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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

PLAINTIFFS' RESPONSE TO
DEFENDANTS' FIRST REQUEST FOR
PRODUCTION

DEMAND FOR JURY TRIAL

28 Raymond Lyall, Garry Anderson, Thomas Peterson, Jerry Roderick Burton, Fredrick Jackson,
29 Brian Cooks, William Pepper, Christopher Farrell and Krystal McEvoy ("Plaintiffs") herein
30 respond to Defendant's First Request For Production through the undersigned counsel.

31 **GENERAL OBJECTIONS**

32 Almost every Request for Production violates attorney-client privilege and work product. Those
few Requests that don't violate these privileges seem to exist for no other reasons than rebuttal
and impeachment as Defendants are almost certainly already in possession of the requested

1 communications and materials via their surveillance of local activist groups. Defendants know
2 that they possess an advantage in resources and that they can prevail by exploiting that
3 advantage. *The Sedona Principles*, which Plaintiffs submitted as an Exhibit in this litigation, call
4 for “fairness, equity and efficiency.” Defendants Requests do not align with these principles.
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7 These Requests further invade the historically established and protected relationships that exist
8 between 501(c)(3) entities and attorneys in civil rights litigation. Denver Homeless Out Loud,
9 the explicit subject matter of “Request 8” and an implicit subject throughout, is an entity with a
10 fiscal relationship to an established 501(c)(3)—The Western Regional Advocacy Project—that
11 advocates for the dignity of homeless persons and in so doing has served as investigators and
12 facilitators in this cause, which Honorable Magistrate Judge Shaffer recognized as having unique
13 challenges.¹ That Denver Homeless Out Loud does not have a CEO, CFO, or Vice-Director of
14 Investor Relations does not vitiate the privileged relationship that it possesses when it works with
15 this law office on civil rights litigation that is directly on point with the mission(s) of the
16 Western Regional Advocacy Project and Denver Homeless Out Loud. Secondly, much like
17 Exxon or Goldman being prosecuted by the Department of Justice while being sued by the
18 Securities and Exchange Commission, this litigation is now mired in parallel civil and criminal
19 proceedings. In other words, some of these Plaintiffs are now Defendants in transactions arising
20 from the same subject matter, i.e. Camping Ban enforcement. Accordingly, The Fifth
21 Amendment to the United States Constitution is now strongly implicated.
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26 Finally, Plaintiffs Fourth Amendment rights have been systematically violated by Defendants for
27 several years, so that: (1)If documents exist and have not been thrown away, then they are in
28 Defendants’ possession; (2)Plaintiffs have been preparing to litigate these issues from the outset
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32 ¹ In the first open hearing, Magistrate Judge Shaffer took the time to say that organizing the putative class would be
a unique challenge due to their poverty and homelessness.

1 of the statute of limitations period. The fact that they are poor, dispossessed and were unable to
2 find representation should not be held against them with regard to the protections afforded those
3 communications and materials produced in the preparation for litigation, so that along with the
4 Fifth Amendment, the Equal Protection clause of the Fourteenth Amendment to the U.S.
5 Constitution is now implicated as well.
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8 Objections are specifically enumerated. Responses do not waive privilege or confidentiality.
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11 **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

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14 Defendants define *you* and *your* as Plaintiffs and “their representatives, agents, and any other
15 person acting on any Plaintiff’s behalf.” This is admittedly, somewhat, typical legal language,
16 but this does not excuse it from running afoul of the plain meaning found in the Oxford English
17 Dictionary. The definition of “you and yours” here are/is so all-encompassing that it/they almost
18 assuredly, on some level, invade(s) work product and attorney-client privilege.
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21 **OBJECTIONS TO REQUESTS FOR PRODUCTION**

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24 **REQUEST ONE:** All documents supporting any claims for monetary damages in this case.

25 **RESPONSE:** Objection. Over-burdensome, harassing and meant solely for purposes of rebuttal
26 and impeachment. As referenced above, the putative Plaintiff class has been the subject of
27 targeted Fourth Amendment violations for several years. Not only have they had to contend with
28 homelessness, but with having the City of Denver seize their papers, so that Defendants would
29 be in possession of documents proving ownership.
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1 **REQUEST TWO:** Any and all written or recorded statements taken by you or on your behalf
2 from any person claiming to have knowledge of the facts relevant to any of the allegations or
3 claims set forth in your Amended Complaint (or any subsequent amendments thereto).
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6 **RESPONSE:** Objection. Over-burdensome, vague, meant solely for purposes of rebuttal and
7 impeachment, irrelevant and already in possession of Defendants. If this Request applies to the
8 “You and Yours” of Plaintiffs, then it invades work product, attorney-client privilege and is an
9 attempt to discover Plaintiffs’ litigation strategy. If taken literally, “Any person claiming to have
10 knowledge of the facts,” then it is a vague and overbroad request for things that are out of
11 Plaintiffs’ control. Plaintiffs also object on grounds of relevance, as this hearsay could only serve
12 the purposes of rebuttal and impeachment. Finally, via [Docs. 1, 15, 16 & 28], which were
13 accepted as evidence by this Court, defendants are already in possession of Affidavits and
14 supporting documentation.
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18 **REQUEST THREE:** Excluding all information protected from disclosure by Fed. R. Civ. P.
19 26(a)(4), produce copies of all expert reports/opinions, curriculum vitae or professional resumes,
20 and any file materials of any expert witness employed by you to render an opinion with regard to
21 any allegations contained in your Amended Complaint (or any subsequent amendments thereto),
22 including, but not limited to, all documents, diagrams, materials, texts, articles, publications,
23 underlying data, surveys and/or other authorities relied upon by each such expert in rendering
24 his/her opinion, written communications relating to compensation for the expert’s study or
25 testimony, written communications relating to the identification of facts or data that your
26 attorney provided and that the expert considered in forming the opinions to be expressed, and
27 written communications identifying assumptions your attorney provided and that the expert
28 relied on in forming the opinions to be expressed.
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1 **RESPONSE:** Objection. Defendants are already in possession of this information so that this is a
2 harassing and repetitive request. Plaintiffs have already disclosed the CV's and expert reports of
3 their expert witnesses via the required Federal Rules of Civil Procedure R.26 Initial Disclosures
4 and in the form of expert affidavits which have been accepted by this court. [Doc.15 & exhibits.]
5 Plaintiff's experts are Dr. Tony Robinson, Dr. Stephen Koester and Dr. Sig Langegger.
6 (Langegger retained for purposes of litigation preparation and not discoverable as he will not
7 testify at trial.) As clearly stated in Plaintiffs' "Motion for Class Certification with Memorandum
8 of Points and Authorities" [Doc. 15], Dr. Robinson relies on *The Denver Camping Ban, A Report*
9 *From the Street*, in which he designed the survey, trained the surveyors, compiled and analyzed
10 all data in this 76-page narrative report in which 512 homeless respondents were surveyed
11 regarding their recent experiences with regard to policing of homelessness in Denver County.
12 Doctors Langegger and Koester have collaborated on several peer-reviewed papers relevant to
13 this cause whose titles have, again already been disclosed to Defendants via disclosure of their
14 respective curriculum vitae:
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19 1)Koester, S. and S. Langegger (2015). "Never be Stationary": Survival Drug Use in the
20 Neoliberal City. American Anthropological Association Annual Meeting. Denver, CO.

21 Langegger, S. (2016).

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24 2)"After the ban: The moral economies of property." *Antipode* 48(3): 645-664. Langegger, S.
25 and S. Koester (2016).

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27 3)"Dwelling without a home: Denver's splintered public spaces. *Criminology meets geography:*
28 *Order and conflict in public space.*" M. D. Backer, L. Melgaco, G. Varna and F. Menichellil.
29 New York, Routledge: 140-159. Langegger, S. and S. Koester (2016).
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1 4)"Invisible homelessness: Anonymity, exposure and the right to the city." Urban Geography
2 Online First. Langegger, S. and S. Koester (in press). "Moving on, finding shelter: The
3 spatiotemporal camp." Journal of International Sociology.
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6 As expressed in email communications with Defendants, if these articles are not readily available
7 through basic internet search, then Plaintiffs will transmit the full documents. If production of
8 these documents involves a more than *de minimus* expense, then Defendants should be prepared
9 to pay for their production. See *Tierno v. Rite Aid Corp.*, Case No. 05-02520 (N.D. Cal. July 31,
10 2008)
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13 **REQUEST FOUR:** Any documents not previously disclosed or provided to Denver which you
14 anticipate using as evidence at trial.
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17 **RESPONSE:** On December 10, 2016 and the days following, Defendant Mayor Michael
18 Hancock and Defendant Denver Police issued statements concerning the seizure of blankets and
19 tents from homeless persons in frigid temperatures. In the case of the former, it was an order to
20 the Denver Police Department to stop seizing survival items from homeless persons until April
21 2017. Regarding the latter, it was an attempt to address/ameliorate the public relations problems
22 caused by the now viral video—now viewed by millions—of Defendant Denver Police pulling
23 blankets from homeless. Plaintiffs intend to admit these statements as well as the viral video,
24 which is obtainable on the internet, but in the spirit of good faith Plaintiffs are forwarding
25 electronically to Defendants. (As the aforementioned statements were issued by Defendants, they
26 are in Defendants control. In fact, Plaintiffs would request, as part of their duty to ongoing
27 supplement, that Defendants disclose Defendant Mayor's order and Defendant Denver Police
28 statement in their original forms.)
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1 Nb. As referenced above, one of the Plaintiffs, Mr. Burton, has now been charged with violation
2 of the Camping Ban. Trial in this criminal case is set Feb. 21, 2017. The undersigned is defense
3 counsel in the criminal matter. In preparation for trial, it is reasonably anticipated that other
4 documents will be produced. Plaintiffs will, of course supplement while also seeking, at some
5 point, a ruling with regard to the cross admissibility of parallel proceedings, *i.e.* what is the
6 evidentiary relationship between the state criminal trial and this federal action?
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9 **REQUEST FIVE:** Any and all documents, including, but not limited to, e-mails, text messages,
10 social media or other electronic posts, notes, statements, summaries, diaries, memoranda,
11 transcripts, recordings (audio and video) and/or other writings created by you or anyone acting
12 on your behalf relating to, concerning, or evidencing the circumstances and factual allegations
13 made in your Amended Complaint (or any subsequent amendments thereto), including but not
14 limited to, all correspondence between you and any other person (excluding your attorneys).
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16 **NOTE:** This request is not seeking any information which is subject to attorney-client
17 and/or work product privileges.
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20 **RESPONSE:** Objection. Overbroad. Unduly burdensome. Harassing. Relevance. As stated,
21 *supra*, Defendant Denver Police are currently enmeshed in claims that they have illegally
22 monitored Denver activist group, so that if the purpose of this Request is to obtain social media
23 posts, then those posts are being sought solely for rebuttal and impeachment evidence as they are
24 already in possession of Defendants. Either way, this Request shines a light on the City's
25 monitoring of activist groups via Geofeedia, which potentially violates the Fourth Amendment to
26 say nothing of the First Amendment right of association. See *NAACP v. Alabama*, 357 US 449,
27 (1958).
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31 **REQUEST SIX:** All documents or other written communications, including but not limited to,
32 emails and videos, provided by any of the Plaintiffs or on behalf of any or all of the Plaintiffs to

1 the City and County of Denver (including its departments or agencies) regarding the
2 circumstances or factual allegations set forth in your Amended Complaint from August 24, 2014
3 to the present.
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6 **RESPONSE:** Objection. Harassing. Over-burdensome. If Plaintiffs have already provided these
7 materials to Defendants, then Defendants would already be in possession of these materials. This
8 Request is meant solely for annoyance.
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10 **REQUEST SEVEN:** All communications with any person (including, but not limited to, parties
11 or counsel) regarding lawsuits in which a class or purported class of homeless people asserted
12 constitutional or statutory claims against any municipality or state entity.
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15 **RESPONSE:** Objection. Calls for work product. i.e. communications prepared in anticipation of
16 litigation. Objection. Relevance.
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19 **REQUEST EIGHT:** All written communications between you and/or your representatives,
20 including but not limited to your attorney(s) and Denver Homeless Out Loud.
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22 **RESPONSE:** Objection. Calls for violation of work-product, attorney-client and investigative
23 privilege(s). Denver Homeless Out Loud has a fiscal relationship with Western Regional
24 Advocacy Project, *supra*, a registered nonprofit, and has served as investigators in this litigation
25 so that all agreements and communications between Denver Homeless Out Loud and this law
26 office are protected and subject to attorney-client privilege.
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31 **REQUEST NINE:** Any and all documents demonstrating any attempts by you or your
32 representatives to receive any of the property which you claim was taken by the City and County

1 of Denver (including any of its departments or agencies) as alleged in the Amended Complaint
2 (or any subsequent amendments thereto).

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4 **RESPONSE:** Disclosed to Defendants via CD and email link is a video of Plaintiff Thomas
5 Peterson attempting to retrieve property that may be submitted as evidence by Plaintiffs at trial.
6 The video has been obviously edited, so that it may not be admissible. Title: *Response to*
7 *Defendant RFP 9, Video A*. Plaintiffs are disclosing this video in good faith, but as referenced
8 throughout, Defendant Denver Police monitoring of activist social media, including Denver
9 Homeless Out Loud, would strongly suggest that Defendants are already in possession of this
10 video, so that this Request is also harassing and designed for purposes of discovery
11 impeachment. i.e. to test whether Plaintiffs are meeting their duty of disclosure.
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15 **REQUEST TEN:** Any and all documents upon which you or your representatives are relying or
16 intend to rely to demonstrate that any of the property which you claim was taken by the City and
17 County of Denver (including any of its departments or agencies) as alleged in the Amended
18 Complaint (or any subsequent amendments thereto) was immediately deposited into the trash.
19
20 **(here)**

21 **RESPONSE:** Objection. Irrelevance, Burdensome. Defendants are already in possession.
22 Via the Complaint, [Doc. 1], Motion for Class certification [Doc. 15, 16] and Supplemental
23 Evidence, [Doc. 28], Plaintiffs have already submitted photos that have been accepted by this
24 Court of Defendant Denver Public Works *garbage* trucks at the homeless sweeps, so that
25 Defendants are now in possession of these items. Furthermore, this Request is more properly the
26 subject of deposition testimony, so that when Plaintiffs depose Dep't of Public Works
27 employees—depositions now made relevant by this Request—they will then have more
28 information and perhaps materials that could be subject to disclosure, should they not already be
29 in possession of Defendants. Finally, this Request is irrelevant as the due process and
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1 constitutional challenges pertain to the illegal seizures and confiscations and do not hinge upon
2 whether illegally seized property was stored or trashed.

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5 Plaintiffs will supplement their disclosures as is their recognized duty.

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7 Respectfully submitted this the 14th day of January 2017,

8 s/Jason Flores-Williams, Esq.

9 *Counsel for Plaintiffs*

10 Phone: 303-514-4524

11 Email: Jfw@jfwlaw.net

12 1851 Bassett St.

13 #509

14 Denver, Colorado 80202

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17 **CERTIFICATE OF SERVICE**

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20 I hereby certify that on this 14th day of January, 2017 a true and correct copy of the foregoing
21 PLAINTIFF' RESPONSE TO DEFENDANTS' REQUESTS FOR PRODUCTION was served
22 upon the following:

23
24
25 Wendy J. Shea

26 Conor D. Farley

27 Cristina Peña Helm

28 Geoffrey Klingsporn

29 Assistant City Attorneys Denver City Attorney's Office,

30 Litigation Section 201 W. Colfax Avenue, Dept. 1108

31 Denver, Colorado 80202

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CLASS ACTION- 10

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