

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1 : 17 - cv - 02770

DWIGHT IVAN SHORTRIDGE JR., Plaintiff,

v.

**RECEIVED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

MAY 10 2018  
JEFFREY P. COLWELL  
CLERK

DON WICK (Chief of Arvada Police Department) (in his individual and official capacity),

KRAIG BROWNLOW (Officer, Arvada Police Department)(in his individual and official capacity),

WILLIAM DELAY (Officer, Arvada Police Department)(in his individual and official capacity),

ERIC KELLOGG (Arvada Police Department Field Supervisor of William Delay)(in his individual and official capacity),

RON AVILA (Arvada Police Department Field Supervisor of Kraig Brownlow)(in his individual and official capacity),

Defendant(s).

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**PRISONERS THIRD AMENDED COMPLAINT**

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**A. PARTIES**

1. **Dwight Ivan Shortridge, Jr., DOC #177264**  
(Plaintiff's name, prisoner identification number, and complete mailing address)  
Crowley County Correctional Facility, 6564 Hwy 96, Olney Springs, CO 81062

2. **Don Wick (Chief of Arvada Police Department)**  
(Name, title, and address of first defendant)  
Last Known Address: Arvada Police Department, 8101 Ralston Road, Arvada, CO 80002  
At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law  Yes  No (CHECK ONE). Briefly explain your answer:

At all times relevant to this complaint, Chief Don Wick was employed by the City of Arvada, CO as a Police Officer and was acting under color of state, county and city law.

3. **Kraig Brownlow (Officer Badge Number #1506)**  
(Name, title, and address of second defendant)  
Arvada Police Department, 8101 Ralston Road, Arvada, CO 80002  
At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law  Yes  No (CHECK ONE). Briefly explain your answer:

At all times relevant to this complaint, Officer Kraig Brownlow was employed by the City of Arvada, CO as a Police Officer and was acting under color of state, county and city law.

4. **William Delay (Officer Badge Number #8207, Field K-9 Unit)**  
(Name, title, and address of third defendant)  
Last Known Address: Arvada Police Department, 8101 Ralston Road, Arvada, CO 80002  
At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law  Yes  No (CHECK ONE). Briefly explain your answer:

At all times relevant to this complaint, Officer William Delay was employed by the City of Arvada, CO as a Police Officer and was acting under color of state, county and city law.

(If you are suing more than three defendants, use extra paper to provide the information requested above for each additional defendant. The information about additional defendants should be labeled "A. PARTIES.")

**A. PARTIES**

5. **Eric Kellogg** (Arvada Police Department Field Supervisor of William Delay) \_\_\_\_\_  
(Name, title, and address of fourth defendant)

Arvada Police Department, 8101 Ralston Road, Arvada, CO 80002

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law  X  Yes   No (CHECK ONE). Briefly explain your answer:

At all times relevant to this complaint, Officer Eric Kellogg was employed by the City of Arvada, CO as a Police Officer and was acting under color of state, county and city law.

6. **Ron Avila** (Arvada Police Department Field Supervisor of Kraig Brownlow) \_\_\_\_\_  
(Name, title, and address of fourth defendant)

Arvada Police Department, 8101 Ralston Road, Arvada, CO 80002

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law  X  Yes   No (CHECK ONE). Briefly explain your answer:

At all times relevant to this complaint, Officer Ron Avila was employed by the City of Arvada, CO as a Police Officer and was acting under color of state, county and city law.

## B. JURISDICTION

1. I assert jurisdiction over my civil rights claim(s) pursuant to : (check one if applicable)

  X   28 U.S.C. § 1343 and 42 U.S.C. § 1983 (state prisoners)

       28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (federal prisoners)

2. I assert jurisdiction pursuant to the following additional statutes (if any):

42 U.S.C. § 1981

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Article 5, 7, 8, Universal Declaration of Human Rights

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## C. NATURE OF THE CASE

**BRIEFLY** state the background of your case. If more space is needed to describe the nature of the case, use extra paper to complete this section. The additional allegations regarding the nature of the case should be labeled “C. NATURE OF THE CASE.”

1. This complaint pursuant to 42 U.S.C. § 1983 concerns unlawful acts and omissions by Respondents Don Wick, Kraig Brownlow, William Delay, Ron Avila and Eric Kellogg (Officers of the Arvada police Department acting in their official and individual capacities) committed while the officers were responding to a telephoned report initiated by Edward Masdin (store manager of Discount Tire located in Arvada Colorado). The report referenced a suspicious person who Masdin believed was going to leave Discount Tire without paying for services and goods rendered and did not specifically name Petitioner Dwight Ivan Shortridge Jr. (hereinafter “Shortridge”).

### **C. NATURE OF THE CASE**

2. Shortridge claims that while responding to the report, Respondents, Arvada Police officers Brownlow and Delay (and K-9 “Denis” assigned to handler Delay) willfully, wantonly, and unlawfully subjected Shortridge to racial profiling and discrimination in violation of C.R.S. § 24-31-309, use of excessive force resulting in irreparable and serious bodily injury, permanent disfigurement, physical scarring, and psychological trauma.

3. The actions of Brownlow and Delay abridged Shortridge's right to self defense and personal security, subjecting him to illegal arrest in violation of C.R.S. § 16-3-101(2) and C.R.S. § 16-3-102(1)(c) and illegal stopping, search, and seizure without probable cause in violation of C.R.S. § 16-3-103, assault in violation of C.R.S. § 18-3-202, menacing in violation of C.R.S. § 18-3-206, further abridging Shortridge's Federal Constitutional rights pursuant to U.S.C. Const. Amend. IV (Search and Seizure); U.S.C. Const. Amend. VIII (Cruel and Unusual Punishment); U.S.C. Const. Amend. XIV (Due Process), and his right to equal protection from racial discrimination pursuant to 42 U.S.C. § 1981; as well as Colorado State Constitutional rights pursuant to C.R.S. Const. Art. 2, § 7; C.R.S. Const. Art. 2, § 20; and C.R.S. Const. Art. 2, § 25.

4. Shortridge claims that Respondents Brownlow and Delay failed to follow statutorily mandated procedure for use of physical force in making an arrest set forth in C.R.S. § 18-1-707, improperly deployed K-9 Officer “Denis” in an arrest without reasonable cause, intentionally allowing the K-9 to repeatedly bite Shortridge causing serious bodily injury requiring

### C. NATURE OF THE CASE

hospitalization, and, that following arrest, Brownlow and Delay falsely reported their actions by filing inaccurate and conflicting incident reports, sworn statements, and affidavits in support of warrant-less arrest.

5. Shortridge claims that Respondents Wick, Avila, and Kellogg, as supervising officials under statutory mandate and duties associated with their positions, failed to properly train, supervise, and control the actions of Brownlow and Delay, failed to properly review and investigate reports filed by Brownlow and Delay in relation to their actions on November 18, 2016, and failed to independently establish the veracity and accuracy of the reports and sworn statements by Brownlow and Delay concerning the use of force, deployment of a K-9, racial profiling and discrimination, incident management, and the injuries sustained by Shortridge.

6. Shortridge claims that Wick, Avila and Kellogg negligently and intentionally ignored statements by subordinate officers Brownlow and Delay which clearly demonstrate that Shortridge did not present a threat, was personally observed by Brownlow at the cash register paying for the goods and services at Discount Tire (in direct contradiction of the telephone report by Edward Masdin), was not personally identified by Masdin and when questioned by Brownlow was confused as to the reason for questioning.

### C. NATURE OF THE CASE

7. Affidavit by Brownlow demonstrates that when Shortridge attempted to comply with the officer's request to produce identification, (which was located in the vehicle), Brownlow unlawfully pointed his gun at Shortridge, threw him to the ground, and released K-9 officer "Denis" upon him after Shortridge was handcuffed and posed no reasonable or rationally valid threat necessitating use of force or a K-9.

8. Shortridge claims that had Wick, Avila, or Kellogg independently investigated the incident and conducted a review of the incident and the actions of officers Brownlow and Delay, that a clear pattern of racial profiling and discrimination, assault, excessive force, improper use of a K-9, deviation from training and established rules and protocols would have been evident. Shortridge claims that failure by Wick, Avila, or Kellogg to investigate as statutorily required pursuant to their supervisory position constitutes intentional negligence, failure to protect and dereliction of duty, and renders Wick, Avila, and Kellogg explicit accomplices to the unlawful and unconstitutional acts of Brownlow and Delay.

9. Shortridge claims that Respondents in this case improperly relied upon information and racial profiling and discrimination by Edward Masdin and acted in conformity to longstanding unwritten policies, practices, and customs within the Arvada Police Department which unlawfully target minorities, particularly persons of African American descent, treating them far differently and harshly from Caucasian citizens during police contacts and arrests by subjecting

### **C. NATURE OF THE CASE**

African Americans to unnecessarily harsh treatment, improper restraint, assumed guilt, and improper use of force when responding to reports or incidents involving persons such as Shortridge, and that supervisory officials Wick, Avila, and Kellogg being aware of these unwritten policies, customs, and procedures, concerning African American citizens actively participated and perpetuated these customs by intentionally failing to supervise officers Brownlow and Delay, failing to independently review the incident of November 18, 2016, and instead signed off on the reports as true, correct, and accurate, thereby allowing and perpetuating the constitutional and statutory claims brought in this complaint and depriving Shortridge his right to civil right to equal protection pursuant to 42 U.S.C. § 1981.

10. The actions by Brownlow and Delay also abridge Article 5, 7, 8, of the Universal Declaration of Human Rights.



#### **D. CAUSE OF ACTION**

State concisely every claim that you wish to assert in this action. For each claim, specify the right that allegedly has been violated and state all supporting facts that you consider important, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific cases to support your claim(s). If additional space is needed to describe any claim or to assert more than three claims, use extra paper to continue that claim or to assert the additional claim(s). The additional pages regarding the cause of action should be labeled "D. CAUSE OF ACTION."

1. Claim One:

**RESPONDENTS BROWNLOW AND DELAY VIOLATED SHORTRIDGE'S SUBSTANTIVE RIGHT BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT PURSUANT TO U.S.C. CONST. AMEND. VIII AND C.R.S. CONST. ART. 2, § 20 BY USING EXCESSIVE FORCE WHILE RESPONDING TO A TELEPHONED REPORT BY A CIVILIAN.**

Supporting Facts:

1. On November 18, 2016 Respondents, Arvada Police Officers Brownlow and Delay, responded to a call to conduct a routine response to Discount Tire company located at 11707 West 64<sup>th</sup> Avenue, Arvada, in Jefferson County Colorado, 80004, based upon a telephoned report by store manager Edward Masdin alleging his belief that a customer was potentially preparing to leave the store without paying for goods and services rendered (new tires installed on vehicle). In his telephone report, Masdin gave no specific facts or reasoning to support his belief, nor did he specifically name "Shortridge" as the person referenced in the call.
2. Masdin only provided information that the suspect vehicle was a black Cadillac Escalade without license plates (which is disproved by Brownlow who cites the license plate as

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CQU259 in his affidavit and photos from the scene) and that the suspect was a black male wearing a blue jacket and Dallas Cowboys hat. The telephone report makes no reference to a specific crime being committed and fails to provide any specific basis as to what would cause Masdin to believe Shortridge was preparing to leave without paying, or that the referenced vehicle actually belonged to Shortridge and was not being serviced for someone else.

3. Upon arrival at Discount Tires, Brownlow states that the first action taken by officers was to incorrectly identify a person, who officers believed to be the subject, close to the store and stop and question that person based upon an incorrect identification by Masdin who, when asked by Brownlow if the person leaving the store was the person associated with the Cadillac, Masdin answered affirmatively that “yes” this was the person. It is clear by Brownlow's affidavit that neither the officers responding to the scene, nor Masdin could specifically identify Shortridge as the individual referenced in the telephone report, nor could they identify any criminal activity which could be attributed to Shortridge which would justify arrest or seizure of Shortridge or his person or property.

4. Reports by Brownlow demonstrate that the first contact Brownlow had with Shortridge was to witness him “paying at the cash register inside of the store”. Photos taken at the scene by Officer Ryan Nelson (Arvada Police badge number #1218) as well as the receipt provided by Discount Tire clearly show that Shortridge had properly paid his bill and was in the process of leaving

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prior to being confronted by Brownlow and Delay, and that no valid reason existed to stop or question Shortridge.

5. Brownlow did not have a valid reason to believe the Cadillac Escalade referred to in the telephone report was in any way associated with Shortridge or that he was involved in any way with the vehicle being reported as stolen. To the contrary, upon arrival at the scene, Brownlow and Delay began questioning numerous other Caucasian and Hispanic individuals at the scene to determine who the vehicle belonged to.

6. Contrary to information provided in the affidavit by Brownlow, neither Brownlow or Delay entered Discount Tire to speak with Masdin or to verify the information in the telephoned report prior to questioning the individuals outside the store. Shortridge was sitting in his vehicle in the service bay after Masdin spoke to Shortridge in his vehicle numerous times and agreed upon price and payment method. Shortridge was on the phone with a customer of his granite counter-top business regarding kitchen repair and digging out money which had fell between the seat and center console while preparing to enter Discount Tire to pay for the tires and services rendered which had previously been agreed upon.

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#### **D. CAUSE OF ACTION**

7. Prior to entering the store, Shortridge witnessed marked police vehicles and uniformed officers arrive at the store, exit their vehicles, and begin stopping and questioning numerous individuals.

8. Assuming nothing was wrong, and having no reason to believe that he was potentially the focus of the police activity, Shortridge entered the store returned several tools borrowed from Masdin to retrieve his the money from between the seat of the Escalade, and payed Masdin a sum of \$150.00, which was \$42.00 short of the total price, but which was agreed upon and accepted by Masdin following several conversations with Shortridge while he was in the vehicle retrieving money from between the center console and driver's seat of the Cadillac Escalade as payment in full as the full services charged had not been rendered.

9. As Shortridge was waiting in the main lobby for his receipt and change from Masdin, Brownlow opened the door at the front of the store, stuck his head in without fully entering, and asked if there was anyone else with Shortridge to which Shortridge responded “no” and asked Brownlow if there was a problem, to which Brownlow failed to respond and closed the door, returning to the parking lot. Masdin returned and presented Shortridge with a receipt and change and concluded transactions with Shortridge who then began to exit the store.

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10. As Shortridge was exiting the store, he passed Brownlow who had entered the store and was positioning himself behind Shortridge. Brownlow remained silent and followed Shortridge into the parking lot of Discount Tire where Delay was waiting with K-9 "Denis". Delay said "hey" to Shortridge and approached Shortridge from his left side while Brownlow approached from the right impeding his forward movement. As Brownlow and Delay (with K-9) converged on Shortridge with both officers having guns drawn and pointed at Shortridge, who asked the officers "is there a problem"? Brownlow informed Shortridge that the license plates on the Cadillac Escalade had come back as stolen, Brownlow did not inquire as to whether Shortridge was the owner or operator of the vehicle. Shortridge informed the officers that the Cadillac Escalade could not have been stolen because he had the bill of sale for the purchase and service receipt from the dealership was located inside the vehicle and would gladly show the documents to the officers. Shortridge then attempted to retrieve the information from the vehicle as the documents were located in the glove compartment.

11. Immediately, Brownlow said "if you touch the truck, I will shoot you", despite the fact that Shortridge had made no aggressive movements or gestures, and had made no threatening actions except to comply with the officers and attempt to show them the bill of sale for the vehicle to prove ownership. Upon the threat of use of deadly force by Brownlow, Shortridge immediately placed his hands in the air above his head in a "surrender" position, backed away from the vehicle, and made no aggressive movements which would cause a reasonable officer to feel

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#### **D. CAUSE OF ACTION**

threatened or justified to use deadly force. At that time neither Brownlow or Delay gave any further verbal commands.

12. Shortridge attempted to ask officers again for permission to show the documents to the officers, when unexpectedly, and without reason or cause, both Brownlow and Delay tackled Shortridge, slamming him onto the asphalt parking lot. Shortridge fell onto his right shoulder causing significant injury and muscle bruising to his shoulder and neck and face, knocking Shortridge's front tooth out. Shortridge proceeded to land on his stomach with Brownlow and Delay on top of him.

13. In the commotion, K-9 "Denis" became entangled with Brownlow and Delay who had landed on top of the K-9, who, having become agitated by the unexpected aggressive actions by Brownlow and Delay, had attempted to avoid being trampled by the officers and instead became entangled with them and became pinned beneath them facing Shortridge approximately four (4) to five (5) inches from Shortridge's face. Shortridge made no attempt to resist the officers or to fight back against the officers unwarranted aggression and tackling in any way, instead saying "just handcuff me and take me to jail".

14. While Delay was restraining Shortridge on his right side, Brownlow unexpectedly, unjustifiably, and without provocation, told Shortridge to "shut up" and began repeatedly

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#### D. CAUSE OF ACTION

kneeing Shortridge's left side on his ribs and hitting him on the back of his head while yelling "quit resisting", but making no attempt to handcuff or otherwise mechanically restrain Shortridge. Shortridge stated "I'm not resisting" and attempted to remain motionless to avoid any further assault or injury by Brownlow.

15. Having been taken completely by surprise by Brownlow and Delay's unexpected assault, and fearing for his life and personal safety after suffering painful injury, Shortridge called out for assistance from anyone who would help stating "the police are beating me up, if anyone is watching this please record it". Delay responded to Shortridge's pleas for help by telling him to "shut up, stop crying, and take it [the beating] like a man". Upon hearing the statements made by Delay, Shortridge then called out for help from Masdin who was exiting the store and locking up for the night. Masdin simply laughed at Shortridge, turning his back and continued locking up the store.

16. Brownlow unnecessarily continued repeatedly hitting the back of the head and delivering knee strikes to Shortridge's ribs and upper thigh (reported by Brownlow as Shortridge's *Common Peroneal*), grabbing Shortridge's left leg, yanking and dragging him across several parking spaces and metal car lifts (approximately thirty (30) to forty (40) feet). After dragging Shortridge to the secondary location, Brownlow deployed his CEW (Conducted Electrical

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Device “Taser”) on Shortridge's left side delivering multiple shocks (two (2) to three (3)) with the weapon continued to deliver knee strikes to Shortridge who remained on his hands and knees, attempting to remain non-resistant and compliant despite the repeated assaults by Brownlow. During these events, Delay restrained Shortridge's right side.

17. After a period of time, (approximately ten (10) minutes), while enduring the repeated beating and assault by Brownlow, another uniformed Arvada Police officer Rob Hille (Badge #1208) arrived on the scene. At this point, Brownlow and Delay immediately ceased their assault on Shortridge, with Brownlow stepping away several steps, while Delay released Shortridge, getting up, and placing handcuffs on Shortridge who did not resist in any manner. Upon placing the handcuffs on Shortridge, and after Hille arrived, Delay issued a command (it is unknown at this time if the command was verbal or non-verbal) to K-9 Denis, who immediately began to repeatedly bite and attack Shortridge. The bites from the K-9 severely injured Shortridge's right hand and right palm as well as Shortridge's left knee and shin requiring medical attention at Lutheran Hospital where doctors treated the injuries sustained in the “arrest”.

18. After being placed in handcuffs and while still seated on the asphalt parking lot of Discount Tire, Hille finally questioned Shortridge to ascertain his identity. Shortridge at this time repeated his request to the new officer to show him the information, receipts, and documentation regarding the Cadillac Escalade. Hille informed Shortridge that it was up to Brownlow whether



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he would be allowed to explain the situation and provide proof of ownership, however Shortridge never saw Brownlow again.

19. After being placed in the ambulance, paramedics informed Shortridge that they would begin to administer intravenous medication and instead administered an unknown drug which immediately caused Shortridge to begin to experience euphoria and to begin to become drowsy. At which point, Shortridge was questioned by several unknown officers as to where the drugs found on Shortridge during the arrest came from and who had more. Officers also questioned Shortridge about alleged drug cartel activities as well as who stole the Cadillac Escalade, and the location of Shortridge's other vehicles. At no time did any of the officers in the ambulance or supervisory officers who arrived on scene prior to ambulance transport question Shortridge regarding the circumstances or events which had occurred at Discount Tire, or his interaction with Brownlow, Delay, or Masdin.

20. It is clear that Brownlow and Delay acted far outside the realm of reasonable use of force, reasonable questioning techniques and crime scene response when responding to the telephone report by Masdin. Shortridge alleges that Brownlow intentionally used standard commands such as "stop resisting" to cover his assault on Shortridge and that Delay acted as an accomplice by failing to stop the unnecessary use of force by Brownlow and assisting in restraining Shortridge

#### **D. CAUSE OF ACTION**

while the attack by Brownlow continued. Shortridge further contends that Delay acted outside of lawful and reasonable action by failing to protect Shortridge from attack by Brownlow, and by releasing K-9 Denis to repeatedly bite Shortridge after he had been restrained and placed in handcuffs and was not resisting or presenting any behavior which would cause a reasonable and properly trained officer acting according to training and law to believe it necessary to release a service K-9 upon Shortridge.

21. As such, due to the fact that at no time did Shortridge present any behavior or action in resistance or defiance of lawful orders given by Brownlow or Delay, Shortridge claims that the illegal use of excessive force and intentional disregard and abandonment of peace officer standards and training and C.R.S. § 18-1-707 (use of force during arrest), by Brownlow by unnecessarily tackling and repeatedly kneeling, hitting, tasing, dragging, and beating Shortridge and by Delay by restraining Shortridge and allowing K-9 Denis to repeatedly bite Shortridge while handcuffed, failing to stop Brownlow's assault, and taunting Shortridge by saying "take it [the beating] like a man", clearly constitutes the crime of Assault in the First Degree pursuant to C.R.S. § 18-3-202(1)(a),(b),(c), Deliberate Indifference, Failure to Protect, and Dereliction of Duty, in violation of Shortridge's rights pursuant to U.S.C. Const. Amend. VIII; C.R.S. Const. Art. 2, § 20 (Cruel and Unusual Punishment) and the "objective reasonableness" standard of U.S.C. Const. Amend. IV.

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2. Claim Two:

**RESPONDENTS BROWNLOW AND DELAY VIOLATED SHORTRIDGE'S PROCEDURAL AND SUBSTANTIVE RIGHT TO DUE PROCESS PURSUANT TO U.S.C. CONST. AMEND. XIV AND C.R.S. CONST. ART. 2, § 25 (DUE PROCESS) BY MAKING FALSE STATEMENTS IN SWORN AFFIDAVITS IN SUPPORT OF WARRANTLESS ARREST AND CORRESPONDING INCIDENT REPORTS RELATED TO THEIR RESPONSE AND ACTIONS ON NOVEMBER 18, 2016 WHILE RESPONDING TO A TELEPHONED REPORT BY A CIVILIAN AT DISCOUNT TIRE.**

Supporting Facts:

1. On November 18, 2016 Brownlow and Delay (along with K-9 Denis) responded to a telephone report discussed *supra*. Pursuant to the telephoned report by Edward Masdin from Discount Tire, the manager of the store reported his unfounded suspicions that a black male wearing a blue jacket and Dallas Cowboys hat (later determined to be Shortridge) was preparing to leave the store without paying for goods and services rendered in a Cadillac Escalade without license plates. No mention of Shortridge by name was made in the report. Following the response, and after Shortridge had been transported to Lutheran Hospital and then to Jefferson County Jail, Brownlow and Delay returned to the Arvada Police Department and filed several reports and sworn affidavits in support of warrant-less arrest.

2. Shortridge contends that the information Brownlow and Delay provided in these reports is inaccurate, unfounded, misconstrued, contradictory, and in some instances completely false, and was submitted by Brownlow and Delay in an intentional attempt to cover up their illegal assault, excessive use of force, and racial profiling and discrimination of Shortridge.

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3. ***First***, Shortridge claims that the sworn affidavit in support of warrant-less arrest submitted by Brownlow on November 18, 2016 is incorrect concerning statements made by Brownlow regarding questioning of Shortridge about the ownership of the Cadillac Escalade. In his statement, Brownlow states that he asked Shortridge who the truck belonged to and that Shortridge stated that it belonged to a friend. This statement is incorrect. Shortridge actually stated that the vehicle belonged to him and offered to show the bill of sale to prove lawful ownership.

4. ***Second***, Brownlow states that upon arrival at the scene he entered Discount Tire and spoke to Masdin, asking whether a male wearing blue jeans and a stocking cap who was seen walking very briskly away from the truck towards West 64<sup>th</sup> ave the suspect referred to in Masdin's telephoned report. Brownlow states that he questioned Masdin if this individual was the person associated with the Cadillac Escalade to which Masdin responded "yes". Brownlow then states that he exited the Discount Tire store and confronted the subject who was briskly walking away from the store (all within twenty (20) feet of the entrance of the store). Shortly after making contact, Brownlow states that the individual was found to be un-involved. After questioning the un-involved individual, Brownlow states that he observed through the window of the Discount Tire store a black male wearing a blue Dallas Cowboys shirt and a Dallas Cowboys hat. Brownlow states that he observed the person (Shortridge) paying cash at the register inside of the store.

#### **D. CAUSE OF ACTION**

5. Shortridge claims that Brownlow's sworn statement regarding entering the store and speaking to Masdin prior to questioning Shortridge is inaccurate. Shortridge states that he saw officers questioning white males around the store and that neither Brownlow or any other officers entered the Discount Tire store to speak with Masdin. At the time Brownlow reports speaking to Masdin, Shortridge was in the front seat on the driver's side of the Cadillac Escalade with a direct view of the entrance of Discount Tire (approximately ten (10) feet away with a clear unobstructed view) watching the officers question the Caucasian males around the store. Shortridge noticed that he was the only African American male present.

6. Shortridge exited the vehicle and entered the store to pay for the tires. Inside of the store Shortridge and Masdin were in the middle of the lobby, away from the case registers. Masdin stated that he had to hurry up to close the store and went into the back room. At this time Shortridge observed Brownlow walking around outside of the store. Brownlow stuck his head in the door of the store and asked Shortridge who else was with him. Shortridge stated that he was alone and asked Brownlow if there was a problem, to which Brownlow failed to respond and returned to the parking lot and began pacing in front of the store. Masdin returned from the back room and handed Shortridge his change and receipt.

7. Contrary to Brownlow's statement that he instructed Shortridge to sit down in a chair and that Shortridge instead and stood up and walked towards the front door of the store. Shortridge never

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sat down in the store at any time and was never asked by Brownlow to have a seat in a chair. After concluding business with Masdin, Shortridge began to exit the store and crossed paths in the lobby with Brownlow who had re-entered the store after previously sticking his head in the door and asking if Shortridge was alone. Once Shortridge was outside, Brownlow exited the store and approached Shortridge from behind with his gun drawn and pointed at Shortridge. Delay and K-9 Denis approached from the opposite direction also with gun drawn and also pointed at Shortridge.

8. *Third*, In his sworn affidavit, Brownlow claims that he asked Shortridge for his identification while Shortridge was seated in Discount Tire. Contrary to this statement, Shortridge was never seated in the store and Brownlow never asked Shortridge for identification at any time, the only time Shortridge was asked for identification was when Hille asked for it after the entire incident and Brownlow had moved away from Shortridge. In his sworn affidavit, Brownlow states that before he tackled Shortridge, Shortridge “mumbled and stated he was getting his identification”. Shortridge never said anything to Brownlow about getting identification, Shortridge did however state that he was attempting to get the documentation and bill of sale to prove that he legally purchased the vehicle and that it was not, to Shortridge's knowledge, stolen. Shortridge's identification was in his pocket, therefore there would be no reason for Shortridge to move toward the vehicle to retrieve it.

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9. ***Fourth***, In his sworn affidavit, Brownlow states that he pointed his gun at Shortridge and told him he needed to stop and get on the ground as Shortridge was attempting to show Brownlow the bill of sale for the Cadillac Escalade. Contrary to his statements, Brownlow never told Shortridge to get on the ground while pointing his gun at Shortridge. Shortridge claims that Brownlow stated he would shoot if Shortridge touched the vehicle, causing Shortridge to immediately back away with his hands up in a “surrender” position.

10. ***Fifth***, Brownlow stated that he attempted to grab Shortridge's right arm and that Shortridge batted his hands away and attempted to enter the Cadillac Escalade causing K-9 Denis to begin barking at Shortridge while Brownlow commanded Shortridge to get on the ground while attempting to place Shortridge under arrest, and that K-9 Denis (who Brownlow previously claimed was barking at Shortridge) walked up to Shortridge and that when Shortridge noticed Denis beneath him he intentionally dropped his body weight upon Denis.

11. Shortridge claims that Denis never barked at all, instead Denis, in a calm demeanor, walked up to Shortridge in the middle of the conversation at gun point concerning the suspicion of the Cadillac Escalade being reported stolen between Brownlow and Delay, and that Shortridge patted Denis on the head in a friendly manner (the way normal people pet a dog) and said “hey pup”. Delay immediately became belligerent and loudly yelled “do not touch the dog”. At which point both Brownlow and Delay tackled Shortridge, slamming him violently into the asphalt parking

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lot, causing Denis, who was at Shortridge's feet being petted, to become entangled with the officers and pinned beneath them, and that Brownlow and Delay, by their unnecessary and unprovoked tackling of Shortridge were the actual cause of Denis being fell upon, in direct contradiction of Brownlow's sworn statement alleging that Shortridge, after noticing Denis at his feet, intentionally "dropped his weight over Denis' back, bringing his full body weight onto the dog". Further, Denis was not in distress and was licking Shortridge's face until Brownlow placed his full body weight upon Shortridge and Denis, causing the dog to cry out in pain and injuring Shortridge.

12. *Sixth*, Brownlow stated that while officers continued to arrest Shortridge, he managed to remain on his hands and knees with his fists balled and arms bent and tensed, and that Brownlow repeatedly tried to pull Shortridge's left arm out of the 90 degree angle he was holding it in and that Shortridge maintained the position, not allowing officers to get his hands behind his back and into handcuffs. Brownlow claims that Shortridge was able to continue to move his on his hands and knees northbound over various vehicle lifts in front of Discount Tire.

13. Brownlow's statement is inconsistent with itself and contradicts the laws of physics as it would be impossible for Shortridge to maintain his position resisting officers, remaining on his hands and knees while holding his arms bent and tensed and being restrained by Delay who had his full



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body weight on Shortridge's right side while simultaneously crawling on his hands and knees across the parking lot.

14. Shortridge claims that after being tackled and slammed to the ground that he never attempted to move in any direction and that it was Brownlow who caused Shortridge to move by violently and repeatedly kneeling him multiple times in the ribs and dragging him by his left leg across the parking lot while Delay continued to hold the right side of Shortridge's body, and that at no time did Shortridge attempt to move away from the officers on his own or act disruptively in any manner, and that Brownlow intentionally misconstrued Shortridge's attempts to submit to arrest and handcuffing by remaining motionless as resistance and used this as an excuse to continue to apply excessive force and assault on Shortridge and to provoke self-defensive responses by Shortridge to justify Brownlow's unreasonable use of excessive force, improper deployment of Brownlow's CEV Taser, improper drawing of Brownlow and Delay's gun, failure to control K-9 Denis, and the attack and beating which left Shortridge severely injured, scarred, and with a tooth knocked out.

15. Shortridge contends that this is further proven by the fact that when Officer Hille arrived on the scene, Brownlow and Delay immediately ceased their assault and changed their demeanor, releasing Shortridge who was immediately placed in handcuffs without incident or resistance,

#### **D. CAUSE OF ACTION**

contradicting Brownlow's statements that Shortridge was resisting and exhibiting behavior which necessitated use of force.

16. *Seventh*, Despite photographs from the scene taken by officer Ryan Nelson (badge number #1218) which clearly show bloody bite wounds to Shortridge's left hand, and left leg, as well as numerous scratches, bruising and contusions to Shortridge's body, Brownlow never made reference to how the injuries occurred, only stating that Shortridge was transported to Lutheran Hospital where he was seen for injuries resulting from his arrest.

17. Shortridge contends that the reason Brownlow omitted such obviously relevant material in his report and sworn statement is that such information would raise questions concerning Brownlow's use of excessive force and would reveal the assault and intentional provocation by Brownlow and Delay which caused the incident as well as revealing that Brownlow and Delay were actually responsible for the entire incident. Shortridge contends that Brownlow's statements intentionally conceal the fact that Shortridge attempted to comply with all officer's commands, and made numerous attempts to provide documentation which would prove his ownership and legal purchase of the Cadillac Escalade and that Shortridge in no way knew that the vehicle was stolen.

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18. Shortridge also contends that the report and sworn statement by Brownlow reveals that the use of force by Brownlow and Delay clearly exceeded that which a reasonably objective, properly trained officer acting according to police policy and statutory law would reasonably believe necessary, and that the deviation of Brownlow and Delay from established written police policy and lawful standards, instead reverting to racial profiling and discrimination by subjecting Shortridge to violence, actions, and assumptions, not employed against Caucasian persons Brownlow and Delay violated Shortridge's constitutional rights to be free of cruel and unusual punishment.

19. Shortridge claims that the inconsistencies, vagueness, contradictions, and omissions contained in Brownlow's sworn statement and affidavit in support of warrant less arrest were intentionally designed to conceal the unlawful use of excessive force and assault by Brownlow and Delay and violate Shortridge's right to due process pursuant to U.S.C. Const. Amend. XIV (Due Process), and Colorado State Constitutional rights pursuant to C.R.S. Const. Art. 2, § 25.

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##### 3. Claim Three:

**SHORTRIDGE CLAIMS THAT RESPONDENTS DON WICK, RON AVILA, AND ERIC KELLOGG FAILED TO PERFORM STATUTORILY MANDATED DUTIES ASSOCIATED WITH THEIR POSITIONS BY FAILING TO PROPERLY TRAIN, SUPERVISE, AND CONTROL BROWNLOW AND DELAY, AND BY FAILING TO PROPERLY REVIEW AND INVESTIGATE REPORTS FILED BY BROWNLOW AND DELAY IN RELATION TO THE USE OF FORCE, DEPLOYMENT OF A K-9, RACIAL PROFILING AND DISCRIMINATION, INCIDENT MANAGEMENT, AND THE INJURIES SUSTAINED BY SHORTRIDGE. IN VIOLATION OF SHORTRIDGE'S RIGHT TO DUE PROCESS PURSUANT TO U.S.C. CONST. AMEND. XIV (DUE PROCESS), AND COLORADO STATE CONSTITUTIONAL RIGHTS PURSUANT TO C.R.S. CONST. ART. 2, § 25.**

##### Supporting Facts:

1. On November 18, 2016, officers Brownlow and Delay and K-9 Denis were involved in a response to a telephoned report by Edward Masdin, manager of Discount Tire in Arvada Colorado. Upon arrival at the store, Brownlow and Delay were involved in an incident, (discussed *supra*, in Claims one (1) and (2)) which lead to the arrest of Shortridge. During the arrest, Shortridge suffered serious physical injuries which required transport to Lutheran Hospital for emergency treatment, and which left Shortridge scarred and missing his front tooth. The injuries were caused by the actions of Brownlow and Delay in their attempt to arrest Shortridge, and by K-9 Denis who was released by Delay to repeatedly bite Shortridge.

2. Shortridge claims that Brownlow and Delay intentionally submitted vague, conclusory, contradictory, and physically impossible sworn statements and affidavits in support of warrant-less arrest as well as provided false statements to other officers responding to the scene as to the events which transpired with Shortridge prior to the arrival of officer Hille and other officers.

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3. Shortridge claims that officers Ron Avila and Eric Kellogg, (Arvada Police Department field supervisors of Brownlow and Delay during the time and date of the incident in this claim) and Don Wick (Chief of Arvada Police Department) failed to properly train, adequately supervise, and control the actions of Brownlow and Delay as well as failed to investigate the assault and use of excessive force, racial profiling and discrimination, and failed to investigate the cause of the injuries sustained by Shortridge which were caused by Brownlow and Delay.

4. Wick, in conjunction with Avila and Kellogg failed to investigate inconsistent statements made by Brownlow in his sworn affidavit in support of warrant-less arrest, statements which contain factual discrepancies and errors which would cause any reasonable person to question the accuracy and veracity of the statement, thus requiring further inquiry to establish a true and accurate description of the events which allegedly transpired on November 18, 2016 which were the subject of the reports and statements. Wick, Avila, and Kellogg failed to interview Shortridge at any time to determine his interpretation of events or to establish whether Brownlow or Delay had filed a false statement despite the glaring inconsistencies in Brownlow's affidavit and the severe injuries to Shortridge. Wick, Avila, and Kellogg instead took the word and statements of Brownlow and Delay as factual and signed off on the reports.

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5. No attempt was made by Wick, Avila, or Kellogg to locate or obtain potential video tape surveillance footage from Discount Tire or surrounding businesses which would show a bias free factual account of the events which transpired, and would verify the accuracy of the information contained in the reports submitted by Brownlow and Delay. This is especially relevant as Shortridge filed a complaint on September 11, 2016 with the Arvada Police Department reporting the use of excessive force by Brownlow and Delay during the arrest. On January 10, 2017, Sergeant Burhorn of the Arvada Police Department Internal Affairs Division responded to the complaint by reviewing Shortridge's complaint, several officer reports, and a use of force review completed after the arrest on November 18, 2016. Burhorn found that the complaint was completely unfounded and that the use of force by Brownlow and Delay was found to be within policy.

6. Shortridge claims that had Wick, Avila, or Kellogg conducted a proper review and investigation of the actions of Brownlow and Delay immediately following the events prior to and during the arrest, they would have discovered that the use of force and the actions of Brownlow and Delay did not meet policy regulations, and instead were excessive and the result of racial profiling. Because Wick, Avila, and Kellogg failed to conduct a proper investigation, Shortridge's complaint of excessive force and the review by Burhorn relied on inaccurate and incorrect information and arrived at the incorrect conclusion that the actions of Brownlow and Delay were within Arvada Police policy.

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7. By failing to investigate, Wick, Avila, and Kellogg deprived Shortridge of due process to a fair and unbiased supervisory investigation in violation of U.S.C. Const. Amend. XIV (Due Process), and Colorado State Constitutional rights pursuant to C.R.S. Const. Art. 2, § 25.

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##### 4. Claim Four:

**SHORTRIDGE CLAIMS THAT RESPONDENTS BROWNLOW AND DELAY ILLEGALLY SUBJECTED HIM TO DISCRIMINATION, RACIAL PROFILING, AND RACIAL BIAS IN VIOLATION OF SHORTRIDGE'S RIGHTS PURSUANT TO THE EQUAL PROTECTION CLAUSE OF U.S.C. CONST. AMEND. XIV AND 42 U.S.C. § 1981.**

##### Supporting Facts:

1. On November 18, 2016, Arvada police officers Brownlow and Delay responded to a telephoned report by Discount Tire manager Edward Masdin in which Masdin had voiced an unfounded suspicion that a customer at the store was preparing to leave the store without paying, and that the Cadillac Escalade belonging to the person was without license plates. In his telephoned report, Masdin provided officers with no legitimate facts to justify his suspicions that the individual was going to leave without paying or that the Cadillac Escalade did not have license plates except to state that the individual referred to was a black male wearing a Dallas Cowboys jacket and hat. Neither claim by Masdin constitutes probable cause to believe a crime was being committed.

2. Brownlow and Delay, upon responding to the scene, immediately began questioning Caucasian individuals at the scene who were standing in the parking lot to determine if they were the individual who was the subject of Masdin's report. Brownlow states in his sworn affidavit that he chased down another individual who was believed to be the suspect but was later determined to be un-involved. The individual stopped by Brownlow was a Hispanic individual and was questioned without incident and released.



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3. When Shortridge, an African American person was determined by Brownlow to be the person referred to in the telephoned report by Masdin, Brownlow's demeanor and actions completely changed, constituting significantly disparate treatment than Brownlow's treatment of the Caucasian individuals and the Hispanic person who was questioned earlier. When questioning the Caucasian and Hispanic individuals at the scene, Brownlow's demeanor was cordial and professional, Brownlow did not draw his gun, nor did he raise his voice or issue threats to any of the other individuals at the scene. When Brownlow questioned Shortridge, the only African American at the scene, Brownlow drew his weapon and threatened to shoot Shortridge. Brownlow failed to respond to any of Shortridge's attempts to answer Brownlow's statement that the Cadillac Escalade was stolen, instead threatening to shoot Shortridge and ultimately tackling him, tasing, and repeatedly kneeing and hitting him.

4. Shortridge claims that Brownlow intentionally used routine police procedure in an unlawful manner both to provoke Shortridge into actions which would allow Brownlow to use excessive force and as a cover for his racially motivated assault. Shortridge claims that Brownlow made statements that the Cadillac Escalade was reported stolen, but intentionally ignored Shortridge when he attempted to provide the Brownlow with documentation and a bill of sale instead seizing on the opportunity presented by Shortridge to tackle him to the ground, despite the fact that Shortridge had made no provocative movements except to attempt to provide Brownlow with documentation to prove his purchase of the vehicle.

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5. Shortridge claims that after tackling him, Brownlow intentionally told him to “quit resisting” as a pretext to cover the repeated kneeling and assault by Brownlow. Shortridge claims that the assault by Brownlow and Delay continued until such time as other officers arrived on the scene. Shortridge claims that when other officers arrived, Brownlow and Delay immediately ceased all aggression and that Delay placed handcuffs on Shortridge without incident, negating statements made by Brownlow that Shortridge would not comply and was resisting. Had Shortridge actually been resisting and attempting to harm officers and K-9 Denis as alleged in Brownlow's statement, the moment the officers released their hold on Shortridge, logic dictates that he would have continued the resistance and not immediately allowed the officers to handcuff him.

6. It is clear by the actions and statements of Brownlow and Delay, that their conduct toward Shortridge differed significantly from their treatment of Caucasian and Hispanic persons at the scene, and that Brownlow and Delay intentionally provoked a peaceful, non-violent police contact concerning the possibility of a stolen vehicle into a pretext for subjecting Shortridge, an African American, to racial discrimination, assault, unnecessary and excessive use of force, and false reporting.

7. It is also clear that Brownlow intentionally filed inaccurate sworn statements which contradict the laws of physics in an attempt to cover for his unlawful actions, racial profiling, bias, and assault, instead attempting to affix blame for his actions on Shortridge, who at all times during

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the police contact was attempting to comply with the Brownlow and Delay's commands. It is also clear that supervisory personnel Wick, Ron Avila and Eric Kellogg, and Burhorn relied on the incorrect reports to excuse Brownlow and Delay of the use of excessive force, thus tacitly authorizing, perpetuating and becoming accomplice to the actions of Brownlow and Delay, and the continuing, widespread, and persistent, practice and custom of racial profiling by the Arvada Police Department.

8. Shortridge therefore claims that the racial bias and profiling of Brownlow and Delay violate his rights pursuant to the equal protection clause of U.S.C. Const. Amend. XIV and 42 U.S.C. § 1981.

**E. PREVIOUS LAWSUITS**

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? X Yes \_\_\_ No (CHECK ONE). If your answer is "YES," complete this section of the form. If you have filed more than one lawsuit in the past, use extra paper to provide the necessary information for each additional lawsuit. The information about additional lawsuits should be labeled "E. PREVIOUS LAWSUITS."

- 1. Name(s) of defendant(s) in prior lawsuit: Edward Masdin
- 2. Docket number and court name: 1 : 17 - cv - 02772
- 3. Claims raised in prior lawsuit: Racial Profiling and Bias
- 4. Disposition of prior lawsuit (for example, is the prior lawsuit still pending? Was it dismissed?): Pending in 10<sup>th</sup> Circuit District Court
- 5. If the prior lawsuit was dismissed, when was it dismissed and why? Pending
- 6. Result(s) of any appeal in the prior lawsuit: NOT APPLICABLE

**F. ADMINISTRATIVE RELIEF**

- 1. Is there a formal grievance procedure at the institution in which you are confined?  
\_\_\_ Yes X No (CHECK ONE).

There is no formal grievance procedure available in relation to the issues in this claim. Shortridge filed an excessive force complaint with Arvada Police Department which was denied.

- 2. Did you exhaust available administrative remedies?  
\_\_\_ Yes \_\_\_ No (CHECK ONE).

### **G. REQUEST FOR RELIEF**

State the relief you are requesting. If you need more space to complete this section, use extra paper. The additional requests for relief should be labeled "G. REQUEST FOR RELIEF."

1. Shortridge seeks exemplary, compensatory, and punitive damages against each named Respondent, jointly and severally, in this complaint in the amount of \$190,000.00 each for the pain, suffering, physical injury, mental injury, and emotional distress and irreparable physical and mental injury inflicted on Shortridge by Respondents.

2. Shortridge seeks that Brownlow and Delay receive re-training pursuant to C.R.S. § 24-31-309 to ensure proper communication, and conduct when dealing with persons of African American descent and all other minorities or at risk individuals, and that Brownlow and Delay be individually supervised to ensure compliance with re-training and that no further assaults are perpetrated by either Brownlow or Delay.

3. Shortridge seeks an immediate review of all reports, arrests, and actions by Brownlow and Delay, as well as a review of Arvada Police Department policy and procedure concerning use of force during arrest and deployment of K-9 officers to ensure that the conduct of the Respondents has not been repeated in previous encounters with other African American citizens.

4. Shortridge further seeks an order requiring Arvada Police Department to immediately outfit all officers involved in contact with the public to be required to wear body cameras to alleviate disruptive conduct and behavior by officers and to protect minority citizens from future racial bias and profiling.

5. Shortridge seeks an order requiring Arvada Police Department to immediately formulate and implement a review policy for all police reports and sworn affidavits for warrant-less arrest or use of force incidents to ensure due process and officer accountability and report veracity and accuracy. Review should include, when necessary or appropriate, contact with the subject of the

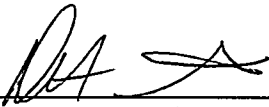
arrest or police contact, and acquisition of any surveillance footage available at the time of the incident.

6. Shortridge seeks a declaration that the acts and omissions described herein abridge Shortridge's Federal Constitutional rights pursuant to U.S.C. Const. Amend. IV (Search and Seizure); U.S.C. Const. Amend. VIII (Cruel and Unusual Punishment); U.S.C. Const. Amend. XIV (Due Process), and his right to equal protection from racial discrimination pursuant to 42 U.S.C. § 1981; as well as Colorado State Constitutional rights pursuant to C.R.S. Const. Art. 2, § 7; C.R.S. Const. Art. 2, § 20; and C.R.S. Const. Art. 2, § 25.

**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed on 5-2-18  
\_\_\_\_\_  
(Date)

  
\_\_\_\_\_  
(Prisoner's Original Signature)

Alfred A Array Court house  
901 19<sup>th</sup> St, Room A105  
Denver, CO. 80294 - 3589





CCCF	5/7/18	
FACILITY	DATE RECD	
SPONSLER	Herren	
STAFF LAST NAME	INT	
177264	Shortridge	DS
DOC#	OFFENDER LAST NAME	INT