

<b>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO</b>  Court Address: 7325 S. Potomac St. Centennial, CO 80112	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<b>MULTIMEDIA HOLDINGS CORPORATION d/b/a KUSA-9 News,</b>  <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>KATHRYN MILLER, in her official capacity as the Records Manager of the Aurora Police Department, for the City of Aurora, Colorado,</p> <p style="text-align: center;">Defendant.</p>	
<i>Attorney for Plaintiff:</i>  Rachael Johnson (#43597) Reporters Committee for Freedom of the Press c/o Colorado News Collaborative 2101 Arapahoe Street Denver, CO 80205 Telephone: (970) 486-1085 Facsimile: (202) 795-9310 <a href="mailto:rjohnson@rcfp.org">rjohnson@rcfp.org</a>	Case No.:
<p style="text-align: center;"><b>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND APPLICATION FOR ORDER TO SHOW CAUSE UNDER THE COLORADO CRIMINAL JUSTICE RECORDS ACT</b></p>	

Plaintiff, Multimedia Holdings Corporation d/b/a KUSA-9-News (“KUSA-9-News”), by and through its undersigned counsel, for its complaint for declaratory and injunctive relief, and application for order to show cause, hereby states as follows:

### INTRODUCTION

1. This is a civil action seeking the entry of a declaration of the parties’ respective rights and obligations under the Enhance Law Enforcement Integrity Act (the “Integrity Act”), C.R.S. § 24-31-902.
2. The Integrity Act requires all law enforcement agencies in the state to release to any member of the public, within 21 days of receiving a request, “all *unedited* video and audio recordings,” including body-worn camera footage, capturing an interaction between police officers and any member of the public in which any complaint has been lodged with respect to the officer’s misconduct. C.R.S. § 24-31-902(2)(a) (emphasis added).
3. The Integrity Act was passed in June 2020 following the deaths of George Floyd and Elijah McClain. It is important for courts to consider this context and the “widespread bipartisan

support for enhanced transparency in law enforcement,” which prompted the enactment of this legislation. *SMB Advertising v. City of Boulder*, No. 2024CV30320, at 10 (Colo. Dist. Ct. Aug. 12, 2024).

4. On May 23, 2024, the Aurora Police Department SWAT Team attempted to arrest Kilyn Lewis. During the confrontation between police officers and Mr. Lewis, Aurora Police Department Officer Michael Dieck fatally shot Mr. Lewis, who was unarmed, had his hands up, and was on his knees surrendering. In the limited and edited body-worn camera footage that has been disclosed so far, Mr. Lewis can be heard yelling, “I don’t have nothing.” See <https://www.youtube.com/watch?v=RX-Yum-zblQ>.

5. The Aurora Police Department contends that Mr. Lewis “produced an object from behind his back” which led Officer Dieck to fire his gun. A true and correct copy of that press release is attached hereto as **Exhibit 1** (Press Release, APD Concludes Review of May IOS). However, additional Aurora Police Department officers were at the scene, and none of them discharged their weapons. See William Beese, *DA declines to charge Aurora officer in deadly shooting of Kilyn Lewis*, 9 News (Oct. 11, 2024), <https://perma.cc/4G6N-J2WP>. Moreover, before Officer Dieck shot Mr. Lewis, at least two officers provided conflicting commands—instructing Mr. Lewis to raise his hands and for him to get on the ground. **Exhibit 1**. These inconsistent commands appear to have led to confusion and call into question the Aurora Police Department’s actions.

6. Mr. Lewis’s family has asserted that following the shooting, Officer Dieck and other officers at the scene failed to provide adequate medical care, contributing to Mr. Lewis’s death two days later. A true and correct copy of the Lewis family’s complaints and requests for all unedited body-camera footage are combined and attached hereto as **Exhibit 2**, at 2 (August & September Complaints of Peace Officer Misconduct & Requests for Unedited Video and Audio Recordings).<sup>1</sup> This allegation further calls into question the actions of the Aurora Police Department officers and provides additional grounds for the City of Aurora to release the full unedited body-worn camera footage of the May 23, 2024 incident.

7. As state protocol requires, a Critical Incident Response Team investigated the fatal shooting and presented its findings to the District Attorney for the Eighteenth Judicial District, John Kellner, to determine whether any of the officers involved should be charged with any crime. A true and correct copy of the CIRT Report is attached hereto as **Exhibit 4** (Report of Findings for the Officer-Involved Shooting on May 23, 2024, at 384 South Ironton Street, Aurora, CO (CIRT Case Number 24-04)). Upon reviewing statements of the officers and of other witnesses, the evidence gathered at the scene, and the footage obtained from officers’ body-worn cameras, the District Attorney concluded that Officer Dieck’s actions were justified and declined to charge him with a crime. *Id.*

8. Separately, a report filed by an independent consent decree monitor for the City of Aurora found critical issues with respect to the confrontation between the police officers and Mr. Lewis. A true and correct copy of that report is attached hereto as **Exhibit 5** (Report of the Independent Consent Decree Monitor Reporting Period 7 (October 15, 2024)) (“The Report”). For instance, the Report states that “less lethal options were not deployed [by the Aurora Police Department] in the interaction with Mr. Lewis ” and questioned whether the police officers at the

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<sup>1</sup> See also a true and correct copy of the third complaint by the family is attached hereto as **Exhibit 3**, at 2 (July 2024 Complaint of Peace Officer Misconduct & Request for Unedited Video and Audio Recordings).

scene could have used a different approach which would have resulted in a better outcome. *Id.*; See Tony Gorman, *Latest consent decree report raises questions on Aurora police shooting of Kilyn Lewis*, CPR News (Oct. 17, 2024), <https://perma.cc/R343-A6MK>; see also Beese, *DA declines to charge Aurora officer in deadly shooting of Kilyn Lewis*, *supra* ¶ 5.

9. After Mr. Lewis's family filed formal notices of a claim, see **Exhibits 2 & 3**, calling into question the officers' conduct and requesting all body-worn camera footage from the fatal shooting, Aaron Adelson, a reporter for KUSA-9 News, also submitted a request with Aurora Police Department (on November 11, 2024), for a copy of the unedited body-worn camera footage of the officers' May 23, 2024 interaction with Mr. Lewis. The request was effectively denied by the Aurora Police Department, which instead released edited footage of the incident on December 10, 2024. See *infra* ¶ 36-7.

10. Following multiple follow-up requests for all of the unedited body-worn camera footage, as required under section 24-31-902(2)(a), C.R.S. to date the Aurora Police Department has only released edited segments of the footage from the May 23, 2024 incident, which omit time stamps necessary to determine when each edited recording begins and ends.

11. By this action, Plaintiff seeks to bring about a swift and expeditious resolution of a genuine dispute between the parties as to the Aurora Police Department's obligations, and Plaintiff's rights, under the law. Plaintiff respectfully requests that this Court enter a declaratory judgment declaring those respective obligations and rights, and further that it speedily enters an Order commanding the Aurora Police Department to comply *immediately* with its disclosure obligations under the Enhancing Law Enforcement Integrity Act.

## JURISDICTION & PARTIES

12. This Court has jurisdiction over the controversy herein under C.R.S. § 13-51-106. The body-worn camera footage or record(s) that are the subject of Plaintiff's request can be found in this judicial district.

13. Plaintiff KUSA-9-News is a journalism organization operating in the State of Colorado. Aaron Adelson is an investigative reporter for KUSA-9-News and requested access to all unedited body-worn camera ("BWC") footage from the May 23, 2024 fatal police encounter with Kilyn Lewis.

14. Defendant Kathryn Miller, sued in her official capacity, is the Records Manager for the Aurora Police Department and is a custodian of the body-worn camera footage recordings) at issue in this case. The Aurora Police Department is a political subdivision of the State of Colorado.

## OPERATIVE FACTS

### A. Underlying Events

15. On May 23, 2024, four on-duty and uniformed Aurora Police Department officers attempted to arrest Kilyn Lewis pursuant to an active warrant which allegedly connected Mr. Lewis with an attempted murder earlier that month. According to an Aurora Police Department Press Release, Officer Michael Dieck fired his gun, fatally wounding Mr. Lewis. **Exhibit 1.**

16. At the time of the aforementioned confrontation, all four officers were wearing body-worn cameras that presumably recorded their pursuit of the suspect, confrontation with him, Officer

Dieck's firing of his weapon, and the immediate aftermath thereof, including any medical care that was provided to Mr. Lewis. **Exhibit 4**, at 3.

17. On August 15, 2024, certain members of Mr. Lewis's family filed a Complaint of Peace Officer Misconduct and Request for Unedited Video and Audio Recordings with APD seeking "all unedited video and audio recordings of the [I]ncident, including those from body-worn cameras, dash cameras, or otherwise collected through investigation[.]" including "[a]ll video and audio recordings depicting [the] death during the Incident." **Exhibit 2**, at 2 (citing C.R.S. § 24-31-902(2)(a), (b)(I)).<sup>2</sup> **Exhibit 2** (August & September Complaints of Peace Officer Misconduct & Requests for Unedited Video and Audio Recordings).

18. On October 11, 2024, the District Attorney for Eighteenth Judicial District transmitted to the Chief of Police (and also publicly released) his final report concluding the Critical Incident Response Team investigation into the officers' conduct that had caused Mr. Lewis's death. **Exhibit 4** (Report of Findings for the Officer-Involved Shooting on May 23, 2024, at 384 South Ironton Street, Aurora, CO (CIRT Case Number 24-04)).

19. The Critical Incident Response Team Report concluded that Officer Dieck was justified in using deadly force and that no criminal charges would be pursued against him. *Id.* at 1-2. The District Attorney based his conclusion on several pieces of evidence he had reviewed, including, "Body Worn Camera videos of Officer Dirck and the other officers present at the time of the shooting." *Id.* at 3.

20. The Critical Incident Response Team Report also cited an autopsy report that had found Mr. Lewis's cause of death to be a single bullet in his abdomen, which was consistent with the bullet that was fired from Officer Dieck's location. *Id.* at 11-12. The autopsy report detailed that as a result of that gunshot wound, Mr. Lewis suffered significant brain damage because of blood loss, which ultimately caused his death. *Id.*

21. On November 15, 2024, The Aurora Police Department issued a press release stating that its administrative investigation of the fatal shooting of Mr. Lewis was complete. **Exhibit 1**. The Aurora Police Department stated that it was determined that Officer Dieck did not violate agency policy. *Id.*

## **B. Plaintiff's Request to Inspect and Defendant's Denial**

22. On October 24, 2024, on behalf of KUSA-9 News, Mr. Adelson submitted an initial request through the Aurora Police Department's Public Records Request portal for access to the BWC footage of Mr. Lewis's shooting death; he sought:

[B]ody camera footage from Officers Mike Dieck, Eric Graham, Nick Wilson, Grant Peet, and Rhett Fox from the 5/23/2024 shooting of Kilyn Lewis at 384 South Ironton St. I believe a formal complaint has previously been filed in this case. Because of that, and because of the public interest in this case, I ask that APD waive any fees for the footage.

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<sup>2</sup> Mr. Lewis's family filed an earlier Complaint of Police Officer Misconduct & Request for Unedited Video and Audio Recordings with the Aurora Police Department on July 11, 2024, through Rathod Mohamedbhai LLC. *see also* Fn. 1 citing **Exhibit 3**.

A true and correct copy of that request is attached hereto as **Exhibit 6** (Oct. 24, 2024 Request).

23. On October 25, 2024, Mr. Adelson's request was denied by Kathryn Miller, the official records custodian, stating:

Your request for body camera footage for case #2024-97805 is being denied pursuant to the discretion permitted under the Colorado Criminal Justice Records Act (CCJRA), Sec. 24-72-305(5), C.R.S. as recognized by the Colorado Supreme Court in *Harris v. Denver Post*, 123 P.3d 1166 (Colo. 2005).

As official custodian of criminal justice records, the Aurora Police Department is denying the release of any criminal justice records because the Aurora Police Department believes it would be contrary to the public interest to release criminal justice investigative records prior to the conclusion of the ongoing investigation. The interest in keeping this information confidential and the interest in the integrity of the ongoing internal investigation outweighs the public purpose to be served in allowing disclosure at this time.

*Id.* Ms. Miller further stated that Mr. Adelson's request was closed. *Id.*

24. On November 11, 2024, Mr. Adelson, sent another request for a copy of the above referenced body-worn camera footage from the Aurora Police Department, pursuant to C.R.S. § 24-31-902(2). Mr. Adelson stated in his request that he was "Seeking body camera footage from the shooting Kilyn Lewis shooting [sic] on May 23rd. Because an official complaint of misconduct, under CRS 24-31-902 APD must release the existing body camera footage." A true and correct copy of that request is attached hereto as **Exhibit 7** (Nov. 11, 2024 Request).

25. On November 12, 2024, Ms. Miller and city staff responded by denying Mr. Adelson's request, on the ground that it was a "duplicate request," and because:

Technically, media are not included in the statute as to who can make a request pursuant to C.R.S 24-31-902 (2) (a), which specifically states, **another peace officer, civilian, or non profit organization**. As such your request will be handled as a normal CCJRA request. We will be in contact with you with the invoice associated with your request in the order it was received.

*See id.* (emphasis in original).

26. On November 14, 2024, in response to a separate CORA/CCJRA request, Mr. Adelson received from the Aurora Police Department copies of the complaints of misconduct that were filed on behalf of members of the Lewis family by their attorneys Mr. Brad Irwin and Mr. Edward Hopkins.

27. The Letter complaints dated July 11, 2024, August 15, 2024, and September 9, 2024 sought access to "all unedited video and audio recordings" of the shooting death of their loved one in the incident that occurred on May 23, 2024. **Exhibits 2 & 3**, at 1 (emphasis added).

28. On November 15, 2024, after the APD announced via press release, *see* **Exhibit 1**, that the Aurora Police Department had completed its internal review of the shooting; Mr. Adelson asked via the Aurora Police Department Public Records Request portal: “Will you be releasing [the video] today?” *See* **Exhibit 7**.

29. Also, on November 15, 2024 Mr. Adelson submitted a request via the portal for a PowerPoint document and report created by the Aurora Police Department’s Force Investigations Unit that included segments of the body-worn camera footage. A true and correct copy of the request and response is attached hereto as **Exhibit 8** (Nov. 15, 2024 PowerPoint Request) and incorporated by reference herein.

30. On the same day, Mr. Adelson further revised his request for the body-worn camera footage; stating, specifically, “We are seeking a copy of the unedited, body camera footage from the 5/23 shooting of Kilyn Lewis.” A true and correct copy of that request for the footage is attached hereto as **Exhibit 9** (Nov. 15, 2024 BWC Request).

31. Three days later, on November 18, 2024, Defendant “closed” Mr. Adelson’s request on the grounds that it was a “duplicate request.” *Id.*

32. On November 19, 2024, undersigned counsel contacted the Assistant City Attorney Megan Platt via email to inquire about the status of Mr. Adelson’s requests for all unedited BWC footage. A true and correct copy of that email is attached hereto as **Exhibit 10** (Nov. 19, 2024 Email Correspondence).

33. On November 19, 2024, Ms. Platt denied Mr. Adelson’s request for the BWC footage asserting it “did not meet the statutory criteria to be expediated under C.R.S. § 24-31-902.” *Id.* Ms. Platt further stated that because Mr. Adelson himself did not make a complaint of police misconduct, his records request would be handled under the CCJRA (C.R.S. § 24-72-304) instead of the Integrity Act (C.R.S. § 24-31-902). *Id.* Despite Mr. Adelson’s Nov. 11 Request which stated that he was seeking the footage “Because an official complaint of misconduct, under CRS 24-31-902” was filed.

34. In an email on November 21, 2024, counsel for KUSA-9-News responded to Ms. Platt’s November 19 denial, stating that the Integrity Act applied to Mr. Adelson’s request for body-worn camera footage and that it mandated immediate release of all unedited BWC footage because a complaint of misconduct was filed by Mr. Lewis’s family. *Id.* Ms. Platt responded on November 27, 2024 that “Mr. Irwin [the Lewis family’s attorney] received what was responsive to his allegation of misconduct noticed to APD, not every BWC in the entire investigation.” *Id.*

35. On November 27, 2024, Mr. Adelson again reiterated his request for the above referenced BWC footage under the Integrity Act. Mr. Adelson once again specified that he was “seeking copies of all unedited bodyworn camera footage from Michael Dieck, Eric Graham, Nick Wilson, Rhett Fox, and Grant Peet, from the May 23, 2024 shooting death of Mr. Kilyn Lewis.” A true and correct copy of the request and response is attached hereto as **Exhibit 11** (Nov. 27, 2024 Request) and incorporated by reference herein.

36. On December 10, 2024, Mr. Adelson asked for an update regarding his request. **Exhibit 8.**

37. On that day, the Aurora Police Department (or “APD”) provided Mr. Adelson with five separate video clips, each of which included body-worn camera footage from the Aurora Police Department of the fatal shooting of Mr. Lewis. **Exhibit 11.** However, the edited segments did not

reflect the full, unedited body-worn camera footage from the May 23, 2024 incident and thus did not fulfill Mr. Adelson's request.

38. On January 17, 2025, the Aurora Police Department provided Mr. Adelson with the PowerPoint document; however, any access to the body-worn camera footage that was contained within the PowerPoint was redacted by the department "pursuant to C.R.S. § 24-72-303(4)(b)," on the ground that Mr. Adelson "already [had] all associated body camera footage in regard to this incident" and that the videos from the PowerPoint required redaction "per state law." **Exhibit 8.** Further, the response stated that if Mr. Adelson would like to request the footage from the incident he would need to "submit a new request." *Id.* After subsequent back-and-forth, the APD closed the request, and this complaint was subsequently filed.

39. On February 12, 2025, undersigned counsel contacted via email the attorneys for Mr. Lewis's family before filing this complaint as a courtesy. As of the filing of this complaint, the family has not yet taken a position on KUSA 9-News's request for access.

### **FIRST CLAIM FOR RELIEF**

For Declaratory Judgment

(C.R.S. § 13-51-106, C.R.C.P. 57 pursuant to C.R.S. § 24-31-902(2)(a))

40. Paragraph Nos. 1 through 39 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

41. A genuine controversy exists between Plaintiff and the Defendant with respect to their respective rights and responsibilities under C.R.S. § 24-31-902(2)(a) to the body-worn camera footage at issue herein.

42. Plaintiff is entitled to an Order declaring its right to receive the body-worn camera footage at issue from Defendant because each of the requirements under C.R.S. § 24-31-902(2)(a) have been established that command the APD to produce all the unedited body-worn camera footage within 21 days of a complaint of misconduct by a civilian through notice provided to the law enforcement agency involved in the misconduct.

### **SECOND CLAIM FOR RELIEF**

For Injunctive Relief

(C.R.S. § 13-51-112, C.R.C.P. 65 pursuant to C.R.S. § 24-31-902(2)(a))

43. Paragraph Nos. 1 through 42 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

44. Section C.R.S. § 24-31-902(2)(a) of the Enhancing Law Enforcement Integrity Act plainly and expressly mandates that Defendant make all unedited BWC recordings at issue available to Plaintiff promptly, as the deadline for disclosure was September 5, 2024.

45. Plaintiff is suffering, and will continue suffering, irreparable harm, not compensable by monetary damages, as a proximate result of the Defendant's denial of Plaintiff's statutory right of access to the BWC recordings at issue.

46. Plaintiff is entitled to an injunction commanding Defendant to provide access, forthwith, to all unedited BWC recordings at issue. Plaintiff has met each of the requirements pursuant to C.R.S. § 24-31-902(2)(a) that command the APD to produce all the unedited body-worn camera footage within 21 days of a complaint of misconduct.

### **THIRD CLAIM FOR RELIEF**

Order to Show Cause at the Earliest Practical Time under CCJRA  
(C.R.S. § 24-72-301, *et seq.*)

47. Paragraph Nos. 1 through 46 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

48. Because Defendant has denied Plaintiff's valid request, claiming that the CCJRA applies for inspection and copying of the requested records, apparently pursuant C.R.S. § 24-72-305(1)(a), Plaintiff is entitled to an Order directing Defendant to show cause "*at the earliest practical time*" why the criminal justice records at issue should not be made available to them. C.R.S. § 24-72-305(7) (emphasis added).

49. In the event the Court finds that Defendant's denial of access was arbitrary or capricious, Plaintiff would be entitled to an award of his reasonable attorney's fees pursuant to C.R.S. § 24-72-305(7).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that:

- a. The Court forthwith enter an Order to Show Cause directing Defendant to appear before it at the earliest practical time and show cause why the BWC recordings that Plaintiff has requested under the CCJRA should not be made available to them;
- b. At the conclusion of the hearing on the Order to Show Cause, the Court enter an Order directing Defendant to provide Plaintiff access to all unedited BWC recordings at issue;
- c. The Court enter an Order declaring Plaintiff has a legal right, under the Enhancing Law Enforcement Integrity Act, to obtain all unedited copies of the BWC recordings at issue;
- d. The Court, upon finding that the Defendant's improper withholding the record at issue was arbitrary or capricious, enter an Order awarding Plaintiff their costs and reasonable attorney's fees associated with the preparation, initiation, and maintenance of this action, as mandated by C.R.S. § 24-72-304(5)(b); and
- e. The Court award such other and further relief as the Court deems proper and just and proper.



Dated this 24<sup>th</sup> day of February, 2025.

*s/ Rachael Johnson*

Rachael Johnson

REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS

*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of February 2025, a true and correct copy of the foregoing **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND APPLICATION FOR ORDER TO SHOW CAUSE UNDER THE COLORADO CRIMINAL JUSTICE RECORDS ACT** as served on the following counsel through the Colorado Courts E-File & Serve electronic court filing system, pursuant to C.R.C.P. 121(c), § 1-26:

/s/Rachael Johnson

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