

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 12-CV-2317-REB- KLM

BERNARD KENNETH MYERS,

Plaintiff,

v.

CITY OF LOVELAND, COLORADO,

Defendant.

DEFENDANT'S RESPONSE TO PLAINTIFF'S STATUS UPDATE

DEFENDANT City of Loveland, Colorado ("City"), by and through its attorneys, Wick & Trautwein, LLC, hereby responds as follows to Plaintiff's Status Update (#30, filed 10/18/2012):

1. Undersigned defense counsel never told *pro se* Plaintiff "not . . . to mess with number 4 undisputed facts" of the proposed "scheduling order" "because . . . the court would dismiss [Plaintiff's] Complaint as soon as it got the defense motion to dismiss," as inaccurately stated in the aforesaid status report. Undersigned defense counsel did, however, attempt to explain to the *pro se* Plaintiff that "undisputed facts" are only such facts as are agreed by both sides as undisputed.

2. City has included in the proposed Scheduling Order only such undisputed facts as City has a factual basis this time to agree are in fact undisputed.

3. On the morning of October 17, 2012, the *pro se* Plaintiff called defense counsel concerning this issue. Defense counsel was working on a brief in another

matter and asked that the *pro se* Plaintiff be placed into defense counsel's voicemail. Later that day, defense counsel placed a call to the *pro se* Plaintiff and reached a female with whom defense counsel spoke, and was informed that the *pro se* Plaintiff was away from the house and unavailable but would return the call. The *pro se* Plaintiff did not return the call on October 17 or on October 18, 2012, and instead filed the Status Report incorrectly accusing defense counsel of treating the *pro se* Plaintiff like "an idiot" and "trying to set up" the *pro se* Plaintiff, both of which accusations are patently false.

4. It is also false that defense counsel "seems to always be unavailable," as inaccurately stated in the Status Report. Undersigned defense counsel has had several cordial conversations with the *pro se* Plaintiff.

DATED this 22nd day of October, 2012.

WICK & TRAUTWEIN, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2012, I electronically filed the foregoing DEFENDANT'S RESPONSE TO PLAINTIFF'S STATUS UPDATE with the Clerk of Court using the CM/ECF system, and served a copy of the same to the following via U.S. mail, as follows:

Bernard Kenneth Myers
603 East 17th Street
Big Spring, Texas 79720
Plaintiff

s/Jennifer E. Jones