

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO Court Address: 201 La Porte Avenue Fort Collins, CO 80521 Phone Number: (970) 494-3500</p>	
<p><b>Plaintiff:</b> ERIC SUTHERLAND, <i>pro se</i> <b>v.</b> <b>Defendants:</b> 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><b>Indispensable Parties:</b> 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;"><b>▲ COURT USE ONLY ▲</b></p>
<p>Eric Sutherland, <i>Pro Se</i> Plaintiff 3520 Golden Currant Boulevard Fort Collins, CO 80521 970-224-4509 <a href="mailto:sutherix@yahoo.com">sutherix@yahoo.com</a></p> <p>Attorneys for Defendant City of Fort Collins: John W. Mill (#22348) Sherman &amp; Howard L.L.C. 633 17th Street, Suite 3000 Denver, CO 80202 Phone Number: (303) 297-2900 Email: <a href="mailto:jmill@shermanhoward.com">jmill@shermanhoward.com</a></p> <p>Carrie M. Daggett, #23316 John R. Duval, #10185 Fort Collins City Attorney's Office 300 LaPorte Avenue Fort Collins, CO 80522-0580 970-221-6520 Email: <a href="mailto:cdaggett@fcgov.com">cdaggett@fcgov.com</a>, <a href="mailto:jduval@fcgov.com">jduval@fcgov.com</a></p> <p>Attorneys for Defendants Town of Timnath, Timnath Development Authority and Compass Mortgage Corporation: Eric R. Burris, <i>admitted pro hac vice</i> Chloe Mickel, #50437 Jesse D. Sutz, #52395 BROWNSTEIN HYATT FARBER SCHRECK, LLP</p>	<p>Case No.: 2018CV149</p> <p>Courtroom/Division: 3C</p>

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**STIPULATED MOTION FOR SETTLEMENT ORDER**

Come now the *pro se* Plaintiff Eric Sutherland (“Sutherland”); the Defendant City of Fort Collins (“Fort Collins”), by through its attorneys Sherman & Howard and the Fort Collins City Attorney’s Office; and the Defendants the Timnath Development Authority (the “TDA”) and Compass Mortgage Corporation (“Compass”), by and through their attorneys Brownstein Hyatt Farber Schreck, LLP, and hereby stipulate, agree and move that, within fourteen (14) calendar days of the filing of this Stipulated Motion for Settlement Order (“Stipulated Settlement Motion”), the Court issue as its order the “Settlement Order” attached hereto as **Exhibit “1”** (“Settlement Order”) and, as grounds therefor, state to the Court as follows:

1. As required by C.R.C.P. Rule 121, Section 1-15, Counsel for Fort Collins has conferred with the Larimer County Attorney, who represents the Defendants Steve Miller and Irene Josey (jointly, the “County Defendants”) in this action, concerning the filing of this Stipulated Settlement Motion, and the County Defendants do not object to the Court granting the relief requested herein.

2. On April 4, 2020, Sutherland, Fort Collins, the TDA and Compass (collectively, the “Parties”) entered into the fully executed Settlement Agreement attached hereto as **Exhibit “2”** (“Settlement Agreement”).

3. Section I. of the Settlement Agreement reads:

Sutherland, Fort Collins, TDA and Compass agree to jointly file in [Case No. 2018CV149] their “Stipulated Motion for Settlement Order” attached hereto as Exhibit “A” (the “First Lawsuit Settlement Motion”) asking the District Court to issue, within fourteen (14) calendar days after the filing of the First Lawsuit Settlement Motion, the “Settlement Order” attached hereto as Exhibit “B” (the “First Lawsuit Settlement Order”) making this Agreement an order of the District Court and enforceable as such. Once the First Lawsuit Settlement Order is issued, the Parties agree that this Agreement shall go into full effect and the Parties shall be bound by all of the terms and conditions of this Agreement and the First Lawsuit Settlement Order, unless this Agreement terminates as provided below in Section IX. of this Agreement, and each Party waives any right to judicially challenge the legal validity of this Agreement or the First Lawsuit Settlement Order in any court or appeal the First Lawsuit Settlement Order to any court. The Parties further agree that the District Court shall retain jurisdiction to enforce the First Lawsuit Settlement Order and this Agreement.

4. The Parties have entered into the Settlement Agreement in order to resolve all disputes between them in this action and between the Town of Timnath (“Timnath”), the TDA and

Sutherland in the civil action Timnath and the TDA filed in Larimer County District Court Case No. 2018CV30567, (the “Second Lawsuit”) but the Court’s issuance of the Settlement Order within fourteen (14) calendar days of the filing of this Stipulated Settlement Motion is required before the Settlement Agreement will be fully in effect. However, Section IX. of the Settlement Agreement provides that the Settlement Agreement will terminate, become null and void, and the Parties and Timnath will be released from all obligations under the Settlement Agreement if either this Court does not issue this Settlement Order within fourteen (14) calendar days after the filing of this Stipulated Settlement Motion or Senior District Court Judge J. Robert Lowenbach (“Judge Lowebach”) does not timely issue in the Second Lawsuit the “Second Lawsuit Settlement Order” as contemplated in Section II.B. of the Settlement Agreement. Also, if for any reason the Second Lawsuit Settlement Order is not issued on or before June 15, 2020, the Settlement Agreement will terminate.

5. The Court has the authority under Rule 41 of the Colorado Rules of Civil Procedure to issue the Settlement Order as an order of this Court and to retain jurisdiction to enforce it and the Settlement Agreement. Under Rule 41, a “district court may issue an order dismissing a case with prejudice while retaining jurisdiction over a settlement agreement resolving the underlying dispute.” *EnCana Oil & Gas (USA), Inc. v. Miller*, 405 P.3d 488, 493 (Colo. App. 2017). For this proposition in *EnCana*, the Court of Appeals cites the United States Supreme Court’s decision in *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375 (1994). In *Kokkonen*, the Supreme Court states the following with regard to the application of Rules 41(a)(2) and 41(a)(1)(ii) of the Federal Rules of Civil Procedure, which are, respectively, the federal versions of Rules 41(a)(2) and 41(a)(1)(B) of the Colorado Rules of Civil Procedure:

If the parties *wish* to provide for the court’s enforcement of a dismissal-producing settlement agreement, they can seek to do so. When the dismissal is pursuant to Federal Rule of Civil Procedure 41(a)(2), which specifies that the action “shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper,” the parties’ compliance with the terms of the settlement contract (or the court’s “retention of jurisdiction” over the settlement contract) may, in the court’s discretion, be one of the terms set forth in the order. Even when, as occurred here, the dismissal is pursuant to Rule 41(a)(1)(ii) (which does not by its terms empower a district court to attach conditions to the parties’ stipulation of dismissal) we think the court is authorized to embody the settlement contract in its dismissal order or, what has the same effect, retain jurisdiction over the settlement contract) if the parties agree. (Emphasis in original.) 511 U.S. at 381-82.

Accordingly, this Court can issue the Settlement Order incorporating the Settlement Agreement and retain jurisdiction to enforce it and the Settlement Agreement as needed.

6. The Parties also agree that the counterclaims previously asserted in this action by the TDA against Sutherland, and which the Court dismissed *without* prejudice in its order dated March 15, 2019, may now be dismissed by the Court *with* prejudice once Judge Lowenbach has timely issued the Second Lawsuit Settlement Order as provided in Section II.B. of the Settlement Agreement.

7. The Parties further agree to be responsible for their own attorney fees and costs once Judge Lowenbach has timely issued the Second Lawsuit Settlement Order as provided in Section II.B. of the Settlement Agreement.

WHEREFORE, the Parties respectively request the Court to issue the Settlement Order as its order within fourteen (14) calendar days of the filing of this Stipulated Settlement Motion.

4/9/2020

Dated this \_\_\_\_ day of April, 2020.

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Eric Sutherland, *Pro Se*  
Plaintiff

SHERMAN & HOWARD L.L.C.

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Compass Mortgage Corporation

**CERTIFICATE OF SERVICE**

I hereby certify on the 4/9/2020 day of \_\_\_\_\_, 2020, that a true and correct copy of the foregoing **STIPULATED MOTION FOR SETTLEMENT ORDER** was served via ICCES e-filing system, upon the following:

Jeannine S. Haag, Esq.  
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