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CITY OF FULLERTON

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE – CENTRAL JUSTICE CENTER
11

12 CITY OF FULLERTON,
13 Plaintiff,

14 vs.

15 FRIENDS FOR FULLERTON’S FUTURE,
16 JOSHUA FERGUSON, DAVID CURLEE,
CHRISTOPHER TENNYSON, and DOES 1
17 through 20, inclusive,

18 Defendants.
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24

Case No. 30-2019-01107063-CU-NP-CJC
Judge Thomas A. Delaney

COMPLAINT FOR:

- 1) **VIOLATION OF COMPREHENSIVE
COMPUTER DATA ACCESS AND
FRAUD ACT (CAL. PEN. CODE
§ 502 *et seq.*);**
- 2) **VIOLATION OF THE COMPUTER
FRAUD AND ABUSE ACT (18 U.S.C.
§ 1030 *et seq.*);**
- 3) **VIOLATION OF CAL. GOV’T CODE
§ 6204 *et. seq.*;**
- 4) **CONVERSION;**
- 5) **TRESPASS TO CHATTELS; AND**
- 6) **CONSPIRACY**

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE SECTION 6103

1 The CITY OF FULLERTON, a municipal corporation, (“the City”) brings this Complaint
2 against FRIENDS FOR FULLERTON’S FUTURE, JOSHUA FERGUSON, an individual,
3 DAVID CURLEE, an individual, CHRISTOPHER TENNYSON, an individual, and Does ONE
4 through TWENTY (collectively “Defendants”), and hereby alleges as follows:
5

6 **PRELIMINARY AND GENERAL ALLEGATIONS**
7

8 1. Plaintiff City of Fullerton was and is a municipal corporation duly organized and
9 existing under and by virtue of the laws of the State of California, and located in the County of
10 Orange.

11 2. Upon information and belief, Defendant Friends for Fullerton’s Future (the “Blog”)
12 is an internet blog accessible at the following Internet address: <https://www.fullertonsfuture.org/>.
13 The Blog is registered to George and Tony Bushala, to an address in Fullerton, California, and the
14 mailing address listed on the Blog’s website is a P.O. Box located in Fullerton, California.

15 3. Plaintiff is informed and believes that Defendant JOSHUA FERGUSON is an
16 individual who has at all times material to this action been one of the authors of the Blog and has
17 been listed as the primary contact for the Blog.

18 4. Plaintiff is informed and believes that Defendant DAVID CURLEE is an individual
19 who has at all times material to this action been one of the authors of the Blog.

20 5. Plaintiff is informed and believes that Defendant CHRISTOPHER TENNYSON is
21 a co-worker of Joshua Ferguson at Fullerton Cameras, who assisted Mr. Ferguson with accessing
22 and downloading documents from the City’s Dropbox account, without the City’s permission,
23 consent or authority

24 6. Plaintiff is informed and believes that other writers for the Blog include: Travis
25 Kiger, Lonnie Machin, and Joe Sipowicz.

26 7. The true names and capacities of DOES 1 to 20 are currently unknown to Plaintiff,
27 who therefore sues such Defendants by their fictitious names, and will amend this Complaint to
28 show their true names and capacities as such time as they are ascertained. Upon information and

1 belief, DOES 1 to 20 are adult individuals who are employed by, work for, assist, volunteer or are
2 otherwise involved in the furtherance of the activities of the Blog, and conspired with the
3 Defendants named herein, in order to accomplish the acts outlined in this Complaint.

4 8. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
5 them, at all times herein-mentioned, have done business in or reside in the City of Fullerton, in the
6 County of Orange, in the State of California, and that all of the Defendants' actions alleged herein
7 have occurred, been carried out, been furthered, or resulted in injury within the City of Fullerton in
8 the County of Orange.

9
10 **FACTUAL BACKGROUND**

11 9. On or about June 13, 2019, the City of Fullerton became aware that certain of its
12 privileged and confidential information had been published without its permission on the Blog.

13 10. The confidential information that was accessed, downloaded and published without
14 permission relates to various topics, including but not limited to privileged or otherwise exempted
15 communications relating to the City of Fullerton Police Department's internal investigations of law
16 enforcement agents as well as communications and draft agreements relating to the terminations
17 and resignations of several law enforcement agents and non-sworn former employees. The Blog
18 has published privileged and confidential material damaging to the reputation and goodwill of the
19 City and its officials, employees and former employees, with the apparent intent to mislead and
20 incite the public.

21 11. Upon learning about the publication of excerpts from privileged and confidential
22 documents, the City of Fullerton began an extensive investigation into the nature and scope of the
23 incident, including the method by which the Blog and its authors had obtained the privileged and
24 confidential material. During its investigation of the incident, the City of Fullerton determined the
25 privileged and confidential City documents accessed, downloaded, and posted by Defendants
26 without the City's permission or authorization originated from specific folders within the City's
27 file sharing account ("Dropbox") intended for attorney review prior to any potential production in
28 response to Public Records Act (PRA) requests made by Defendants, including Defendants Joshua

1 Ferguson and David Curlee. The primary source from which the documents that were published on
2 the Blog beginning on or about June 5, 2019 were extracted was a Dropbox zip file stored in the
3 City's Dropbox account named "pr1919-Joshua Ferguson.zip" (the Subject File). The Subject File
4 housed approximately 11,000 emails plus attachments that were culled by a City Information
5 Technology (IT) employee, with assistance from one of the City's attorneys, and were collected
6 together for attorney review for purposes of responding to a PRA request made by Defendant
7 Joshua Ferguson.

8 12. The PRA request made by Mr. Ferguson to the City that is at issue is one of many
9 he has submitted to the City. The particular request at issue (PRR 19-19) was extremely expansive
10 and sought all emails referencing any of the following eight (8) search terms: "Record Retention,"
11 "Police Records," "Retention," "Personnel Files," "Deleted Records," "Oversight," "Personnel
12 Records," and "Limitations," without any limitation in scope as to date or custodian. The original
13 request would have entailed searching across the email boxes of approximately 500 City officials
14 and employees. When City IT first tested Mr. Ferguson's requested search terms against one
15 individual's email box, the search terms returned approximately 25,000 emails plus attachments,
16 for that one individual alone.

17 13. Because of the extreme breadth of Mr. Ferguson's request and the immensity of the
18 potentially responsive documents returned by Mr. Ferguson's requested terms, the City Clerk's
19 office asked Mr. Ferguson to narrow his request. Even after narrowing his initial request from
20 approximately 500 City users to approximately 20 persons, the searches run by City IT using Mr.
21 Ferguson's requested narrowed search terms against the requested individuals' emails still returned
22 approximately 11,000 emails plus attachments. These 11,000+ records were comprised of records
23 that were only *potentially* responsive to Mr. Ferguson's request and included:

- 24 (a) Records that were likely *not* of interest to Mr. Ferguson but were brought
25 in as false positives by the breadth of the requested search terms;¹

26 ¹ For example, one of Mr. Ferguson's requested search terms was "Brady," which given the other requested search
27 terms related to police records probably refers to the Brady doctrine, a pretrial discovery rule established by *Brady v.*
28 *Maryland*, 373 U.S. 83 (1963) that requires the prosecution to turn over all exculpatory evidence to a defendant in a
criminal case. However, running the search term against a body of documents would necessarily bring in all documents
that make any reference to "Brady," including references to individuals, streets, buildings and other entities and objects
with the word "Brady" as part of its name. Such documents would be considered "false positives," as they are

1 (b) Records that were expressly exempted from disclosure under the Public
2 Records Act, including but not limited to: (i) preliminary drafts, notes, or interagency or
3 intra-agency memoranda not retained by the public agency in the ordinary course of
4 business, Cal. Gov't Code § 6254(a); (ii) records pertaining to pending litigation to which
5 the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with
6 Section 810), Cal. Gov't Code § 6254(b); (iii) personnel, medical or similar files, the
7 disclosure of which would constitute an unwarranted invasion of personal privacy, Cal.
8 Gov't Code § 6254(c); and (iv) law enforcement investigative records, Cal. Gov't Code §
9 6254(f);

10 (c) Records exempted from disclosure pursuant to other applicable federal and
11 state law provisions, Cal. Gov't Code § 6254(k), including: (i) attorney-client privileged
12 records, Cal. Evid. Code § 950 et seq.; *Roberts v. City of Palmdale*, 5 Cal. 4th 363 (1993);
13 (ii) attorney work product, Cal. Civ. Proc. Code § 2018.010 et seq.; (iii) peace officer
14 personnel records, Cal. Pen. Code § 832.7 et seq.; and (iv) confidential City Council closed
15 session information, Cal. Gov't Code § 54963;² and

16 (d) Documents that would need to be redacted for information subject to third
17 party privacy rights (such as social security numbers, driver's license numbers, and dates
18 of birth, as well as phone numbers, street addresses, and/or email addresses of certain
19 individuals) prior to production, see, e.g., Cal. Gov't Code §§ 6254.2, 6254.4, 6254.16,
20 6254.21, 6254.29; Cal. Pen. Code § 841.5(a).

21 14. Upon information and belief, these documents were placed by a City IT employee
22 in a Dropbox zip file containing the 11,000+ emails (plus attachments) that was only shared among
23 four (4) City employees/agents, including (1) the City IT employee who created the Dropbox folder
24 in question; (2) the IT Manager; (3) a City Clerk employee who was assisting in the preparation of
25 the City's response to Mr. Ferguson's PRA request No. PR 19-19; and (4) a Deputy City Attorney

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technically responsive to the search term request, but not substantively responsive to the request.

27 ² Such privileged and confidential documents included communications between City employees and the City's
28 attorneys (from both the City Attorney's office as well as retained outside counsel) relating to a plethora of sensitive
subject matters, including employee separations and discipline, investigations, proposed settlement agreement terms,
as well as legal advice concerning PRA responses.

1 who was reviewing the records in the context of assisting the City with its response to Mr.
2 Ferguson's PRA request.

3 15. Based on the nature of the search terms requested (e.g., "Personnel Records,"
4 "Personnel Files" and "Police Records"), the 11,000+ records contained in the Subject File
5 necessarily included highly confidential and privileged emails and attachments relating to sensitive
6 subject matters such as ongoing personnel investigations, Police Department internal
7 investigations, as well as information subject to third party privacy and protected from disclosure
8 (e.g., social security numbers, driver's license numbers, health records, California Public
9 Employees Retirement System data, and other personal, confidential and private information).

10 16. Because of the overbreadth and immensity of the 11,000+ records returned from Mr.
11 Ferguson's narrowed search terms, on May 24, 2019, the City Clerk asked that Mr. Ferguson further
12 narrow his request, informing him that a review and redaction of the 11,000+ records returned by
13 his revised request would require over 100 hours of attorney time at an hourly rate of \$199.83
14 (roughly \$20,000) to review those records for responsiveness, the applicability of various
15 exemptions and privileges, and to apply any necessary redactions of private information. That same
16 day, Mr. Ferguson responded that he would consult with his attorney about the City's request that
17 he narrow his PRA request and would "get back" to the City regarding the matter.

18 17. Neither Mr. Ferguson nor his attorney followed up with the City regarding further
19 narrowing of the PRA request. That is because Mr. Ferguson and his associates had already been
20 knowingly and systematically accessing and downloading folders and files from the City's Dropbox
21 account without the City's knowledge, consent or authorization since the end of 2017, including
22 not only the Subject File, but many other folders and files that were clearly intended for attorney
23 review and not for production to outside third parties. In fact, Mr. Ferguson and his associates had
24 already downloaded the Subject file on May 10, 2019.

25 18. Mr. Ferguson and his associates utilized methods to mask their identity and
26 computer locations in order to cover up their unauthorized accesses into and downloads from the
27 City's Dropbox account. Specifically, they used anonymizing Virtual Private Networks (VPNs)
28 and The Onion Router (TOR) to mask their IP addresses and make it appear as if they were

1 accessing and downloading folders and files through mostly foreign exit nodes.

2 a. Mr. Ferguson's early accesses into and downloads from the City's Dropbox
3 were characterized by (1) the logging of the email addresses tied to the Dropbox accounts
4 he used to download the City's documents;³ and (2) his use of a foreign VPN service
5 through foreign exit nodes (primarily located in Europe).

6 b. Starting on November 6, 2018, Mr. Ferguson actively logged out of his
7 Dropbox account or disabled the automatic disclosure function of his web browser's
8 persistent information (cookies), which resulted in his accesses and downloads no longer
9 recording his email addresses. Many of these later unidentified VPN accesses and
10 downloads through foreign exit nodes can be attributed to PureVPN, the specific foreign
11 VPN service used by Mr. Ferguson, as reflected on the activity log for the City's Dropbox
12 account.

13 c. On January 16, 2019, Defendant Christopher Tennyson, Mr. Ferguson's co-
14 worker at Fullerton Cameras, accessed and downloaded a Dropbox file named
15 "PRRS01152019_JF" without the City's permission or authorization. Such file was not
16 produced to him and the City had not authorized it to be produced or forwarded to him.
17 This folder contained PST files for attorney review only.⁴

18 d. Beginning roughly in May 2018, unidentified user(s) began using a TOR
19 service to access the City's Dropbox account routinely up until June 21, 2019 when the
20 City closed its Dropbox account entirely. These TOR accesses were through mostly
21 foreign exit nodes. The City believes one if not all of these TOR accesses and downloads
22

23 ³ The activity log reflecting all events associated with individual folders and files added to the City's Drobox account
24 shows accesses and downloads associated with the following of Mr. Ferguson's email addresses: "joshua@joshua
25 ferguson.com," "joshua@thehourlystruggle.com," and "info@fullertoncameras.com." Mr. Ferguson is the co-host of
The Hourly Struggle Podcast associated with "thehourlystruggle.com" domain name. See <https://twitter.com/hourlystruggle?lang=en>.

26 ⁴ PST files are generated by the City's IT department through a search run against the City's emails using certain search
27 terms and other parameters such as date scope and user limitations. PST files are the native email storage format used
28 by Microsoft Outlook email client and they can also be generated from a Microsoft Exchange email server by running
search terms and other parameters such as date scope and user limitations against an email server. PST files are
databases with their own folder hierarchy and may contain up to millions of email messages, attachments, and other
data such as notes or calendar items within a single computer file. PST files can only be opened within Outlook or
using other special software. An ordinary consumer would not know how to open a PST file. Double clicking on a
PST file would not open it even with Outlook installed.

1 can be attributed to Mr. Ferguson’s associate, Defendant David Curlee, another writer for
2 the Blog. This is based on the fact that the only third party access and download of one of
3 the Dropbox files produced by the City to Defendant Curlee (and no other third parties)
4 (“PRR Pro Card 5-29-19.zip”) was only accessed by a TOR user through a foreign exit
5 node, and not by Defendant Curlee using a non-anonymized method of access, thereby
6 raising the unmistakable inference that Defendant Curlee was the TOR user.

7 e. The unidentified accesses and downloads using foreign VPN and/or TOR
8 services through mostly European exit nodes can also be attributed to Mr. Ferguson, Mr.
9 Curlee (and possibly their other associates) as (1) there is no evidence tying any other users
10 to the use of a foreign VPN or TOR service; (2) the odds that European citizens using VPN
11 or TOR services to mask their IP addresses to search through records posted to the Dropbox
12 account of a small city like Fullerton, California is infinitesimally small, if not non-
13 existent; and (3) the fact that many of the unidentified accesses and downloads utilized
14 PureVPN, the same foreign VPN service Mr. Ferguson used during his early accesses into
15 and downloads from the Dropbox account when his email addresses were still associated
16 with his use of PureVPN in his effort to anonymize his identity.

17 19. Some of the additional Dropbox folders and files the City has reason to believe
18 Defendants accessed and downloaded without the City’s permission or authority, utilizing
19 anonymizing VPN or TOR services include, but are not limited to:

20 “(Addendum No. 1 Plans).zip”
21 “1_Laguna Lake Files”
22 “129 W Commonwealth – Graphics”
23 “1310 Sorrento Pl”
24 “19-135 Datathehourlystruggle.com”
25 “52588 BID”
26 “56019 Fiber”
27 “ACUSA_H21 Leases”
28 “ACUSA_PRR.zip”
“Airport Database/Fullerton Municipal Airport.mdb”
“AxonPRR.zip”
“CE_PRR_KC.zip”
“Citywide Bicycle \u0026 Ped. Improvement Project”
“COF_CADD_PACKAGE-REV-2015-08”
“council_20180430.zip”
“Drainage Master Plan/1996 Boyle/COF_comprehensive master plan of
drainage_1996.pdf”

1 "Dukes"
2 "FD_20180430.zip"
3 "Hillcrest Park"
4 "JF_PRR_2.zip"
5 "JF_PRR20181012.zip"
6 "JF_PRR_PD.zip"
7 "KCCPRR - Redacted.zip"
8 "Keith Cangiarella PRR Responsive E-mails.zip"
9 "Kevin/COF_Kevin.docx"
10 "Lease Files.zip"
11 "Lucity"
12 "NARCOTICS"
13 "Police"
14 "PRR 18-225 Replogle Responsive E-mails.pdf"
15 "PPR_18_326_Curlee.zip"
16 "PR19-171VD_1_2.zip"
17 "pr1919 - Josh Ferguson.zip"
18 "PRR_1600_2.7z"
19 "PRR_19-134_data@thehourlystruggle.com.zip"
20 "PRR Accela 8-17-17"
21 "PRR_AIR20180604.zip"
22 "PRR_CE.zip"
23 "PRR_Cox.zip"
24 "PRR_JF_20181002.zip"
25 "PRR_Pro Card 5-29-19.zip"
26 "PRRS01082019"
27 "PRRS01082019.zip"
28 "PRRS01092019.zip"
"PRRS01092019_all.zip"
"PRRS01152019_JF.zip"
"Public Records Request"
"Vernoica Duarte PRR"
"Veronica Duarte - Air Combat"
"Veronica Duarte.zip"
"VM.zip"
"Water"

20. Of the above-listed Dropbox folders and files downloaded without the City's authority, the following folders contained PST files that were intended for attorney review only:

"ACUSA_PRR.zip"
"council_20180430.zip"
"HL_PRR"
"JF_PRR_2"
"JF_PRR20181012"
"pr1919 - Josh Ferguson"
"PRR_19-134_data@thehourlystruggle.com"
"PR19-171VD_1_2.zip"
"PRR_Cox.zip"
"PRR_JF_20181002"
"PRRS01082019.zip"
"PRRS01092019.zip"
"PRRS01092019_all.zip"

1 “PRRS01152019_JF.zip”
2 “PRRS02042019_VD.zip”
3 “PRRS02042019_VD_2.zip”
4 “Tiger_Signal_PRR.zip”

5 21. Beginning on or about June 5, 2019, despite having received an email from the City
6 Clerk on May 24, 2019 indicating that his request was still too overbroad and burdensome for the
7 City to respond to without Defendant Ferguson further narrowing his request, Defendants began to
8 post on the Blog excerpts and information from the City’s privileged and confidential records they
9 had taken from the Subject File (and other such files) created only for attorney review. The City
10 has determined that many of the City’s privileged and confidential emails and documents posted
11 on the Blog were taken from the Subject File containing the 11,000+ emails and attachments. Most,
12 if not all, of the privileged and confidential City documents posted to the Blog fall under one or
13 more of the Public Records Act exemptions noted above, and included clearly privileged attorney-
14 client privileged communications, as well as sensitive and confidential records relating to ongoing
15 personnel investigations, Police Department internal investigations, and the like, none of which
16 were provided to the Defendants by the City. These records, posted without the City’s permission
17 or authorization, were of a nature that would never have been provided by the City to the
18 Defendants or any other third parties in response to a PRA request, and could only have been
19 obtained by the Defendants without the City’s permission or authorization. From the City’s prior
20 responses to Defendants’ numerous prior PRA requests submitted to the City, Defendants were
21 well aware of the various exemptions to the PRA established by law in California applicable to
22 confidential and privileged City records. Nevertheless, after knowingly accessing the City’s
23 Dropbox account files and folders, without the City’s consent or permission, Defendants posted
24 and published confidential and privileged City records on the Blog

25 22. On June 13, 2019, the City sent a letter to the Blog’s representative, Defendant
26 Joshua Ferguson, demanding that the Blog (1) remove the City’s confidential documents from the
27 Blog; (2) refrain from posting any other confidential City documents obtained without
28 authorization; (3) immediately return all confidential City documents in Defendants’ possession;
and (4) immediately delete all electronic copies of confidential City documents in Defendants’

1 possession.

2 23. On June 14, 2019, Mr. Ferguson responded that The Friends for Fullerton's Future
3 is represented by counsel and asked that any future correspondence be addressed to its counsel.
4 Said counsel erroneously claimed that Mr. Ferguson obtained the confidential City documents
5 through legal means, but made no effort to establish how Defendant Ferguson came into possession
6 of the privileged and confidential documents he and his associates posted on the Blog.

7 24. On July 11, 2019, the City sent another cease and desist letter to legal counsel for
8 Mr. Ferguson and the Blog, specifically invoking California Government Code § 6204(a)(2) to seek
9 the return of any and all folders and files obtained from the City of Fullerton's Dropbox account
10 that were not directly provided by the City to Mr. Ferguson or any of the Blog's agents or associates,
11 including but not limited to the Subject File "pr1919 – Joshua Ferguson." (See Exhibit A).

12 25. Again, instead of complying with the City's demands, Defendants instead
13 knowingly continued to post additional excerpts and information from privileged and confidential
14 City records taken from the City's Dropbox folders and files without its permission or
15 authorization.

16 26. As a result of the Defendants' actions, the City and its employees and officials have
17 been injured through (1) the invasion of privacy caused by the unauthorized disclosure of
18 privileged, confidential and private information, in violation of HIPAA, exemptions under the
19 Public Records Act and other applicable federal and state laws; and (2) the damage to their
20 reputation stemming from Defendants' false allegations published on the Blog relating to such
21 unauthorized disclosure of confidential, private and privileged material.

22 27. Without an order (1) instructing Defendants to remove the inappropriately published
23 privileged and confidential City documents from their Blog and (2) enjoining and preventing
24 Defendants from publishing further information derived from clearly privileged and confidential
25 communications between the City's employees and its attorneys and other confidential City
26 documents exempted from disclosure under the Public Records Act, the City will continue to be
27 subjected to great and immediate irreparable harm to the privacy and reputation of its employees
28 and officials, and the invasion of its attorney/client relationships.

1 “council_20180430.zip”
2 “HL_PRR”
3 “JF_PRR_2”
4 “JF_PRR20181012”
5 “pr1919 - Josh Ferguson” (the Subject File)
6 “PRR_19-134_data@thehourlystruggle.com”
7 “PR19-171VD_1_2.zip”
8 “PPR_Cox.zip”
9 “PPR_JF_20181002”
10 “PRRS01082019.zip”
11 “PRRS01092019.zip”
12 “PRRS01092019_all.zip”
13 “PRRS01152019_JF.zip”
14 “PRRS02042019_VD.zip”
15 “PRRS02042019_VD_2.zip”
16 “Tiger_Signal_PRR.zip”

17 32. Upon information and belief, the privileged and confidential emails and/or records
18 belonging to the City of Fullerton continue to be improperly, unlawfully, and wrongfully held by
19 Defendants even after receiving notice of such unlawful possession and written demand that they
20 return the materials to the Plaintiff.

21 33. Defendants continue to improperly, unlawfully, wrongfully and without
22 authorization, post and publish the privileged and confidential City documents and information that
23 are not subject to public disclosure under various privileges and exemptions to production under
24 the Public Records Act.

25 34. The City has been harmed by the Defendants’ conduct and has suffered damages in
26 excess of \$5,000, including but not limited to the following: (1) the continuing costs connected
27 with the investigation of the source, nature and scope of the theft of the City’s confidential and
28 privileged records; and (2) the continuing costs of pursuing this action against the Defendants to
prevent further publication of privileged and confidential records and information taken from the
City’s Dropbox account without authorization and to recover the records taken. The City
anticipates will also face the costs of notifying each person whose confidential information has
been improperly and illegally accessed by the Defendants, in violation of their right to privacy, and
may also face the following future damages: (1) the costs of defending any data breach claims
brought by any person whose confidential information was improperly and illegally accessed by
the Defendants; and (2) the costs of defending any claims from current and former employees

1 stemming from the unauthorized release and/or publication of their confidential information.

2 35. In addition, as a result of the Defendants' actions, the Defendants' conduct has
3 caused City employees and officials to suffer injury and damage due to the invasion of their privacy,
4 in violation of HIPAA and other applicable federal and state laws as well as damage to their
5 reputation stemming from the Defendants' false allegations published on the Blog based on the
6 illegally obtained documents and materials.

7 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants acted
8 with malice, oppression and/or fraud, with a conscious disregard for the rights of the City's
9 employees, former employees and other third parties whose private data and information
10 Defendants stole and published in a public forum.

11 37. Accordingly, punitive damages should be awarded against Defendants in an amount
12 sufficient to punish and deter them (and other such persons engaged in the conspiracy) from
13 committing such wrongful and malicious acts in the future.

14 38. Defendants' conduct was a substantial factor in causing the City's harm.

15 **SECOND CAUSE OF ACTION**

16 **Federal Computer Fraud and Abuse Act (CFAA) - 18 U.S.C. § 1030 et seq.**

17 **(Against All Defendants)**

18 39. Plaintiff incorporates herein by reference each and all of the allegations in the
19 preceding paragraphs of this Complaint as though fully set forth herein.

20 40. Defendants have willfully violated the Computer Fraud and Abuse Act, 18 U.S.C.
21 § 1030(a)(2)(C), by intentionally accessing the City's Dropbox account, which was used for
22 interstate commerce and communication, without or in excess of the City's authorization.

23 41. On information and belief, after gaining unauthorized access to the City's Dropbox
24 account, Defendants downloaded privileged and confidential materials intended for review by the
25 City's attorneys and never produced to the Defendants, without the City's authority. This
26 information included the records and emails contained in the Dropbox folders and files identified
27 at Paragraph 32 above, among other yet to be identified additional folders and files.

28 42. Upon information and belief, the emails and records belonging to the City of

1 Fullerton continue to be improperly, unlawfully and wrongfully held and used by the Defendants.

2 43. Defendants continue to improperly, unlawfully, wrongfully and without
3 authorization, post and publish the privileged and confidential City documents that are not subject
4 to public disclosure under various privileges and exemptions under the Public Records Act.

5 44. The City has been harmed by the Defendants' conduct and has suffered damages in
6 excess of \$5,000, including but not limited to the following: (1) the continuing costs connected
7 with the investigation of the source, nature and scope of the theft of the City's confidential and
8 privileged records; and (2) the continuing costs of pursuing this action against the Defendants to
9 prevent further publication of privileged and confidential records and information taken from the
10 City's Dropbox account without authorization and to recover the records taken. The City
11 anticipates will also face the costs of notifying each person whose confidential information has
12 been improperly and illegally accessed by the Defendants, in violation of their right to privacy, and
13 may also face the following future damages: (1) the costs of defending any data breach claims
14 brought by any person whose confidential information was improperly and illegally accessed by
15 the Defendants; and (2) the costs of defending any claims from current and former employees
16 stemming from the unauthorized release and/or publication of their confidential information.

17 45. In addition, as a result of the Defendants' actions, the Defendants' conduct has
18 caused City employees and officials to suffer injury and damages due to the invasion of their
19 privacy, in violation of HIPAA and other applicable federal and state laws as well as damage to
20 their reputation stemming from the Defendants' false allegations published on the Blog based on
21 the illegally obtained documents and materials.

22 46. Defendants' conduct was a substantial factor in causing the City's harm.

23 47. Pursuant to 18 U.S.C. § 1030(g), Plaintiff is entitled to injunctive relief,
24 compensatory damages, and other equitable relief.

25 48. Plaintiff has suffered irreparable and incalculable harm and injuries resulting from
26 Defendants' conduct, which harm will continue unless Defendants are enjoined from further
27 unauthorized use and publication of Plaintiff's privileged and confidential records. Plaintiff has no
28 adequate remedy at law.

1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF CAL. GOV'T CODE § 6204 et seq.**

3 **(Against All Defendants)**

4 49. Plaintiff incorporates herein by reference each and all of the allegations in the
5 preceding paragraphs of this Complaint as though fully set forth herein.

6 50. Plaintiff has reasonable grounds to believe that records and emails, including
7 privileged and confidential records and emails, belonging to the City of Fullerton are in the
8 possession of Defendants, who are not authorized by law to possess such records and/or emails.

9 51. The records in question consist of various Dropbox folders and files containing PST
10 files gathered for attorney review, which in turn included privileged and confidential emails and
11 attachments, and which include those Dropbox folders and files identified at Paragraph 32 above
12 as well as other additional yet to be identified folders and files.

13 52. On July 11, 2019, Plaintiff issued a written notice to Defendants pursuant to
14 California Government Code § 6204.2, *et seq.* demanding that they: (a) return the aforementioned
15 records to the City or (2) respond in writing explaining why the records do not belong to the City.
16 The written notice further advised the Defendants that the City would take legal action to recover
17 the records if Defendants failed to respond in writing within 20 days. (See Exhibit A).

18 53. Plaintiff City of Fullerton is the rightful owner of the emails and/or records in
19 question and Plaintiff is therefore entitled to the sole possession of the property.

20 54. Defendants improperly, unlawfully, and/or wrongfully took possession and/or came
21 into possession of the emails and/or records through the improper access of the Dropbox account
22 established by the City of Fullerton.

23 55. Pursuant to California Government Code § 6204.2(d), Plaintiff asks that the Court
24 enter an order that Defendants surrender the records at issue (as identified at Paragraph 32) to the
25 City, pending the Court's decision on the Plaintiff's petition. Such order is necessary to protect the
26 City's privileged and confidential records from "destruction, alteration, transfer, conveyance, or
27 alienation by the Defendants"
28

1 **FOURTH CAUSE OF ACTION**

2 **Conversion**

3 **(Against All Defendants)**

4 56. The City incorporates herein by reference each and all of the allegations in the
5 preceding paragraphs of this Complaint as though fully set forth here.

6 57. The City owned privileged and confidential data stored in its private Dropbox
7 account, including Dropbox folders and files containing privileged and confidential emails and
8 records containing material subject to the attorney-client privilege, third parties' right to privacy
9 and other applicable privileges and exemptions under the Public Records Act. Such data is the
10 exclusive property of the City, and the City has an exclusive right to the possession of such property.

11 58. Defendants substantially interfered with the City's property by knowingly,
12 intentionally, willfully, and maliciously accessing, copying, downloading, and taking possession
13 of said property; by distributing and publishing said property; and by refusing to return the said
14 property after the City demanded its return.

15 59. The City at no time consented, expressly or impliedly, to any copying, downloading,
16 removal, retention, publication and/or distribution of said property.

17 60. The City has been harmed by the Defendants' conduct and has incurred, and is
18 continuing to incur, damages and losses due to the illegal and wrongful conduct of the Defendants.

19 61. Plaintiff is informed and believes, and based thereon alleges, that Defendants acted
20 with malice, oppression and/or fraud, with a conscious disregard for the rights of the City's
21 employees, former employees and other third parties whose private data and information
22 Defendants stole and published in a public forum.

23 62. Accordingly, punitive damages should be awarded against Defendants in an amount
24 sufficient to punish and deter them (and other such persons engaged in the conspiracy) from
25 committing such wrongful and malicious acts in the future.

26 63. Defendants' conduct was a substantial factor in causing the City's harm.
27
28

1 **FIFTH CAUSE OF ACTION**

2 **TRESPASS TO CHATTELS**

3 **(Against All Defendants)**

4 64. Plaintiff incorporates herein by reference each and all of the allegations in the
5 preceding paragraphs of this Complaint as though fully set forth here.

6 65. The City owned confidential data stored in its private Dropbox account, including
7 confidential emails and records containing information subject to third parties' right to privacy.
8 Such data is the exclusive property of the City, and the City has an exclusive right to the possession
9 of such property.

10 66. Defendants substantially interfered with the City's property by knowingly,
11 intentionally, willfully, and maliciously accessing, copying, downloading, and taking possession
12 of said property; by distributing and publishing said property; and by refusing to return said
13 property after the City demanded its return.

14 67. The City at no time consented, expressly or impliedly, to any copying, downloading,
15 removal, retention, and/or distribution of said property.

16 68. The City has been harmed by the Defendants' conduct and has incurred, and is
17 continuing to incur, damages and losses due to the illegal and wrongful conduct of the Defendants.

18 69. Defendants' conduct was a substantial factor in causing the City's harm.

19 **SIXTH CAUSE OF ACTION**

20 **CONSPIRACY**

21 **(Against All Defendants)**

22 70. Plaintiff incorporates herein by reference each and all of the allegations in the
23 preceding paragraphs of this Complaint as though fully set forth here.

24 71. Plaintiff is informed and thereon alleges that sometime between December 28, 2017
25 and June 21, 2019, Defendants did knowingly and willfully conspire and agree among themselves
26 to: (1) knowingly access and/or download certain files and folders within the City's Dropbox
27 account which they knew or had reason to know contained privileged and confidential information,
28 without the City's permission; and (2) use and publish such privileged and confidential information

1 wrongfully and illegally obtained from the City's Dropbox account on The Blog.

2 72. Plaintiff had no reason to know of the Defendants' access and unauthorized
3 download of such files and folders until they began publishing excerpts from documents taken from
4 those files and folders on their Blog on or about June 13, 2019.

5 73. In furtherance of said conspiracy, the Defendants knowingly trespassed onto private
6 folders and files within the City's Dropbox account which they had no permission to access or
7 download, and substantially interfered with the City's property by knowingly, intentionally,
8 willfully and maliciously accessing, copying, downloading and taking possession of said property
9 and by refusing to return said property after the City demanded its return.

10 74. All of the actions of Defendants set forth in the preceding paragraphs incorporated
11 herein were in violation of the Plaintiff's rights and committed in furtherance of the aforementioned
12 conspiracies and agreements. Moreover, each of the Defendants lent aid and encouraged and
13 knowingly ratified and adopted the acts of the other.

14 75. The City has been harmed by the Defendants' conduct and has incurred, and is
15 continuing to incur, damages and losses due to the illegal and wrongful conduct of the Defendants.

16 76. Plaintiff is informed and believes, and based thereon alleges, that Defendants acted
17 with malice, oppression and/or fraud, with a conscious disregard for the rights of the City's
18 employees, former employees and other third parties whose private data and information
19 Defendants stole and published in a public form. Accordingly, punitive damages should be
20 awarded against Defendants in an amount sufficient to punish and deter them (and other such
21 persons engaged in the conspiracy) from committing such wrongful and malicious acts in the future.

22 77. Defendants' conduct was a substantial factor in causing the City's harm.

23
24 **PRAYER**

25 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
26 follows:

27 1. For an order declaring that: Defendants, according to proof, (i) knowingly
28 accessed the City's Dropbox account without the City's consent, and (ii) downloaded the City's

1 privileged and confidential documents contained therein and published information and excerpts
2 from such documents, without the City's permission or authorization.

3 2. For an order enjoining and restraining the Defendants and their officers, agents,
4 servants, employees, assigns, and those acting in active concert or participation with them as
5 follows:

6 a. Restraining them from accessing the City's private computer networks,
7 Dropbox account and/or servers without the City's authorization;

8 b. Restraining them from removing, copying, extracting or downloading any
9 information or data from the City's computer networks, Dropbox account and/or servers
10 without the City's authorization;

11 c. Restraining them from engaging in any activity that disrupts, diminishes the
12 quality of, interferes with the performance of, or impairs the functionality of the City's
13 computer networks, Dropbox account and/or servers;

14 d. Restraining them from selling, publishing, distributing or otherwise using
15 any property or information obtained from the City's computer networks, Dropbox account
16 and/or servers without the City's authorization;

17 e. Ordering Defendants to permanently delete any privileged or confidential
18 City documents obtained from the City's Dropbox account without express authority from
19 any and all Blogs, websites, social media posts and/or publications within their possession,
20 custody or control; and

21 f. Ordering Defendants to permanently delete, under Court-appointed
22 supervision, any City documents obtained without the City's express authority from any
23 and all computers, servers and storage media (e.g., hard drives, flash drives, thumb drives,
24 CD-ROMs, DVD-ROMs, etc.) under their possession, custody or control;

25 3. For an award of compensatory damages to the City in an amount to be determined,
26 including but not limited to all damages and losses suffered by the City as a result of the
27 unauthorized access, theft and subsequent publication of the City's privileged and confidential
28 documents and the City's response thereto and remediation efforts related thereto;

- 1 4. For an award of any statutory damages to the Plaintiff available under applicable
2 laws;
3 5. For an award of punitive damages to the Plaintiff available under applicable laws
4 by way of punishment and in an amount sufficient to punish and set an example of Defendants;
5 6. For an award of reasonable costs and attorneys' fees available under applicable
6 laws; and
7 7. For an award of such other relief as the Court deems proper, necessary or just.

8 Dated: October 24, 2019

JONES & MAYER

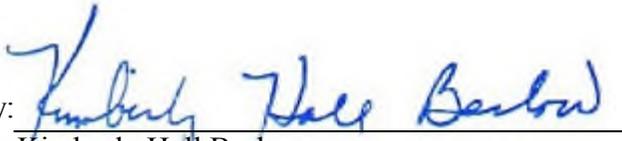
9
10
11 By: 
12 Kimberly Hall Barlow
13 Bruce A. Lindsay
14 Monica Choi Arredondo
15 Attorneys for Defendant
16 CITY OF FULLERTON
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EXHIBIT A

From: [Gregory P. Palmer](mailto:Gregory.P.Palmer@fullertonsfuture.org)
To: team@fullertonsfuture.org; joshua@joshuaferguson.com
Cc: KDomer@cityoffullerton.com; GretchenB@cityoffullerton.com; [Richard D. Jones](mailto:Richard.D.Jones@cityoffullerton.com); [Ivy M. Tsai](mailto:Ivy.M.Tsai@cityoffullerton.com)
Subject: Cease and Desist
Date: Thursday, June 13, 2019 8:45:46 PM

Joshua Ferguson
Friends for Fullerton

Re: Cease and Desist – City of Fullerton Police Department

Dear Mr. Ferguson,

It has come to the attention of the City of Fullerton that you have recently published on your website documents which have clearly and undoubtedly been sourced from the confidential personnel files of several current and/or former Fullerton Police Officers. The State of California has statutorily recognized this right of confidentiality. (See Penal Code §§ 832.5, 832.7 and 832.8.) Any disclosure of such confidential records is strictly limited and must be authorized by a court order from a Superior Court judge. (See Evidence Code §§ 1043-1047; Pitchess v. Superior Court(1974) 11 Cal.3d 531 and its progeny.) Indeed, the Fullerton Police Department has an affirmative duty to resist attempts at unauthorized disclosure and the officers who are the subject of such records expect their right of privacy will be respected. (See Craig v. Municipal Court for the Inglewood Judicial District et al. (1979) 100 Cal.App.3d 69.) Finally, the improper disclosure of such records is prosecutable as a misdemeanor violation of law under Government Code section 1222 (See Attorney General Opinion, 82 Op. Att’y Gen. 246 (1999).) Any person facilitating the illegal disclosure of such documents in violation of the law may be prosecuted as either a principal in that crime or as an aider and abettor.

For all these reasons the City of Fullerton demands you immediately:

1. Remove these Confidential Documents from Your Blog within one hour of your receipt of this e-mailed cease and desist letter;
2. Refrain from posting any other Confidential Documents illegally obtained to Your Blog in the future;
3. That you immediately send to our office within 24 hours all Confidential Documents you and your employees have in your possession. You are also instructed not to make any copies of the Confidential Documents in any form (including but not limited to electronic, imaged, hard copies, etc.)
3. That you immediately delete all electronic copies of the Confidential Documents in your and your employees’ possession.

Your failure to follow these instructions can result in legal action being taken against Friends for Fullerton’s Future wherein the City will seek all necessary legal remedies.

We require your immediate compliance with this cease and desist letter. **Notify the undersigned of your compliance with the above within 24 hours of your receipt of this correspondence.**

Thank you for your prompt attention to this matter.

City Prosecutor
City of Fullerton

Gregory P. Palmer

Sent from my iPhone



JONES & MAYER

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**Appellate Specialist

Consultant

Mervin D. Feinstein

July 11, 2019

Kelly Aviles, Esq.
LAW OFFICES OF KELLY AVILES
1502 Foothill Blvd, #103-140
La Verne, CA 91750

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Friends for Fullerton’s Future Blog

Dear Ms. Aviles:

As legal counsel for the City of Fullerton, I write, pursuant to California Government Code section 6204 *et seq.*, to notify you, as legal counsel to the owner(s) and/or operator(s) of the Friends for Fullerton’s Future (FFFF) blog, that the City of Fullerton has reasonable grounds to believe that owner(s) and/or operator(s) of the FFFF blog are in unlawful possession of records belonging to the City of Fullerton. The records were taken and used by FFFF blog owner(s) and/or operator(s) without the City’s authorization and fall within the definition of “record” under California Government Code Section 6204(a)(2), as well as the definition of “public records” under California Government Code § 6252(e), and are described as follows:

Any and all records obtained from the City of Fullerton’s Dropbox account (<https://cityoffullerton.com/outbox>) that were not directly provided by the City to Joshua Ferguson or any of FFFF’s agents or associates through an emailed link, including, but not limited to, records contained in a folder named “pr1919 - Josh Ferguson.”

Therefore, pursuant to Government Code section 6204, within twenty (20) calendar days of receiving this notice, the owner(s) and/or operator(s) of the Friends for Fullerton’s Future blog are hereby directed to either:

- (1) Return the above-referenced records to the City of Fullerton, as previously requested; or
- (2) Respond in writing and declare why the above-referenced records do not belong to the City of Fullerton. If the owner(s) and/or operator(s) of the Friends for Fullerton’s Future blog do not deliver the above-described records, or do not respond adequately to this notice and its demand within the required time, we will immediately thereafter petition the Superior Court of Orange County for an order requiring the return of these records.

Cal. Gov’t Code § 6204(b).

Kelly Aviles, Esq.

July 11, 2019

Page 2

We further note that the FFFF blog has posted many of the confidential City documents after receipt of our office's June 13, 2019 cease-and-desist email. (A copy of that email is enclosed herein). Many, if not all, of the confidential City records posted to the FFFF blog are explicitly exempted from disclosure under the California Public Records Act, would not have been provided to Mr. Ferguson or FFFF agents or associates in response to a Public Records Act request, and could only have been obtained without the City's express authorization. Such records posted to the FFFF blog are confidential and exempt from disclosure pursuant to the following authorities:

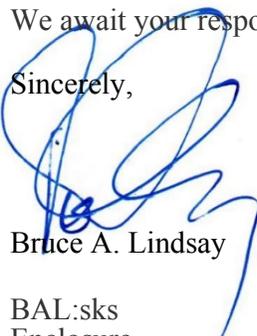
- "Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure." Cal. Gov't Code § 6254(a);
- "Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled." Cal. Gov't Code § 6254(b);
- "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Cal. Gov't Code § 6254(c);
- Law enforcement investigative records. Cal. Gov't Code § 6254(f); and
- "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code § 6254(k), which includes the following privileges:
 - Attorney-client privileged records. Cal. Evid. Code 950 et seq.; *Roberts v. City of Palmdale*, 5 Cal. 4th 363 (1993);
 - Attorney work product. Cal. Civ. Proc. Code § 2018.010 et seq.;
 - Peace officer personnel records. Cal. Penal Code § 832.7 et seq.; and
 - Confidential closed session information. Cal. Gov't Code § 54963.

FFFF's unauthorized access and misuse of the City's clearly privileged and exempted documents constitute a violation of California Penal Code section 502, which grants civil remedies (including compensatory damages, attorney's fees and potential punitive damages) to any persons or entities injured by any violations thereof. See Cal. Pen. Code § 502(c), (e).

As such, unless FFFF complies with the demands set forth in the City's June 13, 2019 cease and desist letter within 24 hours, the City will have no choice but to pursue all criminal and civil remedies available to it under the law.

We await your response.

Sincerely,


Bruce A. Lindsay

BAL:sks
Enclosure

cc: Gary S. Kranker, Esq.
Monica Choi Arredondo, Esq.
Ivy M. Tsai, Esq.