IN THE CARDIFF COUNTY COURT **CASE NO.BS 614159-MC65**
CF101741
CF204141
7CF07345

BETWEEN

MAURICE JOHN KIRK

Claimant

and

THE CHIEF CONSTABLE OF THE SOUTH WALES CONSTABULARY

Defendant

AFFIDAVIT

1. I, Barbara Wilding, the Chief Constable of South Wales Police, make oath and say as follows:

2. On 25 November 2008 His Honour Judge Chambers QC made the following order:

   "In respect of the Claimant's application for "further disclosure", the Defendant shall serve upon the Claimant an affidavit confirming lists of documents on Actions BS614159-MC65, CF101741 and CF204141 by 4:30pm on 5 January 2009. The original affidavit shall be filed at Court."

3. I have been advised that when making this order His Honour Judge Chambers QC requested that the affidavit identify the extent of enquiries that have been made in respect of incidents where no documentation has been discovered on behalf of the Defendant.

4. To assist the Court I exhibit a bundle of documents to my affidavit marked "BW 1", the first page of which is an index of the contents.

5. I was appointed Chief Constable of South Wales Police on 1 January 2004. Prior to my appointment there were three other Chief Constables and two temporary Chief Constables in the period from 1993 to my appointment in 2004. I was not the Defendant at the time that the Claimant began these proceedings against South Wales Police, save

insofar as allegations have been introduced into the proceedings since 1 January 2004.

6. I have no personal knowledge of the matters which form the subject of the dispute between the parties. In seeking to comply with the terms of the court order that has been made, it has been necessary for me to rely upon enquiries made on my behalf by police officers and police staff under my instruction.

7. I have instructed those police officers and police staff, through the Legal Services Department of South Wales Police, to make diligent enquiry as to the documentation that is currently held by South Wales Police insofar as the same can be identified as being relevant to the matters set out by the Claimant in his pleadings before the court in these civil actions.

8. Relevant documentation, where located, has been sent by the Legal Services Department of South Wales Police to Dolmans solicitors, who have represented the Defendant during the course of these civil proceedings. Dolmans have then caused appropriate lists of documents to be prepared on behalf of the Defendant, copies of which are included in the bundle of documents exhibited to my affidavit.

Action BS614159

9. The 19 incidents with which Action BS614159 are concerned took place between 1993 and 1995.

10. I refer to the list of documents on Action BS614159 that itemises in black font those documents that remain in existence which are relevant and discloseable in respect of these 19 incidents.

11. For the assistance of the Court and the parties, I am advised by Dolmans that the list of documents also itemises in bold black font

those documents that the Claimant came to disclose as being relevant in his undated list of documents, his second list of documents dated 19 January 2001 and his third list of documents dated 23 May 2003.

12. The undated list of documents prepared by the Claimant also itemised a photograph and a statement of Mr Kirk regarding a fire. I am advised by Dolmans that these documents do not relate to the pleaded incidents and as they are not relevant they have not been itemised on the Defendant's list of documents.

13. I have been advised by Dolmans that on 27 October 2003 His Honour Judge Chambers QC made an order requiring the Crown Prosecution Service to disclose relevant documentation in respect of actions BS 614159-MC65, CF101741 and CF204141 to the Claimant and the Defendant. I am also advised by Dolmans that the Crown Prosecution Service indicated that they had no documentation to disclose in respect of action BS 614159 – MC65. In the circumstances, no documentation held by the Crown Prosecution Service has been disclosed in respect of these 19 incidents to South Wales Police in the course of these civil proceedings.

14. I now refer to those incidents in this action where no documentation has been located on behalf of the Defendant.

15. I refer to the allegation at Paragraph 8.14 of the Particulars of Claim in this action. The Claimant alleges that on 15 December 2003 he was stopped by the Police in Cardiff and with lawful excuse required to produce his motoring documents. He asserts that he produced these documents at Barry Police Station. He claims that he was thereafter maliciously charged with failing to produce the documents. He further claims that such charges were later discontinued with the prosecution offering no evidence. In the Defence it is pleaded that save that it is averred that if, as alleged, the Claimant was stopped whilst driving his motor vehicle, then the same arose out of the exercise of a Constable's

3

lawful right to stop a motor vehicle and save that it is denied that the matters alleged give rise to the alleged or any cause of action, no admissions are made. It was denied that the officers acted maliciously. It is further pleaded that the Defendant was unable to locate any information in respect of this incident and it was submitted that the claim should be struck out. The Claimant has subsequently received a civil witness statement from Inspector 913 Griffiths dated 19 May 2000. I note that Inspector 913 Griffiths sets out the enquiries he made in respect of this incident in paragraph 8. I can confirm that the enquiries conducted on behalf of the Defendant have recovered no documents in respect of this alleged incident. I am advised by Dolmans that the Claimant has not disclosed any documents relevant to this incident within the three lists of documents that he has served in respect of this action.

16. I refer to the allegation at Paragraph 8.20 of the Particulars of Claim. The Claimant maintains that on 24 July 1995 Paul Stringer tried to gain access to his veterinary hospital armed with a length of wood. It is alleged that the Defendant negligently refused to take any action to provide protection for the Claimant, his property or third parties. In the Defence it is pleaded that save that it is denied that the matters alleged give rise to any cause of action whatsoever, no admissions are made. It is further pleaded that the Defendant had been unable to locate any documentation either recording this incident or receiving any message to attend the Claimant's property on this date. The Claimant has subsequently received a civil witness statement from Inspector 913 Griffiths dated 19 May 2000. I note that Inspector 913 Griffiths sets out the enquiries he made in respect of this incident in paragraph 9. I can confirm that the enquiries conducted on behalf of the Defendant have recovered no documents in respect of this alleged incident. I am advised by Dolmans that the Claimant has not disclosed any documents relevant to this incident within the three lists of documents that he has served in respect of this action.

17. I refer to the allegation at Paragraph 8.21 of the Particulars of Claim. The Claimant maintains that on 6 August 1995 he was attacked by Paul Stringer. It is alleged that the Defendant's officers were called and negligently refused to take any action. It is further claimed that on 7 August 1995 Paul Stringer broke windows and caused damage to the Claimant's property at 52 Tynewydd Road, Barry. It is alleged that the Defendant's officers were called and negligently refused to take any action. In the Defence it is pleaded that save that it is denied that the matters alleged give rise to any cause of action whatsoever, no admissions are made. It is further pleaded that the Defendant had been unable to locate any documentation either recording this incident or receiving any message to attend the Claimant's property on this date. The Claimant has subsequently received a civil witness statement from Inspector 913 Griffiths dated 19 May 2000. Inspector 913 Griffiths sets out the enquiries he made in respect of this incident in paragraph 9. I can confirm that the enquiries conducted on behalf of the Defendant have recovered no documents in respect of this alleged incident. I note that the Claimant has disclosed a copy of his letter to Barry Police Station dated 8 August 1995 concerning this incident together with a copy letter he had received from Mr Sweeney MP dated 31 August 1995. Regrettably this correspondence has not assisted in locating any documents relating to this matter and none are known to exit in the possession of South Wales Police.

18. I refer to the allegation at Paragraph 8.23 of the Particulars of Claim. The Claimant maintains that in May 1995 he was stopped and detained by the Defendant's officer in Barry and required to produce his driving documents which he did. He asserts that he was maliciously charged with failing to produce and found not guilty. In the Defence it is denied that the Defendant's officers were acting maliciously. It is further pleaded that as a result of this claim the Defendant had sought enquiries to be made with the ASU Department at Cardiff which included a physical check of HORT 2 books and computer record checks and there is no trace of the Claimant producing driving

documents in respect of this matter. A further check has been made with the Summons Section of the ASU with a negative result. Enquiries with the Record Station of Barry Magistrates Court, were also made, who after checking records for 1995 and January 1996 could find no trace of the Claimant having appeared before them in respect of failing to produce driving documents. Furthermore the reference "33139/A", which had been provided by the Claimant, was of no significance to either the Summons Department or the Magistrates Court. The Claimant has subsequently received a civil witness statement from Inspector 913 Griffiths dated 19 May 2000. I note that Inspector 913 Griffiths sets out the enquiries he made in respect of this incident in paragraphs 11 to 14. I am advised that the Claimant subsequently disclosed a photocopy of a South Wales Constabulary photography department booking in receipt. It can be seen that the reference provided by the Claimant of "33139/A" is a reference within the photography department. I can confirm that I have been advised that further enquiries have been made with the photography department who have confirmed that the reference number provided by the Claimant relates to a different matter and is not related in any way to the Claimant. The photography department have explained that after 7 years, reference numbers are often reallocated to new matters. This might explain why this reference number now relates to a matter not involving the Claimant. However, it has not been possible for any officer or member of police staff to identify any documents relating to the matters alleged by the Claimant.

19. I refer to the allegation at Paragraph 8.26 of the Particulars of Claim. The Claimant maintains that in June 1995 the Defendant's officers purported to arrest the Claimant for illegal eviction of a tenant at a house. He asserts that the Defendant knew and / or had insufficient evidence to justify the arrest and in any event should have conferred with the Local Authority who have direct responsibility for administering the Protection Against Eviction Act 1997. He claims that his arrest and detention was unlawful. In the Defence no admissions are made. It is

noted that a Request for Further and Better Particulars dated 19 June 1998 has been raised and despite a Court Order dated 22 November 1999 the request remains outstanding. The Claimant has subsequently received a civil witness statement from Inspector 913 Griffiths dated 19 May 2000. I note that Inspector 913 Griffiths confirms that he had been advised that enquiries undertaken did not reveal an arrest of Mr Kirk during this period for the alleged incident. I am informed by Dolmans Solicitors that the now Retired Inspector Griffiths has confirmed that those enquiries would have included checking with the Custody Officer at Barry Police Station to ascertain whether Mr Kirk had been booked in at Barry Police Station during June 1995. Captor Incidents would have also been checked to ascertain whether Mr Kirk had had any involvement with the Police recorded on Captor during June 1995. I am advised that Dolmans solicitors wrote to the Claimant on 18 December 2007 asking the Claimant to provide the following information in respect of this incident:

1. The date of the incident.
2. The names of any police officers who dealt with you on this occasion.
3. The name of the Police Station to which you were taken on this occasion.
4. An indication of how long you were detained on this occasion.
5. Please identify whether or not you were interviewed on this occasion.
6. Please identify whether or not you called a duty solicitor on this occasion, and if so the name of the solicitor.
7. Please identify whether or not you were charged, and if so please specify the offence(s).
8. Please identify the Magistrates Court if you were produced to the Magistrates on this occasion.

I am advised that the Claimant has only confirmed that he was taken to Barry Police Station. I am aware that the Claimant has disclosed handwritten notes relating to rent payments in respect of this alleged incident. In these circumstances, there are no further enquiries that can be undertaken. I can also confirm that the enquiries that have been conducted on behalf of the Defendant have recovered no documents in respect of this alleged incident.

20. I also refer to the allegation at Paragraph 8.13 of the Particulars of Claim in this action. The Claimant's motorcycle was allegedly stolen on

16 October 1993. The Claimant alleges that the Police recovered the motorcycle but failed to advise him. He asserts that he was told by "a third party" that the motorcycle was in the Defendant's possession and with some difficulty he was able to recover the motorcycle from the Defendant. It is denied in the Defence that the matters complained of give rise to the alleged or any cause of action. It is pleaded that South Wales Police had no record of the motorcycle coming into their possession. It is admitted that the vehicle was reported as stolen. The Claimant has subsequently received a civil witness statement from Inspector 913 Griffiths dated 19 May 2000, a copy of which is included in the bundle of documents. I note that Inspector 913 Griffiths sets out the enquiries he made in respect of this incident in paragraphs 5 to 7. I can confirm that the enquiries conducted on behalf of the Defendant have recovered no further documents than those itemised at numbers 155 to 160 of the list of documents, namely those documents that confirm that the vehicle was reported as stolen. The enquiries conducted on behalf of the Defendant have been unable to locate any documentation which identifies that the vehicle ever came into the Defendant's possession as alleged by the Claimant.

Action CF101741

21. The 14 incidents with which Action CF101741 are concerned took place between 1996 and 2000.

22. I refer to the list of documents on Action CF2101741 that itemises in black font those documents that remain in existence which are relevant and discloseable in respect of these 14 incidents. For the assistance of the Court and the parties the list of documents also itemises in bold black font those documents that the Claimant disclosed as relevant in his list of documents dated 29 August 2003 and in red font those documents that were disclosed as relevant by the Crown Prosecution Service in 2004 pursuant to a Court order dated 27 October 2003.

23. I refer to the allegation at Paragraph 5.1 of the Particulars of Claim in this action. The Claimant maintains that in or about October 1997 he received a notice requiring him to identify the person driving his Escort van on a highway near St Nicholas, Vale of Glamorgan, which was allegedly exceeding the speed limit when photographed by a speed camera. The Claimant states that he duly supplied the information required, but thereafter a police officer laid an information against him at Barry Magistrates Court relating to the alleged traffic offence. He states that he received a summons which was subsequently withdrawn at Barry Magistrates Court. The Claimant asserts that this prosecution was conducted maliciously. This is denied in the Defence.

24. I am advised by Dolmans that the Claimant has subsequently disclosed documents that indicate that the incident took place on 2 October 1997. He received a notice on 23 October 1997 under reference number C036955X. The Claimant's car registration was D821LNY and he asserts that the summons was dated 26 March 1998. The Case Number at court was 01358295 and hearings took place on 27.04.98 and 01.06.98. The Claimant maintains that Inspector 1581 Rice was the officer who attended the hearing. The Claimant also asserts that he arrested the Crown Prosecution Service lawyer, Mr Soffa.

25. I am advised by Dolmans that this information was provided to the Crown Prosecution Service. I am also advised that Dolmans were informed by the Crown Prosecution Service that they have been unable to locate any papers and are of the view that the file has been destroyed in accordance with the instructions in the Crown Prosecution Service Records Management Manual. The Crown Prosecution Service have also contacted Mr Soffa. Mr Soffa has indicated that he did not make any notes of this incident and does not wish to become involved in court proceedings in respect of an incident that occurred some ten years ago.

26. I am advised that Inspector 1581 Rice has provided a civil statement for the purpose of these proceedings which will be served at the time of exchange of witness statements. Inspector 1581 Rice will identify that he has no recollection of the incident described by the Claimant in his letter to the Vale Magistrates Court, dated 1 June 1998. The Officer will confirm that he has had, in the past, occasion to deal with the Claimant and that although the alleged incident was a number of years ago, in light of the unusual circumstances, he feels sure that he would have remembered the hearing if he had been present. Inspector 1581 Rice will also confirm that the summons books covering 1997 and 1998 are no longer in existence. In the circumstances, it has not been possible to search the same to identify whether the Claimant received a summons as he claims following an incident on 2 October 1997. I am therefore advised that there are no documents in the possession of South Wales Police with reference to this allegation.

27. I refer to the allegation at Paragraph 10.1 of the Particulars of Claim in this action. The Claimant states that he was stopped on 23 January 2000 as he drove along the A4050 by a police officer and required to provide a breath sample. He asserts that there was no good reason to stop him or require him to provide a breath sample. In the Defence it was asserted that the Defendant was unable to plead to the same without information as to the name, number and identity of the Officer who was alleged to have required the Claimant to provide a breath sample.

28. I am advised by Dolmans that the Claimant has disclosed no documentation in respect of this incident. However, he has further asserted that he was first stopped on the M4 before being stopped a few minutes thereafter on A4050. He claims that on the first occasion there were two police officers who issued a vehicle rectification certificate and on the second occasion it was by a police officer who followed him after leaving the first police car. The Claimant asserts that he was stopped at 5.15pm on the roadside adjacent to the Welsh Folk

Museum, on the pretext of the manner of his driving. The Claimant states that the officer was PC Guest who was joined by PC Welbeloved.

29. I am advised that PC 1696 Guest and PC 485 John Wellbeloved have provided civil statements for the purpose of these proceedings which will be served at the time of exchange of witness statements. Both officers will confirm that PC Guest stopped the Claimant on the A4232, on the slip road leading to the Welsh Folk Museum. PC Guest will confirm that the Claimant was stopped because of the manner of his driving. The officers will state that they knew nothing of an earlier stop on the M4. PC Guest will confirm that the Claimant provided a negative breath test before he was allowed to go on his way. Both officers willl confirm that their pocket book entries for 23 January 2000 have now been destroyed in accordance with Force policy. I am therefore advised that there are no documents in the possession of South Wales Police with reference to this allegation.

Action CF204141

30. The 5 incidents with which Action CF101741 are concerned took place between 1998 and 2002.

31. I refer to the list of documents on Action CF204141 that itemises in black font those documents that remain in existence which are relevant and discloseable in respect of these 5 incidents. For the assistance of the Court and the parties the list of documents also itemises in bold black font those documents that the Claimant disclosed as relevant in his list of documents dated 23 May 2003 and in red font those documents that were disclosed as relevant by the Crown Prosecution Service in 2004 pursuant to a Court order dated 27 October 2003.

32. The Court will no doubt recognise the antiquity of the allegations in these claims and will have an appreciation of the difficulty involved in

locating documents or seeking the recollection of witnesses after this length of time. However, I have caused enquiries to be made with those currently serving or employed by the Force who would have access to any relevant documents and sought their assistance. This affidavit seeks to identify to the Court the current position as to the documents that can be located in the possession of the South Wales Police.

Sworn this 25th day of February 2009
At Police Headquarters, Bridgend Barbara Hula
Before me
Solicitor / ~~Commissioner~~ for Oaths