

DISTRICT COURT OF LARIMER COUNTY, STATE OF COLORADO

Court Address: 201 La Porte Avenue, Suite 100
Fort Collins, CO 80521

Phone Number: (970) 494-3500

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FILING ID: C001460287373
CASE NUMBER: 2016CV31148

Plaintiff:

HEATHER ORTIZ

▲ Court Use Only ▲

v.

Defendants:

ALEX HUTCHINSON and CITY OF LOVELAND

Adam N. Balach, No. 41992

BACHUS & SCHANKER, L.L.C.

1899 Wynkoop Street, Suite 700

Denver, Colorado 80202

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Attorneys for Plaintiff

Case Number:

Division:

CIVIL COMPLAINT AND JURY DEMAND

COMES NOW the Plaintiff, Heather Ortiz, by and through her attorneys, Bachus & Schanker, LLC, and hereby submits her Complaint, and alleges and asserts:

CERTIFICATION OF NOTICE UNDER THE COLORADO GOVERNMENTAL IMMUNITY ACT, C.R.S. § 24-10-109

Plaintiff Heather Ortiz has complied with the requirements of C.R.S. § 24-10-109, et. seq. by providing sufficient written notification within one hundred eighty-two days after the date of the discovery of the injury to the applicable government entities.

GENERAL ALLEGATIONS

1. At all times relevant to this action, Plaintiff Heather Ortiz (hereinafter "Ms. Ortiz" or "Plaintiff") was a resident of the State of Colorado with a mailing address of 8411 Eagle View Road, Loveland, CO 80538 .

2. Upon information and belief, and at all times relevant to this action, Defendant Alex Hutchinson (hereinafter "Defendant Hutchinson ") was a resident of the State of Colorado with a mailing address of 810 E 10th Street, Loveland, CO 80537.

3. Upon information and belief, and at all times relevant to this action, Defendant City of Loveland (hereinafter "Loveland") is a home rule municipality, body politic and corporation organized under the Constitution and laws of the State of Colorado, and may be sued pursuant to C.R.S. § 31-15-101, with a mailing address of 500 East Third Street, Loveland, Colorado 80537.

4. Venue is proper in Larimer County, Colorado, pursuant to C.R.C.P. 98(c), as the event that is the subject matter of this action occurred in Larimer county.

FACTUAL ALLEGATIONS

5. Ms. Ortiz incorporates herein by this reference the allegations contained in Paragraphs 1 through 4 of this Complaint as if set forth verbatim.

6. On April 25, 2016, at approximately 12:04 p.m., Ms. Ortiz was driving a maroon Chevrolet Malibu westbound in the left, #1, through lane of East Eisenhower Boulevard, at or near the intersection with N. Denver Avenue in Loveland, Colorado.

7. Ms. Ortiz had a solid green traffic signal in her direction of travel at the intersection of Eisenhower Boulevard and N. Denver Avenue.

8. Ms. Ortiz had the right-of-way at the intersection.

9. At the same time and place, Defendant Hutchinson was in his Chevrolet Caprice patrol car, northbound in the far right portion of N Denver Avenue in Loveland, Colorado.

10. Defendant Hutchinson was at all times employed as a police officer for the City of Loveland, and was at all times acting within the course and scope of his employment as a police officer for the City of Loveland with the Loveland Police Department.

11. Defendant Hutchinson had a red traffic signal in his direction of travel.

12. As Ms. Ortiz was entering the intersection on a green traffic signal, Defendant Hutchinson entered the intersection on a red traffic signal and caused a collision (the "collision") between Defendant Hutchinson and Ms. Ortiz.

13. The collision resulted in Ms. Ortiz's vehicle broadsiding the passenger side of Defendant Hutchinson's vehicle.

14. The collision caused Defendant Hutchinson's vehicle to deflect to the northwest and collide with Ms. Ortiz's vehicle for a second time. Defendant Hutchinson's vehicle rode up onto a raised median where it stopped.

15. After the second impact with Defendant Hutchinson, Ms. Ortiz's vehicle deflected and spun clockwise into the middle of N. Denver Avenue on the north side of the intersection and struck the 2000 Isuzu driven by Richard Jones.

16. Crash Data Retrieval ("CDR") system uploads were retrieved from both the vehicle driven by Ms. Ortiz and the vehicle driven by Defendant Hutchinson.

17. The CDR uploads were transposed onto an excel spreadsheet for comparison and analyses by Loveland Police Department Officer, Andres Salazar.

18. Officer Salazar conducted an investigation and reconstruction of the collision on behalf of the Loveland Police Department.

19. According to Officer Salazar's report, the two CDR uploads provided six categories, which include: time, accelerator, brake, engine speed, engine throttle, and miles per hour/MPH.

20. Officer Salazar reported that Defendant Hutchinson's vehicle had reported time values every .5 seconds for 5 seconds prior to the collision, and that Ms. Ortiz's vehicle had reported time values every second for 5 seconds prior to the collision.

21. According to Officer Salazar, he applied a F/S² and distance traveled calculation.

22. When calculating the distance traveled for Defendant Hutchinson, Officer Salazar determined that Defendant Hutchinson's vehicle was approximately 116.55', which is at or near the stop line for northbound traffic 5 seconds prior to the collision.

23. Officer Salazar then determined that Ms. Ortiz's vehicle was approximately 375.30' east 5 seconds prior to the collision, and determined Ms. Ortiz's speed to be approximately 51.2 mph.

24. Officer Salazar also spoke with three witnesses Philip Bustad, Jerry Beers, Sandy McKinney, and Richard Jones.

25. Officer Salazar also reviewed video footage of the intersection from the time of the collision.

26. Officer Salazar concluded that Defendant Hutchinson accelerated from 6 mph to a top reported speed of 31 mph. Officer Salazar determined that Defendant Hutchinson did not accelerate gradually based on his analysis of the CDR upload, and that the throttle percentage increased from 0%.

27. Officer Salazar concluded that traffic congestion was likely a factor for the ineffectiveness of emergency equipment from Defendant Hutchinson's vehicle.

28. Officer Salazar concluded that Defendant Hutchinson had attempted to clear seven lanes of perpendicular travel that had a posted speed of 45 mph, and that westbound left turn lanes created a substantial hazard for Defendant Hutchinson because of the amount of traffic utilizing the lanes to enter the shopping center to the south.

29. Officer Salazar further concluded that Defendant Hutchinson didn't take into consideration the roadway, width and conditions; that the roadway design and basic venue were large and required ample space and time to navigate safely; and the time of day, lunch hour, added to the additional considerations of more cautious maneuvering while utilizing emergency equipment.

30. Officer Salazar ultimately concluded that Defendant Hutchinson failed to exercise due regard when entering an intersection on a red light and was responsible for the collision.

31. Defendant Hutchinson was required to drive with due regard for the safety of all persons.

32. Defendant Hutchinson did not take into account the width of the roadway he needed to clear.

33. Defendant Hutchinson did not take into account the traffic conditions when he entered the intersection.

34. Defendant Hutchinson did not consider that he needed ample space and time to navigate the intersection safely.

35. Defendant Hutchinson did not proceed slowly enough or slow down in a way necessary for safe operation of his vehicle.

36. Defendant Hutchinson endangered life and property when he accelerated at too high of a speed too quickly through the intersection.

37. As a result of the collision caused by Defendant Hutchinson, Plaintiff Ortiz has sustained past and future economic losses, injuries and damages, including, but not limited to: loss of earnings or damage to her ability to earn money in the future; reasonable and necessary medical, hospital and other expenses for health care, treatment and services; and other recoverable economic losses, injuries and damages.

38. As a result of the collision caused by Defendant Hutchinson, Plaintiff Ortiz has sustained past and future, non-economic losses, injuries and damages including, but not limited to: physical and mental pain and suffering, inconvenience, emotional stress, impairment of the quality of life, and loss of enjoyment of life.

39. As a result of the collision caused by Defendant Hutchinson, Plaintiff Ortiz has sustained physical impairment and disfigurement.

FIRST CLAIM FOR RELIEF
Negligence of Defendant Hutchinson

40. Plaintiff incorporates herein by this reference the allegations contained in Paragraphs 1 through 39 of this Complaint as if set forth verbatim.

41. Defendant Hutchinson owed a duty to Plaintiff to use reasonable care in the operation of the motor vehicle he was driving at the time of the collision.

42. Defendant Hutchinson breached his duty of reasonable care and caused the collision.

43. Defendant Hutchinson's breach of his duty to use reasonable care in operating his vehicle was negligent.

44. Defendant Hutchinson's negligence was willful and wanton.

45. Plaintiff was not comparatively negligent.

46. As a cause of Defendant Hutchinson's negligence, Plaintiff has sustained past and will probably have in the future, economic losses or injuries, including: loss of earnings or damage to her ability to earn money in the future; reasonable and necessary medical, hospital and other expenses; and other recoverable economic losses, injuries and damages.

47. As a cause of Defendant Hutchinson's negligence, Plaintiff has sustained in the past and will probably have in the future, non-economic losses or injuries, including: physical and mental pain and suffering, inconvenience, emotional stress, impairment of the quality of life, and loss of enjoyment of life, and other non-economic losses.

48. As a cause of Defendant Hutchinson's negligence, Plaintiff has sustained physical impairment and disfigurement.

SECOND CLAIM FOR RELIEF
Respondeat Superior – Defendant City of Loveland

49. Plaintiff incorporates herein by this reference the allegations contained in Paragraphs 1 through 48 of this Complaint as if set forth verbatim.

50. At the time of the collision, Defendant Hutchinson was an employee and agent of the City of Loveland.

51. On the date, and at the time of the collision, Defendant Hutchinson was operating the motor vehicle within the course and scope of his employment, agency and authority with Defendant Loveland.

52. The negligent acts and omissions of Defendant Hutchinson at the time of the collision are by law the acts and omissions of Defendant Loveland.

53. Defendant Loveland is responsible through Respondeat Superior for the negligent acts and omissions of Defendant Hutchinson, that caused Plaintiff's economic losses, non-economic losses, and physical impairment and disfigurement damages as stated.

JURY DEMAND

Trial to a jury of six is demanded on all issues so triable.

WHEREFORE, the Plaintiff, Heather Ortiz, prays that this Court enter Judgment against Defendants Alex Hutchinson and City of Loveland in an amount to be determined at trial, for pre-judgment and post-judgment interest, attorney's fees, costs of suit, expert witness fees, and for such other and further relief as the Court may deem just and proper.

DATED this 15th day of December, 2016.

Respectfully submitted,

BACHUS & SCHANKER, L.L.C.

/s/ Adam Balach

Adam N. Balach, Esq., #41992
Attorney for Plaintiff Heather Ortiz

Plaintiff's address:
8411 Eagle View Road
Loveland, CO 80538