



October 4, 2013

Michael R.W. Houston, City Attorney
City of Anaheim
200 South Anaheim Blvd. Ste. 356
Anaheim, CA 92805

RE: Moreno et. al. v. City of Anaheim – Preservation of Evidence

Dear Mr. Houston:

By this letter, you and your client are hereby given notice that Plaintiffs consider certain paper or electronic files and data – including emails from official and personal email accounts, voice mails or text messages – in the possession of the City of Anaheim, its agents, elected officials, appointed representatives, and employees, and/or stored on their computers, mobile devices, and electronic storage media, relevant to the above-mentioned case, and Defendant is not to destroy, conceal or alter them.¹ It has come to Plaintiffs' attention that routine document retention policies in many of the city's departments require the destruction of documents after two years. Because nearly that amount of time has passed since Plaintiffs first notified the city of its violation of the California Voting Rights Act, Plaintiffs demand that these routine procedures be suspended, particularly with respect to the documents and classes of documents identified in this letter. *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 218 (S.D.N.Y. 2003) (“Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a ‘litigation hold’ to ensure the preservation of relevant documents.”).²

¹ Courts have made it clear that all information available on electronic storage media is discoverable, whether readily readable (“active”) or “deleted” but recoverable. *See, e.g., Santiago v. Miles*, 121 F.R.D. 636, 640 (W.D.N. Y. 1988) (a request for “raw information in computer banks” was proper and obtainable under the discovery rules).

² “Because of the similarity of California and federal discovery law, federal decisions have historically been considered persuasive absent contrary California decisions.” *Liberty Mutual Ins. Co. v. Superior Court*, 10 Cal. App. 4th 1282, 1288 (Cal. App. 1st Dist. 1992)

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Your client's failure to comply with this notice can result in severe sanctions being imposed by the Court for spoliation of evidence or potential evidence.

“While a litigant is under no duty to keep or retain every document in its possession once a complaint is filed, it is under a duty to preserve what it knows, or reasonably should know, is relevant in the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery and/or is the subject of a pending discovery request.” *Turner v. Hudson Transit Lines, Inc.*, 142 F.R.D. 68, 72 (S.D.N.Y. 1991) (citing *Wm T. Thompson Co. v General Nutrition Corp.*, 593 F. Supp. 1443, 1455 (C.D. Cal. 1984)); see also *Ellis v. Toshiba America Information Systems, Inc.*, 218 Cal. App. 4th 853, 891 n.6 (Cal. App. 2d Dist. 2013). The documents identified herein are relevant to a central issue in the case – the lack of accountability of Anaheim’s city council to Anaheim’s Latino community, resulting from the continued maintenance of an at-large system after being advised that the system dilutes the vote of the Latino community. *Zubulake* at 216 (“The obligation to preserve evidence arises when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant....”); see also *Cedars-Sinai Medical Center v. Superior Court*, 18 Cal. 4th 1, 12 (Cal. 1998) (concluding that destroying evidence “in anticipation of a discovery request” would “surely be a misuse of discovery.”)

Accordingly, the types of documents, electronic files, and data which may be subject to Plaintiffs’ discovery requests include, but are not limited to, the following:

- And all emails between members of the city council and members of and/or applicants for the Citizens’ Advisory Committee on Elections and Community Involvement, between June 1, 2012 and August 1, 2013. This includes, but is not limited to, emails sent between any of the following individuals: Tom Tait, Kris Murray, Gail Eastman, Jordan Brandman, Lucille Kring, Lorri Galloway, Harry Sidhu, Peter Agarwal, Anthony Armas, Bill Dalati, Sandra Day, David Diaz, Amanda Edinger, Joseph Karaki, Larry Larsen, Martin Lopez, Gloria Ma’ae, Keith Oleson, Vivian Pham, and/or Vic Real.
- Any and all emails sent and received by Gail Eastman to or from a Yahoo Email group for residents of an area referred to as the “Colony.” This includes, but is not limited to, an email sent July 25, 2012.
- Any and all emails sent or received by Lucille Kring between July 1, 2012 and August 1, 2013, including emails in which at least one of the recipients was Jason Young. This includes, but is not limited to:
 - an email sent on or around October 10, 2012 mentioning Curt Pringle;
 - an email sent on or around October 26, 2012 mentioning Disney campaign spending;



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- any emails referencing a meeting, encounter or event in or around April 2013 in which Lucille Kring, Kurt Pringle, Bill O'Connell, and/or Ajesh Patel were present;
- an email from Kurt Pringle to Lucille Kring regarding a May 29, 2013 fundraiser at the Catch Restaurant in Anaheim
- Any and all email between Jordan Brandman and Tom Daly between July 1, 2012 and August 1, 2013
- Any and all correspondence between the County of Orange and Jordan Brandman or any of his businesses, including correspondence dated March 15, 2013.
- Any and all text messages sent or received by current members of the city council, including Kris Murray, from the city council chamber during the times when city council meetings are in session. This includes all information about text messages, such as the time sent, the recipient, and the sender. *See Passlogix, Inc. v. 2FA Technology, LLC, et al.*, 708 F. Supp. 2d 378, 415-16 (S.D.N.Y. 2010) (finding a breach of the duty to preserve evidence and imposing monetary sanction on a party for, among other things, failing to preserve text messages).
- All Form 460 and Form 700 documents submitted to the city of Anaheim by all candidates for Anaheim city council or Anaheim mayor since 2000.
- And and all email sent or received by any member of Anaheim city council or city staff, including members of the planning commission, to or from Arte Moreno, from July 1, 2012 to the present.
- And and all email sent or received by any member of Anaheim city council or city staff to or from any representative of the Disney Corporation or Disneyland, from July 1, 2012 to the present.
- And and all email sent or received by any member of Anaheim city council or city staff to or from any representative of the Anaheim Chamber of Commerce, from July 1, 2012 to the present.
- And and all email sent or received by any member of Anaheim city council or city staff to or from any representative of the Support Our Anaheim Resort Area, or the former Save Our Anaheim Resort (collectively, "SOAR"), from July 1, 2012 to the present.



- And and all email sent or received by any current or former member of Anaheim city council, including Harry Sidhu, from Bill O'Connell and/or Ajesh Patel, from January 1, 2010 to the present.
- And and all email sent or received by any current or former member of the Anaheim Planning Commission from Bill O'Connell and/or Ajesh Patel, from January 1, 2010 to the present.

In order to assure that your and your client's obligation to preserve documents and things will be met, please forward a copy of this letter to all persons and entities with custodial responsibility for any of the items referred to in this letter. In addition, please set up an automatic procedure so that city employees and elected officials are reminded every sixty (60) to ninety (90) days that the preservation hold remains in effect.

Thank you for your time, and please do not hesitate to contact me if you have any questions.

Sincerely,



Bardis Vakili
Staff Attorney

cc:

Marguerite Leoni, Christopher Skinnell, Hilary Gibson, Kristin Pelletier, David Soldani, Irma Rodriguez



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