

COLORADO SUPREME COURT

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FILING ID: 9FD9926BFBC78
CASE NUMBER: 2022SA287

RAE ANN WEBER, et al.,

Petitioners,

Vs.

JENA GRISWOLD, et al.,

Respondents.

Appeal from the 2nd Judicial District of Denver

The Honorable Judge Alex C. Meyers

District Court Case No. 2022CV032191

PETITIONERS' APPENDIX 2

Volume 2 of 5 - Pages 54 to 91

Gary D. Fielder, Esq.
1435 Stuart St.
Denver, CO 80204
(p) 303-650-1515
gary@fielderlaw.net

Counsel for Petitioners

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Affidavit of Record

STATE OF COLORADO / COUNTY OF El Paso

DATE FILED: August 1, 2022 5:30 PM

FILING ID: C5592922466BD

CASE NUMBER: 2022CV32191

The undersigned, David Winney, declares under penalty of perjury under the laws of Colorado that the foregoing is true and correct:

1. I am over the age of 18 and am a resident of the state of Colorado. I have personal knowledge of the facts herein, and, if called as a witness, could testify to the truth and accuracy thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. I affirm that

When I discovered that instead of working on tasks I really needed to complete on Saturday, I'd need to be at the El Paso County Clerk and Recorder's office most of the day. Then I was planning on being in church with my wife this morning and have a day of rest with her, I found out that I needed to be on a long conference call in the early morning with our lawyers and with the rest of our fellow candidates in El Paso County who had our Primary elections / votes manipulated and stolen from us. Did we all witness this happening to us firsthand? Well, yes, we did. While I cannot say we could watch each specific vote switched or compromised in person, we certainly watched the clear effects of that in person together, real time on TV, the night of our Primary Vote June 28th watch party. One local TV channel even called the race for a heavy win by Lynda Zamora Wilson with a huge margin. Later, it was flipped so she lost!

Seven of us candidates in El Paso County officially called for a hand recount of those same ballots. Many people donated. On Monday, July 25th, we all presented a letter officially asking for a hand recount. Chuck's office responded with a cost estimate which was exorbitant and unrealistic. We were not deterred. We all showed up with certified checks in hand and our letter to pay for whatever amount we had money to pay. Some were full payment. Others were partial payment. Only those with full payment of the exorbitant amount were allowed to participate in the recount effort. This is not only unfair but is disenfranchising some of the candidates who paid partial amounts and our donors and our voters.

This arbitrary estimate and cost for recount is not based on anything articulated in the rules that govern recounts. It is not uniformly applied to each candidate. Yes, the amounts are the same. However, in each of our races, the number of votes cast for each of us are much different based on the size of the district covered by our positions. Some are county-wide and some cover districts of various sizes. Those who had to turn in their recount requests to the Colorado Secretary of State, their story becomes even more arbitrary and even bizarre. The only "uniformity" applied by Chuck to our cost estimates for recount was the unjustified \$10,000 amount for an unidentified vendor present for programming. For what? There should be no need for an unidentified vendor being on site and paid \$250 / hour for 40 hours for each candidate. This involvement of a vendor who is not under any oath, yet performing an official function is unnecessary and cost prohibitive for contemplated work is vague and ambiguous at best. These exorbitant charges of \$10,000 each is unreasonable, arbitrary, and capricious. I am both shocked and disgusted that those in our government, who are there to serve us and protect our God-given rights, seem to only be there to "milk" us candidates along with our donors and supporters to enrich them and their buddies. Chicanery is the nicest word I can find for this behavior. When I am forced to be outside of the recount room, rather than inside, what I can observe is there are no uniform application of any rules. Some people must sign in and sign out when entering or leaving the room. Some do not. There are no clean and uniform measures to guard the

critical chain of custody of ballots for recount. One person is sleeping half the time. Why is someone in that room, ostensibly paid by us, to sleep and be so disinterested in the accuracy and flow of what is going on with the tests and recount? Our candidates in the room are and must be alert always! Any of us disenfranchised candidates outside of the glass or any of our supporters would be more than happy to be an alert observer and participant in that room! Our many rights are being violated by this high-cost, low performance "recount" done by unreliable, unpredictable people, machines, and arbitrary processes. The supposed "race" to complete this prior to another arbitrary deadline is based on false pretense. One designated watcher for Tina Peters said the LAT starts tomorrow (Monday 8/1) in Jefferson County. When candidates inside the room proposed that Chuck shut this down for Sunday and let the candidates and his people go home for rest and resume Monday, the report was his response was something like, anyone can just take an hour off to go "do that" for their religious observance. How crude a response was that! Now, I understand that this point could be considered hearsay. But there we all were, stuck there the rest of Sunday, diligently observing, making note of, and even taking pictures and videos of what was going on in our recount. With volunteers who would be glad to help, we likely could have completed a hand recount by now! Chicanery is the nicest word I can find for Chuck's behavior. He's a candidate in the El Paso County races. What business does he have inside that room? We should be protected from state action that violates our rights to equal protection, freedom of expression and due process. Chuck Broerman and his messy, haphazard operation is clearly not set up to protect ANY of our rights during this machine recount.

A hand recount using Chuck's office staff to supervise and using the ocean of volunteers that would likely show up to help throughout the entire process could possibly be completed in a fraction of the time and maybe a fraction of the money yet covers all the races for the seven candidates who have officially requested a hand recount. The money already offered and still available by all seven candidates could likely pay for an entire hand recount effort, including food for all who are involved and prove to be a low-cost, high performance accurate recount result that would have the added benefit of exponentially improving the public trust in this Primary Election, and in our elected officials, regardless of who is proven to be the winners in each race!

The County Commissioner meeting was cancelled this last Tuesday. But, when I addressed the EPC County Commissioners on Tuesday 7/19 before they broke out to go into Executive Session, I gave them a challenge. With the public trust clearly tanking in the Dominion Voting Manipulation Machines and in the MULE Ballot Trafficking Drop Boxes, and hitting rock bottom on the "election processes", we should get rid of these voting subversion tools, restore full transparency every step of the way, and restore an iron-clad chain of custody for every ballot. The proof is now voluminous for how these "election tools" add to the potential corruption in elections and how they virtually eliminate chain of custody and how they completely eliminate transparency. I said the task of researching, learning about breaches in and restoring Public Trust in our elections and election processes, including Full Transparency, is NOT up to us. We should not have to pay for this effort. As our elected officials, this task falls squarely on their shoulders to completely restore transparency in all processes and restore OUR Vote and OUR Voice! And thus, their trustworthiness!

I, David Winney, hereby declare under penalty of perjury, under the laws of the United States of America and Colorado that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "David Winney". The signature is written in a cursive style with a horizontal line under the name.

Affidavit of Record

STATE OF COLORADO/COUNTY OF EL PASO.

DATE FILED: August 1, 2022 5:30 PM
FILING ID: C5592922466BD
CASE NUMBER: 2022CV32191

The Undersigned, Todd M Watkins, declares under penalty of perjury under the laws of Colorado that the foregoing is true and correct:

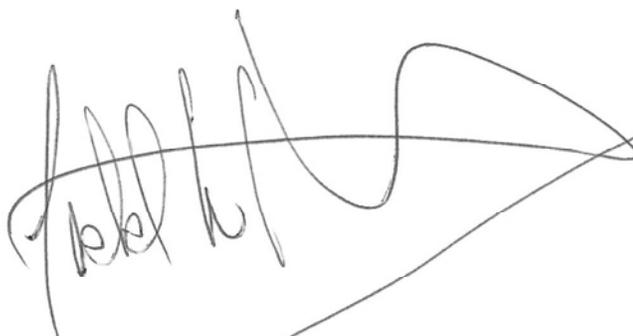
1. I am over the age of 18 and am a resident of the state of Colorado. I have personal knowledge of the facts herein, and, if called as a witness, could testify to the truth and accuracy thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. I affirm that I am a candidate for the office of sheriff of El Paso County, Colorado for the Republican Party (GOP) and participated as such during the 2022 El Paso County, Colorado GOP Primary race that concluded on June 28, 2022.
4. I contest the fairness and impartiality of the 2022 GOP primary election due to the fact that Clerk and Recorder Charles “Chuck” Broerman is/was a GOP candidate in that race for El Paso County Treasurer.
5. I also contest the fairness and impartiality of any and all challenges, inquiries, and/or examinations of the 2022 El Paso County primary election results due to the fact that Clerk and Recorder Charles “Chuck” Broerman is/was a GOP candidate in that race for El Paso County Treasurer.
6. Furthermore, all of the presumptive winning nominees for the GOP primary for El Paso County offices were endorsed by Chuck Broerman, who, in his capacity as Clerk and Recorder for El Paso County, served as the election official for the 2022 primary election.
7. In addition to serving as the election official for the 2022 El Paso County primary election, Chuck Broerman also served as a canvass board member charged with the responsibility of certifying the election’s results.
8. A candidate in this race serving as not only the election official for his own race, but for the races of his close colleagues, whom he endorsed for their campaigns (and who in turn endorsed him), is an obvious conflict of interest and seriously erodes any sense that the election would be conducted fairly and impartially.
9. A candidate serving as one of three canvass board members that decides the veracity and accuracy of an election in which he is a candidate as well as his close colleagues, whom he endorsed and who endorsed him, seriously challenges any sense that the canvass board conducted itself fairly or impartially.
10. On or about July 14, 2022, the El Paso County canvass board certified the 2022 El Paso County primary election.
11. It is noted that the canvass board did not unanimously decide to certify the primary election as the El Paso County Republican Party member (appointed by the county GOP chair) dissented certification based on several issues concerning the accuracy and integrity of the election and the subsequent results.
12. The canvass board certified the election with two of three members assenting, with Chuck Broerman being the deciding vote.

13. The certification of the election established Chuck Broerman and his close colleagues, all of whom currently serve as officials in the El Paso County government and all of whom Chuck Broerman publicly endorsed, as the GOP nominees for their respective races for the November 2022 general election.
14. The results of the 2022 GOP primary election do not reflect patterns and processes that are statistically possible and, in fact, present serious and probable reasons to suspect incorrect outcomes and/or massive errors in the election that favor(ed) the presumptive GOP nominees for the El Paso County general election (November 2022).
15. For the reason(s) stated above (4-7), I requested that a recount of the 2022 El Paso County GOP primary election.
16. I submitted my request to the El Paso County Clerk and Recorder via personally delivered, notarized letter on July 25, 2022.
17. In my request for recount, I asked for the cast vote records (CVR) in order that I might make a more informed decision as to how to proceed in protecting my rights as a candidate.
18. The Clerk and Recorder denied my request to these records and stated that they would not be available until the first week of August, long after the statutory period for requesting the recount.
19. Denial of the CVR deprived me of my rights to consider information that should be publicly available to any person who requests access to it and further deprived me of my right to make an informed and reasoned decision as to my next steps as a candidate.
20. There is no reasonable explanation as to this denial other than to impede my ability to contest my race and deprive me of rights as a candidate and as a citizen.
21. In my request for a recount, I specifically requested that my recount be conducted manually using the ballots cast during the primary election and not be conducted using the same machines that I suspect to be inaccurate and massively flawed.
22. On July 26, 2022, I received an email from El Paso County Director of Elections Angie Leath informing me that any recount for my race would be conducted using the same methods and machines used to tabulate the primary election.
23. This email informed me that the Clerk and Recorder was statutorily required to be conducted thusly (Citing CRS 1-10.5-102).
24. This is an erroneous statement as the statute cited does not require the same manner of tabulation.
25. This statute allows discretion as to the manner of recount and does not constrain the clerk and recorder to the manner/method of recount.
26. Denial of my request for a manual recount is a deliberate attack on my rights to examine the results of my election in a fair and transparent manner that would give me confidence in the true results.
27. On July 26, 2022, I received a cost estimate for the recount of my primary race in the amount of \$20,819.87. I was further instructed, via email from El Paso County Director of Elections, Angie Leath, that the full amount was due to the Clerk and Recorder's office by the end of the next business day, July 27, 2022.

28. On the morning of July 27, 2022, I sent an email request to Angie Leath asking for a reconsideration of the recount cost estimate, based on the fact that several of the bid items were arbitrarily derived and had no explanation for what the charge entailed and how the figure was determined. E.g. \$10,000 for “vendor program support.”
29. Despite my inquiry, I was never given an explanation for a) what was meant by “vendor program support,” b) who the “vendor” is/was, c) what program the “vendor” was supporting, or d) why program support was necessary for a recount.
30. Despite my objections that the recount cost was unfair, capricious, and unnecessarily prohibitive to my ability to exercise my rights as a candidate, the El Paso County Clerk and Recorder denied my request to reconsider the recount cost estimate on the afternoon of July 27, 2022.
31. At approximately 2:20 pm on July 27, 2022, I arrived at the El Paso County Clerk and Recorder’s Office and presented Elections Director Angie Leath with a cashier’s check for \$3,811.87 and explained to her that I was only able to procure that amount in the unreasonably short time given to me as a candidate contesting an election.
32. I further explained that I was in the process of accruing/procuring the remaining amount in order to meet the \$20,819.87 threshold determined by the Clerk and Recorder.
33. After a phone call with the Colorado Secretary of State’s office, Angie Leath informed me that the El Paso County Clerk and Recorder’s office was not permitted to accept any amount other than the full amount in order to proceed with a recount. The cashier’s check was returned to me and I departed the building.
34. Point of consideration: On July 13, 2022, Colorado candidate for US Senate, Ron Hanks, also contested his primary race and received a cost estimate from the El Paso Clerk and Recorder in the amount of \$8,545.87.
35. The process for a recount of Candidate Hanks’ race would be identical to mine as the scope for both our races is inclusive of all of El Paso County.
36. There is no logical, or fair reason for the capricious and exorbitant increase for my recount estimate (\$12,274.00) other than to deliberately deprive or obstruct me of my right to contest my race.
37. On Friday, July 29, 2022 and Saturday, July 30, 2022 I observed the conduct of the recount of two El Paso County GOP primary races (Clerk and Recorder and Coroner) and two Colorado State primary races (State Senate District 9 and Secretary of State). The candidates contesting these races are, respectively, Peter Lupia, Dr. Rae Ann Weber, Lynda Zamora-Wilson, and Tina Peters (not present in El Paso County during this time period).
38. On Friday, July 29, 2022 I observed the Clerk and Recorder’s office perform a logic and accuracy test of seven Dominion ballot scanning/reading machines.
39. The Clerk and Recorder employed approximately 4,200 “test ballots” that had been created and used for this same test in May of 2022, prior to the 2022 El Paso County primary election.
40. Upon completing the first run or batch of approximately 4,200 test ballots through one of the Dominion ballot scanning/reading machines, the Clerk and Recorder elections staff

were clearly distressed upon learning that 2,2068 of the test ballots were referred for manual adjudication.

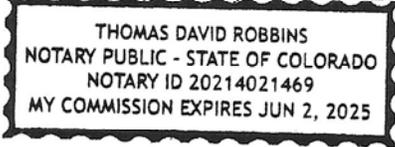
41. The elections staff clearly did not expect such an anomalously high rate of adjudication and struggled to explain why this had occurred and what their next steps should be.
42. Ultimately, the elections staff called the Colorado Secretary of State's office to seek instructions.
43. The elections staff was instructed to conduct the same test(s) with the same test ballots through the remaining six machines and perform the requisite manual adjudication as indicated by the test(s).
44. The remainder of that day, July 29, 2022, was spent completing logic and accuracy tests of four Dominion ballot scanning/reading machines.
45. July 30, 2022 was spent completing the logic and accuracy test(s) of the remaining three Dominion ballot scanning/reading machines.
46. Despite the unexpected and confounding rate of adjudicated ballots, the Clerk and Recorder officially and publicly proclaimed the logic and accuracy test to be complete and 100% accurate.
47. The fact that the logic and accuracy test results performed in May 2022 in advance of the primary election (using the same machines and the same test ballots) were vastly different was blamed on the Colorado Secretary of State requiring that the machines be adjusted to a finer setting to cause more adjudications.
48. Why this setting was not used during the actual primary election is not known.
49. The difference in machine setting between the primary election and the recount erodes confidence in the results of both the primary election as well as the current recount.
50. If the recount setting is more accurate and provides better tabulation results, then El Paso County voters in the 2022 primary election have been disenfranchised.
51. If the recount setting is unnecessarily parsimonious, then this deprives the candidates of their right to due process during the recount.
52. In either scenario, the difference in the manner of scanning/reading ballots is inequitable and injurious to free and fair elections.

A handwritten signature in black ink, appearing to be 'John H. ...', is written over a large, thin, diagonal line that spans across the bottom half of the page.

NOTARY ACKNOWLEDGMENT

STATE OF COLORADO)
) SS.
COUNTY OF EL PASO)

Subscribed to and sworn before me, the undersigned Notary Public, on this 31ST day of July, 2022, by Stefan Watkins, who personally appeared before me and whose name is subscribed to the following letter, and acknowledged to me that he executed the same.



Notary Public for Colorado
Thomas David Robbins
Date commission expires:
02 / Jun / 2025

Affidavit of Record

STATE OF COLORADO / COUNTY OF EL Paso.

The undersigned, Peter Lupia, declares under penalty of perjury under the laws of Colorado that the foregoing is true and correct:

1. I am over the age of 18 and am a resident of the state of Colorado. I have personal knowledge of the facts herein, and, if called as a witness, could testify to the truth and accuracy thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. I affirm that:

DATE FILED: August 1, 2022 5:30 PM
FILING ID: C5592922466BD
CASE NUMBER: 2022CV32191

I am currently an in-the-room watcher/observer of an election recount effort, that I requested as a candidate in the 2022 Republican Primary, at the El Paso County (EPC) Clerk & Recorders office.

At the end of the Dominion tabulating machine driven ballot counting session held on Sunday, July 31, 2022, I asked for a review of the total ballots scanned for the day and the total of ballots adjudicated (reviewed by humans) as a result of some ballot abnormality. It was explained to me by El Paso County Clerk & Recorder employee Karl Nordstrom that every ballot scanned by any Dominion machine must "pass through" the adjudication portion of the system on its way to being fully accounted for at the main server. I was told that the vast majority of ballots pass through without any additional review, however, those with any sort of ballot marking discrepancy are held by the adjudication system until reviewed and approved via a human interaction. This sounded fairly straightforward.

When I was provided with end of day statistics I was shown, and simultaneously reviewed on the main system screen with Karl, the following figures:

27,197 = the total ballots scanned by all Dominion tabulating machines over the course of the day.

19,749 = the total ballots that had successfully cleared the "pass through" of the adjudication portion of the system.

1,324 = the number of ballots that had been fully adjudicated to completion.

557 = the number of ballots pending review in the adjudication system.

The figures viewed leave me with grave concern that although ballots are being scanned through a Dominion machine, those ballots are not being fully tabulated and accounted for. I believe votes are being adulterated or completely removed from the overall tally. 27,197 total ballots scanned less 19,749 total ballots cleared through adjudication less 1,324 ballots fully processed through adjudication less 557 ballots pending review in adjudication leaves 5,567 ballots unaccounted for. Why are the ballots counted numbers so dramatically different from the votes counted numbers? Where did the missing 5,567 votes go?

4. I affirm I am under no duress to sign this affidavit, and I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 1st day of August, 2022. At this address 2627 Flintridge Dr, CO Springs, CO, 80918

I, Peter Lupia, hereby declare under penalty of perjury, under the laws of the United States of America and Colorado that the foregoing is true and correct to the best of my knowledge.

AFFIANT SIGNATURE: 

Affidavit of Record

STATE OF COLORADO / COUNTY OF EL Paso.

The undersigned, Peter Lupia, declares under penalty of perjury under the laws of Colorado that the foregoing is true and correct:

1. I am over the age of 18 and am a resident of the state of Colorado. I have personal knowledge of the facts herein, and, if called as a witness, could testify to the truth and accuracy thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. I affirm that:

DATE FILED: August 1, 2022 5:30 PM
FILING ID: C5592922466BD
CASE NUMBER: 2022CV32191

I am currently an in-the-room watcher/observer of an election recount effort, that I requested as a candidate in the 2022 Republican Primary, at the El Paso County (EPC) Clerk & Recorders office.

Despite being told by El Paso County Clerk & Recorder Chuck Broerman that none of the Dominion system ballot tabulating machines used in EPC have any internet or external connection capabilities, on July 29, 2022, his staff freely demonstrated and explained otherwise. Clearly visible on the home start screen of each of the seven machines being used to tabulate results for the recount there are check box options across the top to enable either a wireless internet connection, a wireless Bluetooth connection, or both, when the machine is first activated each morning. While personally explaining and readily demonstrating this fact, employee Karl Nordstrom confirmed the machines are fully capable of those types of connections, but that those capabilities are not activated. It was explained that the machines are considered "verified" as not active or connected by the mere fact that neither box is checked. Karl explained the failsafe for keeping wireless connections from occurring is that someone must enter a password before the machine will let them check a box.

I have been continually told the Dominion machines do not have the capability to connect with, or be connected to, any manner of wireless network, yet I now have visual and verbal confirmation of that feature being readily available on each machine. This verification coincides with the Dominion machine build specifications issued by the SOS and raises the question of remote access capabilities being built into the machines, also as specified in the SOS build specifications. I have been told that remote access capability does not exist, despite it being a feature of the SOS design/build specifications, just as I have been told there are no wireless connection capabilities.

Visual and verbal evidence, confirmed as accurate by Karl, clearly shows that the Dominion system ballot tabulating machines are in-fact capable of multiple types of wireless communication connections. Having now been shown unequivocal proof that the SOS's specifications are being followed, I must now assume that the machines also contain the remote access/control features specified by the SOS

What I have clearly discovered and learned is that the ballot recount effort that I am paying nearly \$21,000 to Clerk & Recorder Broerman to complete, under the on-site guidance of a verified Dominion representative, is being undertaken on Dominion ballot tabulating machines which are both capable of wireless connections to outside sources and remote controllable. How can I expect to receive a fair, open, transparent, and honest recount if the Dominion machines are capable of being under outside control and other influences via a wireless connection? The answer is I cannot.

4. I affirm I am under no duress to sign this affidavit, and I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 1st day of August, 2022. At this address 2627 Flintridge Dr, CO Springs, CO, 80918

I, Peter Lupia, hereby declare under penalty of perjury, under the laws of the United States of America and Colorado that the forgoing is true and correct to the best of my knowledge.

AFFIANT SIGNATURE: 

Affidavit of Record

STATE OF COLORADO / COUNTY OF EL Paso.

The undersigned, Peter Lupia, declares under penalty of perjury under the laws of Colorado that the foregoing is true and correct:

1. I am over the age of 18 and am a resident of the state of Colorado. I have personal knowledge of the facts herein, and, if called as a witness, could testify to the truth and accuracy thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. I affirm that:

DATE FILED: August 1, 2022 5:30 PM
FILING ID: C5592922466BD
CASE NUMBER: 2022CV32191

I am currently an in-the-room watcher/observer of an election recount effort, that I requested as a candidate in the 2022 Republican Primary, at the El Paso County (EPC) Clerk & Recorders office. I have noted the following as being alarming:

1. I personally viewed and received a written report from Clerk & Recorder staff showing nearly 24,000 ballots were logged as returned to the office as “undeliverable” by the USPS. This demonstrates very poorly maintained voter rolls and represented nearly 24,000 opportunities for fraud to occur with ballots sent to improper recipients. An unknown number of ballots were not returned as undeliverable, despite being such, and remained in circulation. I have great concern of illegal ballots having been introduced into the Primary Election.
2. A ballot storage box, allegedly closed on each end by a numbered security zip tie run through the handle and an aligned small hole in the box lid, was brought into the counting room from storage with a lid so damaged and torn that one security zip tie did not need to be cut off or removed in order to open the box. The fix was to simply replace the lid and apply new seals. This demonstrates a lack of ballot security and a poor chain of custody as anyone could have access to the ballots without needing to break the security seal. This constitutes a clear violation of 8 CCR 1505-1-20.11d and requires compliance attention.
3. One of the official 2022 Primary Election storage records, is in the form of validation stickers placed on each envelope of ballots being stored (ten envelopes per box with up to 100 ballots per envelope). These stickers were being altered by at least one counting judge during the ballot scanning process. The judge in question was the same judge who had originally completed the validation stickers during the Primary Election count. It was observed that the judge had failed to fully complete the validation stickers when the envelopes were originally filled, logged, and stored. Now, while completing the second validation sticker being added on the envelope to log the recount activity, the judge was also going back and filling in the missing information on the original sticker. This issue was observed to occur numerous times during the session. This demonstrates a lack of proper training of judges, insufficient oversight of judges by election officials, and lack of adherence to election protocols, rules, possible state statutes, and potentially federal election rules/laws regarding the recording and storage of election documents. This sticker represents part of the official election records by their attachment to ballot storage envelopes that are officially logged and stored. This exemplifies the weak protocols in place and a willingness to break election rules and protocols by a Democrat counting judge.

4. I affirm I am under no duress to sign this affidavit, and I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 1st day of August, 20 22. At this address 2627 Flintridge Dr, CO Springs, CO, 80918

I, Peter Lupia, hereby declare under penalty of perjury, under the laws of the United States of America and Colorado that the forgoing is true and correct to the best of my knowledge.

AFFIANT SIGNATURE: 

Affidavit of Record

STATE OF COLORADO / COUNTY OF El Paso. The undersigned, Summer Groubert, declares under penalty of perjury under the laws of Colorado that the foregoing is true and correct: (SUMMER GROUBERT)

DATE FILED: August 1, 2022 5:30 PM

FILED ID: C550291266ED
CASE NUMBER: 2022CV32191

1. I am over the age of 18 and am a resident of the state of Colorado. I have personal knowledge of the facts herein, and, if called as a witness, could testify to the truth and accuracy thereof.

2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.

3. I affirm that:

I believe I have the right to audit the voter record and have the results officially recounted. My option to do that through CRS 1-10.5-106 has been wrongfully removed from me.

According to the official election results, there were 12,707 ballots cast within Colorado House District 18.

When I submitted my request for a hand recount of the in-district voter-verified paper records to the Secretary of State on July 26, 2022, the Secretary of State was then required to comply with CRS 1-10.5-106 which states, "Before conducting the recount, the election official who will conduct the recount shall determine the cost of the recount within one day of receiving the request to recount, notify the interested party that requested the recount of the cost, and collect the costs of conducting the recount. If the request is filed with the secretary of state, the secretary of state shall determine the cost of the recount by adding the individual amounts determined by the political subdivisions conducting the recount".

I received a Cost Determination from the Secretary of State on July 27, 2022 in the amount of \$21,594.85. That is a cost of approximately \$1.70 per ballot cast in-district.

Unlike other recount requestors, I did not receive an attachment with the itemized detail of the cost determination.

On or after July 13, 2022 a Cost Determination with itemized detail with a uniform page for every county in Colorado was sent to Recount Requestor Ron Hanks.

Reviewing the amounts that had been provided to Recount Requester Ron Hanks, El Paso County estimated 10 cents per ballot cast, I expected an amount not more than 31 cents be charged to recount my in-district ballots.

On July 28, 2022, I sent a request for the itemized estimate and disputed the charges to recount the in-district ballots in an email sent to the Colorado Secretary of State and included the El Paso County Clerk and Recorder and Teller County Clerk and Recorder as recipients.

I have not received a response from the Secretary of State. I am wondering why I was not provided the attachment that every other recount requestor received?

There I was with very few options, my candidate committee had raised enough funding for the purpose of a hand recount to pay 33 cents per in-district ballot.

Thornton's email containing the total amount of the HD18 Recount Cost Determination was sent after 3pm. This time frame removes several funding and transfer options. I left work as soon as possible and drove to the bank just barely making it prior to close of business. I was in shock at the excessive cost and had a cashier's check made out for an amount in excess of 33 cents per ballot. I have been a bookkeeper for 20 years and prepared and paid hundreds of payments to government agencies. While all amounts I had prepared may have at times felt excessive they always had regularity and consistency in the method of calculation. As the bank teller asked me who to make the cashier's check out to, I followed the directions and said "Colorado Department of State" which felt like I was following the directions on a ransom request.

I could see no reason why I would be charged 2000% more per ballot than a US Senate Candidate. Again, it felt like a ransom request. The amount was astonishingly unexpected as Ron Hanks had been charged around \$8,500.00. The amount of \$21,594.85 could include (170 days x 8 hours x \$15.50 hourly wage for an election judge) + \$315.87 supplies.

The anticipated time for hand recount of the voter-verified paper records in House District 18 would be around 130 election judge hours.

My cashiers check for \$4,242.42 would cover 250 election judge hours give or take the supply costs. I could be more exact if I were provided an itemized explanation of the costs for in-district ballots.

It is my understanding of the statutes and the rules that my request was for the ballots cast within the race for the district requested. I understand the law to say that I do not have the right to count out-of-district ballots. Therefore, I believe it wrongful to pay for out-of-district ballots to be recounted.

It is to the best of my understanding that the recount is being attempted in reference to CRS 1-10.5-102 which is a statute that begins "CO REV ST § 1-10.5-102. Recounts for congressional, state, and district offices, state ballot questions, and state ballot issues" which begins CRS 1-10.5-102(1) "If the secretary of state determines that a recount is required" to the best of my knowledge I am not aware that the Secretary of State has required a recount.

It is to the best of my understanding that the county employees believe it would be hard to separate the district from other districts because instead of the historical method of casting ballots precinct by precinct, ballots are mixed all together in a manner prohibitive to an audit. To further damage my hope of fair treatment and equitable resolution it is, to the best of my understanding, that the machine recount that is currently underway could include the GOP House District 18 2022 Primary Race at a click of a mouse, checking a box on a computer screen. If that is the case then upon the realization of that, neither the Secretary of State nor the El Paso County Clerk & Recorder has made any effort to include me or House District 18 in the current machine recount process.

I am receiving an unfair distribution of costs for the size and scale of Republican ballots cast in House District 18. I have not received an itemized explanation of costs. I am being denied access to a hand recount. I am being charged \$13,000 more than the El Paso County cost estimate for the Republican US Senate race just two weeks prior at the rate of 500% more per ballot cast within the race.

I was witness to the following situation on July 31, 2022: The containers that the El Paso County Clerk and Recorder's office are using appear to be bankers boxes which are not uniform in brand, age or condition. The condition of the boxes and lids vary. Some boxes appear to have been reused multiple times, some have red tape hanging from the lid. Tears from tape appear on the sides where the tape appears to have been detached

Some boxes are so old they have discoloration, some appear to be so old I would describe them as vintage, as they appear to be several decades old.

In another room that contained racks of unopened ballots still in envelopes, I was able to read writing on boxes that were stacked together. At least two boxes had the year 2022 written on them and a few boxes to the right is a box that had writing and the year 1995 written in permanent marker. Several boxes have mismatching lids. Box tampering would no longer be obvious because of the condition of the boxes.

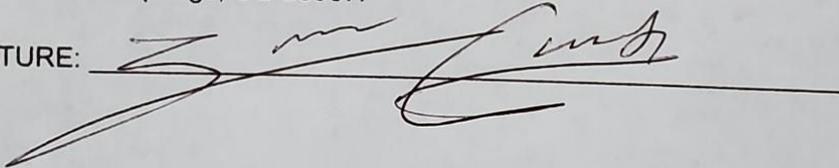
On July 31st 2022 after 3:30pm, I witnessed a male election judge working in a single chair computer station handle a banker's box that had a blue zip tie secured on both handles and the election judge lifted the lid from the center and slid paper, that appears to be a log, on top with both zip ties remaining secured in place. The people viewing from the hallway collectively made an exclamation of error "Ohhhh" which alerted Angie Leath to view the violation and appeared to acknowledge the point of concern. Leath failed to inspect the contents of the box, failed to reconfirm the labels, and failed to reconfirm the log in my presence. The box was returned to the rack and was not moved in my presence.

I can affirm that Secretary of State Attorney Caleb Thornton reminded me via email on July 26, 2022 and July 27, 2022 of my ability to request for a Rule 10.12 rescan and I did not request the Rule 10.12 rescan. I feel it is wrong to be charged for an unrequested Rule 10.12 rescan.

I believe I have the right to audit the voter record and have the results officially recounted. My option to do that through CRS 1-10.5-106 has been wrongfully removed from me.

4. I affirm I am under no duress to sign this affidavit, and I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete. Executed this 1st day of August, 2022. At this address 1340 Hamstead, Colorado Springs, CO 80907.

AFFIANT SIGNATURE:

A handwritten signature in black ink, appearing to be "Angie Leath", written over a horizontal line. The signature is cursive and somewhat stylized.

Affidavit of Record

STATE OF COLORADO / COUNTY OF El Paso.

The undersigned, Lindsay Moore, declares under penalty of perjury under the laws of Colorado that the foregoing is true and correct: Lindsay Moore

1. I am over the age of 18 and am a resident of the state of Colorado. I have personal knowledge of the facts herein, and, if called as a witness, could testify to the truth and accuracy thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. I affirm that on this day, July 31, 2022.

On this day I have witnessed what seems to be a complete and utter breakdown of the voting systems in El Paso, County Colorado as well as a complete violation of the rights of the Candidates. The candidates came to Chuck Broerman on the morning of July 31, 2022 and requested relief of their rights as our right to worship and have a day of rest, the Clerk and Recorder stated that this recount will continue as directed per statute and per the orders of the Secretary of State.

After the request of the candidates was denied, the election judges were notably inside the elections office as the candidates and other election observers were told to wait outside. If this process is to be bipartisan, what are some allowed in the office, while others are told to wait outside? Peter Lupia made a request that the other election judges be removed as to be fair and just to everyone.

After some consideration the director of elections, Angle Leath, made the election judges move to another "break room" so they would not be in line of sight or near any other conversations. Regardless of that effort, at every turn there have been occasions where the chain of custody continues to be broken, and the rules are bent for some, but not others. If we are to have a complete, fair and transparent system, then the rules should be the same for everyone.

Additionally, I personally witnessed the chain of custody of our primary ballots being broken. There was no system in place from the elections department for the recount. No one knows what they are doing. Everyone stands around waiting for someone else to figure out what is supposed to happen next. If they are given an instruction it is given on a sticky note. No Standard Operating Procedures to conduct a recount. The ballots are stored in cardboard bankers boxes, some that are clearly over used and reused from years past. These bankers boxes are sealed with plastic zip ties that have a number on them. Some of these boxes are torn, tattered and there is no feasible way that a zip tie is "safe" and keeping our ballots from being stolen, changed, taken or harmed. This is complete nonsense, how does a torn cardboard box "sealed" with a plastic zip tie keep anything safe? This continued to happen throughout the day as more boxes of ballots were brought out. They were all compromised in some way. After the bankers boxes comes the manilla envelopes with the batches of 100 ballots that are supposed to be inside. On the outside of each of these manilla envelopes are large white stickers that have the date, the number of ballots in side and the signature of the election judge. I witnessed an election judge breaking the entire chain of custody of the ballots for the primary. On one package of ballots, the sticker from the date of the primary count, June 23, 2022, was empty, did not contain a count of ballots that was supposed to be inside the envelope. After this judge scanned the ballots through the machine again for the "recount" he then proceeded to fill in the box that was blank from June 23, 2022 primary, that was previously empty, covering up a mistake from before and completely breaking the entire chain of custody of these ballots. He continued to do this, 4 more times to 4 more envelopes. After he was done with that, I then pointed out, from the other side of the glass window where I was viewing, that he had forgotten to include the log sheet in the box of ballots that he had just "adjusted" the ballot count on. The judge gets up, lifts up the corner of the cardboard box that already had the zip ties back on it and proceeds to jam the paper back into the box that he had forgotten. THIS IS NOT SAFE, THIS IS NOT SECURE, THIS IS COMPROMISED !!!

I Lindsay Moore, hereby declare under penalty of perjury, under the laws of Colorado that the foregoing is true and correct.
August 1, 2022

A handwritten signature in dark ink that reads "Lindsay Moore". The signature is written in a cursive style with a large, rounded initial "L" and a long, sweeping underline for the "e" at the end.

Affidavit of Record

STATE OF COLORADO / COUNTY OF EL PASO

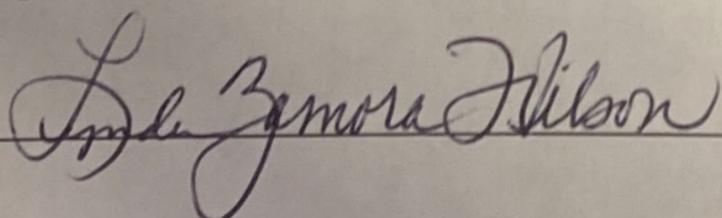
The undersigned, Lynda Zamora Wilson, declares under penalty of perjury under the laws of Colorado that the foregoing is true and correct:

1. I am over the age of 18 and am a resident of the state of Colorado. I have personal knowledge of the facts herein, and, if called as a witness, could testify to the truth and accuracy thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. I affirm that
 - I was denied my citizen right to have a complete hand count of the El Paso County 2022 Primary Election. Elections belong to the people and we have a right to have a hand count.
 - Key decision-making information such as the election CVR data, was withheld from candidates. Colorado clerks informed this data would not be released until 28Jul2022 (after the deadline to contest an election). Not only was this a violation of my right as a candidate, but it increased uncertainty in the decision to request a recount.
 - When I submitted my request for a recount to the Secretary of State, they responded with a cost for the recount but without an itemized cost list (as required by statute). I had to request an itemized cost list.
 - I was charged an unfair, non-uniform, burdensome cost of \$20,819.87 for a recount of 30,848 ballots. Note: \$20,819.87 is the same cost for a full county-wide recount containing over 145,000. I objected to the exorbitant costs to the Secretary of State but was denied any reduction in costs.
 - I received an email from the Secretary of State on 28Jul2022, at 8:09pm, stating the following: *“Our understanding is that El Paso County will begin the recount of this and other races tomorrow morning at 8AM.”* Not only was I given less than 12 hour notice for a recount, but without location and certainty. I had to request a confirmation on location.
 - During the recount, there was biased judges. On multiple occasions, one female judge displayed agitation (shaking head and disdainfully looking at me) when I approached the scanner at her station. Another judge told people to stay 6 feet away, making it impossible to see the ballot results on the scanner.
 - Due to the unanticipated long process of the Logic and Accuracy test, the El Paso Clerk mandated that the recount would continue on a Sunday. I requested to not have a count on Sunday as it was the Sabbath for many. The Clerk denied our request.

4. I affirm I am under no duress to sign this affidavit, and I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed the 1 day of July, 2022, at this address: 4207 E. Muledeer Dr #C, USAFA, CO 80840.

I, Lynda Zamora Wilson, hereby declare under penalty of perjury, under the laws of the United States of America and Colorado that the forgoing is true and correct to the best of my knowledge.

AFFIANT SIGNATURE:  Date: 1 Aug 2022



Affidavit

01 August 2022

STATE OF COLORADO / COUNTY OF El Paso
The undersigned, Rae Ann Weber, declares under penalty of perjury under the laws of Colorado that the foregoing is true and correct: (AFFIANT NAME)

1. I am over the age of 18 and am a resident of the state of Colorado. I have personal knowledge of the facts herein, and, if called as a witness, could testify to the truth and accuracy thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. I affirm that

Affidavit for Court Filing

This affidavit is written after much reflection and consideration of the interaction that I have had with the Office of the Clerk and Recorder of El Paso County since announcing my official candidacy for Coroner of El Paso County. Since that time I have been treated unfairly and with overt partiality which I believe is a serious violation of the duties required of the Office of the Clerk and Recorder.

I have requested a recount and the cost required to complete the recount per the Revised Colorado State Statutes as a candidate for the office of Coroner for El Paso County. I have complied and produced the stated funds that are required for the recount per the Clerk and Recorders office within the time allowed. Producing these funds has been a personal financial hardship. I have worked as a member of the The El Paso County Coalition for Recount which is dedicated to achieving a recount which we and thousands of our supporters feel is needed and just. The El Paso County Coalition for Recount has prioritized this recount beyond our own personal lives and personal finances. Countless citizens have funded this effort with their hard earned dollars at this time of economic hardship and uncertainty. We have worked tirelessly to raise the exorbitant amount asked of us for a recount and complied with the very tight deadline of one day to present \$20,819.72 at the demand of the Office of the Clerk and Recorders office. "We The People" value free and fair elections and have decided that a recount must be done in order to achieve these fair elections that are essential to our Nation's process in choosing leaders that we trust to govern our county.

The El Paso Clerk and Recorder's office is not providing consistent requirements for access to recounts both Ron Hanks, candidate for US Senate, and Tina Peters, candidate for Secretary of State, were told that the fee to recount El Paso County would be \$8,500. Then just days later, unfairly, the El Paso County candidates were unexpectedly required by the Office of the Clerk and Recorder to pay more than twice this fee, with no explanation. This exorbitant fee is unfair, and unevenly applied to candidates and appears to be a barrier to candidates to be able to peruse the reasonable request for a recount.

The El Paso County Clerk and Recorder, Chuck Broerman, has openly endorsed several of the supposedly 'winning' candidates of the 2022 El Paso County Primary Republican Race. It is highly unfair



that Mr. Broerman oversaw his own election in this race for Treasurer of El Paso County. This Lack of impartiality is offensive and abusive to the integrity of the election process. Mr. Broerman has openly campaigned with and for three of the supposedly 'winning' candidates. He has taken part in events, publicly denouncing several challengers to these winning incumbent candidates. A clear delineation has been made between the group of currently elected officials; Chuck Broerman, Steve Schleike, Joe Royal, and Leon Kelly and their four respective challengers, all who supposedly 'lost' this primary election. It is highly circumspect that all the candidates that Mr. Broerman chose to endorse all won, while all those that he openly opposed, all supposedly lost. It is unfair to have a public official that has sworn to uphold the duties of the Office of the Clerk and Recorder to both campaign for a preferred candidate, then to oversee the election of the that preferred candidate, and have access to ballots, scanners, tabulators, logs, videos, security, and the entire voting process and choosing the staff that assists in the process. It is an extraordinary showing of partiality, where the overseer of the election has already predicted the winners, in this case, the preferred candidates that Mr. Broerman campaigned with, then to see these predictions all come true. By openly campaigning with and for the sheriff candidate, Joe Roybal, the very concerning question arises, that if there was foul play between the Clerk and Recorder and the Sheriff regarding the election process, would the supposedly 'elected' sheriff be in a compromised position as sheriff with an incentive to then look the other way if evidence was presented of foul play. This is a very serious issue of impartiality and unfair to the candidates of the 2022 primary and to the people of El Paso County.

During the recount process, all of my reasonable requests have been denied by Mr. Broerman. My request for a re-assessment of the cost for a recount was denied. My request to wait a few minutes to begin the Logic and Accuracy testing was denied. My request for a hand recount was denied. My request to have a day to honor my faith, to be with my family and to rest rest was denied even though I have worked tirelessly over the past week and half to meet the deadlines demanded of the Office of the Clerk and Recorder. I was told that Sunday would be a day of rest, but because the Clerk and Recorder's Office was unprepared for the time required to complete the logic and accuracy test; my constitutional right to express my religious faith on the sabbath was denied.

I have observed many concerning events during the process of the recount over the past three days, that have been unfair and have and have violated my right to an impartial election and recount through the Office of the Clerk and Recorder. The process of the recount has been rushed and poorly executed, showing a disregard for the integrity of process of the recount of the election requested by candidates that Mr. Broerman has openly opposed and denounced. I personally have observed many counts of failing of the integrity of the recount process, unfairly striping my constitutional right to a free and fair election with impartial oversight and uniform application of the rules of the election process. I personally witnessed staff sleeping in the recount room, multiple failures of the chain of custody, broken ballot box where the seal is no longer valid, questionable dating of ballot logs, questionably high adjudication rate, abnormal ballot voting pattern of voting for a single back side vote for a low voter turn out race, ie only voted for the coroner, and sequentially single vote for coroner. I have witnessed blue tooth signal coming from inside the count room. It was witnessed yesterday in the count room, that an election judge was caught back dating the voting ballot log multiple times. This is a crime and noting was done about it. This single act alone is justification to call the election into question. I have heard multiple answers being given by the clerk staff as to what the servers in the count room are and where



the back up server is. I have witnessed the moving of ballots with no election judge present or canvas board present. The election judges scanning the ballots do not have a watcher. I, therefore request that this unfair process is halted.

4. I affirm I am under no duress to sign this affidavit, and I declare under penalty of perjury, under the laws of the United States of America and Colorado that the foregoing is true and correct to the best of my knowledge.

Respectfully ,

Rae Ann Weber
Candidate for El Paso County Coroner

DISTRICT COURT CITY & COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	DATE FILED: August 4, 2022 5:01 PM CASE NUMBER: 2022CV32191
<p>Petitioner(s): RAE ANN WEBER, PETER LUPIA, LYNDA ZAMORA WILSON, LINDSAY MOORE, DAVID WINNEY, SUMMER GROUBERT, TODD WATKINS and TINA PETERS</p> <p>v.</p> <p>Respondent(s): JENA GRISWOLD, in her official capacity as Secretary of State for the State of Colorado, and CHUCK BROERMAN, in his official capacity as Clerk and Recorder of the county of El Paso,</p>	<p>Case Number: 22CV32191</p> <p>Courtroom: 209</p>
DELAY REDUCTION ORDER	

All civil courtrooms are on a delay reduction docket.

IF AN ATTORNEY OR PRO-SE PARTY FAILS TO COMPLY WITH THIS ORDER, THE COURT MAY DISMISS THE CASE WITHOUT PREJUDICE. THIS ORDER IS THE INITIAL NOTICE REQUIRED BY C.R.C.P 121 § 1-10, AND C.R.C.P. 41(B)(2).

- A. In all civil actions, the following deadlines must be met:
1. **Service of Process:** Proof of service of process under C.R.C.P. 4 for all defendants must be filed within **63 days** after filing the complaint. After **63 days**, the Court may dismiss the action against any defendant for whom proof of service has not been filed.
 2. **Default:** Motions for judgment must be filed within **14 days** after default has occurred and must comply with C.R.C.P. 121 § 1-14. Reasonable inquiry regarding a person's military status requires confirmation through the Department of Defense's Servicemembers Civil Relief Act website (<https://scra.dmdc.osd.mil>) or equivalent confirmation.
 3. **Trial Setting:** The Responsible Attorney, as defined in C.R.C.P. 16(b)(2), must file and serve a Notice to Set the case for trial and complete the trial setting no later

than **14 days** from the date the case is at issue. Counsel may call the courtroom to set trials only on Tuesdays, Wednesdays, and Thursdays from 10:00 a.m. until noon.

4. **Continuances:** Continuances of trials are disfavored, and continuances of trial are even less likely to be granted if the trial cannot be reset within a year of the filing date of the action. Accordingly, if you schedule your trial toward the end of the one-year period, you should assume that you will not be able to obtain a continuance of the trial.

5. **Cases filed under C.R.C.P. 16:**

- a) **Case Management Conference:** The notice to set trial must also include a notice to set a Case Management Conference to be held no later than **49 days** after the case is at issue. Counsel may call the courtroom to set case management conferences only on Tuesdays, Wednesdays, and Thursdays from 10:00 a.m. until noon.
- b) **Proposed Case Management Order:** At least **7 days** before the Case Management Conference, the parties must file a proposed Case Management Order.
- c) **Waiver of Case Management Conference:** If all parties are represented by counsel, a joint request to waive the case management conference may be included in the proposed Case Management Order. Unless such a request has been granted, counsel must appear for the case management conference.

6. **Cases filed under C.R.C.P. 16.1:**

Certificate of Compliance: Not later than **49 days** after the case is at issue, the Plaintiff (or the Responsible Attorney) must file a Certificate of Compliance as required under C.R.C.P. 16.1(h). No Case Management Order or Case Management Conference is required.

B. Additionally, in all civil actions, the following provisions apply:

1. **Service of this Order:** The Plaintiff or Responsible Attorney must send a copy of this Order to all other parties who enter their appearance.
2. **Related Cases:** An attorney entering an appearance in this case who is aware of a related case is ordered to complete and file in this case an Information Regarding Related Case(s) form, available in Room 256 of the City and County Building or online at:

Date: August 4, 2022

BY THE COURT:



A handwritten signature in black ink, appearing to read "Alex C. Myers".

Alex C. Myers
District Court Judge

DISTRICT COURT OF THE 2ND JUDICIAL DISTRICT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202 (303) 606-2300	DATE FILED: August 4, 2022 5:04 PM CASE NUMBER: 2022CV32191
Petitioner(s): RAE ANN WEBER, PETER LUPIA, LYNDIA ZAMORA WILSON, LINDSAY MOORE, DAVID WINNEY, SUMMER GROUBERT, TODD WATKINS and TINA PETERS v. Respondent(s): JENA GRISWOLD, in her official capacity as Secretary of State for the State of Colorado, and CHUCK BROERMAN, in his official capacity as Clerk and Recorder of the county of El Paso,	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 22CV32191 Division: 209
PRE-TRIAL ORDER	

A. ALTERNATIVE DISPUTE RESOLUTION

The Court will not issue a separate ADR order at this time, but parties may contact the Court Clerk at any time if they wish to have an ADR order entered, provided all parties or counsel for the parties are included in the communication.

B. DUTY TO CONFER¹

Colo. R. Civ. P. 121 § 1-15(8) states that “moving counsel and any self-represented party shall confer with opposing counsel and any self-represented parties before filing a motion.” Rule 121 § 1-15(8) requires the parties to identify and attempt to resolve emerging issues before engaging in motions practice. The duty to confer requires counsel to confer in good faith either by telephone, in person, email, or in writing with any party who might potentially oppose the relief requested. A single unanswered email or phone call is insufficient to comply with the rule. The Court expects the parties to have made (or at least attempted) follow-up in their conferral. (E.g., if a voicemail is left, it must be followed by a second attempt to confer in the form of an additional telephone call or voicemail).

The word “shall” in Rule 121 § 1-15(8) is a mandatory requirement. Before filing a motion, the moving party must confer with any potentially opposing party, as detailed above. “If no conference has occurred, the reason why, including all efforts to confer, shall be stated.” The reason why no conference has occurred must be explained in substantive detail, and a lack of

¹ The Court finds Colorado District Court Judges Frederick Gannett and Juan Villasenor and United States District Court Magistrate Judge Boland’s interpretation of the conferral requirement persuasive and attributes the following discussion to them.

conferral will be excused only under unusual or extraordinary circumstances. On one end of the spectrum, it will not be acceptable for the moving party to make a single phone call, leave a voicemail requesting conferral, and submit a corresponding motion shortly thereafter without the required conferral. On the other hand, the Court will not allow a moving party to be hamstrung by an opposing party if the moving party has made numerous attempts to confer by leaving messages and there is no timely return communication. The Court will evaluate whether parties have satisfied the duty to confer on a case-by-case basis.

The Court also reads Rule 121 § 1-15(8) as applying to *pro se* parties in the same manner as it applies to any attorney entering an appearance before the Court.

C. MOTIONS

1. DO NOT, UNDER ANY CIRCUMSTANCES, COMBINE PLEADINGS (i.e., Defendant's Motion for Summary Judgment and Response to Plaintiff's Motion for Summary Judgment). IF YOU DO, YOUR PLEADING MAY BE STRICKEN *SUA SPONTE*.
2. Plan ahead as "forthwith" motions are discouraged. Due to the electronic filing system, filings are not received by this division at the same time they are filed. If the filing is an emergency and needs immediate attention from the Court, please contact the courtroom clerk and alert them of the filing. However, please note that your emergency may not be considered the Court's emergency.
3. The Court interprets C.R.C.P. 121, § 1-15 to require the moving party to give the non-moving party(s) at least two business days to respond before the moving party files the motion.
4. The parties shall comply with the formatting requirements of C.R.C.P. 10 for every motion.
5. A motion will be followed by a response, and a reply unless this Court has eliminated a reply or other pleading pursuant to C.R.C.P. 121. No other pleadings relating to a given motion will be accepted for filing unless court order permits.
6. The requirements of C.R.C.P. 121 § 1-15 concerning the content of briefs will be strictly enforced. **Except as otherwise outlined in this order, all motions and briefs are limited to 10 pages in length.** Should a party wish to exceed the Court's limit, the party shall seek court approval before filing the motion.
7. The requirements of C.R.C.P. 121 § 1-15 concerning the time for filing motions will be strictly enforced. Extensions of the deadlines are strongly discouraged because they make it unlikely that the motions will be ruled on in advance of trial. The Court may, if appropriate, expedite the briefing schedule.
8. Once motions are at issue, they will be ruled upon as the Court's docket permits, usually without a hearing. Motions hearings will be set so as not to interfere with the conduct of other trials.

MOTIONS FOR SUMMARY JUDGMENT (C.R.C.P. 56)

9. Summary Judgment Motions pursuant to C.R.C.P. 56 shall be filed at least 91 days (13 weeks) before trial.

a. Motion, Page Limits, and Exhibits

This deadline and these procedures contemplate filing a single motion for summary judgment by a party. This deadline applies to any motion under C.R.C.P. 56, even if designated as a cross-motion for summary judgment or motion for determining a question of law. The page limits outlined in C.R.C.P. 121 § 1-15(1)(a) apply. However, the case caption, signature block, certificate of service, and attachments will not count toward the page limit.

b. Exhibits

Exhibits attached to a motion for summary judgment, a response in opposition or a reply must follow the following format. Defendant must label his/her/its exhibits by letters: A, B, C, etc. If Defendant needs to attach more than 26 exhibits, Defendant may instead number his/her/its exhibits starting at 501, 502, 503, etc. Plaintiff must designate his/her/its exhibits by numbers: 1, 2, 3, 4, etc.

When filing any exhibits in support of, or opposition to, a motion, the party must label the exhibit and include its title so that the description appears in the register of actions. For example: “Ex. A, John Smith Decl.” “Ex. 3, Sales Contract.” “Ex. F, Plaintiff Depo.”

Voluminous exhibits are discouraged on summary judgment.

c. Motion Format

Facts Section. The moving party must use the following format: the movant must create a section of the motion titled “Statement of Undisputed Material Facts” and must set forth in simple, declarative sentences, separately numbered and paragraphed, each material fact which the movant believes is not in dispute and which supports movant's claim that movant is entitled to judgment as a matter of law. The movant must avoid adding unnecessary adjectives or adverbs to his or her material facts. In general, the Court finds such descriptors vague and unhelpful to adjudicate summary judgment motions.

Each separately numbered and paragraphed fact must be accompanied by a specific reference to material in the record which establishes that fact. General references to pleadings, depositions, or documents are insufficient if the document is over one page in length. A “specific reference” means the title of the document (e.g., “Exhibit A, Pl. Depo.”) and a specific paragraph or page and line number; or, if the document is attached to the motion, the paragraph or page and line number.

Legal Argument Section. For each claim for relief or defense as to which judgment is requested, the motion must: (a) identify which party has the burden of proof; (b) identify each element that must be proved; (c) for each identified element, identify the material undisputed facts that prove that element and the pinpoint location in the filed record; or

(d) if the respondent has the burden of proof, identify the elements which the movant contends the respondent cannot prove (with reference to the record).

d. Response Format

Facts Section. Any party opposing the motion for summary judgment must create a section of the response titled “Response to Statement of Undisputed Material Facts,” and must respond by deeming the facts “undisputed,” “disputed,” or “undisputed for purposes of summary judgment.” Each response must be made in separate paragraphs numbered to correspond to movant’s paragraph numbering. A “disputed” response must address the fact as tendered by the movant, not a fact that the non-movant wishes had been tendered. Proper responses to a “disputed” fact should be limited to an argument that (1) the particular parts of materials in the record don’t establish the absence or presence of a genuine dispute; or (2) the movant cannot produce admissible evidence to support the fact. The response must be accompanied by a brief factual explanation to support the dispute.

If the non-movant fails to properly address the other party’s assertion of fact as required here, the Court generally will consider the fact undisputed for purposes of the motion.

If the party opposing the motion believes that there are additional disputed (or undisputed) facts which it has not adequately addressed in the submissions made in the facts section, the party must create a separate section of the response titled “Statement of Additional Disputed (or Undisputed) Facts,” and must set forth in simple, declarative sentences, separately numbered and paragraphed, each additional material undisputed/disputed fact which undercuts movant’s claim that it is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact must be accompanied by a specific reference to material in the record which establishes the fact or at least demonstrates that it is disputed/undisputed.

Legal Argument Section. The response must utilize the same format for each claim/defense as set forth above: (a) if the respondent disputes the statement of the burden of proof on necessary elements, it must identify such as disputed and must provide supporting legal authority. (b) If the movant has the burden of proof, the respondent must identify all elements for which there are disputed material facts, as well as provide a brief explanation of the reason(s) for the dispute and specific references to supportive evidence in the record appendix. Stipulation to facts not reasonably in dispute is highly encouraged. (c) If the respondent has the burden of proof, for each element identified by the movant as lacking proof, the respondent should identify the facts and their location in the record that establish that element.

e. Reply Format

Facts Section. At the beginning of the reply, the movant must list the facts that are undisputed and disputed by their respective paragraph number.

The movant must create a section titled “Reply Concerning Undisputed Facts” and must include any **factual** reply regarding the facts asserted in its motion to be undisputed, supported by specific references to material in the record. The reply will be made in

separate paragraphs numbered according to the motion and the opposing party's response.

The movant must create a section titled "Response Concerning Disputed Facts" to respond to those facts claimed to be in dispute, and either admit that the fact is disputed or supply a brief factual explanation for its position that the fact is undisputed, accompanied by a specific reference to material in the record which establishes that the fact is undisputed. The movant's response to undisputed fact must be done in paragraphs numbered to correspond with the opposing party's paragraph numbering.

Legal Argument Section. The movant must respond to the legal arguments made by the respondent and must not raise new issues.

Finally, legal argument is not permitted in the factual sections of the motion/response/reply and should be reserved for the legal argument section(s) of the documents. If, for example, a party believes that an established fact is immaterial, that argument must go in the legal argument section, and the fact should be admitted. If, on the other hand, a party believes that the reference to material in the record does not support the claimed fact, that fact may be disputed accompanied by a brief *factual* argument made under these procedures.

MOTIONS – EXPERT TESTIMONY

10. **Motions challenging expert testimony pursuant to C.R.E. 702 must be filed at least 70 days (10 weeks) before trial unless a different time is permitted by court order.** C.R.C.P. 16(c). Motions shall include the following: (1) identification of the expert witness and separately state each opinion/testimony the moving party seeks to exclude; (2) a response for each opinion/testimony with the specific foundational challenge made to the opinion/testimony, e.g., relevancy, sufficiency of facts and data, methodology. C.R.E. 702 and 703; and, (3) indication of whether an evidentiary hearing is requested, explain why such a hearing is necessary, and specify the time needed for the evidentiary hearing (assuming time is divided equally between the parties).

The Court in its discretion may set a hearing to determine the admissibility of the challenged opinions under the Colorado Rules of Evidence.

MOTIONS IN LIMINE

11. **Motions *in limine* shall not exceed 5 pages and must be filed at least 35 days prior to trial unless a different time is permitted by court order.** C.R.C.P. 16(c). Responses shall be filed no more than **7 days** after the motion is filed, unless a different time is permitted by court order. No replies shall be allowed.

OTHER PRETRIAL MOTIONS

12. **Other pretrial motions must be filed at least 42 days before trial unless a different time is permitted by court order.** Responses shall be filed **14 days** after the filing of the motion unless a different time is permitted by court order. No replies shall be allowed.

D. DISCOVERY

1. Failure to disclose or insufficient/untimely disclosure of any document, exhibit or opinion is undertaken at your own risk. Similarly, delaying discovery until the eve of deadlines and/or trial is undertaken at your own risk. Do not procrastinate in the preparation of your case.
2. **NO WRITTEN DISCOVERY MOTIONS WILL BE ACCEPTED.** The Court will address *ALL* discovery disputes with a discovery hearing (in-person) instead of by formal written motions. A “discovery dispute” means a disagreement involving issues arising under C.R.C.P. 16, 16.1, 26, 30, 31, 33, 34, 35, 36, 37, and 45. The purpose of this procedure is to ensure an expedited and inexpensive resolution of discovery disputes. The following procedures will be in effect in this case:
 - a. If there is a discovery dispute, counsel are expected to confer in a meaningful way to try to resolve it. This means in writing, by telephone or in person. An exchange of emails is not sufficient.
 - b. If counsel cannot resolve the dispute, they shall contact one of the clerks for this court during setting times (Tuesday, Wednesday & Thursday from 10 am – 12 noon) at 303-606-2393. If counsel cannot agree on a date the Court will set the hearing date.
 - c. The dispute will be argued and resolved at the hearing, or taken under advisement with a prompt ruling by the Court. The parties shall file a one-page, concise identification of the discovery issues in dispute (with citations) and provide a copy of any legal authority that might be helpful to the Court, at least 2 days before the hearing. The discovery issues shall be laid out clearly and explain the legal and factual justifications for an objection. This shall be done in lieu of filing a written motion and response. **DO NOT** file any written motion, attachments, etc. unless the Court requests it.
 - d. If a dispute occurs during a deposition, please call the clerk of this courtroom at the above number and advise them about the nature of the dispute. The Court will address the dispute as quickly as possible, based upon the Court’s availability.

E. EXPERTS

1. Disclosure of expert opinions must comply with C.R.C.P. 26(a)(2). As set out in Comment 21 to C.R.C.P. 26, detailed expert disclosures “facilitate the trial, avoid delays, and enhance the prospect for settlement.”
2. Retained Experts shall be limited to testifying on direct examination about matters disclosed in reasonable detail in the written expert disclosures.

3. For non-retained experts (including treatment providers), the Court strictly construes the requirement in C.R.C.P. 26(a)(2)(b)(ii)(a). Non-retained expert disclosures must include “a complete description of all opinions to be expressed and the basis and reasons therefor.” This is required regardless of whether the expert’s opinions formed during treatment are stated in a party’s medical records. A boilerplate statement that the treatment provider “will testify about the plaintiff’s medical records and their impact on the plaintiff’s treatment” does not meet this requirement.
4. Disputes over the adequacy of expert disclosures should be raised at the time of disclosure.

F. CASE MANAGEMENT ORDER

1. The recently amended provisions of C.R.C.P. 16 and 16.1 concerning presumptive and modified case management orders will apply.
2. At the same time as the Notice to Set Trial is filed, the Responsible Attorney shall file a notice to set a Case Management Conference as required in C.R.C.P. 16(d)(1), to be held no later than 49 days after the case is at issue, and shall provide notice of the conference to all parties.
3. Not later than 42 days after the case is at issue and at least 7 days before the Case Management Conference, the parties shall file, in editable format, a proposed Case Management Order consisting of the matters set forth in C.R.C.P. 16(b)(1)-(17) and take all necessary actions to comply with those subsections.
4. If all parties are represented by counsel, no later than 35 days after the case is at issue, counsel may file a proposed Case Management Order in compliance with C.R.C.P. 16(b) and may jointly request the Court to dispense with a Case Management Conference.
5. If the parties cannot agree on a modified case management order, they shall submit a draft order identifying the areas of disagreement. The Court will decide the disputed matters and will issue a Case Management Order promptly.
6. The parties shall contact the clerk of this court at (303) 606-2393 during setting times (Tuesday, Wednesday & Thursday from 10 am – 12 noon) to schedule a case management conference if they think one will be helpful.
7. Cases Filed Under C.R.C.P. 16.1: Not later than 49 days after the case is at issue, the Plaintiff (or Responsible Attorney) shall file a Certificate of Compliance as required under C.R.C.P. 16.1(h). No Case Management Order or Case Management Conference is required.

G. TRIAL SETTING

Continuances will NOT be granted as a matter of course, even if stipulated. Continuances will be granted only for good cause shown. Contested motions for continuance will likely be decided on the first day of trial unless ripe at least **7 days** before trial.

H. TRIAL MANAGEMENT ORDER

1. Plaintiff's counsel shall prepare and submit a Trial Management Order ("TMO") no later than **28 days** before the date of trial.

I. TRIAL PREPARATION

1. A Pre-trial Conference is not scheduled by the Court automatically. The parties may contact the clerk of this Court at any time if they wish to schedule a Pre-trial Conference in this matter. Unless good cause is shown to hold the conference closer to trial, the Pre-trial Conference shall be held no later than **7 days** before trial.
2. The FTR shall be the official record in this case, absent an agreement to use a freelance court reporter. Counsel and any party appearing *pro se* shall decide if a retained court reporter will be used. Review and comply with the 2nd Judicial District Chief Judge Directive 2011-1 and attached policy regarding Court Reporters.
3. Any Trial Briefs must be filed no later than **7 days** before trial and shall not exceed 5 pages. In lieu of a trial brief, a party may file a list of case and statutory authority upon which the party intends to rely.
4. **Witness Lists.** A correctly spelled list of the probable witnesses who may be called. In addition to listing the names of the witnesses, the list shall also specify the witnesses' titles or degrees and employment (e.g., Dr. John Smith, M.D., Children's Hospital) if applicable.
5. **Joint Order of Proof.** Counsel **shall confer** and prepare a joint order of proof which identifies each counsel's good-faith estimate of the order in which witnesses will be presented and the time required for direct and cross-examination of each witness.
6. **The witness lists and order of proof shall be filed no later than 7 days before the commencement of trial.**
7. **Exhibits.**
 - a. The parties must prepare a comprehensive Index of Exhibits and note those exhibits which are stipulated. Authenticity of exhibits shall be deemed stipulated to unless an objection is filed **14 days** before trial.
 - b. Counsel shall stipulate to admissibility of exhibits where appropriate to reduce use of Court and, if applicable, jury time. Each exhibit in the index should be accompanied by a number, Plaintiffs shall use numbers 1-999 and Defendants shall use numbers 1,000-1,999. If there are multiple Plaintiffs or multiple Defendants the parties shall designate the exhibit number range each party will use.
 - c. All exhibits must be pre-marked with the number or letter identification, along with the case number. On the day of trial, counsel shall have in their possession at least four complete sets of all exhibits (either paper or electronic): one copy for the judge, one copy for witnesses, and copies for counsel.

- d. The parties shall exchange any demonstrative exhibits **7 days** before the first day of trial.
- e. Unless the Court orders otherwise, on or before the trial date, the parties must submit ALL of their exhibits, and/or images of large or demonstrative exhibits, through the E-Filing system. Parties should anticipate that there are exhibits such as negotiable instruments where the original paper document may need to be tendered to the Court. Images of these exhibits shall also be filed through the E-Filing system. *See* CJD 11-01 ¶ VI. Submission of exhibits shall be in substantial compliance with Paragraph V, of Chief Justice Directive 11-01. *See id.* ¶ V. Any violation of this Order regarding the submission of exhibits will be subject to sanctions including contempt of Court under C.R.C.P. 107.
- f. Copies of a draft of list of exhibits and witnesses must be exchanged at least **42 days** before trial, as required by C.R.C.P. 16(f)(2). Other orders concerning exhibits may be entered as necessary.

8. Depositions

- a. If any party wishes to use depositions in place of live testimony, C.R.C.P. 16(f)(3)(VI)(D) shall be complied with.
 - b. The parties must provide the Court with a single copy of the deposition transcript with the designations and cross designations indicated, **7 days** before trial.
 - c. All objections shall be filed with the designations and shall include a specific Rule of Evidence supporting the objection.
 - d. The same rules apply to written, videotape, and DVD depositions alike.
9. If a party needs any form of audio/visual equipment, the party(s) is responsible for providing it. This includes extension cords and power surge strips
10. **Interpreters.** If any party or witness requires an interpreter which the Court is required to provide under CJD 06-03 (as amended, May 2016), you must notify the courtroom clerk for Courtroom 209 of the need for the interpreter, the language needed and the anticipated date and length of testimony of the witness who is English Language Deficient **not less than 35 days before trial**. Failure to do so may result in the Court's inability to schedule an interpreter and, if so, the witness will not be permitted to testify.

J. JURY INSTRUCTIONS

1. Attorneys are required to meet and confer in good faith, preferably in person, regarding jury instructions. The Court has already prepared the following instructions: 3:1, 3:4, 3:8, 3:9, 3:12, 3:14, 3:15, 3:16, 4:1, 4:2, 4:2A, 5:1 and 5:6. Counsel for the plaintiff is required to submit a joint proposed initial draft of the final jury instructions directly to the court via e-mail to the Court's law clerk (02courtroom209@judicial.state.co.us) no later than 7 days prior to the scheduled trial. By initial draft, the Court means a single document that includes the instructions the Court has already prepared, the instructions to which all parties have stipulated, and any additional or disputed instructions of any party, as discussed below.

2. Please note: the Court does not need, nor will it accept, basic introductory or closing instructions, oaths, admonitions, lengthy annotations, or similar instructions.
3. Counsel shall submit instructions using the following order: opening instructions; 2:1 claims and defenses; basic evidentiary instructions; instructions relating to the plaintiff's claims; instructions relating to defenses; damages; definitions; closing instructions.
4. Unless a stipulation can be reached, counsel for both parties shall be responsible for submitting their own version of a proposed 2:1 instruction under the "Claims of the Parties" instruction. The Court will either choose between those submitted instructions or prepare its own.
5. If counsel cannot agree on the wording of other instructions then both counsel shall submit instructions defining applicable stipulations, claims, standards of proof, affirmative defenses, damages, and special definitions under the appropriate sections.
6. Additional instructions may be submitted. However, the Court does not favor, and rarely gives, special instructions patterned after caselaw; any such instructions shall be submitted separately via e-mail, accompanied by a brief statement of authority, in compliance with the requirements for the initial draft. All proposed instructions must be organized in substantial compliance with the format utilized by the Court. If either counsel has an objection to a submitted instruction, the nature of the objection shall be briefly stated on the initial draft submitted to the Court, along with a brief statement of authority.
7. The Court shall prepare proposed verdict forms that conform to the proposed instructions.
8. All instructions must be submitted through the E-Filing system in editable format. *See* CJD 11-01 ¶ VII. Accordingly, two editable documents comprising the proposed jury instructions must be E-Filed **7 days** before trial: (1) one document of stipulated instructions (without CJI and/or case citations), and (2) one document of disputed instructions (with CJI and/or case citations). The set of instructions provided to the jury as well as a party's tendered instructions that have been rejected by the Court shall be uploaded in the E-Filing system.
9. The Court will conduct a conference on the instructions during breaks, over the lunch hour, or at the end of the day. Counsel and/or parties shall be prepared, with case citations, to discuss the disputed instructions at the time of the conference. The goal is to have a completed set of instructions ready for the jury as soon as the presentation of evidence is concluded.

K. JUROR NOTEBOOKS (If Applicable)

Each trial juror will be provided with a juror notebook. We will provide the notebooks, unless an oversize notebook is needed, in which case the parties must provide them. We will prepare general information and juror question forms, but the parties must prepare the remainder of the contents. Each page must be three-hole punched in advance so it can be placed in a notebook. Each party must file its materials with courtroom staff *in person* no later than 3:00 p.m. on the

Thursday before the first day of trial. The person bringing the materials to court must be prepared to place the material into the notebooks. Each party must supply an original and eight copies of the following:

1. **Exhibit Lists.** A list of exhibits whose admissibility is stipulated or not subject to reasonable dispute.
2. **Exhibits or Excerpts of Exhibits.** Copies of stipulated exhibits may be put in the juror notebooks. If exhibits are lengthy, stipulated excerpts may be used with my permission. The parties should bring to trial eight (three hole-punched) copies of any exhibit not stipulated to; copies will be placed in the notebook if and when the exhibit is admitted.
3. **Glossary of Terms.** If there are any scientific or other specialized terms which will be used repeatedly, those should be set forth, with an agreed-upon definition. If the parties have a legitimate dispute about the definition of any term, just the term should be listed.

L. JURY SELECTION (If Applicable)

1. Each side will have a maximum of 20 minutes for *voir dire*, unless additional time is requested and permitted in advance of the first day of trial. In multi-party cases, time must be divided between all parties on the side(s) of the case.
2. The Court will ask some basic questions before counsels' *voir dire*. If there are questions all parties believe the should ask during its *voir dire*, such questions should be submitted to the Court at least **7 days** before trial.
3. *Voir dire* will be conducted from the lectern.
4. Typically, an alternate juror is selected. The Court will advise counsel on the first day of trial how the alternate will be designated. The Court prefers that the alternate be allowed to deliberate, but a final decision will be made before the venire arrives for trial.
5. Peremptory challenges are to be made against the presumptive panel.
6. Typically, challenges for cause will be exercised at the bench upon the conclusion of all parties' *voir dire*. Peremptory challenges will be announced orally in open Court *by counsel*.

M. CONDUCT OF TRIAL

1. Scheduling/Use of Time

- a. The trial day will start at 8:30 a.m. and end at 5:00 p.m. We will take a morning and an afternoon break of 15 to 20 minutes each. Lunch will run for approximately 1 hour within the timeframe of noon to 1:30 p.m. Adjustments to this schedule may be made for good cause shown or upon order of the Court.
- b. Counsel and parties will be in court by 8:00 a.m. on each day of trial. This allows time for setup and preparation before beginning each trial day. It also provides an opportunity for counsel to discuss anything outside the presence of the jury before the trial day begins.

- c. Jurors (if applicable) are the most important people in the decision-making process; their time is more valuable than ours. Witnesses must be scheduled so that no lengthy gaps occur in testimony. If there is a lengthy delay in one side's presentation of evidence, the Court will likely exercise its discretion and require the other side to begin the presentation of evidence. Proper concern for the jury's time is generally more important than the order in which evidence is presented.
 - d. Counsel and the Court will spend a few minutes at the end of each trial day (after the jury has been excused) discussing what will occur the next day, including what witnesses are scheduled and how much time each witness is expected to take.
2. **Opening Statements.** Each side will have a maximum of 20 minutes for its opening statement. In multiple-party cases, this time must be divided between the parties. Additional time may be permitted for good cause shown.
3. **Questioning of Witnesses.**
- a. Generally, questioning will be done from the podium unless permission is granted to approach the witness or the bench.
 - b. Redirect may be limited or disallowed. The Court generally does not allow re-cross. Prior to questioning, counsel should ask to approach for a bench conference should a re-cross be sought.
 - c. Juror questions will be permitted when all other questions have been asked. Jurors will submit written questions on forms which the Court will place in the juror notebooks. As required, the Court will make a determination on whether the question will be asked after a bench conference as to any question(s). Counsel may ask *brief* follow-up questions after juror questions have been asked, but only as to issues raised by the jurors' questions.
4. **Objections.**
- a. Make objections professionally: be brief, concise and specific.
 - b. Speaking objections are not permitted.
 - c. Do not automatically respond to an objection; if I want a response to an objection before ruling on it, I will ask for one.
5. **Closing Arguments.** Each side will have 20 minutes for closing argument. In multiple-party cases, this time must be divided between the parties. Additional time may be permitted for good cause shown.
6. **Miscellaneous.**
- a. Parties must remain at counsel table while court is in session.
 - b. Counsel must use surnames.

- c. No food is permitted in the courtroom; water is permitted at counsel table.
- d. Please turn off (or silence) all electronic devices before coming into court.

N. GENERAL RULES

1. If this Order conflicts with any Pre-Trial Order that was issued previously **THIS ORDER** will supersede.
2. Any reference in this Order to “counsel” includes *pro se* parties.
3. The parties are to **notify the Court within 24 hours of settlement or resolution of the case. This should be accomplished by both calling the Courtroom at its main number of 303-606-2393 AND e-filing a notice of settlement. All documents confirming settlement shall be filed not later than 28 days from the date of settlement**, unless otherwise ordered by the Court.
4. Unless all parties agree on the record that exhibits need not be maintained, the following procedure will be followed:
 - a. When the trial or hearing is concluded, each party will withdraw any exhibits or depositions which that party marked or admitted.
 - b. Each party will maintain in its custody the withdrawn exhibits and depositions without modification of any kind until 63 days after the time for the need of such exhibits for appellate or other review purposes has expired, unless all parties stipulate otherwise on the record or in writing. It will be the responsibility of the withdrawing parties to determine when the appropriate time period has expired.
5. This is a **CIVIL** division. Counsel will treat jurors, parties, witnesses, me, my staff, and each other with professionalism, courtesy and respect at all times. This applies not only to the actual trial, but to all aspects of the case, including discovery and motions practice, and includes what is written as well as what is said.

DISCOVERY PROTOCOL

Counsel are reminded that all discovery responses shall be made in the spirit and with the understanding that the purpose of discovery is to elicit facts and to get to the truth. The Rules of Civil Procedure are directed toward securing a just, speedy and inexpensive determination of every action. The discovery process shall not be employed to hinder or obstruct these goals, nor to harass, unduly delay or needlessly increase the cost of litigation.

WRITTEN DISCOVERY

These discovery protocols shall be considered as part of the responsibility of parties and counsel to comply with the Rules of Civil Procedure relating to discovery.

1. The parties should refrain from interposing repeated boilerplate type objections such as “overbroad, unduly burdensome, vague, ambiguous, not reasonably calculated to lead to the discovery of admissible evidence” and other similar objections. In the event any such objections are made, they shall be followed by a clear and precise explanation of the legal and factual justification for raising such an objection. Additionally, if the objecting party otherwise responds to the discovery request but does so subject to or without waiving such an objection, that party shall describe with reasonable specificity the information which may be available, but which is not being provided as a result of the objection raised.
2. When a responding party claims not to understand either a discovery request or the meaning of any words or terms used in a discovery request, that party shall, within fourteen (14) days of receiving the discovery request, seek clarification of the meaning from counsel who served the discovery. A failure to seek such clarification shall be considered a violation of this Order for Discovery Protocol.
3. A discovery response which does not provide the information or material requested but promises to do so at some point in the future will be treated as the equivalent of no response unless the party so responding provides a specific reason for the information not being produced as required by the Rules of Civil Procedure, and also provides a specific date by which such information will be produced.
4. A response to a discovery request that does not provide the information or material requested but rather states that the party is continuing to look for or search for such information or material will be treated as the same as no response, unless that party provides a clear description of where such information or material is normally located, who is normally in custody of such information or material, where the party has searched, the results of the search, as well as the identity of all persons who have engaged in such a search. The responding party shall also provide a clear explanation of the ongoing search and a specific date by which the search will be complete.
5. Whenever a party objects to discovery based upon a claim of attorney/client privilege, work product protection, or any other privilege or protection, that party shall produce a detailed privilege/protection log that includes at least the following for each such item for which privilege is claimed:
 - a. The information required by C.R.C.P. 26(b)(5);
 - b. The date of the information or material;
 - c. All authors and recipients; and
 - d. The specific privilege or protection which is claimed.

The proponent of the privilege has the burden of establishing that privilege. Failure to comply with this paragraph 5 and Order for Discovery Protocol will constitute a waiver of the claimed privilege.

DEPOSITIONS

1. Depositions shall be conducted in compliance with the Colorado Rules of Civil Procedure.
2. During all depositions, counsel shall adhere strictly to C.R.C.P. 30(d) (1) and (3). No objections may be made, except those which would be waived if not made under C.R.C.P. 32(d)(3)(B) (errors, irregularities), and those necessary to assert a privilege, to enforce a limitation on evidence directed by the Court, or to present a C.R.C.P. 30(d)(3) motion (to terminate a bad faith deposition). Objections to form shall be stated: "Objection as to form." Any further explanation is inappropriate and prohibited unless specifically requested by the attorney asking the question.
3. There shall be no speaking objections. It is inappropriate and prohibited for an attorney, during the course of questioning, to advise a witness to answer, "if you know," or "if you remember." It is similarly prohibited for an attorney during questioning to advise a witness not to speculate. All such questions shall be considered speaking objections. All deponent preparation shall be conducted prior to the commencement of the deposition and shall not take place during the course of the deposition.
4. It is appropriate for the deponent to request clarification of a question. However, it is not appropriate for counsel to do so.
5. A deponent and an attorney may not confer during the deposition while questions are pending. Similarly, neither a deponent nor counsel for a deponent may interrupt a deposition when a question is pending or a document is being reviewed, except as permitted by C.R.C.P. 30(d) (1).
6. Counsel shall refrain from excessive objections that have the purpose or effect of disrupting the flow of questioning or the elicitation of testimony.
7. Counsel may instruct the deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under C.R.C.P. 30(d)(3). Whenever counsel instructs a witness not to answer a question, counsel shall state on the record the specific reason for such an instruction, the specific question, part of a question or manner of asking the question upon which counsel is basing the instruction not to answer the question.
8. Violations of these Discovery Protocols will result in the Court limiting or prohibiting additional discovery in the case.

DATED this 4th day of August, 2022.

BY THE COURT:



A handwritten signature in black ink, appearing to read "Alex C. Myers".

Alex C. Myers
District Court Judge