

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Case No. \_\_\_\_\_

CHRISTINA ANN FOURHORN,  
MUSE JAMA,  
JOSE ERNESTO IBARRA,  
DENNIS MICHAEL SMITH,  
SAMUEL POWELL MOORE,

Plaintiffs,

v.

CITY AND COUNTY OF DENVER;  
MARK DALVIT, a detective with the Denver Police Department, in his individual capacity;  
CURT PETERSON, an officer with the Denver Police Department, in his individual capacity;  
JOHN BISHOP, an officer with the Denver Police Department, in his individual capacity;  
C.A.M., whose true name is unknown, a law enforcement officer working for the City and  
County of Denver, in his or her individual capacity;  
CHOICE JOHNSON, an officer with the Denver Police Department, in his individual capacity;  
ANDREW RICHMOND, an officer with the Denver Police Department, in his individual  
capacity;  
PAUL ORTEGA, a sergeant with the Denver Sheriff Department, in his individual capacity;

Defendants.

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**Complaint and Jury Demand**

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Plaintiffs, through their attorneys, Ty Gee of Haddon, Morgan, Mueller, Jordan, Mackey  
& Foreman, P.C., and Mark Silverstein and Taylor Pendergrass of the American Civil Liberties  
Union Foundation of Colorado, complain as follows:

**Introduction**

1. When law enforcement officers have an arrest warrant or when they develop  
probable cause to believe that a particular suspect committed a crime, they have legal grounds to

take that suspect into custody and deprive that person of his or her liberty. When they make that arrest, they must have probable cause to believe that the person they are arresting is the same person as the suspect.

2. There is an obvious risk that law enforcement officers will carry out “mistaken identity” arrests; that is, there is a risk that law enforcement officers could arrest or cause the arrest of an innocent person who is not the individual named in the warrant or is not the person for whom probable cause exists.

3. Because of recklessly sloppy police work, the five Plaintiffs in this case are all victims of such “mistaken identity” arrests. All were wrongfully arrested and imprisoned—up to 26 days in one case—for alleged offenses with which they had no connection whatsoever. In each case, Denver law enforcement officers had legal grounds to arrest a particular suspect for an offense, but instead they arrested or caused the arrest of one of the Plaintiffs. In each case, the officers were aware of facts that demonstrated that they were arresting or causing the arrest of the wrong person, but they deliberately ignored those facts.

4. Each of the Plaintiffs was arrested and imprisoned under arrest warrants that named a different person or intended to name a different person. In almost every case, Plaintiffs were denied their legal right to a prompt appearance before a judicial officer. They were thus deprived of an opportunity to alert the courts to the law enforcement mistake, which could have led to a prompt correction and release from wrongful imprisonment.

5. In several cases, employees of the Denver Sheriff Department were repeatedly told that they were locking up the wrong person, that the Plaintiff was not the person named in the arrest warrant. Sheriff Department employees ignored obvious facts and failed to investigate

6. In each case, the Plaintiff's injuries were caused by policies and practices and customs of the City and County of Denver, including its deliberately indifferent failure to establish policies, procedures, supervision and training that would have promptly corrected the mistakes or minimized or eliminated the risk of the Plaintiff's injuries. Accordingly, each Plaintiff seeks compensation from Denver as well as from one or more of the individually named Defendants.

### **Jurisdiction and Venue**

7. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983, and the laws of the State of Colorado. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343 and 1367.

8. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All parties reside within the District of Colorado, and the events described in this Complaint occurred in the District of Colorado.

### **Parties**

#### ***Plaintiffs***

9. Plaintiff Christina Ann FourHorn is a United States citizen and resides in Sterling, Colorado, with her young daughter and her husband, Sidney FourHorn. In March 2007, she was arrested under a year-old Denver warrant, obtained by Defendant Dalvit without probable cause, authorizing her arrest for a crime with which she had no connection. She sues Defendants Dalvit and the City and County of Denver ("Denver").

10. Plaintiff Muse Jama is a legal permanent resident of the United States and a Denver resident. In September 2007, he was arrested without probable cause under a warrant for a different person. He sues Defendants Bishop, Peterson and Denver.

11. Plaintiff Jose Ernesto Ibarra is a United States citizen and a Denver resident. In July 2007, he was arrested without probable cause under a warrant for a different person. He sues Defendants C.A.M. and Denver.

12. Plaintiff Dennis Michael Smith is a United States citizen and a Denver resident. In January 2008, he was arrested without probable cause by Denver Sheriff deputies under a warrant for a different person. He sues Defendants Paul Ortega and Denver.

13. Plaintiff Samuel Powell Moore is a United States citizen and a Denver resident. In November 2007, Denver police officers arrested him for the fourth time under an Aurora warrant for a different person. He sues Defendants Richmond, Johnson and Denver.

### *Defendants*

14. Defendant Denver is a home rule municipality pursuant to Article XX of the Colorado Constitution. It operates the Denver Police Department (“DPD”) and the Denver Sheriff Department (“DSD”). DSD operates the downtown Denver Pre-Arrestment Detention Facility (“City Jail”) and the Denver County Jail (“County Jail”). DPD and DSD detectives, officers, deputies and employees are Denver employees and agents.

15. At all times relevant to this Complaint, Defendant Mark Dalvit was a DPD detective. Plaintiff FourHorn sues Defendant Dalvit in his individual capacity.

16. At all times relevant to this Complaint, Defendant Curt Peterson was a DPD officer. Plaintiff Jama sues Peterson in his individual capacity.

17. At all times relevant to this Complaint, Defendant John Bishop was a DPD officer. Plaintiff Jama sues Bishop in his individual capacity.

18. At all times relevant to this Complaint, Defendant C.A.M., whose true name is unknown, was a Denver law enforcement officer. Plaintiff Ibarra sues C.A.M. in his or her individual capacity.

19. At all times relevant to this Complaint, Defendant Paul Ortega was a DSD sergeant. Plaintiff Smith sues Defendant Ortega in his individual capacity.

20. At all times relevant to this Complaint, Defendant Choice Johnson was a DPD officer. Plaintiff Moore sues Defendant Johnson in his individual capacity.

21. At all times relevant to this Complaint, Defendant Andrew Richmond was a DPD officer. Plaintiff Moore sues Defendant Richmond in his individual capacity.

22. At all times relevant to this Complaint, all Defendants acted or failed to act under color of state law.

## **Factual Background**

### **A. Christina FourHorn**

23. In March 2007, Sterling police officers arrested Plaintiff FourHorn under a year-old Denver warrant, obtained by Defendant Dalvit without probable cause, authorizing her arrest for a crime with which she had no connection. Before this incident, Plaintiff FourHorn had never been arrested. She was horrified to see her name published in the local newspapers as an arrested felon. She spent 5 days in jail away from her husband and daughter. Because of the pending felony charge against her, she could not return to work for weeks and, as a result, nearly lost her job.

***The “mistaken identity” warrant for Plaintiff FourHorn***

24. On March 6, 2006, a year before Plaintiff FourHorn’s arrest, Denver police officers investigated a report of an aggravated robbery at a Denver apartment complex. On that date, Plaintiff FourHorn was at home in Sterling, Colorado, suffering from medical problems, including partial blindness and partial paralysis on one side of her body.

25. The crime victim, Ramone Correa, told Denver police that his girlfriend of three weeks, “Christin Fourhorn,” had assaulted and robbed him.

26. Denver police interviewed three eyewitnesses, including two whom the police regarded as accomplices and later arrested.

27. From these interviews, Denver police learned that the assailant had said she intended to use Mr. Correa’s money for a bus trip back to her home in Oklahoma.

28. Denver police reports described the assailant as Native American, 26 years old, 5'5” tall, 160 pounds, with brown hair, hazel eyes, and a tattoo of her daughter on her left arm.

***Defendant Dalvit’s reckless conduct***

29. On March 7, 2006, Defendant Dalvit was assigned to investigate the case. He was aware of the information in Paragraphs 25-28.

30. Defendant Dalvit obtained from Mr. Correa a photograph of the assailant and her birthdate, April 18, 1980.

31. Defendant Dalvit searched unsuccessfully for the assailant’s name, “Christin Fourhorn,” in NCIC/CCIC, a law enforcement database.

32. He then searched a non-criminal, Colorado motor vehicle database, where he found the identification information for Plaintiff FourHorn, including a driver’s license photograph.

33. Plaintiff FourHorn's motor vehicle record contained information clearly showing she was not the assailant. For example, the record showed that Plaintiff FourHorn was seven years older (DOB: November 24, 1973); weighed 250 pounds, 90 pounds more than the assailant; had different hair and eye color; and had a home address in Sterling, Colorado.

34. Although Mr. Correa had provided the assailant-girlfriend's date of birth, after finding Plaintiff FourHorn's motor vehicle record, Defendant Dalvit wrote in his report that he had learned the assailant's "true date of birth."

35. On March 8, 2006, Defendant Dalvit interviewed one of the assailant's suspected accomplices. He did not show the suspected accomplice Plaintiff FourHorn's driver's license photograph, and he did not ask the accomplice about any of the differences between the suspect's description and Plaintiff FourHorn's description.

36. On March 9, 2006, Defendant Dalvit made one attempt to telephone eyewitness Astin O'Dowd. He never spoke with her and made no subsequent attempts to reach her.

37. On March 10, 2006, Defendant Dalvit submitted an affidavit seeking a warrant for the arrest of Plaintiff FourHorn.

38. Before submitting the affidavit, he made no effort to determine whether the person whose name he had located in the motor vehicle records, Plaintiff FourHorn, was the same person Mr. Correa and eyewitnesses described as the assailant.

39. Indeed, Defendant Dalvit failed to take obvious steps that would have quickly confirmed that Plaintiff FourHorn was not the alleged assailant.

a. He failed to show Plaintiff FourHorn's photograph to Mr. Correa or the eyewitnesses/accomplices or question them about the differences between their description of the assailant and Plaintiff FourHorn's driver's license information

b. He failed to question Plaintiff FourHorn, even though her telephone number at home was publicly listed and her work number was easily found. Had he done so, he would have learned that on the date of the crime, she was at home suffering from partial paralysis, that she could produce records and witnesses confirming the same, that she has never lived in Denver or Oklahoma, that the last time she had been in Denver was in August 2005, that she had been married to her husband, Sidney FourHorn, since 1996, and that she had never known, dated, lived with, or heard of Mr. Correa.

40. Defendant Dalvit also failed to make any effort to perform basic investigative police work that would have easily led him to the alleged assailant. For example:

a. After her "mistaken identity" arrest and imprisonment in 2007, Plaintiff FourHorn accessed a commercial record search website. Within a matter of minutes, she located a record for "Christin Blue Fourhorn," who by then was 27 years old, with an address in Duncan, Oklahoma.

b. A search of a publicly accessible Oklahoma District Court records website also revealed a "Christin Blue Fourhorn," born in April 1980 with a home address in Duncan, Oklahoma. The records revealed that "Christin Blue Fourhorn" was a defendant in several cases dating back to 2005, including at least one criminal misdemeanor charge labeled as "Obtain cash or merchandise by bogus check."



***Defendant Dalvit's false statements and material omissions in the affidavit and application for arrest warrant***

41. When Defendant Dalvit signed the affidavit seeking the arrest of Plaintiff FourHorn, he did not have probable cause to believe she was the assailant. Nevertheless, because of material omissions and false statements in that affidavit, Judge Andrew Armatas was misled into signing a warrant authorizing Plaintiff FourHorn's arrest.

42. On the caption of the warrant, Defendant Dalvit falsely stated that the suspect was Plaintiff FourHorn. He used her full name, including her middle name and her birthdate, November 24, 1973.

43. Defendant Dalvit then misleadingly combined Plaintiff FourHorn's full name and birthdate with the physical description of the suspect: "Native American Female/5'5"/160lbs/Brown Hair/Hazel Eyes."

44. Defendant Dalvit stated falsely that Mr. Correa had identified the suspect as "Christina Ann Fourhorn, 11/24/73." In fact, Mr. Correa had described the suspect as "Christin Fourhorn," and he had never provided a middle name. In addition, Mr. Correa told Mr. Dalvit that the assailant was born in 1980, not 1973.

45. In the affidavit, Defendant Dalvit stated falsely that Mr. Correa knew Plaintiff FourHorn and that she was his girlfriend. In fact, Mr. Correa did not claim to have known Plaintiff FourHorn, whom he had never met.

46. In the affidavit, Defendant Dalvit described the assault on Mr. Correa. Throughout the description, Defendant Dalvit falsely referred to Plaintiff FourHorn as "suspect #1," and he stated falsely that Mr. Correa accused her of the assault and robbery.

47. Defendant Dalvit testified falsely that he had received a photograph of Plaintiff FourHorn from Mr. Correa. In fact, the photograph Mr. Correa provided was not a photograph of Plaintiff FourHorn.

48. Plaintiff FourHorn's motor vehicle record showed she was nearly seven years older than the suspect whom the victim and witnesses described. Defendant Dalvit omitted these material facts from his affidavit, and instead simply substituted in Plaintiff FourHorn's date of birth.

49. The police investigation reports described the suspect as weighing 160 pounds. Plaintiff FourHorn's motor vehicle record indicated that she weighed 250 pounds. Defendant Dalvit omitted this material fact from his affidavit.

50. The police investigation reports state that the suspect had a tattoo of her daughter on her upper left arm. Defendant Dalvit omitted this material fact from his affidavit. Plaintiff FourHorn has no such tattoo.

51. The police investigation reports reveal that the suspect reportedly said she intended to use the stolen money to return home to Oklahoma. Defendant Dalvit omitted this material fact from his affidavit. Plaintiff FourHorn's home address is Sterling, Colorado.

52. Defendant Dalvit stated he had obtained a Colorado driver's license photograph of Plaintiff FourHorn from the Department of Motor Vehicles. He did not, however, show this photograph to the victim or any of the witnesses. He omitted this material fact from his affidavit.

53. Without the false statements and material omissions, the affidavit would not have provided probable cause to believe that Plaintiff FourHorn was the assailant and the arrest warrant would not have issued.

***Denial of prompt court appearance***

54. On Monday, March 12, 2007, four officers from the Sterling Police Department arrested Plaintiff FourHorn under the warrant Defendant Dalvit obtained. The officers told her she was under arrest for felony aggravated robbery.

55. Sidney FourHorn tried to post bail and have Plaintiff FourHorn brought before a judge. Jail deputies told Sidney that because Plaintiff FourHorn was arrested pursuant to a warrant from another jurisdiction, she was not allowed to post bail or see a judge while in Logan County; instead, she would have to wait until she was taken to Denver before she would have the opportunity to post bail. This was a “Denver matter,” the deputies said.

56. Colorado Rule of Criminal Procedure 5 and section 16-3-108 of the Colorado Revised Statutes required that Plaintiff FourHorn be taken promptly to the nearest available county or district court. Rule 5 provides that at such a court appearance, the court must set bond. Plaintiff FourHorn was denied her right to a prompt judicial appearance during the 4 days she remained in the Logan County Jail.

57. Had Plaintiff FourHorn been granted her right to a prompt court appearance, she would have had the opportunity to ask that bail be set and/or to inform the court that she was the victim of a “mistaken identity” arrest. Had bail been set, she would have posted bail immediately and reduced the time she spent imprisoned under the Denver warrant that lacked probable cause.

***Denver detectives knew a mistake had been made but failed to correct it***

58. When Sidney FourHorn learned his wife had been arrested and jailed, he immediately began making calls to attempt to find out what had happened. The day after the arrest, he spoke with DPD Sgt. Julie Wheaton.

59. Sidney FourHorn explained that there had to have been a mistake. Sgt. Wheaton asked Sidney if his wife's date of birth was April 18, 1980. Sidney said her birthdate was November 24, 1973.

60. Sgt. Wheaton asked Sidney how long he had been married to Plaintiff FourHorn, and whether he and Plaintiff FourHorn had ever lived in Denver. Sidney said they had been married 10 years and had never lived in Denver. Sgt. Wheaton also asked Sidney FourHorn for his wife's physical description, and he provided the previously-mentioned physical description that differed markedly from the suspect's.

61. Sgt. Wheaton was obviously basing her questions on the reports of the police interviews with Mr. Correa and the witnesses.

62. Sidney offered to give Sgt. Wheaton documentary proof that Plaintiff FourHorn was not the same person as the criminal suspect. Sidney said he had collected bank records from Plaintiff FourHorn's debit card showing she had used the card in Sterling on the date of the alleged Denver assault. Sgt. Wheaton refused Sidney's offers and said Plaintiff FourHorn would have to be transported to Denver before any errors could be corrected, noting that transport might not happen until the next weekend.

63. After that phone call, Sgt. Wheaton knew Defendant Dalvit had made a mistake and that Plaintiff FourHorn was the victim of a "mistaken identity" arrest. Sgt. Wheaton had the power and opportunity to intervene and correct the mistake. Had she done so, she would have reduced the scope of the injuries Plaintiff FourHorn suffered from the erroneously-issued warrant. On information and belief, Sgt. Wheaton did not attempt to correct Defendant Dalvit's

mistake. In declining to take action, Sgt Wheaton was acting consistently with, and pursuant to, DPD's and Denver's standard operating procedures, policies, practices and customs.

64. On Thursday, March 15, her fourth day in the Logan County Jail, Plaintiff FourHorn was finally transported to the Denver Jail, where she spent the night.

65. On Friday morning, DPD Detective Laurie Freund conducted a tape-recorded interrogation of Plaintiff FourHorn about the assault and robbery of Mr. Correa. Plaintiff FourHorn said she was the victim of a mistake.

66. Detective Freund declared that she knew that Plaintiff FourHorn was having an affair with Mr. Correa, and that she was hiding the affair from her husband. Plaintiff Fourhorn was humiliated, ashamed and angered by this false accusation.

67. Detective Freund became increasingly hostile and aggressive, and Plaintiff FourHorn asked to end the interview.

68. At this time, Detective Freund knew that Defendant Dalvit had made a mistake and had caused the "mistaken identity" arrest of an innocent person.

69. Nevertheless, after turning off the tape recorder, Detective Freund said she was going to tell the prosecutor to "nail your ass to the wall."

70. Detective Freund also told Plaintiff FourHorn to tell her husband, Sidney, to quit calling Detective Freund and leaving voicemails, because Detective Freund "didn't care" about evidence that Sidney was offering to show his wife was not the assailant. Detective Freund said Plaintiff FourHorn's arrest was "none of [Sidney's] business".

71. On information and belief, Detective Freund followed through on her threat and urged the prosecutor to "nail" Plaintiff FourHorn.

72. Later that afternoon, Plaintiff FourHorn was finally brought to court, and bond was set. She posted bond and was finally released late Friday afternoon. Plaintiff FourHorn had to hire a lawyer for her next scheduled court date of March 30, 2007. The regulations of her job prohibited her from returning to work until the criminal charge was resolved.

73. After reviewing the police reports, the District Attorney's Office declined to prosecute Plaintiff FourHorn. In a memo memorializing that decision, Detective Freund wrote that "[t]he suspect Christina Fourhorn [sic] who was in jail and released on bond is NOT the suspect in the robbery offense."

74. Detective Freund knew on March 19 that the District Attorney's Office would not prosecute but did not bother to tell Plaintiff FourHorn. As a result, Plaintiff FourHorn did not learn that the criminal case against her had been resolved in her favor until she returned to Denver for her March 30 court appearance.

75. Detective Freund's acts and omissions were carried out consistently with, and pursuant to, Denver's procedures, policies, customs and practices.

***Denver was unresponsive to complaints and inquiries***

76. Plaintiff FourHorn tried to tell Denver officials about the police misconduct that had unjustifiably resulted in her "mistaken identity" arrest and her mistreatment and unjust imprisonment. She wrote to the DPD and Sgt. Wheaton, explaining what had happened to her. She also submitted a separate complaint to Denver's Office of the Independent Monitor. She received no response to either letter. She also requested that Denver provide her with all documents connected with her arrest and with the investigation that led to her arrest. She received only an incomplete set of documents from Denver's Department of Safety Records Coordinator Mary Dulacki.

77. After Ms. FourHorn contacted the ACLU of Colorado for legal assistance, an ACLU attorney then asked Denver officials for all the documents. The ACLU received documents that Denver had failed to provide to Plaintiff FourHorn. None of the documents, however, suggested that Denver had taken any steps to investigate the conduct of the police officers responsible for Plaintiff FourHorn's unjust treatment.

78. On March 20, 2008, Denver Post columnist Susan Greene published an account of Plaintiff FourHorn's wrongful arrest and imprisonment. According to Ms. Greene's column, Denver Detective Susan Hahn, a Denver spokesperson, defended the actions of Defendant Dalvit and said he had "followed our investigative procedures in locating this person."

#### **B. Muse Jama**

79. Plaintiff Muse Jama was in his home, peacefully studying for a college exam, when Defendants Peterson and Bishop falsely arrested him, without probable cause, under a warrant for a different person, "Ahmed Alia." Plaintiff Jama was locked up in Denver jails over a span of 8 days before he was released on bond. During those 8 days, Denver law enforcement officers denied Plaintiff Jama his right to appear before a judge, and repeatedly refused to investigate Plaintiff Jama's complaints—and additional obvious red flags—that he was not the person named in the arrest warrant.

#### ***Plaintiff Jama's "mistaken identity" arrest***

80. In March 2007, Ahmed Alia was charged in Denver with felony aggravated auto theft. At the time of the crime, Plaintiff Jama was in San Diego with family on his spring break vacation from Metropolitan State College of Denver.

81. When Ahmed Alia missed a court hearing in August 2007, a "failure to appear" warrant was issued for his arrest.

82. Defendants Peterson and Bishop were assigned to the DPD's "Fugitive Unit." Their duties included locating and arresting criminal suspects named in outstanding warrants. On September 21, 2007, Defendants Peterson and Bishop appeared at Plaintiff Jama's home to arrest him under the felony warrant for Mr. Alia. They did not have probable cause to believe Mr. Jama was the person they were authorized to arrest.

83. At Jama's home, Defendants Peterson and Bishop asked Plaintiff Jama if his name was Muse Jama, and they asked for identification. Plaintiff Jama provided his valid Colorado driver's license, his valid Social Security card, and his student photo identification card.

84. Defendants Peterson and Bishop carried with them a mug shot of Ahmed Alia. The mug shot of Ahmed Alia does not resemble Plaintiff Jama. For example, as Defendants Peterson and Bishop knew, Mr. Alia has a distinct facial scar and Plaintiff Jama has no facial scars.

85. Nevertheless, Defendants Peterson and Bishop announced they had a warrant for Plaintiff Jama's arrest. They handcuffed Plaintiff Jama and confiscated his identification cards. Plaintiff Jama insisted there must be a mistake.

86. During the drive to the jail, Plaintiff Jama heard one of the defendant officers say, "I don't think this is the right guy. He doesn't have any of the scars. Doesn't look like the guy we're looking for."

87. When Plaintiff Jama heard this statement, he asked why, if he was not the criminal suspect, he was being arrested. One of the defendant officers replied that any error would be figured out at the city jail and if there was a mistake, he would be back home "in two hours." This statement was false.



88. Defendants Peterson and Bishop arrested Plaintiff Jama in reckless disregard of clear facts showing he was not the person they were authorized to arrest.

89. No reasonable officer could have believed Plaintiff Jama was the same person as the criminal suspect Ahmed Alia. No reasonable officer could have believed there was probable cause to arrest Plaintiff Jama under the arrest warrant for Mr. Alia.

***Denver jailed Plaintiff Jama without probable cause***

90. At the City Jail, Plaintiff Jama was fingerprinted. His property, including approximately \$80 in cash, was confiscated. He learned for the first time that the officers did not actually have a warrant for his arrest, as they had falsely represented; instead he was being held under an arrest warrant for Ahmed Alia. Plaintiff Jama did not know Ahmed Alia and had no connection with Mr. Alia's alleged crime.

91. Plaintiff Jama protested he was not Ahmed Alia. He asked repeatedly to be properly identified. Despite his protests, despite his three valid and consistent identification cards, and despite the fact that there was no probable cause to believe he was the person named in the arrest warrant, DSD deputies booked Plaintiff Jama into the jail under the name Ahmed Alia.

92. No law enforcement officer working for Denver compared Plaintiff Jama's fingerprints to Mr. Alia's fingerprints. If such a comparison was made, it was ignored and no action was taken to remedy Plaintiff Jama's "mistaken identity" arrest.

93. Pursuant to Denver's procedures, policies, customs and practices, DPD officers and/or DSD deputies failed to investigate Plaintiff Jama's assertions that he was not the person named in the arrest warrant and failed to take any steps adequate to correct the "mistaken identity" arrest.

94. Plaintiff Jama's time in jail was isolating and terrifying. Plaintiff Jama was not sure whether or when his correct identity would ever be established and whether or when he would be released. During his time in jail, he was forced to answer to the name "Ahmed Alia" to receive food.

95. Finally, on September 28, 2008, Plaintiff Jama posted a \$20,000 bond and was released. He had been incarcerated for 8 days.

96. When released on bond, Plaintiff Jama was issued a check for the money taken from him when he was booked. The check was issued in the name "Ahmed Alia," making the check worthless to Plaintiff Jama.

***Denial of prompt court appearance***

97. Denver deprived Plaintiff Jama of his liberty over the course of 8 days despite the fact that no judicial officer ever determined that there was probable cause to believe that he was the person named in the arrest warrant. Plaintiff Jama was never brought before a court as required by Colorado Rule of Criminal Procedure 5 and/or section 16-3-108 of the Colorado Revised Statutes. Had he been brought before a court "without unnecessary delay," as required by the rule and statute, he would have informed the court he was not the person named in the arrest warrant, and he would have asked for a prompt investigation and prompt correction of the mistake.

98. On October 9, 2007, after he had been released on bond, Plaintiff Jama appeared in court for the first time since his "mistaken identity" arrest on the warrant for Ahmed Alia. It was immediately apparent to the prosecutor that Plaintiff Jama was not Ahmed Alia and not the person named in the arrest warrant.

99. At the court hearing, the prosecutor told the court, “Your honor, just for the record, the People have a mug shot of the correct defendant in the file. It is obviously not this individual.” The court replied, “All right. The arrest warrant as to this individual’s vacated and the bond’s released, the surety discharged. Our apologies, sir.”

100. The court’s minute order documenting the dismissal states: “[Defendant] that now appears on bond is not the charged [Defendant] but rather mistaken identity. Warrant vacated and bond released.”

101. Denver has no standard procedure, policy, custom or practice to inform Defendants Bishop and Peterson, or their supervisors, that a Denver court had determined that Plaintiff Jama had been erroneously arrested under a warrant for Ahmed Alia. The court’s ruling did not prompt such an internal communication, nor did it prompt an internal investigation of what had happened and why.

102. Ms. Dulacki, the Records Coordinator for the Denver Department of Safety, confirmed that the DPD’s only record of Plaintiff Jama’s arrest is a single, half-page slip documenting nothing more than Plaintiff Jama’s personal information, place of arrest, and the identity of the arresting officers. The Records Coordinator said officers in the Fugitive Unit were not required to file any other reports documenting the arrest or their basis for believing they could arrest Plaintiff Muse Jama under a warrant for Ahmed Alia. Accordingly, the supervisors had no ability to review the grounds, or lack thereof, that Defendants Bishop and Peterson relied upon in mistakenly concluding that the warrant to arrest Ahmed Alia somehow authorized them to arrest Plaintiff Jama. The supervisors thus had no basis for correcting or disciplining the officers for their mistake.

103. After his release, Plaintiff Jama and a friend went to the DPD's Internal Affairs Bureau to file a complaint. Sgt. Scott Murphy refused to take a complaint.

104. Plaintiff Jama's injuries were sustained as a result of Denver's procedures, policies, customs and practices, including acquiescing in and tolerating an unjustifiable risk and frequency of "mistaken identity" arrests, and failing to ensure that arrested persons are brought promptly before a court.

### **C. Jose Ernesto Ibarra**

105. Plaintiff Jose Ernesto Ibarra spent 26 days locked up in the County Jail after his arrest, without probable cause, because of a Denver law enforcement officer's erroneous conclusion he was someone else: a person with a different name, different description, and different date of birth who was the subject of outstanding arrest warrants for traffic violations. During those 26 days, Denver law enforcement officers denied Plaintiff Ibarra the right to a prompt court appearance. They repeatedly refused to investigate obvious red flags, including the complaints of Plaintiff Ibarra and his family and their offers to provide documentary proof that he was not the person named in the warrants.

106. Because he missed a court date on some traffic tickets, Plaintiff Jose Ernesto Ibarra spent a few days in the County Jail in summer 2007. On July 2, 2007, he appeared in court and resolved the matter. The court ordered his release from custody.

107. Plaintiff Ibarra, however, was not released. Defendant C.A.M., of either the DSD or DPD, performed a routine database search to determine whether there were any outstanding warrants for Plaintiff Ibarra. Defendant C.A.M. erroneously determined, without probable cause, that Plaintiff Ibarra was the same person as Jose Cayetano Ibarra, who had outstanding warrants.

108. No reasonable officer could have believed there was probable cause to conclude that Plaintiff Ibarra and Jose Cayetano Ibarra were the same person. Their physical descriptions were markedly different; the two men have different dates of birth and different middle names, and the records reflected additional differences in other identifying information.

109. Defendant C.A.M. failed to review easily available and accessible information, such as photographs and fingerprints, that would have demonstrated conclusively that Plaintiff Ibarra was not the person named in the warrants. Plaintiff Ibarra does not look like Jose Cayetano Ibarra. No reasonable officer comparing photographs and/or fingerprints could have believed that there was probable cause to arrest Plaintiff Ibarra under the warrants for Jose Cayetano Ibarra.

110. Plaintiff Ibarra told DSD deputies that he was not the person named in the warrants. The deputies, however, failed to investigate. Even the most minimal investigation would have promptly corrected and resolved this “mistaken identity” arrest.

111. In addition, Plaintiff Ibarra’s relatives—his mother-in-law Carmen Mendoza, and his wife Itzel Mendoza—repeatedly contacted various DPD and DSD officers and employees. They explained that Plaintiff Ibarra was not the person named in the warrants. They offered documentation, including Plaintiff Ibarra’s birth certificate, driver’s license and Social Security card. Pursuant to Denver’s policies, practices and customs, those officers and employees disregarded the pleas of Plaintiff Ibarra’s wife and mother-in-law and failed to investigate or otherwise correct the “mistaken identity” arrest that continued to keep Plaintiff Ibarra imprisoned.

112. Plaintiff Ibarra was erroneously imprisoned under at least four warrants for Jose Cayetano Ibarra. They are referred to below as Warrants 1, 2, 3 and 4.

113. After Plaintiff Ibarra was mistakenly arrested, he was not taken promptly to court on all charges, as required by Colorado Rule of Criminal Procedure 5 and/or section 16-3-108 of the Colorado Revised Statutes. On information and belief, Plaintiff Ibarra was never provided any court appearance at all for at least one of Jose Cayetano Ibarra's outstanding warrants, Warrant 1, a traffic case originating from Adams County.

114. On July 5, 2007, Plaintiff Ibarra was taken to court for a brief appearance, but for only two of Jose Cayetano Ibarra's outstanding warrants, Warrants 3 and 4. Carmen Mendoza addressed the court, informing Denver County Court Judge Mark R. Muller that Plaintiff Ibarra was not Jose Cayetano Ibarra. She explained that Plaintiff Ibarra and Jose Cayetano Ibarra had different middle names and different birthdates, and that "everything is different."

115. The prosecutor agreed:

Your Honor, we have two cases for Ibarra. The cases we have before us are for Jose Ibarra Cayentano [sic]. The gentleman before us claims to be Jose Ernesto Ibarra with different birth dates. Your Honor, we need to find out if—who this gentleman is. He does have his relative in the Court that had an ID that reflected his name to be Ernesto and not Cayentano, [sic] which would mean he is not the gentleman that these cases reflect. However, I think it might be fruitful to send him to get fingerprinted so we can get some resolution on his identity.

116. The court agreed and set the next court appearance for July 24 to provide an opportunity to "run fingerprints to insure that they—that you're not the actual Jose Ibarra that they're meaning to prosecute." In the meantime, the prosecutor agreed that release on personal recognizance was appropriate because of the doubt that Plaintiff Ibarra was the person named in the warrants.

117. On information and belief, the fingerprint comparison was never done. Nor was Plaintiff Ibarra released on personal recognizance. He remained in jail, held erroneously under additional outstanding warrants for Jose Cayetano Ibarra, including Warrants 1 and 2.

118. Despite repeated requests by Plaintiff Ibarra, Carmen Mendoza and Itzel Mendoza to various Denver law enforcement officers and employees, nothing was done to investigate and correct the “mistaken identity” arrest and “mistaken identity” imprisonment. One Denver officer responded to Itzel Mendoza’s “mistaken identity” claim by telling her that Plaintiff Ibarra was lying to her about his identity and that she should go home.

119. On July 24, 2007, Plaintiff Ibarra returned for the next court appearance on Warrants 3 and 4. At that hearing, Plaintiff Ibarra was represented by a public defender, who again asserted that Plaintiff Ibarra was not the person named in the warrants.

120. Although the prosecutor erroneously said information indicating a “mistaken identity” arrest had not previously come to light, he agreed there was “compelling” evidence that a mistake had been made, and he asked that Plaintiff Ibarra be dismissed:

This information’s only come to light today, Your Honor, and there seems to be fairly compelling evidence and the State joins in this request with the Public Defender . . . the People are going to ask to dismiss both of these matters on the motion of the District Attorney at this time, there appearing compelling evidence that this is not the actual defendant.

121. Although Warrants 3 and 4 were dismissed with regard to Plaintiff Ibarra, DSD deputies still refused to release Plaintiff Ibarra or promptly investigate and correct the erroneous determination that he was the defendant on the other warrants for Jose Cayetano Ibarra, namely, Warrants 1 and 2.

122. On July 27, 2007, 26 days after his “mistaken identity” arrest, Plaintiff Ibarra finally had his first court appearance on Warrant 2, which originated from Jose Cayetano’s alleged failure to meet a condition of juvenile probation. At that hearing, Plaintiff Ibarra and his family informed Denver District Court Magistrate Melanie Gilbert that Plaintiff Ibarra was not the person named in the warrant. The supervisor of the probation officer assigned to the case of Jose Cayetano Ibarra appeared in court. She confirmed that Plaintiff Ibarra was not the defendant named in the failure-to-appear warrant. The court dismissed Plaintiff Ibarra, writing in a minute order, “The person in custody is not the juvenile.”

123. Itzel Mendoza went to the Denver County Jail with the expectation she would finally take her husband home after his nearly month-long wrongful imprisonment. DSD deputies, however, told Itzel Mendoza that her husband would not be released until he paid the fine owed by Jose Cayetano Ibarra for outstanding traffic tickets that were the subject of Warrant 1.

124. Itzel Mendoza was incredulous, and told the DSD deputies that Denver had finally figured out that her husband was not Jose Cayetano Ibarra with regard to the other warrants. DSD deputies again refused to investigate. Instead, they insisted that Plaintiff Ibarra could not be released until there was payment of the unpaid traffic fine that prompted Warrant 1, the failure-to-pay warrant for Jose Cayetano Ibarra.

125. Faced with the prospect of additional days or weeks of wrongful imprisonment, Itzel Mendoza decided to pay the fine owed by Jose Cayetano Ibarra to secure her husband’s release.



126. A DSD deputy told Itzel Mendoza that she would have to go to Adams County to pay the fine sought in Warrant 1, which she did. At the Adams County Detention Facility, however, she was told that the fine could be paid only in Denver. She then returned to the County Jail, where she paid a \$274 fine and fee owed by Jose Cayetano Ibarra.

127. Finally, after 26 days of wrongful imprisonment under a “mistaken identity” arrest, Plaintiff Ibarra was released.

128. With regard to the foregoing allegations, including the failure to take him promptly before a court after his “mistaken identity” arrest, DPD and DSD officers and employees were acting or failing to act pursuant to, and consistent with, Denver’s procedures, policies, customs and practices.

#### **D. Dennis Michael Smith**

129. Plaintiff Dennis Michael Smith, who teaches English as a Second Language at a Denver high school, went to the County Jail to visit a former student who had been arrested. Following the jail’s procedures, Plaintiff Smith had made advance arrangements for the visit, which included submitting his driver’s license number and other identification information. He received advance confirmation that he had a reservation for a 1 p.m. visit on January 19, 2008.

130. Instead of getting to visit, however, Plaintiff Smith was himself arrested, without probable cause, under an outstanding warrant for a different person. He was handcuffed and taken to the City Jail.

131. Before this “mistaken identity” arrest in 2008, Plaintiff Smith knew there was a person named Dennis Allen Smith who had accumulated traffic tickets that wound up causing problems for Plaintiff Smith.

132. Years earlier when upgrading his driver's license, Plaintiff Smith was told there was an active warrant for his arrest. He knew it was a mistake and contacted the Colorado Bureau of Investigations ("CBI").

133. The CBI determined that Plaintiff Dennis Michael Smith had been confused with Dennis Allen Smith, for whom there was a pending failure-to-appear warrant.

134. To resolve the problem, the CBI issued a letter on its official letterhead to Plaintiff Smith. It was signed by CBI Fingerprint Examiner Wendy A. Fahrenbruch of the CBI Identification Unit. That letter said she had made a fingerprint comparison and had determined conclusively that Dennis Michael Smith was not the same person as Dennis Allen Smith. The letter also noted that both men had different State Identification numbers and different FBI numbers.

135. The letter also explained that the CBI had made a corresponding entry into the CCIC database, notifying law enforcement officers that the two men are not the same person. By placing such a notice in the CCIC database, CBI intended to protect Plaintiff Smith from the risk that he would become a victim of a "mistaken identity" arrest under a warrant for Dennis Allen Smith.

136. Plaintiff Smith kept a copy of the CBI letter with him. When he went with a friend to visit his former student at the County Jail on January 19, 2008, a copy of the CBI letter was in his car in the jail's parking lot.

137. Upon arrival at the County Jail, Plaintiff Smith provided the name of the former student he intended to visit and his driver's license as identification.

138. A DSD deputy then directed Plaintiff Smith to a room where three deputies were waiting, including Defendant Ortega.

139. Plaintiff Smith was told there was an active warrant for his arrest.

140. The warrant the deputies referenced was not for Plaintiff Smith; it was for Dennis Allen Smith.

141. The deputies failed to heed the notation the CBI had previously added to the CCIC database.

142. Plaintiff Smith explained that he knew that there was a different Dennis Smith who might be the subject of a warrant. He told them about the CBI letter in his car that would confirm he was not the person named in the warrant.

143. It would have taken mere minutes to retrieve the CBI letter from the car. Plaintiff Smith pleaded with the deputies at least three times to permit him or his friend to get the CBI letter, but the deputies refused. The deputies also declined to recheck the CCIC database or otherwise investigate Plaintiff Smith's information.

144. On information and belief, the deputies could have obtained information from the database that stores the records of Colorado driver's licenses. That information would have revealed that the suspect had a different driver's license number. It would also have yielded a photograph, which would also have demonstrated even more clearly that the deputies had arrested the wrong person.

145. Instead, one of the deputies declared that the warrant "was good." Based on Defendant Ortega's decision, Plaintiff Smith was arrested.

146. The facts available to Defendant Ortega did not provide probable cause to believe that Plaintiff Smith was the person named in the warrant. As Defendant Ortega knew from the warrant, the person to be arrested has tattoos on his left shoulder and a tattoo on his right arm. Plaintiff Smith has no tattoos. The deputies did not check to see if Plaintiff Smith had any tattoos. The deputies also overlooked additional material differences between Plaintiff Smith and the personal information and description of the wanted individual. No reasonable officer could have believed there was probable cause for the arrest.

147. Plaintiff Smith was handcuffed and taken to the City Jail. Plaintiff Smith eventually telephoned his wife, who immediately brought another copy of the CBI letter to the DPD. A DPD supervisor initiated an investigation. Plaintiff Smith was eventually released after about 4½ hours in custody. He received a small slip of paper stating that a DPD detective had determined he was the “wrong person.”

148. Denver had no procedure, policy, custom or practice that established a “feedback loop” to ensure that the DSD deputies responsible for Plaintiff Smith’s “mistaken identity” arrest were informed of their mistake. Similarly, Denver had no procedure, policy, custom or practice by which the finding that Plaintiff Smith was the “wrong person” triggered any investigation of the reasons for the mistake. Denver’s failure to establish such procedures evidences its procedures, policies, customs and practices of acquiescing in an unjustifiable frequency of such “mistaken identity” arrests.

149. After his release, Plaintiff Smith complained about his “mistaken identity” arrest in a letter to various Denver officials, including the Mayor, the Manager of the Department of Safety, and the Director of Corrections and Undersheriff for Denver.

150. Only the latter replied. The Undersheriff said he had investigated the circumstances of Plaintiff Smith's arrest. He ratified the deputies' actions and said they acted reasonably. The letter confirmed that the "mistaken identity" arrest was carried out pursuant to, and consistent with, Denver's existing procedures, policies, customs and practices.

**E. Samuel Powell Moore**

151. Denver police officers have erroneously arrested Plaintiff Samuel Powell Moore four separate times under an outstanding Aurora warrant for a different person. Each time, the Aurora Municipal Court quickly determined that Plaintiff Moore was not the person named in the warrant. In this action, Plaintiff Moore seeks compensation for injuries stemming from the most recent of those "mistaken identity" arrests, which took place on November 13, 2007, 3 years after the suspect sought in the warrant, William Douglas Pipkin, had died. After that fourth arrest without probable cause, Plaintiff Moore spent 8 days in the City Jail, without an opportunity to appear in court and without any judicial review of the Defendant officers' erroneous determination that he was the person named in the Aurora warrant.

***The warrant for William Douglas Pipkin***

152. In October 2002, William Douglas Pipkin was accused of attempting to steal \$450 worth of merchandise from a store. He was carrying a stolen Colorado State Identification card that had been issued to Plaintiff Moore. The card did not include a middle name.

153. When asked for identification, Mr. Pipkin presented Plaintiff Moore's stolen ID card. On information and belief, Mr. Pipkin invented the middle name "Earl." An Aurora police officer issued Mr. Pipkin a summons and complaint that identified him as "Samuel Earl Moore."

154. The officer's report included a photograph of Mr. Pipkin taken at the store. The report noted that Pipkin had a "heart tattoo [sic] on arm."

155. Pipkin did not appear in court as commanded by the summons and complaint. In November 2002, a failure-to-appear warrant was issued for his arrest in the name of “Samuel Earl Moore.”

*Multiple “mistaken identity” arrests*

156. Several weeks later, in December 2002, acting under the warrant for “Samuel Earl Moore,” Denver police officers arrested Plaintiff Moore. It was the first of four “mistaken identity” arrests of Plaintiff Moore. After 2 nights in jail, Plaintiff Moore was taken to the Aurora Municipal Court. The judge quickly determined that Plaintiff Moore was the victim of a “mistaken identity” arrest and ordered his release. The docket notation states:

12/23/02 Person present is not [defendant]. Correct [defendant] has tattoo of “heart” on arm. This person is Samuel Powell Moore. No tattoo on arm. Re-issue [bench warrant.]

157. In April 2003, acting under the same Aurora warrant, Denver police officers again mistakenly arrested Plaintiff Moore. Once again, the Aurora Municipal Court ordered his release. The docket sheet states:

4/29/03 Release Samuel Powell Moore (dob 1/29/42). He is not the [defendant], but same dob? (Reissue warrant). See notes on 12/23/02.

158. In June 2004, acting under the same Aurora warrant, Denver police for the third time mistakenly arrested Plaintiff Moore. One of the arresting officers was Defendant Choice Johnson. After Plaintiff Moore spent 4 nights in jail, he appeared in Aurora Municipal Court, where the judge released him for the third time. The docket notation states as follows:

6/14/04 Release Samuel Powell Moore (dob 1/29/42) (Reissue warrant).

159. The Aurora Municipal Court followed up by instructing the Aurora Police Department to include additional information in the “miscellaneous” field of the CCIC database. This information should have prevented future “mistaken identity” arrests of Plaintiff Moore, but it did not.

160. The notation placed in the CCIC database in 2004 stated:

NTSA Moore, Samuel Powell Sam E DOB/012942 -- Above subject [Samuel Earl Moore] uses this party's [Samuel Powell Moore] name/dob. If contact is made please verify prints/FBI#/SID# -- This subject [Samuel Earl Moore] has a heart tattoo on one of his arms --other party [Samuel Powell Moore] doesn't have any tattoos.

“NTSA” means “not the same as.”

161. On October 8, 2004, the criminal suspect, Mr. Pipkin, died at the Fort Lyon Correctional Facility.

***Plaintiff Moore's fourth “mistaken identity” arrest***

162. In November 2007, Defendants Choice Johnson and Andrew Richmond conducted a traffic stop on a car in which Plaintiff Moore was a passenger.

163. Defendants Johnson and Richmond checked Plaintiff Moore's identification. They asked him to step out of the car and said there was a warrant for his arrest.

164. Because of the three previous “mistaken identity” arrests on the same Aurora warrant, Plaintiff Moore carried with him the docket sheet from Aurora Municipal Court.

165. Plaintiff Moore told Defendants Johnson and Richmond that he was not the criminal suspect. He explained about the previous “mistaken identity” arrests under the Aurora warrant for a different person, and he told Defendant Johnson that Defendant Johnson himself

had carried out one of those “mistaken identity” arrests in 2004. Plaintiff Moore said the docket sheet that would confirm his explanation was in the nearby car.

166. Defendants Johnson and Richmond refused to allow Plaintiff Moore to retrieve the docket sheet from the car.

167. Plaintiff Moore also repeatedly told Defendants Johnson and Richmond that his middle name was Powell, not Earl. Plaintiff Moore told Defendants Johnson and Richmond that he shared that name with his brother, Denver police officer Jerome Powell.

168. Defendants Richmond and Johnson were aware of the notation in the CCIC computer described above in paragraph 160. Plaintiff Moore heard Defendant Richmond specifically direct Defendant Johnson’s attention to a notation in the computer database. Defendant Johnson replied that he did not care what was in the computer, and that he was going to arrest Plaintiff Moore regardless and “take him in.” Defendant Richmond did nothing to stop the arrest.

169. In light of the facts before them and the readily available facts on the docket sheet, Defendants Richmond and Johnson did not have probable cause to arrest Plaintiff Moore. No reasonable officer could have believed there was probable cause for the arrest. Nevertheless, relying on the warrant for the arrest of a different person, with a conclusively different physical description and a different name, Defendants Richmond and Johnson carried out the fourth “mistaken identity” arrest of Plaintiff Moore.

*A Denver police supervisor fails to investigate*

170. Plaintiff Moore was taken to a DPD substation. He explained to a supervising officer about his previous “mistaken identity” arrests and the rulings by the Aurora Municipal Court. He showed that he had no tattoos.



171. On information and belief, the supervising officer had the authority to release Plaintiff Moore if he confirmed Plaintiff Moore's information.

172. On information and belief, the supervising officer failed to review the CCIC database or consult other readily available information that would have confirmed that Plaintiff Moore was the victim of a (fourth) "mistaken identity" arrest. If the supervising officer did investigate, the officer deliberately overlooked obvious facts and failed to correct the "mistaken identity" arrest. The supervising officer's acts and omissions were consistent with, and pursuant to, Denver's procedures, policies, customs and practices.

*Sheriff deputies refuse to investigate*

173. After spending hours in a holding cell, Plaintiff Moore was transferred to the City Jail.

174. At the City Jail, Plaintiff Moore told DSD deputies he was not the person named in the warrant. He again showed he had no tattoos and explained the Aurora Municipal Court's three prior rulings. In light of the facts, including the notation in the CCIC database, DSD deputies did not have probable cause to believe that Plaintiff Moore was the person named in the warrant. Indeed, no reasonable officer could have believed there was probable cause. Nevertheless, the deputies booked Plaintiff Moore into the jail.

175. At the City Jail, Plaintiff Moore continued to inform DSD deputies he was not the person named in the warrant. He continued to assert and show that he had no tattoos. Pursuant to Denver's procedures, policies, customs and practices, Denver law enforcement officers failed to investigate or failed to correct the "mistaken identity" arrest. In doing so, they ignored the facts known to them and ignored readily available information establishing that Plaintiff Moore was not the person named in the warrant.

*Denial of prompt court appearance*

176. Plaintiff Moore spent 8 days locked in the City Jail without being taken before a court. Plaintiff Moore was deprived of his right to the prompt court appearance that is required by Colorado Rule of Criminal Procedure 5 and/or section 16-3-108 of the Colorado Revised Statutes. During his time in jail, no judicial officer reviewed the law enforcement officers' erroneous conclusion that he was the person named in the warrant. Had he been brought before a court, Plaintiff Moore would have had the opportunity to explain that he was the victim of a "mistaken identity" arrest.

177. Indeed, when Plaintiff Moore was finally brought before the Aurora Municipal Court, it once again realized the error and ordered Plaintiff Moore's release, for the fourth time.

A notation from Aurora Municipal Court docket sheet reads:

Person in custody: Samuel Powell Moore is NOT this defendant.  
He is to be released. [Bench warrant] remains for Samuel Earl  
Moore DOB: 1/29/42

178. In holding Plaintiff Moore in jail without judicial review of the officers' decision to arrest and without a prompt court appearance, Denver's agents and employees were acting pursuant to and consistent with Denver's procedures, policies, customs and practices.

After Plaintiff Moore was released from custody, he spoke with Defendants Johnson and Richmond's supervisor, a DPD sergeant. The sergeant conceded that Plaintiff Moore had been the victim of a wrongful "mistaken identity" arrest. He apologized to Plaintiff Moore and encouraged him to retain a lawyer. On information and belief, the sergeant did not make a report of the conversation, did not discipline Defendants Johnson and Richmond, and did not inform the Internal Affairs Bureau.

179. Plaintiff Moore also spoke with an officer in the DPD's Internal Affairs Bureau. He described his wrongful "mistaken identity" arrest. The officer declined to take a complaint from Plaintiff Moore about Defendants Johnson and Richmond's conduct.

### **Denver's procedures, policies, practices and customs**

#### *Denver policymakers are aware of the risk of "mistaken identity" arrests*

180. There is an obvious risk that law enforcement officers will carry out "mistaken identity" arrests—arrest or cause the arrest of an innocent person who is not the person named in the warrant or is not the person for whom probable cause to arrest exists.

181. The risk is particularly obvious in the case of an innocent person whose name is similar to that of the suspect. It is also particularly obvious in cases where the suspect may have used an alias, or, as in the increasingly common cases of identity theft, may have appropriated the identification information of an innocent person. Similarly, there is an obvious risk that fallible human beings processing the paperwork could make errors that result in such "mistaken identity" arrests.

182. Denver is aware of these risks. The Manager of Safety, who oversees the DPD and DSD, is aware of these risks. DPD's and DSD's highest policymakers are aware of these risks.

183. At the time of the incidents described in this Complaint, the Denver media had reported incidents that underscored the fact that the risk of such "mistaken identity" arrests is very real. On information and belief, the policymakers in the Department of Safety and in Denver's law enforcement agencies were aware of these media reports.

184. For example, Channel 7 News reported in September 2005 that the Aurora Police Department had caused the “mistaken identity” arrest of an innocent man. A text version of the report appears on the station’s web site.<sup>1</sup>

185. In August 2005 Channel 7 News reported that the Lakewood Police Department had caused the “mistaken identity” arrest of an innocent woman, Mercedes Archuleta. A text version of the report appears on the station’s web site.<sup>2</sup> The Rocky Mountain News also published a story.

186. The law enforcement errors that resulted in the well-publicized “mistaken identity” arrest of Mercedes Archuleta in 2005 closely resemble the errors that led to the “mistaken identity” arrest of Plaintiff FourHorn. Lakewood police officers took a crime report. The victim said the suspect’s name was Mercedes Archuleta, but there was little additional identifying information. A Lakewood detective searched the Colorado motor vehicle database. She located a record corresponding to the innocent Mercedes Archuleta, who had no criminal record and no connection to the crime. The detective did not have probable cause to believe that the person she located in the database was the same person as the suspect. Nevertheless, the detective copied the birthdate, address, and other identifying from this database record, inserted it into an application for an arrest warrant, and obtained a warrant to arrest the innocent Mercedes Archuleta. On October 17, 2006, Ms. Archuleta filed suit in federal district court seeking

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<sup>1</sup>See “Case of Identity Theft Lands Wrong Man in Jail; Man Mistakenly Arrested Because Of ‘Sloppy Detective Work,’” available at <http://www.thedenverchannel.com/7newsinvestigates/4968583/detail.html> (last visited July 31, 2008).

<sup>2</sup>See “Nursing Mom Arrested in Case of Mistaken Identity; Sloppy Detective Work Implicates Wrong Woman,” available at <http://www.thedenverchannel.com/news/4897809/detail.html> (last visited May 29, 2008).

damages for her “mistaken identity” arrest. The Denver Post and the Rocky Mountain News reported on the lawsuit the following day.

187. Denver policymakers were also aware of the 2005 “mistaken identity” arrest of Valerie Rodriguez, which is also strikingly similar to the “mistaken identity” arrests of Mercedes Archuleta and Plaintiff FourHorn. In December 2004, a Denver police officer took a report of an assault in the Five Points area of Denver. The victim said the assailant was a prostitute and drug dealer living a few blocks away, whose full name was Valerie Rodriguez. The officer searched the electronic database of Colorado driver’s license records. He located a record for the innocent Valerie Rodriguez, who lived in Aurora and had no connection whatsoever to the crime. The officer did not have probable cause to believe that the person he located in the motor vehicle database was the same person the victim described. Nevertheless, he drafted an affidavit for arrest warrant recounting the victim’s report and stating that the victim knew the suspect. He identified the “suspect” as the innocent Valerie Rodriguez and included specific descriptive details such as address, birthdate, height and weight that he obtained from motor vehicle records. As a result, in October 2005 the innocent Valerie Rodriguez was arrested and imprisoned, without probable cause, for an alleged crime with which she had no connection.

188. In early December 2005, Ms. Rodriguez wrote to the Denver Mayor about her “mistaken identity” arrest and the difficulty she encountered attempting to file a complaint with the DPD. She received no response.

189. In February 2006, Channel 7 News featured an investigative report on the “mistaken identity” arrest of Ms. Rodriguez.<sup>3</sup> As a result of the reporter’s questions to Denver

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<sup>3</sup> See “Why Are Hundreds of Coloradans Wrongly Arrested? Some Say It’s Sloppy Police Work,” available at <http://www.thedenverchannel.com/news/7263019/detail.html> (last visited May 29, 2008).

police officials, the DPD opened an internal investigation into the actions of the officer who procured the arrest warrant for the innocent Valerie Rodriguez.

190. On information and belief, the occurrence of additional “mistaken identity” arrests is well known to DPD and DSD officers, state courts in Denver, and other personnel who work in the Denver criminal justice system. In summer 2007, the Manager of the Department of Safety became aware of the “mistaken identity” arrest of Bradley Braxton, who was unjustifiably held prisoner for 8 days by the DSD under a warrant for an obviously different person. Braxton is African-American; he was held on a warrant for a Caucasian man who had a different name. In the course of an internal affairs investigation into Braxton’s “mistaken identity” arrest, a DSD deputy stated that “similar things happen every day” in the DSD.

***Denver’s policies and deliberately indifferent failure to adopt adequate policies caused Plaintiffs’ injuries***

191. In light of the obvious risk of “mistaken identity” arrests, and their prevalence, the need for changes in procedures, policies, supervision, and training was obvious. Nevertheless, Denver failed, through deliberate indifference, to adopt and implement procedures, policies, supervision and training that would have eliminated or minimized the risk of such “mistaken identity” arrests. Denver also failed, through its deliberate indifference, to adopt and implement procedures, policies, supervision and training designed to promptly detect cases of “mistaken identity” arrests when they occur and promptly correct or remedy the mistake.

192. By failing to correct deficiencies in policies, procedures, supervision and training that were so likely to result in unjustified deprivations of liberty, Denver demonstrated deliberate indifference to the protections of Plaintiffs’ rights. Denver’s deliberately indifferent failures caused the Plaintiffs’ injuries.

193. At the time of the injuries to Plaintiffs, it was Denver's policy to acquiesce in, or tolerate, a constitutionally unjustifiable risk that its law enforcement officers would:

- a. cause or carry out "mistaken identity" arrests;
- b. imprison the victims of such arrests without promptly checking or confirming the arresting officer's conclusion that the arrestee is the person named or intended to be named in the arrest warrant;
- c. fail to investigate red flags that they were erroneously imprisoning the innocent victim of a "mistaken identity" arrest;
- d. fail to take the victims of such "mistaken identity" arrests promptly before a court;  
and
- e. fail to promptly take all necessary steps to recognize and correct the mistake.

194. For example, the City failed to adopt or enforce policies or procedures that include, but are not limited to, the following:

- a. In cases in which an officer seeks an arrest warrant for a suspect and obtains identifying information from a computer database, Denver failed to require officers to explain, in their warrant application, the facts supporting the officer's conclusion that the person whose computer database record he relies on is the same person as the suspect for whom there is probable cause.
- b. In cases in which an officer seeks an arrest warrant, Denver failed to require that a supervisor carefully review the officer's basis for believing that the person whose arrest is sought is the same person for whom there is probable cause.

- c. In cases in which an officer makes an arrest under an existing warrant, Denver failed to require that a supervisor carefully review the officer's basis for believing that the person arrested is the same person named in the warrant, and failed to require adequate documentation by arresting officers that would permit such review.
- d. In cases in which Denver authorities or the courts determine that a "mistaken identity" arrest has occurred, Denver failed to adopt, implement, or enforce procedures that would communicate information about the mistake to the officers who were responsible for making it, or to their supervisors.
- e. In cases in which Denver authorities or the courts determine that a "mistaken identity" arrest has occurred, Denver failed to adopt, implement, or enforce procedures that would launch an investigation to analyze the cause of the mistake, either for disciplinary purposes or for the purpose of improving training, policies, or procedures to minimize the risk of similar mistakes.
- f. Denver failed to organize its records in a manner that would permit it to retrieve information about the number or frequency of cases in which its officers, the District Attorney's Office, or the courts have determined that a "mistaken identity" arrest has occurred.
- g. In cases in which Denver police or Sheriff deputies receive reports or complaints that a person in custody is the victim of a "mistaken identity" arrest, Denver failed to adopt, implement, or enforce policies and procedures that required prompt investigation and prompt correction of the mistake.



- h. Even after a victim of a “mistaken identity” arrest managed to gain release from custody, Denver failed to adopt, implement, or enforce policies and procedures to ensure that the victim was able to initiate, without unnecessary obstacles or runaround, a citizen complaint that is taken seriously and investigated fairly. Pursuant to Denver’s actual practice, an internal investigation into allegations of a “mistaken identity” arrest was unlikely to occur unless the news media, an attorney, or an organization like the ACLU made a complaint or inquiry.
- i. For example, in a December 2005 letter to Mayor Hickenlooper, Valerie Rodriguez reported that she had been unable to determine to whom she should direct a complaint about her “mistaken identity” arrest. She asked Mayor Hickenlooper to investigate her “mistaken identity” arrest. The DPD did not open an internal investigation into Ms. Rodriguez’s unjust arrest, however, until a Channel 7 investigative reporter made inquiries several months later.
- ii. After his release on bail in fall 2007, Plaintiff Muse Jama attempted to file a complaint about his “mistaken identity” arrest. He was told he could not file a complaint. After Denver Post reporter Susan Greene made inquiries in spring 2008, however, the DPD opened an internal investigation of Plaintiff Jama’s “mistaken identity” arrest.
- iii. After her “mistaken identity” arrest, Plaintiff FourHorn wrote to the Denver Office of the Independent Monitor as well as to the DPD and Sgt. Wheaton to complain about the misconduct of Denver police officers. She received no response. On information and belief, Ms. FourHorn’s inquiries did not prompt

an internal investigation. In 2008, however, after both the Denver Post and the Rocky Mountain News asked Denver officials about Ms. FourHorn's ordeal, an internal investigation was finally opened.

- iv. After his release from jail, Plaintiff Moore tried to complain to the DPD's Internal Affairs Bureau, which refused to take his complaint. After Denver Post reporter Susan Greene made inquiries in spring 2008, however, the DPD opened an internal investigation of Plaintiff Moore's "mistaken identity" arrest.

195. Denver has failed to adopt, implement, or enforce policies and procedures to ensure that every person arrested on a warrant is brought without unnecessary delay to the nearest court, as required by Colorado Rule of Criminal Procedure 5 and section 16-3-108 of the Colorado Revised Statutes. As a result, persons who are the victims of "mistaken identity" arrests are often deprived of this early opportunity to inform the court of the mistake, an opportunity that could potentially spark a prompt investigation and correction of law enforcement's mistake.

**FIRST CLAIM FOR RELIEF**

(Fourth Amendment, 42 U.S.C. § 1983)

(Plaintiff FourHorn, Defendants Dalvit and Denver)

196. The foregoing allegations are incorporated.

197. Defendant Dalvit did not have probable cause to believe that Plaintiff FourHorn committed a crime. No reasonable officer could have believed there was probable cause.

198. In his affidavit for arrest warrant, Defendant Dalvit intentionally or recklessly included false statements that were material to the determination of probable cause. He

intentionally or recklessly omitted facts that were material to the determination of probable cause.

199. Without the false material statements and without the material omissions, the affidavit would not have provided probable cause to arrest Plaintiff FourHorn, and the warrant to arrest here would not have issued..

200. Defendant Dalvit violated clearly-established law and caused Plaintiff FourHorn to be arrested and imprisoned without probable cause. A reasonable officer in Defendant Dalvit's position would have known that his actions violated Plaintiff FourHorn's Fourth Amendment rights.

201. Defendant Dalvit followed the DPD's standard procedures, policies, customs and practices.

202. Denver, through its procedures, policies, customs and practices, caused the violation of Plaintiff FourHorn's constitutional rights.

203. Plaintiff FourHorn is entitled to compensatory damages from Denver, and compensatory and punitive damages from Defendant Dalvit, attorney's fees pursuant to 42 U.S.C. § 1988 and all applicable law, and as well as any additional relief the Court determines is just.

**SECOND CLAIM FOR RELIEF**

(42 U.S.C. § 1983, Fourth Amendment)

(Plaintiff Jama; Defendants Peterson, Bishop and Denver)

204. The foregoing allegations are incorporated.

205. Defendants Peterson and Bishop arrested Plaintiff Jama without probable cause, in violation of the Fourth Amendment.

206. In the light of clearly established law, no reasonable officer could have believed that the facts provided probable cause to arrest Plaintiff Jama.

207. Plaintiff Jama was subjected to an extended period of pretrial detention without a prompt judicial determination of probable cause that he committed a crime.

208. Plaintiff Jama was subjected to an extended period of pretrial detention without a prompt judicial evaluation of the arresting officers' erroneous conclusion that the warrant for the arrest of Ahmed Alia justified the arrest and incarceration of Plaintiff Jama.

209. Plaintiff Jama suffered injury as a result of the defendants' actions and failures to act.

210. Denver's procedures, policies, customs and practices, including its deliberately indifferent failure to establish adequate procedures, policies, supervision and training, caused Plaintiff Jama's injuries and the violations of his Fourth Amendment rights.

211. Plaintiff Jama is entitled to compensatory and punitive damages from the individual defendants, compensatory damages from Denver, attorney's fees pursuant to 42 U.S.C. § 1988 and all applicable law, and any additional relief the Court deems just.

**THIRD CLAIM FOR RELIEF**  
(42 U.S.C. § 1983, Due Process of Law )  
(Plaintiff Jama; Defendant Denver)

212. The foregoing allegations are incorporated.

213. The DSD deputies who booked Plaintiff Jama into the City Jail knew Plaintiff Jama said he was not Mr. Alia and was the victim of a “mistaken identity” arrest.

214. The deputies failed to investigate Plaintiff Jama’s protestations of innocence, or if they investigated, they failed to take adequate steps to correct the “mistaken identity” arrest.

215. They did not have probable cause to believe that Plaintiff Jama was the person named in the warrant.

216. No reasonable law enforcement could have believed there was probable cause to believe that Plaintiff Jama was the person named in the warrant.

217. Plaintiff Jama was subjected to an extended period of pretrial detention without a prompt judicial determination of probable cause to believe that he committed a crime.

218. Plaintiff Jama was subjected to an extended period of pretrial detention without a prompt judicial evaluation of the arresting officers’ erroneous conclusion that the warrant for the arrest of Ahmed Alia justified the arrest and incarceration of Plaintiff Jama.

219. During that period of pretrial detention, Plaintiff Jama was deprived of a prompt judicial appearance.

220. Denver officers and/or deputies had the power and authority to investigate readily available information that would have confirmed that Plaintiff Jama was the victim of a “mistaken identity” arrest, and they had the power and authority to correct the mistake but declined to do so.

221. The deputies were acting consistently with, and pursuant to, Denver's procedures, policies, customs and practices.

222. Denver's procedures, policies, customs and practices deprived Plaintiff Jama of due process of law, in violation of the Fourteenth Amendment.

223. Plaintiff Jama is entitled to compensatory damages, attorney's fees pursuant to 42 U.S.C. § 1988 and all applicable law, and such additional relief as the Court deems just.

**FOURTH CLAIM FOR RELIEF**

(False Imprisonment, Negligence)  
(Plaintiff Jama; Defendant Denver)

224. The foregoing allegations are incorporated.

225. On March 18, 2008, Plaintiff Muse Jama timely filed a notice of claim pursuant to section 24-10-109 of the Colorado Revised Statutes.

226. Denver is liable to Plaintiff Jama for negligence and false imprisonment.

227. Plaintiff Jama seeks compensatory damages.

**FIFTH CLAIM FOR RELIEF**

(42 U.S.C. § 1983, Fourth Amendment)  
(Plaintiff Ibarra; Defendants C.A.M. and Denver)

228. The foregoing allegations are incorporated.

229. Defendant C.A.M. made the decision to hold Plaintiff Ibarra in jail under warrants for a different person. That decision caused the unlawful arrest of Plaintiff Ibarra, in violation of his Fourth Amendment rights.

230. Defendant C.A.M. did not have probable cause to believe that Plaintiff Ibarra was the person named in the warrants.

231. In the light of clearly established law, no reasonable officer could have believed that the facts provided probable cause to arrest Plaintiff Ibarra.

232. Plaintiff Ibarra was subjected to an extended period of pretrial detention without a prompt judicial determination of probable cause to believe that he committed a crime.

233. Plaintiff Ibarra was subjected to extended period of pretrial detention without a prompt judicial evaluation of Defendant C.A.M.'s erroneous conclusion that the warrants for the arrest of Jose Cayetano Ibarra justified the arrest and incarceration of Plaintiff Jose Ernesto Ibarra.

234. Denver's procedures, policies, customs and practices, including its deliberately indifferent failure to establish adequate procedures, policies, supervision and training, caused Plaintiff Ibarra's injuries.

235. Plaintiff Ibarra is entitled to compensatory and punitive damages from Defendant C.A.M., compensatory damages from Denver, attorney's fees pursuant to 42 U.S.C. § 1988 and all applicable law, and any additional relief the Court deems just.

**SIXTH CLAIM FOR RELIEF**

(42 U.S.C. § 1983, Due Process of Law, Fourteenth Amendment)  
(Plaintiff Ibarra; Defendant Denver)

236. The foregoing allegations are incorporated.

237. Plaintiff Ibarra was subjected to an extended period of pretrial detention without a prompt judicial determination of probable cause to believe that he committed a crime.

238. Plaintiff Ibarra was subjected to an extended period of pretrial detention without a prompt judicial evaluation of the arresting officer's conclusion that the warrants for the arrest of Jose Cayetano Ibarra justified the arrest and incarceration of Plaintiff Jose Ernesto Ibarra.

239. During that period of pretrial detention, Plaintiff Ibarra was deprived of a prompt judicial appearance.

240. During that period of pretrial detention, Denver officers knew Plaintiff Ibarra and members of his family had repeatedly insisted that Plaintiff Ibarra was not the person named in the warrants. They had the power and authority to investigate readily available information that would have confirmed that Plaintiff Ibarra was the innocent victim of a “mistaken identity” arrest, and they had the power and authority to correct the mistake but declined to do so.

241. These acts, omissions and deprivations were carried out consistently with, and pursuant to, Denver’s procedures, policies, customs and practices.

242. Denver’s procedures, policies, customs and practices, including its deliberately indifferent failure to establish adequate procedures, policies, supervision and training, caused the violations of Plaintiff Ibarra’s right to due process of law.

243. Plaintiff Ibarra is entitled to compensatory damages, attorney’s fees pursuant to 42 U.S.C. § 1988 and all applicable law, and such additional relief as the Court deems just.

**SEVENTH CLAIM FOR RELIEF**

(42 U.S.C. § 1983, Fourth Amendment)

(Plaintiff Smith; Defendants Paul Ortega, Denver)

244. The foregoing allegations are incorporated.

245. Defendant Ortega arrested or caused the arrest of Plaintiff Smith. The arrest was carried out without probable cause, in violation of Plaintiff Smith’s Fourth Amendment rights.

246. In light of the facts and the readily available information, no reasonable officer could have believed that there was probable cause to arrest Plaintiff Smith under the warrant, which was for a different person.



247. In arresting or ordering the arrest of Plaintiff Smith without probable cause, Defendant Ortega was acting consistently with, and pursuant to, Denver's procedures, policies, customs and practices.

248. Denver's procedures, policies, customs and practices, including its deliberately indifferent failure to establish adequate procedures, policies, supervision and training, caused the violation of Plaintiff Smith's Fourth Amendment rights.

249. Plaintiff Smith is entitled to compensatory and punitive damages from Defendant Ortega, compensatory damages from Denver, attorney's fees pursuant to 42 U.S.C. § 1988 and all applicable law, and such additional relief as the Court deems just.

**EIGHTH CLAIM FOR RELIEF**

(42 U.S.C. § 1983, Fourth Amendment)

(Plaintiff Moore; Defendants Johnson, Richmond, and Denver)

250. The foregoing allegations are incorporated.

251. Defendants Choice Johnson and Andrew Richmond arrested Plaintiff Moore without probable cause, in violation of the Fourth Amendment.

252. In light of the facts and the readily available information, no reasonable officer could have believed that there was probable cause to believe that the arrest of Plaintiff Moore was justified under a warrant for a different person.

253. Plaintiff Moore was subjected to an extended period of pretrial detention without a prompt judicial determination of probable cause to believe that he committed a crime.

254. Plaintiff Moore was subjected to an extended period of pretrial detention without a prompt judicial evaluation of the arresting officers' erroneous conclusion that the warrant for the

arrest of “Samuel Earl Moore” justified, for the fourth time, the arrest and incarceration of Plaintiff Samuel Powell Moore.

255. Denver’s procedures, policies, customs and practices, including its deliberately indifferent failure to establish adequate procedures, policies, supervision and training, caused the violation of Plaintiff Moore’s Fourth Amendment rights.

256. Plaintiff Moore is entitled to compensatory and punitive damages from the individual defendants, compensatory damages from Denver, attorney’s fees pursuant to 42 U.S.C. § 1988 and all applicable law, and such additional relief as the Court deems just.

**NINTH CLAIM FOR RELIEF**

(42 U.S.C. § 1983, Due Process of Law, Fourteenth Amendment)  
(Plaintiff Moore; Defendant Denver)

257. The foregoing allegations are incorporated.

258. Plaintiff Moore was subjected to an extended period of pretrial detention without a prompt judicial determination of probable cause to believe that he committed a crime.

259. Plaintiff Moore was subjected to an extended period of pretrial detention without and without a prompt judicial evaluation of the arresting officers’ erroneous conclusion that his arrest was justified by an outstanding warrant for a different person.

260. During that period of pretrial detention, Plaintiff Moore was deprived of a prompt judicial appearance.

261. During that period of pretrial detention, DPD and DSD officers were aware of Plaintiff Moore’s repeated protests that he was not the person named in the warrant. They had the power and authority to investigate readily available information that would have confirmed that Plaintiff Moore was the innocent victim of a “mistaken identity” arrest, and they had the

power and authority to correct the mistake but declined to do so. With regard to these acts and omissions, they were acting consistently with, and pursuant to, Denver's procedures, policies, customs and practices.

262. Denver's procedures, policies, customs and practices, including its deliberately indifferent failure to establish adequate procedures, policies, supervision and training, caused the violation of Plaintiff Moore's due process rights.

263. Plaintiff Moore is entitled to compensatory damages, attorney's fees pursuant to 42 U.S.C. § 1988, and such additional relief as the Court deems just.

**TENTH CLAIM FOR RELIEF**  
(False Imprisonment, Negligence)  
(Plaintiff Moore; Defendant Denver)

264. The foregoing allegations are incorporated.

265. On May 8, 2008, Plaintiff Moore timely filed a notice of claim pursuant to section 24-10-109 of the Colorado Revised Statutes.

266. Denver is liable to Plaintiff Moore for negligence and false imprisonment.

267. Plaintiff Moore seeks compensatory damages.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray for relief as follows:

- Compensatory and punitive damages pursuant to 42 U.S.C. § 1983 against defendants who are sued in their individual capacity;
- Compensatory damages from defendants who are sued pursuant to Colorado law;
- Compensatory damages from the City and County of Denver;

- An award of Plaintiffs' reasonable attorney's fees and costs of this action, pursuant to 42 U.S.C. § 1988 and any other applicable law;
- Any additional relief the Court deems just and proper.

**JURY DEMAND**

Plaintiffs request a trial by jury.

Dated: August 11, 2008.

Respectfully submitted,

s/ Mark Silverstein

Mark Silverstein

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**Attorneys for Plaintiffs**