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 Gov. Code, § 6103

SUPERIOR COURT FOR 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 BUENA VENTURA, a California
 municipal corporation, incorrectly named as CITY
 OF BUENA VENTURA,

Respondents.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

**DECLARATION OF HOLLY J. JACOBSON
 ISO STATUS CONFERENCE STATEMENT
 AND RESPONSE TO OSC**

Date: December 9, 2021

Time: 2:30 pm

Dept: 10

**310 North Spring Street
 Los Angeles, CA 90012**

Action Filed: September 19, 2014

First Amended Complaint Filed:
 September 7, 2018

CITY OF SAN BUENA VENTURA, a California
 municipal corporation,

Cross-Complainant,

v.

DUNCAN ABBOTT;
 AGR BREEDING, INC; et al.

{00260896.1}

DECLARATION OF HOLLY J. JACOBSON ISO STATUS CONFERENCE STATEMENT AND RESPONSE
 TO OSC

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I, Holly J. Jacobson, declare:

1. I am an attorney duly licensed to practice in the courts of the State of California. I am an attorney in this action for Cross Defendant, City of Ojai.

2. If sworn as a witness in the above-entitled action, I could and would competently testify to all the following facts of my own personal knowledge.

3. On December 1, 2021 I received correspondence from Christopher Pisano indicating that Cross-Complainant the City of Ventura would not be producing the model relied upon by its expert Claire Archer until three days before her deposition in January of 2022 pursuant to the General Discovery statute and deposition notice. I responded the same day with my objection and referring him to the controlling statute, Code of Civil Procedure section 843. He responded late on Friday evening, December 3, 2021 that he disagreed and would not be producing the model. Attached hereto as Attachment A is the complete chain of emails that I received and sent concerning the communications above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: December 6, 2021

Respectfully submitted,
Bartkiewicz, Kronick & Shanahan, PC
By: 
JENNIFER T. BLUCKMAN
HOLLY J. JACOBSON
Attorneys for CITY OF OJAI,

Attachment A

From: [Christopher Pisano](#)
To: [Holly J. Jacobson](#); [Patterson, Gregory](#); [Shawn Hagerty](#); "[Gregg S. Garrison](#)"; [Jeremy N. Jungreis Esq. \(jjungreis@rutan.com\)](#); "[Marc Melnick](#)"
Subject: RE: Deposition of Ms. Klug/expert witness disclosure
Date: Friday, December 3, 2021 4:32:12 PM
Attachments: [image001.png](#)
[image002.png](#)

Greg and Holly:

I am going to respond to you both in this email.

First, Greg, I appreciate the suggestion to continue the Klug deposition in light of this apparent dispute. I think that course makes the most sense. I have conferred with Ms. Klug, and she is available on the following dates in January: 1/12, 1/13, 1/14 and 1/17. I think you're already doing Evans on 1/12, but I would think that Evans and Klug would both be half-day depositions, so that should be doable if you want that date.

Second, as to both of you contending that the City was required to produce the model itself with the expert report, I disagree. Dr. Archer provided with her report an entirely separate and distinct model report, where she described in great detail the methodology and process for creating her model. Everything (i.e. all facts and data that went into building the model) are described in that model report. As I understand it, the model is in essence a computer program that is constructed using publicly available software, and once an expert creates a computer model through inputting data points, it can then be used to run different scenarios to show changes in surface flow based on different environmental and man-made conditions. As Dr. Archer describes in her report, once she created the model through numerous different inputs (all of which are described in the model report) she ran different scenarios to show how pumping impacted the surface flow in the four basins during different time periods. Those different modeling runs, which support her opinion of connectivity, are all described in her report, and those are the modelling runs that we intend to present at trial. In short, Dr. Archer provided a report with all facts and data that she considered in forming her opinions of connectivity. Stated another way, her report complies with Section 843.

Again, it seems to me that you want the computer model itself because you want to run it using different scenarios than those that Dr. Archer ran, which I presume you want to do because you want to try to show modelling runs that support your clients' positions. The City was not under any obligation to produce the model with Dr. Archer's report for that purpose because that would not be a modelling run that was considered by Dr. Archer. Section 843 plainly provides that we are obligated to produce a report that contains the facts and data that the expert considered in forming his or her opinions. All such facts and data are set forth in the modeling report and the report itself. That is all that was required with the disclosure.

Greg, as for your suggestion that we produce the model as part of the response to the request for production, and that we do so 10 days before the deposition, rather than 3, I will give that some thought and let you know early next week. However, I am not sure that the City is required to produce the model at all given that it was built using publicly available software. Messrs. Brown and Kear could have built the exact same model, but chose not to do so. As I am sure you are aware,

these models are extremely expensive because they are labor intensive, i.e. they take a long time to build. I'm not sure that you are entitled to a duplicate of the model for no cost that the City spent a substantial amount of money to create. Perhaps we can work out an arrangement where if you want to run different modeling scenarios, you can give us the inputs and we will have Dr. Archer run the model using those inputs. That is just a thought for now. But again, I am going to research this issue, and I will get back to you both early next week.

Chris



[Christopher Pisano](#)

Partner

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From: Holly J. Jacobson <hjj@bkslawfirm.com>

Sent: Wednesday, December 1, 2021 3:52 PM

To: Patterson, Gregory <G.Patterson@musickpeeler.com>; Christopher Pisano <Christopher.Pisano@bbklaw.com>; Shawn Hagerty <Shawn.Hagerty@bbklaw.com>; 'Gregg S. Garrison' <gsgarrison@garrisonlawcorp.com>; Jeremy N. Jungreis Esq. (jjungreis@rutan.com) <jjungreis@rutan.com>; 'Marc Melnick' <Marc.melnick@doj.ca.gov>

Subject: RE: Deposition of Ms. Klug/expert witness disclosure

CAUTION - EXTERNAL SENDER.

Chris,

Following up on Greg's comments, I absolutely agree that the modeling data that Ms. Archer used in forming her opinion was required to be produced on September 24, 2021 per CCP section 843(b)(2).

It is prejudicial to withhold that information based upon the discovery act provision regarding the expert's file [in response to a deposition notice](#). (C.C.P. section 2034.415) Unlike Mr. Patterson, I'm not agreeable to have Ventura withhold this information until 10 days before deposition. This directly impacts our ability to prepare for and conduct depositions and to prepare for trial.

Please let me know if you are willing to reconsider your position and produce this information by Friday.

-Holly

From: Patterson, Gregory <G.Patterson@musickpeeler.com>

Sent: Wednesday, December 1, 2021 3:27 PM

To: Christopher Pisano <Christopher.Pisano@bbklaw.com>; Shawn Hagerty <Shawn.Hagerty@bbklaw.com>; 'Gregg S. Garrison' <gsgarrison@garrisonlawcorp.com>; Holly J. Jacobson <hjj@bkslawfirm.com>; Jeremy N. Jungreis Esq. (jjungreis@rutan.com) <jjungreis@rutan.com>; 'Marc Melnick' <Marc.melnick@doj.ca.gov>

Subject: Deposition of Ms. Klug/expert witness disclosure

Importance: High

Chris:

Thank you for your response to our request that Ms. Archer's model be produced prior to Ms. Klug's deposition. We view it as unfortunate that the City will not produce the model information as requested. To that end, I note that CCP 843(a)(2) requires the expert to provide "The facts or data considered by the witness in forming his or her opinions" at the time of producing the expert report. It is our position that this would include the model (data) upon which Ms. Archer clearly heavily relied upon in forming her opinions. We simply do not know currently how this model was run that forms the basis of Ms. Archer's opinions. To be clear, we are not simply requesting "documents" regarding the model, but the information, as provided in the notice, to allow our expert to independently examine the model.

Ms. Klug's input for the model raises questions regarding her input and how that affected the model and it is difficult to assess that without the model. We understand that it is the City's position that Ms. Klug had nothing to do with the construction of the model, but it does appear she was aware the model was being developed and may have information relevant to the model. Hard to ask questions when we don't know what the model looks like and how it was run.

Given our disagreement over what should be turned over and when, we agree with your proposal that we continue Ms. Klug's deposition until we resolve the modeling disclosure dispute. We will provide notice of the continuance. Please provide some dates in January that work for you and Ms. Klug.

We agree that everyone should play by the same rules with respect to expert witness disclosures. It appears that the City and the State both prepared

models, but no other designated experts have done so. Aquilogic did not independently develop a model and we do not intend to do so, but we must have the opportunity and time to review the models upon which the City and the State rely and how those models were run.

In order to provide sufficient time to allow experts to review the model and advise their clients, we propose that the modeling information requested in the notice be mutually produced 10 business days prior to the expert deposition because three business days does not provide sufficient time for our expert to advise us on his opinion of the model, parameters/assumptions/etc. in order to properly prepare for the deposition. All other files can be produced three days before per code. We also reserve the right to provide a rebuttal report after the City and State's depositions, assuming the models are produced at some point.

If we cannot reach agreement, we intend to file a status report or motion on this issue and try to key it up at the pending December 9th status conference for the Court to review.

I am copying the parties who I understand intend to participate in person or via zoom in the various depositions. If there are others who anyone thinks should see this, please forward.

Happy to discuss at your convenience.

Greg

Gregory J. Patterson
Partner

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