

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERNEST FLAGG, as Next Friend of
JONATHAN BOND, a minor,

Plaintiff,

v.

Case No.: 05-CV-74253
Hon. Gerald E. Rosen
Magistrate Judge R. Steven Whalen

CITY OF DETROIT, a municipal corporation;
DETROIT POLICE CHIEF ELLA BULLY-CUMMINGS;
DEPUTY DETROIT POLICE CHIEF CARA BEST;
JOHN DOE POLICE OFFICERS 1-20; ASST.
DEPUTY POLICE CHIEF HAROLD CURETON;
COMMANDER CRAIG SCHWARTZ; POLICE LT.
BILLY JACKSON; MAYOR KWAME M. KILPATRICK,
CHRISTINE BEATTY, jointly and severally,

Defendants.

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**DEFENDANTS', CITY OF DETROIT, ELLA BULLY-CUMMINGS, CRAIG
SCHWARTZ, MAYOR KWAME M. KILPATRICK, AND CHRISTINE BEATTY'S,
RESPONSE TO ORDER TO SHOW CAUSE DATED FEBRUARY 7, 2008**

Defendants, City of Detroit, Ella Bully-Cummings, Craig Schwartz, Mayor Kwame M. Kilpatrick, and Christine Beatty, by and through their attorneys, Morganroth & Morganroth, PLLC, hereby respond to this Court's Order to Show Cause, and state as follows:

Defendants are not aware of any facts that would warrant entry of such an order directing Defendants and SkyTel, Inc. to preserve the various categories of materials identified in Plaintiff's Motion to Preserve Evidence filed on February 1, 2008 ("Plaintiff's Motion") especially inasmuch as there already is an obligation to preserve evidence that is relevant to this litigation and Judge Robert J. Columbo, Jr. of the Wayne County Circuit Court has already issued an order (attached as Exhibit 1¹) in Detroit Free Press, Inc. vs. City of Detroit, Case No. 08-100214-CZ requiring SkyTel to preserve the 14,000 text messages which Plaintiff has made such a big deal about obtaining in this case. Furthermore, the subpoenas to which Plaintiff refers in its Motion violated the Federal Rules of Civil Procedure, are overblown, unduly burdensome and expensive, seek materials not relevant to any issue in this case and seek to invade several privileges. However, in light of this Court's statements set forth in the Order to Show Cause dated February 7, 2008, Defendants DO NOT OPPOSE entry of an order to preserve the various categories of materials identified in Plaintiff's Motion to the extent that such materials exist and are in the possession, custody or control of

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¹/ Defendants' counsel attempted to retrieve a copy of the Order that was entered by Judge Colombo from the Wayne County Circuit Court, but the file was checked out. Accordingly, Defendants have attached the order as approved for entry which Defendants' counsel has been advised was in fact entered.

Defendants or SkyTel, Inc. for the purpose of accomplishing the salutary purpose highlighted by this Court in the Order to Show Cause.

Respectfully submitted,

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By: /s/ Mayer Morganroth

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Dated: February 21, 2008

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CERTIFICATE OF SERVICE

_____ I hereby certify that on February 21, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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