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CITY OF BERKELEY, et al.

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
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5 CITY OF BERKELEY; MAYOR AND)
MEMBERS OF THE CITY COUNCIL)
6 OF THE CITY OF BERKELEY,)

7 Plaintiffs,)

8 v.)

9 UNITED STATES POSTAL)
SERVICE; PATRICK R. DONOHOE AS)
10 POSTMASTER GENERAL OF THE UNITED)
STATES POSTAL SERVICE; TOM A.)
11 SAMRA, VICE PRESIDENT-)
12 FACILITIES OF THE UNITED STATES)
POSTAL SERVICE; DIANA ALVARADO,)
13 DIRECTOR, REAL ESTATE, Service)
14 PACIFIC REGION,)

15 Defendants.)
16

Case No.: CV-14-04916 WHA

**JOINT STATUS REPORT ON
THE CANCELLATION OF THE
SALES AGREEMENT AND NOTICE OF
WITHDRAWAL OF THE PRELIMINARY
INJUNCTION MOTION**

17 Pursuant to Civil Local Rules 6-2 and 7-12 of the Northern District of California,
18 Defendants, Patrick R. Donahoe, Postmaster General of the United States Postal Service, Tom A.
19 Samra, Vice President-Facilities of the United States Postal Service, Diane Alvarado, Director,
20 Real Estate, United States Postal Service, Pacific Region, the United States Postal Service
21 (collectively, “the Postal Service”), and Plaintiffs City of Berkeley and Mayor and Members of
22 the City Council of the City of Berkeley (“Plaintiffs”) by and through their respective counsel,
23 hereby file this Joint Notice to the Court to apprise this Court of recent developments regarding
24 the prospective buyer’s (Hudson McDonald LLC (“Buyer”)) termination of the “Agreement to
25 Sell and Purchase” (the “Sales Agreement”):

26 1. On November 5, 2014, Plaintiffs filed a Complaint for Declaratory and Injunctive
27 Relief (ECF 1) and a motion for a temporary restraining order and preliminary injunction (ECF

28 Joint Status Report on the Cancellation of the Sales Agreement
And Notice of Withdrawal of the Preliminary Injunction Motion
Case No.: CV-14-04916 WHA

1 3), to enjoin named Federal Defendants from completing a sale of the Berkeley Post Office,
2 located at 2000 Allston Way, Berkeley, California.

3 2. On November 5, 2014, this Court granted Plaintiffs' request for a Temporary
4 Restraining Order, enjoining Defendants from completing the sale of the Berkeley Post Office
5 until a hearing on the motion for preliminary injunction can be conducted. ECF No. 8.

6 3. Upon a Joint Stipulation filed by the parties that provided the closing deadline would
7 not occur until December 22, 2014, that the Postal Service would not seek to close the sale until
8 at least December 17, and that the Postal Service agreed to an extension of the temporary
9 restraining order, *see* ECF No. 17, this Court extended the temporary restraining order until
10 December 17, 2015. *See* ECF No. 18.

11 4. Although the Postal Service had previously entered into a Sales Agreement, for the
12 Berkeley Main Post Office, located at 2000 Allston Way in Berkeley, California, the Buyer
13 terminated the Sales Agreement on December 3, 2014. *See* Declaration of Joseph D. Lowe
14 ("Lowe Declaration"), Ex. A ("Termination Letter"). As a consequence, there is no sale
15 pending. *Id.*

16 5. Given the foregoing, the parties agree, and respectfully submit as follows:

17 A. The Parties agree to vacate the Temporary Restraining Order issued on
18 November 5, 2014, and Plaintiffs hereby agree to withdraw without prejudice
19 their motion for a preliminary injunction;

20 B. Federal Defendants agree that, during the pendency of this lawsuit, the Postal
21 Service will provide Plaintiffs and this Court with at least 45-days' notice
22 prior to the closing of any future sale.

23 6. As a result of the litigation surrounding the preliminary injunction, the changed
24 circumstances resulting from the termination of the Sales Agreement, and the upcoming Federal
25 Holidays, among other reasons, the Federal Defendants will be filing a motion to a 30-day
26 extension of time to respond to Plaintiffs' Complaint, to and including February 4, 2015.

27 Plaintiffs have indicated that they do consent to this request.

1 7. Federal Defendants and Plaintiffs disagree on the following.

2 **Plaintiffs' position:** Plaintiffs request that this Court order the Postal Service to release the
3 Hudson McDonald contract and the building structural report referenced in the Termination
4 Letter. That is because these documents are subject to a pending Freedom of Information Act
5 request submitted prior to (and to avoid if possible) this litigation, which request has not been
6 honored. (See Pl. Exs. 26 & 27 in support of preliminary injunction (ECF No. 3-9:14, 16);
7 Additionally, that if the USPS has good reasons for proceeding as they have, or serious
8 constraints affecting *any* potential sale, it will facilitate resolution of the underlying dispute for
9 the City and community to know them. Plaintiffs also request that, in the event they file a
10 petition for attorney's fees, this Court consider the preliminary injunction be deemed as issued.
11 That is because plaintiffs believe that notwithstanding their voluntary withdrawal of their motion
12 to conserve the resources of the Court and defendants, they are entitled to the injunction and
13 have invested the effort to secure it in advance of the termination of the sale. Plaintiffs request
14 that the Postal Service notify all future prospective buyers of the pending litigation, since no
15 injunction will be in place and (with USPS declining to release sale-related documents to the
16 City or public), plaintiffs cannot be assured that USPS will provide such notice. Plaintiffs also
17 maintain that the Court should keep this case on calendar for December 11, 2014, to provide the
18 Court an opportunity if desired to confer with the parties before entering an order pursuant to this
19 status report.

20 **Federal Defendants' position:** Plaintiffs' "requests" that this Court order the release of various
21 documents and deem an injunction issued for purposes of fees litigation is premature and not
22 properly before this court as Plaintiff has filed no motion for such relief and Federal Defendants
23 have not yet responded to the Complaint. Moreover, Plaintiffs' requests are made pursuant to
24 Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, which provides Plaintiffs with the
25 appropriate remedy. They have not availed themselves of said remedy, as such it is not a proper
26 issue before this Court. Further, Plaintiffs' request that this Court order the Postal Service to
27 notify prospective buyers of pending litigation is unrelated to the withdrawal of Plaintiffs'

1 motion for a preliminary injunction. In any event, standard Postal Service contracts for the sale
2 of real property contain representations concerning the Postal Service's knowledge of litigation
3 affecting the property that is the subject of said contract. Federal Defendants request that the
4 hearing scheduled for December 11, 2014, be vacated as a consequence of Plaintiffs' withdrawal
5 of its preliminary injunction motion. Any hearing would be moot and unnecessary because, as a
6 result of the withdrawal of Plaintiff's motion, there is no issue currently pending before this
7 Court.

8 8. THEREFORE, the parties have each provided this Court with their proposed orders to
9 reflect the relief sought in this Joint Notice to the Court.

10 DATED: December 5, 2014

11 Respectfully submitted,
12 SAM HIRSCH
13 Acting Assistant Attorney General
14 Environmental & Natural Resources Division

15 MELINDA HAAG
16 United States Attorney

17 By: /s/ Kenneth Rooney

18 KENNETH ROONEY (NMBN 128670)
19 Trial Attorney¹
20 Natural Resources Section

21 ERICA BLACHMAN HITCHINGS
22 Assistant United States Attorney

23 *Attorneys for Federal Defendants*

24 By: ___/s/ Antonio Rossmann_____
25 ANTONIO ROSSMANN
26 Special Counsel (SBN 51471)
27 ROGER B. MOORE (SBN 51471)
28 ROSSMANN AND MOORE, LLP

Attorneys for Plaintiffs

¹ I, Kenneth Dean Rooney, hereby attest that I obtained the concurrence in the filing of this document of all signatories whose signatures are represented by /s/.

1 **[PLAINTIFFS' PROPOSED] ORDER**

2 The Postal Service shall provide this Court and Plaintiffs with 45-days' notice before
3 closing any sale of the Berkeley Main Post Office. The Postal Service shall also notify any
4 prospective buyers with notice of this lawsuit. **IT IS SO ORDERED.**

5 The Parties' request that the Temporary Restraining Order issued on November 5, 2014,
6 be lifted, and Plaintiffs' request that the motion for a preliminary injunction be withdrawn without
7 prejudice, are **GRANTED.**

8 Plaintiffs' request that this Court order the Postal Service to release promptly to plaintiffs
9 the Hudson McDonald contract and the building structural report referenced in the Termination
10 Letter is **GRANTED.**

11 Plaintiffs request this Court consider the preliminary injunction be deemed as issued in the
12 event they subsequently file a petition for attorney's fees is **GRANTED.**

13 Plaintiffs request to keep this case on calendar for December 11, 2014 is
14 **GRANTED/DENIED.**

15
16 Date: _____

17 WILLIAM ALSUP
18 UNITED STATES DISTRICT JUDGE
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