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DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100	
Plaintiff: Ilse G. Westphal Defendant: Anthony John Jansa; Jansa Trucking, LLC, a Colorado Limited Liability Company; Jansa Trucking, LLC, a North Dakota Limited Liability Company; The City of Fort Collins, a Colorado municipal corporation	▲ COURT USE ONLY ▲
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RESPONSE TO DEFENDANT CITY OF FORT COLLINS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO C.R.C.P. 12(b)(1) and C.R.S. § 24-10-106

COMES NOW, the Plaintiff, Ilse G. Westphal, by and through her attorney, David M. Herrera of Herms & Herrera, LLC, and responds to the *Defendant City Of Fort Collins' Motion To Dismiss Plaintiff's Complaint Pursuant To C.R.C.P. 12(B)(1) And C.R.S. § 24-10-106 ("Motion")* filed by the City of Fort Collins as follows:

I. INTRODUCTION

The Defendant City of Fort Collins, under C.R.C.P. Rule 12(b)(1), challenges jurisdiction asserting the Plaintiff's Seventh and Eighth claims are barred by the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §24-10—106. Plaintiff has alleged that the bus stop shelter facility and the public roadway were put to a use that created dangerous conditions constituting an unreasonable health and safety risk to the Plaintiff. Defendant claims that neither the Seventh nor

Eighth claims assert an exception to the general rule of immunity expressed by the CGIA. In short, the City's argument is that Plaintiff has not alleged facts showing "construction or maintenance" of the bus stop, the bus stop shelter, or the Roadway. The following standards, facts, and legal authority will show that both statutory exceptions to the CGIA are applicable and that the City is not immune from the Plaintiff's claims.

II. STANDARD OF REVIEW

Questions of governmental immunity implicate subject matter jurisdiction and are determined in accordance with a motion to dismiss. *St. Vrain Valley School District RE-1J v. Loveland by and through Loveland*, 395 P.3d 751 (Colo. 2017).

Whether immunity has been waived under the GIA is an issue of subject matter jurisdiction that is resolved by the trial court under C.R.C.P. 12(b)(1). *See Fogg v. Macaluso*, 892 P.2d 271 (Colo.1995).

Sovereign and governmental immunity created by State Governmental Immunity Act is in derogation of common law and must be strictly construed. Bertrand v. Board of County Com'rs of Park County, 872 P.2d 223 (Colo.,1994). Because the GIA derogates the common law, its grant of immunity must be strictly construed, **conversely its waiver provisions are interpreted broadly**. *Corsentino v. Cordova*, 4 P.3d 1082 (Colo.2000). *Lin v. City of Golden*, 97 P.3d 303, 305 (Colo.App.,2004).

The trial court is not obligated to treat the facts asserted in the complaint as true for purposes of adjudicating its jurisdiction. *Medina v. State*, 35 P.3d 443 (Colo. 2001); *City of Lakewood v. Brace*, 919 P.2d 231, 244 (Colo. 1996).

A claimant bears the burden of proving subject matter jurisdiction under the Governmental Immunity Act. *Buckley Powder Co. v. State*, 70 P.3d 547 (Colo.App. 2002).

The CGIA requires the trial court to definitively resolve all issues of immunity before trial, regardless of whether the issues have been classified as jurisdictional. *Finnie v. Jefferson County School District R–1*, 79 P.3d 1253, 1258 (Colo. 2003). Trial courts may conduct an evidentiary hearing under *Trinity Broadcasting of Denver v. City of Westminster*, 848 P.2d 916 (Colo.1993), to determine the facts necessary to definitely resolve all disputed issues of immunity, including those deemed non-jurisdictional. *Finnie, supra.* The court may conduct a *Trinity* hearing at which the parties may present evidence related to all issues of immunity, including facts not in dispute. *Dennis on behalf of Heyboer v. City and County of Denver*, ____ P.3d ___, 2016 COA 140, ¶ 25, 2016 WL 5219967, at *5 (Colo.App., 2016).

In assessing disputed facts concerning its subject matter jurisdiction in the face of an immunity defense under the Governmental Immunity Act, the trial court may receive any competent evidence relevant to its jurisdiction. *Powell v. City of Colorado Springs*, 25 P.3d 1266 (Colo.App. 2000). *See, Seefried v. Hummel*, 148 P.3d 184, 188 (Colo. Ct. App. 2005), *cert. denied*, 2006 WL 2590062 (Colo. 2006) (in a subject matter jurisdiction case not under the CGIA, court held that a trial court may make factual findings in determining subject matter jurisdiction and may hold a hearing to resolve a factual dispute, but a hearing is unnecessary if the matter can be resolved on undisputed facts).

See also, St. Vrain Valley School District RE-1J v. A.R.L. by and through Loveland, 325 P.3d 1014, 1018 n. 6 (Colo. 2014) (under Rule 12(b)(1) and prior case law, the trial court may allow for limited discovery and conduct an evidentiary hearing to resolve factual disputes on the

court's jurisdiction, but if there is no evidentiary dispute the trial court may rule on the jurisdictional issue as a matter of law without a hearing).

A waiver will exist where a plaintiff alleges facts proving a ***minimal causal connection*** between the injuries and the specified conduct. Because the required showing is minimal, and because discovery by the time of the *Trinity* hearing has been limited, the trial court should afford the plaintiff the inferences of his allegations. *Tidwell ex rel. Tidwell v. City and County of Denver*, 83 P.3d 75, 86 (Colo.,2003). The standards of C.R.C.P. 12(b)(5) and C.R.C.P. 56 should ***not*** be applied in Trinity hearings. *Dennis on behalf of Heyboer Supra.*, 2016 WL 5219967, at *4.

Immunity turns on the precise mechanism of the injury rather than the plaintiff's location when the injury occurred. *Burnett v. State Department of Natural Resources*, 346 P.3d 1005 (Colo., 2015).

III. FACTS

Subject to limited discovery, Plaintiff is prepared to present evidence at a *Trinity* Hearing on the following facts:

1. The City of Fort Collins (hereinafter "City") is a Colorado home-rule municipal corporation.
2. The City of Fort Collins owns and operates the bus stop/ bus shelter situated along north side of East Harmony Road approximately 494 feet west of the intersection of Zeigler Road and East Harmony Road, Larimer County, Colorado.
3. Ilse G. Westphal was an invitee to the publicly operated bus stop/bus shelter.
4. The City never informed Ms. Westphal that the bus service was not available to her at the bus stop/bus shelter.
5. The East Harmony Duct Bank was a project managed by the Utilities department of the City of Fort Collins.

6. Phase 2 of the East Harmony Duct Bank project included the installation of large underground vaults and over 125,000 feet of conduit.
7. The placement of the vaults required the use of a crane contracted for with Sterling Crane.
8. East Harmony Road is a controlled-access highway.
9. On November 22, 2016, the City of Fort Collins placed cones and signage closing the north lane of Harmony Road from Zeigler Road westbound to the bus stop.
10. The placing of cones and closure of lanes interfered with the movement of traffic.
11. The City of Fort Collins, engaged in the process of constructing utility facilities in connection with the "East Harmony Duct Bank" project, marshalled labor, materials and equipment to the site, was preparing to use the crane that had been staged to place vaults as part of the construction project.
12. On November 22, 2016, at approximately 12:30 p.m., Plaintiff was waiting for a Fort Collins bus at a bus stop/bus shelter along the north side of East Harmony Road west of Zeigler Road.
13. The bus stop/bus shelter is a public building.
14. At approximately 12:30 p.m., along the northernmost lane of Harmony Road west of Zeigler Road, the number of vehicles being parked along Harmony Road included a Sterling Crane pickup truck, the track hoe excavator (loaded onto the trailer), a dump truck pulled ahead of the track hoe/trailer, a large 7-axle oversized crane two City trucks and an equipment trailer were parked in the northernmost lane.
15. The City of Fort Collins was establishing a construction site that encompassed the bus stop shelter public building, public facility and its curtilage and the Harmony Road public highway.
16. At no time before the incident was the public bus stop shelter closed.
17. At the time of the incident the City of Fort Collins was engaged in construction or maintenance encompassing the bus stop/bus shelter, the road shoulder, and Harmony Road.
18. Several traffic cones had been placed in Harmony Road closing portions of the northernmost lane.

19. Sterling Crane's equipment requires the use of counterweights and rigging.
20. The counterweights and rigging were being delivered to the construction site by Defendant Jansa on November 22, 2016.
21. Defendant Jansa was driving a Peterbilt tractor and an attached Fontaine drop deck trailer.
22. Ms. Westphal stood up from the bus stop/bus shelter and took a few steps toward the roadway lane that was closed to look for her bus.
23. There is no curb or gutter between the bus stop shelter and the roadway at the bus stop/bus shelter.
24. Jansa pulled to the north side of the roadway to prepare to back into a construction zone east of the bus stop.
25. Jansa backed his semi-tractor/trailer and ran over the Plaintiff causing injury.
26. Defendant Jansa backed the vehicle and trailer on the roadway of a controlled-access highway into Plaintiff while she was standing on the shoulder of the road.
27. Plaintiff disputes the allegation that Plaintiff was in the roadway but admits she was on the road shoulder.
28. Plaintiff disputes the allegation that "she was not even at or in the bus stop shelter when she was injured" or that she "admittedly departed from the bus stop" as asserted in *Motion* p. 5.
29. Plaintiff disputes the opinion of causation asserted by the officer Drew Jurkofsky in the hearsay document. *Motion* Exhibit 1.

IV. ARGUMENT

A. Seventh Claim Bus Shelter

In Complaint paragraph 29, Plaintiff stated: "The City of Fort Collins was establishing a construction site that encompassed the bus stop shelter public building, public facility and its curtilage." While generally "curtilage" is commonly applied to a dwelling, Plaintiff's referring to "curtilage" was meant to encompass the space of ground and buildings immediately surrounding the public building. This is so, because the bus stop and shelter itself, in practical terms, includes

more than the area directly beneath the roof. Evidence in this case would show that the area of the bus stop and bus shelter included portions of the roadway and sidewalks.

In one of the early cases involving *St. Vrain Valley School District RE-1J v. A.R.L. by and through Loveland*, 325 P.3d 1014, 1017 (Colo., 2014), the Supreme Court held that a collection of playground equipment considered as a whole qualifies as a "public facility" because such equipment is (1) relatively permanent or otherwise affixed to the land, (2) a man-made structure, (3) accessible to the public, and (4) maintained by a public entity to serve a beneficial, common public purpose. As here, the entirety of the facility considered as a whole, is referenced as "curtilage."

Plaintiff has asserted at Complaint ¶113, that "the City's operation of the bus shelter while assembling the construction site, marshalling labor, material and equipment, in the street, the shoulder and the right-of way between the street and the sidewalk on the North side of Harmony Road all around the bus shelter where Plaintiff was sitting waiting for her bus, rendered the bus shelter, a public building, to be in a dangerous condition constituting an unreasonable health and safety risk." Colorado Revised Statutes involving CGIA define a "dangerous condition." *See* C.R.S. §24-10-103(1.3):

> (1.3) "Dangerous condition" means either a physical condition of a facility ***or the use thereof*** that constitutes an unreasonable risk to the health or safety of the public, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the negligent act or omission of the public entity or public employee in constructing or maintaining such facility. For the purposes of this subsection (1.3), a dangerous condition should have been known to exist if it is established that the condition had existed for such a period and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall not exist solely because the design of any facility is inadequate. The mere existence of wind, water, snow, ice, or temperature shall not, by itself, constitute a dangerous condition. (Emphasis added).

Here, it appears to be undisputed that the City of Fort Collins owns and operates the bus stop and bus shelter described in the complaint. It also appears to be undisputed that "Defendant Jansa pulled to the north side of the roadway to prepare to back into a construction zone east of the bus stop." (*Motion* p. 3, ¶7.) This acknowledged undisputed fact accordingly also directly acknowledges the existence of a "construction zone."

Defendant City argues that "There is nothing in Plaintiff's Complaint supporting a finding that her injuries were caused by construction or maintenance of the bus stop shelter. It is indisputable that there was no construction or maintenance being done to the bus stop shelter at the time of the incident whatsoever." (*Motion*, p5.) TO the contrary, Plaintiffs well-pled facts assert a set of facts where both "construction and maintenance" are present.

Colorado Revised Statute §24-10-103(2.5) states: "Maintenance" means **the act or omission of a public entity or public employee** in keeping a facility in the same general state of repair **or efficiency as initially constructed or in preserving a facility from decline or failure**." Case law holds that the phrase "operation and maintenance" as used by the CGIA can be a redundancy. *City of Colorado Springs v. Powell*, 48 P.3d 561, 565 fn4 (Colo.,2002). Indeed a case relied upon by the Defendant City focuses on the nuances involved in the term "maintenance." *See, Padilla ex rel. Padilla v. School Dist. No. 1 in City and County of Denver*, 25 P.3d 1176 (Colo. 2001) ("Broadly construed, "maintenance," for purposes of provision of the Governmental Immunity Act waiving immunity for a dangerous condition of a public facility, encompasses ongoing repair and upkeep of the facility ***as it is put to the original, additional, or different uses than originally constructed***.") At the very time of the incident alleged in the complaint, the City was undertaking an effort directly and through the use of contractors, to change the use of the

roadway and the immediate area where the bus stop and bus shelter which were in use by Ms. Westphal, an invitee of the City. *See Springer v. City and County of Denver*, 13 P.3d 794, 797 (Colo.,2000):

> We hold that a public entity does not have governmental immunity when it constructs a public building through the services of an independent contractor and a dangerous condition arises from that construction. We further hold that when a public entity provides a public building for public use, it owes a nondelegable duty to protect invitees under Colorado's premises liability statute from an unreasonable risk to their health and safety due to a negligent act or omission in constructing or maintaining the facility.

The change in use by simultaneously operating the same space as a construction zone was fundamentally a failure to maintain the bus stop/bus shelter as originally constructed.

Padilla ex rel. Padilla v. School Dist. No. 1 in City and County of Denver, 25 P.3d 1176, 1182 (Colo.,2001) states: "Similarly, 'constructing' includes the facility as originally constructed but also encompasses permanent or temporary alterations to the facility made during its ensuing lifetime in service to the public."

At a *Trinity* hearing, Plaintiff is prepared to show that Defendant City marshalled resources, staged men, materiel, equipment, around the bus stop and bus shelter occupied by Ms. Westphal converting its fundamental use from that as originally constructed into an unreasonable risk to the health or safety of Ms. Westphal, a member of the public.

Defendant City suggests that it is somehow incorrect to assert "a combination of various factors which ultimately amount to a 'dangerous' public building, i.e., a dangerous bus stop shelter." (Motion p. 4) City seemingly relies on *Padilla* for that proposition.

However, in *Walton v. Colorado*, 968 P.2d 636 (Colo.1998), the Colorado Supreme Court expressly held that it was the combination of various factors that created the exception to immunity and allowed the claim to proceed liability. In *Walton*, a university building was designed with

several feet of space between two ceilings above an art studio, and teachers at the university who had used the space to store art supplies requested assistance from students in cleaning the space. The plaintiff was injured when she climbed a ladder, unsecured on a floor that had been coated with a slippery finish, to reach the storage space, and the ladder slipped out from under her. *Id*. at 638. The Colorado Supreme Court found that the teachers' use of the ceiling space as storage was a use of a physical condition of the building, and that the university knew or should have known that its request that members of the public (students) perform a maintenance task (cleaning the space) with a ladder on a slippery floor would result in an unreasonable risk to them. *Id*. at 645.

The Court held that "the State knew, or should have known, that asking students rather than its own employees to do the work, and furnishing only a portable extension ladder to access a high and otherwise inaccessible space, could result in one or more of them climbing the ladder without bracing it securely, that the ladder might slip on the floor, and that injuries could result from this dangerous combination of the floor, ladder, and loft." *Id*. Because all four of the elements of the dangerous condition of a public building exception were met, the exception applied and the public entity was not immune from suit. *Id*. By itself the loft was not dangerous. By itself, the floor was not dangerous. By itself, the ladder was not dangerous. In combination, the use of the facility became dangerous.

In *Padilla*, the Court found that the use of a storage closet in a school as a "time-out" area did not to fall under the immunity exception for a dangerous condition of a public building. The plaintiff, a disabled child who had been put in "time-out" in the storage closet, placed in a stroller propped against the open door. *Id.* at 1178. Left alone, the child became agitated, the stroller fell backward, and she hit her head on the hard tile floor. *Id.* The Colorado Supreme Court rejected the

plaintiff's attempt to analogize her case to *Walton* by demonstrating that the teacher's improper use of a physical condition of the building—the storage closet used as a "time-out" room—combined with a hard tile floor proximately caused the plaintiff's injuries. *Id.* at 1183. The Colorado Supreme Court held that the plaintiff's claim amounted to an argument that the school "should have upgraded the design of the closet if it wished to use it as a 'time out' room," which exempted it from the definition of "dangerous condition," and that in any event, the alleged negligent acts were unrelated to construction or maintenance of the building. *Id.* Accordingly, the public entity was immune from suit. *Id.* Quite clearly, Court in *Padilla* found that the complaint did not allege negligent maintenance but rather that the use of the closet in *Padilla* was as a result of improper actions in placing the child out of their line of sight. *Padilla* at 260. In other words, In *Padilla* there was no defect in the closet or in the way it was used. Padilla simply did not assert a failure in maintenance or construction. *Padilla* also underscored the holding in *Swieckowski v. City of Fort Collins*, 934 P.2d 1380, 1386, where the Supreme Court concluded that, under the CGIA, "a failure to 'maintain' means a failure to keep a facility in the same general state of being, repair, or efficiency as initially constructed."

Here, considering C.R.S. §24-10-103(2.5), by integrating the bus stop/bus shelter into the construction zone, the City failed to maintain by not keeping the facility in the same general state of efficiency as initially constructed or it failed in preserving the facility from decline or failure. Indeed, integrating the bus stop/bus shelter completely thwarted its essential purpose as a shelter. The facility, if it had been kept as a bus stop/bus shelter, was not in an unreasonably dangerous condition. Once it had been integrated into a construction zone with traffic diversions and large

vehicles obstructing views and semis backing into the area, through the combination of these factors, the facility declined and failed, and became unreasonably dangerous to Ms. Westphal.

B. Eighth Claim Road

The construction zone being established around Ms. Westphal at the bus stop/bus shelter extended to the road shoulder and the roadway was itself. This created a "dangerous condition." The waiver of immunity for a dangerous condition on a public highway only requires interference with the movement of traffic. Here there is no dispute that the construction zone interfered with the movement of traffic. Lanes were closed, trucks were parked or backing up, large equipment was staged, and pedestrian labor was throughout the site. As mentioned above, *Padilla* found that operation and maintenance includes putting the facility to a different use that originally constructed. Here the roadway was also being put to use as a construction site.

Colorado Revised Statute defines "dangerous condition" on a public highway. *See*, C.R.S. §24-10-106. (d)(I):

> A dangerous condition of a public highway, road, or street which physically interferes with the movement of traffic on the paved portion, if paved, or on the portion customarily used for travel by motor vehicles, if unpaved, of any public highway, road, street, or sidewalk within the corporate limits of any municipality, or of any highway which is a part of the federal interstate highway system or the federal primary highway system, or of any highway which is a part of the federal secondary highway system, or of any highway which is a part of the state highway system on that portion of such highway, road, street, or sidewalk which was designed and intended for public travel or parking thereon. As used in this section, the phrase "physically interferes with the movement of traffic" shall not include traffic signs, signals, or markings, or the lack thereof.

"Dangerous condition" means either a physical condition of a facility ***or the use thereof*** that constitutes an unreasonable risk to the health or safety of the public. C.R.S.§24-10-103(1.3), *see also St. Vrain Valley School District RE-1J v. Loveland by and through Loveland*, 395 P.3d 751, 755, (Colo., 2017). Here, the use of the roadway was at the immediate time of the incident

of being temporarily changed by the City to a construction site. Here, the "constructing" of the facility was underway by the City of Fort Collins at the time of the injury. *Padilla ex rel. Padilla v. School Dist. No. 1 in City and County of Denver*, 25 P.3d 1176, 1182 (Colo.,2001) states: "Similarly, 'constructing' includes the facility as originally constructed but also encompasses permanent or temporary alterations to the facility made during its ensuing lifetime in service to the public."

The Colorado Court of Appeals in *Dempsey v. Denver Police Department*, 353 P.3d 928, 932–33, 2015 COA 67, ¶ 26 (Colo.App., 2015) had occasion to consider whether the establishment of a construction zone on a public road could constitute a "special hazard" for purposes of determining whether a police officer exceeded a lower speed which was required by the existence of a special hazard. The Court stated:

> Although we offer no opinion as to whether the traffic conditions in the present case qualified as a "special hazard," we see no reason to preclude traffic conditions caused by a construction zone from so qualifying. *See Weems v. Dep't of Transp., Bureau of Driver Licensing*, 990 A.2d 1208, 1214 (Pa.Commw.Ct.2010) (Speed may be imprudent or unreasonable under circumstances which may include "not only the amount of traffic, pedestrian travel and weather conditions, but also the nature of the roadway itself (e.g., whether four-lane, interstate, or rural; flat and wide, or narrow and winding over hilly terrain; smooth-surfaced, or full of potholes; clear, or under construction with abrupt lane shifts.).").

While not directly applicable to this case, it is useful to show that certain circumstances created by the City could amount to a "special hazard." At a *Trinity* hearing, Plaintiff would show that Defendant City marshalled resources, staged men, materiel, equipment, around the bus stop and bus shelter occupied by Ms. Westphal converting the bus stop/bus shelter and the area in front of the bus stop/bus shelter into a confusing and dangerous milieu amounting to unreasonable risk to the health or safety of Ms. Westphal, a member of the public.

Plaintiff does not allege the dangerous condition was caused by a lack of warnings and negligent design of temporary traffic control. Indeed that warnings were directed to vehicular traffic and actually lay the foundation for proof that the construction zone physically interfered with the movement of traffic on the paved portion. *See* C.R.S. §24-10-106. (d)(I). No aspect of the complaint alleges failure to warn by the City as a basis for liability.[1]

To be actionable, the state of the building or use of a state of the building and the injury resulting therefrom: (1) must have occurred in connection with a negligent act or omission of the governmental entity, not a third party; (2) must be associated with "constructing" or "maintaining" the facility; and (3) must not be solely due to the facility's design. *Padilla ex rel. Padilla v. School Dist. No. 1 in City and County of Denver,* 25 P.3d 1176, 1181 (Colo.,2001).

To be clear, it was not Jansa, or the Crane operator, or the various other actors at the site who created the "dangerous condition" interfering with the movement of traffic (although Jansa certainly contributed to it). It was the City's establishment of the construction zone (i.e., the change to the physical conditions of the road facility or the use thereof) that constituted an unreasonable risk to the health or safety of Ms. Westphal, which was known to exist or which in the exercise of reasonable care should have been known to exist. It was that condition, proximately caused by the negligent act or omission of the public entity or public employee in constructing or maintaining the construction zone over and around Ms. Westphal, that is an exception to the

[1] Although it could be said that the lack of cones, tape, signage, or other items indicated closure of the bus stop shelter as alleged in Complaint ¶21 are factors a jury may consider in any affirmative defense of comparative negligence.

general immunity of CGIA. As with the bus stop/bus shelter, the combination of various factors created the exception to immunity and allowed the claim to proceed liability. *See Walton, Supra*.

V. CONCLUSION

Wherefore, Plaintiff respectfully urges the Court to deny the motion in its entirety. Alternatively, Plaintiff respectfully requests that to the extent any of the facts are in dispute, that a hearing pursuant to *Trinity Broadcasting of Denver v. City of Westminster*, 848 P.2d 916 (Colo.1993) be held. And, Plaintiff further requests that limited discovery be allowed prior to a *Trinity* hearing. IN addition, Plaintiff requests the Court adopt the "relatively lenient" standard of *Tidwell ex rel. Tidwell v. City & Cty. of Denve*r, 83 P.3d 75, 85 (Colo. 2003).. *Tidwell* states that because statutes granting immunity must be narrowly construed (and those waiving immunity must be broadly construed), the plaintiff should be afforded the reasonable inferences from his or her evidence.). *Dennis on behalf of Heyboer Supra.*, 2016 WL 5219967, at *4.

Respectfully submitted this 18th day of December, 2017.

HERMS & HERRERA, LLC

s/ David M. Herrera [*Signature on File*]_____
David M. Herrera #12818

This Response was filed electronically pursuant to Rule 121, §1-26. The Original was duly executed and is on file at the Office of Herms & Herrera, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2017, a true and correct copy of the foregoing *Response to Defendant City Of Fort Collins' Motion To Dismiss Plaintiff's Complaint Pursuant To C.R.C.P. 12(B)(1) And C.R.S. § 24-10-106.*

☐ was sent by mail, postage prepaid, to:
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