

<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: STUWARD CROSS AND KATRINA RICHMAN</p> <p>v.</p> <p>Defendant: The City of Fort Collins, State of Colorado</p> <hr/> <p>Attorneys for Plaintiffs: 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: July 30, 2020 1:24 PM FILING ID: B3140D2CEE1F5 CASE NUMBER: 2020CV30363</p> <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No: 2020CV30363</p> <p>Div.: Ctrm:</p>
<p>FIRST AMENDED COMPLAINT AND JURY DEMAND</p>	

Plaintiffs, **STUWARD CROSS AND KATRINA RICHMAN**, by and through their attorneys, The Sawaya Law Firm., file their Complaint against the **CITY OF FORT 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, Defendant City of Fort Collins (“City”), was a municipal corporation organized under laws of the State of Colorado, and is a corporate entity capable of suing and being sued.

4. On June 7, 2017, Antonio Lopez, employee of the City of Fort Collins acting in the course of his employment, committed a tort at South Lemay and Poudre River Drive in the City of Fort Collins, Colorado, County of Larimer, State of Colorado.
5. 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.
6. Jurisdiction and venue are proper in this action pursuant to C.R.C.P. 98(c)(1) and (5).

GENERAL ALLEGATIONS

7. The incident occurred near or at South Lemay and Poudre River Drive, City of Fort Collins, County of Larimer, State of Colorado.
8. At the time of the incident, Plaintiff Steward Cross was the restrained operator of his vehicle.
9. At the time of the incident, Plaintiff Katrina Richman was a restrained passenger of Plaintiff Steward Cross' vehicle.
10. Plaintiff Cross was traveling northbound on Poudre River Drive, City of Fort Collins, County of Larimer, State of Colorado.
11. At the time of the incident, Antonio Lopez was an employee of the Defendant, City of Fort Collins.
12. On the date and time of the incident, Antonio Lopez, was working within the course and scope of his employment with the City of Fort Collins.
13. Antonio Lopez was driving westbound on Poudre River Drive from a stop sign, City of Fort Collins, County of Larimer, State of Colorado.
14. Antonio Lopez was driving a dump truck owned by the City of Fort Collins
15. 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.
16. Antonio Lopez had a stop sign on his roadway and in his direction of travel.
17. Antonio Lopez failed to stop for this stop sign.
18. Antonio Lopez turned left to go southbound on Lemay causing the Defendant's dump truck to collide with Mr. Cross' vehicle on the vehicle's rear passenger side bumper.

19. Antonio Lopez fled the scene of the incident after the collision.
20. Antonio Lopez was negligent in the operation of the motor vehicle he was operating.
21. Antonio Lopez showed a reckless disregard for the safety of other in the operation of the motor vehicle he was operating.
22. Antonio Lopez did cause a collision with Plaintiff Cross' vehicle.
23. As a direct and proximate result of Antonio Lopez's actions noted above, Defendant City is responsible for the consequences of those actions as his employer and due to Mr. Lopez being in the course and scope of his employment with Defendant.
24. As a direct and proximate result of Antonio Lopez's actions noted above, Plaintiffs Cross and Richman suffered injuries, damages, and losses.
25. At the time of the above-referenced motor vehicle incident, Plaintiff Cross was prudently, reasonably, lawfully, and safely driving his motor vehicle.
26. Plaintiff Cross was not negligent in the above referenced motor vehicle incident.
27. Plaintiff Richman was not negligent in the above referenced motor vehicle incident.
28. No third party caused or contributed to the cause of the above-referenced motor vehicle collision.
29. No third party caused or contributed to Plaintiffs Cross' and Richman's injuries, damages, and losses.
30. Both Plaintiffs were wearing their seatbelt at the time of the subject incident.
31. 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 CITY OF FORT COLLINS

32. The allegations contained in all above paragraphs are incorporated herein by reference as if now set forth verbatim.
33. On June 7, 2017, Antonio 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.

34. 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.
35. On June 7, 2017, and at all times material hereto, Defendant City employed Antonio Lopez as its agent, apparent agent, servant, employee, or a person engaged in performing the transportation duties.
36. Defendant City employed Antonio Lopez as its agent authorized as a dump truck driver.
37. On the date of the incident, Antonio Lopez operated a dump truck owned by Defendant City.
38. Therefore on the date of incident, Antonio Lopez was acting within the scope of his authority as an agent of Defendant City.
39. On June 7, 2017, Antonio Lopez, and thus the Defendant City, owed a legal duty to Plaintiffs Cross and Richman to operate his vehicle in a reasonable, non-negligent manner.
40. On June 7, 2017, Antonio Lopez, and thus the Defendant City, owed a legal duty to Plaintiffs Cross and Richman to operate his vehicle without reckless disregard for the safety of others.
41. On June 7, 2017, Antonio Lopez, and thus the Defendant City, caused a collision with Plaintiff Cross' vehicle.
42. Antonio Lopez, and thus the Defendant City, thus breached his legal duty owed to Plaintiffs Cross and Richman.
43. Antonio Lopez, and thus the Defendant City, breached his duty by operating his motor vehicle negligently.
44. Antonio Lopez, and thus the Defendant City, breached his legal duty by operating his motor vehicle with reckless disregard for the safety of others.
45. Antonio Lopez, and thus the Defendant City, breached his duty by operating his motor vehicle recklessly and carelessly.
46. Upon information and belief, Antonio Lopez, and thus the Defendant City, operated his motor vehicle in disregard of the traffic regulations then in effect.
47. Antonio Lopez, and thus the Defendant City, operated his motor vehicle in disregard of the traffic conditions then encountered.
48. Antonio Lopez, and thus the Defendant City, operated his motor vehicle in reckless disregard of the rights and safety of Plaintiffs Cross and Richman and the public at large.

49. As a result of the collision, Plaintiffs Cross and Richman incurred injuries, damages, and losses.
50. 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 Antonio Lopez was acting within the course and scope of his employment with Defendant City, at the time of the incident.
51. On the date of the incident complained of, as Antonio Lopez, agent, apparent agent, servant, joint venturer, or employee, was negligent in the operation of the subject vehicle and caused the subject collision.
52. Defendant City in its capacity of principal, master, joint venturer, or employer is vicariously responsible, under respondeat superior, for the negligent acts of Antonio Lopez.
53. As a direct and proximate result of the Antonio Lopez' negligence, and reckless disregard for the safety of others and thus the Defendant's 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.
54. As a direct and proximate result of the Antonio Lopez' negligence, and reckless disregard for the safety of others and thus the Defendant's 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 Plaintiffs will continue suffer in the future.
55. As a direct and proximate result of the Antonio Lopez' negligence, and reckless disregard for the safety of others and thus the Defendant's 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.
56. As a direct and proximate result of Antonio Lopez's actions and thus Defendant'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 CITY OF FORT COLLINS

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

58. The aforementioned acts of negligence were in violation of the applicable statutes and ordinances of the State of Colorado.
59. 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.
60. As such, the conduct of Antonio Lopez, and thus Defendant City, in violating said statutes, ordinances, and codes, constitutes negligence *per se*.
61. As a direct and proximate result of the Antonio Lopez's negligence and thus Defendant's negligence, Plaintiffs Cross and Richman have suffered traumatic physical and/or emotional injuries and/or disabilities and/or economic losses and injuries.
62. As a direct and proximate result of the Antonio Lopez' negligence thus Defendant's 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.
63. As a direct and proximate result of Antonio Lopez' negligence thus Defendant's 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.
64. As a direct and proximate result of Plaintiff Cross' and Richman's injuries caused by Defendant, 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
UNLAWFUL TAKING/DAMAGE OF PRIVATE PROPERTY
AGAINST DEFENDANT CITY OF FORT COLLINS

65. The allegations contained in all paragraphs above are incorporated herein by reference as if now set forth verbatim.
66. 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.
67. Antonio Lopez, as an employee of Defendant City of Fort Collins working in the course and scope of his employment with Defendant, did negligently and recklessly collide with Plaintiff s vehicle on the date of incident.
68. Antonio Lopez, and thus Defendant City of Fort Collins, did not have permission to take/damage the property of Plaintiff Cross.

69. Under the Colorado Constitution, Article 2, § 15 and C.R.S. § 38-1-101 (a), the City of Fort Collins damaged Plaintiff Cross' vehicle.
70. 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.
71. 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 Defendant City of Fort Collins, 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 30th day of July, 2020.

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

/s/ W. Clayton Harris

W. Clayton Harris

Plaintiffs' Addresses:

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Fort Collins, CO 80526

Katrina Richman
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Fort Collins, CO 80525