UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JANET GARCIA, et al., Plaintiffs, v. CITY OF LOS ANGELES, et al., Defendants.	2:19-cv-06182-DSF-MRW ORDER RE NEUTRAL FORENSIC EXAMINATION

The factual and procedural background of the proceedings leading up to the Court's appointment of Michael Kunkel as a neutral forensic examiner is well-documented in Plaintiffs' interim briefing, dkt. 263 (Pls.' Br.), and the documents cited, id. at 2-7, and need not be repeated here. The stated purpose of the examination was to "clarify when the City altered or created documents relevant to Plaintiffs' claims, and whether this occurred during the course of the litigation." Dkt. 184 (Order Granting in Part Pls.' Ex Parte App. to Appoint Neutral Examiner) at 6. Having reviewed the submissions of the parties, the Court finds that the City of Los Angeles has altered, modified, and created documents relevant to Plaintiffs' claims during the course of the litigation and has repeatedly failed to produce legitimately requested documents and versions of documents.

The City concedes the point, but explains that it "repeatedly explained to [Plaintiffs] and the Court, by deposition, briefing, and oral

argument, that it is the policy and practice of [the City] to have [City employees] review reports and documentation for accuracy, errors, completeness, and missing forms or documentation, and that there is no outside limit to conduct or complete this review. . . . Indeed, some documents were created or revised much later than would be ideal, some being done months or even years after an encampment cleanup." Dkt. 264 (Def.'s Br.)

The City's conduct cannot be excused as "imperfect document management," see Def's Br. at 6; its "explanation" for its admitted spoliation is unconvincing to say the least.

The City's suggestion that it made only "administrative changes" and its assertion that the "Court has stated that it is not interested in these types of mundane revisions," id. at 5, has only further damaged its credibility. The Court actually said that "if a comma was changed to a semicolon, [the Court was] not going to find that there was spoliation, although once litigation was filed, that shouldn't happen either but that doesn't mean it's cause for any grave concern other than someone wanting to make sure their grammar looked proper." Dkt. 266-2 (Suppl. Myers Decl., Exh. M at 32:16-20). The City cannot seriously expect the Court to conclude that the changes admittedly made by the City are comparable to a change in punctuation. The City's contention that material changes to documents such as the reason for seizing and destroying personal property – sometimes to match the City's litigation position – are "administrative" is also untenable. The City concedes, for example, that "[m]aterial changes also exist. . . . As Plaintiffs note, "'bulky' was removed and 'contaminated items' was inserted into headings of photographs." Def's Br. at 17. The City also acknowledges that "reports and checklists are created and revised after cleanup dates." Id. at 19. Even if – as the City suggests – the changes were "corrections" to make the documents more accurate and in keeping with the City's policy, those "corrections" should not have been made after litigation was commenced. The problem is exacerbated because the original versions of altered documents apparently no longer exist. Nor would the contention that altered or added facts can be determined

from other documents in any way justify the City's conduct. And admitting spoliation doesn't excuse spoliation.

The City's contention that "drafts" were not requested is demonstrably false. Those documents were specifically and legitimately requested. See Suppl. Myers Decl., Exh. P at 2-3.

To the extent the City has raised any legitimate points, those pale by comparison to the blatant discovery violations. The Court declines to discuss further the City's excuses and failings.[1] Suffice it to say that the City's credibility has been damaged significantly. The Court agrees with Plaintiffs that spoliation has occurred during the course of the litigation – but the full extent has not yet been determined. The Court will await an appropriate motion before commenting on potential sanctions.

Plaintiffs are ordered to submit a proposed order detailing the specific relief requested no later than February 28. The City may submit any objections no later than ten court days from date of filing of the proposed order.

IT IS SO ORDERED.

Date: February 15, 2024

Dale S. Fischer
United States District Judge

[1] For example, the City contends it was "overwhelmed by the number and scope of encampment cleanups due to the rapid increase in the homelessness crisis followed by, and occurring through, a pandemic, as well as producing documents and data." Def's Br. at 4. Producing the documents without alteration and declining to create documents would have been less "overwhelming."