

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

PHILIPPA GRACE MCCULLY,

Plaintiff,

v.

EL PASO COUNTY;

KIMBERLY FARRELL;

SEAN GRADY;

LARI HANENBERG;

DEANNA FLORES;

SPENCER OTTLEY;

[First Name Unknown] RINCON, a law enforcement officer of the El Paso County Sheriff's Office;

[First Name Unknown] ROGERS, a law enforcement officer of the El Paso County Sheriff's Office

MICHAEL KRABLEAN;

MICHELLE MACKEY;

MELANIE HOFFMAN;

JOHN DOES 1-10, in their individual and official capacities; and

JANE DOES 1-10, in their individual and official capacities,

Defendants.

PLAINTIFF'S COMPLAINT AND JURY DEMAND

Plaintiff, Philippa Grace McCully, by and through counsel, David Lane, Darold Killmer and Eudoxie (Dunia) Dickey of KILLMER, LANE & NEWMAN, LLP, respectfully alleges for her Complaint and Jury Demand as follows:

I. INTRODUCTION

1. This action arises out of the brutal treatment sustained by and subsequent failure to provide medical care to Plaintiff Philippa Grace McCully at the hands of Defendants Deputy

Sean Grady, Deputy Kimberly Farrell, Lieutenant Lari Hanenberg, Deputy or Lieutenant Deanna Flores, Licensed Practical Nurse (LPN) Spencer Ottley, Deputy or Lieutenant or LPN Michelle Mackay, Deputy or Lieutenant or LPN Melanie Hoffman, Deputy or Lieutenant [First Name Unknown] Rincon, Deputy or Lieutenant Michael Krablean, Deputy [First Name Unknown] Rogers, John Does 1-10 and Jane Does 1-10, who were at all relevant times acting under color of state law in their respective capacities as correctional officers employed at the El Paso County Criminal Justice Center, located at 2739 E. Las Vegas St., Colorado Springs, Colorado 80906 (the "Jail").

2. On or about April 21, 2014, Ms. McCully was arrested and taken to the Jail. At approximately 11:17 P.M., Deputy Sean Grady, Deputy Kimberly Farrell and Lt. Lari Hanenberg escorted a compliant Ms. McCully into a holding cell. At this point, Defendants Grady, Farrell and Lt. Hanenberg violated Plaintiff's clearly established right to be free of excessive force guaranteed by the Fourteenth Amendment's Due Process Clause when, with the assistance of Lt. Hanenberg, Defendant Farrell grabbed Plaintiff's feet and brutally pulled Plaintiff's legs out from underneath and behind her, causing Plaintiff to slam forcibly onto the cell floor, audibly hitting her head and knees against the hard concrete surface. Working in concert, at the same time that Deputy Farrell pulled Plaintiff's legs out from behind her, Deputy Grady excessively forcefully shoved Plaintiff down hard by her left shoulder using his right arm, simultaneously restraining her arms from behind. Consequently, Plaintiff was unable to break her fall with her arms or hands, and she suffered severe injuries, including but not limited to a fractured left knee, left knee hyperextension with bone contusion, left anterior cruciate ligament (ACL) avulsion tear, torn left posterior cruciate ligament (PCL), left posterior joint capsular tear, extensive, deep bruising on the fronts and backs of her legs and blunt trauma to her face, head and upper body.

As Plaintiff lay face-down on the unyielding concrete, having been immediately handcuffed behind her back after her violent takedown and completely incapacitated, Deputy Farrell and Lt. Lari Hanenberg placed their respective knees and full body weight onto the back of each of Plaintiff's legs as Deputy Grady dug his left knee into Plaintiff's back, soon joined by John Doe 1,¹ who excessively forcefully dug his right knee into Plaintiff's back.

3. The excessive force used against Ms. McCully is a reflection of a long-time custom, practice and policy of the El Paso County Sheriff's Office ("EPSO"), which at the time lacked a constitutionally adequate policy respecting excessive force and for years had failed to adequately train and discipline its employees with respect to the use of excessive force. The violent and brutal treatment perpetrated upon Philippa McCully represents the standard operating procedure within the El Paso County Sheriff's Office, which has in fact permitted a culture of excessive force to fester in its Jail, and condoned and ratified the actions of staff who engaged in excessive force against inmates.

4. Following this dramatic take-down, Ms. McCully immediately screamed out in pain that her left leg was broken and she was in acute pain from her multiple injuries. Although she voiced her concern that her leg was broken over and over again, had obvious and visible difficulty standing up and walking and repeatedly requested medical attention the night of April 21st-22nd, 2014, and throughout the rest of her 5-day detainment at the Jail, her clearly established Fourteenth Amendment Due Process right to receive medical treatment was callously ignored and violated by Defendants' deliberate indifference to Plaintiff's serious medical condition and their failure to provide constitutionally adequate medical evaluation or treatment,

¹ The identity of several of the individuals who interacted with Plaintiff McCully has not yet been ascertained, despite several requests by undersigned counsel to the El Paso County Sheriff's Office ("EPSO"). On April 8, 2016, the EPSO's Public Information Officer, Jacqueline Kirby, wrote in response to a specific request to identify by saying "EPSO declines to answer the question posed about identifying those in the video."

despite Defendants' awareness of Plaintiff's serious and obvious injuries. As a result, Plaintiff spent her five days in custody at the Jail in excruciating pain and nearly unable to walk. Moreover, Plaintiff's injuries worsened significantly for lack of early medical evaluation, attention and intervention.

5. The El Paso County Sheriff's Office has a custom, policy and practice of failing to evaluate and treat the serious medical conditions of inmates at the Jail, and condones and fails to discipline its correctional officers for failing to appropriately provide medical attention.

6. As a result of the Individual Defendants' actions and inactions, and El Paso County's custom, policy and practice with respect to excessive force and provision of medical care, Plaintiff suffered severe physical and emotional damages and continues to be traumatized by her brutal and painful ordeal.

II. JURISDICTION AND VENUE

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

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

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

10. 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.

III. PARTIES

Plaintiff

11. Plaintiff, Philippa Grace McCully, is a citizen of the United States and was at all times relevant hereto a resident of and domiciled in the State of Colorado.

Defendants

12. At all times relevant to this Complaint, Defendant Deputy Kimberly Farrell was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer employed by the El Paso County Sheriff's Office.

13. At all times relevant to this Complaint, Defendant Deputy Sean Grady was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in his capacity as a correctional officer employed by the El Paso County Sheriff's Office.

14. At all times relevant to this Complaint, Defendant Lieutenant Lari Hanenberg was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer employed by the El Paso County Sheriff's Office.

15. At all times relevant to this Complaint, Defendant Deputy or Lieutenant Deanna Flores was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer employed by the El Paso County Sheriff's Office.

16. At all times relevant to this Complaint, Defendant Licensed Practical Nurse (LPN) Spencer Ottley was a citizen of the United States, resident of and domiciled in the State of

Colorado and was acting under color of state law in his capacity as a nurse employed by the El Paso County Sheriff's Office.

17. At all times relevant to this Complaint, Defendant Lieutenant or Deputy or Licensed Practical Nurse (LPN) Michelle Mackey was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer or nurse employed by the El Paso County Sheriff's Office.

18. At all times relevant to this Complaint, Defendant Lieutenant or Deputy [First Name Unknown] Rincon, a female, was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer employed by the El Paso County Sheriff's Office.

19. At all times relevant to this Complaint, Defendant Deputy [First Name Unknown] Rogers was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in his or her capacity as a correctional officer employed by the El Paso County Sheriff's Office.

20. At all times relevant to this Complaint, Defendant Lieutenant or Deputy or LPN Michael Krablean was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in his capacity as a correctional officer employed by the El Paso County Sheriff's Office.

21. At all times relevant to this Complaint, Defendant Lieutenant or Deputy or LPN Michelle Mackey was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in his capacity as a correctional officer employed by the El Paso County Sheriff's Office.

22. At all times relevant to this Complaint, Defendant Lieutenant or Deputy or LPN Melanie Hoffman was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in his capacity as a correctional officer employed by the El Paso County Sheriff's Office.

23. Plaintiff has made diligent efforts to identify the John Does 1-10 and Jane Does 1-10 Defendants. Specifically, Plaintiff has made numerous requests to the El Paso County Sheriff's Office and the El Paso County Attorney's Office asking for the identities of the officers visible in the Jail video footage taken of Philippa McCully's holding cell, cell 3, from approximately 11:17 P.M. on April 21, 2014 through approximately 3:44 A.M. on April 22, 2014 (the "Jail Surveillance Video").² Despite Plaintiff's repeated inquiries, the County Attorney's Office failed to respond altogether and the Sheriff's Office responded but declined to identify the officers in the video. See footnote one, supra. Therefore, in order to provide the best notice practicable under the circumstances, Plaintiff identifies some of the John Does 1-10 and Jane Does 1-10 by reference to still video screenshots of the Jail Surveillance Video included below. Other John Does 1-10 and Jane Does 1-10 are not present in the video, but supervised and therefore were legally responsible for the actions and inactions of the Individual Defendants visible in the video. The identity of these John and Jane Doe Defendants is within the possession and knowledge of Defendant EPSO.

24. At all times relevant to this Complaint, Defendant John Doe 1 was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in his capacity as a correctional officer employed by the El Paso County Sheriff's Office.

² References to the times and date of the events described throughout this Complaint are taken from the Jail Surveillance Video time and date stamps.

Defendant John Doe 1 is the male officer visible in the middle of the Jail Surveillance Video screenshot below, taken at approximately 11:17:32 P.M. on April 21, 2014:



25. At all times relevant to this Complaint, Defendant John Doe 2 was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in his capacity as a correctional officer employed by the El Paso County Sheriff's Office. Defendant John Doe 2 is the male officer visible holding a camera on the far right in the screenshot below, taken at approximately 11:19:10 P.M. on April 21, 2014:



26. At all times relevant to this Complaint, Defendant Jane Doe 1 was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer employed by the El Paso County Sheriff's Office. Defendant Jane Doe 1 is the female officer visible behind the jail cell window in the Jail Surveillance Video screenshot below, taken at approximately 1:19:17 A.M. on April 22, 2014:

2014-Apr-22 01:19:17.682 AM (MDT)



122 IIR Cell 3

27. At all times relevant to this Complaint, Defendant Jane Doe 2 was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer employed by the El Paso County Sheriff's Office. Defendant Jane Doe 2 is the female officer visible behind the jail cell window, taken at approximately 1:31:01 A.M. on April 22, 2014. This may be the same individual as Jane Doe 1, described in ¶ 23.

2014-Apr-22 01:31:01.766 AM (MDT)



28. At all times relevant to this Complaint, Defendant Jane Doe 3 was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer employed by the El Paso County Sheriff's Office.

Defendant Jane Doe 3 is the female officer visible standing on the left hand side in the back row in the Jail Surveillance Video screenshot below, taken at approximately 3:23:16 A.M. on April 22, 2014:



29. At all times relevant to this Complaint, Defendant Jane Doe 4 was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer employed by the El Paso County Sheriff's Office. Defendant Jane Doe 4 is the female officer visible standing on the right hand side in the back row in the Jail Surveillance Video screenshot below, taken at approximately 3:23:16 A.M. on April 22, 2014:



30. At all times relevant to this Complaint, Defendant Jane Doe 5 was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer employed by the El Paso County Sheriff's Office. Defendant Jane Doe 5 is the female officer visible standing on the right hand side in the front row in the Jail Surveillance Video screenshot below taken at approximately 3:23:16 A.M. on April 22, 2014. This Jane Doe 5 may be Defendant Rincon:

2014-Apr-22 03:23:16.422 AM (MDT)



31. At all times relevant to this Complaint, Defendant John Doe 2 was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in his capacity as a correctional officer employed by the El Paso County Sheriff's Office. Defendant John Doe 2 is the male officer visible on the left-hand side of the shot, grabbing Plaintiff's right arm in the Jail Surveillance Video screenshot below, taken at approximately 3:35:43 A.M. on April 22, 2014. This John Doe 2 may be Defendant Deputy Grady:

2014-Apr-22 03:35:43.911 AM (MDT)



32. At all times relevant to this Complaint, Defendant Jane Doe 6 was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer employed by the El Paso County Sheriff's Office. Defendant Jane Doe 6 is the female officer visible standing on the right hand side, grabbing Defendant's left arm in the Jail Surveillance Video screenshot below, taken at approximately 3:35:43 A.M. on April 22, 2014:



33. At all times relevant to this Complaint, Defendant Jane Doe 7 was a citizen of the United States, resident of and domiciled in the State of Colorado and was acting under color of state law in her capacity as a correctional officer employed by the El Paso County Sheriff's Office. Defendant Jane Doe 7 is the female officer visible on the right in the Jail Surveillance Video screenshot below, taken at approximately 3:35:45 A.M. on April 22, 2014:

2014-Apr-22 03:35:45:911 AM (MDT)



34. The remaining Defendants John Does 4-10 and Jane Does 8-10 were citizens of the United States, resident of and domiciled in the State of Colorado and were acting under color of state law in their respective capacities as correctional officers employed by the El Paso County Sheriff's Office. Although Defendants John Does 4-10 and Jane Does 8-10 are not present in the Jail Surveillance Video, they were employed by EPSO and were responsible for the safety and welfare of detainees at the Jail, and some of them supervised the Defendants present in the Jail Surveillance Video, and therefore were legally responsible for the actions and inactions of the named Defendants and John Does 1-3 and Jane Does 1-7 Defendants identified by reference to their presence in the Jail Surveillance Video.

35. Defendants Farrell, Grady, Hanenberg, Flores, Ottley, Mackey, Rincon, Krablean, Rogers, John Does 1-10 and Jane Does 1-10 are referred to collectively as the "Individual Defendants."

36. Defendant El Paso County is a governmental entity chartered under the laws of the State of Colorado. Among other things, El Paso County operates the El Paso County Criminal Justice Center (“the Jail”), located at 2739 E. Las Vegas St., Colorado Springs, Colorado 80906.

IV. FACTUAL ALLEGATIONS

A. PHILIPPA MCCULLY’S LIFE

37. Ms. McCully was born on January 5, 1993.



38.

The above image is a photograph of Ms. McCully with her cousin, Leah, 2, pictured on Easter of 2016.

39. Ms. McCully is a petite young woman, approximately 5 feet, 0 inches tall and weighing just 100 pounds.

40. Ms. McCully was 21 years old at the time of this incident.

41. Ms. McCully, known as Pippa, has a very close and loving relationship with her identical twin sister Caroline McCully, known as Zara, both of whom were in their junior year at Colorado College in Colorado Springs, Colorado at the time of Ms. McCully's arrest.



42.

(Philippa McCully, known as “Pippa”, right, with her twin sister Caroline, known as “Zara,” left, pictured in December 2013.)

43. During her sophomore year, Ms. McCully was diagnosed with cancer and Ollier Disease, a rare skeletal disorder which causes tumors, one of which had metastasized to chondrosarcoma and was discovered on Ms. McCully's left ischium, or butt bone.

44. Following this devastating diagnosis, on March 1, 2013, Ms. McCully underwent life-saving surgery to remove the tumor and three quarters of her left ischium, or butt bone, making sitting difficult and uncomfortable and requiring Ms. McCully to sit down carefully and place more weight on her right side.

45. Ms. McCully continued with her regular studies and activities as a college student, but she was anxious about her diagnosis and prognosis and became depressed. During her sophomore and junior years at Colorado College, Ms. McCully was treated by clinical staff at the Colorado College Student Health Center, who prescribed various psychiatric medications in an effort to alleviate her depression and anxiety.

46. By the spring of 2014, the combination of medications began causing Ms. McCully to act erratically, and it was in this context that she was arrested for the very first time in her life on the night of April 21, 2014.

47. On the evening of April 21, 2014, Ms. McCully was arrested for menacing, criminal attempt and reckless driving after she drove a car and nearly struck other persons with the vehicle.

48. That evening, several students alerted Roy Garcia, security officer at Colorado College to McCully's reckless driving on campus, and Mr. Garcia contacted Officer Newton of the EPSO. Officers Powers and Caro of the EPSO were also dispatched to the scene. After Officer Newton conducted a Mirandized interview with Ms. McCully inside of her apartment, he arrested her and transported her to the Jail.

B. PHILIPPA MCCULLY'S DETAINMENT AT THE EL PASO COUNTY CRIMINAL JUSTICE CENTER

49. Following her arrest on April 21, 2014, Ms. McCully was brought to the Jail, where she was booked and provided with a jail uniform.

50. At approximately 11:17 P.M. on April 21, 2014, Defendant Deputy Grady marched the orderly and compliant Plaintiff into a holding cell, gripping under her arms from behind in a “Double Under Hook” hold. Ms. McCully was cooperative and non-resistant.

51. Defendant Deputy Farrell and Lieutenant Lari Hanenberg quickly followed and the three officers surrounded the unresisting Plaintiff, who was calmly standing facing the cell wall.

52. Suddenly, without any provocation or warning and without Ms. McCully knowing it was going to happen, and with help from Lieutenant Hanenberg, Deputy Farrell forcefully pulled her legs out from under her from behind, and with his right arm Deputy Grady excessively forcefully shoved Plaintiff down hard by her left shoulder onto her front side and face, simultaneously restraining her arms from behind.

53. Consequently, Plaintiff was unable to break her fall with her hands or arms, breaking it instead with her knees. She suffered severe injuries, as detailed below.

54. As Plaintiff lay face-down on the unyielding concrete, now handcuffed behind her back and completely incapacitated, Deputy Farrell and Lt. Lari Hanenberg placed their respective knees and full body weight onto the back of Plaintiff’s legs, as Deputy Grady dug his left knee into Plaintiff’s back, soon joined by John Doe 1, who dug his right knee into Plaintiff’s back with excessive force.

55. The image below is a photograph taken by John Doe 2 shortly after the violent takedown of Ms. McCully.



The picture depicts an image of Plaintiff's face, her head having just hit the unforgiving concrete cell floor with a loud thud, while she is being handcuffed and unnecessarily forcefully restrained by the four large Defendants amassed on top of her 100 pound frame.

56. As a result of this violent takedown, Plaintiff suffered severe injuries, including but not limited to a fractured left knee, left knee hyperextension with bone contusion, left anterior cruciate ligament (ACL) avulsion tear, torn left posterior cruciate ligament (PCL), left posterior joint capsular tear, extensive, deep bruising on the fronts and backs of her legs and blunt trauma to her face, head and upper body.

57. Immediately realizing her left leg was broken following her rough and unjustified takedown, Plaintiff yelled without hesitation “You broke my leg! You broke my leg!” to the four Defendant officers amassed on top of her.

58. When Deputy Farrell asked Plaintiff to which leg she was referring, Plaintiff indicated her left leg was hurt.

59. From that moment on and continuing through the remainder of her 5-day stay in the Jail, Plaintiff never ceased verbally alerting any and all Defendant officers and medical staff to her pain and the severity of her broken left knee and requested medical attention over and over again. During this entire time, Ms. McCully never once met with a medical professional nor received any kind of medical examination, evaluation or treatment. She did not receive as much as an aspirin.

60. In response to Plaintiff’s urgent plea, Deputy Ferrell called in Defendant LPN Ottley to evaluate Plaintiff’s injuries.

61. Without even turning Plaintiff onto her back and to conduct a proper examination of her legs and knees, at approximately 11:18 P.M. LPN Ottley proceeded to indifferently conduct a wholly cursory and inadequate check of her legs and feet, hastily clearing her of any injuries within less than one second.

62. Between approximately 11:19 P.M. and 11:20 P.M., LPN Ottley returned to conduct another equally inadequate and perfunctory check of Plaintiff’s legs and feet, again quickly clearing her of any injuries, despite the obvious presence of injuries and pain.

63. Because Plaintiff was lying on her front at the time, LPN Ottley did not observe her legs or feet during either search. He did not even attempt to do so.

64. Instead of heeding Plaintiff's exigent insistence that her leg was broken and providing her with the prompt medical attention her injuries warranted, at approximately 11:20 P.M., Defendants Grady, Farrell, Hanenberg, Ottley, John Doe 1 and John Doe 2 left Plaintiff alone lying face down on the hard cell floor, still handcuffed from behind.

65. From approximately 11:20 P.M. on April 21, 2014 until approximately 12:32 A.M. on April 22, 2014, Plaintiff was left alone in extreme pain, visibly in distress and attempting to crawl around the holding cell.

66. Plaintiff's struggles to move about her cell and inability to stand up or bend her leg were visible to Defendant officers in real-time via the live video feed of the Jail security camera and upon visual inspection of her cell if anyone bothered to look into the cell window.

67. In her incident report, Defendant Farrell noted she observed Plaintiff's near inability to stand up or bend her left leg, and heard her cries of "Help me!"

68. But instead of assisting Plaintiff by calling a doctor or other medical professional, Defendant Farrell deliberately and indifferently dismissed Plaintiff's distress by stating that she had already been checked and cleared of injury by Defendant LPN Ottley.

69. With no option but to lie or sit on the hard, concrete floor, Plaintiff experienced additional pain because of her prior cancer surgery in which three quarters of her left ischium, or butt bone, had been removed, making sitting highly uncomfortable, let alone on rocklike concrete.

70. When Plaintiff removed her pants in order to inspect her injuries at approximately 12:09 A.M. on April 22, 2014, her fractured left knee appeared visibly swollen.

71. At approximately 12:29 A.M., Plaintiff again struggled to stand up, but ultimately failed because of her inability to bend or place any weight onto her left leg. Still handcuffed behind her back, Plaintiff was unable to use her hands to brace herself against the cell wall.

72. Defendants Farrell, Hanenberg and Rincon entered her cell at approximately 12:32 A.M., over 70 minutes after abandoning Plaintiff, and found her handcuffed and writhing in pain from a knee whose fracture the officers themselves had caused.

73. Plaintiff again insisted to Defendants Farrell, Hanenberg and Rincon that her leg was broken.

74. Yet again LPN Ottley was called in to perform another totally deficient medical examination of Plaintiff's knees, legs and feet, following which he deliberately and indifferently pronounced that while she may have overextended her knee, Plaintiff's leg was definitively not broken, according to his medical judgment.

75. Consistent with the extent and seriousness of her pain and injuries, Plaintiff asked whether she would be taken to a hospital

76. LPN Ottley denied Plaintiff's request, with deliberate indifference to her serious and obvious medical condition, and refused to provide any additional medical evaluation, treatment, call a medical professional or to transport Plaintiff to a hospital or other medical facility as she requested.

77. LPN Ottley told Plaintiff he would be able to get her some pain medication later.

78. This promised medication never arrived, and Plaintiff did not receive any pain medication during her entire stay in custody.

79. At this point, Defendants Farrell, Hanenberg and Rincon and LPN Ottley, as well as their respective supervisors, were on notice and were or should have been clearly aware of the extent

of Plaintiff's serious and obvious severe pain and injuries, evidenced by her swollen knees, her inability to bend her left leg, her struggles to stand up or walk, her cries for medical assistance and the deep purple bruising already covering the entirety of her feet, lower legs and knees.

80. Nevertheless, at approximately 12:41 A.M., Defendants Farrell, Hanenberg and Rincon and LPN Ottley left Plaintiff in her cell once again, alone and in obvious pain and distress.

81. Plaintiff repeatedly requested medical attention by insistently pressing the call button in her cell and banging on the cell window with her hands at approximately 1:18 A.M., 1:19 A.M., 2:01 A.M., and 2:27 A.M. without any response.

82. During this period of time, various officers can be observed walking outside her cell window, callously ignoring Plaintiff's pleas for assistance with deliberate indifference.

83. At approximately 1:19 A.M., Plaintiff pushed herself up with great effort, bracing with her right arm against the wall, and hobbled over to the window to ask for help.

84. At approximately 1:20 A.M., Defendant Farrell inaccurately noted in a report, "I observed inmate McCully standing on both legs, her right hand on her hip, without any issues."

85. At approximately 1:30 A.M., Plaintiff once again explained that she has a broken leg to Defendant Deputy Rogers through the cell window, but neither Deputy Rogers, Deputy Farrell, their supervisors nor any other Defendants took any actions to assist Plaintiff or provide her with appropriate medical care.

86. Finally, at approximately 3:19 A.M., Defendant Hanenberg and Defendants Jane Does 3-5 entered Plaintiff's cell and proceeded to take multiple digital photographs of each of Plaintiff's legs and arms, once again being placed on notice of Plaintiff's extensive, serious and obvious injuries. Large purple bruising on Plaintiff's legs and knees is clearly visible in both the Jail

Surveillance Video as well as in the digital photographs taken between approximately 3:20 A.M. and 3:21 A.M.

87. The image below is a photograph taken by Jane Doe 5, who may be Defendant Rincon, between approximately 3:20 A.M. and 3:21 A.M. on April 22, 2014. The picture depicts Plaintiff McCully's broken left knee and extensive, deep purple bruising on the fronts of both legs which is consistent with where her legs slammed into the concrete cell floor at approximately 11:17pm on April 21, 2014. When compared with her right knee, the dramatic swelling in her left knee is readily apparent.



88. The image below is a photograph taken by Jane Doe 5, who may be Defendant Rincon, between approximately 3:20 A.M. and 3:21 A.M. on April 22, 2014. The picture depicts Plaintiff McCully's broken swollen left knee and left leg, covered with extensive, deep purple

bruising which is consistent with where the front of both of her legs slammed into the concrete cell floor at approximately 11:17pm on April 21, 2014. The dramatic swelling in her left knee is readily apparent.



89. The image below is a photograph taken by Jane Doe 5, who may be Defendant Rincon, between approximately 3:20 A.M. and 3:21 A.M. on April 22, 2014. The picture depicts Plaintiff McCully's right knee and leg marked by extensive, deep purple bruising which is consistent with where the fronts of both of her legs slammed into the concrete cell floor at approximately 11:17pm on April 21, 2014.



90. Plaintiff bruises extremely easily and quickly, so although she may have arrived at the Jail with a few discrete, minor pre-existing bruises on her arms, the extensive deep purple bruising captured in the digital photographs taken at this time are the result of and consistent with the excessive force perpetrated upon Plaintiff by Defendants Grady, Farrell, Hanenberg and John Doe 1 a full four (4) hours earlier, between approximately 11:17 P.M. and 11:20 P.M. the night of April 21, 2014.

91. At approximately 3:22 A.M., Defendant Hanenberg instructed Plaintiff to get up, and Plaintiff struggled to stand up with utmost difficulty, forced to brace herself with her left arm against the cell wall and unable to place any weight at all on her broken left leg.

92. At approximately 3:22 A.M., Defendants Hanenberg and Defendants Jane Does 3-5 observed Plaintiff's supreme difficulty standing up and walking.

93. Between approximately 3:23 A.M. and 3:24 A.M., as Defendant Hanenberg was speaking with Plaintiff, out of necessity Plaintiff braced herself with her right arm against the cell wall in order to remain standing. Otherwise, she would have collapsed.

94. As Plaintiff limped over to the door of her cell at approximately 3:24 A.M., she was clearly unable to walk without the support of her right hand against the cell wall.

95. At approximately 3:24 A.M., unable to walk any further without support, Plaintiff collapsed, falling forward onto the ground, at which point she lay back and extended her broken left leg, unable to bend it.

96. At this point, Plaintiff was completely unable to stand without assistance due to her worsening pain and injury.

97. In order to stand at all, Plaintiff required the assistance of Defendant Jane Doe 3, who helped push Plaintiff up and supported her as she walked back into the cell, then helped her sit down on the floor.

98. At approximately 3:25 A.M., undoubtedly recognizing Plaintiff's complete inability to stand up on her own, Defendant Hanenberg extended her arm to pull Plaintiff up so that she would be able to leave the cell.

99. Despite all the mounting evidence suggesting that Plaintiff's left knee was broken and she was in excruciating pain and real physical and mental distress, at approximately 3:35 A.M., Defendant John Doe 2 excessively roughly pulled Plaintiff back into the cell, grabbing her right arm from behind, as Defendant Jane Doe 6 pulled Plaintiff from behind by her left arm.

100. Plaintiff can be seen screaming in pain. Obviously, those Defendants who were with her observed these clear indications of pain, suffering and severe injury.

101. At approximately 3:36 A.M., Defendant John Doe 2 roughly and callously pushed down on Plaintiff's left shoulder as she sat down on the concrete floor, which was extremely painful for her in light of her prior surgery removing three quarters of her ischium, or butt bone.

102. Defendants again left Plaintiff alone in her cell, without requesting any medical attention for her or even taking the minimal step of asking LPN Ottley to again examine her, in light of her progressively worsening serious medical condition.

103. Between approximately 3:36 A.M. and the officers' return at 3:34 A.M., Plaintiff intermittently holds her left knee with her right arm, in obvious pain.

104. At this time, Plaintiff's right leg pant appears in the Jail Surveillance Video to be covered in blood.

105. Following Plaintiff's release from her holding cell at approximately 3:44 A.M., Defendant LPN Ottley examined Plaintiff and, finally recognizing the gravity of her injuries, at approximately 3:54 A.M. issued a "Lower Bunk" alert, indicating that during the entirety of her remaining stay in Jail and due to her injuries, Plaintiff would be assigned a bottom bunk.

106. An itinerary of "Scheduled Events for Inmate" indicates that as of April 22, 2014, Plaintiff "**NEEDS LOWER BUNK ONLY.**" (emphasis added)

107. Plaintiff was indeed assigned a lower bunk during the entirety of her remaining custody at the Jail.

108. At this point, Defendant LPN Ottley knew or should have known that Plaintiff was incapable of climbing up a ladder to a top bunk, and yet inexplicably he took no action to contact other medical personnel or transport Plaintiff to an Emergency Room or other medical facility.

109. At approximately 7:50 P.M. on April 22, 2014, Defendant Deputy or Lieutenant Michael Krablean administered a “Point Based Classification Report” to Plaintiff, in which he noted that in response to question 26, “Are you physically handicapped/ restricted mobility?” Plaintiff indicated “Yes” and Defendant Krablean noted in the report “LEG PROBLEMS. **MEDICAL KNOWS.** INMATE WAS GIVEN A MEDICAL KITE TO RE-ALERT THEM.” (emphasis added).

110. Plaintiff then used this medical kite on April 22, 2014, to re-alert medical staff of her urgent need for assistance.

111. Despite medical staff’s awareness and recognition of Plaintiff’s “leg problems,” no response to Plaintiff’s urgent medical kite came on April 22, 2014 or April 23, 2014.

112. It was not until approximately 7 A.M. on April 24, 2014—approximately *eighty (80) hours* from the time she sustained her injuries at the hands of four of the Defendants—that someone was sent to escort Plaintiff to meet with a medical professional.

113. Plaintiff spent these eighty (80) hours in excruciating and unnecessary pain.

114. The previous day, Plaintiff’s attorney informed Plaintiff that she would imminently be released by 12 P.M. on April 24, 2014. Therefore, Plaintiff declined medical assistance, but only because she was planning to be admitted to a hospital immediately upon what she believed to be her imminent release.

115. When she realized she would not in fact be released on April 24, 2014 as her attorney had indicated, Plaintiff again sent a medical kite that same day, but no one ever came to check on Plaintiff’s medical condition prior to her release from the Jail on April 25, 2014 at approximately 6:18 P.M., over 24 hours later.

116. After meeting with Plaintiff on the evening of April 24, 2014, her attorney told Jail staff that medical staff needed to evaluate and treat Plaintiff's leg immediately, but once again, no one took any action to attend to Plaintiff's deteriorating medical condition and continued severe pain and suffering.

117. Plaintiff never met with a medical professional – with the exception of Defendant LPN Ottley – during her entire time in custody. At all times Defendant LPN Ottley demonstrated deliberate indifference to Plaintiff's known and serious medical needs.

118. At approximately 7:50 P.M. on April 22, 2014, Defendant Lieutenant or Deputy or LPN Michelle Mackey noted on Plaintiff's Inmate Classification Report that her classification was "Minimum. Placed on Suicide Preventions." Later, at 4:41 P.M. on April 24, 2014, Defendant Mackey placed Plaintiff on a "MH Alert" because of her deteriorating mental state, caused in part by her extreme pain, injuries and physical distress. Having had an opportunity to observe or examine Plaintiff carefully enough to make a note regarding her proper inmate classification and declare a mental health alert, Defendant Mackey knew or should have known of Plaintiff's mental and physical distress – distress so severe as to potentially rise to the level of requiring suicide prevention. Yet, Defendant Mackey did nothing to address Plaintiff's obvious and severe physical pain and injuries.

119. At the same time, Defendant Lieutenant or Deputy or LPN Melanie Hoffman noted on Plaintiff's Inmate Classification Report that her classification was "Minimum. RS REMOVED START YS." Having had a chance to observe or examine Plaintiff carefully enough to make a note regarding her proper inmate classification, Defendant Hoffman knew or should have known of Plaintiff's severe and obvious mental and physical distress. Yet, like

Defendant Mackey, Defendant Hoffman took no actions to address Plaintiff's obvious and severe pain and injuries.

120. Throughout Plaintiff's 5-day stay at the Jail, the Individual Defendants' deplorable lack of reaction were constitutionally insufficient and simply not commensurate with the gravity of Plaintiff's obvious and serious injuries.

121. The Individual Defendants, including El Paso County Sheriff's Office medical staff, fully recognized the gravity of Plaintiff's medical condition, but with deliberate indifference they took no adequate actions to alleviate her serious and obvious pain and injuries.

122. During the entirety of her detainment at the Jail, Plaintiff did not receive as much as an aspirin.

123. As a result of this gross violation of her clearly established Constitutional right to receive medical treatment, Plaintiff suffered extreme pain and a preventable worsening of her injuries during her five (5) day ordeal at the Jail.



124.

The image above is a photograph taken by Ms. McCully shortly after her release from Jail on April 25, 2014 which depicts whole-scale, deep purple bruising extending across the back of Ms. McCully's left foot, leg and thigh. According to Dr. Gautam Yagnik, MD, an orthopedic surgeon in Miami, Florida and Ms. McCully's treating physician in connection with her broken knee and other injuries described herein, this bruising resulted from a posterior joint capsule disruption with marked posterior knee edema and hemorrhage that occurred during her violent

takedown by Defendants Grady, Farrell and Hanenberg at approximately 11:17 P.M. on April 21, 2014.

125. To treat her fractured left knee, left knee hyperextension with bone contusion, left anterior cruciate ligament (ACL) avulsion tear, torn left posterior cruciate ligament (PCL), and left posterior joint capsular tear, among other injuries, after her release from the Jail, Ms. McCully was required to wear a full leg cast, extending from her thigh to her ankle, for 7 days. She then had to wear a custom knee brace for a month. Once the brace was removed, Ms. McCully needed to undergo physical therapy twice per week for 4 months.

126. As much as 7 months later, Ms. McCully was still experiencing pain and a crackling or popping sensation in her left knee.

127. Although her torn ACL eventually healed, Ms. McCully sustained permanent injuries to her PCL, which doctors have advised will always remain loose.

128. Her injuries were so severe that Dr. Yagnik, Ms. McCully's physician, told her he had seen the same injuries just once before in his entire career – *on a Miami Dolphins linebacker*.

129. Too traumatized by this experience to remain in Colorado Springs, Colorado, Ms. McCully left Colorado for good shortly following her arrest and detainment at the Jail.

C. EL PASO COUNTY'S CUSTOM, PATTERN AND PRACTICE OF EXCESSIVE FORCE

130. El Paso County and the El Paso County Sheriff's Office have created, fostered, maintained and tolerated an environment and culture of law enforcement brutality and deliberate indifference to the constitutional rights of its citizens and residents.

131. El Paso County law enforcement officers have repeatedly and unlawfully used excessive force against citizens.

132. El Paso County law enforcement officers have engaged in a persistent practice of law enforcement misconduct, and the officials responsible for assuring that such misconduct does not occur have consistently failed to properly train, supervise, and discipline individual officers who have engaged in such misconduct.

133. An Organizational Assessment of the El Paso County Sheriff's Office prepared by KRW Associates, LLC on June 17, 2015³ (the "Organizational Assessment") found that between 2010 and 2014, incidents of use of force against inmates by El Paso County Sheriff's Office correctional officers saw a dramatic rise:

YEAR	# USE OF FORCE REPORTS
2014	458
2013	322
2012	272
2011	261
2010	130

134. The Use of Force Policy of the El Paso County Sheriff's Office in effect in 2014 was inadequate and constitutionally deficient. The Organizational Assessment notes that this Use of Force Policy "is not clearly written and does not conform to best practices" and strongly advised making 18 key changes to the policy, which were lacking in the policy in effect in 2014. Such changes include but are not limited to the following: "1. A statement recognizing the sanctity of life and the significance of using deadly force;" "2. Statement of policy acknowledging that only force which is 'objectively reasonable' shall be used;" "4. Use of

³ Organizational Assessment of the El Paso County Sheriff's Office, by KRW Associates, June 17, 2015 (see: http://posting.csindy.com/media/pdf/krw_report.pdf) ("Organizational Assessment"), at p.17.

advisements, warnings and verbal persuasion, when possible, before resorting to force;” “5. Use of de-escalation techniques to attempt to lessen the likelihood of the need to use force or to reduce the level of force;” “6. Use of tactical options to attempt to reduce the need for force or the level of force...;” “7. Duty to deescalate immediately as resistance decreases and the threat subsides;” “10. Duty to immediately notify a supervisor after witnessing or becoming aware of the use of unnecessary or excessive force by another deputy;” (emphasis in original) “11. Duty to intercede, when possible, to stop the use of unnecessary and excessive force by another deputy;” “13. Factors to consider in determining the reasonableness of force options;” “15. Duty of supervisors to investigate and evaluate use of force by subordinates;” “16. Duty to provide medical assistance to persons against whom force was used;” “17. Acknowledgement of constitutional requirements for the use of force in an institutional/ correctional setting (Hudson v McMillan, 503 US 1 [1993]).”⁴

135. In addition to the excessive force used against Ms. McCully, the culture and environment of brutality endemic within the El Paso County Sheriff’s Office, and the lack of an adequate use of force policy, training, supervision and discipline of law enforcement officers is evidenced by a significant history and custom of brutality, including the following incidents.

136. On September 26, 2007, Brock John Behler, then an inmate in the Jail, was excessively forcefully placed in a bear-hug type hold by Deputy Dennis Grivois. Deputy Grivois claimed Mr. Behler fought back while he was being restrained, so Deputy Grivois threw Mr. Behler to the floor, breaking Mr. Behler’s arm. El Paso County settled the civil rights case for \$80,000 in 2010.⁵

⁴ Organizational Assessment at p.46-47

⁵ Rick Montanez, “County to Pay Out \$80k to Ex-Inmate Over Lawsuit, KTTVO 11 News, June 15, 2010 (see: <http://www.kktv.com/home/headlines/96440444.html>)

137. Although then-Sheriff Maketa tried to absolve himself of responsibility for Deputy Grivois' use of excessive force, stating "We can't defend what that deputy did,"⁶ Sheriff Maketa's lack of a constitutionally adequate Use of Force Policy and lack of training respecting use of force were directly responsible for Mr. Behler's injuries.

138. In fact, during his tenure, then-Sheriff Maketa allegedly had his hands full carrying on simultaneous liaisons with numerous female subordinates, and allegedly was busy doling out preferential treatment to those with whom he had intimate sexual relations and discriminating against subordinates who refused to engage in such intimate sexual relations with him.⁷

139. According to an official Organizational Assessment paid for by public funds, these alleged actions and inactions on the part of then-Sheriff Maketa resulted in "an absence of leadership and supervisory training and accountability"⁸ and led to a "total breakdown in morality and professionalism"⁹ within the El Paso County Sheriff's Office.

140. The dramatic increase in use of force incidents in the Jail between 2010 and 2014 described above directly coincides with then-Sheriff Maketa's increasing distraction by his alleged affairs and related extracurricular activities which caused the breakdown in supervision and training.

141. During these years, then-Sheriff Maketa was "asleep at the wheel," or worse, and inmates like Ms. McCully and others described below paid the price.

⁶ Id.

⁷ Kirk Mitchell, "Federal Judge Says Some Claims Against Former El Paso Sheriff Will Go Forward," The Denver Post, April 1, 2016 (see: http://www.denverpost.com/news/ci_29713194/federal-judge-says-some-claims-against-former-el)

⁸ Organizational Assessment at p.7.

⁹ Organizational Assessment at p.8.

142. On October 6, 2009, an El Paso County Sheriff's Office SWAT team stormed into the home of Rose Santistevan, 69, as part of a drug bust in which her son, Kirt, was targeted. However, Kirt Santistevan was then in custody at the Teller County Jail on a DUI charge, a fact allegedly known to the SWAT team deputies. Nevertheless, although Ms. Santistevan's house contained numerous signs warning she used oxygen, deputies forced their way in, battering in her door with a ram, shattering glass all over her living room, and charging in while displaying automatic weapons. A flash bang was also detonated. Deputies seized Ms. Santistevan at gunpoint as her home filled with smoke and she tried to breathe with an oxygen hose. Ms. Santistevan was rushed to the hospital for respiratory and heart problems and spent a week recuperating there. El Paso County settled this lawsuit for \$75,000 in 2013.¹⁰

143. On September 13, 2011, Deputy Marcus Miller shot and killed Christine Vargas as she tried to drive away from him and two other deputies, and in the process drove over Deputy Miller's foot. El Paso County settled this civil rights lawsuit in 2015 for \$300,000. Nevertheless, the El Paso County Sheriff's Office and the Fourth Judicial District Attorney's Office condoned and ratified Deputy Miller's outrageous and unforgiveable use of lethal excessive force. Deputy Miller was cleared of criminal wrongdoing, and his only punishment was a 20-hour suspension without pay for drawing a weapon when such force was not warranted. As of August 2015, Deputy Miller remained employed on the force. The two other deputies involved in the fatal incident, Deputy Glenn Boardman and Deputy Christopher Gonzalez, received only letters of reprimand for policy violations, such as failing to notify dispatch that they had stopped a vehicle. They were later promoted to detective and sergeant, respectively. At

¹⁰ Pam Zubeck, "El Paso County Deputies Hear Excessive-Force Accusations," The Colorado Springs Independent, August 5, 2015 (see: <http://www.csindy.com/coloradosprings/el-paso-county-deputies-hear-excessive-force-accusations/Content?oid=3255850>).

the time, the El Paso County Sheriff's Office lacked a policy on the use of lethal force, any recognition of the sanctity of life or of the significance of using deadly force, and any policy with regard to shooting at or from moving vehicles and tactically approaching vehicles.¹¹ Christine Vargas paid with her life for these omissions and others, an attendant lack of training, and ratification of the casual use of lethal force.¹²

144. On June 11, 2013, correctional officer Deputy Patrick Smith attacked inmate Robert Montoya without any provocation, striking Mr. Montoya in the face, pushing him into a wall, beating him and sitting on him. Not only was Mr. Montoya seriously injured, but just as in Ms. McCully's case, correctional officers acted with deliberate indifference to the serious medical injuries they themselves had caused. Mr. Montoya was refused medical treatment for his injuries that resulted in further injuries and aggravation of injuries, including a concussion, memory and cognitive problems, increased anxiety and post-traumatic stress disorder. El Paso County settled this civil rights lawsuit for \$24,999 in 2015. As in the case of Christine Vargas, the El Paso County Sheriff's Office condoned and ratified Deputy Smith's use of excessive force and deliberate indifference to an inmate's serious medical needs by retaining him on the force, where he remained employed as a deputy as of August 2015.¹³

145. In the context of the incidents detailed above and many others, the lack of a constitutionally acceptable use of force policy, the absence of accountability and training and a general breakdown of any kind of order, trust or ethics on then-Sheriff Maketa's watch, the excessive force used against Ms. McCully is not at all surprising, and clearly reflects the very

¹¹ Organizational Assessment at p. 46.

¹² Zubeck, "El Paso County Deputies Hear Excessive-Force Accusations," supra, fn 10.

¹³ Id.

modus operandi or standard operating procedure of the El Paso County Sheriff's Office at the time.

146. El Paso County's custom, pattern and practice of excessive force and deliberate indifference to a detainee's known serious medical condition caused Plaintiff McCully severe physical and emotional damage.

D. EL PASO COUNTY'S CUSTOM, PATTERN AND PRACTICE OF DELIBERATE INDIFFERENCE TO INMATES' SERIOUS MEDICAL NEEDS

147. El Paso County and the El Paso County Sheriff's Office maintained constitutionally deficient policies and neglected to train its employees with respect to the proper procedures for the evaluation and treatment of inmates' serious medical needs.

148. El Paso County Sheriff's Office deputies engaged in a persistent custom and practice of law enforcement misconduct with respect to the treatment of detainees with serious medical and/or mental health needs, and the officials responsible for assuring that such misconduct does not occur consistently failed to properly train, supervise, and discipline individual officers who have engaged in such misconduct.

149. Specifically, the El Paso County Sheriff's Office Use of Force policy in effect at the time omitted any mention of a duty on the part of officers or medical staff to provide medical assistance to persons against whom force was used.¹⁴

150. Not only did the El Paso County Sheriff's Office consistently fail to provide constitutionally adequate medical care to inmates, with respect to inmates with mental illness, the Organizational Assessment notes:

“[The Organizational Assessment's authors] [were] told that ‘80% of the population have mental health problems and over 1/3 of the [inmate] population are on medications for a mental illness.’... The 2014 data would suggest that approximately 12.3% of the 2014 inmate population suffered a recognized mental health condition.”... [Yet] [m]ental health

¹⁴ Organizational Assessment at p.47.

support is on-site from 0700 hrs. to 2100 hrs. each day. Staff is without these mental health service personnel for the remaining 10 hours of the day. For 42% of any day, staff is expected to address the mental health behavioral and needs of the population during the absence of the mental health staff.”¹⁵

151. El Paso County law enforcement officers have repeatedly and unlawfully shown deliberate indifference to and ignored the serious medical and/ or mental health conditions of its inmates, which has resulted in numerous serious and preventable injuries to Jail inmates, some of which are detailed below.

152. On January 7, 2013, Christopher Spencer nearly died after being shot in the chest during an attempted robbery in Colorado Springs. Mr. Spencer was transferred from a hospital to the Jail on February 15, 2013. Because of the gunshot wounds, Mr. Spencer’s circulation was compromised and his feet began to swell, his feet and toes turning multicolored. Despite his debilitating pain, Mr. Spencer was not provided with a wheelchair, and ultimately he was transferred to a cellblock where his brother cared for his feet for a period of three weeks. The gangrene left Mr. Spencer’s feet and toes visibly festering with sores and, eventually, rock hard and rotten, and rendered him unable to walk without debilitating pain. Through petitions, Mr. Spencer and other inmates begged deputies to get him the medical help he needed, but there pleas fell on deaf ears. It was not until Mr. Spencer’s family bailed him out of the Jail on April 16, 2013, that he received proper medical care, but by then his toes and part of his left foot had to be amputated. A lawsuit with respect to Jail staff’s deliberate indifference to Mr. Spencer’s obvious and serious medical condition is pending against El Paso County and the individual officers involved.¹⁶

¹⁵ Id. at p. 18-19.

¹⁶ Kirk Mitchell, “Man Sues El Paso County Jail After Losing All Toes, Foot to Gangrene,” The Denver Post, February 24, 2016 (see: http://www.denverpost.com/news/ci_27591383/man-sues-el-paso-county-jail-after-losing)

153. As detailed above in ¶ [136], in June 2013, El Paso County Jail staff turned a blind eye to Mr. Montoya's serious medical injuries – injuries caused by Deputy Patrick Smith in a vicious and totally unprovoked attack. Due to the denial of constitutionally adequate medical care, Mr. Montoya suffered deteriorating and severe injuries. As detailed above, the El Paso County Sheriff's Office condoned and ratified Deputy Smith's actions and inactions by retaining Deputy Smith on the force as of August 2015.

154. Viewed in light of the incidents above, Defendants' deliberate indifference to Plaintiff's obvious and serious medical needs, as evidenced by her near inability to stand up or walk, the deep purple bruising visible all over her legs, knees and arms, and her repeated pleas for help and continued insistence that her left knee was broken and she needed to be taken to a hospital, can only be seen as customary. Defendants' simultaneous awareness of and disregard for Plaintiff's serious medical needs was the rule, not the exception, and merely reflected the custom, practice and pattern of the El Paso County Sheriff's Office at the time. This cruel standard operating procedure stemmed from the lack of any written policy with respect to the provision of medical assistance to inmates against whom excessive force is used, a general lack of leadership, accountability and training emanating from the very top of then-Sheriff Maketa's Office, and the routine ratification of officers' deliberate indifference to inmates' serious medical needs.

155. As a result of Defendants' blatantly illegal actions, Ms. McCully has suffered grave and lasting physical and emotional damage.

STATEMENT OF CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

U.S.C. § 1983 – Fourteenth Amendment Violation – Excessive Force (Against Defendants Grady, Farrell, Hanenberg, John Doe 1, John Doe 2, Jane Doe 6 and El Paso County)

156. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

157. Defendants Grady, Farrell, Hanenberg and John Doe 1, John Doe 2, Jane Doe 6 and El Paso County were acting under color of state law in their actions and inactions that occurred at all times relevant to this action.

158. At the time when Plaintiff was knocked down and restrained by Defendants Grady, Farrell, Hanenberg and John Doe 1 with excessive force, Ms. McCully had a clearly established constitutional right to be secure in her person from excessive force.

159. Defendants herein knew, and any reasonable law enforcement officer knew or should have known of this clearly established right.

160. Defendants Grady, Farrell, Hanenberg and John Doe 1 engaged in use of force that was objectively unreasonable in light of the facts and circumstances confronting them, violating Ms. McCully's Fourteenth Amendment rights.

161. Defendants Grady's, Farrell's, Hanenberg's and John Doe 1's respective actions and inactions, as described above, were motivated by intent to harm Plaintiff.

162. Defendants Grady's, Farrell's, Hanenberg's and John Doe 1's respective actions and inactions, as described herein, were undertaken intentionally, maliciously, willfully, wantonly, and/or in reckless disregard of Plaintiff's federally protected rights.

163. The acts and omissions of each Defendant described herein, were the legal and proximate cause of Ms. McCully's damages.

164. The acts and omissions of Defendants Grady, Farrell, Hanenberg and John Doe 1 were engaged in pursuant to the custom, policy, and practice of the El Paso County Defendants, which encouraged, condoned, tolerated, and ratified the use of excessive force by law enforcement officers, lacked a written use of force policy and failed to adequately train its employees with respect to the use of excessive force.

165. The acts or omissions of the El Paso County Defendants caused Ms. McCully to suffer severe physical and emotional damages.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983
Fourteenth Amendment; Failure to Provide Medical Care and Treatment
(Against All Defendants)

166. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

167. At all times relevant to the allegations in this Complaint, Defendants were acting under color of state law.

168. Ms. McCully had a clearly established right under the Fourteenth Amendment to be free from deliberate indifference to her known serious medical needs.

169. Each individual Defendant knew or should have known of this clearly established right at the time of Ms. McCully's detainment.

170. At all times relevant to the allegations in this Complaint, each individual Defendant knew of and disregarded the excessive risks associated with Ms. McCully's serious and obvious medical condition, and risks associated with their failure to provide or procure medical treatment for her medical needs.

171. Nevertheless, with deliberate indifference to Ms. McCully's constitutional right to adequate medical care, as provided by the Due Process Clause of the Fourteenth Amendment, Defendants knowingly failed to examine, treat, and/or care for Ms. McCully's worsening condition. They did so despite their knowledge of Ms. McCully's serious medical needs, thereby placing her at risk of serious physical harm and continuing unabated pain. Therefore, Defendants knew or were aware that Ms. McCully faced a substantial risk of harm and disregarded this excessive risk by failing to take measures to reduce it.

172. When Ms. McCully alerted each Defendant to her need for medical assistance, Defendants acted with deliberate indifference to Ms. McCully's readily apparent need for medical attention and her constitutional rights by providing constitutionally inadequate medical attention and treatment for her.

173. All of the deliberately indifferent acts of each individual Defendant were conducted within the scope of their official duties and employment.

174. The acts or omissions of each individual Defendant were the legal and proximate cause of Ms. McCully's injuries and ongoing, excruciating pain.

175. The acts and omissions of each individual Defendant caused Ms. McCully damages in that she suffered extreme physical and mental pain while she was in Defendants' custody for approximately 5 days.

176. The intentional actions or inactions of each individual Defendant as described herein intentionally deprived Ms. McCully of due process and of rights, privileges, liberties, and immunities secured by the Constitution, and caused her other damages.

177. The acts and omissions of the Individual Defendants were engaged in pursuant to the custom, policy, and practice of the El Paso County Defendants, which at the time lacked a

written policy with respect to the provision of medical assistance to inmates against whom excessive force was used, generally operated under a serious absence of leadership, accountability and training coming from the very top, and routinely condoned, tolerated, and ratified officers' deliberate indifference to the serious medical needs of inmates.

178. The El Paso County Defendants' unconstitutional policies, customs, or practices, as described herein, were the legal and proximate cause of Ms. McCully's deprivation of appropriate medical care at the Jail.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants, and award her all relief as allowed by law and equity, including, but not limited to the following:

- a. Declaratory relief and injunctive relief, as appropriate;
- b. Actual economic damages as established at trial;
- c. Compensatory damages, including, but not limited to those for past and future pecuniary and non-pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, medical bills, and other non-pecuniary losses;
- d. Punitive damages for all claims as allowed by law in an amount to be determined at trial;
- e. Issuance of an Order mandating appropriate equitable relief, including but not limited to:
 - i. Issuance of a formal written apology from each Defendant to Plaintiff;
 - ii. The imposition of policy changes designed to avoid future similar misconduct by the Individual Defendants; and

iii. Imposition of disciplinary action against appropriate employees of the El Paso County Defendants;

- f. Pre-judgment and post-judgment interest at the highest lawful rate;
- g. Attorneys' fees and costs; and
- h. Such further relief as justice requires.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

DATED this 15th day of April 2016.

KILLMER, LANE & NEWMAN, LLP

s/ David A. Lane

David A. Lane
Darold W. Killmer
Eudoxie (Dunia) Dickey
1543 Champa Street, Suite 400
Denver, CO 80202
(303) 571-1000
dlane@kln-law.com
dkillmer@kln-law.com
ddickey@kln-law.com

ATTORNEYS FOR PLAINTIFF