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 12 CASITAS MUNICIPAL WATER DISTRICT a California  
 special district

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 14 FOR THE COUNTY OF LOS ANGELES, COMPLEX

15 SANTA BARBARA CHANNELKEEPER, a  
 16 California non-profit corporation,

17 Petitioner,

18 vs.

19 STATE WATER RESOURCES CONTROL  
 BOARD, a California State Agency;  
 20 CITY OF SAN BUENA VENTURA, a  
 California municipal corporation, incorrectly  
 21 named as CITY OF BUENA VENTURA,

22 Respondents.

23 CITY OF SAN BUENA VENTURA, a  
 California municipal corporation,

24 Cross-Complainant,

25 vs.

26 DUNCAN ABBOTT, et al.,

27 Cross-Defendant.  
 28

Case No. 19STCP01176

Judge: Hon. William F. Highberger  
 Dept: 10

**CROSS-DEFENDANT CASITAS  
 MUNICIPAL WATER DISTRICT'S  
 NOTICE OF MOTION AND MOTION FOR  
 ORDER GRANTING CASITAS LEAVE TO  
 SERVE EXPERT WITNESS  
 DESIGNATION**

Date Action Filed: September 19, 2014  
 Phase 1 Trial Date: February 14, 2022

Hearing Date: November 23, 2021  
 Time: 9:00 a.m.  
 Department: 10

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on November 23, 2021 at 9:00 a.m., or as soon thereafter as  
3 the matter may be heard, in Department 10 of the Los Angeles County Superior Court, Complex  
4 Division located at 312 North Spring Street Los Angeles, CA 90012, Cross-Defendant Casitas  
5 Municipal Water District (“Casitas”), will and hereby does apply for leave to submit its  
6 designation of expert witnesses, naming Mr. Jordan Kear as Casitas’ designated primary expert.  
7 Likewise, Casitas also, to the extent legally required,<sup>1</sup> seeks leave to designate a supplemental  
8 expert per CCP § 843 on or before the existing December 10, 2021 deadline.

9 Further, through this Motion, Casitas requests that the Court issue a scheduling order,  
10 acknowledging Casitas’ right (and those of other parties) to designate rebuttal expert witnesses,  
11 and prepare expert rebuttal reports, per Code of Civil Procedure section 843 (d) at a time  
12 designated by the Court so as to allow the efficient discovery of expert rebuttal evidence prior to  
13 trial.

14 This Motion is made on an expedited briefing schedule pursuant to the direction of this  
15 Court at the November 2, 2021 Case Management Conference (“CMC”), and is brought pursuant  
16 to Code of Civil Procedure sections 843 and 2034.710, et seq., the inherent power of this Court to  
17 control the proceedings before it, and is based upon this Notice, the accompanying Memorandum  
18 of Points and Authorities, the Proposed Order, the pleadings and files in this matter, and such  
19 additional evidence as may be presented at or before the time of the hearing.

20 Dated: November 10, 2021

Respectfully submitted

RUTAN & TUCKER, LLP

21  
22  
23 By: 

24 Jeremy N. Jungreis  
25 Attorneys for Cross-Defendant  
CASITAS MUNICIPAL WATER  
DISTRICT a California special district

26 <sup>1</sup> Casitas notes that leave of court is not required to designate Mr. Kear as a supplemental expert  
27 to the extent that the Court authorizes Casitas to designate Mr. Kear as its primary expert since  
28 such supplemental designation would be prior to the deadline for all parties to designate  
supplemental experts. Similarly, no leave of court is required to allow Casitas to designate  
rebuttal experts as such expert opinions are specifically authorized by Code of Civil Procedure  
 (“CCP”) §843 (d) and are not currently regulated under the Trial Schedule in Phase 1.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 By way of this Motion, Cross-Defendant Casitas Municipal Water District (“Casitas”)  
4 seeks the Court’s leave to submit designation of one expert witness pursuant to Code of Civil  
5 Procedure (“CCP”) section 843. With over three months until the Phase 1 portion of this trial is to  
6 occur, and before a single deposition has occurred, Casitas is asking for a very small  
7 accommodation, the ability to designate one expert witness, Mr. Jordan Kear, already a designated  
8 expert witness for the City of Ojai, and an expert who already submitted the expert report on  
9 which Casitas plans to rely, on September 24, 2021—the otherwise applicable deadline for such  
10 disclosures. Casitas only seeks herein to designate Jordan Kear as its own expert and to use the  
11 same opinions that already exist in Mr. Kear’s expert report for its own purposes at trial. The fact  
12 that such a minor procedural step, which clearly is not capable of causing any prejudice to anyone,  
13 is being opposed by the City of Ventura, with much fanfare, is disappointing. After initially  
14 indicating during the meet and confer process that it would not formally oppose Mr. Kear’s  
15 designation, Ventura reversed course on November 2, arguing vociferously that Casitas be  
16 prohibited from participating in any meaningful way in Phase 1 of trial, including the use of  
17 rebuttal experts, which aren’t even part of the trial schedule and which are expressly authorized for  
18 use by Casitas and other parties in CCP 843(d). This entire motion process was avoidable if  
19 Ventura was simply willing to negotiate in good faith. Sadly, that was not to be. So, Casitas  
20 hereby requests that the Court permit it to designate Jordan Kear as its expert for use at trial in  
21 Phase 1 of this case.

22 Casitas also requests, through this motion, confirmation of what the law already provides,  
23 that Casitas retains the ability to designate supplemental expert witnesses and rebuttal witnesses  
24 pursuant to CCP § 843. Such confirmation should not be required since supplemental designation  
25 is permissible once primary designation (e.g., Jordan Kear) is made, and since there is nothing in  
26 the trial schedule (or in any other provision of law) that purports to limit Casitas’ ability to  
27 designate rebuttal experts per CCP § 843(d). Unfortunately, the assertions by Ventura in its most  
28

1 recent filings, and in statements made at the October 18 and November 2 CMCs, make it advisable  
2 for the court to clarify what the law already provides, that Casitas has the same rights as any other  
3 party participating in expert discovery to designate supplemental and rebuttal experts per CCP  
4 843. Casitas also makes this Motion pursuant to the requirements of CCP §§ 2034.710, *et seq.*,  
5 and CCP § 128.

6 In designating Mr. Jordan Kear as its expert witness, Casitas seeks to rely on the very same  
7 expert that had previously been designated by the City of Ojai on September 24, 2021. As such,  
8 no party could possibly suffer any legally cognizable prejudice from Casitas' designation and  
9 reliance upon the same expert witness, as all of the parties have long known of Mr. Kear's  
10 existence and the opinions he will render. Furthermore, given the amount of time for expert  
11 discovery to take place before trial, and the fact that no depositions have yet taken place, no party  
12 could suffer any prejudice in allowing Casitas to designate Mr. Kear as its expert witness, and this  
13 is true even if Mr. Kear was to subsequently offer supplemental opinions on behalf of Casitas—  
14 because such opinions could just as easily be proffered by the City of Ojai prior to the otherwise  
15 applicable deadline for the disclosure of supplemental opinions. Either way, Ventura and any  
16 other party that wished, could test the basis of those supplemental opinions during the otherwise  
17 applicable discovery schedule for supplemental depositions. No harm, no foul, no prejudice.

18 Moreover, the designation of Mr. Kear would not, and cannot, cause any party prejudice,  
19 because: (i) the parties have been aware of Mr. Kear and his expert opinions since September 24,  
20 2021, the date that Casitas would have been required to submit Mr. Kear's expert report; (ii)  
21 Casitas timely informed other parties, including Ventura, of its intent to designate Mr. Kear after  
22 confirming it fears regarding the apparent scope creep of Phase 1 during the October 18 CMC; (iii)  
23 Mr. Kear will provide the same expert opinions for Casitas as are already disclosed in Mr. Kear's  
24 existing expert report previously produced on behalf of the City of Ojai; (iv) any supplemental  
25 opinions offered by Mr. Kear for Casitas would be disclosed prior to the otherwise applicable  
26 deadline for the disclosure of supplemental opinions and could be tested by Ventura and aligned  
27 interests during deposition in the same manner, and to the same extent as if the City of Ojai made  
28 such supplemental declarations; (v) Casitas is already authorized by CCP 843 (d) to introduce

1 expert rebuttal and impeachment evidence at trial in rebuttal of expert opinions made by any party,  
2 and the trial schedule does not dictate otherwise; and (vi) Casitas is willing to stipulate to  
3 whatever trial continuance the Court may find necessary or appropriate to mitigate any potential  
4 for prejudice to any party that could theoretically exist.

5 Moreover, because the trial in this matter is roughly over three months away, and can be  
6 continued within the Court’s inherent authority to ensure the proper administration of justice, and  
7 because no party can possibly suffer any legal prejudice—as distinguished from the diminution of  
8 a tactical or strategic advantage at trial (apparently what Ventura has shoehorned into the meaning  
9 of the term “prejudice”)—in allowing Casitas to designate Mr. Kear as a primary expert witness,  
10 Casitas’ Motion should be granted in its entirety.

11 **II. The Court Should Authorize Casitas to Designate its Initial Expert Witness**

12 A. Court’s Authority to Authorize Casitas to Designate an Expert Witness

13 The Court’s prior schedule for expert witness disclosures was largely set pursuant to the  
14 Court’s inherent authority to make such scheduling orders under CCP § 843. However, CCP §  
15 843 does not explicitly address when the Court may allow expert disclosures after a previously set  
16 deadline has passed. That being said, the Court has the inherent authority to adjust the expert  
17 disclosure deadlines under a variety of different statutes, including CCP §§ 843, 2034.710, et seq.,  
18 and CCP § 128. (*See Santandrea v. Siltec Corp.* (1976) 56 Cal.App.3d 525, 529 [“Every court has  
19 the inherent power to regulate the proceedings of matters before it and to effect an orderly  
20 disposition of the issues presented.”]) The Court also has authority, if cause is shown, to stage and  
21 sequence the timing of discovery for the convenience of parties and in the interests of justice.  
22 (Code Civ. Proc. § 2019.020, subd. (b).).

23 CCP § 843 imposes certain restrictions on the Court’s handling of groundwater  
24 adjudications brought under that section, and generally authorizes the Court to create any expert  
25 witness disclosure requirements and/or schedules it wishes. (*See* CCP § 843(d) [“Unless  
26 otherwise stipulated by the parties, a party shall make the disclosures of any expert witness it  
27 intends to present at trial, except for an expert witness presented solely for purposes of  
28 impeachment or rebuttal, at the times and in the sequence ordered by the court. *If there is no*

1 *stipulation or court order*, the disclosures of an expert witness shall be made as follows: . . .”  
2 (emph. added)].) Under the express terms of CCP § 843(d), the Court has the inherent authority to  
3 alter the expert witness disclosure schedule, as it states that a “court order” can ultimately control.  
4 As such, the Court may alter expert witness designation deadlines at its reasonable discretion  
5 under CCP § 843.

6 Under CCP § 2034.710, in a more traditional civil case, the Court is also empowered to  
7 submit “tardy expert witness” information under conditions the court deems reasonable. Lastly,  
8 under CCP § 128, the Court has the general authority “[t]o provide for the orderly conduct of  
9 proceedings before it, or its officers.” In other words, the Court has ample authority under any of  
10 these provisions to authorize Casitas to designate primary, supplemental and rebuttal witnesses,  
11 particularly under the facts at hand where Casitas believed, reasonably and in good faith, that the  
12 scope of trial was likely to be far narrower than the much broader scope of trial revealed at the  
13 October 18 CMC and in the subsequent “Scope of Issues” to be tried in Phase 1 submitted by the  
14 various parties on November 8.

15 B. Casitas Should be Allowed to Designate its Expert Witness

16 As discussed above, the Court has extremely broad authority when setting expert  
17 disclosure requirements and schedules in the context of groundwater adjudications under CCP §  
18 843. The statute itself does not impose any procedural or substantive requirements, as such it is  
19 assumed that the Court’s authority is only limited by the notion that the Court may not abuse its  
20 discretion under that section. The Court can set a schedule. The court can modify the schedule—  
21 all within its authority to manage the case. And indeed, Casitas is asking far less since granting  
22 Casitas’ request will not cause the trial schedule to change. The deposition of Mr. Kear will still  
23 take place on December 15, as originally scheduled. Any supplemental depositions of Mr. Kear, if  
24 needed, would occur during the specified time for supplemental expert depositions. No trial  
25 schedule changes, and no prejudice for anyone. While not required, the Court can also look to the  
26 elements of CCP § 2034.720 for guidance to determine whether or not allowing Casitas to  
27 designate Mr. Kear as an expert witness is appropriate in these circumstances. Because Casitas’  
28 request meets all of the requirements under CCP § 2034.720, including that no party will suffer



1 any prejudice in allowing Casitas to designate an expert witness at this time, the Court should  
2 grant Casitas’ Motion pursuant to CCP §§ 843, 2034.720, and 128.

3         The Court is already aware why Casitas did not initially designate Mr. Kear as an expert.  
4 Casitas made the mistake of taking Ventura at its word—an oversight that will not happen again.  
5 Ventura, as discussed below, proposed in its motion to bifurcate a narrow trial in Phase 1, focused  
6 on boundaries and hydrologic interconnection (e.g., was there a hydrologic connection between  
7 groundwater in the Ojai Basin and the surface waters of the Ventura River?).<sup>2</sup> Casitas did not see  
8 a need to designate an expert on such narrow topics—the province of hydrogeologists and  
9 cartographers. However, during October and the CMCs that occurred after the initial expert  
10 disclosures were due, it became clear to Casitas that scope of trial was likely to become much  
11 broader than originally briefed in the motion to bifurcate, with Ventura’s designation of a botanist,  
12 water rights historian, and fisheries biologist, and the designation of a fisheries biologist by the  
13 State of California, as well as discussions during the October 18 CMC by multiple parties which  
14 suggested that Phase 1 would be used to determine whether groundwater extractions in the Ojai  
15 Basin could result in a material effect on the fishery in the Ventura River. Casitas is a large  
16 pumper from the Ojai Basin and the manager of many of the large diversion facilities in the  
17 Ventura River and its tributaries. If there was to be a determination of cause and effect  
18 relationships between pumping and the fishery, then Casitas needed to actively participate in  
19 Phase 1—with expert support as appropriate. Hence, Casitas’ failure to initially designate a  
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21 <sup>2</sup> In its Motion to Bifurcate and Partial Lifting of the Discovery Stay, the City of Ventura  
22 (“Ventura”) requested that the Court issue (i) an “order bifurcating this proceeding such that the  
23 Court try the issues of the boundaries of the Ventura River Watershed and the four groundwater  
24 basins therein, as well as the interconnectivity of the Watershed and groundwater basins in a first  
25 phase of trial . . .”; and for a (ii) “order partially lifting the discovery stay to allow for discovery  
26 only as these two threshold issues that will be tried in the first phase of trial.” (See City of  
27 Ventura’s Motion to Bifurcate and Partial Lifting of the Discovery Stay, filed May 11, 2021.) On  
28 or about June 21, 2021, the Court granted Ventura’s motion, but set the trial for February 14, 2022  
rather than November as originally requested by Ventura. (Notice of Ruling dated July 2, 2021,  
para. 9 [“The Court granted the City’s Motion to Bifurcate and Partial Lifting of Discovery Stay  
for matters relevant to the Phase 1 trial on the basin and watershed boundaries and  
interconnectivity. The Court lifted the discovery stay only as to Phase 1 matters.”].) After that  
time, on or about August 9, 2021, following a status conference before the Court, Ventura served  
the schedule setting out the relevant disclosure deadlines and discovery cutoffs for Phase 1. (See  
August 9, 2021 Notice of Ruling, confirming the various orders issued by the Court at the July 19  
and July 23 status conferences, filed and served by the City of Ventura including schedule for fact  
and expert discovery pertaining to Phase 1.)

1 separate expert witness was, at worst, the result of good faith inadvertence and/or surprise on what  
2 Phase 1 of trial would actually entail. (See CCP § 2034.720(c)(1).)

3 In light of the foregoing, Casitas did not initially designate experts because (1) the scope of  
4 Phase 1, as Casitas understood the Court’s June 21, 2021 order, did not appear to require expert  
5 testimony relevant to Casitas’ interests in the case; (2) Casitas did not understand Phase 1 to  
6 include impacts of Ojai Basin pumping on the fishery, riparian habitat and downstream water  
7 rights.<sup>3</sup> Casitas’ concerns regarding the scope “creep” described above were further confirmed at  
8 the October 18 CMC where it soon became apparent that not only was Ventura seeking a cause  
9 and effect determination regarding the impact of upstream pumping on the health of the fishery,  
10 but the East Ojai Group was also seeking a determination of the impact of individual pumpers in  
11 the Ojai Basin on the downstream fishery (albeit with very different conclusions). Perhaps the  
12 scope of issues to be tried during Phase 1 will ultimately again be narrowed by the Court, but  
13 Casitas, from what it currently understands, cannot take that risk and be left without the expert  
14 support it will need should a broader Phase 1 trial take place. Casitas needs the ability to  
15 designate Jordan Kear as its primary expert now on the relative effects of pumping in the Ojai  
16 Basin on downstream resources, and per CCP § 843, it needs the ability to potentially introduce  
17 supplemental and rebuttal opinions on other matters raised by Ventura and the State should the  
18 evidence suggest such expert evidence is necessary to protect Casitas’ interests or otherwise be  
19 helpful to the Court.

20 In regard to CCP § 2034.720(c)(2)—(3) (which require prompt disclosure of a party’s  
21 desire to designate an expert out of time), upon learning that other parties had designated experts  
22 to opine on matters that were outside of the scope of Phase 1, Casitas promptly brought the issue  
23 to the Court’s and parties’ attention at the September CMC, in Casitas’ CMC Statement for the  
24 October 18, 2021 CMC (and extensively at the October 18 CMC itself), and again at the  
25 November 2, 2021 CMC. During the entire period, Casitas sought, in good faith, to reach an

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27 <sup>3</sup> It is also worth noting that under the Court’s June 21, 2021 order, Casitas understood that it  
28 could not designate an expert for any issue other than opinion on the meets and bounds of the  
property that would be subject to this adjudication, as the Court’s order arguably only authorized  
discovery as to those limited inquiries, so it is not clear why Ventura appears to have ventured  
significantly beyond those narrow bounds with its expert designations.



1 accommodation with Ventura and other parties that would allow for a stipulated designation of  
2 Mr. Kear, as well as an orderly process for the designation of rebuttal experts should Casitas  
3 determine a need to designate one or more, but Ventura was much more concerned about trying to  
4 keep Casitas from participating in Phase 1 of trial. Sadly, that reality has not changed—  
5 necessitating this motion. Further, at the November 2, 2021 CMC, the Court authorized Casitas to  
6 file this immediate motion on an expedited briefing schedule. As such, Casitas timely informed  
7 the parties of its desire to designate Mr. Kear as its primary expert witness, and the contents of his  
8 testimony and report, while also raising for the Court’s consideration the distinct but related issue  
9 of rebuttal experts under CCP §843,<sup>4</sup> thereby fully satisfying CCP §§ 2034.720(c)(2)-(3). (*See*  
10 *also* Casitas’ Case Management Conference Statement, dated October 28, 2021, stating Casitas’  
11 desire to designate Mr. Kear and the opinions that Mr. Kear would provide).

12 In regards to CCP § 2034.720(a) and (b), and the degree that opposing parties may have  
13 detrimentally relied on non-designation or otherwise have been prejudiced, there is simply nothing  
14 there. Most parties in this case appear to support Casitas’ request herein, and Ventura, the  
15 principal party opposing this Motion, could not have detrimentally relied on the absence of a list  
16 of expert witnesses, because the City of Ojai had already listed Mr. Kear as an expert witness, and  
17 the timeframes and content of his report and testimony are and will be identical as between Ojai  
18 and Casitas. Ventura received all of the information they were entitled to receive on the date they  
19 were entitled to receive it—September 24. Casitas has stated that it will rely on Mr. Kear’s  
20 existing report and future testimony, meaning that there is no new information for Ventura to  
21 process prior to the supplemental expert witness disclosure deadline and deposition of Mr. Kear.

22 During the November 2 CMC, Ventura’s counsel argued that Ventura could be prejudiced  
23 because by allowing Casitas to designate Mr. Kear as its primary expert witness, Casitas will also  
24 be able to provide supplemental expert witness testimony. This is not the sort of “prejudice” that  
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26 <sup>4</sup> Note, CCP §2034.720 is not technically applicable to rebuttal experts that Casitas might wish  
27 to designate in the future since the schedule in this case makes no mention of rebuttal or  
28 impeachment experts. Perhaps it should have, but it doesn’t, notwithstanding the clear direction in  
CCP §843 (d) that rebuttal experts are authorized at trial and are to be liberally authorized  
provided rebuttal testimony is within the scope of evidence proffered by other experts. Casitas’  
future use of rebuttal experts cannot be tardy since no date for their designation was ever set.

1 CCP § 2034.720 is concerned with. CCP § 2034.720 is not intended to act as a procedural  
2 “gotcha,” that allows Ventura to keep evidence it may not like from the finder of fact. Instead, it  
3 ensures that when a party does not designate an expert witness within a timely manner, opposing  
4 parties have enough time to conduct discovery given the new information and are not otherwise  
5 prevented from deposing or retaining their own experts. (CCP § 2034.720(b).)<sup>5</sup> Ventura’s ability  
6 to pursue its claims and defenses would not be harmed in the slightest by Casitas being allowed to  
7 designate Mr. Kear, rather Ventura would be in the same exact situation it is as of the date of this  
8 Motion – Mr. Kear’s original report and his future testimony will stand, and the possibility of  
9 potential supplemental expert witness testimony will be revealed on December 10, 2021, just as it  
10 would if only Ojai was designating supplemental expert opinions. As such, no party would be  
11 prejudiced if the Court allows Casitas to designate Mr. Kear as its expert witness, and to the extent  
12 that Mr. Kear is asked to provide a supplemental opinion on behalf of Casitas, Ventura and other  
13 parties will have the same opportunity to depose him on those opinions during supplemental  
14 expert depositions. No delay, no unfair surprise, no prejudice.

15 In short, Casitas’ request to designate Mr. Kear as its primary expert witness, and its desire  
16 to have the ability, if it chooses, to produce supplemental expert testimony in no way prejudices  
17 Ventura, or any of the other parties to this litigation. To the extent any party objects, Casitas is  
18 more than willing to accommodate any party by adjusting the discovery cut-off if requested,  
19 and/or agreeing to a trial continuance so as to avoid any possible theory of “prejudice.”

20 Accordingly, pursuant to the Court’s authority under Code of Civil Procedure §§ 843,  
21 2034.720 and 128, the Court should grant Casitas’ reasonable request. Otherwise, Casitas will be  
22 severely prejudiced in defending its interests in what has the potential to be a significantly  
23 expanded Phase 1 trial.

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27 <sup>5</sup> As explained above, CCP § 843 does not have any formal requirements regarding a request to  
28 designate an expert witness after the schedule set pursuant to that section. However, due to the  
significant amount of discretion the Court enjoys within that section, it is clear that the ability to  
authorize tardy expert witness designations under that section should only be broader than that  
provided by CCP § 2034.720.

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**III. The Court Should Direct the Parties to Meet and Confer on the Date When Rebuttal Witnesses Must Be Designated**

Casitas may have the need to designate rebuttal experts. It will not know for certain until the court makes determinations on the scope of trial on or after November 15 and potentially until after the first round of expert depositions is completed. As noted previously, the trial schedule approved by the Court on or about July 23, 2021 does not address rebuttal and/or impeachment experts. CCP section 843 does. CCP section 843, subparagraphs (d) and (e), state in pertinent part:

(d) Unless otherwise stipulated by the parties, a party shall make the disclosures of any expert witness it intends to present at trial, *except for an expert witness presented solely for purposes of impeachment or rebuttal*, at the times and in the sequence ordered by the court. . . .

(e) The court may modify the disclosure requirements of subdivisions (b) to (d), *inclusive, for expert witnesses presented solely for purposes of impeachment or rebuttal*. In modifying the disclosure requirements, the court shall adopt disclosure requirements that expedite the court’s consideration of the issues presented and shall ensure that expert testimony presented solely for purposes of impeachment or rebuttal is strictly limited to the scope of the testimony that it intends to impeach or rebut.

A couple of things are apparent from a cursory review of CCP § 843. First, contrary to Ventura’s assertions during the CMC process, rebuttal expert disclosures are quite distinct from supplemental expert disclosures. The scope of opinions to be rendered are different, the dates and timing for disclosures are different, and the process for disclosing reports is different. Second, rebuttal and impeachment experts are specifically authorized even if not part of a prior court order or stipulation of the parties.

In any event, the Parties’ current schedule does not include any time for the deposition of rebuttal experts, and it does not specify the deadline for disclosure of rebuttal expert reports—though CCP § 843 (e) clearly contemplates that the Court has the authority to regulate the timing and content of rebuttal expert reports. The Court should order the parties to meet and confer over adjustments to the schedule to facilitate rebuttal expert depositions, and such depositions should presumably occur after the conclusion of depositions of primary and supplemental experts.

1 In light of the foregoing, and independent of the dispute regarding Casitas' designation of  
2 Mr. Kear as Casitas' primary expert witness, the Court should recognize the parties' rights to  
3 designated rebuttal expert witness under CCP § 843, and set a deadline for such rebuttal expert  
4 witness disclosures at a time deemed appropriate per stipulation of the Parties, or at a time  
5 designated by the Court.

6 **IV. CONCLUSION**

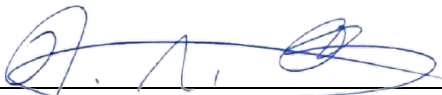
7 For the foregoing reasons, Casitas respectfully requests that the Court issues an order: (i)  
8 authorizing Casitas to designate Mr. Kear as its primary expert witness; (ii) authorizing Casitas to  
9 submit supplemental expert witness designations, if any, by the existing December 10, 2021  
10 deadline; and (iii) directing the parties to meet and confer on any potential rebuttal expert  
11 witnesses, and their potential deposition, prior to the currently scheduled trial date of February 14,  
12 2022.

13 If a party objects to this Motion on the grounds that they believe that there is insufficient  
14 time to depose Mr. Kear (which for the reasons stated above is not a valid argument), Casitas is  
15 willing to agree to whatever alterations to the discovery schedule and/or trial date that the Court  
16 believes is appropriate and/or necessary. However, because Casitas is not modifying Mr. Kear's  
17 existing report in any way, and Mr. Kear will be made available for the deposition that he is  
18 already schedule for, Casitas does not believe that any such extension or modification is necessary.

19  
20 Dated: November 10, 2021

Respectfully submitted

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