

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

Civil Action No. 15-CV-635-CMA-KLM

JOEL RAGUINDIN;
JENNA FOX;

Plaintiffs,

v.

MICHAEL YATES, individually;
JASON PHIPPS, individually;
MIKE PARKOS, individually.
PATRICK HAUGSE; individually;
CHIEF OF POLICE RICK BRANDT, in his official capacity;

Defendants.

FIRST AMENDED COMPLAINT WITH REQUEST FOR TRIAL BY JURY

Plaintiffs Joel Raguindin and Jenna Fox, by and through their attorneys, Holland, Holland Edwards & Grossman, P.C., amend their complaint after service as a matter of course under F.R.C.P. Rule 15, and now complain against Defendants and request trial by jury as follows:

I. INTRODUCTION

1. This case seeks damages under 42 U.S.C. §1983 against the City of Evans through the official actions of Police Chief Brandt and against individual related government actors working in the Evans Police Department, for their individual misconduct and conspiracy to cover up, for well over two years, the murder of Ashley Fallis by her husband Tom Fallis, a Weld County Corrections Officer.

2. On January 1, 2012, Ashley Fallis died from a gunshot wound to the head following a New Year's Eve party at her home in Evans, Colorado.

3. At all times relevant hereto, there was substantial evidence that Ashley Fallis was shot and killed by her husband, Tom Fallis.

4. During the ensuing “investigation” of her death, high ranking detectives, sergeants, and/or commanders at the Evans Police Department willfully jointly acted to cover up a potential homicide, by the calculated suppression of inculpatory witness accounts in their possession relating to Tom Fallis’ guilt, by the purposeful alteration and/or destruction of original inculpatory statements into false exculpatory ones, by intentionally and in bad faith ignoring incriminating statements and crime-scene evidence, and by the refusal to follow basic homicide investigation protocols such as testing DNA, all in order to make this homicide appear like a suicide.

5. On January 6, 2012, less than one week after her death, based on false, altered and incomplete information provided by Evans Police Department officials, Ashley Fallis’ death was pronounced to be a suicide by the Weld County Coroner’s office on her Death Certificate, which was publicized.

6. Subsequently, Justin Joseph at Fox31 News Denver conducted an in depth inquiry into Ms. Fallis’ death, uncovering and reporting for the first time in April 2014 numerous omissions and discrepancies in the Evans Police investigation.

7. Based on this investigative reporter’s findings, the Evans Police Department reopened the investigation and turned the homicide investigation over to the Fort Collins Police Department for an independent investigation.

8. On or about November 17, 2014, based on the Fort Collins investigation, Tom Fallis was indicted for second-degree murder by a Weld County grand jury.

9. Due to Defendants' concerted acts to fraudulently conceal their conduct and this homicide well into 2014, Plaintiffs did not and could not have, through the exercise of reasonable diligence, discovered the basis for their claims against Defendants until the reporting by Justin Joseph in April 2014, as these claims did not accrue and were equitably tolled to at least that point.

10. The records of the Fort Collins police investigation and of the Grand Jury proceedings are not yet available to Plaintiffs because of the pending criminal proceedings. Counsel for some of the Defendants has stated that he will not make the entire criminal investigation records of the Evans Police Department in Defendants' control available voluntarily.

11. The Loveland Police Department investigation into the conduct of Defendant Yates or others is currently unavailable to Plaintiffs.

12. According to Defendant Brandt in August 2014, the Evans Police Department is conducting an internal investigation of the conduct of the individual Defendants, which is also not yet available.

13. Defendants' conduct challenged herein, including the cover up of this killing for well over two years, interfered with and burdened Plaintiffs' constitutional due process rights of access to courts and liberty rights, by obstructing their legitimate efforts to vindicate the killing through judicial redress, causing the loss or inadequate resolution of their claims.

14. Defendants conduct has thus greatly interfered with, blocked and thwarted Plaintiffs efforts to gain control of their daughter's estate, to meaningfully and timely enforce the laws pertaining thereto under the slayer statutes, and to invoke and employ, without such

extraordinary burdens, statutory rights designed to allow them to protect, care for and be with their surviving grandchildren after their daughter was killed.

II. JURISDICTION, VENUE, AND NOTICE

15. This action arises under the Constitution and laws of the United States, including Article III, Section 1 of the United States Constitution and is brought pursuant to 42 U.S.C. §1983 and 42 U.S.C. § 1988. The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, and 1343.

16. This case is instituted in the United States District Court for the District of Colorado pursuant to 28 U.S.C. §1391 as the judicial district in which all relevant events and omissions occurred and in which Defendants maintain offices and/or reside.

17. Supplemental pendent jurisdiction is based on 28 U.S.C. §1367 because the violations of Federal law alleged are substantial and the pendent cause of action derives from a common nucleus of operative facts.

18. Timely notice of state law claims was given on August 18, 2014 under the Colorado Governmental Immunity Act.

III. PARTIES

19. At all times relevant hereto, Plaintiffs Joel Raguindin and Jenna Fox were residents of the State of Colorado and citizens of the United States of America.

20. Plaintiffs Raguindin and Fox are the father and mother of Ashley Fallis, deceased.

21. At all times relevant hereto, Defendant Michael Yates was a citizen of the United States and a resident of the State of Colorado and was acting under color of state law in his

capacity as a Police Officer for the Evans Police Department. Defendant Yates is sued individually.

22. At all times relevant hereto, Defendant Jason Phipps was a citizen of the United States and a resident of the State of Colorado and was acting under color of state law in his capacity as a Sergeant in Investigations employed by the Evans Police Department. Defendant Phipps is sued individually.

23. At all times relevant hereto, Defendant Mike Parkos was a citizen of the United States and a resident of the State of Colorado and was acting under color of state law in his capacity as a Commander employed by the Evans Police Department, and in charge of the subject investigation herein. Defendant Parkos is sued individually.

24. At all times relevant hereto, Defendant Patrick Haugse was a citizen of the United States and a resident of the State of Colorado and was acting under color of state law in his capacity as a Commander employed by the Evans Police Department, and involved with the subject investigation herein. Defendant Haugse is sued individually.

25. At all times relevant hereto, Defendant Rick Brandt was a citizen of the United States and a resident of the State of Colorado. Defendant Brandt is currently sued, pending discovery, only in his official capacity as the Chief of Police of the Evans Police Department for the City of Evans, Colorado and final decision-maker or final delegated decision-maker acting under color of state law.

26. Because of lack of access to documents which are in the exclusive control of Defendants and/or the Evans Police Department, individual Defendants' exact actions cannot yet be more precisely identified by Plaintiffs prior to discovery and, to avoid prolixity, while

permitting individual responses, this is often indicated hereafter by allegations that all of them engaged in or had knowledge of the wrongful conduct identified in any particular paragraph.

27. On information and belief, there are other involved Defendant John Doe and Defendant Jane Doe individuals, presently unknown, including from the Weld County Sheriff's Department and/or other public employees who actively participated in the willful suppression or destruction of material evidence relating to Tom Fallis' guilt, or have knowledge of these wrongful individual Defendant acts, and Plaintiffs give notice that they may amend this Complaint to add additional parties after discovery.

IV. STATEMENT OF FACTS

The Shooting

28. Before Ashley Fallis was shot and killed shortly after midnight on January 1, 2012, Tom Fallis and Ashley Fallis had hosted a New Year's Eve Party for family and friends at their home.

29. About 15-20 people were there throughout the night, including Mr. Fallis' parents, Jim and Anna Fallis, Plaintiffs Fox and Raguindin, Ashley Fallis' Aunt and Uncle, Peggy and John Schmitzer, and their son, Eric Schmitzer.

30. Tom and Ashley Fallis' three children, who include their then six and nine year old daughters and their four-year-old son, were also at the house.

31. During the evening, Ms. Fallis had been enjoying herself, dancing with her daughter and socializing with their guests.

32. Sometime between mid and later evening, Plaintiff Fox asked Tom Fallis to lower his voice because he was screaming and cussing about fantasy football.

33. Plaintiff Fox was trying to defuse this situation and asked Mr. Fallis to be quiet and not swear so loudly, because there were children in the home.

34. Mr. Fallis just became angrier, yelling repeatedly “fuck those kids”, and that the kids always woke him up and that he didn’t need to be quiet.

35. At approximately 12:30 a.m., Mr. Fallis lost his temper and started yelling at Peggy Schmitzer because he believed marijuana was present in his home, and because he apparently believed that Ms. Fallis was going outside to smoke marijuana.

36. Tom Fallis yelled that his wife “didn’t have a brain in her fucking head.”

37. Tom Fallis was irate, explosive, and abusive with his words.

38. He told Plaintiffs and other family members that he hated them and said, “fuck everybody, I wish you all would die.”

39. Mr. Fallis then went to the master bedroom and slammed the door.

40. Shortly after Fallis’ last outburst, the remaining guests consisting of Ms. Fallis’ family left the house.

41. Ashley Fallis walked her family outside the house. Ms. Fallis stated that she was planning to host a superbowl party and wanted Plaintiffs to attend.

42. This was the last time Plaintiffs saw their daughter alive.

43. The only people in the house at that point were Tom and Ashley Fallis, their three children, and Tom Fallis’ niece and nephew, both also children.

44. Plaintiffs Raguindin and Fox, and Ashley Fallis’ aunt and uncle drove down the street and parked to discuss Mr. Fallis’ wild and erratic behavior they had just observed.

45. Back at the Fallis residence, Mr. and Ms. Fallis argued in the master bedroom.

46. According to the indictment, Mr. Fallis picked up a 9mm Taurus handgun, and during a struggle, held the gun to the right side of his wife's head and shot her.

47. Mr. Fallis called 911 at 12:50 a.m. on January 1, 2012.

48. He immediately claimed it was a suicide, telling 911 "my wife just shot herself in the head."

49. The Fallis' oldest daughter, then nine years old, sent the following emails to Mr. Raguindin: 12:51 a.m.: "Help!!!!"; 12:52 a.m.: "Come here, help!!"; 12:53 a.m.: "She got shot".

50. Law Enforcement from the Evans Police Department arrived on scene.

51. As Plaintiffs were about to leave where they were parked nearby, they saw police entering the neighborhood. They immediately drove back to the house, terrified for their daughter.

52. Plaintiff Raguindin called Mr. Fallis' mother, Anna Fallis, and told her to get back to the house because something bad had happened.

53. Tom Fallis was outside of the house yelling and being aggressive.

54. When Evans police officers arrived at the house, Mr. Fallis immediately informed them he was a Deputy Sheriff, yelling to various police officers: "I am a Weld County Deputy CO2."

55. Mr. Fallis demanded that Evans police contact Commander Rodriguez and Deputy Koppes of the Weld County Sheriff's Office to come to the scene.

56. Mr. Fallis was yelling and having verbal altercations with officers.

57. Evans Police Officer Miramontes actually had to threaten Mr. Fallis with his Taser because he was approaching him in an aggressive manner and clinching his fists.

58. According to Evans Police Officers' reports, during the crime scene investigation, Weld County Deputy Wills stopped by the scene and spoke with one of the responding Evans police, Officer Rodriguez.

59. Deputy Wills said he recognized the Fallis' name broadcasted over the radio and came to the house to see if the Evans Police Department needed anything.

60. Deputy Wills stated to Evans police officers that he knew Mr. Fallis from working with him at Weld County.

61. On information and belief, other top-level officials and or other John Doe or Jane Doe Defendants from the Weld County Sheriff's Department became immediately involved with the case, visited the crime scene or the Evans Police Department, participated in the early review of the same, and/or were involved with the suppression or destruction of evidence.

62. At some point after Mr. Fallis' parents returned to the house, Plaintiff Raguindin saw Jim Fallis on the phone.

63. Jim Fallis, who had been a prominent Athletic Director at the University of Northern Colorado, accompanied Tom Fallis to the police station and was interviewed.

64. While at the police station, Tom Fallis continued his rage against Ashley Fallis' family, stating that Jenna Fox was evil and he did not want his children to be with Plaintiffs.

65. At 3:44 a.m. on January 1, 2012, Ashley Fallis was pronounced dead.

The Cover-up Investigation

66. The investigation into Ms. Fallis' death and its cover-up was conducted and/or supervised *inter alia* by Defendant Officer Michael Yates, Defendant Sergeant Jason Phipps,

Defendant Commander Mike Parkos, and Defendant Commander Patrick Haugse, who were all working together and sharing information.

67. During the investigation, Evans Police Officers, including these Defendants, strained to ignore and knowingly omitted key incriminating witness accounts from their investigation reports, altered and/or destroyed witness statements, and purposely failed to follow standard protocol for a homicide investigation in order to summarily accept fellow law enforcement officer Fallis' story that his wife had killed herself, a story that was reported in the news media by the Evans Police Department, including Defendant Haugse, starting just a day or two after her death.

68. The various police reports, interviews, findings and recommendations of Evans law enforcement were reviewed in their entirety by Chief Brandt, who concluded that the shooting was a suicide and closed the case.

69. A neighbor and witness Nick Glover was interviewed by Officer Yates and told him that he overheard Tom Fallis confess to his parents that he murdered his wife, as reported by Fox31 News in April 2014.

70. Nick Glover reportedly told Defendant Yates that he distinctly heard him say, "I shot her."

71. More specifically, during his interview with Officer Yates, shared, on information and belief, with the other individual defendants, Mr. Glover reported that he heard the following incriminating exchange immediately after the shooting between Mr. Fallis and his parents:

- Mr. Fallis: "Oh my God, I can't believe I did it. Oh my God, what have I done. What have I done."
- Mr. Fallis' parents: "What. What are you saying."

- Mr. Fallis: “I shot her.”

72. Outrageously, Officer Yates and/or other involved Defendants consciously decided to not include this highly incriminating confession witnessed by Mr. Glover in their official reports.

73. Officer Yates, on information and belief, supported and/or supervised by the other individual defendants, additionally altered/destroyed another witness’s original reporting of the shooting, changing her report from a highly incriminating account into a manufactured suicide account.

74. Thus, Mr. Glover’s mother, Kathy Glover, reported to Officer Yates that she received a phone call from neighbor Chelsea Arrigo immediately after the shooting.

75. She reported that Ms. Arrigo told her: “***Call police, your neighbor just shot his wife.***” (Emphasis supplied).

76. Officer Yates, on information and belief, with the knowledge or support of the other individual defendants, however, deliberately altered and/ or destroyed this phone conversation in his official report, falsely characterizing Ms. Arrigo’s original statement to Ms. Glover as: “***[P]lease tell me you called the cops...your neighbor just shot herself.***” (Emphasis Supplied).

77. Upon learning that their accounts had been altered, Nick Glover and Kathy Glover reportedly prepared sworn affidavits describing their original accounts to the police, and have also stated that they were shocked to learn of the omissions and misstatements in the police reports that were prepared.

78. When confronted about his conduct as described by these witnesses, Defendant Yates reportedly did not deny the claims and referred the reporter to Chief Brandt.

79. At all times relevant hereto, Officer Yates was working closely with the co-defendants on this investigation and discussing all the evidence in the case.

80. The intentional cover up and knowing decision to falsely label this a suicide is further shown by the involved investigating Defendant officers' willful failure to investigate or even consider the evidence that was readily available from the police reports or other records, as well as their decision not to even present the case to the District Attorney.

81. On information and belief, the named individual Defendants chose to ignore a number of other critical incriminating observations that neighbor Arrigo made to investigating officers, including that Ms. Arrigo heard Ms. Fallis being assaulted by Tom Fallis.

82. Ms. Arrigo, who lived in the neighboring house behind the Fallis residence, told Greeley Police Department Sergeant Turk and Evans Police Department Officer Croissant that she overheard the shooting.

83. Ms. Arrigo told Officer Croissant that as she lay in her bed watching TV, she heard an argument between a man and a woman coming from the Fallis residence.

84. Ms. Arrigo told Officer Croissant that she heard a male yelling "your fucking mom...your mom...your fucking mom...answer my fucking question."

85. Ms. Arrigo told Officers Turk, Croissant, and Yates that she heard a female voice yelling "get off of me...get off of me".

86. Ms. Arrigo further informed Officer Croissant that she heard a male voice yelling, "don't leave me."

87. Ms. Arrigo told Officer Croissant that she then heard what sounded like “a vase breaking.”

88. Individual Defendants’ who were in charge of the investigation knew this information from Ms. Arrigo but chose to disregard these critical accounts of domestic violence reported immediately prior to an alleged suicide.

89. Additionally, the Fallis children were improperly interviewed by Detectives Lisa Duffy and Rita Wolf, neither of who are professional forensic child psychiatrists, and without the required presence of any such professionals there.

90. To the express knowledge of all Defendants, Ashley Fallis’, then six year old daughter, reported about her own father, Tom Fallis: “**I saw my Daddy get the gun ready and shoot mommy 3 times**”, but this eye-witness statement was completely and utterly disregarded by these Defendants in charge of this investigation. (Emphasis supplied.)

91. Officer Rita Wolf conducted the first interview of Mr. Fallis.

92. Mr. Fallis kept pushing his suicide story to Officer Wolf, stating that his wife was upset because she had a miscarriage, despite her fallopian tubes having been tied.

93. Mr. Fallis denied any physical altercation, but since released photographs from the crime scene show this to be false, as the Fallis’ bedroom was in disarray with a number of pictures torn off the wall.

94. These photographs showing a struggle in their room where Ashley Fallis was shot were known to and likewise disregarded by all these individual Defendants.

95. Individual Defendants also found or knew about divorce papers on Ashley Fallis' dresser that night, yet they also all chose to ignore this critical motivating factor while falsely concluding that Ms. Fallis killed herself.

96. To the knowledge of the individual defendants, during his interview with Detective Wolf, investigators observed three scratches on Mr. Fallis' chest, approximately ½-1 inch long, one on his neck, approximately 1-2 inches long, and one on top of his right forearm, approximately 1 inch long.

97. Tom Fallis claimed he had scratched his own chest and the marks were not from his wife.

98. DNA samples were obtained from these scratches to the knowledge of these individual defendants, but Defendants outrageously decided not to involve a District Attorney in the case or otherwise cause them to get properly tested.

99. To individual defendants knowledge, such DNA testing is basic and fundamental to a non-sham investigation of this type of matter.

100. Mr. Fallis' self-serving statements that there was no fight at all were simply baselessly and knowingly accepted by all these Evans Police Department Defendants who were in charge of the investigation, despite eyewitness testimony, reports that he had been irate and explosive, physical evidence of scratches, and a crime-scene that showed a physical altercation of some sort had occurred.

101. DNA samples have reportedly since been tested and the results indicate that Mr. Fallis' DNA was underneath Ms. Fallis' fingernails, which is consistent with other reports of a physical confrontation between the two and the scratch marks on his chest.

102. Despite the large amount of evidence showing that Tom Fallis murdered his wife, all these investigating individual Defendants, with the ultimate ratification of Defendant Brandt, decided to look the other way, all letting the deputy walk free.

103. The Evans Police Department involved Defendants actually designated and publicized Ms. Fallis' death a suicide on January 2, 2012, *the day after* the shooting - - before any meaningful investigation could be completed, and before the Weld County pathologist and/or coroner had even issued a report.

104. Thus, on January 2, 2012, Defendant Commander Haugse reported all Defendants determination to the online Greeley Tribune that Ms. Fallis had committed suicide, although this post was later removed.

105. On January 3, 2012, in an article entitled: "Police: Evans shooting appears to be suicide", Defendant Commander Haugse, told the Greeley Tribune that evidence had led these Defendant investigators to believe that "no criminal activity took place".

106. On January 6, 2012, based on Defendants faulty, altered and/or destroyed evidence, apparently unaware of the actual facts recited herein, which, on information and belief, these individual Defendants knowingly decided not to provide, the Weld County Coroner and/or pathologist also declared Ms. Fallis' death a suicide.

107. Chief Brandt reviewed the investigation, undoubtedly spoke with the other Defendants, and decided not to even present the case to the District Attorney.

108. On March 1, 2012, as the final and/or final delegated decision maker for the City of Evans, Chief Brandt formally closed their investigation and officially ratified the designation that Ms. Fallis' death was a suicide.

109. Joel Raguindin and Jenna Fox repeatedly asked the Evans Police Department to not close the investigation, stating that they believed their suicide conclusion was premature.

110. At that time, and until the aforementioned reporting in April 2014, Plaintiffs had no way of knowing that the suicide designation was the result of a corrupt investigation that was intentionally incomplete and based on what was internally known to the involved Defendants to be a highly inaccurate version of the key facts about the incident, which these individual Defendants fraudulently concealed from Plaintiffs and the public, making the doctrines of equitable tolling and fraudulent concealment applicable to the accrual and filing of these claims.

111. As a result, individual Defendants denied and burdened to the point of rendering meaningless Plaintiffs' constitutional rights to access and petition a Court in "Civil Proceedings" as "interested persons" to determine that their daughter's death was the result of a "felonious killing" within the meaning of § C.R.S. 15-11-803.

112. Individual Defendants additionally burdened to the point of rendering meaningless Plaintiffs' constitutional rights to access courts and gain sufficient control of their minor grandchildren, protect the estate, and meaningfully bring a wrongful death claim (including for felonious killing) under § 13-21-201 *et seq.* and related statutes against Tom Fallis as their next friends or guardians *ad litem* as provided for under C.R.C.P 17(c).

113. Individual Defendants also denied and burdened Plaintiffs constitutional rights to access to court to take action under C.R.S. § 13-81-101, *et seq.* to obtain the appointment of a legal and personal representatives, including themselves, to represent and protect the interests of their three grandchildren under C.R.S. § 13-81-101.5 as persons under disability.

114. Individual Defendants further denied and burdened Plaintiffs constitutional right to access to courts to establish guardianship of their three grandchildren under C.R.S. § 15-14-101 *et seq.*, who remained in the custody of Tom Fallis and have since been awarded temporary custody to his mother, Anna Fallis.

115. Finally, on information and belief, these Defendants and other members of the Evans Police Department also burdened their access to their grandparent rights under C.R.S. § 19-1-117 by supporting Tom Fallis' attempt to label them as irrational and delusional for believing that their daughter didn't kill herself, but was actually killed by Tom Fallis.

116. With respect to even grandparent visitation rights, Plaintiffs had to seek court intervention to obtain any access to their three grandchildren, who Tom Fallis outright refused to let them see starting immediately after the close of the investigation into Ms. Fallis' death.

117. In August 2012, the Evans Police Department findings were used by Tom Fallis, with related Defendants' assistance, to burden Plaintiffs grandparents' statutory rights in a contested grandparent rights proceeding in Colorado state court.

118. Tom Fallis and his Counsel urged the Court to deny, limit and burden Plaintiffs' access to obtain grandparent rights by arguing that their fitness was questionable because they were "irrational" for refusing to accept Defendants' findings of suicide, as Tom Fallis and his counsel asserted in such proceedings.

119. Tom Fallis further asserted that Plaintiffs' concerns about the Evans Police Department not doing their job also bore on their fitness to have such rights.

120. Defendants knew that Plaintiffs were involved in a contested grandparents rights hearing as they actively supported Tom Fallis leading up to such contested proceedings.

121. On information and belief, Defendant Phipps and other Evans Police Department officials voluntarily and actively supported Tom Fallis' efforts to block Plaintiffs from grandparents rights and visitation, including assisting such efforts before Court proceedings on this issue and voluntarily appearing to support and even testify on their behalf without subpoena, in a continuing effort to further this cover up and protect Tom Fallis, a fellow law enforcement official.

122. As a result of Defendants' stigmatizing findings of suicide, plus this attack in grandparent proceedings, after eight months of not seeing their grandchildren because of Defendants' outrageous cover-up, Plaintiffs were forced to defend themselves as not irrational for refusing to blindly accept their daughter's suicide and unfit to therefore receive their legally sought visitation rights.

123. Mr. Fallis subsequently moved with his three children to Bloomington, Indiana.

Fort Collins Police Investigation and Indictment of Tom Fallis

124. Plaintiffs continued to try to get help with finding out what happened to their daughter, which they were unable to afford and not properly equipped to undertake on their own.

125. As aforealleged, Justin Joseph at Fox31 News Denver began an inquiry into the police investigation and into the circumstances of Ashley Fallis' death.

126. Reporter Justin Joseph spent over a year combing through records and finding witnesses to this death, as outlined herein.

127. Fox31 Denver also hired a nationally renowned independent forensic pathologist, Dr. Cyril Wecht, to review the Fallis case, including witness statements, forensic evidence, and crime scene photos.

128. According to Dr. Wecht's independent expert opinion, Mr. Fallis should have been charged with murder and the conduct by Evans Police Department officers warranted an independent investigation into a possible cover up by these officers.

129. Based on his review, Dr. Wecht opined: "To say the investigation was botched was to attribute it to negligence or incompetence or lack of experience, but we've gone beyond that to something conspiratorial in nature."

130. Shortly after this April 2014 news report, the Evans Police Department re-opened the investigation into Ms. Fallis' death and a new investigation was conducted independently by the Fort Collins Police Department.

131. The Weld County Pathologist, Dr. Wilkerson, has since retracted his cause of death as suicide, reportedly stating in a letter that: "Physical altercation preceded death. Other factors in new investigation do not unequivocally support suicide as a manner of death. Homicide is also a consideration."

132. Mr. Fallis was indicted for the murder of Ashley Fallis in November 2014.

133. All of the above-described acts were done pursuant to preexisting and ongoing deliberately indifferent policies, customs, training and supervision of the Evans Police Department, including by Defendant Brandt in his official capacity as Chief of Police.

134. After the cover-up of this homicide and identities of the involved parties were brought to light by Reporter Joseph, a former Evans police officer publicly came forward and spoke out about the corruption permeating the Evans Police Department.

135. This officer feared retribution so his or her identity was not disclosed.

136. This former Evans Police Officer reported having worked with some of the involved Defendant officers in this case.

137. The former officer accused some of these Defendants of serious misconduct in previous cases, including mishandling of evidence.

138. When Reporter Joseph asked, “Did you ever see the detectives that you worked with, the detectives that are now working on the Fallis case change or alter evidence?” the former officer responded: “Yes. In my experience there were times when sergeants and lieutenants change their reports to the way they wanted them written, and I was not comfortable with those changes.”

139. Notably, this former officer raised these complaints of misconduct and mishandling of evidence well *before* Ms. Fallis’ death.

140. The officer also spoke about the widespread pattern of corruption at the Evans Police Department of mishandling evidence and protecting their own, variously stating:

- a. “I feel that when officers mess up they’ll do whatever it takes to protect their own”;
- b. “If they like you . . . they’ll protect you to no end.”
- c. “They will do whatever it takes to solve a crime the way they want to solve it.”
- d. “If you complain and tell the truth against the culture you’re retaliated against.”
- e. “If you’re asked questions and if you’re caught at something you deny, deny, deny.”

141. Pursuant to these long-standing customs, Officer Yates and the other Defendants have thus far received no discipline.

142. Indeed, Sergeant Phipps has been promoted to a Commander position.

143. Ashley Fallis was extremely close to her parents and was a loving mother to her three children.

144. Here is a picture of Ashley Fallis:



145. Ashley Fallis was the Director of the Colorado chapter of the Pediatric Hydrocephalous Foundation, a non-profit advocacy organization. She became active in this organization because of her son Blake, who had hydrocephalus.

146. Ms. Fallis and her family had traveled to Washington, D.C., so that she could testify in front of Congress about her son's hydrocephalous and obtain funding.

147. Joel Raguindin and Jenna Fox have suffered not only the devastation of losing their daughter, but have been deprived of their due process rights, stigmatized, and also are suffering the severe trauma of experiencing a purposely derelict official police investigation of their daughter's death, an investigation that was designed and intended in bad faith by those involved to protect Tom Fallis, a Weld County Deputy Sheriff, and deep six and cover up eye witness reports of his alleged criminal conduct.

148. They would be much further along in the healing process had these public employees done their jobs and not covered up the cause of their daughter's death at human hands. Their grieving process has been substantially interfered with and altered by Defendants unconstitutional conduct.

149. Plaintiffs care deeply about the health, safety, and happiness of their grandchildren. Because of the actions of Defendants in omitting and changing police reports to cover up this homicide for well over two years, not only have they been stigmatized with their efforts to gain control over their grandchildren, but Plaintiffs have lived in a constant fear for the safety and well being of these grandchildren, who were moved out-of-state in Tom Fallis' custody.

150. The three Fallis children, one of whom reported seeing her father shoot her mother, now live with Mr. Fallis' parents, who were reported to have overheard their son's own confession to killing Plaintiffs' daughter.

151. Plaintiffs also experienced the extraordinary on-going difficulty of a continued relationship with a person who they believe to have shot their daughter, and who was not originally subject to a full or complete investigation by conspiratorial design. They also fear for the ability of their grandchildren to properly cope with their mother's death because it was prematurely and falsely determined to be a suicide.

152. As a result of the Defendants' conduct, Plaintiffs have suffered substantial injuries and losses, entitling them to compensatory and special damages, including but not limited to, denial of access, loss of constitutional and statutory rights, legal expenses, emotional distress,

reputational assault, stigma, and ongoing special damages for any medically/psychologically related treatment liens and expenses, in amounts to be determined at trial.

153. Plaintiffs are further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law.

154. Plaintiffs are also entitled to punitive damages against individual Defendants on their federal claims, in that the actions were taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiffs.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983 – Denial of Due Process Including Access to Courts in Violation of the Fourteenth Amendment (Against all Defendants)

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

156. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress . . .

157. Plaintiffs in this action are citizens of the United States and all of the individual Defendants to this claim are persons for purposes of 42 U.S.C. § 1983.

158. All individually sued Defendants to this claim, at all times relevant hereto, were acting under the color of state law in their capacity as Evans law enforcement and their acts or omissions were conducted within the scope of their official duties or employment.

159. These individual Defendants and police officials shielded from the public and Plaintiffs key facts which would form the basis of the Plaintiffs' claims for redress, stymied an investigation, destroyed original evidence, and intentionally and in bad faith did not present all of the available evidence to the coroner and pathologist, in order to support their preordained conclusion that this death was a suicide.

160. Due to the ongoing nature of Defendants' conspiracy to violate their constitutional rights well into 2014, as well as Defendants' concerted bad faith acts to fraudulently conceal such conduct, Plaintiffs did not and could not have, through the exercise of reasonable diligence, discovered the full basis for their claims against Defendants until on or about April 8, 2014, making the doctrines of equitable tolling and fraudulent concealment applicable to the accrual and filing of these claims.

161. All of the above-described acts were also done with the knowledge, approval and/or ratification of the final delegated decision maker Chief Brandt continuing until April 8, 2014.

162. The right of access to the courts is clearly established and is well recognized as one of the fundamental rights protected by the Constitution.

163. Access of courts must be adequate, effective, and meaningful, and includes the principle that 'justice delayed is justice denied'.

164. The herein alleged cover-up has obstructed, thwarted and/or interfered with the availability of the judicial machinery and rendered largely meaningless Plaintiffs' legitimate efforts to vindicate this killing through judicial redress, violating Plaintiffs' due process access to court and liberty rights to gain control of their daughter's estate, enforce the laws pertaining

thereto under the slayer statutes and to protect, care for, see and relate to their surviving grandchildren.

165. More particularly, Defendants denied and burdened to the point of rendering meaningless Plaintiffs' constitutional rights to timely access and petition a Court in "Civil Proceedings" as "interested persons" to determine that their daughter's death was the result of a "felonious killing" within the meaning of § C.R.S. 15-11-803.

166. Plaintiffs were therefore unable to: establish the "effect of homicide" on intestate succession, wills, trusts, joint assets, life insurance, beneficiary designations and other statutory benefits as identified in § C.R.S. 15-11-803; establish their priority for appointment as personal representatives of the estate of Ashley Fallis under this statute and § C.R.S. 15-12-203; see to the divestiture of Tom Fallis of any interest in the estate, and; establish her minor children's' rights thereto and to an uncapped claim for wrongful death damages against Tom Fallis.

167. Defendants additionally burdened to the point of rendering meaningless, thwarted and/or interfered with Plaintiffs' constitutional rights to access courts and exercise their Fourteenth Amendment rights to familial association, which extends protection to grandparents and their grandchildren, and gain sufficient control of their minor grandchildren to credibly bring a wrongful death claim (including for felonious killing) under § 13-21-201 *et seq* against Tom Fallis as their next friends or guardians *ad litem* as provided for under C.R.C.P 17(c).

168. Defendants also denied and burdened Plaintiffs constitutional rights to access to courts to establish guardianship of their three grandchildren under C.R.S. § 15-14-101 *et seq.*, who remained in the custody of Tom Fallis and have since been awarded temporary custody to his mother, Anna Fallis.

169. Individual Defendants also denied and burdened Plaintiffs constitutional rights to access to court to take action under C.R.S. § 13-81-101, *et seq.* to obtain the appointment of a legal representative, including themselves, as personal representatives to represent the interests of their three grandchildren under C.R.S. § 13-81-101.5 as persons under disability.

170. Under C.R.S. § 13-81-101.5, each child is a “minor under eighteen years of age” who does not have a legal guardian to take action to enforce their rights, including bringing, commencing, maintaining, prosecuting actions and suits to protect and assert their interests.

171. Finally, Defendants also burdened and thwarted their meaningful access to their grandparent rights under C.R.S. § 19-1-117, including supporting Tom Fallis in such proceedings.

172. Defendants’ conduct greatly prejudiced Plaintiffs chances of prevailing in legal actions, as the concealment and alteration of evidence caused delay, which could lead to stale evidence and the fading of material facts in the minds of potential witnesses, and increased litigation expenses.

173. Further, all of the evidence is still not available to them given the long delayed but now pending criminal charges, preventing adequate, timely, and effective access or discovery under the statutory schemes referenced herein.

174. Plaintiffs also had a clearly established due process liberty right under the 14th Amendment’s “stigma plus” doctrine to be free from stigma and harm to their reputation coupled with the “plus” factor of a deprivation of some tangible interest, property right, or alteration of legal status.

175. Defendants violated this “stigma plus” doctrine by falsely publicizing their daughter’s death as a suicide, thereby stigmatizing Plaintiffs, accompanied by altering, burdening, thwarting and interfering with their tangible interests, property rights, and legal status under the Constitution and statutory schemes referenced specifically in this Claim for Relief.

176. Defendants’ decision to continue their cover-up by supporting Tom Fallis in his efforts to make Plaintiffs seem utterly irrational during their efforts to obtain grandparent rights known to these defendants also affected, altered and interfered with their tangible interests, property rights, and legal status.

177. On information and belief, all of the above-described acts were done pursuant to the preexisting and ongoing deliberately indifferent policies, training and supervision of the Evans Police Department for the City of Evans, Colorado, which promotes and tolerates the mishandling evidence and protecting their own through a culture of intimidation and retaliation.

178. On information and belief, in his official capacity for the City of Evans, Colorado, Defendant Brandt failed to adequately train and/or supervise his subordinates to prevent the acts described herein. These failures inevitably led to the mishandling and cover-up of the investigation into the death of Ashley Fallis. In light of the duties and responsibility of these Defendants to train, supervise and exercise control over one or more of the individual Defendants, the need for scrutiny and specialized training and supervision was so obvious, and the inadequacy of the training and supervision provided so likely to result in a constitutional violation, that Defendants’ conduct amounts to deliberate indifference to the constitutional rights of persons with whom their officers come into contact, including Plaintiffs.

179. Defendants not only failed to adequately train and supervise individual Defendants, but Chief Brandt knew of, condoned, and/or ratified these wrongful acts of individual Defendants until April 8, 2014, as the City of Evan's final or final delegated decision maker with respect to the conclusion of this investigation and as an official who had full access to the case files and evidence.

180. As a proximate result of Defendants' unlawful conduct, Plaintiffs suffered injuries and losses, entitling them to recover compensatory damages including loss of constitutional rights, loss of familial relationships, loss of enjoyment of life, pain and suffering during this event, actual and special damages including substantial legal expenses in the form of attorneys' fees to fight and obtain rights that allow them to protect, care for and be with their surviving grandchildren after their daughter was killed, and for past and future medical and health care related expenses and other special damages, all in amounts to be proven at trial.

181. Plaintiffs are further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law.

182. Plaintiffs are also entitled to punitive damages against the four individual Defendants, in that the actions were taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiffs.

SECOND CLAIM FOR RELIEF
Willful and Wanton Outrageous Conduct
(Against Defendant Yates, Defendant Phipps, and Defendant Parkos)

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

184. Defendants are public employees within the meaning of the Colorado Government Immunity Act, C.R.S. § 24-10-103.

185. These individual Defendants are not entitled to immunity under the Colorado Government Immunity Act because their acts and omissions were willful and wanton within the meaning of C.R.S. §§ 24-10-105(1) and 24-10-118.

186. These Defendants were acting within the scope of their employment when they committed such willful and wanton acts that were actual and proximate causes of Plaintiffs' injuries.

187. Due to the ongoing nature of these Defendants' concerted actions to violate Plaintiffs' rights well into 2014, as well as these, other Defendants, and other participants whose identities have not yet been ascertained, Plaintiffs did not and could not have, through the exercise of due diligence, discovered the basis for their claims against these Defendants or given CGIA Notice until on or about April 8, 2014.

188. The herein complained of overt acts by Defendants to mishandle, omit, destroy and falsify original evidence, the acquiescence, and ongoing toleration of the same, constitutes conduct that was engaged in recklessly or with the intent of causing Plaintiffs severe emotional distress.

189. Misrepresentations and intentional omissions in a police report regarding a homicide under these circumstances, including Defendants' omissions of Nick Glover's account that he heard Tom Fallis confess to shooting his wife, the altered and/or destruction of original statements or testimony of other witnesses, the complete and knowing mischaracterization of inculpatory witness testimony, the intentional refusal to investigate the death and crime scene,

and the conscious choice not to cause the testing of DNA evidence, are the type of actions that an ordinary citizen would consider outrageous.

190. Defendants' conduct was directed at Plaintiffs and they understood that it would cause severe emotional distress to Plaintiffs, who they knew were actively looking to them for the truth about what happened to their daughter.

191. Defendants' decision to then continue their cover-up by supporting Tom Fallis in his efforts to make Plaintiffs seem utterly irrational during their efforts to obtain grandparent rights known to these Defendants also constitutes conduct that was engaged in recklessly or with the intent of causing Plaintiffs severe emotional distress.

192. Defendants severely abused their power, authority and influence to profoundly and adversely affect the rights and interests of Plaintiffs, knowing full well or recklessly disregarding the fact that they would suffer severe emotional distress as a direct and proximate result of these outrageous acts.

193. This conduct was and is so outrageous in character, and so extreme in degree, that no reasonable person would be expected to endure it, reasonable members of the community have already stated they regard and will continue to regard this conduct as atrocious, going beyond all possible bounds of human decency, and utterly intolerable in a civilized community.

194. The willful and wanton acts and omissions outlined herein were a substantial and significant proximate cause of Plaintiffs' claimed damages.

195. Plaintiffs are therefore entitled to general and compensatory damages, loss of familial relationships, severe emotional distress, including depression, anxiety, hopelessness, anguish, embarrassment, anger, disappointment, worry about their grandchildren, and

special/actual damages in the form of attorneys' fees to fight and obtain rights that allow them to protect, care for and be with their surviving grandchildren after their daughter was killed, and for past and future medical and health care related expenses and other special damages, all in amounts to be proven at trial.

196. There is no cap under the Governmental Immunity Act as Defendants' acts and omissions were willful and wanton within the meaning of C.R.S. § 24-10-118.

197. Plaintiffs hereby give notice that they may be seeking exemplary damages for the willful and wanton acts of individual Defendants on this state law claim upon suitable amendment.

VI. PRAYER FOR RELIEF

Plaintiffs pray that this Court enter judgment for the Plaintiffs and against each of the Defendants and grant:

- A. Compensatory and consequential damages, including economic losses, loss of constitutional rights, 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;
- B. Special/actual damages in amounts to be finally ascertained and determined at trial;
- C. Punitive damages on all federal claims allowed by law against individual Defendants and in an amount to be determined at trial;
- D. Attorneys' fees and the costs associated with this action under 42 U.S.C. § 1988, on all claims allowed by law;
- E. Pre- and post-judgment interest at the lawful rate; and,
- F. Any further relief including declaratory or injunctive relief that this court deems just and proper, and any other appropriate relief at law and equity.

PLAINTIFFS REQUEST A TRIAL BY JURY.

/s/ Erica T. Grossman

Erica T. Grossman

John Holland

Anna Holland Edwards

Holland, Holland Edwards & Grossman, P.C.

1437 High Street

Denver, CO 80218

303-860-1331