

1 Andrew C. Schwartz (State Bar No. 64578)  
2 **CASPER, MEADOWS, SCHWARTZ & COOK**  
3 A Professional Corporation  
4 2121 North California Blvd., Suite 1020  
5 Walnut Creek, California 94596  
6 Telephone: (925) 947-1147  
7 Facsimile: (925) 947-1131  
8 [schwartz@cmslaw.com](mailto:schwartz@cmslaw.com)

9 Karen L. Snell (State Bar No. 100266)  
10 Attorney at Law  
11 102 Buena Vista Terrace  
12 San Francisco, CA 94117  
13 Telephone: (415) 225-7592  
14 Facsimile: (415) 487-0748  
15 [ksnell@snell-law.com](mailto:ksnell@snell-law.com)

16 Attorneys for Plaintiff  
17 IAN ANDERSON

18 UNITED STATES DISTRICT COURT  
19 SOUTHERN DISTRICT OF CALIFORNIA

20 IAN ANDERSON,  
21 Plaintiff,  
22 vs.  
23 CITY OF SAN DIEGO, SAN DIEGO POLICE  
24 CHIEF SHELLEY ZIMMERMAN, OFFICER  
25 BENNETT and DOES 1-50,  
26 Defendants.

CASE NO.: '15CV1413 JLS JMA

**COMPLAINT FOR DAMAGES  
(Violation of Civil Rights)**

JURY TRIAL DEMANDED

**JURISDICTION AND VENUE**

27 1. This complaint seeks damages against Defendants CITY OF SAN DIEGO, SAN  
28 DIEGO POLICE CHIEF SHELLEY ZIMMERMAN, SAN DIEGO POLICE OFFICER  
BENNETT and DOES 1-50, for the violation of Plaintiff IAN ANDERSON'S rights protected  
by the Fourth Amendment to the United States Constitution and California state law. Plaintiff  
brings this action under 42 United States Code Section 1983 and California state law. The  
actions and failures to act which this Complaint alleges against Defendants were committed by  
the individual Defendants acting under color of law and within the course and scope of their

1 employment with the CITY OF SAN DIEGO.

2 2. Because the complaint seeks remedies pursuant to Title 42, United States Code,  
3 section 1983, jurisdiction is conferred upon the United States District Court by Title 28, United  
4 States Code, sections 1331 and 1343. This Court has supplemental jurisdiction over Plaintiff's  
5 state law claims pursuant to Title 28, United States Code, section 1367(a).

6 3. The actions giving rise to Defendants' liability as alleged in this Complaint  
7 occurred in the City of San Diego, County of San Diego, State of California. Venue is  
8 therefore proper in the United States District Court for the Southern District of California  
9 pursuant to Title 28, United States Code, section 1391(b), and Southern District Local Rule  
10 77.4.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff demands a jury trial in this action.

13 **IDENTIFICATION OF PARTIES**

14 4. At all times material to this Complaint, Plaintiff IAN ANDERSON was a  
15 resident of San Diego, California and of full age.

16 5. Defendant CITY OF SAN DIEGO is a public entity, duly organized and existing  
17 under the laws of the State of California, and is a "person" under Title 42, United States Code,  
18 section 1983. Defendant CITY OF SAN DIEGO includes the SAN DIEGO POLICE  
19 DEPARTMENT ("SDPD"). At all times relevant to this Complaint, the SDPD was supervised,  
20 controlled and staffed by Defendant CITY OF SAN DIEGO, its officers, agents and employees.  
21 At all times relevant to this Complaint, Defendants acted under the color of law and within the  
22 course and scope of their employment with CITY OF SAN DIEGO, which caused the harm of  
23 which Plaintiff complains.

24 6. At the time of the alleged constitutional and state tort violations suffered by  
25 Plaintiff, March 15, 2015, Defendant CHIEF ZIMMERMAN was the Chief of Police of the  
26 SDPD. As Chief of Police, CHIEF ZIMMERMAN was an official with final policy-making  
27 authority regarding the supervision, training and discipline of police officers for defendant  
28 CITY OF SAN DIEGO. CHIEF ZIMMERMAN is sued in her individual and official

1 capacities.

2 7. At all times relevant to this Complaint, Defendant OFFICER BENNETT was a  
3 SDPD OFFICER employed by the CITY OF SAN DIEGO who was acting under color of law.  
4 Defendant BENNETT is sued in his individual capacity.

5 8. Plaintiff is ignorant of the true names and capacities of Defendants DOE 1  
6 through 20, and therefore sues these Defendants by such fictitious names. Plaintiff is informed  
7 and believes and thereon alleges that each Defendant so named is responsible in some manner  
8 for the injuries and damages suffered by Plaintiff as described in this Complaint. Plaintiff will  
9 amend this Complaint to state the true names and capacities of Defendants, including DOES 1  
10 through 20, when they have been ascertained. Any reference in this complaint to “Defendant,”  
11 “Defendants,” or to an individually-named defendant also refers to Defendants DOES 1-50.

12 9. Each Defendant sued in this Complaint acted as the agent or employee of every  
13 other Defendant.

14 **FACTS GIVING RISE TO THE COMPLAINT**

15 10. On March 15, 2015, Plaintiff IAN ANDERSON lived at 956.5 Garnet Avenue,  
16 San Diego, California. At 5:20 a.m., before dawn, Plaintiff was awakened by a loud knocking  
17 on his door. Plaintiff looked out his window and saw two San Diego Police Officers at his  
18 front door. Plaintiff answered the door and stepped outside, trying not to disturb house guests  
19 who were sleeping inside his home. Plaintiff’s five year old dog, Burberry, exited the house  
20 with him. Burberry was professionally trained to serve as Plaintiff’s Emotional Support Pet  
21 and had helped Plaintiff deal with anxiety and depression following the death of his father.

22 11. There is a videotape of what happened next. One of the SDPF Officers bent  
23 down to pet Burberry. Burberry then danced over to Defendant OFFICER BENNETT, who  
24 yelled and started backing away while drawing his police issued firearm and pointing it at the  
25 dog. Plaintiff moved to control Burberry, who was only a few feet away from him, within the  
26 confines of Plaintiff’s property. But before Plaintiff could reach his dog, Defendant  
27 BENNETT shot Burberry in the head, killing him.

28 12. Plaintiff was never told why Defendant BENNETT and the other SDPD

1 OFFICER knocked on his door on March 15<sup>th</sup>. The SDPD Officers never asked Plaintiff or his  
2 houseguests any questions. They never told Plaintiff why they had awakened him in the  
3 nighttime and demanded that he open his door. They never told him why Defendant  
4 BENNETT had killed his dog.

5 13. The intrusion on Plaintiff's rights when Defendant BENNETT shot and killed  
6 Burberry was severe. "Dogs are more than just a personal effect. The emotional attachment to  
7 a family's dog is not comparable to a possessory interest in furniture." *San Jose Charter of the*  
8 *Hells Angels Motorcycle Club, et al., v. City of San Jose, et al.*, 402 F.3d 962 (9<sup>th</sup> Cir.), cert.  
9 denied, 546 U.S. 1061 (2005).

10 14. Shooting Plaintiff's dog served no legitimate government purpose and was  
11 unnecessary. Plaintiff was on hand to control Burberry and should have been allowed to do so.  
12 It was malicious, and unreasonable for Defendant BENNETT to shoot and kill Plaintiff's dog.

13 15. Defendant BENNETT had no legal justification for his intrusion onto Plaintiff's  
14 property and destruction of Plaintiff's dog. By engaging in the conduct alleged in this  
15 Complaint, Defendants violated Plaintiff's constitutional rights and his rights under California  
16 state law.

### 17 DAMAGES

18 16. As a direct and proximate result of the conduct of Defendants, and each of them,  
19 Plaintiff was deprived of his dog Burberry and his investment in professional training for the  
20 dog. Plaintiff suffered emotional distress, violation of his constitutional rights, and the loss of  
21 his sense of security, dignity, and pride as a resident of the United States of America

22 17. Plaintiff sustained damages from the trespass to real property and chattels,  
23 conversions, and the intentional infliction of emotional distress inflicted on Plaintiff by  
24 Defendants acting within the course and scope of their employment with the CITY OF SAN  
25 DIEGO.

26 18. As a direct and proximate result of Defendants' conduct, Plaintiff suffered  
27 emotional distress, loss of property, and the loss of his sense of security, dignity, and pride as a  
28 citizen of the United States of America.

1 19. Those individually named Defendants, including but not limited to OFFICER  
2 BENNETT and DOES 1 through 50, who participated in, or were otherwise responsible for the  
3 wrongful shooting of Plaintiff's dog, acted with malice and oppression. These Defendants'  
4 conduct was intended to harm Plaintiff or was despicable and carried out with a conscious  
5 disregard of Plaintiff's rights or safety. Plaintiff is therefore entitled to an award of punitive  
6 damages from these Defendants.

7 20. Plaintiff has retained attorneys to pursue his rights as asserted in this Complaint.  
8 Plaintiff is entitled to an award of reasonable attorneys' fees incurred in relation to this action  
9 pursuant to Title 42, United States Code, section 1988.

10 **FIRST CLAIM FOR RELIEF**  
11 **42 U.S.C. § 1983**  
12 **(Against OFFICER BENNETT and DOES 1-50)**

13 21. Plaintiff IAN ANDERSON hereby incorporates herein the preceding paragraphs  
14 of this Complaint, to the extent relevant, as if fully set forth.

15 22. The individually named Defendants, including OFFICER BENNETT and DOES  
16 1-50, acted under color of law and violated Plaintiff's rights protected by the Fourth  
17 Amendment to the United States Constitution, including but not limited to "[t]he right of the  
18 people to be secure in their persons, houses, papers and effects, against unreasonable searches  
19 and seizures." U.S. Constitution, Amendment IV.

20 23. The individually named Defendants who participated in or were otherwise  
21 responsible for the wrongful shooting death of Plaintiff's dog acted with malice and  
22 oppression. These Defendants' conduct was intended to harm Plaintiff or was despicable and  
23 carried out with a conscious disregard of Plaintiff's rights or safety. Plaintiff is therefore  
24 entitled to recorder exemplary damages from these Defendants.

25 24. As a proximate result of the conduct of Defendants, Plaintiff was deprived of his  
26 rights and privileges under the Fourth Amendment to the United States Constitution.

27 WHEREFORE, plaintiff prays for relief as set forth below.

28 ///

1 ///

2 **SECOND CLAIM FOR RELIEF**

3 **42 U.S.C. § 1983**

4 **(Against CITY OF SAN DIEGO, CHIEF ZIMMERMAN and DOES 1-50)**

5 25. Plaintiff IAN ANDERSON hereby incorporates herein the preceding paragraphs  
6 of this Complaint, to the extent relevant, as if fully set forth.

7 26. At all times relevant to this Complaint, Defendants CITY OF SAN DIEGO,  
8 CHIEF ZIMMERMAN and DOES 1-50, acting through their policymakers and agents,  
9 developed and maintained policies, practices or customs exhibiting deliberate indifference to  
10 the constitutional rights of persons within the jurisdiction of the SDPD. These policies,  
11 practices or customs were the moving forces behind the violation of Plaintiff's rights protected  
12 by the Fourth Amendment. These policies, practices or customs included: authorizing  
13 nighttime entries onto property without a search warrant; failing to train officers to respect San  
14 Diego residents' property; failing to train officers to employ reasonable alternatives to shooting  
15 San Diego residents' dogs. These policies of Defendants were the moving forces behind the  
16 violation of Plaintiff's rights protected by the Fourth Amendment.

17 27. At all times relevant to this Complaint, it was obvious that CITY OF SAN  
18 DIEGO, CHIEF ZIMMERMAN and DOES 1-50 must properly train SDPD Officers to refrain  
19 from violating the Fourth Amendment rights of San Diego residents, and that such training  
20 must include, in part, the requirements: not to enter private property without a warrant and  
21 without exigent circumstances; to take reasonable precautionary measures when entering  
22 private property where dogs may be present; and not to shoot dogs when there are reasonable,  
23 non-lethal alternatives.

24 28. At all times relevant, it was obvious that the failure to provide training reflected  
25 a deliberate indifference to the protection of the rights guaranteed by the Fourth Amendment to  
26 the United States Constitution. The failure by CITY OF SAN DIEGO, CHIEF ZIMMERMAN,  
27 and DOES 1-50, acting through SDPD and their policymakers, to properly train SDPD police  
28 officers to refrain from committing violations of the Fourth Amendment to the United States

1 Constitution caused the alleged unconstitutional actions of SDPD which Plaintiff alleges in this  
2 Complaint.

3 29. As a direct and proximate result of the policies, practices, acts and omissions of  
4 Defendants CITY OF SAN DIEGO, CHIEF ZIMMERMAN, and DOES 1-50, Plaintiff  
5 sustained harm and the special and general damages which Plaintiff will establish at trial.

6 **THIRD CLAIM FOR RELIEF**  
7 **CONVERSION**  
8 **(Against CITY OF SAN DIEGO, OFFICER BENNETT and DOES 1-50)**

9 30. Plaintiff IAN ANDERSON hereby incorporates herein the preceding paragraphs  
10 of this Complaint, to the extent relevant, as if fully set forth.

11 31. On April 13, 2015, Defendant CITY OF SAN DIEGO received the Government  
12 Claim Plaintiff timely filed pursuant to the provisions of the California Tort Claims Act,  
13 California Government Code § 910, et seq. On May 29, 2015, Plaintiff received a letter from  
14 Defendant CITY OF SAN DIEGO informing him that the CITY did not act on Plaintiff's claim  
15 within the 45-day time period set forth in California Government Code § 912.4, and therefore,  
16 the claim is deemed denied by operation of law.

17 32. The individual Defendants committed their alleged actions in the course and  
18 scope of their employment as CITY OF SAN DIEGO employees. The employees are liable  
19 pursuant to California Government Code § 820(a), which renders a public employee liable for  
20 injury caused by his or her act or omission to the same extent as a private person. CITY OF  
21 SAN DIEGO is liable pursuant to Government Code § 815.2, which renders a public entity  
22 liable for injury proximately caused by an act or omission of an employee of a public entity  
23 within the scope of his or her employment if the act or omission would give rise to a cause of  
24 action against the public employee.

25 33. On March 15, 2015, Plaintiff was the lawful owner of his pet dog, Burberry.

26 34. On March 15, 2015, OFFICER BENNETT shot Burberry in the head with his  
27 police-issued handgun, killing him. In committing this act, Defendant substantially interfered  
28 with Plaintiff's rights.

1 35. Plaintiff did not consent to the substantial interference with his personal  
2 property.

3 36. The actions of these Defendants, and each of them, was a substantial factor in  
4 causing Plaintiff to sustain harm and the special and general damages which Plaintiff will  
5 establish at trial.

6 37. The individually named Defendants, including OFFICER BENNETT and DOES  
7 1-50, acted with malice and oppression. The conduct of these individually named Defendants  
8 was intended to harm Plaintiff or was despicable and carried out with a conscious disregard of  
9 Plaintiff's rights or safety. Plaintiff therefore is entitled to recover exemplary damages from  
10 these Defendants.

11 WHEREFORE, Plaintiff prays for relief as set forth below.

12 **FOURTH CLAIM FOR RELIEF**  
13 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
14 **(Against CITY OF SAN DIEGO, OFFICER BENNETT**  
15 **and DOES 1-50)**

16 38. Plaintiff IAN ANDERSON hereby incorporates herein the preceding paragraphs  
17 of this Complaint, to the extent relevant, as if fully set forth.

18 39. On March 15, 2015, OFFICER BENNETT and DOES 1-50 either engaged in  
19 outrageous conduct intended to cause Plaintiff emotional distress or acted with reckless  
20 disregard of the probability that Plaintiff would suffer emotional distress, knowing that Plaintiff  
21 was present when each Defendant committed the outrageous conduct alleged in this Complaint.

22 40. Plaintiff suffered severe emotional distress.

23 41. Each Defendant's conduct was a substantial factor in causing the alleged severe  
24 emotional distress.

25 42. The individually named Defendants, including OFFICER BENNETT and DOES  
26 1-50, acted with malice and oppression. The conduct of these individually named Defendants  
27 was intended to harm Plaintiff or was despicable and carried out with a conscious disregard of  
28 Plaintiff's rights or safety. Plaintiff therefore is entitled to recover exemplary damages from  
these Defendants.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

WHEREFORE, Plaintiff prays for relief as set forth below.

///

**FIFTH CLAIM FOR RELIEF**  
**CALIFORNIA CIVIL CODE §§ 52, 52.1**  
**(Against CITY OF SAN DIEGO, OFFICER BENNETT and DOES 1-50)**

43. Plaintiff IAN ANDERSON hereby incorporates herein the preceding paragraphs of this Complaint, to the extent relevant, as if fully set forth.

44. On March 15, 2015, OFFICER BENNETT and DOES 1 through 50, using threats, coercion and intimidation, interfered with and threatened to interfere with Plaintiff's rights guaranteed by the Fourth Amendment to the United States Constitution, and Art. 1, § 13 of the California Constitution.

45. The actions of these Defendants, and each of them, was a substantial factor in causing Plaintiff to sustain harm and the special and general damages which Plaintiff will establish at trial.

46. The individually named Defendants, including OFFICER BENNETT and DOES 1 through 50, acted with malice and oppression. The conduct of these individually named defendants was intended to harm Plaintiff or was despicable and carried out with a conscious disregard of Plaintiff's rights or safety. Plaintiff therefore is entitled to recover exemplary damages from these Defendants.

47. Plaintiff is entitled to such statutory damages and attorney's fees allowed by California Civil Code §§ 52 and 52.1.

WHEREFORE, Plaintiffs pray for relief as follows:

1. For general damages, according to proof;
2. For special damages, according to proof;
3. For pecuniary damages, according to proof;
4. For burial expenses, according to proof;
5. For punitive damages against the individually named Defendants;
6. For statutory damages pursuant to California Civil Code §§ 52 and 52.1;
7. For reasonable attorney's fees pursuant to 42 U.S.C. § 1988 on Plaintiffs' First

1 and Second Claims for Relief;

2 8. For reasonable attorney's fees pursuant to California Civil Code §§ 52 and 52.1  
3 on Plaintiffs' Fifth Claim for Relief;

4 9. For costs of suit incurred herein; and

5 10. For such other and further relief as the Court may deem just and proper.

6

7 Dated: June 26, 2015

CASPER, MEADOWS, SCHWARTZ & COOK

8

9

10

\_\_\_\_\_/s/ - "Andrew C. Schwartz"

11

By: ANDREW C. SCHWARTZ

12

Attorneys for Plaintiff

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28