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9 UNITED STATES DISTRICT COURT
10 IN THE DISTRICT OF COLORADO

11 RAYMOND LYALL, GARRY ANDERSON, THOMAS
12 PETERSON, JERRY RODERICK BURTON,
13 FREDRICK JACKSON, BRIAN COOKS, WILLIAM
14 PEPPER, CHRISTOPHER FARRELL, KRYSTAL
15 MCEVOY INDIVIDUALLY ON BEHALF OF
16 THEMSELVES AND ALL OTHERS SIMILARLY
17 SITUATED;

18 Plaintiffs,

19 vs.

20 CITY OF DENVER, A MUNICIPAL CORPORATION,
21 MAYOR MICHAEL B. HANCOCK, POLICE CHIEF
22 ROBERT C. WHITE, DENVER PUBLIC WORKS
23 MANAGER JOSE M. CORNEJO, MAYOR'S CHIEF-
24 OF-STAFF EVAN DREYER & COMMANDER
25 ANTONIO LOPEZ IN THEIR OFFICIAL
26 CAPACITIES;

27 Defendants

Case No.: 16-2155

CLASS ACTION

MOTION TO TAKE JUDICIAL NOTICE

PURSUANT TO FRE 201

DEMAND FOR JURY TRIAL

28 **MOTION TO TAKE JUDICIAL NOTICE OF DEFENDANT MAYOR MICHAEL**
29 **HANCOCK'S ORDER TO DEFENDANT DENVER POLICE TO STOP SEIZING**
30 **HOMELESS BLANKETS AND TENTS**

- 31 1. Pursuant to Federal Rule of Evidence 201, Plaintiffs move this Court to take judicial
32 notice of Defendant Mayor Michael Hancock's order to Defendant Denver Police Dep't
to stop seizing and confiscating Denver Homeless person's blankets and tents.

- 1 2. This order was issued via press release by Defendant Mayor Hancock Saturday,
2 12/10/2016. Exhibit “A”. (Mayor’s press release ordering adjustment to camping ban
3 enforcement.)
4
- 5 3. The entirety of the statement and its contents are accurately included in Ex. “A” as
6 electronically distributed to media by Defendant Mayor’s Office so that, as submitted
7 here, is in substantial compliance with both FRE 1002 and 1003.¹ See, *Greco v. Velvet*
8 *Cactus, LLC*, Civil Action No. 13-3514, E.D. La. June 27, 2014) for a ruling that informs
9 the somewhat unsettled concept of the “original” with regard to text messages and
10 emails; *Greco* Court holding that duplicates of electronic messages satisfy best evidence
11 pursuant to FRE 1002, stating: “[f]or electronically stored information, ‘original’ means
12 any printout- or other output readable by sight- *if it accurately reflects the information.*”
13 *Emph. added.*
14
- 15 4. The order to stop seizing homeless person’s blankets and tents was widely distributed to
16 media and repeated by the Defendant Mayor himself and is now well known and readily
17 verifiable via a simple internet search. Nb. “Denver Mayor Orders Denver Police to Stop
18 Confiscating Homeless Blankets and Tents.” See *Dias v. City and County of Denver*,
19 2009 WL 1490359 (10th Cir., May 27, 2009), where the trial court reviewing the scope
20 of an ordinance took judicial notice of relevant facts from a website. See also *O’Toole v.*
21 *Northrop Grumman Corp.*, 499 F.3d 1218, 1224 (10th Cir. 2007: “It is not uncommon for
22 courts to take judicial notice of factual information found on the world wide web.”
23
24
- 25 5. The Defendant’s order was not the result of any compromise offers or settlement
26 negotiations with lead counsel pursuant to FRE 408.
27

28
29
30 ¹ Counsel avers that the contents are exactly that of the “original,” save for the City’s graphic letterhead, which did
31 not translate into PDF in this office for purposes of electronic court filing, but can be submitted in its hardcopy
32 original should the court prefer it. Here is the link to the statement on the Mayor’s website:
<https://www.denvergov.org/content/denvergov/en/mayors-office/newsroom/2016/mayor-hancock-statement-regarding-unauthorized-camping-ordinance.html>

- 1 6. The Defendant Mayor's order to Defendant Denver Police is an indisputable and relevant
2 fact of the case and as such is an *adjudicative* fact clearly admissible in the 10th circuit.
3 *United States v. Wolny*, 133 F.3d 758, 764 (10th Cir. 1998).
- 4
5 7. The Defendant Mayor's order is central to the core issues of this litigation, i.e. seizure of
6 homeless person's property, and relevant to the adjudication of current dispositive
7 motions before the Court, any potential Summary Judgment Motions, and jury
8 instructions. See FRE 201(f) regarding judicial notice and jury instruction.
- 9
10 8. The legal authority for taking judicial notice of Defendant Mayor's order is found at
11 Paragraph (b)(2) of Rule 201 stating in part that "[t]he court may judicially notice a fact
12 that is not subject to reasonable dispute because it: . . . can be accurately and readily
13 determined from sources whose accuracy cannot reasonably be questioned."
- 14
15 9. Judicial notice of an adjudicative fact may be taken by the Court at any time. See FRE
16 201(d).
- 17
18 10. Defendant Mayor Hancock's order can be readily determined from Exhibit "A", or any
19 reasonable source. It occurred within the territorial jurisdiction of the Court and cannot be
20 reasonably questioned. FRE 201(1-2).
- 21
22 11. Defendant Mayor's order is an executive order from the Mayor's Office which is
23 either/or: (1)a business record pursuant to FRE 803(6) as it was issued on City of Denver
24 letterhead; (2)A public record pursuant to FRE 803(8) as it was issued from Defendant
25 Mayor's office; (3)admission or declarant statement against interest FRE 802(d)(2), FRE
26 804(3), respectively.
- 27
28 12. As the Mayor's order-admission was distributed through the Denver.gov address it
29 should be considered adopted by all Defendants pursuant to FRE 801(d)(2)(b), see
30 *Wagstaff v. Protective Apparel Corp. of Am., Inc.*, 760 F.2d 1074, 1079 (10th Cir. 1985),
31 where the court found that Defendants adopted a statement-admission by distributing it.
32 *Id.* at 1078

1 13. Conferral: Plaintiffs conferred with Defendants regarding this Motion as required by
2 Local Rule 7.1 and this Motion is opposed.
3

4 **PRAYER**

5 Plaintiffs respectfully move this Honorable Court to take judicial notice of Defendant Mayor
6 Michael Hancock's order to Defendant Denver Police to stop seizing homeless person's blankets
7 and tents.
8

9 **Certification of Service**

10
11 I hereby certify that I filed electronically the above Pleading causing it to be served upon
12 opposing counsel 12/13/16.
13

14
15 s/ Jason Flores-Williams

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