

September 29, 2010

Via U.S. Mail & E-mail

Brian Procel
Miller Barondess, LLP
1999 Avenue of the Stars, suite 1000
Los Angeles, CA 90067

Re: SCC Alameda Point LLC v. City of Alameda
Alameda County Superior Court Case No. RG10537988

Dear Mr. Procel:

I am responding to your request to depose city officials in your Public Records Act writ petition before the end of the 20-day statutory hold on discovery. For reasons that I explain below, the City cannot agree to your request.

First, you have not adequately explained the reason for the new-found sense of urgency. The City told your firm that responsive documents were ready to be reviewed on August 5, 2010. After waiting a month and a half, you sent a copy service to Alameda City Hall on September 21, 2010. I do not know when you received the copies made on that date, but you did not send me the disc containing copies made by your service until September 27 (received yesterday in my office).

The writ petition was signed by Louis Miller of your firm and verified by Bruce Cook on September 22, 2010. At that point, you knew the City was Bates labeling several computer discs for production, in accordance with our agreement concerning production of documents. Those discs were delivered to you on September 23 and 24 via Federal Express overnight delivery.

You decided not to wait two days to file the writ petition, and therefore filed it before you received the bulk of the 23,750 pages of documents that the City has produced so far. In your rush, you have made some mistakes. For example, the claim in SunCal's Verified Writ Petition that the City has "yet to produce any emails from the accounts of the City Council Members or Ms. Gallant" is not true.

I have not myself had the time to conduct a complete review of all the documents produced, but a cursory review reveals that the City has indeed produced numerous e-mails to and from council members and City Manager Ann Marie Gallant.

The Mills Building
220 Montgomery Street, Suite 1850
San Francisco, CA 94104

Letter to Brian Procel
Re: *SCC Alameda Point LLC v. City of Alameda*
Alameda County Superior Court Case No. RG10537988
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For examples of what I am referring to, please look at: SCCALAMEDA 0000971 (5/27/09 email from Ms. Gallant to council members); SCCALAMEDA 0000994 (7/13/09 email to Ms. Gallant); SCCALAMEDA 0001003 (4/23/09 email from Ms. Gallant); SCCALAMEDA 0001006 (10/6/09 email to Ms. Gallant); SCCALAMEDA 0001010 (9/22/09 emails cc'd to Ms. Gallant); SCCALAMEDA 0001015 (7/31/09 email cc'd to Ms. Gallant); SCCALAMEDA 0001024 (8/5/09 email to Ms. Gallant); SCCALAMEDA 0001027 (8/3/09 email to Ms. Gallant); SCCALAMEDA 001045 (2/19/10 email to City Council and Ms. Gallant); SCCALAMEDA 001161 (6/24/09 email to Ms. Gallant); SCCALAMEDA 0001168 (3/16/2010 email to City Council); SCCALAMEDA 0001171 (12/15/09 emails to and from Councilmember Frank Matarese); and SCCALAMEDA 0001181 (5/25/10 email from Ms. Gallant).

The list above does not include examples I found in the documents produced to SunCal of numerous other emails to and from the Deputy City Manager and others on the staff of the City Manager.

Your haste in filing the state court complaint before you had received most of the documents raises a serious question as to the purpose of this action. Your client has filed a federal lawsuit against the City, and it would appear that you are simply trying to get depositions of city officials before the time permitted by the federal rules.

As the City informed you in letters on September 2, 2010, and September 16, 2010, the City has taken appropriate steps to preserve e-mails from the City Manager, City Council and other officials. Your claim that the City is deleting relevant e-mails is false.

Finally, as I informed you by letter on September 23, 2010, the City is continuing its search for responsive public records. We think it would be better to await the results of that search before engaging in depositions. Accordingly, we do not agree to your request to serve deposition notices or conduct discovery during the 20-day statutory hold period.

Please call if you have any questions.

Sincerely,

NEWDORF LEGAL



David B. Newdorf

cc: City Attorney Teresa L. Highsmith
Geoff Robinson, Esq.