Council Meeting of
September 11, 2007

SUPPLEMENTAL #2

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Supplemental Material to Council Agenda Item #12A

Attached are additional materials received after the original item was prepared.

Respectfully submitted,

LeROY J. JACKSON
CITY MANAGER

By Viet Hoang
Viet Hoang
Acting Civil Service Manager

NOTED:

LeRoy J. Jackson
City Manager

Attachment A) Correspondence from J. Scott Tiedemann dated September 11, 2007

12A

LIEBERT CASSIDY WHITMORE
A PROFESSIONAL LAW CORPORATION
LOS ANGELES | FRESNO | SAN FRANCISCO

6033 WEST CENTURY BOULEVARD, SUITE 500
LOS ANGELES, CALIFORNIA 90045
T: (310) 981-2000 F: (310) 337-0837

STIEDEMANN@LCWLEGAL.COM
(310) 981-2022

September 11, 2007

VIA FACIMILE

Viet Hoang
Acting Civil Service Manager
City of Torrance
3231 Torrance Boulevard
Torrance, California 90503
(310) 618-2927

Michael McGill
Lackie & Dammeier
367 North Second Street
Upland, California 91786
(909) 985-3299

Re: [redacted] *v. City of Torrance, et al.*
Client-Matter: TO020(028)

Dear Mr. Hoang & Mr. McGill:

As the attorney for the hiring authorities in this matter, I write in response to Mr. McGill's letter to you dated September 10, 2007. The substance and accusatory tenor of Mr. McGill's letter to you are off base.

[redacted] is entitled to a hearing to determine state status of his revived interest in employment. Pursuant to the Superior Court's June 15, 2007, Judgment, the City Council is ordered to conduct a hearing "as set forth in *Tuffli v. San Diego Unif. Sch. Dist.*, 30 Cal.App.4th 1398, to determine the status of Petitioner's revived interest in employment . . ." The Judgment further states, "If the City Council finds no legal cause for not reinstating Petitioner to his employment as a peace officer with the City of Torrance, the City Council shall also determine the amount of back pay . . ."

Importantly, the City Council must decide by what means a determination will be made whether there is legal cause for not reinstating [redacted]. That is what I understand to be the purpose of the anticipated meeting on September 25, 2007. Moreover, I understand the invitation to the parties to submit briefs to be an invitation to the parties to provide input regarding how they believe the hearing should proceed.

While Mr. McGill describes [redacted] reinstatement as "inevitable," the truth is that [redacted] reinstatement is possible but not a certainty. Indeed, in this case, the Court both: 1) rejected [redacted] request to overturn the City Council's 1998 decision upholding the termination of Petitioner; and 2) rejected Petitioner's request for reinstatement.

The following are pertinent excerpts from the hearing conducted on June 1, 2007 wherein Mr. McGill unsuccessfully argued that his client is entitled to automatic reinstatement:

> Mr. McGill: But my point though, Your Honor, is that the hearing that he's going to have is not going to be the same hearing as before. It is not going to be a rehearing; it is going to be an entirely new hearing on some new issue.
>
> The Court: That's right. It will be. It is a question of whether or not in view of the fact that his rights have now been revived, and he would be entitled to reinstatement based upon the original disability whether there's still any reason for not reinstating him. That's really the issue.
>
> Mr. McGill: But You Honor, if I hear the Court correctly, what the Court is saying is that [redacted] may have done something else wrong something aside from the conviction; meanwhile, he has to go through another appeal process on some charge that he has not been noticed of, he has not had a Skelly on . . .
>
> The Court: Well, if there is a charge - - obviously, I suppose there would have to be some kind of notice if there's going to be some kind of charge. I mean, certainly he has to have an opportunity to respond and deal with it. But at the same time - - let's assume for a moment he has murdered someone since this last happened or he has been convicted of something else or let's assume he has done other things that would disqualify him from reinstatement. **It seems to me that there has to be some basic determination before he's actually reinstated that he has the basic qualifications that police officers must have. Just because it takes this many years to get a decision, you know doesn't mean that they have to now automatically put him on the streets to be protecting the public.**
>
> ***

The Court: The question is going to be whether or not the City should have been doing something to - - well, when you talk about background investigation, and again, we do get into this question of how far are you going to investigate.

Mr. Tiedemann: That's a good point, Your Honor. I don't believe that what happened up to the point that he was originally hired by Torrance would be a bar to his employment now. But the problem is that we don't know [redacted] for the last nine years, and as you have indicated, this is a unique case in a sense. I did try to conduct a deposition on the subject of where have you been and what have you been doing, and the Petitioner objected to that. So I think that certainly the City Council would be within its authority to say, we will consider reinstatement, but we need to know, where have you been, as you indicated, for the last nine years. I don't think he has murdered anybody, but what have you been doing? What has your employment been [with whom] have you been associating? I think those are valid questions to be decided by the City Council who made the final decision rather than the Civil Service Commission. I think they are looking for is merely reopening - -

The Court: No. Normally the normal orders are it goes back to the last decision-maker; it's remanded to the last decision-maker for such proceeding as it may deem appropriate and in compliance with the Court's decision.

Mr. McGill: Your Honor, this is the point I was trying to make right here is that they're going to make [redacted] jump through a million hurdles. Meanwhile, he is without a job, he is without any money.

The Court: **I don't think that if it turns out that he is simply not qualified under some law to be a police officer and therefore cannot be reinstated that he ought to be getting paid for that.**

Mr. McGill: There's no evidence of that.

> The Court: Well, how is there going to be any evidence? **This is exactly why Tuffli I think talks about, you know a hearing to determine the status of his revived interest in continued employment. I think that includes some kind of review of what has been happening over none years. That's a long time. We're not talking about a year here. I think they are entitled to know what he has been doing over that period of time to make sure that he is not - - that it would be contrary to some statute to actually reinstate him.**
>
> Mr. McGill: I don't disagree with that. They're entitled to delve into that all day long. I don't argue that. What I argue is that in the meanwhile he should be working.
>
> The Court: **No. How can he be working as a police officer in the meanwhile if there is not that basic information available that he has those basic characteristics and qualifications that one must have; namely, that he has not been convicted of something else?** [Emphasis added.]

In addition to the Court's comments at the hearing, there is also regulatory and statutory authority which prohibits [redacted]. "inevitable" reinstatement. As you know, any person who is employed as a peace officer must pass an exhaustive background investigation pursuant to *Government Code* section 1031. Moreover, the P.O.S.T. Background Investigation Manual states: "Individuals who, as a result of a court decision, are reinstated or restored as 'whole' need not undergo another background investigation; furthermore, the background investigations of those who were internally upgraded may focus on any areas of inquiry that may have changed since the last background investigation." [Emphasis added.] Here, the Court denied [redacted] request for reinstatement and he is therefore not exempt from the requirement that a background investigation be conducted regarding his activities in the last nine years as well as his present physical and mental fitness.

Moreover, it appears from the materials faxed to me by your office this morning, that the City Council is anticipated to schedule a meeting on September 25, 2007, not to decide *whether* to provide a hearing in compliance with the Court's order, but rather to decide *how* to proceed in this matter. The *Torrance Municipal Code* does provide any procedure to be followed in these unique circumstances. However, at the hearing in June, the Court made a number of comments affording the City Council wide latitude in deciding exactly how to proceed. At the hearing on June 1, 2007, the Court commented on the Council's options for proceeding as follows:

> The Court: The Court is going to remand this matter to the City Council which is the last decision-maker whose decision in fact was before the Court for the purposes of having a hearing as described in Tuffli to determine the status of Petitioner's revived interest in continued employment. At that hearing, **the City**

> **Council can seek such information as it deems appropriate to conclude what the status of that revived interest in terms of whether there are disqualifying facts that would preclude the Plaintiff from being a police officer.**
>
> Mr. McGill: You Honor, obviously the City Council is not a fact-finding body. Logistically, how is that going to - -
>
> The Court: They can send it back to the Commission if they want to. I'm not telling them that they have to. They can procedurally handle this by sending it back to the Commission if they want to, as far as I'm concerned. They certainly have that option. **The final decision-maker has a lot of options. I don't think I can prescribe how they want to handle it. I'm remanding it to them; they can deal with the hearing themselves. Send the hearing back to the Commission or I suppose they can set up some other kind of way of making that determination. But I think they are entitled to make that determination.** [Emphasis added.]

Based on the foregoing, my clients dispute Mr. McGill's characterization of the legal obligations of the City in response to the writ, i.e. that [redacted] be reinstated. We look forward to the opportunity to providing input to the Council regarding how the hearing should be conducted and will file a brief in accordance with the schedule described in your memorandum.

Sincerely,

LIEBERT CASSIDY WHITMORE

J. Scott Tiedemann

JST/bvw

cc: Bradley Wohlenberg