

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

Civil Action No.

MICHAEL YOUNG, an individual,
Plaintiff,

v.

THE CITY OF LOVELAND, A Municipal Corporation; DEREK STEPHENS, individually; and in his official capacity as a Loveland Police Officer; and CHRISTOPHER BROWN, individually and in his official capacity as a Loveland Police Officer,
Defendants.

FIRST AMENDED COMPLAINT WITH REQUEST FOR TRIAL BY JURY

Plaintiff Michael Young, by and through his attorneys, the Law Offices of Erik Johnson, P.C., complains against Defendants and requests trial by jury as follows:

I. INTRODUCTION

1. This is an action brought by Michael Young ("Plaintiff"), a partially disabled man, to assert and prove violations of his constitutional rights caused by use of unnecessary and excessive force by officers of the Loveland Police Department.

2. On April 25, 2014, Plaintiff, then 43 years old, was stopped by Loveland police in a parking lot while Plaintiff was being driven to police station to turn himself in on a warrant.

3. During the course of this stop, Mr. Young, was assaulted and injured without legal justification. At the time, he was known to be unarmed, injured, recovering from surgery and defenseless.

4. This action is for Constitutional violations and state law personal injuries

suffered by Plaintiff as a result of an unreasonable search and seizure, assault, resulting in personal injuries and property damage.

5. Michael Young brings this action for damages under 42 U.S.C. § 1983 because Defendants jointly and severally deprived Plaintiff of his federally-protected right to be free from unreasonable seizure and unreasonable force, malicious prosecution. U.S. CONST, amends. I IV, XIV and as applied through 42 U.S.C. § 1983 and § 1988.

6. As a direct result of the policies, practices, customs and procedures of the City of Loveland ("City') and the City of Loveland Police Department ("LPD") Plaintiff Michael Young was intentionally deprived of his constitutional right to be free from unreasonable searches and seizures guaranteed to him by the Fourth Amendment to the United States Constitution.

7. Defendants Derek Stephens and Christopher Brown, police officers acting in the course and scope of their employment with the City of Loveland, and acting under color of state law, unjustifiably assaulted and injured Michael Young under circumstances where no reasonable police officer would have done so. Under long established law regarding excessive force, Officers Brown and Stephens are not entitled to qualified or other immunity for these actions.

II. JURISDICTION AND VENUE

8. This action is brought pursuant to 42 U.S.C. § 1983 and § 1988 and the Fourth Amendment, to the United States Constitution, made applicable to Defendants through the Fourteenth Amendment to the United States Constitution. This court has jurisdiction over Plaintiff's claim under 28 U.S.C. § 1331 (federal question) and under 28 U.S.C. § 1343(3) (civil rights). This court further has jurisdiction over Plaintiff' state law

claims under 28 U.S.C. § 1367 (supplemental jurisdiction) as those claims form part of the same case or controversy under Article III of the United States Constitution.

9. Statutory notice was provided pursuant to section 24-10-109, C.R.S.

10. Venue lies in the U.S. District of Colorado, the district in which the claim arose, pursuant to 28 U.S.C. § 1391(b).

III. PARTIES

11. Plaintiff Michael Young resides at 1322 Harter Place, Loveland, CO 80537. He was 43 years old at the time of the assault. The Plaintiff was, at the time, recovering from surgeries on his shoulders, abdomen and groin.

12. Defendant City of Loveland, Colorado (the “City”) is a Colorado Municipal Corporation located in Larimer County, State of Colorado, operating pursuant to the Constitution and the laws of the State of Colorado within the U.S. District of Colorado. The City of Loveland can be served with process through the Mayor, City Manager, City Clerk or Deputy Clerk, at 500 East 3rd Street, Loveland, CO 80537.

13. Defendant Derek Stephens (Officer Stephens) is an individual employed as a police officer by the City of Loveland. The acts and omissions complained of herein arise from the conduct of Officer Stephens while he was acting under color of state law and each act and omission was committed pursuant to Officer Stephens’s employment and authority as a police officer with the City of Loveland. Officer Stephens may be served with process at his place of employment, located at 500 East 3rd Street, Loveland, CO 80537.

14. Defendant Christopher Brown (Officer Brown) is an individual employed as a police officer by the City of Loveland. The acts and omissions complained of herein arise from the conduct of Officer Brown while he was acting under color of state law

and each act and omission was committed pursuant to Officer Brown's employment and authority as a police officer with the City of Loveland. Officer Brown may be served with process at his place of employment, located at 500 East 3rd Street, Loveland, CO 80537.

IV. STATEMENT OF FACTS

Initial Contact

15. On April 17, 2014, Loveland PD officers came to Mr. Young's house on an erroneous welfare check.

16. Mr. Young had recent surgery, was taking medications for pain and was not feeling well. He had asked his former girlfriend to stop by and visit because he was having a bad reaction to prescription medication. When she advised she could not come over, Mr. Young just went to sleep. The former girlfriend had been drinking and could not drive. Exercising poor judgment she called the Loveland PD to ask them to do a welfare check.

17. When they knocked on the front door, it was dark outside and there were some lights in the house.

18. The officers could see him come into the front living room in semi-darkness. Mr. Young had large plants in front of the window, which was also covered by curtains and screens.

19. His living room is small and cluttered with furniture and decor.

20. Mr. Young only saw figures in his front yard but could identify them as police.

21. He picked up a flashlight and answered the door to look around outside.

22. When Mr. Young opened his front door, no one was there. The police had hidden from view.

Executing the Warrant

23. The police reports indicate that Officer Sauter, who was in the front yard, thought she may have seen a knife on the floor and a gun in Mr. Young's underwear.

24. Upon that basis, the LPD officers applied for a warrant to search Mr. Young's house because they claimed he had a semi-automatic handgun.

25. That assertion was false.

26. Mr. Young is a non-violent previous offender; he was convicted for attempting to sell prescription drugs in 1997 and possession of prescription medications in 2004.

27. Accordingly, Mr. Young was under suspicion of possessing a weapon by a previous offender.

28. The LPD put Mr. Young under surveillance.

29. The LPD put together a plan to arrest Mr. Young at a "traffic stop" when he left his home and concurrently search his home with a swat team while he was out.

30. On April 25, 2014, the LPD came to execute the search warrant.

31. The LPD came in "full swat" meaning in force, fully armed and equipped with battle gear.

32. Because Mr. Young was under surveillance, his vehicle was gone, the LPD knew he was not home.

33. The house was empty; no one was home.

34. No exigent circumstances justified the failure to contact Mr. Young to request a peaceful search of his home.

35. The LPD smashed the front door in using a battering ram.

36. The City of Loveland caused permanent damage to the door by smashing it and Mr. Young has not been able to devote money from his disability income to repair or replace the door.

37. The City of Loveland was never actually or constructively refused admittance to the house before they forced entry.

38. The City of Loveland acted with reckless indifference to and deliberate disregard for the rights of Michael Young when they decided to break down his door and ransack his house.

39. The LPD searched the home, emptying drawers, cabinets, shelves and throwing his possessions around the rooms and onto the floor. Mr. Young's medication bottles were opened and the pills strewn about. His bed was pulled apart.

40. The LPD found no gun because Mr. Young did not (and still does not) have a gun.

41. The LPD did find a home-made hunting knife given to Mr. Young by his grandfather. They also found a cheap Chinese ceremonial sword in a closed dusty case that he had bought at a flea market.

42. The LPD made no effort to put Mr. Young's possessions back or to clean up the mess they had made.

43. The LPD made no effort to contact Mr. Young to explain what they had done to his home.

44. On April 25, 2014, according to LPD reports, at approximately 1700 hours, LPD

received a phone call from Michael Young to report a burglary at his home. He was calling, because his front door was smashed in, he was burglarized, and his house was damaged and in a shambles. The shock and state of his home caused him extreme anxiety.

45. Mr. Young's home was in disarray, with drawers emptied, clothing and medications maliciously strewn about his bedroom. He never located all his medications.

46. Mr. Young told LPD dispatch that he was not home when he was burglarized. During the call, dispatch transferred the call to LPD Detective Patrick Musselman. Detective Musselman advised Mr. Young that it was the LPD who were in his home and asked him to turn himself in at the police department. Mr. Young told Detective Musselman that he could not turn himself in because he was disabled, and had just taken more medications due to his shock, anxiety and pain.

47. Officers Brown and Stephens were assigned to the Loveland Police Department Street Crimes Unit (SCU) working a plain clothes assignment with the Loveland Police Department (LPD) Criminal Investigations Unit (CIU) on the search and arrest warrant at 1322 Harter Place, Loveland, CO; i.e. covering Mr. Young by surveillance.

48. Officers Brown and Stephens were in an unmarked SUV near his home.

49. At approximately 1715 hours, Alice Young, plaintiff's grandmother, 83 years of age, arrived in her blue Volkswagen.

50. Alice Young spoke with LPD and advised that she would transport Michael Young to the LPD.

51. Officer Musselman advised Alice Young and Michael Young that they must have two

piles of cash of \$250 and \$60 to bond out.

52. It is apparently not possible for the LPD to make change for a cash bond.

53. Alice Young then began to drive Michael Young to the LPD, but first stopping at the Loveland Albertson's store to get the exact amount of cash for the bond. Officers Brown and Stephens followed in an unmarked SUV. They were in "plain clothes."

54. When Alice Young parked in a parking stall at Albertson's, the police ordered Mr. Young out of the car and to raise his hands.

55. Both officers were pointing fully locked and loaded AR-15 Assault rifles at Mr. Young.

56. The loaded assault rifles, in firing position, in Mr. Young's face, and aimed at his grandmother, caused him additional fear and extreme anxiety.

57. Plaintiff exited the car as commanded.

58. According to the LPD reports, Michael Young was very slow in reacting and reached down grabbing what looked like money. As he opened the door to the car when told to get out, he grabbed a black metal cane. Michael Young was slow in exiting and looked like he was in severe pain. He was told to raise his hands and turn around, and at that same time, Plaintiff raised his hands holding his cane.

59. Mr. Young was complying with the orders, had his hands raised and clearly unarmed.

60. Although Mr. Young was out of the vehicle, hands raised and unarmed, the officer Stephens continued to point the AR-15 at his face at close range.

61. Michael Young clearly stated he was complying with the orders and that he was

disabled. He asked the officers to “take it easy on me;” however, although the officers observed he appeared to be in severe pain, the officers did not listen to him and continued to shout at plaintiff, pointing guns, yelling at least five times to get out of the car and raise his hands after he had complied, causing plaintiff extreme fear.

62. At the same time, Alice Young started to get out of the Volkswagon and the officers continued shouting at her to get back in the car.

63. Although Alice Young was out of the car, she was told to get back in, was clearly unarmed and terrified, and Officer Brown continued to point the AR-15 in her face.

64. With the repeated screaming from both officers, after he had complied, unable to raise his arms higher, and officers’ continued shouting at his grandmother, plaintiff uttered “fuck off - I am complying with your orders.” He then slowly turned around.

65. Upon hearing plaintiff’s utterance, Officer Stephens charged at plaintiff and shoved him into the side of his grandmother’s car.

66. The officer spun plaintiff around and placed him in handcuffs.

67. The officer searched Mr. Young.

68. From this point forward, the officers knew Mr. Young was unarmed, handcuffed, and posed no threat.

69. Mr. Young was never threatening, violent or aggressive at any time during his arrest by the LPD.

70. The LPD officers did not have any reason to believe that Mr. Young posed any

threat, committed a crime, or had done anything wrong by the time he was in custody because he was unarmed and the search of the house and car did not find a gun.

71. The officer twisted and wrenched plaintiff's arms and wrists.

72. Plaintiff's face was pressed against the glass window directly in the view of his grandmother, causing pain to his face and ear, accompanied by redness and swelling.

73. Officer Stephens then slammed plaintiff into the car again, smashing his face against the window.

74. The officer then grabbed plaintiff's arms and pulled them upward, turning him toward the police vehicle and shoving him toward the vehicle.

75. Plaintiff again told the officer he was disabled and hurt.

76. Plaintiff's grandmother was on the phone asking Detective Musselman why they were stopped when they were getting cash at the grocery store for the bond.

77. Officer Stephens continued to shove plaintiff toward the vehicle while raising plaintiff's arms that were in handcuffs. The officer had plaintiff's cane in one hand, his handcuffed wrists in the other. He taunted the Plaintiff that he could "walk just fine" as he leveraged Mr. Young forward by wrenching his handcuffed arms.

78. Plaintiff stated he had knee problems that needed surgery.

79. The officer then slammed plaintiff against the police car and tightened the handcuffs to the point they were hurting the plaintiff.

80. Plaintiff cried out in pain when his arms were pulled upward from behind. He told the officer that he just had shoulder surgery and surgery on his stomach and

groin, but the officer kept wrenching plaintiff's wrists and shoulders.

81. The officer then slammed plaintiff three times in succession against the car.

82. The officer then stomped on plaintiff's right foot and the kicked Plaintiff's left leg out to spread his legs. Plaintiff's left knee buckled causing injury.

83. The officer then struck plaintiff on the back of the head and neck with a forearm smash as plaintiff's head was against the car. The officer then ground his forearm into plaintiff's neck.

84. The forearm strikes fractured vertebrae in plaintiff's neck.

85. At this time, plaintiff's grandmother could hear plaintiff being slammed into the officers' car and was screaming that plaintiff was hurt.

86. Officer Stephens removed an ice bag from plaintiff's waistband for officer safety. Plaintiff advised that again that he had surgery and that the ice bag was for pain control.

87. According to LPD reports, the officers noticed that Michael Young's movements were dramatically different, with extremely small and slow steps, from the time prior to the arrest.

88. Nonetheless, the officer shoved the plaintiff, bent over, into the small back seat compartment of the unmarked SUV.

89. Officer Stephens and Brown transported Plaintiff back to LPD for booking. During the ride to LPD plaintiff asked if these officers had broken his door. The officers denied this and Plaintiff apologized for his comment at the traffic stop. Officer Stephens accepted the apology

and agreed they could all get along from that point forward.

90. The officers did not apologize for slamming plaintiff against the car five times, kicking his leg, taking his cane, wrecking his house, tearing his shoulder tendons, tearing his knee meniscus or fracturing his vertebrae.

91. The officers never explained why he was under surveillance, why he was followed and arrested, or why his house was broken into and ransacked

92. At the LPD, officers took Michael Young from the back seat. They reported his movements were very exaggerated and slow. Officer Brown assisted him as he slid out of the vehicle.

93. Once standing, plaintiff was walking with a limp, previously not seen while at his house. Officer Brown took the handcuffs off of Michael Young allowing him to rest his arms and shoulders.

94. Officer Brown told Plaintiff that normally he requires arrestees to put their hands on their head while being un-cuffed however he would make an exception for him. Mr. Young sat on the booking bench after being un-cuffed. LPD produced an ice pack for Mr. Young after his requested one. With Plaintiff uncomfortable sitting, Officer Brown allowed Michael Young to stand at the booking counter since it was more comfortable to stand.

95. After leaving the LPD, Mr. Young went to the hospital. As he was being wheeled out of the hospital in a wheelchair an officer confronted him and threatened him not to file a complaint or file a lawsuit. He claimed plaintiff was treated gently and it was all on video.

96. Michael Young did file a complaint about being assaulted during the arrest; however,

the same officer conducted the investigation and found no misconduct under LPD policy.

97. Plaintiff's charges were eventually dismissed; Plaintiff had committed no crime. The alleged weapon was a small flashlight found on the window sill.

98. At the time of this Complaint, plaintiff's house and property remain damaged. The front door remains splintered, the door jams are broken, the drywall is damaged with texture and paint torn from the wall, and a file cabinet is broken.

99. Plaintiff suffered torn tendons in his shoulders, a torn meniscus in his knee and fractured vertebrae because of the unnecessary and excessive use of force in making the unnecessary stop and arrest.

FIRST CLAIM FOR RELIEF 42 U.S.C §1983

Excessive and unreasonable Force in Executing the Warrant in violation of the Fourth Amendment (Against Defendant City of Loveland)

100. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

101. The City of Loveland acted under color of law when it used force against Michael Young's residence and property.

102. The acts of the City of Loveland deprived Mr. Young of his Fourth Amendment rights to free from unreasonable search and seizure, among other rights.

103. The City of Loveland, through its agency, the Loveland Police Department ("LPD"), acted pursuant to expressly adopted official municipal policies, longstanding custom and practices of the LPD.

104. The level of force used by the LPD was excessive and unreasonable under the

circumstances.

105. The LPD made a Fourth Amendment seizure of the Plaintiff's home and property.

106. The force used in executing the warrant was objectively unreasonable.

107. The suspected crime was not non-violent.

108. There was no indication that at the time of the forced entry that Plaintiff posed a threat to anyone.

109. The use of the swat team in full battle armor with automatic weapons and battering ram was far beyond any objective standard of reasonableness for this search.

110. There were no factors present in this case to justify the use of such force.

111. In executing the warrant, there were no "split-second" decisions or exigent circumstances threatening the officers' safety.

112. There was no aggression from Mr. Young.

113. Mr. Young did not threaten anyone.

114. Mr. Young was not home.

115. From April 17th to April 25, 2014, the LPD had sufficient time to plan other, less violent, risky, or intrusive methods to investigate whether Mr. Young was violating state law by owning a gun.

SECOND CLAIM FOR RELIEF 42 U.S.C §1983

Excessive Force in violation of the Fourth Amendment (Against Defendants Stephens, Brown and the City, pre-arrest)

116. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom

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

117. Plaintiff in this action is a citizen of the United States and all of the individual

118. Police officer Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.

119. All individual Defendants to this claim, at all times relevant hereto, were acting under the color of state law in their capacity as Loveland police officers and their acts or omissions were conducted within the scope of their official duties or employment.

120. At the time of the complained of events, Plaintiff had a clearly established constitutional right under the Fourth Amendment to be secure in his person from unreasonable seizure through excessive force.

121. Plaintiff also had the clearly established Constitutional right under the Fourth Amendment to bodily integrity and to be free from excessive force by law enforcement.

122. Any reasonable police officer knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

123. Defendants Stephens' and Brown's actions and use of force, as described herein, were objectively unreasonable in light of the facts and circumstances confronting them and violated these Fourth Amendment rights of Plaintiff.

124. Defendant officers' actions and use of force, as described herein, were also malicious and/or involved reckless, callous, and deliberate disregard for and indifference to Mr. Young's federally protected rights, feelings and well-being. The force used by these Defendant officers shocks

the conscience and violated these Fourth Amendment rights of Plaintiff.

125. Defendants Stephens and Brown unlawfully seized Mr. Young by means of objectively unreasonable, excessive and conscious shocking and unnecessary physical force, thereby unreasonably depriving Mr. Young of his freedom from unreasonable seizure and injury.

126. The force used constituted unreasonable excessive force in that it caused serious bodily injury.

127. Officer Brown and the other officers who may have been present had an affirmative duty to prevent unreasonable use of force and the resulting injuries to the Plaintiff.

128. Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Mr. Young's federally protected constitutional rights.

129. They did so with shocking and willful indifference to Plaintiff's rights and their conscious awareness that they would cause Plaintiff severe physical and emotional injuries.

130. The acts or omissions of all individual Defendants were moving forces that caused Plaintiff's injuries and exacerbated his existing injuries.

131. All Defendants acted in concert and joint action with each other.

132. The acts or omissions of Defendants as described herein intentionally deprived Plaintiff of his constitutional rights and caused him other damages.

133. These individual Defendants are not entitled to qualified immunity for the complained of conduct.

134. The Defendants to this claim at all times relevant hereto were acting pursuant to municipal/county custom, policy, decision, ordinance, regulation, widespread habit, usage, or practice in their actions pertaining to Plaintiff.

135. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered actual

physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue to incur further medically and other special damages related expenses, in amounts to be established at trial.

136. Upon information and belief, Plaintiff may suffer lost future earnings and impaired earning capacities from the not yet fully ascertained diagnosis and prognosis of his neck, shoulder, knee and emotional injuries, in amounts to be ascertained in trial. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law.

137. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

**THIRD CLAIM FOR RELIEF 42 U.S.C. § 1983
Retaliation in Violation of the First Amendment
(Against Defendants Stephens and Brown)**

138. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

42 U.S.C. § 1983 provides that:

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

139. Plaintiff in this action is a citizen of the United States and all of the individual police

officer Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.

140. All individual Defendants to this claim, at all times relevant hereto, were acting under the color of state law in their capacity as Loveland police officers and their acts or omissions were conducted within the scope of their official duties or employment.

141. At the time of the complained of events, Plaintiff the clearly established constitutional right to be free from retaliation for the exercise of protected speech.

142. Any reasonable police officer knew or should have known of this right at the time of the complained of conduct as it was clearly established at that time.

143. Mr. Young exercised his constitutionally protected right to question law enforcement and/or engaged in protected speech related to the constitutional rights of citizens with respect to searches of their property by the police and objectionable police conduct.

144. Retaliatory animus for Mr. Young's exercise of his constitutionally protected right to question Loveland Police Officers, who appeared from their unmarked vehicle, in plain clothes, without identifying themselves, pointing guns at him, and, regarding the apparent unreasonableness of the officers' repeated commands, scope of their legal authority to command him to turn around directions, raise his arms and search his grandmother's car, disrespect for his grandmother, was a substantially motivating factor in the excessive force used by individual Defendants.

145. The officers' use of excessive force to retaliate, punish, or establish power over plaintiff for his harmless comment is disproportionate and beyond how a reasonable peace officer would react.

146. The excessive force used against Plaintiff in retaliation for his protected conduct would deter a person of ordinary firmness from continuing to engage in the protected conduct.

147. All of these Defendant officers participated in this use of force as a means of retaliation

for his protected speech and none of the Defendant officers took reasonable steps to protect Plaintiff from this retaliation for the protected speech. They are each therefore liable for the injuries and damages resulting from the objectively unreasonable and conscience shocking force of each other officer.

148. Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Mr. Young's federally protected constitutional rights.

149. The acts or omissions of all individual Defendants were moving forces behind Plaintiff's injuries.

150. These individual Defendants acted in concert and joint action with each other. The acts or omissions of Defendants as described herein intentionally deprived Plaintiff of his constitutional and statutory rights and caused him other damages.

151. Defendants are not entitled to qualified immunity for the complained of conduct.

152. The Defendants to this claim at all times relevant hereto were acting pursuant to municipal/county custom, policy, decision, ordinance, regulation, widespread habit, usage, or practice in their actions pertaining to Plaintiff.

153. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial.

154. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue to incur further medically and other special damages related expenses, in amounts to be established at trial.

155. Upon information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained diagnoses of his neck, shoulder, knee and emotional injuries, in amounts to be ascertained in trial. Plaintiff is further entitled to attorneys' fees

and costs pursuant to 42U.S.C. §1988, pre-judgment interest and costs as allowable by federal law.

156. In addition to compensatory, economic, consequential and special damages, Plaintiff is entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiff.

157. The Defendants to this claim at all times relevant hereto were acting under the color of state law.

**FOURTH CLAIM FOR RELIEF- Violation of 42 U.S.C. § 1983
Deliberately Indifferent Policies, Practices, Customs, Training, and Supervision
in violation of the Fourth and First Amendments and in violation of 42 U.S.C. § 1981
(Against the City of Loveland – procedures in Execution of Warrant and Arrest)**

158. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

159. The City of Loveland acted under color of law when it used force against Michael Young.

160. The acts of the City of Loveland deprived Mr. Young of his Fourth Amendment rights to free from unreasonable search and seizure, among other rights.

161. The City of Loveland, through its agency, the Loveland Police Department (“LPD”), acted pursuant to an expressly adopted official municipal policy and longstanding custom and practices of the LPD.

42 U.S.C. § 1983 provides that:

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

162. Plaintiff in this action is a citizen of the United States and Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.

163. Plaintiff had the following clearly established rights at the time of the complained of conduct:

- a. the right to be secure in his person from unreasonable seizure through excessive force, under the Fourth Amendment;
- b. the right to bodily integrity and to be free from excessive force by law enforcement under the Fourth Amendment;
- c. the right to exercise his constitutional rights of free speech under the First Amendment without retaliation and,
- d. the right to be free from malicious prosecution under the Fourth Amendment.

164. The City acting through the LPD knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

165. The acts or omissions of these Defendants, as described herein, deprived Mr. Young of his constitutional and statutory rights and caused him other damages.

166. The acts or omissions of Defendants as described herein intentionally deprived Plaintiff of his constitutional and statutory rights and caused him other damages.

167. Defendants are not entitled to qualified immunity for the complained of conduct.

168. These Defendants developed and maintained policies, procedures, customs, and/or practices, such as employing a swat team and force when not necessary, exhibiting deliberate disregard and indifference to the constitutional rights of citizens, which were moving forces behind and proximately caused the violations of Mr. Young's constitutional and federal rights as set forth herein and in the other claims, resulted from a conscious or deliberate choice to follow a course of action from among various available alternatives.

169. The City of Loveland deliberately used excessive force, by means of an overwhelming force of swat team, armed as a military force, with automatic weapons, unmarked vehicles, restraint techniques, property destruction, verbal abuse, intimidation, deceit, dishonesty, beating, twisting limbs, kicking, far beyond the needs of the investigation, search warrant and arrest of the Plaintiff, suspected, under dubious circumstances, of having a weapon that he actually never had.

170. The City of Loveland's unreasonable use of force, intrusion, violation of rights and dignity against Plaintiff has caused him catastrophic exacerbation of his preexisting injuries and mental strain and anxiety.

171. Defendant City of Loveland and its Police Department have created and tolerated an atmosphere of lawlessness, and have developed and maintained long-standing, department-wide customs, law enforcement related policies, procedures, customs, practices, and/or failed to properly train and/or supervise its officers in a manner amounting to deliberate indifference to the constitutional rights of Plaintiff and of the public.

172. In light of the duties and responsibilities of those police officers that participate in arrests and preparation of police reports on alleged crimes, the need for specialized training and supervision is so obvious, and the inadequacy of training and/or supervision is so likely to result in the violation of constitutional and federal rights such as those described herein that the failure to provide such specialized training and supervision is deliberately indifferent to those rights.

173. The deliberate training, policies and supervision provided by the City resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to the officers and were moving forces in the constitutional and federal violation injuries complained of

by Plaintiff.

174. As a direct result of Defendants' deliberate conduct, Plaintiff has suffered actual physical and emotional injuries, and other damages and losses as described herein entitling him to compensatory and special damages, in amounts to be determined at trial.

175. As a further result of the Defendants' unlawful conduct, Plaintiff has incurred special damages, including medically related expenses and may continue to incur further medically or other special damages related expenses, in amounts to be established at trial.

176. Upon information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained prognoses of his neck, shoulder knee and emotional injuries, in amounts to be ascertained in trial. Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law.

177. Finally, Plaintiff seeks appropriate declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 to redress Defendants' above described ongoing deliberate indifference in policies, practices, habits, customs, usages, training and supervision with respect to the rights described herein, and with respect to the ongoing policy and/or practice of the Internal Affairs Bureau of failing to investigate or appropriately handle complaints of the same, which Defendants have no intention for voluntarily correcting despite obvious need and requests for such correction.

REQUEST FOR RELIEF

Plaintiff requests that this Court enter judgment for the Plaintiff and against each of the Defendants and grant:

A. compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;

- B. economic losses on all claims allowed by law;
- C. special damages in an amount to be determined at trial;
- D. punitive damages on all claims allowed by law against individual Defendants and in an amount to be determined at trial;
- E. attorneys' fees and the costs associated with this action under 42 U.S.C. § 1988, Including expert witness fees, on all claims allowed by law;
- F. pre- and post-judgment interest at the lawful rate; and,
- G. any further relief that this court deems just and proper, and any other appropriate relief at law and equity.

PLAINTIFF REQUESTS A TRIAL BY JURY.

Respectfully submitted this 8th day of September, 2015.

Respectfully submitted,

ERIK A. JOHNSON LAW OFFICES, P.C.

/s/Erik A. Johnson

Erik A. Johnson, A.R. 23989
325 East 7th Street
Loveland, CO 80537
(970) 481-8876
lovelandlaw@gmail.com
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of September, 2015, I electronically filed a true and exact copy of the PLAINTIFF'S FIRST AMENDED COMPLAINT with the Clerk of Court using the CM/ECF system which will send notification of this filing to the following email addresses:

Eric M. Ziporin
Senter, Goldfarb & Rice, LLC
3900 E. Mexico Ave., Suite 700
Denver, CO 80210
Telephone: (303) 320-0509
Fax:(303) 320- 0210
Email: eziporin@sgrc.com

DJ Goldfarb
Senter, Goldfarb & Rice, LLC
3900 E. Mexico Ave., Suite 700
Denver, CO 80210
Telephone: (303) 320-0509
Fax:(303) 320- 0210
Email: dgoldfarb@sgrc.com

/s/ Debra Bullock
Email: ej.db.law@gmail.com
Paralegal to Erik A. Johnosn