of deadly force; 3) employing and retaining as officers individuals such
18 as Defendants POTTS and DOES 1 through 6, inclusive, whom Defendant CITY at all
19 times material herein knew or reasonably should have known had dangerous propensities
20 for abusing their authority and for using excessive force; 4) inadequately supervising,
21 training, controlling, assigning, and disciplining CITY officers and other personnel,
22 including Defendants POTTS and DOES 1 through 6, inclusive, whom Defendant CITY
23 knew or in the exercise of reasonable care should have known had the aforementioned
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COMPLAINT FOR DAMAGES

1 propensities and character traits; 5) maintaining grossly inadequate procedures for
2 reporting, supervising, investigating, reviewing, disciplining and controlling misconduct
3 by CITY officers; 6) for fabricating / destroying / concealing / altering evidence in
4 criminal and civil actions, and for otherwise “framing” persons in criminal actions, in
5 order to falsely and maliciously, oppressively convict innocent persons, to protect them
6 and other police officers and supervisory personnel from civil, administrative and
7 criminal liability; and 7) for covering-up unlawful and tortious conduct by Costa Mesa
8 Police Department personnel and were a proximate cause of the very same California
9 state law, and federal and state constitutional violations complained of below by the
10 plaintiff in this action.
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15 39. Said actions of said defendants were done by them under the color of state
16 law.
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18 40. As a proximate result of said defendants acting pursuant to said policies,
19 customs, usages and practices of Defendant CITY, above-described, said defendants
20 violated Plaintiff’s constitutional rights, above-described.
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22 41. As a direct and proximate result of the actions of Defendant CITY, as
23 complained of herein, Plaintiff: 1) was substantially physically, mentally and emotionally
24 injured, and great physical, mental and emotional pain, suffering and distress; 2) incurred
25 medical and psychological costs, bills and expenses, 3) incurred other special and general
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1 damages and expenses in an amount to be proven at trial, which is in excess of
2 \$2,000,000.00.

3 **WHEREFORE**, plaintiff prays for judgment as follows:
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- 5 a) For a judgment against all defendants for compensatory damages in an
6 amount in excess of \$2,000,000.00;
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8 b) For a judgment against all defendants, save defendant CITY, for punitive
9 damages in an amount in excess of \$1,000,000.00;
10
11 c) For an award of reasonable attorney's fees and costs;
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13 d) For a trial by jury; and
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15 e) For such other and further relief as this honorable court deems just and
16 equitable.

17 /S/ Gregory Peacock
18 GREGORY PEACOCK
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