

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO 201 La Porte Ave., Suite 100 Fort Collins, CO 80521</p> <hr/> <p><b>Plaintiff: VIRGINIA FARVER,</b></p> <p><b>v.</b></p> <p><b>Defendants: CITY OF FORT COLLINS, FORT COLLINS CITY COUNCIL, DARIN ATTEBERRY, FORT COLLINS UTILITIES, FORT COLLINS UTILITIES MANAGEMENT and STAFF, DENNIS SUMNER, STEVE CATANACH; and DOES 1-100.</b></p>	<p>DATE FILED: July 19, 2016 7:52 AM FILING ID: C0D84B7C17F2F CASE NUMBER: 2016CV144</p> <p>COURT USE ONLY</p>
<p>Kimberly B. Schutt, #25947 WICK &amp; TRAUTWEIN, LLC 323 South College Avenue, Suite 3 P.O. Box 2166, Fort Collins, CO 80522 Phone Number: (970) 482-4011 E-mail: kschutt@wicklaw.com FAX Number: (970) 482-8929</p> <p>John R. Duval, #10185 FORT COLLINS CITY ATTORNEY'S OFFICE P.O. Box 580 Fort Collins, CO 80522 Phone: (970) 221-6520 Email: jduval@fcgov.com</p>	<p>Case Number: 2016 CV 144</p> <p>Courtroom: 5B</p>
<p style="text-align: center;"><b>DEFENDANTS' RESPONSE TO PLAINTIFF'S REPLY TO DEFENDANTS' ANSWER AND MOTION FOR LEAVE TO AMEND COMPLAINT</b></p>	

COMES NOW all of the above-named defendants (“Defendants”), by and through counsel, Kimberly B. Schutt of Wick & Trautwein, LLC, and John R. Duval of the Fort Collins City Attorney’s Office, and respectfully submit the following response to Plaintiff’s “Reply” to the Defendant’s Answer and her motion for leave to amend her Complaint:

1. On June 30, 216, the *pro se* Plaintiff in this action filed a “Reply” to the Defendants’ Answer which also contained a motion for leave to amend her Complaint. Plaintiff’s motion did not contain a certification that she had conferred with defense counsel pursuant to C.R.C.P. 121, §1-15, nor did she actually confer with defense counsel prior to filing the Reply and Motion. The motion also did not include a copy of the proposed amended complaint which Plaintiff sought leave to file.

2. Defense counsel Kimberly Schutt and John Duval met with the Plaintiff on July 5, 2016, for purposes of discussing the various case management issues required by Rule 16.1 and this Court's procedural order. During that meeting, defense counsel provided Plaintiff with a copy of Rule 121, §1-15 and explained the need to provide a copy of the proposed amended complaint in order for defense counsel to determine whether to object or consent to the motion. They asked Plaintiff to provide that information as soon as possible in order to allow for a meaningful opportunity to review and evaluate the proposed amended complaint. Plaintiff committed to do so.

3. Almost two weeks have passed, and Plaintiff has not still provided a copy of the proposed amended complaint. Undersigned counsel followed up with the Plaintiff on July 13, 2016, and was told that she would provide it by the end of the week. Instead, Plaintiff simply provided the letter attached hereto as *Exhibit 1* outlining what she intends to do with her amended complaint.

4. Accordingly, at this point, the Defendants must object to the Plaintiff's motion on the grounds that she failed to comply with Rule 121, §1-15 and provide a copy of her proposed amended complaint, to the Defendants' prejudice.

5. Moreover, based on what Plaintiff has outlined in her letter of July 13, Defendants believe her amended complaint will simply retool her allegations to reframe them based on the Answer filed by the Defendants and make legal arguments which are more appropriately left for summary judgment proceedings, rather than serving as a basis for amending her Complaint. The rules of civil procedure do not allow her to file a reply to the Defendants' Answer, which is what she has done in her Reply pleading and appears to be what she intends to further do in her proposed amended complaint, based upon what she has outlined in her letter. She also fails to address at all the Defendants' contention that she has not alleged with sufficient particularity the claims of fraud, deceit and willful misrepresentation.

6. As reflected above, Defense counsel have attempted to work through these issues with the Plaintiff, but she has failed to timely provide them with the information they need to truly evaluate what she is trying to do. Though the Plaintiff is choosing to represent herself in this matter, she is still obligated to comply with the same rules of procedure as though she were represented by an attorney.

WHEREFORE, the Defendants respectfully request the Court to enter an order denying the Plaintiff's Reply and Motion to Amend, with the understanding that she can resubmit the motion if she actually provides a copy of the proposed amended pleading and confers with defense counsel prior to doing so. The parties anticipate setting this matter in for a case management conference to occur in the latter part of August. If the Plaintiff provides a proposed amended complaint to defense counsel prior to that time, then the Court can always take up this issue at the conference, to the extent there are any issues needing to be resolved at that time.

DATED this 19<sup>th</sup> day of July, 2016.

WICK & TRAUTWEIN, LLC

*This document was served electronically pursuant to C.R.C.P. 121 §1-26. The original pleading signed by Kimberly B. Schutt is on file at the offices of Wick & Trautwein, LLC*

By: s/Kimberly B. Schutt  
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And

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**CERTIFICATE OF ELECTRONIC FILING**

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANTS' RESPONSE TO PLAINTIFF'S REPLY TO DEFENDANTS' ANSWER AND MOTION FOR LEAVE TO AMEND COMPLAINT** was filed via Integrated Colorado Courts E-Filing System (ICCES) and served this 19<sup>TH</sup> day of July, 2016, on the following:

Sent via email to [vrfarv@hotmail.com](mailto:vrfarv@hotmail.com) and sent by U.S. Mail to:

Virginia L. Farver  
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*Pro se Plaintiff*

/s/ Jody L. Minch

*[The original certificate of electronic filing signed by Jody L. Minch is on file with the law offices of Wick & Trautwein, LLC.]*