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7 UNITED STATES DISTRICT COURT  
8 IN THE DISTRICT OF COLORADO

9 RAYMOND LYALL, GARRY ANDERSON, THOMAS  
10 PETERSON, JERRY RODERICK BURTON,  
11 FREDRICK JACKSON, BRIAN COOKS, WILLIAM  
12 PEPPER, INDIVIDUALLY ON BEHALF OF  
THEMSELVES AND ALL OTHERS SIMILARLY  
SITUATED;

13 Plaintiffs,

14 vs.

15 CITY OF DENVER,

16 Defendant.

Case No.: 16-2155

**CLASS ACTION**

**MOTION TO STAY PROCEEDINGS**

**PENDING ADJUDICATION OF**

**PLAINTIFFS' MOTION FOR CLASS**

**CERTIFICATION WITH MEMORANDUM**

**OF POINTS AND AUTHORITIES**

**DEMAND FOR JURY TRIAL**

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23 **MOTION**

24 Plaintiffs move for a Stay of Proceedings pending adjudication of their Motion for Class  
25 Certification. The non-determination of this dispositive motion is causing undue hardship,  
26 inequity and prejudice to Plaintiffs, so that a short stay is warranted in the interests of justice and  
27 fairness. Plaintiffs filed their Motion for Class Certification and Memorandum of Points and  
28 Authorities [Doc. 15] on September 9, 2016. Plaintiffs did not oppose Defendant's Motion for  
29 Extension of Time [Doc. 35] filed September 27, 2016. Plaintiffs did not oppose Defendant's  
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1 Motion for Leave to File Excess Pages in their response [Doc. 56] filed October 24, 2016.

2 Defendant's filed their Response to Motion to Certify Class [Doc. 58] on October 25, 2016.

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4 Plaintiffs filed their Reply to Defendant's Response [Doc. 59] on October 31, 2016.

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7 **LAW**  
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10 Courts have inherent power to stay proceedings for "economy of time and effort for  
11 itself, for counsel and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). In  
12 reviewing a request for stay, the court should consider among, other things, whether, absent a  
13 stay, the requesting party will suffer irreparable harm; whether a stay will cause substantial harm  
14 to the other parties to the proceeding; and the public interests at stake. *United Steelworkers of*  
15 *America v. Oregon Steel Mills, Inc.*, 322 F.3d 1222, 1227 (10th Cir. 2003). "When applying for  
16 a stay, a party must demonstrate 'a clear case of hardship or inequity' if 'even a fair possibility  
17 exists that the stay would damage another party.'" *Creative Consumer Concepts, Inc. v.*  
18 *Kreisler*, 563 F.3d 1070, 1080 (10th Cir. 2009) (quoting *Ben Ezra, Weinstein & Co. v. Am.*  
19 *Online Inc.*, 206 F.3d 980, 987 (10th Cir. 2000)).  
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25 Federal Rules of Civil Procedure 23(c)(1) states in part that "[a]s soon as practicable after the  
26 commencement of an action brought as a class action, the court *shall* determine by order whether  
27 it is to be so maintained." Like Rule 23(c), subpart (d) "is concerned with the fair and efficient  
28 conduct of the action." Fed. R. Civ. P. 23 Advisory Committee's Notes, 1966 Amendment. Rule  
29 23(d) authorizes the court to "make appropriate orders" about the course of the proceedings; the  
30 content, manner and timing of notice to prospective class members; the imposition of conditions  
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1 on representative parties or intervenors; amendments of the pleadings to eliminate therefrom  
2 allegations as to representation of absent persons; and other procedural matters. Fed. R. Civ. P.  
3 23(d). Together, subdivisions (c) and (d) give the Court broad discretion to manage pending class  
4 actions.  
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### 6 **HARDSHIP AND INEQUITIES TO PLAINTIFFS**

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10 The putative class is homeless. They are a harassed community that is constantly being forced to  
11 move location by the policies and actions of City of Denver, i.e. the homeless sweeps. Most do  
12 not have phones, email, or any means of communication. Despite these burdens, Plaintiffs have  
13 successfully struggled for nearly six months to keep this putative class, and related witnesses,  
14 together in case of class action certification. The legal team has had to pay for hotel rooms for  
15 potential class members and witnesses. The legal team has had to find places to stay for potential  
16 class members and witnesses, at times even putting them up in their own residences to ensure  
17 ability of attendance. In light of the subject matter of this litigation, some of these extraordinary  
18 efforts could be reasonably expected, but not for this period of time while not knowing if the  
19 resource expenditure was even necessary. More importantly, Defendants have issued wide-  
20 ranging discovery demands that would be immaterial and irrelevant should the class not be  
21 certified. Defendant is fixated on homeless advocacy group Denver Homeless Out Loud. In  
22 response to their invasive discovery demands concerning this group, Plaintiffs, at immense  
23 expense, have processed and produced 979 redacted emails and a privilege log and are being  
24 caused to process and produce hundreds of other emails and documents, again, at great expense,  
25 that would be irrelevant if the class is not certified. Furthermore, if the class is not certified, then  
26 Plaintiffs' grave concerns regarding Defendant's violations of the First Amendment  
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1 Associational privilege would be moot as discovery of Denver Homeless Out Loud and other  
2 homeless advocates and independent journalists would be irrelevant.  
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5 This confusion and inequity extends to Plaintiffs' Experts. If the class is not certified, then the  
6 experts are irrelevant to this matter as the scope of trial and therefore discovery would be limited  
7 to specific instances of Plaintiffs' property deprivation. (Plaintiffs are not challenging the  
8 constitutionality of the ordinance.) In contradistinction, if the class is certified, then expert  
9 testimony regarding statistical evidence of this Denver homeless class and the deleterious effects  
10 of the homeless sweeps on them are relevant to the issue of damages. To wit: Defendant has  
11 made expensive discovery demands of Plaintiffs' experts that are only proper if the class is  
12 certified, but immaterial if the class is not certified, so that again Plaintiffs are incurring serious  
13 expenses that may be unnecessary.  
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17 While Plaintiffs are trying to meet Defendant's class action-oriented-discovery-demands, they  
18 are also, as stated, working to keep a class of homeless persons together in the face of a city that  
19 is constantly forcing them to disperse. The Defendant knows that if they make wide-ranging  
20 discovery demands while continuing to harass the putative class of Plaintiffs, then they are  
21 attacking the litigation from both ends and draining Plaintiffs of their resources. The prejudice  
22 here is profound. Potential class members, whose lives are already difficult, are caught in a trap,  
23 forced to endure harassment in an effort to take part in litigation concerned with their very  
24 dignity. This litigation is not voluntary, but a mandatory response to the deprivation of rights.  
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28 The public policy consequences here are terrific. Without a stay, attorneys challenging systemic  
29 civil rights violations will have to consider that they may be required to spend thousands of  
30 dollars producing discovery that may be entirely unnecessary. This has nothing to do with the  
31 substance and merits of their case, but with the burdens of the courts and mere scheduling. As a  
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1 matter of policy and public interest, denial of a stay will result in deterrence of mass scale civil  
2 rights litigation, which is contrary to the interests of justice as well as the health of our  
3 constitutional rights.  
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6 The six-month precatory deadline for the determination of this motion is April 31, 2017. (See  
7 *supra*, Reply filed October 31, 2016.) This request for a stay, therefore, is not a long request and  
8 has no negative or prejudicial consequences for Defendant. One respectfully opines that the  
9 determination of the Motion for Class Certification will come in May or June 2017. When the  
10 Motion for Class Certification is ruled on, then pending discovery disputes will be, in the main,  
11 clarified, resolved and rendered moot, so that along with curing the financial hardships and  
12 inequities currently facing Plaintiffs, a short stay would serve judicial efficiency and conserve  
13 resources. A stay here promotes the interests of justice and fairness in a matter concerned with  
14 the fundamental rights of the poor and dispossessed.  
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18 Plaintiffs have conferred with Defendants pursuant to D.C.COLO.L.Civ. R. 7.1 and are opposed.  
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21 Respectfully submitted,

22 s/ Jason Flores-Williams, Esq.

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**Certificate of Service**

I hereby certify that the above referenced pleading was filed electronically in this court via the CM/ECF system on this 22nd day of April, 2017, which caused the pleading to be served upon Defendants.

s/Jason Flores-Williams

Attorney For Plaintiffs

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