

1 Brian E. Claypool, Esq., State Bar# 134674  
2 **THE CLAYPOOL LAW FIRM**  
3 1055 East Colorado Blvd., 5<sup>th</sup> Floor  
4 Pasadena, CA 91106  
5 (626) 240-4616 (telephone)  
6 (626) 796-9951 (fax)

7 Linda Starr, #118789  
8 Paige Kaneb, #251184  
9 **NORTHERN CALIFORNIA  
10 INNOCENCE PROJECT**  
11 at Santa Clara University  
12 900 Lafayette St. Suite 105  
13 Santa Clara, CA 95053-0422  
14 Telephone: (408) 554-1945  
15 FACSIMILE: (409) 554-5440

E-filing

E-filing

**FILED**  
APR 16 2012  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

M (SA) RA  
JSS

16 Attorneys For Plaintiff  
17 MAURICE CALDWELL

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

**EDL**

CV 12 1892

20 MAURICE CALDWELL

21 Plaintiff,

22 vs.

23 CITY OF SAN FRANCISCO;  
24 SAN FRANCISCO POLICE  
25 DEPARTMENT; KITT  
26 CRENSHAW; ARTHUR  
27 GERRANS; JAMES  
28 CROWLEY; and DOES 1-10,  
inclusive

Defendants.

- (1) FABRICATION OF EVIDENCE, 42 U.S.C. §1983;
- (2) JOINT ACTION/ CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS, 42 U.S.C. §1983, FABRICATION OF EVIDENCE;
- (3) MANSON/BIGGERS VIOLATIONS, 42 U.S.C. §1983;
- (4) JOINT ACTION/ CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS, 42 U.S.C. §1983, MANSON/BIGGERS VIOLATIONS;
- (5) MONELL VIOLATIONS, 42 U.S.C. §1983;
- (6) FIRST AMENDMENT FREEDOM OF ASSOCIATION
- (7) DUE PROCESS VIOLATION, 42 U.S.C. §1983;
- (8) FAILURE TO INTERVENE, 42 U.S.C. §1983;
- (9) NEGLIGENCE;
- (10) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

DEMAND FOR JURY TRIAL.

BY FAX

I.

**JURISDICTION AND VENUE**

1  
2  
3 1. This action is brought by Plaintiff Maurice Antwone Caldwell (“Plaintiff” or  
4 “Caldwell”) pursuant to 42 U.S.C. §1983.

5 2. This Court has jurisdiction under 28 U.S.C. §1343(4) for violations of the 1871  
6 Civil Rights Enforcement Act, as amended, including 42 U.S.C. §1983, and under 28 U.S.C.  
7 §1331.  
8

9 3. The acts and omissions complained of commenced on June 30, 1990, and  
10 continued until May 28, 2011, within the Northern District of California. Therefore, venue lies in  
11 this District pursuant to 28 U.S.C. §1391.  
12

II.

**INTRODUCTION**

13  
14  
15 4. On September 21, 1990, San Francisco Police officers arrested Plaintiff Maurice  
16 Caldwell for the murder of Judy Acosta, a murder for which he has never been lawfully  
17 convicted, and the commission of which he has adamantly denied for the past 21 years. Mr.  
18 Caldwell was convicted based upon a single unreliable eyewitness identification obtained by  
19 unnecessarily suggestive procedures. Without this false evidence, Mr. Caldwell would not have  
20 been arrested or convicted.  
21

22 5. Mr. Caldwell spent 20 years in prison as a result of the actions of the San Francisco  
23 Police officers. The officers’ conduct in procuring the conviction of Mr. Caldwell violated his  
24 civil and constitutional rights. In addition, the policies and customs of the San Francisco Police  
25 Department, including its lack of supervision of its officers, and its condoning, encouraging,  
26 ratifying and deliberately ignoring the corrupt pattern and practices of its employees were  
27 motivating forces behind the violations of Mr. Caldwell’s rights. As a result of these actions,  
28 Mr. Caldwell was deprived of the one thing all innocent people deserve: freedom.





1           17. Mr. Caldwell served much of his 20 years in custody in various maximum-security  
2 prisons before his conviction was reversed. He was released from custody of the California  
3 Department of Corrections on March 28, 2010. During those 20 long years, Mr. Caldwell  
4 suffered the unimaginable horrors of life in maximum-security prisons. He was assaulted by  
5 other inmates. He suffered back injuries and permanent damage due to the poor working  
6 conditions in the jail's kitchen. He only received medical treatment after filing several  
7 complaints. He was unable to pursue a profession or create a family.

9           18. Throughout the 20 years in custody, Mr. Caldwell relentlessly worked to correct  
10 this miscarriage of justice and procure his release, and always proclaimed his innocence. In  
11 pursuit of relief, he wrote countless letters asserting his innocence, the injustice of his conviction  
12 and the problems in his case. These included letters to various press organizations, lawyers,  
13 Innocence Projects, Centurion Ministries, and the San Francisco County Public Defender's  
14 Office.

16           19. From the beginning of his case to his release, Mr. Caldwell adamantly refused to  
17 accept any plea bargain that would entail an explicit or implicit admission of guilt. He refused to  
18 admit guilt while imprisoned even though refusing to do so effectively doomed his opportunity  
19 to be paroled. After Mr. Caldwell's writ of habeas corpus was granted in December of 2010, the  
20 San Francisco County District Attorney's Office offered to dismiss the murder charge in  
21 exchange for his plea to manslaughter, attempted murder and shooting into an occupied vehicle,  
22 which, if accepted, would have secured his immediate release from custody. Mr. Caldwell  
23 would not even have been on parole. Mr. Caldwell rejected that offer. He would not admit to  
24 murdering Mr. Acosta, even if it would guarantee his release. Even after 20 years in custody, he  
25 risked a re-trial which could have resulted in a life sentence in prison, rather than admit to  
26 something that he did not do.  
27  
28

**B. PRE-MURDER**

1  
2 20. Defendants' targeting of Mr. Caldwell started long before this crime. The year that  
3 Maurice Caldwell was born, his father Donald Caldwell shot and killed a San Francisco County  
4 police officer. Donald Caldwell was convicted of first-degree murder, sentenced to 7 years to  
5 life, and released on parole in 1986. From his early teenage years, San Francisco police officers  
6 targeted Maurice Caldwell and continuously violated his civil rights. Donald Caldwell's release  
7 from prison, followed by Maurice Caldwell's release from Youth Authority in October of 1988,  
8 only increased the officers' desire to see Maurice Caldwell behind bars.  
9

10 21. Defendants' violations of Mr. Caldwell's civil and constitutional rights increased in  
11 frequency and intensity in the year leading up to Mr. Caldwell's wrongful arrest for this murder.  
12

13 22. Between March of 1989 and June 30, 1990 (the date of the murder at issue in this  
14 case), Mr. Caldwell was arrested or detained by San Francisco police officers 7 times for  
15 allegations of 23 various Penal Code and Health and Safety Code violations. Not a single one of  
16 these arrests or detentions resulted in a conviction or even a trial. Mr. Caldwell's rap sheet  
17 demonstrates that in each instance, police alleged multiple counts of criminal conduct ranging  
18 from attempted murder to attempted lynching to possession of narcotics with a number of  
19 obstructing or resisting a police officer allegations thrown in, and, in each instance, the  
20 prosecution released Mr. Caldwell for lack of sufficient evidence, released him in the interests of  
21 justice or rejected the police allegations and declined to file charges. The one time the  
22 prosecution actually filed two counts of firearm charges and one count of obstructing or resisting  
23 a police officer, the court dismissed all of the charges.  
24  
25

26 23. This pattern of targeting Mr. Caldwell continued until Defendants were finally able  
27 to frame Mr. Caldwell for the murder of Judy Acosta.  
28

1           24. Further, on or about January 24, 1990, then-narcotics Sergeant Kitt Crenshaw  
2 assaulted Maurice Caldwell. Mr. Caldwell filed a complaint against Crenshaw at the Office of  
3 Civilian Complaints. That complaint was being investigated at the time of the murder.

4           25. Crenshaw told Mr. Caldwell that if he ever caught him with a gun in his hand, he  
5 would kill him.  
6

7  
8           **C. PRE-ARREST INVESTIGATION**

9           26. On June 30, 1990, at approximately 2:40 am, Mr. Judy Acosta was shot and killed  
10 on Ellsworth Street in the Alemany Projects in San Francisco. The autopsy report lists the cause  
11 of death as a gunshot wound that penetrated Mr. Acosta's heart, lung and liver. However, at  
12 trial, the medical examiner testified that shotgun pellets had contributed to the cause of death.  
13 Mr. Acosta's three friends Domindaor Viray, Eric Aguirre and Domingo Bobila all escaped  
14 unharmed. At no time during the investigation or trial did any of the three surviving victims ever  
15 positively identify Mr. Caldwell.  
16

17           27. Police officers responded to the scene, but did not obtain any information regarding  
18 the perpetrators.  
19

20           28. There was no forensic evidence -- fingerprints, DNA, hair samples, fibers, bloody  
21 footprints or handprints, etc. -- linking Mr. Caldwell to this murder. There was no physical  
22 evidence -- no clothes, no blood, no money, and no murder weapon -- linking Mr. Caldwell to  
23 the offense.  
24

25           29. Despite having no evidence connecting him to the crime, San Francisco Police  
26 officers decided from the beginning to focus their investigation on Mr. Caldwell as their sole  
27 suspect. Throughout their investigation and the entirety of Mr. Caldwell's ordeal, Defendants'  
28

1 ignored evidence of Mr. Caldwell's innocence and refused to adequately investigate evidence  
2 regarding the identities of the true perpetrators.

3           30. On July 13, 1990, homicide Inspector Arthur Gerrans went to the Alemany Projects  
4 to canvas the neighborhood. He brought narcotics Sergeant Kitt Crenshaw with him to canvas  
5 the Projects. As described above, Crenshaw had assaulted Mr. Caldwell, had threatened to kill  
6 him, and had an investigation pending against him as a result of his conduct. Inspector Gerrans  
7 testified at trial that Crenshaw and another officer whose name he could not recall accompanied  
8 him on his canvas because they were familiar with some of the Projects' residents. Even  
9 Inspector Gerrans' chrono states he went to the Projects with narcotics officers, but only names  
10 Sergeant Kitt Crenshaw. It is completely improper for a narcotics officer to participate in and  
11 question suspects related to a homicide investigation.  
12

13  
14           31. Defendants initially claimed to have received an anonymous tip on July 12 to "look  
15 into Maurice Caldwell because he had been shooting off guns in the Projects for years,"<sup>1</sup> but a  
16 letter from the District Attorney's file indicates that it was police who suspected Mr. Caldwell's  
17 involvement despite a complete lack of evidence to support that suspicion, and it was police who  
18 deliberately employed suggestive identification procedures until they obtained an identification  
19 of Mr. Caldwell in violation of his constitutional rights.  
20

21  
22 <sup>1</sup> The anonymous tip lacks any indicia of reliability. There are no notes or reports  
23 from Captain Philpott, who allegedly received the call. There is no indication of  
24 how the anonymous caller was able to speak to a captain. Further, the tip refers to  
25 "Maurice Caldwell," yet everyone in the Projects knew Mr. Caldwell by his middle  
26 name "Antwone" or the short form "Twone" or "Little Twone." The one page  
27 handwritten report that is the sole documentation or reference to the alleged call is  
28 not dated or signed. The Inspectors' chrono does not mention an anonymous tip,  
but instead states that they spoke to Captain Philpott "regarding description of  
suspects." No descriptions were contained in the alleged anonymous tip, and the  
only person named in it is Maurice Caldwell. Finally, even the content alleged tip  
does not actually connect Mr. Caldwell to the murder.



1           32. During the July 13 canvas, Gerrans found only one person willing to let him inside  
2 and talk to him: Mary Cobbs. In the meantime, Crenshaw grabbed Mr. Caldwell, pushed him up  
3 against a wall, handcuffed him, and dragged him up to Mary Cobbs' front door. Ms. Cobbs  
4 answered the door, and Officer Crenshaw asked to speak to the homicide inspector. Crenshaw  
5 said something to the effect of, "This is Maurice Caldwell, Twone, the guy I've been telling you  
6 about. I need the keys to put him in the patrol car." All of this was within Ms. Cobbs' hearing  
7 and could be heard on the tape of her interview.  
8

9           33. By asking the homicide inspector for the keys to the police car to place Mr. Caldwell  
10 in it, Crenshaw signaled to Ms. Cobbs that he intended to arrest Mr. Caldwell. After displaying  
11 Mr. Caldwell to Ms. Cobbs singly and in the company of a police officer, Gerrans ensured Ms.  
12 Cobbs understood that they were arresting Mr. Caldwell in relation to this case by saying that the  
13 officer at the door was working with him.  
14

15           34. Crenshaw placed Mr. Caldwell in the police car, and asked him about the crime. Mr.  
16 Caldwell told Crenshaw that he did not know anything about it. Crenshaw released Mr.  
17 Caldwell, but fabricated a police report alleging that Mr. Caldwell had said "that he was present  
18 at the shooting, but was down the street. Prior to the shooting Caldwell was with the suspects  
19 dealing drugs [but walked away prior].<sup>2</sup> After the shooting, Caldwell returned and started yelling  
20 at the shooters. He did this because he felt he was going to be blamed."  
21

22           35. The prosecution, apparently doubtful of the veracity and reliability of this report, did  
23 not attempt to introduce that statement at trial.  
24

25           36. It would be absurd for a narcotics officer to obtain a statement such as that and then  
26 release the suspect before allowing the homicide inspectors to interrogate him, especially where  
27 in the purported statement it is alleged that Mr. Caldwell admitted he knew the identities of the  
28

---

<sup>2</sup> The bracketed words were crossed out in the handwritten police report.

1 shooters. Yet nothing in the report indicates the shooters' identities or even that Mr. Caldwell  
2 had refused to tell Officer Crenshaw who they were.

3           37. Crenshaw had no warrant and did not arrest Mr. Caldwell that day, but rather, after  
4 displaying him to Ms. Cobbs in this suggestive manner, removed the handcuffs and released Mr.  
5 Caldwell.  
6

7           38. Meanwhile, Gerrans continued to interview Ms. Cobbs. Ms. Cobbs did not indicate  
8 that the man at the door was the shooter. Instead, she told the Inspector that the shooters were  
9 not from the area and that she had heard they were from Sunnydale or Hunter's Point. She also  
10 told Gerrans that she did not know the shooters' names or nicknames.  
11

12           39. Although police knew that Mr. Caldwell lived in the apartment right next to Ms.  
13 Cobbs' apartment and were well aware that Ms. Cobbs had not identified Mr. Caldwell when a  
14 uniformed officer brought him to her front door, they continued to focus their investigation on  
15 Mr. Caldwell.  
16

17           40. On July 17, the same day that Inspectors Gerrans and Crowley met again with  
18 Crenshaw regarding this case, the Inspectors went to Mr. Caldwell's grandmother's house (the  
19 address listed on his identification card) house and left a message with her to tell Mr. Caldwell to  
20 call them. The Inspectors then met with Crenshaw again. The following day, Mr. Caldwell  
21 called the Inspectors, and agreed to meet them at his grandmother's house. Mr. Caldwell kept  
22 that appointment and when the Defendants arrived, he agreed to go down to the station with  
23 them. He reiterated to the Inspectors what he had told Crenshaw – that he was not involved in  
24 this murder. Mr. Caldwell asked the Defendants why they kept questioning him about the  
25 murder and they told him that they had heard from Crenshaw that he was present during the  
26 shooting and with the shooters before and after. Mr. Caldwell told them he had never made any  
27 such statement and that it was not true. He further explained that Crenshaw was always "fucking  
28

1 with me” and that he had filed a complaint against Crenshaw. The inspectors asked Mr.  
2 Caldwell if he would take a polygraph test regarding his alleged statement to Crenshaw, which  
3 he agreed to. Then Mr. Caldwell asked if they would polygraph Crenshaw about the alleged  
4 statement as well. The inspectors said they would not. They then released Mr. Caldwell, who  
5 took a bus home. A few days later, Mr. Caldwell called and told the inspectors that he would not  
6 take a polygraph test unless they also polygraphed Crenshaw.  
7

8 41. Police did not question anyone other than Maurice Caldwell as a suspect in this case.

9 42. On July 26, 1990, two weeks after the show-up at which they had presented Mr.  
10 Caldwell to Ms. Cobbs in person, Gerrans and Crowley presented Ms. Cobbs with a six-pack that  
11 included Mr. Caldwell’s photograph. They still had no evidence linking Mr. Caldwell to this  
12 crime. The Inspectors did not memorialize what was said during the initial identification  
13 procedure, but instead turned on the tape recorder only after they had convinced Ms. Cobbs to  
14 identify Mr. Caldwell. When the tape was on, Ms. Cobbs stated that she knew Mr. Caldwell by  
15 his nickname “Twone” but was not asked any questions about why she did not provide that  
16 information during the earlier interview, or why she had initially said that she did not know the  
17 shooters’ names or nicknames. At trial, Ms. Cobbs further explained that she knew Mr. Caldwell  
18 as “Little Twone,” which distinguished him from “Big Twone” a.k.a. Charles Antwone Waddell.  
19 Ms. Cobbs was never asked why she had not told the officers that the shooter had lived or stayed  
20 next door to her.  
21

22 43. One of the Defendants told Ms. Cobbs that Mr. Caldwell *was the suspect* for the  
23 murder. After convincing Ms. Cobbs to identify Mr. Caldwell, the Inspectors told her on tape  
24 that she had identified “the suspect, Maurice Caldwell,” and that he was “the man with the  
25 shotgun.” Defendants essentially told Ms. Cobbs that she had identified the “right” person, that  
26 is, the person they suspected was guilty, thereby tainting all further identifications as well.  
27  
28

1           44. Defendants then offered Ms. Cobbs an incentive to continue to identify Mr. Caldwell  
2 – they would move her out of the Alemany Projects, where she had feared for her safety even  
3 before this shooting, if she would be their witness.

4           45. Law enforcement obtained Ms. Cobbs' identification of Mr. Caldwell by a process in  
5 which the search for truth was made secondary to the quest for a conviction. Police effectively  
6 told Ms. Cobbs "this is the man" before she identified him.

7           46. Ms. Cobbs claimed that she woke up to shots, looked out her bedroom window and  
8 saw the shooters standing under a light pole. She claimed to have seen Mr. Caldwell firing a  
9 shotgun from under that light pole. The Inspectors knew or should have known that Ms. Cobbs  
10 cannot see that pole from her window, as discovered by Mr. Caldwell's habeas counsel.  
11

12           47. Mr. Caldwell cooperated fully with the investigation and remained in the area, even  
13 after he was repeatedly questioned about his involvement in this murder. Crenshaw questioned  
14 Mr. Caldwell on July 12 and then released him. When he heard that police were looking for him,  
15 Mr. Caldwell called the homicide inspectors, made an appointment to meet them, and kept that  
16 appointment. He remained in the San Francisco area, frequently staying in the Alemany  
17 Projects, right next door to Mary Cobbs, until he was arrested on September 21, 1990.  
18

19           48. After his arrest on September 21, 1990, Mr. Caldwell agreed to speak to Defendant  
20 police officers for a third time in regards to this homicide, again denying any involvement with  
21 the homicide. For over twenty-one years, Mr. Caldwell has consistently maintained that he was  
22 not outside when the homicide occurred, he had nothing to do with the commission of the crime  
23 or any prior planning that might have occurred, he did not fire a weapon during the crime, and he  
24 only went outside afterwards to see what happened.  
25

26           49. At no point leading up to or even after his arrest did police ever obtain any evidence  
27 linking Mr. Caldwell to the this murder other than the unreliable identification they obtained  
28

1 from Mary Cobbs using suggestive procedures in violation of his constitutional rights as  
2 established by the Supreme Court of the United States.

3 **D. POST ARREST - THE TUNNEL VISION CONTINUES**

4 50. After Mr. Caldwell's arrest, the police continued their attempts to build a case  
5 against him. They conducted a live lineup at which none of the surviving victims positively  
6 identified Mr. Caldwell. Ms. Cobbs, who had lived next door to Mr. Caldwell, was of course  
7 able to point to Mr. Caldwell having already been convinced by police that he was their suspect.  
8

9 51. On October 17, 1990, Mr. Caldwell's trial attorney told the homicide inspectors of  
10 the identities of the true perpetrators: specifically that Marritte Funches fired the handgun, Henry  
11 Martin fired the shotgun, and Eric Brown punched Bobila. Defendants placed the three men in  
12 six-packs and showed them to the surviving victims and Mary Cobbs in the ensuing weeks,  
13 approximately six months after the murder, at which time no one could identify them. They did  
14 nothing further to investigate these men. They never attempted to speak to them, and certainly  
15 did not interview them repeatedly as they did Mr. Caldwell.  
16

17 52. The Inspectors interviewed more witnesses, but only discovered more evidence of  
18 Mr. Caldwell's innocence. They interviewed Alice Carruthers, who said that she was out on the  
19 street at the time of the shooting and saw Marritte Funches pull out a handgun and shoot the  
20 victim, at which point she turned and ran home. Ms. Carruthers told the Inspectors that Mr.  
21 Caldwell was not on the street at the time.  
22

23 53. Police never attempted to interview Marritte Funches, and could not have done  
24 much investigation into him as even a cursory investigation would have revealed that Mr.  
25 Funches had a prior conviction for assault with a firearm, and fled the state within months of the  
26 murder. Further, on March 27, 1991, nine days after Mr. Caldwell's conviction and one month  
27 prior to his sentencing, Mr. Funches shot and killed a taxi driver in Reno, Nevada. Even after  
28

1 Mr. Funches confessed to Mr. Acosta's murder in great detail in 2007-2011, police never  
2 attempted to interview Mr. Funches.

3 54. At no point during their investigation did Defendants interview anyone other than  
4 Mr. Caldwell as a suspect in relation to this murder. In fact, no law enforcement has ever  
5 interviewed anyone other than Maurice Caldwell as a suspect in Mr. Acosta's murder as of the  
6 day of this filing, even after two witnesses identified the two actual shooters and one of those  
7 shooters confessed under oath.

8  
9 55. Defendants also interviewed multiple witnesses who informed them that Mr.  
10 Caldwell was inside Deborah Rodriguez's apartment, upstairs with a female named Tina at the  
11 time the shots were fired. Those witnesses include Ms. Rodriguez, James Green, Jacqueline  
12 Williams and Mr. Caldwell himself.

13  
14 **E. SUPERIOR COURT PROCEEDINGS**

15 56. At the preliminary hearing and at trial, the only witness to identify Mr. Caldwell as  
16 a perpetrator was Mary Cobbs. No other witness or evidence ever connected Mr. Caldwell to the  
17 crime.

18  
19 57. Defendants attempted to conceal the evidence of the impermissible show up and  
20 unconstitutionally suggestive identification procedure from the jury.

21 58. After Mary Cobbs claimed at the preliminary hearing and at trial that when she  
22 opened the door, there was only a police officer there, Inspector Gerrans committed perjury and  
23 refused to admit that Mr. Caldwell was brought to the door.

24  
25 59. Mr. Caldwell has sworn in a declaration that he was standing right next to Defendant  
26 Crenshaw when Mary Cobbs answered the door. The prosecution conceded in opening  
27 statements in 1991 and prior to the dismissal of all charges in 2011 that an officer brought Mr.  
28 Caldwell to Ms. Cobbs' door, but due to the perjury committed by Mary Cobbs and Defendant

1 Gerrans, the jury never heard any evidence that Mr. Caldwell was brought to Ms. Cobbs' front  
2 door by a police officer two weeks before she identified him as a perpetrator.

3 60. Inspector Gerrans committed perjury when he attempted repeatedly to deny that Mr.  
4 Caldwell was brought to the door.

5 61. When asked about Mr. Caldwell being at Ms. Cobbs' front door on direct, Gerrans  
6 admitted that Crenshaw had referred to Mr. Caldwell by name, but claimed that only Crenshaw  
7 was at the door. The prosecutor did not correct this false testimony, but did attempt to elicit the  
8 truth, as was demonstrated on the audiotape of that interview, from Defendant Gerrans.

9 62. For instance, the prosecutor asked Gerrans, "were you aware at the time that you  
10 opened the door that Mr. Crenshaw was with Mr. Caldwell?" And when Gerrans responded that  
11 they mentioned that they had him "out there," in the police car, Mr. Giannini asked, "had you  
12 directed Mr. Crenshaw to bring Mr. Caldwell to that residence?" The Inspector simply said  
13 "no," and did not elaborate. In addition, Mr. Giannini asked, "My point is that it was not your  
14 intention at that time to seek an identification of Mr. Caldwell by Miss Cobbs?" Gerrans  
15 responded elusively, "No. I never knew Mr. Caldwell was going to be out there that day."  
16 Gerrans never admitted that Mr. Caldwell was at Ms. Cobbs' door.

17 63. Clearly, the prosecution was aware that Crenshaw brought Mr. Caldwell to Mary  
18 Cobbs' front door, yet he failed to correct the testimony that he knew to be false. Mr. Giannini  
19 admitted as much in opening statements, saying that a "police officer brought Mr. Caldwell to  
20 Inspector Gerrans. And unfortunately, Inspector Gerrans was talking to Mary Cobbs when they  
21 bring the defendant up to the front door."

22 64. Based on the false eyewitness testimony of Mary Cobbs, tainted by the actions of  
23 one or more of the Defendant San Francisco Police officers, Mr. Caldwell was wrongfully tried  
24 and convicted.  
25  
26  
27  
28

1           **F.POST-CONVICTION DISCOVERIES.**

2           65.   Marritte Funches, when finally interviewed about the murder of Judy Acosta,  
3 confessed to the crime in great detail – in letters, under oath in declarations, compellingly in  
4 person to multiple different attorneys, and has reiterated his willingness to testify in court time  
5 and time again. He has also drawn detailed diagrams of the scene that comport with the physical  
6 evidence and testimony from the surviving victims. He has sworn repeatedly that Mr. Caldwell  
7 was not present or involved.  
8

9           66. In addition to the indicia of reliability surrounding Mr. Funches' many confessions  
10 over the past five years, his confession is corroborated by the fact that he was named as the  
11 actual perpetrator to police and at trial.  
12

13           67. In his confessions, Mr. Funches also explained that if Ms. Cobbs had truly looked  
14 out her window during the shooting, she would have seen him standing directly in front of her  
15 window in the street. He swears that he knew Ms. Cobbs and she would have recognized him.  
16 In fact, when Ms. Cobbs viewed the six-pack with Mr. Funches' photograph, she told the officers  
17 that she knew Funches as someone who was out in the street all the time, but she was not sure if  
18 he was outside the night of the shooting.  
19

20           68. Further, Mr. Funches has sworn that he never stood under the streetlight, while Mary  
21 Cobbs testified she saw both shooters standing under the light pole. Finally, Mr. Funches has  
22 sworn that the man with the shotgun, who was not Maurice Caldwell, was standing on the side of  
23 Ms. Cobbs' building and not under the light pole.  
24

25           69. Marcus Mendez was in his mother's house when he heard the gunshots. After the  
26 shots stopped, he looked out his kitchen door and saw a group of people gathered on Ellis Street.  
27 He then saw Maurice Caldwell running towards the gathering empty handed. He did not hear  
28 any further shots after seeing Mr. Caldwell running towards the shooting.



1           70. Maurice Tolliver was out on the street at the time of the shooting and saw the entire  
2 crime. He has sworn under oath, and told Mr. Caldwell's habeas counsel in 2009, as well as  
3 Assistant District Attorney Susan Christian and DA investigator Al Salerno in 2010, that Mr.  
4 Caldwell was not present during the shooting or involved in anyway. He has described the  
5 events in detail consistent with the physical evidence and testimony from the victims. He has  
6 sworn that a light-skinned man named Marrantte fired a handgun, shooting one of the victims in  
7 the chest area from a few feet away. Then Henry Martin (described as an older man with a dark-  
8 complexion who was a dope fiend) fired a larger gun. Mr. Tolliver's description of the scene  
9 and diagrams place the shooters' in the exact same locations as Marrantte Funches' own  
10 confession and diagram does. Again, this contradicts Mary Cobbs' testimony and undermines  
11 what little credibility her statements had.  
12

14           71. While the habeas petition was pending in 2009 and 2010, Mr. Funches disclosed  
15 who else was present during the shooting – "Lil Mo" (Maurice Tolliver) and a man named  
16 Demetrius. Mr. Caldwell's habeas counsel noted a Demetrius Williams in the police reports and  
17 located him through his mother Emma Williams. Demetrius was on the street at the time of the  
18 shooting and described what he saw first to Mr. Caldwell's habeas counsel and then to Assistant  
19 District Attorney Susan Christian and DA investigator Al Salerno. He disclosed that Marrantte  
20 Funches fired the handgun, and that Henry Martin was the shotgun shooter. He described details  
21 of the crime consistent with the surviving victims' testimony, along with statements from  
22 Funches and Tolliver. Demetrius had not spoken to Funches, Tolliver or Caldwell about what  
23 happened that night. Specifically, Demetrius placed the shooters in the exact same locations that  
24 Mr. Funches and Tolliver had.  
25  
26  
27  
28

1           72. Henry Martin told Mr. Caldwell's habeas counsel that he had gone to Mr.  
2 Caldwell's appellate attorney while the appeal was pending and stated that he would talk about  
3 the incident if given immunity.

4           73. Tina McCullum told the San Francisco Public Defender who represented Mr.  
5 Caldwell in the re-trial proceedings that she still recalls spending the night of her birthday with  
6 Mr. Caldwell, upstairs in an apartment in the Alemany Projects. They were in bed when the  
7 shots were fired. Mr. Caldwell got up, got dressed, and went to see what happened. Ms.  
8 McCullum stayed in the room, and Mr. Caldwell returned a few moments later. She did not hear  
9 any more shots while he was gone, and he did not smell like gunpowder or fireworks when he  
10 returned.

11           74. Alice Caruthers and Deborah Rodriguez maintain their trial testimony and  
12 statements to police. Ms. Caruthers recalls seeing Marrisette Funches pull out a handgun and shoot  
13 the victim, at which point she turned and ran home. Ms. Rodriguez recalls that Mr. Caldwell  
14 was upstairs with a girl named Tina when the shots were fired, and that he ran downstairs and  
15 outside after the shots ceased to see what happened.<sup>3</sup>

16 ///

17 ///

18 ///

19  
20  
21  
22  
23  
24           **G. AS THE RESULT OF THE CITY OF SAN FRANCISCO'S POLICIES,**  
25           **CUSTOMS AND PRACTICES VIOLATING THE RIGHT TO BE FREE FROM**

26  
27 <sup>3</sup> Mr. Caldwell's habeas counsel was unable to locate Jacqueline Williams, who  
28 told police and testified at trial *for the prosecution* that Mr. Caldwell was inside  
when the shots were fired, ran downstairs and outside after the shots, and she did  
not hear any more shots while Mr. Caldwell was outside.

1                   **IMPROPER AND SUGGESTIVE EYEWITNESS IDENTIFICATIONS,**  
2                   **SUGGESTIVE EYEWITNESS IDENTIFICATION PROCEDURES WERE**  
3                   **ROUTINELY EMPLOYED WITH EYEWITNESSES.**  
4

5  
6           75. The San Francisco Police Department had no established or clear policy regarding  
7 the following issues pertaining to eyewitness identification: a) ensuring that eyewitness  
8 identification procedures complied with the requirements of due process, including those set out  
9 in *Manson v. Braithwaite* and *Neil v. Biggers*; b) ensuring that police personnel, whether through  
10 inadvertence or design, did not provide information to potential eyewitnesses that influenced the  
11 identification; c) fully and completely documenting police personnel's interactions with  
12 eyewitnesses; d) training police personnel regarding their obligations to provide prosecutor(s)  
13 eyewitness identification information that is exculpatory in the case in which the in which the  
14 eyewitness was making an identification; and                   e) supervising police personnel in the  
15 provision of eyewitness identification information that is exculpatory to the prosecutor(s) in the  
16 case in which the eyewitness was making an identification.  
17  
18

19           76. To the extent that the San Francisco Police Department had policies regarding the  
20 issues set out in the foregoing paragraph, the policies were not implemented by police personnel  
21 in cases in which an eyewitness was used. Not only were any such titular policies not  
22 implemented or followed, but the San Francisco Police Department had a custom and practice of:  
23 a) failing to ensure that eyewitness identification procedures complied with the requirements of  
24 due process, including those set out in *Manson v. Braithwaite* and *Neil v. Biggers*; b) failing  
25 to ensure that police personnel, whether through inadvertence or design, did not provide  
26 information to potential eyewitnesses that influenced the identification; c) failing to ensure that  
27 police personnel fully and completely documented their interactions with eyewitnesses; d) failing  
28

1 to properly or adequately train police personnel in the provision of eyewitness identification  
2 information that is exculpatory to the prosecutor(s) in the case in which the eyewitness was  
3 making an identification; and e) failing to properly or adequately supervise police personnel in  
4 the provision of eyewitness identification information that is exculpatory to the prosecutor(s) in  
5 the case in which in which the eyewitness was making an identification.  
6

7 77. The actions and inactions of the San Francisco Police Department set forth in the  
8 preceding two paragraphs were known or should have been known to the policy makers  
9 responsible for the San Francisco Police Department and occurred with deliberate indifference to  
10 either the recurring constitutional violations elaborated above, and or to the strong likelihood that  
11 constitutional rights would be violated as a result of failing to train, supervise or discipline in  
12 areas where the need for such training was obvious.  
13

14 78. The actions and omissions of the San Francisco Police Department set forth in the  
15 preceding three paragraphs were a motivating force behind the violations of Mr. Caldwell's  
16 constitutional rights as set forth in this complaint. As a result of those violations, Mr. Caldwell  
17 was wrongfully convicted and imprisoned for 20 years.  
18

#### 19 **H. MR. CALDWELL'S PETITION FOR WRIT OF HABEAS CORPUS**

20 79. On December 16, 2010, the San Francisco County Superior Court granted Mr.  
21 Caldwell's petition for writ of habeas corpus finding that Mr. Caldwell's counsel was ineffective  
22 and that having ineffective counsel was sufficiently prejudicial to constitute grounds for  
23 overturning the conviction. Consequently, the judge concluded that no other issues relating to  
24 Mr. Caldwell's wrongful conviction needed to be looked at or determined by his Court. As a  
25 result, none of the claims being raised in this complaint have been considered or determined by  
26 the any Court prior to the date of filing this complaint.  
27  
28

1 80. Ultimately Mr. Caldwell was not re-tried. Accordingly, he is an innocent man as a  
2 matter of law. When Mr. Caldwell was released from the custody of Defendant County of San  
3 Francisco on March 28, 2010, he had been wrongfully and continuously held in custody since  
4 September 21, 1990, over 20 years.

5  
6 **PARTICIPATION, STATE OF MIND AND DAMAGES**

7 81. All Defendants acted without authorization of law.

8 82. Each Defendant participated in the violations alleged herein, or directed the  
9 violations alleged herein, or knew of the violations alleged herein and failed to act to prevent  
10 them. Each defendant ratified, approved or acquiesced in the violations alleged herein.

11 83. As joint actors with joint obligations, each defendant was and is responsible for the  
12 failures and omissions of the other.

13 84. Each Defendant acted individually and in concert with the other Defendants and  
14 others not named in violating Plaintiff's rights.

15 85. Each Defendant acted with a deliberate indifference to or, reckless disregard for, an  
16 accused's rights to be free from fraud and fabrication of evidence, and /or for the Plaintiff's right  
17 to an eyewitness identification free from improper suggestion, and/or for the Plaintiff's right to  
18 due process of law.

19 86. As a direct and proximate result of the aforesaid acts, omissions, customs,  
20 practices, policies and decisions of the Defendants, Plaintiff has suffered great mental and  
21 physical pain, suffering, anguish, fright, nervousness, anxiety, shock, humiliation, indignity,  
22 embarrassment, harm to reputation, and apprehension, which have caused Plaintiff to sustain  
23 damages in a sum to be determined at trial.

24 87. Due to the acts of the Defendants, Plaintiff has suffered, and continues to suffer,  
25 and is likely to suffer in the future, extreme and severe mental anguish as well as mental and  
26  
27  
28

1 physical pain and injury. For such injury, Plaintiff will incur significant damages based on  
2 psychological and medical care.

3 88. As a further result of the conduct of each of these Defendants, Plaintiff has lost past  
4 and future earnings in an amount to be determined according to proof at trial.

5  
6 89. As a further result of the conduct of each of these Defendants, Plaintiff has been  
7 deprived of familial relationships, including not being able to get married and raise a family.

8 90. The aforementioned acts of the Defendants, and each of them, was willful, wanton,  
9 malicious, oppressive, in bad faith and done with reckless disregard or with deliberate  
10 indifference to the constitutional rights of the Plaintiff, entitling Plaintiff to exemplary and  
11 punitive damages from each defendant other than defendant City of San Francisco in an amount  
12 to be proven at the trial of this matter.

13  
14 91. By reason of the above described acts and omissions of Defendants, Plaintiff was  
15 required to retain an attorney to institute and prosecute the within action, and to render legal  
16 assistance to Plaintiff that he might vindicate the loss and impairment of his rights, and by reason  
17 thereof, Plaintiff requests payment by Defendants of a reasonable sum for attorney's fees  
18 pursuant to 42 U.S.C. § 1988.  
19

20  
21 **FIRST CLAIM FOR RELIEF**

22 **FABRICATION OF EVIDENCE –42 U.S.C. §1983**

23 **(Against All Defendants)**  
24

25  
26 92. Plaintiff realleges paragraphs 1 through 91, as well as any  
27 subsequent paragraphs contained in the complaint, as if fully set forth herein.

28 93. Mr. Caldwell was arrested and prosecuted due to the fabricated evidence

1 presented by Defendants.

2 94. Defendants manipulated witnesses in order to obtain false  
3 statements to manufacture probable cause when there was none, and subsequently promised to  
4 reward these witnesses. Defendants also manipulated a one-on-one show up and photo arrays to  
5 secure false witness identifications on more than one occasion, and coerced witnesses to make  
6 false identifications, eliminating the integrity of the identification.  
7

8 95. This fabrication of evidence done to secure an indictment against Plaintiff  
9 resulted in the unconstitutional seizure of Plaintiff in violation of the Fourth and Fourteenth  
10 Amendments. CITY is vicariously liable for the wrongful acts of Defendants Crenshaw,  
11 Gerrans, Crowley, and DOES 1-10, inclusive, pursuant to section 815.2(a) of the California  
12 Government Code, which provides that a public entity is liable for the injuries caused by its  
13 employees within the scope of the employment if the employee's acts would subject him or her  
14 to liability.  
15

16 96. As a result of Defendants' fabrication of evidence, Plaintiff had his  
17 constitutional rights violated and was injured.  
18

19  
20 **SECOND CLAIM FOR RELIEF**

21 **JOINT ACTION/CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS – 42 U.S. C.**

22 **§1983 – FABRICATION OF EVIDENCE**

23 **(Against Defendants Crenshaw, Gerrans, Crowley, and DOES 1-10)**  
24  
25

26 97. Plaintiff realleges paragraphs 1 through 96, as well as any subsequent paragraphs  
27 contained in the complaint, as if fully set forth herein.  
28





1 said that an identification of Foster following the suggestive procedure was “all but inevitable.”  
2 (*Id.* at p. 443.)

3           104. Similarly, here, Ms. Cobbs’ identification of Mr. Caldwell was all but inevitable  
4 after an officer brought Mr. Caldwell to her front door while she was being interviewed about the  
5 murder, identified him by name and nickname, and indicated repeatedly that he was their sole  
6 suspect by first requesting keys in order to put him in the police car, then presenting her with a  
7 six-pack that included his picture two weeks later and telling Ms. Cobbs that he was the suspect.  
8

9           105. Defendants Crenshaw, Gerrans, and Crowley, while acting under color of law,  
10 deprived Plaintiff of his civil rights by violating his right to have an eyewitness identification by  
11 Mary Cobbs that was free from suggestion or influence by police, as set forth in *Manson v.*  
12 *Brathwaite*, 432 U.S. 98 (1977) and *Neil v. Biggers*, 409 U.S. 188 (1972). The actions of each  
13 defendant in violating Plaintiff’s right to have an eyewitness identification by Mary Cobbs that  
14 was free from suggestion or influence by police were done with deliberate indifference to or  
15 reckless disregard for Plaintiff’s rights or for the truth.  
16

17           106. The constitutional source of the obligation to conduct eyewitness identifications  
18 free from improper suggestion or influence is the due process clause of the Fifth and Fourteenth  
19 Amendments. Plaintiff’s due process rights were violated by the conduct alleged herein.  
20 Plaintiff brings this claim as a procedural, or alternatively as a substantive, due process violation.  
21 To the extent that any Court were to conclude that the source of Plaintiff’s right to eyewitness  
22 identifications free from improper suggestion or influence is any constitutional source other than  
23 due process (such as the Fourth Amendment), this claim is brought on those bases as well.  
24

25           107. Defendants Crenshaw, Gerrans, and Crowley were each jointly and severally  
26 responsible to ensure that any identification procedure was free from suggestion or influence by  
27 police, and violated that responsibility. Each engaged in, knew or should have known of the  
28

1 unconstitutional conduct alleged herein, and ratified, approved or acquiesced in it. CITY is  
2 vicariously liable for the wrongful acts of Defendants Crenshaw, Gerrans, Crowley, and DOES  
3 1-10, inclusive, pursuant to section 815.2(a) of the California Government Code, which provides  
4 that a public entity is liable for the injuries caused by its employees within the scope of the  
5 employment if the employee's acts would subject him or her to liability.  
6

7 108. As a result of defendants', and each of their, violations of Mr. Caldwell's  
8 constitutional rights as alleged above, Mr. Caldwell was damaged as alleged above.  
9

10 **FOURTH CLAIM FOR RELIEF**

11 **JOINT ACTION/CONSPIRACY TO VIOLATE CIVIL RIGHTS -- 42 U.S.C. §1983 --**

12 ***MANSON/BIGGERS VIOLATIONS***

13 **(Against Defendants Crenshaw, Gerrans, Crowley, and DOES 1-10)**  
14

15  
16 109. Plaintiff realleges paragraphs 1 through 108, as well as any subsequent paragraphs  
17 contained in the complaint, as if fully set forth herein.  
18

19 110. Defendants Crenshaw, Gerrans, and Crowley were jointly and severally  
20 responsible as investigators assigned to the Caldwell case to share material case information with  
21 each other, and to ensure that any eyewitness identification by Mary Cobbs was free from  
22 suggestion or influence by police.  
23

24 111. Defendants Crenshaw, Gerrans, and Crowley, acting under color of state law,  
25 conspired and agreed to deprive Plaintiff of rights, privileges, or immunities secured by the  
26 Constitution and laws of the United States, in particular the right to have the eyewitness  
27 identification by Mary Cobbs occur free from suggestion or influence by police, as elaborated  
28

1 above. Each act of improper influence, as well as other actions related to them, constitutes an  
2 overt act in furtherance of said conspiracy.

3 112. Alternatively as joint actors with joint obligations, each of them was and is  
4 responsible for the failures and omissions of the other.

5  
6 113. As a result of defendants', and each of their, violations of Mr. Caldwell's  
7 constitutional rights as alleged above, Mr. Caldwell was damaged as alleged above.

8 **FIFTH CLAIM FOR RELIEF**

9 **DEPRIVATION OF CIVIL RIGHTS -- 42 U.S.C. §1983 – MONELL VIOLATIONS**

10 **(Against Defendant City of San Francisco)**

11  
12  
13 114. Plaintiff realleges paragraphs 1 through 113 , as well as any subsequent paragraphs  
14 contained in the complaint, as if fully set forth herein.

15 115. Plaintiff is informed and believes and thereon alleges that, at all times herein  
16 mentioned, Defendants City of San Francisco and Does 1 - 10, with deliberate indifference, and  
17 conscious and reckless disregard to the safety, security and constitutional and statutory rights of  
18 Plaintiff, engaged in the unconstitutional conduct and omissions as is specifically elaborated in  
19 ¶¶ 1-91 et seq. above, which will not be repeated here.

20  
21 116. The actions and inactions of the San Francisco Police Department set forth in the  
22 in those paragraphs were known or should have been known to the policy makers responsible for  
23 the San Francisco Police Department and occurred with deliberate indifference to either the  
24 recurring constitutional violations elaborated above, and/or to the strong likelihood that  
25 constitutional rights would be violated as a result of failing to train, supervise or discipline in  
26 areas where the need for such training and supervision was obvious.  
27  
28

1 117. The actions of the San Francisco Police Department set forth herein were a  
2 motivating force behind the violations of Mr. Caldwell's constitutional rights as set forth in this  
3 complaint.

4 118. As a direct and proximate result of Defendant City of San Francisco's acts and  
5 omissions, condoning, encouraging, ratifying and deliberately ignoring the pattern and practice  
6 of Defendants Crenshaw's, Gerrans', and Crowley's acts and omissions, Plaintiff sustained  
7 injury and damage as proved.

8 119. As a result of defendants', and each of their violations of Mr. Caldwell's  
9 constitutional rights as set forth herein, Mr. Caldwell was damaged as alleged above.

10 120. Further, this is not the only case in which such violations of civil rights have  
11 occurred. Three other innocent men were wrongfully tried and convicted as a result of police  
12 actions in and around 1989-1992. In all three of those cases, the evidence that led to the  
13 overturning of the conviction, as well as the civil settlements in two of the cases, came from the  
14 police's file. In this case, the police have repeatedly represented that they have lost the file in  
15 this case although they have files from other cases from the same time period.

16  
17  
18  
19  
20 **SIXTH CLAIM FOR RELIEF**

21 **VIOLATION OF FIRST AMENDMENT - FREEDOM OF ASSOCIATION**

22 **(Against All Defendants)**

23  
24  
25 121. Plaintiff realleges paragraphs 1 through 120, as well as any subsequent  
26 paragraphs contained in the complaint, as if fully set forth herein.

27 122. Defendants deprived Mr. Caldwell of the rights and liberties secured to him under the  
28 First Amendment of the Constitution of the United States, and applied to state actors through the

1 Fourteenth Amendment, to the formation and preservation of highly personal and intimate  
2 relationships free from unjustified interference by the State. For over 20 years, Mr. Caldwell  
3 was incarcerated, and subsequently deprived of the ability to attend family birthdays, funerals  
4 and other events important to the nurturing of the familial relationship. This interference with  
5 Mr. Caldwell's ability to foster and preserve intimate and personal relationships was unjustified  
6 and the result of his wrongful conviction.  
7

8 123. Defendants' conduct which led up to Mr. Caldwell's conviction was unjustified and  
9 without probable cause. This conduct by Defendants was willful and intentional.

10 124. Defendants Crenshaw, Gerrans, Crowley, and DOES 1-10 as CITY employees were  
11 acting under the color of law when they investigated Mr. Caldwell's case and their inappropriate  
12 handling of said investigation was the proximate and direct cause of Plaintiff's right to maintain  
13 and preserve his familial and highly personal relationships. CITY is vicariously liable for the  
14 wrongful acts of Defendants Crenshaw, Gerrans, Crowley, and DOES 1-10, inclusive, pursuant  
15 to section 815.2(a) of the California Government Code, which provides that a public entity is  
16 liable for the injuries caused by its employees within the scope of the employment if the  
17 employee's acts would subject him or her to liability.  
18

19 125. Accordingly, Defendants are each liable to Plaintiff for compensatory damages  
20 based on 42 U.S.C. §1893.  
21

22  
23 **SEVENTH CLAIM FOR RELIEF**

24 **DUE PROCESS VIOLATION – 42 U.S.C. §1983**

25 **(Against All Defendants)**  
26  
27  
28

1 126. Plaintiff realleges paragraphs 1 through 125, as well as any subsequent paragraphs  
2 contained in the complaint, as if fully set forth herein.

3 127. As described above, Defendant officers, and DOES 1-10, while acting individually,  
4 jointly, and/or in conspiracy, as well as under color of law and within the scope of their  
5 employment deprived Plaintiff of his constitutional right to a fair trial. CITY is vicariously liable  
6 for the wrongful acts of Defendants Crenshaw, Gerrans, Crowley, and DOES 1-10, inclusive,  
7 pursuant to section 815.2(a) of the California Government Code, which provides that a public  
8 entity is liable for the injuries caused by its employees within the scope of the employment if the  
9 employee's acts would subject him or her to liability.  
10

11 128. As described above, the Defendant officers and/or other City of San Francisco  
12 employees and agents deliberately tainted the investigation into the incident through their  
13 intimidation of witnesses, fabrication of evidence and suggestive identification procedures,  
14 thereby misleading and misdirecting the criminal investigation of Mr. Caldwell. Absent this  
15 misconduct, the prosecution of Plaintiff could not and would not be pursued.  
16

17 129. The Defendants misconduct directly resulted in the unjust criminal conviction of  
18 Plaintiff, thereby denying him his constitutional right to a fair trial, in violation of the Due  
19 Process Clause of the Fourteen Amendment to the United States Constitution.  
20

21 130. As a result of this violation of his constitutional right to a fair trial, Plaintiff suffered  
22 injuries, including but not limited, to the loss of liberty, physical harm, and emotional distress.  
23

24 131. The misconduct in this Count was objectively unreasonable and was undertaken  
25 intentionally and with willful indifference to Plaintiffs' constitutional rights.

26 132. The misconduct described in this Count was undertaken pursuant to the policy and  
27 practice of the City of San Francisco in that San Francisco Police Department employees and  
28

1 agents pursued wrongful convictions through profoundly flawed investigations and coerced  
2 testimony, and otherwise violated due process in a similar manner to that alleged herein.

3 133. Furthermore, the widespread practices described in the preceding paragraphs were  
4 allowed to flourish because the CITY declined to implement sufficient training and/or any  
5 legitimate mechanism for oversight or punishment.  
6

7  
8 **EIGHTH CLAIM FOR RELIEF**

9 **FAILURE TO INTERVENE –42 U.S.C. §1983**

10 **(Against All Defendants)**  
11  
12

13 134. Plaintiff realleges paragraphs 1 through 133, as well as any subsequent paragraphs  
14 contained in the complaint, as if fully set forth herein.

15 135. During the constitutional violations described herein, Defendants Crenshaw,  
16 Gerrans, Crowley, or DOES 1-10, stood by without intervening to prevent the misconduct.  
17

18 136. As a result of Defendants' failure to intervene to prevent the violation of Plaintiff's  
19 constitutional rights, Plaintiff suffered pain and injury, as well as emotional distress. These  
20 Defendants had a reasonable opportunity to prevent this harm, but failed to do so. CITY is  
21 vicariously liable for the wrongful acts of Defendants Crenshaw, Gerrans, Crowley, and DOES  
22 1-10, inclusive, pursuant to section 815.2(a) of the California Government Code, which provides  
23 that a public entity is liable for the injuries caused by its employees within the scope of the  
24 employment if the employee's acts would subject him or her to liability.  
25

26 137. The misconduct described in this Count was objectively unreasonable and was  
27 undertaken intentionally with willful indifference to Plaintiff's constitutional rights.  
28

1 138. The misconduct described in this Count was undertaken by employees of the City of  
2 San Francisco, including, but not limited to the named Defendants.

3 **NINTH CLAIM FOR RELIEF**

4 **NEGLIGENCE (Cal. Govt. Code §820 and California Common Law)**

5 **(Against all Defendants)**

6  
7  
8 139. Plaintiff realleges paragraphs 1 through 138, as well as any subsequent paragraphs  
9 contained in the complaint, as if fully set forth herein.

10 140. The actions and inactions of the Defendants were negligent and reckless, including,  
11 but not limited to:

- 12  
13 (a) the failure to properly and adequately investigate other potential  
14 suspects, even after several witnesses had given police the name of the  
15 real shooter and verified that Mr. Caldwell was not at the scene of the  
16 murder;
- 17  
18 (b) the negligent tactics and handling of the investigation, specifically  
19 ignoring the fact that there was no physical or forensic evidence  
20 linking Mr. Caldwell to the murder;
- 21  
22 (c) the negligent detention, arrest, and tactics in conducting an investigation,  
23 including detaining Mr. Caldwell when there was no evidence linking him to the  
24 murder, bringing a detained Mr. Caldwell to a witness's door to coerce a false  
25 statement and identification, using suggestive identification procedures, and  
26 continuing to harass and attempt to indict Mr. Caldwell;
- 27  
28



- 1 (d) the negligent tactic of not recording interviews or meetings with witnesses and  
2 survivors until after police had suggested or coerced incriminating statements and  
3 identifications of Caldwell to be made;  
4  
5 (e) the failure to properly train and supervise employees, both professional and non-  
6 professional, including Defendants Crenshaw, Gerrans, Crowley, and DOES 1-10;  
7 and  
8 (f) the failure to ensure that adequate numbers of employees with appropriate  
9 education and training were available to meet the needs of and protect the rights  
10 of Mr. Caldwell.  
11

12 141. As a direct and proximate result of Defendants' conduct, as alleged above, and other  
13 undiscovered negligent conduct, Mr. Caldwell was caused to suffer severe pain and suffering and  
14 ultimately lost his earning capacity and liberty for over 20 years of his life behind bars. Also as a  
15 direct and proximate result of Defendants' conduct, as alleged above, Plaintiff suffered extreme  
16 and severe mental anguish and pain and has been injured in mind and body. Plaintiff has also  
17 been deprived of his liberty, earning capacity, and familial relationships for over 20 years, the  
18 effect of which he will continue to feel and experience in the future.  
19

20 142. CITY is vicariously liable for the wrongful acts of Defendants Crenshaw, Gerrans,  
21 Crowley, and DOES 1-10, inclusive, pursuant to section 815.2(a) of the California Government  
22 Code, which provides that a public entity is liable for the injuries caused by its employees within  
23 the scope of the employment if the employee's acts would subject him or her to liability.  
24

25  
26 **TENTH CLAIM FOR RELIEF**

27 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

28 **(Against Defendants Crenshaw, Gerrans, Crowley, and DOES 1-10)**

1  
2 143. Plaintiff realleges paragraphs 1 through 152, as well as any subsequent paragraphs  
3 contained in the complaint, as if fully set forth herein.  
4

5 144. The actions of Defendants toward Plaintiff (i.e. causing Plaintiff's wrongful  
6 incarceration) were extreme and outrageous and done intentionally and with a reckless disregard  
7 of the probability of causing Plaintiff emotional distress. This conduct was rooted in an abuse of  
8 power, and was undertaken with the intent to cause, or with reckless disregard of the probability  
9 that the conduct would cause Plaintiff severe emotional distress.  
10

11 145. Defendants while working as police officers for CITY, conducted themselves in a  
12 manner that exceeded all bounds of what is tolerated in a civilized community when they  
13 intentionally and maliciously manipulated the murder investigation to cause there to be probable  
14 cause to arrest Plaintiff, and later to convict Plaintiff when no forensic or physical evidence  
15 linked Plaintiff to the murder.  
16

17 146. As a direct and proximate cause of Defendants' conduct, Plaintiff was caused to  
18 suffer severe emotional distress, including, but not limited to anxiety, anguish, humiliation, and  
19 other injuries to his nervous systems.

20 147. The conduct of Defendants Crenshaw, Gerrans, Crowley, and DOES 1-10 was  
21 malicious, wanton, and oppressive, and accomplished with a conscious disregard for the rights of  
22 Plaintiff, entitling him to an award of exemplary and punitive damages.  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Maurice Antwone Caldwell, requests relief on his own behalf as follows, and according to proof, against each Defendant:

- 1. General and compensatory damages in an amount according to proof;
- 2. Special damages in an amount according to proof;
- 3. Exemplary and Punitive damages against each Defendant, except the City of San Francisco, in an amount according to proof;
- 4. Costs of suit, including attorneys' fees, under 42 U.S.C. §1988; and,
- 5. Such other relief as may be warranted or as is just and proper.

DATED: April 16, 2012

**THE CLAYPOOL LAW FIRM**

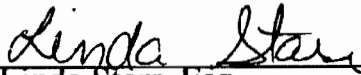



---

Brian E. Claypool, Esq.,  
Attorneys for Plaintiff

DATED: April 16, 2012

**NORTHERN CALIFORNIA  
INNOCENCE PROJECT**




---

Linda Starr, Esq.,  
Attorneys for Plaintiff

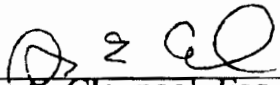
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**JURY DEMAND**

Trial by jury of all issues is demanded.

DATED: April 16, 2012

**THE CLAYPOOL LAW FIRM**

  
\_\_\_\_\_  
Brian E. Claypool, Esq.,  
Attorneys for Plaintiff

DATED: April 16, 2012

**NORTHERN CALIFORNIA  
INNOCENCE PROJECT**

  
\_\_\_\_\_  
Linda Starr, Esq.,  
Attorneys for Plaintiff