

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
8 William W. Carter (State Bar No. 115487)
9 w.carter@musickpeeler.com

10 Attorneys for The Thacher School; Friend's Ranches, Inc.; 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.**

27 **CITY OF SAN BUENAVENTURA, etc.,**

28 **Cross-Complainant,**

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

CASE No. 19STCP01176

Judge: Hon. William F. Highberger

EAST OJAI GROUP'S TRIAL BRIEF

Action Filed: September 19, 2014

First Amended Complaint Filed:

September 7, 2018

Trial Date (Phase One): March 16, 2022

1 **I. INTRODUCTION.**

2 The East Ojai Group consists of seven (7) parties, all of whom have longstanding
3 overlying water rights in one of the four (4) groundwater basins involved in this case, referred to
4 as the Ojai Valley Groundwater Basin ("Ojai Basin"). With the exception of the Thacher School,
5 the members of the East Ojai Group all own and maintain agricultural interests, primarily growing
6 citrus and avocado crops. The members all have groundwater wells located in a geologic unit
7 known as the "deep" or "deeper" and "confined" aquifer located in the Ojai Basin.

8 The presentation of their case will focus on the lack of any material connectivity between
9 the deep confined aquifer and surface water flows within Ojai Basin, including in San Antonio
10 Creek. to demonstrate that these members should not be parties in the instant action, and more
11 importantly, in the City of Buenaventura's ("City") proposed Physical Solution, which seeks
12 primarily to increase flow in reaches 3 and 4 in the lower Ventura River and improve Steelhead
13 habitat ("Physical Solution"). A copy of the map showing the location of the wells used by the
14 East Ojai Group is attached as Exhibit A. The Ojai Basin is currently being managed by the Ojai
15 Valley Groundwater Management Agency under the California Sustainable Groundwater
16 Management Act (SGMA).

17 The City seeks the imposition of the Physical Solution requiring all parties to pay for the
18 Steelhead fishery habitat improvements under the guise of a "water rights" case. In reality, the
19 purpose of the City's case and the proposed Physical Solution is to inappropriately and unfairly
20 spread the cost of the underlying lawsuit filed by Santa Barbara Channelkeeper against the City
21 and the State Water Resources Control Board ("State"). That underlying lawsuit only alleges that
22 the City's pumping and diversion of water in reaches 3 and 4 of the Ventura River (as defined in
23 the lawsuit) reduce flow during the summer months to the detriment of the Steelhead fishery
24 habitat.

25 The current phase of this trial ("Phase One") is intended to address the issue of whether or
26 not there is sufficient "connectivity" between the four basins and surface water flow within the
27 Ventura River Watershed to allow the City to continue to pursue its case against the hundreds of
28 parties it has sued. There remains, however, significant disagreement as to the burden of proof the

1 City must show to establish "hydrological connection" in this phase. Notwithstanding the Court of
2 Appeal's holding in *Santa Barbara Channelkeeper v. City of San Buenaventura et al.* (2018) 19
3 Cal.App.5th 1176, the City appears to take the position that "any" connectivity is all it must show
4 in this phase of the trial and that it does not need to show that there is any material connection
5 between groundwater pumping and surface water flow in the river, and specifically, that water use
6 impairs the flow in reaches 3 and 4 in the summer months to the harm of the fishery. More
7 specifically, the City is claiming that merely "one drop" of water need make its way from any of
8 the four basins into the Ventura River in order to establish that there is "one common source" of
9 water in satisfaction of its burden. Or, as has been suggested by the City, if no human had ever
10 lived in the watershed and there was no groundwater pumping whatsoever, there would be more
11 water in the river at some point in time, depending on the rainfall in any given year. The City, in
12 essence, seeks to remove any nexus or proximate cause between water use and the harm alleged in
13 the underlying Channelkeeper complaint and indeed, in its own cross-complaint. In a nutshell,
14 according to the City, if a person uses any amount of water taken from anywhere in the basins and
15 watershed, that person is responsible for paying to restore fish habitat that the City damaged
16 through its activities on the lower Ventura River.

17 As discussed below, this position goes far beyond the holding in *Santa Barbara*
18 *Channelkeeper*, which allows the City to pursue this case only against those parties who are
19 responsible for "reduced water flow in reaches 3 and 4 (as defined in the underlying lawsuit)
20 during the summer months." (*Id.* at 1190.) The issue of interconnectivity must also be viewed in
21 the context of this case and the claims asserted by the City. The City's position is also contrary to
22 this Court's Order dated February 8, 2022, in which the Court specifically referenced this language
23 (Order p.3) and its Order of February 14, 2022, wherein the Court similarly noted that the burden
24 for Phase One is more than mere interconnectivity, but rather, noted that the burden is "material
25 interconnectedness." (Order, paragraph 14).

26 This Court should therefore reject the City's notion of its proposed minimal burden of
27 proof and require that there be a material and quantified showing of interconnectivity consistent
28 with the ruling by the Court Appeal, which is the law of the case. That definition and burden of

1 proof should take into account the genesis of this case and the specific ruling in the *Channelkeeper*
2 decision. It is simply a waste of time if the City need only show "any" connection. Rather, the
3 City must quantify any alleged connection and show that it is harming the fishery in reaches 3 and
4 4 during the summer months, as directed by the Court of Appeal.

5 It is the East Ojai Group's position, based on actual groundwater data and their expert,
6 Anthony Brown, as well as the experts for the City of Ojai and Casitas Municipal Water District,
7 that because of the confined nature of the portion of the Ojai Basin from which they extract water,
8 namely, the deep confined aquifer, their respective groundwater pumping has no effect on the
9 surface water flow of the Ventura River in reaches 3 and 4 and even its tributaries, including San
10 Antonio Creek, in the summer months. These opinions are based on actual data. None of the
11 City's or State's experts have provided any opinions regarding any quantifiable material impact the
12 pumping of groundwater water in the Ojai Basin has caused in the Ventura River, including
13 leading to any insufficient flows in reaches 3 and 4 of the Ventura River in the summer months.
14 Rather, the City and the State assert some vague notion of interconnectivity relying primarily on
15 two groundwater models and simulations that the evidence will show are deficient and as a result,
16 do not represent true hydrological and geological conditions in the Ojai Basin and, in particular,
17 the confined (e.g., separate) nature of the deep aquifer from which the East Ojai Group pumps its
18 groundwater.

19 **II. ARGUMENT**

20 **A. The Court of Appeal Decision Requires The City To Show That The East Ojai**
21 **Basin Groups' Pumping Causes Insufficient Flows in the Ventura River In**
22 **Reach 3 and 4 During the Summer Months, Harming the Fishery.**

23 The Court of Appeal was very specific in defining the scope of the City's ability to bring a
24 cross-complaint based on the Channelkeeper's complaint. Any determination of "connectivity"
25 must, as the City has admitted, follow the law of this case. In reviewing the scope of permissive
26 cross-complaints. the Court of Appeal authorized the City to file a "cross-complaint against other
27 water users in the Ventura River watershed, where it alleges that other users are partially
28 responsible for the reduced waterflow in reaches 3 and 4 during the summer months." (*Santa*

1 *Barbara Channellkeeper* 19, Cal.App. 5th at 1190). The Court of Appeal expressly defined the
2 term "hydrological connection: "This means that other water users' pumping and diversion
3 activities may be contributing to the alarmingly low water flow alleged in reaches 3 and 4, and if
4 these activities were curtailed the water flow in the Ventura River might improve." (*Id* at 1189)
5 Thus, the City has the burden of showing that the pumping by the East Ojai Group in the confined
6 deep aquifer in the Ojai Basin leads to insufficient flow in the these reaches of the Ventura River
7 during the summer months. In order to do so, the City is not simply required to show there is
8 "any" connection at some point in time, it must also quantify that connection to prove that it
9 affects or has a material nexus to the flow in the river in those reaches during the summer months.

10 **B. The City's Claims In Its Third Amended Complaint Require Much More**
11 **Than a Showing of Any Vague Connection**

12 The City's relevant causes of action regarding the alleged impact of groundwater pumping
13 to the alleged harm to the fishery include a claim under California Constitution, art. 10, Section 2;
14 (First Claim for Relief); a cause of action under the Public Trust Doctrine (Second Claim for
15 Relief) and a cause of action for a Comprehensive Adjudication and Physical Solution under the
16 Comprehensive Adjudication Statute. (Sixth Claim for Relief) (The remaining causes of action
17 are related to the City's claimed water rights that are not part of this first phase.) Under each of
18 these causes of action, the City has the burden to show much more than just some vague notion of
19 "any" connection between the confined aquifer from which the East Ojai Group pumps and the
20 surface flows of San Antonio Creek, a tributary of the Ventura River.

21 First, California Constitution, art 10, Section 2, requires a showing that the East Ojai
22 Group's pumping is "wasteful" and "unreasonable" and that any actual use be "reasonable" and
23 "beneficial." This requires the City to show that the pumping materially affects the City's own
24 "reasonable and beneficial" use in reaches three and four of the Ventura River.

25 Similarly, under the Public Trust Doctrine, where this Court must balance competing
26 interests, the City must first show that the East Ojai Group' groundwater pumping is harming its
27 interests. (See e.g. *National Audubon Society et al. v. The Superior Court of Alpine County et al*
28 (1983) 33 Cal.3d 419.

1 Finally, with respect to the Sixth Cause of Action under the Comprehensive Groundwater
2 Adjudication statute (Code of Civil Procedure Sections 30-852) CCP § 833(c), only authorizes the
3 court to join parties with surface water rights to a pending comprehensive groundwater
4 adjudication of a basin: "If the court finds that including an interconnected surface water body or
5 subterranean stream flowing through known and definite channels is necessary for the fair and
6 effective determination of the groundwater rights in a basin, the court may require the joinder of
7 persons who claim rights to divert and use water from that surface water body or subterranean
8 stream in a comprehensive adjudication conducted pursuant to this chapter." (*Id.*)

9 "Interconnected surface water" is defined in the Sustainable Groundwater Management Act
10 (SGMA), which is the companion legislation to the Comprehensive Groundwater Adjudication
11 Act. SGMA identifies certain undesirable results caused by groundwater depletions. Water Code
12 § 10721(x)(6) states that one undesirable result is "depletions of interconnected surface water that
13 have significant and unreasonable adverse impacts on beneficial uses of the surface water." Thus,
14 this Court must make a finding under this particular cause of action that the groundwater pumping
15 by the East Ojai Group in the confined deep aquifer has a "significant and unreasonable impact" to
16 the surface water flow of reaches 3 and 4 of the Ventura River.

17 **III. CONCLUSION.**

18 The City is attempting to impermissibly lower its burden of proof in Phase One, so it can
19 then seek to impose the Physical Solution in the next phase, unfairly requiring the East Ojai Group
20 and other parties to pay to improve the fishery at some unknown cost, for some undetermined
21 period of time and subject to regulation, oversight and enforcement by some-as-yet unknown new
22 public agency, even in those basins where the City holds no water rights, such as the Ojai Basin.
23 The Court of Appeal in *Santa Barbara Channelkeeper*, as well as existing case law, require more
24 than the unprecedented "one drop" rule of "hydrological connection" proffered by the City.

25 The East Ojai Group therefore respectfully requests that this Court use the definition of
26 "hydrological connection" provided by the Court of Appeal in *Santa Barbara Channelkeeper*,
27 which requires the City to show that the pumping by the East Ojai Group substantially and
28 materially reduces the flow in reaches 3 and 4 of the Ventura River in the summer months. The

1 Court of Appeal has clearly defined the term "hydrological connection," which is not consistent
2 with the City's proposed "one drop" theory. The City is obviously seeking to move the case
3 immediately to review of the proposed physical solution without meeting its burden of proof.
4

5 DATED: March 2, 2022

MUSICK, PEELER & GARRETT LLP

6
7 By: 

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

5.7 Groundwater use by EOG Parties

Available EOG Parties' well locations and extraction data were collated,⁹² along with precipitation data. EOG well locations are shown on Figure 24.



⁹² 20200413_WellInfoOjai.xlsx, 20210917_hydrographs.xlsx, Precipitation_data_compiled.xlsx

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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 March 2, 2022, I served true copies of the following document(s) described as **EAST OJAI GROUP'S TRIAL BRIEF** 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 March 2, 2022, at Westlake Village, California.

/s/ Stacey Hanlin
Stacey Hanlin

1 **SERVICE LIST**

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

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

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

20 Edward J. Casey, Esq.
21 Gina Angiolollo, 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
27 gina.angiolollo@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

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
Noah.goldenkrasner@doj.ca.gov
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

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, 15th Floor
San Diego, CA 92101
Tel: (619) 525-1300
Email: 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
sarah.foley@bbklaw.com
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

Anthony Lee Francois, Esq.
Briscoe Ivester & Bazel
235 Montgomery Street, Suite 935
San Francisco, CA 94104
Tel: (415) 402-2707
Email: tfrancois@briscoelaw.net

Attorney for Cross-Defendant Robin Bernhoft

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

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
Carrieta@lrmmt.com

Attorneys for Cross-Defendant Casitas
Municipal Water District

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

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

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
nmetcalf@hansonbridgett.com
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

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
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

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
9 bherrema@bhfs.com
10 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
21 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.dlpiper.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

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

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

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
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
mberner@kslaw.legal

Attorneys for Cross-Defendant Oak Haven,
LLC

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

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

7
8
9 Peter A. Goldenring
Mark R. Pachowicz
10 Pachowich | Goldenring
6050 Seahawk Street
11 Ventura, CA 93003-6622
Tel: (805) 642-6702
12 Fax: (805) 642-3145
Email: attorneys@gopro-law.com
13 peter@gopro-law.com
14 mark@pglaw.law

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

16 Karen A. Feld, Esq.
Daniel S. Roberts, Esq.
17 Cole Huber LLP
3401 Centerlake Dr., Ste. 670
18 Ontario, CA 91761
T: (909) 230-4209
19 F: (909) 937-2034
Email: kfeld@colehuber.com
20 droberts@colehuber.com

21 Attorneys for Cross-Defendant Ventura
Unified School District

22
23 Attn: Roger J. Essick
Hermitage Mutual Water Company
2955 Hermitage Road
24 Ojai, CA 93023
Tel: (805) 320-1406
25 Email: rogeressick@gmail.com

Adam D. Wieder, Esq.
Barry C. Groveman, Esq.
Ryan Hiete, Esq.
Groveman Hiete LLP
35 East Union St., Ste. B
Pasadena, CA 91103
Tel: (626) 747-9383
Fax: (626) 747-9370
Email: awieder@grovemanhiete.com
bgroveman@grovemanhiete.com
rhiete@grovemanhiete.com

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

Ernest J. Guadiana
Elkins Kalt Weintraub Reuben
Gartside LLP
10345 W. Olympic Boulevard
Los Angeles, CA 90064
Tel: (310) 746-4425
Email: eguadiana@elkinskalt.com

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

David A. Ossentjuk, Esq.
Ossentjuk & Botti
2815 Townsgate Rd., Ste. 320
Westlake Village, CA 91361
T: (805) 557-8081
F: (805) 456-7884
Email: dossentjuk@oandblawyers.com

Attorneys for Cross-Defendant Robert Martin

26
27
28 Tiernan Dolan
995 Riverside Street
Ventura, CA 93001
Email: tdolan@hacityventura.org

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

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

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

Michaela Boehm
12293 Topa Lane
Santa Paula, CA 93060
Tel: (323) 493-3737
Email: 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
17 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
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

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

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

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

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

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

8 Robert K. Cartin
Cartin Family LLC
9 505 Estremoz Ct.
Oceanside, CA 90257
10 Tel: (760) 429-4738
Email: 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

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

18 David R. Greifinger
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

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

26

27

28

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

Martin Hartmann
Whitney Hartmann
430 S. Carrillo Road
Ojai, CA 93023
Tel: (805) 798-2253
Email: 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

Janice and Jesse Hillestad
9611 N. Ventura Ave.
Ventura, CA 93001
Tel: (310) 614-8438
Email: janicehillestad@icloud.com
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
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
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
9 swaggener@manatt.com

6 Attorneys for Cross-Defendant Aera Energy,
7 LLC

8 Claude R. and Patrica E. Baggerly
9 119 S. Poli Avenue
10 Ojai, CA 93023-2144
11 Tel: (805) 646-0767
12 Tel: (805) 766-7317
13 Email: russ.baggerly65@gmail.com

11 Prop Per

12 Henry D. Finkelstein
13 Brian Moskal
14 GREENBERG GLUSKER FIELDS
15 CLAMAN & MACHTINGER LLP
16 2049 Century Park East, Ste. 2600
17 Los Angeles, CA 90067
18 Tel: (310) 785-6833
19 Fax: (310) 201-2368
20 Email: hfinkelstein@ggfirm.com
21 bmoskal@greenbergglusker.com

18 Attorneys for Ginnetti Living Trust; and
19 Baldwin Ranch, LLC

19 Tristan F. Mackprang
20 David J. Farkas
21 COLEMAN FROST LLP
22 201 Nevada St., Smokey Hollow
23 El Segundo, CA 92045
24 Tel: (424) 277-1650
25 Email: tristan@colemanfrost.com
26 david@colemanfrost.com

24 Attorneys for Cross-Defendants Housing
25 Authority of the City of San Buenaventura;
26 Triad Properties, Inc.; Encanto Del Mar
27 Apartments, L.P.; Villages at Westview I L.P.;
28 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@mofocom
wtarantino@mofocom

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

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

Andrew K. Whitman
821 N. Signal Street
Ojai, CA 93023
Tel: (805) 444-5671
Email: 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

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

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

16 Kelley M. Rasmussen, Trustee
2420 Park Road
17 Lake Oswego, OR 97034
Tel: (805) 798-7125
18 Email: 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

22 Joshua Beckman
23 913 Oso Road
Ojai, CA 93023
24 Tel: (323) 404-0465
Email: 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

Attorneys for Berbard Properties, Inc.

Christine Steiner
2560 Ladera Road
Ojai, CA 93023
Tel: (310) 600-3220
Email: 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
TaftGardensOffice@gmail.com

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

Rebecca Tickell
350 Verano Drive
Ojai, CA 93023
Tel: (323) 559-5700
Email: rebbecca@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

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

<p>1 Robert L. Smith 12777 Tree Ranch Road 2 Ojai, CA 93023 Tel: (805) 558-6322 3 Email: treeranch@vmail.com</p> <p>4 Robin Schwartzburd 411 Franklin Drive 5 Ojai, CA 93023 Tel: (805) 272-5877 6 Email: robin.schwartzburd@gmail.com</p> <p>7 Malinda K. Vaughn 8 Mitchell B. Vaughn 12283 Ojai Santa Paula Road 9 Ojai, CA 93023-9323 Tel: (805) 890-6616 10 Email: vaughnmb@aol.com</p> <p>11 Jennifer Jordan Day and Joel Fox 909 North Rice Road 12 Ojai, CA 93023 Tel: (213) 321-5253 13 Email: jenniferjordandav@gmail.com</p> <p>14 Catherine Ferro & Catherine Eileen Ferro Inter Vivos Trust 312 Montana Road 15 Ojai, CA 93023 Tel: (805)326-1686 16 Email: cepharoah@gmail.com</p> <p>17 Susan Capper 12870 Tree Ranch Road 18 Ojai, CA 93023 Tel: (805) 794-6421 19 Email: chelsue@aol.com</p> <p>20 Joyce L. Heath Joyce Heath, Trustee 21 The Heath Family Living Trust, P.O. Box 1323 22 Ojai, CA 93024 Tel: (805) 290-6231 23 Email: mamaheath55@gmail.com</p> <p>24 Ronald W. Bowman, Trustee The Bowman Trust Dated April 8, 2011 25 672 W. Villanova Road Ojai, CA 93023 26 Tel: (805) 732-4014 Email: ron@l-binc.com</p> <p>27 28</p>	<p>Susan M. Glennon 292 Cruzero Street Ojai, CA 93023 Tel: (805) 646-4816 Email: theglennonest@aol.com</p> <p>Melinda Hass 11947 Kocnigstein Road Santa Paula, CA 93060 Tel: (213) 713-4360 Email: mlynnbooking@gmail.com</p> <p>Rebecca D. Schwermer P. O. Box 174 Santa Paula, CA 93061 Tel: (805) 551-3494 Email: octoberbabies2@verizon.net</p> <p>Brigitte Lovell, Trustee of Lovell Living Trust 295 Encino Drive Oak View, CA 93022 Tel: (915) 227-9412 Email: loveb9@gmail.com</p> <p>Susan C. White Steven J. White 2 Shorewood Drive Bellingham, WA 98225 Tel: (425) 891-9249 Email: curranwhite1@hotmail.com</p> <p>Lindy & Karen C. Goetz 12338 Linda Flora Ojai, CA 93023-9721 Tel: (805) 649-2526; (805) 794-2312 Email: lindygoetz@roadrunner.com</p> <p>Thomas M. German 301 N. Drown Avenue Ojai, CA 93023 Tel: (805) 646-2130 Email: kittycatgirl214@gmail.com</p> <p>Amy Hueppe 1025 Moreno Drive Ojai, CA 93023 Tel: (310)699-4619 Email: amyhueppe@gmail.com</p>
--	---

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

6 Attorneys for Cross-Defendant Roman Catholic
7 Archdiocese of Los Angeles

8 Glenn Bator
9 338 Montana Road
10 Ojai, CA 93023
11 Tel: (805) 798-1802
12 Email: denibator@aol.com

13 David L. Osias, Esq.
14 Allen Matkins Leck Gamble
15 Mallory & Natsis LLP
16 One America Plaza
17 600 West Broadway, 27th Floor
18 San Diego, CA 92101-0903
19 Tel: (619) 233-1155
20 Fax: (619) 233-1158
21 Email: dosias@allenmatkins.com

22 Attorneys for Cross-Defendant Jeff Bacon as
23 Trustee of The Villa Nero Trust Dated January
24 25. 2000

25 Laura M. Peakes
26 John E. Peakes, Jr.
27 316 Verano Drive
28 Ojai, CA 93023
Tel: (805) 402-0249
Email: jpeakesjr@aol.com

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

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

Bryan M. Sullivan, Esq.
Early Sullivan Wright Glizer & Mcrae LLP
6420 Wilshire Boulevard, 17th Floor
Los Angeles, CA 90048
Tel: (323) 301-4660
Email: bsullivan@earlysullivan.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

Thomas Adams
Adams & Associates
21781 Ventura Boulevard, Suite 10005
Woodland Hills, CA 93003
Tel: (805) 229-1529
Email: 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

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

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

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

4 William R. Thatcher
5 12195 Linda Flora Drive
6 Ojai, CA 93023-9723
Email: thelostplanetairmen@yahoo.com

7
8
9 Chet Hilgers
Mellanie Hilgers
10 mellaniehilgers@gmail.com

11 Kristi Schoeld
Neil Jorgensen
12 Tel. (805) 272-8360
Email: neilkristi@googlemail.com

13
14
15 Linda J.G. MacDougall, Trustee of the Linda
16 J.G. MacDougall Living Trust
Marsha Kee Strong-chandler
17 Richard Holt Robinson
119 E. Channel Islands Blvd.
18 Port Hueneme, CA 93041
Tel: (805) 202-6379
19 Email: speakerholistic@gmail.com

20 James A. Vickman
Vickman & Associates
21 424 South Beverly Drive
Beverly Hills, CA 90212
22 Tel. (310) 553-8533
Fax (310) 553-0557
23 jv@vickmanassociates.com

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

Robert Kyle
The Robert Kyle Living Trust
715 Sunset Place
Ojai, CA 93023
Tel: (626) 260-5509
Email: 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

Robert Turnage
9902 Sulphur Mountain Road
Ojai, CA 93023
Tel. (916) 837-3907
Email: 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

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

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

Christopher Stolz
Valerie Levett
11871 Koenigstein Rd.
Santa Paula, CA 93060
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
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
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

Adam C. Kear
1940 N. Saint Andrews Place
Los Angeles, CA 90068
Phone (323) 481-9392
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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
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