

LARIMER COUNTY DISTRICT COURT STATE OF COLORADO  201 LaPorte Ave Fort Collins, CO 80521	DATE FILED: January 3, 2022 9:57 PM FILING ID: 8D86BA5AD67C0 CASE NUMBER: 2022CV30006
<b>HARRIS ELIAS,</b> Plaintiff,  <b>v.</b>  <b>CITY OF LOVELAND, and</b> <b>OFFICER WILLIAM GATES,</b> Defendants.	<b>▲ COURT USE ONLY ▲</b>  Case Number:  2022CV    Division:
<i>Attorney for Plaintiff:</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	
<b>COMPLAINT AND JURY DEMAND</b>	

COMES NOW the Plaintiff, Harris Elias, by and through the undersigned counsel, with this *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 various forms of relief, to include compensatory damages and attorneys fees, stemming from Defendants’ violations of Plaintiff’s 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 Plaintiff’s 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 state court supplemental jurisdiction over the federal claims arising out of 42 U.S.C. § 1983.
3. Pursuant to C.R.C.P. 98(c)(5), venue is proper in this Court, which Plaintiff designates 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 Harris Elias is a resident of the State of Colorado. He resides in Fort Collins, Larimer County, Colorado presently and at all times relevant to this Complaint.
6. Defendant Loveland Police Officer William Gates (“Officer Gates”) was at all times relevant to this complaint duly appointed and sworn as a police officer working for the Loveland Police Department. Officer Gates is a named Defendant in his individual capacity.
7. 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”).
8. 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 Gates.
9. 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 DUI arrests and probable cause.
10. All of the events described herein occurred in the Cities of Loveland/Fort Collins and the State of Colorado.

## **STATEMENT OF FACTS**

11. On the evening of January 4, 2020, Plaintiff Mr. Elias was peaceably, lawfully and quite soberly driving to his home after having left his girlfriend’s house in north Fort Collins.
12. Mr. Elias’s girlfriend had hosted a dinner party that night, with several guests in attendance from 5-9 pm. They had had a wonderful time with great food and enjoyable conversation. After the guests left around 9-9:30 pm, Mr. Elias had helped his girlfriend clean up. Together they chatted, did dishes, and cleaned up leftovers.
13. At about 10:30 pm, Mr. Elias departed for home. It had been a great evening. He was tired and full. He was very much looking forward to rejoining his teenage son at their residence in southeast Fort Collins, and then going to bed.
14. Mr. Elias soon was headed south on College Ave through mid-town Fort Collins. There was little to no traffic anywhere around him.
15. Mr. Elias stopped at the red light at Drake. When it turned green, he continued driving southbound.
16. After driving approximately another half mile, Mr. Elias saw that the stoplight up ahead at the intersection with Swallow Road was red. He slowed for the red light. As he had nearly come to a stop, the light turned green and he began to slowly accelerate forward again.

17. Mr. Elias had been daydreaming and shortly after he crossed Swallow, he had a moment of wondering if he had missed the turn that he had intended to take east. He briefly removed his foot from the gas pedal to stop accelerating further, so that he'd be able to read the next cross-street's street sign and orient himself.
18. Mr. Elias read the next street sign and was reoriented. He had not yet missed his planned turn. However suddenly, in nearly the very same instant as he put his foot back on the gas pedal, he saw the headlights of a car speed up behind him and close in on his bumper in a startling, aggressive manner. Not wanting to impede the driver, whomever it was, he signaled a lane change with his left blinker to get out of the driver's way and in preparation for his upcoming left turn to head east. He made the lane change normally, lawfully, and without issue.
19. The car that had sped up behind him turned out to be Loveland Police Officer William Gates. Defendant Officer Gates was working in his role as a member of the recently formed "RAID" (Reduce All Impaired Driving) inter-police agency task force. Officer Gates had been that night roving the streets of Larimer County with the sole task of looking for and charging citizens with DUIs.
20. Officer Gates stayed tight on Mr. Elias's tail, following him into the left lane (and not signaling his own lane change). He then flipped on his overhead red and blue lights, initiating a traffic stop. Mr. Elias immediately submitted to the officer's show of authority, using his turn signal to promptly turn onto a well-lit side street. Mr. Elias made sure to also pull forward enough on the side street, before parking, to ensure that the officer stopping him had room to safely park behind him.
21. Officer Gates parked behind Mr. Elias, got out of his patrol car, and walked up to Mr. Elias's window. Mr. Elias had already rolled it down.
22. Officer Gates asked Mr. Elias how he was doing. Mr. Elias said he was doing well.
23. Officer Gates told Mr. Elias he stopped him because he "didn't signal his lane change." This was not true. Mr. Elias was skeptical of this claim and told Gates so.
24. Officer Gates regularly claims (falsely) that the drivers he arrests for DUI did not signal a lane change. Gates does so because this is one of the most difficult allegations to disprove, given that Loveland PD does not employ dash cams (only bodycams) and so never capture the arrested individual's actual driving. "Failures" to signal are also often an offense of slight omission – when changing lanes, a driver need only blink their blinker once, even for just a millisecond prior to moving lanes, to comply. As a result, proving something this subtle and brief actually occurred can be (particularly at night) immensely difficult. Officer Gates counts on this reality.
25. At the time this arrest occurred, Officer Gates had been alleging drivers committed "failure to signal a lane change" more often than any other officer at LPD. He alleged it so often that it ought to have caused any reasonable, responsible immediate supervisor to have had questions and concern about its veracity.

26. Officer Gates prides himself on having some of the highest DUI arrest rates in the State of Colorado. He is heard regularly boasting about it to drivers he is arresting on his various bodycam videos. He has received awards from MADD (Mothers Against Drunk Driving) and his employing agency (Loveland Police Department) for having the highest DUI arrest numbers. At the time of this arrest, he was earning extra income as a result of his high DUI arrest numbers by virtue of those numbers gaining him overtime shifts (paid time and a half) to work DUI enforcement both for LPD and the RAID task force.
27. Grant funds obtained by the RAID task force are distributed to the member police agencies “according to the individual agency’s percentage of impaired driving citations issued in the immediately preceding year.” As a result, all of the participating agencies know to value quantity of DUI arrests over quality of DUI arrests.
28. The RAID task force also states in its formation documents that its objectives include “ensuring an appropriate level of media coverage” for each of the participating agencies to increase the funding and public support they receive.
29. After Mr. Elias informed Gates that he was skeptical of the claim that he had not signaled his lane change<sup>1</sup>, Gates added that he also stopped Mr. Elias because he was “doing 18 miles an hour in a 45 mile-per-hour zone.”
30. It is not unlawful to drive 18 mph in a 45 mph zone.
31. Every single driver, accelerating into motion from a red light that has turned green, must at some point go 18 mph in a 45 mph zone. This is not a lawful basis to stop any motorist. Officer Gates knew it. Every reasonable officer would know it.
32. But that knowledge did not prevent Gates from hurling the claim at Mr. Elias as though it were a criminal accusation requiring his response and defense. Mr. Elias was stunned.
33. Quickly, and aiming to capitalize on Mr. Elias’s taken-aback state by peppering him with further demands and accusations (with the hope that he could proclaim even the slightest resulting pause, delay, or confusion as another “observation” of DUI impairment) Gates nearly simultaneously demanded Mr. Elias’s driver’s license and insurance while also asking him how much he had to drink tonight.
34. Mr. Elias provided Gates with his license and proof of insurance immediately and without indication of impairment. In fact, he already had both documents ready and waiting for Officer Gates.
35. It was windy that day, however, and Mr. Elias had not heard Gates’s question about drinking. He said, “What’s that? I can’t hear you.” Gates repeated himself: “I said how much have you had to drink tonight?”

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<sup>1</sup> Mr. Elias, an FAA-licensed pilot and general contractor, is quite fastidious and detail-oriented both in his day-to-day life and in his operation of vehicles. He was as sure as any person can be that he had in fact signaled his lane change and specifically recalled doing so.

36. Mr. Elias was finding this entire encounter increasingly bizarre and concerning. He had committed no crimes nor even a traffic offense but had just been accused of multiple such offenses by this officer within just 30 seconds. He knew that his obligation was to provide license and insurance; he had done so. He knew that he had a right to remain silent and not be interrogated by such an obviously untrustworthy police officer; so now he did that as well. He told Officer Gates he was not going to answer his questions.
37. Officer Gates did not expect this. Typically people fell apart from the speed and intensity of his abrupt criminal accusations. But Mr. Elias was not at all. Even worse, Mr. Elias had perfect dexterity and speech. This DUI arrest that he had planned to make was not going how he intended it at all. Especially if Mr. Elias was going to exercise his right to remain silent.
38. Since Gates still intended to make the DUI arrest regardless, he knew he needed to fabricate more, and quick. So he threw out next the one and only other item he could falsely claim and that Mr. Elias could not disprove later. He responded: "Well, I smell the overwhelming odor of alcohol coming from your vehicle."
39. There was no odor of alcohol coming from Mr. Elias's vehicle, let alone an "overwhelming one."
40. Gates continued berating Mr. Elias, somewhat frenzied now: "And you're doing 22 miles an hour below the speed limit, and you failed to signal a lane change, so on a scale of zero being completely sober and 10 being the most intoxicated you've ever been, what do you feel like?"
41. It is worth noting that Gates first accused Mr. Elias of committing the non-crime of driving 18 miles per hour in a 45 mph zone. Now, seconds later, and contradicting his previous non-crime accusation, he was accusing Mr. Elias of committing the also-non-crime of driving 23 miles per hour in a 45 mph zone. In the very same breath, he was ignoring Mr. Elias's invocation of his right to remain silent and attempting to continue an unlawful custodial interrogation of Mr. Elias without a *Miranda* advisement.
42. Mr. Elias responded to Officer Gates matter-of-factly: "That's irrelevant. I am not going to answer your questions."
43. At this point, Officer Gates's only lawful option was to let Mr. Elias go. Mr. Elias had committed no offenses (criminal, traffic, or otherwise) and he did not have probable cause to continue to detain Mr. Elias for anything else. But Officer Gates worked at the Loveland Police Department. And LPD had a custom for the treatment of any person who refused to submit to their authority and questioning: They would be arrested.
44. So Gates took Mr. Elias's documents back to his patrol car and called for cover officers. After 3 minutes, two officers from the Larimer County Sheriff's Office arrived. Officer Gates told them that Mr. Elias was refusing to answer questions so he "didn't know how this was going to go."
45. Officer Gates returned to Mr. Elias's driver side door and ordered him out of the car. Mr. Elias complied, turning off the car and rolling his window up as he exited.

46. Gates noticed that Mr. Elias had his phone with him and potentially was recording the encounter. He directed Mr. Elias to leave his phone in his car.
47. Officer Gates during this time regularly and prolifically violated LPD's written policy regarding when officers were permitted to mute their bodyworn cameras. It was a known practice of his to mute his camera while questioning arrestees, after which he would write in his reports all kinds of false statements regarding what was said during the time that he "accidentally" or "inadvertently" had muted his bodyworn camera or "forgotten" to unmute his bodyworn camera. Pursuant to this practice, he would always attempt to separate subjects from their phones to reduce the possibility of their separately recording the exchange.
48. Mr. Elias complied with the directive and put his phone in the car, naturally growing increasingly wary and concerned as ever.
49. Mr. Elias is an FAA-licensed pilot. Being accused of or investigated for DUI is about as terrifying as it can get. Merely being arrested for DUI can result in the suspension or revocation of all the years of training, education, testing and medical clearances completed to obtain such a license.
50. Officer Gates directed Mr. Elias to the back of his vehicle. Mr. Elias complied, showing still not one indication of impairment.
51. At the rear of the vehicle, and now having surrounded him with himself and two other officers, Officer Gates took another stab at interrogating the observably innocent Mr. Elias. He told Mr. Elias that his eyes were "bloodshot, watery, glassy."
52. Mr. Elias's eyes were not "bloodshot, watery, or glassy." To this end, Mr. Elias throughout his encounter later into the night with Officer Gates would request that he take a photograph of his eyes to document the fact of the false allegation.
53. Officer Gates continued: "So, how much have you had to drink?"
54. Mr. Elias told Officer Gates again: "I am not going to answer any questions."
55. Gates replied: "Ok. Would you want to do some voluntary tests for me?" Mr. Elias responded: "No sir."
56. Officer Gates then told Mr. Elias to turn around, put his hands behind his back, and that he was under arrest for DUI.
57. At the time he formally arrested Mr. Elias, Officer Gates did not have probable cause to arrest him for DUI. He also knew it. He didn't care.
58. Officer Gates knew that LPD valued his DUI arrest numbers far more than the quality of any of his DUI arrests. He had also wrongfully arrested numerous people prior to this for DUI. At least 4 in just the previous year alone. In each case, he had falsely claimed

“overwhelming odor of alcohol” and “bloodshot watery eyes” only to see test results indicating zeroes.

59. Gates’s supervising officers at LPD were aware of his wrongful DUI arrests. But they took no corrective measures whatsoever. They instead continued to reward him for the quantity of DUI arrests he made over all else.
60. Gates knew that increasing his DUI arrest numbers remained the top priority to his own ego and career as well as to his employer, and so he proceeded accordingly.
61. Officer Gates invoked Colorado’s Express Consent law and demanded that Mr. Elias submit to a chemical test of his blood or breath.
62. Mr. Elias asked Gates to explain the process for each of the two types of test. Given what he had just witnessed from Gates so far, Mr. Elias was very concerned about which test would be more vulnerable to tampering or falsification on Gates’s part.
63. Given that he was innocent and a breath test would provide incontrovertible proof of that far sooner than a blood test, Mr. Elias elected a breath test.
64. Officer Gates transported Mr. Elias back to the Loveland Police Station to conduct a breath test.
65. Mr. Elias completed a breath test. The result was 0.000% BAC.
66. Officer Gates was undeterred. He had already wrongfully arrested Mr. Elias, why would he stop his unlawful fishing expedition now? He muted his microphone and then went and talked with some of the other LPD officers about what he was going to do next. One of them laughed and then came over to watch.
67. Officer Gates un-muted his microphone and then returned to the room where Mr. Elias was waiting. He told Mr. Elias that he now needed to take a blood test.
68. Mr. Elias was incredulous. He told Officer Gates that he had just complied with Colorado Express Consent. Why would he now need to do a blood test?
69. Officer Gates began babbling nonsense explanations. This included him stating that he had “reasonable suspicion to arrest” Mr. Elias for DUI (which is categorically insufficient under the Fourth Amendment and Colorado Constitution) and that since Mr. Elias had blown zeroes, he now could demand a blood test.
70. Mr. Elias requested an attorney. Gates told him no, that he needed to agree to comply with a blood test now or he was going to mark him as a refusal and his license would be revoked.
71. It is worth noting here that Officer Gates was at the time of this arrest trained and certified as a “Drug Recognition Expert.” “Drug Recognition Experts” claim that they can detect, discern, and differentiate the different types of impairments caused by various recreational drugs and medications.

72. Officer Gates was making no such attempts at discernment now, however. This was a fishing expedition, plain and simple. He knew from his own experience that most adults were on some kind of medication, or had at some point recently used some kind of drug. Mr. Elias had refused his questioning, which was an indignity that no Loveland Police Officer tolerated. And so Officer Gates was going to just search and seize Mr. Elias until he found something to arrest him for. Or behave so unlawfully that Mr. Elias was provoked into some form of anger or outrage that he could charge him with Resisting Arrest or Obstruction for. Everyone at Loveland Police Department knew that was how to do things in this situation.
73. Mr. Elias had not taken any kind of impairing drug or medication, however. He was not going to be provoked into any kind of behavior that could be misconstrued into resistance or obstruction either. He continued to grow more and more sick, however, that his compliance and law-abidingness would not in this case be enough to overcome Gates's determination to destroy his life.
74. At the hospital, now more than 2 hours into this unlawful arrest, Mr. Elias's panic grew. If Gates were permitted to take the vial of his blood out of sight, couldn't he just switch the vial with someone else's? He demanded that Gates explain how the integrity of the test and the vial would be ensured. Gates grew angry, aggressive and petulant with Mr. Elias. He told him to sign the form to do the draw or he was going to mark him as a refusal and revoke his license.
75. Mr. Elias was under great stress. He told Gates so. Specifically, he told him: "I am under stress. My freedom is at stake sir." In response, Gates mocked him.
76. Mr. Elias requested that a second vial be drawn for Mr. Elias to have tested at an independent lab. Gates mocked him some more, telling him that one of the vials was for the defense to have independently tested, as though this is something Mr. Elias would have otherwise known. He told Mr. Elias that he needed to stop "playing this game" and that he was going to just revoke his license for the refusal. Mr. Elias – terrified, exasperated, completely innocent, alone, in distress and still in the custody of this legitimately evil police officer – responded, forcefully: "I am *not* playing a game, sir. **This is my freedom we are talking about.**"
77. Gates told Mr. Elias to quiet down. Gates told Mr. Elias that he was "threatening" the nurse.
78. Mr. Elias had not threatened anyone. Still, he was further reminded in this moment of Gates's complete control over his life, his livelihood, his freedom, and his future. So despite having done nothing wrong, he apologized. Then he agreed to sign the form for the blood draw.
79. Officer Gates removed only one of Mr. Elias's hands from the handcuffs to sign the form – Mr. Elias's left hand (Mr. Elias is right-handed). Mr. Elias signed the form to the best of his ability with his non-dominant hand. The nurse took two vials of his blood.



80. Officer Gates put both of Mr. Elias's hands back into handcuffs and transported him back to the Loveland Police Station booking area. He told him the only way to avoid being taken to the jail for the rest of the night was if he could find a sober driver to pick him up.
81. It was 2:00 am in the morning. Humiliated and terrified, Mr. Elias began calling his children and his girlfriend to try and obtain a ride.
82. Mr. Elias has always had a zero tolerance policy with his children and impaired driving. His adolescent children have known forever that he would not tolerate that from them, and now here he was calling them from jail after having been arrested for that very charge. It was the lowest, sickest feeling he had ever felt.
83. Mr. Elias's girlfriend had young children. He knew that by calling her for a ride, if by chance she answered, she'd have to find someone in the middle of the night to watch her kids while she went to pick him up. The mortification continued and expanded.
84. After several attempts, Mr. Elias was able to reach his girlfriend who then called her neighbor to come over and watch her kids while she drove to jail to pick him up. He knew this meant that all of her friends and extended group would find out. The humiliation continued.
85. Adding to the dehumanization and utter humiliation, Mr. Elias was locked in a cell to use the bathroom and wait for his girlfriend to arrive.
86. Mr. Elias's girlfriend finally arrived. She was clearly tired, confused, and stressed. Mr. Elias asked her to drop him off at a hospital so that he could get an independent test of his blood. She did so.
87. At the hospital, Mr. Elias spent about an hour waiting for an attending doctor to talk to him about his rather odd middle-of-the-night request for an independent blood test. During his wait and after talking with members of hospital staff (who indicated it was unlikely they could provide this service), he decided to call other hospitals in the area to obtain such a test. After further long wait, a doctor came out and told Mr. Elias that they could not provide him with the blood test he requested.
88. Mr. Elias walked home from the hospital, defeated, devastated and humiliated. He then began the long horrible wait for the results of the blood. Every night he laid awake wrought with fear and anxiety that Gates would find a way to tamper with or alter the results. And if he had succeeded in doing so, that would be the end of his career, his relationship, his respect as a parent, his pilot's license, and his livelihood.
89. For two months, this harrowing wait went on. During these eight horrible weeks, Mr. Elias spent significant time, funds, energy, and stress on obtaining an attorney to represent him and an investigator assist him in preparing to overcome whatever lies Gates attempted next.
90. On March 2, 2020, the blood results came back. Negative. For everything.

91. On March 3, 2020, the Larimer County Court dismissed the case against Mr. Elias in its entirety.
92. Mr. Elias's nightmare was not over yet, and never will be. Because he is an FAA-licensed pilot, Mr. Elias also suffered unique additional harms, in the form of the FAA opening an investigation into and initiation of proceedings against one of Mr. Elias's most prized possessions/accomplishments – his pilot's license.
93. The FAA (Federal Aviation Administration) has some of the most strict mandatory reporting requirements known to any agency. The penalty for failure to report can lead to an emergency revocation of all certificates (i.e., complete revocation of his pilot's license). In the months that followed (and well into the next year), Mr. Elias had to dedicate inordinate time and stress in speaking with experts in this field to figure out how and whether to report the arrest. An FAA investigator would eventually direct him to notify the FAA of the arrest, even though the case had been dismissed, in an abundance of caution due to the severity of the sanction for failure to report.
94. This triggered numerous weighty and stressful consequences for Mr. Elias with the FAA. When renewing his pilot's license in February 2021, he was required to report the arrest and the FAA refused to renew his license until he provided: (1) copies of the police reports and blood/breath tests; (2) complete copies of all court records associated with the offense; (3) all records related to any care, treatment or assessments for any alcohol abuse or related disorders in his entire life; (4) a detailed statement from Mr. Elias regarding his "past and present patterns, and future plans of alcohol use and of the circumstances surrounding all of [his] offenses"; (5) a complete copy of Mr. Elias's driving record from any state in which he has held a driver's license for the past decade; (6) a written statement from Mr. Elias explaining why he did not submit to roadside tests; and (7) complete medical records from when Mr. Elias had previously decades earlier sustained a head injury. The process for obtaining and producing these documents was expensive, stressful and took several months.
95. As a result of Defendant Gates's knowingly wrongful and false arrest of Mr. Elias and Defendant City of Loveland's failure to supervise Gates, as well as their promulgation of such unlawful customs/practices as arresting people for remaining silent and openly valuing quantity of DUI arrests over quality/lawfulness of DUI arrests, Mr. Elias will have to report this wrongful arrest on every medical renewal with the FAA for the rest of his life (Question 18V on the medical form), and explain it anew. All of the records that Mr. Elias had to submit as listed above are now a permanent part of his airman medical file. The consequences of this are innumerable, to include foreclosure of career paths, jobs, increases to insurance rates, embarrassment and heightened scrutiny. This particular component of the damages caused by the Defendants continues to, and will forever, cause Mr. Elias humiliation, sadness, and distress.
96. Loveland Police supervisory staff, including Chief of Police Ticer, were aware of Defendant Officer Gates's propensity for wrongful DUI arrests and did nothing about it.
97. Loveland Police supervisory staff, including Chief of Police Ticer were aware that its officers regularly arrested people for merely refusing to be questioned. Because this was pursuant to a known custom/practice at LPD, no one did anything to stop it.

98. As a result of the Defendants' violations of his constitutional rights under both the U.S. and Colorado Constitutions, Plaintiff has suffered damages, trauma, depression, and suffering that has destroyed his ability to work, caused lost wages and devastated his enjoyment of life.

### **STATEMENT OF CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF**

42 U.S.C. § 1983 – Unlawful Arrest Without Probable Cause – Individual, Failure-to-Supervise/Train and *Monell*

Violation of Fourth Amendment, Due Process  
(against Defendants Gates and Loveland)

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

100. The actions of Defendant Officer Gates as described herein, while acting under color of state law, intentionally deprived Mr. Elias of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including his right to be free from unlawful seizure as guaranteed by the Fourth Amendment to the Constitution of the United States of America and 42 U.S.C. § 1983, in that Mr. Elias was arrested without a warrant and without probable cause to believe he had committed any offense.

101. Defendant Officer Gates knew that Mr. Elias was unimpaired and that he had no probable cause to arrest him and he did so anyway, with deliberate indifference to Mr. Elias' rights under the Fourth Amendment to the U.S. Constitution.

102. Officer Gates's arrest of Mr. Elias was objectively unreasonable in light of the facts and circumstances confronting Officer Gates before, during and after this encounter.

103. Gates'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 Plaintiff.

104. Defendant Officer Gates falsified his reports regarding evidence of impairment to ensure that Plaintiff would be prosecuted for the DUI offense he had not committed.

105. Defendant Officer Gates caused Plaintiff to be arrested without probable cause or a warrant, and his false statements in his report caused Plaintiff to be wrongly subjected to criminal prosecution. Defendant Gates's actions were done with malice and caused Plaintiff damages.

106. 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”).

107. Defendant Loveland had a duty to train and supervise Defendant Officer Gates.
108. 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 Gates.
109. Defendant City of Loveland was aware of Defendant Gates’s propensity for wrongfully arresting citizens to increase his DUI arrest numbers, falsifying his reports, and had evidence of the same, and it chose to not just fail to remedy it, but to instead reward it, ensuring it would continue to occur.
110. Defendant City of Loveland also had a custom/practice where its officers would punish anyone who refused to be questioned (in violation of their constitutional rights) by arresting them.
111. Defendant City of Loveland also had a custom/practice of rewarding and valuing DUI arrest numbers over actual lawful DUI arrests, which made the wrongful arrest of innocent individuals like Mr. Elias at the hands of officers like Gates further inevitable.
112. Both Loveland’s failure to supervise and train Gates, as well as its aforementioned unconstitutional customs/practices, were the moving force behind Mr. Elias’s wrongful arrest.
113. Defendant Loveland’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.
114. Defendant Loveland 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.
115. The Defendants’ conduct proximately caused injuries, damages, and losses to Mr. Elias.

SECOND CLAIM FOR RELIEF

Section 13-21-131, C.R.S. – Arrest Without Probable Cause  
Violation of Colorado Constitution, Article II, Section 7  
(against Defendant Gates)

116. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if set forth fully herein.
117. Defendant Gates was a police officer under Colo. Rev. Stat. § 24-31-901(3), employed by the City of Loveland and LPD at the time he wrongfully seized, arrested and maliciously prosecuted Mr. Elias.

118. Plaintiff Mr. Elias had a protected interest under the Colorado Constitution, article II, § 7 in being secure in his person from unreasonable seizures by law enforcement personnel.
119. Officer Gates unreasonably seized and arrested Mr. Elias, in violation of the Constitution of the State of Colorado.
120. Officer Gates did not at any time during his encounter with Mr. Elias have probable cause or reasonable suspicion or any other legally valid basis to believe that Mr. Elias had committed, was committing, or was about to commit any violation of law.
121. Officer Gates did not at any time have a warrant authorizing his seizure of Mr. Elias.
122. Officer Gates violated Mr. Elias's state constitutional rights by engaging in an unlawful seizure of Mr. Elias that was objectively unreasonable in light of the facts and circumstances confronting him before, during and after his encounter with Mr. Elias.
123. Defendant Gates knowingly violated Mr. Elias's individual rights secured by the bill of rights of the Colorado Constitution.
124. Defendant Gates did not act upon a good faith and reasonable belief that his actions in seizing Plaintiff without probable cause or reasonable suspicion was lawful.
125. The acts or omissions of the Defendant Gates were the moving force behind, and the proximate cause of, injuries sustained by Mr. Elias.
126. Defendant Gates's wrongful arrest and humiliation of Mr. Elias caused him to experience extraordinary stress, expense, depression, terror and anxiety. The experience of this event caused and continues to cause Mr. Elias trauma and emotional distress, loss of any feeling of safety or security, along with other damages and injuries described herein.

### THIRD CLAIM FOR RELIEF

42. U.S.C. § 1983 – Malicious Prosecution  
Fourth Amendment, Due Process Violations  
(against Defendant Gates)

127. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if set forth fully herein.
128. Defendant Gates caused the criminal prosecution against Mr. Elias by falsifying and deliberately exaggerating the facts in his report and his Affidavit for Warrantless Arrest, in an effort to make it more likely to appear there had been probable cause for Mr. Elias's arrest, and providing those documents to the District Attorney.
129. Defendant Officer Gates' false allegations were the sole moving force behind the criminal prosecution against Mr. Elias.
130. Defendant Gates's actions were done with malice.

131. No probable cause supported the criminal charges Gates brought against Mr. Elias.
132. The criminal prosecution against Mr. Elias resolved in his favor with the Larimer County Court dismissed the case against him on March 3, 2020.
133. Defendant Gates's malicious and false prosecution of Mr. Elias caused him to suffer further trauma, damages, lost wages, suffering, depression, and despair.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in his favor and against Defendants, and award him 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 Plaintiff;
  - 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**

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted this 3rd day of January, 2022.

**THE LIFE & LIBERTY LAW OFFICE**

**s/ Sarah Schielke**

Sarah Schielke, #42077

*Counsel for Plaintiff*