



**CAMACHO
MENDOZA
COULTER**
LAW GROUP PLLC

**Boise City
CLAIM FOR DAMAGE**

This form is being provided to assist you in filing your claim. Providing this form is not an admission nor shall it be construed to be an admission of liability or an acknowledgment of the validity of a claim by the political subdivision. Claim must be filed with the Boise City Clerk's Office.

2009 JUL 27 AM 10:13
BOISE CITY
REC'D CITY CLERK

PERSONAL INFORMATION

NAME Gerald Amidon
 CURRENT ADDRESS _____
 CITY _____ STATE _____ ZIP _____ EMAIL _____
 CELL PHONE _____ HOME PHONE _____ WORK PHONE _____
 EMPLOYED BY Independent Contractor OCCUPATION _____ HOW LONG _____

CLAIM INFORMATION

DATE CLAIM OCCURRED 2/14/2009 TIME 2100 hours A.M. / P.M. LOCATION _____
 YOUR ADDRESS FOR SIX MONTHS IMMEDIATELY PRIOR TO THE DATE THE CLAIM OCCURRED 2420 N. Maple Grove Street
 DESCRIBE HOW CLAIM OCCURRED Boise Police Department officers handcuffed me, treated me roughly, placed a large amount of weight on me so that I could not breathe, and then tased me numerous times on my back, butt, and wrist. Officers Harr, McKean, and Bammert were directly involved in holding me down and handcuffing me. After I was on the ground, I did not resist and was genial, however the officers felt it necessary to still tase me multiple times.

PROPERTY DAMAGE

DESCRIBE PROPERTY (IF AUTO - YEAR, MAKE, MODEL AND LICENSE #) _____
 OWNER'S NAME AND ADDRESS _____ YOUR INSURANCE CO. _____
 DRIVER'S NAME AND ADDRESS _____ POLICY# _____
 DRIVER'S PHONE # _____ INS. CONTACT INFO _____
 DESCRIBE DAMAGE _____ ESTIMATE AMOUNT \$ _____
 PROPERTY CAN BE SEEN AT _____

PERSONAL INJURY

WERE YOU INJURED? Y DESCRIBE INJURIES Burn marks on my butt from a Taser
 NAME AND ADDRESS OF DOCTOR _____
 ARE YOU PRESENTLY UNDER A DOCTOR'S CARE? N NAME AND ADDRESS OF HOSPITAL _____
 _____ DATE _____ WERE YOU AN INPATIENT Y
 WAS ANYONE ELSE INJURED? N NAMES AND ADDRESSES _____

OTHER INFORMATION

DID POLICE INVESTIGATE? Y NAME OF POLICE DEPT. Idaho State Police REPORT # _____ OFFICER NAME Fred Swanson
 WERE THERE ANY WITNESSES? Y

NAME AND ADDRESS	PHONE	YOUR VEHICLE	OTHER VEHICLE	OTHER
Laura Bryson				

I HEREBY CERTIFY THAT I HAVE READ THE ABOVE INFORMATION AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HEREBY MAKE A CLAIM AGAINST See Attachments FOR Physical injury, mental anguish, emotional distress, and punitive damages (damage, injury, etc.) IN THE AMOUNT OF No less than 500,000.00

DATE 7/25/09 SIGNATURE Gerald Amidon

YOU MAY ATTACH ANY OTHER INFORMATION OR SUBSTANTIATING DOCUMENTATION YOU SO DESIRE

CLAIM

COMES NOW the Claimant and for cause of action states the following allegations:

I. INTRODUCTION

This action arises under the Fourth Amendment to the United States Constitution; under federal law in 42 U.S.C. § 1983; under federal law in 28 U.S.C. § 1367; and under the Idaho Tort Claims Act in I.C. §§ 6-901, 6-902, 6-906, 6-907 for unreasonable search and seizure, excessive force, gross negligence, reckless, willful, and wanton conduct, and deliberate indifference.

The officer Defendants were acting in the scope of their employment as law enforcement officers in the City of Boise, under color of state law, whereby they unlawfully used excessive force against the Claimant after Claimant was successfully subdued by the officer Defendants. The Defendant's actions caused personal injury and mental anguish to the plaintiff.

II. JURISDICTION AND VENUE

1. Claimant commences this action to recover from Defendant damages for bodily injury and emotional damages, as covered by I.C. §§ 6-901, et. seq.
2. Claimant was injured by Defendants on February 14, 2009; and, one hundred eighty calendar days from February 14, 2009 falls on August 18, 2009.
3. The actions complained of herein occurred in the City of Boise, wherein all occurrences and facts took place.

III. PARTIES

4. Claimant GERALD AMIDON (herein Claimant), at all times relevant to this action was a resident and citizen of Boise, Idaho. Claimant commences this action in tort as a result of

excessive force utilized against him by Defendants; and as a violation of his Fourth amendment rights against unreasonable search and seizure.

5. Defendant CORY BAMMERT (herein Bammert) was at all times during the allegation of this complaint, employed by Boise Police Department as a law enforcement officer in the city of Boise and acted under color of state law.
6. Defendant DEIDRA HARR (herein Harr) was at all times during the allegation of this complaint, employed by Boise Police Department as a law enforcement officer in the city of Boise and acted under color of state law.
7. Defendant GUY MCKEAN (herein McKean) was at all times during the allegation of this complaint, employed by Boise Police Department as a law enforcement officer in the city of Boise and acted under color of state law.
8. Defendant MARK ABERCROMBI (herein Abercrombi) was at all times during the allegation of this complaint, employed by Boise Police Department as a law enforcement officer in the city of Boise and acted under color of state law.
9. Defendant OFFICER #10 was at all times during the allegation of this complaint, employed by Boise Police Department as a law enforcement officer in the city of Boise and acted under color of state law.
10. Defendant BOISE POLICE DEPARTMENT (herein BPD), is a political subdivision of the State of Idaho, and which at all times during this action was the employer of officers, Bammert, Harr, McKean, and Abercrombi.

11. Defendant CITY OF BOISE, (herein City) is a political subdivision of the State of Idaho, for which the City has established or delegated to Defendant BPD the responsibility for establishing and implementing policies, practices, procedures, and customs used by law enforcement officers employed by the City regarding Taser weaponry and search and seizure technique.

IV. FACTS

12. On February 14th of 2009, Claimant and his girlfriend, Laura Bryson (Bryson) went out together to get breakfast. (Amidon Aff. ¶ 1.) Afterwards they returned to Bryson's residence. (Amidon Aff. ¶ 1.) When they returned from breakfast the two agreed to meet later in the evening to do something for Valentine's Day. (Amidon Aff. ¶ 1.)

13. In the afternoon, Bryson drove Claimant to an acquaintance of Claimant's. (Amidon Aff. ¶ 2.) At the acquaintance's house Claimant called Bryson asking what time she wanted to go out and requested a ride from Bryson. Bryson was busy with her son at Planet Kid and stated that she was unable to pickup Claimant. (Amidon Aff. ¶¶ 2, 3.)

14. Claimant then went to Bryson's house and saw roses that were not from him on the kitchen table; Claimant then got upset and jealous. As a result of his anger, Claimant went into Bryson's room and began wrecking Bryson's room. Claimant then left Bryson's room. (Amidon Aff. ¶¶ 3, 4.)

15. In an attempt to makeup for his prior inappropriate behavior, Claimant called Bryson the evening of February 14th of 2009, and asked her if he could clean up the mess he made in

Bryson's room. (Amidon Aff. ¶ 5.) Claimant and Bryson stood at the front door of Bryson's house and proceeded to argue between each other. Bryson had talked to one of her friends, Crystal. Crystal said that she would bring a "big guy" friend over to Bryson's to beat up Claimant. (Amidon Aff. ¶¶ 6, 7.)

16. A short time later a car came to the front of the house and Bryson remarked, "Oh, God, it's Crystal!" Claimant requested that Bryson call Crystal and tell Crystal and her accompaniment to leave. (Amidon Aff. ¶ 7.) At the same time, Claimant attempted to negotiate with Bryson by stating that he would leave as well so that no more trouble would ensue. (Amidon Aff. ¶ 7.)

17. Bryson called Crystal and told her to leave, however Bryson's cellular phone lost all battery power and became inoperable. Crystal, with her friend, got into her car and began patrolling the exterior of Bryson's house. (Amidon Aff. ¶ 7.)

18. Claimant and Bryson were standing at the front of the door when the doorbell rang. Claimant turned on the porch light and began to look out the peephole. Before Claimant's eye could adjust to determine who was on the other side of the door, Officer Bammert¹ loudly commanded Claimant to open the door.² Unable to identify who was on the other

¹ Claimant asserts that neither he nor Bryson requested the presence of BPD officers. Claimant did not make a phone call to the police, and Bryson's phone lost all battery power.

² It should be noted, that all police officers failed to identify themselves as BPD officers. Despite Bammert and Harr proclaiming numerous times that they identified themselves as police, an in-depth analysis of Bammert's recording reveals that no officer identified themselves as a BPD officer. See generally Exhibit A at 42:00 to end; Exhibit B: Ombudsman's Report Complaint Investigation & Findings, at pg. 3 (Note: Exhibit B is an official report regarding Claimant's complaint against BPD by the Boise Community Ombudsman (hereinafter Ombudsman))

side of the door, Claimant then attempted to prevent anyone on the outside of the house from entering through the front door.³ See Exhibit A, 725 Bammert, C 02142009 2117 904079.dss at 43:41;⁴ (Amidon Aff. ¶¶ 8, 9, and 10.)⁵

19. Claimant successfully prevented Bammert's initial attempt to open the front door of Bryson's house. Bammert loudly exclaimed that, "He's [Claimant] holding it shut...." Bammert then requested that Claimant, "Get away from the door, do it now!" Exhibit A at 43:43.

20. Bryson then told Claimant to let them in. Id. at 43:47. After further attempts by Bammert to gain entry into Bryson's house, Bammert told an unnamed officer, to attempt entry into the house from the back. Id. at 43:58. Bammert again loudly asked Claimant to open the door, at which time Bryson told Claimant to, "Stop, Stop, go out the backdoor now!" Id. at 44:07 – 44:16.⁶

³ As mentioned earlier, Claimant knew that Bryson had contacted Crystal, and that Crystal had attained the help of a big man to beat Claimant. Because Claimant was unable to ascertain who was at the front door, Claimant barred entry to Bryson's house by using his foot as a door jam, preventing Bammert from gaining entry.

⁴ Throughout this Complaint there will be voluminous citations to Exhibit A. Exhibit A is a tape recording made by Bammert that details the Claimant's encounter with Bammert, Harr, McKean, and Abercrombi on February 14th, 2009 in its entirety. When citing to the tape, the first number before the colon is minutes and the numbers after the colon are seconds; therefore 43:31 would equate to 43 minutes and 31 seconds into Exhibit A.

⁵ Furthermore, it is clear that Claimant did not know the law enforcement officers were at the front of Bryson's house because he loudly requests that someone, "Call the cops!" even though officer Bammert was the one yelling for Claimant to open Bryson's door. Exhibit A at 43:31 – 43:33; See Exhibit B at pg. 27.

⁶ Claimant insists that neither he nor Bryson knew that the law enforcement officers were outside and that Bryson was trying to protect Claimant from getting beat up by Crystal's male friend. Claimant argues that proof of his logic is derived from Bryson's request that Claimant leave her house while she dealt with Crystal. Exhibit A at 44:12.

21. Further struggling ensued, and Bammert received backup from at least two additional officers; Harr and McKean. Id. at 44:24. Harr demanded that Claimant, “Open the door!” Id.⁷ After further struggle, Bammert quickly synchronized the other two officers with him to concentrate their power on Bryson’s front door. Id. at 44:51. Bammert, Harr, and one other officer verbally counted off, “One, two, and three!” and then overpowered Claimant, gaining entry into Bryson’s house. Id. at 44:55-45:01; (Amidon Aff. ¶ 11.)
22. After gaining entry into Bryson’s house, the officers told Claimant to get on the ground, to which Claimant replied, “Okay! I’ll get on the ground!” and immediately got onto the ground. Exhibit A at 45:02. Even though Claimant was complying with the officers’ requests, Claimant was tased by one of the officers. Exhibit A at 45:06; Exhibit B at pg. 13.
23. After the first application of the Taser, Claimant was commanded to put his arms behind his back. Id. at 45:09. Claimant then said, “Alright sir.” was handcuffed with three officers on top of him,⁸ and did not resist. Exhibit A at 45:13.⁹

⁷ Again no officers have identified themselves as BPD officers. Id. at 44:25.

⁸ At this portion of the tape, one can hear a distinct click made when a handcuff closes around an arrestee’s hand on Exhibit A at 45:13. It is important to note that after this moment the officers’ claim to qualified immunity ceased to exist. As the Ninth Circuit has observed, “Under *Saucier*, courts “must examine first whether the [officers] violated [the plaintiff’s] constitutional rights on the facts alleged and, second, if there was a violation, whether the constitutional rights were clearly established.” Boyd v. Benton County, 374 F.3d 773, 778 (9th Cir. 2004) (citing Saucier v. Katz, 533 U.S. 194, 201 (2001)) (emphasis in original). *The first step* of the analysis is clearly alleged; the BPD officers violated Claimant’s Fourth Amendment right to be free from unreasonable seizure. *The second step* in the analysis is clear from the Supreme Court, “[I]f the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate.” Saucier, 533 U.S. at 202. The officers cannot validly claim that they were not on notice that their actions against Claimant would violate his clearly stated constitutional rights. Prior case law establishes that an officer’s conduct is not protected under qualified immunity if no reasonable officer could have believed that the officer’s actions were unlawful or inappropriate. See Doerle v. Rutherford, 374 F.3d 1106, 1119 (9th Cir. 2001); Drummond v. City of Anaheim, 343 F.3d 1052, 1062 (9th Cir. 2003) (*Deciding that they did not need an exact prior case, the Ninth Circuit held that*

24. Claimant then tried to explain himself and stated that, “I thought it was her friend trying to get in,” to which he was immediately interrupted by an officer’s interjection, “Bullshit!” Exhibit A at 45:20 – 45:23; (Amidon Aff. ¶ 13.) During this exchange one of the officers told Claimant that he had his Taser, “Up your [Claimant’s] asshole.”¹⁰ Exhibit A at 45:22.¹¹

when officers kneel on the back and neck of an arrestee and press the weight of two officers’ bodies on arrestee, especially after the arrestee cries for air, violates clearly established law, and reasonable officers would have been aware of such). Even if there were no prior court precedent for Claimant’s case, the Boise City Ombudsman, a community officer officially tasked with recommending policy to the BPD stated the following:

However, I believe this narrow restriction regarding passive subjects leaves too much room for Tasers to be applied to persons whose actions clearly constitute an active level of resistance but who have given no indication that they pose a threat to officers, and/or have displayed no aggressive behavior. For example, a person who refuses to follow an officer’s direction and clings to a stationary object as officers are trying to pull him or her away from it is actively resisting. *Given the inherent risks involved in applying a Taser to a human being and absent any actions by the subject or other indications that the person is a threat to the officers, the use of a Taser would be unreasonable.* Except in exigent circumstances, the policy should prohibit the use of Tasers against persons whose active resistance is only defensive in nature. I recommend that, under the section that reads, “Unless exigent circumstances exist, the Conducted Energy Weapon will not be used,” the following item should be added:

- **On subjects whose active resistance is only defensive in nature and who pose no immediate threat of physical harm to officers, themselves, or others.** Ombudsman’s Special Report: Taser use by Boise Police Department, June 6, 2006. (Italics added)

⁹ It is important to note that at this point Claimant is on the ground with his face and chest facing the ground and his legs twisted in a scissor formation. Three officers were on top of Claimant, one with his/her knee forcefully applied to the side of Claimant’s neck. Exhibit B at pg 33. The United States Court of Appeals for the Ninth Circuit has specifically stated that applying direct pressure to an arrestee’s neck has a dangerous risk of causing compression asphyxia which can kill an arrestee. See Drummond, 343 F.3d at 1056-57 (9th Cir. 2003). The Ninth Circuit further elaborated that:

“While Drummond [arrestee] may have presented a threat before he was handcuffed- an action that he does not claim was in itself an excessive use of force- after he was “knock[ed] ... to the ground where the officers cuffed his arms behind his back as [he] lay on his stomach,” a jury could reasonably find that he posed only a minimal threat to anyone’s safety... there was therefore little or no need to use any further physical force.” Id. at 1057, 58.

“... *After he was handcuffed and lying on the ground, the force that the officers then applied was clearly constitutionally excessive when compared to the minimal amount that was warranted.*” Id. at 1059. (emphasis added)

¹⁰ Anatomically, the officer’s Taser was placed on Claimant’s perineum and anogenital space which is the area of skin between the penis and anus.

¹¹ After this conversation, nearly thirty seconds go by on Bammert’s recording where the officers breathe heavily and Claimant exclaims that, “I’m good sir, I’m good.” Exhibit A at 45:24-45:53. From Bammert’s recording it is clear that the officers are not struggling to arrest Claimant, Claimant’s demeanor changed to a docile state, and any

25. Claimant again tried to explain himself, "... darn, I was trying to look but I thought it was her [Bryson's] friends." Exhibit A at 45:55. Harr hastily responded, "You heard us yelling Boise Police!" Id. at 45:59. Claimant appealed with the officers stating, "No we didn't!", and Harr commanded back, "Be quiet!"¹² Id. at 46:03

26. Claimant then asked, "Could you let me up please?" and cried out "My hands!" Id. at 46:06-46:10.¹³ An unknown officer then told Claimant, "If you move again I'm gonna stick this Taser up your ass and pull the trigger again!" Id. at 46:06-46:12. That same officer then told Claimant, "Do you feel this? Do you feel that? That's my Taser up your ass, don't move!" Id. 46:14-46:21. Claimant then screamed, "I can't breathe!" Id. at 46:22.¹⁴

threat Claimant posed to the BPD officers was no longer present. Exhibit A at 45:22; Exhibit B at pg. 32 (regarding Complainant's [Claimant's] speech as polite and deferential to the officers).

¹² Again, a careful analysis of Bammert's recording clearly reveals that none of the BPD officers identified themselves as officers of BPD. Exhibit B at pg. 12.

¹³ Claimant asserts that he was tased on his right wrist at this point.

¹⁴ In the background Harr yells at Claimant to stop moving, and one can also hear the faint sound of a Taser's electrical buzz as it is applied to Claimant, yet again. Exhibit A at 46:23. Although one might be compelled to consider Claimant's actions as active resistance against a police officer, the United States District Court for the Western District of Washington has addressed this exact issue:

"...being shocked by a taser can render a subject disoriented. Thus, Mr. Beaver's actions may have been as much as a reaction to being tased as an intentional effort to resist arrest...During such a brief time period, it is difficult to see how Mr. Beaver even had the opportunity to comply with Officer Laird's commands."

"First, defendants [police officers] maintain that because Mr. Beaver had not complied with Officer Laird's commands, he was actively resisting arrest and further tasing was warranted. *The defendants confuse involuntary non-compliance with active resistance. Officer Castro testified that she believed that non-compliance was the equivalent of a threat. In light of Mr. Beaver's failure to comply with officer Laird's multiple commands, his [arrestee's] altered state of mind, and his statement, "I can't," a reasonable officer would have concluded that Mr. Beaver was unable to comply with the commands given, and his refusal to do so was at least in part involuntary.*" Beaver v. City of Federal Way, 507 F.Supp.2d 1137 at 1145, 46 (W.D.Wash 2007).

27. Claimant then stated, numerous times, that he could not breathe and that he would stop whatever action he was committing at the time. Id. at 46:21-46:33. Soon thereafter an officer threatens, “Do you want another Taser deployment on you? I’ll give you another one if you move again.” Id. at 46:35-46:37. While that officer said the previous statement, Claimant continued to decry that he could not breathe and that he needed to be let up. Id. The same officer then says, “I haven’t searched you yet,” and another officer speaks over the first and says, “If you’re talking your breathing!” Claimant then screamed loudly as he was shocked one more time and begged the officers to stop tasing him. Id. at 46:42. The initial officer then responds to Claimant’s pain by saying, “Then stop moving!” Id. at 46:44.¹⁵

¹⁵ There is no discernable justification for BPD officers to use their Tasers against Claimant at this point. Claimant was already hobbled and in handcuffs; any potential threat Claimant posed was completely eliminated by being outnumbered 3:1, on the ground, and in handcuffs. The Supreme Court of the United States found that police officers commit excessive force in violation of the Fourth Amendment of the United States Constitution by:

“Determining whether the force used to effect a particular seizure is “reasonable” under the Fourth Amendment ... balancing of “ ‘ the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ “ against the countervailing governmental interests at stake ... Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it ... however, its proper application requires careful attention to the facts and circumstances of each particular case, *(1) including the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight.* Graham v. Connor, 109 S.Ct. 1865, 1871, 72 (1989). (notations added, bold added)

No reasonable police officer in the BPD’s officers’ shoes could reasonably find that Claimant was an immediate threat to the officers, actively resisting, or committing a severe crime. More to the point, Claimant was never charged with resisting arrest, was compliant throughout the ordeal, hobbled by three police officers on top of him, struggling to breathe, and was only cited with relatively minor misdemeanors. In light of the tape recording by Bammert, the BPD officers’ actions are totally without merit or justification. Furthermore, the Ninth Circuit makes it clear to police officers that, “*Gratuitous and completely unnecessary acts of violence by the police during a seizure violates the Fourth Amendment.*” Fontana v. Haskin, 262 F.3d 871, 880 (9th Cir. 2001) (citing McDowell v. Rogers, 863 F.2d 1302, 1307 (6th Cir. 1988)) (Bold and Italics added).

Finally, it is clear from BPD policy that using a Taser on an individual that is handcuffed should be done only in exigent circumstances, as detailed below:

28. One of the officers then stated, “I fear for my safety, I have not searched you sir. Before [inaudible] I fear for my safety. If you move again I will deploy this Taser.”¹⁶ *Id.* at 46:45

29. About ten seconds went by, and then Claimant said he needed to be let up so that he could breathe. *Id.* at 46:52-47:10. Then, the officer that feared for his safety asks, “Now, do you feel this on your balls? I’m going to Taser your balls if you move again.” *Id.* at 47:10. Claimant attempted, in vain, to explain his situation by stating he could not hear the officers identify themselves as the BPD. The tasing officer said, “Okay, I’m going to

Unless exigent circumstances exist, the Conducted Energy Weapon will not be used:

- *On women known to be or that obviously appear to be pregnant*
 - *On elderly persons, young children, and visibly frail persons*
 - *On passive subjects*
 - *In combustible environments*
 - ***On a handcuffed subject unless actively resisting or exhibiting active aggression to prevent individuals from harming themselves or others***
 - *On subjects in physical control of a vehicle in motion, including automobiles, trucks, motorcycles, ATVs, bicycles, and scooters*
 - *On subjects in a location where a fall may cause substantial injury or death*
- Exhibit B at pg. 34; BPD § 1.02.03B Use of Conducted Energy Weapon (Taser) (Italics in original, bold added)

The Ombudsman found that, “While the Complainant [Claimant] was not totally motionless, there is no evidence to suggest that he presented a realistic danger of harm to himself or others, as required by policy to justify the use of a Taser on a handcuffed person.” *Id.* at pg. 34.

¹⁶ Although the officer claimed that he feared for his safety, such a claim is highly specious. The officer is accompanied by two other police officers, Claimant is on the floor gasping for air and in handcuffs, and the Claimant has already been tased four times. Despite the officer’s concern for his safety, any objective threat to the officer’s safety is clearly not present. The officers successfully subdued Claimant within the first twenty five seconds of gaining entry into Bryson’s residence. After the overwhelming physical force exerted on Claimant, and after immediately handcuffing him, any objective reason to use force against Claimant evaporated. The court in Beaver held that threat,

“... analysis changes, however, with the arrival of Officer Castro. At this point, there were two officers to control the situation. To the extent that Mr. Beaver posed an “immediate threat” to Officer Laird during the first three tasings, that threat was ***significantly diminished when Officer Castro arrived to provide backup. Once Officer Laird had backup, his options increased dramatically. Instead of tasing Mr. Beaver, Officer Laird could have covered Officer Castro while she approached Mr. Beaver and attempted to handcuff him.***” Beaver 507 F.Supp.2d at 1145. (Bold and italics added)

Additionally, the officer’s proclamation does not avail him of any legal protections, as the Ninth Circuit has stated, “***However, a simple statement by an officer that he fears for his safety or the safety of others is not enough [to justify use of force]; there must be objective factors to justify such a concern.***” Doerle, 263 F.3d at 1115, 16 (9th Cir. 2001) (amended on other grounds) (bold added).

take this Taser out of your asshole now, are you going to fight with me?” After which Claimant continued to comply and did not fight with the officers. Id. at 48:12.¹⁷

30. One of the officers then remarked that, “The last two minutes he’s [Claimant has] been cooperative.” Id. at 48:22-48:24.¹⁸

31. Bammert then took Claimant to BPD, interrogated him, and ultimately charged Claimant with three misdemeanors: battery, unlawful entry, and false imprisonment. Exhibit C. Officer # 10 was responsible for supervising the officer Defendants; however, he failed to conduct a proper investigation of the prior events either on the scene or subsequent to his leaving the scene. See Exhibit B at pg. 39.¹⁹

V. DAMAGES

¹⁷ Although Exhibit A clearly depicts Claimant’s predicament, Bammert’s police report conveys a much different, and more docile recantation of the above events. See Exhibit C. Bammert’s police report also fails to mention that Claimant was tased multiple times in various locations. This is critical because Claimant was tased in the perineum and anogenital space, the back, and wrist, which calls into question the veracity of Bammert’s entire recollection of the events.

¹⁸ A remarkable statement considering one of the officers “feared” for his safety in those two minutes. Even more remarkable is the officers’ joint belief that tasing the Claimant was necessary even though he had been cooperative by the officers’ own admissions.

¹⁹ The Ombudsman’s report makes it clear that Officer #10 conducted a deficient investigation regarding the officer Defendants’ use of force, and an improper investigation of the crime scene in general:

Lastly, the investigation into the use of force by Officer #10 does not appear to meet the standards required by BPD. As required, officers at the scene promptly notified Officer #10 of the use of force. Officer #10 responded to the scene and spoke to several of the officers, ***but did not document anything that they told him.*** Officer #10 reported that he would have re-interviewed them after reviewing the arrest report. But Officer #10 did not interview Witness #1 at the scene, nor did he interview the Complainant at the jail regarding the use of force, even though he had ample opportunity to do so. Although the Complainant had not told anyone about the injuries to his buttocks, no photographs were taken of the Taser application site on his back. Officer #10 ***took little action to investigate the incident so that he could complete the Use of Force Report required by BPD policy.*** Exhibit B at pg. 39

32. As a result of the foregoing, Claimant has suffered with regard to his career as an independent contractor and to his reputation.

33. As a result of the foregoing, Claimant has suffered emotional distress. Claimant continues to suffer from humiliation, lack of motivation, loss of joy, ill temper, hopelessness, anxiety, and a profound sense of personal violation.

34. As a result of the foregoing, Claimant feels profoundly betrayed. Where Claimant used to enjoy life, he now is unable to find motivation to continue in his endeavors, and has secluded himself away from relationships he once thought fruitful.

35. As a result of the foregoing, Claimant has lost his self-respect and feeling of self-worth. Claimant now questions his prior respect he had for the BPD and City.

36. As a result of the foregoing, Claimant has suffered and will continue to suffer economic damages as a result of the inhumane treatment he endured at the hands of the BPD and City.

VI. CAUSES OF ACTION

COUNT I

Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983

(General Allegations)

37. Claimant realleges and incorporates herein by reference the allegations set forth in paragraphs 1-36 of this Complaint as ¶ 37.

38. By the aforementioned acts and omissions committed by Defendants, the Defendants, under color of law, deprived the Claimant of his constitutionally protected right to be free from unreasonable seizure under the Fourth Amendment to the United States Constitution.

39. In violating the Claimant's right as set forth above, Defendants conducted an unreasonable seizure of the Claimant by directly applying heavy weight to Claimant's neck and using a Taser multiple times on Claimant after Claimant was physically and totally subdued by Defendants. These actions are the crux of Defendants use of excessive force, in violation of Claimant's rights under the Fourth Amendment to the United States Constitution, and to 42 U.S.C. § 1983.

40. As a direct result of the violation of his constitutional right by Defendants, Claimant suffered general damages and is entitled to relief under 42 U.S.C. § 1983.

41. The Conduct of Defendants was willful, malicious, reckless and/or oppressive, and was so extreme in nature that punitive damages should be imposed in an amount commensurate with the wrongful acts alleged herein.

COUNT II

Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983

(Use of Excessive Force)

42. Claimant realleges and incorporates herein by reference the allegations set forth in paragraphs 1-36 of this Complaint as ¶ 42.

43. Defendants Bammert, Harr, McKean, and Abercrombi failed to abide by constitutional practice when conducting a search and seizure, which led to application of excessive force against Claimant and a violation of Claimant's right to be free from unreasonable search and seizure.²⁰

44. Aforementioned Defendants, while executing their unconstitutional seizure of Claimant, were acting under color of state law, through their employment as police officers under BPD under the City, in Idaho.

45. As a result of Defendants' actions, Claimant suffered severe burn marks on the perineum and the anogenital space of his body resulting in personal damages, emotional damage, personal embarrassment, and mental anguish under 42 U.S.C. § 1983.

COUNT III

Violation of Civil Rights Pursuant to title 42 U.S.C. § 1983

(Failure to Implement Appropriate Training Policies and Customs through Gross Negligence and/or Deliberate Indifference)

46. Claimant realleges and incorporates herein by reference the allegations set forth in paragraphs 1-36 of this Complaint as ¶ 46.

²⁰ The BPD Chief of Police, Michael Masterson, stated that multiple officers violated BPD requirements, and one officer violated BPD policy to a degree unbecoming of an officer. See Exhibit B at pgs. 50, 51.

47. The Defendants, City and BPD, have deliberately been indifferent to the adoption of policies, procedures, practices, or customs within BPD that allow the use of excessive force when other more reasonable methods are available to BPD police officers.²¹

²¹ The United States Supreme Court made it clear in Monell v. Dept. of Social Serv. Of the City of New York, 436 U.S. 658, that state and local subdivisions are persons under 42 U.S.C. 1983. A municipality may be sued under 42 U.S.C. § 1983, but is not liable under a tortfeasor theory of respondeat superior. See Monell, 436 U.S. 658 at 694-95 (1978). A municipality is liable for damages under 42 U.S.C. § 1983 under the following provisions:

To impose liability against the County under *Canton*, a plaintiff must show: (1) that a County employee violated Gibson's rights; (2) that the County has customs or policies that amount to deliberate indifference (as that phrase is defined by *Canton*); and (3) that these policies were the moving force behind the employee's violation of Gibson's constitutional rights, in the sense that the County could have prevented the violation with an appropriate policy. Gibson v. County of Washoe, 290 F.3d 1175, 1193-94 (9th Cir. 2002) (italics in original)

The first criterion is met under the excessive force claim. The BPD officer's deplorable actions against Claimant are enough to show that Claimant's rights were violated. An official custom or policy is slightly more difficult to prove; however, courts have recognized that a failure to train police officers is emblematic of a municipal policy or custom of deliberate indifference to police officers' actions against individuals. See Id. at 1194 (policies of omission regarding supervision of employees, then, can be "policies" or "customs" that create municipal liability under Monell, but only if the omission reveals a deliberate or conscious choice to countenance the possibility of a constitutional violation); Turpin v. Mailet, 619 F.2d 196, 202 (2nd Cir. 1980) (stating that a single, unusually brutal or egregious beating administered by a group of municipal employees may be sufficiently out of the ordinary to warrant an inference that it was attributable to inadequate training or supervision amounting to deliberate indifference).

In Claimant's case, the police officers committed a series of egregious errors, that could lead to an inference that the Defendant officers were not properly supervised by the BPD, or that no legislative guidance existed from City: (1) The officers failed to identify themselves as BPD throughout the entire event; (2) one officer placed his/her knee into Claimant's neck risking possibility of compression asphyxiation, even though Claimant was not a threat, nor committing a serious crime; (3) the BPD officers continued to use their Tasers three times after Claimant was handcuffed, compliant, and not resisting; (4) one officer thought it necessary to deploy his Taser on Claimant's perineum and anogenital space, even after Claimant was compliant according to a police officer's own admission made on Exhibit A; (5) one of the officer's failed to understand why medical services were summoned, despite BPD policy mandating immediate medical services for tased subjects. ***These factors combined, show that multiple officers were deficiently trained by BPD authorities, or lacked sufficient guidance from policy set by City.*** Finally, the third criterion is met because a lack of training regarding search and seizure technique is directly related to the violation of an individual's constitutional rights.

Additionally, the BPD's policy is ***facially unconstitutional*** because the policy allows using a taser against individuals who are handcuffed and exhibiting active aggression. See BPD Policy § 1.02.03B; BPD Policy § 1.01.01 (defining active aggression as physical actions or assaults against the officer or another person with less than deadly force such as advancing, challenging, punching, kicking, grabbing, and wrestling). This policy allows police officers to tase an individual who is handcuffed, but struggling to breathe due to an officer's weight. Technically, a person struggling to breathe in such a situation would be using a physical action that is less than deadly force against the officer in such a situation. ***However, using a Taser on an individual who is handcuffed and only passively moving is unconstitutional.*** See Beaver, 507 F.Supp.2d at 1145; Fontana 262 F.3d at 880. Do to the broad definition of active aggression, the BPD policy allows Taser deployments in situations that do not comport with excessive force jurisprudence. Further, the BPD was forewarned by the Ombudsman about this occurrence as such actions would be unreasonable. See FN. 8, supra. Again, this policy directly led to the events that resulted in

48. The actions of Defendants City and BPD amount to gross negligence to the rights of Claimant to be free from excessive force and unreasonable seizures under the Fourth Amendment to the Constitution of the United States.²²

49. As a result of the deliberate indifference and gross negligence regarding Claimant's rights, the Claimant has suffered grievous personal injury and is entitled to relief under 42 U.S.C. § 1983.

COUNT IV

Idaho Tort Claims Act Pursuant to I.C. § 6-901 and all Subsequent Sections (Reckless, Willful, and Wanton Conduct)

50. Claimant realleges and incorporates herein by reference the allegations set forth in paragraphs 1-36 of this Complaint as ¶ 50.

Claimant's dilemma, and therefore the policy is the cause of Claimant's unconstitutional treatment. Because the policy is unconstitutional and BPD and City are responsible for establishing operating procedures for BPD officers, these two entities are liable for damages.

²² The Ombudsman goes on to state that the officers involved have not been properly trained in numerous fields including training pertaining to Positional Asphyxia:

In the course of this investigation, it was clear that the involved officers were familiar with the concept of Positional Asphyxia as it relates to prisoners who are hobbled. However, none of the officers seemed to be aware of the possible danger posed by Positional Asphyxia to the Complainant in this case...

Certain factors may render some individuals more susceptible to positional asphyxia following a violent struggle, particularly when prone in a face-down position:

- *Obesity.*
- *Alcohol and high drug use.*
- *An enlarged heart (renders an individual more susceptible to a cardiac arrhythmia under conditions of low blood oxygen and stress).*

The risk of positional asphyxia is compounded when an individual with predisposing factors becomes involved in a violent struggle with an officer or officers, particularly when physical restraint includes use of behind-the-back handcuffing combined with placing the subject in a stomach-down position. Exhibit B at pg. 42-43. (Italics in original).

51. The Defendants, Bammert, Harr, McKean, and Abercrombi committed reckless, willful, and wanton conduct when they intentionally applied harmful force to Claimant after the Claimant had been completely subdued and compliant with aforementioned Defendants' requests for compliance. Defendants' application of inappropriate body holds and Taser shocks after Claimant was already subdued, in combination with statements made by Defendants to Claimant during the incident, shows that the Defendants acted intentionally and knowingly to cause unreasonable bodily harm to Claimant which had a high degree of probability that harm would result from Defendants' concerted actions.

52. Due to officer Defendants' above actions, Claimant did suffer bodily harm and great personal injury, therefore the Claimant is able to recover damages under the Idaho Tort Claims Act, and further to recover punitive damages under 42 U.S.C. § 1983.

COUNT V

Idaho Tort Claims Act Pursuant to I.C. § 6-901 and all Subsequent Sections

(Gross Negligence)

53. Claimant realleges and incorporates herein by reference the allegations set forth in paragraphs 1-36 of this Complaint as ¶ 53.

54. The Defendants Bammert, Harr, McKean, and Abercrombi committed gross negligence by continuing to apply excessive force once Claimant was subdued. After Claimant fell to the floor and was immediately handcuffed, there was no longer a need to apply any amount of force to Claimant. By using continued force against plaintiff, the Defendants use of force became unreasonable and the officer Defendants should have known that their actions would

cause harm; with which, the failure to avoid such harm constituted deliberate indifference to the pain and suffering unreasonably visited upon the Claimant at the Defendants' hands.

55. Due to officer Defendants' above actions, Claimant did suffer bodily harm and great personal injury, therefore the Claimant is able to recover damages under the Idaho Tort Claims Act, and further to recover punitive damages under 42 U.S.C. § 1983.

COUNT VI

Idaho Tort Claims Act Pursuant to I.C. § 6-901 and all Subsequent Sections

(Negligent Investigation)

56. Claimant realleges and incorporates herein by reference the allegations set forth in paragraphs 1-36 of this Complaint as ¶ 56.

57. Defendant Officer #10 performed a negligent investigation of the crime scene and failed to conduct a proper investigation of the other officers' use of force. Officer #10 was directly responsible for conducting field interviews of the officers on scene, but failed to document the results of those interviews. Officer #10 also failed to document and take accurate pictures of Claimant to record the extent of force used on Claimant; neither on the scene or at the BPD. Finally, Officer #10 failed to interview Bryson.

58. As a result of Officer #10's actions, Claimant was wrongfully charged with three misdemeanors which have entered the public record and caused Claimant great embarrassment personally, and socially. Therefore, Claimant is able to recover damages under the Idaho Tort Claims Act.

PRAYER FOR RELIEF

WHEREFORE, Claimant prays that he be granted the following relief:

1. A finding that Defendant's conduct violated Claimant's Constitutional right, under the Fourth Amendment to the Constitution, to be free from unreasonable seizure.
2. An award compensating Claimant, according to proof, personal damages, personal expenses related to physical harm suffered at the hands of Defendants, emotional harm, mental suffering, personal embarrassment, and social embarrassment pursuant to the Idaho Tort Claims Act under I.C. §§ 6-901, 6-902, 6-906, 6-907; and federal law under 42 U.S.C. § 1983.
3. A finding in Claimant's favor, that the Defendants stand liable to Claimant for an award of Claimant's reasonable attorneys' fees, litigation costs and other costs of this action, together with a determination of the amount of Claimant's reasonable attorneys fees taxable to the Defendants, along with a determination of the Claimant's litigation costs and expenses taxable to the Defendants, pursuant to 42 U.S.C. § 1988 for claims arising under 42 U.S.C. § 1983.
4. A finding that the Defendants' actions were so excessive, as to constitute gross negligence, and/or reckless, willful, and wanton conduct, to such a degree that punitive

damages²³ are recoverable by the Claimant under 42 U.S.C. § 1983 and relief for no less than five hundred thousand dollars and zero cents²⁴ under Idaho code.²⁵

5. Hopefully, this matter can be resolved in a reasonable manner without the need for time consuming, unproductive, and expensive litigation in federal court. Claimant merely seeks to be compensated for the negligent, egregious, and unwarranted acts committed by the Defendants. If this matter cannot be resolved through the tort claims process, Claimant is prepared to seek redress in federal court. Please see Exhibit D enclosed.

²³ The Supreme Court made it clear that punitive damages may be awarded under 42 U.S.C. § 1983 when Defendants' conduct is shown to be motivated, "by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." Smith v. Wade, 461 U.S. 30, 56, (1983). Other courts have found that when officers commit excessive acts of violence, as is the case here, with no basis for such action, that the force must be reckless and with evil motive. See Lewis v. Downs, 774 F.2d 711, 715 (6th Cir. 1985) (holding that two officers were liable for punitive damages under 42 U.S.C. § 1983 when they struck a handcuffed arrestee in the face with the butt of a nightstick) (*rev'd* on other grounds); Clark v. Beville 730 F.2d 739, 741 (11th Cir. 1984) (stating that officer inflicted injuries to the arrestee's arm, wrist, and shoulder, which met the standard for willful and gross disregard for arrestee's rights; thus officer was liable for punitive damages).

²⁴ I.C. § 6-926 states:

The combined, aggregate liability of a governmental entity and its employees for damages, costs and attorney fees under this chapter, on account of bodily or personal injury, death, or property damage, or other loss as the result of any one (1) *occurrence or accident regardless of the number of persons injured or the number of claimants, shall not exceed and is limited to five hundred thousand dollars (\$500,000), unless the governmental entity has purchased applicable, valid, collectible liability insurance coverage in excess of said limit, in which event the controlling limit shall be the remaining available proceeds of such insurance.* If any judgment or judgments, including costs and attorney fees that may be awarded, are returned or entered, and in the aggregate total more than five hundred thousand dollars (\$500,000), or the limits provided by said valid, collectible liability insurance, if any, whether in one or more cases, the court shall reduce the amount of the award or awards, verdict or verdicts, or judgment or judgments in any case or cases within its jurisdiction so as to reduce said aggregate loss to said applicable statutory limit or to the limit or limits provided by said valid, collectible insurance, if any, whichever was [is] greater. I.C. § 6-926 (Bold and italics added).

²⁵ The 500,000 dollar cap was set by the Idaho State Legislature, but the Legislature could not have foreseen the wanton and reckless acts committed in this case. Therefore, given the unprecedented nature of these acts, the 500,000 dollar maximum would be conservative compensation at best. Considering the totality of the circumstances and egregiousness of the Defendants' acts, the amount prayed for is both minimal and reasonable.

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Attorney for Claimant

THE CITY CLERK, CITY OF BOISE

IN THE COUNTY OF ADA, IN THE STATE OF IDAHO

GERALD AMIDON,)	
)	
)	
Claimant,)	
)	
v.)	
)	AFFIDAVIT OF
CORY BMMERT; DEIDRA HARR;)	GERALD AMIDON
GUY MCKEAN; MARK)	
ABERCROMBI; OFFICER #10; BOISE)	
POLICE DEPARTMENT OF THE CITY)	
OF BOISE;)	
)	
and)	
)	
OFFICERS JOHN AND/OR JANE)	
DOES 1-10; JOHN AND/OR JANE)	
DOES 1-10;)	
)	
and)	
)	
THE CITY OF BOISE,)	
)	
)	
)	
)	
Defendants.)	
_____)	

State of Idaho)
)
County of Ada) ss.

I, Gerald Amidon and Claimant being first duly sworn on oath, deposes and says:

1. That on February 14th of 2009, I was with my girlfriend, Laura Bryson (herein after, Laura). On that morning we went out together for breakfast. Afterwards we returned to Laura's house. We agreed at that time to meet later and do something for Valentine's day.
2. That after breakfast, Laura dropped me off at one of my friend's house. I called Laura from there asking if she could pick me up and asked what time she wanted to pick me up.
3. That Laura told me that she was busy with her son at Planet Kid and that she was not my chauffer. We got into an argument over the phone, after which I drove over to Laura's house. I went into Laura's house and saw roses on the kitchen table.
4. That I got jealous when I saw the roses on Laura's kitchen table. I went into Laura's room and began throwing things around and messing up her room. I then left Laura's house. I then tried to call Laura but she did not pick up.
5. That in the evening of February 14th of 2009, I went to Laura's house again. Laura and I were talking at the front door of Laura's house. I told Laura that I was sorry, and overreacted, so I offered to clean up Laura's room. Upon entering the house Laura and I argued again.

6. That Laura told me she had talked to her friend Crystal. Laura said that Crystal was coming to Laura's house with a "big guy" to beat me up for what I did to Laura's room.
7. That soon after, while still just inside the front door, a car pulled up to the front of Laura's house. Laura said that it was Crystal with her male friend. I told Laura to call Crystal and tell her to leave. I also said that I did not want any trouble and that I would also leave. Laura then called Crystal and told her to leave. After the phone call Laura told me that her phone went dead. I saw a reflection of tail lights through the front window, and thought that it was Crystal patrolling outside the front of the house.
8. That I was standing at the front of the door with Laura and we were arguing with each other. I heard someone ring the doorbell and so I turned on the porch light to Laura's house. I then tried to look through the peephole to see who was on the other side of the door. Before my eye could adjust somebody yelled, "Open the door!" I thought that it was Crystal and her male friend to beat me up and quickly responded, "Call the cops!"
9. That the person on the other side of the door kicked the door in an attempt to enter Laura's house. I used my foot and my body weight to hold the door back so that the person on the other side of the door could not gain entry to the house. At the same time Laura was yelling for me to let the people on the other side of the door in and for me to leave through the back of the house.
10. That while I was trying to keep the door closed, I had no knowledge that the person on the other side of the door was a police officer. I was unable to look

outside the window or the peephole because I concentrated all my efforts into preventing whoever was on the other side of the door from coming into Laura's house.

11. That eventually the people outside of Laura's house overpowered me and opened the door. After the door opened I immediately recognized that the people outside were police officers so, without hesitation, I got on the ground and put my hands behind my back. Three officers had me pinned in only two seconds. After pinning me, one of the officers used his/her Taser on my back.
12. That after I was tased, I could not move. There were enough officers on top of me so that I could not move. Shortly thereafter both of my hands were handcuffed. I tried to explain that I mistakenly thought that the people on the other side of Laura's front door were Laura's friends, not police officers. One of the officers told me my story was, "Bullshit."
13. That one of the officers then told me that he had his Taser, "Up [my] asshole." I then tried to explain myself again stating that I thought the cops were in fact not cops, but Crystal and her male friend. A female officer then told me that I heard the officers identify themselves as the Boise Police Department. I do not recall ever hearing the officers identify themselves as Boise Police officers.
14. That I then asked to be let up off the floor because I could not breath and the handcuffs felt tight. As I was saying I could not breathe, one of the officers tased me on my right wrist. I was then told by one of the officers that "If you [I] move again I'm gonna stick this Taser up your ass and pull the trigger again!" I kept

screaming that I was unable to breathe. One of the officers then tased me again, this time in between my butt and my balls.

15. That an officer then asked me if I wanted to be tased again. I quickly replied that I did not want to be tased, but the officer spoke over me saying that, "I haven't searched you yet." I was then tased one more time in between my buttocks. I was told by one of the officers that, "I [he] fear for my safety, I have not searched you sir." I was also told that if I moved again I would be tased again.
16. That a couple of seconds went by, after which I asked to be let up. The same officer that said he feared for his safety then told me that he had his Taser on my balls. After that, I tried to explain my situation one more time, one of the officers again said my story was bullshit. The officers then stood me up and I was able to breathe regularly again.
17. That the female officer then requested my wallet and identified me as Jerry Amidon. After the identification, I was taken outside where an emergency medical services worker checked on me. The medical worker took pictures of my back where I was tased. Neither the officers nor the ambulance workers took pictures of my taser marks in between my butt or my wrist.
18. That I was then taken to Boise Police Department where I was interrogated and eventually charged with three misdemeanor crimes.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Gerald Amidon
Gerald Amidon

SUBSCRIBED AND SWORN to before me this 20 day of July, 2009.

Gerald A. Hunkle
Notary Public
Commission Expires: November 24, 2014

Table of Exhibits	
Exhibit A	Tape Recording, Officer Bammert
Exhibit B	Ombudsman's Official Report
Exhibit C	Bammert's Police Report
Exhibit D	Draft Federal Complaint