

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO</p> <p><b>Court Address:</b> 2nd Judicial District City &amp; County Building 1437 Bannock Street Denver, Colorado 80203</p>	<p>▲ COURT USE ONLY ▲</p>
<p><b>Plaintiffs:</b></p> <p>ESTATE OF EMILY RICE, By SUSAN GARBER and ROY RICE as Co-Personal Representatives; SUSAN GARBER, as parent and Co-Personal Representative of the Estate of Emily Rice; ROY RICE, as parent and Co-Personal Representative of the Estate of Emily Rice.</p> <p>v.</p> <p><b>Defendants:</b></p> <p>CITY AND COUNTY OF DENVER, COLORADO; DENVER DEPARTMENT OF HEALTH AND HOSPITALS, D/B/A "DENVER HEALTH MEDICAL CENTER" AND "DENVER HEALTH"; JASON HAUKOOS, M.D., in his individual and official capacities; LISA CHENG, M.D., in her individual and official capacities; ROBERT KELLY COSTIN, R.N., in his individual and official capacities; MARIA BOUZAINÉ, R.N., in her individual and official capacities; MARY CLEARY, R.N., in her individual and official capacities; YVETTE DUBOIS, R.N., in her individual and official capacities; MARIA/YVETTE GASTON, R.N., in her individual and official capacities; NANCY ZIMMER, R.N., in her individual and official capacities; CAPTAIN JACOB KOPYLOV, in his individual and official capacities;</p>	<p>Case Number: Division:</p>

<p>CAPTAIN JOHN RIORDON, in his individual and official capacities; SERGEANT LOREN COLLIER, in his individual and official capacities; SERGEANT HANS RASTEDE, in his individual and official capacities; SERGEANT RICHARD ROBINSON, in his individual and official capacities; SERGEANT KAROLINA SICH, in her individual and official capacities; SERGEANT ANTHONY SULLIVAN, in his individual and official capacities; DEPUTY KERRY ADCOCK, in her individual and official capacities; DEPUTY JULIANNA BARRON, in her individual and official capacities; DEPUTY SARAH BRIGHT, in her individual and official capacities; DEPUTY [FIRST NAME UNKNOWN] CELENI, in his individual and official capacities; DEPUTY LAKISHA FORREST, in her individual and official capacities; DEPUTY FAUN GOMEZ, in her individual and official capacities; DEPUTY SHERMAINE GUZMAN, in her individual and official capacities; DEPUTY AMANDA LINE, in her individual and official capacities; DEPUTY JULIE KIRKBRIDE, in her individual and official capacities; DEPUTY TROY MOTLEY, in his individual and official capacities; DEPUTY MICHELLE PADILLA, in her individual and official capacities; DEPUTY JESSICA WANROW, in her individual and official capacities; and JOHN AND JANE DOES 1 THROUGH 20, DENVER CITY AND COUNTY SHERIFF'S DEPUTIES AND MEDICAL PERSONNEL, in their official and individual capacities.</p>	
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<p>Attorneys for Plaintiff:</p> <p>Name: Darold W. Killmer #16056  Mari Newman # 30192  Sara J. Rich #36904</p> <p>Address: 1543 Champa Street Suite 400  Denver, CO 80202</p> <p>Phone: 303-571-1000</p> <p>Fax No.: 303-571-1001</p> <p>E-mail: <a href="mailto:dkillmer@killmerlane.com">dkillmer@killmerlane.com</a>  <a href="mailto:mnewman@killmerlane.com">mnewman@killmerlane.com</a>  <a href="mailto:srich@killmerlane.com">srich@killmerlane.com</a></p>	
<p><b>COMPLAINT FOR DAMAGES, CERTIFICATE OF REVIEW AND JURY DEMAND</b></p>	

Plaintiffs, Susan Garber, individually as Mother of the late Emily Rice and as Co-Personal representative of the Estate of Emily Rice; and Roy Rice, individually as Father of the late Emily Rice and as Co-Personal representative of the Estate of Emily Rice, by and through their attorneys, KILLMER, LANE & NEWMAN, LLP, respectfully allege for their Complaint and Jury Demand as follows:

## I. INTRODUCTION

1. Emily Rice was a young woman with a warm and open personality and a bright future who suffered an agonizingly slow and painful death because Defendants simply did not care. Defendants violated the rights of Emily Rice, the daughter of the Plaintiffs, under the United States Constitution and the laws of the State of Colorado when knowingly and with deliberate indifference to her constitutional rights, they denied her necessary medical treatment for an obvious serious medical condition, thereby causing her extensive pain and suffering and ultimately death. Defendants' conduct under color of state law proximately caused the deprivation of Ms. Rice's federally protected rights. Defendants' conduct, done willfully and wantonly, also gives rise to supplemental state claims.

## II. JURISDICTION AND VENUE

2. This action arises under the Constitution and laws of the United States and the State of Colorado including Article III, Section 1 of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction supporting Plaintiffs' claim for attorney fees and costs is conferred by 42 U.S.C. § 1988.

3. This Court has jurisdiction over this matter pursuant to C.R.S. § 13-1-124(1)(a) and (b).

4. Venue is proper in this Court pursuant to C.R.C.P. Rule 98(c)(5). All of the events alleged herein occurred within the City and County of Denver, Colorado.

### **III. CERTIFICATE OF REVIEW**

5. Pursuant to C.R.S. § 13-20-602(3)(a), Counsel certifies as follows:
- a. Counsel has consulted with physicians with expertise in the area of the alleged negligent conduct as set forth in Plaintiffs' Complaint;
  - b. The physicians who have been consulted have reviewed all known facts relevant to the allegations of negligent conduct as complained of in Plaintiffs' Complaint;
  - c. Based upon review of such facts, the physicians have concluded that the filing of the claims against the defendants does not lack substantial justification within the meaning of C.R.S. § 13-17-102(4); and
  - d. The physicians who have reviewed all known facts relevant to the allegations of negligent conduct as contained in Plaintiffs' Complaint meet the requirements set forth in C.R.S. § 13-64-401.

### **IV. PARTIES**

#### **Plaintiffs:**

6. At all pertinent times pertinent hereto, the decedent, Emily Rice was a citizen of the United States of America and a resident of the State of Colorado.

7. At all times pertinent hereto, Plaintiffs Susan Garber and Roy Rice, parents of and co-personal representatives of the estate of Emily Rice have been citizens of the United States of America and residents of the State of Colorado.

#### **Defendants:**

##### **Denver Health Defendants:**

8. Upon information and belief, Denver Department of Health and Hospitals, D/B/A "Denver Health Medical Center" and "Denver Health" (hereinafter "Denver Health"), is a political subdivision of the State of Colorado with its principal office address at 777 Bannock Street, Denver, Colorado 80204.

9. At all times relevant to this complaint, Denver Health and all of its agents and employees were acting under color of state law.

10. Upon information and belief, at all relevant times, Defendant Jason Haukoos, M.D., was a physician licensed to practice medicine in the State of Colorado, and was an Attending Physician at Denver Health.

11. Upon information and belief, at all relevant times, Defendant Lisa Cheng, M.D., was a physician licensed to practice medicine in the State of Colorado, and was working as a Resident at Denver Health.

12. Upon information and belief, at all relevant times, Defendant Robert Kelly Costin, R.N., was a registered nurse with a principal place of business at Defendant Denver Health, and who served as a nurse at Denver Jail.

13. Upon information and belief, at all relevant times, Defendant Maria Bouzaine, R.N., was a registered nurse with a principal place of business at Defendant Denver Health, and who served as a nurse at Denver Jail.

14. Upon information and belief, at all relevant times, Defendant Mary Cleary, R.N., was a registered nurse with a principal place of business at Defendant Denver Health, and who served as a nurse at Denver Jail.

15. Upon information and belief, at all relevant times, Defendant Yvette Dubois, R.N., was a registered nurse with a principal place of business at Defendant Denver Health, and who served as a nurse at Denver Jail.

16. Upon information and belief, at all relevant times, Defendant Maria Gaston, R.N., was a registered nurse with a principal place of business at Defendant Denver Health, and who served as a nurse at Denver Jail.

17. Upon information and belief, at all relevant times, Defendant Nancy Zimmer, R.N., was a registered nurse with a principal place of business at Defendant Denver Health, and who served as a nurse at Denver Jail.

18. At all pertinent times mentioned herein, all of the Defendants sued in both their individual and official capacities were acting within the scope of their official duties and employment, under color of state law.

**Jail Defendants:**

19. Defendant City of and County of Denver is a Colorado municipal corporation.

20. At all times relevant to the subject matter of this litigation, Defendant Jacob Kopylov was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Captain at the Denver Jail, in Denver, Colorado.

21. At all times relevant to the subject matter of this litigation, Defendant John Riordon was a citizen of the United States and a resident of Colorado and was acting under color

of state law in his capacity as a law enforcement officer employed as a Captain at the Denver Jail, in Denver, Colorado.

22. At all times relevant to the subject matter of this litigation, Defendant Loren Collier was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Sergeant at the Denver Jail, in Denver, Colorado.

23. At all times relevant to the subject matter of this litigation, Defendant Hans Rastede was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Sergeant at the Denver Jail, in Denver, Colorado.

24. At all times relevant to the subject matter of this litigation, Defendant Richard Robinson was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Sergeant at the Denver Jail, in Denver, Colorado.

25. At all times relevant to the subject matter of this litigation, Defendant Karolina Sich was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Sergeant at the Denver Jail, in Denver, Colorado.

26. At all times relevant to the subject matter of this litigation, Defendant Anthony Sullivan was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Sergeant at the Denver Jail, in Denver, Colorado.

27. At all times relevant to the subject matter of this litigation, Defendant Kerry Adcock was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

28. At all times relevant to the subject matter of this litigation, Defendant Julianna Barron was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

29. At all times relevant to the subject matter of this litigation, Defendant Sarah Bright was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

30. At all times relevant to the subject matter of this litigation, Defendant [First Name Unknown] Celeni was a citizen of the United States and a resident of Colorado and was acting

under color of state law in his capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

31. At all times relevant to the subject matter of this litigation, Defendant Lakisha Forrest was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

32. At all times relevant to the subject matter of this litigation, Defendant Faun Gomez was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

33. At all times relevant to the subject matter of this litigation, Defendant Shermaine Guzman was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

34. At all times relevant to the subject matter of this litigation, Defendant Amanda Line was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

35. At all times relevant to the subject matter of this litigation, Defendant Julie Kirkbride was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

36. At all times relevant to the subject matter of this litigation, Defendant Troy Motley was a citizen of the United States and a resident of Colorado and was acting under color of state law in his capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

37. At all times relevant to the subject matter of this litigation, Defendant Michelle Padilla was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

38. At all times relevant to the subject matter of this litigation, Defendant Jessica Wanrow was a citizen of the United States and a resident of Colorado and was acting under color of state law in her capacity as a law enforcement officer employed as a Deputy at the Denver Jail, in Denver, Colorado.

39. At all times relevant to the subject matter of this litigation, Defendants John and Jane Does 1 through 20 were citizens of the United States and residents of Colorado and were

acting under color of state law in their capacities as law enforcement officers employed at the Denver Jail, in Denver, Colorado.

40. At all times relevant to this complaint, the City and County of Denver and all of its agents and employees were acting within the scope of their official duties and employment, under color of state law.

## **V. FACTUAL ALLEGATIONS**

41. Emily Rae Rice, age 24, died at the Denver Jail while in the custody of the Denver Sheriff's Department.

42. As an autopsy revealed, Ms. Rice suffered from an 18-centimeter gaping gash in her liver, a lacerated spleen, and three broken ribs.

43. Ms. Rice's death is a direct result of the extreme and deliberate indifference to her serious medical condition and the reckless practices and procedures employed by the public officials in connection with her medical "treatment" and detention.

### **The Accident and Denver Health**

44. At approximately 6:50 a.m. on February 18, 2006, Emily Rice was involved in a non-fatal car accident, in which her car was totally destroyed.

45. A vehicle traveling approximately 40 miles per hour struck the right front of the vehicle driven by Ms. Rice while she was turning left, destroying her vehicle and causing life-threatening injuries to Ms. Rice.

46. The accident was witnessed by a clerk in a nearby convenience store, who approached Ms. Rice's vehicle immediately after the accident to render assistance.

47. After concluding that Ms. Rice was unconscious, the clerk returned to the convenience store and placed a 911 call.

48. Denver Police officers who arrived at the scene summoned paramedics who were dispatched by Denver Health to the scene of the accident at approximately 6:53 a.m.

49. Paramedics arrived at approximately 7:00 a.m.

50. Paramedics, who recognized the potential severity of Ms. Rice's injuries, immobilized Ms. Rice and transported her to Denver Health.

51. The paramedics noted in a report that Ms. Rice's air bag had deployed, and that she was complaining of pain in her right shoulder.

52. The paramedics report also noted an odor of alcohol.



53. The paramedics further reported that they drew Ms. Rice's blood, and that they administered oxygen while transporting Ms. Rice to Denver Health.

54. Upon arrival at Denver Health, Ms. Rice was first booked, and then admitted as a detainee to the Emergency Department of Denver Medical at approximately 7:45 a.m.

55. Upon information and belief, Ms. Rice was briefly examined by a resident, Defendant Lisa Cheng, M.D. who indicated on a Trauma Flow Sheet that Ms. Rice was experiencing pain in two trauma sites, her left shoulder and her left abdomen/side.

56. Although Ms. Rice's "pain score" was 7 out of 10, no diagnostic tests or lab work were ordered to determine the cause of her shoulder or adnominal/side pain.

57. Instead, the only lab work performed on Ms. Rice was a breathalyzer at 7:55 a.m., which indicated a blood alcohol level of .121.

58. The attending physician, Defendant Jason Haukoos, M.D. noted in Ms. Rice's medical file that after discussing the case with Dr. Cheng and reviewing the medical charts, it was his assessment that Ms. Rice was merely suffering from a shoulder contusion.

59. According to medical records, Ms. Rice was given ibuprophin for pain at 9:25 a.m., and then released to the Denver Sheriffs at 10:00 a.m. for detention.

60. According to medical records, the "Final ED Assessment," which was completed by Defendant Lisa Cheng, M.D. and was signed by Defendant Jason Haukoos, M.D., states "shoulder strain, Etoh intoxication".

61. The written Emergency After Care Instructions indicate that Ms. Rice was to return to the Emergency Department for "new injury, worsening symptoms, other urgent concerns".

62. As a detainee, Ms. Rice was not free to return to the emergency department at will, but rather could do so only with the express permission and assistance of personnel at the Denver Jail.

63. Denver Health released Ms. Rice to the Denver Sherriff's Department at 10:00 a.m., despite the fact that she reported that she was in serious pain, and Denver Health had not taken reasonable steps to determine the cause of the pain.

#### **Denver Jail**

64. Ms. Rice arrived at the Denver County Jail at approximately 10:50 a.m., where she was questioned and searched by Defendants Lakisha Forrest and Julie Kirkbride.

65. Defendants did not follow the normal booking procedure, but instead placed Ms. Rice in an isolation cell for several hours prior to booking her.

66. Although Denver Health had discharged Ms. Rice into Sherriff custody with instructions regarding her medical condition, Ms. Rice was not taken to the jail nurse for evaluation during the intake process or for hours thereafter.

67. Medical care at the Denver Jail is provided by nurses and other medical professionals employed by Denver Health, and stationed at the Denver Jail pursuant to a contract between the City and County of Denver and Denver Health.

68. At approximately 3:09 p.m., Ms. Rice, who was walking very unsteadily and holding the wall for assistance, was escorted to have her fingerprints and mug shots taken.

69. Ms. Rice complained to a guard that she was feeling very bad and was briefly allowed to speak with a nurse, Defendant Kelly Costin.

70. Defendant Costin performed no medical evaluation of Ms. Rice. He simply looked at her records and cleared her, telling her that she was drunk and needed to "sleep it off."

71. At this point, however, Ms. Rice had been in custody for over seven hours since her blood alcohol was measured at .121, and thus could not have been "drunk".

72. At approximately 3:18 p.m., as guards were filling out paperwork, Ms. Rice's eyes rolled back into her head, she fainted and fell to the floor, as guards stood by idly.

73. One guard contacted a jail nurse, Defendant Kelly Costin, to let him know that Ms. Rice had passed out.

74. Instead of evaluating Ms. Rice -- or even looking at her -- Defendant Costin mocked her, told her to "stop being dramatic," and ordered her to stand up. Costin did not even do so much as offer Ms. Rice help getting to her feet.

75. Although she had collapsed, Denver Jail staff did not take Ms. Rice back to Denver Health, but instead stood around staring at her, eventually pulled her to her feet, and continued the "check-in" process.

76. At some point during the afternoon of February 18, 2006, a guard who happened to be a family friend of Ms. Rice, allowed Ms. Rice to call her mother, Plaintiff Susan Garber. Ms. Rice told her mother that she could not feel her feet, but that she had been told by a jail nurse to "sleep it off".

77. Ms. Rice's mother, Susan Garber, tried unsuccessfully to bail Ms. Rice out of jail.

78. Ms. Garber also went to the jail at approximately 6:45 p.m., but was not allowed to see her daughter.

79. Upon information and belief, at some point in the late afternoon or early evening of February 18<sup>th</sup>, the guard who was a friend of Ms. Rice's mother became increasingly

concerned regarding Ms. Rice's complaints of numbness in her feet, and her own observation that Ms. Rice's feet were cold and grey.

80. Recognizing immediately that Emily was suffering serious medical issues, the guard alerted a second jail nurse, Defendant Mary Cleary, that Ms. Rice was having medical problems, and that her feet were cold and grey.

81. Despite the fact that Ms. Rice had been released from Denver Health with a record that she had been in an automobile accident and instructions to return to the hospital if she had any worsening symptoms or urgent concerns, Defendant Cleary refused to perform any medical evaluation or provide any medical care to Ms. Rice.

82. Instead, without ever even looking at the patient, Defendant Cleary arrived at her diagnosis and remedy: Ms. Rice was still drunk and needed to drink plenty of fluids and sleep it off. By this time, it had been approximately ten hours since Ms. Rice had consumed any alcohol.

83. Unfortunately for Ms. Rice, the one and only member of the jail staff who apparently cared one whit about her serious medical condition, the guard who was a family friend, went off duty in the early evening of February 28, 2006.

84. Throughout the course of the evening and through the night, Ms. Rice called out repeatedly for help.

85. Others confined in nearby cells recognized Ms. Rice's obvious serious medical need and likewise pleaded with guards to render medical assistance to Ms. Rice.

86. At least one point during the night, Ms. Rice's cries for help became so urgent that others in nearby cells began screaming and banging on the glass in order to get the attention of guards and to convince them to provide medical care to Ms. Rice.

87. Over and over, Ms. Rice alerted various guards regarding her serious medical condition, but her pleas for help were repeatedly ignored.

88. Ms. Rice told guards that she was unable to get up, that she was experiencing numbness in her legs and/or feet, and that she was very cold.

89. During one interaction with a guard, Ms. Rice's blanket fell off of her and to the floor, but Ms. Rice was too weak to cover herself back up.

90. Upon information and belief, some time before midnight on February 18<sup>th</sup>, at least one guard alerted jail nurse Defendant Maria Bouzaine that Ms. Rice was experiencing these symptoms and needed medical help.

91. Defendant Nurse Bouzaine responded that she was aware Ms. Rice had been released to the jail from Denver Health after being involved in a car accident, and that she would get to her later when she did nursing rounds.

92. Upon information and belief, Defendant Bouzaine never visited Ms. Rice's cell or otherwise provided any medical attention to her, even after having been alerted regarding Ms. Rice's condition.

93. Even after Defendant Nurse Bouzaine refused to provide medical care to Ms. Rice, none of the Defendant guards who had alerted Bouzaine to her serious medical need took any further action to assist Ms. Rice or to secure medical care for her.

94. During the course of the night, Ms. Rice and others continued to plead for help for Ms. Rice.

95. Later in the night or very early morning, after approximately 20-30 minutes of several detainees screaming and banging on the glass, a male guard came in and asked Ms. Rice what she wanted.

96. Ms. Rice told the guard that she could no longer feel her legs, and that she was very cold, and that she needed more blankets.

97. In deliberate indifference to Ms. Rice's obvious serious medical need, the guard did not provide her with any medical help. Instead, the guard told Ms. Rice that she was not allowed to have another blanket and left.

98. Throughout the rest of the night and early morning, Ms. Rice and other detainees continued to beg for guards or other jail staff to help Ms. Rice, to no avail.

99. During the early morning of February 19, 2006, guards entered the cell area to take the detainees to breakfast.

100. Ms. Rice did not leave her cell, and no guard provided any assistance to her.

101. Ms. Rice complained to another female guard that she was unable to feel her feet. The guard did nothing to address this serious medical condition, nor did anything to alert the jail nurse.

102. The guards steadfastly refused to provide any medical care to Ms. Rice or to provide her access to medical treatment, despite the repeated and vocal urgings of Ms. Rice and other detainees, who could hear and observe that Ms. Rice was seriously injured.

103. Instead, guards, nurses, and other public employees in the jail not only denied Ms. Rice access to medical treatment, but consciously disregarded her obvious serious medical need.

104. At approximately 5:15 on the morning of February 19, 2006, another young female detainee (referred to herein as "NC") was escorted by a guard to the cell occupied by Ms. Rice.

105. NC observed that Ms. Rice was moaning in pain.

106. When NC asked Ms. Rice if she was okay, Ms. Rice informed her that she could not move her legs. Ms. Rice also told NC that she could not sit up.

107. NC asked Ms. Rice if she should call for help, but Ms. Rice, who had been crying in vain for help throughout the night, told NC that calling for help was useless, as she and others had already told the guards, but nobody would listen.

108. Shortly thereafter, a guard asked NC if she would like to make a telephone call.

109. NC responded that she would, and also told the guard that he needed to help Ms. Rice because there was something wrong and she could not move.

110. The guard opened the cell door to allow NC to exit and use the phone, and then directed Ms. Rice to get up and asked her what was wrong with her.

111. While NC was at the telephone, she heard the guard call for a nurse and then walk down the hall into an office.

112. A nurse appeared carrying an oxygen tank and a backpack, and was in Ms. Rice's cell along with a number of guards.

113. According to medical records, Ms. Rice was unresponsive and showed no vital signs by the time that emergency medical personnel finally arrived.

114. According to the "Final ED Assessment" of Dr. Cheng and the "Assessment" of attending physician Dr. Pons, Ms. Rice died at 6:52 a.m. of cardiac arrest. Dr. Cheng's Assessment also noted a "suspected spleen injury" related to Ms. Rice's car accident.

115. According to autopsy reports, Ms. Rice died of injuries resulting from blunt force trauma to the abdomen, with an 18 cm gaping deep laceration in the liver and a laceration in the spleen.

116. The autopsy also revealed considerable internal bleeding and three fractured ribs.

117. Ms. Rice died of avoidable internal bleeding, alone in her cell, after many hours of excruciating pain.

## **VI. CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

**(§ 1983 – Failure to Provide Medical Care and Treatment)**  
**(Against All Defendants)**

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

119. At all times relevant to the allegations in this complaint, Defendants acted or failed to act under color of state law.

120. Defendants are persons under Title 42 U.S.C. § 1983.

121. At all times relevant to the allegations in this Complaint, Defendants were acting pursuant to municipal custom, policy, or practice in their actions pertaining to Emily Rice.

122. Defendants knew or should have known of Ms. Rice's potentially life-threatening medical condition.

123. Nevertheless, with deliberate indifference to Ms. Rice's constitutional right not to be denied necessary medical care, protected by the Due Process Clause of the Fourteenth Amendment, Defendants failed to examine, treat and care for Ms. Rice's worsening condition and failed to send Ms. Rice for treatment. They did so despite their knowledge of her obvious serious medical needs, placing her at risk of substantial physical harm.

124. When Ms. Rice, and others on her behalf, called for medical assistance, Defendants acted with deliberate indifference to Ms. Rice's obviously serious medical need and constitutional rights in failing to obtain and provide medical treatment for her in a timely and appropriate fashion.

125. The acts or omissions of all Defendants were conducted within the scope of their official duties and employment.

126. The acts or omissions all Defendants were the legal and proximate cause of Ms. Rice's injuries and death.

127. Defendant City and County of Denver's unconstitutional policies, customs or practices, as described herein, were the legal and proximate cause of Ms. Rice's injuries and death.

128. The acts or omissions of each Defendant caused Ms. Rice damages in that she suffered extreme physical and mental pain during the approximately twenty-four hours leading up to her death.

129. The actions of Defendants as described herein intentionally deprived Ms. Rice of due process and of rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages.

## **SECOND CLAIM FOR RELIEF**

**(§ 1983 – Municipal Liability for Failure to Train and Supervise)**

**(Against Defendants City and County of Denver and Denver Health)**

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

131. Defendants City and County of Denver and Denver Health failed to properly train and supervise their employees to recognize and appropriately respond to medical emergencies.

132. Defendants City and County of Denver and Denver Health knew, or should have known, that its employees would fail to adequately identify and respond appropriately to medical emergencies, violating detainees' constitutional rights.

133. Defendants City and County of Denver and Denver Health were deliberately indifferent to the obvious serious medical needs of patients and jail detainees, knowing that potentially fatal consequences could be suffered by such individuals (including Ms. Rice) by failing to properly train and supervise their employees. Defendants City and County of Denver and Denver Health could have and should have pursued reasonable methods for the training and supervising of such employees, but failed to do so.

134. Defendants City and County of Denver's and Denver Health's policies, customs, or practices in failing to properly train and supervise their employees were the moving forces and proximate cause of the violation of Ms. Rice's constitutional rights.

135. The acts or omissions of Defendants City and County of Denver and Denver Health caused Ms. Rice damages in that she suffered extreme physical and mental pain during the approximately twenty-four hours leading up to her death.

136. The actions of Defendants City and County of Denver and Denver Health as described herein deprived Ms. Rice of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages.

### **THIRD CLAIM FOR RELIEF**

#### **(§ 1983 – Supervisory Liability for Failure to Train and Supervise)**

(Against Defendants Captain Jacob Kopylov, Captain John Riordon, Sergeant Loren Collier, Sergeant Hans Rastede, Sergeant Richard Robinson, Sergeant Karolina Sich, Sergeant Anthony Sullivan (referred to collectively herein as "Supervisory Jail Defendants"))

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

138. The Supervisory Jail Defendants each have duties to train and supervise deputy sheriffs, nurses and other jail personnel in order to ensure the safety and wellbeing of detainees in the jail facility.

139. Each of the Supervisory Jail Defendants failed to discharge these duties.

140. The Supervisory Jail Defendants acted intentionally in failing to adequately train and supervise deputy sheriffs, nurses and other jail personnel.

141. The Supervisory Jail Defendants' failure to properly train and supervise their subordinate employees was the moving force and proximate cause of the violation of Ms. Rice's constitutional rights.

142. The acts or omissions of the Supervisory Jail Defendants caused Ms. Rice damages in that she suffered extreme physical and mental pain during the approximately twenty-four hours leading up to her death.

143. The actions of the Supervisory Jail Defendants as described herein deprived Ms. Rice of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages.

#### **FOURTH CLAIM FOR RELIEF**

##### **(§ 1983 – First and Fourteenth Amendments – Deprivation of Familial Association)**

(On Behalf of Plaintiffs Susan Garber and Roy Rice, Against All Defendants)

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

145. Plaintiffs Susan Garber and Roy Rice had a clearly established right to not be deprived of their liberty interest in their intimate familial association with their daughter, Emily Rice, at the time of the events described herein. The constitutional right to family integrity or association protects family relationships.

146. Plaintiffs' liberty interest and right of familial association outweighed any state interest in depriving them of such right of intimate association under the facts and circumstances of this case.

147. Defendants' conduct as described herein, in preventing Plaintiff Susan Garber from seeing Emily Rice at the jail and in intentionally engaging in the conduct that led to the death of Emily Rice, deprived Plaintiffs Susan Garber and Roy Rice of their liberty interest in their intimate association with Emily Rice, their daughter, as protected under the First and Fourteenth Amendments to the United States Constitution.

148. Defendants' conduct was engaged in maliciously or in reckless disregard of Plaintiffs' federally protected rights to intimate familial association.

149. Defendants' conduct proximately caused significant injuries, damages and losses to Plaintiffs Susan Garber and Roy Rice.

150. Defendants' conduct as described throughout this Complaint deprived all Plaintiffs of their clearly established constitutional rights of which reasonable persons in Defendants' position knew or should have known.

#### **FIFTH CLAIM FOR RELIEF**

##### **(State Law Claim for Negligent Training and Supervision)**

(Against Defendants City and County of Denver, Denver Health and Supervisory Jail Defendants)

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



152. Defendants City and County of Denver, Denver Health, and Supervisory Jail Defendants each had a duty to exercise reasonable care in the training and supervision of their employees in a manner that provided the detainees under their care with reasonable medical care and treatment.

153. Defendants' conduct as described herein breached their duty to exercise reasonable care in the training and supervision of their subordinate employees.

154. Defendants City and County of Denver, Denver Health, and Supervisory Jail Employees, because they knew or should have known of the lack of supervision, experience and training among their employees, also had reason to know that their employees were likely to harm Denver Jail detainees in need of medical care, including Ms. Rice.

155. In failing to exercise reasonable care in the training and supervision of their employees relative to their providing reasonable medical care and treatment, Defendants City and County of Denver, Denver Health and Supervisory Jail Defendants were negligent.

156. The negligence of Defendants City and County of Denver, Denver Health and Supervisory Jail Defendants proximately caused Ms. Rice significant physical and mental pain and suffering and other damages in the final approximately twenty-four hours of her life.

157. Defendants' conduct has proximately caused Susan Garber and Roy Rice significant pain, suffering, grief, loss of comfort and society, and other damages arising from the suffering and ultimate death of their daughter, Ms. Rice.

#### **SIXTH CLAIM FOR RELIEF**

##### **(State Law Claim for Outrageous Conduct)**

(Against Jail Defendants, Denver Health and Denver Health Nurses at the Jail)

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

159. Defendants' conduct as described herein, including their failure to provide reasonable medical care and treatment to Ms. Rice, constituted omissions or acts of extreme and outrageous conduct.

160. Defendants engaged in such outrageous conduct recklessly or with the intent of causing the Decedent, Ms. Rice, and Ms. Rice's parents, Plaintiffs Susan Garber and Roy Rice, severe emotional distress.

161. Defendants City and County of Denver and Denver Health are legally responsible to claimants for any harm caused by employees acting on their behalf.

162. Defendants' outrageous conduct caused Plaintiffs to suffer severe emotional distress.

### **SEVENTH CLAIM FOR RELIEF**

**(State Law Claim for Wrongful Death under C.R.S. § 13-21-202)**  
(Against Jail Defendants, Denver Health and Denver Health Nurses at the Jail)

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

164. The Jail Defendants, at all times relevant hereto, were employees of Defendants City and County of Denver. The nurses at the Denver Jail, at all times relevant hereto, were employees of Denver Health.

165. Defendant City and County of Denver and Denver Health are legally responsible to claimants for any harm caused by employees acting on their behalf.

166. Plaintiffs, as the parents of Ms. Rice, suffered and continue to suffer economic and non-economic damages due to Defendants' conduct toward their daughter, including but not limited to economic damages for funeral expenses and financial losses due to the financial benefits they would have reasonably expected to receive from their daughter had she lived, and non-economic damages for grief, loss of their daughter's companionship, impairment in the quality of their lives, inconvenience, pain and suffering, and extreme emotional stress.

167. Defendants' conduct was attended by circumstances of malice, or willful and wanton conduct, which Defendants must have realized was dangerous, was done heedlessly and recklessly, without regard to the consequences to Ms. Rice and her parents.

168. Defendants consciously disregarded a substantial and unjustifiable risk that they would cause the death of another.

169. Defendants' conduct constituted a felonious killing under C.R.S. §§ 13-21-203 and 15-11-803, such that there shall be no statutory limitation on damages available herein to Plaintiffs.

### **EIGHTH CLAIM FOR RELIEF**

**(Medical Negligence/ Negligent Medical Care and Treatment)**  
(Against Denver Health Defendants)

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

171. At all times relevant, Emily Rice was under the care and treatment of the Denver Health Defendants.

172. Defendants Cheng and Haukoos had a physician-patient relationship with Emily Rice at all times pertinent to this Complaint.

173. Defendants Costin, Bouzaine, Cleary, Dubois, Gaston and Zimmer had a nurse-patient relationship with Emily Rice at all times pertinent to this Complaint.

174. During the course of this medical treatment, Denver Health Defendants were negligent in their care and treatment of Emily Rice.

175. Defendants had a duty to provide reasonable medical care and treatment to detainees at Denver Jail, including Ms. Rice.

176. Defendants breached their duty of care and were negligent when they failed to provide Ms. Rice with reasonably obtainable and necessary emergency medical treatment.

177. With respect to their care and treatment of Emily Rice, Denver Health Defendants owed Emily Rice a duty to exercise that degree of care, skill, caution, diligence and foresight exercised by and expected of physicians and nurses in similar situations. The Denver Health Defendants deviated from that standard of care and were negligent in failing to properly diagnose and treat Emily Rice.

178. The Denver Health Defendants were negligent in failing to properly diagnose and treat Emily Rice during the course of her detention at Denver Health and Denver Jail.

179. As a direct and proximate result of the conduct of the Denver Health Defendants, Emily Rice suffered significant physical and mental pain and suffering and other damages in the final approximately twenty-four hours of her life, and ultimately her death.

180. Plaintiffs Susan Garber and Roy Rice, as the parents of Ms. Rice, suffered and continue to suffer economic and non-economic damages due to Defendants' negligent conduct toward their daughter, including but not limited to economic damages for funeral expenses and financial losses due to the financial benefits they would have reasonably expected to receive from their daughter had she lived, and non-economic damages for grief, loss of their daughter's companionship, impairment in the quality of their lives, inconvenience, pain and suffering, and extreme emotional stress.

**NINTH CLAIM FOR RELIEF**  
**(Survival Action)**  
**(Against All Defendants)**

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

182. Plaintiffs Susan Garber and Roy Rice are the heirs and personal representatives of the Estate of Emily Rice.

183. As a result of the deliberate indifference, reckless indifference and/or negligence of Defendants as more fully described above, the Estate of Emily Rice has suffered injuries and damages, including, but not limited to, hospital and medical expenses and funeral expenses, emotional distress and pain and suffering, and loss of enjoyment of life.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against each of the Defendants, and award them all relief allowed by law, including but not limited to the following:

- (a) Appropriate relief at law and equity;
- (b) Declaratory relief and other appropriate equitable relief;
- (c) Economic losses on all claims allowed by law;
- (d) Compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (e) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (f) Attorneys fees and the costs associated with this action, including expert witness fees, on all claims allowed by law;
- (g) Pre- and post-judgment interest at the highest lawful rate;
- (h) Any further relief that this court deems just and proper, and any other relief as allowed by law.

**PLAINTIFFS HEREBY DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.**

DATED this 25<sup>th</sup> day of June 2007.

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