

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

DANIKA GONZALES,

and

FELICIA VALDEZ,

Plaintiffs,

v.

CITY OF TRINIDAD, COLORADO;

PHIL MARTIN, a Detective Sergeant of the Trinidad Police Department of the City of Trinidad,
in his individual capacity;

ARSENIO VIGIL, a Detective Sergeant of the Trinidad Police Department of the City of
Trinidad, in his individual capacity;

Defendants.

COMPLAINT

Plaintiffs, Danika Gonzales and Felicia Valdez, by and through their attorneys Baker & Hostetler LLP, and Mark Silverstein and Rebecca T. Wallace of the ACLU Foundation of Colorado, for their Complaint against the Defendants, allege and aver as follows:

INTRODUCTION

1. Plaintiffs Danika Gonzales and Felicia Valdez bring this action seeking compensatory damages, declaratory relief, and attorneys' fees pursuant to 42 U.S.C. § 1983 for violations of their constitutional rights.

2. The Trinidad Police Department of the City of Trinidad (the “**TPD**”) has implemented a custom, policy, and/or practice of conducting undercover drug stings and arrests in a manner that violates the United States Constitution.

3. In 2013, the TPD conducted a drug sting culminating in late December with highly publicized arrests throughout the community in which innocent citizens were arrested based on false, deficient, and misleading arrest affidavits from the TPD who regularly relied almost exclusively on uncorroborated and untrustworthy information provided by confidential informants (“**CI**s”) who accused various individuals of selling them drugs.

4. As a matter of practice, the TPD chose not to undertake meaningful efforts to corroborate the CI’s allegations, even when the TPD had ample reason to doubt the reliability of the CI’s accusations and even though readily available exculpatory evidence was at the TPD’s disposal.

5. The procedures of the TPD during the course of the alleged “controlled buys” made as part of the “drug sting” provided an open opportunity for CI’s to lie with impunity, to divert the TPD’s buy money for themselves, to skim drugs for their own use, and to act on the basis of personal motives to frame innocent persons.

6. Crystal Bachicha (“**CI Bachicha**”), one of the two informants the TPD relied on for the 2013 drug sting, was precisely such an opportunistic CI. She took advantage of the opportunity presented by the TPD’s willful blindness and lax supervision and falsely accused innocent people of selling drugs.

7. At the time TPD tapped CI Bachicha to be a CI, the TPD knew that CI Bachicha was a three-time convicted felon, a liar, a drug user, and had no history of providing reliable

information to the TPD. Yet, over and over again, the TPD took CI Bachicha at her word as she falsely accused various community members of selling drugs.

8. The TPD did shockingly little to attempt to corroborate CI Bachicha's allegations regarding these buys. Yet, in affidavits seeking warrants to arrest the alleged sellers, the TPD misleadingly presented information about the buys as if the TPD had in fact corroborated CI Bachicha's allegations. Moreover, the TPD intentionally omitted from the arrest warrants all of the myriad facts that cast serious doubt on CI Bachicha's credibility. In some cases, the TPD included fabricated inculpatory evidence in the arrest affidavits, all in an attempt to manufacture probable cause when none existed.

9. Had the TPD included in the arrest affidavits the material information regarding CI Bachicha's credibility, excluded false information, and accurately presented the information about the alleged buys as uncorroborated hearsay by the CI, the arrest warrants would not have issued.

10. The TPD either did not investigate or turned a blind eye to readily available evidence that CI Bachicha had a variety of personal motivations for choosing the individuals that she accused of selling drugs. Some of the individuals that she accused of selling drugs were individuals against whom she had a personal vendetta. In fact, three of the people who CI Bachicha had accused of selling her drugs were individuals who CI Bachicha had been charged with attempting to murder. In other cases, CI Bachicha accused individuals whom the TPD had already identified as desirable targets. In still other cases, CI Bachicha simply acted opportunistically by taking advantage of various personal interactions with individuals that would be easy to mischaracterize as drug buys when no one else was physically present to confirm or disprove that any drug transaction actually occurred.

11. As a direct result of the Defendants' actions, innocent people were arrested in the 2013 drug sting. Notably, two of the persons arrested were already in jail at the time they were accused of having sold drugs to CI Bachicha, making it impossible for them to have committed the crimes alleged. Additionally, CI Bachicha accused Plaintiff Danika Gonzales, CI Bachicha's former probation officer, and Plaintiff Felicia Valdez, an old acquaintance who had a negative relationship with CI Bachicha, of selling drugs. A modicum of police work would have revealed that both of these Plaintiffs were innocent of all charges against them. Because of Defendants' actions as described herein, Plaintiffs were unconstitutionally arrested and prosecuted, and they suffered serious financial and emotional losses as a result.

12. None of the 40 arrests that were made as part of the 2013 drug sting resulted in a drug-related conviction.

JURISDICTION AND VENUE

Subject Matter Jurisdiction

13. Plaintiffs bring this action under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution to redress the deprivation of their rights, privileges, or immunities secured by the United States Constitution and laws, and so deprived under color of law.

14. This Court has subject matter jurisdiction over this action pursuant to Article III, Section 2, of the United States Constitution and 28 U.S.C. § 1331. This action arises under the Constitution and laws of the United States.

Venue

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise the Complaint occurred in this District.

PARTIES

Plaintiffs

16. On December 19, 2013, pursuant to the TPD's drug sting, Danika Gonzales was arrested, detained, imprisoned and subsequently prosecuted for selling drugs, without probable cause. All charges against her were ultimately dismissed. Ms. Gonzales is a citizen of the State of Colorado.

17. On December 19, 2013, pursuant to the TPD's drug sting, Felicia Valdez was arrested, detained, imprisoned and subsequently prosecuted for selling drugs, without probable cause. All charges against her were ultimately dismissed. Ms. Valdez is a citizen of the State of Colorado.

Defendants

18. Defendant City of Trinidad, Colorado ("Defendant City of Trinidad"), at all times relevant to this Complaint, was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of Colorado. Defendant City of Trinidad maintains the TPD, a duly authorized public authority and/or police department authorized to perform all functions of a police department pursuant to the applicable sections of Colorado statutes. The TPD acts under the direction and supervision of the Defendant City of Trinidad. The Defendant City of Trinidad was and is responsible for the customs, policies, practices, supervision, implementation, and conduct of all TPD matters. In addition, the Defendant City of Trinidad was and is responsible for the hiring, appointment, training, supervision, retention, disciplining, and conduct of all TPD personnel, including Defendants Vigil and Martin.

19. Defendant Phil Martin, at all times relevant to this Complaint, was an officer of the TPD holding the rank of Detective Sergeant. He is sued in his individual capacity.

20. Defendant Arsenio Vigil, at all times relevant to this Complaint, was an officer of the TPD holding the rank of Detective Sergeant. He is sued in his individual capacity.

21. Defendants' actions or omissions as described in this Complaint were committed under color of state law.

FACTUAL BACKGROUND

Plaintiff Danika Gonzales

22. Plaintiff Danika Gonzales was among the targets who were arrested in the 2013 drug sting.

23. At that time, Ms. Gonzales had been employed by the State of Colorado as a probation officer for seven years.

24. Ms. Gonzales' arrest, detention, and imprisonment were without probable cause and were based on uncorroborated accusations made by an unreliable and untrustworthy CI. Defendants Vigil and Martin procured the warrant for the arrest of Ms. Gonzales by submitting to the court an affidavit that 1) contained intentionally false and misleading assertions; and 2) intentionally omitted a host of material exculpatory facts. Defendants Vigil and Martin also caused Ms. Gonzales' malicious prosecution by choosing to rely on the untested allegations of a patently unreliable CI without engaging in the most basic of police work aimed at corroborating (or disproving) those allegations. In doing so, Defendants Vigil and Martin acted pursuant to the customs, policies, and standard practices of the TPD.

25. CI Bachicha knew Ms. Gonzales prior to the 2013 drug sting because Ms. Gonzales had served as CI Bachicha's probation officer.

26. According to the affidavit for Ms. Gonzales' arrest (the "**Gonzales Arrest Affidavit**"), a copy of which is attached hereto as Exhibit A, CI Bachicha told the TPD that Ms.

Gonzales was responsible for three sales of illegal drugs to CI Bachicha on November 5, 6, and 12, 2013. These allegations were false. Defendants had no probable cause to believe that Ms. Gonzales was responsible for selling any drugs to CI Bachicha.

27. Ms. Gonzales was arrested on charges of distribution of a controlled substance before 8 a.m. on December 19, 2013, when the TPD began serving the 40 arrest warrants. She was detained and imprisoned and not permitted to bond out until 11:00 p.m. on that date.

28. After the arrest, Ms. Gonzales was immediately suspended by the State of Colorado without pay from her position as a probation officer in the Third Judicial District of the State of Colorado. As a result of the arrest, Ms. Gonzales' employment was terminated on February 28, 2014. Ms. Gonzales was the sole breadwinner for her family at the time her employment was terminated.

29. The charges against Ms. Gonzales were not dismissed until June 18, 2014.

30. Ms. Gonzales was humiliated publicly because of the arrest and her reputation has suffered. Ms. Gonzales' name and photograph were in the Trinidad newspaper along with the 39 other arrestees. Ms. Gonzales' name and photograph were also published in the Pueblo Chieftain and broadcast on the major southern Colorado news stations. Ms. Gonzales' previous employer also told Ms. Gonzales before she was terminated that if she did not get terminated she would have to be transferred because Ms. Gonzales could no longer work in southern Colorado due to the publicity.

31. Ms. Gonzales has suffered emotionally because of her arrest. Ms. Gonzales had a horrific experience while in custody and has been scarred by the arrest and what has happened to her as a result.

32. Ms. Gonzales continues to reside in Trinidad and lives in fear of being arrested again for a crime she did not commit.

The Gonzales Arrest Affidavit – Lack of Probable Cause and False and Misleading Statements and Omissions

33. Defendants Vigil and Martin are the affiants who signed the Gonzales Arrest Affidavit and submitted it to Las Animas County Court Judge Bruce Billings on December 17, 2013, in order to obtain a warrant for Ms. Gonzales' arrest.

34. Upon information and belief, prior to Judge Billings signing Ms. Gonzales' arrest warrant, a Colorado District Court judge refused to issue the warrant. This belief is based on the fact that a Colorado District Court Judge signed most of the other arrest warrants issued as part of the drug sting.

35. The Gonzales Arrest Affidavit, on its face, as submitted, failed to provide probable cause to believe that Ms. Gonzales sold drugs to CI Bachicha.

- a. The Gonzales Arrest Affidavit turns on the hearsay report provided to Defendants Vigil and Martin by CI Bachicha. The Gonzales Arrest Affidavit contains no statement, however, that CI Bachicha is reliable or had provided reliable information to the TPD detectives in the past. Indeed, Defendants Vigil and Martin had no basis to make any assertion that CI Bachicha had proved her trustworthiness.
- b. When an arrest affidavit fails to demonstrate that the CI is credible and reliable, a court cannot credit the CI's hearsay unless it is independently corroborated and/or if the CI's hearsay account provides such richness of detail that it is deemed credible even without corroboration.

- c. The Gonzales Arrest Affidavit does not provide richness of detail. Indeed, the absence of detail is startling. For instance, the Gonzales Arrest Affidavit provides no details of how CI Bachicha supposedly came to know that her former probation officer supposedly sold drugs, or how Ms. Gonzales managed to engage in alleged drug deals in the hallway of the courthouse, which was under constant video surveillance, or how CI Bachicha claimed to have managed to gain the confidence of her former probation officer for such a transaction to occur.
- d. Likewise, the Gonzales Arrest Affidavit fails to provide independent corroboration of CI Bachicha's hearsay accusations.

36. Reasonably well-trained officers would have known that the Gonzales Arrest Affidavit, as written, was wholly lacking in indicia of probable cause and should not have been submitted to a judge.

37. Moreover, Defendants Vigil and Martin obtained the warrant for Plaintiff Gonzales by submitting an arrest affidavit that they knew 1) contained false and misleading assertions of fact; and 2) omitted material facts. Had Defendants Vigil and Martin included the omitted facts and corrected the false and misleading statements, the absence of probable cause would have been crystal clear, and the judge would not have issued the warrant.

38. Defendants Vigil and Martin intentionally omitted all material information from the Gonzales Arrest Affidavit that reflected adversely on CI Bachicha's credibility, her reliability, and her motivations for providing information to the TPD as a CI. The intentionally omitted information included the following:

- a. CI Bachicha's criminal record included at least three separate felony convictions and a sentence to the Department of Corrections.
- b. At the time CI Bachicha agreed to become an informant and ***before*** the 2013 drug sting, she faced two additional felony counts of attempting to obtain a controlled substance by fraud or deceit, a charge in which lying is an element of the crime.
- c. CI Bachicha agreed to work as a CI in return for, among other rewards, dismissal of the pending felony charges.
- d. ***While*** CI Bachicha was making buys for the TPD, she was arrested in Raton, New Mexico, on yet another felony charge of attempting illegally to obtain prescription drugs by fraud, providing additional indications of her lack of reliability and credibility.
- e. CI Bachicha was paid for each drug buy she claimed to have made, and the total payout to her amounted to \$3,085. CI Bachicha was paid a premium for her alleged purchases from Ms. Gonzales.
- f. CI Bachicha has a history of illegal drug use.
- g. Defendants Vigil and Martin and the TPD had evidence strongly suggesting that CI Bachicha was actively using illegal drugs while working as a CI. Her drug use was a direct violation of her contractual pledge (signed as a condition of working as a CI) to refrain from illegal drug use. Her drug use showed not only that she was deceiving the detectives when she pledged to refrain, but it also cast doubt on her ability to accurately perceive and recount details of the transactions she was

carrying out for the Defendants. CI Bachicha's drug use also suggested that she could be motivated to use her position as a CI to skim drugs or money to feed her habit. Nevertheless, Defendants Vigil and Martin and the TPD chose to ignore CI Bachicha's deception and chose not to require CI Bachicha to submit to drug testing at any time.

- h. CI Bachicha claimed that she arranged or carried out drug buys from three separate individuals whom Defendants Vigil and Martin and the TPD knew CI Bachicha and her brother had been charged with attempting to murder a few years earlier. Although the attempted murder charges against CI Bachicha were eventually dismissed, her brother was convicted and is serving a lengthy prison sentence. CI Bachicha's assertion that persons who earlier testified against her and her brother would be willing to sell her illegal drugs is not credible. It also suggests that the lure of settling personal scores was an additional motivation for her activities as a CI.
- i. One of the individuals who CI Bachicha was charged with attempting to murder is Bobby Jo Vigil. According to the Gonzales Arrest Affidavit, CI Bachicha claimed Ms. Vigil sold her drugs after CI Bachicha arranged the buy with Ms. Gonzales. Defendants Vigil and Martin omitted all information about the attempted murder charge from the Gonzales Arrest Affidavit, thereby avoiding the obvious credibility issues raised by CI Bachicha's allegations against Ms. Vigil and Ms. Gonzales.

j. Defendants Vigil and Martin were aware of the foregoing facts at the time they executed the Gonzales Arrest Affidavit, and they intentionally omitted them.

39. Defendants Vigil and Martin prepared and maintained a book or books of photographs of suggested targets of the drug sting, and they showed this book of photographs to the CIs, including CI Bachicha. The CIs were thus motivated to report to Defendants Vigil and Martin and the TPD that they had purchased drugs from persons in this photo collection. Defendants Vigil and Martin deliberately omitted from the Gonzales Arrest Affidavit any mention of the fact that CI Bachicha had previously reviewed photographs of suggested targets.

40. On information and belief, Defendants Vigil and Martin knew that Ms. Gonzales had been CI Bachicha's probation officer. This information would have provided the judicial officer a basis for concluding that CI Bachicha was using her position as an informant to settle personal scores. Defendants Vigil and Martin deliberately omitted this information from the Gonzales Arrest Affidavit.

41. The Gonzales Arrest Affidavit contains additional material omissions regarding the assertions that CI Bachicha and her vehicle were searched prior to the alleged buys and after the alleged buys. Pursuant to the TPD's custom and policy, the Gonzales Arrest Affidavit contains a boilerplate assertion that these searches were conducted immediately before CI Bachicha received the buy money from the detectives and immediately after CI Bachicha turned over the drugs she claimed to have purchased. It contains the boilerplate assertion that no drugs, contraband, or money were found. These assertions are designed to convey the impression that the supervising detectives are ensuring that the CI is not skimming money or drugs, and that the purported drugs she provides to the detectives must have come from the suspect rather than from

another source or even the CI herself. The Gonzales Arrest Affidavit omits a critical material fact revealed in testimony during several preliminary hearings: the searches of CI Bachicha's person were merely cursory patdowns of the outer clothing. Such patdown searches will not detect cash or small bindles of drugs hidden in the CI's underwear. Similarly, the Gonzales Arrest Affidavit omits a material fact regarding the searches of CI Bachicha's vehicle: the searches were so quick and so cursory that they did not and could not ensure that the CI was not concealing money or drugs.

42. When they executed the Gonzales Arrest Affidavit, Defendants Vigil and Martin were well aware of the omitted facts described in the preceding paragraphs. They intentionally or recklessly omitted these facts from the Gonzales Arrest Affidavit.

43. The Gonzales Arrest Affidavit conveys the false and misleading impression that Defendants Vigil and Martin are reporting firsthand observations linking Ms. Gonzales to the alleged drug buy, when in fact the only information suggesting such a link was the uncorroborated allegations of a patently unreliable CI.

44. For example, the Gonzales Arrest Affidavit states that on November 6, 2013, CI Bachicha "met Gonzales on the third floor of the courthouse building." It further states that CI Bachicha and Ms. Gonzales "entered the women's bathroom." Although Defendants Vigil and Martin present as though they are relating firsthand observations, they had no firsthand knowledge that CI Bachicha met Ms. Gonzales, nor did they have any firsthand knowledge that CI Bachicha and Ms. Gonzales "entered the women's bathroom."

45. Defendants Vigil and Martin present the same kind of false and misleading statements in describing the November 12 alleged transaction. The Gonzales Arrest Affidavit states that CI Bachicha traveled to the 900 block of E. Main Street and that Ms. Gonzales was the

front-seat passenger in a dark-colored vehicle being driven by Bobbie Jo Vigil. Neither Defendants Vigil or Martin, nor any other officer of the TPD, observed the scene. Although Defendants Vigil and Martin described the scene as though they were reporting firsthand observations, they did not have any firsthand knowledge.

46. Instead, Defendants Vigil and Martin relied on uncorroborated hearsay from CI Bachicha – whose credibility was in serious doubt – to establish each of the facts recounted in the previous three paragraphs. Neither Defendants Vigil or Martin nor the TPD took meaningful efforts to corroborate (or disprove) CI Bachicha’s assertions linking Ms. Gonzales to the alleged drug deals. Indeed, they declined to review readily available exculpatory evidence. Yet, the Gonzales Arrest Affidavit is written to falsely convey the impression that the TPD had some independent knowledge of these facts.

47. The Gonzales Arrest Affidavit includes additional false and misleading statements in its report of what Defendants Vigil and Martin claim they heard over the audio transmitter that CI Bachicha carried. These false characterizations of the audio were designed to convey the false impression that the TPD had some independent knowledge that Ms. Gonzales was present at the scene and sold drugs to CI Bachicha.

48. In describing both transactions that supposedly occurred in the courthouse, Defendants Vigil and Martin include a snippet of what they describe as “not verbatim” excerpts of the audio. In each case, Defendants Vigil and Martin misleadingly recount this communication as being between CI Bachicha and “Gonzales,” even though Defendants Vigil and Martin had no basis to believe that CI Bachicha was communicating with Ms. Gonzales, other than CI Bachicha's uncorroborated hearsay. Thus, Defendants Vigil and Martin conveyed

the false and misleading impression that they had some independent basis for placing Ms. Gonzales at the scene of the alleged drug buy when, in fact, they did not.

49. Defendants Martin and Vigil intentionally, or with reckless disregard for the truth, included in the Gonzales Arrest Affidavit the false and misleading statements described above.

The Corrected Gonzales Arrest Affidavit Does Not Provide Probable Cause

50. The false statements and intentional omissions recounted above were material. With the false statements corrected and the omitted facts included, the corrected Gonzales Arrest Affidavit clearly does not establish probable cause. Indeed, any reasonably well-trained officer would have known that the affidavit, as corrected, was wholly lacking in indicia of probable cause. On the basis of a corrected Gonzales Arrest Affidavit, the judge would not have issued the warrant to arrest Ms. Gonzales for the following reasons, among others:

- a. The Gonzales Arrest Affidavit did not contain any statement asserting that CI Bachicha was reliable as a CI or that CI Bachicha had provided reliable information in the past.
- b. Defendants Vigil and Martin did not, in fact, have any basis to assert that CI Bachicha had provided reliable information in the past or that she had done so in connection with the information contained in the Gonzales Arrest Affidavit. Without any statements asserting or demonstrating the CI's credibility or reliability, a court evaluating the corrected Gonzales Arrest Affidavit could not credit the CI's hearsay unless the affidavit provided sufficient independent corroboration or some other basis for concluding that the CI's hearsay statements should be believed.

- c. The corrected Gonzales Arrest Affidavit provides no such corroboration. Indeed, neither Defendants Vigil or Martin nor the TPD attempted meaningful efforts to corroborate or disprove CI Bachicha's allegations, even when readily available exculpatory evidence existed. Nor does the corrected Gonzales Arrest Affidavit provide any other basis for crediting CI Bachicha's hearsay.
- d. Moreover, when the corrected Gonzales Arrest Affidavit includes the omitted information described above, including CI Bachicha's lack of credibility, drug use, record of fabrication, deception of law enforcement, and possible motives to use her position as a CI to settle scores, it provides ample grounds to affirmatively distrust CI Bachicha's uncorroborated statement that she purchased drugs from the particular person she accused.

Malicious Prosecution of Ms. Gonzales

51. Defendants Vigil and Martin performed obviously unreliable investigative work and intentionally and maliciously caused the arrest and prosecution of Ms. Gonzales, without probable cause to believe she had committed a crime.

52. If Defendants Vigil and Martin and the TPD had engaged in the most basic of police work, they would have known CI Bachicha's allegations that Ms. Gonzales sold her drugs were false. Two of the three alleged buys occurred in the courthouse where Ms. Gonzales worked as a probation officer. As Defendants Vigil and Martin and the TPD surely knew, the courthouse is under constant video surveillance. The video shows the times when the alleged buys supposedly occurred. The TPD could have watched as the supposed buys were going down. In the alternative, the TPD could have reviewed the video before seeking Ms. Gonzales'

arrest. Any reasonable police officer would have reviewed this readily available and potentially exculpatory evidence before seeking Ms. Gonzales' arrest. Had Defendants Vigil and Martin watched the video, they would have confirmed that Ms. Gonzales was innocent and that CI Bachicha had lied to them repeatedly.

53. The third alleged transaction purportedly took place at the driver's side of a car stopped on a public street. Had the TPD simply surveilled that scene, they would have known Ms. Gonzales' innocence. Likewise, Defendants Vigil and Martin and the TPD chose not to review or preserve CI Bachicha's cell phone records, which would have disproven CI Bachicha's claim that she "arranged" the deal with Gonzales. Instead of engaging in this type of basic police work, Defendants Vigil and Martin chose to take CI Bachicha at her word.

54. Defendants Vigil's and Martin's choice to take CI Bachicha at her word regarding this sale is particularly astonishing given that she claimed Ms. Gonzales was in the car with Bobby Jo Vigil – a person who had testified only a few years prior against CI Bachicha and her brother regarding their attempt at murdering Ms. Vigil. According to the Gonzales Arrest Affidavit, it was Bobby Jo Vigil who exchanged drugs for money with CI Bachicha in this third sale. Defendants Vigil and Martin and the TPD knew about this history between CI Bachicha and Ms. Vigil, but still did nothing to test the credibility of CI Bachicha's allegations regarding this buy.

55. At the beginning of the drug sting, Defendants Vigil and Martin, or other TPD officers working under their direct supervision, showed their CIs pictures of individuals in a book maintained by the TPD in order to suggest to the CIs potential targets for drug arrests. The CIs were thus motivated to report to the TPD that they had purchased drugs from persons in this photo collection.

56. Defendant Martin, or individuals acting under his direction and supervision, intentionally destroyed one or more of the books containing the photographs of potential drug sting targets, thus preventing them from being made available for the defense of individuals arrested in the drug sting.

57. Defendants Vigil and Martin knew that CI Bachicha was unreliable as a CI but, nonetheless, they arrested Ms. Gonzales based on the uncorroborated word of CI Bachicha. Defendants Vigil and Martin and the TPD did not conduct a basic investigation to determine what the existing connection, if any, was between their CIs and their targets. Even if Defendants Vigil and Martin did not actually know that Ms. Gonzales had been CI Bachicha's probation officer in the past, such an investigation would have revealed that fact. A basic investigation would have also revealed that Ms. Gonzales worked at the Department of Human Services when CI Bachicha was involved in child welfare matters with that agency.

58. Pursuant to the custom and policy of the TPD, Defendants Vigil and Martin sought the arrest of Ms. Gonzales without having submitted the substances CI Bachicha claimed to have purchased to the Forensic Services Division of the Colorado Bureau of Investigation ("CBI"). Ms. Gonzales was a defendant in an active case against her for several months before the lab report dated May 9, 2014 (the "**Gonzales Lab Report**"), came back revealing that the substance CI Bachicha claimed to have purchased from Ms. Gonzales on November 5, 2013 was not heroin but rather Codeine and Tetrahydrocannabinol (a component of Marijuana) – substances readily and cheaply available to a drug user such as CI Bachicha. The Gonzales Lab Report further revealed that the substance CI Bachicha allegedly purchased on November 12, 2013, was not a controlled substance, refuting the statement in the Gonzales Arrest Affidavit that the substance tested positive for "METH". If Defendants Vigil and Martin and the TPD had

performed a reliable test on the substances prior to the arrest, they would have had further reason to doubt CI Bachicha's credibility.

59. Defendants Vigil and Martin and the TPD did not perform thorough searches of CI Bachicha's person or vehicle before or after the alleged drug buys involving Ms. Gonzales. In fact, the searches of CI Bachicha and her vehicle were so cursory that CI Bachicha could easily have concealed drugs or money without detection. Defendants Vigil and Martin knew that the searches that they and/or the TPD conducted did not eliminate the possibility that CI Bachicha already possessed the drugs that she would later accuse Ms. Gonzales of selling or that CI Bachicha still had possession of the buy money when she returned with the allegedly purchased drugs.

60. Defendants Vigil and Martin and the TPD did not review or retain or preserve CI Bachicha's phone records related to the advance arrangements she claimed to have made for the alleged buys, even when they knew that CI Bachicha claimed that she used phone calls and text messages from her cell phone to make the arrangements.

61. Defendants Vigil and Martin and the TPD did not drug test CI Bachicha at any time during her work as a CI.

62. Defendants Vigil and Martin and the TPD either did not investigate, or they knew and did not disclose on the Gonzales Arrest Affidavit, the following information which would have demonstrated CI Bachicha's unreliability as part of the 2013 drug sting: (i) why or how Ms. Gonzales was identified as a target of the sting, or why Ms. Gonzales was identified by CI Bachicha as a target in the first place; or (ii) how CI Bachicha supposedly gained the confidence of a probation officer sufficient for Ms. Gonzales to risk selling drugs in a Courthouse under continuous video surveillance.

63. In pursuing the arrest of Ms. Gonzales without probable cause, Defendants Vigil and Martin intentionally or recklessly disregarded readily available exculpatory evidence. They intentionally or recklessly turned a blind eye to multiple red flags indicating that CI Bachicha was unworthy of their trust. Reasonably well-trained officers would have known that they should not have applied for a warrant. Nevertheless, Defendants Vigil and Martin submitted an arrest affidavit with intentionally or recklessly false or misleading statements of fact and omissions of material facts that would have vitiated probable cause as described in paragraphs 33 to 50.

64. Defendants Vigil and Martin's conduct as described herein was sanctioned by the TPD. The TPD has made the conscious choice not to have a policy governing the use, supervision of, and reliance on CIs to support drug arrests, even in the face of historical problems regarding the credibility and reliability of confidential informants.

Plaintiff Felicia Valdez

65. Plaintiff Felicia Valdez was among the targets who were arrested in the 2013 drug sting.

66. At that time, Ms. Valdez was employed in the Trinidad school system.

67. Ms. Valdez's arrest, detention, and imprisonment were without probable cause and were based on uncorroborated accusations made by an unreliable and untrustworthy informant. Defendants Martin and Vigil procured the warrant for the arrest of Ms. Valdez by submitting to the court an affidavit that 1) contained intentionally false and misleading assertions; and 2) intentionally omitted a host of material exculpatory facts. Defendants Martin and Vigil also caused Ms. Valdez's malicious prosecution by choosing to rely on the untested allegations of a patently unreliable CI without engaging in the most basic of police work aimed

at corroborating (or disproving) those allegations. In doing so, Defendants Martin and Vigil acted pursuant to the customs, policies, and standard practices of the TPD.

68. According to the affidavit for Ms. Valdez's arrest (the "**Valdez Arrest Affidavit**"), a copy of which is attached hereto as Exhibit B, CI Bachicha purportedly told the TPD that she purchased methamphetamine from Ms. Valdez on two separate occasions on October 10, 2013 and October 15, 2013. Ms. Valdez was arrested, detained, imprisoned, and prosecuted based on CI Bachicha's false assertions. These allegations were false. The TPD, including Defendants Vigil and Martin, had no probable cause to believe that Ms. Valdez sold drugs to CI Bachicha.

69. Ms. Valdez was falsely arrested outside of her home on December 19, 2013 in connection with the drug sting.

70. The charges against Ms. Valdez were not dismissed until June 2014.

71. Because of the arrest, Ms. Valdez was terminated from her job with the Trinidad school system.

72. Because of the arrest, Ms. Valdez, along with her children, was immediately evicted from her section 8 housing.

73. Ms. Valdez was humiliated publicly because of the arrest. Ms. Valdez's name and photograph were in the Trinidad newspaper along with other arrestees. Because of the unconstitutional arrest, Ms. Valdez has suffered emotionally. She lives in fear of being arrested again for a crime she did not commit.

The Valdez Arrest Affidavit – Lack of Probable Cause and False and Misleading Statements and Omissions

74. Defendants Vigil and Martin are the affiants who signed the Valdez Arrest Affidavit and submitted it to District Court Judge Leslie J. Gerbracht on December 18, 2013, in order to obtain a warrant for Ms. Valdez's arrest.

75. The Valdez Arrest Affidavit, on its face, as submitted, failed to provide probable cause to believe that Ms. Valdez sold drugs to CI Bachicha.

- a. The Valdez Arrest Affidavit turns on the hearsay report provided to Defendants Vigil and Martin by CI Bachicha. The Valdez Arrest Affidavit contains no statement, however, that CI Bachicha is reliable or had provided reliable information to the TPD detectives in the past. Indeed, Defendants Martin and Vigil had no basis to make any assertion that CI Bachicha had demonstrated her trustworthiness.
- b. When an affidavit fails to demonstrate that the CI is credible and reliable, a court cannot credit the CI's hearsay unless it is independently corroborated and/or if the CI's hearsay account provides such richness of detail that it is deemed credible even without corroboration.
- c. The Valdez Arrest Affidavit does not provide richness of detail. Indeed, the absence of detail is startling.
- d. Likewise, the Valdez Arrest Affidavit fails to provide independent corroboration of CI Bachicha's hearsay accusations.

76. Reasonably well-trained officers would have known that the Valdez Arrest Affidavit, as written, was wholly lacking in indicia of probable cause and should not have been submitted to a judge.

77. Moreover, Defendants Vigil and Martin obtained the warrant for Plaintiff Valdez by submitting an arrest affidavit that they knew 1) contained false and misleading assertions of fact; and 2) omitted material facts. Had Defendants Vigil and Martin included the omitted facts and corrected the false and misleading statements, the absence of probable cause would have been crystal clear, and the judge would not have issued the warrant.

78. Defendants Vigil and Martin intentionally omitted all material information from the Valdez Arrest Affidavit that reflected adversely on CI Bachicha's credibility, her reliability, and her motivations for providing information to the TPD as a CI. The intentionally omitted information included the following:

- a. CI Bachicha's criminal record included at least three separate felony convictions and a sentence to the Department of Corrections.
- b. At the time CI Bachicha agreed to become an informant and before the 2013 drug sting, she faced two additional felony counts of attempting to obtain a controlled substance by fraud or deceit, a charge in which lying is an element of the crime.
- c. CI Bachicha agreed to work as a CI in return for, among other rewards, dismissal of the pending felony charges.
- d. While CI Bachicha was making buys for the TPD, she was arrested in Raton, New Mexico, on yet another felony charge of attempting illegally to obtain prescription drugs by fraud, providing additional indications of her lack of reliability and credibility.
- e. CI Bachicha was paid for each drug buy she claimed to have made, and the total payout to her amounted to \$3,085.

- f. CI Bachicha has a history of illegal drug use.
- g. Defendants had evidence strongly suggesting that CI Bachicha was actively using illegal drugs while working as a CI. Her drug use was a direct violation of her contractual pledge (signed as a condition of working as a CI) to refrain from illegal drug use. Her drug use showed not only that she was deceiving the detectives when she pledged to refrain, but it also cast doubt on her ability to accurately perceive and recount details of the transactions she was carrying out for the Defendants. CI Bachicha's drug use also suggested that she could be motivated to use her position as a CI to skim drugs or money to feed her habit. Nevertheless, Defendants Vigil and Martin and the TPD chose to ignore CI Bachicha's deception and chose not to require CI Bachicha to submit to drug testing at any time.
- h. CI Bachicha claimed that she arranged or carried out drug buys from three separate individuals whom Defendants Vigil and Martin and the TPD knew CI Bachicha and her brother had been charged with attempting to murder a few years earlier. Although the attempted murder charges against CI Bachicha were eventually dismissed, her brother was convicted and is serving a lengthy prison sentence. CI Bachicha's assertion that persons who earlier testified against her and her brother would be willing to sell her illegal drugs is not credible. It also suggests that the lure of settling personal scores was an additional motivation for her activities as a CI.

- i. Defendants Vigil and Martin were aware of the foregoing facts at the time they executed the Valdez Arrest Affidavit, and they intentionally omitted those facts from the Valdez Arrest Affidavit.

79. As explained earlier, Defendants Vigil and Martin prepared and maintained a book or books of photographs of suggested targets of the drug sting, and they showed this book of photographs to the CIs. The CIs were thus motivated to report to Defendants Vigil and Martin that they had purchased drugs from persons in this photo collection. On information and belief, Ms. Valdez was among the suggested targets. Defendants Vigil and Martin deliberately omitted from the Valdez Arrest Affidavit any mention of the fact that CI Bachicha had previously reviewed photographs of suggested targets, including Ms. Valdez.

80. On information and belief, Defendants Vigil and Martin knew of the long-standing acrimonious relationship between CI Bachicha and Ms. Valdez. This information would have provided the judicial officer a basis for concluding that CI Bachicha was using her position as a CI to settle personal scores. Defendants Vigil and Martin deliberately omitted this information from the Valdez Arrest Affidavit.

81. The Valdez Arrest Affidavit contains additional material omissions regarding the assertions that CI Bachicha and her vehicle were searched prior to the alleged buys and after the alleged buys. Pursuant to the TPD's custom and policy, the Valdez Arrest Affidavit contains a boilerplate assertion that these searches were conducted immediately before the CI received the buy money from the detectives and immediately after the CI turned over the drugs she claimed to have purchased. It contains the boilerplate assertion that no drugs, contraband, or money were found. These assertions are designed to convey the impression that the supervising detectives are ensuring that the CI is not skimming money or drugs, and that the drugs she provides to the

detectives must have come from the suspect rather than from another source or even the CI herself. The Valdez Arrest Affidavit omits a critical material fact revealed in testimony during several preliminary hearings: the searches of CI Bachicha's person were merely cursory patdowns of the outer clothing. Such patdown searches will not detect cash or small bindles of drugs hidden in the CI's underwear. Similarly, the Valdez Arrest Affidavit omits a material fact regarding the searches of CI Bachicha's vehicle: the searches were so quick and so cursory that they did not and could not ensure that the CI was not concealing money or drugs.

82. When they executed the Valdez Arrest Affidavit, Defendants Vigil and Martin were well aware of the omitted facts described in the preceding paragraphs. They intentionally or recklessly omitted these facts from the Valdez Arrest Affidavit.

83. The Valdez Arrest Affidavit conveys the false and misleading impression that Defendants Vigil and Martin are reporting firsthand observations linking Ms. Valdez to the alleged drug buy, when in fact the only information suggesting such a link to the alleged drug buy was the uncorroborated allegations of a patently unreliable CI.

84. For example, the Valdez Arrest Affidavit states that on October 10, 2013, CI Bachicha arrived at McDonald's "and met with Valdez." Although Defendants Vigil and Martin present as though they are relating firsthand observations, neither they nor the TPD had firsthand knowledge that CI Bachicha went to McDonald's, nor did they have any firsthand knowledge that CI Bachicha met with Ms. Valdez.

85. Similarly, the Valdez Arrest Affidavit states that on October 15, 2013, CI Bachicha arrived at the Family Seed Restaurant and met with Ms. Valdez. The Valdez Arrest Affidavit asserts that Valdez exited the restaurant from a specific west-facing door. Neither Defendants Vigil and Martin nor the TPD, however, had firsthand knowledge that CI Bachicha

went to the Family Seed Restaurant, nor did they have any firsthand knowledge that CI Bachicha met with Ms. Valdez.

86. Instead, Defendants Vigil and Martin relied on uncorroborated hearsay of CI Bachicha – whose credibility was in serious doubt – to establish each of the facts recounted in the previous two paragraphs. Neither Defendants Vigil or Martin nor the TPD took meaningful efforts to corroborate (or disprove) CI Bachicha’s assertions linking Ms. Valdez to the alleged drug deals. Yet, the Valdez Arrest Affidavit is written to falsely convey the impression that the TPD had some independent knowledge of these facts.

87. The Valdez Arrest Affidavit includes additional false statements in its report of what Defendants Vigil and Martin claim they heard over the audio transmitter that CI Bachicha carried. These false characterizations of the audio were designed to convey the false impression that the TPD had some independent knowledge that Ms. Valdez was present at the scene and sold drugs to CI Bachicha.

88. For example, in an apparent effort to provide partial corroboration of the CI Bachicha’s claim that a transaction involving \$200 took place on October 15, Defendants Vigil and Martin state that CI Bachicha said “Hi, here’s 200, geez, you could at least say hi.” Defendants Vigil and Martin further state that “Valdez” replied “hi.” The audio, which was recorded, does not support Defendants Vigil and Martin’s false statement that CI Bachicha said “here’s 200.” No voice on the recording utters any words that could be construed (or even mistakenly misconstrued) as “here’s 200.” Without that false statement that CI Bachicha said “here’s 200,” the Valdez Arrest Affidavit’s excerpt of the audio provides no support for CI Bachicha’s report that any transfer of money took place at all, let alone a transaction involving drugs.

89. Moreover, neither the audio nor any other facts in the Valdez Arrest Affidavit provides any basis for attributing the response of “hi” to Ms. Valdez. Defendants Vigil and Martin misleadingly recount this communication as being between CI Bachicha and “Valdez,” even though Defendants Vigil and Martin had no basis to believe CI Bachicha was communicating with Ms. Valdez, other than CI Bachicha's uncorroborated hearsay. Again, Defendants Vigil and Martin give the false and misleading impression that they had some independent basis for placing Ms. Valdez at the scene of the alleged drug buy when, in fact, they did not.

90. Defendants Vigil and Martin intentionally, or with reckless disregard for the truth, included in the Valdez Arrest Affidavit the false and misleading statements described above.

The Corrected Affidavit Does Not Provide Probable Cause

91. The false statements and intentional omissions recounted above were material. With the false statements corrected and the omitted facts included, the corrected Valdez Arrest Affidavit clearly does not establish probable cause. Indeed, any reasonably well-trained officer would have known that the Valdez Arrest Affidavit, as corrected, was wholly lacking in indicia of probable cause. On the basis of a corrected affidavit, the judge would not have issued the warrant to arrest Ms. Valdez for the following reasons, among others:

- a. The Valdez Arrest Affidavit did not contain any statement asserting that CI Bachicha was reliable as a CI or that CI Bachicha had provided reliable information in the past.
- b. Defendants Vigil and Martin did not, in fact, have any basis to assert that CI Bachicha had provided reliable information in the past or that she had done so in connection with the information contained in the Valdez Arrest

Affidavit. Without any statements asserting or demonstrating the informant's credibility or reliability, a court evaluating the corrected Valdez Arrest Affidavit could not credit the CI's hearsay unless the affidavit provided sufficient independent corroboration or some other basis for concluding that the CI's hearsay statements should be believed.

- c. The corrected Valdez Arrest Affidavit provides no such corroboration. Indeed, neither Defendants Vigil or Martin nor the TPD attempted meaningful efforts to corroborate or disprove CI Bachicha's allegations. Nor does the corrected Valdez Arrest Affidavit provide any other basis for crediting the CI Bachicha's hearsay.
- d. Moreover, when the corrected Valdez Arrest Affidavit includes the omitted information described above, including the CI Bachicha's lack of credibility, drug use, record of fabrication, deception of law enforcement, and possible motives to use her position as a CI to settle scores, it provides ample grounds to affirmatively distrust CI Bachicha's uncorroborated statement that she purchased drugs from the particular person she accused.

Malicious Prosecution of Ms. Valdez

92. Defendants Vigil and Martin and the TPD performed obviously unreliable investigative work and intentionally and maliciously caused the arrest and prosecution of Ms. Valdez without probable cause to believe she had committed a crime.

93. If Defendants Vigil and Martin and the TPD had engaged in the most basic of police work, they would have known CI Bachicha's allegations that Ms. Valdez sold her drugs were false. The two alleged transactions purportedly took place in public at two restaurants. Had

the TPD simply surveilled the scenes they would have known Ms. Valdez's innocence.

Defendants Vigil and Martin and the TPD intentionally failed to take basic steps to observe the scene of the supposed drug buys or do anything else to corroborate basic facts about CI Bachicha's and Ms. Valdez's whereabouts when the drug buys were occurring.

94. Likewise, Defendants Vigil and Martin and the TPD did not review, retain, or preserve CI Bachicha's phone records related to the advance arrangements she claimed to have made for the alleged buys, even when they knew that CI Bachicha claimed that she used phone calls and text messages from her cell phone to make the arrangements. Instead of engaging in this type of basic police work, Defendants Vigil and Martin chose to take CI Bachicha at her word.

95. At the beginning of the drug sting, Defendants Vigil and Martin, or other TPD officers working under their direct supervision, showed their CIs pictures of individuals in a book maintained by the TPD in order to suggest to the CIs potential targets for drug arrests. The CIs were thus motivated to report to the TPD that they had purchased drugs from persons in this photo collection.

96. Defendant Martin, or individuals acting under his direction and supervision, intentionally destroyed one or more of the books containing the photographs of potential drug sting targets, thus preventing it from being made available for the defense of individuals arrested in the drug sting.

97. Defendants Vigil and Martin knew that CI Bachicha was unreliable as a CI but, nonetheless, they arrested Ms. Valdez based on the uncorroborated word of CI Bachicha. Defendants Vigil and Martin and the TPD did not conduct a basic investigation to determine what the existing connection, if any, was between their CIs and their targets. Either Defendants

Martin and Vigil already knew, or such an investigation would have revealed, that CI Bachicha and Ms. Valdez knew each other in the past and that CI Bachicha was biased against Ms. Valdez.

98. Defendants Vigil and Martin and the TPD did not perform thorough searches of CI Bachicha's person or vehicle before or after the alleged drug buys involving Ms. Valdez. In fact, the searches of her person and her vehicle were so cursory that CI Bachicha could easily have concealed drugs or money without detection. Defendants Vigil and Martin knew that the searches that they and/or the TPD conducted did not eliminate the possibility that CI Bachicha already possessed the drugs that she would later accuse Ms. Valdez of selling or that CI Bachicha still had possession of the buy money when she returned with the allegedly purchased drugs.

99. Defendants Vigil and Martin and the TPD did not drug test CI Bachicha at any time during her work as an informant, including on the days of the alleged buys and on the day she identified Ms. Valdez as a drug dealer using a photo lineup, even though the TPD knew she was a drug user.

100. Defendants Vigil and Martin and the TPD knew that CI Bachicha was not being truthful or credible about her buys because of obvious discrepancies in the amounts of drugs she claimed to have purchased for different amounts of money. For example, the Valdez Arrest Affidavit states that 1 gram of methamphetamine cost \$250 on October 10, 2013 but 1.6 grams of methamphetamine cost \$200 on October 15, 2013. Defendants Vigil and Martin knew that these discrepancies suggested either that the drug buys did not occur as CI Bachicha had claimed, or that CI Bachicha was skimming money or drugs for herself. This is just one of the many red flags regarding CI Bachicha's untrustworthiness that Defendants Martin and Vigil and the TPD chose to ignore.

101. In pursuing the arrest of Ms. Valdez without probable cause, Defendants Vigil and Martin intentionally or recklessly disregarded readily available exculpatory evidence, including evidence that seriously undermined the credibility of her accuser, CI Bachicha. They intentionally or recklessly turned a blind eye to multiple red flags indicating that CI Bachicha was unworthy of their trust. Reasonably well-trained officers would have known that they should not have applied for a warrant. Nevertheless, as described in paragraphs 74 to 91 above, Defendants Vigil and Martin submitted an arrest affidavit with intentionally or recklessly false or misleading statements of fact and intentional or reckless omissions of material facts that would have vitiated probable cause.

102. Defendants Vigil and Martin's conduct as described herein was sanctioned by the TPD. The TPD has made the conscious choice not to have a policy governing the use, supervision of, and reliance on CIs to support drug arrests, even in the face of historical problems regarding the credibility and reliability of CIs.

Customs, Policies, and/or Practices of the TPD

103. The acts and omissions of Defendants Martin and Vigil described above were carried out in accordance with, pursuant to, and consistent with the customs, policies, and practices of the TPD.

104. The deficient, false, and misleading affidavits that Martin and Vigil submitted to procure the arrest of the Plaintiffs were drafted and submitted in accordance with, pursuant to, and consistent with the customs, policies, and practices of the TPD, as evidenced by the 40 affidavits that TPD officers submitted to the court to procure the arrests in the December, 2013, drug sting. These affidavits, with few exceptions, reflect the same deficiencies that characterize

the affidavits seeking the arrest of the Plaintiffs, described above in paragraphs 33 to 50 and 74 to 91, including the following:

- a. The affidavits intentionally omit all information about the CI's motivations for providing information. Thus, the affidavits conceal information about the informant earning a favorable resolution of multiple pending criminal charges and the informant's receipt of substantial financial rewards for providing information.
- b. The affidavits intentionally omit the plethora of information known to the TPD that reflects adversely on the informant's reliability, credibility, and biases. Thus, the affidavits conceal the informant's criminal record and history of drug use as well as information known to the police that would reveal the informant's personal biases against particular targets. All of the affidavits seeking arrests on the basis of CI Bachicha's accusations conceal the facts described above in paragraphs 38 and 78.
- c. The affidavits rely solely on the uncorroborated hearsay report of an informant with no demonstrated history of reliability as the only basis for linking a particular suspect to the drugs the informant claimed to have purchased.
- d. The affidavits make assertions of material fact that are presented, falsely and misleadingly, as if they are the first-hand observations of the police officer affiants when, in fact, the affiants are not reporting firsthand observations.

- e. Likewise, in references to audio transmissions the officers monitored, the affidavits state that a voice heard on the audio is the target of warrant, thus conveying the false impression that the TPD had independent knowledge that the target was present at the scene and sold drugs to the informant.
- f. The affidavits intentionally omit the fact that the TPD showed the informants books of photos of suggested targets that the TPD had compiled, often based on nothing more than an anonymous phone call, thus providing the informant with a motive for targeting particular persons.
- g. The affidavits include boilerplate statements saying that the informant and her vehicle were searched both before and after the buy and that no money or contraband was found, but they omit details that would reveal that the searches were so cursory that the informant could easily conceal money or drugs without detection.
- h. The affidavits omit all information about how the CIs came to know or select their targets or how they gained their targets' confidence.
- i. The affidavits assert that the detectives conducted a "field test" on purported street drugs, along with the conclusory assertion that the "field test" was "positive." The affidavits provide no facts about the particular manufacturer or "brand" of the field test, its methodology, its purported reliability, the actual testing procedures carried out by the TPD, or the readings or results that prompt the TPD to conclude that the result was "positive." Thus, the affidavits provide the reviewing court with no

information that allows an assessment of whether the “field test” is worthy of being accorded weight in the probable cause analysis.

105. The obviously deficient and unreliable police work that resulted in the arrests and subsequent prosecution of the Plaintiffs was carried out in accordance with, pursuant to, and consistent with the customs, policy, and/or practices of the TPD. As reflected in the 40 separate affidavits seeking arrests in connection with the 2013 drug sting, as well as documents disclosed in the course of the prosecutions and testimony in court hearings, these customs, policies, and practices of the TPD include the following:

- a. Drafting and submitting arrest affidavits that omit material facts and also contain false and misleading assertions of material fact, as detailed more fully in paragraph 104, above;
- b. Deliberately overlooking obvious red flags of CIs’ use of illegal drugs, in violation of their contractual pledge to the TPD, and doing nothing to sanction the CIs for those violations;
- c. Creating financial incentives for a CI to falsely accuse others of selling drugs;
- d. Showing CIs pictures of individuals in a book maintained by the TPD in order to suggest to the CIs potential targets for the drug arrests, failing to disclose that information in arrest affidavits, and then later destroying the books, thus preventing them from being made available for the defense of individuals arrested in the drug sting;
- e. Relying on the hearsay of an unreliable CI as the only basis for linking a particular suspect to an alleged sale of drugs, without making any

reasonable efforts to corroborate the CI's accusations, even when the TPD has myriad reasons to doubt the credibility of the CI and even when potentially exculpatory information is readily available;

- f. Choosing not to obtain and investigate readily available and potentially exculpatory evidence, such as surveillance videos and the records of the CI's phone calls and text messages;
- g. Choosing to rely on unreliable field drug tests rather than reliable drug testing available from the Colorado Bureau of Investigation;
- h. Choosing not to investigate how the CI supposedly gained the confidence of particular targets sufficient for the targets to allegedly risk selling drugs to the CI or how the alleged drug buys were arranged;
- i. Choosing not to perform thorough searches of their CI's person or vehicle before or after the alleged drug buys and, instead, performing searches of the CI's person and vehicle that were so cursory and superficial that hidden drugs or money could easily escape detection; and
- j. Proffering to the court arrest affidavits knowing or with reckless disregard for the fact that there was not probable cause supporting the arrest.

106. The TPD made the conscious choice to have no policy regarding the use, supervision of, and reliance on confidential informants, even in the face of historical problems regarding the supervision and credibility of confidential informants.

107. The customs, policies, and practices of the TPD alleged herein are the customs and policies of the Defendant City of Trinidad.

FIRST CLAIM FOR RELIEF
(42 U.S.C. § 1983; Violations of the Fourth Amendment)
Against Defendants Vigil and Martin

108. Plaintiffs incorporate by reference as if fully rewritten herein all of the foregoing allegations in this Complaint.

109. Defendants Vigil and Martin wrote, signed, and submitted affidavits to the court in order to obtain warrants for the Plaintiffs' arrests.

110. The arrest affidavits that Defendants Vigil and Martin submitted, as written and presented to the court, were so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. Reasonably well-trained officers would have known that the affidavits failed to establish probable cause and that they should not have applied for the warrants.¹

111. Defendants Vigil and Martin knowingly or with a reckless disregard for the truth caused arrest warrants for Plaintiffs to issue by submitting the affidavits that contained material falsifications and/or misleading statements and omitted material information that would have vitiated probable cause.²

112. Had Defendants Vigil and Martin not included the material falsifications and/or misleading statements and had they included the material omissions, the corrected affidavits would not have supported a finding of probable cause and no arrest warrants for Plaintiffs would have issued. The corrected affidavits clearly would have been so lacking in indicia of probable cause that no reasonably well-trained officer could have believed that they established probable cause.

¹ See *Malley v. Briggs*, 475 U.S. 335, 345 (1986); *United States v. Leon*, 468 U.S. 897, 923 (1984).

² See *Franks v. Delaware*, 438 U.S. 154 (1978); *Stewart v. Donges*, 915 F.2d 572 (10th Cir. 1990).

113. Based upon the unlawful arrest warrants, Defendants Vigil and Martin caused Plaintiffs' unlawful arrests and the commencement of an unlawful prosecution against Plaintiffs for various alleged drug crimes.

114. Plaintiffs, then, were subject to unlawful arrest and imprisonment in violation of the Fourth Amendment of the United States Constitution.

115. Defendants Vigil and Martin's conduct alleged herein violated Plaintiffs' clearly established rights under the Fourth Amendment.

116. Plaintiffs are entitled to declaratory relief, compensatory and punitive damages, an award of reasonable costs and attorneys' fees, and such other relief as the Court deems just and proper.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983; Malicious Prosecution; Fourth Amendment)

Against Defendants Vigil and Martin

117. Plaintiffs incorporate by reference as if fully rewritten herein all of the foregoing allegations in this Complaint.

118. Defendants Vigil and Martin commenced, or caused to be commenced, a criminal prosecution without probable cause against Plaintiffs. Plaintiffs' arrests, continued confinement, and prosecution were brought about because of the material falsifications and/or misleading statements and material omissions Defendants Vigil and Martin made in their arrest affidavits presented to the court.

119. The criminal prosecutions ultimately terminated in Plaintiffs' favor by the dismissal of their cases.

120. As fully alleged herein, there was no probable cause to support the arrest affidavits submitted by Defendants Vigil and Martin, which ultimately led to Plaintiffs' arrest,

continued confinement, and/or prosecution. Thus, there was no probable cause to support Plaintiffs' arrest, continued confinement, and/or prosecution.

121. Defendants Vigil and Martin acted with malice when engaging in the conduct alleged herein.

122. Defendants Vigil and Martin's conduct alleged herein violated Plaintiffs' clearly established rights under the Fourth Amendment.

123. Plaintiffs are entitled to declaratory relief, compensatory and punitive damages, an award of reasonable costs and attorneys' fees, and such other relief as the Court deems just and proper.

THIRD CLAIM FOR RELIEF MUNICIPAL LIABILITY

(42 U.S.C. § 1983; Fourth Amendment; Custom Policy, or Practice (*Monell*³ Claims))
Against Defendant City of Trinidad, Colorado

124. Plaintiffs incorporate by reference as if fully rewritten herein all of the foregoing allegations in this Complaint.

125. The customs, policies, and practices of the TPD, detailed above, are the customs and policies of the Defendant City of Trinidad.

126. In drafting and submitting the affidavits seeking the arrest of the Plaintiffs, Defendants Martin and Vigil were acting in accordance with, pursuant to, and consistent with the customs, policies, and practices of the TPD and the Defendant City of Trinidad. The customs, policies, and practices of the Defendant City of Trinidad are responsible for the submission of the deficient, false, and misleading affidavits that procured and caused the arrest of the Plaintiffs, as alleged in Claim 1, in violation of the Fourth Amendment. The Defendant City of Trinidad is liable for the violations of Plaintiffs' constitutional rights that are alleged in Claim 1.

³ *Monell v. Dept. of Social Servs. of the City of New York*, 436 U.S. 658 (1978).

127. The obviously deficient and unreliable police work that resulted in the arrest of the Plaintiffs in the 2013 drug sting, and their subsequent prosecution, was carried out in accordance with, pursuant to, and consistent with the customs, policies, and practices of the TPD and the Defendant City of Trinidad. The customs, policies, and practices of the Defendant City of Trinidad caused the malicious prosecution of the Plaintiffs and caused them to be arrested and prosecuted without probable cause, as alleged in Claim 2, in violation of the Fourth Amendment. The Defendant City of Trinidad is liable for the violations of the Plaintiffs' rights that are alleged in Claim 2.

128. Accordingly, Plaintiffs are entitled to declaratory relief, compensatory damages, an award of reasonable costs and attorneys' fees, and such other relief as the Court deems just and proper.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for relief as follows:

129. An award of compensatory damages;

130. An award of punitive damages;

131. An award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and all applicable law;

132. Interest from the date of each violation;

133. A declaration that the conduct of the Defendants in connection with the drug sting was unconstitutional;

134. Any further or other relief the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury in this matter.

Dated this 8th day of January, 2015

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