

Case No. G044138

**IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION THREE**

---

SIERRA CLUB,

*Petitioner*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
COUNTY OF ORANGE,

*Respondent.*

COUNTY OF ORANGE.

*Real Party in Interest.*

---

**REPORTER'S TRANSCRIPT  
VOLUME II**

(RT 295 - 332)

Proceedings on March 18 and 23, 2010

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From the Superior Court of the State of California,  
County of Orange, Case No. 30-2009-00121878

The Honorable James J. Di Cesare, Judge  
Department C-18

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Attorneys for Real Party In Interest,  
County of Orange

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WITNESS INDEX

PETITIONER'S:      DIRECT   CROSS   REDIRECT      RECROSS

(NONE)

RESPONDENT'S:      DIRECT   CROSS   REDIRECT      RECROSS

(NONE)

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EXHIBIT INDEX

PETITIONER'S EXHIBITS:

IDENT EVID

(NONE)

RESPONDENT'S:

DIRECT CROSS REDIRECT

RECROSS

(NONE)

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER  
DEPARTMENT C18

THE SIERRA CLUB, )  
 )  
 ) PLAINTIFF, )  
 )  
 ) VS. ) CASE NO.  
 ) 30-2009-121878  
 )  
 ) THE COUNTY OF ORANGE, )  
 )  
 ) DEFENDANT. )

HONORABLE JAMES J. DI CESARE, JUDGE PRESIDING  
REPORTER'S PARTIAL TRANSCRIPT  
THURSDAY, MARCH 18, 2010

APPEARANCES OF COUNSEL:

FOR PETITIONER:

VENSKUS & ASSOCIATES  
BY: THERESA A. LABRIOLA (PRESENT TELEPHONICALLY)  
ATTORNEY AT LAW

FOR RESPONDENT COUNTY OF ORANGE:

COUNTY OF ORANGE  
BY: MARK D. SERVINO (PRESENT TELEPHONICALLY)  
DEPUTY COUNTY COUNSEL

RANDI TAYLOR, CSR 6208, RPR  
OFFICIAL COURT REPORTER

**ORIGINAL**

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WITNESS INDEX

PETITIONER'S:      DIRECT   CROSS   REDIRECT      RECROSS

(NONE)

RESPONDENT'S:      DIRECT   CROSS   REDIRECT      RECROSS

(NONE)

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EXHIBIT INDEX

PETITIONER'S EXHIBITS:

IDENT EVID

(NONE)

RESPONDENT'S:

DIRECT CROSS REDIRECT

RE CROSS

(NONE)

1           SANTA ANA, CALIFORNIA - THURSDAY, MARCH 18, 2010  
 2           BEFORE THE HONORABLE JAMES DI CESARE  
 3                           DEPARTMENT C18  
 4                           AFTERNOON SESSION

5                           \* \* \* \* \*

6           (THE FOLLOWING PROCEEDINGS WERE HELD IN  
 7 CHAMBERS:)

8           THE COURT: ALL RIGHT. WE'RE IN CHAMBERS.

9           UNIDENTIFIED SPEAKER: HI.

10          THE COURT: HI. THIS IS THE CASE OF SIERRA --

11          UNIDENTIFIED SPEAKER: YES.

12          THE COURT: -- CLUB VERSUS COUNTY OF ORANGE.

13 AND WE'RE IN CHAMBERS WITH THE COURT REPORTER AND THE  
 14 CLERK AND THE JUDGE. WOULD YOU MAKE YOUR APPEARANCES.

15          MR. SERVINO: MARK SERVINO FOR RESPONDENT COUNTY  
 16 OF ORANGE.

17          MS. LABRIOLA: THERESA LABRIOLA, COUNSEL FOR THE  
 18 SIERRA CLUB.

19          THE COURT: APPARENTLY YOU WERE SET FOR HEARING  
 20 TODAY. WE WERE ALL READY TO SEE YOU, BUT THERE WAS A  
 21 WITNESS PROBLEM, AND NOW WE HAVE TO RESCHEDULE. THE TIME  
 22 HAS BEEN WAIVED BY BOTH OF YOU, BUT I UNDERSTAND FROM MY  
 23 CLERK THAT THERE IS A CONFLICT IN SCHEDULING.

24                   SO WHAT WOULD YOU LIKE TO DO? HOW CAN WE  
 25 ACCOMMODATE YOU FOLKS?

26          MR. SERVINO: YOUR HONOR, WE ARE READY TO

1 PROCEED. WE CAN PROCEED TODAY. I HAVE MY WITNESSES  
2 READY. WE CAN PROCEED TOMORROW. AND I'M READING THE  
3 APPLICATION FOR A CONTINUANCE THAT WAS SUBMITTED BY THE  
4 SIERRA CLUB FOR A CONTINUANCE, AND THEY STATED THEIR  
5 WITNESS BRUCE JOFFE WAS AVAILABLE THIS WEEK AS WELL.  
6 WE'RE READY TO PROCEED. WE CAN PROCEED TODAY OR WE CAN  
7 BEGIN TOMORROW.

8 MS. LABRIOLA: SORRY THAT WE CANNOT PROCEED,  
9 YOUR HONOR. IT WAS EITHER AN ERROR IN MY UNDERSTANDING  
10 OF THE COURT ON TUESDAY AFTERNOON THAT WHEN I CALLED THEY  
11 SAID THAT TODAY WAS A MOTION DAY AND YOU WOULD NOT HAVE  
12 HEARINGS TODAY, AND SO MY -- MY WITNESS IS NOT AVAILABLE  
13 WHEN YOU CALLED AT 9:45. I DON'T WORK -- YOU KNOW, OUR  
14 WITNESSES ARE NOT IN ORANGE COUNTY, SO IT'S NOT POSSIBLE  
15 FOR THEM TO BE THERE ON THREE-HOURS-AND-FIFTEEN-MINUTES  
16 NOTICE.

17 YOU ARE CORRECT, MR. SERVINO, THAT MY WITNESSES  
18 WERE TO BE AVAILABLE ALL WEEK. ONE OF MY WITNESSES IS  
19 UNAVAILABLE TOMORROW; THAT IS AMANDA DE RECINOS, AND  
20 THROUGH NEXT WEEK, AND BRUCE JOFFE -- YOU KNOW, TO HAVE  
21 BOTH MY WITNESSES AVAILABLE AT THE SAME TIME WITH COUNSEL  
22 WOULD BE THE WEEK OF THE 29TH AND PREFERABLY STARTING ON  
23 THE 30TH AS BRUCE JOFFE IS COMING DOWN FROM SAN  
24 FRANCISCO. SO IF I HAVE -- THE 29TH IS MORE DIFFICULT  
25 THAN THE 30TH, BUT I CAN MAKE HIM AVAILABLE STARTING ON  
26 THE 29TH.



1 MR. SERVINO: FROM OUR -- HE -- OUR CONCERN  
2 ABOUT THE 29TH IS -- WE'RE HAVING THESE CONTINUANCES --  
3 IS THAT THERE HAVE ALREADY BEEN MOTIONS FOR CONTINUANCES.  
4 BECAUSE OF PRIORITY, AND OUT OF PROFESSIONAL COURTESY, WE  
5 DID NOT HAVE A PROBLEM CONTINUING THE CASE TO MARCH 15TH,  
6 BUT --

7 MS. LABRIOLA: IF YOU REMEMBER, IT WAS YOUR  
8 WITNESS THAT WAS NOT AVAILABLE. THE FIRST CONTINUANCE  
9 WAS PARTLY IN RESPONSE TO YOUR WITNESS NOT BEING  
10 AVAILABLE, EVEN THOUGH MY WITNESS WAS HERE FROM  
11 SAN FRANCISCO FOR THE FIRST WEEK. SO THERE HAVE BEEN  
12 CONTINUANCES ON BOTH SIDES.

13 THE COURT: WOULD YOU LIKE TO DO THIS BY  
14 DECLARATION AND NOT HAVE LIVE WITNESSES?

15 MS. LABRIOLA: NO. I WOULD LIKE TO HAVE LIVE  
16 WITNESSES. IF ON TUESDAY AFTERNOON I WAS TOLD THAT TODAY  
17 WE WOULD BE -- YOU KNOW, THE COURT WOULD BE AVAILABLE, MY  
18 WITNESSES WOULD HAVE BEEN THERE. BUT I WASN'T GIVEN  
19 THAT -- I DIDN'T UNDERSTAND THAT TO BE THE CASE ON  
20 TUESDAY AFTERNOON. IF THAT IS MY MISUNDERSTANDING, I  
21 APOLOGIZE TO THE COURT.

22 MR. SERVINO: WE ARE PREPARED TO GO IN AND  
23 SUBMIT ON THE EXISTING PAPERS. WITH RESPECT TO THE  
24 WITNESSES, THIS IS OUR CONCERN IS IF THIS DATE WAS -- AND  
25 HERE IS THE -- I HAVE THE DECLARATION OF MS. LABRIOLA  
26 BEFORE ME. THERE WAS A DECLARATION TO THIS COURT. I

1 CONFIRMED THAT MY WITNESSES ARE AVAILABLE THIS ENTIRE  
2 WEEK. NOW WE HAVE ANOTHER REPRESENTATION THAT IT'S THE  
3 29TH. WELL, I CAN SAY RIGHT NOW THAT I AM GOING TO HAVE  
4 A WITNESS ISSUE DUE TO MEDICAL REASONS WITH ONE OF MY  
5 WITNESSES. HE'LL BE OUT FROM THE 29TH TO THE 6TH, MARCH  
6 29TH THROUGH APRIL 6TH. AND IT'S NOT A WITNESS -- OF  
7 COURSE I'M THE RESPONDENT, YOU KNOW, I WOULD LIKE TO  
8 SEE -- I'M NOT ENTIRELY SURE WHAT EVIDENCE IS GOING TO BE  
9 PUT ON. AND I WOULD LIKE TO HAVE MR. -- THE WITNESS  
10 GORDON PARDEE WHO TESTIFIED -- WHO WILL PROVIDE TESTIMONY  
11 WITH RESPECT TO SOME OF THE FINANCIAL ISSUES.

12 THE COURT: RIGHT.

13 MR. SERVINO: I WOULD LIKE TO HAVE HIM AVAILABLE  
14 DEPENDING ON WHAT EVIDENCE PETITIONER PRESENTS. I HAVE  
15 THEIR TWO WITNESSES. WE'RE READY. AGAIN, WE'RE READY TO  
16 GO TODAY. WE'RE READY TOMORROW AS AGREED. I HAVE ASKED  
17 MY CLIENTS TO GIVE -- GIVEN WE'RE TRAILING THROUGHOUT THE  
18 ENTIRETY OF NEXT WEEK AND OF COURSE COMES THE 29TH AND  
19 MR. PARDEE HAS -- IS GOING TO BE OUT FOR MEDICAL REASONS  
20 FROM THE 29TH THROUGH THE 6TH, SO THAT IS -- YOU KNOW,  
21 THAT IS MY CONCERN THAT --

22 MS. LABRIOLA: WE COULD HEAR THE CASE ON THE  
23 29TH AND LEAVE YOUR LAST WITNESS TO CONTINUE ON A DAY  
24 WHEN HE COMES BACK IF YOU FEEL THE NEED TO CALL HIM.  
25 THAT IS ONE OPTION.

26 MR. SERVINO: WE COULD DO THAT. IT'S AGAIN --

1 YEAH, IF THAT IS THE EARLY -- IF THAT IS THE BEST WE CAN  
2 DO. I HATE TO DO A CASE LIKE THAT.

3 THE COURT: THIS IS NOT EVEN A CASE. THIS IS  
4 LIKE A HEARING TO GIVE YOU A CHANCE TO MAKE A RECORD.  
5 AND --

6 MS. LABRIOLA: UM-HUM.

7 THE COURT: -- I'VE ALREADY ISSUED MY TENTATIVE.  
8 THIS IS ACTUALLY AS A COURTESY TO LET YOU, FIRST OF ALL,  
9 TRY TO SETTLE IT AND THEN TRY TO SUPPLEMENT IT. BUT IT'S  
10 GETTING OUT OF HAND.

11 MR. SERVINO: YEAH.

12 THE COURT: THAT IS THE PROBLEM. WE HAVE HAD TO  
13 CONTINUE IT, OF COURSE. THAT'S WHY I WAS TRAILING IT  
14 FROM DAY TO DAY FIGURING THAT I WOULD FIT IT IN MY  
15 CALENDAR, WHICH I HAVE DONE. SO I FIT IT INTO MY  
16 CALENDAR AND NOW THIS IS THE PROBLEM. BUT I WANT TO  
17 ACCOMMODATE YOU. I'M NOT BEING A PROBLEM. I WANT TO BE  
18 THE FACILITATOR OF JUSTICE, NOT A PROBLEM TO JUSTICE, BUT  
19 YOU GUYS ARE MAKING IT TOUGH.

20 MR. SERVINO: I APPRECIATE THAT.

21 THE COURT: I DID SAY YOU WERE GOING TO TRAIL  
22 FROM WEEK TO WEEK -- DAY TO DAY, NOT WEEK TO WEEK.

23 MR. SERVINO: DAY TO DAY.

24 THE COURT: IF I WOULD HAVE SAID MONDAY TO  
25 MONDAY, THAT WOULD BE DIFFERENT. BUT WHEN YOU CALL AND  
26 THE CLERK GIVES YOU A HEADS-UP, IT IS A HEADS-UP, IT

1 DOESN'T MEAN THINGS ARE IN CEMENT. WHETHER YOU  
2 UNDERSTOOD HER OR NOT, YOU'RE STILL SUPPOSED TO BE READY  
3 TO GO EVERY DAY. I DON'T THINK THIS HEARING IS GOING TO  
4 TAKE -- THIS HEARING IS NOT GOING TO TAKE A DAY.

5 MS. LABRIOLA: I DON'T EXPECT IT TO.

6 THE COURT: THIS IS A WRIT HEARING. IT'S GOING  
7 TO BE MOVING ALONG VERY QUICKLY. SO I WILL LEAVE -- I  
8 WILL LEAVE -- YOU BOTH WAIVED TIME. I WILL LEAVE  
9 SELECTING A DATE TO YOU. IF YOU TRULY CANNOT ACCOMMODATE  
10 EACH OTHER, THEN WE JUST HAVE TO GO FORWARD. I DON'T  
11 KNOW WHAT ELSE TO DO.

12 MR. SERVINO: BRUCE, I DON'T KNOW WHETHER HE'S  
13 STILL AVAILABLE THIS WEEK. AND HAVE HIM -- AND THEN  
14 TO -- THE SUGGESTION OF MS. LABRIOLA, TO COVER -- YOU  
15 KNOW, FINISH -- MS. DE RECINOS NEXT AVAILABLE DATE SHE'S  
16 AVAILABLE?

17 MS. LABRIOLA: MARK, MAYBE YOU AND I CAN SPEAK  
18 TO EACH OTHER BECAUSE IT WOULD MAKE A LOT MORE SENSE FOR  
19 ME TO HAVE BOTH OF MY WITNESSES ON THE SAME DAY. AND  
20 THEY ARE IN TOWN TOGETHER NEXT WEEK.

21 THE COURT: THAT KILLS MY CALENDAR, TOO, REALLY  
22 TO -- WE CARRY A HEAVY CASE LOAD. AND I DON'T WANT TO  
23 TRUNCATE IT. I WOULD RATHER HAVE YOU COME IN. THAT WAS  
24 THE WHOLE PURPOSE OF TRAILING DAY TO DAY.

25 MR. SERVINO: MY CONCERN IS IF WE SCHEDULE A  
26 DAY, LIKE THE 29TH, IT MIGHT BE THE SAME SITUATION, DUE

1 TO CALENDARING ISSUES WE MAY TRAIL.

2 THE COURT: YOU WILL TRAIL BECAUSE I'M IN TRIAL  
3 ALL DAY. YOU WILL TRAIL UNTIL I HAVE AN OPENING.

4 MR. SERVINO: EVEN IF WE PICK A DATE -- WE'RE  
5 GOING TO BE -- PROBLEM ONE --

6 MS. LABRIOLA: THIS COURT --

7 MR. SERVINO: YEAH.

8 MS. LABRIOLA: I MEAN, I GUESS I'M -- I'M THE --  
9 I FEEL LIKE I'M THE ONE WHO IS BEING DIFFICULT, BUT THAT  
10 IS ONLY BECAUSE MY WITNESS COMES DOWN FROM SAN FRANCISCO.  
11 SO IT'S MORE DIFFICULT TO HAVE HIM ON A MOMENT'S NOTICE  
12 EVEN THOUGH HE WAS AVAILABLE UNTIL TOMORROW.

13 MR. SERVINO: IN THAT THERE IS A JURY TRIAL, THE  
14 COURT IS -- WOULD CONSIDER THIS, IT'S GOING TO THE JURY  
15 ON MONDAY, IS THERE A WAY THAT THERESA AND I, WE CAN GO  
16 ON MONDAY OR TUESDAY?

17 MS. LABRIOLA: SORRY. LIKE I SAID, BRUCE AND  
18 AMANDA ARE BOTH OUT OF TOWN NEXT WEEK. THEY ARE IN  
19 MEETINGS TOGETHER IN SAN FRANCISCO. SO I MEAN THERE  
20 IS -- THERE IS -- I HAVE AN ISSUE WITH MY WITNESS  
21 AVAILABILITY FOR NEXT WEEK. IT'S THAT SIMPLE. AND  
22 STARTING FRIDAY -- STARTING TOMORROW AMANDA IS OUT OF  
23 TOWN. AND THAT IS -- IT'S JUST AS SIMPLE AS THAT.  
24 AGAIN, I WOULD RECOMMEND, MARK, IF WE CAN TRAIL BEGINNING  
25 THE 29TH, THEN, YOU KNOW, WE WOULD HAVE TO COME BACK FOR  
26 YOUR WITNESS IF YOU FELT THAT THAT WAS -- IF HE WAS

1 NEEDED TO REBUT OUR TESTIMONY.

2 THE COURT: THEN WE'D HAVE TO TRUNCATE IT.

3 MS. LABRIOLA: YEAH.

4 MR. SERVINO: SINCE OUR CASE DOESN'T HAVE A JURY  
5 TRIAL, AND WE'RE ONLY THINKING ABOUT TWO TO THREE HOURS,  
6 COULD WE DO IT ON A THURSDAY OR A FRIDAY, LET'S SAY THE  
7 WEEK OF THE 5TH?

8 THE COURT: WELL, FRIDAY WE CLOSE AT 3:00  
9 O'CLOCK. SO YOU CAN'T DO IT ON FRIDAY --

10 MS. LABRIOLA: OKAY.

11 THE COURT: -- FOR BUDGETARY REASONS. THURSDAY  
12 I HAVE LAW AND MOTION AT 1:30. SO THEORETICALLY YOU  
13 COULD PICK A THURSDAY AT 3:00 O'CLOCK, BUT YOU WOULD ONLY  
14 HAVE -- ASSUMING I'M DONE WITH LAW AND MOTION, YOU WOULD  
15 HAVE FROM -- YOU'D HAVE THREE -- YOU WOULD HAVE AN HOUR  
16 AND A HALF. YOU WOULD HAVE TO GET IT DONE IN AN HOUR AND  
17 A HALF. THAT IS WHY I PUT IT ON THE MONDAY CALENDAR.

18 MS. LABRIOLA: AN HOUR AND A HALF, TO BE HONEST  
19 WITH THE COURT, WOULD PROBABLY BE DIFFICULT FOR BOTH  
20 SIDES. I DON'T HAVE A LOT, BUT I KNOW AN HOUR AND A HALF  
21 WOULD BE CLOSE AND WE WOULD PROBABLY GO TWO DAYS. AND I  
22 KNOW YOU'RE SAYING TRUNCATING DOESN'T SOUND GOOD, BUT --  
23 HERE IS A POTENTIAL, LET ME THROW OUT AN OPTION, TO DO  
24 TWO THURSDAY AFTERNOONS. I COULD PUT MY WITNESSES ON THE  
25 WEEK THEY ARE HERE, THURSDAY THE 1ST.

26 THE COURT: IT'S TOO HARD TO DO THAT BECAUSE

1 SEE, IN MY JURY TRIALS I RESERVE THAT TIME TO DO LAW AND  
2 MOTION AND DO JURY INSTRUCTIONS WITH COUNSEL AND ALL  
3 THAT.

4 MS. LABRIOLA: ALL RIGHT.

5 THE COURT: IF I BURNED UP TWO THURSDAY --

6 MR. SERVINO: HOW ABOUT THURSDAY THE 8TH AND  
7 THEN FOLLOWED BY A FRIDAY, THAT WE JUST DO IT IN THE  
8 AFTERNOON BOTH. THAT'S AN HOUR. JUST IN CASE WE HAVE TO  
9 GO BEYOND AN HOUR AND A HALF, ISN'T THAT -- BECAUSE I  
10 KNOW THAT THE COURT HAS FRIDAY 1:30 TO 3:00. AND WE DO  
11 IT AFTER YOUR MOTION CALENDAR AND START IT ON THURSDAY  
12 AND FINISH IT ON FRIDAY.

13 THE COURT: WHAT DAYS?

14 MR. SERVINO: WHAT ABOUT THE 8TH AND 9TH?

15 THE COURT: I'LL BE OUT OF TOWN.

16 MS. LABRIOLA: AND YOUR WITNESS WON'T BE  
17 AVAILABLE, MARK, THE 2ND AND 3RD -- SORRY, THE 1ST AND  
18 THE 2ND.

19 MR. SERVINO: RIGHT.

20 MS. LABRIOLA: AND THE COURT WON'T BE AVAILABLE  
21 FROM --

22 THE COURT: I DON'T REMEMBER THINGS BEING THIS  
23 WAY WHEN I WAS A LAWYER. WHAT IS GOING ON WITH YOU TWO  
24 ANYWAY? WE HAVE TO GET THIS THING MOVING. YOU'RE NOT  
25 BOOKING A RESORT. YOU'RE NOT AT SOME COUNTRY CLUB.  
26 YOU'RE SUPPOSED TO BE TRAILING.

1 MR. SERVINO: WE'RE READY TO PROCEED. IT'S  
2 JUST -- WE UNDERSTOOD THE COURT TO BE PROCEEDING FROM DAY  
3 TO DAY AND THAT IS PART OF THE REASON WHY WE DIDN'T  
4 OPPOSE THEIR EX PARTE APPLICATION.

5 MS. LABRIOLA: SORRY, MR. SERVINO, MY WITNESSES  
6 ARE -- THEY DON'T WORK IN THE AREA AND THEY ARE -- AND I  
7 DON'T HAVE THEM EVERY DAY.

8 THE COURT: WELL, THEY MAY HAVE TO BE HERE  
9 TUESDAY. SO, YOU KNOW, I TRAIL DAY TO DAY. YOU CAN'T  
10 AGREE ON A DATE. WE'VE ALREADY BEEN ON THE PHONE OVER  
11 TEN MINUTES.

12 MS. LABRIOLA: AND IF MY WITNESS IS NOT  
13 AVAILABLE ON TUESDAY?

14 THE COURT: THEN WHAT AM I TO DO? THAT IS WHY  
15 YOU'RE TRAILING. I TRAILED YOU DAY TO DAY SO WE CAN  
16 ACTUALLY GET THIS DONE.

17 MR. SERVINO: THEY ARE NOT PRESENTING EVIDENCE.  
18 I'M PREPARED TO SUBMIT ON THE PAPERS. AND WE CAN GO TO  
19 ORAL ARGUMENT IF THAT IS THE --

20 THE COURT: DIDN'T YOU -- OKAY.

21 MR. SERVINO: WE'RE TRYING -- AGAIN, IT'S TO --  
22 THE PEOPLE ARE ENTITLED TO PRIORITY. WE WE WERE READY  
23 THIS WEEK, LAST WEEK. I UNDERSTAND FROM THE COURT THIS  
24 IS MERELY A COURTESY PROVIDED TO THE PARTIES, AND WE  
25 APPRECIATE THAT, BUT WE'RE ALSO WILLING TO WAIT TO FOREGO  
26 THE EVIDENTIARY HEARING.



1 MS. LABRIOLA:: MR. SERVINO, IF YOU'RE WILLING  
2 TO FOREGO THE EVIDENTIARY HEARING, I ASK FOR --  
3 TO ALLOW US TO HAVE THE EVIDENTIARY HEARING OF WITNESSES  
4 AVAILABLE ON THURSDAY IN THE AFTERNOON AND YOU CAN SUBMIT  
5 A DECLARATION OF MR. PARDEE. BECAUSE MY WITNESSES WILL  
6 NOT BE AVAILABLE ON TUESDAY AND YOU'RE SAYING YOU'RE FINE  
7 GOING AHEAD ON THE PAPERS.

8 MR. SERVINO: AGAIN, YOU'RE SAYING YOU'RE GOING  
9 TO PRESENT NEW EVIDENCE. I DO NOT KNOW WHAT YOUR CASE  
10 IS. THAT IS WHY THAT WOULD NOT BE FAIR.

11 MS. LABRIOLA: I REPRESENT THAT WE ARE NOT  
12 PRESENTING FINANCIAL EVIDENCE.

13 THE COURT: IF YOU GUYS CAN AGREE ON A NEW DATE,  
14 THAT IS FINE WITH ME. WE'VE DONE THIS. WE PICKED A NEW  
15 DATE FOR YOU, AND I TRAILED YOU DAY TO DAY. THERE IS  
16 NOTHING MORE THAT I CAN DO. I HAVE OPENED MY CALENDAR TO  
17 YOU. I SAY PICK A DATE IF YOU CAN. IF YOU CANNOT PICK A  
18 DATE THEN, YOU KNOW, THE COURT HAS DONE ITS PART. I  
19 MERELY SAID TRAIL FROM DAY TO DAY. THERE IS NOTHING MORE  
20 I CAN DO. I CANNOT BE YOUR ARBITRATOR IF YOU CANNOT --  
21 YOUR ARBITRATOR OF A DATE. I'M SAYING PICK A DAY YOU  
22 WANT TO COME BACK, YOU'RE PROBABLY GOING TO HAVE TO START  
23 TRAILING AGAIN IF I'M IN TRIAL, AND WE'LL BE READY TO GO.  
24 YOU'RE WELCOME TO DO THAT. IF YOU CAN'T DO IT, THEN  
25 YOU'RE GOING TO CONTINUE TO TRAIL FROM DAY TO DAY. AND  
26 WE'LL JUST CONTINUE FROM DAY TO DAY.

1 IF YOUR WITNESS IS NOT AVAILABLE, THEN YOU CAN  
2 BOTH CONTINUE IT OR AGREE THAT YOU WILL TRAIL TO THE NEXT  
3 DAY. I DON'T KNOW WHY YOUR WITNESSES CAN'T FLY DOWN FROM  
4 SAN FRANCISCO TO GIVE THEIR TESTIMONY AND LEAVE AND GO  
5 BACK. IT'S NOT LIKE THEY ARE IN SOME FAR OFF PLACE.

6 MS. LABRIOLA: I WILL RECHECK THEIR SCHEDULES  
7 FOR NEXT WEEK TO SEE IF THEY HAVE TWO HOURS IN THE  
8 MORNING OR SOMETHING LIKE THAT AND, YOU KNOW, EVERY BIT  
9 OF AVAILABILITY THEY CAN HAVE -- THAT THEY HAVE. SO I  
10 WILL GO WITH A FINE TOOTH COMB TO GO THROUGH THEIR  
11 SCHEDULES TO SEE IF I CAN GET THEM NEXT WEEK WHEN THE  
12 COURT SEEMS TO BE AVAILABLE.

13 THE COURT: BUT UNDERSTAND THIS, TOO, I'M NOT  
14 GOING TO WAIT AND WASTE THE TAXPAYERS' DAY IN THE MORNING  
15 WAITING BECAUSE THEY ARE ONLY AVAILABLE IN THE AFTERNOON.  
16 AS SOON AS THIS JURY GOES INTO DELIBERATIONS, IT'S MY  
17 INTENTION TO HAVE THIS HEARING.

18 MS. LABRIOLA: OKAY.

19 THE COURT: AND I THINK THEY WILL START  
20 DELIBERATING MONDAY. I DON'T KNOW WHAT TIME, SO I WASN'T  
21 GOING TO HAVE YOU HERE MONDAY, BUT I WAS GOING TO HAVE  
22 YOU HERE PROBABLY TUESDAY, GET IT DONE, AND THEN THAT'S  
23 IT. THAT IS THE MOST I CAN DO. I CANNOT DO ANYMORE.

24 MS. LABRIOLA: THANK YOU, YOUR HONOR. I WILL  
25 CHECK WITH ALL OF MY WITNESSES. AND IF I CANNOT HAVE  
26 THEM AVAILABLE, I WILL TALK WITH MR. SERVINO ABOUT TRYING

1 TO ACCOMMODATE EACH OTHER'S SCHEDULES AGAIN. AND THANK  
2 YOU, YOUR HONOR, FOR, YOU KNOW, ALLOWING US TO TRY AND  
3 PRESENT YOU WITH A NEW DATE IF NEEDED.

4 THE COURT: ALL RIGHT. YOU HAVE A GOOD DAY.

5 MR. SERVINO: THANK YOU.

6 (END OF IN-CHAMBERS PROCEEDINGS)

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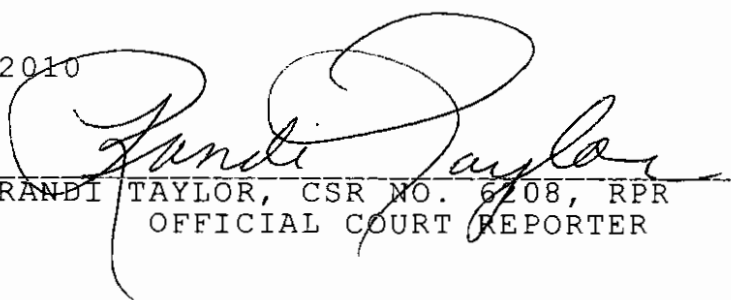
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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA            )  
  )        SS.  
COUNTY OF ORANGE            )

I, RANDI TAYLOR, CSR NO. 6208, RPR, OFFICIAL COURT REPORTER, DO HEREBY CERTIFY THAT THE WITHIN AND FOREGOING TRANSCRIPT IS A FULL, TRUE, AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES THEREOF AND A FULL, TRUE, AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED: OCTOBER 1, 2010

  
\_\_\_\_\_  
RANDI TAYLOR, CSR NO. 6208, RPR  
OFFICIAL COURT REPORTER

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER  
DEPARTMENT C18

THE SIERRA CLUB, )  
 )  
 PLAINTIFF, )  
 )  
 VS. ) CASE NO.  
 ) 30-2009-121878  
 )  
 THE COUNTY OF ORANGE, )  
 )  
 DEFENDANT. )

HONORABLE JAMES J. DI CESARE, JUDGE PRESIDING  
REPORTER'S PARTIAL TRANSCRIPT  
TUESDAY, MARCH 23, 2010

APPEARANCES OF COUNSEL:

FOR PETITIONER:

VENSKUS & ASSOCIATES  
BY: THERESA A. LABRIOLA (PRESENT TELEPHONICALLY)  
ATTORNEY AT LAW

FOR RESPONDENT COUNTY OF ORANGE:

COUNTY OF ORANGE  
BY: MARK D. SERVINO  
DEPUTY COUNTY COUNSEL

RANDI TAYLOR, CSR 6208, RPR  
OFFICIAL COURT REPORTER

**ORIGINAL**

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WITNESS INDEX

PETITIONER'S:      DIRECT   CROSS   REDIRECT                      RECROSS

(NONE)

RESPONDENT'S:      DIRECT   CROSS   REDIRECT                      RECROSS

(NONE)

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EXHIBIT INDEX

PETITIONER'S EXHIBITS:

IDENT EVID

(NONE)

RESPONDENT'S:

DIRECT CROSS REDIRECT

RECROSS

(NONE)

1           SANTA ANA, CALIFORNIA - TUESDAY, MARCH 23, 2010  
 2                   BEFORE THE HONORABLE JAMES J. DI CESARE  
 3                           DEPARTMENT C1  
 4                           MORNING SESSION

5                           \* \* \* \* \*

6                   (THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN  
 7 COURT:)

8                   (UNRELATED PROCEEDINGS WERE HAD AND NOT  
 9 TRANSCRIBED HEREIN)

10                   MS. LABRIOLA: HI, YOUR HONOR. THIS IS THERESA  
 11 LABRIOLA ON TELEPHONE REPRESENTING THE SIERRA CLUB.

12                   THE COURT: GOOD MORNING.

13                   MR. SERVINO: MARK SERVINO FOR THE -- DEPUTY  
 14 COUNTY COUNSEL FOR THE COUNTY OF ORANGE.

15                   THE COURT: GOOD MORNING TO YOU.

16                   THIS MATTER WAS TRAILED FOR A HEARING TODAY.  
 17 THE HEARING WAS SORT OF SET AS A COURTESY. THE MATTER  
 18 WAS REVIEWED. THE TENTATIVE WAS POSTED. IT HAD BEEN  
 19 CONTINUED SEVERAL TIMES. TODAY WAS GOING TO BE THE  
 20 HEARING DAY. I EVEN TRAILED IT, I THINK, FROM DAY TO  
 21 DAY, DID I, OR NO?

22                   MR. SERVINO: YES, MARCH 15TH IT WAS. CORRECT?

23                   MS. LABRIOLA: YES.

24                   THE COURT: THAT DIDN'T WORK. THEN WE HAD A  
 25 COUNSEL CALL WITH COUNSEL LAST WEEK AND I ASKED HIM TO  
 26 PICK A NEW DATE. COUNSEL COULD NOT PICK A NEW DATE.



1 MS. LABRIOLA: WE'VE HAD A LITTLE MORE SUCCESS  
2 WITH THAT.

3 THE COURT: OKAY. I THEN TOLD HIM WE WOULD HAVE  
4 TO REPEAT THE DATE ABSENT A STIPULATION. I TOLD THEM TO  
5 HAVE THEIR WITNESSES HERE.

6 MR. SERVINO: WE'RE READY TO PROCEED TODAY, YOUR  
7 HONOR.

8 MS. LABRIOLA: COUNSEL AND I HAVE AGREED ON A  
9 SCHEDULE, AND I WOULD LIKE TO PRESENT THAT TO THE COURT.

10 MR. SERVINO: NO. THIS IS -- I UNDERSTAND I  
11 MADE -- WELL, I'LL LET MS. LABRIOLA SPEAK, AND THEN I CAN  
12 ADDRESS THE -- THERE IS NOT AN AGREEMENT. THERE WAS A  
13 DISCUSSION OF AVAILABILITY AND A WILLINGNESS ON THE PART  
14 OF THE COUNTY TO PROCEED, IF NECESSARY, ON CERTAIN DAYS  
15 WHEN OUR WITNESSES WERE NOT AVAILABLE. BUT --

16 THE COURT: I TOLD YOU, IN A WRIT THERE ARE TIME  
17 LIMITATIONS. YOU BOTH HAVE WAIVED THE TIME LIMITATIONS.  
18 I TOLD YOU THAT I WOULD DO WHATEVER I COULD TO  
19 ACCOMMODATE YOU.

20 MS. LABRIOLA: OKAY.

21 THE COURT: AND I WILL CONTINUE TO DO THAT AS IT  
22 MAKES SENSE.

23 MS. LABRIOLA: OKAY.

24 THE COURT: BUT IF ONE OF THE PARTIES REVOKES  
25 THEIR CONSENT TO THE TIME OR IF YOU CAN'T AGREE ON A  
26 DATE, THEN WE HAVE TO GO FORWARD, ESPECIALLY IN LIGHT --

1 I'VE ALREADY POSTED A TENTATIVE IN THIS CASE.

2 MS. LABRIOLA: YES.

3 MR. SERVINO: WE'RE PREPARED --

4 MS. LABRIOLA: LAST WEEK WE DISCUSSED SCHEDULING  
5 IT FOR A THURSDAY AFTERNOON HEARING RECOGNIZING IT WOULD  
6 BE A SHORTER TIME, BUT YOU WOULD BE AVAILABLE. DUE TO  
7 WITNESS AVAILABILITY, IT WOULD HELP WITH WITNESSES WHO  
8 WERE COMING IN FROM OUT OF TOWN. AND, YOU KNOW,  
9 MR. SERVINO AND I DISCUSSED -- AND FOUR OUT OF OUR FIVE  
10 WITNESSES ARE AVAILABLE ON THURSDAY, APRIL 1ST. AND  
11 MR. SERVINO WOULD BE WILLING TO GO AHEAD WITHOUT HIS  
12 THIRD WITNESS ON THAT DAY. SO OUR FIRST, I GUESS, OFFER  
13 TO THE COURT WOULD BE TO ASK IF WE WOULD BE ABLE TO BE  
14 HEARD ON THURSDAY, APRIL 1ST, AFTER YOUR NORMAL MOTION  
15 HEARING?

16 MR. SERVINO: THIS IS -- IT'S NOT AN AGREEMENT.  
17 THERE IS AN EXPRESSION THAT IF THE COURT WERE TO ORDER,  
18 THE COUNTY IS WILLING TO PROCEED. AT THE LAST CONFERENCE  
19 CALL WE INFORMED THE COURT, I INFORMED OPPOSING COUNSEL,  
20 THAT MR. PARDEE IS GOING TO BE OUT ON MEDICAL LEAVE FROM  
21 MARCH 29 TO APRIL 6. I'VE SINCE SPOKEN TO MY CLIENT AND,  
22 IF NECESSARY, IF WE CONTINUE TRAILING DAY TO DAY, WE'RE  
23 WILLING AGAIN TO GET THIS CASE RESOLVED EXPEDITIOUSLY,  
24 WE'RE WILLING TO PROCEED EVEN IN THE ABSENCE OF  
25 MR. PARDEE AND, YOU KNOW, WE WILL ALSO HAVE AVAILABILITY  
26 OF COUNSEL ON APRIL 2ND AND APRIL 5TH.

1            THAT BEING SAID, AS WE LEFT THE CONFERENCE CALL  
2 ON FRIDAY, MS. LABRIOLA WAS GOING TO VERIFY WITH HER  
3 WITNESSES WHETHER OR NOT THE WITNESSES WOULD BE AVAILABLE  
4 ON TUESDAY BECAUSE THE COURT CONTEMPLATED THAT THE MATTER  
5 THAT IS CURRENTLY PENDING BEFORE THE COURT WOULD BE  
6 COMPLETE, IT'S ABOUT READY TO WRAP UP.

7            MS. LABRIOLA: EXACTLY. THAT WAS THE FIRST  
8 OPTION. AND ONE --

9            MR. SERVINO: THEREFORE, I ENCOURAGED OPPOSING  
10 COUNSEL TO TRY TO EXPLORE WAYS OF HAVING HER WITNESSES  
11 AVAILABLE --

12           MS. LABRIOLA: YES.

13           MR. SERVINO: -- FOR TODAY. AND WE WERE READY  
14 TO PROCEED. AND WE ARE READY TO PROCEED.

15           MS. LABRIOLA: YOUR HONOR, MR. SERVINO HAS BEEN  
16 INFORMED SINCE FRIDAY THAT I HAVE SPOKEN WITH MY  
17 WITNESSES, THAT THEY ARE UNAVAILABLE THIS WEEK, STANDS.  
18 BUT THEY'VE HAD THINGS PLANNED AND THAT THEY ARE STILL  
19 UNAVAILABLE. HE'S VERY MUCH AWARE OF THAT. THAT FACT  
20 HAS NOT CHANGED. AND I HAVE CHECKED WITH MY WITNESSES  
21 AND I HAVE INFORMED MR. SERVINO. SO YOU KNOW, HE'S HAD  
22 THIS INFORMATION IN WRITING AND OVER THE PHONE. SO, YOUR  
23 HONOR, WE ARE -- AGAIN, WE WOULD ASK THAT YOU HAVE THE  
24 HEARING ON THURSDAY, APRIL 1ST, AND EITHER THE MORNING OR  
25 THE AFTERNOON AFTER YOUR NORMAL LAW AND MOTION SESSION  
26 AND IF, YOU KNOW, IF THAT IS NOT A POSSIBILITY, THEN MY

1 WITNESSES WOULD BE AGAIN AVAILABLE NEXT MONDAY, TUESDAY,  
2 WEDNESDAY, AND THURSDAY. SO, YOU KNOW -- OBVIOUSLY WITH  
3 A BRIEF FOREWARNING SO THAT I CAN FLY ONE OF MY WITNESSES  
4 IN FROM SAN FRANCISCO WITH A COUPLE OF HOURS OF NOTICE  
5 BASICALLY.

6 MR. SERVINO: AND THE COUNTY'S POSITION IS THE  
7 SIERRA CLUB HAS NOT DEMONSTRATED GOOD CAUSE FOR A  
8 CONTINUANCE. THEY FAILED TO DEMONSTRATE DILIGENCE IN  
9 SECURING THE ATTENDANCE OF THE EXPERT WITNESSES FOR A  
10 TRIAL DATE THEY CHOSE. THE TRIAL DATE FOR NEXT WEEK WAS  
11 PURSUANT TO AN EX PARTE APPLICATION. THEY PREPARED THE  
12 ORDER THAT THE TRIAL IN THE CASE WOULD BEGIN -- OR THE  
13 HEARING WOULD BEGIN ON MARCH 15TH OR THE NEXT AVAILABLE  
14 DATE THEREAFTER. IN THAT EX PARTE THEY REPRESENTED TO  
15 THE COURT THAT THEIR EXPERT WITNESSES WOULD BE AVAILABLE  
16 THE ENTIRETY OF LAST WEEK.

17 MS. LABRIOLA: I'M SURPRISED YOU'RE BEING AS  
18 ARGUMENTATIVE AS YOU ARE, MR. SERVINO, BECAUSE WE  
19 DISCUSSED THIS FULLY FRIDAY AFTERNOON. AS EVERYONE  
20 KNOWS, FROM THURSDAY -- IT WAS PERHAPS MY  
21 MISUNDERSTANDING ON TUESDAY THERE -- THAT WE WOULD NOT BE  
22 GOING ON THURSDAY AND, THEREFORE, MY PLANS CHANGED IN THE  
23 TIME THAT -- THE TIME BETWEEN TUESDAY AND THURSDAY. THAT  
24 WAS PROBABLY MY MISUNDERSTANDING THROUGH THE TELEPHONE  
25 CALL WITH THE CLERK THAT WE WOULD NOT BE GOING ON  
26 THURSDAY. BUT THERE WAS NO MISREPRESENTATION ON THE PART

1 OF THE PLAINTIFF.

2 MR. SERVINO: RIGHT. AND --

3 THE COURT: THIS -- WAIT. THIS, YOU KNOW,  
4 THE -- THIS HEARING HAS TO BE TREATED IN TERMS OF  
5 CALENDARING AS A TRIAL DATE. THAT IS WHY I SET A DATE  
6 AND I SAID WE'RE GOING TO TRAIL FROM DAY TO DAY UNTIL I  
7 CAN HEAR THE MATTER. SO EVEN THOUGH IT'S A WRIT HEARING  
8 AND I'M ACCOMMODATING YOU BY ALLOWING YOU TO PUT ON SOME  
9 WITNESSES, WHICH I DON'T EVEN HAVE TO DO, NOW IT IS BEING  
10 A PROBLEM TO THE CALENDAR BECAUSE WE'RE TRAILING AND ALL  
11 OF A SUDDEN WE CAN'T GO FORWARD. SO THE NEXT TIME YOU  
12 COME BACK, I'LL BE IN TRIAL ON ANOTHER CASE. THEN I'LL  
13 TRAIL YOU UNTIL I'M DONE WITH THAT CASE, THAT MAKES SOME  
14 SENSE, AND IN THIS SITUATION IT WORKED OUT FINE, AND SO  
15 THEN WE'LL BE IN THE NEXT PROBLEM AND THE NEXT PROBLEM.  
16 AND IN THE MEANTIME, THE WRIT DOES HAVE TIME  
17 REQUIREMENTS.

18 AND YOU HAVE FOUR WITNESSES? WHAT ARE THESE  
19 FOUR WITNESSES GOING TO TESTIFY TO?

20 I GAVE EVERYBODY TIME TO TALK ABOUT IT. I TOLD  
21 YOU TO TRY TO WORK OUT A DEAL WHERE YOU COULD SAVE SOME  
22 MONEY; THE COUNTY COULD MAINTAIN SOME PROPRIETARY  
23 INTEREST; MAYBE YOU COULD MAKE SOME INROADS; THEY WILL  
24 GIVE YOU INFORMATION THAT MAYBE YOU CAN APPLY TO YOUR  
25 SOFTWARE; EVERYBODY GETS INFORMATION AT A REDUCED PRICE  
26 OR SOME DEAL, SOME SENSIBLE SOLUTION.

1 I HAVE A SETTLEMENT CONFERENCE FOR YOU. YOU  
 2 TALK. AND NOW I HAVE TO SET IT FOR A HEARING. AND NOW  
 3 IT'S BECOMING -- YOU KNOW, IT'S GETTING OUT OF CONTROL  
 4 QUITE CANDIDLY. SO I TRIED TO FACILITATE RESOLUTION THAT  
 5 WOULD MAKE SENSE FOR BOTH THE COUNTY AND THE SIERRA CLUB  
 6 AND NOW WE CAN'T EVEN GET THIS THING TO HEARING, A  
 7 HEARING WHICH THERE IS A QUESTION AS TO WHETHER OR NOT WE  
 8 EVEN NEED A HEARING.

9 MR. SERVINO: THE ALTERNATIVE I PROPOSED TO  
 10 COUNSEL ALSO DURING OUR PHONE CALL, WHICH WAS NOT  
 11 ACCEPTED, IS THE COUNTY IS WILLING TO PROCEED DIRECTLY TO  
 12 ARGUMENT BASED UPON THE EXISTING PAPERS, AND THAT IS  
 13 INCLUSIVE OF THE ADDITIONAL DOCUMENTATION THAT WAS FILED  
 14 BY THE PARTIES FOLLOWING THE COURT'S TENTATIVE RULING.  
 15 THIS CASE HAS BEEN HEAVILY BRIEFED. THE ISSUES HAVE, IN  
 16 FACT, NARROWED. AND SINCE THEN THE PARTIES HAVE  
 17 STIPULATED TO MANY OF THE OPERATIVE FACTS. YOU KNOW, THE  
 18 CASE HASN'T -- THE FACTUAL ISSUES HAVEN'T GOTTEN BROADER,  
 19 THEY HAVE NARROWED. THAT IS WHY WE OFFERED AS AN  
 20 ALTERNATIVE IS THAT -- WE'RE READY TO PROCEED TODAY WITH  
 21 THE EVIDENTIARY HEARING AND THE REST OF THIS WEEK, BUT IF  
 22 THE COURT AND COUNSEL WERE AGREEABLE WE'RE ALSO WILLING  
 23 TO PROCEED DIRECTLY TO ORAL ARGUMENT BASED ON THE RECORD  
 24 AS IT CURRENTLY STANDS.

25 MS. LABRIOLA: YOUR HONOR --

26 THE COURT: WHAT ARE THESE FOUR PEOPLE GOING TO

1 TESTIFY TO AND HOW LONG ARE THEY GOING TO TAKE?

2 MS. LABRIOLA: SURE. LET ME TALK ABOUT MY TWO  
3 WITNESSES. AMANDA DE RECINOS IS A GIS PROFESSIONAL. HER  
4 TESTIMONY IS DIRECTLY RELATED TO THIS -- THE DOCUMENTS  
5 THAT THE -- THAT THE COUNTY HAS OFFERED -- THAT YOUR  
6 HONOR ASKED THAT WE REVIEW AND TO REALLY TO TESTIFY AS TO  
7 THE NATURE OF THESE DOCUMENTS VERSUS THE DATA THAT THE  
8 SIERRA CLUB REQUESTED.

9 AND THE -- IT SHOULDN'T -- HER TESTIMONY, YOUR  
10 HONOR, IS UNDER A HALF HOUR I WOULD SAY. AND BRUCE JOFFE  
11 IS A GIS EXPERT THAT HAS -- WILL TESTIFY TO THE NATURE OF  
12 A GIS SYSTEM AND HOW IT DIFFERS AND IS, YOU KNOW --

13 THE COURT: HOW LONG WILL HE BE?

14 MS. LABRIOLA: UNDER AN HOUR. ALTHOUGH HE'LL BE  
15 A LITTLE LONGER THAN AMANDA, HE WOULD BE UNDER AN HOUR.

16 THE COURT: WHO ELSE?

17 MS. LABRIOLA: THAT'S ALL I HAVE.

18 THE COURT: YOU HAVE TWO WITNESSES?

19 MS. LABRIOLA: YES.

20 MR. SERVINO: AND WE'LL NEED AN HOUR. WE'RE  
21 GOING TO RELY ON BOB JELINEK WHO IS GOING TO MOSTLY  
22 TESTIFY IN RESPONSE TO TESTIMONY OFFERED BY MISS  
23 DE RECINOS AND MR. JOFFE. DEPENDING WHAT THEY PRESENT,  
24 IT COULD BE SUBSTANTIALLY LESS THAN AN HOUR.

25 THE COURT: HERE IS WHAT WE'RE GOING TO DO --

26 MS. LABRIOLA: OKAY.

1 THE COURT: -- I'M GOING TO CONTINUE THIS. YOU  
2 ARE STILL AGREEING TO WAIVE TIME?

3 MS. LABRIOLA: THE ONLY PROBLEM WITH TIME, YOUR  
4 HONOR, YOU'RE GOING TO HATE ME FOR SAYING THIS, BUT OUR  
5 LEAD ATTORNEY IS GOING ON MATERNITY LEAVE IN MID-APRIL.  
6 THAT'S WHY I ASKED IF APRIL 1ST WAS A POSSIBILITY FOR THE  
7 COURT.

8 THE COURT: I DON'T THINK SO. I THINK APRIL THE  
9 1ST IS GOING TO BE BAD BECAUSE MARCH 31ST IS GOING TO BE  
10 A COURT HOLIDAY. SO THINGS WILL BE BACKING UP.

11 MS. LABRIOLA: THE 31ST IS A COURT HOLIDAY?

12 MR. SERVINO: CAESAR CHAVEZ DAY.

13 THE COURT: RIGHT. AND I'LL BE OUT MYSELF FOR A  
14 WHILE. THIS IS THE IDEAL TIME TO DO IT.

15 MS. LABRIOLA: ALTERNATIVELY, YOUR HONOR, YOU  
16 ASKED IF WE WOULD PROCEED ON DECLARATIONS. ALTHOUGH THAT  
17 IS NOT OUR PREFERENCE, WE WOULD BE WILLING TO GO FORWARD  
18 ON DECLARATIONS. AND WE SUBMITTED THAT TO MR. SERVINO AS  
19 WELL THE OTHER DAY, BUT HE HAS RESERVATIONS ABOUT THAT.  
20 I WILL LET HIM ARGUE THAT TO YOU.

21 MR. SERVINO: IT WAS A PROPOSAL OF SIMULTANEOUS  
22 EXCHANGE OF DECLARATIONS. NUMBER ONE, IT'S MORE  
23 BRIEFING. AND NUMBER TWO, BY SIMULTANEOUSLY EXCHANGING  
24 DECLARATIONS IT WOULDN'T BE AN OPPORTUNITY TO RESPOND TO  
25 NEW EVIDENCE THAT WAS SUBMITTED BY THE SIERRA CLUB. THAT  
26 IS WHY I OPPOSED THAT.



1 THE COURT: THE ONLY THING I CAN DO IS TRAIL YOU  
2 UNTIL NEXT MONDAY AND TRAIL YOU FROM DAY TO DAY UNTIL  
3 EVERYONE ELSE IS AVAILABLE. I DON'T KNOW HOW ELSE TO DO  
4 IT. IT'S REALLY NOT CONDUCIVE TO MY SCHEDULE WHERE I'M  
5 IN TRIAL ALL THE TIME. IT'S JUST NOT CONDUCIVE TO HAVE  
6 ME MODIFY MY SCHEDULE BASED ON -- YOU'RE SUPPOSED TO BE  
7 HERE WHEN THE COURT IS AVAILABLE TO HEAR YOUR CASE. THAT  
8 IS WHEN YOU'RE SUPPOSED TO BE HERE. AND I EVEN WORKED  
9 WITH YOU. I'M THE MOST PATIENT GUY IN THE WORLD, BUT NOW  
10 IT'S STARTING TO BUG ME AND MY SCHEDULE.

11 MS. LABRIOLA: I APOLOGIZE FOR OUR WITNESS  
12 AVAILABILITY THIS WEEK AND --

13 THE COURT: WHY DID YOU WANT TO TRAIL? THAT WAS  
14 THE WHOLE DEAL ABOUT TRAILING. AS SOON AS I OPENED UP I  
15 TOLD YOU WE'D GET THIS THING DONE AND THAT WOULD BE IT.  
16 IT'S REALLY GETTING OUT OF CONTROL. SO I'M GOING TO DO  
17 THIS, I'LL TRAIL IT UNTIL NEXT MONDAY.

18 MS. LABRIOLA: OKAY.

19 THE COURT: I'LL BE IN TRIAL ON ANOTHER CASE,  
20 BUT WHEN THAT CASE WRAPS UP --

21 MS. LABRIOLA: OKAY.

22 THE COURT: I DON'T KNOW, WILL THAT PUT YOU AT A  
23 DISADVANTAGE, COUNSEL?

24 MR. SERVINO: IT PUTS ME AT A DISADVANTAGE.  
25 MR. PARDEE WILL NOT BE AVAILABLE FOR THE WEEK OF MARCH  
26 29TH TO APRIL 6TH DUE TO -- BECAUSE HE'LL BE OUT ON

1 MEDICAL LEAVE. IF NEED BE, THE COUNTY IS WILLING TO  
2 PROCEED IN HIS ABSENCE ALSO, COUNSEL.

3 THE COURT: NO ONE IS GOING TO BE PREJUDICED BY  
4 THIS. EVERYONE IS GOING BE HERE IF WE'RE HAVING A FULL  
5 HEARING. I'M NOT GOING TO PREJUDICE YOU BY YOUR PERSON  
6 NOT BEING AVAILABLE TO ACCOMMODATE THEIR SIDE AND I'M NOT  
7 GOING TO DO IT VICE VERSA. I HAVE TO FINISH THIS TRIAL.  
8 I COULD BE DONE WITH THIS TRIAL IN FORTY MINUTES AND THEN  
9 HEAR YOUR CASE TODAY AND DEVOTE THE TIME THAT IS NEEDED  
10 TO YOUR CASE. IT WOULD HAVE WORKED OUT PERFECT TODAY IF  
11 YOU HAD KEPT YOUR OBLIGATION OF TRAILING DAY TO DAY. SO  
12 NOW I'M CAUSING THESE ATTORNEYS TO WAIT AND A JURY TO  
13 WAIT. I HAVE A SICK JUROR. THIS IS GETTING OUT OF HAND  
14 REALLY.

15 SO I'M GOING TO TRAIL YOU UNTIL NEXT MONDAY. I  
16 DON'T KNOW WHAT ELSE TO DO. I CAN'T SET YOU ON APRIL  
17 1ST. I CAN'T SET YOU ON APRIL 8TH. I SUPPOSE I COULD  
18 SET YOU ON APRIL 15TH. I CAN SET YOU ON A FRIDAY. I  
19 COULD SET YOU ON APRIL 2ND. THAT IS GOOD FRIDAY. I  
20 CAN'T SET YOU ON THE 9TH. I COULD SET YOU ON THE 16TH AT  
21 1:30 AND THEN YOU'D HAVE TO BE EFFICIENT TO GET IT DONE  
22 BY 3:00 BECAUSE THE COURT CLOSES AT 3:00. THURSDAY IS A  
23 LAW AND MOTION DAY. THAT'S WHY I TRAILED YOU DAY TO DAY.

24 MS. LABRIOLA: WELL --

25 THE COURT: I DON'T HAVE -- I DON'T KNOW WHAT TO  
26 DO OTHER THAN TRAIL YOU DAY TO DAY UNTIL EVERYONE IS

1 AVAILABLE, INCLUDING ME. NOW I'M AVAILABLE, AND YOU'RE  
2 NOT.

3 MS. LABRIOLA: YEAH.

4 THE COURT: WHAT DO YOU WANT TO DO?

5 MR. SERVINO: I SUGGEST, YOU KNOW, NEXT -- YOU  
6 KNOW, OUR FIRST PROPOSAL, OF COURSE, WE PROCEED TO ORAL  
7 ARGUMENT BASED UPON THE EXISTING PAPERS. THAT WAY -- I  
8 THINK THE PRIMARY ISSUES HERE ARE LEGAL. IT'S THE  
9 INTERPRETATION OF GOVERNMENT CODE 6254.9. AGAIN, SINCE  
10 WE BRIEFED THIS, THE ISSUES THAT ARE IN -- THAT ARE BEING  
11 DISPUTED FACTUALLY HAVE NARROWED. THE ISSUES THAT  
12 MS. DE RECINOS AND MR. JOFFE ARE GOING TO TESTIFY TO THEY  
13 COVERED IN THEIR DECLARATIONS. WE, IN FACT, STIPULATED  
14 TO SOME OF THE FACTS REGARDING FUNCTIONALITY OF THE GIS  
15 AND WHAT THEY CAN DO WITH THE GIS FORMAT.

16 MS. LABRIOLA: YOUR HONOR, OUR WITNESSES WOULD  
17 BE TESTIFYING TO MORE THAN WHAT IS IN THE DECLARATIONS.  
18 WE WOULD AT LEAST ASK THE COURT TO CONSIDER DECLARATIONS.  
19 THAT IS A MISREPRESENTATION OF MR. SERVINO.

20 THE COURT: YOUR WITNESS IS IN SAN FRANCISCO. I  
21 TOLD YOU OVER THE PHONE THE OTHER DAY YOU SHOULD HAVE  
22 YOUR WITNESS CONSIDER FLYING DOWN, GIVE TESTIMONY, AND  
23 FLY BACK.

24 MS. LABRIOLA: THE OTHER WITNESS IS UNAVAILABLE.  
25 THEY BOTH ARE IN CONFERENCE LATER THIS WEEK.

26 MR. SERVINO: HOW ABOUT IF WE HAVE AN ARGUMENT

1 ON THE LEGAL ISSUES, THE QUESTION OF WHETHER OR NOT  
2 SUBDIVISION (B) OF SECTION 6254.9 IS A STATUTORY  
3 DEFINITION OR NOT? YOU KNOW, IF WE'RE WRONG, WE DON'T  
4 EVEN GET TO THE FACTS. IF WE'RE RIGHT, WE ALSO THINK  
5 THAT THE CASE IS DECIDED IN OUR FAVOR.

6 THE COURT: I ISSUED MY TENTATIVE.

7 MR. SERVINO: WE, OF COURSE, ARE HAPPY WITH THE  
8 TENTATIVE RULING.

9 THE COURT: I'M GIVING YOU A CHANCE FOR -- THE  
10 REQUESTING PARTY, I'M GIVING A CHANCE FOR EVIDENCE. I  
11 HAVE TO MOVE ON. I CAN'T DEAL WITH THIS ANYMORE. I HAVE  
12 TO DEAL WITH THE TRIAL AND SICK JUROR MEMBERS. I NEED TO  
13 MOVE ON. THE ONLY THING I CAN DO IS CONTINUE TO TRAIL  
14 YOU DAY TO DAY UNTIL EVERYONE BECOMES AVAILABLE.

15 MS. LABRIOLA: IF WE CAN BEGIN TRAILING ON THE  
16 29TH, THAT IS THE NEXT TIME THAT YOU SAID THAT WOULD  
17 BE -- YOU KNOW, WE WOULD AGREE WITH THAT. THAT'S GREAT.  
18 AND WE WOULD THANK THE COURT.

19 THE COURT: WHAT DO YOU WANT TO DO? YOU HAVE TO  
20 WAIVE TIME. THIS IS A TIME SENSITIVE MOTION.

21 MR. SERVINO: YOU KNOW, THE COUNTY AT THIS POINT  
22 IS NOT READY TO WAIVE TIME. THIS IS THE HEARING ON --  
23 THE HEARING LAST WEEK WAS -- THE COURT SCHEDULED A  
24 HEARING FOR MARCH 15TH. IT IS PURSUANT TO THEIR REQUEST  
25 AND DECLARATION AND PURSUANT TO THE ORDER THAT WAS  
26 PREPARED BY PETITIONER. WE'RE READY TO PROCEED. WE WERE

1 READY TO PROCEED LAST WEEK, THE WEEK OF OUR CASE, READY  
2 TO PROCEED RIGHT NOW.

3 THE COURT: YOU MAY HAVE TO PROCEED ON COURT  
4 CALL IF THERE IS NO TIME WAIVER. WHAT YOU WILL HAVE TO  
5 DO IS THIS: I HAVE TO HAVE THE JUROR COME IN THAT IS  
6 SICK. SHE'S SITTING OUT THERE. I WANT TO DEAL WITH IT  
7 BECAUSE SHE'S UNCOMFORTABLE. I WANT YOU TO LOOK AT THE  
8 TIME ISSUE. YOU'VE WAIVED TIME. I WANT YOU TO LOOK AT  
9 THE CASE AND THE STATUTE AND TELL ME ONCE YOU REVOKE TIME  
10 HOW MUCH TIME --

11 MR. SERVINO: THE ISSUE --

12 THE COURT: I'M SORRY. I HAVE TO DEAL WITH  
13 THESE PEOPLE NOW. YOU DEAL WITH THE TIME ISSUE. WE MAY  
14 HAVE TO HAVE THE HEARING -- DEPENDING ON THE TIME ISSUE,  
15 WE'LL JUST HAVE TO WORK IT OUT. IF WITNESSES AREN'T  
16 AVAILABLE, SO BE IT. GO AHEAD AND DO THAT FOR ME. I'LL  
17 CALL YOU AS SOON AS THAT JURY STARTS DELIBERATING. IT'S  
18 ONLY GOING TO BE FORTY MINUTES OR LESS.

19 MR. SERVINO: THANK YOU, YOUR HONOR.

20 MS. LABRIOLA: I'LL STAY ON COURT CALL.

21 THE COURT: YOU CAN STAY ON COURT CALL FOR FORTY  
22 MINUTES AND LISTEN TO CLOSING ARGUMENTS OR AT SOME  
23 DESIGNATED TIME CALL BACK ON COURT CALL. IT'S UP TO YOU.

24 MS. LABRIOLA: THANK YOU. I'LL STAY ON HOLD.

25 (UNRELATED PROCEEDINGS WERE HAD AND NOT  
26 TRANSCRIBED HEREIN)

1 THE COURT: THANK YOU VERY MUCH. I JUST HAVE  
2 ONE MATTER THAT I HAVE TO TAKE CARE OF REAL QUICK.

3 WOULD YOU HAVE THE GENTLEMAN COME IN FROM  
4 OUTSIDE ON THE SIERRA MATTER?

5 THANK YOU. I DIDN'T WANT YOU TO WAIT ANY  
6 LONGER.

7 THIS IS THE SIERRA CLUB WRIT VERSUS ORANGE  
8 COUNTY. SAME APPEARANCES AS BEFORE. BOTH COUNSEL ARE IN  
9 THE COURTROOM. I HAVE REVIEWED THE STATUTES, AND I DON'T  
10 THINK THERE IS A LIMIT ON THE WRIT OF MANDATE. HAVE YOU  
11 DETERMINED THERE IS A TIME LIMIT?

12 MR. SERVINO: THERE IS NO SPECIFIC TIME LIMIT.  
13 IT PROVIDES THE CASES ARE RESOLVED AT THE EARLIEST  
14 PRACTICABLE OPPORTUNITY.

15 THE COURT: THIS IS MY THOUGHT. I THINK I'M  
16 GOING TO HAVE YOU COME BACK AND START TRAILING ON THE  
17 12TH OF APRIL. IS THAT OKAY?

18 MR. SERVINO: THAT --

19 MS. LABRIOLA: UM --

20 THE COURT: OKAY. WAIT. STOP. MAYBE -- IS THE  
21 12TH OF APRIL NO GOOD? JUST YES OR NO. BECAUSE I'M IN  
22 THE MIDDLE OF A TRIAL RIGHT HERE. I'M TRYING TO  
23 CONVENIENCE YOU SO YOU DON'T HAVE TO STAY ON COURT CALL  
24 ANYMORE.

25 MS. LABRIOLA: YES. UNLESS YOUR HONOR WOULD  
26 GIVE US THAT DEFINITE DATE ON THE SAME WEEK THAT YOU

1 EXPRESSED EARLIER, I THINK IT WAS THE 15TH OR THE 16TH,  
2 IF MR. SERVINO'S WITNESSES ARE AVAILABLE.

3 MR. SERVINO: I CONFIRMED THAT MY WITNESSES ARE  
4 AVAILABLE ON THE 15TH AND 16TH.

5 THE COURT: ALL RIGHT. WHAT I'M GOING TO DO IS  
6 THIS --

7 MS. LABRIOLA: YES.

8 THE COURT: PARDON ME.

9 MS. LABRIOLA: YES, I SAID.

10 THE COURT: ALL RIGHT. I'M GOING TO HAVE YOU  
11 START TRAILING ON THE 12TH OF APRIL WITH THE IDEA THAT IT  
12 WILL BE HEARD ON THE 15TH OR THE 16TH.

13 MR. SERVINO: VERY GOOD, YOUR HONOR.

14 THE COURT: SO YOU'RE GOING TO START TRAILING BY  
15 PHONE. SO CALL EVERY DAY AT 4:30. AND WE'LL KEEP  
16 STATUS. I MIGHT HEAR YOU ON THE 12TH, 13TH, BUT PROBABLY  
17 THE 15TH OR 16TH.

18 MR. SERVINO: THANK YOU, YOUR HONOR.

19 THE COURT: WILL EVERYBODY BE AVAILABLE ON THE  
20 12TH, 13TH OR 14TH?

21 MS. LABRIOLA: COUNSEL WILL BE, YES. I CHECKED  
22 WITH MY WITNESSES ON THE 15TH AND 16TH JUST NOW. I WILL  
23 GO BACK AND DOUBLE-CHECK ON THE 12TH, 13TH AND 14TH AND  
24 ASK THEM TO FREE THEIR SCHEDULES.

25 THE COURT: WE'LL JUST START TRAILING UNTIL THE  
26 WITNESSES ARE AVAILABLE.

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SIERRA CLUB GIVE NOTICE.  
MR. SERVINO: THANK YOU, YOUR HONOR.  
MS. LABRIOLA: ALL RIGHT. THANK YOU.  
(END OF PARTIAL TRANSCRIPT)



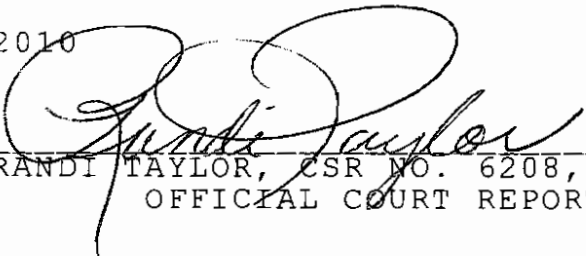
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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA            )  
  )        SS.  
COUNTY OF ORANGE            )

I, RANDI TAYLOR, CSR NO. 6208, RPR, OFFICIAL COURT REPORTER, DO HEREBY CERTIFY THAT THE WITHIN AND FOREGOING TRANSCRIPT IS A FULL, TRUE, AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES THEREOF AND A FULL, TRUE, AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED: OCTOBER 4, 2010

  
\_\_\_\_\_  
RANDI TAYLOR, CSR NO. 6208, RPR  
OFFICIAL COURT REPORTER

## PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 333 W. Santa Ana Blvd, Suite 407, Santa Ana, California 92701.

On November 15, 2010, I served the foregoing document described as **REPORTER'S TRANSCRIPT VOLUME II** on each interested party, as follows:

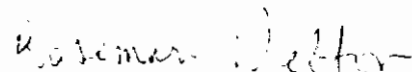
### SEE ATTACHED SERVICE LIST

- (BY MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each interested party, as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at the Office of the County Counsel, Santa Ana, California. I am readily familiar with the Office of the County Counsel's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.
- (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by United Parcel Service (UPS), an express service carrier which provides overnight delivery, as follows. I placed a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed, as set forth above, with fees for overnight delivery paid or provided for.
- (CARRIER PICK-UP) I delivered such envelopes or packages to an authorized carrier or driver authorized by the express service carrier to receive documents.
- (BY ELECTRONIC MAIL) I caused the foregoing document to be served electronically by electronically mailing a true and correct copy through Office of the County Counsel's electronic mail system to the e-mail address(es), as set forth on the attached service list, and the transmission was reported as complete and no error was reported.

Executed on November 15, 2010, at Santa Ana, California.

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

Rosemarie Welton  
\_\_\_\_\_  
(Type or print name)

  
\_\_\_\_\_  
(Signature)

**SERVICE LIST**

**Sierra Club v. Superior Court of the State of California, County of  
Orange, Court of Appeal Case Number G044138**

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