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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, WEST DISTRICT

MSG FORUM, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

CITY OF INGLEWOOD, a municipal corporation; SUCCESSOR AGENCY TO THE INGLEWOOD REDEVELOPMENT AGENCY; THE INGLEWOOD PARKING AUTHORITY; CITY OF INGLEWOOD CITY COUNCIL; MAYOR JAMES T. BUTTS, JR., in his individual and representative capacity; MURPHY'S BOWL LLC; and DOES 1–25, inclusive,

Defendants.

AND RELATED CROSS-CLAIMS

Case No. YC072715

Hon. Craig D. Karlan, Dept. N

PLAINTIFF MSG FORUM, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT CITY OF INGLEWOOD'S MOTION TO STRIKE THE PURPORTED ERRATA OF MELANIE MCDADE-DICKENS' DEPOSITION TRANSCRIPT AND MSG FORUM, LLC'S SECOND SUPPLEMENTAL INTERROGATORY RESPONSES

[*Declaration of Megan K. Smith and [Proposed] Order filed concurrently herewith*]

PUBLIC REDACTED VERSION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

TABLE OF AUTHORITIES
(cont.)

Page(s)

I. INTRODUCTION

Melanie McDade-Dickens ("Ms. McDade") was, until a few months ago, a highly placed City of Inglewood executive. Most importantly, she served as an Executive Assistant and close confidante to Inglewood Mayor James T. Butts, who, on behalf of the City, orchestrated the fraudulent acts underlying MSG Forum, LLC's ("MSG") claims. *See* Declaration of Megan K. Smith ("Smith Decl."), Ex. 1 at 19:5-8; Ex. 3 at 118:22-25. Given her prominence at City Hall and her close relationship to Mayor Butts, MSG noticed Ms. McDade's deposition in May 2018. Ms. McDade sat for her deposition in two sessions on September 10, 2018 and July 15, 2019.[1] During both sessions, Ms. McDade was largely nonresponsive, testifying she could not recall or had no knowledge of key events, documents, or conversations related to MSG's claims against the City. This same uncooperative and evasive approach mirrored nearly every other defense witness, including Mayor Butts and Clippers' witnesses Steve Ballmer, Dennis Wong, Gillian Zucker, Chris Meany, and Gerard McCallum, each of whom feigned having virtually no recollection of key events or conversations—even emails and text messages they personally wrote or received. *See, e.g.*, Smith Decl., Ex. 17 at 119:6-123:19; *id.*, Ex. 25.

In September, after she reviewed her second deposition transcript, Ms. McDade's counsel served an errata with corrections to her testimony revealing new and important evidence not previously disclosed at her depositions. Among other things, Ms. McDade admitted:

- She overheard Mayor Butts speak with MSG's partner, Irving Azoff, about developing a tech park on property that MSG had leased from the City—and that the Mayor fraudulently induced MSG to relinquish so the City could make it available to the Clippers to build an arena. *Id.*, Ex. 33 at 149:17-20, 151:6-12, 154:14-20. This testimony adds to mounting evidence corroborating MSG's claims—including testimony from Mr. Azoff, Clippers consultant Christine Robert, and others—and squarely contradicts the Mayor, who insists that such a conversation "never" happened. *Id.*, Ex. 11 at 274:25-276:24.
- She knew about Mayor Butts' secret negotiations with the Clippers in 2016 and 2017 about developing an arena on MSG's land and was told by the Mayor that he needed MSG to terminate its lease before he could enter into an agreement with the Clippers. These statements also impeach Mayor Butts' deposition testimony. *Id.*, Ex. 33 at

[1] Ms. McDade sat for deposition for 90 minutes on September 10, 2018, until MSG was forced to suspend the deposition because her then-counsel—who is also counsel for the City Defendants—instructed her not to answer a number of questions. *Id.*, Ex. 1; *id.* ¶ 3. After MSG filed a motion to compel, the Referee issued an order over the City's objection requiring Ms. McDade to sit for the remainder of her deposition, which occurred on July 15, 2019. *See id.*, Ex. 2.

166:5-10, 183:20-184:1, 250:2-20, 270:14-271:1, 282:2-283:8, 286:17-287:13, 298:9-13; Ex. 11 at 143:5-23, 149:14-25, 154:22-155:7, 274:19-24; and

- Mayor Butts uses a personal email address under a pseudonym, cwinslow72@gmail.com, including apparently in connection with lobbying work performed in support of the Clippers arena. This email account was never before disclosed in this or other related litigation, despite direct questions to Mayor Butts at his deposition and extensive discovery and motion practice regarding the Mayor's email accounts. *Id.*, Ex. 33 at 238:7-239:7; Ex. 27 at 13-14; Ex. 11 at 21:14-23:11, 31:11-33:9 ([redacted]); *id.* ¶ 20.

Needless to say, Ms. McDade's decision to break ranks with defendants and correct her testimony is highly problematic to defendants.[2]

The City's Motion to strike Ms. McDade's corrections lacks any practical litigation purpose since, as the City knows, it is axiomatic that a witness can change her testimony at any time, including at trial.[3] The real purpose of the Motion is PR damage control. Not content to rely on cross-examination to challenge Ms. McDade's corrections, defendants seek to defuse her testimony by spinning a reckless and false press narrative, going so far as to suggest to the Court that MSG may have paid Ms. McDade to change her deposition testimony.[4]

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[2] Perhaps concerned about this eventuality, the City fought strenuously to prevent Ms. McDade from sitting for a second session of her deposition. For example, the City attempted to moot MSG's motion to compel further testimony by offering that the parties should just "agree not to have Ms. McDade testify at trial." Smith Decl. ¶¶ 3-4. After MSG declined to so stipulate, the City opposed MSG's motion to compel, representing to the Discovery Referee that "Ms. McDade isn't a witness in this case," she "was not involved in and had no knowledge of the negotiations between the Mayor and the City relating to the ENA," and "[t]here's nothing else [MSG] need[s] from her." *Id.* Ms. McDade's corrected testimony shows that none of this was true.

[3] As with all deponents, Ms. McDade was advised at her deposition that changes to her testimony may affect her credibility and she may be examined about those changes at trial, and she expressly acknowledged this in her recent filing with the Court. *See* Smith Decl. ¶ 12. Defendants plainly intend to do so, since Murphy's Bowl already has noticed Ms. McDade's deposition. *Id.*

[4] Notably, the City did not meet and confer with MSG before filing this Motion and gave no notice that it intended to file a public statement effectively charging MSG with suborning perjury. *Id.* ¶ 13. The City also circumvented the parties' stipulated agreement to appoint the Referee to "provide assistance in resolving *any and all present and future discovery disputes in this litigation*," *see* 03/12/19 Order and Stipulation Appointing Mr. Chernick (emphasis added), despite the fact that defendants recently stipulated with Ms. McDade (without conferring with MSG) to permit Mr. Chernick to adjudicate Ms. McDade's pending Motion to Quash the deposition notice served by Murphy's Bowl. *Id.* ¶¶ 13, 19; *id.* Ex. 10.

This also is not the first time that the City has used a public filing in this case as part of its press campaign. On May 13, 2019, the City issued a press release in conjunction with its filing of objections to the Referee's Order No. 5. Smith Decl., Ex. 29. The Court issued an order overruling the City's objections on October 21, 2019.

The attacks on MSG in the Motion are patently false and exceed the bounds of fair and legitimate advocacy. After reviewing the Motion, MSG's counsel wrote to defendants' lead counsel, explicitly advised that no one associated with MSG had anything to do with Ms. McDade's corrections, and requested that the false accusations be withdrawn. *Id.* ¶ 14, Ex. 5. Counsel to the City and the Mayor refused. *Id.* ¶¶ 15-17. The exchange of correspondence is included in the accompanying declaration of Megan K. Smith. *Id.*, Exs. 6-7.

These false accusations are especially reprehensible because defendants know full well that certain of Ms. McDade's corrections are indisputably truthful. For example, Ms. McDade's testimony about Mayor Butts' undisclosed email account has been corroborated by the City Defendants' own counsel. *See* Smith Decl., Ex. 22 (10/10/19 Email from J. Tokoro admitting "the account belongs to the Mayor.").[5] In any event, Defendants are free to cross-examine Ms. McDade, and there is no need or basis to strike her errata, much less MSG's written discovery responses that incorporate it. The City's Motion should be denied.

II. BACKGROUND OF THE CASE

In 2011, after months of negotiations led by Mayor James Butts, MSG agreed to purchase the iconic Forum arena from its owner and invest at least $50 million in the arena's rehabilitation. FAC ¶¶ 2-9, 49-57. In exchange for that significant undertaking and other commitments to the City, the City made multiple commitments in a Development Agreement ("DA") with MSG to refrain from taking any actions that would jeopardize the Forum's chance to succeed. *Id.* ¶¶ 10, 58-63, Ex. 1. Because the Forum does not have adequate parking onsite for sold-out events, MSG entered into a contract with the City to lease 15 acres of land for overflow parking (the "Leased Property"). Importantly, the contract also gave MSG the right to purchase the land for parking or any other use. *Id.*, Ex. 3.

In 2016, Mayor Butts and the City embarked on a fraudulent scheme to convince MSG to terminate its Lease so that they secretly could offer the Leased Property to the Clippers—with

[5] Despite this acknowledgement, counsel for the City Defendants publicly denied in a press report that the account belongs to Mayor Butts. *See id.*, Ex. 32 ("[City attorney, Skip] Miller denied the email account belongs to Butts.").

whom the Mayor was having clandestine negotiations—for a new concert and sports arena. *Id.* ¶¶ 20-22, 27-32, 82-95. The new arena will directly impede the operations and undermine the viability of the Forum just one mile away in violation of the DA, and Mayor Butts knew that MSG would never relinquish control of the Leased Property if he revealed his plans. So he deliberately deceived MSG. Behind MSG's back, he met with and corresponded often with the Clippers about the scheme to secure control over MSG's Leased Property. Smith Decl., Exs. 18-26. In February 2017, after a *Los Angeles Times* article reported that the Clippers were considering a move to Inglewood, the Mayor expressly disavowed the report to MSG partner and Forum consultant Irving Azoff. FAC ¶ 81; *see* Smith Decl., Ex. 14 at 49:25-53:14; Ex. 15 at 110:13-115:12. The Mayor then proceeded to convince MSG to terminate the Lease by lying to Mr. Azoff that he needed the Leased Property for a developer in the "tech area." Smith Decl., Ex. 14 at 84:5-13, 84:18-86:21, 129:16-23, 130:4-136:4. After MSG relinquished the property, the City publicly announced an agreement with the Clippers to develop an arena on the property, thus breaching its commitments in the DA and consummating its fraud on MSG. *See, e.g.*, FAC ¶¶ 29-36, 94-103, 113-121, 131-137, 160-168, 189-193.

Mayor Butts was deposed by MSG on August 30, 2018. Smith Decl., Ex. 11. Among other things, Mayor Butts testified that he met with the Clippers sometime in 2016 to discuss the Clippers' interest in developing a new arena in Inglewood. *Id.* at 138:14-142:23. Mayor Butts testified he told the Clippers the City "didn't have a parcel that was suitable," and the Clippers representatives "were disappointed but that's the way it was." *Id.* at 142:1-142:23. According to Mayor Butts, he had no communications with the Clippers between the early 2016 meeting and late spring 2017, when lawyers began working on an exclusive negotiating agreement. *Id.* at 143:5-23, 149:14-151:19, 154:22-156:20, 274:9-18. He strongly denied that the termination of MSG's Lease had anything to do with the proposed Clippers arena and insisted he never told any person—ever—that he wanted to develop a tech park in Inglewood. *Id.* at 274:19-276:24.

Since Mayor Butts' deposition last year, a growing body of evidence contradicts his testimony. For example, Clippers' co-owner Dennis Wong produced to MSG [redacted] from the June 24, 2016 meeting with the Mayor, which show that—contrary to the Mayor's testimony—the

Mayor assured the Clippers at that meeting that MSG's land could be made available to the Clippers within the next six months and told the Clippers he "wants $1.5 million for ENA." *Id.*, Ex. 22. Other documents, and now Ms. McDade's testimony, show that, after the June meeting, Mayor Butts was in frequent contact with the Clippers and hosted Mr. Wong at City Hall in September 2016 to discuss MSG's land. *Id.*, Exs. 18-26. The record also shows that the termination of MSG's Lease was a condition precedent to the Clippers' ENA with the City, and the Clippers were closely following the Mayor's progress in convincing MSG to relinquish its control of the Leased Property. *Id.* Ms. McDade now corroborates that the Mayor, immediately after reassuring Mr. Azoff on a February 2017 phone call that the *Times* article about the Clippers moving to Inglewood was false, called Mr. Wong to report on their narrow escape from MSG's discovery of the scheme—prompting Mr. Ballmer, when he learned of it, to write, "[redacted]." *Id.*, Ex. 25.

Even before Ms. McDade served her errata describing the "tech park" conversation between the Mayor and Mr. Azoff, two witnesses (in addition to documents) corroborated Mr. Azoff's testimony on this point: Tim Leiweke, an MSG consultant who testified that he attended a meeting with the Mayor, Mr. Azoff, and Ms. McDade at which the Mayor expressed to Mr. Azoff a desire to "create a tech park and the ability to utilize the existing land that MSG had for that tech park"; and Christine Robert, a City consultant presently working on the Clippers project, who admitted she heard the Mayor tell MSG that he wanted to develop a tech park in Inglewood. *See id.*, Ex. 15 at 68:23-72:22; *id.* at 331:15-334:11; Ex. 16 at 164:9-165:16, 275:13-23. All of the above evidence directly contradicts the Mayor's sworn testimony, and is consistent with Ms. McDade's corrected testimony.

III. THERE IS NO LEGAL BASIS TO STRIKE THE ERRATA

A. The Court Is Not Required to Strike the Errata as Untimely

Section 473(b) of the Code of Civil Procedure authorizes the Court, in its discretion, to relieve parties from inadvertent mistakes such as getting some but not all counsel's agreement to an extension. The Court should exercise its discretion here to deny defendants' Motion to strike Ms. McDade's errata, especially since defendants will have ample opportunity to cross-examine

her in a further deposition or at trial. The alleged untimeliness prejudices no one,[6] and is asserted by defendants solely with the aim to prevent a full record of Ms. McDade's testimony to the prejudice of MSG. Section 473(b) is intended to redress precisely these circumstances. *See Ramsey Trucking Co. v. Mitchell*, 188 Cal. App. 2d Supp. 862, 865 (1961) (Section 473 is "a remedial statute strongly favored by the courts and liberally applied to carry out the policy of permitting a trial on the merits." (quotation and citation omitted)); *see also Kapitanski v. Von's Grocery Co*., 146 Cal. App. 3d 29, 33 (1983) (court abused its discretion in refusing to consider untimely papers where attorney's neglectful conduct was nonetheless reasonable); *Mitchell v. Cal. & O.C.S.S. Co*., 156 Cal. 576, 578, 580 (1909) (trial court abused its discretion in denying Section 473 relief to party whose attorney mistakenly believed he had obtained extension to file appeal).

B. <u>The "Sham Evidence" Rule Does Not Apply</u>

Equally wrong is the City's suggestion that Ms. McDade's corrected testimony (and the relevant portions of MSG's discovery responses incorporating it[7]) should be disregarded as a "sham" intended to create a factual dispute to defeat summary judgment. Its reliance on the "sham evidence" rule of *D'Amico v. Board of Medical Examiners*, 11 Cal. 3d 1 (1974), is misplaced. The "sham evidence" rule prevents a party opposing summary judgment, after the motion has been filed, from presenting to the court a declaration that purports to impeach her own prior sworn admissions in an effort to defeat summary judgment. *See Ahn v. Kumho Tire U.S.A. Inc.*, 223 Cal. App. 4th 133, 135 (2014) (explaining that *D'Amico* "held that a party's statement of fact adduced on a motion for summary judgment must be disregarded as insubstantial or incredible to the extent they contradict the party's prior 'clear and unequivocal admission[s]' of fact"); *see also Scalf v.*

[6] The City makes no showing of prejudice and, instead, relies on a single conclusory sentence that it would be harmed if the errata is not stricken because the Court may deny defendants' summary judgment motion. This is a *non sequitur*. The fact that evidence is damaging to the City's case does not make it prejudicial—indeed, the highly probative value of the errata weighs against any purported prejudice. *See* Cal. Evid. Code § 352.

[7] MSG disputes defendants' baseless assertion that MSG served supplemental and amended responses in order to manufacture an issue of fact for purposes of summary judgment, or that any of its interrogatory responses undermine its claims. *See* Mot. at 13-14.

D.B. Log Homes, Inc., 128 Cal. App. 4th 1510, 1514 (2005); *D'Amico*, 11 Cal. 3d at 21-22; Mot. at 16-17. The rule does not apply here because:

- Ms. McDade is not a "party opposing summary judgment." Just the opposite, she is a party witness for the moving City Defendants.
- Ms. McDade is not working with or for MSG. The City's accusation that MSG—the party that will oppose defendants' motion—orchestrated Ms. McDade's changes to her testimony is a complete fabrication. MSG and its counsel had no knowledge of Ms. McDade's changes to her testimony until September 16, 2019, when her errata was served on all counsel. *See infra* at 16-19.
- Ms. McDade's corrections were prepared and signed on September 12, 2019, more than two weeks *before* Defendants filed their September 27, 2019 summary judgment motion and, therefore, cannot have been created to defeat the motion. In other words, Defendants had notice of the changes to Ms. McDade's testimony before filing their motion. Their brief even acknowledges the errata and indicates that, for purposes of its motion, it accepts as true the facts Ms. McDade's testimony supports. *See* 09/27/19 MSJ at 44-45 n.14 (accepting Azoff's testimony regarding the tech park misrepresentation as true).

The authorities cited by the City do not hold otherwise. *See* Mot. at 16-19 (citing *Gray v. Reeves*, 76 Cal. App. 3d 567, 574 (1977) (court disregarded *plaintiff's* errata submitted in opposition to summary judgment where it contradicted his deposition testimony); *D'Amico*, 11 Cal. 3d at 21-22 (discussing efforts by plaintiff to contradict earlier sworn admissions)). Indeed, the City does not cite a single California case—nor has MSG been able to find one—supporting the City's position that, just because a non-party witness's changes to her deposition testimony are substantive, the changes must be stricken. Section 2025.520(b) of the Code of Civil Procedure, in fact, expressly *permits* a deponent to "change the . . . substance of [her] answer to a question" after her deposition.

Moreover, California courts, citing to the Code, routinely uphold a witness's right to substantively correct or amend her deposition transcript, even when those corrections are presented for purposes of opposing summary judgment. *See, e.g.*, *Keenan v. Souza*, 2015 WL 9918464, at *6-7 (Cal. Sup. Ct. Oct. 20, 2015) (denying motion to strike plaintiff's changes to deposition transcript and permitting it to rely on changes to deposition for purposes of opposing

summary judgment).[8] *Cf. Manas v Kenai Drilling Ltd.*, 2018 WL 1510408, at *8 (Cal. Sup. Ct. Jan. 8, 2018) (disregarding defendant's challenge to class certification based on class representative's substantive corrections to deposition testimony).[9] Ms. McDade's errata falls squarely within the scope of these cases—not *D'Amico*—and should not be stricken.

C. <u>There Is No Basis to Strike MSG's Verified Discovery Responses</u>

The City's efforts to mitigate the damage caused by Ms. McDade's defection do not stop with her errata—the City also asks the Court to strike portions of MSG's *verified* interrogatory responses that incorporate Ms. McDade's testimony on the ground that they are "substantive[ly] infirm." That contention is baseless.

As the Court knows, written interrogatories require a party to disclose to its adversary all responsive information available to it for purposes of, among other things, "expedit[ing] resolution of the lawsuit" and assisting the parties in preparing for trial. *Deyo v. Kilbourne*, 84 Cal. App. 3d 771, 781-82 (1978). Last year, the City served more than 60 special interrogatories on MSG, asking it to, *inter alia*, "[s]tate all facts that support" its claims for breach of contract, rescission, and fraud against the City of Inglewood and Mayor Butts (Special Interrogatory Nos. 1, 5, 13) and "[i]dentify all PERSONS YOU know of" who were told that the Leased Property would be used for a "technology park," (Special Interrogatory Nos. 28, 37). MSG served its initial set of responses to the City's First Set of Special Interrogatories on December 19, 2018 but, given the significant discovery that remained to be completed in the case, made clear that its responses were

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[8] To comply with California Rule of Court 8.1115, MSG has not cited unpublished appellate authorities here but, for the Court's benefit and for persuasive value only, has included citation to various trial court orders.

[9] The federal cases cited by the City are inapposite because California state courts have not adopted the Ninth Circuit's narrow interpretation of Federal Rule of Civil Procedure 30(e). *See* Cal. Civ. Proc. Code § 2025.520. The cases also are factually inapposite. *See Hambleton Bros. Lumber Co. v. Balkin Enters., Inc.*, 397 F. 3d 1217, 1224-25 (9th Cir. 2005) (concluding that sham affidavit rule prevented *party* opposing summary judgment from making corrections to his deposition testimony and noting that "corrections were submitted only after" the summary judgment motion was filed, with no explanation for those corrections); *Lewis v. The CCPOA Benefit Tr. Fund*, 2010 WL 3398521, at *3-4 (N.D. Cal. Aug. 27, 2010) (rejecting contradictory changes to deposition made by 30(b)(6) party witness for purposes of aligning testimony to documents); *Tourgeman v. Collins Fin. Servs., Inc.*, 2010 WL 4817990, at *2-3 (S.D. Cal. Nov. 22, 2010) (striking 30(b)(6) party witness's corrections to testimony with no explanation for those corrections).

solely based on information available to MSG at the time, and MSG reserved the right to amend or supplement its responses as permitted by the Code. *See, e.g.*, 10/28/19 Declaration of Jason Tokoro ("Tokoro Decl."), Ex. N at 2 ("MSG has not yet completed its investigation of facts of the above-captioned case, has not completed its review of relevant documents (many of which have not yet been produced by parties or third parties) or otherwise completed discovery . . . ."); *see* Cal. Civ. Proc. Code § 2030.310(a).

Consistent with its responses and its rights under the Code, since December, MSG has twice served amended responses that, among other things, incorporate evidence discovered since its initial responses were served. *See* Tokoro Decl., Ex. L. In its Second Supplemental and Amended Responses served in September 2019, MSG incorporated Ms. McDade's corrected testimony as evidence in support of its claims, and identified Ms. McDade as a witness to the Mayor's "tech park" misrepresentations. MSG's most recent amended responses also include discovery elicited by MSG in the summer of 2019, such as deposition testimony from Clippers party witnesses. *Id.* at 206-207.

In short, the Code expressly permits MSG to amend and supplement its discovery responses, and the City's Motion does not cite a single authority supporting its request that the Court strike the responses. In a lone sentence, the City contends the responses should be stricken in light of the same "substantive infirmities" it associates with Ms. McDade's errata. But the City's dissatisfaction with Ms. McDade's changed testimony is no basis to strike MSG's discovery responses.

IV. THE MOTION IS ALSO FACTUALLY UNSOUND

A. The Record Corroborates Ms. McDade's Corrections to Her Testimony

In asking the Court to strike Ms. McDade's errata, the City accuses her of perjury. While it is not MSG's burden to defend Ms. McDade's credibility, the record strongly supports the veracity of her corrections. Critically, counsel to the City and Mayor Butts already have confirmed that Ms. McDade's corrected testimony about Mayor Butts' undisclosed email account is correct. *See* Smith Decl., Ex. 33 at 238:7-9 ("Q: What is -- whose e-mail address is cwinslow72@gmail.com? A: The Mayor."); *id.*, Ex. 12. Ms. McDade's revelation is

significant—and troubling—because the Mayor's use of personal accounts and devices to maintain "confidentiality" of his communications (and conceal his failure to comply with preservation duties under California and City law) has been the subject of extensive litigation in this case and others. *See id.* ¶ 20. The Mayor was first asked by MSG to identify his personal email accounts under oath at his August 2018 deposition in this case. [redacted] —but never disclosed the cwinslow72@gmail.com account, even after reviewing his transcript to make any necessary changes. *Id.*, Ex. 11 at 21:14-23:11, 31:11-33:9. Earlier this year, Mayor Butts had another opportunity to rectify his omission after the Referee ordered the Mayor and the City to explain in declarations the "preservation, search, collection, and production methodology" of his personal emails. *See* Referee Order No. 8. Yet again, Mayor Butts failed to report his cwinslow72@gmail.com account. *Id.* ¶ 20.

Exposed by Ms. McDade's errata, the City and Mayor have now been forced to acknowledge the Mayor's wrongful omission. Jason Tokoro, outside counsel for the City, first confirmed the accuracy of Ms. McDade's changed testimony to MSG by email on October 10, 2019, conceding: "the account belongs to the Mayor," notwithstanding the fact that Mr. Tokoro's partner, Skip Miller, later denied this same fact to the press.[10] *Id.*, Exs. 12, 32. Days later, the Mayor and City agreed to search and produce responsive documents from the cwinslow72@gmail.com account. *Id.* ¶ 23, Ex. 13.

Other evidence in the record also supports the accuracy of her changes. For example, the City's contention that the errata is the only evidence in the record that supports MSG's "tech park" allegation—and therefore must have been fabricated—is wrong. Two witnesses independently corroborated the "tech park" allegation in depositions given earlier this year: Mr. Leiweke and Ms. Robert. *See supra* at 9. In addition, document discovery reveals that, at the same time the

[10] Mr. Tokoro sought to defend the omission by arguing that the Mayor does not use the email account except for "spam" email. *Id.*, Ex. 12. But, even if true, this does not justify the Mayor's failure to disclose the account under oath. Moreover, the "spam" excuse is likely untrue. Ms. McDade's testimony, as well as text messages she exchanged with Clippers' consultant Gerard McCallum, suggest that the Mayor used the account to communicate about work he and Ms. McDade performed on behalf of the Clippers' pro-arena lobbying organization, Inglewood Forward. *See* Smith Decl., Ex. 33 at 237:5-244:4, *id.*, Ex. 27.

Mayor misled MSG about the City's plans to develop a tech park, the City was planning to develop a "TechTown" in Inglewood—plans that the City Council (including Mayor Butts) approved in October 2016. *See, e.g.*, Tokoro Decl., Ex. L at 208-210.

B. The City's Reckless Accusations Against MSG Are False

Much of the City's Motion consists of its knowingly false accusations that MSG is "in cahoots" with Ms. McDade and "manufacture[d]" her corrections to defeat defendants' summary judgment motion, which was filed on September 27, 2019 and is scheduled to be heard on May 7, 2020. *See* Mot. at 8. The Motion does not stop there, irresponsibly, baselessly, and publicly accusing MSG of paying Ms. McDade to commit perjury and "attack[ing] the Court's truth-finding function by colluding with McDade." *See* Mot. at 20; *id.* at 8 (suggesting that "money or other consideration of promises changed hands"); *id.* at 7, 16. These bad faith assertions to the Court are sanctionable and have no place in this litigation.

On July 15, 2019, counsel for MSG examined Ms. McDade. Smith Decl. ¶ 5. Ms. McDade was represented at the July 2019 deposition by Douglas Winter, though counsel for the City and Murphy's Bowl attended the deposition and asserted dozens of objections. *Id.* At the conclusion of the deposition, MSG's counsel informed Ms. McDade of the parties' usual stipulation that required errata to be served 30 days after receipt of the final transcript, but offered, "if you want to take [more] time, you can let us know." *Id.*, Ex. 3 at 427:8-16.[11]

Ms. McDade's counsel followed this instruction. A few days before the initial deadline for Ms. McDade to serve her errata, Mr. Winter left a brief voicemail for MSG's counsel seeking a

[11] Counsel for defendants did not object to this instruction and, in fact, stipulated to it on the record. *Id.* The stipulation was consistent with the City's past practice in this case, and Ms. McDade's request to MSG was certainly not the first time that a party witness has sought an extension from opposing counsel for time to serve its errata without copying all parties to the case. For example, just one day after Ms. McDade's deposition, counsel for the City emailed MSG (and did not copy Murphy's Bowl) to request a 2-week extension of time to serve an errata on behalf of City witness Yvonne Horton. *See id.* ¶ 18, Ex. 9.

Notably, this Motion is the first time anyone in this case has sought to enforce the 30-day deadline for errata. In the past, when a witness errata sheet had not been served within 30 days, the City sent a reminder email to the witness's counsel and later accepted the errata without objection. *Id.* ¶ 17, Ex. 8. The City does not explain why it did not take the same approach here—particularly where its counsel was in contact with Ms. McDade's counsel regarding other matters. *See* 10/28/19 Declaration of J. Harris ¶ 3 (City met with Mr. Douglas on September 4).

10-day extension of time for Ms. McDade to serve corrections to her transcript. *Id.* ¶ 6. The same day, counsel for MSG sent Mr. Winter an email agreeing to the extension as a professional courtesy. *Id.*; Tokoro Decl., Ex. H. The fact that MSG did not copy defendants' counsel on its email is inconsequential. Although Ms. McDade had retained her own counsel, she was still a City employee, and MSG had every reason to believe she was still in contact with defendants' counsel. Smith Decl. ¶¶ 6-7. MSG also did not consider its communications with Mr. Winter unusual, given the parties' past practice with errata in the case. *See supra* n.11.

Ten days later, on August 26, MSG received an email from Carl Douglas, identifying himself as Ms. McDade's new attorney. *Id.* ¶ 8. Mr. Douglas's email requested an additional 2 ½ weeks to serve the errata because he had recently been retained to take over for Mr. Winter and was planning to travel over the upcoming Labor Day holiday weekend. Tokoro Decl., Ex. I. The next day, counsel for MSG emailed back its agreement to the extension. *Id.*

On September 13, 2019, Mr. Douglas informed MSG's counsel that he had mailed an errata sheet to all counsel in the case. Smith Decl. ¶ 9, Ex. 4. On September 16, 2019, MSG received Mr. Douglas's September 12, 2019 letter containing Ms. McDade's corrections. *Id.* ¶ 11. This was the first time anyone associated with MSG learned of Ms. McDade's changes.

The City has no evidence to the contrary, and its purported justifications for its unprincipled attacks on MSG are frivolous. The City claims MSG's approval of Ms. McDade's request for two extensions was "secret" and thus proves collusion between MSG and Ms. McDade. It proves no such thing. MSG had no knowledge if or when Ms. McDade's counsel had contacted other counsel, nor was it obligated to do check that he had—any obligation belonged, if at all, to Ms. McDade's counsel.[12]

[12] Given the parties' agreement on the record that, if Ms. McDade wanted additional time to review her transcript, she just needed to "let [MSG's counsel] know," it would be reasonable if her counsel thought he was in full compliance with the stipulation by contacting only MSG. Similarly, counsel for Defendant-Intervenor Murphy's Bowl has been engaged in recent meet-and-confer conversations with counsel for Ms. McDade about a pending motion to quash. Defendants did not include MSG in their communications and did not copy MSG on their correspondence. *See id.* ¶ 19.

The City also relies on MSG's request that the City de-designate Ms. McDade's transcript under the terms of the parties' Protective Order. This also proves nothing, except the significance of her testimony and defendants' desire to keep it under wraps. The application of confidentiality designations to documents and testimony elicited in discovery already has been the subject of reciprocal motion practice in this case, including two motions presently noticed for hearing before the Referee. Given the public nature of the proposed arena project, the press and community are keenly interested in developments in this litigation, and defendants have frequently discussed this case in the media. *See* Smith Decl., Exs.29-31. Ms. McDade's revelations materially impeach defendants' witnesses and their representations to the Court and Referee, and there is no basis for withholding their disclosure.

Likewise frivolous as proof of collusion is the City's attack on MSG's use of Ms. McDade's testimony. Her testimony is directly relevant to MSG's efforts to obtain certain additional discovery from the City (*e.g.*, information regarding the newly disclosed email address) and its supplementing of written discovery responses. MSG's counsel has every right to use evidence in the case to support its claims.

Nor is a statement purportedly made by Mr. Douglas to a City attorney on September 4, 2019—more than one week before MSG even learned that Ms. McDade was making changes to her testimony—evidence of coordination between MSG and Ms. McDade. MSG was not a party to this supposed conversation and, as already explained, MSG had no prior knowledge of the errata. *Id.* ¶¶ 5-11. Mr. Douglas has already publicly confirmed the same. *Id.*, Ex. 32.

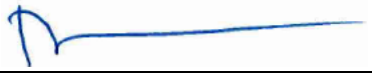
V. CONCLUSION

A witness can change her testimony at any time, including at trial. Any alleged inconsistencies in her prior statements can be used to challenge her credibility. They are not a basis, however, to strike evidence just because it is damaging to defendants' case. Defendants will have the opportunity to cross-examine Ms. McDade about her corrections.

For all the foregoing reasons, MSG requests that the Court deny the City's Motion.

DATED: November 14, 2019

O'MELVENY & MYERS LLP

By: 

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