



February 28, 2011

The Honorable Edward M. Chen
United States Magistrate Judge
United States District Court – Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

Re: *Kirola et al. v. City and County of San Francisco*, No. C07-3685 SBA
(EMC)

Dear Judge Chen:

Plaintiffs write at this time to advise the Court of their difficulty in obtaining the Defendant's cooperation in obtaining a prompt resolution of a pending dispute regarding the adequacy of the Rule 30(b)(6) deposition for which the City designated Dennis Kern to testify regarding the City's new recreation-and-park-related trial exhibits. As indicated by the email correspondence attached hereto as attachment A, Plaintiffs have been attempting to obtain the City's portion of the proposed letter brief on this issue since Wednesday, February 23, 2011 in order to present the matter to the Court as promptly as possible.¹ Defendants have delayed in doing so through the close of business today. After being reminded again of the need to provide the City's position this evening, the City has made only a vague offer to provide a "proposal" for resolving the issue related to the adequacy of Mr. Kern's testimony at some unspecified time on Tuesday, March 1. Defendant's claimed inability to respond based upon Plaintiffs' failure to provide a copy of the deposition transcript is without merit. *See, Schroer v. United States*, 250 F.R.D. 531,537 (D. Colorado, 2008).

Plaintiffs respectfully requests that the Court order the City to provide its position for the proposed joint letter brief by no later than Noon on Wednesday, March 2, 2011 or, in the alternative, file a response to the papers submitted herewith, representing Plaintiffs' portion of the proposed letter brief and the supporting declaration, with Exhibits of Class Counsel Guy B. Wallace.

¹ Specific areas of lack of knowledge on the part of Mr. Kern were detailed in Plaintiffs' opposition to Defendant's motion to clarify discovery submitted to the trial court on February 22, 2011 (Doc. No.478) and the accompanying Declaration of Guy B. Wallace (Docket No. 479).



SCHNEIDER WALLACE
COTTRELL BRAYTON
KONECKY LLP

Plaintiffs thank the Court for its attention to this matter.

Very truly yours,

/s/

Mark T. Johnson
Attorney at Law

cc: (by email)

James M. Emery, Esq.

Elaine M. O'Neil, Esq.

Danny Chou, Esq.

IT IS SO ORDERED.

Edward M. Chen
U.S. Magistrate Judge

Dated: 3/1/11

