MUNICIPAL COURT, CITY OF NORTHGLENN, COLORADO 50 West Community Center Dr. Northglenn, CO 80234	
PEOPLE OF THE STATE OF COLORADO AND CITY OF NORTHGLENN **v.** **McCAMISH, DAVID EDWIN** Defendant.	**COURT USE ONLY**
Nathan Moelker Garrett A. Taylor Liam R. Harrell AMERICAN CENTER FOR LAW & JUSTICE [redacted]	Case No. 2025-0000387

DEFENDANT'S MOTION TO DISMISS

Comes now, Defendant, David Edwin McCamish, by and through undersigned counsel, and respectfully moves this honorable Court pursuant to C.M.C.R. 212 to dismiss the criminal complaint filed against him for the alleged violation of Northglenn Municipal Code § 9-10-2. This motion is based on the grounds that City Resolution 54 ("CR-54"), the regulation underlying the charged violation, is unconstitutional on its face and as applied to Defendant. The ordinance violates the Free Exercise Clause, Free Speech Clause, Due Process Clause, and Equal Protection Clause of the First and Fourteenth Amendments to the United States Constitution, as well as parallel provisions of the Colorado Constitution.

FACTUAL BACKGROUND

1. Defendant David McCamish is an active member of Brave Church at its Westminster, Colorado, campus, volunteering and meeting on a recurring basis in E.B. Rains Jr. Memorial Park ("Park") to minister and serve weekly meals to the local homeless population in accordance with his sincerely held religious beliefs. Mr. McCamish was cited on September 18, 2025, for violating park rules, following the City's enactment of CR-54.

2. Defendant McCamish, along with other volunteers from three local churches (Crossing Church, Next Step Christian Church, and Brave Church Westminster Campus) have gathered weekly at the Park to serve and minister to the local community, including homeless individuals.

3. The gatherings occur every Tuesday and Thursday from 12:00 pm to 1:00 pm and include sharing meals, prayer, Bible study, sermons, worship music, and Christian fellowship.

4. Tuesday gatherings typically draw 30-40 people; Thursday gatherings approximately 20 people—both days well within the capacity of any single pavilion at the Park.

5. Mr. McCamish and the other ministry participants sincerely believe that feeding, serving, and ministering to the homeless community is a religious exercise central to their Christian faith, compelled by Scripture and their religious convictions.

6. E.B. Rains Jr. Memorial Park is a 28-acre public park located in, maintained by, and operated by the City of Northglenn.[1]

7. The Park is a traditional public forum, open to the public for general use.

[1] *E.B. Rains, Jr. Memorial Park*, City of Northglenn, https://www.northglenn.org/rec_and_events/parks_and_open_space/e_b_rains_jr_memorial_park.php (last accessed December 9, 2025). [Hereinafter Park Website].

8. The Park has eight pavilions with combined capacity exceeding 400 people: six pavilions seating up to 50 people each, and two larger pavilions seating up to 72 people each. [2]

9. From July 2020 through summer 2024—a period of over four years—the ministry operated without incident, complaint, or objection from City officials.

10. In July 2024, Northglenn Chief of Police James May arrived at one of the gatherings and informed participants that he had been tasked with shutting down the weekly gatherings.

11. On September 24, 2024, City officials held a private meeting exclusively with pastors and church representatives, including Pastor Mackintosh, at the Northglenn Police Department.

12. At this meeting, City officials told the pastors they could not continue the weekly gatherings at the Park.

13. Upon information and belief, no other groups using the Park were summoned for similar discussions, demonstrating selective targeting of religious actors.

14. On June 9, 2025, following the City's stated goal of shutting down the ministry gatherings, the Northglenn City Council enacted CR-54.[3]

15. CR-54's Background section makes clear the ordinance was designed to target the ministry gatherings, noting that amendments "would prohibit any group from reserving or dropping-in to utilize a pavilion or a park on a recurrent basis."

16. CR-54 prohibits "group use" (defined as five or more individuals) of pavilions and outdoor spaces "on a recurrent basis."

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[2] *Pavilions*, City of Northglenn, https://www.northglenn.org/rec_and_events/pavilions.php (last accessed December 9, 2025).

[3] Amanda J. Peterson, PARKS, RECREATION & CULTURE MEMORANDUM # 8-2025 (to Honorable Mayor Meredith Leighty and City Council Members, June 9, 2025), https://webdocs.northglenn.org/file/101621/packet/CR-54,%20Public%20Facilities%20Standards.pdf. A true and correct copy is attached to this Motion as Exhibit A.

17. "Recurrent" is defined as "occurring on more than one occasion in a manner that monopolizes all or part of the facility and impedes open access by others."

18. CR-54 does not define the critical terms "monopolizes," "impedes," "open access," or "facility."

19. CR-54 requires permits for group use, with issuance at the sole discretion of City officials, but prohibits recurring use even with a permit.

20. CR-54 provides no time frames, objective standards, or review mechanisms for permit decisions.

21. On September 11, 2025, officers issued a warning to ministry leaders. Officers reportedly stated they did not know how to cite the violation, demonstrating their confusion about CR-54's application.

22. On September 18, 2025, Mr. McCamish was cited for violating Northglenn Municipal Code § 9-10-2 by allegedly violating CR-54.

23. When officers arrived on September 18, they asked ministry leaders how many people were part of their churches. They then requested and recorded which churches participants represented.

24. Upon information and belief, numerous other groups have used the Park on a recurring basis without citation.

LEGAL STANDARD

Under C.M.C.R. 212, all defenses and objections that could previously be raised by demurrer or motion to quash must now be raised by motion to dismiss or to grant appropriate relief. Constitutional challenges to the ordinance under which a defendant is charged may properly be raised by motion to dismiss. *See People v. Waddell*, 24 P.3d 3, 7 (Colo. App. 2000) ("[T]he trial

court granted the defense counsel's motion to dismiss the felony charges against him, based on a finding that the statute was unconstitutional."); *People v. Hickman*, 988 P.2d 628, 634 (Colo. 1999) ("[T]he trial court held the statute unconstitutional and granted the defendant's motion to dismiss.").

ARGUMENT

I. CR-54 FACIALLY VIOLATES THE UNITED STATES AND COLORADO CONSTITUTIONS' GUARANTEES OF EXERCISE OF RELIGION, SPEECH, AND PEACEABLE ASSEMBLY

The First Amendment to the U.S. Constitution prohibits Congress from, *inter alia*, violating the free exercise of religion, the freedom of speech, or the freedom of peaceable assembly. U.S. const. amend. I. These limitations are applied to the State of Colorado through the Fourteenth Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296 (1947) (free exercise); *Gitlow v. New York*, 268 U.S. 652 (1925) (speech); *De Jonge v. Oregon*, 299 U.S. 353 (1937). *See also Van Osdol v. Vogt*, 908 P.2d 1122 (Colo. 1996); *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044 (Colo. 2022); *American Fed. of Labor v. Reilly*, 155 P.2d 145 (Colo. 1944). This is not to say that no regulation of these activities is unconstitutional: "reasonable 'time, place and manner' regulations may be necessary to further significant government interests." *Grayned v. City of Rockford*, 408 U.S. 104 (1972). Moreover, Section 4, 10, and 24 of Article II of the Colorado Constitution afford even the same, and sometimes greater protections to these activities. *See*, *e.g.*, *Conrad v. City & Cnty. Of Denver*, 656 P.2d 662 (Colo. 1982) (holding Section 4's protections to be broader than the First Amendment); *Parrish v. Lamm*, 758 P.2d 1356, 1365 (Colo. 1988) (same regarding Section 10).

Such regulations, however, are given different levels of analysis based upon the "forum" implicated. "The Constitution forbids a State to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place." *Perry Educ.*

Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983). "In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the State to limit expressive activity are sharply circumscribed." *Id*. at 45. This includes "streets and parks," which have immemorially been held in trust for the use of the public and, time out of mind, "have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens." *Hague v. CIO*, 307 U.S. 496, 515 (1939). "In a traditional public forum, content-neutral restrictions of free speech are considered reasonable time, place, and manner regulations if they are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Lewis v. Colo. Rockies Baseball Club*, 941 P.2d 266, 272 (Colo. 1997) (citing *United States v. Grace*, 461 U.S. 171, 177 (1983).

While States can easily conjure legitimate State interests, the tailoring requirement requires courts to skeptically compare the regulation with the proposed justification. The deterrence of littering cannot justify a ban on handbills. *Schneider v. Town of Irvington*, 308 U.S. 147, 162 (1939). An "esthetic" interest cannot justify a partial ban on signs. *City of Laude v. Gilleo*, 512 U.S. 43, 52-53 (1994). The desire to prevent fraud and protect privacy cannot justify a ban on door-to-door canvassing. *Watchtower Bible & Tract Soc'y of N.Y. v. Vill. Of Stratton*, 536 U.S. 150, 168 (2002). All of this is because a regulation, in order to be sufficiently tailored, may not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989).

This is not to say that reducing litter, protecting community aesthetics, or preventing fraud are not valid governmental interests, only that the First Amendment restrictions were insufficiently

tailored to meet those ends or that they failed to leave open ample alternatives for that expressive activity. When a court does uphold a restriction, such as a "State's interest in protecting the 'safety and convenience' of persons using a public forum," it is only when the interest is demonstrated valid, such as a finding that without the regulation "there would be widespread disorder" coupled with a determination that "alternative forums . . . exist." *Heffron v. ISKCON*, 452 U.S. 640, 650-54 (1981). However, some justifications completely fail in First Amendment cases. *Denver Publ'g v. City of Aurora*, 896 P.2d 306, 317 (Colo. 1995) (citing *City of Renton v. Playtime Theatres*, 475 U.S. 41, 46 (1986)). And in every case, commonsense given the nature of the forum is always guiding: "the nature of a place . . . [and] the pattern of its normal activities . . . dictate the kinds of regulations of time, place, and manner that are reasonable." *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972) (citation omitted).

The City of Northglenn has offered its proposed justification of CR-54: to defend "typical park use." Ex. A at 1. This certainly fails in the First Amendment context. While the Colorado Supreme Court and federal courts have found *crowding* and its associated safety concerns to be valid, and even "aesthetic" concerns, "typical park use" falls outside any recognized governmental interest. Assuming, *arguendo*, that such an interest could be justified, there is similarly no conceivable argument that limiting recurring gatherings of five or more persons would protect the nebulous concept of "typical park use." The City's own website for the park shows many dozens of parkgoers on the first photo, apparently demonstrating "typical park use," clearly contradicting the absurd claims that a recurrent gathering of five or more somehow constitutes 'atypical' park use, pictured below:

See Park Website.

Other possible justifications similarly fail. The definition of "recurrent" includes events which "monopolize[] all or a portion" of a park facility. Ex. A at 6. But no pavilion of E.B. Rains Jr. Memorial Park has a capacity of fewer than fifty persons, and totaled they have a capacity of 444 persons. None of that even considers the numerous other park facilities. It strains credulity to argue that a group of five could meaningfully "monopolize" any single pavilion, let alone the twenty-eight acre park as a whole. The ratio of protected to unprotected conduct swept up by CR-54 is overwhelming. For every gathering that might arguably monopolize facilities, hundreds of harmless gatherings are also prohibited. Even assuming the City has a legitimate interest in preventing monopolization of park facilities, CR-54's prohibition vastly exceeds any conduct the City could constitutionally regulate. The five-person threshold and "more than one occasion" standard sweep in massive amounts of protected First Amendment activity that poses no threat whatsoever to park access. Accordingly, this Court should conclude as a matter of law that CR-54 is not narrowly tailored.

II. CR-54 IS OVERLY BROAD, VAGUE, AND AMBIGUOUS

"A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). The Supreme Court regularly cautions against vague laws that infringe on First Amendment rights. *See*, *Smith v. Goguen*, 415 U.S. 566,

573 (1974) ("Where a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the [vagueness] doctrine demands a greater degree of specificity…"); *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 499 (1982) (If "the law interferes with the right of free speech . . . a more stringent vagueness test should apply. A vague regulation of expression or assembly "raises special First Amendment concerns because of its obvious chilling effect on free speech." *Reno v. ACLU*, 521 U.S. 844, 871–72 (1997)).

CR-54 fails on both fronts: it provides no notice as to prohibited conduct, and it invites discriminatory enforcement. Without question, a great deal of constitutionally protected activity is caught up in the "literal scope" of CR-54. A family picnic, a prayer meeting, a political rally, a book club, would all become illegal by the simple fact that they meet "on more than one occasion." The ordinance's definition of "recurrent"[4] is no defense from vagueness, as that does not leave a person of ordinary intelligence notice as to what conduct is prohibited. How long must one sit on a bench before "monopolizing" it, or may they sit there at all? What if other benches are nearby? What if you only sit on half of the bench? Is a park bench even a "facility" under the definition? Is Webster Lake "monopolized" by fishing? "Impedes": what type of impediment, physical barriers or mere psychological deterrent? Does "open access" imply first-come, first-served? Can you monopolize a trail when jogging, or does your movement render that impossible?

Under the plain, literal meaning of CR-54, a family of five would be prohibited from sitting in the same park bench twice. None of this is defensible, yet it is all caught up in the statute's verbiage. Because of this ludicrous meaning, the statute invites the sort of discriminate enforcement cautioned in *Hill*. A law must not "vest[] unbridled discretion in a government official

[4] "'Recurrent' means on more than one occasion in a manner that monopolizes all or a portion of the facility and as a result, impedes open access to the facility or a portion of the facility by others." Ex. A at 6.

over whether to permit or deny expressive activity." *Lakewood v. Plain Dealer*, 486 U.S. 750, 755 (1988). *See Papachristou v. Jacksonville*, 405 U.S. 156, 170 (1972) ("Where . . . there are no standards governing the exercise of the discretion granted by the Ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law."). As evidenced here, and by CR-54's history, this law was pretextually passed to target only one group: McCamish and his co-Defendants. Despite the seemingly neutral, albeit broad, language, upon information and belief the only persons cited to date are these Christians called to serve the homeless. Without alternative means of thwarting this activity, the City has decided to write a vague law with the singular purpose of stopping this unwanted activity. Vague terms grant enforcement officials unbounded discretion, allowing them to enforce selectively based on personal preference, viewpoint, or discriminatory animus. The record demonstrates that this is precisely what has occurred: officials have enforced CR-54 against religious gatherings while ignoring comparable secular uses. Park users must guess at what is prohibited, and their guesses are subject to the unbounded discretion of enforcement officials.

If the City wanted to actually address any real concerns with public safety, Northglenn "has available to it a variety of approaches that appear capable of serving its interests without excluding individuals from areas historically open." *McCullen v. Coakley*, 573 U.S. 464, 494 (2014). Existing ordinances and criminal statutes already equip the government to address its safety concerns. *Id*. at 492.

III. AS-APPLIED TO DEFENDANT, THE ENFORCEMENT OF CR-54 HAS VIOLATED HIS RIGHT TO FREE EXERCISE BY DISCRIMINATING AGAINST RELIGIOUS ACTIVITY

The Free Exercise Clause prohibits government action that is neither neutral nor generally applicable toward religion. *Church of Lukumi Babalu Aye v. City of Hialeah.* 508 U.S. 520, 531-32 (1993). When a law is not neutral nor generally applicable, it must satisfy strict scrutiny—it

must be narrowly tailored to advance a compelling governmental interest. *Id.* at 546. A law is not neutral if it discriminates against some or all religious beliefs or if it regulates or prohibits conduct because it is undertaken for religious reasons. *Id.* at 532. Should a plaintiff make a showing that the government action is not neutral and generally applicable, the Court must find a First Amendment violation exists unless the government can satisfy "strict scrutiny" by demonstrating the action was justified by a compelling state interest and was narrowly tailored in pursuit of that interest. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022) (citing *Lukumi*, 508 U. S., at 546). "Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021) (citing *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. 617, 631 (2018) (internal citation omitted).

Defendant can show overwhelming, publicly available, evidence of religious targeting. The Chief of Police announced the City's goal: In July 2024, Chief May informed participants he had been "tasked with shutting down" the weekly gatherings—before CR-54 was enacted. On September 24, 2024, the City held a meeting exclusively with pastors and church representatives. No other groups using the Park were called in, demonstrating singling out of religious actors. On September 18, 2025, officers asked, "How many people are part of your church?" and recorded which churches participants represented. If CR-54 were truly about group size, religious affiliation would be irrelevant. This pattern closely mirrors *Lukumi*, where the Court found religious targeting based on the sequence of events, explicit focus on religious practices, and discriminatory statements by officials. 508 U.S. at 534-35, 540.

Numerous other groups have been observed using the park without citation or interference: adult special needs daycare groups meeting at the same time as the ministry; groups who have

rented pavilions; Afghan refugee gatherings; walking clubs; and pickleball groups. A law lacks general applicability if it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 534. The City, through acquiescence or purposeful intent, has done precisely that here, granting individualized exemptions to certain groups. In practice, CR-54 rule only applies to churches, and strict scrutiny has been triggered.

The City cannot meet this burden. There is no compelling interest. The City asserts an interest in preventing monopolization of park facilities. But the ministry's gatherings of fewer than forty people cannot monopolize a park with capacity for hundreds of people across eight pavilions and twenty-eight acres. The four-year period without incident demonstrates no genuine threat requiring intervention. Nor is the Ordinance narrowly tailored. CR-54's five-person threshold sweeps in vast amounts of ordinary activity that poses no threat to park access, as discussed above.

IV. AS-APPLIED TO DEFENDANT, THE ENFORCEMENT OF CR-54 HAS VIOLATED HIS RIGHT TO FREE SPEECH BY DISCRIMINATING BASED UPON VIEWPOINT

The "First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." *Lamb's Chapel v. Ctr. Moriches Sch. Dist.*, 508 U.S. 384 (1993) (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984)). "In the realm of private speech or expression, government regulation may not favor one speaker over another." *Rosenberger v. Univ. of Va.*, 515 U.S. 819, 828 (1995). "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Id.* at 829. "Restrictions based on viewpoint are especially invidious; viewpoint discrimination is 'poison.'" *Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4.th 1122, 1141 (D.C. Cir. 2023) (quoting *Iancu v. Brunetti*, 139 S. Ct. 2294, 2302 (2019) (Alito, J., concurring)); *see also Rosenberger*, 515 U.S. at

829). "It is antithetical to a free society for the government to give 'one side of a debatable public question an advantage in expressing its views to the people.'" *Id*. (quoting *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 785 (1978)).

Despite the clear prohibition against viewpoint discrimination, the City has enforced CR-54 only against religious gatherings. Other recurrent gatherings in the park are numerous, but the City only targets religious groups. The City has engaged in viewpoint discrimination by denying the religious group access to park facilities for expressive purposes due to the content of their message. The selective enforcement against the ministry while other groups continue to use the park freely demonstrates that the City is regulating speech based on its religious viewpoint. The Officers' questions about church membership further evidence this viewpoint-based targeting.

V. CR-54 VIOLATES THE FOURTEENTH AMENDMENT'S GUARANTEE OF EQUAL PROTECTION OF LAWS THROUGH SELECTIVE ENFORCEMENT

The Equal Protection Clause requires that "the State must treat all similarly situated persons alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). "Selectivity in the enforcement of criminal laws is . . . subject to constitutional constraints." *United States* v. *Batchelder*, 442 U.S. 114, 125 (1979) (footnote omitted). "In particular, the decision to prosecute may not be deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification, including the exercise of protected statutory and constitutional rights." *Wayte v. United States*, 470 U.S. 598, 608 (1985) (internal quotation marks and citations omitted). "[T]he constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause [of the Fourteenth Amendment]." *Whren v. United States*, 517 U.S. 806, 813 (1996).

Defendant and other recurring park users are similarly situated—all are groups of five or more people meeting recurrently and occupying park facilities. Yet the City treats them

fundamentally differently: the religious group is subjected to special meetings with officials, warnings, citations, forced dispersal, and ongoing monitoring, while secular groups are permitted to use the Park freely without citation or interference. This differential treatment based on religious identity violates equal protection. When government treats religious individuals differently from similarly situated secular individuals, strict scrutiny applies. The City cannot demonstrate a compelling interest or narrow tailoring, as discussed above.

CONCLUSION

CR-54 is unconstitutional on its face and as applied. The ordinance is overbroad, vague, operates as a prior restraint, targets religious conduct, and violates equal protection. The City cannot prosecute Defendant under an unconstitutional ordinance. The Court should grant this motion and dismiss the criminal complaint with prejudice.

Respectfully submitted,

/s/ Nathan Moelker
Nathan Moelker [redacted]
Liam R. Harrell
AMERICAN CENTER FOR LAW & JUSTICE
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COUNSEL FOR DEFENDANT

Christopher Ponce [redacted]
Ramos Law
[redacted]

LOCAL COUNSEL

**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

Whereas this Motion to Dismiss alleges that a municipal ordinance is unconstitutional, the undersigned, pursuant to C.R.S. § 16-9-501, hereby certifies that a copy of the attached Motion to Dismiss has been served, by commercial carrier, postage prepaid, mailed from Washington, DC to the Attorney General of Colorado at the address below:

AG Phil Weiser
OFFICE OF THE ATTORNEY GENERAL
Colorado Department of Law
Ralph L. Carr Judicial Building
[redacted]

In addition, as required by Colorado Municipal Court Rule 249, a copy of this Motion to Dismiss has been electronically served to below counsel of record for the City of Northglenn:

Ms. Christy Ausmus
AUSMUS LAW FIRM PC
[redacted]

/s/ Liam R. Harrell
Liam R. Harrell

January 7, 2026

MUNICIPAL COURT, CITY OF NORTHGLENN, COLORADO 50 West Community Center Dr. Northglenn, CO 80234	
PEOPLE OF THE STATE OF COLORADO AND CITY OF NORTHGLENN **v.** **McCAMISH, DAVID EDWIN** Defendant.	**COURT USE ONLY**
Nathan Moelker Garrett A. Taylor Liam R. Harrell AMERICAN CENTER FOR LAW & JUSTICE [redacted]	Case No. 2025-0000387

ORDER RE: DEFENDANT'S MOTION TO DISMISS

Upon consideration of the Defendant's Motion, it is hereby ordered that

[ ] The Defendant's Motion is Granted

[ ] The Defendant's Motion is Denied

[ ] The Court orders:

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_____
JUDICIAL OFFICER