

DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO
1437 Bannock Street
Denver, CO 80202
(720) 865-8301

DATE FILED: September 10, 2021 1:17 PM
FILING ID: 419550072A9DF
CASE NUMBER: 2021CV32845

Plaintiffs: JOHN PACHEACO, JR. b/n/f JAMIE
FOWLER; and THE ESTATE OF JOHN
PACHEACO, JR.

v.

Defendants: NEAL MCCORMICK, Police
Officer for the City of Glendale Police
Department; and CHANDLER PHILLIPS, Police
Officer for the City of Glendale Police
Department.

▲ COURT USE ONLY ▲

Attorneys for Plaintiffs:
Mike Ogborn, No. 20932
Clayton E. Wire, No. 41717
Peter A. McClenahan, No. 41044
OGBORN MIHM LLP
1700 Lincoln Street, Suite 2700
Denver, Colorado 80203
Phone Number: (303) 592-5900
E-mail: Mike.Ogborn@OMTrial.com
Clayton.Wire@OMTrial.com
Peter.McClenahan@OMTrial.com

Matthew Haltzman, No. 47913
Haltzman Law Firm
204 Maple Street | Suite 101
Fort Collins, Colorado 80521
Phone Number: (970) 692-3440
Email: matthew@haltzmanlaw.com

Case Number:

Division:

COMPLAINT AND JURY DEMAND

Plaintiffs, John Pacheaco, Jr. b/n/f Jamie Fowler and the Estate of John Pacheaco, Jr., through their undersigned counsel, Clayton E. Wire, Peter A. McClenahan, and Michael J. Ogborn of Ogborn Mihm, LLP, and Matthew A. Haltzman of Haltzman Law Firm, PC, for their Complaint and Jury Demand against City of Glendale Police Department Officer Neal McCormick, and City of Glendale Police Department Officer Chandler Phillips, allege as follows:

INTRODUCTION



Figure 1. The vehicle John Pacheaco, Jr. was driving, photograph taken after his encounter with Glendale police on October 31, 2020.

1. On October 31, 2020, at about 10:00 p.m., Defendants Police Officer Neal McCormick and Police Officer Chandler Phillips of the Glendale Police Department (collectively, the “Defendant Officers”) shot and killed unarmed John Pacheaco, Jr., who was at the wheel of a Dodge truck, at the intersection of Colorado Boulevard and Alameda Avenue, in Denver, Colorado.

2. At about 9:58 p.m., approximately two minutes prior to the Defendant Officers opening fire, Glendale Police Department Officer Bradley Reed arrived on the scene to conduct a “Wellness Check” on Mr. Pacheaco, who was inside his vehicle.

3. Officer Reed parked his unmarked police vehicle behind Mr. Pacheaco’s vehicle, walked up to the driver’s side window of Mr. Pacheaco’s vehicle, and found Mr. Pacheaco to be unconscious and unresponsive while slumped inside his stopped vehicle at the intersection. Officer Reed walked slowly back to his own vehicle and reported to dispatch that the vehicle’s driver was passed out in the front seat.

4. The two Defendant Officers then arrived at the scene and “pinned” Mr. Pacheaco’s vehicle, in between two police vehicles that were parked in front and behind Mr. Pacheaco’s vehicle, while Mr. Pacheaco remained unconscious. Officers then began shining flashlights into the windows of Mr. Pacheaco’s vehicle and attempted to awake Mr. Pacheaco. Mr. Pacheaco, who was disoriented, awoke and removed his foot from the vehicle’s brake. This caused the vehicle to move slowly forward approximately one foot and contact the front bumper of the unoccupied police vehicle in front of him. Mr. Pacheaco then moved the shifting mechanism in the Dodge.

5. At this point, the Defendant Officers opened fire on Mr. Pacheaco at close range, firing nineteen rounds from two semi-automatic firearms at and into the vehicle. Other more senior officers on scene, standing in close proximity to the Defendant Officers, did not fire their weapons.

6. After bullets fired by the Defendant Officers caused catastrophic injuries to Mr. Pacheaco, including lacerating his spinal cord, Mr. Pacheaco’s foot came down on the gas pedal of his vehicle and the vehicle accelerated backwards, striking the unoccupied police vehicle behind him and pushing it.

7. A video recording of the incident shows that the Defendant Officers maintained positions to the side of Mr. Pacheaco’s vehicle, and were not endangered by Mr. Pacheaco’s vehicle when they fired at him.



Figure 2. The Defendant Officers are positioned to the west of the vehicle, which is traveling southbound in reverse. Police Officer Phillips is positioned to the north of the vehicle. Police Officer McCormick is positioned just south of Police Officer Phillips.

8. Given the slow speed of the vehicle and the wide-open city street, the Defendant Officers had every opportunity to step even further aside or abandon their pursuit if they felt endangered. Instead, after only seconds, the Defendant Officers fired nineteen rounds from close range from two firearms into the vehicle, fatally wounding Mr. Pacheaco.

9. Both prior to and at the precise moment that Mr. Pacheaco was shot, he did not pose any danger to the Defendant Officers or to any member of the public. The fatal shooting of a suspect who poses no substantial danger to any person violates clearly established law. Further, Colorado law requires officers to use non-violent means before resorting to any force. Colorado law also explicitly outlaws the use of deadly force to arrest people for minor offenses and non-violent offenses. Finally, Colorado law outlaws deadly force against someone fleeing the police who does not pose an immediate risk of death or serious bodily injury to others.

10. Despite the Defendant Officers' unlawful use of deadly force, they were not disciplined or even re-trained by the Glendale Police Department.

11. The Defendant Officers, acting under color of state law, violated Mr. Pacheaco's right under the Fourth Amendment to be free from the unreasonable use of deadly force.

12. As a direct and proximate result of Defendants' actions, Plaintiffs suffered injuries, damages and losses.

13. This action against the Defendant Officers seeks all available relief, including damages, based on their unlawful seizure and excessive force in violation of the Colorado Constitution Article II, Section 7, and is brought under C.R.S. § 13-21-131(1).¹

PARTIES, JURISDICTION AND VENUE

14. John Pacheaco, Jr. was a male citizen of the United States, residing in Jefferson County, Colorado.

15. Jamie Fowler is the mother and next-of-kin to John Pacheaco, Jr.

16. Ms. Fowler is a female citizen of the United States, and a resident of Davis County, Utah.

17. Ms. Fowler is the duly appointed Personal Representative of The Estate of John Pacheaco, Jr.

18. Defendant Police Officer Neal McCormick, is and at all relevant times was employed by the City of Glendale (the "City") and the Glendale Police Department (the "GPD") as a Police Officer. Defendant McCormick was acting within the scope of his official duties and employment, and under the color of state law in his capacity as a GPD officer, at all times relevant in this Complaint.

¹ Plaintiffs reserve their right to bring claims against the City of Glendale and its Police Chief, W.J. Haskins, as well as other officers, supervisors or municipal actors, should discovery reveal that the violations of Mr. Pacheaco's constitutional rights was caused by a policy, practice, failure to supervise, or failure to train by the police department or municipality, or a failure to intervene by another officer. Plaintiffs may seek redress under the implied right of action that the Colorado Supreme Court has recognized in cases seeking declaratory and injunctive relief for the enforcement of rights under the Colorado Constitution. *See, e.g., Taxpayers for Pub. Educ. v. Douglas Cty. Sch. Dist.* 351 P.3d 461 (Colo. 2015), vacated on other grounds, 137 S. Ct. 2327 (2017); *Trinidad Sch. Dist. v. Lopez*, 963 P.2d 1095 (Colo. 1998); *Univ. of Colo. v. Derdeyn*, 863 P.2d 929 (Colo. 1993); *Bock v. Westminster Mall*, 819 P.2d 55 (Colo. 1991); *Conrad v. City & Cty. of Denver*, 656 P.2d 662 (Colo. 1982).

19. Defendant Police Officer Chandler Phillips, is and at all relevant times was employed by the City and GPD as a Police Officer. Defendant Phillips was acting within the scope of his official duties and employment, and under the color of state law in his capacity as a GPD officer, at all times relevant in this Complaint.

20. Notice pursuant to the Colorado Governmental Immunity Act, § 24-10-109, C.R.S., was timely sent to, *inter alia*, the City and Chief of Police W.J. Haskins on January 6, 2021. A copy of the notice is attached hereto as “**Exhibit 1**” and incorporated herein by reference. Plaintiffs have not received any notice that their claim was denied.

21. This Court has jurisdiction under Colo. Rev. Stat. § 13-1-124(1)(b).

22. The conduct complained of herein occurred in the City and County of Denver, State of Colorado. This Court is the proper venue for this action pursuant to C.R.C.P. 98(c)(5).

FACTUAL BACKGROUND AND ALLEGATIONS

John Pacheaco, Jr.’s Life and Loss

23. John Pacheaco, Jr. was born on October 30, 1984, the son of Jamie Fowler and John Pacheaco, Sr. Mr. Pacheaco had three brothers and one sister.

24. Throughout his life, Mr. Pacheaco maintained a close relationship with his mother, Jamie Fowler, who has now outlived her son.

25. In 2016, Mr. Pacheaco enrolled in the Cypress Bible Institute and earned an Associate of Theology degree.

26. Mr. Pacheaco had a history of drug dependency. Mr. Pacheaco struggled to maintain his sobriety. Throughout the last decade, Mr. Pacheaco struggled with addiction and completed various drug treatment programs.

27. Despite his drug dependency issues, Mr. Pacheaco treated those around him with kindness and respect, and was always willing to lend a helping hand to those in need.

28. On October 30, 2020, the night before he was shot and killed by the Defendant Officers, Mr. Pacheaco had celebrated his 36th birthday.

29. Mr. Pacheaco was in good physical health with no serious underlying medical conditions at the time of his death.

30. On November 1, 2020, Ms. Fowler received a telephone call from Denver Police Department Detective Daniel Tregembo informing her that her son had been shot and killed by officers of the Glendale Police Department.

31. The autopsy report, completed by the Office of the Medical Examiner of the City and County of Denver, found that Mr. Pacheaco's death was due to "homicide."

Events Leading to the Encounter Between Mr. Pacheaco and Officers of the Glendale Police Department

32. On October 31, 2020, at approximately 9:55:38 p.m. (MDT), the maroon Dodge Ram that Mr. Pacheaco was driving came to a stop for a traffic light, facing northbound, at the intersection of Colorado Boulevard and Alameda Avenue in Denver, Colorado.

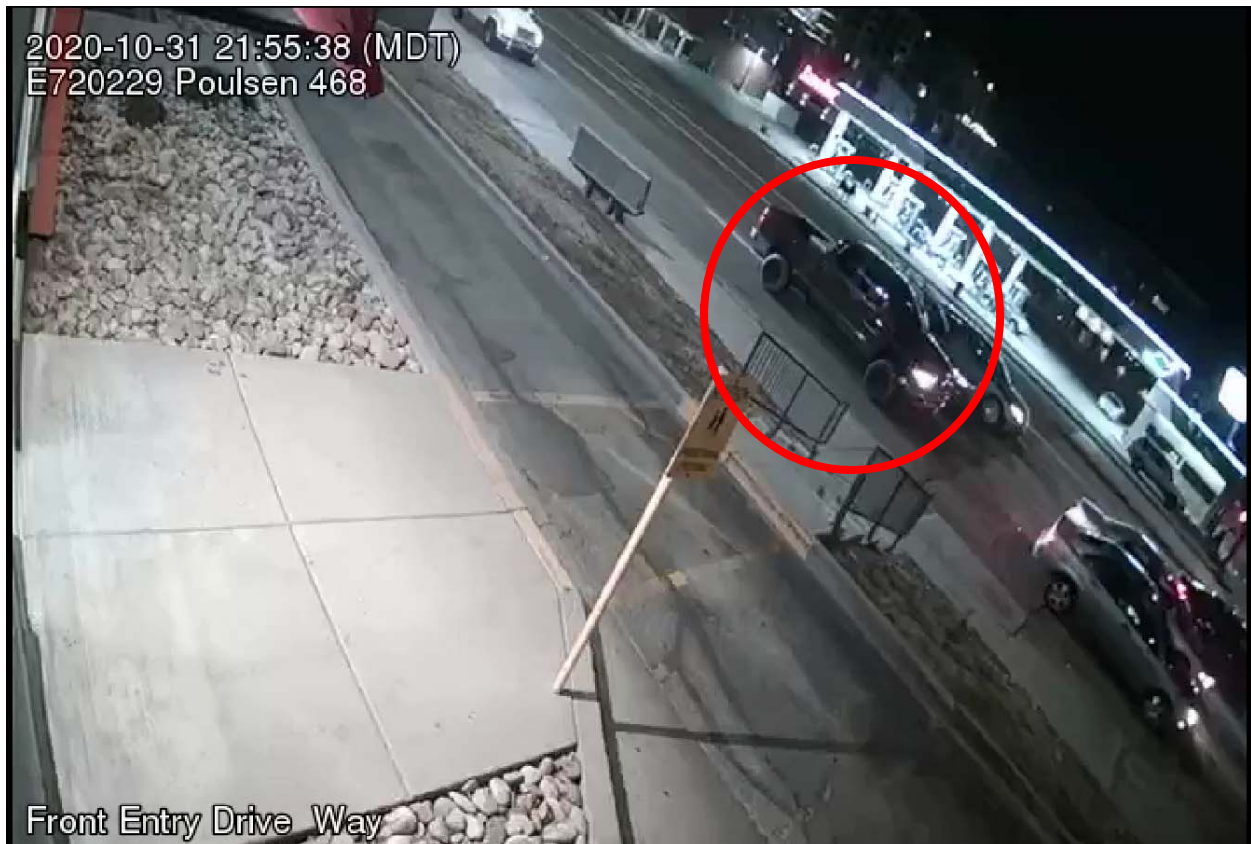


Figure 3. View of the Dodge (circled in red) stopped in traffic, taken by a local business' surveillance camera.

33. Mr. Pacheaco made a safe, controlled stop at the red light but did not move his vehicle when the traffic signal turned green.

Law Enforcement Contacts Mr. Pacheaco

34. As noted above, at approximately 9:58 p.m., Officer Bradley Reed of the Glendale Police Department approached Mr. Pacheaco's stopped vehicle for the purpose of conducting a "Wellness Check."

35. This location is in the City and County of Denver, outside of the City of Glendale and outside of the jurisdiction of the Glendale Police Department.

36. Officer Reed, driving an unmarked GPD vehicle, crossed out of his jurisdiction and into the City of Denver, and arrived on scene at approximately 9:58:31 p.m. and reported a disabled vehicle.

37. At approximately 9:58:40 p.m., Officer Reed reported the vehicle's location, license plate number, make and description.

38. Officer Reed then walked up to the Dodge's passenger side door to check on the driver, Mr. Pacheaco, who he found to be slumped over, unresponsive and appearing to be unconscious. Officer Reed slowly walked back to his vehicle without making any attempt to render aid or remove Mr. Pacheaco from the vehicle.

39. At approximately 9:59:11 p.m., Officer Reed asked dispatch to "advise Denver it's actually going to be theirs" and reported that the vehicle's driver was passed out in the front seat.

40. On information and belief, pursuant to policy and practice, Officer Reed's role as a GPD officer in Denver was to hold the scene until Denver Police Department officers arrived on scene.

41. Had Denver Police Department officers responded and taken control of the scene, then that Department's policies would have guided the interaction with Mr. Pacheaco.

42. At that time, Denver Police Department maintained a policy that would have applied to the situation that unfolded, which stated as follows:

(9) MOVING VEHICLES:

- a. Officers will exercise good judgment and not move into or remain in the path of a moving vehicle. Being in the path of a moving vehicle will not be the sole reason for discharging a firearm at the vehicle or any occupant. An officer in the path of a vehicle will attempt to move to a position of safety rather than discharging a firearm at the vehicle or any occupant(s).
- b. Occupant(s):
Firearms will not be discharged at anyone in a moving or fleeing vehicle unless lethal force is being used by that person against a police officer or any other person present by means other than the moving vehicle.
- c. Vehicles:
Firearms will not be discharged at a moving vehicle for the following reasons:
 1. It may have very little effect on stopping the vehicle.
 2. Inadvertently disabling the driver may result in an uncontrolled vehicle, and the likelihood of injury to occupants of the vehicle and/or bystanders may be increased when the vehicle is either out of control or shots are fired into the passenger compartment.
- d. Vehicle Ramming Attack:
Firing at the driver of a moving vehicle or the moving vehicle itself when there is an apparent intent to inflict mass casualties may be reasonable and necessary.

43. At approximately 9:59:19 p.m., dispatch reported that the vehicle came back “Code 5,” which meant that it was possibly stolen or involved in a crime.

44. At approximately 9:59:24 p.m., Officer Reed acknowledged dispatch’s advisement that the vehicle had been reported stolen and requested a cover car.

45. At approximately 9:59:35 p.m., Police Officer Neal McCormick reported that he was responding.

46. At approximately 9:59:37 p.m., Sergeant Ruben Montour instructed the officers on scene to “try to get a car in front of it to pin it in.”

47. At approximately 9:59:45, Police Officer Chandler Phillips positioned his marked patrol car directly in front of the Dodge, facing southbound.

48. Officer Reed moved his GPD vehicle forward, so that it was positioned a few feet behind the Dodge, facing northbound.

49. Police Officer Neal McCormick arrived a short time later and parked facing southbound, behind Police Officer Chandler Phillips’ patrol vehicle.

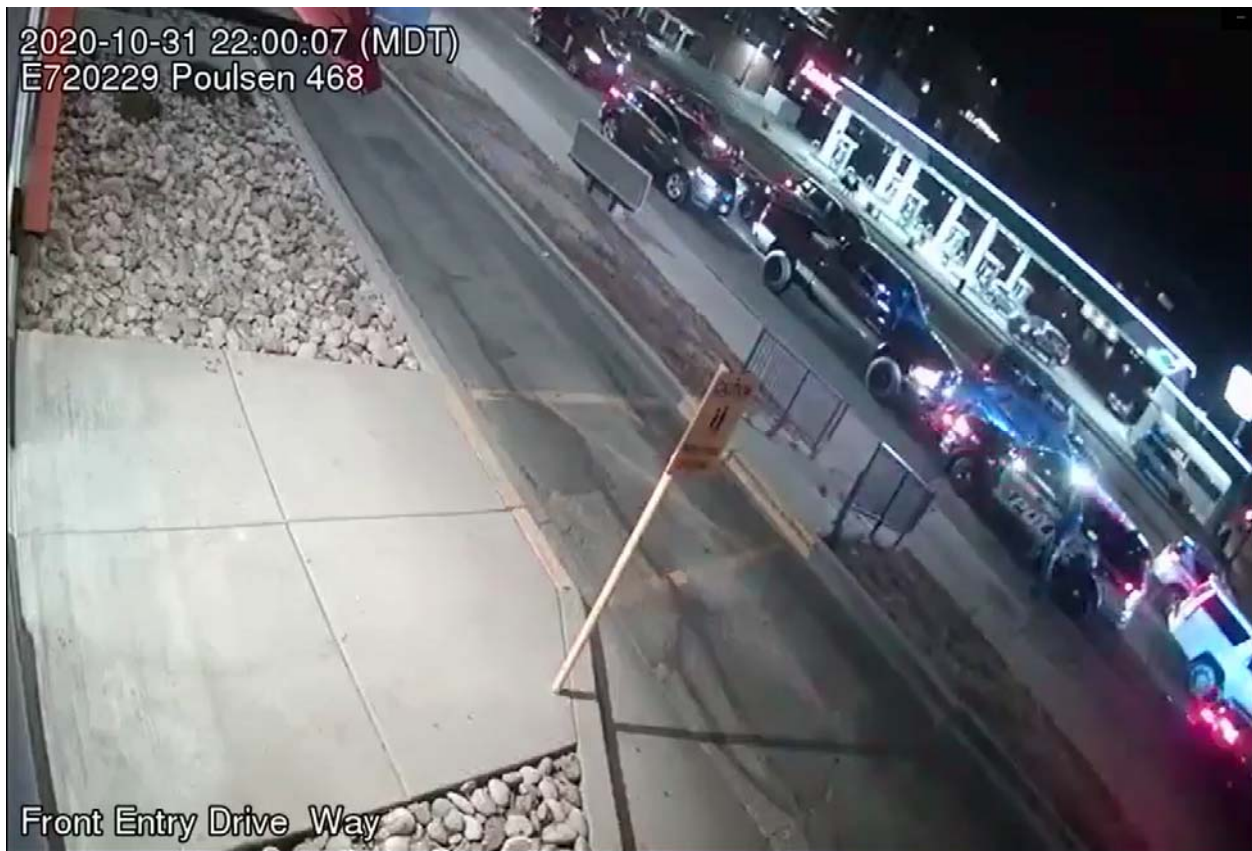


Figure 4. View of the Dodge driven by Pacheaco pinned between the GPD vehicles.

50. At approximately 10:00:09 p.m., dispatch advised additional responding officers that “they are going to be on the 300 block South Colorado Boulevard on the Denver side.”

51. During this time, Mr. Pacheaco remained unconscious and unresponsive inside his vehicle.

52. No efforts were made to stop, control or divert the south or northbound flow of traffic.

53. At approximately 10:00:18 p.m., Police Officer Neal McCormick walked up to the Dodge’s passenger side door and shone his flashlight through the passenger side window.

54. At that time, Officer McCormick and other officers began shouting at Mr. Pacheaco.

55. At that point, Mr. Pacheaco began to awake, but remained disoriented. When Mr. Pacheaco removed his foot from the brake, the Dodge began slowly rolling forward approximately a foot and contacted the front of the marked patrol car that had been positioned directly in front of it.

56. When the Dodge bumped up against the police cruiser, Police Officer Neal McCormick began banging on the Dodge’s passenger side window with his left fist.

57. Police Officer Neal McCormick then walked behind the Dodge to relocate to the driver’s side of the vehicle, recklessly placing himself between Mr. Pacheaco’s vehicle and the GPD vehicle behind the Dodge.

Defendant Officers Shoot and Kill Mr. Pacheaco

58. After Police Officer Neal McCormick had passed behind the rear of the Dodge and was clear of the vehicle’s path, Mr. Pacheaco shifted the vehicle.

59. At that time, approximately 10:00:34 p.m., Police Officer Neal McCormick fired seven rounds and Police Officer Chandler Phillips fired twelve rounds from extremely close range at Mr. Pacheaco.

60. Neither officer was in the path of the Dodge driven by Mr. Pacheaco when they began firing their weapons.

61. The Dodge driven by Mr. Pacheaco did not touch or impact Police Officer Neal McCormick before or after he fired his weapon at Mr. Pacheaco.

62. Given the slow speed of the vehicle driven by Mr. Pacheaco and the wide-open city street, the Defendant Officers had every opportunity to step even

further to the side of the Dodge or abandon their pursuit if they felt Mr. Pacheaco posed a significant threat of death or serious physical injury to them.

63. The bullets fired by Defendants struck Mr. Pacheaco in the face, neck, chest and arm.

64. After Mr. Pacheaco was struck by Defendants' bullets, one of which lacerated his spinal cord, his foot came down on the gas pedal and the Dodge began accelerating backward and struck the unoccupied and unmarked police vehicle behind him.

65. There was no need for the Defendant Officers to use deadly force against Mr. Pacheaco.

66. Even if a need to use deadly force existed, it was caused by the Defendant Officers' prior reckless and/or intentional conduct that was immediately connected to, and the cause of, any alleged danger posed by Mr. Pacheaco.

67. The Defendant Officers' reckless actions precipitated any alleged need to use deadly force.

68. Mr. Pacheaco was not armed.

69. No weapons were discovered in Mr. Pacheaco's vehicle.

70. At approximately 10:00:39 p.m., Officer Reed reported "shots fired."

71. At approximately 10:00:42 p.m., another officer reported "shots fired, shots fired."

72. At approximately 10:01:00 p.m., GPD dispatch contacted the Denver Police Department and requested "emergent cover, 300 block South Colorado Boulevard. We have shots fired from a stolen vehicle." (underlining added). However, the only shots fired were fired by the Defendant Officers.

73. At approximately 10:01:07 p.m., GPD dispatch reported that it was "unknown if officers down at this time" and requested Emergency Medical Services.

74. At approximately 10:01:34 p.m., Sergeant Montour requested "Code 10 coverage . . . right now."

75. At approximately 10:01:55 p.m., GPD dispatch reported to the Denver Police Department that the "vehicle is going to be a 2004 Dodge Ram maroon color. Vehicle also rammed my sergeant's car."

76. At approximately 10:02:06 p.m., the Denver Police Department dispatcher asked if GPD needed EMS.

77. In response, at approximately 10:02:14 p.m., GPD dispatch advised that “our sergeant is asking for EMS Code 10.”

78. At approximately 10:02:41 p.m., Sergeant Montour directed dispatch to “stage [EMS] at fuckin’ ah, ah fuckin’ knows, excuse me, excuse my language, stage them at Chick-fil-A,” which was located at 430 S. Colorado Boulevard in Denver.

79. At approximately 10:02:56 p.m., GPD dispatch advised the Denver Police Department that “my officers are unable to advise on line of fire at this time.”

80. At approximately 10:03:07 p.m., Sergeant Montour advised that he was going to contact the on-call commander and on-call detective.

81. At approximately 10:03:12 p.m., GPD dispatch advised that “they have the vehicle pinned right now.”

82. At approximately 10:03:15 p.m., Sergeant Montour reported that there had been “shots fired. We’ve got one male party down, in front of the, in the front seat. We’re right at the 300 block of South Colorado Boulevard.”

83. At approximately 10:03:22 p.m., GPD dispatch attempted to reach Captain Michael Gross by telephone, but was unsuccessful.

84. At approximately 10:03:28 p.m., GPD dispatch advised the Denver Police Department that “we have one party confirmed down in the driver’s seat of that vehicle.”

85. At approximately 10:03:42 p.m., Denver dispatch requested clarification as to whether Mr. Pacheco was down due to gunfire or because of the accident.

86. In response, at approximately 10:03:47 p.m., GPD dispatch advised Denver that “they are unable to advise at this time. I believe it’s going to be from the gunshots.”

87. At approximately 10:03:53 p.m., Sergeant Montour requested the Denver Police Department to start blocking Colorado Boulevard southbound at the Alameda intersection.

88. At approximately 10:04:09 p.m., GPD dispatch contacted Captain Michael Gross by telephone and advised that “we’ve got shots fired. They stopped a vehicle at 300 south block of Colorado Boulevard and we have one down in the vehicle, so sergeant asked me to advise.”

89. At approximately 10:04:30 p.m., GPD dispatch contacted Denver dispatch and advised “they have one party confirmed down, I don’t have line of fire yet. If you guys could block Colorado and Alameda, the southbound lanes, please.”

90. Denver dispatch responded that “we’ve got northbound shut down. We’re also being told it’s an officer involved.” GPD dispatch replied that she “didn’t get that yet.”

91. At approximately 10:06:44 p.m., GPD dispatch asked the officers on scene if EMS was “clear to go in.”

92. At approximately 10:06:46 p.m., Sergeant Montour responded “negative, stand by.”

93. At approximately 10:07:22 p.m., GPD dispatch confirmed with Denver dispatch that EMS was staged.

94. At approximately 10:08:26 p.m., Captain Gross contacted GPD dispatch to clarify whether a GPD officer had fired the shots.

95. At approximately 10:09:26 p.m., a team of Denver police officers approached the Dodge and broke out the front passenger window.

96. Denver officers then pulled Mr. Pacheaco out of the vehicle from the passenger side and placed him on the sidewalk, where a Denver police officer began to perform CPR, approximately 9 minutes after Mr. Pacheaco was shot.

97. At approximately 10:09:43 p.m., Code 4 was requested, “one male party down.”

98. At approximately 10:09:44 p.m., GPD dispatch advised EMS that “they can go to the scene from Colorado and Virginia on the shots fired.”

99. Mr. Pacheaco was transported to Denver Health Medical Center where, despite the concerted efforts of medical staff, he was pronounced dead at 10:36 p.m.

100. An autopsy was performed by the Denver Office of the Medical Examiner on November 2, 2020 at 8:30 a.m.

101. The forensic examination revealed a gunshot wound to the left side of Mr. Pacheaco’s head and neck. The bullet had entered through the left occipital scalp/superior neck, traveled left to right, front to back, and downward, causing injury to Mr. Pacheaco’s 2nd and 3rd cervical vertebrae, lacerating his spinal cord and causing hemorrhage along the wound path.

102. The significant injuries caused by the gunshot to Mr. Pacheaco's head and neck would be categorized as medically expected to result in death, independent of other injuries.

103. The bullet recovered from Mr. Pacheaco's neck was fired by Police Officer Chandler Phillips.

104. The forensic examination also revealed a gunshot wound to the left side of Mr. Pacheaco's face. The bullet had entered through the left side of Mr. Pacheaco's face, traveled left to right, back to front, and downward, exiting through the lower lip and causing hemorrhage along the wound path.

105. The forensic examination also revealed a gunshot wound to Mr. Pacheaco's torso. The bullet had entered through the left side, traveled left to right, slightly back to front, and downward, below Mr. Pacheaco's left 7th rib, injuring his bowel and mesentery and aorta, and causing hemoperitoneum, hemorrhage along the wound path and surrounding the left adrenal gland, and mesenteric hemorrhage.

106. The significant injuries caused by the gunshot to Mr. Pacheaco's torso would be categorized as medically expected to result in death, independent of other injuries.

107. The bullet recovered from Mr. Pacheaco's abdomen was fired by Police Officer Neal McCormick.

108. The forensic examination revealed a gunshot wound to Mr. Pacheaco's left arm. The bullet had entered the lateral left arm, traveled left to left, slightly back to front, and slightly upward, exiting the medial left arm and causing hemorrhage along the wound path.

109. The cause of Mr. Pacheaco's death was multiple gunshot wounds that injured his cervical spine and spinal cord, bowel and mesentery, and aorta.

110. The bullets fired by Officers Phillips and McCormick each inflicted significant injuries to Mr. Pacheaco and resulted in his death independently of each other.

111. The Denver Office of the Medical Examiner ruled the shooting a homicide.

Defendant Officers Conspire to Fabricate a False Version of Events

112. Police Officer Neal McCormick was hired by the GPD on November 30, 2017.

113. Police Officer Chandler Phillips was initially hired by the GPD on November 24, 2014, resigned effective January 17, 2015, and was then rehired on August 20, 2018.

114. The Defendant Officers worked the same patrol shifts and knew each other.

115. The Denver District Attorney's Office conducted an investigation of the shooting.

116. The Denver District Attorney's "Officer Involved Shooting Protocol" states, in part, "Standard investigative procedures are used at all stages of the investigation, and additional specific procedures in the Denver Police Department's Operations Manual for officer-involved shootings are followed to further ensure the integrity of the investigation. For example, the protocol requires the immediate separation and sequestration of all key witnesses and all involved officers. Involved officers are separated at the scene, transported separately by a supervisor to police headquarters, and sequestered with restricted visitation until a formal voluntary statement is taken."

117. However, during this particular investigation, the Defendant Officers were not immediately separated and sequestered until formal voluntary statements were taken. Instead, the Defendant Officers were not interviewed until December 2, 2020, over a month after the shooting.

118. During the month prior to their interviews, the Defendant Officers spoke to each other about the shooting of Mr. Pacheaco.

119. During interviews with investigators after the shooting, the Defendant Officers provided similar explanations for their decision to shoot Mr. Pacheaco.

120. Defendant McCormick falsely claimed that Mr. Pacheaco had struck him with the Dodge.

121. Defendant Phillips falsely claimed that he shot Mr. Pacheaco because Officer McCormick was behind the truck when Defendant Phillips shot and he feared for Officer McCormick's safety. Defendant Phillips also falsely claimed that he saw the Dodge strike Officer McCormick.

122. Defendant McCormick was not struck by the Dodge Mr. Pacheaco was driving and, in fact, had cleared the vehicle's path before the first shot was fired by either Defendant Officer.

123. Defendant McCormick did not report any physical injuries immediately after the shooting.

124. The Denver Police Department did not report any physical injuries to Officer McCormick contemporaneous to the shooting.

125. The Denver Police Department held a street side press conference shortly after the shooting and reported that Mr. Pacheaco had struck a vehicle while traveling southbound, in reverse, on Colorado Boulevard. In response to query from the media as to whether Mr. Pacheaco hit a police officer, Denver Police Department spokesman Mark Chuck advised that Mr. Pacheaco hit a police vehicle.

126. The Defendant Officers arrived at extremely similar explanations for the shooting of Mr. Pacheaco because they discussed with each other the shooting before their interviews with investigators and aligned their defense.

127. Defendant Phillips admitted to speaking with Officer McCormick about the shooting of Mr. Pacheaco, prior to his interview with investigators.

The Defendant Officers' Conduct was Unreasonable and Violated GPD Policy

128. GPD's deadly force policy provides that its police officers shall not discharge their firearms:

- A. "except to protect themselves or another person from imminent death or serious bodily injury."
- B. "when there is likelihood of serious injury to persons other than the person to be apprehended, or into a crowd."
- C. to threaten or subdue persons whose actions are destructive to property or injurious to themselves unless the subject represents an imminent threat of death or serious bodily injury to the officers or others."
- D. "to subdue an escaping suspect who presents no immediate threat of death or serious bodily injury."

129. Mr. Pacheaco did not pose an imminent or immediate threat of death or serious bodily injury.

130. The Defendant Officers' actions, however, created a likelihood of serious injury to persons other than Mr. Pacheaco by discharging their firearms at a busy intersection with heavy vehicular and pedestrian traffic.

131. The Defendant Officers thus violated the GPD's policy on the use of deadly force.

132. GPD policy also provides that “[f]iring at or from a moving vehicle is prohibited except under extreme conditions where the officer reasonably believes that there is an imminent threat of death to them or a third party if the officer does not do so. Before discharging a firearm at or from a moving vehicle, officers must reasonably believe that the only reasonable means of protecting themselves and/or a third party is the use of deadly force.”

133. The Defendant Officers wrongfully fired at Mr. Pacheaco’s moving vehicle when he did not pose an imminent threat of death to them or a third party.

134. The Defendant Officers thus violated the GPD’s policy on shooting at moving vehicles.

135. The Defendant Officers were dishonest in their statements to investigators regarding the shooting.

136. Despite their clear violations of policy and their dishonesty about what had transpired, the Defendant Officers were not disciplined by the GPD, indicating that the GPD approves of their conduct.

137. Upon information and belief, the Defendant Officers had previously failed to adhere to GPD’s written policies.

138. Upon information and belief, Defendant McCormick had previously failed to adhere to GPD’s written policies.

139. Upon information and belief, Defendant McCormick had not been previously disciplined for his failure to adhere to GPD’s written policies.

140. Upon information and belief, Defendant Phillips had previously failed to adhere to GPD’s written policies.

141. Upon information and belief, Defendant Phillips had not been previously disciplined for his failure to adhere to GPD’s written policies.

142. Following the shooting, Defendant Phillips, once again, violated the GPD’s policies, this time authoring the offensive social media post below regarding his killing of Mr. Pacheaco:



143. Upon information and believe, Defendant Phillips was ordered to remove the social media post, but was not otherwise disciplined.

144. Lt. Jamie Dillon with the Glendale Police Department stated in regard to Phillips' social media post, "...We [GPD] are not comfortable with the photo or the captions, and they are in poor taste to say the least. The Pacheaco family has suffered a tremendous loss and the situation should not be made light of in any way. The Glendale Police Department apologizes for the actions of our officer."

CAUSE OF ACTION

Colo. Rev. Stat. § 13-21-131 – Violation of Colo. Const. Art. II, Sect. 7 (Against Defendant Officers Phillips and McCormick)

145. Plaintiff restates and incorporates paragraphs 1 through 144 as though fully set forth.

146. Defendant Phillips and Defendant McCormick were police officers, under Colo. Rev. Stat. § 24-31-901(3), employed by the City of Glendale and the GPD at the time of their shooting of Mr. Pacheaco.

147. Defendant Phillips and Defendant McCormick were acting within the course and scope of their employment with the City and GPD at the time they shot Mr. Pacheaco.

148. Defendant Phillips and Defendant McCormick were acting under color of law, when they shot Mr. Pacheaco.

149. Article II, Section 7, of the Colorado Constitution, states in relevant part that “[t]he people shall be secure in their persons ... from unreasonable ... seizures...”

150. Mr. Pacheaco had the protected interest and right under Article II, Section 7, of the Colorado Constitution to be free from unreasonable seizures by law enforcement personnel, such as the Defendant Officers.

151. Mr. Pacheaco had the protected interest and right under Article II, Section 7, of the Colorado Constitution to be free from the unreasonable use of deadly force by law enforcement personnel, such as the Defendant Officers.

152. Defendant Phillips and Defendant McCormick used deadly force against Mr. Pacheaco when they shot and killed him.

153. Defendant Phillips’ and Defendant McCormick’s unjustified use of deadly force resulted in Mr. Pacheaco’s death.

154. Defendant Phillips’ and Defendant McCormick’s unreasonable use of deadly force violated Mr. Pacheaco’s rights and interests secured by Article II, Section 7, of the Colorado Constitution.

155. Defendant Phillips and Defendant McCormick seized Mr. Pacheaco when they shot and killed him, actions which constituted the use of deadly force.

156. Defendant Phillips’ and Defendant McCormick’s seizure of Mr. Pacheaco through the use of deadly force resulted in Mr. Pacheaco’s death.

157. Defendant Phillips’ and Defendant McCormick’s seizure of Mr. Pacheaco through the use of deadly force violated Mr. Pacheaco’s rights and interests secured by Article II, Section 7, of the Colorado Constitution.

158. Defendant Phillips’ and Defendant McCormick’s seizure of Mr. Pacheaco, through their use of deadly force that resulted in his death, was not objectively reasonable in light of the facts and circumstances encountered by Defendants on the night of October 31, 2020.

159. Under the totality of the circumstances encountered by Defendant Phillips and Defendant McCormick on October 31, 2020, their use of deadly force

against Mr. Pacheaco was not justified and was objectively unreasonable and reckless.

160. A reasonable officer in Defendant Phillips' and Defendant McCormick's position would not have had probable cause to believe that, prior to firing their weapons, Mr. Pacheaco posed a threat of serious physical harm to officers or to others.

161. Both prior to and at the precise moment that Defendant Phillips and Defendant McCormick shot and killed Mr. Pacheaco, no law enforcement officer or member of the public was in danger from Mr. Pacheaco.

162. Defendant Phillips and Defendant McCormick set in motion a series of events that they knew, or reasonably should have known, would cause Mr. Pacheaco to be deprived of his rights secured by Article II, Section 7 of the Colorado Constitution.

163. Defendant Phillips and Defendant McCormick personally participated in the decisions and actions that subjected Mr. Pacheaco to a deprivation of his right to be free from the unreasonable use of deadly force.

164. Defendant Phillips and Defendant McCormick, through their own individual actions, subjected Mr. Pacheaco to a violation of his rights and interests under Article II, Section 7 of the Colorado Constitution.

165. Defendant Phillips and Defendant McCormick acted deliberately indifferent, objectively unreasonably, heedlessly, and recklessly, without regard for the rights of Mr. Pacheaco.

166. Defendant Phillips' and Defendant McCormick's acts and omissions directly caused, proximately caused, and were the moving force behind the deprivation of Mr. Pacheaco's rights under the Colorado Constitution.

167. If a need to use deadly force existed, such need was unreasonably created by Defendant Phillips' and Defendant McCormick's own deliberate and/or reckless conduct.

168. As a direct and proximate result of the violation of Mr. Pacheaco's right to be free from unreasonable seizure through the use of deadly force, Mr. Pacheaco and Plaintiffs suffered injuries and damages, both economic and noneconomic, in an amount to be determined at trial.

169. Each of the Defendant Officers' use of deadly force was a separate, independent, and several cause of the violation of Mr. Pacheaco's rights under Article II, Section 7 of the Colorado Constitution.

170. Each of the Defendant Officers' use of deadly force was a separate, independent, and several cause of the death of Mr. Pacheaco.

171. The Defendant Officers are jointly and severally liable for the violations of Mr. Pacheaco's rights, his death, and the damages sought by Plaintiffs.

172. As pled above, Defendant Phillips' and Defendant McCormick's conduct was willful and wanton, and reckless and callously indifferent to the protected rights of Mr. Pacheaco.

173. Plaintiffs seek an award of compensatory damages in an amount that includes, but is not limited to, medical and burial expenses; pain and suffering before death; loss of earnings based upon the probable duration of Mr. Pacheaco's life had not the injury occurred; Mr. Pacheaco's loss of consortium; other damages recognized in common law tort actions, including the loss of enjoyment of life; legal and equitable relief and damages; prejudgment and post-judgment interest; costs of litigation; attorneys' fees; and such other and further relief as the Court deems just and proper.

[Intentionally Blank]

PRAYER FOR RELIEF

WHEREFORE, pursuant to the above Cause of Action, Plaintiffs pray for Judgment against the Defendants, and each of them, jointly and severally, as follows:

- a. an award of all damages available pursuant to Colo. Rev. Stat. § 13-21-131 and Colorado law, including legal and equitable relief such as economic and non-economic damages;
- b. loss of earnings based upon the probable duration of John Pacheco, Jr.'s life had the injury not occurred;
- c. John Pacheco, Jr.'s loss of consortium;
- d. all applicable damages recognized in common law tort actions;
- e. John Pacheco, Jr.'s loss of the enjoyment of his life;
- f. prejudgment and post-judgment interest at the highest lawful rate;
- g. reasonable costs of litigation and reasonable attorneys' fees;
- h. medical and burial expenses;
- i. John Pacheco, Jr.'s pain and suffering before death; and
- j. for such other and further relief as the Court deems just and proper.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL ON ALL ISSUES.

RESPECTFULLY SUBMITTED this 10th day of September, 2021.

OGBORN MIHM, LLP

By: /s/ Clayton E. Wire
Clayton E. Wire, No. 41717
Mike Ogborn, No. 20932
Peter A. McClenahan, No. 41044
1700 Lincoln Street, Suite 2700
Denver, Colorado 80203
Telephone: (303) 592-5900
Facsimile: (303) 592-5910
Email: Clayton.Wire@omtrial.com
Mike.Ogborn@omtrial.com
Peter.McClenahan@omtrail.com

HALTZMAN LAW FIRM

Matthew Haltzman, No. 47913
204 Maple Street, Suite 101
Ft. Collins, Colorado 80521
Telephone: (970) 692-3440
Email: Matthew@haltzmanlaw.com

Attorneys for Plaintiffs

Plaintiffs' Mailing Address:
2030 Evans Cove Loop
Layton, UT 84041