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Oct 18 2012 01:04pm

12124066890 P.02/12

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JON L. NORINSBERG

ALEX UMANSKY

October 18, 2012

Honorable Robert W. Sweet
United States District Court
Southern District of New York
500 Pearl Street, Room 1920
New York, New York 10007Re: Schoolcraft v. City of New York, et al
10 CV 6005 (RWS)

Your Honor:

I represent plaintiff Adrian Schoolcraft in the above referenced civil rights action brought pursuant to 42 U.S.C. § 1983. I write now to respectfully request that plaintiff Adrian Schoolcraft be granted access to materials which have been designated by the City of New York as "Attorneys Eyes Only". Defense counsel, Suzanna Publicker, Esq., opposes this request. Ms. Publicker, however, has failed to state any basis for her opposition to this request. For the reasons set forth below, plaintiff should be allowed to have access to all documents provided by the City of New York.

Procedural History

By way of background, in March 2012, an article appeared in the Village Voice which disclosed the contents of the QAD investigation into Mr. Schoolcraft's allegations. On March 28, 2012, the parties appeared before Your Honor to address this issue. At that time, the Court ruled that the City of New York could, as part of discovery, inquire into the source of this leak before turning over any further confidential materials.

The Attorneys Eyes Only Stipulation was originally conceived as a *temporary* measure to allow the City of New York to continue to exchange discovery materials while the City investigated the source of the leak of the QAD. In fact, the record will reflect that it was *plaintiff's counsel* -- and not the City of New York -- who originally proposed the idea of an Attorneys Eyes Only Stipulation, so as to ensure that discovery could proceed forward while the City investigated the source of the leak.

On August 9, 2012, plaintiff signed an affidavit that specifically denied any involvement or knowledge into the leak of the QAD investigation materials. (Ex. A). This affidavit was drafted by the City of New York, and was provided to the City as a temporary measure until they could take plaintiff's deposition. On October 11, 2012, plaintiff appeared for his deposition. At that time, plaintiff once again specifically and emphatically denied any involvement in the QAD leak.

Following plaintiff's deposition, on October 12, 2012, plaintiff's counsel wrote to defendants to request that plaintiff – and plaintiff alone – be allowed access to the materials which had been designated as “Attorneys Eyes Only” (Ex. B). On October 16, 2012, the City of New York responded with a one line e-mail, refusing to consent to plaintiff's request, but failing to offer any explanation for such a refusal. (Ex. C).

There Is No Longer Any Valid Basis For Denying Plaintiff Access To The Discovery Materials.

The original rationale for denying plaintiff access to discovery materials no longer exists. Simply put, there is *no evidence* whatsoever that plaintiff Adrian Schoolcraft had anything to do with the QAD leak. Mr. Schoolcraft has now provided sworn testimony – twice – emphatically denying that he had anything to do with the leak of the QAD investigation findings. The City has had ample time to conduct its investigation, and has failed to discovery any evidence at all linking plaintiff to this leak. Given the complete lack of *any* evidence connecting plaintiff to this leak, the City's continued insistence that plaintiff should be denied access to discovery materials is wholly unwarranted and fundamentally unfair to plaintiff.

Plaintiff Needs To Have Access To The Discovery Materials In Order To Meaningfully Participate In His Case.

It is fundamentally unfair to deny plaintiff access to the materials which have been exchanged during discovery. These materials – which consist largely of the interviews conducted during the IAB investigation – directly involve plaintiff's allegations in this lawsuit. There are tape recorded interviews of multiple defendants in this case relating to the October 31, 2009 invasion into plaintiff's home, as well as the events which occurred earlier in that day. To deny plaintiff access to these materials would be to effectively prevent him from participating in his own case. It would be impossible for plaintiff to meaningfully assist counsel in preparing for depositions and formulating further document requests without having any access to these discovery materials. Therefore, as a matter of fairness, plaintiff respectfully requests that the Court grant him access to the materials which have been exchanged during discovery.

Defendants Would Suffer No Prejudice If Plaintiff Were Allowed Access to the Designated Materials.

Defendants have not argued, nor could they, that they would suffer any prejudice if plaintiff were allowed to see the materials which have been designated confidential. The only possible justification for withholding such materials – concerns about another possible leak – are non-existent at this point. Plaintiff has given sworn testimony on this issue on two occasions, and there is no evidence whatsoever linking plaintiff to the earlier leak of the QAD investigation findings. Under

such circumstances, there is simply no longer any compelling reason for denying plaintiff access to materials which directly involve his allegations in this lawsuit.

For all of the foregoing reasons, plaintiff Adrian Schoolcraft respectfully requests that the Court allow him to have access to materials designated by the City of New York as "Attorneys Eyes Only."

I thank the Court for consideration of this request.

Respectfully submitted,

Jon L. Norinsberg

JLN/nb
Enclosures

cc:
Scoppetta Seiff Kretz & Abercrombie
444 Madison Avenue
30th Floor
New York, N.Y. 10022-1010
Attn: Walter A Kretz, Jr., Esq.

Corporation Counsel
100 Church Street
Room 3-200
New York, New York 10007
Attn: Suzanna H. Publicker, Esq.

Martin, Clearwater & Bell, LLP
220 East 42nd Street
New York, New York 10017
Gregory J. Radomisli, Esq.

Callan Koster Brady & Brennan, LLP
One Whitehall Street
10th Floor
New York, New York 10004
Attn: Bruce Brady, Esq.

OCT-18-2012 13:22

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Oct 18 2012 01:05pm

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P.05/12

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2001 Marcus Avenue
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Cohen & Fitch, LLP.
The Woolworth Building
233 Broadway
Suite 1800
New York, New York 10279

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Exhibit A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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ADRIAN SCHOOLCRAFT,

Plaintiff,

**AFFIDAVIT OF
ADRIAN SCHOOLCRAFT**

-against-

10 CV 6005 (RWS)

THE CITY OF NEW YORK, et al.,

Defendants.

----- x

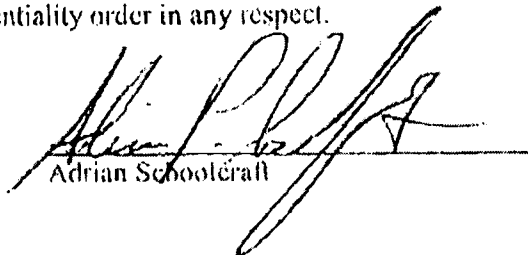
STATE OF NEW YORK)
 : SS.:
COUNTY OF ALBANY)

Adrian Schoolcraft, being duly sworn, hereby states, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

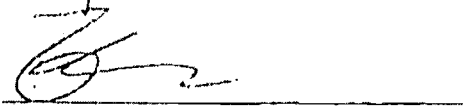
1. I am the plaintiff in this matter. I make this declaration based upon my personal knowledge.
2. By letter dated March 12, 2012, counsel for defendant City of New York, requested that the parties provide affidavits attesting to the fact that they have not violated the Stipulation and Protective Order in this matter, dated September 28, 2011, by producing a confidential New York City Police Department ("NYPD") Quality Assurance Division Report ("QAD Report") to any media outlet, including the Village Voice.
3. I am aware that the parties entered into a Confidentiality order in or about September 2011, which was ordered by the Court on March 12, 2012, relating to various NYPD documents, including, but not limited to, the QAD report.

4. I am aware of the general terms and conditions of the Confidentiality order and understand its terms. Most importantly, I understand that the documents which are subject to the order cannot be disclosed to anyone, except in the very limited circumstances set forth in paragraph 4.
5. I did not provide, show, or otherwise disseminate the QAD Report, bearing Bates Nos. D000508-000602, to the Village Voice newspaper or reporter Graham Rayman, and do not know or have any knowledge whatsoever about who did or may have done so.
6. I did not provide, show, or otherwise disseminate the QAD Report, bearing Bates Nos. D000508-000602, to any media outlet, including but not limited to newspapers, magazines, blogs, or television networks and I do not know or have any knowledge whatsoever about who did or may have done so.
7. I did not provide, show, or otherwise disseminate the QAD Report, bearing Bates Nos. D000508-000602, to my father, Larry Schoolcraft, or any family members and I do not know or have any knowledge whatsoever about whether anyone may have done so.
8. I do not know or have any knowledge whatsoever about who provided either Graham Rayman or the Village Voice with a copy of the QAD Report.
9. I did not violate the March 12, 2012 Confidentiality order in any respect.

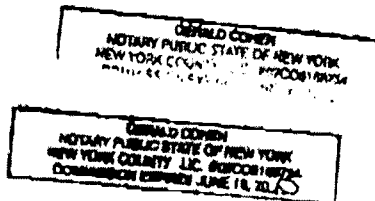
Date:


 Adrian Schoolcraft

Sworn to before me this 9th day
 of August, 2012



NOTARY PUBLIC



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Exhibit B

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JON L. NORINSBERG
ALEX UMANSKY

October 12, 2012

Corporation Counsel
100 Church Street
Room 3-200
New York, New York 10007
Attn: Suzanna H. Publicker, Esq.

Re: Schoolcraft v. City of New York, et al
10 CV 6005 (RWS)

Dear Ms. Publicker:

Since plaintiff has now given both an affidavit and sworn deposition testimony denying his involvement with the QAD leak – and since there is no evidence whatsoever that plaintiff had anything to do with the QAD leak – we believe that there is no longer any basis for denying plaintiff access to confidential documents exchanged during discovery. Therefore, we intend to write to Judge Sweet to request permission for Adrian Schoolcraft, and Adrian Schoolcraft alone (i.e., not Larry Schoolcraft or any other person) to be exempt from the Attorneys Eyes Only restriction on documents exchanged by the City defendants. Please advise as to whether or not you consent to this request

Thank you for your attention to this matter.

Very truly yours,



Jon L. Norinsberg

cc: Cohen & Fitch, LLP.
The Woolworth Building
233 Broadway
Suite 1800
New York, New York 10279

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Exhibit C

Nicole Bursztyn

From: Publicker, Suzanna [spublick@law.nyc.gov]
Sent: October 16, 2012 8:58 AM
To: Nicole Bursztyn
Subject: RE: Schoolcraft v. City of New York
Defendants do not consent.

From: Nicole Bursztyn [mailto:Nicole@norinsberglaw.com]
Sent: Friday, October 12, 2012 4:04 PM
To: Publicker, Suzanna
Cc: Jon Norinsberg External; Gerald Cohen; Joshua Fitch
Subject: Schoolcraft v. City of New York

Dear Ms. Publicker,

Please see attached correspondence from Mr. Norinsberg.

Thank you.

Nicole Bursztyn
Law Offices of Jon L. Norinsberg, Esq.
212-791-5396

**LAW OFFICES OF
JON L. NORINSBERG
225 BROADWAY, SUITE 2700
NEW YORK, NEW YORK 10007**

FAX TRANSMISSION

DATE: October 18, 2012

TO: Honorable Robert W. Sweet
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FROM: Jon L. Norinsberg, Esq.
Phone: (212) 791-5396
Fax: (212) 406-6890

PAGES: (12) Including Cover Memorandum

RE: Adrian Schoolcraft v. City of New York, et al.
10 CV 6005 (RWS)

MESSAGE: Please see attached.