

DISTRICT COURT, LARIMER COUNTY,  
STATE OF COLORADO  
201 La Porte Ave., Suite 100  
Fort Collins, CO 80521  
Tel: 970-494-3500

**Plaintiff: LARRY SARNER, an individual, *pro se***

**v.**

**Defendants: CITY OF LOVELAND; and  
ANGELA MYERS, LARIMER COUNTY  
CLERK AND RECORDER**

*Attorneys for Defendant City of Loveland:*

|                                 |                                    |
|---------------------------------|------------------------------------|
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Case No.: 2016cv230

Division: 5C

**DEFENDANT CITY OF LOVELAND'S RESPONSE TO  
PLAINTIFF'S SECOND MOTION TO AWARD COSTS TO CONTESTOR**

Defendant City of Loveland (the “City”), by and through its counsel, hereby submits this response to Plaintiff Larry Sarner’s Second Motion to Award Costs to Contestor (the “Motion”), filed November 28, 2016, and states as follows:

1. On November 3, 2016, the Court held a trial/hearing on Sarner’s ballot question contest, pursuant to C.R.S. § 1-11-203.5.
2. On November 5, 2016, the Court dismissed the Complaint and entered judgment in favor of the City. *See* Order re Ballot Title Questions at 13.

3. Sarner now seeks “to be awarded costs from the Contestee, City of Loveland.” Mot. at 1.

4. Reasonable costs may be awarded only to the “prevailing party.” C.R.C.P. 54(d). Sarner is not the prevailing party because his complaint was dismissed in its entirety, and the Court entered judgment in favor of the City. Accordingly, Sarner is not entitled to costs under C.R.C.P. 54(d).

5. Defendant City of Loveland requests that the Court deny the Motion.

Respectfully submitted this 6<sup>th</sup> day of December, 2016.

KUTAK ROCK LLP

*s/ Thomas W. Snyder* \_\_\_\_\_  
Thomas W. Snyder, #33106

*Attorneys for Defendant City of Loveland*

## CERTIFICATE OF SERVICE

I hereby certify that on this 6<sup>th</sup> day of December, 2016, a true and correct copy of the foregoing **DEFENDANT CITY OF LOVELAND'S RESPONSE TO PLAINTIFF'S SECOND MOTION TO AWARD COSTS TO CONTESTOR** was served as indicated below on the following:

Served via electronic mail and U.S. Mail, first class postage prepaid:

Larry Sarner  
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larry.sarner@gmail.com  
*Pro se Plaintiff*

s/ Becky Franson