



CITY ATTORNEY DENNIS HERRERA NEWS RELEASE

FOR IMMEDIATE RELEASE
TUESDAY, FEBRUARY 2, 2010

CONTACT: MATT DORSEY
(415) 554-4662

Herrera wins Court sanctions against CitiApartments for 'obfuscation, delay'

Landlords' defiance in the face of City Attorney's 'Herculean efforts' triggers order to cooperate with discovery, pay \$50K sanction

SAN FRANCISCO (Feb. 2, 2010)—City Attorney Dennis Herrera has won Court-ordered sanctions against a labyrinthine web of defendants involved in the operation of CitiApartments and Skyline Realty, the residential property management and investment behemoth Herrera first sued in 2006 for its stunning array of unlawful business practices. The order, which was signed by San Francisco Superior Court Judge John E. Munter last month and obtained this morning, compels each of the two-dozen corporate, trust and individual defendants currently named in the suit to respond to discovery requests in compliance with rules of civil procedure, and to pay sanctions to the City totaling \$50,129.50, which reflects San Francisco's fees and costs to pursue its motion to compel. Munter's order requires all of the defendants to comply with the order by Feb. 19, 2010.

"CitiApartments deserved to be sanctioned for its continued defiance in this case, and I'm gratified to Judge Munter for calling these tactics exactly what they are—'obfuscation, delay and meritless objections,'" said Herrera. "I hope this sanction sends a message to Frank Lembi, Walter Lembi and all of the defendants responsible for CitiApartments' lawless conduct that there is a limit to judicial patience, and they've reached it. This has been a long, difficult case to address what is perhaps the most egregious corruption of San Francisco's residential housing market in modern history. We remain committed to pursuing this case aggressively, and I hope these sanctions are a tipping point that hastens our progress toward a just outcome."

Herrera originally filed suit against CitiApartments, Skyline Realty and nine named subsidiary companies in August 2006, detailing an outrageous pattern of corporate lawlessness in which rental units would be illegally recovered from tenants; renovated in clear violation of building and safety codes; and then unlawfully relet at dramatically increased rental rates—occasionally as short-term corporate housing, representing still another violation of local law. According to the complaint Herrera filed following his office's investigation, CitiApartments' employed harrowing tactics to intimidate tenants into surrendering their rent controlled tenancies, including unannounced visits by armed paramilitary-like agents; unauthorized entry into rental units; utility shutoffs; changed locks; and retaliation against tenants who refused to accept buy-out offers. Once in control of vacated units, CitiApartments often undertook extensive remodeling work without the requisite permits and inspections necessary to assure compliance with state and local safety and building codes.

[MORE]

At a hearing last December, Judge Munter announced his intention to issue the sanction, saying: “Starting in February of 2008 counsel for plaintiffs have engaged in substantial, indeed Herculean, efforts to resolve the instant discovery disputes with the Corporate Entity Defendants through repeated correspondence and numerous meetings with defense counsel. Those good faith efforts by plaintiffs’ counsel to informally resolve the disputes have proved unsuccessful. In this Court’s opinion, plaintiffs’ discovery requests have been repeatedly met with obfuscation, delay and meritless objections made by the Corporate Entity Defendants in an effort to avoid providing appropriate discovery....In each instance where the Court grants this motion, the Court finds and concludes that there was an unreasonable failure by defendants to fully and fairly respond to plaintiffs’ discovery requests. More specifically, in each instance where the Court grants this motion, the Court finds and concludes that defendants have engaged in misuse of the discovery process by failing to respond properly or at all to proper discovery requests, and/or making unmeritorious objections to proper discovery requests, and/or making evasive responses to proper discovery requests, and/or failing to verify responses.”

Throughout more than three years of complex litigation, the defendants’ litigation strategy has been marked by continued defiance and elaborate financial shell games that forced Herrera to twice move successfully to amend his civil complaint to include additional related corporate, trust and individual alter-egos. Fully 37 defendants are now specifically named in the suit, including founder Frank Lembi and his son, Walter Lembi, whom Herrera sued as individuals. At its zenith—prior to the real estate market meltdown beginning in 2008—CitiApartments boasted some more than 200 buildings and 6,000 units in its portfolio, making it among San Francisco’s largest residential property owners.

Defendants currently named in Herrera’s lawsuit are: Skyline Realty Inc., Citiapartments Inc., Citi Funding Group Inc., Citisuites LLC, Lembi Group Inc., Lembi Group Partners LLC, Urban Property Management, Inc., Citiwide Rentals, Inc., Frank Lembi, Walter Lembi, David Raynal, Taylor Lembi, Frank Lembi As Trustee Of The Frank E. Lembi Survivor's Trust Dated February 17, 1984, As Restated On June 2, 1999, Frank Lembi, As Trustee Of The Olga Lembi Residual Trust Created Under The Provisions Of Part Three Of The Lembi Family Trust Dated February 17, 1984, Walter Lembi, As Trustee Of The Walter And Linda Lembi Family Trust Dated June 30, 2004, David Raynal, As Trustee Of The David M. Raynal Revocable Trust Dated May 9, 2002, 737 Pine DE LLC, 737 Pine B10 DE LLC, 737 Pine B10 Mezz DE LLC, 1155 LLC, Gaylord Hotel LLC, LSL Properties B14 DE LLC, LSL Property Holdings II DE LLC, LSL Property Holdings II Mezz LLC, Nob Hill Tower DE LLC, Nob Hill Tower Mezz DE LLC, Prime Apartment Properties LLC, Prime Apartment Properties B10 DE LLC, Prime Apartment Properties B10 Mezz DE LLC, Trophy Properties B10 DE LLC, Trophy Properties IV DE LLC, Trophy Properties IV B8A LLC, Trophy Properties IV Mezz DE LLC, Trophy Properties V LLC, Trophy Properties V DE LLC, Trophy Properties VI LLC, Trophy Properties IV B8A Manager LLC.

The case is *City and County of San Francisco and People of the State of California v. Skyline Realty, Inc. et al.*, San Francisco Superior Court Case No. 06-455241.

###

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 ALEX G. TSE, State Bar #152348
Chief Attorney
3 Neighborhood and Resident Safety Division
YVONNE R. MERÉ, State Bar #173594
4 JENNIFER CHOI, State Bar #184058
JILL CANNON, State Bar #203471
5 Deputy City Attorneys
1390 Market Street, Sixth Floor
6 San Francisco, California 94102-5408
Telephone: (415) 554-3874
7 Facsimile: (415) 437-4644
E-Mail: yvonne.mere@sfgov.org
8

9 Attorneys for Plaintiffs
10 CITY AND COUNTY OF SAN FRANCISCO AND
PEOPLE OF THE STATE OF CALIFORNIA
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED JURISDICTION

15 CITY AND COUNTY OF SAN
FRANCISCO, a Municipal Corporation,
16 and PEOPLE OF THE STATE OF
CALIFORNIA, by and through DENNIS
17 J. HERRERA, City Attorney for the City
and County of San Francisco,

18 Plaintiffs,

19 vs.

20 SKYLINE REALTY INC.,
21 CITIAPARTMENTS INC., GAYLORD
HOTEL LLC, TROPHY PROPERTIES V
22 LLC, TROPHY PROPERTIES V DE
LLC, PRIME APARTMENT
23 PROPERTIES LLC, LSL PROPERTY
HOLDINGS II DE LLC, 737 PINE DE
24 LLC, TROPHY PROPERTIES VI LLC,
TROPHY PROPERTIES IV DE LLC,
25 NOB HILL TOWER DE LLC, AND DOE
ONE THROUGH DOE FIFTY,

26 Defendants.
27
28

FILED
Superior Court of California
County of San Francisco

JAN 06 2010

GORDON PARK-LI, Clerk
BY: *Craig Blanton*
Deputy Clerk
CB

Case No. CGC 06 455-241

**ORDER GRANTING PLAINTIFFS'
MOTION TO COMPEL DEFENDANTS
FURTHER RESPONSES TO
REQUESTS FOR PRODUCTION,
SPECIAL AND FORM
INTERROGATORIES, AND
SANCTIONS**

Hearing Date: December 18, 2009
Hearing Judge: Hon. John E. Munter
Time: 9:30 a.m.
Place: Dept. 305

Date Action Filed: August 16, 2006
Trial Date: Not Yet Set

1 The motion of Plaintiffs CITY AND COUNTY OF SAN FRANCISCO and the PEOPLE
2 OF THE STATE OF CALIFORNIA ("Plaintiffs") to compel verified responses and verified further
3 responses from Defendants SKYLINE REALTY, INC., CITIAPARTMENTS INC., CITI
4 FUNDING GROUP INC., CITISUITES LLC, FRANK LEMBI, WALTER LEMBI, DAVID
5 RAYNAL, FRANK LEMBI as TRUSTEE of the FRANK E. LEMBI SURVIVOR'S TRUST
6 DATED FEBRUARY 17, 1984, AS RESTATED ON JUNE 2, 1999, FRANK LEMBI, as
7 TRUSTEE of the OLGA LEMBI RESIDUAL TRUST CREATED UNDER THE PROVISIONS
8 OF PART THREE OF THE LEMBI FAMILY TRUST DATED FEBRUARY 17, 1984, WALTER
9 LEMBI, as TRUSTEE of the WALTER AND LINDA LEMBI FAMILY TRUST DATED JUNE
10 30, 2004, DAVID RAYNAL, as TRUSTEE of the DAVID M. RAYNAL REVOCABLE TRUST
11 DATED MAY 9, 2002, 737 PINE DE LLC, 737 PINE B10 DE LLC, GAYLORD HOTEL LLC,
12 LSL PROPERTIES B14 DE LLC, LSL PROPERTY HOLDINGS II DE LLC, NOB HILL TOWER
13 DE LLC, PRIME APARTMENT PROPERTIES LLC, PRIME APARTMENT PROPERTIES B10
14 DE LLC, TROPHY PROPERTIES B10 DE LLC, TROPHY PROPERTIES IV DE LLC, TROPHY
15 PROPERTIES IV B8A LLC, TROPHY PROPERTIES V LLC, and TROPHY PROPERTIES VI
16 LLC to requests for production, special interrogatories, and form interrogatories and the imposition
17 of sanctions ("motion") came on regularly for hearing at 9:30 a.m. on December 18, 2009, in
18 Department 305 of the above- captioned Court. The parties appeared through their attorneys of
19 record. ^{Judge} The Honorable John E. Munter, Judge of the Superior Court, presided.

20 Having read and considered the moving papers and argument of counsel, the Court
21 ORDERS that Plaintiffs' motion is GRANTED in full, subject to a few exceptions as described
22 below.

23 At the December 18, 2009 hearing, the Court articulated from the bench its findings and
24 reasons for granting the motion on the merits and imposing sanctions. Those findings are reflected
25 in the transcript of the hearing which is attached as Exhibit A and incorporated into this Order.

26 The Court finds and concludes that there was an unreasonable failure by Defendants to fully
27 and fairly respond to Plaintiffs' discovery requests. More specifically, in each instance where the
28 Court grants this motion, the Court finds and concludes that Defendants have engaged in misuse of

JEM

1 the discovery process by failing to respond properly, or at all, to proper discovery requests, and/or
2 making unmeritorious objections to proper discovery requests, and/or making evasive responses to
3 proper discovery requests, and/or failing to verify responses. The Court further finds that in each
4 such instance, defendants have acted without substantial justification.

5 All objections made by Defendants are overruled, except those specifically sustained by this
6 Court. Objections to production or responding based on privileges, including those related to
7 financial information, are overruled except for the attorney client and attorney work product
8 privilege.

9 When responding to discovery in compliance with this Order, each Defendant shall respond
10 as follows:

- 11 1. Each response must be verified;
- 12 2. If a Defendant asserts the attorney client or attorney work product as justification for
13 withholding the production of particular documents, the Defendant shall prepare a
14 privilege log in accordance with Code of Civil Procedure Section 2031.240(b) and
15 include the following information: identification of the privilege being claimed,
16 document description, Bates number, identity and job title of the author, identity and
17 job title of the recipient and location of the document;
- 18 3. When referring to previously produced documents in a response, Defendants must
19 provide the specific page and/or Bates numbers of the cited documents;
- 20 4. When referring to information contained in an electronic database, Defendants must
21 identify with specificity the location of the information in the database; and
- 22 5. Where Defendants lack knowledge to respond, Defendants must state that they do
23 not know the answer.

24 ///

25 ///

26 ///

27 ///

28 ///

1 By February 19, 2010, the Court also orders each Defendant to do the following :

VEM

- 2 1. Defendant SKYLINE REALTY, ^{INC.} shall tender verified responses to Supplemental
3 Special Interrogatories, Set One and Supplemental Requests for Production, Set
4 One¹.
- 5 2. Defendant CITIAPARTMENTS, INC. shall do as follows:
 - 6 a. Tender verified responses to Supplemental Special Interrogatories, Set One
7 and Supplemental Requests for Production, Set One; and
 - 8 b. Tender verified amended responses to Special Interrogatories Set Two and
9 Requests for Production Set Two, Nos. 61, 62, 70, 75, 83, 93, and 95.
- 10 3. Defendant CITIFUNDING GROUP INC. shall do as follows:
 - 11 a. Tender verified responses to Supplemental Special Interrogatories, Set One
12 and Supplemental Requests for Production, Set One; and
 - 13 b. Tender verified amended responses to Special Interrogatories Set Two and
14 Requests for Production Set Two, Nos. 146, 147, 158, 163, 171, 181, and
15 183.
- 16 4. Defendant CITISUITES LLC shall tender verified responses to Supplemental
17 Special Interrogatories, Set One and Supplemental Requests, Set One for Production.
- 18 5. Defendant 737 PINE B10 DE LLC shall do as follows:
 - 19 a. Tender verified responses to Supplemental Special Interrogatories, Set One
20 and Supplemental Requests for Production, Set One; and
 - 21 b. Tender verified amended responses to Special Interrogatories Set Two and
22 Requests for Production Set Two, Nos. 65, 68, 71, 72, 74, 76, & 96.
- 23 6. Defendant 737 PINE DE LLC shall do as follows:
 - 24 a. Tender verified responses to Supplemental Special Interrogatories, Set One
25 and Supplemental Requests for Production, Set One; and

JEM

26
27 ¹ Plaintiffs served "Supplemental Requests for Production, Set One" seeking that Defendants
28 supplement the previous document requests which were included as part of Plaintiffs' letter
discovery dated January 2, 2009 and February 25, 2009. That letter discovery sought both
information *and* documents.

- 1 b. Tender verified amended responses to Special Interrogatories Set Two and
2 Requests for Production Set Two, Nos. 65, 68, 71, 72, 74, 76, and 96.
- 3 7. Defendant GAYLORD HOTEL LLC shall do as follows:
- 4 a. Tender verified responses to Supplemental Special Interrogatories, Set One
5 and Supplemental Requests for Production, Set One; and
- 6 b. Tender verified amended responses to Special Interrogatories Set Two and
7 Requests for Production Set Two, Nos. 65, 68, 71, 72, 74, 76, and 96.
- 8 8. Defendant LSL PROPERTY HOLDINGS II DE LLC shall do as follows:
- 9 a. Tender verified responses to Supplemental Special Interrogatories, Set One
10 and Supplemental Requests for Production, Set One; and
- 11 b. Tender verified amended responses to Special Interrogatories Set Two and
12 Requests for Production Set Two, Nos. 65, 68, 71, 72, 74, 76, and 96.
- 13 9. Defendant LSL PROPERTIES B14 DE LLC shall tender verified amended
14 responses to Special Interrogatories Set Two and Requests for Production Set Two,
15 Nos. 65, 68, 71, 72, 74, 76, and 96.
- 16 10. Defendant NOB HILL TOWER DE LLC shall do as follows:
- 17 a. Tender verified responses to Supplemental Special Interrogatories, Set One
18 and Supplemental Requests for Production, Set One; and
- 19 b. Tender verified amended responses to Special Interrogatories Set Two and
20 Requests for Production Set Two, Nos. 65, 68, 71, 72, 74, 76, and 96.
- 21 11. Defendant PRIME APARTMENT PROPERTIES B10 DE LLC shall do as follows:
- 22 a. Tender verified responses to Supplemental Special Interrogatories, Set One
23 and Supplemental Requests for Production, Set One; and
- 24 b. Tender verified amended responses to Special Interrogatories Set Two and
25 Requests for Production Set Two, Nos. 42, 42.1, 43, 47, 65, 68, 71, 72, 74,
26 76, and 96.
- 27 12. Defendant PRIME APARTMENT PROPERTIES LLC shall do as follows:
- 28

- 1 a. Tender verified responses to Supplemental Special Interrogatories, Set One
2 and Supplemental Requests for Production, Set One; and
3 b. Tender verified amended responses to Special Interrogatories Set Two and
4 Requests for Production Set Two, Nos. 65, 68, 71, 72, 74, 76, and 96⁶ JEM

5 13. Defendant TROPHY PROPERTIES B10 DE LLC shall tender verified amended
6 responses to Special Interrogatories Set Two and Requests for Production Set Two,
7 Nos. 65, 68, 71, 72, 74, 76, and 96.

8 14. Defendant TROPHY PROPERTIES IV B8A LLC shall do as follows:

- 9 a. Tender verified responses to Supplemental Special Interrogatories, Set One
10 and Supplemental Requests for Production, Set One; and
11 b. Tender verified amended responses to Special Interrogatories Set Two and
12 Requests for Production Set Two, Nos. 65, 68, 71, 72, 74, 76, and 96.

13 15. Defendant TROPHY PROPERTIES IV DE LLC shall do as follows:

- 14 a. Tender verified responses to Supplemental Special Interrogatories, Set One
15 and Supplemental Requests for Production, Set One; and
16 b. Tender verified amended responses to Special Interrogatories Set Two and
17 Requests for Production Set Two, Nos. 65, 68, 71, 72, 74, 76, and 96.

18 16. Defendant TROPHY PROPERTIES V LLC shall do as follows:

- 19 a. Tender verified responses to Supplemental Special Interrogatories, Set One
20 and Supplemental Requests for Production, Set One; and
21 b. Tender verified amended responses to Special Interrogatories Set Two and
22 Requests for Production Set Two, Nos. 65, 68, 71, 72, 74, 76, and 96.

23 17. Defendant TROPHY PROPERTIES VI LLC shall do as follows:

- 24 a. Tender verified responses to Supplemental Special Interrogatories, Set One
25 and Supplemental Requests for Production, Set One; and
26 b. Tender verified amended responses to Special Interrogatories Set Two and
27 Requests for Production Set Two, Nos. 42, 42.1, 43, 47, 65, 68, 71, 72, 74,
28 76, and 96.

1 18. Defendant FRANK LEMBI shall do as follows:

- 2 a. Tender verified amended responses to Form Interrogatory, Set One, No. 15.1.
3 As to Form Interrogatory, Set One, Nos. 2.11 and 12.1, the Court sustains
4 Defendant's vagueness objection to Plaintiffs' definition of the term
5 "incident";
- 6 b. Tender verified amended responses to Special Interrogatories, Set One, Nos.
7 6, 109-114, 117-124, 130-132 with one exception. As to Special
8 Interrogatory No. 6, Defendant's objections are sustained only to the extent
9 that it asks Defendant "to identify and describe each writing that
10 evidences, relates to, refers to or supports your answer." This request is
11 overbroad as written and is hereby deemed to be modified by the Court to say
12 "identify and describe writings that are sufficient to support your answer."
13 Defendant is ordered to answer Special Interrogatory, Set One, No. 6 as
14 modified by the Court; and
- 15 c. Tender verified amended responses to Requests for Production Set One, Nos.
16 1-2.

17 19. Defendant WALTER LEMBI shall do as follows:

- 18 a. Tender verified amended responses to Form Interrogatory, Set One, No. 15.1.
19 As to Form Interrogatory, Set One, Nos. 2.11 and 12.1, the Court sustains
20 Defendant's vagueness objection to Plaintiffs' definition of the term
21 "incident";
- 22 b. Tender verified amended responses to Special Interrogatories Set One, Nos.
23 6, 109-114, 117-124, 130, and 132 with one exception. As to Special
24 Interrogatory No. 6, Defendant's objections are sustained only to the extent
25 that it asks Defendant "to identify and describe each writing that
26 evidences, relates to, refers to or supports your answer." This request is
27 overbroad as written and is hereby deemed to be modified by the Court to say
28 "identify and describe writings that are sufficient to support your answer."

1 Defendant is ordered to answer Special Interrogatory, Set One, No. 6 as
2 modified by the Court; and

3 c. Tender verified amended responses to Requests for Production Set One, Nos.
4 1-2.

5 20. Defendant DAVID RAYNAL shall do as follows:

6 a. Tender verified amended responses to Form Interrogatory, Set One, No. 15.1.

7 As to Form Interrogatory, Set One, Nos. 2.11 and 12.1, the Court sustains
8 Defendant's vagueness objection to Plaintiffs' definition of the term
9 "incident";

10 b. Tender verified amended responses to Special Interrogatories Set One, Nos. *JEM*

11 6, 16, 109-114, 117-124, 130, and 132 ~~by February 19, 2010~~ with one

12 exception. As to Special Interrogatory No. 6, Defendant's objections are
13 sustained only to the extent that it asks Defendant "to identify and describe
14 each writing that evidences, relates to, refers to or supports your answer."

15 This request is overbroad as written and is hereby deemed to be modified by
16 the Court to say "identify and describe writings that are sufficient to support
17 your answer." Defendant is ordered to answer Special Interrogatory, Set
18 One, No. 6 as modified by the Court; and

19 c. Tender verified amended responses to Requests for Production Set One, Nos.
20 1-2.

21 21. Defendant FRANK LEMBI as TRUSTEE of the FRANK E. LEMBI SURVIVOR'S
22 TRUST DATED FEBRUARY 17, 1984, AS RESTATED ON JUNE 2, 1999 shall
23 do as follows:

24 a. Tender verified amended responses to Form Interrogatory, Set One, No. 15.1.

25 As to Form Interrogatory, Set One, Nos. 2.11 and 12.1, the Court sustains
26 Defendant's vagueness objection to Plaintiffs' definition of the term
27 "incident";

✓ E.M.

b. Tender verified amended responses to Special Interrogatories Set One, Nos. 3-4, 6, 9, ¹²15-22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 50, 52-55, 91, 93, 95-96, 101-108, and 112 with one exception. As to Special Interrogatories Nos. 6, 9, 12, 15, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 50, and 52, Defendant's objections are sustained only to the extent that it asks Defendant "to identify and describe each writing that evidences, relates to, refers to or supports your answer." This request is overbroad as written and is hereby deemed to be modified by the Court to say "identify and describe writings that are sufficient to support your answer." Defendant is ordered to answer Special Interrogatory, Set One, Nos. 6, 9, 12, 15, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 50, and 52 as modified by the Court; and

c. Tender verified amended responses to Requests for Production Set One, Nos. 1-2.

22. FRANK LEMBI, as TRUSTEE of the OLGA LEMBI RESIDUAL TRUST
 CREATED UNDER THE PROVISIONS OF PART THREE OF THE LEMBI
 FAMILY TRUST DATED FEBRUARY 17, 1984 shall do as follows:

a. Tender verified amended responses to Form Interrogatory, Set One, No. 15.1. As to Form Interrogatory, Set One, Nos. 2.11 and 12.1, the Court sustains Defendant's vagueness objection to Plaintiffs' definition of the term "incident";

b. Tender verified amended responses to Special Interrogatories Set One, Nos. 3-4, 6, 9, 12, 15-22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 50, 52-55, 91, 93, 95-96, 101-108, and 112 with one exception. As to Special Interrogatories Nos. 6, 9, 12, 15, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 50, and 52, Defendant's objections are sustained only to the extent that it asks Defendant "to identify and describe each writing that evidences, relates to, refers to or supports your answer." This request is overbroad as written and is hereby deemed to be modified by the Court to say "identify and describe

JEM

writings that are sufficient to support your answer." Defendant is ordered to answer Special Interrogatory, Set One, Nos. ~~6~~, 9, 12, 15, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 50, and 52 as modified by the Court; and

c. Tender verified amended responses to Requests for Production Set One, Nos. 1-2.

23. Defendant WALTER LEMBI, as TRUSTEE of the WALTER AND LINDA LEMBI FAMILY TRUST DATED JUNE 30, 2004 shall do as follows:

a. Tender verified amended responses to Form Interrogatory, Set One, No. 15.1. As to Form Interrogatory, Set One, Nos. 2.11 and 12.1, the Court sustains Defendant's vagueness objection to Plaintiffs' definition of the term "incident";

b. Tender verified amended responses to Special Interrogatories Set One, Nos. 3-4, 6, 9, 12, 15-22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 50, 52-55, 91, 93, 95-96, 101-108, and 112 with one exception. As to Special Interrogatories Nos. 6, 9, 12, 15, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 50, and 52, Defendant's objections are sustained only to the extent that it asks Defendant "to identify and describe each writing that evidences, relates to, refers to or supports your answer." This request is overbroad as written and is hereby deemed to be modified by the Court to say "identify and describe writings that are sufficient to support your answer." Defendant is ordered to answer Special Interrogatory, Set One, Nos. 6, 9, 12, 15, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 50, and 52 as modified by the Court; and

c. Tender verified amended responses to Requests for Production Set One, Nos. 1-2.

24. Defendant DAVID RAYNAL, as TRUSTEE of the DAVID M. RAYNAL REVOCABLE TRUST DATED MAY 9, 2002 shall do as follows:

a. Tender verified amended responses to Form Interrogatory, Set One, No. 15.1. As to Form Interrogatory, Set One, Nos. 2.11 and 12.1, the Court sustains

1 Defendant's vagueness objection to Plaintiffs' definition of the term
2 "incident";

- 3 b. Tender verified amended responses to Special Interrogatories Set One, Nos.
4 3-4, 6, 9, 12, 15-18, 20-22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 52-55,
5 91, 95-96, 101-108, and 112 with one exception. As to Special
6 Interrogatories Nos. 6, 9, 12, 15, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 50,
7 and 52, Defendant's objections are sustained only to the extent that it asks
8 Defendant "to identify and describe each writing that evidences, relates to,
9 refers to or supports your answer." This request is overbroad as written and
10 is hereby deemed to be modified by the Court to say "identify and describe
11 writings that are sufficient to support your answer." Defendant is ordered to
12 answer Special Interrogatory, Set One, Nos. 6, 9, 12, 15, 24, 26, 28, 30, 32,
13 34, 36, 38, 40, 42, 44, 50, and 52 as modified by the Court; and
14 c. Tender verified amended responses to Requests for Production Set One, Nos.
15 1-2.

16 The Court also finds that Defendants' objections and the positions they took during
17 discovery were without substantial justification and constitute a misuse of the discovery process as
18 described in Code of Civil Procedure Sections 2023.010, ^{(d)-(e), 2023.030(a), 2030.290(c), 2031.300(c), 2031.310(d)} 2030.300(d), and 2031.320(b). VEM
19 Accordingly, the Court GRANTS Plaintiffs' motion for sanctions in the amount of \$50,129.50,
20 representing the fees incurred by Plaintiffs in preparing the motion to compel. Those sanctions are
21 to be divided and apportioned amongst the Defendants as follows:

- 22 1. FRANK LEMBI, WALTER LEMBI, DAVID RAYNAL, FRANK LEMBI as
23 TRUSTEE of the FRANK E. LEMBI SURVIVOR'S TRUST DATED FEBRUARY
24 17, 1984, AS RESTATED ON JUNE 2, 1999, FRANK LEMBI, as TRUSTEE of the
25 OLGA LEMBI RESIDUAL TRUST CREATED UNDER THE PROVISIONS OF
26 PART THREE OF THE LEMBI FAMILY TRUST DATED FEBRUARY 17, 1984,
27 WALTER LEMBI, as TRUSTEE of the WALTER AND LINDA LEMBI FAMILY
28 TRUST DATED JUNE 30, 2004, and DAVID RAYNAL, as TRUSTEE of the

1 DAVID M. RAYNAL REVOCABLE TRUST DATED MAY 9, 2002 shall be
 2 sanctioned \$1500 each; and
 3 2. SKYLINE REALTY, INC., CITIAPARTMENTS INC., CITI FUNDING GROUP
 4 INC., CITISUITES LLC, 737 PINE DE LLC, 737 PINE B10 DE LLC, GAYLORD
 5 HOTEL LLC, LSL PROPERTIES B14 DE LLC, LSL PROPERTY HOLDINGS II
 6 DE LLC, NOB HILL TOWER DE LLC, PRIME APARTMENT PROPERTIES
 7 LLC, PRIME APARTMENT PROPERTIES B10 DE LLC, TROPHY
 8 PROPERTIES B10 DE LLC, TROPHY PROPERTIES IV DE LLC, TROPHY
 9 PROPERTIES IV B8A LLC, and TROPHY PROPERTIES V LLC, and TROPHY
 10 PROPERTIES VI LLC shall be sanctioned \$2331.15 each.

11 Each Defendant shall pay the sanction by February 19, 2010. The payment shall be made by
 12 cashier's check or money order made payable to the "City and County of San Francisco" and mailed
 13 to the following address: San Francisco City Attorney's Office, Attention: Yvonne Mere, Deputy
 14 City Attorney, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

15 IT IS SO ORDERED.

JEM

16
 17 Dated: Jan. 6, 2010
 18 2009
 19 Judge John E. Munter
 20 Hon. John E. Munter
 21 Judge of the Superior Court

22 APPROVED AS TO FORM

23 Dated: December 31, 2009
 24 Yvonne Mere, Jennifer Choi, Jill Cannon
 25 Counsel for Plaintiffs

26 Dated: 12/31, 2009
 27 Ed Singer
 28 Counsel for Defendants

EXHIBIT

A

EXHIBIT A

Transcript of December 18, 2009 Hearing

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 SUPERIOR COURT OF CALIFORNIA
 2 COUNTY OF SAN FRANCISCO
 3 BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE PRESIDING
 4 DEPARTMENT NUMBER 305

5 ---oOo---

6	CITY AND COUNTY OF SAN FRANCISCO,)	
7	A MUNICIPAL, et al.,)	
8	Plaintiffs,)	Case No. 06-455241
9	vs.)	MOTION
10	SKYLINE REALTY, INC., et al.,)	
11	Defendants.)	

12
 13 Reporter's Transcript of Proceedings
 14 Friday, December 18, 2009

15 APPEARANCES OF COUNSEL:

16 For Plaintiffs:

17 OFFICE OF THE CITY ATTORNEY
 18 Sixth Floor - Fox Plaza
 1390 Market Street
 San Francisco, California 94102
 19 BY: YVONNE MERE, ESQ.
 JENNIFER CHOI, ESQ.
 20 JILL CANNON, ESQ.

21 For Skyline Realty:

22 THE LEMBI GROUP
 2099 Market Street
 23 San Francisco, CA 94114
 BY: EDWARD SINGER, JR., ESQ.
 24

25 GOVERNMENT CODE § 69954(d): "ANY COURT, PARTY, OR PERSON WHO
 HAS PURCHASED A TRANSCRIPT MAY, WITHOUT PAYING A FURTHER FEE TO
 THE REPORTER, REPRODUCE A COPY OR PORTION THEREOF AS AN EXHIBIT
 26 PURSUANT TO COURT ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL
 NOT OTHERWISE PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER
 27 PARTY OR PERSON."

28 Reported by: Rhonda L. Aquilina, CSR #9956, RMR, CRR
 Official Reporter

□

1 APPEARANCES CONT'D.

2 For Urban Pioneer Property Management:

3 ROPERS, MAJESKI, KOHN & BENTLEY
4 201 Spear Street, Suite 1000
5 San Francisco, CA 94105
6 By: ADRIAN DRISCOLL, ESQ.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

□

3

1 Friday, December 18, 2009

9:30 a.m.

2

3 THE COURT: We're on the record.

4 Please call the case.

5 THE CLERK: Calling the case of City and County of San
6 Francisco versus Skyline Realty Inc., et al, Case No.
7 CGC-06-455241.

8 Counsel, please state your appearances for the record.

9 MS. MERE: Good morning, Your Honor. Yvonne Mere for the
10 City and County of San Francisco and People of the State of
11 California.

12 MS. CANNON: Jill Cannon for the People.

13 MS. CHOI: Jennifer Choi on behalf of the plaintiffs.

14 MR. SINGER: Edward Singer for the defendants, with the
15 exception of Urban Pioneer and Taylor Lembi.

16 MR. DRISCOLL: Good morning, Your Honor. Adrian Driscoll,
17 Ropers, Majeski appearing on the case management conference for
18 defendant Urban Pioneer Property Management, Inc.

19 THE COURT: Does that mean one of the defendants is not
20 represented here today?

21 MR. SINGER: Apparently Taylor Lembi is not here today,
22 that's correct, on the case management conference.

23 THE COURT: Or at all.

24 MR. SINGER: Correct.

25 THE COURT: Taylor Lembi is not appearing here today at all
26 through counsel or otherwise.

27 MR. SINGER: That's correct, yes, he is a no-show.

28 THE COURT: All right. First order of business is

4

1 Plaintiffs' Motion to Compel Defendants' Further Responses to
2 Requests for Production and to Special and Form Interrogatories
3 and for Sanctions.

4 Does anybody want to present an oral argument on the motion?

5 MS. MERE: Your Honor, I know the motion was quite
6 voluminous, and so we're available if the Court has any
7 questions.

8 You know, the only thing that I'd add as of today is I think
9 the Court is well aware of how long we have been seeking some of
10 this discovery, and we have been -- the plaintiffs have been
11 frustrated at how long and how difficult it has been to get some
12 basic answers. We were loath to bring this motion to the Court
13 but found no other mechanism to resolve the conflict.

14 I also wanted the Court to know that to add to that we are
15 still waiting for documents that were promised by defendants.
16 In defendants' opposition brief, defendants stated, before the
17 date of the hearing, plaintiffs will have access to the YARDY
18 database. We don't have it.

19 So, if the Court has any questions, I'd be happy to address
20 them.

21 THE COURT: Thank you. I don't have any.

22 MR. SINGER: Okay. And the only opposition we're raising
23 are to the motions vis-a-vis the defendant, the individual
24 defendants and the trust, who have only been recently brought
25 into this case and were only recently served the discovery I
26 think in September, and I guess I won't re-argue what I have in
27 my --

28 THE COURT: You're only resisting the motion as to the

5

1 individual defendants and the trust?

2 MR. SINGER: That's correct, Your Honor, and that's the
3 opposition that I filed. And we have some issues with the over
4 breadth of the definitions that they used, and we have some
5 issues with requesting -- compelling answers, and this goes to
6 asking for the defenses of the trusts and of the individuals.

7 We presented, we believe, the facts that support their defenses.
8 To the extent they think we should think of more or add more, I
9 think that's an issue for possibly a motion in limine to the
10 extent that we don't provide information to them, but we've
11 stated what we believe our defenses are, and that's not ground
12 for moving to compel further responses.

13 THE COURT: Thank you. Anything further or is the matter
14 submitted?

15 MS. MERE: Submitted, Your Honor.

16 MR. SINGER: Submitted, Your Honor.

17 THE COURT: The matter submitted, and here's the Court's
18 ruling.

19 Plaintiffs have moved for an order compelling defendants to
20 provide responses or further responses to requests for
21 production and to special and form interrogatories. In
22 addition, plaintiffs seek sanctions for abuse of the discovery
23 process to plaintiffs' prejudice.

24 The defendants, for convenience in analyzing the instant
25 motion, can be grouped into three categories as follows.

26 The first group, referred to hereafter as the "Corporate
27 Entity Defendants," consists of: (1) Skyline Realty, Inc.; (2)
28 CitiApartments, Inc.; (3) CitiSuites LLC; (4) CitiFunding Group,
6

1 Inc.; (5) 737 Pine B10 DE, LLC; (6) 737 Pine DE, LLC; (7)
2 Gaylord Hotel, LLC; (8) LSL Properties B14 DE, LLC; (9) LSL
3 Property Holdings II DE, LLC; (10) Nob Hill Tower DE, LLC; (11)
4 Prime Apartment Properties B10 DE, LLC; (12) Prime Apartment
5 Properties, LLC; (13) Trophy Properties IV B8A, LLC; (14) Trophy
6 Properties IV DE, LLC; (15) Trophy Properties V, LLC; (16)
7 Trophy Properties VI, LLC and (17) Trophy Properties B10 DE,
8 LLC.

9 The second group, referred to hereafter as the "Individual
10 Defendants," consists of: Frank Lembi, Walter Lembi, and David
11 Raynal, R-A-Y-N-A-L.

12 And the third group, referred to hereafter as the "Trust
13 Defendants," consists of: Frank Lembi as Trustee of the Frank
14 E. Lembi Survivor's Trust dated February 17, 1984, as restated
15 on June 2, 1999; next, Frank Lembi as Trustee of the Olga Lembi
16 Residual Trust created under the provisions of Part Three of the
17 Lembi Family Trust dated February 17, 1984; next, Walter Lembi
18 as Trustee of the Walter and Linda Lembi Family Trust dated
19 June 30, 2004; and David Raynal as Trustee of the David M.
20 Raynal Revocable Trust dated May 9, 2002.

21 Collectively, all three groups will be referred to in this
22 ruling as the "defendants."

23 At the outset, a few matters of general import warrant
24 mention.

25 First, defendants present no declaration or other admissible
26 evidence to support the factual statements in their opposition
27 brief regarding their allegedly unfortunate financial state.
28 Unsworn self-serving statements in a brief do not constitute

7

1 evidence, as is well-established in the case law. Authorities
2 supporting that conclusion include the case of Davenport versus
3 Blue Cross of California, 52 Cal.App.4th 435, at page 454; the
4 case of In Re Zeth, Z-E-T-H, 31 Cal.4th 396, at page 414, at
5 footnote 11; and the case of Denny H. versus Superior Court, 131
6 Cal.App.4th 1501, at page 1513. It follows that the assertions
7 by defense counsel in their brief regarding the financial
8 condition of defendants are properly disregarded on this motion,
9 and they are so disregarded. However, even if the
10 generalizations about financial condition, as they appear in the

11 brief, were repeated in the same language in a declaration, the
12 showing would be inadequate to justify defendants' unreasonable
13 refusal to make discovery.

14 Additionally, defendants provide no declaration or any other
15 admissible evidence in support of their contentions that some of
16 plaintiffs' discovery requests pose an unreasonable burden.
17 Therefore, the contentions of burden, being unsupported by
18 evidence, are rejected in each instance.

19 Further, in their opposition papers, defendants make
20 specific contentions only with respect to portions of the motion
21 directed to the discovery responses given by the Individual
22 Defendants and the Trust Defendants. No specific contentions
23 are made in defendants' opposition papers to portions of the
24 motion directed to the discovery responses given by the
25 Corporate Entity Defendants.

26 The discovery requests here at issue include waves of
27 discovery propounded to some or all Corporate Entity Defendants
28 in November of 2007, in March of 2008, in June of 2008, in

8

1 January of 2009, and in July of 2009. Starting in February of
2 2008 counsel for plaintiffs have engaged in substantial, indeed
3 Herculean, efforts to resolve the instant discovery disputes
4 with the Corporate Entity Defendants through repeated
5 correspondence and numerous meetings with defense counsel.
6 Those good faith efforts by plaintiffs' counsel to informally
7 resolve the disputes have proved unsuccessful. In this Court's
8 opinion, plaintiffs' discovery requests have been repeatedly met
9 with obfuscation, delay and meritless objections made by the
10 Corporate Entity Defendants in an effort to avoid providing
11 appropriate discovery.

12 The Individual and Trust Defendants were added in the Third
Page 7

13 Amended Complaint, filed in March 2009, and discovery requests
14 were first directed to them in September of 2009. The
15 plaintiffs' good faith effort to informally resolve the disputes
16 related to these discovery requests was unsuccessful.

17 The Court grants the plaintiffs' motion to compel in full,
18 subject only to a few exceptions, which will be specified in
19 today's ruling. All objections, except for those specifically
20 sustained in this ruling, are overruled.

21 In each instance where the Court grants this motion, the
22 Court finds and concludes that there was an unreasonable failure
23 by defendants to fully and fairly respond to plaintiffs'
24 discovery requests. More specifically, in each instance where
25 the Court grants this motion, the Court finds and concludes that
26 defendants have engaged in misuse of the discovery process by
27 failing to respond properly or at all to proper discovery
28 requests, and/or making unmeritorious objections to proper

9

1 discovery requests, and/or making evasive responses to proper
2 discovery requests, and/or failing to verify responses. The
3 Court finds that in each such instance, defendants have acted
4 without substantial justification, and circumstances do not
5 exist that make unjust the imposition of sanctions. It follows
6 that this Court is awarding monetary sanctions pursuant to Code
7 of Civil Procedure Sections 2023.010(d) through (f) inclusive,
8 CCP Section 2023.030(a), CCP Section 2030.290(c),
9 Section 2030.300(d), Section 2031.300(c), Section 2031.310(d),
10 and 2031.320(b), all in the Code of Civil Procedure, the amount
11 and division of which will be discussed momentarily.

12 The exceptions to the full grant of this motion, and the
13 only exceptions to the full grant, are as follows:

14 As to the form interrogatories directed to the Individual
Page 8

15 Defendants and to the Trust Defendants, the Court sustains the
16 objection of vagueness to plaintiffs' definition of the term
17 "incident" as applied in Form Interrogatories 2.11 and 12.1.
18 That term, as defined by plaintiffs, has no reasonably
19 ascertainable meaning in the context of this case.

20 All other objections regarding the form interrogatories as
21 to the Individual Defendants and the Trust Defendants are
22 overruled.

23 The next ruling applies to defendants' objections to special
24 interrogatory number 6 as directed to the Individual Defendants
25 and the Trust Defendants and also to defendants' objections to
26 special interrogatories 9, 12, 15, 24, 26, 28, 30, 32, 34, 36,
27 38, 40, 42, 44, 50, and 52 as directed to the Trust Defendants.
28 With respect to all those objections, the Court sustains the

10

1 objections of the Individual Defendants and the Trust Defendants
2 in part and overrules them in part. The objections are
3 sustained to those interrogatories to the extent, and only to
4 the extent, that they ask the Individual Defendants and the
5 Trust Defendants "to identify and describe each writing that
6 evidences, relates to, refers to or supports your answer." This
7 expression is overbroad as written and is hereby deemed to be
8 modified by the Court to say "identify and describe writings
9 that are sufficient to support your answer." The Individual
10 Defendants and the Trust Defendants are ordered to answer those
11 interrogatories as so amended.

12 Defendants' objections to special interrogatories
13 3 through 5, 16 through 22 and 91 through 108 as pertaining to
14 the Trust Defendants are overruled. The Court notes that all
15 financial information is subject to the Court's May 13, 2009
16 Protective Order.

17 The Court overrules the objections to special
18 interrogatories numbered 109 through 132 as to the Individual
19 Defendants and also overrules the objections to special
20 interrogatories 109 through 112 as to the Trust Defendants. In
21 doing so, the Court again notes that the Protective Order covers
22 financial information.

23 Generally speaking, if and to the extent that information
24 now ordered to be provided is included within documents
25 previously produced, it is sufficient for defendants to answer
26 an interrogatory or to respond to a request to produce documents
27 by referencing the specific documents, including the specific
28 page numbers of those documents, containing the requested

11

1 information. Similarly, if and to the extent that information
2 now ordered to be provided is included within a database
3 previously produced, it is sufficient for defendants to answer
4 an interrogatory or to respond to a request to produce by
5 identifying with specificity the location within the database
6 where plaintiffs can find the requested information. It is not
7 sufficient to state merely that the information is contained
8 within a group of produced documents or an entire database
9 without more specific information regarding the location of the
10 requested information. And if and to the extent that the
11 defendants avail themselves of this opportunity, the answers
12 need to be under oath.

13 Turning to a different subject, the Court understands that
14 in some instances defendants have claimed that they cannot
15 respond to certain discovery requests because all employees with
16 knowledge of, or information concerning, the answers thereto are
17 no longer employed by defendants. Where defendants truly lack
18 the knowledge to respond, they must state in their responses

19 that they do not know the answer, again under oath.

20 In sum, the Court grants the Plaintiffs' motion in full
21 subject only to the exceptions previously stated, and to one
22 further exception. The further exception relates to situations
23 where defendants claim of privilege relating to documents. In
24 each of those instances, and I'm not talking about a financial
25 information privilege, I've already ruled on that, I'm talking
26 about attorney-client or work product here. To the extent that
27 the defendants make those claims, the defendant shall produce a
28 privilege log that complies with the requirements of CCP

12

1 Section 2031.240(b) and includes the following information with
2 respect to each such document: Identification of the privilege
3 being claimed; document description; Bates number; identity and
4 job title of the author; identity and job title of the
5 recipient; and location of the document.

6 Now, that leaves the matter of sanctions. Having in mind
7 that some defendants were brought into the case more recently
8 than others and that the discovery requests to them came later,
9 how does the City propose that the Court, if awarding the full
10 \$50,129.50, which the Court believes to be a reasonable sum, how
11 does the City or the plaintiffs propose that that be allocated
12 among the defendants?

13 MS. MERE: Well, it's a difficult question to answer in
14 light of plaintiffs' allegations in this case that these
15 corporate entities are alter egos of the individuals. In light
16 of that, I don't -- I mean, obviously the Court could allocate a
17 portion of the sanctions more heavily to the entities that have
18 spent a longer time avoiding responding; however, we believe --
19 plaintiffs believe that these corporate entities are alter egos
20 of the individuals.

21 THE COURT: But that's not a matter that I can rule on at
22 this time. I understand that's your allegation. That hasn't
23 been established. It hasn't been addressed by the Court. What
24 I have is the individual and trust defendants being added to the
25 third amended complaint in March and the discovery request being
26 directed to them in September, so the amount of time that the
27 plaintiffs have needed to devote to this issue was less with
28 respect to them, as you just point out, than with respect to

13

1 others who for really years, at least a couple of years, have
2 been failing to produce reasonable discovery.

3 MS. MERE: And I understand that, Your Honor, and I didn't
4 mean to have the Court rule on something that is premature and
5 not within the ambit of today's discussion. I guess it's just
6 that the discovery has been often verified by the varying
7 individuals that were added to the case. But if you could give
8 me just a moment for me to confer and I'll have an answer for
9 you.

10 THE COURT: Or I'll tell you another thing we can do is I
11 can take very short letter briefs or real briefs from you in a
12 very short period of time where you make a suggestion and I give
13 the defendants a chance to respond to it, rather than to try to
14 make you do this on the fly here.

15 I think the amount is reasonable. There are 24 total
16 defendants, as I understand it, that are subject to this motion,
17 and so the question is how to allocate, but the defendants fit
18 into different groups.

19 MS. MERE: Right.

20 MR. SINGER: Correct, and there are far more discovery
21 requests against the entity defendants as well. Essentially,
22 there were I think four discovery requests against the trust and

23 the individuals; there were timely responses, the Court has
24 deemed those inadequate; there was only one letter to confer
25 basically to race to get those discovery requests into this
26 motion, but it's certainly not -- doesn't fall into the category
27 of the dragging the feet that the Court has pointed out in its
28 ruling.

14

1 THE COURT: Well, it doesn't fall into the category of
2 dragging your feet for as long, but I found the responses to be
3 unreasonable and to be sanctionable, but I do agree with the
4 notion that the others have put the plaintiffs' counsel to a
5 tremendous amount of work and good faith efforts over a long
6 period of time to resolve these disputes, and the extent of that
7 expense imposed on the City is not as great with respect to
8 those that received discovery requests more recently.

9 MS. MERE: Your Honor, if I -- I don't think that it
10 necessitates additional briefing. I just want to confer with
11 counsel for two minutes.

12 THE COURT: All right, go ahead, sure.

13 (pause in proceedings.)

14 MS. MERE: Thank you, Your Honor.

15 Just to make clear for the record, the amount of sanctions
16 that the plaintiff requested did not actually include any of the
17 time that we spent meeting and conferring. We merely included
18 just the portion in preparing for the motion so...

19 THE COURT: Okay. But I would just add -- I don't mean to
20 interrupt you, but even given that, the conduct of the others is
21 more outrageous than the conduct of those that received the
22 requests in September of this year.

23 MS. MERE: Certainly, it certainly was existing for longer,
24 and even though, as I've said on the record, plaintiffs believe

25 that the individuals who were responding and verifying discovery
26 are still the same, we would be willing to allocate or suggest
27 an allocation of a third of the sanctions to be divided amongst
28 the individuals and trust and two-thirds of the sanctions to go ¹⁵

1 to the corporate defendant entities to reflect the longer
2 dragging of the feet. Even though the -- even though the
3 discovery outstanding to the individuals and trusts was not
4 outstanding for as long, the evasiveness of their response was
5 in some ways more egregious.

6 THE COURT: But the question is I'm compensating you for
7 your -- this isn't punitive, this is compensatory; in other
8 words, I'm awarding you reasonable fees and expenses that you've
9 incurred in pursuing this, so the issue -- this isn't a penalty
10 under the law.

11 MS. MERE: I understand, Your Honor, it's just that a good
12 portion of the motion was, as I said, we only limited our
13 request for sanctions to the time spent preparing the motion,
14 and there was a significant time spent in the motion addressing
15 the individuals and the trusts, but that's our -- those are our
16 thoughts of the allocation.

17 THE COURT: Do you want to be heard on that?

18 MR. SINGER: I'm just looking at these raw numbers. I'm
19 just using my calculator, Your Honor. It looks like there are
20 16, is it 16 entity defendants, six trust/individual defendants,
21 just that breakdown alone would be like a 75/25 percent.

22 THE COURT: So if I did -- let's just assume I did 75/25,
23 how would the math work out? Let's just say it's 50 instead of
24 50,129.50 for purposes of the calculation, so you're saying
25 three quarters of 50?

26 MR. SINGER: Correct.

27 THE COURT: Let me just see how the math works out.
28 So that's basically 37,500. Let me make a suggestion and 16

1 you can talk against this if you want, that what I'm
2 contemplating doing is 40,000 jointly and severally against the
3 parties other than the individual and trust defendants, and the
4 other 10,129.50 jointly against the -- and severally against the
5 trust defendants, which is pretty close to the suggestion I
6 think of the 75/25.

7 MR. SINGER: And my only objection to that would be to the
8 joint and several aspect of it where you have different
9 defendants, I mean, why would Frank's Trust be responsible if
10 Raynal's trust is --

11 THE COURT: How many trust defendants are there?

12 MR. SINGER: There are three trust defendants, three
13 individual defendants.

14 THE COURT: So that's six defendants.

15 MR. SINGER: I guess what I am -- I guess I'm just conceding
16 that these should be divided equally among each named party.

17 THE COURT: You're saying if I award 10,000 plus against the
18 individuals and the trust defendants it should be divided into
19 six?

20 MR. SINGER: Which is I guess -- when I said 75/25, I was
21 actually -- that's the saying the same thing, I guess. If each
22 party had to pay its numeric share based on just the number of
23 parties in this, just divided it evenly, I wasn't even conceding
24 that there was any -- in doing that, I'm not even saying that
25 the Trust Defendants should be punished equally.

26 THE COURT: No, I'm not asking you to. Obviously, you're
27 not conceding sanctions.

28 MR. SINGER: Right.

0

1 THE COURT: And you don't have to address this at all. I
2 was just asking if you had any thoughts that you wanted to
3 express on the matter.

4 MR. SINGER: I do think that these are all individual -- I
5 mean, I know that their theory of the case is everything is the
6 same, but each one of these entities have a different ownership
7 structure, so even at the entity level I don't believe that it
8 would be fair to jointly and severally hold them liable.

9 THE COURT: How many defendants are there with the
10 remaining -- there's six individuals and trusts, how many
11 others?

12 MS. MERE: Your Honor, I believe there's seven individuals
13 and trusts, there's three individuals and four trusts, because
14 Frank has two, so there are seven.

15 MR. SINGER: That's correct, that's correct.

16 THE COURT: All right. How many others?

17 MS. MERE: I think there are 17 other --

18 THE COURT: Well, what about the argument that it ought to
19 be divided, I mean it ought to be divided equally between them
20 within the categories? Counsel makes the argument, you know, if
21 I do it jointly and severally you can collect the full amount
22 against one, but should one defendant be responsible for the
23 full amount?

24 MS. MERE: Well, Your Honor --

25 THE COURT: Because if that was the only defendant against
26 whom you had to move, it wouldn't have caused you nearly as much
27 to make the motion.

28 MS. MERE: I mean, part of -- first of all, I think that

1 these defendants often responded jointly, so we often got form
2 interrogatories responses on behalf of all of the corporate
3 defendants verified by the same person, so it's a little
4 disingenuous to say that their attitude toward discovery was
5 completely separate and therefore --

6 THE COURT: You know, I'm not sanctioning counsel here. The
7 fact that they represent more than one party and file a joint
8 one isn't, I don't think, relevant. In other words, what you're
9 saying is one defendant ought to be responsible for what another
10 defendant did because the lawyer represents them both and
11 combined their responses in one answer. That doesn't seem right
12 to me.

13 MS. MERE: Well, Your Honor, I guess I must not be
14 expressing myself well. When counsel, for instance, defense
15 counsel says these are distinct entities so they shouldn't take
16 on this burden of sanctions for another entity, I merely raise
17 that in discovery they sometimes acted individually, we got
18 individual responses, but sometimes we got responses all
19 together, so it varied, and I agree that it's not punitive.

20 THE COURT: But I will tell you, you are expressing yourself
21 very well because I understood precisely what you said before
22 and thought I had responded to it, and now you're saying the
23 same thing again.

24 The fact they give joint responses is a function of one
25 lawyer representing them. Here's -- I'm prepared to rule on
26 this.

27 MS. MERE: Okay.

28 THE COURT: Is the matter submitted on sanctions?

19

1 MS. MERE: Submitted, Your Honor.

2 MR. SINGER: Submitted, Your Honor.

3 THE COURT: All right. Here's what I'm going to do, I'm
4 going to take -- and I'm going to ask counsel for plaintiffs to
5 prepare a form of order that covers my rulings today, and we'll
6 talk a little bit about that, and we haven't talked about the
7 timing and when the responses are going to be due, but let me
8 get through the sanctions issue first.

9 Here's what I want to do. The Order on sanctions against
10 each of the seven who are Individuals or Trust Defendants is
11 \$1,500 apiece, that is \$10,500. The balance, which is the
12 40,000, whatever it is, take the balance, subtract \$10,500 from
13 50,129.50, and that will give us -- you can check me, I think
14 it's \$39,629.50.

15 MS. MERE: That's what I get.

16 THE COURT: Okay. That will be -- the sanctions Order will
17 divide that evenly among the 17 others, okay?

18 MS. MERE: Okay.

19 THE COURT: And now let's talk about the deadline for
20 compliance. And I want to say to counsel for the defense, when
21 I issue an order like this, or any other order, I expect it to
22 be complied with, so please be sure that your clients understand
23 that they need to follow the orders of this Court.

24 Okay. Now, when?

25 MS. MERE: Oh, when?

26 THE COURT: How much time should I give the defendants to do
27 this, keeping in mind that I want to give them enough time to do
28 it so that if there is a failure to do it, I am comfortable

20

1 proceeding further if I have to and I'm asked to, with a failure
2 to comply with the order, so I want to give a reasonable period
3 of time to comply.

4 MS. MERE: well, Your Honor, then I think perhaps staging it

5 with certain -- so that they can produce certain things at
6 different timeframes might be easiest, like, for example, the
7 database which defendants state in their opposition they will
8 produce to us, it's a database they point to in many of their
9 responses to say it will provide us information that will be
10 responsive.

11 THE COURT: Let me ask you a different question. If I were
12 not to do that because it's going to maybe get a little
13 complicated, if I just give an order for the whole amount, how
14 much time, and I'm going to ask Mr. Singer this too, how much
15 time is reasonable to do the whole thing rather than to make it
16 complicated and then start to get issues about something was
17 produced on day two but should have been on day one?

18 MS. MERE: I think 60 days would be --

19 THE COURT: well, 60 days seems to me to be very generous.
20 Do you have a problem with the 60 days? And I'm not asking you
21 to concede the correctness of the ruling, I'm just asking you
22 about the time right now.

23 MR. SINGER: You said it was generous, so I'm not going to
24 ask for more, Your Honor.

25 (Laughter)

26 THE COURT: well, I think it is given the history here. I
27 mean, and, you know, the plaintiffs have been trying to get this
28 information for a long time. This is not a surprise coming.

21

1 I'm comfortable with the 60 days for compliance, 60 days from
2 today.

3 MS. MERE: Today.

4 THE COURT: And not from the time that this Order gets
5 signed, because I'm going to ask plaintiffs' counsel to prepare
6 a form of order, submit it to you for approval as to form.

7 So, 60 days from today, let's figure out what that is, two
8 months from today, basically.

9 MR. SINGER: Mid-February.

10 THE COURT: Yes, mid-February why don't I give you.

11 THE CLERK: 60 days would be February 16th, 2010.

12 THE COURT: I'll give you until February the 19th, 2010 to
13 comply, give your clients that amount of time. I think it's
14 generous, but this Order needs to be complied with, and we need
15 to move forward with this case, and we can't do that fairly to
16 the plaintiffs unless this discovery is done.

17 Now, a couple of details when you prepare that Order. There
18 are a couple kind of gnat's eyelash discrepancies, if you will,
19 in the papers, for example, one version of the proposed order
20 referenced CitiFunding, Inc. when the separate statement
21 referred to the same entity as CitiFunding Group, Inc.

22 MS. MERE: Yes.

23 THE COURT: The proposed order omitted Special Interrogatory
24 Set 1, No. 131 as to Individual Defendant Frank Lembi when the
25 separate statement included that interrogatory; also, one
26 proposed order listed Request for Production Set 2, No. 156 as
27 to CitiFunding Group when the separate statement listed No. 158,
28 so when you prepare -- and there may be other similar

22

1 discrepancies that I didn't just mention. Please be very
2 careful when you issue this Order, when you prepare it I should
3 say, and submit it to Mr. Singer and then to the Court.

4 Now, you can decide how you want to handle this. I think,
5 though, my suggestion is that you attach a copy of the
6 transcript to the Order and you reference what I have said in
7 this transcript as the Order of the Court, because if you try to
8 restate it, you and Mr. Singer will spend a lot of time debating

9 whether you've stated what I said accurately and then I'll have
10 to try to figure it out, too.

11 MS. MERE: Okay.

12 THE COURT: So I suggest that the form of order be
13 relatively brief and conclusory and refer to the transcript
14 which is attached to it as reflective of the precise ruling and
15 of the reasoning of the Court, which will make your job simpler.

16 MS. MERE: Yes, okay.

17 THE COURT: All right. We have a case management conference
18 to do today, which we generally have done off the record and
19 then come back on the record, which is fine with me unless you
20 want to stay on the record for some reason.

21 Okay. Then we can go off the record.

22 (off the record discussion.)

23 THE COURT: All right. We're back on the record.

24 we've had a case management conference off the record. The
25 Court mentioned, noted the failure of Mr. Taylor Lembi to be
26 here, and the Court received the information that he is an
27 official with Urban Pioneer Property Management that
28 Mr. Driscoll represents, but Mr. Driscoll doesn't represent

23

1 Mr. Taylor Lembi in his individual capacity, correct?

2 MR. DRISCOLL: That's correct, Your Honor.

3 THE COURT: But he's appeared in pro per in answering the