

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 24-cv-02833-RMR-SBP

DANIELLE SEEWALKER,

Plaintiff,

v.

TOWN OF VAIL, COLORADO,

Defendant.

**DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT
AND DEFENDANT'S DEMAND FOR JURY TRIAL**

Defendant Town of Vail, Colorado, by and through its counsel, Andrew D. Ringel, Esq., of Hall & Evans, L.L.C., hereby respectfully submits this Answer to Plaintiff's Complaint and Defendant's Demand for Jury Trial, as follows:

INTRODUCTION

1. Defendant Town of Vail, Colorado ("Defendant") admits there were communications between representatives of the Arts in Public Places Board ("AIPP Board") and Plaintiff beginning in January 2024 concerning Plaintiff's participation in the Artist in Residency Program. Defendant states before any artist could be selected by the AIPP Board to participate in the Artist in Residency Program, the artist was required to present a proposal to the AIPP Board, have the proposal approved, and then enter into a contract with the Defendant. Plaintiff was notified and invited to present her proposal at the May 6, 2024, AIPP Board meeting, but Plaintiff cancelled her

participation in this meeting a few days prior to it occurring. Defendant states none of the above steps occurred respecting Plaintiff's participation in the Artist in Residency Program. Defendant denies the remaining allegations in paragraph 1 of Plaintiff's Complaint.

2. Defendant admits there has been discrimination against Native Americans historically in both the United States and in Colorado. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 2 of Plaintiff's Complaint and therefore denies same.

3. Defendant admits the AIPP Board has developed an Artist in Residency Program. Defendant admits the Artist in Residency Program is designed to offer a unique environment for artists to grow, re-energize, and infuse new perspectives into their work and share with the Vail community. Defendant admits the Artist in Residency Program is designed to create an exceptional and diverse art collection, community engagement and outreach, collaboration with youth programs and other non-profits, and offer educational opportunities related to the visual arts. Defendant admits the AIPP Board and others working with the Art in Public Places Program were excited by the possibility of Plaintiff participating in the Artist in Residency Program. Defendant denies the remaining allegations in paragraph 3 of Plaintiff's Complaint. Defendant and the AIPP Board have included a diverse representation of artists in the public art collection in the Town of Vail including artists of various ethnic backgrounds.

4. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included Plaintiff creating a mural,

providing instruction at a community event, and the display of Plaintiff's art. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included discussion concerning Plaintiff's Native American heritage. Defendant denies the remaining allegations in paragraph 4 of Plaintiff's Complaint.

5. Defendant admits Plaintiff posted the picture that appears following paragraph 43 on her professional Instagram account and her professional website. Defendant is without sufficient knowledge or information to form a belief as to the meaning of the picture to the Plaintiff. Defendant denies the remaining allegations in paragraph 5 of Plaintiff's Complaint.

6. Defendant admits individuals complained to representatives of the Defendant and publicly concerning Plaintiff's posting of the picture that appears following paragraph 43 on her Instagram account. Defendant denies the allegations in paragraph 6 of Plaintiff's Complaint.

7. Defendant denies the allegations in paragraph 7 of Plaintiff's Complaint.

8. Defendant admits Plaintiff attempts a variety of claims against Defendant. Defendant denies Plaintiff states any cognizable claim against Defendant. Defendant denies the remaining allegations in paragraph 8 of Plaintiff's Complaint.

JURISDICTION AND VENUE

9. Defendant admits Plaintiff attempts a variety of claims against Defendant. Defendant denies Plaintiff states any cognizable claim against Defendant. Defendant denies Plaintiff is entitled to any of the relief sought in Plaintiff's Complaint.

10. Defendant admits this Court possesses subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367. Defendant denies the remaining allegations in paragraph 10 of Plaintiff's Complaint.

11. Defendant admits venue is proper before this Court pursuant to 28 U.S.C. § 1391. Defendant denies the remaining allegations in paragraph 11 of Plaintiff's Complaint.

PARTIES

12. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 12 of Plaintiff's Complaint and therefore denies same.

13. Defendant admits it is a Town organized and operating under Colorado law. Defendant admits it is located in the mountains and is a ski community. Defendant admits it operates an Art in Public Places Program. Defendant admits the AIPP Board is responsible for the Art in Public Places Program. Defendant admits the AIPP Board consists of five individuals who are volunteers who are appointed by the Town Council. Defendant admits the AIPP Board oversees the Artist in Residency Program. Defendant denies the remaining allegations in paragraph 13 of Plaintiff's Complaint.

FACTUAL ALLEGATIONS

Defendant denies the allegations and characterizations in the subheading prior to paragraph 14 of Plaintiff's Complaint.

14. Defendant admits the Art in Public Places Program ("AIPP Program") was created in 1992. Defendant admits the AIPP Program operates pursuant to the Art in

Public Places Program Policies and Guidelines. Defendant admits the purpose of the AIPP Program is to promote and encourage the development of public awareness of fine arts. Defendant admits the AIPP Program maintains the public art located in Vail among other responsibilities. Defendant admits diversity is a value of the AIPP Program as evidenced by the diverse artists commissioned for works displayed publicly in the Town of Vail. Defendant denies the remaining allegations in paragraph 14 of Plaintiff's Complaint.

15. Defendant admits a review of the AIPP Program was conducted in 2022. Defendant admits the review included review of all the organic documents of the AIPP Program including the Program Policies and Guidelines, applicable Town ordinances, and the 2001 AIPP Strategic Plan. Defendant admits the review also including interviews, work sessions, and surveys conducted with public representatives, stakeholders and Town staff. Defendant denies the remaining allegations in paragraph 15 of Plaintiff's Complaint.

16. Defendant admits the AIPP Board adopted a 2023-2028 Strategic Plan for the AIPP Program in 2023. Defendant states the 2023-2028 Strategic Plan in its entirety speaks for itself. Defendant denies the allegations in paragraph 16 of Plaintiff's Complaint inconsistent therewith. Defendant denies the remaining allegations in paragraph 16 of Plaintiff's Complaint.

17. Defendant admits the Artist in Residency Program is part of the 2023-2028 Strategic Plan and a priority for the AIPP Program. Defendant admits the Artist in Residency Program is designed to offer a unique environment for artists to grow, re-

energize, and infuse new perspectives into their work and share with the Vail community. Defendant admits the Artist in Residency Program is designed to create an exceptional and diverse art collection, community engagement and outreach, collaboration with youth programs and other non-profits, and offer educational opportunities related to the visual arts. Defendant denies the remaining allegations in paragraph 17 of Plaintiff's Complaint.

18. Defendant admits the Artist in Residency Program began in the Summer of 2023 and Squire Broel was the Artist in Residence. Defendant admits Mr. Broel is based in the State of Washington and works as a sculptor and painter. Defendant denies the remaining allegations in paragraph 18 of Plaintiff's Complaint.

19. Defendant admits Mr. Broel's Artist in Residency involved displaying sculptures in the Town of Vail and participating in community events. Defendant admits Mr. Broel was commissioned \$60,000 to create a permanent sculpture in bronze and other metal materials "Rising from Memory" for the town's public art collection. Mr. Broel was not paid for his participation in the Artist in Residency Program other than travel expenses and being provided lodging. Defendant denies the remaining allegations in paragraph 19 of Plaintiff's Complaint.

20. Defendant admits before any artist could be selected by the AIPP Board to participate in the Artist in Residency Program, the artist was required to present a proposal to the AIPP Board, have the proposal approved, and then enter into a contract with the Defendant. Defendant denies the remaining allegations in paragraph 20 of Plaintiff's Complaint.

Defendant denies the allegations and characterizations in the subheading prior to paragraph 21 of Plaintiff's Complaint.

21. Defendant admits there were communications concerning Plaintiff's potential participation in the Artist in Residency Program. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of paragraph 21 of Plaintiff's Complaint and therefore denies same. Defendant denies the remaining allegations in paragraph 21 of Plaintiff's Complaint.

22. Defendant admits Molly Eppard is the Art in Public Places Coordinator for the Town of Vail. Defendant admits Ms. Eppard contacted Plaintiff in January 2024 concerning Plaintiff's potential participation in the Artist in Residency Program. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included Plaintiff creating a mural, providing instruction at a community event, and the display of Plaintiff's art. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included discussion concerning Plaintiff's Native American heritage. Defendant denies the remaining allegations in paragraph 22 of Plaintiff's Complaint.

23. Defendant admits Ms. Eppard and Plaintiff had discussions by telephone and over email concerning Plaintiff's potential participation in the Artist in Residency Program. Defendant denies the remaining allegations in paragraph 23 of Plaintiff's Complaint.

24. Defendant admits Ms. Eppard and Plaintiff had discussions over email concerning Plaintiff's potential participation in the Artist in Residency Program.

Defendant states the email from Ms. Eppard to Plaintiff dated January 18, 2024, in its entirety speaks for itself. Defendant denies the allegations in paragraph 24 of Plaintiff's Complaint inconsistent therewith. Defendant denies the remaining allegations in paragraph 24 of Plaintiff's Complaint.

25. Defendant admits Ms. Eppard and Plaintiff had discussions over email concerning Plaintiff's potential participation in the Artist in Residency Program. Defendant states the email from Ms. Eppard to Plaintiff dated January 23, 2024, in its entirety speaks for itself. Defendant denies the allegations in paragraph 25 of Plaintiff's Complaint inconsistent therewith. Defendant denies the remaining allegations in paragraph 25 of Plaintiff's Complaint.

26. Defendant admits Ms. Eppard and Plaintiff had discussions over email concerning Plaintiff's potential participation in the Artist in Residency Program. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included Plaintiff creating a mural. Defendant denies the remaining allegations in paragraph 26 of Plaintiff's Complaint.

27. Defendant admits Ms. Eppard and Plaintiff had discussions over email concerning Plaintiff's potential participation in the Artist in Residency Program. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included Plaintiff creating a mural. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included the AIPP Board approving her proposal for a mural. Defendant denies the remaining allegations in paragraph 27 of Plaintiff's Complaint.

28. Defendant admits there was discussion at the AIPP Program of a budget for a mural created by the Plaintiff in the amount of \$10,000 including materials. Defendant denies the remaining allegations in paragraph 28 of Plaintiff's Complaint.

29. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included Plaintiff creating a mural, providing instruction at a community event, and the display of Plaintiff's art. Defendant denies the remaining allegations in paragraph 29 of Plaintiff's Complaint.

30. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 30 of Plaintiff's Complaint and therefore denies same.

31. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included Plaintiff creating a mural, providing instruction at a community event, and the display of Plaintiff's art. Defendant denies the remaining allegations in paragraph 31 of Plaintiff's Complaint.

32. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included Plaintiff creating a mural, providing instruction at a community event, and the display of Plaintiff's art. Defendant denies the remaining allegations in paragraph 32 of Plaintiff's Complaint.

33. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included Ms. Eppard communicating with the Vail Public Library. Defendant denies the remaining allegations in paragraph 33 of Plaintiff's Complaint.

34. Defendant admits as part of Plaintiff's potential participation in the Artist in Residency Program, Ms. Eppard traveled to Denver to see Plaintiff's exhibition at the History Colorado Center. Defendant denies the remaining allegations in paragraph 34 of Plaintiff's Complaint.

35. Defendant admits as part of Plaintiff's potential participation in the Artist in Residence Program, Plaintiff traveled to Vail on March 6, 2024, met with Ms. Eppard and visited the location where her potential mural would be installed. Defendant admits Plaintiff was reimbursed for her travel expenses for March 6, 2024. Defendant denies the remaining allegations in paragraph 35 of Plaintiff's Complaint.

36. Defendant admits the communications concerning Plaintiff's potential participation in the Artist in Residency Program included Plaintiff creating a mural. Defendant denies the remaining allegations in paragraph 36 of Plaintiff's Complaint.

37. Defendant admits Plaintiff's potential participation in the Artist in Residency Program was discussed at AIPP Board meetings. Defendant denies the remaining allegations in paragraph 37 of Plaintiff's Complaint.

38. Defendant states any February 21, 2024, email thread in its entirety speaks for itself. Defendant denies the allegations in paragraph 38 of Plaintiff's Complaint inconsistent therewith. Defendant states any email from Kathleen Halloran in its entirety speaks for itself. Defendant denies the allegations in paragraph 38 of Plaintiff's Complaint inconsistent therewith. Defendant states before any artist could be selected by the AIPP Board to participate in the Artist in Residency Program, the artist was required to present a proposal to the AIPP Board, have the proposal approved, and

then enter into a contract with the Defendant. Defendant states none of these steps occurred respecting Plaintiff's participation in the Artist in Residency Program. Defendant denies the remaining allegations in paragraph 38 of Plaintiff's Complaint.

39. Defendant admits a May 6, 2024, communication stated Plaintiff had been selected for the 2024 Artist in Residency Program. Defendant states the May 6, 2024, communication in its entirety speaks for itself. Defendant denies the allegations in paragraph 39 of Plaintiff's Complaint inconsistent therewith. Defendant states the May 6, 2024, communication was sent in error because before any artist could be selected by the AIPP Board to participate in the Artist in Residency Program, the artist was required to present a proposal to the AIPP Board, have the proposal approved, and then enter into a contract with the Defendant. Defendant states none of these steps occurred respecting Plaintiff's participation in the Artist in Residency Program. Defendant denies the remaining allegations in paragraph 39 of Plaintiff's Complaint.

40. Defendant admits Plaintiff was not an employee of Defendant. Defendant denies the remaining allegations in paragraph 40 of Plaintiff's Complaint.

Defendant denies the allegations and characterizations in the subheading prior to paragraph 41 of Plaintiff's Complaint.

41. Defendant admits Plaintiff has a professional Instagram account and posts on her professional Instagram account. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 41 of Plaintiff's Complaint and therefore denies same.

42. Defendant admits Plaintiff has a professional Instagram account and posts on her professional Instagram account. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 42 of Plaintiff's Complaint and therefore denies same.

43. Defendant admits Plaintiff posted the picture under paragraph 43 on her Instagram account. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 43 of Plaintiff's Complaint and therefore denies same.

44. Defendant admits Plaintiff posted the picture under paragraph 43 on her Instagram account with a caption. Defendant states the caption on the posting in its entirety speaks for itself. Defendant denies the allegations in paragraph 44 of Plaintiff's Complaint inconsistent therewith. Defendant denies the remaining allegations in paragraph 44 of Plaintiff's Complaint.

45. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 45 of Plaintiff's Complaint and therefore denies same.

46. Defendant states the comments to Plaintiff's Instagram post in their entirety speak for themselves. Defendant denies the allegations in paragraph 46 of Plaintiff's Complaint inconsistent therewith. Defendant denies the remaining allegations in paragraph 46 of Plaintiff's Complaint.

47. The allegations in paragraph 47 of Plaintiff's Complaint contain a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 47 of Plaintiff's Complaint.

48. Defendant admits Plaintiff was not acting as a participant in the Artist in Residency Program when she posted on her Instagram account. Defendant denies the remaining allegations in paragraph 48 of Plaintiff's Complaint.

49. Defendant admits Plaintiff was not acting as a participant in the Artist in Residency Program when she posted on her Instagram account. Defendant denies the remaining allegations in paragraph 49 of Plaintiff's Complaint.

50. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 50 of Plaintiff's Complaint and therefore denies same.

51. Defendant denies the allegations in paragraph 51 of Plaintiff's Complaint.

52. Defendant admits Ms. Eppard received an email on May 6, 2024, which states: "Hello, I read the Town of Vail email about Danielle SeeWalker with interest, and I went straight to her Instagram page to look at her art. The first thing I saw was her anti-Israel piece that she is selling on her website. I am quite dismayed by this, and I sincerely hope that this sentiment will not be expressed in her Town of Vail art near the covered bridge." Defendant denies the remaining allegations in paragraph 52 of Plaintiff's Complaint.

53. Defendant admits Ms. Eppard sent an email to the AIPP Board on May 6, 2024, after receiving the email quoted above which states: "I wanted you all to see this

email below. I guess that I can assure them that any mural on TOV property will be approved by the AIPP Board and we definitely will not introduce divisive politics into the art. Any other thoughts? Thanks!" Defendant denies the remaining allegations in paragraph 53 of Plaintiff's Complaint.

54. Defendant admits Kathy Langenwalter is a member of the AIPP Board. Defendant admits Ms. Langenwalter sent an email in response to Ms. Eppard's email quote above which states: "I suggest not answering until you have a response approved by Russ and/or Matt." Defendant admits upon information and belief Ms. Langenwalter's email refers to Russell Forrest, the Town Manager of the Town of Vail. Defendant denies the remaining allegations in paragraph 54 of Plaintiff's Complaint.

55. Defendant admits on May 7, 2024, Rabbi Joel D. Newman, Rabbi of the B'nai Vail Congregation, emailed officials with the Town of Vail concerning the incorrect announcement of Plaintiff as the 2024 Artist in Residence, the Plaintiff's Instagram post, and his own and his congregation's feelings concerning those issues. Defendant admits Plaintiff selectively quotes Rabbi Newman's email in paragraph 55 of Plaintiff's Complaint. Defendant states the entirety of Rabbi Newman's email speaks for itself. Defendant denies the allegations in paragraph 55 inconsistent therewith. Defendant denies the remaining allegations in paragraph 55 of Plaintiff's Complaint.

56. Defendant admits Plaintiff selectively quotes Rabbi Newman's email in paragraph 56 of Plaintiff's Complaint. Defendant states the entirety of Rabbi Newman's email speaks for itself. Defendant denies the allegations in paragraph 56 inconsistent

therewith. Defendant denies the remaining allegations in paragraph 56 of Plaintiff's Complaint.

57. Defendant admits on May 7, 2024, Ms. Eppard sent an email to Bobby L'Heureux stating: "You may want to hold the press on the article about Danielle SeeWalker. There is an issue that has literally just arrived." Defendant admits Ms. Eppard sent an email to Mr. L'Heureux later on May 7, 2024, stating: "We have had to pull her from the residency. This is really unfortunate, but the best decision for the program." Defendant states all the emails between Ms. Eppard and Mr. L'Heureux on May 7, 2024, in their entirety speak for themselves. Defendant denies the allegations in paragraph 57 of Plaintiff's Complaint inconsistent therewith. Defendant denies the remaining allegations in paragraph 57 of Plaintiff's Complaint.

58. Defendant admits Ms. Eppard and Plaintiff had a text message exchange on May 7, 2024. Defendant admits some of the text messages between Ms. Eppard and Plaintiff are included after paragraph 58 of Plaintiff's Complaint. Defendant states the text messages between Ms. Eppard and Plaintiff in their entirety speak for themselves. Defendant denies the allegations in paragraph 58 of Plaintiff's Complaint inconsistent therewith. Defendant denies the remaining allegations in paragraph 58 of Plaintiff's Complaint.

59. Defendant admits Plaintiff selectively quotes portions of the text messages between Ms. Eppard and Plaintiff in paragraph 59 of the Plaintiff's Complaint. Defendant states the text messages between Ms. Eppard and Plaintiff in their entirety speak for themselves. Defendant denies the allegations in paragraph 59 of Plaintiff's Complaint

inconsistent therewith. Defendant denies the remaining allegations in paragraph 59 of Plaintiff's Complaint.

60. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 60 of Plaintiff's Complaint and therefore denies same.

61. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 61 of Plaintiff's Complaint and therefore denies same.

62. Defendant admits Ms. Eppard wrote an email to three others on May 8, 2024, which states: "Hi. We have had to pivot our summer program, so please pull any content that Danielle SeeWalker is the Artist in Resident. Thank!" Defendant denies the remaining allegations in paragraph 62 of Plaintiff's Complaint.

63. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 63 of Plaintiff's Complaint and therefore denies same.

Defendant denies the allegations and characterizations in the subheading prior to paragraph 64 of Plaintiff's Complaint.

64. Defendant denies the allegations in paragraph 64 of Plaintiff's Complaint.

65. The allegations in paragraph 65 of Plaintiff's Complaint contain a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 65 of Plaintiff's Complaint.

66. The allegations in paragraph 66 of Plaintiff's Complaint related to whether the Town Manager or the Deputy Town Manager are final policymakers for Defendant contain legal conclusions for which no response is required. To the extent a response to these allegations is required, Defendant denies these allegations in paragraph 66 of Plaintiff's Complaint. Defendant admits Ms. Halloran informed Plaintiff she was not going to participate in the 2024 Artist in Residency Program. Defendant denies the remaining allegations in paragraph 66 of Plaintiff's Complaint.

67. Defendant denies the allegations in paragraph 67 of Plaintiff's Complaint.

68. Defendant admits Ms. Halloran informed Plaintiff during a telephone conversation Plaintiff was not going to participate in the 2024 Artist in Residency Program. Defendant denies the remaining allegations in paragraph 69 of Plaintiff's Complaint.

69. Defendant denies the allegations in paragraph 69 of Plaintiff's Complaint.

70. Defendant denies the allegations in paragraph 70 of Plaintiff's Complaint.

71. Defendant admits Ms. Eppard was present at the time Ms. Halloran spoke to Plaintiff by telephone.

72. Defendant admits Ms. Halloran does not believe she had spoken to Plaintiff prior to May 9, 2024.

73. The allegations in paragraph 73 of Plaintiff's Complaint contain a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 73 of Plaintiff's Complaint.

74. Defendant admits Ms. Eppard emailed Rabbi Newman. Defendant states the email from Ms. Eppard to Rabbi Newman in its entirety speaks for itself. Defendant denies the allegations in paragraph 74 inconsistent therewith. Defendant denies the remaining allegations in paragraph 74 of Plaintiff's Complaint.

75. Defendant admits on May 9, 2024, the following was posted on the Town of Vail website:

The Town of Vail's Art in Public Places (AIPP) is not moving forward with its summer Artist in Residency and related programs. The decision was made after concerns arose around the potential politicizing of the public art program.

Danielle SeeWalker was the artist being considered for the summer residency. While the Town of Vail embraces her messaging and artwork surrounding Native Americans, in recent weeks her art and her public messaging has focused on the Israel/Gaza crisis. While the programs around a 2-week residency were being planned, a proposal or her mural was never submitted, nor approved and therefore no contract was issued.

AIPP's mission is to create a diverse and meaningful public art experience in Vail, but to not use public funds to support any position on a polarizing geopolitical issue.

Defendant denies the remaining allegations in paragraph 75 of Plaintiff's Complaint.

76. Defendant admits on May 9, 2024, what is quoted above was posted on the Town of Vail website. Defendant denies the remaining allegations in paragraph 76 of Plaintiff's Complaint.

77. Defendant admits it received responses to the May 9, 2024, posting from individuals expressing anger and disappointment including a response from Tara McLain Manthey. Defendant states the responses in their entirety speak for themselves. Defendants deny the allegations in paragraph 77 of Plaintiff's Complaint

inconsistent therewith. Defendant denies the remaining allegations in paragraph 77 of Plaintiff's Complaint.

78. Defendant denies the allegations in paragraph 78 of Plaintiff's Complaint.

79. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 79 of Plaintiff's Complaint about how any decision by Defendant was seen by anyone and therefore denies same. Defendant denies the remaining allegations in paragraph 79 of Plaintiff's Complaint.

80. Defendant denies the allegations in paragraph 80 of Plaintiff's Complaint.

81. Defendant admits on May 14, 2024, the following was posted on the Town of Vail website:

In recent days, you have read about the decision by Town of Vail to suspend the Summer 2024 Artist in Residency Program, that would have featured artist Danielle SeeWalker.

It was premature to have announced the residency before a mural had been proposed and a contract put in place. That's on us. And we sincerely apologize for the inconvenience. If Ms. SeeWalker would like to discuss expense reimbursement incurred while preparing for the residency, we will speak to her.

The decision to suspend the residency program, now in its second year, was made in part to allow the town time to reexamine its approach and create robust and specific guidelines, timelines and deliverables for both artists and the town to ensure a positive experience for all moving forward. By way of further background, in January, SeeWalker was approached by Vail's Art in Public Places to discuss creating a mural as part of the town's public art program based on SeeWalker's existing body of public art murals highlighting Native American culture. Our decision not to move forward with See Walker's residency was not made in a vacuum; after releasing her name in an announcement, community members, including representatives from our local faith-based communities, raise concerns to town staff around SeeWalker's recent rhetoric on her social medial platform about the Hamas-Israel war. As public representatives we will not

support messaging that targets one group of residents or guests over another as we are a welcoming and inclusive community for all.

Defendant denies the remaining allegations in paragraph 81 of Plaintiff's Complaint.

82. Defendant denies the allegations in paragraph 82 of Plaintiff's Complaint.

83. Defendant admits Plaintiff was not a participant in the 2024 Artist in Residency Program. Defendant denies the remaining allegations in paragraph 83 of Plaintiff's Complaint.

84. Defendant denies the allegations in paragraph 84 of Plaintiff's Complaint.

85. Defendant denies the allegations in paragraph 85 of Plaintiff's Complaint.

86. Defendant denies the allegations in paragraph 86 of Plaintiff's Complaint.

87. Defendant denies the allegations in paragraph 87 of Plaintiff's Complaint.

88. Defendant denies the allegations in paragraph 88 of Plaintiff's Complaint.

89. Defendant denies the allegations in paragraph 89 of Plaintiff's Complaint.

90. Defendant denies the allegations in paragraph 90 of Plaintiff's Complaint.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983—First Amendment Freedom of Speech and Association)

91. Defendant incorporates by reference its responses to the allegations in paragraphs 1-90 as its response to the allegations in paragraph 91 of Plaintiff's Complaint as if fully set forth herein.

92. Defendant admits the Arts in Public Places Board makes decisions concerning participation in the Artist in Residency Program. Defendant denies the remaining allegations in paragraph 92 of Plaintiff's Complaint.

93. The allegations in paragraph 93 of Plaintiff's Complaint contain a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 93 of Plaintiff's Complaint.

94. Defendant denies the allegations in paragraph 94 of Plaintiff's Complaint.

95. Defendant denies the allegations in paragraph 95 of Plaintiff's Complaint.

96. Defendant denies the allegations in paragraph 96 of Plaintiff's Complaint.

97. Defendant admits individuals including Rabbi Newman raised concerns about Plaintiff's participation in the Artist in Residency Program. Defendant states any statements conveyed by anyone to Defendant or publicly related to the Plaintiff's participation in the Artist in Residency program in their entirety speak for themselves. Defendant denies the allegations in paragraph 97 of Plaintiff's Complaint inconsistent therewith. Defendant denies the remaining allegations in paragraph 97 of Plaintiff's Complaint.

98. Defendant denies the allegations in paragraph 98 of Plaintiff's Complaint.

99. Defendant admits the allegations in paragraph 99 of Plaintiff's Complaint.

100. Defendant admits the allegations in paragraph 100 of Plaintiff's Complaint.

101. Defendant denies the allegations in paragraph 101 of Plaintiff's Complaint.

102. Defendant denies the allegations in paragraph 102 of Plaintiff's Complaint.

103. Defendant denies the allegations in paragraph 103 of Plaintiff's Complaint.

104. The allegations in paragraph 104 of Plaintiff's Complaint contain a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 104 of Plaintiff's Complaint.

105. Defendant denies the allegations in paragraph 105 of Plaintiff's Complaint.

106. Defendant denies the allegations in paragraph 106 of Plaintiff's Complaint.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983—First Amendment Retaliation)

107. Defendant incorporates by reference its responses to the allegations in paragraphs 1-106 as its response to the allegations in paragraph 107 of Plaintiff's Complaint as if fully set forth herein.

108. The allegations in paragraph 108 of Plaintiff's Complaint contain a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 108 of Plaintiff's Complaint.

109. The allegations in paragraph 109 of Plaintiff's Complaint contain a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 109 of Plaintiff's Complaint.

110. Defendant denies the allegations in paragraph 110 of Plaintiff's Complaint.

111. Defendant denies the allegations in paragraph 111 of Plaintiff's Complaint.

112. Defendant denies the allegations in paragraph 112 of Plaintiff's Complaint.

113. Defendant denies the allegations in paragraph 113 of Plaintiff's Complaint.

114. Defendant denies the allegations in paragraph 114 of Plaintiff's Complaint.

115. Defendant denies the allegations in paragraph 115 of Plaintiff's Complaint.

116. The allegations in paragraph 116 of Plaintiff's Complaint contain a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 116 of Plaintiff's Complaint.

117. Defendant denies the allegations in paragraph 117 of Plaintiff's Complaint.

118. Defendant denies the allegations in paragraph 118 of Plaintiff's Complaint.

THIRD CLAIM FOR RELIEF

(Colo. Const. Art. II, Section 10—Freedom of Speech and Association)

119. Defendant incorporates by reference its responses to the allegations in paragraphs 1-118 as its response to the allegations in paragraph 119 of Plaintiff's Complaint as if fully set forth herein.

120. Defendant admits paragraph 120 of Plaintiff's Complaint quotes Colo. Const. Art. II, § 10. Defendant states the allegations in paragraph 120 concerning what Colo. Const. Art. II, § 10 protects contain a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 120 of Plaintiff's Complaint.

121. The allegations in paragraph 121 of Plaintiff's Complaint contain a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 121 of Plaintiff's Complaint.

122. Defendant denies the allegations in paragraph 122 of Plaintiff's Complaint.

123. The allegations in paragraph 123 of Plaintiff's Complaint contain a legal conclusion for which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 123 of Plaintiff's Complaint.

124. Defendant denies the allegations in paragraph 124 of Plaintiff's Complaint.

125. Defendant denies the allegations in paragraph 125 of Plaintiff's Complaint.

126. Defendant denies the allegations in paragraph 126 of Plaintiff's Complaint.

127. Defendant denies the allegations in paragraph 127 of Plaintiff's Complaint.

128. Defendant denies the allegations in paragraph 128 of Plaintiff's Complaint.

129. Defendant denies the allegations in paragraph 129 of Plaintiff's Complaint.

130. Defendant denies the allegations in paragraph 130 of Plaintiff's Complaint.

131. Defendant denies the allegations in paragraph 131 of Plaintiff's Complaint.

PRAYER FOR RELIEF

Defendant denies the allegations under the heading "Prayer for Relief" including all the allegations in subparagraphs (a) through (i). Defendant denies Plaintiff is entitled to any of the relief sought in the Plaintiff's Complaint.

GENERAL DENIAL

Defendant denies each and every allegation in Plaintiff's Complaint not specifically admitted in this Answer.

DEFENSES AND AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted against Defendant.

2. Plaintiff is not entitled to any of the relief sought or claimed under any of the legal theories against Defendant.

3. Plaintiff's damages, if any, were proximately caused by her own conduct or the conduct of others and not by reason of any unconstitutional or other action by Defendant.

4. Plaintiff's damages, if any, are not to the nature and extent alleged.

5. Plaintiff may have failed to mitigate any damages allegedly sustained as a result of the events described in Plaintiff's Complaint.

6. No act or omission of Defendant caused any violation of Plaintiff's constitutional rights.

7. Plaintiff cannot establish a violation of her constitutional rights.

8. No custom, policy, practice or decision by a final policymaker of Defendant caused any violation of Plaintiff's constitutional rights.

9. Defendant acted in accordance with all common law, statutory, regulatory, constitutional, and policy obligations and duties and without any intent to cause Plaintiff any harm.

10. Plaintiff lacks standing or a basis to pursue injunctive or equitable relief.

11. Defendant lacked the requisite intent to establish any claim against Defendant.

12. Defendant specifically reserves the right to amend this Answer to include additional defenses and affirmative defenses and/or delete defenses and affirmative defenses which have become applicable or non-applicable upon completion of additional discovery.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Defendant hereby demands a trial by jury on all issues so triable.

WHEREFORE, Defendant Town of Vail, Colorado, having fully answered the allegations in Plaintiff's Complaint in full, respectfully requests this Court dismiss it in its entirety with prejudice, enter judgment in Defendant's favor and against Plaintiff, and grant such other and further relief as this Court deems just and proper.

Dated this 20th day of December, 2024.

Respectfully submitted,

s/ Andrew D. Ringel .
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 20th day of December 2024, a true and correct copy of the foregoing was filed by CM/ECF and was served on the following parties as specified:

Laura B. Moraff, Esq.
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Madeline M. Leibin, Esq.
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s/ Elizabeth Miller
Legal Assistant
Hall & Evans, L.L.C.