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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

CARL VINCENT BALL CAPLES, an individual

Plaintiff,

vs.

CITY OF PHOENIX, a municipality,

Defendant.

No. CV 2014-013815

COMPLAINT
(Section 1983 Claim)

(Jury Trial Demanded)

For his Complaint, Plaintiff Carl Vincent Ball Caples hereby alleges as follows:

INTRODUCTION

1. Defendant City of Phoenix violated Plaintiff's constitutional rights because, as a matter of governmental custom and/or formal policy, as well as inadequate training and supervision, it knowingly followed unconstitutional procedures based on custom and/or policy. These include: customarily and as a matter of policy failing to properly train and supervise its arson investigators; failing, as a matter of habit and custom, to hire adequately trained fire investigators; and making use, as a matter of habit and custom, of discredited and widely disavowed arson investigation techniques. A reasonable policy maker would have known and concluded that the obvious consequence of improper training, supervision, and hiring, and the use of discredited arson investigation techniques, would be to deprive Plaintiff Caples and others like him of federally protected constitutional rights.

2. This is a civil rights action against the City of Phoenix (the "City") for the unlawful and unconstitutional acts, omissions, and policies of its Fire Department, particularly, the investigative practices and customs implemented and performed by its then-Fire Chief Robert "Bob" Khan, its former-Fire Marshal Jack Ballentine (who, at all times relevant to this Complaint, also served as the Director of the Fire Department's Arson Investigations Unit), and its fire investigators (who are also sworn peace officers). *See generally Monell v. Dept of Social Svcs of City of New York*, 436 U.S. 658, 694 (1978).

3. In an effort to increase its arson clearance statistics and further other self-serving interests, the City of Phoenix implemented and followed unlawful policies and customs, in violation of the federal and Arizona Constitutions, national fire investigation standards, and the basic due process rights that the City's officers were supposed to protect.

4. The City of Phoenix failed to train and/or supervise the fire investigators on proper fire investigation methods and standards, which led to the wrongful arrest and detention of many individuals, resulting in a gross deprivation of their civil rights.

5. Among other improprieties, the City of Phoenix established and followed a policy and custom under which its accelerant detection canine was deemed superior to the scientific laboratory results, and the City would routinely present the unconfirmed alert of the canine to a Grand Jury as indicia of arson, even in the absence of any laboratory support, meaning there would, in those instances, be **no** confirmed evidence of an accelerant. Under established national fire investigation standards, the only legitimate objective for the use of accelerant detection canines is to assist with the selection of samples that have a higher probability of laboratory confirmation of ignitable liquids. Also, most importantly, under established national standards of long standing, any canine alert that has not been confirmed by laboratory analysis should not be considered validated.

6. The City of Phoenix routinely approached fire scenes with a preconceived idea of whether a fire was arson, and it reviewed the scene based on that preconceived idea,

causing innocent individuals to be charged, arrested, and incarcerated based on a "negative corpus" methodology. Using the widely discredited "negative corpus" methodology, if an accidental cause of a fire cannot be established, then the fire is presumed to be arson.

7. In this case and others, the City developed a "hypothesis" that the fire was intentionally set **before** the scene was reviewed and **before** any evidence was collected. Under established national fire investigation standards, a properly trained fire investigator would have been trained to avoid such expectation bias and to focus solely on the tangible evidence to determine the point of origin and the fuel and ignition sources.

8. The City of Phoenix routinely presented false and unsubstantiated testimony and conclusions to Grand Juries, including regarding "arson" dogs, which, in this case, caused the Plaintiff, an innocent man, to be wrongfully arrested for felony charges of arson and endangerment and imprisoned for more than fourteen months, until his case was voluntarily dismissed by the prosecution on the first day of trial in the interests of justice.

PARTIES, JURISDICTION, AND VENUE

9. Plaintiff Carl Vincent Ball Caples ("Caples") is presently a resident of Cook County, Illinois, but he previously resided in Maricopa County, Arizona.

10. Defendant City of Phoenix is a municipal corporation of Arizona. The City is responsible for the actions, omissions, policies, practices, and customs of the Phoenix Fire Department and its representatives (collectively, the "Fire Department").

11. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988 and the Fourth and Fourteenth Amendments to the United States Constitution.

12. The underlying events all occurred in Maricopa County, Arizona, and venue is appropriate in this Court.

BACKGROUND

13. On May 7, 2009, at or about 10:58 a.m., a 911 emergency dispatcher received a call about a fire at 19001 North 18th Drive, Phoenix, Arizona (the "Residence").

14. The Fire Department was dispatched to the Residence at or about 10:59 a.m. and arrived at the Residence minutes later, at or about 11:02 a.m.

15. James Modeste ("Modeste") was the only individual at the Residence at the time of the fire (the "Fire").

16. The other occupants of the Residence, the homeowner, Angel Guzman ("Guzman"), and the other roommate, Caples, were not there at the time of the Fire.

17. A neighbor saw smoke coming from the Residence, went over, and alerted Modeste of the Fire. Modeste safely exited the Residence without injury.

18. At 11:19 a.m., the Phoenix Fire Department Arson Investigations Unit (the "Arson Unit") was called to the scene to investigate the Fire at the Residence.

19. With respect to the Fire at the Residence, Captain Sam Richardson ("Richardson"), the assigned lead fire investigator, arrived on the scene on May 7, 2009 at approximately 11:54 a.m.

20. The Fire at the Residence was fully extinguished by the time that Richardson and other members of the Arson Unit arrived.

21. The position of "lead" investigator routinely rotated among all members of the Arson Unit.

22. No special training or minimum experience was required to serve as lead investigator.

23. The Arson Unit's lead investigator at a fire was responsible for directing the fire scene investigation and the other Arson Unit members present at the scene provided support as directed by the lead investigator.

24. At the time of the Fire at the Residence, Richardson was **not** a fire investigator certified by the International Association of Arson Investigators, Inc. (the "IAAI").

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25. Richardson did not complete the national IAAI Certified Fire Investigator ("IAAI-CFI") standardized program until 2010.

26. The first thing Richardson did when he arrived on the scene of the Fire was speak to Captain Brian Cole ("Cole").

27. Cole, a member of the Fire Department who had no fire investigation training or experience, told Richardson that the Fire was "suspicious" and that "we had a good victim sitting across the street" and Richardson should talk to him.

28. Without doing any investigation or even viewing the scene, Richardson went across the street to talk to the "good victim," Modeste.

29. Richardson started his investigation and interview with Modeste by presuming that the Fire was arson and had been intentionally set. Specifically, Richardson asked Modeste, "What's going on? What happened? . . . **Do you know who lit this fire?** What is going on?"

30. Modeste, a lay person without any fire investigation training or experience, and who was allegedly sleeping at the time of the Fire, baldly assumed that the Fire had been started by Caples and he shared his unfounded assumption with Richardson.

31. Richardson then told Modeste, "Okay, let me get back to you. I need to look at the scene before I get your interview."

32. After his initial contact with Cole and Modeste, Richardson went to the Residence and started his investigation.

33. Because Cole and Modeste both believed that the Fire started on the back patio, Richardson started his investigation at the rear of the Residence.

34. Richardson did not inquire with any of the other responding firefighters as to what they saw when they arrived at the Residence.

35. The responding firefighters had cut a hole in the northwest portion of the roof near the front of the Residence for ventilation and visibility (a "venting hole").

36. A venting hole is generally cut right over the fire source. In this case, the venting hole suggested that the Fire originated in the front attic area, not in the back patio.

37. According to Richardson, he called a fellow fire investigator, Captain Fred Andes ("Andes"), to bring the Fire Department's accelerant detection canine for assistance because Cole said the Fire looked "suspicious," Modeste said Caples "did it," and he (Richardson) was "looking at different things on the patio."

38. Andes is the canine handler of the Fire Department's sole accelerant detection dog, Sadie, a chocolate-colored Labrador retriever.

39. When Andes arrived at the scene, Richardson caucused with him and they immediately came up with a "hypothesis" of what they believed started the Fire.

40. According to Andes, Sadie "alerted" or "hit" at three areas on the patio of the Residence, suggesting the presence of an ignitable fluid.

41. An "alert" is the multi-behavioral change in the canine when the canine detects an odor that the canine has been trained to detect.

42. Andes took samples from these three areas, namely, from the pool table, the chair, and the coffee table, all of which were on the back patio of the Residence

43. Richardson theorized that Caples had started the Fire in the rear of the Residence on the patio, even though there was no evidence tying Caples to the Fire.

44. Using, in part, the discredited negative corpus method, Richardson believed that Caples had intentionally set the Fire because he had "ruled out accidental causes at the fire scene, [there was] multiple points of origin, and the accelerant detection dog 'hitting' on the samples we took from these areas [and] there were no other heat sources in the area." However, none of the multiple points of origin identified by Richardson on the patio were actually the cause or origin of the Fire.

45. In addition to his other errors, Richardson did not conduct any arc mapping, which is necessary to rule out an electrical cause for a fire. Richardson did not conduct arc

mapping because he did not have any training to do so, nor did anyone else at the Fire Department have such training.

46. An arc survey (also known as arc mapping) is a technique in which the investigator uses the identification of arc locations or "sites" to aid in determining the area of fire origin.

47. Despite his belief that the Fire was arson, Richardson never determined either the supposed fuel source or the purported ignition source for the alleged arson.

48. In connection with the Fire, Richardson failed to conduct a proper and thorough investigation in accordance with established fire investigation standards and protocols.

49. The three samples that were gathered by Richardson and Andes based on the alerts of the accelerant detection canine were submitted to the Phoenix Crime Lab on May 11, 2009, with instructions to "analyze for any presence of an ignitible liquid."

50. The Phoenix Crime Lab analyzed the samples and determined that the results were inconclusive, meaning that the presence of an ignitable liquid in the samples could not be established. Thus, the crime lab could not establish any trace of accelerants.

51. Based on the crime lab analysis, there was no evidence to show the presence of any ignitable liquid at the Fire or the Residence.

52. Even without any evidence tying Caples to the Fire, Richardson believed that Caples had started the Fire and he immediately named Caples as an arson suspect.

53. Caples had left the Residence on May 7, 2009 at about 8:30 a.m. to do personal errands.

54. At the time of the Fire, Caples was several miles away from the Residence.

55. At the time the Fire was reported, Caples was at North Phoenix Pawn II, located at 10620 North 19th Avenue, Phoenix, Arizona.

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56. On May 7, 2009, the day of the Fire, Caples spent the evening at his girlfriend's home and did not learn about the Fire until the morning of May 8, 2009, when he returned to the Residence.

57. Based on Richardson's immediate conclusion that Caples was an arsonist, Caples was arrested on May 8, 2009, when he returned to the Residence to retrieve some personal belongings. He was released from custody several days later.

58. When Caples was arrested, in his pocket, he still had the receipt from North Phoenix Pawn II, showing that he had completed his pawn transaction at 11:35 a.m. on May 7, 2009, and he was miles away when the Fire was allegedly set at the Residence.

59. A clerk at the pawn shop, when finally interviewed on May 26, 2009 by Captain Dana Donahue ("Donahue"), a member of the Fire Department, supported in part Caples' alibi. The clerk told Donahue that "it normally took ten to fifteen minutes to process a pawn receipt" and although "the computer logged the pawned item at 11:35 a.m., [Caples] probably arrived [the store] around 11:15 a.m.," further suggesting that Caples could not have set the Fire at the Residence.

60. Donahue was also told that another clerk helped Caples but he would not be back in the until the next day, May 27, 2009.

61. No one from the Fire Department ever interviewed the clerk that actually assisted Caples to see if the pawn transaction was longer or shorter than the time estimated by the other clerk.

62. There were also cameras at the pawnshop, which may have recorded Caples' May 7, 2009 visit. But the Fire Department failed to secure the video recordings or explore Caples' alibi any further.

63. Following Caples' release, Richardson remained steadfast that Caples started the Fire and he had Caples arrested again, on June 5, 2009, without any additional evidence. Again, Caples was released from custody days later.

64. On June 25, 2009, Captain William Nelson ("Nelson"), another fire investigator with the Fire Department's Arson Unit, appeared before a Grand Jury to relay Richardson's unsubstantiated conclusion that Caples had started the Fire at the Residence. It is unclear at this time why Richardson sent Nelson to the Grand Jury in his stead.

65. Nelson provided false and misleading testimony to the Grand Jury.

66. For instance, although the Fire Department knew that Caples was at the pawn shop from, at least, 11:15 a.m. to 11:30 a.m. on the day of the Fire, Nelson told the Grand Jury otherwise:

> Q. And did Captain Richardson check out those locations.
>
> A. He did.
>
> Q. And was Mr. Caples at either of them at 11:00 or anywhere around 11:00 in the morning?
>
> A. He was at those locations, like, an hour or an hour and a half after the fire has started.
>
> Q. So nowhere near 11:00 in the morning?
>
> A. No.

67. Nelson also provided the following testimony to the Grand Jury:

> Q. To try to determine what the accelerant was, if there was one, samples have been taken; is that correct?
>
> A: Yes.
>
> Q: But those have not been fully analyzed; is that correct?
>
> A: I'm not sure if they came back. What happens typically in these cases, we have a K9 arson detection dog that sniffs the patterns and tells us whether or not they detect accelerants.
>
> A lot of times, they go into the lab, and the lab is unable to determine if there is or isn't. But after significant testing with the dog, the lab equipment is not as sensitive as the dog. And so a lot of times these come back as inclusive [*sic*] from the lab.

68. Knowing that the actual standard for fire investigations was to the contrary, Nelson, in response to a Grand Juror question, further testified to the Grand Jury as follows:

Q: Did I understand you correctly to say the dogs are better than lab testing?

A: Yes.

Q: They will pick up on something more so than - - -

A: Yes.

Q: Okay.

A: It's pretty amazing.

Q: And the dogs did detect?

A: The dogs did detect. And they send that to the lab, and sometimes the lab will come back and say, "It's not conclusive. We can't say one way or the other"

And so, yeah. That's common with fires of this nature. I'm not . . . I don't know if the lab reports have come back yet on this particular fire, though.

* * *

Q: The K9 dogs, they're taught to - - is it - - are they taught to smell particular accelerants or just accelerants?

A: It's petroleum-based accelerants, gasoline, they detect. I'm not sure exactly the range of detection, but they are trained to detect accelerants.

69. Based on the false and incorrect testimony of Nelson, an indictment was issued on June 25, 2009, charging Caples with felony counts of arson and endangerment.

70. An arrest warrant was issued on July 1, 2009.

71. Caples, a former law enforcement officer in Mississippi, was arrested on July 6, 2009.

72. That same day, Caples was booked into the Maricopa County Sheriff's Office Fourth Avenue Jail.

73. At all times, Caples maintained his innocence and he repeatedly stated that he had not been involved with the Fire at the Residence; this was the case each time he was arrested, detained, and questioned.

74. Caples was arraigned on July 13, 2009, and he pled not guilty to all charges. His bond was set at $35,000.00.

75. Caples did not have the financial resources to post the $35,000.00 bond.

76. Caples was unable to afford a lawyer and he was assigned a court-appointed defense attorney.

77. During the course of his defense, approximately nine months after Caples was arrested, his then-defense counsel retained the services of Patrick Andler ("Andler"), a fire and arson expert with more than thirty years of experience, to conduct an origin and cause investigation of the Fire at the Residence.

78. Andler used the established protocols set forth in National Fire Protection Association ("NFPA") 921: Guide for Fire and Explosion Investigation, the nationally recognized and accepted standard for fire investigations.

79. Andler determined that the Fire was not arson at all, but was an electrical fire, of an unintentional origin, which originated in the attic space at the front of the Residence. Specifically, the Fire originated in the attic space above the family room as a result of an electrical failure in a copper conductor wire.

80. Caples was indigent and he was unable to secure the bond amount necessary for his release; thus, he remained in jail until September 27, 2010. On September 27, 2010, the day that the criminal trial against Caples was to begin, the Maricopa County Attorney's Office acknowledged that the Fire was accidental in nature and it dropped the felony arson and endangerment charges.

81. Caples had by then spent more than fourteen months in jail.

UNLAWFUL POLICIES AND PROCEDURES

A. Lack of Proper Investigative Training.

82. The primary responsibility of a fire investigator is to determine the origin and cause of a fire.

83. The Phoenix Fire Department's Standard Operating Procedure M.P. 605.00 details when a fire investigator is required: specifically, in (1) fires that produced serious injuries and/or deaths, (2) structure fires where cause is not readily determined, and (3) car, field or dumpster fires that appear to have been started by a person. Fire investigators are called to scenes that appear to be attempted arsons, as well as all explosions and bombings.

84. In many instances, fire investigators take the lead in the criminal investigation of arson fires, after which the investigators may initiate arrests and submit cases to the Maricopa County Attorney's Office for possible prosecution.

85. In executing such duties, fire investigators should follow the Fire Department's standard operating procedures and NFPA 921, to conduct: (a) scene investigation; (b) scene photography; (c) witness interviews; (d) evidence collection; (e) evidence submittals to the Phoenix Police Department Crime Lab; and (f) the preparation of an investigative report.

86. In this case and many others, the Fire Department failed to conduct a proper and thorough investigation in accordance with NFPA 921.

87. The City has a duty to ensure that its arson investigators are properly trained and that they conduct proper investigations. *See, e.g.,* A.R.S. §§ 9-500.01, 41-2163, and 41-2164 (granting law enforcement powers to state fire marshal and municipal fire department arson investigators).

88. In this case, Richardson, in his report, failed to identify any witnesses that supported his conclusion that the Fire initiated on the patio; Cole had actually stated that the response time was under four minutes and, when he arrived, there was a working fire in both the front attic and the rear of the Residence.

89. In part, Richardson: failed to identify, recognize, and validate burn patterns; failed to recognize that drop down debris caused the three (3) burn patterns he observed on the patio; failed to consider existing burn patterns in the attic space at the north end (the

front) of the Residence; failed to conduct char depth analysis in the attic space; failed to conduct arc mapping; failed to collect and examine electrical conductors from attic space above the family room; failed to recognize a tripped circuit breaker; failed to recognize existing fuel loads on the patio that were ignited by drop down debris; failed to recognize a competent fuel source in the attic space; failed to recognize and interpret fire spread patterns through the attic; failed to properly identify existing burn patterns on the patio; and failed to recognize competent ignition sources in the attic (electrical arcing of a copper conductor above the family room)

90. The City failed to ensure that the Fire Department, particularly its Arson Unit, was properly trained.

91. The City failed to ensure that its fire investigators in the Arson Unit possessed the professional qualifications necessary for a fire investigator.

92. At the time they were investigating the Fire at the Residence, neither Richardson nor Andes was certified by the IAAI. Neither Richardson nor Andes completed the national IAAI-CFI standardized program until 2010.

93. In 1986, the IAAI addressed a national concern by developing the Certified Fire Investigator ("IAAI-CFI") program. The IAAI-CFI qualification is a standardized evaluation of a fire investigator's training and expertise.

94. As of September 29, 2010, Richardson had still not received his IAAI-CFI, but he was identifying himself as possessing such credentials. At that time, Richardson did not even have a date on which he would take the CFI written examination.

95. Andes obtained his IAAI-CFI certification in 2010, even though he had been investigating fires for many years before that.

96. The City failed to ensure proper training for its Fire Department, particularly its Arson Unit, including with respect to NFPA 921.

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97. NFPA 921, Guide for Fire and Explosion Investigations, is the reference manual that outlines the accepted approach and methods used in fire investigation. The basic principles incorporated in NFPA 921 center around the use of the scientific method and the avoidance of bias.

98. NFPA 921, sometimes referred to as simply 921, is promulgated by the National Fire Protection Association.

99. NFPA 921, Guide for Fire and Explosion Investigations, was developed by the Technical Committee on Fire Investigations to assist in improving the fire investigations process and the quality of information resulting from the fire investigative process.

100. The Fire Department does not consistently and routinely follow NFPA 921.

101. According to Richardson, "Basically we were taught the 921, but we don't use that as our standard standard."

102. In 1988, the Arizona Attorney General issued an opinion to the State Fire Marshal, on the meaning of the phrase "nationally recognized fire code" as used in A.R.S. § 41-2163(A)(2). Therein, the Attorney General specifically concluded that the model codes pertaining to fire safety which have been promulgated or sponsored by the National Fire Protection Association, among others, constituted "nationally recognized fire codes" as that term is used in A.R.S. § 41-2163(A)(2). 1988 Ariz. Op. Atty. Gen. 80 (1988).

103. The City failed to ensure that the Fire Department, particularly its Arson Unit, was properly trained on fire origin, cause, and analysis.

104. "The determination of fire origin and cause is necessary for all fire incidents." Phoenix Regional Standard Operating Procedures, Fire Cause Investigation, M.P. 202.13 (02/10 - R).

105. Richardson did not perform arc mapping as part of his investigation of the Fire.

106. At all relevant times, the Fire Department did not conduct arc mapping.

107. At all relevant times, the Fire Department did not have anyone trained to conduct arc mapping.

108. Arc mapping is an integral part of the fire investigation process. It is used to help determine the point of origin of a fire, including, specifically, the possibility that the fire is electrical in origin.

109. Arc mapping (also known as an arc survey) is a technique based on the predictable behavior of energized electrical circuits when exposed to a spreading fire.

110. The City failed to ensure that the Fire Department, particularly its Arson Unit, was properly trained against expectation bias.

111. "Expectation bias is a well-established phenomenon that occurs in scientific analysis when investigator(s) reach a premature conclusion too early in the study and without having examined or considered all of the relevant data. Instead of collecting and examining all of the data in a logical and unbiased manner to reach a scientifically reliable conclusion, the investigator(s) use the premature determination to dictate their investigative processes, analyses, and, ultimately, their conclusions, in a way that is not scientifically valid. The introduction of expectation bias into the investigation results in the use of only that data that supports this previously formed conclusion and often results in the misinterpretation and/or the discarding of data that does not support the original opinion. Investigators are strongly cautioned to avoid expectation bias through proper use of the scientific method." NFPA 921 § 4.3.8.

112. The City routinely utilized the negative corpus method in its investigations, whereby it was presumed that there was arson if an accidental cause of a fire could not be established; using this method, the Arson Unit investigators would reach an arson conclusion by eliminating all accidental ignition sources found, known, or believed to have been present in the area of origin, and by then concluding that a supposed arson ignition

source is the one thing left that cannot be eliminated, even though there is no evidence of its existence.

113. Under established national fire investigation standards, "Until data have been collected, no specific hypothesis can be reasonably formed or tested. All investigations of fire and explosion incidents should be approached by the investigator without presumption as to origin, ignition sequence, cause, fire spread, or responsibility for incident until the use of scientific method has yielded a provable hypotheses." NFPA 921 § 4.3.7.

114. In this case, there was no probable cause to arrest Caples.

115. Caples' arrest and subsequent criminal prosecution were the result of extremely poor investigative practices and unlawful policies and customs of the City of Phoenix and its Fire Department.

116. Caples was arrested even before the Arson Unit's investigators attempted to confirm his alibi.

117. At all relevant times, the Fire Department showed a deliberate disregard for cross-contamination at the scene and it also disregarded appropriate evidence preservation protocols.

118. "A fire investigation is conducted after fire control and salvage activities are completed, but before overhaul actions, which could hinder the investigation." Phoenix Regional Standard Operating Procedures, Fire Cause Investigation, M.P. 202.13.

119. "Salvage and all unnecessary interim activities which may alter, contaminate the fire scene, or interfere with a subsequent origin and cause investigation must be discontinued until authorized to continue by the responding Fire Investigator." Phoenix Regional Standard Operating Procedures, Fire Cause Investigation, M.P. 202.13.

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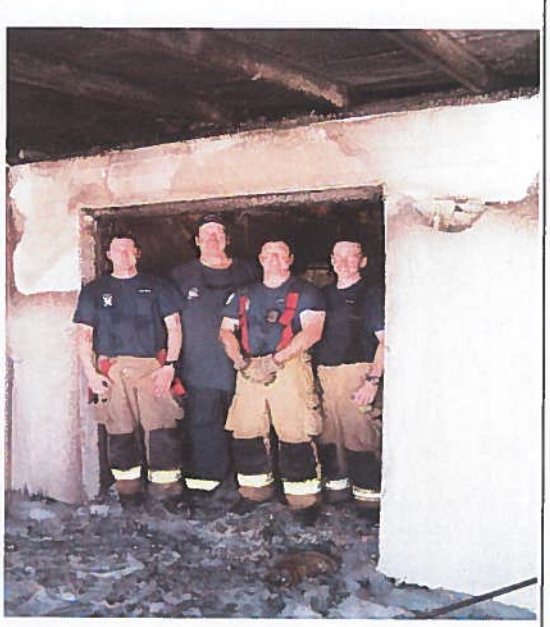
120. "Salvage operations should be minimal until the initial fire investigation is completed, and should be confined to diminishing loss." Phoenix Regional Standard Operating Procedures, Fire Cause Investigation, M.P. 202.13.

121. In contrast to the foregoing standard, even before the results came back from the crime lab, the Fire Department's Arson Unit touted the Fire as an arson, which was a common procedure for the Arson Unit. It was also common for Arson Unit personnel to take celebratory photographs for the firefighters' personal use, such as their personal Facebook and other social media pages.

122. In this case, with respect to the Fire at the Residence, Richardson allowed the firemen to pose for such "celebration" photographs, which he took on the exact spots where he believed the Fire originated (thus completely disregarding principles of preserving the scene and all relevant evidence). Two such photographs are provided below:



123. The City failed to ensure that the Fire Department, particularly its Arson Unit, was adequately trained in proper investigation tactics.

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124. In this case, many improper investigative practices were used including, but not limited, to interviewing multiple witnesses together and mentioning Caples' name to a witness who was otherwise not aware of him.

125. The City routinely permitted its Arson Unit investigators to unlawfully arrest, or initiate the arrest of, people without probable cause.

126. The City failed to properly supervise and discipline its fire investigators despite knowledge that they wrongfully arrested innocent persons.

127. The City's indifference to this unlawful behavior permitted its Arson Unit investigators to feel that they could make unlawful arrests without fear of punishment.

B. Deliberate Indifference to Known Problems.

128. The City was aware of the failings and inadequate training of its fire investigations, since as far back as 1999.

129. In July 1999, Terry Shields ("Shields") of the Phoenix Fire Department submitted a research project entitled, "Increasing the Level of Customer Service in Fire Investigations," ("Research Project") to the National Fire Academy as part of the Executive Fire Officer Program. Shields is a former Deputy Fire Chief, who retired from the Fire Department in 2010.

130. In Shields' Research Project, it was noted that "The Phoenix Fire Department has recently embraced customer service as a core value. In many cases, long-held fire service structures and practices do not support the strategy of quality customer service. One division in which the structures and practices need to be examined and adjusted to support the highest level of customer service is Fire Investigations."

131. The Research Project explained that, "It is commonly believed that the lack of initial and continuing training of fire investigators in Phoenix is an obstacle to quality customer service. At this time, the Investigation Section does not train to a standard, require fire investigators to obtain certification or another type of evaluation process in the

area of fire cause and origin. The only training currently required is that of Specialty Peace Officer."

132. The Research Project further explained that, "A critical component of providing a 'proper fire cause determination investigation' is providing well-qualified and trained fire investigators. Because, 'In virtually all situations, it is the quality of an investigation that determines whether or not the cause of a fire will be discovered.'"

133. The Research Project noted that the haphazard response of the Fire Department "is primarily due to understaffed, inadequately financed and under-trained investigative units. As a result, perhaps half of the yearly fires are misclassified . . . ."

134. In addressing these problems, the Research Project explained that the Fire "Department has relied upon seniority to select fire captains for fire investigator positions since the mid 1980s. Ironically, prior to the mid 1980s, there was a written test for the position of fire investigator, allowing firefighters, engineers and captains to compete for positions. However, in 1997, the selection process of recruiting for staff positions, including fire investigators evolved, permitting a more structured process. The new procedure allows the division manager to 'require resumes, conduct formal interviews, conduct skills/aptitude assessments and review past performance applicable to the position' (Volume 1, Standard Operating Procedures, Phoenix Fire Department, M.P. 104.02 page 6 of 13). Since that time, no investigators have been selected and no formal selection process has been designed or implemented. Additionally, there is no formal training or educational program for initial or continuing training of investigators in the critical areas of fire cause and origin, report writing, interviewing and interrogation. Courses in fire investigations are available but are not a mandatory requirement for the job. The only mandatory training or qualification required of fire investigators is that they qualify at the shooting range on an annual basis and attend minimal peace officer proficiency and continuing education."

135. The Research Project specifically noted that, "Fire investigator positions require knowledge, skills and abilities for successful completion of duties, which are not required of a fire captain working in Operations."

136. The Research Project agreed with "The NFPA 1033, Professional Qualifications for Fire Investigator, 1993 Edition [which] specifie[d] over one hundred specific skills and areas of knowledge that constitute the minimum standards required for service as a fire investigator. These prerequisite skills and areas of knowledge are grouped into the following categories: (a) scene examination; (b) scene documentation; (c) evidence collection/preservation; (d) interview/interrogation; (e) post-incident investigation; and (f) presentations."

137. The Research Project noted, "It is clear from the literature and the investigation managers consulted that a test based on a job analysis and national standards is needed. It must objectively quantify the specific knowledge, skills and abilities required to successfully complete the duties of fire investigator. The necessary skills include, report writing, courtroom presentation, interviewing, interrogation and observation."

138. In closing, the Research Project recommended "the State Fire Marshal's office to take a similar role to that of California and Texas by requiring all fire investigators to be trained to the NFPA standards of 1033 and 921."

139. The City failed to ensure that its Arson Unit was properly trained.

C. Inappropriate Use of Unconfirmed Alerts by Accelerant Detection Canine.

140. "The Phoenix Fire Department Investigations Section has the services of an accelerant detection canine assigned to the [Arson Unit]. The canine is used by the assigned Fire Investigator/Handler to identify the use of accelerants in the ignition of the fire." Phoenix Regional Standard Operating Procedures, Fire Cause Investigation, M.P. 202.13.

141. Sadie, the accelerant detection canine, was added to the Arson Unit in 2007.

142. Sadie is a food reward based canine, meaning Sadie is only fed when she alerts to indicate the presence of an ignitable liquid.

143. It was not just Richardson, Andes, and Nelson who testified that Sadie was superior to laboratory results. This was a systemic problem within the Arson Unit.

144. For example, in Maricopa County Superior Court Case No. CR2009-154846-001, entitled State of Arizona v. Michael Marin ("Marin"), Captain Jeff Peabody, another member of the Arson Unit, testified to the same effect. After a guilty verdict was read, Marin, who had maintained his innocence throughout the proceedings, committed suicide in the courtroom by ingesting cyanide.

145. Another example is found, in Maricopa County Superior Court, Case No. CR2012-138236-001, entitled State of Arizona v. D'Warndarrius Robinson ("Robinson"), where an Arson Unit member testified that the accelerant detection canine was better at detecting the presence of an accelerant than any lab test. In that case, the canine alerted on several articles of Robinson's clothing (four out of five items) despite the fact that laboratory tests for accelerants on Robinson's clothes and shoes came back negative.

146. The City established and followed an unlawful policy and custom under which its accelerant detection canine was deemed superior to laboratory results, and the unconfirmed alerts of the canine were routinely presented to Grand Juries, and in court, as proof of arson, even though there was no confirmed evidence of an accelerant.

147. This policy and custom was and is contrary to established best practices and the known science.

148. Under established national fire investigation standards, the objective of the use of canine/handler teams is to assist with the selection of samples that have a higher probability of laboratory confirmation of ignitable liquids and, most importantly, any canine alert that has not been confirmed by laboratory analysis should not be considered validated.

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149. The accepted standard in the fire investigation industry is to never rely on an arson dog unless there is lab support.

150. In 1994, the IAAI Forensic Science Committee developed a position paper that stated that an accelerant detection canine alert might be acceptable in the context of finding probable cause to look further, but that no jury should ever hear about an unconfirmed canine alert. This position was ratified by the NFPA in 1996, when an emergency amendment was added to NFPA 921, making it clear that unconfirmed canine alerts did not constitute valid science.

151. "Trained canine/handler teams may assist investigators in locating areas for collection of samples for laboratory analysis to identify the presence of ignitible liquids." NFPA 921 § 14.5.10.

152. "Properly trained and validated ignitible liquid detection canine/handler teams have proven their ability to improve fire investigations by assisting in the location and collection of samples for laboratory analysis for the presence of ignitible liquids. The proper use of detection canines is to assist with the location and selection of samples." NFPA 921 § 16.5.4.7.

153. "In order for the presence or absence of an ignitible liquid to be scientifically confirmed in a sample, that sample should be analyzed by a laboratory in accordance with 16.5.3. Any canine alert not confirmed by laboratory analysis should not be considered validated." NFPA 921 § 16.5.4.7.1.

154. "Research has shown that canines have responded or have alerted to pyrolysis products that are not produced by an ignitible liquid and have not always responded when an ignitible liquid accelerant was known to be present. If an investigator feels that there are indicators of an accelerant, samples should be taken even in the absence of a canine alert." NFPA 921 § 16.5.4.7.2.

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155. "The canine olfactory system is believed capable of detecting gasoline at concentrations below those normally cited for laboratory methods. The detection limit, however, is not the sole criterion or even the most important criterion for any forensic technique. Specifically, the ability to distinguish between ignitible liquids and background materials, is even more important than sensitivity for detection of any ignitible liquid residues. Unlike explosive- or drug-detecting dogs, these canines are trained to detect substances that are common to our everyday environment. The techniques exist today for forensic laboratories to detect submicroliter quantities of ignitible liquids, but because these substances are intrinsic to our mechanized world, merely detecting such quantities is of limited evidential value." NFPA 921 § 16.5.4.7.3.

156. "Current research does not indicate which individual chemical compounds or classes of chemical compounds are the key 'triggers' for canine alerts. Research reveals that most classes of compounds contained in ignitible liquids may be produced from the burning of common synthetic materials. Laboratories that use ASTM standards have minimum standards that define those chemical compounds that must be present in order to make a positive determination. The sheer variety of pyrolysis products present in fire scenes suggests possible reasons for some unconfirmed alerts by canines. The discriminatory ability of the canine to distinguish between pyrolysis products and ignitible liquids is remarkable but not infallible." NFPA 921 § 16.5.4.7.4.

157. "The proper objective of the use of canine/handler teams is to assist with the selection of samples that have a higher probability of laboratory confirmation than samples selected without the canine's assistance." NFPA 921 § 16.5.4.7.5.

158. "Canine ignition liquid detection should be used in conjunction with, and not in place of, the other fire investigation and analysis methods described in this guide." NFPA 921 § 16.5.4.7.6.

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159. Similar to the NFPA 921 position, the Bureau of Alcohol, Tobacco and Firearms, Accelerant Detection Canine Program "recognizes that a canine's indication (alert) to the presence of an accelerant is only one of the many resources available to the investigator in determining the origin and cause of a fire. The canine's indication must never be the sole basis for identification of a particular accelerant material but must be followed by a thorough laboratory analysis of the collected sample."

160. The American Bar Association has also recognized that "Laboratories today are capable of detecting 0.1 ìL (1/500 of a drop) of ignitable liquid residue in a gallon of fire debris without breaking a sweat. If the laboratory is unable to find any ignitable liquid residue, having the dog handler testify that 'There really was something there but the laboratory missed it,' has the potential for setting up a gross miscarriage of justice."

161. Other fire departments have specifically noted the problems with relying on unconfirmed canine alerts.

162. For example, the Charlottesville Fire Department, warned "Sometimes the expectation of these canines is beyond the scope of their ability. Fire investigators must realize that the [canine] is a tool and not infallible. An alert by [a canine] to areas identified as containing accelerants is not the magic bullet to show intent. The fire debris from that alert should be collected and sent for analysis to an accredited laboratory for confirmation. Investigators and prosecutors that use the alert of the [canine] without the confirmation from a laboratory as expert testimony, do so at the risk of compromising the entire case." TRUST YOUR DOG, A STUDY OF THE EFFICACY OF ACCELERANT DETECTION CANINES, William A. Hogsten, Charlottesville Fire Department, Charlotteville, VA.

163. The Canine Accelerant Detection Association ("CADA"), a national organization dedicated to the use of arson dogs, "does not support, nor do we recommend, Accelerant Detection Canine Handlers testifying in criminal or civil court to the presence of an ignitable liquid without having received confirmation through laboratory analysis."

164. CADA's position on "Testifying to Negative Samples" further states:

> [W]e encourage all ADC Handlers (public and private), and all Prosecutors and Attorneys to follow the National Fire Protection Association (NFPA) 921, Guide for Fire and Explosion Investigations which states - "Any canine alert not confirmed by laboratory analysis should not be considered validated."
>
> NFPA 921 also states - "Research reveals that most classes of compounds contained in ignitable liquids may be produced from the burning of common synthetic materials."2 This being the case, our position is that no Prosecutor, Attorney or ADC Handler should ever testify or encourage testimony that an ignitable liquid is present without confirmation through laboratory analysis.
>
> Accelerant Detection Canines (ADCs) are a valuable tool for fire investigators to call upon during fire scene examinations. ADCs should be utilized on a regular basis, as they serve at least two very important functions:
>
> 1. To help locate trace evidence of ignitable liquids and thus, secure samples with a higher probability of laboratory confirmation than samples collected without the canine's assistance.
>
> 2. To help eliminate the presence of ignitable liquids as a potential fuel source in the area of origin.

165. The National Fire Codes and the National Association of Fire Investigators also support the position that any ignitable liquid detection canine "alert" is meaningless without a corresponding positive confirmation by a laboratory utilizing ASTM E 1387, Standard Test Method for Ignitible Liquid Residues in Extracts from Fire Debris Samples by Gas Chromatography, or with ASTM E 1618, Standard Test Method for Ignitible Liquid Residues in Extracts from Fire Debris by Gas Chromatography-Mass Spectrometry.

166. Forensic scientists have not yet determined the exact triggering process which results in a positive alert by an accelerant detection canine for the presence of ignitable liquids. Therefore, any alert given by the canine that is not confirmed by laboratory analysis should be considered an unconfirmed indication of the presence of an ignitable liquid for the purposes of origin and cause determination.

167. The City of Phoenix also failed to ensure that its Fire Department, particularly its Arson Unit, was keeping accurate records related to its accelerant detection canine.

168. A canine handler should document all training exercises, and all canine deployment / work searches. All canine team records shall be retained for a length of time as required by the agency in which the handler is employed. It is also recommended that, at a minimum, records should be retained for five years after the canine retires from work.

169. Training records should include, but not be limited to: (a) name of the handler and canine; (b) date / time the training took place; (c) training location; (d) number of hides (targets); (e) type of ignitable liquid trained on; (f) quantity of ignitable liquid trained on; (g) type of training (scent discrimination, outside search, blank room, etc.); (h) size of search area; (i) search results; (j) deficiencies and corrective measures implemented; and (k) number of False Alerts.

170. Fire search records should include, but not limited to: (a) name of the handler and canine; (b) date of fire; (c) date / time the canine team worked; (d) location / address of search; (e) type of search (residence, vehicle, etc.); (f) size of area searched; (g) search results; (h) any other pertinent information to document the team's work; and (i) number of False Alerts.

171. Andes knew that the Fire Department's canine was not always accurate, but he intentionally and repeatedly misrepresented its efficiency.

172. In 2009, Andes kept records comparing Sadie's efficiency to the laboratory.

173. Of the forty samples alerted to by Sadie in 2009, laboratory analysis was only able to conform the presence of ignitible liquid in sixteen (39%) of the samples (i.e., these samples came back positive). Twelve (30%) of the samples were negative for ignitible liquids, and the remaining twelve samples were inconclusive.

174. In 2009, Sadie also suffered from Lymn's disease, which probably affected her ability to detect ignitable liquids.

175. Andes, in one or more instances, also cued his canine, Sadie, to provide a false alert.

176. A "false alert," "false positive," or "false indication" is when a canine responds to cues or gives an indication when there is no target odor presents.

177. In one instance, Andes was videotaped, telling his accelerant detection canine to alert; he said to the canine, "You gotta put your nose down, at least fake it for me, okay."

178. After each alert, the canine gets rewarded with a treat.

179. The canine can be highly motivated to react in a certain way (*i.e.*, alert), since it only gets fed if it alerts.

180. The Fire Department did not collect or maintain records necessary to confirm the accelerant detection canine's reliability

D. Lack of Adequate Policies and Lack of Proper Supervision.

181. At all times relevant to this Complaint, Robert "Bob" Khan ("Khan") served as the Chief of the Fire Department.

182. Khan became Fire Chief in 2006 and he served as such until February 28, 2014, when he abruptly resigned.

183. The Fire Chief has the primary responsibility, both legally and morally, for seeing that every fire has a proper fire cause determination completed. The Fire Chief must give the fire cause determination as high a priority as fire suppression. International Fire Service Training Association ("IFSTA"), Introduction to Fire Origin and Cause.

184. Among the essential functions of the Fire Chief is to develop general policies for the administration of the Fire Department, establish operational standards for the Fire Department, and direct and oversee the activities of the Fire Department.

185. At all times relevant to this Complaint, Jack Ballentine ("Ballentine") served as the City Fire Marshal and/or as the Director of the Arson Unit.

186. The responsibilities of the City Fire Marshall include serving as the Deputy Director of the Fire Department and heading the Division of Fire Prevention.

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187. The responsibilities of the Director of the Arson Unit include: supervising the fire investigators; coordinating with other agencies such as the Phoenix Police Department, the Federal Bureau of Alcohol Tobacco and Firearms, the FBI, and the Maricopa County Attorney's Office; identifying and coordinating staff training needs; assisting with investigations as needed; and handling the administrative functions of the Unit.

188. In August of 2007, Ballentine was hired as the director of the Fire Department's Arson Unit in hopes of improving the Unit's arson clearance rate.

189. Ballentine, a former police detective, had no background, training, or experience in fire investigations.

190. Ballentine decided to take firefighters from within the Fire Department, including Richardson and Andes, and turn them into law enforcement officers with the power to arrest suspected arsonists.

191. When ABC News interviewed Andes in 2010, he admitted the transition from firefighter to fire investigator wasn't easy. Andes explained, "We had no experience whatsoever. We had no idea what we were getting into. We were pretty comfortable on a fire truck. We were pretty comfortable fighting a fire. Then all of a sudden, we're asked to investigate the fire, and we didn't have a clue."

192. In that interview, Andes seemed to recognize the dangers of putting an untrained firefighter into an fire investigator role without adequate training. He explained, "[Firefighters are] usually overly aggressive and we have to be careful because of safety concerns that we don't push our luck too much. . . . So when you take firefighters and put them into a unit and make them investigators, we still have that same characteristic, we just don't know what to do with it."

193. Ballentine implemented additional law enforcement training and partnerships with investigators and tactical personnel in an effort to "move cases forward."

194. Under Ballentine and Khan, little was done to ensure that the fire investigators were knowledgeable about the established science involved in fire and arson investigations.

195. For example, fire investigators routinely did not keep notes or a crime scene log to manage the fire scene.

196. Ballentine also put pressure on the Arson Unit to make arrests before completing full investigations in order to get high arson case clearance numbers.

E. High Arson Clearance Rates was a Primary Motivation.

197. Under Ballentine and Khan, the City focused heavily on increasing the arson clearance rates and it disregarded the potential for wrongful arrests and convictions.

198. Under Ballentine's leadership, and with the numerous unconfirmed alerts by its accelerant detection canine, the Arson Unit's arson case clearance rate skyrocketed.

199. The Arson Unit went from making arrests in only 22% of cases in 2007 to an arson clearance rate of 65% in 2010, the highest in the country.

200. The Fire Department routinely touted its arson clearance rates in its reports to the City.

201. For example, in a City Council Report submitted by Khan on or about April 15, 2008, he wrote:

> The purpose of this report is to provide Public Safety and Veterans Subcommittee with an update on some of the changes and improvements that have been implemented in the Fire Department's Fire Investigations Section.
>
> **THE ISSUE**
> Last year the Fire Department implemented a new case management approach in Fire Investigations. Retired Police Detective Jack Ballentine was hired by the Fire Department to oversee the Section's caseload and investigative processes and to Insure effective investigations and prosecutions.

* * *

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OTHER INFORMATION
The new case management approach has proven to be very successful. This approach coupled with additional training for our investigators and greater coordination with other agencies has significantly improved our case clearance rate. Our previous clearance rate was about 8% and the current rate is 29%.

STATISTICS YTD 2008
So far this year, Fire Investigations have investigated 178 fires and have determined that 37 were Arson caused and 141 were Accidental or Undetermined in cause. There have been three adult fire fatalities since January 1st.

202. Similarly, in a City Council Report submitted by Khan on or about April 28, 2009, he wrote:

This report is to request Public Safety and Veterans Subcommittee with an update on some of the changes and improvements that have been implemented in the Fire Department's Fire Investigations Section.

THE ISSUE
In 2007, the Fire Department implemented a new case management approach in Fire Investigations. This approach was designed and implemented by Fire Investigations Manager Jack Ballentine, a retired Police Department Detective.

OTHER INFORMATION
The new case management approach has continued to be very successful. The new approach, coupled with continuing training for fire investigators, has resulted in greater coordination with other agencies, and a marked improvement in the arson case clearance rate. For 2008, the clearance rate for arson fires in Phoenix is 40%. This is considered very high in the profession and reflects very well on the efforts of the entire Fire Investigations team. The national clearance rate for these types of incidents is 17%.

* * *

At this point in 2009, Phoenix fire investigators have performed 206 investigations. 150 of these investigations determined that the cause of the fire was accidental or undetermined and arson was ruled as the cause for 56 incidents.

203. Likewise, in a City Council Report submitted by Khan on or about November 23, 2009, he wrote:

The purpose of this report is to provide the Public Safety and Veterans Subcommittee with an update on the Fire Department's Fire Investigations Section. Fire Investigators conducted three successful "high-profile"

investigations to date. These are the Southwest Supermarket Fire at 3500 W. McDowell with the arrest of one suspect, Young Champions Headquarters at 5414 S. 40th Street with the arrest of three suspects, and the $3.5 million dollar residential fire at 71 Biltmore Estates with the arrest of the owner.

THE ISSUE
The Fire Investigations Section is in their second year of partnering with the Phoenix Police Department in areas of advanced training. The section has surpassed expectations and is currently leading the nation in clearance rates.

* * *

Statistics YTD 2009
So far this year, Fire Investigations has investigated 639 fires and determined 155 were arson caused. There have been two adult fire fatalities since January 1st, one of them the suspect of the arson at 5414 S. 40th Street. The current clearance rate is 56%.

204. The City engaged in a pattern of disregarding exculpatory evidence and/or proceeding in the face of a lack of any real evidence, all in an attempt to increase its arson clearance rates.

F. Knowingly Providing False Testimony in Criminal Proceedings.

205. The City permitted its investigators to present false testimony in criminal proceedings and to arrest people without probable cause in order to boost its statistics.

206. In at least one instance, and probably others (to be shown through discovery) the Fire Department was found to have presented false testimony in a criminal proceeding.

207. On February, 28, 2014, the Arizona Department of Public Safety ("DPS") Special Investigations Unit ("SIU"), began an investigation into allegations that members of the Fire Department Arson Unit, specifically Ballentine, Richardson, and Andes, were criminally culpable concerning a fire investigation case involving Barbara Sloan ("Sloan"), who, like Caples, was wrongfully arrested and charged with arson.

208. Based upon interviews and information from documents and reports, the SIU investigators identified multiple testimonial discrepancies by the Arson Unit.

209. After concluding its investigation, on July 14, 2014, the DPS issued its report and recommended felony charges to the Maricopa County Attorney Office against

Richardson and Andes. Specifically, the DPS recommended six charges of false swearing (A.R.S. § 13-2703) against Richardson and one charge of false swearing against Andes.

210. With respect to the Sloan fire, the DPS concluded that Richardson made false statements regarding his investigation concerning a garage fire, a supposedly barricaded front door, a gas line, and gasoline allegedly poured into an electrical outlet.

211. As for Andes, he stated, under oath, that he did not maintain records of his accelerant detection canine, but Andes provided handwritten notes to SIU investigators.

212. Among the items provided by Andes were handwritten notes which indicated the need for certification, recertification, and training records.

213. Andes was aware of the importance of continued training and the meticulous maintenance of training records.

214. Andes provided copies of handwritten notes to the SIU investigators.

215. The handwritten notes had an asterisk next to the following entry, "if a dog hits . . . but not strong or confidence - don't turn into lab and indicate 'shows interest' on written report. This keeps the competency stats high. Keep credibility above 75% lab needs 33% to stay credited – pretty sad."

216. During the DPS investigation, Andes admitted that he did not collect and maintain complete statistics because he knew the statistics would show his accelerant detection canine was only "right half the time."

217. After the DPS report, the Fire Department placed Richardson, Andes and Ballentine on administrative leave with full pay and benefits.

218. Neither Richardson nor Andes were disciplined.

219. Sadie has been retired from service as an accelerant detection canine.

220. Richardson, Andes, and Ballentine returned to work in August 2014, and they were reassigned to other divisions within the Fire Department.

221. Richardson was assigned to the Fire Department's operations division.

222. Andes was assigned to the Fire Department's physical resources division.

223. Ballentine continues to work in the Fire Department's training division (but reportedly no longer has access to files), which includes hazardous materials, technical rescue and Arizona's Federal Emergency Management Agency task force. Ballentine continues to work in a supervisory capacity.

224. Despite the fact that an independent inquiry concluded that Richardson and Andes had repeatedly testified falsely under oath, the City did not discipline them.

225. In effect, the City condoned and ratified their wrongful behavior.

226. The Maricopa County Attorney's Office, however, added Richardson and Andes to its Rule 15 Disclosure Database, formerly known as the Officer Integrity Database, sometimes referred to as the Brady List.

227. On October 8, 2014, the Maricopa County Attorney Office announced that it will not prosecute any case previously investigated by either Richardson or Andes.

228. The Maricopa County Attorney's Office also indicated that, "in the interest of justice," it would decline to rely on any work conducted by any improperly documented canine acceleration detection dogs.

229. The Maricopa County Attorney's Office is also reviewing about thirty past and pending cases investigated by Richardson and/or Andes.

230. The Maricopa County Attorney's Office further suggested that the Fire Department's Arson Unit fire investigators needed to be retrained in the areas of report writing, crime scene integrity, evidence collection, canine certification records keeping, court testimony, search and seizure, probable cause, witness credibility, the Rules of Evidence, the Rules of Criminal Procedure with an emphasis on discovery responsibilities, and expert witness opinions.

231. The Maricopa County Attorney's Office recommended that every canine have a permanent log book created to track the animal's performance.

232. After the DPS report, Maricopa County Attorney Bill Montgomery characterized the Arson Unit's behavior as an "utter breakdown in basic investigative techniques and procedures."

233. In April of 2013, Caples and Sloan filed complaints against the Fire Department with the U.S. Attorney's Office in Phoenix.

234. The FBI is presently investigating the Fire Department for civil rights violations, based, in part, on complaints filed by Caples and Sloan.

NOT AN ISOLATED INSTANCE

235. Caples was not aware that his case was part of a larger problem, a systemic problem with the City, until he was contacted by Sloan in the Spring of 2013.

236. Sloan spent two years and $300,000 defending bogus arson charges, and, like Caples, the charges were eventually dismissed in the interest of justice. The Case Disposition Worksheet in her case, generated by the Maricopa County Attorney's Office, noted that there was no evidence tying her to the fire.

237. Richardson, Andes, and Sadie were the team that investigated and arrested both Caples and Sloan.

238. Upon information and belief, the Caples and Sloan prosecutions were not isolated cases, but were part of a larger policy and custom.

239. Caples had no idea before the Spring of 2013 that the miscarriage of justice he suffered was a result of a "policy or custom" of the Fire Department and its focus on having the highest clearance rate in the nation for arson.

CONSTITUTIONAL VIOLATION

240. The City knew or should have known that improper fire investigation practices and customs could and would result in wrongful arrests and convictions.

241. The Arson Research Project recently published "Anatomy of a Wrongful Arson Conviction: Sentinel Event Analysis in Fire Investigation."

242. That report found that 65% of the wrongful arson convictions and exonerations were cases where accidental fires were misidentified as arson.

243. In those cases, the arrests and convictions were based on misapplied or insufficient methodologies leading to incorrect forensic conclusions.

244. This report also noted that unconfirmed accelerant detecting canine alerts played a role in 22% of the misidentified arson cases.

245. This same report also profiled both the Caples and Sloan cases as two of the nine worst abuses nationwide in defective arson investigations.

DAMAGES SUSTAINED BY CAPLES

246. Caples' life was affected in many ways while he spent over one year in jail.

247. While in jail, Caples, a former law enforcement officer, was placed in the general population, where he was assaulted by several inmates.

248. Caples was wrongfully accused and charged with arson and endangerment.

249. The unfounded criminal charges continue to show up on background checks and, as a result, Caples has been unable to secure gainful employment.

250. Caples has sustained significant damages.

251. The damages sustained by Caples were a product of the City's policies and customs, and of its deliberate indifference, all as outlined above..

252. The unlawful policies and customs outlined above constituted the City's standard operating procedure and showed a deliberate indifference to Caples' constitutional rights, and to the constitutional rights of others.

253. The City was on actual or constructive notice that its omissions would likely result in constitutional violations.

254. The City had notice that its training procedures and supervision were inadequate and would likely to result in constitutional violations, yet it did nothing.

CAUSE OF ACTION

(Fourth and Fourteenth Amendments; 42 U.S.C.A. § 1983; *Monell* Claim)

255. The foregoing allegations are incorporated by this reference.

256. At all relevant times, the City established and/or followed policies, procedures, customs and/or practices which were the moving force and cause of violations of Caples' constitutional rights, including those under the Fourth and Fourteenth Amendments of the U.S. Constitution. *See Monell v. Dept of Social Svcs of City of New York*, 436 U.S. 658, 694, 98 S.Ct. 2018 (1978).

257. At all times relevant to this Complaint, the City's representatives were acting under color of state law when they committed the above-referenced actions, doing so without proper reason, without reasonable or probable cause, and with deliberate indifference to the rights of Caples.

258. The City had a duty to Caples to establish, implement, and follow policies, procedures, customs and/or practices which would confirm and provide the protections guaranteed him under the U.S. Constitution, including the use of reasonable care to select, supervise, train, control and review the activities of all agents, officers, and employees in its employ, and to refrain from acting with deliberate indifference to the constitutional rights of Caples.

259. The City breached its duties and obligations to Caples, as stated above, including but not limited to: failing to establish, implement and follow the correct and proper constitutional policies, procedures, customs, and practices; failing to properly select, supervise, train, control, and review its agents and employee as to their compliance with constitutional safeguards; and permitting its fire investigators to engage in the unlawful, malicious and unconstitutional conduct alleged.

260. The City knew or should have known that, by breaching the duties and obligations outlined above, that it was foreseeable that it would, and did, cause Caples and

others to be injured and damaged by its wrongful policies and acts, and that such breaches would occur in contravention of public policy and in violation of the City's legal and constitutional duties and obligations to Caples and others.

261. The conduct of the City and its representatives described in this Complaint violated Caples' civil rights, including a violation of the Fourth and Fourteenth Amendments of the U.S. Constitution.

262. Pretrial detainees are entitled to at least as much protection under the Fourteenth Amendment as convicted prisoners receive under the Eighth Amendment.

263. An arrest without probable cause violates the Fourth Amendment and gives rise to a claim for damages under 42 U.S.C. § 1983.

264. As a direct and proximate consequence of the acts of the City, as alleged, Caples was unlawfully and falsely arrested, prosecuted, and held in the custody of the Maricopa County Sheriff for more than fourteen months, all for a crime he did not commit.

265. At all relevant times, the City acted with deliberate indifference to the rights of Caples and others, and with deliberate indifference to established law and science.

266. The policies, procedures, customs and/or practices of the City were the moving force behind the arrest and prosecution of Caples and, as a result, Caples has sustained and will continue to sustain general and special damages, in an amount subject to proof at trial.

267. As a direct result of the City's conduct, Caples suffered loss of meaningful relations with his family members and friends. Without limitation, Caples also suffered loss of society, friendship, business relations, hobbies and earnings, enduring great mental pain and suffering due to the City's conduct and his resulting detention.

268. Upon information and belief, Caples loss of earnings, and his mental pain and suffering, will continue into the future and he therefore seeks damages due to such loss of earnings, and mental pain and suffering, in the future.

269. As a result of the conduct of the City as alleged, Caples has been damaged in the amount to shown according to proof.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff request Judgment against the Defendants, and each of them, as follows:

A. General damages in an amount to be determined by proof at trial;

B. Attorney's fees, costs and expenses as authorized by 42 U.S.C.A. § 1988, according to proof;

C. Costs and interest according to law; and

D. Such other and further relief as the Court considers proper.

DATED this 12th day of November, 2014.

POLI & BALL, P.L.C.

By _____
Michael N. Poli
James B. Ball
Kesha A. Hodge
Attorneys for Plaintiffs

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