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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, CHRISTOPHER FARRELL, KRYSTAL
13 MCEVOY INDIVIDUALLY ON BEHALF OF
14 THEMSELVES AND ALL OTHERS SIMILARLY
15 SITUATED;

16 Plaintiffs,

17 vs.

18 CITY OF DENVER, A MUNICIPAL CORPORATION,

19 Defendant.

Case No.: 16-2155

CLASS ACTION

MOTION TO COMPEL DEPOSITION

TESTIMONY

DEMAND FOR JURY TRIAL

20 **INTRODUCTION**

21 **The Mayor Has Been Directly Involved In The Homeless Sweeps**

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23 Plaintiffs would prefer not to depose Mayor Michael Hancock. Public officials cannot do their
24 jobs properly, on our behalf, if they are summoned into depositions by lawyers and Plaintiffs
25 suing the City. But in this case, Mayor Hancock has so directly involved himself in the subject
26 matter of this litigation that Plaintiffs have no choice but to depose him.
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29 More than any other city official, Mayor Hancock has engaged himself in Camping Ban policy
30 and enforcement—aka the homeless sweeps—by issuing orders for it to temporarily cease,
31 making repeated comments to media, personally explaining to media why certain problems
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1 occurred, and even by appointing city officials that have been involved in downtown urban
2 development. Namely, the current city attorney, Kristin Bronson, who was the Chairperson of
3 the Board of Directors of the Downtown Denver Partnership/Downtown Denver Inc., which has
4 been a driving force in Camping Ban policy and enforcement.¹
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7 The Mayor could have delegated and distanced himself.² He could have let others in his
8 administration forge policy and make statements to the media. He could have issued orders
9 through back channels. Chief example is the order to the Denver Police Department on
10 December 12, 2016 to stop seizing blankets and tents from homeless persons until April 2017.³
11 Instead, he issued the order via press release and then went on a media tour to explain it to the
12 public. Mayor Hancock has chosen to be on the front lines of this issue, so that he has made
13 himself an essential witness. Here is a short list of Mayor Hancock's comments to media since
14 the camping ban was first conceived:
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18 1. Mayor Hancock tells media there should not be homeless people sleeping on 16th street
19 mall before camping ban passed: [http://www.denverpost.com/2011/10/21/denver-mayor-](http://www.denverpost.com/2011/10/21/denver-mayor-michael-hancock-supports-effort-to-outlaw-sleeping-on-the-16th-street-mall/)
20 [michael-hancock-supports-effort-to-outlaw-sleeping-on-the-16th-street-mall/](http://www.denverpost.com/2011/10/21/denver-mayor-michael-hancock-supports-effort-to-outlaw-sleeping-on-the-16th-street-mall/)
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- 22
23 2. Mayor Hancock tells media the "camps will not be rebuilt" after the March 8th sweep:
24 <http://kdvr.com/2016/03/09/mayor-hancock-homeless-camps-will-not-be-rebuilt/>
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28 ¹ At the beginning of this litigation, in a *Motion to Recuse* that was denied, Plaintiffs addressed the issue that private,
29 downtown economic interests were driving municipal policy and practice regarding the Homeless Sweeps, which
30 would speak to their unconstitutional enforcement. Mayor Hancock's selection of Ms. Bronson as City Attorney is
31 noteworthy and relevant to Plaintiffs' cause as the City Attorney's Office appears to have been the architect of
32 Camping Ban enforcement. [http://www.downtowndenver.com/homepage/downtown-denver-partnership-announces-](http://www.downtowndenver.com/homepage/downtown-denver-partnership-announces-new-committee-leadership)
[new-committee-leadership.](http://www.downtowndenver.com/homepage/downtown-denver-partnership-announces-new-committee-leadership)

² This is why public officials are often instructed to state: "I am not free to comment on pending litigation."

³ This Court may respectfully recall Plaintiffs' Motion to Take Judicial Notice concerning this order. While it may not have been relevant to any pending motion at that time, it is now relevant to this Motion to Compel.

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3. Mayor Hancock tells media that taking public donation to pay for the homeless sweeps was a "snafu": <http://denver.cbslocal.com/2016/06/30/city-used-homeless-donations-to-assist-with-homeless-sweep/>

4. Again, Mayor tells media that taking public donations to pay for the homeless sweeps was a "snafu": http://denver.cbslocal.com/2016/11/10/denver-to-stop-co-mingling-homeless-donations/?utm_source=Homelessness+in+the+News+11.8.16-11.14.16&utm_campaign=Homelessness+in+the+News+11.8.16+-+11.14.16&utm_medium=email

5. Mayor defends sweeps before the November 15 sweep:
http://www.9news.com/entertainment/television/programs/next-with-kyle-clark/denvers-mayor-hancock-defends-homeless-camp-cleanups/351973086?utm_source=Homelessness+in+the+News+11.8.16-11.14.16&utm_campaign=Homelessness+in+the+News+11.8.16+-+11.14.16&utm_medium=email

6. Mayor tells media that there was only one incident of Denver Police seizing blankets after giving Denver Police the directive to not take blankets:
<http://www.9news.com/mb/news/local/helping-or-enabling-mayor-on-letting-homeless-keep-blankets-tents/368300001>

7. Mayor tells media why he gave directive to temporarily not take blankets from homeless persons: <http://denver.cbslocal.com/video/category/spoken-word-kcncv/3591568-mayor-michael-hancock-discusses-homelessness-issues/>

1 As this Honorable Court can see, Mayor Hancock has made himself and his office central players
2 in the subject matter of this litigation.⁴ Under almost every relevant rule and norm of discovery,
3 Plaintiffs now have a right to depose him.
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6 **CERTIFICATION OF GOOD FAITH COMMUNICATIONS WITH OPPOSING**
7 **COUNSEL PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 37(a)(1).**
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9 Pursuant to Fed R. Civ. P. 37(a)(1), Plaintiffs certify that they have repeatedly and in good faith
10 communicated with opposing counsel regarding deposition of Mayor Michael Hancock.
11 Plaintiffs have made a showing of need and have expressed a great flexibility and willingness to
12 work with the Mayor’s schedule, offering to depose the Mayor at his office and to limit
13 deposition time. Plaintiffs have made it clear, out of respect for a busy public official’s schedule,
14 that they are not seeking a day of depositions, but merely two to three hours of taking directed
15 and relevant testimony. (Plaintiffs provide queries/sought information to the court. *Infra.*)
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19 In response to Plaintiffs’ good faith efforts, Defendant has consistently made clear to Plaintiffs
20 that they will attempt to oppose and prevent deposition of the Mayor by filing a protective order.
21 On March 6, 2017, Plaintiffs filed a Notice of Deposition for Mayor Michael Hancock that was
22 e-filed with this Court and served to Defendant on that same day, noticing the deposition for 1:00
23 p.m. March 29, 2017. (Ex. “A”) Plaintiffs contacted opposing counsel again, and for a third time,
24 on March 20, 2017, and were again informed that Defendant intended to file a protective order.
25 Plaintiffs now bring this Motion to Compel pursuant to Fed R. Civ. P. 37(a)(1)-(3) or/and R.
26 26(c)(2), should the court view this *Motion to Compel* in the context of Defendant’s forthcoming
27 protective order.
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32 ⁴ A cursory review of the exhibits submitted in support of Plaintiffs’ “Motion for Class Certification” will show that the policy directives and planning behind the homeless sweeps came from the Mayor’s office.

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2 Federal Rule of Civil Procedure 26(b)(1) is dispositive here. “Parties may obtain
3 discovery....proportional to the needs of the case, considering the importance of issues at stake
4 in the action.” This is a matter of fundamental constitutional importance. Plaintiffs have a right
5 to know how the city planned, orchestrated and implemented the homeless sweeps. From whom
6 did the orders emanate? How did they initiate? Was there a funding shortfall that may have
7 resulted in negligent training with regard to civil rights issues? Why were public donations meant
8 to help homeless persons used to fund the homeless sweeps? (The Mayor personally made
9 comment on this matter. *Supra.*) What are the relationships between the Mayor and the
10 Downtown Denver Partnership and other business development groups in Denver? (Goes to the
11 14th Amendment, Equal Protection claim. As stated, the Mayor appointed Kristin Bronson City
12 Attorney. Ms. Bronson sat on the Board of the Downtown Denver Partnership, a group that has
13 driven camping ban enforcement.) Why did the city repeatedly engage in the homeless
14 sweeps/camping ban enforcement pursuant to the Mayor’s orders? Why did the Mayor
15 personally feel the need to make repeated comments to media regarding the homeless sweeps?
16 Why did the Mayor issue an order to temporarily cease camping ban enforcement, *i.e.* what did
17 the Mayor see or experience that caused him to issue an order to Denver Police to stop taking
18 blankets and tents from homeless persons? What private-public relationships have compelled the
19 homeless sweeps/camping ban enforcement? (Goes to the 14th Amendment claim as to whether
20 the camping ban was being enforced fairly and to how it was ultimately implemented, which
21 goes to the Fourth Amendment claim.) Why are the Mayor and the Mayor’s office—and not
22 Public Works or the Denver Police Dep’t—directing Camping Ban enforcement policy? To wit:
23 why is there a policy and not simply ordinance enforcement? (This is a fundamental question as
24 camping ban enforcement has been driven by the Mayor’s office, which, in turn, begs the
25 question: who drove the Mayor’s office with regard to this issue?) What meetings were directed
26 by his office with regard to the implementation of policy, practice and conduct of the homeless
27 sweeps? (Relevant to all claims.) When did the Mayor know that there were civil rights issues
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1 concerned with the enforcement of the Camping Ban and what was his response? Did he order
2 cessation of camping ban enforcement because of constitutional issues, because of cruelty issues,
3 or because it was in his political best interest?
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6 These questions, which can only be answered by Mayor Hancock, are more than relevant: they
7 are at the heart of Plaintiffs' case, *i.e.* conduct, planning, policy, motivation, notice, intent,
8 response, enforcement and temporary cessation of enforcement, which are all relevant to this
9 mass scale civil rights claim against a municipality. The Mayor has an entire staff and army of
10 public relations spokespersons at his disposal, but has chosen to put himself squarely at the
11 center of this litigation. If anyone beside the Mayor had involved himself to this extent in
12 pending litigation, there would no question as to whether Plaintiffs' had a right to depose him
13 pursuant to Federal Rule of Civil Procedure 26(b)(1).
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16 Indeed, the only reason that we are here before the Court is because he *is* the Mayor, which is not
17 relevant to a 10th circuit Court's analysis as the 10th Circuit does not embrace the "Apex
18 Doctrine."⁶ See *Thomas v. International Business Machines*, 48 F.3d 479 (10th Cir. 1995).
19 Being that Mayor Hancock is at the core of this litigation and possesses unique and relevant
20 information that cannot be obtained elsewhere, then for purposes of R. 26, he is, respectfully,
21 treated like anyone else. See *Icon Health & Fitness, Inc. v. Johnson Health Tech No. Am., Inc.*,
22 1:10-cv-00209-DN, (holding that a magistrate judge was right in not applying the apex doctrine).
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26 As Plaintiffs pray they have shown this Honorable Court, this deposition is not being sought for
27 purposes of, "annoyance, embarrassment, oppression, or undue burden or expense." See Fed. R.
28 Civ. P. 26(c)(1). Plaintiffs are homeless. There is a massive differential in resources between the
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32 ⁶ Generally, that there must be a special showing of need made to depose a top executive. To wit: even if the 10th
Circuit adopted the apex doctrine, Plaintiffs could still make the requisite showing with regard to the Mayor.

1 parties in this matter. Depositions are expensive and being forced to file a Motion to Compel
2 further increases that expenditure of costs and resources. As stated at the start of this Motion,
3 Plaintiffs prefer not to depose the Mayor. But the Mayor has so injected himself into this
4 litigation, that they are left with no choice.
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7 Pursuant to Federal Rules of Civil Procedure 37(a)(1)-3, and/or R. 26(c)(2)—should the court
8 view this Motion to Compel in the context of Defendants’ forthcoming protective order—
9 Plaintiffs move this Honorable Court to compel the deposition of Mayor Michael Hancock.
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12 Respectfully submitted this the 22nd day of March 2017,

13 s/Jason Flores-Williams, Esq.

14 *Counsel for Plaintiffs*

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20
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22 Certificate of Service

23 I hereby certify that the above referenced Motion to Compel was filed electronically in this court
24 via the CM/ECF system on this 22nd day of September, 2017, causing a copy to be served upon
25 Defendants.
26

27 s/Jason Flores-Williams

28 Attorney For Plaintiffs
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