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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

RUSTY AND MARC ANDRUS; )  
RUSTLERS, LLC, a Wyoming limited )  
liability company )

Plaintiffs, )

v. )

Civil Action No. 18-CV-05-S

THE TOWN OF THAYNE, WYOMING, an )  
incorporated Wyoming Municipality; THE )  
MAYOR AND MEMBERS OF THE TOWN )  
COUNCIL OF THE TOWN OF THAYNE, )  
WYOMING, in each of their official )  
capacities. )

Defendants. )

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**DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT**  
**AND AFFIRMATIVE DEFENSES**

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Defendants, Town of Thayne, Wyoming, and the Mayor and Members of the Town Council of the Town of Thayne, Wyoming, in each of their official capacities [collectively referred to herein as "Defendants"], by and through their attorney, Thomas A. Thompson, of MacPherson, Kelly and

Thompson, LLC, respectfully admit, deny, and affirmatively state in response to the **Plaintiffs' Verified Complaint for Damages, Declaratory and Injunctive Relief**, as follows:

### INTRODUCTION

1. In response to paragraph 1 of the Plaintiffs' Complaint, Defendants deny each and every allegation set forth therein.
2. In response to paragraph 2 of the Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation that Plaintiffs Marc and Rusty Andrus are a married couple, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. It is affirmatively stated that to the best of Defendants' knowledge and belief that all documents presented to the Defendants, with exception of the *Business License Application-2017-18*, and all in-person interactions with Plaintiffs have been with "Rusty Andrus" and "Marc Jones" not "Marc Andrus." Defendants admit Plaintiffs have represented to the Defendants that they reside in Lincoln County, Wyoming, and that Plaintiffs own the business "Rustlers, LLC," a Wyoming limited liability company. Defendants admit that Plaintiffs have represented to the Defendants that they purchased a commercial property located on Main Street in Thayne, Wyoming. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations that Plaintiffs purchased the commercial property in September of 2015 and have made significant efforts over the intervening time period to create a family restaurant, bar and grille or that this was to fulfill their dream of becoming restaurant owners, as well as to enhance and benefit the Town of Thayne and its community, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Defendants deny that Plaintiffs operate the restaurant under the name "Rustlers Restaurant and Saloon," and affirmatively state that Plaintiffs operate a "bar and grill" under the name "Rustlers Restaurant and

Saloon." Defendants deny that since the beginning of this effort in September of 2015, Plaintiffs have made strenuous and earnest attempts to work with Defendants and to comply with all of Defendants' ordinances, rules, regulations and instructions to Plaintiffs -- only to be met with push-back, hostility, and utterly disparate treatment from Defendants in comparison to other similarly situated non-LGBT citizens and business owners within the Town of Thayne. Defendants deny that "Ultimately, Defendants have taken official action against Plaintiffs in order to discriminate against Plaintiffs, in violation of the Constitutions of the United States and Wyoming, as set forth [in their complaint.]" Any allegations in paragraph 2 which are not specifically admitted are generally denied.

#### **PARTIES**

3. In response to paragraph 3 of the Plaintiffs' Complaint, Defendants admit that it has been represented to the Defendants that Plaintiff Rusty Andrus is an adult resident of Wyoming, residing in Lincoln County, Wyoming. Defendants deny that Plaintiff Rusty Andrus resides in "Star Valley Ranches" and affirmatively state the correct name of the town is "Star Valley Ranch." Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation that Mr. Andrus is an openly gay man, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Any allegations in paragraph 3 which are not specifically admitted are generally denied.

4. In response to paragraph 4 of the Plaintiffs' Complaint, Defendants admit that it has been represented to Defendants that "Marc Jones" is an adult resident of Wyoming, residing in Lincoln County, Wyoming. Defendants deny that Plaintiff Marc Jones/Andrus resides in "Star Valley Ranches" and affirmatively state the correct name of the town is "Star Valley Ranch." It is affirmatively stated that all of the documents presented to the Defendants, with the exception of the

*Business License Application-2017-18*, have been with Rusty Andrus and with “Marc Jones” not “Marc Andrus.” It is further affirmatively stated that all interactions by Defendants have been with Rusty Andrus and with “Marc Jones” not “Marc Andrus.” Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation that Mr. Andrus is an openly gay man, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Any allegations in paragraph 4 which are not specifically admitted are generally denied.

5. In response to paragraph 5 of the Plaintiffs’ Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation that Plaintiffs Rusty and Marc Andrus are a married couple and have been married to each other at all times relevant to this action, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Any allegations in paragraph 5 which are not specifically admitted are generally denied.

6. In response to paragraph 6 of the Plaintiffs’ Complaint, Defendants admit that Rustlers, LLC is a Wyoming limited liability company, duly organized under the laws of Wyoming and registered with the Wyoming Secretary of State’s Office. Defendants deny that Rustler, LLC owns and operates the restaurant under the name “Rustlers Restaurant and Saloon,” and affirmatively state that Rustlers, LLC operates a “bar and grill” under the name “Rustlers Restaurant and Saloon” within the Town of Thayne, Wyoming. Any allegations in paragraph 6 which are not specifically admitted are generally denied.

7. Defendants admit the allegations set forth in paragraph 7 of Plaintiffs’ Complaint.

8. In response to paragraph 8 of the Plaintiffs’ Complaint, Defendants admit that Defendant Town of Thayne, Wyoming, is an incorporated Wyoming municipality, located in Lincoln County, Wyoming, and created pursuant to the powers vested by Wyo. Stat. Ann. §§ 15-1-201 et seq. and

that the Town of Thayne is a person within the meaning of 42 U.S.C. § I 983 and was acting under color of state law at all times relevant to this Complaint. Defendants deny that “It is a ‘duty’ of the Town of Thayne, Wyoming, to defend and enforce its laws and ordinances. See Wyo. Stat. Ann. §§ 15-1-103 et seq.” Any allegations in paragraph 8 which are not specifically admitted are generally denied.

9. In response to paragraph 9 of the Plaintiffs’ Complaint, Defendants admit that Plaintiffs have sued the Defendants Mayor and Town Council of the Town of Thayne, Wyoming, each in their “official capacities” as the Mayor of the Town of Thayne, Wyoming, and members of the Town Council of the Town of Thayne, Wyoming, and that pursuant to Wyo. Stat. Ann. § 15-1-103(a)(i) and 42 U.S.C. § 1983 they may be sued in their official capacities, and that they are filing an answer in response to the Plaintiffs’ Complaint. Defendants deny that “It is also the ‘duty’ of each of the Defendants Mayor and Town Council of the Town of Thayne, Wyoming, to defend and enforce the laws and ordinances of the Town of Thayne, Wyoming.” Defendants admit that each of the Defendants Mayor and Town Council members of the Town of Thayne, Wyoming, is a person within the meaning of 42 U.S.C. § 1983. and was acting under color of state law at all times relevant to this complaint. It is affirmatively stated that while Plaintiffs have sued the Mayor and Town Council members in their official capacities that no cause of action exists and such complaint is subject to many affirmative defenses and dismissal. Any allegations in paragraph 9 which are not specifically admitted are generally denied.

#### **JURISDICTION AND VENUE**

10. In response to paragraph 10 of the Plaintiffs’ Complaint, the allegations in paragraph 10 are purportedly statements of law that do not require the Defendants to either admit or deny the

same, but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein. Defendants affirmatively stated that to the extent that this action is based on sections of the Wyoming Constitution, Plaintiffs' action is defective and barred due to Plaintiffs' failure to comply with the requirements of the Wyoming Governmental Claims Act [Wyo. Stat. Ann. §§ 1-39-101, et seq.] in that Plaintiffs have not, at any time, filed a claim with the Town of Thayne upon their state law claims, which is a legal prerequisite to bringing an action based on state law against these Defendants.

11. In response to paragraph 11 of the Plaintiffs' Complaint, Defendants admit this Court has original jurisdiction over the subject matter of actions brought pursuant to 28 U.S.C. §§ 1331 and 1343 if matters in controversy arise under laws of the United States and the United States Constitution. Defendants affirmatively state that no cause of action exists against the Defendants and such complaint is subject to many affirmative defenses and dismissal. Any allegations in paragraph 11 which are not specifically admitted are generally denied.

12. In response to paragraph 12 of the Plaintiffs' Complaint, Defendants admit that venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2). Any allegations in paragraph 12 which are not specifically admitted are generally denied.

13. In response to paragraph 13 of the Plaintiffs' Complaint, the allegations in paragraph 13 are purportedly statements of law that do not require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein.

14. Defendants admit the allegations in paragraph 14 of Plaintiffs' Complaint.

### **FACTUAL ALLEGATIONS**

15. In response to paragraph 15 of the Plaintiffs' Complaint, Defendants admit that Plaintiffs have represented to Defendants that they purchased a commercial property located on Main Street in Thayne, Wyoming. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations that Plaintiffs purchased the commercial property in September of 2015 and have made significant efforts over the intervening time period to create a family restaurant, bar and grille or that this was to fulfill their dream of becoming restaurant owners, as well as to enhance and benefit the Town of Thayne and its community and operate the restaurant under the name "Rustlers Restaurant and "Saloon," which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Defendants affirmatively state that Plaintiffs operate a "bar and grill" under the name "Rustlers Restaurant and Saloon." Any allegations in paragraph 15 which are not specifically admitted are generally denied.

16. Defendants deny the allegations set forth in paragraph 16 of the Plaintiffs' Complaint.

17. In response to paragraph 17 of the Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations that Plaintiffs purchased a century-old commercial property for their restaurant, located on Thayne's Main Street, which at the date of their purchase had been on the market for more than eight years without sale, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Any allegations in paragraph 17 which are not specifically admitted are generally denied.

18. In response to paragraph 18 of the Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth therein, which has the effect of a denial under Rule 8(b)(5), F.R.C.P.

19. In response to paragraph 19 of the Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth therein, which has the effect of a denial under Rule 8(b)(5), F.R.C.P.

20. Defendants deny the allegations set forth in paragraph 20 of the Plaintiff's Complaint. It is affirmatively stated that upon information and belief Plaintiffs met with the then Town Clerk to inquire about a bar and grill liquor license.

21. In response to paragraph 21 of the Plaintiffs' Complaint, Defendants admit that Plaintiffs communicated with the Town Clerk of the Town of Thayne in order to obtain a bar and grill liquor license from the Town. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations concerning when those communications occurred, whether they were "extensive" and if the content of the communications were as alleged, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Any allegations in paragraph 21 which are not specifically admitted are generally denied.

22. Defendants deny the allegations as set forth in paragraph 22 of the Plaintiffs' Complaint. Defendants affirmatively state: Defendants did not communicate with the Plaintiffs until the March 31, 2016, public hearing held on the bar and grill liquor license application; Plaintiffs requested information from the Town Clerk concerning the liquor license application process, which information, upon information and belief, was expeditiously provided; the Town Clerk did not "demand" information from Plaintiffs, Plaintiffs requested information from the Town Clerk; prior to the public hearing on March 31, 2016, the Town Clerk invited Plaintiffs to bring supporters with them to show community support for their application for issuance of a liquor license as the Town Clerk was trying to be helpful in getting the license issued. Any allegations in paragraph 22 which

are not specifically admitted are generally denied.

23. In response to paragraph 23 of the Plaintiffs' Complaint, Defendants admit that on March 31, 2016, Plaintiffs appeared at a special meeting before the Defendants for purposes of conducting the required public hearing concerning Plaintiffs' application for a bar and grill liquor license. All other allegations set forth in paragraph 23 are denied.

24. In response to paragraph 24 of the Plaintiffs' Complaint, Defendants deny the allegations as set forth therein. Defendants affirmatively state that Plaintiffs' application for the bar and grill liquor license was filed within the "prescribed time period for filing liquor license applications," as Plaintiffs' application was for issuance of a new bar and grill license, and there were no "prescribed time periods" applicable. It is further affirmatively stated that at the public hearing Plaintiffs were asked why they had not approached the Town about the feasibility of the Town issuing a bar and grill liquor license before they undertook the expenditure of money and various activities. Any allegations in paragraph 24 which are not specifically admitted are generally denied.

25. In response to paragraph 25 of the Plaintiffs' Complaint, Defendants admit that they took testimony and heard objections from members of the public at the public hearing conducted on March 31, 2016, concerning Plaintiffs' application for a new bar and grill liquor license and affirmatively state that W.S. 12-4-104(a) requires a public hearing be conducted, specifically to hear "protests, if any there be, against the issuance (transfer or renewal) of the license. . . ." Defendants admit that the owner of Dad's Bar provided comments/protests which included telling Defendants that he felt he had been lied to that Plaintiffs intended to use the space as an apartment building and that Plaintiffs' parking lot was public parking. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations concerning whether or

not Plaintiffs' told the owner of Dad's Bar they intended to use the space as an apartment building, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. It is affirmatively stated Defendants knew that the Plaintiffs' parking lot had been used as public parking, with the consent of the previous owner for more than ten years, but that it was not, in fact, a parking lot owned by the public and that Plaintiffs were granted the bar and grill liquor license despite the comments/protests of the owner of Dad's Bar. Any allegations in paragraph 25 which are not specifically admitted are generally denied.

26. Defendants deny the allegations as set forth in paragraph 26 of the Plaintiffs' Complaint. It is affirmatively stated the Mayor stated that the Defendants could and would request receipts to verify Plaintiffs compliance with state statutes but no such requests have ever been made. Any allegations in paragraph 26 which are not specifically admitted are generally denied.

27. In response to paragraph 27 of the Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth therein, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Defendants affirmatively state there is only one bar and grill liquor license issued by the Town of Thayne, and that is the license held by Plaintiff Rustlers, LLC, so there are no other similarly situated liquor license or business holders in Thayne. Any allegations in paragraph 27 which are not specifically admitted are generally denied.

28. In response to paragraph 28 of the Plaintiffs' Complaint, Defendants admit that the law requires alcohol to food sales proportions be viewed over a twelve-month period. Defendants deny all other allegations set forth in paragraph 28 and affirmatively state that no request for Plaintiffs' sales and use tax receipts have ever been made by the Defendants. Any allegations in paragraph 28 which are not specifically admitted are generally denied.

29. In response to paragraph 29 of the Plaintiffs' Complaint, Defendants admit that at the public hearing, Defendants raised issues related to Thayne's recent struggles with intoxicated motorists and that at the hearing the Plaintiffs represented that Plaintiffs already planned to conduct required TIPS training, which Defendants affirmatively state they were required to conduct under the rules and regulations of the Department of Revenue. Defendants admit that Plaintiffs' bar and grill liquor license renewal fee was increased 100%, from \$1500 to \$3000, and affirmatively state that the Town's current ordinance that addresses liquor license fees sets the Town's fees within the range authorized under Wyoming law and that the fee charged Plaintiffs was within the range authorized under Wyoming law. It is further affirmatively stated that the Town's current ordinance which was approved on third reading on August 18, 2016, that addresses liquor license fees sets the Town's fees within the range authorized under Wyoming law and provides that the Town can now charge up to a maximum fee of \$10,500 for the class of bar and grill liquor licenses and up to a maximum fee of \$3,000 for the class of restaurant liquor licenses, both of which are increases in fees from what previously existed. The Defendants admit that the other liquor license holders' renewal fees stayed the same because the other licenses which were renewed were retail liquor licenses, and the maximum amount which can be charged by the Town under Wyoming law is \$1500, and that is what the Town charged those licensees. Any allegations in paragraph 29 which are not specifically admitted are generally denied.

30. Defendants deny the allegations as stated in paragraph 30 of the Plaintiffs' Complaint. Defendants affirmatively state that at no time since the Plaintiffs' business opened has any Defendant entered the bar and grille to check on the operation of the business. It is further affirmatively stated that W.S. 12-4-413(f) subjects bar and grill licenses to W.S. 12-4-410(c) which states that all sales

of alcoholic and malt beverages cease at time food sales and services cease or at the hours set by W.S. 12-5-101 if food sales and services extend beyond those hours. Any allegations in paragraph 30 which are not specifically admitted are generally denied.

31. In response to paragraph 31 of the Plaintiffs' Complaint, Defendants deny that they "demanded" information relative to Plaintiffs' proposed parking arrangement and affirmatively state that inquiry was made of the Plaintiffs concerning compliance with the Town of Thayne's off-street parking ordinance. Defendants admit that Plaintiffs were able to assure Defendants via an accurately depicted parking map that Plaintiffs could provide adequate off-street parking. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation that the owners of Dad's Bar, Mi Ranchero, Hubs, are "similarly situated establishments" or "are all non-LGBT persons," which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Defendants deny all other allegations set forth in paragraph 31. Any allegations in paragraph 31 which are not specifically admitted are generally denied.

32. Defendants deny the allegations of paragraph 32 of Plaintiffs' Complaint. It is affirmatively stated Plaintiffs expressed during the public hearing on March 31, 2016, that it was *their* intention and desire to fence their parking area to ensure that Dad's Bar patrons were not using their lot. Plaintiffs' also presented a letter dated March 31, 2016, stating the same intention [Copy of letter is attached as Exhibit 1]. Plaintiffs stated during the public hearing that it was their desire to construct a wooden post and rail fence, which the Defendant Mayor agreed would be adequate. Any allegations in paragraph 32 which are not specifically admitted are generally denied.

33. In response to paragraph 33 of the Plaintiffs' Complaint, Defendants admit that at the conclusion of the public hearing [on March 31, 2016], Defendants announced that Defendants would

still need to address Plaintiffs' initial liquor license fee and admit that the Town Ordinance at the time of the hearing set the price for all liquor licenses of all classes at \$1,500.00. It is affirmatively stated that \$1500 was established as Plaintiffs' initial liquor license fee in accordance with the then Town Ordinance. Defendants deny all other allegations set forth in paragraph 33. Any allegations in paragraph 33 which are not specifically admitted are generally denied.

34. In response to paragraph 34 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations concerning whether the other licensed establishments are non-LGBT owned establishments, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Defendants deny all other allegations set forth in Paragraph 34 and affirmatively state that the only liquor license dealt with by the Town of Thayne on March 31, 2016, was that of Rustlers, LLC, and that Plaintiffs' bar and grill liquor license is in a separate class from the other liquor licenses issued by the Town so Plaintiffs' are not "similarly situated." It is further affirmatively stated that the Town's current ordinance which was approved on third reading on August 18, 2016, that addresses liquor license fees sets the Town's fees within the range authorized under Wyoming law and provides that the Town can now charge up to a maximum fee of \$10,500 for the class of bar and grill liquor licenses and up to a maximum fee of \$3,000 for the class of restaurant liquor licenses, both of which are increases in fees from what previously existed. The retail liquor license fee was, and continues to be, at the maximum amount that the Town can charge for the class of retail liquor licenses. Any allegations in paragraph 34 which are not specifically admitted are generally denied.

35. In response to paragraph 35 of the Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth therein,

which has the effect of a denial under Rule 8(b)(5), F.R.C.P. It is affirmatively stated that if this occurred, Plaintiffs should have immediately brought this to the Defendants attention so that it could be addressed, which Plaintiffs did not do. It is further affirmatively stated that none of the comments or objections placed on the record of the hearing contained that subject matter. Any allegations in paragraph 35 which are not specifically admitted are generally denied.

36. In response to paragraph 36 of Plaintiffs' Complaint, Defendants admit that the bar and grill liquor license was granted to Rustlers, LLC at the special meeting held on March 31, 2016, and that the vote was 3-2, which was legally sufficient to grant the license. Defendants further admit the issue of Plaintiffs' initial license fee was still outstanding at the conclusion of the meeting and affirmatively state that the Plaintiffs' initial fee was established at \$1500. All other allegations of paragraph 36 are denied. Any allegations in paragraph 36 which are not specifically admitted are generally denied.

37. Defendants deny the allegations of paragraph 37 of Plaintiffs' Complaint. Defendants affirmatively state that it was the Plaintiffs, not the Defendants, that wanted to fence their parking lot and that Defendants never requested or required Plaintiffs to construct a fence and that by April 7, 2016, the Plaintiffs' bar and grill liquor license had already been approved. Any allegations in paragraph 37 which are not specifically admitted are generally denied.

38. Defendants deny the allegations of paragraph 38 of Plaintiffs' Complaint. Defendants affirmatively state that it was the Plaintiffs, not the Defendants, that wanted to fence their parking lot.

39. In response to paragraph 39 of Plaintiffs' Complaint, Defendants admit that Plaintiffs erected a post and rail fence. Defendants deny all other allegations of paragraph 39 of Plaintiffs'

Complaint and affirmatively state that it was the Plaintiffs, not the Defendants, that wanted to fence their parking lot. Any allegations in paragraph 39 which are not specifically admitted are generally denied.

40. In response to paragraph 40 of Plaintiffs' Complaint, Defendants deny that the Defendant Mayor told Plaintiffs that they were not permitted to have a neon sign outside of their restaurant and affirmatively state that neon signage was not a topic of the conversation; the conversation dealt with the size of the letters on the building. All other allegations set forth in paragraph 40 are denied. Any allegations in paragraph 40 which are not specifically admitted are generally denied.

41. In response to paragraph 41 of Plaintiffs' Complaint, Defendants admit that on April 21, 2016, Defendants had a regular Town Council meeting that included an agenda item to determine the liquor license fee for Plaintiffs and that Defendants Mayor of Thayne and the Town Council went into executive session and then returned with a motion to set the initial license fee for Plaintiffs at \$1,500.00. Defendants also admit that the motion passed at the time, but was opposed by Defendant Councilman Joe Heward. It is denied that an "opposition" vote is in direct conflict with the existing Town of Thayne ordinance. All other allegations set forth in paragraph 41 are denied. Any allegations in paragraph 41 which are not specifically admitted are generally denied.

42. In response to paragraph 42 of Plaintiffs' Complaint, Defendants admit that on April 28, 2016, Defendants held a special Town Council meeting during which Defendants had discussion on updating the Town's liquor license ordinance including adopting the State Liquor License Fees set forth by state statute, which state statute allows for a liquor license fee for a bar and grill license to be set anywhere between \$1,500.00 to \$10,500.00. Defendants affirmatively state that the initial discussion concerning updating the Town's liquor license ordinance was on April 21, 2016. All

other allegations set forth in paragraph 42 are denied. Any allegations in paragraph 42 which are not specifically admitted are generally denied.

43. In response to paragraph 43 of the Plaintiffs' Complaint, Defendants admit that at the special meeting on April 28, 2016, there was discussion that the amended liquor license ordinance would permit Defendants to impose liquor license renewal fees on applicants on a case-by-case basis dependent on whether the specific applicant had received "complaints" or "caused cost to the Town" over the preceding year and it was represented that the Town of Thayne received a report relative to intoxicated driving issues and purportedly received an "F" grade. Any allegations in paragraph 43 which are not specifically admitted are generally denied.

44. Defendants deny the allegations as set forth in paragraph 44 of the Plaintiffs' Complaint and affirmatively state that the discussion was that the Town Council, many years past, had made the decision not to prosecute DUI under town ordinances because there could be jury trials and the Town could not afford to fund or pay for a jury trial. As a result, all DUI's which originate in the Town of Thayne are prosecuted by the County, not the Town of Thayne. Any allegations in paragraph 44 which are not specifically admitted are generally denied.

45. Defendants deny the allegations set forth in paragraph 45 of the Plaintiffs' Complaint and affirmatively state that the minutes of the meeting of April 28, 2016, state on page 2: "Not likely that the town will charge bar & grills the \$10,500.00 (ten thousand five hundred) dollars." It is further affirmatively stated that any opinion expressed during discussion of an item is the personal opinion of the person expressing the opinion during discussion and not the official action of the Town unless there is a specific motion, second and majority vote to adopt an opinion expressed as the official position of the Town. Any allegations in paragraph 45 which are not specifically admitted are

generally denied.

46. Defendants deny the allegations set forth in paragraph 46 of the Plaintiffs' Complaint and affirmatively state that the minutes of the meeting of April 28, 2016, state on page 2: "Not likely that the town will charge bar & grills the \$10,500.00 (ten thousand five hundred) dollars." It is further affirmatively stated that any opinion expressed during discussion of an item is the personal opinion of the person expressing the opinion during discussion and not the official action of the Town unless there is a specific motion, second and majority vote to adopt an opinion expressed as the official position of the Town. Any allegations in paragraph 46 which are not specifically admitted are generally denied.

47. Defendants deny the allegations of paragraph 47 of the Plaintiffs' Complaint. Defendants affirmatively state that no request was received from Plaintiffs by any of the Defendants for a copy of the revised liquor license ordinance and affirmatively state that the liquor license ordinance was not passed on first reading until June 16, 2016. Any allegations in paragraph 47 which are not specifically admitted are generally denied.

48. In response to paragraph 48 of the Plaintiffs' Complaint, Defendants deny that Defendants told Plaintiffs that Defendants would be monitoring Plaintiffs' business and operations closely. Defendants deny that Defendants were watching Plaintiffs or that Plaintiffs were under intense scrutiny from Defendants. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation that other members of the Thayne community told Plaintiffs that they were "being watched" and that one such declarant was a Lincoln County Fire Marshall who told Plaintiffs that they were under intense scrutiny, upon information and belief, from Defendants, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Any allegations in paragraph 48 which

are not specifically admitted are generally denied.

49. Defendants deny the allegations of paragraph 49 of the Plaintiffs' Complaint.

50. Defendants deny the allegations of paragraph 50 of the Plaintiffs' Complaint.

51. In response to paragraph 51 of the Plaintiffs' Complaint, Defendants admit that on August 18, 2016, Defendants completed and approved the third reading of the revised liquor license ordinance. Defendants deny all other allegations of Paragraph 51. Any allegations in paragraph 51 which are not specifically admitted are generally denied.

52. Defendants admit the allegations set forth in paragraph 52 of the Plaintiffs' Complaint.

53. In response to paragraph 53 of the Plaintiffs' Complaint, Defendants admit that following submission of Plaintiffs' liquor license renewal application, one Defendant Town Council member, Joe Heward, approached Plaintiffs at Plaintiffs' restaurant and stated Plaintiffs needed to personally appear at the liquor license renewal hearing. Defendants deny the allegation that the tone of this statement was terse, direct or threatening. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation concerning how or what Plaintiffs perceived, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. It is affirmatively stated that Defendant Town Council member Joe Heward approached other Town of Thayne liquor license holders at their respective places of business and told those liquor license holders the same thing—that they needed to personally appear at the liquor license renewal hearing. Any allegations in paragraph 53 which are not specifically admitted are generally denied.

54. In response to paragraph 54 of Plaintiffs' Complaint, Defendants admit Defendants held a meeting at which Defendants held hearings on liquor license renewal applications, but deny that the hearings were on February 2 and affirmatively state that the meeting was February 16, 2017. Any

allegations in paragraph 54 which are not specifically admitted are generally denied.

55. In response to paragraph 55 of Plaintiffs' Complaint, Defendants admit that prior to the meeting, and in accordance with Defendants' ordinance, Plaintiffs submitted certification of completed TIPS training and all documentation necessary for their liquor license renewal application and admit that Defendant Woolley seconded a motion to approve Dad's Bar's liquor license renewal and Defendant Heward seconded the motion for Pines Bar's liquor license renewal and that a newer member of the council, Councilman Wicks, seconded the motion to approve the Rustlers' liquor license renewal. All other allegations set forth in Paragraph 55 are denied. It is affirmatively stated that TIPS certification is valid for a number of years and the Town had on file valid TIPS certification forms for Dad's Bar, Pines Bar, and Rustlers at the time of license renewal. It is further affirmatively stated that the Rustlers renewal application received a motion and second, and upon the vote to renew, all Defendants voted "aye," there were no "nay" votes and the license was renewed; as such, it is unclear what the Plaintiffs are complaining about as the license was renewed. Any allegations in paragraph 55 which are not specifically admitted are generally denied.

56. In response to paragraph 56 of Plaintiffs' Complaint, Defendants admit that all three liquor license renewals, *i.e.*, Dad's Bar, Pines Bar, and Rustlers, were approved. All other allegations set forth in paragraph 56 are denied. It is affirmatively stated that liquor license renewal applications are handled on an alphabetical basis. It is further affirmatively stated that each of the three renewals, including the Rustlers, were approved unanimously, with no nay votes. Any allegations in paragraph 56 which are not specifically admitted are generally denied.

57. In response to paragraph 57 of Plaintiffs' Complaint, Defendants admit that Dad's Bar failed to submit TIPS certifications until the date of the hearing, but affirmatively state that TIPS

certification is valid for a number of years and the Town had on file valid TIPS certification forms for Dad's Bar, Pines Bar, and Rustlers and if there are current documents on file the Town allows some flexibility in submission of documents. All other allegations set forth in paragraph 57 are denied. Any allegations in paragraph 57 which are not specifically admitted are generally denied.

58. In response to paragraph 58 of Plaintiffs' Complaint, Defendants admit that Pines Bar failed to submit TIPS certifications until the date of the hearing, but affirmatively stated that TIPS certification is valid for a number of years and the Town had on file valid TIPS certification forms for Dad's Bar, Pines Bar, and Rustlers and if there are current documents on file the Town allows some flexibility in submission of documents. All other allegations set forth in paragraph 58 are denied. Any allegations in paragraph 58 which are not specifically admitted are generally denied.

59. Defendants deny the allegations of paragraph 59 of Plaintiffs' Complaint.

60. Defendants deny the allegations of paragraph 60 of Plaintiffs' Complaint. Defendants affirmatively state that Plaintiffs are the holders of the only bar and grill liquor license issued by the Town of Thayne. All other allegations set forth in paragraph 60 are denied. Any allegations in paragraph 60 which are not specifically admitted are generally denied.

61. Defendants deny the allegations of paragraph 61 of Plaintiffs' Complaint. It is affirmatively stated that upon notification by Plaintiffs of alleged violations by retail liquor license holders the Defendant Mayor quickly visited with the holder of those licenses to ascertain the validity of the complaint and cautioned the license holders against further purported violations. Defendants also affirmatively stated that the Defendants have received complaints from Dad's Bar and its patrons that Plaintiffs instigated harassment directed to it and its patrons. All other allegations in paragraph 61 are denied. Any allegations in paragraph 61 which are not specifically admitted are generally denied.

62. Defendants deny the allegations of paragraph 62 of Plaintiffs' Complaint.

63. Defendants deny the allegations of paragraph 63 of Plaintiffs' Complaint.

64. In response to paragraph 64 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations that in connection with Plaintiffs' initial liquor license application to Defendants, an email was circulated among members of the LDS Church opposing Plaintiffs' application, which has the effect of a denial under Rule 8(b)(5), F.R.C.P.; Defendants affirmatively state that the correct name is "The Church of Jesus Christ of Latter-day Saints." Defendants admit that some of the Defendant members of the town council are members of The Church of Jesus Christ of Latter-day Saints and affirmatively state that is their protected Constitutional right. Defendants also affirmatively state the initial liquor license application was approved, and the renewal of the liquor license was unanimously approved so whatever emails that might have been circulated, if any there were, and whether members of the town council were members of The Church of Jesus Christ of Latter-day Saints is irrelevant and immaterial. All other allegations of paragraph 64 are denied. Any allegations in paragraph 64 which are not specifically admitted are generally denied.

65. Defendants deny the allegations of paragraph 65 of Plaintiffs' Complaint. Defendants affirmatively state that Nicole Astle moved from the Town of Thayne and was no longer qualified to run for reelection to the council.

66. In response to paragraph 66 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation concerning property damage to Plaintiffs establishment as alleged or whether establishments are non-LGBT owned or LGBT owned, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. All other allegations

set forth in paragraph 66 are denied. Any allegations in paragraph 66 which are not specifically admitted are generally denied.

67. In response to paragraph 67 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations concerning any matter alleged or described in paragraph 67, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Any allegations in paragraph 67 which are not specifically admitted are generally denied.

68. In response to paragraph 68 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations concerning the matters alleged or described in paragraph 68, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Defendants affirmatively state that the types of situations described in paragraph 68 are typically discussed at the time of liquor license renewals. Any allegations in paragraph 68 which are not specifically admitted are generally denied.

69. In response to paragraph 69 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations concerning the matters alleged or described in paragraph 69, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Any allegations in paragraph 69 which are not specifically admitted are generally denied.

70. In response to paragraph 70 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations concerning the matters alleged or described in paragraph 70, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Defendants affirmatively state that the types of situations described in paragraph 70 are typically discussed at the time of liquor license renewals. Any allegations in paragraph 70 which are not specifically admitted are generally denied.

71. Defendants deny the allegations set forth in paragraph 71 of Plaintiffs' Complaint.

72. In response to paragraph 72 of Plaintiffs' Complaint, Defendants admit that the Town of Thayne community in general, is comprised of many members of The Church of Jesus Christ of Latter-day Saints. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations concerning whether those members are "conservative, devoutly religious members" as described in paragraph 72, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Defendants deny all other allegations set forth in paragraph 72 and affirmatively state that a new bar and grill liquor license was approved and issued to the Plaintiffs on March 31, 2016, and that liquor license was unanimously renewed in 2017 even though/if the Town of Thayne community in general is comprised of many conservative, devoutly religious members of The Church of Jesus Christ of Latter-day Saints as alleged by Plaintiffs. All other allegations in paragraph 72 are denied. Any allegations in paragraph 72 which are not specifically admitted are generally denied.

73. Defendants deny the allegations of paragraph 73 of Plaintiffs' Complaint.

74. Defendants deny the allegations of paragraph 74 of Plaintiffs' Complaint.

75. In response to paragraph 75 of Plaintiffs' Complaint Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations that on April 29, 2016, Dad's Bar held an annual party at which 200 people were served alcohol and consumed such alcohol outside of the licensed establishment, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Defendants affirmatively state that a retail liquor license holder can hold an event outside their premises as long as it is held on private property and the necessary permission to do so is obtained from the Town Council, which was done, and, consequently, would not have been in violation of

Defendant Town's liquor license ordinance. It is further affirmatively stated that it is not required that the police or other representatives of the Town of Thayne be present. All other allegations set forth in paragraph 75 are denied. Any allegations in paragraph 75 which are not specifically admitted are generally denied.

76. Defendants deny the allegations set forth in paragraph 76 of Plaintiffs' Complaint.

77. Defendants deny the allegations set forth in paragraph 77 of Plaintiffs' Complaint.

78. In response to paragraph 78 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation that Wagon Wheel Café in Thayne, Wyoming is, upon information and belief, owned by a non-LGBT business owner, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. All other allegations set forth in paragraph 78 are denied.

79. In response to paragraph 79 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation that Mi Ranchito in Thayne, Wyoming was, upon information and belief, owned by a non-LGBT business owner, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. All other allegations set forth in Paragraph 79 are denied.

80. In response to paragraph 80 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation that Dad's Bar in Thayne, Wyoming is, upon information and belief, owned by a non-LGBT business owner, which has the effect of a denial under Rule 8(b)(5), F.R.C.P.. All other allegations set forth in paragraph 80 are denied.

81. In response to paragraph 81 of Plaintiffs' Complaint, Defendants are without sufficient

knowledge or information to form a belief as to the truth of the allegation that the Thayne, Wyoming, "Dog Wash" upon information and belief, is owned by a non-LGBT business owner, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Defendants affirmatively state that the correct name of the business is "Dog Gone Clean." Defendants admit that this business opened in a new location in a new modular building in the spring of 2017, but affirmatively state the Town's ordinances do not require a business license review when a business changes location within the town boundaries. Defendants admit they have not enforced any parking ordinances against this establishment and affirmatively state that the business is not in violation of any Thayne parking ordinances. All other allegations set forth in paragraph 81 are denied. Any allegations in paragraph 81 which are not specifically admitted are generally denied.

82. In response to paragraph 82 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation that Bo-B-Q in Thayne, Wyoming is, upon information and belief, owned by a non-LGBT business owner, which has the effect of a denial under Rule 8(b)(5), F.R.C.P. Defendants affirmatively state this establishment received its business license in 2017 and that when Bo-B-Q's owner met with the Defendants at a town council meeting on May 18, 2017, he was advised of the relevant ordinances and the owner demonstrated that they had off-street parking sufficient to meet the off-street parking requirements existed. All other allegations set forth in paragraph 82 are denied. Any allegations in paragraph 82 which are not specifically admitted are generally denied.

83. In response to paragraph 83 of Plaintiffs' Complaint, Defendants admit that the Town of Thayne maintains a website located online at <http://www.Thayne-WY.com>, and this website bears the Defendant Town of Thayne's seal. All other allegations set forth in Paragraph 81 are denied. Any

allegations in paragraph 83 which are not specifically admitted are generally denied.

84. Defendants admit the allegations of paragraph 84 of Plaintiffs' Complaint.

85. Defendants admit the allegations of paragraph 85 of Plaintiffs' Complaint.

86. In response to paragraph 86 of Plaintiffs' Complaint, Defendants deny that "Rustlers Restaurant and Saloon" was "omitted" by Defendants. Defendants admit the website was updated when the change of name of Hub's to Wagon Wheel occurred. All other allegations in paragraph 86 are denied. Any allegations in paragraph 86 which are not specifically admitted are generally denied.

87. In response to paragraph 87 of Plaintiffs' Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth therein, which has the effect of a denial under Rule 8(b)(5), F.R.C.P.

88. Defendants deny the allegations set forth in paragraph 88 of Plaintiffs' Complaint.

89. Defendants deny the allegations set forth in paragraph 89 of Plaintiffs' Complaint.

90. Defendants deny the allegations set forth in paragraph 90 of Plaintiffs' Complaint, and affirmatively state that Defendants have not treated Plaintiffs in the manner in which Plaintiffs describe or allege.

91. Defendants deny the allegations set forth in paragraph 91 of Plaintiffs' Complaint.

92. Defendants deny the allegations set forth in paragraph 92 of Plaintiffs' Complaint and affirmatively state that the Plaintiffs have not been treated in a discriminatory manner and no Constitutional violations have been perpetrated by the Defendants.

93. Defendants deny the allegations set forth in paragraph 93 of Plaintiffs' Complaint.

94. In response to paragraph 94 of Plaintiffs' Complaint, Defendants are without sufficient

knowledge or information to form a belief as to the truth of the allegations set forth therein, which has the effect of a denial under Rule 8(b)(5), F.R.C.P.

95. Defendants admit the allegations of paragraph 95 of Plaintiffs' Complaint.

96. Defendants admit the allegations set forth in paragraph 96 of Plaintiffs' Complaint.

97. Defendants admit the allegations set forth in paragraph 97 of Plaintiffs' Complaint.

98. Defendants deny the allegations set forth in paragraph 98 of Plaintiffs' Complaint and affirmatively state that Plaintiffs have admitted in paragraph 95 of their complaint that the Town Clerk contacted Plaintiffs and advised them the Town Council meeting was scheduled for November 27, 2017.

99. Defendants deny the allegations set forth in paragraph 99 of Plaintiffs' Complaint.

100. Defendants deny the allegations set forth in paragraph 100 of Plaintiffs' Complaint and affirmatively state that the Town had incurred direct out-of-pocket costs due to Plaintiffs and their bar and grill establishment.

101. Defendants deny the allegations set forth in paragraph 101 of Plaintiffs' Complaint and affirmatively state that the Town's current ordinance that addresses liquor license fees sets the Town's fees within the range authorized under Wyoming law and that the fee charged Plaintiffs was within the range authorized under Wyoming law. It is further affirmatively stated that the Town's current ordinance which was approved on third reading on August 18, 2016, provides that the Town can now charge up to a maximum fee of \$10,500 for the class of bar and grill liquor licenses and up to a maximum fee of \$3,000 for the class of restaurant liquor licenses, both of which are increases in fees from what previously existed. The retail liquor license fee was, and continues to be, at the maximum amount that the Town can charge for the class of retail liquor licenses.

102. Defendants deny the allegations set forth in paragraph 102 of Plaintiffs' Complaint and affirmatively state that the Town's current ordinance that addresses liquor license fees sets the Town's fees within the range authorized under Wyoming law and that the fee charged Plaintiffs was within the range authorized under Wyoming law. It is further affirmatively stated that the Town's current ordinance which was approved on third reading on August 18, 2016, provides that the Town can now charge up to a maximum fee of \$10,500 for the class of bar and grill liquor licenses and up to a maximum fee of \$3,000 for the class of restaurant liquor licenses, both of which are increases in fees from what previously existed. The retail liquor license fee was, and continues to be, at the maximum amount that the Town can charge for the class of retail liquor licenses.

103. Defendants deny the allegations set forth in paragraph 103 of Plaintiff's Complaint and affirmatively state that Plaintiffs are barred from bringing an action against the Defendants based upon alleged violations of the Wyoming Constitution due to Plaintiffs' failure to comply to first comply with the requirements of the Wyoming Governmental Claims Act.

104. Defendants deny the allegations set forth in paragraph 104 of Plaintiffs' Complaint.

#### **CLAIMS FOR RELIEF**

105. Defendants incorporate by reference their responses to Plaintiffs' allegations made in Paragraphs 1 through 104 as though fully set forth herein.

106. In response to paragraph 106 of Plaintiff's Complaint, the allegations in said paragraph are purportedly statements of law that do not require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein, except that allegation that the action against the individual defendants is made in their official capacities, which allegation is

admitted. Any allegations in paragraph 106 which are not specifically admitted are generally denied.

107. In response to paragraph 107 of Plaintiff's Complaint, the allegations in said paragraph are purportedly statements of law that do not require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein.

108. In response to paragraph 108 of Plaintiff's Complaint, the allegations in said paragraph are purportedly statements of law that do not require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein

109. In response to paragraph 109 of Plaintiffs' Complaint, the allegations in said paragraph are not statements of law or operative facts in this matter, so as to require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth therein, which has the effect of a denial under Rule 8(b)(5), F.R.C.P.

110. In response to paragraph 110 of Plaintiffs' Complaint, the allegations in said paragraph are not statements of law or operative facts in this matter, so as to require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth therein, which has the effect of a denial under Rule 8(b)(5), F.R.C.P.

111. In response to paragraph 111 of Plaintiffs' Complaint, the allegations in said paragraph are not statements of law or operative facts in this matter, so as to require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts Defendants

are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth therein, which has the effect of a denial under Rule 8(b)(5), F.R.C.P.

112. In response to paragraph 112 of Plaintiffs' Complaint, the allegations in said paragraph are not statements of law or operative facts in this matter, so as to require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth therein, which has the effect of a denial under Rule 8(b)(5), F.R.C.P.

113. In response to paragraph 113 of Plaintiffs' Complaint, the allegations in said paragraph are not statements of law or operative facts in this matter, so as to require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth therein, which has the effect of a denial under Rule 8(b)(5), F.R.C.P.

114. Defendants deny the allegations set forth in paragraph 114 of Plaintiffs' Complaint.

115. Defendants deny the allegations set forth in paragraph 115 of Plaintiffs' Complaint.

116. Defendants deny the allegations set forth in paragraph 116 of Plaintiffs' Complaint.

117. Defendants incorporate by reference their responses to Plaintiffs' allegations made in Paragraphs 1 through 116 as though fully set forth herein.

118. In response to paragraph 118 of Plaintiff's Complaint, the allegations in said paragraph are purportedly statements of law that do not require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein.

119. In response to paragraph 119 of Plaintiff's Complaint, the allegations in said paragraph are

purportedly statements of law that do not require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein.

120. Defendants deny the allegations set forth in paragraph 120 of Plaintiffs' Complaint.

121. Defendants deny the allegations set forth in paragraph 121 of Plaintiffs' Complaint.

122. Defendants deny the allegations set forth in paragraph 122 of Plaintiffs' Complaint.

123. Defendants incorporate by reference their responses to Plaintiffs' allegations made in Paragraphs 1 through 12 2 as though fully set forth herein.

124. In response to paragraph 124 of Plaintiff's Complaint, the allegations in said paragraph are purportedly statements of law that do not require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein.

125. In response to paragraph 125 of Plaintiff's Complaint, the allegations in said paragraph are purportedly statements of law that do not require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein.

126. Defendants deny the allegations set forth in paragraph 126 of Plaintiffs' Complaint.

127. In response to paragraph 127 of Plaintiffs' Complaint, Defendants deny the allegations as set forth therein and affirmatively state that the Town's current ordinance that addresses liquor license fees sets the Town's fees within the range authorized under Wyoming law and that the fee charged Plaintiffs was within the range authorized under Wyoming law, and that the \$3,000 charged for 2018 is substantially less than the maximum fee that could be charged by the Town for a bar and

grill liquor license. It is further affirmatively stated that the Town's current ordinance which was approved on third reading on August 18, 2016, provides that the Town can now charge up to a maximum fee of \$10,500 for the class of bar and grill liquor licenses and up to a maximum fee of \$3,000 for the class of restaurant liquor licenses, both of which are increases in fees from what previously existed. The retail liquor license fee was, and continues to be, at the maximum amount that the Town can charge for the class of retail liquor licenses. Any allegations in paragraph 127 which are not specifically admitted are generally denied.

128. Defendants deny the allegations set forth in paragraph 128 of Plaintiffs' Complaint.

129. Defendants deny the allegations set forth in paragraph 129 of Plaintiffs' Complaint.

130. Defendants deny the allegations set forth in paragraph 130 of Plaintiffs' Complaint.

131. Defendants incorporate by reference their responses to Plaintiffs' allegations made in Paragraphs 1 through 130 as though fully set forth herein.

132. In response to paragraph 132 of Plaintiff's Complaint, the allegations in said paragraph are purportedly statements of law that do not require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein.

133. In response to paragraph 133 of Plaintiff's Complaint, the allegations in said paragraph are purportedly statements of law that do not require the Defendants to either admit or deny the same, but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein.

134. In response to paragraph 134 of Plaintiff's Complaint, the allegations in said paragraph are purportedly statements of law that do not require the Defendants to either admit or deny the same,

but to the extent that the paragraph attempts to allege operative facts as opposed to conclusions of law, Defendants deny each and every allegation contained therein.

135. Defendants deny the allegations set forth in paragraph 135 of Plaintiff's Complaint.

136. Defendants deny the allegations set forth in paragraph 136 of Plaintiff's Complaint.

137. Defendants deny the allegations set forth in paragraph 137 of Plaintiff's Complaint.

138. Defendants deny the allegations set forth in paragraph 138 of Plaintiff's Complaint.

139. Defendants deny the allegations set forth in paragraph 139 of Plaintiff's Complaint.

140. Defendants deny the allegations set forth in paragraph 140 of Plaintiff's Complaint.

141. Defendants deny the allegations set forth in paragraph 141 of Plaintiff's Complaint.

142. Defendants deny the allegations set forth in paragraph 142 of Plaintiff's Complaint.

143. With regard to Plaintiffs "Prayer for Relief as to all Counts," Defendants deny that Plaintiffs are entitled to relief from or against Defendants as alleged or prayed in paragraphs A-H inclusive and affirmatively state that Defendants are entitled to an award of their costs, expenses, and reasonable attorney fees pursuant to 42 U.S.C. 1988 and other applicable laws from Plaintiffs and each of them.

144. Any allegations in Plaintiffs' Complaint which have not been specifically admitted are generally denied.

#### **ASSERTION OF AFFIRMATIVE DEFENSES**

145. These answering Defendants assert that the Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

146. As a further and separate defense to the Plaintiffs' Complaint, the Defendants assert that they are entitled to absolute immunity as a matter of fact and law from the claims and causes of action asserted therein.

147. As a further and separate defense to the Plaintiffs' Complaint, the Defendants assert that the claim for punitive damages is barred as a matter of fact and law and is unconstitutional.

148. As a further and separate defense to the Plaintiffs' Complaint, the Defendants assert that the Plaintiffs have failed to mitigate any damage any of the Plaintiffs may have incurred or suffered as the result of any action or conduct of the Defendants.

149. As a further and separate defense to the Plaintiffs' Complaint, the Defendants assert that the Plaintiffs' claims or causes of action based upon the Wyoming Constitution are defective and barred due to Plaintiffs' failure to comply with the requirements of the Wyoming Governmental Claims Act [Wyo. Stat. Ann. §§ 1-39-101, et seq.] in that Plaintiffs have not, at any time, filed a claim with the Town of Thayne upon their state law claims, which is a legal prerequisite to bringing an action based on state law against these Defendants.

150. As a further and separate defense to the Plaintiffs' Complaint, the Defendants assert that their conduct was not the proximate cause of any of the alleged injuries or damages suffered by the Plaintiffs.

151. As a further and separate defense to the Plaintiffs' Complaint, the individual Defendants assert that no act or omission of the Defendants was malicious, willful, wanton, reckless or grossly negligent and, therefore, any award of punitive damages is barred.

152. The Defendants reserves the right to amend these pleadings to assert any further or additional affirmative defenses that discovery in this case discloses.

### **COUNTERCLAIMS**

Defendants, and each of them, reserve the right, after conducting discovery and further investigation, with leave of Court, to file such Counterclaims against Plaintiffs and each of them

as may be deemed appropriate.

**WHEREFORE**, Defendants respectfully request that the Plaintiffs' Complaint and the claims for relief stated therein be dismissed with prejudice, that Defendants be allowed their costs, expenses, and reasonable attorney fees pursuant to 42 U.S.C. 1988 and other applicable laws, and for such other and further relief as the Court deems proper in the premises.

**DATED** this 13<sup>th</sup> day of March, 2018.

/s/ Thomas A. Thompson  
Thomas A. Thompson, #6-2640  
Attorney for Defendants  
MacPherson, Kelly & Thompson, LLC

**CERTIFICATE OF SERVICE**

This is to certify that on the 13<sup>th</sup> day of March, 2018, I electronically filed the foregoing instrument with the Clerk of the Court using the electronic filing system, which will send notification of such filing to the registered CM/ECF user at the following address:

James K. Lubing  
Kevin P. Gregory  
Lubing Law Group, LLC  
PO Box 3894  
260 W. Broadway, Suite A  
Jackson, WY 83001

/s/ Thomas A. Thompson  
For MacPherson, Kelly, & Thompson, LLC

Electronically Filed By: **js**