

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

Civil Action No.

Alexander Landau

Plaintiff,

v.

RANDY MURR, individually;  
RICKY NIXON, individually;  
TIFFANY MIDDLETON, individually;  
GERALD WHITMAN, in his official capacity;  
CITY AND COUNTY OF DENVER;

Defendants.

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**CIVIL RIGHTS COMPLAINT WITH REQUEST FOR TRIAL BY JURY**

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Plaintiff Alexander Landau, by and through his attorneys, the Law Offices of John Robert Holland, P.C., complains against Defendants and requests trial by jury as follows:

**I. INTRODUCTION**

1. This is an action brought by Alexander Landau, an African American college student, to vindicate profound deprivations of his constitutional rights caused by race based police brutality.

2. On January 15, 2009, Plaintiff, then 19 years old, was stopped by Denver police in a traffic stop for an allegedly illegal left turn.

3. During the course of this stop, Mr. Landau, was not only senselessly beaten, but also racially branded by Denver police officers who called him “nigger.” At the time, he was known to be defenseless.

4. The individually sued Defendant officers assaulted Mr. Landau with their fists, a radio and a flashlight, beating his face and head many times until he was rendered unconscious.

5. These pictures show Mr. Landau's facial injuries shortly after the beating:





6. This picture, also taken at the time, shows Mr. Landau's blood covering a police jacket:



7. In concert or conspiracy, Defendants then maliciously and baselessly caused Plaintiff to be prosecuted with the serious charge of attempting to disarm a police officer, a charge that was subsequently dismissed by the Denver District Attorney.

## **II. JURISDICTION, VENUE, AND NOTICE**

8. This action arises under the Constitution and laws of the United States, including Article III, Section 1 of the United States Constitution and is brought pursuant to 42 U.S.C. §§ 1981, 1983 and 42 U.S.C. § 1988. The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343, 2201.

9. This case is instituted in the United States District Court for the District of Colorado pursuant to 28 U.S.C. §1391 as the judicial district in which all relevant events and omissions occurred and in which Defendants maintain offices and/or reside.

### **III. PARTIES**

10. At all times relevant hereto, Plaintiff Alexander Landau was a resident of the State of Colorado and a citizen of the United States of America.

11. At all times relevant hereto, Defendant Randy Murr was a citizen of the United States and a resident of the State of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed by the Defendant City and/or of the Denver Police Department. Defendant Murr is sued individually.

12. At all times relevant hereto, Defendant Ricky Nixon was a citizen of the United States and a resident of the State of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed by the Defendant City and County of Denver and/or of the Denver Police Department. Defendant Nixon is sued individually.

13. At all times relevant hereto, Defendant Tiffany Middleton was a citizen of the United States and a resident of the State of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed by the Defendant City and County of Denver and/or of the Denver Police Department. Defendant Middleton is sued individually.

14. Defendant City & County of Denver, hereinafter “Defendant City” is a Colorado municipal corporation and is the legal entity responsible for itself and for the Denver Police Department. This Defendant is also the employer of the individual Defendants and is a proper entity to be sued under 42 U.S.C. § 1983.

15. At all times relevant hereto, Defendant Gerald Whitman was a citizen of the United States and a resident of the State of Colorado. Defendant Gerald Whitman is sued in his official capacity as the Chief of the Denver Police Department, employed by the Defendant City and/or the Denver Police Department, and was acting under color of state law.

16. As the Chief of the Denver Police Department, Defendant Whitman both exercised and delegated his municipal final decision making power to the Internal Affairs Bureau and others. On information and belief, he also trained and supervised individual Defendants Murr, Nixon, and Middleton.

17. Defendant City and Defendant Whitman are properly sued directly under 42 U.S.C. § 1983 for their own and their delegated deliberately indifferent unconstitutional decisions, policies, practice, habits, customs, usages, training and derelict supervision, ratification, acquiescence and intentional failures which were moving forces in the complained of constitutional and statutory violations and resulting injuries.

18. The Defendant City is also properly sued under 42 U.S.C. § 1983 for the challenged delegated final decisions of Defendant Gerald Whitman in his official capacity as the Chief of the Denver Police Department, and for those of any final delegated decision makers, with respect to the hereinafter challenged deliberately indifferent policies, decisions, widespread habits, customs, usages and practices.

#### **IV. STATEMENT OF FACTS**

19. Plaintiff incorporates all of the preceding paragraphs, including the allegations and photographs in the Introduction, as if they were fully set forth again at this point.

20. At the time he was pulled over by Denver Police Officers, Alexander Landau was driving with Addison Hunold as a passenger.

21. Defendant Nixon made the initial contact with Plaintiff during this traffic stop.

22. Plaintiff did not have his wallet on him and gave Defendant Nixon his identifying information so he could look up his license.

23. Defendant Nixon instructed Mr. Landau to get out of the car.

24. Defendant Nixon frisked and patted Mr. Landau down, finding no weapons.

25. Defendant Nixon next told Mr. Hunold to get out of the car.

26. Mr. Hunold volunteered that he had a small amount of marijuana on him and was placed in handcuffs.

27. Mr. Hunold was told to stand by the police vehicle.

28. Mr. Landau was standing between Mr. Hunold and his car while Defendant Nixon searched the inside of the car.

29. During this time, Defendant Murr arrived at the scene in another police car.

30. Defendants Middleton and Murr stood by while Defendant Nixon conducted the search.

31. When Defendant Nixon began to move to unlock the trunk of the car, Mr. Landau calmly asked if they had a warrant that authorized the search of the trunk.

32. This question was constitutionally protected speech under the First Amendment to the United States Constitution.

33. While asking if they had a warrant, Mr. Landau slowly stepped toward the officers with his hands deferentially raised in the air, showing that he was not a threat.

34. The individual Defendants became irate at this questioning of their legal authority by an African American.

35. Defendant Murr grabbed Mr. Landau by his left hand and arm and Defendant Middleton grabbed Mr. Landau by his right hand and arm.

36. While Defendants Murr and Middleton held his arms, Defendant Nixon looked at Plaintiff with a smirk and said “you don’t have your license.” Without any justification or provocation, Defendant Nixon then punched the restrained Plaintiff in the face.

37. As a result of being punched in the face, Plaintiff and Defendant officers holding him fell to the ground.

38. To provide cover and divert from liability for the initiation and continuation of this unprovoked attack, Officer Murr falsely and outrageously yelled: “He’s going for the gun.”

39. Defendant Murr yelled this to fabricate and plant evidence, knowing it to be false and that it would be broadcast over the radio to and inflame other officers.

40. Plaintiff responded quickly, loudly stating: “No, I’m not!”, a declaration which was ignored by all three Defendant Officers.

41. Defendants Nixon, Murr, and Middleton beat Plaintiff, subjecting him to deadly force.

42. Plaintiff was struck in the face and head many times with their fists, a radio, and a flashlight.

43. All three individual Defendant officers engaged in this unprovoked attack. None of the officers took any steps to protect the Plaintiff against the other officer’s use of excessive force, despite being in a position and having a duty to do so.

44. More Denver Police arrived at the scene and joined in on this one-sided attack.



45. Additional force by additional police officers was also not remotely justified.

46. Mr. Hunold yelled “stop” and “what the hell are you doing?” as even more officers joined in on this vicious beating, but his pleas were ignored and the beating continued until Plaintiff was rendered unconscious.

47. At one point, Officer Murr put his revolver to Plaintiff’s head and threatened to shoot him. Defendant Nixon has falsely testified in motions hearings related to the criminal charges that even this overt threat to kill Plaintiff had no affect on Plaintiff’s behavior.

48. When he came to, Plaintiff was lying in a pool of his own blood.

49. While he was still lying on the ground, a male officer said to him: “Where’s that warrant now, you fucking nigger?”

50. On information and belief, the “Where’s that warrant now, you fucking nigger?” statement was made by Defendant Murr or Defendant Nixon, as the male speaker obviously knew about the earlier warrant request by Plaintiff.

51. No other officer objected to the use of this racial epithet and all jointly participated in this beating and branding.

52. A male officer, on information and belief Defendant Murr, further terrorized Plaintiff by saying “you have no idea how close you were to getting your fucking head blown off.”

53. According to police records, Plaintiff was stopped at or around 12:30 a.m. Plaintiff was still being beaten as late as 12:46. The paramedics were not called until 12:49.

54. Paramedics arriving on the scene documented that Plaintiff was: “found lying prone on curbside, handcuffed behind his back,” “bleeding from the head/hematoma” with lacerations, and in “acute distress.”

55. Mr. Landau, in a primordial moment of spontaneous witnessing to his innocence, told the paramedics, as they charted in all capital letters: “PT. STATES ‘HE DID NOT DO ANYTHING.’”

56. Mr. Landau heard the officers talking to each other and laughing about what happened while in the ambulance before being transported to the hospital.

57. Plaintiff then began to shake and go into shock. An officer who was riding in the ambulance with Plaintiff, tauntingly told him to “stop being such a pussy.” On information and belief, this was Officer Richard Laber.

58. Mr. Landau was taken to Denver Health and treated for a broken nose, lacerations, and serious closed head injuries, including a large hematoma, a concussion, and a hemorrhage in his right eye.

59. He required several dozen stitches to control the bleeding and to close the numerous large wounds to his head.

60. The extent and damage of Mr. Landau’s closed head injuries are not yet fully ascertained.

61. When Mr. Landau’s parents rushed down to the jail to see their son beaten, they were shocked and horrified at his condition. Accompanied by his father, Mr. Landau filed a complaint with the Internal Affairs Bureau (IAB) immediately after he was released from jail, reporting both the physical and the racial/verbal abuse he had suffered at the hands of the Denver Police involved.

62. In their angst to divert from liability for and cover up their viciously brutal attack on a defenseless teenager, and/or, on information and belief, with knowledge that Plaintiff had already complained against them, Defendant officers and other officers next conspired and/or acted in

concert to have Plaintiff falsely charged and prosecuted for criminal attempt to disarm a police officer.

63. At the time of this incident, Plaintiff was an unarmed, about 155 pounds, 5'8" tall, 19 year old teenager who was no match for three grown armed officers.

64. Several officers have nonetheless knowingly made false statements that Mr. Landau was some kind of unstoppable force with super human powers, who was not able to be subdued by three armed officers and their multiple reinforcements, all with weapons, who were inflicting multiple blows to his face and head with fists, a radio and a flashlight.

65. As Defendant Nixon falsely reported in his far fetched initial statement on January 15, 2009:

I immediately attempted to restrain Landau by grabbing onto his left hand. Officer Middleton had hold of his right hand . . . Landau began to pull away and twist his body and raise his arms as he was walking towards the curb as we were trying to control him. We all fell over the curb and onto the ground while holding onto Landau . . . I began to strike Landau several times in the face with a closed fist, but it had no affect on Landau. Due to no affect with the strikes that were given to Landau, Cpl. Murr struck Landau in the head with a flashlight . . . It took several more officers to restrain Landau.

66. Defendant Murr amplified Officer Nixon's false story. He falsely reported that even striking Plaintiff an "unknown number of times in the head" with a flashlight, and choking him with the trained police "carotid technique" had no affect, requiring further beating:

Officers struck Landau several times in the face with a closed fist but Landau continued to try and reach for Middleton's gun and pull away from Nixon...I stayed behind Landau and put my arm around his neck and attempted to apply the department approved carotid technique. This did not affect Landau. I reached over and pulled Middleton's flashlight from her gunbelt and struck Landau an unknown number of times in the head.

67. Notably, despite these reports about Plaintiff's conduct of "flailing and fighting" all of these officers aggressively and uncontrollably, no officers were injured at all in this attack. On the "Use of Force Report," all three individual Defendants reported: "no injury."

68. Officer Politica, who arrived on the scene during this one-sided attack, pinocchioed this "reaching" for the gun story, falsely reporting to have actually seen Plaintiff's hand on Officer Middleton's gun.

69. Not only did officers manufacture this story, they even went so far as to intimidate and coerce Mr. Hunold into initially giving inaccurate, distorted and incomplete statements.

70. Police made Mr. Hunold fear that, if he refused to support their story, he too would be falsely charged and face significant jail time.

71. Police made it clear to Mr. Hunold in his interrogation that racism and rogue officers were pervasive in the department, telling him: "That nigger's not your friend."

72. Having just witnessed this shocking assault on Plaintiff, Mr. Hunold was himself badly shaken, terrorized, and legitimately afraid of the threats of reprisal that were being made against his person and liberty if he did not do what these officers wanted.

73. Once liberated from the undue pressure of such threats, Mr. Hunold gave an accurate statement to a public defender's investigator, clearly stating that Mr. Landau never attacked, resisted, tried to disarm or even yelled at the officers.

74. These false officer accounts, described in part above, were presented the morning after the attack to a District Attorney. Their original story, however, was not credible, consistent and/or complete enough for the District Attorney to prosecute Mr. Landau on this charge.

75. Thus, Detective James Medina wrote on January 16, 2009 at 9:45 a.m. that he had presented the facts to District Attorney Alma Staub, and that she “stated she would reject this case of attempt to disarm a peace officer based on the facts presented and I would need further details on the incident.”

76. Accordingly, Detective Medina sent an email to Officers Nixon, Middleton and Murr, inviting them to “clarify certain issues on this contact.”

77. Detective Medina was clearly seeking new or additional facts to present to the District Attorney to ensure that Mr. Landau would be prosecuted.

78. In response, Defendant officers conspired or acted in concert to add further outrageous falsehoods to their story, actively seeking to convince the District Attorney to bring the charge.

79. Individual Defendants and other officers, including supervising Detective Medina, colluded with each other in preparing their series of cover up reports. The series of collusive accounts contain numerous contradictions, escalations, and glaring omissions, only some of which are described below.

80. At 10:13 p.m. on January 16, 2009, Defendant Nixon, making express reference to Officer Politica’s report from the day before, which stated he had seen Plaintiff’s hand on Officer Middleton’s gun, suddenly claimed to have “spaced” mentioning that he witnessed a bloody handprint on Defendant Middleton’s gun. He extraordinarily added that he saw this bloody handprint before further witnessing Defendant Middleton cleaning this supposed case critical evidence off of her gun.

81. As Defendant Nixon put this in his own words responding to Detective Medina’s request for more facts:

I spaced putting this in my statement, but prior to Officer Middleton cleaning the blood off of her weapon, I observed what appeared to be the **imprint of the webbing of the hand in blood on the backstrap of her gun**, I'm not too sure if this helps out or not."

(Emphasis supplied.)

82. None of the individual Defendants mentioned in the initial police reports that Plaintiff ever touched Defendant Middleton's gun, let alone that they at one point actually had in their possession fingerprint or blood evidence on her gun.

83. Defendant Middleton herself never claims that Plaintiff made any contact with her gun and never reports wiping off any blood or handprint evidence on her gun at the scene.

84. Like Defendant Middleton, Defendant Murr, even with his reported "birds eye view" never once claims to have seen Plaintiff's hand touch Officer's Middleton's gun.

85. This was a further false and a blatant attempt to plant more evidence to secure Plaintiff's prosecution, as Defendant Nixon knew at the time that Detective Medina needed more evidence for the prosecution to go forward with this charge.

86. It is inconceivable that if Defendant officers had bloody handprint or fingerprint evidence of actual contact with the gun by the Plaintiff, evidence that would have likely secured a conviction, they would have destroyed it and/or watched it be destroyed.

87. In contrast, police in this case preserved and photographed a "bloody police jacket," a "bloody corporal shirt," and a "bloody police turtleneck" in their failed attempt to build a case against Plaintiff that would justify the use of the deadly force involved.

88. There was no such handprint or fingerprints from Plaintiff on the gun, because he never touched the gun or tried to touch it.

89. Defendant Middleton also willfully acted in concert or conspired with the other individual Defendants in attempting to conform her story, at least in part, to match other officers' account of the incident.

90. For example, she initially reported that Mr. Landau was "fighting us" and that he "pushed all three of us with such force that we all advanced toward the curb. I fell back landing on my back as he and the other officers landed on my stomach."

91. However, after Defendants Nixon and Murr both had reported that they fell to the ground rather than being assaulted by Mr. Landau, Defendant Middleton recanted her initial "assault" version of the story in response to Detective Medina's January 16, 2010 email titled "clarification on Landau."

92. To bring it in line with the other Defendants, Defendant Middleton thus stated unequivocally that: "I was never assaulted by Mr. Landau."

93. The District Attorney, apparently based on the more aligned information collusively supplied by Defendant officers and/or Detective Medina, accepted charges of attempting to disarm a peace officer on or about January 20, 2009.

94. The District Attorney, however, ultimately dropped all charges against Mr. Landau not long after Mr. Landau was granted access to the Internal Affairs files for the involved officers.

95. These charges were not dropped in response to a plea bargain or any other arrangement with Mr. Landau and constitutes a prosecutorial judgment that the case against Mr. Landau could not be proven.

96. All of the above-described acts were done by the Defendants intentionally, knowingly, willfully, wantonly, maliciously and/or recklessly in disregard for Mr. Landau's federally protected

rights, and were done pursuant to the preexisting and ongoing deliberately indifferent official custom, practice, decision, policy, training, and supervision of the Defendant City and Defendant Whitman acting under color of state law.

97. With deliberate indifference to the rights of citizens to be free from excessive force by police, the Defendant City and Defendant Whitman have ongoingly encouraged, tolerated, ratified, and acquiesced to a dangerous environment of police brutality by:

- a. failing to conduct sufficient training or supervision with respect to the constitutional limitations on the use of force;
- b. by failing to adequately punish unconstitutional uses of force;
- c. by tolerating the use of unconstitutional force;
- d. by ongoingly failing to properly or neutrally investigate citizen complaints of excessive force; and,
- e. by tolerating, encouraging, and permitting collusive statements by involved officers in such situations.

98. It is the longstanding widespread deliberately indifferent custom, habit, practice and/or policy of the Defendant City, Defendant Whitman and the Denver Police Department to permit police officers to use excessive force against individuals when such use is unnecessary and unjustified, as well as to fail to supervise and to train deputies in the appropriate constitutional limits on the use of force, knowing that these members of law enforcement therefore pose a significant risk of injury to the public.

99. Denver has recently been ranked worst in one report for the first half of 2010 out of the 63 largest law enforcement agencies "for credible excessive force reports with an estimated Excessive Force Rate of 2,206 officers involved in excessive force complaints per every 100,000 officers."



100. The Defendant City and Defendant Whitman have attempted to publicly minimize and cover up the egregious record of excessive force by Denver Police by repeatedly informing City officials and the public that the Denver Police use of force per arrest is less than most major police forces, whereas in fact Denver's police rank among the nations worst major city police departments in this category.

101. With deliberate indifference to the rights of citizens to be free from racism in law enforcement, the Defendant City and Defendant Whitman have ongoingly encouraged, tolerated, ratified, and acquiesced to police racism by:

- a. failing to conduct sufficient training or supervision with respect to the rights of citizens to be free from racism in law enforcement;
- b. by failing to adequately punish race based law enforcement actions;
- c. by ongoingly tolerating racism, slurs, and race based selective law enforcement among the police force and in police decisions;
- d. and by failing to properly investigate citizen complaints of racism, use of racial slurs, racial profiling, race based animus, and toleration of collusive statements by involved officers in such situations.

102. It is the longstanding widespread deliberately indifferent custom, habit, practice and/or policy of the Defendant City, Defendant Whitman and the Denver Police Department to permit police officers to use race and race based animus as motivating factors in police decisions and actions, as well as to fail to supervise and to train deputies in the rights of citizens to be free from such race based decision making in law enforcement.

103. With deliberate indifference to the rights of citizens to be free from retaliation for exercising their First Amendment rights, the Defendant City and Defendant Whitman have

ongoingly encouraged, tolerated, ratified, and acquiesced to a dangerous environment of police retaliation to the exercise of such rights by:

- a. failing to conduct sufficient training or supervision with respect to the protected speech rights of citizens to question the actions of police without retaliation;
- b. by failing to adequately punish retaliation by police against members of the public who exercise their protected speech rights to object to police conduct;
- c. by tolerating the use of retaliation based on protected speech;
- d. and by ongoingly failing to properly investigate citizen complaints of retaliation for exercising their First Amendment Rights.

104. It is the longstanding widespread deliberately indifferent custom, habit, practice and/or policy of the Defendant City, Defendant Whitman and the Denver Police Department to permit police officers to retaliate against individuals for exercising First Amendment rights, as well as to fail to supervise and to train deputies in the constitutional rights of individuals.

105. With deliberate indifference to the rights of citizens to be free from malicious prosecution, the Defendant City and Defendant Whitman have ongoingly encouraged, tolerated, ratified, and acquiesced to the malicious prosecution and cover up efforts by police officers by failing to investigate citizen complaints of police misconduct, instead accepting police accounts of events without question and rubber stamping through IAB any police account given.

106. It is the longstanding widespread custom, habit, practice and/or policy of the Defendant City, Defendant Whitman and the Denver Police Department to find no fault with police conduct as long as any story is given by police, regardless of how incredible.

107. The IAB routinely ratifies, acquiesces, rubber stamps, and tolerates the malicious collusive conduct and unconstitutional actions of police by routinely ignoring serious complaints of race based or other violent retaliation and fabrication of evidence by the police force.

108. The Defendant City and Defendant Whitman did exactly that here, deciding through IAB to ratify and declare to be within policy these unconstitutional, racist and retaliatory actions with a bogus, insufficiently investigated and partial IAB finding of non-fault and justifiable use of deadly force by the police officers involved.

109. Sergeant Virginia Quinones, the IAB intake worker taking Plaintiff's initial complaint of racism and brutality, actually discouraged Plaintiff from making his complaint several times. This intake worker accused Plaintiff of lying, telling him that he should "grow up", take responsibility for his actions, and that his intimidated friend was on "our side, not your side."

110. IAB consciously decided not to even speak to Addison Hunold about what he witnessed before making their determination.

111. IAB suggested to the badly injured Plaintiff during his initial complaint that he was bringing false charges, making it clear that the matter would not be neutrally investigated, but rather had been pre-decided.

112. After Plaintiff complained about his being called a "nigger" by one of the male police officers, the IAB interviewer outrageously accused him of "playing the race card" when Plaintiff suggested that there was a racial motivation behind his beating.

113. Neither the "nigger" statement, nor the excessive force complaints were meaningfully investigated by IAB or the Defendant City. Plaintiff's complaints of racism were not even mentioned in the formal determination concluding that the officers acted pursuant to policy.

114. Thus, on March 31, 2009 IAB Commander, John Burbach, wrote that it was their "finding" that the "actions of the officer were within the policies of the Denver Police Department."

115. These final policy decisions by IAB in its role as the final delegated policy decision maker with respect to reviewing police misconduct create liability for Defendant City and Defendant Whitman. They are also further evidence of the ongoing deliberately indifferent custom, habit, policy, decision, practice, training and supervision of the Denver Police Department, the Defendant City and Defendant Whitman of tolerating and encouraging lawlessness and disregard for the federal rights of citizens among the Denver Police force.

116. In this exact period, before and since this event, IAB has unfounded other complaints of racism, excessive force and outrageous actions by law enforcement without serious investigation and to provide cover up support to members of the force violating the constitutional and statutory rights of citizens.

117. On information and belief, because of this utter failure of supervision and oversight, other members of the public have been hurt by at least some of the same police officers, who have been the subject of citizen complaints both prior to January of 2009 and thereafter.

118. Defendant Murr has been publicly accused of brutalizing other citizens, but allowed to remain on the street as a police officer without significant discipline.

119. Without limitation, he was reported by the Denver Post to have beat a Pueblo County Sheriff Deputy's son without provocation.

120. The media reports that the victim was initially charged with "resistance," but that the charges there were also subsequently dropped, while the entity and police chief failed to take any meaningful action to seriously investigate or discipline the involved officers. This is the same pattern of events complained of here.

121. On information and belief, Defendant Murr was subsequently only minimally disciplined once it was revealed by video footage that he had misreported events related to this beating to cover up his own wrongdoing and that of other officer's in the improper use of force against the public.

122. On information and belief, even after this fraudulent reporting was discovered, he was under-disciplined by the former Manager of Safety pursuant to herein challenged policies, habits, practices and customs. On information and belief, the minor wrist slap he did receive for providing false reports to IAB came only after video evidence contradicted his testimony and concomitant public outcry.

123. On information and belief, Defendants Nixon and Middleton may also have a history of citizen complaints and/or discipline.

124. As a direct and proximate result of the wrongful conduct of each of the Defendants, Plaintiff has been substantially injured. These injuries include, but are not limited to, loss of constitutional and federal rights, physical injuries, impairments and disfigurement, great pain and emotional distress, and/or aggravation of pre-existing conditions, and ongoing special damages for medically/psychologically related treatment caused by the unconstitutional and moving forces concerted conduct of all these Defendants.

125. Mr. Landau is now permanently disfigured from these injuries, with a raised scar in a prominent location on his right forehead.

126. Mr. Landau also suffers persisting neurological damage and sequelae from this closed head injury, the extent of which has not yet been fully ascertained.

127. Plaintiff also continues to suffer ongoing emotional distress, with significant PTSD type symptoms, including sadness, anxiety, stress, anger, depression, frustration, sleeplessness, nightmares and flashbacks from being beaten like this.

128. Plaintiff's grandfather and great-grandfather were both Denver Police Officers and this incident has cost him to lose a great deal of faith in law enforcement and this city.

129. Plaintiff is also entitled to punitive damages on all of his claims against the individual Defendants personally to redress their willful, malicious, wanton, reckless and fraudulent conduct.

## **V. CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **42 U.S.C. § 1983 – Excessive Force in violation of the Fourth and Fourteenth Amendments (Against Defendants Murr, Nixon, and Middleton)**

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

131. 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 . . .

132. 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.

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

134. 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.

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

136. 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.

137. Defendants Murr, Nixon, and Middleton'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.

138. Defendants Murr, Nixon, and Middleton's actions and use of force, as described herein, were also malicious and/or involved reckless, callous, and deliberate indifference to Mr. Landau's federally protected rights. The force used by these Defendant officers shocks the conscience and violated these Fourteenth Amendment rights of Plaintiff.

139. Defendants Murr, Nixon, and Middleton unlawfully seized Mr. Landau by means of objectively unreasonable, excessive and conscious shocking physical force, thereby unreasonably restraining Mr. Landau of his freedom.

140. The force used constituted deadly force in that it could have caused death and did cause serious bodily injury.

141. None of the Defendant officers took reasonable steps to protect Plaintiff from the objectively unreasonable and conscience shocking excessive force of other Defendant officers or from the excessive force of later responding officers despite being in a position to do so. They are

each therefore liable for the injuries and damages resulting from the objectively unreasonable and conscience shocking force of each other officer.

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

143. 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.

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

145. These individual Defendants acted in concert and joint action with each other.

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

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

148. 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.

149. 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.

150. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his closed head injury, 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. There may also be special damages for lien interests.

151. 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.

**SECOND CLAIM FOR RELIEF**

**42 U.S.C. § 1983 – Racial Discrimination in Violation of the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1981  
(Against Defendants Murr, Nixon and Middleton)**

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

153. 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 . . .

154. 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.

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

156. At the time of the complained of events, Plaintiff had the clearly established constitutional right to be free from racial discrimination in law enforcement by police officers and to enjoy the equal protection of the laws.

157. Title 42 U.S.C. § 1981("Section 1981") provides, in pertinent part:

(a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

158. Plaintiff, as an African American is a member of a protected class, and thus also had the clearly established statutory right under this provision of 42 U.S.C. § 1981 to be free from racially motivated beatings, arrests, searches, and the filing of false charges.

159. 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.

160. Plaintiff's race was a motivating factor in the decisions to use excessive force and then maliciously prosecute Plaintiff with false charges. Defendants' conduct was undertaken with the purpose of depriving Plaintiff of the equal protection and benefits of the law, equal privileges and immunities under the law, and due process in violation of the Fourteenth Amendment and § 1981.

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

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

163. These individual Defendants acted in concert and joint action with each other.

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

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

166. 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.

167. 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.

168. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his closed head injury, 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. There may also be special damages for lien interests.

169. 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 and statutory rights of Plaintiff.

**THIRD CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Retaliation in Violation of the First Amendment**  
(Against Defendants Murr, Nixon, and Middleton)

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

171. 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 . . .

172. 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.

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

174. 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.

175. 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.

176. Mr. Landau 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.

177. Retaliatory animus for Mr. Landau's exercise of his constitutionally protected right to question Denver Police Officers regarding the scope of their legal authority to search his trunk was a substantially motivating factor in the excessive force used by individual Defendants.

178. 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.

179. 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.

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

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

182. These individual Defendants acted in concert and joint action with each other.

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

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

185. 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.

186. 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.

187. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his closed head injury, 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. There may also be special damages for lien interests.

188. 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.

**FOURTH CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Malicious Prosecution in violation of the Fourth and Fourteenth**  
**Amendments**  
(Against Defendants Murr, Nixon, and Middleton)

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

190. 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 . . .

191. 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.

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

193. At the time of the complained of events, Plaintiff had the clearly established constitutional right to be free from malicious prosecution without probable cause under the Fourth Amendment and in violation of due process under the Fourteenth Amendment.

194. 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.

195. Individual Defendants violated Mr. Landau's Fourth and Fourteenth Amendment rights to be free from malicious prosecution without probable cause and without due process when they worked in concert to secure false charges against him, resulting in his unlawful confinement and prosecution.

196. Individual Defendants conspired and/or acted in concert to institute, procure and continue a criminal proceeding for felonious attempt to disarm a peace officer against Mr. Landau without probable cause.

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

198. The procurement of prosecution against Mr. Landau for the known to be false allegations of attempting to disarm Officer Middleton were malicious, shocking, and objectively unreasonable in the light of the circumstances.

199. Those criminal proceedings terminated in Plaintiff's favor. The prosecutor dropped the charges without any compromise by Plaintiff, reflecting a prosecutorial judgment that the case could not be proven beyond a reasonable doubt.

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

201. These individual Defendants acted in concert and joint action with each other.

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

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

204. 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 its actions pertaining to Plaintiff.

205. 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 or other special damages related expenses, in amounts to be established at trial.

206. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his closed head injury, 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. There may also be special damages for lien interests.

207. 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.

**FIFTH CLAIM FOR RELIEF**

**Violation of 42 U.S.C. § 1983 – Deliberately Indifferent Policies, Practices, Customs, Training, and Supervision in violation of the Fourth, Fourteenth, and First Amendments and in violation of 42 U.S.C. § 1981**

(Against City and County of Denver and Defendant Whitman only)

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

209. 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 . . .

210. 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.

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

212. 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 Fourteenth Amendment;
- c. the right to exercise his constitutional rights of free speech under the First Amendment without retaliation;
- d. the right to be free from discrimination by police under the Equal Protection Clause of the Fourteenth Amendment and under 42 U.S.C. § 1981; and,
- e. the right to be free from malicious prosecution under the Fourth and Fourteenth Amendments.

213. Defendant Whitman and Defendant City knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

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

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

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

217. Defendant Whitman, Defendant City, and IAB were, at all times relevant, policymakers for the City and County of Denver and the Denver Police Department, and in that capacity established policies, procedures, customs, and/or practices for the same.

218. These Defendants developed and maintained policies, procedures, customs, and/or practices exhibiting deliberate indifference to the constitutional rights of citizens, which

were moving forces behind and proximately caused the violations of Mr. Landau'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.

219. Defendant Whitman and the Defendant City 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.

220. 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.

221. The deliberately indifferent training and supervision provided by Defendant City and Defendant Whitman resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to Defendant City and Defendant Whitman and were moving forces in the constitutional and federal violation injuries complained of by Plaintiff.

222. As a direct 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 or other special damages related expenses, in amounts to be established at trial.

223. On information and belief, Plaintiff may suffer lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his closed head injury, 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. There may also be special damages for lien interests.

224. 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.

## **VI. PRAYER FOR RELIEF**

Plaintiff prays 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 11th day of January, 2011.

/s/John R. Holland  
John Holland  
Anna C. Holland-Edwards  
Erica T. Grossman