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15 **UNITED STATES DISTRICT COURT FOR THE**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 HORACE ROBERTS,

18 Plaintiff,

19 v.

20 COUNTY OF RIVERSIDE, DAVID  
COX, ROBERT CREED, DAVID  
21 COLLINS, SHELDON GILL, MARK  
CORDOVA, EDWARD CHAVEZ,

CASE NUMBER: 19-1877

**COMPLAINT FOR DAMAGES  
AND OTHER RELIEF  
JURY TRIAL DEMANDED**

1 RICK ZERKEL, RANDY KEY,  
2 DEPUTY ORONA, TIMOTHY  
3 JOHNSON, LARRY SMITH, GARY  
4 PENROD, CHARLES VARGA, and  
5 UNKNOWN OFFICERS OF THE  
6 RIVERSIDE COUNTY SHERIFF'S  
7 DEPARTMENT,

8 Defendants.

9 Plaintiff HORACE ROBERTS, by his undersigned attorneys, hereby complains  
10 against Defendants COUNTY OF RIVERSIDE, DAVID COX, ROBERT CREED,  
11 DAVID COLLINS, SHELDON GILL, MARK CORDOVA, EDWARD CHAVEZ,  
12 RICK ZERKEL, RANDY KEY, DEPUTY ORONA, TIMOTHY JOHNSON,  
13 LARRY SMITH, GARY PENROD, CHARLES VARGA, and UNKNOWN  
14 OFFICERS OF THE RIVERSIDE COUNTY SHERIFF'S DEPARTMENT, and  
15 states as follows:

### 16 JURISDICTION AND VENUE

17 1. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 and California  
18 law to redress Defendants' tortious conduct and their violation of Plaintiff's rights  
19 secured by the U.S. Constitution.

20 2. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28  
21 U.S.C. § 1331, and supplemental jurisdiction over his state law claims pursuant to 28  
U.S.C. § 1367.

3. Venue is proper under 28 U.S.C. § 1391(b). Plaintiff's criminal case was  
investigated, tried, and appealed in Riverside County, California, such that a

1 substantial part of the events and omissions giving rise to Plaintiff's claims occurred  
2 within this judicial district.

### 3 INTRODUCTION

4 4. Plaintiff Horace Roberts was a forty-year-old U.S. Marine Corps veteran,  
5 hardworking professional, and father of two young children when Defendants framed  
6 him for the 1998 murder of Terry Cheek. In 1999, Plaintiff was wrongly convicted.  
7 He spent two decades in prison.

8 5. Plaintiff had nothing to do with the crime. At all times during his twenty-  
9 year ordeal, Plaintiff steadfastly maintained his innocence.

10 6. Although Defendants recovered ample forensic evidence at the crime  
11 scene, not one piece of that evidence has ever connected Plaintiff to Terry Cheek's  
12 murder. On the contrary, all the forensic testing of physical evidence from the Cheek  
13 homicide investigation shows Plaintiff was not the perpetrator.

14 7. In fact, the DNA and other evidence recovered from the crime scene  
15 reveals that Cheek's true killers were her estranged husband and his nephew. Those  
16 men are now charged with her murder and are awaiting trial.

17 8. In addition to the fact that no forensic evidence ties Plaintiff to Cheek's  
18 murder, no eyewitness has ever implicated him.

19 9. During their investigation, Defendants abandoned their role as unbiased  
20 investigators, decided first that Plaintiff was the killer, and then manufactured a case  
21 against him.

1           10. To secure Plaintiff's conviction, Defendants suppressed evidence  
2 showing Plaintiff was innocent, including evidence that Cheek's estranged husband  
3 was threatening and abusive toward her and that the former couple had clashed shortly  
4 before her murder over his son's attempt to molest Cheek's daughter.

5           11. As a consequence, Plaintiff's arrest, prosecution, and conviction were  
6 based solely on false evidence fabricated by Defendants, including evidence that  
7 Plaintiff's watch was found at the crime scene and that Plaintiff possessed a purse  
8 Cheek had with her when she was killed.

9           12. Because of Defendants' misconduct, the real perpetrators of this heinous  
10 crime were free in the community for decades, and at least one of them committed  
11 other crimes.

12           13. Plaintiff was convicted of second-degree murder. The court sentenced  
13 him to fifteen years to life.

14           14. For the next twenty years, Plaintiff languished in prison, grappling with  
15 the injustice of his wrongful conviction, never knowing whether he would be free  
16 again.

17           15. While he was imprisoned, Plaintiff steadfastly pursued his freedom.  
18 Finally, in October 2018, he was exonerated, and he walked out of prison a free man.

19           16. Plaintiff now seeks justice for the harm Defendants caused and redress  
20 for the loss of liberty and the terrible hardship he endured and continues to suffer as a  
21 result of Defendants' misconduct.

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**PARTIES**

17. Plaintiff Horace Roberts is a sixty-one-year-old man who spent twenty years wrongly imprisoned for a murder he did not commit.

18. David Cox, Robert Creed, David Collins, Sheldon Gill, Mark Cordova, Edward Chavez, Rick Zerkel, Randy Key, Deputy Orona, Timothy Johnson, Larry Smith, Gary Penrod, and Charles Varga (together, “Defendants”) are current or former officers and employees of the Riverside County Sheriff’s Department and the County of Riverside, California. Defendants participated in the investigation of Terry Cheek’s murder and caused Plaintiff’s wrongful conviction.

19. At all times relevant to the events described in this complaint, Defendants Larry Smith, Gary Penrod, and Charles Varga were supervisors in the Riverside County Sheriff’s Department. In that capacity, they directed, approved, and ratified the decisions of the other individual defendants.

20. Defendant Unknown Officers of the Riverside County Sheriff’s Department participated in the misconduct alleged in this complaint.

21. The County of Riverside is or was the employer of the above-named Defendants. In addition, each Defendant named in this complaint acted during his or her investigation of Cheek’s murder as an agent or employee of the County of Riverside. The County of Riverside is responsible for indemnifying judgments against Defendants; is liable for all torts Defendants committed pursuant to the doctrine of

1 *respondeat superior*; and is liable for violations of Plaintiff's rights arising from  
2 unconstitutional policies and customs in place at the Riverside County Sheriff's  
3 Department.

4 22. Each Defendant, known and unknown, acted under color of law and  
5 within the scope of his or her employment at all times relevant to this lawsuit. Unless  
6 otherwise noted, Defendants are sued in their individual capacity.

## 7 **FACTS**

### 8 **The Murder of Terry Cheek**

9 23. On April 14, 1998, Terry Cheek left her home in Riverside to travel to  
10 her job working the night shift at Quest Diagnostics in San Juan Capistrano.

11 24. Later that night, a California Highway Patrol officer found a truck parked  
12 on the shoulder of the southbound freeway between Corona and Lake Elsinore, about  
13 twenty miles from Cheek's Riverside home. The officer tagged the truck with a notice  
14 that it would be towed if it was not moved within seventy-two hours. A few days later,  
15 the truck was towed.

16 25. Cheek never arrived at work.

17 26. On April 18, 1998, Cheek's body was spotted by three men fishing in  
18 Corona Lake, lying on a row of rocks lining Temescal Canyon Road, which runs  
19 alongside Corona Lake and parallel to the northbound freeway.

20 27. Cheek had been strangled with a rope, and her body was left near the  
21 lake. She was across the freeway and 1.2 miles west of where the truck was parked.

1 28. Googie Harris Sr., Cheek's estranged husband, and his nephew, Joaquin  
2 Leal, had murdered Cheek and hidden her body there.

3 **Plaintiff Horace Roberts**

4 29. Plaintiff Horace Roberts had nothing to do with Cheek's murder.

5 30. In April 1998, Plaintiff was a forty-year-old father to two young children,  
6 living in Riverside County.

7 31. Plaintiff graduated high school in 1976, and he enlisted in the U.S.  
8 Marine Corps three years later. He served for eight-and-a-half years and was honorably  
9 discharged in 1987.

10 32. For the next ten years, Plaintiff worked at a diagnostics laboratory  
11 originally called Nichols Institute and later renamed Quest Diagnostics, the same place  
12 Cheek was working at the time of her death.

13 33. Plaintiff was hired by Quest as a specimen processor, and he was  
14 promoted to a lead position after a few years. In that role, Plaintiff trained new  
15 personnel and managed teams of processors.

16 34. At the time of Cheek's death, Plaintiff worked the nightshift from 1 a.m.  
17 to 9:30 a.m., Tuesdays to Saturdays.

18 35. He was well-respected by his peers and superiors at Quest and was  
19 considered a key member of the team.

20 **Plaintiff's Relationship with Terry Cheek**

21 36. In 1997, Plaintiff separated from his wife of sixteen years, Debra Roberts.

1 At the time, Plaintiff and Debra had seven-year-old twins who lived with their mother  
2 following the separation, though Plaintiff remained an active parent.

3 37. Plaintiff and Terry Cheek were colleagues at Quest. They both worked  
4 the night shift Tuesdays through Saturdays.

5 38. Eventually, Plaintiff and Cheek began a romantic relationship.

6 39. Also in 1997, Cheek separated from Googie Harris Sr. She moved out of  
7 their home in Riverside into a new apartment in Temecula.

8 40. Cheek and Harris Sr. had a young son together, Jeremy Harris, and  
9 Cheek had two young daughters of her own, Tynisha and Christina Weaver.

10 41. When she moved out, Cheek took the children to live with her in  
11 Temecula.

12 42. For several months beginning in late 1997, Plaintiff joined Cheek and her  
13 three children in Temecula. The five of them lived together peacefully. By all  
14 accounts, Plaintiff had a happy relationship with Cheek, and a close relationship with  
15 Cheek's children.

16 43. In early 1998, because the children missed their friends and wanted to  
17 return to their old school, Cheek decided to return part-time to the Riverside house.  
18 Thereafter, she divided her time between Temecula and Riverside, continuing her  
19 relationship with Plaintiff.

20 44. On the morning of April 14, 1998, when Plaintiff and Cheek finished  
21 work together, Plaintiff loaned Cheek his truck. Cheek dropped Plaintiff at their



1 Temecula apartment and headed to Riverside, intending to return to pick Plaintiff up  
2 in time for them to drive together to their 1 a.m. shift at Quest the next day. This was  
3 often their routine.

4 45. But on the night of April 14, 1998, Plaintiff was surprised when Cheek  
5 never returned to pick him up. Plaintiff was unable to reach Cheek by phone and was  
6 alarmed to learn that she never arrived at work.

7 46. Plaintiff found out that his truck, which Cheek had borrowed the morning  
8 of April 14, had been towed after it had been found abandoned on the highway  
9 between Riverside and Temecula.

10 47. Four days later, Plaintiff learned along with Cheek's family that her body  
11 had been discovered by Corona Lake.

12 48. Plaintiff was shocked and devastated by the news of Cheek's murder. He  
13 had no involvement in her death and did not know how it occurred.

14 **Terry Cheek's Relationship with Googie Harris Sr. and His Family**

15 49. At the time of her death, Terry Cheek's relationship with her estranged  
16 husband, Googie Harris Sr., was extremely volatile.

17 50. Before separating, Cheek and Harris Sr. lived in the Riverside house with  
18 their shared son, Cheek's daughters, and Harris Sr.'s son from another relationship, a  
19 teenager named Googie Harris Jr.

20 51. Googie Harris Sr. was abusive and threatening toward Cheek.

21 52. Shortly before her death, for example, Cheek told friends that she was

1 terrified of Harris Sr. and felt very threatened by him.

2 53. In December 1997, a few months after she moved to Temecula, Cheek  
3 filed for divorce. The court file from her divorce proceedings included documents  
4 outlining in detail Harris Sr.'s abuse of Cheek, including that he surveilled Cheek on  
5 several occasions and saw her driving Plaintiff's truck. In addition, the file revealed  
6 that Harris Sr.'s son, Googie Harris Jr., had attempted to molest Cheek's younger  
7 daughter.

8 54. Defendants had possession of documents in the divorce court file, but  
9 they never provided those documents to state prosecutors, Plaintiff, or his defense  
10 attorneys.

### 11 **The Defendants' Homicide Investigation**

12 55. Defendants responded to the scene where Cheek's body was discovered  
13 on April 18, 1998, and thereafter investigated her murder.

14 56. At the crime scene, Defendants located several items of evidence near  
15 Cheek's body, including a black men's Lorus brand wristwatch, a length of orange  
16 and black rope, and a set of tire tracks arcing off the freeway, stopping near the body,  
17 and then turning back onto the freeway.

18 57. None of the physical evidence gathered at the crime scene suggested that  
19 Plaintiff had been involved in the crime.

20 58. On or about April 18, 1998, Defendants went to the home of Cheek's  
21 brother, Junies Joseph, to inform the family that Cheek's body had been discovered.

1 Plaintiff was also at Joseph's home, along with Cheek's close friend and Quest co-  
2 worker, Janet Corsi.

3 59. Cheek's family, Plaintiff, and Corsi learned of Cheek's death when  
4 Defendants visited Joseph's home.

5 60. During the visit, Defendants interviewed Corsi privately. Corsi told them  
6 about problems between Cheek and Harris Sr., including that Harris Sr. had recently  
7 tried to rape Cheek.

8 61. Defendants also interviewed Tynisha Weaver, Cheek's older daughter.  
9 Tynisha told Defendants that Cheek had left for work from the Riverside home around  
10 10:30 p.m. on April 14, and that Harris Sr. had left the house fifteen minutes after her.

#### 11 **Defendants Interrogate Plaintiff**

12 62. Defendants took Plaintiff into custody and began to interrogate him on or  
13 about the afternoon of April 18, 1998.

14 63. Defendants interrogated Plaintiff at the police station for an extended  
15 period of time. They swore at Plaintiff, insisted he had murdered Cheek, and accused  
16 him of lying when he professed his innocence.

17 64. Plaintiff truthfully told Defendants he knew nothing about Cheek's death.

18 65. The same day, Defendants interviewed Harris Sr. Unlike their interview  
19 with Plaintiff, Defendants unquestioningly accepted Harris Sr.'s account of his  
20 whereabouts at the time of the murder. Thereafter, they failed to document any  
21 subsequent conversation with Harris Sr. about Cheek's death.

1           66.    On April 22, 1998, Defendants interrogated Plaintiff again, and later  
2 administered a polygraph exam. During the polygraph exam, Defendants again swore  
3 at Plaintiff and repeatedly accused him of lying and murdering Cheek.

4           67.    Plaintiff continued to maintain his innocence.

5           68.    Though they still had no reason to suspect Plaintiff, Defendants  
6 conducted another interrogation immediately following the polygraph. The  
7 interrogation lasted for hours.

8           69.    Despite Defendants' efforts to wear Plaintiff down, including by calling  
9 Cheek a whore and calling Plaintiff a liar and murderer, Plaintiff maintained that he  
10 knew nothing about what had happened to Cheek.

11           70.    Defendants later interrogated Plaintiff a fourth time. Again, the  
12 interrogation lasted for hours; again, Defendants accused Plaintiff of murdering  
13 Cheek; and, again, Plaintiff denied being involved.

14           71.    During this interrogation, Defendants showed Plaintiff evidence from the  
15 crime scene, lied to him about evidence they had uncovered from other witnesses, fed  
16 him facts about the crime, and coerced him into making incriminating statements.

17           72.    Detectives later interrogated Plaintiff for a fifth time. During this  
18 interrogation, which lasted almost an hour, Defendants again pushed Plaintiff to make  
19 incriminating statements they knew were false.

20           73.    Defendants' purpose in repeatedly questioning Plaintiff in this manner  
21 was to secure false and involuntary statements they could use to incriminate him.

1           74. Defendants believed they needed to coerce and fabricate inculpatory  
2 statements from Plaintiff because they knew they lacked any other evidence linking  
3 Plaintiff to the Cheek homicide.

4           75. During Defendants' repeated, intensive, and abusive interrogations,  
5 Plaintiff was forced to provide Defendants with statements. At no point did Plaintiff  
6 voluntarily make any incriminating statements to Defendants.

7           76. At all times during Defendants' interrogation, Plaintiff was in custody  
8 and was not free to leave.

9           77. In total, Defendants questioned Plaintiff at least five times before even  
10 attempting to give Plaintiff *Miranda* warnings.

11           78. Defendants nonetheless used the statements they coerced from Plaintiff  
12 to implicate him in Cheek's murder.

13           79. In committing the misconduct described above, Defendants entered an  
14 agreement with each other and with others currently unknown to Plaintiff to secure,  
15 individually, jointly, and/or in conspiracy, a false, fabricated, and involuntary  
16 confession from Plaintiff and to use that confession to initiate and perpetuate false  
17 criminal charges against Plaintiff.

18                           **All of the Other Evidence Exonerates Plaintiff**

19           80. After investigating Plaintiff in connection with Cheek's murder for two  
20 weeks, Defendants had no credible evidence implicating him.

21           81. The tire tracks near Cheek's body did not match Plaintiff's truck.

1 82. None of the physical evidence found at the crime scene tied him to the  
2 murder.

3 83. No witness placed Plaintiff at the crime scene.

4 84. Many witnesses told Defendants that Plaintiff was kind and loving  
5 toward Cheek.

6 85. And several witnesses informed police that Plaintiff had been stranded in  
7 Temecula—about twenty-five miles away—with no car, waiting for Cheek, when the  
8 crime occurred.

9 **Defendants Fabricate Additional Evidence to Implicate Plaintiff**

10 86. Defendants were under immense pressure to solve the crime.

11 87. Because they had no legitimate evidence tying Plaintiff to Cheek's  
12 murder, Defendants pivoted their efforts to implicating Plaintiff by manufacturing  
13 additional false evidence—including police reports and witness statements—to frame  
14 Plaintiff for murder, while concealing that the evidence they manufactured was false.

15 88. Among other things, Defendants created false evidence that the Lorus  
16 watch found at the crime scene belonged to Plaintiff.

17 89. In fact, Defendants knew and were told by numerous witnesses that the  
18 Lorus watch was not Plaintiff's. But they suppressed that fact, told Plaintiff numerous  
19 witnesses said the watch was his, and falsely connected Plaintiff to the crime using the  
20 Lorus watch.

21 90. Defendants also created false reports purporting to show that the Lorus

1 watch belonged to Plaintiff, including a report they concocted, which said among  
2 other things that Plaintiff's wrist was the exact same size as the wrist of the Lorus's  
3 owner.

4 91. Defendants knew the reports about the Lorus watch were false.

5 92. Defendants also fabricated other evidence to falsely implicate Plaintiff in  
6 Cheek's murder.

7 93. For instance, Defendants fabricated reports and witness statements from  
8 Cheek's family members saying that a purse found in the Temecula apartment after  
9 Cheek's killing was the same purse Cheek had been carrying on the night she was  
10 murdered.

11 94. In fact, Cheek had not been carrying that purse with her at or around the  
12 time of her killing.

13 95. Defendants obtained other false witness testimony implicating Plaintiff,  
14 including by shaping the testimony of Cheek's friends to implicate Plaintiff.

15 96. For example, Corsi initially reported to Defendants that Plaintiff treated  
16 Cheek with love and respect, and that Harris Sr. had been abusive.

17 97. But again, Defendants coerced Corsi into giving false testimony.  
18 Defendants repeatedly interrogated Corsi, fed her facts, informed her that she had  
19 failed her polygraph examination, investigated her disciplinary history at Quest, and  
20 even searched her car in an effort to influence her testimony.

21 98. By the time she testified at trial, Corsi repeated Defendants' story that

1 Plaintiff killed Cheek.

2 99. Defendants knew Corsi's testimony was false and was the product of  
3 their own efforts because Corsi's initial statements about Plaintiff strongly pointed to  
4 Googie Harris Sr. as Cheek's killer.

5 100. At no time during their investigation of Cheek's death did Defendants  
6 disclose to state prosecutors, Plaintiff, or his criminal defense attorneys that they had  
7 fabricated inculpatory evidence and testimony.

8 **Defendants Suppress Critical Exculpatory Evidence**

9 101. Throughout their investigation and during Plaintiff's wrongful  
10 prosecution and imprisonment, Defendants suppressed critical exculpatory evidence,  
11 which if disclosed to state prosecutors or Plaintiff's defense attorneys would have  
12 exonerated Plaintiff.

13 102. Shockingly Defendants suppressed evidence that implicated Googie  
14 Harris Sr., his nephew Joaquin Leal, and his son Googie Harris Jr., in Cheek's murder.

15 103. Defendants disclosed only one report of their interactions with Harris Sr.,  
16 and they disclosed no reports of interactions with Harris Jr. or Leal.

17 104. Defendants similarly did not disclose any of their investigation into  
18 whether Harris Sr., Harris Jr., or Leal had been involved in the murder.

19 105. Defendants did not disclose any physical evidence connecting Harris Sr.,  
20 Harris Jr., or Leal to the crime scene.

21



1           106. Defendants did not disclose that the orange and black rope used to  
2 strangle Cheek was the same type of rope Harris Sr. used on his property in Riverside.

3           107. Defendants did not disclose any records or account of the violent and  
4 contentious relationship between Harris Sr. and Cheek at the time of Cheek's death.

5           108. Defendants did not disclose that they had records, had responded to calls,  
6 and had conducted interviews about threats and violence Harris Sr., Harris Jr., and  
7 Leal had directed at Cheek and her family.

8           109. If Defendants had provided prosecutors this critical evidence, prosecutors  
9 could have dropped the false charges against Plaintiff and pursued the actual  
10 perpetrators.

11           110. Likewise, if Defendants had given this evidence to Plaintiff or his  
12 defense counsel, Plaintiff would have had powerful evidence of his innocence and  
13 material evidence to impeach Harris Sr. and Defendants, who testified falsely against  
14 him, at trial.

15           111. Instead, Defendants concealed their misconduct from prosecutors,  
16 Plaintiff, and his defense attorneys. Indeed, Defendants continue to this day to hide  
17 their fabrication of evidence and their improper manipulation of witnesses.

18           112. As a result, the real killers ran loose in the community for over two  
19 decades, while the wrong man was convicted of murder.

20           113. Defendants' supervisors were aware of their misconduct and fabrication  
21 of a case against Plaintiff. These supervisors nevertheless intentionally ignored

1 Defendants' misconduct and acquiesced in pursuing Plaintiff's conviction, rather than  
2 directing the officers to find the people who had actually committed the crime. In  
3 addition, Defendants' supervisors explicitly authorized their investigative conduct.

#### 4 **Plaintiff's Wrongful Conviction and Imprisonment**

5 114. In 1999, as the result of Defendants' misconduct and based on the false  
6 evidence described in this complaint, Plaintiff was prosecuted and ultimately convicted  
7 of murder. He was sentenced to fifteen years to life in prison.

8 115. Without Defendants' fabrication, manufacturing, and suppression of  
9 evidence, Plaintiff never would have been arrested, prosecuted, or convicted.

10 116. At no point between 1998 and the present day has there been any evidence  
11 giving rise to probable cause to suspect Plaintiff of Terry Cheek's murder.

12 117. Plaintiff was imprisoned for twenty years for a crime he did not commit.  
13 Throughout his imprisonment, Plaintiff never knew whether he would be free again.

14 118. Plaintiff's whole life was turned upside down without any warning. He  
15 was taken away from his family and friends, and he missed out on their lives,  
16 including the vast majority of his son's and daughter's childhood. He returned home  
17 to relationships changed or lost by decades away, and to a changed world.

18 119. Plaintiff was robbed of a significant portion of his lifespan. He was  
19 deprived of all of the basic pleasures of human experience, which all free people  
20 enjoy as a matter of right, including the freedom to live one's life as an autonomous  
21 human being.

1           120. Plaintiff lost his career, including the opportunity to grow and advance in  
2 his professional pursuits.

3           121. During his decades of wrongful imprisonment, Plaintiff was detained in  
4 harsh and dangerous conditions in maximum-security prisons. Despite the brutality of  
5 prison and the injustice of being locked away for something he had not done, Plaintiff  
6 was a model prisoner.

7           122. A Marine Corps veteran and once well-respected professional at Quest,  
8 Plaintiff also suffered severe reputational harm by being branded a murderer.

9           123. In addition to causing Plaintiff the severe trauma of wrongful  
10 imprisonment, loss of his liberty, and reputational harm, Defendants' misconduct  
11 continues to cause Plaintiff extreme physical and psychological pain and suffering,  
12 humiliation, fear, nightmares, anxiety, depression, and despair, rage, and other  
13 physical and psychological effects.

14                           **Plaintiff's Exoneration and the True Killers' Prosecution**

15           124. In the years following his conviction, Plaintiff fought to prove his  
16 innocence. He appealed his conviction and filed seven post-conviction petitions in  
17 Riverside County Superior Court, the state Court of Appeal, the California Supreme  
18 Court, and in federal court. All of these efforts were unsuccessful.

19           125. Between 2007 and 2018, Plaintiff was granted permission to conduct his  
20 own testing of DNA evidence found at the scene of Cheek's murder.

21           126. DNA tests excluded Plaintiff as a contributor of DNA found at the crime

1 scene and on the victim.

2 127. Those DNA tests instead implicated Googie Harris Jr. and Leal in the  
3 Cheek homicide.

4 128. In October 2018, as the result of this exonerating DNA evidence,  
5 Plaintiff's wrongful conviction was vacated and all charges against him were dropped.

6 129. Leal and Harris Sr. were arrested and charged with Terry Cheek's murder.  
7 They are currently awaiting trial.

8 **COUNT I**

9 **42 U.S.C. § 1983 – Violation of Fourteenth Amendment**

10 130. Plaintiff incorporates each paragraph of this complaint as if fully restated  
11 herein.

12 131. As described above, Defendants, while acting individually, jointly,  
13 and/or in conspiracy with each other, as well as under color of law and within the  
14 scope of their employment, deprived Plaintiff of his constitutional right to due process  
15 and his right to a fair trial.

16 132. In the manner described more fully above, Defendants deliberately  
17 withheld exculpatory and impeachment evidence from Plaintiff, his attorneys, and  
18 prosecutors, among others, thereby misleading and misdirecting Plaintiff's criminal  
19 prosecution.

20 133. In addition, as described more fully above, Defendants fabricated and  
21 solicited false evidence, including statements and testimony they knew to be false,

1 fabricated police reports and other evidence falsely implicating Plaintiff, obtained  
2 charges against Plaintiff, obtained his conviction using that false evidence, and failed  
3 to correct fabricated evidence they knew to be false when it was used against Plaintiff  
4 during his criminal trial.

5 134. In addition, Defendants used coercive tactics to extract involuntary  
6 statements from Plaintiff, which Defendants used to incriminate Plaintiff during his  
7 criminal proceedings and to secure his conviction.

8 135. In addition, based on information and belief, Defendants concealed and  
9 fabricated additional evidence that is not yet known to Plaintiff.

10 136. Defendants' misconduct described in this count resulted in Plaintiff's  
11 unjust and wrongful criminal prosecution and conviction, deprived him of his liberty,  
12 caused him to provide false and involuntary statements that were used to incriminate  
13 him, and denied him his constitutional right to a fair trial guaranteed by the Fourteenth  
14 Amendment. Absent this misconduct, Plaintiff's prosecution could not and would not  
15 have been pursued.

16 137. The misconduct described in this count was objectively unreasonable and  
17 was undertaken intentionally, with malice, with reckless indifference to the rights of  
18 others, and with total disregard for the truth and Plaintiff's clear innocence.

19 138. As a result of Defendants' misconduct described in this count, Plaintiff  
20 suffered loss of liberty, great mental anguish, humiliation, degradation, physical and  
21 emotional pain and suffering, and other grievous and continuing injuries and damages.

1 139. Defendants' misconduct described in this count was undertaken pursuant  
2 to Riverside County policies and customs more fully described below.

3 **COUNT II**

4 **42 U.S.C. § 1983 – Illegal Detention and Prosecution**

5 140. Plaintiff incorporates each paragraph of this complaint as if restated fully  
6 herein.

7 141. In the manner described more fully above, Defendants, individually,  
8 jointly, and in conspiracy with each other, as well as under color of law and within the  
9 scope of their employment, accused Plaintiff of criminal activity and exerted influence  
10 to initiate, continue, and perpetuate judicial proceedings against Plaintiff without any  
11 probable cause for doing so and in spite of the fact that they knew Plaintiff was  
12 innocent, in violation of his rights secured by the Fourth and Fourteenth Amendments.

13 142. In so doing, Defendants caused Plaintiff to be deprived of his liberty and  
14 detained without probable cause and subjected improperly to judicial proceedings for  
15 which there was no probable cause.

16 143. The misconduct described in this count was objectively unreasonable and  
17 was undertaken intentionally and with malice.

18 144. As a result of Defendants' misconduct described in this Count, Plaintiff  
19 suffered loss of liberty, great mental anguish, humiliation, degradation, physical and  
20 emotional pain and suffering, and other grievous and continuing injuries and damages.

21 145. Defendants' misconduct described in this count was undertaken pursuant

1 to Riverside County policies and customs more fully described below.

2 **COUNT III**

3 **42 U.S.C. § 1983 – Failure to Disclose Exculpatory Information**

4 146. Plaintiff incorporates each paragraph of this complaint as if restated fully  
5 herein.

6 147. Defendants failed to disclose exculpatory evidence leading to Plaintiff's  
7 detention in violation of his right to due process.

8 148. As described above, Defendants failed to disclose, among other things,  
9 evidence that: Googie Harris Sr., Joaquin Leal, and/or Googie Harris Jr. were  
10 implicated in and investigated in connection with Cheek's murder; Harris Sr. had been  
11 abusing Cheek; physical evidence exonerated Plaintiff and connected Harris Sr.,  
12 Harris Jr., and Leal to the crime scene and the victim; the Lorus watch was not  
13 Plaintiff's; Cheek had not been carrying the black purse on the day she was killed;  
14 their own misconduct in coercing and fabricating evidence and testimony; and that  
15 they had fabricated police reports.

16 149. Defendants knew there was no credible evidence tying Plaintiff to  
17 Cheek's murder. Had they disclosed this exculpatory evidence, the evidence would  
18 have proved Plaintiff's innocence, cast doubt on the entire police investigation and  
19 prosecution, and led to the end of Plaintiff's detention and prosecution.

20 150. Defendants performed the above-described acts under color of state law,  
21 deliberately, intentionally, with malice or reckless disregard for the truth and

1 Plaintiff's rights and with deliberate indifference to Plaintiff's clearly established  
2 constitutional rights.

3 151. As a result of Defendants' misconduct described in this Count, Plaintiff  
4 suffered loss of liberty, great mental anguish, humiliation, degradation, physical and  
5 emotional pain and suffering, and other grievous and continuing injuries and damages.

6 152. Defendants' misconduct described in this count was undertaken pursuant  
7 to Riverside County policies and customs more fully described below.

#### 8 **COUNT IV**

#### 9 **42 U.S.C. § 1983 – Failure to Intervene**

10 153. Plaintiff incorporates each paragraph of this complaint as if restated fully  
11 herein.

12 154. In the manner described above, during the constitutional violations  
13 described above, one or more Defendants stood by without intervening to prevent the  
14 violation of Plaintiff's constitutional rights, even though they had the duty and the  
15 opportunity to do so.

16 155. These Defendants had a duty and reasonable opportunity to prevent this  
17 harm to Plaintiff, but they failed to do so.

18 156. The misconduct described in this count was objectively unreasonable and  
19 was undertaken intentionally with willful indifference to Plaintiff's constitutional  
20 rights.

21 157. As a result of Defendants' failure to intervene to prevent the violation of



1 Plaintiff's constitutional rights, Plaintiff suffered loss of liberty, great mental anguish,  
2 humiliation, degradation, physical and emotional pain and suffering, and other  
3 grievous and continuing injuries and damages as set forth above.

4 158. Defendants undertook the misconduct described in this count pursuant to  
5 Riverside County policies and customs more fully described below.

6 **COUNT V**

7 **42 U.S.C. § 1983 – Conspiracy**

8 159. Plaintiff incorporates each paragraph of this complaint as if restated fully  
9 herein.

10 160. Defendants reached an agreement among themselves to frame Plaintiff  
11 for Cheek's murder, and thereby to deprive Plaintiff of his constitutional rights, as  
12 described above. This agreement was first reached before arresting Plaintiff, and it  
13 remained in place throughout all periods of his detention, prosecution, and  
14 incarceration.

15 161. In addition, Defendants conspired before Plaintiff's conviction, and  
16 continued to conspire after his conviction, to deprive Plaintiff of exculpatory material  
17 to which he is entitled and that would have led to his earlier exoneration.

18 162. In this manner, Defendants, acting in concert with each other and with  
19 other co-conspirators, known and unknown, conspired by concerted action to  
20 accomplish an unlawful purpose and/or a lawful purpose by unlawful means.

21 163. In furtherance of the conspiracy, each co-conspirator committed overt

1 acts and was an otherwise willful participant in joint activity.

2 164. As a result of this illicit prior agreement, Plaintiff suffered loss of liberty,  
3 great mental anguish, humiliation, degradation, physical and emotional pain and  
4 suffering, and other grievous and continuing injuries and damages as set forth above.

5 165. The misconduct described in this count was objectively unreasonable and  
6 was undertaken intentionally and with willful indifference to Plaintiff's constitutional  
7 rights.

8 166. Defendants undertook the misconduct described in this count pursuant to  
9 Riverside County's policies and customs more fully described below.

10 **COUNT VI**

11 **42 U.S.C. § 1983 – Unconstitutional Policies of the County of Riverside**

12 167. Plaintiff incorporates each paragraph of this complaint as if fully restated  
13 herein.

14 168. Plaintiff's injuries were caused by the policies and customs of the County  
15 of Riverside, as well as by the actions of policy-making officials for the County of  
16 Riverside.

17 169. At all times relevant to the events described in this complaint and for a  
18 period of time before and after, the County of Riverside failed to promulgate proper or  
19 adequate rules, regulations, policies, and procedures governing: the conduct of  
20 interrogations and questioning of criminal suspects and witnesses by officers and  
21 agents of the Riverside County Sheriff's Department and the County of Riverside; the

1 collection, documentation, preservation, testing, and disclosure of evidence; writing of  
2 police reports and taking of investigative notes; obtaining statements and testimony  
3 from witnesses; and the maintenance of investigative files and disclosure of those files  
4 in criminal proceedings.

5 170. In addition or alternatively, the County of Riverside failed to promulgate  
6 proper and adequate rules, regulations, policies, and procedures for the training and  
7 supervision of officers and agents of the Riverside County Sheriff's Department and  
8 the County of Riverside with respect to the conduct of interrogations and techniques  
9 to be used when questioning criminal suspects and witnesses.

10 171. Officers and agents of the Riverside County Sheriff's Department and the  
11 County of Riverside committed these failures to promulgate proper or adequate rules,  
12 regulations, policies, and procedures.

13 172. In addition, at all times relevant to the events described in this complaint  
14 and for a period of time before, the County of Riverside had notice of a practice and  
15 custom by officers and agents of the Riverside County Sheriff's Department and the  
16 County of Riverside pursuant to which individuals suspected of criminal activity, like  
17 Plaintiff, were routinely interrogated abusively, were not read their *Miranda* rights,  
18 and were coerced against their will to involuntarily implicate themselves in crimes  
19 they did not commit.

20 173. In addition, at all times relevant to the events described in this complaint  
21 and for a period of time before, the County of Riverside had notice of practices and

1 customs of officers and agents of the Riverside County Sheriff's Department and the  
2 County of Riverside that included one or more of the following: (1) officers did not  
3 record investigative information in police reports, did not maintain proper  
4 investigative files, and/or did not disclose investigative materials to prosecutors and  
5 criminal defendants; (2) officers falsified statements and testimony of witnesses; (3)  
6 officers fabricated false evidence implicating criminal defendants in criminal conduct;  
7 (4) officers failed to maintain and/or preserve evidence and/or destroyed evidence;  
8 and/or (5) officers pursued wrongful convictions through profoundly flawed  
9 investigations.

10 174. These practices and customs, individually and/or together, were allowed  
11 to flourish because the leaders, supervisors, and policymakers of the County of  
12 Riverside directly encouraged and were thereby the moving force behind the very type  
13 of misconduct at issue by failing to adequately train, supervise, and control their  
14 officers, agents, and employees on proper interrogation techniques and by failing to  
15 adequately punish and discipline prior instances of similar misconduct, thus directly  
16 encouraging future abuses like those affecting Plaintiff.

17 175. The above practices and customs, so well settled as to constitute *de facto*  
18 policies of the County of Riverside, were able to exist and thrive, individually and/or  
19 together, because policymakers with authority over the same exhibited deliberate  
20 indifference to the problem, thereby effectively ratifying it.

21 176. In addition, the misconduct described in this count was undertaken

1 pursuant to the County of Riverside's policies and practices in that the constitutional  
2 violations committed against Plaintiff were committed with the knowledge or  
3 approval of persons with final policymaking authority for the County of Riverside or  
4 were actually committed by persons with such final policymaking authority.

5 177. Plaintiff's injuries were directly and proximately caused by officers,  
6 agents, and employees of Riverside County, including but not limited to Defendants,  
7 who acted pursuant to one or more of the policies, practices, and customs set forth  
8 above in engaging in the misconduct described in this count.

## 9 **COUNT VII**

### 10 **State Law Claim – Malicious Prosecution**

11 178. Plaintiff incorporates each paragraph of this complaint as if restated fully  
12 herein.

13 179. In the manner described above, Defendants, individually, jointly, and/or  
14 in conspiracy with one another, as well as within the scope of their employment,  
15 accused Plaintiff of criminal activity and exerted influence to initiate, continue, and  
16 perpetuate judicial proceedings against Plaintiff.

17 180. In this way, the legal proceedings against Plaintiff were commenced and  
18 pursued by or at Defendants' direction.

19 181. As described above, there was no probable cause to pursue legal  
20 proceedings against Plaintiff.

21 182. Defendants pursued Plaintiff's prosecution until it terminated in his favor

1 when a court reversed Plaintiff's conviction and all the charges against him were  
2 dismissed based on exonerating DNA evidence.

3 183. These judicial proceedings were initiated and pursued with malice.

4 184. As a result of Defendants' misconduct described in this count, Plaintiff  
5 suffered loss of liberty, great mental anguish, humiliation, degradation, physical and  
6 emotional pain and suffering, and other grievous and continuing injuries and damages.

7 **COUNT VIII**

8 **State Law Claim – Intentional Infliction of Emotional Distress**

9 185. Plaintiff incorporates each paragraph of this complaint as if restated fully  
10 herein.

11 186. Defendants' actions and conduct as set forth above were extreme and  
12 outrageous. Defendants' actions were rooted in an abuse of power or authority, and  
13 were undertaken with intent to cause, or were in reckless disregard for the probability  
14 that they would cause Plaintiff severe emotional distress, as more fully alleged above.

15 187. As an actual and proximate result of Defendants' actions, Plaintiff  
16 suffered and continues to suffer severe emotional distress.

17 **COUNT IX**

18 **State Law Claim – Civil Conspiracy**

19 188. Plaintiff incorporates each paragraph of this complaint as if restated fully  
20 herein.

21 189. As described more fully above, Defendants, acting in concert with other

1 co-conspirators, known and unknown, reached an agreement among themselves to  
2 frame Plaintiff for a crime he did not commit and conspired by concerted action to  
3 accomplish an unlawful purpose by unlawful means. In addition, these co-conspirators  
4 agreed among themselves to protect one another from liability for depriving Plaintiff  
5 of his rights.

6 190. In furtherance of the conspiracy, each of the co-conspirators committed  
7 overt acts and was otherwise a willful participant in joint activity.

8 191. The violations of California law described in this complaint, including  
9 Defendants' malicious prosecution of Plaintiff and their intentional infliction of  
10 emotional distress, were accomplished by Defendants' conspiracy.

11 192. The misconduct described in this count was objectively unreasonable and  
12 was undertaken intentionally and with willful indifference to Plaintiff's constitutional  
13 rights.

14 193. As a result of Defendants' misconduct described in this count, Plaintiff  
15 suffered loss of liberty, great mental anguish, humiliation, degradation, physical and  
16 emotional pain and suffering, and other grievous and continuing injuries and damages.

17 **COUNT X**

18 **State Law Claim – Cal. Gov. Code § 815.2, *Respondeat Superior***

19 194. Plaintiff incorporates each paragraph of this complaint as if restated fully  
20 herein.

21 195. Plaintiff suffered the aforementioned injuries as a proximate result of

1 Defendants' misconduct.

2 196. During all relevant times, Defendants were employees of the Riverside  
3 County Sheriff's Department acting within the scope of their employment.

4 197. Defendant Riverside County is liable as principal for all torts committed  
5 by its agents.

6 **COUNT XI**

7 **State Law Claim – Cal. Civ. Code § 52.1**

8 198. Plaintiff incorporates each paragraph of this complaint as if restated fully  
9 herein.

10 199. As described more fully above, Defendants intentionally interfered with  
11 Plaintiff's exercise or enjoyment of rights secured by the U.S. Constitution and the  
12 laws of California.

13 200. Defendants' conduct in interfering with Plaintiff's rights was carried out  
14 by threats, intimidation, and or coercion, as described above.

15 201. As a result of Defendants' threats, intimidation, and/or coercion, Plaintiff  
16 was deprived of his constitutional rights; wrongly prosecuted, detained, and  
17 imprisoned for over twenty years; and subjected to other grievous injuries and  
18 damages as set forth above.

19 **COUNT XII**

20 **State Law Claim – Cal. Gov. Code § 825, Indemnification**

21 202. Plaintiff incorporates each paragraph of this complaint as if restated fully



1 herein.

2 203. California law provides that public entities are directed to pay any tort  
3 judgment for compensatory damages for which employees are liable within the scope  
4 of their employment activities.

5 204. At all relevant times, Defendants were employees of the Riverside  
6 County Sheriff's Department who acted within the scope of their employment in  
7 committing the misconduct described herein.

8 WHEREFORE, Plaintiff HORACE ROBERTS, respectfully requests this Court  
9 enter a judgment in his favor and against Defendants COUNTY OF RIVERSIDE,  
10 DAVID COX, ROBERT CREED, DAVID COLLINS, SHELDON GILL, MARK  
11 CORDOVA, EDWARD CHAVEZ, RICK ZERKEL, RANDY KEY, DEPUTY  
12 ORONA, TIMOTHY JOHNSON, LARRY SMITH, GARY PENROD, CHARLES  
13 VARGA, and UNKNOWN OFFICERS OF THE RIVERSIDE COUNTY  
14 SHERIFF'S DEPARTMENT, awarding compensatory damages, attorneys' fees and  
15 costs against each defendant, and, because they acted willfully, wantonly, and/or  
16 maliciously, punitive damages against each of the individual defendants, and any  
17 other relief this Court deems just and appropriate.

18 **JURY DEMAND**

19 Plaintiff HORACE ROBERTS hereby demands a trial by jury pursuant to  
20 Federal Rule of Civil Procedure 38(b) on all issues so triable.

21

1 **DATED: October 1, 2019**

Respectfully submitted,

2 **HORACE ROBERTS**

3 By: s/ David B. Owens  
4 One of His Attorneys

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\**Pro hac vice* application forthcoming