FORT COLLINS MUNICIPAL COURT 215 N. Mason Fort Collins, CO 80521 Phone (970) 221 6800	
Plaintiffs: Colleen Hoffman, Rick Hoffman, Ann Hunt v. **Defendant:** THE CITY COUNCIL OF THE CITY OF FORT COLLINS, the governing body of a Colorado municipal corporation; and THE ADMINISTRATION BRANCH OF THE CITY OF FORT COLLINS, by and through its City Manager, Darin Atteberry.	▲ COURT USE ONLY ▲
Parties without attorney Colleen Hoffman, pro se 1804 Wallenberg Drive Fort Collins, CO 80526 (970) 484 8723 cohoff@comcast.net Rick Hoffman, pro se 1804 Wallenberg Drive Fort Collins, CO 80526 (970) 484 5154 rick-hoffman@comcast.net Ann Hunt, pro se 1800 Wallenberg Drive Fort Collins, CO 80526 (970) 484 5242 ARH4@COMCAST.NET	Case Number: **2017 CIVIL 01**
REPLY BRIEF FOLLOWING DEFENDANT'S RESPONSE TO MOTION FOR DEFAULT	

Plaintiffs, Colleen Hoffman, Rick Hoffman and Ann Hunt submit this reply brief to Defendant City's Response to Plaintiff's Motion for Entry of Default that has been filed with this court by one Kimberly Schutt who has represented herself to be legal Council for the Defendants.

As *pro se* litigants in this matter, the Plaintiffs herein use the plural pronouns (we, us, our) to refer to themselves. Unless otherwise noted, all references to the Plaintiffs in this pleading where a statement of position on any matter is made or inferred indicate a jointly adopted position agreed to by all 3 individual plaintiffs.

INTRODUCTION

1. We have filed with this court a Motion for Entry of Default. This Motion was accompanied by a proposed order that did include request for judgment on the claims made by us in our complaint. This proposed order was prematurely authored and submitted. We regret the error. The only issue properly before the court was whether or not the Defendants' default should be entered and this should have been obvious to the Defendants.

2. The Defendants, through their attorney, Kim Schutt, has filed a Response to our Motion. Ms. Schutt's Response indicates a general confusion on her part as to the nature of the request made in our Motion, which was *entry of default* pursuant to Rule 55(a) of the Colorado Rules of Civil Procedure. Whether or not Ms. Schutt was baited into a response to defend against default judgment under C.R.C.P. Rule 55(b) by our errant filing of a premature proposed order, or whether her response was a proactive defense against an action of this court that had not been requested by motion is, much like the remainder of Ms. Schutt's argument, beyond our ability for speculation. Suffice it to say, the Defendant's responsive pleading does accurately state that default judgment is not appropriate at this time. Indeed, it was not requested at this time.

REGARDING ENTRY OF DEFAULT

3. There can be no doubt that the Defendant's default should have been entered by the clerk of this court at as early a time after April 28th as possible pursuant to C.R.C.P. Rule 55(a). In order for this not to be true, this court would have to find that it issued an Order staying these proceedings with retroactive effect. This retroactive Order would have to have been made without any request to make the Order retroactive and without any mention or notice of the retroactive effect in the Order. There is absolutely no place anywhere within our judicial system, regardless of what rules are or aren't in effect, for this sort of silliness. Orders of any court must be concise in their direction. Orders are presumed to be proactive in operation unless some mention is made of retroactive effect. The Defendants had ample opportunity to request additional time for filing an answer by simply proposing a date that the answer would be available, but the Defendants did not do that.

4. Ironically, we are being accused of demanding a '*draconian, retroactive*' application of rules. *See Defendants' Response* ¶ 8. This accusation is erroneous and absurd. Ms. Schutt gives no explanation of how our interpretation of the rules is retroactive. Indeed, it is not. Our interpretation of the rules is based on the

plain and simple meaning of Rule 12(a) as explained in our Motion. Rule 12(a) defines the time for an answer as following service of summons by 21 days. Nothing following the adoption of the C.R.C.P. could possibly cast the simple meaning of the time for an answer as retroactive.

5. Ms. Schutt should be appraised here that an option exists, for good cause shown, for this court to set aside an entry of default. However, there can be no doubt that such entry is a ministerial requirement of this court at this time.

DEFENDANTS' FUTHER CONFUSION, SPURIOUS ACCUSATIONS

6. With every single pleading filed in this matter, the Defendants have accused us of obstructing the ends of justice with our decision to decline the adoption of the C.R.C.P. to control this proceeding. We disagree with the Defendants on this matter. As we have stated before, it is incredibly imprudent .. even inappropriate .. to adopt the C.R.C.P. to control these proceedings. Perhaps this matter has now advanced to a point where our position can be viewed as the more intelligent, practical and consistent with the ends of justice. Examination of the applicability of Rule 106 bears this out.

7. In their responsive pleading, the Defendants have argued that this court should dismiss our complaint. As stated in ¶ 8; "*After all, C.R.C.P. 106(a)(4)(I), which now clearly provides the framework and procedure for review here, ...*" The Defendant goes on to complain that we have not requested certification of the record. Yet, Rule 106 is in no way invoked or applicable in this proceeding. Rule 106(a) clearly states:

> *In the following cases relief may be obtained in the* **district court** *by appropriate action under the practice prescribed in the Colorado Rules of Civil Procedure:* (emphasis added).

8. There is no doubt that such relief as is contemplated by Rule 106(a)(4) is available in a district court. It is equally indisputable that the City Council of the City of Fort Collins has affirmed the availability of the relief contemplated in Rule 106(a)(4) in a district court with Ordinance 52. However, this court is still without any rules specific to adjudicating a claim for relief when City Council or other quasi-judicial body is alleged to have abused its discretion.

9. Ironically, the rather simple task of amending the C.R.C.P. to replace references to the district court with suitable language for the municipal court was precisely the sort of rulemaking that we thought should be pursued as an alternative to that which the Defendant proposed and eventually adopted. All the same, we are the recipients of accusations of "complaining" of the lack of rules.

10. The example made here (Rule 106) of the Defendants' misunderstanding of the wholesale adoption of the C.R.C.P. is not, by any means, the only circumstance where confusion and consequences unanticipated by the Defendants are likely to visit these proceedings. Again ironically, it would appear that the vast majority of the misunderstandings will favor our position. Yet, it was and is the responsibility of this court, pursuant to the City Charter, to recommend rules for adoption. The circumstances are what they are and they are exclusively of this court's making.

QUESTIONS OF CONSTITUTIONAL DIMENSION

11. This last point needs to be considered within a sweeping analysis of this proceeding and the events that preceded it. We are generally in agreement with the position stated by the Defendants regarding what has transpired to date. *"(the defendants) could also take the position that the Plaintiffs' Summons and Complaint filed by the Plaintiffs* (sic) *was not based upon any then-existing rules, and thus invalidate the first instance.* See ¶ 5 of Defendants' Response. Indeed, in taking this position, it may be reasonably concluded that we are deprived of our constitutional rights under Article II sections 6 and 24, and as a consequence thereof, we are deprived of property without due process of law in violation of Article II section 25. As we have done before, we continue to reserve our right to access relief afforded by our constitutional rights and we would be doing so with the full agreement of the Defendants.

12. The Defendants are fond of reiterating their position that this matter could be determined on its merits. See ¶ 9 of Defendants' Response. However, it is reasonable to suspect we are not before a court with the capacity or alacrity sufficient for this purpose. Evidence of bias has already been established in this court's "deciding" an issue that was not properly before the court (retrospective application of rules) in favor of the Defendants in the only action of this court seen to date. This evidence, coupled with the confusion stemming from adopting entirely inappropriate rules creates good cause to examine all options.

POSSIBLE ENTRY OF ADDITIONAL PARTY

13. As another party has now motioned this court for status as a defendant, and that motion appears to be made without defect and for good cause shown, it is reasonable to presume that this contest will continue once this court properly enters a default for the Defendants.

CONCLUSION

14. Default must be entered for the Defendants named in this action for failure to timely file an answer. The decision point regarding our constitutional rights has been advanced with every step in this proceeding as we have done our

best to make this system work in accordance with our law. There should be no misunderstanding that the failure of this court to enter default in abrogation of rules that the Defendants themselves wished upon this court, then the decision is made for us.

Respectfully submitted this 30th day of May, 2017

Colleen Hoffmann

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Address of Lead Plaintiff

Rick Hoffmann

Rick Hoffman

Ann Hunt

Ann Hunt