

<p>DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO.</p> <p>Court Address: 201 Laporte Ave. Fort Collins, CO 80621 T: (970) 494-3500</p> <hr/> <p>Plaintiffs: <b>STUWARD CROSS AND KATRINA RICHMAN</b></p> <p><b>v.</b></p> <p>Defendant: <b>Antonio Lopez and the City of Fort Collins, State of Colorado</b></p> <hr/> <p>Attorneys for Plaintiff: W. Clayton Harris, No. 46455 The Sawaya Law Firm 1600 Ogden Street Denver, CO 80218 Phone Number: (303) 839-1650 FAX Number: (303) 832-7102 E-mail: wharris@sawayalaw.com</p>	<p>DATE FILED: May 29, 2020 9:42 AM FILING ID: B2EC9135ABAF8 CASE NUMBER: 2020CV30363</p> <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No:</p> <p>Div.:                      Ctrm:</p>
<p><b>COMPLAINT AND JURY DEMAND</b></p>	

Plaintiffs, **STUWARD CROSS AND KATRINA RICHMAN**, by and through their attorneys, The Sawaya Law Firm., files their Complaint against **ANTONIO LOPEZ (hereinafter “Defendant Lopez”)** and the **CITY OF FORTT COLLINS (Defendant “City”**, State of Colorado and states as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. On or about June 7, 2017, Plaintiff Steward Cross was a resident of the City of Fort Collins, County of Larimer, State of Colorado.
2. On or about June 7, 2017, Plaintiff Katrina Richman was a resident of the City of Fort Collins, County of Larimer, State of Colorado.
3. Upon information and belief, on or about June 7, 2017, the date of the incident complained of, Defendant Antonio Lopez was and is a resident of the City of Fort Collins, County of Larimer, State of Colorado.

4. Upon information and belief, on or about June 7, 2017, Defendant City of Fort Collins (“City”), is a municipal corporation organized under laws of the State of Colorado, and is a corporate entity capable of suing and being sued.
5. On June 7, 2017, Defendant Lopez committed a tort at South Lemay and Poudre River Drive in the City of Fort Collins, Colorado, County of Larimer, State of Colorado.
6. Pursuant to C.R.S. § 24-10-109, Defendant City of Fort Collins was afforded proper notice upon by and through its agents, apparent agents, servants, employees and personnel via certified mail to the Carrie Daggett, City Attorney for the City of Fort Collins.
7. Jurisdiction and venue are proper in this action pursuant to C.R.C.P. 98(c)(1) and (5).

### **GENERAL ALLEGATIONS**

8. The incident occurred near or at South Lemay and Poudre River Drive, City of Fort Collins, County of Larimer, State of Colorado.
9. At the time of the incident, Plaintiff Steward Cross was the restrained operator of his vehicle.
10. At the time of the incident, Plaintiff Katrina Richman was a restrained passenger of Plaintiff Steward Cross’ vehicle.
11. Plaintiff Cross traveling northbound at Poudre River Drive, City of Fort Collins, County of Larimer, State of Colorado.
12. Defendant Lopez was traveling westbound on Poudre River Drive from a stop sign, City of Fort Collins, County of Larimer, State of Colorado.
13. Defendant Lopez was driving a City of Fort Collins dump truck.
14. Plaintiff Cross did not have any stop sign, traffic signal or any other sign or device indicating a lack of right-of-way on his road and in his direction of travel.
15. Defendant Lopez had a stop sign on his roadway and in his direction of travel.
16. Defendant Lopez failed to stop for this stop sign.
17. Defendant Lopez turned left to go southbound on Lemay causing his dump truck to collide with Mr. Cross’ vehicle on the vehicle’s rear passenger side bumper.
18. Defendant Lopez fled the scene of the incident after the collision.
19. Defendant Lopez was negligent in the operation of his motor vehicle.

20. Defendant Lopez showed a reckless disregard for the safety of other in the operation of his motor vehicle
21. Defendant Lopez did cause a collision with Plaintiff Cross' vehicle.
22. As a direct and proximate result of Defendant Lopez's actions noted above, Plaintiffs Cross and Richman suffered injuries, damages, and losses.
23. At the time of the above-referenced motor vehicle incident, Plaintiff Cross was prudently, reasonably, lawfully, and safely driving his motor vehicle.
24. Plaintiff Cross was not negligent in the above referenced motor vehicle incident.
25. No third party caused or contributed to the cause of the above-referenced motor vehicle collision.
26. No third party caused or contributed to Plaintiffs Cross' and Richman's injuries, damages, and losses.
27. Both Plaintiffs were wearing their seatbelt at the time of the subject incident.
28. Upon Information and belief, Defendant City of Fort Collins has waived government immunity under C.R.S. § 24-10-106 (1)(a) and by violating C.R.S. § 42-4-108 (4).

**FIRST CAUSE OF ACTION**  
**NEGLIGENCE AGAINST DEFENDANT ANTONIO LOPEZ**

29. The allegations contained in all above paragraphs are incorporated herein by reference as if now set forth verbatim.
30. On June 7, 2017, Defendant Lopez was negligent in the operation of his motor vehicle near or at South Lemay and Poudre River Drive, City of Fort Collins, County of Larimer, State of Colorado.
31. On June 7, 2017, Defendant Lopez owed a legal duty to Plaintiffs Cross and Richman to operate his vehicle in a reasonable, non-negligent manner.
32. On June 7, 2017, Defendant Lopez owed a legal duty to Plaintiffs Cross and Richman to operate his vehicle without reckless disregard for the safety of others.
33. On June 7, 2017, Defendant Lopez caused a collision with Plaintiff Cross' vehicle.
34. Defendant Lopez thus breached his legal duty owed to Plaintiffs Cross and Richman.
35. Defendant Lopez breached his duty by operating his motor vehicle negligently.

36. Defendant Lopez breached his legal duty by operating his motor vehicle with reckless disregard for the safety of others.
37. Defendant Lopez breached his duty by operating his motor vehicle recklessly and carelessly.
38. Upon information and belief, Defendant Lopez operated his motor vehicle in disregard of the traffic regulations then in effect.
39. Defendant Lopez operated his motor vehicle in disregard of the traffic conditions then encountered.
40. Defendant Lopez operated his motor vehicle in reckless disregard of the rights and safety of Plaintiffs Cross and Richman and the public at large.
41. As a result of the collision, Plaintiffs Cross and Richman incurred injuries, damages, and losses.
42. As a direct and proximate result of the Defendant Lopez' negligence and reckless disregard for the safety of others, Plaintiffs Cross and Richman have suffered traumatic physical and/or emotional injuries and/or disabilities and/or economic losses and injuries.
43. As a direct and proximate result of the Defendant Lopez' negligence and reckless disregard for the safety of others, Plaintiffs Cross and Richman have suffered injuries, damages and losses which are she continues to treat for and which losses the Plaintiff will continue suffer in the future.
44. As a direct and proximate result of Defendant Lopez' negligence and reckless disregard for the safety of others, Plaintiffs Cross and Richman have and will continue to endure pain and suffering, loss of enjoyment of life, expenses for the services of doctors and other health care providers and medical supplies, and other such general losses.
45. As a direct and proximate result of Defendant Lopez's actions, Plaintiffs Cross and Richman will be prevented from engaging in certain social and recreational activities normal to their lifestyle prior to this incident and will otherwise be prevented from participating in and enjoying the benefits of a full and complete life.

**SECOND CAUSE OF ACTION**  
**NEGLIGENCE PER SE AGAINST DEFENDANT ANTONIO LOPEZ**

46. The allegations contained in all above paragraphs are incorporated herein by reference as if now set forth verbatim.

47. The aforementioned acts of negligence were in violation of the applicable statutes and ordinances of the State of Colorado.
48. The aforementioned statutes, ordinances, procedures and codes were enacted to protect all persons and the general public, such as Plaintiffs, from harm and injury of the type inflicted upon her.
49. As such, the conduct of Defendant Lopez in violating said statutes, ordinances, and codes, constitutes negligence *per se*.
50. As a direct and proximate result of the Defendant Lopez's negligence, Plaintiffs Cross and Richman have suffered traumatic physical and/or emotional injuries and/or disabilities and/or economic losses and injuries.
51. As a direct and proximate result of the Defendant Lopez' negligence, Plaintiffs Cross and Richman have suffered injuries, damages and losses which are permanent in nature and which losses the Plaintiffs will continue suffer in the future.
52. As a direct and proximate result of Defendant Lopez' negligence, Plaintiffs Cross and Richman have and will continue to endure pain and suffering, loss of enjoyment of life, expenses for the services of doctors and other health care providers and medical supplies, and other such general losses.
53. As a direct and proximate result of Plaintiff Cross' and Richman's injuries, Plaintiffs will be prevented from engaging in certain social and recreational activities normal to their lifestyles prior to this incident and will otherwise be prevented from participating in and enjoying the benefits of a full and complete life.

**THIRD CAUSE OF ACTION**  
**RESPONDEAT SUPERIOR/ JOINT AND VICARIOUS LIABILITY**  
**AGAINST CITY OF FORT COLLINS**

54. The allegations contained in all paragraphs above are incorporated herein by reference as if now set forth verbatim.
55. On the date of the incident complained of, and at all times material hereto, Defendant City of Fort Collins, is a municipal corporation organized under laws of the State of Colorado, and is a corporate entity capable of suing and being sued.
56. On June 7, 2017, and at all times material hereto, Defendant City employed Defendant Lopez as its agent, apparent agent, servant, employee, or a person engaged in performing the transportation duties.
57. Defendant City employed Defendant Lopez as its agent authorized as a dump truck driver.

58. On the date of the incident, Defendant Lopez operated a dump truck owned by Defendant City.
59. Therefore on the date of incident, Defendant Lopez was acting within the scope of his authority as an agent of Defendant City.
60. Defendant City directed, controlled, or maintained the right to control, and supervised the duties of its agent, apparent agent, servant, joint venturer, or employee in the operation of the subject vehicle described herein, and did so at all times material to this matter, such that Defendant Lopez was acting within the course and scope of his employment with Defendant City, at the time of the incident.
61. On the date of the incident complained of, as Defendant Lopez, agent, apparent agent, servant, joint venturer, or employee, was negligent in the operation of the subject vehicle and caused the subject collision.
62. Defendant City in its capacity of principal, master, joint venturer, or employer is vicariously responsible, under respondeat superior, for the negligent acts of Defendant Lopez.
63. As a direct and proximate result of Defendant Lopez' negligent operation of his motor vehicle, Plaintiffs have suffered injuries, damages, and losses as set forth supra in paragraphs 42-49.

**FOURTH CAUSE OF ACTION**  
**UNLAWFUL TAKING/DAMAGE OF PRIVATE PROPERTY**  
**AGAINST CITY OF FORT COLLINS**

64. The allegations contained in all paragraphs above are incorporated herein by reference as if now set forth verbatim.
65. On the date of the incident complained of, and at all times material hereto, Defendant City of Fort Collins, a public municipal corporation organized under laws of the State of Colorado, and is a corporate entity capable of suing and being sued.
66. Defendant Lopez, as an employee of Defendant City of Fort Collins, did negligently and recklessly collide with Plaintiff s vehicle on the date of incident.
67. Defendant Lopez and Defendant City of Fort Collins did not have permission to take/damage the property of Plaintiff Cross.
68. Under the Colorado Constitution, Article 2, § 15 and C.R.S. § 38-1-101 (a), the City of Fort Collins damaged Plaintiff Cross' vehicle.
69. Defendant City of Fort Collins has not provided just compensation for the taken/damaged property, therefore Defendant City of Fort Collins has perpetrated an improper taking.

70. An improper taking is not subject to the Governmental Immunity Act.

**JURY DEMAND**

Trial to a Jury of six (6) is demanded on all issues so triable.

**WHEREFORE**, Plaintiffs Steward Cross and Katrina Richman request that judgment be entered in favor of Plaintiffs and against Defendants, in an amount to fairly compensate them for the injuries as set forth herein, including but not limited to, court costs, attorney fees, expert witness fees, pre and post judgment interest, statutory interest from the date this cause of action accrued or as otherwise permitted under Colorado law and for such other and further relief as this Court deems just and proper and / or Plaintiffs pray for the following relief:

- (a) For an amount which will reasonably compensate Plaintiffs for past, present, and future economic loss;
- (b) For an amount which will reasonably compensate Plaintiffs for medical expenses, past and future;
- (c) For an amount which will reasonably compensate Plaintiffs for permanent limitation, injuries, and/or disfigurement, limitations and or disabilities of the body and/or mind;
- (d) For an amount which will reasonably compensate Plaintiffs for pain and suffering, past and future;
- (e) For an amount which will reasonably compensate Plaintiffs for loss of enjoyment of life and / or the capacity of life;
- (f) For pre and post judgment interest as provided by Statute from the date of each collision which forms the bases of the complaint to the date of verdict or judgment, and for costs and fees incurred in the prosecution of the matter and for any other and further relief as the Court may deem just.

Respectfully submitted this 29th day of May, 2020.

SAWAYA, ROSE, MCCLURE & WILHITE, P.C.

/s/ W. Clayton Harris

W. Clayton Harris, Esq.

Plaintiffs' Addresses:

Steward Cross  
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Fort Collins, CO 80526

Katrina Richman  
2027 Shorebird Dr., Apt. 202  
Fort Collins, CO 80525