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TO GOVERNMENT CODE SECTION 6103

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11 Attorneys for Respondent and Cross-Complainant
CITY OF SAN BUENAVENTURA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

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

17 Petitioner,

18 v.

19 STATE WATER RESOURCES CONTROL
20 BOARD, etc., et al.,

21 Respondents.

22 CITY OF SAN BUENAVENTURA, etc.,

23 Cross-Complainant,

24 v.

25 DUNCAN ABBOTT, an individual, et al.,

26 Cross-Defendants.
27
28

Case No. 19STCP01176

Judge: Hon. William F. Highberger

STATUS CONFERENCE REPORT

Date: August 16, 2021

Time: 1:30 p.m.

Dept: SS10

Action Filed: Sept. 19, 2014

Trial Date: Feb. 14, 2022

STATUS CONFERENCE REPORT

Defendant and Cross-Complainant City of San Buenaventura (City) submits this status conference report (Report) in advance of the status conference scheduled for August 16, 2021 at 1:30 p.m. On August 4, 2021, the City emailed a draft of this Report to all parties who have appeared and invited input and joinder. The City revised this report pursuant to input from Cross-Defendant Villa Nero Trust. Consistent with the Court's instructions, some parties may submit their own status conference reports.

1. UPDATE PROOFS OF SERVICE AND DEFAULTS

The City filed an ex parte application requesting a final extension of time to file proofs of service to allow the City to complete service on the 38 Cross-Defendants who are being served via publication in the *Ventura County Star*. The last publication date of these 38 Cross-Defendants is August 13, 2021.

The City is in the process of requesting defaults for 1,376 Cross-Defendants. As of August 3, 2021, the City has filed 825 requests for entry of default in packages 1 through 42, with 20 requests per package. Seven requests were rejected by the Court, including five that have been resubmitted and one that will be resubmitted to the Court. The Court has accepted and processed 587 requests for entry of default. The City will file another 328 requests for defaults for this initial group of non-appearing Cross-Defendants. The City also anticipates having to request defaults of approximately 500 non-appearing Roe Cross-Defendants in the upcoming months.

Defaults submitted	825
Defaults rejected, to be resubmitted	1
Defaults not yet processed by the Court	238
Defaults accepted	587
Defaults to be submitted for initial group	328
TOTAL	1,376

1 2. PROPOSED PHYSICAL SOLUTION

2 Pursuant to the Court’s instructions at the July 23, 2021 further status conference, on July
3 27, 2021 Best Best & Krieger staff spoke with Mr. Sanchez, Clerk of the Court, and was asked to
4 provide the Court with a complete set of the filings relating to the Proposed Physical Solution.
5 On July 28, 2021, the City provided the Court with one organized and indexed binder consisting
6 of twenty (20) filings regarding the Proposed Physical Solution. All of these documents were
7 previously served on File&ServeXpress, and the City will also post them on the Ventura
8 Adjudication River Watershed Adjudication website, available at
9 <https://www.venturariverwatershedadjudication.com/>.

10
11 3. SOLD PROPERTIES/SUBSTITUTION OF PARTIES

12 The City is aware of instances where Cross-Defendants or other parties (e.g., stipulating
13 overlier parties) sold parcels at issue and now seek to be dismissed, in conjunction with the
14 transferee-in-interest substituting into the case. While the City is not required to name transferees
15 after having accomplished service on the original property owner (see Code Civ. Proc., §§ 851;
16 836(f)), the City seeks to propose a procedure for substitutions as a result of property transfers by
17 filing of a notice of transfer and proposed order.

18 Pursuant to Code of Civil Procedure section 368.5, the transfer of an interest in the action
19 or proceeding does not abate the proceeding, because “the action or proceeding may be continued
20 in the name of the original party, or the court may allow the person to whom the transfer is made
21 to be substituted in the action or proceeding.” (*Id.*; see also *Hearn Pacific Corp. v. Second*
22 *Generation Roofing, Inc.* (2016) 247 Cal.App.4th 117 [trial court has discretion to allow litigation
23 to continue in the name of original plaintiff rather than substitute transferee].) Code of Civil
24 Procedure section 368.5 does not require a specific procedure for substitution. Witkin comments
25 that, “contrary to the rule requiring substitution after death so as to bring in the real party in
26 interest [citation], the transferee has the convenient election to continue in the name of the
27 transferor, avoiding the trouble of substitution.” (4 Witkin, California Procedure (5th Ed. 2020),
28 “Pleading,” § 262.)

1 Here, for transferees-in-interest who seek to substitute into the case, the City proposes to
2 submit a stipulation and proposed order authorizing the substitution of the transferee-in-interest,
3 and correspondingly correcting, without further action, the Third Amended Cross-Complaint
4 pursuant to Code of Civil Procedure section 473 to reflect the name of the transferee in place of
5 the transferor, wherever it appears in the pleading. Attached hereto as Exhibit A is a template
6 stipulation and proposed order that the City proposes to use. The City requests that the Court
7 approve the City's use of this template form at the August 16, 2021 status conference.
8

9 4. MAP OF APPEARING PARTIES

10 The City has prepared a preliminary map of the parcels owned by the parties that have
11 appeared in the case, attached hereto as Exhibit B. The City is working on a more detailed map
12 that will allow the parties to identify party names and if possible, parcel numbers and estimates
13 that it will be able to serve this more detailed map before or at the August 16, 2021 status
14 conference.
15

16 5. DRONE FOOTAGE OF WATERSHED

17 At the April 19, 2021 status conference, the City advised the Court of its ongoing meet
18 and confer efforts regarding potential use of a drone or other video surveillance device to create
19 or compile a comprehensive video tour of the Watershed. The parties selected a drone operator
20 and agreed on twenty-four locations to be filmed within the Watershed. The drone operator has
21 completed filming all but two locations and anticipates completing all filming in short order. The
22 City will work with the parties for any final edits to the video and anticipates presenting the video
23 to the Court at a status conference in September or October 2021. The video would become part
24 of the record of the proceeding and could be used by the parties in future evidentiary hearings as
25 appropriate and subject to proof.
26
27
28

1 6. FUTURE STATUS CONFERENCES

2 As the parties prepare for Phase 1 trial, the City believes that the Court and the parties
3 should discuss whether monthly status conferences are necessary at this time or whether holding
4 status conferences every other month would be more efficient for the Court and the parties.

5
6 7. NON-SUBSTANTIVE AMENDMENT TO CITY'S THIRD AMENDED
7 CROSS-COMPLAINT

8 The City wishes to advise the Court that it will be bringing an application to file a Non-
9 Substantive Amendment to its Third Amended Cross-Complaint (3ACC) pursuant to Code of
10 Civil Procedure section 473(a)(1). The City will request this non-substantive amendment to
11 address a structure in the pleadings for Roe Cross-Defendants that has proven to be unworkable
12 in practice. As it is currently pled and before the number of parties in the case increased
13 dramatically, the 3ACC assigns separate and distinct "Roe" numbers for the diverters of water
14 from the Ventura River and its different tributaries, as well as from the four groundwater basins
15 within the Ventura River Watershed.

16 In the process of serving Roe Cross-Defendants once their identities were ascertained, it
17 became infeasible for the City to serve newly identified Cross-Defendants with a Roe number that
18 corresponded to the specific watercourse and/or basin from which he/she/it diverts and/or extracts
19 water given the number of Roe Cross-Defendants that needed to be served. Instead, in order to
20 minimize confusion and logistical challenges that would invariably arise through the assignment
21 of non-consecutive numbers for the large amount of Roe Cross-Defendants that needed to be
22 served, consecutive Roe numbers were used for new Cross-Defendants, as their identities were
23 ascertained. In other words, each new Roe Cross-Defendant was assigned a Roe number based
24 on *when* his/her/its identity was ascertained, and not on the *location* of his/her/its extraction or
25 diversion of water from the Ventura River Watershed. This proved to be a simpler and more
26 straightforward method of keeping track of the numerous Roe Cross-Defendants and the status of
27 their responses, but as a result, the Roe numbers that were assigned to each new Cross-Defendant
28 do not necessarily correspond to the numbers identified in the 3ACC for those who had to be

1 named as parties in this action.

2 The City's proposed Amendment will merely seek to conform the 3ACC to the manner by
3 which the Roes have been served. Because the Amendment will be non-substantive, it will not
4 require new responses from any Cross-Defendant. The City will also be seeking leave of Court to
5 serve the Amendment on all parties that have appeared via "File & Serve Xpress" and on the
6 remaining parties that have been served but who have not yet appeared and have not yet been
7 defaulted via overnight mail.

8
9 8. CONCLUSION AND SUMMARY OF REQUESTS

10 The City respectfully requests that the Court consider taking the following actions at the
11 August 16, 2021 status conference:

- 12 • Provide guidance on the frequency of future status conferences.
13 • Provide guidance re substitution of parties after property transfers.

14
15 Dated: August 9, 2021

BEST BEST & KRIEGER LLP

16
17 By: 

18 SHAWN D. FAGERTY
19 CHRISTOPHER MARK PISANO
20 SARAH CHRISTOPHER FOLEY
21 PATRICK D. SKAHAN
Attorneys for Respondent and Cross-
Complainant
CITY OF SAN BUENAVENTURA

22 Dated: August 9, 2021

HERUM CRABTREE SUNTAG

23
24 By: /s/ Jeanne Zolezzi

25 JEANNE ZOLEZZI
26 Attorneys for Cross-Defendants MEINERS
27 OAKS WATER DISTRICT AND
28 VENTURA RIVER WATER DISTRICT

EXHIBIT A

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CITY OF SAN BUENAVENTURA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER, a
California non-profit corporation,

Petitioner,

v.

STATE WATER RESOURCES CONTROL
BOARD, et al.,

Respondents.

CITY OF SAN BUENAVENTURA, et al.,

Cross-Complainant,

v.

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

Case No. 19STCP01176

Judge: Hon. William F. Highberger

**STIPULATION ALLOWING
SUBSTITUTION OF**

[PROPOSED] ORDER AND

[New Owner Name; APN]

Action Filed: Sept. 19, 2014

Trial Date: Feb. 14, 2022

WHEREAS, the following are cross-defendants in this matter concerning the Ventura River Water Adjudication:

1. [CROSS DEFENDANT NAME]
2. [CROSS DEFENDANT NAME]

1. WHEREAS, Cross Defendants [Insert Cross Defendant Names] owned property within the Basin referenced as Assessor Parcel Number(s) _____ (the "Property").

2. WHEREAS, [Insert Transferees' name] ("_____") recently acquired the Property. A true and correct copy of the grant deed between [Insert Cross-Defendant Names] and [Insert Transferees' name] is attached hereto as Exhibit A.

3. WHEREAS, [Insert Transferees' name] as successor in interest to [Insert Cross-Defendant Names] seeks to substitute into this matter pursuant to Code of Civil Procedure section 368.5.

4. WHEREAS, pursuant to Code of Civil Procedure section 473, Cross-Complainant City of San Buenaventura requests that its Third Amended Cross-Complaint be amended to reflect the true name [Insert Transferees' name] in place of [Insert Cross-Defendant Names].

BASED ON THE FOREGOING, THE PARTIES STIPULATE AS FOLLOWS:

1. This action may proceed with [Insert Transferees' name] as a successor in interest to [Insert Cross-Defendant Names]. [Insert Transferees' name] shall continue to be represented by _____.

2. [Insert Cross-Defendant Names] is hereby dismissed from this action.

This Stipulation may be signed in counterpart and facsimile signatures shall be considered as originals.

It is hereby stipulated.

1 Dated: _____, 2021

BEST BEST & KRIEGER LLP

2
3 By: _____
4 SHAWN HAGERTY
5 CHRISTOPHER M. PISANO
6 SARAH CHRISTOPHER FOLEY
7 PATRICK D. SKAHAN
8 Attorneys for Respondent and
9 Cross-Complainant
10 CITY OF SAN BUENAVENTURA

11 Dated: _____, 2021

[LAW FIRM NAME]

12 By: _____
13 _____
14 Attorneys for
15 CROSS-DEFENDANT, _____

16 Dated: _____, 2021

17 By: _____
18 _____
19 CROSS-DEFENDANT

20 Dated: _____, 2021

21 By: _____
22 _____
23 SUBSTITUTING CROSS-DEFENDANT

ORDER

GOOD CAUSE APPEARING, the Court having considered the stipulation of the parties hereby orders as follows:

This action may proceed with _____ as a successor in interest to: _____.

The following parties are hereby dismissed from this action: _____.

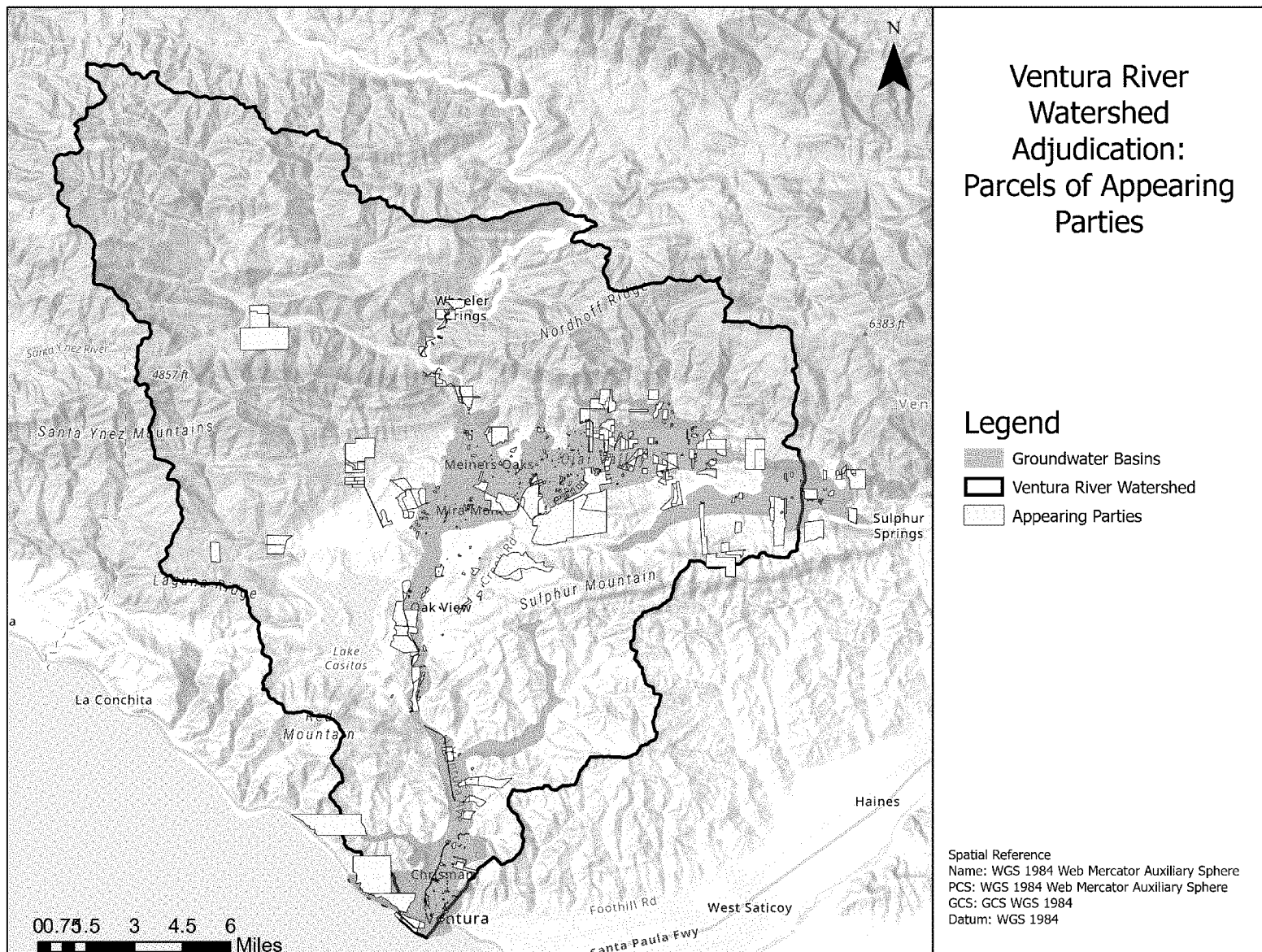
Pursuant to Code of Civil Procedure section 473, Cross-Complainant City of San Buenaventura's Third Amended Cross-Complaint is amended to reflect the true name [Insert Transferees' name] in place of [Insert Cross-Defendant Names], wherever it appears in the pleading.

IT IS SO ORDERED

Dated: _____, 2021

JUDGE OF THE SUPERIOR COURT

EXHIBIT B



PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the action herein; my business address is Best Best & Krieger LLP, 2001 N. Main Street, Suite 390, Walnut Creek, CA 94596. On August 9, 2021, I served the following document(s):

STATUS CONFERENCE REPORT

- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.
- ☐ I caused such envelope to be delivered via overnight delivery. Such envelope was deposited for delivery by United Parcel Service following the firm's ordinary business practices.
- ☒ by transmission via **E-Service to File & ServeXpress** to the person(s) set forth below. Local Rules of Court 2.10 (P).
- ☒ **By e-mail or electronic transmission.** I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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Water Resources Control Board

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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;
Michel A. Etchart, Trustee of the Michel A.
Etchart Separate Property Trust, and Mark W.
Etchart, Trustee of the Mark W. Etchart
Sepertate Property Trust; Lawrence
Hartmann; Ole Konig; Krotana Institute of
Theosophy; Stephen Michtell 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; 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,
Ltd.; Burgess Ranch; Cary Cheldin; Cynthia
Daniels; Wayne Francis; David Friend; The
Larry & Pat Hartmann Family Trust; The John
N. Hartmann Trust; Gary Hirschcron; Cheryl
Jensen; Lutheran Church of the Holy Cross of
Ojai, California; Janice Sattler (Mineo); Eitan
Sloustcher; Rogers-Cooper Memorial
Foundation; Robert Norris (not yet appeared);
Patricia Norris; Old Creek Road Mutual
Water Company (not yet appeared); Margaret
Vanderfin; Telos Ojai, LLC (not yet
appeared); 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

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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 Carolyn D. Bennett, Trustees of the Bennett Family Trust; Sumeet Bhatia and Michael McDonald; John Joseph Broesamle and Katharine Sue Broesamle, Trustees of the Broesamle Family Trust; Richard Aaron Carlson, Trustee of the Richard Aaron Carlson Trust and Michelle Larson, Trustee of the Michelle Larson 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 L.L.C.; Douglas Roy Parent and Ann Marie Parent; William Erickson; Gelb Enterprises, L.P.; Jan Stephen Granade and Priscilla K. Granade, Trustees of the Granade Family Revocable Living Trust; Margot 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 Bengtson 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

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Trustees of The Hamm 2004 Family Trust
Dated April 29, 2004; Reeves Orchard, LLC;
and Ojai Valley Inn, Edward J. Conner,
Edward J. Conner, Trustee of the Edward J.
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Nicholas and Jess E. Long as Trustees of the
Long Family Trust

Jeffrey E. Barnes
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8 I declare under penalty of perjury under the laws of the State of California that the
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10 Executed on August 9, 2021 at Walnut Creek, California

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