8th DISTRICT COURT **LARIMER COUNTY JUSTICE CENTER** Court Address: 201 Laporte Avenue Fort Collins, CO 80521 Phone (970) 494-3500	2019 DEC 12 PM 4:32 DATE FILED: December 12, 2019 CASE NUMBER: 2018CV149 FILED IN CONFIRMED COURT LARIMER COUNTY CO
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 to 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** ▲
Party without attorney: Eric Sutherland, pro se 3520 Golden Currant Boulevard Fort Collins, CO 80521 Phone Number: (970) 224 4509 E-mail: sutherix@yahoo.com	Case #: 2018CV149 Division: 3C

REPLY IN SUPPORT OF PLAINTIFF'S MOTION MADE UNDER DURESS TO DISCONTINUE HEARING OF DECEMBER 13TH, 2019

I. BACKGROUND

Earlier today, Defendant City of Fort Collins filed a *Response* to Plaintiff's *Motion to Discontinue.*

II. REPLY

A. City has misapprehended and misrepresented Plaintiffs position

As it has on numerous occasions before, the City, through its attorneys from Sherman and Howard, have misapprehended the substance of Plaintiff's *Motion* and subsequently misrepresented Plaintiffs position before this court.

Contrary to what Ms. Loehr and Mr. Mills have written in their *Response,* Plaintiff Sutherland has elected to forego a hearing for fear that not doing so will expose him to future sanctions. Sutherland is cutting his losses at this point. But he does so involuntarily and only because this court has systematically disregarded every single argument, authority and fact he has presented to show a rational basis underlying all of his petitioning activity.

Thus, the duress stems exclusively from the dilemma of choosing between two alternatives: 1) making a showing of a rational basis for all the activities complained of in the City's *2nd Motion for Fees* with the fore-knowledge that doing so will not persuade a clearly biased court and will lead to further sanctions when the City comes back for thirds, or 2) cutting losses even if it means not exercising his rights under the Rules of Civil Procedure.

In this dilemma, this courts systematic disregard of Plaintiff's arguments, authorities and facts coupled with it own propensity to decide things like requests for large sanctions on the basis of facts of its own invention clearly clears the bar of "shocking" that is applied when deciding issues when a duress defense has been presented. *See Vail/Arrowhead Inc. v. District Court* 945 P.2d 608 Colo. 1998.[1] Thus, Plaintiff's duress defense is sound here, even if it is completely mischaracterized by the City.

B. The City fails to understand that duress is a distinction without a difference.

The City of Fort Collins has stated that foregoing the hearing was not opposed. A much more accurate representation of conference is found in Exhibit 1 to this *Reply.*

The City fails to realize that duress is simply the underlying reason for foregoing the hearing. The end effect is exactly the same whether or not Plaintiff found himself in the position of having to react to shocking bias and bad faith or not. Certainly, the Proposed Order that

[1] Due to Plaintiff's error, the word 'shocking' was omitted from his treatment of the duress defense in the original *Motion,* but is repeated here. Shocking.

accompanied the *Motion* did not request that any distinction or finding associated with duress be made by the Court.

In this regard, the City is making an issue out of nothing. Granted, the duress defense is now preserved for appeal. But litigants must always be mindful of preserving issues for appeal and are not obliged to forego opportunities to do when they come up ... especially in a proceeding that has been characterized by systemic disregard for argument and authority and legal conclusions based upon contrived factual conclusions.

C. The City ignores the secondary rational for foregoing the hearing

In comparison to the financial realities of a fledgling broadband utility that is already performing at a level far, far below what was expected (and promised) while facing headwinds in the marketplace that were barely visible two years ago, the sanctions that the city is in pursuit of are trivial.

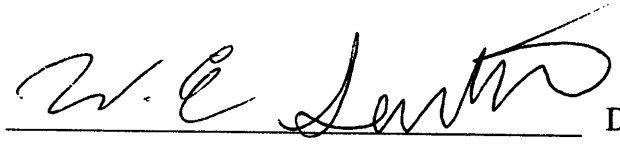
Despite over twenty days of inquiries and fact finding on the issue, no official of the city has provided anything resembling a *'don't worry everything will get back on track'* message.

Plaintiff has urged many times that the City focus its efforts on right-siding something that is amiss rather than this litigation. The public interest should be put at the highest priority.

D. The city's position is untenable and will fail in the appellate courts.

Under the city's view of how things should work, a public entity can completely disregard any and all laws when placing the public in debt as it has done with the broadband bonds ... just as long no potential plaintiff can make a showing of injury within 30 days. Forget about the First, Fifth and Fourteenth Amendments to the U.S. Constitution. Forget about sections 24 and 25 of Article II of the Colorado constitution. The city's view is, to say the least, contrary with the findings of our appellate courts and general understanding of American life.

WHEREFOR, Plaintiff respectively requests that this court grant the relief that has been requested.



Dated December 12, 2019

I hereby certify that on this 12th Day of December, 2019, a true and correct copy of the foregoing

REPLY IN SUPPORT OF PLAINTIFF'S MOTION MADE UNDER DURESS TO DISCONTINUE HEARING OF DECEMBER 13TH, 2019

was served on the following via email.

John Mill jmill @ shermanhoward.com
Rosemary Loehr rloehr @ Shermanhoward.com
Attorneys for City of Fort Collins

John Duval jduval @ fcgov.com
Carrie Daggett cdaggett @ fcgov.com

By _____