

Government Claims Form

California Victim Compensation and Government Claims Board
 P.O. Box 3035
 Sacramento, CA 95812-3035

1-800-955-0045 • www.governmentclaims.ca.gov

State of California

For Office Use Only
 Claim No.:

Is your claim complete?

- New! Include a check or money order for \$25 payable to the State of California.**
- Complete all sections relating to this claim and sign the form. Please print or type all information.
- Attach receipts, bills, estimates or other documents that back up your claim.
- Include two copies of this form and all the attached documents with the original.

Claimant Information

1	Eberhard	Stephen	E	2	Tel: 707 456 9018
	<i>Last name</i>	<i>First Name</i>	<i>MI</i>	3	Email: dcarolan@jassyvick.com
4	4340 Blue Lake Terrace	Willits	CA	95490	
	<i>Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip</i>	
5	Best time and way to reach you: through counsel Duffy Carolan				
6	Is the claimant under 18?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	If YES, give date of birth:	12 10 1947
					<i>MM DD YYYY</i>

Attorney or Representative Information

7	Carolan	Duffy	MI	8	Tel: 415 463 1001
	<i>Last name</i>	<i>First Name</i>	<i>MI</i>	9	Email: dcarolan@jassyvick.com
10	Jassy Vick Carolan LLP, 400 Montgomery St., Su	San Francisco	CA	94104	
	<i>Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip</i>	
11	Relationship to claimant: None				

Claim Information

12	Is your claim for a stale-dated warrant (uncashed check) or unredeemed bond?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	State agency that issued the warrant:	If NO, continue to Step 13 .	
	Dollar amount of warrant:	Date of issue:	MM DD YYYY
	Proceed to Step 22 .		
13	Date of Incident: July 23, 2013; pattern of harassment/intimidation before and after.		
	Was the incident more than six months ago?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	If YES, did you attach a separate sheet with an explanation for the late filing?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
14	State agencies or employees against whom this claim is filed:		
	California Highway Patrol; California Dep't of Transportation; CHP Officers Christopher W. Dabbs, Kory A.Reynolds (#14642), Teddy M. Babcock; CHP Cpt. James T. Epperson; CHP Chief Bridget Lott; Caltrans District 1 Director Charlie Fielder; Does 1-25		
15	Dollar amount of claim:		
	If the amount is more than \$10,000, indicate the type of civil case: See attachment;	<input type="checkbox"/> Limited civil case (\$25,000 or less)	<input checked="" type="checkbox"/> Non-limited civil case (over \$25,000)
	Explain how you calculated the amount:		
	See attachment. Injunctive and declaratory relief, damages in excess of \$25,000.00, emotional distress, loss of reputation, pain and suffering, earnings and earning capacity.		

16 Location of the incident:
Willits, CA, see attachment

17 Describe the specific damage or injury:
See attachment. Injunctive and declaratory relief, damages in excess of \$25,000.00, emotional distress, loss of reputation, pain and suffering, earnings and earning capacity.

18 Explain the circumstances that led to the damage or injury:
See attachment.

19 Explain why you believe the state is responsible for the damage or injury:
See attachment.

20 Does the claim involve a state vehicle? Yes No
If YES, provide the vehicle license number, if known:

Auto Insurance Information

21

Name of Insurance Carrier

Mailing Address City State Zip

Policy Number: Tel: _____

Are you the registered owner of the vehicle? Yes No

If NO, state name of owner:

Has a claim been filed with your insurance carrier, or will it be filed? Yes No

Have you received any payment for this damage or injury? Yes No

If yes, what amount did you receive?

Amount of deductible, if any:

Claimant's Drivers License Number: Vehicle License Number:

Make of Vehicle: Model: Year:

Vehicle ID Number:

Notice and Signature

22 I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to \$10,000 (Penal Code section 72).

Duffy Carter Jan 17, 2014
Signature of Claimant or Representative Date

23 Mail the original and two copies of this form and all attachments with the \$25 filing fee or the "Filing Fee Waiver Request" to: Government Claims Program, P.O. Box 3035, Sacramento, CA, 95812-3035. Forms can also be delivered to the Victim Compensation and Government Claims Board, 400 R St., 5th flr, Sacramento.

For State Agency Use Only

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Name of State Agency Fund or Budget Act Appropriation No.

Name of Agency Budget Officer or Representative Title

Signature Date

ATTACHMENT TO CLAIM FOR DAMAGES AGAINST CALIFORNIA HIGHWAY PATROL, THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND CERTAIN OFFICERS, EMPLOYEES AND OFFICIALS OF THESE STATE AGENCIES, ACTING IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

I. FACTUAL CIRCUMSTANCES OF CLAIM

A. Introduction.

This claim stems from a consistent pattern of harassment and intimidation by personnel of the California Highway Patrol (“CHP”) and California Department of Transportation (“Caltrans”) aimed at retaliating against, and chilling, the valid exercise of state and federal constitutional rights to report on and gather information about important matters of public interest pertaining to a controversial highway construction project called the Willits Bypass Project in Caltrans District 1. After months of intimidation and harassment of the press, including threatening journalists with arrest for doing their job, monitoring and controlling the press’s access to public places, falsely portraying the press as protesters and, in one instance, assault on a journalist, the events at issue here culminated in the warrantless arrest without probable cause of a photojournalist for The Willits News (“TWN”), Stephen Eberhard, in the early morning hours of July 23, 2013, in the course of carrying out his newsgathering duties for the paper on public property where about a dozen individuals had gathered to protest the project and where two people had locked themselves to construction equipment on the site in protest. This claim also arises from the warrantless seizure of Eberhard’s newsgathering materials, including his cameras, cell phone with source contact information, and journalist notepad, in violation of state and federal law; the intentional delay in processing Eberhard to further intimidate him and chill his speech rights; and, after his arrest, a concerted effort between CHP and Caltrans to falsely represent the facts of the arrest in the press and to falsely portray Eberhard within his own journalistic community as a protester in order to destroy his credibility as a neutral fact gather in retaliation for and to chill the exercise of his state and federal constitutional rights.

While this claim presents state law claims for damages only, the factual circumstances of the events at issue here give rise to several federal civil rights claims for damages and injunctive and declaratory relief, as well as Bane Act claims for injunctive and declaratory relief. While the filing of a claim is not a prerequisite for federal claims or for injunctive or declaratory relief, Eberhard presents herein the facts underlying these claims in an attempt to give CHP, Caltrans and individually named employees and officers of these agencies a full opportunity to resolve this matter before litigation.

B. The Willits Bypass Project.

The Willits Bypass Project is a four-year, \$210 million highway construction project involving a 5.9 mile long, four-lane freeway around the City of Willits. It impacts an area known as the Little Lake Valley, a historical cultural resource site where thousands of American Indians once resided, and covers more than 80 acres of sensitive wetlands. The project, first proposed in the 1950s, necessitated issuance of one of the largest wetland fill permits in Northern California history. Construction on the project began in February of 2013 and involved, among other things, clearing the site of trees and vegetation and piling 85-foot long wick drains deep into the ground about every five feet to drain the wetland area and reduce the time needed for the roadway to settle. The project has prompted two lawsuits, one brought by conservation groups in the Northern District of California attempting to halt the project and another that sought to enjoin the transfer of fill to the site. Not surprisingly, the project has been highly controversial, sparking public debate and public protests, including but not limited to peaceful, picketing-style protests along the Highway 101 corridor, public lands adjacent to the site and on public land in the area of the project. Additionally, several individuals have been arrested after lengthy sit-ins in trees set to be removed as part of the project and others after chaining themselves to construction equipment to impede the project and in protest of it. Since construction on the project began in February 2013, more than 50 arrests, involving more than 30 individuals, have been made by CHP.

Most recently, in October of 2013, the Sherwood Valley Band of Pomo Indians, an organization of American Indian tribes, called on the United States Congress to halt work on the project after Caltrans construction crews installed deep drains on what is believed to be part of a historical cultural site, possibly causing harm to cultural resources.

Needless to say, the Willits Bypass Project is highly newsworthy and has been the subject of extensive media coverage, including but not limited to coverage by TWN, a bi-weekly newspaper circulated throughout the Willits area.

C. Pattern of Harassment and Intimidation of the Press, including TWN Photographer Eberhard, by CHP and Caltrans leading up to July 23, 2013.

When construction began on the Willits Bypass Project, protests took place in areas adjacent to the site along the public right-of-way abutting Highway 101, and within the route of the new highway, which is on public land owned by the State of California. Initially, five individuals staged protests by occupying trees within the new bypass route, adjacent to Highway 101. When the press, including TWN Editor Linda Williams, Publisher Debbie Clark and Photojournalist Eberhard, tried to cover these events they were threatened with arrest by CHP officers if they did not leave the area. At the time, the bypass site was unmarked and there were no fences impeding access to it. Williams and Clark went to the Caltrans' field office in Willits and spoke with Caltrans Public Affairs Officer Steven Kruhl for a briefing on the scope of police activities. Few details were available at the time as the situation continued to evolve. The CHP had closed East Hill Road, a major access route for many residents of Little Lake Valley, and were diverting traffic. While Williams and Clark were standing in the Caltrans office parking lot, Kruhl came out and told them Ukiah CHP Post Commander Captain James T. Epperson wanted them to leave the premises.

On separate occasions in March and early April of 2013, Williams was threatened with arrest by CHP personnel if she did not leave immediately when she was attempting to cover newsworthy events while parked alongside a county road, a state highway, and while standing on

the shoulder of a city street, and in unmarked areas purported by CHP to be within the zone of construction. During this same time period, Eberhard, who at all relevant times was wearing around his neck on lanyards visible press credentials issued by the Mendocino County Sheriff's Department and TWN, and carrying two large cameras, similarly was threatened with arrest on numerous occasions while attempting to cover newsworthy events while on public property, including the public right of way adjacent to Highway 101 and along-side county roads. The incidents of intimidation and harassment include, but are not limited to, the following:

On April 2, 2013, CHP moved in with about 60 officers dressed in riot gear and a team of SWAT officers to extract 5 protesters who had placed themselves in trees, starting with one known as the Warbler. Eberhard was on the scene to document the extraction for TWN. When a CHP officer learned of his presence, he was told to leave. Eberhard showed the officer his TWN press credential. The officer then called on the radio and spoke with a commanding officer believed to be Captain Epperson, explaining that Eberhard had a press pass. The commanding officer nevertheless told the officer to "get him out of here" or words to that effect. Eberhard then showed the officer his press credential issued from the Mendocino County Sheriff's Office, and the officer again radioed the commanding officer and said that Eberhard had a Mendocino County Sheriff's press credential. The commanding officer again responded, "get him out of here."

Later that morning, when Eberhard attempted to photograph from the public right-of-way along Highway 101 CHP's treatment of two of the protesters who, along with the Warbler, were being arrested by CHP personnel, Eberhard was again threatened with arrest by a CHP officer, in front of several other officers, if he did not return to the other side of the highway where he could not readily see the arrest activity. On this occasion, as on numerous other occasions, CHP had its own publicity photographer on the scene. Instead of recording CHP's performance of their duties in arresting the protesters, the CHP photographer stood near the arrest activity and photographed Eberhard attempting to photograph the officers' treatment of the protesters as they

struggled to arrest them. It is believed and thereon alleged that Captain Epperson was aware of CHP's treatment of the press, including that of Eberhard, and indeed directed CHP's conduct.

On April 8, 2013, Eberhard, who was taking photographs of police activity outside of the project area and along property owned by the North Coast Railroad Authority, was told by CHP Officer Berry that if he did not leave the area he would be arrested. When Eberhard asked the CHP officer why he was being denied access to the area he was told that he had to get clearance from Caltrans. When Eberhard followed-up with the Willits Caltrans office, he was told it was CHP's call.

On April 8, 2013, in response to these and similar incidents, TWN Editor Linda Williams wrote to Caltrans District 1 Director Charlie Fielder and Captain Epperson to complain about the treatment of the press and to facilitate press access to the bypass project and surrounding areas to cover newsworthy events, including recording peace officers in the performance of their duties and documenting the construction of a controversial public project. After receiving no response from CHP or Caltrans, Editor Williams contacted Caltrans Assistant Deputy Director of Public Affairs Tamie McGowen. McGowen agreed to intervene with Caltrans District 1 by arranging for Caltrans Public Affairs Officer Phil Frisbie to be on site for a week and to have a Caltrans media representative facilitate access to the site thereafter.

On April 12, 2013, in a meeting with TWN Editor Williams, Publisher Clark and Eberhard, Frisbie offered to assign a media representative who could be contacted during normal business hours to escort TWN reporters and photographers while on the site. He said that this was consistent with Caltrans bylaws, but later admitted that he could not find any such restriction in the bylaws. This arrangement for access during business hours was not exclusive and at no time did TWN agree that it would engage in newsgathering activities in the project area only in the presence of a Caltrans escort or only during Caltrans business hours.

On May 13, 2013, after receiving information that protest activities were underway on the south side of the bypass project, near gate 1 on the west side of Highway 101, Eberhard contacted Caltrans escort Matt McKeon asking him to meet him and TWN Videographer Tony

Ellis at Walker Road to take them to the site. By the time Ellis and Eberhard arrived at the scene with McKeon, one individual already had been arrested and was in the back of a CHP vehicle and another had locked himself to an excavator. When Eberhard approached the CHP vehicle to get a photograph of the arrestee through the window of the vehicle, he immediately heard CHP Officer Teddy M. Babcock rush up from behind, yelling at him, "Get away from there! Get away from there!" Officer Babcock pointed at Eberhard to get away from the car. Eberhard asked Babcock what the problem was and Babcock said he was standing in an unsafe area and that he was responsible for his safety. Eberhard moved to the side of the car where Babcock was pointing – on the far side of the car from the highway – but Babcock continued yelling at him to go back to the area near the excavator where he could not see or photograph the arrestee. Eberhard told Babcock that he was safe standing where he was and that he was with a Caltrans escort, but nevertheless proceeded back to the area directed.

Later that same day, Ellis and Eberhard covered a protest that took place along county owned Hearst Willits Road, where individuals carrying a long banner blocked a construction vehicle. When Babcock moved in to arrest one of the individuals with the aid of another CHP officer, Ellis videotaped the arrest activity, while Eberhard took photographs of it. Both were standing on the side of the road, where the CHP vehicles were parked. At one point, when Babcock was attempting to place the handcuffed protestor into the back of the CHP vehicle with the aid of another officer, he turned to Ellis and, in an angry, aggressive tone heard by Eberhard said, "You are going to go to jail in about a minute." Neither Ellis nor Eberhard was interfering in any way with the arrest activity by recording and photographing it; rather, they were doing their jobs.

On May 20, 2013, Eberhard got word that two individuals had locked themselves to equipment on the site. Eberhard called McKeon and left him a message asking to meet him. Eberhard went to the site at about 7 a.m. and proceeded to photograph the protesters until a CHP officer approached him and told him to leave. Eberhard informed the officer that he was with TWN and that he was waiting for his Caltrans escort. The officer came right up to Eberhard's

face telling him to leave now or he'd be arrested. Eberhard left the area. Later, Eberhard learned that the two protesters were cited and released at the scene.

On May 21, 2013, arrangements were made for Eberhard and Ellis to meet McKeon on Hearst Willits Road to be taken to the site to document the first pile driving at the bypass project. This event was highly newsworthy to the community as construction noise levels in the valley had been the subject of significant public debate. McKeon parked his truck about 200 feet from the pile driving rig and the three walked in wearing Caltrans' hard hats and vests. Babcock was on the scene near the pile driving rigs and two other CHP officers were near the entrance of the site where 10-12 protesters were gathered on the shoulder of Hearst Willits Road. While Eberhard and Ellis were walking around before pile driving began, Babcock walked over to McKeon and talked to him. McKeon later told Eberhard and Ellis that Babcock voiced concern about the press being there and was asking whether Caltrans had allowed it. According to McKeon, he informed Babcock that it was okay for the journalist to be there and that he was escorting them. McKeon continued to inform Eberhard and Ellis that during the pile driving operation they could roam at their own discretion, including inside of the roped perimeter placed about 150 feet from the pile driving rig, noting that once the pile (24" diameter by 110' long steel structure) had been driven into the ground a short distance it can't fall over and that this would be a safer time to get a close up view of the pile driving rig in operation.

After the pile had been driven about one third of the way into the ground, Eberhard walked into the perimeter area to take some photographs. He was about 30 feet into the area when he heard Babcock yelling at him. He turned toward him and Babcock continued yelling at him telling him to leave the area. Eberhard told Babcock that he had McKeon's permission to enter the area. Eberhard photographed Babcock during this encounter and when Babcock noticed this he changed his gesture from a threatening figure-pointing one to an open hand purporting to direct Eberhard to leave. Eberhard turned and walked back toward the perimeter rope. When he was about two feet from the rope, he turned to take two more photographs of the pile driving operation. Babcock instantly came running up and shoved Eberhard hard with two

hands on Eberhard's right shoulder. He then shoved him three more times on his shoulder while yelling at him before Eberhard turned toward him and told him to stop pushing him, explaining that he had a constitutional right to be there.

Captain Epperson was informed of this incident by TWN Editor Williams. Epperson seemed unaware of the incident but agreed to investigate it. Epperson called several days later and acknowledged that the two state agencies were not working together as they should and apologized for the incident. Epperson told Williams that Caltrans and CHP were now on the same page.

On June 12, 2013, several dozen individuals staged a protest by lying down in the wick drain fields, chanting and holding signs. After CHP personnel arrived at the scene, the individuals got up but continued to sing, holding signs and a few individuals stood in front of equipment trying to move within the area. Eberhard and Ellis were on the scene, with their Caltrans escort McKeon, recording the protest activities for the paper. CHP Sergeant Braden Moffett, with Babcock standing along-side him, read a dispersal order to the crowd informing them that if they refused to leave the premises after having been read the order they would be arrested. After reading the dispersal order, Moffett immediately turned to Eberhard and Ellis standing apart from the protesters and clearly there to cover the protests as independent journalists, said, "And, we're going to start with you two."

On June 22, 2013, Eberhard and Ellis went to the bypass project to cover protesters who had walked into the site area in an attempt to supply food to another protestor, Will Parrish, who had days earlier locked himself to one of the wick drain towers. After four individuals were arrested, the protesters began to leave. While Eberhard was walking off the site among other individuals exiting the area, CHP Sergeant Jeffrey A. Mesa pointed at Eberhard and ordered him to come back and approach him. Mesa asked Eberhard for his name and asked to look at his press pass. Eberhard attempted to show him the Mendocino County Sheriff's press pass but Mesa ignored it and reached for TWN press credentials also around Eberhard's neck and wrote down his name on his notepad. Mesa commented that he had seen Eberhard at these protests and

then said in an intimidating manner, “You’re pushing it.” Eberhard explained that he was just doing his job for the paper. Mesa stared directly at Eberhard for several seconds without responding to his legitimacy before Eberhard turned and walked away. No one else was pulled from the departing crowd and questioned in this manner and Mesa clearly knew beforehand that Eberhard was a member of the press, not a protestor.

On July 1, 2013, after Parrish had occupied the wick drain tower for 11 days, Ellis got word that CHP was moving in to extract Parrish from the tower and arrest him. Eberhard called McKeon around 8:30 a.m. to arrange for an escort to the site. McKeon told Eberhard that CHP Captain Epperson had informed McKeon that if he brought the press to the site to document the extraction and arrest, CHP would shut down the operation. On that basis, McKeon denied Eberhard’s request for an escort. About 40 CHP personnel and a SWATT team responded to the scene, taking about two hours to cut Parrish free and arrest him.

At no time during the course of these events did Eberhard either intend to injure or interfere with any lawful business or occupation carried on by the owner of the land or actually injure or interfere with the owner’s property rights. Nor did he ever participate in any protests, he was there to cover them as a journalist. At all times relevant herein, CHP personnel and Caltrans personnel were aware that Eberhard was a credentialed member of the press and was gathering information for dissemination to the public as part of his job duties for TWN, and not as an individual intent on interfering or impeding the bypass project or as a member of the protest contingent.

D. July 23, 2013 False Arrest of The Willits News Photojournalist Stephen Eberhard and Delay in Processing his Arrest.

On July 23, 2013, at about 6 a.m. a group of about 10-15 individuals walked through the gate 6 entrance of the bypass project area carrying a large banner that read “Save our water Stop Caltrans.” The protesters walked about 100 yards into the area and while they were on the property two other individuals entered the area and chained themselves to two wick drain drills.

A CHP officer read the group a dispersal order and thereafter instructed them that they would be arrested if they refused to leave the property. After being read the dispersal order, the protesters slowly began walking backwards toward the gate entrance still holding the banner. A CHP officer walked them back towards the entrance, instructing them that if they stopped they would be arrested. No arrests were made of these protesters and they remained near gate 6 along the shoulder of Highway 101 for several hours.

At about 6:20 a.m., Eberhard drove past the protesters onto a wide area on the west side of Highway 101 and parked. He immediately called McKeon for an escort but did not receive an answer. He left a message asking him to meet him at the site, referred to as the north end wick field. Eberhard put his two press passes around his neck and gathered his camera gear. He crossed the highway at about 6:30 a.m., past the group that was gathered along the shoulder of the highway, and walked through the open gate. Eberhard noticed one protester locked to a wick drain drill about 200 yards from the highway. He started walking toward the closest CHP officer he saw, with his two cameras strapped around each shoulder and his press credentials hanging around his neck and displayed on his chest. CHP Officer Christopher W. Dabbs saw Eberhard and walked towards him, meeting him about half way between the highway and the area where a protester had locked himself onto a drill.

The moment Eberhard was close enough to talk to Dabbs, he reached out to shake hands with Dabbs and while shaking his hand, introduced himself saying "Good morning officer, my name is Steve Eberhard of The Willits News." Eberhard then noticed the second protester and asked Dabbs if he could come in a little closer to photograph the protesters locked to the towers. Dabbs refused to allow him to photograph the protesters and told Eberhard that he would have to leave. Eberhard then told Dabbs that he had called his Caltrans escort McKeon to meet him at the site, making clear to Dabbs that Eberhard's presence on the site was consensual and not intended to interfere with or impede the lawful enjoyment of the owner's property rights. Nevertheless, Dabbs told Eberhard that he was not allowed on the site without an escort. Eberhard explained that he was trying to do his job and cover the protests and that he had a First

Amendment right to do so. Eberhard also made reference to his press credentials. Dabbs then told Eberhard he had to leave or he was going to read him the dispersal order and arrest him if he thereafter refused to leave. Eberhard told Dabbs, "Okay, go ahead and read me the dispersal order and I'll leave." Dabbs was looking at his cell phone for the dispersal order when another CHP officer, Officer Kory Reynolds, approached from the side, grabbing Eberhard's wrist and saying "You're going in. You're under arrest." Eberhard told Reynolds that Dabbs was going to read him the dispersal order and that he was going to leave, as had been the practice on prior occasions with protesters and with Eberhard himself, and that he did not want to be arrested. Reynolds said, "You know what that dispersal order says. We're not going to read it." Dabbs then stopped looking for the dispersal order on this phone and joined Reynolds in arresting Eberhard.

Knowing that Eberhard would leave upon being read the dispersal order, which is intended to make clear that in effectuating any order to vacate property peace officers are acting at the express request of and as agents for the property owner, and knowing that Eberhard was there not to interfere with the owner's property rights in any manner but to gather information for dissemination to the public about important matters of public interest, Dabbs and Reynolds proceeded to arrest Eberhard, refusing to read him the dispersal order and refusing to give him any opportunity to leave the property even though the officer said he would.

Dabbs and Reynolds proceeded to seize Eberhard's two cameras, laying them on the ground. They then pulled his other arm behind his back and placed handcuffs on his wrists. A Caltrans employee drove up and stopped about 15 feet from the officers. Eberhard asked if she would take his cameras to McKeon for safekeeping, but she refused. Reynolds said that they were taking his cameras in as evidence.

Eberhard reiterated that he did not want to be arrested and that he was just trying to do his job. Reynolds told Eberhard he was being arrested for trespassing and that they were taking him in. Reynolds walked Eberhard to the patrol car holding his arm and leaned him up against the patrol car, face forward. Reynolds and Dabbs proceeded to conduct a pat down search of

Eberhard's person, removing his cell phone, with source contact information, and journalist's notepad and pen, among other things. Eberhard was then placed in the back of the patrol car, with his wrists still cuffed behind him.

After about 10 minutes in the back of the patrol car, Dabbs opened the driver-side door to get a note pad. Eberhard told Dabbs that he had a bad shoulder and it was hurting in this position. Dabbs told Eberhard, "You should have thought of that before you walked out here." He then closed the door. After about another 15 minutes, Sergeant Lott opened the door and asked Eberhard how he was doing. Eberhard, said, "Sgt. Lott, it's a mistake to arrest the press for trying to document the story." Eberhard told him he should let him go. Eberhard then told Lott that he had four surgeries on his shoulder and that it was hurting him bad in this position. Lott did not respond to this. The two proceeded to have a conversation where Eberhard conveyed that he had always shown respect to him and the other CHP officers and that there was only one time that he called out Babcock for shoving him repeatedly on May 21, 2013, when he was with his escort. Lott smiled and said he had heard about those prior incidents. He then closed the door and walked back to a group of officers.

About five minutes later, Reynolds and Dabbs walked over and opened the door for Eberhard to get out. They adjusted the handcuffs to allow more separation between the wrists and placed him back into the patrol car.

About an hour transpired from the time of the arrest until Dabbs opened the door and strapped Eberhard's seatbelt in for the trip to Mendocino County Jail, about 30 minutes away. As Dabbs drove from the site, the protesters were still present along the shoulder of Highway 101, some chanting "freedom of the press" and words to that effect. At no time was Eberhard read his Miranda rights.

When they arrived at the jail, a sheriff's deputy came out to greet arresting officer Dabbs. Dabbs told the deputy that he had "another protester in the back." Eberhard said, "I am not a protester, I am the press." The deputy did not respond. Dabbs proceeded to hold Eberhard in the back of the car, questioning him and filling out paper work for about another 30 minutes.

Dabbs brought Eberhard into the jail's intake room, where the handcuffs were removed from his wrists. He was then placed in a cell occupied by another individual who appeared intoxicated. He was held there for about two hours. Then he was taken to another room where he was fingerprinted and his mug shot was taken. He was issued a "pre-trial release" form, requiring that he appear in Mendocino County Superior Court in Ukiah on August 23, 2013. His cell phone, notepad and personal effects were returned to him. He was released about 12 p.m.

Upon release, he went to the Ukiah Office of CHP to retrieve his cameras, which purportedly were being held as evidence.

On or about August 19, Mendocino County District Attorney C. David Easter informed counsel for Eberhard that no charges would be filed against him and that this determination was made on July 30, 2013. Eberhard was informed by the court as late as August 15, however, that no decision had been made by the DA as to whether to press charges.

The two protesters who chained themselves to the wick drain on the construction site that morning, causing construction delays, interfering with the property owner's property rights and necessitating the law enforcement response, were cited by CHP and released at the scene.

E. CHP's Falsification of the Arrest Report and CHP's and Caltrans' Post-Arrest Collusion in Falsely Portraying Photojournalist Eberhard as a Protester to Destroy his Credibility as a Neutral Fact Gatherer, to Chill his First Amendment Rights and to Retaliate against him for Exercising those Rights.

Despite knowing the true facts, Dabbs prepared an undated narrative to the arrest report full of numerous falsehoods, including but not limited to the statement that Reynolds told Eberhard to leave the premises before grabbing his wrist, placing it behind his back and arresting him; that Eberhard violated the trespass laws as outlined in Penal Code Section 602(k), or any other subdivision therein; that Eberhard refused to leave or that he was arrested after refusing to leave; and, that Eberhard was not questioned after the arrest. Additional false representations about the supposed protocol for obtaining access to the site were included in the report. The arrest report's first page also indicates that Eberhard's misdemeanor incarceration, rather than

immediate release, was justified because he “would be reasonably likely to continue the offense or offenses, or the safety of persons or property would be imminently endangered if immediately released.” Given that it was known to CHP, including officers Dabbs and Reynolds and Captain Epperson, that Eberhard had entered the property not to participate in the protests or in any way impede the bypass project but to gather information for dissemination to the public, including the recording of peace officers in the performance of their duties, these statements were knowingly false.

Not surprisingly, Eberhard’s arrest and incarceration were met with universal rebuke by the journalism community throughout California. Numerous editorials were published throughout the state condemning the actions of CHP in arresting Eberhard for doing his job and attempting to photograph newsworthy events.

In response to these editorials, CHP Chief Bridget Lott and Caltrans District 1 Director Charlie Fielder jointly penned a “letter to the editor” stating, among other things, that Eberhard was arrested because he “trespassed” and “refused a lawful order to exit.” The letter further stated that Eberhard “was led peacefully from the construction site not because of his profession, but because he refused lawful orders to leave a construction site.” The letter also said, “We strongly object to a claim that members of the press corps have been treated with anything but respect and professional courtesy.”

Soon after the letter was presented to TWN and a sister paper in Chico, Caltrans Director of Communications Fran Clader was informed that the characterization about Eberhard’s arrest was inaccurate and potentially defamatory of him. She was also informed that the statement that CHP and Caltrans have treated the press with nothing but respect and professional courtesy was grossly inaccurate. Despite being informed about the inaccuracies of these statements, the letter, as initially presented by Lott and Fielder, was published in numerous newspapers in California. However, Lott and Fielder did agree to change the letter before it was published in TWN, and its sister papers. Instead, of stating that Eberhard failed to obey a lawful order, Lott and Fielder, through Clader, agreed to change the letter to say that Eberhard was directed by an officer to

leave and that he was arrested not because of his profession but because he refused to leave a construction site. The letter with this changed language was then published in TWN and its sister papers not because it was true but because it mirrored the official version of events as presented by Dabbs in the arrest report, thus receiving protection from false publication under the fair and true report privilege of Civil Code Section 47d.

On August 2, 2013, in response to a letter written to CHP Commissioner Joseph A. Farrow by the Society of Environmental Journalists in protest of CHP's treatment of Eberhard, Lott wrote to the Society of Environmental Journalists. In this letter to Eberhard's professional, journalism peers, Lott falsely portrayed Eberhard as a protester not only on prior occasions in which he was covering the protests as a journalist but on the date of his arrest. Specifically, she states, in relevant part:

[H]e had visited the site many times since early February 2013, and had been granted access without incident. In other situations he was on site as part of a protest contingent, but had left voluntarily with the protesters when asked. ¶ Gaining access to the issues that make up the news is at the heart of the journalistic enterprise and the CHP takes seriously its role in facilitating that process. The CHP does not want to see any member of the media arrested. Unfortunately, on this particular day, Mr. Eberhard declined to conform to the well-defined set of operating standards. It was explained to him, no less than three times, that he was putting himself in a situation which could lead to arrest. Though originally acting as part of a group of protesters, when all other protesters had left the site as requested, Mr. Eberhard remained.¶ He was given additional time to leave but chose not to, leaving officers with no other course of direction but to take him into custody for trespassing; for his safety, the safety of the workers, and the operational necessity of the project.

These statements were false and known to be false when stated but nevertheless were published for the purpose of further intimidating and chilling the exercise of Eberhard's state and federal constitutional speech rights and in further retaliation for his legitimate newsgathering activities, including photographing peace officers in the performance of their duties on numerous prior occasions.

II. LIABILITY

A. False Arrest and False Imprisonment.

On July 23, 2013, Officers Dabbs and Reynolds had no rational reason to believe Eberhard was violating any law, including trespass, which under California law requires a specific intent to interfere with or impede the property owner's enjoyment of his or her property rights, and at all relevant times Dabbs and Reynolds knew or reasonably should have known that Eberhard was on the bypass project site to document newsworthy events for TWN. Dabbs and Reynolds also knew or reasonably should have known that Eberhard's entry onto the site of the bypass project was not nonconsensual or in violation of the property owner's rights as he had been on the site on other occasions, both with a Caltrans escort and without, without incident.

Nevertheless, Dabbs and Reynolds arrested Eberhard without a warrant, without probable cause to believe he violated any law and without any other legal justification.

Dabbs and Reynolds intended to confine Eberhard and deprive him of his liberty when they arrested him, placed him in the patrol car and transported him to county jail, where he was incarcerated for several hours and then booked and released.

These actions were flagrant, malicious, willful and reckless, and displayed a high degree of moral culpability.

Dabbs and Reynolds conduct was committed within the scope and course of their employment by CHP, and it is believed and therefore alleged that their actions were directed, controlled or participated in by superior officers of both Caltrans and CHP, including but not limited to CHP Captain Epperson.

These actions caused actual harm to Eberhard, including physical pain and suffering, emotional injury, degradation, humiliation, mental anguish, embarrassment, reputational harm, and loss of earnings and earning capacity.

Dabbs' and Reynolds' conduct, and the conduct of others who approved, directed, controlled or participated in the unlawful arrest, including but not limited to Epperson, was a substantial factor in causing Eberhard's harm.

B. Violations of the BANE ACT, Cal. Civ. Code Section 52.1.

Babcock interfered with Eberhard's state and federal constitutional rights to gather news for dissemination to the public about important matters of public interest and to photograph peace officers in the performance of their duties by threatening to arrest him and by committing assault and battery upon his person. These acts of intimidation, violence and coercion were done by Babcock in retaliation of Eberhard's exercise of these state and federal constitutional rights (First Amendment, Fourteenth Amendment; Cal. Const. Art. 1, § 2). These actions caused actual harm to Eberhard, including physical pain and suffering, emotional injury, degradation, humiliation and mental anguish.¹ Babcock's conduct was a substantial factor in causing Eberhard's harm.

Dabbs, Reynolds and Epperson interfered with Eberhard's state and federal constitutional rights to gather news for dissemination to the public about important matters of public interest, to photograph peace officers in the performance of their duties and to enjoy equal protection of the laws by arresting Eberhard without probable cause and without an arrest warrant, or by directing, controlling or participating in the unlawful arrest, and by intentionally delaying the processing of his arrest while knowing he was in physical pain from the wrist restraints. These acts of intimidation and coercion were done by Dabbs, Reynolds and Epperson in retaliation of Eberhard's exercise of his state and federal constitutional rights (First Amendment, Fourteenth Amendment; Cal. Const. Art. 1, §§ 2, 7).

¹ The primary relief sought against Babcock under this claim is a declaration that Babcock's conduct of intimidation and harassment violates Eberhard's state and federal constitutional rights and an injunction prohibiting such conduct in the future.

Separately, Dabbs and Reynolds interfered with state and federal laws (42 U.S.C. § 2000aa; Cal. Pen. Code §1524) designed to protect journalists, such as Eberhard, against seizures of newsgathering materials, even with a warrant, where no rational reason exists to suspect the materials seized will contain evidence of a crime committed by the journalist. Dabbs and Reynolds interfered with these rights and laws by seizing Eberhard's cameras, journalist's notepad and cell phone during the commission of an unlawful arrest without probable cause, and by holding these materials purportedly as evidence without any rational reason to believe these materials would contain any evidence since no crime was committed by Eberhard and no reasonable peace officer in Dabbs and Reynolds position would believe any such crime was committed by Eberhard when he entered the site to photograph the protesters, a purpose known by and conveyed to the officers.

These acts of intimidation and coercion were done in violation of these state and federal laws and in retaliation of Eberhard's exercise of his state and federal constitutional rights to gather news, to photograph peace officers in the performance of their duties and to enjoy equal protection of the laws.

The above acts committed by Dabbs and Reynolds caused actual harm to Eberhard, including physical pain and suffering, emotional injury, degradation, humiliation, mental anguish, embarrassment, reputational harm, and loss of earnings and earning capacity. Dabbs' and Reynolds' conduct was a substantial factor in causing Eberhard's harm.

C. Unnecessary Delay in Releasing Photojournalist Eberhard.

Dabbs and Reynolds caused Eberhard to be held in custody, from the time of his arrest until the time of his release, for nearly six hours.

This time was far in excess of the time necessary to complete booking paperwork or to process Eberhard's arrest. Indeed, the initial delay in transporting Eberhard to county jail was not only unnecessary, it was an intentional effort by Dabbs and Reynolds

to harass, intimidate and retaliate against Eberhard for attempt to cover the protest on that day and for his prior newsgathering activities related to the bypass project. This is further evidenced by the fact that the two protesters who chained themselves to the construction equipment with the intent to interfere with the property owner's enjoyment of its property rights and actually caused substantial delays and incidental costs to the project, were cited and released at the scene. Others there to intentionally interfere with the project and in protest of it, were allowed to leave after being read the dispersal order.

Eberhard was further held in a county jail cell for two hours before he was fingerprinted and booked, in part, because of Dabbs' false representation to sheriff personnel that Eberhard was a protester. This delay in releasing Eberhard was unnecessary and intentional.

Eberhard did not consent to this delay.

In addition to nominal damages, Eberhard was actually harmed by the delay in processing his release, including but not limited to physical pain and suffering, emotional injury, degradation, humiliation, mental anguish, embarrassment, reputational harm, and loss of the ability to convey time sensitive, newsworthy information to the paper for publication.

Dabbs and Reynolds conduct was a substantial factor in causing Eberhard's harm.

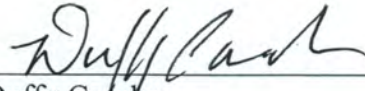
D. Intentional Infliction of Emotional Distress.

The conduct of Dabbs, Reynolds, Epperson, Lott and Fielder, in arresting Eberhard, seizing newsgathering materials, delaying the processing of his arrest and then falsely portraying the facts in the press and with Eberhard's peers in order to chill his First Amendment and state constitutional rights by destroying his credibility as a journalist, as more fully set forth above, was outrageous and intended to cause emotional distress to Eberhard. Eberhard suffered emotional distress. The conduct of these CHP

and Caltrans officers and personnel was a substantial factor in causing Eberhard's server emotional defense.²

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² In addition to these state law claims for damages, these facts give rise to liability against Dabb, Reynolds and Epperson, in their individual capacities, under 42 U.S.C. § 1983, and the First, Fourth and Fourteenth Amendments to the United States Constitution, and against Dabbs and Reynolds, in their individual capacities, under 42 U.S.C. § 2000aa-6(a). These facts also give rise to liability against Officer Babcock, in his individual capacity, under 42 U.S.C. §1983, and the First and Fourteenth Amendments to the United States Constitution for First Amendment retaliation. These facts also give rise to liability against CHP Chief Lott and Caltrans District 1 Director Fielder, in their individual capacities, under 42 U.S.C. § 1983, and under the First Amendment and Fourteenth Amendments to the United States Constitution for First Amendment retaliation. There is no claim prerequisite for these federal claims however.