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| LARIMER COUNTY DISTRICT COURT STATE OF COLORADO | | |
| 201 LaPorte Ave Fort Collins, CO 80521 | | |
| WENDY LOVE, and JAY HAMM, Plaintiffs, | | ▲ COURT USE ONLY ▲ |
| v. | | Case Number: |
| OFFICER MATHEW GRASHORN, SERGEANT PHILIP METZLER, CHIEF ROBERT TICER, and CITY OF LOVELAND, Defendants. | | 2021CV30461 |
| <i>Attorney for Plaintiffs:</i> Sarah Schielke, #42077 P: (970) 493-1980 The Life & Liberty Law Office F: (970) 797-4008 1209 Cleveland Avenue Loveland, CO 80537 sarah@lifeandlibertylaw.com | | Division: 3B |
| AMENDED COMPLAINT AND JURY DEMAND | | |

COMES NOW the Plaintiffs, Wendy Love and Jay Hamm, by and through the undersigned counsel, with this *Amended Complaint and Jury Demand* and in support of the same, respectfully submits as follows:

INTRODUCTION

1. Plaintiffs bring this civil rights action pursuant to § 13-21-131, C.R.S. and 42 U.S.C. § 1983 and 1988 for relief through compensatory damages and attorneys fees stemming from Defendants’ violations of Plaintiffs’ rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and Article II, Section 7 of the Colorado Constitution.
2. The Court has jurisdiction over Plaintiffs’ claims pursuant to § 13-21-131, C.R.S., § 13-1-124(1)(b), C.R.S., because the acts giving rise to the claims were committed in the State of Colorado, and pursuant to 42 U.S.C. § 1983.
3. Pursuant to C.R.C.P. 98(c)(5), venue is proper in this Court, which Plaintiffs designate as the place of trial for this action.

4. Jurisdiction supporting Plaintiffs' claim for attorney's fees is conferred by 42 U.S.C. § 1988 and § 13-21-131(3).

PARTIES

5. Plaintiff Wendy Love is a resident of the State of Colorado. She and her husband Jay Hamm were the owners of 14-month-old puppy Herkimer. She and Herkimer were located in Loveland, Larimer County, Colorado at the time of his shooting and death.
6. Plaintiff Jay Hamm is a resident of the State of Colorado. He and his wife Wendy Love were the owners of 14-month-old puppy Herkimer. He and Herkimer were located in Loveland, Larimer County, Colorado at the time of his shooting and death.
7. Defendant Loveland Police Officer Mathew Grashorn ("Officer Grashorn") was at all times relevant to this complaint duly appointed and sworn as a police officer working for the Loveland Police Department. Officer Grashorn is a named Defendant in his individual capacity.
8. Defendant Loveland Police Sergeant Philip Metzler ("Sergeant Metzler") was at all times relevant to this complaint duly appointed and sworn as a police sergeant working for the Loveland Police Department. Sergeant Metzler is a named Defendant in his individual capacity.
9. Defendant Chief of Police Robert Ticer ("Chief Ticer") was at all times relevant to this complaint duly appointed and sworn as the Loveland Police Department's Chief of Police. He is a named Defendant in his individual capacity.
10. Defendant City of Loveland is a governmental entity and municipality incorporated under the laws of the State of Colorado for purposes of liability under 42 U.S.C. § 1983 and the Loveland Police Department is a department of City of Loveland. Defendant City of Loveland enforces local and state law through its law enforcement agency, the Loveland Police Department ("LPD").
11. At all times relevant to this Complaint, Defendant Chief Ticer employed and was responsible for the oversight, supervision, discipline and training of LPD personnel, including Officer Grashorn and Sergeant Metzler.
12. At all times relevant to this Complaint, Defendant Sergeant Metzler was responsible for supervising and directing Defendant Officer Grashorn.
13. At all times relevant to this Complaint, Defendant City of Loveland employed and was responsible for the oversight, supervision, discipline and training of LPD personnel, including Officer Defendants. Defendant City of Loveland was also, at all times relevant to this Complaint, the body responsible for LPD's official policies and practices as well as LPD's unofficial customs and practices with respect to use of force, de-escalation, service of private business interests, and LPD's interactions with canines belonging to members of the community.
14. All of the events described herein occurred in the City of Loveland and the State of Colorado.

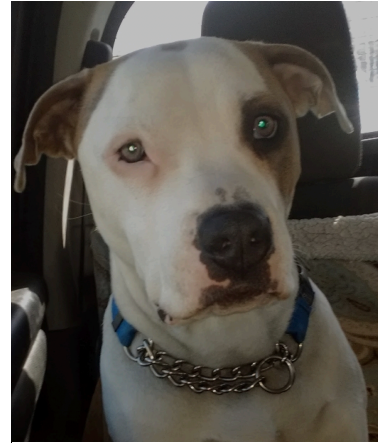
STATEMENT OF FACTS

15. At the time of the incident described herein, the Plaintiff, Wendy Love and her husband Plaintiff Jay Hamm owned a 14-month-old mixed breed (Staffordshire terrier/boxer mix) male dog named Herkimer.

16. Herkimer was a sweet, loving, playful dog. He was beloved by his family. He was a good boy.

17. Herkimer was not a Pitbull. Herkimer had no history of biting or otherwise being dangerous to humans. He was known to be affectionate and friendly with both people and other dogs.

18. At approximately 5:00 pm on June 29, 2019, Plaintiffs Ms. Love and Mr. Hamm were working for their firewood delivery business in the Loveland area. Like always, they had their pack of dogs (Bubba, Max and Herkimer) riding along with them in their truck. They had been driving quite a bit and it was a nice day. They decided to stop in a vacant parking lot next to an apparently vacant commercial building to make some repairs to the large ice box they were going to utilize for their final firewood delivery of the day.



Herkimer

19. The building had no signage. It had no vehicles parked in or near it. All of the windows were covered up from the inside. The flag pole was bare.

20. This is what the building looked like that day:



21. Mr. Hamm drove to the furthest back corner and parked. It was a quiet, peaceful spot with some shade and there were no people or cars anywhere nearby who might be bothered.
22. They laid out a tarp together and then Mr. Hamm put the ice box on it to be painted. While he did that, Ms. Love let Herkimer out of the truck to stretch, drink some water, and play. Herkimer did that for about 5 minutes and then he jumped back into the truck. Herkimer liked to be in the backseat of the truck. It was where he felt most at home.
23. While Herkimer did that, Ms. Love then let another of their dogs (Bubba, a 16-year-old Rhodesian Ridgeback) out of the truck to stretch and drink some water. Bubba was an old boy so after he had his drink of water, he found a nice spot to rest on the pavement and laid down to watch Mr. Hamm work.
24. Ms. Love then took their third dog (Max, a black lab mix) out to stretch and drink some water too, tying him to a nearby tree. Max was known to wander which was why he was tied to the tree after getting his water and doing his stretch.
25. Unbeknownst to Plaintiff's, the building's owner, Andrew Hendrickson, was remotely watching surveillance video from the lot and saw their silver truck park in the back corner. Mr. Hendrickson decided he would call Loveland police to investigate them. He told dispatch that someone had tampered with the dumpster lock on the property once previously and he didn't want the truck occupants to mess with it.
26. Loveland PD's dispatcher asked Mr. Hendrickson if it appeared on his video feed that Plaintiffs were doing anything to his dumpster. He responded no, that they were not anywhere near his dumpster, but he still wanted Loveland to send police to see what they were up to.
27. City of Loveland leadership and Loveland's Police Department leadership regularly communicate to the private business community in Loveland that the LPD's top priority is to serve them – the private business owners. This policy is regularly and aggressively reiterated to the lower ranks of all LPD officers. Whatever any business owner's whim is in Loveland, the City makes it well known that their police force will do whatever it takes, including the use of extreme force, to demonstrate the City's commitment to protecting business interests.
28. City council member Don Overcash repeatedly cites this policy in City Council meetings, in addition to even having opinion pieces authored by himself published in the Loveland Reporter-Herald stating the same. This policy is unusually severe and openly dangerous. It openly trades heightened risk to the lives and safety of individual citizens in order to promote or attract more business development.
29. The absurd recklessness of this policy and obvious risk it presents to the lives and health of Loveland citizens has played out over and over again quite publicly and quite embarrassingly for Loveland. Still, Chief Ticer and the City of Loveland maintain the policy and continue to encourage the prioritization of business interests over the safety and well-being of individual citizens (particularly those who appear to be poor). For example:

- a. On June 26, 2020, Walmart suffered no loss when dementia-sufferer and 73-year-old woman Karen Garner walked out of the store without paying for \$13.88 of items. When confronted, she gave the items back and attempted to pay for them. Walmart refused and instead called LPD to deal with it. LPD sent multiple officers, including Sergeant Metzler, to locate and tackle Ms. Garner, causing her to suffer a broken and dislocated shoulder. The multiple officers involved did this knowing that Walmart hadn't suffered any loss. They did it pursuant to the aforementioned policy of making large, demonstrative showings of allegiance to Loveland businesses.
 - b. On July 20, 2020, Target contacted Loveland PD to deal with a man (Keenan Stuckey) suffering from mental health issues in their parking lot, requesting that they arrest or remove him even though he was breaking no laws and bothering nobody. Loveland PD sent six officers there in minutes, and they promptly brutalized the man with batons, kicking him, punching him, and doing a pile-driver type of jump atop his lifeless body.
30. There are more examples of this policy causing great harm to individual Loveland citizens however none as publicly shamed and visible as the foregoing examples due to the fact that LPD did not adopt bodyworn cameras until May 2019. It was the collision of now being recorded while acting pursuant to this policy, and not changing the behavior, that led to the public outcry regarding the examples above.
 31. An even cursory review of Loveland PD records reveals a plain and obvious practice and policy of deliberately and recklessly using excessive force to respond to any and all complaints made about citizens by Loveland business owners, no matter how minor or insignificant the complaint.
 32. As a result of this policy and practice set by City leadership and LPD leadership, LPD has become known (now, internationally) for subjecting its citizens to incidents of extraordinarily excessive force and disproportionately reckless violence whenever a private business owner makes a complaint of petty theft or petty trespass.
 33. The commercial lot at 995 N. Wilson Ave. where Plaintiffs had parked was not fenced or enclosed to keep intruders out. It was not agricultural land. There were no "no trespassing" signs erected. Therefore the worst "crime" alleged to have been committed by Ms. Love and Mr. Hamm by the business owner was third degree trespass, which is the lowest-level form of trespass, and a mere petty offense under Colorado law.
 34. Two officers were dispatched to respond to this pinnacle of non-urgent calls - Officer Grashorn and Officer Tim Nye. Officer Grashorn arrived and drove into the lot. He observed one of the couple's dogs (Bubba) laying on the parking lot ground.
 35. Officer Grashorn did not wait even one second for his partner responding officer to arrive.
 36. Officer Grashorn gave no warning to Plaintiffs, audible or otherwise, of his arrival. Ms. Love and Mr. Hamm were on the other side of the truck and did not see him. The rear of their truck was packed full and high of firewood and other items that blocked their view.

37. It was an ambush, and Grashorn knew it. He didn't care. He suspected that they were poor and wanted to surprise them, to see if they were up to anything he might be able to get an arrest for.
38. Officer Grashorn saw the 16-year-old dog Bubba lying on the pavement by the truck unsecured. Ms. Love was ten feet away and promptly visible to Grashorn. Rather than alert Ms. Love to his presence and ask her to put Bubba on a leash or in the car, or wait the 30 seconds for his back-up officer to arrive, or pull up to Plaintiffs to talk to them while remaining in his patrol car, or any infinite number of less outrageously reckless options, Grashorn instead jumped out of his car and took two steps towards them (they were about 20 yards away). As he did so, 16-year-old Bubba, who was dozing on the pavement, heard Grashorn's door, and got up (it took him a couple seconds due to his age and size). Once up, Bubba began a friendly gallop towards Officer Grashorn to greet him.
39. Rather than take less than two steps back into his vehicle to give Ms. Love and Mr. Hamm an opportunity to control Bubba, Officer Grashorn, still moving towards the family, immediately pulled out his firearm and pointed it at Bubba. **Officer Grashorn had his gun pointed at Bubba within one second of Bubba's standing up.** Officer Grashorn yelled at Ms. Love and Mr. Hamm to call their dog off. Grashorn himself did not retreat one single inch.
40. Ms. Love and Mr. Hamm – quite startled – immediately did so. They called out for Bubba to come back to them, and he did, but not before the excitement and commotion of yelling caused Herkimer, who had been resting in his favorite spot in the truck, to jump out the truck's open door to go see what the fuss was about.
41. A few seconds more into this encounter, there were still about 15 yards of distance between the dogs and Officer Grashorn. There were less than 5 feet between Grashorn and obvious, accessible refuge in his patrol car. But he never once took one step backwards. Instead, he stepped *forward* and kept his gun on Bubba.
42. Bubba turned back in response to Plaintiffs calling him. Herkimer, like the puppy he was, pranced along side him as he did so, fixated on what Bubba was interested in. As Bubba turned back, Herkimer, who was slowing in speed and had his path of running turn away from Officer Grashorn, finally looked at the officer. Everything about Herkimer's face and demeanor was one of curiosity and friendly excitement. His pace slowed and then Herkimer's pointed his direction of travel away from the officer, peeling off to turn back to his owners.
43. Officer Grashorn did not put his firearm away. Instead, he moved his gun from being pointed at Bubba to being pointed at Herkimer, tracking Herkimer as he began to turn away. There was no threat to him at all. No reasonable officer or reasonable person would have perceived this situation as a threat requiring the immediate euthanization of an innocent citizen's beloved pet. Bubba was trotting back to his owners and Herkimer was beginning to turn himself to do so as well.
44. Officer Grashorn didn't care. He had his gun out and his adrenaline was up so he sure as heck was going to shoot something. So he did. He shot Herkimer twice, once in the face, and a second time in his body.

45. Herkimer's body fell to the ground, stiff and paralyzed, his eyes wide open in distress. Ms. Love, close behind him, began sobbing and crying. Herkimer was the light and love of Ms. Love's life. He appeared to have just been shot dead. It would have been better if he had been. But instead, Herkimer was still alive, suffering and immobilized.
46. Ms. Love, shrieking and sobbing in horror, but now dealing with an officer who still had his firearm out, pointed at them both, then begged Grashorn for permission to please go comfort Herkimer and take him to a vet. Officer Grashorn told her no. He yelled at her instead. He told her there was "nothing to be done" for Herkimer.
47. Ms. Love again begged for permission to comfort her dying puppy. Grashorn sneered at her to stand back. Realizing it was time to begin covering up his excessive force and obvious misconduct, Grashorn then quickly told Ms. Love she could not go to her pet because Herkimer was a dangerous dog that would bite her. He snidely prohibited her from comforting or providing aid to her lethally wounded best friend. This went on for over a minute, while Herkimer bled out on the pavement alone, and Ms. Love cried desperately.
48. Herkimer displayed no signs of aggression.
49. Herkimer put no one in imminent danger.
50. Any reasonable person with any training or experience would have recognized that Herkimer was not a threat to anyone's safety. He was wagging his tail and appeared curious and excited. His path of travel as he got closer to Grashorn was also not pointed towards Grashorn but instead was visibly slowing and veering off to the side in a C-shape, due to him beginning to point himself back to his owners who were calling him.
51. But Officer Grashorn already had his gun out for Bubba, and Officer Grashorn was eager to utilize his firearm. Once he saw a dog running towards him, he relished in the opportunity to shoot it and did not care at all about other alternatives.
52. On this point, in the immediate aftermath of Officer Grashorn shooting Herkimer, when Grashorn went to confront Mr. Hamm at his truck, Mr. Hamm demanded to know why Grashorn had shot a clearly friendly dog. Grashorn yelled at Mr. Hamm that he (Grashorn) had "no way of knowing" whether Herkimer was friendly. Grashorn told Mr. Hamm that he "wasn't in the business to get bit" and had no interest in "waiting to find out" whether Herkimer was a friendly dog.
53. Mr. Hamm pointed out that Grashorn could have tased Herkimer rather than shoot him. Grashorn told him no way, that he "don't take the chances," and that he "has to do what's gonna work." Mr. Hamm, in shock, continued to ask why a stun gun wouldn't work. Grashorn, snarling in response, told Mr. Hamm that a taser might not work, and that **shooting the dog is the "only thing that always works."**
54. Even if Officer Grashorn were actually fearful of Herkimer, there were multitudinous alternatives available to him besides twice fatally shooting Herkimer with a gun. Those alternatives included, but were not limited to:

- a. Taking two steps backwards and getting in his vehicle;
- b. Taking two steps backwards and using the door of his vehicle as a buffer/shield;
- c. Using a taser;
- d. Using a baton;
- e. Using pepper spray; or
- f. Shooting next to Herkimer to scare him, rather than directly into his skull to end his life.

To name a few.

55. In quick order, a half dozen other LPD police officers soon arrived. Once those officers laid eyes on the complete mess Grashorn had made, the cover-up began.
56. Ms. Love and Mr. Hamm continued to beg the officers to take Herkimer to the vet or to at least let them take Herkimer to the vet.
57. All of the officers agreed: they would refuse to let Ms. Love take Herkimer to the vet for care until Defendant Sergeant Metzler arrived on scene and approved of the idea. What they *really* wanted Sergeant Metzler to do, however, was to come and make sure nothing further needed to be done to cover up their misconduct before removing the dog from the scene.
58. Sergeant Metzler was well known within the Loveland Police Department for being the supervisor you call when you've royally screwed something up. Metzler was the champion of ensuring Loveland Police officers were never held accountable. He was beloved by his subordinates (and his superiors) for his excellent work on this front.
59. It is the known practice and custom at the Loveland Police Department to utilize Sergeant Metzler for disguising, concealing and obfuscating police officer misconduct – particularly excessive force.
 - a. Upon information and belief, Sergeant Metzler has assisted subordinate officers in writing false reports into Blue Team to cover up incidents of excessive force.
 - b. Upon information and belief, Sergeant Metzler has assisted subordinate officers in coming up with false criminal charges to press on individuals who are the victims of LPD officer excessive force, in order to pre-emptively damage their credibility should they later make a complaint related to the misconduct.
 - c. Chief Ticer is aware of all of this regarding Sergeant Metzler and not only condones the behavior and such practices, but utilizes it (and similar practices) to insulate himself from any accountability arising out of LPD officer excessive force incidents.
60. When finally permitted to go to Herkimer to comfort him, Ms. Love cradled her dying dog's head in her hands and cried and cried for help and for permission to take Herkimer to the vet. For over eight minutes, Ms. Love was told she could not remove her dying best friend from the parking lot to take him to the vet. Finally Metzler arrived and after surveying the scene and shaking his head in annoyance, he announced she could be permitted to do so.

61. Loveland sergeants and officers next discussed together concern that Ms. Love and Mr. Hamm had mentioned sharing what had happened with the media. Sergeant Metzler told Officer Grashorn that “since [Hamm’s] saying he’s going to go to the press, we better scratch him a ticket for something.”
62. The officers decided they would claim that Herkimer had *attacked* Officer Grashorn. They did in fact tell this lie over and over again. They told this lie to Larimer County Animal Control and to the veterinarians attempting to treat Herkimer. They followed the family to the vet and went and had their own private conversations with treating veterinarians in which they repeatedly told them that Herkimer was dangerous and had attacked police and needed to be euthanized.
63. This lie interfered with the care that Herkimer received. The vets, believing the lies told by Loveland Police, told Ms. Love that Herkimer needed to be put down because he was going to be taken into custody of animal control for being a dangerous dog after the surgery to eventually be euthanized regardless. The vets were pressured by police to feed them this false and deliberately manipulative information while they were already suffering, in shock, devastated and vulnerable.
64. This lie was also at the foundation of the Defendant officers’ decision to give Mr. Hamm a ticket for having a “dangerous dog,” a charge that the Larimer County District Attorney’s office later dismissed as not having any basis in fact.
65. The crime that Officer Grashorn charged Mr. Hamm with – Dangerous Dog pursuant to § 18-9-204.5, C.R.S. – requires that the dog in question cause bodily injury to someone. Officer Grashorn knew this (he can be heard talking about it on his bodycam video). Sergeant Metzler knew this (he too can be heard talking about it on his bodycam video). Despite this knowledge, Sergeant Metzler directed Officer Grashorn to maliciously and wrongfully charge Mr. Hamm with this offense in order to improve the optics of their having just murdered Mr. Hamm’s puppy. Sergeant Metzler literally announced that they would wrongfully charge Mr. Hamm with this crime because Mr. Hamm and Ms. Love had indicated they were going to tell the media about what Loveland had done.
66. Herkimer suffered in intensive care for 4 days before having to ultimately be euthanized.
67. The psychological trauma and suffering Ms. Love and Mr. Hamm endured during this period is unquantifiable. Ms. Love plunged into depression after Herkimer’s death. She could not go to her home or anywhere that reminded her of her beloved puppy. The Plaintiffs’ other dogs, Bubba and Max, were also bereft. All of the joy and happiness in this family’s life was obliterated by the Loveland Police Department.
68. Mr. Hamm also fell into a deep immovable depression. Both Ms. Love and Mr. Hamm spent days and weeks crying and unable to get out of bed.
69. Finally two months later, on September 4, 2019, Ms. Love summoned the courage to go to the LPD and file a complaint. She was terrified to do so, given what LPD had already done to her and her puppy Herkimer, let alone the false charges they had filed on her husband, but ultimately she could not live with the idea of her inaction on this permitting Grashorn to shoot another person’s beloved pet.

70. When she arrived at the LPD, Ms. Love said who she was and what she was there to do. Everyone at the station immediately realized she was the owner of the dog that Grashorn had shot and began scrambling. They told Ms. Love that she could submit a written complaint and gave her a form, and then began pressuring her to sit down and talk with a sergeant or Lieutenant Shaffer right then and there. Ms. Love got very uncomfortable and said she would fill out the form and come back.
71. After Ms. Love came and announced her intention to file a formal complaint, Lieutenant Shaffer decided they would have to actually paper the file to show they did a use of force Blue Team report and review up the chain of command as required by Loveland policy.
72. Loveland Police have a three-page document purporting to lay out all of their policies relating to citizens' pets. One half-page portion relates to Colorado's Dog Protection Act (§ 29-5-112, C.R.S.) and gives brief lip service to the mandates of those statutes. This portion of LPD's policy 11.27, titled "Animal Control Procedures," states with respect to citizens' dogs, the following (this is reprinted in full):

Dog Protection Act. Each Department officer will receive a minimum of 3 hours of P.O.S.T. Certification training in the following areas:

- The identification and meaning of common canine behaviors, and how to differentiate between dogs who are exhibiting aggressive behavior that puts law enforcement officers or other persons in imminent danger and dogs that are exhibiting other behaviors (protective, friendly, excessive, barking, etc.); and
- Alternatives to lethal force against dogs; and
- What consists of a reasonable opportunity for a dog owner to control or remove the dog from the area.

The P.O.S.T. Certification training will provide Department officers an opportunity to effectively evaluate the totality of the circumstances and provide guidance on how to best manage a situation involving an interaction with a dog.

In consideration of the totality of circumstances then existing, Department officers should take into account their safety and the safety of other persons in the area, the availability of nonlethal equipment, the feasibility of permitting a dog owner to control the dog, the presence of an animal control officer, whether the call is a location that is listed in the dangerous dog registry (C.R.S. 35-42-115), whether the location is one in which illegal narcotics are suspected to be manufactured or trafficked, or any other exigencies that may be present, such as when Department officers are responding to a call that asserts or suggests that a person has been bitten by a dog or is in physical danger.

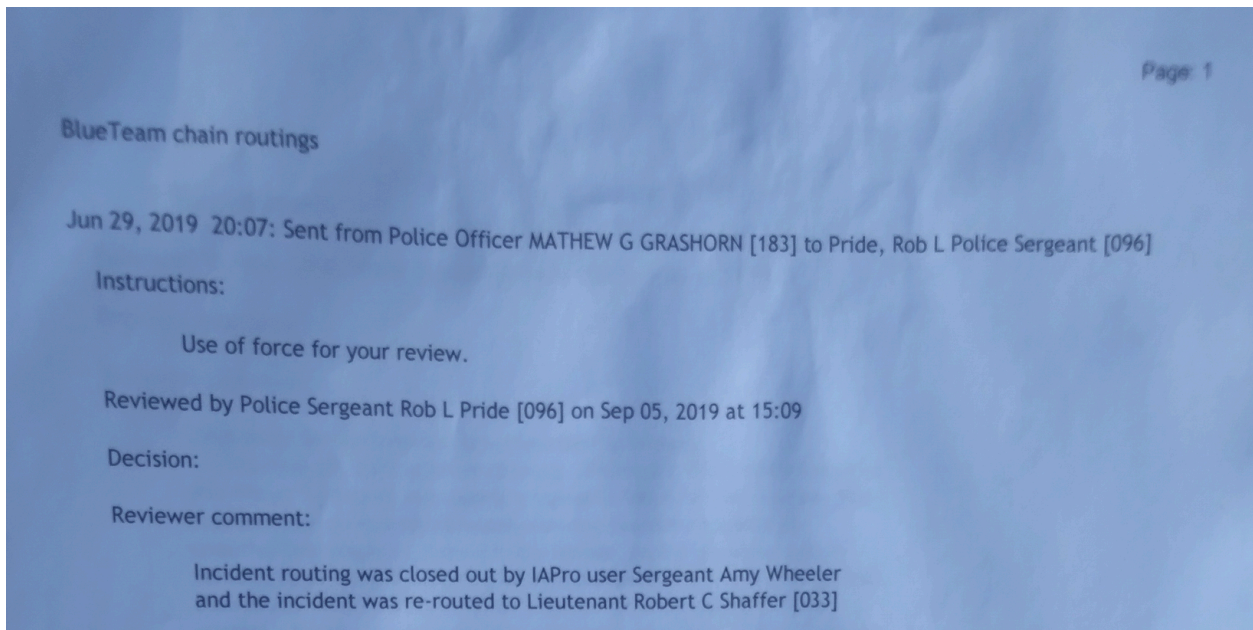
In consideration of the totality of the circumstances then existing, the Department emphasizes the use of alternatives to lethal force against dogs, when the circumstances allow, and utilization of LCHS animal control

officers, when the circumstances allow, so Department officers can discharge their official duties.

73. The only other mention of how LPD officers are to safely engage with citizens' pets occurs in their Use of Force policy number 11.04, reprinted here in full:

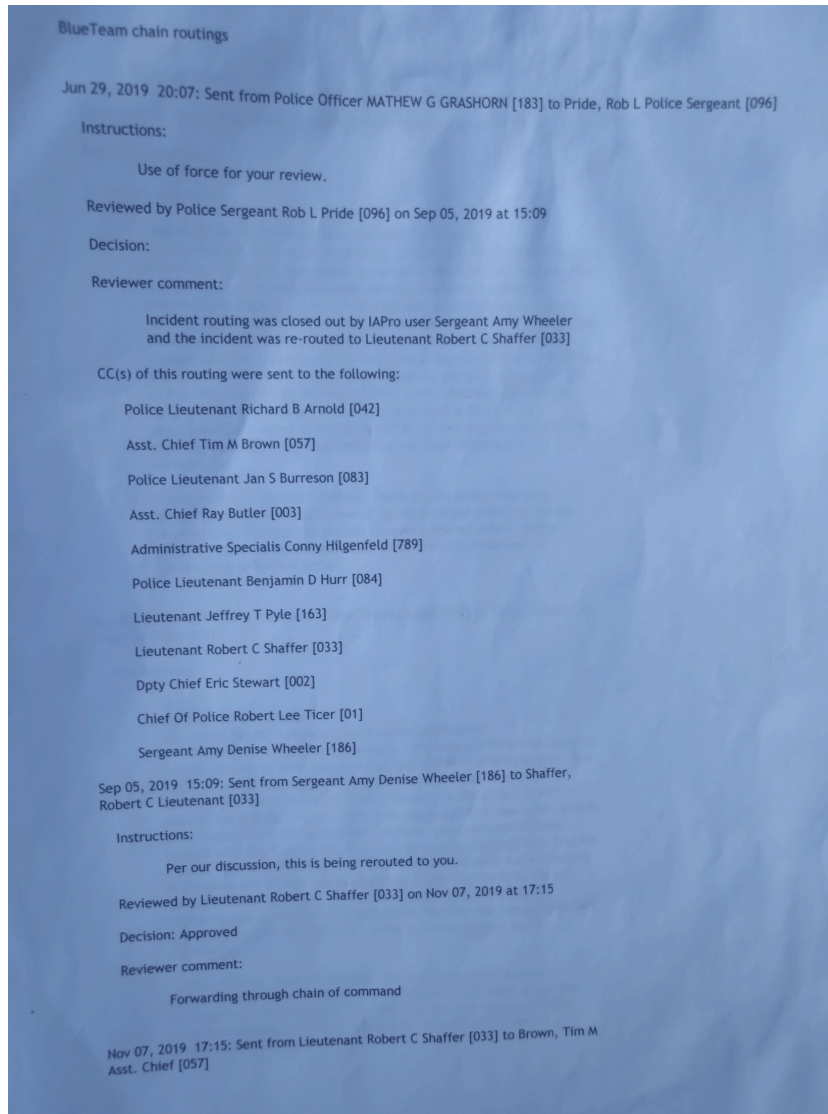
An officer may use deadly force against an animal that represents a significant threat to public safety, to the officer's safety, or as a humanitarian measure if the animal is seriously injured and only after the owner of the animal has authorized the measure (to the extent practicable) and the officer's supervisor has approved the measure. Pursuant to the [sic] Colorado's **Dog Protection Act**, alternate types of control should be considered prior to the use of deadly force against a dog and, if feasible, allow the owner the opportunity to remove the dog from the immediate area.

74. Ms. Love went to make the complaint about this event to LPD on September 4, 2019. Instantly, the next day, on September 5, 2019, supervising Sergeant Robert Pride suddenly began the City's Blue Team review process, despite the fact that the initial Blue Team report from Grashorn had been sitting there, unreviewed, for 2 months.



Blue Team Chain Routings for Herkimer Shooting

75. The Blue Team report was routed through nearly every member of supervisory staff at the Loveland Police Department. Comments by the reviewing supervisors indicated they were having conversations off the record about what to do with the case that were not being included in the actual written Blue Team review process.



Page 1 of Blue Team Routing

76. Eventually, still months later (now in November 2019), Lieutenant Bob Shaffer wrote into Blue Team that he had reviewed the incident and found “no policy violations.” Lieutenant Shaffer and Assistant Chief Tim Brown continued in their reviews approving of Grashorn’s conduct stating obvious lies and falsehoods, including characterizing Herkimer as a “Pit Bull” (he clearly was not) and suggesting the business owner’s original complaint had alleged wrongdoing with his dumpster (the business owner had clearly said they were NOT near his dumpster). The chief and Lieutenant Shaffer referred to victims Wendy Love and Jay Hamm throughout their reviews as “the trespassers.”
77. All the supervisory personnel at LPD reviewed Grashorn’s misconduct and found literally no policy violations. This is despite Colorado’s Dog Protection Act as set forth above and Loveland’s own written policies echoing the same.

Instructions:

For your review

Reviewed by Asst. Chief Tim M Brown [057] on Nov 08, 2019 at 17:19

Decision: Approved

Reviewer comment:

Lieutenant Shaffer's review is summarized as follows:

"On June 29, 2019 at approximately 1740 hours, Officer Mat Grashorn was dispatched to an in-progress trespass at 995 N. Wilson Avenue. The business owner reported remotely viewing live video footage of unauthorized suspects, a male and a female, on the property with a vehicle, apparently trespassing into his dumpster and loading things into their truck. When Officer Grashorn arrived and attempted to make contact with the trespassers, their two large dogs charged him. One was a Great Dane and the other a Pit Bull. Despite the male subject yelling at the dogs and Officer Grashorn yelling at the dogs to stop, the pit bull, continued to charge. Officer Grashorn shot it twice within approximately 3-4 feet of him because he felt the dog was going to bite him. The dog died later after receiving aid from officers and a veterinarian."

I concur with Lt. Shaffer's review. There are no policy violations. Officer Grashorn reasonably feared for his personal safety as the dog charged him. He acted to protect his own personal safety. Officer Grashorn's actions were reasonable under the circumstances. I recommend no further action.

Nov 08, 2019 17:19: Sent from Asst. Chief Tim M Brown [057] to Ticer, Robert Lee Chief Of Police [01]

Instructions:

Chief,

For your review, please.

Lieutenant Shaffer's review is summarized as follows:

"On June 29, 2019 at approximately 1740 hours, Officer Mat Grashorn was dispatched to an in-progress trespass at 995 N. Wilson Avenue. The business owner reported remotely viewing live video footage of unauthorized suspects, a male and a female, on the property with a vehicle, apparently trespassing into his dumpster and loading things into their truck. When Officer Grashorn arrived and attempted to make contact with the trespassers, their two large dogs charged him. One was a Great Dane and the other a Pit Bull. Despite the male subject yelling at the dogs and Officer Grashorn yelling at the dogs to stop, the pit bull, continued to charge. Officer Grashorn shot it twice within approximately 3-4 feet of him because he felt the dog was going to bite him. The dog died later after receiving aid from officers and a veterinarian."

I concur with Lt. Shaffer's review. There are no policy violations. Officer Grashorn reasonably feared for his personal safety as the dog charged him. He acted to protect his own personal safety. Officer Grashorn's actions were reasonable under the circumstances. I recommend no further action.

Lt. Shaffer and Asst. Chief Brown's Approval of Grashorn's Conduct in Blue Team

78. Loveland Police supervisory staff, including Defendant Chief of Police Ticer, reviewed Defendant Grashorn's bodyworn camera and report (which did not match the video and contained several obviously false statements) and declared that Defendant Grashorn's use of lethal force upon Herkimer was justified and within Loveland policy.
79. The video shows that everything about Grashorn's contact with Ms. Love and her dogs was not within policy.
80. Everything done with the Blue Team report and the cover-up by the Loveland Defendants was pursuant to regular custom and practice at Loveland of gaslighting citizens, falsely reciting facts relating to officer misconduct, and rubber stamping the chain of command review of such misconduct in order to bury it. Wherever possible, including here, LPD policy, custom and practice was to attempt to criminally charge the citizens involved in their acts of misconduct to improve the odds that the citizen would not be believed if they attempted to expose LPD.
 - a. This same thing was done with Karen Garner.
 - b. This same thing was done with Keenan Stuckey.
 - c. This same thing was done with Preston Sowl (excessive force incident in September 2019).
81. These patterns, practices and customs at LPD ensured that officers continued to engage in misconduct and harm the citizens of Loveland. It was a driving force in causing Grashorn to feel safe in shooting Herkimer and it was a driving force in all of the LPD officers involved in this case victimizing and traumatizing Plaintiffs further in their efforts to cover-up the misconduct.
82. Grashorn's decision to approach this family without warning, without announcing himself, and with unsecured large dogs visible to him was objectively unreasonable. Grashorn's decision to approach the family and their dogs without waiting for back-up was objectively unreasonable. Grashorn's decision to do all this without alerting the family to his presence so that they had an opportunity to secure their dogs was objectively unreasonable. Grashorn's decision to stand his ground and pull out his firearm rather than retreat back into his vehicle when Bubba began running towards him from 20 yards away was objectively unreasonable.
83. There was nothing pressing requiring Grashorn to stand his ground and refuse to return to his car when Bubba began galloping towards him from 20 yards away.
84. Grashorn saw that Ms. Love and Mr. Hamm had dogs with them but gave them zero opportunity to remove their dogs from the area or get them under control prior to sneaking up on them from afar and without audible warning. If there was any imminent danger here, Grashorn knowingly created it.
85. Grashorn held his gun out and pointed it at the dogs for five full seconds before firing. It would have taken him less than two seconds to return to his vehicle.

86. Loveland, Ticer and Metzler failed to adequately train and supervise Grashorn.
87. Ticer promoted and praised Metzler's gaslighting of citizens, cover-ups of officer excessive uses of force, and other tactics designed to bury police misconduct. This was observed by LPD employees, including Grashorn, to represent the values of LPD and they modeled their behavior accordingly.
88. It is a custom, policy and practice at the Loveland Police Department and within the City of Loveland generally to use excessive force to protect private business interests.
89. Loveland Police regularly and consistently communicate to the private business community that they are there to serve whatever interests and needs they may have, regardless of the impact on individual citizens and the community.
90. Loveland Police thereafter directed that Mr. Hamm be falsely added as a defendant to other criminal cases to assist in their cover up and to ensure the media would be uninterested in his case.
91. **Five months after killing Herkimer, Defendant Officer Grashorn and Defendant Sergeant Metzler killed a human by shooting her to death.** Sergeant Metzler again provided the narrative of what had occurred to the DA's office, and the DA's office subsequently cleared them both of wrongdoing.
92. Lieutenant Bob Shaffer personally reviewed the reports and BWC in this case and assisted in its cover up, traumatizing Plaintiffs further.
93. Chief Ticer personally reviewed the reports and BWC in this case and assisted in its cover up, traumatizing Plaintiffs further.
94. To the extent that any of the training required by LPD policy related to the Dog Protection Act was actually given, the Defendants deliberately ignored that training.
95. Plaintiffs had a constitutionally-protected property interest in Herkimer and in enjoying the rest of the long happy life Herkimer had ahead with Herkimer. Defendants knew and understood of this interest. Grashorn knew that the killing of Herkimer constituted a "seizure" of property and that such seizures could not be taken without due process of law. Grashorn did it anyway because he wanted to and because he knew, with help like Defendants Metzler and Ticer, he would never be held accountable for it.
96. Today, nearly two years later, both Plaintiffs remain consumed by the immovable horrific grief and trauma inflicted upon them by these Defendants. Their world remains darker than it ever was. They cry for Herkimer and the life of joy he had ahead of him, stolen. They have never again felt safe outdoors, even when in places of seeming remote calm. When they close their eyes, they see Herkimer's puppy body collapsing to the pavement. They see the parking lot pavement stained with his blood. They hear the voices of Loveland Police telling them that it was all their fault, and that this is what they get for trespassing. They will never be the same.

97. As a result of the Defendants' violations of their constitutional rights under both the U.S. and Colorado Constitutions, Plaintiffs have suffered damages, trauma, exorbitant veterinary bills, and emotional suffering that has destroyed their ability to work, causing lost wages and lost enjoyment of life.

STATEMENT OF CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Section 13-21-131, C.R.S. – Unlawful Seizure
Violation of Colorado Constitution, Article II, Section 7
(against Defendant Grashorn)

98. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if set forth fully herein.

99. This claim is brought against Defendant Grashorn.

100. At all times relevant to this claim, Defendant Grashorn was acting under color of state law in his capacity as an LPD officer, a peace officer as defined under § 24-31-901(3), C.R.S.

101. Plaintiffs had a constitutional right under Article II, Section 7 to the Colorado Constitution to be secure in their person and property against unreasonable seizures by law enforcement personnel.

102. Officer Grashorn unreasonably seized and killed Plaintiffs' dog Herkimer, in violation of the Constitution of the State of Colorado.

103. Officer Grashorn violated Plaintiffs' state constitutional rights by engaging in an unlawful seizure and killing of Plaintiffs' dog Herkimer, which was objectively unreasonable in light of the facts and circumstances confronting Officer Grashorn before, during and after this encounter.

104. The Individual Defendants' conduct described herein was attended by circumstances of malice, or willful and wanton conduct, which the Individual Defendants must have realized was dangerous, or that was done heedlessly and recklessly, without regard to the consequences or the rights and safety of others, particularly Plaintiff.

105. Plaintiffs suffered damages as a result of Defendants' misconduct, including, but not limited to, loss of property, loss of companionship, anguish, trauma, loss of security, insomnia, emotional distress, lost work, veterinary bills, and attorney's fees.

SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983 – Unlawful Seizure
Violation of Fourth Amendment, Due Process
(against Defendants Grashorn, Metzler and Ticer)

106. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if set forth fully herein.

107. This claim is brought against Defendant Officer Grashorn, Defendant Sergeant Metzler, and Defendant Chief Ticer.
108. Officer Grashorn unreasonably seized and killed Plaintiffs' dog Herkimer, in violation of the Fourth Amendment to the U.S. Constitution.
109. Officer Grashorn violated Plaintiffs' Fourth Amendment and due process rights by engaging in an unlawful seizure and killing of Plaintiffs' dog Herkimer, which was objectively unreasonable in light of the facts and circumstances confronting Officer Grashorn before, during and after this encounter.
110. Grashorn's conduct described herein was attended by circumstances of malice, or willful and wanton conduct, which he must have realized was dangerous, or that was done heedlessly and recklessly, without regard to the consequences or the rights and safety of others, particularly Plaintiffs.
111. Defendants Ticer and Metzler had a duty to train and supervise Defendant Officer Grashorn.
112. Defendants Ticer and Metzler failed to reasonably train and supervise LPD officers, including Officer Grashorn, in specific issues related to encountering citizens' dogs in the field, despite the obvious need to do so.
113. Defendants Ticer and Metzler knew or should have known that their failure to adequately supervise and train LPD officers in such issues relating to encountering citizens' dogs in the field was likely to harm individuals like Plaintiff; it was reasonably foreseeable that their failures in these areas would cause the harm or a similar harm that Plaintiff has suffered, is suffering, and will suffer.
114. In failing to reasonably train and supervise LPD officers, including Officer Grashorn, in such issues relating to citizens' dogs, Defendants Ticer and Metzler caused Plaintiffs to be subjected to the deprivation of their right to be secure in their person against unreasonable seizures as guaranteed by the Fourth Amendment to the U.S. Constitution.
115. Defendant Ticer's and Defendant Metzler's actions and omissions violated Plaintiff's federal constitutional rights, and were a substantial and significant contributing cause and proximate cause of Plaintiff's damages.
116. Defendant Ticer and Defendant Metzler did not act upon a good faith and reasonable belief that their actions and omissions in failing to adequately train and supervise LPD officers in this area was lawful.

THIRD CLAIM FOR RELIEF
42. U.S.C. § 1983 – Malicious Prosecution
Fourth Amendment, Due Process Violations
(against Defendants Grashorn and Metzler)

117. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if set forth fully herein.
118. Defendants Grashorn and Metzler caused the criminal prosecution against Mr. Hamm by memorializing their lies about Herkimer attacking Defendant Grashorn in their reports and providing them to the District Attorney.
119. Defendants false allegations were the sole moving force behind the criminal prosecution against Mr. Hamm.
120. Defendants' actions were done with malice.
121. No probable cause supported the criminal charges brought by Defendants Metzler and Grashorn against Mr. Hamm.
122. The criminal prosecution against Mr. Hamm resolved in his favor with the Larimer District Attorney dismissed the case against him on October 15, 2019.
123. Defendants' malicious and false prosecution of Mr. Hamm caused him to suffer further trauma, damages, lost wages, suffering, depression, despair and deeply exacerbated the existing trauma he was already suffering associated with the other harms they had inflicted upon him by murdering his beloved puppy Herkimer as set forth in this Complaint.

FOURTH CLAIM FOR RELIEF
42 U.S.C. § 1983 – *Monell* claims
Unconstitutional policies, practices, customs
(against Defendant City of Loveland)

124. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if set forth fully herein.
125. Defendant City of Loveland is liable for the acts and omissions of its agents and/or employees, and for the herein described acts by the individual Defendants, who were acting within the scope and course of their employment.
126. Defendant City of Loveland maintained both official policies that caused the constitutional violations in this case as well as unofficial practices and customs that caused the violations in this case.
127. Defendant City of Loveland has a well-established pattern and practice of resorting to violence upon innocent citizens in order to show business owners that their interests are penultimate in the City of Loveland. The City believes that behaving in this callous, unlawful way will attract more business development to the City.
128. Defendant City of Loveland is a governmental entity and municipality incorporated under the laws of the State of Colorado for purposes of liability under 42 U.S.C. § 1983 and the Loveland Police Department is a department of City of Loveland. Defendant City of Loveland enforces local and state law through its law enforcement agency, the Loveland Police Department (“LPD”).

129. At all times relevant to this Complaint, Defendant City of Loveland employed and was responsible for the promulgation of policies, customs, practices and training of LPD personnel, including Officer Grashorn and Sergeant Metzler.

130. At all times relevant to this Complaint, Defendant City of Loveland employed and was responsible for the oversight, supervision, discipline and training of LPD personnel, including Officer Defendants. Defendant City of Loveland was also responsible for at all times relevant to this Complaint the body responsible for LPD's official policies and practices as well as LPD's unofficial customs and practices with respect to use of force, de-escalation, service of private business interests, and LPD's interactions with dogs belonging to members of the community.

131. Defendant City of Loveland's unconstitutional policies, practices and customs were the driving force and proximate cause of the damages that Plaintiffs suffered.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court enter judgment in their favor and against Defendants, and award them all relief as allowed by law and equity, including but not limited to:

- a. Declaratory relief and injunctive relief, as appropriate;
- b. Actual economic damages as established at trial;
- c. Compensatory damages, including but not limited to those for past and future pecuniary and non-pecuniary losses, physical and mental pain, trauma, fear, anxiety, loss of enjoyment of life, loss of liberty, loss of sense of security, and other non-pecuniary losses;
- d. Punitive or exemplary damages for all claims as allowed by law in an amount to be determined at trial;
- e. Issuance of an Order mandating appropriate equitable relief, including but not limited to:
 - i. Issuance of a formal written apology from each Defendant to Plaintiffs;
 - ii. The imposition of appropriate policy changes designed to avoid future similar misconduct by Defendants;
 - iii. Mandatory training designed to avoid and prevent future similar misconduct by Defendants;
 - iv. Imposition of disciplinary action against appropriate employees of Loveland;
- f. Pre-judgment and post-judgment interest at the highest lawful rate;
- g. Attorney's fees and costs; and

h. Such further relief as justice requires.

JURY DEMAND

Plaintiffs demand a jury trial on all issues so triable.

Respectfully submitted this 22nd day of August, 2021.

THE LIFE & LIBERTY LAW OFFICE

s/ Sarah Schielke

Sarah Schielke, #42077

Counsel for Plaintiffs