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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CV 11

5771

LB

MITCHELL KATZ,

Plaintiff,

v.

COUNTY OF CONTRA COSTA, ALICIA  
SPENGER, CHRISTOPHER BUTLER,  
CARL MARINO, STEPHEN TANABE,  
WILLIAM HOWARD, SHERIFF DAVID  
LIVINGSTON, TOWN OF DANVILLE and  
DOES ONE to FIFTY, inclusive.

Defendants.

Case No.

**COMPLAINT FOR DAMAGES FOR  
VIOLATIONS OF CIVIL RIGHTS AND  
OTHER WRONGS**

**JURY TRIAL DEMANDED**

Date Action Filed:

Trial Date:

Plaintiff Mitchell Katz ("Plaintiff") complains of Defendants, and each of them, and alleges that:

**I. JURISDICTION AND VENUE**

I. The Court has jurisdiction to grant the relief requested herein pursuant to the Civil Rights Acts, 42 U.S.C. §1983, *et seq.*, the Judicial Code, 28 U.S.C. §§1331, 1343 and 2201, the

1 constitutions of the United States and State of California, Cal. Govt. Code §815.2, and California  
2 common law.

3 2. Venue in this Court is proper because the acts complained of occurred in the  
4 Northern District of California, and all parties live, work or are situated in or around the County  
5 of Contra Costa, California.

6 3. On May 25, 2011, pursuant to Cal. Government Code, § 910, Plaintiff timely  
7 presented a claim for damages to the Town of Danville. On June 2, 2011, the Town of Danville  
8 rejected the claim. (A true copy of the June 2, 2011 Notice of Status of Claim by the Town of  
9 Danville is attached as Exhibit A).

10 4. On May 25, 2011, pursuant to Cal. Government Code, § 910, Plaintiff timely  
11 presented a claim for damages the County of Contra Costa. On June 28, 2011, the County of  
12 Contra Costa rejected the claim. (A true copy of the June 28, 2011 Board of Supervisors Order  
13 by the County of Contra Costa is attached as Exhibit B).

## 14 II. PARTIES

15 5. Plaintiff is, and at all times mentioned herein was, a resident of Livermore,  
16 California. Plaintiff owns and operates Mitchell Katz Winery located at 1188 Vineyard Avenue,  
17 Pleasanton, California. (See [www.mitchellkatzwinery.com](http://www.mitchellkatzwinery.com)).

18 6. Defendant Alicia Spenger ("Ms. Spenger") is, and at all times mentioned herein  
19 was, (1) a resident of Livermore, California, (2) the wife of Plaintiff, (3) the mother of Plaintiff's  
20 two children and (4) acted under color of state law.

21 7. Plaintiff is informed and believes and thereupon alleges that: Defendant  
22 Christopher Butler ("Private Investigator Butler") is, and at all times mentioned herein was, (1) a  
23 resident of Concord, California, (2) a "Private Patrol Operator" licensed by the State of  
24 California Bureau of Security and Investigative Services and (3) acted under color of state law.  
25 Private Investigator Butler's license number 14798 was issued on February 26, 2003 and became  
26 delinquent on February 28, 2011. Private Investigator Butler operated a business entitled  
27 "Christopher B. Butler Investigations" doing business as "Butler & Associates Private  
28

Investigations" in Walnut Creek, California. Private Investigator Butler was a sworn peace officer of the City of Antioch Police Department.

8. Plaintiff is informed and believes and thereupon alleges that: Defendant Carl Marino ("Mr. Marino") is, and at all times mentioned herein was, (1) an employee of Christopher B. Butler Investigations and/or the agent of Private Investigator Butler and (2) acted under color of state law. Mr. Marino is a "San Francisco Bay Area model/actor" who is "from New York originally." (See [www.carlmarino.net](http://www.carlmarino.net)).

9. Plaintiff is informed and believes and thereupon alleges that: Defendant Contra Costa County Sheriff's Office Deputy Stephen Tanabe ("Deputy Tanabe") is, and at all times mentioned herein was, (1) a resident of Alamo, California, (2) a sworn peace officer, (3) an employee of the Contra Costa County Sheriff's Office, and/or (4) an employee of the Danville Police Department, and (5) acted under color of state law. Deputy Tanabe is sued in both his official capacity and in his individual capacity.

10. Plaintiff is informed and believes and thereupon alleges that: Defendant Contra Costa County Sheriff's Office Deputy William Howard ("Deputy Howard") is, and at all times mentioned herein was, (1) a resident of Contra Costa County, (2) a sworn peace officer, (3) an employee of the Contra Costa County Sheriff's Office, and/or (4) an employee of the Danville Police Department, and (5) acted under color of state law. Deputy Howard is sued both in his individual and official capacities.

11. Defendant Sheriff David Livingston ("Sheriff Livingston") is, and at all times mentioned herein was, employed as the sheriff of Defendant County of Contra Costa, acting within the course and scope of his employment, and under the color of state law. Sheriff Livingston is sued both in his individual and official capacities.

12. Defendant County of Contra Costa ("County") is, and at all times mentioned herein was, a public entity duly organized and existing under the laws of the State of California. The County operates the Contra Costa County Office of the Sheriff ("Sheriff's Office").

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1           13. Defendant Town of Danville, California ("Danville") is, and at all times  
2 mentioned herein was, a public entity duly organized and existing under the laws of the State of  
3 California. Danville operates the Danville Police Department.

4           14. Plaintiff is ignorant of the true names and capacities of the defendants sued in this  
5 litigation as Does One through Fifty, inclusive and, as a result, sues these defendants by these  
6 fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of  
7 these defendants once they have been ascertained. Plaintiff is informed and believes and  
8 thereupon alleges that each of the fictitiously named defendants (1) is in some manner  
9 responsible for the injuries and damages to Plaintiff alleged in this Complaint and (2) acted  
10 under color of state law.

11           15. Plaintiff is informed and believes and thereupon alleges that at all times relevant  
12 to this litigation, Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy  
13 Tanabe, Deputy Howard, County, Danville and Does One through Fifty, and each of them, were  
14 the agents, servants, and employees of their codefendants, and that these defendants, in doing the  
15 things mentioned in this Complaint, were acting within the course and scope of their authority as  
16 such agents, servants, and employees, and were acting with the permission and consent of their  
17 codefendants.

18           16. The individual defendants carried out the actions complained of in their individual  
19 capacities, under color of state law, and/or in the course and scope of their employment as  
20 employees of the County and Danville. The County and Danville is obligated, under Cal.  
21 Government Code, §§815.2 and 825(a), to pay any compensatory damages awarded against  
22 some or all of the individual defendants. Nevertheless, all Defendants are jointly and severally  
23 liable for any damage awards.

### 24                                   III. STATEMENT OF FACTS

#### 25                   A.    **Ms. Spenger Hires Private Investigator Butler to Attempt a "Dirty** 26                                   **DUI on Plaintiff at a Cost of \$6,601.17**

27           17. In the fall of 2010, Plaintiff told Ms. Spenger that he wanted to divorce her.  
28

1           18. Plaintiff is informed and believes and thereupon alleges that: Shortly after  
2 Plaintiff told Ms. Spenger that he wanted to divorce her, Ms. Spenger met with Private  
3 Investigator Butler sometime in November 2010, and "she was very, very angry – very angry"  
4 with Plaintiff. Private Investigator Butler told Ms. Spenger about the possibility of attempting to  
5 have Plaintiff arrested for driving under the influence by engineering a ruse in which co-  
6 conspirators of his would ply Plaintiff with alcohol and then Butler would tip off a law  
7 enforcement official if Plaintiff attempted to drive his vehicle following the ruse. Private  
8 Investigator Butler referred to this practice as a "Dirty DUI." Ms. Spenger responded that "she  
9 wanted it [for Plaintiff to be arrested for driving under the influence of alcohol] badly."

10           19. Plaintiff is informed and believes and thereupon alleges that: On Tuesday,  
11 November 23, 2010, Ms. Spenger and Private Investigator Butler entered into a "Client Service  
12 Agreement" ("Agreement"). The Agreement was limited to the following assignment: "Provide  
13 the Client with installation of a vehicle GPS system on the Client's vehicle. Provide the Client  
14 with the removal of the vehicle GPS system at the Client's request." The Agreement further  
15 provided in pertinent part: "Client agrees to pay ... the sum of \$199 ... for the vehicle GPS  
16 system installation, plus a \$200 ... refundable deposit for the vehicle GPS system hardware, plus  
17 \$250 ... per month to keep the vehicle GPS active." (A true copy of the November 23, 2010  
18 Agreement is attached as Exhibit C).

19           20. Plaintiff is informed and believes and thereupon alleges that: The Agreement was  
20 a cover for the actual assignment; that is, Ms. Spenger hired Private Investigator Butler for a  
21 Dirty DUI – to attempt to have Plaintiff arrested for driving under the influence by means of  
22 Butler engineering a ruse in which co-conspirators of Butler would ply Plaintiff with alcohol and  
23 then Butler would tip off a law enforcement official if Plaintiff attempted to drive his vehicle  
24 following the ruse.

25           21. Plaintiff is informed and believes and thereupon alleges that: Prior to November  
26 23, 2010, Private Investigator Butler previously had arranged for at least one Dirty DUI; that is,  
27 at least one other male victim was arrested at the request of a female client by means of Butler  
28 engineering a ruse in which co-conspirators of his plied the victim with alcohol and then he or

1 one of his co-conspirators tipped off a law enforcement official when the victim attempted to  
2 drive his vehicle following the ruse. Private Investigator Butler required that his clients pay for  
3 an attempted Dirty DUI. On Wednesday, November 24, 2010, Ms. Spenger paid Private  
4 Investigator \$6,601.17 – or some portion thereof – for the attempted Dirty DUI on Plaintiff.

5 22. At the time that Ms. Spenger hired Private Investigator Butler, Plaintiff and Ms.  
6 Spenger were in the process of divorcing and, as a result, they were embroiled in a dispute over  
7 custody of their two children. Plaintiff is informed and believes and thereupon alleges that Ms.  
8 Spenger hired Private Investigator Butler to entrap Plaintiff by having him arrested for driving  
9 under the influence of an alcoholic beverage in order to obtain leverage over Plaintiff in the  
10 divorce proceedings.

11 **B. The Setup for a “Dirty DUI” Via a “Reality Television Show”**

12 23. On Friday, January 14, 2011, Plaintiff was at the “The Vine” located at 480 Hartz  
13 Avenue, Danville, California. Plaintiff was discussing what he believed to be a business proposal  
14 regarding a potential reality television show pertaining to Plaintiff’s winemaking business.

15 24. For several weeks prior to January 14, 2011, a “television producer” – identifying  
16 himself as “John” – made numerous telephone calls to Plaintiff and sent Plaintiff numerous  
17 emails requesting that they meet. (Plaintiff is informed and believes and thereupon alleges that  
18 ‘John’ is, and at all relevant times was, Mr. Marino. All further references to ‘John’ should be  
19 considered a reference to Mr. Marino). The purpose of the meeting, according to ‘John’, was to  
20 interview Plaintiff regarding his successful winemaking business. Plaintiff tried to get ‘John’ to  
21 come to Plaintiff’s winery; however, ‘John’ insisted that the meeting take place in Danville.  
22 Plaintiff ultimately agreed to meet with ‘John’ on January 14, 2011 at The Vine.

23 25. At The Vine, ‘John’ introduced himself to Plaintiff as a producer of a reality  
24 television show through the A&E Network. ‘John’ further introduced Plaintiff to “Benny” who  
25 stated that he was very interested in the wine business and asked if he could sit in on the meeting  
26 between ‘John’ and Plaintiff. Plaintiff proceeded to discuss his winemaking business with ‘John’  
27 while “Benny” purchased drinks for Plaintiff.  
28

1           26.    Next, a woman who was using crutches sat down near Plaintiff, 'John' and  
2 "Benny." The unidentified woman stated to them that she needed to rest her leg. Then, three  
3 additional women joined her. These women noticed Plaintiff and claimed that they recognized  
4 him from his winery. These four women then joined the informal business meeting under the  
5 pretense of being familiar with Plaintiff's winery.

6           27.    Plaintiff is informed and believes and thereupon alleges that 'John', "Benny" and  
7 the four women all were employed by Private Investigator Butler for the purposes of this  
8 contrived meeting with Plaintiff. 'John', "Benny" and the four women encouraged Plaintiff to  
9 consume alcohol. Plaintiff ended up consuming more alcohol than he otherwise would have  
10 knowingly consumed on this occasion. Unbeknownst to Plaintiff, the premise for the meeting –  
11 to discuss a relating television show – was false. In fact, the meeting simply was a ruse to entrap  
12 Plaintiff with a "Dirty DUI."

13           28.    When Plaintiff left The Vine, he immediately was pulled over by Deputy Tanabe  
14 – without probable cause – and arrested for driving under the influence of an alcoholic beverage.

15           29.    Prior to that day, Plaintiff was never arrested for driving under the influence of an  
16 alcoholic beverage.

17           **C.    Ms. Spenger Pays Extra to Have Butler Continue the Ruse**

18           30.    On January 18, 2011, 'John' sent Plaintiff an email that stated in pertinent part:

19           I wanted to check your availability for the tour of the winery on Friday  
20 [January 21, 2011]. I will be bringing a small crew with me and I was  
21 hoping that we could start around 1 pm. I will have a camera guy that will  
22 be taking some footage, but this is not for any broadcast reasons. We will  
23 just use this footage for production purposes. We just want the layout of  
24 grounds and building. We would also like to meet some of the people who  
25 are working. It will be very casual. We will not interrupt them while they  
26 are doing their jobs and would only do a quick introduction. We just kind of  
27 wanted to get an overview on how the winery operates, the people there,  
28 and what the set up is. Please let me know as soon as you can if this works

1 for you. You can just respond to this email or give me a call. I look forward  
2 to moving forward with this.

3 31. On Friday, January 21, 2011, 'John' and several other unidentified persons met  
4 with Plaintiff at Mitchell Katz Winery.

5 32. On Monday, January 24, 2011, 'John' sent Plaintiff an email that stated in  
6 pertinent part:

7 It was great seeing you at your winery and getting to meet all of the  
8 people who work with you. We were impressed with how everything runs  
9 and how the people there feel like a family. It is also a gorgeous location to  
10 shoot at. We are at the part of the process now that takes a little time. We  
11 have other people looking at the footage and information provided. They  
12 are evaluating everything and determining the next step in the process,  
13 budget, etc., before we can start to film anything. There are no guarantees  
14 on the project, but we are confident that it is something that we can put  
15 together well enough to pitch to the networks, primarily the people at A&E.  
16 I will keep you informed as things progress, but now it is kind of a waiting  
17 game. If you have any questions, feel free to let me know what they are at  
18 any time. We just need to be patient now. Thanks again for opening up your  
19 winery and your life to us.

20 33. On Wednesday, March 30, 2011, 'John' sent Plaintiff an email that stated in  
21 pertinent part:

22 I hope you are doing well. The first thing I want to do is apologize to  
23 you for my part of the set up. As you can see, I never wanted to be involved  
24 in Butler's shady activities and that is why I put an end to them and also let  
25 the DOJ [United States Department of Justice] know what was done to you  
26 and others. I hope you can forgive me and understand that ultimately I was  
27 the good guy in this. I would love to apologize to you in person and answer  
28



1 any questions that you might have of me. Let me know if you would be  
2 interested in this. Thanks.

3 34. Plaintiff responded via email the same day, asking: "Did my wife know that is  
4 what you guys were doing?"

5 35. On Thursday, March 31, 2011, 'John' responded to Plaintiff's March 30 email in  
6 which Plaintiff asked about his wife's involvement in the Dirty DUI in pertinent part: "She knew  
7 exactly what we were doing. She is the one that wanted us to go to the winery with the camera  
8 and do those interviews after the initial set up. She paid an extra \$1500 to Butler for that. She  
9 thought it would look more legitimate. I actually tried to talk her out of it but she was adamant."  
10 (A true copy of the email string from January 18, 2011 and March 31, 2011 between 'John' and  
11 Plaintiff is attached as Exhibit D).

12 **D. Deputy Tanabe's Colleague Confesses to the "Dirty DUI"**

13 36. Plaintiff is informed and believes and thereupon alleges that: On Wednesday,  
14 February 23, 2011 Sergeant Detective Jason Vorhauer ("Detective Vorhauer") of the Contra  
15 Costa County Sheriff's Office interviewed Deputy William Howard ("Deputy Howard") of the  
16 Contra Costa County Sheriff's Office. Deputy Howard wanted to speak to Detective Vorhauer  
17 about the recent arrest of Contra Costa Narcotics Enforcement Team Commander Norman  
18 Weilsch ("Commander Weilsch") and Private Investigator Butler for narcotics trafficking.

19 37. Plaintiff is informed and believes and thereupon alleges that: Deputy Howard told  
20 Detective Vorhauer that he had information about Deputy Tanabe. Deputy Howard believed that  
21 Deputy Tanabe could be involved in some possible illegal activity with Private Investigator  
22 Butler.

23 38. Plaintiff is informed and believes and thereupon alleges that: Deputy Howard told  
24 Detective Vorhauer that he had met Deputy Tanabe while working as a per-diem Deputy for the  
25 Court Services Division of the Contra Costa County Sheriff's Office. Deputy Howard stated that  
26 he also had worked a few shifts with Deputy Tanabe on patrol in the Town of Danville. Deputy  
27 Howard stated that he and Deputy Tanabe have a "casual/friendly/business relationship."  
28

1           39. Plaintiff is informed and believes and thereupon alleges that: Deputy Howard  
2 further told Detective Vorhauer that on Friday, January 14, 2011, he was on patrol with Deputy  
3 Tanabe in the Town of Danville. Deputy Howard stated that during this shift Deputy Tanabe  
4 received approximately eight to ten personal cell phone calls from someone Deputy Tanabe  
5 identified as his "PI friend." (The "PI friend" later was identified as Private Investigator Butler  
6 by Deputy Tanabe). Deputy Howard stated that during these phone calls it appeared that Deputy  
7 Tanabe was receiving updates about an individual, who later was identified as Plaintiff, who was  
8 drinking alcoholic beverages at a wine bar. The wine bar later was identified as "The Vine"  
9 located at 480 Hartz Avenue, Danville, California. Deputy Howard stated that he only could hear  
10 Deputy Tanabe's side of the conversation, but it appeared that Private Investigator Butler was  
11 giving Deputy Tanabe updated information relating to Plaintiff's sobriety.

12           40. Plaintiff is informed and believes and thereupon alleges that: During the course of  
13 the conversations between Deputy Tanabe and Private Investigator Butler, Butler gave Deputy  
14 Tanabe a description of the vehicle that Plaintiff would be driving once he left The Vine. Deputy  
15 Tanabe then drove around the immediate vicinity of The Vine and located a white pickup truck  
16 that Private Investigator Butler described as belonging to Plaintiff. While driving past The Vine,  
17 Deputy Howard heard Deputy Tanabe ask Private Investigator Butler if that was him (Private  
18 Investigator Butler) sitting in a Hummer parked next to The Vine. As Deputy Tanabe drove past  
19 the Hummer, Deputy Howard could see that the Hummer was occupied by a male subject.  
20 (Later, when members of the United States Department of Justice ("Department of Justice")  
21 arrested Private Investigator Butler, they seized a Hummer that belonged to Private Investigator  
22 Butler).

23           41. Plaintiff is informed and believes and thereupon alleges that: Deputy Howard said  
24 that after locating the white pickup truck, Deputy Tanabe found a location close to the pickup  
25 truck at which Deputy Tanabe could hide his police vehicle and watch the pickup truck. Deputy  
26 Howard said that a short time later, Plaintiff came out of The Vine and approached the pickup  
27 truck. Deputy Howard said that Tanabe confirmed with Private Investigator Butler that the  
28 individual at the pickup truck was Plaintiff, the intended target. Plaintiff then got into the pickup

1 truck, drove a short distance, parked the pickup truck a short distance from The Vine and walked  
2 back to The Vine. After a short wait, Plaintiff reemerged from The Vine, walked to his pickup  
3 truck, got inside and started to drive away.

4 42. Plaintiff is informed and believes and thereupon alleges that: At some point  
5 during this sequence of events, Deputy Howard asked Deputy Tanabe what was going on.  
6 Deputy Tanabe responded that they were about to conduct a "Dirty DUI" stop on Plaintiff.

7 43. Plaintiff is informed and believes and thereupon alleges that: Deputy Howard  
8 observed that immediately after Plaintiff started to drive his pickup truck, Deputy Tanabe pulled  
9 his patrol vehicle behind the pickup truck and followed Plaintiff for a short distance. At some  
10 point while Deputy Tanabe was following the pickup truck, Deputy Tanabe alleged that Plaintiff  
11 made a right hand turn without signaling. Deputy Tanabe then immediately conducted a traffic  
12 enforcement stop based upon this alleged probable cause.

13 44. Plaintiff is informed and believes and thereupon alleges that: Deputy Tanabe then  
14 performed a Driving Under the Influence investigation of Plaintiff and subsequently arrested him  
15 for driving under the influence of an alcoholic beverage.

16 45. Plaintiff is informed and believes and thereupon alleges that: Deputy Tanabe  
17 processed Plaintiff at the Danville Police Station and then transported Plaintiff to the Martinez  
18 Detention Facility. While discussing the arrest of Plaintiff, Deputy Howard told Deputy Tanabe  
19 that he felt sorry for Plaintiff because just before Deputy Tanabe arrested Plaintiff, Plaintiff had  
20 been in The Vine discussing a business deal with unidentified persons to be featured in a reality  
21 show. Deputy Howard felt that Plaintiff's arrest might affect his chances of getting the reality  
22 show. Deputy Tanabe responded that Deputy Howard should not worry because the whole thing  
23 was a "set up." Deputy Tanabe did not explain to Deputy Howard what he meant by "set up."  
24 Deputy Tanabe added that he arrested Plaintiff because Plaintiff needed to be "dirtied" up for a  
25 future court date. Deputy Howard felt uncomfortable with Plaintiff's arrest, but because of his  
26 inexperience, Deputy Howard did not question Plaintiff's arrest at that time.

27 46. Plaintiff is informed and believes and thereupon alleges that: On Wednesday,  
28 February 16, 2011 (the date that members of the Department of Justice arrested Private

1 Investigator Butler and Commander Weilsch) at approximately 8:00pm, Deputy Tanabe called  
2 Deputy Howard at his residence. Deputy Tanabe asked Deputy Howard if he could come over  
3 for a visit. Deputy Howard agreed to meet with Deputy Tanabe. Deputy Howard said that he  
4 could tell that something was bothering Deputy Tanabe.

5 47. Plaintiff is informed and believes and thereupon alleges that: When Deputy  
6 Tanabe arrived he asked Deputy Howard if he had been watching the news about the arrests of  
7 Private Investigator Butler and Commander Weilsch. Deputy Howard responded that he had not  
8 yet watched the news. Deputy Tanabe then told Deputy Howard about the arrests of Private  
9 Investigator Butler and Commander Weilsch. Deputy Tanabe stated that he felt that his telephone  
10 probably was "bugged" because of his personal relationship with Private Investigator Butler.  
11 Deputy Tanabe then confirmed that his "PI friend" was Private Investigator Butler.

12 48. Plaintiff is informed and believes and thereupon alleges that: Deputy Tanabe  
13 continued by telling Deputy Howard that they no longer could talk on the phone because they  
14 probably were being "bugged." Deputy Tanabe went on to tell Deputy Howard that the police  
15 were going to start investigating him (Deputy Tanabe) because of the "Dirty DUIs."

16 49. Plaintiff is informed and believes and thereupon alleges that: Deputy Tanabe said  
17 that he knew that the police were going to serve a search warrant on his home soon, and he was  
18 concerned because an item that he possessed was going to be found during the search of his  
19 residence. Deputy Tanabe asked if he could leave something at Deputy Howard's residence until  
20 "things settled down." Deputy Tanabe told Deputy Howard that he (Deputy Tanabe) already had  
21 instructed his wife on how to act when the police served the search warrant and executed the  
22 search. Deputy Tanabe added that he felt that when the police served the search warrant that they  
23 would kill his dog to punish him.

24 50. Plaintiff is informed and believes and thereupon alleges that: Deputy Howard  
25 agreed to take the item from Deputy Tanabe. Deputy Tanabe then went out to his vehicle and  
26 retrieved an item covered with a black plastic garbage bag. Deputy Tanabe asked Deputy  
27 Howard to place the item in his attic to keep it hidden. Deputy Howard said that he felt  
28

1 uncomfortable with what Deputy Tanabe was asking him to do, but that Deputy Howard did not  
2 want to cause a confrontation with Deputy Tanabe so he took the item.

3 51. Plaintiff is informed and believes and thereupon alleges that: Deputy Howard told  
4 Detective Vorhauer that he did not look in the bag and did not know what it contained. Deputy  
5 Howard said that after one week of having the item and hearing more information about the  
6 arrests of Private Investigator Butler and Commander Weilsch, Deputy Howard felt that he might  
7 be hiding something illegal. After much thought, Deputy Howard decided to contact the Contra  
8 Costa County Sheriff's Office and turn over the item that Deputy Tanabe had asked him to hide.

9 52. Plaintiff is informed and believes and thereupon alleges that: Detective Vorhauer  
10 asked Deputy Howard what he knew about the relationship between Deputy Tanabe and Private  
11 Investigator Butler. Deputy Howard stated that he knew that Deputy Tanabe started working for  
12 Private Investigator Butler at his private investigation business shortly after Deputy Tanabe was  
13 fired from his position as a sworn peace officer with the City of Antioch Police Department.  
14 Deputy Howard stated that he believed that Deputy Tanabe and Private Investigator Butler spoke  
15 to each other approximately three to four times per week. Deputy Howard added that Deputy  
16 Tanabe recently was conducting surveillance for Private Investigator Butler while Deputy  
17 Tanabe was employed by the Contra Costa County Sheriff's Office.

18 53. Plaintiff is informed and believes and thereupon alleges that: On Wednesday,  
19 February 23, 2011, Detective Vorhauer went to Deputy Howard's residence and retrieved the  
20 item that Deputy Howard had agreed to hold for Deputy Tanabe. Detective Vorhauer inspected  
21 the contents of the black plastic garbage bag and found a contraband Bushmaster AR-15 assault  
22 rifle. Detective Vorhauer later determined that the assault rifle was not registered to Deputy  
23 Tanabe and did not qualify as an assault weapon owned and registered before the ban on owning  
24 assault weapons.

25 54. Plaintiff is informed and believes and thereupon alleges that: On Monday,  
26 February 28, 2011, Detective Vorhauer met with Contra Costa County District Attorney  
27 Investigator Daryl Jackson. Jackson told Detective Vorhauer that a search of Private Investigator  
28 Butler's cell phone confirmed that Deputy Tanabe and Butler had made arrangements to have

1 Plaintiff arrested. Additionally, Jackson provided Detective Vorhauer with additional  
2 information relating to a second "Dirty DUI" arrest by Deputy Tanabe on January 9, 2011.

3 55. Plaintiff is informed and believes and thereupon alleges that: Detective Vorhauer  
4 discovered additional information relating to a third "Dirty DUI" arrest on November 2, 2010 in  
5 which Deputy Tanabe – while off duty – tipped off Deputy Tom Henderson ("Deputy  
6 Henderson") of the Contra Costa Sheriff's Office. Specifically, Deputy Henderson stated that he  
7 received a call from Deputy Tanabe in which Deputy Tanabe told him that he was off duty in a  
8 bar in the downtown area of Danville and an individual was drinking heavily and would be  
9 leaving the bar soon. Deputy Tanabe asked Deputy Henderson to conduct a traffic stop for DUI  
10 once the individual left the bar. Deputy Tanabe further told Deputy Henderson that the individual  
11 was being targeted because the individual was cheating on his wife and they (Private Investigator  
12 Butler and Deputy Tanabe) wanted to "dirty him up" for a future court case. Deputy Tanabe  
13 provided a description of the individual's vehicle and told Deputy Henderson that the individual  
14 was leaving the bar. Deputy Henderson parked on a side street and waited for the vehicle to pass  
15 by his patrol car. Deputy Henderson then conducted a traffic enforcement stop on the individual  
16 for driving 35 mph in a 25 mph zone. Deputy Henderson asked Deputy Robert Durrer to conduct  
17 the DUI investigation. Deputy Durrer determined that the individual was under the influence of  
18 an alcoholic beverage and arrested him for driving under the influence.

19 56. Plaintiff is informed and believes and thereupon alleges that: Detective Vorhauer  
20 reviewed the text messages retrieved from Private Investigator Butler's cell phone. On January  
21 22, 2011, Private Investigator Butler wrote Deputy Tanabe a text message that stated: "Steve,  
22 can you get an update on the DUI case involving [the individual arrested on November 2, 2010  
23 by Deputy Durrer]."

24 57. On March 4, 2011, Detective Vorhauer stated under penalty of perjury in his  
25 Affidavit for Search Warrant for the issuance of a Search Warrant for Deputy Tanabe's residence  
26 located at 1872 Green Valley Road, Alamo, California in pertinent part: "It is my opinion that  
27 Deputy Tanabe has abused his police powers and has been acting as an agent of Butler while on  
28 duty as an Officer of the City of Danville.... It is my belief ... that Deputy Tanabe and Butler

1 have conspired to set up other individuals to be arrested for driving under the influence of an  
2 alcoholic beverage. I believe that Deputy Tanabe and/or Butler are receiving financial benefits  
3 from clients of Butler's private investigation business by creating a situation in which the target  
4 will be entrapped and will inevitably become a victim of a "Dirty DUI" vehicle stop." (A true  
5 copy of the March 4, 2011 Affidavit for Search Warrant by Detective Vorhauer is attached as  
6 Exhibit E).

7 58. On March 25, 2011, Senior Deputy District Attorney of the Contra Costa County  
8 Office of the District Attorney wrote a letter to counsel for Plaintiff in the criminal matter  
9 involving Plaintiff's arrest for driving under the influence that provided in pertinent part: "It is  
10 my best legal opinion your client, Mitchell Katz, was the victim of an intentional conspiracy to  
11 entrap targeted victims of Tanabe's accomplice, Christopher Butler, and consequently the arrest  
12 of Mr. Katz was unlawful." (A true copy of the March 25, 2011 letter is attached as Exhibit F).

#### 13 IV. STATEMENT OF DAMAGES

14 59. As a result of the acts and/or omissions of Defendants Ms. Spenger, Private  
15 Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy Howard, County, Danville and Does  
16 One through Fifty, and each of them, Plaintiff incurred expenses relating to defending against the  
17 Dirty DUI, including attorneys' fees and costs, in amounts to be determined according to proof.

18 60. As a result of the acts and/or omissions of Defendants Ms. Spenger, Private  
19 Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy Howard, County, Danville and Does  
20 One through Fifty, and each of them, Plaintiff suffered injury to his reputation in the community.

21 61. As a result of the acts and/or omissions of Defendants Ms. Spenger, Private  
22 Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy Howard, County, Danville and Does  
23 One through Fifty, and each of them, Plaintiff suffered lost employment opportunities.

24 62. As a result of the acts and/or omissions of Defendants Ms. Spenger, Private  
25 Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy Howard, County, Danville and Does  
26 One through Fifty, and each of them, Plaintiff's business Mitchell Katz Winery was damaged.

27 63. As a result of the acts and/or omissions of Defendants Ms. Spenger, Private  
28 Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy Howard, County, Danville and Does

1 One through Fifty, and each of them, Plaintiff suffered emotional distress including suffering,  
2 anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame, in  
3 amounts to be determined according to proof.

4 64. As set forth above, the acts and/or omissions of Defendants Ms. Spenger, Private  
5 Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy Howard, and Does One through Fifty,  
6 and each of them, were willful, wanton, reckless, malicious, oppressive and/or done with a  
7 conscious or reckless disregard for the constitutional rights and state law rights of Plaintiff.  
8 Plaintiff therefore will seek an award of punitive and exemplary damages, against Defendants  
9 Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy Howard, and  
10 Does One through Fifty, and each of them, in amounts to be determined according to proof.

11 65. Plaintiff retained private counsel to represent him in this matter and is entitled to  
12 an award of attorneys' fees, pursuant to 42 U.S.C. Section 1988.

#### 13 **V. PLAINTIFFS' CLAIMS**

14 All claims for relief set forth below incorporate all of the facts set forth above.

#### 15 **FIRST CLAIM FOR RELIEF**

##### 16 **Bad Faith Arrest**

#### 17 **42 U.S.C. § 1983 – Violation of the Fourth Amendment to the U.S. Constitution**

##### 18 **(Deputy Tanabe and Deputy Howard)**

19 66. The above-described Dirty DUI arrest of Plaintiff by Deputy Tanabe and Deputy  
20 Howard was the result of entrapment, without purpose or justification in law, lacked probable  
21 cause, was objectively unreasonable, was unnecessary, was not privileged in any way or  
22 protected by qualified immunity, and was in violation of the Fourth Amendment.

23 67. Plaintiff is entitled to judgment against Deputy Tanabe and Deputy Howard who  
24 arrested Plaintiff or aided in the Dirty DUI arrest of Plaintiff.

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**SECOND CLAIM FOR RELIEF**

**Conspiracy to Commit Bad Faith Arrest**

**42 U.S.C. § 1983 – Violation of the Fourth Amendment to the U.S. Constitution**

**(Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy Tanabe,  
Deputy Howard, and Does One to Twenty-Five)**

68. The above-described Dirty DUI arrest of Plaintiff by Deputy Tanabe and Deputy Howard was the result of a conspiracy to deprive Plaintiff of his constitutional rights by means of a scheme to entrap him to be arrested for driving under the influence of an alcoholic beverage. Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy Howard, and Does One through Twenty-five, and each of them, agreed with each other to accomplish the Dirty DUI arrest of Plaintiff in violation of his Fourth Amendment rights.

**THIRD CLAIM FOR RELIEF**

**Egregious Official Conduct Intended to Injure Unjustified by Any Government Interest**

**42 U.S.C. § 1983 – Violation of the Fourteenth Amendment to the U.S. Constitution**

**(Deputy Tanabe and Deputy Howard)**

69. The above-described Dirty DUI arrest of Plaintiff by Deputy Tanabe and Deputy Howard was the result of entrapment, without purpose or justification in law, was subjectively unreasonable, was unnecessary, was not privileged in any way or protected by qualified immunity, and was in violation of the Fourteenth Amendment. "Entrapment is indistinguishable from other law enforcement practices which the courts have held to violate due process. Entrapment is an affront to the basic concepts of justice. Where it exists, law enforcement techniques become contrary to the established law of the land as an impairment to due process." *Baker v. McCollan*, 443 U.S. 137 142-143 (1979). The actions and behavior of Deputy Tanabe and Deputy Howard in entrapping Plaintiff via a Dirty DUI arrest constituted abuses of power, which "shock the conscience", in violation of the Fourteenth Amendment.

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1 **FOURTH CLAIM FOR RELIEF**

2 **Conspiracy to Commit Egregious Official Conduct Intended to**  
3 **Injure Was Unjustified by Any Government Interest**

4 **42 U.S.C. § 1983 – Violation of the Fourteenth Amendment to the U.S. Constitution**  
5 **(Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy Tanabe,**  
6 **Deputy Howard, and Does One to Twenty-Five)**

7 70. The above-described Dirty DUI arrest of Plaintiff by Deputy Tanabe and Deputy  
8 Howard was the result of a conspiracy to deprive Plaintiff of his constitutional rights by means of  
9 a scheme to entrap him to be arrested for driving under the influence of an alcoholic beverage.  
10 Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy  
11 Howard, and Does One through Twenty-five, and each of them, agreed with each other to  
12 accomplish the Dirty DUI arrest of Plaintiff in violation of his Fourteenth Amendment rights.

13 **FIFTH CLAIM FOR RELIEF**

14 **Unconstitutional Hiring of Deputy Tanabe**

15 **42 U.S.C. § 1983 – Violation of the Fourteenth Amendment to the U.S. Constitution**  
16 **(Sheriff Livingston and Does Twenty-Six to Fifty)**

17 71. Sheriff Livingston and Does Twenty-six to Fifty, and each of them, either  
18 disregarded a known or obvious consequence of hiring Deputy Tanabe or failed to scrutinize  
19 adequately Deputy Tanabe's background before hiring him. Such actions or inactions by Sheriff  
20 Livingston and Does Twenty-six to Fifty, and each of them, in hiring Deputy Tanabe reflected  
21 deliberate indifference to the substantial risk and plainly obvious consequence that Deputy  
22 Tanabe would engage in corrupt practices in violation of the Fourth and Fourteenth Amendments  
23 following his hiring by the County and Sheriff's Office as a sworn peace officer.

24 72. By and through the acts and omissions alleged herein, Sheriff Livingston and  
25 Does Twenty-six to Fifty, and each of them, unlawfully subjected Plaintiff to a Dirty DUI arrest  
26 thereby violating Plaintiff's rights under the Fourth and Fourteenth Amendments.

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1 **SIXTH CLAIM FOR RELIEF**

2 **Unconstitutional Policy and Practice (*Monell-Adickes*)**

3 **42 U.S.C. §§ 1983, 1986; Fourteenth Amendment to the U.S. Constitution**

4 **(County of Contra Costa)**

5 73. The County is liable to Plaintiff because the actions of Sheriff Livingston and  
6 Does Twenty-six to Fifty, and each of them, in hiring Deputy Tanabe (1) were caused by  
7 customs or policies of the Sheriff's Office; (2) were caused by deliberate indifference of the  
8 Sheriff's Office; and/or (3) were ratified by final decision-makers of the Sheriff's Office.

9 74. Pursuant to the rules set forth in the *Monell* and *Adickes* decisions by the U.S.  
10 Supreme Court, the above described conduct of the County, its Sheriff's Office and numerous  
11 other officials, the County is jointly and severally liable with Sheriff Livingston and Does  
12 Twenty-six to Fifty, and each of them, for the injuries, deprivations and losses sustained by the  
13 Plaintiff.

14 **SEVENTH CLAIM FOR RELIEF**

15 **False Arrest and Imprisonment**

16 **(Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy Tanabe,**

17 **Deputy Howard, County, Danville and Does One to Twenty-Five)**

18 75. The above-described Dirty DUI arrest of Plaintiff by Deputy Tanabe and Deputy  
19 Howard was the result of a conspiracy to deprive Plaintiff of his constitutional rights by means of  
20 a scheme to entrap him to be arrested for driving under the influence of an alcoholic beverage.  
21 Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy  
22 Howard, County, Danville, and Does One through Twenty-five, and each of them, agreed with  
23 each other to accomplish the Dirty DUI arrest of Plaintiff in order to have Plaintiff falsely  
24 arrested and imprisoned.

25 76. Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy  
26 Tanabe, Deputy Howard, County, Danville and Does One through Twenty-five, and each of  
27 them, either arrested Plaintiff or caused Plaintiff to be arrested without a warrant.



1           82.     The conduct of Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino,  
2 Deputy Tanabe, Deputy Howard, County, Danville, and Does One through Twenty-five, and  
3 each of them, was a substantial factor in causing Plaintiff's harm.

4                               **NINTH CLAIM FOR RELIEF**

5                               **Intentional Infliction of Emotional Distress**

6           **(Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy Tanabe,**  
7           **Deputy Howard, County, Danville and Does One to Twenty-Five)**

8           83.     The above-described Dirty DUI arrest of Plaintiff by Deputy Tanabe and Deputy  
9 Howard was the result of a conspiracy to deprive Plaintiff of his constitutional rights by means of  
10 a scheme to entrap him to be arrested and prosecuted for driving under the influence of an  
11 alcoholic beverage. Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy  
12 Tanabe, Deputy Howard, County, Danville, and Does One through Twenty-five, and each of  
13 them, agreed with each other to accomplish the Dirty DUI arrest of Plaintiff in order to  
14 intentionally inflict emotional distress upon Plaintiff.

15          84.     The conduct of Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino,  
16 Deputy Tanabe, Deputy Howard, County, Danville, and Does One through Twenty-five, and  
17 each of them, was outrageous.

18          85.     Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy  
19 Tanabe, Deputy Howard, County, Danville, and Does One through Twenty-five, and each of  
20 them, intended to cause Plaintiff emotional distress or, in the alternative, Defendants Ms.  
21 Spenger, Private Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy Howard, County,  
22 Danville, and Does One through Twenty-five, and each of them, acted with reckless disregard of  
23 the probability that Plaintiff would suffer emotional distress, knowing that Plaintiff was present  
24 when he was subjected to the Dirty DUI arrest.

25          86.     Plaintiff suffered severe emotional distress.

26          87.     The conduct of Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino,  
27 Deputy Tanabe, Deputy Howard, County, Danville, and Does One through Twenty-five, and  
28 each of them, was a substantial factor in causing Plaintiff's severe emotional distress.

1                                   **TENTH CLAIM FOR RELIEF**

2                                   **Negligence**

3                   **(Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy Tanabe,**  
4                   **Deputy Howard, County, Danville and Does One to Twenty-Five)**

5               88.   Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy  
6 Tanabe, Deputy Howard, County, Danville, and Does One through Twenty-five, and each of  
7 them, owed Plaintiff a duty to use reasonable care in order to prevent harm to Plaintiff;

8               89.   Defendants Ms. Spenger, Private Investigator Butler, Mr. Marino, Deputy  
9 Tanabe, Deputy Howard, County, Danville, and Does One through Twenty-five, and each of  
10 them, were negligent in that they failed to use reasonable care in order to prevent harm to  
11 Plaintiff;

12           90.   Plaintiff suffered harm as a result of the negligent conduct of Defendants Ms.  
13 Spenger, Private Investigator Butler, Mr. Marino, Deputy Tanabe, Deputy Howard, County,  
14 Danville, and Does One through Twenty-five, and each of them, including serious emotional  
15 distress.

16           91.   The negligent conduct of Defendants Ms. Spenger, Private Investigator Butler,  
17 Mr. Marino, Deputy Tanabe, Deputy Howard, County, Danville, and Does One through Twenty-  
18 five, and each of them, was a substantial factor in causing Plaintiff's harm.

19                                   **PRAYER**

- 20           1.    For compensatory damages and other special damages according to proof;  
21           2.    For general damages according to proof;  
22           3.    For punitive damages against all individual defendants according to proof;  
23           4.    For prejudgment interest at the legal rate according to proof;  
24           5.    For costs and attorney's fees; and

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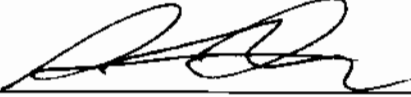
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1           6.       For such other relief as the Court may deem proper.

2   Dated: November 31, 2011

3                   GEARINGER LAW GROUP

4                   By: 

5                   BRIAN GEARINGER

6                   R. STEPHEN M. LAROE

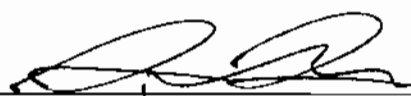
7                   Attorneys for Plaintiff MITCHELL KATZ

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11                   **JURY TRIAL DEMANDED**

12           Plaintiff Mitchell Katz demands a trial by jury in this action.

13   Dated: November 31, 2011

14                   GEARINGER LAW GROUP

15                   By: 

16                   BRIAN GEARINGER

17                   R. STEPHEN M. LAROE

18                   Attorneys for Plaintiff MITCHELL KATZ