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EASTERN DISTRICT OF CALIFORNIA
BY _____
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1 John Gregory Downing (State Bar No. 157717)
2 Jordan A. Sussman (State Bar No. 225220)
3 DOWNING LAW FIRM
4 109 Geary Street, 4th Floor
5 San Francisco, CA 94108
6 Tel: (415) 986-3644
7 Fax: (415) 982-5130

8 Attorneys for Plaintiff
9 JOEL THOMAS TOLER

10 UNITED STATES DISTRICT COURT

11 IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

12 JOEL THOMAS TOLER,

13 Plaintiff,

14 vs.

15 DAVID PAULSON, COUNTY OF SOLANO,
16 AL GARZA, BROOK BYERLY, and DOES
17 1 through 10, inclusive.

18 Defendants.

2:06 - CV - 0735 LKK DAD

**COMPLAINT FOR DAMAGES
AND FOR INJUNCTIVE RELIEF
[42 USC §1983]
[42 USC §1985]**

GENERAL ALLEGATIONS

19 Plaintiff JOEL THOMAS TOLER ("Plaintiff" or "Toler"), by and through his
20 attorneys of record, hereby alleges.

- 21 1. This action arises under the United States Constitution, specifically the provisions
22 of the First and Fourteenth Amendments to the United States Constitution and
23 under federal law, specifically under United States Code, Title 42, Section 1983.
- 24 2. Jurisdiction is conferred on this court by Title 28, United States Code §§1343(3),
25 1343(4), 2201, 2202.
- 26 3. Defendant DAVID PAULSON ("Paulson") is the elected District Attorney of the
27 County of Solano.

28 **Complaint for Damages & Injunctive Relief**
Toler v. Paulson

1 4. Defendant COUNTY OF SOLANO ("the "County") is a governmental entity located
2 in the State of California.

3 5. Defendant AL GARZA ("Garza") is the Chief Investigator employed by the District
4 Attorney's Office of Solano County.

5 6. Defendant BROOK BYERLY ("Byerly") is the Supervising Investigator employed
6 by the District Attorney's Office of Solano County.

7 7. Plaintiff is informed and believes, and thereon alleges, that each of the
8 defendants named herein was, at all times relevant to this action, the agent,
9 employee, representing partner, co-conspirator, or joint venturer of the
10 remaining defendants and was acting within the course and scope and in
11 furtherance of that relationship. Plaintiff is further informed and believes, and
12 thereon alleges, that each of the defendants herein gave consent to, ratified, and
13 authorized the acts alleged herein to each of the remaining defendants.
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15 8. Plaintiff does not know the true names of defendants DOES 1 through 20,
16 inclusive, and therefore sues them by those fictitious names. Plaintiff will amend
17 this complaint to allege their true names and capacities when ascertained.

18 9. The acts alleged in this complaint to have been done by defendants, were done
19 by them not as individuals, but under color of the authority of the State of
20 California, County of Solano, under the authority of the District Attorney's Office
21 for the County.

22 10. Plaintiff is a licensed bail bondsman and licensed private investigator with a
23 principal place of business in Fairfield, County of Solano.

24 11. On March 27, 2005, after receiving threats of physical violence to his children,
25 Toler made a police report to the Fairfield Police Department (the "Report").
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- 1 12. On April 7, 2005, Toler came to the District Attorney's Office for the County of
2 Solano in an attempt to find out if any action was going to be taken on the
3 Report. According to sworn testimony from William Godwin, investigator for the
4 District Attorney's Office, while Toler initially appeared upset, after speaking to
5 him, Toler calmed down and Godwin took a statement regarding Toler's report of
6 threats.
- 7 13. On April 12, 2005, submitted a paid advertisement to the Fairfield Daily Republic,
8 which was critical of Paulson and the District Attorney's office. A true and correct
9 copy of the April 12, 2005 article is attached hereto as Exhibit 1 and incorporated
10 as if fully set forth herein.
- 11 14. Later on April 12, 2005, Byerly, after speaking to Paulson, prepared a report
12 alleging Toler had violated Penal Code §76 back on April 7, 2005, specifically that
13 he had made threats against a Public Officer/Public Office. The threat alleged to
14 have been made by Toler was "Don't make me defend my children."
- 15 15. Byerly also asked Godwin to prepare a memorandum regarding Godwin's
16 encounter back on April 7, 2005, even though Godwin did not believe the
17 incident necessitated preparation of a memorandum.
- 18 16. On June 15, 2005, Defendants filed a "Petition of Employer for Injunction
19 Prohibiting Violence or Threats of Violence Against Employee and Application for
20 Temporary Restraining Order" pursuant to Code of Civil Procedure §§527.8 and
21 527.9 in *County of Solano et al. v. Toler* (Solano Case No. FCS026197)(the
22 "Petition"). The Petition sought that Toler be prevented from bring within 500
23 yards of the District Attorney's Office. Toler's office at the time was within the
24 500 yard prohibited area. A Temporary Restraining Order (the "TRO") was
25 issued as requested in the Petition.
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- 1 17. The Petition was supported by a declaration by Garza, which contained two false
2 statements, one, that Toler had threatened to bring an Uzi to the District
3 Attorney's office and two, that he was an expert on workplace violence.
- 4 18. On September 22, 2005, Toler was standing in one the first level of a parking lot
5 (maintained for the public) when Paulson (who has his own space on the fourth
6 level) approached him. Toler, who did not know it was Paulson until someone
7 called out Paulson's name, made no threatening gestures or movements, but did
8 extend his hand to shake Mr. Paulson's hand.
- 9 19. Despite the fact that the encounter with Toler was coincidental and did not
10 involve any violation of the TRO, Paulson sought criminal prosecution of Toler for
11 California Penal Code §166.
- 12 20. On October 27, 2005, in *People v. Toler* (Solano Case No. FCC 227937), criminal
13 charges were brought against Toler for five (5) violations of Penal Code §166
14 (the "Criminal Case").
- 15 21. On November 3, 2005, Defendants sought to obtain a search warrant and have it
16 served on Toler. The Search Warrant Affidavit was based on false and otherwise
17 inadequate information, there was no probable cause for the requested search
18 warrant and its issuance violated the Fourth Amendment of the United States
19 Constitution.
20

21 **FIRST CAUSE OF ACTION**

22 **[For Violation of 42 USC §1983 Against All Defendants]**

- 23 22. Plaintiff incorporates by reference the preceding allegations.
- 24 23. The actions of Defendants, as alleged above, was in retaliation for Toler's
25 exercise of his First Amendment Rights in publishing articles critical of the District
26 Attorney's office.
- 27 24. That actions of Defendants were intentional.
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- 1 25. At all relevant times, the individual Defendants acted under color of law.
- 2 26. As against the County, Plaintiff further alleges that the acts complained of are
3 indicative and representative of its custom and policies and that said customs
4 and policies are the direct and proximate result of the County's indifference to
5 prosecution of individuals in retaliation for their exercise of their constitutional
6 rights, including their rights under the First Amendment of the United States
7 Constitution.
- 8 27. The acts of Defendants were the cause of the of the deprivation of Plaintiffs
9 rights as protected by the Constitution and the laws of the United States.
- 10 28. As a result of Defendants' actions, Plaintiff has suffered fear, anxiety, emotional
11 distress, and loss of dignity and pride, all to his damage in an amount to be
12 proven at trial. Plaintiff has also suffered loss and damage to his business as a
13 proximate result of Defendants' unlawful actions.
- 14 29. Plaintiff has found it necessary to retain private counsel to vindicate his rights
15 under the law. Plaintiff therefore seeks an award of attorney's fees pursuant to
16 42 USC §1988.
- 17 30. At all times mentioned herein, the Defendants, and each of them, were engaged
18 in an oppressive course of conduct, intentionally, maliciously, willfully and with
19 full knowledge that such conduct was in derogation of the law and the civil rights
20 of Plaintiff.

21 WHEREFORE, Plaintiff prays for relief as follows.

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1 **SECOND CAUSE OF ACTION**

2 **[For Violation of 42 USC §1983 Against All Defendants]**

3 31. Plaintiff incorporates by reference the preceding allegations.

4 32. Plaintiff is informed and believes and on that basis alleges that a conspiracy
5 existed among the Defendants herein and others to deprive Plaintiff of his civil
6 rights through a concerted campaign to intimidate Plaintiff by bringing the
7 Petition and the Criminal Case and taking the actions referenced above.

8 33. As a result of Defendants' actions, Plaintiff has suffered fear, anxiety, emotional
9 distress, and loss of dignity and pride, all to his damage in an amount to be
10 proven at trial. Plaintiff has also suffered loss and damage to his business as a
11 proximate result of Defendants' unlawful actions.

12 34. Plaintiff has found it necessary to retain private counsel to vindicate his rights
13 under the law. Plaintiff therefore seeks an award of attorney's fees pursuant to
14 42 USC §1988.

15 35. At all times mentioned herein, the Defendants, and each of them, were engaged
16 in an oppressive course of conduct, intentionally, maliciously, willfully and with
17 full knowledge that such conduct was in derogation of the law and the civil rights
18 of Plaintiff.

19 WHEREFORE, Plaintiff prays for relief as follows.

20 **JURY TRIAL**

21 36. Plaintiff hereby demands a trial by jury in this matter.

22 **PRAYER**

- 23 1. For compensatory damages;
24 2. For exemplary and punitive damages;

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- 1 3. For a preliminary and permanent injunction to be issued preventing Defendants
- 2 from further depriving Plaintiff of his rights under the Constitution and the laws
- 3 of the United States;
- 4 4. For declaratory relief as to the parties respective rights and duties;
- 5 5. For attorney's fees;
- 6 6. For costs of suit; and
- 7 7. For such other and further relief as may be ordered by the Court.

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9 Dated: April 5, 2006

DOWNING LAW FIRM

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11 By: 

John Gregory Downing
Attorneys for Plaintiff
JOEL THOMAS TOLER