DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue Fort Collins, CO 80521	DATE FILED: June 5, 2018 9:57 AM FILING ID: 713FDA0620E06 CASE NUMBER: 2018CV149
Plaintiff: ERIC SUTHERLAND, *pro se* v. **Defendants:** THE CITY OF FORT COLLINS, a home rule municipality in the State of Colorado; STEVE MILLER, in his capacity as the Larimer County Assessor and all successors in this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office; and Indispensable Parties: THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.	▲ COURT USE ONLY ▲
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THE TIMNATH DEVELOPMENT AUTHORITY AND COMPASS MORTGAGE CORPORATION'S JOINT MOTION TO DISMISS AND REQUEST FOR EXPEDITED BRIEFING AND HEARING

The Timnath Development Authority (the "TDA") and Compass Mortgage Corporation ("Compass") (together referred to as "Defendants") move to dismiss Plaintiff Eric Sutherland's Unamended Complaint for Declaratory Judgment and Equitable Relief ("Complaint") for failure to state a claim upon which relief can be granted pursuant to C.R.C.P. 12(b)(5). Defendants further request that this Court exercise its discretion pursuant to C.R.C.P. 121 §1-15(4) to expedite the briefing on this Motion and schedule a hearing on this Motion prior to June 21, 2018.

Certificate of Compliance with Rule 121 §1-15(8): Certificate of Compliance with Rule 121 §1-15(8): The undersigned certifies that he conferred with Plaintiff via telephone and explained the basis for the Motion and the relief requested therein. Plaintiff refused to indicate whether he opposed the Motion.

INTRODUCTION

In direct contradiction with clear Colorado precedent, Plaintiff asserts standing to enforce the provisions of the Urban Renewal Authority ("URA") Statute, C.R.S. § 31–25–101, et seq., to enjoin the TDA from pledging incremental property tax revenues to an authorized loan from Compass as duly authorized by the TDA's urban renewal plan (the "2018 Loan").

The Complaint should be dismissed in its entirety as it relates to Defendants because (I) Colorado courts have already determined that taxpayers like Plaintiff do not have standing to enforce the URA Statute; (II) the URA Statute, as amended, precludes Plaintiff from challenging TDA actions taken pursuant to the TDA's Urban Renewal Plan as adopted in 2004 and revised in 2007 and 2015; (III) the third through eleventh claims for relief fail to satisfy the pleading requirements of C.R.C.P. 8(a) and 9(b) (as applicable) as they merely allege conclusions of law

without any factual support; and (IV) the third and eighth claims for relief are time barred as they seek to challenge actions that took place more than eleven years ago.

The Plaintiff's plain disregard for established precedent which precludes his lawsuit illustrates his intent to delay and hinder the consummation of the 2018 Loan. If Plaintiff's abuse of process is allowed to linger, the TDA will suffer undue harm in the form of a higher interest rate and increased interest costs on the 2018 Loan, and Compass's ability to consummate the loan will be hindered. Further, the planned public improvement projects awaiting funding from the 2018 Loan will be delayed, increasing the cost of completing those projects. Defendants therefore requests that this Court order expedited briefing on this Motion so that Defendants may efficiently move forward with closing on the 2018 Loan while mitigating the financial harm that would result due to undue delay.

BACKGROUND

The TDA is an Urban Renewal Authority organized under C.R.S. § 31-25-101 et seq. Compl. at ¶ 5. The TDA operates in accordance with its urban renewal plan, which was adopted by the Town of Timnath in 2004 and modified subsequently in 2007 and 2015 (the 2004 urban renewal plan and its 2007 and 2015 amendments are collectively referred to herein as the "Plan"). *See* December 15, 2004 Town of Timnath Resolution No. AS-2004, "A Resolution of the Board of Trustees Of the Town of Timnath Adopting An Urban Renewal Plan For The TDA," as revised by 2007 Town of Timnath Resolution Nos. L-2007, S-2007, and No. 61, Series 2015 (the "Plan"), attached hereto as Exhibit A.[1] The Plan grants broad authorization to

[1]"The general rule is that, although a court primarily considers the pleadings, certain matters of public record may also be taken into account, and matters which are properly the subject of judicial notice may be considered without converting the motion into one for summary judgment." *Walker v. Van Laningham*, 148 P.3d 391, 397 (Colo. App. 2006)

the TDA, including the collection of all municipal sales tax increment and all property tax increment for all overlapping jurisdictions within the Plan Area. Plan at § 5.1. The TDA is also authorized under the Plan to issue, in its discretion, any amount of debt to facilitate development, in fulfillment of the Plan's goals to remediate blight, without the need for further modifications to the Plan. Plan, Ex. A at §§ 2.8.4, 2.8.5, 5.1.

Pursuant to this Plan, the TDA approved the issuance of the 2018 Loan in the estimated principal amount not to exceed $20,000,000 pursuant to Resolution No. TDA-04, Series 2018 on March 27, 2018 at a meeting of the TDA Board of Commissioners (the "Resolution"), attached hereto as Exhibit B. Per the Resolution, the purpose of the 2018 Loan is to fund "certain capital improvements within or benefiting the urban renewal area as described in the Plan and paying the costs of obtaining the 2018 Loan Portion." *Id.*

The TDA approved the Term Sheet and Rate Lock Agreement for the 2018 Loan with Compass on March 20, 2018 pursuant to Resolution No. TDA-03, Series 2018, attached hereto as Exhibit C. The approved Term Sheet and Rate Lock Agreement for the 2018 Loan requires closing by no later than 5:00 p.m. on June 21, 2018 (which has since been extended by Compass to July 20, 2018) and locks the interest rate at 4.99% per annum.

STANDARD OF REVIEW

This Court may dismiss any claim that fails to state a claim upon which relief can be granted pursuant to C.R.C.P. 12(b)(5). The purpose of a motion to dismiss is twofold. First, a motion to dismiss tests the formal sufficiency of the complaint. *Public Service Co. of Colo. v. Van Wyk*, 27 P.3d 377, 385 (Colo. 2001). Second, a motion to dismiss permits the early dismissal of meritless claims. *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 915-916 (Colo. 1996).

A court must grant a motion to dismiss under C.R.C.P. 12(b)(5) if it appears that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief, or if the substantive law does not support the alleged claim. *Denver Parents Ass'n v. Denver Bd. of Educ.*, 10 P.3d 662, 664 (Colo. App. 2000). Although a court, in determining whether to grant a motion to dismiss, must accept the material allegations in the complaint as true, *Denver Parents Ass'n*, 10 P.3d at 664, this Court need only accept as true Plaintiff's well-pleaded factual contentions, not his conclusory allegations. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011) (noting that the court is not required to accept as true legal conclusions that are couched as factual allegations).

ARGUMENT

I. Plaintiff Lacks Standing to Assert the Claims

A court does not have jurisdiction over a case unless the plaintiff has standing. *Hotaling v. Hickenlooper*, 275 P.3d 723, 725 (Colo. App. 2011). Standing is a threshold issue, which must be established before a court turns to the merits. *Barber v. Ritter*, 196 P.3d 238, 245 (Colo. 2008). If the plaintiff does not have standing, the case must be dismissed. *See State Bd. for Community Colleges v. Olson*, 687 P.2d 429, 435 (Colo.1984). A plaintiff has standing if he or she (1) incurred an injury-in-fact (2) to a legally protected interest, as contemplated by statutory or constitutional provisions." *Brotman v. East Lake Creek Ranch, L.L.P.*, 31 P.3d 886, 890 (Colo.2001). A remote possibility of future injury or an injury overly indirect or incidental to the challenged action of the defendant is not a sufficient injury in fact to sustain standing. *Hotaling*, 275 P.3d at 725. The standing doctrine has constitutional significance, *see* Colo. Const. art. III, and Colorado courts reject standing based generally on the plaintiff's status as a taxpayer as such situations overlook prudential limitations on standing, rooted in separation of powers, which

prohibit the judicial branch from assuming the powers of another branch. *See Olson v. City of Golden*, 53 P.3d 747, 750 (Colo. App. 2002); *Wimberly v. Ettenburg*, 194 Colo. 163, 750 P.dd 535 (1977).

Here, no injury or cognizable legal interest personal to Plaintiff is apparent from the allegations challenging the actions of the TDA and Compass. Instead, Plaintiff claims standing based solely on his status as a taxpayer. Compl. at ¶ 9. But as Plaintiff concedes in his Complaint (Compl. at ¶ 33), Colorado courts have already determined that a taxpayer does not have standing to bring an action under the URA Statute. *Olson*, 53 P.3d at 752 (Colo. App. 2002) ("we conclude that the General Assembly did not intend to create a right in taxpayers to enforce the statute"). Because Plaintiff has failed to allege facts to support his standing to bring claims under the URA Statute against the TDA, the Complaint should be dismissed in its entirety.

A. Plaintiff Fails to Allege an Injury-in-Fact

An injury in fact exists if the action complained of has caused or has threatened to cause injury. *Kreft v. Adolph Coors Co.*, 170 P.3d 854, 857 (Colo. App. 2007). However, the injury must be "direct and palpable," not indirect, remote, or uncertain. *Kreft v. Adolph Coors Co.*, 170 P.3d 854, 857 (Colo. App. 2007); *Olson*, 53 P.3d at 752. "A claimed injury that, as here, is presently speculative and cannot be determined until a remote time in the future, is not sufficiently direct and palpable to support a finding of injury in fact." *Olson*, 53 P.3d at 752.

The Complaint is premised on the theory that the TDA improperly authorized an increase in debt owed to Compass. Plaintiff alleges that he will suffer an "imminent tangible economic injury" because he "may be reasonably expected to pay future property taxes . . . that will

undoubtedly be higher as to rates and total tax demanded as a result of the unlawfully authorized debt of TDA." Compl. at ¶ 8.

The Complaint's allegations as to injury are hypothetical and attenuated. Plaintiff's use of "may be reasonably expected" and "that will undoubtedly be higher" highlight the uncertainty of Plaintiff's "injury" and demonstrate that Plaintiff's inability to allege a direct and palpable harm. Instead, he states a speculative injury that is unsupported by any factual allegations in the Complaint. Moreover, Colorado courts have specifically rejected this type of speculative tax injury argument in the URA context:

> Thus, on the one hand, if the redevelopment is successful, it may enhance tax revenues so that the tax loss plaintiff claims GURA [the urban renewal authority] caused by the transaction with Clear Creek [private corporation] will not occur. On the other hand, if the redevelopment is unsuccessful, the alleged tax loss may occur and may never be recovered. ***But the outcome in either event will not be known until a remote time in the future, and therefore, plaintiff's claim of damage from lost tax revenues is mere speculation at this time***.

Olson, 53 P.3d at 752 (emphasis added). Just as in *Olson*, the possibility of a tax injury alleged by the Plaintiff is speculative and will not be known until a remote time in the future, and thus does not satisfy the injury-in-fact prong required for Article III standing.

URAs like the TDA are not authorized to impose taxes of any kind under the URA Statute and any proposal by a state or local government to increase the property tax rate must be put to a vote of all the voters within its district. *See* Taxpayer Bill of Rights (TABOR), Colo. Const. art. X, §20(4)(a) ("districts must have voter approval in advance for . . . any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district."). Moreover, Plaintiff acknowledges in his Complaint that he does

not live within the boundaries of the TDA's Plan Area or in the broader boundaries of the Town of Timnath. Rather, he is a Fort Collins resident. Compl. at ¶¶ 1, 8.

Thus, Plaintiff's only injury-in-fact assertion, which is without factual support, is that he will pay more property taxes due to his residence within the boundaries of the Poudre Valley School District (the "School District"). Because a portion of the School District is located within the TDA's Plan Area, this overlapping area (which does not include Plaintiff's property) is subject to the TDA's tax increment collection authority. Given these facts, Plaintiff's hypothesis that he will be subjected to higher property tax liability would only occur assuming several intermediate and hypothetical circumstances. For example, first, the School District would have to sustain an injury in the form of decreased revenues as a result of the TDA's collection of tax increments in the relatively small portion of the School District that overlaps the TDA's Plan Area. This is the highly speculative argument that was rejected in *Olson*. 53 P.3d at 752. Second, the School District would have to respond to its injury with the imposition of an increased mill levy throughout its boundaries. Finally, a proposed increase in the School District's mill levy would require a TABOR election of the residents of the School District, including Plaintiff. Plaintiff's tax liability is more likely to be impacted, either adversely or beneficially, by changes in the assessed valuation of other residential, agricultural, and commercial properties within the School District's boundaries than by the far-fetched and attenuated injury he alleges in the Complaint[2].

[2] Ironically, one factor that could adversely impact Plaintiff's property value is the inability of the School District to fund much-needed additional classrooms and other facilities as a result of Mr. Sutherland's groundless litigation and appeals, which have indefinitely delayed closing on the School District's $375,000,000 bond issuance. *See Poudre School Dist. R-1 v. Sutherland*, 17CA1178; *Sutherland v. Poudre School Dist. R-1*, 2018SC221, Pet. for Writ of Cert.

The remote possibility of the hypothetical string of events increasing Plaintiff's property tax liability is not a palpable injury that meets the injury-in-fact requirement. On its face, then, the Complaint does not meet the first prong of the standing test.

B. Plaintiff Fails to Allege a Legally Protected Interest

Whether the Plaintiff's alleged injury is to a legally protected interest "is a question of whether the plaintiff has a claim for relief under the constitution, the common law, a statute, or a rule or regulation." *Barber*, 196 P.3d at 246. Put another way, "[t]he court must determine whether the particular provision underlying the claim creates a right or interest in the plaintiff that has been arguably abridged by the challenged action." *Olson*, 687 P.2d at 435. Here, as the Complaint acknowledges, the URA Statute does not grant a legally protected interest to the Plaintiff so that he might enforce the statute. Compl. at ¶ 33.

In *Olson*, a taxpayer brought an action seeking an injunction and declaratory judgment against a city, city council, a URA, and a redevelopment corporation, alleging that agreements between the various entities violated the URA Statute. The Colorado Court of Appeals determined that the URA Statute did not specifically or by implication grant a right to a taxpayer to sue to enforce the URA Statute, that there was no discernable legislative intent to grant taxpayers the right to enforce the statute, and that implying such a right in taxpayers is not consistent with the statutory scheme. *Id*. at 752. Specifically, the court concluded that had the General Assembly intended that taxpayers have a right of enforcement, it would have provided directions, such as staying a project during litigation or requiring bonds to protect the taxpayers' interest if the project continued during litigation. *Id.*

Plaintiff seemingly recognizes the precedential authority of *Olson* and alleges that the case "must be reviewed in light of circumstances where debt is paid with revenues that are

patently otherwise available to public entities." Compl. ¶ 33. But Plaintiff offers no reason why the Colorado Court of Appeals decision should be reviewed, much less overturned. To the contrary, since *Olson*, the URA Statute has been amended in a manner that further illustrates the General Assembly's intent not to afford taxpayers standing to enforce the statute. *See* discussion *infra* Section II.

Given the uncontroverted rule in Colorado that taxpayers do not have standing to enforce the URA Statute, Plaintiff has failed to allege a legally protected interest to bring suit against the TDA, much less Compass. Thus, Plaintiff has failed to allege an injury to a legally protected interest sufficient for standing here, and the Complaint against the TDA should be dismissed in its entirety.

II. Plaintiff's Claims are Precluded by the URA Statute, as Amended

In addition to lacking standing, the very amendments to the URA Statute that Plaintiff relies on to bring his Complaint preclude Plaintiff's claims against the Defendants. Through House Bill 15-1348, enacted in 2015, as amended by Senate Bill 16-177, enacted in 2016, and Senate Bill 17-279, as enacted in 2017 (together, the "Bills"), the General Assembly modified the URA Statute to include provisions requiring new seats for the county, school district, and special district representatives on URA boards of commissioners. C.R.S. § 31-25-107(9)-(9.5). The triggering event that gives rise to these new requirements include the creation of a new URA, approval of a new plan within an existing URA, or approval of a "substantial modification" to an existing plan. *Id*. Importantly, the amendments enacted by these Bills are not retroactive and are only applicable to events taking place on or after January 1, 2016:

> (9.7) Notwithstanding any other provision of law:
>
> (a) Nothing in subsection (9.5) of this section, as added by House Bill 15-1348, enacted in 2015, and as amended by Senate Bill 16-177, enacted in 2016, is

> intended to impair, jeopardize, or put at risk any existing bonds, investments, loans, contracts, or financial obligations of an urban renewal authority outstanding as of ***December 31, 2015***, or the pledge of pledged revenues or assets to the payment thereof that occurred on or before ***December 31, 2015***.
>
> (b) The requirements of section 31-25-104 (2)(a), (2)(b), and (2.5), section 31-25-115 (1.5), the introductory portion of subsection (9)(a) of this section, subsections (9)(a)(II), (9)(i), and (9.5) of this section, as added by House Bill 15-1348, enacted in 2015, and as amended by Senate Bill 16-177, enacted in 2016, and the requirements of subsections (7) and (7.5) of this section as amended by Senate Bill 17-279, enacted in 2017, apply to municipalities, urban renewal authorities, and any urban renewal plans created on or after January 1, 2016, and to any ***substantial modification of any urban renewal plan*** where the modification is approved on or after ***January 1, 2016***.

C.R.S. 31-25-107(9.7)(a)-(b)(emphasis added). Thus, the Bills were not intended to retroactively impact previously approved URA plans or previously approved substantial modifications to those plans.

Here, the Plan was approved in 2004, and subsequently modified in 2007 and 2015, prior to the January 1, 2016 date for implementation of the amendments. Further, the Plan provides broad authorization to the TDA to "exercise all powers authorized to be exercised by TDA under the Urban Renewal Law and which are necessary, convenient or appropriate to accomplish the objectives of this Plan" (Ex. A at § 2.8.1) and to "in its discretion, issue bonds [sic], including bonds or other obligations, to the extent permitted by law." Plan, Ex. A at § 2.8.5.

The Complaint alleges that "the legitimacy or any further disbursement of property tax increment to the TDA in light of past and ongoing violations of state law is challenged in this action." Compl. at p.3 and ¶¶ 11-26.[3] But C.R.S. 31-25-107(9.7)(a) precludes Plaintiff from

[3] It is unclear from the Complaint whether Plaintiff challenges the 2015 TDA Refunding and Improvement Loan in the original principal amount of $50,000,000 (the "2015 Loan") closed on September 29, 2015. Resolution No. TDA-6-2015. To the extent it does, such a claim is time barred by C.R.S. § 11-57-212 which provides that "No legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of

challenging any TDA "bonds, investments, loans, contracts, or financial obligations" authorized prior to January 1, 2016. Further, the URA Statute does not grant authority to any party to cease disbursement of incremental tax revenues, once authorized. Thus, to the extent the Complaint challenges actions taken by the TDA prior to January 1, 2016, those claims should be dismissed.

Plaintiff also contends that the TDA's 2018 Loan runs afoul of the URA Statute, as recently amended. Compl. at ¶¶ 11-22. But because the 2018 Loan falls within the TDA's scope of authority under the Plan, no modification of the Plan is required in order to effectuate the 2018 Loan. As such, the 2018 Loan does not trigger and is not subject to the requirements enacted by the Bills, and Plaintiff's claim fails on its face. C.R.S. 31-25-107(9.7)(b). Because the amendments enacted by the Bills are inapplicable to the 2018 Loan and the Bills bar any challenge to the TDA's Plan adoption and modifications, all of which were completed prior to January 1, 2016, Plaintiff's claims against the Defendants are precluded and must be dismissed.

Importantly, SB 17-279 further reinforced the determination in *Olson* that a taxpayer does not have standing to enforce the URA Statute. SB 17-279 modified the URA Statute to provide limited standing to taxing entities whose boundaries overlap with a URA to file an action in state district court for an order determining whether a modification to a URA plan is a "substantial modification" and to enjoin any such action until compliance with subsection 9.5 of the URA Statute has occurred. C.R.S. § 31-25-107(7). The URA Statute does not confer similar limited standing to taxpayers as the Complaint assumes. Thus, the URA Statute only authorizes a taxing entity with overlapping jurisdiction to bring the claims contained in the Complaint against

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securities by a public entity shall be commenced more than thirty days after the authorization of such securities." Such claim would also be time barred under C.R.S. 31-25-107(9.7)(a).

the TDA. Because the Plaintiff does not have standing under the URA Statute, as amended, the Complaint must be dismissed as to the Defendants.

III. The Complaint Does not Meet the Simple Pleading Requirements of C.R.C.P. 8(a)

C.R.C.P. 8(a) requires a "short and plain statement of the claim showing that the pleader is entitled to relief." Factual allegations in a complaint must be enough to raise a right to relief above the speculative level and provide plausible grounds for relief. *Warne v. Hall*, 2016 CO 50, ¶ 24, 373 P.3d 588, 595 (adopting the *Twombly* and *Iqbal* plausibility standard); B*egley v. Ireson*, 2017 COA 3, ¶ 8, 399 P.3d 777, 779, cert. denied, No. 17SC136, 2017 WL 3016413 (Colo. July 3, 2017) ("A court properly dismisses a claim if the factual allegations in the complaint, taken as true and viewed in the light most favorable to the plaintiff, do not present plausible grounds for relief").

Here, the Complaint fails to state coherent claims for relief and is instead filled with conclusory statements that fail to meet basic requirements of C.R.C.P. 8(a), as follows:

i. Third Claim for Relief: Plaintiff fails to state a claim of relief, and instead states that he "requests, etc." This is insufficient to state a plausible claim.

ii. Fourth Claim for Relief: Plaintiff merely states the name of an agreement. This is insufficient to state a plausible claim.

iii. Fifth Claim for Relief: Plaintiff merely states the name of an agreement. This is insufficient to state a plausible claim.

iv. Sixth Claim for Relief: Plaintiff merely states the name of an agreement. This is insufficient to state a plausible claim.

v. Seventh Claim for Relief: Plaintiff states a conclusion of law which is insufficient to meet the pleading requirements of Rule 8.

vi. Eight Claim for Relief: Plaintiff states a conclusion of law which is insufficient to meet the pleading requirements of Rule 8.

vii. Ninth Claim for Relief: Plaintiff states a conclusion of law which is insufficient to meet the pleading requirements of Rule 8.

viii. Tenth Claim for Relief: Plaintiff states a conclusion of law which is insufficient to meet the pleading requirements of Rule 8.

ix. Eleventh Claim for Relief: Plaintiff states a conclusion of law which is insufficient to meet the pleading requirements of Rule 8.

x. Twelfth through Nineteenth Claims for Relief: Plaintiff's allegations only pertain to his action against the City of Fort Collins, which are wholly unrelated to Plaintiff's action against the TDA and Compass. The claims should therefore be dismissed as to the Defendants.

Thus, the third through eleventh claims for relief should be dismissed for failure to state plausible claims for relief, and the twelfth through nineteenth claims for relief should be dismissed as to the TDA and Compass.

IV. The Eighth Claim for Relief Fails to Satisfy the Heightened Pleading Requirements of Rule 9(b)

In addition to failing to state a plausible claim for relief, the Eighth Claim for Relief does not satisfy the particular pleading requirements set forth in C.R.C.P. 9(b).

Pursuant to C.R.C.P. 9(b), this Court may dismiss any claim sounding in fraud that fails to set forth with particularity the facts necessary to prevail on such claim. V*inton v. Virzi*, 269 P.3d 1242, 1247 (Colo. 2012) (Rule 9(b) is designed "in part to protect defendants from reputational harm that may result from unsupported allegations of fraud, a charge which involves moral turpitude"). To satisfy Rule 9(b), "the complaint must sufficiently 'specify the statements it claims were false or misleading, give particulars as to the respect in which plaintiff contends the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements'" so that each "defendant is provided with sufficient information to frame a responsive pleading and defend against the claim." *State Farm Mut. Auto. Ins. Co. v. Parrish*, 899 P.2d 285, 288-89 (Colo. App. 1994).

Here, Plaintiff merely alleges that the "Original declaration of blight was fraudulent," Compl. at ¶ 31, without specifying the statements that make the declaration fraudulent or who is responsible for the fraud. The Eight Claim of Relief should therefore be dismissed.

V. The Third and Eight Claims for Relief are Barred by the Statute of Limitations

Both the Third and Eighth claims for Relief are time-barred and should be dismissed. The Third Claim for relief purports to challenge an agreement between Larimer County and the TDA. Plaintiff is referring to the Intergovernmental Agreement Regarding Settlement of Litigation and Urban Renewal and Tax Increment Issues entered into by the Town of Timnath, the TDA, and Larimer County, dated June 30, 2006, and as incorporated into the Plan at § 5.1(d). As discussed above, this claim is precluded by the URA Statute, *supra* Section II. Additionally, all actions against any public or government entity must be brought within two years after the cause of action accrues. C.R.S. § 13-80-102(f). It has been more than 12 years since the agreement at issue was executed by the TDA, the Town of Timnath, and Larimer County. Accordingly, the intergovernmental agreement statute of limitations has long passed, and the claim should be dismissed.

The Eighth Claim for Relief alleges that the "Original declaration of blight was fraudulent and erroneous." Compl. at ¶ 31. But the original declaration of blight that Plaintiff is referring to was adopted in 2004, when the original plan for the TDA was adopted. Under the URA Statute, a blight finding, must be challenged within 30 days of the effective date of the finding, and further, can only be brought by a property owner of property located within the urban renewal plan area. C.R.S. § 31-25-105.5(2)(b). Even assuming Plaintiff had standing to challenge the original declaration, which he does not allege, the time to challenge such blight finding has long since passed. The Eight Claim for Relief should therefore be dismissed.

VI. Request for Expedited Briefing and Hearing

The 2018 Loan Term Sheet and Rate Lock Agreement approved by the TDA Board of Commissioners on March 20, 2018, by Resolution TDA-03, Series 2018, requires a closing date

of no later than June 21, 2018, and provides that the interest rate on the 2018 Loan will be locked at 4.99% through April 20, 2018. Compass offered a courtesy extension of the closing date and the rate lock expiration date to July 20, 2018. *See* May 22, 2018 email from Compass, attached hereto as Exhibit D. After this date, the interest rate will no longer be locked and will be subject to current market conditions in a manner that could result in the TDA paying substantially more over the term of the 2018 Loan, through December 1, 2029. To illustrate the financial harm that could result due to an interest rate increase, TDA staff calculated two potential scenarios: (1) if the interest rate increases to 5.06%, a possibility assuming a one month delay, the additional interest payable over the term of the loan will cost $110,791.46 and (2) if the interest rate increases to 5.99%, a possible scenario assuming a prolonged delay, the additional interest payable over the term of the loan will be $1,582,735.14. *See* TDA Debt Service Schedule, attached hereto as Exhibit E.[4] Further, postponing the closing of the 2018 Loan will unnecessarily delay the improvement projects planned by the TDA, including projects that address safety concerns and will directly impact the public welfare. Such a delay will hinder the TDA's ability to address current public safety issues within its Plan Area and will increase construction costs in an amount that exceeds one million dollars.

To avoid the unnecessary cost and damage that would result from delaying the closing of the 2018 Loan due to the instant litigation, the TDA requests that this Court exercise its discretion pursuant to C.R.C.P. 121§ 1-15(4) to require expedited briefing and to schedule a hearing on this Motion prior to June 21, 2018 so that this matter may be resolved and closing on the 2018 Loan may be completed by the deadline of July 20, 2018.

[4] These spreadsheets were prepared by TDA staff in determining the cost of an increased interest rate as part of the process of briefing the Board of Commissioners on the anticipated impact of delay.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant this Motion to Dismiss and dismiss the Complaint in its entirety as to the TDA and Compass with prejudice. Defendants also request that this Court order expedited briefing on this Motion so that Plaintiff's Response is due within seven days of the filing of this Motion and that the Defendants' Reply is due within three days thereafter and that this Court schedule a hearing on the Motion prior to June 21, 2018.

DATED this 5th day of June, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

Original signature on file at offices of Brownstein Hyatt Farber Schreck pursuant to C.R.C.P. 121 § 1-26

By: *s/Cole J. Woodward*
Eric R. Burris, *pro hac vice pending*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of June, 2018, a true and correct copy of the foregoing **THE TIMNATH DEVELOPMENT AUTHORITY AND COMPASS MORTGAGE CORPORATION'S JOINT MOTION TO DISMISS AND REQUEST FOR EXPEDITED BRIEFING AND HEARING** was filed with the Court and served via Colorado Courts E-filing System on *pro se Plaintiff* as follows:

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