

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

**KATHERINE HAN-NOGGLE**, as daughter  
and Next of Kin to **MARY Y.C. HAN**, Deceased,  
**ELIZABETH WALLBRO**, as Personal  
Representative of the Estate of **MARY Y.C. HAN**,

Plaintiffs,

v.

No.: 2013-CV-00894 CG/GBW

**THE CITY OF ALBUQUERQUE; DARREN WHITE**, in his individual and official capacity as Public Safety Director for the City of Albuquerque; **ROBERT PERRY**, in his individual capacity and official capacity as the City Attorney; **CHIEF RAYMOND D. SCHULTZ**, in his individual and official capacity as the Chief of Police of the Albuquerque Police Department for municipal and supervisory claims; **DEPUTY CHIEF PAUL FEIST**, **DEPUTY CHIEF ELIZABETH PAIZ**, **DEPUTY CHIEF ALLEN BANKS**, in their individual and official capacities as supervisors and trainers within the Albuquerque Police Department; **MARC ADAMS**, in his individual and Official capacity as Manager, investigator, and trainer of the Albuquerque Police Department Crime Lab, **FIELD INVESTIGATOR MICHAEL MUNIZ**, in his individual and official capacity, **OFFICER TRICIA K. HOFFMAN**, in her individual and official capacity, and **TODD J. WILHAM**, Albuquerque Police Department Public Information Officer in his individual and official capacity; and **JOHN DOES 1-2**;

Defendants.

**VERIFIED THIRD AMENDED COMPLAINT FOR VIOLATIONS OF CIVIL RIGHTS AND SUPPLEMENTAL CLAIMS UNDER STATE LAW**

COMES NOW the Plaintiff, Katherine Han-Noggle, as daughter and next of kin to Mary Y.C. Han, Deceased, and Elizabeth Wallbro, as Personal Representative of the Estate of Mary Y.C. Han by counsel, Vega Lynn Law Offices, LLC (Rosario D. Vega Lynn), and for their complaint against the Defendants states as follows:

## **I. INTRODUCTION**

Plaintiff, Katherine Han-Noggle, is the sole daughter and next of kin to Mary Y.C. Han, deceased. Plaintiff, Elizabeth Wallbro, is Ms. Han's sister and the personal representative of the Estate of Mary Y.C. Han.

Since 1985, Ms. Han was a tireless, tenacious advocate for the rights of under-represented people and the Constitutional rights of all. During her long career, Ms. Han represented a wide variety of clients to include the homeless, victims of elder abuse, men accused of vagrancy, police officers, judges, and politicians. Shortly before she died, Ms. Han also filed suit against the Albuquerque Police Department ("APD") for the civil rights violations of several women charged with prostitution. The lawsuit was covered extensively by local media and Ms. Han was interviewed many times.

On November 18, 2010, APD Officers Tim Lonz and Jacob Welch were dispatched to Ms. Han's home after her law partner, Paul Kennedy, called 911 to report he found Ms. Han in her vehicle in the garage of her home and that she had committed "accidental suicide". The 911 operator contacted an Albuquerque Fire Department paramedic who dispatched emergency medical services ("AFD EMS") to the home. Upon arrival to Ms. Han's home, Officers Lonz and Welch began to follow APD standard operating procedures for an unattended death. AFD paramedics arrived on scene at the same time as Officers Lonz and Welch. After verifying that Ms. Han was deceased, AFD EMS personnel pulled back from the area immediately identifying the area as a possible crime scene.

Shortly thereafter, Mr. Kennedy left the scene. Sometime after that, several high-ranking members of the APD and high-ranking civilian employees of the City of Albuquerque, including

Defendants Darren White and Rob Perry, arrived on scene. Despite APD SOPs requiring scene preservation and crime scene integrity, APD personnel as well as high-ranking civilian City of Albuquerque personnel allowed *at least twenty-six* individuals and *as many as fifty* individuals to trample the scene; thus, contaminating any evidence and preventing any party from conducting an effective investigation.

Within five minutes of his arrival, and without a factual or evidentiary basis, Defendant Paul Feist ordered personnel to process Ms. Han's death a suicide. (Personnel from the Office of the Medical Investigator at the scene did not state that Ms. Han died from suicide.) At that point, APD shut down the unattended death investigation begun by Officers Lonz and Welch and APD's homicide and criminalistics units were not called to the scene. Ironically, Defendant Feist never officially assumed control of the scene. In fact, despite the omnipresence of a number of high-ranking civilian and police personnel, there was a clear absence of leadership by any specialized department and agency head. While not physically present, Defendant Schultz was speaking with Defendants White, Adams, Banks and Hoffman using his wife's mobile phone.

Defendants White, Perry, Feist, Paiz, Banks, Adams, Schultz, Hoffman and John Does 1-2 prevented an investigation from being conducted despite the requirement to treat an unintended death as a possible homicide and interviewing people who possess information as well as the processing and collection of physical evidence. Further, Defendants interfered with the crime scene by contaminating evidence as they and others went thru many areas of Ms. Han's house. APD made no effort to restrict access to Ms. Han's residence to only those with a legitimate reason for entering or to obtain a valid search warrant. In the interim, Ms. Han's expensive diamond rings, personal mobile phone and laptop computer went missing with no documentation.

Because of the rush to judgment in declaring Ms. Han's death a suicide, no investigation suitable for an unattended death was conducted: Specifically, neighbors, family, and close friends were not interviewed. Physical evidence was not collected. Fingerprints were not preserved. No effort was made to determine the identity and interview the last person who may have seen Ms. Han alive.

This case concerns Defendants' interference with Plaintiffs' ability to obtain justice in the courts, intentional deflection of investigative inquiry, refusal to investigate, refusal to acknowledge and avoid investigative conflict of interest and the fundamental right to know and learn the truth.

APD should be deterred from similar action in future cases.

## **II. PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, Katherine Han-Noggle, is the daughter and next of kin to her mother, Mary Y.C. Han and a resident of the State of New York.
2. Plaintiff, Elizabeth Wallbro, is the personal representative of the Estate of Mary Y.C. Han and a resident of Bernalillo County, State of New Mexico.
3. Mary Y.C. Han (hereinafter "Ms. Han") was found deceased on or about November 18, 2010 in Bernalillo County, New Mexico.
4. Defendant City of Albuquerque is a political subdivision and governmental entity of the State of New Mexico that employs and is charged with exercising direct supervisory control over all APD Defendants during the time period relevant to this Complaint.
5. The City of Albuquerque is responsible for the hiring, retention, training, supervision, investigation, and discipline of its police officers and supervisors, and for the promulgation of policies and procedures that govern conduct of its police officers, both on and off duty. It

also includes investigation and supervision of conduct unbecoming of officers of the law and violation(s) of the Code of Conduct by personnel.

6. On or about November 18, 2010, Defendant Darren White was employed by the City of Albuquerque as Public Safety Director and, upon information and belief, resides in Bernalillo County, New Mexico. On December 7, 2009 during his confirmation as public safety director White was questioned by members of the City Council and stated that he was “the boss” of Albuquerque Police Chief Ray Schultz. It was White’s duty to oversee the police and fire chiefs and, as their boss, he was the final authority and decision-maker regarding the conduct of APD’s highest-ranking officials. Unlike his predecessor, who was supervised by the City’s Chief Administrative Officer, White was the only department director in the city to operate with full autonomy and no oversight by the CAO – directly reporting only to Mayor Richard Berry.
7. On or about November 18, 2010, Defendant Robert Perry was employed as the City Attorney and, upon information and belief, resides in Bernalillo County, New Mexico. Mr. Perry’s duties as City Attorney include but are not limited to working closely with Mayor Berry and the City Council “on matters of concern to the governing body” and to “avoid all conflicts of interest.”
8. Mr. Perry’s duties as City Attorney did not include being present at unattended death scenes.
9. Defendant APD Chief Raymond D. Schultz (hereinafter “Chief Schultz”) was appointed by Mayor Berry and is directly responsible for the efficient conduct and operation of APD. Schultz retired from APD on August 3, 2013.
10. At all times relevant, Chief Schultz was ultimately responsible for all hiring, retention, training, investigation, discipline and supervision of officers, promoting supervisors, as well

as for the implementation and promulgation of all policies, procedures, customs and usages of APD or the “checking” and “correcting” of customs and usages that cause foreseeable harm or destruction.

11. For over 15 years, APD has been accredited through the Commission on Accreditation for Law Enforcement Agencies (“CALEA”) which requires participating law enforcement agencies to achieve higher standards than nonaccredited departments to include submitting self-evaluations.
12. The policies and procedure promulgated by APD are contained in the Standard Operating Procedures (“APD SOPs”) and must be utilized by department personnel.
13. The APD SOPs are written directives issued by the Chief of Police as authorized by the City of Albuquerque, and remain in full force and effect until amended or rescinded directly by the Chief. APD personnel do not have the discretion of choosing which SOPs to follow and which to ignore.
14. Even though Defendant White was in a superior position of authority than Chief Schultz, White did not have any authority over the creation of or the carrying out of the SOPs including the process of investigating an unattended death.
15. Defendants Deputy Chiefs Paul Feist, Elizabeth Paiz, and Allen Banks were employed by APD on or about November 18, 2010 and, upon information and belief, reside in Bernalillo County, New Mexico.
16. As Deputy Chiefs, Feist, Banks and Paiz were required to possess excellent and personal working knowledge of the APD SOPs and APD Department policies.
17. APD SOPs require police officers to protect the rights of those persons with whom they have contact as provided for in the Constitution of the United States, the Statutes of the State of

New Mexico, and the Ordinances of the City of Albuquerque: “Personnel shall obey, and to the best of their abilities, protect the rights of the people as provided in the Constitution of the United States.”

18. The APD SOPs include procedures for scene investigations to include unattended death, and the code of conduct for on and off duty officers.
19. Per the APD SOPs, Deputy Chiefs are responsible for the efficient operation of the functions of their assigned bureaus, divisions, sections, and units under their respective commands.
20. On or about November 18, 2010, Defendant Paiz was employed as Deputy Chief for the Investigations Bureau. Paiz retired from APD on May 11, 2012.
21. On November 18, 2010, Defendant Paiz was the supervisor for Defendants Feist, Adams and Muniz.
22. On November 18, 2010, Defendant Banks was employed as Deputy Chief of the Support Bureau for APD and was responsible for the oversight of tactical units, homeland security and prisoner transport. On August 2, 2013, Defendant Banks was promoted to acting chief of the Albuquerque Police Department and announced his retirement on January 29, 2014.
23. On November 18, 2010, Defendant Feist was the Commander of the Scientific Evidence Division (“SED”) for APD.
24. As Commander, Defendant Feist assisted in drafting the SED policies and procedures for APD.
25. On behalf of APD, Defendant Feist approved the SED SOPs on or about August 6, 2009.
26. APD SOPs state that the mission of SED is to provide high quality, modern scientific and technical support in the processing, collection, preservation and analysis of evidence to all areas of APD.

27. On November 18, 2010, Defendant Feist deliberately violated the SED guidelines he authored and promulgated by, at least in part:
- (a) declaring that Ms. Han's death was a suicide,
  - (b) ordering all personnel to proceed as if it were a suicide,
  - (c) limiting the investigation by ordering all personnel to proceed as if it were a suicide,
  - (d) permitting unauthorized personnel to view Ms. Han in her deceased state,
  - (e) not enforcing the SED procedures regarding investigations of unattended deaths,
  - (f) failing to act in any official capacity.
28. On December 18, 2010, Defendant Feist was promoted to Deputy Chief of the Investigative Bureau which oversees SED and Defendant Paiz was reassigned to Field Services.
29. On November 18, 2010, Defendant Tricia K. Hoffman was employed as a certified officer by APD and was assigned as a public information officer.
30. Defendant Marc Adams is a civilian employed by APD as the director of SED and, upon information and belief, resides in Bernalillo County, New Mexico.
31. On November 18, 2010, Defendant Adams had knowledge of proper crime scene procedure as the SED director.
32. On November 18, 2010, Defendant Michael Muniz was employed as a certified officer by APD and assigned as a field investigator to SED.
33. On November 18, 2010, Defendant Todd J. Wilham (also known as "TJ Wilham") was employed as a civilian public information officer for APD and, upon information and belief, resides in Bernalillo County, New Mexico.
34. Defendant White was Wilham's supervisor on November 18, 2010.
35. Defendants John Does 1-2 are individuals who acted as state actors and/or may have



conspired to have the unattended death investigation stopped, allowed individuals to contaminate the crime scene and/or deprive Plaintiffs and/or Ms. Han's estate of due process and access to the courts as asserted in the allegations contained herein.

36. All of the acts complained of herein occurred in Bernalillo County, New Mexico.
37. Plaintiffs have complied with the New Mexico Tort Claims Act, NMSA 1978, §41-4-1 *et seq.* and the public bodies had actual notice.
38. This Court has jurisdiction over the parties and subject matter. Venue is proper in this Court.

**Preservation of Rights by Ms. Han's Estate**

39. Upon information and belief, Ms. Han had created a last will and testament prior to her death. However, at the time of her death and after, Ms. Han's Estate has been unable to locate a will.
40. Plaintiff, Katherine Han-Noggle, is Ms. Han's sole child and only statutory beneficiary of the Estate of Mary Y.C. Han, and should be the only beneficiary of her estate in the event this complaint results in any judgment or settlement against any Defendants on any theory of liability regardless of the results of the criminal or civil justice system's examination of the role of any City of Albuquerque and/or APD personnel known or unknown.
41. Mr. Paul Kennedy, Ms. Han's law partner, without consultation with Ms. Han's family, was appointed personal representative of the Estate on November 29, 2010. To the extent that any conveyances have taken place during the statutory time period contemplated in the New Mexico Fraudulent Conveyances Act, or other applicable law, and in the event of a judgment in this case, Plaintiffs will pursue all options available to them as the beneficiary and/or personal representative of the estate.
42. Plaintiff Han-Noggle was appointed the personal representative of the Estate on September

22, 2011. Plaintiff Wallbro replaced Ms. Han-Noggle as personal representative of the Estate on August 16, 2012.

### **III. GENERAL ALLEGATIONS**

#### **Initial Response to 911 Call**

43. In the morning of November 18, 2010, Ms. Han's legal assistant informed Paul Kennedy (Ms. Han's law partner) that she had not heard from Ms. Han.
44. Ms. Han's standard practice was to send her assistant instructions along with a list of tasks to complete for the day via email either the night before or first thing in the morning.
45. On November 18, 2010, Mr. Kennedy went to Ms. Han's home and, at 12:37 p.m., let himself into Ms. Han's residence using a key he possessed for the home where Mr. Kennedy found Ms. Han dead in her car at which time he called the emergency line ("911") to report an "accidental suicide".
46. Mr. Kennedy, with the assistance of the 911 operator, informed emergency medical services personnel en-route to Ms. Han's residence, reported that he last saw Ms. Han the night before, November 17, 2010.
47. At 12:39 p.m., APD personnel (Officers Lonz and Welch) were dispatched to the scene by APD Dispatch (also known as "radio").
48. APD Dispatch coded Mr. Kennedy's call as "10-31" which is a "suspicious person or car" and a "priority 2" call.
49. Officer Welch arrived at the scene at 12:44:56 p.m.
50. The Albuquerque Fire Department ("AFD") personnel arrived at the scene at 12:45:05 p.m. and requested that they be advised once the scene was secure.
51. AFD requires APD to "secure the area, isolate, and deny entry".

52. Upon arrival, APD and AFD personnel found Mr. Kennedy standing outside the home and the garage door open.
53. Mr. Kennedy, an experienced criminal defense attorney, admitted to the 911 operator that he opened the garage door when he found Ms. Han in her vehicle, a BMW 330i.
54. Mr. Kennedy also told the 911 operator that he opened the driver's side door to the BMW 330i to check on Ms. Han when he found her and that she was not breathing, was "in rigor" and "stiff".
55. Mr. Kennedy also reported that, when he approached Ms. Han's car, all four windows were open at the time he opened the car door to check on Ms. Han.
56. Mr. Kennedy told the 911 operator that "the vehicle was not running when I got here but I guess it had been."
57. Mr. Kennedy told the 911 operator that, "it looks like an accidental suicide" and that Ms. Han had not been sick.
58. Mr. Kennedy also told the AFD EMS paramedic with whom he spoke via telephone that he last saw Ms. Han the night before.
59. Officer Welch informed APD Dispatch that Ms. Han was deceased at 12:45:46 p.m.
60. Acting Sgt. Matthew Hoisington arrived at the scene at 12:45:50 p.m.
61. In his supplemental report, Defendant Wilham, who was supervised by Defendant White, wrote that he was notified "shortly after 12:40 PM" by PIO Trish Hoffman that Mary Han had died inside her home and that he arrived at Ms. Han's residence "about 15 minutes later."
62. Officer Lonz arrived at the scene at 12:48:00 p.m.
63. Officer Lonz requested the phone number for OMI at 12:48:18 p.m.
64. Officers Lonz, Welch and Hoisington, along with AFD personnel, followed Mr. Kennedy

into the garage to observe the scene.

65. AFD personnel indicated that Mr. Kennedy led them to the garage of the residence where the “individual was obviously expired. Individual’s seat was reclined moderately and the driver’s side window and door was open.”
66. AFD personnel determined Ms. Han was “obviously deceased” and the area was “identified immediately” as a possible crime scene and turned over to APD for investigation and preservation of evidence.
67. Albuquerque Fire Department Standard Operating Guidelines state, “APD determines the cause and manner of deaths in cooperation with the Office of the Medical Investigator to whose office bodies are delivered at the direction of police.”
68. APD SOPs do not list “accidental suicide” in its standard police code; rather, APD lists “DOA” also known as “dead on arrival” and “suicide”. APD ranks both types of calls as “priority one”.
69. The New Mexico Office of the Medical Investigator (“OMI”) does not have a manner of death category of “accidental suicide,” instead OMI labels manner of death specifically as accident, suicide, homicide, or undetermined.
70. On November 18, 2010, OMI personnel at the scene did not state Ms. Han’s manner of death was suicide.
71. Officers Lonz and Welch authored police incident reports and listed the offense/incident as “unattended death/dead on arrival.”
72. APD SOPs require “unexplained death” to be both treated as and investigated in the same manner as a violent crime.
73. Ms. Han’s death was “unexplained” and “unattended” on November 18, 2010 when Mr.

Kennedy called 911.

74. After AFD personnel exited the garage, Officers Lonz, Welch and Hoisington entered the home again and observed Ms. Han in her vehicle.
75. Officers Lonz, Welch and Hoisington indicated the interior door leading to the garage was ajar and the garage door from the kitchen area was open several inches when they entered.
76. APD photographs show the driver's door was open by a few inches and Ms. Han's body was located in the driver's seat of the vehicle with her feet crossed and propped on the dashboard to the left side of the steering wheel. All windows to the vehicle were rolled down and the garage door was open by several inches.
77. APD photographs also show that the headlamp switch was in the "off" position.
78. After Mr. Kennedy and AFD personnel departed the scene, Officers Lonz, Welch and Hoisington determined the home was otherwise clear of personnel.
79. While in the home, Lonz kept insisting he smelled vehicle emissions and that they needed to leave the home soon.
80. Despite complaining about the strong odors, at no time did APD personnel request that AFD personnel take a meter reading of the carbon monoxide levels.
81. Lonz informed Hoisington that the call to Ms. Han's home was a "high priority" call and that he was concerned that the Chief and "DCs" (deputy chiefs) would be going to the home. Officer Lonz also said, "We don't need too many people down here right now. We don't need people tromping through the scene right now."
82. Lonz also told Hoisington he was concerned that the DCs (deputy chiefs) would "push themselves in" the home and Hoisington agreed.
83. At the scene, Hoisington commented to Lonz that Ms. Han's vehicle and personal belongings

appeared “expensive.” Hoisington also commented to Lonz that Ms. Han did not have the cherry red skin coloring regularly seen in carbon monoxide deaths via motor vehicle.

84. Lonz asked Hoisington if the redness on Ms. Han’s arm was the result of rigor and not carbon monoxide poisoning.

85. Lonz also asked Hoisington his opinion of what occurred at the home and the belt tape was turned off before Hoisington’s answer could be recorded.

86. APD SOPs require the dispatched field officers to be responsible for the crime scene until relieved by the field investigator.

87. Lonz requested radio “start FI” (field investigator) at 12:52:23 p.m.

88. Field Investigator Muniz (“FI Muniz”) was not dispatched to the home until 13:01:34 (1:01:34 p.m.)

#### **Phone Calls at Crime Scene**

89. At 1:02 p.m. Defendant Darren White received a telephone call from Fire Chief Breen. Upon information and belief Chief Breen had been briefed by his staff about the 911 call and his officers’ observations upon arriving at Ms. Han’s residence.

90. At 1:20 p.m. Defendant White received a call from Schultz which lasted for two minutes. Defendant Schultz utilized his wife’s (Connie Schultz) mobile phone to make the calls. Defendant White’s phone records show the call as “unavailable.”

91. Immediately after hanging up the call from the unavailable number, Defendant White telephoned Defendant Rob Perry.

92. After finishing the call with Defendant Perry, Defendant White telephoned Schultz.

93. While on the telephone with Defendant Schultz, White received several incoming calls in rapid succession from Defendant TJ Wilham (3 calls) and Defendant Allen Banks (2 calls).

Defendant White's flurry of activity occurred within 10 minutes of receiving the telephone call from Connie Schultz's mobile phone.

94. Subsequent to and during these phone calls, high-ranking civilian and APD personnel began arriving at Ms. Han's residence.

95. In his supplemental report, Defendant Wilham reported that, about 45 minutes after he arrived at the Han residence, he was asked to move Defendant White's vehicle to serve as a screen to block the public's view at the scene.

96. White, in his own supplemental report, acknowledged speaking with Mr. Kennedy while at Ms. Han's residence by phone and in person.

97. On November 18, 2010, Chief Schultz was in telephone communication with Defendants Adams, Banks, White and Hoffman as well as Mayor Richard J. Berry while Defendants Banks, Adams, White and Hoffman were in Ms. Han's home. Again, Chief Schultz used Connie Schultz's mobile phone to make the calls.

98. Chief Schultz also made at least one phone call to Albuquerque Police Officer Association ("APOA") President, Joey Sigala, on November 18, 2010 at 3:12 p.m.

99. Defendant Perry communicated with Mr. Kennedy by telephone at least twice while he was in Ms. Han's home.

100. Defendants Schultz and Perry also communicated with APD legal counsel, Kathryn Levy, several times in the afternoon of November 18, 2010.

101. Upon information and belief, on November 18, 2010, Defendants Perry and White were also at the Kennedy & Han law offices located at 201 12<sup>th</sup> Street in Albuquerque.

#### **Interference with Unattended Death Investigation**

102. Lonz and Welch were the lowest ranking law enforcement officers present and stayed

outside the scene while the highest ranking officers; to wit, Defendants Public Safety Director White, Deputy Chiefs Paiz and Banks, Commander Feist, and Marc Adams, all entered the home and stayed for several hours.

103. Lonz and Welch began a canvass of the cul-de-sac where Ms. Han's home was located and made initial contact with a couple of neighbors but, upon information and belief, were directed to stop their efforts and, as a direct result, a full neighborhood canvass typically associated with an unattended death was not conducted. Lonz and Welch did not list the neighbors contacted or their comments in any written report.

104. In his report, Welch noted that "[D]uring [his] investigation, other APD personnel arrived on scene and entered the home: D.C. A. Banks, D.C. B. Paiz, D. White, T.J. Wilam (sic), Commander A. Feist, Officer T. Grover, Officer R. Burge, PIO Sgt. T. Hoffman, Sgt. M. Meisinger, A/Sgt. M. Hoisington, FI Sgt. Lopez, FI M. Muniz, OMI T. Coaker (sic) and additional personnel that were not identified. I was not with them while they did a walk through of the scene."

105. Lonz wrote in his report that, "Several other personnel went inside Ms. Han's home while the investigation was still going on. I stayed outside while they did a walk through of the residence."

106. No explanation or procedural justification was provided to explain why the majority of these individuals entered the residence.

107. None of the APD personnel at Ms. Han's home to include Defendants were considered "necessary" and their presence interfered with Defendants' Muniz's investigation.

108. Ms. Elizabeth Wallbro, Ms. Han's biological sister was at Ms. Han's home at approximately 2 p.m. and immediately asked APD personnel about Ms. Han's diamond



rings.

109. APD and City personnel denied Ms. Wallbro entry into the home and forced her to sit on the street curb in front of Ms. Han's home while various APD personnel came in and out to include Defendants. At no time was Ms. Wallbro interviewed about Ms. Han's death.

110. Upon information and belief, Mr. Kennedy, shortly before 1:00 p.m., abruptly left the scene without permission from or notifying APD personnel. Sometime later that afternoon, Mr. Kennedy returned, spoke with Defendant White while outside the residence and APD again allowed him inside the residence.

111. It was not until after Mr. Kennedy returned to the scene that Officer Lonz recorded a brief statement rather than a full in person interview.

112. Defendant Banks instructed FI Muniz to release a laptop computer, found in close proximity to Ms. Han, to Mr. Kennedy.

113. At FI Muniz's instruction, Officer Robbin Burge placed the laptop at the foot of the stairs and called out to Mr. Kennedy that the computer was ready for him to pick up.

114. Ms. Han habitually, frequently, and routinely used the laptop computer for personal and business purposes.

115. On November 17, 2010, Ms. Han used the computer to send an email to a local bank asking for a personal loan and notified the bank that she would be settling her previous personal loan account.

116. At 1:34 p.m. Defendant Rob Perry telephoned Ms. Han's mobile phone. Perry already knew that Ms. Han was deceased at the time he made the phone call to Ms. Han's telephone.

117. Ms. Han was known for her frequent use of her mobile phone. Upon information and belief Defendant Perry telephoned Ms. Han's number because her phone was not located by

APD at Ms. Han's residence.

118. Mr. Kennedy also had possession of Ms. Han's mobile phone. Ms. Han would frequently use her mobile phone to call, text and email other individuals to include her legal assistant.

119. In late October 2010, Ms. Han was actively looking for new office space to open a solo practice.

120. Ms. Han's call records show regular activity in the months leading up to November 18, 2010.

121. Mr. Kennedy is not an immediate member of the Han Family and did not have permission from the family to take any items, including Ms. Han's telephone, from the home.

122. Upon information and belief, Mr. Kennedy left Ms. Han's residence with her mobile phone and laptop computer.

123. Within minutes of his arrival, Defendant Feist ordered personnel to treat the "unattended death" as a suicide and not as a homicide and forbade personnel from calling out the criminalistics unit.

124. In doing so, Defendant Feist ignored that, at 6:39 p.m. on November 17, 2010, an unknown individual arrived at Ms. Han's front door, causing Ms. Han to discontinue a phone conversation she was having with her sister Liz Wallbro in which they were discussing driving to San Francisco to visit Ms. Han's daughter Katherine Han-Noggle for the upcoming Thanksgiving holiday.

125. The visitor to Ms. Han's residence that evening was likely the last person to have seen Ms. Han alive and as such would have been a critical person to identify and interview.

126. To reach Ms. Han's front door, a visitor must first pass through a locked front gate.

127. On information and belief, the front gate was locked at the time Mr. Kennedy entered Ms.

Han's residence through the front door and found her deceased in the garage.

128. APD is a para-military organization. Despite SOPs, APD has developed an unwritten "blue code of silence" under which law enforcement officers are expected to lie or keep silent in situations where their supervisors order them to perform duties that would conflict with SOPs. Once APD command personnel ordered the scene to be processed as a suicide, lower ranking personnel had no choice but to follow orders.

129. APD did not advise Defendant Feist that he was in charge of the potential crime scene; thus, Defendant Feist did not have authority to make any decisions regarding the scene.

130. Though lacking a cause of death determination from OMI, APD still did not process the home as a crime scene.

131. Because APD command personnel ordered APD to proceed as a suicide, APD also failed to interview Ms. Han's family and close personal friends.

132. On November 18, 2010 at 16:14 hours, Lonz typed on the mobile data terminal ("MDT") "DON'T WANNA TYPE ANYTHING ON THE KDT TO GET SUED FOR." in response to an inquiry from another police officer who was "JUS CURIOUS ABOUT THE MARY HAN CALL."

133. Defendant Paiz filed a type-written supplemental report on March 16, 2011 admitting she knew the decedent to be Ms. Han and walked through the interior of the home to view Ms. Han in the garage. Paiz noted the original offense was "unattended death/DOA".

134. Defendants Hoffman, Adams, Feist and Officer Burge all filed type-written supplemental reports on March 28, 2011 admitting they were present at the scene because they knew that Ms. Han was the decedent. All indicated that the original offense was "unattended death/DOA".

135. Defendants Perry, White and Wilham submitted hand-written supplemental reports on March 28, 2011, March 29, 2011 and March 31, 2011 respectively noting the original offense as “apparent suicide”. None of these individuals were employed by APD in any law enforcement capacity on November 18, 2010.
136. APD Defendants failed to properly secure the residence for investigation - allowing unauthorized and nonessential personnel to improperly enter and remain in Ms. Han’s home, allowing them to walk through the scene, contaminate the scene, and remove items.
137. Unknown APD personnel rifled through Ms. Han’s purse and removed her wallet.
138. Defendant Muniz photographed Ms. Han’s identification card.
139. Unknown APD personnel moved a memo pertaining to Ms. Han’s recent investigation for discrimination against Defendant Banks.
140. At no time did APD personnel request a Court order that would have prevented APD personnel from rifling through Ms. Han’s belongings, walking through her home, or protecting her belongings from theft.
141. If the scene was declared a suicide, APD personnel lacked authority, reasonable suspicion, or probable cause to search Ms. Han’s home or remove property.
142. At no time did APD request permission from Ms. Han’s sister, Elizabeth Wallbro, to rummage through Ms. Han’s belongings or to be in Ms. Han’s home.
143. APD SOPs also state, “The victim will not be removed from the scene prior to the investigation if he/she is declared dead by medical personnel.”
144. Ms. Han’s body was moved and was photographed outside of the vehicle while lying on the floor. An individual wearing standard APD uniform pants can be seen standing over Ms. Han’s body.

145. Ms. Han's body was placed in a body bag and onto a gurney. While OMI personnel were moving Ms. Han's body through the home, Defendant Wilham informed OMI personnel that they were not to show Ms. Wallbro her sister's body. OMI personnel refused.
146. Defendant Wilham is a civilian employee and did not have authority to be at the scene nor to issue orders.
147. The BMW's engine was not running at the time Officers Lonz, Welch and Hoisington entered the garage with Mr. Kennedy. APD reports are conflicting: one report indicates the engine was warm while another states the engine was cold.
148. Welch wrote in his report that, "[A]fter OMI and the responding FI arrived on scene and removed the body a second check of the vehicle was conducted, the battery was in fact dead and the vehicle would not start or function any of the internal electronics."
149. On his own initiative, Welch contacted a technician from the local BMW dealership to inquire about the 330i. The technician informed Welch that, "[T]he only way the vehicle would turn off was if it was out of gas or physically turned off at the ignition point. I provided this information to the field investigator."
150. At the direction of Defendant Muniz, APD had the BMW 330i jump-started. APD failed to report the manner in which the vehicle was jump-started, or take photographs of the dials after the vehicle was jump-started. APD failed to report if the BMW 330i was in proper working condition when it was jump-started.
151. In fact, the 2006 BMW 330i was fully functioning on or about November 18, 2010 and it was Ms. Han's custom and habit to have it regularly maintained. Ms. Han did not own or drive any other vehicle.
152. On November 19, 2010, Defendant Muniz contacted OMI and falsely informed the OMI

investigator that the BMW dealership informed him that the BMW 330i “has a carbon monoxide sensor that shuts the vehicle off with the level is high. It would not shut the electrical off. The vehicle had 1/2 tank of gas in it. We talked that either the sensor or the exclusion of oxygen in the garage would cause the vehicle to shut down. He advised that the battery was completely dead and when they got the vehicle started the radio didn't come on but [] it is unclear whether it would or not.”

153. Defendant Muniz knew or should have known that his statement to OMI was contrary to the information provided to him by Officer Welch on November 18, 2010.

154. At all times leading up to November 18, 2010, Ms. Han's custom and habit was to work out at a local gym every morning and sometimes in the evening.

155. At all times leading up to November 18, 2010, Ms. Han's custom and habit also included running several miles in the early morning.

156. Ms. Han did not deviate from her custom and habits for physical fitness at any time.

157. On November 18, 2010, Ms. Han was found wearing clothing that she would typically wear to the gym or to run.

158. On November 24, 2010, Defendant Feist informed OMI investigator, Amy Wyman, that Ms. Han had stopped going to the gym to work out in the mornings. It was not within Defendant Feist's authority or official duties to provide personal information about Ms. Han when he lacked any firsthand knowledge.

159. This statement was false since Ms. Han had continued to exercise up to the time of her death and Defendant Feist knew or should have known the statement was false and is a direct violation of the APD SOPs requiring honesty in all investigations.

160. On November 24, 2010, OMI investigator, Amy Wyman, attempted to speak with Mr.

Kennedy about the laptop computer. Mr. Kennedy did not respond to the request for information.

161. On November 24, 2010, Ms. Wyman again contacted Defendant Feist and informed him of the difficulty getting the computer from Mr. Kennedy. Defendant Feist informed Ms. Wyman that, “He does not think Paul Kennedy will turn it over to APD because the decedent was involved in many civil law suits against APD, and Mr. Kennedy made comments on scene that the information on the computer was attorney-client privileged (sic). I asked if APD would be willing to get a search warrant. He advised me to contact Mr. Kennedy first, and if that did not work we would work on getting a warrant.”

162. Defendant Feist never assisted OMI in obtaining either the warrant or the computer.

163. OMI records show that Ms. Han died with 84.8% carboxyhemoglobin saturation levels in her system.

164. A level of 84.8 percent is incredibly high and an improbable cause of death from ambient air contaminated with carbon monoxide via motor vehicle. This high level should have alerted Defendants that further investigation into Ms. Han’s death was needed.

165. At no point did APD conduct carbon monoxide testing in order to determine the carbon monoxide levels emitted from Ms. Han’s vehicle nor did they obtain vehicle emissions testing data from the New Mexico Motor Vehicle Division that could provide information about carbon monoxide levels.

166. Such testing could have provided information on the amount of time it would have taken for Ms. Han’s carbon monoxide level to reach that high a level of concentration and whether Ms. Han’s death would have occurred rapidly or would have required several hours to occur.

167. On November 18, 2010, many detectives assigned to the APD homicide unit were

attending a training conference in Albuquerque conducted by the Federal Bureau of Investigation. However, homicide detectives did not leave the conference to even attempt to investigate circumstances of Ms. Han's death though they discussed her death.

168. Defendants received inadequate training by the City of Albuquerque and/or APD regarding proper SOPs and/or failed to implement appropriate SOPs at the scene of an unattended, unexplained death, preservation of evidence and entering private property.

### News Coverage

169. On November 18, 2010, Defendant White spoke by telephone with KRQE TV news manager, Paul Burt at 3:07 p.m. for six minutes and again at 3:55 p.m. for eight minutes.

170. On November 18, 2010, KRQE aired an evening news segment on Mary Han's death, reporting that "police don't believe anybody killed her" and that her law partner, Paul Kennedy, was "recently named chief counsel to Governor-elect Susana Martinez."

171. On November 18, 2010, *Albuquerque Journal* reporter, Scott Sandlin, was standing in Ms. Han's driveway, while the garage door was open and Ms. Han's body was visible to anyone. Ms. Sandlin covered Ms. Han's death for the *Albuquerque Journal* on November 19, 2010, "Talented Attorney Found Dead" and quoted Defendant Hoffman stating, "There are no signs of foul play."

172. On August 10, 2011, the Mayor's office released the following statement: "Due to the high profile nature of Ms. Han and the fact that all personnel recognized that the confidentiality of Ms. Han's legal work-product should be protected, many City personnel responded to the scene. Public information personnel and police administrators were present to address questions from the local media. The City Attorney was present to address issues surrounding legal documents, computers and other sensitive legal items present at the scene.



The City Attorney worked with Ms. Han's law partner, Paul Kennedy at the premises after it was released by investigators, to ensure confidentiality of any legal items present."

**Stolen Rings**

173. On November 18, 2010, Ms. Han's sister, Elizabeth Wallbro, informed law enforcement personnel that Ms. Han's diamond rings were missing.

174. It was Ms. Han's habit and custom to wear a 5 carat diamond ring set in platinum bands and a 3 carat diamond ring set in white gold band. Ms. Han would wear one ring on each hand every day.

175. Ms. Han had been seen wearing the rings regularly to include on November 17, 2010.

176. The rings are family heirlooms, are valued at over \$100,000, and remain missing.

177. Mr. Kennedy informed Ms. Wallbro that "the cops took the rings."

178. On November 18, 2010, at no time did any APD personnel investigate or search for the missing rings.

179. Because of APD's inactions, Ms. Wallbro was forced to file a police report with APD on January 30, 2011 about the missing rings. The report is dated February 1, 2011.

180. APD assigned the investigation to Sgt. John Sullivan.

181. On March 15, 2011, Sgt. Sullivan sent an email to Paul Feist, Harold Prudencio, and Elizabeth Paiz informing them that he needed "to interview the following APD personnel at Ms. Han's home on November 18, 2010: Officer Jacob Welch, Officer, Mike Muniz, Officer Tom Grover."

182. In the March 15, 2011 email, Sgt. Sullivan informed the following individuals that they needed to write supplemental reports to APD's file concerning Ms. Han's unattended death call of November 18, 2010: Public Safety Director Darren White, CAO Robert Perry, Deputy

Chief Elizabeth Paiz, Deputy Chief Allen Banks, Deputy Chief Paul Feist, Crime Laboratory Director Marc Adams, Officer Tricia K. Hoffman and TJ Wilham.

183. After Sgt. Sullivan sent his email, all individuals, except for Deputy Chief Banks, submitted supplemental reports.

184. In his investigation, Sgt. Sullivan attempted to interview various individuals who were also at Ms. Han's home on November 18, 2010 to include but not limited to: Ms. Wallbro, Officers Tim Lonz, Jacob Welch, Tom Grover, Robbin Burge, and Defendants Beth Paiz, Rob Perry, TJ Wilham, Darren White, Trish Hoffman.

185. Ultimately, Sgt. Sullivan only interviewed Ms. Wallbro, Lonz, Welch, Grover, Burge, and Muniz.

186. Officer Welch confirmed being present when Ms. Wallbro inquired about the rings on November 18, 2010.

187. When Sgt. Sullivan interviewed Officers Grover and Burge on March 17, 2011 and March 24, 2011 respectively, he commented that criminalistics should have been called to the home on November 18, 2010 and, if they had, "everyone would be sleeping better at night."

188. Sgt. Sullivan also stated that the number of APD personnel and APD command personnel at Ms. Han's home was unheard of, highly improper and that, at the very least, the individuals at the scene should have automatically filed supplemental reports to note their presence at the home.

189. On March 29, 2011, Sgt. Sullivan interviewed Paul Kennedy via telephone because Mr. Kennedy "refused to meet [] in person."

190. In the interview, Mr. Kennedy "would only tell me that he did not see if Mary was

wearing the rings or not when he discovered the body” and that Ms. Han “almost always wore them.”

191. Mr. Kennedy then refused to answer any questions “on his knowledge of Mary’s personal habits.”

192. Mr. Kennedy did confirm to Sgt. Sullivan that he took Ms. Han’s laptop from the scene on November 18, 2010.

193. On April 22, 2011, Officer Burge asked Sgt. Sullivan if he would be willing to submit a request to test the plastic bag found in Ms. Han’s vehicle for DNA. Sgt. Sullivan responded that it was a “great idea” but he was “not authorized to do any sort of investigation into the death” and he was limited to “theft of the rings.”

194. On April 22, 2011, Defendant Banks was Sgt. Sullivan’s supervisor.

195. On May 3, 2011, Ms. Wallbro sent a letter to Defendant Feist personally requesting his assistance into the investigation of Ms. Han’s death and the missing rings.

196. In the letter, Ms. Wallbro informed Defendant Feist that “given Mary’s standing within the community and the numerous on-going lawsuits her office has against your department, APD would work diligently and transparently to reinforce its credibility to its mission in solving crimes given an opportunity such as this. I noticed that there were so many people both uniformed and not [] go through her house, and am wondering if this [is] the normal practice of APD to do so in every death.”

197. Defendant Feist did not respond to Ms. Wallbro’s letter or her request for assistance.

**Political Appointments and Appearance of Conflict of Interest**

198. On November 3, 2010, Susana Martinez was elected as Governor of the State of New Mexico.

199. From the primary onward, Paul Kennedy provided legal services to the Martinez campaign.
200. Defendant Darren White starred in a campaign commercial for the Martinez campaign.
201. On November 5, 2010, Governor-elect Susana Martinez announced the names of the core members of her transition team and named Paul Kennedy as her chief legal counsel.
202. On November 9, 2010, Governor-elect Susana Martinez announced the selection of Defendants White, Perry and Paiz to her transition team.
203. A full investigation into Ms. Han's death would necessarily involve Ms. Han's law partner, Paul Kennedy, because he found her deceased, admitted that he saw Ms. Han the night before making him possibly the last person to see her alive and insisted that Ms. Han died of "accidental suicide."
204. In 2008, Defendant Darren White ran for the US House of Representatives.
205. Public records show that Paul Kennedy contributed the maximum contributions to Defendant Darren White's primary and general election campaigns.
206. On July 15, 2011, Defendant White resigned his position as Director of Public Safety for the City of Albuquerque after he appeared at the scene of a car accident involving his wife and was accused of intimidating and preventing law enforcement officers from following SOPs to include testing Defendant White's wife for drugs and/or other impairments. Defendant White stated his decision to resign was in an effort to "end distraction surrounding his wife's recent accident." Paul Kennedy represented Defendant White and his wife in the fallout for his actions at the scene of his wife's accident.
207. Both Darren White and Paul Kennedy were mentioned in media coverage surrounding the New Mexico GOP's efforts to have New Mexico's United States Attorney David Iglesias

fired. Paul Kennedy represented the accountant who brought the allegations forward in the Metropolitan Courthouse scandal, and also represented plaintiffs from Chaves County suing on behalf of the NM GOP's push to enforce stricter voter ID laws at the same time that, according to the US Department of Justice, Darren White headed the Republican Party's Voter Fraud Working Group.

208. In 2006, Paul Kennedy and Rob Perry formed a political action committee to push for the election of a Republican for the position of New Mexico Attorney General.

209. Prior to becoming City Attorney, Rob Perry rented office space at 201 12th St NW, Albuquerque, NM 87102 in a building owned by Kennedy & Han, P.C.

210. Defendants White and Perry had (a) enough of a substantial and personal relationship with Mr. Kennedy that their presence at the scene, and (b) communications with Mr. Kennedy (including visiting his office on the day that Ms. Han was found dead), that the failure to request another agency investigate that it created an apparent conflict of interest regarding the handling of the investigation into Ms. Han's death.

211. Utilizing the services of another law enforcement agency, one not subject to Defendant White's supervision or control, would have prevented a conflict of interest and allowed a full and complete investigation into the circumstances of Ms. Han's death.

#### **Investigation by New Mexico Attorney General**

212. On March 13, 2013, The New Mexico Attorney General, Gary King, announced his office was looking into Ms. Han's death: "As of this date, the New Mexico Attorney General's office ("NMAG") is conducting an active, on-going investigation into the circumstances of Ms. Han's death and the conduct of Defendants and APD personnel at the scene on November 18, 2010, as well as the conduct of Defendants after November 18, 2010.

213. On August 16, 2013, the NMAG released “Findings of New Mexico Attorney General’s Office death of attorney Mary C. Han” which listed in part:

- (1) the death scene was terribly mishandled by the Albuquerque Police Department due to inappropriate directions from high-ranking police and civilian administrators with the city;
- (2) numerous individuals from APD and City were allowed access to the death scene of Mary Han’s home which materially interfered with the investigation process;
- (3) significant items were removed or are otherwise missing from the scene which eliminated standard scientific analysis of potential evidence;
- (4) insufficient witness interviews were conducted;
- (5) a precipitous decision was made by a high-ranking APD officer at the scene characterizing Mary’s death as suicide well before even a minimal thorough investigation had started;
- (6) hasty handling of the scene by APD limited severely the potential evidence given to the Office of the Medical Investigator for its analysis and contributed to a mischaracterization of death;
- (7) the cumulative effect of the errors by APD make it extremely difficult at this time to definitively determine the cause of Mary Han’s death;
- (8) the nature of Mary’s death should be properly changed from suicide to undetermined;
- (9) fundamental police procedures for suspicious deaths were inexplicably not followed.

**Prostitution cases**

214. On January 12, 2010, Ms. Han filed a complaint against Chief Schultz and the City of Albuquerque for civil rights violations, tort claims, damages and injunctive relief for the unlawful search, seizure and arrest of several prostitutes by the APD vice unit (“prostitute

complaint”). Ms. Han was interviewed many times by local media about the case to include Defendant Wilham who was then a reporter for the *Albuquerque Journal*.

215. On October 31, 2010, Ms. Han added Michael Callaway to the prostitute complaint. At that time, Mr. Callaway was employed by APD as a Deputy Chief.

216. On November 18, 2010, Deputy Chief Callaway was in the direct line of supervisors for Officers Welch, Lonz, Hoisington, Meisinger, and Defendant Hoffman.

217. Mr. Kennedy settled the prostitution complaint against all individual named defendants on April 8, 2011.

**Previous Proceeding: Petition for Discovery**

218. On October 4, 2011, Plaintiff filed a Petition for Discovery with the Second Judicial District Court, Cause Number 2011 CV 09975.

219. On November 3, 2011, the Honorable Nan Nash ordered “The City of Albuquerque and APD shall preserve all records, reports, documents, photographs, and any other record or evidence in their possession, custody, or control relating to an emergency call concerning Mary Y.C. Han on November 18, 2010, and any subsequent response or investigation. The City of Albuquerque and APD shall not destroy, alter, amend, redact or issue new supplements to any records and/or documents, electronic or otherwise, to include but not limited to cellular phone records and/or texts and/or photographs relating in any manner to its response to an emergency call regarding Mary Y.C. Han on November 18, 2010 to include any investigation(s) or documents generated.”

220. On March 15, 2012, APD’s counsel, Kathryn Levy, informed Judge Nash that APD would not provide the photographs taken by FI Muniz at the scene in digital form but assured the Court that all photographs had been provided. However, the photographs produced by

APD were reformatted as .pdf files with all metadata removed. To date, Plaintiffs have not been provided with the digital copies.

**IV. CAUSES OF ACTION**

**COUNT I  
VIOLATION OF SUBSTANTIVE AND PROCEDURAL  
DUE PROCESS PURSUANT TO 42 U.S.C. § 1983  
AGAINST ALL DEFENDANTS**

268. Plaintiffs reinstate the allegations above as if fully set forth herein.
269. Defendant APD is a local government agency of the municipality of the City of Albuquerque.
270. Defendants are state actors who are and were at all times pertinent hereto acting under color of law as employees of Defendant APD and City of Albuquerque.
271. Defendants controlled the scene at Ms. Han's home on November 18, 2010 and prevented other law enforcement personnel from following proper procedure for an unattended death.
272. Plaintiffs have a substantive and due process right of access to the courts as (a) a privilege and immunity under the Due Process clauses of the Fifth and Fourteenth Amendments, the Privileges and Immunities Clause of Article IV, Section 2, and (b) the First Amendment and the right to petition the government as granted by the First Amendment.
273. APD operates as a para-military organization. APD has unwritten, but official policies and/or customs in place, that require lower ranking officers to allow higher ranking officers to assume control of a crime scene without question.
274. The actions of Defendants, under the color of state law, intentionally, willfully and maliciously destroyed evidence from the scene such that their actions resulted in concealing



the perpetration of a wrong in a manner that denied the Plaintiffs the ability to seek redress by the court.

275. To the extent any evidence was gathered, APD lower ranking personnel were so mis-directed that further obfuscation was the only result, effectively and permanently ending the prospect of anyone, including Plaintiffs, from ever being able to find a cause and manner of Ms. Han's death.

276. Defendant Perry, as counsel for Defendant City of Albuquerque, knew or should have known that APD had an obvious conflict of interest in being in Ms. Han's home; yet, Defendants White, Banks, Feist, Paiz, Adams insisted on staying in the home with Defendant Schultz on the phone, allowing at least twenty-six unknown individuals to enter the home, invade Ms. Han's privacy and maintained presence at the scene.

277. Defendants' intentional interference with any investigation, constant presence at the scene, and refusal to relieve the obvious conflict of interest all taken together are tantamount to a "cover up," even if some Defendants were unaware exactly of what or who they were protecting with their efforts.

278. Other Defendants, to include John Does 1-2, acted under color of law, and actively participated in deflecting inquiry by adopting and promulgating the "accidental suicide" as the explanations for Ms. Han's death.

279. Plaintiffs allege that, in doing the foregoing acts and things above complained of, the Defendants were conspirators engaged in a scheme and conspiracy designed and intended to deny and deprive Ms. Han and/or Plaintiffs of rights to due process guaranteed to Ms. Han under the Constitution and laws of the United States and particularly those enumerated above.

280. Defendants therefore violated the Plaintiffs' due process rights.

**COUNT II**  
**INTERFERENCE WITH PLAINTIFFS' RIGHT OF ACCESS TO THE COURTS**  
**PURSUANT TO 42 U.S.C. § 1983 AGAINST ALL DEFENDANTS**

281. Plaintiffs reinstate the allegations above as if fully set forth herein.

282. Defendants and their officers, agents, assistants, and employees, individually and collectively in conspiracy with each other and other persons as yet unknown to the Plaintiffs, acting under color and authority of law of the State of New Mexico, or in active concert with such Defendants who were so acting, and the applicable laws, regulations, policies, customs, procedures, and usage of the State of New Mexico, City of Albuquerque deprived the Plaintiffs of their constitutional right to petition and access to the court under Article Four of the United States Constitution, the First Amendment, and the Due Process Clause of the Fourteenth Amendment by:

- a. Deliberately engaging in conduct which blatantly disregarded the Plaintiffs' rights during the investigation of Mary Y.C. Han's death which interfered with the Plaintiffs' right to bring a wrongful death action in the state court. This conduct as described herein permanently deprived Plaintiffs of their right to bring a wrongful death action.
  - b. Violating a clearly established constitutional right under the United States Constitution which a reasonable person would have realized would deprive the Plaintiffs of their right of access to the courts. Moreover, the established policies, procedures, practices and customs of the City of Albuquerque as established and promulgated were insufficient to protect the constitutional rights of the Plaintiffs.
283. Defendant The City of Albuquerque is vested with authority over the Albuquerque Police

Department, the Chief of Police, and all police department employees.

284. The Chief of Police, Raymond D. Schultz, during all times relevant herein, was in direct command of the Albuquerque Police Department and was charged with making rules, regulations and standard operating procedures concerning the operation of the Albuquerque Police Department and conduct of all employees to include brass. Further, Defendant Schultz was responsible for the preservation of public peace, prevention of crime, apprehension of criminals, protections of the rights of persons and property, the enforcement of laws of the United States, State of New Mexico, and the ordinances of the City of Albuquerque and all rules and regulations relevant thereto. During all relevant times herein, Defendant Darren White was Chief Schultz's superior.

285. Defendants are responsible for the deprivation of Plaintiffs' constitutional right of access to the courts pursuant to 42 U.S.C. §1983 because the Defendants and their agents, representatives, employees and subordinates, implemented or executed the official policies, ordinances, regulations, procedures, decisions and unofficial customs and usages of the City of Albuquerque during the investigation of the death of Mary Y.C. Han. By these official policies, ordinances, regulations, procedures, decisions and unofficial customs and usages Defendants implicitly authorized, approved, acquiesced or were deliberately indifferent to the violation of Plaintiffs' rights as protected by 42 U.S.C. §1983, Article IV of the United States Constitution, and the First and Fourteenth Amendments to the United States Constitution:

- a. Defendants were authorized to establish policy, rules and regulations concerning the operation of the Police Department and conduct of all employees. Defendants were in charge of Ms. Han's death scene directing the investigation and directed the investigation thereafter; therefore, all actions taken by the Defendants of the

Albuquerque Police Department in the Han investigation are the official policies, rules, regulations, procedures, decisions and unofficial customs and usages of the City of Albuquerque.

- b. Defendants deliberately chose to follow a course of action from among various alternatives with respect to the investigation into Ms. Han's unattended death.

286. Defendants' conduct which deprived the Plaintiffs of their constitutional right to petition and access the court under Article Four of the United States Constitution, the First Amendment, and the Due Process Clause of the Fourteenth Amendment included but is not limited to the following:

- a. Defendant Muniz failed to conduct an unattended death scene investigation;
- b. Defendants interfered with the scene of the investigation and actively precluded lower ranking personnel from conducting an unattended death investigation;
- c. The City of Albuquerque completely failed to train its police force or trained its police officers in a reckless or grossly negligent manner such that the misconduct of the Albuquerque police in the Han investigation was almost inevitable;
- d. No one ordered or performed even the most minimal investigation to include getting fingerprints, analyzing the clear liquid found in the glass, determining the origin of the carbon monoxide, conduct tests on the BMW 330i, properly and formally interview Mr. Kennedy regarding the circumstances of Ms. Han's death.
- e. The City of Albuquerque never questioned Ms. Han's immediate family or close friends or conducted a neighborhood investigation with regard to the circumstances surrounding the death.
- f. Failing to preserve any physical evidence of Ms. Han's death.

g. Failed to locate lost property including failing to search for Ms. Han's rings which were "a 5 carat diamond ring set in platinum bands and a 3 carat diamond ring set in white gold band". Upon information and belief, the rings were stolen during the course of police investigation of Ms. Han's death. Alternatively, Defendants failed to investigate the possibility that Ms. Han's death occurred in connection with a robbery.

287. As a direct and proximate result of the illegal conduct depriving Plaintiffs of their constitutionally protected right of access to the state court, the Defendants and each of them, caused Plaintiffs to be subjected to extreme humiliation, embarrassment, and loss of reputation.

288. As a direct and proximate result of the illegal conduct depriving Plaintiffs of their constitutionally protected right of access to the state court, Plaintiffs have been required, and will continue to be required, to incur attorney's fees, costs and expenses of litigation to vindicate the unlawful violation of their constitutional rights.

289. The affirmative defense of immunity cannot be raised by the individual Defendants in that they were acting under color of authority of law in the conduct of the investigation into Ms. Han's death, which directly resulted in the deprivation of the Plaintiffs' constitutionally protected rights.

**COUNT III**  
**VIOLATION OF 42 U.S.C. § 1985(2) BY DEFENDANTS**

290. Plaintiffs reinstate the allegations above as if fully set forth herein.

291. Defendants' conduct impeded, hindered, obstructed and defeated the due course of justice with the intent to deny Plaintiffs equal protection.

292. Defendants' conduct was intentional.

293. Plaintiffs were injured as a result of conduct interfering with the judicial process.

**COUNT IV**  
**VIOLATION OF 42 U.S.C. § 1985(1)**

294. Plaintiffs reinstate the allegations above as if fully set forth herein.

295. Plaintiffs bring a good faith claim that they have standing to allege that Defendants interfered with the duties of federal officials which caused them damages.

296. Defendants conspired to tell misinform the OMI about the decedent and/or deliberately misstated they would assist in the OMI investigation when it was not true and/or refused to provide a statement to OMI or any other agency inquiring into Ms. Han's death.

297. A Section 1985(1) conspiracy does not require a discriminatory animus to support liability regarding race or gender, and none is alleged in this count.

298. Proof of force or intimidation is not necessary when the conspiracy intends to injure the person or property of Plaintiffs.

299. Defendants (or some of them) met with Plaintiffs and knew from personal meetings with one or both Plaintiffs that they were inquiring into Ms. Han's death. Defendants intentionally acted to prevent Plaintiffs from pursuing any independent investigation knowing Plaintiffs would be injured, punished and incur private investigative fees as a means to force Plaintiffs to drop the matter altogether.

300. Defendants' acts included affirmative steps to prevent any investigation into any other means of death other than "accidental suicide".

301. The interference with the duties of other agencies in this case by Defendants caused injury to the person and property of Plaintiffs.

**COUNT V**  
**PLAINTIFFS' CLAIM AGAINST CHIEF SCHULTZ FOR SUPERVISORY LIABILITY**  
**UNDER 42 U.S.C. SECTIONS 1984, 1985(3), 1984, 1986**

302. Plaintiffs reinstate the allegations above as if fully set forth herein.
303. Chief Schultz was one conspirator in the Section 1985(3) claims described herein.
304. In addition or in the alternative, Chief Schultz was in communication with APD personnel in Ms. Han's home to include but not limited to Defendant Banks, Adams, White and Hoffman and had knowledge of a conspiracy and had the power to prevent and/or stop it.
305. Chief Schultz knew of Ms. Han's multiple litigation against APD, knew that his employees should not be at the scene, and knew or should have known that SOPs require unattended deaths to be fully investigated and knew or should have known that the allegations of "accidental suicide" should have been investigated by an agency without the history with Ms. Han or in the alternative was deliberately and maliciously indifferent to the actions of his personnel.
306. The conspiracy included deliberate plans, practices, patterns, customs and efforts to prevent any meaningful investigation into Ms. Han's death scene to include any follow up inquiry into the conduct of APD personnel at the scene as well as the conduct of Defendants Perry and Wilham.
307. Chief Schultz and failed to utilize his power to prevent a Section 1985 conspiracy aimed at deflecting inquiry, and therefore, is liable under 42 U.S.C. Section 1986.
308. Chief Schultz's failure to act and supervise amounts to callous, deliberate indifference to the constitutional rights of Plaintiffs.
309. Chief Schultz's supervisory response to the obvious need for an independent and immediate investigation in this case as well as the immediate need to prevent further

trampling of Ms. Han's death scene was so inadequate as to show a deliberate indifference to or tacit authorization of the alleged offensive practices of deflecting and controlling the investigation in a "cover up".

310. Chief Schultz is liable for supervisory omissions in this case and under these facts for at least the following reasons:

- a. there has been a failure of training in the face of obvious need to recognize conflicts of interest with taxpayer investigatory dollars and act accordingly;
- b. those individuals who were responsible for drafting, implementing and enforcing the SOPs were violating the SOPs by intimidating lower ranking officers;
- c. there has been a failure of training in the face of obvious need to adequately and professionally investigate;
- d. there has been a statutory violation of 42 U.S.C. §1986;
- e. there has been a failure to correct the unconstitutional practices and conditions described in this complaint intentional deflection of investigative inquiry;

311. An affirmative causal link exists between Chief Schultz's supervisory inactions and the particular constitutional injuries suffered by Plaintiffs.

312. Plaintiffs were damaged as a result and their rights were violated.

**COUNT VI  
TORT CLAIMS ACT  
NEGLIGENT SUPERVISION AND/OR NEGLIGENT INVESTIGATION  
CAUSING VIOLATION OF PROPERTY RIGHTS  
TO WIT, SPOILIATION OF EVIDENCE**

258. Plaintiffs restate the allegations above as if fully set forth herein.

259. APD distributed and maintained the mobile phones used by certain personnel who were at Ms. Han's home on November 18 2010, to include but not limited to: Defendants Robert



Perry, Darren White, Chief Ray Schultz, Feist, Paiz, Banks, Adams, and Wilham as well as Officer Timothy Lonz, Sgt. Timothy Lopez, Sgt. Michael Meisinger, Sgt. Matthew Hoisington and Commander Rae Mason.

260. On August 8, 2011, Plaintiffs' counsel did inform Chief Raymond Schultz about the possibility of a claim against APD and requested that APD preserve any and all documents electronic and otherwise relating to Ms. Han in any manner.
261. Despite Judge Nash's verbal order of November 3, 2011 and filed on November 23, 2011, APD failed to preserve the mobile phones of APD personnel to include but not limited to: Defendants Adams, Banks, Hoffman, Paiz, and White that these individuals used on November 18, 2010.
262. The mobile phones may contain potential evidence bearing on the Plaintiffs' legal claims.
263. The mobile phones may contain information sent by APD personnel at Ms. Han's home on November 18, 2010 to include photos of Ms. Han in her deceased state.
264. APD has spoliated the potential evidence contained in the mobile phones by losing, destroying, mutilating, misplacing or significantly altering the following, but not limited to, certain mobile phones in June 1, 2011 (Banks and Adams), and September 2, 2011 (Paiz).
265. By doing so, APD intentionally disrupted or defeated Plaintiffs' legal claims.
266. APD's spoliation of the evidence inhibits either Plaintiffs' ability to prove their legal claims in this lawsuit.
267. Moreover, the negligent supervision of, and negligent investigation by, APD personnel at the scene caused the loss of certain physical evidence forever, leaving the fact finder in this case to rely heavily on circumstantial evidence yet to be discovered. Said negligence merits sanctions to be determined by the Court, but which may include adverse inferences against

the Defendants.

**V. REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiffs seek the following relief:

1. compensatory damages sufficient to make the Estate of Mary Y.C. Han whole for the actions by APD personnel to include replacement value of the personal property taken from the scene;
2. attorney Fees pursuant to 42 U.S.C. §1988 and as permitted by state law;
3. punitive damages against all defendants in their individual capacities if it is found they were acting beyond their scope of duties and in any individual capacity;
4. costs, expenses and interest as allowed by law to include expert witness fees;
5. equitable relief including but not limited to (a) an order precluding Defendants from asserting any defenses which may have been disproved by the destruction or loss of evidence; and/or (b) an instruction to the jury that it may consider that the lost evidence would be unfavorable to the Defendants; or (c) an instruction that supervisory liability is proven as a matter of law;
6. such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Rosario D. Vega Lynn  
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Email: [vegallynnlawfirm@aol.com](mailto:vegallynnlawfirm@aol.com)

Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of January 2014, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Stephen G. French  
Erika E. Anderson  
Attorneys for Defendants  
500 Marquette Avenue, NW - Ste. 500  
Albuquerque, NM 87102  
sfrench@frenchlawpc.com  
eanderson@frenchlawpc.com

  
\_\_\_\_\_  
Rosario D. Vega Lynn

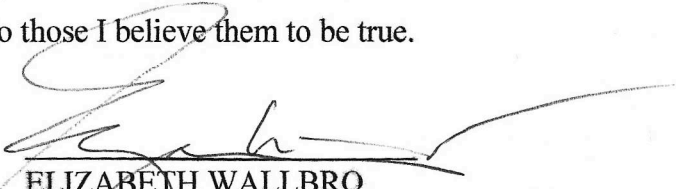
VERIFICATION

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF BERNALILLO )

The undersigned affiant, being first duly sworn, upon oath, deposes and says:

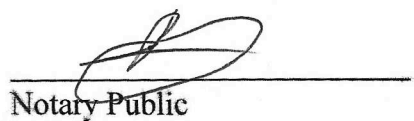
My name is Elizabeth Wallbro and I am the Personal Representative of the Estate of Mary Y.C. Han and Ms. Han's biological sister. I am familiar with the claim at issue in this matter.

I have read over, know and understand the contents of the foregoing Third Amended Complaint for Violations of the New Mexico Tort Claims Act and for Violations of Civil Rights, and the statements therein made are true of my own knowledge, except those statements that are made upon information and belief, and as to those I believe them to be true.



ELIZABETH WALLBRO

SUBSCRIBED AND SWORN TO before me this 28<sup>th</sup> day of January, 2014.

  
Notary Public

My commission expires:

June 21 2016



Official Seal  
Megan E Basha  
Notary Public, State of New Mexico  
My commission expires: 06.21.16