



1 **MUSICK, PEELER & GARRETT LLP**

2 2801 Townsgate Road, Suite 200  
3 Westlake Village, California 91361  
4 Telephone (805) 418-3100  
5 Facsimile (805) 418-3101

6 Gregory J. Patterson (State Bar No. 136665)  
7 [g.patterson@musickpeeler.com](mailto:g.patterson@musickpeeler.com)  
8 William W. Carter (State Bar No. 115487)  
9 [w.carter@musickpeeler.com](mailto:w.carter@musickpeeler.com)

10 Attorneys for The Thacher School; Friend's Ranches, Inc.; Topa Topa Ranch & Nursery, LLC;  
11 Finch Farms, LLC; Red Mountain Land & Farming, LLC; Thacher Creek Citrus, LLC; The Finch  
12 Family Trust; James P. Finch; Robert Calder Davis, Jr.; Robert Calder Davis, Jr., TTEE of Trust  
13 Owned Properties; Sharon H. Booth, Trustee of The Survivor's Trust Created Under Declaration  
14 of Trust of Richard G. Booth and Sharon H. Booth Dated July 10, 1980; David Robert Hamm and  
15 Reeves Orchard, LLC (collectively, the "East Ojai Group")

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **COUNTY OF LOS ANGELES**

18 SANTA BARBARA CHANNELKEEPER, a  
19 California non-profit organization

20 Petitioner,

21 vs.

22 STATE WATER RESOURCES CONTROL  
23 BOARD, a California State Agency; CITY OF  
24 SAN BUENAVENTURA, a California  
25 municipal corporation,

26 Respondents.

CASE No. 19STCP01176

Judge: Hon. William F. Highberger

**DECLARATION OF GREGORY J.  
PATTERSON IN SUPPORT OF NOTICE  
OF EX PARTE APPLICATION TO  
CONTINUE TRIAL**

**Date: January 18, 2022**  
**Time: 1:30 p.m.**  
**Dept: 10**

Action Filed: September 19, 2014  
First Amended Complaint Filed:  
September 7, 2018  
Trial Date (Phase One): February 14, 2022

27 CITY OF SAN BUENAVENTURA, etc.,

28 Cross-Complainant,

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

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DECLARATION OF GREGORY J. PATTERSON

I, Gregory J. Patterson, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Musick, Peeler & Garrett LLP, attorneys of record for The Thacher School; Friend’s Ranches, Inc.; Topa Topa Ranch & Nursery, LLC; Finch Farms, LLC; Red Mountain Land & Farming, LLC; Thacher Creek Citrus, LLC; The Finch Family Trust; James P. Finch; Robert Calder Davis, Jr.; Robert Calder Davis, Jr., TTEE of Trust Owned Properties; Sharon H. Booth, Trustee of The Survivor’s Trust Created Under Declaration of Trust of Richard G. Booth and Sharon H. Booth Dated July 10,1980; David Robert Hamm and Reeves Orchard, LLC (collectively, the "East Ojai Group"). I have personal knowledge of the facts set forth herein and if called as a witness, I could and would competently testify thereto.

2. We received the City of Buenaventura's expert report prepared by Clare Archer and Tamara Klug on August 31, 2021. In preparing the report, Archer and, perhaps Klug, did their own 3D groundwater model and Ms. Archer's opinions are based heavily on the model. I was informed by the East Ojai Group's Expert Anthony Brown, that it was extremely important that he have access to a fully functioning actual model in order for him to be able to review and critique the model and that he would not have time without the model in hand to prepare fully for his deposition and trial testimony.

3. On September 1, 2021 I sent an e-mail to Shawn Haggerty, counsel for the City, in which I requested that the City turn over the model to allow Mr. Brown to run the model. A true and correct copy of this e-mail is attached as Exhibit A.

4. On September 2, 2021, counsel for the City flatly stated that the City would not produce the model. Counsel stated it would revisit the issue only after the East Ojai Group provided its expert report on September 24, 2021. A true and correct copy of this e-mail is attached as Exhibit B.

5. Thereafter, on more than one occasion, I reiterated the need for the model with no success.

1           6.       On November 30<sup>th</sup>, 2021 I sent an e-mail to counsel for the City again expressing  
2 the need for the model and indicating that I was going to continue the deposition of Ms. Archer  
3 and Ms. Klug until we, or the court resolved the matter. A true and correct copy of this e-mail is  
4 attached as Exhibit C. I was later informed the City would not produce the model.

5           7.       On December 1, 2021, again, that same day I sent another e-mail again expressing  
6 the need to have the model and confirming that we were continuing Ms. Klug's deposition. A true  
7 and correct copy of that e mail is attached as Exhibit D.

8           8.       On December 6, 2021 at 11:59 a.m., I sent an e-mail to counsel for the City again  
9 expressing my position that the City was required to turn over the model. In that e-mail I noted  
10 that in the Las Posas water adjudication action pending in Santa Barbara Superior Court, in which  
11 I am involved, all experts turned over their models, including an expert retained Calleguas Mutual  
12 Water District, a Best, Best and Krieger client in that matter. A true and correct copy of this  
13 e-mail is attached as Exhibit E.

14           9.       That same day, counsel for the City sent an e-mail to me stating that they were  
15 prepared to discuss the issue after the deposition scheduled for the next day.

16           10.       Subsequently, I was informed that the City would provide the model subject to a  
17 stipulation regarding use of the model.

18           11.       On December 27, 2021, we finally received the model.

19           12.       I was then informed by my expert, Mr. Anthony Brown that he would require at  
20 least eight weeks to properly review the City model, the State model and a model prepared by the  
21 Ojai Basin Groundwater Management Agency upon which the State considered in developing its  
22 model.

23           13.       Given that the expert discovery deadline was January 12, 2022, and there were  
24 multiple pre-trial deadlines with the trial set for February 14, 2022, it became very clear to me that  
25 we would not have sufficient time to properly prepare for trial, given the lateness in which we  
26 received the City's model and Mr. Brown's need for sufficient time to review and critique the  
27 model.

28

1           14.    I also understand that at least one other group of cross-defendants have requested  
2 the model (Whitman et al.) and the City has refused to provide the model because these cross-  
3 defendants did not designate an expert witness. A true and correct copy of the filing made by the  
4 Whitman Group is attached as Exhibit F.

5           15.    I notified counsel for the City that I thought we needed to continue the trial. I also  
6 notified counsel for the City of Ojai, counsel for the State, counsel for Casitas and counsel for the  
7 Upper Ojai Basin of my position.

8           16.    Initially, all parties, including the City, were agreeable to a continuance. We first  
9 looked at time in April and May. Unfortunately, the parties determined that there were multiple  
10 conflicts during these months. After further back and forth, Mr. Melnick, counsel for the State,  
11 sent an e mail summarizing the conflicts. A true and correct copy of this e-mail is attached as  
12 Exhibit G. It appears there is a window from June 13 -July 1, 2022. All parties except the City  
13 are agreeable to those dates, assuming the Court also is available.

14           17.    The City has suggested only a week or ten day continuance which is not acceptable  
15 to the East Ojai Group because it does not provide the time necessary to review the models and  
16 prepare its expert. Such a short continuance would be highly prejudicial to the East Ojai Group.

17           18.    To the extent the Court determines it should set the case earlier than June 13, 2022,  
18 the East Ojai Group respectfully requests that the trial be set no earlier than May. The East Ojai  
19 Group will not object to segmenting the trial if, necessary, although I understand that the counsel  
20 for the City and the State do not want to break up the trial over differing dates.

21           I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct. Executed on this 13<sup>th</sup> day of January, 2022, at Westlake Village,  
23 California.

24  
25   
26 Gregory J. Patterson

# **EXHIBIT A**

## **Patterson, Gregory**

---

**From:** Patterson, Gregory  
**Sent:** Wednesday, September 1, 2021 3:54 PM  
**To:** Shawn Hagerty  
**Subject:** FW: Cardno Groundwater Report

**Importance:** High

Shawn: We have quickly reviewed the Cardno Groundwater Report. My understanding of the basis of the court's ruling that the City go first was to allow those experts who may respond to address issues raised in the City's expert reports. Based on our initial review, we cannot do that for the reasons expressed below. Given the very short time frame for expert discovery, it would be more efficient for everyone involved if we had the following information and we would be willing to do the same (share the same data sets) and we would agree that the flow models would be used for this matter only. This will, in my mind, save a lot of discovery time and dollars. We should probably get the same data set from the state.

As we see it at the moment:

The opinions presented in the expert report of Claire Archer Ph.D. are based heavily on groundwater flow modeling developed by Cardno. However, her report presents no documentation regarding the development and calibration of the model, and simulation runs from the model. As such, the modeling is a "black box" whose workings are invisible to those not in possession of a functional version of the model.

Therefore, we are formally requesting that Cardno, through their client the City of Ventura, provide a fully functional working version of the model that experts for other parties in this matter can run. in particular (and in addition), Cardno should provide the following to all parties subject to this proceeding:

- All documentation related to model development (e.g., modeling work plan, conceptual model report, model development report, calibration calculations and reports, reports of sensitivity analyses, and documentation of simulations)
- All source data used in development of the model
- All input files (text or ASCII format) necessary to run the models
- All output files (text or ASCII format) from model runs performed in support of GSP development
- All databases, spreadsheets, geographic information system (GIS) shapefiles, and graphics files (e.g., maps) used to develop the models
- All files necessary to open and run the models within the graphical user interface (GUI) (e.g., commercially available software packages like Groundwater Vistas, GMS).

I am happy to discuss at your convenience.

Regards,

Greg

# **EXHIBIT B**

## **Patterson, Gregory**

---

**From:** Christopher Pisano <Christopher.Pisano@bbklaw.com>  
**Sent:** Thursday, September 2, 2021 2:32 PM  
**To:** Shawn Hagerty; Patterson, Gregory  
**Subject:** RE: Cardno Groundwater Report

Greg:

The City's formal response is that we are not going to provide you with the information you have requested. The Court did not require the City to disclose its expert information before all other parties so that other parties could merely respond to the City's experts' reports, with no independent expert analysis. As I understand the Court's July 23<sup>rd</sup> ruling, the City was ordered to disclose first because the City's experts have been working on these issues longer than other parties, and the Court believed that was good cause to require the City to disclose first.

We disagree with the Court's ruling, however we complied with it, and we provided disclosures that meet all requirements of CCP Sections 843 and 2034.010 et. seq. We are not obligated under these statutes to provide you with the information requested below as part of our disclosures, and we are not inclined to do so. Under the Court's order, your clients are now obligated to disclose their expert information on September 24<sup>th</sup>, and we are anticipating that your experts will provide independent analysis of the issues of interconnectivity and the basin boundaries, and that your experts' analysis will either support or refute the opinions provided by the City's experts.

Also, as Shawn mentioned, Dr. Archer provided a separate model report, which is an exhibit to her main report. The model report describes her modeling process in great detail, and provides a roadmap for how she and her team constructed the model from the ground up, and ran the modelling scenarios as support for her opinions.

In short, we respectfully decline your request. We are willing to revisit this issue after all experts have disclosed their reports, at which time we can meet and confer on appropriate scope of expert discovery. But that will not happen until we receive your expert disclosures on September 24<sup>th</sup>. Thanks.

Chris

**From:** Shawn Hagerty <Shawn.Hagerty@bbklaw.com>  
**Sent:** Wednesday, September 1, 2021 4:34 PM  
**To:** 'Patterson, Gregory' <G.Patterson@musickpeeler.com>  
**Cc:** Christopher Pisano <Christopher.Pisano@bbklaw.com>  
**Subject:** RE: Cardno Groundwater Report

Greg: We will provide you with a formal response to this request. We do not agree with your characterization of the Court's order regarding expert exchange dates, and we anticipate a formal initial expert report conforming to CCP 843 from your clients on September 24 that sets forth any independent opinions that your expert(s) may intend to present at the phase 1 trial. Supplemental reports, if any, are scheduled for a later, mutual exchange. Also, please confirm whether you have reviewed the model report that is an exhibit to Ms. Archer's report.



**From:** Patterson, Gregory <G.Patterson@musickpeeler.com>  
**Sent:** Wednesday, September 1, 2021 3:54 PM  
**To:** Shawn Hagerty <Shawn.Hagerty@bbklaw.com>  
**Subject:** FW: Cardno Groundwater Report  
**Importance:** High

**CAUTION - EXTERNAL SENDER.**

Shawn: We have quickly reviewed the Cardno Groundwater Report. My understanding of the basis of the court's ruling that the City go first was to allow those experts who may respond to address issues raised in the City's expert reports. Based on our initial review, we cannot do that for the reasons expressed below. Given the very short time frame for expert discovery, it would be more efficient for everyone involved if we had the following information and we would be willing to do the same (share the same data sets) and we would agree that the flow models would be used for this matter only. This will, in my mind, save a lot of discovery time and dollars. We should probably get the same data set from the state.

As we see it at the moment:

The opinions presented in the expert report of Claire Archer Ph.D. are based heavily on groundwater flow modeling developed by Cardno. However, her report presents no documentation regarding the development and calibration of the model, and simulation runs from the model. As such, the modeling is a "black box" whose workings are invisible to those not in possession of a functional version of the model.

Therefore, we are formally requesting that Cardno, through their client the City of Ventura, provide a fully functional working version of the model that experts for other parties in this matter can run. In particular (and in addition), Cardno should provide the following to all parties subject to this proceeding:

- All documentation related to model development (e.g., modeling work plan, conceptual model report, model development report, calibration calculations and reports, reports of sensitivity analyses, and documentation of simulations)
- All source data used in development of the model
- All input files (text or ASCII format) necessary to run the models
- All output files (text or ASCII format) from model runs performed in support of GSP development
- All databases, spreadsheets, geographic information system (GIS) shapefiles, and graphics files (e.g., maps) used to develop the models
- All files necessary to open and run the models within the graphical user interface (GUI) (e.g., commercially available software packages like Groundwater Vistas, GMS).

I am happy to discuss at your convenience.

Regards,

Greg

# **EXHIBIT C**

## Patterson, Gregory

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**From:** Patterson, Gregory  
**Sent:** Tuesday, November 30, 2021 3:25 PM  
**To:** Christopher Pisano; Shawn Hagerty  
**Cc:** Carter, William; 'Holly Jacobson'; 'Gregg S. Garrison'; 'Marc Melnick'  
**Subject:** RE: expert depos

**Importance:** High

Christopher and Shawn:

We are perplexed as to why the City continues to refuse to produce the model used by your experts. As admitted below and in the Cardno expert report, Ms. Klug "provided input For Ms. Archer's model." In addition, while not providing the specific sections Ms. Klug wrote in the report, it is clear she wrote "two sections" of the Cardno expert report. We have no idea which sections were prepared by her and whether she relied on the model in preparing those sections. How in the world can we ask meaningful questions about her "input" without having the model? How do we understand her involvement in the two sections of the report when we don't know what sections she wrote or whether the model impacted her opinions in the report? How is one of two experts at Cardno the sole custodian of the model? It seems to us Cardno, or the City, is the "custodian."

In short, we have concluded that we cannot meaningfully take Ms. Klug's deposition on the 6<sup>th</sup> without the model and, we will, if necessary seek a court order by ex-parte application requiring that the City turn over the model information we requested long ago and again in Ms. Klug's deposition notice before we take her deposition.

Please reply by noon tomorrow. If the City is unwilling to produce the model, we will postpone the Klug deposition until the court rules on this issue. I am copying those parties I understand intend to participate in person, so they can adjust travel plans, if necessary.

Bill Carter and I are around to have a discussion about this if you would like to do so.

Regards,

Greg

**Gregory J. Patterson**  
*Partner*

MusickPeeler

Musick, Peeler & Garrett LLP  
2801 Townsgate Road Suite 200  
Westlake Village, California 91361

[g.patterson@musickpeeler.com](mailto:g.patterson@musickpeeler.com)  
[www.musickpeeler.com](http://www.musickpeeler.com)

T (805) 418-3103  
F (805) 418-3101

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**From:** Christopher Pisano <Christopher.Pisano@bbklaw.com>  
**Sent:** Tuesday, November 30, 2021 12:55 PM  
**To:** Patterson, Gregory <G.Patterson@musickpeeler.com>; Shawn Hagerty <Shawn.Hagerty@bbklaw.com>  
**Cc:** Carter, William <W.Carter@musickpeeler.com>  
**Subject:** RE: expert depos

Greg:

I will be producing the files for Ms. Klug, Dr. Littlefield and Dr. Hanson later this week. I should have Ms. Klug's file ready tomorrow. Please note that while Ms. Klug provided input for Dr. Archer's model, Ms. Klug is not the custodian of the model and its related documents, and she did not rely upon the model in formulating the opinions that she will testify to at the Phase 1 trial. As such, Ms. Klug will not be producing documents related to the model prior to or at her deposition.

Chris

**From:** Patterson, Gregory <[G.Patterson@musickpeeler.com](mailto:G.Patterson@musickpeeler.com)>  
**Sent:** Tuesday, November 30, 2021 9:22 AM  
**To:** Christopher Pisano <[Christopher.Pisano@bbklaw.com](mailto:Christopher.Pisano@bbklaw.com)>; Shawn Hagerty <[Shawn.Hagerty@bbklaw.com](mailto:Shawn.Hagerty@bbklaw.com)>  
**Cc:** Carter, William <[W.Carter@musickpeeler.com](mailto:W.Carter@musickpeeler.com)>  
**Subject:** expert depos

**CAUTION - EXTERNAL SENDER.**

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Chris and Shawn: we will be sending amended notices today to make clear that parties can attend via zoom and changing the time (not the date) per Marc's request. To that end, it is important that we receive the requested documents in the notices and especially the info regarding the model used by the City's experts by tomorrow for Monday's depo, so we can have exhibits prepared with the reporting service prior to the depo.

Regards,

Greg

**Gregory J. Patterson**  
*Partner*

MusickPeeler

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Musick, Peeler & Garrett LLP  
2801 Townsgate Road Suite 200  
Westlake Village, California 91361

[g\\_patterson@musickpeeler.com](mailto:g_patterson@musickpeeler.com)  
[www.musickpeeler.com](http://www.musickpeeler.com)

T (805) 418-3103  
F (805) 418-3101

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# **EXHIBIT D**

## **Patterson, Gregory**

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**From:** Patterson, Gregory  
**Sent:** Wednesday, December 1, 2021 3:27 PM  
**To:** Christopher Pisano; Shawn Hagerty; 'Gregg S. Garrison'; Holly J. Jacobson; Jeremy N. Jungreis Esq. (jjungreis@rutan.com); 'Marc Melnick'  
**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 9<sup>th</sup> 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*

MusickPeeler

Musick, Peeler & Garrett LLP  
2801 Townsgate Road Suite 200  
Westlake Village, California 91361

[g.patterson@musickpeeler.com](mailto:g.patterson@musickpeeler.com)  
[www.musickpeeler.com](http://www.musickpeeler.com)

T (805) 418-3103  
F (805) 418-3101

Los Angeles | Orange County | San Diego | San Francisco | Ventura County

Greg

Gregory J. Patterson  
*Partner*

MusickPeeler

Musick, Peeler & Garrett LLP  
2801 Townsgate Road Suite 200  
Westlake Village, California 91361

[g.patterson@musickpeeler.com](mailto:g.patterson@musickpeeler.com)  
[www.musickpeeler.com](http://www.musickpeeler.com)

T (805) 418-3103  
F (805) 418-3101

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# **EXHIBIT E**



## Patterson, Gregory

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**From:** Patterson, Gregory  
**Sent:** Monday, December 6, 2021 11:59 AM  
**To:** Christopher Pisano; Shawn Hagerty  
**Cc:** Carter, William  
**Subject:** Expert Model

Chris and Shawn: I am unaware of any case where this information was not turned over. Not just in this type of case, but in other computer modeling cases.

The language is clear that all data relied upon by the expert needs to be turned over. Your position in this case is also inconsistent with what was turned over in the Las Posas water adjudication, in which I am involved. In that case the UWCD model was turned over and Calleguas MWD ( A BKK CLIENT IN THAT MATTER) turned over its model.

How is the Las Posas matter, in which BKK turned over the model on behalf of its client, different than this one?

We will bring this to the attention of the court at Thursday's status conference.

Bill and I are happy to discuss at your convenience.

Greg

Gregory J. Patterson  
*Partner*

MusickPeeler

---

Musick, Peeler & Garrett LLP  
2801 Townsgate Road Suite 200  
Westlake Village, California 91361

[g.patterson@musickpeeler.com](mailto:g.patterson@musickpeeler.com)  
[www.musickpeeler.com](http://www.musickpeeler.com)

T (805) 418-3103  
F (805) 418-3101

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# **EXHIBIT F**



1 ANDREW K. WHITMAN (SBN 128358)  
 2 821 N. Signal St.  
 3 Ojai, Ca 93023  
 4 (805) 444-5671  
 5 [andyw821@gmail.com](mailto:andyw821@gmail.com)  
 6 In Pro Per and Attorney for  
 Heidi A. Whitman, Nancy L.  
 Whitman and John R. and Nancy  
 L. Whitman Family Trust

7  
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF LOS ANGELES

11 SANTA BARBARA CHANNELKEEPER,  
 12 a California non-profit corporation,  
 13  
 14         Petitioner,  
 15  
 16 v.  
 17 STATE WATER RESOURCES CONTROL  
 18 BOARD, A CALIFORNIA STATE AGENCY;  
 19 CITY OF SAN BUENAVENTURA, a  
 California municipal corporation, incorrectly  
 named as CITY OF BUENAVENTURA,  
 20  
 21         Respondents.  
 22  
 23 \_\_\_\_\_  
 CITY OF SAN BUENAVENTURA,  
 a California municipal corporation,  
 24  
 25         Cross-Complainant,  
 26  
 27 v.  
 28 DUNCAN ABBOTT, an individual, et al.  
 \_\_\_\_\_  
 Cross-Defendants.

Case No. 19STCP01176  
 Assigned to Judge William F. Highberger  
 Dept.: 10  
 Complaint filed: September 19, 2014  
 CROSS DEFENDANTS ANDREW K.  
 WHITMAN, HEIDI A. WHITMAN,  
 NANCY L. WHITMAN AND JOHN R.  
 AND NANCY L. WHITMAN FAMILY  
 TRUST'S STATEMENT RE CITY  
 REFUSAL TO PRODUCE EXPERT  
 DOCUMENTS/MATERIALS

TO: CROSS-COMPLAINANT CITY OF SANBUENAVENTURA, ALL PARTIES  
 AND THEIR ATTORNEYS OF RECORD:

1 This Court has allowed for further briefing concerning the Computer Model utilized by  
2 CITY OF VENTURA (CITY) and the associated protective order concerning the model. At the  
3 initial hearing on the motion for approval of the protective order my clients objected on grounds  
4 that the CITY has refused to produce the model despite my clients' willingness to sign the  
5 protective order.

6 **I. THE CITY SHOULD BE ORDERED TO PRODUCE THE EXPERT'S COMPUTER**  
7 **MODEL TO ANY CROSS-DEFENDANT WHO AGREES TO MAINTAIN**  
8 **CONFIDENTIALITY OF THE MODEL AND WITHOUT THE NEED TO**  
9 **PREPARE AND FILE A MOTION AND OBTAIN APPROVAL OF THE COURT**

10 At the ex parte hearing, the CITY's attorneys attempted to distort the factual setting of the  
11 dispute which was created by the CITY. An accurate recounting of how this dispute arose is as  
12 follows: After receiving notice of the CITY's ex parte hearing concerning the protective order,  
13 legal counsel for a handful of cross-defendants (Andrew K. Whitman) communicated with legal  
14 counsel for the CITY and asked that the cross-defendants be added to the names listed in the  
15 protective order. It was volunteered that the CITY would not need to immediately send the  
16 protected material (computer modeling software) and that it was possible that cross-defendants  
17 might not ever request possession of the model.<sup>1</sup> The CITY responded that it would not agree to  
18 add my clients to the stipulation unless I had an expert.<sup>2</sup> I asked the CITY if they had any legal

19  
20  
21 <sup>1</sup> The full text of Whitman's communication to the CITY:

22 "I haven't decided yet whether I want the model but I dont want to have to go to court to approve my inclusion in  
23 the protective order if I later decide I want it. I think the easiest resolution is to add me to the stip and protective  
24 order. At the moment I wouldnt know what I was looking at if I received a copy of the model so don't currently  
25 want a copy. If I get someone to help me understand the model (something I am looking into) I would then want  
26 a copy of the model and agree to be subject to the protective order provisions. If you agree to add my name to the  
27 order (I'm an attorney and represent myself and three others) and also agree that you dont need to send the model  
28 unless I request it (either in the order or as a side agreement) then I wouldnt have to make an appearance tomorrow.  
Thanks for your consideration."

<sup>2</sup> The CITY's response: "I am hesitant to agree to your inclusion at this point before you have retained an expert.  
The point of this stipulation is that the experts are going to get the model in a form that can be altered or manipulated  
so that they can then advise their clients on the merits of the model. The experts can then share the model (or any  
portions of it) with their clients, but that must be done in a "read only" mode. From my perspective, that is the  
best way to insure that the model is only used for litigation purposes. There is a provision in the Stipulation to add  
parties, subject to notice and court approval. I would suggest that once you retain an expert we revisit this issue,  
and at that point I may not have any problem with including you as a party to the stipulation."

1 authority for the proposition that they could refuse to produce expert witness material to a party  
2 willing to stipulate to a protective order? I further indicated I would oppose the stipulation based  
3 upon CITY's refusal to accommodate my clients.<sup>3</sup> The CITY then indicated it would  
4 communicate that my clients opposed the ex parte application.<sup>4</sup> No legal authority for the  
5 CITY's position has ever been provided.

6 When an expert has relied on privileged material to formulate an opinion, the court may  
7 exclude their testimony as necessary to enforce the privilege. *Fox v. Kramer* (2000) 22 Cal.4th  
8 531, 541. The privilege that is claimed is held by the CITY's expert and she has the option to not  
9 provide testimony and thereby protect her work product. She has also been given the option to  
10 have her work protected from dissemination by way of a protective order. What is not an option  
11 is for the CITY's expert to offer opinion testimony that is based upon material that hasn't been  
12 admitted into evidence and without the opportunity of the cross-defendants to examine  
13 concerning the details of the actual computer model relied upon. An expert's opinion that is not  
14 supported by the facts is inadmissible. *Sanchez v. Kern Emergency Med. Transp. Corp.* (2017) 8  
15 Cal.App.5th 146, 155–156. A judge should not permit an expert to testify to an opinion that is  
16 not reasonably based on the evidence. *Pedefferri v. Seidner Enters.* (2013) 216 Cal.App.4th 359,  
17 375.

18 The CITY was asked if there was any legal authority for the proposition that it could refuse  
19 to provide a party with the materials their expert witnesses rely upon<sup>5</sup>. No response to this inquiry  
20 has ever been provided by the CITY.

21 The CITY's objection is apparently based upon the fact that the Whitman Defendants have  
22 not disclosed an expert witness. However, there is no articulation of fact or law that renders  
23

24

25

25 <sup>3</sup> "Can you cite any legal authority for your position at a party who is willing to stipulate to your protective order is  
26 not entitled to a model unless they have an expert? I will be opposing the stipulation based upon your refusal to  
27 accommodate my clients."

26 <sup>4</sup> "I am posting to the message board that you are opposing the application so that the Court is aware of your  
27 opposition."

27 <sup>5</sup> CITY contends it need not produce the evidence and material relied upon their expert in formulating her opinions  
28 if the cross-defendant has not retained its own expert. For the record the Whitman defendants have designated  
Jordan Kier as a non-retained expert.

1 expert retention as relevant to the need to disclose expert materials as part of expert discovery. A  
2 party who does not have an expert is nonetheless entitled to obtain the materials the expert relies  
3 upon in discovery and to cross-examine the expert concerning the materials that form the basis of  
4 the expert's opinion. The computer model that forms the basis of the CITY's requested protective  
5 order is precisely the type of evidence that must be disclosed in discovery. Furthermore, no matter  
6 what the protective order states the computer model will need to be admitted into evidence if the  
7 CITY's expert testifies at trial.<sup>6</sup>

8 The computer model must be part of the evidence if the expert's testimony is to be  
9 admitted. In addition, each cross-defendants has the right to depose and cross-examine the  
10 CITY's expert on all of her opinions, including the basis of her opinions. Cross-defendants must  
11 be permitted to examine the materials the expert relies upon or they are being denied the right to  
12 conduct discovery permitted by the Code of Civil Procedure and denied their legal right to cross-  
13 examine the expert witness both at deposition and trial. If every cross-defendant isn't given the  
14 opportunity to review the material the expert relies upon, then the testimony needs to be excluded.

15 The CITY's position raises an issue previously addressed in this case. The CITY has  
16 asserted that the computer model doesn't serve any purpose other than to an expert witness. This  
17 Court has expressed repeatedly that it is not an expert concerning hydrogeology. Yet, the Court  
18 is required to determine whether hydrogeology experts regularly rely on computer models rather  
19 than actual data collection. If the Court concludes yes - an expert should be expected to rely upon  
20 computer modeling - then the next question is whether the model is the same type that experts  
21 regularly rely upon to form opinions concerning a salient point of testimony.

22 How can this Court decide these foundational questions concerning the admissibility of  
23 the expert's testimony without having the computer model itself in evidence and without having  
24 an expert witness/special master to compare and contrast the computer model with foundational  
25 material that an expert can rely upon? The Court should reconsider the motion to appoint a special

---

26  
27  
28 <sup>6</sup> The CITY can ask that the computer model be sealed but whether the request will be granted is subject to the First Amendment scrutiny.

1 master to assist the Court given that the CITY has now made it abundantly clear that it will need  
2 expert assistance to decide whether the Court can admit the testimony of the CITY's expert.

3 **II. CONCLUSION**

4 There is no basis for the CITY to refuse disclosure of the computer model prepared by  
5 and relied upon by the CITY's expert. Any cross-defendant who agrees to maintain the  
6 confidentiality of the computer model should receive the model without the need to file a motion.  
7 Treating the information with confidentiality is an accommodation to the expert. If that is not a  
8 sufficient accommodation in her mind then she should withdraw from testifying. A cross-  
9 defendant should not be forced to file a motion (and receive a 100 page opposition from a firm  
10 padding its bills). The burden should be on the expert witness and the CITY to demonstrate why  
11 the signature on a confidentiality agreement is not sufficient protection of the expert's rights.  
12 There is no law which permits an expert's testimony without complete disclosure of the  
13 background material the expert relies upon.

14 Respectfully submitted,

15 Dated: January 7, 2022

16 */s/ Andrew K. Whitman*

17 ANDREW K. WHITMAN, in pro per, and  
18 attorney for HEIDI A. WHITMAN, NANCY  
19 L. WHITMAN and the JOHN R. and  
20 NANCY L. WHITMAN FAMILY TRUST

# **EXHIBIT G**



## **Patterson, Gregory**

---

**From:** Marc Melnick <Marc.Melnick@doj.ca.gov>  
**Sent:** Monday, January 10, 2022 12:44 PM  
**To:** Patterson, Gregory; Carter, William; Christopher Pisano; Holly J. Jacobson; Jeremy N. Jungreis Esq. (jjungreis@rutan.com); Gregg Garrison; Noah GoldenKrasner; Daniel Cooper; Shawn Hagerty  
**Subject:** RE: New Posting: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

Greg, I'm not sure where others are on this, since no one has responded. But I am happy to talk about it. I'm not amenable to taking a break in the middle of this trial; there are a multitude of problems with that. I understand your desire not to start on February 14, and can agree to that. So it seems to me that that leaves us with trying to find three consecutive weeks where we all and Judge Highberger are available. That should be in everyone's interest.

I don't know what everyone's conflicts are, but someone has to start that conversation. I've gotten my experts' availability, and so let me start with the unavailability dates that I know of, by week. (This includes my experts' unavailability as part of my unavailability.)

March 7 - 11 Melnick unavailable 3/7 to 3/9  
March 14 - 18 Judge unavailable 3/16, 3/17, 3/18  
March 21 - 25 Judge unavailable  
March 28 - April 1 Judge unavailable 3/28 to 3/31; Melnick unavailable  
April 4 - 8 Judge unavailable; Melnick unavailable  
April 11 - 15 Cooper unavailable; Melnick unavailable  
April 18 - 22 Cooper unavailable 4/18, 4/19  
April 25 - 29 Patterson unavailable  
May 2 - 6  
May 9 - 13 Jacobson unavailable  
May 16 - 20 Judge unavailable  
May 23 - 27 Judge unavailable  
May 31 - June 3 Melnick unavailable  
June 6 - 10 Melnick unavailable  
June 13 - 17  
June 20 - 24  
June 27 - July 1  
July 5 - 8 Melnick unavailable  
July 11 - 15 Melnick unavailable  
July 18 - 22 Melnick unavailable  
July 25 - 29 Melnick unavailable  
August 1 - 5 Melnick unavailable  
August 8 - 12 Melnick unavailable  
August 15 - 19 Melnick unavailable  
August 22 - 26  
August 29 - September 2  
September 6 - 9  
September 12 - 16  
September 19 - 23  
September 26 - 30

I hope that helps. Folks can cut and paste this list, and add their problem weeks. If everyone can share their unavailability then at least we can all know where we are. Thanks.

Marc

-----Original Message-----

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

Sent: Thursday, January 6, 2022 2:57 PM

To: Carter, William <W.Carter@musickpeeler.com>; Christopher Pisano <Christopher.Pisano@bbklaw.com>; Holly J. Jacobson <hjj@bkslawfirm.com>; Jeremy N. Jungreis Esq. (jjungreis@rutan.com) <jjungreis@rutan.com>; Gregg Garrison <gsgarrison@garrisonlawcorp.com>; Marc Melnick <Marc.Melnick@doj.ca.gov>; Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>; Daniel Cooper <daniel@sycamore.law>; Shawn Hagerty <Shawn.Hagerty@bbklaw.com>

Subject: FW: New Posting: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

I am including folks who are active in trying to determine a new trial date. There may be others who have an interest. (PLEASE MAKE SURE YOU INCLUDE MY PARTNER, BILL CARTER. ON ALL E-MAILS.)

See below regarding Judge Highberger's March schedule. He can start March 7, but then leaves on a trip on the 16th.

We are agreeable to start on March 7, but understand that we may have a hiatus and sequential trial dates based on everyone's schedule.

I want to make it clear that 2/14 simply is not going to work for us and we will seek a continuance and let the Court decide on a schedule if we can't figure this out soon.

Happy to discuss proposals.

Regards,

Greg

Gregory J. Patterson  
Partner

Musick, Peeler & Garrett LLP  
2801 Townsgate Road Suite 200  
Westlake Village, CA 91361

[g.patterson@musickpeeler.com](mailto:g.patterson@musickpeeler.com)

[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.musickpeeler.com&d=DwlGaQ&c=uASjV29gZuJt5\\_5J5CPRuQ&r=fxcevG8X2KIHXH8KOP7a2TU8cwzuGdckPm\\_A9ukaX70&m=DLjjQBsfOMYsi6-B-JMP3-a8E43IXfjFKlpdxUt5f89JkAKJXTJGhnopO6Ke5pKX&s=m4qZiWHKA2e6L04wZ3LWE1WwmK\\_lehZSzM0MH4C705IU&e=T\(805\)418-3103](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.musickpeeler.com&d=DwlGaQ&c=uASjV29gZuJt5_5J5CPRuQ&r=fxcevG8X2KIHXH8KOP7a2TU8cwzuGdckPm_A9ukaX70&m=DLjjQBsfOMYsi6-B-JMP3-a8E43IXfjFKlpdxUt5f89JkAKJXTJGhnopO6Ke5pKX&s=m4qZiWHKA2e6L04wZ3LWE1WwmK_lehZSzM0MH4C705IU&e=T(805)418-3103)

F (805) 418-3101

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-----Original Message-----

From: FileAndServeXpress <[MessageBoardNotification@secure-mail.fileandservexpress.com](mailto:MessageBoardNotification@secure-mail.fileandservexpress.com)>  
Sent: Thursday, January 6, 2022 1:21 PM  
To: Patterson, Gregory <[G.Patterson@musickpeeler.com](mailto:G.Patterson@musickpeeler.com)>  
Subject: New Posting: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

To: Patterson, Gregory, Musick Peeler & Garrett LLP- Westlake Village  
Subject: New Message Board Posting

Message Board Name: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

Subject: RE: Continuance of trial

Message Text: But you didn't ask about my availability in March.

My wife and I have a long-planned escorted tour to Egypt and Jordan set, leaving the afternoon of Wed. March 16 and returning on Thurs. March 31. Just 48 hours ago we were advised that the Jordan extension had been cancelled due to covid, but they "still plan to operate the Egypt part of this trip at this time." Airfare to Egypt, back from Jordan has already been purchased on non-refundable basis. So I do not recommend that you expect to start a 3-week court trial on March 7 unless you are OK with a hiatus. (That would be OK with me.)

A new message has been posted to a message board to which you are a member of. To view this message, click on the following link:

[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_\\_secure.fileandservexpress.com\\_MessageBoard\\_ShowPost.aspx-3FPostID-3D31829&d=DwIGaQ&c=uASjV29gZuJt5\\_5J5CPRuQ&r=fxcevG8X2KIHXH8KOP7a2TU8cwzuGdckPm\\_A9ukaX70&m=DLjjQBsfOMYsi6-B-JMP3-a8E43IXfJKlpdxUt5f89JkAKJXTJGhnopO6Ke5pKX&s=7leLJAn5PRIfHwhd0kN0y-drOZkfIVjs4o8h\\_Q1I-w&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A__secure.fileandservexpress.com_MessageBoard_ShowPost.aspx-3FPostID-3D31829&d=DwIGaQ&c=uASjV29gZuJt5_5J5CPRuQ&r=fxcevG8X2KIHXH8KOP7a2TU8cwzuGdckPm_A9ukaX70&m=DLjjQBsfOMYsi6-B-JMP3-a8E43IXfJKlpdxUt5f89JkAKJXTJGhnopO6Ke5pKX&s=7leLJAn5PRIfHwhd0kN0y-drOZkfIVjs4o8h_Q1I-w&e=)

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF VENTURA**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Ventura, State of California. My business address is 2801 Townsgate Road, Suite 200, Westlake Village, California 91361.

On January 13, 2022, I served true copies of the following document(s) described as **DECLARATION OF GREGORY J. PATTERSON IN SUPPORT OF NOTICE OF EX PARTE APPLICATION TO CONTINUE TRIAL** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**By transmission via E-Service to File & ServExpress:** to the person(s) set forth below. Local Rules of Court 2.10(P)

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

Executed on January 13, 2022, at Westlake Village, California.

/s/ Stacey Hanlin  
Stacey Hanlin

**SERVICE LIST**

1  
2 Daniel Cooper, Esq.  
3 Sycamore Law, Inc.  
4 1004 O'Reilly Avenue  
5 San Francisco, CA 94129  
6 Tel: (415) 360-2962  
7 Email: [daniel@sycamore.law](mailto:daniel@sycamore.law)

8 Attorneys for Petitioner and Plaintiff Santa  
9 Barbara Channelkeeper

10 Marc N. Melnick, Esq.  
11 Deputy Attorney General  
12 Attorney General's Office  
13 1515 Clay Street, 20th Floor  
14 Post Office Box 70550  
15 Oakland, CA 94612-0550  
16 Tel: (510) 879-0750  
17 Email: [Marc.melnick@doj.ca.gov](mailto:Marc.melnick@doj.ca.gov)

18 Attorneys for Respondent and Intervenor State  
19 Water Resources Control Board

20 Edward J. Casey, Esq.  
21 Gina Angiolillo, Esq.  
22 Alston & Bird LLP  
23 333 South Hope Street, 16th Floor  
24 Los Angeles, CA 90071  
25 Tel: (213) 576-1000  
26 Email: [ed.casey@alston.com](mailto:ed.casey@alston.com)  
27 [gina.angiolillo@alston.com](mailto:gina.angiolillo@alston.com)

28 Attorneys for Cross-Defendants AGR  
Breeding, Inc.; Bentley Family Limited  
Partnership and Southern California Edison  
Company

Matthew Bullock  
Deputy Attorney General  
California Resources Law Section  
455 Golden Gate Ave., Suite 1100  
San Francisco, CA 94102-7004  
Tel: (415) 510-3376  
Email: [matthew.bullock@doj.ca.gov](mailto:matthew.bullock@doj.ca.gov)

Attorneys for Respondent and Defendant State  
Water Resources Control Board

Eric M. Katz, Supervising Deputy AG  
Noah Golden Krasner, Deputy AG  
Carol Boyd, Deputy AG  
Attorney General's Office  
300 S. Spring Street  
Los Angeles, CA 90013  
Tel: (213) 269-6343  
Fax: (213) 897-2802  
Email: [Eric.Katz@doj.ca.gov](mailto:Eric.Katz@doj.ca.gov)  
[Noah.goldenkrasner@doj.ca.gov](mailto:Noah.goldenkrasner@doj.ca.gov)  
[carol.boyd@doj.ca.gov](mailto:carol.boyd@doj.ca.gov)

Attorneys for Proposed Intervenor California  
Department of Fish & Wildlife

Ryan Blatz  
Blatz Law firm  
206 N. Signal St., Suite G  
Ojai, CA 93023  
Tel: (805) 646-3110  
Email: [ryan@ryanblatzlaw.com](mailto:ryan@ryanblatzlaw.com)

Attorneys for Cross-Defendants Troy Becker  
and Jeri Becker; Janet Boulten; Michael  
Boulten; Michael Caldwell; Joseph Peter Clark,  
successor in interest to The Joseph Clark and  
Linda Epstein Family Trust; Linda Louise  
Epstein, successor in interest to The Joseph  
Clark and Linda Epstein Family Trust; Michael  
I. Cromer and Jody D. Cromer; Michael A.  
Etchart, Trustee of The Michael A. Etchart  
Separate Property Trust; Mark W. Etchart,  
Trustee of The Mark W. Etchart Separate  
Property Trust; Lawrence Hartmann; Ole  
Konig; Krotona Institute of Theosophy;  
Stephen Mitchell and Kathleen Reid Mitchell,  
Trustees of The Stephen Mitchell and Byron  
Katie Trust; North Fork Springs Mutual Water  
Company; Stephen Robert Smith, Trustee of  
The Charles R. Rudd and Lola L. Rudd Trust,  
Dated May 20, 1976; Shlomo Raz; Sylvia Raz;

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Senior Canyon Mutual Water Company, Siete Robles Mutual Water Company; Soule Park Golf Course, Ltd.; Telos, LLC; Victor C. Timar, Jr., Trustee of The Timar Family Trust; John Town; Trudie Town; Asquith Family Limited Partnership; Burgess Ranch; Cary Cheldin; Cynthia Daniels; Wayne Francis; David Friend; The Larry & Pat Hartmann Family Trust; The John N. Hartmann Trust; Gary Hirschkron; Cheryl Jensen; Lutheran Church of the Holy Cross of Ojai, California; Janice Sattler (Mineo); Eitan Sloustcher; Rogers-Cooper Memorial Foundation; Robert Norris; Patricia Norris; Old Creek Road Mutual Water Company; Margaret Vanderfin; Telos Ojai, LLC; Jennifer Ware; The Walker Jr. Living Trust; David Altman, Trustee of The 1190 El Toro Trust; Babtiste Foundation; Sean A. Bennett and Leslie Bennett, Trustees of The Bennett Family Trust; Dwayne A. Bower and Marilyn E. Bower, Trustees of The Bower Family Trust; Mark Terry Cline and Bonnie Burreson Cline, Trustees of The Mark Terry Cline and Connie Burreson Cline Revocable Trust; Robert R. Daddi and Darlene J. Daddi; Lucille A. Elrod, Trustee of The John and Lucille Elrod Family Trust; Friend's Stable & Orchard, Inc.; Daniel Hultgen, Trustee of The Hultgen Living Trust; Ojai Golf, LLC; Three Oaks, LLC; Erica J. Abrams, Trustee of The Erica J. Abrams Trust; Raul E. Alvarado and Hildegard M. Alvarado, Trustees of The Alvarado Family Trust; William Armstrong and April Nardini; Joseph Lynn Barthelemy and Elvira Lilly Barthelemy, Trustees of The Joseph Lynn Barthelemy and Elvira Lilly Barthelemy 2002 Family Trust; James S. Bennett and

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Carolyn D. Bennett, Trustees of The Bennett Family Trust; Sumeet Bhatia and Michael McDonald; John Joseph Broesamle and Katherine Sue Broesamle, Trustees of The Broesamle Family Trust; Richard Aaron Carlson, Trustee of The Richard Aaron Carlson Trust; Michelle Larson, Trustee of The Michelle Family Trust; Thomas D. Carver and Cynthia L. Carver; Dana Cenicerros, Trustee of The Dana and Dawn Cenicerros Revocable Living Trust; Deborah Lys Martin Crawford; Frank Clay Creasey, Jr.; Debra Joy Reed, Trustee of The Debra Joy Reed Revocable Trust Dated November 3, 1994; Frederic Devault; Diana Syvertson, Trustee of The Diana Syvertson Living Trust; Dive Deep, LLC; Douglas Roy Parent and Ann Marie Parent; William Erickson; Gelb Enterprises, L.P.; Jan Stephen Grande and Priscilla K. Grande, Trustees of The Grande Family Revocable Living Trust; Margaret J. Griswold; Brian C. Haase and Marie Haase, Trustees of The B&M Haase Trust Dated October 8, 2019; Thomas Lann Harper and Jadona Collier-Harper; Ojai-Jackman L.L.C.; Kevin Rainwater and Marianne Ratcliff; Keith M. Nightingale and Victoria V. Nightingale, Trustees of The Nightingale Family Trust; Heide C. Kurtz, Trustee of The Kurtz Family Trust Dated January 19, 2019; Randall Leavitt, Trustee of The Randall B. Leavitt 2010 Trust; Edward C. Leicht and Jacqueline M. Leicht, Trustees of The Leicht Family 2013 Revocable Trust Dated March 1, 2013; Paul Lepiane and Bengston Bo; Robert Levin and Lisa Solinas, Trustees of The Levin Family Living Trust; Francis Longstaff and Shauna Longstaff, Trustees of The Longstaff Trust Dated October 11, 2018; Mandy Macaluso, Trustee of The Living Trust of Mandy Macaluso; Marilyn Wallace, Trustee of The Marilyn Wallace Separate Property Trust; Daniel J. McSweeney and Yoko McSweeney; Wendell M. Mortensen and Laura L. Mortensen, Trustees of The Mortensen Family Revocable Trust; Timothy Jerome Murch and Jody Caren Murch, Trustees of The Jodim Family 2007 Trust Dated July 31, 2007; Chris E. Platt and Hanh H. Platt; Robert Erickson, Trustee and Ronald Wilson; Michael D. Robertson and Kimberly A. Robertson, Trustees of The Robertson Family Trust; James P. Robie, Trustee of The Robie Family Trust;

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Petter Romming and Kimi Romming, Trustees;  
Marc Saleh, Trustee of The Saleh Family Trust;  
Konrad Stefan Sonnenfeld, Trustee of The  
Konrad Stefan Sonnenfeld Living Trust; Mark  
Sutherland, Trustee of The Sutherland Marital  
Trust; John H. Thacher and Caroline H.  
Thacher, Trustees of The Thacher Family Trust  
Dated January 2004; Gilbert G. Vondriska and  
Carolyn J. Vondriska, Trustees of The  
Vondriska Living Trust; William D. Rusin, Sr.,  
Trustee of The William D. Rusin, Sr.  
Revocable Trust; and Oscar D. Acosta, Trustee  
of The Acosta Trust

Shawn Hagerty, Esq.  
Best & Krieger LLP  
655 West Broadway, 15<sup>th</sup> Floor  
San Diego, CA 92101  
Tel: (619) 525-1300  
Email: [shawn.hagerty@bbklaw.com](mailto:shawn.hagerty@bbklaw.com)  
  
Attorneys for Respondent and Cross-  
Complainant City of San Buenaventura

Christopher M. Pisano, Esq.  
Sarah Christopher Foley, Esq.  
Patrick D. Skahan, Esq.  
Best, Best & Krieger LLP  
300 South Grand Avenue, 25th Floor  
Los Angeles, CA 90071  
Phone: (213) 617-8100  
Email: [christopher.pisano@bbklaw.com](mailto:christopher.pisano@bbklaw.com)  
[sarah.foley@bbklaw.com](mailto:sarah.foley@bbklaw.com)  
[Patrick.Skahan@bbklaw.com](mailto:Patrick.Skahan@bbklaw.com)

Attorneys for Respondent and Cross-  
Complainant City of San Buenaventura

William G. Short, Esq.  
Law Offices of William G. Short  
Post Office Box 1313  
Ojai, CA 93024-1313  
Tel: (805) 490-6399  
Email: [billshortesq@me.com](mailto:billshortesq@me.com)  
  
Attorney for Cross-Defendant Robin Bernhoft

Anthony Lee Francois, Esq.  
Briscoe Ivester & Bazel  
235 Montgomery Street, Suite 935  
San Francisco, CA 94104  
Tel: (415) 402-2707  
Email: [tfrancois@briscoelaw.net](mailto:tfrancois@briscoelaw.net)  
  
Attorneys for Cross-Defendant Robin Bernhoft

Robert Kwong, Esq.  
Arnold Larochelle Mathews VanConas &  
Zirbel, LLP  
300 Esplanade Drive, Suite 2100  
Oxnard, CA 93036  
Tel: (805) 988-9886  
Email: [rkwong@atozlaw.com](mailto:rkwong@atozlaw.com)  
  
Attorneys for Cross-Defendant Casitas  
Municipal Water District

Patrick Loughman, Esq.  
Cristina Arrieta  
Lowthorp, Richards, McMillan, Miller &  
Templeman  
300 Esplanade Drive, Suite 850  
Oxnard, CA 93036  
Tel: (805) 804-3848  
Email: [Ploughman@lrmmt.com](mailto:Ploughman@lrmmt.com)  
[Carrieta@lrmmt.com](mailto:Carrieta@lrmmt.com)

Attorneys for Cross-Defendants Ernest Ford;  
Tico Mutual Water Company; Betty Withers  
and Betty Bow Withers Trust



1 Lindsay F. Nielson, Esq.  
2 Law Office of Lindsay F. Nielson  
3 845 East Santa Clara Street  
4 Ventura, CA 93001  
5 Tel: (805) 658-0977  
6 Email: [nielsonlaw@aol.com](mailto:nielsonlaw@aol.com)

7 Attorneys for Cross-Defendants Meiners Oaks  
8 Water District and Ventura River Water  
9 District, and Jean Marie Webster, Trustee of  
10 the Roger E. and Jean Marie Webster Trust

11 Neal P. Maguire, Esq.  
12 Ferguson Case Orr Patterson LLP  
13 1050 South Kimball Road  
14 Ventura, CA 93004  
15 Tel: (805) 659-6800  
16 Email: [nmaguire@fcoplaw.com](mailto:nmaguire@fcoplaw.com)

17 Attorneys for Cross-Defendant Rancho  
18 Matilija Mutual Water Company; Bettina  
19 Chandler, Trustee of The Bettina Chandler  
20 Trust; Martin Gramckow, Trustee of The  
21 Monika G. Huss Irrevocable Trust, Trustee of  
22 The Karin W. Gramckow Irrevocable Trust  
23 and Trustee of The Kurt J. Gramckow  
24 Irrevocable Trust

25 Michael J. Van Zandt, Esq.  
26 Nathan A. Metcalf, Esq.  
27 Sean G. Herman, Esq.  
28 Hanson Bridgett LLP  
425 Market Street, 26th Floor  
San Francisco, CA 94105  
Tel: (415) 777-3200  
Email: [mvanzandt@hansonbridgett.com](mailto:mvanzandt@hansonbridgett.com)  
[nmetcalf@hansonbridgett.com](mailto:nmetcalf@hansonbridgett.com)  
[sherman@hansonbridgett.com](mailto:sherman@hansonbridgett.com)

Attorneys for Cross-Defendant Ventura  
County Watershed Protection District and  
County of Ventura

Jeanne Zolezzi, Esq.  
Herum Crabtree Suntag  
5757 Pacific Avenue, Suite 222  
Stockton, CA 95207  
Tel: (209) 472-7700  
Email: [jzolezzi@herumcrabtree.com](mailto:jzolezzi@herumcrabtree.com)

Attorneys for Cross-Defendants Meiners Oaks  
Water District and Ventura River Water District

Thomas S. Bunn, III, Esq.  
Elsa Sham  
Lagerlof Senecal Gosney & Kruse LLP  
301 North Lake Avenue, 10th Floor  
Pasadena, CA 91101-5123  
Tel: (626) 793-9400  
Email: [tombunn@lagerlof.com](mailto:tombunn@lagerlof.com)  
[esham@lagerlof.com](mailto:esham@lagerlof.com)

Attorneys for Cross-Defendant St. Joseph's  
Associates of Ojai, California, Inc. and St.  
Joseph's Health and Retirement Center; Janis  
Long Nicholas; John Jay Nicholas; Jess Earl  
Long (aka Jess E. Long); Johana Rae Long and  
Mary Margaret Long; Janis Long Nicholas and  
Jess E. Long as Trustees of The Long Family  
Trust

Jeffrey E. Barnes  
Chief Assistant County Counsel  
Jason Canger  
Assistant County Counsel  
Office of Ventura County Counsel  
800 South Victoria Ave., L/C #1830  
Ventura, CA 93009  
Tel: (805) 654-2879  
Fax: (805) 654-2185  
Email: [jason.canger@ventura.org](mailto:jason.canger@ventura.org)

Attorneys for Cross-Defendants Ventura  
County Watershed Protection District and  
County of Ventura

1 Scott Slater, Esq.  
2 Bradley Herrema, Esq.  
3 Christopher Guillen, Esq.  
4 Brownstein Hyatt Farber Schreck LLP  
5 1021 Anacapa Street, 2nd Floor  
6 Santa Barbara, CA 93101  
7 Tel: (805) 963-7000  
8 Email: [sslater@bhfs.com](mailto:sslater@bhfs.com)  
9 [bherrema@bhfs.com](mailto:bherrema@bhfs.com)  
10 [cguillen@bhfs.com](mailto:cguillen@bhfs.com)

11 Attorneys for Cross-Defendant Wood  
12 Claeysens Foundation

13 Jeremy N. Jungreis, Esq.  
14 Douglas J. Dennington, Esq.  
15 Rutan & Tucker, LLP  
16 18575 Jamboree Road, 9th Floor  
17 Irvine, CA 92612  
18 Tel: (714) 641-5100  
19 Fax: (714) 546-9035  
20 Email: [jjungreis@rutan.com](mailto:jjungreis@rutan.com)  
21 [ddennington@rutan.com](mailto:ddennington@rutan.com)

22 Attorneys for Cross-Defendant Casitas  
23 Municipal Water District

24 Andrew Brady, Esq.  
25 DLA Piper LLP (US)  
26 550 S. Hope St., Ste. 2400  
27 Los Angeles, CA 90071-2618  
28 Tel: (213) 330-7700  
Fax: (310) 330-7701  
Email: [andrew.brady@us.dlpipe.com](mailto:andrew.brady@us.dlpipe.com)

Attorneys for Cross-Defendant Integritas Ojai,  
LLC

David R. Krause-Leemon, Esq.  
Beaudoin & Krause-Leemon LLP  
15165 Ventura Blvd., Ste. 400  
Sherman Oaks, CA 91403  
Tel: (818) 205-2809  
Fax: (818) 788-8104  
Email: [david@bk-llaw.com](mailto:david@bk-llaw.com)

Attorneys for Cross-Defendant RDK Land,  
LLC

Joseph C. Chrisman, Esq.  
Hathaway, Perrett, Webster, Powers, Chrisman  
& Gutierrez  
5450 Telegraph Road  
Ventura, CA 93003  
Tel: (805) 644-7111  
Email: [jchrisman@hathawaylawfirm.com](mailto:jchrisman@hathawaylawfirm.com)

Attorneys for Cross-Defendant Wood-  
Claeysens Foundation

Thomas E. Jeffry, Esq.  
Debra J. Albin-Riley, Esq.  
Arent Fox LLP  
555 W. Fifth Ave., 48th Floor  
Los Angeles, CA 90013-1065  
Tel: (213) 629-7400  
Fax: (213) 629-7401  
Email: [Thomas.jeffry@arentfox.com](mailto:Thomas.jeffry@arentfox.com)

Attorneys for Cross-Defendant Community  
Memorial Health System

Jennifer T. Buckman, Esq.  
Holly J. Jacobson, Esq.  
Bartkiewicz Kronick & Shanahan, PC  
1011 Twenty-Second Street  
Sacramento, CA 95816-4907  
Tel: (916) 446-4254  
Fax: (916) 446-4018  
Email: [jtb@bkslawfirm.com](mailto:jtb@bkslawfirm.com)  
[hij@bkslawfirm.com](mailto:hij@bkslawfirm.com)

Attorneys for Cross-Defendant City of Ojai

Eric J. Schindler, Esq.  
Michelle J. Berner, Esq.  
Kroesche Schindler LLP  
2603 Main St., Ste. 200  
Irvine, CA 92614  
Tel: (949) 387-0495  
Fax: (888) 588-0034  
Email: [eschindler@kslaw.legal](mailto:eschindler@kslaw.legal)  
[mberner@kslaw.legal](mailto:mberner@kslaw.legal)

Attorneys for Cross-Defendant Oak Haven,  
LLC

1 Brian A. Osborne, Esq.  
2 Osborne Law Firm  
3 674 County Square Drive, Ste. 308  
4 Ventura, CA 93003  
5 Tel: (805) 642-9283  
6 Fax: (805) 642-7054  
7 Email: [osbornelawyer@gmail.com](mailto:osbornelawyer@gmail.com)

8 Attorneys for Cross-Defendants Brian A.  
9 Osborne; Ronald W. Rood and Susan B. Rood,  
10 Trustees of The Rood Family Trust

11 Peter A. Goldenring  
12 Mark R. Pachowicz  
13 Pachowich | Goldenring  
14 6050 Seahawk Street  
15 Ventura, CA 93003-6622  
16 Tel: (805) 642-6702  
17 Fax: (805) 642-3145  
18 Email: [attorneys@gopro-law.com](mailto:attorneys@gopro-law.com)  
19 [peter@gopro-law.com](mailto:peter@gopro-law.com)  
20 [mark@pglaw.law](mailto:mark@pglaw.law)

21 Attorneys for Cross-Defendant The Manfred  
22 Krankl and Elaine V. Krankl Living Trust

23 Karen A. Feld, Esq.  
24 Daniel S. Roberts, Esq.  
25 Cole Huber LLP  
26 3401 Centerlake Dr., Ste. 670  
27 Ontario, CA 91761  
28 T: (909) 230-4209  
F: (909) 937-2034  
Email: [kfeld@colehuber.com](mailto:kfeld@colehuber.com)  
[droberts@colehuber.com](mailto:droberts@colehuber.com)

29 Attorneys for Cross-Defendant Ventura  
30 Unified School District

31 Attn: Roger J. Essick  
32 Hermitage Mutual Water Company  
33 2955 Hermitage Road  
34 Ojai, CA 93023  
35 Tel: (805) 320-1406  
36 Email: [rogeressick@gmail.com](mailto:rogeressick@gmail.com)

37 Adam D. Wieder, Esq.  
38 Barry C. Groveman, Esq.  
39 Ryan Hiete, Esq.  
40 Groveman Hiete LLP  
41 35 East Union St., Ste. B  
42 Pasadena, CA 91103  
43 Tel: (626) 747-9383  
44 Fax: (626) 747-9370  
45 Email: [awieder@grovemanhiete.com](mailto:awieder@grovemanhiete.com)  
46 [bgroveman@grovemanhiete.com](mailto:bgroveman@grovemanhiete.com)  
47 [rhiete@grovemanhiete.com](mailto:rhiete@grovemanhiete.com)

48 Attorneys for Cross-Defendants Michael  
49 Bradbury; Heidi Bradbury; and The Heidi  
50 Gramkow Trust

51 Ernest J. Guadiana  
52 Elkins Kalt Weintraub Reuben  
53 Gartside LLP  
54 10345 W. Olympic Boulevard  
55 Los Angeles, CA 90064  
56 Tel: (310) 746-4425  
57 Email: [eguadiana@elkinskalt.com](mailto:eguadiana@elkinskalt.com)

58 Attorneys for Michael Lombardo and Charles  
59 L. Ward III, as Co-Trustees of the Ward-  
60 Lombardo Living Trust

61 David A. Ossentjuk, Esq.  
62 Ossentjuk & Botti  
63 2815 Townsgate Rd., Ste. 320  
64 Westlake Village, CA 91361  
65 T: (805) 557-8081  
66 F: (805) 456-7884  
67 Email: [dossentjuk@oandblawyers.com](mailto:dossentjuk@oandblawyers.com)

68 Attorneys for Cross-Defendant Robert Martin

69 Tiernan Dolan  
70 995 Riverside Street  
71 Ventura, CA 93001  
72 Email: [tdolan@hacityventura.org](mailto:tdolan@hacityventura.org)

73 Attorney for Cross-Defendants Housing  
74 Authority of the City of San Buenaventura,  
75 Triad Properties, Inc., Encanto Del Mar  
76 Apartments, L.P., Villages at Westview I Lp,  
77 vista Del Mar Commons, LP and Soho  
78 Associates. L.P.

1 Julia A. Baker  
2 2193 Maricopa Hwy.  
3 Ojai, CA 93023  
4 Tel: (805) 646-8700  
5 Email: [Janjbaker2@gmail.com](mailto:Janjbaker2@gmail.com)

Attn: Oriana Fedele  
The Joseph Fedele 1995 Living Trust  
Oriana Marie Fedele, Trustee  
P.O. Box 298  
Lahaina, HI 96767  
Tel: (818) 601-3161  
Email: [orianafedele@gmail.com](mailto:orianafedele@gmail.com)

5 T&D Nevada Trust  
6 Dennis and Antoinette Mitchell  
7 Mitchell Homes, Inc.  
8 P.O. Box 360  
9 Ojai, CA 93024  
10 Tel: (805) 340-2890  
11 Email: [amitc74383@aol.com](mailto:amitc74383@aol.com)

Michaela Boehm  
12293 Topa Lane  
Santa Paula, CA 93060  
Tel: (323) 493-3737  
Email: [Micboehm@me.com](mailto:Micboehm@me.com)

9 Carlos A. Mejia  
10 Sophie A. Wenzlau  
11 Department of Justice  
12 1300 I Street, Suite 125  
13 P.O. Box 944255  
14 Sacramento, CA 94244-2550  
15 Tel. (916) 210-6379  
16 Email: [carlos.mejia@doj.ca.gov](mailto:carlos.mejia@doj.ca.gov)  
17 [sophie.wenzlau@doj.ca.gov](mailto:sophie.wenzlau@doj.ca.gov)

Justin M. Alvarez  
Lamdien T. Le  
The Alvarez Firm  
24005 Ventura Boulevard  
Calabasas, CA 91302  
Tel: (818) 224-7077  
Fax: (818) 224-1380  
Email: [jalvarez@alvarezfirm.com](mailto:jalvarez@alvarezfirm.com)  
[del@alvarezfirm.com](mailto:del@alvarezfirm.com)

14 Attorneys for California Department of Parks  
15 and Recreation

Attorneys for Cross-Defendant Rancho Sueno,  
LLC

16 Patrick L. Rendon  
17 Lamb and Kawakami LLP  
18 333 S. Grand Ave., Ste. 4200  
19 Los Angeles, CA 90071  
20 Tel: (213) 630-5500  
21 Fax: (213) 630-5555  
22 Email: [prendon@lkfirm.com](mailto:prendon@lkfirm.com)

William Slaughter  
Slaughter, Reagan & Cole, LLP  
625 East Santa Clara St., Ste. 101  
Ventura, CA 93001  
Tel: (805) 658-7800  
Fax: (805) 644-2131  
Email: [slaughter@srllplaw.com](mailto:slaughter@srllplaw.com)

20 Attorneys for Real Party in Interest Emily V.  
21 Brown

Attorneys for The Boyd S. Dron and Karin  
Dron Joint Living Trust; and Sisar Mutual  
Water Company

22 Attn: Tim Carey, Managing Member  
23 Del Cielo LLC  
24 22410 Hawthorne, #5  
25 Torrance, CA 90505  
26 Tel: (310) 787-6569  
27 Email: [tim@calvoterguide.com](mailto:tim@calvoterguide.com)

Stephen C. Lewis, Esq.  
Barg Coffin Lewis & Trapp LLP  
600 Montgomery Street, Suite 525  
San Francisco, CA 94111  
Tel: (415) 228-5480  
Email: [slewis@bargcoffin.com](mailto:slewis@bargcoffin.com)

Attorney specially appearing for proposed  
Cross-Defendant Rudd Ranch, LLC

1 Anthonie M. Voogd  
918 Palomar Road  
2 Ojai, CA 93023  
Tel: (805) 646-1512  
3 Email: [avoogd@stanfordalumni.org](mailto:avoogd@stanfordalumni.org)

4 Heather Blair  
5 556 S. Fair Oaks Ave., Ste. 101  
P.O. Box 356  
6 Pasadena, CA 91105  
Tel: (626) 755-6566  
7 Email: [Hblair1946@gmail.com](mailto:Hblair1946@gmail.com)

8 Robert K. Cartin  
Cartin Family LLC  
9 505 Estremoz Ct.  
Oceanside, CA 90257  
10 Tel: (760) 429-4738  
Email: [bob.cartin@dvm.com](mailto:bob.cartin@dvm.com)

11 Joyce Syme, and  
12 The Joyce A. Syme Living Trust  
1760 Ocean Avenue  
13 Santa Monica, CA 90401  
Tel: (310) 403-1760  
14 Email: [seaviewmotel@hotmail.com](mailto:seaviewmotel@hotmail.com)

15 Dale and Patricia Givner  
12617 Koenigstein Rd.  
16 Santa Paula, CA 93060  
Tel: (805) 525-9524  
17 Email: [dalegivner@gmail.com](mailto:dalegivner@gmail.com)

18 David R. Greifmger  
Law Office of David R. Greifinger  
19 15515 West Sunset Blvd., No. 214  
Pacific Palisades, CA 90272  
20 Tel: (424) 330-0193  
Email: [tracklaw@me.com](mailto:tracklaw@me.com)

21 Attorney for Cross-Defendants Danny Everett  
22 and Tiarzha Talvor

23 George and Sigrid Bressler  
340 Longhorn Lane  
24 Ojai, CA 93023  
Tel: (805) 646-1221  
25 Email: [andybsail@gmail.com](mailto:andybsail@gmail.com)

Lawrence S. Mihalas  
Trustees of the Mihalas Family Trust  
419 21st Place  
Santa Monica, CA 90402  
Tel: (310) 739-0700  
Email: [lmihalas@gmail.com](mailto:lmihalas@gmail.com)

Martin Hartmann  
Whitney Hartmann  
430 S. Carrillo Road  
Ojai, CA 93023  
Tel: (805) 798-2253  
Email: [earthbuilding@gmail.com](mailto:earthbuilding@gmail.com)

Loa E. Bliss  
Loa E. Bliss 2006 Revocable Trust  
9030 Ojai Santa Paula Road  
Ojai, CA 93023  
Tel: (617) 750-8500  
Email: [loabliss@hotmail.com](mailto:loabliss@hotmail.com)

Janice and Jesse Hillestad  
9611 N. Ventura Ave.  
Ventura, CA 93001  
Tel: (310) 614-8438  
Email: [janicehillestad@icloud.com](mailto:janicehillestad@icloud.com)  
[jessehillestad@icloud.com](mailto:jessehillestad@icloud.com)

Dennis and Nadine Corte  
12812 MacDonald Drive  
Ojai, CA 93023  
Tel: (805) 701-1950

Kelton Lee Gibson  
878 Oak Grove Court  
Ojai, CA 93023  
Tel: (805) 701-9318  
Email: [kgibson@mwgilaw.com](mailto:kgibson@mwgilaw.com)  
[kgibson878@gmail.com](mailto:kgibson878@gmail.com)

Attorney for Kelton Lee Gibson, Trustee of  
The Gibson Family Trust Dated June 6, 2006

Rebecca C. Collins  
Thomas M. Collins, Jr.  
241 Longhorn Lane  
Ojai, CA 93023  
Tel: (805) 312-5894  
Email: [tominojai@gmail.com](mailto:tominojai@gmail.com)  
[collinst3@sbcglobal.net](mailto:collinst3@sbcglobal.net)

1 Peter Duchesneau  
2 Sigrid R. Waggener  
3 MANNAT, PHELPS & PHILLIPS, LLP  
4 One Embarcadero Center, 30th Flr.  
5 San Francisco, CA 94111  
6 Tel: (415) 291-7400  
7 Fax: (415) 291-7474  
8 Email: [pduchesneau@manatt.com](mailto:pduchesneau@manatt.com)  
9 [swaggener@manatt.com](mailto:swaggener@manatt.com)

10 Attorneys for Cross-Defendant Aera Energy,  
11 LLC

12 Claude R. and Patrica E. Baggerly  
13 119 S. Poli Avenue  
14 Ojai, CA 93023-2144  
15 Tel: (805) 646-0767  
16 Tel: (805) 766-7317  
17 Email: [russ.baggerly65@gmail.com](mailto:russ.baggerly65@gmail.com)

18 Prop Per

19 Henry D. Finkelstein  
20 Brian Moskal  
21 GREENBERG GLUSKER FIELDS  
22 CLAMAN & MACHTINGER LLP  
23 2049 Century Park East, Ste. 2600  
24 Los Angeles, CA 90067  
25 Tel: (310) 785-6833  
26 Fax: (310) 201-2368  
27 Email: [hfinkelstein@ggfirm.com](mailto:hfinkelstein@ggfirm.com)  
28 [bmoskal@greenbergglusker.com](mailto:bmoskal@greenbergglusker.com)

Attorneys for Ginnetti Living Trust; and  
Baldwin Ranch, LLC

Tristan F. Mackprang  
David J. Farkas  
COLEMAN FROST LLP  
201 Nevada St., Smokey Hollow  
El Segundo, CA 92045  
Tel: (424) 277-1650  
Email: [tristan@colemanfrost.com](mailto:tristan@colemanfrost.com)  
[david@colemanfrost.com](mailto:david@colemanfrost.com)

Attorneys for Cross-Defendants Housing  
Authority of the City of San Buenaventura;  
Triad Properties, Inc.; Encanto Del Mar  
Apartments, L.P.; Villages at Westview I L.P.;  
Vista Del Mar Commons, LP; and Soho  
Associates. L.P.

William Francis Tarantino  
Justin Fisch  
Morrison & Foerster LLP  
425 Market St. |  
San Francisco, CA 94105  
Tel. (415) 268-7850  
[jfisch@mofo.com](mailto:jfisch@mofo.com)  
[wtarantino@mofo.com](mailto:wtarantino@mofo.com)

Attorneys for Ventura Land Trust

Judith L. Mercer  
c/o Jason Goldman  
Mercer Family Trust Agreement of 1992  
1175 Grand Avenue  
Ojai, CA 93023  
Tel: (310) 625-7795  
Email: [jgoldman@begroup.com](mailto:jgoldman@begroup.com)

Harry D. Sims and Raymond P. Sims  
Post Office Box 1870  
Ojai, CA 93024  
Tel: (805) 646-0167  
Email: [1978simsfamilytrust@gmail.com](mailto:1978simsfamilytrust@gmail.com)

Andrew K. Whitman  
821 N. Signal Street  
Ojai, CA 93023  
Tel: (805) 444-5671  
Email: [sfreberg@scr-legal.com](mailto:sfreberg@scr-legal.com)

In pro per and attorney for Cross-Defendants  
Andrew K. Whitman and Heidi A Whitman;  
Nancy L. Whitman; John R. Whitman and  
Nancy L. Whitman Family Trust

1 Christopher Danch  
16200 Maricopa Highway  
2 Ojai, CA 93023  
Tel: (805) 640-8534  
3 Email: [chrisdanch@gmail.com](mailto:chrisdanch@gmail.com)

4 Attorney for Cross-Defendants Angie Marie  
Genasci and Christopher Paul Danch, Trustees  
5 of The Genasci-Danch Family Trust; and  
Donald and Wendy Givens

6 Alessandro (Alex) Lobba  
7 Alessandro Lobba and Mary E. Jackson,  
individually and as Trustees of The Lobba-  
8 Jackson Family Trust  
947 Casitas Vista Rd.  
9 Ventura, CA 93001  
Tel: (805) 895-7056  
10 Email: [alobba@gmail.com](mailto:alobba@gmail.com)

11 Julia Taft-Whitman, President CEO  
Taft Corporation'  
12 111 West Topa Street  
Ojai, CA 93023  
13 Tel: (805) 794-2837  
14 Email: [juliawhitman@gmail.com](mailto:juliawhitman@gmail.com)

16 Kelley M. Rasmussen, Trustee  
2420 Park Road  
17 Lake Oswego, OR 97034  
Tel: (805) 798-7125  
18 Email: [kelleyras@gmail.com](mailto:kelleyras@gmail.com)

19 William E. Colborn, Jr.  
20 13183 Ojai Road  
Santa Paula, CA 93060  
21 Tel: (805) 795-1909  
Email: [iake@colbornandassociates.com](mailto:iake@colbornandassociates.com)

22 Joshua Beckman  
23 913 Oso Road  
Ojai, CA 93023  
24 Tel: (323) 404-0465  
Email: [joshbfbp@gmail.com](mailto:joshbfbp@gmail.com)

Paul R. Huff, Esq.  
The Huff Law Firm  
21 S. California St., Ste. 205  
Ventura, CA 93001  
Tel: (805) 667-8940  
Fax: (805) 850-7399  
Email: [phuff@hufffirm.com](mailto:phuff@hufffirm.com)

Attorneys for Berbard Properties, Inc.

Christine Steiner  
2560 Ladera Road  
Ojai, CA 93023  
Tel: (310) 600-3220  
Email: [csteiner@csteinerlaw.com](mailto:csteiner@csteinerlaw.com)

Jaide Whitman, President  
Julia Whitman, Director  
Conservation Endowment Fund  
P.O. Box 6  
Oak View, CA 93022  
Tel: (805) 649-2333  
Fax: (805) 804-7005  
Email: [jaide.whitman@gmail.com](mailto:jaide.whitman@gmail.com)  
[TaftGardensOffice@gmail.com](mailto:TaftGardensOffice@gmail.com)

Angela Small Booth, Attorney  
2175 Valley Meadow Drive  
Oak View, CA 93022  
Tel: (805) 765-5413  
Email: [angie@angiesmall.org](mailto:angie@angiesmall.org)

Rebecca Tickell  
350 Verano Drive  
Ojai, CA 93023  
Tel: (323) 559-5700  
Email: [rebecca@bigpictureranch.com](mailto:rebecca@bigpictureranch.com)

Gregg S. Garrison and Rosanna Garrison  
Garrison Law Corporation  
12986 MacDonald Drive  
Ojai, CA 93023  
Tel: (650) 726-1111  
Fax: (805) 669-3168  
Email: [gsgarrison@garrisonlawcorp.com](mailto:gsgarrison@garrisonlawcorp.com)

Attorney for Cross-Defendants Gregg S.  
Garrison, Rosanna Garrison, and Emily V.  
Brown, Trustee of the Restated Emily V.  
Brown Intervivos Trust, Roe 37

1	Robert L. Smith 12777 Tree Ranch Road Ojai, CA 93023 Tel: (805) 558-6322 Email: <a href="mailto:treeranch@vmail.com">treeranch@vmail.com</a>	Susan M. Glennon 292 Cruzero Street Ojai, CA 93023 Tel: (805) 646-4816 Email: <a href="mailto:theglennonest@aol.com">theglennonest@aol.com</a>
4	Robin Schwartzburd 411 Franklin Drive Ojai, CA 93023 Tel: (805) 272-5877 Email: <a href="mailto:robin.schwartzburd@gmail.com">robin.schwartzburd@gmail.com</a>	Melinda Hass 11947 Kocnigstein Road Santa Paula, CA 93060 Tel: (213) 713-4360 Email: <a href="mailto:mlynnbooking@gmail.com">mlynnbooking@gmail.com</a>
7	Malinda K. Vaughn Mitchell B. Vaughn 12283 Ojai Santa Paula Road Ojai, CA 93023-9323 Tel: (805) 890-6616 Email: <a href="mailto:vaughnmb@aol.com">vaughnmb@aol.com</a>	Rebecca D. Schwermer P. O. Box 174 Santa Paula, CA 93061 Tel: (805) 551-3494 Email: <a href="mailto:octoberbabies2@verizon.net">octoberbabies2@verizon.net</a>
11	Jennifer Jordan Day and Joel Fox 909 North Rice Road Ojai, CA 93023 Tel: (213) 321-5253 Email: <a href="mailto:jenniferjordanday@grmail.com">jenniferjordanday@grmail.com</a>	Brigitte Lovell, Trustee of Lovell Living Trust 295 Encino Drive Oak View, CA 93022 Tel: (915) 227-9412 Email: <a href="mailto:loveb9@gmail.com">loveb9@gmail.com</a>
14	Catherine Ferro & Catherine Eileen Ferro Inter Vivos Trust 312 Montana Road Ojai, CA 93023 Tel: (805)326-1686 Email: <a href="mailto:cepharoah@gmail.com">cepharoah@gmail.com</a>	Susan C. White Steven J. White 2 Shorewood Drive Bellingham, WA 98225 Tel: (425) 891-9249 Email: <a href="mailto:curranwhite1@hotmail.com">curranwhite1@hotmail.com</a>
17	Susan Capper 12870 Tree Ranch Road Ojai, CA 93023 Tel: (805) 794-6421 Email: <a href="mailto:chelsue@aol.com">chelsue@aol.com</a>	Lindy & Karen C. Goetz 12338 Linda Flora Ojai, CA 93023-9721 Tel: (805) 649-2526; (805) 794-2312 Email: <a href="mailto:lindygoetz@roadrunner.com">lindygoetz@roadrunner.com</a>
21	Joyce L. Heath Joyce Heath, Trustee The Heath Family Living Trust, P.O. Box 1323 Ojai, CA 93024 Tel: (805) 290-6231 Email: <a href="mailto:mamaheath55@gmail.com">mamaheath55@gmail.com</a>	Thomas M. German 301 N. Drown Avenue Ojai, CA 93023 Tel: (805) 646-2130 Email: <a href="mailto:kittycatgirl214@gmail.com">kittycatgirl214@gmail.com</a>
24	Ronald W. Bowman, Trustee The Bowman Trust Dated April 8, 2011 672 W. Villanova Road Ojai, CA 93023 Tel: (805) 732-4014 Email: <a href="mailto:ron@l-binc.com">ron@l-binc.com</a>	Amy Hueppe 1025 Moreno Drive Ojai, CA 93023 Tel: (310)699-4619 Email: <a href="mailto:amyhueppe@gmail.com">amyhueppe@gmail.com</a>



1 Andrew P. Byrne, Esq.  
1140 Highland Avenue, Ste. 250  
2 Manhattan Beach, CA 90266  
Tel: (310) 505.7170  
3 Email: [Andy@ByrneLaw-LA.com](mailto:Andy@ByrneLaw-LA.com)

4 Attorneys for Cross-Defendant Roman Catholic  
Archdiocese of Los Angeles

6 Glenn Bator  
338 Montana Road  
7 Ojai, CA 93023  
Tel: (805) 798-1802  
8 Email: [denibator@aol.com](mailto:denibator@aol.com)

10 David L. Osias, Esq.  
Allen Matkins Leck Gamble  
Mallory & Natsis LLP  
11 One America Plaza  
600 West Broadway, 27<sup>th</sup> Floor  
12 San Diego, CA 92101-0903  
Tel: (619) 233-1155  
13 Fax: (619) 233-1158  
Email: [dosias@allenmatkins.com](mailto:dosias@allenmatkins.com)

14 Attorneys for Cross-Defendant Jeff Bacon as  
15 Trustee of The Villa Nero Trust Dated January  
25. 2000

16 Laura M. Peakes  
17 John E. Peakes, Jr.  
316 Verano Drive  
18 Ojai, CA 93023  
Tel: (805) 402-0249  
19 Email: [ipeakesjr@aol.com](mailto:ipeakesjr@aol.com)

20 Laura R. Schreiner, aka Laura Rearwin  
418 Crestview Drive  
21 Ojai, CA 93023  
Tel: (805) 479-5400  
22 Email: [laura@rearwin.com](mailto:laura@rearwin.com)

23 Jennifer Carafelli  
Robin Schwartzburd  
24 211 Village Commons Boulevard, No. 21  
Camarillo, CA 93012  
Tel: (805) 340-2540  
25 Email: [carafelli@gmail.com](mailto:carafelli@gmail.com)

Bryan M. Sullivan, Esq.  
Early Sullivan Wright Glizer & Mcrae LLP  
6420 Wilshire Boulevard, 17<sup>th</sup> Floor  
Los Angeles, CA 90048  
Tel: (323) 301-4660  
Email: [bsullivan@earllysullivan.com](mailto:bsullivan@earllysullivan.com)

Attorneys for Cross-Defendant  
Jeff Bacon as Trustee of the Villa Nero Trust  
Dated Januarv 25. 2000

Harry Anthony Williams  
915 Daly Road  
Ojai, CA 93023  
Tel: (661) 609-1253  
Tel: (805) 794-6922  
Email: [awilliam@me.com](mailto:awilliam@me.com)

Thomas Adams  
Adams & Associates  
21781 Ventura Boulevard, Suite 10005  
Woodland Hills, CA 93003  
Tel: (805) 229-1529  
Email: [tom@adamsassoc.com](mailto:tom@adamsassoc.com)

Attorneys for Cross-Defendant 235 La Luna  
Owners, an unincorporated association

Kelsey Klein  
Paula Kee  
1042 Fairview Road  
Ojai, CA 93023  
Tel: (805) 640-5154  
Email: [kelseyklein88@gmail.com](mailto:kelseyklein88@gmail.com)

Paul J. Deneen  
12170 Ojai Santa Paula Road  
Ojai, CA 93023-9358  
Tel: (805)218-0211  
Email: [paul@carbide.com](mailto:paul@carbide.com)

Timothy Mahoney  
10244 Ojai Santa Paula Road  
Ojai, CA 93023  
Tel: (323) 252-3309  
Email: [honedog@mac.com](mailto:honedog@mac.com)

1 Salvatore Scarpato  
106 Calhoun Lane  
2 Georgetown, TX 78633  
Tel: (805) 797-8767  
3 Email: [salscarpato@att.net](mailto:salscarpato@att.net)

4 William R. Thatcher  
5 12195 Linda Flora Drive  
6 Ojai, CA 93023-9723  
7 Email: [thelostplanetairmen@yahoo.com](mailto:thelostplanetairmen@yahoo.com)

8  
9 Chet Hilgers  
10 Mellanie Hilgers  
11 [mellaniehilgers@gmail.com](mailto:mellaniehilgers@gmail.com)

12 Kristi Schoeld  
13 Neil Jorgensen  
14 Tel. (805) 272-8360  
15 Email: [neilkristi@googlemail.com](mailto:neilkristi@googlemail.com)

16 Linda J.G. MacDougall, Trustee of the Linda  
17 J.G. MacDougall Living Trust  
18 Marsha Kee Strong-chandler  
19 Richard Holt Robinson  
20 119 E. Channel Islands Blvd.  
21 Port Hueneme, CA 93041  
22 Tel: (805) 202-6379  
23 Email: [speakerholistic@gmail.com](mailto:speakerholistic@gmail.com)

24 James A. Vickman  
25 Vickman & Associates  
26 424 South Beverly Drive  
27 Beverly Hills, CA 90212  
28 Tel. (310) 553-8533  
Fax (310) 553-0557  
[jv@vickmanassociates.com](mailto:jv@vickmanassociates.com)

Attorneys for Cross-Defendant New  
Civilization, a California corporation  
Nancy J. Johnson

Robert Kyle  
The Robert Kyle Living Trust  
715 Sunset Place  
Ojai, CA 93023  
Tel: (626) 260-5509  
Email: [robertkyle61@gmail.com](mailto:robertkyle61@gmail.com)

**Via US Mail**

Warren W. Greene  
Bonnie M. Green  
958 E. Main Street  
Ventura, CA 93001  
Tel: (805) 652-1080  
Fax: (805) 652-0400

Stephanie Gustafson  
Tel. (805) 646-1423  
[sgustafson@ovs.org](mailto:sgustafson@ovs.org)

Robert Turnage  
9902 Sulphur Mountain Road  
Ojai, CA 93023  
Tel. (916) 837-3907  
Email: [Robert.turnage@sbcglobal.net](mailto:Robert.turnage@sbcglobal.net)

Authorized Representative for Cross-Defendant  
Meher Mount Corporation

Gerrold Grigsby  
Karen Grigsby  
9799 Ojai Santa Paula Road  
Ojai, CA 93023  
Tel. (805) 649-1624  
Email: [grisbyranch@gmail.com](mailto:grisbyranch@gmail.com)

Nancy J. Johnson  
Berliner Cohen LLP  
10 Almaden Blvd., 11th Floor  
San Jose, CA 95113  
Tel. (408) 286-5800  
Fax (408) 998-5388  
[Nancy.Johnson@berliner.com](mailto:Nancy.Johnson@berliner.com)

Attorneys for Cross-Defendant Union Pacific  
Railroad Company, a Delaware corporation –  
Roe 411

1 Claire S. Brian and Brad D. Brian, Trustees of  
2 the Brad & Claire Brian Living Trust, Roes 30  
3 and 31  
4 1150 So Arroyo Blvd.  
5 Pasadena, CA 91105  
6 cbrian8587@gmail.com  
7 brad.brian@mto.com

8 Stacey Birchfield  
9 Double Vision Development, LLC  
10 1810 Miramar Drive  
11 Ventura, CA 93001  
12 Tel. (805) 340-0929  
13 stacey.birchfield@gmail.com

14 Erin E. Holebrook  
15 Jerald M. Montoya  
16 Steven J. Dadaian  
17 Erick L. Solares  
18 Julie Del Rivo  
19 Tucker Wisdom-Stack  
20 100 South Main Street, 1300  
21 Los Angeles, California 90012-3702  
22 Tel. (213) 687-6000  
23 Fax (213) 687-8300  
24 Tucker.Wisdom-Stack@dot.ca.gov

25 Tom Maloney  
26 Executive Director  
27 Ojai Valley Land Conservancy  
28 P.O. Box 1092  
Ojai, CA 93024  
Tel. (805) 649-6852 Ext. 1  
[tom@ovlc.org](mailto:tom@ovlc.org)

Christopher Stolz  
Valerie Levett  
11871 Koenigstein Rd.  
Santa Paula, CA 93060  
[kitstolz@gmail.com](mailto:kitstolz@gmail.com)  
Via First Class Mail

Michael W. Price, Trustee of the Michael W.  
Price Trust, Roe 197  
Leslie L. Clark, Trustee of the Leslie L. Clark  
Trust, Roe 51  
10886 Creek Rd  
Ojai, CA 93023  
[michael@nomadgal.com](mailto:michael@nomadgal.com)  
[leslie@nomadgal.com](mailto:leslie@nomadgal.com)

Thomas G. Gehring, Esq.  
Julia J. Park, Esq.  
Thomas G. Gehring & Associates, a  
Professional Corporation  
1534 17th Street, Suite 203  
Santa Monica, CA 90404  
Tel. (310) 264-7744  
Fax (310) 264-7746  
[tom@tomgehring.com](mailto:tom@tomgehring.com)  
[julia@tomgehring.com](mailto:julia@tomgehring.com)

Attorneys for Cross-Defendant Teen  
Challenge of Southern California, Inc., a  
California nonprofit corporation

Kathleen Janetatos Smith, Trustee of the  
Smith Family 2020 Revocable Trust dated  
January 3, 2020, Roe 426  
Tel. (805) 844-2093  
[kathismith@sbcglobal.net](mailto:kathismith@sbcglobal.net)

Adam C. Kear  
1940 N. Saint Andrews Place  
Los Angeles, CA 90068  
Phone (323) 481-9392  
[ackear@gmail.com](mailto:ackear@gmail.com)

Attorneys for Cross-Defendant Senior Canyon  
Mutual Water Company (co-counsel w/Ryan  
Blatz)

Warren W. Greene  
Bonnie M. Greene  
958 E. Main Street  
Ventura, CA 93001  
Tel. (805) 652-1080  
Fax (805) 652-0400

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2  
3  
4  
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20  
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24  
25  
26  
27  
28

Via First Class Mail

Lewis A. Enstedt  
12617 Macdonald Drive  
Ojai, CA 93023  
(310) 613-3937

David Bishop  
Sophie Loire  
Tel. (805) 403-5370  
frenchiephotos@yahoo.com

Brandon Hansen (pro per)  
for Jamie Hansen, Ralph Hansen, Sandra  
Hansen, Ojai Highlands LLC, BH Holding  
LLC, 403 Bryant LLC and 401 Bryant LLC  
PO Box 1516  
Oak View, CA 93022  
Tel. (805) 207-1869  
Email: brandon@welldo.com

Amy Elmore  
110 Park Road  
Ojai, Ca 93023  
Tel. (805) 746-1551  
elmoreaw@gmail.com