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NOV 01 2019

HON. STUART A. MINKOWITZ, A.J.S.C.
SUPERIOR COURT OF NEW JERSEY
JUDGE'S CHAMBERS

SILLS CUMMIS & GROSS P.C.
Joseph B. Fiorenzo, Esq. (Bar # 021421980)
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Marshall O. Dworkin, Esq. (Bar # 057772013)
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Attorneys for Plaintiffs

RECEIVED
11-4-19

54-74 SOUTH STREET, LLC, SHOPS AT
SOUTH STREET, LLC, and THE
SILVERMAN GROUP,

Plaintiffs,

v.

TOWN OF MORRISTOWN, and MARGOT
G. KAYE, in her official capacity as Town
Clerk of Morristown,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No. *MRS L-2331-19 PW*

Civil Action (OPRA)

ORDER TO SHOW CAUSE
(Summary Action)

THIS MATTER having been brought before the Court *ex parte* by Sils Cummis & Gross P.C., attorneys for Plaintiffs 54-74 South Street, LLC, Shops at South Street, LLC, The Silverman Group (collectively, "Plaintiffs"), seeking relief by way of summary actions pursuant to R. 4:67-1(a), based upon the facts set forth in the Complaint and Certification of Marshall Dworkin submitted herewith; and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for other good cause shown;

IT IS, on this 1st day of NOVEMBER 2019, ORDERED that the defendants, Margot G. Kaye, in her capacity as Town Clerk of Morristown and Town of Morristown, appear and show cause on the 17th day of DECEMBER ~~November~~, 2019, before the Honorable Stuart A. Minkowitz,

J.S.C., at the Morris County Courthouse, Washington and Court Streets, Morristown, New Jersey, at 10:30 o'clock in the FORE noon, or as soon thereafter as counsel can be heard, why judgment should not be entered as follows:

- A. Ordering Defendants to submit a privilege log, or *Vaughn* index, that identifies with particularity each document or portion of a document withheld or redacted and states with particularity the legal basis for their claim that it is not subject to disclosure;
- B. Ordering Defendants to produce all withheld and redacted, or partially redacted, documents for *in camera* inspection by the Court.
- C. An Order declaring that Defendants have wrongfully withheld or redacted the requested documents and directing Defendants to provide access to true and exact copies of the requested documents to Plaintiffs;
- D. Award Plaintiffs reasonable attorneys' fees and costs incurred in this action pursuant to N.J.S.A. 47:1A-6;
- E. Retain jurisdiction over this action until Defendants come into compliance with OPRA and every order of this Court;
- F. Grant such other and additional relief as the Court deems just and proper.

AND it is further ORDERED that:

1. A copy of this order to show cause, compliant, supporting certification, and form of order be served upon the Defendants within 3 days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. The Plaintiffs shall file with the Court its proof of service of the pleadings on the defendant no later than three (3) days before the return date of this order to show cause.

3. Defendants shall file and serve a written answer and papers in opposition to this order to show cause and the relief requested in the complaint by DECEMBER 3, 2019, 2019. The papers must be filed with the Clerk of the Superior Court in Morris County, and a copy of the papers must be sent directly to the chambers of The Honorable Stuart A. Minkowitz, J.S.C.

4. Plaintiffs must file and serve any written reply to the Defendants' opposition papers by ~~November 10~~ ^{DECEMBER} 10, 2019. The reply papers must be filed with the Clerk of the Superior Court in Morris County, and a copy of the reply papers must be sent directly to the chambers of the Honorable Stuart A. Minkowitz, J.S.C.

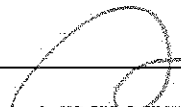
5. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date, and relief may be granted by default, provided that the Plaintiffs file a proof of service and a proposed form of order at least three days prior to the return date.

6. If the Plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

7. Defendants take notice: the plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey. The complaint and supporting certification accompanying this order to show cause state the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer and opposition papers and proof of service before the return date of this order to show cause and proof of service before the return date of the order to show cause. Paragraph 3 above states the date by which you are required to respond. These documents must be filed with the Clerk of the Superior Court for Morris County. You must also send a copy of your answer and any other opposition papers to the Plaintiffs' attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer and other opposition papers, with the filing fee, or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in Morris County and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than two (2) days before the return date.



HON. STUART A. MINKOWITZ, J.S.C.

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54-74 SOUTH STREET, LLC, SHOPS AT
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**ORDER TO SHOW CAUSE
(Summary Action)**

THIS MATTER having been brought before the Court *ex parte* by Sills Cummis & Gross P.C., attorneys for Plaintiffs 54-74 South Street, LLC, Shops at South Street, LLC, The Silverman Group (collectively, "Plaintiffs"), seeking relief by way of summary actions pursuant to R. 4:67-1(a), based upon the facts set forth in the Complaint and Certification of Marshall Dworkin submitted herewith; and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for other good cause shown;

IT IS, on this ____ day of _____ 2019, *ORDERED* that the defendants, Margot G. Kaye, in her capacity as Town Clerk of Morristown and Town of Morristown, appear and show cause on the _____ day of November, 2019, before the Honorable Stuart A. Minkowitz,

J.S.C., at the Morris County Courthouse, Washington and Court Streets, Morristown, New Jersey, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, why judgment should not be entered as follows:

- A. Ordering Defendants to submit a privilege log, or *Vaughn* index, that identifies with particularity each document or portion of a document withheld or redacted and states with particularity the legal basis for their claim that it is not subject to disclosure;
- B. Ordering Defendants to produce all withheld and redacted, or partially redacted, documents for *in camera* inspection by the Court.
- C. An Order declaring that Defendants have wrongfully withheld or redacted the requested documents and directing Defendants to provide access to true and exact copies of the requested documents to Plaintiffs;
- D. Award Plaintiffs reasonable attorneys' fees and costs incurred in this action pursuant to N.J.S.A. 47:1A-6;
- E. Retain jurisdiction over this action until Defendants come into compliance with OPRA and every order of this Court;
- F. Grant such other and additional relief as the Court deems just and proper.

AND it is further ORDERED that:

1. A copy of this order to show cause, compliant, supporting certification, and form of order be served upon the Defendants within _____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. The Plaintiffs shall file with the Court its proof of service of the pleadings on the defendant no later than three (3) days before the return date of this order to show cause.

3. Defendants shall file and serve a written answer and papers in opposition to this order to show cause and the relief requested in the complaint by _____, 2019. The papers must be filed with the Clerk of the Superior Court in Morris County, and a copy of the papers must be sent directly to the chambers of The Honorable Stuart A. Minkowitz, J.S.C.

4. Plaintiffs must file and serve any written reply to the Defendants' opposition papers by November ___, 2019. The reply papers must be filed with the Clerk of the Superior Court in Morris County, and a copy of the reply papers must be sent directly to the chambers of the Honorable Stuart A. Minkowitz, J.S.C.

5. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date, and relief may be granted by default, provided that the Plaintiffs file a proof of service and a proposed form of order at least three days prior to the return date.

6. If the Plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

7. Defendants take notice: the plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey. The complaint and supporting certification accompanying this order to show cause state the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer and opposition papers and proof of service before the return date of this order to show cause and proof of service before the return date of the order to show cause. Paragraph 3 above states the date by which you are required to respond. These documents must be filed with the Clerk of the Superior Court for Morris County. You must also send a copy of your answer and any other opposition papers to the Plaintiffs' attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer and other opposition papers, with the filing fee, or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in Morris County and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than two (2) days before the return date.

HON. STUART A. MINKOWITZ, J.S.C.

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Civil Action (OPRA)

COMPLAINT

Plaintiffs 54-74 South Street, LLC, the Shops at South Street, LLC and The Silverman Group (collectively, the "Plaintiffs"), through their undersigned counsel Sills Cummis & Gross, P.C. ("Sills"), hereby complain as follows:

1. Plaintiffs bring this lawsuit against Defendants Town of Morristown ("Morristown") and Margot G. Kaye ("Kaye"), in her official capacity as Town Clerk for Morristown (collectively, the "Defendants") to enforce their rights pursuant to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1, *et seq.*, and the common law.

PARTIES

2. Plaintiffs 54-74 South Street, LLC and Shops at South Street, LLC are the owners of certain properties located at 54-74 South Street, Morristown, New Jersey and 76-80 South

Street, Morristown, New Jersey, respectively, located in the downtown commercial zone of Morristown which permits the construction of commercial office space.

3. Plaintiff, The Silverman Group, is a family-owned and operated real estate development organization based in Basking Ridge, New Jersey, which owns and manages over 16 million square feet of office, industrial, retail and aviation properties, as well as ownership of 3,000 multi-family units through the United States. The Plaintiffs, 54-74 South Street, LLC and the Shops at South Street, LLC are affiliates of The Silverman Group.

4. Defendant, the Town of Morristown, is a municipal corporation, incorporated as a body politic, in Morris County, New Jersey.

5. Defendant, Margot G. Kaye, is a resident of New Jersey and was, at all relevant times, the Town Clerk of Morristown. Plaintiffs plead against Ms. Kaye in her representative capacity.

VENUE

6. Venue is proper in Morris County because Morristown, the Town Clerk of Morristown, and the OPRA requests at issue were directed to the Defendants in Morris County seeking documents that, upon information and belief, are located in Morristown in Morris County.

BACKGROUND FACTS

7. On or about August 6, 2019, Sills, on behalf of Plaintiffs, downloaded the OPRA request form located on Morristown's town website and submitted their OPRA request (the "OPRA request") to the fax number indicated on the website.

8. The OPRA request specifically asked for 8 categories of documents:

- a. All communications relating to The Silverman Group, its agents, representatives or staff from 2016 to Present. This includes, but is not limited

to, communications involving the Mayor, the Morristown Planning Division and/or the Morristown Planning/Zoning Board.

- b. All communications relating to the relocation of the Deloitte New Jersey Corporate Headquarters. This includes, but is not limited to, communications involving the Mayor, the Morristown Planning Division and/or the Morristown Planning/Zoning Board.
- c. All documents relating to The Silverman Group from 2016 to Present.
- d. All documents relating to the relocation of the Deloitte New Jersey Corporate Headquarters.
- e. All communications relating to a July 12, 2018 meeting involving Mayor Dougherty and representatives of Deloitte.
- f. All documents relating to a July 12, 2018 meeting involving Mayor Dougherty and representatives of Deloitte.
- g. All communications relating to Blake Silverman from 2016 to Present. This includes, but is not limited to, communications involving the Mayor, the Morristown Planning Division and/or the Morristown Planning/Zoning Board.
- h. All documents relating to Blake Silverman from 2016 to Present.

9. A true and accurate copy of the OPRA Request is attached to the October 30, 2019 Certification of Marshall O. Dworkin ("Dworkin Cert.").

10. Upon information and belief, Morristown received the OPRA Request on August 7, 2019 and assigned it OPRA Request No. 8089.

11. On August 16, 2019, Steffanie Morales ("Morales"), an employee in the Town Clerk's Office, emailed Sills and stated that Request No. 8089 "requires additional time beyond the seven (7) business days to fulfill. OPRA allows custodians to seek extensions of time pursuant to N.J.S.A. 47:1A-5.i. Your request requires an extension of time of five (5) business days until August 23, 2019." Sills did not object to Ms. Morales' and Morristown's request for an additional amount of time to respond to the request.

12. On or about August 28, 2019, Sills emailed Ms. Morales to follow-up on her request for additional time to respond to the OPRA Request and sought information regarding the status of the OPRA Request.

13. On or about August 29, 2019, Sills again emailed Ms. Morales, and carbon-copied Ms. Kaye on the email, seeking a response to the OPRA Request and Sills' email from the prior day seeking a status update.

14. Later that day, Ms. Morales emailed Sills apologizing of the "time lapse" but noted that she had been in contact with the "departments handling your OPRA" request and that "they have informed me that additional time is needed for the completion of this search." As a result, Ms. Morales stated that "an extension of time of seven (7) business days until September 10, 2019" was necessary to complete their response to the OPRA Request.

15. In response to the August 29, 2019 email from Ms. Morales, Sills responded that it had "no objection to an additional 7 business days" but that Sills would not necessarily consent to an additional extension beyond September 10, 2019. Sills noted that if there are issues or problems in meeting that deadline, Sills was "more than happy to work with you all to find a solution."

16. On September 10, 2019, Sills emailed Ms. Morales and Ms. Kaye inquiring whether there would be a production that day, as previously stated.

17. Ms. Kaye responded later that day stating that "the appropriate departments continue to review documentation that may be responsive to your request. As you are aware, OPRA provides for an extension of time in which to respond, if necessary. Accordingly, your request requires an additional five (5) business days and any responsive documentation will be provided to you on or before September 17, 2019."

18. In response to Ms. Kaye's email, Sills noted that it hoped to "work and accommodate any issues or inconveniences...but this will now be the third extension requested and September 17 will be well over a month since we initially submitted our OPRA request." Sills noted it reserves its rights to enforce its access to these documents, but sought to find a way to "help expedite this OPRA request."

19. On or about September 17, 2019, Ms. Kaye forwarded five separate PDF files which contained Morristown's production of documents in response to the OPRA request (the "First Production"). The vast majority of documents provided in the First Production were entirely redacted. Ms. Kaye also included in her email a privilege log, or *Vaughn* index, which set forth the bases for the redactions. See Exhibits B, C, D, E and F to Dworkin Cert.. A true and accurate copy of Defendants' *Vaughn* index is attached as Exhibit G to Dworkin Cert.

20. According to the *Vaughn* index provided, the vast majority of the redactions were based on the Attorney Client Privilege. Only two documents were redacted due to the "Intra agency advisory, consultative, and deliberative material" privilege.

21. Morristown made no objections to the OPRA Requests and made no objections or comments to the breadth of the OPRA Requests or any hardship the OPRA Requests would cause Morristown through its communication with Sills, or in its First Production.

22. On or about October 4, 2019, Sills sent a letter to Morristown and Ms. Kaye responding to the First Production. Sills made a number of objections to the First Production, the redactions Morristown made to the First Production and the insufficiency of the *Vaughn* index provided in the First Production. See Exhibit H to Dworkin Cert.

23. Sills objected to the breadth of the redactions Morristown made, guised under the attorney-client privilege. Sills noted that the attorney-client privilege only relates to the "mental

impressions, conclusions, opinion or legal theories of an attorney or representative of a party concerning litigation or potential litigation.” Sills noted that communications with attorneys relating to business other than legal matters are not protected by the privilege.

24. Specifically, Sills objected to the broad use of the attorney-client privilege for documents and communications Morristown’s *Vaughn* index indicated were related to “Email correspondence regarding draft press release”, “Email correspondence regarding Speedwell parking Agreement”, “Email correspondence regarding a development project” and “Email correspondence regarding Deloitte call” which are not inherently legal.

25. Sills also noted that even if portions of the documents provided contained communications protected by the attorney-client privilege, redacting the entire document was not appropriate and the redactions should be limited to the portions of the document which are protected under the privilege.

26. Sills also noted that in the First Production and in the *Vaughn* index that accompanied the First Production, Morristown failed to identify certain individuals who were included in many of the emails. It was unclear reviewing the First Production who the attorney was which created the attorney-client privilege and the identification of the other individuals on the emails in order to determine whether they were agents or third-parties to the communication.

27. Third, Sills objected to the *Vaughn* index and noted that it failed to include sufficient information about the bases of the claimed privileges and requested that Morristown supplement or correct the *Vaughn* index with additional information. Specifically, Sills noted that the *Vaughn* index failed to adequately describe why the privileges applied to each communication. Rather, Morristown simply provided conclusory summaries of the topic of the document, rather than establishing the basis for redacting the information contained in the

document. As a result, it is impossible for Sills or Plaintiffs to properly object or challenge Morristown's use of a privilege to redact most of the documents produced.

28. On or about October 11, 2019, Ms. Kaye responded to the October 4, 2019 letter and stated that "we are working on your follow up request." Sills responded to this email seeking an estimated time when Morristown would provide a formal response or new production, and Ms. Kaye responded that she did not know but stated she would follow up in a few days.

29. On October 16, 2019, Sills followed up to inquire the status of Morristown's response to the October 4, 2019 letter, and Ms. Kaye responded that she "followed up yesterday and am just waiting for attorney review."

30. On or about October 21, 2019, Ms. Kaye provided a supplemental production (the "Supplemental Production") which only contained 9 partially redacted emails which Ms. Kaye stated were "previously redacted and identified on the *Vaughn* index but have since been determined to not contain privileged discussions or information." See Exhibit I to Dworkin Cert.

31. In the email which provided the Supplemental Production, Ms. Kaye identified the full names and positions of the individuals listed in the *Vaughn* index and in the documents provided in the First and Supplemental Production.

32. Ms. Kaye and Morristown again did not object to the OPRA requests, their breadth or any hardship that Morristown encountered or could potentially encounter responding to the OPRA request. Ms. Kaye and Morristown also did not supplemental or amend the *Vaughn* index to include the required information described in the October 4, 2019 letter.

33. After receiving the Supplemental Production, Sills inquired if this response and Supplemental Production constituted "the extent of [Morristown's] response to our [October 4,

2019] letter, or will more information/documents be forthcoming?” Ms. Kaye responded that “please be advised that the documentation provided this morning is the extent of our response.”

34. Aside from the 9 individual emails that were provided in the Supplemental Production, Morristown has refused to amend or correct the overly broad redactions contained in the First Production or amend their *Vaughn* index to include sufficient information for the bases of the redactions, as is required under law.

35. Further, Plaintiffs possess numerous emails and correspondences with representatives of Morristown that were clearly not produced in Defendants’ First and Supplemental Production.

36. As of the date of this filing, and in violation of Plaintiffs’ rights under New Jersey law, Morristown has not produced all documents or all portions of documents responsive to the OPRA request, a sufficient privilege log and/or *Vaughn* index.

37. Morristown is a defendant in a case brought by Sills on behalf of Plaintiffs pending before New Jersey Superior Court, Morris County, captioned *54-74 South Street, LLC, The Silverman Group and Shops at South Street, LLC v. Timothy P. Dougherty, individually and in his capacity as mayor of Morristown, and Town of Morristown*, Docket No. MRS-L-001101-19. In this matter, Plaintiffs allege that Defendant Timothy P. Dougherty and Morristown tortiously interfered with a prospective economic advantage. Specifically, the Mayor Dougherty and Morristown tortiously intervened to prevent Deloitte from relocating its offices to a development owned and operated by Plaintiffs.

38. On or about July 11, 2019, Mayor Dougherty and Morristown filed a motion to dismiss the aforementioned action.

39. On or about October 2, 2019, the Honorable Peter A. Bogaard, J.S.C. denied the motion to dismiss.

COUNT I

OPEN PUBLIC RECORDS ACT, N.J.S.A. 47:1A-1 et seq.

40. Each of the foregoing Paragraphs is incorporated herein as if set forth in full.

41. All of the requested documents are subject to the disclosures requirements of OPRA.

42. Defendants have violated OPRA by, *inter alia*:

- a. Failing to produce documents responsive to the OPRA request;
- b. Improperly asserting the attorney-client privilege where it does not apply;
- c. Improperly asserting the deliberative process privilege where it does not apply;
- d. Failing to provide a sufficient *Vaughn* index which properly describe the legal bases for the withholding or redacting of documents contained in the First and Supplemental Production.

43. Defendants' violation of OPRA has damaged Plaintiffs, is continuing in nature, and it has not been remedied as of the date of filing this action.

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in favor of Plaintiffs and against Defendants as follows:

- A. Enter an order requiring Defendants to submit an amended privilege log, or *Vaughn* index, that identifies with particularity each document or portion of a document withheld or redacted and states with particularity the legal basis for their claim that it is not subject to disclosure.

B. Enter an order requiring Defendants to produce all withheld and/or redacted documents or portions of documents for *in camera* inspection by the Court.

C. Enter an order declaring that Defendants have wrongfully withheld or redacted the requested documents and directing Defendants to provide access to true and exact copies of the requested documents to Plaintiffs.

D. Award Plaintiffs reasonable attorneys' fees and costs incurred in this action pursuant to *N.J.S.A. 47:1A-6*;

E. Retain jurisdiction over this action until Defendants come into compliance with OPRA and every order of this Court;

F. Grant such other and additional relief as the Court deems just and proper.

COUNT II

COMMON LAW RIGHT OF PUBLIC ACCESS

33. Each of the foregoing paragraphs is incorporated herein as if set forth in full.

34. The documents requested by Plaintiffs constitute public records subject to the common law right of access.

35. As a business who had a prospective economic advantage tortiously interfered with by Mayor Dougherty and Morristown, Plaintiffs have a substantial private interest in access to the complete administrative record compiled by Defendants in connection to the tortious interference and the relocation of Deloitte's offices to Morristown for use in the related litigation.

36. Plaintiffs' interest in access to the documents relating to the tortious interference, as well as the relocation of Deloitte's offices to Morristown, outweighs any public interest in the confidentiality of any such documents.

37. All of the requested documents are subject to the disclosures requirements of the common law right of public access.

38. Defendants have violated Plaintiffs' common law right of public access by, *inter alia*:

- a. Failing to produce documents responsive to OPRA request;
- b. Improperly asserting the attorney-client privilege where it does not apply;
- c. Improperly asserting the deliberative process privilege where it does not apply;
- d. Failing to provide a sufficient *Vaughn* index which properly describe the legal bases for the withholding or redacting of documents contained in the First and Supplemental Production.

39. Defendants' violation of Plaintiffs' common law right of public access has damaged Plaintiffs, is continuing in nature, and it has not been remedied as of the date of filing this action.

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in favor of Plaintiffs and against Defendants as follows:

A. Enter an order requiring Defendants to submit an amended privilege log, or *Vaughn* index, that identifies with particularity each document or portion of a document withheld or redacted and states with particularity the legal basis for their claim that it is not subject to disclosure.

B. Enter an order requiring Defendants to produce all withheld and/or redacted documents or portions of documents for *in camera* inspection by the Court.

C. Enter an order declaring that Defendants have wrongfully withheld or redacted the requested documents and directing Defendants to provide access to true and exact copies of the requested documents to Plaintiffs.

D. Award Plaintiffs reasonable attorneys' fees and costs incurred in this action pursuant to *N.J.S.A. 47:1A-6*;

E. Retain jurisdiction over this action until Defendants come into compliance with OPRA and every order of this Court;

F. Grant such other and additional relief as the Court deems just and proper.

Respectfully submitted,
SILLS CUMMIS & GROSS P.C.
Attorneys for Plaintiffs

By: /s/ Joseph B. Fiorenzo
JOSEPH B. FIORENZO, ESQ.

Dated: October 31, 2019

Designation of Trial Counsel

Pursuant to R. 4:5-1(c), Joseph B. Fiorenzo, Esq. is designated as trial counsel on behalf of Plaintiffs.

Certification Pursuant to R. 4:5-1

I certify that the matter in controversy is not the subject of any other action or arbitration proceeding, except for the matter of *54-74 South Street, LLC, The Silverman Group and Shops at South Street, LLC v. Timothy P. Dougherty, individually and in his capacity as mayor of*

Morristown, and Town of Morristown, Docket No. MRS-L-001101-19, described above. I further certify that no other presently known parties should be joined in this action pursuant to R. 4:5-1(b)(2).

/s/ Joseph B. Fiorenzo
JOSEPH B. FIORENZO, ESQ.
SILLS CUMMIS & GROSS P.C.
Attorneys for Plaintiffs

Certification Pursuant to R. 1:38-7(c)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from documents submitted in the future in accordance with Rule 1:38-7(b).

/s/ Joseph B. Fiorenzo
JOSEPH B. FIORENZO, ESQ.
SILLS CUMMIS & GROSS, ESQ.
Attorneys for Plaintiff

Dated: October 31, 2019

SILLS CUMMIS & GROSS P.C.
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Attorneys for Plaintiffs

54-74 SOUTH STREET, LLC, SHOPS AT
SOUTH STREET, LLC, and THE
SILVERMAN GROUP,

Plaintiffs,

v.

TOWN OF MORRISTOWN, and MARGOT
G. KAYE, in her official capacity as Town
Clerk of Morristown,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No.

Civil Action (OPRA)

**ORDER TO SHOW CAUSE
(Summary Action)**

THIS MATTER having been brought before the Court *ex parte* by Sills Cummis & Gross P.C., attorneys for Plaintiffs 54-74 South Street, LLC, Shops at South Street, LLC, The Silverman Group (collectively, "Plaintiffs"), seeking relief by way of summary actions pursuant to R. 4:67-1(a), based upon the facts set forth in the Complaint and Certification of Marshall Dworkin submitted herewith; and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for other good cause shown;

IT IS, on this ____ day of _____ 2019, *ORDERED* that the defendants, Margot G. Kaye, in her capacity as Town Clerk of Morristown and Town of Morristown, appear and show cause on the _____ day of November, 2019, before the Honorable Stuart A. Minkowitz,

J.S.C., at the Morris County Courthouse, Washington and Court Streets, Morristown, New Jersey, at ____ o'clock in the ____ noon, or as soon thereafter as counsel can be heard, why judgment should not be entered as follows:

- A. Ordering Defendants to submit a privilege log, or *Vaughn* index, that identifies with particularity each document or portion of a document withheld or redacted and states with particularity the legal basis for their claim that it is not subject to disclosure;
- B. Ordering Defendants to produce all withheld and redacted, or partially redacted, documents for *in camera* inspection by the Court.
- C. An Order declaring that Defendants have wrongfully withheld or redacted the requested documents and directing Defendants to provide access to true and exact copies of the requested documents to Plaintiffs;
- D. Award Plaintiffs reasonable attorneys' fees and costs incurred in this action pursuant to N.J.S.A. 47:1A-6;
- E. Retain jurisdiction over this action until Defendants come into compliance with OPRA and every order of this Court;
- F. Grant such other and additional relief as the Court deems just and proper.

AND it is further ORDERED that:

1. A copy of this order to show cause, compliant, supporting certification, and form of order be served upon the Defendants within ____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. The Plaintiffs shall file with the Court its proof of service of the pleadings on the defendant no later than three (3) days before the return date of this order to show cause.

3. Defendants shall file and serve a written answer and papers in opposition to this order to show cause and the relief requested in the complaint by _____, 2019. The papers must be filed with the Clerk of the Superior Court in Morris County, and a copy of the papers must be sent directly to the chambers of The Honorable Stuart A. Minkowitz, J.S.C.

4. Plaintiffs must file and serve any written reply to the Defendants' opposition papers by November ___, 2019. The reply papers must be filed with the Clerk of the Superior Court in Morris County, and a copy of the reply papers must be sent directly to the chambers of the Honorable Stuart A. Minkowitz, J.S.C.

5. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date, and relief may be granted by default, provided that the Plaintiffs file a proof of service and a proposed form of order at least three days prior to the return date.

6. If the Plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

7. Defendants take notice: the plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey. The complaint and supporting certification accompanying this order to show cause state the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer and opposition papers and proof of service before the return date of this order to show cause and proof of service before the return date of the order to show cause. Paragraph 3 above states the date by which you are required to respond. These documents must be filed with the Clerk of the Superior Court for Morris County. You must also send a copy of your answer and any other opposition papers to the Plaintiffs' attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer and other opposition papers, with the filing fee, or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in Morris County and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than two (2) days before the return date.

HON. STUART A. MINKOWITZ, J.S.C.

SILLS CUMMIS & GROSS P.C.

Joseph B. Fiorenzo, Esq. (Bar # 021421980)

David W. Phillips, Esq. (Bar #027141985)

Marshall O. Dworkin, Esq. (Bar # 057772013)

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Attorneys for Plaintiffs

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TOWN OF MORRISTOWN, and MARGOT
G. KAYE, in her official capacity as Town
Clerk of Morristown,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No.

Civil Action (OPRA)

ORDER
(granting OPRA relief)

THIS MATTER having been opened to the Court by Sills Cummis & Gross P.C., attorneys for Plaintiffs 54-74 South Street, LLC, Shops at South Street, LLC and The Silverman Group (collectively, "Plaintiffs") (_____, Esq. appearing), in the presence of _____, counsel for defendants Clerk of the Town of Morristown and the Town of Morristown (collectively, "Defendants") (_____, Esq. appearing), seeking relief by way of summary action pursuant to R. 4:67-1(a), based upon the facts set forth in the compliant and supporting certification of Marshall O. Dworkin, Esq.; and the defendants having submitted papers in opposition to the relief sought in the Complaint; and the Court having reviewed the papers and heard oral argument and having determined that this matter may be commenced by order to show

cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and that the documents requested under the Open Public Records Act ("OPRA") were improperly redacted and/or withheld, and for good cause shown;

IT IS, on this _____ day of November 2019, *ORDERED* as follows:

A. The Defendants shall produce an amended *Vaughn* index that is legally sufficient under the law on or before _____ either electronically or in paper form;

B. The Defendants shall re-produce the redacted documents previously provided to Plaintiffs to the Court in an unredacted fashion before _____ for the Court to perform an *in camera* review;

C. Plaintiffs shall file a memorandum of law challenging Defendants' redactions based on the amended *Vaughn* index submitted pursuant to Paragraph A of this Order before _____. Defendants may file opposition within seven (7) days of Plaintiffs' memorandum of law, and Plaintiffs may reply within three (3) days.

D. Defendants as the losing party in an OPRA action shall pay Plaintiffs' reasonable counsel fee incurred in bringing this action, to be established by a certification from Plaintiffs' counsel to be submitted to the Court and opposing counsel within ten (10) days of this service of this Order, explaining the services performed and the fees and costs incurred. Defendants may file opposition within seven (7) days, and plaintiff may reply within three (3) days. The Court will hear the application on a regular motion day to be determined by the Court. Copies of all papers shall be filed with the Clerk of the Superior Court in Morris County.

J.S.C.

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October 31, 2019

Via eCourts and Regular Mail

Honorable Stuart A. Minkowitz, J.S.C.
Morris County Courthouse
Washington and Court Streets
2nd Floor
Morristown, NJ 07963

Re: 54-74 South Street, et. al. v. Town of Morristown (OPRA)

Dear Judge Minkowitz:

Our office represents 54-74 South Street, LLC, Shops at South Street, LLC and The Silverman Group (collectively, "Plaintiffs") in the above-referenced matter. Please accept this letter brief in lieu of a more formal memorandum of law in support of Plaintiff's Order to Show Cause challenging the response of the Town of Morristown ("Morristown") and Town Clerk Margot G. Kaye ("Kaye") (collectively, "Defendants") to Plaintiffs' Open Public Records Act ("OPRA") request.

PRELIMINARY STATEMENT

On or about August 7, 2019, Plaintiffs submitted an OPRA request (the "OPRA Request") to Morristown seeking 8 categories of documents relating to The Silverman Group, Blake

Sills Cummis & Gross
A Professional Corporation

October 31, 2019

Page 2

Silverman, Deloitte's planned relocation of its New Jersey Corporate Headquarters to Morristown, and other related issues. Plaintiffs patiently consented to over a month of requested extensions from Morristown and its Town Clerk, Ms. Kaye. On or about September 17, 2019, Ms. Kaye provided approximately 600 pages of responsive documents with the vast majority of those pages completely redacted under the attorney-client privilege. While Defendants did provide a privilege log, or *Vaughn* index, with the production, the privilege log failed to satisfy the requirements of a privilege log and did not provide any bases for claiming the attorney-client privilege. Rather, the log simply stated the subject of the correspondences and documents. This failure is particularly troubling given the subject matter listed for the majority of documents redacted were non-legal, such as emails "regarding draft press release." As such, it is completely unclear what bases Defendants have for redacting such significant portions of the documents produced and whether they are, in fact, privileged material.

Aside from the failure to properly state the bases for the redactions, the breadth of the redactions is particularly troubling. The attorney-client privilege only applies to communications that are "characterized as predominantly legal." The privilege does not apply simply because an attorney is present on the communication. The privilege does not apply to communications that would be characterized as political, business advice or other non-legal services. Though the documents redacted included communications with the town attorney, that in and of itself is not sufficient to qualify as privileged, particularly when our courts have stated such a privilege under an OPRA request must be construed "strictly."

Sills Cummis & Gross
A Professional Corporation

October 31, 2019

Page 3

In an attempt to resolve these issues, Plaintiffs notified Defendants of these deficiencies on October 4, 2019 (the "October 4 Letter"). Defendants again requested several extensions to review and respond to Plaintiffs' October 4 Letter. Finally, on October 21, 2019, Defendants produced a mere 9 previously redacted emails that were either unredacted or less redacted than originally produced. Defendants declined to revise or amend their *Vaughn* index despite the glaring issues Plaintiffs addressed in the October 4 Letter. Because Plaintiffs cannot adequately determine the bases for Defendants' redactions and, based on the subject matter of the emails, believe that Defendants' redactions are overly broad, Plaintiffs bring this Complaint and Order to Show Cause.

STATEMENT OF FACTS

Plaintiffs rely on the facts set forth in the Verified Complaint and the exhibits attached thereto.

ARGUMENT

POINT I

Defendants' Privilege Log, or *Vaughn* index, Fails To State The Bases For The Redactions Included In Defendants' Production

Defendants should be required to produce a more detailed privilege log, or *Vaughn* index, because the one provided with Defendants' original production failed to detail, much less with specificity, the bases for the numerous redactions included in Defendants' production. *Vaughn* indexes must "adequately describe each withheld document or redaction, state the exemption claimed, and *explain why each exemption applies.*" Tucker Dev. & Acquisition Fund, L.P. v.

Sills Cummis & Gross
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October 31, 2019

Page 4

Borough of Fort Lee, 2010 N.J. Super Unpub. LEXIS 3089, *6 (Law Div. Aug. 20, 2010) (emphasis added). The purpose of a *Vaughn* index “is not only to facilitate the decision-maker’s review of governmental records to determine whether they contain privileged material but also to provide the party seeking disclosures with as much information as possible to use in presenting his case.” Fisher v. Division of Law, 400 N.J. Super. 61, 76 (App. Div. 2008). Simply providing documents to a fact-finder to review *in camera* without a proper *Vaughn* index is not an “adequate substitute for production of a proper *Vaughn* index because it does not afford the party seeking disclosure the opportunity to effectively advocate its position.” Id. If a party fails to provide a *Vaughn* index or the index is insufficient, which is the case here, courts “possess the authority” to direct a party to prepare a *Vaughn* index. Paff v. Division of Law, 412 N.J. Super. 140 (App. Div. 2010).

In this case, Defendants’ *Vaughn* index fails to state *why* the attorney-client privilege applies to any of the redactions included in Defendants’ document production. Defendants’ *Vaughn* index merely provides a “description of information redacted” rather than state why the information included is privileged. See Exhibit G to the October 30, 2019 Certification of Marshall O. Dworkin (“Dworkin Cert.”). More troubling, the descriptions included in the *Vaughn* index are not even legal in nature. Many of the descriptions include non-legal subjects, such as “Email correspondence regarding draft press release”, “Email correspondence regarding a development project”, “Email correspondence regarding Deloitte Call” and “Email Correspondence regarding Speedwell Parking Agreement.” As such, Plaintiffs respectfully request this Court order

Sills Cummis & Gross
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October 31, 2019

Page 5

Defendants to amend their *Vaughn* index and provide the requisite information regarding their claims of attorney-client privilege.

POINT II

Defendants' Redactions Are Overly Broad and Likely Include Communications or Information That Is Not Covered By The Attorney-Client Privilege

Though Defendants' *Vaughn* index does not provide the bases for its redactions, it is apparent from the description of the information that its redactions are overly broad. Simply showing that "the communication was from client to attorney does not suffice" to establish attorney-client privilege. Tractenberg v. Twp. of W. Orange, 416 N.J. Super. 354, 375 (App. Div. 2010). Put another way, "documents do not become cloaked with the lawyer-client privilege merely by the fact of their being passed from client to lawyer." Id. (citation omitted). For instance, our courts have expressly stated that communications with lawyers are not protected if they are for the purpose of securing "business advice or other non-legal services." Hedden v. Kean University, 434 N.J. Super. 1, 12 (App. Div. 2013). Even "communications with in-house counsel relating to business rather than legal matters are not protected by the privilege." Johns v. Wikisal, 2013 N.J. Super. Unpub. LEXIS 3089, *6-*7 (App. Div. Oct. 17, 2013) (citing Leonen v. Johns-Manville, 135 F.R.D 94, 98 (D.N.J. 1990)). Furthermore, courts must construe the privilege "strictly." In re Custodian of Records, 420 N.J. Super. 182, 187 (App. Div. 2011). This is particularly true for an OPRA request, which represents "this state's longstanding public policy favoring ready access to most public records." Tractenberg, 416 N.J. Super. at 378 (citations omitted). As a result, courts will only extend the privilege if "the communication is designed to meet problems which can fairly

Sills Cummis & Gross
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October 31, 2019

Page 6

be characterized as predominantly legal.” Leonen, 135 F.R.D. at 99.¹

Here, Defendants’ production has redacted entire conversations between the Mayor, employees and agents of the town and the attorney for the town, Vij Pawar. As noted above, the attorney-client privilege only applies to discussions that are predominantly legal, as opposed to business, public relations or political advice. As can be seen from the *Vaughn* index and as noted above, a description of the information redacted includes non-legal subjects such as “draft press release.” Clearly, advice about a press release is not inherently legal and it is unclear what legal advice would be necessary to publish a press release. As such, the Court should review the documents redacted *in camera* and determine whether the attorney-client privilege applies.

CONCLUSION

Plaintiffs respectfully request this Court order Defendants provide an amended *Vaughn* index and review Defendants’ redactions *in camera* to determine whether the attorney-client privilege applies.

¹ In addition to the attorney-client privilege, two of the documents were withheld under the intra-agency/deliberative privilege. As noted herein, it is unclear what the basis is for the redactions under this privilege since Defendants’ *Vaughn* index fails to state the bases of their redactions. To establish this privilege, the government must show that the documents or communications in question were “pre-decisional” and “deliberative in nature, containing opinions, recommendations, or advice about agency policies.” In re Readoption with Amendments of Death Penalty Regulations N.J.A.C. 10A:23, 367 N.J. Super. 61, 73 (App. Div.), certif. denied 182 N.J. 149 (2004). This privilege, however, does not apply to “purely factual information” since facts do not “reflect deliberative processes.” Id. (citing In re Liq. Of Integrity Ins. Co., 165 N.J. 75, 85 (2000)).

Sills Cummis & Gross
A Professional Corporation

October 31, 2019

Page 7

Respectfully submitted,

Sills Cummis & Gross P.C.

/s/ Joseph B. Fiorenzo

Joseph B. Fiorenzo

Civil Case Information Statement

Case Details: MORRIS | Civil Part Docket# L-002331-19

Case Caption: 54-74 SOUTH STREET, LLC, VS TOWN OF MORRISTOWN

Case Initiation Date: 10/31/2019

Attorney Name: MARSHALL O DWORKIN

Firm Name: SILLS CUMMIS & GROSS, PC

Address: THE LEGAL CENTER ONE RIVERFRONT PLZ
NEWARK NJ 071025400

Phone: 9736437000

Name of Party: PLAINTIFF : 54-74 South Street, LLC,

Name of Defendant's Primary Insurance Company

(If known): None

Case Type: OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

Document Type: Verified Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: YES

If yes, list docket numbers: MRS-L-1101-19

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO

Title 59? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

10/31/2019

Dated

/s/ MARSHALL O DWORKIN

Signed

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October 31, 2019

Via eCourts and Regular Mail

Honorable Stuart A. Minkowitz, J.S.C.
Morris County Courthouse
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Page 2

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October 31, 2019

Page 3

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October 31, 2019

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October 31, 2019

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October 31, 2019

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Sills Cummis & Gross
A Professional Corporation

October 31, 2019

Page 7

Respectfully submitted,

Sills Cummis & Gross P.C.

/s/ Joseph B. Fiorenzo

Joseph B. Fiorenzo

SILLS CUMMIS & GROSS P.C.
Joseph B. Fiorenzo, Esq. (Bar # 021421980)
David W. Phillips, Esq. (Bar #027141985)
Marshall O. Dworkin, Esq. (Bar # 057772013)
The Legal Center
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Fax (973) 643-6500
Attorneys for Plaintiffs

54-74 SOUTH STREET, LLC, SHOPS AT
SOUTH STREET, LLC, and THE
SILVERMAN GROUP,

Plaintiffs,

v.

TOWN OF MORRISTOWN, and MARGOT
G. KAYE, in her official capacity as Town
Clerk of Morristown,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY

Docket No.

Civil Action (OPRA)

**CERTIFICATION OF MARSHALL O.
DWORKIN**

MARSHALL O. DWORKIN, of full age, certifies as follows:

1. I am an attorney at law in the State of New Jersey, and am an associate with the law firm of Sills Cummis & Gross P.C., attorneys for Plaintiffs 54-74 South Street, LLC, Shops at South Street, LLC, and the Silverman Group (collectively, "Plaintiffs"). I submit this Certification in support of Plaintiffs' Complaint and Order to Show Cause relating to Plaintiffs' OPRA request to the Town of Morristown ("Morristown") and Margot G. Kaye ("Kaye") (collectively, "Defendants")

2. On or about August 6, 2019, Sills, on behalf of Plaintiffs, downloaded the OPRA request form located on Morristown's town website and submitted their OPRA request (the "OPRA request") to the fax number indicated on the website.

3. The OPRA request specifically asked for 8 categories of documents:
 - a. All communications relating to The Silverman Group, its agents, representatives or staff from 2016 to Present. This includes, but is not limited to, communications involving the Mayor, the Morristown Planning Division and/or the Morristown Planning/Zoning Board.
 - b. All communications relating to the relocation of the Deloitte New Jersey Corporate Headquarters. This includes, but is not limited to, communications involving the Mayor, the Morristown Planning Division and/or the Morristown Planning/Zoning Board.
 - c. All documents relating to The Silverman Group from 2016 to Present.
 - d. All documents relating to the relocation of the Deloitte New Jersey Corporate Headquarters.
 - e. All communications relating to a July 12, 2018 meeting involving Mayor Dougherty and representatives of Deloitte.
 - f. All documents relating to a July 12, 2018 meeting involving Mayor Dougherty and representatives of Deloitte.
 - g. All communications relating to Blake Silverman from 2016 to Present. This includes, but is not limited to, communications involving the Mayor, the Morristown Planning Division and/or the Morristown Planning/Zoning Board.
 - h. All documents relating to Blake Silverman from 2016 to Present.
4. Attached hereto as Exhibit A is a true and accurate copy of the OPRA Request.
5. Upon information and belief, Morristown received the OPRA Request on August 7, 2019 and assigned it OPRA Request No. 8089.
6. On August 16, 2019, Steffanie Morales ("Morales"), an employee in the Town Clerk's Office, emailed Sills and stated that Request No. 8089 "requires additional time beyond the seven (7) business days to fulfill. OPRA allows custodians to seek extensions of time pursuant to N.J.S.A. 47:1A-5.i. Your request requires an extension of time of five (5) business days until August 23, 2019." Sills did not object to Ms. Morales' and Morristown's request for an additional amount of time to respond to the request.

7. On or about August 28, 2019, Sills emailed Ms. Morales to follow-up on her request for additional time to respond to the OPRA Request and sought information regarding the status of the OPRA Request.

8. On or about August 29, 2019, Sills again emailed Ms. Morales, and carbon-copied Ms. Kaye on the email, seeking a response to the OPRA Request and Sills' email from the prior day seeking a status update.

9. Later that day, Ms. Morales emailed Sills apologizing for the "time lapse" but noted that she had been in contact with the "departments handling your OPRA" request and that "they have informed me that additional time is needed for the completion of this search." As a result, Ms. Morales stated that "an extension of time of seven (7) business days until September 10, 2019" was necessary to complete their response to the OPRA Request.

10. In response to the August 29, 2019 email from Ms. Morales, Sills responded that it had "no objection to an additional 7 business days" but that Sills would not necessarily consent to an additional extension beyond September 10, 2019. Sills noted that if there are issues or problems in meeting that deadline, Sills was "more than happy to work with you all to find a solution."

11. On September 10, 2019, Sills emailed Ms. Morales and Ms. Kaye inquiring whether there would be a production that day, as previously stated.

12. Ms. Kaye responded later that day stating that "the appropriate departments continue to review documentation that may be responsive to your request. As you are aware, OPRA provides for an extension of time in which to respond, if necessary. Accordingly, your request requires an additional five (5) business days and any responsive documentation will be provided to you on or before September 17, 2019."

13. In response to Ms. Kaye's email, Sills noted that it hoped to "work and accommodate any issues or inconveniences...but this will now be the third extension requested and September 17 will be well over a month since we initially submitted our OPRA request." Sills noted it reserves its rights to enforce its access to these documents, but sought to find a way to "help expedite this OPRA request."

14. On or about September 17, 2019, Ms. Kaye forwarded five separate PDF files which contained Morristown's production of documents in response to the OPRA request (the "First Production"). The vast majority of documents provided in the First Production were entirely redacted. Ms. Kaye also included in her email a privilege log, or *Vaughn* index, which set forth the bases for the redactions. Attached hereto as Exhibits B, C, D, E and F are true and accurate copies of the individual PDFs provided by Morristown in the First Production. Attached hereto as Exhibit G is a true and accurate copy of the *Vaughn* index provided by Morristown in the First Production.

15. According to the *Vaughn* index provided, the vast majority of the redactions were based on the Attorney Client Privilege. Only two documents were redacted due to the "Intra agency advisory, consultative, and deliberative material" privilege.

16. Morristown made no objections to the OPRA Requests and made no objections or comments to the breadth of the OPRA Requests or any hardship the OPRA Requests would cause Morristown through its communication with Sills, or in its First Production.

17. On or about October 4, 2019, Sills sent a letter to Morristown and Ms. Kaye responding to the First Production. Sills made a number of objections to the First Production, the redactions Morristown made to the First Production and the insufficiency of the *Vaughn* index

provided in the First Production. Attached hereto as Exhibit H is a true and accurate copy of the October 4, 2019 letter.

18. Sills objected to the breadth of the redactions Morristown made, guised under the attorney-client privilege. Sills noted that the attorney-client privilege only relates to the "mental impressions, conclusions, opinion or legal theories of an attorney or representative of a party concerning litigation or potential litigation." Sills noted that communications with attorneys relating to business other than legal matters are not protected by the privilege.

19. Specifically, Sills objected to the broad use of the attorney-client privilege for documents and communications Morristown's *Vaughn* index indicated were related to "Email correspondence regarding draft press release", "Email correspondence regarding Speedwell parking Agreement", "Email correspondence regarding a development project" and "Email correspondence regarding Deloitte call" which are not inherently legal.

20. Sills also noted that even if portions of the documents provided contained communications protected by the attorney-client privilege, redacting the entire document was not appropriate and the redactions should be limited to the portions of the document which are protected under the privilege.

21. Sills also noted that in the First Production and in the *Vaughn* index that accompanied the First Production, Morristown failed to identify certain individuals who were included in many of the emails. It was unclear reviewing the First Production who the attorney was which created the attorney-client privilege and the identification of the other individuals on the emails in order to determine whether they were agents or third-parties to the communication.

22. Third, Sills objected to the *Vaughn* index and noted that it failed to include sufficient information about the bases of the claimed privileges and requested that Morristown

supplement or correct the *Vaughn* index with additional information. Specifically, Sills noted that the *Vaughn* index failed to adequately describe why the privileges applied to each communication. Rather, Morristown simply provided conclusory summaries of the topic of the document, rather than establishing the basis for redacting the information contained in the document. As a result, it is impossible for Sills or Plaintiffs to properly object or challenge Morristown's use of a privilege to redact most of the documents produced.

23. On or about October 11, 2019, Ms. Kaye responded to the October 4, 2019 letter and stated that "we are working on your follow up request." Sills responded to this email seeking an estimated time when Morristown would provide a formal response or new production, and Ms. Kaye responded that she did not know but stated she would follow up in a few days.

24. On October 16, 2019, Sills followed up to inquire the status of Morristown's response to the October 4, 2019 letter, and Ms. Kaye responded that she "followed up yesterday and am just waiting for attorney review."

25. On or about October 21, 2019, Ms. Kaye provided a supplemental production (the "Supplemental Production") which only contained 9 partially redacted emails which Ms. Kaye stated were "previously redacted and identified on the *Vaughn* index but have since been determined to not contain privileged discussions or information." Attached hereto as Exhibit I is a true and accurate copy of the October 21, 2019 email and Supplemental Production.

26. In the email which provided the Supplemental Production, Ms. Kaye identified the full names and positions of the individuals listed in the *Vaughn* index and in the documents provided in the First and Supplemental Production.

27. Ms. Kaye and Morristown again did not object to the OPRA requests, their breadth or any hardship that Morristown encountered or could potentially encounter responding

to the OPRA request. Ms. Kaye and Morristown also did not supplemental or amend the *Vaughn* index to include the required information described in the October 4, 2019 letter.

28. After receiving the Supplemental Production, Sills inquired if this response and Supplemental Production constituted “the extent of [Morristown’s] response to our [October 4, 2019] letter, or will more information/documents be forthcoming?” Ms. Kaye responded that “please be advised that the documentation provided this morning is the extent of our response.”

29. Aside from the 9 individual emails that were provided in the Supplemental Production, Morristown has refused to amend or correct the overly broad redactions contained in the First Production or amend their *Vaughn* index to include sufficient information for the bases of the redactions, as is required under law.

30. Further, Plaintiffs possess numerous emails and correspondences with representatives of Morristown that were clearly not produced in Defendants’ First and Supplemental Production.

31. As of the date of this filing, and in violation of Plaintiffs’ rights under New Jersey law, Morristown has not produced all documents or all portions of documents responsive to the OPRA request, a sufficient privilege log and/or *Vaughn* index.

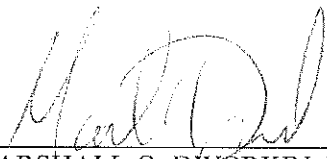
32. Morristown is a defendant in a case brought by Sills on behalf of Plaintiffs pending before New Jersey Superior Court, Morris County, captioned *54-74 South Street, LLC, The Silverman Group and Shops at South Street, LLC v. Timothy P. Dougherty, individually and in his capacity as mayor of Morristown, and Town of Morristown*, Docket No. MRS-L-001101-19. In this matter, Plaintiffs allege that Defendant Timothy P. Dougherty and Morristown tortiously interfered with a prospective economic advantage. Specifically, the Mayor Dougherty

and Morristown tortiously intervened to prevent Deloitte from relocating its offices to a development owned and operated by Plaintiffs.

33. On or about July 11, 2019, Mayor Dougherty and Morristown filed a motion to dismiss the aforementioned action.

34. On or about October 2, 2019, the Honorable Peter A. Bogaard, J.S.C. denied the motion to dismiss.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

By: 
MARSHALL O. DWORKIN, ESQ.

Dated: October 31, 2019