

<p>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO</p> <p>7325 S. Potomac St. Centennial, Colorado 80112</p>	<p style="text-align: right; transform: rotate(90deg);"> 2013 JAN 15 AM 9:15 CLERK OF COURT DISTRICT COURT ARAPAHOE COUNTY COLORADO </p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: People of the State of Colorado</p> <p>v.</p> <p>Defendant: James Eagan Holmes</p>	
<p>Attorneys for Interested Party City of Aurora:</p> <p>Name(s): Martha L. Fitzgerald, #14078 Address: Brownstein Hyatt Farber Schreck, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432</p> <p>Phone Number: 303.223.1100 FAX Number: 303.223.1111 E-mail: mfitzgerald@bhfs.com</p>	<p>Case Number: 12CR1522</p> <p>Division: 22</p>
<p>MOTION REGARDING RECONSIDERATION OF PRE-TRIAL PUBLICITY ORDERS</p>	

The City of Aurora hereby respectfully requests that this Court revisit and potentially revise its "Order re Motion to Limit Pre-Trial Publicity" (Dkt. 2) issued in this matter on July 23, 2012, and as amended by "Amended Order Re Motion to Limit Pre-Trial Publicity," (Dkt. 2a), August 13, 2012 (collectively "Publicity Orders"). As grounds for its motion, the City of Aurora ("the City") states:

1. Pursuant to this Court's Publicity Orders, the City, including its management, elected officials, members of first response teams from the Aurora Police Department, Aurora Fire Department, and many other divisions of the government, have exercised great care to refrain from disclosing any information to the public which might jeopardize the integrity of this proceeding.

2. In its attempt to protect the fairness of the judicial process, for example, the City has refused numerous requests from law enforcement personnel and fire departments from jurisdictions around the country and the world which seek for the City to give presentations regarding the theater shooting. Those requests have in the vast majority of instances been made



by other municipalities, law enforcement, and emergency response organizations seeking to learn from the City's response here.

3. The City has also been the recipient of numerous requests for information relating to the Century 16 Theater shootings which have been made pursuant to the Colorado Open Records Act, Colo. Rev. Stat. § 24-72-204 (CORA). The Open Records requests have been submitted not only by media entities, but have come from educational institutions, individuals, and others. Those requests also have come from across the country and the world.

4. The City has carefully construed the scope of this Court's Publicity Orders in conjunction with the requirements of CORA in responding to each information or presentation request.

5. When the City has refused to provide information, it has done so on the basis that release of the requested information (1) would impinge upon the integrity of the criminal investigative process and/or constitute criminal records pursuant to the Colorado Criminal Justice Act; and/or (2) would inflict substantial injury to the public interest (*see, e.g., Bodelson v. Denver Publishing Company*, 5 P.3d 373, 378 (Colo. Ct. App. 2000)); and/or (3) would violate this Court's Publicity Orders.

6. As this Court is well aware, however, during the Preliminary Hearing and Proof Evident Presumption Great Hearing ("Preliminary Hearing") in this matter which was held on January 7-9, 2013, the People of the State of Colorado ("the State") presented extensive factual testimony regarding the theater shootings from many law enforcement personnel, including members of the Aurora Police Department.

7. During the course of that testimony, the State presented detailed testimony relating to the investigation of the charges against the Defendant and also revealed underlying evidence which has been marshaled in support of those charges. Some of the evidence presented in open court, such as the two audio recordings¹ of 911 calls made during the July 20 attack, is maintained by the City.² Other testimonial evidence consists of individual and collective knowledge of the Aurora Police Department.

8. Because extensive law enforcement testimony has now revealed the parameters of many details of the State's case against Defendant, the City requests that this Court consider whether its proscription against public extrajudicial statements by law enforcement as set out in the Publicity Orders is now moot, allowing Aurora Police and Fire Command Staff, at a

¹ Recordings of two 911 calls were introduced into evidence during the testimony of Aurora Police Detective Randy Hansen. The first call was the initial call received by Aurora Dispatch during the attack, and was found at time stamp 12:38:37. A longer call, which began at approximately 12:44, was also introduced. The recordings of those calls were received as Exhibits 25 and 26, respectively.

² The Aurora Public Safety Communications Center preserves recordings of 911 calls.

minimum, to speak publically about the City's response to the theater shootings, and to release the recordings of the two 911 calls played in open court.

9. Release of recordings of the two 911 calls played in open court and/or allowing the City to speak about its response will not potentially jeopardize any investigation or the fairness of the judicial process here, because the evidence has already been revealed to millions of people worldwide.

For the above reasons, the City respectfully requests that this Court consider revisiting and potentially modifying its Publicity Orders to allow City representatives to speak about the City's response to the attack, and to release any audio recordings which have already been played in open court in this action.

January 15, 2013

Respectfully submitted,

Brownstein Hyatt Farber Schreck, LLP

By: Martha L. Fitzgerald
Martha L. Fitzgerald, #14078

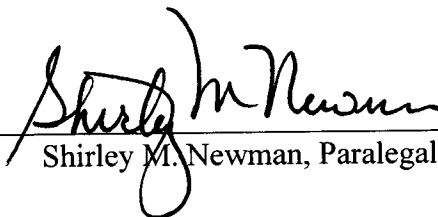
ATTORNEY FOR INTERESTED
PARTY CITY OF AURORA

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of January, 2013, a true and correct copy of the foregoing **MOTION FOR CLARIFICATION OF PRE-TRIAL PUBLICITY ORDER** was filed with the Clerk of the Combined Court via Hand-Delivery, and served via U.S. Mail, postage prepaid and properly addressed to the following:

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