IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-03112-RBJ-STV

SEAN SLATTON,

Plaintiff,

v.

CITY OF FORT COLLINS, A MUNICIPALITY

Defendant.

SCHEDULING ORDER

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1. DATE OF CONFERENCE AND APPEARANCES OF COUNSEL AND PRO SE PARTIES

The Scheduling Conference pursuant to Fed. R. Civ. P. 16(b) is scheduled for 10:00 a.m. September 10, 2020, in Courtroom A402 of the Alfred Arraj United States Courthouse, 901 19th St, Denver, Colorado, before Magistrate Judge Varholak. Appearing for the parties are:

Helen Oh
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Counsel for Plaintiff

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Counsel for City of Fort Collins

2. STATEMENT OF JURISDICTION

Plaintiff:

This action arises under the Constitution and laws of the United States and is brought pursuant to 42 U.S.C. § 1983.

Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331.

Jurisdiction supporting Plaintiff's claim for attorneys' fees and costs is conferred by 42 U.S.C. § 1988.

Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of Colorado, and all of the parties were residents of the State at the time of the events giving rise to this litigation.

Defendant:

The Defendant admits jurisdiction exists in respect to the claims brought by Plaintiff, but denies jurisdiction in all other respects including, but not limited to, the notion Plaintiff is somehow entitled to attorneys' fees and costs.

3. STATEMENT OF CLAIMS AND DEFENSES

Plaintiff:

Officers Hopkins and Barnes unjustifiably and unreasonably seized Mr. Slatton[1]

On December 3, 2016, Plaintiff Sean Slatton was attending his girlfriend's sorority event at a private venue in Fort Collins. Officers Hopkins and Officer Barnes were working off-duty at the event, but in full uniform. A woman who was working the event had heard from an attendee, falsely, that Mr. Slatton had brought a flask into the event. The employee confronted Mr. Slatton, who told her that he did not have a flask. Either because the employee signaled Officer Hopkins and indicated for him to remove Mr. Slatton or because of Officer Hopkins' own observations of Mr. Slatton's discussion with the employee, Officer Hopkins decided that Mr. Slatton needed to leave the event. Officers Hopkins and Barnes approached Mr. Slatton, and Officer Hopkins

[1] Plaintiff's unlawful seizure claim was dismissed. *See* Doc. 114. However, Plaintiff reserves the right to appeal this issue.

instructed him to leave. Mr. Slatton calmly and immediately complied with the Officers' request. As Mr. Slatton was walking toward the exit of the building, Officers Hopkins and Barnes followed Mr. Slatton through the venue. Mr. Slatton exited the building and began ordering a car service to drive him back to the hotel where he was staying. Officers Hopkins and Barnes followed Mr. Slatton when he exited the building. Officer Hopkins immediately asked Mr. Slatton "what was the property part you didn't understand," referring to the instruction to leave the property. Mr. Slatton responded that he was "waiting for his ride." Officer Hopkins told Mr. Slatton he needed to leave the property in its entirety, and Mr. Slatton responded, "ok, I will." But before giving Mr. Slatton a chance to do so, Officer Hopkins immediately, without legal authorization to do so, demanded to see Mr. Slatton's identification. When Mr. Slatton asked why Officer Hopkins was demanding his identification, Officer Hopkins informed Mr. Slatton that he was "detaining [him]."

When Mr. Slatton asked Officer Hopkins for what he was being detained, Officer Hopkins responded, "[f]or trespassing," even though Officer Hopkins did not have probable cause or reasonable suspicion to believe that Mr. Slatton was trespassing. Mr. Slatton replied, "I'm not trespassing, I'm leaving right now," and turned away from Officer Barnes and Hopkins and started walking. Officer Hopkins then informed Mr. Slatton, "stop, you're under arrest." During this brief encounter—which lasted no longer than thirty seconds—Officer Hopkins repeatedly demanded to see Mr. Slatton's identification. Despite the lack of reasonable suspicion or probable cause to believe that Mr. Slatton had committed or was about to commit a criminal offense, at no point during this encounter did Officer Barnes make any attempt to stop Officer Hopkins from unlawfully asserting authority over Mr. Slatton in order to unjustifiably restrain Mr. Slatton's liberty.

Officer Hopkins used violent, unjustified, and excessive force against Mr. Slatton.[2]

As Mr. Slatton was walking away from Officers Barnes and Hopkins—less than thirty seconds after Officer Hopkins told him he needed to leave the property in its entirety—completely unprovoked, Officer Hopkins attacked Mr. Slatton. Officer Hopkins' violent actions occurred within a minute of Mr. Slatton being told to exit the building. Approximately five seconds after Officer Hopkins told Mr. Slatton to "stop" walking away because he was "under arrest," a command which confusingly was issued approximately twenty seconds after the command to "leave" the property, which Mr. Slatton was in the process of doing, Officer Hopkins pulled out his baton and struck Mr. Slatton hard in the lower leg. Mr. Slatton posed absolutely no threat to the safety of Officer Hopkins, Officer Barnes, or any other individual when Officer Hopkins delivered the baton strike. Clearly confused about Officer Hopkins' completely unjustified use of force against him, Mr. Slatton asked Officer Hopkins what he "[was] doing." Reasonably believing that excessive force had been used against him and that Officer Hopkins would continue to use excessive force against him, and in fear for his safety, Mr. Slatton attempted to move away from Officer Hopkins. Mr. Slatton started slowly backing away from Officer Hopkins. Without any warning, and approximately five seconds after striking him with a baton, Officer Hopkins sprayed Mr. Slatton in the eyes with pepper spray.

Contrary to the implication raised by the warrantless arrest affidavit, which was completed by FCPS Officer Harres based solely on information provided by Officer Hopkins, that Mr. Slatton acted aggressively toward either Officers Hopkins or Barnes before Officer Hopkins pepper sprayed him, Mr. Slatton in fact was hobbling and backing away from them at

[2] The Court found Officer Hopkins used excessive force under the Fourth and Fourteenth Amendments, but dismissed Hopkins because the law was not clearly established. However, the excessive force claims proceed against the City of Fort Collins.

that time. At no point during the entire encounter with Officers Barnes and Hopkins did Mr. Slatton pose any risk of causing bodily harm to either officer or any other individual. Now completely afraid for his safety, Mr. Slatton justifiably believed he had no choice but to flee from Officer Hopkins because the only alternative was to risk Officer Hopkins' continuing use of unlawful physical force against him, which reasonably appeared imminent.

Officer Hopkins radioed for assistance in apprehending Mr. Slatton. Officer Hopkins' description of Mr. Slatton included the statement that Mr. Slatton had "OC on his face" (OC is an abbreviation for the scientific name of pepper spray). Another Fort Collins officer later told Officer Hopkins that his description of Mr. Slatton "was fucking classic." Shortly thereafter, Mr. Slatton stopped running because he was struggling to breathe and in intense pain from the pepper spray. Mr. Slatton was then contacted by other Fort Collins officers, who detained him without any issues. He was compliant with their orders, although clearly still in extreme pain and distress because of the pepper spray. After being put into restraints, Mr. Slatton was taken to the hospital by an ambulance.

Predictably, Fort Collins concluded that Officer Hopkins had engaged in no wrongdoing, and did not discipline him for his use of excessive force. Fort Collins provided no additional training to either Hopkins or Barnes, or other Fort Collins officers, related to the incident with Mr. Slatton.

Later that night, Mr. Slatton was taken from the hospital to the Larimer County Jail. In complete and sole reliance on the information Hopkins provided, Mr. Slatton was booked into Larimer County Jail on charges of 3rd Degree Criminal Trespassing, Obstructing a Peace Officer, and Resisting Arrest. Mr. Slatton was released from jail in the early morning hours of December 4, 2016, on a personal recognizance bond with payment of $750. The bond conditions

required Mr. Slatton to undergo regular drug tests, for which he was required to pay. All charges against Mr. Slatton were dismissed on September 14, 2017. The actions of the Fort Collins officers on the night of December 3, 2016, were extremely excessive, unwarranted, and violated Mr. Slatton's clearly established constitutional rights.

Defendant Fort Collins' and Defendant Hutto's policies, customs, practices, and/or failure to adequately train and supervise FCPS officers, caused the violations of Mr. Slatton's constitutional rights.

At all times relevant to this Complaint, Defendant Hutto was responsible for overseeing, training, and supervising Officers Hopkins and Barnes, and all other Fort Collins officers. Defendant Hutto was in charge of the overall management of the police department, setting Fort Collins' policy and practices, and ensuring all Fort Collins officers complied with the law and the Constitution. At all times relevant to this Complaint, it was the custom and actual practice of Fort Collins and Defendant Hutto to ratify and condone the use of excessive force by FCPS officers. As a result, it was customary among Fort Collins officers to use unjustified and excessive force because Fort Collins and Defendant Hutto communicated to For Collins officers that such force was authorized and, indeed, expected, and when used would be defended or covered up by the supervisory and municipal apparatus of the City.

Fort Collins officers have repeatedly used excessive force against individuals like Mr. Slatton who did not threaten or resist officers. For instance, in December of 2013, For Collins officers similarly brutalized Stanley Cropp, a sixty-one year-old man with Alzheimer's disease and dementia. Mr. Cropp was aggressively, unjustifiably, and unreasonably tackled by Fort Collins officers while taking a walk in his neighborhood. The excessive force claims against the City of Fort Collins and settled for $113,000.

In another case, on or about October 20, 2016, Fort Collins officers seized Dakota

McGrath, who was suspected of third-degree assault, a misdemeanor. Mr. McGrath, who had gotten out of his car and was walking in an alleyway, had earbuds in and did not hear the officer approach. The officer caught up to Mr. McGrath and struck him in the head or neck with a steel baton, causing Mr. McGrath to fall to the ground, unconscious. Mr. McGrath regained consciousness but remained on the ground, dazed, when the officer struck Mr. McGrath's leg multiple times with the baton, fracturing his leg in several places. The excessive force case based on the incident settled for an undisclosed amount.

In July of 2016, Fort Collins officers were called to Joe Heneghan's house for a noise complaint. Mr. Heneghan turned down the music. The officer proceeded to search Mr. Heneghan's home without a warrant and without his consent, and unjustifiably and unreasonably pepper sprayed him in the face when he refused to show officers his ID. The City of Fort Collins settled Mr. Heneghan's case for $150,000.

As further evidence that Fort Collins and Defendant Hutto had a custom, practice, or policy of tolerating and encouraging excessive force at the time of the events giving rise to this case, incidents that occurred after Mr. Slatton was victimized in December 2016 show that such custom, practice, or policy has continued, unabated.

On April 6, 2017, Michaella Surat was outside a bar in Fort Collins celebrating her twenty-second birthday when Fort Collins officers were called regarding an altercation inside the bar. When Ms. Surat approached officers who were speaking with her boyfriend, one officer told her to "back off" and pushed her shoulder. Ms. Surat told the officer not to touch her. The officer then grabbed and held on to Ms. Surat's wrist and put her in a rear wristlock hold. Ms. Surat repeatedly asked the officer why he was touching her and what she did wrong. The officer responded by slamming Ms. Surat face-first to the ground – clearly an excessive use of force on

someone who posed no danger to the officer. Ms. Surat's chin slammed into the sidewalk, causing a concussion, cervical strain, and a large and painful contusion on her chin. After video footage of Ms. Surat's encounter with Fort Collins officers surfaced, Fort Collins spokesperson Kate Kimble told the media that the officer used "standard arrest control." This statement makes explicit Fort Collins' custom and practice of unconstitutional use of force.

Soon after the incident with Ms. Surat, on October 6, 2017, Kimberly Chancellor was driving when a man on motorcycle followed her as she pulled into the parking lot of her apartment complex. She hurried toward the building to get away from him. When the man yelled that she was a cop and she was going to be arrested, she hesitated and stopped even though he still had not proven that he was an officer. After Ms. Chancellor handed the officer her identification, he put his hand on her and she flinched. He slammed Ms. Chancellor to the ground, put his knee in her back, and held her head to the ground, clearly an excessive use of force on someone who posed no danger to the officer.

Last but not least, Fort Collins officers—including Officer Hopkins—used excessive force in an egregious incident against Natasha Patnode, a woman accused of shoplifting at a Target store on March 29, 2018. Officer Hopkins struck Ms. Patnode more than sixty times with his fist or baton while she was already on the ground and restrained. Another Fort Collins officer arrived and the officers tased Ms. Patnode multiple times, again while she was already restrained on the ground. The Fort Collins officers' use of force blatantly exceeded the Fourth Amendment's scope of reasonableness.

Defendant Fort Collins and Defendant Hutto thus knew or had constructive knowledge, based on FCPS's history and widespread practice of its officers using excessive force and Fort Collins and Defendant Hutto's condoning of those actions, that Fort Collins officers would

utilize excessive and unnecessary force against people like Mr. Slatton. Defendant Hutto either (1) promulgated, created, implemented, or possessed responsibility for the persistent and widespread practice of Fort Collins officers' use of excessive force and/or (2) made a deliberate choice to not adequately train Fort Collins officers in not using excessive force when, given Fort Collins' history of excessive force, he knew of the need to provide additional or better training in this respect. Because Defendant Fort Collins and Defendant Hutto created and tolerated a custom of deliberate indifference and continuously failed, despite the obvious need to do so, to adequately train and supervise Fort Collins officers in these areas, citizens, including Mr. Slatton, were repeatedly been subjected to violations of their constitutional rights. Defendant Fort Collins and Defendant Hutto fostered "a policy of inaction" in the face of knowledge that Fort Collins officers were routinely violating specific constitutional rights, which constitutes the functional equivalent of a decision by Fort Collins and Defendant Hutto themselves to violate the Constitution.

Moreover, Fort Collins and Defendant Hutto's persistent failure to meaningfully investigate and discipline numerous Fort Collins officers for their similar uses of excessive force reflects a custom, policy, or practice of encouraging, tolerating, and/or ratifying blatantly illegal and improper conduct. These encouragements, toleration of, and ratifications demonstrate that such police misconduct is carried out pursuant to the policies of and regimen of training provided by Fort Collins and Defendant Hutto, and that such conduct is customary within Fort Collins.

Indeed, Fort Collins Sergeant Moore, a supervisor who reviewed Defendant Hopkins conduct toward Mr. Slatton, concluded that Officer Hopkins' use of force was within the law and FCPS's policy, explicitly demonstrating that the excessive force Defendant Hopkins used against Mr. Slatton was consistent with Fort Collins' policies.

Likewise, Fort Collins' and Defendant Hutto's deliberate and conscious failure to correct prior constitutional violations based on similar conduct constituted an affirmative choice to ratify the conduct, and to send a clear message in doing so to its law enforcement officers that such misconduct is acceptable and approved. It was Defendant Fort Collins' and Defendant Hutto's responsibility to properly train its officers to ensure they perform their duties correctly and to discipline, rather than ratify and encourage, their improper conduct, so that officers can learn from their mistakes and perform their jobs correctly moving forward, and be deterred from engaging in misconduct that violates the constitutional rights of people with whom the police interact. Fort Collins' and Defendant Hutto's failure to do so clearly communicated to Fort Collins' officers, including Defendant Hopkins, that excessive force is authorized and tacitly (or explicitly) encouraged. Fort Collins' and Defendant Hutto's past ratification and toleration of similar illegal conduct thus caused and was the moving force behind the Defendant Hopkins's use of excessive force against Mr. Slatton.

Defendant Fort Collins and Chief Hutto[3] are liable for Officer Hopkins's violation of Mr. Slatton's rights.

The unlawful conduct of Fort Collins officers amounts to a custom and widespread practice so pervasive and well-established as to constitute a custom or usage with the force of law. Given Fort Collins' history and widespread practice of officers using excessive force, Defendant Fort Collins and Chief Hutto knew of the need to provide additional or better training and supervision in this respect and made a deliberate choice to not adequately train and supervise Fort Collins officers in avoiding excessive force. Defendant Fort Collins and Chief Hutto knew or should have known that their acts or omissions in this regard were substantially certain to

[3] Chief Hutto was granted qualified immunity for Plaintiff's excessive force claim.

cause Fort Collins officers to violate individuals' constitutional rights, and they consciously or deliberately chose to disregard this obvious risk of harm in adhering to the policy and custom of failing to provide additional or better training and supervision to Fort Collins officers regarding how to avoid excessive force.

Defendant Fort Collins and Chief Hutto acted recklessly, intentionally, and with deliberate indifference to Plaintiff's constitutional rights because they knew that individuals in Mr. Slatton's position would be at a substantial risk of suffering dangerous consequences from their failure to properly train and supervise Fort Collins employees. Defendant Fort Collins and Chief Hutto could have and should have pursued reasonable methods for the training and supervising of such employees, or disciplining them if they engaged in misconduct, but intentionally chose not to do so.

Defendant Fort Collins' and Chief Hutto's custom, practice, and policy of encouraging, condoning, and ratifying excessive force, failing to act in the face of a history of excessive force against people, and their custom, policy, and practice of failing to properly train and supervise Fort Collins employees despite such history and knowledge or constructive knowledge of such history, were the moving force and proximate cause of Officer Hopkins's violation of Mr. Slatton's constitutional rights. Defendant Fort Collin's and Chief Hutto's acts or omissions caused Mr. Slatton damages in that he suffered physical and mental pain, humiliation, fear, anxiety, loss of enjoyment of life and sense of security and individual dignity, among other injuries, damages, and losses. Defendant Fort Collin's and Chief Hutto's actions, as described herein, deprived Mr. Slatton of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages.

Defendants' unlawful actions against Mr. Slatton caused him significant damages.

Among other injuries, damages, and losses, Defendants' unlawful actions against Mr. Slatton caused him physical pain. In addition to the pain he experienced immediately after the use of excessive force against him, Mr. Slatton had a large bruise on his leg from the baton strike that took days to fade. The pain and discomfort the pepper spray caused Mr. Slatton also took a few days to fade, but his eyes remained red and irritated-looking for approximately one year, causing Mr. Slatton to feel extremely self-conscious about his appearance. In addition to Defendants' excessive force and unlawful seizure of Mr. Slatton necessitating a trip to the hospital, such unlawful actions also caused Mr. Slatton to spend a night in jail. Defendants' unlawful actions also caused Mr. Slatton significant emotional stress and anxiety, leading him to lose weight, have problems sleeping and issues in his relationships with his family and fiancée, and ultimately stop attending his college classes. Mr. Slatton further suffered financial losses due to Defendants' unlawful actions, including, but not limited to, the money he was required to spend for drug testing approximately three times per week for months and to retain a criminal defense attorney. All of the acts described herein were done by Officers Hopkins, Barnes, and Hutto intentionally, knowingly, willfully, wantonly, maliciously and/or recklessly in disregard for Mr. Slatton's federally protected rights, and were done pursuant to the preexisting, deliberately indifferent official custom, policy, practice, training, and supervision.

Defendant:

The Defendant filed an answer, defenses, and affirmative defenses denying each and every substantive allegation set forth in Plaintiff's Complaint. The City also set forth the following affirmative defenses:

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

2. Plaintiff is not entitled to any relief being sought or claimed in the Complaint under any legal theories asserted therein.

3. On information and belief, Plaintiff failed to mitigate his damages, if any.

4. On information and belief, some or all of Plaintiff's injuries and damages, if any, were either pre-existing or not aggravated by any action omission of or by this Defendant, nor proximately caused by or related to any act or omission of this Defendant.

5. All or part of Plaintiff's claims never achieved the level of any constitutional violation sufficient to state a claim under 42 U.S.C. § 1983. In addition, no claim pursuant to 42 U.S.C. § 1983 may be grounded in any theory of respondeat superior or vicarious liability respecting this Defendant.

6. Plaintiff's injuries and damages, if any, in whole or in part, were proximately caused by his own acts or omissions, either in combination with one another or independent of one another.

7. Plaintiff's injuries and damages, if any, were proximately caused by the acts or omissions of third parties over whom this Defendant possessed no ability to control or right to control.

8. Plaintiff's claim is barred in whole or in part by the doctrines of consent, estoppel, and waiver.

9. Plaintiff cannot satisfy all or some of the perquisites to a grant of injunctive or declaratory relief in this matter. Any request for injunctive or declaratory relief is moot.

10. Defendant is not liable for any punitive damages pursuant to state or federal law and no Defendant could become liable for any such damages.

11. There is no custom, practice, policy, or procedure in place which is a proximate cause of Plaintiff's alleged Constitutional violations.

The Defendant also takes the position any determination with respect to Officer Hopkins engaging in "excessive force", was made without full consideration or adjudication of the matter, given the applicable standards at the motion to dismiss stage, and therefore any such ruling is not dispositive of any issue in this matter.

4. UNDISPUTED FACTS

None.

5. COMPUTATION OF DAMAGES

Plaintiff:

All appropriate relief at law and equity; declaratory relief and injunctive relief; economic losses on all claims as allowed by law; compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, loss of companionship and association with family members, and other pain and suffering on all claims allowed by law in an amount to be determined at trial; punitive damages on all claims allowed by law and in an amount to be determined at trial; issuance of an order mandating appropriate equitable relief including issuance of a formal apology to Plaintiff by each Defendant; imposition of policy changes to avoid future similar misconduct by Defendants; mandatory training designed to avoid future similar misconduct by Defendants; attorneys' fees and the costs associated with this action, including expert witness fees, on all claims allowed by law; pre- and post-judgment interest at the appropriate lawful rate; and any further relief that this court deems just and proper, and any other relief as allowed by law.

Plaintiff's damages are not of the type that can be tallied here. Plaintiff has claims for emotional distress damages. These are not quantifiable other than by a jury. Undersigned

counsel will provide Defendants in this matter with whatever quantifiable evidence is obtained to show measurement of damages, but civil rights violations like this are not given to easy description of losses and instead require that the jury announce their value.

A more precise computation of Plaintiff's damages, to the extent his damages are subject to such computation, will be provided during the normal course of discovery, and will be determined by a jury in its sound discretion following a presentation of the evidence at trial in this matter.

Defendant:

The Defendant does not seek damages, attorneys' fees, or costs at this time, but reserves the right to do pursuant to applicable authority.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)

a. The Fed. R. Civ. P. 26(f) meeting was conducted via telephone conference between counsel on **August 19, 2020**.

b. Participants in the meeting were as follows:

1. Helen Oh of Killmer, Lane & Newman, LLP, for the Plaintiffs;

2. Mark S. Ratner of Hall and Evans, LLC for the Defendants;

c. The parties will make their Rule 26(a)(1) disclosures on or before **September 10, 2020.**

d. The parties do not propose any changes in the timing or requirement of the disclosures under Fed. R. Civ. P. 26(a)(1).

e. The parties have not agreed to conduct informal discovery.

f. The parties agree to take all reasonable steps to reduce costs to discovery, including using a unified exhibit numbering system.

g. The parties anticipate that their claims or defenses will involve the discovery of some electronically stored information. To the extent that discovery or disclosures involves information or records in electronic form, the Parties will take steps to preserve that information. The Parties agree that, to the extent feasible, the Parties will exchange information (whether in paper or electronic form) in PDF format.

The parties anticipate filing a Stipulated Motion for Protective Order related to confidential materials exchanged in discovery.

h. The parties have discussed the possibilities for a prompt settlement or resolution of the case by alternate dispute resolution, but at this juncture settlement appears premature. The parties will continue to work together in good faith to determine whether the matter can be resolved. To the extent there is a settlement meeting, the parties will report the result of any such meeting, and any similar future meeting, to the magistrate judge within 14 days of the meeting.

7. CONSENT

The parties do not consent to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules:

In addition to experts, each side will be limited to ten depositions.

Plaintiff may serve 30 interrogatories to Defendant. Defendant may serve 30 interrogatories to Plaintiff.

b. Limitations which any party proposes on the length of depositions: The Parties do not propose any modifications to the limitations on the length of depositions. A deposition is limited to one day of seven hours as provided in Fed.R.Civ.P. 30(d)(2).

c. Limitations which any party proposes on the number of requests for production and/or requests for admission: Plaintiff may serve 30 Requests for Production and 30 Requests for Admission to Defendant. Defendant may serve a total of 30 Requests for Production and 30 Requests for Admission to be answered by Plaintiff.

d. Deadline for Interrogatories, Requests for Production of Documents and/or Admissions: The parties propose submission of the written interrogatories at any time after the date of the Scheduling Conference. The last written discovery requests shall not be served upon any adverse party any later than forty-five (45) days prior to discovery cut off.

e. Other Planning or Discovery Orders

1. The parties will comply with D.C.COLO.LCIVR. 7.1(a) and the Magistrate Judge's practice standards for discovery disputes before filing an opposed discovery motion.
2. Plaintiff proposes including the following language in this section of the Scheduling Order: "It is the policy of Killmer, Lane & Newman, LLP that no weapons are allowed on the premises during the taking of a deposition. In the event that a deponent brings a weapon to a deposition, the weapon will be placed in a locked box or other secure location until the conclusion of the deposition."

9. CASE PLAN AND SCHEDULE

a. Deadline for Joinder of Parties and Amendment of Pleadings: **October 26, 2020**.

b. Discovery Cut-off: **June 10, 2021**.

c. Dispositive Motion Deadline: **July 12, 2021**.

d. Expert Witness Disclosure**:**

(a) Plaintiff shall disclose his expert(s) by February 10, 2021;

(b) Defendant shall disclose its expert(s) by March 29, 2021;

(c) Plaintiff shall disclose any rebuttal expert(s) by May 13, 2021.

Plaintiff:

1. (a) Plaintiff anticipates retaining experts in the following areas: economics (regarding Plaintiff's damages); psychologist, psychiatrist, or other expert to testify regarding emotional distress and/or other non-economic damages; police custody and operations issues; and any expert necessary for rebuttal and/or impeachment purposes. Plaintiff may call experts in other areas as well.

(b) Defendant may call experts in any field designated by Plaintiff and/or as necessary for rebuttal purposes.

2. The Parties agree to limit the number of retained affirmative experts to three (3) per side.

e. Identification of Persons to Be Deposed[4]:

Name of Deponent	*Date of Deposition*	*Time of Deposition*	*Expected Length of Deposition*
Sean Slatton	TBA	TBA	7 hours
30(b)(6) of Fort Collins	TBA	TBA	7 hours
Officer Todd Hopkins	TBA	TBA	7 hours
Officer Brandon Barnes	TBA	TBA	4 hours
Plaintiff's treating physicians, if any	TBD	TBD	TBD

10. DATES FOR FURTHER CONFERENCES

a. Status conferences will be held in this case at the following dates and times:

_____.

[4] The Parties reserve the right to take additional depositions of persons identified in the Parties' disclosures, discovery responses and through the course of discovery.

b. A final pretrial conference will be held in this case on _____at o'clock _____m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement:

b. The parties anticipate that the jury trial will take five (5) days.

c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facilities at 212 N. Wahsatch Street, Colorado Springs, Colorado 80903-3476; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado 81501-2520; or the U.S. Courthouse/Federal Building, 103 Sheppard Drive, Durango, Colorado 81303-3439: None.

12. NOTICE TO COUNSEL AND PRO SE PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1(c) by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

Counsel and unrepresented parties are reminded that any change of contact information must be reported and filed with the Court pursuant to the applicable local rule.

13. AMENDMENTS TO SCHEDULING ORDER

The scheduling order may be altered or amended only upon a showing of good cause.

DATED at Denver, Colorado, this 10th day of September, 2020.

BY THE COURT:

United States Magistrate Judge

APPROVED:

s/ Helen Oh
David A. Lane
Helen Oh
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Counsel for City of Fort Collins

CERTIFICATE OF SERVICE

I certify that on this 3rd day of September 2020 I filed this **PROPOSED SCHEDULING ORDER** via CM/ECF, which will generate a Notice of Electronic Filing to the following:

Mark Ratner
Hall & Evans, LLC
1001 17th Street, Ste 300
Denver, CO 80202
303-628-3300
ratnerm@hallevans.com
Counsel for City of Fort Collins

s/ Jamie Akard
Paralegal