

EXHIBIT E

Jeanette T. Barzelay

From: Lux, James [James.Lux@wilmerhale.com]
Sent: Tuesday, August 28, 2012 3:08 PM
To: Brian Brosnahan; Fleming, Joel
Cc: Shapiro, Jonathan; Perla, Timothy; Robinson, Andrea; Charles Freiberg; Jacob N. Foster; Jeanette T. Barzelay; Eugenia M. DiSabatino
Subject: RE: Your Ex Parte Application

Brian,

It certainly seems extraordinary for Plaintiffs to have unilaterally submitted more than eight times the allowed number of pages. In any event, it is only efficient for the parties and the Court to know ahead of time what arguments are in play for the hearing. Either way, an ex parte application is appropriate, and we will file this evening as we described.

Jim

From: Brian Brosnahan [mailto:BBrosnahan@kasowitz.com]
Sent: Tuesday, August 28, 2012 5:17 PM
To: Lux, James; Fleming, Joel
Cc: Shapiro, Jonathan; Perla, Timothy; Robinson, Andrea; Charles Freiberg; Jacob N. Foster; Jeanette T. Barzelay; Eugenia M. DiSabatino
Subject: RE: Your Ex Parte Application

Jim,

Nothing in the Local Rules, Judge Selna's rules, or his order regarding page limits precludes the filing of objections to evidence or includes objections to evidence within any page limits applicable to briefs.

Judge Selna's Initial Order Following Filing of Complaint Assigned to Judge Selna states (in Part D) that "Ex Parte applications are solely for extraordinary relief and should be used with discretion." There is nothing extraordinary about your motion to strike, and we see no reason why it needs to be heard before September 10. Please advise us why you believe your motion needs to be resolved on an ex parte basis.

Brian

Brian P. Brosnahan
Kasowitz, Benson, Torres & Friedman LLP
101 California Street, Suite 2300
San Francisco, California 94111
Tel. (415) 655-4337
Fax (415) 358-4278
BBrosnahan@kasowitz.com

From: Lux, James [mailto:James.Lux@wilmerhale.com]
Sent: Tuesday, August 28, 2012 2:04 PM
To: Brian Brosnahan; Fleming, Joel
Cc: Shapiro, Jonathan; Perla, Timothy; Robinson, Andrea; Charles Freiberg; Jacob N. Foster; Jeanette T. Barzelay; Eugenia M. DiSabatino
Subject: RE: Your Ex Parte Application

Brian,

I tried calling to discuss your proposal. We don't see the rule you are referring to, and in any event, Plaintiffs helped themselves to an additional 170 pages of briefing without seeking our assent and without leave of court, so it doesn't seem right to suggest that your filing is not subject to judicial review before the hearing.

Is there some rule we're missing? If so, please advise, and if not we will plan on filing on an ex parte basis as Joel described.

Jim

From: Brian Brosnahan [<mailto:BBrosnahan@kasowitz.com>]
Sent: Tuesday, August 28, 2012 3:41 PM
To: Fleming, Joel
Cc: Shapiro, Jonathan; Perla, Timothy; Lux, James; Robinson, Andrea; Charles Freiberg; Jacob N. Foster; Jeanette T. Barzelay; Eugenia M. DiSabatino
Subject: Your Ex Parte Application

Joel,

Having consulted the pertinent rules and Judge Selna's General Order, we do not believe that the relief you describe can be obtained via an ex parte application. We would be happy to discuss a stipulation for an order shortening time so that you can file a motion to strike to be heard on September 10, 2012.

Please advise.

Brian

Brian P. Brosnahan
Kasowitz, Benson, Torres & Friedman LLP
101 California Street, Suite 2300
San Francisco, California 94111
Tel. (415) 655-4337
Fax (415) 358-4278
BBrosnahan@kasowitz.com

This e-mail and any files transmitted with it are confidential and may be subject to the attorney-client privilege. Use or disclosure of this e-mail or any such files by anyone other than a designated addressee is unauthorized. If you are not an intended recipient, please notify the sender by e-mail and delete this e-mail without making a copy.