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10 Trial Counsel for Plaintiff

11 **IN THE UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 Greg Ohlson :
14 19424 North 78th Lane :
15 Glendale, Arizona 85308 :

16 Plaintiff :

17 -vs- :

18 Beth Brady-Morris :
19 Arizona Department of Public Safety :
20 Scientific Analysis Bureau, :
21 2222 West Encanto Boulevard :
22 Phoenix, Arizona 85009 :

23 and :

24 Joseph Tripoli :
25 Arizona Department of Public Safety :
26 Scientific Analysis Bureau :
27 2222 West Encanto Boulevard :
28 Phoenix, Arizona 85009 : Civil Action No.

and : Jury Demand Endorsed Hereon

Timothy Chung :

1 Arizona Department of Public Safety
2 2222 West Encanto Boulevard :
3 Phoenix, Arizona 85009 :

4 and :

5 Vincent Figarelli :
6 Arizona Department of Public Safety :
7 Scientific Analysis Bureau :
8 2222 West Encanto Boulevard :
9 Phoenix, Arizona 85009, :

10 Defendants. :

11 **COMPLAINT**

12 **I. INTRODUCTION, PARTIES, JURISDICTION**

13 1. At all times pertinent hereto, until his constructive discharge, Plaintiff was
14 employed as a Criminalist by the Arizona Department of Public Safety, Scientific
15 Analysis Bureau, Toxicology Section;

16 2. At all times pertinent hereto, Defendant Joe Tripoli was a supervisor over
17 Plaintiff. He is sued in his individual capacity;

18 3. At all times pertinent hereto, Defendant Beth Brady-Morris held the
19 position of Supervising Forensic Scientist/Crime Laboratory Manager;

20 4. At all times pertinent hereto, Defendant Timothy Chung was Assistant
21 Director, Technical Services Division;

22 5. At all times pertinent hereto, Defendant Vincent Figarelli was
23 Superintendent, Scientific Analysis Bureau;

24 6. These Defendants are sued in their individual capacities. Defendants'
25 actions, as alleged below, were taken maliciously, and in reckless disregard of Plaintiff's
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1 rights under the Constitution of the United States;

2 7. The Court has jurisdiction of this case under federal question jurisdiction,
3 §28 U.S.C. §1331;

4 8. Venue is proper in this Court pursuant to 28 U.S.C. §1391;

5 9. The claims asserted by Plaintiff are brought to vindicate rights guaranteed
6 Plaintiff under 42 U.S.C. §1983;

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8 **II. FACTS**

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10 10. Plaintiff realleges Paragraphs 1 through 9 as if fully set forth herein;

11 11. From the date of hire, in the year 2004, Plaintiff worked in the capacity of
12 Forensic Scientist in the Toxicology Department in the Scientific Analysis Bureau
13 [hereafter, “SAB”];

14
15 12. In the capacity, he was, in 2014, responsible for directing the validation of
16 the SAB blood alcohol systems used by SAB. During the validation process multiple issues
17 with the system became apparent;

18
19 13. Because his work involved testing blood samples obtained in DUI criminal
20 cases, Plaintiff was occasionally subpoenaed by either prosecution or defense counsel to
21 give evidence regarding the testing process. He was also called upon to give interviews to
22 prosecutors and defense lawyers in advance of court testimony;

23
24 14. In 2015, Plaintiff’s work on individual case testing shifted to analysis of
25 blood alcohol levels;

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27 15. In SAB, up to ninety (90) duplicate blood samples from up to forty-five (45)
28 different individuals are tested in a single “batch,” along with calibrators, controls, and a

1 “mixed standard” containing substances that are chemically similar to ethanol. The
2 documentation resulting from the testing includes printed results, called “chromatograms”
3 for every sample in the batch. SAB practice at the time was for the scientist doing the
4 analysis to work with hardcopies of the batch, to check the individual sample results, to
5 then segregate the individual results from the calibrators and controls, and, after concluding
6 a review of the analysis, pass on the hardcopies to another scientist for a technical review.
7
8 The results would be subject to a clerical, or administrative, review. The practice was to
9 disseminate the individual chromatograms to individual case files in advance of the
10 technical review;
11

12 16. AZDPS practice was to deny release of the entire batch results when sought
13 through the discovery process by any attorney representing a defendant. Plaintiff learned
14 that the agency would make the batch documentation available to a defense attorney only
15 through the attorney’s review in the SAB offices, without the production of copies to the
16 attorney. Plaintiff was informed that, because of the manner in which the paper hardcopy
17 system was set up, it was too burdensome on the department to release the entire batch run
18 upon demand;
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21 17. As a consequence of the blood alcohol validation work done, and because
22 Plaintiff was informed that the department was contemplating building out its website so
23 that complete batch results could be released, Plaintiff began to explore the possibility of
24 efficiently accessing the entire batch. Plaintiff also was engaged in one instance in which
25 he was tasked with gathering the disseminated hardcopies for review, and found it required
26 up to two and one-half (2 ½) hours of time to accomplish the task, when in the presence of
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1 a prosecutor and defense attorney. He later accomplished the task of pulling files and
2 providing them to administration, while working on his own, which required less than forty
3 (40) minutes of time;

4
5 18. Plaintiff's work over the years with the testing process led him to conclude
6 that, in rare cases, review of the entire batch could reveal evidence that would tend to cause
7 an individual result to be suspect. Consequently, he concluded that review of the entire
8 batch which showed no irregularities would enhance the validity of the individual results.
9 He came to the opinion that disclosure of the entire batch by AZDPS in each criminal case
10 in which the blood alcohol level was at issue, and was requested by defense counsel, is in
11 the public interest because it could either confirm the validity of the test, or, in rare cases,
12 reveal deficiencies in the result;

13
14
15 19. As part of this exploration of obtaining more efficiency, in early 2016,
16 Plaintiff began to preserve the batch results in a directory file in the system, taken directly
17 from the instrument download at the conclusion of the test run. He came to the conclusion
18 that it would be efficient to use this method to access the entire batch documentation at a
19 later date, after the technical and clerical reviews were concluded, taking only a few
20 minutes of time;

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23 20. In or around March, 2016, Plaintiff informed Defendants Tripoli and Morris
24 of his work. Neither, at that time, informed him that this effort violated any SAB protocols
25 or practices, and neither ordered him to stop saving the information on tests that Plaintiff
26 ran;

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1 21. Before May 23, 2016, the attorney representing the defendant in a case styled
2 State v. Worthen requested production through discovery of the entire batch run of tests,
3 one of which was his client's. Plaintiff had been the scientist who conducted a reanalysis of
4 the blood sample;

6 22. The lawyer representing the defendant filed a motion to compel discovery,
7 and subpoenaed Plaintiff to a hearing in Casa Grande held on May 23, 2016;

9 23. During that hearing, Plaintiff was questioned by defense counsel as well as
10 by the case prosecutor. He testified truthfully and completely in response to questions from
11 both prosecution and defense;

12 24. One aspect of testimony was Plaintiff's work in making the acquisition of
13 entire batch runs more efficient. Plaintiff testified to his opinion that release of the entire
14 batch would be in the public interest, and, except in rare instances, support the validity of
15 the individual result;

17 25. Plaintiff heard nothing from the Defendants concerning this testimony until
18 June 29, 2016. On that date, he was called into the office of Defendant Tripoli where he
19 was confronted by both Tripoli and Morris regarding his testimony in State v. Worthen;

21 26. At conclusion of the meeting, Plaintiff was informed that he would no longer
22 be allowed to conduct blood alcohol analysis, but would be limited to technical and
23 administrative reviews. He was informed that any future testimony or interviews conducted
24 with defense counsel would be monitored by the department to assure that his statements
25 and testimony conformed to the demands of the department. He was directed as well to
26 delete from the system all directory files which contained batch runs for the cases he had
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1 done. These were the actions Defendants Tripoli, Morris and Figarelli had agreed upon in
2 advance of Plaintiff being called in and reprimanded;

3 27. Following the meeting, Morris and Tripoli created a document titled
4 “Performance Notation,” a true and accurate copy of which is appended hereto as Exhibit
5 A;
6

7 28. The document was never provided to Plaintiff for his review and
8 acknowledgement;
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10 29. One of the “corrective actions” Plaintiff was required to take was to “modify
11 your testimony in such a way as to bring it inline (sic) with the position of the laboratory
12 and the other analysts. Failure to do so will result in referral to PSU [“Professional
13 Standards Unit”] for investigation.”;
14

15 30. The next day, June 30, 2016, Plaintiff sought out Tripoli, to request a
16 meeting with Defendant Chung regarding the preceding day’s meeting. Tripoli engaged
17 Plaintiff in conversation, then directed Plaintiff to go home and not return to the office until
18 Tuesday, July 5, 2016;
19

20 31. Between the 30th and the 5th, Defendants conferred regarding Plaintiff’s
21 situation. It was agreed that action would be taken against Plaintiff because of his truthful
22 testimony in the Worthen case; also because of the intent to prevent Plaintiff from
23 truthfully and fully testifying in future cases; and because he was advocating internally that
24 the department could without great difficulty change its practice to allow the production of
25 batch runs if requested in a case;
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1 32. When Plaintiff returned to work on July 5th, he was confronted by Tripoli,
2 and presented with another “Performance Notation,” a true and accurate copy of which is
3 appended as Exhibit B;
4

5 33. When Plaintiff reviewed the document, which purported to describe his
6 interactions with Tripoli on the 30th, he saw it was filled with inaccuracies and omissions.
7 Plaintiff signed is acknowledgement of receiving the document, and noted that he was
8 “unable to comply completely” with the directives that he would not testify as to his
9 “personal opinions” and would change his future testimony to “bring it in alignment with
10 the position of the laboratory and the other analysts.”;
11

12 34. Two days later, on July 7th, Plaintiff was subpoenaed to give evidence in
13 another evidentiary hearing, in the case of State v. Morel. As in the Worthen case, defense
14 counsel had sought batch runs for tests done by Plaintiff, which had been denied by the
15 department;
16

17 35. At the hearing, Plaintiff was questioned by defense counsel, and by the
18 prosecutor, and testified truthfully and completely;
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20 36. Present at the hearing was Defendants Morris and Tripoli;
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22 37. Following the conclusion of Plaintiff’s testimony, that day Morris spoke with
23 Defendants Tripoli and Figarelli, and on July 8th, Figarelli prepared a complaint against
24 Plaintiff for submission to PSU, charging him with having testified “in direct violation of
25 verbal and written orders given to him.” At the time, Figarelli knew Plaintiff had testified
26 truthfully and accurately and that any investigation was unwarranted;
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1 38. On July 8th, Figarelli, who had previously communicated the situation to
2 Defendant Chung, took Plaintiff to Chung’s office, where Chung handed Plaintiff a
3 document notifying him of his being placed on indefinite administrative leave, upon
4 accusations of insubordination, conduct adverse to the department and improper procedure;
5

6 39. Both Defendants knew at the time that the true reason behind the charges
7 was because Plaintiff had testified truthfully and accurately at the previous day’s hearing,
8 and was therefore not going to abide by the directive that he “modify his testimony” for the
9 administration;
10

11 40. Plaintiff was ordered that he was to remain at home during all working hours,
12 and was required to get special permission to leave the home, permission being granted
13 only for such necessities and doctors’ appointments. Plaintiff was denied access to the
14 department systems, and was given no assignments;
15

16 41. Beginning on July 20th, PSU began its investigation, assigned No. 2016-212.
17 In the course of the investigation, Morris and Tripoli were interviewed and gave false and
18 misleading information regarding their conduct and that of Plaintiff;
19

20 42. Upon conclusion of the investigation, the investigator prepared an
21 “Investigation Narrative” which was forwarded to Defendants;
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23 43. On or about November 4, 2016, Defendants met, conferred, and issued
24 findings that Plaintiff was guilty of insubordination and conduct adverse to the
25 Department;
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27 44. Plaintiff was disciplined with a 16 hour suspension without pay;
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1 45. Plaintiff was returned to work on or about November 4, 2016. Plaintiff was
2 essentially stripped of all responsibilities, and had his work station changed so that he was
3 sitting immediately outside Morris's office;

4 46. On or around November 16, 2016, Plaintiff learned that while he was on
5 administrative leave, Morris had circulated to all Forensic Scientists in the laboratory a
6 document identified as an Affidavit. By executing the affidavit, the affiant would swear
7 that "Chromatograms from unrelated cases have no scientific value in a particular case."
8 This language mirrors the directive that Plaintiff had been given on June 29th and again on
9 July 5th;

10 47. On or about November 4, 2016, Plaintiff notified the department of his intent
11 retire. He continued to come into work until approximately January 10, 2017. During that
12 period, Plaintiff was assigned very limited duties, unrelated to his work as a Forensic
13 Scientist;

14 **III. FIRST CLAIM: FIRST AMENDMENT VIOLATION: RETALIATION**

15 48. Plaintiff realleges Paragraphs 1 through 47 as if fully set forth herein;

16 49. This Claim is brought to vindicate rights guaranteed Plaintiff under the First
17 and Fourteenth Amendments to the Constitution of the United States;

18 50. In testifying truthfully and completely under oath in the cases identified
19 above, and in advocating within the SAB for a change in the manner in which the
20 department responds to requests in criminal cases for entire batch runs, Plaintiff engaged in
21 protected expression on matters of public concern;

1 51. None of Plaintiff's protected activities implicated actual or potential
2 disruptions of the efficient operation of the SAB;

3 52. As of 2016, it was clearly established that state actors violated the First
4 Amendment when they took retaliatory actions against a public employee for having given
5 truthful testimony under oath, and advocated for change in internal agency practices which
6 the public employee reasonably believed would further the interests of the agency;

7 53. Defendants retaliated against Plaintiff for having engaged in protected
8 expression. Such retaliation included, but is not limited to: (1) ordering Plaintiff to alter his
9 future testimony in order to comply with the administration's political interests; (2)
10 ordering Plaintiff to cease any internal advocacy of change in the SAB practice and
11 removing him from conducting testing; (3) sending Plaintiff home on June 30th after he
12 notified Tripoli of his request to meet with Chung; (4) falsifying the July 5th Performance
13 Notation and again directing Plaintiff to alter truthful testimony; (5) making out a
14 complaint against Plaintiff, initiating an investigation of him by PSU, because Plaintiff
15 violated Defendants' directives to alter his testimony to bring it in line with the
16 administration's interests; (6) placing Plaintiff on indefinite administrative leave; (7)
17 circulating the proposed Affidavit to all Forensic Scientists, including Plaintiff, which
18 reinforced Defendants' previous directives to Plaintiff; (8) issuing Plaintiff discipline that
19 Defendants knew was based on false and misleading information; (9) stripping Plaintiff of
20 his job duties upon his return from administrative leave; (10) by these actions,
21 constructively discharging Plaintiff from his employment with AZDPS;

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JURY DEMAND

Plaintiff demands trial by a jury of twelve (12) persons as to all issues.

/s/ Michael Garth Moore

/s/ Joseph P. St. Louis

ARIZONA DEPARTMENT OF PUBLIC SAFETY
EMPLOYEE PERFORMANCE REPORT



PERFORMANCE NOTATION

6/29/16

Employee: Greg Ohlson

Rater: Beth Brady-Morris, Joe Tripoli

Date of Counseling: 6/29/16

Time: 10:30 – 1:00

Type of Counseling: Verbal Instruction

SUMMARY OF INCIDENT:

Over the course of the past few months your testimony and interviews with the defense have been seen as actions inimical to the interests of the lab and the department. It has become apparent that ~~you have been attempting to forward your own agenda with regards to how blood alcohol analysis is conducted and what material is disclosed.~~ Significant time has been spent by me, Joe, Vince and Matt Herlihy addressing issues that have arisen as a result of your interviews and testimony.

During the course of this counseling session you were counseled with regards to your testimony. The concerns/issues are outlined below:

1. It was pointed out to you that your opinion regarding the necessity of evaluating all of the chromatograms from a run in order to determine if an individual sample is successful is contrary to the opinion of the other analysts in the bureau and contrary to the position of the laboratory.
2. You were advised that testifying about what other agencies in the state do with regards to disclosure or storage of their data is outside of your current qualifications. You are not currently employed by these agencies and are not aware of their current procedures, protocols or policies.
3. You have testified that you have a pdf file that could be easily attached to an email and disclosed. While you may have the chromatograms in a pdf file and the file could be attached to an email, doing so would violate SAB policies. Testifying or interviewing in this fashion is misleading and harmful to the department.
4. You state in your testimony in the State v Worthen evidentiary hearing that DPS stores data in individual case files because it is "convenient when you don't want to actually bring up additional documents." The implication that DPS has ulterior motives for storing data in case files is inappropriate and damaging to the laboratory and the department.
5. During the State v Worthen hearing you testified about what we could do to be able to provide the pdf file you have been creating prior to review. Unless you are specifically asked about how we could change things to make it easier, it is inappropriate for you to be making suggestions in your testimony or interviews about how we could change our process to make the disclosure easier. You should be testifying about how we currently operate not about what your ideas are for change. As Joe and I explained, your ideas for change need to be made through the chain of

EMPLOYEE'S ACKNOWLEDGEMENT

DATE

EXHIBIT

A

SUMMARY OF CORRECTIVE ACTION/COMMENTS:

1. For the time being, your duties will be limited to technical and administrative reviews.
 2. All of your testimony and interviews will be monitored.
 3. It is expected that you will modify your testimony in such a way as to bring it inline with the position of the laboratory and the other analysts. Failure to do so will result in referral to PSU for investigation.
 4. You are to cease the scanning of your data prior to it having been both technically and administratively reviewed. Any such files that exist are to be deleted.
-

EMPLOYEE COMMENTS:

During the meeting, Greg stated that he would not change his testimony and continued with, "so, you'll have to do what you have to do."

EMPLOYEE'S ACKNOWLEDGEMENT

DATE



ARIZONA DEPARTMENT OF PUBLIC SAFETY
EMPLOYEE PERFORMANCE REPORT

PERFORMANCE NOTATION
6-30-16 to 7-5-16

Employee: Greg Ohlson

Rater: Joseph Tripoli

Date of Counseling: July 5th 2016

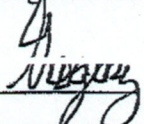
Time: 0900

Type of Counseling: Corrective Action

SUMMARY OF INCIDENT:

On June 30, 2016, I came into work to an email from Greg Ohlson regarding a meeting that had taken place the day prior. In the email, he expressed his wishes to speak to Lt. Colonel Chung regarding the circumstances surrounding that meeting and the information he was given. Before I could speak with management regarding the situation, Herlinda Graham came into my office, around 7:20, and asked what was wrong/going on with Greg. I asked her why and what was her question in reference to. She said he had already confronted her about his distrust of management, being removed from case work, as well as his desire to resign. I asked her how she felt about the confrontation. She said she was just taken back by it. I then went and spoke to Brooke Arnone about the situation, Greg's email, his desire to speak to Lt. Colonel Chung as well as his potential resignation. She advised me to inform Greg I would do all I could to arrange the meeting and that he was to wait patiently without confronting anymore employees. I went back to my office and pulled Greg in for a closed door meeting. I told him I was saddened and disappointed to see his email this morning and that I would work toward getting him the meeting he requested. I also asked him to refrain from confronting anymore employees. He then proceeded to inform me that he was at "Defcon 5", that he had a complete and total lack of trust for the administration and that he felt the open ended notice of reduced duties was an attempt on Vince's part to get him to quit since Vince knows he (Greg) likes to do casework and not the paperwork. I then asked him to remain calm and not do anything rash, like resigning, until he had further time to reflect. He said, "No, my resignation will come on July 7th in court," during an evidentiary hearing with Nesci. Greg informed me he had already contacted Nesci about what had occurred the previous day. Greg wants the courtroom on July 7th to be standing room only. He wants the room to be filled with defense attorneys, prosecutors, and uniformed officers. He will request the presence of the officers during his conversation with Lt. Colonel Chung. During the hearing he intends to bring to light all the things he feels are wrong with the administration, the department, the leaders, the policies and procedures. He proceeded to express his general desire to rip the department apart. He wishes to speak to Ron Skwartz to get his wife's phone number to contact as many prosecutors as possible. (Ron's wife works at the Maricopa County Attorney's Office.)

After hearing this, I withheld a response and informed him I would continue to try to get the meeting scheduled and that he was to sit at his desk and refrain from speaking to anyone. I then went back to Brooke and immediately informed her of what had occurred. Brooke then contacted Vince as I contacted my supervisor, Beth Brady-Morris. We informed them both of what was occurring. Brooke then asked me to write up what I could remember of the events. While doing so Vince and Brooke called me to the front office and asked me to send Greg home on administrative leave for the rest of the day. Greg was told not to return until Tuesday, July 5th. They also informed me that Lt. Colonel Chung



 EMPLOYEE'S ACKNOWLEDGEMENT

7/5/16

 DATE

EXHIBIT
 B

had been made aware of the request to meet but was otherwise engaged for the week and had requested time to review the situation prior to meeting. I went back and informed Greg that Lt. Colonel Chung was aware of his request to meet but was otherwise engaged for the week and I would continue to work on getting a meeting set with him. Greg then left the premises without further confrontation.


SUMMARY OF CORRECTIVE ACTION/COMMENTS:

Expectations are as follows:

- 1. You will adhere to the Policies and Procedures set forth by DPS General Orders and SAB General Procedure Manual.
- 2. You remain on limited duties performing Technical and Administrative reviews of case work and other duties as assigned by your supervisor.
- ~~3. You will not use legal proceedings as a forum to advance personal agendas or personal opinions similar to those identified in the summary of incident.~~
- 4. You are to cease the scanning of your data and any such files that exist are to be deleted.
- 5. From this day forward all testimony and defense interviews will be monitored and you are to notify your supervisor or designee of any upcoming testimonies or interviews.
- ~~6. You will modify your testimony in such a way as to bring it into alignment with the position of the laboratory and the other analysts.~~

* UNABLE TO COMPLY COMPLETELY

"Disciplinary action will be taken if you cannot complete these tasks"

EMPLOYEE'S ACKNOWLEDGEMENT

7/5/14

DATE

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to
the Complaint or Notice of Removal.**

Plaintiff(s): Greg Ohlson

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

**Michael Garth Moore
Law Offices of Michael Garth Moore
9040 N. Placita Verde
Tucson, Arizona 85704
888-318-0075**

**Joseph P. St. Louis
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216 N. Main Avenue
Tucson, Arizona 85701
520-622-1222**

**Beth Brady-Morris ; Joseph Tripoli
Defendant(s): ; Timothy Chung ; Vincent
Figarelli**

County of Residence: Maricopa

Defendant's Atty(s):

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

**III. Citizenship of Principal
Parties (Diversity Cases Only)**

**Plaintiff:- 1 Citizen of This State
Defendant:- 1 Citizen of This State**

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **440 Other Civil Rights**

VI.Cause of Action: **Fourteenth Amendment to the Constitution of the United States through 42 U.S.C. § 1983**

VII. Requested in Complaint

Class Action: **No**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: Michael Garth Moore

Date: 04/02/2018

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014