

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. [18-cv-00217-REB-KLM](#)

WILLIAM MONTGOMERY,

Plaintiff,

v.

MATTHEW CHERNAK,
MIKE HOWARD,
MATTHEW BROUGH.

Defendants.

AMENDED COMPLAINT

Plaintiff, William Montgomery, by and through his attorney, Raymond K. Bryant of the Civil Rights Litigation Group, PLLC, hereby [submits this Amended Complaint, as a matter of course, pursuant to Fed.R.Civ.P. 15\(a\)\(1\)\(B\)](#), as follows:

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INTRODUCTION

1. This is a First and Fourth Amendment [contempt of cop](#), action seeking damages against several police officers' for their misconduct in retaliating against a homeless protester, by unlawfully arresting and prosecuting him for crimes he couldn't have committed, which caused him to be incarcerated, needlessly, during two separate periods of time totaling approximately one month.

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2. Plaintiff Montgomery had been known as an activist for homeless populations in Fort Collins for some time, which included spending significant time in public protests, advocating for the homeless, and fighting for use of public spaces by the

homeless. He was largely considered to be a troublemaker by the Fort Collins police, as the police answered public nuisance calls by sending police officers to sweep through areas of homeless congregations and disperse people considered to be eyesores. Plaintiff Montgomery was present at one such location – a public plaza located in a public right-of-way – when police began questioning a homeless man about trespassing in a local 7-11. When Plaintiff questioned the officers, criticized them, and then continued to observe them from a safe distance inside the public plaza, the officers became irritated and determined to punish him. The officers arrested Plaintiff and charged him with trespass on private property and other crimes he did not commit.

3. Plaintiff Montgomery was present at the public plaza that day to raise awareness to an illegal encroachment on the property, as a fence had been erected around the public property without authorization of the city, by a private corporation who sought to keep the homeless away from a construction zone nearby. Plaintiff Montgomery sought to spread the word to members of the public and the police that the property remained public and dedicated for public use by communicating and showing correspondence authored by leadership of the City of Fort Collins who had ordered the fence around the public plaza to be taken down (but which command had not been followed up to that point). The officers – who would have had knowledge that the plaza had, indeed, been a public space for over 20 years – ignored Plaintiff’s protests, communication, and the evidence he showed them that proved the land remained public for his and other persons’ use, and arrested him anyway.

4. Plaintiff Montgomery seeks vindication regarding the wrongful allegations

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made by the officers, and a remedy for the loss of liberty, emotional distress, dignitary injuries, and economic damages he suffered by the violation of his First and Fourth Amendment rights.

JURISDICTION AND VENUE

5 This action arises under the Constitution and laws of the United States, 42 U.S.C. § 1983.

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6 Jurisdiction is proper pursuant to 28 U.S.C. § 1331.

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7 Venue is proper in the City and County of Denver, State of Colorado, because the incidents and resultant injuries to the Plaintiff giving rise to this action occurred in Fort Collins, Colorado.

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PARTIES

8 Plaintiff incorporates the preceding paragraphs herein by reference.

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9 Plaintiff William Montgomery was, at all times relevant to the claims set forth below, a resident of the State of Colorado.

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10 Defendant Matthew Chernak was, at all times relevant to the subject matter of this action, employed as a police officer by the Fort Collins Police Department, and acted under color of law in full police uniform. He is identified in his individual capacity.

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11 Defendant Mike Howard was, at all times relevant to the subject matter of this action, employed as a police officer by the Fort Collins Police Department, and acted under color of law in full police uniform. He is identified in his individual capacity.

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12 Defendant Matthew Brough was, at all times relevant to the subject matter

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of this action, employed as a police officer by the Fort Collins Police Department, and acted under color of law in full police uniform. He is identified in his individual capacity.

FACTUAL BACKGROUND

13. Plaintiff incorporates all preceding paragraphs by reference.

14. Long before January of 2016 (at least 20 years), the City of Fort Collins built a public seating plaza (“public plaza”) on a public right-of-way, located between a public sidewalk and a Safeway grocery store, at the 400 block of Remington Street, in Fort Collins, Colorado (also known as the east side of 460 S. College Ave.).

15. The public plaza area was approximately 50 feet by 20 feet and contained a large, ornate, sculpture-esque, concrete seating bench that ran from the back of the right-of-way area to the sidewalk, and contained multiple group seating locations for public visitors.

16. The public plaza was impressed with a concrete pathway for public use and was operated and maintained for the benefit of the public by the City of Fort Collins, just as a sidewalk, street, or public park would be. It clearly and unambiguously met the definition of public property set out in Fort Collins Municipal Code § 17-42.

17. At some point, the location became regularly used by homeless members of the public who sought a place to congregate, rest, and socialize.

18. On or before January 11, 2016, some members of the public complained about the appearance of these groups and sought police intervention to disperse those who were drawn there.

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19. Neighbors and other members of the public called Fort Collins police hundreds of times to complain about the appearance of the groups, which complaining persons considered an eyesore. The Fort Collins police received so many telephone calls that they began classifying such calls with a special flag in the police computer system “TRAN” (meaning a call regarding “transients”).

20. Being homeless and/or “transient” is not illegal in the state of Colorado, but Fort Collins police frequently dispatched officers to the scene, anyway, up to three to four times per day, to look for evidence of unlawful activity and to otherwise discourage the type of congregating that complaining persons considered to be an eyesore.

21. The seating area was well-known by officers of the Fort Collins Police Department – especially those who were responsible for patrolling the area and/or who were regularly dispatched to the location. Through these repeated calls, patrols, roll-call meetings, supervisory instructions, and repeated contacts, officers knew that the area was within a public right-of-way and was operated and maintained for use by the public – even for “transients.”

22. On information and belief, each of the Defendant officers regularly patrolled and/or were dispatched to the area and knew the area well. The Defendant officers knew the public plaza was public property, as it was obviously located in a public right-of-way, and it had been created, maintained, and preserved for public use by the City of Ft. Collins for 20 years or more. As such the officers knew (or should have reasonably known) that it could not be illegal for any member of the public to be present there.

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23. At some point, on or before January 11, 2016, a company called Loveland Commercial, LLC who owns several commercial properties in the area, was constructing buildings across the street and/or in an adjacent area separate from the public plaza. The company also became bothered by “transients” in the public plaza. They took matters into their own hands by building a six-foot chain-link fence around the public plaza to block the homeless from accessing or congregating in the public space.

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24. Loveland Commercial knew from its long history of construction projects in the Loveland and Fort Collins area that city authorization was required to build an obstruction around public property, but ignored the requirement.

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25. However, between January 11 and 19, 2016, a well-known author, David Sucher, visited the location to gather information about the city for a new book he was writing, “City Comforts – How to Build an Urban Village.”

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26. Fort Collins city officials were embarrassed that the public plaza had been fenced-in, and that erection of the fence had created an illegal barrier that blocked public access to the public plaza.

27. On January 19, 2016, Ted Shepard, Chief Planner for the City of Fort Collins, emailed Loveland Commercial, LLC and informed key board members of the corporation that the city was “quite surprised” to see the newly-installed six-foot high chain link fence around the gathering space. Shepard explained that, while “society in general has issues with individuals with different lifestyles who inhabit our City...a fence [is not] the solution.” Mr. Shepard further elaborated that without application for some

kind of amendment to their authority to erect construction, the fence is likely non-compliant with municipal ordinances and illegal.

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28. On January 26, 2016, Rob Mosbey, Chief Construction Inspector for the City of Fort Collins, responded to the email-chain discussion (in which he had been copied by the Chief Planner) and communicated, in brief, clear, and unambiguous language, that the placement of the fence blocked public property, was an illegal encroachment, and must be removed. The email communication included various official Ft. Collins city email addresses and Inspector Mosbey's office and cellular telephone numbers.

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29. Between January 11 and January 26, Plaintiff Montgomery had become aware of the fence that blocked homeless persons from congregating in the public space, as he had sought to utilize the public plaza many times in the past. When he saw that the plaza was blocked by the chain-link fence, he used the internet to look up Ft. Collins Municipal Code § 17-42 to confirm that the property was, indeed, public property. Plaintiff contacted the City Planner's office for an explanation regarding the fence and was routed to Inspector Mosbey.

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30. On or about January 26, 2016, Chief Inspector Mosbey informed Plaintiff Montgomery that the public plaza remained public property within a public right-of-way, that the chain-link fence was an illegal obstruction, and that Inspector Mosbey had ordered Loveland Commercial to remove the fence.

31. On or about January 27, 2016, Chief Inspector Mosbey provided to Plaintiff Montgomery a paper copy of the brief, one-page email discussion, pertaining to

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the city representative's official communication that the area remained public property, that the fence was an illegal obstruction, and that the fence must be removed.

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32. With proof of Inspector Mosbey's conclusions and orders regarding the illegal fence, Plaintiff Montgomery began frequenting the public plaza again. While the fence continued to obstruct access, Plaintiff Montgomery climbed the fence each time he visited to gain access to the public plaza. Plaintiff Montgomery not only sought to use the public space, himself, but also sought to spread the word that the fence was illegal and that the space continued to remain a place where public visitors should be permitted access and public use.

33. On January 28, 2016, Defendant Officers Chernak, Howard, and Brough were dispatched to a 7-11 area located at 430 Remington Street regarding a possible trespass complaint pertaining to a different person, Melvin Swett.

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34. Mr. Swett was not in the 7-11 and could not reasonably be perceived to have been trespassing at the time police contacted him. Instead, he and Plaintiff Montgomery were standing near each other, outside, conversing on a public sidewalk.

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35. Defendant officers Howard and Chernak approached Mr. Swett and began asking questions in a voluntary consensual encounter. The officers did not convey to Mr. Swett that he was being detained. Plaintiff Montgomery questioned whether the officers were detaining Mr. Swett and/or had reasonable suspicion to believe Mr. Swett had committed any crime.

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36. Defendant Officers Howard and Chernak expressed visible and audible annoyance with Plaintiff's questions and criticisms. Defendant Howard responded to Plaintiff's speech with a directive to leave the area.

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37. Plaintiff complied with Defendant Howard's request. Plaintiff climbed the fence around the public plaza, and stood peaceably within the public seating area, while continuing to observe the police interaction for any evidence of mistreatment of the homeless man. There, he thought, he could not reasonably be perceived as interfering, since a fence physically separated him from the officers. Plaintiff also saw his presence within the public plaza as an opportunity to raise awareness to the issues pertaining to the illegal fence on public land.

38. Defendants Howard and Chernak took obvious offense to Plaintiff's criticism of the officers and his continued observation of the police interaction after they told him to leave, which they viewed as disobedience and a challenge to their authority. The Officers decided to punish and retaliate against him, by manufacturing a pretextual reason to arrest Plaintiff Montgomery.

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39. Defendant Officers Howard and Chernak saw the fence surrounding the public plaza and discussed with each other that the fence might provide them an illusory justification to assert that Plaintiff was trespassing. The officers did not obtain any information suggesting that the property had changed in character from public to private. The officers did not obtain any information indicating that anyone other than the city owned the property. The officers did not inquire into whether Plaintiff had consent to be present there, or whether Plaintiff had, otherwise, lawfully/unlawfully entered the

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property. The officers did not obtain any information indicating that Plaintiff was unwelcome there or that Plaintiff needed to be removed.

40. In fact, Plaintiff did not unlawfully enter the property; the property had remained public for more than 20 years. Plaintiff had received confirmation from City officials, including the Chief City Planner and Chief City Inspector, that the area remained public property, that he and other members of the public continued to be allowed access to the space, and that the fence was an illegal encroachment that had been ordered to be removed.

41. Defendant Officer Howard told Plaintiff Montgomery that he was trespassing and to provide his name and date of birth. Plaintiff verbally questioned the determination that he was trespassing by telling Defendant Howard and Chernak that he was allowed to be present in the public plaza because it was part of a public park and/or right-of-way, that the fence was an illegal encroachment designed to discriminatorily keep homeless people out, and that he had spoken to the city's Chief Inspector and confirmed that he was allowed to be present there.

42. After explaining that the area continued to remain public property, Plaintiff provided his name, and continued explaining that he had a right to be in the public plaza because the fence was not a city fence and that it had been erected by a private corporation, illegally. The Defendant officers heard Plaintiff provide his name and used it to conduct a background search using a police computer-aided system and/or communication with dispatch. Seconds later, Plaintiff Montgomery overheard his date of birth transmitted over police radio and confirmed that was his date of birth.

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43. Defendant Howard and Chernak both told Plaintiff that he was going to be placed into custody and charged with trespass. Defendant Officer Brough arrived and began assisting the officers. All three Defendant officers asked Plaintiff to climb back over the fence so that they could handcuff him.

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44. Plaintiff verbally protested the officers' conclusions and continued to provide information to the three officers indicating that he was not breaking the law. Plaintiff reasserted his earlier communications regarding the nature of the property, the illegal fence, and his discussion with Inspector Mosbey, to Defendant Brough.

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45. Plaintiff informed all three officers that he had proof in the form of an email from the City Inspector's Office proving that what he was telling the officers was the truth about the nature of the property and his lawful presence there.

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46. It soon became clear that the officers were not listening to or responding to Plaintiff's attempts to communicate; none of the officers appeared interested in considering the matters about which Plaintiff provided information.

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47. Soon after, Plaintiff yelled out to his brother, who was parked across the street in a white van observing the incident, asking him to bring the email proof for the officers to see. Defendant Officer Brough knew Plaintiff's brother from prior interactions and recognized him as he approached.

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48. Plaintiff's brother delivered the printed email that had earlier been provided by Inspector Mosbey to Defendant Brough.

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49. Defendant Brough stood and read the email in front of Plaintiff and the officers. Defendant Brough then handed the email to Defendant Chernak, who also

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looked at it. As a result, both officers knew or should have known that the email provided exculpatory evidence demonstrating that Plaintiff could not have been trespassing by being present in the public plaza. The two officers would have seen that the paper copy of the email had involved several members of the City of Fort Collins, with official Fort Collins email addresses, telephone numbers for Inspector Mosbey, and which included communications about the public nature of the public plaza, the encroachment of the illegal fence, and the order to Loveland Commercial LLC to take down the fence.

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50. Defendant Chernak and Howard, together, walked away from the public plaza, around the corner, with the email in hand, so as to leave the audible range of Plaintiff Montgomery and nearby witnesses.

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51. On information and belief, the officers spoke about the situation, for the next few minutes. The officers, obviously, appeared visibly upset and annoyed by Plaintiff's continued presence and communications. They discussed and agreed to charge Plaintiff Montgomery with anything and everything that they believe they could illusorily justify to their supervising sergeant, in order to punish Plaintiff for his speech, criticism, and perceived challenge to the Defendant officers. The two agreed to charge Plaintiff with not only trespass, but also other crimes that were not supported by probable cause, including obstruction, resisting arrest, and disorderly conduct. When the two officers returned, they said something to Defendant Brough, and the three appeared resolved to act in furtherance of a common plan of action.

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52. Shortly thereafter, another officer arrived with bolt cutters and cut the lock to a gate that opened up to the public plaza. The three officers then cooperatively placed hands on Plaintiff, placed Plaintiff's hands into handcuffs, and took Plaintiff into custody.

53. Plaintiff did not, at any time, physically resist or otherwise physically fight or challenge the officers. The officers, each, grabbed him, placed handcuffs on him, walked him to the police vehicle, placed him into a police vehicle, and Defendant Chernak transported him to jail. Plaintiff only verbally voiced his concerns and criticisms to officers and surrounding persons about the unlawful nature of the arrest.

54. As Defendant Chernak drove Plaintiff to the police station, Plaintiff asked Defendant Chernak why he didn't act on the exculpatory email evidence that his brother provided to the officer regarding the public plaza. Defendant Chernak responded, facetiously, that "you were being too loud for me to read it." Plaintiff explained again that the email showed that he had spoken to Inspector Mosbey the day before and that the email proved the area was public property upon which Plaintiff could not possibly have trespassed. Plaintiff then verbally protested the arrest and criticized the officer for wrongfully arresting him without lawful basis. Defendant Chernak ignored the plainly exculpatory evidence.

55. The three officers unreasonably failed to investigate the information Plaintiff provided about the nature of the property, the availability of the property to members of the public, and the consent Plaintiff was provided by city officials to be present. The three Defendants failed to discuss with their supervisor the nature of the public property or the email communications about it, failed to make any effort to look up

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or review police or city records concerning the property, and failed to call Inspector Mosbey (or any other city official) to obtain clarity regarding the property or the consent that had been provided for Plaintiff to be present in the public plaza. Any of these actions would have required mere minutes and would have proven that Plaintiff could not have been guilty of trespass on the public land.

56 Approximately 45 minutes later, Defendant Chernak filed a warrantless arrest affidavit asserting that Plaintiff committed the crimes of Trespass, Obstruction, Resisting Arrest, Disorderly Conduct, and Violation of Bail Bond. Defendant Chernak asserted false facts in the affidavit, including that Plaintiff (a) “interfered” with the officers’ earlier contact with another person, (b) “un-lawfully entered” the fenced-in area, (c) “refused to identify himself,” and (d) “required” the officers to use bolt cutters to gain entry to the fenced-in area. Defendant Chernak purposefully omitted that the property Plaintiff entered into was a public seating area operated and maintained by the city; that Plaintiff had provided exculpatory information and evidence demonstrating that the property remained public, despite an illegally erected fence; and that he had permission to be present there. Defendant Chernak omitted that he did not have any information indicating there was any private owner of the property, whether Plaintiff had consent to be present there, or how Defendant Chernak came to the conclusion that Plaintiff “un-lawfully” entered the property. Defendant Chernak charged Plaintiff in retaliation for the trouble Plaintiff gave him and the other two officers, via his Protected, First Amendment protests and speech.

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57. On information and belief, all three Defendant Officers met and discussed the charges, and agreed that they would assert false factual information that would illusorily support the wrongful charges, including *inter alia*, that Plaintiff (a) “interfered” with the officers’ earlier contact with another person, (b) “unlawfully” entered private property, (c) attempted to use the fence as an “obstruction” to keep officers from arresting him, (d) yelled at the top of his lungs to wake/disturb neighbors, (e) resisted arrest, and (f) violated the terms of an earlier bond condition by not remaining lawful.

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58. Afterward, all three Defendant Officers drafted police reports including the false, exaggerated, and misrepresentative information in order to cause Plaintiff to be detained, to cover up and conceal their own abuse of authority, and to continue to punish Plaintiff for what they perceived as challenges to their authority and annoyance of the speech of the protester.

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59. Upon information and belief, the warrantless arrest affidavit, summons, and complaint documents were submitted directly to the criminal court by the officer(s) pursuant to Colorado’s simplified misdemeanor complaint procedure, C.R.S. § 16-2-104, and were relied upon by the court and the prosecutor to initiate and continue the criminal prosecution against Plaintiff.

60. As a result of the wrongful charges, Plaintiff spent three days in jail, from January 28-30, 2016.

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61. On or about February 1, 2016, in coordination with the prosecutor, Defendant Chernak filed an additional affidavit in Larimer County Court, for the purposes of advancing the charge of violation of bail bond condition, in order to cause the

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court to revoke Plaintiff's bond in an earlier case that had involved Plaintiff's protesting for the homeless. The affidavit asserted that Plaintiff had committed the five offenses listed in the case, including violation of bail bond conditions, and that he would act as a witness for the offenses and provide all discoverable materials in support of the charges.

62. During the criminal prosecution, Plaintiff continued to protest his innocence, contacting the prosecutor multiple times and leaving voicemail messages that explained in detail how he could not have committed the crimes alleged. Plaintiff directed the prosecutor to the exculpatory emails that confirmed he could not have committed the crimes alleged and that the officers acted unreasonably in arresting him without probable cause.

63. The prosecutor was influenced by the Defendant officers' false statements and ignored the exculpatory import of the Mosbey email that had been provided. As a result, the prosecution dragged on, unnecessarily, for almost two years.

64. On information and belief, the prosecutor communicated with all three of the Defendant officers through in-person meetings and email, as is typical of cases involving police complaining witnesses. All three Defendant officers continued to assert false facts and to otherwise support the criminal prosecution through assertions that they witnessed, in person, the crimes that were, allegedly, committed.

65. On February 8, 2016, Tammy Fisher, Court Services Specialist II for the Larimer County Pretrial Services Program, was influenced by Defendant Chernak's (and the other two Defendant Officers') assertions that Plaintiff failed to remain lawful. She cited the Defendant Officers' assertions of criminal activity as a basis for noncompliance

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with Plaintiff's bond conditions in another case, and, petitioned the court to revoke Plaintiff's bond.

66. On or about February 16, 2016, Loveland Commercial, LLC, removed the fence around the public plaza, as had been ordered by Inspector Mosbey.

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67. On or about February 18, 2016, the criminal court granted the petition to revoke Plaintiff's bond based on the Defendant Officers' assertions of criminal conduct. As a result, a warrant was issued for Plaintiff Montgomery and Plaintiff was incarcerated from March 25-April 19, 2016.

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68. Eventually, in July of 2017, the prosecutor verbally acknowledged to Plaintiff Montgomery that he was correct about the nature of the public property and his presence there. The prosecutor admitted contacting the city attorney's office and confirming that the area was public property.

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69. On or about August 31, 2017 the prosecutor dismissed the charge of trespass against Plaintiff Montgomery.

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70. On or about November 16, 2017, the prosecutor reviewed the remaining charges that allegedly stemmed from the purported trespass and dismissed all remaining charges against Plaintiff Montgomery.

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FIRST CLAIM FOR RELIEF
42 U.S.C. §1983 - Retaliation for Plaintiffs' First Amendment Expression
(Against Defendant Officers Chernak and Howard)

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71. Plaintiff incorporates by reference, as though fully set forth herein, each and every allegation contained in the preceding paragraphs of this Complaint.

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72. At the time the Defendant Officers took action to seize and detain Plaintiff

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Montgomery, he had committed no crime in the deputy's presence; he had only expressed verbal criticism and questioning of the officers, and, otherwise, entered public land to raise awareness to a public access issue pertaining to the land.

73. The speech, criticism, profanity, and/or the act of entering the public plaza that the Defendant Officers witnessed could not have reasonably been construed to be a crime or warrant arrest. The officers had knowledge that the public plaza had been created, operated, and maintained by the city for public use for decades. The location of the property in a public right-of-way, and the concrete pathway and other improvements made clear that the area was public property. Plaintiff provided the officers information and evidence about the property, the nature of the fence that illegally blocked public access to the public plaza, and he and the public's authority to enter the property.

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74. The Defendant Officers took action to seize, detain, prosecute, and to otherwise injure, humiliate, and cause emotional distress to Plaintiff Montgomery, in order to retaliate against Mr. Montgomery for his protected, First Amendment, expressions, to punish Plaintiff for appearing to challenge the officers, and to illusorily justify and/or cover up their misconduct.

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75. The actions of the Defendant Officers caused Plaintiff Montgomery injury that would chill a person of ordinary firmness from engaging in protected First Amendment expression. Plaintiff was yelled at, seized, arrested, charged with crimes he did not commit, prosecuted, jailed, and otherwise suffered loss of liberty and emotional distress.

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76. Such actions by the Defendant Officers, while acting under color of law,

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deprived Plaintiff of the rights, privileges, liberties, and immunities, secured by the Constitution of the United States of America, including the right to free speech guaranteed by the First Amendment, and which is made actionable pursuant to 42 U.S.C. 1983, which actions proximately resulted in the injuries described above.

SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983 Fourth Amendment Violation – Unlawful Arrest and Detention (Against All Individual Defendant Officers)

77. Plaintiff hereby incorporates by reference, as though fully set forth herein, each and every allegation contained in the preceding paragraphs of this Complaint.

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78. The Defendant officers caused the arrest, detention, and confinement of Plaintiff Montgomery from January 28-30, 2016, without possessing probable cause to believe that he had committed the crimes alleged. While the officers accused Plaintiff of committing trespass on private property, the officers had knowledge that the area was public property, not private property, and that Plaintiff could not have been trespassing or resisting by peacefully being present there.

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79. Even if the officers had a *suspicion* that Plaintiff could have, arguably, committed trespass, or any other crime, such suspicion was vitiated by information that the officers knew, had obtained, or to which they had ready access, before the arrest, immediately following the arrest, and/or within a reasonable time during which Plaintiff was being detained in the detention facility from January 28-30, 2016.

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80. Even if the officers did not believe Plaintiff or the evidence provided by Plaintiff's brother, the officers failed to conduct a reasonable investigation into the property, the exculpatory email, and/or the alleged crimes committed by Plaintiff.

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81. When reporting the basis/probable cause for Plaintiff Montgomery's seizure and arrest, the Defendant officers asserted information that they knew to be objectively doubtful, untrue, exaggerated, and/or false, to ensure that Plaintiff would be detained and/or prosecuted.

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82. Based upon the totality of the information the Defendant Officers collected, or had access to, and the circumstances in which they obtained it, no reasonable police officer would have believed that he had sufficient reasonably trustworthy information necessary to fairly believe Plaintiff Montgomery had committed the crimes alleged.

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83. The intentional and/or reckless conduct of the Defendant Officers, acting under color of state law, deprived Plaintiff of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, made actionable pursuant to 42 U.S.C. § 1983, including the unlawful seizure and detention that followed, and which proximately caused Plaintiff loss of liberty and emotional harms.

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THIRD CLAIM FOR RELIEF
(42 U.S.C. § 1983 – Fourth Amendment Deprivation - Wrongful and Malicious Prosecution
(Against All Individual Defendant Officers)

84. Plaintiff incorporates by reference, as though fully set forth herein, each and every allegation contained in the preceding paragraphs of this Complaint.

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85. The Defendant Officers did not have probable cause to believe Plaintiff Montgomery had committed the crimes of Trespass, Obstruction, Resisting Arrest, Disorderly Conduct, and/or Violation of Bail Bond, but criminally charged him,

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exaggerated their version of the events, and made false statements that ensured his prosecution for such crimes, anyway.

86. The Defendant Officers knew, should have known, and/or had received, read, taken custody of, and/or been informed of, exculpatory information in the form of an email communication and/or the transmission of information indicating that the fenced-in area surrounding the public plaza was public property, that Plaintiff was allowed to be present within, and/or that it could not be a violation of law for Plaintiff to climb the fence and/or otherwise watch/observe the Defendants from within the public plaza area.

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87. The Defendant Officers knew or should have known that claiming they saw Mr. Montgomery trespass, resist, and obstruct the officers (when attempting to perform certain duties) would provide false evidence that would result in his detention and criminal prosecution.

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88. Despite this knowledge, the Defendant Officers gave oral and written statements to other law enforcement officers, the prosecutor, and the court asserting that Plaintiff Montgomery had “unlawfully” entered into private land, “interfered,” “resisted” and/or “obstructed” the officers, and “yelled” to wake neighbors, in order to retaliate against and/or punish Plaintiff, and to attempt to cover up, conceal, and/or otherwise superficially justify Defendants’ misconduct.

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89. The officers failed to conduct reasonable investigation into Plaintiff’s

communications and email evidence concerning the nature of the property and the

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consent he was provided to be there, and, instead, acted to abuse their authority and to harm Plaintiff.

90. In furtherance of the conspiracy to maliciously cause Plaintiff to be wrongly prosecuted, Defendant Chernak knowingly omitted materially exculpatory information from his probable cause affidavit relating to the arrest, including but not limited to information the officers would have known about the nature of the public plaza, and, information communicated and otherwise presented to the officers in the form of email communications authored by city officials.

91. Three days after the arrest, Defendant Chernak submitted an additional affidavit alleging that he had witnessed the crimes originally alleged, in order to cause Plaintiff's bond in another case to be revoked, so that Plaintiff would be re-arrested and re-incarcerated.

92. The Defendant Officers' allegations, misrepresentations, and omissions caused Plaintiff's repeated incarcerations, bond revocation, and the long and drawn out wrongful criminal prosecution.

93. The criminal charges against Plaintiff Montgomery were ultimately dismissed, in circumstances suggestive of Plaintiff's innocence.

94. The actions as described herein, under color of state law, deprived Plaintiff of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, made actionable pursuant to 42 U.S.C. § 1983, and which proximately caused loss of liberty, emotional distress, and other injuries associated with wrongful prosecution.

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WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor and against all Defendants for compensatory damages, as referenced above, punitive damages against the individual Defendants, for interest as allowed by law, for costs, expert witness fees, and reasonable attorney fees, as allowed by statute or as otherwise allowed by law, and for any other and further relief that this Court shall deem just and proper.

**PLAINTIFF DEMANDS TRIAL TO
A JURY ON ALL ISSUES SO TRIABLE.**

Respectfully submitted this 25th day of April, 2018.

Civil Rights Litigation Group, PLLC

s/ **Raymond K. Bryant**
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Raymond@rightslitigation.com

CERTIFICATE OF SERVICE

I certify that on this 25th day of April, 2018, the foregoing **AMENDED COMPLAINT** was filed with the Clerk of the Court via the CM/ECF system, which is expected to send notification of such filing to the following:

Thomas J. Lyons, Esq.
Christina S. Gunn, Esq.
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1001 17th Street, Suite 300,
Denver, CO 80202
303-628-3300 /
Fax: 303-628-3368
lyonst@hallevans.com /

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gunnc@hallevans.com