

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO Court Address: 201 LA Porte Avenue Fort Collins, CO 80521 Phone Number: (970) 494-3500</p>	<p>DATE FILED: October 16, 2018 3:00 PM FILING ID: 4347F7219499B CASE NUMBER: 2018CV149</p>
<p>Plaintiff: ERIC SUTHERLAND, <i>pro se</i></p> <p>v.</p> <p>Defendant: 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 Defendant City of Fort Collins John W. Mill (#22348) Amanda Levin Milgrom (#47871) Sherman & Howard L.L.C. 633 17th Street, Suite 3000 Denver, CO 80202 Phone Number: (303) 297-2900 Email: jmill@shermanhoward.com amilgrom@shermanhoward.com</p> <p>Carrie M. Daggett, #23316 John R. Duval, #10185 Fort Collins City Attorney's Office 300 LaPorte Avenue Fort Collins, CO 80522-0580 Phone Number: (970) 221-6520 cddaggett@fcgov.com jduval@fcgov.com</p>	<p>Case No.: 2018CV149</p> <p>Courtroom/Division: 3C</p>
<p style="text-align: center;">CITY OF FORT COLLINS' RESPONSE TO PLAINTIFF'S MOTION FOR CORRECTION OF THE RECORD IN ADVANCE OF APPEAL</p>	

The City of Fort Collins (the “City”), by and through its counsel, Sherman & Howard L.L.C. and the Fort Collins City Attorney’s Office, submits this City of Fort Collins’ Response to Plaintiff’s Motion for Correction of the Record in Advance of Appeal (“Motion”), and states as follows:

I. PLAINTIFF’S MOTION SHOULD BE DENIED

Plaintiff requests that the Court order the “Clerk of Courts [to] review the documents in the record of this case to determine if any documents have included extraneous pages as a consequence of scanning in paper submissions.” Motion at 3. Essentially, Plaintiff is asking the Court and the Clerk to spend tedious hours reviewing all of Plaintiff’s filings in this case because he chose to file some papers with extraneous material on the back of some pages. Plaintiff’s Motion should be denied for three reasons:

- Plaintiff has failed to identify any specific filing that purportedly contains “extraneous” pages.
- Plaintiff’s request would place an undue and unnecessary burden on the Court and the Clerk.
- Removing “extraneous” pages is not necessary and might improperly alter the substance of the record.

For these reasons, the Court should deny Plaintiff’s Motion and leave the record as is.

II. PLAINTIFF’S MOTION IS AMBIGUOUS

Plaintiff’s Motion is ambiguous. Plaintiff fails to identify which filings (never mind which pages within those filings) contain any “extraneous pages.”¹ Instead, he places the burden

¹ Plaintiff’s explanation of “extraneous pages” is not clear. The City understands him to be saying that he sometimes prints his filings on paper that already has been printed on one side. When he provides such pages to the Clerk (containing his filings related to this case on one side and unrelated matter on the other side), he believes that both pages sometimes were scanned and therefore some of his filings may contain pages that are unrelated to the case. The City has not seen any evidence of this but believes this is the Plaintiff’s concern.

on both the Court and the Clerk to review all twenty-eight of his filings in this case, page by page, to determine whether any of his filings contain “extraneous pages.”

This would be a challenging task. The City, at least, is not sure what Plaintiff is talking about. In response to Plaintiff’s conferral email, the City requested that Plaintiff clarify which pages or documents he is talking about. However, he failed to do so, denying both the City and the Court the opportunity to understand Plaintiff’s request. For the Court to grant a motion such as this one, the movant would have to specify to the Court—at a minimum—which specific filings contain specifically-identified extraneous pages. Then, and only then, could the Court, the Clerk and the parties know what pages Plaintiff is asking to be reviewed and determine if they are in fact “extraneous.”

III. PLAINTIFF’S REQUEST PLACES TOO MUCH OF A BURDEN ON THE COURT AND THE CLERK

Second, the Court should deny Plaintiffs’ Motion because it places too much of an administrative burden on the Court and the Clerk. The impetus for Plaintiff filing his Motion is that Plaintiff filed papers with the Court that apparently had extraneous writing on the back of the page. Plaintiff asserts that some of those back pages apparently were scanned and included in the filings that appear on ICCES. Upon recognizing these mistakes, Plaintiff asks the Court and the Clerk to spend numerous hours poring over all of his filings to identify and correct these mistakes. Plaintiff takes no responsibility for his actions. For example, he could review all of his filings, identify the filings and corresponding page numbers that he believes contain these extraneous pages, and submit copies of those specific pages of those specific filings to this Court. But, he did not. Instead, he asks the Court and the Clerk to conduct the same review

without the benefit of knowing what they are looking for. This is an unfair request of the Plaintiff to make on the Court's limited resources.

IV. REMOVING "EXTRANEOUS" PAGES IS NOT NECESSARY AND COULD MISTAKENLY ALTER THE RECORD

Finally, removing "extraneous" pages from Plaintiff's filings is not necessary. There is no claim or suggestion that any of Plaintiff's motions, responses or other filings or any of Plaintiff's arguments were inadvertently omitted from the record. All of Plaintiff's arguments are in the record. If there also are some extra pages in the record, Plaintiff has not identified how that is a problem.

Moreover, Plaintiff's failure to identify any filings with "extraneous" pages creates a risk that pages that should remain part of the record might inadvertently be removed. Plaintiff's Motion provides the Clerk with no guidance whatsoever as to what to look for or what to remove as unrelated to the record. There is a risk, given the lack of clarity of Plaintiff's request, the Clerk might unintentionally remove pages from Plaintiff's filings that should remain in the record. This illustrates that Plaintiff's request is inappropriate.

V. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court deny Plaintiff's Motion and allow the record in this case to remain as is.

Dated this 16th day of October, 2018.

SHERMAN & HOWARD L.L.C.

By: /s/ John W. Mill
John W. Mill (#22348)
Amanda Levin Milgrom (#47871)
633 17th Street, Suite 3000

Denver, CO 80202
Telephone: (303) 297-2900
Email: jmill@shermanhoward.com
amilgrom@shermanhoward.com
ATTORNEYS FOR DEFENDANT
CITY OF FORT COLLINS

CERTIFICATE OF SERVICE

I hereby certify on the 16th day of October, 2018, that a true and correct copy of the foregoing pleading, entitled, **THE CITY OF FORT COLLINS' RESPONSE TO PLAINTIFF'S MOTION FOR CORRECTION OF THE RECORD IN ADVANCE OF APPEAL**, was served via ICCES e-filing system, upon the following:

Eric Sutherland, *pro se*
3520 Golden Currant Boulevard
Fort Collins, CO 80521
(*By email and US Mail*)

Eric R. Burris, *pro hac vice*
Cole J. Woodward
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202

/s/ Stephanie Hendrickson
Stephanie Hendrickson, Legal Assistant