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BY ECF & EMAIL
(Talia Nissimyan@nysd.uscourts.gov)

Honorable Robert W. Sweet
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

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

Your Honor:

I am a Senior Counsel in the office of Zachary W. Carter, Corporation Counsel of the City of New York, representing the motion respondent City of New York (the "City"), in connection with the above-captioned matter.

Yesterday the City moved to strike plaintiff's improperly filed letter of May 10, 2016. The Court has not ruled on the application, nor has it been opposed.

In the event that the Court does not strike the plaintiff's letter, I write in response to plaintiff's objection under Fed. R. Evid. 1006, voiced for the first time in the letter, that plaintiff had not received Judith Bronsther's coding data. Plaintiff never before requested such information, despite having the Audit Report since April 8, and therefore cannot at this late date object on that basis. Moreover, the calculations in the Audit Report are based on and can be verified with reference to the plaintiff's own timesheets submitted to the Court and the reorganization of those time entries contained in Exhibit A to the City's opposition to the fee motion (previously submitted in both electronic and hard copy formats).

Nevertheless, for the avoidance of all doubt, today the City produced to plaintiff by email a printout from the witness' computer system of the codes she entered into that system with respect to plaintiff's counsel's time entries in the process of preparing the calculations reflected in her report. Should the Court deem it relevant, the City is prepared to submit those printouts to the Court. The City reserves all objections, including objections with respect to privilege, as to

any other material prepared by the witness in anticipation of litigation or in preparation of the Audit Report.

In addition, in light of plaintiff's contention regarding the Arbitration Advisory 2003-01 of the California State Bar's Committee on Mandatory Fee Arbitration, the City submits the recent update to that Advisory, as of March 25, 2016, Analysis of Potential Bill Padding and Other Billing Issues, as Exhibit A to this letter. The Arbitration Advisory 2003-01 has been frequently relied on by federal courts on attorneys' fees issues, especially with respect to block billing. *See, e.g., Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. Cal. 2007); *Ibrahim v. Dep't of Homeland Sec.*, 2014 U.S. Dist. LEXIS 145633, *45-46 (N.D. Cal. Sept. 18, 2014); *Apple, Inc. v. Samsung Elecs. Co.*, 2012 U.S. Dist. LEXIS 160668, *29-31 & n. 49 (N.D. Cal. Nov. 7, 2012); *Hamed v. Macy's West Stores, Inc.*, 2011 U.S. Dist. LEXIS 125838, *17-18 (N.D. Cal. Oct. 31, 2011); *Alvarado v. FedEx Corp.*, 2011 U.S. Dist. LEXIS 112997, *57 (N.D. Cal. Sept. 30, 2011); *Cadkin v. Bluestone*, 2007 U.S. Dist. LEXIS 83582, *7-8 (C.D. Cal. Apr. 9, 2007); *see also Edwards v. Ford Motor Co.*, 2016 U.S. Dist. LEXIS 59651, *29 (S.D. Cal. Jan. 22, 2016) (regarding billing increments).

Should the Court deny the City's motion to strike the plaintiff's letter submission of May 10, 2016, in light of the plaintiff's additional filing the City further respectfully moves for reconsideration of the Court's denial of the City's prior request (Docket No. 629) to adjourn the date of the oral argument to a date after May 13, 2016, in light of the plaintiff's oversize and multiple submissions. The City respectfully submits that an adjournment of the oral argument until at least May 18, 2016, is called for to cure the now heightened prejudice to the City from the plaintiff's oversized and multiple submissions.

We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/

Alan H. Scheiner
Senior Counsel
Special Federal Litigation Division

cc (w/encl):

All counsel by ECF