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Attorney for Cross-Defendant,
 ROBERT MARTIN, an individual

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER, a
 California non-profit corporation,

Petitioner,

v.

STATE WATER RESOURCES CONTROL
 BOARD, a California State Agency; CITY OF
 SAN BUENAVENTURA, a California
 municipal corporation, incorrectly named as
 CITY OF BUENAVENTURA,

Respondents.

CITY OF SAN BUENAVENTURA, a
 California municipal corporation,

Cross-Complainant,

v.

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

Case No. 19STCP01176

[Transferred to Los Angeles Superior Court,
 Complex Civil Division, and assigned for all
 purposes to Hon. William F. Highberger per
 Minute Order dated May 15, 2019]
 Dept. S10

**CROSS-DEFENDANT ROBERT
 MARTIN'S RESPONSE TO CITY OF SAN
 BUENAVENTURA'S MOTION TO
 BIFURCATE AND PARTIAL LIFTING OF
 THE DISCOVERY STAY**

Date: June 21, 2021
 Time: 1:30 p.m.
 Dept.: S10

Action Filed: September 19, 2014
 Trial Date: None set

Cross-defendant Robert Martin ("Martin") respectfully presents this response to the City of San Buenaventura's (the "City") Motion to Bifurcate, Etc., which is set for hearing before this Court on June 21, 2021.

1 Martin is the owner of land in the Upper Ojai Valley. His property rights in his land
2 include the right to pump and use water from the underlying aquifer. Martin strongly disputes the
3 City’s contention that the aquifer underlying his land somehow is connected to the Ventura River
4 Watershed. He strongly disputes the City’s contention that his pumping of water from his private
5 property somehow impacts the volume or flow of water in the River. He also strongly disagrees
6 with the City’s *de facto* contention that this action—which, after all, was brought by Plaintiff
7 Santa Barbara Channelkeeper in order to ensure or restore fish habitat in the River—is the proper
8 context and forum for the *de facto* “adjudication” of Upper Ojai Valley landowners’ groundwater
9 rights. The City states that it does not intend that this Court to adjudicate any party’s groundwater
10 rights, but the City’s proposed Physical Solution seems tantamount to groundwater adjudication;
11 and, not simply an adjudication of a single groundwater basin, but the *de facto* adjudication of
12 multiple groundwater basins, all ostensibly in the name of restoring aquatic habitat in the River.
13 Plaintiff’s goal of protecting aquatic habitat in the River is perhaps laudable, or at least justifiable.
14 We are not sure that the same can be said of the City’s cross-complaint, at least insofar as the
15 cross-defendants in the Upper Ojai Basin are concerned.

16 That said, and reserving all of his rights in connection with these and any other relevant
17 issues, Martin does not oppose the City’s Motion to Bifurcate. We believe that it is appropriate
18 for the court to sever and first determine the obvious issues of the physical extent of the River’s
19 Watershed and the connection (or, actually, the absence of any connection) between that
20 Watershed and groundwater pumping from the Upper Ojai Basin groundwater aquifers.

21 Martin does, however, oppose the truncated and unreasonable schedule proposed by the
22 City. There are several reasons for this:

23 First, as the Court is well aware, the State of California is in the midst of preparing its
24 long-awaited study. To the extent that any party to the first phase of the trial will want to rely on,
25 or dispute, the State’s report, the parties should have a reasonable time between publication of that
26 report and the first phase of the trial.

27 Second, Martin and other similarly-situated cross-defendants need time to take the
28 depositions of the City’s expert witness(es) and prepare their own experts for their depositions and

1 trial. The City's proposed schedule provides far too little time for those tasks.

2 Third, Martin and a number of other similarly-situated Upper Ojai Basin landowners are
3 contemplating dispositive motions, either for summary judgment or summary adjudication of
4 issues. Any such motions probably will be focused on (i) the propriety of the City's efforts to
5 transform an endangered species habitat case into a groundwater adjudication case, and (ii) the
6 absence of any hydrogeological connection between the Upper Ojai Basin and the Ventura River
7 Watershed. The City's proposed schedule does not leave sufficient time after completion of
8 percipient and expert discovery for those motions to be duly filed, heard and determined by the
9 Court.

10 Fourth, notwithstanding the City's significant efforts, this case is not yet "at issue" with
11 respect to all of the named cross-defendants. We do not know how many of those unserved cross-
12 defendants are groundwater pumpers in the Upper Ojai Basin, or how long it will take the City to
13 finish its service of process on those remaining unserved persons. As to those unserved persons
14 who will want to participate in the first phase of the trial, the City's proposed schedule is
15 inconsistent with the time lines set out in Code of Civil Procedure Sections 842 and 843.

16 Fifth, to the extent that the Court elects to entertain written testimony as part of the initial
17 phase of the trial, as is permitted under Code of Civil Procedure Section 844(a), the City's
18 schedule is simply incompatible with that approach.

19 Finally, the City's proposed schedule provides no realistic time frame for the parties to
20 provide the Court with legal briefing on the many important (and arcane) legal issues in this case.

21 The City proposes that percipient discovery conclude by October 15, 2021, which would
22 be less than four (4) months from the date of the hearing on this motion. It proposes that expert
23 witness designations and discovery conclude by November 1, 2021, only two (2) weeks after
24 percipient discovery would conclude, and only two (2) weeks before trial. And, it proposes that
25 trial commence on November 15, 2021, only five (5) months after the hearing on this motion.

26 Those dates are entirely unreasonable. The proposed schedule would allow cross-
27 defendants less than five (5) months to (i) complete percipient discovery, (ii) engage expert
28 witnesses, (iii) prepare their expert witness reports on the highly complicated Upper Ojai Basin,

1 (iv) prepare/review supplemental expert reports, and (v) conclude depositions of a presently
2 unknown number of experts. There would be only two (2) weeks between conclusion of expert
3 discovery and trial.

4 We propose instead that (i) the percipient discovery deadline be set in December 2021, (ii)
5 expert witness exchanges occur in February, 2022, (iii) supplemental expert exchanges occur in
6 April, 2022, (iv) expert depositions take place in May-June, 2022, and (v) trial be scheduled for
7 late summer or early fall of 2022. This schedule will allow time for the City to get the case “at
8 issue” as to as many cross-defendants as reasonably possible and avoid unduly prejudicing them
9 with “short fuse” discovery and trial dates after they appear in the action. It will allow time for
10 thoughtful and thorough expert witness reports and depositions. It will permit Martin and other
11 similarly-situated cross-defendants time to file dispositive motions and have those motions heard
12 before they have to spend considerable time and money preparing for trial. And, it will permit all
13 of the stakeholders in the Upper Ojai Basin sufficient time to adequately prepare to protect their
14 private property rights from the City’s “stealth” groundwater adjudication.

15 Respectfully submitted,

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17 Dated: June 1, 2021

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20 By: 

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Attorney for Cross-Defendant,
ROBERT MARTIN, an individual

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