EIGHTH JUDICIAL DISTRICT COURT, **LARIMER COUNTY,** **STATE OF COLORADO** Court Address: Larimer County Justice Center 201 Laporte Avenue Fort Collins, Colorado 80521 Telephone: 970-494-3500	▲ COURT USE ONLY ▲
Contestor: Larry Sarner, *v.* **Contestee:** City of Loveland; *Party without attorney:* Larry Sarner, *pro se* 711 West Ninth Street Loveland, Colorado 80521 Telephone: 970-667-7313 larry.sarner@gmail.com	Case Number: **16 CV 230** Courtroom: **5C**

CONTESTOR'S REPLY TO CONTESTEE'S RESPONSE TO MOTION TO VACATE JUDGMENT

Comes now the Contestor, Larry Sarner, *pro se*, to reply to the Response of the Contestee City of Loveland ("City") to my Motion to Vacate Judgment, and states as follows:

1. In its Response, the City takes issue with my attack utilizing CRCP Rule 60(b)(3) which allows a party to seek vacation of a judgment granted improvidently. Counsel for the City says, "the Court dismissed the Complaint and entered judgment in favor of the [Contestee]" (Response ¶2) wrongly suggesting the Court's Order was entering a judgment by way of dismissal. As the Court is aware, the dismissal actually was on jurisdictional grounds (lack of standing).

2. Nonetheless, the City's Response immediately cites (*Id.* ¶4) *Nickerson v. Network Solutions,* 339 P3d 526, 529 (Colo. 2014) in support of a new position, that the only grounds for a jurisdictional attack in 60(b)(3) is a lack of personal jurisdiction over the parties, or of subject matter jurisdiction over the cause of action. That is too narrow. While *Nickerson* was decided with reference to just these two matters, it is actually a progeny of *In re Marriage of Stroud*, 631 P2d 168 (Colo. 1981), where jurisdiction (unqualified) is clearly enunciated as the applicable standard. ("There is no question but that in Colorado, as elsewhere, a judgment rendered without jurisdiction is void and may be attacked directly or collaterally." *Id.* at 170, citations omitted.)

3. As stated in my Motion, standing is a threshold jurisdictional issue. The City's arguments on personal jurisdiction (Response ¶6) notwithstanding, lack of standing is necessarily a lack of jurisdiction, and it is the dismissal for lack of

jurisdiction, not the lack of standing *per se*, that voids any judgment made by the Court.

4. Admittedly, I demur from the Court's dismissal on standing. Pending a successful appeal of the dismissal (which appeal I intend to make), it remains in force and effect. Being in effect, any judgment entered by the court is a nullity.

5. The City then defends the court's action by knocking down a straw man, that "[a] judgment is not void because it contains alternative holdings." Response ¶5. Counsel for the City argues that alternative holdings are "a common practice" and cites three appellate examples. They are indeed common—at the appellate level, where the courts' responsibility and authority is very different than at the trial court. At the district court level, the use of alternative 'holdings' is more constrained, as demonstrated by the very cases cited by counsel for the City. *Cordova v. Pueblo West Metropolitan District*, 986 P2d 976, 979 (Colo. App. 1998), is distinguishable from the instant case because the alternative holding was entirely within the four corners of making a decision over jurisdiction, not as an alternative to jurisdiction. In *Colorado General Assembly v. Owens*, 136 P3d 262, 264 (Colo. 2006), the Supreme Court affirmed a trial court's non-jurisdictional alternative holding *as part of entering a judgment on the merits.* In *People v. Moore*, 900 P2d 66, 70 (Colo.

1995), the alternative holding was not *arguendo*, and made entirely within the Supreme Court's own review of an interlocutory appeal. Being distinguishable from the instant case, these cases do not support the City's conclusion. If there are any apposite cases allowing a judge to enter judgment as an alternative to dismissal on jurisdictional grounds, counsel for the City does not provide them, nor have I been able to find any.

6. A district judge, in an order, is free to opine all he wants on anything that suits his fancy—about the evidence before him, about the alternatives that he would consider if he was an appellate judge, even about the sartorial choices of a litigant entering his court room—that is the meaning of *arguendo*—but when it comes to *entering* a judgment he must *apply* the law, not argue it. He is constrained from entering a judgment in a case he has dismissed on jurisdictional grounds, or must void it if entered before the dismissal.

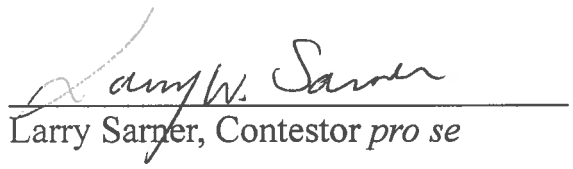
7. The City's stated reason for supporting a judgment in the alternative ("avoids wasteful remands", Response ¶5) is a naked attempt to moot my appeal with a procedural stunt, and is repugnant to due process.

8. The City cannot have its cake and eat it, too. By asking the Court for a dismissal on jurisdictional grounds, and simultaneously asking for judgment *in the alternative*, the City gave the Court a choice, and now that the court un-

wisely has given it both a jurisdictional dismissal and judgment in their favor, they are suborning error.

Now, therefore, the Contestor requests the Court that the motion to vacate judgment be granted.

Respectfully submitted this 12th day of December, 2016.



Larry Sarner, Contestor *pro se*

Certificate of Delivery

I hereby certify that, on December 12th, 2016, I have delivered a true and correct copy of the foregoing, by the means indicated, to the following:

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