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**By ECF & By Hand**

Hon. Lewis A. Kaplan  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: Five Borough Bicycle Club, et al. v. City of New York, et al.  
07 CV 2448 (LAK)

Dear Judge Kaplan:

This office represents the defendants in the above entitled action. Pursuant to Local Rule 6.3 of this Court, defendants seek reconsideration of the Court's order dated November 27 and docketed on November 28, 2007 ("Order") granting in part and denying in part Plaintiffs' motion to compel compliance with Plaintiffs' First Request for Production of Documents ("Plaintiffs' Document Request"). Specifically, Defendants respectfully request that the Court reconsider the Order with respect to Document Request Number 6 and 7(g) since complying with the Order would literally require the by-hand review of, at best, tens of thousands of summonses stored in precincts throughout the City.<sup>1</sup>

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<sup>1</sup> Document Request 6 seeks "[a]ll documents concerning any summons issued or arrests made pursuant to the Parade Rules." Defendants seek reconsideration only with respect to the portion of that document request relating to summonses. Document Request 7(g), as modified by the Order, seeks "[a]ll documents concerning ... NYPD's issuing of a summons in connection with any Group Bicycle Ride." In accordance with the Order, the plaintiffs have identified more than 450 such rides.

While the Order recognized the limitations on discovery and sought to craft a compromise that addressed the substantial burden upon the City of New York “of conducting a massive document search in a department with 35,000 or 40,000 uniformed officers and the plaintiffs’ equally obvious interests in getting at the basic facts needed to litigate this case,” Order at 1, it is respectfully suggested that the Court failed to appreciate that the manner in which summonses are prepared and maintained by the New York City Police Department (“NYPD”) makes the plaintiffs’ discovery requests not only incredibly burdensome to comply with, but in some cases, simply not feasible.

As a general matter, the NYPD does not maintain a paper file relating to either summonses issued pursuant to the Parade Rules (NYC Ad. Code § 10-110) or group bicycle rides that would enable it to simply retrieve the actual summonses conceivably responsive to these two documents requests.<sup>2</sup> And absent the name of the person charged, retrieving actual Parade Rule summonses or summonses issued in connection with group bicycle rides is incredibly burdensome. Specifically, summonses are filed by charge date in precincts throughout the City. Thus, the NYPD would have to comb through thousands of summonses in each precinct to find potentially responsive documents.

Moreover, even if the NYPD undertook this onerous exercise, it is likely that summonses issued in connection with group bicycle rides would not be located. Unless the issuing officer wrote a narrative identifying the defendant as a participant in a group bicycle ride, it would be virtually impossible to ascertain whether a particular summons related to a group bicycle ride. The arduous and time-consuming process required to find potentially responsive summonses far exceeds the probative value of the document.

As defendants stated in their November 21<sup>st</sup> opposition to Plaintiffs’ Motion to Compel, the NYPD’s computers are also not designed to query the system in the manner necessary to search for documents responsive to Document Request Number 6 and 7(g). The computers are programmed to assist the NYPD in two specific areas: (1) to run a name and date of birth search to determine whether an individual has been previously arrested and (2) to organize data enabling the NYPD to conduct a statistical analysis of certain categories of crime. Thus, the NYPD maintains information merely as another tool to accomplish its primary purpose of enforcing the laws and protecting the public. As set forth in detail below, these computers were not programmed to respond to discovery requests involving the City of New York.

Document Request Number 6 and 7(g) require distinct searches for three categories of records: (1) summonses issued for traffic infractions (i.e., failure of bicyclist to be equipped with a bell or horn, failure of a bicyclist to be equipped with lights, failure to stop at a

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<sup>2</sup> There are two exceptions to this general rule. For a certain period of time, the NYPD prepared a list of arrests in connection with Critical Mass rides in Manhattan. In addition, some time in late 2006, NYPD’s Patrol Borough Manhattan South began to save summonses issued in connection with these Critical Mass rides. The defendants are in the process of producing these documents to plaintiffs in redacted form.

red light, etc.) returnable in Traffic Court; (2) criminal summonses issued for penal law offenses returnable at Criminal Court; and (3) arrests of bicyclists.<sup>3</sup>

The NYPD maintains statistical data as to traffic summonses issued for various types of moving offenses. Moving offenses related to bicycles are captured in two ways; as (1) general bicycle traffic infractions and (2) violations for bicycling on the sidewalk. For the 450-plus group bicycle rides identified by plaintiffs, the NYPD can produce a report listing the number of infractions for each category on a given date and the precinct issuing the summons. However, this report would not include any information as to the exact location of the offense or the name of the individual receiving the summons or the summons number. Moreover, as there is no indication whether the person participated in a group bicycle ride, such a report might be entirely irrelevant. The report states only the number of moving violations issued by police officers in certain precincts. A copy of a computer generated report for precincts in Patrol Bureau Manhattan South for August 25, 2006 is attached hereto as Exhibit "A."

This problem with respect to criminal summonses is even more acute. Bicycle related violations are reflected in a category simply called "Bicycle." There is no designation whether these offenses were related to a group bicycle ride. Nor does this computer contain information as to the summons number, or the name of the individual receiving the summons. Further complicating matters is that some bicyclists may have received a disorderly conduct summons in addition to or in lieu of the aforementioned bicycle summons. Disorderly conduct summonses capture a wide array of behavior, including: fighting; using obscene or abusive language; refusing an order of a police officer to disperse; blocking pedestrian or vehicular traffic; creating a hazard; etc. However, these NYPD computer records do not specify the nature of the disorderly conduct summons, nor do they indicate whether the summons was issued to a bicyclist, regardless of whether the defendant was a participant in a group bicycle ride. And summonses issued pursuant to the Parade Rules cannot be identified as they are captured in the catchall category "Admin. Code Viol. (Unclassified)," which contains summonses issued for hundreds of violations of the New York City Administrative Code, the overwhelming majority of which are not bicycle related. A copy of a computer generated report listing the number of criminal court summonses issued in Patrol Borough Manhattan South on August 25, 2006 is attached hereto as Exhibit "B."

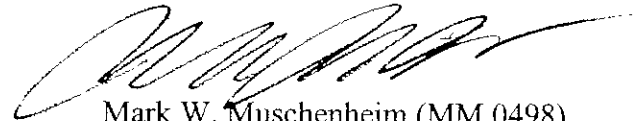
A more sophisticated computer program, the NYPD's Real Time Crime Center, contains some additional information with regard to the disorderly conduct summonses. For a given date, this database can provide the specific disorderly conduct charge and the time of occurrence of the offense. However, this program does not indicate whether the offense was committed by someone on a bicycle or someone who was part of a group bicycle ride. Only the summons itself might provide this information. Thus, as with the moving offense summonses described above, NYPD personnel would have to devote countless hours searching paper summonses maintained in each precinct.

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<sup>3</sup> Since defendants are not seeking reconsideration of the Court's Order relating to document requests regarding arrests made pursuant to the Parade Rules and arrests in connection with group bicycle rides, this motion will not explore this category of records in greater detail.

Defendants have collected and reviewed more than 40,000 documents – the overwhelming majority of which are wholly irrelevant to the disputed issues. To date, defendants have produced more than eight thousand documents. Thus, defendant have acted in good faith to comply with plaintiffs’ discovery requests to the extent feasible. Moreover, defendants have taken steps to fully comply with Document Request Number 4, 5, 7(h) and 7(i) as revised by the Court Order. Additionally, defendants can comply with Document Request Number 6 with respect to arrests made pursuant to the Parade Rules. The summonses and list of arrests identified in footnote 2 will be produced. Finally, the defendants are prepared to compile the statistical information on certain categories of summonses for the 450-plus group bicycle rides identified by plaintiffs. However, as described in great detail above, there are aspects of the plaintiffs’ document requests that are simply not feasible given the nature of the NYPD’s electronic record keeping database and the manner in which paper documents are stored. Therefore, defendants request that this motion to reconsider the Order be granted.<sup>4</sup> If the Court deems it appropriate, Defendants can submit sworn statements relating to the factual information set forth above.

Respectfully submitted,



Mark W. Muschenheim (MM 0498)  
Assistant Corporation Counsel

Attachments

cc: Steve Vaccaro, Esq.  
(By ECF & By Hand)

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<sup>4</sup> After the issuance of the Order, the parties unsuccessfully attempted to resolve this dispute.

**EXHIBIT A**

MS

Moving Offenses

From: 8/25/2006 To: 8/25/2006

	001 PCT	005 PCT	006 PCT	007 PCT	009 PCT	010 PCT	013 PCT	014 PCT	017 PCT	018 PCT	Total
Bicycle - Traf. Infraction	0	0	0	0	0	0	0	8	2	0	10
Bicycle, Operate on Sidewalk	0	0	0	0	1	0	0	0	0	0	1
Brake Lights (Defect or Improper)	0	0	0	0	1	2	0	0	6	3	12
Bus Lane, Driving in	0	0	0	0	0	0	0	0	0	5	5
Cell Phone (VTL 1225c)	0	0	12	4	9	6	3	4	6	4	48
Disobey Sign	2	0	6	8	0	2	1	0	9	10	38
Fail to Keep Right	0	0	0	0	0	0	0	1	0	0	1
Fail to Signal	0	0	0	0	0	3	0	0	0	3	6
Fail to Stop on Signal	2	0	0	1	0	4	1	0	1	4	13
Headlights (Defect or Improper)	0	0	0	0	0	0	0	4	0	0	4
Improper Lights	0	0	0	4	0	0	0	0	0	0	4
Improper Passing	0	0	0	0	0	0	0	0	0	2	2
Improper Turn	1	0	0	4	11	2	1	1	0	10	30
Infraction (Unclassified) [B]	0	0	4	13	4	3	0	36	0	9	69
Leaving Scene Acc.(Prop. Damage)	0	0	0	0	0	0	1	0	0	0	1
Not Giving R of W to Pedes.	0	0	0	1	10	0	0	1	0	0	12
Not Giving R of W to Veh.	0	0	0	0	0	2	0	0	0	0	2
Pavement Markings	0	1	0	0	0	1	0	0	1	0	3
Safety Belt (Adult)	0	0	8	2	19	15	6	2	47	14	113
Speeding	0	0	0	0	0	0	4	0	0	0	4

	001 PCT	005 PCT	006 PCT	007 PCT	009 PCT	010 PCT	013 PCT	014 PCT	017 PCT	018 PCT	Total
Spillback	0	0	0	0	1	0	3	1	7	0	12
Tinted Windows	2	0	0	0	2	2	1	0	0	0	7
Truck Routes	0	0	0	0	0	0	6	0	0	12	18
Uninspected	0	0	0	0	0	0	0	2	0	0	2
Uninsured	1	0	0	5	2	2	2	1	4	2	19
Unlicensed Operator	0	1	1	1	2	1	1	0	5	2	14
Unregistered	0	1	0	0	0	0	0	0	1	1	3
Unsafe Lane Change	1	0	0	0	2	0	0	1	1	0	5
<b>Total</b>	<b>2</b>	<b>2</b>	<b>21</b>	<b>43</b>	<b>64</b>	<b>45</b>	<b>30</b>	<b>62</b>	<b>24</b>	<b>31</b>	<b>458</b>

**MS**

- 001 PCT
- 005 PCT
- 006 PCT
- 007 PCT
- 009 PCT
- 010 PCT
- 013 PCT
- 014 PCT
- 017 PCT
- 018 PCT

**EXHIBIT B**

MS

**Criminal Court Offenses**

From: 8/25/2006 To: 8/25/2006

	001 PCT	005 PCT	006 PCT	007 PCT	009 PCT	010 PCT	013 PCT	014 PCT	017 PCT	018 PCT	Total
A.B.C. Laws Violation	1	0	0	0	0	14	3	0	0	0	18
Admin. Code Publ. Consumpt.	0	0	6	0	2	15	6	5	4	1	39
Admin. Code Viol. (Unclassified)	0	1	0	0	1	0	0	4	0	0	6
Bicycle	0	0	0	0	0	0	0	1	13	2	16
Disorderly Conduct	0	1	6	0	1	19	0	4	2	0	33
Health Code Misd. (Unclassified)	0	0	0	0	0	2	0	0	0	0	2
Marjuana. Possession	0	0	1	0	1	2	1	1	0	0	6
Panhandling	0	0	0	0	0	0	0	1	0	0	1
Park Rules & Reg. Viol. (Unclassified)	0	0	0	0	5	2	1	0	2	0	10
Tax Stamp	0	0	0	0	0	0	0	0	0	1	1
T.L.C	0	0	0	1	0	0	0	0	0	0	1
Traffic Rules & Regulations (NYC)	0	1	0	0	0	0	0	0	0	0	1
Trespass	0	0	1	1	1	2	0	0	0	0	5
Urinating in public	0	1	1	0	0	4	1	0	3	0	10
VTL	0	1	0	0	0	0	1	0	0	0	2
<b>Total</b>	<b>1</b>	<b>5</b>	<b>15</b>	<b>2</b>	<b>11</b>	<b>60</b>	<b>13</b>	<b>16</b>	<b>24</b>	<b>4</b>	<b>151</b>