IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 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, and,
CITY AND COUNTY OF DENVER,

Defendants.

ORDER ON MOTION TO AMEND

Michael E. Hegarty, United States Magistrate Judge.

Before the Court is Plaintiffs' Motion for Leave to File Second Amended Complaint with Certificate of Conferral and Request for Oral Argument [filed December 19, 2013; docket #137]. Pursuant to 28 U.S.C. § 636(b)(1)(A) and D.C. Colo. LCivR 72.1C, the matter has been referred to this Court for disposition [docket #139]. The matter is fully briefed,[1] and oral argument would not materially assist the Court in its consideration of this matter. Thus, the Court denies Plaintiffs' request for oral argument. For the reasons that follow, the Court GRANTS Plaintiffs' Motion to Amend.

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[1]Interested Party City and County of Denver ("the City") filed a response, but defendant Juan Jesus Rodriguez did not.

BACKGROUND

In the early morning hours of April 1, 2012, Juan Jesus Rodriguez, a 911 emergency call operator with the City and County of Denver, received a 911 call placed by Ran Pal. During the call, Mr. Rodriguez learned that Ran Pal had been driving a vehicle with his brother Jimma Pal Reat and two others on South Sheridan Boulevard in Denver and had been attacked by occupants of another vehicle. During the call, Ran Pal ended up driving to a home in nearby Lakewood, Colorado and parked there. Despite Ran Pal's protestations, Rodriguez convinced him to drive back to Denver, telling Ran Pal that this was the only way for Denver police to take a report on the incident. Ran Pal ultimately ended up back on South Sheridan Boulevard, the same street on which the original confrontation occurred, albeit more than a dozen blocks away. Minutes after parking the car in anticipation of Denver police arriving to take a report, the attacking vehicle returned, and Jimma Pal Reat was fatally shot by one of its occupants.[2]

On September 24, 2012, Plaintiffs filed a complaint pursuant to 28 U.S.C. § 1983 against Juan Jesus Rodriguez and the City and County of Denver ("the City"). Plaintiffs then filed a First Amended Complaint on November 9, 2012 asserting four claims against Mr. Rodriguez and one claim against the City. Against Mr. Rodriguez, Plaintiffs asserted claims for (1) violation of equal protection and due process under the Fourteenth Amendment; (2) wrongful death; (3) negligent infliction of emotional distress; and (4) intentional infliction of emotional distress. Against the City, Plaintiffs asserted a claim for deliberately indifferent policies, practices,

[2] The factual allegations regarding the April 1, 2012 phone call are described in much greater detail in this Court's April 9, 2013 Report and Recommendation [docket #92]. Most of the changes in the proposed second amended complaint pertain to allegations about the City and do not materially alter the factual allegations pertaining to Mr. Rodriguez's handling of a phone call in February 2012 or his handling of the April 1, 2012 phone call.

customs, training, supervision, ratification, and acquiescence against the City. On June 17, 2013, the District Court dismissed without prejudice the equal protection and the substantive due process claims against Mr. Rodriguez (insofar as the due process claim was based on a special relationship between Mr. Rodriguez and the Plaintiffs). The remaining claims against Mr. Rodriguez were permitted to proceed, including a substantive due process claim under the state-created danger theory. The Court also dismissed without prejudice the claim against the City.

The present Motion for Leave to File Second Amended Complaint seeks to reassert the claim against the City based on newly discovered evidence.

LEGAL STANDARD

Rule 15 of the Federal Rules of Civil Procedure provides that, following a 21-day period for service of the original pleading or service of a responsive pleading or Rule 12 motion, a party may amend its pleading only by leave of the court or by written consent of the adverse party. Fed. R. Civ. P. 15(a) (2013). Rule 15 instructs courts to "freely give leave when justice so requires." *Id.* "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

The grant or denial of leave is committed to the discretion of the district court. *See Duncan v. Manager, Dep't of Safety, City & Cnty. of Denver*, 397 F.3d 1300, 1315 (10th Cir. 2005). Leave to amend should be refused "only on a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment." *Id.*; *see also Foman*, 371 U.S. at 182.

ANALYSIS

The City contends that the Motion for Leave to File Second Amended Complaint should be denied because (1) it is barred by the law of the case; (2) it is futile; and (3) there was undue delay in filing the Motion that prejudices the City. The Court will address each of these arguments in turn.

I. Law of the Case

Plaintiffs' claim against the City centers on its response, or lack of response, to Mr. Rodriguez's handling of a 911 call in February 2012. In its June 17, 2013 Order, the District Court concluded that Plaintiffs had failed to show deliberately indifferent training and supervision because, among other reasons, "[t]here [was] no allegation or other indication that the February 2012 incident actually resulted in a violation of anyone's constitutional rights." (Docket #111, p. 11.) The City contends that this statement, which is now part of the "law of the case," precludes a finding of deliberate indifference. *See United States v. Graham*, 704 F.3d 1275, 1278 (10th Cir. 2013) ("Under the 'law of the case' doctrine, when a court rules on an issue, the ruling 'should continue to govern the same issues in subsequent stages in the same case.'") (quoting *Arizona v. California*, 460 U.S. 605, 618 (1983)).

To establish municipal liability on a failure to train theory, a plaintiff must demonstrate that the municipal action or inaction was taken with "deliberate indifference" as to its known or obvious consequences. *Bd. of Cnty. Comm'r of Bryan Cnty., Okla. v. Brown*, 520 U.S. 397, 407 (1997). "The deliberate indifference standard may be satisfied when the municipality has actual or constructive notice that its action or failure to act is substantially certain to result in a constitutional violation, and it consciously or deliberately chooses to disregard the risk of harm."

Barney v. Pulsipher, 143 F.3d 1299, 1307 (10th Cir. 1998). Thus, although a showing that a supervisor knew about a previous constitutional violation *may* support a finding of deliberate indifference, such a showing is not required.

Deliberate indifference may also be established "absent a pattern of unconstitutional behavior if a violation of federal rights is a highly predictable or plainly obvious consequence of a municipality's action or inaction, such as when a municipality fails to train an employee in specific skills needed to handle recurring situations, thus presenting an obvious potential for constitutional violations." *Id*. at 1308 (citations and internal quotation marks omitted). It is under this theory of deliberate indifference that I believe Plaintiffs have provided sufficiently plausible factual allegations in their proposed second amended complaint.

First, Plaintiffs must sufficiently allege that a failure to train Mr. Rodriguez in discerning danger and handling emergency situations made constitutional violations a highly predictable consequence or presented an obvious potential for constitutional violations. *See id.* In the First Amended Complaint, the Plaintiffs relied heavily on a claim that the City had a policy of requiring assaulted 911 callers to return to the crime scene. The District Court rejected this policy-based theory, and the Plaintiffs have abandoned it in the proposed second amended complaint in favor of a theory that focuses on the supervisors' knowledge and opinions about Mr. Rodriguez's lack of specific skills that are crucial to his job as a 911 operator.

When Mr. Rodriguez was dismissed in May 2012, the City noted that the April 2012 call was not the first one Mr. Rodriguez had mishandled. (*See* docket #137-2.) In February 2012, Mr. Rodriguez received a 911 call from a person who claimed he may have choked his mother's boyfriend to death after the boyfriend had been violent toward the caller's mother. (Docket

#137-1, at ¶ 132.) Specifically, the February 2012 caller stated, "I choked him out and I think I killed him ... I think he is deceased." (*Id*. at ¶ 134.) The caller explained that he was "in a really, really stressed situation" and that "his mind [was] racing really fast. . ." (*Id*. at ¶ 135.) Despite these statements, Mr. Rodriguez directed the caller to go out into the street to get the exact address. (*Id*. at ¶ 136.) According to the City, this instruction was unnecessary since Mr. Rodriguez already had enough information with the intersections to complete the address verification. (*Id*.)

In its Letter of Dismissal [docket # 137-2], the City further found that Mr. Rodriguez "did not demonstrate any urgency to process that information," and that the call should have been sent to the dispatch queue within 60 seconds. (Docket # 137-1, at ¶ 137.) Instead, it took Mr. Rodriguez over five minutes to process the call. (*Id*.) As stated by the City, "[w]ithout acknowledging the criminality of the statement," Mr. Rodriguez "embarked on the medical triage aspect of the interview" by asking a number of questions about the victim and directing the caller to "perform CPR." (*Id*. at ¶ 138.) The City found that "[a]t no point in the conversation did [Mr. Rodriguez] actively listen to what the caller had to say or appear to understand that a homicide had occurred and that scene safety was paramount." (*Id*. at ¶ 139.) Instead, Mr. Rodriguez "repeatedly harangued the caller with questions and appeared to have no appreciation for the caller's environment and his effort to assist [Mr. Rodriguez] with processing the call." (*Id*.)

The proposed second amended complaint alleges that supervisors reached the following conclusions before April 1, 2012 concerning the February 2012 phone call:

- "In [Mr. Rodriguez's] handling of [the February 2012] incident, [he] failed to address scene safety and the integrity of a crime scene ... Allowing the caller to return to the apartment could have resulted in further violence..."
- "[Mr. Rodriguez's] handling of this call demonstrates an inability to discern, based on [the] caller's comments, what type of situation [he was] dealing with when processing the [February 2012] call. In this case, in [his] attempt to get an exact location, [he] failed to demonstrate any urgency in finding out what happened, and in the process, dismissed the confession [he was] provided and failed to recognize the potential consequences of sending the caller back into the crime scene."
- "Denver 911 Director Carl Simpson testified that *he thought at the time* that Mr. Rodriguez had created for danger and potential for violence for all involved at the scene in the February 2012 incident."
- "Denver 911's Operation Manager Lesnansky testified that during [the February 2012] event Mr. Rodriguez was "missing" the ability to listen to his caller and process and discern the information he was given."
- "Operations Manager Lesnansky also admitted that it was her perception at the time of this February 2012 incident that Mr. Rodriguez had created danger of private violence for the caller and the people inside, should the man actually not be dead, or his mother, who [might] react, as Mr. Rodriguez sent the caller back into danger."
- "Direct supervisor Natalie Heywood testified that at the time of this incident she knew, and Manager of Operations Lesnansky understood as well, that there was "nothing subtle about the shocking danger-creation situation in February where Juan Rodriguez's

> conduct put the teenager, his mother, and the choked victim at risk for death, if still alive, by sending the teenager back into the house into the active crime scene."

(Docket # 137-1, ¶143) (emphasis in original.)

These factual allegations demonstrate a plausibility that supervisors knew a violation of federal rights was a highly predictable or highly obvious consequence of a failure to train Mr. Rodriguez in discerning and handling emergency situations. *See Barney*, 143 F.3d at 1308.

Next, Plaintiffs must sufficiently allege that, despite knowing of the highly obvious consequence, the city failed to train Mr. Rodriguez. In concluding that the City did not fail to train Mr. Rodriguez based on allegations in the *First* Amended Complaint, the District Court relied heavily upon the Plaintiffs' allegation that Mr. Rodriguez received a verbal reprimand for the February incident. However, the proposed second amended complaint alleges that Mr Rodriguez testified under oath he was never reprimanded or disciplined for his mishandling of the February 2012 phone call. Mr. Rodriguez acknowledged at a deposition that he was "coached for 15 or 20 minutes about the February incident . . . however, counseling on at least a quarterly performance review basis and in individual situations in between is commonplace in this 911 operator job; it is not discipline. It was Mr. Rodriguez's understanding that this was a routine non-disciplinary coaching[.]" (Docket #137-1, ¶¶150-151.) According to the allegations, the City's practice is to send the employee an email copy of a verbal reprimand, yet the City has no such documents, and Mr. Rodriguez testified he has no recollection of receiving one. (*Id*. at ¶149.) Based on these allegations, it is plausible that the City's short counseling session was merely a routine coaching and did not sufficiently train Mr. Rodriguez in specific skills for handling 911 phone calls – in this instance, the ability to discern emergency situations.

Accordingly, I conclude that the District Court's finding that the February 2012 incident did not violate anyone's constitutional rights does not preclude the Plaintiffs from stating a failure-to-train claim for relief as set forth herein against the City and, therefore, the law of the case doctrine does not bar the amendment.

II. Futility of Amendment

"A municipality may not be held liable where there was no underlying constitutional violation by any of its officers." *Wilson v. Meeks*, 98 F.3d 1247, 1255 (10th Cir. 1996) (citing *Hinton v. City of Elwood, Kan.*, 997 F.2d 774, 782 (10th Cir. 1993)). Plaintiffs claim that Mr. Rodriguez violated their constitutional rights under the state-created danger theory. In order to invoke the state-created danger theory, Plaintiffs must establish, among other elements, that Mr. Rodriguez acted recklessly in conscious disregard of a known or obvious risk. *Schwartz v. Booker*, 702 F.3d 573, 580 (10th Cir. 2012). The City contends that the proposed second amended complaint is futile because it alleges that Mr. Rodriguez was incapable of discerning danger, thereby precluding a finding that he consciously disregarded a known or obvious risk.

I do not agree with the City's contention, because an inability to discern danger does not equate to an inability to consciously disregard a risk. The District Court's order supports this conclusion. In determining that the conscious disregard standard applies, rather than the intent to harm standard, the District Court noted that the allegations suggest Mr. Rodriguez "did not subjectively believe he was dealing with an emergency at any point during the [April 2012] call." (Docket #111, p.5.) Despite that finding, the District Court concluded that the Plaintiffs had alleged sufficient facts to establish that Mr. Rodriguez consciously disregarded the risk of

the Plaintiffs parking on a major road where the attackers had been traveling minutes earlier and activating their hazard lights to make them more visible.

Additionally, the allegations about Mr. Rodriguez's failure to discern an emergency are directed at the City's knowledge and awareness of his need for training before the April 1, 2012 incident. Those allegations do not actually state that Mr. Rodriguez could not discern the nature of emergency situations but that certain supervisors knew or believed that Mr. Rodriguez lacked that crucial ability.

To the extent any of the allegations actually state that Mr. Rodriguez could not discern an emergency, as opposed to a supervisor's opinion about his inability, the proposed second amended complaint also alleges that Mr. Rodriguez understood that his instructions on the April 1, 2012 phone call put the Plaintiffs at risk, and he disregarded those risks by giving the instructions. For example, the proposed second amended complaint contains the following allegations:

- "The danger to these Plaintiffs' lives, safety, and bodily integrity was actually known, consciously disregarded 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 simply hung up the phone and not acted at all." (Docket # 137-1, ¶ 13)
- "As Defendant Rodriguez also admits, to his conscious awareness, Ran Pal and other passengers also reported to Defendant Rodriguez that he was in shock, that he did not want to be driving, and that they wanted to stay in the safety of the parking lot of his brother's residence and needed help to be sent to where they were." (*Id*. at ¶ 49.)

- "Knowing and acknowledging, now under oath, that these men were injured, in shock, and shouldn't be driving, despite protocols requiring an ambulance [to] be dispatched, Defendant Rodriguez falsely told Ran Pal repeatedly that because he was outside of Denver City limits, he could not send a police car and ambulance to the young men's actual location in Wheat Ridge as they requested, knowing that in fact he could do so and having done so in the past, as he has now admitted under oath he told his employer[.]" (*Id*. at ¶ 51.)
- "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 criminal assault, and to promptly and continually electronically update the incident report with information relevant to the incident in order for dispatchers and officers to properly respond. . . . Nevertheless, with extreme recklessness to the safety of these Plaintiffs, 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, making it impossible for dispatchers and officers to even respond to the dangerous scene he was consciously creating." (*Id*. at ¶¶ 59 and 61.)
- "When this Defendant did finally send the call to queue, he knowingly decided to code the incident as a mere property crime, without documenting any of the critical personal injury information in the comments or snapshot, with the deleterious effect of insuring that no police could be timely sent, as the call was treated as a minor property crime only and not an assault with weapons as it was known to be by Defendant Rodriguez. Mr.

Rodriguez has admitted that he knew that ordinary objects can be used as weapons." (*Id*. at ¶ 64.)

- After instructing Ran Pal to park on the same street on which the original confrontation occurred, Mr. Rodriguez told Ran Pal that "if you see them come back, I need you to call us right away at 911." (*Id*. at ¶ 93.) That warning suggests that Mr. Rodriguez understood the risk that the other vehicle would return to that street and the danger to Ran Pal and the passengers in his vehicle if that occurred. Indeed, when Jimma Pal Reat was shot, Mr. Rodriguez said "I need you to get away." *Id*. at 11:24.

Based on these allegations, it is plausible that Mr. Rodriguez acted recklessly in conscious disregard of a known or obvious risk. *Schwartz*, 702 F. 3d at 580. That Mr. Rodriguez lacked an ability to discern the nature of emergency situations, or that his supervisors were of such opinion, does not preclude a finding that he understood and knew the risks, yet acted recklessly and in conscious disregard of those risks.

Accordingly, I conclude that the proposed second amended complaint contains sufficient plausible allegations to establish a constitutional violation, and therefore, it is not futile.

III. Undue Delay, Prejudice, and Failure to Cure Deficiencies

The deadline for joinder of parties and amendment of pleadings was December 20, 2013[3]; Plaintiffs filed their Motion for Leave to File Second Amended Complaint on December 19, 2013. Although the Motion was filed within the deadline, the City contends that the Motion is untimely because the Plaintiffs "have been aware of the circumstances presented by the

[3] The deadline was originally November 15, 2013, but the Court granted two motions for extension of time.

February 2012 call" since before the First Amended Complaint was filed, and Plaintiffs' proposed second amended complaint continues "to rely heavily upon the same Letter of Dismissal in making materially similar allegations." (Docket #139, p.10.)

The City's arguments are unpersuasive in that circumstance, because the allegation that the City did not reprimand or train Mr. Rodriguez after the February 2012 incident was based on evidence that was discovered after the City was dismissed as a party. In dismissing the City for failure to state a claim, the District Court relied heavily upon the allegation in the First Amended Complaint that the City reprimanded Mr. Rodriguez for his mishandling of the February 2012 call. Additionally, although the letter dismissing Mr. Rodriguez, which was relied upon in the First Amended Complaint, contained some evidence about the City's knowledge that he lacked certain skills, more information about the City's knowledge and opinions about Mr. Rodriguez's work-related deficiencies has been discovered since the First Amended Complaint was filed. For example, the proposed second amended complaint makes specific factual allegations about the opinions of operations manager Shelly Lesnansky and direct supervisor Natalie Heywood, while the First Amended Complaint makes no mention of these individuals.

The claim against the City was dismissed without prejudice, and the City has continued to participate in discovery. Because the City is familiar with the case, it should come as no surprise that the Plaintiffs are seeking to reinstate the City as a Defendant. Thus, the Court finds that the proposed second amended complaint does not unduly prejudice the City.

In light of the newly discovered evidence presenting a question of fact about whether the City failed to train Mr. Rodriguez in the specific skill of discerning danger and handling

emergency situations, the Court finds that it is in the interest of justice to grant Plaintiffs' Motion for Leave to File Second Amended Complaint.

CONCLUSION

Accordingly, for the reasons stated above and in the interest of justice, it is hereby ORDERED that the Plaintiffs' Motion for Leave to File Second Amended Complaint with Certificate of Conferral and Request for Oral Argument [filed December 19, 2013; docket #137] is **GRANTED**.

Dated and entered this 17th day of January, 2014, in Denver, Colorado.

BY THE COURT:

Michael E. Hegarty
United States Magistrate Judge

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 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.

SECOND AMENDED CIVIL RIGHTS COMPLAINT WITH REQUEST FOR TRIAL BY JURY

Plaintiffs, by and through their attorneys, HOLLAND, HOLLAND EDWARDS & GROSSMAN, P.C., hereby amend their complaint to add the City and County of Denver as a Defendant, previously dismissed without prejudice, update the allegations against Defendant Rodriguez consistent with recent discovery, and now complain against these Defendants as follows:

I. INTRODUCTION

1. This case presents a classic example of a "snake pit" state created danger 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 car related Plaintiffs' safety by City and County of Denver 911 Emergency Communications Operator Defendant Rodriguez.

2. Jimma Reat, his two brothers, Ran Pal, Changkuoth Pal and a close friend, Joseph Kolong, were driving to their homes when they were repeatedly assaulted with large beer bottles and bottle rockets by a group of unknown Hispanic males.

3. During these violent criminal assaults, the assailants repeatedly called these young men "niggers."

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

5. The caller and his passengers 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, with whom they were then on the phone and who was still actively talking to, instructing, commanding and guiding them as this occurred during a phone call that lasted about 15 minutes.

6. Mr. Rodriguez repeatedly calmly instructed and directed these men to leave the known safety of their apartment complex in Wheat Ridge, and return to Denver to meet the police. As was revealed in a statement he made to Ran Pal, he was all the while consciously aware of the likely continuing proximity of these assailants.

7. Defendant Rodriguez expressly conditioned the provision of police and medical services to them on these men obeying him by following his instructions.

8. While so affirmatively instructing and directing, Defendant Rodriguez shockingly did not even take any available actions to ensure timely dispatch of the police or assure their ability to properly assess of the nature of this call.

9. Even after learning that their assailants had brandished a gun, nothing changed Mr. Rodriguez's instructions, directions and plans for Ran Pal and the passenger Plaintiffs prior to the shooting.

10. Over protest, in obedience to his repeated law enforcement commands and instructions, and in reliance on his false statements in essence assuring them that police protection was coming, Ran Pal and the three passengers returned to Denver, further following Defendant Rodriguez's fatal specific instructions to pull their car over, stop and flash their hazard lights, making them visible sitting ducks to their attackers.

11. There, rather than being met by the police, they again encountered the same group of males from whom they had previously escaped to the safety of their apartment complex. This occurred without Defendant Rodriguez ever taking any actions to stimulate the urgent sending of the promised police to this directed location where he had them stopped and waiting -- until just about one minute after the shooting.

12. This time the unidentified males opened fire on all of them, and Jimma Reat was gunned down and died in his brother's arms.

13. The danger to these Plaintiffs' lives, safety, and bodily integrity was actually known, consciously disregarded 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 simply hung up the phone and not acted at all.

14. As set forth in detail in the municipal entity fact section below**,** liability for the conscience shocking conduct by Juan Rodriquez is not confined to just this individual Defendant.

15. Mr. Rodriguez's danger creation in this matter was also a result of deliberate indifference in training and supervision,

16. Based on evidence from discovery, the City is plausibly and properly sued and coequally liable for its own moving force deliberate indifference to the obvious recurring danger posed to the public in choosing to keep and leave Defendant Rodriguez in his job without discipline or substantial changes in his training and supervision including monitoring, despite an obvious actual need for such training and supervision to prevent recurrence.

17. This conscience shocking behavior did not just unpredictably occur on its' own or by surprise.

18. Rather life threatening, danger creating reckless conduct by Juan Rodriquez was well known to the Defendant City to have manifested itself in another egregious homicide case handled by him just weeks before.

19. This knowledge is not imputed to the City; policymakers Director Simpson and Denver 911 Operations Manager Shelly Lesnansky, and Mr. Rodriguez's direct supervisor, Natalie Heywood, expressly admitted that before this case, they knew Mr. Rodriguez was creating danger and unable to discern urgency and emergency, obviously critical abilities for an Emergency Communications Operator.

20. Despite such knowledge, shared by the City through three layers of supervisors,

Denver made conscious choices to do nothing to further train, supervise or remove this known to be unfit reckless actor from his known danger creating position, and thereby failed to protect these Plaintiffs and the public from this highly foreseeable harm.

21. As also set forth below, contrary to Denver's claims that the City reprimanded Mr. Rodriguez for his handling of the February call at the time, he has now denied ever being aware that he had been disciplined or reprimanded at his deposition.

22. Defendant Rodriguez received absolutely no additional training or supervision, including monitoring or sufficient discipline. He was not removed. He was not put on leave. He was not evaluated. In short the City did nothing reasonable or effective to prevent this highly foreseeable harm.

23. Thus the evidence developed in discovery proves the Defendant City simply and with deliberate indifference left him in a place to shockingly create and then blatantly and consciously disregard known danger again, this time with fatal effect for Jimma Reat.

24. The obvious moving force consequence of the decision not to further train, supervise, monitor, discipline or remove Juan Rodriguez from his position of handling life and death emergencies was the deprivation of the federally protected rights of these Plaintiffs complained of herein, and involved nothing more than at most reiteration of proscriptive policy unaccompanied by any proactive substantive steps to minimize this well known danger to the public.

II. JURISDICTION, VENUE, AND NOTICE

25. 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.

26. 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.

27. 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.

28. 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

29. 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 that was opened in Jefferson County, Colorado.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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. Defendant Rodriguez is a citizen of the United States and a resident of the State of Colorado.

36. 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.

37. Defendant City is properly sued directly under 42 U.S.C. § 1983 for its' own and its' final and final delegated decision makers' deliberately indifferent training and supervision including monitoring and sufficient discipline which were also moving forces in the complained of constitutional and statutory violations and resulting injuries.

IV. STATEMENT OF FACTS

38. Plaintiffs incorporate all of the preceding paragraphs as if they were fully set forth again at this point.

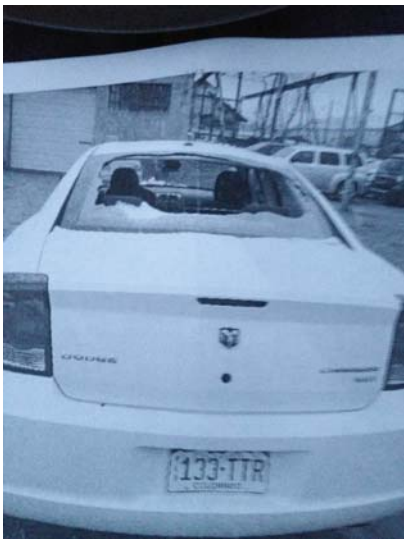
39. Early in the morning on April 1, 2012 in Denver by the intersection of 10th and Sheridan, the male occupants of a Jeep Cherokee pulled up and began harassing and attempting to injure Jimma Reat, Changkuoth Pal, Ran Pal and Joseph Kolong, four young men and refugees from what is now South Sudan, who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

40. This group of unidentified males called these Plaintiffs and the decedent "niggers" and threw 40 ounce beer bottles at them, shattering their back windshield and injuring them with a shower of glass shards with a bottle hitting Ran Pal in the face and hands.

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

42. A little while later they also threw "bottle rockets" at them while Plaintiffs were attempting to get their license plate so that they could assist law enforcement.

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



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44. Plaintiff Ran Pal called 911 while en route home to report this crime and obtain emergency police and medical protection and assistance.

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

46. While on the phone with Defendant Rodriguez, Plaintiff Ran Pal and the other passengers who, after getting most of the license plate so they could assist law enforcement, had 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, giving their exact apartment address as 5992 W. 29th Avenue and where they were planning to go inside.

47. These Plaintiffs reported to Defendant Rodriguez that they were the victims of a violent assault and had been injured by a group of Hispanic males while they were driving home.

48. During the call, to Defendant Rodriguez's admitted conscious awareness at the time, Ran Pal variously reported to Defendant Rodriguez starting in the first minute of the call that these assailants viciously assaulted them with beer bottles thrown at them through their back window which hit him in the face and hands and covered several passengers in glass shards, brandished a gun and that they were physicially injured.

49. As Defendant Rodriguez also admits, to his conscious awareness, Ran Pal and other passengers also reported to Defendant Rodriguez that he was in shock, that he did not want to be driving, and that they wanted to stay in the safety of the parking lot of his brother's residence and needed help to be sent to where they were.

50. More particularly, as shown from the transcript of this tape recorded 911 call, attached hereto as **Exhibit 1** and incorporated herein by this reference, in the first few minutes of the call while they were safe at home in Wheat Ridge, Plaintiff Ran Pal stated to Defendant Rodriguez: "Can you just send a -- can you like send somebody, like over, to come take a report where I'm at right now, 'cuz I just want to like kind of recover and I don't want to drive around."[1]

51. Knowing and acknowledging, now under oath, that these men were injured, in shock, and shouldn't be driving, despite protocols requiring an ambulance be dispatched, Defendant Rodriguez falsely told Ran Pal repeatedly that because he was outside of Denver City limits, he could not send a police car and ambulance to the young men's actual location in Wheat Ridge as they requested, knowing that in fact he could do so and having done so in the past, as he has now admitted under oath he told his employer -- as is shown in **Exhibit 2,** pp 11-12.

52. Defendant Rodriguez responded to this request at the time, as seen on **Exhibit 1:** "I know that, but that's outside of Denver -- it's outside of Denver's jurisdiction."

53. Defendant Rodriguez falsely 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.

54. As Defendant said about this at one point on **Exhibit 1**: "I need you to come into Denver to take a report because they can't go outside of Denver."

55. Defendant Rodriguez told Ran Pal at least six times, as also appears on **Exhibit 1**, that he and the City "need" or "needed" him to come back to Denver, and that if they did not

[1] The actual tape recording, which provides pertinent voice sounds, context and tone, has been previously filed conventionally with the Court as part of the previous complaint.

return to Denver to meet the police as he directed, they would not be allowed to make a report of the criminal violence that had been visited upon them and would not receive police assistance.

56. As a 911 Operator, Mr. Rodriguez admits that he was trained that these callers and passengers were relying on his instrutions and representations and knew that, as contained in a document in produced, Rodriguez 00234, "the caller expects the telecommunicators to be the voice of authority, able to handle the problem. The caller trusts what the ECO says and may act on the information provided."

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

58. In instructing passenger Plaintiffs to return to Denver, knowing they were relying on him, 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.

59. 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 criminal assault, and to promptly and continually electronically update the incident report with information relevant to the incident in order for dispatchers and officers to properly respond.

60. The computer system used by 911 operators to enter information include a "snapshot" and a "call comments" section. These are used to communicate information to dispatch and other responders and are considered the lifeblood of the system in terms of call prioritizing, proper triage and security proper dispatch responses.

61. Nevertheless, with extreme recklessness to the safety of these Plaintiffs, 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, making it impossible for dispatchers and officers to even respond to the dangerous scene he was consciously creating.

62. This is seven times worse than the acceptable average length for a 911 operator to send a call like this to queue.

63. Defendant Rodriguez's own direct supervisor, Natalie Heywood has agreed in deposition that that this extensive delay was an "outrageous violation of the standards."

64. When this Defendant did finally send the call to queue, he knowingly decided to code the incident as a mere property crime, without documenting any of the critical personal injury information in the comments or snapshot, with the deleterious effect of insuring that no police could be timely sent, as the call was treated as a minor property crime only and not an assault with weapons as it was known to be by Defendant Rodriguez. Mr. Rodriguez has admitted that he knew that ordinary objects can be used as weapons.

65. According to the testimony of Captain Saunier, who is the Commander of the Major Crimes section of the Denver Police Department, and also that of Denver 911 Director Carl

Simpson, criminal mischief is a "low level priority problem." Emergency communication operators and dispatchers who make police assignments are aware of this fact.

66. Captain Saunier also testified that the Denver Police Department does not send officers outside the city for mere criminal mischief without a suspect and that "criminal mischief" is not a major crime but rather "a decentralized crime that is handled at the district level."

67. 911 Director Simpson testified that generally "a criminal mischief that occurred in Denver but the victim has gone home, that type of call never makes it to the dispatcher" – this not even making it to dispatch "happens all the time" because it is understood by all involved, such as emergency communication operators, that "criminal mischief is just not the same as crimes against persons" and is "a lower level" event.

68. Captain Saunier also testified that routine situations involving criminal mischief property crimes in progress or where the criminal mischief just occurred in Denver, but the reporting party is then outside Denver are not regarded by the Denver police as "emergency assistance matters."

69. Likewise, Denver 911 Director Simpson testified such criminal mischief property crimes are correctly regarded by this system as nothing more than a "routine matter from a police standpoint" because it is not a crime against a person and "not the sort of thing that causes an emergency response."

70. Thus, in so delaying for 7 minutes and 19 seconds and then recklessly labeling this matter a criminal mischief, Defendant Rodriguez actually knew this would prevent dispatchers and/or officers from being able to properly triage and respond to this situation in a timely

manner, which was further aggravated by his then choosing to leave out all the critical information he had learned about this assault regarding the bottles and bottle rockets, the injuries to the passengers, and their being in shock.

71. According to Defendant City itself, "there was an existing incident under investigation by the DPD at 10th and Sheridan" with officers out there already from a "Shots Fired" call while Defendant Rodriguez was still on the phone with Plaintiff Ran Pal that he did not append.

72. In obedience to the given instructions, and justifiably relying on the represented 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:

73. Plaintiffs stopped their car on West 29th Avenue just across Sheridan Boulevard in Denver City limits.

74. As they crossed into Denver, Defendant Rodriguez had Ran Pal state to him that they had arrived on the East Side of Sheridan on 29th Avenue, in Denver, and when they did, this Defendant directed him to stop, stating, as appears on **Exhibit 1**: "Just tell me whenever you are

at – on the east side of Sheridan, just tell me and then we'll send an officer to wherever you stop."

75. After being told that they were going eastbound on Sheridan and 29th, Defendant Rodriguez instructed them to "Just stop somewhere right there, just tell me where you stopped." See **Exhibit 1.**

76. Having affirmatively directed them to stop, Defendant Rodiguez finally decided to ask for more details about the assault that should have been obtained from the outset of the call.

77. Two Plaintiffs substantively communicated with this Defendant and/or were instructed by him during this time of the call. Joseph Kolong told Defendant Rodriguez that he was concerned Ran Pal was then in shock and wanted to talk to him about this Defendant's plan for them.

78. Defendant Rodriguez dismissed this Plaintiff's substantive concerns and instructed him to give the phone back to Ran Pal, refusing to allow car Plaintiffs to question what he was doing or the safety of his purported plan of having the police meet them there immediately.

79. In repeatedly assuring them he was getting them police help where he had them stopped and waiting for them to arrive, Defendant Rodriguez recklessly made no effort to have them dispatched quickly or to ascertain whether the police were in fact on their way.

80. In fact, Defendant Rodriguez either knew that the police had not been dispatched when he repeatedly gave the car Plaintiffs the clear sense that they were on the way right then or he recklessly communicated like this with them without even checking this critical fact, despite having immediate access to such actual dispatch information at all times on his computer screen.

81. As Director Simpson, other 911 supervisors, and Defendant Rodriguez himself, have now admitted, at the exact time this Defendant was talking to passenger Plaintiffs and telling them to wait for the police that were on their way were coming, he knew and could readily see on his screen that in fact police had not been dispatched.

82. Shelly Lesnansky, Denver 911 Operations Manager, has testified that the information regarding whether the police have been dispatched is "available to you at all times" and when the operators are "looking at the queue" they can "absolutely tell" if a dispatch assignment has been made.

83. Director Simpson testifying in this exact regard about the availability of such information to Mr. Rodriguez at that time: "He can tell. We can all tell."

84. Just under three minutes before the shooting, Ran Pal told Defendant Rodriguez that the assailants had a gun. Even this critical information was recklessly not entered into the CAD for about a minute by Mr. Rodriguez, who admits it would have taken only a second or two.

85. After learning about the assailants threatening these Plaintiffs with a gun, Defendant Rodriguez wasted further crucial time - repeatedly asking about the gun's color and nature rather than acting to end the danger he had created.

86. Further, even after learning the assailants were armed with a gun, Defendant Rodriguez did not change his plans or instruct the passenger Plaintiffs to flee the highly public danger corridor area he had sent them to, and further decided not to take any actions within his power to cause the police to be much more urgently dispatched to protect them.

87. Defendant Rodriguez testified that it is "correct" to say that his instructions and directions to passenger Plaintiffs never changed even after he learned of the gun until after there was a shooting when, he finally said "I need you to get away."

88. Even at this point, Defendant Rodriguez appeared to refuse what he was being told or accept what was actually going on, asking repeatedly as he was told over and over that Jimma Reat had been shot, as appears on **Exhibit 1**: "What's going on?"

89. Despite knowing that their assailants had threatened them with a gun, Defendant Rodriguez further greatly increased danger to car related Plaintiffs, who had now stopped in obedience to his commands on the east side of 29th across Sheridan Boulevard in Denver, by instructing them, to wait for the police, to make themselves prominent and visually apparent by putting their hazard lights on and leaving them flashing.

90. He greatly increased their danger in this regard by directing them to do this not just once but twice, so that the police could see them easily, stating, as appears on **Exhibit 1:**

> 00:10:09:6 13 911 OPERATOR: Okay. ***Just wait right there***
> **00:10:11:5 14** ***for officers. Okay? Turn your hazard lights on so they***
> **00:10:11:9 15** ***can find you.***
> . . .
> 00:10:50:7 16 911 OPERATOR: *Yeah, so we're going to send*
> 00:10:55:4 17 *an officer out.* ***I just need you to wait there.*** Okay?
> 00:10:56:6 18 RAN PAL: *Yeah,* ***we're waiting.***
> 00:10:59:3 19 911 OPERATOR: **Go ahead and turn your**
> **00:11:00:4 20** ***hazard lights on so they can see you easier.*** Okay?
> 00:11:02:7 21 RAN PAL: *They're on.*

(Emphases supplied.)

91. More particularly, Denver 911 Director Simpson found, with emphasis supplied, as follows:

> [Y]ou directed the caller to return to the city. The male caller then, reluctantly, drove back within Denver City limits, parked his vehicle with hazard lights on, at 29th and Sheridan, **waited for officers to arrive**. While the caller and the passengers in his car waited, per your instructions, the other vehicle involved in the prior altercation passed through the intersection, saw the caller's vehicle and opened fire, shooting and killing the caller's brother.

Exhibit 2.

92. At the exact time of these events, Defendant Rodriguez was actually thinking that the dangerous men were lurking nearby while the car Plaintiffs were thinking they were safe and that the police were meeting them.

93. Thus, Defendant Rodriguez told Plaintiff Ran Pal to call 911 if the attackers came back to where they were waiting per his instruction for the police, stating as appears on **Exhibit 1**: "If you see them come back, I need you to call us right away at 911. Okay?"

94. This was not a generic closing comment and Mr. Rodriguez stayed on the phone for minutes longer after stating this.

95. Actually thinking that the assailants were likely still in the area and consciously aware that the hazards lights made these young men sitting ducks, Defendant Rodriguez shockingly left the men vulnerable and exposed to this shooting by still not acting to have dispatch send the police and continuing the instructions that they must stay there and wait for police who, to his immediately available knowledge, had not been.

96. Defendant Rodriguez also recklessly did not enter in the CAD updating comments advising all with whom this information is shared such things as that: a.) he was worried or having the important thought that the assailants could return and shoot at them, b.) he had told the car Plaintiffs to wait for police with their hazard lights on in this situation he was then perceiving was dangerous for them, c.) he was concerned that he had them waiting for police

who he knew had not yet been sent and, d.) he was requesting (as was well within his power per the testimony of all his top and immediate supervisors) that the police be dispatched immediately under these dangerous circumstances.

97. These young men were thus placed and left alone defenseless, now far more vulnerable, 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.

98. The assailants returned, and shot and killed Jimma Reat.

99. Plaintiff Ran Pal cradled Jimma Reat as he was dying.

100. No officer was dispatched until 4:25:08 a.m. which was about a minute after Jimma Reat was shot.

101. The official records, and the unequivocal testimony of all the witnesses in this this case now shows that the only reason the police were dispatched in this case was because of this "shooting."

102. The Manager of Safety's Office created the following time line in this regard, showing the police were not even asked to respond until 53 seconds after the shooting.

103. The time line which is contained in **Exhibit 2** hereto, the letter of dismissal, reads as follows:

Computer Aided Dispatch (CAD) Incident timestamps summary for incident handled by Operator J. Rodriguez

Action or Status	Time Stamp	Elapsed Time
Call Received and answered by Operator Juan Rodriguez at Position 101	04:12:41	
Operator enters 10th / Sheridan but does not geo-code or use the location	04:13:11	00:00:30
Operator learns of injury to caller *(audio only not documented in CAD)*	04:13:19	00:00:38
Operator enters 29th / Harlan but does not geo-code or use the location	04:13:35	00:00:54
Incident geo-verified with 5992 W 29th Ave, Edgewater, CO	04:14:44	00:02:03
Operator learns caller is in shock and does not want to drive (audio only)	04:15:19	00:02:38
Incident geo-verified with W 29th Ave / N Sheridan Blvd *(caller in Denver)*	04:19:51	00:07:10
First comments entered	04:19:56	00:07:15
Incident sent to dispatch queue as a Criminal Mischief IP-JO	04:20:00	00:07:19
Caller states gun was flourished by suspect at 10th / Sheridan	04:21:21	00:08:40
Shooting occurs at 29th / Sheridan by occupants in Red Jeep	04:24:15	00:11:34
First police unit assigned*	04:25:08	00:12:27
Operator triages the shooting with ProQA and completes the process	04:27:53	00:15:12
Ambulance dispatched	04:28:19	00:15:38
First police unit on scene at 29th / Sheridan	04:28:42	00:16:01
Ambulance arrived at 29th / Sheridan	04:34:05	00:21:24

**Ofcr advises the inc is related to the Shots Fired at 10th/Sheridan & starts to 29th / Sheridan*

(Highlighting emphases including pointing arrows supplied.)

104. No one has been apprehended and/or arrested for this preventable death, proximately caused by the described 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.

105. Defendant Rodriguez's directives and instructions, in their totality, were shocking and outrageous, particularly 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 and remain without securing police cover.

106. Further, Defendant Rodriguez has now acknowledged under oath that he never treated or regarded this matter as an emergency until about a minute after Jimma Reat was shot and killed.

107. Rather, he testified that it was only after the shooting that he had to start making "split second decisions" and that the case only became stressful emergency for him after hearing a passenger Plaintiff shout: "They're back, they're back, they're shooting, he's down."

108. Denver 911 Director Simpson has also testified that in responding to this call, Juan Rodriguez "didn't treat it like an emergency."

109. This is further reflected in his remaining very calm, as afore alleged, until after the shooting.

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

111. Defendant City, through Denver 911 Director Carl Simpson, has itself admitted in the Letter of Dismissal for Defendant Rodriguez, attached as **Exhibit 2** hereto, and 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 them by requiring them to leave their place of safety and instructing them to return to a dangerous corridor for them in 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.

112. Asked what he meant by "blatant" Director Simpson testified he meant "complete."

113. 911 Director Simpson concluded in **Exhibit 2**, *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."

114. Asked by Director Simpson whether he heard Ran Pal tell him these things, Defendant Rodriguez responded: "Yes I did" and has now further testified that his statement to Carl Simpson is this regard was accurate.

115. Asked if Ran Pal told him that "he did not want to drive in his diminished capacity", Defendant Rodriguez responded: "Yeah, he told me". He has now also testified that his statement in this regard was accurate.

116. According to his **Exhibit 2** Letter of Dismissal, Defendant Rodriguez has also admitted that he actually knew that the assailants "were throwing bottle rockets at them" and Ran Pal told him that "he was covered in shards of glass." He has likewise testified that his statements to Mr. Simpson in this regard were accurate.

117. Defendant Rodriguez's immediate and top level City Supervisors found that this was a crime against persons assault involving weapons, not a property crime starting at around second 35, when it is clear that Ran Pal was in the car when it was attacked.

118. Carl Simpson, Shelly Lesnansky and Natalie Heywood all have testified that the case was obviously known to be a crime against persons assault by just over 30 seconds into the call and repeatedly confirmed as such before Defendant Rodriguez finally queued the call as a nonemergency call involving only property mischief.

119. Carl Simpson has testified that it was "obvious" to him as the Director of 911 that this was an "assault in progress" just "38 seconds into the call".

120. Director Simpson has also admitted that Defendant Rodriguez's directions to the car Plaintiffs "certainly" created the circumstances which culminated in this death.

121. Captain Saunier has further testified that the "outcome of this speaks for itself" and that Defendant's instructions caused Plaintiffs to leave their position of "relative safety" at the apartment unit where they had pulled in and were planning to go in before being directed back into Denver, specifically swearing that by Mr. Rodriguez's directions: "There was a danger created."

122. Director Simpson additionally found that Defendant Rodriguez's handling of this call generated "**an overwhelming concern for your failure to decipher a situation, demonstrate a sense of urgency and make appropriate decisions for the caller's, the public's and first responders' safety**" and that the failure to address the "medical concerns of your caller in your quest to make sure the caller was in Denver" was "unaccepable by any standard." (Emphasis supplied.)

123. Director Simpson has since testified he agrees this was "so far below" as to "not be recognizable" "as consistent with any standard", and that he has never been as bothered by the handling of a call as he was by what Juan Rodriguez did in this case.

124. Director Simpson concluded in **Exhibit 2** 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 29th 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.**

> . . .
> You waited more than seven minutes to create a CAD incident, despite having valid locations; when you did finally create an incident, **you failed to document the injury information and nature code the incident as a person crime, thereby preventing the dispatcher, officer or supervisors an opportunity to make an informed assessment of the situation.**

(Emphases supplied.)

125. Defendant Rodriguez also admitted to Director Simpson in **Exhibit 2** that: "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."** (Emphasis supplied.)

126. Defendant Rodriguez told Director Simpson in a tape recorded and transcribed interview that although he knew that he could send the officers out of Denver's jurisdiction on calls for service like this at the time and that he had done it in the past in assault cases, he just "chose" not do so in this situation, as Denver 911 Director Simpson found expressly -- using the word "chose" to describe his finding.

127. Carl Simpson has further testified that what he meant by the word "chose" is that Mr. Rodriguez "elected not do that in this situation and decided not to do so."

128. All of the above-described shocking acts, in their totality, were done by Defendant Rodriguez knowingly, willfully, wantonly, maliciously and/or recklessly with conscious disregard for Plaintiffs' federally and state protected rights.

FACTS CREATING MUNICIPAL ENTITY LIABILITY

129. Defendant City and County of Denver has admitted through its final decision makers and delegated final decision makers that they were actually consicously aware,

in February of 2012, that Defendant Rodriguez had demonstrated an "inability to discern" what kind of situation he was dealing with or the need for urgency. **Exhibit 2**.

130. These supervisors and policymakers knew to a moral certainty that an "inability to discern" an emergency and perceive the situation at hand are obviously necessary skills of an Emergency Communications Operator.

131. These supervisors and policymakers knew to a moral certainty that creating danger to the public is a highly foreseable consequence of the lack of the ability to discern an emergency or perceive a situation by a 911 operator.

132. In February, 2012, Defendant Rodriguez answered a call in which a person called 911 and reported that he choked his mother's boyfriend to death after the boyfriend had apparently been violent towards the caller's mother.

133. The audio of this phone call is being conventionally filed with the Clerk of the Court as **Exhibit 3** and is incorporated by this reference.

134. This person called 911 "because he thought he had killed his mother's boyfriend." He told Defendant Rodriguez: "I choked him out and I think I killed him. . . I think he is deceased."

135. Defendant Rodriguez was also told by this caller that he was "in a really, really stressed situation" and that his "mind is racing really fast if you want to know what I just did."

136. Perseverating, as again here, over the exact address of the caller rather than this urgent homicide story or the actual state of the victim, Mr. Rodriguez recklessly actually sent the young man into the street to get the exact address despite, according to the City,

already "having enough information with the intersections provided to complete the address verification." See **Exhibit 2.**

137. The City further found that Mr. Rodriguez "did not demonstrate any urgency to process that information", that the call should have been sent to queue within 60 seconds "yet it took [him] over five minutes to process the call". See **Exhibit 2.**

138. The City further found that: "Without acknowledging the criminality of the statement", Mr. Rodriguez "embarked on the medical triage aspect of the interview" by asking a number of questions about the victim's status and then, according to the City, actually asked the caller who reported this killing, a caller who the City found "admittedly choked out the victim" to "perform CPR." See **Exhibit 2.**

139. The City found in this same **Exhibit 2** ,emphasis supplied, that:

> You started to have the caller, who admittedly choked out the victim, perform CPR. When you asked the caller to check for anything in the victim's mouth, the caller told you, "No, I told you I choked him out! **At no point during the conversation did you actively listen to what the caller had to say or appear to understand that a homicide had occurred and scene safety was paramount. You repeatedly harangued the caller with questions and appeared to have no appreciation for the caller's environment and his efforts to assist you with processing the call.**

140. Defendant City became aware of this egregiously mishandled call by Defendant Rodriguez because a command level homicide sergeant, Sergeant Kurkuris involved with this homicide, called upper level supervisors at Denver 911 and complained about how it was handled.

141. Final decision makers for the City, along with delegated final decision makers, made a series of conclusions about Mr. Rodriguez's conduct in the handling of that call in February of 2012.

142. Those conclusions are listed in **Exhibit 2**, dated after the events in this case, but Carl Simpson has testified that these conclusions were made around February 2012, prior to the events in this matter.

143. Thus, these high level supervisors concluded prior to the danger creation in this case that:

a. "In your handling of this incident, you failed to address scene safety and the integrity of a crime scene.. . Allowing the caller to return to the apartment could have resulted in further violence. . ."

b. "Your handling of this call **demonstrates an inability to discern**, based on your caller's comments, what type of situation you wre dealing with when processing the call. In this case, in your attempt to get an exact location, **you failed to demonstrate any urgency** in finding out what happened, and in the process, **dismissed the confession you were provided** and **failed to recognize the potential consequences of sending the caller back into the crime scene**."

c. Denver 911 Director Carl Simpson testified that *he thought at the time* that Mr. Rodriguez had created for danger and potential for violence for all involved at the scene in the February 2012 incident.

d. Likewise, Denver 911's Operation Manager Lesnansky has testified that during this event Defendant Rodriguez was "missing" the ability to listen to his caller and process and discern the information he was given.

e. Operations Manager Lesnansky has also admitted that it was her perception at the time of this February 2012 incident that Mr. Rodriguez had created danger of private violence for the caller and the people inside, should the man actually not be dead, or his mother, who right react, as Juan Rodriguez sent the caller back into danger, testifying in response to this very question: "That's correct."

f. Direct supervisor Natalie Heywood has now testified that at the time of this incident she knew, and Manager of Operations Lesnansky understood as well, that there was "nothing subtle about the shocking danger-creation situation in February where Juan Rodriguez's conduct put the teenager, his mother, and the choked victim at risk for death, if still alive, by sending the teenager back into the house into the active crime scene." To this exact question, Ms. Heywood testified this was true by saying "Yes".

g. She also testified that to her and his higher level supervisors conscious awareness in February 2012, Juan Rodriguez had "enough information to make sending that young

> man back into danger reckless, in your understanding, at that time." She answered this question affirmatively and added also agreed it was "way outside the standard of practice for a 911 operator."

144. Despite final and final delegated decision making officials for Denver concluding that Defendant Rodriguez was a danger creator for the public and that he lacked the ability to discern the nature of emergency situations in February 2012, Mr. Rodriguez was not terminated, disciplined, re-trained, or supervised to ensure that he developed these critical abilities to do his job safely.

145. According to the Defendant City, Mr. Rodriguez supposedly received a verbal reprimand for this shocking incident.

146. However, Mr. Rodriguez testifying under oath that he was ever in fact reprimanded or disciplined for the February 2012 homicide incident.

147. Mr. Rodriguez agreed in his testimony that discipline scares employees, including himself, that he understands progressive discipline, and that he never had the sense at all that he was being disciplined or reprimanded for the February incident.

148. Rather it was his understanding that prior to his termination he had never been disciplined testifying "No" to a question as to whether he had ever been disciplined before this matter as a 911 operator and specifically acknowledging in his deposition that he knows a verbal reprimand is part of progressive discipline.

149. While Manager of Operations Lesnansky testified that Denver's practice is to routinely send the employee an email copy of the verbal reprimand, the City has no such documents and Mr. Rodriguez testified he has no recollection of receiving one.

150. Defendant Rodriguez acknowledges being coached for 15 or 20 minutes about the February incident, as his supervisors have now admitted, however counseling on at least a quarterly performance review basis and in individual situations in between is commonplace in this 911 operator job; it is not discipline.

151. It was Mr. Rodriguez's understanding that this was a routine non-disciplinary coaching, testifying: "It was a coaching."

152. Further, although Carl Simpson stated that the conclusions in Defendant Rodriguez's termination letter regarding the February 2012 incident were their collective conclusions at the time of that incident, the document Supervisor Heywood prepared with Operations Manager Lesnansky's approval for the February 2012 homicide call does not anywhere contain this alarming actual finding that Mr. Rodriguez's handling of this call demonstrated an inability to discern, based on the caller's reports, what type of situation he was dealing with when processing the call.

153. Mr. Rodriguez has testified that no supervisors told him during the alleged "coaching" conversation about the actual concern that he lacked the ability to discern the nature of the calls he was handling or its being a homicide. No one told him that he was being disciplined for creating life threatening danger of private violence to the callers.

154. No one even told him that the call was reviewed because a Denver homicide sergeant, Sergeant Kurkuris, had complained about how he handled the February 2012 homicide call.

155. Denver 911 Director Carl Simpson has admitted that failure to "demonstrate any urgency in finding out what happened" and inability to discern this homicide situation is an "incredibly serious problem in a 911 operator."

156. Carl Simpson has also admitted that the ability to discern urgency or an emergency is "among the most important skills of a 911 operator." He further admitted that "from a safety standpoint, from a public consumer standpoint" "the ability to be understood and perceived by the operator who takes the call" is a "key element of the skills we need from operators."

157. Likewise his supervisors, Shelly Lesnansky, Carl Simpson and Natalie Heywood have also admitted that an inability to discern an emergency or danger is a grave or unacceptable deficiency in a 911 operator with Ms. Lesnansky, saying "it's absolutely a concern."

158. Defendant Rodriguez has admitted in his deposition that in fact he "had created that danger or that risk for those people", and that he failed to consider that danger.

159. Mr. Rodriguez has testified that an inability to discern an emergency or danger is a "grave deficiency" in the essential skills for a 911 operator.

160. Mr. Rodriguez has further admitted that he understood, as did his supervisors, that in the February 2012 incident following his "instructions could have caused deaths" from private violence, testifying that he agrees that his instructions "could have" caused deaths and also agreeing further that this "is a subject that should be of grave concern to a City," although it did not lead him to ask for a leave of absence or transfer until this admitted problem was solved.

161. Mr. Rodriguez agreed in his deposition that, if his supervisors, including Ms. Heywood, Operations Manager Lesnansky and Denver 911 Director Simpson felt he lacked the ability to discern the nature of callers problems and was a danger creator, he would have expected to be removed from his post as unfit, because 911 operators are "in the life and death business" and owe a duty to the public to keep them safe.

162. Not only was he not terminated in February 2012, no actual, retraining or individual supervision or suspension from handling calls until his fitness to work in this capacity without recklessly creating danger was properly and sufficient assessed and corrected.

163. Denver has the ability to monitor 911 operators, to listen to their calls, to provide training where needed, and to discipline,

164. Supervisors could have monitored his calls or to supervise him "side-by-side to make sure that he was properly discerning urgency and emergencies."

165. None of these things were done in response to the serious conclusion by the City that Defendant Rodriguez lacked the ability to do his job without creating danger in February 2012.

166. Defendant City performed no assessments of Defendant Rodriguez and pursued no psychological or other work evaluation in light of the February 2012 homicide matter.

167. Carl Simpson, Shelly Lesnansky, Natalie Heywood and Juan Rodriguez have also now all admitted that there was no additional training or supervision of Mr. Rodriguez by Denver 911 after the February 2012 incident.

168. As Ms. Lesnansky stated: "We didn't provide him any one-on-one specific training" and Defendant Rodriguez has testified it was "correct" to say, speaking about these supervisors that "they didn't do anything to improve your skills."

169. Mr. Rodriguez has testified that if his supervisors saw such a serious and "obvious risk" in his ability to perform as a 911 operator he expects he should have received "additional training" as well as "a side-by-side" or "listening to my calls, monitoring calls".

170. Such training, supervision and removal would have avoided this tragedy.

171. Despite obviously being a matter of great concern, with a very high potential for recurrence in the daily work, it was instead covered-up and only brought up against Defendant Rodriguez in this case after such deliberate indifference in his training and supervision again manifested in this entirely preventable fatality, and Defendant Rodriguez again recklessly ignored the known and conscience shocking nature of the emergency he was creating.

172. This is all made particularly egregious given that a command level police official actually called to report that Mr. Rodriguez had so badly bungled the February homicide incident and to ask his supervisors to intervene with him to correct this glaring danger creating problem.

173. Denver, thus, through its top level decision makers, made a conscious decision not to address this obvious, incredibly serious problem with Juan Rodriguez in a meaningful fashion, and instead to leave Defendant Rodriguez in a position to again not discern the "true criminal and medical nature of the call" that caused Jimma Reat's death, a highly foreseable consequence occuring just weeks later.

174. Given the conclusions made by involved decision makers, it was glaringly obvious that a similar inability to discern an emergency and similar danger creation incident could happen with Mr. Rodriguez handling calls without training or supervision.

175. In fact, Defendant City, through Director Simpson, has admitted that "**the deficiencies in your performance during [the February Call] are similar to the deficiencies in your performance in the instant call**." (Emphasis supplied).

176. Manager of Operations for Denver 911 Lesnansky has admitted in testimony that if Juan Rodriguez had been removed from his position as of February 2012, and was no longer in a position to endanger members of the public because of his inability to discern the nature of situations presenting to him, it is likely the "other operators" in the 911 system would have sent the police to help Ran Pal where he was under these circumstances without requiring passenger Plaintiffs to leave their Apartment building in Wheat Ridge.

177. The failure to take any sufficient action to address this fully known and obvious major inability to act based on information about matters of life and death constitutes deliberate indifference in training and supervision, including monitoring and sufficient discipline.

178. Juan Rodriguez has testified that while he has repeatedly admitted and taken responsibility for his role in this matter stating "I admit full responsibility," he understands the City blamed him alone in a situation where it "crossed [his] mind" at least a "half a dozen" times, that he has been scapegoated for a 911 system that is equally responsible and culpable for their failure to properly train, supervise, monitor or discipline him after he was felt displayed an

obvious inability to discern a homicide two months before this shooting, which created additional danger of private violence from his continued recklessness.

THE DAMAGES AND CLAIMS OF PLAINTIFFS

179. Jimma Reat was 25 years old at the time of his death. 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.

180. 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.

181. 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.

182. 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.

183. 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.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983 –Violation of Due Process Under Fourteenth Amendment
(Estate of Jimma Pal Reat, Ran Pal, Changkuoth Pal, and Joseph Kolong, Against Defendant Rodriguez only)

184. Plaintiffs hereby incorporate the foregoing paragraphs as if fully set forth herein.

185. 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 . . .

186. 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.

187. 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.

188. 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.

189. 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.

190. 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.

191. 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.

192. 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 vulnerablitity to such danger, for private acts of violence.

193. 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.

194. 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 and then wait for the police by falsely telling them he could not send police to them, knowing he could, and thereby creating and/or greatly increasing and exacerbating their danger, Defendant Rodriguez was consciously aware/knew variously during this event, *inter alia* that:

- they had been violently assaulted starting at 10th and Sheridan in Denver by Hispanic males;
- their assailants had attacked and injured them with beer bottles and/or bottle rockets including hitting Ran Pal in the face and hand with these 40 oz bottles which were used as weapons;
- Plaintiffs, including decedent Jimma Reat, were shocked and did not want to drive back to Denver or stay in the vicinity of these events;
- the assailants had likely been in the area moments before he sent the young men back to Denver;
- a gun had been flourished by one of the assailants and threatened the passenger Plaintiffs well before the subsequent death of Jimma Reat, which he learned about three minutes before the shooting;
- he was directing these Plaintiffs to return to the City limits and make themselves highly visible by turning on their flashing hazard lights, while

consciously aware danger was lurking, as he acknowledged by expressly bringing his concern about the attackers returning up to Ran Pal while Plaintiffs were parked waiting for the police, all without ever dispatching the police to protect them after he told them he had sent the police; and

- he never did any thing within his power to secure the emergency sending of the the police until almost a minute after the shooting in his snapshot or his comments.

195. These dangers and risks to Plaintiffs' lives, safety, and bodily integrity were obvious, entirely foreseeable and actually known to Defendant Rodriguez as he acted with a high degree of outrage and shockingly created this danger, and took the affirmative moving force steps pled herein that essentially altered the status quo by directing Plaintiffs from safety to danger, 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.

196. 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.

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

198. 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.

199. 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.

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

201. 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.

202. 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.

203. 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.

204. 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 Training and Supervision
(Estate of Jimma Pal Reat, Ran Pal, Changkuoth Pal, and Joseph Kolong,
Against Defendant City only)

205. Plaintiffs hereby incorporate the foregoing paragraphs as if fully set forth herein.

206. 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 . . .

207. 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.

208. 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.

209. 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.

210. 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.

211. The reckless and deliberately indifferent acts and omissions of Defendant City by its top level final decision makers or delegated final decision makers, as described herein, were moving forces in the deprivation of Plaintiffs' constitutional and statutory rights and caused them damages.

212. Defendant City was, at all times relevant, the policy and decisionmakers for the Denver Department of Safety through its final decision makers and delegated final decision makers, and, in that capacity, established training and supervision including monitoring, and sufficient discipline for the same, or through their delegated final policy and decision makers at the Department, including Director Carl Simpson, Operations Manager Lesnansky and supervisor Natalie Heywood.

213. Defendant City and/or its final and final delegated policy and decision maker(s), including 911 Director Carl Simpson and 911 Operations Manager Shelly Lesnansky and Ms. Heywood, with actual knowledge of the obvious urgent need for additional and supervision including monitoring and discipline of Defendant Rodriguez described in the factual allegations section above and the obvious likelihood of injury to callers without action on that obvious need, recklessly and with deliberate indifference, did not reasonably provide such sufficient and supervision including monitoring or discipline of Defendant Rodriguez or remove him from the field for evaluation after the incident in February 2012 in which he created danger of private violence which involved the same or very similar type of known grave deficiencies that led to Plaintiffs' injuries in this case, including the death of Jimma Reat.

214. This deliberately indifferent training and supervision including monitoring and discipline by the 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.

215. 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.

216. 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.

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

218. 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.

219. 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.

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

220. Plaintiffs hereby incorporate the foregoing paragraphs as if fully set forth herein.

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

222. 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.

223. 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.

224. 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.

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

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

227. 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.

228. 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.

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

230. 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.

231. 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)

232. Plaintiffs hereby incorporate the foregoing paragraphs as if fully set forth herein.

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

234. 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.

235. 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.

236. 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.

237. 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.

238. 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.

239. 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.

240. 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.

241. 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.

242. 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)

243. Plaintiffs hereby incorporate the foregoing paragraphs as if fully set forth herein.

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

245. 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.

246. 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.

247. 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.

248. The herein complained of overt acts by Defendant Rodriguez in their totality, amounting to a shocking 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 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.

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

250. 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.

251. 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.

252. 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.

253. 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

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