

<b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b> <b>1437 Bannock Street</b> <b>Denver, Colorado 80202</b>	
<b>DENVER POLICE PROTECTIVE ASSOCIATION,</b> <b>Plaintiff</b>  <b>v.</b>  <b>CITY AND COUNTY OF DENVER, COLORADO,</b> <b>Defendant</b>	<b>▲ COURT USE ONLY ▲</b>
<i>Attorney for Plaintiff</i>  <b>Sean T. Olson, #38017</b> <b>2105 Decatur Street</b> <b>Denver, CO 80211</b> <b>Telephone: (303) 433-8247</b> <b>Facsimile: (303) 477-3166</b> <b>E-mail: <a href="mailto:sean@dppa.com">sean@dppa.com</a></b>	<hr/> Case Number:  Division:
<b>CIVIL COMPLAINT</b>	

**NATURE OF THE ACTION**

1. This action is brought by Plaintiff the Denver Police Protective Association (“Plaintiff”) for violation of the Denver Colorado Municipal Code (hereinafter “the Charter”) pertaining to collective bargaining rights of the parties, and related claims. Plaintiff seeks declaratory relief, and equitable relief.

**JURISDICTION AND VENUE**

2. This Court has original and general jurisdiction over all civil matters arising in the State of Colorado.

3. Venue in this Court is proper because the injury occurred in this judicial district and because the defendant may be personally served here.

### **PARTIES**

4. Plaintiff, the Denver Police Protective Association (“Plaintiff”), is an association of police officers employed by the City and County of Denver, Colorado, formed for the purpose of mutual aid and protection and to bargain rights and take collective action as permitted under the Charter of the City and County of Denver and Colorado law.

5. Defendant, the City and County of Denver (“Defendant”), is a municipality in the state of Colorado which employs Plaintiff’s members.

### **ALLEGATIONS OF FACT COMMON TO ALL CLAIMS**

6. Plaintiff and Defendant are parties to a collective bargaining agreement (“the Agreement”) in effect from January 1, 2015 through December 31, 2017. The Agreement is attached as Exhibit 1 to the Complaint. The Agreement sets forth the rights and responsibilities of the parties for the duration of the Agreement.

7. The parties are also bound by the Charter of the City and County of Denver (“the Charter”), specifically Title I, Subtitle B, Article IX, Part 8, entitled “Collective Bargaining; Police.”

8. The Charter states in pertinent part:

§ 9.8.3 - Right to organize and bargain collectively; mandatory, prohibited, and permissive subjects of bargaining.

(A) Police Officers shall have the right to bargain collectively with the City and to be represented by an employee organization in such negotiations.

(B) The following shall be mandatory subjects of bargaining for Police Officers:

(i) Compensation;

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(iii) The number of hours in the work week;

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(v) Personal safety and health equipment;

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§ 9.8.5 - Obligation to bargain in good faith.

(A) It shall be the obligation of the Corporate Authorities to meet and bargain in good faith with the representatives of the bargaining agent at all reasonable times and places. This obligation shall include the duty to cause any agreements to be reduced to a written contract and executed in a timely manner. Any such contract shall be for a term of not less than one (1) year nor more than three (3) years, notwithstanding the provisions of Article VII of this Charter relating to Budget and Finance. All collective bargaining agreements shall be effective on a January 1 date and shall terminate on a December 31 date.

(B) It shall be the obligation of the bargaining agent to meet and bargain collectively in good faith with the Corporate Authorities at all reasonable times and places. This obligation shall include the duty to cause any agreements to be reduced to a written contract and executed in a timely manner.

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§ 9.8.14 - Collective bargaining agreement; what constitutes.

(A) The collective bargaining agreement between the City and the bargaining agent shall consist of any and all terms actually agreed to by the parties or awarded by the arbitrator. At the request of either the bargaining agent or the Corporate Authorities, the agreement shall contain a grievance procedure which culminates in final and binding arbitration by a neutral arbitrator. The grievance procedure may be established by voluntary agreement or by the arbitrator.

(B) Whenever there is a conflict between the terms of the agreement and a rule, executive order, procedure, policy, or any ordinance of

the City which is applicable only to employees of the City, the provisions of the agreement shall prevail; provided, however, when a conflict is between the terms of the agreement and an ordinance or executive order adopted prior to March 7, 1995, other than an ordinance or executive order establishing compensation or fringe benefits for Police Officers, the ordinance or executive order shall prevail.

9. In or around the early summer of 2015, Defendant indicated that it would adopt a body camera policy requiring body cameras to be worn and used by Plaintiff's members.

10. On or about July 21, 2015, Plaintiff demanded to bargain with Defendant over the issue. Plaintiff has continued to reiterate its position that body camera use by members is a mandatory subject of bargaining and must be negotiated by the parties.

11. On or about September 1, 2015, Defendant's Police Department finalized its policy entitled "Body Worn Camera – Policy." It did so without considering input from Plaintiff. That final policy is attached to this complaint as Exhibit 2. Plaintiff is not opposed to a body camera policy or the use of body cameras, but is concerned by several aspects of Defendant's proposed final policy including, but not limited to:

(a) The requirement of use and activation in situations that will violate the privacy and dignity of crime victims, witnesses, suspects, and arrestees who may be in a state of undress due to the nature of the police contact, including police entry into homes and health care facilities. In particular, plaintiff is concerned about the lack of an adequately protective policy on storage, retention and designation of such private and potentially embarrassing video footage. See Ex. 2, 111.11(3), (8);

(b) The requirement of use and activation in situations that will impede the ability to perform normal police duties, including gaining the trust and cooperation of crime

victims and witnesses, particularly domestic violence victims and confidential informants. See Ex. 2, 111.11(3), (4);

(c) The requirement of use, activation, recording, uploading of data and related tasks that will have the tendency of impeding routine police work, adding to workload, and increasing hours engaged in administrative functions, potentially increasing overtime. See e.g. 111.11(4);

(d) The requirement of use and activation by employees who are not otherwise on-duty, but are engaged in secondary employment and the implications under the Fair Labor Standards Act of such a requirement;

(e) The requirement that officers immediately upload footage at the end of shift to the cloud from secondary employment and discussion of using personal home internet connections to do so, instead of traveling to the station or official hub and the implications for chain of custody and evidence, as well as Fair Labor Standards Act issues. See Ex. 2, 111.11(4)(f); and

(f) Vagueness regarding where the camera is to be mounted on the officer's person and concerns that, if an officer's camera is not properly affixed, the officer will be subject to discipline. See Ex. 2, 111.11(4)(b);

(g) Vagueness regarding officer discretion in turning off the camera and concerns about officers being subject to discipline if their discretionary decision is not deemed appropriate. See Ex. 2, 111.11(3)(a); and

(h) Concerns about overuse of cameras in all situations, including routine police interviews of witnesses and investigatory functions, instead of being more limited to critical

incident situations, use of force situations, and related interactions. Such overuse increases privacy concerns, administrative costs both for the use of the cameras and time of officers, and unduly impedes normal police investigatory functions. See Ex. 2, 111.11(3)(a).

12. Defendant's body camera policy is a mandatory subject of bargaining because it relates to (i) compensation, (iii) the number of hours in the work week, and (v) personal safety and health equipment. These are all identified as mandatory subjects of bargaining in the Agreement.

13. Plaintiff demanded to bargain the policy beginning in July of 2015.

14. Defendant has refused to bargain the body camera policy with Plaintiff and proposes to unilaterally implement the policy on November 1, 2015. On October 19, 2015, Defendant denied Plaintiff's demand to bargain.

15. Plaintiff has no recourse but to file this complaint for breach of contract and breach of the covenant of good faith and fair dealing.

**FIRST CLAIM FOR RELIEF**  
**Breach of Charter and Collective Bargaining Agreement**

16. Plaintiff realleges and incorporates paragraphs 1-15, above.

17. Plaintiff and Defendant are parties to a collective bargaining agreement ("the Agreement"), as required by the Denver City Charter.

18. The Agreement's terms and the Charter govern the relationship between the parties and mandate when the parties are required to negotiate terms and conditions of employment.

19. Defendant violated the Charter when it unilaterally implemented the body camera policy and refused to bargain it with Plaintiff.

20. Plaintiff has been damaged by Defendant's actions.

21. Plaintiff requests declaratory relief in the form of an order that Defendant breached its obligations under the Charter.

22. Plaintiff requests equitable relief in the form of a court order instructing Defendant to bargain the implementation of the body camera policy.

23. Plaintiff requests reimbursement for its costs, disbursements and attorney's fees incurred herein.

**SECOND CLAIM FOR RELIEF**  
**Breach of the Covenant of Good Faith and Fair Dealing in the Agreement and Charter**

24. Plaintiff realleges and incorporates paragraphs 1-23, above.

25. Defendant's actions in refusing to bargain the body camera policy and its unilateral implementation breached the covenant of good faith and fair dealing in § 9.8.5 of the Charter and in the Agreement.

26. Plaintiff has been damaged by Defendant's action.

27. Plaintiff requests declaratory relief in the form of an order that Defendant breached its obligations under the Agreement and the Charter.

28.

28. Plaintiff requests equitable relief in the form of a court order instructing Defendant to bargain the implementation of the body camera policy.

**THIRD CLAIM FOR RELIEF**  
**Declaratory Judgment Pursuant to Colo. R. Civ. P. 57 & Colo. Rev. Stat. §13-51-101**

29. Plaintiff realleges and incorporates paragraphs 1-28, above.

30. Plaintiff requests a declaration, pursuant to Colo. Rev. Stat. §13-51-101, *et seq.* and Colo. R. Civ. P. 57, that Defendant breached its obligations to bargain under the Agreement and the Charter.

31. Plaintiff requests reimbursement for its costs and disbursements incurred herein.

32. Plaintiff requests all other relief the court deems necessary and proper.

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays for judgment against Defendant as follows:

1. A declaration that Defendant is in breach of the Agreement and Charter;
2. A declaration that Defendant violated Plaintiff's rights with respect to the Charter;
3. Equitable relief, including an order for Defendant to bargain with Plaintiff the issue of body camera policies and implementation;
4. Plaintiff's costs, disbursements and attorney's fees incurred herein; and
5. Such other and further relief that the Court deems necessary and proper.

DATED this 3<sup>rd</sup> day of November, 2015.

Respectfully submitted,

*s/Sean T. Olson*

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Sean T. Olson, #38017

*Attorney for Plaintiff*

IN ACCORDANCE WITH C.R.C.P. 121, SECTION 1-26(9), A PRINTED COPY OF THIS DOCUMENT WITH ORIGINAL SIGNATURES IS BEING MAINTAINED BY THE FILING PARTY AND WILL BE MADE AVAILABLE FOR INSPECTION BY OTHER PARTIES OR THE COURT UPON REQUEST.