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9 **UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

10 DANIEL BILL; BRYAN HANANIA;
11 and MICHAEL MALPASS,

12 Plaintiffs,

13 v.

14 WARREN BREWER; HEATHER
15 POLOMBO; JOHN DOES I-V;
16 and JANE DOES I-V,

17 Defendants.

Case No.

COMPLAINT

(Fourth Amendment)

(Jury Trial Requested)

18
19 Plaintiffs DANIEL BILL, BRYAN HANANIA, and MICHAEL MALPASS, by
20 counsel, hereby sue Defendants WARREN BREWER, HEATHER POLOMBO, JOHN
21 DOES I-V, and JANE DOES I-V for violation of Plaintiffs' rights under the Fourth and
22 Fourteenth Amendments to the Constitution of the United States. Plaintiffs bring this action
23 pursuant to 42 U.S.C. § 1983 and seek declaratory and injunctive relief and nominal
24 damages.
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JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

2. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim at issue occurred in this judicial district and Defendants reside within this judicial district.

PARTIES

3. Plaintiff DANIEL BILL is a police officer in the City of Phoenix Police Department and an employee of the City of Phoenix. Plaintiff BILL was and is assigned to the K9 unit as a canine handler.

4. Plaintiff BRYAN HANANIA is a police officer in the City of Phoenix Police Department and an employee of the City of Phoenix. Plaintiff HANANIA was and is assigned to the K9 unit as a canine handler

5. Plaintiff MICHAEL MALPASS is a police officer in the City of Phoenix Police Department and an employee of the City of Phoenix. Plaintiff MALPASS was and is assigned to the Special Assignment Unit, which is the Phoenix Police Department’s “SWAT” team.

6. Defendant WARREN BREWER is a Detective in the Phoenix Police Department and an employee of the City of Phoenix. Defendant BREWER was and is assigned to the Homicide Unit of the Phoenix Police Department’s Violent Crimes Bureau. Defendant BREWER is being sued in his individual capacity, albeit for acting under color of state law.

1 7. Defendant HEATHER POLOMBO is a Detective in the Phoenix Police
2 Department and an employee of the City of Phoenix. Defendant POLOMBO was and is
3 assigned to the Homicide Unit of the Phoenix Police Department’s Violent Crimes Bureau.
4 Defendant POLOMBO is being sued in his individual capacity, albeit for acting under color
5 of state law.
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7 8. Defendants JOHN DOES I-V and JANE DOES I-V, named fictitiously herein,
8 are members of the Phoenix Police Department and employees of the City of Phoenix.
9 Defendants JOHN DOES I-V and JANE DOES I-V were personally involved in or engaged
10 in the same or similar conduct as Defendants BREWER and POLOMBO and/or caused,
11 directed, or ordered Defendants BREWER and POLOMBO to undertake the conduct
12 described herein.
13

14
15 **FACTUAL BACKGROUND**

16 9. On October 18, 2010, Sergeant Sean Drenth of the Phoenix Police Department
17 (“PPD”) was found dead outside of his patrol vehicle in an empty dirt lot near 1825 W.
18 Jackson Street in Phoenix, Arizona, just south of the State Capitol.
19

20 10. Sergeant Drenth had been shot in the head. A shotgun lay across his chest.
21 The muzzle of the weapon pointed towards his chin. A secondary weapon was lying on the
22 ground next to Sergeant Drenth’s right ankle. Sergeant Drenth’s handcuffs, flashlight, and
23 cellular telephone lay on the ground near his body.
24

25 11. Shortly after Sergeant Drenth’s body was discovered, over 300 hundred
26 persons – including PPD officers (including the Chief of Police), City of Phoenix fire
27 fighters, other City of Phoenix personnel (including the Mayor), and Arizona State Capitol
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1 Police officers and security personnel – converged on the area where Sergeant Drenth’s body
2 had been found.

3
4 12. Plaintiffs BILL and HANANIA were at a restaurant in central Phoenix with
5 three other PPD officers when, at approximately 10:54 p.m., they received an emergency
6 radio broadcast for an “officer down.” The officers had been at the restaurant location for at
7 least thirty (30) minutes prior to receiving the emergency broadcast. The locators in the
8 officers’ portable radios and the mobile digital communicators in their vehicles confirmed
9 their location, as did their fellow officers.
10

11 13. Plaintiff MALPASS was at a coffee shop on N. 32nd Street and E. Camelback
12 Street in Phoenix with at least one other PPD officer assigned to the Special Assignment
13 Unit when he received the “officer down” emergency broadcast. Plaintiff MALPASS and
14 the other officer had been at that location for at least thirty (30) minutes prior to receiving the
15 emergency broadcast. Like Plaintiffs BILL and HANANIA, the locator in Plaintiff
16 MALPASS’s portable radio and the mobile digital communicator in his vehicle confirmed
17 his location, as did his fellow officers.
18

19
20 14. Plaintiff BILL and HANANIA and the three other PPD officers at the
21 restaurant responded to the emergency broadcast immediately and drove to the scene in
22 separate vehicles. They parked their vehicles on S. 17th Avenue and walked over to the lot
23 on the west side of S. 18th Avenue where Sergeant Drenth’s body had been found.
24

25 15. Plaintiff MALPASS and at least one other PPD officer at the coffee shop also
26 responded to the emergency broadcast immediately and drove to the scene in separate
27 vehicles. Plaintiff MALPASS parked his vehicle in a public parking area north of the lot
28

1 where Sergeant Drenth's body had been found, walked to the area where a temporary
2 command center had been established, and waited for his assignment.

3
4 16. The triangular-shaped dirt lot was surrounded on two sides by a tall chain link
5 fence. A railroad track curved along the southern side of the lot, on the opposite side of the
6 fence. The east side of the lot was open, allowing access to S. 18th Avenue. Sergeant
7 Drenth's patrol car was parked in approximately the center of the lot. The driver's side door
8 was open, and the keys were in the ignition. Sergeant Drenth's body lay on the ground,
9 beyond the patrol car, near a tree in the northwest corner of the lot. Aerial photographs of
10 the lot and the neighborhood surrounding the lot are attached hereto as Exhibits A and B,
11 respectively.
12

13
14 17. Plaintiffs BILL and HANANIA entered the lot from S. 18th Avenue, but
15 did not proceed beyond the deceased officer's patrol car. At no point were Plaintiffs BILL
16 and HANANIA ever closer than fifteen (15) feet from Sergeant Drenth's body. They never
17 touched or were closer than fifteen (15) feet from the shotgun that lay across Sergeant
18 Drenth's chest or the secondary weapon that lay near Sergeant Drenth's ankle. Nor did they
19 ever touch or enter Sergeant Drenth's patrol car.
20

21 18. Plaintiff MALPASS did not enter the lot. He was never closer than thirty (30)
22 feet from Sergeant Drenth's body. He never touched or was closer than thirty (30) feet from
23 the shotgun or the secondary weapon found with Sergeant Drenth's body, and he never
24 touched or entered Sergeant Drenth's patrol car.
25

26 19. The temporary command center had been established in a parking lot on the
27 east side of S. 18th Avenue, opposite the dirt lot in which Sergeant Drenth's body had been
28

1 found. At the temporary command center, two canine search teams were organized to
2 conduct a grid search of the surrounding area. In accordance with usual PPD practice, each
3 search team was assigned two canine handlers and their respective canine partners, as well as
4 several Special Assignment Unit members to provide support. One search team consisted of
5 Plaintiff BILL and a second canine handler, Officer Mary Zielinski, their respective canine
6 partners, Plaintiff MALPASS, and four other Special Assignment Unit members. The
7 second search team consisted of Plaintiff HANANIA, his canine partner, another canine
8 handler and his canine partner, and four Special Assignment Unit members. Each search
9 team was assigned responsibility for searching a particular area.
10
11

12 20. Just as the search was commencing, Sergeant Drenth's service weapon was
13 spotted near the railroad tracks south of the lot, on the opposite side of the chain link fence.
14 An officer was posted near the weapon.
15

16 21. Beginning at approximately 11:30 p.m., the search team that included Plaintiff
17 HANANIA searched the area on the opposite side of the chain link fence bordering the lot
18 between S. 18th and S. 19th Avenues north to W. Jefferson Street. In order to search to the
19 railroad tracks, it was necessary for the team to cut and roll back a portion of the chain link
20 fence that bordered the lot. As the team worked its way west along the railroad tracks to S.
21 19th Avenue, they observed Sergeant Drenth's service weapon lying on the north side of the
22 tracks. The team moved to the south side of the tracks in order to avoid disturbing the area
23 near the service weapon, until they reached S. 19th Avenue. After searching along the
24 railroad tracks, the team then searched the area between S. 18th and S. 19th Avenues from
25 W. Lincoln Street south to W. Grant Street and the railroad tracks between S. 19th and S.
26
27
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1 21st Avenues. The last area searched by the team was the area between S. 20th and S. 21st
2 Avenues from W. Jefferson Street south to the railroad tracks. At no time during the search
3 was Plaintiff HANANIA or the other members of the search team anywhere near Sergeant
4 Drenth's body or his patrol vehicle or weapons.
5

6 22. Shortly thereafter, Plaintiff HANANIA prepared a report detailing his actions
7 and the actions of the other members of his search team, as did another member of the team,
8 Special Assignment Unit Officer David Haas. At all relevant times, both reports were
9 readily available to Defendants BREWER, POLOMBO, JOHN DOES I-V, and JANE DOES
10 I-V, and, on information and belief, Defendants BREWER, POLOMBO, JOHN DOES I-V,
11 and JANE DOES I-V were aware of and reviewed both Plaintiff HANANIA's report and
12 Officer Hass' report.
13

14 23. The search team that included Plaintiffs BILL and MALPASS searched the
15 area between S. 17th and S. 18th Avenues from W. Jefferson Street south to W. Buchanan
16 Street, including the railroad tracks. The team then searched the area between S. 17th and S.
17 18th Avenues from W. Lincoln Street south to W. Grant Street. The last area searched by
18 the team was the area between S. 19th and S. 21st Avenues from W. Jefferson Street south to
19 the railroad tracks. At no time during their search were Plaintiffs BILL and MALPASS or
20 the other members of their search team anywhere near Sergeant Drenth's body or his patrol
21 vehicle or weapons.
22

23 24. Shortly thereafter, Officer Zielinski prepared a report detailing her actions and
24 the actions of the other members of her search team, including Plaintiffs BILL and
25 MALPASS. At all relevant times, Officer Zielinski's report was readily available to
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1 Defendants BREWER, POLOMBO, JOHN DOES I-V, and JANE DOES I-V, and, on
2 information and belief, Defendants BREWER, POLOMBO, JOHN DOES I-V, and JANE
3 DOES I-V were aware of and reviewed Officer Zielinski's report.
4

5 25. The PPD subsequently commenced a homicide investigation into the death of
6 Sergeant Drenth. Defendant BREWER was the lead officer or "Case Agent" in charge of the
7 investigation. Defendant POLOMBO assisted Defendant BREWER as a "Case Assist"
8 officer.
9

10 26. During the course of the investigation, a full unknown male DNA profile was
11 found on Sergeant Drenth's patrol vehicle and partial unknown male DNA was found on
12 Sergeant Drenth's weapons.
13

14 27. A list of all PPD officers who had responded to the "officer down" emergency
15 radio broadcast on the night of October 18, 2010 was subsequently compiled, and
16 Defendants BREWER and POLOMBO began asking these officers to voluntarily provide
17 DNA samples for exclusionary purposes.
18

19 28. On information and belief, on or about December 20, 2010, Defendants JOHN
20 DOES I-V and JANE DOES I-V assigned Defendant POLOMBO the task of collecting
21 DNA samples from a list of PPD officers, including Plaintiffs BILL, HANANIA, and
22 MALPASS and the other members of their respective search teams.
23

24 29. Beginning on or about December 27, 2010 and over the next several months,
25 Defendant POLOMBO communicated with Plaintiffs BILL, HANANIA, and MALPASS
26 and the other members of their respective search teams about obtaining DNA samples for
27 what Defendant POLOMBO told the officers were exclusionary purposes. Plaintiffs BILL,
28

1 HANANIA, and MALPASS agreed in principle to provide the samples on the condition that
2 they receive satisfactory assurances about the use and disposition of the samples and any
3 subsequent analysis of the samples.
4

5 30. During the course of these communications, Plaintiffs BILL, HANANIA, and
6 MALPASS each informed Defendant POLOMBO of their specific locations and activities on
7 the night of October 18, 2010. Consequently, Defendant POLOMBO knew or had
8 substantial reason to know that Plaintiffs BILL, HANANIA, and MALPASS could not have
9 been the source(s) of any DNA found on Sergeant Drenth's patrol vehicle and weapons,
10 much less be suspected of any criminal wrongdoing in Sergeant Drenth's death. On
11 information and belief, Defendant POLOMBO shared this information with Defendants
12 BREWER, JOHN DOES I-V, and JANE DOES I-V.
13
14

15 31. On April 14, 2011, Defendant POLOMBO sent an email to Defendant
16 BREWER and several other officers within the Homicide Unit, stating, in pertinent part, as
17 follows:
18

19 I have a memo to provide to each employee who refused to provide DNA. We
20 have been requested to deliver a memo to each employee asap and obtain the
21 swab if they consent. This needs to be done preferably today or tomorrow, but
22 by the beginning of next week at the latest as we have a meeting to update the
23 responses (emphasis added).

24 32. On information and belief, the memorandum referenced by Defendant
25 BREWER in her April 14, 2011 email was prepared by personnel in the PPD Laboratory
26 Services Bureau at the request of Defendants JOHN DOES I-V and JANE DOES I-V to be
27 disseminated to the employees from whom DNA samples had been requested.
28

1 33. On or about April 18, 2011, Defendant POLOMBO met with Plaintiffs BILL,
2 HANANIA, and MALPASS at the Special Assignment Unit's offices. Also present at the
3 meeting were the other search team members from whom DNA samples had been requested.
4 During the course of the meeting, Defendant POLOMBO provided Plaintiffs BILL,
5 HANANIA, and MALPASS and the other search team members with a memorandum, on
6 PPD letterhead, entitled "DNA Collection Fact Sheet – Drenth Investigation." The
7 memorandum stated, in pertinent part, as follows:
8

- 9
- 10 • DNA samples have been recovered from the scene that have not been
11 identified
 - 12 • There were over 100 officers/detective/fire fighters that entered the scene
13 near Sgt. Drenth's vehicle and body.
 - 14 • To date 115 DNA samples have been obtained and compared to this case
15 including officers, detectives, firefighters, mechanics, civilians and lab
16 personnel
 - 17 • DNA samples from all known people in the scene are needed to eliminate
18 them as contributors.
 - 19 • You are being requested to provide a sample of your DNA based on
20 information that indicates you were in the scene.
 - 21 • DNA samples will be obtained by buccal swabs . . .
 - 22 • DNA samples will be processed by the lab in accordance with established
23 policy and procedure
 - 24 • DNA samples will be retained by the lab in accordance with ARS
25 regulations (ARS 13-[4221]) . . .
 - 26 • The results of the DNA testing will be documented in the report. These
27 results are discoverable in accordance with Arizona law
28

1 34. During the course of the April 18, 2011 meeting, Plaintiffs BILL, HANANIA,
2 and MALPASS again informed Defendant POLOMBO of their specific locations and
3 activities on the night of Sergeant Drenth's death. On information and belief, Defendant
4 POLOMBO again shared this information with Defendants BREWER, JOHN DOES I-V,
5 and JANE DOES I-V.
6

7 35. Also during the course of the April 18, 2011 meeting, Defendant POLOMBO
8 told Plaintiffs BILL, HANANIA, and MALPASS and the other search members that she
9 knew that the officers were not involved in Sergeant Drenth's death because the locators in
10 their portable radios and the mobile digital communicators in their vehicles confirmed their
11 locations on the night of October 18, 2010.
12

13 36. Subsequent to the April 18, 2011 meeting, Plaintiffs BILL, HANANIA, and
14 MALPASS retained counsel in an attempt to negotiate a compromise with the PPD. To this
15 end, counsel for Plaintiffs BILL, HANANIA, and MALPASS engaged in several discussions
16 with Violent Crimes Bureau Commander David Faulkner and PPD Legal Unit
17 Lieutenant/Attorney Jennifer LaRoque about a negotiated resolution.
18

19 37. On information and belief, while these negotiations were continuing,
20 Defendants JOHN DOES I-V and JANE DOES I-V directed Defendants BREWER and
21 POLOMBO to apply to the Superior Court for the County of Maricopa, State of Arizona
22 ("Maricopa County Superior Court") for detention orders, pursuant to Ariz. Rev. Stat. § 13-
23 3905, authorizing the temporary detention of Plaintiffs BILL, HANANIA, and MALPASS
24 and the other search team members for purposes of taking samples of their DNA.
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1 38. On or about August 8, 2011, Defendant BREWER applied to the Maricopa
2 County Superior Court for the detention orders for Plaintiffs BILL, HANANIA, and
3 MALPASS and the other search team members.
4

5 39. In support of these applications, Defendant BREWER executed five (5)
6 separate affidavits (“the Brewer Affidavits”) that were identical but for the names and dates
7 of birth of Plaintiffs BILL, HANANIA, and MALPASS and the other search team members.
8

9 The Brewer Affidavits stated, in pertinent part, as follows:

10 Your Affiant, Detective Warren Brewer, a Peace Officer for the City of
11 Phoenix in the State of Arizona, being first duly sworn, upon oath, deposes and
12 says that:

13 I

14 He is engaged, within the scope of his authority, in the investigation of an
15 alleged criminal offense punishable by at least one year in the State Prison;

16 II

17 There is probable cause to believe that on or about the 18th day of October
18 2010, in the County of Maricopa, State of Arizona, the felony of Homicide in
19 violation of A.R.S. § 13-1105A1 was committed by suspect/s unknown.

20 III

21 The procurement of a saliva sample by mouth swab from [names and dates of
22 birth of Plaintiffs BILL, HANANIA, and MALPASS and the other search team
23 members] may contribute to the identification of the individual who committed
24 the felony offense described above;

25 IV

26 Such evidence cannot be obtained by our Affiant from the Law Enforcement
27 Agency employing his (sic) or from the Criminal Identification Division of the
28 Arizona Department of Public Safety.

V

Your Affiant further deposes and says that:

On October 18th, 2010 at approximately 2255 hours, Phoenix Police Sergeant Sean Drenth was found deceased from a single gunshot wound to his chin area. He was lying outside of his patrol vehicle, in a dirt lot at 1825 W. Jackson Street. A shotgun was lying on his chest, his duty weapon was found on the opposite side of a fence and his secondary weapon was lying on the ground next to his right ankle . . . [P]artial unknown male DNA found on the weapons, and a full unknown male profile collected from Sergeant Drenth's patrol vehicle indicate this was a homicide . . .

Approximately 300 City of Phoenix Police Officers responded to the call by Capitol Police regarding an injured City of Phoenix Officer. Approximately 50 Phoenix Police Officers entered the scene where Sergeant Drenth was found. In attempts to identify the unknown DNA profile/s, investigators have collected buccal swabs from all but five of the Phoenix Police Personnel that were inside the scene. All Phoenix Fire Personnel and Capitol Police Personnel that entered the scene have voluntarily provided buccal swabs.

Five of the approximately 50 Phoenix Police Officers that were inside the scene refused to provide buccal swabs. All five officers had the potential to inadvertently deposit their DNA on the collected evidence. The five officers were earlier contacted by Investigators and were asked to voluntarily provide buccal swabs for elimination purposes. The five officers are Brian (sic) Hanania #6581, Patrick Clinton #7113, Daniel Bill #7540, Michael Malpass #6532 and Brian Milhone #6471 . . .

This investigation has lead investigators to believe that at least two possible scenarios could have taken place. The possible scenarios are the scene was a homicide staged to look like a suicide or a suicide staged to look like a homicide . . .

Your affiant requests the issuance of this court order to allow investigators to obtain a saliva sample from [name of birth of Plaintiffs BILL, HANANIA, and MALPASS and the other search team members] to be analyzed for DNA and compared to other evidence in this investigation.

40. On information and belief, Defendant POLOMBO assisted in the preparation and submission of the applications for the detention orders, including the Brewer Affidavits, and read and was familiar with the contents of the Brewer Affidavits.

1 41. The applications and the Brewer Affidavits were completely devoid of any fact
2 establishing individualized suspicion that Plaintiffs BILL, HANANIA, or MALPASS had
3 committed criminal wrongdoing or were otherwise responsible for the death of Sergeant
4 Drenth.
5

6 42. In addition, at the time that Defendants BREWER and POLOMBO prepared
7 and submitted the Brewer Affidavits to the Maricopa County Superior Court, Defendants
8 BREWER and POLOMBO knew or had substantial reason to know that the following
9 assertions contained in the Brewer Affidavits were false:
10

- 11 • that “[t]he procurement of a saliva sample by mouth swab from [Plaintiffs
12 BILL, HANANIA, and MALPASS and the other search team members] may
13 contribute to the identification of the individual who committed the felony
14 offense described above;”
- 15 • that “[a]pproximately 50 Phoenix Police Officers entered the scene where
16 Sergeant Drenth was found;” and
- 17 • that “[a]ll five officers had the potential to inadvertently deposit their DNA on
18 the collected evidence.”

19 43. Moreover, Defendants BREWER and POLOMBO omitted from the
20 applications and the Brewer Affidavits facts well known to Defendants BREWER and
21 POLOMBO establishing the locations and activities of Plaintiffs BILL, HANANIA, and
22 MALPASS and the other search team members on the night of October 18, 2010, including
23 the fact that none of the officers were in sufficient proximity to Sergeant Drenth’s body or
24 his patrol vehicle or weapons to have deposited their DNA either on the vehicle or on any of
25 the weapons.
26

27 44. On or about August 8, 2010, a judge of the Maricopa County Superior Court,
28 the Hon. Douglas L. Rayes, issued the detention orders requested by Defendants BREWER

1 and POLOMBO. Like the affidavits executed by Defendant BREWER, the orders were
2 identical but for the names and dates of birth of Plaintiffs BILL, HANANIA, and MALPASS
3 and the two other members of the search teams. The detention orders stated, in pertinent
4 part, as follows:
5

6 **IT IS THE FINDING OF THIS COURT:**

7 I

8 That there is probable cause to believe that the crime of Homicide had been
9 committed, such offense being a felony punishable by more than one year in
10 the state prison;

11 II

12 The procurement of a saliva sample by mouth swab [names and dates of birth
13 of Plaintiffs BILL, HANANIA, and MALPASS and the other search team
14 members] may contribute to the identification of the individual who committed
the offense;

15 III

16 That such evidence cannot be obtained by Detective Warren Brewer #6828
17 from either the Phoenix Police Department or the Criminal Identification
18 Division of the Arizona Department of Public Safety;

19 **IT IS HEREBY ORDERED:**

20 I

21 That [name and badge numbers of Defendants BREWER and POLOMBO],
22 Detective Darrell Branch #5986, or Detective Brian Hansen #6250 of the City
23 of Phoenix Police Department is authorized to effectuate this order;

24 II

25 That a saliva sample by mouth swab from the person of [names and dates of
26 birth of Plaintiffs BILL, HANANIA, and MALPASS and the other search team
members] is to be obtained;

27 III

1 That this evidence is to be obtained in connection with the crime of homicide;

2 IV

3 That this evidence is to be used in the identification or exclusion of [names and
4 dates of birth of Plaintiffs BILL, HANANIA, and MALPASS and the other
5 search team members] as the perpetrator of the offense listed herein. . . .

6 45. On or about August 15, 2011, Defendants BREWER and POLOMBO served
7 Plaintiff BILL with the detention order and obtained a buccal swab from him. Defendant
8 BREWER and POLOMBO subsequently impounded the buccal swab as evidence and
9 provided it to the PPD's Laboratory Services Bureau for processing and analysis.
10

11 46. On or about August 15, 2011, Defendant BREWER served Plaintiff
12 MALPASS with the detention order and obtained a buccal swab from him. Defendants
13 BREWER and POLOMBO subsequently impounded the buccal swab as evidence and
14 provided it to the PPD's Laboratory Services Bureau for processing and analysis.
15

16 47. On or about August 17, 2011, Defendant BREWER served Plaintiff
17 HANANIA with the detention order and obtained a buccal swab from him. Defendants
18 BREWER and POLOMBO subsequently impounded the buccal swab as evidence and
19 provided it to the PPD's Laboratory Services Bureau for processing and analysis.
20

21 48. Detention orders were served on the other search team members and buccal
22 swabs were obtained from them on or about August 15, 2011 and August 17, 2011.
23

24 49. At no point did Plaintiffs BILL, HANANIA, and MALPASS consent to the
25 taking and subsequent processing and analysis of their DNA.
26
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1 50. Also at no point did Defendants BREWER, POLOMBO, JOHN DOES I-V, or
2 JANE DOES I-V obtain a search warrant for the DNA of Plaintiffs BILL, HANANIA, and
3 MALPASS.
4

5 51. On at least two occasions, the PPD denied that the detention orders served on
6 Plaintiffs BILL, HANANIA, and MALPASS and the other search team members were
7 search warrants or that Plaintiffs BILL, HANANIA, and MALPASS and the other search
8 team members were suspects in the death of Sergeant Drenth.
9

10 52. Specifically, on August 21, 2011, a PPD spokesperson, Public Affairs Bureau
11 Sergeant Trent Crump, responded as follows to an inquiry from a reporter about whether
12 search warrants were served on Plaintiffs BILL, HANANIA, and MALPASS and the other
13 search team members and whether these officers were suspects in the death of Sergeant
14 Drenth:
15

16 No, this is not true. The fact of the matter is six¹ court orders were served in
17 the last week or so. These are not search warrants and do not require the same
18 level of cause. The six city employees involved, who are not all police
19 officers, were in critical scene areas and have refused to provide an
20 exclusionary sample to detectives after several attempts . . . The Phoenix
21 Police Department has said all along that suicide or homicide are a possibility .
22 . . .

23 53. In addition, on August 22, 2011, the PPD issued a notice to all PPD employees,
24 through the PPD's Employee Notification System, again denying that the detention orders
25 served on Plaintiffs BILL, HANANIA, and MALPASS and the other search team members
26 were search warrants:
27

28 ¹ On or about August 8, 2011, Defendant BREWER also applied for and obtained a detention order for a sixth person, a mechanic employed by the City of Phoenix, who had serviced Sergeant Drenth's patrol vehicle some time before Sergeant Drenth's death.

1 Within the last week, six city employees were served with court orders (not
2 search warrants) to obtain identifying characteristics (DNA) related to the
3 death investigation of Sergeant Sean Drenth. These court orders are based on
4 reasonable cause . . . Members of some media and other outlets may make
5 claims these employees are considered suspects. This is not true. These
6 employees were determined to be within a critical area within the scene and
7 their DNA was collected strictly for comparative analysis . . . Six employees
8 exercised their constitutional right and refused to provide their DNA,
9 necessitating a court order

10 54. The PPD's Laboratory Services Bureau subsequently processed the buccal
11 swaps taken from Plaintiffs BILL, HANANIA, and MALPASS, analyzed the DNA of
12 Plaintiffs BILL, HANANIA, and MALPASS extracted therefrom, and prepared reports of
13 the analysis.

14 55. Defendants BREWER, POLOMBO, JOHN DOES I-V and JANE DOES I-V
15 continue to maintain control over the Laboratory Services Bureau reports.

16 56. The buccal swabs used to take DNA samples from Plaintiffs BILL,
17 HANANIA, and MALPASS remain impounded at the PPD, albeit each swab is impounded
18 in two separate pieces. The stick portions of the buccal swabs are impounded in evidence
19 bags in the PPD's Property Management Bureau. The tip portions of the buccal swabs,
20 which contain the DNA samples, are impounded in a freezer at the PPD's Laboratory
21 Services Bureau.

22 57. Defendants BREWER, POLOMBO, JOHN DOES I-V, and JANE DOES I-V
23 continue to maintain control over both the impounded stick and the tip portions of the buccal
24 swabs.
25
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1 58. On information and belief, the DNA samples taken from Plaintiffs BILL,
2 HANANIA, and MALPASS will be retained by the PPD for as long as fifty-five years, or
3 until 2066, pursuant to Ariz. Rev. Stat. 13-4221.
4

5 **COUNT I**

6 **(Violation of the Fourteenth Amendment – 42 U.S.C. § 1983)**

7 59. Plaintiffs hereby reallege paragraphs 1-58 as if fully stated herein.

8 60. Plaintiffs enjoy the right to be secure in their persons against unreasonable
9 searches and seizures, as guaranteed by the Fourth and Fourteenth Amendments to the U.S.
10 Constitution.
11

12 61. The act of taking of a buccal swab for purposes of a DNA analysis clearly and
13 unquestionably constitutes a search subject to the protections of the Fourth and Fourteenth
14 Amendments to the U.S. Constitution. *See, e.g., Friedman v. Boucher*, 568 F.3d 1119, 1124
15 (9th Cir. 2009) (“There is no question that the buccal swab constituted a search under the
16 *Fourth Amendment.*”).
17

18 62. Defendants BREWER, POLOMBO, JOHN DOES I-V, and JANE DOES I-V,
19 acting within the course and scope of their authority and under color of state law, deprived
20 Plaintiffs BILL, HANANIA, and MALPASS of their rights under the U.S. Constitution by
21 subjecting them to buccal swabs for purposes of DNA analysis without obtaining search
22 warrants, without probable cause, and without having a non-law enforcement special need.
23

24 63. In addition, Defendants BREWER, POLOMBO, JOHN DOES I-V, and JANE
25 DOES I-V, acting within the course and scope of their authority and under color of state law,
26 deprived Plaintiffs BILL, HANANIA, and MALPASS of their rights under the U.S.
27
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1 Constitution by omitting material information from the Maricopa County Superior Court
2 when seeking orders of detention of Plaintiffs BILL, HANANIA, and MALPASS for
3 purposes of taking samples of their DNA.
4

5 64. Defendants BREWER, POLOMBO, JOHN DOES I-V, and JANE DOES I-V,
6 acting within the course and scope of their authority and under color of state law, continue to
7 deprive Plaintiffs BILL, HANANIA, and MALPASS of their rights under the U.S.
8 Constitution by continuing to retain samples of DNA from Plaintiffs BILL, HANANIA, and
9 MALPASS, as well as analyses and reports of these samples, which were derived from the
10 unlawful searches and seizures.
11

12 65. Plaintiffs BILL, HANANIA, and MALPASS are being irreparably and
13 substantially injured as a direct and proximate result of the unlawful deprivation of their
14 constitutional rights by Defendants BREWER, POLOMBO, JOHN DOES I-V, and JANE
15 DOES I-V.
16

17 66. Plaintiffs have no adequate remedy at law.

18 **WHEREFORE**, Plaintiffs respectfully request that the Court:
19

- 20 (1) Declare the searches and seizures of Plaintiffs' DNA to be unlawful;
- 21 (2) Enjoin Defendants from continuing to maintain possession, custody, or control
22 of Plaintiffs' DNA samples and order Defendants to expunge or destroy the buccal swabs
23 containing Plaintiffs' DNA samples and any analyses and reports of Plaintiffs' DNA
24 samples;
- 25 (3) Award Plaintiffs nominal damages in the amount of one dollar (\$1.00) each;
- 26 (4) Award Plaintiffs reasonable attorneys' fees and costs; and
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(5) Grant such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs request a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this 7th day of December, 2012.

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Exhibit A

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Exhibit B

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