

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

WENDELL I. FORD, et al.

Plaintiffs

v.

RICHARD J. VOORHAAR, et al.

Defendants

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CASE No. AW-02-CV-3311

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**PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

Plaintiffs, by their undersigned attorney, hereby ask leave of court pursuant to Rule 15(a), F. R. Civ. P., and Local Rule 103.6 to file a First Amended Complaint in this cause.

The amended complaint removes Richard J. Voorhaar and John Doe 1-10 and names as defendants Lieutenant Steven Doolan, individually and in his official capacity as then-Captain within the Office of Sheriff of St. Mary's County; the St. Mary's County Board of County Commissioners; and two additional individuals, Michael Bowes and Steven Cooper.

In light of the Court's Order dated April 9, 2003 which, in part, dismissed the 1983 claim against Sheriff Voorhaar in his official capacity, but allowed for the possibility of further consideration of the matter, the accompanying Memorandum includes the grounds upon which Plaintiffs believe that the official capacity claim

for violation of Section 1983 (proposed Count Five) is proper as to Defendant Doolan and the Board of County Commissioners.

The amended complaint contains revisions to the original allegations of fact and the grounds upon which relief is sought as a result of discovery conducted since the stay in this cause ended on March 3, 2003.

As set forth in the accompanying Affidavit of Michael B. Suessmann, the information learned through discovery was not previously known to the Plaintiffs and could not have been reasonably ascertained earlier.

Counsel for Plaintiffs sought but did not obtain concurrence from counsel for Defendant Voorhaar for the filing of the First Amended Complaint.

Filed with this Motion are the First Amended Complaint, Memorandum in Support of Plaintiffs' Motion for Leave to File Amended Complaint, Affidavit of Michael B. Suessmann and the highlighted copy required by Local Rule 103.6.

Respectfully submitted,

//s//Michael B. Suessmann  
Michael B. Suessmann, Esq.  
A. Shane Mattingly, P.C.  
P.O. Box 1906  
Leonardtown, MD 20650  
301/475-9101  
Bar Number 13458

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

WENDELL I. FORD, et al.

Plaintiffs

v.

RICHARD J. VOORHAAR, et al.

Defendants

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CASE No. AW-02-CV-3311

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO  
FILE FIRST AMENDED COMPLAINT**

Plaintiffs, by their undersigned attorney, submit this memorandum in support of their Motion for Leave to File First Amended Complaint. The memorandum first discusses the basis for amendment of the pleadings under the Federal Rules and next sets forth the grounds upon which Plaintiffs believe that it is proper to include in the amended complaint an official capacity claim at Count Five for violation of Title 42 U.S. Code Section 1983.

**Amendment of the Complaint Should Be Allowed in the Interest of Justice.**

Rule 15(a), F. R. Civ. P. states that leave to amend shall be freely given when justice so requires. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Conley v. Gibson, 355 U.S. 41, 48 (1955).

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. - the leave sought should, as the rules require, be "freely given." Foman v. Davis, 378 U.S. 178 (1962).

As further set forth in the accompanying Affidavit of Michael B. Suessmann, discovery in this case was stayed after agreement between the parties until March 3, 2003 because of a criminal investigation by the State Prosecutor regarding the same occurrences that form the basis for this lawsuit.

Since the stay expired, Plaintiffs have discovered new information, contained in the proposed amended complaint, regarding the handling of the property at issue within the Office of Sheriff. The new information implicates then-Captain Doolan, the second-in-command, as the sole member of the Office of Sheriff who is liable for the wrongful acts set forth in the complaint. The information also implicates two civilians, then-Captain Doolan's step-son and a close friend.

The Court Should Permit the Plaintiffs to Include an Official Capacity Claim in the Section 1983 action (proposed Count Five).

In light of the court's earlier dismissal of the official capacity allegations against Sheriff Voorhaar, including the Section 1983 count, Plaintiffs offer their

understanding of the law and facts which form the basis for their request to include the official capacity claim against then-Captain Doolan and the Board of County Commissioners in proposed Count Five of the amended complaint.

In sum, to ultimately resolve the propriety of the claim, the court first will have to decide whether then-Captain Doolan acted as a local or state official when performing a law enforcement function; *i.e.*, the control of property seized under search warrants as evidence in a criminal investigation. If the court determines that he acted as a local official, the court next will have to decide whether he was a policy-making or decision-making official for the county in respect to the facts of this case.

The Supreme Court has provided a framework for the first part of the analysis, state official or local official, in McMillian v. Monroe County, Alabama, 520 U.S. 781 (1997).

Our cases on the liability of local government under 1983 instruct us to ask whether governmental officials are final policymakers for the local government in a particular area, or on a particular issue, citing Jett v. Dallas Indep. School District, 491 U.S. 701, 737 (1989) and St. Louis v. Prapotnik, 485 U.S. 112, 123 (1988). . . . Second, our inquiry is dependent on an analysis of state law (citations omitted). This is not to say that state law can answer the question for us by, for example, simply labeling as a state official an official who clearly makes county policy. But our understanding of the actual function of a governmental official, in a particular area, will necessarily be dependent on the definition of the official's function under relevant state law. 520 U.S. at 785-6.

In McMillian, the Court had to decide whether an Alabama sheriff was a local or state official for purposes of Section 1983 when he took part in a murder investigation and was alleged by the plaintiff to have suppressed exculpatory information. In deciding that the Alabama sheriff was a state official when performing law enforcement duties, the major factors driving the result were the Alabama Constitution's placement of sheriffs within the executive branch of state government and the 1901 Constitution's clarification that Sheriffs were acting for the state when exercising their law enforcement function.

Recognizing the appropriate deference to state law in the context of section 1983, the McMillian court closely examined the Alabama Constitution, Code and case law, finding critical to its decision that the Alabama Supreme Court had interpreted various of the relevant provisions and their historical background as evidence of "the framer's intent to ensure that sheriffs be considered executive officials of the state." Streit v. County of Los Angeles, 236 F.3d. 552, 560 (9th Cir., 2001).

The McMillian court also considered four "important considerations" which cut in favor of the conclusion that sheriffs are county officials-sheriffs are paid by their counties, counties fund the Office of Sheriff, jurisdiction is limited to the county, and sheriffs are elected locally. These provisions of state law did not, however, outweigh the significance of the Alabama Constitution's placement of sheriffs in the executive branch of state government. See 520 U.S. at 791.

In sharp contrast to Alabama, Maryland's comparable constitutional and statutory provisions uniformly weigh in favor of Maryland sheriffs being local officials for purposes of Section 1983 when they perform law enforcement duties.

First, the Maryland Constitution identifies sheriffs as part of the judicial branch at Section 44 of Article IV, not part of the Executive branch in Article II. Constitution, Md. Code Ann., (2002 Supp.)

Section 44 states that the sheriffs "exercise such powers and perform such duties as now are or may hereafter be fixed by law". Under this provision, the duties of the sheriffs are those prescribed by the common law, the enactments of the General Assembly, and the Rules of the Court of Appeals. Prince George's County v. Aluisi, 354 Md. 422, 433; 731 A.2d. 888, 894 (1999).

Unlike Alabama, the Maryland Constitution does not assign a law enforcement role to its sheriffs. Based on the placement of sheriffs within the judicial branch and the absence of a Constitutional provision directing that sheriffs engage in law enforcement, Maryland's Court of Appeals has viewed sheriffs' constitutional role as the performance of ministerial functions.

The office of sheriff, under our Constitution, is ministerial in nature; a sheriff's function and province is to execute duties prescribed by law. See ...the concurring opinion of Le Grand, C.J., in Mayor and City Council of Baltimore v. State ex rel. Board of Police, 15 Md. 376, 470, 488-90 (1860). Crosse v. Board of Elections, 243 Md. 555, 561; 221 A.2d. 431, 435 (1966).

Maryland's highest court has commented on the specific issue before this court. While declaring that under Maryland law, a sheriff is a state official, the

court recognized that the state characterization is not dispositive for Section 1983 claims. Ritchie v. Donnelly, 324 Md. 344, 597 A.2d 432 (1991).

For an official capacity claim under Section 1983, the action at issue must be that of a municipality or local government, not that of a state. Because a state government official, sued in his official capacity, is not a “person” for purposes of a Section 1983 action for damages, but a local government official is a “person” under the statute..., it is obviously necessary in many cases to determine whether an individual defendant is a state or local government official for purposes of section 1983. This is often difficult when dealing with an official like a Maryland sheriff who has some of the characteristics of a state official and some characteristics of a local government official. 324 Md. at 356-367; 597 A.2d at 438.

The framers of Maryland’s current Constitution, which is the Constitution of 1867, could have placed sheriffs in the executive branch and could have directed that they engage in law enforcement in behalf of the state, as did Alabama. However, while aware of the sheriff’s common law duties regarding law enforcement, Maryland’s framers elected to remain silent regarding sheriffs’ law enforcement activities and categorized sheriffs, for constitutional purposes, as officers of the court who are charged with its security and the execution of its orders.

Second, the General Assembly has enacted laws regarding sheriffs which, viewed collectively, tilt toward the conclusion that Maryland sheriffs are local officials for purposes of Section 1983 when engaged in law enforcement.



The Legislature has codified some of the common law duties of sheriffs. *E.g.*, accepting bail bonds; removing convicted criminals to the penitentiary; keeping prisoners safely; serving writs; executing writs of execution or attachment and filing returns of service with the clerk of the court. (internal citations omitted). However, it has not substantially diminished those common law duties, but rather has left them essentially intact. Soper v. Montgomery County, 294 Md. 331, 337; 449 A.2d 1158, 1161 (1982).

Since the Maryland Constitution was enacted, the duties of sheriffs have evolved in two general directions. In some counties, local governments have established county police forces that have replaced sheriffs as the local law enforcement agency; while in the remaining counties, sheriffs continue to provide local law enforcement

The General Assembly has sought to maintain the status of all sheriffs as state officials while ensuring that financial liability for torts committed by sheriffs in the performance of law enforcement duties is borne by their counties. Thus, the Maryland Tort Claims Act lists sheriffs and deputy sheriffs as covered persons. Section 12-101(a), State Government Article, Md. Code Ann. (2002 Supp.).

However, the General Assembly has insured that the tort liability costs of law enforcement are borne by counties regardless of whether law enforcement is provided by county police departments or by sheriffs. Thus, counties are financially liable to the state for any tort-related costs arising from a sheriff's law

enforcement duties. Section 9-108, State Finance and Procurement Article, Md. Code Ann. (2001) <sup>1</sup>

We note that in the context of an 11<sup>th</sup> Amendment arm-of-the-state analysis, the state's action to shift the ultimate financial liability to counties would be a substantial, if not dispositive, factor in deciding that sheriffs do not act as an "arm of the state" for purposes of the 11<sup>th</sup> Amendment when engaging in law-enforcement functions. Cash v. Granville County Board of Ed., 242 F.3d 219 (4<sup>th</sup> Cir., 2001). While not controlling for the Section 1983 determination under McMillian, we urge the court to give significant weight to the practical import of the counties' financial liability for sheriffs' torts arising from law enforcement.

Further, in defining "police officer" for purposes of the Criminal Procedure Article, the General Assembly includes "... (10) the sheriff of a county whose usual duties include the making of arrests; (11)) a regularly employed deputy sheriff of a county who is compensated by the county and whose usual duties include the making of arrests" Section 2-101, Crim. Proc. Art., Md. Code Ann. (2002 Supp.).

In creating the authority of these police officers, the General Assembly distinguished between the statewide authority of the Maryland State Police, codified at Section 4, Article 88B, Department of State Police, and that of sheriffs and their deputies who meet the definition of "police officer".

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<sup>1</sup> For a discussion of the history of the statute, see State v. Card, 104 Md. App. 439 (1995), cert. den. 339 Md. 643 (1995).

Sheriffs and deputy sheriffs operate under the same restrictions on out-of-area jurisdiction as do county and municipal police officers. They can act outside their jurisdictions only under enumerated conditions: participation in a joint investigation with an officer who has local jurisdiction, while rendering assistance to another officer or at his request, or in an emergency. Even in such cases, the law requires formal notification of the head of the local law enforcement agency and the commander of the local barrack of the State Police as well as the formulation of agency policies to carry out the statute. Section 2-102, Crim. Proc. Art., Md. Code Ann. (2002 Supp.).

Next, the General Assembly has placed the costs of funding the sheriff's salary, deputies and operations on the counties. Section 2-309, Cts. and Jud. Proc. Art., Md. Code Ann. (2002).

In addition, the General Assembly has identified the St. Mary's Sheriff and deputy sheriffs as county employees. "In St. Mary's County, the County Commissioners may adopt a separate plan of pension benefits or may supplement existing plans for any one or more of the following classes of employees: (i) Sheriff; (ii) Deputy sheriffs...". Section 3g-2(1), Article 25, County Commissioners, Md. Code Ann. (2002 Supp.).

Finally, for at least the past several years, the General Assembly has not legislated any significant provisions specific to St. Mary's County in its recurring act to set the annual salary for each sheriff and to impose operational and administrative requirements on a county-by-county basis. See Section 2-309(t), Cts. and Jud. Proc. Art., (supra).

Thus, the factors which most determined the outcome in McMillian-- the constitutional placement of Alabama sheriff's in the executive branch of state government and the specific assignment of a law enforcement function in behalf of the state--are not replicated in Maryland. Rather, the Maryland Constitution places sheriffs within the judicial branch of government, the branch charged with deciding the law, and not in the executive branch, the branch charged with enforcing the law. The Maryland Constitution is silent regarding the sheriffs' role in law enforcement.

Second, Maryland's General Assembly has placed financial responsibility onto the counties for sheriffs' torts arising from law enforcement activities.

Third, McMillian's "four important provisions which cut in favor of the conclusion that sheriffs are county officials" (sheriffs paid by county; counties fund the Office of Sheriff; jurisdiction is limited to the county; and sheriffs are elected locally) equally apply in Maryland. In Maryland, these provisions buttress, rather than conflict with, the state's constitutional provisions in support of the conclusion that, in a Section 1983 analysis, Maryland sheriffs are more properly viewed as local officials when engaged in law enforcement activities.

Fourth, the General Assembly has termed the Sheriff and deputy sheriffs "employees" of St. Mary's County.

If the Court determines that in this case the Sheriff is a local official for purposes of Section 1983, the Court will need to assess facts presented by the parties to decide whether then-Captain Doolan was a policy-maker or decision-maker for the county.

While analysis of state law alone is the basis for the determination that Maryland sheriffs are better viewed as local officials for purposes of Section 1983 when performing law enforcement duties, a decision regarding whether an official is a policy-maker or decision-maker of the local government requires application of the law to the facts of the case.

It is well established that a local government cannot be held liable under Section 1983 based on respondeat superior. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 691 (1978). However, a municipality may be sued under Section 1983 based on a single decision attributable to a municipality where the evidence that the municipality had acted and that the plaintiff had suffered a deprivation of federal rights also proved fault and causation. Bryan County, OK v. Brown, 520 U.S. 397 (1997).

The Supreme Court has recognized that, under appropriate circumstances, a municipality may incur Section 1983 liability for a single decision by a policymaking official. Austin v. Paramount Parks, et al., 195 F.3d 715, 728 (4<sup>th</sup> Cir.,1998). If the decision to adopt a particular course of action is directed by those who establish governmental policy, the municipality is equally liable whether the action is to be taken only once or to be taken repeatedly. Pembaur v. City of Cincinnati, 475 U.S. 469, 480 (1986).

The Plaintiffs believe that the evidence of then-Captain Doolan's wrongful conversion of the Plaintiffs' property will satisfy the fault and causation requirements of Bryan County.

Plaintiffs already have obtained testimonial and documentary evidence in support of their position that then-Captain Doolan was a policy-maker for the county in the area of law enforcement and expect to develop additional evidence to support this aspect of the analysis as discovery continues.

Accordingly, for the reasons set forth above, Plaintiff ask for leave to amend the complaint and to include the Section 1983 official capacity claim.

Respectfully submitted,

//s//Michael B. Suessmann  
Michael B. Suessmann, Esq.  
A. Shane Mattingly, P.C.  
P.O. Box 1906  
Leonardtown, MD 20650  
301/475-9101  
Bar Number 13458

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

WENDELL I. FORD, et al  
Plaintiffs

CASE No. AW-02-CV-3311

v.

RICHARD J. VOORHAAR, et. al  
Defendants

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**Affidavit of Michael B. Suessmann**

**COMES NOW** Michael B. Suessmann, and having been sworn states as follows:

1. I am counsel for the Plaintiffs in the above-styled cause and submit this Affidavit in support of Plaintiffs' Motion For Leave To File First Amended Complaint.

2. After on agreements between the parties, the Court issued several stays of discovery to allow the State Prosecutor to continue an investigation into the facts which form the basis for this lawsuit. These stays ran from approximately the date when the case was removed to this Court until March 3, 2003.

3. In the two months since the final stay expired, the Plaintiff's have engaged in discovery to determine what happened to the Plaintiff's property and who was responsible for its wrongful removal from the Office of Sheriff. We

learned for the first time that there was mishandling of the property and associated records on several distinct occasions by several members of the Office of Sheriff. However, the evidence obtained so far identifies then-Captain Doolan as the only member of the Office of Sheriff directly and culpably involved in the acts set forth in the amended complaint.

4. The information regarding then-Captain Doolan's actions and the actions of other members of the Office of Sheriff were not known to the Plaintiffs until after March 3, 2003 and could not have been learned before that date due to the unwillingness of the Office of Sheriff to provide any information prior to the filing of this lawsuit as well as due to the stays of discovery described above.

5. The Plaintiffs provided notice of their intent to amend the Complaint at paragraph 17 of the original Complaint and also by their naming as defendants, John Doe-1-10.

6. For these reasons and in the interest of justice, Plaintiffs seek leave to amend the complaint.

(s) Michael B. Suessmann  
Michael B. Suessmann

STATE OF MARYLAND  
COUNTY OF ST. MARY'S

Subscribed and sworn to before me, a Notary Public of St. Mary's County, Maryland, this 8<sup>th</sup> day of May, 2003.

Seal

(s) Lisa Keating  
Lisa Keating  
Notary Public

My Commission Expires 03/30/05



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

WENDELL I. FORD et al.,

Plaintiffs

v.

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CASE NO. AW-02-CV-3311

LT. STEVEN DOOLAN, in his official capacity  
as then-Captain, Office of Sheriff, St. Mary's  
County, Maryland and individually  
P.O. Box 1559  
Leonardtown, Maryland 20650;

BOARD OF COUNTY COMMISSIONERS OF )  
ST. MARY'S COUNTY, MARYLAND )  
(Thomas McKay, Daniel Raley, Thomas )  
Mattingly, Larry Jarboe, Kenny Dement) )  
P.O. Box 156  
Leonardtown, Maryland 20650;

STEVEN P. COOPER  
42888 Hart Court  
Leonardtown, MD 20650; and

GEORGE MICHAEL BOWES, JR.  
45321 East Othello Way  
California, MD 20619;

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Defendants

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**FIRST AMENDED COMPLAINT**

This is a complaint for damages for violation of the Plaintiffs' rights under the United States Constitution and the Maryland Declaration of Rights and for other intentional torts.

Jurisdiction and Venue

1. This case was removed from the Circuit Court of St. Mary's County, Maryland pursuant to Title 28 United States Code Sections 1331, 1441 and 1446.

2. Venue is proper under Title 28 United States Code Section 1391 because the acts and conduct which form the basis of this Complaint occurred in whole or in part within the District of Maryland and, in particular, within the Southern Division of this District.

#### The Parties

3. Plaintiffs Wendell I. Ford and Corey Butler are in their 30's and are life-long residents of St. Mary's County, Maryland.

4. Defendant Lt. Steven Doolan has been a Deputy Sheriff within the Office of Sheriff, St. Mary's County, Maryland for many years. At all times relevant to this lawsuit, he held the rank of Captain within the Office of Sheriff and was second-in-command to the elected Sheriff.

5. Defendant George Michael Bowes, Jr. is the stepson of Defendant Doolan.

6. Defendant Steven Paul Cooper is a close friend of Defendant Doolan.

7. Defendant Board of County Commissioners of St. Mary's County, Maryland is the corporate entity for St. Mary's County, Maryland and is subject to lawsuit under the laws of the State of Maryland.

#### Factual Background

8. In January, 1999, Deputy Sheriffs of the Office of Sheriff of St. Mary's County, Maryland executed search warrants at the Plaintiffs' residences and at

other locations including a house which the Plaintiffs owned and were then renovating for subsequent resale. The search warrants had been obtained as part of an investigation into reports of thefts from construction sites in the county that had been made to the Office of Sheriff and the Maryland State Police in the prior months.

9. One report which was basis for the search warrants had been filed in behalf of a local company, Egan, McAllister and Associates (“EMA”). In Offense Report Number 33030-98, dated November 16, 1998, EMA had reported the theft of 220 pieces of 2x6 lumber, each 9 feet long and 100 pieces of ½ inch plywood.

10. In the execution of the search warrants, the Deputy Sheriffs seized personal property of the Plaintiffs, including sheet rock, windows, doors, safe, refrigerator, insulation, tub, tar paper, siding, lumber, photographs, check books, receipts, and other items of a value in excess of \$ 40,000.00.

11. In October, 1999, the State’s Attorney for St. Mary’s County filed in the District Court for St. Mary’s County criminal charges for one count of Theft over \$300 against each of the Plaintiffs.

12. In or about October, 1999, the Office of Sheriff negligently and contrary to law and policies of the Office of Sheriff released to third persons several items of the property which it had seized from the plaintiffs.

13. On September 27, 2000, the State’s Attorney for St. Mary’s County entered nolle prosequi on the charges against the Plaintiffs and the charges were dismissed.

14. In or about January, 2002, Defendant Doolan directed a subordinate to release to EMA the remaining building materials which had been seized in January, 1999.

15. On information and belief: Defendant Doolan provided a telephone number to the subordinate to use in contacting EMA. This telephone number was for a cellular telephone used by Defendant Doolan's step-son, Defendant Bowes, who was not then and never had been an employee of EMA.

16. Pursuant to the order from Defendant Doolan, his subordinate released to Defendant Bowes and Defendant, a close friend of Defendant Doolan and an employee of EMA, the majority of the property that had been seized from the Plaintiffs. The property that was released included 5 bags of insulation, aluminum siding starter strips, nineteen pieces of 14 foot baseboard; 2 pre-hung interior vinyl doors, additional interior and exterior doors, 39 pieces of vinyl siding, one roll of tar paper, 5 rolls of poly painted aluminum coil, 5 sets of vinyl shutters, one case of roofing nails (50 lbs.), one case of 8d coated sinker nails (50 lbs.), 90 sheets of sheetrock, vinyl windows, 52 8' cinderblocks, and numerous other items.

17. On information and belief: Defendants Bowes and Cooper took possession of the property described above knowing that they had no legal right to the property.

18. On information and belief: Defendant Bowes sold a portion of the property for cash.

19. Defendant Cooper retained at his residence another portion of the

property.

20. The whereabouts of the remaining property that Defendants Bowes and Cooper received from the Office of Sheriff, as described above, is presently unknown.

21. On March 28, 2002, the District Court of Maryland for St. Mary's County ordered the return to Plaintiff Ford of the property seized from him.

22. On April 25, 2002, A. Shane Mattingly, counsel for the Plaintiffs, wrote to Sheriff Voorhaar to request an investigation and explanation after Plaintiff Ford was informed by a Sheriff's employee that compliance with the order would not be possible because the Office of Sheriff no longer had possession of the property. On May 6, 2002, Defendant Doolan wrote in response to the letter that an investigation would be conducted and that a member of the Office of Sheriff would soon contact Mr. Mattingly. No one from the Office of Sheriff contacted Mr. Mattingly in the months after his letter. On July 3, 2002, Mr. Mattingly wrote directly to Defendant Doolan regarding the matter. Shortly thereafter, a sergeant working in the headquarters of the Office of Sheriff notified Sheriff Voorhaar, Defendant Doolan's immediate superior, concerning the court order and the release of the property by the defendant.

**COUNT ONE (Conversion)**

**Defendants Doolan, Bowes, and Cooper, individually**

23. Plaintiffs incorporate the allegations at Paragraphs 1-22.

24. The direction by Defendant Doolan to release property to EMA was

part of a scheme between the three individual defendants to facilitate the transfer of the property to Defendants Bowes and Cooper who had no legal right to the property, was intentional, without justification and, together with Defendant Bowes and Cooper's removal of the property from the custody of the Office of Sheriff, constituted a conversion of the Plaintiffs' property.

25. As a result of the Defendants' actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.

**COUNT TWO (Civil Conspiracy)**

**Defendants Doolan, Bowes, and Cooper, individually**

26. Plaintiffs incorporate the allegations at Paragraphs 1-22.

27. The wrongful acts of the individual defendants, as set forth in this complaint, were committed pursuant to an agreement between and among these defendants to accomplish an unlawful and improper violation of the Plaintiffs' constitutional and common law rights. Defendants Doolan, Bowes and Cooper each committed overt acts in furtherance of that conspiracy.

28. As a result of the Defendants' actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.

**COUNT THREE (Violation of the Maryland Declaration of Rights)**

**(Defendant Doolan, Individually)**

29. Plaintiffs incorporate the allegations at Paragraphs 1-22.

30. At all relevant times, Defendant Doolan, in his individual

capacity, acted with actual malice and under color and pretense of law, statutes, customs and usages of the State of Maryland.

31. By releasing the Plaintiffs' property to third persons without legal basis to do so and in a manner contrary to law, Defendant Doolan deprived the Plaintiffs of the rights, privileges and immunities guaranteed to them under Article 24 of the Maryland Declaration of Rights.

32. As a result of the Defendant's actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.

**COUNT FOUR (Title 42 United States Code Section 1983)**

(Defendant Doolan, Individually)

33. Plaintiffs incorporate the allegations at Paragraphs 1-22.

34. At all relevant times, Defendant Doolan, in his individual capacity, acted with actual malice and under color and pretense of law, statutes, customs and usages of the United States of America and the State of Maryland.

35. By releasing the Plaintiffs' property to third persons in a manner and under circumstances contrary to law, Defendant Doolan deprived the Plaintiffs of the rights, privileges and immunities guaranteed to them under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

36. As a result of the Defendant's actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.

**COUNT FIVE (Title 42 United States Code Section 1983)**

(Defendant Doolan in his Official Capacity and Defendant Board of County  
Commissioners in its Official Capacity)

37. Plaintiffs incorporate the allegations at Paragraphs 1-22.

38. At all relevant times, Defendant Doolan, in his official capacity as second in command of the Office of Sheriff, acted with actual malice and under color and pretense of law, statutes, customs and usages of the United States of America and the State of Maryland.

39. By releasing the Plaintiffs' property to third persons in a manner and under circumstances contrary to law, Defendant Doolan deprived the Plaintiffs of the rights, privileges and immunities guaranteed to them under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

40. As a result of the Defendant's actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Wendell I. Ford and Cory Butler respectfully request that this Court enter a judgment:

A. Awarding to plaintiffs compensatory and actual damages, including damages for the emotional distress and mental anguish suffered by them as a result of the defendants' conduct;

B. Awarding punitive damages (1) under Counts One and Two against the individual defendants in order to punish the individual defendants for their malicious and willful misconduct which deprived the plaintiffs of their rights at



common law; (2) under Counts Three and Four against Defendant Doolan, individually in order to punish the defendant for his malicious and willful misconduct which deprived the plaintiffs of their rights under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America and similar rights secured under the Maryland Constitution's Declaration of Rights; and (3) to deter defendants from engaging in such willful and malicious conduct in the future;

C. Awarding plaintiffs reasonable costs and attorney's fees as provided in Title 42 United States Code Section 1988; and

D. Awarding plaintiffs such other and further relief as this Court deems just and appropriate.

**JURY DEMAND**

Plaintiffs hereby demand a jury trial on the claims asserted herein.

Dated: May 9, 2003

Respectfully submitted,

//s// Michael B. Suessmann  
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Counsel for Plaintiffs Wendell I. Ford  
and Corey Butler

IN THE ~~CIRCUIT COURT FOR ST. MARY'S COUNTY,~~  
~~MARYLAND~~ UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

WENDELL I. FORD et al.,  
47335 Lincoln Avenue  
Lexington Park, MD 20653

~~And~~

**COREY BUTLER**  
41775 Sheiloh Way  
Hollywood, MD 20636,

Plaintiffs

Plaintiffs

v.

CASE NO.

AW-02-CV-

3311

**RICHARD J. VOORHAAR, SHERIFF**  
**OF ST. MARY'S COUNTY AND**  
**INDIVIDUALLY**

41650 Tudor Hall Road  
LT. STEVEN DOOLAN, in his official capacity  
as then-Captain, Office of Sheriff, St. Mary's  
County, Maryland and individually  
P.O. Box 1559  
Leonardtown, Maryland 20650;

BOARD OF COUNTY COMMISSIONERS OF )  
ST. MARY'S COUNTY, MARYLAND )  
(Thomas McKay, Daniel Raley, Thomas )  
Mattingly, Larry Jarboe, Kenny Dement) )  
P.O. Box 156  
Leonardtown, Maryland 20650;

**STEVEN P. COOPER**  
42888 Hart Court  
Leonardtown, MD 20650; and )

~~And~~

**JOHN DOE 1-10, EMPLOYEES OF THE**  
**OFFICE OF SHERIFF, ST. MARY'S COUNTY**  
**AND INDIVIDUALLY,** )

GEORGE MICHAEL BOWES, JR. )  
45321 East Othello Way )  
California, MD 20619;

Defendants

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**COMPLAINT**  
**FIRST AMENDED COMPLAINT**

This is a complaint for damages for violation of the Plaintiffs' rights under the United States Constitution and the Maryland Declaration of Rights and for other intentional torts.

Jurisdiction and Venue

1. This case was removed from the Circuit Court of St. Mary's County, Maryland pursuant to Title 28 United States Code Sections 1331, 1441 and 1446.

2. Venue is proper under Title 28 United States Code Section 1391 because the acts and conduct which form the basis of this Complaint occurred in whole or in part within the District of Maryland and, in particular, within the Southern Division of this District.

The Parties

**COME NOW 3. Plaintiffs Wendell I. Ford and Corey Butler**~~and sue Richard J. Voorhaar and John Doe 1-10 and say:~~

~~1. Plaintiffs are~~are in their 30's and are life-long residents of St. Mary's County, Maryland.

~~2. The actions giving rise to this lawsuit took place in St. Mary's County, Maryland.~~

~~3. At all times relevant to this complaint, Richard J. Voorhaar was the Sheriff of St. Mary's County, Maryland.~~

~~At all times relevant to this complaint, JOHN DOE 1-10 were employees of~~  
Defendant Lt. Steven Doolan has been a Deputy Sheriff within the Office of Sheriff, St. Mary's County, Maryland for many years. At all times relevant to this lawsuit, he held the rank of Captain within the Office of Sheriff and was second-in-command to the elected Sheriff.

5. Defendant George Michael Bowes, Jr. is the stepson of Defendant Doolan.

6. Defendant Steven Paul Cooper is a close friend of Defendant Doolan.

7. Defendant Board of County Commissioners of St. Mary's County, Maryland is the corporate entity for St. Mary's County, Maryland and is subject to lawsuit under the laws of the State of Maryland.

#### Factual Background

~~5. 8. In January, 1999, Deputy Sheriffs acting under the direction and control of Defendant Richard J. of the Office of Voorhaar executed search warrants at the Plaintiffs' residences and at a house which the Plaintiffs owned and were then renovating for subsequent resale.~~

~~6. In the execution of the search warrants, the Deputy Sheriffs seized personal property of the Plaintiffs, including sheet rock, windows, doors, safe, refrigerator, insulation, tub, tar paper, siding, lumber, photographs, check books, receipts, and other items of a value of \$ 80,000.00.~~

~~7. In October, 1999, the State's Attorney for St. Mary's County filed charges in the District Court of Maryland for St. Mary's County against each Plaintiff, alleging one count of Theft Over \$ 300.~~

~~8.~~

~~On September 27, 2000, the State's Attorney entered nolle prosequi as to the charges against the Plaintiffs and the charges were dismissed.~~

~~9. Between September 27, 2000 and March 27, 2002, the Plaintiffs were unsuccessful in their repeated requests to the Office of Sheriff by telephone and in person for the return of their property.~~

~~10.~~

~~On March 28, 2002, the District Court of Maryland for St. Mary's County ordered the return to Plaintiff Ford of the property seized from him.~~

~~11. On August 12, 2002, Plaintiff Ford filed in the District Court of Maryland for St. Mary's County a Petition for Constructive Civil Contempt against Defendant Richard J. Voorhaar for failure to comply with the Order of March 28, 2002. The matter remains pending.~~

~~12. On August 28, 2002, Defendant Richard J. Voorhaar orally advised Plaintiffs' counsel that the property seized from the Plaintiffs, except for a safe and a refrigerator, was not in his possession or control.~~

~~13. At the same meeting, Defendant Richard J. Voorhaar informed the Plaintiffs' counsel that the Office of State Prosecutor was investigating the circumstances surrounding the removal of the property from the Office of Sheriff.~~

~~14. The duration of the State Prosecutor's investigation and the duration of resulting criminal prosecutions, if any, cannot be determined at this time.~~

~~15. At no time between September 27, 2002 and this date did any defendant notify the Plaintiffs of their intention to release the property described above to any third party or parties.~~

~~16. On information and belief: The property was not "stolen" by unknown third persons. Rather, it was removed, intentionally and wrongfully, from the custody and control of the Office of Sheriff by John Doe 1, aided and abetted by John Doe 2-10.~~

~~17. The identities of John Doe 1-10 will be determined during discovery in this matter and, thereupon, they will be named as Defendants and served as required by law.~~

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**COUNT 1 (Conversion)**

~~18. Plaintiffs incorporate the allegations at Paragraphs 1-17.~~

~~19. Defendant Richard J. Voorhaar, in his official capacity as Sheriff of St. Mary's County, knowingly retained custody and control of the property of the Plaintiffs, to which the plaintiffs had the immediate right of possession after the dismissal of charges against them on September 28, 2000.~~

~~20. Retention of the property by Defendant Richard J. Voorhaar and the Office of Sheriff was intentional, without justification and constituted a conversion of the Plaintiffs' property.~~

~~21. Release of the property by the Office of Sheriff to third persons who had no legal right to the property, and without prior notice to the Plaintiffs, was~~

~~intentional, without justification and constituted a conversion of the Plaintiffs' property.~~

**COUNT 2 (Detinue)**

~~22.Plaintiffs incorporate the allegations at Paragraphs 1-17.~~

~~**23.**Defendant Richard J. Voorhaar, in his official capacity as Sheriff of St. Mary's County, unjustly detains the property of the Plaintiffs, to which the Plaintiffs have the right of immediate possession.~~

~~**24.**Plaintiffs demand the immediate return of the property or its value.~~

**COUNT 3 (Failure to Supervise)**

~~25.Plaintiffs incorporate the allegations at Paragraphs 1-17.~~

~~26.Defendant Richard J. Voorhaar was negligent in failing to supervise the Office of Sheriff regarding the marking of evidence, inventorying of evidence, safekeeping of evidence and releasing of evidence in compliance with law.~~

~~27.As a result of the negligence of Defendant Richard J. Voorhaar, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.~~

**COUNT 4 (Violation of Maryland Declaration of Rights)**

~~28.Plaintiffs incorporate the allegations at Paragraphs 1-17.~~

~~29. At all relevant times, Defendants, in their individual capacity, acted with actual malice and under color and pretense of law, statutes, customs and usages of the State of Maryland.~~

~~30. By retaining possession of the property after the dismissal of charges against the Plaintiffs without legal basis to do so and by failing to notify the Plaintiffs prior to August 28, 2002 that the Office of Sheriff no longer had possession of the vast majority of the items seized from them, defendant Richard J. Voorhaar deprived the Plaintiffs of the rights, privileges and immunities guaranteed to them under Article 24 of the Maryland Declaration of Rights.~~

~~31. By releasing the Plaintiffs' property to third persons without legal authority to do so and in a manner contrary to law, Defendants John Doe 1-10 deprived the Plaintiffs of the rights, privileges and immunities guaranteed to them under Article 24 of the Maryland Declaration of Rights.~~

~~32. As a result of the Defendants' actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.~~

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~~**Count 5 (Title 42 United States Code Section 1983)**~~

~~33. Plaintiffs incorporate the allegations at Paragraphs 1-17.~~

~~34. At all relevant times, Defendants, in their individual capacity, acted with actual malice and under color and pretense of law, statutes, customs and usages of the State of Maryland.~~



~~35. By retaining possession of the property without legal basis to do so after dismissal of the charges against the Plaintiffs and by failing to notify the Plaintiffs prior to August 28, 2002 that he no longer had possession of the vast majority of the property seized from them, Defendant Richard J. Voorhaar deprived the Plaintiffs of the rights, privileges and immunities guaranteed to them under the Fourth and Fifth Amendments to the Constitution of the United States of America.~~

~~36. By releasing the Plaintiffs' property to third persons without legal authority to do so and in a manner contrary to law, Defendants John Doe 1-10 deprived the Plaintiffs of the rights, privileges and immunities guaranteed to them under the Fourth and Fifth Amendments to the Constitution of the United States of America.~~

~~37. As a result of the Defendants' actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.~~

~~**WHEREFORE,** Plaintiffs Wendell I. Ford and Cory Butler pray damages as follows:~~

~~—— **On Count 1,** in compensatory damages against Defendant Richard J. Voorhaar in his official capacity as Sheriff of St. Mary's County, the sum of \$80,000.00, plus interest from the date upon which the property should lawfully have been returned to the Plaintiffs.~~

~~—— **On Count 2,** in compensatory damages against Defendant Richard J. Voorhaar in his official capacity as Sheriff of St. Mary's County, the sum of \$ 80,000.00, plus interest from the date upon which the property should lawfully have been returned to the Plaintiffs or the immediate return of the property.~~

~~On Count 3, in compensatory damages against Defendant Richard J. Voorhaar in his official capacity as Sheriff of St. Mary's County, the sum of \$80,000.00, plus interest from the date upon which the property should lawfully have been returned to the Plaintiffs.~~

~~On Count 4, in compensatory damages against Defendant Richard J. Voorhaar and John Doe 1-10, individually, the sum of \$ 80,000.00, jointly and severally, plus interest from the date upon which the property should lawfully have been returned to the Plaintiffs; and punitive damages against each Defendant, individually, as follows:~~

~~Richard J. Voorhaar, the sum of \$ 25,000.~~

~~John Doe 1, the sum of \$ 50,000.~~

~~John Doe 2-10, the sum of \$ 10,000, each.~~

~~On Count 5, in compensatory damages against Defendant Richard J. Voorhaar and John Doe 1-10, individually, the sum of \$80,000.00, jointly and severally, plus interest from the date upon which the property should lawfully have been returned to the Plaintiffs; and punitive damages against each Defendant, individually, as follows:~~

~~Richard J. Voorhaar, the sum of \$ 25,000.~~

~~John Doe 1, the sum of \$ 50,000.~~

~~John Doe 2-10, the sum of \$ 10,000, each,~~

~~and attorney fees as allowed by law ( Title 42 United States Code Section 1988);~~

~~plus interest, the cost of this action and such other amounts as are proper in the interest of justice.~~

~~Wendell I. Ford~~

~~Corey Butler~~

~~Respectfully submitted,~~

~~Michael B. Suessmann, Esq.~~

~~A. Shane Mattingly, Esq.  
A. Shane Mattingly, P.C.  
P.O. Box 1906  
Leonardtown, MD 20650  
301/475-9101~~

8. Sheriff of St. Mary's County, Maryland executed search warrants at the Plaintiffs' residences and at other locations including a house which the Plaintiffs owned and were then renovating for subsequent resale. The search warrants had been obtained as part of an investigation into reports of thefts from construction sites in the county that had been made to the Office of Sheriff and the Maryland State Police in the prior months.

9. One report which was basis for the search warrants had been filed in behalf of a local company, Egan, McAllister and Associates ("EMA"). In Offense Report Number 33030-98, dated November 16, 1998, EMA had reported the theft of 220 pieces of 2x6 lumber, each 9 feet long and 100 pieces of 1/2 inch plywood.

10. In the execution of the search warrants, the Deputy Sheriffs seized personal property of the Plaintiffs, including sheet rock, windows, doors, safe, refrigerator, insulation, tub, tar paper, siding, lumber, photographs, check books, receipts, and other items of a value in excess of \$ 40,000.00.

11. In October, 1999, the State's Attorney for St. Mary's County filed in the District Court for St. Mary's County criminal charges for one count of Theft over \$300 against each of the Plaintiffs.

12. In or about October, 1999, the Office of Sheriff negligently and contrary to law and policies of the Office of Sheriff released to third persons several items of the property which it had seized from the plaintiffs.

13. On September 27, 2000, the State's Attorney for St. Mary's County entered nolle prosequi on the charges against the Plaintiffs and the charges were dismissed.

14. In or about January, 2002, Defendant Doolan directed a subordinate to release to EMA the remaining building materials which had been seized in January, 1999.

15. On information and belief: Defendant Doolan provided a telephone number to the subordinate to use in contacting EMA. This telephone number was for a cellular telephone used by Defendant Doolan's step-son, Defendant Bowes, who was not then and never had been an employee of EMA.

16. Pursuant to the order from Defendant Doolan, his subordinate released to Defendant Bowes and Defendant, a close friend of Defendant Doolan and an employee of EMA, the majority of the property that had been seized from the Plaintiffs. The property that was released included 5 bags of insulation, aluminum siding starter strips, nineteen pieces of 14 foot baseboard; 2 pre-hung interior vinyl doors, additional interior and exterior doors, 39 pieces of vinyl siding, one roll of tar paper, 5 rolls of poly painted aluminum coil, 5 sets of vinyl

shutters, one case of roofing nails (50 lbs.), one case of 8d coated sinker nails (50 lbs.), 90 sheets of sheetrock, vinyl windows, 52 8' cinderblocks, and numerous other items.

17. On information and belief: Defendants Bowes and Cooper took possession of the property described above knowing that they had no legal right to the property.

18. On information and belief: Defendant Bowes sold a portion of the property for cash.

19. Defendant Cooper retained at his residence another portion of the property.

20. The whereabouts of the remaining property that Defendants Bowes and Cooper received from the Office of Sheriff, as described above, is presently unknown.

21. On March 28, 2002, the District Court of Maryland for St. Mary's County ordered the return to Plaintiff Ford of the property seized from him.

22. On April 25, 2002, A. Shane Mattingly, counsel for the Plaintiffs, wrote to Sheriff Voorhaar to request an investigation and explanation after Plaintiff Ford was informed by a Sheriff's employee that compliance with the order would not be possible because the Office of Sheriff no longer had possession of the property. On May 6, 2002, Defendant Doolan wrote in response to the letter that an investigation would be conducted and that a member of the Office of Sheriff would soon contact Mr. Mattingly. No one from the Office of Sheriff contacted Mr. Mattingly in the months after his letter. On July 3, 2002, Mr. Mattingly wrote

directly to Defendant Doolan regarding the matter. Shortly thereafter, a sergeant working in the headquarters of the Office of Sheriff notified Sheriff Voorhaar, Defendant Doolan's immediate superior, concerning the court order and the release of the property by the defendant.

#### **COUNT ONE (Conversion)**

Defendants Doolan, Bowes, and Cooper, individually

23. Plaintiffs incorporate the allegations at Paragraphs 1-22.

24. The direction by Defendant Doolan to release property to EMA was part of a scheme between the three individual defendants to facilitate the transfer of the property to Defendants Bowes and Cooper who had no legal right to the property, was intentional, without justification and, together with Defendant Bowes and Cooper's removal of the property from the custody of the Office of Sheriff, constituted a conversion of the Plaintiffs' property.

25. As a result of the Defendants' actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.

#### **COUNT TWO (Civil Conspiracy)**

Defendants Doolan, Bowes, and Cooper, individually

26. Plaintiffs incorporate the allegations at Paragraphs 1-22.

27. The wrongful acts of the individual defendants, as set forth in this complaint, were committed pursuant to an agreement between and among these defendants to accomplish an unlawful and improper violation of the Plaintiffs'

constitutional and common law rights. Defendants Doolan, Bowes and Cooper each committed overt acts in furtherance of that conspiracy.

28. As a result of the Defendants' actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.

**COUNT THREE (Violation of the Maryland Declaration of Rights)**

(Defendant Doolan, Individually)

29. Plaintiffs incorporate the allegations at Paragraphs 1-22.

30. At all relevant times, Defendant Doolan, in his individual capacity, acted with actual malice and under color and pretense of law, statutes, customs and usages of the State of Maryland.

31. By releasing the Plaintiffs' property to third persons without legal basis to do so and in a manner contrary to law, Defendant Doolan deprived the Plaintiffs of the rights, privileges and immunities guaranteed to them under Article 24 of the Maryland Declaration of Rights.

32. As a result of the Defendant's actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.

**COUNT FOUR (Title 42 United States Code Section 1983)**

(Defendant Doolan, Individually)

33. Plaintiffs incorporate the allegations at Paragraphs 1-22.

34. At all relevant times, Defendant Doolan, in his individual capacity,

acted with actual malice and under color and pretense of law, statutes, customs and usages of the United States of America and the State of Maryland.

35. By releasing the Plaintiffs' property to third persons in a manner and under circumstances contrary to law, Defendant Doolan deprived the Plaintiffs of the rights, privileges and immunities guaranteed to them under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

36. As a result of the Defendant's actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal property, loss of income, financial expense and other damages.

**COUNT FIVE (Title 42 United States Code Section 1983)**

(Defendant Doolan in his Official Capacity and Defendant Board of County Commissioners in its Official Capacity)

37. Plaintiffs incorporate the allegations at Paragraphs 1-22.

38. At all relevant times, Defendant Doolan, in his official capacity as second in command of the Office of Sheriff, acted with actual malice and under color and pretense of law, statutes, customs and usages of the United States of America and the State of Maryland.

39. By releasing the Plaintiffs' property to third persons in a manner and under circumstances contrary to law, Defendant Doolan deprived the Plaintiffs of the rights, privileges and immunities guaranteed to them under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

40. As a result of the Defendant's actions, the Plaintiffs have suffered damage by being deprived of the use, benefit and enjoyment of their personal



property, loss of income, financial expense and other damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Wendell I. Ford and Cory Butler respectfully request that this Court enter a judgment:

A. Awarding to plaintiffs compensatory and actual damages, including damages for the emotional distress and mental anguish suffered by them as a result of the defendants' conduct;

B. Awarding punitive damages (1) under Counts One and Two against the individual defendants in order to punish the individual defendants for their malicious and willful misconduct which deprived the plaintiffs of their rights at common law; (2) under Counts Three and Four against Defendant Doolan, individually in order to punish the defendant for his malicious and willful misconduct which deprived the plaintiffs of their rights under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America and similar rights secured under the Maryland Constitution's Declaration of Rights; and (3) to deter defendants from engaging in such willful and malicious conduct in the future;

C. Awarding plaintiffs reasonable costs and attorney's fees as provided in Title 42 United States Code Section 1988; and

D. Awarding plaintiffs such other and further relief as this Court deems just and appropriate.

**JURY DEMAND**

Plaintiffs hereby demand a jury trial on the claims asserted herein.

Dated: May 9, 2003

Respectfully submitted,

//s// Michael B. Suessmann

Michael B. Suessmann, Esq. (# 13458)

A. Shane Mattingly, Esq.

A. Shane Mattingly, P.C.

P.O. Box 1906

Leonardtown, MD 20650

301/475-9101

Counsel for Plaintiffs Wendell I. Ford  
and Corey Butler

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

WENDELL I. FORD, et al.

Plaintiffs

v.

RICHARD J. VOORHAAR, et al.

Defendants

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CASE No. AW-02-CV-3311

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**PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

Plaintiffs, by their undersigned attorney, hereby ask leave of court pursuant to Rule 15(a), F. R. Civ. P., and Local Rule 103.6 to file a First Amended Complaint in this cause.

The amended complaint removes Richard J. Voorhaar and John Doe 1-10 and names as defendants Lieutenant Steven Doolan, individually and in his official capacity as then-Captain within the Office of Sheriff of St. Mary's County; the St. Mary's County Board of County Commissioners; and two additional individuals, Michael Bowes and Steven Cooper.

In light of the Court's Order dated April 9, 2003 which, in part, dismissed the 1983 claim against Sheriff Voorhaar in his official capacity, but allowed for the possibility of further consideration of the matter, the accompanying Memorandum includes the grounds upon which Plaintiffs believe that the official capacity claim

for violation of Section 1983 (proposed Count Five) is proper as to Defendant Doolan and the Board of County Commissioners.

The amended complaint contains revisions to the original allegations of fact and the grounds upon which relief is sought as a result of discovery conducted since the stay in this cause ended on March 3, 2003.

As set forth in the accompanying Affidavit of Michael B. Suessmann, the information learned through discovery was not previously known to the Plaintiffs and could not have been reasonably ascertained earlier.

Counsel for Plaintiffs sought but did not obtain concurrence from counsel for Defendant Voorhaar for the filing of the First Amended Complaint.

Filed with this Motion are the First Amended Complaint, Memorandum in Support of Plaintiffs' Motion for Leave to File Amended Complaint, Affidavit of Michael B. Suessmann and the highlighted copy required by Local Rule 103.6.

Respectfully submitted,

//s//Michael B. Suessmann  
Michael B. Suessmann, Esq.  
A. Shane Mattingly, P.C.  
P.O. Box 1906  
Leonardtown, MD 20650  
301/475-9101  
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