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ATTORNEY GENERAL'S OFFICE

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RECEIVED FROM Jack Cox

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Tom Horne – Attorney General
NOTICE OF CLAIM

Pursuant to A.R.S. §12-821.01 and the Arizona Rules of Civil Procedure, Phoenix Police Officers Aaron Lentz, Steven Peck and Phoenix Police Sergeant Benjamin Sywarungsymun (collectively referred to herein as “the officers”)¹ hereby submit this Notice that they were damaged by the actions of the State of Arizona and Special Agent Meg Hinchey, a law enforcement officer employed by the Special Investigations Section of the Attorney General’s Office. Damages incurred by the officers were the direct result of Special Agent Hinchey’s actions that were intentional, grossly negligent and reckless and were undertaken in her official capacity as an agent of the State.² The officers seek compensatory damages pursuant to violations of both their State and Federal rights.³

Background

The Cotton Center Townhomes

In 2005 the officers were employed by the Phoenix Police Department (PPD). The officers accepted an offer from PPD Officer George Contreras, an off-duty coordinator, to work off-duty at an area known as the Cotton Center Townhomes. While each of the officers had worked other off-duty jobs, this was not the typical off-duty assignment. The officers were informed by Coordinator Contreras that, while most off-duty assignments involved a single officer standing by at a location to provide security, the Cotton Center Townhomes job would be far more involved. The officers were told that this job required proactive police officers willing to take an active role in crime detection and prevention. All officers accepting this off-duty job understood that Contreras had high expectations for the officers assigned to this location.

¹ Shannon Lentz, wife of Aaron Lentz also claims damages as a result of Special Agent Hinchey’s actions against her husband. For ease of reading, the “officers” are referred to as the damaged parties for the purposes of the background facts; however, the damages of Shannon Lentz are also explicitly claimed and discussed in further detail below.

² The State of Arizona is advised that, while some claims against the State are discussed in separate damages paragraphs, these are not the only claims stated against the State. Claimants intend to pursue *respondet superior*, supervisory and related liability claims against the State for all actions stated against Special Agent Hinchey where permitted under State and Federal law.

³ Although a Notice of Claim is not required before a prospective plaintiff may file a lawsuit for damages resulting from a deprivation of Federal rights, the officers include a discussion of their Federal claims in an effort to allow the State to fully evaluate the officers’ claims and in an effort to achieve a comprehensive settlement.

The Cotton Center Townhomes was known as a high-crime area, riddled with drug and gang activity. The officers were informed that this off-duty job would involve proactive police work, with each shift consisting of two officers utilizing a marked, PPD vehicle. The officers were expected to be active, follow up on citizen concerns, make arrests, and take other actions to reduce crime in the townhomes area. Officers working off-duty at the townhomes were expected to keep a log of their activities, and would be responsible for following up on investigations and activities of earlier off-duty shifts.

While most off-duty jobs required an officer to report directly to the off-duty site, this was not possible for the Cotton Center Townhomes job. Officers needed to sign out and prepare a patrol car for the off-duty shift, so the officers were told by Coordinator Contreras that their shift began when they arrived at the South Mountain Precinct. In addition, the logbook for off-duty activities was kept at the precinct, (although at the start it was kept at the Townhomes site, it was moved to the precinct shortly after the job commenced) which the officers needed to track their activities.

The officers were told by Coordinator Contreras when to arrive at the South Mountain Precinct. The officers were required to gather their gear, checked out a patrol car and review the townhomes log. The officers occasionally needed gas for the patrol car, so they would fill the car before the approximately 15 minute drive to the Townhomes.

While most off-duty jobs simply involved the officer standing by, waiting to be contacted, the officers working at the Townhomes engaged in active police work. They ran license plates on suspicious vehicles, assisted Townhomes employees, conducted surveillance and arrested individuals based upon preexisting warrants or "on view" police work.

Because they had a patrol car, when the officers arrested a suspect, they transported the suspect to the South Mountain Precinct for the pre-booking process (a required step at the time of the Townhomes off-duty job). The officers entered information into the computer system and then transported the suspect to the jail. The officers remained with the suspect through the jail booking process, which, depending on how busy the jail was at the time, could take over an hour. Depending on when the booking process finished, the officers either drove back to the Townhomes, or back to the precinct.

At the end of their shift the officers were required to drive their patrol car back to the precinct, unpack their gear and ensure that the log was kept up to date. They were told by Coordinator Contreras that, because there were additional responsibilities to complete at the precinct, their shift time ended once the car was returned and log entries and paperwork was finished.

Coordinator Contreras had negotiated prepayment for the off-duty officers from the Townhomes.⁴ The schedule of which officers would be working each shift was determined more than one month in advance and the officers were paid based upon their scheduled hours. If an officer was unable to make his or her scheduled shift, that officer would be responsible for finding a replacement.

Due to the nature of police work (and the highly active nature of the Townhomes job), there were times when officers were held over for longer than their scheduled shift. The officers were familiar with this reality, as they were occasionally held over during regular patrol. Instead of charging the Townhomes overtime for these extra hours (and due to the fact that the officers had already received payment for only their scheduled shift), Coordinator Contreras instructed the officers that they were to "flex" the time, meaning they were told they could leave a subsequent shift early to make up for the unpaid overtime.

Citizen complaint and PSB investigation

The Townhomes terminated the off-duty security arrangement after November, 2006. After the termination of the agreement, the PPD received a complaint regarding Coordinator Contreras and Townhomes off-duty officers. The complainant reported that Contreras was having an inappropriate relationship with one of the Townhomes staff members, and that it appeared that the off-duty officers were "double dipping" by being "on-duty" and answering regular patrol calls while they were assigned to the Townhomes. The complainant did not know what hours the off-duty officers were working and based her complaint on second-hand reports that the patrol car assigned to the Townhomes would leave the property with its emergency equipment activated, causing the complainant to speculate the off-duty officers were working on-duty patrol while they were supposed to be providing off-duty security for the Townhomes.

The complaint was referred to the PPD Professional Standards Bureau (PSB) and upon information and belief, was assigned to Sergeant Paula Veach.⁵ Sergeant Veach focused her investigation into the activities of Coordinator Contreras and attempted to determine the hours worked by all officers ever assigned to the Townhomes.

At the direction of Sergeant Veach, PSB created a spreadsheet for every known Townhomes shift. She noted the officer assigned to work each shift by serial number. Because the Townhomes shift included the use of a patrol car, she also

⁴ While prepayment for off-duty work was not the standard practice for the PPD, it was not prohibited by the Department at the time of the Townhomes off-duty job.

⁵ Paula Veach is now a patrol Lieutenant in the South Mountain Precinct. At all times relevant to the PSB investigation she was a Sergeant in PSB and will be referred to as Sergeant Veach for ease of understanding.

pulled the Mobile Data Terminal (MDT) usage times.⁶ Sergeant Veach also examined a sample of personal radio deactivation times as captured by the PPD radio network, PACE computer records information, Department Reports documenting certain police activities undertaken by the off-duty officers, voice recorder⁷ logs, and other materials.

After placing the times for the various data sources on her spreadsheet, Sergeant Veach began interviewing witnesses to the Townhomes off-duty shifts. Specifically, she interviewed certain officers involved, including Coordinator Contreras, a PPD patrol officer. This interview was compelled as a condition of employment, and, upon information and belief, Contreras explicitly stated that he invoked the protections of *Garrity v. New Jersey* with the understanding that his statement would not be admissible in any subsequent criminal proceeding.

At some point after the interviews with Contreras and other officers, Sergeant Veach suspended the PSB investigation into Contreras and referred it to the law enforcement arm of the Arizona Attorney General's Office. The investigation was transferred due to a conflict of interest the PPD would have in investigating criminal conduct of one of its own officers. Even though the PSB investigation was placed on hold, Sergeant Veach continued to assist Special Agent Hinchey in her criminal investigation.

Special Agent Hinchey's investigation

The PPD PSB investigation was turned over to Special Agent Hinchey of the Special Investigations Section of the Arizona Attorney General's Office. Special Agent Hinchey is a certified peace officer of the State of Arizona, acting in a law enforcement capacity, charged with investigating potentially criminal activity.

Special Agent Hinchey reviewed Sergeant Veach's spreadsheet displaying the recorded activities of the officers assigned to the Townhomes. Special Agent Hinchey had multiple meetings with Sergeant Veach to discuss the meaning of the spreadsheet and to gain "background" on the PSB investigation. While Sergeant Veach did not disclose the transcript or recording of any PPD officers' statements to Special Agent Hinchey, Sergeant Veach did communicate "what she knew" regarding the PSB investigation.

After a preliminary review of the information from the PSB spreadsheet, Special Agent Hinchey requested all supporting data from the PPD used to create the times in the PSB spreadsheet. In addition, 27 officers who had worked at the Townhomes were interviewed. After reviewing the interviews, discussing the case

⁶ The MDT acronym has since been changed to Mobile Data Computer, or MDC. For ease of understanding, the computer in the patrol car will be referred to as MDT for the purposes of this Notice of Claim, as that is how it was referred to by all parties involved in the investigation.

⁷ The PPD allows officers to call a phone number and dictate a police report.

with Sergeant Veach once again, and reviewing every element of data used to create the PSB spreadsheet Special Agent Hinchey decided that, of the 53 officers who worked at least one shift at the Townhomes, 30 officers committed theft, with six officers reaching a level of felony theft.

Grand Jury presentation

Special Agent Hinchey was the sole witness for the Grand Jury impaneled to determine whether probable cause existed to charge former PPD Officer George Contreras, current PPD Officers Aaron Lentz and Steven Peck and current PPD Sergeant Benjamin Sywarungsymun with theft of services.⁸ Based only upon Special Agent Hinchey's presentation, the Grand Jury returned a True Bill indictment for all charges sought against all defendants.

Media coverage

The indictment was signed by the foreperson of the Grand Jury on November 17, 2010. The news media was informed about the allegations on November 18, 2010, the same day the officers were directed to turn in their badges and guns to the PPD. The media also reported that Sergeant Sean Drenth, a PPD officer who died while on duty, would also have been indicted had he been alive. The PPD announced that all officers investigated by the Attorney General's Special Investigations Sections as a part of the Townhomes investigation were required to produce DNA samples as part of the investigation into the circumstances surrounding Sergeant Drenth's death.

Motion to Remand to the Grand Jury

The officers were each represented by criminal defense counsel.⁹ The defense lawyers obtained a copy of the transcript of the Grand Jury proceedings and noted a wide range of false evidence presented to the Grand Jury by the State's sole witness, Special Agent Hinchey. The officers' counsel filed Motions to Remand on this basis.

Judge Karen O'Connor of the Maricopa County Superior Court found that the officers were deprived of their due process rights based upon Special Agent Hinchey's Grand Jury presentation. Judge O'Connor ordered that the case be remanded, cited more than 20 specific facts that needed to be presented accurately to the grand jury and concluded her Order with this statement:

⁸ Evidence was also presented related to two charges of Fraudulent Schemes and Artifices and Illegal Control of an Enterprise against George Contreras alone.

⁹ The criminal defense counsel referred to in this matter are not representing the officers in any civil action. These attorneys could be witnesses to Special Agent Hinchey's misconduct.

In addition, the State is cautioned to present only factually accurate evidence throughout the entire Grand Jury presentation.¹⁰

Second Grand Jury

The officers were compelled to testify at a second Grand Jury session. While the officers were granted Use and Derivative immunity related to their testimony, upon information and belief, the Grand Jury was provided the opportunity to evaluate the evidence to determine whether probable cause existed to charge the officers with any crimes. The second Grand Jury declined to indict the officers, finding that Special Agent Hinchey's presentation and analysis showed no probable cause that Officers Lentz and Peck and Sergeant Sywarungsymun committed any crimes.

Special Agent Hinchey presented false evidence to both her superiors and to the Grand Jury either intentionally or with reckless disregard for the truth.

Multiple "facts" were presented to both Special Agent Hinchey's supervisors and to the first Grand Jury in an attempt to demonstrate that probable cause existed to charge the officers with theft. Special Agent Hinchey either intentionally presented these fabricated facts, or acted in reckless disregard for the truth in relying on data that she knew or should have known was inaccurate. Appendix B, with included reference materials, provides a representative sample of fabrications by Special Agent Hinchey; it is not exhaustive.

Special Agent Hinchey failed to use ordinary care to prevent injuries to the officers, constituting negligence or gross negligence.

Special Agent Hinchey had an obligation to use some care to avoid or prevent injury to the officers. She was aware that, in her position as a law enforcement officer and Special Agent for the Attorney General's Office, she was in a position to cause harm to the officers if she recklessly recommended criminal prosecution.

Despite this knowledge of the potential harm to the officers, Special Agent Hinchey failed to complete a comprehensive investigation into the data she used to determine if the officers worked the off-duty shifts at the Townhomes for which they were paid. Special Agent Hinchey deliberately ignored the statements of officers who worked at the Townhomes and failed to identify the Townhomes representative who entered into the contract with Coordinator Contreras regarding the terms and conditions of this off-duty job. Although Special Agent Hinchey was informed that the PPD had an off-duty detail, she failed to contact the detail to verify her assumptions regarding the expectations for off-duty work before deciding that the officers committed criminal conduct at the Townhomes off-duty job.

¹⁰ Judge O'Connor's Order is attached as Appendix A.

It was only after Judge O'Connor ordered the remand of this case to the Grand Jury (and after the officers' reputations were permanently damaged by the intense media coverage surrounding the original indictment), that Special Agent Hinchey decided to interview and summarize the statements of key witnesses. Importantly, this was the first contact Special Agent Hinchey had with former PPD Sergeant Dennis Joyner. Sergeant Joyner was the head of the off-duty detail. Sergeant Joyner offers the following key facts regarding PPD policies and practices at the time of the Townhomes job:

- The start and stop locations of an off-duty job are negotiated between the coordinator and the location. There is no prohibition on a job beginning and ending at the precinct, especially when the officers need to check out a patrol vehicle.
- The coordinator and the location could reach an agreement that the time required to prepare a patrol car and drive to the location is included in the job hours. This is consistent with on-duty expectations, as officers do not leave in their patrol cars immediately at the start time of their shift. Similarly, at the end of a patrol shift, on duty officers are expected to drive back to the station, return their car and complete paperwork before the end of their shift.
- The officers working an off-duty job are not responsible for negotiating the terms of an off-duty job with the location. Off-duty officers are responsible of being where they are told to be, when they are told to be there by the coordinator.
- Prepayment for hours worked was not prohibited by policy.
- The coordinator is responsible for reaching an agreement with the location regarding what is covered under the off-duty agreement (i.e. investigations, meetings, etc).
- The coordinator and the location can reach an agreement for how to handle circumstances where officers are held over longer than their scheduled shift. Permissible options include "flexing" the time, or paying overtime – whatever the parties agree.
- MDT sign-on and sign-off times were never used by the off-duty bureau to determine the hours an officer was working for a specific off-duty shift. This is because an officer using a patrol car off-duty would not be required to be signed on to the MDT until they arrived at the off-duty location and when the officer decided to run information through the computer.

Special Agent Hinchey failed to determine that the officers had the specific intent to commit felony theft of services.

Consistent with the arrangements made between Coordinator Contreras and the Townhomes, the officers were paid in advance for their off-duty shifts. While there is no dispute that the officers accepted these checks, in order to prove that they committed theft, there would need to be some evidence that, at the time the checks were cashed, the officers intended to work less than a full shift in violation of the off-duty arraignments made by Coordinator Contreras and at the time they allegedly did not work a full shift, that they intended to "deprive" the Townhomes of agreed-to services.

Of the 27 officers interviewed by Special Agent Hinchey and her team, the majority stated that they had never left a Townhomes shift early. This alone would cause a reasonable investigator to question the sources of data that purportedly served as the basis for probable cause that theft had occurred. Seven officers stated that they occasionally left early, but they left at the direction of Coordinator Contreras. Multiple officers reported that Coordinator Contreras stated that he had "worked it out" with the Townhomes, i.e. because Coordinator Contreras' performed work for the Townhomes outside of the normal, off-duty shifts, or because of other overtime worked but not paid, the officers had "banked" extra time for the Townhomes and could therefore leave the shift early.

Because the officers were responsible for working for Officer Contreras and following his directives as the Coordinator, any shifts that they allegedly left early while working under Coordinator Contreras' direct supervision and command could not constitute "theft," as there is no evidence that any officer, following a lawful command from his or her Coordinator, could know that they were depriving the Townhomes of the services for which the Townhomes contracted.

Special Agent Hinchey was asked during the first Grand Jury presentation how much of the alleged theft each of the three officers committed during shifts worked with Coordinator Contreras. Special Agent Hinchey responded that she did not know. In fact, Special Agent Hinchey had conducted an analysis of whom each officer worked with, although she declined to present it to the Grand Jury. Special Agent Hinchey knew that, had the shifts each officer worked with Coordinator Contreras been excluded, the "value" of the alleged theft would have been far below the felony threshold for all three officers, even using unreliable metrics (i.e. MDT sign-on/sign-off times).

When specific intent is a required element of a criminal offense, an officer must have probable cause for that element in order to reasonably believe that a crime has occurred (*see Blankenhorn v. City of Orange*, 458 F.3d 463 (9th Cir. 2007) citing *Gasho v. United States*, 39 F.3d 1420 (9th Cir. 1994)). Here, Special Agent Hinchey's investigation failed to identify any support for probable cause that these three officers had the specific intent to commit theft of services and she deliberately ignored statements by other, similarly situated officers that demonstrated that

specific intent to commit theft could not have existed, particularly when the officers were working shifts with Coordinator Contreras.

Questions posed to the officers interviewed

Special Agent Hinchey was negligent in failing to ask certain key questions to the PPD officers that worked at the Townhomes. Specifically, a reasonable officer has a duty to determine whether the conduct they are investigating constituted a crime. Because the officers were charged with theft (with intent being an essential element) and because certain data points were used as definitive proof of when an off-duty shift started and stopped, the following are examples of some highly relevant, yet never asked questions:

- When and where did Coordinator Contreras tell you the shift started?
- When and where did Coordinator Contreras tell you the shift stopped?
- What was your understanding of the agreement between the Townhomes and Coordinator Contreras?
- What are some reasons why an MDT sign-on or sign-off time may not be accurate reflections of a shift worked?
- Approximately how long would it take from the time you arrived at the precinct for your off-duty shift until your arrival at the Townhomes?
- Did PPD policy require that the MDT always be on when you were in your patrol car, or were you permitted to turn it on once you arrived at an off-duty location?
- Is it possible to be working on Townhomes off-duty activities without the activity being captured by the MDT?
- What are some reasons why an off-duty officer's portable radio may be deactivated during an off-duty shift?
- How long did it take to complete the booking process for an arrested individual on average? Shortest time? Longest time?
- What did Coordinator Contreras tell you about "flex" time for hours worked beyond a scheduled shift? (Although this was not a standard question asked, some officers volunteered information on this subject, but it was disregarded)

- Were you required to review the log of Townhomes activities? If so, when did you review the log? Did you consider this review part of your off-duty hours?
- Did you ever complete work at the precinct related to the Townhomes off-duty job? What work did you do at the precinct? How long would this take?
- Describe a typical off-duty job. In what ways was the Townhomes job different?
- Are you aware of other off-duty jobs involving a patrol car where the job started and stopped at the precinct?

As detailed in Appendix B, Special Agent Hinchey also failed to use ordinary care in reviewing the data showing some of the officers' activities, fabricating evidence and acting in reckless disregard for the truth.

Special Agent Hinchey maliciously prosecuted the officers.

In Arizona, the elements of a malicious prosecution claim are 1) a criminal prosecution, 2) that terminates in favor of plaintiff, 3) with defendants as prosecutors, 4) actuated by malice, 5) without probable cause and 6) causing damages. There is a presumption that a prosecution was "actuated by malice" when the action is initiated without probable cause.¹¹

Here, Special Agent Hinchey deliberately fabricated evidence that she presented to her supervisors and to the first Grand Jury (or presented evidence with reckless disregard for the truth) as proof that probable cause existed to charge the officers with theft.

Special Agent Hinchey was aware that her report and findings were used by the Assistant Attorney General to decide whether to present the case to a Grand Jury to seek an indictment. Although a prosecutor's independent assessment of a case before deciding to bring charges can limit the liability of a police officer in a malicious prosecution claim, this limitation of liability does not occur when the prosecutor relied on fabricated evidence (*See Blakenhorn v. City of Orange*, 485 F.3d 463, 482 (9th Cir. 2007)). Here, Special Agent Hinchey intentionally or recklessly

¹¹ There is, in addition to the state law claim, a malicious prosecution action is available under 42 USC §1983 when the malicious prosecution was conducted with the intent to deprive a person of equal protection of the laws or is otherwise intended to subject a person to a denial of constitutional rights. As discussed below, the intentional or reckless fabrication of evidence used to support a criminal prosecution is a Constitutional violation for which the officers may recover under 42 USC §1983.

fabricated evidence that the Assistant Attorney General evaluated in deciding to pursue this case, robbing him of the opportunity to conduct an independent determination as to whether sufficient evidence existed to bring the case to the Grand Jury.

As a direct result of Special Agent Hinchey's intentional, grossly negligent and reckless conduct, the first Grand Jury indicted the officers, creating significant negative media coverage related to the South Mountain precinct as a whole and to the officers specifically. The multiple items of fabricated evidence presented constituted a due process deprivation that was so great that Judge O'Connor ordered the matter be remanded.

When a second Grand Jury evaluated the evidence related to the Townhomes investigation (under the due process guidelines required by the Constitution outlined by Judge O'Connor), the Grand Jury found no probable cause to indict the officers.

Special Agent Hinchey defamed the officers

The officers suffered from defamation of character by Special Agent Hinchey's decision to make false statements regarding the officers' integrity, painting them to be felons after allegedly "giving them the benefit of the doubt" in analyzing the data available about their work at the Townhomes. Special Agent Hinchey's multiple false statements brought the officers' character into ill repute and impeached their honesty, integrity and reputation, as they were branded as felons unworthy to serve in a position of trust.

Special Agent Hinchey's extreme or outrageous conduct resulted in the officers experiencing severe emotional distress

The decision to pursue criminal charges against the officers based upon evidence that was either intentionally fabricated or presented with a reckless disregard for the truth is both extreme and outrageous. Special Agent Hinchey's actions demonstrate a reckless disregard for the near certainty that officers wrongfully indicted would experience emotional distress. As described below in the damages section, as a direct and foreseeable result of Special Agent Hinchey's conduct each officer experienced extreme emotional distress. The circumstances presented demonstrate that Special Agent Hinchey, acting in her official capacity, intentionally inflicted emotional distress upon the officers.

Special Agent Hinchey violated the officers' clearly established Constitutional right under the Fourth Amendment not to be subjected to criminal prosecution on the basis of false evidence¹²

¹² This is a Federal claim under 42 USC §1983. While Federal claims are not subject to Notice of Claim requirements, the officers include this section in an effort to settle all claims created by Special Agent Hinchey's intentional, reckless and grossly

There is a Constitutional right to be free from criminal prosecution based upon false evidence that was deliberately fabricated by the government (*See Deveraux v. Abbey*, 263 F.3d 1070 (9th Cir. 2001, *en banc*). When a government agent "knowingly and intentionally, or with reckless disregard for the truth" falsifies or omits evidence, a claim arises under 42 USC §1983 (*see e.g. Lacy v. County of Maricopa*, 631 F. Supp. 2d 1997, 1206-1207 (D. Ariz. 2008) *applying Franks v. Delaware*, 438 U.S. 154, 155-56 (1978)).

Here, as detailed in Appendix B, Special Agent Hinchey knowingly and intentionally, or with reckless disregard for the truth, presented false evidence, both to her superiors and to the first Grand Jury, subjecting the officers to a wrongful indictment. In addition, at the first Grand Jury presentation, Special Agent Hinchey failed to present the evidence that she possessed tending to show that the officers did not commit theft (i.e. evidence of overtime shifts, the general understanding of the off-duty officers as to the shift beginning and ending at the precinct, the travel time to the off-duty site, no requirement that MDT be turned on while the officers are in the patrol car, Contreras' explicit instructions to other officers to leave early and that the time was covered, activity logs showing arrests and other police activities, the known unreliability of radio deactivation times, etc.).

The State of Arizona negligently trained and supervised Special Agent Hinchey

Upon information and belief, Special Agent Hinchey lacked the training and experience to conduct this investigation into the officers. Specifically, Special Agent Hinchey had no training or experience in analyzing the data sources used to "establish" the times these officers were working at the Townhomes. She was unfamiliar with how the data was created and whether it would be a reliable source of when the officers were functioning in an off-duty capacity. Indeed, Special Agent Hinchey had no knowledge of the PPD's off-duty policies and procedures. The State failed to ensure that Special Agent Hinchey was capable of conducting this investigation and had sufficient skills and abilities to understand the information presented to her.

In addition, upon information and belief, Special Agent Hinchey never worked an off-duty shift using a patrol car and was unfamiliar with the policies and procedures in place at the time of the Townhomes off-duty job. Although the PPD had many officers (including an entire off-duty detail) that could provide experience and information related to the expectations of an off-duty job using a patrol car, the State failed to ensure that these resources were utilized.

Damages

Damages common to all officers

negligent conduct. The officers provide notice that they may state additional Federal claims arising out of the conduct described above if they are forced to file a lawsuit.

The indictment of the officers was the lead story on all Phoenix affiliates of CBS, ABC and Fox. Public Safety Manager Jack Harris held a press conference stating that the actions of these officers do not reflect "corruption" in the Phoenix Police Department as a whole. News crews flocked to each of the officers' homes and attempted to interview the officers' neighbors.

The officers were called into their respective precincts and asked to turn in their badges and guns. They were suspended from their regular duties and placed on administrative assignment. Although each of the officers intended to go home, they could not. They were advised by family members that the media was camped outside each of their respective homes. They were required to be at their homes Monday through Friday, from 8 am to 4 pm.

While the officers continued to receive their regular paychecks, for the next eight months the officers were in constant fear of losing their jobs. They believed that the phone call informing them that they would be required to attend a Loudermill hearing could come at any time. The officers believed they would never put a police uniform on again, as they were unaware of any officer ever returning to work after being suspended as a result of a felony indictment.

Shortly after the indictments were announced, the media made a connection between the death of Sergeant Drenth and the Townhomes investigation. It was widely reported (and confirmed by the Attorney General's office) that, had he been alive, Sergeant Drenth would have also been subject to felony indictment. The Phoenix Police Department announced that all officers who were investigated by the Attorney General's office would be asked to submit DNA samples to compare with evidence taken from the scene of Sergeant Drenth's death. Once again, the lead story on the news was the Townhomes investigation and the images of Officers Lentz and Peck and Sergeant Sywarungsymun.

The damaging stories continued even after the indictment was remanded to the Grand Jury and the second Grand Jury declined to reindict the officers. The media reported that the officers would not be reindicted, but that they could face "internal discipline" from the Phoenix Police Department. The officers were allowed to return to duty, however, the perception of the public and even some police officers remains that these officers are part of the "dirty 30" who worked at the Townhomes and stole time.

Each of the officers had prior plans to travel outside the state for various family activities including birthdays, anniversaries and family trips. For more than nine months they were forced to seek the permission of a judge before they left Arizona. This resulted in missed trips and created a sense that the officers were "trapped" in Arizona for the duration of their time under indictment.

Integrity and the perception of integrity is a critical element to a police officer's career. Officers are highly trained in the concept of probable cause, and they know that a person cannot be charged with a crime unless probable cause

exists to believe that a crime, in fact, occurred. These officers' reputations are permanently damaged as a result of the decisions made by Special Agent Hinchey. The assumption of members of law enforcement who learned about this case through the news media is that, at a minimum, probable cause existed to charge the officers with a crime. Many members of law enforcement will assume that these officers "beat" the charge, when in fact, no charge would have existed but for Special Agent Hinchey's intentional, reckless and grossly negligent conduct.

The officers are unlikely to be promoted within the Phoenix Police Department and they would face significant difficulties in transferring to any other police department. Any background investigator would see that the officers were indicted for a crime related to honesty and the officers would be forced to answer questions related to this investigation, placing them at a significant disadvantage compared to other candidates.

In addition, internet searches related to these officers will forever tie their names to the alleged theft and to the death of Sergeant Drenth. The officers have been recognized when they are in public, receiving stares from bystanders causing discomfort and embarrassment.

Each of the claimants experienced specific, additional damages as a result of Special Agent Hinchey's conduct.

Officer Aaron Lentz

Officer Lentz was home with his wife and two year old son when he received a call informing him that he was indicted by the Grand Jury for felony theft. He went to the union office to meet with the union attorney and read the indictment. The union attorney informed him that, because this issue related to off-duty work, she did not believe the union would provide his criminal defense. He was provided the names of criminal defense attorneys and told their rates. He wondered how he would be able to afford to pay for his own defense.

While at the union building, Officer Lentz received a call from his wife (who was crying) informing him that the media was outside his house and she did not know what to do. Officer Lentz, fearing for his family's comfort and well-being, returned home to pick up his wife and son. Officer Lentz intended to take his family to his brother's house, away from the media, but he received a call from the South Mountain Precinct.

Officer Lentz was ordered to report to the South Mountain Precinct to turn in his badge and gun. Since he was already in the car with his family, he drove to the station. While his partner waited outside the station with his family, Officer Lentz met with his Commander. The Commander informed him that he was suspended as a result of his indictment and therefore he must order Officer Lentz to turn in his badge, gun and commission card.

The badge and gun are the essence of being a police officer and Officer Lentz felt like his identity was being stripped away. He was a decorated officer with an impressive service record, yet he knew that all of his accomplishments did not matter at that moment. He was no longer an officer.

As Officer Lentz exited the Commander's office, the hallway was lined with fellow police officers. Most of them wished him luck, but there were some that just stared. Officer Lentz describes this experience as being similar to witnessing his own funeral, as he did not know of any officer who was suspended as a result of a felony indictment that ever returned to duty. At that moment, Officer Lentz felt that he would never serve with these officers again.

Officer Lentz was ordered to report to PSB. Although he drove to South Mountain Precinct with his family, he could not take them to police headquarters with him. Officer Lentz' wife drove their son to Officer Lentz' brother's house, as she knew that she could not return home - the media would be there. Officer Lentz promised to meet her at his brother's house after he finished with PSB.

Officer Lentz' partner drove him to PSB where he signed a Notice of Investigation. His partner drove him to his brother's house, where Officer Lentz remained until midnight. He received dozens of phone calls and text messages, but did not answer. Although he did not do anything wrong, he simply did not have the ability to respond to his friends and family who called looking for answers.

When Officer Lentz finally returned home around 1 am, although he was exhausted, he could not sleep. His mind was racing as he wondered how he would provide for his family. He stayed up all night talking with his wife. This was the first of many nights where, instead of sleeping, Officer Lentz lied awake wondering how he would provide for his family.

The next day Officer Lentz received a call from the Administration Sergeant informing him of the terms of his assignment to home. Officer Lentz was told to treat his house like his patrol car - while he was "on shift" from 8 am to 4 pm he was required to be at or very near his house. He was informed that the police department could call him at any time.

Financial stress

While Officer Lentz continued to receive his regular pay while on administrative assignment, he had no idea how long this would continue. Officer Lentz knew that the PPD had fired officers after they were indicted for a felony and he believed that he would also be fired. His wife had left her full-time job as a teacher to stay at home with his son, so Officer Lentz was the sole source of income for his family.

In addition, Officer Lentz did not initially know that his criminal defense would be covered by the police union's legal defense fund. Officer Lentz met with a criminal defense attorney and learned his hourly rate. A criminal defense of this

magnitude could easily rise into six figures. Officer Lentz knew that, while his family may be able to afford representation by using their emergency savings, this defense could wipe out their entire safety net. It was not until January that the Lentz family learned that the police union would cover the defense.

Even after they learned that the costs of the criminal defense would be covered, Officer Lentz continued to worry about how his family would survive if the police department fired him. Because of the significant media coverage related to this case, Officer Lentz thought it would be virtually impossible to find a job with a salary anywhere near what he made at the police department while he was under a felony indictment. Every time his phone rang and showed a blocked number, he was afraid it was the PPD informing him of his Loudermill hearing.

The Lentz family made significant changes to their lifestyle during the entire time Officer Lentz was under indictment. They cut out virtually all discretionary spending, stopped going out to eat, did not buy gifts for Christmas or birthdays and spent most of their free time at home.

Although Officer Lentz was home during the day, his wife was not able to return to work unless they paid for childcare for their son. Officer Lentz was told that he could be called in to work at any time, so he could not be responsible for watching his son while he was "on duty." To make additional money, Officer Lentz's wife began to babysit for her sister on a part-time basis.

Counseling

Officer Lentz went to counseling sessions to discuss the effects of the death of Sergeant Drenth and the stress related to the indictment. While he worked with his therapist to focus on the positive aspects of his life, he struggled with depression, insomnia, stress, weight loss, anxiety and relationship issues.

While counseling was helpful during the time Officer Lentz was under felony indictment, the issues he experienced did not fully resolve even after he returned to full duty. Officer Lentz continues to see a therapist at this time.

Damage to reputation

Police officers are highly trained in the concept of probable cause. They know that, in order to accuse a person of a crime, probable cause must exist. Here, Officer Lentz' reputation is permanently damaged within the PPD because of Special Agent Hinchey's fabrication of evidence. Members of the department that do not have first-hand knowledge of the case assume that probable cause existed to charge Officer Lentz, and that he somehow "got away" with committing a crime.

Before the indictment, Officer Lentz was regarded as a hard-working, well-liked, trusted member of the Phoenix Police Department. He was known for his work ethic and accomplishments as an officer. Now, the first thing new officers associate Officer Lentz with is his felony indictment. While those that worked with

him directly know him as honest, dedicated and efficient, the first impression of new officers is that he "beat" the charges they heard about in the news.

Officer Lentz faced additional damage to his reputation due to the media coverage related to the death of Sergeant Drenth. Officer Lentz was one of the last people to speak with Sergeant Drenth before his death and was one of the first officers to respond to the "officer down" radio call. Although Officer Lentz was in a patrol car (with an active GPS unit) with another officer at the time the "officer down" call was dispatched, after the indictment was announced the media connected Officer Lentz with Sergeant Drenth's death. Reporters speculated as to whether Sergeant Drenth's involvement in the Townhomes investigation was related to his death, and made multiple allusions to the fact that Officer Lentz was also involved in the investigation and was one of the last people to contact Sergeant Drenth.

Loss of off-duty pay

Officer Lentz was prohibited from working any off-duty jobs while the indictment was pending. Upon information and belief, this resulted in the loss of up to \$10,000. In addition, since his return, Officer Lentz is no longer called to work discretionary off-duty positions, resulting in the loss of future lost wages that could total more than \$100,000 over the course of his career.

Loss of consortium

Officer Lentz and his wife had plans to have a second child, as they hoped their children would be close in age. Officer Lentz had significant anxiety as to whether they would be able to afford an additional family member, but they decided to try for another child nonetheless. Although the Lentz' were eventually successful in conceiving their second child, due to the considerable stress he was experiencing, for the first time in his life, Officer Lentz experienced sexual dysfunction. This resulted in embarrassment, additional stress and disappointment for the Lentz family.

Specific sum to settle the claims of Officer Aaron Lentz

While it is difficult to calculate compensatory damages related to damage to reputation, loss of consortium and other issues related to the facts of this case, A.R.S. §12-821.01 requires a specific amount for which the claim can be settled and the facts to support that amount. This case is relatively unique, as there are very few cases in existence where a police officer intentionally or recklessly fabricates evidence and wrongfully secures the indictment of another police officer. As an initial comparison, in 2002 the Arizona Supreme Court upheld a \$1.4 million jury verdict when after a pawnshop manager demonstrated that he was maliciously prosecuted by a Phoenix Police Department detective who lacked probable cause to initiate charges against him. (*Gonzales v. City of Phoenix*, 203 Ariz. 152 (2002)).

Here, the baseless indictment resulted in intense media coverage and significant damage to the reputation and work environment for the wrongfully indicted law enforcement officers. The damages related to intense media coverage, and the difference between the impacts of false accusations against a pawnshop manager versus false accusations against law enforcement officers is significant. In addition, if a resolution at the notice of claim stage is not possible, Officer Lentz will seek damages under 42 U.S.C. §1983 for civil rights violations, including but not limited to his Fourth Amendment right to be free from criminal prosecution on the basis of evidence that is fabricated or presented with a reckless disregard for the truth.

Officer Lentz believes that he provided sufficient facts to support his Claim, but specifically advises that, in the interests of settling his claim, he would be willing to provide additional information upon request.

At this stage, in an effort to resolve this matter by avoiding the costs, time, stress and other factors related to civil litigation, Officer Aaron Lentz will settle all of his claims resulting from the wrongful actions of Special Agent Hinchey, both Federal¹³ and State, for \$3,000,000 (three million dollars).

Shannon Lentz

Shannon Lentz is married to Officer Lentz. As a direct result of the indictment of her husband she experienced significant stress, depression, anxiety and a change in lifestyle. She incorporates the facts outlined above in the damages section for Officer Lentz and offers the following additional information.

Unfortunately, this is not Shannon Lentz' first experience with intense media coverage related to the Phoenix Police Department. She was engaged to Phoenix Police Officer Paul Salmon when he died in the line of duty in November, 2005. Officer Salmon's death also resulted in heavy media exposure, so when the media arrived at her house once again, it caused Shannon Lentz significant stress.

Shannon also witnessed the first-hand effects Officer Lentz' indictment had on him. She recalls that Officer Lentz was distant, depressed, and worried about how he would provide for their family. There were many sleepless nights and conversations about how the family would move forward if Officer Lentz was no longer able to continue as a police officer.

The stress she experienced was not limited to her own family. Shannon received phone calls from friends and relatives across the country every time there was a new news story about the Townhomes investigation.

Officer Lentz is Shannon's best friend and confidant, however, in this situation, Shannon felt that she could not talk to him about how the indictment

¹³ Officer Lentz specifically advises that he may state additional Federal claims based upon Special Agent Hinchey's conduct should he be forced to file a lawsuit.

affected her, as she did not want to burden her husband, who she knew was suffering from embarrassment and shame related to his suspension. She knew that Officer Lentz did not do anything wrong, but he still felt ashamed that his family was in a difficult position.

As a result of Officer Lentz' indictment and the accompanying stress, the Lentz' experienced some marital difficulties and decided to take a marriage strengthening class through their church. Although the purpose of the class was to introduce married couples to a peer support group, Shannon found it difficult to open up to the other wives in the class, as she feared that they would ask questions related to Officer Lentz' indictment.

Shannon's birthday was January 16. She made Officer Lentz promise that he would not buy her anything, as they believed that his paychecks could stop at any time. This financial stress continued through out the time Officer Lentz was under indictment. The Lentz family cancelled their annual trip to San Diego, due to both financial insecurity and the requirement that they clear the trip with a judge.

In an effort to make additional money, Shannon approached her sister and asked if she could babysit her sister's new baby. Although this only resulted in approximately \$200 extra income per month, this was a small thing she could do to provide some additional money to provide a small level of financial security. She continued to babysit for her sister until Officer Lentz returned to duty.

After the Grand Jury remand, Officer Lentz was allowed to return to duty. The PPD called and informed him that he was required to report to the South Mountain Precinct the next day. This was the same day Shannon had her second ultrasound for the Lentz' second child. Had Officer Lentz not been suspended, he would have taken time off to attend this important doctor's appointment. Instead, Officer Lentz felt he needed to go to his first day back on duty and Shannon went to the ultrasound appointment alone.

Specific sum to settle the claim of Shannon Lentz

At this stage, in an effort to resolve this matter by avoiding the costs, time, stress and other factors related to civil litigation, Shannon Lentz will settle all of her claims resulting from the wrongful actions of Special Agent Hinchey, both Federal and State, for \$500,000 (five hundred thousand dollars).¹⁴

Officer Steven Peck

Officer Peck is a 23-year employee of the City of Phoenix. His first city position was with the Water Department and after 11 years he transferred to become a Phoenix Police Officer. He is highly decorated, having received over 30 commendations and awards since he joined the PPD.

¹⁴ Shannon Lentz specifically advises that she may state additional Federal claims based upon Special Agent Hinchey's conduct should she be forced to file a lawsuit.

On or near the beginning of 2007, Officer Peck recalled hearing rumors that the officers who worked the Townhomes off-duty job were being investigated by PSB. While Officer Peck knew that he did nothing wrong, he wondered when he would be interviewed by PSB regarding the Townhomes job. He heard that other officers were interviewed, but he was never called in. In fact, before his indictment, Officer Peck had never before been interviewed by PSB.

The rumors surrounding the Townhomes investigation occasionally reoccurred between the beginning of 2007 and when the Grand Jury issued the indictment. Approximately two months before he was indicted, Officer Peck received a call from his wife telling him that Special Agent Hinchey came to his house and was asking to speak with Officer Peck. This made his wife nervous; she asked Officer Peck why a Special Agent wanted to speak with him. Officer Peck responded that he did not know, but this became a source of tension between Officer Peck and his wife.

On the day he was indicted, Officer Peck was assigned to the Air Support Unit as a pilot. Officer Peck received a call from his lieutenant informing him that he needed to report to PSB to turn in his badge and gun as he was indicted for felony theft.

Officer Peck called his wife as he drove to PSB. Although they were still married, the Pecks separated shortly after Special Agent Hinchey arrived to interview Officer Peck. Despite their disagreements, when Officer Peck informed his wife that he had been indicted, she told them that she was sad for him.

Although his phone was ringing nearly constantly, Officer Peck ignored most of the calls. He saw calls from his brother in Florida, cousins in California, and friends of his father who lived in Michigan. Officer Peck did, however, call his father. Officer Peck told him that he had just handed in his gun and badge, and that he thought he was "done" as a police officer. His father asked "how could this happen?" and Officer Peck had no response.

When Officer Peck arrived home, he called his two daughters into the living room (ages 14 and 12) to tell them about the indictment and his subsequent suspension. The living room TV was on. As he was about to explain the circumstances surrounding the Townhomes job, the Peck family's attention was diverted by the news. The lead story was the indictment of three Phoenix police officers, and Officer Peck saw his department picture displayed on the screen. His daughters burst into tears and asked him if he was going to jail.

Officer Peck, devastated by seeing this reaction by his daughters, told them "no" and explained that he had not done anything wrong. He told them that this would not be a big deal. But he was worried, as he had no idea how the Grand Jury had issued an indictment. Officer Peck believed that he would never put on a police uniform again, but he wanted to appear strong for his daughters.

Financial stress

Like Officer Lentz, Officer Peck believed that he would be terminated by the Phoenix Police Department as a result of the indictment. Although he continued to receive his regular pay while on administrative assignment to his home, he did not know which paycheck would be his last.

As a pilot with the Air Support Unit, Officer Peck was approximately 80% complete with the requirements to receive a "commercial" rating as an aircraft pilot. Receiving a commercial rating meant a significant increase in pay and responsibilities. This training stopped when he was on administrative leave, and Officer Peck did not know if he would be able to resume his pilot training.

Officer Peck also coordinated and worked at multiple off-duty job sites, receiving more than \$20,000 dollars per year in additional income. As a result of his suspension, all of his off-duty activities ceased. Even after Officer Peck returned to duty, he was unable to return to coordinating off-duty jobs due to the damage to his reputation received as a result of the indictment.

While Officer Peck may have attempted to reconcile with his wife, as a result of his suspension and the intense media coverage related to his indictment, any attempt at reconciliation became impossible. He paid his wife \$800 per month so she could afford a separate apartment and child support.

With the loss of off-duty pay and the addition of costs related to separating from his wife, Officer Peck was unable to pay his bills. Because his income level remained high, he was unable to file Chapter 7 bankruptcy and was forced to file for Chapter 13 relief. Eventually, he withdrew his bankruptcy filing and negotiated down his debts through a debt settlement service.

Like Officer Lentz, Officer Peck cut down on all discretionary spending. He spent less than \$100 on Christmas gifts for his daughters. In addition, the Pecks were avid hunters; Officer Peck would take his daughters hunting 2-3 times per month. Due to his suspension and loss of off-duty income, he could not afford gas for hunting trips, which were reduced to only one trip approximately every other month.

Counseling

Officer Peck struggled with weight loss, anxiety, depression and insomnia as a direct result of the stress related to his indictment. He met with a therapist to discuss these issues on more than 15 occasions while he was under indictment, and continues to receive counseling.

Damage to reputation

While he was suspended, Officer Peck began to receive unusual mail. Specifically, an anonymous person purchased a magazine subscription, sent to his home address, addressed to "Corrupt Pecker." Officer Peck needed to call the magazine companies to cancel "his" subscription.

Officer Peck realized that the media coverage reached wide aspects of the community. Shortly after his indictment, his chiropractor jokingly asked Officer Peck for his autograph. In addition, while he was on administrative assignment to his house, Officer Peck noticed that he had a new neighbor move in across the street. After he returned to duty, he saw this neighbor walking into the front door of her house and decided to introduce himself. He told his neighbor that he was a Phoenix police officer and that if she ever needed anything, she could ask. The neighbor responded that she knew who he was, but admitted that she was afraid to approach him because of what she saw on the news.

Perhaps the most damage to Officer Peck's reputation relates to work. Police officers are highly trained in the concept of probable cause. They know that, in order to accuse a person of a crime, probable cause must exist. Here, Officer Peck's reputation is permanently damaged within the PPD because of Special Agent Hinchey's fabrication of evidence. Members of the department that do not have first-hand knowledge of the case assume that probable cause existed to charge Officer Peck, and that he somehow "got away" with committing a crime.

As a direct result of the indictment, Officer Peck's work experiences have drastically changed. When he returned to duty in an administrative capacity, he heard a number of officers making comments that he was "dirty" and that he needed to "do his time" for stealing. These comments created stress to the extent that he could not continue working. When he approached a supervisor to discuss his concerns, he was brushed off, with the supervisor stating "maybe you need medication for stress."

Officer Peck told his therapist about his experience going back to work, and the therapist helped him create a FMLA packet for stress. Officer Peck charged 80 hours of sick time, taking two straight weeks off, to allow him to complete this documentation and receive counseling. Officer Peck did not return to work until he was cleared to resume regular duties. To this day, comments and jokes from co-workers related to the allegations contained in the indictment continue.

As mentioned above, Officer Peck was earning his commercial rating at the time of the indictment, and was approximately 80% complete. Unfortunately, as a result of his suspension, not only did he need to restart the process for a commercial rating, but he also lost his IFR qualification. It took Officer Peck approximately two months of flying to simply regain his IFR qualification. He has not yet been advised when he will be able to receive his commercial rating and the resulting pay increase.

Loss of off-duty pay

Officer Peck was prohibited from working any off-duty jobs while the indictment was pending. Upon information and belief, this resulted in the loss of up to \$15,000. In addition, since his return, Officer Peck is no longer called to work discretionary off-duty positions, save one particular off-duty job where he had a particularly strong relationship with the job's primary contact. As a result of the

damage to his reputation and the loss of his off-duty coordinating, Officer Peck's future lost wages could total more than \$200,000 over the course of his career.

Specific sum to settle the claims of Officer Steven Peck

While it is difficult to calculate compensatory damages related to damage to reputation and other issues related to the facts of this case, A.R.S. §12-821.01 requires a specific amount for which the claim can be settled and the facts to support that amount. This case is relatively unique, as there are very few cases in existence where a police officer intentionally or recklessly fabricates evidence and wrongfully secures the indictment of another police officer. As an initial comparison, in 2002 the Arizona Supreme Court upheld a \$1.4 million jury verdict when after a pawnshop manager demonstrated that he was maliciously prosecuted by a Phoenix Police Department detective who lacked probable cause to initiate charges against him. (*Gonzales v. City of Phoenix*, 203 Ariz. 152 (2002)).

Here, the baseless indictment resulted in intense media coverage and significant damage to the reputation and work environment for the wrongfully indicted law enforcement officers. The damages related to intense media coverage, and the difference between the impacts of false accusations against a pawnshop manager versus false accusations against law enforcement officers is significant. In addition, if a resolution at the notice of claim stage is not possible, Officer Peck will seek damages under 42 U.S.C. §1983 for civil rights violations, including but not limited to his Fourth Amendment right to be free from criminal prosecution on the basis of evidence that is fabricated or presented with a reckless disregard for the truth.

Officer Peck believes that he provided sufficient facts to support his Claim, but specifically advises that, in the interests of settling his claim, he would be willing to provide additional information upon request.

At this stage, in an effort to resolve this matter by avoiding the costs, time, stress and other factors related to civil litigation, Officer Steven Peck will settle all of his claims resulting from the wrongful actions of Special Agent Hinchey, both Federal¹⁵ and State, for \$3,500,000 (three million five hundred thousand dollars).

Sergeant Benjamin Sywarungsymun

On the day the indictments were announced, Sergeant Sywarungsymun was at work at the Maryvale precinct working in his position as the Community Relations Sergeant. This high-profile supervisory position is responsible for the community relations officers who are assigned to interact with community leaders, block watch groups and lead programs involving the Phoenix Police Department's interactions with citizens groups in the high-crime Maryvale area of Phoenix.

¹⁵ Officer Peck specifically advises that he may state additional Federal claims based upon Special Agent Hinchey's conduct should he be forced to file a lawsuit.

Sergeant Sywarungsymun received a phone call from an attorney with the police officers' union informing him that the attorney had accepted service of an indictment and that Sergeant Sywarungsymun needed to come to the union building to pick up the indictment.

After a brief meeting at the union building, Sergeant Sywarungsymun returned to the Maryvale precinct to wait for a call to travel to the PSB offices to turn in his badge, gun and commission card. Sergeant Sywarungsymun called his squad members into a meeting to inform them that he would be suspended, but also to let them know that he did nothing wrong. Although he was hopeful that the indictment would be proven false, Sergeant Sywarungsymun believed that this meeting may have been the last time he would ever address his squad.

Once the squad meeting ended, Sergeant Sywarungsymun sat at his desk and attempted to finish paperwork that he felt was important to complete before he was suspended. One by one, more than 10 officers stopped by his desk to tell him that they were "sorry" to see him go.

After approximately a four-hour wait, Sergeant Sywarungsymun's supervising lieutenant came to his desk and told him it was time to go to PSB. She drove Sergeant Sywarungsymun to the PSB office, where he was ordered to relinquish his badge, gun and commission card.

One of Sergeant Sywarungsymun's worst moments as a police officer occurred as he was leaving the PSB office. Although he entered the building in full uniform, he left wearing a police uniform without a badge and gun, riding back to the Maryvale precinct in a marked police car. Sergeant Sywarungsymun felt embarrassed and insecure, as he knew it was an officer safety issue to be wearing a uniform traveling in a police vehicle while unarmed.

When he arrived back at the precinct Sergeant Sywarungsymun needed to dress out and gather his personal belongings. As a sergeant, he was accustomed to being greeted by officers when they walked by. Now, without his badge, many officers just stared and said nothing. Sergeant Sywarungsymun felt that the reputation and identity he established in the past three years as a hard-working, dedicated supervisor was immediately destroyed by a very public indictment alleging that he was a thief.

Sergeant Sywarungsymun had to make a series of difficult phone calls to his family, but perhaps the hardest call was to his dad. Reputation, honor and integrity were the values Sergeant Sywarungsymun's father drilled into his son, and Sergeant Sywarungsymun felt like a very public criminal indictment would be among the worst examples of dishonor he could commit. Sergeant Sywarungsymun's father was angry, and did not believe his son's explanation of the circumstances surrounding the indictment. His father believed in the criminal justice system and it was only after a series of conversations with Sergeant Sywarungsymun's sister that his father began to understand how a wrongful indictment could occur.

Although Sergeant Sywarungsymun was sent home, his girlfriend informed him that there was media at their house. He went to his girlfriend's sister's house and stayed there until late that night. When he finally returned home, he was unable to sleep.

The next morning the media was at his door. Sergeant Sywarungsymun declined an interview, but they stayed in front of his property for the next few hours.

Later that afternoon, Sergeant Sywarungsymun received a phone call from his daughter Brittany's school. Brittany is Sergeant Sywarungsymun's 11-year-old daughter from a prior relationship who was at her mother, Nicole's house the previous night. Sergeant Sywarungsymun had called Nicole to tell her he was indicted and Nicole agreed to keep Brittany away from the news so Sergeant Sywarungsymun could talk to Brittany in person when she came home from school. Unfortunately, Brittany was teased by classmates about her father to the point where she was in tears. She was sent to the school counselor, who suggested that she call her father. Sergeant Sywarungsymun explained to his daughter that she should not believe what other people and the news were saying about him.

Sergeant Sywarungsymun also has two children, aged eight and five with his ex-wife. When they came home from school he explained that he was suspended from work. His children did not completely understand what this meant, and asked him if he was still a police officer. He told his children that he was, although secretly he wondered if he would ever be allowed to return to the job he loved.

Financial stress

Like the other two officers, Sergeant Sywarungsymun believed that he would be terminated by the Phoenix Police Department as a result of the indictment. Although he continued to receive his regular pay while on administrative assignment to his home, he did not know which paycheck would be his last.

As a sergeant assigned to the Maryvale community relations detail, Sergeant Sywarungsymun had access to overtime, as his unit had secured grant money to engage in special projects. All overtime ceased while he was assigned to home.

In addition, Sergeant Sywarungsymun worked at multiple off-duty job sites, receiving more than \$10,000 dollars per year in additional income. As a result of his suspension, all of his off-duty activities ceased. Even after Sergeant Sywarungsymun returned to duty, he was unable to return to a number of his steady off-duty jobs due to the damage to his reputation received as a result of the indictment.

Like Officer Lentz and Officer Peck, Sergeant Sywarungsymun cut down on all discretionary spending. He spent less than \$200 on Christmas gifts for his children. In addition, the Sywarungsymuns normally took mini-vacations on long weekends when the kids were out of school, however these vacations were severely limited due to Sergeant Sywarungsymun's precarious financial situation. The

Sywarungsymun family normally traveled to Rocky Point, Mexico for vacation, but Sergeant Sywarungsymun was told by his attorney that this trip was impossible while he was under indictment.

Mental health issues

Sergeant Sywarungsymun struggled with weight loss, anxiety, depression and insomnia as a direct result of the stress related to his indictment. These issues occurred in waves through out the time he was assigned to home. Sergeant Sywarungsymun would wake up and spend hours on the internet looking at stories related to the indictment, seeing the massive media coverage of the Townhomes case from multiple sources across the United States.

While a student at ASU, Sergeant Sywarungsymun occasionally struggled with alcohol abuse. Although he enjoyed a few drinks at times after he graduated, he was conscious of the dangers involved with excessive alcohol consumption. During some of the "down" cycles while he was suspended from the department he began to drink heavily. This resulted in additional stress for Sergeant Sywarungsymun and his family.

Damage to reputation

The Phoenix Police Department conducts a selection process for sergeants hoping to become lieutenants approximately once every two years. Although Sergeant Sywarungsymun had significant contributions to the Department in his time as a sergeant, due to his suspension, he was unable to take part in the selection process that occurred at the end of 2011. Because the PPD announced a hiring freeze until 2015, Sergeant Sywarungsymun is unsure when the next lieutenant selection process will occur.

In addition, before the indictment Sergeant Sywarungsymun regularly received phone calls from other officers and supervisors seeking his input and direction on a variety of police related issues. These topics include department policies, personnel issues and simple requests for advice. While he was suspended, these phone calls stopped. Unfortunately, they did not resume even after he returned to full duty. Sergeant Sywarungsymun feels that as a direct result of his indictment, his standing in the eyes of other officers has been permanently diminished.

Loss of off-duty pay

Sergeant Sywarungsymun was prohibited from working any off-duty jobs while the indictment was pending. Upon information and belief, this resulted in the loss of up to \$15,000. In addition, since his return, Sergeant Sywarungsymun is rarely called to work discretionary off-duty positions. As a result of the damage to his reputation, Sergeant Sywarungsymun's future lost wages could total more than \$150,000 over the course of his career.

Specific sum to settle the claims of Sergeant Benjamin Sywarungsymun

While it is difficult to calculate compensatory damages related to damage to reputation and other issues related to the facts of this case, A.R.S. §12-821.01 requires a specific amount for which the claim can be settled and the facts to support that amount. This case is relatively unique, as there are very few cases in existence where a police officer intentionally or recklessly fabricates evidence and wrongfully secures the indictment of another police officer. As an initial comparison, in 2002 the Arizona Supreme Court upheld a \$1.4 million jury verdict when after a pawnshop manager demonstrated that he was maliciously prosecuted by a Phoenix Police Department detective who lacked probable cause to initiate charges against him. (*Gonzales v. City of Phoenix*, 203 Ariz. 152 (2002)).

Here, the baseless indictment resulted in intense media coverage and significant damage to the reputation and work environment for the wrongfully indicted law enforcement officers. The damages related to intense media coverage, and the difference between the impacts of false accusations against a pawnshop manager versus false accusations against law enforcement officers is significant. In addition, if a resolution at the notice of claim stage is not possible, Sergeant Sywarungsymun will seek damages under 42 U.S.C. §1983 for civil rights violations, including but not limited to his Fourth Amendment right to be free from criminal prosecution on the basis of evidence that is fabricated or presented with a reckless disregard for the truth.

Sergeant Sywarungsymun believes that he provided sufficient facts to support his Claim, but specifically advises that, in the interests of settling his claim, he would be willing to provide additional information upon request.

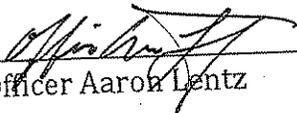
At this stage, in an effort to resolve this matter by avoiding the costs, time, stress and other factors related to civil litigation, Sergeant Benjamin Sywarungsymun will settle all of his claims resulting from the wrongful actions of Special Agent Hinchey, both Federal¹⁶ and State, for \$2,500,000 (two million five hundred thousand dollars).

Summary and Conclusion

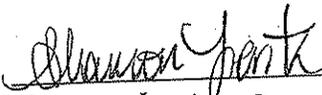
Officer Aaron Lentz, Shannon Lentz, Officer Steven Peck and Sergeant Benjamin Sywarungsymun submit their Notice of Claim in a good-faith effort to reach a settlement with the State of Arizona for damages caused by their employee, Special Agent Meg Hinchey. If a representative of the State requires additional information to evaluate these claims, or if the State believes this Notice of Claim is in anyway deficient, the undersigned respectfully request that the State provide a written statement detailing any alleged deficiency to the following address:

¹⁶ Sergeant Sywarungsymun specifically advises that he may state additional Federal claims based upon Special Agent Hinchey's conduct should he be forced to file a lawsuit.

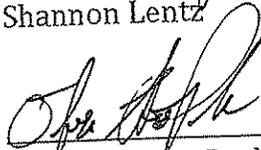
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(404) 891-1402



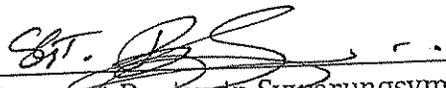
Officer Aaron Lentz



Shannon Lentz



Officer Steven Peck



Sergeant Benjamin Sywarungsymun

Appendix A

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-007888-004 DT

07/29/2011

HON. KAREN L. O'CONNOR

CLERK OF THE COURT
C. Smith
Deputy

STATE OF ARIZONA

TODD C LAWSON

v.

AARON J LENTZ (004)

CRAIG MEHRENS

VICTIM WITNESS DIV-AG-CCC

MOTIONS TO REMAND GRANTED

After hearing, the Court took the Defendants' motions for remand to the Grand Jury under advisement. The Court has considered the pleadings filed and counsels' respective arguments.

The Defendants are entitled to due process. Due process requires a fair and impartial Grand Jury presentation. *Crimmons v. Superior Court in and for Maricopa County*, 137 Ariz. 39, 688 P.2d 882 (1983). That was not done here. The following undisputed facts were not presented to the Grand Jury in a fair, impartial and clear manner. Therefore, remand is warranted.

IT IS ORDERED granting Defendants' motions to remand. If the State elects to present these charges again, they shall remedy their first presentation by including the following information:

AGREEMENT BETWEEN DEFENDANTS AND HOA

There is no Phoenix Police Department (PPD) policy or requirement for off-duty security service agreements to be in writing, let alone any requirement for formal written contracts.

There was no requirement by the three home owner associations (HOAs) that such an agreement had to be in writing.

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In fact, there was no written agreement, contract or contract term between the HOAs and Defendants for off-duty services.

OFF-DUTY SERVICE AGREEMENT AUTHORITY

PPD gave Defendant, Officer Contreras, authority in his capacity as an off-duty coordinator, to enter into verbal agreements with the HOAs for off-duty police security jobs.

Defendant Contreras reported the schedules and the number of hours worked for each Defendant officer to the three HOAs in accordance with his duties as PPD off-duty coordinator.

Defendants Lentz, Sywarungsymun and Peck had no duty or obligation to report their hours to the HOAs and, in accordance with PPD policy, they did not report their hours to any HOA. Further, they never prepared or viewed the invoices for payment sent to the HOAs by Defendant Contreras.

PAYMENTS TO OFF-DUTY OFFICERS

Upon receiving invoices prepared by Defendant Contreras, the HOAs paid all Defendants in advance for their services directly.

CALCULATING NUMBER OF OFF-DUTY HOURS WORKED

Documentation:

PPD has no policy or requirement for Defendants to document their actual off-duty hours.

The HOAs have no policy or requirement for Defendants to document their hours on the days they actually worked.

There is no "sign-in" or "sign-out" document which establishes the hours the Defendants actually worked off-duty.

MDT:

There is no PPD policy which requires the Defendants to log into the MDT at the beginning of an off-duty shift or log off of the MDT after completing the shift.

Location of where shift begins or ends:

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There is no PPD policy defining where the off-duty job started or started. For example, there is no policy requiring the start and stop time to begin and end on-site of the HOA's property being served.

There is no PPD off-duty policy or agreement preventing the Defendants from starting their off-duty shift at the time they arrived at the precinct to get dressed out, or when they picked up their car, or when they were en route to the off-duty destination. Likewise, there is no PPD policy or agreement preventing the Defendants from ending their off-duty shift after leaving the off-duty site, or arriving back at the station, or returning their car, or dressing out.

Similarly, the HOAs had no policy requirement as to where the off-duty shift began or ended.

There was no agreement between the Defendants and the HOAs as to where the off-duty shift began or ended.

There is an off-duty *vehicle* log that reports when the off-duty shift begins and ends. This document reflects the hours of a particular off-duty shift. The document supports that the Defendants worked certain shifts on particular dates. The document reflects no off-duty hour shortage by Defendants.

Time for preparation/completion of shift:

There is no PPD policy that limits the amount of time the Defendants spent at the precinct in preparation for or completion of their off-duty jobs.

Likewise, there was no agreement between the HOAs and Defendants to limit any preparation or completion time for their shifts.

VICTIM LOSS

None of the three HOAs reported any financial loss from the payments they made to the Defendants.

The HOAs never tracked the number of off-duty hours worked to establish any loss.

The HOAs have no documentation showing any financial loss.

THE RAPTOR BUSINESS

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There was nothing illegal about setting up this business.

PPD policy does not prohibit setting up a business or an account to deposit payments for off-duty services and to make payments to off-duty officers.

In any event, the Raptor business was not involved in any way for off-duty payments to Defendants Lentz, Sywarungsymun and Peck for their off-duty services. The Defendants received payments directly from the HOAs..

GRAND JURY PRESENTATION FOR SYWARUNGSYMUN AND LENTZ

The State must present specific instances of alleged misconduct for Defendants Sywarungsymun and Lentz. The Grand Jury should be told the dates of their shifts; the number of hours they worked; and the amount paid to the officers for each shift.

AGGREGATION OF CLAIMS

The State must advise the Grand Jury that in order to aggregate claims pursuant to A.R.S. §13-1801(B) in counts 4, 5, 6 and 7, they must find some connection with one or more of the co-Defendants that show a scheme or a course of conduct which include the individual Defendant's intent to deprive the HOAs of their property. Further, if accomplice liability is alleged, the State should advise the Grand Jury as to whom the accomplices are, if known.

OTHER

The State's witness should not use legal phrases such as "probable cause" when describing her analysis or calculations. Further, the witness should not couch her numbers with phrases like "giving them the benefit of the doubt". When presenting her testimony, the Grand Jurors should only be told of the facts: the numbers calculated and the basis for the numbers. In addition, the State is cautioned to present only factually accurate evidence throughout the entire Grand Jury presentation.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.

Appendix B

1. The officers knew that the Cotton Center Townhomes off-duty shift started when they arrived at the Townhomes property, not when they arrived at the precinct.
 - PPD policy in place at the time of the Townhomes off-duty job was silent as to when or where an off-duty job began.
 - No officer interviewed reported that the Townhomes job started and stopped at the Townhomes, not at the precinct. In fact, Officers Contreras (AR705), Eyrich (AR759-760), Scranton (AR818), Thompson (AR867-868), Austin Lewis (AR1107), Montoya (AR849), Behm (AR1003), and Reiff (AR1202) all specifically reported that the Townhomes shift started at the precinct.
 - Officer Holton stated that he had no idea what Coordinator Contreras' arrangement with the Townhomes was. Officer Holton believed it was his responsibility to show up when directed to by Contreras and leave when he was told (AR736-737). This was later summarized by Special Agent Hinchey as Officer Holton admitting that the Cotton Center Townhomes off-duty shift was a job where officers could leave early without consequence (AR512).
 - Officer Hoenigman stated that he was informed that his shift started as soon as he pulled into the precinct parking lot (AR1146).
 - Officer Hoenigman also stated that there were times when an investigation related to the Townhomes would take them off Townhomes property. He recalled a specific night where they were off-property for three or four hours tracking down a suspect from an earlier Townhomes incident (AR1150-1151).
 - Special Agent Hinchey never identified or interviewed the person who made the agreement with Coordinator Contreras regarding how the shift hours were calculated; there was no evidence to support her contention that the agreement dictated that the shift started and stopped at the Townhomes and not at the precinct.
 - The only "victim" interviewed by SA Hinchey before the first Grand Jury presentation was Patricia DonFrancesco, a woman hired by the Townhomes HOAs as a property manager. In this

interview, Ms. DonFrancesco never stated that the hours for the off-duty officers started and stopped when the officers were on Townhomes property (AR1212-1218).

2. The MDT is turned on by officers as soon as they enter a patrol car, making this a fair recording of the time an officers' shift started and stopped.

- At the time of the Townhomes job, there was no PPD policy requiring that the MDT be signed on while working an off-duty shift.
- No officer interviewed reported that an MDT would provide a completely accurate log of when the officers assigned to the Townhomes were working at the off-duty job.
- Officers Holton (AR731), McKinney (AR798), Woods (AR888), Chrisman (AR963) and Hoenigman (AR1191) all provided reasons why the MDT times would not be accurate in determining the start and stop times for a shift, including the fact that some officers did not sign on the MDT until they arrived at the Townhomes.

3. Officers who worked the Townhomes job who were interviewed by Special Agent Hinchey informed her that a 15 minute "prep time" was appropriate for each shift.

- While most officers were not asked about this issue, no officer interviewed stated that a single, 15 minute "prep time" allowance would accurately describe the time necessary to dress out and prepare the patrol car used.
- Even though she claimed that the 15 minute "prep time" credit was applied to all shifts, it was not. Special Agent Hinchey apparently arbitrarily decided which shifts merited at 15-minute credit based upon an undefined, subjective criteria.
- Officer Thompson (AR867-868) reported that there was time both at the beginning and end of the shift involving a patrol car to allow the officers to check out and return the vehicle to the precinct.
- Officer Austin Lewis stated that it would take at least 20-25 minutes at both the beginning and end of a shift to secure a patrol car and complete paperwork (AR1129).

4. There was no evidence that any of the officers worked beyond their scheduled shift on any days they were assigned to the Townhomes.

- Even using Special Agent Hinchey's inaccurate data, there was evidence that all three officers listed in this Notice of Claim worked certain shifts beyond their scheduled times. Specifically, Officer Peck worked beyond his shift on April 24, 2006, May 15, 2006 and October 10, 2006. Officer Lentz worked beyond his scheduled shift on January 11, 2006, January 18, 2006, and June 14, 2006. Sergeant Sywarungsymun worked beyond his scheduled shift on June 1, 2006 and July 20, 2006.
- Officer Montoya (AR851-853) provided a detailed example of a time when he stayed well beyond his scheduled shift, including the reasons for the delay.
- Officer Jennifer Contreras recounted a shift she worked with Lt. Pat Tortorici at the Townhomes where they were held over her scheduled time to assist with a child abuse investigation (AR899). SA Hinchey mischaracterized this statement when she spoke with Lt. Tortorici, claiming that his partner had told her they left EARLY for a shift. Lt. Tortorici denied leaving early to assist with any child abuse investigations (AR941-942).
- Officer Diedrick stated that he left early on an occasion, but this was to make up for an earlier shift where he had been held over to avoid charging the Townhomes overtime (AR1050-1052).

5. The "radio deactivations" time available for some shifts provided evidence that an officer had ended his shift before the scheduled time.

- Special Agent Hinchey was specifically advised by a portable radio expert that the registration/deregistration data for the radios was unreliable (AR632-633).
- Specifically, the radio expert noted that the system may not capture registration/deregistration data for a variety of reasons, both known and unknown.
- Although she was advised to only use the radio data as an "aggravating" source of information when it was confirmed by multiple other data points, Special Agent Hinchey improperly used an "early" radio deactivation as evidence that an officer was no longer working on multiple dates, even when this data was contradicted by other data points.

- The Grand Jury was never told that the radio data used was not considered a reliable source of information.
6. The activity log used by officers to document their activities at the Townhomes was kept on Townhomes property.
 - Officers Eyrich (AR759), McKinney (AR800), Chrisman (AR963), Schiaveto (AR991), Diedrick (AR1047) and Jacob Lewis (AR1068) all stated that the log was kept at the precinct.
 7. The Grand Jury was presented with all data sources to determine whether an officer worked a particular shift for the example shifts presented.
 - The Grand Jury was told that, for certain shifts, there was no evidence as to when a shift began or ended. In fact, the vehicle use log and the off-duty log documented the hours scheduled; yet Special Agent Hinchey ignored these sources of information in her report.
 8. When presented with conflicting data as to when an officer began or ended a shift, the officer was "given the benefit of the doubt" and a later shift was used.
 - There were multiple occasions where Special Agent Hinchey used an earlier time (i.e. radio sign-off) to show that an officer was no longer working the off-duty shift, even when this data was contradicted by other data points.
 9. Only one officer interviewed stated that they were held over. He stated that he was held over for three hours, but there was no evidence to support this assertion.
 - As stated outlined above, Officers Montoya, Jennifer Contreras, and Diedrick all stated that they had worked extra hours on occasion, and that these hours were "flexed" out on later shifts.
 10. During multiple shifts where Special Agent Hinchey asserted that the officers committed theft, there was "no activity."
 - Every Townhomes shift for the officers bringing this Notice of Claim had activity, including the use of the MDT to run license plates, documented contact with Townhomes residents, or follow-up to investigations. SA Hinchey recklessly ignored the

paper log provided to her and also ignored all but the last call entered in the officers' unit histories in her testimony before the first Grand Jury.

11. Officer safety concerns would likely dictate that any contact between officers working off-duty and a citizen would be reported to Dispatch over the radio.
 - There is no PPD policy requiring every citizen contact be reported over the radio to dispatch. In fact, it would be highly unusual for a two-person off-duty job to report informational contact over the radio if it is unrelated to any patrol function.

12. Officer Peck improperly conducted off-duty work the next day while he was on duty.
 - Special Agent Hinchey told the Grand Jury that Officer Peck worked off-duty from 1725 to 2340 on June 19, 2006.
 - She then told Grand Jurors that Officer Peck called in a report for the Townhome shift the next day at 0607 on the voice writer.
 - Special Agent Hinchey testified that this was improper, as Officer Peck was **on-duty** when he submitted this report.
 - The next shift that Officer Peck was allegedly short on was June 20, 2006. Special Agent Hinchey testified that, since the MDT was not logged on until 0727, Officer Peck must have started his shift at that time – an hour and 27 minutes late. But, since his partner logged on to PACE (which could only be accessed at the station) at 0647, she gave Officer Peck “the benefit of the doubt” and started his shift at that time.
 - What Special Agent Hinchey failed to recognize is that Officer Peck was calling in a report on the voice writer while **off-duty**, and had started his shift on time.

13. The reasons officers interviewed gave for leaving early was because Officer Contreras was the boss, the officers were sick, or they left for family concerns.
 - As outlined above, officers stated that they left the Townhomes to return to the precinct to secure the car and finish paperwork (See, e.g. Officer Chrisman – AR963).
 - Numerous officers stated that they left early on certain shifts to make up for time where they were held over on earlier shifts

and not paid for the extra time (See, e.g. Officer Jacob Lewis – AR1074).

14. Officers assigned to this off-duty job used a “wagon” to transport suspects to jail, unless the wagon was busy.
 - None of the officers were asked whether they used a “wagon” as part of the standard practices related to this off-duty job.
 - Officers Chrisman (AR959) stated that, as a general rule, the officers working this off-duty job were responsible for processing prisoners and bringing them to the jail.
 - Officers Jacob Lewis (AR1068), Austin Lewis (AR1128), Eyrich (AR768), and Montoya (AR852) all relayed examples where they personally transported prisoners for processing without the use of a wagon.

15. The complaint that initiated the investigation was that the officers assigned to this off-duty job weren’t there when they should have been.
 - The only “victim” interviewed by SA Hinchey was Patricia DonFrancesco. In her recorded interview, Ms. DonFrancesco stated that the two concerns she had with Coordinator Contreras were that he was having an inappropriate sexual relationship with a member of the Townhomes staff (AR1214) and that the off-duty officers were “double-dipping” by working on-duty patrol when they were supposed to be working for the Townhomes (AR1215).

16. The MDT times presented to the Grand Jury were accurate.
 - Special Agent Hinchey chose to only present slides documenting the alleged times Officer Peck did not work a full shift.
 - On four of these slides, the times presented as MDT sign-offs were falsified.
 - o For April 10, 2006, Special Agent Hinchey stated that the MDT was signed off at 2357, when the actual sign-off time was 0344 the next day.
 - o For May 1, 2006, Special Agent Hinchey stated that the MDT was signed off at 2335, when the actual sign-off time was 0705 the next day.

- For May 8, 2006, the Grand Jury was told the sign-off time was 0025, when the true time was 0254.
- For May 22, 2006, a sign-off time of 2340 was presented, with an actual sign-off time of 0437
- Special Agent Hinchey presented the "last used" MDT time for the above dates and testified that this was an acceptable benchmark to determine when Officer Peck ended his shift. In reality, the "last used" time on an MDT provides no evidence that an officer was done with the shift at that point.
- There were similar, significant errors made in the calculations of hours worked by Officer Lentz and Officer Sywarungsymun. Because Special Agent Hinchey used Officer Peck as an example, we use the same example here.