

Edward J. Dauber, Esq. (008881973)
Michael H. Freeman, Esq. (034981992)
GREENBERG DAUBER EPSTEIN & TUCKER, P.C.
1 Gateway Center, Suite 600
Newark, New Jersey 07102
(973) 643-3700

Attorneys for Plaintiff
Office of the New Jersey State Comptroller

OFFICE OF THE NEW JERSEY STATE
COMPTROLLER,

Plaintiff,

v.

CITY OF BAYONNE,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY
DOCKET NO. _____

Civil Action

VERIFIED COMPLAINT

Through this Verified Complaint filed under R. 1:9-6, R. 4:67-2(b), N.J.S.A. 52:15B-8(c), and N.J.S.A. 52:15C-8, Plaintiff, Office of the New Jersey State Comptroller (“OSC”), by its attorneys, Greenberg Dauber Epstein & Tucker, P.C., alleges that:

INTRODUCTION

1. Through this action, the OSC seeks to enforce a subpoena issued under its statutory authority to investigate, fraud, waste, and abuse of public funds as set forth in N.J.S.A. 52:15B-1 to -16 and N.J.S.A. 52:15C-1 to -24, and properly served upon the defendant, the City of Bayonne (“Bayonne”). To protect the confidentiality and integrity of its work, OSC has refrained from introducing into the public record specific facts concerning its document requests and subpoena issued to defendant.

PARTIES/VENUE

2. The OSC maintains an office at 20 West State Street, Trenton, New Jersey 08625. The OSC is, charged with, among other things: (a) conducting audits and reviews, proposing and enforcing remediation plans for the Executive branch of State government; (b) conducting investigations, and in pursuit thereof, evaluations, inspections, and other reviews; (c) issuing subpoenas in furtherance of investigations; and (d) filing actions to enforce those subpoenas. *See* N.J.S.A. 52:15C-8(a); N.J.S.A. 52:15B-8(c).

3. Defendant has its principal place of business in the State of New Jersey.

4. Venue is proper in the County of Mercer pursuant to R. 4:3-2 because the cause of action arose in Mercer County as the OSC's office is in the County and defendant is being compelled to produce documents at that office. See Certification of OSC Staff Attorney, Justine M. Jacobs ("Jacobs Cert.") at ¶ 11, dated February 8, 2023.

STATEMENT OF FACTS

5. Defendant Bayonne is a city located in Hudson County, New Jersey that is reasonably believed to possess information that is relevant to a pending investigation of the OSC under its statutory authority.

6. Pursuant to the statutory authority granted to OSC as set forth in N.J.S.A. 52:15B-1 to -16 and N.J.S.A. 52:15C-1 to -24, OSC sent a request for documents and information to Madelene C. Medina, Municipal Clerk of the City of Bayonne, via email on June 16, 2022. The request specified a response due date of June 30, 2022. See Jacobs Cert. at ¶ 2.

7. Because OSC had not received a response by June 30, 2022, OSC called Ms. Medina, who stated that she never received the document request. OSC then resent the document request via email, and Ms. Medina confirmed receipt. See Jacobs Cert. at ¶ 3.

8. Later that day, Ms. Medina forwarded OSC some of the requested documents and advised that she was working with the City's Law Department to obtain the rest. OSC subsequently granted a two-week extension on the initial document request, making for a new return date of July 14, 2022. See Jacobs Cert. at ¶ 4.

9. Because OSC had not received the outstanding documents by July 14, 2022, OSC followed up with Ms. Medina via email on July 15, 2022, but did not receive a response. See Jacobs Cert. at ¶ 5.

10. On July 20, 2022, OSC called Ms. Medina, who transferred the call to John Coffey, Law Director for the City of Bayonne. Mr. Coffey said he would provide a calendar summary of events and documents responsive to OSC's request the following week. See Jacobs Cert. at ¶ 6.

11. OSC did not receive any further communications from Mr. Coffey. OSC emailed Mr. Coffey to follow up on the outstanding documents on July 29, 2022 and August 8, 2022, but received no response. See Jacobs Cert. at ¶ 7-8.

12. OSC attempted to reach Mr. Coffey by phone on September 8, 2022, but was informed that he was out of the office. OSC left a message for Mr. Coffey but received no response. See Jacobs Cert. at ¶ 9.

13. On September 16, 2022, OSC again attempted to reach Mr. Coffey by phone, but was advised that he was in meetings all morning. OSC sent Mr. Coffey an email documenting its attempt to reach him, but received no response. See Jacobs Cert. at ¶ 10.

14. On September 29, 2022, the OSC served defendant a Subpoena Duces Tecum ("Subpoena") pursuant to N.J.S.A. 52:15B-8c. See Jacobs Cert. at ¶ 11, and Exhibit D, copy of the September 29, 2022 Subpoena from the OSC to Bayonne ("Exhibit D" or "the Subpoena").

15. The Subpoena's deadline for the production of the aforementioned documents was

October 14, 2022. See Jacobs Cert. at ¶ 11.

16. Having received no response to the subpoena by October 18, 2022, OSC attempted to call Mr. Coffey, but was informed that he was out of the office. OSC left a message for Mr. Coffey but received no response. See Jacobs Cert. at ¶ 12.

17. On October 20, 2022, OSC emailed Mr. Coffey to follow up on the unanswered Subpoena, but again received no response. See Jacobs Cert. at ¶ 13.

18. On or about November 4, 2022, Greenberg Dauber Epstein & Tucker, P.C. (“GDE&T”) was retained to represent OSC in connection with the Subpoena.

19. Soon thereafter, GDE&T reached out to Mr. Coffey and left a message. GDE&T later learned that Bayonne was represented by Leslie G. London of the law firm McManimon, Scotland & Baumann, LLC with respect to the Subpoena.

20. On November 15, 2022, Ms. London emailed GDE&T that Bayonne would submit the documents by December 2, 2022. See February 8, 2023 Certification of Michael Freeman Esq., (“Freeman Cert.”) at ¶4. Ms. London later emailed suggesting that the documents would be produced by December 9, 2022. Freeman Cert. at ¶7

21. Numerous emails were exchanged, including that GDE&T advised Ms. London that absent prompt compliance with the Subpoena, the OSC would seek court intervention. Freeman Cert. ¶6 at Ex. A.

22. To date, Bayonne has not complied with the Subpoena and has not produced the requested documents. Freeman Cert. at ¶8-9.

COUNT I

23. Plaintiff repeats the allegations set forth in Paragraphs 1 to 22 of this Complaint as though set forth fully herein.

24. Defendant Bayonne has not complied with a properly issued subpoena in violation of N.J.S.A. 52:15B-8, N.J.S.A. 52:15C-8, and R. 1:9-6.

25. Pursuant to N.J.S.A. 52:15B-8, N.J.S.A. 52:15C-8, and R. 1:9-6, defendant Bayonne has not complied with the Subpoena, and therefore OSC invokes the power of this Court to compel its compliance.

DEMAND FOR RELIEF

WHEREFORE, plaintiff petitions this Court for an Order:

- A. Directing that this matter be heard in a summary manner, pursuant to R. 4:67-2;
- B. Directing defendant Bayonne to immediately produce the records in its possession pursuant to the Subpoena requests from the OSC;
- C. Directing the defendant Bayonne to satisfy the subpoena duces tecum issued by the OSC;
- D. Affording the OSC any additional relief that the Court may deem just and equitable.

GREENBERG DAUBER EPSTEIN & TUCKER, P.C.
Attorneys for Plaintiff

/s/Edward J. Dauber

By: _____

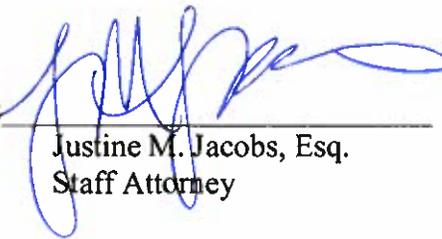
Edward J. Dauber
Michael H. Freeman

Dated: February 8, 2023

VERIFICATION

I, Justine Jacobs, Esq., certify as follows:

I am an authorized representative of plaintiff. I have read the foregoing Verified Complaint and certify based on my own personal knowledge that the facts contained therein are true to the best of my knowledge. I am aware that if the foregoing statements are willfully false, I am subject to punishment.

By: 

Justine M. Jacobs, Esq.
Staff Attorney

Dated: February 8, 2023

R. 4:5-1(c) Designation of Trial Counsel

Edward J. Dauber is hereby designated as trial counsel on behalf of the OSC in this matter.

R. 4:5-1 CERTIFICATION

This is a subpoena enforcement action under the authority of the OSC and its subject matter relates to the limited issues in the Verified Complaint. The subject of this controversy is not the subject matter of a pending action in another court or arbitration proceeding, and this office is unaware of any other party that is subject to potential liability based on the facts alleged in this Verified Complaint.

GREENBERG DAUBER EPSTEIN & TUCKER, P.C.
Attorneys for Plaintiff

/s/Edward J. Dauber

By: _____

Edward J. Dauber
Michael H. Freeman

Dated: February 8 , 2023

R. 1:38-7 CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents submitted to the Court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7.

GREENBERG DAUBER EPSTEIN & TUCKER, P.C.
Attorneys for Plaintiff

/s/Edward J. Dauber

By: _____

Edward J. Dauber
Michael H. Freeman

Dated: February 8, 2023

Edward J. Dauber, Esq. (008881973)
Michael H. Freeman, Esq. (034981992)
GREENBERG DAUBER EPSTEIN & TUCKER, P.C.
One Gateway Center, Suite 600
Newark, New Jersey 07102
(973) 643-3700

Attorneys for Plaintiff
Office Of The New Jersey State Comptroller

OFFICE OF THE NEW JERSEY STATE
COMPTROLLER,

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CITY OF BAYONNE,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY
DOCKET No. _____

Civil Action

**ORDER TO SHOW CAUSE
PURSUANT TO N.J.S.A. 52:15B-1 to -
16 AND N.J.S.A. 52:15C-1 to -24;
R. 4:67-2; R. 1:9-6**

This matter being brought before the Court by the Office of the New Jersey State Comptroller (“OSC”), by and through its attorneys, Greenberg Dauber Epstein & Tucker, P.C., seeking relief for enforcement of a subpoena, by way of summary action pursuant to R. 4:67-2, R. 1:9-6, N.J.S.A. 52:15B-1 to -16 and N.J.S.A. 52:15C-1 to -24, based upon facts set forth in the Verified Complaint, supporting Certifications and Brief filed herewith, and after consideration of the papers filed herewith, and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to R. 4:67-2(b), and having found that good and sufficient cause has been shown;

IT IS ON THIS _____ day of _____ 2023,

ORDERED THAT defendant the City of Bayonne shall appear and show cause on the _____ day of February 2023, before the Superior Court of New Jersey at the Mercer County Civil

Courthouse, 175 South Broad Street, Trenton, New Jersey 08608 at ____ a.m./p.m. or as soon thereafter as counsel can be heard, why an order and/or judgment should not be entered:

A. Directing the City of Bayonne to produce the documents in its possession, pursuant to the Subpoena Duces Tecum, served by the OSC under N.J.S.A. 52:15B-8 and N.J.S.A. 52:15C-8, on or about September 29, 2022.

B. Directing the City of Bayonne to immediately, within five (5) days, satisfy the Subpoena Duces Tecum issued by the OSC.

C. Granting such other relief as the Court may deem just and equitable.

And it is FURTHER ORDERED that:

1. A copy of this Order to Show Cause, Verified Complaint, Certification of Justine Jacobs dated February 8, 2023 and exhibits thereto, Certification of Michael Freeman, dated February 8, 2023, and exhibit thereto, and Brief be served upon defendant within ____ days of the entry of this Order. Service may be made via email and overnight delivery to outside counsel for the City of Bayonne, Leslie G. London of the law firm McManimon, Scotland & Baumann, LLC, and via email and overnight delivery to John Coffey, Law Director for the City of Bayonne;

2. The OSC must file with the Court the proof of service of the pleadings on defendant no later than three (3) days before the return date.

3. Defendant the City of Bayonne shall file and serve a written answer, an answering affidavit or a motion returnable on the return date set above to this Order to Show Cause and the relief requested in the Verified Complaint and proof of service of the same by _____. The answer, answering affidavit, or appropriate motion must be filed with the Clerk of the Superior Court in the county listed above, and a copy of the papers must be sent directly to the chambers of Judge _____. The City of Bayonne must also send a copy of its opposition papers to

counsel for the New Jersey Office of the State Comptroller, via email and regular mail, at the name and address appearing above. A telephone call will not protect your rights; you must file your opposition and pay the required fee of \$_____ and serve your opposition on your adversary, if you want the Court to hear your opposition to the relief the New Jersey Office of the State Comptroller is seeking.

4. The OSC must file and serve any written reply to the defendant's Order to Show Cause opposition by _____. The reply papers must be filed with the Clerk of the Superior Court in the county listed above, and a copy of the reply papers must be sent directly to the chambers of Judge _____.

5. If defendant the City of Bayonne does 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 plaintiff files a proof of service and a proposed form of order at least three (3) days prior to the return date.

6. If the OSC has not already done so, a proposed form of Order addressing the relief sought on the return date must be submitted to the court no later than three (3) days before the return date.

7. Defendant take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this order to show cause; not counting the day you received it. These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at

http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf. Include a \$ _____ filing fee payable to the “Treasurer State of New Jersey.” You must also send a copy of your Answer to the plaintiff’s 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 (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

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-LSNJLAW (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 the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

9. On the return date of the Order to Show Cause, the Court will entertain argument, but not testimony, unless informed otherwise not later than ___ days before the return date.

, J.S.C.

Edward J. Dauber, Esq. (008881973)
Michael H. Freeman, Esq. (034981992)
GREENBERG DAUBER EPSTEIN & TUCKER, P.C.
1 Gateway Center, Suite 600
Newark, New Jersey 07102
(973) 643-3700

Attorneys for Plaintiff
Office Of The New Jersey State Comptroller

OFFICE OF THE NEW JERSEY STATE
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY
DOCKET NO. MER-L-_____

Civil Action

PROPOSED ORDER

This matter having been brought before the Court on the Verified Complaint and Order to Show Cause by Greenberg Dauber Epstein & Tucker, P.C., attorneys for the Office of the New Jersey State Comptroller, on notice to Leslie G. London of the law firm McManimon, Scotland & Baumann, LLC., attorneys for Defendant, the City of Bayonne (“Bayonne”), and having found that the Office of the New Jersey State Comptroller has clear and unambiguous authority to seek the documents sought in its September 29, 2022 subpoena issued to the City of Bayonne pursuant to N.J.S.A. 52:15B-1 to -16 and N.J.S.A. 52:15C-1 to -24;

IT IS ON THIS ___ DAY OF _____, 2023,

ORDERED THAT, the City of Bayonne shall fully respond to the Subpoena Duces Tecum within ___ days of the date of this Order; and, it is

FURTHER ORDERED THAT, if Bayonne fails to obey and fully comply with this

Order, then the Office of the New Jersey State Comptroller may take any action under law and the current New Jersey Court Rules, including an application to enforce litigant's rights under R. 1:10; and it is

FURTHER ORDERED THAT the Office of the New Jersey State Comptroller serve a copy of this Order on counsel for the City of Bayonne within three business days of receipt of this Order.

Honorable _____, J.S.C.

_____ OPPOSED

_____ UNOPPOSED

Edward J. Dauber, Esq.
Michael H. Freeman, Esq.
GREENBERG DAUBER EPSTEIN & TUCKER, P.C.
One Gateway Center, Suite 600
Newark, New Jersey 07102
(973) 643-3700
*Attorneys for Plaintiff,
Office of the New Jersey State Comptroller*

OFFICE OF THE NEW JERSEY STATE
COMPTROLLER,

Plaintiff,

v.

CITY OF BAYONNE,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

DOCKET NO.

CIVIL ACTION

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION TO ENFORCE ITS SUBPOENA**

Edward J. Dauber, Esq.
Michael H. Freeman, Esq.
On the Brief

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PRELIMINARY STATEMENT

On September 29, 2022, the City of Bayonne (“the City”) was duly served with a subpoena duces tecum by the Office of the New Jersey State Comptroller (“OSC”), pursuant to its statutory authority under N.J.S.A. 52:15B-1 et seq. and N.J.S.A. 52:15C-1 et seq. OSC only elected to exercise its subpoena powers after exhausting all other means of obtaining the information sought, including a formal document request and persistent efforts to follow up with the City over the course of several months. Nonetheless, the City has failed to produce the documents compelled by the subpoena. The Court should Order the City to promptly produce all of the responsive documents requested in the subpoena.

STATEMENT OF FACTS

On June 16, 2022, OSC served a request for documents and information to the City’s Municipal Clerk (“Clerk”) requesting sixteen categories of documents believed to be within the possession of the City. See Certification of Justine Jacobs (“Jacobs Cert.”) at Ex. A. The request set a return date of June 30, 2022. Id. The City failed to respond by the return date. Therefore, on June 30, 2022, OSC contacted the Clerk inquiring as to the status of the City’s response. Jacobs Cert. at ¶3. The Clerk indicated that she had never received the document request. Id. OSC provided a copy of the previously served document request via email to the Clerk, who confirmed receipt. Id. Later that day, the Clerk made a partial production of documents and advised that she was working with the City’s Law Department to obtain the remainder of the responsive documents. Id. at ¶4. OSC granted the City a two-week extension on the initial document request with a new return date of July 14, 2022. Id.

The City failed to produce the remaining documents by the July 14, 2022 return date. Id. at ¶5. On July 15, 2022, OSC contacted the Clerk via email to inquire as to the outstanding documents. Id. The City failed to respond to this inquiry. Id. On July 20, 2022, OSC contacted the Clerk via telephone in a second follow up on the document request. Id. at ¶6. The Clerk transferred the call to the City's Law Director, John Coffey, who advised that he would provide a calendar of events along with substantiating documents the following week. See Id.

OSC did not receive any further communications from Mr. Coffey despite numerous attempts to reach him. Id. at ¶7. Specifically, OSC emailed Mr. Coffey to inquire about the outstanding documents on July 29, 2022, and again on August 8, 2022, but received no response. Id. at ¶8. OSC then attempted to reach Mr. Coffey by phone on September 8, 2022, but was told he was out of the office and OSC never received a return call. Id. at ¶9. On September 16, 2022, OSC again attempted to reach Mr. Coffey by phone, but was advised that he was unavailable, and again, never received a return call. Id. at ¶10. That same day, OSC sent Mr. Coffey a final email documenting its attempt to reach him, but received no response. Id. at ¶10.

Having made exhaustive efforts to obtain the requested documents, on September 29, 2022, OSC served a subpoena duces tecum commanding the production and delivery of the remaining documentation and information by October 14, 2022, pursuant to the Comptroller's statutory authority under N.J.S.A. 52:15B-1 to -16 and N.J.S.A. 52:15C-1 to -24. See Jacobs Cert. at ¶11 and Ex. D thereto. Service was effectuated by hand-delivering the subpoena to the Clerk at the City's Municipal Clerk's Office. Id. at ¶11 and Ex. D.

Again, OSC did not receive a response to the subpoena by the October 14, 2022 return date. Id. at ¶12. On October 18, 2022, OSC called Mr. Coffey, but was informed that he was out of the office and never received a return call. Id. at ¶12. On October 20, 2022, OSC emailed Mr.

Coffey to follow up on the unanswered subpoena, but again received no response. On or about November 4, 2022, Greenberg Dauber Epstein & Tucker, P.C. (“GDE&T”) was retained to represent OSC in this matter. Id. at ¶14.

In early November, GDE&T reached out to Mr. Coffey, and then learned that Bayonne was now represented by Leslie G. London of the law firm McManimon, Scotland & Baumann, LLC, in connection with the September 29, 2022 Subpoena from the OSC to the City. GDE&T spoke with Ms. London on November 10, 2022 about the response to the subpoena, and she agreed to look into the response and report back. On November 15, 2022, Ms. London reported that Bayonne was “in the process of completing the compilation of documents in response to the Subpoena” and that she “should be able to complete our review and submit the documents by December 2.” See Freeman Cert., at ¶3-4, and Ex. A. GDE&T agreed to the final production of documents by December 2, but also asked that documents be produced on a rolling basis before that date. Ms. London agreed to try to produce the documents on a rolling basis prior to the final production by December 2.

No documents were produced on a rolling basis, and after multiple emails to Ms. London, she responded that responsive documents were being reviewed by another counsel, and he anticipated production of such documents by December 9. No documents were produced by December 9. Indeed, to date, Bayonne has not complied with the Subpoena and has not produced any of the requested documents. Freeman Cert., at ¶5-9.

ARGUMENT

PLAINTIFF’S MOTION TO ENFORCE THE SUBPOENA SHOULD BE GRANTED BECAUSE PLAINTIFF HAS A REASONABLE BELIEF THE REQUESTED RECORDS RELATE TO OSC’S WORK AND HAS MADE ALL REASONABLE ATTEMPTS TO OBTAIN THE RECORDS

OSC has the statutory authority to “establish a full-time program of investigation, to receive and investigate complaints concerning alleged fraud, waste, abuse or mismanagement of State funds, designed to provide increased accountability, integrity, and oversight of every public entity recipient of State funds.” N.J.S.A. 52:15B-7. To accomplish these important objectives, OSC is afforded “all the powers necessary to carry out its duties and functions and to fulfill” its statutory responsibilities. N.J.S.A. 52:15B-6, -8. Specifically, OSC “is empowered to . . . compel any person to produce at a specific time and place, by subpoena, any documents, books, records, papers, objects, or other evidence” reasonably related to its work. N.J.S.A. 52:15B-8(c). If the individual “fails to produce the books, papers or other documents required,” OSC may make a request of the court to compel that person to produce the documents and information sought. Id.

It is axiomatic that a subpoenaed party is required to comply with the subpoena, or otherwise respond by filing a timely motion to “quash or modify the subpoena . . . if compliance would be unreasonable or oppressive.” R. 1:9-2. Our courts have concluded that a government-issued subpoena duces tecum is reasonable so long as it commands “the production of things relevant” to the work being performed and specifies with “reasonable particularity” the items to be produced, and is limited to “records covering only a reasonable period of time.” In re Grand Jury Subpoena Duces Tecum, 143 N.J. Super. 526, 535 (Law Div. 1976) (quoting United States v.

Gurule, 437 F.2d 239, 241 (10th Cir. 1970)). A person who fails to obey a subpoena may be held in contempt of court, unless “adequate excuse” is shown. R. 1:9-5. See also R. 1:9-6.

Here, OSC reasonably believes that the City possesses documents and information related to OSC’s work. Following numerous attempts to obtain the documents, OSC properly exercised its statutory subpoena power to compel the City to produce responsive documents. The City has a legal obligation to respond to OSC’s subpoena, either by producing the documents or moving to quash the subpoena as unreasonable or oppressive. The City has done neither. Rather, the City has ignored the subpoena, as well as all OSC communications made in an attempt to obtain the requested documents. Therefore, the City should be compelled to produce the responsive documents.

CONCLUSION

For the reasons stated above, the Court should grant OSC’s Motion to Enforce and compel the City to produce the responsive documents.

Dated: February 8, 2023

GREENBERG DAUBER EPSTEIN & TUCKER,
P.C.

/s/Edward J. Dauber

By: _____

Edward J. Dauber

Michael H. Freeman

One Gateway Center, Suite 600

Newark, New Jersey 07102

Attorneys for Plaintiff,

Office of the New Jersey State Comptroller

Edward J. Dauber, Esq. (008881973)
Michael H. Freeman, Esq. (034981992)
GREENBERG DAUBER EPSTEIN & TUCKER, P.C.
One Gateway Center, Suite 600
Newark, New Jersey 07102
Attorney for Plaintiff
Office of the New Jersey State Comptroller

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v.

CITY OF BAYONNE,
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

DOCKET NO.

CIVIL ACTION

**CERTIFICATION OF MICHAEL
FREEMAN IN SUPPORT OF
PLAINTIFF'S MOTION TO ENFORCE
COMPLIANCE WITH A SUBPOENA**

I, Michael Freeman, being of full age, hereby certify as follows:

1. I am an attorney admitted to practice in the State of New Jersey and a partner at Greenberg Dauber Epstein & Tucker, P.C. This firm represents the Office of the New Jersey State Comptroller (OSC) and, as such, I am fully familiar with the facts set forth herein.

2. In November 2022, this firm was retained by the OSC in connection with the September 29, 2022 Subpoena served by the OSC on the City of Bayonne (the "Subpoena"). See Certification of Justine Jacobs, Ex. D. In November, my partner, Edward Dauber, reached out to John Coffey, Law Director for the City of Bayonne concerning the subpoena and left a message. Soon thereafter, we learned that Bayonne was now represented by Leslie G. London of the law firm McManimon, Scotland & Baumann, LLC, in connection with the Subpoena. On or about November 10, Mr. Dauber and I spoke with Ms. London about the response to the subpoena, and she agreed to look into the status of the response and report back to us.

3. On November 15, 2022, Ms. London emailed us that Bayonne was “in the process of completing the compilation of documents in response to the Subpoena” and that she “should be able to complete our review and submit the documents by December 2.” A copy of an email thread containing multiple emails between Ms. London and me, including the November 15 email, is attached hereto as Exhibit 1.

4. I then spoke with Ms. London on November 15 concerning her anticipated production of documents, and agreed for Bayonne to make its final production of documents by December 2. I also asked that documents be produced on a rolling basis before that date, and that December 2 would be the date for the final production of outstanding documents. Ms. London agreed to try to produce the documents on a rolling basis prior to the final production by December 2.

5. No documents were produced over the ensuing days. On November 28, 2022, I emailed Ms. London asking her to advise “when we can begin to receive the documents responsive to the subpoena?” *See* Ex. 1. Ms. London did not respond to the email.

6. On November 29, 2022, I again emailed Ms. London, informing her that absent prompt compliance with the subpoena, the OSC would seek court intervention. *See* Ex. 1. Ms. London responded shortly thereafter stating that she had received the November 28 and 29 emails and was “trying to get an update from her clients on the status of the documents.” *See* Ex. 1.

7. On December 1, 2022, I again emailed Ms. London regarding the lack of any production of documents and the lack of any substantive update. *See* Ex. 1. Ms. London responded later that day, stating that she was in the process of “trying to get whatever documents are available in interim while counsel completes his review.” *See* Ex. 1. Ms. London also included in her response a December 1, 2022 email from John Wyciskala, Esq. of Inglesio, Webster, Wyciskala

& Taylor, LLC to her concerning his apparent interim review of the subpoenaed documents. Mr. Wyciskala informed Ms. London that “I am working on this Leslie. I have a lot of emails that go back to the beginning that I need searched and printed. I am not going to have my stuff together by tomorrow, but think I should have it all printed out by the end of next week.” The “end of the next week” would be December 9, 2022.

8. On or about December 9, 2022, Mr. Dauber reached out to Ms. London about an update to the response. Ms. London informed him that she had not been given anything by her client despite having reached out any number of times. We have received no further updates from Ms. London as to the status of the document production in response to the subpoena.

9. To date, Bayonne has not complied with the Subpoena and has not produced any of the requested documents.

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

Date: February 8, 2023

/s/Michael H. Freeman

Michael H. Freeman

EXHIBIT 1

From: Leslie G. London <LLondon@MSBNJ.COM>
Sent: Thursday, December 1, 2022 7:28 PM
To: Michael Freeman <mfreeman@greenbergdauber.com>; Edward Dauber <edauber@greenbergdauber.com>
Subject: RE: City of Bayonne - Subpoena/Office of the State Comptroller

Good evening Michael,

I have been trying to obtain a response as to the status of the City's compilation of the documents that are responsive to the Subpoena. I just received the email below this afternoon from the City's counsel. I am also trying to get whatever documents are available in interim while counsel completes his review and am waiting for a response.

Unfortunately, I don't have something more concrete to provide on the matter, other than John's email below. I am continuing to push forward on this matter so that the documents can be produced as soon as possible, but I understand if you need to move forward as you previously indicated.

Thank you,
Leslie

Email from Counsel:

I am working on this Leslie. I have a lot of emails that go back to the beginning that I need searched and printed. I am not going to have my stuff together by tomorrow, but think I should have it all printed out by the end of next week. I am laid up at the home with the flu or a bad cold.

JOHN P. WYCISKALA, Esq.

jwyciskala@iwwt.law

Direct: (973) 947-7134

Assistant: Chrisanne Young, cyoung@iwwt.law

Inglesino, Webster, Wyciskala & Taylor, LLC

600 Parsippany Road, Suite 204

Parsippany, New Jersey 07054

General: (973) 947-7111

Fax: (973) 887-2700

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Leslie G. London, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Roseland, New Jersey 07068
Office: (973) 622-5335
Fax: (973) 622-7333
llondon@msbnj.com

From: Michael Freeman <mfreeman@greenbergdauber.com>
Sent: Thursday, December 1, 2022 6:07 PM
To: Leslie G. London <LLondon@MSBNJ.COM>; Edward Dauber <edauber@greenbergdauber.com>
Subject: RE: City of Bayonne - Subpoena/Office of the State Comptroller

Leslie:
You informed us on November 15 that your client was in the process of compiling the responsive documents. Since that time, we have received no substantive update, but are hopeful that the documents will be produced by tomorrow as we had discussed. Please advise as to the status of the production.

Michael

From: Leslie G. London <LLondon@MSBNJ.COM>
Sent: Tuesday, November 29, 2022 2:26 PM
To: Michael Freeman <mfreeman@greenbergdauber.com>; Edward Dauber <edauber@greenbergdauber.com>
Subject: RE: City of Bayonne - Subpoena/Office of the State Comptroller

Hi Michael, I apologize for next getting back to you sooner. I did see your email yesterday and I have been trying to get an update from my client on the status of the documents. I understand your position in this matter and will continue to try to obtain a more substantive response.
Thank you,
Leslie

Leslie G. London
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue | 2nd Floor | Roseland, NJ 07068
Direct Dial: 973-622-5335
Email: LLondon@MSBNJ.COM
[Website](#)

Connect with MS&B on [LinkedIn](#) | [Twitter](#) | [Instagram](#)

From: Michael Freeman <mfreeman@greenbergdauber.com>
Sent: Tuesday, November 29, 2022 1:18 PM
To: Leslie G. London <LLondon@MSBNJ.COM>; Edward Dauber <edauber@greenbergdauber.com>
Subject: RE: City of Bayonne - Subpoena/Office of the State Comptroller

Leslie:

I am following up from yesterday's email since we received no response. Please advise us immediately of the status of your production. We had been hopeful that we would obtain the subpoenaed records without the need for Court intervention, but absent prompt compliance, we will be compelled to file the appropriate application in the Superior Court.

Michael

From: Michael Freeman
Sent: Monday, November 28, 2022 9:40 AM
To: Leslie G. London <LLondon@MSBNJ.COM>; Edward Dauber <edauber@greenbergdauber.com>
Subject: RE: City of Bayonne - Subpoena/Office of the State Comptroller

Leslie:

We have not received any substantive update concerning the production of documents pursuant to the subpoena. As mentioned, we would appreciate a rolling production to begin as soon as possible and to have the complete production by the end of this week. Can you let us know the current status of your review of the subpoenaed records?

Michael

From: Leslie G. London <LLondon@MSBNJ.COM>
Sent: Tuesday, November 15, 2022 9:36 AM
To: Edward Dauber <edauber@greenbergdauber.com>; Michael Freeman <mfreeman@greenbergdauber.com>
Subject: City of Bayonne - Subpoena/Office of the State Comptroller

Good morning Ed and Mike,

I have been advised by the City that they are in the process of completing the compilation of the documents in response to the Subpoena and anticipate submitting the documents to our office for review by or about Friday of this week.

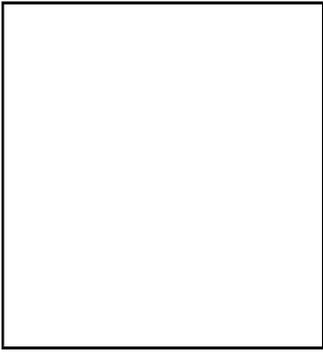
Depending on the volume of the documents involved, my office will need 1-2 weeks for review. In light of the upcoming Thanksgiving holiday, I would say we should be able to complete our review and submit the documents by December 2.

Please advise if this is acceptable. We will make every effort to provide the documents sooner if possible.

Thank you,

Leslie

Leslie G. London
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue | 2nd Floor | Roseland, NJ 07068
Direct Dial: 973-622-5335
Email: LLondon@MSBNJ.COM
[Website](#)



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Edward J. Dauber, Esq. (008881973)
Michael H. Freeman, Esq. (034981992)
GREENBERG DAUBER EPSTEIN & TUCKER, P.C.
One Gateway Center, Suite 600
Newark, New Jersey 07102
Attorney for Plaintiff
Office of the New Jersey State Comptroller

OFFICE OF THE NEW JERSEY STATE
COMPTROLLER,
Plaintiff,

v.

CITY OF BAYONNE,
Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

DOCKET NO.

CIVIL ACTION
**CERTIFICATION OF JUSTINE JACOBS
IN SUPPORT OF PLAINTIFF'S
MOTION TO ENFORCE COMPLIANCE
WITH A SUBPOENA**

I, Justine Jacobs, being of full age, hereby certify as follows:

1. I am an attorney admitted to practice in the State of New Jersey and am employed as a Staff Attorney by the Office of the New Jersey State Comptroller (OSC). I am currently handling this matter for OSC and, as such, I am fully familiar with the facts set forth herein.

2. Pursuant to its statutory authority as set forth in N.J.S.A. 52:15B-1 et seq. and N.J.S.A. 52:15C-1 et seq., on June 16, 2022, OSC issued a request for documents and information to the City of Bayonne (Bayonne). The deadline to respond to that request was June 30, 2022. A true and correct copy of OSC's June 16, 2022 document request is attached as Exhibit "A."

3. OSC did not receive a response to its document request from Bayonne by the June 30, 2022 deadline. As a result, on June 30, 2022, OSC contacted Bayonne's Municipal Clerk Madelene Medina, who advised that she never received OSC's document request. OSC then resent the document request via email to the Municipal Clerk, who confirmed receipt of the same. A true

and correct copy of OSC's email correspondence with Bayonne's Municipal Clerk is attached as Exhibit "B," at 7.

4. Later that day, the Municipal Clerk forwarded OSC some of the requested documents and advised that she was working with the City's Law Department to obtain the rest. OSC subsequently granted a two-week extension on the initial document request, making for a new return date of July 14, 2022. See Exhibit "B" at 5-7.

5. Because OSC had not received the outstanding documents and information by the extended deadline of July 14, 2022, OSC followed up with Ms. Medina via email on July 15, 2022, but OSC did not receive a response. See Exhibit "B" at 3-4.

6. On July 20, 2022, OSC called the Municipal Clerk, who transferred the call to John Coffey, Law Director for the City of Bayonne. Mr. Coffey advised that he would begin to provide a calendar summary of events and documents responsive to OSC's request the following week.

7. OSC did not receive any further communications from Mr. Coffey.

8. OSC emailed Mr. Coffey to follow up on the outstanding documents on July 29 and August 8, 2022, but received no response. See Exhibit "B" at 1-3.

9. OSC attempted to reach Mr. Coffey by phone on September 8, 2022, but was informed that he was out of the office. OSC left a message for Mr. Coffey, but received no response.

10. On September 16, 2022, OSC again attempted to reach Mr. Coffey by phone, but was advised that he was in meetings all morning. OSC sent Mr. Coffey an email documenting its attempt to reach him, but received no response. A true and correct copy of the September 16, 2022 correspondence to Mr. Coffey from OSC is attached as Exhibit "C."

11. Pursuant to the statutory authority granted to OSC as set forth in N.J.S.A. 52:15B-1 to -16 and N.J.S.A. 52:15C-1 to -24. on September 29, 2022, OSC issued a subpoena duces tecum to Bayonne's Municipal Clerk commanding the production and delivery of documentation and information to OSC's office in Trenton, New Jersey, by October 14, 2022. That subpoena was served via hand-delivery. A true and correct copy of the September 29, 2022 subpoena duces tecum with proof of service is attached as Exhibit "D."

12. Having received no response to the subpoena by October 18, 2022, OSC attempted to contact Mr. Coffey but was informed by a representative from Bayonne's Law Department that he was out of the office. OSC left a voicemail message for Mr. Coffey, but received no response.

13. On October 20, 2022, OSC emailed Mr. Coffey to follow up on the unanswered subpoena, but again received no response. A true and correct copy of the October 20, 2022 correspondence to Mr. Coffey from OSC is attached as Exhibit "E."

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

Date: February 8, 2023



Justine M. Jacobs

EXHIBIT A



State of New Jersey

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

OFFICE OF THE STATE COMPTROLLER
P.O. BOX 024
TRENTON, NJ 08625-0024
(609) 984-2888

KEVIN D. WALSH
Acting State Comptroller

CONFIDENTIAL

June 16, 2022

Via Electronic Mail

Madelene C. Medina
Municipal Clerk
City of Bayonne
630 Avenue C
Bayonne, NJ 07702
[REDACTED]

RE: First Request for Documents and Information

Dear Ms. Medina:

Pursuant to *N.J.S.A. 52:15B-1 et seq.* and *N.J.S.A. 52:15C-1 et seq.*, the Office of the State Comptroller requests the documents and information listed below from the City of Bayonne ("Bayonne") pertaining to [REDACTED] and associated properties located within Bayonne at [REDACTED], which property is identified as [REDACTED]. As used in this request, "documents" shall include, but not be limited to, any written materials, graphic materials, video recordings, however produced or reproduced, either electronic or otherwise, within Bayonne's possession, custody, or control. The Office of the State Comptroller requests the documents and information listed below from Bayonne for the time period of January 1, 2020 to the present, unless otherwise noted.

1. Any and all correspondence, including emails, between Bayonne and [REDACTED] or any other representative of the [REDACTED] regarding any negotiation of Bayonne's purchase of the [REDACTED];

The information contained in this document is confidential and privileged, and exempt from disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Madelene C. Medina
June 16, 2022
Page 2

2. Any and all appraisals, studies, and inspection reports, and environmental reports obtained by Bayonne in furtherance of Bayonne's potential purchase of [REDACTED];
3. A copy of the Purchase and Sale Agreement between Bayonne and [REDACTED], regarding Bayonne's purchase of [REDACTED] ("Purchase Agreement");
4. Any and all resolutions and ordinances issued by the Bayonne City Council authorizing and approving the Purchase Agreement;
5. Any and all correspondence, including emails, between Bayonne and [REDACTED] or any other representative of the [REDACTED] regarding the termination of Bayonne's interest in [REDACTED] and Bayonne's assignment and assumption of its' interest in [REDACTED];
6. Any and all documentation, including correspondence, detailing how and to what extent entities were solicited by Bayonne for the sale of Bayonne's assignment of its interest from the Purchase Agreement;
7. Any and all correspondence, including emails, between Bayonne and representatives of [REDACTED], and any of its subsidiaries, regarding [REDACTED], including the negotiation of Bayonne's assignment of its interest from the Purchase Agreement to [REDACTED];
8. A copy of any executed assignment agreements between Bayonne and [REDACTED];
9. Any and all documentation related to [REDACTED] agreement to reimburse Bayonne for all expenses incurred and professional fees expended by Bayonne in furtherance of the Purchase Agreement;
10. A copy of the final redevelopment plan concerning [REDACTED] [REDACTED] titled "[REDACTED]" and approved by the Bayonne City Council on [REDACTED];
11. Any and all resolutions and ordinances issued by the Bayonne City Council and/or Planning Board authorizing and approving the redevelopment plan known as [REDACTED];
12. Any and all Redevelopment/Rehabilitation Plans and zoning ordinances for [REDACTED] approved by the Bayonne City Council prior to the approval of the redevelopment plan known as [REDACTED];

Madelene C. Medina

June 16, 2022

Page 3

13. Any and all reports, studies, and correspondence relied on by Bayonne in furtherance of approving the redevelopment plan known as [REDACTED];
14. Any and all correspondence, including emails, between Bayonne and representatives of [REDACTED], and any of its subsidiaries, regarding the redevelopment plan known as [REDACTED];
15. Any and all documents, including correspondence, between Bayonne and [REDACTED] regarding the [REDACTED] and [REDACTED]; and
16. Any and all correspondence, including emails, between Bayonne and representatives of the [REDACTED], and any of its subsidiaries, regarding [REDACTED] interest to enter, inspect, environmental test, and potentially purchase all or a portion of [REDACTED] in furtherance of [REDACTED].

Please provide copies of these documents on or before **June 30, 2022**. We kindly request that you submit the aforementioned documentation electronically to [REDACTED]. In the event that you cannot produce the documentation electronically, or have any other questions regarding this request, please contact me at [REDACTED].

Thank you for your courtesy and cooperation regarding this request.

Very truly yours,

KEVIN D. WALSH
ACTING STATE COMPTROLLER

By: /s/Brian E. McGarry
Brian E. McGarry
Staff Attorney

EXHIBIT B

From: [McGarry, Brian \[OSC\]](#)
To: [Jacobs, Justine \[OSC\]](#)
Subject: FW: New Jersey Office of the State Comptroller - Document Request - City of Bayonne
Date: Tuesday, October 25, 2022 2:43:28 PM
Attachments: [image001.png](#)

Brian E. McGarry

Staff Attorney
Procurement Division
New Jersey Office of the State Comptroller
20 W. State St., 12th Floor
Trenton, NJ 08625



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From: McGarry, Brian [OSC]
Sent: Monday, August 8, 2022 4:45 PM
To: JCoffey@baynj.org
Cc: [REDACTED]
Subject: RE: New Jersey Office of the State Comptroller - Document Request - City of Bayonne

Good Afternoon Mr. Coffey,

As per my below July 29, 2022 e-mail, please advise on the status of Bayonne's outstanding response to OSC's June 16, 2022 document request.

Thank you,

Brian McGarry

Brian E. McGarry

Staff Attorney

Investigations Division

New Jersey Office of the State Comptroller

20 W. State St., 12th Floor

Trenton, NJ 08625



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From: McGarry, Brian [OSC]

Sent: Friday, July 29, 2022 12:51 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: New Jersey Office of the State Comptroller - Document Request - City of Bayonne

Importance: High

Good Afternoon Mr. Coffey,

As per below, on June 16, 2022, the New Jersey Office of the State Comptroller (OSC) provided Municipal Clerk Madelene Medina, via email, a document request for the City of Bayonne regarding the [REDACTED] and associated properties. The document request had a return date

of Thursday, June 30, 2022. After receiving only a partial response, as a courtesy, OSC provided a two week extension for the requested information until Thursday, July 14, 2022.

Pursuant to a phone conversation you had with OSC Investigator Melanie Cobb on Wednesday, July 20, 2022, you advised OSC would be provided the requested documents by Monday, July 25, 2022. To date, the requested information has not been provided.

Please advise on the status of the City of Bayonne's response to OSC's document request.

Thank you,

Brian McGarry

Brian E. McGarry

Staff Attorney

Investigations Division

New Jersey Office of the State Comptroller

20 W. State St., 12th Floor

Trenton, NJ 08625



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From: McGarry, Brian [OSC]

Sent: Friday, July 15, 2022 3:57 PM

To: Madelene Medina <[REDACTED]>

Cc: Cobb, Melanie [OSC] <[REDACTED]>

Subject: RE: New Jersey Office of the State Comptroller - Document Request - City of Bayonne

Importance: High

Good Afternoon Ms. Medina,

As per below, the New Jersey Office of the State Comptroller (OSC) provided the City of Bayonne a two week extension for the document request until Thursday, July 14, 2022. With the exception of a limited amount of documents provided by your office on June 30, 2022, OSC has not been provided the requested documents pursuant to the June 16, 2022 document request.

Please advise as to the status of the requested documents.

Thank you,

Brian McGarry

Brian E. McGarry

Staff Attorney

Investigations Division

New Jersey Office of the State Comptroller

20 W. State St., 12th Floor

Trenton, NJ 08625



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From: McGarry, Brian [OSC]

Sent: Tuesday, July 5, 2022 3:57 PM

To: Madelene Medina <[REDACTED]>

Cc: Cobb, Melanie [OSC] <[REDACTED]>

Subject: RE: New Jersey Office of the State Comptroller - Document Request - City of Bayonne

Good Afternoon Ms. Medina,

As you are aware, on June 16, 2022, the New Jersey Office of the State Comptroller (OSC) provided you, via email, a document request for the City of Bayonne regarding the [REDACTED] and associated properties. The document request had a return date of Thursday, June 30, 2022. As per your conversation with OSC Investigative Accountant Melanie Cobb on June 30, 2022, for reasons unknown, you did not receive the OSC email with the attached document request. As a courtesy to your office, OSC will provide an two week extension until **Thursday, June 14, 2022** to provide the requested information. Please forward to me the documents you provided our office on June 30, 2022.

If you have any questions regarding the document request you can contact me via email or phone. You may also contact Investigative Accountant Melanie Cobb at [REDACTED].

Thank you for your anticipated assistance in this matter.

Regards,

Brian McGarry

Brian E. McGarry

Staff Attorney

Investigations Division

New Jersey Office of the State Comptroller

20 W. State St., 12th Floor

Trenton, NJ 08625



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From: Cobb, Melanie [OSC] <[REDACTED]>
Sent: Thursday, June 30, 2022 2:07 PM
To: Madelene Medina <[REDACTED]>
Cc: McGarry, Brian [OSC] <[REDACTED]>
Subject: RE: New Jersey Office of the State Comptroller - Document Request - City of Bayonne

Madelene,

Thank you for the prompt response. I have copied my colleague, Brian McGarry. Please be sure to "reply all" when providing the emails and correspondence.

Thank you,
Melanie

Melanie Cobb, CPA, CGMA

Investigative Accountant
Investigations Division
NJ Office of the State Comptroller
PO Box 024
Trenton, NJ 08625

[REDACTED]
[REDACTED]
[REDACTED]



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From: Madelene Medina [REDACTED]
Sent: Thursday, June 30, 2022 1:38 PM

To: Cobb, Melanie [OSC] <[REDACTED]>

Subject: [EXTERNAL] RE: New Jersey Office of the State Comptroller - Document Request - City of Bayonne

***** CAUTION *****

This message came from an **EXTERNAL** address ([REDACTED]). **DO NOT** click on links or attachments unless you know the sender and the content is safe. **Suspicious?**
Forward the message to spamreport@cyber.nj.gov.

Melanie

Here's what is on file in the City Clerk's office regarding the [REDACTED] I am working with our Law Dept. and IT tech on any emails and/ or correspondence

Madelene Medina

City Clerk

City of Bayonne

630 Avenue C

Bayonne, NJ 07002

[REDACTED]

From: Cobb, Melanie [OSC] [REDACTED]

Sent: Thursday, June 30, 2022 11:32 AM

To: Madelene Medina <[REDACTED]>

Cc: McGarry, Brian [OSC] <[REDACTED]>

Subject: FW: New Jersey Office of the State Comptroller - Document Request - City of Bayonne

From: McGarry, Brian [OSC]

Sent: Thursday, June 16, 2022 3:39 PM

To: [REDACTED]

Cc: Cobb, Melanie [OSC] <[REDACTED]>

Subject: New Jersey Office of the State Comptroller - Document Request - City of Bayonne

Good Afternoon Ms. Medina,

I am an attorney with the New Jersey Office of the State Comptroller (OSC). Attached is a document request for the City of Bayonne regarding the [REDACTED] and associated properties.

If you have any questions regarding the document request you can contact me via email or phone. You may also contact Investigative Accountant Melanie Cobb at [REDACTED].

Thank you for your anticipated assistance in this matter.

Regards,

Brian McGarry

Brian E. McGarry

Staff Attorney

Investigations Division

New Jersey Office of the State Comptroller

20 W. State St., 12th Floor

Trenton, NJ 08625



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EXHIBIT C

From: [MacDougall, Scott \[OSC\]](#)
To: [Davies, Suzanne \[OSC\]](#); [Jacobs, Justine \[OSC\]](#)
Subject: Motion to Enforce Subpoena
Date: Tuesday, October 25, 2022 2:12:25 PM
Attachments: [image001.png](#)

Hey Justine,

Thanks for working on the Motion to Enforce.

I made two attempts at contacting Jay Coffey, both on 9/16/22. The email I sent is below.

From: MacDougall, Scott [OSC]
Sent: Friday, September 16, 2022 3:01 PM
To: Jay Coffey <[REDACTED]>
Subject: Office of the State Comptroller - Request for Contact

Mr. Coffey,

Our office has been attempting to make contact with you regarding an outstanding document request that was served on the City of Bayonne. Despite these repeated attempts, we have not received any return calls.

I personally reached out this morning, but was advised that you were in meetings all morning. I am available for the remainder of the day at [REDACTED].

Thank you,

Scott J. MacDougall, Esquire, *he/him/his*
Acting Director, Investigations Division
Office of the State Comptroller
20 W. State St., 12th Floor
Trenton, NJ 08625
[REDACTED]



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EXHIBIT D

Kevin D. Walsh
Acting State Comptroller
Office of the State Comptroller
20 West State Street
Trenton, New Jersey 08625



**SUBPOENA DUCES TECUM
THE OFFICE OF THE STATE COMPTROLLER**

Madelene C. Medina
Municipal Clerk City of Bayonne
630 Avenue C Bayonne, NJ 07702

You are hereby commanded to appear before the Office of the State Comptroller, located at 20 West State Street, 12th Floor, Trenton, New Jersey 08625, on **October 14, 2022 at 10:00a.m.**, to produce all original documentation and information set forth in **Schedule A** attached. In lieu of your appearance, you may provide true copies of the documents and information identified in **Schedule A** on or before the return date to the address listed above by Certified Mail, Return Receipt Requested or via email to [REDACTED] addressed to the attention of the New Jersey Office of the State Comptroller - Investigations Division. If you choose to do so, you must also complete and return the provided **Certification of True Copy**.

This Subpoena is issued pursuant to the authority granted to the Office of the State Comptroller as set forth in N.J.S.A. §52:15B-1 *et seq.* and N.J.S.A. §52:15C-1 *et seq.* Failure to comply with this Subpoena may render you liable for contempt of court and such other penalties as are provided by law.

Very truly yours,

KEVIN D. WALSH
ACTING STATE COMPTROLLER

By: [Signature]
Justine M. Jacobs, Esq.
Staff Attorney
Investigations Division

Date: September 29, 2022

SCHEDULE A

DOCUMENTS AND INFORMATION BEING SOUGHT

1. Any and all correspondence, including emails, between Bayonne and [REDACTED] or any other representative of the [REDACTED] regarding any negotiation of Bayonne's purchase of [REDACTED];
2. Any and all appraisals, studies, and inspection reports, and environmental reports obtained by Bayonne in furtherance of Bayonne's potential purchase of [REDACTED];
3. A copy of the Purchase and Sale Agreement between Bayonne and [REDACTED], regarding Bayonne's purchase of [REDACTED] ("Purchase Agreement");
4. Any and all resolutions and ordinances issued by the Bayonne City Council authorizing and approving the Purchase Agreement;
5. Any and all correspondence, including emails, between Bayonne and [REDACTED] or any other representative of the [REDACTED] regarding the termination of Bayonne's interest in [REDACTED] and Bayonne's assignment and assumption of its' interest in [REDACTED];
6. Any and all documentation, including correspondence, detailing how and to what extent entities were solicited by Bayonne for the sale of Bayonne's assignment of its interest from the Purchase Agreement;
7. Any and all correspondence, including emails, between Bayonne and representatives of [REDACTED] and any of its subsidiaries, regarding [REDACTED], including the negotiation of Bayonne's assignment of its interest from the Purchase Agreement to [REDACTED];
8. A copy of any executed assignment agreements between Bayonne and [REDACTED];
9. Any and all documentation related to [REDACTED] agreement to reimburse Bayonne for all expenses incurred and professional fees expended by Bayonne in furtherance of the Purchase Agreement;
10. A copy of the final redevelopment plan concerning [REDACTED] [REDACTED] titled [REDACTED] and approved by the Bayonne City Council on [REDACTED];

11. Any and all resolutions and ordinances issued by the Bayonne City Council and/or Planning Board authorizing and approving the redevelopment plan known as [REDACTED];
12. Any and all Redevelopment/Rehabilitation Plans and zoning ordinances for the [REDACTED] approved by the Bayonne City Council prior to the approval of the redevelopment plan known as the [REDACTED];
13. Any and all reports, studies, and correspondence relied on by Bayonne in furtherance of approving the redevelopment plan known as [REDACTED];
14. Any and all correspondence, including emails, between Bayonne and representatives of [REDACTED], and any of its subsidiaries, regarding the redevelopment plan known as [REDACTED];
15. Any and all documents, including correspondence, between Bayonne and the [REDACTED] regarding [REDACTED] [REDACTED] and [REDACTED]; and
16. Any and all correspondence, including emails, between Bayonne and representatives of [REDACTED] and any of its subsidiaries, regarding [REDACTED] interest to enter, inspect, environmental test, and potentially purchase all or a portion of the [REDACTED] in furtherance of [REDACTED].

SCHEDULE B

INSTRUCTIONS

1. You have a right to consult with an Attorney and to receive said Attorney's advice with regard to this Subpoena.
2. Unless otherwise specifically indicated, the period of time encompassed by this subpoena shall be January 1, 2017 through the present.
3. You have a continuing obligation to respond to this Subpoena, even after producing documents to the Office of the State Comptroller. Therefore, if after you respond to this Subpoena, you create or receive a document or documents that this Subpoena seeks, you must promptly produce the document or documents to the Office of the State Comptroller. If subsequent appearances pursuant to your continuing obligation to respond to this Subpoena are required, the Office of the State Comptroller will make reasonable efforts to coordinate with you to identify dates that are mutually agreeable.
4. In complying with this Subpoena, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agent, employee, or representative acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, including bank records, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data, or information called for by this request shall be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Office of the State Comptroller.
5. If one or more documents or any portions thereof requested herein are withheld under a claim of privilege or otherwise, you must raise your objections on or before the date specified in the Subpoena for the documents to be produced. You must also identify each document or portion thereof as to which the objection is made, together with each author or maker of the document; each addressee or recipient of the document or person to whom its contents were disclosed or explained; the date thereof; the title or description of the general nature of the subject matter of the document and the number of pages; the present location of the document; each person who has possession, custody or control of the document; and the basis on which the objection is made.
6. In the event that any document which you would have reason to believe the Office of the State Comptroller might regard as responsive to this Subpoena has been (or is claimed to have been) destroyed or discarded or to otherwise be no longer within your possession, custody, or control, provide the following information concerning such document: identify that document (including a description of the document's subject

matter) and also include the date of that document's destruction or discard; the reason for the destruction or discard; the persons authorizing and/or carrying out such destruction or discard; and, the name and address of each recipient of the original or a copy of the document, together with the date or approximate date when each recipient received the document.

7. If the original records are not available, you may, at your expense, produce a certified true copy of all documents which are clear, complete, and legible and contain all four margins on each page. You must also complete the "**Certification of True Copy**" form, which is attached.

8. If a document is maintained solely on microfilm, microfiche, email, or by other electronic means (including but not limited to mass storage devices such as computer hard drives, flash drives or disks), please advise our office so that we may determine how best to obtain the documents.

9. Any draft, preliminary version, modification, revision, or amendment of a document, and any version that otherwise differs in any respect, such as having marginalia, markings, other notations or attachments, or otherwise, shall be considered a separate document and shall also be furnished as responsive.

10. In the event that any entity, organization, or individual denoted in this Subpoena is or has been also known by any other name than that herein denoted, this Subpoena shall be read also to include them under that alternative identification.

11. If compliance with this Subpoena cannot be made in full, compliance shall be made to the fullest extent possible and shall include an explanation of how the compliance is less than full and why fuller compliance is not possible.

12. If a date or other descriptive detail set forth in this Subpoena referring to a document or event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

DEFINITIONS AND RULES OF CONSTRUCTION

1. "**Activities**" includes affairs, affiliations, agreements, alliances, arrangements, associations, contracts, plans, promises, pursuits, relationships, understandings or undertakings, directly or indirectly, of a personal and professional nature.

2. "**Any**" includes all.

3. "**Communications**" or "**Correspondence**" includes, but is not limited to documents, letters, memoranda or notes, whether hardcopy (either handwritten, printed, or printed out

from an electronic format), or electronic (existing only as an email, text message or voicemail not printed out), sent or transmitted to another or others via personal delivery, U.S. or international postal mail, private delivery service (whether regularly scheduled or private courier), interoffice delivery, facsimile/fax machines, telephone, cellular phone, internet, email, instant messaging, or text message transmissions and any records thereof.

4. **"Concerning"** means constituting, describing, evidencing, involved with, referring to, or relating to.

5. **"Document," "Documentation," or "Submission"** includes, as applicable, any memorialization, whether typed, written, recorded, printed, or otherwise produced by hand, or produced by an electronic or digital process or otherwise. It includes, without limitation, agreements, letters or other correspondence, facsimile, email, telephone messages, logs or records, memoranda, notes, diaries, graphs, formulas, models, bulletins, computer printouts, transcripts, analyses, returns, summaries, accounts, estimates, projections, comparisons, messages, press releases, circulars, reviews, opinions, offers, studies, reports, official filings and submissions, investigations, questionnaires, surveys, work sheets, statistical data, notebooks, manuals, charts or other graphic matter analyses, commentary, expense reports, books, instructions, financial reports, working papers, records, notes, notices, confirmations, telegrams, teletypes, interoffice or intra office communications, cables, minutes, notations or other records of any type of any conversation, interview, telephone call, meeting, conference, discussion, or other communication. It includes any transmittal slip, attachment, appendix, or other document referenced therein. It includes, without limitation, any information contained on audiotape, microfilm, or microfiche, as well as any electronically stored information that has been created using, or is otherwise maintained on, digital repositories or other electronic media including, but not limited to, personal computers, office workstations, laptops, hard drives, handheld devices (such as Palm, Trio or Blackberry), phones (office, cellular and/or home), removable electronic storage devices (such as CDs, DVDs, USB or thumb/travel drives and memory cards), shared network drives and servers (including email and/or file servers) and back-up tapes (or other disaster recovery/archiving media).

6. **"Employee"** means any person, including independent contractor, who has performed any service for you, on your behalf, or under your name (whether on a full-time, part-time, piece-work, or other basis, and whether paid or unpaid).

7. **"Person," "persons," and "anyone"** includes, without limitation, natural persons, firms, partnerships, associations, corporation, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business, or governmental entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

8. **"You," "your," and "yours"** refers to (a) the entity to whom this subpoena is addressed and any predecessors; (b) the parent organization(s), subsidiaries or affiliates (if any) of the entity to whom this subpoena is addressed and any predecessors thereto; and, (c) present and former officers, directors, managers, employees, agents, and representatives of the entity to whom this subpoena is addressed.

9. The terms **"and"** and **"or"** shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope.

10. The terms **"including"** and **"includes,"** with respect to any given subject, shall be construed broadly so that specification of any particular matter shall not be construed to exclude any documents that you have reason to believe the Office of the State Comptroller might regard as responsive.

11. The terms **"referring," "relating," "related to,"** and **"concerning"** with respect to any given subject, shall be construed broadly to mean anything that constitutes, contains, embodies, reflects, identifies, concerns, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

12. The singular form of a word shall be construed to include within its meaning the plural form of the word and vice versa, so that neither shall be construed as a limitation.

13. The use of any tense or any verb shall be considered to also include all other tenses, in a manner that gives this subpoena schedule the broadest reading.

14. The masculine and feminine genders each include the other.

PROOF OF SERVICE

On 9/29, 2022, I, Melanie Cobb, personally served the original of
at 1:15 pm this subpoena by hand delivery upon Madelene C. Medina at her office located at
630 Avenue C in Bayonne, NJ.

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

Melanie Cobb (Signature)

DATED: 09/29/2022

EXHIBIT E

From: [Jacobs, Justine \[OSC\]](#)
To: [REDACTED]
Cc: [Davies, Suzanne \[OSC\]](#)
Subject: Office of the State Comptroller - Subpoena Follow-Up (City of Bayonne)
Date: Thursday, October 20, 2022 2:24:00 PM
Attachments: [image001.png](#)
Importance: High

Good afternoon Mr. Coffey --

This email is regarding the September 29, 2022 subpoena duces tecum that was served on the City of Bayonne's municipal clerk by the Office of the State Comptroller. The subpoena had a return date of October 14, 2022, but we have yet to receive a response. Our office has made numerous attempts to get in touch with you regarding this matter which have gone unanswered. Please contact us as soon as possible to discuss the City's compliance with the subpoena. I can be reached at this email address or by phone at [REDACTED].

Thank you,

Justine M. Jacobs, *she/her/hers*
Staff Attorney, Investigations Division
Office of the State Comptroller
20 W. State St., 12th Floor
Trenton, NJ 08625
[REDACTED]



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Civil Case Information Statement

Case Details: MERCER | Civil Part Docket# L-000274-23

Case Caption: OFFICE OF THE N.J. STATE COMP VS
CITY OF BAYONN

Case Initiation Date: 02/08/2023

Attorney Name: EDWARD J DAUBER

Firm Name: GREENBERG DAUBER EPSTEIN & TUCKER,
PC

Address: ONE GATEWAY CENTER, STE 600
NEWARK NJ 07102

Phone: 9736433700

Name of Party: PLAINTIFF : OFFICE OF THE N.J. STATE
COMPT

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: OTHER enforce a subpoena issued under its statutory
authorit

Document Type: Verified Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

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

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: OFFICE OF THE N.J. STATE
COMPT? 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 **Consumer Fraud?** 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)*

02/08/2023
Dated

/s/ EDWARD J DAUBER
Signed

