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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO,

No. C-09-01964 RS (EDL)

Plaintiff,

**ORDER REGARDING IN CAMERA
REVIEW OF DOCUMENTS**

v.

US POSTAL SERVICE,

Defendant.

_____ /

In the Court's July 12, 2011 Order granting in part Plaintiffs' motion to compel Defendant to supplement its privilege log, the Court gave the parties leave to lodge up to ten documents from Defendant's log, chosen by Plaintiff, for the Court to review to determine whether the documents were properly included on Defendant's privilege log. On August 3, 2011, Defendant lodged the documents and the parties filed a joint brief regarding the documents. The Court has carefully reviewed the in camera documents and makes the following rulings.

1. Email string that includes the entry with subject "SROs" dated December 11, 2008. This document is not protected by the attorney-client privilege. Further, the Court is not convinced that Defendant reasonably anticipated litigation when this document was created, but even if Defendant did reasonably anticipate litigation at that time, the chart attached to the email contains purely factual information that is not protected by the work product doctrine in this case. Plaintiffs have substantial need for the information, and, unless they have already been provided the same information in a different form (e.g., as part of a larger table or in a different format), they would be unable to obtain substantially equivalent information without undue hardship. See Fed. R. Civ. P. 26(b)(3) (stating that work product

1 materials may be discovered if: “the party shows that it has substantial need for the materials
2 to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by
3 other means.”). To the extent that Plaintiffs have not already received this document or its
4 equivalent, Defendant shall produce it.

- 5 2. Email string that includes the undated entry with the subject line “No subject.” This
6 document is protected by the attorney-client privilege and/or the work product doctrine.
7 Defendant did not waive either protection. This document is properly on the privilege log.
- 8 3. Chart entitled "Hotel Information" sent by non-attorney Dan Bernardo dated December 11,
9 2008. This document is not protected by the attorney-client privilege. Further, the Court is
10 not convinced that Defendant reasonably anticipated litigation when this document was
11 created, but even if Defendant did reasonably anticipate litigation at that time, the chart
12 attached to the email contains purely factual information that is not protected by the work
13 product doctrine in this case. Plaintiffs have substantial need for the information, and, unless
14 they have already been provided the same information in a different form (e.g., as part of a
15 larger table or in a different format), they would be unable to obtain substantially equivalent
16 information without undue hardship. See Fed. R. Civ. P. 26(b)(3) (stating that work product
17 materials may be discovered if: “the party shows that it has substantial need for the materials
18 to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by
19 other means.”). To the extent that Plaintiffs have not already received this document or its
20 equivalent, Defendant shall produce it.
- 21 4. Document entitled "SRO Inventory w/Del. Issues" dated March 31, 2009. This document is
22 not protected by the attorney-client privilege. Further, even assuming that this document was
23 prepared because of litigation for purposes of the work product doctrine, the document
24 contains purely factual information that is not protected by the work product doctrine in this
25 case. Plaintiffs have substantial need for the information, and, unless they have already been
26 provided the same information in a different form (e.g., as part of a larger table or in a
27 different format), they would be unable to obtain substantially equivalent information
28 without undue hardship. See Fed. R. Civ. P. 26(b)(3) (stating that work product materials

1 may be discovered if: “the party shows that it has substantial need for the materials to
2 prepare its case and cannot, without undue hardship, obtain their substantial equivalent by
3 other means.”). To the extent that Plaintiffs have not already received this document or its
4 equivalent, Defendant shall produce it.

5 5. Email string that included the entry with a doc type labeled "Excel" and with the subject
6 "Attachment - Chart" from Dan Bernardo dated December 11, 2008. This document is not
7 protected by the attorney-client privilege. Further, the Court is not convinced that Defendant
8 reasonably anticipated litigation when this document was created, but even if Defendant did
9 reasonably anticipate litigation at that time, the chart attached to the email contains purely
10 factual information that is not protected by the work product doctrine in this case. Plaintiffs
11 have substantial need for the information, and, unless they have already been provided the
12 same information in a different form (e.g., as part of a larger table or in a different format),
13 they would be unable to obtain substantially equivalent information without undue hardship.
14 See Fed. R. Civ. P. 26(b)(3) (stating that work product materials may be discovered if: “the
15 party shows that it has substantial need for the materials to prepare its case and cannot,
16 without undue hardship, obtain their substantial equivalent by other means.”). To the extent
17 that Plaintiffs have not already received this document or its equivalent, Defendant shall
18 produce it.

19 6. Email string that included the entry with a doc type labeled "Excel" and with the subject
20 "SRO's prior to Ordinance w/Attachment" from Dan Bernardo dated December 11, 2008.
21 This document is not protected by the attorney-client privilege. Further, the Court is not
22 convinced that Defendant reasonably anticipated litigation when this document was created,
23 but even if Defendant did reasonably anticipate litigation at that time, the chart attached to
24 the email contains purely factual information that is not protected by the work product
25 doctrine in this case. Plaintiffs have substantial need for the information, and, unless they
26 have already been provided the same information in a different form (e.g., as part of a larger
27 table or in a different format), they would be unable to obtain substantially equivalent
28 information without undue hardship. See Fed. R. Civ. P. 26(b)(3) (stating that work product

1 materials may be discovered if: “the party shows that it has substantial need for the materials
2 to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by
3 other means.”). To the extent that Plaintiffs have not already received this document or its
4 equivalent, Defendant shall produce it.

5 7. Email string that included the entry with a doc type "Email - string" and with the subject
6 "FW: Attachment" from Judi Mummy to Judi Mummy dated December 11, 2008. This
7 document is not protected by the attorney-client privilege. Further, the Court is not
8 convinced that Defendant reasonably anticipated litigation when this document was created,
9 but even if Defendant did reasonably anticipate litigation at that time, the chart attached to
10 the email contains purely factual information that is not protected by the work product
11 doctrine in this case. Plaintiffs have substantial need for the information, and, unless they
12 have already been provided the same information in a different form (e.g., as part of a larger
13 table or in a different format), they would be unable to obtain substantially equivalent
14 information without undue hardship. See Fed. R. Civ. P. 26(b)(3) (stating that work product
15 materials may be discovered if: “the party shows that it has substantial need for the materials
16 to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by
17 other means.”). To the extent that Plaintiffs have not already received this document or its
18 equivalent, Defendant shall produce it.

19 8. Email string that included the entry with a doc type "Attached" and with the subject
20 "Attachment" from Dan Bernardo dated December 11, 2008. This document is not protected
21 by the attorney-client privilege. Further, the Court is not convinced that Defendant
22 reasonably anticipated litigation when this document was created, but even if Defendant did
23 reasonably anticipate litigation at that time, the chart attached to the email contains purely
24 factual information that is not protected by the work product doctrine in this case. Plaintiffs
25 have substantial need for the information, and, unless they have already been provided the
26 same information in a different form (e.g., as part of a larger table or in a different format),
27 they would be unable to obtain substantially equivalent information without undue hardship.
28 See Fed. R. Civ. P. 26(b)(3) (stating that work product materials may be discovered if: “the

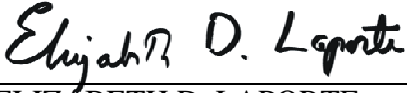
1 party shows that it has substantial need for the materials to prepare its case and cannot,
2 without undue hardship, obtain their substantial equivalent by other means.”). To the extent
3 that Plaintiffs have not already received this document or its equivalent, Defendant shall
4 produce it.

5 9. Email string that included the entry with a doc type “Attached” and with the subject
6 “Attachment” with no author dated December 11, 2008. This document is not protected by
7 the attorney-client privilege. Further, the Court is not convinced that Defendant reasonably
8 anticipated litigation when this document was created, but even if Defendant did reasonably
9 anticipate litigation at that time, the chart attached to the email contains purely factual
10 information that is not protected by the work product doctrine in this case. Plaintiffs have
11 substantial need for the information, and, unless they have already been provided the same
12 information in a different form (e.g., as part of a larger table or in a different format), they
13 would be unable to obtain substantially equivalent information without undue hardship. See
14 Fed. R. Civ. P. 26(b)(3) (stating that work product materials may be discovered if: “the party
15 shows that it has substantial need for the materials to prepare its case and cannot, without
16 undue hardship, obtain their substantial equivalent by other means.”). To the extent that
17 Plaintiffs have not already received this document or its equivalent, Defendant shall produce
18 it.

19 10. Email string that includes the 6 entries with a doc type "Email-string" and with the subject
20 "Fw: San Fran SRO templt" dated from December 17, 2008 to December 23, 2008. This
21 document is protected by the attorney-client privilege. Therefore, it is properly on
22 Defendant’s privilege log.

23 **IT IS SO ORDERED.**

24 Dated: August 12, 2011



ELIZABETH D. LAPORTE
United States Magistrate Judge