

DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO Court Address: 201 LaPorte Avenue, Suite 100 Fort Collins, Colorado 80521 970.494.3500		DATE FILED: September 29, 2016 4:45 PM FILING ID: F98452474B3E3 CASE NUMBER: 2016CV30886
Plaintiff: CALEB HERNANDEZ, v. Defendants: CITY OF LOVELAND, and ELIZABETH ANDERSON, in her official capacity as Director of Parks and Recreation for the City of Loveland.		▲ COURT USE ONLY ▲ Case Number: 2016CV Div.: Ctrm.:
<i>Attorneys for Plaintiff:</i> Name: Stanley T. Matsunaka, #9843 Melissa K. Matsunaka, #40875 Firm: CLARK WILLIAMS AND MATSUNAKA, LLC Address: 2881 N. Monroe Ave., Ste. 1 Loveland, CO 80538 Tel: 970.663.0896 Fax: 970.667.7524 E-Mail: stan.matsunaka@gmail.com stmlaw3@aol.com		
COMPLAINT		

COMES NOW, the Plaintiff, Caleb Hernandez, by and through his attorneys, Clark Williams and Matsunaka, LLC, for his Complaint against the Defendants, hereby states as follows:

PARTIES AND JURISDICTION

1. At all times material to this complaint, the Plaintiff, Caleb Hernandez was and is a natural person, residing at 2126 Glenwood Court, Loveland, CO 80538.
2. At all times material to this complaint, the Defendant City of Loveland was operating the Loveland Sports Park as a public recreational facility, located at 950 N. Boyd Lake Avenue, Loveland, CO 80537.
3. At all times material to this complaint, the Defendant Elizabeth Anderson was the Director of Parks and Recreation for the City of Loveland.

4. The accident that forms the basis for this action occurred on April 22, 2015, at the Loveland Sports Park, in Loveland, Colorado in Larimer County, State of Colorado.
5. Venue is proper in the county of Larimer pursuant to C.R.C.P. 98 because the incident that forms the basis for this action occurred in the county of Larimer, State of Colorado.
6. Jurisdiction in this matter is proper pursuant to §13-1-124(1)(b), C.R.S. since the negligent and/or tortuous act(s) that form(s) the basis for this lawsuit occurred within the State of Colorado and because the overall damages claimed exceed the jurisdictional minimum of this Court.
7. Jurisdiction in this matter is proper pursuant to §24-10-106(1)(c), C.R.S. as immunity is waived under the Colorado Governmental Immunity Act ("CGIA") as plaintiff's alleged injuries occurred as a result of the physical condition of the public facility or the use thereof, which constitutes an unreasonable risk to the health and safety of the public, is known to exist or should have been known to exist in the exercise of reasonable care and are proximately caused by the negligent acts or omissions of the public entity in constructing or maintaining the facility.
8. Jurisdiction in the matter is proper pursuant to §24-10-106(1)(f), C.R.S. as immunity is waived under the CGIA since the plaintiff's alleged injuries are directly related from the operation or maintenance of a public facility.

GENERAL ALLEGATIONS

9. Upon information and belief, Defendant City of Loveland, owned and operated the Loveland Sports Park, which was devoted to a public purpose, and which is beneficial to a substantial segment of the public, was involved in the April 22, 2015 accident alleged herein.
10. Upon information and belief, Defendant Elizabeth Anderson, in her official capacity as the Director of Parks and Recreation for the City of Loveland, was involved in the April 22, 2015 accident alleged herein.
11. On or about April 22, 2015, Plaintiff Caleb Hernandez was skating on his skateboard in the Skate Bowls (13-14 diameter wide skate bowl) within the Skate Park at Loveland Sports Park when his skateboard's front wheels plunged through the drain plate, throwing Hernandez from his skateboard, causing him significant physical injuries. (Hereinafter referred to as the Accident.)
12. As a result of the Accident, Caleb Hernandez suffered serious injuries.

13. As a result of the Accident, Caleb Hernandez has had an ongoing need for medical treatment.
14. A Notice of Claim pursuant to §24-10-109(2)(c), was timely served on Defendants on October 20, 2015.

FIRST CLAIM FOR RELIEF:

Negligence Defendants City of Loveland and Elizabeth Anderson in her official capacity as the Director of Parks and Recreation for the City of Loveland

15. Plaintiff Caleb Hernandez incorporates, by this reference, the averments contained within paragraphs 1 through 14, above, as if more fully set forth herein.
16. As a result of the Accident, Plaintiff Caleb Hernandez has suffered serious injuries.
17. Defendant City of Loveland had a duty to maintain the premises of the Skate Bowls within the Skate Park at Loveland Sports Park.
18. Defendant Elizabeth Anderson had a duty of maintain the premises of the Skate Bowls within the Skate Park at Loveland Sports Park.
19. By failing to maintain the premises of the Skate Bowls within the Skate Park at Loveland Sports Park, Defendants City of Loveland and Elizabeth Anderson, created dangerous conditions for Plaintiff.
20. Defendants failed to keep the Skate Bowls in the same general state of being, repair, or efficiency as initially constructed.
21. Defendants failed to act in a manner in which a reasonably careful organization under the same or similar circumstances would act in order to protect oneself or others from bodily injury and/or property damage.
22. By creating a dangerous condition for Plaintiff, Defendants City of Loveland and Elizabeth Anderson, were negligent.
23. By failing to act as a reasonably careful organization under the same or similar circumstances, and by failing to exercise reasonable care, Defendants City of Loveland and Elizabeth Anderson, were negligent.
24. Defendants City of Loveland and Elizabeth Anderson's negligence was the direct, immediate and proximate cause of the injuries to Plaintiff Caleb Hernandez.
25. Defendants City of Loveland and Elizabeth Anderson's negligence was the direct, immediate and proximate cause of the damages to Plaintiff Caleb Hernandez.

26. Plaintiff Caleb Hernandez did not in any way contribute to the Accident.
27. Plaintiff Caleb Hernandez acted reasonably under the circumstances and was not comparatively at fault.
28. As a result of Defendants' negligence, Plaintiff has suffered severe personal injuries, was otherwise injured, was prevented from transacting his business, suffered loss of earnings, and incurred expenses for medical attention and hospitalization in the past and will, in reasonable probability, continue to incur medical expenses in the future for treatment of his injuries.
29. Plaintiff has incurred pain and suffering damages.
30. Plaintiff has been damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff requests:

- i. Judgment against Defendants for Plaintiff's damages;
- ii. Interest on the judgment at 8% per annum from the date of judgment;
- iii. Prejudgment interest on Plaintiff's damages as allowed by law;
- iv. Court costs; and
- v. Such other and further relief the court deems just and proper in the premises.

DATED this 16th day of September, 2016.

BY:

CLARK WILLIAMS AND MATSUNAKA, LLC



/s/ Stanley T. Matsunaka

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*A duly signed original is on file at the
office of Clark Williams and Matsunaka, LLC*