

**In the United States District Court
for the District of Colorado**

Civil Action No. 1:08-cv-01693-MSK-KLM

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

Plaintiffs,

v.

CITY AND COUNTY OF DENVER;
MARK DALVIT, a Denver Police Department detective, in his individual capacity;
CURT PETERSON, a Denver Police Department officer, in his individual capacity;
JOHN BISHOP, a Denver Police Department officer, in his individual capacity;
ALAN SIRHAL, Denver Sheriff Department deputy, in his individual capacity;
CHOICE JOHNSON, a Denver Police Department officer, in his individual capacity;
ANDREW RICHMOND, a Denver Police Department officer, in his individual capacity;
PAUL ORTEGA, a Denver Sheriff Department sergeant, in his individual capacity;
JOHN DOE 1, a Denver Police Department officer, whose identity is unknown, in his individual
capacity;
JOHN DOE 2, a Denver Police Department officer, whose identity is unknown, in his individual
capacity;
Defendants.

Amended Complaint

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Plaintiffs, through their attorneys, complain as follows:

I. 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 six Plaintiffs in this case are all victims of such “mistaken identity” arrests. All were wrongfully arrested and incarcerated—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 which demonstrated 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 incarcerated 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 (“DSD”) were repeatedly told that they were locking up the wrong person and that the Plaintiff was not the person named in the arrest warrant. DSD employees ignored obvious facts and failed to investigate easily available information that would have proved that the Plaintiff they were holding was not the person named in the arrest warrant.

6. In each case, the Plaintiff’s injuries were caused by policies, procedures, practices and customs (collectively, “policies”) of the City and County of Denver (“Denver”), including its deliberately indifferent failure to establish policies, 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.

II. 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 under 28 U.S.C. §§ 1331, 1343 and 1367.

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

III. Parties

A. 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 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 Sirhal 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 DSD deputies under a warrant for a different person. He sues Defendants Ortega and Denver.

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

14. Plaintiff Dede Davis is a United States citizen and Denver resident. In June 2007, Denver law enforcement officers arrested and detained her under a Jefferson County warrant for a different person. She sues Defendants Denver and John Does 1 and 2.

B. Defendants

15. Defendant Denver is a home rule municipality under Article XX of the Colorado Constitution. It operates the DPD and 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.

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

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

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

19. At all times relevant to this Complaint, Defendant Sirhal was a DSD deputy. Plaintiff Ibarra sues Defendant Sirhal in his individual capacity.

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

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

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

23. At all times relevant to this Complaint, Defendant John Doe 1 was a DPD officer. Plaintiff Davis sues Defendant Doe 1 in his individual capacity.

24. At all times relevant to this Complaint, Defendant John Doe 2 was a DPD officer. Plaintiff Davis sues Defendant Doe 2 in his individual capacity.

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

26. At all times relevant to this Complaint, each of the individual defendants in this action was acting in accordance with Denver's policies relating to arrest, detention, and identification of individuals for arrest and detention.

27. At all times relevant to this Complaint, none of the individual defendants violated or otherwise acted inconsistently with any of Denver's policies relating to arrest, detention, and identification of individuals for arrest and detention.

IV. Factual Background

A. Christina FourHorn

28. 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.

29. 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.

30. She spent 5 days in jail. During this time, she was separated 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.

a. The “mistaken identity” warrant for Plaintiff FourHorn

31. 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.

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

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

34. 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 Oklahoma.

35. 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.

b. Defendant Dalvit’s reckless conduct

36. On March 7, 2006, Defendant Dalvit was assigned to investigate the case.

37. He was aware of the information in Paragraphs 32-35, above.

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

39. Defendant Dalvit searched for the assailant's name, "Christin Fourhorn," in NCIC/CCIC, a law enforcement database. The search did not produce any information on "Christin Fourhorn" or any similar name.

40. He then searched a non-criminal, Colorado motor-vehicle database.

41. In that database, he found identification information for Plaintiff FourHorn, including her:

- a. Driver's license photograph;
- b. Date of birth;
- c. Home address;
- d. Height, weight, eye color; and
- e. Other information typically contained in the motor-vehicle database.

42. The motor vehicle database information for Plaintiff FourHorn showed differences between Plaintiff FourHorn and the assailant. For example, Plaintiff FourHorn:

- a. Was seven years older than the reported age of the assailant;
- b. Weighed 250 pounds, 90 pounds more than the reported weight of the assailant;

c. Had hair and eye color different from the reported hair and eye color of the assailant; and

d. Had a home address in Sterling, Colorado.

43. Mr. Correa had provided the assailant-girlfriend's date of birth to police.

a. That date of birth was different from Plaintiff FourHorn's date of birth.

b. Instead of using the reported date of birth of the assailant, namely, April 14, 1980, Defendant Dalvit stated in a report he prepared that he had "learn[ed] that her true date of birth is 11/24/73," which is Plaintiff FourHorn's date of birth.

c. Neither Mr. Correa, the suspected accomplices, nor any other eyewitness had provided Defendant Dalvit or police with a date of birth of 11/24/73 for the assailant.

d. Upon information and belief, Defendant Dalvit obtained the 11/24/73 date of birth from the motor vehicle database after finding Plaintiff FourHorn in that database.

44. 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. Nor did he ask the accomplice about any

of the differences between the suspect's description and Plaintiff FourHorn's description.

45. Defendant Dalvit made one unsuccessful attempt to telephone eyewitness Astin O'Dowd. Without having spoken to Ms. O'Dowd, Defendant Dalvit executed the affidavit in support of an arrest warrant against Plaintiff FourHorn.

46. Defendant Dalvit made contact with Ms. O'Dowd after the arrest warrant had issued against Plaintiff FourHorn. During this contact:

- a. He did not show Ms. O'Dowd a picture of Plaintiff FourHorn. He did not subsequently show her a picture of Plaintiff FourHorn.
- b. He did not ask Ms. O'Dowd to confirm any of the information in his application for an arrest warrant that identified Plaintiff FourHorn as the assailant.

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

48. 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.

49. 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.

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

c. 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.

50. Defendant Dalvit 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.”

c. Defendant Dalvit’s false statements and material omissions in the affidavit and application for arrest warrant

51. When Defendant Dalvit signed the affidavit seeking the arrest of Plaintiff FourHorn, he did not have probable cause to believe she was the assailant. No reasonable officer would have believed there was probable cause. 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.

52. On the caption of the warrant:

a. Defendant Dalvit falsely stated that the suspect was Plaintiff FourHorn.

b. He used her full name, including her middle name and her birthdate, November 24, 1973, contrary to the information that Mr. Correa and the eyewitnesses/accomplices had given DPD officers and Defendant Dalvit.

53. 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/Bro Hair/Hazel Eyes."

54. Defendant Dalvit stated falsely that Mr. Correa had identified the suspect as "Christina Ann Fourhorn, 11/24/73." In fact, to Defendant Dalvit's knowledge:

a. Mr. Correa had never said "Christina Ann Fourhorn, 11/24/73" was the assailant.

b. Mr. Correa had said the suspect was "Christin Fourhorn," and he had never provided a middle name.

c. Mr. Correa told Defendant Dalvit and other police officers that the assailant was born in 1980, not 1973.

d. No witness had reported a middle name for the assailant.

e. No witness had reported that the assailant's date of birth was 1973.

55. In his affidavit in support of a warrant for Plaintiff FourHorn's arrest, Defendant Dalvit stated that Mr. Correa knew Plaintiff FourHorn and that she was

his girlfriend. The foregoing statements were false. In fact, to Defendant Dalvit's knowledge:

a. Mr. Correa never had said he had known Plaintiff FourHorn or that Plaintiff FourHorn had ever been his girlfriend.

b. No witness had ever said Mr. Correa had known Plaintiff FourHorn or that Plaintiff FourHorn had ever been his girlfriend.

56. In the affidavit, Defendant Dalvit described the assault on Mr. Correa. Throughout the description, Defendant Dalvit stated that Plaintiff FourHorn was "suspect #1," and that Mr. Correa accused her of the assault and robbery. In fact, no one ever had identified Plaintiff FourHorn as the assailant or a suspect in the robbery.

57. Defendant Dalvit stated in his affidavit that he had received a photograph of Plaintiff FourHorn from Mr. Correa. The statement was false. Mr. Correa never provided a photograph of Plaintiff FourHorn to Defendant Dalvit.

58. Defendant Dalvit omitted these facts from his affidavit:

Plaintiff FourHorn's motor vehicle record showed she had a date of birth different from the assailant's.

a. Plaintiff FourHorn was 7 years older than the assailant.

- b. Plaintiff FourHorn's name was spelled differently from the assailant's name.
- c. Plaintiff FourHorn had hair and eye color different from the assailant.
- d. Plaintiff FourHorn weighed 250 pounds, 90 pounds more than the reported weight of the assailant, 160 pounds.
- e. Defendant Dalvit had not communicated with any of the eyewitnesses about the foregoing differences between Plaintiff FourHorn and the assailant.
- f. Defendant Dalvit knew the assailant had a tattoo of her daughter on her left arm but had done nothing to determine whether Plaintiff FourHorn had a tattoo of a girl or woman on her left arm.
- g. Plaintiff FourHorn resided in Sterling, Colorado; eyewitnesses reported that the assailant had "wanted money to get back to Oklahoma."
- h. Defendant Dalvit had not shown Plaintiff FourHorn's driver's license photograph to any of the eyewitnesses.
- i. Defendant Dalvit had not checked with Oklahoma law enforcement authorities about information they might have about the assailant.

j. Defendant Dalvit had not checked publicly available Oklahoma court-records databases or commercial databases about the assailant.

k. Defendant Dalvit had not resolved any of the foregoing differences between Plaintiff FourHorn and the assailant.

l. Defendant Dalvit had the ability to call Plaintiff FourHorn and interview her or determine her identity, but he did not do so.

m. Defendant Dalvit had the ability to contact law-enforcement authorities in Sterling and request that they interview her or determine her identity, but he did not do so.

n. Defendant Dalvit harbored doubt about whether Plaintiff FourHorn was the assailant before he executed the affidavit.

o. Defendant Dalvit harbored doubt about whether Plaintiff FourHorn was the assailant when he executed the affidavit.

59. 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.

d. Denial of prompt court appearance

60. 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.

61. Sidney FourHorn tried to post bail and have Plaintiff FourHorn brought before a judge. Jail deputies told Sidney that because Plaintiff FourHorn was arrested under 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.

62. 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.

63. 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 incarcerated under the Denver warrant that lacked probable cause.

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

64. 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.

65. 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.

66. 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.

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

68. 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.

69. 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 (collectively, "policies").

70. 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.

71. 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 by DPD.

72. 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.

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

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

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

76. Detective Freund told Plaintiff FourHorn to tell her husband, Sidney, to quit calling Detective Freund and leaving voicemails. Detective Freund said she “didn’t care” about information Sidney offered relating to Plaintiff FourHorn’s identity and relating to whether Plaintiff FourHorn was the assailant. Detective Freund said Plaintiff FourHorn’s arrest was “none of [Sidney’s] business.”

77. Despite Sidney’s offer to provide the information described in the previous paragraph, Detective Freund:

- a. Never requested any documentation from Sidney relating to Plaintiff FourHorn’s identity.

b. Never requested any documentation from Sidney relating to whether Plaintiff FourHorn was the assailant.

c. Never interviewed Sidney to address any of the differences between Plaintiff FourHorn and the assailant noted in Paragraphs 42 and 58, above.

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

79. Later that day, 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.

80. 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.”

81. Detective Freund knew no later than 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.

82. Detective Freund's acts and omissions were carried out consistently with, and pursuant to, Denver's policies.

f. Denver was unresponsive to complaints and inquiries

83. 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.

84. 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.

85. 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

86. 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.

a. Plaintiff Jama's "mistaken identity" arrest

87. In March 2007, a person with the name or alias of Ahmed Alia was charged in Denver with felony aggravated auto theft. (For the purposes of this Complaint, "Ahmed Alia" or "Mr. Alia" hereafter will refer to this person.) 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.

88. When Mr. Alia missed a court hearing in August 2007, a “failure to appear” warrant was issued for his arrest.

89. Defendants Peterson and Bishop were assigned to the DPD’s “Fugitive Unit.” Their duties included locating and arresting criminal suspects named in outstanding warrants.

90. 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.

91. At Plaintiff Jama’s home, Defendants Peterson and Bishop asked him if his name was Muse Jama, and requested identification. Plaintiff Jama provided his valid Colorado driver’s license, his valid Social Security card, and his student photo identification card.

92. Defendants Peterson and Bishop had with them, or had access to *via* computer, one or more photographs of Mr. Alia. They also had other information that they believed would help them identify Mr. Alia.

93. The photograph or photographs of Mr. Alia did not resemble Plaintiff Jama. For example, as Defendants Peterson and Bishop knew, Mr. Alia has a

distinct facial scar; Plaintiff Jama has no facial scars. Defendants Peterson and Bishop saw that Plaintiff Jama had no facial scars.

94. Nevertheless, Defendants Peterson and Bishop announced they had a warrant for Plaintiff Jama's arrest.

95. Defendants Peterson and Bishop handcuffed Plaintiff Jama.

96. Defendants Peterson and Bishop confiscated his identification cards.

97. Plaintiff Jama told Defendant Peterson and/or Defendant Bishop that there must be a mistake and that they should not be arresting him.

98. Either Defendant Peterson or Defendant Bishop, or both, harbored doubt about whether Mr. Jama was Mr. Alia.

99. 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."

100. 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.

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

102. 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.

b. Denver jailed Plaintiff Jama without probable cause

103. At the City Jail:

- a. Plaintiff Jama was fingerprinted.
- b. Jail officials took his property, including approximately \$80 in cash.
- c. 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 Mr. Alia.
- d. Plaintiff Jama had no connection with Mr. Alia's alleged crime.

104. None of the defendants have any evidence that Plaintiff Jama had any connection with Mr. Alia's alleged crime.

105. Plaintiff Jama protested he was not Mr. Alia. He asked repeatedly to be properly identified. Plaintiff Jama was arrested even though he had protested that he had been mis-identified as Mr. Alia, he had provided three valid and consistent

identification cards, and 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.

106. No Denver law enforcement officer 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.

107. Pursuant to Denver's policies, 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.

108. 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.

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

110. 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.”

c. Denial of prompt court appearance

111. 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.

112. 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.

113. 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."

114. 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."

115. 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.

116. 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.

117. 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.

118. Plaintiff Jama's injuries were sustained as a result of Denver's policies, 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

119. 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.

120. 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.

121. Plaintiff Ibarra, however, was not released. After a routine computer database search to determine whether there were any outstanding arrest warrants for Plaintiff Ibarra, DSD employees turned up four outstanding arrest warrants for a different person, Jose Cayetano Ibarra.

a. There was doubt among one or more DSD employees about whether Cayetano Ibarra was the same person as Plaintiff Ibarra.

b. Former DSD “NCIC agent” Catherine McLane wrote a note, apparently to Defendant Sirhal, “I don’t think there is enough to call it him—your call—lemme know.”

c. Among the reasons Ms. McLane believed Plaintiff Ibarra was not Cayetano Ibarra were the following: She did not feel confident that Plaintiff Ibarra was Cayetano Ibarra; while the first and last names were similar, one was missing a middle initial; the date of birth on each of the four warrants for Cayetano Ibarra were identical, but that date was different from the date of birth she had for Plaintiff Ibarra; she had very limited information for comparison; the names alone were not enough for her to say that Plaintiff Ibarra was Cayetano Ibarra; based on the foregoing, she

was not comfortable deciding that Plaintiff Ibarra was Cayetano Ibarra. She referred the matter to a higher authority for guidance.

d. Defendant Sirhal was the higher authority. Ms. McLane gave him the reasons she was unable to conclude that Plaintiff Ibarra was Cayetano Ibarra. Defendant Sirhal agreed with Ms. McLane that there was not enough information available to conclude that Plaintiff Ibarra was Cayetano Ibarra.

e. Nonetheless, Defendant Sirhal subsequently directed that Plaintiff Ibarra would not be released, and would be re-arrested and/or detained on the four warrants for Cayetano Ibarra.

f. Defendant Sirhal told Ms. McLane that he wanted the courts to decide whether Plaintiff Ibarra was Cayetano Ibarra.

122. At the time Defendant Sirhal made the decision to re-arrest and/or detain Plaintiff Ibarra for the courts to decide whether Plaintiff Ibarra was Cayetano Ibarra, he:

a. Was unable to resolve any of Ms. McLane's concerns described in Paragraph 121.c., above.

b. Sent no communication to the courts that one or more DSD deputies and agents, including Ms. McLane or Defendant Sirhal himself, harbored doubts about whether Plaintiff Ibarra was Cayetano Ibarra.

c. Sent no communication to the courts notifying the courts that he and/or Ms. McLane had the concerns described in Paragraph 121.c.

d. Sent no communication to the courts notifying the courts that he had not been able to resolve Ms. McLane's concerns described in Paragraph 121.c.

e. Sent no communication to the courts notifying them that while he and/or Ms. McLane harbored doubts about whether Plaintiff Ibarra was Cayetano Ibarra, he had decided to let the courts decide the question whether Plaintiff Ibarra was Cayetano Ibarra.

f. Failed to take any steps reasonably calculated to ensure that Plaintiff Ibarra would be taken before a judicial officer so that the judicial officer could decide whether Plaintiff Ibarra was Cayetano Ibarra.

123. No reasonable officer could have believed there was probable cause to conclude that Plaintiff Ibarra and Cayetano Ibarra were the same person. For example:

a. Their physical descriptions were markedly different.

- b. The two men have different dates of birth.
- c. The two men have different middle names.
- d. Other records available to DSD deputies and employees reflected additional differences in other identifying information for the two men.

124. Defendant Sirhal 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 Cayetano Ibarra. No reasonable officer comparing photographs and/or fingerprints could have believed that there was probable cause to arrest or detain Plaintiff Ibarra under the warrants for Cayetano Ibarra.

125. 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.

126. In addition, Plaintiff Ibarra’s relatives—his mother-in-law Carmen Mendoza, and his wife Itzel Mendoza—repeatedly contacted various DPD and DSD law enforcement 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.

127. Denver's policies, procedures, practices and customs permitted DPD and DSD officers and employees to disregard the pleas of Plaintiff Ibarra's wife and mother-in-law to further investigate whether Plaintiff Ibarra was Cayetano Ibarra. In fact, the officers and employees did disregard the pleas. As a result, those pleas did not induce Denver officers and employees to conduct any further investigation into whether Plaintiff Ibarra was Cayetano Ibarra.

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

129. 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 Cayetano Ibarra's outstanding warrants, Warrant 1, a traffic case originating from Adams County.

130. On July 5, 2007, Plaintiff Ibarra was taken to court for a brief appearance, but for only two of 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 Cayetano Ibarra. She explained that Plaintiff Ibarra and Cayetano Ibarra had different middle names and different birthdates, and that “everything is different.”

131. 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.

132. 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.

133. 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 Cayetano Ibarra, including Warrants 1 and 2.

134. 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.

135. 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.

136. 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.

137. 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 Cayetano Ibarra, namely, Warrants 1 and 2.

138. On July 27, 2007, 26 days after his “mistaken identity” arrest/detention, Plaintiff Ibarra finally had his first court appearance on Warrant 2, which originated from Cayetano Ibarra’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 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.”

139. 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 Cayetano Ibarra for outstanding traffic tickets that were the subject of Warrant 1.

140. Itzel Mendoza was incredulous, and told the DSD deputies that Denver had finally figured out that her husband was not 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 Cayetano Ibarra.

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

142. 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 Cayetano Ibarra.

143. Finally, after 26 days of wrongful imprisonment under a "mistaken identity" arrest, Plaintiff Ibarra was released.

144. 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 policies.

D. Dennis Michael Smith

145. Plaintiff Dennis Michael Smith, who teaches English as a Second Language at a Denver 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.

146. 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.

147. 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.

148. 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").

149. 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.

150. 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.

151. At about the time the CBI sent the letter, or thereafter, CBI made an entry into the CCIC database that notified law enforcement officers and CCIC users that Plaintiff Smith is not the same person as Dennis Allen Smith.

152. 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 or Dennis A. Smith.

153. 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.

154. 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.

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

156. One or more DSD deputies told Plaintiff Smith there was an active warrant for his arrest.

157. In fact, the warrant the deputies referenced was not for Plaintiff Smith.

a. Plaintiff Smith’s full name is Dennis Michael Smith.

b. The warrant the deputies referenced was for a “Dennis Allen Smith” or a “Dennis A. Smith.”

c. The warrant did not name “Dennis Michael Smith” or “Dennis M. Smith.”

158. When the DSD deputies ran Plaintiff Smith’s name on the CCIC database, the CBI notation showed up regarding Dennis Allen Smith or Dennis A. Smith.

159. The DSD deputies saw the CBI notation regarding Dennis Allen Smith or Dennis A. Smith.

160. The DSD deputies failed to heed the notation in the CCID database that Plaintiff Smith was not Dennis Allen Smith or Dennis A. Smith.

161. Plaintiff Smith told the DSD deputies that he knew that there was a different Dennis Smith who might be the subject of a warrant.

162. Prior to being arrested and prior to being transported to the City Jail, Plaintiff Smith told the DSD deputies about the CBI letter in his car that would confirm he was not the person named in the warrant.

163. It would have taken mere minutes to retrieve the CBI letter from the car.

164. Prior to being arrested and prior to being transported to the City Jail, 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 refused to recheck the CCIC database or otherwise investigate Plaintiff Smith's information.

165. 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.

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

167. 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.

168. Plaintiff Smith was handcuffed and taken to the City Jail.

169. 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 slip of paper stating that a DPD detective had determined he was the “wrong person.”

170. 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 policies of acquiescing in an unjustifiable frequency of such “mistaken identity” arrests.

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

172. The Undersheriff investigated the circumstances of Plaintiff Smith’s arrest. He ratified the deputies’ actions. He concluded that the DSD deputies acted

reasonably. He also concluded that the arrest of Plaintiff Smith was carried out pursuant to, and consistent with, Denver's policies.

E. Samuel Powell Moore

173. 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.

a. The warrant for William Douglas Pipkin

174. 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.

175. 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."

176. 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."

177. 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."

b. Multiple "mistaken identity" arrests

178. In December 2002, acting under the warrant for "Samuel Earl Moore," Denver police officers arrested Plaintiff Moore.

179. It was the first of four "mistaken identity" arrests of Plaintiff Moore.

180. 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.]

181. In April 2003, acting under the same Aurora warrant, Denver police officers again mistakenly arrested Plaintiff Moore.

182. 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.

183. 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.

184. After Plaintiff Moore spent 4 nights in jail, he appeared in Aurora Municipal Court a third time, where the court released him for the third time. The docket notation states:

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

185. 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.

186. 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.”

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

c. Plaintiff Moore's fourth "mistaken identity" arrest

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

189. 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.

190. 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.

191. 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.

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

193. Plaintiff Moore also repeatedly told Defendants Johnson and Richmond that his middle name was Powell, not Earl.

194. Plaintiff Moore told Defendants Johnson and Richmond that he shared that name with his brother, Denver police officer Jerome Powell.

195. Upon information and belief, Defendant Johnson and/or Richmond know Officer Powell, but they did not contact Officer Powell for any information about Plaintiff Moore.

196. Defendants Richmond and Johnson were aware of the notation in the CCIC computer described in Paragraph 186, above.

197. Defendant Richmond directed Defendant Johnson's attention to a notation in the computer database.

198. 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."

199. Defendant Richmond did nothing to stop the arrest.

200. Defendants Richmond and Johnson did not check Plaintiff Moore's arms for a heart tattoo.

201. 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.

202. Defendants Richmond and Johnson handcuffed Plaintiff Moore. They then took him to the City Jail.

d. A Denver police supervisor fails to investigate

203. 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 he had no heart tattoo.

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

205. 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 policies.

e. DSD deputies refuse to investigate

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

207. At the City Jail, Plaintiff Moore told DSD deputies he was not the person named in the warrant. He again showed he had no heart tattoo 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.

208. Pursuant to Denver's policies, 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.

f. Denial of prompt court appearance

209. 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.

210. 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

211. 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 policies.

212. After Plaintiff Moore was released from custody, he spoke with Defendants Johnson and Richmond's supervisor, a DPD sergeant.

213. 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.

214. 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.

215. DSD and DPD officers and employees did not notify the Internal Affairs Bureau about Plaintiff's Moore's November 2007 arrest.

216. The Internal Affairs Bureau did not learn of Plaintiff's Moore's November 2007 arrest until Plaintiff Moore or his representatives notified the Bureau of it.

217. Plaintiff Moore told an officer in DPD's Internal Affairs Bureau about his wrongful "mistaken identity" arrest. The officer declined to take a complaint from Plaintiff Moore about Defendants Johnson and Richmond's conduct.

F. Dede Davis

218. On June 15, 2007, DPD officers falsely arrested Plaintiff Davis, without probable cause, under a warrant for a different person, Brandy Nichole Hair. Plaintiff Davis is African-American; Ms. Hair is Caucasian. At the time of the arrest, Ms. Hair—whom DPD had arrested 2 days earlier on June 13—was in DPD's custody. Plaintiff Davis was jailed for 3 days before posting the bond that had been set for Ms. Hair. Upon information and belief, Plaintiff Davis and Ms. Hair were both in the City Jail during Plaintiff Davis's incarceration on Ms. Hair's warrant.

219. On June 15, 2007, Plaintiff Davis was walking home with groceries. She was accompanied by her four children, ages 18, 12, 4 and 2, and her 13-year-old nephew.

220. When Plaintiff Davis and the children were about 100 feet from the Davis home, they were stopped by DPD officers, who said they were investigating

a report that her 18-year-old son was carrying a firearm. In fact, there was no firearm.

221. After Plaintiff Davis identified herself, the DPD officers ran a computer check on her. Afterward, an officer told her there was a Jefferson County warrant for her arrest and handcuffed her in front of her children and numerous bystanders. The arrest and handcuffing traumatized her children and her nephew.

222. At about this time, DPD officers were uncertain whether Plaintiff Davis was the person identified in the arrest warrant. The arrest warrant was for a “Brandy Nichole Hair,” a 5' 2" 25-year-old Caucasian who previously had been arrested by Denver. Plaintiff Davis is 5 inches taller, 13 years older and African-American. Defendant John Doe 1 decided erroneously and without probable cause that Plaintiff Davis was the person named in the arrest warrant, and caused Plaintiff Davis to be handcuffed and arrested.

223. While handcuffed, Plaintiff Davis protested that she had done nothing that would have caused Jefferson County to issue a warrant for her arrest and that the DPD officers had made a mistake. During the course of her protest, DPD officers yelled at her for “interfering” with their activities and subsequently charged her with the municipal offenses of interference and disobedience of a lawful order.

224. While she was in a police car awaiting transit to the jail, Plaintiff Davis saw Defendant John Doe 2 typing information relating to Plaintiff Davis into a computer. As he was looking at the information displayed on the computer, Defendant Doe 2 was heard saying, “This doesn’t make sense.” Upon information and belief, Defendant Doe 2 saw some of the information described in Paragraph 225, below. After viewing the information, Defendant Doe 2 followed up by requesting more identification information from Plaintiff Davis, such as her date of birth. Despite his reservations, however, Defendant Doe 2 did not pass on his concerns about whether Plaintiff Davis was Ms. Hair to other law-enforcement officers. Nor did he take any other action to have Plaintiff Davis cleared on the Jefferson County arrest warrant for Ms. Hair.

225. At the time of the DPD officers’ arrest of Plaintiff Davis on the Hair warrant, those officers, including Defendants Doe 1 and Doe 2, either knew about or had ready access to the following NCIC/CCIC database and other criminal-justice information about Ms. Hair and Plaintiff Davis, including each of the following facts:

- a. Ms. Hair has these known names and aliases: Brandy Nichole Hair; Brandy Nicole Locklear; Brandy Nicole Hair; Brandi Nicole Hair; Brandy

Nichole Locklear. Plaintiff Davis has these known names and aliases: Dede Davis; Dede Carter.

b. Ms. Hair is white, female, 5' 2", 110 lbs, brown hair, hazel eyes.

Plaintiff Davis is black, female, 5' 7", 134 lbs, black hair, brown eyes.

c. Ms. Hair's date of birth is 4/11/1982. Plaintiff Davis's date of birth is 7/13/1969.

d. In June 2007, Ms. Hair was 25 years old; Plaintiff Davis was nearly 38—13 years older.

e. On February 28, 2007, Lakewood police arrested Ms. Hair on drug and larceny charges. The charges were filed in Jefferson County District Court Criminal Action No. 07CR631.

f. On June 11, 2007, Ms. Hair failed to appear for a hearing in Case No. 07CR631. Jefferson County District Judge Tidball issued an arrest warrant for Ms. Hair because she failed to appear for arraignment. This was the warrant that led to Plaintiff Davis's arrest.

g. On June 13, 2007—two days before Plaintiff Davis's arrest—DPD arrested Ms. Hair on felony drug charges unrelated to the Jefferson County Case No. 07CR631. Upon information and belief, Ms. Hair was in

Denver's custody when DPD arrested and jailed Plaintiff Davis on Ms. Hair's arrest warrant.

226. In March 2007, Plaintiff Davis underwent surgery on her right hand and wrist. She is right-handed. When she was arrested, she was wearing a doctor-prescribed brace to immobilize her wrist.

227. At the City Jail, jail officers took away the wrist brace. As a result, Plaintiff Davis suffered significant pain, tingling and numbness.

228. At the time of her arrest, Plaintiff Davis was regularly taking various prescription medicines. After her arrest and during her time in jail, she did not have access to any of these medications.

229. On June 16, the day after her arrest, Plaintiff Davis appeared in Denver County Court on the municipal charges of interference and disobeying a lawful order. She was told that if she pleaded guilty to the municipal offenses, she could return home to her children. Accordingly, she immediately pleaded guilty.

230. When Plaintiff Davis was returned to the City Jail and she inquired about being released, she was told she would not be released because she was being held on the Jefferson County warrant for Ms. Hair. Jail employees rebuffed Plaintiff Davis's protests that she was not Ms. Hair and that she, Plaintiff Davis, was being held improperly on Ms. Hair's warrant.

231. Because of childhood trauma, Plaintiff Davis was being treated for certain emotional conditions. The false arrest and detention exacerbated these conditions.

232. Plaintiff Davis is under medical care for high blood pressure. After her false arrest, she suffered extreme pain in her chest and had to be taken to a medical facility. While undergoing treatment in the facility, she was handcuffed. The medical providers at the facility said her pain was the result of a spike in her blood pressure and that she would not be released until the blood pressure had dropped. When she was released, she was taken to the City Jail.

233. On about June 18, 2007, Plaintiff Davis posted the bond that had been set for Ms. Hair on Judge Tidball's Jefferson County arrest warrant, and she was released. Plaintiff Davis was only able to post the bond by using money she had allocated for her rent.

234. On June 29, 2007, Ms. Davis appeared on bond in Case No. 07CR631. According to court docket information, the deputy district attorney and the court determined that Ms. Davis "is not Ms. Hair." Ms. Davis was released from bond.

V. Denver's procedures, policies, practices and customs

A. Denver policymakers are aware of the risk of "mistaken identity" arrests

235. 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.

236. 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.

237. 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.

238. 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.

239. 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.

240. 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. The *Rocky Mountain News* also published a story.

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

242. 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 DPD 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 incarcerated, without probable cause, for an alleged crime with which she had no connection.

243. 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.

244. In February 2006, Channel 7 News featured an investigative report on the “mistaken identity” arrest of Ms. Rodriguez. As a result of the reporter’s questions to DPD officials, the DPD opened an internal investigation into the actions of the officer who procured the arrest warrant for the innocent Valerie Rodriguez.

245. 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.

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

246. 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.

247. 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.

248. 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.

249. 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 DPD officers or DSD 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 DPD 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 inquires in spring 2008, however, the DPD opened an internal investigation of Plaintiff Moore's "mistaken identity" arrest.

250. 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)

251. The foregoing allegations are incorporated.

252. 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.

253. 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.

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

255. Defendant Dalvit followed DPD's standard policies.

256. Denver, through its policies, caused the violation of Plaintiff FourHorn's constitutional rights.

257. Plaintiff FourHorn is entitled to compensatory damages from Denver, and compensatory and punitive damages from Defendant Dalvit, attorney's fees under 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)

258. The foregoing allegations are incorporated.

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

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

261. 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.

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

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

264. Plaintiff Jama is entitled to compensatory and punitive damages from the individual defendants, compensatory damages from Denver, attorney's fees under 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)

265. The foregoing allegations are incorporated.

266. 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.

267. 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.

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

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

270. 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.

271. 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.

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

273. 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.

274. The deputies were acting consistently with, and pursuant to, Denver’s policies.

275. Denver’s policies deprived Plaintiff Jama of due process of law, in violation of the Fourteenth Amendment.

276. 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)

277. The foregoing allegations are incorporated.

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

279. Denver intentionally confined Plaintiff Jama without lawful privilege and against his consent, causing injury to him.

280. Denver owed Plaintiff Jama a legal duty to conform to a standard of care, namely, to ensure that it did not deprive him of his liberties without a valid basis; Denver breached the duty, causing injury to him.

Fifth Claim for Relief
(42 U.S.C. § 1983, Fourth Amendment)
(Plaintiff Ibarra; Defendants Sirhal and Denver)

281. The foregoing allegations are incorporated.

282. Defendant Sirhal 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.

283. Defendant Sirhal did not have probable cause to believe Plaintiff Ibarra was the person named in the warrants.

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

285. 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.

286. Plaintiff Ibarra was subjected to extended period of pretrial detention without a prompt judicial evaluation of Defendant Sirhal's erroneous conclusion that the warrants for the arrest of Cayetano Ibarra justified the arrest and incarceration of Plaintiff Ibarra.

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

288. Plaintiff Ibarra is entitled to compensatory and punitive damages from Defendant Sirhal, compensatory damages from Denver, attorney's fees under 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)

289. The foregoing allegations are incorporated.

290. 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.

291. 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 Cayetano Ibarra justified the arrest and incarceration of Plaintiff Ibarra.

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

293. 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.

294. These acts, omissions and deprivations were carried out consistently with, and pursuant to, Denver’s policies.

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

296. Plaintiff Ibarra is entitled to compensatory damages, attorney’s fees under 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)

297. The foregoing allegations are incorporated.

298. 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.

299. 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 for Dennis Allen Smith.

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

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

302. Plaintiff Smith is entitled to compensatory and punitive damages from Defendant Ortega, compensatory damages from Denver, attorney's fees under 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)

303. The foregoing allegations are incorporated.

304. No reasonable officer could have believed there was probable cause to believe Plaintiff Moore's arrest was justified under the warrant for "Samuel Earl Moore."

305. 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.

306. 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 justified, for the fourth time, the arrest and incarceration of Plaintiff Moore.

307. Denver's policies, including its deliberately indifferent failure to establish adequate policies, supervision and training, caused the violation of Plaintiff Moore's Fourth Amendment rights.

308. Plaintiff Moore is entitled to compensatory and punitive damages from the individual defendants, compensatory damages from Denver, attorney's fees under 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)

309. The foregoing allegations are incorporated.

310. 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.

311. 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.

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

313. 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 policies.

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

315. Plaintiff Moore is entitled to compensatory damages, attorney's fees under 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)

316. The foregoing allegations are incorporated.

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

318. Denver intentionally confined Plaintiff Moore without lawful privilege and against his consent, causing injury to him.

319. Denver owed Plaintiff Moore a legal duty to conform to a standard of care, namely, to ensure that it did not deprive him of his liberties without a valid basis; Denver breached the duty, causing injury to him.

Eleventh Claim for Relief
(False Imprisonment, Negligence)
(Plaintiff Smith; Defendant Denver)

320. The foregoing allegations are incorporated.

321. On June 4, 2008, Plaintiff Smith timely filed a notice of claim under section 24-10-109 of the Colorado Revised Statutes.

322. Denver intentionally confined Plaintiff Smith without lawful privilege and against his consent, causing injury to him.

323. Denver owed Plaintiff Smith a legal duty to conform to a standard of care, namely, to ensure that it did not deprive him of his liberties without a valid basis; Denver breached the duty, causing injury to him.

Twelfth Claim for Relief

(42 U.S.C. § 1983, Fourth Amendment)

(Plaintiff Davis; Defendants Doe 1, Doe 2, and Denver)

324. The foregoing allegations are incorporated.

325. No reasonable officer could have believed that there was probable cause to arrest Plaintiff Davis under the warrant for Ms. Hair.

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

327. Denver's policies, including its deliberately indifferent failure to establish adequate policies, supervision and training, caused Plaintiff Davis's injuries and the violations of her Fourth Amendment rights.

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

Thirteenth Claim for Relief

(42 U.S.C. § 1983, Due Process of Law)

(Plaintiff Davis; Defendant Denver)

329. The foregoing allegations are incorporated.

330. Denver law enforcement officers failed to investigate Plaintiff Davis's protestations of innocence, or if they did investigate, they failed to take adequate steps to correct the "mistaken identity" arrest.

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

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

333. Denver officers and/or deputies were acting consistently with, and pursuant to, Denver’s policies.

334. Denver’s policies deprived Plaintiff Davis of due process of law, in violation of the Fourteenth Amendment.

335. Plaintiff Davis 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.

VI. Prayer for Relief

Wherefore, Plaintiffs pray for relief as follows:

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

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

VII. Jury Demand

Plaintiffs request a trial by jury.

Dated: November 28, 2008.

Respectfully submitted,

s/ Ty Gee

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Attorneys for Plaintiffs

Certificate of Service: I certify that on November 28, 2008, I electronically filed the foregoing Amended Complaint with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

Stuart L. Shapiro: stuart.shapiro@ci.denver.co.us

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s/ Ty Gee
