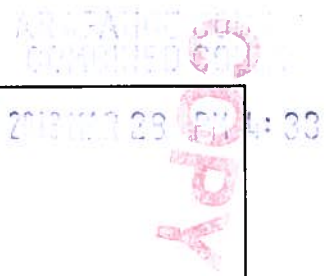


District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	<div style="text-align: right;">  <p>2018 OCT 23 PM 4:33</p> <p>Copy</p> </div> <p style="text-align: center;">σ COURT USE ONLY σ</p>
<p>THE PEOPLE OF THE STATE OF COLORADO, Plaintiff</p> <p>v.</p> <p>JAMES HOLMES, Defendant</p>	
MICHAEL C. THEIS, CHRISTOPHER O. MURRAY Hogan Lovells US LLP One Tabor Center, Suite 1500 1200 Seventeenth Street Denver, CO 80202 Phone (303) 899-7300 Fax (303) 899-7333 michael.theis@hoganlovells.com chris.murray@hoganlovells.com	<p>Case No. 12 CR1522</p> <p>Division 22</p>
<p>AFFIDAVIT OF JANA WINTER IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AND TO QUASH SUBPOENA DUCES TECUM AND AD TESTIFICANDUM</p>	

STATE OF NEW YORK)
) ss.:
 COUNTY OF NEW YORK)

JANA WINTER, being duly sworn, deposes and says:

1. I am an Investigative Reporter for FoxNews.com and a New York resident. I submit this affidavit in support of my Motion for a Protective Order and to Quash Subpoena Duces Tecum and Ad Testificandum, which respectfully asks this Court to preclude testimony and production of documents concerning my confidential news sources on grounds that information is protected under the Colorado Reporter’s Shield Law.

A. Background

2. I have worked as a professional journalist for the past six years. I first pursued a career in journalism in India, working as a freelance reporter and documentary filmmaker after I

graduated from Emory University with a degree in international studies. I then obtained my master's degree from the Columbia University Graduate School of Journalism. My first job after graduate school was working as a Reporter for the *New York Post*. During that time, I received a 2008 Deadline Club Award, given out by the New York chapter of the Society of Professional Journalists. I remained at the *Post* for a period of two years before moving to my current position at FoxNews.com. My work has appeared in *The New York Times*, the *St. Louis Post-Dispatch*, the *Chicago Tribune*, *The Orlando Sentinel*, *The Arizona Republican*, and the *Daily News* (New York), among other publications.

3. In my current position, my responsibilities include fact-gathering for articles and original reporting and writing news reports that are posted on FoxNews.com. In this time, I have developed a specialty in gathering and reporting news about mass killings, such as the one that defendant James Holmes ("Holmes") is accused of having perpetrated here.

4. Over the course of my career, I have frequently relied on information from sources for news reports who would not have been willing to speak to me without a promise that I would keep their identities confidential. This information often has concerned vital, breaking issues of public concern. In my experience, a source's willingness to come forward to the press often depends on my ability to earn the source's trust and to maintain his or her confidentiality. Without the ability to credibly promise potential sources that I will maintain their confidences, I know that future sources will not be willing to speak to me, and the important stories that they could tell me will not be written.

5. In all of the time that I have worked as a journalist, I have always maintained my commitments to sources to keep the identities of confidential sources safe from disclosure. As a result, I enjoy an excellent reputation as an investigative journalist among my peers and, as

importantly, among the sources upon whom I rely to obtain information for my reporting. If this reputation were tarnished, it would severely compromise my ability to gather news, and would assuredly result in critical reports on public issues never seeing the light of day. Indeed, as set forth in greater detail below, I have already begun to experience substantial harm to my ability to gather news from confidential sources, solely due to the public attention that has already been paid to Holmes' efforts to force me to reveal my confidential sources in this matter. I am also fearful for my safety based on numerous threatening Internet postings about my work pertaining to the Holmes case.

B. Reporting on James Holmes

6. On or about July 20, 2012, I was assigned to gather and to report news concerning Holmes and his attack on a crowd of moviegoers in Aurora, Colorado. I learned through my reporting that Holmes had been apprehended at the scene after opening fire on the crowd, leaving dozens dead or injured.

7. On or about July 24, 2012, I learned that police had searched for and recovered a notebook that Holmes had sent to an office at the University of Colorado prior to the mass shooting. I investigated the tip and began to prepare a report for FoxNews.com. The report, entitled "Movie massacre suspect sent chilling notebook to psychiatrist before attack," was published on July 25, 2012 (the "Article"). A true and correct copy of the Article is annexed hereto as Exhibit A. I learned the confidential source information about the Notebook and its contents on or before July 24, 2012.

8. The Article refers to two unnamed "law enforcement sources." I understand that Holmes wants me to identify those sources. I promised my sources that I would keep their identities confidential, and I have done so.

C. The Subpoena

9. I understand that Holmes has obtained a subpoena (the “Subpoena”) calling for me to travel to Colorado to testify about my confidential sources for the Article and to provide notes from my reporting. A true and correct copy of the Subpoena (with my home address redacted for privacy reasons) is annexed hereto as Exhibit B. The documents and testimony Holmes seeks would violate my promises to my sources that I would keep their identities a secret. Furthermore, having to travel to Colorado to reveal my confidential sources for the Article will cause me severe, irreparable hardship in a number of ways. For these reasons, I respectfully ask this Court to quash the Subpoena.

10. Having to testify will jeopardize my ability to perform my job both during the time that I am away and, irrevocably, in my relationships with future sources. Here, being made to testify as Holmes requests will force me to “burn” not one, but two confidential sources. My reputation as a journalist will be irreparably tarnished among my colleagues and, perhaps more importantly, my future sources. I am an Investigative Reporter, and one of the most fundamental truths of my profession is that most investigative reporting cannot be accomplished without confidential sources. I rely on the trust of my sources every single day. If I am forced to reveal the identities of persons whom I have promised to shield from public exposure, simply put, I will be unable to function effectively in my profession, and my career will be over. As such, my free speech rights, as well as those of my sources, will be chilled. This is not an exaggeration – it is a provable certainty. Even though I am doing everything I can within the law to exercise my rights not to testify here, in the few weeks since news broke that Holmes is seeking my testimony, I have already had sources refuse to speak to me, merely because they are afraid that one day I will be subject to another subpoena like this one. And the sources who have continued to speak

to me have done so less often and have provided me with less information for my reports. Because my sources have been intimidated by the specter of Holmes' Subpoena, reports have gone unwritten, and I have been thwarted in my newsgathering and in the exercise of my First Amendment rights. The public, too, has been and will continue to be deprived of access to the critical news of the day that my reporting would otherwise bring to light.

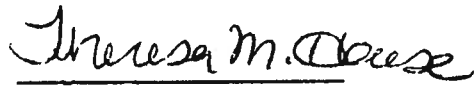
11. In addition to substantially impairing, and potentially destroying, my ability to do my job, the Subpoena also causes other hardships. I am very concerned that being targeted by Holmes in this way may lead to serious harm against me and my family. I read a Court filing that stated that Holmes has many supporters who have been harassing the families of victims of his attack. I have also already been harassed, even without stepping foot in Colorado. I have been the subject of numerous threatening internet postings, including one posted just yesterday that, although it does not specifically refer to the Holmes case, states "may you be one of the first killed when the next civil war comes." Other posts on websites for Holmes' supporters call for me to be "reprimanded" and publish my contact details. On February 24, 2013, a blog entry was posted on a website called jimmysllama.wordpress.com, which contained personal photographs of myself, my father, my mother (who passed away some time ago), as well as a scary degree of detail about our personal lives. Seeing those words, and knowing the amount of time that must have gone into digging into my personal life and into my father's decades-long work history and military service, makes me fear very much for my personal safety and for that of my family. I cannot even begin to think about what might happen if I actually travel to Colorado at a time and place where these kinds of people will know where I am.

12. For all of these reasons, I respectfully request that the Court quash the Subpoena in full, preclude Holmes from seeking the requested testimony and documents from me, and protect me from the dire, irreparable injury that I will be made to suffer if I am made to testify. I thank the Court for its consideration.



JANA WINTER

Sworn to before me this
26 day of March, 2013



Notary Public

THERESA M. HOUSE
Notary Public, State of New York
No. 02HO6190809
Qualified in New York County
Commission Expires September 24, 2016

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2013 I served the foregoing AFFIDAVIT OF JANA WINTER IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AND TO QUASH SUBPOENA DUCES TECUM AND AD TESTIFICANDUM on the following by first class U.S. Mail postage prepaid:

George Brauchler
18th Judicial District Attorney
6450 S. Revere Parkway
Centennial, CO 80111-6492

Douglas K. Wilson
Colorado State Public Defender
1290 Broadway, Suite 900
Denver, CO 80203-5606

s/ Christopher O. Murray