DISTRICT COURT, COUNTY OF LARIMER, STATE OF COLORADO Court Address: 201 LaPorte Avenue Fort Collins, CO 80521-2761 Phone Number: (970) 494-3500	
GIULIANO & FATHER CONSTRUCTION, INC., a Colorado corporation, and GIULIANO ADDITION, LLLP, a Colorado limited liability partnership, Plaintiff v. CITY OF LOVELAND, COLORADO, a municipal corporation**,** Defendant.	▲ FOR COURT USE ONLY ▲
Attorneys for Defendant City of Loveland, a Municipal Corporation: Alicia R. Calderón, #32296 Assistant City Attorney Laurie R. Stirman, #39393 Assistant City Attorney Loveland City Attorney's Office 500 E. Third Street, Suite 300 Loveland, CO 80537 (970) 962-2544 alicia.calderon@cityofloveland.org laurie.stirman@cityofloveland.org	Case Number: 2016CV30358 Courtroom: 5C
MOTION TO DISMISS COMPLAINT PURSUANT TO C.R.C.P. 12(b)(1) and (5)	

COMES NOW the City of Loveland, a municipal home rule corporation, by and through undersigned counsel, and submits this Motion to Dismiss and in support states as follows:

Certificate of Conferral Pursuant to C.R.C.P. 121 § 1-15:

Undersigned counsel conferred with Plaintiffs' counsel and has been advised that Plaintiffs oppose this Motion.

PROCEDURAL BACKGROUND

The City of Loveland (the "City") is a home rule municipality with all powers granted under the City Charter and the Colorado Constitution. This includes establishing regulations to assure coordinated and harmonious development of the City, accomplished through planning and zoning. Title 16 of the Loveland Municipal Code addresses subdivision of land, and Title 18 is zoning. Planning and zoning of new development requires consideration of present and future needs, health and safety, and adequate provision of public utilities and community facilities. Loveland Municipal Code (hereafter the "Code" or "LMC") § 16.04.010.

Plaintiffs in this case are Giuliano & Father Construction, Inc. and Giuliano Addition, LLLP. Giuliano is a developer and home builder. *Complaint, paragraph 1*. The City will refer to them interchangeably as Giuliano or Plaintiffs in this Motion. John Giuliano is a principal in each, and he has worked with the City on a number of construction and development projects. *Complaint, paragraph 5*. The Complaint does not make it clear which of the projects identified in paragraph 5 are included in the allegations, but paragraph 6 would seem to indicate the Complaint involves Giuliano First Subdivision.

Regardless of which developments are at issue in the Complaint, the process for development of each is the same and set out in the Code. A developer will first annex land to the City. All of the Giuliano projects identified in paragraph 6 of the Complaint have been through the annexation process and are now within the City limits. Generally, the area annexed is known as an "addition." If the development will be a planned unit development zone district, meaning an area uniquely zoned and designed, then the project will be subject to a number of requirements and procedures set out in LMC § 18.41. A planned unit development with phases will require a general development plan, a preliminary development plan, and a final development plan. *LMC § 18.41.050.A.*

A formal application for approval consists of a general development plan and a preliminary and final development plan for each phase. *LMC §18.41.050.C.* The Giuliano Addition is a planned unit development with several phases, including Giuliano First Subdivision. With each type of plan submitted for approval, City staff must consider whether the plan conforms to the City's master plans, the impact of the plan on traffic and utilities, whether the plan is complementary to existing and future development plans for the area, and how the plan incorporates public facilities or infrastructure to assure the proposed development will not negatively impact the levels of City's services. *LMC § 18.41.050.D.4.* The general development plan may be approved, approved with conditions, or denied at a public hearing before the Loveland Planning Commission. The application, the Commissions' recommendations, minutes and exhibits are forwarded to the Loveland City Council. City Council may approve, approve with conditions, or deny the general development plan. If approved, the property is zoned as a planned unit development district subject to the general development plan, including any conditions. *LMC § 18.41.050.*

Following approval of the general development plan but before actual development begins for any phase, both the preliminary development plan and the final development plan must be approved. If an application for a preliminary development plan is not submitted within one year of the general development plan, the general development plan lapses, and the applicant must submit a new general development plan. *LMC § 18.41.050.D.13.* The preliminary development plan must be submitted along with an affidavit that the applicant conducted a neighborhood meeting. *LMC § 18.41.050.E.1.* Within thirty days, the City's development review team will make a recommendation to the Loveland Planning Commission to approve, approve with conditions, or deny the plan. The recommendation will include findings including whether the preliminary development plan conforms to the general development plan, whether it meets the intent and objectives of the Code and applicable land use and development regulations. The Loveland Planning Commission will hold a public hearing after notice on the preliminary development plan and make a final decision. *Id.* Any party in interest may file a notice of appeal of the Loveland Planning Commission's decision, and the appeal is scheduled for a public hearing before the City Council. *LMC § 18.41.050.E.3.*

If there is an approved general development plan, then the approval or conditional approval of the preliminary development plan is by resolution of the Planning Commission, and the resolution must be recorded in the Larimer County real property records. *LMC § 18.41.050.E.4.* The preliminary development plan may be amended in the same manner as it was approved. *LMC § 18.41.050.E.5.* When a general development plan has been approved, the Planning Commission may amend the preliminary development plan. *Id.* If a final development plan is not submitted for approval within one year, the preliminary development plan lapses, and the applicant will be required to submit a new preliminary development plan. *LMC § 18.41.050.E.6.* The final development plan must show all conditions imposed on the general development plan. The final development plan must be reviewed by the Current Planning Manager for approval, and the approval must be recorded in the Larimer County real property records. *LMC § 18.41.050.F.* If denied, the applicant may file an appeal before the Planning Commission. *Id.* The final development plan may be amended in the same manner as it was approved and must meet the same standards as required for approval. *LMC § 18.41.050.F.4.*

In addition to the development plans, an applicant must follow the process for approval of the subdivision and must have approved public improvement construction plans before beginning any construction. Any appeal of a final decision by a director or other staff decision maker regarding the subdivision application or the planning commission decision must be brought in accordance with the Code at Chapter 18.80. *LMC § 16.10.010*. A major subdivision follows a standardized process set forth in the Code in accordance with Chapters 16.20 and 18.39. *LMC § 16.16.020.* No building may be erected or building permit issued unless the lot is part of an approved subdivision. *LMC § 16.20.010.B.* A preliminary plat application must include sufficient information to review design, planning and engineering issues. The preliminary plat will be presented to the Loveland Planning Commission, and the Commission will make findings based upon applicable review standards and adopted plans. The Planning Commission may impose

reasonable conditions. The Planning Commission decision may be appealed to City Council. *LMC § 16.20.060.* A final plat is approved by the director, and the director's decision may be appealed to the Planning Commission. *LMC § 16.20.080.*

A Developer is required to submit a complete plan for the design of all public and private improvements in a project. *Larimer County Urban Area Street Standards (hereafter "LCUASS") § 3.1.1.* The "LCUASS" are adopted in the Code to establish standards for streets, street signs, electric and water distribution system improvements, sewer collection and other improvements to be constructed as public improvements within all developments within the City. *LMC § 16.24.011.* Public improvement construction plans are valid for a period of three years from the date of approval by the City's Engineer. *LCUASS § 3.1.4.* The plans are reviewed by the City for concept and the review does not imply responsibility by the City for accuracy and correctness of the calculations, nor does review imply the quantities of items are the final quantities required. *LCUASS §3.3.1.E.*

No development approval, subdivision approval or building permits may be approved if they will cause a reduction in the levels of service for any community facilities below the adopted level of service established by the City. *LMC §16.41.010.* The City's development review team evaluates a proposed development or subdivision and makes recommendations regarding adequacy. The review team may make a positive recommendation of adequacy with any reasonable condition to ensure that all community facilities will be adequate and available or with the condition that the applicant provide the community facility necessary to provide capacity to accommodate the proposed development at the adopted level of service. *LMC § 16.41.050.* A determination of adequacy shall expire the earlier of 1) expiration, lapse, or revocation of the development approval or 2) failure by the applicant to timely comply with the conditions attached to a positive determination of adequacy or 3) two years following the date of issuance of a positive determination of adequacy. *LMC § 16.41.070.* Water facilities and services must be made available prior to issuance of the first building permit within the proposed development. *LMC § 16.41.120.* Any appeal of a final decision by the director or staff decision make shall be brought in accordance with Chapter 18.80 of the Code. *LMC § 16.10.010.*

Throughout these procedures, there are appeal processes. The City Council has established standards and provides due process for decisions made by staff and by Planning Commission. The City is best suited to making decisions about land use planning and public improvements. All developers are subject to the same standards and requirements found in the Code.

FACTUAL BACKGROUND

The Giuliano Addition has a General Development Plan approved by the Planning Commission and City Council. The Giuliano Addition is zoned as a Planned Unit Development that is designated as an affordable single-family housing project. *Complaint, paragraph 7.* The

year a project is designated as affordable locks the rate for all future fees the developer pays to the city to the year it was designated, including water rights. The City generally requires that at least 20% of a development be sold to persons at 70% or below of median family income for Loveland to receive the affordable designation. *Complaint, paragraph 8.* In the Final Development Plan for the Giuliano First Subdivision, the formal adopted and approved document says that Giuliano will provide 163 affordable housing units out of 356. The earlier General Development Plan says 114-172 out of 400-526 units. These documents are formal documents, available as public records, and these plans went through the formal process of review, public hearing, and formal adoption by the Loveland Planning Commission.

Plaintiff argues the Revised Final Development Plan contains a typographical error of 163 lots out of 256 [*sic*]. Whether or not this is a typographical error, to change this document requires an amendment to the Final Development plan, and these are recorded as Amendments to the Plan. The Giuliano First Subdivision Final Development Plan has at least two amendments already recorded and part of the public record. An Amendment will require presenting the issue to the Planning Commission at a public hearing and allowing the administrative process and procedure described above to proceed. The allegations of the Complaint as to the affordable housing attempt to paint this as a contract dispute, but this is not a contract. These are documents recorded on real property with the Larimer County Clerk and Recorder. Giuliano has benefited from affordable housing incentives and locked rates, and he seeks to circumvent the administrative process by alleging contractual claims.

Similarly, Giuliano makes allegations regarding a "pump house" without allowing the administrative process to conclude. The General Development Plan for the Giuliano Addition and the Preliminary Development Plan for the Giuliano First Subdivision both contain a condition for Giuliano to conduct an engineering study to determine whether additional water facilities would be needed. A water booster station was determined necessary. Giuliano built the water booster pump station around 2002 and the City accepted ownership of the facility. *Complaint*[1] *paragraphs 17-18.* Giuliano intends to construct an additional 56 units in the Wilson Commons Addition. *Complaint, paragraph 21.* The public improvement construction plans for the Wilson Commons Addition expired and new plans were recently submitted to the City. The staff comments on those plans were provided back to Giuliano April 29, 2016. The plans are on first review. The need for a water booster pump station is directly at issue in the administrative process currently proceeding at the City. Giuliano attempts to circumvent the administrative process by presenting this as a contract dispute when the administrative process has not even concluded. The original water booster station was accepted by the City fourteen years ago. The data used to generate the technical specifications for the capacity for that station is more than fifteen years old. No contract exists for the water booster station and the Complaint does not reference any contract for the water booster station.

[1] For purposes of this Motion only, any facts alleged in the complaint are being accepted as true. For example, the exact date the pump station was accepted by the City may or may not be in 2002.

LEGAL AUTHORITY AND ARGUMENT

As the detailed description of the City's process for approving developments within the City demonstrates, there are multiple steps for approval which involve several levels of review, from City staff to City Council. The Code provides appeal and review rights for these various decisions, generally up to a final decision by City Council. If a party objects to a decision by City Council, the proper claim is one under C.R.C.P. 106 filed with the Larimer County District Court.

However, prior to a decision becoming ripe for review by the District Court under Rule 106, a party is required to exhaust its administrative remedies. As will be discussed in detail, neither Giuliano plaintiff (both are confusingly lumped together in the Complaint) has exhausted its administrative remedies, and therefore, this Court does not have subject matter jurisdiction to review their claims. Furthermore, Giuliano has tried to shoehorn issues that should be addressed within the City's process into various contract and other claims in an attempt to circumvent the process, and have thus failed to state claims upon which relief may be granted. As a result, each of Plaintiffs' claims should be dismissed under C.R.C.P. 12(b)(1) or 12(b)(5).

1. Plaintiffs' claims regarding affordable housing units should be dismissed as the Court lacks subject matter jurisdiction over such claims and Plaintiffs have failed to state a claim upon which relief may be granted.

a. The Court does not have subject matter jurisdiction to hear Plaintiffs' claims regarding affordable housing as Plaintiffs have failed to exhaust their administrative remedies.

As a general rule, a court does not have jurisdiction over a matter if the plaintiff has failed to exhaust its administrative remedies. "Colorado courts strictly adhere to the exhaustion of remedies doctrine, which requires parties to pursue statutory remedies before seeking relief in district court." Colorado Dept. of Public Health and Environment v. Bethell, 60 P.3d 779, 784 (Colo. App. 2002). "If complete, adequate, and speedy administrative remedies are available, a party must pursue these remedies before filing suit in district court." City and County of Denver v. United Air Lines, Inc., 8 P.3d 1206, 1212 (Colo. 2000). The purpose of the exhaustion doctrine is to permit the agency which has the expertise in the subject matter to review the matter first, as well as to conserve judicial resources. City and County of Denver, 8 P.3d at 1212-13. In addition, the doctrine "protects against premature interference by the courts and piecemeal litigation." Bethell, 60 P.3d at 784.

"Under C.R.C.P. 12(b)(1), a trial court determines subject matter jurisdiction by examining the substance of the claim based on the facts alleged and the relief requested . . . The plaintiff has the burden of proving jurisdiction, and evidence outside the pleadings may be considered to resolve

a jurisdictional challenge." City of Aspen v. Kinder Morgan, Inc., 143 P.3d 1076, 1078 (Colo. App. 2006).

Although couched in terms of various claims for relief, Plaintiffs' Complaint ignores the City's process of approving land developments and seeks relief for contractual allegations that are not ripe for review. Thus, for the reasons discussed below, Plaintiffs' first, second, third and fourth claims regarding affordable housing should be dismissed pursuant to C.R.C.P. 12(b)(1) as Plaintiffs have failed to exhaust their administrative remedies.

As described above, the Giuliano Addition General Development Plan, which includes an affordable housing condition, went through the City's process and was approved. The Giuliano First Subdivision Preliminary Development Plan and Final Development Plan also went through the City's formal process and were approved. They both contain the affordable housing requirement of 163 units, and both are signed by Mr. Giuliano.

The "Plan," as defined in the Complaint is the 2003 Revised Final Development Plan[2] for Giuliano First Subdivision and it contains the condition troublesome to Plaintiffs that 163 of 356 lots within the Giuliano First Subdivision will be sold as affordable housing[3]. As described above, the process for challenging or changing a condition set out in a final development plan or preliminary development plan is to seek an amendment of the final development plan. Neither Plaintiff, nor any other Giuliano party, has sought an amendment of the affordable housing requirement in the Plan or availed itself of any remedies or review provided by the Code. The Complaint itself demonstrates that Plaintiffs have previously availed themselves of the process for amending the Plan. Despite their knowledge of the process, Giuliano is now attempting to circumvent the City's processes by filing this case.

The purpose of the exhaustion of remedies requirement is clearly exemplified in this case. The City has its own specific and unique zoning and planning processes set out in its Code, with rights for public hearings, review, appeal, and amendment. Exhaustion of remedies permits the City, as the party most knowledgeable about these processes, to address any disputes first, before utilizing judicial resources to resolve the dispute. It is for these reasons that until Plaintiff has exhausted its administrative remedies, made available by the City, this Court simply does not have subject matter jurisdiction to consider the case. As a result, Plaintiffs' claims related to affordable housing must be dismissed pursuant to C.R.C.P. 12(b)(1).

b. Plaintiffs have failed to state any claims upon which relief may be granted with respect to affordable housing, and such claims should be dismissed pursuant to C.R.C.P. 12(b)(5).

[2] The first amendment to the Final development plan was approved in October of 2013, and the second amendment in May of 2014. For purposes of this motion only, the City accepts this 2003 Revised Final development plan date.
[3] For clarification, the Plan reflects that Plaintiff Giuliano and Father Construction Co., Inc. is the owner of the subdivision. Plaintiff Giuliano Addition, LLLP is the owner of the Giuliano Addition, of which the Giuliano First Subdivision is one subdivision.

Plaintiffs have failed to state a claim upon which relief may be granted for its first, second, third and fourth claims for relief regarding affordable housing, and therefore, each of these claims should be dismissed pursuant to C.R.C.P. 12(b)(5). A motion to dismiss may be granted if "it appears beyond doubt that the plaintiff cannot prove facts in support of a claim that would entitle it to relief." Western Innovations, Inc. v. Sonitrol Corp., 187 P.3d 1155, 1157-1158 (Colo. App. 2008). The court considering a motion to dismiss "must accept all well-pleaded facts as true, and the allegations of the complaint must be viewed in the light most favorable to the plaintiff." Western Innovations, 187 P.3d at 1158. However, "legal conclusions couched as factual allegations" need not be accepted as true, and the claim may be dismissed if not supported by substantive law. Id.

i. Breach of contract

Plaintiffs assert as their second claim for relief breach of contract related to affordable housing, and argue that the Plan and the Wilson Commons Agreement are binding contracts between Plaintiffs and the City of Loveland. However, the Plan and the Wilson Commons Agreement are not contracts; rather, they represent vested property rights of the Plaintiffs. Giuliano agreed to the Final development plan with conditions, and one of those conditions was the construction of affordable housing units. As a result, Giuliano benefitted from incentives and fees locked in at the 1999 rate. Wilson Commons has its own final development plan, and unlike the Giuliano Addition, a development agreement. The final development plan for Wilson Commons and its corresponding development agreement do not create a contract for the separate Giuliano Addition. They are unique developments and each went through the processes set out above separately. A development agreement for one property does not create a contract for another.

In order to state a claim for a breach of contract, a plaintiff must allege facts in support of the following elements: (1) that a contract exists; (2) that the plaintiff performed its side of the contract or was justified in nonperformance; (3) that the defendant failed to perform its side of the contract; and (4) that the plaintiff suffered damages as a result. Western Distributing Co. v. Diodosio, 841 P.2d 1053, 1056 (Colo. 1992). In this case, Plaintiffs cannot establish the element of existence of a contract as "[a]n enforceable contract requires mutual assent to an exchange, between competent parties, with regard to a certain subject matter, for legal consideration." Denver Truck Exchange v. Perryman, 307 P.2d 805 (Colo. App. 1997). The Complaint fails to allege any facts sufficient to establish that all of the elements necessary to form a contract exist. There are no allegations of any offer, acceptance, or consideration.

Rather, Colorado law provides that development plans are vested property rights. Colorado statute defines "vested property right" as "the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan." C.R.S. § 24-68-102.5(5). A "site specific development plan" is defined as "a plan that has been submitted to a local government by a landowner . . . describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of . . . [a] planned unit development plan, a subdivision plat . . . a preliminary or general development plan

. . . a development agreement, or any other land use approval designation as may be utilized by a local government." C.R.S. § 24-68-102(4)(a). The City's definition of a vested property right mirrors the state statute definition. *LMC § 18.72.020.*

ii. Breach of covenant of good faith and fair dealing

Similarly, as Plaintiffs have failed to establish that a contract or contracts exist, their third claim for breach of the implied covenant of good faith and fair dealing must fail. The claim is a breach of contract claim. City of Golden v. Parker, 138 P.3d 285, 292 (Colo. 2006)("[u]nder Colorado law, every contract contains an implied duty of good faith and fair dealing . . . [a] violation of the duty of good faith and fair dealing gives rise to a claim for breach of contract"). Again, no contract exists for which a claim for good faith and fair dealing could arise.

iii. Promissory estoppel

Plaintiffs raise yet another contract-type claim, seeking promissory estoppel relief in their fourth claim for relief. In order to assert a claim for promissory estoppel, Plaintiffs must allege facts to support the following elements: "(1) a promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promise; (2) action or forbearance induced by that promise; and (3) the existence of circumstances such that injustice can be avoided only by enforcement of the promise." Nelson v. Elway, 908 P.2d 102, 110 (Colo. 1995).

Plaintiffs have not alleged facts sufficient to support any of the elements of promissory estoppel. The Complaint alleges in paragraph 45 that the "City has affirmatively stated that the development requires 20% affordable housing." Notwithstanding the fact that Plaintiffs provide absolutely no specificity with respect to "the development," to determine which development is at issue, again, the requirement of affordable housing is a condition set forth in numerous development plans submitted by Plaintiffs and approved by the City. A condition is not a promise by the City. A condition set forth in a development plan is a requirement that is binding on the developer, not a promise from the City. Without a promise, there can be no reliance on a promise. Finally, Plaintiffs do not allege any facts to meet the third element of the existence of circumstances such that injustice can be avoided only by enforcement of the promise because they cannot identify any promise other than their own to build affordable housing units.

iv. Declaratory Judgment

Plaintiffs' first claim for relief is for declaratory judgment. C.R.C.P. 57 sets forth the power of courts to issue declaratory relief. Rule 57(b) provides that "[a]ny person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder."

Plaintiffs simply allege in paragraph 30 of the Complaint that "Giuliano requests a declaratory judgment from the Court determining the parties' respective rights and obligations, *including* a determination as to the lawful amount of affordable housing units required in the Giuliano Projects." As discussed above, no contract "or other writings constituting a contract" exist for which the Court may provide declaratory relief. In addition, Plaintiffs are using their declaratory relief claim as a catch-all to avoid providing any specificity in their Complaint. "Giuliano" consists of two completely separate legal entities. The "Giuliano Projects" include "but [are] not limited to" **nine** different development projects, each with its own set of various development plans. Plaintiffs have not even tried to point the Court to their specific grievances. Rather, Plaintiffs have sought declaratory relief by essentially telling the Court "you sort it all out" in the written equivalent of dumping multiple boxes of unorganized files on the Court's desk. Therefore, Plaintiffs have failed to state a claim for a declaratory judgment upon which relief may be granted, and their first claim for relief should be dismissed.

v. If any review by this Court is appropriate, the exclusive remedy to review approval of the development plans at issue is under C.R.C.P. 106(a)(4), not by breach of contract, promissory estoppel, and/or declaratory relief claims.

The Plan and the other development plans setting forth affordable housing requirements are approved through a quasi-judicial process within the City. "C.R.C.P. 106(a)(4) is the exclusive remedy for reviewing quasi-judicial decisions . . ." JJR 1, LLC v. Mt. Crested Butte, 160 P.3d 365, 369 (Colo. App. 2007); *see also* Grant v. District Court In and For Fremont County, 635 P.2d 201 (Colo. 1981).

As described above, the various development plans at issue in the Plaintiffs' Complaint went through a quasi-judicial process, including public hearing. Relief under C.R.C.P. 106(a)(4) is Plaintiffs' exclusive remedy to seek review (to the extent it were appropriate based on exhaustion of remedies), and therefore all of Plaintiffs' claims should be dismissed.

2. Plaintiffs' claims regarding the "pump house" should be dismissed as Plaintiffs have failed to exhaust their administrative remedies.

Just as discussed with respect to Plaintiffs' affordable housing claims, this Court does not have subject matter jurisdiction to adjudicate Plaintiffs' "pump house" claims as Plaintiffs have failed to exhaust their administrative remedies. The new Public Improvement Construction Plans have only recently been submitted and are under review by the City. Plaintiffs are required by law to permit the City's process move forward, and to exhaust all of their remedies prior to seeking judicial review. Even then, a claim under Rule 106(a)(4) would be Plaintiffs' exclusive remedy for any quasi-judicial decision by the City related to the submitted plans.

Therefore, Plaintiffs claims related to the "pump house" should be dismissed pursuant to C.R.C.P. 12(b)(1) for lack of subject matter jurisdiction.

WHEREFORE, the City respectfully requests that the Court dismiss the Complaint. If the Court denies this Motion, the City respectfully requests the opportunity to answer the Complaint within 14 days of entry of any such Order.

Dated this 10th day of May, 2016.

CITY OF LOVELAND

Original signature on file

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing MOTION TO DISMISS was served via ICCES e-Service on this 10th day of May, 2016 to the following:

Erich L. Bethke, Esq.
Charles Fuller, Esq.
Senn Visciano Canges P.C.
1700 Lincoln Street, #4500
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/s/ Kayla Demmler
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