

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 10 HON. WILLIAM F. HIGHBERGER, JUDGE
4

5 SANTA BARBARA CHANNELKEEPER, A)
CALIFORNIA NON-PROFIT CORPORATION,)
6) Case No. 19STCP01176

7 Petitioner,)

8 vs.)

9 STATE WATER RESOURCES CONTROL)
BOARD etc., et al.,)

10 Respondents.)

11 _____)
AND RELATED CROSS-ACTIONS.)
12 _____)

13
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 JULY 6, 2021

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28

1 CASE NAME: SANTA BARBARA CHANNELKEEPER VS.
2 STATE WATER RESOURCES BOARD
3 CASE NUMBER: 19STCP01176
4 LOS ANGELES, CALIFORNIA JULY 6, 2021
5 DEPARTMENT 10 HON. WILLIAM F. HIGHBERGER
6 REPORTER: DEBORAH MORIN, CSR NO. 11558
7 APPEARANCES: (AS HERETOFORE MENTIONED.)
8 TIME: 2:10 P.M.
9

10 THE COURT: Okay. We're on the record in
11 19STCP01176, Santa Barbara Channelkeeper vs. State Water
12 Resources Control Board.

13 I've got Mr. Pisano and Mr. Hagerty here for the
14 City of San Buenaventura, more commonly referred to as
15 City of Ventura; Mr. Cosgrove for Casitas Water District;
16 and various lawyers appearing through LACourtConnect.

17 In terms of new paperwork for today, I have
18 printed out the June 25th service document, which was also
19 filed by the City of Ventura in response to the court's
20 request, which is a citation to 34 items which Mr. Hagerty
21 and his team believe are demonstrative of the
22 interconnection of the subsurface water in the area in
23 question with the repairing flows.

24 More specific to today's event, I have the City
25 of Ventura's July 2nd filing, a filing by Allen Matkins
26 and co-counsel for Jeffrey Bacon as trustee of a certain
27 trust filed -- or actually served on Case Anywhere July 2.
28 I didn't find it in the court's record yet, but hopefully

1 the Allen Matkins lawyers will remember to get it filed if
2 they haven't already.

3 And likewise pulled off of File & ServeXpress
4 served under the date of today, this morning, at 9:43 by
5 Mr. Gregg Garrison, an attorney representing himself and
6 his spouse, a document generally described as objections
7 to lodgement of proposed physical solution and statement
8 in support of court-appointed scientific expert. And then
9 there's certain other collateral filings by the City of
10 Ventura that aren't really statements specific to today's
11 further status conference.

12 I am informed by the City of Ventura that
13 they've requested that the continued order to show cause
14 regarding service by publication of certain
15 cross-defendants be continued to July 19, and we have
16 already continued it to the afternoon of July 19 as
17 requested by the City of Ventura. So nothing more needs
18 to be said on that topic from my point of view.

19 Do I have a lawyer for the State, whether it's
20 Water Resources or Fish & Game, such as Attorney Melnick,
21 with us via LACourtConnect? I didn't get any filings from
22 the State, though I thought the State continued to be
23 energized with opposition to the receipt of the court of
24 the proposed physical solution.

25 Has the State laid down its objections,
26 Mr. Melnick and Mr. Eric Katz, in that regard, or is the
27 State still displeased with the idea that the current
28 version of the physical solution should be put in front of

1 yours truly?

2 MR. MELNICK: Your Honor, good afternoon. It's
3 Marc Melnick from the Attorney General's Office.

4 You're correct that we didn't file anything. We
5 didn't feel we needed to waste any more paper. I think we
6 talked about this last time. Our view is that it's a
7 settlement document. We are hoping to have more
8 settlement conversations, and that's just not the greatest
9 idea.

10 If Your Honor does want to see it, we don't have
11 an objection per se, but we would suggest that rather than
12 getting a one-sided view of the physical solution, that
13 you entertain filings from other parties that comment on
14 its efficacy.

15 THE COURT: Well, that is certainly a
16 possibility, and I will say that the recent submission by
17 Attorney Garrison on behalf of himself and his wife makes
18 a very specific suggestion that the document be marked
19 Draft and that -- no, actually that wasn't from
20 Mr. Garrison. That was from Allen Matkins' papers
21 suggesting that it be marked Draft and Section 8 in their
22 view proposed findings be deleted outright.

23 Mr. Garrison has some other objections to the
24 draft physical solution, though that would really be more
25 a question of the substance of it than whether or not the
26 court should see it at this point in time.

27 Different question. Do I have Mr. Katz for Fish
28 & Game?

1 MR. KATZ: Yes, Your Honor.

2 THE COURT: Any news, good, bad, or otherwise,
3 on progress towards getting the State's water flow
4 analysis issued? I think you're the point of the spear on
5 that, or do you hand that back to Mr. Melnick for Water
6 Resources?

7 MR. KATZ: Well, the Department of Fish &
8 Wildlife is doing its own analyses regarding flow
9 requirements that it believes is what's appropriate and
10 needed for fish. The Department has released its flow
11 recommendations for the lower Ventura earlier in the year.
12 It opened it up to public comment. It extended that
13 public comment, and it's in the process of finalizing
14 that.

15 And then I think Mr. Melnick can talk about what
16 the State Water Resources is doing with regard to its
17 surface water groundwater modeling.

18 THE COURT: So back to you, Mr. Melnick. I
19 guess when I speak about waiting for Giddeaux [phonetic],
20 I guess, it's your clients' exertions that are causing me
21 to think about waiting for Giddeaux.

22 MR. MELNICK: Yes, unfortunately, Your Honor.
23 But we're on track to releasing the model next month in
24 August.

25 THE COURT: On the previously proposed date in
26 August, or are we now August 31?

27 MR. MELNICK: We did not specify a date. We're
28 trying to move it as early in the month as possible, but

1 certainly could be towards the end.

2 THE COURT: Well, if it comes out, that will at
3 least be some kind of progress.

4 MR. MELNICK: I agree.

5 THE COURT: Who else wants to be heard that I
6 shouldn't be getting the physical solution under some
7 conditions at this time?

8 For the record, nobody responded further.

9 So I do have the Garrison objection in one
10 fashion. The objection by trustee Bacon setting up some
11 proposed edits to the document before I look at it, and
12 the more broad suggestion of Mr. Katz and Mr. Melnick that
13 there be a chance to provide some kind of color commentary
14 by others at the same time that I get the physical
15 solution.

16 So Mr. Hagerty and Mr. Pisano, as you wish,
17 let's start with the trustee Bacon's two specific edits as
18 reflected in the Allen Matkins filing.

19 MR. HAGERTY: Thank you, Your Honor. Shawn
20 Hagerty for the City. We agree with the draft comment.
21 That's not an issue at all.

22 With respect to Section 8, our position is
23 because it's a draft, you can look at the whole document.
24 Section 8 is just a part of the entire document, and to
25 understand it fully, we believe that that would be
26 appropriate for you to look at that.

27 At the same time, Your Honor, we're interested
28 in just having a decision made on this issue in kind of

1 getting past this. So if it means redacting Section 8, we
2 certainly wouldn't object if we could otherwise submit it
3 to the court.

4 THE COURT: What about the separate suggestion
5 of Mr. Katz that there ought to be an opportunity for some
6 version of color commentary by others as to the wisdom or
7 ill wisdom of the City's draft physical solution as it
8 exists at this time if I am to see it in its current
9 rendition?

10 MR. HAGERTY: The parties have already taken the
11 liberty to do that, Your Honor. I know you said you
12 haven't looked at those, but multiple parties have
13 submitted objections that are more substantive in nature.
14 We don't have a concern really if there's a structure by
15 which parties can make comments about the efficacy or the
16 issues posed in the physical solution.

17 THE COURT: To some extent getting the cards on
18 the table is exactly what the litigation process is all
19 about. So seeing those objections has a benefit in many
20 ways.

21 MR. HAGERTY: Yes, Your Honor.

22 THE COURT: Mr. Osias, I see you're joining us
23 via LACourtConnect. Do you want to say anything further
24 in support of deleting the findings?

25 MR. OSIAS: I don't have much to add, Your
26 Honor, other than given the comments of the City, it
27 doesn't sound like they're very -- they're not objecting
28 too strenuously to the redaction. If they're redacted,

1 that satisfies our desire that we not argue yet until the
2 physical solution is put in front of Your Honor for
3 purposes of argument, in which case there will be
4 appropriate briefs with page limits, service sequencing,
5 et cetera. So that was really what that was about to keep
6 the argument at bay until you determine it's time to do it
7 and then do it in the normal fashion.

8 And I appreciate that they agree that it should
9 be marked Draft so not only Your Honor but everyone knows
10 it may change if agreements can be reached. We're hopeful
11 that they can be reached, and we won't have to participate
12 for too much longer, but we'll see.

13 THE COURT: Mr. Garrison, do you have any
14 comments about whether the court ought to see the draft
15 physical solution in its current form?

16 MR. GARRISON: Yes, Your Honor. Thank you for
17 requesting my input on the issue.

18 I think the document as it stands right now is
19 an advocacy document for the City, and I think it's
20 misleading as an advocacy document.

21 I would prefer in the sense of justice and equal
22 treatment with the disparity of the parties that we have a
23 court-appointed scientific expert that weighs in on this
24 issue so we don't start with an advocacy document but we
25 have a document that's neutral that we can build on to
26 build consensus instead of having a "he takes this
27 position" and "she takes that position." That
28 counter-position I don't think serves the Court.

1 On other cases that I've worked on with this
2 issue, we do work with neutrals, and that gives us a good
3 common ground. And I think your statement about
4 litigation, put the cards on the table, that's correct.
5 But mediation litigation are also being able to disclose
6 and find common ground, and right now I see very little
7 common ground with this proposed physical solution with
8 its usufructuary language, with the admission of fire
9 resistance and what many of the property owners are trying
10 to do.

11 And also with the L.A. Basin, they forgot the
12 interplay in between the surface waters and the
13 groundwaters. In a case I handled in 1991 in Yolo County,
14 it's exactly what we found. Aggregate in-bed creek mining
15 took out the rocks in this riverbed and did not allow it
16 to recharge. Therefore, the groundwater fell. The same
17 thing we have here. I think we have to increase the
18 surface waters to recharge the groundwater system, and the
19 proposed physical solution misses the boat on that point.

20 THE COURT: Thank you, sir. I did enjoy your
21 discussion of how the word "usufructuary" -- Madam
22 Reporter, that's spelled u-s-u-f-r-u-c-t-u-a-r-y -- is a
23 piece of legal jargon that is a polite way to hide the
24 unreimbursed taking of somebody else's asset.

25 MR. HAGERTY: Your Honor, may I --

26 THE COURT: Sends me back to my Black's Law
27 Dictionary from my first year in law school.

28 MR. HAGERTY: Can I address those three points?

1 I mean, those three points are exactly why we have a
2 current meet and confer.

3 Any party who has a concern about the physical
4 solution should contact us, because all three of those
5 points that Mr. Garrison has made we think can or either
6 already are accommodated or could be made clearer in the
7 physical solution, and that's the kind of ongoing process
8 that we're moving this forward.

9 We believe what we have today, if we were in
10 trial, we'd present it to you. But it can always be
11 improved. So on the fire point, of course, we think that
12 that's something that's critical. We would clearly work
13 with Mr. Garrison to address that.

14 And the same with regard to -- I mean, we're
15 arguing that there is a connection, and that's what the
16 trial is going to be between the surface water and the
17 basin. So we can certainly agree on that point.

18 And then on the usufructuary, Your Honor, all it
19 means is that it's a right to use water. And in
20 California that's not something that we made up. That's
21 the long-standing law that the State owns all the water.
22 Everyone has a right to use it who perfects that right,
23 and it becomes a property right. But it's a right to use.
24 It's not pure ownership in the traditional sense, Your
25 Honor. That's all that means.

26 THE COURT: So I'm going to do the following.
27 Specific to whether or not it's permissible for the City
28 of Ventura to lodge the current draft physical solution,

1 I'm going to authorize its being lodged with the court.
2 How thick is it? How big?

3 MR. HAGERTY: It's right here, Your Honor.

4 THE COURT: Like a three-ring binder but only a
5 one-inch version of a three-ring binder.

6 MR. HAGERTY: Yeah. It's a hundred-plus pages,
7 Your Honor, with exhibits, but it's manageable. And here
8 it is.

9 THE COURT: Okay. Don't give it to us today
10 because I agree every page ought to get marked Draft. And
11 in the near term it's easier to keep the genie in the
12 bottle than it is to stick it back in the bottle.

13 So leave out Section 8, the findings at the
14 moment, but mark them as redacted so I know where they'd
15 be, and in that sense page by page just show deletions as
16 redacted, and you can lodge that with the court by next
17 Monday and provide a notice of lodging.

18 I infer that for everybody else involved in this
19 case such as Mr. Garrison and Mr. Osias, that this
20 document is readily available, although it has not gotten
21 into my sticky fingers so far; correct, Mr. Hagerty?

22 MR. HAGERTY: That's correct, Your Honor.

23 THE COURT: Does anybody claim you need access
24 to the document that's going to be lodged with the court
25 to know what I'm getting?

26 I guess you, frankly, ought to serve your
27 redacted version on File & ServeXpress with the word
28 "Draft" added and those Section 8 sections marked out.

1 That way everybody with access to File & Serve Express
2 will have the same document I have.

3 MR. HAGERTY: We will do that, Your Honor.

4 THE COURT: Okay. But for the purposes of
5 filing with this court, submit like a one or two-page
6 notice of lodging with whatever necessary proof of service
7 attached, and that's the one thing that will go in the
8 public file.

9 MR. HAGERTY: Yes, Your Honor.

10 THE COURT: Okay. I will get that by this
11 coming Monday the 12th. I will let others who wish to be
12 educating me about why this is an awful or bad or
13 incomplete thing submit objections to the proposed
14 physical solution without prejudice to litigating the
15 issues later in the fullness of time, but if you feel
16 there's something urgent about putting your position in
17 front of me, you can do so, but I want them served and
18 filed by close of business on Thursday, July 15, and the
19 objections are to be no more than six pages of text
20 without attachments, declarations, or exhibits.

21 So you've got to boil it down and state it in
22 summary terms. The six pages doesn't include the caption
23 page. It doesn't include the proof of service, but in
24 terms of the gist of what you want me to read, I don't
25 want more than six pages at this time from anybody.

26 If you have previously submitted an objection to
27 the physical solution, do not assume I'm going to go back
28 and retrieve them from the file. You're obligated to file

1 a new document on or before July 15 if you want something
2 brought to my attention, because I'm not going to go back
3 and try to reconstruct things from the large haystack that
4 constitutes the prior filings in this case prior to today,
5 with the City of Ventura to give notice, Mr. Hagerty.

6 MR. HAGERTY: Yes, Your Honor.

7 MS. ZOLEZZI: Your Honor, Jeanne Zolezzi.

8 THE COURT: One second. Who wants to speak
9 first?

10 MS. ZOLEZZI: Jeanne Zolezzi. I just had a
11 question. I assume that the court will allow the
12 proponents of the physical solution to provide a reply?

13 THE COURT: Sure. From a time point of view, I
14 don't know how you're going to get it in before the 19th,
15 but you can file it on the morning of the 19th. Serve it
16 on the morning of the 19th, then you can file it in court.
17 So like serve it by noon on the 19th, and file it at the
18 time of the next hearing.

19 MS. ZOLEZZI: Thanks, Your Honor.

20 THE COURT: And you can have 50 percent of the
21 pages that add up to the total number of objections that
22 are filed.

23 So if five different six-page objections are
24 filed constituting a total of 30 pages, you can have 15
25 pages. If seven different five-page objections are filed
26 that adds up to 35 pages, you can have 17 and a half pages
27 if my math is right.

28 MS. ZOLEZZI: Thank you, Your Honor.

1 THE COURT: The reason for that is although
2 you're getting more than six pages, I assume that the
3 objections are going to have some common themes, and
4 therefore you're going to be speaking about issues that
5 are touched on multiple times by the people that are
6 objecting.

7 In some ways it will be useful, though, because
8 this is the kind of straw poll of where your most
9 strenuous objections are.

10 Mr. Cosgrove, you've been sort of a fence-sitter
11 wallflower, or more accurately your client has been. Have
12 they gotten closer to liking the physical solution, or are
13 they waiting to be sold? Do they know they're going to be
14 the point of the spear for the opponents?

15 MR. COSGROVE: A bit of all of that, Your Honor.
16 We are engaged internally in discussions with staff and
17 the board regarding it.

18 THE COURT: Oh, I bet that's exciting.

19 MR. COSGROVE: Well, it has been. Working
20 toward potentially issuing a draft of our own that might
21 modify some of the aspects that we are a little less than
22 thrilled with. But in the end, you know, I think our --
23 we are still in watch-and-wait mode on a lot of it and are
24 interested to see how the phase one and the potential
25 culling of the size of the scope of the action may come
26 out.

27 THE COURT: In geographic terms in particular?

28 MR. COSGROVE: In terms of the basins and in

1 terms of the parties in order to help inform some of our
2 positions. So we're -- I think you've accurately
3 characterized it that we are a little bit in
4 watch-and-wait mode, but it is not passive watch-and-wait
5 mode. We are looking closely at it and working on
6 concepts of our own.

7 THE COURT: The reason I ask is when people like
8 Mr. Garrison raise the question of who's going to help the
9 small property owners who want to push back against an
10 ill-conceived physical solution but have a lack of
11 symmetrical resources, the obvious question is, okay,
12 where is this alliance going to come from, and this is an
13 alliance that's going to be led by the Casitas Water
14 District which has probably got resources proportionate to
15 those of the City of Ventura, or is it an alliance that
16 won't have the assistance of the Casitas Water District?

17 MR. COSGROVE: At this point that decision
18 hasn't been made, Your Honor. It is true that there have
19 been smaller constituents or constituents from some of the
20 basins that would characterize themselves as too remote to
21 impact the surface water flows.

22 I have reached out to Casitas seeking, for lack
23 of a better term, for Casitas to take a leadership role in
24 carrying their banner. Unfortunately, Casitas also has a
25 rather significant customer in the City of Ventura, and so
26 we're in a delicate balance situation, and because the
27 facts are still being brought to fore, and because there
28 are, to be quite frank, political allegiances on a number

1 of different sides of the litigation, we are taking a more
2 cautious or, as I would put it, deliberate approach. I
3 can --

4 THE COURT: That's why I said your discussions
5 are probably quite fascinating, but I'm sure they're
6 privileged.

7 MR. COSGROVE: Well, I think both are true. So,
8 you know, I can preview for you that we're not thrilled
9 with the physical solutions allocations of costs and their
10 relationship to voting power on the management committee,
11 which, when you read it, you will see I think pretty
12 clearly why. But we understand that that's a living,
13 breathing document and that -- that the City and others
14 are anxiously awaiting our input on it, but we want that
15 input to be well thought out, and we want it to be
16 properly based.

17 THE COURT: Is there going to be some event that
18 will force your people to make a decision? I've been
19 goading Mr. Katz and Mr. Melnick -- I guess in particular
20 Mr. Melnick -- for getting their bureaucrats to get
21 something done.

22 Frankly, in some ways getting an answer from
23 Casitas Water District is a rather important decision
24 point in this case. Do I need to start pushing you to
25 force them to get to a decision point, or are other
26 circumstances going to bring it to a fruition without me
27 kicking and prodding?

28 MR. COSGROVE: I have not made it a habit in my

1 career to invite judges to pressure my clients. So I
2 would say no to that.

3 I think that there's nothing in the current
4 litigation horizon that I would view as a catalyst for
5 Casitas making some of the decisions that you're talking
6 about, but I can assure you that we understand that people
7 are looking for those decisions, but we're still sorting
8 through our internal processes on how those decisions
9 might best be made.

10 THE COURT: Ms. Holly Jacobson, is City of Ojai
11 a declared sponsor of the current draft physical solution,
12 or are you somewhere more like Mr. Cosgrove's client?

13 MS. JACOBSON: Sorry, Your Honor. As soon as I
14 unmuted myself, I had a bunch of alerts pop up.

15 I would say that the City is not a fan of the
16 proposed physical solution. As a matter of procedural
17 issues, frankly, I think it's strange that we keep jumping
18 to view it and discuss it before the foundational issues
19 establishing who the correct parties are in this
20 litigation have been dealt with in Phase 1. Long-winded
21 answer of saying we do not support it in its current
22 fashion.

23 THE COURT: Has the City of Ojai retained one or
24 more water experts to help it provide useful criticism of
25 the City of Ventura's proposal?

26 MS. JACOBSON: I don't think that I can speak
27 intelligently or accurately on that point right now.

28 THE COURT: Okay. And I may be asking you to

1 disclose privileged information. So you're entitled to
2 object if you want.

3 Mr. Cosgrove, I'll ask the question anyway. Has
4 Casitas Water District hired any independent water experts
5 to provide advice and possible forensic support if it's
6 going to be criticizing the City of Ventura's physical
7 solution?

8 MR. COSGROVE: Not on the Phase 1 issues, Your
9 Honor. We have retained experts to analyze other aspects,
10 but not on Phase 1. And beyond that, I would invoke
11 privilege.

12 THE COURT: Now, as a separate comment, I do
13 note that Mr. Baggerly appears to have solved the
14 procedural problems that hindered his first motion for the
15 appointment of an independent expert and that his renewed
16 motion for that, which obviously Mr. Garrison thinks is a
17 good idea, is now on calendar for July 19.

18 So I will have an opportunity at that point to
19 see if I should be appointing an expert, and of course,
20 Mr. Garrison and others, an independent expert selected by
21 the court is truly to be independent and is not
22 necessarily to become the pro/con counterweight expert to
23 the plaintiff's expert, but rather to be a true neutral,
24 fair-minded person who might in the fullness of time come
25 out saying essentially "rah-rah-rah" for everything the
26 plaintiff says, if that's what that independent expert
27 thought was a true statement. Whereas most forensic
28 experts, when they understand who's hiring them and what

1 position they're trying to support, have a certain
2 nimbleness of thought that allow them to find a way to
3 criticize something that otherwise might be professionally
4 exemplary work. But that isn't the nature of an expert
5 the court would be appointing, but it might be the kind of
6 expert Mr. Garrison and other small property owners would
7 want to look for, given their diverging interests from
8 those of the City of Ventura, at least as they perceive
9 it. But that's on for July 19, not for today.

10 MR. BAGGERLY: Your Honor, this is --

11 THE COURT: Go ahead. Who's speaking?

12 MR. BAGGERLY: Can I have your attention just
13 for a moment --

14 THE COURT: Who's speaking?

15 MR. BAGGERLY: Claude Baggerly.

16 THE COURT: Go ahead, Mr. Baggerly.

17 MR. BAGGERLY: Thank you, Your Honor.

18 I have been waiting for today to find out
19 whether or not you are actually going to receive the
20 physical solution for review on your own, and therefore, I
21 didn't send in my objections, which is 14 pages long.

22 Would you accept more than one filing of six
23 pages? Because I've got plenty of objections.

24 THE COURT: No. I want you to give me the best
25 of. Edit it down and give me your best of. As they say,
26 I would have written less if I had more time. So you've
27 got some time to edit down your work product and to give
28 me the high points and leave out the lesser points.

1 MR. BAGGERLY: It will be truncated then.

2 THE COURT: Thank you, sir.

3 MR. HAGERTY: Your Honor, also on that same
4 point, if I may. Shawn Hagerty for the City.

5 As you mentioned and we've discussed,
6 Mr. Garrison has submitted a new document supportive of
7 the motion. We've already filed our opposition, and
8 that's with the court. We were advised that we don't need
9 to refile.

10 We would like leave to file a one or two-page
11 very brief response to Mr. Garrison's points, and we're
12 happy to do that as quickly as possible. I think we can
13 get it all filed by Friday.

14 THE COURT: File it whenever your opposition
15 would be due, but note that you're referencing your prior
16 opposition and supplementing it rather than restating it
17 all.

18 MR. HAGERTY: Thank you, Your Honor.

19 MR. OSIAS: This is David Osias, Your Honor,
20 from Allen Matkins.

21 THE COURT: Yes, sir.

22 MR. OSIAS: I had one quick question and then
23 one comment. The question is, was there a time on July 15
24 that you set for filing up to six pages of objections?

25 THE COURT: Serve it by close of business
26 4:30 P.M. on Case Anywhere. I'll give you the latitude to
27 file it on the 16th as long as you serve it by 4:30 P.M.
28 on the 15th. And for the reply, it's to be served by noon

1 on the 19th and filed with reasonable dispatch thereafter.

2 MR. OSIAS: Thank you.

3 And then you started to raise that others who
4 might be the opposition and asking whether they have
5 experts, and I know that relates to something else on
6 calendar for today, but one of the things I've been asking
7 for as I think one of the few lawyers who has a small
8 client, you know, with a single property and a single well
9 and minor use is for a user-friendly list by geography,
10 not just APN number but address or something of those
11 similarly situated in case they do want to pool resources
12 even for a consulting expert to help them understand what
13 ultimately is released. I haven't been able to get such a
14 list and wonder whether the court thinks that would also
15 be helpful.

16 THE COURT: I propose the following, Mr. Osias.
17 Why don't you post a message on the message board on File
18 & Serve Express that says, "Anybody who's interested in
19 sharing the costs of such and such an expert in
20 furtherance of X or Y theory, please e-mail me at."

21 So, in other words, you could ask that the
22 responses be offline from what Mr. Hagerty and his team
23 will see on File & Serve Express, but basically send out
24 your solicitation in plain view of the City, but then ask
25 people to find you via your e-mail and see what kind of
26 response you get.

27 Presumably we have a fair number of lawyers
28 participating today. The same thing will doubtless be

1 true on the 19th. And let me check one thing. Off the
2 record.

3 (Brief pause.)

4 THE COURT: Okay. Back on the record.

5 I've been reminded that the service that was
6 offered for time to let anybody in the world verbally
7 listen in to a court proceeding without otherwise more
8 formally registering or paying a fee was terminated mostly
9 due to problems experienced in the misuse of that resource
10 and people observing the criminal docket, but that tells
11 us then that the people participating today are limited to
12 those who we see registered on LACourtConnect, and this
13 is, as appearances for this case go, a fairly short list
14 today, but maybe the 19th we'll have a larger attendance.

15 Mr. Osias, in any case, I have no quarrel with
16 you using the bulletin board on Case Anywhere to see who
17 you can find. And if you want them to respond to you in
18 front of Mr. Hagerty and Mr. Pisano on File & ServXpress,
19 I leave it up to your good judgment.

20 Mr. Hagerty?

21 MR. HAGERTY: Yeah. I would also offer to the
22 court and to the parties that we've heard this comment
23 repeatedly. As I've said, we're working on a more
24 searchable database. But in the interim, we've also --
25 we're going to take everyone who's appeared in the action.
26 There's about 244 parties who have appeared. We're going
27 to create a map so that people can see sort of if there
28 are fellows within the basins, which I think was

1 Mr. Osias's point, and we're going to post that. It will
2 take us probably about a week to two weeks, so it won't be
3 immediate, but we are going to do that. It will be posted
4 on the website and we'll make it available to anyone.

5 THE COURT: To your perception, Mr. Hagerty, is
6 Thacher School, as a large consumptive user, now a sponsor
7 of your physical solution, or it's not clear?

8 MR. HAGERTY: There are five proposing parties,
9 Your Honor, who are very -- you know, who are part of the
10 party groups putting forward the physical solution, and
11 then there are somewhere in the order of 60 parties who
12 have stipulated to the physical solution. Thacher is not
13 one of those parties.

14 THE COURT: So they might be unhappy with it
15 given the water uses they have and where they take their
16 water?

17 MR. HAGERTY: Your Honor, I think the thinking
18 here from everyone is that this is all subject to
19 continued discussion, and we're hoping to get to a
20 solution that everyone or the majority can support, but
21 they have not yet indicated their specific support for the
22 current version of the physical solution.

23 THE COURT: Do I have a lawyer for Thacher
24 School joining us this afternoon?

25 MR. CARTER: Yes, Your Honor. William Carter
26 appearing specially for Craig Patterson on behalf of the
27 Thacher School.

28 THE COURT: And a variety of other clients;

1 correct, Mr. Carter?

2 MR. CARTER: Yes. I guess they're referred
3 to -- our clients are referred to as the East Ojai Group.

4 THE COURT: And if people like Mr. Garrison or
5 Mr. Baggerly are looking for somebody who's ready to pick
6 a fight with the City of Ventura because the physical
7 solution is ill conceived and unfair to users in East Ojai
8 and elsewhere, are you looking for people to join your
9 forces, or are you not willing to be seen as the pied
10 piper?

11 MR. CARTER: Your Honor, this is William Carter.
12 We welcome all those discussions. I think Thacher School
13 is in the same position as Ojai. We're not thrilled with
14 it. We're not a fan of it. And we're open to having
15 further discussions with like-minded individuals on all
16 aspects of the matter.

17 THE COURT: Mr. Garrison, is there something
18 more you want me to do to try to bang the drum in how to
19 form a crowd?

20 MR. GARRISON: Well, I do have some concern
21 about the physical solution. In interviewing some of the
22 106 residences in Rancho Matilija, one recent homebuyer
23 was told a precondition of purchasing a new home in a
24 subdivision was that he had to execute the proposed
25 physical solution.

26 When you hear that type of thing, when the new
27 buyer said he didn't know what the physical solution
28 meant, but he was required to do it to consummate the

1 transaction, I wonder if that is one of the 60 people that
2 have signed the proposed physical solution.

3 Is there a list the City of Ventura has of the
4 five principal and the 60 additional that have signed the
5 proposed physical solution?

6 THE COURT: So that question goes to you,
7 Mr. Hagerty, from Mr. Garrison.

8 MR. HAGERTY: Well, Mr. Garrison, if you look at
9 the physical solution itself, it says, "The parties who
10 are proposing it." So the five parties are there, but
11 it's the City of Ventura, it's the Ventura River Water
12 District, it's Meiners Oaks Water District, it's Rancho
13 Matilija Mutual Water Company, and it's the
14 Wood-Claeyssens Foundation, also known as Taylor Ranch,
15 are the five proposing parties.

16 There are -- all of the parties who have already
17 submitted stipulations, and I'm happy to share that with
18 you, but they're of record in the court filing. And then
19 there's a series of other filings that are mostly clients
20 of Ryan Blatz that we're working with to refile some
21 documents that were previously filed that the court had
22 some questions and concerns about.

23 So it will all be of record, and the parties
24 that have already filed are of record.

25 THE COURT: It's certainly true that if you go
26 to the L.A. Superior Court public record in this docket
27 number and look at documents filed, once I've signed this
28 or that stipulation for entry of judgment as to a given

1 cross-defendant or different unnamed party, that then
2 becomes part of the court's public record.

3 So it's got a very similar document description.
4 So you can just start eyeballing the court's docket and
5 see which kind of parties show up with their names
6 associated with it.

7 By way of example, if I were to scan that docket
8 at this time -- give me a second while it loads. It's a
9 huge data file due to all the parties.

10 The Round Up case totally crushed the software
11 in Alameda Superior. This case has almost crushed our
12 software, but so far it hasn't actually crushed the
13 software, although I think we did have the experience that
14 when people try to sign up for things when we have
15 multiple events on calendar, the accumulation of 20,000 or
16 2,000-plus cross-defendants and five events on calendar
17 then freaked out the software. Still loading.

18 I'm going to turn to the question of discovery
19 scheduling in a moment. And when we do that, one of my
20 first questions is going to be the lawfulness of
21 nonunilateral disclosure of experts. Let me take a second
22 to sort of try to recite some of these stipulations which
23 can be gleaned from the court's records.

24 I've gone into the documents tab. Here's one
25 June 21. Stipulation made with -- oh, no, that was the
26 peace treaty with the original plaintiff. That doesn't
27 count.

28 MR. HAGERTY: Your Honor, if it will expedite

1 things, we're happy to share with Mr. Garrison the list of
2 the ones that have been filed so that he can understand.
3 We're happy to help him with that process.

4 THE COURT: Okay. Now, here are a couple.
5 June 14, Big Black Dog, LLC is party to such a thing.
6 Ventura Unified School District, June 7.

7 When we come back on the 19th, by the way,
8 please give me an update on how you're doing on the
9 default-o-rama.

10 MR. HAGERTY: Yes, Your Honor.

11 THE COURT: I do know that my staff is not
12 complaining to me. The courtroom staff is not and the
13 management on the second floor and the 8th floor is not.
14 So apparently your processes are going tolerably well or
15 else they'd be down here moaning and groaning.

16 MR. HAGERTY: I think we have a good process
17 going, Your Honor.

18 THE COURT: Okay. March 24, we have a gaggle of
19 them. The Roman Catholic Archbishop of Los Angeles.
20 Joseph Lynn Bartholomy and Elvira Lily Bartholomy. James
21 P. Robey. Deborah Liz Martin Crawford. Konrad with a K.
22 A whole bunch of them on March 24. But as Mr. Hagerty
23 indicated, he can tell you what's already in the court's
24 public record, Mr. Garrison and Mr. Osias.

25 So okay, experts. Rafael Metzger, Esquire, had
26 well educated me in toxic tort cases that although they're
27 oftentimes when having a plaintiff go first an expert
28 disclosure has a certain practical logic to it that it's

1 inconsistent with the legislative provisions and CCP
2 Section 3024, and as interpreted by a court of appeals
3 case that's got the City or County of Los Angeles in the
4 caption.

5 All that being said, is the City of Ventura
6 willing to waive those arguments and go first, or are you
7 adamant that it has to be a mutual exchange, Mr. Hagerty?

8 MR. PISANO: Your Honor, Mr. Pisano. The City
9 is fine with a tiered approach whereby some of the
10 smaller parties, smaller users, who have not yet retained
11 an expert to look at these issues, get a glimpse at what
12 those larger parties who have retained experts have done.

13 But we are not waiving the argument that there
14 are -- waiving the argument that there be a mutual
15 exchange of experts for those parties that are currently
16 in the process of looking at these issues that are going
17 to be tried in Phase 1. We think it should be a mutual
18 exchange.

19 THE COURT: So then I guess there's a debate, as
20 I understand it, as to whether this first mutual exchange
21 should happen in late August versus in September. Because
22 your Exhibit A to today's report suggests that this mutual
23 exchange be September 24, but the text indicates other
24 people think that that is too slow and is going to
25 backload the trial.

26 Who, by way of example, wants a mutual exchange
27 by the big players earlier than September 24?

28 MS. JACOBSON: Your Honor -- [Inaudible].

1 THE COURT: Who's speaking?

2 MS. JACOBSON: Holly Jacobson for the City of
3 Ojai.

4 THE COURT: Go ahead, Ms. Jacobson.

5 MS. JACOBSON: Earlier you referenced the
6 General Civil Discovery Act 2030 something. But here we
7 are dealing with a very specific statute for the
8 groundwater dedication phase of this trial. It is CCP
9 832, et seq. When it comes to the disclosure of experts,
10 it's CCP Section 843.

11 THE COURT: One moment. Okay. I have it in
12 front of me. Go ahead, ma'am.

13 MS. JACOBSON: And that essentially says that in
14 a situation where a party is alleging that it can
15 adjudicate the groundwater rights of others, that it can
16 disclose its expert and opinions according to the schedule
17 laid out in 843 unless there's a stipulation among the
18 parties or the court orders it otherwise.

19 This statute being directly on point is what's
20 going to govern this case, not the general provisions
21 under the Discovery Act. And so --

22 THE COURT: Concur, Mr. Hagerty? Do you agree
23 with Ms. Jacobson on that point?

24 MR. HAGERTY: Not entirely, Your Honor. I mean,
25 843 does come into play, but the other CCP are
26 specifically preserved where it's not inconsistent and we
27 think the way you phrased it earlier is absolutely
28 consistent. I mean, 843 requires, as it's written, that

1 all parties mutually disclose within 30 days of the trial
2 setting, which is something we have agreed not to do. But
3 the mutual parties --

4 THE COURT: It was your plans to do it much in
5 advance of the trial, whether it's mutual or phased.

6 MR. HAGERTY: Absolutely. Yeah.

7 THE COURT: So what I need is briefs from you
8 and Ms. Jacobson and others who have a dog in this fight
9 delineating the pros and cons of these arguments. I don't
10 intend to just do it on the fly now, but I would
11 appreciate briefs from you and Ms. Jacobson and others so
12 that I can decide this on July 19.

13 MR. HAGERTY: Okay, Your Honor. That's fair.
14 And we're happy to do that.

15 THE COURT: Are there others who support
16 Ms. Jacobson's position that the City should be made to go
17 first who want a chance to brief the same issue? I
18 appreciate the fact that there's at least one advocate for
19 the position.

20 MR. OSIAS: David Osias from Allen Matkins, Your
21 Honor, for Villa Nero Trust. Our papers suggested that
22 the issue of when the City discloses its expert
23 sequentially or concurrently, it shouldn't be so late that
24 we don't have enough time to do anything about it because
25 of the time gap. And therefore, thought sequential or
26 earlier, in early to mid August, not late August, would be
27 necessary to meet the deadline at the end of their
28 proposed schedule.

1 In our meet and confer, there were several who
2 objected to earlier than September 24th. Some of them
3 aren't -- I guess they're all here today in court so they
4 can speak for themselves. But our main concern is to have
5 enough time between the receipt and the ability to do
6 anything about it. And under this schedule it's only
7 seven weeks.

8 Now, I had an idea between our filing and
9 today's hearing that might allow the current schedule for
10 those with experts to go forward, which at the meet and
11 confer was acceptable to many, if not all. And that is
12 the City had proposed to allow the later submission for
13 those who would sign a declaration that they didn't have
14 an expert at this time, which we're certainly prepared to
15 do, and if we added to that declaration a confidentiality
16 clause or even having Your Honor order it, that those
17 without experts can get it sooner but not share it with
18 anyone so that we do have enough time -- other than share
19 it with like-situated people without an expert, so that we
20 have enough time to deal with it.

21 The mutual exchange at a later date would not be
22 prejudicial to those with no expert because no one with an
23 expert would have access to it. And so the City's concern
24 from a litigation tactical perspective to not go first
25 would be protected, and our concern that we not have an
26 unrealistic time to read it, see if we can find help if we
27 need it -- don't even know if we're going to need help yet
28 because we don't know what it says -- and do something

1 about it.

2 So that was the new idea I had that didn't make
3 it into my papers but would seem to satisfy the City's
4 concern that it not reveal its expert reports before
5 others reveal theirs and our concern that we have enough
6 time and the City's willingness to go earlier so long as
7 it was concurrent. We can avoid that last condition if we
8 keep it confidential except for the people who don't have
9 an expert. We can talk to each other about it.

10 THE COURT: Well, that raises a couple of
11 points. Let me speak first and then I'll hear from
12 Mr. Hagerty.

13 One, if there is to be a traditional California
14 Discovery Act procedure of disclosure of experts, you get
15 a crummy lawyer declaration that says I've hired a genius.
16 Here's his CV. He's prepared to testify as follows and
17 give a deposition.

18 And the lawyer then gives you a kind of
19 paraphrase of what the expert is supposed to say but no
20 report. But that's good enough for the legislature. So
21 then that raises the question of whether the court makes
22 an order in the style of the Federal Rules of Civil
23 Procedure that says nah, you're also going to provide a
24 report either at the time of the designation or within
25 reasonable dispatch after the time of designation. That's
26 policy question and there are pros and cons to that.

27 MR. HAGERTY: Can I address that, because I
28 think there's an answer. 843 does say what is in the

1 disclosure and it's the report. And when we have
2 disclosed, mutually hopefully, we will disclose the full
3 report, and we expect other parties to as well.

4 THE COURT: That's Mr. Hagerty's statement of
5 position and may be right insofar as 843 is more precise
6 than CCP 2034. So in that regard, he is happy to lean on
7 843, Ms. Jacobson, even if he scatters the parts of 2034
8 that he likes, such as the mutuality provision.

9 But that then raises a different question. If
10 you've got, say, an asbestos case with one plaintiff and
11 13 defendants, and for whatever reason, because of the
12 deep pocket or because the facts tend to implicate two of
13 the 13 defendants more than the others, maybe the battle
14 of experts is between the plaintiff and functionally two
15 of the 13 defendants but not all 13 of the 13 defendants.
16 But the plaintiff hasn't settled with the other 11
17 defendants. They're in the case.

18 So my understanding, even if they're not
19 designating at the time of a mutual exchange an expert,
20 they're entitled to see everybody else's designation.

21 MR. HAGERTY: Yes, Your Honor.

22 THE COURT: So in that sense, you can't just
23 say, oh, if I know that Casitas Water District is going to
24 designate an expert at the same time I do, I'm going to
25 send my information to Casitas through counsel, but I
26 won't send it to Mr. Baggerly. Or I won't send it to
27 Mr. Osias. To my understanding, it's got to go to
28 everybody even if you're not getting anything in return.

1 MR. HAGERTY: That's correct, Your Honor.

2 And if I may, the idea of just a quick briefing.
3 We can make this really complicated or we can make it
4 pretty simple. There's really two questions. Mutual or
5 somehow one party going first, which you know our position
6 on that. And when. And I think if we just brief that and
7 the court makes a decision on the 19th, we're off and
8 running. Otherwise --

9 THE COURT: So what I need for that then is
10 probably the City to go first with why it must be mutual
11 and why it should be no sooner than whatever it is that
12 you want to protest.

13 MR. HAGERTY: To be clear, we're okay with
14 moving it up by a month to August 24th. It's other
15 parties, I think. If it's mutual, they may have some
16 objection to the other dates. So that's why getting those
17 both in --

18 THE COURT: But I'm going to have you speak
19 first. Could you get us a brief by this Friday in support
20 of it being mutual and in support of whatever date you're
21 arguing for?

22 MR. HAGERTY: Yes, Your Honor.

23 THE COURT: And then I would let anybody who
24 wants to object either on the aspect of mutuality or the
25 timing, and you can object to both or just one of the two.
26 But if you're going to object, I want you to object, and I
27 need you to object with something served on the 14th,
28 4:30 P.M., filed on the 15th, with a reply served close of

1 business on the 16th at 4:30 P.M. and filed on the next
2 business day on the 19th with Mr. Hagerty to give notice.

3 MR. HAGERTY: Yes, Your Honor. Thank you.

4 THE COURT: So if you don't like the idea that
5 the big dogs have got extra -- already have to designate
6 at the same time as Ventura city, you'd better get a brief
7 in on the 14th in terms of service. And if you don't like
8 the idea of a September disclosure as opposed to an
9 earlier disclosure date, then you'd better speak to that
10 same issue on a brief on the 14th. No page limits on
11 these briefs.

12 Okay. What else should we usefully take up this
13 afternoon, Mr. Hagerty?

14 MR. HAGERTY: Your Honor, I think there's just
15 two more issues. One -- well, actually just one point of
16 clarification, Your Honor. I had asked for leave to file
17 a very short response to the Garrison item, and you had
18 indicated it's when our opposition would have been due,
19 which it would have been today.

20 THE COURT: Well, then file it Thursday.

21 MR. HAGERTY: Okay. Thank you, Your Honor. One
22 other issue that I think --

23 THE COURT: And I will give Mr. Garrison until
24 Friday to file a reply in support of his motion.
25 Mr. Baggerly will.

26 MR. HAGERTY: Thank you, Your Honor. The only
27 other issue before the court is you had trailed the issue
28 of initial disclosures, and I believe you asked for the

1 stay to provide an explanation to the court why.

2 THE COURT: You don't think you need them.
3 You're willing to do the 850 map someday, if ever, without
4 them and make the assumptions.

5 MR. HAGERTY: The court ordered that the parties
6 provide the initial disclosures. Many have. The question
7 really is for those parties who have stipulated and
8 essentially attempting to sit on the sideline but not be
9 out of the case, we don't believe that they're necessary.
10 I think Mr. Blatz articulated why he thinks they're not
11 necessary. And that was just the only open issue that we
12 had in our notes, Your Honor.

13 THE COURT: So, Mr. Melnick, Mr. Katz, or
14 Mr. Mejia, who wants to be heard as to why the perfect is
15 the enemy of the good here.

16 MR. MELNICK: Thank you, Your Honor. It's Mark
17 Melnick. I can speak to this. I think there's three
18 things I want to say. One is, first, Mr. Blatz had made a
19 pitch that this was a big endeavor for him. And we don't
20 have a problem with giving him as much time as he wants.
21 This isn't relevant to the first phase. This is relevant
22 to future phases. And if he needs to take several months
23 to get this done, we're perfectly fine with that.

24 The second thing I want to say --

25 THE COURT: Can I ask it another way,
26 Mr. Melnick. If there's some chance of peace breaking out
27 in the next few months, why don't you just give him an
28 extension to February 1st and see if peace breaks out in

1 the interim.

2 MR. MELNICK: That's perfectly fine.

3 THE COURT: Mr. Blatz, is that a practical
4 solution to your concern about putting undue burdens on
5 people who are trying to get away from the fistfight?

6 MR. BLATZ: Thank you, Your Honor. Ryan Blatz
7 on behalf of a litany of defendants.

8 I suppose that could work. The problem is, Your
9 Honor, and this is really without getting into the
10 nitty-gritty on the physical solution, but there's this
11 cost element to it that's unknown. And if they are
12 required, I mean, there's -- other than a full peace
13 treaty that gets this whole thing settled before February,
14 which listening to the parties I don't think is likely.
15 They've -- we've -- multiple big parties have indicated
16 that the necessity of Phase 1 is before there could be any
17 settlement potentially where this thing was approved.

18 So it's not just the time issue, it's the
19 resources that all of these de minimis users -- and again,
20 these are all de minimis users who I represent have
21 stipulated. None of them use over 5-acre feed on an
22 annual basis. It's just the cost outlay and the whole
23 point of trying to get them stipulated early and on the
24 sideline was to avoid what is cumulatively a lot of money
25 that they'd have to pay to just get that work done. Even
26 though it may not be unbelievably complicated, it still
27 requires requesting ten years' worth of data often from
28 the basin management agencies. Right now I can tell you

1 we have overloaded the OBGMA, the Ojai Basin Groundwater
2 Management Agency, with the disclosures that we're doing
3 right now in getting data from them.

4 These parties have only one interest, and it is
5 that they want to get out of this case and move on with
6 their lives as cheaply and as efficiently as possible
7 because they're de minimis users and the stipulation
8 provided that.

9 So I do agree that the time wouldn't hurt if it
10 was going to absolutely be necessary, but the level of
11 information that's going to come out of it, the outlay of
12 costs that the individuals are going to have to put up
13 with and the time element to it seem unduly burdensome on
14 them. And that's why they are deemed de minimis users,
15 that they are literally not important enough under the
16 de minimis principles of the Groundwater Management Act
17 that they're not important enough to have to be active
18 litigants. And as soon as they're doing initial
19 disclosures, they've been there. They're now active
20 litigants and having to spend more money and be more
21 involved in all these filings and everything done.
22 Wrangling a lot of cats, Your Honor.

23 But ultimately, if there was after Phase 1 --
24 and we just heard that Phase 1, it was not going to be
25 necessary for that. If post-Phase 1 there was an absolute
26 need for these individuals to have to do initial
27 disclosures, then I think at that time it might be
28 appropriate, and that's why I have told all of them, even

1 though they're paying a very small flat rate to be
2 represented, that I would maintain representation of them
3 throughout the remaining portion of the case to ensure
4 that if something changed like this, that someone would be
5 in the room to be able to represent them and let them know
6 we needed to have them.

7 But until Phase 1 is complete and there's
8 definitely no agreement, I don't see that there's a
9 material need for this information from these litany of
10 clients. Cumulatively if they were even estimating, like
11 I said, it would only be 500 acres between about 100
12 stipulating de minimis parties.

13 THE COURT: If I delayed the compliance deadline
14 to say March 1, presumably after the court trial has been
15 wrapped up but perhaps before a decision has been
16 rendered, with a determination presumably to be made at
17 the end of the court trial as to whether the March 1
18 deadline has any relevance, doesn't that practically solve
19 the problem by just letting you and your clients put this
20 aside and out of mind for more than half a year?

21 MR. BLATZ: Yes, Your Honor. Other than the
22 numerosity of the stipulating clients would make it
23 difficult post the Phase 1 decision to get them done
24 immediately after that unless we're working on it the
25 whole time before, which is kind of counterintuitive.

26 THE COURT: No, I don't intend to be working on
27 it at all before March 1. I indeed could make an order
28 that you're to take no steps to gather information between

1 now and March 1, and the court will revisit what is a
2 reasonable deadline, if any, on March 1 so that it's clear
3 that you're not to be blamed if you don't get your
4 homework done in advance.

5 MR. BLATZ: Well, I don't rescind my argument
6 about the material nature of not needing the information
7 even past Phase 1. I do think that would be an
8 appropriate way to handle it if they are deemed to be
9 done.

10 THE COURT: Can you live with that, Mr. Melnick?

11 MR. MELNICK: Your Honor, I can live with that.
12 I think what Mr. Blatz told you is incorrect, though.
13 He's not -- his clients are not taking no side. They're
14 taking the City's side. And all the people that have not
15 taken the City's side are going to have to do initial
16 disclosures; right? So this is really about fairness
17 amongst parties with different views of this case.

18 THE COURT: No. These people capitulated, and
19 by capitulating, they avoid a nuisance. That to me in the
20 world of litigation doesn't sound like it's unfair.
21 That's just the consequence of surrendering early.

22 MR. MELNICK: Well, they didn't -- they didn't
23 allow defaults to be taken, right? They took a side.

24 THE COURT: They surrendered. They surrendered
25 and threw themselves in the arms of the City.

26 MR. MELNICK: Right.

27 MR. BLATZ: Your Honor, if I may. Ryan Blatz
28 again.

1 The clients that stipulated, and it's written in
2 there, they did -- the only stipulation that was available
3 was stipulating to the physical solution. The reality of
4 it was, it avoided the filing fee. It got them on the
5 sideline quickly. It's the most efficient way for a
6 de minimis user who wants to not have a default that
7 states that they have no extraction rights or surface
8 diversion rights on their property or they want to have
9 them in the future that was created for the efficiency
10 purpose of it.

11 But it's written specifically that -- and I
12 amended some of the language on the generic stipulation
13 specifically for this reason, that states they are
14 stipulating as long as their rights as a de minimis user
15 don't change, meaning they don't really need to do
16 anything, they just need to be present sufficiently not to
17 have a default taken.

18 Now, the way Ventura, and rightly so, wanted to
19 couch that in the stipulation --

20 THE COURT: I've heard enough on the issue.
21 Thank you, Mr. Blatz. The court will make an order that
22 the people who made a stipulation do not need to provide
23 initial disclosures. They don't need to take any
24 preparatory steps to be able to make initial disclosures
25 between now and March 1 of 2022. And the court on March 1
26 of 2022 will take up the question of whether there's any
27 reason at that time to put a burden on the people who
28 signed a stipulation to commence to gather the information

1 to provide initial disclosures. That will be in the order
2 you make today or notice of ruling, Mr. Hagerty.

3 MR. HAGERTY: Yes, Your Honor. Thank you.

4 THE COURT: Okay. Other new issues we need to
5 take up this afternoon. Mr. Hagerty?

6 MR. HAGERTY: That's all we have, Your Honor.

7 THE COURT: Mr. Melnick?

8 MR. MELNICK: No, Your Honor. Nothing else.
9 Thank you for your time.

10 THE COURT: No problem.

11 MR. OSIAS: Your Honor, David Osias again for
12 Mr. Bacon, the trustee of the Villa Nero Trust from Allen
13 Matkins.

14 For de minimis users who were worried about the
15 impact of the stipulation, because I haven't signed it,
16 and who are participating and my client is participating
17 through counsel, which is not a nominal expense, is it
18 necessary that our initial disclosures still occur before
19 the Phase 1 trial? And if so, to what purpose or can we
20 have the deadline moved and if you need a formal request.
21 But I'm wondering what's the relevance of imposing that
22 burden at this time for others?

23 THE COURT: Candidly, in my own mind, I don't
24 have a sentiment on the topic. Mr. Hagerty, do you have a
25 sentiment?

26 MR. HAGERTY: We don't think the information
27 from any of the de minimis users is going to be material,
28 but maybe what we could do is, I'm happy to speak with

1 Mr. Osias and maybe we can present that to the court on
2 the 19th with more background for the court.

3 THE COURT: Mr. Melnick, do you want to be heard
4 on the same issue?

5 MR. MELNICK: I think Mr. Hagerty's approach is
6 fine. And I think I don't have a problem with any
7 de minimis user having the same March 1 extension as the
8 stipulating parties.

9 THE COURT: Okay. So go bargain about it and
10 see what happens.

11 MR. HAGERTY: Yes, Your Honor. Thank you.

12 THE COURT: Okay. Remember to give me the
13 latest update on your default-o-rama when we get together
14 again.

15 MR. HAGERTY: Yes, Your Honor.

16 MR. KATZ: Your Honor, can I interject. This is
17 Eric Katz for the Department of Fish & Wildlife.

18 THE COURT: Yes, sir.

19 MR. KATZ: I just wanted clarity as to whether
20 the extension of the deadline or staying of the deadline
21 to provide initial disclosures for stipulating parties
22 applies only to de minimis parties who stipulate?

23 That seems implied in the discussion, but it --
24 I guess I wanted just to make sure if my assumption was
25 everyone else's assumption.

26 THE COURT: Well, it's an interesting point. I
27 recited that the archbishop of -- Roman Catholic
28 Archbishop of Los Angeles had been one of the stipulating

1 parties based on cemeteries or prep schools or Catholic
2 parishes. Are they a de minimis user in the aggregate?

3 MR. HAGERTY: I'm not currently aware, as we sit
4 here today, of any party other than the proposing parties
5 who have already made their initial disclosures. So
6 they've agreed to the stipulated judgment, but they've
7 already done their initial disclosures.

8 THE COURT: But that's all the five.

9 MR. HAGERTY: Correct. But I think everyone
10 else -- as I sit here today without it all in front of me,
11 but I believe they're all de minimis users, and I will
12 take a look at that weekend report on that in the status
13 conference report, Your Honor.

14 THE COURT: Even hypothetically the archbishop.

15 MR. HAGERTY: There are many property owners who
16 don't have a well.

17 THE COURT: Fair enough. If they take it out of
18 a city water main, that is de minimis.

19 MR. HAGERTY: That's right, Your Honor.

20 THE COURT: It's how much they take from the
21 city water main, that doesn't count.

22 MR. HAGERTY: That's right, Your Honor.

23 THE COURT: Got you. If it comes to a water
24 meter, that's irrelevant.

25 MR. HAGERTY: If they take from the stream or if
26 they have a well, that's the relevant discussion here.

27 THE COURT: Okay. Fair enough. Okay. Why
28 don't you take it up between now and July 19.

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Anything else, Mr. Hagerty?

MR. HAGERTY: No, Your Honor. Thank you.

THE COURT: Again, anybody else have any suggestions or issues we've got to take up this afternoon?

THE REPORTER: The court reporter would like the parties to email me their appearances. I put my address in the chat box.

THE COURT: Okay. So the court reporter, to repeat, has indicated she has put her address in the chat box, and she requests that if you want your appearance noted on the transcript, that you email her to confirm that you were here on this session this afternoon.

Okay. Mr. Hagerty, do you have what you need for notice?

MR. HAGERTY: Yes, Your Honor.

THE COURT: Court is in recess. You're free to go.

(At 3:28 P.M. the proceedings were adjourned.)

* * *

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 10 HON. WILLIAM F. HIGHBERGER, JUDGE
4

5 SANTA BARBARA CHANNELKEEPER, A)
CALIFORNIA NON-PROFIT CORPORATION,)
6) Case No. 19STCP01176
Petitioner,)

7)
8 vs.)

9 STATE WATER RESOURCES CONTROL)
BOARD etc., et al.,)
10 Respondents.)

11)
12 AND RELATED CROSS-ACTIONS.)
13)
14)
15)

16 I, DEBORAH MORIN, CSR NO. 11558, OFFICIAL
17 REPORTER PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF
18 CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY
19 CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 48, COMPRISE A
20 FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND
21 TESTIMONY TAKEN IN THE ABOVE-ENTITLED CAUSE ON JULY 6,
22 2021.

23 DATED THIS 15TH DAY OF JULY, 2021.
24

25 

26 CSR NO. 11558
27 DEBORAH MORIN, OFFICIAL REPORTER
28

[& - accumulation]

&	1702 2:23	300 1:19 2:23	777-3200 2:13
& 1:18,21 2:4,20 3:15 4:14 6:3,20 7:28 8:7 14:27 15:1 24:18,23 25:18 46:17	19 6:15,16 21:17 22:9 33:12 47:28	3024 31:2	798-2249 4:6
1	1991 12:13	31 8:26	8
1 20:20 21:8,10 31:17 40:16 41:23 41:24,25 42:7,14 42:17,23,27 43:1,2 43:7 44:25,25 45:19 46:7 49:19	19stcp01176 1:6 5:3,11 49:6	325-0658 4:16	8 7:21 9:22,24 10:1 14:13,28
10 1:3 5:5 49:3	19th 16:14,15,16 16:17 24:1 25:1 25:14 30:7 37:7 38:2 46:2	34 5:20	805 2:18 3:12 4:6
100 42:11	1st 39:28	35 16:26	832 32:9
1011 4:15	2	3:28 48:19	843 32:10,17,25,28 35:28 36:5,7
103 4:5	2 5:27	4	850 39:3
1050 3:11	2,000 29:16	415 2:13	879-0750 3:7
106 27:22	20,000 29:15	4205 4:21	8th 30:13
109 4:5	2006 4:23	425 2:12	9
11 36:16	2021 1:15 5:4 49:22,23	48 49:19	90013 2:24
11558 1:26 5:6	2022 44:25,26	4:30 23:26,27 37:28 38:1	90071 1:19
119 2:17	2030 32:6	5	916 3:23 4:16
12986 4:10	2034 36:6,7	5 40:21	92101 1:23 3:17
12th 15:11	20th 3:5	50 16:20	92626 2:5
13 36:11,13,15,15 36:15	21 29:25	500 42:11	93004 3:11
1300 3:22	210-7822 3:23	510 3:7	93023 2:18 4:6,10
14 22:21 30:5	211-1526 3:17	525-1327 1:23	94105 2:12
1400 2:5	213 1:20 2:24	6	94612 3:6
14th 37:27 38:7,10	22nd 4:15	6 1:15 5:4 49:21	95814 3:23
15 15:18 16:1,24 23:23	24 30:18,22 31:23 31:27	60 26:11 28:1,4	9:43 6:4
1515 3:5	244 25:26	600 3:16	a
15th 1:22 23:28 37:28 49:23	24th 34:2 37:14	611 2:5	ability 34:5
16th 23:27 38:1	25th 1:19 5:18	617-8100 1:20	able 12:5 24:13 42:5 44:24
17 16:26	269-6323 2:24	619 1:23 3:17	abrams 4:3
	26th 2:12	641-5100 2:6	absolute 41:25
	27 3:16	646-0767 2:18	absolutely 32:27 33:6 41:10
	2:10 5:8	650 4:11	accept 22:22
	2nd 5:25	655 1:22	acceptable 34:11
3	3	659-6800 3:12	access 14:23 15:1 34:23
	30 16:24 33:1	7	accommodated 13:6
		7 30:6	accumulation 29:15
		7050 49:25	
		70550 3:6	
		714 2:6	
		726-1111 4:11	

[accurately - backload]

<p>accurately 17:11 18:2 20:27 acre 40:21 acres 42:11 act 32:6,21 35:14 41:16 action 17:25 25:25 actions 1:11 49:11 active 41:17,19 adamant 31:7 add 10:25 16:21 added 14:28 34:15 additional 28:4 address 12:28 13:13 24:10 35:27 48:6,9 adds 16:26 adjourned 48:20 adjudicate 32:15 admission 12:8 advance 33:5 43:4 advice 21:5 advised 23:8 advocacy 11:19,20 11:24 advocate 33:18 afternoon 6:16 7:2 26:24 38:13 45:5 48:4,12 agencies 40:28 agency 41:2 aggregate 12:14 47:2 agr 4:19 agree 9:4,20 11:8 13:17 14:10 32:22 41:9 agreed 33:2 47:6 agreement 42:8 agreements 11:10</p>	<p>ahead 22:11,16 32:4,12 al 1:9 4:3 49:9 alameda 29:11 alerts 20:14 allegiances 18:28 alleging 32:14 allen 3:15 5:25 6:1 7:20 9:18 23:20 33:20 45:12 allenmatkins.com 3:18 alliance 18:12,13 18:15 allocations 19:9 allow 12:15 16:11 22:2 34:9,12 43:23 amended 44:12 analyses 8:8 analysis 8:4 analyze 21:9 andrew 4:26 angeles 1:2,19 2:24 5:4 30:19 31:3 46:28 49:2 49:18 angiolilo 4:19 annual 40:22 answer 19:22 20:21 35:28 anton 2:5 anxiously 19:14 anybody 14:23 15:25 24:18 25:6 37:23 48:3 anyway 21:3 apn 24:10 apparently 30:14 appeals 31:2</p>	<p>appearance 48:10 appearances 1:16 1:25 2:1,8 3:1 4:1 5:7 25:13 48:6 appeared 25:25,26 appearing 5:16 26:26 appears 21:13 applies 46:22 appointed 6:8 11:23 appointing 21:19 22:5 appointment 21:15 appreciate 11:8 33:11,18 approach 19:2 46:5 approached 31:9 appropriate 8:9 9:26 11:4 41:28 43:8 approved 40:17 archbishop 30:19 46:27,28 47:14 area 4:20 5:22 argue 11:1 arguing 13:15 37:21 argument 11:3,6 31:13,14 43:5 arguments 31:6 33:9 arms 43:25 articulated 39:10 asbestos 36:10 aside 42:20 asked 38:16,28 asking 20:28 24:4 24:6</p>	<p>aspect 37:24 aspects 17:21 21:9 27:16 asset 12:24 assistance 18:16 associated 29:6 assume 15:27 16:11 17:2 assumption 46:24 46:25 assumptions 39:4 assure 20:6 attached 15:7 attachments 15:20 attempting 39:8 attendance 25:14 attention 16:2 22:12 attorney 2:21,23 3:4,5,22 6:5,20 7:3,17 august 8:24,26,26 31:21 33:26,26 37:14 authorize 14:1 available 14:20 26:4 44:2 avenue 1:19 2:17 avoid 35:7 40:24 43:19 avoided 44:4 awaiting 19:14 aware 47:3 awful 15:12</p>
			b
			<p>back 8:5,18 12:26 14:12 15:27 16:2 18:9 25:4 30:7 background 46:2 backload 31:25</p>

[bacon - christopher]

<p>bacon 3:14 5:26 9:10 45:12</p> <p>bacon's 9:17</p> <p>bad 8:2 15:12</p> <p>baggerly 2:15,15 2:16,17 21:13 22:10,12,15,15,16 22:17 23:1 27:5 36:26 38:25</p> <p>balance 18:26</p> <p>bang 27:18</p> <p>banner 18:24</p> <p>barbara 1:5 5:1,11 49:5</p> <p>bargain 46:9</p> <p>bartholomy 30:20 30:20</p> <p>bartkiewicz 4:14</p> <p>based 19:16 47:1</p> <p>basically 24:23</p> <p>basin 12:11 13:17 40:28 41:1</p> <p>basins 17:28 18:20 25:28</p> <p>basis 40:22</p> <p>battle 36:13</p> <p>bay 11:6</p> <p>bbklaw.com 1:20 1:24</p> <p>bed 12:14</p> <p>behalf 7:17 26:26 40:7</p> <p>believe 5:21 9:25 13:9 38:28 39:9 47:11</p> <p>believes 8:9</p> <p>benefit 10:19</p> <p>best 1:18,18,21,21 20:9 22:24,25</p> <p>bet 17:18</p>	<p>better 18:23 38:6 38:9</p> <p>beyond 21:10</p> <p>big 14:2 30:5 31:27 38:5 39:19 40:15</p> <p>binder 14:4,5</p> <p>bit 17:15 18:3</p> <p>black 30:5</p> <p>black's 12:26</p> <p>blamed 43:3</p> <p>blanche 4:5</p> <p>blatz 4:4,5 28:20 39:10,18 40:3,6,6 42:21 43:5,12,27 43:27 44:21</p> <p>bliss 4:23</p> <p>board 1:9 3:3 5:2 5:12 17:17 24:17 25:16 49:9</p> <p>boat 12:19</p> <p>boil 15:21</p> <p>bottle 14:12,12</p> <p>boulevard 2:5</p> <p>box 3:6 48:7,10</p> <p>breaking 39:26</p> <p>breaks 39:28</p> <p>breathing 19:13</p> <p>breeding 4:19</p> <p>bridgett 2:11</p> <p>brief 23:11 25:3 33:17 37:6,19 38:6,10</p> <p>briefing 37:2</p> <p>briefs 11:4 33:7,11 38:11</p> <p>bring 19:26</p> <p>broad 9:12</p> <p>broadway 1:22 3:16</p>	<p>brought 16:2 18:27</p> <p>buenaventura 1:17 5:14</p> <p>build 11:25,26</p> <p>bulletin 25:16</p> <p>bunch 20:14 30:22</p> <p>burden 44:27 45:22</p> <p>burdens 40:4</p> <p>burdensome 41:13</p> <p>bureaucrats 19:20</p> <p>business 15:18 23:25 38:1,2</p> <p>buyer 27:27</p> <p style="text-align: center;">c</p> <p>c 12:22</p> <p>calendar 21:17 24:6 29:15,16</p> <p>california 1:1,5,19 1:23 2:5,12,18,20 2:21,24 3:4,6,11 3:17,20,23 4:6,10 4:15 5:4 13:20 35:13 49:1,5,18</p> <p>candidly 45:23</p> <p>canger 4:22</p> <p>capitulated 43:18</p> <p>capitulating 43:19</p> <p>caption 15:22 31:4</p> <p>cards 10:17 12:4</p> <p>career 20:1</p> <p>carlos 3:21</p> <p>carlos.mejia 3:24</p> <p>carrying 18:24</p> <p>carter 4:21 26:25 26:25 27:1,2,11,11</p> <p>case 1:6 3:10 5:1,3 5:27 11:3 12:13 14:19 16:4 19:24 23:26 24:11 25:13</p>	<p>25:15,16 29:10,11 31:3 32:20 36:10 36:17 39:9 41:5 42:3 43:17 49:6</p> <p>cases 12:1 30:26</p> <p>casitas 2:3 5:15 18:13,16,22,23,24 19:23 20:5 21:4 36:23,25</p> <p>catalyst 20:4</p> <p>catholic 30:19 46:27 47:1</p> <p>cats 41:22</p> <p>cause 6:13 49:21</p> <p>causing 8:20</p> <p>cautious 19:2</p> <p>ccp 31:1 32:8,10 32:25 36:6</p> <p>cemeteries 47:1</p> <p>certain 5:26 6:9,14 22:1 30:28</p> <p>certainly 7:15 9:1 10:2 13:17 28:25 34:14</p> <p>certify 49:19</p> <p>cetera 11:5</p> <p>chance 9:13 33:17 39:26</p> <p>change 11:10 44:15</p> <p>changed 42:4</p> <p>channelkeeper 1:5 5:1,11 49:5</p> <p>characterize 18:20</p> <p>characterized 18:3</p> <p>chat 48:7,9</p> <p>cheaply 41:6</p> <p>check 25:1</p> <p>christopher 1:18</p>
--	---	--	---

<p>christopher.pisano 1:20 circumstances 19:26 citation 5:20 city 1:17 4:13 5:14 5:15,19,24 6:9,12 6:17 9:20 10:26 11:19 13:27 16:5 18:15,25 19:13 20:10,15,23,25 21:6 22:8 23:4 24:24 27:6 28:3 28:11 31:3,5,8 32:2 33:16,22 34:12 37:10 38:6 43:25 47:18,21 city's 10:7 34:23 35:3,6 43:14,15 civil 32:6 35:22 claeysens 28:14 claim 14:23 clarification 38:16 clarity 46:19 claud 2:15,16 22:15 clause 34:16 clay 3:5 clear 26:7 37:13 43:2 clearer 13:6 clearly 13:12 19:12 client 17:11 20:12 24:8 45:16 clients 8:20 20:1 26:28 27:3 28:19 42:10,19,22 43:13 44:1 close 15:18 23:25 37:28</p>	<p>closely 18:5 closer 17:12 collateral 6:9 color 9:13 10:6 come 17:25 18:12 21:24 30:7 32:25 41:11 comes 9:2 32:9 47:23 coming 15:11 commence 44:28 comment 7:13 8:12,13 9:20 21:12 23:23 25:22 commentary 9:13 10:6 comments 10:15 10:26 11:14 committee 19:10 common 12:3,6,7 17:3 commonly 5:14 company 3:9 28:13 complainant 1:17 complaining 30:12 complete 42:7 compliance 42:13 complicated 37:3 40:26 comprise 49:19 con 21:22 conceived 18:10 27:7 concepts 18:6 concern 10:14 13:3 27:20 34:4 34:23,25 35:4,5 40:4 concerns 28:22</p>	<p>concur 32:22 concurrent 35:7 concurrently 33:23 condition 35:7 conditions 9:7 confer 13:2 34:1 34:11 conference 6:11 47:13 confidential 35:8 confidentiality 34:15 confirm 48:11 connection 13:15 cons 33:9 35:26 consensus 11:26 consequence 43:21 consistent 32:28 constituents 18:19 18:19 constitutes 16:4 constituting 16:24 consulting 24:12 consummate 27:28 consumptive 26:6 contact 13:4 continued 1:25 6:13,15,16,22 26:19 control 1:8 3:3 5:12 49:8 conversations 7:8 corporation 1:5 4:9 49:5 correct 7:4 12:4 14:21,22 20:19 27:1 37:1 47:9 49:20</p>	<p>cosgrove 2:4 5:15 17:10,15,19,28 18:17 19:7,28 21:3,8 cosgrove's 20:12 cost 40:11,22 costa 2:5 costs 19:9 24:19 41:12 couch 44:19 counsel 1:16 2:1 5:26 36:25 45:17 count 29:27 47:21 counter 11:28 counterintuitive 42:25 counterweight 21:22 county 1:2 2:10 4:22 12:13 31:3 49:2,18 couple 30:4 35:10 course 13:11 21:19 court 1:1 5:10 6:8 6:23 7:15,26 8:2 8:18,25 9:2,5 10:3 10:4,17,22 11:13 11:14,23,28 12:20 12:26 13:26 14:1 14:4,9,16,23,24 15:4,5,10 16:8,11 16:13,16,20 17:1 17:18,27 18:7 19:4,17 20:10,23 20:28 21:12,21 22:5,11,14,16,24 23:2,8,14,21,25 24:14,16 25:4,7,22 26:5,14,23,28 27:4 27:17 28:6,18,21</p>
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[court - diverging]

<p>28:25,26 30:4,11 30:18 31:2,19 32:1,4,11,18,22 33:4,7,15 34:3 35:10,21 36:4,22 37:7,9,18,23 38:4 38:20,23,27 39:1,2 39:5,13,25 40:3 42:13,14,17,26 43:1,10,18,24 44:20,21,25 45:4,7 45:10,23 46:1,2,3 46:9,12,18,26 47:8 47:14,17,20,23,27 48:3,5,8,8,16,16 49:1,17 court's 5:19,28 29:2,4,23 30:23 courtroom 30:12 craig 26:26 crawford 30:21 create 25:27 created 44:9 creek 12:14 criminal 25:10 critical 13:12 criticism 20:24 criticize 22:3 criticizing 21:6 cross 1:11,17 3:19 4:8 6:15 29:1,16 49:11 crowd 27:19 crummy 35:15 crushed 29:10,11 29:12 csr 1:26 5:6 49:16 49:26 culling 17:25 cumulatively 40:24 42:10</p>	<p>current 6:27 10:8 11:15 13:2,28 20:3,11,21 26:22 34:9 currently 31:15 47:3 customer 18:25 cv 35:16</p> <hr/> <p style="text-align: center;">d</p> <hr/> <p>d 1:22 data 29:9 40:27 41:3 database 25:24 date 6:4 8:25,27 34:21 37:20 38:9 dated 49:23 dates 37:16 david 2:4 3:16 4:25 23:19 33:20 45:11 day 38:2 49:23 days 33:1 de 40:19,20 41:7 41:14,16 42:12 44:6,14 45:14,27 46:7,22 47:2,11,18 deadline 33:27 42:13,18 43:2 45:20 46:20,20 deal 34:20 dealing 32:7 dealt 20:20 debate 31:19 deborah 1:26 5:6 30:21 49:16,26 decide 33:12 decision 9:28 18:17 19:18,23,25 37:7 42:15,23 decisions 20:5,7,8</p>	<p>declaration 34:13 34:15 35:15 declarations 15:20 declared 20:11 dedication 32:8 deemed 41:14 43:8 deep 36:12 default 30:9 44:6 44:17 46:13 defaults 43:23 defendant 3:19 29:1 defendants 4:8 6:15 29:16 36:11 36:13,15,15,17 40:7 definitely 42:8 delayed 42:13 deleted 7:22 deleting 10:24 deletions 14:15 deliberate 19:2 delicate 18:26 delineating 33:9 demonstrative 5:21 department 1:3 2:20,21 3:19,20 5:5 8:7,10 46:17 49:3 deposition 35:17 deputy 2:23 3:5,22 described 6:6 description 29:3 designate 36:24 38:5 designating 36:19 designation 35:24 35:25 36:20</p>	<p>desire 11:1 determination 42:16 determine 11:6 dictionary 12:27 diego 1:23 3:17 different 7:27 16:23,25 19:1 29:1 36:9 43:17 difficult 42:23 directly 32:19 disclose 12:5 21:1 32:16 33:1 36:2 disclosed 36:2 discloses 33:22 disclosure 29:21 30:28 32:9 35:14 36:1 38:8,9 disclosures 38:28 39:6 41:2,19,27 43:16 44:23,24 45:1,18 46:21 47:5,7 discovery 29:18 32:6,21 35:14 discuss 20:18 discussed 23:5 discussion 12:21 26:19 46:23 47:26 discussions 17:16 19:4 27:12,15 disparity 11:22 dispatch 24:1 35:25 displeased 6:27 district 2:3,10 5:15 18:14,16 19:23 21:4 28:12 28:12 30:6 36:23 diverging 22:7</p>
--	--	---	--

<p>diversion 44:8 docket 25:10 28:26 29:4,7 document 5:18 6:6 7:7,18 9:11,23,24 11:18,19,20,24,25 14:20,24 15:2 16:1 19:13 23:6 29:3 documents 28:21 28:27 29:24 dog 30:5 33:8 dogs 38:5 doing 8:8,16 30:8 41:2,18 doj.ca.gov 2:25 3:7,24 doubtless 24:28 draft 7:19,21,24 9:20,23 10:7 11:9 11:14 13:28 14:10 14:28 17:20 20:11 drive 4:10 drum 27:18 duchesnea 4:20 due 23:15 25:9 29:9 38:18</p>	<p>educating 15:12 efficacy 7:14 10:15 efficiency 44:9 efficient 44:5 efficiently 41:6 either 13:5 35:24 37:24 element 40:11 41:13 else's 12:24 36:20 46:25 elvira 30:20 email 48:6,11 endeavor 39:19 enemy 39:15 energized 6:23 energy 4:20 engaged 17:16 enjoy 12:20 ensure 42:3 entertain 7:13 entire 9:24 entirely 32:24 entitled 21:1 36:20 49:21 entry 28:28 equal 11:21 eric 2:22 6:26 46:17 eric.katz 2:25 erica 4:3 esq 1:18,22 2:4,11 3:10,16 4:5,9,14 esquire 30:25 essentially 21:25 32:13 39:8 establishing 20:19 estimating 42:10 et 1:9 4:3 11:5 32:9 49:9</p>	<p>event 5:24 19:17 events 29:15,16 everybody 14:18 15:1 36:20,28 exactly 10:18 12:14 13:1 example 29:7 31:26 exchange 31:7,15 31:18,20,23,26 34:21 36:19 exciting 17:18 execute 27:24 exemplary 22:4 exertions 8:20 exhibit 31:22 exhibits 14:7 15:20 exists 10:8 expect 36:3 expedite 29:28 expense 45:17 experience 29:13 experienced 25:9 expert 6:8 11:23 21:15,19,20,22,23 21:26 22:4,6 24:12,19 30:27 31:11 32:16 33:22 34:14,19,22,23 35:4,9,19 36:19,24 experts 20:24 21:4 21:9,28 24:5 29:21 30:25 31:12 31:15 32:9 34:10 34:17 35:14 36:14 explanation 39:1 express 15:1 24:18 24:23 extended 8:12</p>	<p>extension 39:28 46:7,20 extent 10:17 extra 38:5 extraction 44:7 eyeballing 29:4</p> <p style="text-align: center;">f</p> <p>f 1:3 5:5 12:22 49:3 fact 33:18 facts 18:27 36:12 fair 21:24 24:27 33:13 47:17,27 fairly 25:13 fairness 43:16 fan 20:15 27:14 far 14:21 29:12 fascinating 19:5 fashion 9:10 11:7 20:22 fcoplaw.com 3:12 february 39:28 40:13 federal 35:22 fee 25:8 44:4 feed 40:21 feel 7:5 15:15 fell 12:16 fellows 25:28 fence 17:10 ferguson 3:10 fight 27:6 33:8 file 6:3 7:4 14:27 15:1,8,28,28 16:15 16:16,17 23:10,14 23:27 24:17,23 25:18 29:9 38:16 38:20,24 filed 5:19,27 6:1 15:18 16:22,24,25 23:7,13 24:1</p>
e			
<p>e 2:15,17 4:23 24:20,25 earlier 8:11 31:27 32:5,27 33:26 34:2 35:6 38:9 early 8:28 33:26 40:23 43:21 easier 14:11 east 27:3,7 edit 22:25,27 edits 9:11,17 educated 30:26</p>			

[filed - groups]

<p>28:21,24,27 30:2 37:28 38:1 filing 5:25,25 9:18 15:5 22:22 23:24 28:18 34:8 44:4 filings 6:9,21 7:13 16:4 28:19 41:21 finalizing 8:13 find 5:28 12:6 22:2 22:18 24:25 25:17 34:26 findings 7:22 10:24 14:13 fine 31:9 39:23 40:2 46:6 fingers 14:21 fire 12:8 13:11 first 12:27 16:9 21:14 29:20 30:27 31:6,20 33:17 34:24 35:11 37:5 37:10,19 39:18,21 fish 2:20 6:20 7:27 8:7,10 46:17 fistfight 40:5 five 16:23,25 26:8 28:4,10,15 29:16 47:8 flat 42:1 floor 1:19,22 2:12 3:5 30:13,13 flow 8:3,8,10 flows 5:23 18:21 fly 33:10 following 13:26 24:16 follows 35:16 force 19:18,25 forces 27:9 fore 18:27</p>	<p>foregoing 49:19 forensic 21:5,27 forgot 12:11 form 11:15 27:19 formal 45:20 formally 25:8 forward 13:8 26:10 34:10 found 12:14 foundation 28:14 foundational 20:18 francisco 2:12 frank 18:28 frankly 14:26 19:22 20:17 freaked 29:17 free 48:16 friday 23:13 37:19 38:24 friendly 24:9 front 6:28 11:2 15:17 25:18 32:12 47:10 fruition 19:26 full 36:2 40:12 49:20 fullness 15:15 21:24 fully 9:25 functionally 36:14 further 6:11 9:8 10:23 27:15 furtherance 24:20 future 39:22 44:9</p>	<p>garrison 4:8,8,9,9 6:5 7:17,20,23 9:9 11:13,16 13:5,13 14:19 18:8 21:16 21:20 22:6 23:6 27:4,17,20 28:7,8 30:1,24 38:17,23 garrison's 23:11 garrisonlawcorp... 4:11 gather 42:28 44:28 general 2:21,23 3:5,22 32:6,20 general's 7:3 generally 6:6 general's 3:4 generic 44:12 genie 14:11 genius 35:15 geographic 17:27 geography 24:9 getting 7:12 8:3 9:6 10:1,17 14:25 17:2 19:20,22 36:28 37:16 40:9 41:3 giddeaux 8:19,21 gina 4:19 gist 15:24 give 14:9 16:5 22:24,25,27 23:26 29:8 30:8 35:17 38:2,23 39:27 46:12 given 10:26 22:7 26:15 28:28 gives 12:2 35:18 giving 39:20 gleaned 29:23</p>	<p>glimpse 31:11 go 15:7,27 16:2 22:11,16 25:13 28:25 30:27 31:6 32:4,12 33:16 34:10,24 35:6 36:27 37:10 46:9 48:17 goading 19:19 goes 28:6 going 13:16,26 14:1,24 15:27 16:2,14 17:3,4,13 18:8,12,13 19:17 19:26 21:6 22:19 25:25,26 26:1,3 29:18,20 30:14,17 31:16,24 32:20 34:27 35:23 36:23 36:24 37:5,18,26 41:10,11,12,24 43:15 45:27 good 7:2 8:2 12:2 21:17 25:19 30:16 35:20 39:15 gotten 14:20 17:12 govern 32:20 grand 1:19 greatest 7:8 gregg 4:8,9 6:5 gritty 40:10 groaning 30:15 ground 12:3,6,7 groundwater 8:17 12:16,18 32:8,15 41:1,16 groundwaters 12:13 group 27:3 groups 26:10</p>
	g		
	<p>gaggle 30:18 gamble 3:15 game 6:20 7:28 gap 33:25</p>		

<p>gsgarrison 4:11 guess 8:19,20 14:26 19:19 27:2 31:19 34:3 46:24</p>	<p>46:3 hearing 16:18 34:9 help 18:1,8 20:24 24:12 30:3 34:26 34:27</p>	<p>hopeful 11:10 hopefully 5:28 36:2 hoping 7:7 26:19 horizon 20:4 huge 29:9 hundred 14:6 hurt 41:9 hypothetically 47:14</p>	<p>infer 14:18 inform 18:1 information 21:1 36:25 41:11 42:9 42:28 43:6 44:28 45:26 informed 6:12 initial 38:28 39:6 41:18,26 43:15 44:23,24 45:1,18 46:21 47:5,7</p>
<p>h</p>	<p>helpful 24:15 heretofore 5:7 hide 12:23 high 22:28 highberger 1:3 5:5 49:3 hindered 21:14 hired 21:4 35:15 hiring 21:28 holly 4:14 20:10 32:2 home 27:23 homebuyer 27:22 homework 43:4 hon 1:3 5:5 49:3 honor 7:2,10 8:1 8:22 9:19,27 10:11,21,26 11:2,9 11:16 12:25 13:18 13:25 14:3,7,22 15:3,9 16:6,7,19 16:28 17:15 18:18 20:13 21:9 22:10 22:17 23:3,18,19 26:9,17,25 27:11 29:28 30:10,17 31:8,28 32:24 33:13,21 34:16 36:21 37:1,22 38:3,14,16,21,26 39:12,16 40:6,9 41:22 42:21 43:11 43:27 45:3,6,8,11 46:11,15,16 47:13 47:19,22 48:2,15</p>	<p>idea 6:27 7:9 21:17 34:8 35:2 37:2 38:4,8 immediate 26:3 immediately 42:24 impact 18:21 45:15 implicate 36:12 implied 46:23 important 19:23 41:15,17 imposing 45:21 improved 13:11 inaudible 31:28 inch 14:5 include 15:22,23 incomplete 15:13 inconsistent 31:1 32:26 incorrect 43:12 increase 12:17 independent 21:4 21:15,20,21,26 indicated 26:21 30:23 38:18 40:15 48:9 indicates 31:23 individuals 27:15 41:12,26</p>	<p>input 11:17 19:14 19:15 insofar 36:5 intelligently 20:27 intend 33:10 42:26 interconnection 5:22 interest 41:4 interested 9:27 17:24 24:18 interesting 46:26 interests 22:7 interim 25:24 40:1 interject 46:16 internal 20:8 internally 17:16 interplay 12:12 interpreted 31:2 interviewing 27:21 invite 20:1 invoke 21:10 involved 14:18 41:21 irrelevant 47:24 issue 9:21,28 11:17,24 12:2 33:17,22 38:10,22 38:27,27 39:11 40:18 44:20 46:4</p>
<p>habit 19:28 hagerty 1:22 5:13 5:20 9:16,19,20 10:10,21 12:25,28 14:3,6,21,22 15:3 15:9 16:5,6 23:3,4 23:18 24:22 25:18 25:20,21 26:5,8,17 28:7,8 29:28 30:10,16,22 31:7 32:22,24 33:6,13 35:12,27 36:21 37:1,13,22 38:2,3 38:13,14,21,26 39:5 45:2,3,5,6,24 45:26 46:11,15 47:3,9,15,19,22,25 48:1,2,13,15 hagerty's 36:4 46:5 half 16:26 42:20 hand 8:5 handle 43:8 handled 12:13 hanson 2:11 hansonbridgett.c... 2:13 happen 31:21 happens 46:10 happy 23:12 28:17 30:1,3 33:14 36:6 45:28 haystack 16:3 hear 27:26 35:11 heard 9:5 25:22 39:14 41:24 44:20</p>	<p>i</p>		

<p>issued 8:4 issues 10:16 15:15 17:4 20:17,18 21:8 31:11,16 38:15 45:4 48:4 issuing 17:20 item 38:17 items 5:20</p>	<p>katz 2:22 6:26 7:27 8:1,7 9:12 10:5 19:19 39:13 46:16,17,19 kdemorest 3:18 keep 11:5 14:11 20:17 35:8 kicking 19:27 kimball 3:11 kind 9:3,13,28 13:7 17:8 22:5 24:25 29:5 35:18 42:25 know 10:11 14:14 14:25 16:14 17:13 17:22 19:8 24:5,8 26:9 27:27 30:11 34:27,28 36:23 37:5 42:5 known 28:14 knows 11:9 konrad 30:21 krieger 1:18,21 kronick 4:14</p>	<p>latest 46:13 latitude 23:26 law 2:22 3:21 4:4 4:9 12:26,27 13:21 lawfulness 29:20 lawyer 6:19 26:23 35:15,18 lawyers 5:16 6:1 24:7,27 leadership 18:23 lean 36:6 leave 14:13 22:28 23:10 25:19 38:16 leck 3:15 led 18:13 legal 12:23 legislative 31:1 legislature 35:20 lesser 22:28 letting 42:19 level 41:10 liberty 10:11 likes 36:8 likewise 6:3 liking 17:12 lily 30:20 limited 25:11 limits 11:4 38:10 list 24:9,14 25:13 28:3 30:1 listen 25:7 listening 40:14 litany 40:7 42:9 literally 41:15 litigants 41:18,20 litigating 15:14 litigation 10:18 12:4,5 19:1 20:4 20:20 34:24 43:20</p>	<p>little 12:6 17:21 18:3 live 43:10,11 lives 41:6 living 19:12 liz 30:21 llc 4:20,21 30:5 llp 1:18,21 2:4,11 3:10,15 loa 4:23 loading 29:17 loads 29:8 lodge 13:28 14:16 lodged 14:1,24 lodgement 6:7 lodging 14:17 15:6 logic 30:28 long 13:21 20:20 22:21 23:27 35:6 44:14 longer 11:12 look 9:11,23,26 22:7 28:8,27 31:11 47:12 looked 10:12 looking 18:5 20:7 27:5,8 31:16 los 1:2,19 2:24 5:4 30:19 31:3 46:28 49:2,18 lot 17:23 40:24 41:22 lower 8:11 lynn 30:20</p>
j	l	m	
<p>jacobson 4:14 20:10,13,26 31:28 32:2,2,4,5,13,23 33:8,11 36:7 jacobson's 33:16 james 30:20 jargon 12:23 jason 4:22 jeanne 16:7,10 jeffrey 3:14 5:26 join 27:8 joining 10:22 26:24 joseph 30:20 judge 1:3 49:3 judges 20:1 judgment 25:19 28:28 47:6 july 1:15 5:4,25,27 6:15,16 15:18 16:1 21:17 22:9 23:23 33:12 47:28 49:21,23 jumping 20:17 june 5:18 29:25 30:5,6 justice 2:21 3:20 11:21</p>	<p>l 3:16 l.a. 12:11 28:26 lack 18:10,22 lacourtconnect 2:8 3:1 4:1,18 5:16 6:21 10:23 25:12 laid 6:25 32:17 land 3:21 4:24 language 12:8 44:12 large 16:3 26:6 larger 25:14 31:12 late 31:21 33:23 33:26</p>	<p>m 1:18 2:22 ma'am 32:12 macdonald 4:10 madam 12:21 mail 24:20,25</p>	
k			
<p>k 30:21</p>			

[main - number]

<p>main 34:4 47:18 47:21 maintain 42:2 majority 26:20 making 20:5 mallory 3:15 manageable 14:7 management 19:10 30:13 40:28 41:2,16 map 25:27 39:3 marc 3:4 7:3 marc.melnick 3:7 march 30:18,22 42:14,17,27 43:1,2 44:25,25 46:7 mark 14:14 39:16 marked 7:18,21 11:9 14:10,28 market 2:12 martin 4:25 30:21 material 42:9 43:6 45:27 math 16:27 matilija 3:9 27:22 28:13 matkins 3:15 5:25 6:1 7:20 9:18 23:20 33:20 45:13 matter 20:16 27:16 mean 13:1,14 32:24,28 40:12 meaning 44:15 means 10:1 13:19 13:25 meant 27:28 mediation 12:5 meet 13:2 33:27 34:1,10</p>	<p>meiners 28:12 mejia 3:21 39:14 melnick 3:4 6:20 6:26 7:2,3 8:5,15 8:18,22,27 9:4,12 19:19,20 39:13,16 39:17,26 40:2 43:10,11,22,26 45:7,8 46:3,5 mentioned 5:7 23:5 mesa 2:5 message 24:17,17 metcalf 2:11 meter 47:24 metzger 30:25 mid 33:26 mind 42:20 45:23 minded 21:24 27:15 minimis 40:19,20 41:7,14,16 42:12 44:6,14 45:14,27 46:7,22 47:2,11,18 mining 12:14 minor 24:9 misleading 11:20 misses 12:19 misuse 25:9 moaning 30:15 mode 17:23 18:4,5 model 8:23 modeling 8:17 modify 17:21 moment 14:14 22:13 29:19 32:11 monday 14:17 15:11 money 40:24 41:20</p>	<p>month 8:23,28 37:14 months 39:22,27 morin 1:26 5:6 49:16,26 morning 6:4 16:15 16:16 motion 21:14,16 23:7 38:24 move 8:28 41:5 moved 45:20 moving 13:8 37:14 multiple 10:12 17:5 29:15 40:15 municipal 2:3 mutual 3:9 28:13 31:7,14,17,20,22 31:26 33:3,5 34:21 36:19 37:4 37:10,15,20 mutuality 36:8 37:24 mutually 33:1 36:2</p> <hr/> <p style="text-align: center;">n</p> <hr/> <p>n 3:4 nah 35:23 name 5:1 names 29:5 nathan 2:11 natsis 3:15 natural 2:22 nature 10:13 22:4 43:6 near 14:11 necessarily 21:22 necessary 15:6 33:27 39:9,11 41:10,25 45:18 necessity 40:16</p>	<p>need 14:23 19:24 23:8 33:7 34:27 34:27 37:9,27 39:2 41:26 42:9 44:15,16,22,23 45:4,20 48:13 needed 7:5 8:10 42:6 needing 43:6 needs 6:17 39:22 nero 3:14 33:21 45:12 neutral 11:25 21:23 neutrals 12:2 new 5:17 16:1 23:6 27:23,26 35:2 45:4 news 8:2 nia 3:10,12 nimbleness 22:2 nitty 40:10 nmetcalf 2:13 nominal 45:17 non 1:5 49:5 nonunilateral 29:21 noon 16:17 23:28 normal 11:7 north 4:5 note 21:13 23:15 noted 48:11 notes 39:12 notice 14:17 15:6 16:5 38:2 45:2 48:14 nuisance 43:19 number 5:3 16:21 18:28 24:10,27 28:27</p>
--	---	---	--

[numerosity - phases]

<p>numerosity 42:22</p>	<p>46:12 47:27,27</p>	<p>p</p>	<p>parts 36:7</p>
<p>o</p>	<p>48:8,13</p>	<p>p 30:21</p>	<p>party 13:3 26:10</p>
<p>o 30:9 46:13</p>	<p>once 28:27</p>	<p>p.m. 5:8 23:26,27</p>	<p>29:1 30:5 32:14</p>
<p>oakland 3:6</p>	<p>ones 30:2</p>	<p>37:28 38:1 48:19</p>	<p>37:5 47:4</p>
<p>oaks 28:12</p>	<p>ongoing 13:7</p>	<p>p.o. 3:6</p>	<p>passive 18:4</p>
<p>obgma 41:1</p>	<p>open 27:14 39:11</p>	<p>page 1:25 11:4</p>	<p>paterson 3:10</p>
<p>object 10:2 21:2</p>	<p>opened 8:12</p>	<p>14:10,15,15 15:5</p>	<p>patricia 2:15,17</p>
<p>37:24,25,26,26,27</p>	<p>opinions 32:16</p>	<p>15:23 16:23,25</p>	<p>4:24</p>
<p>objected 34:2</p>	<p>opponents 17:14</p>	<p>23:10 38:10</p>	<p>patterson 26:26</p>
<p>objecting 10:27</p>	<p>opportunity 10:5</p>	<p>pages 14:6 15:19</p>	<p>pause 25:3</p>
<p>17:6</p>	<p>21:18</p>	<p>15:22,25 16:21,24</p>	<p>pay 40:25</p>
<p>objection 7:11 9:9</p>	<p>opposed 38:8</p>	<p>16:25,26,26 17:2</p>	<p>paying 25:8 42:1</p>
<p>9:10 15:26 37:16</p>	<p>opposition 6:23</p>	<p>22:21,23 23:24</p>	<p>peace 29:26 39:26</p>
<p>objections 6:6,25</p>	<p>23:7,14,16 24:4</p>	<p>49:19</p>	<p>39:28 40:12</p>
<p>7:23 10:13,19</p>	<p>38:18</p>	<p>paper 7:5</p>	<p>people 17:5 18:7</p>
<p>15:13,19 16:21,23</p>	<p>order 6:13 18:1</p>	<p>papers 7:20 33:21</p>	<p>19:18 20:6 24:25</p>
<p>16:25 17:3,9</p>	<p>26:11 34:16 35:22</p>	<p>35:3</p>	<p>25:10,11,27 27:4,8</p>
<p>22:21,23 23:24</p>	<p>42:27 44:21 45:1</p>	<p>paperwork 5:17</p>	<p>28:1 29:14 31:24</p>
<p>obligated 15:28</p>	<p>ordered 39:5</p>	<p>paraphrase 35:19</p>	<p>34:19 35:8 40:5</p>
<p>observing 25:10</p>	<p>orders 32:18</p>	<p>parishes 47:2</p>	<p>43:14,18 44:22,27</p>
<p>obvious 18:11</p>	<p>original 29:26</p>	<p>parks 3:19</p>	<p>perceive 22:8</p>
<p>obviously 21:16</p>	<p>orr 3:10</p>	<p>part 9:24 26:9</p>	<p>percent 16:20</p>
<p>occur 45:18</p>	<p>osias 3:16 10:22</p>	<p>29:2</p>	<p>perception 26:5</p>
<p>offer 25:21</p>	<p>10:25 14:19 23:19</p>	<p>participate 11:11</p>	<p>perfect 39:14</p>
<p>offered 25:6</p>	<p>23:19,22 24:2,16</p>	<p>participating</p>	<p>perfectly 39:23</p>
<p>office 2:21 3:4 7:3</p>	<p>25:15 30:24 33:20</p>	<p>24:28 25:11 45:16</p>	<p>40:2</p>
<p>official 1:27 49:16</p>	<p>33:20 36:27 45:11</p>	<p>45:16</p>	<p>perfects 13:22</p>
<p>49:26</p>	<p>45:11 46:1</p>	<p>particular 17:27</p>	<p>permissible 13:27</p>
<p>offline 24:22</p>	<p>osias's 26:1</p>	<p>19:19</p>	<p>person 1:16 2:1</p>
<p>oftentimes 30:27</p>	<p>ossentjuk 4:25</p>	<p>parties 7:13 10:10</p>	<p>21:24</p>
<p>oh 17:18 29:25</p>	<p>ought 10:5 11:14</p>	<p>10:12,15 11:22</p>	<p>perspective 34:24</p>
<p>36:23</p>	<p>14:10,26</p>	<p>18:1 20:19 25:22</p>	<p>peter 4:20</p>
<p>ojai 2:18 4:6,10,13</p>	<p>outlay 40:22 41:11</p>	<p>25:26 26:8,11,13</p>	<p>petitioner 1:6 49:6</p>
<p>20:10,23 27:3,7,13</p>	<p>outright 7:22</p>	<p>28:9,10,15,16,23</p>	<p>phase 17:24 20:20</p>
<p>32:3 41:1</p>	<p>overloaded 41:1</p>	<p>29:5,9 31:10,12,15</p>	<p>21:8,10 31:17</p>
<p>okay 5:10 14:9</p>	<p>owners 12:9 18:9</p>	<p>32:18 33:1,3 36:3</p>	<p>32:8 39:21 40:16</p>
<p>15:4,10 18:11</p>	<p>22:6 47:15</p>	<p>37:15 39:5,7</p>	<p>41:23,24,25 42:7</p>
<p>20:28 25:4 30:4</p>	<p>ownership 13:24</p>	<p>40:14,15 41:4</p>	<p>42:23 43:7 45:19</p>
<p>30:18,25 32:11</p>	<p>owns 13:21</p>	<p>42:12 43:17 46:8</p>	<p>phased 33:5</p>
<p>33:13 37:13 38:12</p>		<p>46:21,22 47:1,4</p>	<p>phases 39:22</p>
<p>38:21 45:4 46:9</p>		<p>48:6</p>	

[phonetic - purpose]

<p>phonetic 8:19</p> <p>phrased 32:27</p> <p>physical 6:7,24,28 7:12,24 9:6,14 10:7,16 11:2,15 12:7,19 13:3,7,28 15:14,27 16:12 17:12 18:10 19:9 20:11,16 21:6 22:20 26:7,10,12 26:22 27:6,21,25 27:27 28:2,5,9 40:10 44:3</p> <p>pick 27:5</p> <p>piece 12:23</p> <p>pied 27:9</p> <p>piper 27:10</p> <p>pisano 1:18 5:13 9:16 25:18 31:8,8</p> <p>pitch 39:19</p> <p>plain 24:24</p> <p>plaintiff 21:26 29:26 30:27 36:10 36:14,16</p> <p>plaintiff's 21:23</p> <p>plans 33:4</p> <p>play 32:25</p> <p>players 31:27</p> <p>please 24:20 30:8</p> <p>plenty 22:23</p> <p>plus 14:6 29:16</p> <p>pocket 36:12</p> <p>point 6:18 7:26 8:4 12:19 13:11,17 16:13 17:14 18:17 19:24,25 20:27 21:18 23:4 26:1 32:19,23 38:15 40:23 46:26</p> <p>points 12:28 13:1 13:5 22:28,28</p>	<p>23:11 35:11</p> <p>poli 2:17</p> <p>policy 35:26</p> <p>polite 12:23</p> <p>political 18:28</p> <p>poll 17:8</p> <p>pool 24:11</p> <p>pop 20:14</p> <p>portion 42:3</p> <p>posed 10:16</p> <p>position 9:22 11:27,27,28 15:16 22:1 27:13 33:16 33:19 36:5 37:5</p> <p>positions 18:2</p> <p>possibility 7:16</p> <p>possible 8:28 21:5 23:12 41:6</p> <p>post 24:17 26:1 41:25 42:23</p> <p>posted 26:3</p> <p>potential 17:24</p> <p>potentially 17:20 40:17</p> <p>power 19:10</p> <p>practical 30:28 40:3</p> <p>practically 42:18</p> <p>precise 36:5</p> <p>precondition 27:23</p> <p>prefer 11:21</p> <p>prejudice 15:14</p> <p>prejudicial 34:22</p> <p>prep 47:1</p> <p>preparatory 44:24</p> <p>prepared 34:14 35:16</p> <p>present 4:18 13:10 44:16 46:1</p>	<p>preserved 32:26</p> <p>pressure 20:1</p> <p>presumably 24:27 42:14,16</p> <p>pretty 19:11 37:4</p> <p>preview 19:8</p> <p>previously 8:25 15:26 28:21</p> <p>principal 28:4</p> <p>principles 41:16</p> <p>printed 5:18</p> <p>prior 16:4,4 23:15</p> <p>privilege 21:11</p> <p>privileged 19:6 21:1</p> <p>pro 1:27 2:16 21:22 49:17</p> <p>probably 18:14 19:5 26:2 37:10</p> <p>problem 39:20 40:8 42:19 45:10 46:6</p> <p>problems 21:14 25:9</p> <p>procedural 20:16 21:14</p> <p>procedure 35:14 35:23</p> <p>proceeding 25:7</p> <p>proceedings 1:14 48:19 49:20</p> <p>process 8:13 10:18 13:7 30:3,16 31:16</p> <p>processes 20:8 30:14</p> <p>prodding 19:27</p> <p>product 22:27</p> <p>professionally 22:3</p>	<p>profit 1:5 49:5</p> <p>progress 8:3 9:3</p> <p>proof 15:6,23</p> <p>properly 19:16</p> <p>property 12:9 13:23 18:9 22:6 24:8 44:8 47:15</p> <p>proponents 16:12</p> <p>proportionate 18:14</p> <p>proposal 20:25</p> <p>propose 24:16</p> <p>proposed 6:7,24 7:22 8:25 9:11 12:7,19 15:13 20:16 27:24 28:2 28:5 33:28 34:12</p> <p>proposing 26:8 28:10,15 47:4</p> <p>pros 33:9 35:26</p> <p>protected 34:25</p> <p>protection 2:10</p> <p>protest 37:12</p> <p>provide 9:13 14:17 16:12 20:24 21:5 35:23 39:1,6 44:22 45:1 46:21</p> <p>provided 41:8</p> <p>provision 36:8</p> <p>provisions 31:1 32:20</p> <p>public 8:12,13 15:8 28:26 29:2 30:24</p> <p>publication 6:14</p> <p>pulled 6:3</p> <p>purchasing 27:23</p> <p>pure 13:24</p> <p>purpose 44:10 45:19</p>
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[purposes - right]

<p>purposes 11:3 15:4 push 18:9 pushing 19:24 put 6:28 11:2 12:4 19:2 41:12 42:19 44:27 48:6,9 putting 15:16 26:10 40:4</p>	<p>readily 14:20 ready 27:5 reality 44:3 really 6:10 7:24 10:14 11:5 37:3,4 39:7 40:9 43:16 44:15 reason 17:1 18:7 36:11 44:13,27 reasonable 24:1 35:25 43:2 receipt 6:23 34:5 receive 22:19 recess 48:16 recharge 12:16,18 recite 29:22 recited 46:27 recommendations 8:11 reconstruct 16:3 record 5:10,28 9:8 25:2,4 28:18,23,24 28:26 29:2 30:24 records 29:23 recreation 3:19 redacted 10:28 14:14,16,27 redacting 10:1 redaction 10:28 referenced 32:5 referencing 23:15 referred 5:14 27:2 27:3 refile 23:9 28:20 reflected 9:18 regard 6:26 8:16 13:14 36:6 regarding 6:14 8:8 17:17 registered 25:12</p>	<p>registering 25:8 related 1:11 49:11 relates 24:5 relationship 19:10 released 8:10 24:13 releasing 8:23 relevance 42:18 45:21 relevant 39:21,21 47:26 remaining 42:3 remember 6:1 46:12 reminded 25:5 remote 2:8 3:1 4:1 18:20 rendered 42:16 rendition 10:9 renewed 21:15 repairing 5:23 repeat 48:9 repeatedly 25:23 reply 16:12 23:28 37:28 38:24 report 31:22 35:20 35:24 36:1,3 47:12,13 reported 1:26 reporter 1:27 5:6 12:22 48:5,5,8 49:17,26 reporter's 1:14 reports 35:4 represent 40:20 42:5 representation 42:2 represented 42:2 representing 6:5</p>	<p>request 5:20 45:20 requested 6:13,17 requesting 11:17 40:27 requests 48:10 required 27:28 40:12 requirements 8:9 requires 32:28 40:27 rescind 43:5 residences 27:22 resistance 12:9 resource 25:9 resources 1:8 2:22 3:3 5:2,12 6:20 8:6,16 18:11,14 24:11 40:19 49:8 respect 9:22 respond 25:17 responded 9:8 respondent 1:17 respondents 1:10 49:10 response 5:19 23:11 24:26 38:17 responses 24:22 restating 23:16 retained 20:23 21:9 31:10,12 retrieve 15:28 return 36:28 reveal 35:4,5 review 22:20 revisit 43:1 revocable 4:23 right 11:18 12:6 13:19,22,22,23,23 14:3 16:27 20:27 36:5 40:28 41:3 43:16,23,26 47:19</p>
q			
<p>quarrel 25:15 question 5:23 7:25 7:27 16:11 18:8 18:11 21:3 23:22 23:23 28:6 29:18 35:21,26 36:9 39:6 44:26 questions 28:22 29:20 37:4 quick 23:22 37:2 quickly 23:12 44:5 quite 18:28 19:5</p>			
r			
<p>r 2:15,16 12:22,22 rafael 30:25 rah 21:25,25,25 raise 18:8 24:3 raises 35:10,21 36:9 rama 30:9 46:13 ranch 28:14 rancho 3:9 27:22 28:12 rate 42:1 razban 3:10 reached 11:10,11 18:22 read 15:24 19:11 34:26</p>			

[right - solution]

<p>47:22 rightly 44:18 rights 32:15 44:7,8 44:14 ring 14:4,5 river 28:11 riverbed 12:15 road 3:11 4:21 robert 4:25 robey 30:21 rocks 12:15 role 18:23 roman 30:19 46:27 room 42:5 rosanna 4:8 round 29:10 rules 35:22 ruling 45:2 running 37:8 rutan 2:4 ryan 4:4,5,7 28:20 40:6 43:27 ryanblatzlaw.com 4:7</p>	<p>scatters 36:7 schedule 32:16 33:28 34:6,9 scheduling 29:19 school 12:27 26:6 26:24,27 27:12 30:6 schools 47:1 scientific 6:8 11:23 scope 17:25 se 7:11 searchable 25:24 second 16:8 29:8 29:21 30:13 39:24 section 2:22 3:21 7:21 9:22,24 10:1 14:13,28 31:2 32:10 sections 14:28 see 7:10,26 10:8 10:22 11:12,14 12:6 17:24 19:11 21:19 24:23,25 25:12,16,27 29:5 34:26 36:20 39:28 42:8 46:10 seeing 10:19 seeking 18:22 seen 27:9 selected 21:20 send 22:21 24:23 36:25,26,26 sends 12:26 sense 11:21 13:24 14:15 36:22 sentiment 45:24 45:25 separate 10:4 21:12</p>	<p>september 31:21 31:23,27 34:2 38:8 seq 32:9 sequencing 11:4 sequential 33:25 sequentially 33:23 series 28:19 serve 14:26 15:1 16:15,17 23:25,27 24:18,23 served 5:27 6:4 15:17 23:28 37:27 37:28 serves 11:28 servexpress 6:3 14:27 service 5:18 6:14 11:4 15:6,23 25:5 38:7 servxpress 25:18 session 48:12 set 23:24 setting 9:10 33:2 settled 36:16 40:13 settlement 7:7,8 40:17 seven 16:25 34:7 shanahan 4:14 shantal 3:10 share 28:17 30:1 34:17,18 sharing 24:19 shawn 1:22 9:19 23:4 shawn.hagerty 1:24 short 25:13 38:17 show 6:13 14:15 29:5</p>	<p>side 43:13,14,15 43:23 sided 7:12 sideline 39:8 40:24 44:5 sides 19:1 sign 29:14 34:13 signature 49:25 signed 28:2,4,27 44:28 45:15 significant 18:25 similar 29:3 similarly 24:11 simple 37:4 single 24:8,8 sir 12:20 23:2,21 46:18 sit 39:8 47:3,10 sitter 17:10 situated 24:11 34:19 situation 18:26 32:14 six 15:19,22,25 16:23 17:2 22:22 23:24 size 17:25 slow 31:24 small 18:9 22:6 24:7 42:1 smaller 18:19 31:10,10 software 29:10,12 29:13,17 sold 17:13 solicitation 24:24 solution 6:7,24,28 7:12,24 9:6,15 10:7,16 11:2,15 12:7,19 13:4,7,28 15:14,27 16:12</p>
<p>s</p>			
<p>s 2:4 3:14 12:22 sacramento 3:23 4:15 san 1:23 2:12 3:17 5:14 santa 1:5 5:1,11 49:5 satisfies 11:1 satisfy 35:3 saying 20:21 21:25 says 21:26 24:18 28:9 32:13 34:28 35:15,23 scan 29:7</p>			

[solution - terminated]

<p>17:12 18:10 20:11 20:16 21:7 22:20 26:7,10,12,20,22 27:7,21,25,27 28:2 28:5,9 40:4,10 44:3 solutions 19:9 solve 42:18 solved 21:13 somebody 12:24 27:5 someday 39:3 soon 20:13 41:18 sooner 34:17 37:11 sorry 20:13 sort 17:10 25:27 29:22 sorting 20:7 sound 10:27 43:20 south 1:19 2:17,23 3:11 speak 8:19 16:8 20:26 34:4 35:11 37:18 38:9 39:17 45:28 speaking 17:4 22:11,14 32:1 spear 8:4 17:14 specially 26:26 specific 5:24 6:10 7:18 9:17 13:27 26:21 32:7 specifically 32:26 44:11,13 specify 8:27 spelled 12:22 spend 41:20 sponsor 20:11 26:6</p>	<p>spouse 6:6 spring 2:23 srazban 3:12 staff 17:16 30:11 30:12 standing 13:21 stands 11:18 start 9:17 11:24 19:24 29:4 started 24:3 state 1:1,8 3:3 5:2 5:11 6:19,22,22,25 6:27 8:16 13:21 15:21 49:1,8,17 state's 8:3 statement 6:7 12:3 21:27 36:4 statements 6:10 states 44:7,13 status 6:11 47:12 statute 32:7,19 stay 39:1 staying 46:20 steps 42:28 44:24 stick 14:12 sticky 14:21 stipulate 46:22 stipulated 26:12 39:7 40:21,23 44:1 47:6 stipulating 42:12 42:22 44:3,14 46:8,21,28 stipulation 28:28 29:25 32:17 41:7 44:2,12,19,22,28 45:15 stipulations 28:17 29:22 strange 20:17</p>	<p>straw 17:8 stream 47:25 street 2:12,23 3:5 3:22 4:5,15 strenuous 17:9 strenuously 10:28 structure 10:14 style 35:22 subdivision 27:24 subject 26:18 submission 7:16 34:12 submit 10:2 15:5 15:13 submitted 10:13 15:26 23:6 28:17 substance 7:25 substantive 10:13 subsurface 5:22 sufficiently 44:16 suggest 7:11 suggested 33:21 suggesting 7:21 suggestion 7:18 9:12 10:4 suggestions 48:4 suggests 31:22 suite 2:5,23 3:16 4:5 summary 15:22 superior 1:1 28:26 29:11 49:1,17 supervising 2:23 supplementing 23:16 support 6:8 10:24 20:21 21:5 22:1 26:20,21 33:15 37:19,20 38:24 supportive 23:6</p>	<p>suppose 40:8 supposed 35:19 sure 16:13 19:5 46:24 surface 8:17 12:12 12:18 13:16 18:21 44:7 surrendered 43:24 43:24 surrendering 43:21 symmetrical 18:11 system 12:18</p> <hr/> <p style="text-align: center;">t</p> <hr/> <p>t 12:22 tab 29:24 table 10:18 12:4 tactical 34:24 take 18:23 25:25 26:2,15 29:21 38:12 39:22 42:28 44:23,26 45:5 47:12,17,20,25,28 48:4 taken 10:10 43:15 43:23 44:17 49:21 takes 11:26,27 talk 8:15 35:9 talked 7:6 talking 20:5 taylor 28:14 team 5:21 24:22 tell 30:23 40:28 tells 25:10 tempore 1:27 49:17 ten 40:27 tend 36:12 term 14:11 18:23 terminated 25:8</p>
--	---	--	---

[terms - ventura]

<p>terms 5:17 15:22 15:24 17:27,28 18:1 38:7 testify 35:16 testimony 49:21 text 15:19 31:23 thacher 4:21 26:6 26:12,23,27 27:12 thank 9:19 11:16 12:20 16:28 22:17 23:2,18 24:2 38:3 38:21,26 39:16 40:6 44:21 45:3,9 46:11 48:2 thanks 16:19 theirs 35:5 themes 17:3 theory 24:20 thick 14:2 thing 12:17 15:7 15:13 24:28 25:1 27:26 30:5 39:24 40:13,17 things 16:3 24:6 29:14 30:1 39:18 think 7:5 8:4,15 8:21 11:18,19,28 12:3,17 13:5,11 17:22 18:2 19:7 19:11 20:3,17,26 23:12 24:7 25:28 26:17 27:12 29:13 30:16 31:17,24 32:27 35:28 37:6 37:15 38:14,22 39:2,10,17 40:14 41:27 43:7,12 45:26 46:5,6 47:9 thinking 26:17 thinks 21:16 24:14 39:10</p>	<p>thought 6:22 19:15 21:27 22:2 33:25 three 12:28 13:1,4 14:4,5 39:17 threw 43:25 thrilled 17:22 19:8 27:13 thursday 15:18 38:20 tiered 31:9 time 5:8 7:6,26 9:7 9:14,27 10:8 11:6 15:15,25 16:13,18 21:24 22:26,27 23:23 25:6 29:8 33:24,25 34:5,14 34:18,20,26 35:6 35:24,25 36:19,24 38:6 39:20 40:18 41:9,13,27 42:25 44:27 45:9,22 times 17:5 timing 37:25 today 5:17 6:4 13:9 14:9 16:4 22:9,18 24:6,28 25:11,14 34:3 38:19 45:2 47:4 47:10 today's 5:24 6:10 31:22 34:9 told 27:23 41:28 43:12 tolerably 30:14 topic 6:18 45:24 tort 30:26 total 16:21,24 totally 29:10 touched 17:5</p>	<p>toxic 30:26 track 8:23 traditional 13:24 35:13 trailed 38:27 transaction 28:1 transcript 1:14 48:11 49:20 treatment 11:22 treaty 29:26 40:13 trial 13:10,16 31:25 32:8 33:1,5 42:14,17 45:19 tried 31:17 true 18:18 19:7 21:23,27 25:1 28:25 49:20 truly 7:1 21:21 truncated 23:1 trust 3:14 4:23,24 5:27 33:21 45:12 trustee 3:14 5:26 9:10,17 45:12 try 16:3 27:18 29:14,22 trying 8:28 12:9 22:1 40:5,23 tsao 4:24 tucker 2:4 turn 29:18 two 9:17 15:5 23:10 26:2 36:12 36:14 37:4,25 38:15 type 27:26</p> <hr/> <p style="text-align: center;">u</p> <hr/> <p>u 12:22,22,22,22 ultimately 24:13 41:23 unbelievably 40:26</p>	<p>understand 9:25 19:12 20:6 21:28 24:12 30:2 31:20 understanding 36:18,27 undue 40:4 unduly 41:13 unfair 27:7 43:20 unfortunately 8:22 18:24 unhappy 26:14 unified 30:6 unknown 40:11 unmuted 20:14 unnamed 29:1 unrealistic 34:26 unreimbursed 12:24 update 30:8 46:13 urgent 15:16 use 13:19,22,23 24:9 40:21 useful 17:7 20:24 usefully 38:12 user 24:9 26:6 44:6,14 46:7 47:2 users 27:7 31:10 40:19,20 41:7,14 45:14,27 47:11 uses 26:15 usufructuary 12:8 12:21 13:18</p> <hr/> <p style="text-align: center;">v</p> <hr/> <p>variety 26:28 various 5:16 ventura 2:10 3:11 4:22,24 5:15,19 6:10,12,17 8:11 13:28 16:5 18:15 18:25 22:8 27:6 28:3,11,11 30:6</p>
---	--	---	---

[ventura - zolezzi]

<p>31:5 38:6 44:18 ventura's 5:25 20:25 21:6 verbally 25:6 version 6:28 10:6 14:5,27 26:22 versus 31:21 view 6:18 7:6,12 7:22 16:13 20:4 20:18 24:24 views 43:17 villa 3:14 33:21 45:12 voting 19:10 vs 1:7 5:1,11 49:7</p>	<p>8:3,5,16,17 13:16 13:19,21 18:13,16 18:21 19:23 20:24 21:4,4 26:15,16 28:11,12,13 36:23 47:18,21,23 49:8 waters 12:12,18 watershed 2:10 way 12:23 15:1 22:2 29:7 30:7 31:26 32:27 39:25 43:8 44:5,18 ways 10:20 17:7 19:22 we've 23:5,7 25:22 25:24 40:15 48:4 website 26:4 week 26:2 weekend 47:12 weeks 26:2 34:7 weighs 11:23 welcome 27:12 west 1:22 3:16 whitman 4:26 wife 7:17 wildlife 2:20 8:8 46:17 william 1:3 4:21 5:5 26:25 27:11 49:3 willing 27:9 31:6 39:3 willingness 35:6 winded 20:20 wisdom 10:6,7 wish 9:16 15:11 wonder 24:14 28:1 wondering 45:21 wood 28:14 word 12:21 14:27</p>	<p>words 24:21 work 12:2 13:12 22:4,27 40:8,25 worked 12:1 working 17:19 18:5 25:23 28:20 42:24,26 world 25:6 43:20 worried 45:14 worth 40:27 wrangling 41:22 wrapped 42:15 written 22:26 32:28 44:1,11</p>
w		x
		x 24:20
<p>w 4:5 wait 17:23 18:4,4 waiting 8:19,21 17:13 22:18 waive 31:6 waiving 31:13,14 wallflower 17:11 want 7:10 10:23 15:17,24,25 16:1 18:9 19:14,15 21:2 22:7,24 24:11 25:17 27:18 33:17 37:12,26 39:18,24 41:5 44:8 46:3 48:10 wanted 44:18 46:19,24 wants 9:5 16:8 31:26 37:24 39:14 39:20 44:6 waste 7:5 watch 17:23 18:4 18:4 water 1:8 2:3 3:3,9 5:2,11,15,22 6:20</p>		y
		y 12:22 24:20 yeah 14:6 25:21 33:6 year 8:11 12:27 42:20 years 40:27 yolo 12:13
		z
		zolezzi 16:7,7,10 16:10,19,28

California Code of Civil Procedure

Article 5. Transcript or Recording

Section 2025.520

(a) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the Original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time.

(b) For 30 days following each notice under subdivision (a), unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or

refuse to approve the transcript by not signing it.

(c) Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition.

(d) For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

(e) The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person.

(f) If the deponent fails or refuses to approve the transcript within the allotted period, the

deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent.

(g) Notwithstanding subdivision (f), on a reasonable motion to suppress the deposition, accompanied by a meet and confer declaration under Section 2016.040, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

(h) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition under this section, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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