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To Dale Cendali <dale.cendali@kirkland.com>

cc Claudia Ray <claudia.ray@kirkland.com>, "brendan.kehoe@kirkland.com Kehoe" <brendan.kehoe@kirkland.com>, bcc

Subject Fairey v. AP - amended pleadings and discovery scheduling

Hi Dale,

In our telephone conversation on Tuesday, you expressed reluctance to consent to our proposed amendments on the ground you or your clients don't believe some of the allegations in the amended pleadings. As the lawyers submitting these pleadings to the Court, we are satisfied that we have complied with all of our obligations in preparing and submitting them, just as we were in submitting the original pleadings. If your client has doubts about the factual assertions contained in the proposed amended pleadings, it is free to contest those assertions. Your consent to the filing of the amended pleadings is plainly without prejudice to those rights. If you have specific information that leads you or your client to believe any assertion contained in the proposed amended pleadings is incorrect beyond legitimate dispute, I invite you to share it with us for consideration. In any event, please let us know whether you consent to the filing of the amendments or not.

Beyond this, you have expressed a desire to learn more about the nature of the search conducted for responsive documents, to proceed with Mannie Garcia's deposition next week, and to wrap up fact discovery by November 19. I think at this juncture it's important to let you know that both the Stanford FUP and Durie Tangri intend to withdraw as counsel in this matter as soon as practicable. Mr. Fairey and the other Plaintiffs-Counterclaim Defendants ("Plaintiffs") are actively searching for new counsel, and have identified promising candidates. We expect Plaintiffs will secure new counsel shortly. We also expect new counsel will require a significant extension of the discovery cutoff to get up to speed and it will be infeasible to conduct any depositions in the next several weeks. As for providing more information about the search for responsive documents, this is an issue on which new counsel will need to be consulted and involved. In addition, Joe Gratz is out of the country and on vacation until Sunday. Given his role in the discovery process, we wouldn't be in a position to provide any information until next week at the earliest, even assuming new counsel is in place by then.

If you have questions about any of this, feel free to contact me. But please tell us your position on the proposed amendments as soon as possible.

Best regards,

Tony
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