

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

Civil Action No.

ESTATE OF JIMMA PAL REAT;  
JAMES PAL REAT;  
REBECCA AWOK DIAG;  
RAN PAL;  
CHANGKUOTH PAL;  
JOSEPH KOLONG;

**obtained & posted by:**

**[www.911Dispatch.com](http://www.911Dispatch.com)**

Plaintiffs,

v.

JUAN JESUS RODRIGUEZ, individually;  
CITY AND COUNTY OF DENVER;

Defendants.

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**CIVIL RIGHTS COMPLAINT WITH REQUEST FOR TRIAL BY JURY**

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Plaintiffs, by and through their attorneys, HOLLAND, HOLLAND EDWARDS & GROSSMAN, P.C., complain against Defendants and request trial by jury as follows:

**I. INTRODUCTION**

1. This case presents a classic example of a “snake pit” state danger creation fact pattern, and seeks redress for the conscience shocking entirely preventable death of Jimma Reat, a Sudanese refugee and United States permanent resident, who was shot and killed as a result of the blatant and intentional disregard of his and Plaintiffs’ safety by City and County of Denver 911 Emergency Communications Operator Defendant Rodriguez.

2. Jimma Reat looked like this:



3. Jimma Reat, his two brothers, Ran Pal, Changkuoth Pal and a close friend, Joseph Kolong, were driving themselves to their homes when they were repeatedly assaulted with large beer bottles and what the police called “bottle rockets” being thrown at their car by a group of unknown Hispanic males.

4. During these violent criminal assaults, the assailants repeatedly called these young men “niggers”.

5. Immediately after the initial assault, and while these events were unfolding, the young men called 911 to report these events.

6. The young men managed to escape this initial threat to their lives, elude their attackers and flee to the safety of their destination apartment complex in Wheat Ridge, about seven and a half blocks outside of Denver city limits, all to the actual knowledge of Defendant Rodriguez, who was still actively talking to, instructing and guiding them as this occurred during a phone call that lasted about 15 minutes.

7. Consciously aware of this life threatening emergency and the likely continuing proximity of these assailants, Defendant Rodriguez nonetheless instructed, directed and expressly conditioned the provision of emergency police and medical services on these men obeying him by leaving the known safety of the apartment parking lot, and returning to Denver to meet the police.

8. Over protest, in obedience to law enforcement commands and instructions, and in reliance on an express promise of police protection, Ran Pal and the three passengers returned to Denver, further following Defendant Rodriguez's fatal specific instructions to pull their car over and flash their hazard lights, making them visible sitting ducks to their attackers. There, they again encountered the same group of males from whom they had previously escaped, without Defendant Rodriguez even sending the promised police protection and cover to the directed location.

9. This time the unidentified males opened fire on all of them, and Jimma Reat was gunned down and died in his brother's arms before the police were even dispatched.

10. The danger to these Plaintiffs' lives, safety, and bodily integrity was both actually known and entirely foreseeable to Defendant Rodriguez at the time he threw these plaintiffs into a snake pit by the affirmative actions pled herein, thereby placing them in a far worse position than that they would have been had he not acted at all.

11. This case also involves a stereotypical profiling race based equal protection violation.

12. Longstanding policies, customs, habits and procedures as well as deliberate indifference in training and supervision by the Defendant City were also moving forces in this disaster.

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

13. This action arises under the Constitution and laws of the United States, including Article III, Section 1 of the United States Constitution and is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988. The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343, 2201.

14. This case is instituted in the United States District Court for the District of Colorado pursuant to 28 U.S.C. §1391 as the judicial district in which all relevant events and omissions occurred and in which Defendants maintain offices and/or reside.

15. Supplemental pendent jurisdiction is based on 28 U.S.C. §1367 because the violations of Federal law alleged are substantial and the pendent causes of action derive from a common nucleus of operative facts.

16. Timely Notice of Claims under the Colorado Governmental Immunity Act has been given by all Plaintiffs to redress the willful and wanton conduct alleged in this lawsuit, which also violates state law.

## **III. PARTIES**

17. Plaintiff Estate of Jimma Pal Reat is asserting the rights of the decedent, Jimma Reat, a former permanent resident of the United States, who died in Denver, Colorado on April 1, 2012. Rebecca Awok Diag, the mother of Jimma Reat, is the personal representative of the Estate of Jimma Pal Reat which has been opened in Jefferson County, Colorado.

18. At all times relevant hereto, Plaintiff James Pal Reat, father of Jimma Reat, was a resident of the State of Colorado and a citizen of the United States of America.

19. At all times relevant hereto, Plaintiff Rebecca Awok Diag, mother of Jimma Reat, was a resident of the State of Colorado and a legal permanent resident of the United States of America.

20. At all times relevant hereto, Plaintiff Ran Pal, brother of Jimma Reat, was a resident of the State of Colorado and a legal permanent resident of the United States of America.

21. At all times relevant hereto, Plaintiff Changkuoth Pal, brother of Jimma Reat, was a resident of the State of Colorado and a legal permanent resident of the United States of America.

22. At all times relevant hereto, Plaintiff Joseph Kolong was a resident of the State of Colorado and a legal permanent resident of the United States of America. He is a close friend of the Reat family and was a passenger in the car at the time of the shooting.

23. At all times relevant hereto, Defendant Juan Jesus Rodriguez (“Defendant Rodriguez”) was acting under color of state law in his capacity as an Emergency Communications Operator employed by the Defendant City and County of Denver and/or of the Denver Police Department. Defendant Rodriguez is sued individually under federal and state law and was a moving force in the complained of constitutional and statutory violations and resulting injuries. On information and belief, Defendant Rodriguez is a citizen of the United States and a resident of the State of Colorado.

24. Defendant City & County of Denver (hereinafter “Defendant City”) is a Colorado municipal corporation and is the legal entity responsible for itself and for its agents and employees. This Defendant, at all times relevant hereto, was also the employer of the individual Defendant and is a proper local governmental entity to be sued under 42 U.S.C. § 1983.

25. Defendant City is properly sued directly under 42 U.S.C. § 1983 for its’ own and its’ final delegated decision makers’ deliberately indifferent unconstitutional decisions, policies,

practice, habits, customs, usages, training and derelict supervision, ratification, acquiescence and intentional failures, which were also moving forces in the complained of constitutional and statutory violations and resulting injuries.

#### **IV. STATEMENT OF FACTS**

26. Plaintiffs incorporate all of the preceding paragraphs 1-25, as if they were fully set forth again at this point.

27. Early in the morning on April 1, 2012 in Denver by the intersection of 10th and Sheridan, the male occupants of a Jeep Cherokee pulled up and began harassing and attempting to injure Jimma Reat, Changkuoth Pal, Ran Pal and Joseph Kolong, four young men and refugees from what is now South Sudan, who came to the United States from a refugee camp in Ethiopia after escaping the Sudan.

28. This group of unidentified males called these plaintiffs and the decedent “niggers” and threw beer bottles and then “bottle rockets” at them, shattering their back windshield and injuring them with a shower of broken glass shards.

29. A handgun was also brandished by one of the assailants.

30. The back window of the rental car these Plaintiffs’ were driving, which was now completely smashed out, looked like this:



31. Plaintiff Ran Pal called 911 to report this crime and obtain emergency police and medical protection and assistance.

32. Defendant Rodriguez was the Emergency Communications Operator who answered this 911 call at approximately 4:12 am.

33. These Plaintiffs reported to Defendant Rodriguez that they were the victims of, and had been injured by, a racially motivated, life-threatening vicious assault by a group of Hispanic males while they were driving home.

34. While on the phone with Defendant Rodriguez, Plaintiff Ran Pal and the other passengers managed to elude the men who had attacked them and successfully flee to a place of safety at the apartment building tree lined parking lot destination in Wheat Ridge, Colorado, seven and one half blocks West of Denver, all of which they clearly explained to this Defendant.

35. Ran Pal reported to Defendant Rodriguez that these assailants viciously assaulted them with beer bottles, called them ugly racial names, brandished a gun, that their car window had been smashed out, and that they were physically injured.

36. Ran Pal also repeatedly reported that he did not want to be driving and that they were all terrified, in shock, and needed immediate help.

37. Knowing and acknowledging that these men were injured, in shock, and shouldn't be driving, Defendant Rodriguez decided not to send a police car and ambulance to the young men's actual location in Wheat Ridge as they requested.

38. Instead, Defendant Rodriguez instructed them that they had to drive back to Denver.

39. Ran Pal reported to Defendant Rodriguez that they wanted to stay in the safety of the parking lot and were all too scared to leave.

40. Defendant Rodriguez told Ran Pal that if they did not return to Denver to meet the police, they would not be allowed to make a report of the criminal violence that had been visited upon them and would not receive emergency protective or medical services.

41. Ran Pal continued to repeat himself, reportedly telling Defendant Rodriguez at least six times that he was injured, in shock, did not want to be driving or return to Denver, and was afraid because the men involved had a gun.

42. Ignoring the danger of this racially charged in progress assault, the probable nearby location of the assailants, the early morning no traffic nature of the situation, and in blatant conscious disregard for the safety and pressing medical needs of these Plaintiffs, Defendant Rodriguez continually instructed and pressured Ran Pal and the passengers to drive back to Denver, thereby creating and greatly enhancing the danger to these Plaintiffs that proved fatal for Jimma Reat.

43. Defendant Rodriguez told them that if they didn't go back to Denver, they would be unable to file a police report, because the police couldn't and wouldn't come to meet them at their Wheat Ridge location.

44. In so instructing this return to Denver, Defendant Rodriguez also assumed a duty to afford these Plaintiffs some measure of safety by expressly promising to provide timely police protection to meet these young men where he was sending them in Denver if they followed his instructions.

45. After these several protests by Ran Pal that he was too scared and hurt to drive anywhere, all of which were consciously ignored by Defendant Rodriguez, these defendant Plaintiffs reluctantly left the safety of the Wheat Ridge apartment parking lot and returned to



Denver, where they were instructed to go and where the police car was promised to be by Defendant Rodriguez.

46. Having so sent them with promises of police protection, Defendant Rodriguez decided not to immediately send the police to ensure that these Plaintiffs were covered as they traveled this known to be dangerous route.

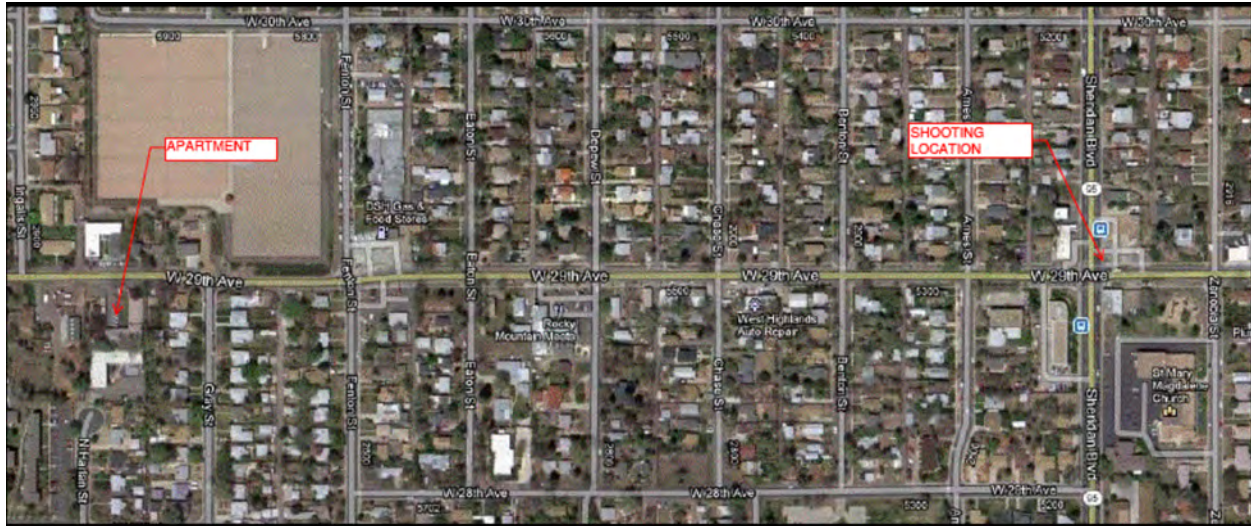
47. Defendant Rodriguez also instructed these unwilling Plaintiffs to pull the car over when they crossed into Denver, and make themselves prominent and visually apparent by putting their hazard lights on and leaving them flashing.

48. Defendant Rodriguez's directives were shocking and outrageous.

49. Defendant Rodriguez did not even create an incident report of the call that would alert dispatchers and officers to go to the scene he was consciously creating.

50. These instructions by Defendant Rodriguez were also conscience shocking given that Defendant Rodriguez actually knew that the assailants were armed and dangerous, and had just been in or near that very area to which he instructed these Plaintiffs to go.

51. In obedience to the given instructions, and justifiably relying on the promised police protection, Plaintiffs went seven and one half blocks, from the safety of the Wheat Ridge apartment parking lot to the shooting location, as shown below:



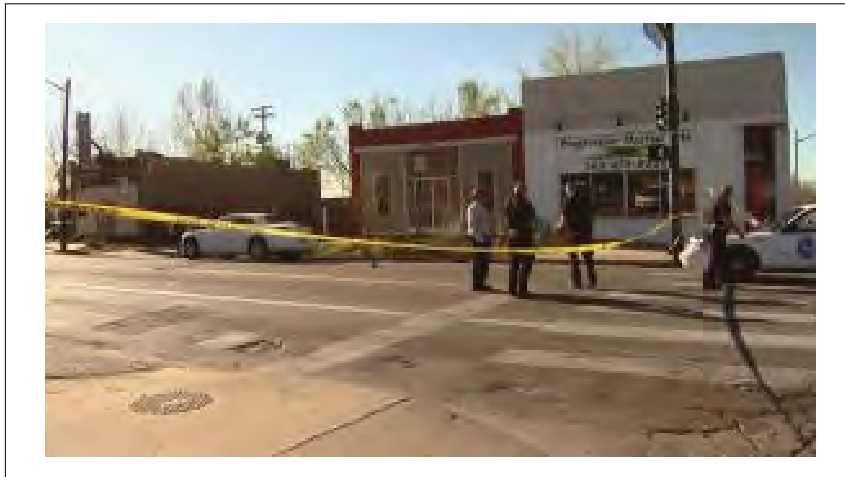
52. Plaintiffs stopped their car on West 29<sup>th</sup> Avenue just across Sheridan Boulevard in Denver city limits.

53. The promised police protection had not even been dispatched there because Defendant Rodriguez made the aforealleged conscious decision not to create an incident for police dispatch for this “higher-level” event until *after* instructing these Plaintiffs to return to the Denver city limits, and did not update it or tell the Plaintiffs to wait until he could secure police cover.

54. These young men were thus placed and left alone defenseless, now even more vulnerable, just inside Denver with their flashing hazard lights, and were put in a far worse and much more dangerous position than they would have been had they not called 911, or had they disobeyed Defendant Rodriguez’s instructions on behalf of law enforcement.

55. Plaintiffs were still on the phone with Defendant Rodriguez when the Jeep Cherokee with the assailants pulled up again behind them.

56. This same group of males who had attacked them previously now opened gunfire on all of them, with one shot killing Jimma Reat at the scene. Here is a picture of the shooting location:



57. Plaintiff Changkuoth Pal cradled Jimma Reat as he was dying.

58. No one has been apprehended and/or arrested for this preventable death proximately caused by the described outrageous and conscience shocking intentional and knowing series of governmental affirmative actions, which placed three of these plaintiffs and their decedent Jimma Reat in grave or fatal positions of danger without protection.

59. Defendant Rodriguez was terminated from his position as Emergency Communications Operator effective May 15, 2012.

60. Defendant City, through Director Carl Simpson, has itself admitted in the redacted publicly released Letter of Dismissal for Defendant Rodriguez, incorporated by this reference, that Defendant Rodriguez was responsible for multiple affirmative acts that created grave danger to Plaintiffs, including, but not limited to, dangerously compromising their safety by instructing them to return to Denver to report the ongoing criminal assault, “an extensive delay in processing this call to queue,” and a “blatant disregard” for the “injury [to Plaintiffs] and the safety of others” when he decided not to immediately send medical help.

61. According to Defendant City, in the first 30 seconds of the call, Plaintiff Ran Pal told Defendant Rodriguez that the vehicle was damaged at 10<sup>th</sup> and Sheridan, but knowing this, he did not send the call to dispatch queue.

62. In the next 30 seconds of the call, Defendant Rodriguez was specifically informed that Ran Pal was injured, indicating a criminal assault and the emergency nature of the call.

63. Defendant Rodriguez knew that he was required to create an incident report in the Computer Aided Dispatch (CAD) system immediately upon hearing this report of a moving criminal assault, and to promptly and continually electronically update the incident report with information relevant to the incident.

64. Nevertheless, Defendant Rodriguez decided to wait more than seven minutes before even generating any kind of CAD incident report, despite this knowledge and having sufficient information regarding the locations, which he actually knew would prevent dispatchers and/or officers being able to respond to this emergency situation in a timely manner.

65. According to Defendant City itself, “there was an existing incident under investigation by the DPD at 10<sup>th</sup> and Sheridan” with officers out there already from a “Shots Fired” call while Defendant Rodriguez was still on the phone with Plaintiff Ran Pal.

66. When this Defendant did finally decide to create an incident report, Defendant Rodriguez knowingly decided not to document the critical personal injury from violence information or to even code the incident as a crime against persons, all of which was well-known to him at the time.

67. Director Simpson concluded, *inter alia*, that: “During the first seven minutes of the call, the caller stated six separate times that he was injured, in shock, didn’t want to drive and needed to recover. [Defendant Rodriguez] acknowledged each time that [he] understood yet did

not ask the caller to pull over, send him an ambulance and triage the call per the EMD protocol policy.”

68. According to quoted statements in his Letter of Dismissal, Defendant Rodriguez has further admitted that Ran Pal told him that “he was in shock” and that “he was covered in shards of glass.

69. Asked whether he heard Ran Pal tell him these things, Defendant Rodriguez responded: “Yes I did.”

70. Asked if Ran Pal told him that “he did not want to drive in his diminished capacity”, Defendant Rodriguez responded: “Yeah, he told me.”

71. According to his Letter of Dismissal, Defendant Rodriguez has also admitted that he actually knew that the assailants “were throwing bottle rockets at them”.

72. Defendant Rodriguez knew that the callers were black people and Plaintiff Ran Pal speaks with a clear African accent.

73. Defendant Rodriguez, also made a race based discriminatory decision to selectively deny immediate police protective services to these black plaintiffs because of their known status as disfavored minorities, and instead, stereotypically profiled and treated them as if they were themselves engaged in gang activity and not equally worthy and in need of immediate criminal protection by law enforcement.

74. Thus, the City and County of Denver Police Department initially investigated this matter to determine if these Plaintiff victims were in fact feuding gang members stating, *at first* publicly to the Denver Post, through Captain Ron Saunier, head of the Crimes-Against Persons Bureau, that “we’re not sure what caused it”, indicating that at “one point, riders from both

vehicles were in the street exchanging words” and that “I don’t know if you would say it was a fight.”

75. The case was initially investigated as a potential gang fight and Defendant Rodriguez, who created this danger and then did not timely send help, as aforealleged, was a source for this racially stereotypical theory of what had happened here.

76. It thus appears this Defendant initially attempted to cover up and divert from his own misconduct by planting the idea of gang activity by the Plaintiffs and Jimma Reat.

77. However, not one full day later, as the Defendant City began widely publicly apologizing in all media outlets for this catastrophic 911 conduct, this same Captain Saunier of the Denver Police Department categorically renounced the originally police floated gang theory. He was quoted in the Denver Post stating as follows:

There is no indication that the Sunday shooting was gang-related, Saunier said, and None of those in the car that was fired on were gang members.

78. The Defendant City has not been willing to furnish the tape recordings and other internal records about this matter prior to suit.

79. The Denver Police Department, in a news release after the shooting, stated that Defendant Rodriguez was also consciously aware during this call that a gun was in play at 10th and Sheridan as follows: “One of the occupants of the Jeep threw a bottle at the rental vehicle, breaking the rear window and one brandished a handgun.”

80. A official timeline summary of this 15 minute call that preceded the killing of Jimma Reat, according to computer entries prepared by the Denver Manager of Safety’s Office, has been released by the Defendant City officials stating as follows:

- 04:12:41 – Call received and answered
- 04:20:00 – Call in dispatch queue

- 04:21:21 – **Caller states gun was flourished by suspect at 10th/Sheridan**
- 04:24:15 – Suspect at 29th/Sheridan
- 04:25:08 – First unit assigned
- 04:27:06 – Ambulance dispatched
- 04:28:42 – First unit on scene at 29th/Sheridan
- 04:29:48 – Call-taking complete by operator

(Emphasis added).

81. Director Simpson concluded that in so profoundly compromising these Plaintiffs' safety, Defendant Rodriguez:

showed a blatant disregard for the caller's health in [his] quest to have the caller return to Denver city limits, when he was actually parked at one point only seven and a half blocks outside the city limits. [Defendant Rodriguez] wasted crucial minutes and compromised public safety by instructing the caller to return to the city. It was only after the caller told [Defendant Rodriguez] that he was at 29<sup>th</sup> and Sheridan and on the east side of the intersection that [he] created an incident for dispatch, all the while discounting any injuries to the occupants of the caller's vehicle by your failure to enter comments in the CAD incident relating to the assault and injury.

82. All of the above-described acts were done by Defendant Rodriguez knowingly, willfully, wantonly, maliciously and/or recklessly in disregard for Plaintiffs' federally and state protected rights, and were done pursuant to the preexisting and ongoing deliberately indifferent official custom, practice, decision, policy, training, and supervision of the Defendant City acting under color of state law.

83. The Defendant City is on express notice that its herein challenged deliberately indifferent and well-known customs, habits, practices and/or policies regarding situations involving potential third party violence, have repeatedly created or exacerbated dangerous situations for the victim callers.

84. More particularly, it is the longstanding widespread deliberately indifferent danger creating custom, habit, practice and/or policy for emergency communications operators to regularly refuse to dispatch units where the victims are safely located, and instead direct them to go back into city limits in the proximity of where the attackers were known to have just been or to still be, or even instruct the callers to remain at the scenes involving crimes against persons to meet police.

85. Denver has, with deliberate indifference, and actual knowledge, failed to mandate as policy or train its operators and dispatchers that in circumstances of reported assaults, they may never direct persons outside of Denver to return to Denver without providing immediate and timely police cover, and a specific protective plan to assure that there is no risk of further attack on such persons by their assailants in following 911 instructions.

86. This custom, habit, policy and practice has been in widespread effect since at least the 1980s, when it was reported in the media that a few young boys who were being attacked at a McDonalds in Denver, and who had gone to a safe place in Lakewood, were instructed by the Denver 911 operators to return to Denver where officers would meet them.

87. In 2004, a women reported that two men in a car pulled up to her and started throwing things at her car, with one pulling out a baseball bat and hitting the back of her windshield. Despite being in physical danger and hysterical, this woman was directed to return to Denver to make a report, regardless of her safety.

88. As Denver 911 officials told the media in response to this road-rage incident, if the caller is outside the city limits, “they will be told to return to make a report.”

89. Just last year, a female called Denver 911 to report a road rage incident where another driver “physically threatened us and reached into the car after he stopped at a green light.”



90. This caller was told by the 911 operator to “pull over immediately and wait for a Denver police officer.”

91. This caller also argued against the herein challenged widespread policy and practices that doing so was unsafe “and the road rager could see us parked and we were in great danger.”

92. This caller reported that she gave the license number and a description of the road rager but the Denver 911 operator “was firm that this was procedure.”

93. Lenny Rubner, a former Denver 911 dispatch trainer, has publicly stated that callers who are outside the city “are routinely told to go back to Denver. The overall policy is for them to go back into the jurisdiction to make a report.”

94. On information and belief, despite conscious awareness of this longstanding and widespread dangerous policy/custom, Denver’s master incident guide remains deliberately indifferent on this life-threatening issue and, according to CBS4, still has “no specific policy about when to send a caller back to Denver when a crime has occurred.”

95. Instead, with deliberate indifference in policy, supervision and training, this guide dangerously leaves it to the unguided and unfettered judgment of the 911 call-taker.

96. There dangerously being no coherent policy or custom, emergency communications operators, including but not limited to Defendant Rodriguez, are also with deliberate indifference not sufficiently or properly trained or supervised on how to handle dangerous situations and/or continuing criminal activity.

97. This exact type of improper 911 instruction at issue in this case has thus been repeatedly given in situations of violence by the Defendant City and its employees in the past, and this case is part of a known and ongoing pattern of misconduct as to which there has been continuing deliberate indifference in policy, supervision and training.

98. Defendant Rodriguez's statements and explanations in his Letter of Dismissal as to the reason he was so adamant about instructing these Plaintiffs to return back to Denver, also strongly evidences these deliberately indifferent policies, customs, habits, practice, supervision and training of the Defendant City.

99. Thus, Defendant Rodriguez has stated: "I know I should have put the call up regardless and have dispatchers or officers decide if they were going to go out there or not. I just told him that we couldn't do it and he needs to be back in Denver so we can help him."

100. Reflecting his deliberately indifferent training and the challenged deliberately indifferent policies and supervision, Defendant Rodriguez admits that he "just got stuck on them being outside of Denver."

101. Defendant Rodriguez's "complete disregard for the injuries caused by the assailants" and knowing decision to withhold "medical assistance from a caller who repeatedly asked for medical aid," also evidences the deliberately indifferent supervision and training by Defendant City in that, according to Director Simpson in the Letter of Dismissal, this Defendant had "previously been disciplined for similar conduct."

102. Thus, in February 2012, Defendant City reprimanded Defendant Rodriguez for the same type of deficiencies in performance as the events at issue in this case, specifically for his danger-creating problem for distressed public callers.

103. With deliberate indifference, Defendant City then utterly failed to re-train and/or supervise Defendant Rodriguez, despite having actual knowledge that he lacked the ability and skill to properly handle emergency situations like this one, and instead allowed him to continue to perform these functions without proper supervision and further training to ensure the safety of the public.

104. Jimma Reat was 25 years old at the time of his death. Here is a picture with two of the plaintiffs, and a new born child of another of his brothers. Jimma Reat is on the right:



105. Jimma Reat was a hard worker and had great life prospects. He was also working to help support his parents and was beloved in his community. With his brother, Ran Pal, he scored three threes in a row to win the 5A State Basketball championship for Lincoln High School.

106. As a direct and proximate cause and result of the wrongful conduct of each of the Defendants, Plaintiff Estate has suffered injuries and losses, including the death of Jimma Reat, entitling it to recover his compensatory and special damages, including loss of constitutional and federal rights, pain and suffering, lost past and future earnings, permanent lost earnings capacity for the expected productive working lifetime of Jimma Reat under the mortality tables, all in amounts to be proven at trial.

107. As a direct and proximate result and cause of the wrongful conduct of each of the Defendants, living Plaintiffs to this claim have suffered substantial emotional injuries, and other

losses, entitling them to compensatory and special damages, in amounts to be determined at trial. These injuries as set forth with particularity in the claims below variously include, but are not limited to, loss of constitutional and federal rights, wrongful death damages, emotional distress including great pain and emotional distress for several of the Plaintiffs who were in the zone of danger and shot at when Jimma Reat was killed, and ongoing special damages for any medically/psychologically related treatment including liens and funeral expenses caused by the challenged conduct of these Defendants.

108. Plaintiffs are further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law.

109. As set forth in the federal claims, the Plaintiffs thereto are also entitled to punitive damages on all of their federal claims against Defendant Rodriguez because his conduct involves reckless and callous indifference to these Plaintiffs' federally protected rights. Such punitive damages may also be sought by suitable amendment on the state law claims.

110. Finally, Plaintiffs seek appropriate declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 to redress the Defendant City's above challenged ongoing deliberate indifference in policies, practices, habits, widespread customs, usages, training and supervision with respect to the rights described herein, which on information and belief, are not being corrected, despite the long-standing and obvious need for such correction.

## **V. CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **42 U.S.C. § 1983 –Violation of Due Process and Equal Protection Under Fourteenth Amendment**

(Estate of Jimma Pal Reat, Ran Pal, Changkuoth Pal, and Joseph Kolong against Defendant Rodriguez only)

111. Plaintiffs hereby incorporate paragraphs 1-110 of this Complaint as if fully set forth herein.

112. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

113. All Plaintiffs in this action are citizens or permanent residents of the United States and the individual Defendant to this claim is a person for purposes of 42 U.S.C. § 1983.

114. Defendant Rodriguez, at all times relevant hereto, was acting under color of state law in his capacity as an Emergency Communications Operator, employed by Defendant City.

115. Defendant Rodriguez had a duty to perform emergency assistance to Plaintiffs to this claim who called him through Denver 911, as a limited defined group of passengers in known danger of private violence, for police and emergency medical services, and his complained of acts in breach of that duty were conducted within the scope of his official duties or employment.

116. At the time of the complained of events, Jimma Reat, now proceeding through the Plaintiff Estate of Jimma Pal Reat, as his successor, had a clearly established substantive due process constitutional right under the Fourteenth Amendment to life, liberty, and bodily integrity.

117. At the time of the complained of events, Plaintiffs Ran Pal, Changkuoth Pal, and Joseph Kolong had clearly established substantive due process rights under the Fourteenth Amendment to be free from threats to their bodily integrity and free from substantial risk to life and/or serious bodily harm.

118. At the time of the complained of events, Plaintiffs had clearly established constitutional rights under the equal protection clause of the Fourteenth Amendment not to be selectively denied police protective law enforcement and related protective services, in whole or in part, because they are disfavored racial minorities.

119. Title 42 U.S.C. § 1981 provides, in pertinent part:

- (a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

120. Plaintiffs are members of a protected class under 42 U.S.C. § 1981, and thus also had the clearly established statutory right under this provision to be free from racially motivated selective denial of police protective law enforcement and related protective services.

121. Any reasonable Emergency Communications Operator knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

122. Defendant Rodriguez knowingly violated these due process rights of Plaintiffs, in that he actively took steps to put Plaintiffs, including Jimma Reat, at substantial risk of serious, immediate and proximate harm by placing them in a position of danger, and increasing their vulnerability to such danger, for private acts of violence.

123. As a result of the above complained of acts by Defendant Rodriguez, including *inter alia*, knowingly instructing them to leave the safety of the apartment complex where Jimma Reat and the other passengers had fled, and return to the scene of the crime in plain view of their known dangerous and armed assailants, Defendant Rodriguez created and increased the danger that led to Jimma Reat's death and the serious threats to the life, safety, and bodily integrity of Ran Pal, Changkuoth Pal, and Joseph Kolong.

124. In so consciously instructing and intentionally directing Jimma Reat, Changkuoth Pal, Ran Pal and Joseph Kolong to return to the City and County of Denver to meet police, and thereby creating and/or greatly increasing and exacerbating their danger, Defendant Rodriguez was consciously aware/knew at the time, *inter alia* that:

- they were black speaking with African accents and had been violently assaulted starting at 10<sup>th</sup> and Sheridan in Denver by Hispanic males;
- their assailants had repeatedly called them “niggers”;
- their assailants had attacked and injured them with beer bottles and/or “bottle rockets”;
- a gun had been flourished by one of the assailants well before the subsequent death of Jimma Reat;
- plaintiffs, including decedent Jimma Reat, were shocked and scared as was repeatedly expressed and did not want to go back to the scene;
- the assailants had been in the area moments before he sent the young men back to Denver; and

- he was directing these Plaintiffs to return to the City limits and make themselves highly visible before police were dispatched and without dispatching the police to protect them.

125. These dangers and risks to Plaintiffs' lives, safety, and bodily integrity were obvious, entirely foreseeable and actually known to Defendant Rodriguez at the time he created this danger, and at the time he took the affirmative moving force steps pled herein that essentially altered the status quo, threw Plaintiffs into a "snake pit", and thereby placed these Plaintiffs and Jimma Reat in a much worse position to suffer private violence than they would have been in had he not acted at all.

126. Additionally, and/or alternatively, Defendant Rodriguez also had a special relationship and duty to protect Plaintiffs and Jimma Reat once he took affirmative actions to restrain and deprive them of their liberty to remain in a safe place, and act as they wished on their own behalf to keep themselves safe, and instead, asserted custody and control over them by depriving them of emergency police and medical services unless they followed his liberty restraining instructions as law enforcement to return to Denver.

127. Defendant Rodriguez further enhanced this special relationship he created - and the accompanying constitutional duties he thereby owed to these defendant Plaintiffs - by promising and representing to them that he would immediately provide and ensure their receipt of police protection if they returned to Denver, thereby creating a reasonable expectation and justifiable reliance by Plaintiffs and Jimma Reat on such police protection from private violence.

128. Defendant Rodriguez knowingly violated Plaintiffs' rights under the equal protection clause of the Fourteenth Amendment and 42 U.S.C. § 1981 to be free from race-based



selective denials of police protective services to disfavored minorities, in that Plaintiffs' race was a motivating factor, in whole or in part, for his complained of actions and omissions.

129. Defendant Rodriguez is not entitled to qualified immunity, as, when viewed in their totality, his numerous herein complained of affirmative actions were conscience shocking and placed these Plaintiffs in serious, immediate, and proximate harm, and he engaged in these actions willfully and/or intentionally, maliciously, in bad faith, and/or in reckless disregard of and with deliberate indifference towards Plaintiffs' federally protected constitutional rights to life and bodily integrity under the Fourteenth Amendment and also to their equal protection rights under the Fourteenth Amendment and 42 U.S.C. § 1981 to be free from race based discrimination and race based selective denials of the provision of urgently needed police protective services.

130. This pattern of complained of willful acts by Defendant Rodriguez were moving causal forces behind Plaintiffs' injuries.

131. As a direct and proximate result and cause of Defendant Rodriguez's unlawful conduct, Jimma Reat was shot and killed, entitling Plaintiff Estate to compensatory and special damages, in amounts to be determined at trial.

132. Plaintiff Estate has incurred special damages in the form of loss of past, continuing and future earnings from Jimma Reat's death, in amounts to be ascertained based on his likely working life at trial.

133. Plaintiff Estate has also incurred special damages in the form of medically related expenses and funeral expenses.

134. As a direct and proximate result and cause of Defendant Rodriguez's unlawful conduct, Ran Pal, Changkuoth Pal, and Joseph Kolong were placed in a life-threatening

situation, shot at, assaulted, forced to witness the brutal death of their loved one while having their own bodily integrity and life threatened, all of which entitles them to compensatory and special damages in the amounts to be determined at trial. Plaintiffs may have ongoing special damages for medically/psychologically related treatment caused by the unconstitutional conduct of this Defendant.

135. Plaintiffs are suffering from extreme emotion upset, including variously from severe PTSD type symptoms, including but not limited to, nightmares, flashbacks, not eating, perserveration, not sleeping, loss of motivation and inability to perform daily living tasks.

136. Plaintiffs are further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law.

137. In addition to compensatory, economic, consequential and special damages, Plaintiffs are also entitled to punitive damages against Defendant Rodriguez because his conduct involves reckless and callous indifference to these Plaintiffs' federally protected rights.

## **SECOND CLAIM FOR RELIEF**

**Violation of 42 U.S.C. § 1983 – Deliberately Indifferent Policies, Practices, Customs, Training, Supervision, Ratification and Acquiescence**  
(Estate of Jimma Pal Reat, Ran Pal, Changkuoth Pal, and Joseph Kolong, Against Defendant City only)

138. Plaintiffs to this claim hereby incorporate paragraphs 1-137 of this Complaint as if fully set forth herein.

139. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

140. All Plaintiffs in this action are citizens or permanent residents of the United States and Defendant to this claim is a person for purposes of 42 U.S.C. § 1983.

141. At the time of the complained of events, Jimma Pal Reat, through his Plaintiff Estate successor, had a clearly established substantive due process Constitutional right under the Fourteenth Amendment to life, liberty, and bodily integrity.

142. At the time of the complained of events, Plaintiffs Ran Pal, Changkuoth Pal, Joseph Kolong had clearly established substantive due process rights under the Fourteenth Amendment to be free from threats to their bodily integrity and free from substantial risk to their life and/or serious bodily harm.

143. The Defendant City knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

144. The acts and reckless omissions of Defendant City, as described herein, deprived Plaintiffs of their constitutional and statutory rights and caused them damages.

145. Defendant City was, at all times relevant, policymakers for the Denver Department of Safety, and in that capacity, established policies, procedures, customs, habits, usages and/or practices for the same, or through their delegated final policymakers at the Department, including Director Carl Simpson.

146. Defendant City and/or its delegated final policymaker(s) created, developed and/or tolerated and maintained long-standing policies, procedures, department-wide customs, habits and/or emergency operator practices of which it was aware for years exhibiting deliberate indifference to the constitutional rights of citizens and permanent residents under the due process theories, including the state-created danger from private violence theory, set forth with particularity in the statement of facts and the First Claim for Relief, which were also moving

forces and proximate causes of the violations of Plaintiffs' constitutional and federal rights, and which, on information and belief, have or may have also injured other persons.

147. It is the longstanding widespread deliberately indifferent dangerous custom, habit, practice and/or policy for emergency communications operators to refuse to timely dispatch units where the victims are safely located, and instead direct them to go back into city limits in the proximity of where the attackers were known to have just been, or even instruct the callers to remain at scenes known to have involved crimes against persons – on information and belief, in part, to advance the administrative convenience of law enforcement personnel.

148. Defendant City and/or its delegated final policymaker(s) also systematically failed to properly train and/or supervise its emergency communication operators in the area of handling and responding to 911 calls, including but not limited to, training operators and dispatchers that in circumstances involving serious bodily injury and/or ongoing danger they must not instruct involved victims to return to Denver or the general scene or whereabouts of the incident, whether moving or stationary, as a condition of receiving police and emergency assistance, in a manner amounting to deliberate indifference to the constitutional rights of Plaintiffs and of the public.

149. On information and belief, Defendant City and/or its delegated final policymaker(s), knowing the inadequacies in the department, and with actual knowledge of the improper training of Defendant Rodriguez, recklessly and with deliberate indifference, did not re-train or supervise Defendant Rodriguez after the incident in February 2012 regarding the same type of deficiencies that led to Plaintiffs' injuries in this case, including the death of Jimma Reat.

150. All this complained of official misconduct and decision-making, including the deliberately indifferent training and supervision provided by Defendant City, resulted from a conscious or deliberate choice to follow a course of action from among various alternatives

available to Defendant City, which were moving forces in the constitutional and federal violation injuries complained of by Plaintiffs.

151. As a direct and proximate result of Defendant City's conduct, Jimma Reat was shot and killed, entitling his Plaintiff Estate to compensatory and special damages, in amounts to be determined at trial.

152. Plaintiff Estate has incurred special damages in loss of past, continuing and future lost earnings from Jimma Reat's death for his likely working life, in amounts to be ascertained in trial.

153. Plaintiff Estate has also incurred special damages in the form of medically related expenses and funeral expenses.

154. As a direct and proximate result of the Defendant City's unconstitutional conduct, Ran Pal, Changkuoth Pal, and Joseph Kolong were also placed in a life-threatening situation, shot at, assaulted, forced to witness the brutal death of their loved one while having their own bodily integrity and life threatened, entitling them to compensatory and special damages in the amounts to be determined at trial. Plaintiffs may also have ongoing special damages for medically and/or psychologically related treatment caused by the unconstitutional conduct of this Defendant.

155. Plaintiffs are further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law.

156. Finally, Plaintiffs seek appropriate declaratory and injunctive relief, including preliminary injunctive relief pursuant to 42 U.S.C. § 1983, the Declaratory Judgment Statute, and F.R.C.P. Rules 57 and 65 to redress Defendant's above-described ongoing deliberate indifference in policies, practices, habits, customs, usages, training and supervision with respect

to the rights described herein, which cause irreparable injury and are obviously capable of repetition and of avoiding judicial review.

**THIRD CLAIM FOR RELIEF**  
**Willful and Wanton Conduct Resulting in Wrongful Death**  
(James Pal Reat and Rebecca Awok Diag against Defendant Rodriguez only)

157. Plaintiffs hereby incorporate paragraphs 1-156 of this Complaint as if fully set forth herein.

158. Defendant Rodriguez is a public employee within the meaning of the Colorado Government Immunity Act, C.R.S. § 24-10-103.

159. Individual Defendant is not entitled to immunity under the Colorado Government Immunity Act because his acts and omissions were willful and wanton within the meaning of C.R.S. §§ 24-10-105(1) and 24-10-118.

160. Individual Defendant was acting within the scope of his employment when he committed such willful and wanton acts that were actual and proximate causes of Plaintiffs' persisting emotional injuries.

161. Defendant Rodriguez was consciously aware that his acts and omissions, created danger and risk to the safety and life of Jimma Reat and he acted and failed to act, without regard to the danger or risk.

162. The willful and wanton acts and omissions outlined herein were a substantial and significant proximate cause in Jimma Reat's avoidable death.

163. Defendant Rodriguez willfully and wantonly created and enhanced the danger that was the direct and proximate cause of Jimma Reat's death.

164. As a direct and proximate result of Defendant's willful and wanton conduct, causing wrongful death, Plaintiffs are entitled to an award of general compensatory damages for

their resulting ongoing grief, emotional distress, pain and suffering, anxiety, inconvenience and impairment of the quality of life against defendant in such amounts as are determined to be just and owing by the jury at trial.

165. Plaintiffs have also incurred special damages in the form of loss of past, continuing and future earnings from Jimma Reat's death during his likely working life, as he was working to help support his parents, in amounts to be ascertained in trial.

166. Plaintiffs may also have ongoing special damages for medically/psychologically related treatment caused by the conduct of this Defendant.

167. There is no cap under the Governmental Immunity Act on Plaintiffs' state law wrongful death claim as Defendant's acts and omissions in this case were willful and wanton within the meaning of C.R.S. § 24-10-118.

168. Plaintiffs hereby give notice that they may be seeking exemplary damages for the willful and wanton acts of individual Defendant on this state law claim upon suitable amendment.

**FOURTH CLAIM FOR RELIEF**  
**Willful and Wanton Negligent Infliction of Emotional Distress**  
(Ran Pal, Changkuoth Pal, and Joseph Kolong against Defendant Rodriguez only)

169. Plaintiffs hereby incorporate paragraphs 1-168 of this Complaint as if fully set forth herein.

170. Defendant Rodriguez is a public employee within the meaning of the Colorado Government Immunity Act, C.R.S. § 24-10-103.

171. Defendant Rodriguez is not entitled to immunity under the Colorado Government Immunity Act because his acts and omissions were willful and wanton within the meaning of C.R.S. § § 24-10-105(1) and 24-10-118.

172. Defendant Rodriguez was acting within the scope of his employment when he committed such willful and wanton acts that were the actual and proximate cause of Plaintiffs' severe and persisting injuries.

173. Defendant Rodriguez was consciously aware that his overt acts or omissions created danger and risk to the safety and life of Plaintiffs and he acted and failed to act, heedlessly, recklessly, and without regard to the rights and safety of others, particularly Plaintiffs here.

174. Defendant Rodriguez willfully and wantonly created an unreasonable risk of physical harm and caused the Plaintiffs to be put in fear for their own safety, as all three Plaintiffs were shot at by the unknown assailants and clearly all within a life-threatening "zone of danger" when Jimma Reat was shot and killed.

175. As a direct and proximate result of Defendant's willful and wanton conduct, Plaintiffs were put in fear for their own safety and lives, frightened, and traumatized, and this fear resulted in persisting, long-continued emotional disturbance and suffering and other damages.

176. These Plaintiffs' personal trauma was also severely exacerbated because they witnessed the death of their loved one during the same incident, as Ran Pal and Changkuoth Pal were the brothers of Jimma Reat, and Joseph Kolong was a long-time close personal friend of the family, including Jimma Reat.

177. Plaintiffs are therefore entitled to general and compensatory damages for such emotional distress and to special damages for any medical and health care related expenses, all in amounts to be proven at trial.



178. There is no cap under the Governmental Immunity Act on this state law claim as Defendant's acts and omissions in this case were willful and wanton within the meaning of C.R.S. § 24-10-118.

179. Plaintiffs hereby gives notice that they may be seeking exemplary damages for the willful and wanton acts of individual Defendant on this state law claim upon suitable amendment.

#### **FIFTH CLAIM FOR RELIEF**

**Outrageous Conduct – Intentional Infliction of Emotional Distress**  
(Ran Pal, Changkuoth Pal, and Joseph Kolong against Defendant Rodriguez only)

180. Plaintiffs hereby incorporate paragraphs 1-179 of this Complaint as if fully set forth herein.

181. Defendant Rodriguez is a public employee within the meaning of the Colorado Government Immunity Act, C.R.S. § 24-10-103.

182. Defendant Rodriguez is not entitled to immunity under the Colorado Government Immunity Act because his acts and omissions were willful and wanton within the meaning of C.R.S. §§ 24-10-105(1) and 24-10-118.

183. Defendant Rodriguez was acting within the scope of his employment when he committed such willful and wanton acts that were the actual and proximate cause of Plaintiffs' severe and persisting injuries.

184. Defendant Rodriguez was consciously aware that his overt acts or omissions created danger and risk to the safety and life of Plaintiffs, and he acted and failed to act, heedlessly, recklessly, and without regard to the rights and safety of others, particularly Plaintiffs here.

185. The herein complained of overt acts by Defendant Rodriguez in their totality, amounting to a pattern, including his direct abuse of his power, authority, and influence to profoundly and adversely affect the rights and interest of Plaintiffs, and the extreme, racist and calloused manner in which it was all done, constitutes shocking, heartless, deliberately indifferent, willful and wanton conduct, in sum, extreme and outrageous conduct. This conduct was so outrageous in character, and so extreme in degree, that no reasonable person would be expected to endure it, and reasonable members of the community will regard the conduct as atrocious, going beyond all possible bounds of human decency, and utterly intolerable in a civilized community.

186. Defendant's conduct was engaged in with actual knowledge and/or reckless disregard that Plaintiffs would suffer severe emotional distress.

187. As a direct and proximate result of Defendant's outrageous conduct, Plaintiffs suffered severe emotional distress, including but not limited to, shock, trauma, Post-traumatic stress disorder type symptoms, depression, anxiety, hopelessness, anguish, anger, shame, and deep sadness.

188. Plaintiffs are therefore entitled to general and compensatory damages for such emotional distress and to special damages for any medical and health care related expenses, all in amounts to be proven at trial.

189. There is no cap under the Governmental Immunity Act on this state law claim as Defendant's acts and omissions in this case were willful and wanton within the meaning of C.R.S. § 24-10-118.

190. Plaintiffs hereby gives notice that they may be seeking exemplary damages for the willful and wanton acts of individual Defendant on this state law claim upon suitable amendment.

**VI. PRAYER FOR RELIEF:**

Plaintiffs pray that this Court enter judgment for the Plaintiffs and against each of the Defendants and grant and award:

- A. Compensatory and consequential damages, including damages for emotional distress, loss of enjoyment of life, and other suffering on all claims allowed by law in an amount to be determined at trial;
- B. Economic losses on all claims allowed by law;
- C. Special damages in amounts to be determined at trial;
- D. Punitive damages on all federal claims allowed by law against individual Defendant and in amounts to be determined at trial;
- E. Attorneys' fees and the costs associated with this action under 42 U.S.C. § 1988, including expert witness fees, on all claims allowed by law;
- F. Pre- and post-judgment interest at the lawful rate;
- G. Declaratory and injunctive relief appropriate to the constitutional violations in this case, and;
- H. Any other appropriate relief at law and equity that this court deems just and proper.

PLAINTIFFS REQUEST A TRIAL BY JURY.

/s/ John R. Holland

John R. Holland  
Erica T. Grossman  
Anna Holland Edwards  
Holland, Holland Edwards & Grossman, P.C.

1437 High Street  
Denver, CO 80218  
303-860-1331

**Plaintiffs' addresses:**

Estate of Jimma Reat c/o Rebecca Awok Diag  
Rebecca Awok Diag  
Changkuoth Pal  
3145 W. Cedar Ave  
Denver, CO 80219

James Pal Reat,  
Ran Pal  
5515 N. Lowell Blvd  
Denver, CO 80221

Joseph Kolong  
1670 Routt St. Apt #3,  
Lakewood, CO 8021

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

Civil Action No. 1:12-cv-02531-REB-MEH

ESTATE OF JIMMA PAL REAT;  
JAMES PAL REAT;  
REBECCA AWOK DIAG;  
RAN PAL;  
CHANGKUOTH PAL;  
JOSEPH KOLONG;

Plaintiffs,

v.

JUAN JESUS RODRIGUEZ, individually;  
CITY AND COUNTY OF DENVER;

Defendants.

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**JOINT MOTION FOR STAY TO ENGAGE IN SETTLEMENT NEGOTIATIONS**

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Plaintiffs, through their counsel, HOLLAND, HOLLAND EDWARDS & GROSSMAN, P.C., and the Defendant City and County of Denver, through Assistant City Attorney David Cooke, hereby stipulate and jointly move the Court for entry of a 75 day stay.

As grounds for this motion, the undersigned parties state that they are requesting the Court enter a 75 day stay in order to permit them to explore potential case settlement without the pressures and deadlines of litigation. The undersigned parties have also requested the Court to immediately enter a protective order in order to permit the frank exchange of information and materials necessary for their discussion during this stay period.

**WHEREFORE**, the undersigned parties jointly move the Court to stay all proceedings between them for 75 days for the purposes above stated.

Respectfully Submitted this 24th day of September, 2012 by:

/s/ John R. Holland

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