

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

Civil Action No. _____

MERCEDES ARCHULETA,

Plaintiff,

vs.

MICHELLE WAGNER, a detective with the Lakewood Police Department, in her individual capacity;

D.L. MANDELKO, a jailer with the Jefferson County Jail, in her individual capacity;

SHAYNE BUTLER, an officer with the Colorado Highway Patrol, in his individual capacity;
and

TED MINK, JEFFERSON COUNTY SHERIFF, in his official capacity.

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Mercedes Archuleta, by and through her attorneys Arnold & Porter LLP and Mark Silverstein of the American Civil Liberties Union Foundation of Colorado, files this Complaint and Jury Demand (“Complaint”) against the Defendants and states as follows:

Introduction

1. Plaintiff Mercedes Archuleta is a 46-year-old woman with no criminal record. She resides at her home in Highlands Ranch, Colorado, with her husband of 27 years, Ricky Archuleta, and their nine children.

2. On June 12, 2005, Mr. Archuleta was driving, and Mrs. Archuleta and five of her children were passengers, when a minor traffic stop turned into a nightmare for the Archuleta family. Defendant Butler of the Colorado State Patrol confronted the family in a rude and hostile

manner as he posed questions about the children's seat belts and the baby's car seat. After illegally seizing Mrs. Archuleta's driver's license, Butler performed a computer check in his patrol car and discovered an outstanding (but erroneously-issued) warrant purporting to authorize the arrest of Mrs. Archuleta for an alleged violation of a Lakewood city ordinance several months earlier.

3. Although Mrs. Archuleta was in no way involved in the Lakewood incident, the warrant contained her name, her date of birth, and other identifying information that appears on her driver's license. The warrant had been obtained by Defendant Wagner of the Lakewood Police Department, who, despite the absence of probable cause, drafted and signed an affidavit—rife with false statements and material omissions—that sought a warrant for the arrest of Mrs. Archuleta instead of the actual suspect.

4. When Butler returned to the Archuleta's car, Mrs. Archuleta was nursing her baby. Without explanation, Butler ordered Mr. Archuleta to take the child. Without giving Mrs. Archuleta a chance to cover up, Butler then forced her out of the car while her breasts remained partially exposed. He conducted a pat-down frisk, forcefully handcuffed her hands behind her back, and took her away, all while her terrified children watched and cried.

5. Butler took Mrs. Archuleta to the Jefferson County Jail. On the way, he acknowledged that he was persuaded that the warrant had been issued for the wrong person. At the jail, Defendant Mandelko consulted a computer database search and also acknowledged that Mrs. Archuleta was "the wrong person." Nevertheless, Defendant Mandelko ordered Mrs. Archuleta to submit to an unwarranted strip search that was especially humiliating when Mrs.

Archuleta's breast milk began to flow while she was unclothed. Mrs. Archuleta was locked in a cell for several hours until her husband was able to secure her release on bail.

6. Mrs. Archuleta was able to clear her name and obtain a court's ruling that she is factually innocent of the Lakewood ordinance violation for which she was arrested. In this action, Mrs. Archuleta seeks to hold accountable the government officials who are responsible for this extremely distressing, humiliating, and unjustifiable ordeal.

The Parties

7. Plaintiff Mercedes Archuleta is a U.S. citizen and resident of Colorado.

8. Defendant Michelle Wagner was a police detective employed by the City of Lakewood at all times relevant to this Complaint. Plaintiff sues Defendant Wagner in her individual capacity.

9. Defendant Shayne Butler was an officer of the Colorado State Patrol at all times relevant to this Complaint. Plaintiff sues Defendant Butler in his individual capacity.

10. Defendant D.L. Mandelko was a jailer at the Jefferson County Detention Facility and was employed by and acted as an agent of Defendant Ted Mink at all times relevant to this Complaint. Plaintiff sues Defendant Mandelko in her individual capacity.

11. Defendant Ted Mink is the Sheriff of Jefferson County, Colorado, and is responsible for the strip search policies and practices at the Jefferson County Detention Facility. The strip search policy of the Jefferson County Detention Facility caused a violation of

Plaintiff's rights. Plaintiff sues the Sheriff in his official capacity for damages and declaratory relief.

12. At all times relevant to this Complaint, the defendants acted or failed to act under color of state law.

Jurisdiction and Venue

13. This is a civil action pursuant to 42 U.S.C. § 1983, seeking damages and declaratory relief against Defendants for committing acts, under color of law, which deprived Plaintiff of rights secured under the Constitution and laws of the United States and for refusing or neglecting to prevent such deprivations and denials to Plaintiff. The Court has jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

14. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All defendants reside within the District of Colorado, and all of the events or omissions giving rise to the claims asserted herein occurred within the District.

General Allegations

15. The warrant for Mrs. Archuleta's arrest, which was issued without probable cause, stemmed from an incident in Lakewood that occurred in April 2005.

16. On April 18, 2005, the Lakewood police responded to a call that two women were having an altercation near, and later inside, the Walgreens on Colfax Avenue in Lakewood, Colorado. When police officers arrived on the scene, the alleged victim identified herself as Alexandria Silvas and told the police that she had had a fight with her girlfriend. Her girlfriend was no longer at the scene, however, and the police did not speak with the girlfriend.

17. Ms. Silvas told the police officers that she did not suffer any injuries and did not wish to press charges.

18. In spite of Ms. Silvas's statement that she and her assailant had been in an intimate relationship for the past three months, Ms. Silvas provided only three identifying facts about her girlfriend: Ms. Silvas told the Lakewood police officers that her girlfriend's name was Mercedes Archuleta; that she thought her girlfriend was approximately 42 or 43 years of age; and that both she and her girlfriend had outstanding arrest warrants.

19. On information and belief, the police checked the names of Alexandria Silvas and Mercedes Archuleta for warrants, but both names came up clear on the Colorado Crime Information Center and the National Crime Information Center databases.

20. Ms. Silvas provided no other identifying information about her alleged assailant. She told the police that she did not know where her girlfriend resided and was unable, or unwilling, to provide any contact information for her girlfriend. She further informed the police that she did not know where her girlfriend would be going or where she could be located. Ms. Silvas stated that she did not know her girlfriend's birth date or home address.

21. Furthermore, Ms. Silvas did not provide, and apparently the officers did not ask for, a physical description of the assailant. Ms. Silvas did not provide her assailant's height, weight, hair color, eye color, or race.

22. The police officers spoke with a Walgreens employee, Annabelle Avila, who had witnessed the altercation between the two women in the store. According to the Lakewood police Incident / Investigation Report, the Walgreens employee stated that she observed the

victim, Ms. Silvas, come into the store. Ms. Silvas asked Ms. Avila to dial 911, and then Ms. Avila handed the phone to Ms. Silvas. Ms. Avila then observed another woman come into the store, pull on the phone cord in an attempt to prevent Ms. Silvas from talking to the police, and pull on Ms. Silvas' hair.

23. The police officers apparently did not ask Ms. Avila for a physical description of the assailant. According to the report, the police on the scene searched the area for the assailant but did not find her.

24. On information and belief, the case was assigned to Defendant Michelle Wagner, a detective with the Lakewood Police Department.

25. On information and belief, Defendant Wagner's investigation of the incident consisted of a single phone call to the victim's foster mother. On April 20, 2005 Defendant Wagner called a phone number that Ms. Silvas had given to the police officers at the scene. A woman named June Huss answered the phone and told Defendant Wagner that Ms. Silvas did not live at the house. Ms. Huss stated that she used to be Ms. Silvas' foster mother and had allowed Ms. Silvas to live with her in November 2004 after Ms. Silvas was released from jail. Ms. Huss further informed Defendant Wagner that she had not heard from Ms. Silvas since November 2004 and was trying to find Ms. Silvas herself.

26. On information and belief, Detective Wagner never spoke with the victim, Ms. Silvas.

27. Defendant Wagner did not attempt to speak with the Walgreens' employee who had witnessed the incident and did not ask her to provide a physical description of the assailant.

28. On information and belief, Detective Wagner did nothing further to investigate the identity of the alleged assailant.

29. Instead, on information and belief, Defendant Wagner simply searched the Colorado Bureau of Investigation (“CBI”) records and/or another criminal records database for the name Mercedes Archuleta. According to those records, a person named Phyllis Rivera had used many different aliases, including the alias Mercedes Archuleta, and had a lengthy criminal record.

30. On information and belief, Defendant Wagner searched the records of the Colorado Division of Motor Vehicles, where she located information about Plaintiff Mercedes Archuleta.

31. Instead of pursuing a possible investigation of Phyllis Rivera, Defendant Wagner elected to pursue a warrant for the arrest of Plaintiff Mercedes Archuleta, despite the lack of probable cause that she was the assailant. Mrs. Archuleta had no connection to the incident in question.

32. Defendant Wagner made no attempt to verify that the Mercedes Archuleta identified in the motor vehicle records was the person who allegedly harassed Ms. Silvas.

33. Defendant Wagner did not attempt to contact Mrs. Archuleta regarding the incident, even though the motor vehicle records included Mrs. Archuleta’s phone number, home address, and other identifying information.

34. Other than a name, Defendant Wagner was in possession of no other information that would link Plaintiff Mercedes Archuleta with the woman who allegedly assaulted Ms.

Silvas. Defendant Wagner lacked probable cause to believe that Plaintiff Mercedes Archuleta was the person who allegedly assaulted Ms. Silvas.

35. Defendant Wagner had no reason to believe that Phyllis Rivera was the same person as Plaintiff Mercedes Archuleta, and made no attempt to confirm that Phyllis Rivera was the person who allegedly harassed Ms. Silvas.

36. On information and belief, Defendant Wagner had access to photographs of Ms. Rivera and Plaintiff Mercedes Archuleta. If Defendant Wagner had compared photos of Ms. Rivera with photos of Plaintiff Mercedes Archuleta, it would have been readily apparent that they are different people.

37. Defendant Wagner swore out the affidavit for the arrest warrant for Plaintiff. The affidavit identifies Plaintiff Mercedes Archuleta as the suspect and lists Plaintiff's first, middle, and last names, her date of birth, her physical description, her driver's license number, and her Social Security number. On information and belief, Defendant Wagner obtained this information by searching the motor vehicle records for the name "Mercedes Archuleta."

38. Defendant Wagner's affidavit contains a number of materially false statements. In her affidavit, Defendant Wagner falsely reports that the whereabouts of Plaintiff Mercedes Archuleta were unknown at the time she executed the affidavit.

39. Defendant Wagner's affidavit falsely reports that Plaintiff Mercedes Archuleta has a lengthy criminal history, including previous arrests for Burglary, False Information, Theft by Receiving, Shoplifting, Larceny, Forgery, Receiving Stolen Property, Obstructing Police, Escape, and Parole Violation. The crimes listed in the affidavit are actually taken from the

criminal history of Ms. Rivera and are listed as if those crimes had been committed by Mrs. Archuleta.

40. Defendant Wagner either knew the information referenced in the above paragraphs was false when she included it in her affidavit or was recklessly indifferent to whether such information was false.

41. Additionally, Defendant Wagner's affidavit contains a number of reckless material omissions. She neglected to clarify that it was Ms. Rivera's criminal history that was included in the affidavit. She neglected to inform the court that the name of Mercedes Archuleta was one of many different aliases used by Ms. Rivera.

42. Although the affidavit includes the fact that Ms. Silvas was in an intimate relationship with the alleged assailant, Defendant Wagner neglected to inform the court that Ms. Silvas was unable or unwilling to provide her girlfriend's description, birth date, home address, phone number, or other identifying information.

43. The affidavit further omits the fact that Ms. Silvas stated that her girlfriend had outstanding arrest warrants, but that there were no warrants for Plaintiff Mercedes Archuleta. The affidavit also omits the fact that Ms. Rivera did have an extensive arrest record, and it fails to state whether Ms. Rivera had any outstanding warrants.

44. Defendant Wagner's affidavit omits any identifying information or a physical description of Ms. Rivera. Instead, it lists identifying information for Plaintiff Mercedes Archuleta.

45. In sum, Defendant Wagner's affidavit is a hybrid of information about three different people: the person who allegedly harassed Ms. Silvas, Plaintiff Mercedes Archuleta, and Phyllis Rivera. The text of the affidavit, however, fails to alert the reader to this fact.

46. On the basis of Defendant Wagner's affidavit, the Lakewood Municipal Court issued a warrant for the arrest of Plaintiff Mercedes Archuleta for allegedly violating a municipal ordinance forbidding "harassment."

47. Representatives of the Lakewood Police Department subsequently acknowledged that Defendant Wagner's actions were improper. On information and belief, Defendant Wagner was not properly trained by the Lakewood Police Department.

48. On information and belief, Defendant Wager was disciplined by the Lakewood Police Department.

49. Several months after Defendant Wagner's constitutionally deficient affidavit caused a warrant to be issued without probable cause, the warrant was executed and Mrs. Archuleta was arrested.

50. On Sunday afternoon, June 12, 2005, Mrs. Archuleta attempted to drive her son to work in the family van, accompanied by five other children, including Mrs. Archuleta's five-month-old son. After the van broke down, Mr. Archuleta picked up the family in his car. To ensure that their son arrived at work on time, Mr. Archuleta elected to travel directly from the disabled van to his son's place of employment, with Mrs. Archuleta in the front passenger seat and the children in the back seat.

51. At the intersection of I-25 and 104th Avenue, a patrol car driven by Defendant Shayne Butler, an officer of the Colorado State Patrol, appeared behind the family's Ford Escort. The patrol car tailed the family's car for approximately 24 blocks and then turned on its flashing lights, at which point Mr. Archuleta pulled over. During the entire incident, Defendant Butler's patrol car remained behind Plaintiff's car with lights flashing.

52. Defendant Butler came to the driver's window and demanded to know why there was an extra person in the back seat. He also demanded that Mr. Archuleta provide his driver's license. As Mr. Archuleta tried to explain that the family's passenger van had broken down and that he had brought the car to pick up the family, Defendant Butler told him to "be silent." When Mrs. Archuleta began to explain the situation, Butler also told her to "be silent."

53. Defendant Butler then asked Mr. Archuleta if he had a car seat for the baby. Mr. Archuleta explained that the baby's car seat was in the trunk, to which Butler demanded that Mr. Archuleta step out of the car and show him the trunk, which he did. Butler did not conduct a further search of the trunk, nor did he ask to search any other part of the car. Butler produced a notepad and ordered Mr. Archuleta to write each of his children's names and birthdates in the notepad. Defendant Butler then told Mr. Archuleta to get back in the car.

54. As he crossed to the passenger side, Defendant Butler shouted at the children to show him their seat belts and required them to open the passenger door so he could view the seatbelts. Butler was increasingly hostile to the children and Mr. and Mrs. Archuleta, shouting during the entire period. Defendant Butler then asked Mrs. Archuleta if she drove. When she said yes, Defendant Butler then shouted "I'm going to need your license too." At no time did Defendant Butler explain why he wanted her license or inform Mrs. Archuleta that she could

refuse to produce her license. Mrs. Archuleta reasonably believed she had no choice but to tender her license to Defendant Butler.

55. Defendant Butler then told Mr. Archuleta to call someone to come pick up a few of the children, which he did.

56. Defendant Butler then took the licenses of both Mr. and Mrs. Archuleta and returned to his patrol car. Two additional police cars subsequently appeared on the scene. Defendant Butler still had not returned with either license.

57. While the family waited for Defendant Butler to return from his patrol car, the Archuleta's five-month old baby began crying in the back seat. Mrs. Archuleta took the baby to the front seat and began nursing him.

58. More than 30 minutes after seizing Mrs. Archuleta's license, Defendant Butler returned to the Archuleta's vehicle. Defendant Butler informed Mr. Archuleta, incorrectly, that his license was suspended due to an unpaid ticket. Mr. Archuleta explained that he had paid the ticket and had the receipt. Defendant Butler rudely stated that Mr. Archuleta would have to call someone else to drive the car and that Mr. Archuleta could show his receipt in court.

59. Instead of returning to his patrol car, Defendant Butler walked quickly around the front of the car to the passenger side, yelling at Mr. Archuleta to take the baby from his wife. Mr. Archuleta explained that the baby was nursing, at which point Defendant Butler screamed "Take the baby from your wife!"

60. Reaching the passenger side, Defendant Butler yelled at Mrs. Archuleta to "Get out of the car!" Mrs. Archuleta had just handed the baby to Mr. Archuleta, and was wearing a

blouse that tied in the front to facilitate nursing the baby. Her top was still undone and her breasts partially exposed as she began to get out of the car.

61. Defendant Butler pushed Mrs. Archuleta against the side of the car and then handcuffed her hands behind her back, with her shirt still open at the front. Two officers from the other patrol car had joined Defendant Butler and stood behind him observing the scene. Mrs. Archuleta did not fight or otherwise struggle with Butler as he arrested her.

62. Mrs. Archuleta asked why Defendant Butler was doing this to her. In response, Defendant Butler shouted “You need to be silent!” Mrs. Archuleta repeatedly requested that she be allowed to tie up her shirt and cover her breasts but she was ignored.

63. Defendant Butler then forcibly directed her to the back of the car and pushed her head forward, bending Mrs. Archuleta over the trunk of the car, with her breasts still partially exposed.

64. After pushing her against the trunk of the car, Butler frisked Plaintiff and removed her jewelry. At no point did Defendant Butler read Mrs. Archuleta her Miranda rights.

65. Mrs. Archuleta’s children sat in the backseat during the entire incident, watching while Defendant Butler yelled at their mother, handcuffed her, and pushed her up against the side and then the back of the car with her shirt open. The children were crying and the baby was hysterical. The children repeatedly asked Mr. Archuleta what was happening to their mother.

66. Defendant Butler then took Mrs. Archuleta to the patrol car with her breasts still partially exposed. He sat her in the front seat of the car, and joined the other two officers in questioning Mr. Archuleta. When Defendant Butler returned to the patrol car, he sat in the

driver's seat and leaned across Mrs. Archuleta, whose shirt was still open, and pressed his body against her, while he fastened her seat belt.

67. On information and belief, Defendant Butler's actions did not comport with proper police or highway patrol procedures.

68. While Butler took Mrs. Archuleta to the patrol car, the other officers at the scene ordered her husband and six children out of the car, and made them stand in the breakdown lane of the highway. Inexplicably, the officers caused the children to exit the car on the driver's side – the side of the car closest to the oncoming traffic. The officers did not permit Mr. Archuleta to hold the Archuletas' hysterical infant, but rather insisted that one of the children, who was also frightened and crying, hold him. Further, the officers made Mr. Archuleta stand apart from his children, and did not permit him to speak with them. As Defendant Butler drove away from the scene, Mrs. Archuleta was confronted with the sight of her terrified, crying children standing in harm's way beside a busy highway.

69. In the patrol car, Butler told Mrs. Archuleta that there was a warrant for her arrest for domestic violence. Mrs. Archuleta repeatedly told Defendant Butler that he had the wrong person. Defendant Butler eventually stated that he believed her, but that he would have to take her to the jail anyway because her name was on the warrant and he had already made the arrest. Moreover, Butler told Mrs. Archuleta that since she was arrested during the weekend, no one was available to help her.

70. While she was in the patrol car, Mrs. Archuleta again made numerous requests that she be allowed to tie up her blouse and cover her breasts. Butler refused.

71. Before entering the Jefferson County Detention Facility, Defendant Butler stopped in front of the building and released Mrs. Archuleta's hands, finally allowing her to close her shirt. He then re-cuffed her before entering the jail.

72. Mrs. Archuleta's ordeal did not end after Defendant Butler arrested her in front of her children and drove her to the Jefferson County Detention Facility.

73. After she entered the Jefferson County Detention Facility, Mrs. Archuleta was subjected to two additional pat-down frisks in the waiting area at the Facility, by unidentified Detention Facility employees. No weapons or contraband were found.

74. After the pat-downs, Mrs. Archuleta explained to the receptionist and Defendant Mandelko that there had been a mistake, and that she was not the person wanted for the domestic harassment charge. Defendant Mandelko proceeded to ask Mrs. Archuleta for the full spelling of her name and looked up a file on the computer on Mandelko's desk.

75. Looking at the computer screen, Mandelko asked Mrs. Archuleta "where are your tattoos and moles?" As Mrs. Archuleta was wearing shorts and a sleeveless blouse, it was readily apparent that she did not have the tattoos or moles in question. After verifying that Mrs. Archuleta did not have the tattoos or moles in question, Defendant Mandelko turned to the receptionist and stated "this isn't her."

76. On information and belief, Defendant Mandelko determined through her review of the computer database and relevant files that the warrant issued for Mrs. Archuleta contained material errors and was invalid. Mandelko had actual knowledge that Mrs. Archuleta was the wrong person.

77. In spite of her knowledge that Mrs. Archuleta was not the right person, Defendant Mandelko informed Mrs. Archuleta that she, Defendant Mandelko, could not do anything about it because it was the weekend. Defendant Mandelko knew or should have known that a judge was always on call to address matters such as these, even on the weekends.

78. Defendant Mandelko proceeded to process Mrs. Archuleta into the jail, despite the fact that she knew and acknowledged that she had the wrong person.

79. Then Defendant Mandelko proceeded to strip search Mrs. Archuleta. This strip search was conducted without reason or cause to believe that weapons or contraband were being concealed on or in Mrs. Archuleta's body.

80. Additionally, Defendant Mandelko conducted the strip search despite the fact that Mandelko knew that Mrs. Archuleta was the wrong person, that Mrs. Archuleta would not be placed in the general jail population, and that Mrs. Archuleta had not been charged with a crime involving weapons or drugs.

81. As Mrs. Archuleta was standing naked in front of Mandelko, her breast milk began to flow. She asked Defendant Mandelko for breast pads to catch the flow of milk. When Mrs. Archuleta tried to cover herself or stem the flow of milk, Defendant Mandelko shouted at her to put her hands down.

82. Defendant Mandelko then hollered to a male jailer to throw her a maxi-pad. Mandelko and the male jailer began laughing and joking about the incident. Mandelko directed the male jailer to cut the maxi-pad in half, and the male jailer then tossed the two pieces of the maxi-pad to Mandelko to give to Mrs. Archuleta. Mandelko told Mrs. Archuleta to place them

on her breasts or she would otherwise drip breast milk. Neither officer was wearing gloves in handling the maxi-pad, rendering it unsanitary. The two jailers continued to laugh and mock Mrs. Archuleta throughout this incident.

83. Throughout the processing and strip search, Defendant Mandelko repeatedly told Mrs. Archuleta that she knew that Mrs. Archuleta was the wrong person. Defendant Mandelko stated “I know you’re innocent hon, but there is nothing that we can do about it because it’s the weekend.”

84. In spite of her knowledge that Mrs. Archuleta was innocent and that the wrong person had been arrested, Mandelko continued to process Mrs. Archuleta into jail and detain her. After she was strip searched, Mrs. Archuleta was taken to a holding room, and then confined in a cell by herself for several hours. Mrs. Archuleta had no idea when, or if, she would be released. She was given bedding and informed that she would not be able to speak with a judge until the following day.

85. While being held in the jail, Mrs. Archuleta asked if her husband could be allowed to bring their baby to the jail so that she could nurse the baby, who was only five-months old at the time and had never used a bottle. The jailers stated that this was impossible. She then asked several times for a breast pump to alleviate the severe discomfort she was experiencing. The jailers said that such equipment was not available.

86. Eventually, after her husband was forced to post \$1,500 in bail—via a bail bond purchased with money earmarked for the Archuleta’s mortgage payment—Mrs. Archuleta was released.

87. The charges against Mrs. Archuleta were subsequently dismissed. Upon a motion from the City of Lakewood, the Lakewood Municipal Court entered a finding of factual innocence pursuant to C.R.S. §16-5-103(1)(b), directing that all records of Mrs. Archuleta's warrant and arrest be marked to indicate that the information contained in the records is inaccurate.

FIRST CLAIM FOR RELIEF

(Knowing or Reckless Inclusion of False Material Statements
and Knowing or Reckless Omission of Material Statements from Affidavit for Arrest Warrant)
(Against Defendant Wagner)

88. Plaintiff Archuleta incorporates the preceding allegations as fully set forth herein.

89. Defendant Wagner's affidavit for an arrest warrant contained a number of false statements.

90. Defendant Wagner's affidavit falsely identifies Plaintiff Mercedes Archuleta, by first, middle, and last name, birth date, physical description, Social Security number and driver's license number as the person who allegedly assaulted Alexandria Silvas.

91. Defendant Wagner's affidavit also states, falsely, that Plaintiff Mercedes Archuleta has a lengthy criminal record, including arrests for Burglary, False Information, Theft by Receiving, Shoplifting, Larceny, Forgery, Receiving Stolen Property, Obstructing Police, Escape, and Parole Violation.

92. Defendant Wagner's affidavit also states, falsely, that the whereabouts of Plaintiff Archuleta were unknown at the time Defendant Wagner executed the affidavit.

93. None of these statements is true. Defendant Wagner knowingly, or with reckless disregard for the truth, included these statements in her affidavit.

94. At the time that Defendant Wagner executed the affidavit, she had no probable cause to believe that Plaintiff Mercedes Archuleta had committed any crime.

95. Moreover, Plaintiff Mercedes Archuleta has no criminal record. In fact, the criminal record listed in the affidavit is for Phyllis Rivera. Defendant Wagner was aware of this fact when she executed her affidavit. If Wagner had compared available photos of Rivera with Plaintiff Archuleta, it would have been readily apparent that they are different people.

96. Defendant Wagner was aware of the whereabouts of Plaintiff Mercedes Archuleta, as the drivers license database from which Wagner obtained Mrs. Archuleta's description also included her then current address and telephone number.

97. If these false statements were omitted from the affidavit, the affidavit would not have been sufficient to support a finding of probable cause and the court would not have issued a warrant for the arrest of Plaintiff Mercedes Archuleta.

98. By knowingly or recklessly including this materially false information in the affidavit, Defendant Wagner caused Mrs. Archuleta to be deprived of her right to be free of unreasonable searches and seizures, in violation of the Fourth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

99. A reasonable police officer in Defendant Wagner's position would have known that she was violating clearly established law.

100. Defendant Wagner also knowingly or recklessly omitted many important facts that, if included, would have vitiated probable cause. The omitted facts include, among others, the fact that it was Ms. Rivera's criminal history that she included in the affidavit, not Plaintiff's, that Ms. Rivera used many different aliases, including Mercedes Archuleta, and that Ms. Silvas was unable to provide her girlfriend's birth date, home address, phone number, physical description or other identifying information.

101. Defendant Wagner further omitted the fact that Ms. Silvas stated that her girlfriend had outstanding arrest warrants, that Ms. Rivera did have outstanding warrants and/or arrests, but that there were no warrants for Plaintiff Mercedes Archuleta.

102. If these statements were included in the affidavit, the affidavit would not have supported a finding of probable cause and the court would not have issued a warrant for the arrest of Plaintiff Mercedes Archuleta.

103. By knowingly or recklessly omitting these important facts, Defendant Wagner intentionally or with deliberate indifference and callous disregard of Plaintiff Archuleta's rights, deprived Mrs. Archuleta of her right to be free of unreasonable searches and seizures, in violation of the Fourth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

104. A reasonable police officer in Defendant Wagner's position would have known that such knowing or reckless omissions from the warrant affidavit violated clearly established law.

105. Defendant Wagner's conduct caused Mrs. Archuleta's injuries, including severe emotional and psychological distress, anguish, embarrassment, humiliation, depression, anxiety, loss of sleep, loss of self-esteem, and damage to reputation.

SECOND CLAIM FOR RELIEF

(Unlawful Search and Seizure)
(Against Defendant Butler)

106. Plaintiff Archuleta incorporates the preceding allegations as fully set forth herein.

107. On June 12, 2005, Defendant Butler turned on the flashing lights on his police vehicle and pulled over Mr. Archuleta. Mrs. Archuleta was a passenger in the car. Defendant Butler was hostile and threatening during the entire incident, shouting at Mrs. Archuleta and the children.

108. Defendant Butler demanded that Mrs. Archuleta provide him with her driver's license. Mrs. Archuleta did not voluntarily give her license to Defendant Butler, and Butler did not inform her of the reason for the demand or her right to refuse. Defendant Butler's tone of voice, posture, and behavior were such that a reasonable person in Mrs. Archuleta's position would believe that she had no choice but to tender her driver's license. When Defendant Butler took Mrs. Archuleta's license without her consent, the traffic stop of her husband had matured into an investigatory detention of Mrs. Archuleta. Such detention is a seizure to which the Fourth Amendment applies.

109. Defendant Butler retained the license and detained Mrs. Archuleta for more than 30 minutes. During that time two additional patrol cars arrived at the scene. A reasonable

person in Mrs. Archuleta's position would not feel free to leave the scene while a patrol officer retained her driver's license and two additional patrol cars were present.

110. The facts made known to Defendant Butler during the traffic stop were insufficient to form a reasonable and articulable suspicion that Mrs. Archuleta was engaged in any criminal activity justifying demanding and retaining Mrs. Archuleta's license.

111. The facts known to Defendant Butler were also insufficient to form a reasonable and articulable belief that Mrs. Archuleta was engaged in any criminal activity that would justify detaining her while running a warrant check on Mrs. Archuleta. Discovery of the erroneous warrant was the fruit of an illegal detention.

112. A reasonable highway patrol officer in Defendant Butler's position would have known that his detention of Plaintiff Archuleta was not based on reasonable suspicion and violated clearly established law.

113. Defendant Butler deprived Mrs. Archuleta of her right to be free of unreasonable searches and seizures, in violation of the Fourth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

114. Defendant Butler's conduct caused Mrs. Archuleta's injuries, including severe emotional and psychological distress, anguish, embarrassment, humiliation, depression, anxiety, loss of sleep, loss of self-esteem, and damage to reputation.

THIRD CLAIM FOR RELIEF

(Unlawful Search and Seizure)
(Against Defendant Butler)

115. Plaintiff Archuleta incorporates the preceding allegations as fully set forth herein.

116. Defendant Butler arrested Mercedes Archuleta while she was in the midst of nursing her five-month old infant. When he ordered her from the car, Mrs. Archuleta's shirt was still open in the front, partially exposing her breasts. Mrs. Archuleta repeatedly asked Defendant Butler if she could tie up her shirt but he refused her request.

117. When Defendant Butler returned to the patrol car, he sat in the front driver's seat and leaned across Mrs. Archuleta, pressing his chest into her exposed breast, to fasten her seat belt. On information and belief this is not proper police procedure.

118. Defendant Butler drove Mrs. Archuleta to the Jefferson County jail with her shirt open and her breasts partially exposed. During the ride, Mrs. Archuleta again asked Defendant Butler, on several occasions, if she could tie up her shirt. Butler refused until just before entering the jail, at which point Defendant Butler unfastened Mrs. Archuleta's handcuffs and allowed her to tie up her shirt and then handcuffed her again.

119. Mrs. Archuleta did not pose an immediate threat to Defendant Butler. She did not resist arrest; she was wanted (in error) for a misdemeanor; she was not armed, and Defendant Butler did not believe that she was armed; and there were several other officers present.

120. Mrs. Archuleta was deeply humiliated by being publicly exposed in front of her family, Defendant Butler, the other officers, passing motorists, and people standing near the jail.

121. The arrest of Mrs. Archuleta was conducted in an extraordinary and unreasonable manner and was unusually harmful to Mrs. Archuleta's privacy. It was not objectively reasonable to arrest her in this manner.

122. A reasonable police officer in Defendant Butler's position would have known that he was violating clearly established law.

123. Defendant Butler violated Mrs. Archuleta's right to be free of unreasonable seizure under the Fourth and Fourteenth Amendments of the U.S. Constitution.

124. As a result of Defendant Butler's unreasonable seizure, Mrs. Archuleta has suffered severe emotional and psychological distress, anguish, embarrassment, humiliation, depression, anxiety, loss of sleep, loss of self-esteem, and damage to reputation.

FOURTH CLAIM FOR RELIEF

(Deprivation of Liberty without Due Process of the Law and Unlawful Seizure)
(Against Defendant Mandelko)

125. Plaintiff Archuleta incorporates the preceding allegations as fully set forth herein.

126. Upon her arrival at the Jefferson County jail, Mrs. Archuleta explained to the receptionist and Defendant Mandelko that there had been a mistake and that she was not the person wanted for the domestic harassment charge.

127. Defendant Mandelko investigated the criminal database and determined, based on the information it contained, that there were material mistakes in the warrant and that the wrong person had been arrested.

128. Defendant Mandelko repeatedly told Mrs. Archuleta, throughout the processing and strip search, that she knew Mrs. Archuleta was the wrong person and treated her in a manner indicating she knew the Plaintiff was not the wanted suspect. Despite her knowledge that Mrs. Archuleta was innocent and that the wrong person had been arrested, Defendant Mandelko continued to process Mrs. Archuleta into jail and detain her.

129. Based on the facts available to her, Mandelko no longer had the right to continue Mrs. Archuleta's detention. Defendant Mandelko's actions in continuing Mrs. Archuleta's detention were unreasonable in light of the exculpatory evidence Mandelko had before her.

130. When Defendant Mandelko became aware that there were material mistakes in the warrant and that they had detained the wrong person, she no longer had an objectively reasonable belief that probable cause existed to support the continued detention of Mrs. Archuleta.

131. A reasonable police officer in Defendant Mandelko's position would have known that she was violating clearly established law.

132. Defendant Mandelko deprived Mrs. Archuleta of her liberty without due process of the law, and unlawfully seized her without probable cause, in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution.

133. As a direct consequence of the deprivation of her rights, Mrs. Archuleta has suffered severe emotional and psychological distress, anguish, embarrassment, humiliation, depression, anxiety, loss of sleep, loss of self-esteem, loss of employment, and damage to reputation.

FIFTH CLAIM FOR RELIEF

(Declaratory Relief and Damages for Unlawful Strip Search)
(Against Defendants Mandelko and Defendant Mink)

134. Plaintiff Archuleta incorporates the preceding allegations as fully set forth herein.

135. The strip search of Mrs. Archuleta was a serious intrusion upon her personal privacy.

136. On information and belief, employees of Defendant Jefferson County have a custom or practice of strip searching all detainees except those covered by C.R.S. § 16-3-105(1) without regard to the reasonableness of the search and even where there is no reasonable suspicion to believe that weapons or contraband are being concealed on or in the detainees' bodies.

137. On information and belief, Defendant Mink has authorized a policy to conduct strip searches of incoming detainees even where the detainee will not be placed in the general prison population.

138. On information and belief, Defendant Mink has authorized a policy to conduct strip searches of incoming detainees even where the detainee is not likely to possess contraband or weapons.

139. On information and belief, the aforementioned strip search policy was the moving force behind Defendant Mandelko's strip search of Mrs. Archuleta and the proximate cause of the violation of her rights.

140. At the time of the strip search, Defendant Mandelko knew that Mrs. Archuleta was the wrong person and that she lacked legal authority or probable cause to detain her, yet proceeded to strip search Mrs. Archuleta anyway.

141. At the time of the strip search, Defendant Mandelko knew that Mrs. Archuleta was to be placed in a solitary cell and not in the general prison population and would thus present no risk of passing contraband to other detainees.

142. Before the strip search, Mrs. Archuleta was subjected to three pat-down frisks in which nothing was found.

143. Defendant Mandelko conducted the strip search without reasonable suspicion that weapons or contraband were being concealed on or in Mrs. Archuleta's body.

144. By means of the unlawful strip search, Defendants Mendelko and Mink intentionally or with deliberate indifference and callous disregard of Plaintiff Archuleta's rights, deprived Mrs. Archuleta of her right to be free of unreasonable searches and seizures, in violation of the Fourth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

145. A reasonable jailer in the position of Defendant Mandelko would have known that the strip search of Plaintiff Archuleta violated clearly established law.

146. Conducting the strip search without reasonable suspicion that weapons or contraband were being concealed on or in Mrs. Archuleta's body was a gross invasion of Mrs. Archuleta's privacy and due process rights under Fourth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

147. Defendant Mink's policy of strip searching all incoming detainees regardless of the existence of reasonable suspicion intentionally or with deliberate indifference and callous disregard of individual rights, acts to deprive similarly situated detainees of the right to be free of unreasonable searches and seizures, and is an invasion of their privacy and due process rights, in violation of the Fourth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

148. Defendant Mink's authorization of the strip search policy and Defendant Mendelko's conduct in carrying out that policy caused Mrs. Archuleta's injuries, including severe emotional and psychological distress, anguish, embarrassment, humiliation, depression, anxiety, loss of sleep, loss of self-esteem, and damage to reputation.

RELIEF SOUGHT

WHEREFORE, Plaintiff prays for relief as follows:

- a. A declaration that Defendant Mink's strip search policy is unconstitutional;
- b. A judgment against Defendant Wagner for compensatory and punitive damages;
- c. A judgment against Defendant Butler for compensatory and punitive damages;
- d. A judgment against Defendant Mink for compensatory damages;
- e. A judgment against Defendant Mendelko for compensatory and punitive damages;
- f. An award of plaintiff's reasonable attorney's fees and costs of this action, pursuant to 42 U.S.C. § 1988 and any other applicable law; and
- g. Any further or other relief the Court deems just and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury.

Dated: October 17, 2006.

Respectfully submitted,

/s/ Timothy R. Macdonald

Timothy R. Macdonald, No. 29180

Andrew S. Kelley, No. 33161

Maureen E. Eldredge, No. 35826

ARNOLD & PORTER LLP

370 Seventeenth Street, Suite 4500

Denver, Colorado 80202-1370

Telephone: (303) 863-1000

Facsimile: (303) 832-0428

In Cooperation with the American Civil Liberties
Union Foundation of Colorado

Mark Silverstein

Legal Director

American Civil Liberties Union Foundation of
Colorado

400 Corona Street

Denver, CO 80218

(303) 777-5482

Attorneys for Plaintiff