

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 498-6100</p> <hr/> <p>Plaintiff: STACY LYNNE</p> <p>v.</p> <p>Defendants: NOAH BEALS, CITY OF FORT COLLINS</p>	<p>DATE FILED: April 29, 2020 11:10 AM FILING ID: B0CFBA6C3D1EA CASE NUMBER: 2020CV115</p> <p>COURT USE ONLY</p>
<p>Andrew W. Callahan, #52421 WICK & TRAUTWEIN, LLC P.O. Box 2166 Fort Collins, CO 80522 Phone: (970) 482-4011 Email: acallahan@wicklaw.com</p>	<p>Case Number: 2020 CV 115</p> <p>Courtroom: 3B</p>
<p align="center">DEFENDANT CITY OF FORT COLLINS’ MOTION TO DISMISS PLAINTIFF’S AMENDED COMPLAINT OR IN THE ALTERNATIVE, FOR AN ENLARGEMENT OF TIME TO FILE AN ANSWER</p>	

COMES NOW, Defendant City of Fort Collins, by and through its counsel, Wick & Trautwein, LLC, and for its Motion to Dismiss Plaintiff’s Amended Complaint, states as follows:

INTRODUCTION

Plaintiff filed her First Amended Complaint on March 16, 2020 (the “Amended Complaint”). The caption of the Amended Complaint reads: Defendants Noah Beals, City of Fort Collins. However, the City of Fort Collins (“City”) is not listed as a defendant in the body of the Amended Complaint, nor is there any relief requested against the City. For this reason, counsel erroneously failed to include the City in Noah Beals’ Motion to Dismiss. Defendant City now moves to dismiss the Amended Complaint pursuant to Rule 12(b)(5) for failure to state a claim, pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, and for all of the reasons set forth in Defendant Noah Beals’ Motion to Dismiss.

Rule 121 Certification. When Defendant realized its error, Defense counsel communicated with Plaintiff via email, and requested she voluntarily dismiss the City as a defendant. Plaintiff declined to dismiss the City, and opposes this Motion.

I. Failure to State a Claim

Plaintiff's Amended Complaint seeks to assert a claim for libel and slander against Defendant Noah Beals, who is alleged to be an employee of Defendant City of Fort Collins. Nowhere in the body of the Amended Complaint does Plaintiff assert a claim directly against the City. Page 2 of the Amended Complaint identifies the parties as Plaintiff Lynne and Defendant Beals. The City is not identified as a separate defendant. In paragraph twelve, Plaintiff identifies Defendant Beals as an employee of the City. The City is not mentioned again a single time in the Amended Complaint.

In Plaintiff's demand for relief, she demands a monetary award but does not identify from whom, as well as a waiver of all prior costs and fees incurred by Defendant and assessed against Plaintiff. Presumably, this is in reference to her previous lawsuit filed against Defendant Noah Beals. Attached hereto as **Exhibit 1** is a transcript of judgment from the previous case, 2018 CV 220, identifying Noah Beals as the judgment creditor. Finally, Plaintiff requests in her relief that Noah Beals issue a public apology. Again, the City is not referenced.

Plaintiff's Amended Complaint alleges no claim whatsoever against the City. To the extent she attempted to assert a claim, it is so deficient that counsel for the City failed to realize the City was a defendant. Accordingly, the City requests that it be dismissed as a defendant in this action.

II. Lack of Subject Matter Jurisdiction

To the extent that Plaintiff has included a claim against Defendant City in her Amended Complaint, it should be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” C.R.C.P. 12(h)(3). Where the issue of sovereign immunity is raised by defendant at any time, the court shall decide such issue on motion. C.R.S. §24-10-118(2.5).

Under the Colorado Governmental Immunity Act (“CGIA”), a public entity such as the City is immune from liability for any claim arising in tort other than those claims specifically enumerated in C.R.S. §24-10-106. Here, Plaintiff has alleged no claims against the City, and thus has not asserted a claim under one of the enumerated exceptions. Furthermore, claims for libel and slander are not included in any of the enumerated exceptions to sovereign immunity. Even if Plaintiff has asserted a claim against Defendant Beals, her claim for libel and slander still fails against the City. Accordingly, the City requests that it be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

III. Incorporation of Remaining Defenses Raised by Defendant Beals

C.R.S. §24-10-106(3) states: “In addition to the immunity provided in subsection 1 of this section, a public entity shall also have the same immunity as a public employee for any act or failure to act for which a public employee would be or hereto for has been personally immune from liability.” In his Motion to Dismiss, Defendant Beals raised three arguments as to why Plaintiff’s Amended Complaint should be dismissed. First, that the Amended Complaint should be dismissed pursuant to the doctrine of claim preclusion. Second, that Defendant Beals is immune from liability under the CGIA, and third, that Plaintiff failed to assert her claim within the one-year statute of limitations for libel and slander. To the extent that Defendant Beals is found immune under any of these doctrines, that immunity applies to the City as well. Accordingly,

without restating them in full herein, the City incorporates all of the arguments asserted by Defendant Beals in his Motion to Dismiss.

IV. In the Alternative, Motion for Enlargement of Time to File Answer and Assert Affirmative Defenses

Finally, in the event the Court finds that Plaintiff has asserted a cognizable claim in her Amended Complaint against the City, the City respectfully requests that it be granted an enlargement of time to file an answer to the Amended Complaint. The City requests seven days from entry of an order on this Motion to file an answer.

CONCLUSION

WHEREFORE, Defendant City of Fort Collins respectfully requests that this Court dismiss Defendant from this action pursuant to Rule 12(b)(1) and Rule 12(b)(5), or in the alternative, for an enlargement of time to file an answer to the Amended Complaint and for such other relief as is just and reasonable.

Respectfully submitted this 29th day of April, 2020.

WICK & TRAUTWEIN, LLC

By: s/Andrew W. Callahan
Andrew W. Callahan, #52421
Attorneys for Defendants

CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT CITY OF FORT COLLINS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT OR IN THE ALTERNATIVE, FOR AN ENLARGEMENT OF TIME TO FILE AN ANSWER** was filed via the Colorado Courts E-Filing System and served this 29th day of April, 2020, on the following:

Stacy Lynne
305 West Magnolia Street #282
Fort Collins, CO 80521

Served via email to stacy_lynne@comcast.net & U.S. Mail.

s/ Jody L. Minch

[The original certificate of electronic filing signed by Jody L. Minch is on file at Wick & Trautwein, LLC)