

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-01814-ODS-MJW

DEBBIE ULIBARRI, *et al.*,

Plaintiffs,

v.

CITY & COUNTY OF DENVER,

Defendant.

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**PLAINTIFFS' SUBMISSION OF PROPOSED JURY INSTRUCTIONS**

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Plaintiffs, by and through their counsel, hereby respectfully submit their proposed jury instructions.

1. Attachment 1 is an index of Plaintiffs' Proposed Jury Instructions, in the order Plaintiffs propose to present them.

2. Attachment 2 is an annotated versions of Plaintiffs' proposed instructions.

3. Attachment 3 includes unannotated versions of Plaintiffs' proposed instructions.

4. Attachment 4 includes Plaintiffs' proposed verdict forms.

Plaintiffs are also submitting, by email, WordPerfect versions of each of these items.

**Joint Instructions**

Plaintiffs' Proposed Jury Instructions Nos. 4, 12 (stipulations of fact), 18, 19, 20, 21, 23 and 49 are verbatim copies of the corresponding instruction received from Defendant on August 14 and, Plaintiffs believe, agreed to by the parties. Plaintiffs proposed to file these instructions

jointly, *see* ECF 340 at 4, but Defendant did not concur, preferring to file a stipulation with no attached instructions or cross-references. Plaintiffs received the draft stipulation at 6:53 this evening, returned it with a single edit -- the addition of the cross-references to Plaintiffs' Instructions -- at 7:04, and waited another hour before filing this pleading. At that time, the phone line of counsel for the City was being answered by voicemail.

### **Stock Instructions**

While the Plaintiffs had prepared and sent to the City their own stock instructions, in preparing the stock instructions attached hereto -- Nos. 1 - 23 -- Plaintiffs put their proposals aside, largely adopted the stock instructions proposed by the City, and proposed changes largely based on local practice, as reflected in the pattern instructions used by Judge John L. Kane<sup>1</sup> and Judge Christine Arguello.<sup>2</sup> In those instructions, Plaintiffs have indicated where they have added or deleted text from the City's proposed instructions by underlining added text and striking through deleted text in the annotated version (Attachment 2).

Plaintiffs sent the annotated version of these stock instructions, with the explanation above, to the City on February 27, 2012, and again on August 3, 2012. In response, counsel for the City stated by email, "We cannot agree to your attempts to 'harmonize' these instructions with other instructions from Judge Kane and Judge Arguello." In a subsequent conference call,

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<sup>1</sup> [http://www.cod.uscourts.gov/Documents/Judges/JLK/jlk\\_JuryInst\\_Civil.pdf](http://www.cod.uscourts.gov/Documents/Judges/JLK/jlk_JuryInst_Civil.pdf)

<sup>2</sup> <http://www.cod.uscourts.gov/Documents/Judges/CMA/Civil%20Preliminary%20Jury%20Instructions.pdf> and <http://www.cod.uscourts.gov/Documents/Judges/CMA/Civil%20Final%20Jury%20Instructions.pdf>

counsel reiterated this and stated that the City would not agree to any of the Plaintiffs' proposed stock instructions or proposed modifications to the City's stock instructions.

As noted above, Plaintiffs ultimately agreed to seven of the City's instructions, while the City would accept none of Plaintiffs'. The parties also reached certain stipulations, on which they continue to meet and confer.

**Substantive Instructions**

While the parties were not able to agree on any of the substantive instructions, Plaintiffs believe that a number of the City's instructions are encompassed within Plaintiffs' instructions. The parties will continue to meet and confer to see if they can harmonize and agree on any of these instructions.

Respectfully submitted,

FOX & ROBERTSON, P.C.

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Dated: August 15, 2012

### CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2012, I served the foregoing via the CM/ECF system on:

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# **Attachment 1**

**PLAINTIFFS' PROPOSED JURY INSTRUCTIONS: INDEX**

Plaintiffs' Instruction No. 1: Introduction

Plaintiffs' Instruction No. 2: General Nature of a Trial

Plaintiffs' Instruction No. 3: Trial Conduct for Jurors

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Plaintiffs' Instruction No. 5: Accommodations in the Courtroom

Plaintiffs' Instruction No. 6: Burden of Proof

Plaintiffs' Instruction No. 7: Evidence; Limitations

Plaintiffs' Instruction No. 8: Evidence - Direct and Circumstantial; Inferences

Plaintiffs' Instruction No. 9: Number of Witnesses

Plaintiffs' Instruction No. 10: Failing to Call a Witness

Plaintiffs' Proposed Statement of the Case

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Plaintiffs' Instruction No. 12: Stipulated Facts

Plaintiffs' Instruction No. 13: Judicial Notice

Plaintiffs' Instruction No. 14: Discrepancies in Testimony

Plaintiffs' Instruction No. 15: Impeachment - Inconsistent statement or conduct

Plaintiffs' Instruction No. 16: Rule 30(b)(6) Deposition Testimony

Plaintiffs' Instruction No. 17: Depositions as Evidence

Plaintiffs' Instruction No. 18: Demonstrative Summaries Not Received as Evidence

Plaintiffs' Instruction No. 19: Highlighted Exhibits

Plaintiffs' Instruction No. 20: All Persons Equal Before the Law

Plaintiffs' Instruction No. 21: Bench Conferences

Plaintiffs' Instruction No. 22: Outline of Trial

Plaintiffs' Instruction No. 23: General Introduction at Close of Evidence

Plaintiffs' Instruction No. 24: Elements of Claims under Section 504 and the ADA

Plaintiffs' Instruction No. 25: Disability

Plaintiffs' Instruction No. 26: Qualified Individual with a Disability

Plaintiffs' Instruction No. 27: Acts of Agent or Employee as Acts of Principal or Employer

Plaintiffs' Instruction No. 28: DHHA as Agent of City & County of Denver

Plaintiffs' Instruction No. 29: "Discrimination" Defined

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Plaintiffs' Instruction No. 35: Qualified Interpreter

Plaintiffs' Instruction No. 36: Notice

Plaintiffs' Instruction No. 37: Undue Burden

Plaintiffs' Instruction No. 38: Damages: Intentional Conduct

Plaintiffs' Instruction No. 39: Compensatory Damages

Plaintiffs' Instruction No. 40: Negligence in Treatment of Shawn Vigil

Plaintiffs' Instruction No. 41: Definition of Negligence

Plaintiffs' Instruction No. 42: Causation

Plaintiffs' Instruction No. 43: Elements of Liability

Plaintiffs' Instruction No. 44: Negligent Training and Supervision

Plaintiffs' Instruction No. 45: Survival Claim and Wrongful Death Claim

Plaintiffs' Instruction No. 46: Damages in Negligence for the Estate

Plaintiffs' Instruction No. 47: Damages for Wrongful Death

Plaintiffs' Instruction No. 48: Difficulty in Determining Damages

Plaintiffs' Instruction No. 49: Election of Foreperson; Duty to Deliberate

Plaintiffs' Instruction No. 50: Using Verdict Forms



# **Attachment 2**

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 1**

**(Introduction)**

Ladies and Gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions — both those I give you now and those I give you later — are equally binding on you and must be followed.

~~{Describe court's policy, such as "You must leave your cell phone, PDA, Blackberry, smart phone, I-phone and any other wireless communication devices} in the jury room during the trial and may only use them during breaks. However, you are not allowed to have cell phones in the jury room during your deliberations. You may give the cell phone to the [bailiff] [deputy clerk] for safekeeping just before you start to deliberate. It will be returned to you when your deliberations are complete."<sup>2</sup>}~~

~~[This is a civil case brought by the plaintiff[s] against the defendant[s]. The plaintiff[s] allege[s] that the defendant[s] \_\_\_\_\_.<sup>1</sup> The defendant[s] deny[ies] that allegation. [If the defendant has a counterclaim or affirmative defense, it should be stated here.] It will be your duty to decide from the evidence whether the plaintiff[s] is [are] entitled to a verdict against the defendant[s].<sup>2</sup>]~~

During the trial, you will hear me use a few terms that you may not have heard before. Let me briefly explain some of the most common to you. The party who sues is referred to as the "Plaintiff." In this action, one of the Plaintiffs is Debbie Ulibarri, who is the mother of Shawn Vigil. Shawn Vigil is another Plaintiff in this case but, because he has died, he is

represented in this case by his estate, and his mother is the representative of his estate. The other Plaintiffs are Sarah Burke, and Roger Krebs. Generally, when I refer to “the Plaintiffs,” I mean Shawn Vigil, Debbie Ulibarri, Sarah Burke and Roger Krebs, that is, for the sake of convenience, I will refer to Mr. Vigil himself as the Plaintiff rather than his mother or his Estate. The party being sued is called the "Defendant." In this action, the Defendant is the City and County of Denver, referenced at times in this case as "the City" or "Denver." The Denver Sheriff Department and the Denver Police Department are operated by the City and County of Denver and it is liable for the actions and conduct of those departments. The City and County of Denver acts through its employees and agents, so the acts of the employees and agents of the Denver Sheriff Department and the Denver Police Department are acts of the City itself.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 2**

**(General Nature of a Trial)**

You will sometimes hear me refer to "counsel." "Counsel" is another way of saying "lawyer" or "attorney." I will sometimes refer to myself as the "Court."

From the evidence you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow my instructions, whether you agree with them or not. You have taken an oath to do so. ~~In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.~~

~~In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony and the extent to which their testimony is consistent or inconsistent with other evidence that you believe.~~

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.<sup>1</sup>

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<sup>1</sup> FED-CIV JI § 1.01 General Nature of Case. Plaintiffs' underlined suggestions from Judge Christine Arguello's Civil Preliminary Instructions ("Arguello Preliminary Instructions"), <http://www.cod.uscourts.gov/Documents/Judges/CMA/Civil%20Preliminary%20Jury%20Instructions.pdf>. Final deletion duplicates a later instructions.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 3**

**(Trial Conduct for Jurors)**

To insure fairness, you must obey the following rules:

1. Do not talk to each other about this case or about anyone involved with this case until the end of the trial when you go to the jury room to decide on your verdict. This rule applies even when the Court is not in session and when there is a recess in the trial.
2. Do not talk with anyone else about this case or about anyone involved with this case until the trial has ended and you have discharged as jurors. "Anyone else" includes members of your family and your friends. You may tell people you are a juror, but do not tell them anything else about the case.
3. Outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended. If someone should try to talk to you about the case during the trial, please report it to me immediately.
4. During the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case – you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator, or the like, remember it is because they are not supposed to talk or visit with you either.
5. Do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it.
6. During the course of the trial you will receive all the evidence you legally may consider to decide the case. Researching or gathering any information on your own that you

think might be helpful is against the law and would be a violation of your oath. Do not engage in any Internet or other outside reading or research in this case. Do not consult dictionaries, maps, or make any investigation about the case, the lawyers, the parties, or the witnesses. Recent technologies require me to point out that some common practices and habits many of you enjoy are strictly forbidden in your role as jurors.

7. You may not, under any circumstances, have your cell phones, Blackberries, iPhones, iPads, smart phones, or the like on when court is in session. Whether you are in court or away from court during recess you may not "Google, Twitter, Tweet, text message, blog, post" or take any other action that has anything to do with this case. To do so could cause a mistrial, meaning all of our efforts over the course of the trial would have been wasted and we would have to start all over again with a new trial before a new jury. If you were to cause a mistrial by violating this order, you could be subject to paying all the costs of these proceedings and you could also be punished for contempt of court. Fairness to all concerned requires that all of us connected with this case deal with the information and with nothing other than the same information produced in this courtroom.

8. You must keep your mind open and free of outside information. Only in this way will you be able to decide the case fairly based solely on the evidence and my instructions on the law. If you decide this case on anything else, you will have done an injustice. It is very important that you follow these instructions. Describe court's policy, such as "You must leave your cell phone, PDA, Blackberry, smart phone, I-phone and any other wireless communication devices] in the jury room during the trial and may only use them during breaks. However, you are not allowed to have cell phones in the jury room during your deliberations. You may give the cell

phone to the [bailiff] [deputy clerk] for safekeeping just before you start to deliberate. It will be returned to you when your deliberations are complete.”]

9. Do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and the other jurors have discussed all the evidence.

10. If you need to tell me something or have a question, simply give a signed note to the (marshal) (bailiff) (clerk) to give to me.<sup>2</sup>

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<sup>2</sup> Grenig & Lee, Federal Jury Practice & Instructions (5th ed. 2000), §101.11 Jury Conduct. Plaintiffs’ underlined suggestions from Judge Christine Arguello’s Civil Preliminary Instructions.



**PLAINTIFFS' PROPOSED INSTRUCTION NO. 4**

**(Notetaking Permitted)**

During this trial, I will permit you to take notes. You are not required to take notes. If you do not take notes, you should not be influenced by another juror's notes, but should rely upon your own recollection of the evidence.

Because many courts do not permit notetaking by jurors, a word of caution is in order. You must not allow your notetaking to distract you from the proceedings.

Frequently, there is a tendency to attach too much importance to what a person writes down. Some testimony that is considered unimportant at the time presented and not written down may take on greater importance later in the trial in light of all the evidence presented, the final arguments, and my instructions on the law.

Accordingly, you are instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Your memory should be your greatest asset when it comes time to deciding this case.<sup>3</sup>

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<sup>3</sup> O'Malley, Grenig & Lee, Federal Jury Practice & Instructions (6th ed. 2012), §101.15 Notetaking-Permitted.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 5**

**(Accommodations in the Courtroom)**

During this trial, there may often be sign language interpreters present in the court room. These individuals will assist this Court with the testimony of the witnesses who are deaf and who will be communicating using American Sign Language, also known as "ASL". The procedure for such a witness is that the attorney will ask the witness a question, the question will then be translated into ASL by the interpreter for the witness, the witness will testify in ASL, and the interpreter will then inform the jury and court what that witness has said.

The interpreter is required to remain neutral. The interpreter is required to translate between English and ASL accurately and impartially to the best of the interpreter's skill and judgment.

You may notice that the witness who is deaf may also communicate using what appears to be exaggerated facial expressions or hand gestures. This is a necessary part of American Sign Language. Grammar is conveyed through these facial expressions and gestures. You should not place any negative implications on these expressions or gestures, even if they appear to be exaggerated or unusual to persons who do not communicate using ASL.

When there is an interpreter, the process of taking testimony is a bit different. An interpreter must listen to the entire question, before beginning to interpret to ensure that the entire question is interpreted accurately. American Sign Language (ASL) is very different from English. Often, there are not ASL signs for English words, and no English word for an ASL sign, so the entire question must be interpreted as a whole. The process is reversed for answers. You must evaluate interpreted witness testimony as you would any other testimony. That is, you must not give interpreted testimony any greater or lesser weight than you would if the witness

had spoken English. You must not make any assumptions that a witness is less credible because that witnesses relies on the assistance of an interpreter to communicate.

One of the attorneys in this case, Carrie Ann Lucas, is also deaf and will be using an interpreter and technology that will allow her to fully participate in the trial. Ms. Lucas is also in a wheelchair and uses a ventilator. She has an assistant that will be in the courtroom and who will monitor the ventilator.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 6**

**(Burden of Proof)**

This is a civil case. Therefore, each Plaintiff has the burden of proving his or her claims by what is called a preponderance of the evidence. This means that no matter who produces the evidence, when you consider each Plaintiff's claims in light of all the facts, you must believe those claims are more likely true than not true in order for that Plaintiff to prevail on his or her claims. To put it differently, if you were to put all the evidence in favor of that Plaintiff and all the evidence in favor of Defendant on opposite sides of a scale, and the scale then tipped to the Plaintiff's side, then the Plaintiff has prevailed. If he or she fails to meet this burden, your verdict must be for Defendant.

As a defense to Plaintiffs' claims, Defendant has asserted affirmative defenses, which will be described to you more fully later. An affirmative defense is more than a denial of the claims. In terms of applying the burden of proof, you should treat Defendant's affirmative defenses in the same way you treat Plaintiffs' claims. That is, Defendant, has the burden of proving by a preponderance of the evidence that an affirmative defense is more likely true than not true.<sup>4</sup>

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<sup>4</sup> Arguello Final Instructions (modified).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 7**

**(Evidence - Limitations)**

I have mentioned the word “evidence.” “Evidence” includes direct and circumstantial evidence. I will define those terms for you in the next instruction. ~~“Evidence” includes the testimony of witnesses; documents and other things received as exhibits; any facts that have been stipulated — that is, formally agreed to by the parties; [and any facts that have been judicially noticed — that is facts which I say you must accept as true.]~~

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions and comments by lawyers are not evidence.
2. Exhibits that are identified by a party but not offered or received in evidence are not evidence.
3. Objections are not evidence. Lawyers have a right and sometimes an obligation to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question or an exhibit, you must ignore the question or the exhibit and must not try to guess what the information might have been.
4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence and must not be considered.
5. Anything you see or hear about this case outside the courtroom is not evidence[, unless I specifically tell you otherwise during the trial].

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other

purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.<sup>5</sup>

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<sup>5</sup> FED-CIV JI § 1.02 Evidence; Limitations, as modified by Plaintiffs.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 8**

**(Evidence - Direct and Circumstantial)**

You are to consider only the evidence in the case. However, you are not limited to the statements of the witnesses.

Generally speaking, two types of evidence are available from which you may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of facts which point to the existence or non-existence of certain other facts. Circumstantial evidence allows you to draw reasonable inferences, which are deductions or conclusions that reason and common sense lead you to draw from facts established by the evidence in the case.

As a general rule, the law makes no distinction between direct and circumstantial evidence. The law requires that you find the facts in accord with all the evidence in the case, both direct and circumstantial.<sup>6</sup>

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<sup>6</sup> FED CIV-JI §104.20 Inferences and Sample Instructions of Judge John L. Kane ("Kane Sample Instructions") at 6, [http://www.cod.uscourts.gov/Documents/Judges/JLK/jlk\\_JuryInst\\_Civil.pdf](http://www.cod.uscourts.gov/Documents/Judges/JLK/jlk_JuryInst_Civil.pdf).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 9**

**(Number of Witnesses)**

The weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

~~You are not bound to decide any issue of fact in accordance with the testimony of any number of witnesses that does not produce in your minds belief in the likelihood of truth, as against the testimony of a lesser number of witnesses or other evidence producing such belief in your minds.~~

The test is not which side brings the greater number of witnesses or takes the most time to present its evidence, but which witnesses and which evidence appeal to you ~~your minds~~ as being most accurate and otherwise trustworthy.<sup>7</sup>

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<sup>7</sup> FED CIV-JI §104.54 Number of witnesses, as modified by Plaintiffs.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 10**

**(Failing to Call a Witness)**

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

If a party fails to call a person as a witness who has knowledge about the facts in issue, and who is reasonably available to the party, and who is not equally available to the other party, then you may infer that the testimony of that person is unfavorable to the party who could have called the witness and did not.<sup>8</sup>

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<sup>8</sup> FED CIV-JI §105.11 All available witnesses or evidence need not be produced; O'Malley § 104:25 Failure to call available witness.

**PLAINTIFFS' PROPOSED STATEMENT OF THE CASE**

Plaintiffs Sarah Burke and Roger Krebs are both deaf, and Shawn Vigil was deaf. They allege that the City, through its Police Department and/or Sheriff Department, held them in custody without providing them necessary accommodations for their deafness. Sarah Burke also alleges that she was not provided necessary accommodations for her deafness and diabetes and was not appropriately provided necessary accommodations when she was arrested and when she was released from custody. The Plaintiffs are bringing claims against the City for violations of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. In addition the Estate of Shawn Vigil and his mother, Debbie Ulibarri, are also bringing claims of negligence and wrongful death against the City for the failure to exercise due care in its treatment of Shawn Vigil during the time he was in the care and custody of the Denver Sheriff Department and for failing to properly train and supervise its employees and agents.

The Plaintiffs are seeking damages against the City, and other relief as provided by the federal and state laws.

The Defendant City denies that it violated the Plaintiffs' rights. Instead, the City claims that the Plaintiffs were provided appropriate accommodations when necessary, or that the required accommodations would have posed an undue burden on the City. The City also denies that it was negligent with respect to the care it provided Shawn Vigil, denies that it was negligent in training or supervising its employees or agents, and denies that the Plaintiffs are entitled to any damages on any claim.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 11**

**(Multiple Plaintiffs)**

Although there are four plaintiffs in this action, it does not follow from that fact alone that if one plaintiff is entitled to recover damages, all are entitled to recover damages. Similarly, an award of damages to one Plaintiff should not be deducted from an award, if any, to any other Plaintiff. The defendant is entitled to a fair consideration as to each plaintiff, just as each plaintiff is entitled to a fair consideration of that plaintiff's claim against the defendant. Unless otherwise stated, all instructions I give you govern the case as to each plaintiff.<sup>9</sup>

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<sup>9</sup> FED CIV-JI §103.13 Multiple plaintiffs; as modified by Plaintiffs for clarity.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 12**

**(Stipulated Facts)**

The parties have stipulated to certain facts and agree that these facts can be taken as true without further proof. The stipulated facts are as follows:

1. The Denver Sheriff Department operated two facilities at issue in this litigation: the Pre-Arrestment Detention Facility ("PADF") and the Denver County Jail (the "Jail").
2. Shawn Vigil was Debbie Ulibarri's son.
3. Shawn Vigil was deaf.
4. Mr. Vigil was transferred from the PADF to the DCJ on August 25, 2005.
5. Mr. Vigil died on October 1, 2005 as a result of his suicide.
6. Sarah Burke was born deaf.
7. Ms. Burke was eventually transported from District 3 to the PADF, arriving there at approximately 9:19 pm on August 29, 2007.
8. Ms. Burke was released from the PADF at approximately 2 a.m.
9. Mr. Krebs has been deaf since he was approximately eighteen months old.
10. Mr. Krebs was taken from the hospital to the PADF, where he arrived at approximately 3:27 a.m. on March 30, 2007.
11. After appearing in court, Mr. Krebs was subsequently released from the Denver PADF at approximately 7 p.m. on March 30, 2007.

Because the parties have stipulated to these facts and do not dispute them, you are to take these facts as true for purposes of this case.<sup>10</sup>

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<sup>10</sup> Arguello Preliminary Instructions; Parties' Stipulations of Fact.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 13**

**(Judicial Notice)**

I have decided to accept as proved the following facts:

1. Shawn Vigil was charged with two serious felonies and he faced the possibility of a significant sentence if convicted of these crimes.<sup>11</sup>

2. On August 29, 2007, Sarah Burke was arrested in her home on an outstanding bench warrant for missing a court date in Arapahoe County.<sup>12</sup>

3. The Rehabilitation Act was passed into law in 1973, and detailed regulations were published in 1977. The Americans with Disabilities Act became law in 1990.

You must accept these facts as proved.

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<sup>11</sup> ECF No. 386 at 1-2.

<sup>12</sup> ECF No. 386 at 3.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 14**

**(Discrepancies in Testimony)**

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to the witness's testimony. An important part of your job will be making judgments about which witnesses to believe and which witnesses not to believe. You may believe everything a witness says, only part of it, or none of it.

You should think about the testimony of each witness you have heard and decide whether you believe all or any part of what each witness had to say, and how important that testimony was.

In considering the testimony of any witness, you may consider:

1. The witness's opportunity and ability to see, hear, or know the things to which the witness testified;

2. The quality of the witness's memory;

3. The witness's manner while taking the oath and testifying;

4. Whether the witness had an interest in the outcome of the case or any motive, bias, or prejudice;

5. Whether the witness's testimony was contradicted by anything the witness said or did another time, by the testimony of other witnesses, or by other evidence;

6. How reasonable the witness's testimony was in light of all the evidence; and

7. Any other facts that bear on believability.

If you believe a witness has willfully lied regarding any fact, you have the right to disregard all or any part of that witness's testimony.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses may or may not cause you to discredit such testimony. Two or more persons seeing an event may see or hear it differently.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood. After making your own judgment, you will give the testimony of each witness such weight, if any, that you may think it deserves.<sup>13</sup>

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<sup>13</sup> Judge Christine Arguello's Civil Final Instructions ("Arguello Final Instructions"), <http://www.cod.uscourts.gov/Documents/Judges/CMA/Civil%20Final%20Jury%20Instru20Instractions.pdf>, as modified by Plaintiffs for clarity.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 15**

**(Impeachment – Inconsistent Statement or Conduct)**

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or have failed to say or do something that is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

~~———— If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.~~

~~———— An act or omission is "knowingly" done, if the act is done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.<sup>14</sup>~~

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<sup>14</sup> FED CIV-JI §105.04 Impeachment – Inconsistent statement or conduct, as modified by Plaintiffs.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 16**

**(Rule 30(b)(6) Deposition Testimony)**

In this trial, there will be certain witnesses who are "Rule 30(b)(6)" witnesses for the City. A Rule 30(b)(6) witness is a person that the City has chosen to designate to speak on behalf of the City. This type of witness must be knowledgeable to speak on the specific identified topics and is required to give complete and knowledgeable answers on the City's behalf. The testimony of a Rule 30(b)(6) witness at their deposition is binding on the City on those topics and, at trial, the City cannot contradict this earlier deposition testimony.

In this case, the City designated four individuals as Rule 30(b)(6) witnesses. Right before these witnesses testify, you will be told that the witness is a Rule 30(b)(6) witness. You will also be told the topics that the City designated each witness to testify on at their depositions.<sup>15</sup>

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<sup>15</sup> Fed.R.Civ.P. 30(b)(6); *Ecclesiastes 9:10-11-12, Inc. v. DeLorean Mfg Co*, 497 F.3d 1135, 1146 (10<sup>th</sup> Cir 2007) ("The law is well-settled that corporations have an 'affirmative duty' to make available as many persons as necessary to give 'complete, knowledgeable, and binding answers' on the corporation's behalf."); *Rainey v. Am. Forest & Paper Ass'n*, 26 F. Supp.2d 82, 94-95 (D.D.C. 1998)(Unless it can prove that the information was not known or was inaccessible, a corporation cannot later proffer new or different allegations that could have been made at the time of the 30(b)(6) deposition.)

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 17**

**(Depositions As Evidence)**

Certain testimony may be read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given by the witness from the witness stand.<sup>16</sup>

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<sup>16</sup> CJI § 3:10.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 18**

**(Demonstrative Summaries Not Received as Evidence)**

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, or other underlying evidence in the case. Those charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the books, records or other underlying evidence.<sup>17</sup>

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<sup>17</sup> FED-CIV JI § 2.10A Demonstrative Summaries Not Received as Evidence.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 19**

**(Highlighted Exhibits)**

The lawyers have highlighted certain parts of some exhibits. However, it is for you to determine the significance of the highlighted parts.<sup>18</sup>

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<sup>18</sup> CJl-Civ 4<sup>th</sup> 3:18 Highlighted Exhibits.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 20**

**(All Persons Equal Before the Law)**

You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A municipality or city is entitled to the same fair trial as a private individual. All persons, including a municipality or a city, stand equal before the law, and are to be treated as equals.<sup>19</sup>

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<sup>19</sup> FED CIV-JI §103.12 All persons equal before the law.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 21**

**(Bench Conferences)**

During the trial it may be necessary for me to speak with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence which govern the trial, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.<sup>20</sup>

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<sup>20</sup> FED-CIV JI § 1.03 Bench Conferences and Recesses.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 22**

**(Outline of Trial)**

The trial will proceed in the following manner:

First, the plaintiffs' attorney may make an opening statement. Next, the defendant's attorney may make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The plaintiffs will then call witnesses and both parties will be allowed to examine those witnesses. Next, the defendant will call witnesses and both parties will be allowed to examine those witnesses.

After the presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence.

After all the evidence has been heard and the arguments are finished, the court will instruct you further on the law. After that you will retire to deliberate on your verdict.

Although you must follow my instructions about the law applicable to this case, you as jurors are the sole and exclusive judges of the facts. Neither in these instructions, nor in any ruling, action or remark that I may make during the course of this trial, has it been or will it be my intention to give any opinion or suggestion as to what your verdict should be, not in these instructions, nor in any ruling, action, or remark that I may make during the course of this trial.<sup>21</sup>

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<sup>21</sup> FED-CIV JI § 1.06 Outline of Trial. Plaintiffs' inserted text From Arguello Preliminary Instructions and, in the third paragraph, to conform to the trial plan that the City may ask its direct questions when Plaintiffs call a witness during our case in chief.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 23**

**(General Introduction at Close of Evidence)  
(Submitted at Close of Evidence)**

Now that you have heard the evidence and the argument, it is my duty to instruct you about the applicable law. It is your duty to follow the law as I will state it. You must apply the law to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. Do not be concerned about the wisdom of any rule of law stated by me. You must follow and apply the law. The lawyers may have properly referred to some of the governing rules of law in their statements or arguments. If there is any difference between the law stated by the lawyers and these instructions, you must follow my instructions. Nothing I say in these instructions indicates I have any opinion about the facts. You, not I, have the duty to determine the facts.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.<sup>22</sup>

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<sup>22</sup>

FED CIV-JI §103.01 General introduction at close of evidence.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 24**

**(Elements of Claims under Section 504 of the Rehabilitation Act and the ADA)**

Plaintiffs Sarah Burke, Roger Krebs, and Debbie Ulibarri, as the Representative of Shawn Vigil's estate, claim that the City and County of Denver violated the Rehabilitation Act of 1973 (which we have been referring to as the RA) which prohibits discrimination against persons with disabilities by entities that receive federal financial assistance.<sup>23</sup> These plaintiffs also claim that the City violated the Americans with Disabilities Act, or the "ADA," which prohibits discrimination against people with disabilities by public entities such as cities.

The parties agree that at all times relevant to this case, the City and County of Denver was required to follow the ADA and RA. Thus, the City's Police Department its Sheriff Department and its employees and agents, including its jails and detention facilities, were also covered by the ADA and the RA.<sup>24</sup>

You must find in favor of a Plaintiff under the ADA and RA if that plaintiff shows that:

1. he or she was disabled;
2. he or she was otherwise qualified to participate in the programs, services and activities; and,
3. the program discriminated against him or her because of his or her disability.<sup>25</sup>

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<sup>23</sup> 29 U.S.C. § 794(a).

<sup>24</sup> 29 U.S.C. § 794(b)(1).

<sup>25</sup> Plaintiffs have combined the instructions for section 504 and the ADA. "Because the language of [Title II of the ADA and the Rehabilitation Act] is substantially the same, we apply the same analysis to both." *Cohon ex rel. Bass v. N.M. Dep't of Health*, 646 F.3d 717, 726 (10th Cir. 2011) (quoting *Doe v. Univ. of Md. Med. Sys. Corp.*, 50 F.3d 1261, 1264 n.9 (4th Cir. 1995)). In addition, because the coverage of both statutes (receiving federal funding; being a public entity) is not disputed, we have not included that element in the list.

The elements come from the following two Tenth Circuit cases: *Barber ex rel. Barber v. Colorado Department of Revenue*, 562 F.3d 1222, 1228 (10th Cir. 2009), provides the following (continued...)

The parties agree that – because of their deafness – Mr. Vigil was, and Ms. Burke and Mr. Krebs are all disabled.<sup>26</sup> (I will discuss Ms. Burke’s diabetes in a moment.) That means the parties agree that the three individuals satisfy the first ADA/RA requirement.

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<sup>25</sup> (...continued)

elements of a prima facie case under Section 504: “(1) plaintiff is handicapped under the Act; (2) [she] is ‘otherwise qualified’ to participate in the program; (3) the program receives federal financial assistance; and (4) the program discriminates against plaintiff.” (Citation omitted.)

*Robertson v. Las Animas County Sheriff’s Department*, 500 F.3d 1185, 1193 (10th Cir. 2007), provides the following elements under Title II: “(1) [the plaintiff] is a qualified individual with a disability, (2) who was excluded from participation in or denied the benefits of a public entity’s services, programs, or activities, and (3) such exclusion, denial of benefits, or discrimination was by reason of a disability.”

<sup>26</sup> As of now, the City will stipulate that Mr. Vigil was, and Ms. Burke and Mr. Krebs are all deaf. It is considering whether it is willing to stipulate that they are all individuals with disabilities as that term is used in the ADA and RA.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 25**

**(Disability)**

In order for Mr. Vigil, Mr. Krebs or Ms. Burke to prove that their deafness was a disability or for Ms. Burke to prove that her diabetes is a disability, each Plaintiff has to prove that this condition – deafness or diabetes -- substantially impairs one or more of his or her major life activities.<sup>27</sup>

“Major life activities” include hearing, as well as eating and the ability to regulate one’s blood sugar and metabolize food.<sup>28</sup>

A person is “substantially limited” in a major life activity if he or she is restricted in performing that major life activity compared to an average person in the general population.<sup>29</sup>

If you find that as a result of deafness, Mr. Vigil, Mr. Krebs or Ms. Burke is substantially limited in hearing, then you must find that he or she is disabled under the ADA and RA.

If you find that as a result of diabetes, Sarah Burke is substantially limited in eating, regulating her blood sugar, and/or metabolizing food, then you must find that she is disabled under the ADA and RA.<sup>30</sup>

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<sup>27</sup> A “disability” under the ADA and RA is a physical impairment that substantially limits one or more major life activities. 42 U.S.C. § 12102(2)(A) (2007). Diabetes is a physical impairment. 28 C.F.R. § 35.104 (2004). Please note that this instruction may be modified to address only Ms. Burke’s diabetes if the City agrees that the individuals’ deafness means that they are disabled under the ADA and RA. *See supra* n. 23.

<sup>28</sup> *Lawson v. CSX Transp., Inc.*, 245 F.3d 916, 923 (7th Cir. 2001).

<sup>29</sup> 29 CFR § 1630.2(j) (2001), *quoted in Toyota Motor Mfg., Kentucky, Inc. v. Williams*, 534 U.S. 184, 196 (2002).

<sup>30</sup> *Lawson*, 245 F.3d at 924.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 26**

**(Qualified Individual With A Disability)**

Shawn Vigil, Sarah Burke, and Roger Krebs were “otherwise qualified” to participate in the City’s programs services and activities if other, nondisabled, people in their circumstances are also allowed to participate in those programs, services and activities. If the City makes a program, service, or activity available to individuals in general, it must make those programs, services, and activities available to deaf people in similar circumstances in the same manner.<sup>31</sup>

Under the ADA and RA, the terms “programs, services or activities” of the City, including its Police and Sheriff Departments and agents, cover everything these departments do with respect to members of the public such as Mr. Vigil, Ms. Burke, or Mr. Krebs.<sup>32</sup> For example, in this case, the terms “programs, services and activities” includes:

1. communicating with arresting officers, deputies, guards, medical personnel, and other employees or agents of the City at the county or city jails or at court;
2. communicating with City employees and its agents during intake, medical and mental health screening, classification procedures, and daily interaction with jail personnel;
3. access to telephones, televisions, and visitation; and

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<sup>31</sup> *Robertson*, 500 F.3d at 1199; *see also Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 212-13 (1998).

<sup>32</sup> *Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 210-11 (1998) (holding that the phrase “benefits of the services, programs, or activities of a public entity” covers programs and activities of prisons); *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002) (“we have construed ‘the ADA’s broad language [as] bring[ing] within its scope “anything a public entity does;”” citing cases).

4. access to any program, service, or activity offered to other people in custody, such as the Administrative Review Board, religious services, and communicating during court appearances.<sup>33</sup>

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<sup>33</sup> 29 U.S.C. § 794(b)(1)(A) (“program or activity” under section 504 of the RA means all of the operations of a department of a state or local government).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 27**

**(Acts of Agent or Employee as Acts of Principal or Employer)**

The Defendant in this case, the City & County of Denver is responsible for any unlawful acts by its officers, employees or any other agent of the City including the Denver Police and Sheriff Departments and their agents while those persons perform the jobs given to them by the City and County of Denver.<sup>34</sup>

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<sup>34</sup> See CJI-Civ. 7:6 Employer and Employee – Defined; CJI-Civ 8:2, Principal and Agent or Employer and Employee -- Only Principal or Employer Sued -- No Issue as to Relationship -- Acts of Agent or Employee as Acts of Principal or Employer (modified).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 28**

**(DHHA as Agent of City & County of Denver)**

The Denver Health and Hospital Authority became the agent of the City & County of Denver when it contracted with the City to provide health care to people in the custody of the Denver Sheriff Department.<sup>35</sup>

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<sup>35</sup> CJI:Civ. 4<sup>th</sup> Agency – Defined (modified).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 29**

**("Discrimination" Defined)**

To prove discrimination under the ADA or RA, each plaintiff must prove that the City failed to provide him or her the opportunity to participate in the same programs, benefits or services of its police and sheriff department that hearing people are able to, and to be able to participate to the same extent that hearing people are able to.<sup>36</sup> In order to provide deaf persons with the opportunity to participate in its programs, benefits or services, the City was required to do all of the following:

1. Provide "effective communication" between deaf people and its employees and agents;<sup>37</sup>
2. Provide "auxiliary aids and services" where necessary to ensure effective communication;<sup>38</sup>
3. Provide information concerning the existence and location of accessible services and activities as well as "notice" to the deaf person regarding his or her rights under the ADA and RA;<sup>39</sup> and
4. Provide reasonable accommodations where necessary to ensure effective communication and otherwise to avoid discrimination.<sup>40</sup>

I will discuss each of these above terms in the following instructions.

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<sup>36</sup> 28 C.F.R. §§ 35.130(b)(1)(i)-(iii), (vii); 28 C.F.R. §§ 41.51(b)(1)(i)-(iii), (vii).

<sup>37</sup> 28 C.F.R. § 35.160.

<sup>38</sup> 28 C.F.R. § 35.160.

<sup>39</sup> 28 C.F.R. §§ 35.106; 35.163(a).

<sup>40</sup> 28 C.F.R. § 35.130(b)(7).



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 30**

**(Discrimination Alleged)**

Each Plaintiff alleges that the City discriminated against him or her during different phases of the arrest and/or detention process. In considering the instructions I am about to give you concerning the requirements and prohibitions of the ADA and RA, please apply them in the following contexts:

Shawn Vigil alleges that the City discriminated against him while he was in the care and custody of the Denver Sheriff Department. Events that occurred prior to August 28, 2005, may only be considered for the purpose of determining whether discrimination occurred after that date. In other words, information about what occurred prior to August 28, 2005 may be relevant only to show the background and context of events that followed, including but not limited to how it came to be that Mr. Vigil was placed in segregation, and the allegations that there was a lack of information about his mental health status and the extent of his disability and inability to communicate.<sup>41</sup>

On August 28, 2005, Mr. Vigil had already been transferred to the Denver County Jail. He alleges that between that date and September 27, 2005, when he committed suicide, the City discriminated against him because

1. it did not provide effective communications with jail personnel and medical staff;
2. because it did not provide effective communications to ensure the safe treatment of him because he was deaf, including the failure to provide effective communication to allow a proper evaluation of his mental health status or his risk of suicide because or in order to be able to take necessary steps to prevent his suicide because he was deaf; and

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<sup>41</sup> Order on Motion to Exclude Expert Witness Opinions, ECF 331, at 9.

3. because it did not provide effective communication to allow him to access other City services, including daily communication with the City's jail personnel and medical staff, access to the Administrative Review Board, and ability to access a telephone or other means to communicate with the outside, which were provided to other people in custody who are not deaf.<sup>42</sup>

Sarah Burke alleges that the City discriminated against her during her arrest because they did not provide effective communication in the process of that arrest and did not permit her to bring her diabetic supplies and her Sidekick pager device with her. Ms. Burke also alleges that she was discriminated against during her release from the City jail because she was not allowed to retain her diabetic supplies and her "Sidekick" device as a communication aid upon her arrest, which she alleges would have decreased the difficulty she had in comprehending or obtaining assistance for her diabetic medical needs and in obtaining transportation upon her release. She further alleges that the City discriminated against her upon her release by not providing her other effective means of communicating with the City's deputies regarding her diabetic medical needs or provide her other effective means of communication to obtain transportation upon her release.<sup>43</sup>

Roger Krebs alleges that the City discriminated against him because it refused to provide effective communication, such as the services of a qualified sign language interpreter for his arraignment and this denied him the opportunity to participate in his arraignment to the same extent as a non-disabled person.<sup>44</sup>

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<sup>42</sup> Order on Pending Motions, ECF 265, at 36-37.

<sup>43</sup> Order on Pending Motions, ECF 265, at 37-38.

<sup>44</sup> Order on Pending Motions, ECF 265, at 38-39, citing *Robertson*, 500 F.3d at 1199.

All of the Plaintiffs allege that the City failed to provide them with information concerning the existence and location of accessible services and activities, and failed to provide them notice of their rights under the ADA and RA.<sup>45</sup>

In order to find discrimination, you do not need to find that all of the allegations of each of the Plaintiffs was more likely true than not. Rather, if you find that one or more of the above allegations were more likely true than not with respect to each Plaintiff, then you must find that the City discriminated against them.

On the other hand, if the Plaintiffs did not prove any of their allegations of discrimination, then you must find that the City did not discriminate with respect to that Plaintiff.

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<sup>45</sup> 28 C.F.R. §§ 35.106, 35.163(a).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 31**

**(Effective Communication)**

In order to provide deaf persons the opportunity to participate in the City's programs, benefits and services, the City must ensure that its employees and agents have "effective communication" with deaf people. That means that the City must ensure that deaf people can communicate with its employees and agents in a manner that is as effective as the communication that they have with people who are not deaf. For example, the City must ensure that deaf people who are arrested and taken into the care and custody of the City receive the same quality of communication that the City provides to people who are not deaf and are taken into their care and custody.<sup>46</sup>

The type of actions that the City was required to take to ensure effective communication depends on several factors, including:

1. the method of communication preferred by the deaf person;
2. the nature, length, and complexity of the communication involved; and/or
3. the context in which the communication is taking place.<sup>47</sup>

If you find that the City did not provide effective communication to a Plaintiff, then you must find that the City violated the ADA and RA with respect to that Plaintiff.

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<sup>46</sup> 28 C.F.R. § 35.160(a)(1); 28 C.F.R. § 41.51(e); *Robertson*, 500 F.3d at 1195; Order on Pending Motions, ECF 265, at 35.

<sup>47</sup> 28 C.F.R. § 35.160(b)(2).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 32**

**(Auxiliary Aids and Services For Effective Communication)**

The ADA and RA require that the City must provide auxiliary aids and services to deaf people if it is necessary to ensure effective communication. The services necessary to ensure effective communication may include, but are not limited to, providing qualified sign language interpreters, providing TTYs (phone systems that can be used by deaf people), and close-captioned televisions.<sup>48</sup>

In determining what the City was required to do to provide effective communication, the City was required to give primary consideration to the preferences of the deaf people involved, that is, to the preferences of Shawn Vigil, Sarah Burke, and Roger Krebs.<sup>49</sup>

The City must also provide an opportunity for deaf people to request the type of communications methods that they prefer. The City must honor that preference unless it can show that another effective means of communication exists or that use of the means chosen would constitute an “undue burden.”<sup>50</sup> If the City attempts to use a different means of communication than that preferred by the deaf person, the City has the burden of proving that its method is as effective as the method preferred by the deaf person.<sup>51</sup>

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<sup>48</sup> 28 C.F.R. § 35.104 (definition of “auxiliary aids and services.”)

<sup>49</sup> 28 C.F.R. § 35.160(b)(2); Order on Pending Motions, ECF 256, at 35.

<sup>50</sup> 28 C.F.R. § 35.160(b)(2); Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services Originally Published July 26, 1991 (“Guidance on Original Title II Regulations”), 28 C.F.R. pt. 35, app. B (2011) at 205. (Point cites will be to the online version at [http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.pdf](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.pdf).)

<sup>51</sup> Guidance On ADA Regulation On Nondiscrimination On The Basis Of Disability In State And Local Government Services Originally Published July 26, 1991, 28 C.F.R. pt. 36, app. B (“The public entity shall honor the choice [of auxiliary aid] *unless it can demonstrate* that another effective means of communication exists or that use of the means chosen would not be required under § 35.164.” (Emphasis added)); *see also, e.g., Hayden v. Redwoods Community*

(continued...)

While exchanging notes is one possible method of communication, sign language interpreters may be required when a deaf person's primary language is sign language, and the information being communicated with the deaf person is complex, or the discussion is lengthy. There are many situations where effective communication between law enforcement and deaf people is critical, including interviewing deaf people, engaging in a complex conversation, or assessing their classification or suicide risk.<sup>52</sup> In these situations, law enforcement must provide the deaf person a qualified sign language interpreter when necessary to ensure effective communication.<sup>53</sup> Similarly, when a law enforcement officer is interviewing or engaging in any complex conversation with a person whose primary language is sign language, a qualified interpreter is usually needed to ensure effective communication.<sup>54</sup>

The City is not permitted to use or rely on a deaf person's minor child to interpret or facilitate communication except in an emergency involving an imminent threat to the safety or welfare of an individual, and no interpreter is available. This imminent threat exception is not

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<sup>51</sup> (...continued)

*College District*, 2007 WL 61886, at \*9 (N.D. Cal. Jan. 8, 2007) (holding that where the defendant proffered what it believed to be an alternative means of communication, it was the defendant's "burden . . . to demonstrate the proffered aid's effectiveness"); *Nat'l Fed'n of the Blind v. Target*, 452 F. Supp. 2d 946 (N.D. Cal. 2006) (holding that after the plaintiffs had stated a claim by alleging that the defendant's website was not accessible to blind people, "the burden then shift[ed] to defendants to assert, as an affirmative defense, that they already provide the information . . . in another reasonable format."); *Center v. City of West Carrollton*, 227 F. Supp. 2d 863, 868 (S.D. Ohio 2002) (quoting Guidance language above, and holding that the ADA and RA "require that a public entity must give deference to a disabled person's choice of auxiliary aid, unless it can demonstrate that another effective means of communication exists, or that use of the means chosen would not be required under § 35.164.).

<sup>52</sup> *Cf. Chisolm v. McManimon*, 275 F.3d 315, 319, 328-29 (3th Cir. 2001) (noting importance of interpreter during intake and classification; prisoner was a suicide risk).

<sup>53</sup> ADA Technical Assistance Manual (1994 Supplement), II-7.1000 Equally Effective communication, ILLUSTRATION 3, <http://www.ada.gov/taman2up.html>.

<sup>54</sup> U.S. Department of Justice, Communicating with People Who are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers. <http://www.ada.gov/lawencomm.pdf>.

intended to apply to typical or foreseeable interactions with law enforcement personnel, but rather where a delay in providing interpretation could have life-altering or life-ending consequences.<sup>55</sup>

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<sup>55</sup> 28 C.F.R. § 35.160(c)(3).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 33**

**(Reasonable Accommodations)**

In addition to the obligation to provide reasonable accommodations to achieve effective communication the City -- and its police and sheriff departments -- were also required to make reasonable accommodations in their policies, practices, or procedures if the accommodations were necessary to avoid discrimination on the basis of disability against Shawn Vigil, Sarah Burke, or Roger Krebs.<sup>56</sup> For example, Sarah Burke alleges that the City was required to make the reasonable accommodation of allowing her to bring her diabetic supplies with her upon her arrest so she would have the ability to test and/or treat her diabetic condition upon her release.

If you find that the City did not make required reasonable accommodations for a Plaintiff, then you must find that the City violated the ADA and RA with respect to that Plaintiff.

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<sup>56</sup> 28 C.F.R § 35.130(b)(7) (title II regulations); *Alexander v. Choate*, 469 U.S. 287, 301,(1985) (holding that section 504 may require reasonable accommodations); *Chaffin v. Kansas State Fair Bd.*, 348 F.3d 850, 857 (10th Cir. 2003) (same; quoting *Choate*); Order on Pending Motions, ECF 256, at 35. Title II uses the term “reasonable modifications,” 28 C.F.R. § 35.130(b)(7), while *Choate* used the term “reasonable accommodations” under the RA. The Tenth Circuit has held that these terms “create identical standards” and may be “used . . . interchangeably.” *Robertson*, 500 F.3d at 1195 n.8.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 34**

**(Knowledge of Need for Services or Accommodations)**

The City was required to provide auxiliary aids and services and/or reasonable accommodations to Shawn Vigil, Sarah Burke, and Roger Krebs if it knew they were disabled and knew that they needed the services or accommodations.

The parties agree that the City knew that Shawn Vigil, Sarah Burke, and Roger Krebs were deaf, and knew that Sarah Burke had diabetes.

The City can be said to have known that Shawn Vigil, Sarah Burke, and Roger Krebs needed services or accommodations for their disabilities *either* if they requested it *or* if the City (through agents and employees such as police officers or sheriff deputies) knew that the Plaintiffs' deafness and Ms. Burke's diabetes limited their ability to participate in or receive the benefits of its services.

The City's knowledge that the Plaintiffs needed services or accommodations could come from the City's knowledge of their disabilities and their need for a certain service or accommodation. It could also come from the Plaintiffs' attempt to participate in or receive the benefits of a certain service.

For example, you may assume that the City knew of the need to provide each Plaintiff with the services of a sign language interpreter if you find that their need for an interpreter was obvious. If their need for an interpreter was obvious, the City was required to provide an interpreter even if the Plaintiff did not request one.<sup>57</sup>

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<sup>57</sup> *Robertson*, 500 F.3d at 1196-97; Order on Pending Motions, ECF 256, at 35.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 35**

**(Qualified Interpreter)**

If the service required or requested was the assistance of a sign language interpreter, then the City must provide a qualified sign language interpreter as defined in the following instruction. A “qualified interpreter” means an interpreter who, via a video remote interpreting (VRI) service or by personal appearance, is able to interpret effectively, accurately, and impartially, in conversations with a deaf person, , using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters.<sup>58</sup>

Someone with only a rudimentary familiarity with sign language or finger spelling is not a “qualified interpreter.”<sup>59</sup>

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<sup>58</sup> 28 C.F.R. § 35.104.

<sup>59</sup> Guidance to Revisions to Title II Regulations at 72.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 36**

**(Notice)**

The City was required to make information available to Shawn Vigil, Sarah Burke, and Roger Krebs regarding their rights under the ADA and RA.<sup>60</sup> The City was also required to ensure that Shawn Vigil, Sarah Burke, and Roger Krebs were able to obtain information as to the existence and location of accessible programs, services, and activities, including available services and accommodations, while they were in the care and custody, or being taken into the care and custody, of the City, the Denver Sheriff Department and/or the Denver Police Department.<sup>61</sup> In providing such information, the City was required to comply with the requirements for effective communication.<sup>62</sup>

If you find that it is more likely than not that the City failed to provide the Plaintiffs -- or any one of them -- information concerning the requirements of the ADA and RA and the existence and location of accessible services, then you must find that the City violated the ADA and RA with respect to that Plaintiff or those Plaintiffs.

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<sup>60</sup> 28 C.F.R. § 35.106.

<sup>61</sup> 28 C.F.R. § 35.163(a).

<sup>62</sup> 28 C.F.R. § 35.106.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 37**

**(Undue Burden)**

The City has asserted the affirmative defense of “undue burden” to its duty to provide effective communication and/or reasonable accommodations, such as sign language interpreters for deaf people or accommodations for diabetes. The City claims that it was not required to provide these services and accommodations because they would have resulted in an undue burden on the City.<sup>63</sup>

“Undue burden” is an affirmative defense. As I discussed earlier, the City has the burden of proving its affirmative defense. That is, it must prove that it is more likely than not that providing the necessary services and accommodations to each or any of the Plaintiffs would have resulted in an undue burden on the City.

An undue burden means a significant difficulty or expense.<sup>64</sup> In determining whether providing sign language interpreters or other accommodations would have imposed an undue burden, you should consider all City resources available for use in the funding and operation of Denver Sheriff Department or Denver Police Department.<sup>65</sup>

Furthermore, the City must prove that the determination of undue burden was made by the head of the public entity, that is, the Manager of Safety for the City and County of Denver.<sup>66</sup>

In order to satisfy its burden of proving that the necessary services or accommodations would result in an undue burden, the City must prove that it considered all resources available

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<sup>63</sup> 28 C.F.R. § 35.164; *Robertson*, 500 F.3d at 1196; Order on Pending Motions, ECF 256, at 35. The defenses in § 35.164 and 35.130(b)(7) include fundamental alteration; this was not pleaded by the City. *See* Answer to Plaintiffs’ Second Amended and Supplemental Complaint, ECF 51, at 13-15.

<sup>64</sup> 28 C.F.R. § 36.104.

<sup>65</sup> 28 C.F.R. pt. 35, app. B at 201.

<sup>66</sup> 28 C.F.R. § 35.164.

for use in the funding and operation of the City and that its decision to refuse to provide such services or accommodations was accompanied by a written statement of the reasons for reaching that conclusion.<sup>67</sup>

If an action that was necessary to provide effective communication to Shawn Vigil, Sarah Burke, or Roger Krebs would have resulted in an undue burden, the City was required to take any other action that would not result in such burdens but would nevertheless ensure that, to the maximum extent possible, these individuals received the benefits or services provided by the Denver Sheriff Department and/or Denver Police Department<sup>68</sup>

It was not permissible for the City to take no action in response to Mr. Vigil's, Ms. Burke's or Mr. Krebs's need for effective communication.<sup>69</sup>

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<sup>67</sup> 28 C.F.R. § 35.164.

<sup>68</sup> 28 C.F.R. § 35.164.

<sup>69</sup> *Robertson*, 500 F.3d at 1199.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 38**

**(Damages: Intentional Conduct)**

In order to find damages under the ADA or RA to Mr. Vigil's estate, to Ms. Burke, or to Mr. Krebs, you must find that the City intentionally discriminated with respect to that Plaintiff. Intentional discrimination does not require a showing of personal ill will or animosity toward the disabled person. Rather, intentional discrimination occurs if the City:

1. knew it was substantially likely that it was or would be violating the ADA or RA, and
2. it failed to take action in response.<sup>70</sup>

For example, with respect to the first part of this test, the City, through its officers and employees, knew that it was substantially likely that it was violating Mr. Vigil's, Ms. Burke's and Mr. Krebs's rights under the ADA and RA if *either* that person requested effective communication or other reasonable accommodation *or* that person's need for effective communication or other reasonable accommodation was obvious.<sup>71</sup>

Under the second part of the test, the City was required to consider each person's individual needs when determining what services were necessary to provide effective communication. Just offering any form of communication was not enough.<sup>72</sup>

In other words, each Plaintiff is entitled to compensatory damages if it is more likely than not that the City was aware of his or her need for effective communication or other reasonable accommodation -- either by request or because it was obvious -- and the City denied or failed to

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<sup>70</sup> *Barber*, 562 F.3d at 1228-29 (quoting, among others, *Duvall v. County of Kitsap*, 260 F.3d 1124, 1139 (9<sup>th</sup> Cir. 2001)).

<sup>71</sup> *Duvall*, 260 F.3d at 1139.

<sup>72</sup> *See Barber*, 562 F.3d at 1229 (quoting *Lovell v. Chandler*, 303 F.3d 1039, 1056 (9<sup>th</sup> Cir. 2002) (internal citations omitted).)

act on the request or need. Plaintiffs are also entitled to compensatory damages if the City was aware of other discrimination against them in the provision of services, programs and benefits and failed to take action to eliminate or remedy that discrimination.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 39**

**(Compensatory Damages)**

If you find that the City intentionally discriminated against Mr. Vigil, Ms. Burke or Mr. Krebs in violation of the ADA or RA, then each such person is entitled to compensatory damages. Compensatory damages is the amount of money necessary to compensate the Plaintiff for the emotional pain and suffering, mental anguish, shock, discomfort, or inconvenience that the person suffered because of the City's violations of the law, as well as any out-of-pocket expenses.

You must then determine an amount of damages, if any, that is fair compensation for violation of that individual's rights under the ADA and RA. The purpose of compensatory damages is to compensate the Plaintiff for the harms and losses that he or she suffered. No evidence of the monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation for these damages. The amount should be fair in light of the evidence presented at the trial. The amount of compensatory damages should be guided by common sense. The law does not require that harms and losses be shown with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit. You must use sound discretion in drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.<sup>73</sup>

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<sup>73</sup> O'Malley, Devitt, Blackmar and Wolff, Federal Jury Practice and Instructions §§ 128.01 n. 15.2 (quoting Pattern Jury Instructions of the District Judges Ass'n of the Fifth Circuit, Civil Cases, Instruction No. 15.2 (2009)) & 177.70 (modified).



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 40**

**(Negligence in Treatment of Shawn Vigil)**

The Plaintiffs claim that the City and County of Denver, through the conduct of the Denver Sheriff Department and its agents, was negligent in its treatment of Shawn Vigil.

In order for the Plaintiffs to prevail on their negligence treatment claim you must find that the following elements are more likely true than not:

1. The Denver Sheriff Department or its agents were negligent in their treatment of Shawn Vigil; and
2. That negligence caused harm to Shawn Vigil.

The terms “negligent in their treatment” and “caused” are defined in the following instructions.

If you find that both of these elements are more likely true than not, then your verdict on the survival claim and on the wrongful death claim must be for the Plaintiffs.

If you find that one or both of these elements are not more likely to be true, then your verdict on these claims must be for the City & County of Denver.<sup>74</sup>

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<sup>74</sup> CJI-Civ 9:1, Elements of Liability (revised by Plaintiffs); see *Ulibarri v. City & County of Denver*, 742 F. Supp. 2d 1192, 1225-27 (D. Colo. 2010).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 41**

**(Definition of Negligence)**

Negligence is defined as the failure to use the due care, or reasonable care, that is required under the circumstances. The law requires that the City, through its Denver Sheriff Department, employees and agents, use due care in its treatment of those in its care. In other words, the City must use due care to assure the safety and security of those people, and to prevent a person in its care from committing suicide by properly classifying that person, communicating with that person, and supervising that person.

The due care required of the City, through its Denver Sheriff Department and its agents and employees, is that they perform their duties in accordance with the knowledge and skill ordinarily possessed by other jailers, or their agents, to protect deaf persons in their care from committing suicide.

Plaintiffs contend that City & County of Denver breached the duty of care in this case by

1. isolating Shawn Vigil in the special management area solely on the basis of his disability, that is because he was deaf;
2. failing to conduct and adequate medical and mental health evaluations at any time after August 28, 2005;
3. failing to take adequate steps to prevent his suicide;
4. failing to provide Shawn Vigil an effective way of communicating with the deputies and medical staff;
5. failing to allow Shawn Vigil to appear before the Administrative Review Board;
6. failing to provide Shawn Vigil or his family an effective way of communicating with each other;

7. failing to adequately supervise Shawn Vigil during his stay at the jail;
8. failing to house Shawn Vigil in a safe manner, and
9. generally acting in a manner without due regard for the care and safety of Shawn Vigil.

You do not have to find that all of the above allegations are proven by the Plaintiffs. If you find that it is more likely than not that the City breached its duty of care with respect to any one, or more of these areas, then you must find that the City was negligent in its treatment of Shawn Vigil.

If you find that the City did not breach its duty of care with respect to any of these areas, then you must find that the City was not negligent in its treatment of Shawn Vigil.<sup>75</sup>

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<sup>75</sup> *Ulibarri v. City & County of Denver*, 742 F. Supp. 2d 1192, 1225 (D. Colo. 2010); *Perreira v. State*, 768 P.2d 1198, 1220 (Colo. 1989); C.R.S. § 17-26-102.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 42**

**(Causation)**

The word "cause" or "caused" as used in these instructions on negligence means an act or failure to act that in natural and probable sequence produced the claimed harm. It is a cause without which the claimed harm would not have happened.

More than one person or act may be responsible for causing the harm. The City & County of Denver may be liable even if there were also other causes for the harms to Shawn Vigil, if you find that those harms would not have happened without the City and County of Denver's negligence.

If you find that City & County of Denver was negligent and that its negligence was a cause of harm to Shawn Vigil, it is not a defense that some third person's negligence might also have been a cause of the harms.<sup>76</sup>

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<sup>76</sup> CJI-Civ 4<sup>th</sup> 9:19, Concurrent Causes; CJI-Civ. 9:20 (revised by Plaintiffs).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 43**

**(Elements of Liability)**

The Plaintiffs also claim that the City and County of Denver, through the Denver Sheriff Department and its agents, negligently failed to train and supervise its employees and agents. In order for the Plaintiffs to prevail on their negligent failure to train and supervise claim against the City & County of Denver, you must find it more likely than not that each of the following elements have been proven:

1. The City & County of Denver negligently failed to train and supervise its employees and agents to protect Shawn Vigil, a deaf person in its custody, from committing suicide; and

2. That negligence caused harm to Shawn Vigil.

If you find that both of these elements are more likely true than not, then your verdict must be for the Plaintiffs on this claim.

If you find that one or both of these elements is not more likely to be true, then your verdict must be for the City & County of Denver.<sup>77</sup>

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<sup>77</sup> CJI-Civ 9:1, Elements of Liability (modified); *Ulibarri v. City & County of Denver*, 742 F. Supp. 2d 1192, 1225\_ (D. Colo. 2010); *Perreira v. State*, 768 P.2d 1198, 1220 (Colo. 1989); C.R.S. § 17-26-102; see *Foradori v. Harris*, 523 F.3d 477, 484 (5<sup>th</sup> Cir. 2008).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 44**

**(Negligent Training and Supervision)**

Negligent training and supervision is defined as the failure to take due care, or reasonable care, to train and supervise employees and agents to protect those persons in its care and custody from committing suicide, which includes identifying those persons who are at risk of self-inflicted harm through proper classification to ensure that at-risk persons are housed appropriately, supervised, and provided medical care.

The due care that was required of the City and County of Denver, through the Denver Sheriff Department and its agents, was that the City train and supervise its employees and agents in accordance with the knowledge and skill ordinarily possessed by other jailers in housing deaf persons in their care and custody.

Plaintiffs contend that the City & County of Denver breached this duty by failing to properly train and supervise its employees and agents of the Denver Sheriff Department in the following areas:

1. failing to effectively communicate with deaf persons in its care,
2. failing to prevent the risk of suicide of deaf persons,
3. failing to safely house and care for deaf people in their care, including failing to supervise its employees and agents to ensure that the mental health needs of deaf persons are adequately assessed;
4. failing to properly supervise its employees to ensure that rounds were properly made to prevent the risk of suicide;
5. failing to properly supervise its employees and agents to ensure that Shawn Vigil was properly supervised, and

6. failing to train its employees and agents on policies and procedures needed to ensure the safety of deaf persons in its care.

You do not have to find that all of the above allegations are proven by the Plaintiffs. If you find that it is more likely than not that the City breached its duty of care with respect to any one, or more of these areas, and that this negligence caused harm to Shawn Vigil, then you must find that the City was negligent in training and supervising.

If you find that the City did not breach its duty of care with respect to any of these areas, then you must find that the City was not negligent in training and supervision.<sup>78</sup>

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<sup>78</sup> See *Destefano v. Grabrian*, 763 P.2d 275, 286-87 (Colo. 1988).

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 45**

**(Survival Claim and Wrongful Death Claim)**

When the City and County of Denver's negligence results in the death of a person, there are two kinds of claims that may be brought. One claim is called a survival claim, and the other is known as a wrongful death claim. Both claims rely on the theory of negligence. A survival claim is brought by the estate of the person who died. In this case, the Estate is made up of Shawn Vigil's family members, his mother, Debbie Ulibarri; his three (3) brothers, Anthony, Brandon, and Aaron; and his sisters, Cherrelle and Ashley. The wrongful death claim is a claim brought by Shawn Vigil's mother and is not the same as the Estate's claims.<sup>79</sup>

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<sup>79</sup> C.R.S. § 13-20-101; C.R.S §§ 13-21-201,-202,-203,-203.5,-203.7 and-204; C.R.S. § 15-11-103(3) (modified); *Rowell v. Clifford*, 976 P.2d 363, 364 (Colo. App. 1998); C.R.S. § 13-20-101.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 46**

**(Damages in Negligence for the Estate)**

In considering damages for the Estate of Shawn Vigil's negligence claim, you may only consider any out-of-pocket expenses to his Estate, including reasonable funeral, burial, interment or cremation expenses.<sup>80</sup>

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<sup>80</sup> C.R.S. 13-20-101; *Estate of Kronemeyer v. Mainig*, 948 P.2d 119, 121 ( Colo. App. 1997); *Espinoza v. O'Dell*, 633 P.2d 455, 466 (Colo. 1981) ("The estate, not the deceased himself, is the real beneficiary of the surviving cause of action, which serves to compensate the estate for actual property losses it has incurred.")

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 47**

**(Damages for Wrongful Death)**

In determining damages for the wrongful death claim, you shall consider the following:

Any losses, including grief, pain and suffering, and emotional stress that Debbie Ulibarri has had to the present, and any grief, pain and suffering, and emotional stress that she will have in the future.

In determining these damages, if any, you should consider the age, health, and life expectancy of Shawn Vigil, and the age, health, and the life expectancy of Debbie Ulibarri.<sup>81</sup>

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<sup>81</sup> CJI-Civ 10:3, Damages For Wrongful Death; C.R.S. § C.R.S. 13-21-201(1)(c); C.R.S. § 13-20-101, *et seq.*

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 48**

**(Difficulty in Determining Damages)**

Difficulty or uncertainty in determining the precise amount of any damages does not prevent you from deciding an amount. You should use your best judgment based on the evidence.<sup>82</sup>

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<sup>82</sup> CJl-Civ 5:6, Uncertainty As To Amount Of Damages.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 49**

**(Election of Foreperson; Duty to Deliberate)**

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges — judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone — including me — how your votes stand numerically.

*Fourth*, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. The verdicts must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be — that is entirely for you to decide.<sup>1</sup>

*Finally*, the verdict forms are simply the written notice of the decision that you reach in this case. [The forms read: (read forms)]. You will take these forms to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the forms, sign and date them, and advise the marshal or bailiff that you are ready to return to the courtroom.<sup>83</sup>

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<sup>83</sup> FED-CIV JI § 3.06 Election of Foreperson; Duty to Deliberate.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 50**

**(Using Verdict Forms)**

In a moment, you will receive the verdict forms in this case. These forms contain questions and directions for answering the questions. In answering these questions, you must apply the law in the instructions that I gave you to the facts that were proved by the evidence.

You must all agree to each answer before you complete this verdict form.

After you reach a verdict, your foreperson shall complete this form by inserting all necessary answers in the form. All jurors must then sign the verdict forms and the foreperson shall tell the bailiff that you have reached a verdict.<sup>84</sup>

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<sup>84</sup> CJJ-Civ 4:19 (modified).

# **Attachment 3**

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 1**

**(Introduction)**

Ladies and Gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions — both those I give you now and those I give you later — are equally binding on you and must be followed.

During the trial, you will hear me use a few terms that you may not have heard before. Let me briefly explain some of the most common to you. The party who sues is referred to as the "Plaintiff." In this action, one of the Plaintiffs is Debbie Ulibarri, who is the mother of Shawn Vigil. Shawn Vigil is another Plaintiff in this case but, because he has died, he is represented in this case by his estate, and his mother is the representative of his estate. The other Plaintiffs are Sarah Burke, and Roger Krebs. Generally, when I refer to "the Plaintiffs," I mean Shawn Vigil, Debbie Ulibarri, Sarah Burke and Roger Krebs, that is, for the sake of convenience, I will refer to Mr. Vigil himself as the Plaintiff rather than his mother or his Estate. The party being sued is called the "Defendant." In this action, the Defendant is the City and County of Denver, referenced at times in this case as "the City" or "Denver." The Denver Sheriff Department and the Denver Police Department are operated by the City and County of Denver and it is liable for the actions and conduct of those departments. The City and County of Denver acts through its employees and agents, so the acts of the employees and agents of the Denver Sheriff Department and the Denver Police Department are acts of the City itself.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 2**

**(General Nature of a Trial)**

You will sometimes hear me refer to "counsel." "Counsel" is another way of saying "lawyer" or "attorney." I will sometimes refer to myself as the "Court."

From the evidence you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow my instructions, whether you agree with them or not. You have taken an oath to do so.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 3**

**(Trial Conduct for Jurors)**

To insure fairness, you must obey the following rules:

1. Do not talk to each other about this case or about anyone involved with this case until the end of the trial when you go to the jury room to decide on your verdict. This rule applies even when the Court is not in session and when there is a recess in the trial.
2. Do not talk with anyone else about this case or about anyone involved with this case until the trial has ended and you have discharged as jurors. "Anyone else" includes members of your family and your friends. You may tell people you are a juror, but do not tell them anything else about the case.
3. Outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended. If someone should try to talk to you about the case during the trial, please report it to me immediately.
4. During the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case – you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator, or the like, remember it is because they are not supposed to talk or visit with you either.
5. Do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it.
6. During the course of the trial you will receive all the evidence you legally may consider to decide the case. Researching or gathering any information on your own that you

think might be helpful is against the law and would be a violation of your oath. Do not engage in any Internet or other outside reading or research in this case. Do not consult dictionaries, maps, or make any investigation about the case, the lawyers, the parties, or the witnesses. Recent technologies require me to point out that some common practices and habits many of you enjoy are strictly forbidden in your role as jurors.

7. You may not, under any circumstances, have your cell phones, Blackberries, iPhones, iPads, smart phones, or the like on when court is in session. Whether you are in court or away from court during recess you may not "Google, Twitter, Tweet, text message, blog, post" or take any other action that has anything to do with this case. To do so could cause a mistrial, meaning all of our efforts over the course of the trial would have been wasted and we would have to start all over again with a new trial before a new jury. If you were to cause a mistrial by violating this order, you could be subject to paying all the costs of these proceedings and you could also be punished for contempt of court. Fairness to all concerned requires that all of us connected with this case deal with the information and with nothing other than the same information produced in this courtroom.

8. You must keep your mind open and free of outside information. Only in this way will you be able to decide the case fairly based solely on the evidence and my instructions on the law. If you decide this case on anything else, you will have done an injustice. It is very important that you follow these instructions. Describe court's policy, such as "You must leave your cell phone, PDA, Blackberry, smart phone, I-phone and any other wireless communication devices] in the jury room during the trial and may only use them during breaks. However, you are not allowed to have cell phones in the jury room during your deliberations. You may give the cell

phone to the [bailiff] [deputy clerk] for safekeeping just before you start to deliberate. It will be returned to you when your deliberations are complete.”]

9. Do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and the other jurors have discussed all the evidence.

10. If you need to tell me something or have a question, simply give a signed note to the (marshal) (bailiff) (clerk) to give to me.

**PLAINTIFFS' PROPOSED INSTRUCTION NO. 4**

**(Notetaking Permitted)**

During this trial, I will permit you to take notes. You are not required to take notes. If you do not take notes, you should not be influenced by another juror's notes, but should rely upon your own recollection of the evidence.

Because many courts do not permit notetaking by jurors, a word of caution is in order. You must not allow your notetaking to distract you from the proceedings.

Frequently, there is a tendency to attach too much importance to what a person writes down. Some testimony that is considered unimportant at the time presented and not written down may take on greater importance later in the trial in light of all the evidence presented, the final arguments, and my instructions on the law.

Accordingly, you are instructed that your notes are only a tool to aid your own individual memory and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence, and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Your memory should be your greatest asset when it comes time to deciding this case.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 5**

**(Accommodations in the Courtroom)**

During this trial, there may often be sign language interpreters present in the court room. These individuals will assist this Court with the testimony of the witnesses who are deaf and who will be communicating using American Sign Language, also known as "ASL". The procedure for such a witness is that the attorney will ask the witness a question, the question will then be translated into ASL by the interpreter for the witness, the witness will testify in ASL, and the interpreter will then inform the jury and court what that witness has said.

The interpreter is required to remain neutral. The interpreter is required to translate between English and ASL accurately and impartially to the best of the interpreter's skill and judgment.

You may notice that the witness who is deaf may also communicate using what appears to be exaggerated facial expressions or hand gestures. This is a necessary part of American Sign Language. Grammar is conveyed through these facial expressions and gestures. You should not place any negative implications on these expressions or gestures, even if they appear to be exaggerated or unusual to persons who do not communicate using ASL.

When there is an interpreter, the process of taking testimony is a bit different. An interpreter must listen to the entire question, before beginning to interpret to ensure that the entire question is interpreted accurately. American Sign Language (ASL) is very different from English. Often, there are not ASL signs for English words, and no English word for an ASL sign, so the entire question must be interpreted as a whole. The process is reversed for answers. You must evaluate interpreted witness testimony as you would any other testimony. That is, you must not give interpreted testimony any greater or lesser weight than you would if the witness

had spoken English. You must not make any assumptions that a witness is less credible because that witness relies on the assistance of an interpreter to communicate.

One of the attorneys in this case, Carrie Ann Lucas, is also deaf and will be using an interpreter and technology that will allow her to fully participate in the trial. Ms. Lucas is also in a wheelchair and uses a ventilator. She has an assistant that will be in the courtroom and who will monitor the ventilator.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 6**

**(Burden of Proof)**

This is a civil case. Therefore, each Plaintiff has the burden of proving his or her claims by what is called a preponderance of the evidence. This means that no matter who produces the evidence, when you consider each Plaintiff's claims in light of all the facts, you must believe those claims are more likely true than not true in order for that Plaintiff to prevail on his or her claims. To put it differently, if you were to put all the evidence in favor of that Plaintiff and all the evidence in favor of Defendant on opposite sides of a scale, and the scale then tipped to the Plaintiff's side, then the Plaintiff has prevailed. If he or she fails to meet this burden, your verdict must be for Defendant.

As a defense to Plaintiffs' claims, Defendant has asserted affirmative defenses, which will be described to you more fully later. An affirmative defense is more than a denial of the claims. In terms of applying the burden of proof, you should treat Defendant's affirmative defenses in the same way you treat Plaintiffs' claims. That is, Defendant, has the burden of proving by a preponderance of the evidence that an affirmative defense is more likely true than not true.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 7**

**(Evidence - Limitations)**

I have mentioned the word “evidence.” “Evidence” includes direct and circumstantial evidence. I will define those terms for you in the next instruction.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions and comments by lawyers are not evidence.
2. Exhibits that are identified by a party but not offered or received in evidence are not evidence.
3. Objections are not evidence. Lawyers have a right and sometimes an obligation to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question or an exhibit, you must ignore the question or the exhibit and must not try to guess what the information might have been.
4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence and must not be considered.
5. Anything you see or hear about this case outside the courtroom is not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 8**

**(Evidence - Direct and Circumstantial)**

You are to consider only the evidence in the case. However, you are not limited to the statements of the witnesses.

Generally speaking, two types of evidence are available from which you may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of facts which point to the existence or non-existence of certain other facts. Circumstantial evidence allows you to draw reasonable inferences, which are deductions or conclusions that reason and common sense lead you to draw from facts established by the evidence in the case.

As a general rule, the law makes no distinction between direct and circumstantial evidence. The law requires that you find the facts in accord with all the evidence in the case, both direct and circumstantial.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 9**

**(Number of Witnesses)**

The weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

The test is not which side brings the greater number of witnesses or takes the most time to present its evidence, but which witnesses and which evidence appeal to you as being most accurate and otherwise trustworthy.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 10**

**(Failing to Call a Witness)**

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

If a party fails to call a person as a witness who has knowledge about the facts in issue, and who is reasonably available to the party, and who is not equally available to the other party, then you may infer that the testimony of that person is unfavorable to the party who could have called the witness and did not.

**PLAINTIFFS' PROPOSED STATEMENT OF THE CASE**

Plaintiffs Sarah Burke and Roger Krebs are both deaf, and Shawn Vigil was deaf. They allege that the City, through its Police Department and/or Sheriff Department, held them in custody without providing them necessary accommodations for their deafness. Sarah Burke also alleges that she was not provided necessary accommodations for her deafness and diabetes and was not appropriately provided necessary accommodations when she was arrested and when she was released from custody. The Plaintiffs are bringing claims against the City for violations of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. In addition the Estate of Shawn Vigil and his mother, Debbie Ulibarri, are also bringing claims of negligence and wrongful death against the City for the failure to exercise due care in its treatment of Shawn Vigil during the time he was in the care and custody of the Denver Sheriff Department and for failing to properly train and supervise its employees and agents.

The Plaintiffs are seeking damages against the City, and other relief as provided by the federal and state laws.

The Defendant City denies that it violated the Plaintiffs' rights. Instead, the City claims that the Plaintiffs were provided appropriate accommodations when necessary, or that the required accommodations would have posed an undue burden on the City. The City also denies that it was negligent with respect to the care it provided Shawn Vigil, denies that it was negligent in training or supervising its employees or agents, and denies that the Plaintiffs are entitled to any damages on any claim.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 11**

**(Multiple Plaintiffs)**

Although there are four plaintiffs in this action, it does not follow from that fact alone that if one plaintiff is entitled to recover damages, all are entitled to recover damages. Similarly, an award of damages to one Plaintiff should not be deducted from an award, if any, to any other Plaintiff. The defendant is entitled to a fair consideration as to each plaintiff, just as each plaintiff is entitled to a fair consideration of that plaintiff's claim against the defendant. Unless otherwise stated, all instructions I give you govern the case as to each plaintiff.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 12**

**(Stipulated Facts)**

The parties have stipulated to certain facts and agree that these facts can be taken as true without further proof. The stipulated facts are as follows:

1. The Denver Sheriff Department operated two facilities at issue in this litigation: the Pre-Arrestment Detention Facility ("PADF") and the Denver County Jail (the "Jail").
2. Shawn Vigil was Debbie Ulibarri's son.
3. Shawn Vigil was deaf.
4. Mr. Vigil was transferred from the PADF to the DCJ on August 25, 2005.
5. Mr. Vigil died on October 1, 2005 as a result of his suicide.
6. Sarah Burke was born deaf.
7. Ms. Burke was eventually transported from District 3 to the PADF, arriving there at approximately 9:19 pm on August 29, 2007.
8. Ms. Burke was released from the PADF at approximately 2 a.m.
9. Mr. Krebs has been deaf since he was approximately eighteen months old.
10. Mr. Krebs was taken from the hospital to the PADF, where he arrived at approximately 3:27 a.m. on March 30, 2007.
11. After appearing in court, Mr. Krebs was subsequently released from the Denver PADF at approximately 7 p.m. on March 30, 2007.

Because the parties have stipulated to these facts and do not dispute them, you are to take these facts as true for purposes of this case.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 13**

**(Judicial Notice)**

I have decided to accept as proved the following facts:

1. Shawn Vigil was charged with two serious felonies and he faced the possibility of a significant sentence if convicted of these crimes.
2. On August 29, 2007, Sarah Burke was arrested in her home on an outstanding bench warrant for missing a court date in Arapahoe County.
3. The Rehabilitation Act was passed into law in 1973, and detailed regulations were published in 1977. The Americans with Disabilities Act became law in 1990.

You must accept these facts as proved.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 14**

**(Discrepancies in Testimony)**

You are the sole judges of the credibility or “believability” of each witness and the weight to be given to the witness's testimony. An important part of your job will be making judgments about which witnesses to believe and which witnesses not to believe. You may believe everything a witness says, only part of it, or none of it.

You should think about the testimony of each witness you have heard and decide whether you believe all or any part of what each witness had to say, and how important that testimony was.

In considering the testimony of any witness, you may consider:

1. The witness’s opportunity and ability to see, hear, or know the things to which the witness testified;
2. The quality of the witness’s memory;
3. The witness’s manner while taking the oath and testifying;
4. Whether the witness had an interest in the outcome of the case or any motive, bias, or prejudice;
5. Whether the witness’s testimony was contradicted by anything the witness said or did another time, by the testimony of other witnesses, or by other evidence;
6. How reasonable the witness’s testimony was in light of all the evidence; and
7. Any other facts that bear on believability.

If you believe a witness has willfully lied regarding any fact, you have the right to disregard all or any part of that witness's testimony.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses may or may not cause you to discredit such testimony. Two or more persons seeing an event may see or hear it differently.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood. After making your own judgment, you will give the testimony of each witness such weight, if any, that you may think it deserves.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 15**

**(Impeachment – Inconsistent Statement or Conduct)**

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or have failed to say or do something that is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 16**

**(Rule 30(b)(6) Deposition Testimony)**

In this trial, there will be certain witnesses who are “Rule 30(b)(6)” witnesses for the City. A Rule 30(b)(6) witness is a person that the City has chosen to designate to speak on behalf of the City. This type of witness must be knowledgeable to speak on the specific identified topics and is required to give complete and knowledgeable answers on the City's behalf. The testimony of a Rule 30(b)(6) witness at their deposition is binding on the City on those topics and, at trial, the City cannot contradict this earlier deposition testimony.

In this case, the City designated four individuals as Rule 30(b)(6) witnesses. Right before these witnesses testify, you will be told that the witness is a Rule 30(b)(6) witness. You will also be told the topics that the City designated each witness to testify on at their depositions.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 17**

**(Depositions As Evidence)**

Certain testimony may be read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given by the witness from the witness stand.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 18**

**(Demonstrative Summaries Not Received as Evidence)**

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, or other underlying evidence in the case. Those charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the books, records or other underlying evidence.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 19**

**(Highlighted Exhibits)**

The lawyers have highlighted certain parts of some exhibits. However, it is for you to determine the significance of the highlighted parts.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 20**

**(All Persons Equal Before the Law)**

You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A municipality or city is entitled to the same fair trial as a private individual. All persons, including a municipality or a city, stand equal before the law, and are to be treated as equals.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 21**

**(Bench Conferences)**

During the trial it may be necessary for me to speak with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence which govern the trial, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 22**

**(Outline of Trial)**

The trial will proceed in the following manner:

First, the plaintiffs' attorney may make an opening statement. Next, the defendant's attorney may make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The plaintiffs will then call witnesses and both parties will be allowed to examine those witnesses. Next, the defendant will call witnesses and both parties will be allowed to examine those witnesses.

After the presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence.

After all the evidence has been heard and the arguments are finished, the court will instruct you further on the law. After that you will retire to deliberate on your verdict.

Although you must follow my instructions about the law applicable to this case, you as jurors are the sole and exclusive judges of the facts. Neither in these instructions, nor in any ruling, action or remark that I may make during the course of this trial, has it been or will it be my intention to give any opinion or suggestion as to what your verdict should be, not in these instructions, nor in any ruling, action, or remark that I may make during the course of this trial.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 23**

**(General Introduction at Close of Evidence)  
(Submitted at Close of Evidence)**

Now that you have heard the evidence and the argument, it is my duty to instruct you about the applicable law. It is your duty to follow the law as I will state it. You must apply the law to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. Do not be concerned about the wisdom of any rule of law stated by me. You must follow and apply the law. The lawyers may have properly referred to some of the governing rules of law in their statements or arguments. If there is any difference between the law stated by the lawyers and these instructions, you must follow my instructions. Nothing I say in these instructions indicates I have any opinion about the facts. You, not I, have the duty to determine the facts.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 24**

**(Elements of Claims under Section 504 of the Rehabilitation Act and the ADA)**

Plaintiffs Sarah Burke, Roger Krebs, and Debbie Ulibarri, as the Representative of Shawn Vigil's estate, claim that the City and County of Denver violated the Rehabilitation Act of 1973 (which we have been referring to as the RA) which prohibits discrimination against persons with disabilities by entities that receive federal financial assistance. These plaintiffs also claim that the City violated the Americans with Disabilities Act, or the "ADA," which prohibits discrimination against people with disabilities by public entities such as cities.

The parties agree that at all times relevant to this case, the City and County of Denver was required to follow the ADA and RA. Thus, the City's Police Department its Sheriff Department and its employees and agents, including its jails and detention facilities, were also covered by the ADA and the RA.

You must find in favor of a Plaintiff under the ADA and RA if that plaintiff shows that:

1. he or she was disabled;
2. he or she was otherwise qualified to participate in the programs, services and activities; and,
3. the program discriminated against him or her because of his or her disability.

The parties agree that – because of their deafness – Mr. Vigil was, and Ms. Burke and Mr. Krebs are all disabled. (I will discuss Ms. Burke's diabetes in a moment.) That means the parties agree that the three individuals satisfy the first ADA/RA requirement.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 25**

**(Disability)**

In order for Mr. Vigil, Mr. Krebs or Ms. Burke to prove that their deafness was a disability or for Ms. Burke to prove that her diabetes is a disability, each Plaintiff has to prove that this condition – deafness or diabetes -- substantially impairs one or more of his or her major life activities.

“Major life activities” include hearing, as well as eating and the ability to regulate one’s blood sugar and metabolize food.

A person is “substantially limited” in a major life activity if he or she is restricted in performing that major life activity compared to an average person in the general population.

If you find that as a result of deafness, Mr. Vigil, Mr, Krebs or Ms. Burke is substantially limited in hearing, then you must find that he or she is disabled under the ADA and RA.

If you find that as a result of diabetes, Sarah Burke is substantially limited in eating, regulating her blood sugar, and/or metabolizing food, then you must find that she is disabled under the ADA and RA.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 26**

**(Qualified Individual With A Disability)**

Shawn Vigil, Sarah Burke, and Roger Krebs were “otherwise qualified” to participate in the City’s programs services and activities if other, nondisabled, people in their circumstances are also allowed to participate in those programs, services and activities. If the City makes a program, service, or activity available to individuals in general, it must make those programs, services, and activities available to deaf people in similar circumstances in the same manner.

Under the ADA and RA, the terms “programs, services or activities” of the City, including its Police and Sheriff Departments and agents, cover everything these departments do with respect to members of the public such as Mr. Vigil, Ms. Burke, or Mr. Krebs. For example, in this case, the terms “programs, services and activities” includes:

1. communicating with arresting officers, deputies, guards, medical personnel, and other employees or agents of the City at the county or city jails or at court;
2. communicating with City employees and its agents during intake, medical and mental health screening, classification procedures, and daily interaction with jail personnel;
3. access to telephones, televisions, and visitation; and
4. access to any program, service, or activity offered to other people in custody, such as the Administrative Review Board, religious services, and communicating during court appearances.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 27**

**(Acts of Agent or Employee as Acts of Principal or Employer)**

The Defendant in this case, the City & County of Denver is responsible for any unlawful acts by its officers, employees or any other agent of the City including the Denver Police and Sheriff Departments and their agents while those persons perform the jobs given to them by the City and County of Denver.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 28**

**(DHHA as Agent of City & County of Denver)**

The Denver Health and Hospital Authority became the agent of the City & County of Denver when it contracted with the City to provide health care to people in the custody of the Denver Sheriff Department.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 29**

**("Discrimination" Defined)**

To prove discrimination under the ADA or RA, each plaintiff must prove that the City failed to provide him or her the opportunity to participate in the same programs, benefits or services of its police and sheriff department that hearing people are able to, and to be able to participate to the same extent that hearing people are able to. In order to provide deaf persons with the opportunity to participate in its programs, benefits or services, the City was required to do all of the following:

1. Provide "effective communication" between deaf people and its employees and agents;
2. Provide "auxiliary aids and services" where necessary to ensure effective communication;
3. Provide information concerning the existence and location of accessible services and activities as well as "notice" to the deaf person regarding his or her rights under the ADA and RA; and
4. Provide reasonable accommodations where necessary to ensure effective communication and otherwise to avoid discrimination.

I will discuss each of these above terms in the following instructions.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 30**

**(Discrimination Alleged)**

Each Plaintiff alleges that the City discriminated against him or her during different phases of the arrest and/or detention process. In considering the instructions I am about to give you concerning the requirements and prohibitions of the ADA and RA, please apply them in the following contexts:

Shawn Vigil alleges that the City discriminated against him while he was in the care and custody of the Denver Sheriff Department. Events that occurred prior to August 28, 2005, may only be considered for the purpose of determining whether discrimination occurred after that date. In other words, information about what occurred prior to August 28, 2005 may be relevant only to show the background and context of events that followed, including but not limited to how it came to be that Mr. Vigil was placed in segregation, and the allegations that there was a lack of information about his mental health status and the extent of his disability and inability to communicate.

On August 28, 2005, Mr. Vigil had already been transferred to the Denver County Jail. He alleges that between that date and September 27, 2005, when he committed suicide, the City discriminated against him because

1. it did not provide effective communications with jail personnel and medical staff;
2. because it did not provide effective communications to ensure the safe treatment of him because he was deaf, including the failure to provide effective communication to allow a proper evaluation of his mental health status or his risk of suicide because or in order to be able to take necessary steps to prevent his suicide because he was deaf; and

3. because it did not provide effective communication to allow him to access other City services, including daily communication with the City's jail personnel and medical staff, access to the Administrative Review Board, and ability to access a telephone or other means to communicate with the outside, which were provided to other people in custody who are not deaf.

Sarah Burke alleges that the City discriminated against her during her arrest because they did not provide effective communication in the process of that arrest and did not permit her to bring her diabetic supplies and her Sidekick pager device with her. Ms. Burke also alleges that she was discriminated against during her release from the City jail because she was not allowed to retain her diabetic supplies and her "Sidekick" device as a communication aid upon her arrest, which she alleges would have decreased the difficulty she had in comprehending or obtaining assistance for her diabetic medical needs and in obtaining transportation upon her release. She further alleges that the City discriminated against her upon her release by not providing her other effective means of communicating with the City's deputies regarding her diabetic medical needs or provide her other effective means of communication to obtain transportation upon her release.

Roger Krebs alleges that the City discriminated against him because it refused to provide effective communication, such as the services of a qualified sign language interpreter for his arraignment and this denied him the opportunity to participate in his arraignment to the same extent as a non-disabled person.

All of the Plaintiffs allege that the City failed to provide them with information concerning the existence and location of accessible services and activities, and failed to provide them notice of their rights under the ADA and RA.

In order to find discrimination, you do not need to find that all of the allegations of each of the Plaintiffs was more likely true than not. Rather, if you find that one or more of the above allegations were more likely true than not with respect to each Plaintiff, then you must find that the City discriminated against them.

On the other hand, if the Plaintiffs did not prove any of their allegations of discrimination, then you must find that the City did not discriminate with respect to that Plaintiff.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 31**

**(Effective Communication)**

In order to provide deaf persons the opportunity to participate in the City's programs, benefits and services, the City must ensure that its employees and agents have "effective communication" with deaf people. That means that the City must ensure that deaf people can communicate with its employees and agents in a manner that is as effective as the communication that they have with people who are not deaf. For example, the City must ensure that deaf people who are arrested and taken into the care and custody of the City receive the same quality of communication that the City provides to people who are not deaf and are taken into their care and custody.

The type of actions that the City was required to take to ensure effective communication depends on several factors, including:

1. the method of communication preferred by the deaf person;
2. the nature, length, and complexity of the communication involved; and/or
3. the context in which the communication is taking place.

If you find that the City did not provide effective communication to a Plaintiff, then you must find that the City violated the ADA and RA with respect to that Plaintiff.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 32**

**(Auxiliary Aids and Services For Effective Communication)**

The ADA and RA require that the City must provide auxiliary aids and services to deaf people if it is necessary to ensure effective communication. The services necessary to ensure effective communication may include, but are not limited to, providing qualified sign language interpreters, providing TTYs (phone systems that can be used by deaf people), and close-captioned televisions.

In determining what the City was required to do to provide effective communication, the City was required to give primary consideration to the preferences of the deaf people involved, that is, to the preferences of Shawn Vigil, Sarah Burke, and Roger Krebs.

The City must also provide an opportunity for deaf people to request the type of communications methods that they prefer. The City must honor that preference unless it can show that another effective means of communication exists or that use of the means chosen would constitute an "undue burden." If the City attempts to use a different means of communication than that preferred by the deaf person, the City has the burden of proving that its method is as effective as the method preferred by the deaf person.

While exchanging notes is one possible method of communication, sign language interpreters may be required when a deaf person's primary language is sign language, and the information being communicated with the deaf person is complex, or the discussion is lengthy. There are many situations where effective communication between law enforcement and deaf people is critical, including interviewing deaf people, engaging in a complex conversation, or assessing their classification or suicide risk. In these situations, law enforcement must provide the deaf person a qualified sign language interpreter when necessary to ensure effective

communication. Similarly, when a law enforcement officer is interviewing or engaging in any complex conversation with a person whose primary language is sign language, a qualified interpreter is usually needed to ensure effective communication.

The City is not permitted to use or rely on a deaf person's minor child to interpret or facilitate communication except in an emergency involving an imminent threat to the safety or welfare of an individual, and no interpreter is available. This imminent threat exception is not intended to apply to typical or foreseeable interactions with law enforcement personnel, but rather where a delay in providing interpretation could have life-altering or life-ending consequences.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 33**

**(Reasonable Accommodations)**

In addition to the obligation to provide reasonable accommodations to achieve effective communication the City -- and its police and sheriff departments -- were also required to make reasonable accommodations in their policies, practices, or procedures if the accommodations were necessary to avoid discrimination on the basis of disability against Shawn Vigil, Sarah Burke, or Roger Krebs. For example, Sarah Burke alleges that the City was required to make the reasonable accommodation of allowing her to bring her diabetic supplies with her upon her arrest so she would have the ability to test and/or treat her diabetic condition upon her release.

If you find that the City did not make required reasonable accommodations for a Plaintiff, then you must find that the City violated the ADA and RA with respect to that Plaintiff.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 34**

**(Knowledge of Need for Services or Accommodations)**

The City was required to provide auxiliary aids and services and/or reasonable accommodations to Shawn Vigil, Sarah Burke, and Roger Krebs if it knew they were disabled and knew that they needed the services or accommodations.

The parties agree that the City knew that Shawn Vigil, Sarah Burke, and Roger Krebs were deaf, and knew that Sarah Burke had diabetes.

The City can be said to have known that Shawn Vigil, Sarah Burke, and Roger Krebs needed services or accommodations for their disabilities *either* if they requested it *or* if the City (through agents and employees such as police officers or sheriff deputies) knew that the Plaintiffs' deafness and Ms. Burke's diabetes limited their ability to participate in or receive the benefits of its services.

The City's knowledge that the Plaintiffs needed services or accommodations could come from the City's knowledge of their disabilities and their need for a certain service or accommodation. It could also come from the Plaintiffs' attempt to participate in or receive the benefits of a certain service.

For example, you may assume that the City knew of the need to provide each Plaintiff with the services of a sign language interpreter if you find that their need for an interpreter was obvious. If their need for an interpreter was obvious, the City was required to provide an interpreter even if the Plaintiff did not request one.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 35**

**(Qualified Interpreter)**

If the service required or requested was the assistance of a sign language interpreter, then the City must provide a qualified sign language interpreter as defined in the following instruction. A “qualified interpreter” means an interpreter who, via a video remote interpreting (VRI) service or by personal appearance, is able to interpret effectively, accurately, and impartially, in conversations with a deaf person, , using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters.

Someone with only a rudimentary familiarity with sign language or finger spelling is not a “qualified interpreter.”

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 36**

**(Notice)**

The City was required to make information available to Shawn Vigil, Sarah Burke, and Roger Krebs regarding their rights under the ADA and RA. The City was also required to ensure that Shawn Vigil, Sarah Burke, and Roger Krebs were able to obtain information as to the existence and location of accessible programs, services, and activities, including available services and accommodations, while they were in the care and custody, or being taken into the care and custody, of the City, the Denver Sheriff Department and/or the Denver Police Department. In providing such information, the City was required to comply with the requirements for effective communication.

If you find that it is more likely than not that the City failed to provide the Plaintiffs -- or any one of them -- information concerning the requirements of the ADA and RA and the existence and location of accessible services, then you must find that the City violated the ADA and RA with respect to that Plaintiff or those Plaintiffs.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 37**

**(Undue Burden)**

The City has asserted the affirmative defense of “undue burden” to its duty to provide effective communication and/or reasonable accommodations, such as sign language interpreters for deaf people or accommodations for diabetes. The City claims that it was not required to provide these services and accommodations because they would have resulted in an undue burden on the City.

“Undue burden” is an affirmative defense. As I discussed earlier, the City has the burden of proving its affirmative defense. That is, it must prove that it is more likely than not that providing the necessary services and accommodations to each or any of the Plaintiffs would have resulted in an undue burden on the City.

An undue burden means a significant difficulty or expense. In determining whether providing sign language interpreters or other accommodations would have imposed an undue burden, you should consider all City resources available for use in the funding and operation of Denver Sheriff Department or Denver Police Department.

Furthermore, the City must prove that the determination of undue burden was made by the head of the public entity, that is, the Manager of Safety for the City and County of Denver.

In order to satisfy its burden of proving that the necessary services or accommodations would result in an undue burden, the City must prove that it considered all resources available for use in the funding and operation of the City and that its decision to refuse to provide such services or accommodations was accompanied by a written statement of the reasons for reaching that conclusion.

If an action that was necessary to provide effective communication to Shawn Vigil, Sarah

Burke, or Roger Krebs would have resulted in an undue burden, the City was required to take any other action that would not result in such burdens but would nevertheless ensure that, to the maximum extent possible, these individuals received the benefits or services provided by the Denver Sheriff Department and/or Denver Police Department

It was not permissible for the City to take no action in response to Mr. Vigil's, Ms. Burke's or Mr. Krebs's need for effective communication.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 38**

**(Damages: Intentional Conduct)**

In order to find damages under the ADA or RA to Mr. Vigil's estate, to Ms. Burke, or to Mr. Krebs, you must find that the City intentionally discriminated with respect to that Plaintiff. Intentional discrimination does not require a showing of personal ill will or animosity toward the disabled person. Rather, intentional discrimination occurs if the City:

1. knew it was substantially likely that it was or would be violating the ADA or RA, and
2. it failed to take action in response.

For example, with respect to the first part of this test, the City, through its officers and employees, knew that it was substantially likely that it was violating Mr. Vigil's, Ms. Burke's and Mr. Krebs's rights under the ADA and RA if *either* that person requested effective communication or other reasonable accommodation *or* that person's need for effective communication or other reasonable accommodation was obvious.

Under the second part of the test, the City was required to consider each person's individual needs when determining what services were necessary to provide effective communication. Just offering any form of communication was not enough.

In other words, each Plaintiff is entitled to compensatory damages if it is more likely than not that the City was aware of his or her need for effective communication or other reasonable accommodation -- either by request or because it was obvious -- and the City denied or failed to act on the request or need. Plaintiffs are also entitled to compensatory damages if the City was aware of other discrimination against them in the provision of services, programs and benefits and failed to take action to eliminate or remedy that discrimination.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 39**

**(Compensatory Damages)**

If you find that the City intentionally discriminated against Mr. Vigil, Ms. Burke or Mr. Krebs in violation of the ADA or RA, then each such person is entitled to compensatory damages. Compensatory damages is the amount of money necessary to compensate the Plaintiff for the emotional pain and suffering, mental anguish, shock, discomfort, or inconvenience that the person suffered because of the City's violations of the law, as well as any out-of-pocket expenses.

You must then determine an amount of damages, if any, that is fair compensation for violation of that individual's rights under the ADA and RA. The purpose of compensatory damages is to compensate the Plaintiff for the harms and losses that he or she suffered. No evidence of the monetary value of such intangible things as pain and suffering has been, or need be, introduced into evidence. There is no exact standard for fixing the compensation for these damages. The amount should be fair in light of the evidence presented at the trial. The amount of compensatory damages should be guided by common sense. The law does not require that harms and losses be shown with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit. You must use sound discretion in drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 40**

**(Negligence in Treatment of Shawn Vigil)**

The Plaintiffs claim that the City and County of Denver, through the conduct of the Denver Sheriff Department and its agents, was negligent in its treatment of Shawn Vigil.

In order for the Plaintiffs to prevail on their negligence treatment claim you must find that the following elements are more likely true than not:

1. The Denver Sheriff Department or its agents were negligent in their treatment of Shawn Vigil; and
2. That negligence caused harm to Shawn Vigil.

The terms “negligent in their treatment” and “caused” are defined in the following instructions.

If you find that both of these elements are more likely true than not, then your verdict on the survival claim and on the wrongful death claim must be for the Plaintiffs.

If you find that one or both of these elements are not more likely to be true, then your verdict on these claims must be for the City & County of Denver.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 41**

**(Definition of Negligence)**

Negligence is defined as the failure to use the due care, or reasonable care, that is required under the circumstances. The law requires that the City, through its Denver Sheriff Department, employees and agents, use due care in its treatment of those in its care. In other words, the City must use due care to assure the safety and security of those people, and to prevent a person in its care from committing suicide by properly classifying that person, communicating with that person, and supervising that person.

The due care required of the City, through its Denver Sheriff Department and its agents and employees, is that they perform their duties in accordance with the knowledge and skill ordinarily possessed by other jailers, or their agents, to protect deaf persons in their care from committing suicide.

Plaintiffs contend that City & County of Denver breached the duty of care in this case by

1. isolating Shawn Vigil in the special management area solely on the basis of his disability, that is because he was deaf;
2. failing to conduct and adequate medical and mental health evaluations at any time after August 28, 2005;
3. failing to take adequate steps to prevent his suicide;
4. failing to provide Shawn Vigil an effective way of communicating with the deputies and medical staff;
5. failing to allow Shawn Vigil to appear before the Administrative Review Board;
6. failing to provide Shawn Vigil or his family an effective way of communicating with each other;

7. failing to adequately supervise Shawn Vigil during his stay at the jail;
8. failing to house Shawn Vigil in a safe manner, and
9. generally acting in a manner without due regard for the care and safety of Shawn Vigil.

You do not have to find that all of the above allegations are proven by the Plaintiffs. If you find that it is more likely than not that the City breached its duty of care with respect to any one, or more of these areas, then you must find that the City was negligent in its treatment of Shawn Vigil.

If you find that the City did not breach its duty of care with respect to any of these areas, then you must find that the City was not negligent in its treatment of Shawn Vigil.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 42**

**(Causation)**

The word "cause" or "caused" as used in these instructions on negligence means an act or failure to act that in natural and probable sequence produced the claimed harm. It is a cause without which the claimed harm would not have happened.

More than one person or act may be responsible for causing the harm. The City & County of Denver may be liable even if there were also other causes for the harms to Shawn Vigil, if you find that those harms would not have happened without the City and County of Denver's negligence.

If you find that City & County of Denver was negligent and that its negligence was a cause of harm to Shawn Vigil, it is not a defense that some third person's negligence might also have been a cause of the harms.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 43**

**(Elements of Liability)**

The Plaintiffs also claim that the City and County of Denver, through the Denver Sheriff Department and its agents, negligently failed to train and supervise its employees and agents. In order for the Plaintiffs to prevail on their negligent failure to train and supervise claim against the City & County of Denver, you must find it more likely than not that each of the following elements have been proven:

1. The City & County of Denver negligently failed to train and supervise its employees and agents to protect Shawn Vigil, a deaf person in its custody, from committing suicide; and

2. That negligence caused harm to Shawn Vigil.

If you find that both of these elements are more likely true than not, then your verdict must be for the Plaintiffs on this claim.

If you find that one or both of these elements is not more likely to be true, then your verdict must be for the City & County of Denver.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 44**

**(Negligent Training and Supervision)**

Negligent training and supervision is defined as the failure to take due care, or reasonable care, to train and supervise employees and agents to protect those persons in its care and custody from committing suicide, which includes identifying those persons who are at risk of self-inflicted harm through proper classification to ensure that at-risk persons are housed appropriately, supervised, and provided medical care.

The due care that was required of the City and County of Denver, through the Denver Sheriff Department and its agents, was that the City train and supervise its employees and agents in accordance with the knowledge and skill ordinarily possessed by other jailers in housing deaf persons in their care and custody.

Plaintiffs contend that the City & County of Denver breached this duty by failing to properly train and supervise its employees and agents of the Denver Sheriff Department in the following areas:

1. failing to effectively communicate with deaf persons in its care,
2. failing to prevent the risk of suicide of deaf persons,
3. failing to safely house and care for deaf people in their care, including failing to supervise its employees and agents to ensure that the mental health needs of deaf persons are adequately assessed;
4. failing to properly supervise its employees to ensure that rounds were properly made to prevent the risk of suicide;
5. failing to properly supervise its employees and agents to ensure that Shawn Vigil was properly supervised, and

6. failing to train its employees and agents on policies and procedures needed to ensure the safety of deaf persons in its care.

You do not have to find that all of the above allegations are proven by the Plaintiffs. If you find that it is more likely than not that the City breached its duty of care with respect to any one, or more of these areas, and that this negligence caused harm to Shawn Vigil, then you must find that the City was negligent in training and supervising.

If you find that the City did not breach its duty of care with respect to any of these areas, then you must find that the City was not negligent in training and supervision.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 45**

**(Survival Claim and Wrongful Death Claim)**

When the City and County of Denver's negligence results in the death of a person, there are two kinds of claims that may be brought. One claim is called a survival claim, and the other is known as a wrongful death claim. Both claims rely on the theory of negligence. A survival claim is brought by the estate of the person who died. In this case, the Estate is made up of Shawn Vigil's family members, his mother, Debbie Ulibarri; his three (3) brothers, Anthony, Brandon, and Aaron; and his sisters, Cherrelle and Ashley. The wrongful death claim is a claim brought by Shawn Vigil's mother and is not the same as the Estate's claims.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 46**

**(Damages in Negligence for the Estate)**

In considering damages for the Estate of Shawn Vigil's negligence claim, you may only consider any out-of-pocket expenses to his Estate, including reasonable funeral, burial, interment or cremation expenses.



**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 47**

**(Damages for Wrongful Death)**

In determining damages for the wrongful death claim, you shall consider the following:

Any losses, including grief, pain and suffering, and emotional stress that Debbie Ulibarri has had to the present, and any grief, pain and suffering, and emotional stress that she will have in the future.

In determining these damages, if any, you should consider the age, health, and life expectancy of Shawn Vigil, and the age, health, and the life expectancy of Debbie Ulibarri.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 48**

**(Difficulty in Determining Damages)**

Difficulty or uncertainty in determining the precise amount of any damages does not prevent you from deciding an amount. You should use your best judgment based on the evidence.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 49**

**(Election of Foreperson; Duty to Deliberate)**

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges — judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone — including me — how your votes stand numerically.

*Fourth*, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. The verdicts must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be — that is entirely for you to decide.<sup>1</sup>

*Finally*, the verdict forms are simply the written notice of the decision that you reach in this case. [The forms read: (read forms)]. You will take these forms to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the forms, sign and date them, and advise the marshal or bailiff that you are ready to return to the courtroom.

**PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. 50**

**(Using Verdict Forms)**

In a moment, you will receive the verdict forms in this case. These forms contain questions and directions for answering the questions. In answering these questions, you must apply the law in the instructions that I gave you to the facts that were proved by the evidence.

You must all agree to each answer before you complete this verdict form.

After you reach a verdict, your foreperson shall complete this form by inserting all necessary answers in the form. All jurors must then sign the verdict forms and the foreperson shall tell the bailiff that you have reached a verdict.

# **Attachment 4**

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

Civil Action No. 07-cv-01814-ODS-MJW

ULIBARRI, et al.,

Plaintiffs,

v.

CITY & COUNTY OF DENVER,

Defendant.

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**VERDICT FORM**  
**Shawn Vigil Estate Americans with Disabilities Act and Rehabilitation Act Claims**

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We, the jury, present our answers to Questions submitted by the Court, to which we have all agreed:

1. Do you find it to be more likely than not that the City & County of Denver intentionally violated the ADA or RA with respect to Shawn Vigil based on his deafness? If your response is “yes,” please proceed to the next question. If your response is “no,” please skip the remainder of the questions and sign the jury form as instructed.

\_\_\_\_\_ Yes

\_\_\_\_\_ No

2. Do you find that it is more likely than not that complying with the ADA and RA with respect to Mr. Vigil would have constituted an undue burden to the City & County of Denver? If your response is “no,” please proceed to the next question. If your response is “yes,” please skip the remainder of the questions and sign the jury form as instructed.

\_\_\_\_\_ Yes

\_\_\_\_\_ No

3. What amount of money, if any, will reasonably and fairly compensate the Estate of Shawn Vigil for the harms and losses Mr. Vigil suffered which were caused by the City and County of Denver's violation of the ADA or RA based on his deafness?

**ANSWER:** \$ \_\_\_\_\_

**Each of you must sign below:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Foreperson

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_



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

Civil Action No. 07-cv-01814-ODS-MJW

ULIBARRI, et al.,

Plaintiffs,

v.

CITY & COUNTY OF DENVER,

Defendant.

---

**VERDICT FORM**  
**Roger Krebs Americans with Disabilities Act and Rehabilitation Act Claims**

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We, the jury, present our answers to Questions submitted by the Court, to which we have all agreed:

1. Do you find it to be more likely than not that the City & County of Denver intentionally violated the ADA or RA with respect to Roger Krebs based on his deafness? If your response is “yes,” please proceed to the next question. If your response is “no,” please skip the remainder of the questions and sign the jury form as instructed.

\_\_\_\_\_ Yes

\_\_\_\_\_ No

2. Do you find that it is more likely than not that complying with the ADA and RA with respect to Mr. Krebs would have constituted an undue burden to the City & County of

Denver? If your response is “no,” please proceed to the next question. If your response is “yes,” please skip the remainder of the questions and sign the jury form as instructed.

\_\_\_\_\_ Yes

\_\_\_\_\_ No

3. What amount of money, if any, will reasonably and fairly compensate Mr. Krebs for the harms and losses he suffered which were caused by the City and County of Denver’s violation of the ADA or RA based on his deafness?

**ANSWER:** \$ \_\_\_\_\_

**Each of you must sign below:**

\_\_\_\_\_  
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Foreperson

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

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

Civil Action No. 07-cv-01814-ODS-MJW

ULIBARRI, et al.,

Plaintiffs,

v.

CITY & COUNTY OF DENVER,

Defendant.

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**VERDICT FORM**  
**Sarah Burke Americans with Disabilities Act and Rehabilitation Act Claims**

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We, the jury, present our answers to Questions submitted by the Court, to which we have all agreed:

1. Do you find it to be more likely than not that the City & County of Denver intentionally violated the ADA or RA with respect to Sarah Burke based on her deafness? If your response is “yes,” please proceed to the next question. If your response is “no,” please skip the remainder of the questions and sign the jury form as instructed.

\_\_\_\_\_ Yes

\_\_\_\_\_ No

2. Do you find that it is more likely than not that complying with the ADA and RA with respect to Ms. Burke based on her deafness would have constituted an undue burden to the City & County of Denver? If your response is “no,” please proceed to the next question. If your

response is “yes,” please skip the remainder of the questions and sign the jury form as instructed.

\_\_\_\_\_ Yes

\_\_\_\_\_ No

3. What amount of money, if any, will reasonably and fairly compensate Ms. Burke for the harms and losses she suffered which were caused by the City and County of Denver’s violation of the ADA or RA based on her deafness?

**ANSWER:** \$ \_\_\_\_\_

4. Do you find it to be more likely than not that the City & County of Denver violated the ADA or RA with respect to Sarah Burke based on her diabetes? If your response is “yes,” please proceed to the next question. If your response is “no,” please skip the remainder of the questions and sign the jury form as instructed.

\_\_\_\_\_ Yes

\_\_\_\_\_ No

5. Do you find that it is more likely than not that complying with the ADA and RA with respect to Ms. Burke based on her diabetes would have constituted an undue burden to the City & County of Denver? If your response is “no,” please proceed to the next question. If your response is “yes,” please skip the remainder of the questions and sign the jury form as instructed.

\_\_\_\_\_ Yes

\_\_\_\_\_ No

6. What amount of money, if any, will reasonably and fairly compensate Ms. Burke

for the harms and losses she suffered which were caused by the City and County of Denver's violation of the ADA or RA based on her diabetes?

**ANSWER:** \$ \_\_\_\_\_

**Each of you must sign below:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Foreperson

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

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

Civil Action No. 07-cv-01814-ODS-MJW

ULIBARRI, et al.,

Plaintiffs,

v.

CITY & COUNTY OF DENVER,

Defendant.

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**VERDICT FORM  
Wrongful Death Claim**

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We, the jury, present our Answers to Questions submitted by the Court, to which we have all agreed:

1. Do you find that it is more likely than not that the City & County of Denver was:
  - a. negligent in its treatment of Shawn Vigil, or
  - b. negligent in training and supervising its employees and agents?
2. If your response is yes to either 1(a) or 1(b) or is yes to both, then you must

answer Yes below:

**ANSWER:** Yes \_\_\_\_\_

No \_\_\_\_\_

3. Do you find that it is more likely than not that the City & County of Denver's negligence was a cause of Shawn Vigil's harms or losses?

ANSWER: Yes \_\_\_\_\_

No \_\_\_\_\_

If your Answer to No. 3 above is Yes, then you must find for the Plaintiff on the wrongful death and answer the following question.

4. What is the total amount of damages, if any, for the harms and losses by City & County of Denver's negligence?

ANSWER: \$ \_\_\_\_\_

**Each of you must sign below:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Foreperson

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

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

Civil Action No. 07-cv-01814-ODS-MJW

ULIBARRI, et al.,

Plaintiffs,

v.

CITY & COUNTY OF DENVER,

Defendant.

---

**VERDICT FORM  
Shawn Vigil Estate Survival Claim**

---

We, the jury, present our Answers to Questions submitted by the Court, to which we have all agreed:

1. Do you find that it is more likely than not that the City & County of Denver was:
  - a. negligent in its treatment of Shawn Vigil, or
  - b. negligent in training and supervising its employees and agents?
2. If your response is yes to either 1(a) or 1(b) or is yes to both, then you must

answer Yes below:

**ANSWER:** Yes \_\_\_\_\_  
No \_\_\_\_\_

If your answer to No. 2 above, is yes, then you must answer Question 3 below.

3. Do you find that it is more likely than not that the City & County of Denver's



negligence was a cause of Shawn Vigil's harms or losses?

**ANSWER:** Yes \_\_\_\_\_

No \_\_\_\_\_

If your Answer to No. 3 above is Yes, then you must find for the Estate of Shawn Vigil and answer the following question.

4. What amount of money will reasonably compensate the Estate of Shawn Vigil on its negligence claim for its out-of-pocket expenses?

**ANSWER:** \$ \_\_\_\_\_

**Each of you must sign below:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Foreperson

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_