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

11 **BILLY MALONE**, a married man,
12
13 Plaintiff,

14 VS.

15 **CLYDE YEE, STEVE MARTIN, CYD**
16 **MARTIN, MIKE SNYDER, CARL**
17 **“CHIP” DAVIS, PATRICIA “PAT”**
18 **BUCCELLO, BRIAN SMITH,**
19 **WESTERN NATIONAL PARKS**
20 **ASSOCIATION, LEANN SIMPSON,**
21 **JIM BABBITT;**

22 Defendants.

23 **NO. 3:08-CV-8027-HRH**

24 **CORRECTED FIRST AMENDED**
25 **COMPLAINT**

26 (Jury Trial Demanded)

1. Plaintiff Billy Malone (“Billy Malone”) for his First Amended Complaint against Defendants and pursuant to his rights under the 4th Amendments of the Constitution of the United States *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) and *Ting v. United States*, 927 F.2d 1504, 1513 (9th Cir.1991) alleges as follows:

JURISDICTION AND VENUE

2. This Court has jurisdiction to hear and determine this action and to grant the

1 relief requested pursuant to 28 U.S.C. § 1331 and 1343 and supplemental jurisdiction for
2 tort and tort-related claims pursuant to 28 U.S.C. § 1367.

3
4 3. The events giving rise to this litigation occurred largely in the District of
5 Arizona and therefore venue is with this court. 28 U.S.C. § 1391.

6 **THE PARTIES**

7
8 4. Billy Malone is an Indian Trader and was formerly employed by Western
9 National Parks Association (“WNPA”) as the Indian Trader at Hubbell Trading Post
10 National Historic Site in Ganado, Arizona where he also lived.

11 5. Defendants Clyde Yee (“Yee”), Steve Martin (S. Martin”), Cyd Martin (“C.
12 Martin”), Mike Snyder (“Snyder”), Carl “Chip” Davis (“Davis”), Patricia “Pat” Buccello
13 (“Buccello”) and Brian Smith (“Smith”) are all employees or former employees of the
14 National Park Service (“NPS”) and are persons who served in various roles in the
15 investigation of Billy Malone and were involved in culpable tortious conduct by which
16 Billy Malone was injured. They are referred to herein collectively as the NPS Defendants.
17

18 6. Defendant WNPA (formerly known as Southwestern Parks and Monuments
19 Association or SPMA prior to 2002) is a cooperating association and non-profit entity
20 acting through its agents and employees and is responsible for the culpable tortious
21 conduct of those persons who injured Billy Malone.
22

23 7. Defendant Leann Simpson (“Simpson”) at all material times was the
24 executive director of the WNPA and reported directly to Babbitt as Chairman of WNPA’s
25 Board of Directors.
26

1 managers and accountants and the failure of Simpson and WNPA personnel to make
2 inquiry about prior practices, in 2003 and early 2004 WNPA acting through Simpson and
3 other WNPA agents began to suspect Billy Malone of misconduct including fraud,
4 embezzlement, and other financial improprieties.
5

6 16. WNPA acting through Simpson and other WNPA personnel contacted NPS
7 and met with NPS personnel in Denver to report their suspicions.
8

9 17. A criminal investigation was initiated and assigned to NPS Special Agent
10 Clyde Yee.

11 18. Yee worked with the assigned AUSA Aspey to build a criminal case against
12 Billy Malone and to obtain a search warrant for Billy Malone's residence.
13

14 19. Aspey as the responsible AUSA assigned to the case with Yee and Yee were
15 obligated to comply with provisions of federal law respecting the issuance and execution
16 of the warrant.

17 20. The Fourth Amendment provides that "no Warrants shall issue, but upon
18 probable cause . . . and particularly describing the place to be searched and the persons or
19 things to be seized." *U.S. Const. Amend. IV*.

21 21. The particularity requirement of the Fourth Amendment "makes 'general
22 searches under [a warrant] impossible and prevents seizure of one thing under a warrant
23 describing another. As to what is to be taken, nothing is left to the discretion of the officer
24 executing the warrant.'" *United States v. Bridges*, 344 F.3d 1010, 1016 (9th Cir.2003),
25 *citing United States v. Cardwell*, 680 F.2d 75, 77 (9th Cir.1982), *quoting Marrion v.*
26

1 *United States*, 275 U.S. 192, 196 (1927).

2 22. *Bridges* further states:

3 The Fourth Amendment requires search warrants to state with reasonable
4 particularity what items are being targeted for search or, alternatively, what criminal
5 activity is suspected of having been perpetrated. *Marrion v. United States*, 275 U.S.
6 192, 196 (1927).

7 23. The warrant for the search of Billy Malone's residence and its supporting
8 affidavit made false or unsubstantiated claims that WNPA was losing money at Hubbell
9 Trading Post and that Billy Malone was stealing it; falsely asserted the existence of a
10 contract between WNPA and NPS by which WNPA was obligated to give 6.5% of its
11 revenues to NPS, falsely stated that a portion of WNPA funds were government funds and
12 that a theft of WNPA funds would constitute a theft of Government funds.

14 24. Yee failed to exercise reasonable diligence in reviewing the WNPA
15 cooperative agreements underlying his claim for federal jurisdiction in the allegation for
16 theft of federal funds, failed to review corroborating information provided by Simpson
17 regarding claimed revenue deficits, failed to make a minimal effort to understand the basis
18 of Simpson's allegations on behalf of WNPA by contacting WNPA's contracted
19 accountant, Marianne DeVries.

22 25. Had Yee contacted Ms. DeVries he would have discovered that WNPA's
23 accounting generally (including but not limited to the trading enterprise at Hubbell Trading
24 Post) was in such disarray that it had no idea about the financial affairs of the entire
25 organization.

1 26. Prior to the issuance or execution of the search warrant, no effort was made
2 by Yee or any NPS personnel to interview Billy Malone about the substance of the
3 allegations made against him by Simpson and WNPA.
4

5 27. Thus, Yee prepared and affirmed an affidavit in support of a search warrant
6 which contained substantially false information.

7 28. Yee failed to identify any criminal activity on the face of the search warrant
8 or in any attachments thereto.
9

10 29. With the support of Aspey, Yee obtained a search warrant for the residence
11 occupied by Billy Malone and his wife Minnie Malone.

12 30. That search warrant was executed on June 9, 2004.

13 31. Before the execution of the search warrant, on June 8, 2004, Yee, NPS
14 agents, and WNPA agents and personnel, including Simpson, met in Simpson's motel
15 room in St. Michaels, Arizona for the pre-raid meeting.
16

17 32. Simpson and WNPA agents and personnel participated in the pre-raid
18 meeting.
19

20 33. The participation of Simpson and other WNPA agents and personnel in the
21 pre-raid meeting and in the subsequent execution of the search warrant, and search of Billy
22 Malone's residence and seizure of personal his property was contrary to standard law
23 enforcement policy, practice and training. The effect of the participation of agents and
24 employees of the putative victim of a crime significantly compromised the rights of Billy
25 Malone.
26

1 34. In executing the search warrant, Yee and agents and employees of WNPA
2 discovered Navajo rugs, jewelry, pots and other personal property of Billy Malone, which
3 were not identified in the warrant.
4

5 35. Despite the fact that the property Yee and agents of WNPA discovered in
6 the search of Billy Malone's residence was not identified in the warrant, Yee seized that
7 property and removed it from Billy Malone's possession and control.
8

9 36. Yee seized the property without probable cause.

10 37. No exigent circumstances or probable cause to seize the property without a
11 warrant existed.

12 38. Yee later acknowledged that during the raid and seizure, Billy Malone
13 protested to Yee that they were taking his personal property. His protest was disregarded
14 by Yee.
15

16 39. While Yee may have suspected that some of the property he discovered in
17 his search of the residence of Billy Malone was stolen, Yee knew that much of the property
18 was not stolen and in fact did belong to Malone but seized it anyway.
19

20 40. The property seized was not inventoried in any meaningful way which is
21 contrary to law enforcement policy, training and procedure.

22 41. The failure to properly inventory the personal property seized was reflected
23 in the varying declarations of Yee erroneously describing the numbers and value of seized
24 items, *i.e.* describing what turned out to be 6000 items of jewelry as "tens of thousands of
25 items of jewelry" and "upwards of five million dollars of value of rugs and jewelry."
26

1 42. Yee loaded Billy Malone’s personal property into an NPS vehicle and a
2 second WNPCA vehicle and transported that property late in the day of June 9, 2004 to an
3 unsecured lot in St. Michaels, Arizona where the vehicles containing the property were
4 parked not under guard.
5

6 43. Simpson, unaccompanied, drove the WNPCA vehicle containing a van load
7 of Billy Malone’s property.
8

9 44. Yee and Simpson drove the vehicle to Flagstaff the next day.

10 45. Yee and Simpson placed Billy Malone’s property in a temporary rented
11 storage locker.

12 46. Some weeks later, in late June of 2004, Yee moved Billy Malone’s seized
13 property to the Walnut Canyon National Historic Site near Flagstaff and the curatorial staff
14 began inventorying and documenting the rugs and about 10% of the jewelry.
15

16 47. Finally, in early July of 2004, the property seized by Yee was transported to
17 the Western Archaeological Conservation Center (“WACC”), a facility in Tucson, Arizona
18 where further inventorying and processing occurred and the property was placed in a
19 locked portion of that facility under the sole custody of NPS Special Agent (“SA”) Susan
20 Morton (“Morton”).
21

22 48. Subsequently, while Morton was on vacation, Yee arranged for the facility
23 lock to be broken and to have access for himself and other NPS senior personnel. In doing
24 so, Yee breached the chain of custody for the seized Billy Malone property.
25

26 49. The visitor log for the Tucson facility indicates certain senior NPS

1 personnel, not associated with the investigation, entered the facility, apparently to observe
2 the property of Billy Malone which Yee had seized.

3
4 50. When Morton discovered the breach of the secure facility, she wrote a
5 memorandum describing that breach. She was criticized by her superiors for doing so.

6 51. Instead of using trained government personnel familiar with forensic
7 accounting and available, in the Fall of 2004, Yee proposed that WNPA contract with
8 WNPA's accountants for a forensic audit under the supervision of Yee as the case agent.

9
10 52. Simpson by Yee, Davis and other NPS personnel made the initial approach
11 to WNPA and indicated to WNPA that it would be a "benefit" to WNPA.

12 53. Yee had already used WNPA agents and employees in support of his
13 original raid on the Billy Malone residence on June 9, 2004.

14
15 54. Simpson indicated to Yee and Davis that such an arrangement would have
16 to be requested by S. Martin.

17 55. As a result, S. Martin, the NPS Regional Director, solicited WNPA to fund
18 the forensic audit in support of the investigation of Billy Malone.

19
20 56. S. Martin told WNPA that such an arrangement would be "beneficial" to
21 WNPA.

22 57. WNPA agreed to fund the audit obligating up to \$75,000, thus involving the
23 reporting party and putative victim of a claim of criminal conduct in the funding and
24 investigation of the alleged offenses, with the implied promise of a return on their
25 investment from the property seized from Billy Malone.
26

1 58. During the period of Yee's oversight of the investigation which continued
2 until the late Fall of 2005, Yee received, by his was own account, as many as six to ten
3 calls a day from Simpson soliciting case briefings and updates on the investigation.
4

5 59. Beyond this, Yee would call WNPA Board Chairman Babbitt and provide
6 additional case briefings, particularly before WNPA Board meetings.
7

8 60. WNPA through Babbitt and Simpson attended a meeting with senior NPS
9 personnel in Denver in July or August of 2004 about the Malone investigation and the
10 status of operations at Hubbell Trading Post.

11 61. Present at that meetings was the then Superintendent of Hubbell Trading
12 Post National Historic Site Nancy Stone ("Stone") who heard Simpson claim the Billy
13 Malone had stolen money from Hubbell and that he was a "crook."
14

15 62. Stone was, in no way involved in the investigation and, in fact, was falsely
16 suspected of complicity in criminal conduct with Billy Malone, an allegation known at that
17 point to Simpson.
18

19 63. Nevertheless, Stone heard Simpson's claim about Billy Malone in front of
20 the entire group, including others not involved in the investigation that Billy Malone and
21 stolen money and was a crook.

22 64. On another occasion Simpson made a similar remark about Malone to Stone
23 at an encounter in the Hubbell Trading Post on or about the same time.
24

25 65. Babbitt who was Simpson's immediate supervisor as Chairman of the
26 WNPA Board of Directors, was present when Simpson speaking in her official capacity as

1 the executive director of WNPA, made the remark in Denver, he did not correct her or
2 caution her in any way or otherwise qualify those remarks and by not doing so, adopted
3 Simpson's defamatory remark about Billy Malone.
4

5 66. Thruide Breckenridge was a volunteer with and served as President of the
6 "Friends of Hubbell," a volunteer support group. In a meeting in Simpson's office at the
7 WNPA headquarters in Tucson, in or about August or September of 2004, Simpson told
8 Breckenridge that Billy Malone had stolen "millions of dollars."
9

10 67. Simpson did not qualify those remarks in any way.

11 68. During the period of time that Yee was in charge of the investigation, Steve
12 Getzwiller ("Getzwiller"), a friend of Billy Malone and a dealer in Navajo rugs, made an
13 unsolicited trip to Denver to meet with Intermountain Regional Director S. Martin, the
14 NPS Regional Director, to explain that the Hubbell Trading Post tags on some of the rugs
15 seized by Yee, were old tags that had been discarded by WNPA and were not indicative of
16 WNPA or Hubbell Trading Post ownership.
17

18 69. S. Martin failed to meet with Getzwiller who was met, instead by C. Martin
19 (S. Martin's wife and a regional employee acting on behalf of her husband as the Regional
20 Director) who received the information from Getzwiller and, as it turned out, failed to
21 forward it to S. Martin, Yee or any other NPS law enforcement person.
22

23 70. In the Fall of 2005, because no apparent progress had been made in the
24 investigation of Bill Malone, the NPS considered and ultimately determined to place a new
25 investigator, Paul Berkowitz ("Berkowitz") in charge of the investigation of Billy Malone.
26

1 71. Berkowitz assumed responsibility for the NPS investigation in December of
2 2005, after the case had already been underway for more than a year and a half, and
3 associated costs of investigation approached a million dollars.
4

5 72. Berkowitz's instructions were to close the case and arrest Billy Malone
6 without further expense or delay.

7 73. Berkowitz's investigation ultimately resulted in a determination that Yee's
8 seizure of Billy Malone's property was unlawful and that the property should be returned
9 to him in July of 2006, a judgment which was concurred with by the assigned Assistant
10 United States Attorney ("AUSA") Rob Long.
11

12 74. As a part of his investigation, Berkowitz interviewed a prior CFO of
13 WNPA, John Pearson and discovered potentially legitimate and benign explanations for
14 Malone's conduct, which Yee, Simpson, and Babbitt erroneously alleged to be criminal.
15

16 75. Berkowitz also had interviewed Simpson and discovered that there was no
17 federal jurisdiction for the claim of embezzlement of WNPA monies because there was no
18 contractual obligation by WNPA to pay a fixed sum to the government. There was,
19 therefore no basis for a claim of a theft of federal funds.
20

21 76. Berkowitz reported these interviews to Yee who remarked to him, in words
22 to the effect, "Man, I hope you can charge [Billy Malone] with something."
23

24 77. Berkowitz sought an interview with Billy Malone who agreed to it and
25 answered all questions.

26 78. Berkowitz sought and Billy Malone agreed to an FBI polygraph at which he

1 was determined not to be deceptive when he stated his own and other property entrusted to
2 him was lawfully possessed by him and that he had not stolen money or property from
3 anyone.
4

5 79. Berkowitz arranged to again meet with Billy Malone at the WACC in
6 Tucson; on or about July 13, 2006, to return all of his property illegally seized on the June
7 9, 2004 raid on his house. Berkowitz was assisted by NPS SA Morton.
8

9 80. Billy Malone indicated he would be bringing his friend Getzwiller to help in
10 loading and transporting the property to a storage facility of his own.

11 81. Yee's failure to properly inventory the property when seized on June 9,
12 2004, the sheer volume of the property, the inadequate chain of custody, and repeated
13 breaches of the chain of custody and security, lead to concerns and complication in the
14 documentation of the return of the property.
15

16 82. The property returned to Billy Malone comprised more than six thousand
17 items listed on the 548-page spreadsheet inventory, and 11-page rug inventory that had
18 been prepared in the months following the actual seizure at WACC.
19

20 83. Rob Eaton ("Eaton"), an attorney with the Department of Interior's
21 solicitor's office sought to inject, as a condition of return of his property, a further
22 qualification that as a condition of return to him of his property, Billy Malone would be
23 required to sign general release of claims against NPS in the draft of the receipt for the
24 return to Billy Malone of his property.
25

26 84. Ultimately, after the intercession of Billy Malone's criminal attorney, the

1 offending language was removed from the receipt and Billy Malone's property was
2 returned to him on July 13, 2006.

3
4 85. When the offending language was removed, Eaton's concluding remark to
5 Berkowitz was "Sorry Clyde" reflecting his awareness of Yee's exposure.

6 86. Somehow, Simpson learned of the intended return to Billy Malone of his
7 property.

8
9 87. Berkowitz received a call on his cell phone, on July 12, 2006, from
10 Simpson.

11 88. Simpson was inquiring about progress with the investigation and rumors she
12 had d heard that Berkowitz would be returning property to Billy Malone.

13
14 89. Berkowitz told Simpson that things were proceeding in consultation with
15 both the U.S. Attorney's Office and the DOI Solicitor's Office and that he was, in fact, in
16 Tucson at the WACC, preparing to return property to Malone the next day.

17 90. Berkowitz observed that the prospect that NPS would actually be returning
18 to Billy Malone the rugs and jewelry seized from his residence seemed to really alarm
19 Simpson.
20

21 91. Simpson also expressed concerns over the prospect of Billy Malone
22 obtaining property obtained and retained separately by Yee from WNPA at a later date.

23
24 92. Simpson explained that several months after the raid of Billy Malone's
25 residence, Yee had taken custody of additional property (rugs, jewelry, and baskets) that
26 were stored in the "Bally Building" behind the Hubbell Trading Post wareroom. This

1 property represented a small subset of property held by NPS at the WACC, the largest
2 amount being that seized in the June 9, 2004 raid.

3
4 93. Simpson was adamant to Berkowitz that the property WNPA had
5 surrendered to the NPS not be turned over to Billy Malone.

6 94. Simpson requested that Berkowitz allow her time to dispatch another
7 WNPA employee Scott Aldridge (“Aldridge”) of her office down to the WACC to provide
8 Berkowitz with a copy of the inventory and receipt for property WNPA possessed.

9
10 95. A copy of a property inventory and receipt listing items had been turned
11 over to Yee by WNPA, from the Hubbell Trading Post “Bally Building” and had been co-
12 mingled with Billy Malone’s seized property at the WACC.

13
14 96. Simpson and WNPA did not know who actually owned this additional
15 property, Malone or consignors, but Simpson was adamant to Berkowitz that she did not
16 want any of that property from the Bally Building turned over to Malone.

17 97. The Bally Building property was not turned over to Billy Malone on July
18 13, 2006.

19
20 98. Simpson’s hand deliver (by Aldridge) letter documenting concerns that
21 property previously seized by SA Yee from WNPA not be turned over to Malone.

22 99. Billy Malone and his friend, Getzwiller, showed up with a large, enclosed
23 horse trailer attached to his truck that would be used to carry the property and haul it away
24 and took back the property illegally seized from him on June 9, 2004.

25
26 100. Berkowitz received a number of telephone calls from Simpson following her

1 calls to him at the WACC on July 11&12 of 2006.

2 101. Discussions with her centered on the balance of property in NPS custody
3 that needed to be returned to WNPA.
4

5 102. Simpson's attentions were re-focused on obtaining copies of the
6 consignment ledgers seized during the raid at Malone's residence, which had actually been
7 the original focus of the warrant.
8

9 103. In the course of these conversations Berkowitz asked Simpson to provide
10 copies of additional documents and correspondence between WNPA, DeVries, Carpenter,
11 and Associates, and the National Park Service, related to early activities in the
12 investigation; particularly a letter from [then] IMR Director Steve Martin authorizing
13 WNPA to terminate their contract with DeVries for the forensic audit.
14

15 104. In a letter on July 21, 2006 which Simpson forwarded to Berkowitz, she
16 detailed, among other matters, the history of Yee's and NPS's agreement for the use of
17 WNPA's accountants, the involvement of WNPA Board members and Simpson in the
18 negotiation for the use of those agents of WNPA, WNPA's agreement to pay for the
19 Forensic Audit in support of the criminal investigation of Billy Malone and the
20 determination and agreement to terminate that arrangement after many months.
21

22 105. Berkowitz received several more telephone calls and one visit from Simpson
23 in the month or so following receipt by him of her letter.
24

25 106. All of these conversations were independently initiated by Simpson in
26 apparent efforts to voice concerns and frustrations about developments in the investigation

1 and concerns about how she was going to explain to Babbitt and the WNPA Board of
2 Directors the return of the property.

3
4 107. Simpson provided, perhaps inadvertently, during these phone calls and
5 meetings information that revealed even more significant issues relating to the NPS request
6 for WNPA financial assistance with the investigation, and the overall relationship between
7 the NPS and WNPA.

8
9 108. Berkowitz made a point of promptly briefing both AUSA Rob Long and the
10 Department of the Interior (Office of the Inspector General) (“OIG”) about the
11 conversations, and later included detailed documentation in his final report.

12
13 109. In the first of these calls, on July 31, 2006, Simpson was upset about rumors
14 circulating in Flagstaff, AZ, and relayed to her by new Hubbell Trading Post manager
15 Steve Pickle (“Pickle”).

16
17 110. Simpson had learned that a group of Billy Malone’s friends were holding a
18 fund-raising rug auction for his legal expenses.

19
20 111. Simpson reported that recent word was also circulating that all of the rugs
21 and jewelry originally seized by the NPS had been returned to Billy Malone (which
22 Simpson already knew was true) and that Billy Malone had been completely exonerated, a
23 determination that had not yet been made by the AUSA assigned.

24
25 112. Worse yet, for Simpson, was the accompanying rumor that she had sent a
26 letter of apology to Billy Malone.

113. Simpson was emphatic when she told Berkowitz there was “no way in hell”

1 she had ever written Malone an apology letter, and “I’ll be damned if I’ll ever write him an
2 apology letter.”

3
4 114. Berkowitz believed that Simpson took these rumors personally and was very
5 angered.

6 115. Simpson sought to learn from Berkowitz if he or the NPS had written Billy
7 Malone a letter of apology.

8
9 116. During this same call to Berkowitz, Simpson first mentioned she might not
10 return any of Billy Malone’s property to him that was still in WNPA custody at the trading
11 post.

12 117. Berkowitz received another call from Simpson on August 23, 2006.

13
14 118. Simpson repeated many of the same sentiments she had expressed earlier,
15 but expanded significantly on the topic of her own expectations of support and cooperation
16 from the NPS.

17 119. Simpson shared with Berkowitz her perception that the NPS was obligated
18 to keep her informed about progress and developments with the investigation.

19
20 120. Simpson informed Berkowitz that she would be in the area of Chinle,
21 Arizona in the next day or so and wanted to know if he would be able to meet with her.

22 121. In that conversation, Berkowitz recorded that Simpson went into a virtual
23 monologue, complaining that the investigation had taken far longer and not gone at all as
24 she and WNPA were promised.

25
26 122. Simpson said to Berkowitz that when the case began back in 2004, she

1 viewed herself and WNPA as “partners” with the NPS in the investigation, and received
2 extensive access to updated case information from Yee.

3
4 123. Simpson added, however, that she and the Board had been frustrated and
5 disappointed by the reduced flow of information and other recent developments;
6 particularly the return to Billy Malone of millions of dollars in property.

7
8 124. Simpson expressed frustration in not being able to explain to her Board and
9 particularly Chairman Babbitt why all this had occurred.

10
11 125. Simpson indicated to Berkowitz that this was especially disturbing for her in
12 light of the money WNPA contributed to the investigation, and assurances WNPA had
13 previously been given by NPS representatives about how this investigation was expected to
14 develop

15
16 126. Expanding on this, Simpson related a recent conversation with
17 Intermountain Regional Director Mike Snyder.

18
19 127. Simpson acknowledged her own attempts to pressure Snyder to get the
20 investigation moving more quickly and provide her and her Board with more information.
21 Simpson even acknowledged that when Snyder told her he didn’t think he had the
22 influence to do that, she told him to figure who did have that clout and get them to speed
23 things up and get more information for her and the Board.

24
25 128. Simpson again complained to Berkowitz about her frustration and anger
26 over rumors that Billy Malone had been exonerated and received a letter of apology from
her.

1 129. Simpson blamed Billy Malone, personally, for spreading that rumor,
2 exclaiming “I’ll be damned’ if I’ll ever apologize to Malone.”

3
4 130. Simpson reiterated the prospect that she might not return any of Billy
5 Malone’s property to him that might be mixed in with the other WNPA or consignment
6 inventory at the Hubbell Trading Post.

7 131. Berkowitz challenged Simpson and reminded her about WNPA’s
8 responsibility to make a reasonable effort to return any property to its rightful owner,
9 including Billy Malone, to which she responded, “I’ll have to think about that.”

10 132. Simpson continued her justification for prospectively keeping property that
11 belonged to Malone, explaining that when this case began, all that she and WNPA had
12 wanted was for the NPS to obtain the consignment ledgers they believed Malone had at his
13 residence, so that they (WNPA) could use them to conduct their audit.

14
15
16 133. Simpson indicated that she thought that was the purpose behind obtaining
17 and serving the search warrants.

18 134. According to Simpson, she had been told “it would be to WNPA’s benefit”
19 to financially assist the NPS with the investigation.

20
21 135. She informed Berkowitz that she was told WNPA would “benefit” from this
22 contribution not only from an improved relationships and access to case information
23 (“partnering” with the NPS in the investigation), but also from the prospect that WNPA
24 would be able to recover costs incurred in supporting the investigation through disposition
25 of the rugs and jewelry seized from Malone in the raid.
26

1 136. With Billy Malone now back in possession of the rugs and jewelry
2 previously seized by the NPS, Simpson stated her view that she and WNPA might keep
3 property that might actually belong to Billy Malone, if that was what it took to compensate
4 for their investment.
5

6 137. Simpson stated she could do this because she doubted anyone would have
7 receipts for property that could force WNPA to return things.
8

9 138. Simpson showed up at Canyon de Chelly on August 25, 2006 to participate
10 in anniversary ceremonies for the national monument.

11 139. She met with Berkowitz at park headquarters and he gave her a copy of the
12 consignment ledgers.
13

14 140. Berkowitz met in private with Simpson and talked for approximately two
15 hours.
16

17 141. Among other topics, they again discussed the disposition of Billy Malone
18 property.
19

20 142. Simpson related to Berkowitz a recent conversation she had with Regional
21 Director Mike Snyder, about Hubbell Trading Post consignment property.

22 143. That conversation had taken place just a few weeks earlier.

23 144. According to Simpson, Snyder questioned why she (Simpson) was even
24 thinking about giving any of the consignment property back, at all (beyond the property
25 claimed by Billy Malone); suggesting that she instead, just keep it to recover their costs.

26 145. Berkowitz responded to Simpson that it had been inappropriate for Snyder

1 to make such a suggestion.

2 146. Simpson hastily followed up by asking Berkowitz, the assigned investigator,
3 to consider this “off the record,” and to “keep it to myself.”
4

5 147. Berkowitz reminded Simpson that both he and the FBI in its polygraph of
6 Billy Malone (to which Malone had agreed), had interviewed Malone about this topic, and
7 to the best of their knowledge Malone had been completely truthful in identifying who
8 owned what property.
9

10 148. Simpson acknowledged this, and seemed to understand the logic in working
11 with Malone and accepting his assistance in identifying and returning all of consignment
12 property WNPA still had to its rightful owners, including Billy Malone and his family.
13

14 149. Toward the end of their meeting, Simpson expressed to Berkowitz her
15 concerns about potential liability arising from the case.

16 150. Simpson asked if the U.S. Attorney’s Office might consider or negotiate
17 NPS or WNPA liability when making its decision on whether to prosecute Malone.
18

19 151. In response to her inquiry, Berkowitz bluntly replied, “No.”

20 152. On November 2, 2006, the OIG opened a case and took over responsibility
21 for the Hubbell Trading Post investigation as an internal investigation.

22 153. OIG Agent Paul Okerberg (“Okerberg”) was the OIG investigator assigned
23 and Berkowitz was directed to assist Okerberg in case transition.
24

25 154. NPS Director Mary Bomar was notified by the OIG and she directed that
26 other NPS personnel were to stand down.

1 155. Despite being directed to stand down, various NPS personnel continued to
2 involve themselves in the case.

3
4 156. Smith sought from Berkowitz in an 11:30 a.m. telephone call on November
5 13, 2006, information about the OIG case in order to brief Inter Mountain Regional Deputy
6 Director Hal Grovert so that he in turn could brief Snyder for Snyder to brief Simpson,
7 Babbitt and other WNPA officials at the upcoming WNPA Board meeting.

8
9 157. Berkowitz who was directed to assist Okerberg went with him to Santa Fe,
10 New Mexico where the documentation developed in the investigation of Billy Malone was
11 supposed to be kept at the NPS internal affairs office of Chip Davis (“Davis”).

12 158. Okerberg and Berkowitz discovered that certain records and property seized
13 from Billy Malone’s residence were missing from Davis’s office and files.

14
15 159. On January 25, 2007, Okerberg arrived at NPS Intermountain Regional
16 headquarters in Lakewood, Colorado to inspect Yee’s office and the “war room” Yee had
17 established for the case, complete with enlarged photos of Billy Malone and his suspected
18 co-conspirators posted on the walls, and hundreds of thousands of documents amassed in
19 boxes and notebooks throughout the room.

20
21 160. Okerberg discovered several boxes containing undocumented evidence or
22 property taken from Billy Malone back in June of 2004.

23 161. Still more boxes of property were brought in from Yee’s unsecured office.

24 162. Among the more disturbing files Okerberg located was one labeled “Not
25 Subject To Discovery”; suggesting its contents were, somehow, not subject to federal rules
26

1 of “discovery” and could have been kept secret from Billy Malone and his attorney had
2 that case ever been prosecuted and gone to trial.

3
4 163. Among the records contained within that file was an October 25, 2004
5 memorandum prepared by Yee, attempting to justify his handling of evidence and
6 responding to SA Morton’s own memorandum that documented the September 2004 break
7 in the chain of custody.

8
9 164. Later still, after Okerberg had completed his inspection and was driving
10 away, he received a call from Yee, claiming that he had just “found” still more evidence
11 that Yee had forgotten about.

12 165. Contained within the boxes of property eventually produced to Okerberg by
13 Yee was thousands of dollars in cash and checks made out to Billy Malone and his family.

14
15 166. Also located were a number of guns belonging to Billy Malone, as well as
16 the valuable family “wedding blanket” he had asked about in Tucson back in April of
17 2006.

18
19 167. Okerberg communicated some of his concerns about Yee’s handling of this
20 evidence to Berkowitz in email exchanges on January 28 and 29, 2007.

21 168. After his encounter with Okerberg reviewing files in the Lakewood office,
22 Yee placed an emergency call to Smith to alert him about the problems discovered by
23 Okerberg in Yee’s handling of evidence, property, and secret files.

24
25 169. Smith and Buccello subsequently made an emergency trip to Lakewood to
26 meet with Yee to conduct an “intervention” and attempt to “rehabilitate” the chain-of-

1 custody over the newly discovered evidence.

2 170. Smith and Buccello did this in spite of very explicit instructions previously
3 communicated from the OIG directly through the office of the NPS Director for the
4 National Park Service to keep altogether “out” of the investigation, and not interfere or
5 become involved in any way unless specifically requested by the OIG.
6

7 171. Sometime prior, in early January of 2007, Billy Malone had been prevailed
8 upon to assist WNPA in the identification and return of some of the property that had not
9 been seized by Yee.
10

11 172. This evaluation and transfer of property was set for January 17, 2007 and
12 Berkowitz had agreed to be present to be sure that things remained calm.
13

14 173. Present were Simpson, Aldridge, and Steve Pickle who were set up in the
15 old “ware room” and other WNPA employees.

16 174. Malone was cooperative and helpful in the exchange in his dealings with
17 Simpson who eventually turned over everything he identified as his own or belonging to a
18 relative.
19

20 175. Malone even spent considerable time helping Simpson identify who owned
21 the property he was not claiming.

22 176. Significant to Berkowitz were a series of comments Simpson made to him
23 just prior to Malone’s arrival, once again expressing her frustrations about the change in
24 course for the entire investigation.
25

26 177. Berkowitz documented those comments to Okerberg three days later in a

1 January 20th email.

2 178. Included in that conversation was Simpson's reiteration that WNPA would
3 never have contributed money for the investigation if S. Martin (beyond Davis and Yee,
4 etc.) had not personally made the request and told her it would be in the "best interest" of
5 WNPA.
6

7 179. She restated her claim that Billy Malone was a crook and was made in the
8 Ware room which was open to WNPA employees and Navajo weavers and other older
9 Navajo ladies from the community. ..
10

11 180. The assigned United States Attorney Rob Long, in January of 2007,
12 declined to prosecute Billy Malone and gave him a letter indicating as much.
13

14 181. The Defendants' actions were outwardly aggravated, outrageous, malicious,
15 or fraudulent and guided by an evil mind.

16 182. The Defendant's conduct was objectively and subjectively unreasonable.

17 183. Defendants knew they were acting unreasonably or demonstrated such
18 reckless disregard for the reasonableness of their actions.
19

20 184. Defendants' actions were extreme and outrageous and done with conscious
21 disregard of the knowledge that their conduct would harm the Plaintiff.
22

23 **FIRST CLAIM FOR RELIEF**
24 **(*BIVENS* CONSPIRACY CLAIM)**
25 **(NPS Defendants, Simpson, Babbitt and WNPA Defendants)**

26 185. Billy Malone incorporates the allegations in paragraphs 1 through 184 above

1 as if fully set forth herein for his *Bivens* claims against NPS Defendants, Simpson, Babbitt
2 and WNPA alleges:

3
4 186. Yee conducted a raid on the home of Billy Malone on June 9, 2009 and
5 seized personal property of Billy Malone not identified in the warrant and without probable
6 cause.

7
8 187. WNPA acting through its agents and Simpson participated in the pre-raid
9 meeting and the NPS raid and seizure of Billy Malone's personal property on June 8 and 9
10 of 2004.

11
12 188. WNPA acting through its agents and Simpson later turned over other
13 property of Malone (or entrusted to Malone) to NPS.

14
15 189. The NPS Defendants and WNPA acting through its agents, Simpson and
16 Babbitt conspired to seize and retain personal property of Billy Malone (or property
17 entrusted to Billy Malone) after the discovery of those materials in the June 9, 2004 raid on
18 his home and acted on that conspiracy up to and including January of 2007.

19
20 190. NPS Defendants articulated to WNPA, Simpson and Babbitt that there was a
21 benefit to WNPA working with NPS and funding the forensic investigation of the Malone
22 case and that by doing so, WNPA would be able to receive benefits which Simpson by her
23 conduct and words took to mean property of Billy Malone seized in the June 9, 2004 raid
24 on Billy Malone's home.

25
26 191. WNPA was approached by numbers of the NPS Defendants who referenced
the benefits to such an arrangement.

1 192. Simpson spoke of this arrangement as a “partnership.”

2 193. Yee took property, cash and checks of Billy Malone to Colorado and failed
3 to disclose that he had that property.
4

5 194. NPS acting through Smith and Buccello and contrary to the dictates of the
6 OIG attempted to cover up the wrongful possession by Yee of property, cash and checks
7 belonging to Billy Malone in January of 2007.
8

9 195. In mid 2006 and thereafter, various NPS Defendants including Snyder
10 suggested to Simpson that WNPA simply retain property of Billy Malone (or property
11 entrusted to Billy Malone) despite the fact that WNPA had no right to possess that
12 property.
13

14 196. As late as January of 2007, in the presence of third parties, Simpson spoke
15 publicly about her belief that Billy Malone was a crook.

16 197. The theme of WNPA that Billy Malone had stolen money from WNPA and
17 was a crook was one which traced back to 2004 and was repeated in meetings attended by
18 Superintendent Nancy Stone and Thrude Breckenridge.
19

20 198. Billy Malone believes and alleges on information and belief that such claims
21 were a part of WNPA communications relative to Billy Malone from and after the
22 discovery of the property that it and NPS personnel seized on June 9, 2004.
23

24 199. Billy Malone believes and alleges on information and belief that this sort of
25 characterization of Billy Malone became a way for WNPA and NPS to justify their claim
26 of entitlement to Billy Malone’s personal property.

1 provide full and truthful information known to WNPA and to Simpson about WNPA's
2 accounting problems.

3
4 207. Simpson and WNPA "partnered" with NPS in a criminal investigation for a
5 promised benefit of receiving the spoils of the Billy Malone search and seizure and
6 authorized the use of WNPA funds to pay for a portion of the criminal investigation in
7 violation of the terms of the Cooperative Agreement and statutory limitations for
8 Cooperating Associations, (funds may be used only for interpretation, research, *etc.*).
9

10 208. Simpson continued to publicly characterize Billy Malone as a crook.

11 209. Simpson made such remarks publicly from 2004 through 2007 as set forth
12 above.

13
14 210. On at least one of those occasions, Babbitt was present when Simpson
15 characterized Billy Malone as a "crook" and did not correct or qualify what Simpson had
16 said about Malone.

17 211. Billy Malone is informed and alleges on information and belief that such
18 characterizations of him by Simpson on her own behalf and WNPA and in the presence of
19 Babbitt was defamatory and injurious to his good name and reputation.
20

21 212. As late as January of 2007, in the presence of third parties, Simpson spoke
22 publicly about her belief that Billy Malone was a crook.

23
24 213. The theme of WNPA that Billy Malone had stolen money from WNPA and
25 was a crook was one which traced back to 2004 and was repeated in meetings attended by
26 Superintendent Nancy Stone and Thrude Breckenridge.

1 Billy Malone as a crook.

2 221. Simpson made such remarks publicly from 2004 through 2007 as set forth
3 above.
4

5 222. On at least one of those occasions, Babbitt who was Simpson's immediate
6 supervisor as Chairman of the WNPA Board of Directors was present when Simpson on
7 behalf of WNPA characterized Billy Malone as a "crook" in a meeting at the
8 Intermountain Regional Headquarters of NPS in Lakewood, Colorado.
9

10 223. Babbitt did not correct or qualify what Simpson had said about Malone and
11 by failing to do so, adopted that statement.

12 224. Billy Malone is informed and alleges on information and belief that such
13 characterizations of him by Simpson on her own behalf and WNPA and in the presence of
14 Babbitt was defamatory and injurious to his good name and reputation.
15

16 225. As late as January of 2007, in the presence of third parties, Simpson spoke
17 publicly about her belief that Billy Malone was a crook.

18 226. The theme of WNPA that Billy Malone had stolen money from WNPA and
19 was a crook was one which traced back to 2004 and was repeated in meetings attended by
20 Superintendent Nancy Stone and Thruide Breckenridge.
21

22 227. Billy Malone believes and alleges on information and belief that such claims
23 were a part of WNPA communications relative to Billy Malone from and after the
24 discovery of the property that it and NPS personnel seized on June 9, 2004.
25

26 228. Billy Malone believes and alleges on information and belief that this sort of

1 characterization of Billy Malone became a way for WNPA and NPS to rationalize and
2 justify their claim of entitlement to Billy Malone's personal property.

3
4 **JURY TRIAL DEMANDED**

5 229. Billy Malone demands a jury trial on all matters triable to a jury.

6 **DAMAGES**

7 230. Billy Malone has been damaged by the wrongful conduct of Defendants and
8 each of them including violation of his constitutional rights under the 4th amendment to
9 the United States Constitution, injury to his good name and reputation by the illegal seizure
10 and retention of his personal property without probable cause causing shame and public
11 humiliation, inconvenience, mental anguish and emotional distress and other damages all
12 of which entitle him to an award of compensatory damages in an amount to be proven at
13 trial.
14

15
16 231. Billy Malone also seeks an award of punitive damages against all
17 Defendants determined to meet the legal standard for such damages.

18 **WHEREFORE**, Billy Malone prays for relief and judgment for damages against
19 Defendants and seeks:
20

- 21 A. An order and judgment of the Court requiring that Billy Malone be made
22 whole;
23
24 B. An award of compensatory damages against Defendants and each of them,
25 for the tortious conduct and resulting injuries suffered by Billy Malone in
26 the amount to be proven at trial;

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- C. An award of punitive damages against Defendants and each of them for such conduct of Defendants motivated by the pertinent standard for such damages;
- D. An award of costs and expenses and attorneys' fees pursuant to 42 U.S.C. §1988;
- E. An award of pre- and post-judgment interest at the highest rate permitted by law, on all amounts awarded to Billy Malone from the date of judgment until paid in full; and
- F. Such other relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 27th day of August, 2009.

LAW OFFICES OF WILLIAM R. HOBSON, P.C.

By _____ s/William R. Hobson
William R. Hobson
Attorney for Billy Malone

1 CERTIFICATE OF SERVICE

2 I hereby certify that on August 27, 2009, I electronically transmitted the attached
3 document to the Clerk's office using CM/ECF System for filing and transmittal of a notice
of Electronic Filing to the following CM/ECF registrants:

4 Janet K. Martin, Esq.
5 Assistant U.S. Attorney
6 405 West Congress Street
7 Suite 4800
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8 Fred R. Petti
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10 Phoenix, Arizona 85016

11 s/William R. Hobson

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