

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6th St., Boulder, CO 80302	DATE FILED: April 10, 2024 9:36 AM FILING ID: FBF8145E4AC57 CASE NUMBER: 2024CV30320
<b>Plaintiff:</b> SMB ADVERTISING, INC. dba YELLOW SCENE MAGAZINE  v.  <b>Defendant:</b> CITY OF BOULDER, COLORADO.	▲ COURT USE ONLY ▲
<i>Attorneys for Plaintiffs:</i>  Daniel D. Williams, #38445 Matthew A. Simonsen, #53757 Ashlyn L. Hare, #59310 Hutchinson Black and Cook, LLC 921 Walnut Street, Suite 200 Boulder, CO 80302 dan.williams@hcboulder.com matt.simonsen@hcboulder.com ashlyn.hare@hcboulder.com P: (303) 442-6514   F: (303) 442-6593	Case Number:  Div:  Ctrm:
<b>COMPLAINT FOR MANDAMUS AND DECLARATORY RELIEF</b>	

SMB Advertising, Inc. dba Yellow Scene Magazine (“Yellow Scene Magazine”), by and through undersigned counsel, submits this complaint for mandamus and declaratory relief pursuant to C.R.C.P. 106(a)(2) and 57 and states as follows:

### I. INTRODUCTION

1. On May 25, 2020, a police officer in Minneapolis killed George Floyd by pressing his knee into Mr. Floyd’s neck for nine minutes while Mr. Floyd was handcuffed and lying face-down on a city street. The next day, video of Mr. Floyd’s murder circulated widely, nationally and internationally, causing a reexamination of the state of modern policing in America.

2. Colorado’s legislature responded quickly to put in place protections to prevent and deter similar abuses by law enforcement officers in this state. On June 3, 2020, SB 20-217, the Law Enforcement Integrity Act (the “Integrity Act”), was introduced, and it was signed into law two weeks later, on June 19, 2020.

3. Among other provisions, the Integrity Act mandates body-worn camera (“BWC”) use by law enforcement officers in Colorado, and provides a speedy mechanism for release of

BWC video when a complaint of police misconduct has been made. The requirement for public release of BWC video is critical to the Integrity Act’s protections, and the George Floyd case highlights that provision’s importance. Without speedy accountability by the release of unedited video evidence of police actions, events like the murder of George Floyd at the hands of the Minneapolis police may have gone unrecognized.

4. This Complaint is being brought because the City of Boulder, Colorado (“Boulder”) has put in place roadblocks to evade accountability and stymie compliance with its obligations under the Integrity Act. Specifically, rather than release unedited BWC video to the public following a complaint of police misconduct and within 21 days of a request, Boulder instead demands prohibitive sums of money before it will comply with the law, knowing that doing so will shield the unedited video footage from disclosure.

5. In a further failure to comply with the Integrity Act, Boulder has begun releasing on its website highly edited and narrated excerpts of BWC footage from high-profile critical police incidents to promote the Boulder Police Department’s self-selected narrative. In doing so, Boulder seeks to shield its police from public scrutiny by creating a curated narrative to suit the city’s interests rather than allowing unedited footage to expose the truth regarding its police officers’ actions.

6. Boulder’s actions cannot be reconciled with its stated commitment to accountability. Boulder’s conduct falls far below the standards the Colorado legislature mandated in the summer of 2020 by enacting the Integrity Act.

7. Through this Complaint, news organization Yellow Scene Magazine seeks to require Boulder to release unedited BWC video at no cost as required by state law so that, just as the public could judge for itself whether George Floyd was mistreated by Minneapolis police, the people of Boulder can judge for themselves whether the Boulder Police Department is using excessive force or wrongfully killing persons on Boulder’s streets.

## **II. JURISDICTION AND VENUE**

8. This Court has jurisdiction over this case pursuant to Colo. Const. art. VI, § 9(1), C.R.S. § 13-51-105, and C.R.C.P. 57 and 106(a)(2).

9. Venue is proper in this Court pursuant to C.R.C.P. 98(b)(2) and (c)(1).

## **III. PARTIES**

10. Plaintiff Yellow Scene Magazine, a Colorado corporation, is a community-based news organization providing local and hyper-local stories affecting Boulder and the surrounding area. Its mission includes editorial integrity in its journalism and a belief that factually based, interesting, and engaged content are at the core of serving the public good.

11. Defendant City of Boulder is a home-rule municipality in Boulder County, Colorado. The City of Boulder is responsible for the actions and inactions of the City of Boulder Police Department.

#### IV. FACTUAL ALLEGATIONS

##### A. Boulder's Police Department Has Been Involved in Several Incidents of Excessive Force and Killing of Civilians in Recent Years.

12. Boulder's police department has been the subject of many excessive force and related incidents, some leading to settlement payments ranging from tens of thousands to millions of dollars.

13. A non-exclusive list of recent excessive force and related incidents involving Boulder police officers includes:

- a. Stopping Zayd Atkinson, a Black college student, in 2019 and pointing a firearm at him based on him seeming "suspicious" for picking up trash in front of his own apartment building, leading Boulder to pay a \$125,000 settlement;
- b. Using excessive force in 2019 against Sammie Lawrence, another Black resident of Boulder, at Mapleton Ballfields when Mr. Lawrence was attempting to record a police stop of homeless residents picnicking in the park at midday, leading Boulder to pay a \$95,000 settlement and agreeing to release use-of-force data publicly;
- c. Wrongfully seizing and handcuffing Seth Franco, and illegally searching his backpack, at the Dushanbe Teahouse in 2017 in apparent retaliation against him because Boulder police officers believed a court had issued too lenient a sentence against him earlier that day, leading to a \$3.4 million jury verdict against Boulder;
- d. In 2022, removing the children of Joslynn Montoya, a deaf woman who was staying at a domestic violence shelter, rather than getting an interpreter to understand what Ms. Montoya was attempting to communicate to police about her situation, leading to Ms. Montoya losing custody of her children for two months;
- e. Falsely justifying a Boulder police SWAT team raid of a home in the Boulder Junction neighborhood in 2022 by stating that the raid yielded the recovery of assault weapons when, as Boulder was later forced to admit, no assault weapons were found; and
- f. Upon encountering a runaway teen in 2021, grabbing his arms, forcing him to the ground, and according to Boulder's own accounting of the incident, "plac[ing] one knee on the back of the young man's upper shoulder area and neck to restrain him."

14. Boulder's police have also been involved in shootings of multiple civilians, including:

- a. Shooting Coleman Stewart after a chase in response to him failing to pay a five-dollar cab fare, leading Boulder to pay a \$1.3 million settlement eight years later in 2022;
- b. Shooting and killing Christopher Swanger in May 2023 when responding to a domestic violence call; and
- c. Shooting and killing Jeanette Alatorre on December 17, 2023, after officers discovered her holding a fake or replica handgun, and after she refused to stop for questioning. Officers fired at least eight rifle rounds at Ms. Alatorre.

15. According to recent news reports, Ms. Alatorre's shooting was the sixth fatal shooting by Boulder police officers since 2013.

16. On February 1, 2024, in response to Boulder Police shooting and killing Ms. Alatorre, undersigned counsel filed a police misconduct complaint relating to the incident using Boulder's online procedures for submission of such complaints.

17. Other than noting the receipt and classification of the complaint as one alleging excessive force, Boulder's police department has provided no response to the complainant or provided any indication that it is undertaking any investigation whatsoever as a result of it.

## **B. The Integrity Act Requires Prompt Release of BWC and Related Video.**

18. The Integrity Act's requirement for the release of BWC and related video is found at C.R.S. § 24-31-902(2)(a) ("Section 902(2)(a)"). It provides in relevant part:

For all incidents in which there is a complaint of peace officer misconduct ... the local law enforcement agency ... shall release, upon request, all unedited video and audio recordings of the incident, including those from body-worn cameras, dash cameras, or otherwise collected through investigation, to the public within twenty-one days after the local law enforcement agency ... received the request for release of the video or audio recordings.

19. In order to assure that officer misconduct is not shielded from view through the use of editing and redaction, the Integrity Act strictly limits what redactions may be made. It provides at C.R.S. § 24-31-902(2)(b)(II)(A) ("Section 902(2)(b)"):

Notwithstanding any other provision of this section, any video that raises substantial privacy concerns ... including video depicting nudity; a sexual assault; a medical emergency; private medical information; a mental health crisis; a victim interview; a minor ... ; any personal information other than the name of any person not arrested, cited, charged, or issued a written warning, ...; significantly explicit and gruesome bodily injury, unless the injury was caused by a peace officer; or the interior of a home or treatment facility, shall be blurred to protect the substantial privacy interest while still allowing public release. ... This subsection (2)(b)(II)(A) does not permit the removal of any portion of the video.

### **C. Boulder Refuses To Comply With Its Duty To Release the Alatorre Video.**

20. On February 2, 2024, undersigned counsel, pursuant to Section 902(2)(a), requested all BWC and dashcam video from when police shot and killed Ms. Alatorre on December 17, 2023.

21. Boulder responded by demanding \$8,484 prior to releasing the video, based on its estimate of the time it would need to spend reviewing video of the incident.

22. When told that the request was brought under Section 902(2)(a), which does not authorize charging fees of the requestor prior to releasing the video to the public, Boulder still refused to release the video.

23. Undersigned counsel then offered to limit his request to “only bodycam videos that actually show Ms. Alatorre at some point during the video. I’d like such video from between ten minutes before BPD shot her with a firearm to three minutes afterwards. I don’t need dashcam video at this time.”

24. Boulder responded by stating that it would not release even this limited subset of available video, consisting of a 13-minute period, absent a payment of \$1,425. That amounts to more than \$100 per minute.

25. On March 12, 2024, Plaintiff Yellow Scene Magazine made a request for the BWC and related video concerning the killing of Ms. Alatorre by Boulder police. Specifically, Yellow Scene Magazine stated that it was making its request pursuant to Section 902(2)(a) of the Integrity Act, and requested “all videos relating to the Ms. Alatorre incident on 12/17/2023, including bodycam and dash cam.”

26. Boulder responded to Yellow Scene Magazine on March 18, 2024, demanding payment of \$2,857.50 before it would make the video public pursuant to the Integrity Act.

27. Boulder justified its demand for payment by citation to the Colorado Criminal Justice Records Act, C.R.S. § 24-72-301, *et seq.* (the “CCJRA”).

28. Unlike the Integrity Act, which at Section 902(2)(a) requires requested video to be released “to the public” within 21 days of a request if there has been a complaint of misconduct, the CCJRA does not concern release of records “to the public” or restrict requests to circumstances where there is a prior complaint of misconduct. Instead, the CCJRA requires custodians of police records to “allow any person to inspect such records,” except in specified circumstances. *See* CCJRA, C.R.S. § 24-72-305.

29. Boulder contends it can demand money prior to releasing video to the public under the Integrity Act based on a provision of the CCJRA authorizing the charging of fees for an individual to inspect police records. Specifically, Boulder contends that C.R.S. § 24-72-306 of the CCJRA, permitting police agencies to “assess reasonable fees ... for the search, retrieval, and redaction of criminal justice records requested pursuant to this part 3,” authorizes charges under the Integrity Act.

30. Yellow Scene Magazine responded to Boulder’s demand for payment by email on March 19, 2024, clarifying that because the request was being made under the Integrity Act rather than Part 3 of the CCJRA, no charge is authorized prior to releasing the video to the public.

31. Although C.R.S. § 24-72-306 authorizes fees to be charged only for “records requested pursuant to this part 3” and Yellow Scene Magazine’s request was not made pursuant to Part 3 of the CCJRA but instead was made pursuant to Section 902(2)(a) of the Integrity Act, Boulder nevertheless insists that CCJRA § 306 authorizes it to demand thousands of dollars prior to publicly releasing video requested pursuant to the Integrity Act.

32. Yellow Scene Magazine does not have available funds to pay thousands of dollars for the release of BWC video as part of its newsgathering operations each time a potentially newsworthy incident of alleged police misconduct occurs.

#### **D. Boulder Releases Edited and Narrated Video of the Alatorre Shooting in a Manner That Does Not Comply with the Integrity Act.**

33. Facing repeated requests for the public release of the unedited video of the Alatorre shooting, Boulder instead chose to post on its website a narrated and edited video. *See* <https://bouldercolorado.gov/boulder-police-high-profile-cases-interestcritical-incidents> (last visited April 1, 2024) (the “Critical Incident Webpage”).

34. Boulder’s Critical Incident Webpage contends that as part of the city’s “reimagine policing” agenda, and to enhance “transparency and accountability,” as of March 2024 it will “post video summaries about high profile and critical incidents here and on social media.”

35. Claiming that “no camera will ever capture all aspects of a critical incident,” Boulder explains that its Critical Incident Webpage “video summaries could include pauses for explanations or narration.”

36. The first and only video Boulder has released on its Critical Incident Webpage concerns Boulder police shooting Ms. Alatorre with a rifle at least eight times and killing her.

37. The video Boulder released is highly edited, with markings on top of the video, narration, stopping of the video multiple times, use of only a few of the BWC recordings rather than the full set of recordings, omission of the recordings from the BWCs worn by key police officers on scene, and multiple excerpts of the video removed.

38. Although Section 902(2)(B) of the Integrity Act “does not permit the removal of any portion of the video,” but instead allows only blurring to address any confidentiality issues, many portions of the video of the shooting and killing of Ms. Alatorre have been removed altogether, and the BWC video from other officers on-scene has been entirely withheld.

39. Boulder’s narration of the video and splicing together of different portions of the encounter with Ms. Alatorre is inconsistent with the purpose of the Integrity Act, which is to require unedited BWC video to be released for the public to form its own conclusions about critical police incidents, just as the public did in Minneapolis based on civilian video of the George Floyd murder.

## V. CLAIMS FOR RELIEF

### FIRST CLAIM FOR RELIEF

#### Mandamus Relief Pursuant To C.R.C.P. 106(a)(2)

40. All paragraphs in this Complaint are incorporated herein by reference.

41. C.R.C.P. 106(a)(2) permits this Court “to compel a ... governmental body, corporation, board, officer or person to perform an act which the law specially enjoins as a duty resulting from an office, trust, or station ....”

42. The Integrity Act requires Boulder to release law enforcement video “to the public” when the following two conditions are satisfied: (a) there is a complaint of peace officer misconduct,” and (b) there is a “request” for the video. *See* Section 902(2)(a).

43. The video required to be released is “all unedited video and audio recordings of the incident, including those from body-worn cameras, dash cameras, or otherwise collected through investigation,” *id.*, with only limited exceptions for blurring as set forth in Section 902(2)(b).

44. Plaintiff Yellow Scene Magazine satisfied the requirements for release of the Alatorre video pursuant to the Integrity Act. Specifically, it requested that Boulder release the video, and a complaint of police misconduct had been filed.

45. Boulder has failed to release to the public all unedited BWC and dash cam video of the Alatorre encounter within 21 days of Yellow Scene Magazine’s request as required by the Integrity Act.

46. Plaintiff Yellow Scene Magazine requests that this Court issue an order compelling Boulder to release to the public all BWC and dash cam video relating to Boulder police confronting Ms. Alatorre, shooting her, and killing her on December 17, 2023.

### SECOND CLAIM FOR RELIEF

#### Declaratory Relief Pursuant to C.R.C.P. 57

47. All paragraphs in this Complaint are incorporated herein by reference.

48. C.R.C.P. 57(b) provides that a “person ... whose rights ... are affected by a statute ... may have determined any question of construction ... arising under the ... statute ... and obtain a declaration of rights, status, or other legal relations thereunder.”

49. Yellow Scene Magazine seeks access to BWC video and related video evidence of police encounters as part of its newsgathering efforts.

50. Yellow Scene Magazine anticipates that as part of its newsgathering activities, in addition to the video concerning Ms. Alatorre, it will seek video pursuant to Section 902(2)(a) of the Integrity Act in the future when other complaints of misconduct are filed against Boulder police

personnel.

51. Yellow Scene Magazine seeks a declaration that Boulder cannot condition its compliance with a qualifying request for BWC video pursuant to the Integrity Act on the requestor's payment of a fee or fulfillment of any other non-statutory requirement.

52. Yellow Scene Magazine seeks a declaration that Boulder's Critical Incident Webpage, established in March 2024, does not satisfy Boulder's transparency and accountability obligations created by the Integrity Act.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

- A. Order the release of video set forth in the First Claim for Relief;
- B. Issue the declarations set forth in the Second Claim for Relief;
- C. Award costs; and
- D. Provide such further and different relief as the Court may deem just and proper.

Respectfully submitted this 10th day of April, 2024.

*/s/ Daniel D. Williams*

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