Please be advised that Plaintiff's originally signed Reply and Cross Motion necessary for filing were inadvertently mailed for service upon Defendant; and wherefore it was not filed with the Court without its May 22, 2018 proof of service and with the filing of enclosed: a corrected copy of Plaintiff's Reply and Cross Motion, a later version. There are no material changes.

Larimer County, Colorado, District Court Larimer County Law and Justice Center 201 LaPorte Avenue Fort Collins, CO 80521-2764 (970) 498-6100	
Kendra Musgrave *Plaintiff* vs. Loveland Municipal Court Judge, Gerri R. Joneson *Defendant*	□COURT USE ONLY□ District Court Case No.: 18CV140 Division:
Kendra Musgrave, P*ro se* P.O. Box 1101 Greeley, Colorado 80631	

REPLY TO DEFENDANT'S MOTION
TO DISMISS AND CROSS MOTION FOR SUMMARY

Kendra Musgrave, Plaintiff, pro se, respectfully submits to this Court her Reply to Defendant's Motion to Dismiss and moves this Court for Summary Judgment pursuant to CRCP 56 and alleges and avers as follows:

CROSS MOTION FOR SUMMARY JUDGMENT

1. Defendant had actual notice and knowledge that Plaintiff had filed a written notice with the court which stated that she had discharged Mr. Kokus and was representing herself and therefore all orders and court notices were to be served and mailed directly to Plaintiff.

2. Defendant proved to the Court that alleged Order dated September 6, 2016 was not served, and is therefore void as a matter of law. No certificate of service for said Order was submitted to this Court.

3. This is not an oversight. Defendant claims in her Motion to Dismiss, last paragraph, to have issued alleged Order on September 6, 2016; but does not claim to have ever served it. Therefore, the alleged Order dated September 6, 2016 is null and void as a matter of law almost as old as the state: "a judgment rendered without service is . . . void." *Great West Min. Co. v. Woodmas of Alston Min. Co.*, 12 Colo. 46, 53, 20 P. 771, 775 (1888). It is doctrine.

4. Colorado law mandates a final judgment *must* be, *not* can be i) issued and 2) properly served. There is no discretion or option. A judicial officer either does or does not. Defendant did not. There is no material issue of fact.

5. Summary judgment should be granted on these grounds as a matter of law.

6. Summary judgment should only be entered "when there is no disputed issue of material fact and the moving party is entitled to judgment as a matter of law." *McIntyre v. Bd. of Cty. Comm'rs*, 86 P.3d 402, 406 (Colo. 2004).

7. Defendant has failed to file an answer. There is no material issue of fact. Plaintiff is entitled to summary judgment on these grounds as a matter of law.

8. Defendant's Motion To Dismiss fails to address Plaintiff's assertion that Defendant Judge Joneson was on vacation and otherwise not present in court on 9/6/16 and therefore she purportedly signed the Order on a date when she was not officially present in the court or courthouse performing her judicial functions and therefore her signature on the Order bearing the date of 9/6/16 renders such Order as being null and void without any legal effect.

9. Defendant's alleged Order dated September 6, 2016 without proof of service upon Plaintiff, appears to be a final determination of #352152; but in fact Defendant's alleged Order is simply paper. Thus, Defendant attempts to pull a fraud on the Court, rather than execute her clear legal duty to render and properly serve Plaintiff with a final determination in #352152. Defendant should be sanctioned.

10. To date Defendant and by extension her counsel continue to play a shell game, pawning off onto the Court and Plaintiff, a void Order dismissing #352152 that Defendant herself does not recognize; while refusing to issue an Order to Vacate all subpoenas issued #352152 that are, most disturbingly, still outstanding.

11. Defendant's Motion to Dismiss fails to address and refute Plaintiff's assertion that Defendant issued and ordered multiple out of state subpoenas. Wherein the last known of record, that Defendant had issued on her own motion and signed as "District Court Judge."

12. Plaintiff filed September 12, 2016 Motion to Vacate all subpoenas issued under #352152. Plaintiff's unopposed Motion to Vacate is still pending before the Loveland Municipal Court, also without determination.

13. There is no material issue of fact. Plaintiff is entitled to summary judgment on these grounds as a matter of law.

WITH REGARD TO DEFENDANT'S MOTION TO DISMISS

14. CRCP 106(a)(2) provides that a district court may issue an order granting relief:

> "Where the relief sought is to compel a lower judicial body, governmental body, corporation, board, officer or person to perform an act which the

law specially enjoins as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such lower judicial body, governmental body, corporation, board, officer, or person. The judgment shall include any damages sustained." (Emphasis.)

15. Defendant presides as the lower judicial body, Loveland Municipal Court, Larimer County. Plaintiff filed CRCP 106(a)(2) Amended Complaint in Larimer County District Court, a higher judicial body.

16. Amended Complaint opening statement declares Plaintiff is "seeking mandamus relief under Colorado Rules of Civil Procedure 106(a)(2) for issuance of final determination of Loveland Municipal Proceeding 352152, and vacation of all subpoenas." Clarity is not an issue.

17. A service free order is not an order. It never happened. Defendant proved by provision to this Court of alleged Order dated September 6, 2016 without any proof of service, that it is void on its face. *Defendant* proved to this Court that to date she has not executed her clear legal duty to issue and properly serve Plaintiff with final determination of #352152; and, to also vacate all subpoenas thereunder. Wherefore, Defendant has *also* proved to this Court that there is no other means but to compel Defendant to fulfill her clear legal duty short of a writ, an Order of Mandamus. There is no issue of fact. Summary judgment must be granted to Plaintiff as a matter of law and Motion to Dismiss must be denied, as a matter of law and for failure to state a claim upon which relief can be granted.

18. Amended Complaint was written in numbered paragraph form. Support for Amended Complaint's specific relief is claimed in numbered paragraphs on five separate grounds supported by CMCR 242, Rule 5, *Borer v. Lewis, 91 P.3d 375 (Colo. 2004)*, citing Weber v. Williams, 137 Colo. 269, 277, 324 P.2d 365, 369 (1958) (stating that "a judgment rendered without service is . . . void") (quoting Great West Min. Co. v. Woodmas of Alston Min. Co., 12 Colo. 46, 53, 20 P. 771, 775 (1888)); A judgment of dismissal with prejudice entered without notice is void. *Thompson v. McCormick*, 138 Colo. 434, 335 P.2d 265 (1959); *Radinsky v. Kripke*, 143 Colo. 454, 354 P.2d 500 (1960). That Defendant is barred from issuing her final determination of #352152 nunc pro tunc as that would vitiate Plaintiff's right to appeal. *In Re Marriage of Spector* 867 P.2d 181 (1993) "Further, the nunc pro tunc effect of an order as to the parties' rights cannot reduce the time nor defeat the right to seek review. See *Joslin Dry Goods Co. v. Villa Italia, Ltd.*, 35 Colo. App. 252, 539 P.2d 137 (1975)." Which Defendant does not dispute. Motion to Dismiss must be denied as a matter of law and for failure to state a claim upon which relief can be granted.

19. In accordance with the language of CRCP 106, Plaintiff in Amended Complaint prayed this Court "enjoin Defendant answer with issuance and proper service of her final determination of #352152, dated no earlier than the service date of this Complaint and no later than 21 days from service thereof; and grants to Plaintiff all ancillary fees and costs of enjoining Defendant to execute her clear legal duty."

20. Instead, Defendant continued to defy clear legal duty. To that end, Defendant obtained counsel, who then filed two Notices of Entry on May 1, 2018 and again on May 2, 2018, each with certificate of mailing. As would have been quite convenient, neither Notice of Entry contained a contemporaneous date dismissal order of #352152 issued by Defendant, with its corresponding certificate of service upon Plaintiff at the same address. Rather, on May 15, 2018 Defendant through counsel filed Motion to Dismiss, enclosing a conspicuous #352152 alleged dismissal Order dated September 6, 2016 but without proof of service, void as a matter of law.

21. Defendant's Motion to Dismiss fails to address and refute Plaintiff's assertion that Defendant was on vacation and otherwise not present in court on 9/6/16 and therefore she purportedly signed the Order on a date when she was not officially present in the court or courthouse performing her judicial functions and therefore her signature on the Order bearing the date of 9/6/16 renders such Order as being null and void without any legal effect

22. Defendant's Motion to Dismiss failed to address or refute Plaintiff's assertion that Defendant has no choice but to execute her clear legal duty to issue and properly serve Plaintiff with a *valid* Order dismissing #352152.

23. Motion to Dismiss fails to address and refute Plaintiff's assertion that she has a clear right to be properly served with a valid issuance of Defendant's final determination in #352152. Or how provision to this Court of the alleged Order without certificate of service, is an execution of Defendant's clear legal duty.

24. Defendant's Motion to Dismiss is frivolous and without merit. Without touching on the merits declared in numbered paragraphs of Plaintiff's Amended Complaint, Defendant's Motion to Dismiss launches into ad hominem fulminations, characterizations, and spurious claims *attributed* to Amended Complaint for the sake of deriving a false conclusion through tortured logic, such as "Plaintiff alleges a due process violation, her claims lie in tort." Perhaps, Plaintiff should be hurt by that statement.

25. Through characterization, it is *Defendant* who "alleges" then pawns it off as *Plaintiff's allegation* of a "due process violation," only to then argue against it. Motion Dismiss is written entirely in this manner. It is unethical unto itself, but particularly as a substitute for any legal basis and argument. Counsel should be sanctioned.

26. However, the *argument* in and of itself, is a frivolous proposition. By definition, *claims* for writs like habeas corpus, and cannot be contrived as tort *claims*. *Camas Colorado, Inc. v. Board of County Commissioners*, 36 P.3d 135 (Colo. App. 2001). "Claims for mandamus or injunctive relief are noncompensatory claims and are thus not claims that lie or could lie in tort. See City of Colorado Springs v. Conners, supra; Jones v. Northeast Durango Water District, 622 P.2d 92 (Colo.App.1980)."

27. Defendant's Motion to Dismiss dated May 15, 2018 must be denied. It is without merit, frivolous and fails to state a claim upon which relief can be granted.

REPLY ARGUMENT TO MOTION TO DISMISS

28. Opening sentence of Introduction to Motion to Dismiss begins with the Amended Complaint "filed by Plaintiff, who is *pro se*, *purports* to be brought pursuant to CRCP 106(a)(2)." (emphasis). There is never a basis or explanation for "*purports* to be brought." It thus comes off as explaining even mansplaining and so little womaning Plaintiff who is of the same sex. At the same time mocking Plaintiff for use of the courts to exercise a right. The equally obnoxious connotation is that any of the proletariat should exercise their rights, perhaps even to abuse the courts with their presence. Unlike Motion to Dismiss, Amended Complaint was filed with numbered paragraphs for specific dispute on a legal basis. Counsel did not. Counsel simply labeled it as without merit for the person filing it by equating the value of the Amended Complaint to the person filing it, "Plaintiff, who is pro se." The negative connotation then clinched with "purports to be brought." The obvious message is pro ses are ignorant of the law and process but must be indulged with due process. Plaintiff is a pro se, and therefore ignorant of the law and process, even doubly ignorant as a woman. Plaintiff is abusing the court with her presence – Amended Complaint.

29. Counsel's argument is ad hominem by design, and not inartful phrasing since counsel expertly adds layers onto this foundation of presumed fact, of spurious claims, vague generalizations, driving an agenda for dismissal for her client on a personal basis, for her client's position. Argued as fact. Making it difficult to dispute. Completely different from "neighbor kicked a dog, what a jerk," that is fair enough and at least ethical. And, as opposed to Counsel's initial premise that it banks on bias: pro se, even a woman pro se.

30. Unlike counsel, pro ses may not have access to a computer, internet, let alone the luxury of unlimited access to WestLaw, Loislaw, associates, paralegals, word processors, proof readers, secretaries and nothing else to do. Already at a disadvantage, a pro se may be physically impaired, or visually impaired in addition to presumed responsibilities. Many CRCP 106 proceedings are filed pro se for the clarity of legal issues: someone on a government salary refuses to do their job.

31. Motion to Dismiss continues "and challenges the judicial actions…" Building on the first few words of that sentence, counsel then substitutes her beliefs for the actual relief sought in Amended Complaint, to wit: a final judgment. Also, *what challenges*? What *judicial actions*? Choice of wording seems prejudicial. *Challenging*, even to use that word, judicial actions or judicial inactions is exactly what the statute was written for. Notwithstanding the appeal process, *inter alia,* in general. The underlying statement then is that exercising a right is the same as challenging authority. That is distressing. Dickensian. By the crafted logic of this phrase, counsel has *proven Plaintiff's* deserves to be punished - but for what? Exercising a right. Specifically, the right for "challenges" to "judicial actions."

32. The bias shown in just that choice of subtle phrasing, and in the context of this case, i.e., that rights are afforded to the public according to the convenience of their *betters*, identifies why Plaintiff had no other means than to file under CRCP 106(a)(2) for a final judgment. For the subtle hysteria of that phrasing that Plaintiff *challenges* Defendant's *judicial actions*, it is not readily apparent that the statement is patently false: it is <u>*Defendant*</u> who <u>*challenges*</u> her *judicial actions* laid down in Loveland Municipal Code, state law, Colorado and

federal Constitution and by the very function of law. By defiantly refusing to execute *a judicial action* in #352152: Specifically, issue and properly serve Plaintiff with final judgement in #352152 as mandated by CMCR 212(d) and CMCR 232(b), *inter alia.* Plaintiff *challenges,* if to use that word, Defendant's *judicial* <u>*inaction*</u> through mandamus for failure to execute that clear legal duty.

33. In substituting her beliefs, "challenges judicial actions," for the actual relief sought by Amended Complaint, counsel defines the relief sought as simply *personal,* not worthy of the Court's legal review. Degrading Plaintiff, her clear legal right, as well as her exercising her right seek redress in the courts; to simply a personal attack of her *betters* and Plaintif no right. Again, the phrasing is both sexist and classist. For the obvious purpose that if counsel substitutes her counsel's beliefs for Plaintiff's specific relief sought in Amended Complaint, then no relief can be granted.

34. Continuing in what is still the first sentence, "in a municipal court matter." Again, vague. What "municipal court matter?" Was it something we are not supposed to talk about? That carries a negative connotation. Or is counsel implying it was simply a matter of bumping cars in the parking lot? Then Defendant would not have executed any *judicial actions.* And, so counsel is careful to be vague.

35. Counsel's opening sentence thus reads "Plaintiff's Amended Complaint filed April 16, 2018 by Plaintiff, who is pro se, purports to be brought pursuant to CRCP 106(a)(2) and challenges the judicial actions of Loveland Municipal Court Judge Geri R. Joneson in a municipal court matter."

36. First paragraph of Plaintiff's Amended Complaint reads, "In seeking mandamus relief under Colorado Rules of Civil Procedure 106(a)(2) for issuance of final determination of Loveland Municipal Proceeding 352152."

37. Counsel's opening is almost a direct contradiction. In effect *proving* Amended Complaint is meritless. Without raising a single legal argument. Simply stated a matter of *fact.* For the person filing it. Even further that Amended Complaint was filed as an excuse, by *some woman,* in a *personal attack,* on Defendant; and, again, but in the reverse, devaluing Amended Complaint, devaluing Plaintiff as a person. An aggrieved person.

38. Wherefore Counsel's next sentence also employs socratic argument. That is 'When the debate is lost, slander becomes the tool of the loser." It reads "The Amended Complaint and exhibits thereto are vague and rambling and do not concisely show that Plaintiff is entitled to relief," written in a motion with no numbered paragraphs. Again, due to counsel's beliefs, Amended Complaint should be rejected. Still, laying foundation for Motion to Dismiss on characterization, the sentence is drug out "vague *and* rambling *and*..." lest the Court miss it: More concisely, Amended Complaint is meaningless drivel. Added upon counsel's previously layered beliefs, and more concisely: filed by a pros se, just *some* woman with an ax to grind. Although Amended Complaint was written in numbered paragraphs for specific dispute, counsel does not. However, if, as counsel alleges, "Amended Complaint is vague and rambling and does not concisely show that Plaintiff is entitled to relief," when did that become a condition to relief and a basis for rejection of Amended Complaint? For this new and novel condition, Plaintiff

should not receive a final determination of #352152 issued and properly served by Defendant, the sought relief in Amended Complaint? "The constitution does not require we exalt form over substance, *People v. Ragulsky*, 518 P.2d 286 (1974). Still, if relief is only available to those whose papers are *not* "vague and rambling and do not concisely show [a] [p]laintiff is entitled to relief," then what relief is there for any plaintiff? Verizon. Apple. Their attorneys. Insurance litigators.

39. *However*, counsel disproves her own statement: if Amended Complaint *did not* "concisely show that Plaintiff is entitled to relief," why submit a void Order dismissing with prejudice and granting probable cause? Why bother? And, exactly how are "exhibits…vague and rambling?" All were court forms, adjourn slips, etc. By nature an exhibit supports specific statements or arguments. The sentence is self-defeating. Exhibit*s* in the plural is then a collection of specific statements. Even numbered statements.

40. Counsel's ad hominem is particularly abusive in the context of this proceeding. Defendant's municipal court has denied to date even a printout of the register of actions/docket for #352152. Plaintiff did not have access to the record, and could not obtain transcripts.

41. Basic to any CRCP 106 proceeding is an existent record. A mandamus to compel as is in this instant case, is more difficult by nature than prohibition, because it requires proving a negative: that a clearly dutiful act was not executed. Whereby a full record is mandatory. Plaintiff was thus put to an extreme disadvantage.

42. The first adjourn slip, however, and each thereafter each with two counts of "aiding and abetting non-payment," show a fatal jurisdictional defect, a defective summons and complaint that alone prove Defendant's clear legal duty to issue a dismissal immediately, then and there, under CMCR 212(d) and serve upon Plaintiff. Simultaneously, such slip proves Defendant did not.

43. Also, the very word "non-payment" mandates immediate dismissal under CMCR Rule 212(d) *inter alia* as it is again a defective summons and complaint, and on its face far beyond Defendant's subject matter jurisdiction and scope of authority because "no Colorado statutory or constitutional provisions authorizing the municipal court to hear civil claims for money," *Englewood v. Parkinson*, 703 P.2d 626 (COA 1985). Citing Denver County Court v. Lee, 165 Colo. 455, 439 P.2d 737 (1968) ""the municipal governing body of each city or town shall create a municipal court to try and hear all alleged violations of ordinance provisions of such city or town"" and "[t]he city's home rule charter limits jurisdiction of the municipal court to actions arising under the city charter and ordinances." *Englewood v. Parkinson, supra.*

44. Without transcripts or access to the record, the adjourn slips, notices, inter alia, demonstrate that over a course of time Defendant *did not* issue and properly serve Plaintiff with a final determination, the requisite for mandamus to compel. Thereby also showing willful refusal to execute her clear legal duty; and, therefore showing there is no other means than mandamus to cause Defendant to execute her clear legal duty. As well as a showing for sanctions.

45. Counsel continues with the next and third sentence, "Plaintiff's Amended Complaint *attempts* to assert five claims for relief" (emphasis); because "Plaintiff, who is pro se"

can't comprehend these things too wonderful for her and has inflicted the court with this *attempt*. Keeping in mind that Counsel substituted the relief sought in Amended Complaint for "challenges judicial actions." Counsel therefore correspondently substitutes her beliefs for Amended Complaint's actual claims. "1) First claim for relief the right to represent oneself." The statement is patently false and/or just deliberately obtuse: Proclaimed below the caption of Amended Complaint is the relief sought for mandamus "issuance of final determination of Loveland Municipal Proceeding #352152, and vacation of all subpoenas. For that relief, Plaintiff asserted that because she was entitled to proceed pro se, Defendant had to acknowledge her and properly serve her with final determination of #352152. Incorporated under First Claim is the record proving Defendant's court long had notice of address and when counsel was discharged as set forth in paragraphs 1-34 under the subheading "as is record and fact," under heading under "general allegations," and incorporated in First Claim. If there is any issue: One can figure it out.

46. Each of these three opening sentences are unethical as well as degrading in and of itself. That full meaning and effect however "is determined [not only] by reference to the language itself, [but also by] the specific context in which that language is used," *Yates v. United States*, 135 S. Ct. 1074 citing Robinson v. Shell Oil Co., 519 U. S. 337, 341. J. Alito concurring.

47. Taken together: "Plaintiff's Amended Complaint, filed April 16, 2018 by Plaintiff, who is pro se, purports to be brought pursuant to CRCP 106(a)(2) and challenges the judicial actions of Loveland Municipal Court Judge Geri R. Joneson in a municipal court matter. The Amended Complaint and exhibits thereto are vague and rambling and do not clearly show that Plaintiff is entitled to relief. Plaintiff's Amended Complaint attempts to assert five claims for relief 1) First Claim for Relief, the right to represent oneself; 2) Second Claim for Relief for issuance of a judgment; 3) Third Claim for Relief for service of all 4) Fourth Claim for Relief challenging the propriety of a potential nunc pro tunc order; and.."

48. *And*, that toward the end of counsel's argument it appears counsel is jonesing for a Trinity hearing; Counsel's opening sentence then appears as a dog whistle calling the Court's attention to convert Amended Complaint filed by "Plaintiff, who is pro se," into *anything else but*: for to create a jurisdictional defect; by engaging in taking advantage of the pro se status of Plaintiff to traverse the parameters of this CRCP 106(a)(2) proceeding; in sponsoring counsel to protract litigation and have the City of Loveland to pay for it: With Defendant still not issuing and properly serving Plaintiff a final determination of #352152. It bears a striking resemblance to Loveland Municipal Court case #352152 from which stems this CRCP 106(a)(2) mandamus request.

49. Whether or not this was counsel's intent, and even if Plaintiff is badly mistaken, that Plaintiff, who is pro se, can upon initial reading and without even reading the last page, so construe Motion to Dismiss, creates the appearance of impropriety. Even if Plaintiff is reading too much into it: that too is the problem or even the intent of sweeping opinion/argument, that one can read a phonebook into it. Motion to Dismiss is spurious, *frivolous* and unethical, but that it could be with a purpose, creates the appearance of impropriety.

50. Fair or not, counsel is credentialed, accomplished in complex litigation and not someone new to the field. In artful phrasing or common error seem improbable. *Noblesse oblige.* Counsel should be sanctioned.

51. Continuing, "5) Fifth Claim for Relief for an alleged violation of Plaintiff's asserted right to due process." It is a patently false statement and blatant engineering. It was not an allegation but statement of fact that Plaintiff was/is denied access to the record, the file, and even a printout of the docket as a showing to the Court that there is no other means as is fundamental to a CRCP 106(a)(2) claim for mandamus.

52. However, speaking of "vague and rambling," counsel then declares "The essence of Plaintiff's Amended Complaint…" The "essence," of what counsel *believes* is immaterial and must be disregarded. The full basis of Motion to Dismiss.

53. From the record, "findings essential to the determination of the judgment have preclusive effect, superfluous findings, (or vague beliefs) do not. *Zabriske v. Zolato*, 22 AD2d 620, 257 N.Y.S.2d 965 (1st Dept. 1965); *Silberstein v. Silberstein*, 218 NY 525 (1965); 'We will recapitulate, we hope for the last time, in the light of the number of occasions it has been necessary to do so, the basic ground rules. Essentially, the prosecutor is to argue the case…He is not to interject his personal beliefs." *United States v. Cotter*, 425 F.2d 450, 452 (1st Cir. 1970) (emphasis.)

54. The rest of the sentence, true to established pattern – vague false premise/false conclusion - declares that "Plaintiff's Amended Complaint *appears*, again, layering her previous statement that Amended Complaint "was vague and rambling and did not concisely…" that counsel, a legal expert, can then *wisely* interpret, and again espouse her beliefs because this statement does not *appear* to be based on any statement of fact. Rather to demean Plaintiffs clear legal right to be properly served long ago with a final judgment issued by Defendant dismissing #352152; to *bothering* the Defendant, *attacking even*, *launching* "what *appears* to be a due process challenge to the actions of Judge Joneson," adding yet another layer to her previous and opening statement. It is also vague and general enough to be patently false on various levels. *Arguendo,* at face value, *judicial actions* are challenged every single day. That is the construction of the court system, Court of Appeals, Supreme Court, U.S. Supreme Court. It is *Defendant* who *challenges* her *judicial actions* as laid down by Loveland Municipal Code, state law, Colorado and federal Constitution, by refusing to issue and properly serve a final judgment. Counsel's wispy logic is then that *judicial immunity* bars mandamus, that she knows is not true. Counsel cites it in the case law in this same Motion to Dismiss.

55. Absolute immunity has never been a bar to mandamus. Or, from disciplinary actions. *Hoffler v. Colorado Department of Correction*, 27 P3d 371, 373-374 is (Colo. 2001). A remedial reading shows CRCP 106(a)(2) does not recognize absolute judicial immunity (see *Englewood v. Parkinson*, supra.) but was specifically written to take judicial officers to task for the sake of due process. Specific to this proceeding Colorado law and since 1888 mandates that Defendant must issue and properly serve Plaintiff with a valid final determination of #352152.

56. Motion to Dismiss then concludes "Plaintiff's failure to comply with the Colorado Governmental Immunity Act ("CGIA"), the Order dismissing the municipal case in question and

the case law governing writs..." This is an outrage. To begin with, there is no service for the alleged Order, Defendant has pawned off onto the Court, so there is no Order; *and there is no such mandamus case law governing writs*, which is why counsel does not city any: because it is pure fiction. CGIA is a separate and inapplicable section of the law. One never complies with CGIA notice requirements to file CRCP 106 complaints, any more than one complies with Colorado Open Records Act to file for divorce. This is just degrading. Also, is counsel alleging Defendant injured Plaintiff? If so, then state the injury before spending pages arguing CGIA notices. And, finally, and to that end, is Defendant her own government? Is Defendant reigning monarch, Queen of Loveland? If unsure, look at the title. "The title is especially valuable here..." *Yates v. United States, supra.* J. Alito dissenting.

57. Lest it unclear: Mandamus is not tort. *Camas Colorado, Inc. v. Board of County Commissioners*, 36 P.3d 135 (Colo. App. 2001). "Claims for mandamus or injunctive relief are noncompensatory claims and are thus not claims that lie or could lie in tort. See City of Colorado Springs v. Conners, supra; Jones v. Northeast Durango Water District, 622 P.2d 92 (Colo.App.1980)."

58. Defendant then cites the following personal injury cases against government entities:

59. *Trinity Broadcasting, Inc. v. City of Westminster* 848 P.2d (1993) "In this case, we address whether the defendant, the City and County of Denver, waived its immunity for injuries Doreen Heyboer sustained as a passenger on a motorcycle that could not timely brake when a car unexpectedly turned left in front of it. The answer depends on whether a deteriorated roadway is an "unreasonable risk to the health or safety of the public." Immaterial and without relevance.

60. *Medina v. State*, 35 P.3d 443, 453 (Colo. 2001). "Thus, the rule in Colorado is precisely the opposite of the federal system: the state and its subdivisions are subject to the same liability as private entities, unless the General Assembly has affirmatively protected the state from liability through immunity legislation." Denny Constr., 199 P.3d at 750.2 And, "In this case, we clarify the relationship between "maintenance" and "design" under the Colorado Governmental Immunity Act ("CGIA" or "Act"), as it was an accident case. *Also,* immaterial and without relevance.

61. *Villalpando v. Denver Health and Hospital Authority*, 181 P3d, 361(Colo. App.2007) was another personal injury medical malpractice and negligence case that was appealed for notice. And, *Mesa County School District No. 51 v. Kelsey*, 8.P3d 1200, 1206 (Colo. 2000) was a slip and fall. Still, immaterial and without relevance.

62. Then declares "To the extent that Plaintiff alleges a due process violation." Perhaps to the extent that Defendant has acted obstructively, submitting a sham Order: *Borer v. Lewis, 91 P.3d 375 (Colo. 2004)*, citing Weber v. Williams, 137 Colo. 269, 277, 324 P.2d 365, 369 (1958) (stating that "a judgment rendered without service is . . . void") (quoting Great West Min. Co. v. Woodmas of Alston Min. Co., 12 Colo. 46, 53, 20 P. 771, 775 (1888)); A judgment of dismissal with prejudice entered without notice is void. Thompson v. McCormick, 138 Colo. 434, 335 P.2d 265 (1959); Radinsky v. Kripke, 143 Colo. 454, 354 P.2d 500 (1960). That

Defendant is barred from issuing her final determination of #352152 nunc pro tunc as that would vitiate Plaintiff's right to appeal. In Re Marriage of Spector 867 P.2d 181 (1993) "Further, the nunc pro tunc effect of an order as to the parties' rights cannot reduce the time nor defeat the right to seek review. See Joslin Dry Goods Co. v. Villa Italia, Ltd., 35 Colo. App. 252, 539 P.2d 137 (1975)," cited in claims for relief in support of relief sought in Plaintiff's Amended Complaint.

63. Line 5 on page 4 of Motion to Dismiss declares "Plaintiff's assertion of jurisdiction by invoking CRCP 106(a)(2) does not save her Amended Complaint." Invoking? Assertion? That is how Amended Complaint was filed. Front and Center, under *Jurisdiction* "CRCP 106(a)(2)." The factually inaccurate implication then is also that papers defective papers without jurisdiction, got past the clerk's office upon filing. A weak proposition even in general, but particularly with clerk's office of this Court. Larimer County District Court's Office of the Clerk distinguishes itself from those in other places, by continuously engaging in an utterly shocking display of due process and unfettered access to the court. Any forms, instructions and filing requisites, for any type of action, child support, divorce, civil suit, one after the other, are whipped out and quite nicely presented at the counter that any set of papers are complete before acceptance for filing. The clerks even answer questions, if they have to get answers. If to imply that Complaint somehow snuck across the counter unnoticed without *filing* under CRCP106(a)(2) is untrue but a moot point: Any changes were filed the next business day *prior* to proper service. But this is remedial. *"Assertion"* and *"invoking"* and clinched with "save" denote *after* filing and proper service. To create another layer of fiction to support the opening phrase of Motion to Dismiss, that Amended Complaint was "filed by Plaintiff, who is *pro se*, *purports* to be brought pursuant to CRCP 106(a)(2)." To *create* a jurisdictional defect. That would make the Court a party. Thus Motion to Dismiss must be denied.

64. Motion to Dismiss on last page finally addresses the instant issue, "First, she ignores the fact that an order dismissing the action against her was entered nearly two years ago." Of course Plaintiff ignored that purported fact. Plaintiff couldn't help but ignore it. There is no certificate of service for this same alleged Order, submitted in Motion to Dismiss. A service free order is not an order. It is a sham Order. Plaintiff could only "ignore the fact that an order dismissing the action against her was entered nearly two years ago" if Plaintiff had been properly served with the "order dismissing the action." *Ever.* Plaintiff was not. As Motion to Dismiss proves as a fact in submitting said "order dismissing the action," *without a certificate of service*.

65. "Second… mandamus will not 'lie against a court, unless it be clearly shown that such court has refused to perform some manifest duty.' See *Lindsey v. Carlton*, 44 Colo. 48 (1908)." Again. There is no material issue of fact. Motion to Dismiss proves Amended Complaint. The case cited was a mandamus proceeding against a county judge. Decided in 1908. It's doctrine. In preparing Motion to Dismiss, counsel knew that neither judicial immunity, nor restrictions of CGIA bar mandamus – but argued it anyway.

66. *Then,* staggeringly, in the very next sentence, argues absolute immunity bars mandamus citing *Hoffler v. Colorado Department of Correction*, 27 P3d 371, 373-374 (Colo. 2001). Upon further reading, however, after laying down foundation for immunity to determine if statement in the instant case had common law privilege, the court found at 376:

"that a grant of absolute immunity does not shield attorneys from the imposition of CRCP 11 sanctions... In reaching that conclusion we explained that CRCP safeguards the judicial process by compelling attorneys to submit pleadings which are truthful and meritorious arguments." Concluding, "We reasoned that if otherwise immune attorneys are placed above the regulation of the legal profession, the integrity of the judicial process, as well as the purpose upon which a grant of immunity is founded, we would be compromised." *Hoffler v. Colorado Department of Correction, supra.*

67. "'We suspect that the message of a single 30-day suspension from practice would be far clearer than disapproving remarks in a score of appellate opinions. *United States v. Modica,*663 F.2d 1173, 1185 (2d Cir. 1981)."

CONCLUSION

Defendant continues to defy her clear legal duty to issue and properly serve Plaintiff with a final determination of #352152. In the face of a mandamus Defendant attempts to pull a fraud on the Court, in providing this Court with alleged Order dated September 6, 2016 without a certificate of mailing, and is therefore void as a matter of law. A service free order is not an order. There is no material issue of fact and summary judgment should be granted Plaintiff as a matter of law. Defense counsel does not cite the record but attempts to script it, abusing Plaintiff and this Court in the process. Motion to Dismiss is meritless, frivolous and untrue. Defendant and her counsel have acted unethically. In continuing historical pattern, Defendant now through counsel continues to engage in nefarious pursuits in defiance of execution of a clear legal duty: issue and properly serve Plaintiff final determination of #352152, and vacate all subpoenas issued thereunder.

And, it is before this Court that Defendant and her counsel have willfully acted grievously and unconscionably in an ongoing display of low moral turpitude as set forth herein. It is against public interest to countenance such abuse of this Court and of Plaintiff. Plaintiff respectfully requests this Court sanction each and with discipline. Defendant has failed to file an answer. Order dated September 6, 2016 dismissing #352152 was filed without a certificate of service proving it is null and void and of no legal effect as a matter of law. There are no material issues of fact. Summary judgment should be granted Plaintiff as a matter of law. Defendant's Motion to Dismiss is without merit, frivolous and untrue. Motion to Dismiss must be denied as a matter of law; and, for failure to state a claim upon which relief can be granted.

WHEREFORE, for the reasons stated above and all papers heretofore submitted, Plaintiff prays this court:

a) Grant Plaintiff summary judgement that within three business of issuance of Order of this Court Defendant will prepare, issue and properly serve same date dismissal of #352152 at the address of record of this court and in use and possession by counsel with proof of service enclosed and filed this Court.

b) Grant Plaintiff summary judgement that within three business of issuance of Order of this Court Defendant will prepare, issue and properly serve same date Order to Vacate in#352152 subpoenas thereunder, with copy and proof of service enclosed at the address of record of this court and in use and possession by counsel with proof of service enclosed and filed this Court.

c) Deny Defendant's Motion to Dismiss in its entirety.

d) Sanctions

e) all ancillary fees and costs of enjoining Plaintiff to execute her clear legal duty.

In the alternative:

Order to Custodian of Records of the City of Loveland, to produce attendance records times and dates only (see Jefferson County Education Association v. Jefferson County School District R-1 and Lisa Pinto in her Official Capacity as Custodian Of Records. COA No 5CA1066 (Decided: January 14, 2016) for Defendant from August 15, 2016 through September 15, 2016 *and* Loveland Municipal Court calendar for each day August 15, 2016 through September 15, 2016 in accordance with ; Relief described a - e as set forth above; all such and other relief as is just and proper.

Dated: May 22, 2018

Kendra Musgrave
P.O. Box 1101
Greeley, Colorado 80631

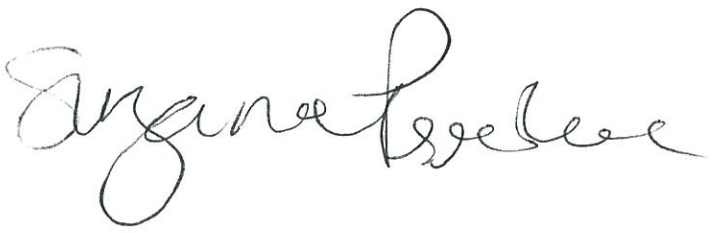
To:

Clerk of the Court
Larimer County District Court
Larimer County Law and Justice Center 201
LaPorte Avenue Fort Collins, CO 80521-2764

Cathy Havener Greer, Esq.
Wells, Anderson & Race, LLC
1700 Broadway, Suite 1020
Denver, Colorado 80290

CERTIFICATE OF MAILING

I hereby certify that I am not a party to the proceeding and that on May 25, 2018 I served a true and correct copy of Plaintiff's Corrected Reply and Cross Motion for Summary Judgment in a secure envelope left in a U.S. post box to Cathy Havener Greer, Esq. of Wells, Anderson & Race, LLC at 1700 Broadway, Suite 1020, Denver, Colorado 80290



Larimer County, Colorado, District Court Larimer County Law and Justice Center 201 LaPorte Avenue Fort Collins, CO 80521-2764 (970) 498-6100	
Kendra Musgrave *Plaintiff* vs. Loveland Municipal Court Judge, Gerri R. Joneson *Defendant*	□COURT USE ONLY□ District Court Case No.: Division:
Kendra Musgrave, *Pro se* P.O. Box 1101 Greeley, Colorado 80631	

REPLY TO DEFENDANT'S MOTION
TO DISMISS AND CROSS MOTION FOR SUMMARY

Kendra Musgrave, Plaintiff, pro se, respectfully submits to this Court her Reply to Defendant's Motion to Dismiss and moves this Court for Summary Judgment pursuant to CRCP 56 and alleges and avers as follows:

CROSS MOTION FOR SUMMARY JUDGMENT

1. Defendant had actual notice and knowledge that Plaintiff had filed a written notice with the court which stated that she had discharged Mr. Kokus and was representing herself and therefore all orders and court notices were to be served and mailed directly to Plaintiff.

2. Defendant has proved to this Court that her alleged Order dated September 6, 2016 was not served and herself proven it void as a matter of law. There is no certificate of service. It is therefore null and void and without any legal effect even as a matter of law almost as old as the state: "a judgment rendered without service is . . . void." *Great West Min. Co. v. Woodmas of Alston Min. Co.*, 12 Colo. 46, 53, 20 P. 771, 775 (1888). It is doctrine.

3. Defendant claims in her Motion to Dismiss, last paragraph, to have issued alleged Order on September 6, 2016; but does not claim to have served it. Defendant defiantly refuse to execute a clear and explicit duty to this day.

4. Colorado law mandates that a final judgment must be not can be i) issued and 2) properly served. There is no discretion or other option. A judicial officer either does or does not. Defendant did not. There is not material issue of fact.

5. Plaintiff is entitled to Summary judgment should be granted on these grounds as a matter of law.

6. Summary judgment should only be entered "when there is no disputed issue of material fact and the moving party is entitled to judgment as a matter of law." *McIntyre v. Bd. of Cty. Comm'rs*, 86 P.3d 402, 406 (Colo. 2004).

7. Defendant has failed to file an answer. There is no material issue of fact. Plaintiff is entitled to summary judgment on these grounds as a matter of law.

8. Defendant's alleged Order dated September 6, 2016 without proof of service upon Plaintiff, appears to be a final determination of #352152, but in fact Defendant's alleged Order is simply paper. The alleged Order is fraudulent. Thus, Defendant attempts to pull a fraud on the Court, rather than execute her clear and explicit duty to render and properly serve Plaintiff with a final determination in #352152. Defendant should be sanctioned.

9. To date Defendant and by extension her counsel continue to play a shell game pawning off onto the Court and Plaintiff, a void Order dismissing #352152: but that Defendant herself recognizes as void and therefore refuses to issue an Order to Vacate all of the . she ordered, issued and executed during the pendency of #352152 and which most disturbingly are still outstanding, as Defendant has also proven to this Court with her Motion to Dismiss.

10. Defendant's Motion to Dismiss fails to address and refute Plaintiff's assertion that Defendant improperly issued and ordered multiple out of state subpoenas, as wherein the last known of record, she issued on her own motion and signed as "District Court Judge."

11. Plaintiff filed September 12, 2016 Motion to Vacate all subpoenas she ordered and issued during the during the pendency of #352152. Plaintiff's unopposed Motion to Vacate is still pending before the Loveland Municipal Court also without determination.

12. There is no material issue of fact. Plaintiff is entitled to summary judgment on these grounds as a matter of law.

WITH REGARD TO DEFENDANT'S
MOTION TO DISMISS

13. CRCP 106(a)(2) provides that a district court may issue an order granting relief:

> "Where the relief sought is to compel a lower judicial body, governmental body, corporation, board, officer or person to perform an act which the law

specially enjoins as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such lower judicial body, governmental body, corporation, board, officer, or person. The judgment shall include any damages sustained." (Emphasis.)

14. Defendant presides as the lower judicial body, Loveland Municipal Court, Larimar County. Plaintiff filed he CRCP 106(a)(2) Complaint in Larimar County District Court, a higher judicial body.

15. Amended Complaint opening statement declares Plaintiff "seeking mandamus relief under Colorado Rules of Civil Procedure 106(a)(2) for issuance of final determination of Loveland Municipal Proceeding 352152, and vacation of all subpoenas." Emphasis.

16. Defendant proved with Motion to Dismiss and enclosed alleged Order dated September 6, 2016 ***without service*** and therefore null and void and of no legal effect, that Defendant to date *still* has not executed her clear and explicit duty to issue and properly serve final determination of final determination of Loveland Municipal Proceeding 352152, and vacate all subpoenas she issued ordered and executed during the pendency of 352152. And, there is no other means to compel Defendant to fulfill her clear and explicit a clear duty there was no other means; Defendant

17. Amended Complaint's specific relief is claimed on five different grounds supported by CMCR 242, Rule 5, *Borer v. Lewis, 91 P.3d 375 (Colo. 2004)*, citing Weber v. Williams, 137 Colo. 269, 277, 324 P.2d 365, 369 (1958) (stating that "a judgment rendered without service is . . . void") (quoting Great West Min. Co. v. Woodmas of Alston Min. Co., 12 Colo. 46, 53, 20 P. 771, 775 (1888)); A judgment of dismissal with prejudice entered without notice is void. *Thompson v. McCormick*, 138 Colo. 434, 335 P.2d 265 (1959); *Radinsky v. Kripke*, 143 Colo. 454, 354 P.2d 500 (1960). That Defendant is barred from issuing her final determination of #352152 nunc pro tunc as that would vitiate Plaintiff's right to appeal. *In Re Marriage of Spector* 867 P.2d 181 (1993) "Further, the nunc pro tunc effect of an order as to the parties' rights cannot reduce the time nor defeat the right to seek review. See *Joslin Dry Goods Co. v. Villa Italia, Ltd.*, 35 Colo.App. 252, 539 P.2d 137 (1975)."

18. In accordance with CRCP 106, Plaintiff prayed this Court enjoin Defendant answer with issuance and proper service of her final determination of #352152 dated no earlier than the service date of this Complaint and no later than 21 days from service thereof; and grants to Plaintiff all ancillary fees and costs of enjoining Plaintiff to execute her clear legal duty.

19. Instead, Defendant obtained counsel who on May 15, 2018 filed Motion to Dismiss, enclosing a conspicuous #352152 dismissal Order dated September 6, 2016 without proof of service and thus void.

20. Defendant's Motion to Dismiss fails to address and refute Plaintiff's assertion that Defendant was on vacation and otherwise not present in court on 9/6/16 and therefore she purportedly signed the Order on a date when she was not officially present in the court or

courthouse performing her judicial functions and therefore her signature on the Order bearing the date of 9/6/16 renders such Order as being null and void without any legal effect

21. Defendant's Motion to Dismiss failed to address or refute Plaintiff's assertion that Defendant has no choice but execute her clear and explicit duty to issue and properly serve Plaintiff with a valid Order dismissing #352152.

22. Without touching on the merits, Defendant's Motion to Dismiss launched into ad hominem fulminations, characterizations, spurious claims attributed to Amended Complaint for the sake of deriving a false conclusion through tortured logic, such as "Plaintiff alleges a due process violation, her claims lie in tort." Perhaps Plaintiff should be hurt by that statement."

23. Defendant thus "alleges" and thus masquerading her "due process violation" as Plaintiff's. After portraying pro se Plaintiff as ignorant, aggressive, abusing the court "*purports to brought*" under CRCP 106(a)(2) to attribute false assessments such as these as Plaintiff's. Motion Dismiss is written entirely in this manner. The last paragraph is

24. By definition, writs like habeas corpus, are not torts. Claims for mandamus are not tort. *Camas Colorado, Inc. v. Board of County Commissioners*, 36 P.3d 135 (Colo. App. 2001). "Claims for mandamus or injunctive relief are non compensatory claims and are thus not claims that lie or could lie in tort. See City of Colorado Springs v. Conners, supra; Jones v. Northeast Durango Water District, 622 P.2d 92 (Colo.App.1980)."

25. Motion to Dismiss never concludes or relates why Plaintiff does not have a clear right to be properly served with a valid issuance of Defendant's final determination in #352152. Or what legal basis for pawning off onto the Court and Plaintiff a backdated Order with no certificate of service.

26. Counsel should be sanctioned.

27. Defendant's Motion to Dismiss dated May 15, 2018 must be denied. It is without merit, frivolous and unethical and fails to state a claim upon which relief can be granted.

REPLY ARGUMENT TO MOTION TO DISMISS

28. Opening sentence of Introduction to Motion to Dismiss begins with the Amended Complaint "filed by Plaintiff, who is *pro se*, *purports* to be brought pursuant to CRCP 106(a)(2)." (emphasis). Just the first few words is an effective ad hominem. Counsel's phrasing while deluding a jurisdictional issue, in the process comes off as explaining even mansplaining in little womaning Plaintiff who is of the same sex. While simultaneously mocking her for exercising her rights. The equally obnoxious connotation is that any of the proletariat should assert rights. Counsel never not disputes or argues Amended Complaint, then concluded it was without merit; but rather labled, degraded it and made it worthless for the person filing it with this tactical ad hominem opening. Counsel builds her argument on these few starter words.

29. Counsel's argument is therefore entirely ad hominem well and subtly executed. By design, and not simply in artful phrasing since counsel keeps adding to it, laying a foundation of

with it to make spurious claims subtle, purposely vague generalizations with false conclusions in a continuous uninterrupted flow. The argues it as fact. It is very difficult to address for the added layers, but without ever actually address or disputing any specifics of Amended Complaint. Completely different from "neighbor kicked a dog, what a jerk," that is fair enough and at least ethical. As opposed to Counsel's initial premise that banks on bias, pro se, even a woman pro se.

30. Truly, unlike counsel, pro ses may not have access to a computer, internet, let alone the luxury of unlimited access to WestLaw, Loislaw, associates, paralegals, word processors, proof readers, secretaries and nothing else to do. Already at a disadvantage, a pro se may be physically impaired, or visually impaired but for what are basic issues of law without being inflated by counsel, choose to address it themselves. Many CRCP 106 proceedings are filed pro se for the clarity of legal issues: someone on a government salary who refuses to do their job.

31. Motion to Dismiss continues with a combination of straw man and generalization fallacy argument: "and challenges the judicial actions..." What challenges? What judicial actions? Challenging, even to use that word, judicial actions or judicial inactions is exactly what the statute was written for. The underlying statement is exercising a right is the same as challenging authority. That is distressing. Dickensian. By the crafted logic of this phrase, Defendant has *proven* Plaintiff deserves to be punished but for what?

32. The bias shown in just that choice of subtle phrasing, and in the context of this case, i.e., that rights are afforded to the public according to the convenience of their betters, identifies why Plaintiff had no other means than to file under CRCP 106(a)(2). Then, and this is pure craft, for the subtle hysteria of the phrasing of Plaintiffs *challenges* to Defendant's *judicial actions*, it that it is not readily apparent that the statement is patently false: Plaintiff *challenges* Defendant's judicial *inaction* in this mandamus: CMCR 232(b) mandates Defendant issue and properly serve Plaintiff with final judgement in #352152, already and CMCR 212(d) mandated immediate dismissal of #352152. No choice and no exceptions.

33. Continuing in what is still the first sentence, "in a municipal court matter." Again, vague. What "municipal court matter?" Is it something we are not supposed to talk about? That has a connotation. Thus the counsel has created a picture of a female pro se who is aggressive "challenges" authority, Defendant's *judicial actions*, as if Plaintiff didn't like her directives, thus this is just *personal* and Plaintiff "*purports* this is brought under CRCP 106(a)(2)." But we know... Or is counsel implying it was simply a matter of bumping cars in the parking lot? Then Defendants would not have executed judicial actions. And, thus careful to be vague.

34. Counsel's sentence thus reads "Plaintiff's Amended Complaint filed April 16, 2018 filed by Plaintiff, who is pro se, purports to be brought pursuant to CRCP 106(a)(2) and challenges the judicial actions of Loveland Municipal Court Judge Geri R. Joneson in a municipal court matter."

35. First paragraph of Plaintiff's Amended Complaint reads, "In seeking mandamus relief under Colorado Rules of Civil Procedure 106(a)(2) for issuance of final determination of Loveland Municipal Proceeding 352152." Also, there is no "purports to be brought."

36. It is almost a direct contradiction with the deficit supplemented with a negative personal impression. The clear, false and negative message from that one statement hat Plaintiff's Amended Complaint is meritless. Without raising a single argument.

37. Counsel for the Defense continues employing the Socratic method. That is 'When the debate is lost, slander becomes the tool of the loser." Next sentence reads "The Amended Complaint and exhibits thereto are vague and rambling and do not concisely show that Plaintiff is entitled to relief." *Incoherent* is not wordy enough. The Court might miss that. Arguendo, even accepting that, for this reason Defendant does not have to issue and properly serve Plaintiff with a final determination in #352152? And, if relief was only available to those whose papers were not vague and rambling and do not concisely show [a] Plaintiff is entitled to relief," then what relief is there for any plaintiff? Verizon. Apple. Their attorneys. Insurance litigators.

38. However, the Defense counsel disproves her own statement: if Amended Complaint "did not concisely show that Plaintiff is entitled to relief," why submit a void Order with the same Motion to Dismiss? Why bother? Further still, exactly how are "exhibits...vague and rambling?" But for a few, it was all court forms, adjourn slips, etc. Also, by nature an exhibit supports a specific statements or arguments. Exhibit<u>s</u> in the plural is then a collection of specific statements. This sentence is self defeating.

39. xIt is particularly abusive in the context of this proceeding because Defendant's municipal court denied even a printout of the register of actions/docket for#352152. Defendant's court has maintained uninterrupted control over the record, denying all access that Plaintiff could not obtain transcripts.

40. Basic to any CRCP 106 proceeding is an existent record. A mandamus to compel as is in this instant case, is more difficult by nature than prohibition, because it requires proving a negative: that a clearly dutiful act was not executed. Whereby a full record is mandatory. Plaintiff was thus put to an extreme advantage.

41. The first adjourn slip, however, and each thereafter each with two counts of "aiding and abetting non-payment," show a fatal jurisdictional defect, a defective summons and complaint and alone prove Defendant's clear and explicit duty to issue a dismissal immediately, then and there, under CMCR 212(d) to issue and properly serve dismissal upon Plaintiff. While simultaneously proving that she did not.

42. Also, the very word "non-payment" mandates immediate dismissal CMCR Rule 212(d) as that is far beyond Defendant's subject matter jurisdiction and scope of authority because "no Colorado statutory or constitutional provisions authorizing the municipal court to hear civil claims for money," Englewood v. Parkinson, 703 P.2d 626 (COA 1985). Citing Denver County Court v. Lee, 165 Colo. 455, <u>439 P.2d 737</u> (1968) the court ""the municipal governing body of each city or town shall create a municipal court to try and hear all alleged violations of ordinance provisions of such city or town"" and "[t]he city's home rule charter limits jurisdiction of the municipal court to actions arising under the city charter and ordinances *Englewood v. Parkinson*, supra.

43. Adjourn slips, notices, inter alia, demonstrate that over a course of time Defendant did not issue and properly serve Plaintiff with a final determination; and, thus also a showing of willful refusal to dismiss; and, thus showing there is no other means than mandamus to force Defendant to execute her clear legal duty, as well as for sanctions.

44. However, speaking of "vague and rambling," Counsel continues "Plaintiff's Amended Complaint *attempts* to assert five claims for relief" (emphasis); because, again, "Plaintiff, who is pro se" can't comprehend these things too wonderful for her and has inflicted the court with this *attempt*. It is a backhanded way to proclaim Plaintiff does not know thus bolstering the previous assertion that Amended Complaint is incoherent. Counsel then projects *her own* claims "1) First claim for relief the right to represent oneself." Patently false statement and/or just deliberately obtuse (this is not tort): Proclaimed below the caption of Amended Complaint is the relief sought for mandamus "issuance of final determination of Loveland Municipal Proceeding 352152, and vacation of all subpoenas. For that relief, Plaintiff asserted that because she was entitled to proceed pro se Defendant had to acknowledge her and serve her. Incorporated under First Claim is the record proving Defendant's court long had notice of address and when counsel was discharged as set forth in paragraphs 1-34 under the subheading "as is record and fact," under heading under "general allegations," and incorporated in First Claim.

45. Lest there be any issue, as is doctrine that Colorado courts do not exalt form over substance. One can figure it out. However, that would defeat the purpose of ridiculing and with ridiculous claims easily obtain dismissal, while preventing the Defendant from every issuing and serving her own dismissal as is Plaintiff's right. Each of these three opening sentences are unethical as well as degrading in and of itself. That meaning however "is determined [not only] by reference to the language itself, [but also by] the specific context in which that language is used," *Yates v. United States*, 135 S. Ct. 1074 citing Robinson v. Shell Oil Co., 519 U. S. 337, 341. J. Alito concurring.

46. Taken together: "Plaintiff's Amended Complaint, filed April 16, 2018 by Plaintiff, who is pro se, purports to be brought pursuant to CRCP 106(a)(2) and challenges the judicial actions of Loveland Municipal Court Judge Geri R. Joneson in a municipal court matter. The Amended Complaint and exhibits thereto are vague and rambling and do not clearly show that Plaintiff is entitled to relief. Plaintiff's Amended Complaint attempts to assert five claims for relief 1) First Claim for Relief, the right to represent oneself; 2) Second Claim for Relief for issuance of a judgment; 3) Third Claim for Relief for service of all 4) Fourth Claim for Relief challenging the propriety of a potential nunc pro tunc order; and.."

47. That from here, and by the end of the counsel's argument wherein Defense counsel appears to be jonesing for a Trinity hearing; Counsel's opening sentence then appears as a dog whistle calling the Court's attention to convert Amended Complaint filed by "Plaintiff, who is pro se," into *anything else but* i.e., *create* a jurisdictional defect. And so engaging in taking advantage of the pro se status of Plaintiff traversing the parameters of this CRCP 106(a)(2), sponsoring counsel in protracting litigation and get the City of Loveland to pay for it. With Defendant still not issuing and properly serving Plaintiff a final determination of #352152. Just like before...

48. Whether or not this was counsel's intent, and even if Plaintiff is badly mistaken, that Plaintiff, who is pro se, but upon initial reading and without even reading the last page, could

so construe Motion to Dismiss, creates the appearance of impropriety. And, even if Plaintiff reads to much into it, that too is the problem or even the intent of sweeping opinion/argument, one can read a phonebook into it. The Motion to Dismiss is spurious, *frivolous* and unethical, but that that would seem to be for a purpose, it then creates the appearance of impropriety.

49. Fair or not, counsel is credentialed, accomplished in complex litigation and not someone new to the field. In artful phrasing or common error seem improbable. *Noblesse oblige*. Counsel should be sanctioned.

50. Continuing, "5) Fifth Claim for Relief for an alleged violation of Plaintiff's asserted right to due process." It is a patently false statement and blatant engineering. It was not an allegation but statement of fact that Plaintiff was/is denied access to the record, the file, and even a printout of the docket, showing the Court there is no other means fundamental to a CRCP 106(a)(2) claim for mandamus.

51. Speaking of "vague and rambling:" Motion to Dismiss then declares "The essence of Plaintiff's Amended Complaint." Again. How does one assert or refute "essence?" Further supports for her previous two declarations that Amended Complaint was incoherent - this is three layers deep now- because Plaintiff is pro se. With this launch, of her beliefs counsel thus *wisely* interprets - entirely *different* Amended Complaint, seeking different relief.

52. From the record, "findings essential to the determination of the judgment have preclusive effect, superfluous findings, (or vague beliefs) do not. Zabriske v. Zolato, 22 AD2d 620, 257 N.Y.S.2d 965 (1st Dept. 1965); Silberstein v. Silberstein, 218 NY 525 (1965); 'We will recapitulate, we hope for the last time, in the light of the number of occasions it has been necessary to do so, the basic ground rules. Essentially, the prosecutor is to argue the case...He is not to interject his personal beliefs." States v. Cotter, 425 F.2d 450, 452 (1st Cir. 1970) (emphasis.)

53. The rest of the sentence, true to established pattern – vague false premise/false conclusion - then declares that "Plaintiff's Amended Complaint *appears*" *another* declaration that the Amended Complaint is incoherent, that counsel can complete her own negative and false rendition, "to be a due process challenge to the actions of Judge Joneson" - supporting her previous declaration as fact that Plaintiff *challenges* the *judicial actions* – "and is therefore barred judicial immunity." Just vague enough and patently false even in taking that assertion at face value. *Judicial actions* are challenged every single day. That is the construction of the court system, Court of Appeals, Supreme Court, U.S. Supreme Court.

54. However, there is no judicial immunity from mandamus. Or, from disciplinary actions. *Hoffler v. Colorado Department of Correction*, 27 P3d 371, 373-374 is (Colo. 2001). A remedial reading shows CRCP 106(a)(2) does not recognize immunity (see *Englewood v. Parkinson*, supra.) but was specifically written to take judicial officers to task for the sake of due process, which mandates since 1888, that Defendant must issue and properly serve Plaintiff with a valid final determination of #352152 .

55. Motion to Dismiss then concludes "Plaintiff's failure to comply with the Colorado Governmental Immunity Act ("CGIA"), the Order dismissing the municipal case in question and the case law governing writs..." This is an outrage. Defendant through her counsel has tried to

pawn off onto the Court and Plaintiff an alleged Order without certificate of service in attempting to pull a fraud on the Court, so there is no Order; *and there is no such mandamus case law governing writs*, which is why none is cited: it is pure fiction. CGIA is a separate and inapplicable section of the law. One never complies with CGIA notice requirements to file CRCP 106, any more than one complies with Colorado Open Records Act to file for divorce. This is just degrading. Further, is Defendant alleging that she injured Plaintiff? If so, then state the injury before spending pages arguing CGIA notices. And, finally, and to that end, is Defendant a reigning monarch, Queen of Loveland? Is Defendant her own government? If unsure, look at the title. "The title is especially valuable here because it reinforces what the text's nouns and verbs independently suggest...this particular one does not cover every noun in the universe with tangible form," *Yates v. United States, supra.* Such as Colorado Government Immunity Act.

56. Lest it unclear: Mandamus is not tort. *Camas Colorado, Inc. v. Board of County Commissioners*, 36 P.3d 135 (Colo. App. 2001). "Claims for mandamus or injunctive relief are noncompensatory claims and are thus not claims that lie or could lie in tort. See City of Colorado Springs v. Conners, supra; Jones v. Northeast Durango Water District, 622 P.2d 92 (Colo.App.1980)."

57. Defendant then cites the following cases:

58. *Trinity Broadcasting, Inc. v. City of Westminster* 848 P.2d (1993) "In this case, we address whether the defendant, the City and County of Denver, waived its immunity for injuries Doreen Heyboer sustained as a passenger on a motorcycle that could not timely brake when a car unexpectedly turned left in front of it. The answer depends on whether a deteriorated roadway is an "unreasonable risk to the health or safety of the public." Immaterial and without relevance.

59. *Medina v. State*, 35 P.3d 443, 453 (Colo. 2001). "Thus, the rule in Colorado is precisely the opposite of the federal system: the state and its subdivisions are subject to the same liability as private entities, unless the General Assembly has affirmatively protected the state from liability through immunity legislation." Denny Constr., 199 P.3d at 750.2 And, "In this case, we clarify the relationship between "maintenance" and "design" under the Colorado Governmental Immunity Act ("CGIA" or "Act"), as it was an accident case. *Also,* immaterial and without relevance.

60. *Villalpando v. Denver Health and Hospital Authority*, 181 P3d, 361(Colo. App.2007) was another personal injury medical malpractice and negligence case that was appealed for notice. And, *Mesa County School District No. 51 v. Kelsey*, 8.P3d 1200, 1206 (Colo. 2000) was a slip and fall. Still, immaterial and without relevance.

61. Then declares "To the extent that Plaintiff alleges a due process violation." Certainly in the sense that Defendant has pulled a fraud on the Court submitting a void Order with no proof of service *Borer v. Lewis, 91 P.3d 375 (Colo. 2004)*, citing Weber v. Williams, 137 Colo. 269, 277, 324 P.2d 365, 369 (1958) (stating that "a judgment rendered without service is . . . void") (quoting Great West Min. Co. v. Woodmas of Alston Min. Co., 12 Colo. 46, 53, 20 P. 771, 775 (1888)); A judgment of dismissal with prejudice entered without notice is void. Thompson v. McCormick, 138 Colo. 434, 335 P.2d 265 (1959); Radinsky v. Kripke, 143 Colo. 454, 354 P.2d 500 (1960). That Defendant is barred from issuing her final determination of #352152 nunc pro

tunc as that would vitiate Plaintiff's right to appeal. In Re Marriage of Spector 867 P.2d 181 (1993) "Further, the nunc pro tunc effect of an order as to the parties' rights cannot reduce the time nor defeat the right to seek review. See Joslin Dry Goods Co. v. Villa Italia, Ltd., 35 Colo.App. 252, 539 P.2d 137 (1975)."

62. Line 5 on page 4 of Motion to Dismiss declares "Plaintiff's assertion of jurisdiction by invoking CRCP 106(a)(2) does not save her Amended Complaint." Invoking? Assertion? That is how it was filed. There was no after the fact "assertion" or "invoking" anymore than "purports to be brought" as this scripted Motion to Dismiss pretends for a false record.

63. Motion to Dismiss finally on last page finally addresses the issue "First, she ignores the fact that an order dismissing the action against her was entered nearly two years ago." Of course Plaintiff ignored that purported fact. Plaintiff couldn't help but ignore it. There is no certificate of service with that same alleged Order. When was it ever mailed to and properly served on Plaintiff?

64. "Second... mandamus will not 'lie against a court, unless it be clearly shown that such court has refused to perform some manifest duty.' See *Lindsey v. Carlton*, 44 Colo. 48 (1908)." This was a mandamus proceeding against a county judge. Defendant or rather counsel knew it was doctrine that absolute judicial immunity and CGIA has *never* applied to mandamus, but argued it knowing full well it was frivolous and that Defendant. And, still enclosed a sham Order with this Motion to Dismiss.

65. *Then,* staggeringly, in the very next sentence, knowing full well absolute immunity cannot be injected into a mandamus proceeding, again, *attempts* to inject it citing *Hoffler v. Colorado Department of Correction*, 27 P3d 371, 373-374 (Colo. 2001). However upon reading further, after laying down foundation for immunity to determine if statement in the instant case had common law privilege, found at 376:

> "that a grant of absolute immunity does not shield attorneys from the imposition of CRCP 11 sanctions... In reaching that conclusion we explained that CRCP safeguards the judicial process by compelling attorneys to submit pleadings which are truthful and meritorious arguments." Concluding, "We reasoned that if otherwise immune attorneys are placed above the regulation of the legal profession, the integrity of the judicial process, as well as the purpose upon which a grant of immunity is founded, we would be compromised." *Hoffler v. Colorado Department of Correction, supra.*

CONCLUSION

In the face of mandamus Defendant *still* has not executed her clear and explicit duty even to issue and properly serve Plaintiff with a final determination in #352152. In continuing historical pattern, Defendant has chosen instead to act obstructively to pull a fraud on the Court with a sham Order without a certificate of service, rather than submit to statutory and constitutional mandates

and execute her clear legal duty: issue and properly serve final judgement. Before this Court Defendant and her counsel have acted willfully in an ongoing display of low moral turpitude and grievous acts as set forth in herein. It is against public interest to countenance this abuse. Plaintiff respectfully requests this Court sanction each and recommend discipline.

There are no material issues of fact. Summary judgment should be granted Plaintiff as a matter of law. Defendant's Motion to Dismiss is void of merit and frivolous and has added no substance to this proceeding and must be denied for failure to state a claim upon which relief can be granted.

WHEREFORE, for the reasons stated above and all papers heretofore submitted, Plaintiff prays this court:

a) Grant Plaintiff summary judgement that within three business of issuance of Order of this Court Defendant will prepare, issue and properly serve same date dismissal of #352152 at the address of record of this court and in use and possession by counsel with proof of service enclosed and filed this Court.

b) Grant Plaintiff summary judgement that within three business of issuance of Order of this Court Defendant will prepare, issue and properly serve same date Order to Vacate in#352152 each of the subpoenas she has issued, ordered and executed served upon each party, with copy and proof of service enclosed at the address of record of this court and in use and possession by counsel with proof of service enclosed and filed this Court.

c) Deny Defendant's Motion to Dismiss in its entirety.

d) Sanctions

e) all ancillary fees and costs of enjoining Plaintiff to execute her clear legal duty.

In the alternative:

Order to Custodian of Records of the City of Loveland, to produce attendance records times and dates only for Defendant from August 15, 2016 through September 15, 2016 *and* Loveland Municipal Court calendar for each day August 15, 2016 through September 15, 2016; Relief described a - e as set forth above; all such and other relief as is just and proper.

Dated: May 22, 2018

Kendra Musgrave
P.O. Box 1101
Greeley, Colorado 80631

To:

Clerk of the Court
Larimer County District Court
Larimer County Law and Justice Center 201
LaPorte Avenue Fort Collins, CO 80521-2764

Cathy Havener Greer, Esq.
Wells, Anderson & Race, LLC
1700 Broadway, Suite 1020
Denver, Colorado 80290

CERTIFICATE OF MAILING

I hereby certify that I am not a party to the proceeding and that on May 22, 2018 I served a true and correct copy of Plaintiff's Reply and Cross Motion for Summary Judgment in a secure envelope left in a U.S. post box to Cathy Havener Greer, Esq. of Wells, Anderson & Race, LLC at 1700 Broadway, Suite 1020, Denver, Colorado 80290

05-22-18