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November 23, 2017

VIA E-MAIL SHAWNA.BLIGH@AGO.MO.GOV

Shawna Bligh
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 64102

Re: Brooke Schreier Ganz v. Missouri Department of Health and Senior Services
Case No. 16AC-CC00503

Dear Shawna:

Tomorrow will be the one year anniversary of my filing suit against DHSS for violating the Missouri Sunshine Law. On November 30 of last year, Nikki Loethen—the DHSS General Counsel—was personally served with my initial discovery requests, making the responses due no later than January 16, 2017.

Assistant Attorney General Nathan Weinert

On December 10, 2016, then-Assistant Attorney General Nathan Weinert requested a two-week extension of time to respond to the discovery requests. Nathan explained that the reason he was requesting an extension was that he did not know if he would continue to be employed after the new Attorney General was sworn in the following month. I agreed to this request, given the circumstances.

On January 26 of this year—just days before DHSS was due to respond to the discovery requests—Nathan and I spoke and he said that he still had a job with the AG's office, but requested another two-week extension, this time until February 14, 2017. I told Nathan that I would agree to this request, but would not agree to any further extensions.

On February 14, Nathan provided DHSS' discovery responses, along with a privilege log which contained an astonishing 570 e-mails, and an additional 131 attachments. Nathan also provided a redaction log with another seven documents on it.

On March 1, Nathan and I conducted our "meet and confer" session by phone. During that call I explained my utter disbelief that there were truly 570 privileged e-mails. Nathan said he would review the two logs, and would get back with me.

On March 28, Nathan got back to me—and told me that it was his last day at the AG's office. He also provided me with what he called an "updated" logs. Remarkably, the privilege log—rather than shrinking—actually grew to 576 e-mails, along with the original 131 attachments. As such, far from reviewing—and removing—e-mails from the privilege log, Nathan actually added e-mails to the log.

Assistant Attorney General Brian Allard

The following month, Brian Allard entered his appearance for DHSS. Brian was apparently a busy lawyer, and he and I never were able to connect, before he withdrew from the case two months later.

Assistant Attorney General Joel Reschly

In late June, Joel Reschly became the third lawyer for DHSS in six months. Right after Joel entered his appearance, I spoke with him and, again, explained that I did not believe there were 576 privileged e-mails—or 131 privileged attachments. Joel promised to review the documents on the log and get back to me.

On August 11, Joel wrote me and said: "I wanted to touch base, since I told you I'd try to get an updated privilege log to you by today. Unfortunately, I don't quite have that ready. But I haven't forgotten, and I'll be in touch next week."

When Joel failed to get in touch the following week, I wrote him on August 23 and asked for an update. Joel responded the next morning, stating: "I'll get back to you later today." He didn't.

Instead, on September 1, he wrote me and said: "I cannot reduce or revise the privilege log."

Accordingly, on September 5, I wrote Joel and asked for available dates to take a corporate representative deposition. Specifically, I said to him: "In that case, I will take a Rule 57.03(b)(4) of the agency regarding each of the documents withheld, and the basis for withholding them. **Please provide me with available dates and I will send the notice**." (Emphasis added).

Joel responded the same day, writing: "Ok. I will find out who the appropriate corporate rep is and get back to you with dates."

When Joel did not respond, on Friday, September 8, I wrote him, stating: "Joel, I am following up on this. Please advise." Joel responded the same day, writing: "I'll be in a deposition Monday but I'll have dates for you Tuesday."

On Tuesday, September 12, Joel wrote: "I apologize, I still don't have dates for you. I'll get back to you as soon as possible."

When, a week later, I still had not heard from Joel, I wrote him and said: “If I don’t hear back from you, I am left with no choice but to pick a date and send a notice.”

Joel responded the same day, writing: “I appreciate your patience, and the courtesy of asking for dates; I know you’re under no obligation to do so. I thought we were collecting dates, but it appears the holdup is still figuring out which person(s) will ultimately be designated. Could we see the notice (or at least the portion describing the subject matters) prior to your filing it?”

On October 3, I sent Joel the notice, and asked him, again, to provide available dates, writing: “Joel, here is the notice, as you requested. Please confirm the dates you and your client are available for the deposition.”

On October 11—after I still had not heard from Joel—I wrote him and said: “Joel, if I don't have dates from you by the end of the week, I will send the notice on a date I pick.”

And when Joel continued to ignore me, on October 15 I noticed the deposition for October 25.

Assistant Attorney General Shawn Bligh

The day after I sent the notice, Joel withdrew from the case, and you entered your appearance.

On October 23—two days before the scheduled deposition—you filed a motion for protective order, falsely claiming that I had not responded to your request to discuss the deposition, and making the remarkable assertion that it would be “an undue burden on Defendant” to physically produce the 576 e-mail and 131 attachments at the deposition. The Court granted the motion the next day, without affording me an opportunity to respond.

On November 3, you and I talked and you agree to go forward with the deposition, and said you would attempt to get dates prior to the scheduled status conference with the Court on November 6.

When we talked before the status conference on November 6, you said that your client still hadn’t gotten back to you with dates, but said you expected to get dates from your client shortly. During the status call, you confirmed to the Court that you no longer had any objection to the deposition.

On November 10, when you still had not provided any dates, I wrote you and asked: “Has your client gotten back to you?”

On November 12, you responded, stating: “My client has not gotten back to me with dates. That said, I put this issue on my team leader's radar, as I know this is not the answer you want and that we need to move on this matter. I will circle back with him tomorrow so that we get a path forward.”

When you did not respond, I wrote you again on November 14, and said: “What is the path forward?” I then wrote you again on November 16, and said: “I am still waiting for a response.”

After you failed to respond to my repeated e-mails, I called your office on November 17, and left you a voicemail message. When you failed to respond to my voicemail message, I called your cell phone yesterday and told you that if I did not hear from you I would pick a date and issue the notice. I even gave you my cell phone number, so that there would be no need to engage in phone tag.

You never responded.

I do not understand your refusal to engage on this topic. However, I cannot continue to sit and wait for you—or your client—to respond.

Accordingly, earlier today, I issued a notice of deposition for December 11—more than three months after I first asked Joel to provide me deposition dates, back on September 5. A copy of the notice is attached.

Very truly yours,

Lathrop Gage LLP

Enclosure