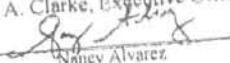


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4

5 Attorneys for **Plaintiff Lucy Messerschmidt**

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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 21 2010

John A. Clarke, Executive Officer/Clerk
BY  Deputy
Nancy Alvarez

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**
9

10 Lucy Messerschmidt, individually and on
11 behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 VH Property Corporation dba Trump National
15 Golf Club and DOES 1 through 100,

16 Defendants.

CASE NO. BC 403 087

(Action filed on December 2, 2008;
Assigned to Hon. Mark V. Mooney)

**Plaintiff Lucy Messerschmidt's Notice
of Motion and Motion to Compel
Defendant VH Property Corporation
dba Trump National Golf Club to
Respond Further to Her 1st C.C.P. §
2031 Document Request**

Memorandum of Points and Authorities

Declaration of Jeffrey W. Cowan, Esq.

**Request for Monetary Sanctions of at
least \$6,888.20 Against Defendant VH
Property Corporation**

[CRC Rule 3.1345 Statement of Items in
Dispute filed separately]

Date: October 21, 2010

Time: 8:30 a.m.

Dept.: 68

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25 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

26 Please take notice that on October 21, 2010 at 8:30 a.m. (or as soon thereafter as counsel
27 may be heard) in Department 68 of this Court, located at 111 North Hill Street, Los Angeles,
28

1 CA 90012, (213) 974-5707 Plaintiff Lucy Messerschmidt will and hereby does move the Court
2 pursuant to C.C.P. § 2031.310 for an order compelling Defendant VH Property Corporation, dba
3 Trump National Golf Club (“Trump”) to respond further to her 1st C.C.P. § 2031.010 et seq
4 document request and produce all responsive documents.

5 The grounds for this motion, as set forth in the attached memorandum of points and
6 authorities and supporting declaration, are that (1) Trump waived all objections to the Items by
7 failing to respond by its deadline to do so, (2) Trump never moved for relief from waiver, (3) the
8 response that Trump later served to the Request fails to assert any privilege or objection to
9 certain requests for which responsive documents exist, (including communications between
10 Trump and its lawyers regarding this lawsuit) and (4) certain responses violate the Code of Civil
11 Procedure and Trump has not served supplemental responses that would cure these “technical”
12 deficiencies despite its prior promises to do so.

13 In addition, because Trump has acted without substantial justification in failing to serve
14 a (verified) response that complies with the Code or produce all responsive documents
15 (including privileged ones) for categories to which no privilege objection was asserted, Plaintiff
16 moves the Court to award her at least \$6,888.20 in sanctions against Trump pursuant to C.C.P.
17 §§ 2023.010, 2023.030 et seq and 2031.310(d).

18 The motion will be based upon this notice, the attached memorandum of points and
19 authorities and declaration of Jeffrey W. Cowan, Plaintiff’s concurrently filed CRC Rule 3.1345
20 Statement of Items in Dispute, the complete file in this action, and such further evidence and
21 argument that the Court may receive at or before the hearing.

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THE COWAN LAW FIRM

DATED: September 21, 2010

By: 
Jeffrey W. Cowan
Attorney for **Plaintiff Lucy
Messerschmidt**

1 **Memorandum of Points and Authorities**

2 **I. INTRODUCTION**

3 A. Background Facts

4 Defendant VH Property Corporation (“Trump”) owns and operates the Trump National
5 Golf Club in Rancho Palos Verdes, California.

6 Plaintiff Lucy Messerschmidt was employed as a hostess at the club. Dave S. Perry (the
7 plaintiff in the related lawsuit *Perry v VH Property Corporation*) was employed as a valet.

8 Although Ms. Messerschmidt and Mr. Perry held different positions and worked in
9 different department at the golf club, they were nevertheless subjected to similar wage-and-hour
10 violations at the hands of Trump. Specifically, Trump management refused to permit Mr. Perry,
11 Ms. Messerschmidt, and their co-workers to take meal periods and rest breaks as required under
12 California law. Indeed Mr. Perry and Ms. Messerschmidt independently complained about and
13 resisted Trump’s noncompliance with the law—and they were both fired for doing so. ¹

14 As a result of the foregoing, Ms. Messerschmidt and Mr. Perry have filed lawsuits
15 seeking class action status to assert wage and hour violations. The parties have stipulated to
16 consolidate these two lawsuits (and that may have been effected by the time this motion is
17 heard).

18 Ms. Messerschmidt and Mr. Perry also have asserted individual claims regarding, *inter*
19 *alia*, the wrongful terminations of their employment.

20 B. Plaintiff’s Prompt Propounding of Written Discovery

21 Plaintiff Lucy Messerschmidt filed this lawsuit on December 2, 2008. Trump retained
22 the Greenberg Traurig law firm to defend it.

23 _____
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25
26 ¹ Ms. Messerschmidt was fired after she objected to not only the failure to allow rest breaks but
27 also age discrimination: not being scheduled for work when Donald Trump was going to be in the
28 club because Mr. Trump preferred having young attractive female employees working and she was
in her 40s.

1 On January 21, 2009, Ms. Messerschmidt served written discovery, which included a
2 document request (as well as form interrogatories and a deposition notice). (Cowan Decl. ¶ 2,
3 Ex. 1).

4 C. Trump Requesting and Receiving Multiple Extensions After It Fired Its 1st Law Firm

5 Thereafter, Trump requested and received several extensions of its deadline to respond to
6 the discovery – in part because its lawyers at Greenberg Traurig advised within weeks of
7 appearing that they were being substituted out as counsel. (Cowan Decl. ¶¶ 3-7, Ex.2-5).

8 The Littler Mendelson law firm then became Trump’s new counsel of record. At their
9 request, Ms. Messerschmidt extended the professional courtesy of extending Trump’s discovery
10 deadlines from March 17, 2009 to March 31, 2009 so that the new defense lawyers would have
11 more time to become familiar with the relevant facts and legal issues. (Cowan Decl. ¶¶ 8-9,
12 Ex.6 and 7).

13 When Ms. Messerschmidt extended Trump’s deadline to March 31, her lawyer told
14 Trump’s lawyer that he would further extend the deadline beyond March 31, 2009 (which
15 Trump’s counsel had requested) if the Court did not express fast track concerns at the March
16 24, 2009 status conference. (Cowan Decl. ¶ 9, Ex.7).

17 D. Trump’s Lawyer Declining an Invitation to Discuss and Set a New Discovery Deadline

18 At the March 24, 2009 status conference, the Court did not press the parties about fast
19 track issues (and instead ordered them to mediate). (Cowan Decl. ¶ 10)

20 After the March 24, 2009 hearing, Ms. Messerschmidt’s lawyer invited Trump’s lawyer
21 Tony Skogen as they walked out of Department 68 to discuss a new later discovery deadline,
22 which is what defense counsel had requested just a week earlier. Mr. Skogen said he was too
23 busy to talk but would telephone Ms. Messerschmidt’s lawyer later. (Cowan Decl. ¶ 11).

24 E. Failing to Timely Respond to Ms. Messerschmidt’s Discovery

25 Trump’s March 31, 2009 deadline to respond to Ms. Messerschmidt’s document request
26 (and other discovery) came and went. Trump’s lawyer never contacted Ms. Messerschmidt’s
27 counsel to request an extension. (Cowan Decl. ¶ 11).

28

1 F. Seeking A Discovery Extension After Trump Had Blown Its Deadline

2 Late in the afternoon on April 2, 2009 — two days after Trump’s deadline had expired —
3 Trump’s lawyer telephoned Ms. Messerschmidt’s counsel and (due to counsel’s absence) left a
4 detailed voice-mail message requesting more time to respond to discovery even though the
5 deadline had past:

6 *[computer time stamp: “Thursday April 2, 2009 at 4:38 pm from an*
7 *outside caller at 310-228-1574 totaling 1 minute 20 seconds”]*

8 *“Hi Jeffrey, it’s Tony Skogen with Littler. I’m calling about, uh,*
9 *the Lucy Messerschmidt case. Uh, I am going to need to take you up*
10 *on your offer, uh, for additional time. I still don’t have the materials,*
11 *uh, from uh the Greenberg firm, uh, and it is my understanding that,*
12 *that most of the discovery was was pretty, pretty much done and, and*
13 *ready to go, um, so I’m trying to sort that out, um, with the other firm.*

14 *Uh, secondly, I wanted to uh...talk to you about some dates*
15 *uh...for your inspection, and I’ve I’ve determined what days of the*
16 *week are the slowest. I’d like I’d like to try and avoid uh...anymore*
17 *disruption in the club. You know, as little as possible.*

18 *And then I uh...also wanted to talk to you about some some dates*
19 *for depositions.*

20 *Uh, I’m uh, and the last item that I had that was an action item*
21 *was I was going to uh...look into the people that uh...uh... that would*
22 *have been managers or have management uh, responsibilities during*
23 *the uh class period and uh...they’re working on that as well so I should*
24 *have that shortly.*

25 *If you could give me a call 310-772-7262, I would appreciate it.*
26 *Also again, I’m requesting a uh...extension. Uh...probably another 2*
27 *weeks should do it, but uh...please give me a call. Thanks.”*
28

1 (Cowan Decl. ¶ 13, Ex. 8).

2 G. Agreeing to Defer Motion Practice Until After Trump Responded to the Overdue
3 Discovery

4 Ms. Messerschmidt’s lawyer tried to return the call, and telephone tagged ensued until
5 April 10, 2009. When the lawyers finally spoke, Ms. Messerschmidt’s lawyer explained that he
6 could not retroactively extend the discovery deadline after it had expired because that would
7 involve relinquishing a substantive right (the waiver of all objections) – as opposed to extending
8 a professional courtesy. Her lawyer then suggested that the parties defer this issue until after
9 Trump served the late responses so that he could determine whether issues other than privilege
10 existed based on the asserted objections. Trump’s lawyer agreed to this proposal. (Cowan
11 Decl. ¶¶ 14-16, Ex.9).

12 H. Trump’s Late Discovery Responses That Failed to Assert Privilege or Work Product To
13 Items Regarding Meal and Rest Breaks While Containing Other Technical Violations

14 Eventually, Trump served its late discovery responses on June 18, 2009. Notably, the
15 response to the document request contained no attorney-client privilege or work product
16 objections to requests (Items Nos. 14 & 15) seeking all writings that “refer or relate” to
17 allegations that Trump had violated California law regarding meal breaks and rest breaks.²
18 Similarly, no privilege objections were asserted to a request (Item 2) for all writings that
19 “discuss or refer or relate to the termination of Plaintiff’s employment.” The response also
20 lacked a verification. (Cowan Decl. ¶ 17, Ex.10).

21 I. Conferring Via Letter and Later In Person For Hours

22 On July 14, 2009 Ms. Messerschmidt invited Trump to meet and confer and sent him a
23 draft C.R.C. Rule 3.1345 Statement of Items in Dispute. (Cowan Decl. ¶ 18, Ex.11).

24 Nine days later, at the request of Trump’s counsel, Ms. Messerschmidt’s lawyer conferred
25 for two hours in the Century City office of Littler Mendelson about discovery issues – including
26 _____

27 ² The response did purport to assert general objections and to further purport to incorporate
28 them to each response thereto notwithstanding C.C.P. § 2031.210's prohibitions on such practices.

1 the waiver of attorney-client privilege and work product due to not only the late response but
2 also the failure to assert those privileges. The next day, Trump’s lawyer agreed to supplement
3 some of the responses and asked for more time to consider further the privilege issues regarding
4 documents. Ms. Messerschmidt agreed. (Cowan Decl. ¶¶ 19-20, Ex. 12).

5 J. Conferring Face-to-Face a 2nd Time and Deferring These Issues Until After Mediation.

6 At Trump’s request, Ms. Messerschmidt’s lawyer again met in person (this time over
7 lunch) with Trump’s counsel on August 6, 2009 to discuss these discovery issues. The parties
8 discussed these waiver of privilege issues (as well as mediation and other procedural issues).
9 (Cowan Decl. ¶ 21).

10 Eventually, Trump agreed to supplement certain responses involving more technical
11 deficiencies. The parties were not able to resolve their dispute about privilege issues, but agreed
12 (at the suggestion of Ms. Messerschmidt) to defer motion practice on the issue until after the
13 scheduled mediation. (Cowan Decl. ¶ 22, Ex.13).

14 The mediation eventually occurred on November 17, 2010. It failed to settle this lawsuit.
15 The parties then agreed to further extend the deadlines for motion practice (unnecessarily as it
16 turned out because neither party focused on the fact that verifications had not been served with
17 the late responses). (Cowan Decl. ¶¶ 23-24, Ex.14).

18 K. Conferring Anew with Trump’s 3rd Law Firm After Trump Fired Law Firm #2

19 Trump then fired the Littler Mendelson firm and hired his third set of lawyers who has
20 appeared as counsel of record in this case: Hodel Briggs Winter, LLP. (Cowan Decl. ¶ 25)

21 Trump’s new lawyers expressed interest in trying to resolve informally some of the
22 outstanding discovery issues. Once again, Ms. Messerschmidt met and conferred by letter,
23 telephone and in person – but to no avail in that Trump provided neither authority or analysis to
24 rebut Ms. Messerschmidt’s analysis that all objections had been waived and that she was
25 entitled to privileged writings responsive to Items 14 and 15. (Cowan Decl. ¶¶ 26-35, Ex.15-
26 21).

27 ///

28

1 Thereafter, the parties again agreed to defer motion practice while they conducted
2 settlement talks (initially through counsel and later at a second mediation). (Cowan Decl. ¶¶ 36-
3 38, Ex. 22-24).

4 L. Sending Trump the Transcript of Mr. Skogen’s April 2, 2009 Message

5 On July 29, 2010, Ms. Messerschmidt sent Trump’s lawyers the transcript of October 2,
6 2009 voice mail message from former Trump lawyer Tony Skogen in a still further effort to
7 confer. Trump never responded. (Cowan Decl. ¶ 39, Ex.25).

8 Trump also never provided the promised supplemental responses that cured the more
9 technical deficiencies in the responses. (Cowan Decl. ¶¶ 40-41, Ex. 26).

10 M. Failing to Settle the Lawsuit at the 2nd Mediation

11 The September 21, 2010 (with mediator Jeffrey Ross of Oakland, CA) failed.

12 As a result, and given the need to get promptly discovery needed to move for class
13 certification in a timely way, Ms. Messerschmidt filed this motion.

14
15 **II. THE COURT SHOULD COMPEL TRUMP TO RESPOND FURTHER AND**
16 **PRODUCE ALL RESPONSIVE DOCUMENTS**

17 Ms. Messerschmidt’s concurrently filed CRC Rule 3.1345 Separate Statement sets forth
18 at length why the Court should grant her motion and compel Trump to respond further to her
19 document request and produce all responsive documents in its custody, possession and control.

20 In short, however, Trump should be ordered to do so for the following reasons:

- 21 • it waived all objections by blowing its deadline to respond (See C.C.P. §
22 2031.300),
- 23 • it later served a response (unverified) that fails to assert privilege or work product
24 objections to items relating to the complaint’s allegations about failing to allow
25 or provide rest and meal breaks or the termination of Ms. Messerschmidt’s
26 employment (*See Scottsdale Ins. Co. v. Superior Court*, 59 Cal. App. 4th 263,
27 273-274 (1997) (failure to assert expressly the attorney-client privilege waives
28

1 it), and the purported general objections are unlawful and void pursuant to C.C.P.
2 § 2031.210³,
3 • Trump has not moved for relief from waiver (and its former counsel cannot carry
4 its burden of showing excusable negligence),
5 • the subject documents are highly relevant, and
6 • Trump never verified its original response to the document request.
7 Plus, Trump never cured the “technical” defects in its responses despite its promises to
8 do so in July of 2009 and again in the spring of 2010.

9 The Code of Civil Procedure’s plain language is crystal clear that based on the facts
10 before the Court, Trump should be compelled to produce all documents in its possession,
11 custody and control (including documents that normally might be protected by the attorney-
12 client privilege or work product doctrine) that are responsive to Ms. Messerschmidt’s document
13 request (and otherwise provide a supplemental Response that fully complies with the Code of

14 _____
15

16 ³ The statute states in relevant part as follows:
17 “(a) The party to whom a demand for inspection, copying, testing, or sampling has been directed
18 ***shall respond separately to each item or category of item by any of the following:***

19 (1) A statement that the party will comply with the particular demand for inspection, copying,
20 testing, or sampling by the date set for the inspection, copying, testing, or sampling pursuant to
21 paragraph (2) of subdivision (c) of Section 2031.030 and any related activities.

22 (2) A representation that the party lacks the ability to comply with the demand for inspection,
23 copying, testing, or sampling of a particular item or category of item.

24 (3) An objection to the particular demand for inspection, copying, testing, or sampling.

25 (b) In the first paragraph of the response immediately below the title of the case, there shall appear
26 the identity of the responding party, the set number, and the identity of the demanding party.

27 (c) Each statement of compliance, each representation, and each objection in the response shall
28 all bear the same number and be in the same sequence as the corresponding item or category in the
demand, but the text of that item or category need not be repeated.” (Emphasis added)

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Civil Procedure). The subject documents are highly relevant to proving her claims, and Ms. Messerschmidt is entitled to them.

III. THE COURT SHOULD SANCTION TRUMP FOR FORCING MS. MESSERSCHMIDT TO BRING THIS MOTION

Ms. Messerschmidt respectfully submits that the Court should award the requested sanctions against Trump because it has acted without substantial justification and no other circumstances make the imposition of monetary sanctions “unjust.”

[Ms. Messerschmidt has not sought sanctions against Trump’s current lawyers because she perceives that Trump has micro-managed its counsel and that responsibility for its actions on this issue rests with Trump.]

Code of Civil Procedure § 2031.310(d) provides that monetary sanctions are mandatory against a party that unsuccessfully opposes a motion to compel further responses *unless* it acted with “substantial justification” or other circumstances would make such sanctions “unjust.”

Here, sanctions are mandatory because Trump has acted without substantial justification. It is not reasonably disputable that Trump blew its deadline to respond to the discovery, or that its later responses failed to assert privilege objections to two items or that Trump never moved for relief from waiver.

Accordingly, Ms. Messerschmidt respectfully submits that the Court should award the requested sanctions of \$6,888.20 against Trump as set forth in ¶¶ 42-48 of the Cowan Declaration.

1 **IV. CONCLUSION**

2 For the reasons set forth herein, Plaintiff Lucy Messerschmidt respectfully asks that the
3 Court compel Trump to respond further to Plaintiff's 1st document request – and in particular
4 Items 14 and 15.

5 Plaintiff further respectfully submits that Trump (aka VH Property Corporation) should
6 be ordered to pay at least \$6,888.20 in sanctions to compensate Plaintiff for the expense in
7 having this motion heard.

8
9 Respectfully submitted,

10 **THE COWAN LAW FIRM**

11
12 DATED: September 21, 2010

By:


Jeffrey W. Cowan
Attorney for **Plaintiff Lucy
Messerschmidt**

The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, California 90401
(310) 394-1420

Declaration of Jeffery W. Cowan

1
2 1. I Jeffery W. Cowan declare that I am licensed to practice law in the State of California
3 and am trial counsel in this lawsuit for Plaintiff Lucy Messerschmidt. I have personal
4 knowledge and if called upon to do so would and could testify to the following:

5 2. Attached hereto as Exhibit 1 is a true and correct copy of plaintiff's first CCP Section
6 2031.010 document request, along with my January 21, 2009 transmittal letter to
7 Trump's then lawyer Michelle Flores.

8 Granting Discovery Extensions Because Trump Replaced Its Lawyers With Littler Mendelson

9 3. Trump's 1st lawyer in this lawsuit Michelle Flores of Greenberg Traurig later told me
10 that her firm was being substituted out of the law suit. In conjunction with this change in
11 counsel, I was asked several times (by Ms. Flores and by persons directly employed by
12 Trump) for extensions for time to respond to this and other served discovery. I granted
13 the requested courtesies each time.

14 4. Attached hereto as Exhibit 2 is a true and correct copy of Ms. Flores' February 18, 2009
15 email regarding an extension of her client's discovery deadlines.

16 5. Attached hereto as Exhibit 3 is a true and correct copy of Ms. Flores' February 25, 2009
17 letter to me.

18 6. Attached hereto as Exhibit 4 are true and correct copies of my March 5, 2009 and March
19 6, 2009 letters to Ms. Flores regarding discovery extensions.

20 7. Attached hereto as Exhibit 5 is a true and correct copy of Ms. Flores' March 10, 2009
21 letter to me.

22 8. Attached hereto as Exhibit 6 is a true and correct copy of defense counsel Tony Skogen's
23 March 17, 2009 letter to me.

24 The Most Recent Extension I Granted Before the 1st Case Management Conference

25 9. Attached hereto as Exhibit 7 is a true and correct copy of an March 17, 2009 email
26 thread that Tony Skogen and I created that day.
27
28

1 10. On March 24, 2009, I attended a case management conference in this action. Tony
2 Skogen appeared for Trump. The Court (the Hon. Mark V. Mooney presiding) ordered
3 the parties to mediate the lawsuit based on the parties' stated interest in mediation (I and
4 Tony Skogen each told the Court that we wanted to mediate) and did not set any
5 deadlines regarding the filing of a motion for certification.

6 Defense Counsel's Failure To Telephone Me After Declining My Offer to Talk About A New
7 Discovery Deadline

8 11. When I walked out of Dept. 69 after this case management conference, I invited Mr.
9 Skogen to talk either in the hallway or in the 9th floor cafeteria about extending his
10 discovery deadline. Mr. Skogen said he was pressed for time but would telephone me
11 later.

12 12. Mr. Skogen never telephoned or otherwise contacted me by March 31st to discuss
13 extending his March 31, 2009 deadline to respond to my discovery (including the subject
14 document request).

15 13. On the late afternoon of Thursday April 2, 2009, I received a voice mail message from
16 Mr. Skogen asking for an extension of the already expired March 31, 2009 deadline to
17 respond to discovery. A true and correct copy of a transcript of that message is attached
18 hereto as Exhibit 8, and I can bring a tape of the recording to the courthouse for the
19 Court to hear if it would like me to do so.

20 14. Mr. Skogen and I then exchanged phone calls over the next week before eventually
21 reaching each other on April 10.

22 Initially Conferring With Mr. Skogen

23 15. During our April 10, 2009 conversation, I told Mr. Skogen that I would have extended
24 his discovery deadline if he had telephoned me on or before March 31 because that
25 would constitute only a professional courtesy, but that I could not do so after the
26 deadline had expired because it would entail relinquishing rights to discovery that my
27
28

1 client now had. Mr. Skogen and I then talked further about how to deal with these
2 issues.

3 16. Attached hereto as Exhibit 9 is a true and correct copy of my April 10, 2009 letter to Mr.
4 Skogen.

5 Defendant's Late Response To the § 2031 Request

6 17. Attached hereto as Exhibit 10 is a true and correct copy of Defendant's response to
7 Plaintiff's first CCP Section 2031 document request (served on June 18, 2009).

8 Further Efforts to Meet & Confer By Letter and In Person

9 18. Attached hereto as Exhibit 11 is a true and correct copy of my July 14, 2009 letter to Mr.
10 Skogen (including the draft CRC Rule §3.1345 Statement that accompanied it regarding
11 documents). The letter also included draft CRC Rule §3.1345 Statements for other
12 discovery items that are not part of this motion, and those draft CRC statements
13 pertaining to other discovery items are not attached hereto.

14 19. On July 23, 2009, I met with Mr. Skogen in a conference room at his Century City office
15 to meet and confer further about discovery issues arising from his failure to get an
16 extension or respond before March 31. The meeting lasted about two hours. During the
17 meeting, I pointed out to Mr. Skogen that aside from the issue of whether the failure to
18 respond on time to my discovery was the result of "excusable" neglect that could warrant
19 relief under the Code of Civil Procedure, the response failed to assert the attorney client
20 privilege and work product doctrine to Items 14 and 15 of the document request even
21 though it was clear that responsive privileged documents existed. Mr. Skogen conceded
22 the point. For those reasons, I made it clear to Mr. Skogen that I was entitled to receive
23 and expected him to produce all responsive documents—including those that might be
24 privileged and might have been protected from production if the appropriate privileges
25 had been asserted. I also told Mr. Skogen that I was not looking either to engage in
26 unnecessary motion practice or to embarrass him or his firm and that I would be willing
27 to defer these issues until after the upcoming mediation so that they need not be made
28

1 public (via the filing of a motion to compel) unless it was necessary. Mr. Skogen said he
2 wanted to think about the legal points I had made and discuss them with one of his
3 partners. He also said he wanted to consider whether he needed to contact his legal
4 malpractice insurance carrier.

5 20. Attached hereto as Exhibit 12 is a true and correct copy of my July 24, 2009 letter to Mr.
6 Skogen.

7 21. On August 6, 2009, I took Mr. Skogen and his colleague and partner Helene Wasserman
8 to lunch to discuss discovery issues (as well as other issues such as mediation and
9 coordinating this case with the other related lawsuit).

10 22. Attached hereto as Exhibit 13 is a true and correct of my August 26, 2009 letter to Mr.
11 Skogen and Ms. Wasserman.

12 Post-mediation Extensions of My Deadline to File a Motion

13 23. The parties mediated the lawsuit on November 17, 2009 with mediator Mark Rudy. The
14 mediation was unsuccessful.

15 24. Attached hereto as Exhibit 14 is a true and correct copy of my November 24, 2009 letter
16 to Mr. Skogen and Ms. Wasserman.

17 25. In December of 2009, Trump changed lawyers again and replaced Littler Mendelson,
18 with Glenn Briggs and Tracy Cox of the Hodel, Briggs, Winter firm.

19 Conferring Again With Trump's New Lawyers

20 26. Attached hereto as Exhibit 15 is a true and correct copy of my December 17, 2009 letter
21 to Ms. Cox (with a draft CRC rule § 3.1345 statement).

22 27. Attached hereto as Exhibit 16 is a true and correct copy of the first of two December 23,
23 2010 letters that Ms. Cox sent to me.

24 28. Attached hereto as Exhibit 17 is a true and correct copy of the second of two December
25 23, 2010 letters that Ms. Cox sent to me.

26 29. On January 11, 2010 I spent almost an hour conferring on the telephone with Ms. Cox
27 and Mr. Briggs about this discovery issue.

28

- 1 30. Attached hereto as Exhibit 18 is a true and correct copy of Ms. Cox's January 11, 2010
2 letter to me.
- 3 31. Attached hereto as Exhibit 19 is a true and correct copy of Ms. Cox's January 11, 2010
4 letter to me.
- 5 32. Attached hereto as Exhibit 20 is a true and correct copy of Ms. Cox's January 19, 2010
6 letter to me.
- 7 33. On February 2, 2010, I (and Anthony Orshansky, counsel for Dave Perry in the related
8 lawsuit) met in person with Mr. Briggs and Ms. Cox for several hours in El Segundo.
9 Our talk included the subject discovery issues (as well as how we might try to settle the
10 lawsuit without extensive discovery or motion practice or trial).
- 11 34. Attached hereto as Exhibit 21 is a true and correct copy of my February 15, 2010 letter to
12 Ms. Cox.
- 13 35. I received no response letter to my February 15, 2010 letter.
- 14 36. Attached hereto as Exhibit 22 is a true and correct copy of Ms. Cox's February 18, 2010
15 letter to me.
- 16 37. Attached hereto as Exhibit 23 is a true and correct copy of my February 23, 2010 letter to
17 Mr. Briggs.
- 18 38. Various additional extensions of discovery were granted (unnecessarily as it later turns
19 out because Trump never verified the subject responses). Attached hereto as Exhibit 24
20 is my June 4, 2010 letter to Mr. Briggs, which is the most recent letter regarding the
21 extension of my deadline to file a motion to compel regarding my 1st sets of discovery.
- 22 39. Attached hereto as Exhibit 25 is a true and correct copy of my July 29, 2010 letter to Mr.
23 Briggs and Ms. Cox (including the enclosed transcript of Mr. Skogen's voicemail
24 message to me).
- 25 40. Attached hereto as Exhibit 26 is a true and correct copy of an email thread starting (at
26 the bottom) with my June 11, 2010 email to Trump's lawyer Tracy Cox, above it Ms.
27 Cox's June 16, 2010 reply, and then (above those emails) my July 28 and 29 responses.
28

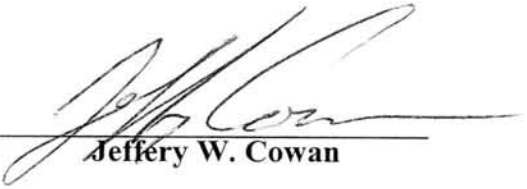
- 1 41. I never received the promised supplemental responses (or a reply to my July 29 email).
- 2 42. I am a 1991 graduate of the UCLA School of Law, and I practiced law from the fall of
3 1992 through August 2001 at Kendig & Ross in Century City, where I was an associate
4 before making partner. Thereafter, I was Of Counsel to Hennelly & Grossfeld in the
5 Pacific Palisades from October 2001 through September 2003. Both of my prior firms
6 had “AV” ratings and practiced complex business litigation and employment law.
- 7 43. Since 2003 I have had my own “AV” rating from Martindale Hubbell, and I have been
8 named a “Southern California Super Lawyer” for 2007, 2008, 2009 and 2010.
- 9 44. I also have prosecuted misdemeanor jury trials since 2001 as a *pro bono* deputy Los
10 Angeles City Attorney, a deputy Inglewood City Attorney, and a deputy Ventura County
11 District Attorney through the Los Angeles County Bar’s Trial Advocacy Program.
- 12 45. My regular hourly rate is \$375. From having talked with colleagues and peers (including
13 UCLA Law classmates who practice at big and medium sized firms) and from previously
14 having obtained sworn declarations from other lawyers at highly regarded law firms in
15 Los Angeles in conjunction with the preparation of motions to recover legal fees, I know
16 that my hourly rate is much lower than that of lawyers of comparable credentials and
17 experience in the Los Angeles legal community.
- 18 46. I spent more than five hours meeting and conferring by letter, telephone and in person
19 with Trump’s prior counsel (Tony Skogen and Helene Wasserman) and Trump’s latest
20 lawyers Glenn Briggs and Tracey Cox on these issues. I also have spent more than six
21 hours preparing this motion and the CRC Statement of Items in Dispute, and anticipate
22 spending at least 4 hours on the reply brief and 3 hours traveling to court and attending
23 the hearing of this motion, for a total of \$6,750.00 for my time.
- 24 47. In addition, I estimate that Ms. Messerschmidt will incur the following \$138.20 in
25 expenses to have this motion heard: a \$40 motion filing fee, a fee of at least \$25.50
26 from my attorney service to file the motion, a fax filing fee of at least \$6 for the reply
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brief, \$12.00 in postage to serve the moving and reply papers, \$12 for parking, \$15.50 in mileage charges, and \$27.20 for photocopies.

48. As a result, I ask that the Court award Ms. Messerschmidt at least \$6,888.20 in sanctions against Defendant VH Property Corporation.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct and that I execute this declaration on September 21, 2010 at Santa Monica, California.



Jeffery W. Cowan

EXHIBIT 1

1 **JEFFREY W. COWAN, ESQ., SBN 157474**
The Cowan Law Firm
2 1541 Ocean Avenue, Suite 200
3 Santa Monica, California 90401
4 Tel: (310) 394-1420
5 Fax: (310) 394-1430

6 Attorneys for **Plaintiff Lucy Messerschmidt**

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 LUCY MESSERSCHMIDT, an individual,)
11)
12 Plaintiff,)

13 vs.)

14 VH PROPERTY CORPORATION dba)
15 TRUMP NATIONAL GOLF CLUB and DOES)
16 I through 100,)
Defendants.)

CASE NO. BC 403 087

(Action filed on December 2, 2008;
Assigned to Hon. Mark V. Mooney)

**Plaintiff Lucy Messerschmidt's First
Set of C.C.P. § 2031.010 et seq
Document Requests to Defendant VH
Property Corporation dba Trump
National Golf Club**

Dept.: 68

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18
19 PROPOUNDING PARTY: Plaintiff Lucy Messerschmidt

20 RESPONDING PARTY: Defendant VH Property Corporation, dba Trump National
21 Golf Club

22 SET NUMBER: One
23

24 Pursuant to Code of Civil Procedure § 2031.010 et seq, Plaintiff Lucy Messerschmidt directs
25 that Defendant VH Property Corporation produce the documents and writings designated below for
26 inspection and copying. The production will take place 30 days from service of this request at The
27 Cowan Law Firm, 1541 Ocean Avenue, Suite 200, Santa Monica CA 90401; telephone (310) 394-
28 1420.

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I. DEFINITIONS

"WRITINGS" as used in this request means the definition contained in Evidence Code Section 250: handwriting, typewriting, printing, photostating, photographing and every other means of recording upon any tangible thing any form of communication or representation, including letters, records, pictures, sounds or symbols or combination thereof; and which includes computer data.

"You," "your" and "Defendant" mean Defendant VH Property Corporation, dba Trump National Golf Club, and its employees, officers, directors, agents, attorneys, or any other persons who have acted on its behalf.

"The Complaint" means the Complaint in this action.

"Plaintiff" means Lucy Messerschmidt

REQUEST NUMBER 1:

All WRITINGS that were or should have been identified in your response to Plaintiff's concurrently served first set of "form interrogatories – employment law".

REQUEST NUMBER 2:

All WRITINGS that discuss or refer or relate to the termination of Plaintiff's employment.

REQUEST NUMBER 3:

All WRITINGS that you sent to or received from Lucy Messerschmidt.

REQUEST NUMBER 4:

All WRITINGS that refer to Lucy Messerschmidt.

REQUEST NUMBER 5:

All WRITINGS that either constitute or discuss the personnel file of Lucy Messerschmidt.

REQUEST NUMBER 6:

All WRITINGS that constitute or refer to policies or procedures of yours regarding or relating to state or federal law regarding age discrimination in the workplace. The scope of this request is from January 1, 2004 through June 30, 2008.

1 **REQUEST NUMBER 7:**

2 All WRITINGS that set forth or discuss your document retention policy since January 1, 2004.

3 **REQUEST NUMBER 8:**

4 All WRITINGS since January 1, 2004 that set forth or discuss policies you have followed to
5 backup or otherwise preserve your email communications.

6 **REQUEST NUMBER 9:**

7 All WRITINGS since January 1, 2001 that constitute or refer or relate to civil lawsuits or
8 arbitration demands pertaining to claims of age discrimination in your employment practices.

9 **REQUEST NUMBER 10:**

10 All WRITINGS since January 1, 2001 that constitute or refer or relate to civil lawsuits or
11 arbitration demands pertaining to claims against you for wrongful termination relating to age
12 discrimination in your employment practices.

13 **REQUEST NUMBER 11:**

14 All WRITINGS since January 1, 2001 that constitute or refer to lawsuits or arbitration demands
15 against you for wrongful termination of employment relating either to age discrimination in
16 your employment practices or the retaliatory termination of employment after an employee(s)
17 objected to employment practices that violated either Government Code § 12940(a) or the
18 comparable anti-discrimination statutes in Title VII of the United States Code.

19 **REQUEST NUMBER 12:**

20 All WRITINGS since January 1, 2001 that constitute or refer or relate to complaints against you
21 filed with either the EEOC or the DFEH regarding either age discrimination or retaliation
22 against employees who opposed unlawful discrimination of any kind.

23 **REQUEST NUMBER 13:**

24 All WRITINGS that refer to this lawsuit. This includes but is not limited to WRITINGS that
25 refer or relate to the post on TMZ.com regarding this lawsuit.

26 **REQUEST NUMBER 14:**

27 All WRITINGS from January 1, 2004 to the present that refer or relate to allegations that you
28 have violated California law regarding meal breaks.

1 **REQUEST NUMBER 15:**

2 All WRITINGS from January 1, 2004 to the present that refer or relate to allegations that you
3 have violated California law regarding rest breaks.

4 **REQUEST NUMBER 16:**

5 All WRITINGS from January 1, 2004 to the present that constitute or refer to policies or
6 procedures of yours regarding or relating to California law regarding meal or rest breaks in the
7 workplace. This request includes WRITINGS intended to ensure that your managers and
8 supervisors at the Trump National Golf Club properly implemented such policies in compliance
9 with the law.

10 **REQUEST NUMBER 17:**

11 All WRITINGS from January 1, 2004 to the present that constitute or refer to policies or
12 procedures of yours regarding or relating to age discrimination. This request includes
13 WRITINGS intended to ensure that your managers and supervisors at the Trump National Golf
14 Club properly implemented such policies in compliance with the law.

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THE COWAN LAW FIRM

DATED: January 21, 2009

By:



Jeffrey W. Cowan
Attorney for **Plaintiff Lucy
Messerschmidt**

JEFFREY W. COWAN, ESQ.
825 Wishra Boulevard, #336
Santa Monica, California 90401
(310) 395-2267

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PROOF OF SERVICE

I am over the age of eighteen years and not a party to this action; my business address is 1541 Ocean Avenue, Suite 200, Santa Monica, California 90401.

On January 21, 2009 I served **Plaintiff Lucy Messerschmidt's First Set of C.C.P. § 2031.010 et seq Document Requests to Defendant VH Property Corporation dba Trump National Golf Club** on the interested parties in said action as indicated below:

Michelle Lee Flores
Greenberg Traurig, LLP
2450 Colorado Avenue
Suite 400E
Santa Monica, CA 90404

[Attorney for Defendants]

[BY MAIL] by placing a copy of said document for collection and mailing on the date indicated above, in a sealed envelope(s), addressed as set forth above, pursuant to ordinary business practices. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service at Santa Monica, California on that same day in the ordinary course of business.

[BY FACSIMILE] by transmitting a true copy by facsimile transmission at the time indicated on the transmission report from facsimile telephone number (310) 394-1430 to a facsimile machine maintained by the party on whom it was served, at the facsimile machine telephone number indicated on the attached service list. The transmission was reported as complete and without error. The transmission report which was properly issued by the transmitting facsimile machine is attached to the file copy of this document.

[By Personal Service] By delivering by hand the foregoing document to the addressee at the address listed above

[BY OVERNIGHT COURIER] I caused to be delivered to and served by an *Overnight Courier* on all interested parties in said action, the above named document(s) by placing true copies thereof in enclosed sealed envelopes, delivery fees paid or provided for, and addressed as set forth above.

[STATE] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 21, 2009, at Santa Monica, California.



Valerie A. Dearth

EXHIBIT 2

Jeffrey Cowan

From: FloresM@GTLAW.com
Sent: Wednesday, February 18, 2009 12:56 PM
To: jeffrey@cowan-law.com
Cc: andersondor@gtlaw.com; hayesm@gtlaw.com
Subject: Messerschmidt vs. VH Property - Extension to Respond to Discovery

Hello Jeffrey -

Thank you for your gracious extension of time to **March 6, 2009** that you granted today to my client, VH Property, to respond to (1) First Request for Documents and (2) First Set of Form Interrogatories, Employment.

If this correspondence does not accurately reflect our agreement, please contact me immediately.

Thank you,
Michelle

Michelle Lee Flores
Greenberg Traurig, LLP
2450 Colorado Avenue, Suite 400E
Santa Monica, CA 90404
310.586.7760 - direct dial
310.586.7800 - general fax
floresm@gtlaw.com

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To reply to our email administrator directly, please send an email to postmaster@gtlaw.com.

EXHIBIT 3

Greenberg Traurig

Michelle Lee Flores
Tel. 310.586.7760
Fax 310.586.7800
FloresM@gflaw.com

February 25, 2009

VIA E-MAIL AND FIRST-CLASS MAIL

Jeffrey W. Cowan, Esq.
The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, California 90401-1204

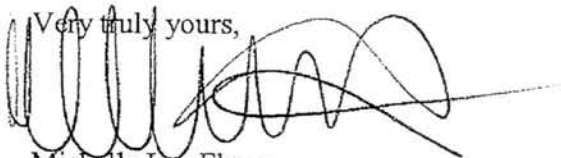
Re: Lucy Messerschmidt v. VH Property Corp.
LASC Case No. BC 403087

Dear Mr. Cowan:

Effective today, we will no longer be counsel for VH Property Corp. in the above-referenced litigation. Please direct all future inquiries and correspondence to Alan G. Garten, Assistant General Counsel, The Trump Organization, 725 Fifth Avenue, New York, New York 10022, phone (212) 836-3202, fax (212) 980-3821.

A formal substitution of counsel form will be forthcoming immediately.

Very truly yours,



Michelle Lee Flores

MLF:dma

ALBANY
AMSTERDAM
ATLANTA
BERLIN*
BOCA RATON
BOSTON
BRUSSELS*
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON*
LOS ANGELES
MIAMI
MILAN*
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PHILADELPHIA
PHOENIX
ROME*
SACRAMENTO
SHANGHAI
SILICON VALLEY
TALLAHASSEE
TAMPA
TOKYO*
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
ZURICH

*Strategic Alliance

LA128,034,456v1 117628.010100

Greenberg Traurig, LLP | Attorneys at Law | Los Angeles Office | 2450 Colorado Avenue | Suite 400E | Santa Monica, CA 90404
Tel 310.586.7700 | Fax 310.586.7800

www.gtlaw.com

EXHIBIT 4

The Cowan Law Firm

1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
Facsimile: (310) 394-1430
www.cowan-law.com

March 5, 2009

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via email to floresm@gtlaw.com & Fax to (310) 586-7800

Michelle L. Flores, Esq
Greenberg Traurig, LLP
2450 Colorado Avenue
Suite 400E
Santa Monica, CA 90404

Re: Lucy Messerschmidt v. VH Property Corp, LASC Case No. BC 403 087

Dear Ms. Flores:

While I was out of the office in a deposition yesterday, David Conforti, the Trump National Golf Club's general manager, sent me the attached email asking for an indefinite extension of pending discovery deadlines. He also left me a message on my voice mail.

You or Alan Garten (the in-house lawyer at The Trump Organization that your February 25, 2009 letter directed me to communicate with) need to advise me in writing whether I may communicate directly with Mr. Conforti. You also should forward this letter to Mr. Conforti.

Finally, I have not yet received the executed substitution of counsel form that your February 25 letter said would be "forthcoming immediately." The Superior Court's "fast track" policy limits my ability to put discovery on hold. At your request, I already have continued one deposition, extended your written discovery deadlines and deferred a pleading issue (the defective affirmative defenses in your client's answer).

Accordingly, I need to know the following by March 7, 2009: (1) will you allow me next week to conduct the noticed March 11 C.C.P. § 2031 inspection of the Trump National Golf Club (I will be only "walking the property" so I can't imagine why defense counsel needs to be present, (2) will you be producing witnesses for my PMQ deposition on March 12, and (3) when will I receive the promised substitution of counsel form?

Very truly yours,


Jeffrey W. Cowan

Enclosure

cc: Lucy Messerschmidt (with enclosure)

Jeffrey Cowan

From: David Conforti [dconforti@trumpnational.com]
Sent: Wednesday, March 04, 2009 4:10 PM
To: jeffrey@cowan-law.com
Subject: Extension request

Importance: High

Dear Mr. Cowan,

As you know, we are in the process of engaging new counsel and we are aware of current, short-term deadlines in place regarding the case of Lucy Messerschmidt v. VH Property Corp. LASC Case No. BC 403 087. Accordingly, we request an extension of said deadlines for an appropriate amount of time to enable us to find new counsel and familiarize them with the case.

We appreciate your attention in this matter and we look forward to your response at your convenience.

Very truly yours,

David Conforti, PGA
General Manager/Director of Golf
Trump National Golf Club Los Angeles
www.trumpnational.com
(T) 310.303.3244
(F) 310.265.5522



This e-mail message, and any attachments to it, are for the sole use of the intended recipients, and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this email message or its attachments is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company. Finally, while the company uses virus protection, the recipient should check this email and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this email.

HP LaserJet M2727nf MFP

Fax Confirmation Report

The Cowan Law Firm
(310) 394-1430
Mar-5-2009 11:45AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
925	3/ 5/2009	11:44:20AM	Send	13105867800	0:51	2	OK

The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
Facsimile: (310) 394-1430
www.cowan-law.com

March 5, 2009

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via email to floresm@gtlaw.com & Fax to (310) 586-7800

Michelle L. Flores, Esq.
Greenberg Traurig, LLP
2450 Colorado Avenue
Suite 400E
Santa Monica, CA 90404

Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

Dear Ms. Flores:

While I was out of the office in a deposition yesterday, David Conforti, the Trump National Golf Club's general manager, sent me the attached email asking for an indefinite extension of pending discovery deadlines. He also left me a message on my voice mail.

You or Alan Garten (the in-house lawyer at The Trump Organization that your February 25, 2009 letter directed me to communicate with) need to advise me in writing whether I may communicate directly with Mr. Conforti. You also should forward this letter to Mr. Conforti.

Finally, I have not yet received the executed substitution of counsel form that your February 25 letter said would be "forthcoming immediately." The Superior Court's "fast track" policy limits my ability to put discovery on hold. At your request, I already have continued one deposition, extended your written discovery deadlines and deferred a pleading issue (the defective affirmative defenses in your client's answer).

Accordingly, I need to know the following by March 7, 2009: (1) will you allow me next week to conduct the noticed March 11 C.C.P. § 2031 inspection of the Trump National Golf Club (I will be only "walking the property" so I can't imagine why defense counsel needs to be present, (2) will you be producing witnesses for my PMQ deposition on March 12, and (3) when will I receive the promised substitution of counsel form?

Very truly yours,

Jeffrey W. Cowan

Enclosure

cc: Lucy Messerschmidt (with enclosure)

The Cowan Law Firm

1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
Facsimile: (310) 394-1430
www.cowan-law.com

March 6, 2009

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via email to floresm@gtlaw.com & Fax to (310) 586-7800

Michelle L. Flores, Esq
Greenberg Traurig, LLP
2450 Colorado Avenue
Suite 400E
Santa Monica, CA 90404

Re: Lucy Messerschmidt v. VH Property Corp, LASC Case No. BC 403 087

Dear Ms. Flores:

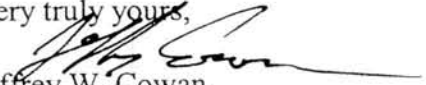
Because you remain counsel of record for Defendant VH Property Corp. (dba Trump National Golf Club), I write to confirm this afternoon's telephone conversation with David Conforti – the general manager with whom your March 5 email authorized me to speak.

Mr. Conforti asked that I extend (again) the deadline to respond to discovery that initially was due two weeks ago (and was later extended to today at your request). He also advised that persons from the Trump organization have a 2nd meeting with prospective counsel on the morning of Monday March 9 and that he anticipates retaining these lawyers by the end of the day.

As a result, because the information given me evidences that your client created its current predicament (*i.e.*, it has no lawyers authorized to defend this lawsuit because it decided for its own reasons switch counsel – as opposed to discovering a conflict of interest), and to protect against unfair delays, I am extending the deadline for discovery due today to Tuesday March 10.

Mr. Conforti assured me that new counsel would call me next week on March 9 or 10. When that occurs, I will be pleased to discuss further extensions of existing discovery deadlines (including all discovery due on March 10). Please call me if you have any questions.

Very truly yours,


Jeffrey W. Cowan

cc: David Conforti
Alan Garten, Esq.

HP LaserJet M2727nf MFP

Fax Confirmation Report

The Cowan Law Firm
(310) 394-1430
Mar-6-2009 5:15PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
944	3/6/2009	5:14:43PM	Send	13105867800	0:38	1	OK

The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
Facsimile: (310) 394-1430
www.cowan-law.com

March 6, 2009

Jeffrey W. Cowan
Email: jfcowan@cowan-law.com

Via email to floresm@gtlaw.com & Fax to (310) 586-7800

Michelle L. Flores, Esq.
Greenberg Traurig, LLP
2450 Colorado Avenue
Suite 400E
Santa Monica, CA 90404

Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

Dear Ms. Flores:


Because you remain counsel of record for Defendant VH Property Corp. (dba Trump National Golf Club), I write to confirm this afternoon's telephone conversation with David Conforti – the general manager with whom your March 5 email authorized me to speak.

Mr. Conforti asked that I extend (again) the deadline to respond to discovery that initially was due two weeks ago (and was later extended to today at your request). He also advised that persons from the Trump organization have a 2nd meeting with prospective counsel on the morning of Monday March 9 and that he anticipates retaining these lawyers by the end of the day.

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Mr. Conforti assured me that new counsel would call me next week on March 9 or 10. When that occurs, I will be pleased to discuss further extensions of existing discovery deadlines (including all discovery due on March 10). Please call me if you have any questions.

Very truly yours,


Jeffrey W. Cowan

cc: David Conforti
Alan Garten, Esq.

EXHIBIT 5

Greenberg Traurig

Michelle Lee Flores
Tel. 310.586.7760
Fax 310.586.7800
FloresM@gtlaw.com

March 10, 2009

VIA E-MAIL AND FIRST-CLASS MAIL

Jeffrey W. Cowan, Esq.
The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, California 90401-1204

Re: Lucy Messerschmidt v. VH Property Corp.
LASC Case No. BC 403087

Dear Mr. Cowan:

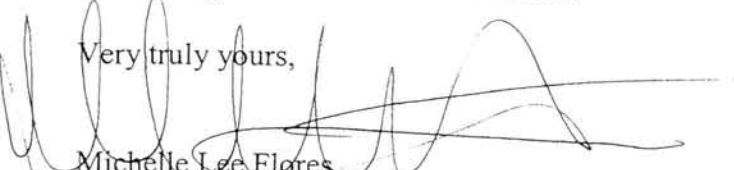
This letter memorializes our conversation today in which you graciously granted an extension of time, up to and including **March 17, 2009**, for Defendant, VH Property Corp., to respond to:

- 1) Plaintiff's 1st Request for Production of Documents; ✓
- 2) Plaintiff's 1st Form Interrogatories, Employment Law; ✓
- 3) Plaintiff's Inspection Demand;
- 4) Plaintiff's Notice of Deposition of Defendant's PMQ.; ✓
- 5) Plaintiff's 1st Special Interrogatories; ✓ and
- 6) Plaintiff's request to identify Defendant's "control group".

We appreciate your continuing courtesy, cooperation and professionalism in granting extensions to Defendant. We also recognize your discovery priority concerning the above-referenced discovery instruments Plaintiff has propounded. Finally, we trust that Defendant's new counsel will engage in good faith in connection with promptly rescheduling the dates for the deposition and requested inspection set forth at "3" and "4" above.

Please contact me if the above does not accurately reflect our conversation and agreement concerning the matters detailed herein.

Very truly yours,


Michelle Lee Flores
MLF:dsm

LA128,051,812v1 117628.010100

Greenberg Traurig, LLP | Attorneys at Law | Los Angeles Office | 2450 Colorado Avenue | Suite 400E | Santa Monica, CA 90404
Tel 310.586.7700 | Fax 310.586.7800

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MIAMI
NEW YORK
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www.gtlaw.com

EXHIBIT 6



Employment & Labor Law Solutions Worldwide

Littler Mendelson, P.C.
2049 Century Park East
5th Floor
Los Angeles, CA 90067.3107

March 17, 2009

Tony R. Skogen
310.772.7262 direct
310.553.0308 main
310.553.5583 fax
tskogen@littler.com

VIA E-MAIL, FACSIMILE & MAIL

Jeffrey W. Cowan, Esq.
The Cowan Law Firm
1541 Ocean Avenue
Suite 200
Santa Monica, CA 90401-1204

Re: Lucy Messerschmidt v. VH Property Corp.

Dear Mr. Cowan:

This is to inform you that Littler Mendelson will be substituting in as attorneys of record for the captioned matter.

This is also to confirm that you have granted us an extension of at least two weeks (until at least March 31, 2009) in which to serve responses, and objections, if necessary, to written discovery.

Thank you for your professional courtesy.

Sincerely,

Tony R. Skogen

TRS/mg

Firmwide:89006608.1 026032.1000

EXHIBIT 7

Jeffrey Cowan

From: Jeffrey Cowan [cowanlaw@verizon.net]
Sent: Tuesday, March 17, 2009 6:19 PM
To: 'Skogen, Tony R.'
Subject: RE: Letter to Jeffrey Cowan

Tony:

Your statement is partially accurate. I said I would be inclined to grant more time to respond to my discovery if doing so would not either cause the Court to think I was ignoring fast-track considerations or prejudice my client -- both of which will turn in large part on what happens at the CMC next week.

I also am hoping for some cooperation with the expedition of (a) a response to my prior request by letter for identification of current managing agent employees so that I do not inadvertently have ex parte conversations with them while conducting informal discovery, and (b) my ability to conduct a CCP Section 2031 inspection of your client's golf club premises per my previously served notice.

I look forward to talking to you next Monday so that we can be better positioned to have a productive CMC the next day.

Best,
Jeffrey

Jeffrey W. Cowan | The Cowan Law Firm | 1541 Ocean Avenue, Suite 200, Santa Monica,
California 90401 | Phone: 310 394 1420 | Fax: 310 394 1430 | www.cowan-law.com | E-mail:
jeffrey@cowan-law.com

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-----Original Message-----

From: Skogen, Tony R. [mailto:TSkogen@littler.com]
Sent: Tuesday, March 17, 2009 5:20 PM
To: cowanlaw@verizon.net
Cc: Gerard, Mary Ann
Subject: Letter to Jeffrey Cowan

Hi Jeffrey,

Thanks for your professional courtesy in granting us an extension of at least two weeks to respond to written discovery. If we need additional time, you indicated you would be disposed to grant it so long as it seems acceptable to the court.

Best regards,
Tony

Tony Skogen, Shareholder

310.772.7262 direct 626.688.4444 mobile 310.553.5583 fax
Tskogen@littler.com
2049 Century Park East, 5th Floor | Los Angeles, CA 90067-3107

Littler Mendelson | littler.com
Employment & Labor Law Solutions Worldwide

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Littler Mendelson, P.C.
<http://www.littler.com>

EXHIBIT 8

Transcript of Voice Message from Tony Skogen re Messerschmidt v VH Property Corp.

[computer time stamp: "Thursday April 2, 2009 at 4:38 pm from an outside caller at 310-228-1574 totaling 1 minute 20 seconds"]

"Hi Jeffrey, it's Tony Skogen with Littler. I'm calling about, uh, the Lucy Messerschmidt case. Uh, I am going to need to take you up on your offer, uh, for additional time. I still don't have the materials, uh, from uh the Greenberg firm, uh, and it is my understanding that, that most of the discovery was was pretty, pretty much done and, and ready to go, um, so I'm trying to sort that out, um, with the other firm.

Uh, secondly, I wanted to uh...talk to you about some dates uh...for your inspection, and I've I've determined what days of the week are the slowest. I'd like I'd like to try and avoid uh...anymore disruption in the club. You know, as little as possible.

And then I uh...also wanted to talk to you about some some dates for depositions.

Uh, I'm uh, and the last item that I had that was an action item was I was going to uh...look into the people that uh...uh... that would have been managers or have management uh, responsibilities during the uh class period and uh...they're working on that as well so I should have that shortly.

If you could give me a call 310-772-7262, I would appreciate it. Also again, I'm requesting a uh...extension. Uh...probably another 2 weeks should do it, but uh...please give me a call. Thanks."

EXHIBIT 9

The Cowan Law Firm

1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
Facsimile: (310) 394-1430
www.cowan-law.com

April 10, 2009

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Email and U.S. Mail

Tony R. Skogen, Esq.
Littler Mendelson, P.C.
2049 Century Park East
Fifth Floor
Los Angeles, CA 90067

Re: Lucy Messerschmidt v. VH Property Corp, LASC Case No. BC 403 087

Dear Mr. Skogen:

I'm writing to memorialize this morning's telephone conversation about discovery issues.

First, we agreed to defer the issues arising from your failure to respond to my discovery by the most recent express deadline of March 31, 2009 until you serve the promised forthcoming responses. After I review them, I can better determine whether we need to litigate issues of waiver and/or relief from waiver.

In addition, enclosed is the promised article about *ex parte* communications with employees of corporations from the journal of the State Bar's litigation section. I look forward to your response to my February 24, 2009 letter (sent to your predecessor Michelle Flores) asking which of the Trump National Golf Club's current employees are officers, directors or managing agents of Defendant VH Property Corp. (or previously were employed in such capacities).

With respect my § 2031 inspection of your client's premises in Palos Verdes, we have tentatively agreed on the morning of Tuesday, April 28, 2009. I will get back to you after confirming that my client is available to help me.

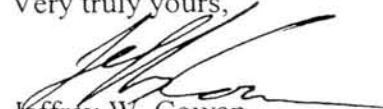
Finally, I await proposed dates in May to depose your PMQ witnesses pursuant to my previously served deposition notice. [On a related note, you advised that I do not need to send a

Tony R. Skogen, Esq
April 10, 2009
Page 2

revised deposition notice or notice of *erratum* regarding the typo in item 9 of the categories of topics that inadvertently referred to “unpaid 30 minute rest breaks” instead of “unpaid 30 minute meal breaks”.]

If you want to confer further about any of these issues, let me know.

Very truly yours,



Jeffrey W. Cowan

JWC:vad
Enclosure

cc: Lucy Messerschmidt

EXHIBIT 10

ORIGINAL

1 TONY R. SKOGEN, Bar No. 67568
HELENE WASSERMAN, Bar No. 130134
2 CHRISTINA HANNA, Bar No. 258552
LITTLER MENDELSON
3 A Professional Corporation
2049 Century Park East
4 5th Floor
Los Angeles, CA 90067.3107
5 Telephone: 310.553.0308
Fax No.: 310.553.5583

6 Attorneys for Defendant
7 VH PROPERTY CORPORATION dba TRUMP
NATIONAL GOLF CLUB
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

12 LUCY MESSERSCHMIDT,
13 Plaintiff,
14 v.
15 VH PROPERTY CORPORATION dba
TRUMP NATIONAL GOLF CLUB and
16 DOES 1 through 100,
17 Defendant.

Case No. BC 403087
ASSIGNED FOR ALL PURPOSES TO
JUDGE MARK V. MOONEY
**DEFENDANT'S RESPONSE TO
PLAINTIFF'S FIRST SET OF C.C.P. §
2031.010 ET SEQ DOCUMENT REQUESTS
TO DEFENDANT VH PROPERTY
CORPORATION DBA TRUMP
NATIONAL GOLF CLUB**
Dept: 68
Complaint Filed: December 2, 2008

20 PROPOUNDING PARTY: PLAINTIFF LUCY MESSERSCHMIDT
21 RESPONDING PARTY: DEFENDANT VH PROPERTY CORPORATION, dba
22 TRUMP NATIONAL GOLF CLUB
23 SET NUMBER: ONE
24
25
26
27
28

1 COMES NOW Defendant VH PROPERTY CORPORATION dba TRUMP NATIONAL
2 GOLF CLUB (“Defendant”), and hereby responds and objects to Plaintiff LUCY
3 MESSERSCHMIDT’s (“Plaintiff”) First Set of Requests For Identification and Production of
4 Documents to Defendant (“Demand”) pursuant to California Code of Civil Procedure § 2031.010, *et*
5 *seq.*, as follows:

6 Defendant hereby makes the following Response (including objections) to Plaintiff’s First Set
7 of Request For Identification and Production of Documents. This Response is made solely for
8 purposes of this action. Each response and/or production is subject to all objections as to
9 competence, relevance, materiality, propriety and admissibility, and any and all other objections and
10 grounds which would require the exclusion of any statements contained herein, if such statements
11 were made by a witness present and testifying at court, all of which objections and grounds are
12 reserved and may be interposed at the time of trial.

13 **GENERAL OBJECTIONS TO DEMANDS FOR PRODUCTION**

14 1. Defendant objects to the requests to the extent they call for the production of any
15 document that is protected by the attorney-client privilege, the attorney work product doctrine or any
16 other privilege or is violative of a right of privacy or calls for the disclosure of confidential and/or
17 proprietary information or information otherwise protected as a trade secret. Inadvertent production
18 of any such document shall not constitute a waiver of any privilege or any other ground for objecting
19 to discovery with respect to such document or any other document, or with respect to the subject
20 matter thereof, or the information contained therein, nor shall inadvertent production waive
21 Defendant’s right to object to the use of any such document or the information contained therein
22 during any subsequent proceeding.

23 2. Defendant does not waive: (1) any objections as to the admissibility of evidence,
24 competency of, relevancy of, materiality of, or privilege attaching to any document produced; or (2)
25 the right to object to other discovery requests or undertakings involving or reflecting the subject
26 matter of documents requested herein. No response or production in response to these requests
27 constitutes or should be construed as an admission respecting relevancy or admissibility of any
28 document or the truth or accuracy of any statement, characterization or other information contained

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DEFENDANT’S RESPONSE TO PLAINTIFF’S FIRST SET OF DOCUMENT REQUESTS

1 in any document. Defendant expressly does not concede the relevancy or materiality of any of these
2 requests or the subject matter to which they refer.

3 3. Nothing contained herein or produced in response to the request herein consists of or
4 should be construed as an admission about the existence or non-existence of any document.

5 4. Defendant objects to the purported definitions and instructions set forth in the
6 document requests on the grounds they are vague, ambiguous, overbroad, burdensome and
7 oppressive and Defendant undertakes no obligations except as those that may be provided by the
8 California Code of Civil Procedure.

9 5. Defendant objects to producing any document already in the possession of Plaintiff
10 on the grounds that any such production is overly broad and unduly burdensome.

11 6. Defendant objects to each and all of the enumerated requests which seek "all
12 DOCUMENTS reflecting" and "all DOCUMENTS which refer to, or concern" pursuant to Calcor
13 Space Facility, Inc. v. Superior Court, 53 Cal. App. 4th 216 (1997), on the grounds that the requests
14 are unlimited in scope, require Defendant to speculate about what is meant by "reflecting," and
15 "concern" and accordingly are overly broad, unduly burdensome and seek irrelevant, privileged
16 material. Moreover, Defendant objects to the entire set of Requests in that it is burdensome and
17 oppressive, particularly given its subparts and interrogatory nature and as inter-related with other
18 written discovery.

19 7. Defendant objects to the requests to the extent that they call for the production of
20 documents not within Defendant's possession, custody, or control.

21 8. Plaintiff objects to the requests to the extent that they seek proprietary and/or
22 confidential information, or information that is otherwise protected as a trade secret.

23 9. Plaintiff incorporates by this reference each and all of the foregoing general responses
24 and objections into the following enumerated responses.

25 **RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS**

26 **REQUEST NO. 1:**

27 All WRITINGS that were or should have been identified in your response to Plaintiffs
28 concurrently served first set of "form interrogatories - employment law".

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2.

DEFENDANT'S RESPONSE TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS

1 **RESPONSE TO REQUEST NO. 1:**

2 Defendant further objects to this Request for the reason that it is vague and ambiguous as to
3 the meaning of “should have been identified.”

4 Without waiving its general and specific objections, Defendants serves herewith copies of all
5 documents identified in its responses to Plaintiff’s Form Interrogatories.

6 **REQUEST NO. 2:**

7 All WRITINGS that discuss or refer or relate to the termination of Plaintiff’s employment.

8 **RESPONSE TO REQUEST NO. 2:**

9 Defendant objects to this Request for the additional reason that Plaintiff’s employment was
10 not terminated. She resigned.

11 **REQUEST NO. 3:**

12 All WRITINGS that you sent to or received from Lucy Messerschmidt.

13 **RESPONSE TO REQUEST NO. 3:**

14 Defendant objects to this Request for the reason that it is vague and overbroad and not
15 limited in scope or time. Without waiving its general and specific objections. Defendant produces
16 all “writings” that could be located from Plaintiff to the Club or from the Club to Plaintiff.

17 **REQUEST NO. 4:**

18 All WRITINGS that refer to Lucy Messerschmidt.

19 **RESPONSE TO REQUEST NO. 4:**

20 Defendant objects to this Request for the reason that it is hopelessly vague and overbroad and
21 would include writings covered by the attorney-client and attorney work product doctrines. Without
22 waiving its general and specific objections. Defendant produces all Club documents that could be
23 located that “refer” to Plaintiff as Defendant understands the intent and meaning of that word.

24 **REQUEST NO. 5:**

25 All WRITINGS that either constitute or discuss the personnel file of Lucy Messerschmidt.

26 **RESPONSE TO REQUEST NO. 5:**

27 A copy of all writings in Plaintiff’s personnel file is served herewith.

28

1 **REQUEST NO. 6:**

2 All WRITINGS that constitute or refer to policies or procedures of yours regarding or
3 relating to state or federal law regarding age discrimination in the workplace. The scope of this
4 request is from January 1, 2004 through June 30, 2008.

5 **RESPONSE TO REQUEST NO. 6:**

6 Copies of the Employee Manuals and the Prohibition Against Harassment Policy, which
7 Plaintiff signed on October 2, 2006, are served herewith. In addition, the required and appropriate
8 notices for the DFEH and the EEOC are and were posted on the walls near the time clock at the
9 Club. They may be reviewed on the website of the California Department of Industrial Relations at
10 <http://www.dir.ca.gov/wpnadb.html>. In addition, all new hires are given and asked to acknowledge
11 receipt of documents including the brochure printed by the DFEH. A copy of these are produced
12 herewith.

13 **REQUEST NO. 7:**

14 All WRITINGS that set forth or discuss your document retention policy since January 1,
15 2004.

16 **RESPONSE TO REQUEST NO. 7:**

17 Defendant responds that there is no official document retention policy at the Club. However,
18 most records will be kept for seven years pursuant to general accounting principles.

19 **REQUEST NO. 8:**

20 All WRITINGS since January 1, 2004 that set forth or discuss policies you have followed to
21 backup or otherwise preserve your email communications.

22 **RESPONSE TO REQUEST NO. 8:**

23 Defendant responds that there is no official back-up policy. However, the Club has a back-
24 up server that maintains copies of e-mails for approximately one month.

25 **REQUEST NO. 9:**

26 All WRITINGS since January 1, 2001 that constitute or refer or relate to civil lawsuits or
27 arbitration demands pertaining to claims of age discrimination in your employment practices.

28 **RESPONSE TO REQUEST NO. 9:**

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4.

1 The only two lawsuits or arbitration demands of which Defendant is aware against Defendant
2 is this action and the action of Dave S. Perry v. VH Property Corporation. A true and correct copy
3 of that Complaint is served herewith.

4 **REQUEST NO. 10:**

5 All WRITINGS since January 1, 2001 that constitute or refer or relate to civil lawsuits or
6 arbitration demands pertaining to claims against you for wrongful termination relating to age
7 discrimination in your employment practices.

8 **RESPONSE TO REQUEST NO. 10:**

9 Please see Defendant's Response to Request No. 9, above.

10 **REQUEST NO. 11:**

11 All WRITINGS since January 1, 2001 that constitute or refer to lawsuits or arbitration
12 demands against you for wrongful termination of employment relating either to age discrimination in
13 your employment practices or the retaliatory termination of employment after an employee(s)
14 objected to employment practices that violated either Government Code § 12940(a) or the
15 comparable anti-discrimination statutes in Title VII of the United States Code.

16 **RESPONSE TO REQUEST NO. 11:**

17 Please see Defendant's Response to Request No. 9, above.

18 **REQUEST NO. 12:**

19 All WRITINGS since January 1, 2001 that constitute or refer or relate to complaints against
20 you filed with either the EEOC or the DFEH regarding either age discrimination or retaliation
21 against employees who opposed unlawful discrimination of any kind.

22 **RESPONSE TO REQUEST NO. 12:**

23 Defendant responds that the only such responsive writings are the Complaint in this action
24 and the DFEH Charge and Notice of Case Closure attached thereto.

25 **REQUEST NO. 13:**

26 All WRITINGS that refer to this lawsuit. This includes but is not limited to WRITINGS that
27 refer or relate to the post on TMZ.com regarding this lawsuit.

28 **RESPONSE TO REQUEST NO. 13:**

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1 Defendant objects for the reason that this Request is overly broad and vague. The only
2 documents of which Defendant is aware of that “refer” to this lawsuit are the pleadings and
3 discovery files in this case and files and records of counsel for Defendant, which are attorney-client
4 and attorney work product privileged. Without waiving its general and specific objections,
5 Defendant produces herewith a hard copy of the materials found on the TMZ.com website.

6 **REQUEST NO. 14:**

7 All WRITINGS from January 1,2004 to the present that refer or relate to allegations that you
8 have violated California law regarding meal breaks.

9 **RESPONSE TO REQUEST NO. 14:**

10 In addition to the files and records of this case and the Perry case, the only other such
11 allegation of which Defendant is aware is Plaintiff’s Labor Commissioner Claim, a copy of which is
12 served herewith.

13 **REQUEST NO. 15:**

14 All WRITINGS from January 1,2004 to the present that refer or relate to allegations that you
15 have violated California law regarding rest breaks.

16 **RESPONSE TO REQUEST NO. 15:**

17 Please see Defendant’s response to Request No. 14.

18 **REQUEST NO. 16:**

19 All WRITINGS from January 1, 2004 to the present that constitute or refer to policies or
20 procedures of yours regarding or relating to California law regarding meal or rest breaks in the
21 workplace. This request includes WRITINGS intended to ensure that your managers and supervisors
22 at the Trump National Golf Club properly implemented such policies in compliance with the law.

23 **RESPONSE TO REQUEST NO. 16:**

24 Defendant objects to this Request for the reason that it is vague, compound, and ambiguous.
25 Without waiving its general and specific objections, Defendant serves herewith all its writings that
26 regard or relate to meal and rest periods.

27 **REQUEST NO. 17:**

28 All WRITINGS from January 1,2004 to the present that constitute or refer to policies or

1 procedures of yours regarding or relating to age discrimination. This request includes WRITINGS
2 intended to ensure that your managers and supervisors at the Trump National Golf Club properly
3 implemented such policies in compliance with the law.

4 **RESPONSE TO REQUEST NO. 17:**

5 Please see Defendant's Response to Request No. 6, above. In addition, Defendant complies
6 with the State requirements of AB 1825 Training for Managers.

7 Dated: ~~May 5~~ ^{June 18}, 2009

8
9
10 Tony Skogen
11 TONY R. SKOGEN
12 HELENE WASSERMAN
13 CHRISTINA HANNA
14 LITTLER MENDELSON
15 A Professional Corporation
16 Attorneys for Defendant
17 VH PROPERTY CORPORATION dba
18 TRUMP NATIONAL GOLF CLUB
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LITTLER MENDELSON
Attorneys at Law
2000 Century Park East
Suite 2000
Beverly Hills, CA 90210
Tel: 310.551.1000

Firmwide: 89789884 | 026032.1016

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a
3 party to the within action. My business address is 2049 Century Park East, 5th Floor, Los Angeles,
4 California 90067.3107. On June 18, 2009, I served the within document(s):

5 **DEFENDANT'S RESPONSE TO PLAINTIFF'S FIRST SET OF C.C.P. § 2031.010 ET SEQ**
6 **DOCUMENT REQUESTS TO DEFENDANT VH PROPERTY CORPORATION DBA TRUMP**
7 **NATIONAL GOLF CLUB**

- 8 by placing a true copy of the document(s) listed above for collection and mailing
9 following the firm's ordinary business practice in a sealed envelope with postage
10 thereon fully prepaid for deposit in the United States mail at Los Angeles,
11 California addressed as set forth below.
- 12 by depositing a true copy of the same enclosed in a sealed envelope, with delivery
13 fees provided for, in an overnight delivery service pick up box or office designated
14 for overnight delivery, and addressed as set forth below.

15 **Jeffrey W. Cowan, Esq.**
16 **The Cowan Law Firm**
17 **1541 Ocean Avenue**
18 **Suite 200**
19 **Santa Monica, CA 90401-1204**

20 I am readily familiar with the firm's practice of collection and processing
21 correspondence for mailing and for shipping via overnight delivery service. Under that practice it
22 would be deposited with the U.S. Postal Service or if an overnight delivery service shipment,
23 deposited in an overnight delivery service pick-up box or office on the same day with postage or
24 fees thereon fully prepaid in the ordinary course of business.

25 I declare under penalty of perjury under the laws of the State of California that the
26 above is true and correct. Executed on June 18, 2009, at Los Angeles, California.

27 _____
28 Mary Ann Gerard

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PROOF OF SERVICE

EXHIBIT 11

The Cowan Law Firm

1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
Facsimile: (310) 394-1430
www.cowan-law.com

July 14, 2009

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Email to tskogen@littler.com & Fax to (310) 553-5583

Tony R. Skogen, Esq.
Littler Mendelson, P.C.
2049 Century Park East
Fifth Floor
Los Angeles, CA 90067

Re: Lucy Messerschmidt v. VH Property Corp, LASC Case No. BC 403 087

Dear Mr. Skogen:

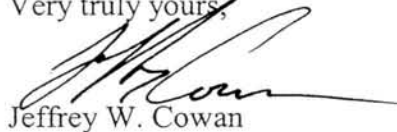
Your client's responses to Plaintiff's first sets of special interrogatories, form interrogatories, and document requests are deficient. They also contain *many* objections that are improper not only because they were waived but also because they are boilerplate or contrary to California law.

The subject deficiencies are important because they prejudice our ability not only to prosecute and prove the claims of Plaintiff and the class but also to mediate intelligently and provide the information necessary for the Court to approve any settlement that might be reached regarding the class claims.

Please consider this letter an invitation to meet and confer. To that end, we enclose draft CRC Rule 3.1345 Statements with our analysis about why your responses are deficient. If you would like to discuss these issues, we are generally available to do so.

Because we have an August 5 deadline to move to compel, these issues must be resolved by July 24, 2009. If they are not, we will prepare a motion to compel and seek monetary sanctions against your client and your firm. We hope that is not necessary, and we look forward to hearing from you.

Very truly yours,



Jeffrey W. Cowan

Enclosures

cc: Lucy Messerschmidt

1 **JEFFREY W. COWAN, ESQ., SBN 157474**
The Cowan Law Firm
2 1541 Ocean Avenue, Suite 200
Santa Monica, California 90401
3 Tel: (310) 394-1420
Fax: (310) 394-1430



DRAFT

4 Attorneys for **Plaintiff Lucy Messerschmidt**

5
6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**
9

10 Lucy Messerschmidt, individually and on
11 behalf of all others similarly situated,)

12 Plaintiff,)

13 vs.)

14 VH Property Corporation dba Trump National
15 Golf Club and DOES 1 through 100,)

16 Defendants.)

CASE NO. BC 403 087

(Action filed on December 2, 2008;
Assigned to Hon. Mark V. Mooney)

**Plaintiff Lucy Messerschmidt's CRC
Rule 3.1345 Separate Statement of
Items in Dispute re Plaintiff's Motion to
Compel Defendant VH Property Corp.
to Produce Documents and Provide
Further Responses**

Date:
Time:
Dept.: 68

17
18
19 **General Objections and Responses In Dispute:**

- 20 1. Defendant objects to the requests to the extent they call for the production of any
21 document that is protected by the attorney-client privilege, the attorney work product
22 doctrine or any other privilege or is violative [*sic*] of a right of privacy or calls for the
23 disclosure of confidential and/or proprietary information or information otherwise
24 protected as a trade secret. Inadvertent production of any such document shall not
25 constitute a waiver or any privilege of any privilege or any other ground for objecting to
26 discovery with respect to such document or any other document, or with respect to the
27 subject matter thereof, or the information contained therein, nor shall inadvertent
28

1 production waive Defendant's right to object to the use of any such document or the
2 information contained therein during any subsequent proceeding.

- 3 2. Defendant does not waive: (1) any objections as to the admissibility of evidence,
4 competency of, relevancy of, materiality of, or privilege attaching to any document
5 produced; or (2) the right to object to other discovery requests or undertakings involving
6 or reflecting the subject matter of documents requested herein. No response or production
7 in response to these requests constitutes or should be construed as an admission respecting
8 relevancy or admissibility of any document or the truth or accuracy of any statement,
9 characterization or other information contained in any document. Defendant expressly
10 does not concede the relevancy or materiality of any of these requests or the subject matter
11 to which they refer.
- 12 3. Nothing contained herein or produced in response to the request herein consists of or
13 should be construed as an admission about the existence or non-existence of any
14 document.
- 15 4. Defendant objects to the purported definitions and instructions set forth in the document
16 requests on the grounds they are vague, ambiguous, overbroad, burdensome and
17 oppressive and Defendant undertakes no obligations except as those that may be provided
18 by the California Code of Civil Procedure.
- 19 5. Defendant objects to producing any document already in the possession of Plaintiff on the
20 grounds that any such production is overly broad and unduly burdensome.
- 21 6. Defendant objects to each and all of the enumerated requests which seek "all
22 DOCUMENTS reflecting" and "all DOCUMENTS which refer to, or concern" pursuant
23 to Calcor Space Facility, Inc. v. Superior Court, 53 Cal. App. 4th 216 (1997), on the
24 grounds that the requests are unlimited in scope, require Defendant to speculate about
25 what is meant by "reflecting," and "concern" and accordingly are overly broad, unduly
26 burdensome and seek irrelevant, privileged material. Moreover, Defendant objects to the
27 entire set of Requests in that it is burdensome and oppressive, particularly given its
28 subparts and interrogatory nature and as inter-related with other written discovery.

- 1 7. Defendant objects to the requests to the extent that they call for the production of
2 documents not within Defendant's possession, custody, or control.
- 3 8. Plaintiff [*sic*] objects to the requests to the extent that they seek proprietary and/or
4 confidential information, or information that is otherwise protected as a trade secret.
- 5 9. Plaintiff [*sic*] incorporates by this reference each and all of the foregoing general
6 responses and objections into the following enumerated responses.

7 **Reason Further Response Should Be Compelled:**

8 This general objection is improper for multiple reasons. First, Defendant failed to respond
9 on time, thereby waiving all objections. *See* C.C.P. § 2031.300.

10 Second, a party may not assert general objections to the extent they go to individual
11 requests (as Defendants purport to do here) and then purport to incorporate them into each
12 individual response. Section § 2031.210 make this clear. Not only does the statute plainly bar
13 these kinds of general objections, but the prohibition serves a compelling purpose: without it
14 litigants would be forced to guess as to which request the general objections pertained and for
15 which responsive information was being withheld.

16 Third, some of the "objections" are *prima facie* meritless. The reference to the *Calcor*
17 appellate decision is a misplaced boilerplate objection because the subject request by Plaintiff
18 contained none of the instructions and definitions that the *Calcor* court commented on
19 disapprovingly.

20
21 **Request Number 2:**

22 All WRITINGS that discuss or refer or relate to the termination of Plaintiff's employment.

23 **Response Given:**

24 Defendant objects to this Request for the additional reason that Plaintiff's employment was not
25 terminated. She resigned.

26 **Reason Further Response Should Be Compelled:**

27 The term "termination of employment" does not implicate how the employment
28 relationship ended. Plaintiff alleges she was fired. Defendant contends that Plaintiff resigned.

1 Either way, responsive documents that discuss the termination (or end) of the employment
2 relationship are directly relevant to proving the claims and defenses in this action.

3 Moreover, the failure to assert the attorney-client relationship or work product doctrine to
4 this specific request means that all documents that “discuss or refer or relate” to the termination
5 of the employment relationship must be produced. [For the reasons discussed above, the
6 boilerplate general objection purportedly incorporated into the response is void because it
7 violates C.C.P. § 2031.210(a).]

8 Finally, the failure to respond on time waived all objections. C.C.P. § 2031.300.
9

10 **Request Number 3:**

11 All WRITINGS that you sent to or received from Lucy Messerschmidt.

12 **Response Given:**

13 Defendant objects to this Request for the reason that it is vague and overbroad and not limited
14 in scope or time. Without waiving its general and specific objections, Defendant produces all
15 “writings” that could be located from Plaintiff to the Club or from the Club to Plaintiff.

16 **Reason Further Response Should Be Compelled:**

17 First, the general objections are improper (for the reasons discussed above).

18 Second, the response fails to state that all responsive documents in Defendant’s
19 “possession, custody or control” will be produced (subject to the asserted privilege objections)
20 as § 2031.220 requires.

21 Third, the late response waived all objections.

22 Fourth, “vagueness” objection lacks merit because there is nothing uncertain about the
23 request.
24

25 **Request Number 4:**

26 All WRITINGS that refer to Lucy Messerschmidt.

27 **Response Given:**
28

1 Defendant objects to this Request for the reason that it is hopelessly vague and overbroad and
2 would include writings covered by the attorney-client and attorney work product doctrines.
3 Without waiving its general and specific objections, Defendant produces all Club documents
4 that could be located that “refer” to Plaintiff as Defendant understands the intent and meaning of
5 that word.

6 **Reason Further Response Should Be Compelled:**

7 The response fails to state that all responsive documents in Defendant’s “possession,
8 custody or control” will be produced (subject to the asserted privilege objections) as § 2031.220
9 requires.

10
11 **Request Number 6:**

12 All WRITINGS that constitute or refer to policies or procedures of yours regarding or relating to
13 state or federal law regarding age discrimination in the workplace. The scope of this request is
14 from January 1, 2004 through June 30, 2008.

15 **Response Given:**

16 Copies of the Employee Manuals and the Prohibition Against Harassment Policy, which
17 Plaintiff signed on October 2, 2006, are served herewith. In addition, the required and
18 appropriate notices for the DFEH and the EEOC are and were posted on the walls near the time
19 clock at the Club. They may be reviewed on the website of the California Department of
20 Industrial Relations at <http://www.dir.ca.gov/wpnadb.html>. In addition, all new hires are given
21 and asked to acknowledge receipt of documents including the brochure printed by the DFEH. A
22 copy of these are produced herewith.

23 **Reason Further Response Should Be Compelled:**

24 No objections were asserted (and they were waived by the late response), yet the Response fails
25 to state that all responsive documents in Defendant’s possession, custody and control will be
26 produced – as § 2031.220 requires.

1 **Request Number 7:**

2 All WRITINGS that set forth or discuss your document retention policy since January 1, 2004.

3 **Response Given:**

4 Defendant responds that there is no official document retention policy at the Club. However,
5 most records will be kept for seven years pursuant to general accounting principles.

6 **Reason Further Response Should Be Compelled:**

7 The response violates § 2031.230's requirement of specifying that a diligent search and inquiry
8 has been conducted and whether responsive documents ever existed.

9
10 **Request Number 8:**

11 All WRITINGS since January 1, 2004 that set forth or discuss policies you have followed to
12 backup or otherwise preserve your email communications.

13 **Response Given:**

14 Defendant responds that there is no official back-up policy. However, the Club has a back-up
15 server that maintains copies of e-mails for approximately one month.

16 **Reason Further Response Should Be Compelled:**

17 The response violates § 2031.230's requirement of specifying that a diligent search and inquiry
18 has been conducted and whether responsive documents ever existed.

19
20 **Request Number 14:**

21 All WRITINGS from January 1, 2004 to the present that refer or relate to allegations that you
22 have violated California law regarding meal breaks.

23 **Response Given:**

24 In addition to the files and records of this case and the Perry case, the only other such
25 allegation of which Defendant is aware is Plaintiff's Labor Commissioner Claim, a copy of
26 which is served herewith.

27 **Reason Further Response Should Be Compelled:**

1 No objections were asserted (and they were waived anyway by being late), yet Defendant
2 has failed to agree that responsive documents from the *Perry* case will be produced. Because
3 that lawsuit contains similar wage and hour allegations, documents in that lawsuit (e.g., attorney
4 notes, communications between counsel and Defendant) that refer or relate to the subject
5 allegations are directly relevant to proving the complaint's allegations in this lawsuit.

6
7 **Request Number 15:**

8 All WRITINGS from January 1, 2004 to the present that refer or relate to allegations that you
9 have violated California law regarding rest breaks.

10 **Response Given:**

11 Please see Defendant's response to Request No. 14.

12 **Reason Further Response Should Be Compelled:**

13 The analysis is the same as regarding No. 14 above.

14
15 **Request Number 16:**

16 All WRITINGS from January 1, 2004 to the present that constitute or refer to policies or
17 procedures of yours regarding or relating to California law regarding meal or rest breaks in the
18 workplace. This request includes WRITINGS intended to ensure that your managers and
19 supervisors at the Trump National Golf Club properly implemented such policies in compliance
20 with the law.

21 **Response Given:**

22 Defendant objects to this Request for the reason that it is vague, compound, and ambiguous.
23 Without waiving its general and specific objections, Defendant serves herewith all its writings
24 that regard or relate to meal and rest periods.

25 **Reason Further Response Should Be Compelled:**

26 There is no prohibition against compound document requests (such a rule pertains only to
27 RFAs and interrogatories), and there is nothing ambiguous about the request.

28 Plus, all objections were waived by the late response.

1 As a result, all responsive documents should be ordered produced.
2

3 **Request Number 17:**

4 All WRITINGS from January 1, 2004 to the present that constitute or refer to policies or
5 procedures of yours regarding or relating to age discrimination. This request includes
6 WRITINGS intended to ensure that your managers and supervisors at the Trump National Golf
7 Club properly implemented such policies in compliance with the law.

8 **Response Given:**

9 Please see Defendant's Response to Request No. 6, above. In addition, Defendant complies
10 with the State requirements of AB 1825 Training for Managers.

11 **Reason Further Response Should Be Compelled:**

12 The analysis is the same as for Item No. 6.
13
14

15 Respectfully submitted,

16 **THE COWAN LAW FIRM**



DRAFT

17 DATED: July __, 2009

18 By:

19 Jeffrey W. Cowan
20 Attorney for **Plaintiff Lucy**
21 **Messerschmidt**
22
23
24
25
26
27
28

HP LaserJet M2727nf MFP

Fax Confirmation Report

The Cowan Law Firm
(310) 394-1430
Jul-14-2009 6:54PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
1520	7/14/2009	6:43:00PM	Send	13105535583	10:57	35	OK

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www.cowan-law.com

July 14, 2009

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Email to lskogen@littler.com & Fax to (310) 553-5583

Tony R. Skogen, Esq.
Littler Mendelson, P.C.
2049 Century Park East
Fifth Floor
Los Angeles, CA 90067

Re: Lucy Messerschmidt v. VH Property Corp. LASC Case No. BC 403 087

Dear Mr. Skogen:

Your client's responses to Plaintiff's first sets of special interrogatories, form interrogatories, and document requests are deficient. They also contain *many* objections that are improper not only because they were waived but also because they are boilerplate or contrary to California law.

The subject deficiencies are important because they prejudice our ability not only to prosecute and prove the claims of Plaintiff and the class but also to mediate intelligently and provide the information necessary for the Court to approve any settlement that might be reached regarding the class claims.

Please consider this letter an invitation to meet and confer. To that end, we enclose draft CRC Rule 3.1345 Statements with our analysis about why your responses are deficient. If you would like to discuss these issues, we are generally available to do so.

Because we have an August 5 deadline to move to compel, these issues must be resolved by July 24, 2009. If they are not, we will prepare a motion to compel and seek monetary sanctions against your client and your firm. We hope that is not necessary, and we look forward to hearing from you.

Very truly yours,


Jeffrey W. Cowan

Enclosures
cc: Lucy Messerschmidt

EXHIBIT 12

The Cowan Law Firm

1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
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www.cowan-law.com

July 24, 2009

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Fax to (310) 553-5583 & U.S. Mail

Tony R. Skogen, Esq.
Littler Mendelson, P.C.
2049 Century Park East
Fifth Floor
Los Angeles, CA 90067

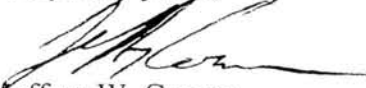
Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

Dear Mr. Skogen:

Today you telephoned me and advised that you will serve supplemental responses to Plaintiff's initial discovery (special and form interrogatories, and a document request). You also said you would like more time to consider some of the document issues (which we discussed in detail yesterday during our two hour meeting in your office) and then confer further.

To allow me to accommodate you without incurring prejudice, you agreed to extend Plaintiff's deadline to file a motion to compel to August 31 (in part because of my vacation next month). You and I also agreed to discuss these issues in person on Wednesday July 29, 2009.

Very truly yours,


Jeffrey W. Cowan

JWC:vad

HP LaserJet M2727nf MFP

Fax Confirmation Report

The Cowan Law Firm
(310) 394-1430
Jul-24-2009 1:27PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
1583	7/24/2009	1:26:49PM	Send	13105535583	0:37	1	OK

The Cowan Law Firm

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Santa Monica, CA 90401-1204
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Facsimile: (310) 394-1430
www.cowan-law.com

July 24, 2009

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Fax to (310) 551-5583 & U.S. Mail

Tony R. Skogen, Esq.
Little Mendelson, P.C.
2049 Century Park East
Fifth Floor
Los Angeles, CA 90067

Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

Dear Mr. Skogen:

Today you telephoned me and advised that you will serve supplemental responses to Plaintiff's initial discovery (special and form interrogatories, and a document request). You also said you would like more time to consider some of the document issues (which we discussed in detail yesterday during our two hour meeting in your office) and then confer further.

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Very truly yours,


Jeffrey W. Cowan

JWC:vad

EXHIBIT 13

The Cowan Law Firm

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Facsimile: (310) 394-1430
www.cowan-law.com

August 26, 2009

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Fax to (310) 553-5583 & Email

Tony R. Skogen, Esq.
Helene Wasserman, Esq.
Littler Mendelson, P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067

Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

Dear Counsel:

I'm writing to confirm today's conversation regarding discovery and procedural issues.

First, you agreed that (a) my deadline to file a motion to compel regarding outstanding discovery issues will be extended to 30 days from when the parties mediate (thereby letting us defer the issues of attorney-client and work product waiver by VH Property Corp), and (b) you will provide by September 4, 2009 supplemental responses to other discovery items where you have previously agreed to cure certain technical defects.

Second, you will use the available dates I gave you to provide proposed dates for me to conduct my previously noticed PMQ deposition and for you thereafter to depose Plaintiff Lucy Messerschmidt.

Third, you agreed to advise me in writing today whether anyone at The Trump National Golf Club other than General Manager David Conforti is a managing agent.

Fourth, you will send me a draft stipulated order continuing the deadline to mediate and the post-mediation status conference.

Finally, I will prepare a notice of related case for the two lawsuits and (after Tony Orshansky has "blessed" it) submit it for your review. After it has been filed, we can submit a stipulated order to have the lawsuits consolidated.

Very truly yours,


Jeffrey W. Cowan

JWC:vad

HP LaserJet M2727nf MFP

Fax Confirmation Report

The Cowan Law Firm
(310) 394-1430
Aug-26-2009 1:10PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
1687	8/26/2009	1:09:35PM	Send	13105535583	0:41	1	OK

The Cowan Law Firm

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www.cowan-law.com

August 26, 2009

Jeffrey W. Cowan
Email: jrc@cowan-law.com

Via Fax to (310) 553-5583 & Email

Tony R. Skogen, Esq.
Helene Wasserman, Esq.
Littler Mendelson, P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067

Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

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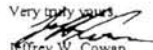
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Very truly yours,


Jeffrey W. Cowan

JWC:vad

EXHIBIT 14

The Cowan Law Firm

1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
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www.cowan-law.com

November 24, 2009

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Fax to (310) 553-5583 & U.S. Mail

Tony R. Skogen, Esq.
Helene Wasserman, Esq.
Littler Mendelson, P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067

Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

Dear Counsel:

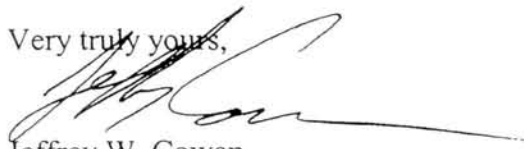
I'm writing to confirm both my November 17 conversation with Ms. Wasserman and my phone call today with Mr. Skogen.

As I left the November 17 mediation, Ms. Wasserman and I agreed to extend my December 17, 2009 deadline to file motions to compel regarding Plaintiff's 1st sets of written discovery – thereby allowing our clients to evaluate the Mediator's settlement proposal without spending time and money on these issues (including the further responses you previously agreed to provide). Ms. Wasserman and I agreed to continue the deadlines until after the holiday season.

Today, Mr. Skogen and I agreed for similar reasons to extend Plaintiff's December 9, 2009 deadline to move to compel regarding VH Property's response to Plaintiff's 3rd § 2031 request. We further agreed to extend all of these deadlines to January 11, 2010.

Please contact me immediately if you believe I have misstated any of these terms.

Very truly yours,


Jeffrey W. Cowan

JWC:vad

P.S. Please accept my best wishes for a happy Thanksgiving

cc: Anthony Orshansky, Esq.
Lucy Messerschmidt

HP LaserJet M2727nf MFP

Fax Confirmation Report

The Cowan Law Firm
(310) 394-1430
Nov-24-2009 2:22PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
1965	11/24/2009	2:21:53PM	Send	13105535583	0:39	1	OK

The Cowan Law Firm

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November 24, 2009

Jeffrey W. Cowan
Email: jfcowan@cowan-law.com

Via Fax to (310) 553-5583 & U.S. Mail

Tony R. Skogen, Esq.
Helene Wasserman, Esq.
Littler Mendelson, P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067

Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

Dear Counsel:

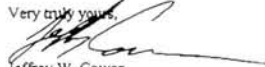
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Please contact me immediately if you believe I have misstated any of these terms.

Very truly yours,


Jeffrey W. Cowan

JWC:vad

P.S. Please accept my best wishes for a happy Thanksgiving

cc: Anthony Orshansky, Esq.
Lucy Messerschmidt

EXHIBIT 15

The Cowan Law Firm

1541 Ocean Avenue, Suite 200
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Facsimile: (310) 394-1430
www.cowan-law.com

December 17, 2009

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Fax to (949) 450-8033 & email to tcox@hbwillp.com

Tracy Cox, Esq.
Hodel Briggs Winter LLP
8105 Irvine Center Drive
Suite 1400
Irvine, CA 92618

Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087


Dear Ms. Cox:

At today's status conference, you expressed interest in trying to resolve informally the document issues (most specifically the waiver of attorney-client privilege and work product doctrine) that I previously conferred about at length with your predecessor counsel Tony Skogen and Helene Wasserman.

Enclosed is a draft CRC Rule 3.1345 statement regarding the document issues. I am generally available next week if you want to discuss them. Just let me know as soon as possible when you would like to do so. [My January calendar requires that I prepare and file my motions in December if we cannot resolve these issues.]

Finally, Mr. Skogen previously agreed to serve supplemental responses to not only the document request (regarding technical issues; not those involving privileged documents) but also my form and special interrogatories (see the draft Rule 3.1345 statements I previously sent him). That has not yet been done. Please advise by December 23, 2009 whether Mr. Skogen's promise will be honored or whether I need to commence motion practice on those issues as well.

Very truly yours,



Jeffrey W. Cowan

Enclosure

cc: Anthony Orshansky, Esq.
Lucy Messerschmidt

1 **JEFFREY W. COWAN, ESQ., SBN 157474**
The Cowan Law Firm
2 1541 Ocean Avenue, Suite 200
Santa Monica, California 90401
3 Tel: (310) 394-1420
Fax: (310) 394-1430

4 Attorneys for **Plaintiff Lucy Messerschmidt**

 **DRAFT**

5
6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**
9

10 Lucy Messerschmidt, individually and on
11 behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 VH Property Corporation dba Trump National
15 Golf Club and DOES 1 through 100,

16 Defendants.

) CASE NO. BC 403 087

) (Action filed on December 2, 2008;
) Assigned to Hon. Mark V. Mooney)

) **Plaintiff Lucy Messerschmidt's CRC**
) **Rule 3.1345 Separate Statement of**
) **Items in Dispute re Plaintiff's Motion to**
) **Compel Defendant VH Property Corp.**
) **to Produce Documents and Provide**
) **Further Responses**

17 Date:
18 Time:
19 Dept.: 68

20 **General Objections and Responses In Dispute:**

- 21 1. Defendant objects to the requests to the extent they call for the production of any
22 document that is protected by the attorney-client privilege, the attorney work product
23 doctrine or any other privilege or is violative [*sic*] of a right of privacy or calls for the
24 disclosure of confidential and/or proprietary information or information otherwise
25 protected as a trade secret. Inadvertent production of any such document shall not
26 constitute a waiver or any privilege of any privilege or any other ground for objecting to
27 discovery with respect to such document or any other document, or with respect to the
28 subject matter thereof, or the information contained therein, nor shall inadvertent

- 1 production waive Defendant's right to object to the use of any such document or the
2 information contained therein during any subsequent proceeding.
- 3 2. Defendant does not waive: (1) any objections as to the admissibility of evidence,
4 competency of, relevancy of, materiality of, or privilege attaching to any document
5 produced; or (2) the right to object to other discovery requests or undertakings involving
6 or reflecting the subject matter of documents requested herein. No response or production
7 in response to these requests constitutes or should be construed as an admission respecting
8 relevancy or admissibility of any document or the truth or accuracy of any statement,
9 characterization or other information contained in any document. Defendant expressly
10 does not concede the relevancy or materiality of any of these requests or the subject matter
11 to which they refer.
- 12 3. Nothing contained herein or produced in response to the request herein consists of or
13 should be construed as an admission about the existence or non-existence of any
14 document.
- 15 4. Defendant objects to the purported definitions and instructions set forth in the document
16 requests on the grounds they are vague, ambiguous, overbroad, burdensome and
17 oppressive and Defendant undertakes no obligations except as those that may be provided
18 by the California Code of Civil Procedure.
- 19 5. Defendant objects to producing any document already in the possession of Plaintiff on the
20 grounds that any such production is overly broad and unduly burdensome.
- 21 6. Defendant objects to each and all of the enumerated requests which seek "all
22 DOCUMENTS reflecting" and "all DOCUMENTS which refer to, or concern" pursuant
23 to Calcor Space Facility, Inc. v. Superior Court, 53 Cal. App. 4th 216 (1997), on the
24 grounds that the requests are unlimited in scope, require Defendant to speculate about
25 what is meant by "reflecting," and "concern" and accordingly are overly broad, unduly
26 burdensome and seek irrelevant, privileged material. Moreover, Defendant objects to the
27 entire set of Requests in that it is burdensome and oppressive, particularly given its
28 subparts and interrogatory nature and as inter-related with other written discovery.

1 7. Defendant objects to the requests to the extent that they call for the production of
2 documents not within Defendant's possession, custody, or control.

3 8. Plaintiff [*sic*] objects to the requests to the extent that they seek proprietary and/or
4 confidential information, or information that is otherwise protected as a trade secret.

5 9. Plaintiff [*sic*] incorporates by this reference each and all of the foregoing general
6 responses and objections into the following enumerated responses.

7 **Reason Further Response Should Be Compelled:**

8 This general objection is improper for multiple reasons. First, Defendant failed to respond
9 on time, thereby waiving all objections. *See* C.C.P. § 2031.300.

10 Second, a party may not assert general objections to the extent they go to individual
11 requests (as Defendants purport to do here) and then purport to incorporate them into each
12 individual response. Section § 2031.210 make this clear. Not only does the statute plainly bar
13 these kinds of general objections, but the prohibition serves a compelling purpose: without it
14 litigants would be forced either to guess as to which request the general objections pertained and
15 for which responsive information was being withheld or always meet and confer about every
16 item in document request.

17 Third, some of the "objections" are *prima facie* meritless. The reference to the *Calcor*
18 appellate decision is a misplaced boilerplate objection because the subject request by Plaintiff
19 contained none of the instructions and definitions that the *Calcor* court commented on
20 disapprovingly.

21
22 **Request Number 2:**

23 All WRITINGS that discuss or refer or relate to the termination of Plaintiff's employment.

24 **Response Given:**

25 Defendant objects to this Request for the additional reason that Plaintiff's employment was not
26 terminated. She resigned.

27 **Reason Further Response Should Be Compelled:**
28

1 The term “termination of employment” does not implicate how the employment
2 relationship ended. Plaintiff alleges she was fired. Defendant contends that Plaintiff resigned.
3 Either way, responsive documents that discuss the termination (or end) of the employment
4 relationship are directly relevant to proving the claims and defenses in this action.

5 Moreover, the failure to assert the attorney-client relationship or work product doctrine to
6 this specific request means that all documents that “discuss or refer or relate” to the termination
7 of the employment relationship must be produced. [For the reasons discussed above, the
8 boilerplate general objection purportedly incorporated into the response is void because it
9 violates C.C.P. § 2031.210(a).]

10 Finally, the failure to respond on time waived all objections. C.C.P. § 2031.300.

11
12 **Request Number 3:**

13 All WRITINGS that you sent to or received from Lucy Messerschmidt.

14 **Response Given:**

15 Defendant objects to this Request for the reason that it is vague and overbroad and not limited
16 in scope or time. Without waiving its general and specific objections, Defendant produces all
17 “writings” that could be located from Plaintiff to the Club or from the Club to Plaintiff.

18 **Reason Further Response Should Be Compelled:**

19 First, the general objections are improper (for the reasons discussed above).

20 Second, the response fails to state that all responsive documents in Defendant’s
21 “possession, custody or control” will be produced (subject to the asserted privilege objections)
22 as § 2031.220 requires.

23 Third, the late response waived all objections.

24 Fourth, “vagueness” objection lacks merit because there is nothing uncertain about the
25 request.

26
27 **Request Number 4:**

28 All WRITINGS that refer to Lucy Messerschmidt.

1 **Response Given:**

2 Defendant objects to this Request for the reason that it is hopelessly vague and overbroad and
3 would include writings covered by the attorney-client and attorney work product doctrines.
4 Without waiving its general and specific objections, Defendant produces all Club documents
5 that could be located that “refer” to Plaintiff as Defendant understands the intent and meaning of
6 that word.

7 **Reason Further Response Should Be Compelled:**

8 The response fails to state that all responsive documents in Defendant’s “possession,
9 custody or control” will be produced (subject to the asserted privilege objections) as § 2031.220
10 requires.

11
12 **Request Number 6:**

13 All WRITINGS that constitute or refer to policies or procedures of yours regarding or relating to
14 state or federal law regarding age discrimination in the workplace. The scope of this request is
15 from January 1, 2004 through June 30, 2008.

16 **Response Given:**

17 Copies of the Employee Manuals and the Prohibition Against Harassment Policy, which
18 Plaintiff signed on October 2, 2006, are served herewith. In addition, the required and
19 appropriate notices for the DFEH and the EEOC are and were posted on the walls near the time
20 clock at the Club. They may be reviewed on the website of the California Department of
21 Industrial Relations at <http://www.dir.ca.gov/wpnadb.html>. In addition, all new hires are given
22 and asked to acknowledge receipt of documents including the brochure printed by the DFEH. A
23 copy of these are produced herewith.

24 **Reason Further Response Should Be Compelled:**

25 No objections were asserted (and they were waived by the late response), yet the Response fails
26 to state that all responsive documents in Defendant’s possession, custody and control will be
27 produced – as § 2031.220 requires.

28

1 **Request Number 7:**

2 All WRITINGS that set forth or discuss your document retention policy since January 1, 2004.

3 **Response Given:**

4 Defendant responds that there is no official document retention policy at the Club. However,
5 most records will be kept for seven years pursuant to general accounting principles.

6 **Reason Further Response Should Be Compelled:**

7 The response violates § 2031.230's requirement of specifying that a diligent search and inquiry
8 has been conducted and whether responsive documents ever existed.

9
10 **Request Number 8:**

11 All WRITINGS since January 1, 2004 that set forth or discuss policies you have followed to
12 backup or otherwise preserve your email communications.

13 **Response Given:**

14 Defendant responds that there is no official back-up policy. However, the Club has a back-up
15 server that maintains copies of e-mails for approximately one month.

16 **Reason Further Response Should Be Compelled:**

17 The response violates § 2031.230's requirement of specifying that a diligent search and inquiry
18 has been conducted and whether responsive documents ever existed.

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1 **Request Number 14:**

2 All WRITINGS from January 1, 2004 to the present that refer or relate to allegations that you
3 have violated California law regarding meal breaks.

4 **Response Given:**

5 In addition to the files and records of this case and the Perry case, the only other such
6 allegation of which Defendant is aware is Plaintiff's Labor Commissioner Claim, a copy of
7 which is served herewith.

8 **Reason Further Response Should Be Compelled:**

9 No objections were asserted (and they were waived anyway by being late), yet Defendant
10 has failed to agree that responsive documents from the *Perry* case will be produced. Because
11 that lawsuit contains similar wage and hour allegations, documents in that lawsuit (*e.g.*, attorney
12 notes, communications between counsel and Defendant) that refer or relate to the subject
13 allegations are directly relevant to proving the complaint's allegations in this lawsuit.

14 Equally important, no objection has been asserted regarding the attorney-client privilege or
15 work product doctrine – thereby waiving such objections as to responsive documents from this
16 lawsuit. See § 2031.210(a)(3).

17 Finally, the response violates § 2031.210(a)(1)-(2) by failing to state without qualification
18 either that Defendant will comply with the request or lacks the ability to do so (with an
19 explanation as to why).

20
21 **Request Number 15:**

22 All WRITINGS from January 1, 2004 to the present that refer or relate to allegations that you
23 have violated California law regarding rest breaks.

24 **Response Given:**

25 Please see Defendant's response to Request No. 14.

26 **Reason Further Response Should Be Compelled:**

27 The analysis is the same as regarding No. 14 above.
28

1 **Request Number 16:**

2 All WRITINGS from January 1, 2004 to the present that constitute or refer to policies or
3 procedures of yours regarding or relating to California law regarding meal or rest breaks in the
4 workplace. This request includes WRITINGS intended to ensure that your managers and
5 supervisors at the Trump National Golf Club properly implemented such policies in compliance
6 with the law.

7 **Response Given:**

8 Defendant objects to this Request for the reason that it is vague, compound, and ambiguous.
9 Without waiving its general and specific objections, Defendant serves herewith all its writings
10 that regard or relate to meal and rest periods.

11 **Reason Further Response Should Be Compelled:**

12 There is no prohibition against compound document requests (such a rule pertains only to
13 RFAs and interrogatories), and there is nothing ambiguous about the request.

14 Plus, all objections were waived by the late response.

15 As a result, all responsive documents should be ordered produced.
16

17 **Request Number 17:**

18 All WRITINGS from January 1, 2004 to the present that constitute or refer to policies or
19 procedures of yours regarding or relating to age discrimination. This request includes
20 WRITINGS intended to ensure that your managers and supervisors at the Trump National Golf
21 Club properly implemented such policies in compliance with the law.

22 **Response Given:**

23 Please see Defendant's Response to Request No. 6, above. In addition, Defendant complies
24 with the State requirements of AB 1825 Training for Managers.

25 **Reason Further Response Should Be Compelled:**

26 The analysis is the same as for Item No. 6.
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Respectfully submitted,

THE COWAN LAW FIRM

DATED: December ____, 2009

By:



DRAFT

Jeffrey W. Cowan
Attorney for **Plaintiff Lucy
Messerschmidt**

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Fax Confirmation Report

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Dec-17-2009 6:06PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
2035	12/17/2009	6:04:06PM	Send	19494508033	1:49	10	OK

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December 17, 2009

Jeffrey W. Cowan
Email: jefcw@cowan-law.com

Via Fax to (949) 450-8033 & email to tcow@hbwlip.com

Tracy Cox, Esq.
Hodel Briggs Winter LLP
8105 Irvine Center Drive
Suite 1400
Irvine, CA 92618

Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

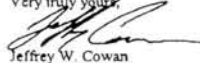
Dear Ms. Cox:

At today's status conference, you expressed interest in trying to resolve informally the document issues (most specifically the waiver of attorney-client privilege and work product doctrine) that I previously conferred about at length with your predecessor counsel Tony Skogen and Helene Wasserman.

Enclosed is a draft CRC Rule 3.1345 statement regarding the document issues. I am generally available next week if you want to discuss them. Just let me know as soon as possible when you would like to do so. (My January calendar requires that I prepare and file my motions in December if we cannot resolve these issues.)

Finally, Mr. Skogen previously agreed to serve supplemental responses to not only the document request (regarding technical issues; not those involving privileged documents) but also my form and special interrogatories (see the draft Rule 3.1345 statements I previously sent him). That has not yet been done. Please advise by December 23, 2009 whether Mr. Skogen's promise will be honored or whether I need to commence motion practice on those issues as well.

Very truly yours,



Jeffrey W. Cowan

Enclosure

cc: Anthony Orshansky, Esq.
Lucy Messerschmidt

EXHIBIT 16



HODEL BRIGGS WINTER^{LLP}

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December 23, 2009

SENT VIA FACSIMILE AND U.S. MAIL

Jeffrey W. Cowan, Esq.
The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, California 90401

Re: Messerschmidt v. VH Property Corporation dba Trump National Golf Club
Los Angeles County Superior Court, Case No. BC403087

Dear Mr. Cowan:

This letter addresses your assertion, both at the status conference and in your letter dated December 17, 2009, that VH Property Corporation dba Trump National Golf Club ("Trump") waived its attorney-client privilege with respect to Plaintiff's requests for production of documents. I will address the remaining issues raised in your December 17, 2009, letter under separate cover.

As an initial matter, as we discussed yesterday, there is a factual dispute regarding whether the discovery responses at issue were served late. Moreover, even if the responses *were* served late (which Trump disputes), Trump's alleged failure to timely serve responses was the result of mistake, inadvertence, or excusable neglect. Consequently, Trump is confident that the court will not find a waiver of attorney-client privilege based on the relevant facts. *See* Cal. Code Civ. Proc. § 2031.300(a)(2).¹

You also argued, both at the hearing yesterday and in your subsequent correspondence, that Mr. Skogen waived the attorney-client privilege because he

¹ Note that Trump has also satisfied Section 2031.300(a)(1) by subsequently serving a response that is in substantial compliance with the Code. The sufficiency of the responses is evidenced by your own separate statement that – with the exception of the waiver issue – addresses only technical deficiencies (e.g., failure to state that "all responsive documents in Defendant's possession, custody and control will be produced.").

Jeffrey Cowan, Esq.
December 23, 2009
Page 2

did not object on privilege grounds to the specific requests in question. Consequently, please confirm in writing that it is Plaintiff's position that her document requests were drafted to encompass attorney-client privileged correspondence and attorney work product. We will further address this issue upon receiving Plaintiff's confirmation.

With regard to timing, we are understanding of your January time constraints, but do not anticipate that these issues will be resolved in the next two weeks, particularly in light of the holidays. Consequently, Trump will extend Plaintiff's deadline to file a motion to compel until February 12, 2009.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tracy Cox". The signature is written in black ink and is positioned above the typed name and affiliation.

Tracy Cox
for Hodel Briggs Winter LLP

cc: Anthony Orshansky, Esq. (via facsimile and U.S. Mail)

EXHIBIT 17



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December 23, 2009

SENT VIA FACSIMILE AND U.S. MAIL

Jeffrey W. Cowan, Esq.
The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, California 90401

Re: Messerschmidt v. VH Property Corporation dba Trump National Golf Club
Los Angeles County Superior Court, Case No. BC403087

Dear Mr. Cowan:

This letter addresses the issues raised in your letter dated December 17, 2009, regarding VH Property Corporation dba Trump National Golf Club's ("Trump") responses to Plaintiff's requests for production of documents and special interrogatories.¹

We have reviewed the concerns listed in your separate statement. As an initial matter, because the separate statement is stamped "draft," please confirm that there is no other case law or authority on which Plaintiff intends to rely with regard to the discovery requests in dispute. While Trump is fully willing to work with Plaintiff to resolve these issues, it wishes to do so as efficiently as possible and, therefore, would like to address all of Plaintiff's authority at once. Piecemeal discussion of the issues in a serial fashion is not effective for either side.

We will confer with Trump on the issues that you flagged. To the extent that the individual discovery responses are deficient in form and do not meet statutory requirements, we anticipate that we will provide supplemental responses.

Next, we have reviewed the correspondence file, but have not found any reference to the agreement made by Tony Skogen to provide supplemental responses, although we did find your separate statements corresponding to Trump's responses

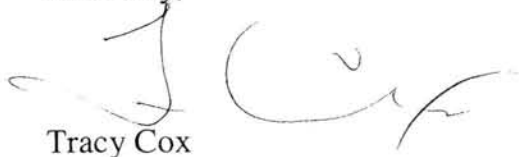
¹ This letter does not address the alleged waiver of the attorney-client privilege, which has been addressed in another letter under separate cover.

Jeffrey Cowan, Esq.
December 23, 2009
Page 2

to Plaintiff's discovery requests. Consequently, please respond in writing with Plaintiff's understanding of the asserted agreement. Once we receive your response, we will confirm the agreement with Mr. Skogen and give you a definitive answer regarding whether Trump will provide supplemental responses.

As stated in my letter sent concurrently herewith, we understand your January time constraints as a result of your calendar, but we do not anticipate that these issues will be resolved in the next two weeks, particularly in light of the holidays. Consequently, Trump will extend Plaintiff's deadline to file a motion to compel until February 12, 2009, and you can accept this letter as confirmation of such an extension.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tracy Cox', written over a light blue horizontal line.

Tracy Cox
for Hodel Briggs Winter LLP

cc: Anthony Orshansky, Esq. (via facsimile and U.S. Mail)

EXHIBIT 18



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January 11, 2010

SENT VIA FACSIMILE ONLY

Jeffrey W. Cowan, Esq.
The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, California 90401

Re: Messerschmidt v. VH Property Corporation dba Trump National Golf Club
Los Angeles County Superior Court, Case No. BC403087

Dear Mr. Cowan:

This letter confirms our conversation today in which the parties agreed that Plaintiff's deadline to file a motion to compel further responses to Plaintiff's discovery requests is extended to February 26, 2010.

Please contact me immediately in writing if you disagree with the foregoing.

Sincerely,

Tracy Cox
for Hodel Briggs Winter LLP

EXHIBIT 19



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January 11, 2010

SENT VIA U.S. MAIL ONLY

Jeffrey W. Cowan, Esq.
The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, California 90401

Re: Messerschmidt v. VH Property Corporation dba Trump National Golf Club
Los Angeles County Superior Court, Case No. BC403087

Dear Mr. Cowan:

This letter confirms that portion of our conversation today in which you answered the question posed in my December 23, 2009 letter. In my letter, I requested that you confirm whether or not Plaintiff's requests for production of documents were drafted with the intent to encompass attorney-client privileged correspondence and attorney work product. Today, you stated that Plaintiff's requests were "categorically intended to include both privileged and non-privileged documents."

Please advise me immediately in writing if both Glenn and I misunderstood your response.

Sincerely,

Tracy Cox
for Hodel Briggs Winter LLP

EXHIBIT 20



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January 19, 2010

SENT VIA FACSIMILE AND U.S. MAIL

Jeffrey W. Cowan, Esq.
The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, California 90401

Re: Messerschmidt v. VH Property Corporation dba Trump National Golf Club
Los Angeles County Superior Court, Case No. BC403087

Dear Mr. Cowan:

The purpose of this letter is to provide you with authority relevant to Plaintiff's expressed intent to file a discovery motion seeking the production of information protected from discovery by the attorney-client and work product privileges (referred to collectively herein as the "privileges"). As you stated during our call on January 11, 2010, as well as in various other correspondence in the past, Plaintiff's position is that VH Property Corporation dba Trump National Golf Club ("Trump") waived the privileges for the following reasons: (1) Trump allegedly failed to respond to the discovery requests on time, thereby waiving all objections; and (2) that Trump waived the privileges by not specifically asserting them in response to each and every discovery request. You further stated during the January 11 call that Plaintiff's responses were "categorically intended to include both privileged and non-privileged documents."

Plaintiff's arguments fail for at least the reasons detailed below. We believe this authority is adequate to convince Plaintiff to forego filing such a motion, but should such a motion be filed, we intend to advance arguments beyond those outlined herein.

1. The Attorney-Client Privilege Is Sacred and Waiver Is Discouraged.

The California Supreme Court recently held that "the fundamental purpose of the attorney-client privilege is the preservation of the confidential relationship

between attorney and client...and the primary harm in the discovery of privileged material is the disruption of that relationship...not the risk that parties seeking discovery may obtain information to which they are not entitled.” *Costco Wholesale Corp. v. Super. Ct.*, 47 Cal. 4th 725, 741-42 (2009). As another court stated:

The privilege afforded the client’s communications to counsel is the oldest of the confidential communication privileges...Our Supreme Court has stated the privilege is given on grounds of public policy in the belief that the benefits derived therefrom justify the risk that unjust decisions may sometimes result from the suppression of relevant evidence...***The privilege is an import right given to protect a relationship that must be sedulously fostered...and has even been referred to as “sacred”...It is not to be whittled away by means of specious argument that it has been waived. Least of all should the courts seize upon slight and equivocal circumstances as a technical reason for destroying the privilege.***

Blue Ridge Ins. Co. v. Super. Ct., 202 Cal. App. 3d 339, 345 (1988) (internal citations and quotations omitted; emphasis added); *see also id.* at 347 (“[W]here there is a timely assertion of the attorney/client privilege, putting the other side on notice, a forced waiver for some technical shortfall is at odds with Evidence Code section 912 and is an excessive sanction not reasonably calculated to achieve the purpose of effecting compliance with discovery.”).

Plaintiff’s arguments for waiver are clearly the specious, technical arguments for waiver to which courts historically are not receptive. As explained in detail below, Trump, through Mr. Skogen, never manifested any intention to relinquish its right to claim privilege over the material. *See State Comp. Ins. Fund v. WPS, Inc.*, 70 Cal. App. 4th 807 (2007). First, Mr. Skogen reasonably understood that Plaintiff granted an extension of time to respond to outstanding discovery (and we do not concede that Plaintiff did not grant such an extension). Second, if no extension was in fact granted, the lateness of the responses resulted only from inadvertence and/or mistake. Further, Mr. Skogen reasonably believed that the responses at issue did not seek privileged information, given that Plaintiff is prohibited from seeking such discovery under the Civil Procedure Code. Finally, Mr. Skogen included general privilege objections, which were incorporated by reference to each specific request, clearly evidencing an intention to preserve the privilege in the unlikely event that Plaintiff was improperly seeking privileged material. As such, the Court in this case is highly unlikely to find a waiver and/or to order production of the privileged documents at issue. *See Regents of Univ. of Cal. V. Super. Ct.*, 165 Cal. App. 4th 672, 683 (2008) (“[N]o waiver of the privilege will occur if the holder of the privilege has taken **reasonable steps** under

the circumstances to prevent disclosure. The law does not require that the holder of the privilege take ‘strenuous or Herculean efforts’ to resist disclosure.” [emphasis added]).

2. No Waiver Where Late Responses Are the Result of Inadvertence or Mistake.

It is Trump’s position that you and Mr. Skogen verbally agreed on March 24, 2009, to an extension of time to respond to the discovery requests at issue, and that the specific date would be agreed upon. When Mr. Skogen later contacted you via email on April 2, 2009, to confirm the specifics of the extension, you took the position that all objections to the discovery requests had been waived because no agreement was reached prior to the original deadline. California Civil Procedure Code section 2030.270 provides that parties may freely agree to extend the time for service of responses to a date beyond the original due date. *See* subsection (a). This code section also clearly states that such an agreement “may be informal,” so long as it is later “confirmed in writing that specifies the extended date for service of a response.” 2030.270(b). There is no requirement in the statute that the written confirmation of the agreement be made *before* the original discovery deadline. Consequently, it is Trump’s position that the discovery responses at issue were not late.

However, even if the Court were to find that the discovery responses were served after the deadline, it is highly unlikely that the Court will find a waiver of the most sacred of privileges based on this technicality, given that Trump’s alleged failure to timely serve responses was the result of mistake, inadvertence, or excusable neglect, *i.e.*, Mr. Skogen’s mistaken impression that Plaintiff had granted a discovery extension. *See* Cal. Code Civ. Proc. § 2031.300(a)(2); *see also* *Ambrose v. Michelin N. Am., Inc.*, 134 Cal. Appl 4th 1350, 1354 (2005) (“Excusable neglect is generally defined as an error a reasonably prudent person under the same or similar circumstances might have made.”).¹

Consequently, if Plaintiff will not concede this point, Trump will have no choice but to file a cross-motion for relief pursuant to section 2033.280(a), which it is

¹ As stated in my December 23, 2009 letter, Plaintiff should note that Trump has satisfied Section 2031.300(a)(1) by subsequently serving a response that is in substantial compliance with the Code. The sufficiency of the responses is evidenced by your own separate statement that – with the exception of the waiver issue – addresses only technical deficiencies (e.g., failure to state that “all responsive documents in Defendant’s possession, custody and control will be produced.”).

confident that it will win. However, as Trump wishes to resolve this matter informally without resort to motion practice, it will not file its motion for relief until the parties have fully met and conferred. To that end, please notify us no less than three days in advance of filing any motion to compel on this issue, so that Trump may proceed to file its cross-motion for relief.

3. Plaintiff's Attempt to Seek Privileged Information Is a Misuse of the Discovery Process.

Under the California Code of Civil Procedure, Plaintiff is simply not entitled to discovery of privileged material. *See* § 2017.010 (“[A]ny party may obtain discovery regarding any matter, **not privileged**, that is relevant to the subject matter involved in the pending action. [emphasis added]”); *see also Glenfeld Dv. Corp. v. Super. Ct.*, 53 Cal. App. 4th 113, 117 (1997) (privileged material is not discoverable). “A writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories is **not discoverable under any circumstances**. [emphasis added]” *Id.* § 2018.030(a). Additionally, an attorney’s work product is “not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party’s claim or defense or will result in injustice.” *Id.* § 2018.030(b). Consequently, Plaintiff’s “categorical” attempt to obtain privileged information outside of the scope of discovery is a misuse of the discovery process. *See Id.* § 2023.010(a).

Moreover, given the plain language of sections 2017.010 and 2018.030, Mr. Skogen reasonably assumed that the discovery requests at issue were not drafted to seek privileged information and, therefore, did not specifically object to the requests on the basis of the privileges. However, Mr. Skogen did include general objections to all propounded discovery on the basis of the attorney-client and attorney work product privileges, and then incorporated those objections by reference into each discovery response.

It is highly unlikely that the Court will find Plaintiff’s requests, which “categorically” seek privileged documents, are proper *and* that the incorporation of the general objections is insufficient to assert the privilege, thereby resulting in a complete waiver of the privileges. Nevertheless, Trump would still have a strong argument that Mr. Skogen mistakenly believed that the general objections fully protected Trump’s interests and that Trump should not be sanctioned with a waiver of privilege simply because of Mr. Skogen’s mistaken belief that that incorporation of the general objections fully protected Trump’s interests. *See Blue Ridge*, 202 Cal. App. 3d at 347 (“[A] forced waiver for some technical shortfall is at odds with Evidence Code section 912 and is an excessive sanction not reasonably calculated to achieve the purpose of effecting compliance with

discovery.”). Notably, Mr. Skogen certainly did not waive the attorney-client privilege through the any “voluntary disclosure or consent to disclosure” of privileged information to someone with no interest in preserving the client’s confidences. *See Regents*, 165 Cal. App. 4th at 679 (internal quotations omitted). Consequently, Plaintiff’s argument fails.

In conclusion, we believe that the preceding authority amply demonstrates that Plaintiff will be highly unlikely to prevail on the privilege waiver issue. As such, Trump again requests that Plaintiff strongly reconsider her position on these issues, and withdraw her request for privileged information.

Sincerely,



Tracy Cox
for Hodel Briggs Winter LLP

cc: Anthony Orshansky (via facsimile and U.S. Mail)

EXHIBIT 21

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February 15, 2010

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Fax to (949) 450-8033 & email to tcox@hbwillp.com

Tracy Cox, Esq.
Hodel Briggs Winter LLP
8105 Irvine Center Drive
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Irvine, CA 92618

Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

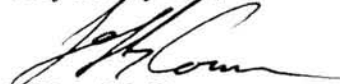
Dear Ms. Cox:

Your January 19, 2010 letter states that it does not contain all of the arguments (and presumably legal authority) that you would use to oppose a motion to compel production of documents. The documents at issue arguably would be privileged but-for the waivers that we contend have occurred due to (a) the failure to assert privileges to specific items in Plaintiff's 1st CCP § 2031 document request, and (b) predecessor counsel's failure to respond on time to the request.

Your letter also fails to address the specific authorities and analysis in the draft CRC Separate Statement that I sent you.

For this reason, I ask that you send me all authority and analysis on which you now intend to rely (which is the very thing you asked me to do) so that I can better determine the merit of your position.

Very truly yours,



Jeffrey W. Cowan

cc: Anthony Orshansky, Esq.
Lucy Messerschmidt

HP LaserJet M2727nf MFP

Fax Confirmation Report

The Cowan Law Firm
(310) 394-1430
Feb-15-2010 8:33PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
2221	2/15/2010	8:32:49PM	Send	19494508033	0:27	1	OK

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February 15, 2010

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Fax to (949) 450-8033 & email to tc Cox@hbwlip.com

Tracy Cox, Esq.
Hodel Briggs Winter LLP
8105 Irvine Center Drive
Suite 1400
Irvine, CA 92618

Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

Dear Ms. Cox:

Your January 19, 2010 letter states that it does not contain all of the arguments (and presumably legal authority) that you would use to oppose a motion to compel production of documents. The documents at issue arguably would be privileged but-for the waivers that we contend have occurred due to (a) the failure to assert privileges to specific items in Plaintiff's 1st CCP § 2031 document request, and (b) predecessor counsel's failure to respond on time to the request.

Your letter also fails to address the specific authorities and analysis in the draft CRC Separate Statement that I sent you.

For this reason, I ask that you send me all authority and analysis on which you now intend to rely (which is the very thing you asked me to do) so that I can better determine the merit of your position.

Very truly yours,


Jeffrey W. Cowan

cc: Anthony Orshansky, Esq.
Lucy Messerschmidt

EXHIBIT 22



HODEL BRIGGS WINTER^{LLP}

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February 18, 2010

SENT VIA U.S. MAIL and FACSIMILE

Jeffrey W. Cowan, Esq.
The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, California 90401

Re: Messerschmidt v. VH Property Corporation dba Trump National Golf Club
Los Angeles County Superior Court, Case No. BC403087

Dear Mr. Cowan:

Pursuant to my voice message to you today, this letter confirms that VH Property Corporation dba Trump National Golf Club ("Trump") agrees to grant Plaintiff an extension of time to file discovery motions related to Trump's responses to Plaintiff's discovery requests, until March 19, 2010.

Sincerely,

Tracy Cox
for Hodel Briggs Winter LLP

cc: Anthony Orshansky (via facsimile and U.S. Mail)

EXHIBIT 23

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February 23, 2010

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Fax to (949) 450-8033 & U.S. Mail

Glen L. Briggs, Esq.
Hodel Briggs Winter LLP
8105 Irvine Center Drive
Suite 1400
Irvine, CA 92618

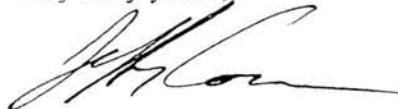
Re: *Lucy Messerschmidt v. VH Property Corp.*, LASC Case No. BC 403 087

Dear Mr. Briggs:

I'm writing to confirm our conversation this morning outside of Department 68 in which you extended my deadline to file a discovery motion regarding your client's initial discovery responses from March 16, 2010 to April 30, 2010.

You also said that you anticipated being able to advise us next week about how your client wants to proceed with this lawsuit (*e.g.*, trying to mediate again, stipulating to consolidate the two cases, providing contact information for putative class members, etc.).

Very truly yours,



Jeffrey W. Cowan

JWC:vad

cc: Anthony Orshansky, Esq.
Lucy Messerschmidt

HP LaserJet M2727nf MFP

Fax Confirmation Report

The Cowan Law Firm
(310) 394-1430
Feb-23-2010 12:48PM

Job	Date	Time	Type	Identification	Duration	Pages	Result
2254	2/23/2010	12:48:24PM	Send	19494508033	0:25	1	OK

The Cowan Law Firm

1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
Facsimile: (310) 394-1430
www.cowan-law.com

February 23, 2010

Jeffrey W. Cowan
Email: jfc@cowan-law.com

Via Fax to (949) 450-8033 & U.S. Mail

Glen L. Briggs, Esq.
Hodel Briggs Winter LLP
8105 Irvine Center Drive
Suite 1400
Irvine, CA 92618

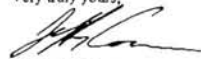
Re: Lucy Messerschmidt v. VH Property Corp., LASC Case No. BC 403 087

Dear Mr. Briggs:

I'm writing to confirm our conversation this morning outside of Department 68 in which you extended my deadline to file a discovery motion regarding your client's initial discovery responses from March 16, 2010 to April 30, 2010.

You also said that you anticipated being able to advise us next week about how your client wants to proceed with this lawsuit (e.g., trying to mediate again, stipulating to consolidate the two cases, providing contact information for putative class members, etc.).

Very truly yours,



Jeffrey W. Cowan

JWC:vad

cc: Anthony Orshansky, Esq.
Lucy Messerschmidt

EXHIBIT 24

The Cowan Law Firm

1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
Facsimile: (310) 394-1430
www.cowan-law.com

June 4, 2010

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Fax to (949) 450-8033 & U.S. Mail

Glenn L. Briggs, Esq.
Hodel Briggs Winter LLP
8105 Irvine Center Drive
Suite 1400
Irvine, CA 92618

Re: *Lucy Messerschmidt v. VH Property Corp.*, LASC Case No. BC 403 087

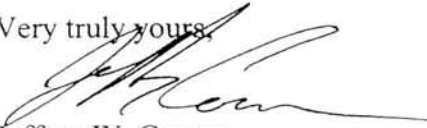
Dear Mr. Briggs:

I am writing to confirm our June 2, 2010 conversation outside Dept. 68 in which you agreed to extend my client Plaintiff Lucy Messerschmidt's existing deadlines to file motions to compel discovery from June 28, 2010 to 30 days after the second mediation that the parties now are scheduling.

You further agreed to extend Plaintiff Lucy Messerschmidt's deadline to respond to your First Set of Special Interrogatories from June 11, 2010 to 14 days after the second mediation occurs.

Please contact me immediately if you disagree with any of the foregoing.

Very truly yours,



Jeffrey W. Cowan

JWC:tn

cc: Anthony Orshansky, Esq.
Justin Kachadoorian, Esq.
Lucy Messerschmidt

HP LaserJet M2727nf MFP

Fax Confirmation Report

The Cowan Law Firm
(310) 394-1430
Jun-4-2010 10:33AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
2603	6/4/2010	10:33:22AM	Send	19494508033	0:25	1	OK

The Cowan Law Firm
1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
Facsimile: (310) 394-1430
www.cowan-law.com

June 4, 2010

Jeffrey W. Cowan
Email: jfc@cowan-law.com

Via Fax to (949) 450-8033 & U.S. Mail

Glenn L. Briggs, Esq.
Hodel Briggs Winter LLP
8105 Irvine Center Drive
Suite 1400
Irvine, CA 92618

Re: *Lucy Messerschmidt v. VH Property Corp.*, LASC Case No. BC 403 087

Dear Mr. Briggs:

I am writing to confirm our June 2, 2010 conversation outside Dept. 68 in which you agreed to extend my client Plaintiff Lucy Messerschmidt's existing deadlines to file motions to compel discovery from June 28, 2010 to 30 days after the second mediation that the parties now are scheduling.

You further agreed to extend Plaintiff Lucy Messerschmidt's deadline to respond to your First Set of Special Interrogatories from June 11, 2010 to 14 days after the second mediation occurs.

Please contact me immediately if you disagree with any of the foregoing.

Very truly yours,


Jeffrey W. Cowan

JWC:tn

cc: Anthony Orshansky, Esq.
Justin Kachadoorian, Esq.
Lucy Messerschmidt

EXHIBIT 25

The Cowan Law Firm

1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
Facsimile: (310) 394-1430
www.cowan-law.com

July 29, 2010

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Fax to (949) 450-8033 & email to gbriggs@hbwillp.com & kdamronhsiao@hbwillp.com

Glenn L. Briggs, Esq.
Kymberleigh Damron Hsiao, Esq.
Hodel Briggs Winter LLP
8105 Irvine Center Drive
Suite 1400
Irvine, CA 92618

Re: *Lucy Messerschmidt v. VH Property Corp.*, LASC Case No. BC 403 087

Dear Counsel:

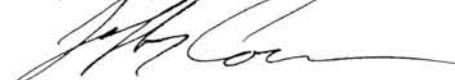
I am writing to make a further attempt to meet and confer about the documents (and other discovery) that we contend are discoverable notwithstanding privileges that otherwise might apply due to (among other things) your client's failure to respond timely to our discovery.

I recently discovered something that I forgotten: I had saved the voice-mail message that lawyer Tony Skogen left me on April 2, 2009. Enclosed is a transcript for your review. If you want to hear the recording, contact me to work out the best way to make it available to you.

Please let me know if this evidence causes you to reconsider your position about whether your client failed to timely respond to my client's discovery. To facilitate your analysis, I also am enclosing the March 17, 2009 communications that Mr. Skogen and I exchanged. I suspect you will admit (at least privately) that Mr. Skogen's April 2 message makes clear that *he was asking to have your client's discovery deadline extended two days after it had expired on March 31.*

As always, I am generally available if you would like to discuss this issue.

Very truly yours,



Jeffrey W. Cowan

Enclosures

cc: Anthony Orshansky, Esq. (with enclosures)
Lucy Messerschmidt (with enclosures)

Transcript of Voice Message from Tony Skogen re Messerschmidt v VH Property Corp.

[computer time stamp: "Thursday April 2, 2009 at 4:38 pm from an outside caller at 310-228-1574 totaling 1 minute 20 seconds"]

"Hi Jeffrey, it's Tony Skogen with Littler. I'm calling about, uh, the Lucy Messerschmidt case. Uh, I am going to need to take you up on your offer, uh, for additional time. I still don't have the materials, uh, from uh the Greenberg firm, uh, and it is my understanding that, that most of the discovery was was pretty, pretty much done and, and ready to go, um, so I'm trying to sort that out, um, with the other firm.

Uh, secondly, I wanted to uh...talk to you about some dates uh...for your inspection, and I've I've determined what days of the week are the slowest. I'd like I'd like to try and avoid uh...anymore disruption in the club. You know, as little as possible.

And then I uh...also wanted to talk to you about some some dates for depositions.

Uh, I'm uh, and the last item that I had that was an action item was I was going to uh...look into the people that uh...uh... that would have been managers or have management uh, responsibilities during the uh class period and uh...they're working on that as well so I should have that shortly.

If you could give me a call 310-772-7262, I would appreciate it. Also again, I'm requesting a uh...extension. Uh...probably another 2 weeks should do it, but uh...please give me a call. Thanks."

Jeffrey Cowan

From: Jeffrey Cowan [cowanlaw@verizon.net]
Sent: Tuesday, March 17, 2009 6:19 PM
To: 'Skogen, Tony R.'
Subject: RE: Letter to Jeffrey Cowan

Tony:

Your statement is partially accurate. I said I would be inclined to grant more time to respond to my discovery if doing so would not either cause the Court to think I was ignoring fast-track considerations or prejudice my client -- both of which will turn in large part on what happens at the CMC next week.

I also am hoping for some cooperation with the expedition of (a) a response to my prior request by letter for identification of current managing agent employees so that I do not inadvertently have ex parte conversations with them while conducting informal discovery, and (b) my ability to conduct a CCP Section 2031 inspection of your client's golf club premises per my previously served notice.

I look forward to talking to you next Monday so that we can be better positioned to have a productive CMC the next day.

Best,
Jeffrey

Jeffrey W. Cowan | The Cowan Law Firm | 1541 Ocean Avenue, Suite 200, Santa Monica, California 90401 | Phone: 310 394 1420 | Fax: 310 394 1430 | www.cowan-law.com | E-mail: jeffrey@cowan-law.com

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-----Original Message-----

From: Skogen, Tony R. [mailto:TSkogen@littler.com]
Sent: Tuesday, March 17, 2009 5:20 PM
To: cowanlaw@verizon.net
Cc: Gerard, Mary Ann
Subject: Letter to Jeffrey Cowan

Hi Jeffrey,

Thanks for your professional courtesy in granting us an extension of at least two weeks to respond to written discovery. If we need additional time, you indicated you would be disposed to grant it so long as it seems acceptable to the court.

Best regards,
Tony

Tony Skogen, Shareholder

310.772.7262 direct 626.688 244 mobile 310.553.5583 fax
Tskogen@littler.com
2049 Century Park East, 5th Floor | Los Angeles, CA 90067-3107

Littler Mendelson | littler.com
Employment & Labor Law Solutions Worldwide

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this document (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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To reply to our email administrator directly, send an email to postmaster@littler.com

Littler Mendelson, P.C.
<http://www.littler.com>



Littler Mendelson, P.C.
2049 Century Park East
5th Floor
Los Angeles, CA 90067.3107

March 17, 2009

Tony R. Skogen
310.772.7262 direct
310.553.0308 main
310.553.5583 fax
tskogen@littler.com

VIA E-MAIL, FACSIMILE & MAIL

Jeffrey W. Cowan, Esq.
The Cowan Law Firm
1541 Ocean Avenue
Suite 200
Santa Monica, CA 90401-1204

Re: Lucy Messerschmidt v. VH Property Corp.

Dear Mr. Cowan:

This is to inform you that Littler Mendelson will be substituting in as attorneys of record for the captioned matter.

This is also to confirm that you have granted us an extension of at least two weeks (until at least March 31, 2009) in which to serve responses, and objections, if necessary, to written discovery.

Thank you for your professional courtesy.

Sincerely,

A handwritten signature in black ink that reads "Tony Skogen". The signature is written in a cursive, flowing style.

Tony R. Skogen

TRS/mg
Firmwide:89006608.1 026032.1000

HP LaserJet M2727nf MFP

Fax Confirmation Report

HP LASERJET FAX

Jul-29-2010 10:38AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
105	7/29/2010	10:37:15AM	Send	19494508033	0:56	5	OK

The Cowan Law Firm

1541 Ocean Avenue, Suite 200
Santa Monica, CA 90401-1204
Telephone: (310) 394-1420
Facsimile: (310) 394-1430
www.cowan-law.com

July 29, 2010

Jeffrey W. Cowan
Email: jeffrey@cowan-law.com

Via Fax to (949) 459-8033 & email to gbriggs@hbwillp.com & kdamronhsiao@hbwillp.com

Glenn L. Briggs, Esq.
Kymberleigh Damron Hsiao, Esq.
Hodel Briggs Winter LLP
8105 Irvine Center Drive
Suite 1400
Irvine, CA 92618

Re: *Lucy Messerschmidt v VH Property Corp.*, LASC Case No. BC 403 087

Dear Counsel:

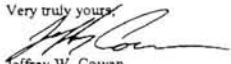
I am writing to make a further attempt to meet and confer about the documents (and other discovery) that we contend are discoverable notwithstanding privileges that otherwise might apply due to (among other things) your client's failure to respond timely to our discovery.

I recently discovered something that I forgotten: I had saved the voice-mail message that lawyer Tony Skogen left me on April 2, 2009. Enclosed is a transcript for your review. If you want to hear the recording, contact me to work out the best way to make it available to you.

Please let me know if this evidence causes you to reconsider your position about whether your client failed to timely respond to my client's discovery. To facilitate your analysis, I also am enclosing the March 17, 2009 communications that Mr. Skogen and I exchanged. I suspect you will admit (at least privately) that Mr. Skogen's April 2 message makes clear that he was asking to have your client's discovery deadline extended two days after it had expired on March 31.

As always, I am generally available if you would like to discuss this issue.

Very truly yours,


Jeffrey W. Cowan

Enclosures

cc: Anthony Orshansky, Esq. (with enclosures)
Lucy Messerschmidt (with enclosures)

EXHIBIT 26

Jeffrey Cowan

From: Jeffrey Cowan [cowanlaw@verizon.net]
Sent: Thursday, July 29, 2010 10:44 AM
To: kdamronhsiao@hbwillp.com
Cc: 'Valerie Beechler'; gbriggs@hbwillp.com; 'Anthony J. Orshansky'
Subject: FW: status of promised supplemental discovery responses

Dear Kimberleigh Damron Hsiao:

Your office advised me this morning that you have replaced lawyer Tracy Cox. As a result, I am sending you the email I sent to Ms. Cox yesterday.

- Jeffrey Cowan

Jeffrey W. Cowan | The Cowan Law Firm | 1541 Ocean Avenue, Suite 200, Santa Monica, California 90401 | Phone: (310) 394-1420 | Fax: (310) 394-1430 | www.cowan-law.com | E-mail: jeffrey@cowan-law.com

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From: Jeffrey Cowan [mailto:cowanlaw@verizon.net]
Sent: Wednesday, July 28, 2010 7:55 PM
To: 'Tracy Cox'
Subject: RE: status of promised supplemental discovery responses

Dear Tracy:

My review of our file shows that your predecessor counsel Littler Mendelson never sent us a verification for the original responses. None are attached to the original responses we received, and we have no record of ever receiving any separately later.

- Jeffrey

Jeffrey W. Cowan | The Cowan Law Firm | 1541 Ocean Avenue, Suite 200, Santa Monica, California 90401 | Phone: (310) 394-1420 | Fax: (310) 394-1430 | www.cowan-law.com | E-mail: jeffrey@cowan-law.com

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From: Tracy Cox [mailto:TCox@hbwillp.com]
Sent: Wednesday, June 16, 2010 11:13 AM
To: Jeffrey Cowan
Subject: RE: status of promised supplemental discovery responses

Dear Jeffrey:

Following up on my voicemail, would you mind sending me a copy of the original verifications that Littler provided to you with the original discovery responses? Our file from Littler appears to be incomplete. Also, for clarity of the record, although I did agree that I would try to provide supplemental responses to cure the technical deficiencies in the original responses by about June 1, 2010, there was no hard deadline. Given that Plaintiff's deadline to file a motion to compel further responses is now extended to 30 days from the second mediation, I assume that Plaintiff has no immediate need for the supplemental responses. That said, we will still work to provide the supplemental responses to cure the technical deficiencies as soon as we can. Please feel free to call me if you have any questions or would like to discuss the matter further.

Thanks,
Tracy

From: Jeffrey Cowan [mailto:cowanlaw@verizon.net]
Sent: Friday, June 11, 2010 4:16 PM
To: Tracy Cox
Subject: status of promised supplemental discovery responses

Dear Tracy:

What is the status of the supplemental responses you had agreed to provide me by about June 1?

- Jeffrey

Jeffrey W. Cowan | The Cowan Law Firm | 1541 Ocean Avenue, Suite 200, Santa Monica, California 90401 | Phone: (310) 394-1420 | Fax: (310) 394-1430 | www.cowan-law.com | E-mail: jeffrey@cowan-law.com

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PROOF OF SERVICE

I am over the age of eighteen years and not a party to this action; my business address is 1541 Ocean Avenue, Suite 200, Santa Monica, California 90401.

On September 22, 2010 I served **Plaintiff's Notice of Motion and Motion to Compel Defendant to Respond to Further to Document Request; Memorandum of Points and Authorities; Declaration of Jeffrey W. Cowan; and Request for Sanctions** on the interested parties in said action as indicated below:

**Glenn L. Briggs, Esq.
Tracy Cox, Esq.
Hodel Briggs Winter LLP
8105 Irvine Center Drive
Suite 1400
Irvine, CA 92618
*[Attorneys for Defendants]***

[BY MAIL] by placing a copy of said document for collection and mailing on the date indicated above, in a sealed envelope(s), addressed as set forth above, pursuant to ordinary business practices. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service at Santa Monica, California on that same day in the ordinary course of business.

[BY FACSIMILE] by transmitting a true copy by facsimile transmission at the time indicated on the transmission report from facsimile telephone number (310) 394-1430 to a facsimile machine maintained by the party on whom it was served, at the facsimile machine telephone number indicated on the attached service list. The transmission was reported as complete and without error. The transmission report which was properly issued by the transmitting facsimile machine is attached to the file copy of this document.

[BY PERSONAL SERVICE] By delivering by hand the foregoing document to the above addressee(s) while he was at my office.

[BY OVERNIGHT COURIER] I caused to be delivered to and served by an *Overnight Courier* on all interested parties in said action, the above named document(s) by placing true copies thereof in enclosed sealed envelopes, delivery fees paid or provided for, and addressed as set forth above.

[STATE] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 22, 2010, at Santa Monica, California.



Tammy Nguyen