

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue Fort Collins, CO 80521</p>	<p>DATE FILED: June 5, 2018 10:06 AM FILING ID: 97D28A1888193 CASE NUMBER: 2018CV149</p>
<p>Plaintiff: ERIC SUTHERLAND, <i>pro se</i></p> <p>v.</p> <p>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</p> <p>Indispensable Parties: THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for The Timnath Development Authority:</p> <p>Eric R. Burris, <i>pro hac vice</i> pending BROWNSTEIN HYATT FARBER SCHRECK, LLP 201 Third Street NW, Suite 1800 Albuquerque, NM 87102 Telephone: 505.244.0770 Email: eburris@bhfs.com</p> <p>Cole J. Woodward, #50199 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Phone: 303.223.1100 Email: cwoodward@bhfs.com</p> <p>Robert G. Rogers, #43578 Casey K. Lekahal, #46531 WHITE BEAR ANKELE TANAKA & WALDRON 2154 E. Commons Ave., Suite 2000 Centennial, CO 80122 Phone: 303.858.1800 Emails: rrogers@wbapc.com; clekahal@wbapc.com</p>	<p>Case Number: 2018CV149</p> <p>Division: 3C</p>
<p style="text-align: center;">THE TIMNATH DEVELOPMENT AUTHORITY'S ANSWER AND COUNTERCLAIMS</p>	

The Timnath Development Authority (“TDA”), submits the following Answer to Plaintiff Eric Sutherland’s Unamended Complaint for Declaratory Judgment and Equitable Relief (“Complaint”):

INTRODUCTION

Plaintiff Eric Sutherland (“Plaintiff” or “Sutherland”) has filed a multitude of frivolous and groundless claims in this District. Sutherland frequently uses litigation and the threat of litigation as a means to strong-arm local government officials and entities into adopting his policy preferences. While these efforts have been uniformly unsuccessful, they waste a tremendous volume of taxpayer dollars and judicial resources.

The Complaint before the Court represents the latest chapter in this lamentable history. Mr. Sutherland lacks standing to bring the Complaint, which has no basis in law or fact. On its face, it appears to make allegations against at least four governmental entities not named as defendants or indispensable parties. The Complaint is replete with unsupported mischaracterizations of the law, and unfounded allegations of corruption against local government officials.

To the extent that the Complaint makes any coherent allegations against the TDA, those allegations are the result of Plaintiff’s incomplete or incorrect reading of the Colorado Urban Renewal Authority statute. Colo. Rev. Stat. § 31-25-107.

PARTIES

1. Upon information and belief, TDA admits that Plaintiff Eric Sutherland is an individual who resides in the City of Fort Collins, Larimer County, Colorado. TDA is without sufficient information to admit or deny the remaining allegations in Paragraph 1 of the Complaint and therefore denies the same.

2. TDA admits the allegations in Paragraph 2 of the Complaint.

3. TDA admits the allegations in Paragraph 3 of the Complaint.

4. TDA admits the allegations in Paragraph 4 of the Complaint.

5. Paragraph 5 contains statements concerning a public record, which public record speaks for itself and conclusions of law for which no response is required. To the extent a response is required; Compass is without sufficient information to admit or deny the allegations in Paragraph 5 of the Complaint and therefore denies the same.

6. TDA is without sufficient information to admit or deny the allegations in Paragraph 6 of the Complaint and therefore denies the same.

JURISDICTION

7. TDA denies that jurisdiction is proper in this Court. TDA has stated the grounds for its denial at § I of TDA's Motion to Dismiss, filed concurrently with this Answer.

8. TDA denies that jurisdiction is proper in this Court. TDA has stated the grounds for its denial at § I of TDA's Motion to Dismiss, filed concurrently with this Answer.

9. TDA denies that jurisdiction is proper in this Court. TDA has stated the grounds for its denial at § I of TDA's Motion to Dismiss, filed concurrently with this Answer.

10. TDA admits that venue is proper in this Court.

FIRST CLAIM FOR RELIEF

11. Paragraph 11 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 11.

12. Paragraph 12 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 12.

13. TDA lacks sufficient knowledge or information to form a belief as to Plaintiff's characterizations of the legislation described in Paragraph 13 and therefore denies same

14. TDA admits the allegation in Paragraph 14.

15. Paragraph 15 contains statements concerning a public record, which public record speaks for itself. To the extent a response is required, TDA denies the remaining allegations in Paragraph 15 of the Complaint

16. Paragraph 16 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 16.

17. Paragraph 17 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 17.

18. Paragraph 18 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 18.

19. Paragraph 19 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 19.

20. Paragraph 20 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 20.

SECOND CLAIM FOR RELIEF

21. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

22. Paragraph 22 requests equitable relief from the Court without stating any basis for that relief. To the extent that Paragraph 22 contains cognizable allegations, TDA denies same.

THIRD CLAIM FOR RELIEF

23. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

24. TDA admits that there exists an 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 (the “Intergovernmental Agreement”).

25. The Intergovernmental Agreement speaks for itself. To the extent that the allegations contained in Paragraph 24 are construed as inconsistent with that document, TDA denies same.

26. Paragraph 25 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 25.

27. To the extent that Paragraph 26 contains cognizable allegations, TDA denies same.

FOURTH CLAIM FOR RELIEF

28. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

29. TDA is unable to determine whether Paragraph 27 of the Complaint contains cognizable allegations against the TDA or any other Defendant named in the Complaint. To the extent the allegations in Paragraph 27 of the Complaint are construed to require a response, TDA denies same.

FIFTH CLAIM FOR RELIEF

30. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

31. TDA is unable to determine whether Paragraph 28 of the Complaint contains cognizable allegations against the TDA or any other Defendant named in the Complaint. To the extent the allegations in Paragraph 28 of the Complaint are construed to require a response, TDA denies same.

SIXTH CLAIM FOR RELIEF

32. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

33. TDA is unable to determine whether Paragraph 29 of the Complaint contains cognizable allegations against the TDA or any other Defendant named in the Complaint. To the extent the allegations in Paragraph 29 of the Complaint are construed to require a response, TDA denies same.

SEVENTH CLAIM FOR RELIEF

34. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

35. Paragraph 30 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 30.

EIGHTH CLAIM FOR RELIEF

36. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

37. Paragraph 31 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 31.

NINTH CLAIM FOR RELIEF

38. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

39. Paragraph 32 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 32.

TENTH CLAIM FOR RELIEF

40. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

41. Paragraph 33 states a conclusion of law to which no response is required. To the extent a response is required, TDA denies the allegations in Paragraph 33.

ELEVENTH CLAIM FOR RELIEF

42. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

43. TDA denies the allegations in Paragraph 34 of the Complaint.

TWELFTH CLAIM FOR RELIEF

44. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

45. Paragraph 35 does not contain cognizable allegations against the TDA or any other Defendant named in the Complaint. Furthermore, Paragraph 35 states a conclusion of law to which no response is required. To the extent the allegations in Paragraph 35 of the Complaint are construed to require a response, TDA denies same.

46. Paragraph 36 does not contain allegations against the TDA. Further, Paragraph 36 states a conclusion of law to which no response is required. To the extent the allegations in Paragraph 36 of the Complaint are construed to require a response, TDA denies same.

47. Paragraph 37 does not contain allegations against the TDA. Further, Paragraph 37 states a conclusion of law to which no response is required. To the extent the allegations in Paragraph 37 of the Complaint are construed to require a response, TDA denies same.

48. Paragraph 38 does not contain allegations against the TDA. Further, Paragraph 38 states a conclusion of law to which no response is required. To the extent the allegations in Paragraph 38 of the Complaint are construed to require a response, TDA denies same.

49. Paragraph 39 does not contain allegations against the TDA. Further, Paragraph 39 states a conclusion of law to which no response is required. To the extent the allegations in Paragraph 39 of the Complaint are construed to require a response, TDA denies same.

THIRTEENTH CLAIM FOR RELIEF

50. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

51. Paragraph 40 does not contain cognizable allegations against the TDA. Furthermore, Paragraph 40 states a conclusion of law to which no response is required. To the extent the allegations in Paragraph 40 of the Complaint are construed to require a response, TDA denies same.

FOURTEENTH CLAIM FOR RELIEF

52. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

53. Paragraph 41 does not contain cognizable allegations against the TDA. Furthermore, Paragraph 41 states a conclusion of law to which no response is required. To the extent the allegations in Paragraph 41 of the Complaint are construed to require a response, TDA denies same.

FIFTEENTH CLAIM FOR RELIEF

54. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

55. Paragraph 42 does not contain cognizable allegations against the TDA. Furthermore, Paragraph 42 states a conclusion of law to which no response is required. To the extent the allegations in Paragraph 42 of the Complaint are construed to require a response, TDA denies same.

SIXTEENTH CLAIM FOR RELIEF

56. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

57. Paragraph 43 does not contain cognizable allegations against the TDA. Furthermore, Paragraph 43 states a conclusion of law to which no response is required. To the extent the allegations in Paragraph 43 of the Complaint are construed to require a response, TDA denies same.

SEVENTEENTH CLAIM FOR RELIEF

58. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

59. Paragraph 44 does not contain cognizable allegations against the TDA. Furthermore, Paragraph 44 states a conclusion of law to which no response is required. To the extent the allegations in Paragraph 44 of the Complaint are construed to require a response, TDA denies same.

EIGHTEENTH CLAIM FOR RELIEF

60. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

61. Paragraph 45 does not contain cognizable allegations against the TDA. Furthermore, Paragraph 45 states a conclusion of law to which no response is required. To the extent the allegations in Paragraph 45 of the Complaint are construed to require a response, TDA denies same.

NINETEENTH CLAIM FOR RELIEF

62. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

63. Paragraph 47 does not contain cognizable allegations against the TDA. Furthermore, Paragraph 47 states a conclusion of law to which no response is required. To the

extent the allegations in Paragraph 47 of the Complaint are construed to require a response, TDA denies same.

GENERAL DENIAL

TDA denies any remaining allegation not specifically denied herein, and TDA denies that Plaintiff is entitled to any of the relief requested.

PRAYER

To the extent that the Plaintiff's WHEREFORE statement is directed towards the TDA, TDA denies that Plaintiff is entitled to the requested judgment against TDA.

AFFIRMATIVE AND OTHER DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
2. The proximate cause of Plaintiff's claimed damages and/or injuries were the acts or omissions of a third party or parties over whom TDA had no control and for whom TDA is not legally responsible.
3. Plaintiff's claimed damages, if any, were not proximately caused by TDA's conduct or omission, but rather were the proximate result of an intervening cause of circumstance that the TDA could not have reasonably foreseen and for which they are not responsible.
4. Plaintiff lacks standing to bring the claims.
5. Plaintiff's claims are time barred by C.R.S. § 31-25-105.5(2)(b), C.R.S. 31-25-107(9.7)(a), C.R.S. § 13-80-102(f), and C.R.S. § 11-57-212.
6. Plaintiff's claims are barred because Plaintiff has suffered no damage, injury, or otherwise as a result of any acts or omissions of TDA.

TDA reserves the right to amend and/or supplement these affirmative and other defenses as this matter proceeds.

COUNTERCLAIMS

Defendant TDA hereby asserts the following Counterclaims against Plaintiff Sutherland.

1. Defendant TDA is an Urban Renewal Authority (URA) organized pursuant to Colo. Rev. Stat. § 31-25-101.

2. Plaintiff Sutherland is an individual who resides in the City of Fort Collins, Larimer County, Colorado, and Plaintiff Sutherland's residence is outside the boundaries of the Town of Timnath and the TDA plan area.

JURISDICTION

3. Jurisdiction is proper in this state pursuant to Colo. Rev. Stat. § 13-1-124.

4. Venue is proper in Larimer County pursuant to Colo. R. Civ. P. 98(c).

FIRST COUNTERCLAIM FOR RELIEF – ABUSE OF PROCESS

5. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

6. On April 26, 2018, Sutherland filed the Complaint, initiating this action.

7. The claims made in the Complaint lack both a reasonable factual basis and a cognizable basis in law.

8. Sutherland filed the Complaint with an ulterior motive, namely to interfere with TDA's efforts to secure financing for certain improvements to public infrastructure within TDA's jurisdiction.

9. In fact, Sutherland has previously threatened Compass Mortgage Corporation ("Compass") representatives with litigation as a means of delaying the transaction between TDA and Compass.

10. Sutherland's filing of the Complaint was not proper in the regular conduct of a lawsuit. The Complaint fails to comport with the Colorado Rules of Civil Procedure in a number of respects. [See TDA's Motion to Dismiss.]

11. As a consequence of Sutherland's abusive and meritless filings, TDA has and will continue to suffer damages including costs and attorneys' fees, and other direct, incidental, consequential and/or general damages, including but not limited to increased construction and borrowing costs, in an amount to be determined at trial.

12. As a result of Sutherland's acts, TDA has been compelled to hire the services of an attorney for the protection of its interests.

**SECOND COUNTERCLAIM FOR RELIEF –
INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

13. TDA incorporates its responses to the foregoing paragraphs as though fully set forth herein.

14. TDA and Compass intend to enter into the 2018 Loan Agreement.

15. The TDA Board of Commissioners authorized the TDA to enter into the 2018 Loan Agreement through Resolution No. TDA-04-2018 on March 27, 2018 (the "Resolution").

16. A draft copy of the 2018 Loan Agreement is attached to the Resolution.

17. Sutherland has actual knowledge of the Resolution, the 2018 Loan Agreement, and its terms.

18. Sutherland has repeatedly contacted Compass representatives by electronic mail and telephone calls advising Compass not to enter into the 2018 Loan Agreement and threatening to file lawsuits if Compass proceeded with consummation of the 2018 Loan Agreement.

19. Sutherland has wrongfully filed the Complaint with the intent of interfering with TDA and Compass's consummation of the 2018 Loan Agreement.

20. Sutherland's frivolous filing has the potential of causing Compass not to enter into the 2018 Loan Agreement.

21. Sutherland's actions are certain or substantially certain to interfere with the TDA's contractual expectations.

22. As a consequence of Sutherland's abusive and meritless filings, TDA has and will continue to suffer damages in the form of increased construction and borrowing costs, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, having fully answered the Complaint, Defendant TDA prays for an entry of judgement in its favor and against Sutherland, and requests that the Court provide the following relief:

- a) Dismissal of Sutherland's claims, with prejudice;
- b) An award for compensatory damages arising from Sutherland's abuse of legal process and intentional interference with TDA's contractual relations, as alleged in TDA's Counterclaims;

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'S ANSWER AND COUNTERCLAIMS** was filed with the Court and served via Colorado Courts E-filing System on *pro se Plaintiff* as follows:

By E-Mail and Regular Mail

Eric Sutherland
3520 Golden Currant Boulevard
Fort Collins, CO 80521
Phone: 970.224.4509
Email: sutherix@yahoo.com

s/Penny G. Lalonde

Penny G. Lalonde, Paralegal

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