

# KILLMER, LANE & NEWMAN, LLP

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January 25, 2019

## **VIA EMAIL, HAND DELIVERY, AND CERTIFIED MAIL**

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Re: *Deramus Lemuel / El Paso County Sheriff's Office / CDOC Adult Parole /  
UCHealth Memorial Hospital Central*

Counsel:

The family of Deramus DeWayne Lemuel has retained KILLMER, LANE & NEWMAN, LLP, to represent them with respect to issues arising out of the death of Mr. Lemuel following treatment at UCHealth Memorial Hospital Central for a suspected methamphetamine overdose and a violent, excessive use of force by deputies of the El Paso County Sheriff's Office in the presence of Department of Corrections Adult Parole Officers at the El Paso County Criminal Justice Center ("CJC") on July 31, 2018 - August 1, 2018. This letter serves as a Notice of Claim pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, on behalf of family members of Deramus Lemuel and their agents regarding claims against the El Paso County Sheriff's Office, Department of Corrections, University of Colorado Hospital Authority (UCHA), University of Colorado Health (UCHealth), and UCHealth Memorial Hospital Central arising from Mr. Lemuel's death. I am directing this to you as the attorneys for the El Paso County Sheriff's office, Department of Corrections, UCHealth Memorial Hospital Central, UCHA and UCHealth, respectively. This letter serves as a Notice of Claim pursuant to C.R.S. § 24-10-109 to provide you notice of claims against various employees of the El Paso County Sheriff's Office ("EPSO"), Department of Corrections ("DOC"), and UCHealth in both their individual and official capacities.

**NOTIFICATION PURSUANT TO C.R.S. § 24-10-109**

**IDENTITY OF CLAIMANTS**

Elisabeth Lemuel (wife of Deramus Lemuel), personally and on behalf of Mr. Lemuel's estate  
773 E Moreno Ave  
Colorado Springs, CO 80903

Marva Lemuel (mother of Deramus Lemuel) on behalf of Mr. Lemuel's estate  
PO Box 16804  
Colorado Springs, CO 80935

Zalayah Lemuel (minor child of Deramus Lemuel)  
773 E Moreno Ave  
Colorado Springs, CO 80903

Zarielle Lemuel (minor child of Deramus Lemuel)  
773 E Moreno Ave  
Colorado Springs, CO 80903

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D'Myalynn Lemuel (minor child of Deramus Lemuel)  
773 E Moreno Ave  
Colorado Springs, CO 80903

Diamond Lemuel (minor child of Deramus Lemuel)  
773 E Moreno Ave  
Colorado Springs, CO 80903

Teliciana Sox (minor child of Deramus Lemuel)

Kiara Morris (minor child of Deramus Lemuel)

Mekai Smith (minor child of Deramus Lemuel)

Katie Smith (minor child of Deramus Lemuel)

#### **CLAIMANTS' ATTORNEYS**

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#### **BASIS OF CLAIMS<sup>1</sup>**

On July 31, 2018, at approximately 8:45 p.m., officers of a task force including DOC Adult Parole, the U.S. Marshals Service, the Drug Enforcement Agency, and Colorado State Patrol arrested Deramus Lemuel outside the Bourbon Box liquor store in Colorado Springs. DOC Community Parole Officers Rohan Ellis, Luis Flores, and Daniel Chavez were present at the time of the arrest; CPO Ellis made the other law enforcement officials on scene aware that Mr. Lemuel had a history of swallowing narcotics during previous arrests. The officers asked Mr. Lemuel to open his mouth, and discovered a baggie containing methamphetamine that Mr. Lemuel had been in the process of swallowing.

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<sup>1</sup> The current recitation of the incident surrounding Mr. Lemuel's death is based on the documents and other information currently in possession of counsel. Additional information is in the possession or control of the governmental agencies or their agents. Counsel may edit or supplement these facts as new information is made available.

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Mr. Lemuel was taken into custody without further incident. As they were unable to determine how much methamphetamine Mr. Lemuel had consumed, the officers decided to take Mr. Lemuel to UCHHealth Memorial Hospital Central ("MHC"). CPO Flores and CPO Chavez transported Mr. Lemuel to MHC; he arrived at the emergency department at approximately 9:55 p.m. and was admitted to the clinical decision unit for observation. Mr. Lemuel was diagnosed with poisoning by methamphetamine, and underwent a series of tests and X-ray exams. At about 11:25 p.m., Dr. Leslie Moats ordered a 2 mg injection of Ativan; Mr. Lemuel appeared to respond well to the injection, and at 12:03 a.m., Dr. Moats set Mr. Lemuel's disposition to "Discharge."

At approximately 1:00 a.m. on August 1, MHC attempted to discharge Mr. Lemuel so that the parole officers could take him to El Paso County CJC for booking. Per the parole officers' request, RN Julie Greenwald contacted a nurse at CJC and notified them of Mr. Lemuel's heart rate, blood pressure, and medications; she was informed that he was "ok to go to CJC." The decision to release Mr. Lemuel proved almost immediately to be premature; RN Greenwald noted that Mr. Lemuel was "diaphoretic, shaking, talking non-sensical," and that it "took 3 people to get [him] to walk." Given this obvious state of medical need, Mr. Lemuel was returned to observation at the hospital.

At approximately 2:30 a.m., RN Rebecca Eighteen requested that Mr. Lemuel be given a 50 mg injection of Benadryl to further calm him, and Dr. Moats ordered the injection. Roughly 45 minutes later, Dr. Moats again decided that Mr. Lemuel was ready for discharge, and at 3:16 a.m. he left the emergency department in custody of CPO Chavez and CPO Flores.

Mr. Lemuel quickly showed signs that he was still suffering the effects of methamphetamine poisoning upon his discharge from the hospital. CPO Chavez noted that Mr. Lemuel was unstable on his feet, and claimed that Mr. Lemuel had attempted to kick him as he was placed in the back of a parole vehicle. CPO Flores drove Mr. Lemuel to CJC, and CPO Chavez radioed ahead to CJC that Mr. Lemuel was non-compliant and that a wheelchair would be needed because Mr. Lemuel could not walk steadily on his own.

When Mr. Lemuel arrived at CJC, several EPSO personnel met him at the front sally port, including Sergeant Kimberly Miller, Deputy Daniel LeBaron, Deputy Brittany Stubbs, Deputy Ann Bell, and Intake Nurse Dianna Bedia. The parole officers informed the EPSO personnel of Mr. Lemuel's serious medical condition and his ingestion of methamphetamine, and EPSO personnel reported observing clear signs of Mr. Lemuel's continued serious medical needs. Sergeant Miller, who had a pre-existing relationship with Mr. Lemuel, attempted to get Mr. Lemuel's attention as he sat in the back of the parole vehicle, but Mr. Lemuel gave no response, even when Sergeant Miller physically contacted him. Deputy LeBaron noted that Mr. Lemuel was staring straight ahead with tensed arms, rapidly twitching leg muscles, and clenched teeth; Deputy Bell observed that Mr. Lemuel was shaking uncontrollably and that his fists were

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tightly clenched; and Deputy Stubbs reported that Mr. Lemuel was sweating and did not reply to verbal communication. Nurse Bedia ordered that Mr. Lemuel be dressed in a safety smock, and Sergeant Miller ordered that he be taken to a cell with a camera due to his obviously poor medical condition.

Deputies LeBaron and Stubbs seized Mr. Lemuel by either arm and walked him into the facility. Deputy Brandon Burgess observed Mr. Lemuel's entry into CJC and later reported that he appeared unable to walk without assistance. Deputies LeBaron and Stubbs further claim that Mr. Lemuel became resistive as they placed him in a cell. However, video from the cell demonstrates that despite obvious distress, Mr. Lemuel actually allowed himself to be placed on the floor of the cell without apparent difficulty.

Notably, the deputies could easily have left Mr. Lemuel to his own devices in the cell at this point. Mr. Lemuel was restrained in handcuffs and could not walk on his own due to his medical condition. He certainly posed no danger to the deputies (or anyone else other than perhaps himself) and no risk of escape. Instead, the deputies needlessly initiated a use of force that would ultimately result in Mr. Lemuel's death. Mr. Lemuel was placed on his stomach on the cell floor. Deputies LeBaron and Burgess, both very large men, attempted to "control" Mr. Burgess's upper body while Deputies Stubbs and Bell forcefully crossed his legs and pushed them up towards his back. Sergeant Kimberly Miller quickly joined the fray as well, and the weight of multiple officers quickly began crushing Mr. Lemuel. Deputy LeBaron admits delivering two knee strikes to Mr. Lemuel's right oblique area and two elbow strikes to his shoulder area, and further admits leaning on Mr. Lemuel's back and shoulder area with an elbow in order to control him, intentionally concentrating the majority of his substantial weight on a single point on Mr. Lemuel's back. Deputy Stubbs admitted delivering two palm heel strikes to Mr. Lemuel's right thigh, ostensibly in an effort to stop him from "kicking"—in fact, Mr. Lemuel was flailing his legs in an attempt to relieve what would prove to be the lethal force that the deputies were applying. Sergeant Miller, too, admits delivering an elbow blow to Mr. Lemuel. The deputies placed a spit hood on Mr. Lemuel's head, no doubt further amplifying the terror that he must have felt as the deputies crushed him.

Deputy Chadwick Young and Deputy John Brienza entered the fray a few minutes later, replacing the smaller Deputies Bell and Stubbs and continuing to bend Mr. Lemuel's legs upwards towards his back, now with the substantially increased force that the larger men were able to generate. From outside of the cell, CPO Flores and CPO Chavez heard Mr. Lemuel cry out, "You're hurting me!" Deputy Kevin Thorpe also entered the cell and worked to restrain Mr. Lemuel and cut his clothing off. Sergeant James Rodriguez entered the cell and observed the action, giving orders to continue the use of force. Sergeant Cody Wright also observed the melee and retrieved a cut-down knife to assist in removing Mr. Lemuel's clothing. The deputies successfully cut Mr. Lemuel's clothing off, leaving him nude aside from the spit hood and restraints that they had applied. Mr. Lemuel was now essentially hogtied, his arms secured behind his back and his legs wrenched up to nearly meet them.

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Absolutely none of the force and use of restraints described was necessary. Mr. Lemuel was not actively resisting or attempting to flee at any relevant time. Any struggle he may have engaged in was simply an instinctual survival response to being beaten, crushed, and suffocated.

Next, the deputies picked Mr. Lemuel up and moved him so that he faced the camera, still on his stomach in the hogtie position. Nurse Bedia entered the cell and checked Mr. Lemuel's restraints, which she approved. At this point, the deputies and nurses noticed that Mr. Lemuel was not breathing and found only a very weak pulse. Nurse Bedia called for assistance, and she and Deputy Burgess began to perform CPR on Mr. Lemuel. Charge Nurse Robin Bauer joined them in the cell and assisted in performing CPR. Eventually, paramedics with American Medical Response and personnel from the Colorado Springs Fire Department arrived on the scene and took over care for Mr. Lemuel.

Mr. Lemuel never regained consciousness. He was returned by ambulance to UCHealth Memorial Hospital Central, where he was diagnosed with cardiac arrest, tonic clonic convulsions, non-traumatic rhabdomyolysis, methamphetamine use, status epilepticus, myoclonic seizures, severe hypoxic-ischemic encephalopathy, and myoclonus. He was repeatedly assessed and treated over the course of the following two weeks, but his status did not improve, and he passed away on August 14, 2018. An autopsy of Mr. Lemuel's body found that the manner of his death was homicide, and that Mr. Lemuel "died as a result of complications of illicit drug intoxication and physical restraint by law enforcement." The Defendants' acts and inactions described above caused Mr. Lemuel's death.

Counsel may bring a variety of legal claims on behalf of Mr. Lemuel's estate and members of his family, including excessive force, wrongful death, deliberate indifference to serious medical needs, and other claims relating to defective medical care.

#### **NAMES OF PUBLIC EMPLOYEES**

Defendants in this suit may include but are not limited to:

COLORADO DEPARTMENT OF CORRECTIONS  
1250 Academy Park Loop  
Colorado Springs, CO 80910

- Executive Director Rick Raemisch
- Community Parole Officer Daniel Chavez
- Community Parole Officer Luis Flores
- Community Parole Officer Rohan Ellis
- Community Parole Officer John Bogner
- Community Parole Manager Mark Allison

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- John Does 1-10

EL PASO COUNTY SHERIFF'S OFFICE  
200 South Cascade Avenue, Suite 150  
Colorado Springs, CO 80903-2208

- Sheriff Bill Elder
- Undersheriff Joe Breister
- Lt. Lari Hanenberg, #96016
- Sergeant Kimberly Miller, #92029
- Sergeant James Rodriguez, #06007
- Sergeant Cody Wright, #10005
- Sergeant Angelica Baier, #10023
- Deputy Daniel LeBaron, #13079
- Deputy Ann Bell, #13138
- Deputy Brittany Stubbs, #12063
- Deputy Brandon Burgess, #13104
- Deputy John Brienza, #17103
- Deputy Chadwick Young, #17098
- Deputy Kevin Thorpe, #13113
- Deputy Christina Walchli, #13132
- Deputy Kevin Sypher, #12019
- Nurse Robin Bauer, #C17187
- Nurse Dianna Bedia, #C17091
- Nurse Megan Allington
- Administration Technician Michelle Schubert #12040
- Detention Specialist Vance Hargraves, #17104
- John Vela
- Douglas Pearce
- John Does 1-10

UCHEALTH MEMORIAL HOSPITAL  
12401 E. 17<sup>th</sup> Ave. Mail Stop F415  
Aurora, CO 80045-0510

- Leslie M. Moats, MD
- Julie Greenwald, RN
- Amanda Bauermeister, RN
- Rebecca Eighteen, RN

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COLORADO SPRINGS FIRE DEPARTMENT  
375 Printers Parkway  
Colorado Springs, CO 80910  
- John Does 1-5

**NATURE AND EXTENT OF INJURIES, DAMAGES, AND LOSSES**

Defendants' treatment of Mr. Lemuel violated his most sacred legal rights, including his right to be free from excessive force at the hands of the government and to receive adequate medical care. Defendants' conduct cost Mr. Lemuel his life, leaving his wife without a husband, his children without a father, and his mother without a son. Defendants' conduct has caused significant injuries and damages to Mr. Lemuel's estate and family. Cases like this are difficult to precisely value, as much of the damages sustained are not subject to precise calculation, and will be determined by a jury should this case proceed to trial. Damages in this case are extensive due to the nature of Defendants' conduct and the fact that the physical and emotional damage will continue to affect Mr. Lemuel's family for the rest of their lives.

**MONETARY DAMAGES CLAIMED**

While the exact amount of damages will be determined at trial, the family members of Mr. Lemuel will seek the maximum amount of damages and remedies permitted by law and equity, on behalf of themselves and his estate. They will also seek attorneys' fees and costs, and all other remedies permitted under the law and equity.

Sincerely,

KILLMER LANE & NEWMAN, LLP



Darold W. Killmer

DWK/lo

cc: Elisabeth Lemuel  
Marva Lemuel