

<p>#</p> <p>DISTRICT COURT, ROUTT COUNTY, COLORADO</p> <p>Court Address: 1955 Shield Drive, P.O. Box 773117  Steamboat Springs, Colorado 80477-3117  (970) 879-5020</p>	
<p><b>Plaintiff: KATHY "CARGO" RODEMAN</b>  v.  <b>Defendants:</b></p> <p><b>ERIK FOSTER</b>, individually and in his official capacity as an Officer with the Oak Creek, Colorado Police Department,  <b>RUSSELL CATERINICCHIO</b>, individually and in his official capacity as Chief of the Oak Creek, Colorado Police Department,  <b>The TOWN OF OAK CREEK, COLORADO, and Oak Creek Town Board Members</b>  <b>J. ELIOT</b>, individually and in his official capacity as Town Board Member,  <b>CHUCK WISECUP</b>, individually and in his official capacity as Town Board Member,  <b>DAVE FISHER</b>, individually and in his official capacity as Town Board Member,  <b>JOSH VOORHIS</b>, individually and in his official capacity as Town Board Member,  <b>WENDY GUSTAFSON</b>, individually and in her official capacity as Town Board Member,  <b>GERRY GREENWOOD</b>, individually and in his official capacity as Town Board Member, and  <b>DAVE EGE</b>, individually and in his official capacity as Town Board Member</p>	<p><b>COURT USE ONLY</b></p>
<p style="text-align: center;">Kristopher L. Hammond  Hammond Law Offices  P.O. Box 774425, 1041 Lincoln Avenue, Suite 200  Steamboat Springs, Colorado 80477-4425  Telephone: (970) 879-6060 FAX: (970) 879-5199  E-mail: klh@yampalaw.com Atty. Reg. # 15034</p>	<p>Case Number: <b>09 CV</b> ____</p>
<p><b>COMPLAINT AND JURY DEMAND</b></p>	

COMES NOW Plaintiff, Kathy “Cargo” Rodeman, by and through her attorneys, Hammond Law Offices, and states her complaint against Defendants as follows:

### **I. JURISDICTION AND PARTIES**

1. At all time pertinent hereto, Plaintiff was a resident of the Town of Oak Creek, Routt County, Colorado.

2. At all times pertinent hereto, Defendants Erik Foster and Russell Caterinicchio were peace officers employed with the Oak Creek Police Department (“OCPD”) in Routt County, Colorado.

3. At all times pertinent hereto Defendant the Town Of Oak Creek (“Oak Creek”) was a governmental entity (Statutory Town) organized under the laws of Colorado.

4. At all times pertinent hereto Defendants J. Eliot (“Eliot”), Chuck Wisecup (“Wisecup”), Dave Fisher (“Fisher”), Josh Voorhis (“Voorhis”), Wendy Gustafson (“Gustafson”), Gerry Greenwood (“Greenwood”), and Dave Ege (“Ege”) were duly elected members of the Town Board of the Town of Oak Creek in Routt County, Colorado.

5. This complaint arises from torts and other violations committed by Defendants in Routt County, Colorado.

### **II. FACTUAL BACKGROUND**

6. From September 2007 to the Summer of 2008, citizens of the Town of Oak Creek registered grievances with the Town of Oak Creek about mistreatment, abuse, and excessive force committed by Defendants Police Sgt. Erik Foster and/or Chief Russell Caterinicchio.

7. The Town of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, conducted forums wherein citizens had an opportunity to share their views on the conduct of the OCPD.

8. Many citizens of Oak Creek spoke out at the first forum making complaints against Defendants Police Sgt. Erik Foster and Chief Russell Caterinicchio.

9. Defendant Chief Russell Caterinicchio insisted that all complaints against OCPD be directed solely through Caterinicchio and not through the Town Board.

10. The Town of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, acquiesced to Defendant Chief

Russell Caterinicchio's request to control all complaints.

11. Defendant Chief Russell Caterinicchio ignored and buried all complaints he received, and never seriously investigated or reported any complaints.

12. Defendant Chief Russell Caterinicchio took it upon himself to conduct a "survey" on OCPD services.

13. Defendant Chief Russell Caterinicchio's "survey" was either a sham or it never occurred.

14. The Town of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, intentionally withheld from the public the results of Defendant Chief Russell Caterinicchio's "survey".

15. Defendant Eliot, then mayor of the Town of Oak Creek, requested that the personnel files of defendants Sgt. Erik Foster and Defendant Chief Russell Caterinicchio be reviewed by the Town Board to insure that adequate background checks and psychological evaluations had been performed on Defendants Foster and Caterinicchio.

16. Defendant Chief Russell Caterinicchio refused to release the requested personnel files, claiming that OCPD was a "paramilitary organization" and the requested records were confidential and protected by statute.

17. The Town of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, voted to keep itself ignorant of the contents of the personnel files of Defendants Sgt. Erik Foster and Chief Russell Caterinicchio.

18. At a second forum, on 29 May, 2009, the Town of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, posted a written notice at the forum entrance stating, in part, that the forum "is an opportunity for POSITIVE interaction between the citizens of Oak Creek and their Police officers. This WILL NOT be a venue for negative accusations regarding personal interactions with our officers. There is a separate procedure to be followed if you have an individual complaint against an officer..."

19. The posting of the notice mentioned above was an intentional act, purposefully committed by The Town of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege.

20. In so acting, the Town of Oak Creek, acting through the Town Board members

Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege showed no regard for the rights and feelings of the citizens of Oak Creek, including Plaintiff.

21. The Town of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, made it clear to Defendants Sgt. Erik Foster and Chief Russell Caterinicchio that citizens' grievances against the OCPD would not be heard or redressed, and that personnel files would remain secret and forbidden to all.

22. Upon information and belief, no member of the Town Board of Oak Creek or anyone else in Oak Creek has ever reviewed the personnel files of Defendants Sgt. Erik Foster and Chief Russell Caterinicchio.

21. Plaintiff Kathy "Cargo" Rodeman ("Rodeman") had been the Mayor of the Town of Oak Creek prior to 2008.

22. As Mayor, Plaintiff Rodeman was a vocal critic of the Oak Creek Police Department.

23. On the night of 19 July, 2008, Defendant Sgt. Erik Foster saw Plaintiff's car parked in front of the Colorado Bar in downtown Oak Creek, Routt County, Colorado.

24. Defendant Sgt. Erik Foster followed Plaintiff's car for approximately one-third of a mile to Plaintiff's driveway.

25. Defendant Sgt. Erik Foster claims that he observed a turn signal violation, when in truth Plaintiff did signal her turns.

26. Plaintiff got out of her car and ran inside her home. Plaintiff's passengers followed.

27. Defendant Sgt. Erik Foster chased after Plaintiff on foot.

28. Defendant Sgt. Erik Foster tried to open the door to Plaintiff's home, but Plaintiff's passenger pushed against the door from the inside to try to keep Foster out.

29. Defendant Sgt. Erik Foster had no search or arrest warrant.

30. Defendant Sgt. Erik Foster did not have consent to enter Plaintiff's home.

31. Defendant Sgt. Erik Foster knew that he had neither warrant nor consent, but he overpowered Plaintiff's passenger and forced his way into Plaintiff's home.

32. Defendant Sgt. Erik Foster knew that entering a strange home at night without backup was dangerous to himself and others, but he did it anyway.

33. Defendant Sgt. Erik Foster knew, or should have known, that he had no right to enter a home in pursuit of a turn signal violator, but he did it anyway.

34. By forcing his way into Plaintiff's home under such circumstances Defendant Sgt. Erik Foster acted outrageously and intentionally disregarded Plaintiff's rights against trespass. In so doing, Foster acted willfully, wantonly, and illegally.

35. Defendant Sgt. Erik Foster ran to Plaintiff's bedroom and found Plaintiff seated on her bed talking to 911 on the telephone.

36. Plaintiff was begging 911 to send a different officer to her house.

37. Defendant Sgt. Erik Foster allowed Plaintiff to talk to 911 for a few seconds.

38. When Plaintiff told 911 that Defendant Sgt. Erik Foster had pushed through the door, Foster grabbed Plaintiff's hand and began pulling on Plaintiff's arm.

39. Plaintiff posed no physical threat to Defendant Sgt. Erik Foster.

40. Plaintiff was not armed.

41. Defendant Sgt. Erik Foster shocked Plaintiff with a TASER as a method of punishment or coercion as she covered on the floor of her bedroom begging not to be TASEd, in violation of Oak Creek Police Department ("OCPD") published procedures.

42. Defendant Sgt. Erik Foster knew that using the TASER on Plaintiff as a method of punishment or coercion was dangerous and against OCPD published procedures, but Foster intentionally used the TASER on Plaintiff anyway.

43. Defendant Sgt. Erik Foster knew that shocking Plaintiff with a TASER, even though Plaintiff posed no physical threat to Foster, was dangerous and against OCPD published TASER procedures, but Foster intentionally used the TASER on Plaintiff anyway.

44. Defendant Sgt. Erik Foster willfully, wantonly, and illegally shocked Plaintiff with a TASER a second time as a method of punishment or coercion as she covered on the floor of her bedroom begging not to be TASEd, in violation of OCPD published procedures.

45. Defendant Sgt. Erik Foster willfully, wantonly, and illegally shocked Plaintiff

with a TASER a second time, even though Plaintiff posed no physical threat to Foster, in violation of OCPD published TASER procedures.

46. By using the TASER under such circumstances, Defendant Sgt. Erik Foster acted outrageously and knowingly disregarded Plaintiff's rights against assault and battery. In so doing, Foster acted willfully, wantonly, and illegally.

47. Defendant Sgt. Erik Foster willfully and wantonly conducted an illegal, warrantless search of Plaintiff's home.

48. Defendant Sgt. Erik Foster willfully and wantonly conducted an illegal, warrantless search of Plaintiff's car.

49. Defendant Sgt. Erik Foster willfully, wantonly, and illegally arrested Plaintiff and took her to jail.

50. Defendant Sgt. Erik Foster willfully and wantonly failed to have Plaintiff examined by an EMT after TASERing her, in direct violation of OCPD police procedures manual.

51. Defendant Chief Russell Caterinicchio was Defendant Sgt. Erik Foster's supervisor and superior.

52. Defendant Chief Russell Caterinicchio knew that a police officer in the United States does not have the right to force his way into a citizen's home in hot pursuit of a turn signal violator.

53. Upon information and belief, Defendant Chief Russell Caterinicchio willfully, wantonly, and wrongly trained Defendant Sgt. Erik Foster that Foster had the right to force his way into a citizen's home on suspicion of a turn signal violation.

54. Upon information and belief, Defendant Chief Russell Caterinicchio willfully, wantonly, and wrongly trained Defendant Sgt. Erik Foster that Foster had the right to shock citizens with a TASER as a method of punishment or coercion, in direct violation of OCPD published procedures.

55. Upon information and belief, Defendant Chief Russell Caterinicchio willfully, wantonly, and wrongly trained Defendant Sgt. Erik Foster that Foster had the right to shock citizens with a TASER who posed no physical threat, in direct violation of OCPD published procedures.

56. Defendant Chief Russell Caterinicchio willfully and wantonly created an

environment in Oak Creek which made Defendant Sgt. Erik Foster believe that Foster's actions would always be supported and would never be questioned.

57. Defendant Chief Russell Caterinicchio willfully and wantonly conducted a sham "review" of Defendant Sgt. Erik Foster's actions which, not surprisingly, wholeheartedly supported Foster's actions.

58. Defendant Chief Russell Caterinicchio tried to cover up the grave errors he and Defendant Sgt. Erik Foster committed by unilaterally rewriting the Town Board's published OCPD TASER procedures in a way that supported Foster's conduct, and passing off the rewrite as the Town's doing.

59. As a direct result of the conduct of Defendants as above alleged, Plaintiff endured electrical shock, pain, suffering, humiliation, illegal forced entry into her home, trespass, loss of privacy in her own home, illegal unconstitutional searches of her home and car, illegal arrest, loss of liberty, scarring, emotional distress, and loss of enjoyment of life.

### **III. CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF (Against Defendant Sgt. Erik FOSTER): Assault**

60. Plaintiff incorporates the allegations contained in paragraphs 1 through 59 as if fully set forth herein.

61. Defendant Sgt. Erik Foster intended to cause an offensive or harmful physical contact with the Plaintiff, or intended to place the Plaintiff in apprehension of such contact.

62. Defendant Sgt. Erik Foster placed the Plaintiff in apprehension of immediate physical contact.

63. That contact was harmful and offensive.

64. As a direct result of the conduct of Defendant as above alleged, Plaintiff endured electrical shock, pain, suffering, humiliation, scarring, emotional distress, and loss of enjoyment of life.

#### **SECOND CLAIM FOR RELIEF (Against Defendant Sgt. Erik FOSTER): Battery**

65. Plaintiff incorporates the allegations contained in paragraphs 1 through 64 as if fully set forth herein.

66. Defendant Sgt. Erik Foster acted with the intent of making a contact with the Plaintiff's person.

67. Defendant Sgt. Erik Foster's acts resulted in a contact with the person of the Plaintiff.

68. The contact between Defendant Sgt. Erik Foster and Plaintiff was harmful and offensive.

69. The conduct of Defendant Sgt. Erik Foster was willful and wanton, purposefully committed with a disregard of the rights of Plaintiff.

70. As a direct result of the conduct of Defendant as above alleged, Plaintiff endured electrical shock, pain, suffering, humiliation, scarring, emotional distress, and loss of enjoyment of life.

**THIRD CLAIM FOR RELIEF (Against Defendant Sgt. Erik FOSTER):**  
**Trespass**

71. Plaintiff incorporates the allegations contained in paragraphs 1 through 70 as if fully set forth herein.

72. Plaintiff had a statutory right to be free from trespass pursuant to C.R.S. § 18-4-502.

73. The Plaintiff was the owner in lawful possession of her house in Oak Creek, Colorado.

74. Defendant Sgt. Erik Foster intentionally entered upon that property.

75. By forcing his way into Plaintiff's house without warrant or consent, Defendant Sgt. Erik Foster committed trespass.

76. As a direct result of the conduct of Defendant as above alleged, Plaintiff endured electrical shock, pain, suffering, humiliation, illegal forced entry into her home, trespass, loss of privacy in her own home, illegal unconstitutional searches of her home and car, illegal arrest, loss of liberty, scarring, emotional distress, and loss of enjoyment of life.



**FOURTH CLAIM FOR RELIEF (Against Defendant Sgt. Erik FOSTER):**  
**False Imprisonment and False Arrest**

77. Plaintiff incorporates the allegations contained in paragraphs 1 through 76 as if fully set forth herein.

78. Defendant Sgt. Erik Foster intended to restrict Plaintiff's freedom of movement.

79. Defendant Sgt. Erik Foster's actions were willful and wanton, purposefully committed with a disregard of the rights of Plaintiff.

80. Plaintiff's freedom of movement was restricted for a period of time directly by an act of Defendant Sgt. Erik Foster.

81. Plaintiff was aware that her freedom of movement was restricted by the acts of Defendant Sgt. Erik Foster.

82. As a direct result of the conduct of Defendant Sgt. Erik Foster as above alleged, Plaintiff endured illegal arrest, loss of liberty, emotional distress, and loss of enjoyment of life.

**FIFTH CLAIM FOR RELIEF (Against Defendant Sgt. Erik FOSTER):**  
**Violation of Civil Rights**

83. Plaintiff incorporates the allegations contained in paragraphs 1 through 82 as if fully set forth herein.

84. Defendant Sgt. Erik Foster acted under color of State Law when he acted in a willful and wanton manner, as alleged above.

85. At all times pertinent hereto, Plaintiff had a clearly established Constitutional right to be secure in her person, house, papers and effects and to be free from unreasonable searches and seizures under both Amendment IV to the U.S. Constitution and Article II, §7 of the Colorado Constitution.

86. The actions of Defendant Sgt. Erik Foster, as alleged above, deprived Plaintiff of her right to be secure against unreasonable searches and seizures, in violation of her rights, privileges and immunities secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

87. At all times pertinent hereto, Plaintiff had a clearly established Constitutional right to be free from cruel and unusual punishment under Amendment VIII to the United States Constitution and Article II, § 20 of the Colorado Constitution.

88. The actions of Defendant Sgt. Erik Foster as, alleged above, deprived Plaintiff of her right to be free from cruel and unusual punishment, in violation of her rights, privileges and immunities secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

89. The actions of Defendant Sgt. Erik Foster, as alleged above, deprived Plaintiff of her right to be free from illegal TASER shocks, in violation of her rights, privileges and immunities secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

90. At all times pertinent hereto, Plaintiff had a clearly established Constitutional right to enjoy and defend her life and liberty; of acquiring, possessing, and protecting property; and of seeking and obtaining her safety and happiness under Article II, §3 of the Colorado Constitution.

91. The actions of Defendant Sgt. Erik Foster, as alleged above, deprived Plaintiff of her Constitutional right to enjoy and defend her life and liberty; of acquiring, possessing, and protecting property; and of seeking and obtaining her safety and happiness, in violation of her rights, privileges and immunities secured by Article II, §3 of the Colorado Constitution and laws, in violation of **42 U.S.C. Section 1983**.

92. At all times pertinent hereto, Plaintiff had a clearly established Constitutional right to be free from deprivation of her liberty without due process of law under Amendment V to the United States Constitution and Article II, § 25 of the Colorado Constitution.

93. The actions of Defendant Sgt. Erik Foster, as alleged above, violated Plaintiff's right to be free from deprivation of her liberty without due process of law secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

94. At all times pertinent hereto, Plaintiff had a clearly established due process Constitutional right to be free from excessive police force under Amendment V to the United States Constitution and Article II, § 25 of the Colorado Constitution.

95. The actions of Defendant Sgt. Erik Foster, as alleged above, violated Plaintiff's right to be free from excessive police force secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

96. As a direct result of the conduct of Defendant Sgt. Erik Foster, as above alleged, Plaintiff endured electrical shock, pain, suffering, humiliation, illegal forced entry into her home, trespass, loss of privacy in her own home, illegal unconstitutional searches of her home and car, illegal arrest, loss of liberty, scarring, emotional distress, and loss of enjoyment of life.

**SIXTH CLAIM FOR RELIEF (Against Defendant Sgt. Erik FOSTER, Individually):**

**Extreme and Outrageous Conduct**

97. Plaintiff incorporates the allegations contained in paragraphs 1 through 96 as if fully set forth herein.

98. By acting as alleged above, Defendant Sgt. Erik Foster engaged in extreme and outrageous conduct.

99. Defendant Sgt. Erik Foster acted recklessly or with the intent of causing the Plaintiff severe emotional distress.

100. Defendant Sgt. Erik Foster's conduct, as alleged above, caused the Plaintiff severe emotional distress.

101. As a direct result of the conduct of Defendant Sgt. Erik Foster as above alleged, Plaintiff endured electrical shock, pain, suffering, humiliation, illegal forced entry into her home, trespass, loss of privacy in her own home, illegal unconstitutional searches of her home and car, illegal arrest, loss of liberty, scarring, emotional distress, and loss of enjoyment of life.

**SEVENTH CLAIM FOR RELIEF  
(Against Defendant Chief Russell CATERINICCHIO, Individually):  
Extreme and Outrageous Conduct**

102. Plaintiff incorporates the allegations contained in paragraphs 1 through 101 as if fully set forth herein.

103. By intentionally training Defendant Sgt. Erik Foster that Foster had the right to force his way into the home of a turn signal violator, and that Foster had the right to TASER citizens who posed no physical threat, and that Foster had the right to use a TASER as a method of punishment or coercion, Defendant Chief Russell Caterinicchio engaged in extreme and outrageous conduct.

104. Defendant Chief Russell Caterinicchio acted recklessly or with the intent of causing citizens like Plaintiff severe emotional distress.

105. Defendant Chief Russell Caterinicchio's training, as alleged above, caused Defendant Sgt. Erik Foster to act as he did against Plaintiff, and caused the Plaintiff severe emotional distress.

106. As a direct result of the conduct of Defendant Chief Russell Caterinicchio, as above alleged, Plaintiff endured electrical shock, pain, suffering, humiliation, illegal forced entry into her home, trespass, loss of privacy in her own home, illegal unconstitutional searches of her

home and car, illegal arrest, loss of liberty, scarring, emotional distress, and loss of enjoyment of life.

**EIGHTH CLAIM FOR RELIEF**  
**(Against Defendant Chief Russell CATERINICCHIO, Individually):**  
**Improper Training and Supervision**

107. Plaintiff incorporates the allegations contained in paragraphs 1 through 106 as if fully set forth herein.

108. Defendant Chief Russell Caterinicchio improperly trained Defendant Sgt. Erik Foster that Foster had the right to force his way into the home of a turn signal violator, and that Foster had the right to TASER citizens who posed no physical threat, and that Foster had the right to use a TASER as a method of punishment or coercion.

109. Defendant Chief Russell Caterinicchio improperly supervised Defendant Sgt. Erik Foster by controlling all complaints against Foster, by ignoring and burying those complaints, by refusing to disclose the contents of Foster's personnel file to the mayor, by conducting a sham "survey" of police services in Oak Creek, by conducting a sham "review" of Foster's attack on plaintiff alleged herein, and by attempting to cover up his and Foster's misconduct.

110. Defendant Chief Russell Caterinicchio's improper training and supervision of Defendant Sgt. Erik Foster caused Foster to act against Plaintiff as alleged above.

111. As a direct result of the conduct of Defendant Chief Russell Caterinicchio, as above alleged, Plaintiff endured assault, battery, electrical shock, pain, suffering, humiliation, illegal forced entry into her home, trespass, loss of privacy in her own home, illegal unconstitutional searches of her home and car, illegal arrest, loss of liberty, scarring, emotional distress, and loss of enjoyment of life.

**NINTH CLAIM FOR RELIEF (Against Defendant Chief Russell CATERINICCHIO):**  
**Violation of Civil Rights**

112. Plaintiff incorporates the allegations contained in paragraphs 1 through 111 as if fully set forth herein.

113. Defendant Chief Russell Caterinicchio acted under color of State Law when he intentionally mis-trained Defendant Sgt. Erik Foster, failed to properly supervise Foster, ignored and buried complaints against Foster, refused to disclose the contents of Foster's personnel file to the mayor, conducting a sham "survey" of police services in Oak Creek, conducting a sham "review" of Foster's attack on plaintiff alleged herein, and attempted to cover up his and Foster's misconduct.

114. At all times pertinent hereto, Plaintiff had a clearly established Constitutional right to be secure in her person, house, papers and effects and to be free from unreasonable searches and seizures under both Amendment IV to the U.S. Constitution and Article II, §7 of the Colorado Constitution.

115. The actions of Defendant Chief Russell Caterinicchio as alleged above worked to deprive Plaintiff of her right to be secure against unreasonable searches and seizures, in violation of her rights, privileges and immunities secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

116. At all times pertinent hereto, Plaintiff had a clearly established Constitutional right to be free from cruel and unusual punishment under Amendment VIII to the United States Constitution and Article II, § 20 of the Colorado Constitution.

117. The actions of Defendant Chief Russell Caterinicchio, as alleged above, worked to deprive Plaintiff of her right to be free from cruel and unusual punishment, in violation of her rights, privileges and immunities secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

118. The actions of Defendant Chief Russell Caterinicchio, as alleged above, worked to deprive Plaintiff of her right to be free from illegal TASER shocks, in violation of her rights, privileges and immunities secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

119. At all times pertinent hereto, Plaintiff had a clearly established Constitutional right to enjoy and defend her life and liberty; of acquiring, possessing, and protecting property; and of seeking and obtaining her safety and happiness under Article II, §3 of the Colorado Constitution.

120. The actions of Defendant Chief Russell Caterinicchio, as alleged above, worked to deprive Plaintiff of her Constitutional right to enjoy and defend her life and liberty; of acquiring, possessing, and protecting property; and of seeking and obtaining her safety and happiness, in violation of her rights, privileges and immunities secured by Article II, §3 of the Colorado Constitution and laws, in violation of **42 U.S.C. Section 1983**.

121. At all times pertinent hereto, Plaintiff had a clearly established Constitutional right to be free from deprivation of her liberty without due process of law under Amendment V to the United States Constitution and Article II, § 25 of the Colorado Constitution.

122. The actions of Defendant Chief Russell Caterinicchio, as alleged above, resulted in the violation of Plaintiff's right to be free from deprivation of her liberty without due process

of law secured by the Constitution and laws, in violation of 42 U.S.C. Section 1983.

123. At all times pertinent hereto, Plaintiff had a clearly established due process Constitutional right to be free from excessive police force under Amendment V to the United States Constitution and Article II, § 25 of the Colorado Constitution.

124. The actions of Defendant Chief Russell Caterinicchio, as alleged above, resulted in the violation of Plaintiff's right to be free from excessive police force secured by the Constitution and laws, in violation of 42 U.S.C. Section 1983.

125. As a direct result of the conduct of Defendant Chief Russell Caterinicchio, as above alleged, Plaintiff endured electrical shock, pain, suffering, humiliation, illegal forced entry into her home, trespass, loss of privacy in her own home, illegal unconstitutional searches of her home and car, illegal arrest, loss of liberty, scarring, emotional distress, and loss of enjoyment of life.

#### **TENTH CLAIM FOR RELIEF**

**(Against Defendants Town of Oak Creek and Town Board Members ELIOT, WISECUP, FISHER, VOORHIS, GUSTAFSON, GREENWOOD, AND EGE individually):**  
**Improper Training, Supervision, and Retention**

126. Plaintiff incorporates the allegations contained in paragraphs 1 through 125 as if fully set forth herein.

127. The Town Of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, engaged in no meaningful supervision whatsoever of its police department.

128. The Town Of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, took no action whatsoever to determine whether its police officers Defendants Sgt. Erik Foster and Chief Russell Caterinicchio were properly trained.

129. The Town Of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, intentionally kept itself ignorant of complaints against its police officers Defendants Sgt. Erik Foster and Chief Russell Caterinicchio.

130. The Town of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, voted to keep itself ignorant of the contents of the personnel files of Defendants Sgt. Erik Foster and Chief Russell Caterinicchio.

131. The Town of Oak Creek acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, had a duty to the citizens of Oak Creek to take reasonable steps to insure that the officers of the OCPD were properly trained and properly supervised.

132. The Town of oak Creek acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, had a duty to the citizens of Oak Creek to terminate the employment of police officers who acted improperly.

133. The Town of oak Creek acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, intentionally abdicated these duties.

134. As a direct result of the conduct of Defendant The Town of Oak Creek acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, as above alleged, Plaintiff endured assault, battery, electrical shock, pain, suffering, humiliation, illegal forced entry into her home, trespass, loss of privacy in her own home, illegal unconstitutional searches of her home and car, illegal arrest, loss of liberty, scarring, emotional distress, and loss of enjoyment of life.

**ELEVENTH CLAIM FOR RELIEF**  
**(Against Defendants Town of Oak Creek and Town Broad members ELIOT, WISECUP, FISHER, VOORHIS, GUSTAFSON, GREENWOOD, AND EGE):**  
**Violation of Civil Rights**

135. Plaintiff incorporates the allegations stated in Paragraphs 1 - 134 as if fully set forth herein.

136. By deferring to Defendant Chief Russell Caterinicchio on all police matters, and limiting the forums to positive comments only, and by voting to keep itself ignorant of the contents of police officers' personnel files, Defendants Town of Oak Creek, acting through the Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, supported, adopted, approved and ratified the policy or custom of their law enforcement officials acting as they pleased without oversight, supervision or consequence, and this policy or custom in effect became the policy or custom of the Board itself.

137. Oak Creek's policy or custom was the moving force behind Defendant Sgt. Erik Foster's offenses against Plaintiff on the night of 19 July 2008.

138. Defendants Town of Oak Creek, acting through the Town Board members

Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, acted under color of State Law when they adopted the policy of non-oversight as alleged above.

139. Town Board members Defendants Eliot, Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, acted under color of State Law when they intentionally adopted the policy of non-oversight as alleged above.

140. At all times pertinent hereto, Plaintiff had a clearly established Constitutional right to be secure in her person, house, papers and effects and to be free from unreasonable searches and seizures under both Amendment IV to the U.S. Constitution and Article II, §7 of the Colorado Constitution.

141. The actions of Defendants, as alleged above, deprived Plaintiff of her right to be secure against unreasonable searches and seizures, in violation of her rights, privileges and immunities secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

142. At all times pertinent hereto, Plaintiff had a clearly established Constitutional right to be free from cruel and unusual punishment under Amendment VIII to the United States Constitution and Article II, § 20 of the Colorado Constitution.

143. The actions of Defendants, as alleged above, deprived Plaintiff of her right to be free from cruel and unusual punishment, in violation of her rights, privileges and immunities secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

144. The actions of Defendants, as alleged above, deprived Plaintiff of her right to be free from illegal TASER shocks, in violation of her rights, privileges and immunities secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

145. At all times pertinent hereto, Plaintiff had a clearly established Constitutional right to enjoy and defend her life and liberty; of acquiring, possessing, and protection property; and of seeking and obtaining her safety and happiness under Article II, §3 of the Colorado Constitution.

146. The actions of Defendants, as alleged above, deprived Plaintiff of her Constitutional right to enjoy and defend her life and liberty; of acquiring, possessing, and protection property; and of seeking and obtaining her safety and happiness, in violation of her rights, privileges and immunities secured by Article II, §3 of the Colorado Constitution and laws, in violation of **42 U.S.C. Section 1983**.

147. At all times pertinent hereto, Plaintiff had a clearly established Constitutional



right to be free from deprivation of her liberty without due process of law under Amendment V to the United States Constitution and Article II, § 25 of the Colorado Constitution.

148. The actions of Defendants, as alleged above, violated Plaintiff's right to be free from deprivation of her liberty without due process of law secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

149. At all times pertinent hereto, Plaintiff had a clearly established due process Constitutional right to be free from excessive police force under Amendment V to the United States Constitution and Article II, § 25 of the Colorado Constitution.

150. The actions of Defendants, as alleged above, violated Plaintiff's right to be free from deprivation of her liberty without due process of law secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

151. At all times pertinent hereto, Plaintiff had a clearly established statutory right to be free from trespass under C.R.S. § 18-4-502.

152. The actions of Defendants, as alleged above, violated Plaintiff's right to be free from trespass secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

153. At all times pertinent hereto, Plaintiff had a clearly established statutory right to be free from assault under C.R.S. § 18-3-203 and § 18-3-204.

154. The actions of Defendants, as alleged above, violated Plaintiff's right to be free from assault secured by the Constitution and laws, in violation of **42 U.S.C. Section 1983**.

**TWELFTH CLAIM FOR RELIEF**  
**(Against Defendants Town of Oak Creek and Town Board members ELIOT, WISECUP, FISHER, VOORHIS, GUSTAFSON, GREENWOOD, AND EGE):**  
**Respondeat Superior**

155. Plaintiff incorporates the allegations contained in paragraphs 1 through 154 as if fully set forth herein.

156. Defendants Chief Russell Caterinicchio and Sgr. Erik Foster were acting in the course and scope of their employment when they committed the acts alleged herein.

157. The Town of Oak Creek and Town Board members Eliot Wisecup, Fisher, Voorhis, Gustafson, Greenwood, and Ege, are liable for the misconduct of their employees under

the doctrine of *respondeat superior*.

#### **IV. PRAYER**

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in her favor and against Defendants, together with compensatory damages, interest, costs, attorney fees pursuant to **42 U.S.C. §1988**, and any other relief this Court deems appropriate.

#### **PLAINTIFF DEMANDS JURY TRIAL AND PAYS THE REQUISTE FEE THROUGH LEXISNEXIS**

Respectfully submitted this 17th day of July, 2009.

*The duly signed original is held in the file  
located at Hammond Law Offices  
/s/ Kristopher L. Hammond*

By:

\_\_\_\_\_  
Kristopher L. Hammond, #15034  
Attorney for Plaintiff

Plaintiff's Address:

P.O. Box 547  
Oak Creek, CO 80467-0547

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **Complaint and Jury Demand**, was filed electronically via LexisNexis File and Serve to the Court, the duly signed original held in the file located at Hammond Law Offices, on July 17, 2009, and via U.S. Mail, postage prepaid, to the following:

Cargo Rodeman  
P.O. Box 547  
Oak Creek, CO 80467-0547

*/s/ Susan Ellis*  
*Filing No.* \_\_\_\_\_

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