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October 15, 2015

**VIA EMAIL ONLY**

Elizabeth Fitzgerald  
Elizabeth.fitzgerald@lacity.org

Dear Ms. Fitzgerald :

We are following up for our meeting on Friday, October 9 regarding the City’s responses to Plaintiffs’ requests for production. As you know, we have another meeting scheduled tomorrow, Friday, October 17 to continue our discussions. It is our hope in sending this letter that we summarize our negotiations to date, spell out our understanding of the City’s position with regards to the issues we discussed on October 9, and identify the remaining issues that need to be discussed on Friday.

**1. Scope of Production to Date**

As a threshold matter, as we discussed on October 9, we remain extremely confused as to what defendants have produced, what searches have been conducted, and what defendant is withholding on the basis of privilege.

Defendant objected to every one of plaintiffs’ requests on the grounds that they are 1) burdensome and 2) overbroad. In the course of our email exchange and our meeting, we understand that defendant believes the requests are all overly broad because 1) the timeframe of the request is too overbroad, 2) the definition of the City is too broad; and 3) the inclusion of the term “relates to” makes each request overbroad. Each of these issues is discussed below.

However, we need information about what defendant has produced and what defendant is withholding on the basis of its objections. Defendant refused to provide documents responsive to 36 specific requests, and to the 22 requests to which defendant agreed to provide responsive documents, each one is limited “to the extent this request is not objectionable, Defendant produces responsive documents herewith.”

In the course of our discussion on October 9, it became clear that defendant has in fact limited both the documents it has produced, and its search for responsive documents. As we have already discussed, defendant’s privilege log fails to give us any information, as it simply lists requests and objections and states that “various” documents are withheld. We also do not know, with regards to the 36 objections defendant has refused to respond, whether it has searched for any responsive documents. We have talked through so far the first 17 responses but

we have not yet obtained clarification on which responsive documents have been located to be withheld and which searches Defendant does not want to perform.

Tomorrow, we hope to discuss in a streamlined fashion the searches that have been performed to date and the documents that are currently being withheld. We respectfully ask that you prepare for tomorrow's call with information about the searches for each RFP that have already been completed and whether or not there are privileged documents that are already in counsel's possession for each request. That should enable us to move more quickly through each RFP.

## **2. Defendant's Email Production**

At the meeting, you suggested for the first time that requests to which email communications would be responsive were all overly burdensome, given the City's technical limitations. It is our understanding that it is the City's position that these requests are burdensome because 1) the City cannot produce any emails from LAPD from before October 2014 because LAPD deletes all emails after one year and therefore, the only emails that exist are those sent after October 9, 2014; and 2) the City is in the process of switching over from its current Postini email system to Vault. This new system will make searches possible, but no emails can be produced until the City completes this transfer, which will occur no earlier than January or February 2016.

You offered to provide us with a detailed declaration outlining LAPD's policy and practice of deleting email, including whether any backups exist; and a more detailed explanation about the other City department's limitations in accessing emails, including when the transition began to a new system, why the emails cannot be accessed, and when this may be remedied.

Please provide us that declaration no later than October 22, 2015. We request that that declaration include: the exact method of retention of emails and the method of deletion of emails (automatic? Individual? At a centralized server?); and the details about the transition between systems and how emails are being preserved/maintained/retained/sent in the meantime, with exact dates of when the transition started and when it will end.

## **3. Timeframe covered by the Requests**

In your email on October 5, 2015 you indicated the City's position that all of the requests were too broad because, inter alia, they requested information going back to January 1, 2000. During our discussions, we agreed to uniformly limit the requests to seven years, unless a specific date was noted in the request. This compromise was unacceptable to the City, and you stated that, to the extent you agreed to provide any documents responsive to any requests, you would provide documents from no earlier than four years ago.

In the interest of cooperation and resolving this threshold issue without bringing every one of our requests before the court, we will agree to limit most requests to four years prior to the date of filing, or September 1, 2010. This encompasses the time period immediately before the facts that gave rise to the litigation in *Lavan v. City of Los Angeles*, which is a significant event in the current litigation. As to the initial batch of requests, the limitation does not apply to RFP 2 (the documents concerning individual plaintiffs) or RFP 4 and 5 (which we have agreed to limit to seven years prior to the request) and we reserve the right to discuss this proposed limitation further as it pertains to other specific requests when we speak again about the next set of requests. This limitation is a significant compromise on our end, and we hope that you will recognize that it adequately responds to defendant's objection.

## **4. Definition of City and Scope of the Requests**

In your October 5, 2015 email, you also raised your concern that each of our requests was burdensome and overbroad because our definition of City was itself overly broad and included all City departments, Council members, etc. We requested a list of departments you believe may have documents and that you have already searched for responsive documents. You represented to us that you had searched many departments, and that you thought the LAPD, Bureau of Sanitation Services, Public Works, and the City Clerk would have the most responsive documents. We responded that the City Comptroller and City Administrative Office also would have responsive documents, as would the Mayor's office and many City Councilmembers' offices. This was not meant to be an exhaustive list on either side—we understood from you that it was not a complete list of where you had searched.

As we discussed, we are requesting a complete list of departments that you have searched. Plaintiffs requested with "reasonable particularity each item or category of items requested," as required by Federal Rule of Civil Procedure 34. It is not our obligation to identify where these documents may exist within the City because there is an asymmetry of information regarding which departments may have responsive documents, and plaintiffs cannot be expected to identify where requested documents may be within the City.

That being said, we are more than willing to limit defendant's search obligations to those departments where the City could reasonably be expected to find responsive documents. But we are entitled to know what searches have already been conducted, so that we are not starting from scratch. Therefore, we need to know 1) where defendant has searched already, and 2) where else responsive documents are likely to be found within the City.

If you let us know what departments have already been searched, we will consider that list and provide you with other departments where we believe responsive documents may exist, reserving the right to augment the list with regards to specific requests if we learn that there may be other responsive documents that have not been produced.

We request that you provide us this information by Friday, and we will provide you with the amended list no later than October 20.

##### **5. Use of "related to" in various requests**

During our meeting on October 9, you indicated that the term "related to" made the requests overly broad, and this was the basis for your refusal to produce documents responsive to some of our requests. We discussed this in detail during our meeting. The term "related to" is a common term used in discovery, *see e.g., Creative Co-Op, Inc. v. Elizabeth Lucas Co., LLC*, 2012 WL 76172 (D. Idaho, 2012) (finding that a request for all documents related to the alleged infringing product" was not overly broad); *In Re MGM Mirage Securities Litigation*, 2014 WL 6675732 at \*5 (interpreting a request for all information related to each and every allegation as reasonable). To the extent there are specific requests that defendant finds "overly broad" based on the use of the term "related to", we are open to discussing that request, but defendant's boilerplate objections give no indication which requests those might be.

##### **6. Specific Requests**

###### **RFP 2.**

You indicated that you have produced documents going back only seven years. We requested that you stipulate that you would not attempt to introduce any evidence not produced in response to these requests but you refused, stating that you may discover that this information is in fact relevant. Although we would be willing to possibly agree to limit the scope on this request, we cannot do so when Defendant expects to use these documents at trial. Nor are we willing to wait until the eleventh hour to attempt to exclude them with a motion in limine as you

suggested. As you are taking the position these documents may be relevant, we are entitled to see whatever the City has regarding the individual plaintiffs.

You also indicated that you may be withholding information on the basis of privilege, including, for example, the names of victims. However, you have not indicated this on the privilege log produced with the City's responses. Therefore, we request that you identify what information you are withholding on an amended privilege log, and that you provide us with the non-privileged portions of the documents redacted in accordance with your claims of privilege. If we do not receive an updated privilege log by October 22, we will move to compel this information.

### **RFP 3.**

We have agreed to limit the scope of this request. Plaintiffs are not interested in receiving any 1) documents from the Department of Building and Safety related to properties owned by the LACW; nor are we seeking 2) any records concerning Business and Operating licenses. We may agree to further limit the request if defendant indicates what departments were searched for responsive documents and identifies any more documents that they believe exist but would be burdensome to produce. Responsive documents may include but are not limited to any property tax assessments that are related to the CCEA assessment and any complaints, letters, and or grievances sent by the LACW to the city, as well as any response and/or discussion to such complaints by the city.

### **RFP 4 and 5.**

We will agree to limit these requests to any policies, directive, and orders that have been in place for the last seven years. The proposed limitation to only documents constituting these policies even you conceded was too narrow, and therefore, unless you can propose a term that includes not only the policies but also documents to which we are entitled that are related to the policies, we stand by our requests.

### **RFP 6**

At our meeting, you provided us a photocopy of the front of a DVD used to train officers but took the position that we are not entitled to the CPTN training because it is copyrighted material and that we should purchase a copy ourselves is not supported by any legal principals, either related to copyright or discovery, and you have not provided us any legal support for this position. The production of a copyrighted document in response to a discovery request is well established in the Ninth Circuit as a fair use of the copyrighted material. *See Religious Technology Center v. Wollersheim*, 971 F.2d 364, 367 (9<sup>th</sup> Cir. 1992) (fair use where defendants copied and distributed materials to give to expert witness to prepare for litigation); *Jartech v. Clancy*, 666 F.2d 403, 406-07 (9<sup>th</sup> Cir. 1982). *See also 3 Nimmer on Copyright* § 13.05[D] at 13-91 (1991) ("works are customarily reproduced in various types of judicial proceedings, including obscenity and defamation actions ... and it seems inconceivable that any court would hold such reproduction to constitute infringement either by the government or by the individual parties responsible for offering the work in evidence"). Thus, the notice should not bar your production of this material.

### **RFP 9**

We offered to limit this request, and requested repeatedly that you provide us information about why our request for phone records was burdensome, so that we could formulate a reasonable request, given these considerations. You refused to provide us details, stating only that the request was overly burdensome because of the man hours required to provide a response.

We remain willing to limit this request, but you must provide us more information about the process for producing the records, so that we can determine how to limit the request.

### **RFP 10.**

Although you indicated in your response that you provided responsive documents, we understand from our discussion that you have not searched for public meetings or letters to council members. We are confused about whether you searched for letters and complaints to the

#653

Bureau of Sanitation Services and request that you clarify that. You also indicated that the Mayor's office and city attorney's office might have additional responsive documents. We will agree that the search should start with Councilmember Huizar and are willing to discuss limiting the other councilmembers that should be included. You mentioned that you had searched more than half the City's departments on this request and would provide us with a list. Unless you tell us what search you conducted or what documents you are withholding on the basis of privilege, we cannot determine whether the search was sufficient. We would like to work with you to limit the departments and councilmembers to be searched, but do need your assistance in doing so.

**RFP 11**

As discussed during our meeting, this request seeks "investigations, responses and communications" related to complaints that would be responsive to RFP 10. This response should be the clarification you need to search for these documents.

**RFPs 14-17**

We will agree to limit the scope of the requests as discussed above (to documents after September 1, 2010), which we believe will address defendants' overbreadth and burdensome objections.

Regards,

Catherine Sweetser

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Enclosures