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8 **SUPERIOR COURT OF ARIZONA**
9
10 **MARICOPA COUNTY**

11 EDGAR CASTRO,
12 Plaintiff,

13 v.

14
15 JASON MCFADDEN, an individual,
16 acting under the color of law; JEFFREY
17 FARRIOR, an individual, acting under the
18 color of law; RICHARD PINA, an
19 individual, acting under the color of law;
20 MICHAEL JOSHUA CARNICLE, an
21 individual, acting under the color of law;
22 CITY OF PHOENIX, a municipal entity;
23 JOHN DOES I-V, an individual(s), acting
24 under the color of law, and JANE DOES I-
25 V, an individual(s), acting under the color
26 of law.

27 Defendants.

Case No.

COMPLAINT

28 Plaintiff Edgar Castro for his Complaint against Defendants hereby alleges as follows:

1. Plaintiff Edgar Castro (“Plaintiff”), at all times relevant to this Complaint, was a resident of Maricopa County, Arizona.

1 2. Defendant, Jason McFadden (“Defendant McFadden”), at all times relevant to this
2 Complaint, was a resident of Maricopa County Arizona. He was a duly appointed and
3 acting officer of the Phoenix Police Department (“PPD”), acting under the color of law
4 and within the scope of employment pursuant to the statutes, ordinances, regulations,
5 policies, customs, and usage of the City of Phoenix and PPD. He is sued in his individual
6 capacity, acting under the color of law.
7

9 3. Defendant, Jeffrey Fariior (“Defendant Fariior”), at all times relevant to this
10 Complaint, was a resident of Maricopa County Arizona. He was a duly appointed and
11 acting lieutenant and/or sergeant of the Phoenix Police Department (“PPD”), acting under
12 the color of law and within the scope of employment pursuant to the statutes, ordinances,
13 regulations, policies, customs, and usage of the City of Phoenix and PPD. He is sued in
14 his individual capacity, acting under the color of law.
15
16

17 4. Defendant, Richard Pina (“Defendant Pina”), at all times relevant to this
18 Complaint, was a resident of Maricopa County Arizona. He was a duly appointed and
19 acting officer of the Phoenix Police Department (“PPD”), acting under the color of law
20 and within the scope of employment pursuant to the statutes, ordinances, regulations,
21 policies, customs, and usage of the City of Phoenix and PPD. He is sued in his individual
22 capacity, acting under the color of law.
23
24

25 5. Defendant, Joshua Michael Carnicle (“Defendant Carnicle”), at all times relevant
26 to this Complaint, was a resident of Maricopa County Arizona. He was a duly appointed
27 and acting officer of the Phoenix Police Department (“PPD”), acting under the color of
28

1 law and within the scope of employment pursuant to the statutes, ordinances, regulations,
2 policies, customs, and usage of the City of Phoenix and PPD. He is sued in his individual
3 capacity acting under the color of law.
4

5 6. Defendant City of Phoenix is a municipal and jural entity duly organized under the
6 laws of the State of Arizona and was the employer of the individual Defendants
7 McFadden, Farrior, Pina and Carnicle, and at all times relevant to this Complaint
8 responsible for the policies, practices, customs and procedures of the PPD. PPD is a
9 department of the City of Phoenix. Defendant City of Phoenix is further liable for the acts
10 of the individual Defendants when acting under the scope of their employment for state
11 law violations.
12
13

14 7. Defendant(s) John Doe(s) and or Jane Doe(s) are yet unknown police officers who
15 at all times relevant to this Complaint, were acting under the color of law and within the
16 scope of employment pursuant to the statutes, ordinances, regulations, policies, customs,
17 and usage of the City of Phoenix and PPD, are being sued in an individual capacity and
18 may be liable to Plaintiff.
19
20

21 8. Defendant(s) XYZ Corporations and ABC LLC's are yet unknown LLC's and/or
22 corporations and may be liable to Plaintiff.
23

24 **JURISDICTION AND VENUE**

25 9. This Court has jurisdiction over the parties of this action. The amount of damages
26 sought by Plaintiff exceeds the minimum jurisdictional amount established for filing in
27 this Court pursuant to the Arizona Constitution and common law.
28

1 **10.** Venue is proper in this Court because the events that gave rise to this lawsuit
2 occurred in Maricopa County.

3
4 **11.** A proper and timely Notice of Claim/Administrative Demand pursuant to the laws
5 of the State of Arizona was served upon each named Defendant, and over sixty (60) days
6 has passed since that service. A.R.S. §12-821.01.

7
8 **DEMAND FOR JURY TRIAL**

9 12. Pursuant to the Seventh Amendment of the United States Constitution, the Arizona
10 Constitution and Rule 38 of the Arizona Rules of Civil Procedure, Plaintiff requests a
11 jury trial on all triable issues and claims set forth in this Complaint.
12

13 **FACTUAL ALLEGATIONS**

14 13. Upon information and belief, on September 13, 2016, Defendants McFadden and
15 Carnicle, while working as on-duty Phoenix police officers, were riding together as a
16 two-man unit within the confines of Phoenix, Arizona.
17

18 14. Upon information and belief, at approximately 3:58 a.m., near North 45th Avenue
19 and West McDowell Road in Phoenix, Arizona, Defendants McFadden and Carnicle
20 initiated a traffic stop of a BMW, which was being driven by Plaintiff. Inside the vehicle,
21 the officers found marijuana, some of which was packaged in medical marijuana
22 dispensary packaging.
23

24
25 15. Upon information and belief, shortly thereafter, Officer Kevin Harsch (“Harsch”),
26 arrived on the scene and parked his patrol car behind McFadden and Carnicle. Harsch
27 stated that Defendant Pina also arrived at the scene.
28

1 16. According to Harsch, upon his arrival, he witnessed Defendants McFadden and
2 Carnicle speaking with Plaintiff about a Medical Marijuana Card.

3
4 17. According to Officer Harsch, Defendant McFadden was by the driver's window
5 talking to Plaintiff and Defendant Carnicle was by the front passenger side window.
6 Officer Harsch was standing towards the back of the vehicle, near the trunk. He believed
7 Defendant Pina was also towards the back of the vehicle.
8

9 18. According to Defendant Carnicle, because Plaintiff was in possession of
10 marijuana, Plaintiff was advised that he could be charged with a class 6 felony and that
11 his vehicle would be towed because of alleged traffic violations. Plaintiff demanded to
12 speak with a supervisor.
13

14 19. While on scene, Officer Harsch stated that he overheard Defendant McFadden say,
15 "Oh, we should make him eat it or something along those lines."
16

17 20. According to Officer Harsch, he received a message from another squad mate and
18 left to assist. Defendants McFadden, Carnicle and Pina were all still on scene.
19

20 21. Plaintiff was handcuffed and placed in the back of Defendants McFadden and
21 Carnicle's City of Phoenix police car.

22 22. Defendants Carnicle and Pina searched the car, including Plaintiff's trunk.
23

24 23. At some point, Plaintiff was taken out of the police car and told to sit on the
25 ground.

26 24. Upon information and belief, Defendant McFadden was with Plaintiff while
27 Defendants Carnicle and Pina inventoried Plaintiff's vehicle.
28

1 25. According to the Police Report, Defendant Carnicle went inside his police car to
2 complete paper work while Defendant McFadden remained with Plaintiff.

3
4 26. According to the police report, Defendant McFadden was standing towards the
5 front of his police car on the passenger side facing Plaintiff. Plaintiff was near Defendant
6 McFadden, sitting down on the curb by the passenger side of the police car.

7
8 27. According to the police report, Defendant Pina was towards the back of the police
9 car on the passenger side.

10 28. Defendant McFadden grabbed the marijuana that he earlier removed from
11 Plaintiff's vehicle and placed it on top of Plaintiff's vehicle.

12
13 29. Defendant McFadden, an armed police officer, asked Plaintiff, "do you want to go
14 to go home tonight?" Plaintiff responded "yeah."

15
16 30. Defendant McFadden then told Plaintiff to eat the marijuana or he would be going
17 to jail.

18 31. Plaintiff asked Defendant Pina if he really had to eat the marijuana, to which
19 Defendant Pina responded, "yeah! You need to eat it."

20
21 32. Plaintiff asked for his phone so that he could record the incident and McFadden
22 stated that if he grabbed it he would be shot.

23
24 33. Defendant Carnicle confirmed that he also heard something to the effect of, "eat it,
25 throw it away, do what you gotta do."

26 34. According to Defendant Carnicle, Plaintiff said: "well I don't wanna eat it, can
27 you at least get my Gatorade or something, or either McFadden asked him if he wanted
28

1 some water or he asked if he could have his Gatorade, I don't know which one was said
2 first.”

3
4 35. According to Defendant Carnicle, when Plaintiff said that he did not want to eat
5 the marijuana, Defendant Carnicle heard Defendant McFadden say, “you are gonna get
6 the same high either way.”

7
8 36. Defendant McFadden then searched the vehicle twice for the Gatorade, without
9 success.

10 37. Plaintiff ate the marijuana while Defendant McFadden and Defendant Pina
11 watched. It took Plaintiff approximately five minutes to get all of the marijuana out of his
12 mouth.
13

14 38. After being forced to eat the marijuana, Plaintiff requested to speak with a
15 supervisor.
16

17 39. Upon information and belief, thereafter, Sergeant Jordon arrived on the scene.
18 According to Sergeant Jordan, he asked Defendant Carnicle if Plaintiff was going to be
19 booked for possession of marijuana. Defendant Carnicle stated “no” and that they
20 “already took care of that.”
21

22 40. According to Defendant Carnicle, he said that it was taken care of because that
23 was what he was told by Defendant McFadden. Upon Defendant Carnicle's own
24 admission, “I should have taken a different action, but that's what I told my sergeant.”
25

26 41. Sergeant Jordan spoke with Plaintiff. Plaintiff asked Sergeant Jordan “is it wrong
27 for an officer to make you eat your weed?” Upon information and belief, Sergeant Jordan
28

1 said, “McFadden stated that it was against the law to have weed.” Sergeant Jordan then
2 left the scene.

3
4 42. Plaintiff was released and because his car was towed, he was forced to walk home.
5 As Defendants McFadden and Carnicle drove away, Defendant McFadden threatened
6 and/or intimidated Plaintiff when McFadden told Plaintiff, “don’t get shot tonight.”

7
8 43. As a result of being forced to eat the marijuana, Plaintiff became ill and vomited.

9 44. According to the police report, Sergeant Jordan received a formal complaint from
10 Plaintiff and contacted Plaintiff via telephone. Sergeant Jordan asked Plaintiff about the
11 marijuana statement that Plaintiff made earlier, to which Plaintiff stated, “they gave me
12 two choices, eat the weed or go to jail.”

13
14 45. According to the police report, on September 13, 2016, Sergeant Jordan notified
15 his direct supervisor, Defendant Farrior of the Complaint and Sergeant Jordan was
16 advised that they could take care of the matter on Saturday, September 17, 2016.

17
18 46. According to the police report, Sergeant Jordan felt “uneasy about the situation”
19 and began reviewing and downloading videos recorded on the officers’ cameras the night
20 of the traffic stop.

21
22 47. According to the police report, Sergeant Jordan told Lieutenant Winchester about
23 the complaint. According to the police report, Lieutenant Winchester explained the
24 situation “needed to be reported, and assisted in making the necessary notifications.”

25
26 48. Sergeant Jordan was advised that they would take care of it on Saturday.
27
28

1 49. Lieutenant Farior was ultimately demoted for failing to take the appropriate
2 action and to immediately begin investigating the offense.

3
4 50. The foregoing acts or omissions of Defendants McFadden, Farior, Pina and
5 Carnicle were deliberate, reckless, wanton, and/or involved callous indifference to
6 Plaintiff's state and federally protected rights.

7
8 51. At all times relevant to this action, the City of Phoenix was further responsible for
9 the hiring, training, supervision, monitoring and disciplining police officers including
10 Defendants McFadden, Farior, Pina and Carnicle.

11
12 52. Upon information and belief, Defendant McFadden was disciplined while
13 employed by a police department in Chicago, Illinois.

14
15 53. Upon information and belief, with full knowledge of Defendant McFadden's
16 propensity to engage in improper and/or unlawful conduct, which includes but is not
17 limited to neglect of duty/conduct unbecoming of an officer, the City of Phoenix still
18 hired Defendant McFadden.

19
20 54. Defendants McFadden, Farior, Pina and Carnicle had either not received any
21 training or received inadequate training from PPD and/or the City of Phoenix regarding the
22 appropriate use of force, detention, methods to conduct traffic stop, the disposal of
23 marijuana, reporting and investigating constitutional violations and proper police officer
24 conduct, which includes, but is not limited to how police officers should react to situations
25 involving police officers' unconstitutional conduct.
26

1 55. At all times relevant to this action, the City of Phoenix had in effect and was
2 responsible for the policies and procedures provided to Defendants McFadden, Farrior,
3 Pina and Carnicle in the actions taken relating to the deprivation of Plaintiff's civil rights.
4 These policies and/or training deficiencies amounted to deliberate indifference to the rights
5 of Plaintiff.
6

7
8 56. As a result of the foregoing, Plaintiff was conspired against, assaulted, battered,
9 harassed, and sustained other damages as more fully set forth herein.

10 **Defendant McFadden**

11
12 57. Plaintiff was informed by the Phoenix Police Department's investigator that
13 Defendant McFadden was disciplined by Chicago Police Department when Defendant
14 McFadden was employed as a police officer with Chicago Police Department.

15
16 58. Plaintiff was informed that Defendant McFadden had a "prior record" had "red
17 flags" and "should never have been hired."

18
19 59. Upon information and belief, Defendant McFadden was named a defendant in a
20 civil matter¹ regarding an incident that occurred on or about July 13, 2013 that involved
21 constitutional violations, which were alleged to have been the result of "official
22 misconduct" and "due process" violations by the police officers.

23
24 60. Upon information and belief, Defendant McFadden was a defendant in a civil
25 matter² regarding an incident that occurred on or about March 5, 2015 while he acted as a
26 Chicago Police Officer. Defendant McFadden was alleged to have engaged in
27

28

¹ Samuel Cintron Sr. v. Police Superintendent Garry McCarthy et al. 14-CV-4100.

² Deandre Hobson v. Officer Jason McFadden, et al Case No. 14-cv-10091

1 unconstitutional conduct, which involved physically and emotionally abusing a man who
2 was detained by Defendant McFadden and other officers. This claim was settled.

3
4 61. Upon information and belief, Defendant McFadden has been disciplined for neglect
5 of duty/conduct unbecoming-on duty.³

6
7 **PLAINTIFF'S CLAIMS**

8 **Count I - Intentional Infliction of Emotional Distress – *Plaintiff against Defendants***
9 ***McFadden, Pina, Carnicle, Fariior and City of Phoenix***

10 62. Plaintiff hereby incorporates by reference the preceding paragraphs as though fully
11 set forth herein.

12 63. At all relevant times, Defendants McFadden, Pina, Carnicle and Fariior were
13 acting within the course and scope of employment with the Defendant City of Phoenix
14 and the City of Phoenix is therefore vicariously liable for the acts and omissions of
15 Defendants.
16

17 64. Defendants McFadden, Pina and Carnicle either directly or indirectly made the
18 conscious decision to force Plaintiff to eat marijuana.
19

20 65. Defendant Fariior made the conscious decision to fail to act in a timely manner
21 and conduct an investigation upon persons who violated Plaintiff's clear constitutional
22 rights.
23

24 66. By forcing Plaintiff to eat marijuana, Defendants McFadden, Pina and Carnicle,
25 through their conduct, either intended to inflict emotional distress or knew that severe
26 emotional distress would result to Plaintiff.
27

28

³ <https://cpdb.co/officer/jason-mcfadden/4802>

1 67. Severe emotional distress indeed occurred as a result of Defendants' conduct,
2 which resulted in Plaintiff leaving the state of Arizona because his fear and distrust of
3 Phoenix Police Department.
4

5 68. Defendants McFadden, Pina and Carnicle either knew or should have known that
6 forcing a young man to commit an illegal act while acting as armed police officers, a
7 profession that is supposed to protect and serve this country's citizens, will obviously
8 lead to severe fear and distrust for both Plaintiff and his young family.
9

10 69. Defendant Farior, as a lieutenant with PPD, should have known that reckless
11 disregard for a blatant violation of another's constitutional rights and failure to timely act
12 and report said violation would lead to severe distrust and fear for both Plaintiff
13 individually and his family.
14

15 70. Defendants McFadden, Farior, Pina and Carnicle's conduct was extreme and
16 outrageous as they abused their position as police officers when they forced a 19-year-old
17 man to consume marijuana against his will or failed to timely investigate said
18 unconstitutional acts.
19

20 71. Defendant City of Phoenix either knew or should have known of Defendant
21 McFadden's propensity to engage in improper and/or unlawful conduct, which includes
22 but is not limited to, his propensity to engage in neglect of duty/conduct unbecoming of
23 an officer.
24

25 72. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has
26 been severely emotionally and physically damaged as more fully set forth herein.
27
28

1 **COUNT II – Federal Civil Rights Claims Under 42 U.S.C. § 1983 (Violation of**
2 **Fourteenth Amendment Substantive Due Process) – By Plaintiff against Defendants**
3 ***McFadden, Pina and Carnicle***

4 73. Plaintiff hereby incorporates by reference the preceding paragraphs as though fully
5 set forth herein.

6 74. Plaintiff had a liberty interest in his freedom from unreasonable restraint and
7 freedom to refuse consuming marijuana without threats by police officers.

8 75. The circumstances surrounding the encounter with Plaintiff provided Defendants
9 McFadden, Pina and Carnicle with an opportunity and time to deliberate regarding the
10 proper methods of detention, force and conduct, none of which would have resulted in
11 Plaintiff being forced to consume marijuana, which led to severe emotional distress and
12 physical sickness.

13 76. The legitimate objective of Defendants McFadden, Pina and Carnicle's law
14 enforcement encounter with Plaintiff was to stop him for a traffic infraction.

15 77. Defendants McFadden, Pina and Carnicle, acting with purpose to cause harm to
16 Plaintiff unrelated to the object of their law enforcement encounter with Plaintiff, forced
17 Plaintiff to eat marijuana.

18 78. Defendants McFadden, Pina and Carnicle acted with deliberate or reckless
19 indifference towards Plaintiff's life when Defendants McFadden and Pina intimidated
20 and forced Plaintiff to eat marijuana and Defendant Carnicle, who had full knowledge
21 and was aware of Defendants Carnicle and Pina's demands, ratified the behavior through
22 his conduct and failed to act.
23
24
25
26
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1 79. As a direct and proximate result of Defendants McFadden, Pina and Carnicle's
2 conduct, Plaintiff ate marijuana, which caused severe emotional distress and physical
3 sickness.
4

5 80. Plaintiff's substantive due process rights were violated and Plaintiff sustained
6 damages as fully set forth herein.
7

8 **COUNT III – Federal Civil Rights Claims Under 42 U.S.C. § 1983 (Excessive and**
9 **Unreasonable Force) – *By Plaintiff against Defendants McFadden, Pina and Carnicle***

10 81. Plaintiff hereby incorporates by reference the preceding paragraphs as though fully
11 set forth herein.
12

13 82. The acts and conduct of Defendants McFadden, Pina and Carnicle constituted an
14 illegal and unconstitutional use of force under the Fourth and Fourteenth Amendments,
15 when while Plaintiff sat on the ground, Defendants forced Plaintiff to consume
16 marijuana, go to jail or otherwise harmed.
17

18 83. As a direct and proximate result of the excessive and unreasonable force used
19 upon Plaintiff and the acts and omissions of Defendants, Plaintiff sustained the damages
20 more fully described herein.
21

22 **COUNT IV - *Monell* Federal Civil Rights Claims Under 42 U.S.C. § 1983 (Excessive**
23 **Force: Unconstitutional Policy and Custom; Failure to Supervise & Discipline;**
24 **Failure to Train; Negligent Hiring) – *By Plaintiff against Defendant City of Phoenix***

25 84. Plaintiff hereby incorporates by reference the preceding paragraphs as though fully
26 set forth herein.
27
28

1 85. Prior to the September 13, 2016 incident, Phoenix police officers routinely
2 interacted with citizens of Phoenix and the use and/or possession of marijuana.

3
4 86. Prior to the September 13, 2016 incident, PPD knew that if it did not have
5 adequate policies and procedures applicable to all PPD officers handling encounters with
6 citizens using and/or possessing marijuana that such would result in the deprivation of
7 United States citizens' constitutional rights, specifically the right to be free from
8 excessive and/or unreasonable force or restraint, assault, battery, negligence and the
9 infliction of emotional distress by the hands of law enforcement officers.
10

11
12 87. Notwithstanding this knowledge, PPD final policymakers, including its Chief of
13 Police, and therefore also Defendant City of Phoenix, made deliberate and conscious
14 decisions to create inadequate policies and procedures, if any at all.

15
16 88. Notwithstanding this knowledge, PPD final policymakers, including its Chief of
17 Police, and therefore also Defendant City of Phoenix, deliberately and consciously
18 adopted unconstitutional policies and/or encouraged, tolerated, or ratified
19 unconstitutional widespread PPD practices and customs, including but not limited to the
20 following: (1) hiring persons with a propensity to engage in improper and/or unlawful
21 behavior, including but not limited to neglect of duty/conduct unbecoming of an officer;
22 (2) failing to train its employees and/or implement policies and/or procedures, if any,
23 regarding the importance of proper reporting and investigations into constitutional
24 violations committed by law enforcement; (3) failing to train or implement policies
25 and/or procedures, if any, for its officers on how to react to officer's unconstitutional
26
27
28

1 actions and/or omissions and/or methods for police officers to use in order to prevent
2 constitutional violations that are being committed by other officers to its citizens; (4)
3 proper methods of detention and/or seizure for traffic offenses; and, (5) proper use of
4 force for alleged traffic offenses.
5

6 89. The policies or customs/practices of Defendant City of Phoenix directly and
7 proximately caused the violation of Plaintiff's constitutional rights and the damages as
8 more fully set forth herein.
9

10 90. The Defendant City of Phoenix directly and proximately caused the violation of
11 Plaintiff's constitutional rights and other damages as more fully set forth herein, with its
12 encouragement, toleration, ratification, and deliberate indifference to the policies, or
13 patterns, practices, and customs, as well as its deliberate indifference to the need for more
14 or different hiring, training, supervision, investigation, or discipline.
15
16

17 **COUNT V –Negligence (ordinary & gross) - *By Plaintiff against all Defendants***

18 91. Plaintiff hereby incorporates by reference the preceding paragraphs as though fully
19 set forth herein.
20

21 92. At all relevant times, Defendants McFadden, Pina, Carnicle and Farrior were
22 acting within the course and scope of employment with the Defendant City of Phoenix
23 and the City of Phoenix is therefore vicariously liable for the acts and omissions of
24 Defendants.
25

26 93. It was the duty of Defendants McFadden, Pina and Carnicle as Phoenix police
27 officers to exercise reasonable care in their interactions with Plaintiff.
28

1 94. Defendants McFadden, Pina and Carnicle breached that duty, and were ordinarily
2 and grossly negligent, when they failed to act as reasonable and prudent police officers
3 and with a conscious indifference towards Plaintiff's life, either directly or indirectly,
4 forced Plaintiff to eat marijuana.
5

6 95. It was the duty of Defendant Farris to properly supervise and train his employees,
7 and to timely report, investigate and notify the appropriate persons regarding the blatant
8 constitutional violations against Plaintiff and committed by the officers that were
9 operating under his supervision.
10

11 96. Defendant Farris breached his duty and was ordinarily and grossly negligent
12 when with knowledge of the violations, failed to timely report, investigate and notify the
13 appropriate persons in regards to the blatant constitutional violations committed against
14 Plaintiff by the officers under his supervision.
15

16 97. As a direct and proximate result of Defendants acts and omissions, Plaintiff was
17 injured and suffered damages more fully set forth herein.
18

19 98. Defendant City of Phoenix and PPD owed Plaintiff a duty of reasonable care.
20

21 99. Defendant City of Phoenix and PPD breached that duty, and were ordinarily and
22 grossly negligent, when they failed to implement adequate policies and procedures and/or
23 train its police officers concerning PPD officer encounters with citizens as more fully
24 described herein; and, more specifically, when it either failed to train or to inadequately
25 train Defendants McFadden, Carnicle, Pina regarding such encounters, including but not
26 limited to the appropriate use of force, seizure and/or disposal of evidence, proper
27
28

1 procedures for detention, proper procedures regarding mandatory investigations and/or
2 reporting regarding reports of constitutional violations committed by its officers, and
3 proper procedures regarding an officer's obligation to intervene and prevent
4 unconstitutional acts from occurring.
5

6 100. Defendant City of Phoenix and PPD also breached its duty and were ordinarily
7 and grossly negligent when it failed to properly screen its employees, if at all, consider
8 prior misconduct before employment and/or employing persons with a propensity to
9 engage in improper and/or unlawful conduct, which includes but is not limited to, a
10 propensity to engage in neglect of duty/conduct unbecoming of an officer.
11

12 101. As a direct and proximate result of Defendant City of Phoenix through PPD's
13 conduct, Plaintiff sustained injuries including but not limited to fear, severe emotional
14 distress, distrust for law enforcement and vomiting.
15
16

17
18 **COUNT VI – Arizona Law Claims for Conspiracy, Assault and Battery- *By Plaintiff***
19 ***against Defendants McFadden and Pina and City of Phoenix***

20 102. Plaintiff hereby incorporates by reference the preceding paragraphs as though fully
21 set forth herein.
22

23 103. Defendant McFadden intended to either cause harmful or offensive contact with
24 Plaintiff's person when he handed marijuana to Plaintiff and through threats and/or
25 intimidation, forced Plaintiff to eat marijuana.
26
27
28

1 104. Defendant Pina, who was standing with Defendant McFadden, also intended to
2 cause a harmful or offensive contact with Plaintiff when he also told Plaintiff that
3 Plaintiff had to eat the marijuana.
4

5 105. As fully explained herein, Defendant Pina and Defendant McFadden conspired to
6 and committed an assault and battery when Defendant McFadden and Pina, through their
7 conduct, agreed to unlawfully force Plaintiff to eat the marijuana, which caused Plaintiff
8 severe emotional distress and physical illness.
9

10 106. Defendants either knew or should have known that eating marijuana would result
11 in severe emotional distress and physical illness.
12

13 Damages

14 107. Plaintiff hereby incorporates by reference the preceding paragraphs as though fully
15 set forth herein.
16

17 108. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has
18 incurred damages in the form of anguish, sorrow, stress, mental suffering, pain and
19 shock, especially considering the manner in which phoenix police officers and PPD
20 abused their position of power and failed to timely remedy their abusive power.
21

22 109. As a direct and proximate result of the conduct of Defendants, Plaintiff suffered
23 physical injuries, including vomiting, all caused by the violation of his rights under the
24 United States Constitution, State and Federal law.
25

26 110. The actions of the individual Defendants, and each of them, shock the conscience
27 and were guided by an evil mind. Defendants intended to injure Plaintiff and/or although
28

1 not intending to cause injury, consciously pursued a course of conduct knowing that it
2 created a substantial risk of significant harm to others.

3
4 111. For the reasons stated above, punitive damages are warranted against individual
5 defendants to the extent authorized under federal and state law.

6 112. Pursuant to 42 U.S.C. 1988, Plaintiff is entitled to attorneys' fees for certain
7 claims for certain defendants.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff Edgar Castro respectfully requests:

11 A. Compensatory damages, loss of income, impairment of earning capacity,
12 relocation expenses, medical and physical expenses;

13 B. Punitive damages against individual Defendants to the extent authorized under
14 federal and state law;

15 C. Reasonable attorneys' fees and costs to the extent allowed under state and federal
16 law; and,
17

18 D. All other relief deemed just and proper.
19

20
21 RESPECTFULLY SUBMITTED this _____ day of August, 2017.
22

23
24 **DOW LAW OFFICE**

25
26
27 By: _____

28 David W. Dow

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