

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

NATHAN NEWHARD,)	
)	
Plaintiff,)	
)	
v.)	
)	
MATT BORDERS, individually and)	
in his official capacity,)	
Defendant)	Civil Action No.
)	
and)	
)	
UNNAMED TOWN OF CULPEPER POLICE)	
OFFICERS 1-100, individually and in their)	
official capacity,)	
Defendant)	
)	
and)	
)	
SCOTT H. BARLOW, Chief of Police)	
in his official capacity,)	
Defendant)	
)	
and)	
)	
TOWN OF CULPEPER POLICE)	
DEPARTMENT)	
Defendant)	
)	

COMPLAINT AND JURY TRIAL DEMAND

Comes Now the Plaintiff, Nathan Newhard, and hereby complains on personal knowledge or information and belief, by and through his attorneys as follows:

INTRODUCTION

1. This action is brought to remedy egregious and unconscionable violations of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution,

pursuant to 42 U.S.C. §1983 and state law claims. This action seeks compensatory and punitive damages to redress the deprivation of rights guaranteed to the Plaintiff Newhard.

2. Plaintiff is a law-abiding citizen of Culpeper, Virginia. On March 30, 2008, Plaintiff Newhard was severely emotionally harmed and suffered extreme embarrassment without provocation, justification or good cause by Sergeant Matt Borders and other unnamed town officers who are members of the Town of Culpeper Police Department. Plaintiff Nathan Newhard, experienced great emotional distress and suffering as a result of the policies and customs of the Town of Culpeper Police Department.

JURISDICTION AND VENUE

3. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. §1983 and on the pendent jurisdiction of this Court to entertain claims arising under state law.

4. Venue is properly placed in this district under 42 U.S.C. §1983 and 28 U.S.C. §1391(a) because the central office of the Defendants is within this district; a substantial part of the events giving rise to this claim arose in this district; and records relevant to the practices complained of herein are located in this district.

NOTICE

5. On September 22, 2008, Plaintiff Newhard, through counsel, by hand-delivery and U.S. next day mail, complied with the notice requirements of §15.2-209 of the Code of Virginia, by providing notice of this tort claim to the Mayor of the Town of Culpeper, Hon. Pranas Rimeiks and Robert Bendall, Attorney for the Town of Culpeper, Virginia. A copy of the notice is attached to this Complaint as "Exhibit A".

PARTIES

6. Plaintiff, NATHAN NEWHARD, (“Plaintiff Newhard”) was, at all material times, a resident of Culpeper County, Virginia.

7. Defendant, MATT BORDERS, (“Sergeant Borders”) was, at all material times, a Sergeant employed by the Town of Culpeper Police Department in Culpeper, Virginia. Defendant Sergeant Borders was at all times relevant to this complaint a duly appointed and acting officer of the police department of the Town of Culpeper, acting under color of law, to wit, under the color of statutes, ordinances, regulations, polices, customs, and usages of the Commonwealth of Virginia and/or the Town of Culpeper.

8. Defendants, UNNAMED TOWN OF CULPEPER POLICE OFFICERS (01-100) hereinafter (“Defendants Unnamed Officers”) were, at all material times, police officers employed by the Town of Culpeper Police Department in Culpeper, Virginia. Defendants were, at all times relevant to this Complaint, duly appointed and acting as officers of the police department of the Town of Culpeper, acting under color of law, to wit, under the color of statutes, ordinances, regulations, polices, customs, and usages of the Commonwealth of Virginia and/or the Town of Culpeper.

9. Defendant, SCOTT H. BARLOW, (“Chief Barlow”) was, at all material times, the Chief of Police employed by the Town of Culpeper Police Department in Culpeper, Virginia. Defendant Barlow was, at all times relevant to this Complaint, a commanding officer and was responsible for the training, supervision and conduct of the Town of Culpeper Police Department law enforcement officers. Defendant Barlow is also responsible for enforcing the regulations of the Town of Culpeper Police Department and ensuring that its officers obey the laws of the Commonwealth of Virginia and the United States.

10. Defendant, TOWN OF CULPEPER POLICE DEPARTMENT, (“Defendant Culpeper Police Department.”) is a department, agency, bureau and/or subdivision of the Town of Culpeper, Culpeper County in the State of Virginia. Defendant is a “person” for purposes of enforcement of the rights guaranteed under 42 U.S.C.§1983 and the Fourteenth Amendment of the U.S. Constitution.

ALLEGATION OF FACTS

11. On March 30, 2008, Defendant Sergeant Borders, Defendant Unnamed Officers and Defendant Culpeper Police Department intentionally inflicted serious mental injury on Plaintiff through the conduct, under the color of law, of its duly authorized agents, Defendant Sergeant Borders, and Defendant Unnamed Officers, acting in their official capacity as sworn peace officers in the Town of Culpeper, Culpeper County, Virginia and in the official performance of their duties.

12. During the early morning hours of March 30, 2008, an unnamed Town of Culpeper Officer arrested Mr. Newhard for Driving Under the Influence and Possession of a Firearm.

13. At some point a town police officer conducted a search of Nathan Newhard and found a cellular telephone in his possession. An unnamed officer proceeded to examine the cellular telephone and opened the pictures folder within the cellular telephone.

14. The pictures folder contained private nude picture messages of Plaintiff Newhard’s long term girlfriend, Jessie Casella.

15. At some point the cellular telephone came into the hands of Defendant Sergeant Borders, a sergeant of the Town of Culpeper Police.

16. Defendant Sergeant Borders then alerted other officers in the station house so they could view the private pictures messages without permission from Plaintiff Newhard or Ms. Jessie Casella.

17. Defendant Sergeant Borders utilized the Town of Culpeper Police Department's radio system to alert numerous unnamed town officers, and Culpeper County Sheriff Deputies that the private pictures were available for their viewing.

18. Upon information and belief, several officers not associated with the arrest of Nathan Newhard, travelled to the Town of Culpeper Police Department headquarters to view the private picture messages.

19. Plaintiff Newhard was informed by an unnamed County of Culpeper Sheriff's deputy, that Defendant Sergeant Borders and several unnamed officers viewed the private pictures intended for him. He became anxious and paranoid as a result of learning that numerous individuals witnessed Ms. Casella in the explicit photographs.

20. He began to believe that every town police officer and Culpeper deputy sheriff had seen Ms. Casella in a compromising position.

21. Immediately after the arrest, he was questioned by his employer, the County of Culpeper School System, about the pictures.

22. Upon information and belief, the questioning by the school official was prompted by an unnamed town police officer who, improperly and unlawfully discussed the pictures with a school official.

23. As a result of the school system learning of this private issue, Plaintiff Newhard was told that he would not be recommended for continuation as a teacher in the school system.

24. Mr. Newhard believed that he had no other choice than to resign his position because he believed that he would never get a teaching job again after being non-recommended.

25. Since resigning Mr. Newhard has been unable to get a position in his chosen profession – a profession that he loves and dedicated himself to – teaching; instead he provides for himself by working in temporary jobs like 7-11 stores.

26. Sometime in May 2008, Plaintiff Newhard prepared a written citizen complaint against Defendant Sergeant Borders and submitted it to Captain Ricky Pinkson of the Culpeper Police Department.

27. After not receiving a response to his written citizen complaint against Defendant Sergeant Borders, Plaintiff Newhard spoke directly to Captain Pinkson, an officer of the Town of Culpeper Police Department, who berated him and never formally responded to his complaint.

28. The Culpeper Police Department never responded nor addressed Plaintiff Newhard's complaint.

29. Defendants were reckless and callously indifferent to Plaintiff's constitutionally protected rights. Furthermore, Plaintiff Newhard suffered severe emotional distress which severely impacted his mental health and emotional well-being as a direct and proximate result of Defendants' actions.

30. The reckless and indifferent violations of the Plaintiff Newhard's rights were the result of Defendant Culpeper Police Department's policy, practice, or custom to inadequately supervise and properly discipline law enforcement officers who violate residents.

31. Although Defendant Culpeper Police Department may have written rules and regulations concerning the use of sensitive and potentially embarrassing information, these policies are superseded by the predominant, overriding and long standing policy, practice and custom of the Defendant knowingly, willfully, and deliberating to ignore violations, to refuse to take any preventive measures to eliminate the violations; and to impose swift and appropriate sanctions, discipline or other punitive measures on Defendant Culpeper Police Department officers who have violated their rules and regulations.

32. This policy, practice, or custom caused widespread denial of constitutional protections in the Town of Culpeper.

33. The failure of Defendants Chief Barlow and the Town of Culpeper Police Department to provide training and supervision regarding proper searches and protection of a citizen's privacy amounts to a total derogation of their constitutional duties.

COUNT ONE- DELIBERATE INDIFFERENCE

34. Paragraphs 1 through 33 are repeated and re-alleged as if fully set forth herein.

35. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall...deny to any person within its jurisdiction equal protection of the laws." U.S. amend. XIV, §1. Such violations are actionable under 42 U.S.C. §1983.

36. At all times herein Defendant Sergeant Borders engaged in conduct that exhibited deliberate indifference to the constitutional and civil rights of Plaintiff Newhard.

37. At all times herein Defendants Unnamed Officers engaged in conduct that exhibited deliberate indifference to the constitutional and civil rights of Plaintiff Newhard.

38. At all times herein Defendant Chief Barlow maintained a custom, policy or practice that proximately caused and was likely to lead to the deliberate indifference of the constitutional and civil rights of Plaintiff Newhard.

39. At all times herein Defendant Culpeper Police Department maintained a custom, policy or practice that proximately caused and was likely to lead to the deliberate indifference of the constitutional and civil rights of Plaintiff Newhard.

40. The foregoing conduct violates the Equal Protection Clause, pursuant to 42 U.S.C.§1983.

COUNT TWO- RIGHT TO PRIVACY

41. Paragraphs 1 through 33 are repeated and re-alleged as if fully set forth herein.

42. Pursuant to the Fourth Amendment of the United States Constitution all persons are free from unreasonable searches and seizures. Any violations of this substantive due process rights are actionable under 42 U.S.C.§1983.

43. Defendant Sergeant Borders repeated disclosures of Plaintiff's private picture messages violated Plaintiff Newhard's right against unreasonable searches and seizures.

44. Defendant Unnamed Officer's participation in the repeated disclosure of Plaintiff's private picture messages violated Plaintiff's Nathan Newhard's right against unreasonable searches and seizures.

45. Defendant Chief Barlow's and the Town of Culpeper Police Department's failure to properly train its officers and effectively discipline its officers concerning a citizen's constitutional right to privacy indicates that it maintained a pattern, practice, and custom which would lead to violations of constitutional rights.

COUNT THREE – OUTRAGEOUS CONDUCT

46. Paragraphs 1 through 33 are repeated and re-alleged as if fully set forth herein.

47. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that “no State shall...deny to any person within its jurisdiction equal protection of the laws.” U.S. amend. XIV, §1. Specifically, the right to be free from state intrusion into personal privacy is a fundamental constitutional right. Such violations are actionable under 42 U.S.C.§1983.

48. Defendant Sergeant Borders’s actions of displaying the private explicit picture messages of Plaintiff Newhard were brutal, demanding and shocking to the conscience. Defendant Sergeant Borders’s conduct offended the generally accepted standards of decency when he announced over the Defendant Culpeper Police Department’s radio system that other town officers who wanted to see the nude pictures should come into the station to view the private picture messages.

49. Defendants’ conduct was outrageous and shocking to the conscience when it failed to properly address the radio broadcast and Defendant Sergeant Borders’s demeaning conduct.

COUNT FOUR – DEFAMATION

50. Paragraphs 1 through 33 are repeated and re-alleged as if fully set forth herein.

51. The Equal Protection Clause of the U.S. Constitution prohibits those acting under the color of law from making a disparaging publication of a person which causes injury to the reputation of the person and deprives him of liberty or a property interest.

52. Defendant Sergeant Borders published explicit personal and private photographs of that were in the possession of Plaintiff Newhard. The photographs were nude pictures of Jessie

Casella and were intended only for Nathan Newhard. Defendant Sergeant Borders's publication of the photographs caused actual damage to Plaintiff Newhard's reputation. Furthermore, Defendant Sergeant Borders' publication of the photographs caused Nathan Newhard to be deprived of a liberty and/or property right.

53. Defendants' deliberate indifference of the conduct of Defendant Sergeant Borders and ultimately, to the constitutional rights of Plaintiff Newhard resulted in the repeated disparaging publications made to other officers not associated with the initial stop of Plaintiff Newhard and caused injury to his reputation and deprived of his liberty and/or a property interest.

COUNT FIVE- INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

54. Paragraphs 1 through 33 are repeated and re-alleged as if fully set forth herein.

55. Defendant Sergeant Borders intentionally and/or recklessly caused Plaintiff Nathan Newhard severe emotional distress. Defendant Sergeant Borders caused others to gather and ridicule Plaintiff Newhard by exposing private nude picture messages of his long time companion Jessie Casella to various law enforcement officers. Defendant Sergeant Borders intended to cause emotional and financial distress upon Plaintiff Newhard when he subsequently caused the existence of the private nude pictures messages to be released to members of the community; specifically, school administrators.

56. Defendants' behavior surrounding the release of the private nude picture messages which belonged to Ms. Casella and the mockery which followed was so outrageous in character for a law enforcement agency, and so extreme in degree, as to go beyond all possible bounds of decency. Plaintiff Newhard was subjected to Defendants' behavior which so atrocious, immature, and utterly intolerable by law enforcement who is responsible to maintain the civility in the community.

57. Defendants' outrageous actions of releasing the private nude picture messages caused severe emotional distress to Plaintiff Newhard. Plaintiff Newhard has suffered from humiliation, injury to his reputation, disintegration of his romantic relationship with Ms. Casella and severe emotional distress. Plaintiff Newhard is now unable to handle his financial affairs, carry out his family duties and otherwise perform as he did previous to Defendants' outrageous actions.

COUNT SIX-FAILURE TO TRAIN

**(DEFENDANT CHIEF BARLOW)
(TOWN OF CULPEPER POLICE DEPARTMENT)**

58. Plaintiff incorporate by reference allegations set forth in paragraphs 1 through 33 as if originally pleaded herein.

59. The dissemination of Plaintiff's photographs was carried out in such a cold, calculated and negligent fashion as to demonstrate a lack of cautious regard for his right to be free from unnecessary and unlawful embarrassment or the threat thereof, and without the due care and diligence which a prudent and reasonable individual would have displayed in making such a decision

60. Defendant Sergeant Borders's dissemination of Plaintiff's photos was carried out willfully, wantonly, maliciously, and with such reckless disregard of the consequences as to reveal a conscious indifference to the clear risk of public humiliation, embarrassment or serious bodily mental anguish.

61. Defendant Chief Barlow's reckless failure to adequately train, supervise, discipline or in any other way control Defendant Barlow in the exercise of his police functions, and his failure to enforce the laws of the Commonwealth of Virginia and regulations of the

Town of Culpeper demonstrates a reckless lack of cautious regard for the rights of the public, including the rights of the Plaintiff, Mr. Newhard, and exhibits a lack of that degree of due care which a prudent and reasonable individual would show in executing the duties of the Chief of Police.

62. Defendant, Town of Culpeper's failure to adequately train, supervise, discipline, or in any way control Defendant Barlow in the exercise of his police duties, and failure to enforce the laws of the Commonwealth of Virginia and the regulations of the Town of Culpeper was and is carried out willfully, wantonly, maliciously, and with such reckless disregard of the consequences as to display a conscious indifference to the danger of harm and injury, to the citizens of the Town of Culpeper, including PLAINTIFF.

63. Defendant Chief Barlow, by his actions and omissions, established a policy of laxity in the Town of Culpeper Police Department that encouraged, acquiesced and/or approved of the dissemination of Plaintiff's photos, and this policy of allowing, encouraging and/or approving the dissemination by Defendant Sergeant Borders, resulted in PLAINTIFF being one of the victims of Defendant's unauthorized disseminations.

64. As a direct result of the willful, malicious and reckless acts/or omissions of the Defendant Chief Barlow, Plaintiff was emotionally and physically injured and continues to suffer from said injuries.

65. Chief Barlow's actions were intentional, wanton, malicious and oppressive, thus entitling Plaintiff to an award of punitive damages against said Defendants in their individual capacities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Nathan Newhard, respectfully requests that the Court grant the following relief in his favor and against Defendants:

1. Award compensatory damages for the pain, suffering, emotional distress, loss of dignity, humiliation and damages to reputation and livelihood endured by Plaintiff Newhard in amounts that are fair, just and reasonable, to be determined at trial.
2. Award Plaintiff Newhard all costs of this action and reasonable attorneys' fees;
3. Punitive damages in an amount of \$350,000, or such other sum as this Court deems appropriate; and
4. Award such other and further relief as law or equity may provide including punitive damages and injunctive and declaratory relief as may be required in the interest of justice.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues in this action that are so triable.

DATED this 24th day of March, 2009.

NATHAN NEWHARD
By Counsel

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