

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-01308-RBJ-KLM

FREE THE NIPPLE – FORT COLLINS,  
BRITTIANY HOAGLAND,  
SAMANTHA SIX,

Plaintiffs,

v.

CITY OF FORT COLLINS, COLORADO,

Defendant.

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**DEFENDANT’S ANSWER AND JURY DEMAND**

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Defendant City of Fort Collins, Colorado, through its attorneys, Andrew D. Ringel, Esq., Gillian Dale, Esq., and Christina S. Gunn, Esq., of Hall & Evans, LLC, and Carrie Mineart Daggett, Esq., and John R. Duval, Esq., of the Fort Collins City Attorney’s Office, by way of response to Plaintiffs’ Complaint, admits, denies, and avers as follows:

**INTRODUCTION**

1. Defendant denies the allegations contained in Paragraph 1.
2. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 2, and therefore denies the same.
3. With respect to the allegations contained in Paragraph 3, Defendant states the terms of Section 17-142 speak for themselves, and denies any of the allegations of Paragraph 3 inconsistent therewith. Defendant denies all remaining allegations in Paragraph 3.

4. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 4, and therefore denies the same.

5. Defendant admits the allegations contained in Paragraph 5 with respect to one or more of Plaintiffs.

6. Defendant admits the allegations contained in Paragraph 6.

7. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 7, and therefore denies the same.

8. Defendant admits that on October 20, 2015, its City Council adopted on first reading Ordinance No. 134, 2015, revising City Code Section 17-142, states that the terms of the ordinance speak for themselves, and denies any of the allegations in Paragraph 8 inconsistent therewith. Defendant denies all remaining allegations in Paragraph 8.

9. Defendant denies the allegations contained in Paragraph 9.

### **PARTIES**

10. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 10, and therefore denies the same.

11. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 11, and therefore denies the same.

12. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 12, and therefore denies the same.

13. Defendant admits the allegations contained in Paragraph 13.

**JURISDICTION AND VENUE**

14. Paragraph 14 consists of a description of the legal basis for Plaintiffs' claims, to which no response is required. To any extent Paragraph 14 can be read as containing any factual allegations, they are denied.

15. Defendant admits that this Court possesses subject matter jurisdiction over this matter.

16. Defendant admits venue is proper in this Court.

17. Defendant admits this Court possesses subject matter jurisdiction over this matter.

**FACTS**

18. With respect to the allegations contained in Paragraph 18, Defendant states the terms of the prior version of Section 17-142 speak for themselves, and denies any of the allegations of Paragraph 18 inconsistent therewith. Defendant denies all remaining allegations in Paragraph 18.

19. Defendant denies that Section 17-142 is discriminatory. Defendant is without sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 19, and therefore denies the same.

20. Defendant admits the allegations contained in Paragraph 20.

21. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 21, and therefore denies the same.

22. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 22, and therefore denies the same.

23. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 23, and therefore denies the same.

24. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 24, and therefore denies the same.

25. Defendant admits its City Council considered various revisions to Section 17-142 at a meeting in October 2015. Defendant denies all remaining allegations in Paragraph 25.

26. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 26, and therefore denies the same. Defendant denies that its justifications for Section 17-142's different treatment of men's and women's breasts are motivated by unlawful "sex stereotypes, double standards, hypocrisies, and the hyper-sexualization . . . of women's breasts."

27. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 27, and therefore denies the same.

28. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 28, and therefore denies the same.

29. With respect to the allegations contained in Paragraph 29, Defendant states the terms of Ordinance No. 134, 2015, speak for themselves, and deny any of the allegations of Paragraph 29 inconsistent therewith.

30. With respect to the allegations contained in Paragraph 30, Defendant states the terms of revised Section 17-142 speak for themselves, and denies any of the allegations of Paragraph 30 inconsistent therewith. Defendant denies all remaining allegations in Paragraph 30.

31. Defendant denies that Paragraph 31 describes the entirety of all reasons advanced in support of the revised version of Section 17-142. Defendant denies all remaining allegations contained in Paragraph 31.

32. Defendant objects to Paragraph 32 as vague and ambiguous and incapable of any response, in that the “veiled references to religious morality” are not identified or explained. Otherwise, the Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 32, and therefore denies the same.

33. With respect to the allegations contained in Paragraph 33, Defendant states the terms of the referenced emails speak for themselves, and deny any of the allegations of Paragraph 33 inconsistent therewith. Defendant denies all remaining allegations contained in Paragraph 33.

34. With respect to the allegations contained in Paragraph 34, Defendant states the terms of the referenced emails speak for themselves, and deny any of the allegations of Paragraph 34 inconsistent therewith. Defendant denies all remaining allegations in Paragraph 34.

35. Defendant objects to Paragraph 35 on the ground that the source of the quoted language is not identified and therefore cannot be verified. Defendant denies all remaining allegations in Paragraph 35.

36. Defendant denies the allegations contained in Paragraph 36.

37. Defendant denies the allegations contained in Paragraph 37.

38. Defendant admits that its City Council enacted revised Section 17-142 at its November 3, 2015, meeting, states that the terms of the revised ordinance speak for themselves, and denies any of the allegations contained in Paragraph 38 in consistent therewith.

39. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 39, and therefore denies the same.

40. With respect to the allegations contained in Paragraph 40, Defendant states the terms of the revised ordinance speak for themselves, and deny any of the allegations of Paragraph 40 inconsistent therewith. Defendant denies all remaining allegations in Paragraph 40.

41. Defendant is without sufficient information to form a belief as to the truth of the allegations contained in Paragraph 41, and therefore denies the same.

42. Defendant admits the allegations contained in Paragraph 42.

**CLAIM 1: FIRST AMENDMENT**

43 to 48. Plaintiff's First Claim has been dismissed, and as a result no response is required to Paragraphs 43 to 48. To the extent a response is deemed required, all such allegations are denied by Defendant.

**CLAIM II: EQUAL PROTECTION**

49. Defendant incorporates its responses to all other allegations in the Complaint.

50. With respect to the allegations contained in Paragraph 50, Defendant states the terms of the Equal Protection Clause speak for themselves, and deny any of the allegations of Paragraph 50 inconsistent therewith.

51. With respect to the allegations contained in Paragraph 51, Defendant states the terms of Section 17-142 speak for themselves, and deny any of the allegations of Paragraph 51 inconsistent therewith.

52. Defendant denies the allegations contained in Paragraph 52.

53. Defendant denies the allegations contained in Paragraph 53.

**CLAIM III: EQUALITY OF SEXES**

54. Defendant incorporates its responses to all other allegations in the Complaint.

55. With respect to the allegations contained in Paragraph 55, Defendant states the terms of the Equal Rights Amendment speak for themselves, and deny any of the allegations of Paragraph 55 inconsistent therewith.

56. With respect to the allegations contained in Paragraph 56, Defendant states the terms of Section 17-142 speak for themselves, and deny any of the allegations of Paragraph 56 inconsistent therewith.

57. Defendant denies the allegations contained in Paragraph 57.

58. Defendant denies the allegations contained in Paragraph 58.

**PRAYER FOR RELIEF**

Defendant denies that Plaintiff is entitled to any of the relief requested in the Complaint.

**GENERAL DENIAL**

Defendant denies each and every allegation in the Plaintiffs' Complaint not specifically admitted herein.

**DEFENSES AND AFFIRMATIVE DEFENSES**

1. The Complaint describes no violation of any state or federal constitutional provision.

2. Section 17-142's gender distinction serves important governmental objectives and is substantially related to achievement of those objectives.

3. Section 17-142's gender distinction is not invidious, but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances.

4. Section 17-142's gender distinction is not based on social stereotypes but instead is premised on reasonable, genuine, and real physical and biological differences between the sexes.

5. The City Council of the City of Fort Collins enactment of the revised version of Section 17-142 was a legislative decision and therefore deliberate process principles and privileges apply.

6. The statements or opinions of one member of the City Council of the City of Fort Collins are not and cannot be attributed to the City Council as a whole when the City Council makes a legislative decision.

7. Defendant reserves the right to assert additional defenses identified in the course of discovery.

WHEREFORE, having responded to Plaintiffs' Complaint, Defendant requests that the Complaint be dismissed in its entirety, with prejudice, and that Defendant be awarded its fees and costs incurred in defense of this matter.

### **JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38, Defendant hereby demands a trial by jury on all issues so triable.



Dated this 4<sup>th</sup> day of November, 2016.

Respectfully submitted,

*/s/ Gillian Dale*

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*/s/ John Duval*

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**ATTORNEYS FOR DEFENDANT CITY OF  
FORT COLLINS, COLORADO**

**CERTIFICATE OF SERVICE (CM/ECF)**

I HEREBY CERTIFY that on the 4<sup>th</sup> day of November, 2016, I electronically filed the foregoing **DEFENDANT'S ANSWER AND JURY DEMAND** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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