

## D.4 Sample Complaint Alleging Violation of 42 U.S.C. § 1983, Conversion, and Breach of Peace<sup>1</sup>

[plaintiff]Consumer,  
Plaintiff

[vs.]

[defendant]Secured Creditor, John Repo, Deputy, and County  
Defendants

[action]Civil Action No.

### COMPLAINT

#### Jury Demand

1. This action seeks money damages because of a county deputy sheriff's participation in private parties' wrongful deprivation of Plaintiff's property. Plaintiff alleges that all of the Defendants acted under color of state law and violated Plaintiff's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States. Plaintiff also brings two state law claims pursuant to this Court's supplemental jurisdiction.

#### Jurisdiction

2. This Court has jurisdiction over Plaintiff's federal claim under 28 U.S.C. §§ 1331 and 1343. The Court has supplemental jurisdiction over Plaintiff's second and third claims, which are based on state law, under 28 U.S.C. § 1367.

3. Venue in the United States District Court for the [*name of district and division*] is proper pursuant to 28 U.S.C. § 1391.

#### Parties

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1 This sample complaint is based on complaints prepared by two experienced consumer law attorneys, Joanne Faulkner, a Connecticut attorney, and Steven Shane, an Ohio attorney. The authors wish to thank them for their contributions.

For a discussion of civil rights violations and constitutional remedies, see § 13.7, *supra*. Information regarding state action can be found at §§ 6.3.6 and 6.4.8, *supra*. Sections 13.6.2 and 6.4, *supra*, cover conversion and breach of peace, respectively. An overview of U.C.C. § 9-625 remedies is contained in § 13.2, *supra*.

4. Plaintiff [*name*] is an individual who resides at [*address*].

5. Defendant [*name of Secured Creditor*], is a company principally engaged in the business of financing motor vehicles and has its principal place of business in [*city, state*]. It acted in concert with the other Defendants in the wrongful taking of Plaintiff's vehicle.

6. Defendant John Repo is an employee of Secured Creditor. At all times mentioned herein, he acted both on his own and at the direction of Defendant Secured Creditor and in concert with the other Defendants.

7. Defendant Deputy is a deputy sheriff employed by [*name of county and state*]. At all times relevant hereto he acted in concert with the other Defendants and under color of state law. He is sued both in his official and individual capacity.

8. Defendant County is the local governmental unit for which Defendant Deputy worked at all times relevant hereto.

### **Facts**

9. On or about [*date*], Plaintiff purchased a [*year and model of vehicle and vehicle identification number (VIN)*] for personal and family use from [*name of dealer*]. Plaintiff financed the purchase through Defendant Secured Creditor. As a result of this transaction, Plaintiff became the owner of the vehicle and Defendant Secured Creditor acquired a security interest in it.

10. Included in the loan agreement was a provision for credit disability insurance.

11. On or about [*date*], Plaintiff became disabled and reported his disability to the credit disability insurance company.

12. On or about [*date*], Defendant John Repo went to Plaintiff's home at [*address*], in response to a request from Defendant Secured Creditor to repossess Plaintiff's vehicle.

13. Plaintiff refused to allow Defendant John Repo to repossess the vehicle, informing Defendant John Repo that credit insurance was supposed to be making the payments, and that he wanted to consult his attorney.

14. When Plaintiff refused to allow repossession of the vehicle, Defendant John Repo contacted the Sheriff's office and asked that a deputy be dispatched to Plaintiff's address.

15. Defendant Deputy arrived in uniform and in a squad car, which remained diagonally in the street in front of Plaintiff's home with doors open and the motor running during the entire time he was present, at least a half hour.

16. Plaintiff told Defendant Deputy that the credit insurance company should have made the payments and that he was trying to contact his attorney to see whether Defendant Secured Creditor had the right to repossess the vehicle.

17. Defendant Deputy told Plaintiff that Defendant John Repo had the right to repossess the vehicle and that Plaintiff had to let Defendant John Repo take the vehicle.

18. Defendant John Repo did not have a court order permitting repossession.

19. Plaintiff felt physically intimidated by the presence of Defendant Deputy and would have resisted Defendant Repo's attempt to repossess the vehicle if Defendant Deputy had not been present.

20. None of the Defendants afforded Plaintiff an opportunity to be heard prior to the repossession of the vehicle.

21. The seizure of Plaintiff's vehicle was unreasonable.

22. Defendant John Repo succeeded in taking Plaintiff's vehicle in the presence of, and with the active cooperation of, Defendant Deputy.

23. As a proximate result of Defendants' actions, Plaintiff has been deprived of his vehicle, has incurred expenses for alternate transportation, and has suffered extreme embarrassment, shame, anxiety, and mental distress.

### **First Claim**

#### *42 U.S.C. § 1983--Against All Defendants*

24. Plaintiff incorporates the preceding paragraphs by reference as if fully rewritten herein.

25. Defendants at all times relevant to this action were acting under color of state law.

26. Defendants Secured Creditor, John Repo, and Deputy unlawfully deprived Plaintiff of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

27. Defendants Secured Creditor, John Repo, and Deputy made an unreasonable and warrantless seizure of Plaintiff's personal property in violation of the Fourth Amendment to the Constitution of the United States as incorporated and applied to the states by way of the Fourteenth Amendment to the Constitution of the United States.

28. At all times relevant hereto, Defendant Deputy acted pursuant to a policy or custom of Defendant County of assisting creditors in depriving debtors of personal property without court order and without providing an opportunity for the debtor to be heard.

29. Defendant County failed to adopt clear policies and failed to properly train its deputies as to the proper role of officers in private disputes such as repossession.

30. Defendant County's policy or custom, and its failure to adopt clear policies and failure to properly train its deputies, were a direct and proximate cause of the constitutional deprivation suffered by Plaintiff.

### **Second Claim<sup>2</sup>**

#### *Conversion--Against Defendants Secured Creditor and John Repo*

31. Plaintiff hereby incorporates the preceding allegations as if fully rewritten herein.

32. Without Plaintiff's consent, Defendants intentionally deprived Plaintiff of his rightful possession of the vehicle.

33. At all times relevant hereto, these Defendants acted with malice, recklessness and total and deliberate disregard for the contractual and personal rights of Plaintiff.

### **Third Claim**

#### *Violation of U.C.C.--Against Defendant Secured Creditor*

34. Plaintiff hereby incorporates the preceding allegations as if fully rewritten herein.

35. Defendant Secured Creditor's manner of repossessing the vehicle was a breach of the peace in violation of [*state codification of U.C.C. § 9-609*].

36. Defendant Secured Creditor's actions were the proximate cause of the damages alleged by Plaintiff in the preceding paragraphs.

### **Prayer for Relief**

WHEREFORE, Plaintiff prays for the following relief:

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<sup>2</sup> The consumer may have a second U.C.C. claim against the secured creditor because the consumer alleged that the credit disability insurance company should have made payments. A repossession absent a default violates U.C.C. § 9-609, and may also violate the U.C.C.'s duty of good faith and breach the creditor's fiduciary duty as a seller of insurance. *See* § 4.2.1, *supra*. The consumer may also have claims against the private defendants under the state UDAP statute or a state debt collection statute. *See* §§ 13.4, 13.5.2, *supra*. The private defendants may also have committed other torts such as trespass. *See* §§ 6.4, 13.6, *supra*. If the secured party used an independent repossession company to seize the vehicle, the consumer may also have a claim under the Fair Debt Collection Practices Act. *See* § 13.5.1, *supra*. With regard to the government defendants, the plaintiff may be able to assert a conversion claim pursuant to the state's tort claims act. However, joining too many state claims can detract from the civil rights violations, so the consumer's attorney will have to exercise judgment about how many state claims to include.

A. On his first claim, a judgment for compensatory damages in an amount to be determined at trial, plus reasonable attorney fees pursuant to 42 U.S.C. § 1988, against all Defendants;

B. On his second claim, a judgment for compensatory and punitive damages in an amount to be determined at trial, against Defendants Secured Creditor and John Repo;

C. On his third claim, a judgment for compensatory damages, with a minimum amount pursuant to [*state codification of U.C.C. § 9-625*] of the finance charge plus ten percent (10%) of the principal, against Defendant Secured Creditor;

D. A jury trial on all appropriate issues;

E. An award of costs and expenses against the Defendants;

F. Any and all other relief this Court may deem appropriate.

Respectfully submitted,  
Attorney for Plaintiff Consumer