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INDEX NO. 161633/2023

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SUPREME COURT OF THE STATE OF NEW YORK **COUNTY OF NEW YORK**

In the Matter of the Application of THE CITY and YOAV GONEN,

Petitioners,

Index No. 161633/2023

The NEW YORK CITY POLICE DEPARTMENT, and EDWARD A. CABAN, in his official capacity as Commissioner of the New York City Police

Department

-against-

Mot. Seq. #003

Respondents.

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

REPLY IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF RESPONSIVE RECORDS

John M. Browning DAVIS WRIGHT TREMAINE 1251 Avenue of the Americas, 21st Floor New York, NY 10020 Telephone: (212) 603-6410 Facsimile: (212) 489-8340

Email: jackbrowning@dwt.com

Katie Townsend Gunita Singh* REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS 1156 15th St. NW, Suite 1250 Washington, DC 20005 Telephone: 202-795-9303 Facsimile: 202-795-9310

Email: ktownsend@rcfp.org Email: gsingh@rcfp.org

Attorneys for Petitioners THE CITY and Yoav Gonen

*Pro Hac Vice

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Pursuant to Section 202.8 of the New York Uniform Civil Rules, THE CITY and its reporter Yoav Gonen ("Gonen") ("Petitioners") respectfully moved the Court on May 28, 2024 to compel the New York City Police Department and its Commissioner Edward A. Caban (collectively, "Respondents") to produce records responsive to Petitioners' New York Freedom of Information Law, N.Y. Pub. Off. Law §§ 84, et seq. ("FOIL" or the "Law") request. As discussed therein, Petitioners and Respondents filed a Stipulation of Adjournment on April 15, 2024, agreeing that Respondents would "commence productions of responsive records for Petitioners on or before May 17, 2024." Stip. of Adjournment (Apr. 15, 2024) (emphasis added). Efforts by Petitioners' counsel to ensure transmittal of such long-awaited production through meet and confer discussions have been unsuccessful. Accordingly, Petitioners respectfully requested that the Court enter the proposed order filed therewith requiring Respondents to comply with their production obligations.

Respondents have filed no opposition to such relief, nor have they sought an extension of time within which to lodge such opposition. Accordingly, Respondents have waived their right to do so and have conceded to Petitioners' arguments. See, e.g., Pearl Contracting, Inc. v. Kamalakar, 65 Misc. 3d 1211(A), 119 N.Y.S.3d 14 (N.Y. Sup. Ct. 2019) ("Pearl did not address their arguments against . . . thus leaving such arguments unopposed."); Mills v. Steuben Foods, Inc., No. 19-CV-1178WMS(F), 2023 WL 4781904, at *3 (W.D.N.Y. July 27, 2023) ("Where a party fails to oppose a request for [relief], the court may find the party to have conceded to the request based on the absence of any opposition Accordingly, the court finds Defendants' request . . . is conceded by Plaintiff as unopposed and as such should be GRANTED."); United States v. Inniss, No. 18-CR-134 (KAM), 2019 WL 6117987, at *5 (E.D.N.Y. Nov. 18, 2019) ("[The] motion is unopposed and conceded."); Yu Mei Chen v. Nielsen, 363 F. Supp. 3d 333, 339

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(E.D.N.Y. 2019) ("[T]he plaintiffs acknowledged that they did not oppose the government's

motion to dismiss . . . and conceded that the government's motion should be deemed unopposed.");

Catzin v. Thank You & Good Luck Corp., No. 15-CV-7109 (KBF), 2017 WL 11675148, at *1

(S.D.N.Y. Jan. 5, 2017) ("Defendants do not address the . . . issues raised by plaintiffs in their

motion[.] The Court thus finds that defendants have conceded these issues and views plaintiffs'

motion as to them to be unopposed.").

Here, Respondents concede to the relief requested by Petitioners as they have failed to

oppose such relief.

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CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant their motion

to compel Respondents to commence production of responsive records and grant the relief

contained in Petitioners' Proposed Order of May 28, 2024.

Dated: New York, New York

June 7, 2024

Respectfully submitted,

/s/ John M. Browning

John M. Browning

DAVIS WRIGHT TREMAINE

1251 Avenue of the Americas, 21st Floor

New York, NY 10020

Telephone: (212) 603-6410

Facsimile: (212) 489-8340

Email: jackbrowning@dwt.com

Katie Townsend

Gunita Singh*

REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1250

Washington, DC 20005

Telephone: 202-795-9303

Facsimile: 202-795-9310

Email: ktownsend@rcfp.org

*Pro Hac Vice

Attorneys for Petitioners THE CITY and Yoav Gonen

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Certificate Pursuant to Part 202.8-b of the Uniform Civil Rules for the Supreme Court

I, John M. Browning, certify that, pursuant to Part 202 of the Uniform Civil Rules for the Supreme Court, the Reply Memorandum of Law in Further Support of Petitioners' Motion to Compel contains 458 words.

/s/ John M. Browning
John M. Browning