

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA**

**EMILEA BURGH,**

**Plaintiff,**

**vs.**

**Case No.: 3:25-CV-00490**

**CHUCK ZERKLE  
(individually and as the Chief Deputy Sheriff of  
Cabell County, West Virginia)**

**Hon. Robert C. Chambers**

**JURY TRIAL DEMANDED**

**and**

**DOUG ADAMS  
(individually and as the Elected Sheriff of  
Cabell County, West Virginia)**

**and**

**CABELL COUNTY SHERIFF'S OFFICE  
(a West Virginia political subdivision)**

**and**

**CABELL COUNTY COMMISSION  
(a West Virginia political subdivision)**

**Defendants.**

**PLAINTIFF'S COMPLAINT**

COMES NOW the Plaintiff Emilea Burgh, by and through counsel Tyler C. Haslam and Haslam Law Firm LLC, and states as follows her causes of action against the Defendants:

**PRELIMINARY STATEMENT**

1. "The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *City of Houston, Tex. v. Hill*, 482 U.S. 451, 462–63 (1987).

2. On August 5, 2025, Plaintiff Emilea Burgh, a licensed independent clinical social worker, was standing on a public sidewalk in Huntington, West Virginia, filming an arrest by Cabell County Sheriff's Deputies. While doing so, she was forcibly grabbed and threatened with arrest for "obstruction" by Defendant Chuck Zerkle, the Chief Deputy of the Cabell County Sheriff's Office—all because she dared to record the incident on her cellular telephone.

3. Defendant Doug Adams, the elected Sheriff of Cabell County, West Virginia, witnessed the entire interaction and failed to stop Chief Deputy Zerkle from violating Ms. Burgh's constitutional rights.

4. The right to record law enforcement is protected speech under the First Amendment, and recording police encounters is a clearly established right. *Sharpe v. Winterville Police Dep't*, 59 F.4th 674 (4th Cir. 2023).

5. This is a civil rights action for money damages for the injuries sustained by Ms. Burgh, resulting from the violations of her constitutional, statutory, and common law rights by Defendants.

6. Ms. Burgh brings this action under 42 U.S.C. § 1983 ("section 1983"), 42 U.S.C. § 1985, 42 U.S.C. § 1986, and 42 U.S.C. § 1988 ("section 1988") to redress the deprivation under color of state law Plaintiff's rights secured by the United States Constitution. More specifically, this Complaint seeks to redress the right to be afforded the protection of substantive due process under the Fourteenth Amendment to the United States Constitution. Ms. Burgh also asserts Section 1983 Claims against Chief Deputy Zerkle, Sheriff Adams, the Cabell County Sheriff's Office, and the Cabell County Commission for failure to properly hire, train, and supervise law enforcement and for promulgating customs, policies, and practices, which proximately caused the violation of Plaintiff's constitutional rights, all under the authority of *Monell v. New York City*

*Dept. of Social Serv.*, 436 U.S. 658 (1978). Ms. Burgh also asserts additional state law claims as set forth below.

### **JURISDICTION AND VENUE**

7. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiff's rights as secured by the United States Constitution.

8. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, as certain claims asserted herein arise under the Constitution and law of the United States, to wit, the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

9. This Court also has supplemental jurisdiction over state law claims asserted herein pursuant to 28 U.S.C. § 1367.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because substantially all of the events that give rise to the claims in this action occurred in Huntington, Cabell County, West Virginia and said county is situated within the bounds of this Court's geographic area of responsibility.

### **THE PARTIES**

11. Plaintiff Emilea Burgh (hereinafter "Plaintiff" or "Ms. Burgh") is a citizen of the United States and was a resident of the State of West Virginia on August 5, 2025.

12. Defendant Cabell County Sheriff's Office (hereinafter "CCSO") is a political subdivision within the meaning of W. Va. Code § 29-12A-1 *et seq.* CCSO promulgates policies, customs, and/or actions that give rise to its liability under 42 U.S.C. § 1983.

13. Defendant Cabell County Commission (hereinafter "CCC") is a political subdivision within the meaning of W. Va. Code § 29-12A-1 *et seq.* CCC promulgates policies, customs, and/or actions that give rise to its liability under 42 U.S.C. § 1983.

14. Defendant Chuck Zerkle (hereinafter “Zerkle”) is the Chief Deputy Sheriff of Cabell County, West Virginia and was acting in that capacity at the time Ms. Burgh’s constitutional rights were violated. As Chief Deputy Sheriff, he was bound to hire, supervise, and train his deputies in accordance with state and federal law and to implement policies and procedures that ensure the rights of all citizens are protected. Defendant Zerkle is a “person” under 42 U.S.C. § 1983. Defendant Zerkle is sued herein in his individual and official capacities.

15. Defendant Doug Adams (hereinafter “Adams”) is the elected Sheriff of Cabell County, West Virginia and was acting in that capacity at the time Ms. Burgh’s constitutional rights were violated. As Sheriff, he was bound to hire, supervise, and train his subordinate deputies in accordance with state and federal law and to implement policies and procedures that ensure the rights of all citizens are protected. Defendant Adams is a “person” under 42 U.S.C. § 1983. Defendant Adams is sued herein in his individual and official capacities.

### **COMMON FACTUAL ALLEGATIONS**

16. On the afternoon of August 5, 2025, Ms. Burgh was on a public sidewalk at the intersection of Fourth Avenue and Seventh Street in Huntington, West Virginia.

17. Ms. Burgh was silently filming the arrest of another citizen from her Burghtage point on the public sidewalk when Chief Deputy Zerkle approached her and stated, “Get that shit out of here.”

18. As Zerkle stated, “Get that shit out of here,” he swiped at Ms. Burgh’s phone and struck her with his hand.

19. Chief Deputy Zerkle told Ms. Burgh to “leave” her spot on the public sidewalk and to stop recording.

20. When Ms. Burgh stated that she was simply filming the actions of the Cabell County Sheriff's Deputies, Zerkle stated, "You're gonna get arrested for obstruction."

21. Upon information and belief, Zerkle was referring to W. Va. Code § 61-5-17(a).

22. Ms. Burgh's actions did not rise to the level of obstruction under the West Virginia Code.

23. Zerkle then removed his handcuffs from his duty belt, shook them in Ms. Burgh's face, and stated, "You wanna set of handcuffs?"

24. Zerkle then grabbed Ms. Burgh by the arm and drug her to where deputies were arresting the other citizen.

25. After moving Ms. Burgh approximately 15 feet, Zerkle turned to Ms. Burgh and stated, "Get your ass out of here."

26. After Ms. Burgh moved further away from Zerkle than her original location, Zerkle approached her a second time.

27. Zerkle then told Ms. Burgh and others that they needed to remove themselves from a public sidewalk.

28. Zerkle moved away from Ms. Burgh before then approached her a third time.

29. On the third approach, Zerkle denied previously grabbing Ms. Burgh.

30. Zerkle instead claimed to have only "touched" Ms. Burgh and then he placed his hands on Ms. Burgh's shoulders in an apparent demonstration of what he believed to be his previous actions.

31. At both instances, Ms. Burgh did not want to be touched by Zerkle.

32. Zerkle's inappropriate, unprofessional, and unconstitutional behavior was at all times witnessed by Sheriff Doug Adams.

33. Sheriff Adams, as the municipal policymaker for CCSO with final authority, directly ratified Zerkle's behavior by failing to intervene and stop Zerkle from violating Ms. Burgh's constitutional rights.

34. Realizing that he was being filmed from multiple angles, Zerkle then disengaged with Ms. Burgh.

35. Ms. Burgh later went to file a complaint against Zerkle at the Cabell County Courthouse.

36. As Ms. Burgh was filing her complaint, she was again approached by Zerkle.

37. Zerkle admitted to "losing his cool" during the previous encounter with Ms. Burgh.

**Count I**  
**(42 U.S.C. § 1983 – Excessive Force Against Zerkle for the First Grab of Ms. Burgh)**

38. Plaintiff realleges and incorporates by reference each and every preceding paragraph as if fully set forth herein.

39. As set forth above, Zerkle was acting under color of law and within the scope of his employment as the Chief Deputy with CCSO and CCC when he acted with reckless indifference to the rights of Ms. Burgh by forcefully grabbing upon her arm, moving to where deputies were effectuating another arrest, and threatening to arrest Ms. Burgh for Ms. Burgh exercising her First Amendment right to record law enforcement.

40. At the time he first grabbed Ms. Burgh, Zerkle was clothed with the authority of the CCSO and CCC.

41. Zerkle's action in the first grab of Ms. Burgh violated the constitutional rights guaranteed to Ms. Burgh under the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

42. Zerkle's first grab and seizure was not taken in good faith and was in violation of clearly established law.

43. Zerkle cannot assert the defense of qualified immunity with respect to the first grab because his actions were designed to curtail Ms. Burgh's First Amendment rights.

44. Zerkle violated the constitutional rights of Ms. Burgh, as described and identified throughout this Complaint, by using excessive, wrongful, and unnecessary force against Ms. Burgh on August 5, 2025 to curtail her First Amendment rights.

45. When Zerkle first grabbed and seized Ms. Burgh and used excessive force against Ms. Burgh, no objectively reasonable law enforcement officer could have perceived the force as necessary.

46. As a proximate result of Zerkle's action in grabbing Ms. Burgh the first time, Ms. Burgh was injured.

47. As a proximate result of Zerkle's action in Ms. Burgh the first time, Ms. Burgh will suffer medical and other expenses.

48. By the acts and omissions described above, Zerkle violated 42 U.S.C. § 1983 by depriving Ms. Burgh of the following clearly established and well-settled constitutional rights protected by the Fourteenth Amendment to the United States Constitution:

- a. The right to free speech as secured by the First Amendment;
- b. The right to be free of unlawful, reckless, deliberately indifferent, and/or conscious shocking conduct as secured by the Fourteenth Amendment;
- c. The right to be free from deprivation of life, liberty and property without substantive due process as secured by the Fourteenth Amendment;

- d. The right to be free from state created/enhanced danger as secured by the Fourteenth Amendment;
- e. The right to receive immediate and proper aid from law enforcement;
- f. And any and all such other conduct as may be learned through the course of discovery.

49. Zerkle's conduct in his first grab and seizure of Ms. Burgh was unnecessary, unreasonable, and outrageous, and constitutes wanton, willful, reckless, unjustifiable, and malicious conduct warranting the imposition of exemplary punitive damages against Zerkle in his individual capacity as a Defendant.

50. As a direct result of Zerkle's unconstitutional action in grabbing and seizing Ms. Burgh the first time, Ms. Burgh seeks to recover damages in an amount to be determined by a jury to compensate her for:

- a. Violation of her federally protected rights;
- b. Physical pain and suffering, past and future;
- c. Mental pain and suffering, past and future;
- d. Injuries resulting from Zerkle's conduct;
- e. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- f. All other injuries proximately caused by Zerkle.

51. In addition to these compensatory damages, Ms. Burgh also seeks to recover under 42 U.S.C. § 1988 the attorney fees and costs incurred the course of this litigation.

52. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights in the future, Ms. Burgh seeks to have the Court order Zerkle



and the other defendants to undergo additional training and education addressing Zerkle's use of excessive and wrongful force, the development of policies to preclude such actions in the future, and the implementation of discipline against Zerkle to hold him accountable for his wrongful actions.

53. Zerkle's actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to Ms. Burgh, thereby entitling Ms. Burgh to punitive damages in an amount to be determined by the jury.

**Count II**  
**(42 U.S.C. § 1983 – Excessive Force Against Zerkle for the Second Grab)**

54. Plaintiff realleges and incorporates by reference each and every preceding paragraph as if fully set forth herein.

55. As set forth above, Zerkle was acting under color of law and within the scope of his employment as Chief Deputy with CCSO and CCC when he acted with reckless indifference to the rights of Ms. Burgh by forcefully grabbing a second time because Ms. Burgh exercised her First Amendment right to record law enforcement.

56. At the time he grabbed Ms. Burgh a second time, Zerkle was clothed with the authority of the CCSO and CCC.

57. Zerkle's action in the second grab of Ms. Burgh violated the constitutional rights guaranteed to Ms. Burgh under the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

58. Zerkle's second grab and seizure was not taken in good faith and was in violation of clearly established law.

59. Zerkle cannot assert the defense of qualified immunity with respect to the second grab because his actions were designed to curtail Ms. Burgh's First Amendment rights.

60. Zerkle violated the constitutional rights of Ms. Burgh, as described and identified throughout this Complaint, by using excessive, wrongful, and unnecessary force against Ms. Burgh on August 5, 2025 to curtail her First Amendment rights.

61. When Zerkle grabbed and seized Ms. Burgh and used excessive force against Ms. Burgh a second time, no objectively reasonable law enforcement officer could have perceived the force as necessary.

62. As a proximate result of Zerkle's action in grabbing Ms. Burgh the second time, Ms. Burgh was injured.

63. As a proximate result of Zerkle's action in Ms. Burgh the second time, Ms. Burgh will suffer medical and other expenses.

64. By the acts and omissions described above, Zerkle violated 42 U.S.C. § 1983 by depriving Ms. Burgh of the following clearly established and well-settled constitutional rights protected by the Fourteenth Amendment to the United States Constitution:

- a. The right to free speech as secured by the First Amendment;
- b. The right to be free of unlawful, reckless, deliberately indifferent, and/or conscious shocking conduct as secured by the Fourteenth Amendment;
- c. The right to be free from deprivation of life, liberty and property without substantive due process as secured by the Fourteenth Amendment;
- d. The right to be free from state created/enhanced danger as secured by the Fourteenth Amendment;
- e. The right to receive immediate and proper aid from law enforcement;
- f. And any and all such other conduct as may be learned through the course of discovery.

65. Zerkle's conduct in his second grab and seizure of Ms. Burgh was unnecessary, unreasonable, and outrageous, and constitutes wanton, willful, reckless, unjustifiable, and malicious conduct warranting the imposition of exemplary punitive damages against Zerkle in his individual capacity as a Defendant.

66. As a direct result of Zerkle's unconstitutional action in grabbing and seizing Ms. Burgh the second time, Ms. Burgh seeks to recover damages in an amount to be determined by a jury to compensate her for:

- a. Violation of her federally protected rights;
- b. Physical pain and suffering, past and future;
- c. Mental pain and suffering, past and future;
- d. Injuries resulting from Zerkle's conduct;
- e. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- f. All other injuries proximately caused by Zerkle.

67. In addition to these compensatory damages, Ms. Burgh also seeks to recover under 42 U.S.C. § 1988 the attorney fees and costs incurred the course of this litigation.

68. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights in the future, Ms. Burgh seeks to have the Court order Zerkle and the other defendants to undergo additional training and education addressing Zerkle's use of excessive and wrongful force, the development of policies to preclude such actions in the future, and the implementation of discipline against Zerkle to hold him accountable for his wrongful actions.

69. Zerkle's actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to Ms. Burgh, thereby entitling Ms. Burgh to punitive damages in an amount to be determined by the jury.

**Count III**  
**(42 U.S.C. § 1983 – First Amendment Retaliation Against Zerkle)**

70. Plaintiff realleges and incorporates by reference each and every preceding paragraph as if fully set forth herein.

71. As set forth above, Zerkle was acting under color of law and within the scope of his employment as a law enforcement officer with CCSO and CCC when he acted with reckless indifference to the rights of Emilea Burgh by acting against Ms. Burgh for Ms. Burgh's decision to exercise her First Amendment right to record law enforcement.

72. At the time Zerkle acted against Ms. Burgh, Ms. Burgh was engaging in a form of protected speech by silently recording law enforcement in a public space.

73. Zerkle's actions adversely affected Ms. Burgh because they would deter a person of ordinary firmness from continuing to silently record Cabell County Sheriff's Deputies from a public space.

74. Zerkle's action in threatening to arrest Ms. Burgh for silently recording him and other deputies from CCSO and CCC was motivated by Ms. Burgh exercising her right to free speech.

75. Zerkle violated the constitutional rights of Ms. Burgh, as described and identified throughout this Complaint, by using excessive, wrongful, and unnecessary force against Ms. Burgh because she exercised her First Amendment right to free speech on August 5, 2025.

76. When Zerkle used excessive force against Ms. Burgh and threatened to arrest her for silently recording Zerkle and other deputies, no objectively reasonable law enforcement officer could have perceived Zerkle's actions as necessary or permissible.

77. As a proximate result of Zerkle's actions in grabbing Ms. Burgh and threatening to arrest her for silently recording Zerkle and other CCSO deputies, Ms. Burgh was injured.

78. As a proximate result of Zerkle's actions in grabbing Ms. Burgh and threatening to arrest her for silently recording Zerkle and other CCSO deputies, Ms. Burgh will suffer medical and other expenses.

79. By the acts and omissions described above, Zerkle violated 42 U.S.C. § 1983 by depriving Ms. Burgh of the following clearly established and well-settled constitutional rights protected by the Fourteenth Amendment to the United States Constitution:

- a. The right to be free of unlawful, reckless, deliberately indifferent, and/or conscious shocking conduct as secured by the Fourteenth Amendment;
- b. The right to be free from deprivation of life, liberty and property without substantive due process as secured by the Fourteenth Amendment;
- c. The right to be free from state created/enhanced danger as secured by the Fourteenth Amendment;
- d. The right to receive immediate and proper aid from law enforcement;
- e. And any and all such other conduct as may be learned through the course of discovery.

80. Zerkle's conduct in using excessive force against Ms. Burghs while she was prone on the ground and injured was unnecessary, unreasonable, and outrageous, and constitutes wanton,

willful, reckless, unjustifiable, and malicious conduct warranting the imposition of exemplary punitive damages against Zerkle in her individual capacity as a Defendant.

81. As a direct result of Zerkle's unconstitutional action in using excessive force against Ms. Burgh while Ms. Burgh was prone on the ground and injured, Ms. Burgh seeks to recover damages in an amount to be determined by a jury to compensate her for:

- a. The right to free speech as secured by the First Amendment;
- b. Violation of her federally protected rights;
- c. Physical pain and suffering, past and future;
- d. Mental pain and suffering, past and future;
- e. Injuries resulting from Zerkle's conduct;
- f. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- g. All other injuries proximately caused by Zerkle.

82. In addition to these compensatory damages, Ms. Burgh also seeks to recover under 42 U.S.C. § 1988 the attorney fees and costs incurred the course of this litigation.

83. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights in the future, Ms. Burgh seeks to have the Court order Zerkle and the other defendants to undergo additional training and education addressing Zerkle's use of excessive and wrongful force, the development of policies to preclude such actions in the future, and the implementation of discipline against Zerkle to hold him accountable for his wrongful actions.

84. Zerkle's actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to Ms. Burgh, thereby entitling Ms. Burgh to punitive damages in an amount to be determined by the jury.

**Count IV**  
**(42 U.S.C. § 1983 – Unlawful Seizure and/or Detention by Zerkle)**

85. Plaintiff realleges and incorporates by reference each and every preceding paragraph as if fully set forth herein.

86. Zerkle, while acting under the color of law, violated the constitutional rights of Ms. Burgh by seizing and detaining the person of Ms. Burgh on August 5, 2025.

87. The actions of Zerkle in seizing the person of Ms. Burgh on August 5, 2025, violated the constitutional rights guaranteed to Ms. Burgh under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

88. The actions of Zerkle in seizing the person of Ms. Burgh on August 5, 2025 were not taken in good faith and were in violation of clearly established law.

89. Zerkle violated the constitutional rights of Ms. Burgh, as described and identified herein, by unlawfully seizing the person of Ms. Burgh on August 5, 2025.

90. Zerkle's seizure of the person of Ms. Burgh on August 5, 2025 was unlawful, as Zerkle could not have believed that he had legal authority to seize the person of Ms. Burgh given that Ms. Burgh had not committed, was not committing, nor was about to commit a criminal offense.

91. By the acts and omissions described above, Zerkle violated 42 U.S.C. § 1983 by depriving Ms. Burgh of the following clearly established and well-settled constitutional rights protected by the Fourteenth Amendment to the United States Constitution:

- a. The right to be free of unlawful, reckless, deliberately indifferent, and/or conscious shocking conduct as secured by the Fourteenth Amendment;
- b. The right to be free from deprivation of life, liberty and property without substantive due process as secured by the Fourteenth Amendment;
- c. The right to be free from state created/enhanced danger as secured by the Fourteenth Amendment;
- d. The right to receive immediate and proper aid from law enforcement;
- e. And any and all such other conduct as may be learned through the course of discovery.

92. As a direct and proximate result of Zerkle's unconstitutional actions, Ms. Burgh seeks to recover damages in an amount to be determined by the jury to compensate her for:

- a. Violation of her federally protected rights;
- b. Physical pain and suffering, past and future;
- c. Mental pain and suffering, past and future;
- d. Injuries resulting from the defendants' conduct;
- e. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- f. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

93. In addition to these compensatory damages, Ms. Burgh also seeks to recover under 42 U.S.C. § 1988 the attorney fees and costs incurred the course of this litigation.

94. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights in the future, Ms. Burgh seeks to have the Court order Zerkle



and the other defendants to undergo additional training and education addressing Zerkle's use of excessive and wrongful force to chill protected speech, the development of policies to preclude such actions in the future, and the implementation of discipline against Zerkle to hold him accountable for his wrongful actions.

95. Zerkle's actions were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to Ms. Burgh, thereby entitling Ms. Burgh to punitive damages in an amount to be determined by the jury.

**Count V**  
**(42 U.S.C. § 1983 – Failure to Intervene by Adams)**

96. Plaintiff realleges and reincorporates by reference each and every allegation above as if fully set forth herein.

97. Sheriff Adams, while acting under the color of law, violated the constitutional rights of Ms. Burgh by failing to intervene to stop Zerkle from violating the rights of Ms. Burgh on August 5, 2025.

98. Sheriff Adams was present at all times that Zerkle was violating Ms. Burgh's constitutional rights on August 5, 2025.

99. Sheriff Adams was aware that Zerkle had no permissible basis to use force against, seize, detain, and/or threaten the arrest of Ms. Burgh on August 5, 2025.

100. Not only did Sheriff Adams have an opportunity to prevent Zerkle from using force against, seizing, detaining, and/or threatening the arrest of Ms. Burgh on August 5, 2025, but Sheriff Adams was a willing participant in and ratified Zerkle's impermissible actions.

101. The failures of Sheriff Adams to intervene and protect Ms. Burgh on August 5, 2025, violated the constitutional rights guaranteed to Ms. Burgh under the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

102. The actions of Sheriff Adams in failing to intervene and protect Ms. Burgh from having her rights violated by Zerkle on August 5, 2025 were not taken in good faith and were in violation of clearly established law.

103. By the acts and omissions described above, Sheriff Adams violated 42 U.S.C. § 1983 by depriving Ms. Burgh of the following clearly established and well-settled constitutional rights protected by the Fourteenth Amendment to the United States Constitution:

- a. The right to free speech as secured by the First Amendment;
- b. The right to be free of unlawful, reckless, deliberately indifferent, and/or conscious shocking conduct as secured by the Fourteenth Amendment;
- c. The right to be free from deprivation of life, liberty and property without substantive due process as secured by the Fourteenth Amendment;
- d. The right to be free from state created/enhanced danger as secured by the Fourteenth Amendment;
- e. The right to receive immediate and proper aid from law enforcement;
- f. And any and all such other conduct as may be learned through the course of discovery.

104. As a direct and proximate result of the unconstitutional actions by Zerkle and Adams, Ms. Burgh seeks to recover damages in an amount to be determined by the jury to compensate her for:

- a. Violation of her federally protected rights;
- b. Physical pain and suffering, past and future;
- c. Mental pain and suffering, past and future;
- d. Injuries resulting from the defendants' conduct;

- e. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- f. All other injuries proven by a preponderance of the evidence proximately caused by the defendants.

105. In addition to these compensatory damages, Ms. Burgh also seeks to recover under 42 U.S.C. § 1988 the attorney fees and costs incurred the course of this litigation.

106. In an effort to prevent other similarly situated individuals from suffering the same violation of their constitutional rights in the future, Ms. Burgh seeks to have the Court order Adams and the other defendants to undergo additional training and education addressing Zerkle's use of excessive and wrongful force, the development of policies to preclude such actions in the future, and the implementation of discipline against Zerkle to hold him accountable for her wrongful actions.

107. The actions and/or inactions of Sheriff Adams in failing to intervene were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to Ms. Burgh, thereby entitling Ms. Burgh to punitive damages in an amount to be determined by the jury.

#### **Count VI**

#### **(42 U.S.C. § 1983 – *Monell* Liability for Failure to Hire, Train, and Supervise, and for Customs, Policies, and Practices Causing Violations of the Fourteenth Amendment)**

108. Plaintiff realleges and incorporates by reference each and every allegation above as if fully set forth herein.

109. Zerkle, Adams, CCSO, and CCC have engaged in a pattern, practice, or custom of failing to adequately train and/or supervise its employee law enforcement officers on the

appropriate use of force, lawful detention, and rendering medical care, such that Zerkle, Adams, CCSO, and CCC exercised deliberate indifference to the rights of Ms. Burgh.

110. The deprivation of Ms. Burgh's rights were caused by the implementation of customs, policies, and/or official act/omissions of Zerkle, Adams, CCSO, and CCC, to wit: failure to adequately train, supervise, and discipline officers regarding violations of citizens' constitutional rights including the right of citizens to record law enforcement and the justified use of force.

111. Zerkle, Adams, CCSO, and CCC failed to adequately train Zerkle for employment with CCSOs by failing to ensure that he understood the rights of citizens to record law enforcement from a public space.

112. Zerkle, Adams, CCSO, and CCC failed to adequately train Zerkle on the law so that he understood when seizure and detention of a person was constitutionally permissible.

113. The lack of training demonstrated by defendants, as set forth above, demonstrates a deliberate indifference to the rights of Ms. Burgh, and the defendants need for training is plainly obvious by the action(s) and/or inaction(s) that they took; to-wit: the failure of Adams to stop Zerkle from violating Ms. Burgh's constitutional rights and the ratification of Zerkle's actions by Adams because Adams participated in and/or acquiesced to the violation of Ms. Burgh's rights.

114. The above-referenced failures in the preceding paragraphs were the actual and proximate cause of the deprivation(s) of the constitutional rights of Ms. Burgh.

115. Zerkle, Adams, CCSO, and CCC failed to adequately supervise Zerkle during the course of his employment with CCSO, including providing the requisite level of supervision to ensure that Zerkle, as well as other similarly situated CCSO officers, were properly trained so that

citizens were seized only when there was a constitutionally permissible basis to do so and so that the rights of citizens to record law enforcement officers was not curtailed.

116. The defendants in the preceding paragraph had actual or constructive knowledge that Zerkle was not properly trained on the First Amendment and use of force, and Zerkle's lack of training and certification posed a severe, pervasive, and unreasonable risk of constitutional injury to citizens.

117. The response of the defendants in allowing Zerkle to violate Ms. Burgh's right to record law enforcement shows a deliberate indifference and/or tacit authorization of allowing Zerkle to ignore CCSO's own policies.

118. In this instance, the inaction of those with supervisory control over Zerkle, including Adams, CCSO, and CCC, in failing to ensure that Zerkle was properly trained on the First Amendment and permissible use of force caused the injuries suffered by Ms. Burgh.

119. The failure to train and failure to supervise Zerkle were systematic and amount to a deliberate indifference to the rights of citizens with whom Zerkle was likely to come into contact, as the training was so deficient that it was understood that Zerkle was likely to cause injury.

120. Additionally and/or alternatively, upon information and belief, Adams, CCSO, and CCC, implemented customs and policies for training and supervision of CCSO deputies concerning the First Amendment and seizure of citizens, that, on their face, violate the Fourteenth Amendment. Alternatively, upon information and belief, the aforementioned defendants implemented otherwise facially valid customs and policies in a manner such that constitutional violations were likely to be and were visited upon those inhabiting, visiting, or otherwise within the jurisdictional limits of Cabell County.

121. Zerkle, Adams, CCSO, and CCC, by these acts and omissions, exhibited deliberate indifference to the unreasonable risk of the unlawful deprivation of citizens' constitutional rights, which their customs and policies pose.

122. These customs and policies violated the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and under Article III, Sections 1, 6, and 10 of the West Virginia Constitution.

123. As a direct and proximate result of the customs, policies, and practices described herein and permitted by defendants, which violate the Fourteenth Amendment on their face, or otherwise are applied in a manner such that Fourteenth Amendment violations are likely to occur, Ms. Burgh was forced to endure and suffer, and continues to endure and suffer extreme physical, mental, and emotional pain and suffering and pecuniary loss.

124. In addition to these compensatory damages, Ms. Burgh also seeks to recover, under 42 U.S.C. § 1988 the attorney fees and costs incurred during the course of this litigation.

125. The actions and/or inactions of Defendants were reprehensible, willful, wanton, malicious, and in blatant and intentional disregard of the rights owed to Plaintiffs, thereby justifying an award of punitive damages, to the extent that such damages are permitted.

**Count VII**  
**(State Law Battery)**

126. Plaintiff realleges and incorporates by reference each and every allegation above as if fully set forth herein.

127. Zerkle committed batteries of Ms. Burgh.

128. Zerkle committed one battery by swiping at Ms. Burgh's phone and striking her, and two additional batteries by twice grabbing Ms. Burgh.

129. Zerkle, at each instance, intended to cause a harmful or offensive touching of Ms. Burgh.

130. Zerkle, at each instance, did cause harmful and offensive touching of Ms. Burgh.

131. As a direct and proximate result of Zerkle's batteries against her, Ms. Burgh suffered injury.

132. As a direct and proximate result of Zerkle's batteries, Ms. Burgh seeks to recover damages in an amount to be determined by a jury to compensate her for:

- a. Physical pain and suffering, past and future;
- b. Mental pain and suffering, past and future;
- c. Injuries resulting from the defendants' conduct;
- d. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- e. All other injuries proven by a preponderance of the evidence proximately caused by these defendants.

133. The actions of Zerkle in causing batteries to Ms. Burgh were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to Ms. Burgh, thereby entitling Ms. Burgh to punitive damages in an amount to be determined by the jury.

**Count VIII**  
**(State Law Assault)**

134. Plaintiff realleges and incorporates by reference each and every allegation above as if fully set forth herein.

135. Zerkle committed common law assault against Ms. Burgh by swiping at Ms. Burgh's phone and striking her, by twice-grabbing Ms. Burgh, and by shaking his handcuffs in Ms. Burgh's face.

136. Zerkle intended to place Ms. Burgh in apprehension of harmful and offensive contact by, *inter alia*, removing his handcuffs from his duty belt, shaking them in Ms. Burgh's face, and stating, "You wanna set of handcuffs?".

137. Ms. Burgh was in immediate apprehension of harmful and offensive contact as a result of Zerkle's actions.

138. As a direct and proximate result of Zerkle's assaults against her, Ms. Burgh suffered injury.

139. As a direct and proximate result of Zerkle's assaults, Ms. Burgh seeks to recover damages in an amount to be determined by a jury to compensate her for:

- a. Physical pain and suffering, past and future;
- b. Mental pain and suffering, past and future;
- c. Injuries resulting from the defendants' conduct;
- d. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- e. All other injuries proven by a preponderance of the evidence proximately caused by these defendants.

140. The actions of Zerkle in causing batteries to Ms. Burgh were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to Ms. Burgh, thereby entitling Ms. Burgh to punitive damages in an amount to be determined by the jury.



**Count IX**  
**(State Law Negligent Training/Supervision)**

141. Plaintiff realleges and incorporates by reference each and every allegation above as if fully set forth herein.

142. Adams, CCSO, and CCC failed to properly train and/or supervise Zerkle and others regarding the First Amendment, the use of force, and lawful seizure of citizens.

143. As a proximate result of the aforementioned defendants' actions and/or omissions, Ms. Burgh suffered injury.

144. As a direct and proximate result of the failures in training and supervision, Ms. Burgh seeks to recover damages in an amount to be determined by a jury to compensate her for:

- a. Physical pain and suffering, past and future;
- b. Mental pain and suffering, past and future;
- c. Injuries resulting from the defendants' conduct;
- d. Indignity, embarrassment, humiliation, annoyance, inconvenience, and degradation; and
- e. All other injuries proven by a preponderance of the evidence proximately caused by these defendants.

145. The failures in training and supervision that harmed Ms. Burgh were reprehensible, willful, wanton, malicious, and/or undertaken with blatant and intentional disregard of the rights owed to Ms. Burgh, thereby entitling Ms. Burgh to punitive damages in an amount to be determined by the jury.

**Count X**  
**(State Law Intentional and/or Negligent Infliction of Emotional Distress)**

146. Plaintiff realleges and incorporates by reference each and every allegation above as if fully set forth herein.

147. The acts and conduct of the Defendants as set forth above in paragraphs 1 through 147 is extreme and outrageous. Defendants intended to cause, or were in reckless disregard of the probability that their conduct would cause, severe emotional distress to Ms. Burgh, as is more fully alleged above.

148. It was reasonably foreseeable that Ms. Burgh would suffer serious emotional distress as a result of being injured by Zerkle.

149. The conduct of the defendants, as set forth above in all paragraphs and incorporated by reference herein, caused Ms. Burgh serious emotional distress as a direct result of having her civil rights violated, to include suffering traumatic brain injury.

150. The actions and conduct of defendants did directly and proximately cause severe emotional distress to Ms. Burgh, and thereby constituted intentional and/or negligent infliction of emotional distress.

151. Additionally and/or alternatively, the misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

152. As a direct and proximate result of defendants' wrongful acts, Ms. Burgh suffered damages, including, but not limited to, severe emotional distress and anguish, as is more fully alleged above.

**DAMAGES**

153. Plaintiff realleges and incorporates by reference each and every allegation above as if set forth herein.

154. As a consequence, of the actions and inactions of the Defendants, as stated herein, whether individually, jointly, or severally, Plaintiff Emilea Burgh has suffered damages.

155. More specifically, Plaintiff seeks compensation for:

- a. Compensatory damages in an amount that will fully and fairly compensate her for her injuries, both general and special;
- b. Punitive damages against Defendants in an amount that will serve to adequately punish and deter the conduct alleged herein;
- c. Costs of suit and reasonable attorneys' fees;
- d. Pre-judgment interest;
- e. Post-judgment interest; and
- f. All such other relief to which Plaintiffs are entitled and/or the Court deems necessary and just.

156. Defendants' actions or inactions constitute a conscious, willful, malicious, reckless, and outrageous indifference to the health, safety, and welfare of Ms. Burgh. As such, Ms. Burgh is entitled to recover punitive damages from these Defendants.

157. Any statutory cap or limit on any element of damages sought herein violates Plaintiff's right to due process, equal protection, and other rights guaranteed to Plaintiffs under the West Virginia Constitution, the United States Constitution, and other relevant legal authorities. Ms. Burgh seeks to recover and be made whole for the full and fair amount of compensatory and punitive damages to which they are entitled to recover without such damages being unconstitutionally limited by statutory caps.

**PRAYER**

**WHEREFORE**, Ms. Burgh does hereby demand judgment of and from the Defendants in this matter, for compensatory damages for all economic and noneconomic losses, as allowable under applicable state and federal law, including general, special, and incidental damages; punitive damages, in an amount to be established by the evidence; prejudgment and post-judgment interest; reasonable attorney fees and costs expended in the prosecution of this lawsuit, including, but not limited to, such reasonable costs and fees as may be awarded under 42 U.S.C. § 1988; and for any and all other relief that this Honorable Court may deem just and proper.

**PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

**PLAINTIFF,**

By counsel

/s/Tyler Haslam

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Tyler C. Haslam (W. Va. Bar No. 11522)

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