

<b>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO</b> 7325 S. Potomac St. Centennial, CO 80112		DATE FILED: June 13, 2022 10:52 AM FILING ID: 4A56ABB528E19 CASE NUMBER: 2022CV30927
<b>Plaintiff:</b> THE SENTINEL COLORADO,  <b>v.</b>  <b>Defendant:</b> KADEE RODRIGUEZ, city clerk, in her official capacity as records custodian.		<b>▲ COURT USE ONLY ▲</b>
<b>Attorneys for Kadee Rodriguez, City Clerk, in her official capacity as records custodian:</b> Attorneys: Corey Y. Hoffmann, Reg. No. 24920 Katharine J. Vera, Reg. No. 53995 Firm: Hoffmann, Parker, Wilson & Carberry, P.C. 511 16 <sup>th</sup> Street, Suite 610 Denver, CO 80202 Phone: (303) 825-6444 E-mail: <a href="mailto:cyh@hpwclaw.com">cyh@hpwclaw.com</a> ; <a href="mailto:kjv@hpwclaw.com">kjv@hpwclaw.com</a>		Case No.: 2022CV030927  Division:
<b>ANSWER TO PLAINTIFF'S "APPLICATION FOR ACCESS TO EXECUTIVE SESSION RECORDING AND MEETING MINUTES AND FOR IN CAMERA REVIEW UNDER § 24-72-204(5.5), C.R.S."</b>		

Defendant, Kadee Rodriguez, City Clerk, in her official capacity as records custodian of the City of Aurora (the "Custodian"), by and through her legal counsel, Hoffmann, Parker, Wilson & Carberry, P.C., hereby submits the following Answer to Plaintiff's "Application for Access to Executive Session Recording and Meeting Minutes and for In Camera Review under § 24-72-204(5.5), C.R.S." (the "Application").

### INTRODUCTION

1. The allegations contained in Paragraph 1 of the Application are prefatory in nature, and no response is required. To the extent a response is required, the Custodian denies the allegations contained in Paragraph 1 of the Application, and states affirmatively that Plaintiff is not entitled to the relief sought in the Application.

2. The allegations contained in Paragraph 2 of the Application are prefatory in nature, and no response is required. To the extent a response is required, the Custodian denies

the allegations contained in Paragraph 2 of the Application, and states affirmatively that Plaintiff is not entitled to the relief sought in the Application.

3. The Custodian admits that *The Sentinel* is a newspaper, and is without sufficient information to admit or deny the remaining allegations contained in Paragraph 3 of the Application and therefore denies the same.

4. The Custodian admits that Max Levy submitted a public records request dated March 18, 2022, states affirmatively that the public records request speaks for itself, and to the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 4 of the Application.

5. The Custodian denies the allegation in Paragraph 5 of the Application.

6. The correspondence provided by the Custodian to Max Levy referenced in Paragraph 6 of the Application speaks for itself, and to the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 6 of the Application.

7. The Custodian denies the allegation in Paragraph 7 of the Application.

8. The Custodian denies the allegation in Paragraph 8 of the Application.

9. The allegations contained in Paragraph 9 of the Application constitute a legal argument and a prayer for relief, and thus no response is required. To the extent a response is required, the Custodian denies the allegations contained in Paragraph 9 of the Application, and states affirmatively that Plaintiff is not entitled to the relief sought in the Application.

### **JURISDICTION AND PARTIES**

10. The Custodian admits that C.R.S. § 24-72-204(5.5) and C.R.S. § 24-6-402(d.5)(I)(C) [sic]<sup>1</sup> provide statutory jurisdiction for certain claims that are attempted to be raised by Plaintiff in the within action, and further admits that the recording of the March 14 executive session which took place in the 18<sup>th</sup> Judicial District and is in the possession of the Custodian, and to the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 10 of the Application.

11. The Custodian is without sufficient information to admit or deny the allegations contained in Paragraph 11 of the Application and therefore denies the same.

12. The Custodian is without sufficient information to admit or deny the allegations contained in Paragraph 12 of the Application and therefore denies the same.

---

<sup>1</sup> The correct statutory reference applicable to Custodian in this case is C.R.S. 24-6-402(d.5)(II)(C).

13. To the extent a response is required to Paragraph 13 of the Application, the Custodian admits she is the custodian of records for the City of Aurora.

### **FACTS**

14. The Custodian is without sufficient information to admit or deny the allegations contained in Paragraph 14 of the Application and therefore denies the same, and states affirmatively that a newspaper article as referenced in Paragraph 14 of the Application has no evidentiary value.

15. The Custodian admits a censure process was initiated against Aurora City Councilwoman Danielle Jurinsky in January of 2022, and to the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 15 of the Application.

16. To the extent the City issued a "statement" on or about February 24, 2022, such document speaks for itself, and no response is required. To the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 16 of the Application.

17. The Custodian admits an executive session was conducted on March 14, 2022 by the City Council. The Custodian denies the remaining allegations contained in Paragraph 17 of the Application.

18. The Custodian denies the allegation in Paragraph 18 of the Application.

19. The Custodian denies the allegation in Paragraph 19 of the Application.

20. The Custodian admits the Aurora City Council held a regularly scheduled study session on March 21, 2022, and to the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 20 of the Application.

21. The City admits that Exhibit E to the Application is a true and correct copy of the originally posted "March 14 Agenda" as defined in Paragraph 21 of the Application, and to the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 21 of the Application, including the denial of any such allegations in footnote 4.

22. The Custodian admits that Max Levy submitted a request dated March 18, 2022 to the City in the form attached as Exhibit F to the Application, states affirmatively that Exhibit F speaks for itself, and to the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 22 of the Application.

23. The Custodian admits that she provided an email response to Levy dated March 22, 2022 attached as Exhibit G to the Application, states affirmatively that Exhibit G speaks for

itself, and to the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 23 of the Application.

24. As to the allegations in Paragraph 24 of the Application regarding the contents of the document attached to the Application as Exhibit G, the Custodian states that Exhibit G speaks for itself, and to the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 24 of the Application.

25. The Custodian admits that the City of Aurora through its City Attorney received the correspondence attached as Exhibit H to the Application, states affirmatively that Exhibit H speaks for itself, and to the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 25 of the Application.

26. The Custodian admits that representatives of the Custodian and of the Plaintiff met on May 5, 2022. The Custodian further states affirmatively that the Minutes of the May 9, 2022 City Council meeting are attached to this Answer as **Exhibit 1**, and incorporated herein by this reference (the "May 9 Minutes"). The May 9 Minutes identify the limited waiver of the attorney client privilege referenced in Paragraph 26 of the Application. *See Exhibit 1* at p. 14. To the extent not specifically admitted herein, the Custodian denies the remaining allegations contained in Paragraph 26 of the Application.

27. The allegations in Paragraph 27 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 27 of the Application, and states affirmatively that the referenced statutory provision speaks for itself.

28. The allegations in Paragraph 28 of the Application are merely a reference to a quoted statutory provision that speaks for itself and does not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 28 of the Application.

29. The allegations in Paragraph 29 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 29 of the Application, and states affirmatively that the referenced statutory provision speaks for itself.

30. The allegations in Paragraph 30 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 30 of the Application, and states affirmatively that the referenced statutory provision speaks for itself.

31. The allegations in Paragraph 31 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 31 of the Application, and states affirmatively that the referenced statutory provision speaks for itself.

32. The allegations in Paragraph 32 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 32 of the Application, and states affirmatively that the referenced statutory provision speaks for itself.

33. The allegations in Paragraph 33 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 33 of the Application, and states affirmatively that the referenced statutory provision speaks for itself.

34. The allegations in Paragraph 34 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 34 of the Application including the allegations in footnote 5, and states affirmatively that the referenced statutory provision speaks for itself.

35. The allegations in Paragraph 35 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 35 of the Application, and states affirmatively that the referenced statutory provisions speak for themselves.

36. The allegations in Paragraph 36 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 36 of the Application, and states affirmatively that the referenced statutory provisions speak for themselves.

37. The allegations in Paragraph 37 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 37 of the Application, and states affirmatively that the referenced statutory provisions speak for themselves.

38. The allegations in Paragraph 38 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 38 of the Application, and states affirmatively that the referenced statutory provisions speak for themselves.

### **FIRST CLAIM FOR RELIEF**

39. The Custodian adopts and incorporates all responses by reference as set forth in Paragraphs 1 through 38 of this Answer, inclusive.

40. The Custodian denies the allegation in Paragraph 40 of the Application.

41. The allegations in Paragraph 41 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the

allegations in Paragraph 38 of the Application, and states affirmatively that the Custodian denies any such formal action was taken by the Aurora City Council in executive session.

42. The Custodian denies the allegation in Paragraph 42 of the Application.

43. The Custodian denies the allegation in Paragraph 43 of the Application.

44. The Custodian denies the allegation in Paragraph 44 of the Application.

45. The allegations in Paragraph 45 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 45 of the Application.

46. The allegations in Paragraph 46 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 46 of the Application.

47. The Custodian denies the allegation in Paragraph 47 of the Application.

48. The Custodian denies the allegation in Paragraph 48 of the Application.

### **SECOND CLAIM FOR RELIEF**

49. The Custodian adopts and incorporates all responses by reference as set forth in Paragraphs 1 through 48 of this Answer, inclusive.

50. The Custodian denies the allegation in Paragraph 50 of the Application.

51. The Custodian denies the allegation in Paragraph 51 of the Application.

52. The Custodian denies the allegation in Paragraph 52 of the Application, and states affirmatively that while under no statutory or legal obligation to do so, the City Council consented by motion to a limited waiver of the attorney-client privilege in order to release the recording of the March 14, 2022 executive session for the limited purpose of an *in camera* review by the Court in the event Plaintiff can make the required showing necessary for such an *in camera* review pursuant to C.R.S. § 24-6-402(2)(d.5)(II)(C). See **Exhibit 1** at p. 14, attached hereto and incorporated herein by this reference.

### **THIRD CLAIM FOR RELIEF**

53. The Custodian adopts and incorporates all responses by reference as set forth in Paragraphs 1 through 52 of this Answer, inclusive.

54. The allegations in Paragraph 54 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the

allegations in Paragraph 55 of the Application, and states affirmatively that the referenced statutory provision speaks for itself.

55. The allegations in Paragraph 55 of the Application are predominantly legal argument that do not require a response, and to the extent Paragraph 55 of the Application alleges a violation of the COML or the effect of such a violation on the recorded discussions of the March 14, 2022 executive session of the Aurora City Council, the Custodian denies the allegation in Paragraph 55 of the Application.

56. The allegations in Paragraph 56 of the Application are legal argument that do not require a response, but to the extent any response is required, the Custodian denies the allegations in Paragraph 56 of the Application, and states affirmatively that the referenced statutory provision speaks for itself.

57. The Custodian denies the allegation in Paragraph 57 of the Application.

### **GENERAL DENIAL**

In addition to the specific responses asserted above, the Custodian denies each and every allegation not specifically admitted herein.

### **ANSWER TO PRAYER FOR RELIEF**

The Custodian denies that Plaintiff is entitled to any of the relief requested in its Prayer for Relief, and therefore, denies all allegations and requests for relief contained therein. The Custodian further requests that this matter be set for an evidentiary hearing pursuant to C.R.S. § 24-6-402(2)(d.5)(II)(C) to cause Plaintiff to attempt to make the requisite showing for the Court to conduct an *in camera* review pursuant to C.R.S. § 24-6-402(2)(d.5)(II)(C).

### **AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Plaintiffs' claims may be barred or limited by the Court's lack of jurisdiction.
3. Plaintiff's claims are barred by Plaintiff's failure to identify the evidentiary basis for its claim that the Aurora City Council somehow violated the provisions of C.R.S. § 24-6-402(2)(d.5)(II)(C) because Plaintiff has used Plaintiff's own newspaper articles as its evidentiary basis, and thus Plaintiff has not established a prima facie case.
4. Plaintiff's claims are barred by the fact that the March 14, 2022 executive session is not a public record subject to disclosure because it is an attorney-client privileged communication protected by C.R.S. § 24-72-204(1)(a) as communication subject to the common law and statutory attorney client privilege.

5. Plaintiff's claims are barred by the fact that the March 14, 2022 executive session is not a public record subject to disclosure because it is a privileged communication protected by C.R.S. § 24-72-204(1)(a) as communication subject to the executive session privilege pursuant to C.R.S. § 24-6-402(4)(b).

6. Even to the extent Plaintiff may allege violations of the Colorado Open Meetings Law, such claims fail as a matter of law because any such violations, if such violations were to be proven, were cured as allowed by law.

**REQUEST FOR RELIEF**

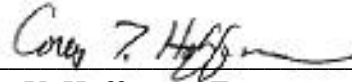
WHEREFORE, the Custodian respectfully requests this Court enter judgment in its favor, and against Plaintiff, for the Custodian's attorney's fees and costs, and for any such relief as the Court deems just and proper.

DATED this 13<sup>th</sup> day of June, 2022.

**HOFFMANN, PARKER, WILSON &  
CARBERRY, P.C.**

By:

/s/



Corey Y. Hoffmann, Esq.

**ATTORNEY FOR DEFENDANT KADEE  
RODRIGUEZ, CITY CLERK, IN HER  
OFFICIAL CAPACITY AS RECORDS  
CUSTODIAN**



**CERTIFICATE OF SERVICE**

I certify that on this 13<sup>th</sup> day of June, 2022, I caused a true and correct copy of the foregoing **ANSWER TO PLAINTIFF'S "APPLICATION FOR ACCESS TO EXECUTIVE SESSION RECORDING AND MEETING MINUTES AND FOR IN CAMERA REVIEW UNDER § 24-72-204(5.5), C.R.S."** to be served via CCES, electronic mail, and/or U.S. mail on the following:

Rachael Johnson  
Reporters Committee for Freedom of the Press  
c/o Colorado News Collaborative  
2101 Arapahoe Street  
Denver, CO 80205  
Email: [rjohnson@rcfp.org](mailto:rjohnson@rcfp.org)  
*Attorney for Plaintiffs*

/s/ Gabriela Casillas  
Gabriela Casillas, Legal Assistant