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12 CITY OF SAN BUENAVENTURA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

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

17 Petitioner,

18 v.

19 STATE WATER RESOURCES CONTROL  
20 BOARD, et al,

21 Respondents.

Case No. 19STCP01176

Judge: Hon. William F. Highberger

**CITY OF SAN BUENAVENTURA'S  
OPPOSITION TO EAST OJAI  
GROUP'S EX PARTE APPLICATION  
TO CONTINUE TRIAL**

*[Filed concurrently with Declaration of  
Christopher M. Pisano; Declaration of  
Sarah Christopher Foley]*

Date: January 18, 2022

Time: 1:30 p.m.

Dept.: 10

24 CITY OF SAN BUENAVENTURA, et al.,

25 Cross-Complainant,

26 v.

27 DUNCAN ABBOTT, an individual, et al.,

28 Cross-Defendants.

Action Filed: Sept. 19, 2014

Trial Date: February 14, 2022

1 Defendant and Cross-Complainant the City of San Buenaventura (Ventura) submits this  
2 opposition to the East Ojai Group’s (EOG) ex parte application to continue trial.

3 **I. INTRODUCTION**

4 EOG’s ex parte application is a classic illustration of someone trying to “move the goal-  
5 posts” during the game. There is no good cause to grant a trial continuance, and EOG’s stated  
6 excuse for trying to delay the trial is belied by their counsel’s prior representations. Indeed,  
7 EOG’s counsel previously stated (in writing no less) that they needed Ventura’s expert’s model  
8 for two, or at most three weeks, in order to analyze it for the depositions. By the time this  
9 application will be heard, EOG will have had Ventura’s expert’s model for exactly three weeks  
10 and one day, and there is still a month before the start of trial. EOG’s strategy of blaming a  
11 supposed “delay” in the production of the model is disingenuous. It is not good cause.

12 The dispute regarding Ventura’s expert’s surface water-groundwater model is well-known  
13 to the Court, and does not warrant repeating. What is important to note however, is that while the  
14 parties were trying to resolve this dispute over the model (which they ultimately did through a  
15 Stipulation and Protective Order), EOG’s counsel stated that they needed the model at least ten  
16 (10) business days (i.e., two weeks) before Ventura’s expert’s deposition. (See Declaration of  
17 Greg Patterson (Patterson Decl.), Ex. D.) At the time in December, Ventura’s expert, Dr. Claire  
18 Archer, was scheduled to be deposed on January 6, 2022. In negotiating the Stipulation and  
19 Protective Order, the parties all agreed that the model would be produced by December 27, 2021,  
20 which was ten days before the scheduled deposition. While this was not the ten business days  
21 that EOG’s counsel requested initially, everyone agreed to the timeline, and nobody objected.

22 Ventura complied with the Stipulation and Protective Order. EOG and their experts have  
23 had the model since December 27<sup>th</sup>. Yet thereafter the “goal-posts” seemingly moved. On  
24 December 29, 2021, after EOG had had Dr. Archer’s model for two days, EOG’s counsel  
25 requested to continue the Archer deposition from January 6<sup>th</sup> to a date in late January or in early  
26 February. (Declaration of Christopher M. Pisano (Pisano Decl.), Ex. C.) There were two stated  
27 reasons for the continuance; (1) EOG’s experts needed *three weeks* to analyze Dr. Archer’s  
28 model, and (2) EOG’s testifying expert, Mr. Brown, was ill at the time. In that email, EOG’s

1 counsel insisted that while they needed more time to review Dr. Archer’s model, they were still  
2 prepared to go forward with the depositions of the State’s experts, Dr. Preston and Dr. Schnaar, as  
3 noticed for January 10<sup>th</sup> and January 11<sup>th</sup>, and there was no indication of any need for a trial  
4 continuance. (*Id.*) Counsel for Ventura agreed to continue Dr. Archer’s deposition and was  
5 agreeable to depositions taking place following the expert discovery cut-off date. Out of a  
6 deference for the health of EOG’s expert, Anthony Brown, counsel for Ventura even agreed to the  
7 concept of a *short* trial continuance. (Pisano Decl., ¶ 4.)

8 By this application, EOG is trying to move the “goal-posts” yet again. They are now  
9 inexplicably saying that they need *eight weeks* to analyze the model. What happened to two  
10 weeks, or at most three weeks? Those extensions, which seem at least to have been reasonable  
11 requests at the time, have been cast aside, and EOG is now asking for a substantial continuance  
12 that will delay this trial for months. The EOG parties (and the Garrison and Whitman parties)  
13 claim that they do not even belong in this case, but as expert discovery has revealed, they cannot  
14 prove this on February 14, 2022 and thus seek to delay this case and waste everyone’s resources.  
15 This lawsuit was filed in 2014, and the time is long overdue for the parties to start Phase 1 of trial.  
16 Ventura will indeed be prejudiced by a continuance, and EOG’s and others’ efforts to stall this  
17 case should not be condoned. Ventura requests that the Court deny EOG’s application.  
18 Alternatively, Ventura would be agreeable to a short continuance of between one week and ten  
19 days. There is no reason the parties should not be able to try the Phase 1 issues before the Court  
20 leaves for its scheduled vacation in mid-March.

## 21 **II. LEGAL ARGUMENT**

### 22 **A. Continuances are Rare and Require a Showing of Good Cause.**

23 Pursuant to California Rules of Court, rule 3.1332, subdivision (c), “continuances of trial  
24 are disfavored” and the Court “may grant a continuance only on an affirmative showing of good  
25 cause requiring the continuance.” The Rules of Court similarly provide that, “[t]o ensure the  
26 prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their  
27 counsel must regard the date set for trial as certain.” (Cal. Rules of Court, rule 3.1332, subd. (a);  
28 *Reales Investment, LLC v. Johnson* (2020) 55 Cal.App.5th 463, 468.)

1 In deciding a motion for continuance, the court must look beyond the limited facts which  
2 cause a litigant to request a last-minute continuance, and consider the degree of diligence in his or  
3 her efforts to bring the case to trial. (*Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th  
4 1389, 1396, (citing *Link v. Cater* (1998) 60 Cal.App.4th 1315, 1324-1325).) Continuances should  
5 not be used as a dilatory tactic, and good cause for granting them must be demonstrated. (*Pham*  
6 *v. Nguyen* (1997) 54 Cal.App.4th 11, 17; see also *Thurman v. Bayshore Transit Management,*  
7 *Inc.* (2012) 203 Cal.App.4th 1112, 1127 [trial court acted within its discretion in denying a  
8 continuance of trial where case had been pending for over five years and employee’s counsel  
9 could have moved for class certification earlier]; *Lerma v. County of Orange* (2004) 120  
10 Cal.App.4th 709, 716 [requiring showing of good cause to support a request for continuance of a  
11 hearing]; *Jurado v. Toys ‘R’ Us, Inc.*, (1993) 12 Cal.App.4th 1615, 1618 [motion for continuance  
12 made before trial should not be granted absent affirmative showing of good cause]; *Foster v. Civil*  
13 *Service Com’n of Los Angeles County* (1983) 142 Cal.App.3d 444, 448 [granting of continuances  
14 is not favored, and party seeking continuance must make proper showing of good cause].)

15 **B. There is no Good Cause Because EOG has had Ventura’s Expert’s Model for**  
16 **Three Weeks, Which is the Amount of Time EOG Claimed that they Needed**  
17 **to Review the Model in Advance of the Depositions.**

18 There is no good cause to continue the trial because EOG’s experts have now had the  
19 model of Ventura’s expert, Dr. Archer, for over three weeks, which is the amount of time EOG’s  
20 counsel claimed was necessary when this issue first arose. EOG’s experts have had the model of  
21 the State’s experts since September, which should have been more than enough time.

22 In late November and December 2021, when the parties were discussing the production of  
23 Dr. Archer’s model, counsel for EOG stated that his experts needed the model two weeks before  
24 her deposition. In a December 1, 2021 email, counsel for EOG confirmed that he wanted his  
25 experts to have access to the model for ten business days (i.e., two weeks) before the deposition.  
26 (Patterson Decl., Ex. D, p. 2 [“In order to provide sufficient time to allow experts to review the  
27  
28

1 model and advise their clients, we propose that the modeling information requested in the notice  
2 be mutually produced **10 business days** prior to the expert deposition....”], emphasis added.)<sup>1</sup>

3 During the first part of December, certain parties who had retained experts, Ventura, City  
4 of Ojai, EOG, and Casitas Municipal Water District, negotiated a Stipulation and Protective  
5 Order, which Ventura presented to the Court on December 23<sup>rd</sup>. The Stipulation and Protective  
6 Order was carefully negotiated by and among these parties, and it provided that Dr. Archer’s  
7 model would be produced on or before December 27, 2021. (Pisano Decl. ¶ 3.) At the time of  
8 the negotiations, Dr. Archer’s deposition was scheduled for January 6, 2022, and at no time  
9 during these negotiations did EOG or any other party complain that December 27<sup>th</sup> was too late  
10 for the production and that Dr. Archer’s deposition should be kicked out. (*Id.*)

11 The model was produced on December 27<sup>th</sup>. Two days later, on December 29<sup>th</sup>, counsel  
12 for EOG sent an email to Ventura’s counsel requesting that the parties move the deposition of Dr.  
13 Archer to late January or early February. In this email, EOG’s counsel wrote, “I am told by  
14 Aquilologic [EOG’s expert] that **it will take about three weeks to review the model**, so I would like  
15 to discuss setting Archer/Klug on 1/24-28 or 1/31 or 2/2.” (Pisano Decl., Ex. C, emphasis added.)  
16 EOG’s counsel also indicated that they thought they would be ready for the State’s experts  
17 (Preston and Schnaar) on the dates they were originally noticed. EOG’s counsel also noted that  
18 for the purpose of finishing the deposition of EOG’s expert Mr. Brown (the President of  
19 Aquilologic), Mr. Brown had fallen ill, and EOG’s counsel targeted the week of January 24<sup>th</sup> to  
20 finish that deposition. (*Id.*) Ventura’s counsel agreed to continue the depositions and take  
21 depositions after the cut-off date, and also, out of respect for Mr. Brown’s medical condition,  
22 agreed to a short trial continuance. (Pisano Decl. . ¶¶ 4-5.)

23  
24  
25 <sup>1</sup> In its application, EOG argues that Ventura was required to produce its expert’s model when it  
26 produced her report pursuant to Code of Civil Procedure Section 843. (App., p. 4.) While this  
27 argument is not relevant to the issue at hand, EOG is wrong. The model is a computer program  
28 that Dr. Archer built using various input files. Dr. Archer produced concurrently with her August  
31, 2021 expert report an extensive, stand-alone report on the development of her model. (Pisano  
Decl., Ex. B.) In this model report Dr. Archer discussed the input files that went into the model,  
how the model was put developed, and how it was used. This report provided the “facts and  
data” regarding the model development and use, and thus it complied with Section 843.

1 As of the hearing date for this ex parte application, EOG’s experts will have had the  
2 model for three weeks and one day. This is more than EOG’s time estimate for a review of the  
3 model, even after they had the model for two full days. This is all the time that should be needed,  
4 and all the time that should be granted. Of course, any extra time that was needed to review the  
5 model can, and should be ameliorated by a reduction in the expert discovery cut-off date. At this  
6 point, there is still a month before trial, which should be enough time for the parties to complete  
7 expert discovery. At a minimum, the Court should only continue the trial by one week to ten (10)  
8 days. If the trial were moved to the last full week of February, that should be more than enough  
9 time for the parties to finish discovery and otherwise prepare for trial.<sup>2</sup>

10 C. **There is no Good Cause to Continue the Trial Because the Model is not a**  
11 **Critical Analysis for Dr. Archer’s Opinion; EOG’s Counsel Overstates the**  
12 **Importance of the Models to his Case.**

13 In their ex parte application, EOG’s counsel (Mr. Patterson) and expert (Mr. Brown) do  
14 their best to emphasize the importance of the models for this phase of trial. (See Patterson Decl.,  
15 ¶ 2 [“In preparing the report, Archer and, perhaps Klug, did their own 3D groundwater model and  
16 Ms. [Dr.] Archer’s opinions are based heavily on the model.”]; Brown Decl., ¶ 4 [“My review  
17 and analysis of these models is critical to enable me to provide competent and relevant testimony  
18 in this case and respond to testimony offered by experts for the City and SWRCB that relies upon  
19 these models.”]) Ventura does not speak for the State experts’ model. However, for Ventura’s  
20 case, the model, while relevant, is hardly the critical linchpin EOG tries to portray. As EOG is  
21 clearly aware, Dr. Archer performed numerous analyses in arriving at her opinions of an  
22 interconnection between ground and surface water in the Ventura River Watershed. A copy of  
23 Dr. Archer’s August 31, 2021 report is attached as Exhibit A. As the report indicates, Dr. Archer  
24 performed six separate analyses for the Ojai Basin alone in reaching her opinion of an  
25 interconnection between surface and groundwater in this basin. (Pisano Decl., Ex. A, pp. 18-27.)

26 <sup>2</sup> Ventura notes here that EOG also claims to need to more time to review the State’s model, and  
27 also a model of Ojai Basin Groundwater Management Agency (OBGMA). Ventura has no  
28 control over those models or the production of those models, but points out here that the State’s  
model has been available to EOG since September. EOG offers no explanation as to why they  
suddenly need more time with the State’s model, particularly after counsel for EOG stated in late  
December that the depositions of the State’s experts (Preston and Schnaar) did not need to move.

1 The model is one of the six analyses Dr. Archer performed, and thus while the model is relevant,  
2 its importance is overstated in EOG’s application.

3 Also, Mr. Brown did not build a model of his own for purposes of offering an opinion in  
4 this case. As Mr. Brown testified in his deposition, he opted not to build his own model not due  
5 to any monetary or time constraint, or lack of ability, rather he did not build his own model  
6 because he felt that a model was unnecessary for the presentation of his opinions. (Pisano Ex. D,  
7 [Brown Depo., pp. 219:16-220:23].) While Brown may want Ventura’s and the State’s model to  
8 critique and rebut Ventura’s and the State’s experts’ work (which models he now has), he is not  
9 using any models as support of his own opinions, because he does not believe he needs to use any  
10 models. Like EOG’s counsel, Mr. Brown is overstating this issue.

11 Finally, Ventura also notes here that Mr. Brown asserts in his declaration a claim that it is  
12 important for him and his team to review both Ventura’s and the State’s expert’s model “at the  
13 same time,” and he estimates that he needs to spend 150 to 200 hours to analyze these models.  
14 (Brown Decl., ¶¶ 4-5.) Mr. Brown provides no explanation as to why the models must be  
15 analyzed at the same time, nor does he explain why it will take so many hours for his modeling  
16 expert to do this work. Ventura notes here that Mr. Brown produced his expert file prior to his  
17 December 16, 2021 deposition, and in this file Mr. Brown produced email exchanges he has had  
18 with his colleagues and counsel for EOG. These emails show that Mr. Brown was given access to  
19 the State’s experts’ report and model on September 27, 2021, and by September 28<sup>th</sup>, Mr. Brown  
20 had already concluded that the State’s expert had used a “[b]izarre model approach not approved  
21 by the Courts.” (Pisano Decl., Ex. E, p. 2.) Mr. Brown likewise called the State’s report, “pure  
22 techno-gobbledygook,” and questioned whether the State’s “modeling approach has ever passed a  
23 Daubert/Kelley-Frye test.” (Pisano Decl., Ex. F, p. 1.) While Mr. Brown goes on to allude to the  
24 need to do more work rebutting and dissecting the reports, he had clearly formulated some strong  
25 opinions against the State’s experts’ model in only one day. Given these strong and emphatic  
26 opinions, it seems a bit far-fetched that Mr. Brown now needs eight weeks to review the models.  
27 There should be no reason that Mr. Brown would now need eight more weeks to analyze the  
28 models, and this application should be denied.

1           **D. There is no Good Cause to Continue the Trial Based on Mr. Whitman**  
2           **Because he has not Asked for Model; Rather he Simply Wants the Ability to**  
3           **Get the Model, Which Ventura is Willing to do.**

4           EOG also points out in his application that the trial should be continued because Whitman  
5           has not yet had an opportunity to review the model. This issue was addressed in Ventura’s  
6           response to Whitman’s statement filed on January 13, 2022. Mr. Whitman has not even asked for  
7           model, rather he just wants the ability to get the model in the future without going to Court for  
8           approval. As Ventura stated in its response, if Whitman wants the model, he can have it; Ventura  
9           would merely like Mr. Whitman to confirm that he has the software necessary to run the model.

9           **E. Garrison’s Charge of “Unclean Hands” is Nonsense; Garrison has Refused to**  
10           **Produce his Expert for Deposition, And Garrison’s and Ojai’s Expert Kear is**  
11           **Withholding Numerous Foundational Documents that Must be Produced.**

12           Ventura also provides a response to Garrison’s separate filing, where he accuses Ventura,  
13           and more to the point, its counsel BBK, of “unclean hands.” The short answer is that Garrison’s  
14           claim is nonsense. BBK attorneys and paralegals have been conciliatory and cooperative in  
15           responding to Mr. Garrison’s requests by researching his own clients and providing him all  
16           known information about them. (See, generally concurrently filed Declaration of Sarah  
17           Christopher Foley.) Mr. Garrison’s assertion of “unclean hands” and withholding of discovery is  
18           a blatant misrepresentation to the Court and an unjustified attack on BBK. *Ibid.* It is Mr.  
19           Garrison’s misrepresentation to the Court that is “arguably sanctionable,” not any conduct by  
20           BBK.

21           It should also be noted here that it is Mr. Garrison whose hands are “unclean” and not  
22           BBK. Mr. Garrison designated Jordan Kear as an expert and produced a report from Mr. Kear on  
23           behalf of a group of owners in the Upper Ojai Basin. BBK properly noticed this deposition for  
24           January 14, 2022, which was the expert discovery cut-off. However, prior to the deposition Mr.  
25           Garrison unilaterally cancelled the deposition, and he failed to produce any foundational  
26           documents in support of Mr. Kear’s work. (Pisano Decl., ¶ 7.) Ventura’s counsel informed Mr.  
27           Garrison that they would be fine taking Mr. Kear’s deposition after the discovery cut-off, but  
28           despite repeatedly asking Mr. Garrison for dates, he has yet to provide alternate dates for Mr.  
          Kear’s deposition. (*Id.*) If anyone’s hands are unclear here, it is Garrison’s.



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**III. CONCLUSION**

For the reasons stated herein, Ventura respectfully requests that EOG's ex parte application be denied.

Dated: January 14, 2022

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