



dispossessed in our state, shelters serve as ideal hot spots for the spread and retransmission of this highly contagious virus, so that homelessness in the time of pandemic is a matter of grave public concern.<sup>12</sup>

Along with the statutory requirement that the Colorado Department of Public Health utilize its expertise to mitigate the crisis amongst the homeless, there is an Equal Protection violation lurking here in that the State has issued orders for *the public good* that the homeless do not have the ability to meet, while failing to provide the resources for those suffering homelessness to meet them.

Currently, there are approximately:

1. 9,619 homeless in Colorado, according to the 2019 *Point In Time* Survey, generated by The U.S. Dep't of Housing and Urban Dev.<sup>3</sup>
2. There are more than 3,900 homeless in Denver, with an estimated 5,500 in the metro area according to the aforementioned Survey.
3. Denver homeless shelters have no more than 2000 beds, according to statistics compiled by The Department of Housing Stability (HOST).
4. Nationally, 23 percent of the homeless population are over 50 and 84 percent have a health condition, making them particularly vulnerable to Covid-19, according to The National Alliance to End Homelessness.

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<sup>1</sup> Pursuant to CRE 201, Plaintiffs respectfully request that the Court take Judicial notice that state and national emergencies have formally been declared on March 10 & 13, respectively.

<sup>2</sup> See Decl. of Stephen Koester, PhD, University of Colorado. Attached.

<sup>3</sup> The exigency and immediacy of this pandemic makes entering the streets and obtaining declarations and affidavits of the homeless impossible, but the statistics, numerosity and typicality of the homeless in Colorado during this crisis would easily qualify as a CRCP 23(b)(2) class action.

5. There are approximately 13 shelters in Denver.

6. There are two shelters in Boulder: Boulder Shelter for the Homeless which has a capacity of 160 beds; and Bridge House which has 72 beds, according to Plaintiffs who work in this community. There are approximately 600 homeless in Boulder, according to the above-referenced *Point in Time* Survey, but as a factual matter, Boulder advocates believe that the number is closer to 2,000. Homeless congregate in large groups in Boulder to sleep and eat, there are a limited amount of shared bathrooms available, and the closest bathroom to the Boulder Shelter for the Homeless is one mile. Conditions in the two Boulder shelters are overcrowded, people sleeping in bunk beds with only a few feet in between each bunk, making the shelters ideal hotspots for this highly infectious disease. Homeless in the shelters eat and congregate in large groups of 50 to 75, standing in lines in close proximity to one other while waiting for their food. According to Plaintiff advocates, the Bridge House has made recent efforts to separate sleeping cots six feet from each other, but this shelter is operating at capacity and is forced to turn people away.

7. Fort Collins, Colorado, has approximately three shelters for the homeless with an estimated homeless population of 430, according to the recent *Point in Time* survey by HUD. Plaintiffs who work with this community assert that half of the homeless population in Fort Collins is elderly, immunocompromised and therefore more highly susceptible to Covid-19. Shelter conditions in Fort Collins range from crowded to less crowded, i.e. people frequently gathering in numbers that are much larger than current U.S. recommendations with regard to distancing; with the base shelter facility in Fort Collins—Aztlán Community Center—hosting 250 persons during the day where

homeless share bathrooms, stand in line for meals, share shower facilities and common space. *There are four presumptive positive Covid-19 cases in the Aztlan community center with reports of numerous persons with respiratory symptoms indicative of Covid-19, according to Homeward Alliance, agency responsible for day-to-day operations at the Aztlan shelter.*<sup>4</sup>

8. There are no available homeless beds in Grand Junction, Colorado. In the one shelter in Grand Junction, people sleep on mats that are approximately two feet from each other. There are 1,500 homeless persons in Grand Junction, according to Plaintiffs who work with this community.

9. Plaintiffs take pains here not to cast a negative light on the efforts of those managing the shelters in our state during this crisis, but conditions are uniformly deficient throughout Colorado shelters:

- a. Beds and mats are separated by a distance of no more than three feet and usually much less.
- b. Bathroom are limited and shared.
- c. Majority of shelters operating at, or near, capacity; and not designed for social distancing—so that thousands have no choice but to violate governmental guidelines and orders issued since the inception of this epidemic.
- d. Reports of many, many people in shelters showing classic symptoms of Covid-19.

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<sup>4</sup> So many homeless are availing themselves of the Aztlan shelter in Fort Collins that they are running out of food and supplies. The shelter is asking people in the community to hand sew cloth masks as they don't have Personal Protective Equipment. (PPE).

- e. As of today, at least 10 homeless persons have tested positive for the virus, but due to extremely limited testing, there are certainly many more.
- f. Reports of breathing machines being used at one of the Denver Shelters in spaces no way intended for medical care.
- g. Bussing is required to shelters where homeless persons are forced to stand in crowded lines then ride in close quarters.
- h. Much of the food is still served in mass congregate settings, i.e. where homeless persons are standing in line with large numbers of people and sitting at tables with hundreds of people eating food.

10. Government orders and recommendations with regard to mitigating this crisis—social distancing, handwashing, stay at home orders—are impossible for Colorado homeless to comply with under current crisis conditions.

### **PARTIES**

11. Plaintiff Denver Homeless Out Loud office is located 2260 California Street, Denver, Colorado 802025. The nonprofit’s mission is to serve and advocate for the Denver Homeless community by amplifying the voice of the invisible and fighting for the rights and dignity of those living on the streets. Due to the lack of testing, safe shelter, and the risk of contracting Covid-19 in the shelters and in encampments, Denver Homeless Out Loud is unable to do its work within the scope of its mission.

12. Plaintiff Hugh Clements (“TC”), 54, is a member of the homeless community in Denver who resides in shelters; and, when shelters are at capacity or

dangerous (as with this crisis), lives on the streets. Mr. Clement's shelters of survival are Crossroads, Denver Rescue Mission, and a shelter in Inglewood, Colorado.

13. Plaintiff Nathaniel Werner ("Nate"), 41, is a member of the homeless community in Denver who resides in shelters; and, when shelters are at capacity or dangerous (as with this crisis), lives on the streets. His usual shelter of survival is 48<sup>th</sup> Street, which is part of the Denver Rescue Mission.

14. Plaintiff Solidarity Not Charity is a nonprofit in Grand Junction, Colorado located at 2842 ½ Texas Avenue, Grand Junction, CO 81501. Solidarity Not Charity is part of the Coalition for the Homeless, also based in Grand Junction, whose mission is to serve and advocate for homeless persons on the front lines in Grand Junction. The current crisis and its lack of management in the state of Colorado make it impossible for Solidarity Not Charity to perform its mission.

15. Plaintiff Fort Collins Homeless Coalition is located in Fort Collins, Colorado, and is a nonprofit subsidiary of the Fort Collins Community Action Network, which is a 501(c)(3). The nonprofit's mission is to work with people experiencing homeless in the Fort Collins community, addressing issues that arise from the experience of homeless on the grass roots level. Due to lack of management of the current epidemic with regard to our most vulnerable citizens, FCHC is unable to perform its core mission amongst the homeless.

16. Plaintiff Boulder Rights Watch is located at 4705 16<sup>th</sup> Street, #202, Boulder, CO 80304. The group has a hundred members and its mission is to ensure the rights and dignity of the homeless, work they cannot perform now due to the lack of management of the coronavirus in our state.

17. Plaintiff Safe Access For Everyone (“SAFE”) is located in Boulder, Colorado and is a subsidiary nonprofit of Boulder Democratic Socialists of America. SAFE has approximately 15 members. Its mission is to perform direct action that assists the Boulder homeless community. SAFE’S work is on the streets directly addressing the needs of the voiceless and invisible in the City of Boulder—a mission that SAFE is prevented from performing due to our state’s current lack of management regarding homeless persons in this pandemic crisis.

18. The Defendant, the Colorado Department of Public Health and Environment (“CDPHE”) is an executive agency of the State of Colorado.

19. The Defendant, Jill Hunsaker Ryan, is the Executive Director of the Colorado Department of Public Health and Environment and is a Defendant in her official capacity.

### **JURISDICTION AND VENUE**

20. This court has subject matter jurisdiction to hear these claims under C.R.C.P. 106(a)(2).

21. Venue is proper in this Court pursuant to C.R.C.P. 98(c).

### **LEGAL & FACTUAL ALLEGATIONS**

22. The relevant facts in this matter are as set forth in the Introduction and Statement of Facts.

### **COUNT I**

(Complaint for Mandamus)

23. Plaintiffs reallege and incorporate by reference the allegations contained in the proceeding paragraphs as though fully set forth herein.

24. Under C.R.C.P. 106(a)(2), mandamus relief is appropriate when: (1) the plaintiff has a clear right to the relief sought; (2) the defendant has a clear duty to perform the act requested; and (3) no other adequate remedy is available to the plaintiff. *Gramiger v. Crowley*, 660 P.2d 1279, 1281 (Colo. 1983).

25. The Plaintiffs have a clear right to the relief sought. Not only is the Dep’t of Public Health tasked with the protection of public health pursuant to statute, *infra*, but current Colorado shelter conditions—during this crisis—violate basic standards of human dignity as well as all recognized guidelines and orders issued by State and Federal government to mitigate the disease.

26. The Dep’t of Health & Environment (“CDPHE”) has statutory mandates to, in addition to all other powers and duties imposed upon it by law:

- a. “investigate and control the causes of epidemic and communicable diseases affecting the public health.” CRS §25-1.5-102(1)(a)(I);
- b. “investigate and monitor the spread of disease that is considered part of an emergency epidemic as defined in section 24-33.5-703(4) to determine the extent of environmental contamination resulting from the emergency epidemic, and to rapidly provide epidemiological and environmental information to the governor’s expert emergency epidemic response committee, created in section 24-33.5-704.5.” CRS §25-1.5-102(b)(I);
- c. “**establish, maintain, and enforce isolation and quarantine**, and, in pursuance thereof and for this purpose only, to exercise such physical control over property and the persons of the people within



this state as the department may find necessary for the protection of the public health.” CRS §25-1.5-102(c); Bold added.

- d. “abate nuisances when necessary for the purpose of eliminating sources of epidemic and communicable diseases affecting the public health.” CRS §25-1.5-102(d).
- e. “Except as otherwise directed by executive order of the governor, the department shall exercise its powers and duties to control epidemic and communicable diseases and protect the public health as set out in this section.” CRS §25-1.5-102(b)(II).

27. These statutory mandates go directly to the current situation regarding homeless persons in Colorado. Homeless persons are particularly susceptible and exposed to the pandemic due to health issues, lack of sanitation and the limitations of shelters. Without intervention and mitigation from the Dep’t of Public Health, they will contract, spread, and die from the disease at potentially much higher rates than the rest of society. Moreover, being without homes, they would serve as vectors for the reintroduction of Covid-19, a virus that lives on surfaces.

28. The Dep’t of Health, as stated, is assuredly doing the best it can under difficult circumstances, but its failure to fulfill its statutory mandate with regard to the homeless population of Colorado has contributed to a serious and shocking breach of medical safety procedures at homeless shelters, which increase the risk of Covid-19 contraction and transmission.

29. Plaintiffs Denver Homeless Out Loud, *et al*, can not do their work with the homeless population in Colorado without endangering its members, so that the lack of

mitigation on the part of the Dep't of Health has a cascading effect on all homeless resources and services, which in turn have an effect on managing this epidemic in Colorado.<sup>5</sup>

30. Plaintiffs Clements and Werner are faced with having to engage in the aforementioned Hobson's Choice: either sleeping a shelter where they will be exposed to Covid-19 or out on the streets where they have both been the victims of violent crime.

31. The Plaintiffs have a clear right to have and to rely on CDPHE's compliance with its statutory mandate.

32. CDPHE has a clear duty to perform the act requested, which is that it should be compelled to comply with its statutory mandate.<sup>6</sup>

33. No other adequate legal vector or remedy is available to the Plaintiffs. Without immediate intervention, people who do not have to die, will; and the spread of the disease will continue to amplify amongst the most vulnerable and voiceless in our society.

34. We are in a formal state of emergency on both state and national levels so that a Colorado Rule of Procedure 106 Extraordinary Petition is not only legally appropriate, but the only legal instrument applicable to the crisis.

35. This matter requires the elite expertise of CDPHE, which perhaps is the only governmental agency in the State of Colorado that has the ability and expertise to

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<sup>5</sup> Homeless can't shelter in place when sick. They are in public, in the community.

<sup>6</sup> Other Cities and States, e.g. San Francisco, Seattle, Milwaukee, Connecticut, are placing homeless persons in hotels and using vacant property to place RV's, which they have purchased, and that are being utilized by homeless during the crisis. The Departments of Public Health in those and other cities are, according to their statutory mandates, applying their expertise to mitigate this dangerous situation.

figure out quickly and effectively what needs to be done mitigate the Covid-19 epidemic amongst the homeless community.

**SPECIAL CIRCUMSTANCES**

**COLORADO RULE OF CIVIL PROCEDURE 106(a)(4)(VIII)**

36. Colorado Rule of Civil Procedure 106(a)(4)(VIII) provides the Court with wide-ranging discretion to hear these issues in a manner that is commensurate with the exigency of this crisis:

“The court may accelerate or continue any action which, in the discretion of the court, requires acceleration or continuance.” C.R.C.P. 106(a)(4)(VIII).

37. In an order relating to a similar Rule 106 petition concerning the jail and this crisis filed March 25, 2020, The District Court of Denver held that, when the relief sought involves potentially ordering a state agency to comply with its statutory mandate, then an *ex parte* hearing in the nature of a Temporary Restraining Order is inappropriate. (See 3/25/20 Order of the Honorable A. Bruce Jones, issued in 2020CV31147, *Christopher Butler v CDPHE*.)

38. Accordingly, Plaintiffs are not seeking a TRO in this matter, but a hearing as soon as practicable pursuant to CRCP 106(a)(4)(VIII).<sup>7</sup>

WHEREFORE, Plaintiffs respectfully seek:

1. That the Court direct CDPHE to immediately comply with its statutory mandate contained in CRS §25-1.5-102.

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<sup>7</sup> Logistically, Plaintiffs expect to serve CDPHE tomorrow, April 2, 2020, as well as the Dept’s representatives in the Colorado Office of the Attorney General. In light of the exigency complained of here, Plaintiffs’ counsel is available anytime for a telephonic hearing with the Court or to confer with representatives of the Dep’t of Health. Plaintiffs will apprise the court of service of this 106 Petition.

2. That the Court direct CDPHE to take steps, based on its expertise, to prevent and mitigate contraction and transmission of Covid-19 amongst the homeless community.
3. That the Court direct CDPHE to, like other similar agencies around the country, work with proper state and city authorities to provide housing for Plaintiffs and similarly-situated homeless persons during this crisis. Housing that is safe, sanitary and that enables Plaintiffs to protect themselves from the epidemic while engaged in the course of their lives, work, and mission.
4. For such other relief as may be just and proper under the circumstances.

Respectfully submitted,

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