

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, and  
MATTHEW BROUGH,

Defendants.

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**JOINT SUPPLEMENT TO SCHEDULING ORDER  
TO INCLUDE ADDITIONAL UNDISPUTED FACTS**

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Defendants Matthew Chernak, Mike Howard and Matthew Brough, by and through their counsel, and Plaintiff William Montgomery, by and through his counsel, hereby respectfully submit this Joint Supplement to Scheduling Order [Dkt. 37] to include Additional Undisputed Facts, as follows:

1. During the scheduling conference in this matter on July 19, 2018, this Court ordered the parties to include additional statements of fact to include identification of the defendants and the underlying charges.<sup>1</sup> [See Dkt. 37, p. 3.]

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<sup>1</sup> The Court also proposed the parties consider statements of fact regarding the disposition of the underlying prosecution. However, as counsel for Defendants stated at the scheduling hearing, the individually-named defendant police officers do not have sufficient knowledge of the details of the criminal proceedings after the arrest for the parties to identify meaningful undisputed facts on that subject matter at this time.

2. The parties have conferred and proffer the following additional undisputed facts, which include the fact contained in the Scheduling Order:

1. On January 28, 2016, Plaintiff William Montgomery was arrested.
2. Defendants Matthew Chernak, Mike Howard and Matthew Brough were all police officers employed by Fort Collins Police Services on January 28, 2018.<sup>2</sup>
3. On January 28, 2016, Plaintiff William Montgomery was charged with:
  - 1) Trespassing, 2<sup>nd</sup> Degree (fenced area, hotel, car), a class 3 misdemeanor, as set out in C.R.S. § 18-4-503
  - 2) Obstructing Police, a class 2 misdemeanor, as set out in C.R.S. § 18-8-104 1(a)
  - 3) Disturbing the Peace, a class 1 petty offense, as set out in C.R.S. § 18-9-106
  - 4) Resisting Arrest, a class 2 misdemeanor, as set out in C.R.S. § 18-8-103
  - 5) Violation of Bail Bond, a class 6 felony, as set out in C.R.S. § 18-8-212(2).

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<sup>2</sup> From Plaintiff: Plaintiff advises the Court that Defendants' refused to acknowledge that they acted "under color of state law," despite acknowledgement that they arrested Plaintiff while working as police officers for the city of Fort Collins, because, they assert, "it is an element of [Plaintiff's] claims," and Defendants "are not obligated to agree."

From Defendants: Defendants dispute Plaintiff's mischaracterization of the parties' conferral. Defendants currently have pending a fully briefed Motion to Dismiss and Motion to Stay Proceedings, and conveyed to Plaintiff that the requested language that Defendants were "acting under color of law" at the time of arrest constitutes an element of each of Plaintiff's claims against Defendants which may be admitted if Defendants are required to file an Answer to the Amended Complaint, but which they were not obligated to admit at this juncture and was not within the subject matter of facts requested by the Court. See Dkt. 37, p. 3. ("Who are Δs? What was charge? What happened w/ prosecution?")

Dated this 20th day of August, 2018.

Respectfully submitted,

*s/ Christina S. Gunn* \_\_\_\_\_

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**ATTORNEY FOR DEFENDANTS  
CHERNAK, HOWARD, AND BROUGH**

*s/ Raymond Bryant* \_\_\_\_\_

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**ATTORNEY FOR PLAINTIFF**

**CERTIFICATE OF SERVICE (CM/ECF)**

I HEREBY CERTIFY that on the 20th day of August, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Raymond K. Bryant

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s/ Nicole Marion, Legal Assistant to  
Christina S. Gunn, Esq. of  
Hall & Evans, L.L.C.