

DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100	DATE FILED: September 10, 2020 2:29 PM FILING ID: 600E3007620F5 CASE NUMBER: 2020CV30363
Plaintiffs: STUWARD CROSS AND KATRINA RICHMAN v. Defendant: THE CITY OF FORT COLLINS, State of Colorado	COURT USE ONLY
Andrew W. Callahan, #52421 WICK & TRAUTWEIN, LLC P.O. Box 2166 Fort Collins, CO 80522 Phone: (970) 482-4011 Email: acallahan@wicklaw.com	Case Number: 2020 CV 30363 Courtroom: 5A
DEFENDANT'S ANSWER TO FIRST AMENDED COMPLAINT AND JURY DEMAND	

COMES NOW Defendant The City of Fort Collins, by and through counsel, Andrew W. Callahan of Wick & Trautwein, LLC, and for its Answer to Plaintiff's First Amended Complaint and Jury Demand, denies, states and alleges as follows:

1. In response to paragraphs 1 and 2, Defendant has no knowledge of the residency of Plaintiffs and therefore denies the allegations.

2. In response to paragraph 3, Defendant admits it is a home rule municipal corporation organized under the laws of the State of Colorado and is a corporate entity capable of suing and being sued, subject to the limitations of the Colorado Governmental Immunity Act.

3. In response to paragraph 4, Defendant admits that Antonio Lopez was an employee of the City acting in the course and scope of his employment while driving a vehicle on June 7, 2017. Defendant denies that Mr. Lopez committed a tort on that day.

4. In response to paragraph 5, Defendant admits it was afforded proper notice of the claims.

5. In response to paragraph 6, Defendant admits that jurisdiction and venue are proper.

6. In response to paragraph 7, Defendant admits.

7. In response to paragraph 8, Defendant admits Plaintiff Cross was operating a vehicle, and has no knowledge as to whether or not Mr. Cross was restrained. Accordingly, Defendant denies that allegation.

8. In response to paragraph 9, Defendant admits that Plaintiff Richman was a passenger in Plaintiff Cross' vehicle, but has no knowledge as to whether or not she was restrained. Accordingly, Defendant denies that allegation.

9. In response to paragraph 10, Defendant denies Plaintiff Cross was traveling northbound on Poudre River Drive, but admits that Plaintiff Cross was traveling northbound on South Lemay Avenue prior to the accident.

10. Defendant admits the allegations of paragraphs 11 and 12.

11. In response to paragraph 13, Defendant denies the allegations as stated. Defendant admits that Mr. Lopez was turning left from Poudre River Drive onto South Lemay Avenue southbound immediately prior to the accident.

12. In response to paragraph 14, Defendant admits.

13. In response to paragraph 15, Defendant admits that northbound South Lemay Avenue does not have a stop sign, traffic signal or other traffic control device. However, Defendant denies that Plaintiff Cross had right-of-way at the time of the incident because he had affirmatively waived Mr. Lopez through the intersection.

14. In response to paragraph 16, Defendant admits.

15. In response to paragraph 17, Defendant denies.

16. In response to paragraph 18, Defendant admits that Mr. Lopez turned left to go southbound on Lemay Avenue. Defendant denies that Mr. Lopez was responsible for causing the collision between his vehicle and Plaintiff Cross' vehicle.

17. Defendant denies the allegations of paragraphs 19, 20, 21 and 22.

18. In response to paragraph 23, Defendant admits Mr. Lopez was driving his vehicle in the course and scope of his employment with Defendant. Defendant denies that Mr. Lopez was negligent or that Defendant is in any way responsible for injuries suffered by Plaintiffs.

19. Defendant denies the allegations in paragraphs 24, 25 and 26.

20. In response to paragraph 27, Defendant lacks knowledge as to the actions of Plaintiff Richman and therefore denies the same.

21. Defendant is without sufficient information to admit or deny the allegations of paragraphs 28, 29, and 30, and therefore denies the same.

22. In response to paragraph 31, Defendant acknowledges that the State of Colorado has waived sovereign immunity for injuries resulting from the operation of a motor vehicle owned or operated by a public employee pursuant to C.R.S. §24-10-106(1)(a). Defendant denies that Defendant or any employee thereof violated C.R.S. §42-4-108(4).

FIRST CAUSE OF ACTION

23. In response to paragraph 32, Defendant incorporates its responses to the previous allegations as set forth above.

24. In response to paragraph 33, Defendant denies.

25. In response to paragraph 34, Defendant admits.

26. In response to paragraph 35, Defendant admits that Mr. Lopez was an employee of Defendant and acting within the course and scope of his employment on June 7, 2017.

27. In response to paragraph 36, Defendant admits that Mr. Lopez was an employee of Defendant and acting within the course and scope of his employment at the time of the accident.

28. Defendant admits the allegations of paragraphs 37, 38, 39 and 40.

29. Defendant denies the allegations of paragraphs 41 through 49.

30. In response to paragraph 50, Defendant admits that at the time of the incident Mr. Lopez was acting within the course and scope of his employment with the Defendant. Defendant denies the remainder of the allegations in paragraph 50.

31. In response to paragraph 51, Defendant denies.

32. In response to paragraph 52, Defendant admits it employed Mr. Lopes at the time of the accident, and that it is vicariously liable for his actions. Defendant denies that Mr. Lopez was negligent and denies the remainder of the allegations in this paragraph.

33. Defendant denies the allegations of paragraphs 53 through 56.

SECOND CAUSE OF ACTION

34. In response to paragraph 57, Defendant incorporates its responses as set forth above.

35. Defendant denies the allegations of paragraphs 58 through 64.

THIRD CAUSE OF ACTION

36. In response to paragraph 65, Defendant incorporates its responses as set forth above.

37. In response to paragraph 66, Defendant admits.

38. Defendant denies the allegations of paragraphs 67 through 71.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Third Cause of Action fails to state a claim upon which relief may be granted.

2. Plaintiffs' have received or will receive funds from a collateral source as defined by C.R.S. §13-21-111.6 for which the Plaintiffs may not receive double recovery.

3. Plaintiffs' claims for damages are limited by C.R.S. §13-21-102.5.

4. Plaintiffs' claims are governed and limited by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

5. Plaintiffs have failed to mitigate their damages.

6. Plaintiffs' claims may be barred or reduced by the seatbelt mitigation defense.

7. Plaintiffs' injuries, if any, are the result of the negligence of Plaintiff Cross. Plaintiff Cross stopped his vehicle before the intersection of South Lemay Avenue and Poudre River Drive due to backed up traffic. Plaintiff Cross then proceeded to waive through the

vehicles stopped on Poudre River Drive waiting to turn left onto South Lemay Avenue. Plaintiff Cross affirmatively waived Mr. Lopez out into the intersection before accelerating suddenly and without warning into the intersection, thus causing the collision.

8. Pursuant to C.R.S. §13-21-111.5, any award of damages in favor of Plaintiffs should be reduced by the percentage of fault assessed to Plaintiff Cross for this collision.

9. Plaintiffs' Third Cause of Action asserts a claim by Plaintiff Cross for unlawful taking/damage of private property. Upon information and belief, the vehicle driven by Plaintiff Cross was owned by Colorado Cab Co., LLC, and thus Plaintiff Cross is not the proper party to assert a claim for damages to the vehicle in question.

WHEREFORE, Defendant respectfully prays that the Court enter judgment in favor of Defendant and against the Plaintiffs, and award Defendant its reasonable attorney's fees, expert witness fees, costs and such further relief as the Court shall deem just and proper.

JURY DEMAND

Defendant hereby demands a trial to a jury of six (6) on all issues herein. The statutory jury fee is remitted herewith.

Respectfully submitted this 10th day of September, 2020.

WICK & TRAUTWEIN, LLC

By: s/Andrew W. Callahan
Andrew W. Callahan, #52421
Attorneys for Defendant

CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that a true and correct copy of the foregoing DEFENDANT'S ANSWER TO FIRST AMENDED COMPLAINT AND JURY DEMAND was filed via the Colorado Courts E-Filing System and served this 10th day of September, 2020, on the following:

W. Clayton Harris
The Sawaya Law Firm
1600 Ogden Street
Denver, CO 80218

s/ Jody L. Minch