

District Court, Larimer County, State of Colorado 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 494-3500	DATE FILED: November 29, 2018 CASE NUMBER: 2018CV125 ▲ COURT USE ONLY ▲
RORY HEATH Plaintiff, v. CITY OF FORT COLLINS CITY COUNCIL; CITY OF FORT COLLINS; and ELIZABETH STREET CO. MANAGER, LLC Defendants.	
“AT ISSUE” ORDER PURSUANT TO COLO. R. CIV. P. 16	

Read this order carefully. The Court expects full compliance with this order. The case file indicates that all parties have been served and have either appeared or defaulted. The Court declares the case to be at issue as of the date of this order.

Counsel and any parties who are self-represented must meaningfully confer as contemplated by Colo. R. Civ. P. 16(b)(3) within 14 days. The Responsible Attorney in this case will be Kimberly B. Schutt. The Responsible Attorney must contact the Court’s Division Clerk, Jessica Wichman, at (970) 494-3610 within 14 days from today to schedule the case management conference. The Court holds Case Management Conferences Tuesdays and Thursdays at 9:00 a.m. If you have any questions please contact the Court’s Division Clerk, Jessica Wichman, at the above number.

The Responsible Attorney must schedule the case management conference to take place between 35 and 49 days from today. Both Colo. R. Civ. P. 16(d) and this Court require the conference to be in person. Absent a motion and good cause shown, the Court will not waive this requirement.

A proposed Case Management Order is due no later than 42 days from today or at least 7 days prior to the Conference. Please use JDF 622.

Regarding ¶ 6, the Parties **must** address: 1) the importance of the issues at stake; 2) the amount in controversy; 3) the parties' relative access to relevant information; 4) the parties' resources; 5) the importance of the discovery in resolving the issues; and 6) whether the burden or expense of the proposed discovery outweighs the benefit. *See* Colo. R. Civ. P. 16(b)(6), and 26(b)(1).

Regarding ¶ 7, the Parties **must** address: 1) that settlement was discussed; 2) the prospects for settlements; and 3) list a proposed deadline for mediation or other alternative dispute resolution.

For most case types, the Court does not set a trial date until after alternative dispute resolution has been completed. The Parties may request that ADR be waived or that the case be set for trial prior to ADR because of the specific needs of their case; however, good cause must be shown for the request. Please use actual calendar dates for deadlines as trial will not be set.

Regarding paragraph #14 of JDF 622: **The Court does not accept written disputed discovery motions. To bring a discovery dispute before the Court, parties shall follow the Courtroom 3B Procedures For Colo. R. Civ. P. 16 document available at:**

https://www.courts.state.co.us/Courts/District/Local_Resources.cfm?District_ID=8

If a dispute about written discovery (requests for production, interrogatories, etc.) is not resolved, the moving party must complete the written discovery dispute chart in the form attached hereto as Appendix A, with the most persuasive authority included. The moving party must send the chart, the disputed discovery requests, the disputed responses to opposing counsel, and the parties' conferral correspondence or emails to the Court's Division Clerk, Jessica Wichman at Jessica.Wichman@judicial.state.co.us. The parties are further directed to contact the Court's Clerk at (970) 494-3610 if they wish to set a hearing on the dispute.

The Court expects counsel to confer in a meaningful way in writing, and by telephone or in

person to try to resolve any discovery dispute. An exchange of emails is not sufficient. If counsel cannot resolve the dispute, the Court will address all discovery disputes with an **in-person** discovery hearing. The parties are directed to contact the Court's Clerk at the number above if they wish to set a discovery hearing.

With respect to written discovery, the Court frowns on "boilerplate" objections that fail to provide clear and precise explanations of the legal and factual justifications for the objections as well as a specific description of any information which may be available but is not being provided because of the objection. If a responding party claims to not understand a discovery request or the meaning of any term in a request, then that party shall within 14 days seek clarification of the meaning from counsel who served the discovery. Failure to do so results in waiver of any objection based on the purported lack of understanding. Any response which does not provide the information or requested material but promises to do so in the future will be treated the same as no response unless the responding party provides a specific reason for not producing the information and a specific date when it will produce it.

Parties shall resolve disputes regarding subpoenas in the same manner as set forth above for written discovery.

With respect to depositions, the Court will not intervene in an ongoing deposition via telephone to resolve disputes; rather, counsel shall resolve such disputes in the same manner described above for discovery disputes. Counsel are expected to adhere strictly to Colo. R. Civ. P. 30(d)(1) and (3) and shall refrain from "speaking objections," excessive objections designed to disrupt the flow of questioning, advising a witness to answer "if you know" or "if you remember" or "not to speculate," asking for clarification of a question, or conferring with a witness while questions are pending or documents are being reviewed unless authorized under Colo. R. Civ. P. 30(d).

At any time during the pendency of the case, any party may request additional case

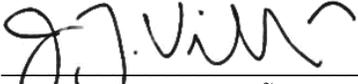
management conferences including brief telephonic conferences if needed.

The Court orders discovery to commence immediately.

Please note the 2015 Comment to Colo. R. Civ. P. 12: “The practice of pleading every affirmative defense listed in Rule 8(c), irrespective of a factual basis for the defense, is improper under [Colo. R. Civ. P.] 11(a). . . .” To the extent that Colo. R. Civ. P. 12 was not followed in this case, any affirmative defenses must be re-pled with a factual basis.

If the parties settle the case after trial has been set, the Court will not vacate the trial until the parties have filed a stipulation to dismiss the case with prejudice. Parties must seek a Court order to modify any deadline or order. A stipulation is not binding on the Court.

SO ORDERED on this 29th day of November, 2018.



JUAN G. VILLASEÑOR
District Court Judge

Appendix A
Sample Written Discovery Dispute Chart¹
Submitted by (Plaintiff/Defendant)
Case No: 00-cv-00001

No./Type of Discovery Request	Disputed Response(s) or Objection(s)	Problem With Response
Plaintiff's Rog No. 2	1. Overbroad and burdensome; <i>Leidbolt v. District Court</i> , 619 P.2d 768 (Colo. 1980)	Information sought is limited in scope. <i>Val Vu, Inc. v. Lacey</i> , 31 Colo. App. 55, 497 P.2d 723 (1972)
Plaintiff's RFP No. 8	1. Attorney-client privilege; <i>National Farmers Union Property and Cas. Co. v. District Court For City and County of Denver</i> , 1986, 718 P.2d 1044 2. Not relevant; <i>Martinelli v. District Court In and For City and County of Denver</i> , 1980, 612 P.2d 1083; 3. Vague and ambiguous	Reasonably calculated to lead to discovery of admissible evidence. <i>Silva v. Basin Western, Inc.</i> , 2002, 47 P.3d 1184 Information sought is reasonably defined and scope is limited. <i>Curtis, Inc. v. District Court In and For City and County of Denver</i> , 1974, 526 P.2d 1335

¹ Acceptable abbreviations include “Rog” for Interrogatory, “RFP” for Request for Production; “RFA” for Request for Admission; “SDT” for Subpoena Duces Tecum.