

<input type="checkbox"/> Small Claims <input type="checkbox"/> County Court <input checked="" type="checkbox"/> District Court <input type="checkbox"/> Probate Court <input type="checkbox"/> Juvenile Court <input type="checkbox"/> Water Court Larimer County, Colorado Larimer County Justice Center 201 La Porte Ave Suite 100 Ft. Collins, CO 80521	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: Div.: Ctrm:
<hr/> Plaintiff: Virginia L.Farver v Defendant(s): City of Fort Collins Fort Collins City Council Darin Atteberry Fort Collins Utilities Fort Collins Utilities Management and Staff Dennis Sumner Steve Catanach; and Does 1 - 100	
<hr/> Attorney or Party Without Attorney: (Name & Address) 1214 Belleview Drive Fort Collins, CO 80526 Phone Number: 970-689-3798 FAX Number: E-mail: Atty. Reg. #:	
Complaint for damages, declaratory order and injunction	

#1 Virginia L. Farver, hereinafter “Plaintiff”, alleges as follows.

#2 Plaintiff brings this action to exercise her rights and to compel Defendants to perform as required by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.*

#3 The primary issue in this action is whether Defendants can lawfully charge Plaintiff a monthly “manual meter reading charge” for the service of reading Plaintiff’s electric meter despite the fact that the Fort Collins City Council never authorized Fort Collins Utilities and the other Defendants to execute or implement the Advanced Meter Fort Collins Project (“AMFC Project” or “Project”) to which the manual meter reading charge relates, and the fact that such authorization by the City Council was necessary and required by statute and the City Charter.

#4 The City of Fort Collins and Fort Collins Utilities spent approximately \$31.4 million on the electric portion of the Advanced Meter Fort Collins project, which among other things entailed

the removal from every residence and business in the City of the original electric meters, which can be referred to as analog electric meters, and the installation in their place of “smart” electric meters or, in some cases, “digital analog” meters.

An analog electric meter is the kind of meter that every electric utility worldwide used for every customer from the beginning of the electric grid until about 7 years ago. Although there are different designs analog meters usually look similar. An analog meter typically has on its face four circles in a horizontal row about an inch in diameter each. Inside each circle is a needle that points to one of the numbers 0 through 9 similar to the hour hand on a clock. Each circle represents a different digit such as ones, tens, hundreds, and thousands. The units may be kilowatt hours or a comparable unit of electricity usage.

As the customer uses electricity, the needles advance to show the cumulative electricity usage. There is also a horizontally mounted disc about 5” in diameter which spins at a rate commensurate with the rate of electricity usage at any moment.

Typically each electric utility sends out a person to each house once per quarter to read the meter. Based on this reading the utility knows how much electricity the customer has used and can calculate how much to charge the customer based on the applicable rate schedule or rate sheet. The utility estimates the customer’s electricity use the other two months in the quarter. For decades this meter reading was considered one of the utility’s costs and it was not billed.

Analog electric meters may be the most tested machine in the world because of the number of them in use, the number of years they have been used and the fact that they run 24 hours a day, 7 days a week.

Spurred by the federal Energy Policy Act of 2005, which did not mandate the removal of any customer’s analog meter or the installation on any customer’s home or business of a different kind of meter, many utilities began removing analog meters and installing “smart electric meters” or simply “smart meters” in about 2009. There are also smart meters used by gas utilities but those are not at issue here.

A smart meter is a digital electronic machine, basically a computer with 2 antennae. The computer is capable of storing data on the customer’s electricity usage at any interval, whether by the month, week, day, hour or minute. The antennae transmit this data wirelessly back to the utility similar to how a cell phone works. The smart meter uses microwave radiation whereas cell phones use radio frequency (RF) radiation.

Both microwave and RF radiation, and indeed all forms of electromagnetic radiation, have been found to be harmful to humans. Previously it was believed that only ionizing radiation, such as gamma rays and x-rays, which are capable of splitting an atom, was harmful.

A smart meter does not have the 4 dials or the horizontally mounted disc. It has only a digital display, which often flashes different readings. Both the number of transmissions of customer

data via microwave radiation and the peak power of those transmissions are typically remotely adjustable by the utility. The customer has no ability to adjust the smart meter, such as to reduce the number of transmissions per day or their peak power, to protect herself or her family from harmful radiation. Many smart electric meters transmit microwave radiation in excess of 10,000 (ten thousand) times per day on average. Some transmit up to 240,000 times per day. Although each transmission only lasts for a fraction of a second, each one is an electrical jolt to the human body and, like a boxer's punch or a bullet from a criminal's gun, it does not take long for an impact to cause physical damage.

A photograph of an analog meter and a smart meter are attached to this Complaint and incorporated by reference herein.

#5 Jurisdiction is found in the Governmental Immunity Act, C.R.S. 24-10-109 (2015), which states:

“(5) Any action brought pursuant to this article shall be commenced within the time period provided for that type of action in articles 80 and 81 of title 13, C.R.S., relating to limitation of actions, or it shall be forever barred; except that, if compliance with the provisions of subsection (6) of this section would otherwise result in the barring of an action, such time period shall be extended by the time period required for compliance with the provisions of subsection (6) of this section.”

#6 Venue is proper in this court because defendants' place of business is located in and the events which are the subject of this complaint occurred in Larimer County, Colorado.

#7 Immunity is waived according to the Governmental Immunity Act, C.R.S. 24-10-106 (1) (f), which states:

“(1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:

(f) The operation and maintenance of any public water facility, gas facility, sanitation facility, electrical facility, power facility, or swimming facility by such public entity;”

#8 Plaintiff has exhausted all administrative remedies by executing a notice and claim of injuries and damages related to the Advanced Metering Fort Collins project per the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.*

Plaintiff hand delivered and sent via U.S. Postal Service certified mail this notice and claim to the City Council, the City Attorney, and the Risk Management Division, on September 23, 2015 at the following address:

City of Fort Collins
Risk Management Division, the City Council, the City Attorney
P.O. Box 580
Fort Collins, Colorado 80522

#9 Copies of Plaintiff's notice and claim and all attachments are attached to this Complaint and incorporated herein by reference.

#10 An employee of the City prepared a hand written receipt and gave it to Plaintiff on the day Plaintiff delivered the notice and claim. It appears that the employee's name is Jane Johnson but the handwriting is somewhat illegible. A copy of that receipt is attached to this complaint and incorporated herein by reference.

#11 Defendant City of Fort Collins responded to Plaintiff's notice and claim on January 12, 2016 in a letter on the City's letterhead signed by John R. Duval, Deputy City Attorney.

#12 Mr. Duval wrote in his January 12 letter, "The City therefore denies the claims you have asserted in your Notice." The City thereby denied Plaintiff's claim and refused to pay Plaintiff as requested in the notice and claim.

#13 Plaintiff brings this action within the statute of limitations provided in C.R.S. 13-80-103 (2015) which states,

"(1) The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within one year after the cause of action accrues, and not thereafter:

(g) All actions for negligence, fraud, willful misrepresentation, deceit, or conversion of trust funds brought under section 12-61-303, C.R.S."

#14 Plaintiff Virginia L. Farver lives at 1214 Belleview Drive, Fort Collins, CO 80526 and lived at this at all times relevant to this action.

#15 Defendant City of Fort Collins is a home rule city with a Council/Manager form of government.

Fort Collins was founded as a military fort in 1864 and referred to as "Camp Collins." The post was given the name in honor of Lt. Col. William O. Collins, the popular commander of Ohio Cavalry troops whose headquarters were at Fort Laramie. Fort Collins was incorporated as a town in 1873.

#16 Defendant Fort Collins City Council is the governing body of the City of Fort Collins. The Council is made up of six district council members who are elected on a non-partisan basis for a four-year term and a Mayor who is elected at-large on a non-partisan basis for a two-year term.

#17 The Fort Collins City Council and Mayor govern the City of Fort Collins according to the Fort Collins Charter, which is available on line at:

https://www.municode.com/library/co/fort_collins/codes/municipal_code?nodeId=FOCOCH

A copy of the Charter of the City of Fort Collins, dated April, 2011, is attached to this complaint and incorporated by reference herein.

#18 Defendant Darin Atteberry is the City Manager of the City of Fort Collins and held this position at all times relevant to this action.

#19 Defendant Fort Collins Utilities, also known as the City's "Electric Utility", "Utilities Light and Power", "Fort Collins Light and Power", or as "Light and Power", is an electric utility owned by the City of Fort Collins. It provides service to over 70,500 homes and businesses, over 55+ square miles.

<http://www.fcgov.com/utilities/what-we-do/light-power>

This Defendant has its principal place of business at:

117 N. Mason St. (north of Mountain on Mason), Fort Collins, CO 80524

Its mailing address is:

P.O. Box 580, Fort Collins, CO 80522-1580

#20 Defendant Fort Collins Utilities Management and Staff includes the leadership of Fort Collins Utilities and, broadly speaking, its staff, who are its employees, representatives, and agents.

#21 Defendant Dennis Sumner was at all times relevant to this action the Smart Meter Fort Collins Project Manager.

#22 Defendant Steve Catanach was at all times relevant to this action the Light and Power Operations Manager or Light and Power Director.

#23 Defendants Does 1 – 100 are individuals, each of whose true name is unknown, who caused or contributed to Plaintiff's injuries.

#24 Colorado law C.R.S. 24-10-109 (2)(b) requires "A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or event complained of;"

#25 Factual basis for this Complaint. As described in the notice and claim dated September 23, 2015 the following events gave rise to Plaintiff's claim. Note that Plaintiff was at the time the Claimant and referred to herself as such in the notice and claim.

#26 The following six paragraphs are directly quoted (with paragraph numbers added) from a letter from Mr. Jeff Mihelich, Deputy City Manager, dated April 21, 2015 and addressed to claimant. A copy of that letter is attached with this notice and claim.

#27 The pursuit of the AMFC project began in 2008, and was referenced in the 2008 Fort Collins Climate Action Plan as "SmartGrid, Advanced Metering Infrastructure, Pricing, Conservation" as one of the menu of project options to support Climate Action Plan goals.

#28 In 2009, the viability of an Advanced Metering Infrastructure (AMI) project was explored by Utilities staff and, as a result, a Light and Power budget offer was developed for City Council consideration as part of the 2010 - 2011 Budgeting for Outcomes (BFO) process.

#29 Concurrent with the BFO consideration process, the City submitted an application to the Department of Energy (DOE) as part of the American Recovery and Reinvestment Act for the Smart Grid Investment Grant (SGIG).

#30 The City of Fort Collins was notified by DOE that the Fort Collins SGIG proposal was selected for SGIG award negotiations on October 21, 2009, just prior to the completion of the BFO process.

#31 Based on the notification from DOE, the AMFC budget offer was withdrawn to modify the budget request.

#32 Therefore, at the May 18, 2010 meeting of the Fort Collins City Council, Council approved Resolution 2010-030 authorizing the City Manager to enter into agreements for the SGIG award and Ordinance No. 43,2010 and Ordinance No. 001 authorizing the following; 1) \$18,101,264 for SGIG funding support, 2) \$16,000,000 Issuance and Sale of Tax Exempt Revenue Bonds, and 3) \$258,499 for bond issuance costs.

#33 Claimant wrote to the City and / or FCU one or more times in 2011, 2012, and 2013, often via certified mail through the U.S. Postal Service, informing the City and FCU of:

- a) claimant's objection to the installation of a smart electric meter or a digital analog meter on claimant's home and
- b) claimant's wish to keep the analog meter that was on the home and had been on the home since the home was built.

Copies of several of these letters are attached to this notice and claim.

#34 Claimant's husband Craig Farver got a call from Dennis Sumner (FTC Utility Head) in late November of 2013. This is when the City was sending letters to utility customers about shutting off customers' electrical service if claimant and other residents who objected to a smart meter did not comply. Dennis Sumner kept claimant's husband on the phone for over 20

minutes. Dennis Sumner had just called claimant at home before calling claimant's husband. Claimant had told Dennis, "NO smart meter, and this would be the end of communication." Then Dennis Sumner called claimant's husband Craig. They taped these conversations of course! Claimant's husband explained what happened to Rich and he just wanted to protect claimant. As the City is aware and was aware at the time, claimant's son Rich had been a student at San Diego State University and spent a lot of time in Nasatir Hall on campus. Very close to Nasatir Hall on a hill is an enormous tower that carries multiple wireless communications for multiple universities and is a central station for San Diego Gas and Electric. SDSU students, faculty and staff were never warned about the hazards of the wireless radiation that this tower produced. Claimant's son Rich Farver, a student at SDSU, developed brain cancer and died from it on October 11, 2008. Claimant believes that the wireless radiation from that tower directly caused Rich Farver's brain cancer. Several other SDSU faculty, students and staff who worked in Nasatir Hall also died from cancer around that time, supporting the idea that the tower was causing the cancer.

#35 In the fall of 2013 claimant's friend Mrs. Ruth Ann Shay of Fort Collins hired an attorney, Thomas V. Hoeflinger of the law firm Jorgensen Brownell & Pepin PC, who wrote a letter to Mr. Steve Catanach at the City dated November 27, 2013 objecting to the removal of the analog electric meter and the installation of a smart electric meter on claimant's home. Claimant and Mrs. Shay were similarly situated and felt that the letter expressed both of their interests as well as the interests of other Fort Collins residents similarly situated. The attorney charged \$1,500 of which Mrs. Shay paid \$1,000 and claimant paid \$500.00 for writing that letter and his earlier related work. A copy of that letter and claimant's check to Mr. Hoeflinger are attached to this notice and claim.

#36 The City and / or FCU removed the original electric meter from claimant's home and installed in its place a digital analog electric meter on March 6, 2014 at 8:30 in the morning. Dennis Sumner, the head of FCU with another gal and claimant saw 1 police officer and the other police officer was on the side of the garage with the installers. They went immediately to Ruth Shay's house across town. Mrs. Shay got the business cards from the officers. When Mr. Sumner and the police officers showed up at claimant's door claimant looked at the woman police officer and said, "You, being on my property without a warrant is unlawful." Claimant knows that Mr. Sumner and the police officers stood in the streets of the other homes after that.

#37 On November 18, 2013 FCU head Dennis Sumner called claimant's husband at work regarding terminating the electric service at claimant's home. This was moments after Sumner had called claimant at home and claimant had told Sumner that she did not want any more communication with him about the smart meter.

#38 In April, 2014 the City and / or FCU began to charge claimant a manual meter reading charge on the monthly electric bill in the amount of \$11.00 (eleven dollars). They have continued to charge this charge each month since then. Because the City and / or FCU could turn off the electricity to claimant's home for failure to pay this charge claimant has paid it each month, although claimant has never agreed with it.

#39 Claimant wrote to the City with an Open Records Act request on February 10, 2015 which said in part:

“I request the following records as provided by Colorado Revised Statutes 24-72-200 through 206.

“Any and all Resolutions, ordinances or other formal records of decision approved or adopted by the City Council:

that authorize the removal of analog electric meters from customers’ homes and businesses and the replacement of those meters with smart meters.

that authorize the charging of fees for those customers who request an analog electric meter, or in other words who choose to “opt out” of the smart meter project.”

#40 The City Clerk, Wanda Nelson, responded on that same day and wrote, “We have received your record request and will begin processing it right away. My colleague Christine Macrina will facilitate this request.”

#41 Claimant, Ms. Nelson and Ms. Christine Macrina, the colleague of Ms. Nelson, engaged in lengthy correspondence between February 24 and April 3, 2015. This correspondence was necessary because the City had failed to provide to claimant responsive records which claimant strongly believed must exist. Claimant wrote to the City more than once that the records the City had provided were not responsive to, or were not ALL the records responsive to, her request.

#42 On March 18, 2015 Ms. Nelson wrote to claimant via email. That message said:

“We have clearly missed the ball in terms of responding to your request to your satisfaction. I have spoken with Utilities Executive Director Kevin Gertig and we will be getting together as soon as possible to determine what additional records, if any, respond to your request. If you are aware of any specific documents you are seeking, please send me a list.

“Thank you once again for your patience. Please do not hesitate to call if you would like to discuss this further.”

#43 On March 27, 2015 Ms. Macrina wrote to claimant via email. That message said in part:

“It is not clear from your requests what record(s) you are seeking, or whether the record(s) you describe are under the control of this office.”

#44 Due to the apparent confusion by the City and the City’s failure to provide certain resolutions, etc. that claimant believed had to exist, claimant asked to have a phone conference with representatives of the City. The purpose of that phone conference was to discuss claimant’s record request, the City’s response so far, the records provided so far, any other responsive records that might exist, and the City’s deliberative and policy making process that led to the approval of the Advanced Meter Fort Collins project. Claimant requested that a representative of the city with decision making authority as to providing certain records in response to a records request would be on that phone conference.

#45 On April 3, 2015 Ms. Nelson wrote to claimant stating that Mr. Jeff Mihelich's (Deputy City Manager) was willing to participate in a phone conference and stating three dates and times when he would be available.

#46 Claimant responded that day requesting April 13 for the phone conference. Ms. Nelson wrote to claimant that day saying in part, "Thanks for your quick reply! We will schedule the phone conference for Monday, April 13th at 2:00 p.m."

#47 On Monday, April 13, 2015 claimant, claimant's friend Mark Graham of California, Mr. Mihelich and 5 other City employees participated in that phone conference. It was a very thorough conversation in which claimant and Mr. Graham explored with Mr. Mihelich and City staff the question of the authorization of the AMFC project, or lack thereof, and the policy making process that the City had actually used. No stone was left unturned.

#48 A separate document describing statements made by representatives of the City during this phone conference is attached to and incorporated by reference into this notice and claim as though that document were fully reproduced here. The title of that document is "Phone conference with City of FC April 13 2015.docx" or a similar title.

#49 During the phone conference claimant learned that according to the Deputy City Manager Jeff Mihelich, whose statement was not contradicted by any of the five other employees of the City who were present on the phone conference, the City Council never approved a resolution authorizing the removal of the original meters and / or the installation of smart electric meters. Mr. Mihelich and his staff made it absolutely clear that no such resolution or ordinance exists, stating so repeatedly in different words. (Notice and claim at 13)

#50 Claimant and Mr. Graham asked many questions intended to flush this information out. They asked questions from many different angles. They asked about the deliberative process by which the City made the decision. The separate document describing statements made by representatives of the City during this phone conference will contain greater detail but for the concise statement of the factual basis of the claim, suffice it to say that that deliberative process did not include a motion, resolution or ordinance approved by the City Council to approve the Project. There were ordinances authorizing the appropriation for the Project.

#51 During the phone conference the City made the following statements:

"During the work sessions we received enough direction from the City Council to move forward." Claimant does not remember who said this but if it was Mr. Mihelich, who did most of the talking on behalf of the City, remember that he also said during the call that he was not involved in City government back in 2010.

Mr. Mihelich said, "Item 1 does not exist; therefore we have satisfied the request."

Mr. Mihelich said, "A lot of decisions are made at the administrative level, so Council doesn't need to approve the AMI program." "They are not required by law to approve the program." By "they" he was referring to the Fort Collins City Council. By "the program"

he was referring to the AMI program. (AMI stands for Advanced Metering Infrastructure. The AMFC project is an AMI project.)

Somebody from the City, either Mr. Sumner or Mr. Mihelich, said, "The document you are asking for does not exist."

#52 Mr. Mihelich and other representatives of the City made other statements during the phone conference to that effect. More details on this phone conference follow in a separate document attached to this notice and claim.

#53 Soon afterward claimant wrote to the City asking the City to write a letter to claimant with some, but not all, of the details which the City had presented during the phone conference, such as the absence of any resolution etc. approving the Advanced Meter Fort Collins project and the deliberative process by which the city decided to do that project or in other words the deliberative process the City had taken in approving the Project.

#54 The City provided such a letter on city letterhead dated April 21, 2015. The letter was signed by Deputy City Manager Jeff Mihelich. A copy of that April 21, 2015 letter is attached to this notice and claim. The bottom line is that the City Council, as stated above, never acted by ordinance, resolution or motion to approve the Project or the removal and replacement of claimant's and other residents' and businesses' electric meters.

#55 Mr. Mihelich's letter quoted the first part of claimant's open records act request, which asked for the resolutions, ordinances or other records of decision authorizing the removal and replacement of the electric meters. Mr. Mihelich then wrote:

"In the end, we both understood that the City of Fort Collins does not have the document you described in your request, and as discussed in our conference call."

#56 Mr. Mihelich's letter then said,

"Nevertheless, the City has endeavored to provide you a description of the events below that should help to describe the approval process for the AMFC project."

#57 Mr. Mihelich's letter then described the steps in the approval process for the AMFC project. These were quoted in paragraphs 1 through 6 on page 14-15 of this notice and claim. They are also quoted in paragraphs 27 through 32 of this Complaint.

#58 Nowhere in Mr. Mihelich's description of that approval process for the AMFC project is any mention of a resolution, ordinance or motion approved by the Fort Collins City Council authorizing the Project or the removal or replacement of the electric meters. Any such resolution, ordinance or motion is conspicuously absent from Mr. Mihelich's letter. That is proof from the Deputy City Manager.

#59 It was on the day of the phone conference, April 13, 2015, when claimant learned these facts about the project, that claimant realized she had been injured by the City. The nature and extent of the injury is described elsewhere in this notice and claim. For now suffice it to say that

the injury was financial in nature. April 13, 2015 was the date of claimant's discovery of her injury and damages. It was the date on which claimant discovered her injury and damages.

#60 For the above stated reasons claimant respectfully asked the City of Fort Collins, in her notice and claim dated September 23, 2015, to grant and accept this claim and pay claimant compensation for injuries and damages as described herein.

#61 On January 12, 2016 John R. Duval, Deputy City Attorney, wrote a letter to Plaintiff responding to Plaintiff's notice and claim. A copy of that letter is attached to and incorporated by reference herein.

#62 Mr. Duval's letter acknowledged Plaintiff's notice and claim.

#63 Mr. Duval's letter summarized, in his words, the contents of Plaintiff's notice and claim.

#64 Mr. Duval's letter did not deny either the factual allegations or the legal basis in Plaintiff's notice and claim.

#65 Mr. Duval's letter presented the City's interpretation and understanding of "how all of the Electric Utility's operations, including the AMFC Project, are authorized in the City's Charter and Code."

#66 Mr. Duval's letter quoted brief excerpts from Section 5(b)(4) of Charter Article II and Article VI Section 26-396 and argued that, "Based on these provisions in the City Charter and Code, the choice and decision of what kind of electric meter is to be used by the Electric Utility has clearly been delegated to the City Manager and the Director of Utility Services"

#67 In fact neither Section 5(b)(4) of Charter Article II nor Article VI Section 26-396 uses the word "delegate" or "delegated" or any synonym for those words.

#68 If the City had wanted to delegate the authority to make major decisions (such as spending \$31.4 million on a city-wide project that entailed removing the analog electric meter from every customer's home and business and installing in its place a digital "smart" electric meter) the City would have written the City Charter to say so. The City would have used the word "delegate" or "delegated" or synonyms for those words in the Charter.

#69 Plaintiff had cited in her notice and claim Article II, Sections 6 and 7 of the Charter of the City of Fort Collins and Colorado Sunshine Act of 1972, as amended, C.R.S. 24-6-101 *et seq*, including the OPEN MEETINGS LAW, C.R.S. 24-6-401 (2015) sections 2(b), 2(c) 2(d) and 8, which set forth the obligations of public entities such as the City of Fort Collins in making policy decisions in such a manner as to give the public the opportunity to be aware of public policy decisions before and as they are being made and to participate in the making of those decisions.

(Notice and claim at 10)

#70 Plaintiff had cited the OPEN MEETINGS LAW, C.R.S. 24-6-401 (2015) 24-6-401. Declaration of policy

“It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.”

The intent of the Open Meetings Law is to afford public access to a broad range of meetings at which public business is considered. *Benson v. McCormick*, 195 Colo. 381, 578 P.2d 651 (1978); *Van Alstyne v. Hous. Auth. of City of Pueblo*, 985 P.2d 97 (Colo. App. 1999); *Bd. of County Comm'rs v. Costilla County Conservancy Dist.*, 88 P.3d 1188 (Colo. 2004).

(Notice and claim at 10)

#71 Plaintiff had also cited case law to support her legal argument that the City Council was and had been obligated to make the public policy decisions on AMFC in such a manner that would enable public participation:

The public meetings laws are interpreted broadly to further the legislative intent that citizens be given a greater opportunity to become fully informed on issues of public importance so that meaningful participation in the decision-making process may be achieved. *Cole v. State*, 673 P.2d 345 (Colo. 1983).

(Notice and claim at 10)

#72 Plaintiff had cited C.R.S. 24-6-402 (2015)

24-6-402. Meetings - open to public – definitions

Subsection 2(b) states:

(b) All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(Notice and claim at 10)

#73 Plaintiff had cited Subsection 2(c) which states:

(c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

(Notice and claim at 10-11)

#74 Plaintiff had cited Section 2(d) which states:

(d) (I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (3) of this section is held shall reflect the topic of the discussion at the executive session.

(II) Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (4) of this section is held shall reflect the topic of the discussion at the executive session.

(III) If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a "meeting" within the meaning of this section.

(IV) Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot unless otherwise authorized in accordance with the provisions of this subparagraph (IV).

(Notice and claim at 11)

#75 Plaintiff had cited Section 8, which states unambiguously:

(8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

(Notice and claim at 11)

#76 Plaintiff had alleged that, "The City never approved a resolution, rule, regulation, ordinance or formal action that met the requirements of subsection (2) of this section. The plain language of this statute is very clear. Absent such a resolution, rule, regulation, ordinance or formal action of the City of Fort Collins City Council the Project and the actions undertaken as part of the project were and are unauthorized and illegal. These actions include the charging of the manual meter reading charge to claimant and other residents and businesses."

(Notice and claim at 11)

#77 Mr. Duval's letter did not deny that the City's decision to implement the AMFC project had been made in secret.

#78 Mr. Duval's letter did not allege that the City's had afforded public access to the meetings at which the decision to implement the AMFC project and what that project should consist of had been made.

#79 Mr. Duval's letter did not allege that the meetings at which the decision to implement the AMFC project and what that project should consist of had been public meetings open to the public at all times.

#80 Mr. Duval's letter did not allege that there had been full and timely notice to the public of the meetings at which the decision to implement the AMFC project and what that project should consist of.

#81 Mr. Duval's letter did not allege that any minutes had been taken and promptly recorded at the meetings at which the decision to implement the AMFC project and what that project should consist of.

#82 Mr. Duval's letter did not deny that the decision to implement the AMFC project and the decisions on what that project would consist of were subject to the Colorado Sunshine Act of 1972, as amended, C.R.S. 24-6-101 *et seq*, Section 8, which states unambiguously:

(8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

#83 Mr. Duval's letter did not provide or attempt to provide any legal basis for the City of Fort Collins, Fort Collins Utilities, or the other Defendants to NOT comply with the requirements of Colorado Sunshine Act of 1972, as amended, C.R.S. 24-6-101 *et seq*, including but not limited to the OPEN MEETINGS LAW, C.R.S. 24-6-401 (2015) Sections 2(b), 2(c) 2(d) and 8, and in particular Section 2(d)(IV), which states:

“(IV) Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot unless otherwise authorized in accordance with the provisions of this subparagraph (IV).”

#84 In her notice and claim, Plaintiff had cited the Charter of the City of Fort Collins.

Article II, Section 6 of the Charter states:

Section 6. Ordinances, resolutions, motions.

The Council shall act by ordinance, resolution, or motion.

The ayes and nays shall be recorded on the passage of all ordinances, resolutions, and motions. Every Councilmember present shall vote; if a member fails to vote when present, he or she shall be recorded as voting in the affirmative. All legislative enactments and every act creating, altering, or abolishing any agency or office, fixing compensation, making an appropriation, authorizing the borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance, which shall not be so altered or amended on the final passage as to change the original purpose.

All ordinances, except the annual appropriation ordinance and any ordinance making a general codification of ordinances, shall be confined to one (1) subject which

shall be clearly expressed in the title. All ordinances shall be formally introduced at a regular or special Council meeting in written or printed form by any member of the Council and considered on first reading and action taken thereon. No ordinance, except an emergency ordinance, shall be finally passed on the first reading or at the meeting at which it is first introduced. An emergency ordinance may be formally introduced at a special Council meeting and action taken thereon, including final passage at such special meeting. Reading of an ordinance shall consist only of reading the title thereof, provided that copies of the full ordinance proposed shall have been available in the office of the City Clerk at least forty eight (48) hours prior to the time such ordinance is introduced for each member of the City Council, and for inspection and copying by the general public, and provided further that any member of the City Council may request that an ordinance be read in full at any reading of the same, in which case such ordinance shall be read in full at such reading. Final passage of all ordinances except emergency ordinances shall be at a regular Council meeting. Emergency ordinances shall require for passage the affirmative vote of at least five (5) members of the Council and shall contain a specific statement of the nature of the emergency. No ordinance granting any franchise or special privilege which involves a benefit to any private person or entity shall ever be passed as an emergency ordinance.

The enacting clause of all ordinances passed by the Council shall be as follows: "Be it ordained by the Council of the City of Fort Collins." (Ord. No. 3, 1961, 2-23-61, approved, election 4-4-61; Ord. No. 94, 1972, 1-4-73, approved, election 2-20-73; Ord. No. 18, 1973, 2-15-73, approved, election 4-3-73; Ord. No. 202, 1986, § 1, Part X, 12-16-86, approved, election 3-3-87; Ord. No. 203, 1986, § 1, Part A, 12-16-86, approved, election 3-3-87)

(Notice and claim at 12)

#85 In her notice and claim Plaintiff had alleged that Section 6 of the City Charter was and is applicable to the AMFC project.

“The AMFC Project established a rule or regulation that each resident had to have the original analog meter removed from the resident’s home and that the City or FCU would install a smart electric meter or, in some cases, a digital analog meter, whether the resident liked it or objected to it. There was a penalty. If claimant or other residents had attempted to block or physically delay the removal and replacement of the electric meter the Police Department could have and would have arrested the resident. In fact the City and / or FCU cut off a lock that claimant had installed to protect her original analog electric meter and prevent its removal and replacement. This was done at 8:30 in the morning and without claimant’s consent or knowledge as to the day and time. Another

possibility was that, if claimant had removed the digital analog meter that the City and / or FCU placed on claimant's home on March 6, 2014 the City and / or FCU would have cut off claimant's electricity. That is clearly a rule or regulation for the violation of which a penalty is imposed. Shutting of electricity to a home is a penalty."

(Notice and claim at 8)

#86 As Plaintiff alleged in her notice and claim, the City and Fort Collins Utilities had failed to comply with Section 6 of the City Charter. "As stated above the City Council never acted by ordinance, resolution or motion to approve and authorize the Project."

(Notice and claim at 8)

#87 On November 19, 2013 the City of Fort Collins sent a letter bearing neither a name or signature of any City official to Plaintiff and to other Utilities customers who had objected to the removal of the analog electric meter from their homes and the installation of a smart electric meter on their homes. A copy of that letter is attached to this Complaint and incorporated by reference herein. The subject of that letter was "Subject: Notice of Termination of Utilities Service".

#88 The entire body of that letter was:

"November 19, 2013

Subject: Notice of Termination of Utilities Service

Dear Utilities Customer,

Fort Collins Utilities has provided multiple communications regarding the need to upgrade its electric and/or water metering equipment at your property, including notification that continued refusal to allow meter upgrades will result in service termination.

You must contact Utilities now at 970.221.6718 to schedule an appointment for immediate installation of upgraded meter equipment to avoid termination of service. If we have not installed upgraded meter equipment by December 2, 2013, electric and/or water utility service will be terminated to your premise.

Utilities will reconnect service at your premises *only during normal business hours* (Monday-Friday 8:00am to 5:00pm) once you have allowed access for the purpose of installing upgraded metering equipment. If service is disconnected, call 970.221.6718 to arrange for reconnection. Service restoration may take 24 hours or longer.

The customer is responsible for preparing the property for restoration of electric and/or water service. The City of Fort Collins is not responsible for damage that may result from failure to prepare for restoration of service.

If you choose not to contact Utilities to arrange for installation of upgraded metering equipment, electric and/or water service will be terminated at your premise after December 2, 2013.”

(Emphasis and italics in original)

#89 By this letter Fort Collins Utilities made a significant threat to Plaintiff and the other recipients. As Plaintiff stated in her notice and claim, “Fort Collins is a VERY cold city in early December. Termination of electric service would have left Mrs. Shay, claimant, and other recipients of this threat very cold since a furnace, heat pump, or any other common residential heating system requires electricity.”

(Notice and claim at 9)

#90 Without the AMFC project, Fort Collins Utilities would never have sent the November 19, 2013 letter to Plaintiff and other customers who rejected the smart meter threatening to shut off their electricity if they did not allow the removal of their analog meter and the installation of a smart electric meter, which was a penalty.

#91 Without the AMFC project, Fort Collins Utilities would never have charged Plaintiff the \$11.00 manual meter reading charge each month since April, 2014, which charge constitutes Plaintiff’s injury.

#92 Mr. Duval’s letter did not deny that Section 6 of the City Charter was and is applicable to the AMFC project and the related manual meter reading charge.

#93 In her notice and claim Plaintiff had cited Article II, Section 7 of the Charter of the City of Fort Collins, which states:

Section 7. Ordinances, publication and effective date.

Every proposed ordinance, except an emergency ordinance, shall be published in full at least seven (7) days before its final passage on the city's official internet web site. In addition, each such ordinance shall be published in a newspaper of general circulation in the city by number and title only, together with a statement that the full text is available for public inspection and acquisition in the office of the City Clerk and on the city's internet web site. Both publications shall contain a notice of the date when said proposed ordinance will be presented for final passage. The City Clerk shall, within seven (7) days after final passage of any such ordinance, publish such ordinance in the same method as is required for the first publication. All ordinances, except emergency ordinances, shall take effect on the tenth day following their passage. An emergency ordinance shall take effect upon passage and shall be published as provided above within seven (7) days thereof.

(Notice and claim at 12-13)

#94 In her notice and claim Plaintiff had alleged that, “The City never complied with the requirements of section 6 and 7 of the City Charter, either by acting by ordinance, resolution or motion, acting by ordinance in this case, introducing and considering the ordinance, passing the ordinance at a subsequent meeting, and making copies of the full ordinance proposed available to the general public at least forty eight (48) hours prior to the time at which the ordinance is introduced (all required by section 6) or publication of the ordinance (required by section 7).”

(Notice and claim at 13)

#95 In her notice and claim Plaintiff had alleged that, “Proof of the claim made in the preceding paragraph and proof that the City Council never acted by ordinance, resolution or motion to approve the Project or the removal and replacement of the electric meters is found in the City’s letter dated April 21, 2015 signed by Jeff Mihelich, Deputy City Manager and addressed to claimant, in the attachment to this notice and claim titled “Phone conference with City of FC April 13 2015.docx”, in the section of this document titled “These are the key events that led to this notice and claim” in paragraphs 1 through 6 on page 14-15 and paragraphs 13 through 23 on pages 17-19, and immediately following this sentence.”

(Notice and claim at 13)

#96 Mr. Duval’s letter failed to explain how or why there could be a statutory conflict situation where a section of the City Charter and a section of the City Code could contradict the plain language of Sections 6 and 7 of the City Charter and the Colorado Sunshine Act of 1972, as amended.

#97 The City’s interpretation and understanding of the process of public meetings open to the public and the public policy decisions made at such meetings does not further the interests of public access and participation. In fact, it frustrates those interests. When the City Manager and the Director of Utility Services have the power, as the City claims, to make decisions such as spending \$31 million on a project such as AMFC, which entails arguably placing a product onto the wall of each resident’s home and business that is known to transmit microwave radiation in all directions, including into that home and business, thereby potentially causing physical bodily injury to the occupants, with no public notice, no public meeting, no agenda, and no public knowledge or participation, clearly this is not an open government. This is called a back room deal. There is no accountability in such a system. Nor is there any transparency.

#98 Mr. Duval’s letter failed to provide any explanation for why the public should be excluded from the decisions on what the AMFC project would consist of and whether the City would do it.

#99 The only part of the entire public policy making process that the City, as expressed by Mr. Duval, admits has to be conducted in public is the financing. Mr. Duval’s letter said, “Based on these provisions in the City Charter and Code, the choice and decision of what kind of electric meter is to be used by the Electric Utility has clearly been delegated to the City Manager and the Director of Utility Services subject, of course, to any needed appropriation of funds by the City Council. As you concede in your Notice, the Council adopted ordinances to appropriate the funds needed to implement and complete the AMFC Project.”

(City of Fort Collins letter by John R. Duval, Deputy City Attorney, to Plaintiff dated January 12, 2016 at 2)

#100 The question of financing begs the question of whether the project, any project, should be done by the City at all and what that project should consist of. Absent a decision to do a certain project according to certain specifications there would be no need for a decision on how to finance the project.

#101 Mr. Duval's interpretation and understanding of the law, that City Manager and the Director of Utility Services have the power, as the City claims, to make decisions such as spending \$31 million on a project such as AMFC negates the meaning of Section 6 of the City Charter, that the City Council is required to "act by ordinance, resolution, or motion".

#102 Mr. Duval's letter concluded by saying, "The City therefore denies the claims you have asserted in your Notice."

#103 Mr. Duval's letter did not attempt to reconcile the legal basis that Plaintiff had presented in her claim for her argument that the "manual meter reading charge" was unlawful with the City's interpretation and understanding of the above; in other words with the City's opinion that the charge was lawful.

#104 Mr. Duval's letter did not mention or notify Plaintiff of her right through the Governmental Immunity Act to take this matter to court or the applicable deadline or statute of limitations.

#105 Mr. Duval's letter said on page 2:

In Section 5(b)(4) of Charter Article II, the City Council is authorized to establish a City administrative office to provide "electric utility services." The Council did this by the adoption of Code Section 2-504 through which it created the City's "Utility Services" and authorized the appointment of a "Director...directly responsible to the City Manager...for the functions and duties of Utility Services . . . to provide for the design, construction, reconstruction, addition, repair, replacement, operation and maintenance of the City's electric . . . services"

#106 Article II, Section 5 (a) and (b) actually state:

Section 5. - Powers.

All powers of the city and the determination of all matters of policy shall be vested in the Council except as otherwise provided by this Charter. Without limitation of the foregoing, the Council shall have power to:

- (a) appoint and remove the City Manager;
- (b) establish, change, consolidate or abolish administrative offices, service areas or agencies by ordinance, upon report and recommendation of the City Manager, so long as the administrative functions and public services established by this Charter are not abolished in

any such reorganization. The city shall provide for all essential administrative functions and public services, including, but not limited to the following:

- (1) fire suppression and prevention;
- (2) police services;
- (3) finance and recordkeeping;
- (4) electric utility services;
- (5) water supply and wastewater services;
- (6) street maintenance;
- (7) storm drainage;
- (8) planning and zoning.

#107 The first sentence of Section 5 (a) is very clear that the Council, not any other City office such as an administrative office, has the power to make policy such as the AMFC Project.

“All powers of the city and the determination of all matters of policy shall be vested in the Council except as otherwise provided by this Charter.”

#108 Section 2-504 of the Municipal Code actually says:

Sec. 2-504. - Utility Services; duties of Director.

Utility Services shall be and is hereby created. Utility Services shall be in the charge of a Director who shall be directly responsible to the City Manager for the functions and duties of Utility Services, including, without a limitation, the functions and duties necessary to provide for the design, construction, reconstruction, addition, repair, replacement, operation and maintenance of the City's electric, water, wastewater and stormwater utility services, and who shall have control and supervision over such agencies, service units, departments, divisions, offices or persons assigned by the City Manager.

https://www.municode.com/library/co/fort_collins/codes/municipal_code?nodeId=CH2AD_AR_TVADOR_DIV3SEAR_S2-504UTSEDUDI

#109 Section 2-504 says that the Director “shall be directly responsible to the City Manager for the functions and duties of Utility Services”. It then describes the tasks that the Director can do. What this means is that Utilities Services implements and carries out decisions that the City Council makes. All Utility Service does is make it happen, it makes whatever the Council decided happen. The City decides what will happen and what will be done and Utility Services implements or carries out the City’s decisions.

#110 As referred to in paragraph 68, the word “delegate” or any synonym for “delegate”, any word meaning that the City Council had relinquished or turned over or assigned its authority or power to make decisions regarding the electric utility, do not appear in the Municipal Code

Section 2-504 or in the City Charter Article II, Section 5 (a) and (b) either as applied to the City Manager or the Director of Utility Services. In other words neither the Charter nor the Code actually delegate such authority or power to the City Manager or the Director of Utility Services.

#111 In a letter to Plaintiff dated April 23, 2013 the City stated, speaking of the AMFC Project, "This program and project is subject to the authority and jurisdiction of the Fort Collins City Council."

The point of that statement is that it is the City Council, not Utilities Services or its Director, that has the authority to make decisions about "this program", which is the Project, the smart meter project.

#112 The AMFC Project this was not a maintenance issue. Maintenance means making changes on a much smaller scale than the AMFC Project, which entailed removing and replacing every customer's electric meter in the City.

#113 Plaintiff believes, and will be able to prove this through discovery, that when the City has decided on multi million dollar projects in the past for Utility Services, the City Council has authorized and approved such projects. They have not been delegated to the City Manager or the Director of Utility Services. This practice has been consistent with the open meetings law and Sections 6 and 7 of the City Charter cited earlier.

#114 Absent an ordinance, resolution or motion authorizing the AMFC Project, Plaintiff infers that the decision to do so was made by one or more of Darin Atteberry, Dennis Sumner, and Steve Catanach.

#115 Darin Atteberry, Dennis Sumner, and Steve Catanach do not have the authority or power to authorize the AMFC Project.

#116 The City of Fort Collins and the Fort Collins City Council failed to exercise oversight over Darin Atteberry, Dennis Sumner, and Steve Catanach and Fort Collins Utilities. Proper oversight would have entailed prohibiting each of them from implementing the AMFC Project without approval and authorization from the City Council.

#117 The City of Fort Collins is responsible for the injuries caused by Darin Atteberry, Dennis Sumner, and Steve Catanach and Fort Collins Utilities to Plaintiff.

#118 If the City of Fort Collins and the Fort Collins City Council had exercised oversight over Darin Atteberry, Dennis Sumner, and Steve Catanach and Fort Collins Utilities, the latter would not have removed the analog electric meter from Plaintiff's home and installed a smart electric meter on Plaintiff's home.

#119 If the City of Fort Collins and the Fort Collins City Council had exercised oversight over Darin Atteberry, Dennis Sumner, and Steve Catanach and Fort Collins Utilities, the latter would

not have charged Plaintiff the manual meter reading charge which was known to the City and Fort Collins Utilities as an “opt out” charge.

#120 Causes of Action

First cause of action, against Fort Collins Utilities, Mr. Sumner, and Mr. Catanach, for acting without authorization in implementing the AMFC Project.

#121 The previous paragraphs are reiterated as if fully set forth here.

#122 Fort Collins Utilities, Mr. Sumner, and Mr. Catanach each have a duty to act only as approved and authorized by the City Council.

#123 As described above the City Council’s approval and authorization were required, but were never given. The Council never approved and authorized the Project.

#124 Were it not for the Project Fort Collins Utilities would never have removed the analog electric meter from Plaintiff’s home and installed a smart electric meter on Plaintiff’s home. Nor would Fort Collins Utilities have charged Plaintiff the manual meter reading charge. This removal and replacement and the charges were the direct result of the Project.

#125 The City is liable for the injuries caused to Plaintiff by Mr. Sumner and Mr. Catanach.

#126 Second cause of action, against the City of Fort Collins, the Fort Collins City Council, and Darin Atteberry, for failing to exercise appropriate oversight over Fort Collins Utilities, Mr. Sumner, and Mr. Catanach by allowing the latter to implement the Project even though the City Council had never approved and authorized the Project.

#127 The previous paragraphs are reiterated as if fully set forth here.

#128 The City, the Council and Mr. Atteberry have and had a duty to exercise appropriate oversight over Fort Collins Utilities, Mr. Sumner, and Mr. Catanach.

#129 Despite this, and despite the lack of an ordinance, resolution or motion by the Council approving and authorizing the Project, the City, the Council and Mr. Atteberry had full knowledge of the Project and that Fort Collins Utilities, Mr. Sumner, and Mr. Catanach were implementing the Project and allowed them to implement the Project.

#130 Were it not for the Project Fort Collins Utilities would never have removed the analog electric meter from Plaintiff’s home and installed a smart electric meter on Plaintiff’s home. Nor would Fort Collins Utilities have charged Plaintiff the manual meter reading charge. This removal and replacement and the charges were the direct result of the Project.

#131 The City is liable for the injuries caused to Plaintiff by Mr. Atteberry.

#132 Third cause of action, against all defendants, for negligence.

#133 The previous paragraphs are reiterated as if fully set forth here.

#134 City of Fort Collins, the Fort Collins City Council, and Darin Atteberry had a duty to exercise oversight over Fort Collins Utilities, Mr. Sumner, and Mr. Catanach and to prevent them from taking action not authorized by the City Council.

#135 Fort Collins Utilities, Mr. Sumner, and Mr. Catanach each had a duty to act only as authorized by the City Council.

#136 All defendants breached their respective duties.

#137 Plaintiff's injuries are the direct result of this negligence.

Were it not for the Project Fort Collins Utilities would never have removed the analog electric meter from Plaintiff's home and installed a smart electric meter on Plaintiff's home. Nor would Fort Collins Utilities have charged Plaintiff the manual meter reading charge. This removal and replacement and the charges were the direct result of the Project.

#138 Fourth cause of action, against all defendants, for fraud.

#139 The previous paragraphs are reiterated as if fully set forth here.

#140 Defendants have an obligation to not commit fraud against Plaintiff and other utility customers.

#141 All defendants have committed fraud by implementing the Project, removing and replacing Plaintiff's and other customers' electric meters, and charging Plaintiff and other customers who have "opted out" a manual meter reading charge because the Project was not approved and authorized by the City Council as described above and the decision to implement Project was not made in accordance with the open meetings law and Colorado Sunshine Act of 1972. Rather it was made behind closed doors and in secret. Implementing a Project not approved and authorized by the City Council constitutes fraud.

#142 Plaintiff's injuries are the direct result of this fraud.

Were it not for the Project Fort Collins Utilities would never have removed the analog electric meter from Plaintiff's home and installed a smart electric meter on Plaintiff's home. Nor would Fort Collins Utilities have charged Plaintiff the manual meter reading charge. This removal and replacement and the charges were the direct result of the Project.

#143 Fifth cause of action, against all defendants for willful misrepresentation.

#144 The previous paragraphs are reiterated as if fully set forth here.

#145 Defendants have an obligation to not make willful misrepresentation to Plaintiff and other utility customers.

#146 Defendants represented to Plaintiff and indeed to all utility customers that the Project had been approved and authorized by the City Council. Defendants made this representation indirectly, in various written letters and communications to Plaintiff and other utility customers, and by their actions in removing the analog electric meters and installing smart electric meters on Plaintiff's home and on other utility customers' homes and businesses.

#147 Defendants knew or should have known that City Council approval and authorization was required for the Project. They also knew or should have known that the City Council never gave its approval and authorization.

#148 Therefore Defendants knew or should have known that their representations concerning the Project were false and misleading and caused or were likely to cause injury in the form of manual meter reading charges to Plaintiff and other utility customers who objected to the installation of a smart electric meter on their home.

#149 Plaintiff's injuries are the direct result of this willful misrepresentation. Were it not for the Project Fort Collins Utilities would never have removed the analog electric meter from Plaintiff's home and installed a smart electric meter on Plaintiff's home. Nor would Fort Collins Utilities have charged Plaintiff the manual meter reading charge. This removal and replacement and the charges were the direct result of the Project.

#150 Sixth cause of action, against all defendants, for deceit.

#151 The previous paragraphs are reiterated as if fully set forth here.

#152 Defendants have an obligation to not deceive Plaintiff and other utility customers.

#153 Defendants knew or should have known that City Council's approval and authorization were required for the Project.

#154 Defendants knew or should have known that the Project was not approved and authorized by the City Council, as described above, and that the decision to implement Project was not made in accordance with the open meetings law and Colorado Sunshine Act of 1972. Rather it was made behind closed doors and in secret.

#155 Despite this defendants implemented the Project, removed the analog meters, installed the smart meters, and charged Plaintiff and other utility customers who objected to the installation of a smart meter on their home a manual meter reading charge.

#156 Plaintiff's injuries are the direct result of this deceit.

Were it not for the Project Fort Collins Utilities would never have removed the analog electric meter from Plaintiff's home and installed a smart electric meter on Plaintiff's home. Nor would Fort Collins Utilities have charged Plaintiff the manual meter reading charge. This removal and replacement and the charges were the direct result of the Project.

#157 Prayer for relief

Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants as follows:

#1) An order directing the City of Fort Collins to grant and approve Plaintiff's notice and claim dated September 23, 2015 and to pay to Plaintiff the amount demanded therein plus Plaintiff's costs in bringing this action

#2) A declaratory order to the effect that:

- a) The approval or authorization of the Fort Collins City Council was required for the AMFC Project; and
- b) The Fort Collins City Council never provided such approval or authorization; and
- c) The AMFC Project was unlawful; and
- d) The removal by Fort Collins Utilities of the analog electric meter from Plaintiff's home and the installation of a smart electric meter on Plaintiff's home, which were purportedly under the AMFC Project, was unlawful; and
- e) The manual meter reading charge that Fort Collins Utilities has been charging Plaintiff, despite being purportedly authorized by Resolution of the City Council, was directly related to and caused by the AMFC Project and was therefore unlawful.

#3) An order to permanently enjoin Defendants from charging Plaintiff a manual meter reading charge

#4) Such other relief as the Court deems fair and appropriate.

Dated March 24, 2016

Respectfully submitted.

Virginia L. Farver