

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH P. CUVIELLO, *et al.*,
Plaintiffs,
v.
CITY OF OAKLAND, *et al.*,
Defendants.

No. C-06-5517 EMC

**ORDER RE PLAINTIFFS’ “JOINT
LETTER” RE NORTHEAST STAIRS**
(Docket No. 440)

At a hearing on December 23, 2011, the Court ordered the parties to meet and confer regarding the northeast stairs issue and to submit a joint letter by January 20, 2012. *See* Docket No. 439 (civil minutes). On January 23, 2012, Plaintiffs submitted a filing on their own, indicating that, immediately after the hearing, the parties discussed the issue briefly in the hallway, that Defendant stated they would follow up, but that Defendant never did. *See* Docket No. 440 (Plaintiffs’ “joint letter”).

Accepting Plaintiffs’ representations as true, the Court finds that **both parties** have failed to comply with its order. First, a brief discussion in the courtroom hallway does not constitute a good faith meet and confer. Second, it is not acceptable for either party to “wait” for the other to initiate or follow-up on a discussion. This failure of the parties to communicate with one another has been symptomatic of this litigation and has led to needless and unjustified motion practice (including the multiple motions for sanctions filed by Plaintiffs), and the Court shall not tolerate it any further. In the future, the Court expects that the parties shall communicate and/or meet and confer in good faith.

1 A failure to do so will result in sanctions, potentially on **both parties**, depending on the circumstances.
2 As for the issue regarding the northeast stairs, the Court hereby orders that lead trial counsel
3 for each side appear (or the party if not represented) for an in-person meet and confer, to be held at
4 the federal courthouse on February 2, 2012. The parties shall make an appearance in Courtroom 5
5 before the Courtroom Deputy Clerk at 9:30 a.m.. The parties are expected to resolve the dispute
6 without the need for judicial intervention and should be prepared to meet and confer all day, if
7 necessary, to resolve the dispute. If, at the end of the day, the parties are not able to resolve the
8 dispute, then they shall submit by February 9, 2012, a **joint letter**, stating what remains unresolved
9 and what each side's last offer of compromise is. A party that takes a position that is not
10 substantially justified may be sanctioned.

11
12 IT IS SO ORDERED.

13
14 Dated: January 24, 2012



15
16 EDWARD M. CHEN
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 CUVIELLO ET AL et al,

5 Plaintiff,

6 v.

7 CITY OF OAKLAND ET AL et al,

8 Defendant.

Case Number: CV06-05517 EMC

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on January 24, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15
16 Joseph Patrick CuvIELlo
17 Box 2834
18 Redwood City, CA 94064

19 Dated: January 24, 2012



Richard W. Wieking, Clerk
By: Betty Lee, Deputy Clerk