UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, et al., Plaintiffs, v. CITY OF LOS ANGELES, CALIFORNIA, et al., Defendants.	Case No. CV 12-0551 FMO (PJWx) **ORDER RE: PLAINTIFFS' MOTION FOR REVIEW**

Having reviewed and considered all the briefing filed with respect to plaintiffs' Motion For Review of Minute Order Denying Plaintiffs' Motion to Compel Discovery From Defendant City of Los Angeles ("Motion"), and concluding that oral argument is not necessary to resolve the Motion, see Fed. R. Civ. P. 78; Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), the court rules as follows.

FACTUAL AND PROCEDURAL BACKGROUND

The Independent Living Center of Southern California, Fair Housing Council of San Fernando Valley, and Communities Actively Living Independent and Free (collectively, "plaintiffs") filed this action on January 13, 2012, pursuant to Section 504 of the Rehabilitation Act ("Section 504"), Title II of the Americans with Disabilities Act ("ADA") and California Government Code § 11135 ("Section 11135"). (See Complaint for Injunctive, Declaratory, and Monetary Relief). Plaintiffs filed a Second Amended Complaint for Injunctive, Declaratory, and Monetary Relief ("SAC") on August 20, 2012, alleging that defendants Designated Local Authority of the

Community Redevelopment Agency of the City of Los Angeles, a public entity and successor agency to the Community Redevelopment Agency of the City of Los Angeles ("CRA/LA"), and the City of Los Angeles ("City")[1] have engaged in a "pattern or practice" of discrimination against people with disabilities in violation of federal and state anti-discrimination laws. (SAC at ¶ 2) Plaintiffs also asserted a claim under the Fair Housing Act ("FHA").[2] (Id. at ¶¶ 133-35 & 245-48). They allege that "[o]ver a period of approximately 15 years, the City and CRA[/LA] have provided funding, land and other assistance to private developers, but failed to take steps to ensure that more than 200 apartment complexes that are the subject of this litigation . . . are meaningfully accessible to people with physical and sensory disabilities[.]" (See Joint Stipulation by Plaintiffs and Defendant City of Los Angeles, California Regarding Discovery ("Joint Stip.") at 1).

Plaintiffs also name 61 owners of multifamily residential properties in the City of Los Angeles (collectively, "owner defendants"), who received federal funds from or through the government defendants. (See SAC at ¶¶ 3 & 57-116). Plaintiffs do not allege any affirmative claims against any of the owner defendants, but bring them into this action pursuant to Federal Rule of Civil Procedure 19(b) as necessary parties to enforce any injunctive or other relief that may be granted if plaintiffs prevail against the government defendants.[3] (See id. at ¶ 3).

Plaintiffs filed the instant Motion, seeking review of Magistrate Judge Walsh's order denying – on the basis of the work product doctrine – plaintiffs' motion to compel the City to disclose building measurements and photographs from a survey of more than 200 buildings at issue. (See Motion at 1). Plaintiffs' underlying motion to compel concerned the "measurements and

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[1] Plaintiffs also named as a defendant the Oversight Board for the CRA/LA, but all claims against the Oversight Board were dismissed pursuant to the Court's Order of November 29, 2012.

[2] On November 29, 2012, pursuant to the City's and CRA/LA's motions to dismiss, the court upheld plaintiffs' claims pursuant to Section 504, the ADA, and Section 11135, but dismissed plaintiffs' claims under the FHA in their entirety. (See Court's Order of November 29, 2012).

[3] "'[A] person may be joined as a party [under Rule 19(b)] for the sole purpose of making it possible to accord complete relief between those who are already parties, even though no present party asserts a grievance against such person.'" E.E.O.C. v. Peabody W. Coal Co., 400 F.3d 774, 781 (9th Cir. 2005), cert. denied, 546 U.S. 1150 (2006) (second alteration in original) (quoting Beverly Hills Fed. Sav. and Loan Ass'n v. Webb, 406 F.2d 1275, 1279-80 (9th Cir. 1969)).

photographs contained within accessibility inspection reports and/or accessibility surveys concerning any property within the scope of discovery in this case." (Joint Stip. at 2). Plaintiffs assert that there are certain federal standards – known as the Uniform Federal Accessibility Standards ("UFAS") and the ADA Accessibility Guidelines ("ADAAG") – that provide requirements for features in individual units and common areas. (See id. at 1). Because the City receives funding from the State of California, it was also obligated to meet the accessibility requirements of the California Building Code ("CBC"). (See id.). According to plaintiff, "UFAS and ADAAG each require a level of accessibility significantly higher than is required under CBC, but . . . the City was reviewing building plans and issuing permits using the lower CBC standard." (See id.). Through discovery, plaintiffs "have learned that the City has conducted accessibility inspections at many of the properties [at issue.]" (See id.). The surveys were conducted by the City's consulting expert, ADAAG Consulting Services, LLC ("ADAAG Consulting"). (See id. at 4).

Plaintiffs assert that the information prepared by ADAAG Consulting "consists of standardized measurements and photographs compiled using a publicly available and government-required checklist. This checklist dictates the precise content and form of the information; it requires the taking of hundreds of standardized measurements, such as the height of kitchen counters and the slopes of floors." (Motion at 2). Plaintiffs estimate that it would cost approximately $1.3 million to survey 262 properties to obtain the information contained in the surveys. (See Joint Stip., Exhibit ("Exh.") 5, Declaration of Michael Allen ("Allen Decl.") at ¶¶ 5-6).[4] The City does not directly address what information the surveys contain. (See, generally, City of Los Angeles' Opposition to Plaintiffs' Motion for Review of Minute Order ("Opp.")). Instead, it states that it has "closely guarded the results of [the] property inspections and how the inspections were conducted . . . because of its unwillingness to take any action that could constitute a waiver [of the work product doctrine]." (See id. at 11, n. 4).

In August 2014, plaintiffs proposed that the City produce only the measurements and photographs contained in the reports, redacting any privileged material. (See Joint Stip., Exh. 3,

[4] Mr. Allen further estimated that writing expert reports for each property would significantly increase this figure. (See Allen Decl. at ¶ 6).

August 4, 2014 Letter from Timothy M. Smyth at 2) ("To be clear: the plaintiffs do not ask that the reports be turned over without redaction."). The City refused to produce the material, stating that the "information and documents [plaintiffs] have requested are in fact work product and fall within the confines of the protections allotted by the case law[.]" (See id., August 25, 2014 Letter from Komal Mehta at 1-2).

Based upon its review of the relevant correspondence and briefing, the court considers the underlying motion to compel and the instant Motion as seeking only the measurements, photographs, and other purely factual material, as opposed to any analysis or conclusions drawn therefrom. (See Motion at 9) ("To the extent any of the reports in question contain analysis or any other information that is arguably core work product, Plaintiffs do not seek that information and would consent to its redaction or to transmittal of the information in a form other than disclosure of the report.").

STANDARD OF REVIEW

Under Rule 72 of the Federal Rules of Civil Procedure, a party may serve and file objections to a magistrate judge's order concerning nondispositive pretrial matter "within 14 days after being served with a copy [of the magistrate judge's order]." Fed. R. Civ. P. 72(a); see Local Rule 72-2.1 ("Any party objecting under F.R.Civ.P. 72(a) to a Magistrate Judge's ruling on a pretrial matter not dispositive of a claim or defense must file a motion for review . . . within fourteen (14) days of service of a written ruling"). Rule 72 provides that a district judge "must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a); see 28 U.S.C. § 636(b)(1)(A) ("A judge of the court may reconsider any pretrial matter . . . where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.").

The clearly erroneous standard, which applies to a magistrate judge's findings of fact, is "significantly deferential, requiring a 'definite and firm conviction that a mistake has been committed.'" Concrete Pipe & Prods. v. Constr. Laborers Pension Trust, 508 U.S. 602, 623, 113 S.Ct. 2264, 2280 (1993); see Security Farms v. Int'l Bhd. of Teamsters, 124 F.3d 999, 1014 (9th Cir. 1997) (same). By contrast, the contrary-to-law standard "permits independent review of purely

legal determinations by the magistrate judge." Crispin v. Christian Audigier, Inc., 717 F.Supp.2d 965, 971 (C.D. Cal. 2010) (internal quotation marks omitted); see Med. Imaging Ctrs. of Am., Inc. v. Lichtenstein, 917 F.Supp. 717, 719 (S.D. Cal. 1996) ("Section 636(b)(1) . . . has been interpreted to provide for de novo review by the district court on issues of law").

Where a party challenges a magistrate judge's decision regarding the application of the work product doctrine, the decision is subject to de novo review because "whether documents are protected by the work product doctrine is a mixed question of law and fact[.]" United States v. Ritchey, 632 F.3d 559, 564 (9th Cir. 2011) (further stating that for such questions, the court "reviewed independently and without deference to the [lower] court."); see also In re McKesson HBOC, Inc. Secs. & ERISA Litig., 2005 WL 934331, *3 (N.D. Cal. 2005) ("Because the court finds that the magistrate judge's order relied on determinations regarding the scope of the attorney-client privilege and finding that McKesson had waived protection under the work product doctrine, the court conducts a de novo review of the order.").

DISCUSSION

With the above-described standard of review in mind, the court now turns to the work product doctrine and addresses whether the ADAAG Consulting materials should be protected from disclosure.

I. THE WORK PRODUCT DOCTRINE.

To qualify as work product protected from discovery under Rule[5] 26(b)(3) of the Federal Rules of Civil Procedure, the subject material must have two characteristics: (1) it must be prepared in anticipation of litigation or for trial; and (2) it must be prepared by or for another party or by or for that other party's representative. See In re Grand Jury Supoena (Mark Torf/Torf Envt'l Mgmt.), 357 F.3d 900, 907 (9th Cir. 2004). The party claiming work product protection has the burden of proving the applicability of the doctrine. See Verizon Cal. Inc. v. Ronald A. Katz Tech. Licensing, L.P., 266 F.Supp.2d 1144, 1147 (C.D. Cal. 2003) (collecting cases). However, the work product doctrine is not an absolute privilege, and a party may overcome it if the material is

[5] All "Rule" references in this order refer to the Federal Rules of Civil Procedure.

otherwise discoverable under Rule 26 (i.e., it is relevant and not privileged) and the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain the substantial equivalent materials by other means. See In re Grand Jury Supoena (Mark Torf/Torf Envt'l Mgmt.), 357 F.3d at 906. Even when a party demonstrates substantial need and undue hardship, the court can order discovery of the materials but must "protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation." Fed. R. Civ. P. 26(b)(3)(B). These mental impressions and conclusions are commonly known as "core" or "opinion" work product, and may only be disclosed under extraordinary circumstances. See McKenzie v. McCormick, 27 F.3d 1415, 1420 (9th Cir. 1994), abrogated on other grounds in Sivak v. Hardison, 658 F.3d 898 (2011); see also United States ex rel. Burroughs v. DeNardi Corp., 167 F.R.D. 680, 683-84 (S.D. Cal. 1996) ("the materials containing mental impressions, conclusions, opinions, and legal theories of an attorney are discoverable only in rare and extraordinary circumstances.").

In evaluating substantial need, courts consider "the importance of the materials as a reason for allowing their discovery." See Wright & Miller, 8 Federal Practice & Procedure § 2025, at 552 (3d ed. 2010); id. at n. 31 (Supp. 2015) (citing Vallabharpurapu v. Burger King Corp., 276 F.R.D. 611, 617 (N.D. Cal. 2011) (allowing discovery of architectural surveys in a disability class action)). This requires more than a mere showing that a party wants to be thorough in ensuring that it has not overlooked anything, or that it thinks production might reveal matters that would be useful to impeach a witness. See 8 Federal Practice & Procedure § 2025, at 557; see also 6 Moore's Federal Practice § 26.70, 457 & 59 (3d ed. 2014) (a party has a substantial need if "the facts contained in the requested documents are essential elements of the requesting party's prima facie case[;]" and it would be insufficient for a party to request the documents out of a mere "desire to find corroborating evidence").

Second, a party seeking to compel production of factual work product must show that obtaining the information by other means would impose an undue hardship. See Fed. R. Civ. P. 26(b)(3). "The fact that [discovery is] expensive is not a sufficient showing unless the expense

would amount, in the particular case, to undue hardship."[6] 8 Federal Practice & Procedure § 2025, 538-41; see, e.g., In re Int'l Sys. and Controls Corp. Secs. Litig., 693 F.2d 1235, 1241 (5th Cir. 1982) (describing cases in which "unusual expense has constituted undue hardship," and characterizing the $1.5 million cost of duplicating the requested information as an "inordinate amount."); see also Fletcher v. Union Pac. R.R. Co., 194 F.R.D. 666, 671 (S.D. Cal. 2000) (finding that "unusual expense involved in obtaining equivalent information is another factor that may establish undue hardship."); People ex rel. Wheeler v. S. Pac. Transp. Co., 1993 WL 816066, *10 (E.D. Cal. 1993) (stating that "cases have held that undue expenses may meet the exceptional circumstances requirement[,]" that a cost of $10 million "is perhaps the most persuasive reason for permitting disclosure," and that "[t]here is little sense in [defendant's] duplication of the [information gathering] efforts at great cost.") (emphasis in original);[7] Bank Brussels Lambert v. Chase Manhattan Bank, N.A., 175 F.R.D. 34, 44 (S.D.N.Y. 1997) (finding disclosure proper when "it is possible to replicate expert discovery on a contested issue, but the costs would be judicially

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[6] The Magistrate Judge's statement that "a showing of undue hardship requires more than mere expense or inconvenience to obtain the substantial equivalent of the information sought," (Court's Order of October 16, 2014, at 2), does not, as the authorities referenced below indicate, adequately address the possibility that financial expense can be an undue burden in and of itself. Thus, in addition to applying de novo review because the question involving the application of the work product doctrine is a mixed question of law and fact, (see supra at Standard of Review) (concluding that decisions regarding the application of the work product doctrine are reviewed de novo), de novo review is also appropriate to address the Magistrate Judge's legal determinations. See Crispin, 717 F.Supp.2d at 971 (noting the district court's independent review of legal determinations by a magistrate judge).

[7] The analysis in Wheeler is under Rule 26(b)(4) rather than 26(b)(3), see 1993 WL 816066 at *8, but is nonetheless relevant here. Under Rule 26(b)(4), a party may not discover, either by interrogatories or depositions, facts known or opinions held by a non-testifying expert who was retained by an opposing party in anticipation of litigation unless it demonstrates "exceptional circumstances under which is it impracticable . . . to obtain facts or opinions on the same subject by other means." Fed. R. Civ. P. 26(b)(4). This "exceptional circumstances" standard is higher than Rule 26(b)(4)'s substantial need and undue hardship standard. See id., 1993 WL 816066 at 16 n. 4 (referring to the 26(b)(4) standard as "higher" and inclusive of that of 26(b)(3)).

prohibitive," and citing another case in which discovery was compelled "because otherwise plaintiffs would have to devote enormous time and resources to duplicating . . . efforts.").[8]

In considering undue hardship, courts also consider whether the replication of factual work product would lead to unnecessary waste of time or resources. See, e.g., In re Enforcement of Subpoena Issued by FDIC, 2011 WL 2559546, *3 (N.D. Cal. 2011) ("To duplicate [the evidence] to obtain the equivalent, FDIC would incur a cost of $55,000. . . . Such expenditure of government's finite resources is an unnecessary waste and constitutes undue hardship."); Portis v. City of Chicago, 2004 WL 1535854, *4 (N.D. Ill. 2004) (finding that it would be a waste of time and money to recreate a database containing data for 20,000 putative class members and sharing the database would benefit the litigation process). In one case, defendants admitted that they could recreate an index of 2,400 boxes of documents that the plaintiff had already created. See Wash. Bancorporation v. Said, 145 F.R.D. 274, 279 (D.D.C. 1992). The court determined, however, that "the time and money it would take to recreate this index easily constitute 'undue hardship.' Th[e] court [saw] no value and only waste in requiring such a duplicative effort." Id. (further stating that "th[e] court can see no reason to force defendants to repeat this effort when such a document already exists and can be disclosed without harm to its creator."); see also Resolution Trust Corp. v. Heiserman, 151 F.R.D. 367, 376 (D. Colo. 1993) ("[T]his case is complex and involves massive amounts of documentation. It would be extremely difficult, not to mention wasteful, for defendants to attempt to replicate" plaintiff's efforts).

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[8] Bank Brussels also analyzes the "exceptional circumstances" test under Rule 26(b)(4) and is applicable here for the reasons discussed in n. 7, supra.

II. THE ADAAG MATERIALS.[9]

A. Core or Opinion Work Product.

At the outset, the court is unpersuaded by defendant's argument that the stricter standard that applies to "core" or "opinion" work product should apply here. (See Joint Stip. at 27). The City has not pointed to anything that exempts the information at issue from ordinary principles pertaining to work product disclosure. (See, generally, id. & Opp.).

Other than stating that it will not share any details regarding the contents of the surveys to avoid any possible argument that it has waived the protections of the work product doctrine, (see Opp. at 5), the City has not made any attempt to satisfy its burden to show that it is entitled to protection from disclosure of the requested information. The City cites cases that have found certain work product to be "core" or "opinion" work product, (see Joint Stip. at 31-33), but it fails to show how the ADAAG Consulting measurements and photographs could possibly fit into that category. The City suggests briefly that "even . . . simply the selection of . . . properties designated for survey or review" is "opinion" work product that is afforded near absolute immunity from disclosure. (See Joint Stip. at 32). Plaintiffs state that the City surveyed "more than 200 of the buildings at issue in this case . . . following a standardized, government-mandated checklist[,]" (see Motion at 1), but defendant responds only that plaintiffs have failed to support these facts (see Opp. at 10). Defendant has not provided any authority or basis to support the notion that, in this case, the selection of properties or survey method somehow constitutes core or opinion

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[9] Although plaintiffs devote considerable attention to whether ADAAG Consulting's work is protected by the attorney-client privilege, the City states that it is "not seeking to protect facts and underlying data by invoking the attorney-client privilege. [Its] assertion of the attorney-client privilege pertains to communications and not underlying facts, and therefore is not the subject of th[e] Joint Stipulation." (See Joint Stip. at 24). For this reason, the court addresses only the parties' arguments regarding the work product doctrine.

In addition, the City argues at length that the court should not address plaintiffs' "new 'public policy' argument that they are entitled to information . . . because the City should have obtained the information prior to being sued." (Opp. at 3) (characterizing the argument as a "transparent attempt to overcome their failure to meet the substantial need and undue hardship requirements of [Rule] 16(b)(3)"). However, because the court finds that plaintiffs have met the substantial need and undue burden requirements, see infra at § II.B., it need not address the so-called "public policy" argument.

work product. Regardless, there are 267 properties at issue in this case. (See Reply at 1). At the time of the surveys, fewer properties – perhaps 227 – may have been at issue. (See Opp. at 2, n. 2). If over 200 were surveyed, more than 75% were measured and photographed.[10] The City has not given the court any reason to believe that much, if any, of its litigation strategy will be revealed if plaintiffs learn which 75%, 80%, 90%, or even 95% of the properties were surveyed. This, of course, assumes that the City did not survey 100% of the properties at issue, which the City may well have done.

Perhaps the reason the City is unwilling to make any attempt to establish that the subject material is "core" or "opinion" work product is because there is little, if any doubt, that the requested information constitutes, at most, ordinary work product. For example, plaintiffs provided a sample UFAS compliance survey, " (see Joint Stip., Exh. 1, HUD UFAS Accessibility Checklist), that indicates that the information-gathering is a "labor-intensive but ministerial task requiring no independent analysis, legal or otherwise." (Motion at 15). Further, plaintiffs have made it clear that they seek only the factual measurements and photographs that were taken during the surveys. (See, e.g., Joint Stip. at 18) ("Plaintiffs seek facts and nothing more"). Accordingly, the court analyzes and applies the standard set out in Rule 26(b)(3) for ordinary work product. See, e.g., Castaneda v. Burger King Corp., 259 F.R.D. 194, 196-97 (applying the ordinary work product standard when plaintiffs were seeking "measurements and photographs, nothing else, no opinions, no advice, just the objective quantitative inches and feet and degrees of slope [of the properties at issue]."). Thus, the court will consider whether plaintiffs have made a sufficient showing of substantial need and undue hardship.

B. Substantial Need and Undue Hardship.

The City argues that plaintiff is unable to "establish that the information sought is essential to [its] defense or is crucial to a determination that the defendant could be held liable for the acts alleged[.]" (Opp. at 14). The court is unpersuaded by this argument. The City has explicitly stated that it will "argue at trial (or in a dispositive motion) that absent inspections by Plaintiffs of

[10] 75% is likely a conservative estimate, as it assumes that exactly 200 buildings were surveyed, and that all 267 properties were at issue at the time of the surveys.

the properties at issue to evidence non-compliance, Plaintiffs [cannot] prevail on their claims." (Id. at 8). Clearly, if defendant intends to argue that the lack of the very information plaintiffs now seek necessarily defeats their claims, then the information is "crucial to a determination that the defendant could be held liable for the acts alleged." (Id. at 14). As plaintiff notes, given the City's litigation strategy, "[i]t is hard to imagine evidence being more 'crucial['.]" (See Reply at 9). Denying plaintiffs' motion to compel would exclude available information that is highly relevant to – and potentially dispositive of – one of the key questions on the merits of this case.[11] Accordingly, the court finds that plaintiffs have a substantial need for the factual information gathered by ADAAG Consulting.

Requiring plaintiffs to duplicate the survey work would also be an undue burden, as it would require great expense and involve an unnecessary waste of resources. As noted earlier, replicating the survey work alone would cost approximately $1.3 million. (See Allen Decl. at ¶¶ 5-6). Plaintiffs, who seek primarily injunctive relief in this case, are nonprofit organizations with limited resources to expend in litigation. (See Motion at 12). They assert that "[c]ost considerations thus practically preclude them from recreating the City's information." (Id.). The court agrees that the replication of the work would cause an unnecessary waste of time and effort. Such an undertaking would "benefit[] no one except building surveyors seeking more work, and in no way furthers the pursuit of the truth on the merits[.]" (Motion at 15).

One alternative referenced as part of the underlying briefing dealt with duplicating the surveys and sending interrogatories to the owners of each of the more than 200 properties seeking the factual information concerning door width, threshold heights, and other measurements likely taken by ADAAG Consulting. (See, e.g., Joint Stip., Exh. 4) (sample interrogatory drafted by plaintiffs including hundreds of sub-parts to encompass all measurements likely covered by the

[11] It is true that plaintiffs have reviewed blueprints and building plans for the properties within the CRA/LA housing portfolio. (See Allen Decl. at ¶ 2). However, both plaintiffs and defendants recognize that "these plans cannot show the actual built condition of these properties." (See Joint Stip. at 18). Thus, unless the City is willing to stipulate that each property was built in strict conformance with the plans that plaintiffs have reviewed, the actual photographs and measurements of the buildings are critical in this case.

ADAAG survey). Just like replicating the surveys themselves, however, this would necessitate an extraordinary expenditure of time and money, both by plaintiffs and the building owners. See Castaneda, 259 F.R.D. at 199-200 (ordering production of measurements and photographs and rejecting as unnecessary the alternative use of lengthy interrogatories to reach the same result); see also Jarvis, Inc. v. AT&T, 84 F.R.D. 286, 293 (D. Colo. 1979) (when a plaintiff would have to depose a large number of witnesses to obtain information equivalent to the material he sought to discovery, undue hardship was shown). Furthermore, there are cost-shifting provisions of federal and state civil rights laws at issue, and if liability is established, the City may be required to compensate plaintiffs for their costs. (See Motion at 15). The imposition of an additional $1.3 million or more in litigation costs, which may well ultimately borne by either party, is hardly justifiable. For these reasons, the court determines that requiring plaintiffs to recreate the surveys at issue would impose an undue hardship.

Finally, in addition to the fact that plaintiffs have met the substantial need and undue hardship standard of Rule 26(b)(3), the court is persuaded that giving plaintiffs access to the subject information has tremendous potential to move this case forward. See Dreith v. Nu Image, Inc., 648 F.3d 779, 790 (9th Cir. 2011) ("The Federal Rules of Civil Procedure exist to move a case forward to disposition, and to do so promptly and expeditiously . . . [D]iscovery too often has become a desultory game of hide and seek."). Indeed, the City's position and conduct with respect to the subject information suggests an unwillingness on the part of the City to move this case forward in an expeditious manner. For example, plaintiffs asked the City to consider the retention of a joint expert or joint inspections by the parties' respective experts in order to limit the costs of inspections. (See Motion, Exh. B, Email from Scott Chang dated October 9, 2013). The City refused and does not provide an explanation as to why it refused plaintiffs' request to retain a joint expert. (See, generally, Opp.). The City also refused plaintiffs' more recent offers to retroactively split the costs incurred in retaining ADAAG Consulting, (see id., Exh. 1, Transcript of Telephonic Hearing Re: Plaintiffs' Motion to Compel Discovery at 20-21), which renders almost absurd the City's assertions that plaintiffs are "simply looking to exploit the City's attorney work

product and avoid having to engage in the effort they should be required to undertake to build their case." (Joint Stip. at 42).

If plaintiffs cannot access the data, they likely will randomly sample what they assert is a statistically significant number of properties and then argue that the accessibility (or lack thereof) is representative of the remaining properties. The City will likely argue in response that such an approach is invalid, or that the sample is not representative of all the properties at issue. It would waste time and effort of the court and the parties to litigate issues of sampling techniques and expert opinions while excluding the actual information that would settle these issues for the actual buildings in question. See Portis, 2004 WL at 1535854 at *4 (granting a motion to compel in part because the relevant data was "an invaluable tool for both sides to assess the merits of the litigation," and ultimately finding that compelling production "has the potential to materially advance the litigation without seriously prejudicing the [opposing party].") (internal quotation marks omitted). This outcome is especially warranted given that the information sought – measurements and photographs and not opinions, impressions, analysis, or strategies – is not the type of information typically withheld in discovery. See, e.g., 6 Moore's Federal Practice § 26.70 at 435 (stating that the doctrine is intended only to guard against divulging an attorney's strategies and legal impressions, not "facts contained within work product."); see also Green v. Baca, 226 F.R.D. 624, 651 (C.D. Cal. 2005) (finding that work product doctrine did not apply when there was "no showing that [] statistics set forth in [] reports derive from privileged communications . . . or represent legal advice.").

This Order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Plaintiffs' Motion for Review of Minute Order Denying Plaintiff's Motion to Compel Discovery from Defendant City of Los Angeles **(Document No. 126)** is **granted.**

2. The referral to Judge Walsh for pretrial proceedings is hereby **vacated**. Pending further order of the court, the court adopts the deadlines set by Judge Walsh in his Order of July 10, 2015.

3. Defendant shall, no later than **July 31, 2015**, produce the measurements and photographs contained within accessibility inspection reports and/or accessibility surveys concerning any property within the scope of discovery in this case. These measurements and photographs shall be produced in a manner and form to make them understandable and usable by consultants in the field.

Dated this 17th day of July, 2015.

/s/
Fernando M. Olguin
United States District Judge