

1 GLEN GOOGINS, ESQ.
City Attorney, CA Bar No. 137977
2 KAREN ROGAN, ESQ.
Assistant City Attorney, CA Bar No. 235582
3 ERIC ALDEN, ESQ.
Deputy City Attorney, CA Bar No. 290283
4 City of Chula Vista
276 Fourth Avenue
5 Chula Vista, CA 91910
Telephone: (619) 691-5037
6 Facsimile: (619) 409-5823

7 Attorneys for Defendants Chula Vista Police Department and City of Chula Vista

8 **UNITED STATES DISTRICT COURT**

9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 RICKY FADARA LINCOLN;
11 KATHERINE I. FREDERICKS,

12 Plaintiffs,

13 v.

14 CHULA VISTA POLICE
DEPARTMENT, CITY OF CHULA
15 VISTA, and DOES 1 through 100,
16 inclusive,

17 Defendants.

Case No.: **'22CV1569 WQHBGS**

NOTICE OF REMOVAL OF A CIVIL
ACTION FILED IN STATE COURT

[28 U.S.C. § 1441(a), (c)]

(Removed from Superior Court of
California, County of San Diego, Case
No. 37-2022-00017440-CU-CR-CTL)

18 **TO: CLERK OF THE ABOVE-ENTITLED COURT**

19 **PLEASE TAKE NOTICE** that Defendants City of Chula Vista (City) and Chula
20 Vista Police Department¹ (CVPD) (collectively referred to herein as “Defendants”) by and
21 through their attorney, Karen Rogan, Assistant City Attorney, respectfully remove to this
22 Court the above-captioned civil action from the Superior Court of California, County of

23 ///

24 _____
25
26 ¹ The Chula Vista Police Department is a department within the City of Chula Vista. It is
27 not a separate entity capable suing or of being sued. The only proper entity for purposes of
28 this action is the singular entity called City of Chula Vista.

1 San Diego, Case No. 37-2022-00017440-CU-CR-CTL. The grounds for this removal
2 include the following:

3 1. On May 9, 2022, Plaintiffs Ricky Fadara Lincoln and Katherine I. Fredericks
4 (collectively referred to herein as “Plaintiffs”) initiated civil case number 37-2022-
5 00017440-CU-CR-CTL in the Superior Court of California, County of San Diego. See
6 Plaintiffs’ Complaint a true and correct copy of which has been filed concurrently herewith
7 as a separate attachment per the CM/ECF removal filing guidelines.²

8 2. Plaintiffs’ Complaint names City, CVPD, and DOE defendants 1 through 100
9 as Defendants. See Compl. ¶¶ 2, 4-5.

10 3. Plaintiffs’ Complaint pleads five causes of action: 1) Violation of Civil Rights
11 42 U.S.C. 1983; 2) Trespass to Chattel; 3) Intentional Infliction of Mental Distress; 4)
12 Conversion; and 5) Negligence. Plaintiffs do not allege these five causes of action against
13 any one defendant, and thus Defendants presumes each are alleged against them.

14 4. As to the factual allegations, Plaintiffs’ Complaint alleges that on April 1,
15 2021, Defendants entered Plaintiffs’ residence in Chula Vista and, among other alleged
16 acts, “searched plaintiffs’ home and seized their property.” Compl. ¶ 1, p. 2:9-11. Plaintiffs
17 further allege that Defendants “took guns belonging to Larry Millete’s [sic] but also took
18 guns belonging to plaintiff Lincoln.”³ Compl. ¶1, p. 2:11-12. Plaintiffs further allege
19 Defendants “entered plaintiffs’ home without a search warrant claiming that the search
20 warrant was sealed.” Compl. ¶ 7, p. 3:12-12.

21 5. The Complaint alleges Defendants “used excessive force and unlawfully
22 detained the plaintiffs when they knocked on the bathroom doors while plaintiff Fredericks
23

24
25 ² Defendants were not served with the original Complaint until October 11, 2022.
26 (Discussed in more detail in paragraphs 9-11 below.)

27 ³ The Complaint alleges Defendants seized personal property items from Larry Millete,
28 who is not a party to this lawsuit.

1 was taking a bath...” Compl. ¶ 7, p. 3:13-14. Plaintiffs further allege Defendants
2 “wrongfully seized plaintiffs’ personal property and destroyed many things plaintiffs
3 owned” in violation of 42 U.S.C. § 1983. Compl. ¶ 13, p. 4:16-17. Plaintiffs also allege
4 Defendants “trespassed intentionally, interfered with [sic] plaintiff Fredericks’ personal
5 property.” Compl. ¶ 17, p. 5:1-2.

6 6. Lastly, the Complaint alleges Defendants caused “anxiety, stress, mental
7 distress, emotional distress” when Defendants “took not only Millete’s gun parts, but also
8 guns that plaintiff Lincoln owned that plaintiff Lincoln had inherited from his father, and
9 a freezer from the kitchen, that Lincoln had borrowed from Larry Millete.” Compl. ¶¶ 23,
10 25. The Complaint asserts the alleged Defendants’ conduct injured Plaintiffs “health,
11 strength, activity, injured in their nervous system, and person.” Compl. ¶ 28, p. 7:8.

12 7. Plaintiffs allege Defendants caused them to suffer humiliation, severe mental
13 distress, anxiety, and emotional anguish, in addition to loss of monies, attorney’s fees,
14 inconveniences, and extra ordinary expenses in an amount to be proven at trial. Compl. ¶¶
15 11, 20, 28, 32, and 38. In addition, the Complaint’s Fourth Cause of Action seeks an award
16 of punitive damages against Defendants. Compl. ¶ 28. Further Plaintiffs’ prayer for relief
17 seeks punitive damages against all parties for the matters alleged in the Complaint. Compl.
18 ¶ 40(3).

19 8. Removal of this case is appropriate pursuant to 28 U.S.C. § 1441 because
20 Plaintiffs’ Complaint alleges violations of their rights under the United States Constitution
21 and thus arises under federal law. Compl. ¶¶ 1, 7-10, 14, 31, and 36. Where a civil action
22 arises under the Constitution or laws of the United States, the district courts have original
23 jurisdiction. 28 U.S.C. § 1331. Where a state court complaint alleges a federal claim and
24 state law claims, defendants may remove the action to federal court, and the federal court
25 may exercise supplemental jurisdiction over the state law claims. 28 U.S.C. § 1441 (a) and
26 (c); *City of Chicago. v. Int. ’l Coll. of Surgeons*, 522 U.S. 156 (1997). The acts complained

27 ///

1 of in Plaintiffs' Complaint occurred in Chula Vista, California, which is within this Court's
2 district.

3 9. Although Plaintiffs filed their Complaint on May 9, 2022, Defendants were
4 not served until October 11, 2022.

5 10. There are no amendments to the original Complaint reflected in the Register
6 of Actions for Plaintiffs' civil case number 37-2022-00017440-CU-CR-CTL in the
7 Superior Court of California, County of San Diego as of the filing of this Notice of
8 Removal.

9 11. As of the filing of this Notice of Removal, there have been no appearances by
10 any Defendants in Plaintiffs' civil case number 37-2022-00017440-CU-CR-CTL in the
11 Superior Court of California, County of San Diego. The initial case management
12 conference is scheduled for October 14, 2022.

13 12. On October 12, 2022, Defendants filed a Notice of Related Cases, identifying
14 the following: *Benito Leo Millete, et al. v. Chula Vista Police Department, et al.* (Lead
15 Case) No. 22cv1343-WQH-WVG. A copy of Defendants' Notice of Related Cases is
16 attached hereto as Exhibit 1.

17 13. A true and correct copy of Plaintiffs' original and only Superior Court
18 Complaint has been filed concurrently herewith as a separate attachment (per the CM/ECF
19 removal filing guidelines).

20 **WHEREFORE**, civil case number 37-2022-00017440-CU-CR-CTL, now pending
21 in the Superior Court of California, County of San Diego, is removed to this Court.

22 DATED: October 12, 2022

Respectfully submitted,
GLEN R. GOOGINS, City Attorney,
City of Chula Vista

23
24
25 /s/KAREN ROGAN
KAREN ROGAN, Assistant City Attorney
ERIC ALDEN, Deputy City Attorney
Attorneys for Defendants Chula Vista Police
26 Department and City of Chula Vista
27
28

BONITA P. MARTINEZ, ESQ. SBN 153346
16885 W. BERNARDO DR., SUITE 108
SAN DIEGO, CA 92127
PHONE: (858) 437-5827
FAX: (858) 257-2662
bonitapmartinez@aol.com

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/09/2022 at 01:35:47 PM

Clerk of the Superior Court
By Keira McCray, Deputy Clerk

ATTORNEY FOR PLAINTIFFS,
RICKY FADARA LINCOLN, KATHERINE I.
FREDERICKS

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

RICKY FADARA LINCOLN;
KATHERINE I. FREDERICKS
PLAINTIFFS,

VS.

CHULA VISTA POLICE DEPARTMENT,
AND CITY OF CHULA VISTA AND
DOES 1 THROUGH 100, INCLUSIVE.
DEFENDANTS.

) CASE NO.: 37-2022-00017440-CU-CR-CTL
) 1. COMPLAINT FOR DAMAGES
) VIOLATION OF CIVIL RIGHTS 42
) U.S.C.1983.
) 2. TRESPASS TO CHATTEL
) 3. INTENTIONAL INFLECTION OF
) MENTAL DISTRESS
) 4. CONVERSION
) 5. NEGLIGENCE

) UNLIMITED

Comes now, Plaintiffs, Ricky Fadara Lincoln, hereinafter Lincoln, and Katherine I. Fredericks,
herein after Fredericks, are husband and wife allege as follows:

I
GENERAL FACTUAL BACKGROUND

1. This is a complaint by plaintiffs Lincoln and Fredericks seeking damages arising out of a claim
for violation of 42 U.S.C. §1983 to recover damages for, unlawful detention, excessive force,
intentional infliction of mental distress, trespass to chattel, conversion and negligence. This

1 Court has authority under 42 U.S.C. §1983, for individuals such as plaintiffs to recover damages
2 resulting from the violations of their civil rights, including physical, mental, and emotional
3 injuries. Plaintiffs filed an administrative claim against the City of Chula Vista and received a
4 right to sue letter. Defendants are City of Chula Vista, and the Chula Vista Police Department
5 (CVPD). Chula Vista Police Department (CVPD) is a law enforcement department of the City of
6 Chula Vista (CCV). CCV police officers with guns in their holsters, armed, wearing bullet proof
7 vests as they unlawfully entered plaintiffs' home located in San Diego on April 1, 2021, and said
8 they were looking for Larry Millete's guns. The police officers searched plaintiffs' home and
9 seized their property without a valid search warrant. The police officers took guns belonging to
10 Larry Millete's but also took guns belonging to plaintiff Lincoln.

11 II

12 PARTIES

13
14
15 2. Chula Vista Police Department (CVPD) is a law enforcement department of the City of
16 Chula Vista. Defendants are City of Chula Vista and the Chula Vista Police Department
17 (CVPD). About ten of the police officers of CVPD and CCV armed, with bullet proof vests
18 entered plaintiffs' house located in San Diego, California on April 1, 2021, and said they were
19 searching for Larry Millete's gun. At all relevant times herein Plaintiff Lincoln was a resident of
20 County of San Diego, City of San Diego, California.

21 3. Plaintiffs Katherine I. Fredericks and Ricky Fadara Lincoln all times relevant were
22 residents of the County of San, San Diego, California.

23 4. Plaintiffs are informed and believe the CCV and the CVPD police officers were acting
24 within the course and scope of their employment with the City of Chula Vista (CCV)

25 5. The true names and capacities of the defendants named herein as Does 1 through 100,
26 inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff who
27 therefore sues such defendants by fictitious names under California Code of Civil Procedure §
28 474. Plaintiffs are informed and believe that Doe defendants are California residents. Plaintiffs

1 will amend this Complaint to show such true names and capacities when they have been
2 determined. Each defendant was an agent of the other Defendants and ratified the conduct of the
3 other defendants.

4 III

5 FIRST CAUSE OF ACTION
6 VIOLATION OF CIVIL RIGHTS in VIOLATION OF 42 USC 1983

7 6. The allegations or paragraphs 1-5 are realleged and incorporated by reference as though
8 set forth herein.

9 7. The CCV police officers entered plaintiffs' residence dressed in bullet-proof vests and
10 carried loaded guns in their holsters. The CCV police officers entered the plaintiffs' home
11 without a search warrant claiming that the search warrant was sealed. CCV police officers used
12 excessive force and unlawfully detained the plaintiffs when they knocked on the bathroom doors
13 while plaintiff Fredericks was taking a bath, then made her go to another room as they proceeded
14 to search the home. The CCV police officers never sent a copy of the search warrant to plaintiffs.
15

16 8. When the police officers entered plaintiff's home plaintiff Fredericks was in the bathroom
17 taking a bath. This was extremely sensitive and offensive to plaintiffs. Even though there was
18 a female officer present in plaintiffs' home at that time the female officer was not called to
19 announce their presence at the bathroom door. Plaintiffs were shocked and very upset at this
20 conduct. Plaintiffs were intimidated, and their sense of dignity, and civil rights were violated.
21

22 9. Plaintiff Fredericks was shocked, trembling, shaken, scared, and uncomfortable because she
23 was intimidated by the CCV police officers' actions.

24 10. Plaintiff Fredericks was wet from taking a bath or shower and had to put on an outfit which
25 was not for public view. The CCV police officers would not let plaintiff Fredericks go to the
26 bathroom to comb her wet hair. Plaintiffs had to wait for many hours in panic and fear. Plaintiff
27 Fredericks was told to go to the living room where other CCV police officers were standing and
28

1 staring at her. Plaintiffs were disgusted with the manner that the police officers were treating
2 them like criminals.

3 11. As a proximate result of the intentional and malicious conduct defendants' actions or
4 omissions, plaintiffs suffered humiliation, severe mental distress, anxiety, and emotional
5 anguish, together with loss of monies, attorney fees, inconveniences, and extraordinary expenses
6 in an amount to be proved at trial.

7
8 12. Wherefore, plaintiffs pray for judgment as hereinafter provided.

9
10 IV
11 SECOND CAUSE OF ACTION
12 DAMAGES FOR TRESPASS TO CHATTEL

13 13. Plaintiffs reallege and incorporate paragraphs 1-12, as though fully set forth herein.

14 14. On or about April 1, 2021, and continuing defendant CCV police officers without a warrant,
15 without authority and against the will of the plaintiffs entered plaintiffs' property as follows:

16 Defendants wrongfully seized plaintiffs' personal property, and destroyed many things plaintiffs
17 owned, then left plaintiffs' home in ruins; defendants took plaintiff Lincoln's firearms, including
18 firearms that he had inherited from his father, which were special and treasured for years,
19 Defendants violated U.S.C 42 section 1983 and entered plaintiffs' property as discussed above in
20 paragraphs 1.
21

22 15. Defendants caused plaintiffs' frozen food items to be thrown on the floor of the kitchen,
23 without putting them back in the freezer; and took other personal items from plaintiffs' bedroom.
24 Defendants harassed the plaintiffs when they told them to go into the living room and would not
25 allow them to go back into the bathroom. Plaintiff Lincoln possessed and owned personal
26 property and had a right to own guns including AeroPrecision, SPR-2 5/N 000554 308 Cal and
27 Highpoint 45 Cal Carbine S/N R17537. Defendants wrongfully trespassed intentionally,
28

1 interfered with plaintiff Lincoln's guns and other personal property. Defendants wrongfully
2 trespassed intentionally, interfered with plaintiff Fredericks' personal property, in particular
3 plaintiff Fredericks' suitcases. Defendants damaged and destroyed four suitcases and the locks to
4 the suitcases.
5

6 16. Defendants searched plaintiffs' wallets, purses and scattered the contents of the suitcases that
7 were precious to plaintiff Fredericks. Defendants took meats and vegetables out of the freezer
8 and threw them on the kitchen floor. Plaintiff Lincoln owned and possessed silver and gold
9 coins, and private intimate pictures of plaintiff Fredericks. Because of the above-described
10 conduct, plaintiffs have been deprived of the use and possession of their property for more than a
11 year, all to plaintiffs' damage in an amount to be determined at trial.
12

13 17. WEREFORE, plaintiffs pray for judgment against the defendants and each of them as
14 hereinafter provided.
15

16 18. On or about April 1, 2021, and continuing plaintiffs owned, controlled the personal property
17 including food items in a freezer, certain firearms inherited from Lincoln's father which were
18 very special and treasured. Defendants intentionally and wrongfully trespassed, interfered or
19 intermeddled with other personal property that plaintiffs owned, such as suitcases, wallets, silver
20 and gold coins.
21

22 19. Plaintiffs suffered damages, and some of the suitcases and food items were destroyed in the
23 freezer by leaving them on the floor in the kitchen. Defendants conduct was a substantial factor
24 in causing harm to plaintiffs. Defendants CCV police officers intentionally, recklessly and
25 negligently entered the plaintiffs' home.
26

27 20. As a result defendants, actions, they are liable to plaintiffs, and their actions constitute a
28 trespass to chattel; proximately causing plaintiffs to suffer damages and inconveniences.

21. Wherefore plaintiffs pray for judgment as hereinafter provided

V
THIRD CAUSE OF ACTION
INTENTIONAL INFLICTION OF MENTAL DISTRESS

22. Plaintiffs allege and incorporates paragraphs 1 through 21, as though fully set forth herein.

23. The conduct of defendants on April 1, 2021, and continuing was intentional, extreme, and outrageous. The City of Chula Vista Police officers (about ten of them) armed, were wearing bullet proof vest with loaded guns in their holsters. Furthermore, on April 1, 2021, the CCV police officers entered the home without a search warrant. They were searching for Larry Millete's gun parts. The CCV police officers took not only Millete's gun parts, but also guns that plaintiff Lincoln owned that plaintiff Lincoln had inherited from his father, and a freezer from the kitchen, that Lincoln had borrowed from Larry Millete.

24. The conduct was intentional, extreme, and outrageous, the CCV police officers, destroyed, damaged, and left plaintiffs' home in disarray, and took plaintiffs' personal property without plaintiffs' permission or consent.

25. The outrageous, severe, and intentional conduct of defendants was done with a reckless disregard of the probability of causing plaintiffs' emotional distress. Plaintiffs suffered severe and extreme emotional distress. Defendants had the intent to inflict severe emotional distress; defendants' conduct was so outrageous and extreme and went beyond bounds of decency. Defendants have caused plaintiffs anxiety, stress, mental distress, emotional distress which has a negative effect on plaintiffs' physical and mental and emotional health.

26. As a proximate result of the intentional and malicious conduct defendants' actions or omissions, plaintiffs suffered humiliation, severe mental distress, anxiety, and emotional

1 anguish, together with loss of monies, attorney fees, inconveniences, and extraordinary expenses
2 in an amount to be proved at trial.

3 27. Wherefore, plaintiffs pray for judgment as hereinafter provided.

4
5 28. Plaintiffs' damages were caused by the intentional infliction of emotional distress. As result
6 of the above-described actions and omissions of the defendants, plaintiffs have suffered severe
7 emotional and mental distress, trauma, shock, nervousness, insomnia, and monetary damages.
8 Plaintiffs are injured in health, strength, activity, injured in their nervous system, and person. The
9 actions of the defendants have caused plaintiffs' great mental, physical, emotional and nervous
10 pain, distress and suffering and fear for their safety. Defendants' taking the inherited guns from
11 plaintiff Lincoln robbed him of the sentimental value and peace of mind.
12

13 29. Wherefore plaintiffs pray for judgment as hereinafter provided.

14
15 VI
FOURTH CAUSE OF ACTION
16 CONVERSION

17 30. Plaintiffs allege and incorporates paragraphs 1 through 29, as though fully set forth
18 herein.

19 31. On April 1, 2021 defendants intentionally interfered with the property of plaintiffs with the
20 intent to deprive the plaintiffs of their personal property; defendants wrongfully seized plaintiffs'
21 personal property, and destroyed many things plaintiffs' owned, then left plaintiffs' home in
22 ruins; defendants took plaintiff Lincoln's firearms, including firearms that he had inherited
23 from his father, that were special and treasured for years. CCV police officers damaged and
24 destroyed four suitcase locks; searched plaintiff Fredericks' wallets, purses and scatted suitcases
25 that were precious to her. Plaintiffs had ownership or right to the personal property at the time
26 that the CCV officers converted it as discussed herein, which also includes the food item in the
27 freezer. and the freezer itself. Defendants refused to allow plaintiff Lincoln to view what they
28

1 had taken from the safe. Nearly all of plaintiff Lincoln 'guns were collectables. Plaintiffs had
2 gold coins and other items. CCV police department continues to hold on to plaintiffs' properties
3 for no good reason, just to deprive plaintiffs from the use, enjoyment, security and protection of
4 the personal property.
5

6 32. The conduct of defendants constitute conversion with the intent on the part of defendants of
7 thereby depriving plaintiffs of property or legal rights or otherwise causing injury and was
8 despicable conduct that subjected plaintiffs to a cruel and unjust hardship in conscious disregard
9 of plaintiffs' rights, so as to justify an award of exemplary and punitive damages.
10

11 33. Wherefore plaintiffs pray for damages as hereinafter provided.

12 VII

13 FIFTH CAUSE OF ACTION FOR NEGLIGENCE

14 34. Plaintiffs allege and incorporates paragraphs 1 through 31, 33 as though fully set forth
15 herein.
16

17 35. The defendants, CCV police office owed the plaintiff Lincoln and plaintiff Fredericks a
18 duty of due care and a duty of reasonable care not to cause a reasonable a risk of harm to the
19 plaintiffs.
20

21 36. The defendant police officers' breach of duty occurred when the CCV police officers
22 failed to observe the duty to use reasonable care as required of them. City of Chula Vista and
23 CCV police officers and each of them violated statute 42 USC 1983. The injury resulted from the
24 occurrence the nature of which the statute was designed to prevent, and plaintiffs were members
25 of the class of persons for whose protection the statute was adopted.
26

27 37. The CCV police officers and all defendants to failed to observe the duty of reasonable
28 standard of due care. Defendants failed to conduct proper investigations of the number of

1 searches and seizures of items from the plaintiffs' place of residence. The City of Chula Vista
2 and The CCV police officers failed to stop or prevent the continued searches of plaintiffs'
3 residence or to prevent a continuation of the searches which always occurred during the day and
4 night.
5

6 38. As a result of defendants' negligence, the City of Chula Vista and the Cula Vista Police
7 Department proximately caused the injury to plaintiffs. The defendants failed to observe the duty
8 of care, which was the cause of the injury to plaintiffs.
9

10 39. Wherefore plaintiffs pray for judgment as hereinafter provided.

11 VIII
12 PRAYER FOR RELIEF

13 40. WHEREFORE, Plaintiff requests relief as follows:

- 14 1. For damages for mental and emotional distress.
- 15 2. general damages and non-economic damages.
- 16 3. For punitive damages as appropriate.
- 17 4. For an award of interest, including prejudgment interest at the prevailing legal rate.
- 18 5. For cost of the suit, including reasonable attorney fees required by statutes.
- 19 6. For such other and further relief as the Court may deem proper.

20 Date: 5-9-2022

21 Submitted by:

22 Bonita P. Martinez
23 Bonita P. Martinez, Esq.,
24 Attorney for Plaintiffs, --
25 Ricky Farada Lincoln and Katherine I. Fredericks

26 JURY DEMAND
27 Plaintiffs demand trial by jury in this action.
28