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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 OAKLAND BULK AND OVERSIZED
16 TERMINAL, LLC, a California limited
17 liability company, and OAKLAND GLOBAL
18 RAIL ENTERPRISE, LLC, a California
limited liability company

19 Plaintiffs,

20 v.

21 CITY OF OAKLAND, a California municipal
corporation,

22 Defendant.

23 CITY OF OAKLAND

24 Counter-Plaintiff,

25 v.

26 OAKLAND BULK AND OVERSIZED
TERMINAL, LLC, and CALIFORNIA
CAPITAL INVESTMENT GROUP,

27 Counter-Defendants.

Consolidated Case Nos. RG18930929 /
RG20062473

Unlimited Civil Case/Assigned to Dept. 514
(Hon. Noël Wise)

**CITY OF OAKLAND'S PHASE 2 TRIAL
MOTION IN LIMINE NO. 2 TO EXCLUDE
UNTIMELY EXHIBITS**

Action Filed: December 4, 2018

Trial Date: July 10, 2023

Cont. Trial Date: Nov. 28, 2023

1 Defendant and Counter-Plaintiff the City of Oakland hereby moves in limine for an order
2 excluding the substantial number of new exhibits, never previously disclosed, served by Plaintiffs
3 OBOT and OGRE *after* the deadline of November 20, 2023 ordered by the Court.

4 At the November 16, 2023 Case Management Conference in this case, the Court ordered:

5 But any exhibit that you intend on using that is not already contained in your exhibits,
6 exchange them by no later than close of business next Monday, which is the 20th. And,
7 you know, obviously if you share them and you don't use them, that is up to you. But do
8 not plan on using anything that hasn't been shared with the other side by close of business
9 on that day.

10 Trial Tr. V32 4352:6-12.

11 The City complied, providing Plaintiffs with a small number of exhibits responsive to
12 Plaintiffs' current exhibit list. Plaintiffs served 99 new exhibits on Monday November 20, 2023.

13 Then, directly contrary to this Court's November 16, 2023 instruction, late on Wednesday
14 November 22, 2023, Plaintiffs served an additional two documents. Again, late on Sunday
15 November 26, 2023, Plaintiffs served six additional documents, including substantial revisions to
16 Plaintiffs' damages calculations (allegedly to "bring the damages numbers currently through
17 12/31/23," but actually also changing/amending damages contrary to Plaintiffs' admissions in
18 discovery, *see* City Motion in Limine No. 1 to Exclude Damages Calculations Not Disclosed in
19 Discovery).

20 This Court's instruction that no documents served after Monday, November 20, 2023 can
21 be used at this trial was clear. The City should not be burdened with scrambling to respond, on
22 the eve of trial, to new damages calculations based on information that has *long* been in Plaintiffs'
23 possession (and for which the City has never been given the opportunity to take discovery).

24 Finally, Ex. 1106 is a 17-page document described by Plaintiffs as a "set of
25 demonstratives" to be used with Plaintiffs' expert. As this Court has repeatedly instructed in this
26 very trial, demonstratives are not evidence and cannot be introduced, even if these documents
27 were timely disclosed. To the extent that Plaintiffs intend to use these as demonstratives only, the
28 City has provided Plaintiffs with its objections to the large amount of inadmissible evidence
contained in the Plaintiffs' slides, and the parties will follow the usual procedures to resolve

