

COUNTY COURT, LARIMER COUNTY, COLORADO Court Address: 201 La Porte Avenue, Suite 100 Fort Collins, CO 80521 (970) 494-3500	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: SHANNON LEWIS v. Defendants: CHARLES C. RICHARDS and THE CITY OF LOVELAND	Case Number: 2015CV30864 Div.: 5C
Attorneys for Defendants Bradley D. Tucker, Esq., #22436 TUCKER HOLMES, P.C. Quebec Centre II, Suite 300 7400 East Caley Avenue Centennial, CO 80111-6714 Phone: (303) 694-9300 Fax: (303) 694-9370 E-mail: bdt@tucker-holmes.com	
<p style="text-align: center;">DEFENDANTS' ANSWER TO COMPLAINT AND JURY DEMAND</p>	

The Defendants, Charles C. Richards and The City of Loveland, through their attorneys, Tucker Holmes, P.C., hereby respond to Plaintiff's Complaint as follows:

1. Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained in paragraph 1 of Plaintiff's Complaint and, therefore, deny the same.
2. The allegations contained in paragraph 2 of Plaintiff's Complaint are admitted.
3. The allegations contained in paragraph 3 of Plaintiff's Complaint are admitted.
4. The Defendants admit that venue is proper in Larimer County. The remaining allegations contained in paragraph 4 are denied.

FIRST DEFENSE TO FIRST CLAIM FOR RELIEF
(Negligence Defendant Richards)

5. In response to paragraph 5 of Plaintiff's Complaint, Defendants incorporate herein by reference the responses to each and every allegation contained in paragraphs 1 through 4 as if fully set forth herein.

6. The allegations contained in paragraph 6 of Plaintiff's Complaint are admitted.

7. The allegations contained in paragraph 7 of Plaintiff's Complaint are admitted.

8. Paragraph 8 of Plaintiff's Complaint is a legal conclusion and as such a proper response cannot be made. To the extent that such a response is necessary, Defendants would deny any allegations contained therein.

9. Paragraph 9 of Plaintiff's Complaint contains a legal conclusion and as such a proper response cannot be made. The factual allegations contained in Paragraph 9 of Plaintiff's Complaint are denied.

10. Defendants are without sufficient information upon which to form a belief as to the truth of the allegations contained in paragraph 10 of Plaintiff's Complaint and, therefore, deny the same.

11. The allegations contained in Paragraph 11 of Plaintiff's Complaint are denied.

12. The allegations contained in Paragraph 12 of Plaintiff's Complaint are denied.

13. The allegations contained in Paragraph 13 of Plaintiff's Complaint are denied.

14. The allegations contained in Paragraph 14 of Plaintiff's Complaint are denied.

15. The allegations contained in Paragraph 15 of Plaintiff's Complaint are denied.

16. The allegations contained in Paragraph 16 of Plaintiff's Complaint are denied.

17. Paragraph 17 of Plaintiff's Complaint is a legal conclusion and as such a proper response cannot be made. To the extent that such a response is necessary, Defendants would deny any allegations contained therein.

FIRST DEFENSE TO SECOND CLAIM FOR RELIEF
(Respondeat Superior)

18. In response to paragraph 18 of Plaintiff's Complaint, Defendants incorporate herein by reference the responses to each and every allegation contained in paragraphs 1 through 17 as if fully set forth herein.

19. The allegations contained in paragraph 19 of Plaintiff's Complaint are admitted.

20. The allegations contained in paragraph 20 of Plaintiff's Complaint are admitted.

21. Paragraph 21 of Plaintiff's Complaint contains a legal conclusion and as such a proper response cannot be made. To the extent that such a response is necessary, Defendants would deny any allegations contained therein.

22. Paragraph 22 of Plaintiff's Complaint is a legal conclusion and as such a proper response cannot be made. To the extent that such a response is necessary, Defendants would deny any allegations contained therein.

FIRST DEFENSE TO WHEREFORE CLAUSE

Defendants deny that Plaintiff is entitled to the relief requested in the Wherefore clause of her complaint.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are barred or limited by the provisions of C.R.S. § 24-10-101 et seq. ("Colorado Governmental Immunity Act").

2. The alleged damages were proximately caused by the comparative negligence of Plaintiff, Shannon Lewis, precluding or reducing any recovery pursuant to C.R.S. § 13-21-111.

3. Plaintiff assumed the risk of the acts involved.

4. The defense is entitled to a presumption of negligence *per se* against Plaintiff on the basis of, but not limited to, the following: Plaintiff breached her duty to exercise more than ordinary care and caution under the circumstances at hand, and in so doing, was in violation of C.R.S. § 42-4-224(5)(a).

5. Plaintiff's claims are barred by the provisions of C.R.S. § 42-4-224(5)(b).

6. Plaintiff's claims are substantially frivolous, groundless and vexatious, unreasonably necessitating the effort and expense of a defense by Defendants. Therefore, Defendants shall be entitled to reasonable attorney's fees in defense of said claims for relief pursuant to C.R.S. 1973 § 13-17-101, *et seq.*, and C.R.C.P. Rule 11.

7. The accident in question and the damages alleged have previously been litigated in case number 2015C031448, County Court, Larimer County. The doctrine of res judicata prohibits the relitigation of this claim as a final judgment was obtained in the previous case.

8. The doctrine of collateral estoppel precludes relitigation of the matters litigated in 2015C031448.

9. The doctrine of issue preclusion precludes relitigation of the issues litigated in 2015C031448.

10. The doctrine of claim preclusion precludes relitigation of all claims that were, or could have been, asserted in 2015C031448.

11. Defendants respectfully request the right to amend this Answer in the future to include additional affirmative defenses as discovery reveals facts sufficient to support a well-grounded basis for such defenses.

WHEREFORE, having fully answered the Complaint and all claims for relief set forth therein, Defendants pray for judgment against Plaintiff and dismissal of all claims with prejudice. Further, Defendants pray for such costs and expenses as may be incurred in this action, for expert witness fees, and for such other relief as the Court deems proper.

A TRIAL TO A JURY OF SIX (6) PERSONS IS DEMANDED.

Address of Defendants:

c/o Tucker Holmes, P.C.
7400 E. Caley Avenue, Suite 300
Centennial, CO 80111

DATED: December 11, 2015

Respectfully submitted,
*The duly signed original held in the file located at
Tucker Holmes, P.C.*

By: /s/ Bradley D. Tucker
Bradley D. Tucker, #22436
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **DEFENDANTS' ANSWER TO COMPLAINT AND JURY DEMAND** was Filed and Served Electronically via ICCES, the duly signed original held in the file located at Tucker Holmes, P.C., on December 11, 2015, copies addressed to:

David J. Furtado, Esq.
Furtado Law, P.C.
3773 Cherry Creek North Drive, Ste. 575
Denver, CO 80209

*The duly signed original held in the file located at
Tucker Holmes, P.C.*

/s/ Cheryll A. Paull
Cheryll A. Paull, Legal Assistant