

June 25, 2020

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SSC 12            HON. CAROLYN B. KUHL, JUDGE

SOUTHERN CALIFORNIA GAS LEAK            )  
CASES.    )  
    )  
    ) SUPERIOR COURT  
    ) CASE NO. JCCP4861  
    )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, JUNE 25, 2020

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SOUTHERN CALIFORNIA GAS LEAK CASES, JCCP4861, underlying case,  
WILLAM GANDSEY VS SOUTHERN CALIFORNIA GAS COMPANY ET AL,  
BC601844

June 25, 2020

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1 CASE NUMBER: BC 601844  
2 CASE NAME: STATE V. SO CAL GAS  
3 LOS ANGELES, CALIFORNIA THURSDAY, JUNE 25, 2020  
4 DEPARTMENT SSC 12 CAROLYN B. KUHL, JUDGE  
5 REPORTER: DAVID A. SALYER, CSR 4410  
6 TIME: 9:00 A.M.

7 -o0o-

8 THE COURT: All right. Good morning, everyone.

9 We'll call the roll as usual. Okay?

10 THE CLERK: Susan Owen?

11 MR. OWEN: Good morning.

12 THE CLERK: Thomas Girardi?

13 Kevin Hannifan?

14 MR. HANNIFAN: Yes. Good morning, your Honor.

15 THE CLERK: Robert Begland?

16 MR. BEGLAND: Good morning. Present.

17 THE CLERK: Justin Eballar?

18 MR. EBALLAR: Good morning.

19 THE CLERK: Frank Petosa?

20 MR. PETOSA: Good morning, your Honor. Present.

21 THE CLERK: Jessica Hansen Arenas?

22 MS. HANSEN-ARENAS: Good morning. Present.

23 THE CLERK: George Stiefel?

24 MR. STIEFEL: Good morning, present.

25 THE CLERK: Thomas Lotterman?

26 MR. LOTTERMAN: Good morning, present.

27 THE CLERK: Randy Levine?

28 MR. LEVINE: Good morning, present.

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1 THE CLERK: David Barrett?

2 MR. BARRETT: Good morning, present.

3 THE CLERK: Jae Lee?

4 MR. LEE: Good morning, present.

5 THE CLERK: Jesse Krompier?

6 MR. KROMPIER: Good morning, present.

7 THE CLERK: Yardena Zwang-Weissman?

8 MS. ZWANG-WEISSMAN: Good morning. Present in the  
9 courtroom.

10 THE CLERK: Kent Kraushaar?

11 MR. KRAUSHAAR: Good morning, present.

12 THE CLERK: Deanne Miller?

13 MS. MILLER: Present here in the courtroom, as well.

14 THE CLERK: David Schrader?

15 MR. SCHRADER: Present. Here.

16 THE CLERK: Austin Norris?

17 MR. NORRIS: Good morning, present.

18 THE CLERK: Allen Lanstra?

19 MR. LANSTRA: Good morning, present.

20 THE CLERK: Christina Kim?

21 MS. KIM: Present.

22 THE CLERK: Ben Gold?

23 MR. GOLD: Good morning, present.

24 THE CLERK: Gary Praglin?

25 MR. PRAGLIN: Good morning, present.

26 THE CLERK: Taras Kick?

27 MR. KICK: Good morning, present.

28 THE CLERK: Lindsey Bayman?

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1 MS. BAYMAN: Good morning, present.

2 THE CLERK: Michael Kelly?

3 MR. KELLY: Good morning, present.

4 THE CLERK: Andrew Jacobson?

5 MR. JACOBSON: Good morning, present.

6 THE CLERK: Jeff Westerman?

7 MR. WESTERMAN: Good morning, present.

8 THE CLERK: Mariana McConnell?

9 MS. McCONNELL: Good morning, present.

10 THE CLERK: Paul Kiesel?

11 MR. KIESEL: Good morning.

12 Welcome back.

13 THE CLERK: Casey O'Neil?

14 MR. O'NEILL: Good morning, present.

15 THE CLERK: George Stiefel?

16 MR. STIEFEL: Good morning, present.

17 THE CLERK: And Regina Bagdasarian?

18 Kimberly McDonald?

19 MS. McDONALD: Good morning, present.

20 THE CLERK: David Logan?

21 MR. LOGAN: Good morning, present.

22 THE CLERK: Robert Borthwick?

23 MR. BORTHWICK: Good morning, present.

24 THE CLERK: Frank Pitre?

25 Kelly Weil?

26 MS. WEIL: Good morning. Present on CourtCall.

27 THE CLERK: Christopher Casillas?

28 MR. CASILLAS: Good morning, present.

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1 THE CLERK: Lusine Coppock?  
2 MS. COPPOCK: Good morning, present.  
3 THE CLERK: Patricia Oliver?  
4 MS. OLIVER: Good morning, present.  
5 THE CLERK: Rex Parris?  
6 MR. PARRIS: Good morning.  
7 THE CLERK: Alison Chase?  
8 MS. CHASE: Good morning, present.  
9 THE CLERK: Raymond Boucher?  
10 MR. BOUCHER: Good morning. Present in the courtroom.  
11 THE CLERK: Alan Schimmel?  
12 MR. SCHIMMEL: Good morning.  
13 THE CLERK: Evan Zucker.  
14 MR. ZUCKER: Good morning, present.  
15 THE CLERK: Gregg Garfinkel.  
16 MS. GARABEDIAN: Present.  
17 THE CLERK: Robert Gooding?  
18 MR. GOODING: Good morning, present.  
19 THE CLERK: Collie James?  
20 MR. JAMES: Good morning, present.  
21 THE CLERK: Cathy Kim?  
22 MS. KIM: Good morning, present.  
23 THE CLERK: James Frantz?  
24 MR. FRANTZ: Good morning.  
25 THE CLERK: Devin Bolton?  
26 MS. BOLTON: Present.  
27 THE CLERK: Matthew Nezhad?  
28 William Aiken?

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1 MR. AIKEN: Present.

2 THE CLERK: Is there anyone else on CourtCall that  
3 would like to appear?

4 MR. GIRARDI: Tom Girardi. Present, your Honor.

5 THE CLERK: Anyone else?

6 Court Call is complete, your Honor.

7 THE COURT: Thank you. Further appearances in the  
8 courtroom if you haven't stated them.

9 MR. PANISH: Yes. Good morning, your Honor. Brian  
10 Panish for the plaintiffs.

11 MS. ELIZABETH: Good morning, your Honor. Sierra  
12 Elizabeth for plaintiffs Toll Brothers and Porter Ranch  
13 Development Co.

14 MR. BOUCHER: Good morning, your Honor. Raymond  
15 Boucher on behalf of plaintiffs.

16 MR. HOLSCHER: Good morning, your honor. Mark Holscher  
17 Kirkland Ellis for the plaintiffs.

18 MR. CREED: Good morning, your Honor. Jesse Creed for  
19 the private plaintiffs.

20 MS. MILLER: I announced myself on CourtCall. Deanne  
21 Miller for the defendants.

22 THE COURT: All right. Very good.  
23 So you can be seated.

24 MR. KELLY: Your Honor, this is Michael Kelly. I'm  
25 sorry to interrupt.

26 Someone is on CourtCall unmuted, and they're breathing  
27 very heavily, making it extremely difficult to hear anything.

28 THE COURT: Yes. Thank you.

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1 I am going to ask everyone on CourtCall please to put  
2 yourselves on mute. Further, please do not put us on hold,  
3 because then we will hear hold music, which is even worse.

4 Okay. Thank you very much.

5 MR. DRAGNA: Your Honor, I don't think I made an  
6 appearance.

7 Jim Dragna, Morgan Lewis.

8 THE COURT: Thank you very much.

9 So I did an agenda late yesterday. Hopefully everybody  
10 has that. I thought that might facilitate where we were going  
11 here today.

12 I don't know if you have any questions about logistics.  
13 We are still in our CourtCall mode, so we still have to speak  
14 into microphones.

15 I got some of the disinfectant spray. So I'm seeing,  
16 Mr. Boucher, for example -- I see you don't have a microphone  
17 in front of you, but you have a lot of papers out. If you  
18 want to go to the center, that would be fine.

19 MR. BOUCHER: Thank you, your Honor.

20 THE COURT: Then if everybody sort of sprays down after  
21 they use the microphone, since as best we know it is our  
22 little particles that come out of our mouths that are the real  
23 concern with the COVID.

24 MR. PANISH: May I ask a question, your Honor?

25 THE COURT: Of course.

26 MR. PANISH: When I go to the podium, can I walk in the  
27 well to social distance from these other people?

28 THE COURT: Yes. I think that would be a good idea.

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1 Any other questions about logistics?

2 MR. SCHRADER: No, your Honor.

3 THE COURT: Okay. There is one thing that is not on  
4 the agenda. Perhaps there will be more. But I think the  
5 clerk I think gave each side a list of five cases that appear  
6 not to have been coordinated as yet.

7 And I'm sort of wondering about that because four of  
8 them were filed in 2019. So I think with regard to that,  
9 could I just ask you within ten days to file a stipulation to  
10 coordinate or not?

11 MR. BOUCHER: Yes, your Honor.

12 We'll undertake to draft a stipulation. We'll work  
13 with defense counsel and get it filed with the Court.

14 THE COURT: Okay. Thank you very much. I appreciate  
15 that.

16 Okay. So I think we'll go ahead with the motions  
17 unless anybody has something else that needs to be handled as  
18 a preliminary matter.

19 And we'll start with -- I know we have a lot to cover  
20 today. We're doing catch-up for three months. We'll just get  
21 through it.

22 So we'll have a hearing on motion to compel production  
23 of document from Intrinsik.

24 It's plaintiffs' motion. So I will hear from  
25 plaintiff. You have a lengthy tentative.

26 MS. OLIVER: Good morning, your Honor. Patricia Oliver  
27 on behalf of plaintiffs. I'll do the argument on Intrinsik.  
28 I appreciate the accommodation to allow us to be heard

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1 remotely.

2 I hope I can be heard okay. If there are any problems,  
3 let me know.

4 THE COURT: I can hear you just fine, Ms. Oliver. Good  
5 morning.

6 MS. OLIVER: Good morning. Your Honor, we just wanted  
7 clarification on two items in the order.

8 We otherwise would stand on the tentative.

9 On page 4 of the tentative, there is the statement that  
10 the plaintiffs designated Intrinsik personnel as expert  
11 witnesses.

12 We didn't intend to make that suggestion in our briefs,  
13 and we apologize if we did.

14 What we were trying to argue is that Dr. Mc Daniel had  
15 already been designated as an expert and had actually  
16 testified by a sworn declaration exhibit on March 7th, 2016 in  
17 response to opposing a motion by the Department of Public  
18 Health.

19 So our argument was based on that concept, which was  
20 that she's already been designated by defendants.

21 We don't know if that will change your Honor's opinion,  
22 but we wanted to make it clear because Dr. Mc Daniel hadn't  
23 been retained by counsel. She had been retained by SoCalGas.  
24 So she was in a unique capacity.

25 I think part of our concern with Intrinsik  
26 communications generally is this very unique role where she is  
27 a State Bar lawyer and a doctor meeting with victims and then  
28 communicating with defense counsel.

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1           So what we were trying to argue was that if she's  
2 playing the position of being a doctor who is presenting  
3 evidence to the Court, then any privilege would have been  
4 waived.

5           That would have been the intent of our argument.

6           THE COURT: Ms. Oliver, could you tell me, if you have  
7 it, what was the motion that she testified in opposition to or  
8 in response to?

9           MS. OLIVER: Sure.

10          THE COURT: And where can I find her declaration in the  
11 record?

12          MS. OLIVER: It was submitted on March 7th, 2016 in  
13 opposition to the entry of a preliminary injunction in  
14 response to a motion filed by the Department of Public Health.

15          Most recently it was in the record in response to the  
16 motion that the plaintiffs had filed to force some type of  
17 evidentiary damages -- pardon me, evidentiary rulings because  
18 Dr. Mc Daniel claimed the dual role of being a doctor and a  
19 lawyer.

20          Yardena Zwang-Weissman put that as Exhibit I to her  
21 declaration submitted on January 15th, 2020.

22          So it shows up in a couple places, but that's the most  
23 recent submission.

24          THE COURT: And those others beyond the March 7 filing,  
25 those were in opposition to discovery motions; is that  
26 correct?

27          MS. OLIVER: Yes, that's correct, your Honor.

28          THE COURT: I understand. Okay.

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1 Go ahead.

2 MS. OLIVER: And Ms. Weissman was putting it in her  
3 declaration, the March 7th, 2016 declaration. That's the  
4 reason I referred to it there.

5 THE COURT: Okay.

6 MS. OLIVER: So that's our big picture question on the  
7 order. I just wanted clarification so that we didn't create  
8 any confusion on that front.

9 The only other thing we just wanted to clarify would be  
10 that we wanted to make sure that everything had been produced  
11 by Intrinsik so the court order could make clear that the  
12 Court and private plaintiffs are expecting at this point  
13 Intrinsik's productions are done.

14 That would close this out.

15 THE COURT: Do you have language that you wanted?

16 MS. OLIVER: Yes, your Honor. Let's go back to the  
17 tentative.

18 At the end of the order, I believe, if we can just say,  
19 you know, the Court further orders that any documents not yet  
20 produced be produced by Intrinsik and Geo -- well, no, I'm  
21 sorry. Intrinsik. We're talking about Intrinsik.

22 THE COURT: All right. Thanks very much.

23 I'll hear from the defense on the tentative.

24 MS. MILLER: Thank you, your Honor. Deanne Miller for  
25 the defendants.

26 I don't believe that either of Ms. Oliver's comments  
27 change the analysis or should change the analysis in the  
28 tentative.

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1 Dr. Mc Daniel submitted a declaration during the  
2 preliminary injunction hearings related to the relocation  
3 program and DPH's challenges to when that program could end  
4 during the week.

5 That does not change the analysis that we believe the  
6 Court got right with respect to the privileged nature of  
7 certain communications between counsel and Dr. Mc Daniel or  
8 others at the Intrinsik law firm.

9 THE COURT: I'm sorry. Tell me again what she talked  
10 about in her 2016 declaration.

11 MS. MILLER: Her 2016 declaration is not before the  
12 Court on this motion, but from recollection and from the  
13 descriptions that are in the privilege log, what it would  
14 indicate is that during the time that DPH contended that  
15 relocation should continue and was looking at air sample  
16 results and environmental science that they believe supported  
17 continuing relocation, Dr. Mc Daniel was among the witnesses  
18 who submitted a declaration in opposition to that briefing to  
19 provide explanation as to why relocation should end, as was  
20 called for in the program itself.

21 So that was a contested issue early in the process.

22 To Ms. Oliver's second point, your Honor may recall  
23 during the time of your interim order on the Intrinsik logs  
24 one of the requirements was that a representative of Intrinsik  
25 provide a verification that their document collection and  
26 production in response to the subpoena was complete.

27 Dr. Mc Daniel did comply with that order and provided  
28 on behalf of Intrinsik a verification, so that has been done.

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1 I just wanted to note that for the record.

2 Otherwise, your Honor, we are willing to submit on the  
3 tentative.

4 We understand your Honor's direction with respect to 20  
5 documents only on the list. I'm sorry. I should say 20  
6 documents from the privilege log and the tentative's direction  
7 to take a look at those and redact only if there is work  
8 product reflected and otherwise produce those. We will do  
9 that.

10 Some of those documents were produced in redacted form.  
11 Some of them were withheld, and there may be minor redactions.  
12 Otherwise, they can be produced.

13 I understand the Court's direction on the log and how  
14 we do those redactions.

15 THE COURT: Okay. Very good.

16 MS. MILLER: Thank you.

17 THE COURT: So I probably should put a time in here,  
18 then, right?

19 What is a reasonable time, 20 days?

20 MS. MILLER: That would be fine.

21 Thank you, your Honor.

22 Anything further, Ms. Oliver?

23 MS. OLIVER: No, your Honor. That's fine.

24 THE COURT: Okay. So what I'm going to do is I'll take  
25 this under submission.

26 I will go back and look at this issue about  
27 Ms. Mc Daniel's-- excuse me, Dr. McDaniel's prior declaration,  
28 and I should be able to get something out today or tomorrow on

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1 this, okay?

2 That's under submission.

3 So can we turn to the plaintiffs' motion to compel  
4 production of Geosyntec documents?

5 MS. OLIVER: Yes, your Honor. Patricia Oliver again on  
6 behalf of the private plaintiffs.

7 We submit on the tentative, your Honor.

8 THE COURT: Okay. Thank you, Ms. Oliver.

9 MR. DRAGNA: As do we, your Honor.

10 THE COURT: All right. So the Court's tentative will  
11 stand on that.

12 I guess, again, I need to address the issue of time of  
13 production. No. The 24 documents that still remain at issue,  
14 there's nothing that needs to be produced at this time?

15 MR. DRAGNA: Correct.

16 THE COURT: So the Court's tentative will stand, then.

17 MR. DRAGNA: Thank you, your Honor.

18 THE COURT: Okay. So let's turn to plaintiffs' motion  
19 for issue evidence and monetary sanctions and other remedies.

20 I did manage to get a tentative out to you yesterday on  
21 that, so I'll hear from plaintiffs.

22 MR. PANISH: Good morning, your Honor. Brian Panish.

23 The Court has repeatedly stated that counsel should  
24 preserve their credibility. So I want to start with the  
25 misrepresentations the defendants made in their opposition  
26 that because of the volume of stuff the Court accepted it, and  
27 it was a false statement.

28 So if you look at your tentative order on page 13, the

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14

1 Court wrote, "Though defendants stood before this Court and  
2 defended the accuracy of the February 2020 logs" -- do you see  
3 that paragraph, your Honor?

4 THE COURT: No, I'm not seeing it this second.

5 MR. PANISH: It's on page --

6 THE COURT: 13?

7 MR. PANISH: Yes. Let me get my order.

8 MR. BOUCHER: The last paragraph.

9 MR. PANISH: The last paragraph. It says "Instance of  
10 privilege log noncompliance."

11 THE COURT: Okay.

12 MR. PANISH: Are you with me?

13 THE COURT: I am.

14 MR. PANISH: So the Court wrote:

15 "Though defendants stood before this Court  
16 and defended the accuracy of the  
17 February 2020 logs, after further court  
18 order review and after trial counsel was  
19 asked to yet again submit declarations as  
20 to the good faith assertion of privilege,  
21 defendants produced 34,530 documents listed  
22 on the February 2020 log."

23 That is false.

24 Defendants produced 41,561 documents, about 20 percent  
25 more than they've represented to the Court.

26 How do we know that? It's very clear.

27 Paragraph 3 of Mr. Creed's March 26 declaration did a  
28 complete accounting.

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15

1 Oh, and by the way, none of those documents were  
2 attachments.

3 Their declarant, Ms. Tess Blair, who has never appeared  
4 in this Court, agrees with Creed's number. See her  
5 declaration, paragraph 49 and 50.

6 But, again, the half-truths and misrepresentations got  
7 the Court to accept that. That is a false statement again,  
8 and the Court has repeatedly said false statements are  
9 offensive to the Court and to counsel.

10 The Court made some comment about what they were going  
11 to do about false statements, but that has yet to occur.

12 Then they go on to point out how defendants -- they  
13 sought to mislead us, because those entries, some of them  
14 dealt with thousands of entries, those documents.

15 So for them to say -- and none of those are  
16 attachments, so that's a false statement, a false  
17 representation. And their own papers prove it.

18 They don't either read or know what their own declarant  
19 said verifying the accuracy of Mr. Creed's declaration.

20 So let's just start with that.

21 Now, this Court has 43 years' experience. I have 36.  
22 Mr. Boucher has 36 and Mr. Praglin and Kelly, the ones  
23 involved in this, have 39 years. Together that's almost 200  
24 years. I've never ever seen anything like this, nor has the  
25 Court. And the Court has repeatedly said -- I'll quote the  
26 Court.

27 "These discovery abuses are unprecedented. This is  
28 uncharted waters. There have been more violations of court

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1 orders and more prejudice in this case than any case the Court  
2 has ever seen in its entire career."

3 And this Court has been an advocate for the civil  
4 justice system, devoted part of your career to serving in this  
5 County, where I have practiced for 36 years and all of us have  
6 practiced.

7 What is not mentioned in the order is the 35,000  
8 victims that are residents of this County who can't get  
9 justice from this Court.

10 I know it's not the Court's doing, but the defendants  
11 have no respect for the Court or us, nor the Court orders.  
12 And because of their lack of respect, the Court has lost all  
13 control of discovery in this case, and the Court has admitted  
14 it. The only time in your entire career. Yet they want to  
15 attack us, attack me and abuse and abuse and abuse.

16 But what has happened. Let's go back and look.

17 The Court -- now, defense counsel is going to go to  
18 their clients and say we won again. And I continue to tell  
19 the Court they win, they win, they win.

20 The Court says, well, I sanctioned them \$550,000,  
21 Mr. Panish.

22 Your Honor, this is a multi-billion-dollar exposure  
23 case. These defendants, the preliminary injunction was  
24 granted. That shows they -- I forgot the standard -- of the  
25 likelihood of success on the merits.

26 So what do they have to lose? They just don't give us  
27 the evidence, the critical evidence in this case.

28 The Court just keeps giving them redo after redo after

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1 redo.

2 The Court could have awarded one issue sanction here to  
3 incentivize the defendants, but they haven't obeyed a single  
4 order yet.

5 They're not incentivized because they have nothing to  
6 lose. If you lose 500,000, a million, 2 million -- and I'll  
7 get to that later -- in a multi-billion-dollar exposure case,  
8 you've won. You've abused the civil discovery system. The  
9 residents of this County have not got the justice that this  
10 civil justice system is supposed to provide, and that's clear.

11 The Court goes on to say -- let me back up.

12 What do I tell the clients? They wanted to be here  
13 today, your Honor. They can't come here. What do I tell them  
14 why it's been five years and nothing -- we've gotten no  
15 closer.

16 You've been on the case nearly a year and half in, and  
17 in that time what's happened? Discovery is out of control.  
18 The abuses are out of control. That's what's happened in the  
19 last year and a half in this case.

20 Those victims, 35,000 of them that were sitting in  
21 their homes doing nothing wrong when this largest natural gas  
22 uncontrolled release in the history of the world occurred, and  
23 from that moment forward it was nothing but obstructions and  
24 misrepresentations by the defendant.

25 And what did they withhold? Critical evidence,  
26 documents that show they had notice of the problem, because of  
27 money they chose not to undertake the repairs. These are  
28 punitive damage documents.

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1           Also health documents, PR misrepresentations to the  
2 health department, misrepresents to AQMD, misrepresents to the  
3 PUC. They're litigating in the PUC. They're violating all  
4 kind of privilege problems there.

5           It doesn't stop. This utility, the largest, with  
6 20,000 employees, with one of the largest law firms in  
7 America, this is not a mistake. This is not a mistake.

8           But what do the plaintiffs have to do? Answer 600-page  
9 questionnaires -- 600 questions. A hundred of them sat for  
10 deposition, signed medical authorizations, signed employment  
11 authorizations, give the medical authorizations after the  
12 discovery cutoff.

13           Have they been in here saying they didn't answer the  
14 questionnaires, they didn't do the depositions? No issue,  
15 none.

16           But I think back to the Court taking that board out and  
17 writing down those three maxims. We followed them. They  
18 haven't ever. But nothing has happened. They're winning.

19           So let me continue on to talk a little more about  
20 what's happened.

21           On page 19 of the order, the Court states:

22           "The Court agrees that defendants'  
23 discovery abuse has caused significant  
24 prejudice to the plaintiffs.

25           "Plaintiffs' case preparation has been  
26 needlessly delayed, and in a certain sense  
27 will never be what it might have been had  
28 defendants met their most basic discovery

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1 obligations."

2 These risk registries were asked in the beginning.  
3 Every witness testified they knew nothing about it. They  
4 recalled nothing about risk registries, every one.

5 Then motion after motion, we get the documents. And  
6 you read, I'm sure, my declaration where the witness gives a  
7 deposition. The person that's the owner of the risk, the  
8 catastrophic well failure from corrosion in charge of the  
9 underground storage. That's the person.

10 He testified in his deposition on December, 2019:

11 "Q. Did you ever do any risk analysis,  
12 risk registry?

13 "A. Only for when I was at San Diego Gas  
14 & Electric for wildfires.

15 "Q. Anything else?

16 "A. I don't recall anything else."

17 January, signs his deposition under oath.

18 February -- excuse me -- March or April he testifies  
19 after meeting with counsel who is not admitted in California,  
20 who's practicing by a privilege, a pro hac vice who's been  
21 obstructing depositions, shows him documents.

22 We ask him:

23 "Q. Did that refresh your recollection?"

24 He says:

25 "A. Oh, no."

26 Eventually we get him to maybe say one.

27 Well, how did you remember this, that you testified  
28 here you didn't know?

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1 "I had a revelation."

2 We asked for the documents. Counsel eventually gives  
3 us one. But that's obstructionism.

4 Your order tried to level the playing field. It's not  
5 even close. It's getting worse.

6 And let me get into that.

7 In September of 2019, after you've been on the case for  
8 a few months, we kept raising these privilege issues. You  
9 wouldn't let us file motions. You said, oh, no, oh, no, we're  
10 going to have a meeting. You come down here on Wednesday.

11 This is what you said. You said, "I'm going to tell  
12 you right now, we're going to get it right or I'm going to  
13 unleash the plaintiffs."

14 This is September, 2019, almost a year ago.

15 Then you said -- the Court said:

16 "If you don't get it right, next Wednesday,  
17 a week from today, we're going to come down  
18 here. I want you to bring all your  
19 documents with you and we're going to go  
20 through that privilege claim that you  
21 claim, complete review on the data group.  
22 And bring them in and we'll take a look and  
23 we'll see if you're going to do something  
24 else. If I'm not satisfied, I'll turn the  
25 plaintiffs loose and you can bring a  
26 motion."

27 We weren't even allowed to bring a motion. What  
28 happened? They came to court. They almost passed the smell

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21

1 test. When they had the heart test, they failed.

2 What does the Court say?

3 Okay, plaintiffs. Go file your motions.

4 Then in February, 2020 the court issues another  
5 warning. These repeated warnings.

6 The Court again tells them:

7 "The sanctions imposed are made under the assumption  
8 that defendants will keep their promise that  
9 plaintiffs have received or will receive by the  
10 deadline, September 20 -- the January 14th order  
11 every document to which they're entitled."

12 That still hasn't happened.

13 You gave them a warning. Did they heed your warning?

14 No. Because they're tone deaf. They're entitled, this  
15 utility. They have nothing to lose. They don't care about  
16 the victims. They just care about saving the money and trying  
17 to make the ratepayers pay.

18 Then what happens, your Honor?

19 You say at that hearing and you write:

20 "If defendants fail to keep their promise  
21 to abide by this January 2020 order, then  
22 the Court will allow further briefing and  
23 consider stricter evidentiary and issue  
24 sanctions as well as jury instructions  
25 under Code Section 413. The Court also may  
26 permit private plaintiffs to seek  
27 additional sanctions based on information  
28 about withheld documents that only recently

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1           have been disclosed."

2           Plaintiffs told the Court at this hearing that is not  
3 going to deter them. I stood here and looked you right in the  
4 eye and told you it's not going to stop them.

5           You said, Mr. Panish, this is significant. Let's see.  
6 We have to give them an opportunity. I'm giving them another  
7 chance. That's what you said.

8           But you called me up there and you told me, Mr. Panish,  
9 it's your job, I hold you to make sure every lawyer is  
10 prepared for every deposition. I don't want any issues.

11           Do you remember that? I do, because I took it  
12 seriously. I take my obligations as a lawyer in this Court,  
13 as an officer of the Court, seriously.

14           That hasn't happened on the other side, your Honor.  
15 They don't respect your orders.

16           But let's continue on.

17           Then we get to March 20th, another order.

18           The Court issues its fourth warning:

19           "Therefore" -- this is what you wrote, "the  
20 Court may be forced to impose" -- may be --  
21 "may be forced to impose issue or  
22 evidentiary sanctions or draft an  
23 appropriate jury instruction regarding  
24 effective spoliation. But that  
25 determination can't be made until further  
26 briefing, to which both sides are entitled,  
27 on those aspects of plaintiffs' current  
28 motion for sanctions.

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1 "Defendants' compliance or lack thereof  
2 with this Court's current order will bear  
3 upon whether or not the Court imposes issue  
4 or evidentiary sanctions and the nature of  
5 any such sanctions."

6 Again, I told you -- that was on the phone -- it's not  
7 going to do anything. They're not going to comply, but you  
8 gave them another chance.

9 Then you tell them if they don't comply, it's \$50,000 a  
10 day.

11 The Court has found they didn't comply. They admitted  
12 it, buried in page 28 of their brief. Human error.

13 This law firm -- and by the way, they claim 6,400 hours  
14 they billed. That's 2-point -- at \$400, that's 2.4 billion  
15 and 3 billion. They're profiting on this to review the  
16 documents, which helps them get prepared for trial, which  
17 helps them coach their witnesses and come up with their  
18 stories.

19 So you're giving them a benefit at our expense.

20 That's what they said, 6,400 documents just -- or  
21 excuse me, 6,400 hours just to review for privilege.

22 How many hours is it going to take us to review them  
23 for content?

24 Then at that time the Court found noncompliance. And  
25 they knew that trial counsels' entries weren't compliant.

26 One example, one macro description that was in that  
27 applied to 12,000 entries, 12,000.

28 This is not a mistake. This is one of the largest

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24

1 firms in the United States with smart lawyers. They're  
2 carrying out direction from some of those lawyers back there  
3 and some of the lawyers on the phone who the Court doesn't  
4 even know.

5 The counsel from Sempra and SoCalGas are controlling  
6 this, and the lawyers are going along.

7 But then that doesn't stop, your Honor. They committed  
8 fraud on the Court many times, and nothing has happened.

9 Then I want to tell the clients that the Court -- what  
10 do I tell them? Do I tell them the Court is warning them;  
11 they warned them if you do it again I might do something?

12 I think what the Court said is you would consider, but  
13 I think the code requires it.

14 The Bentley case overturned an order with less severe  
15 sanctions than this, or less severe conduct. But what do I  
16 tell the clients, that we're going to have to be down here  
17 every day for ex parte motions when they stop the depositions  
18 and they obstruct?

19 Remember, for this last three months we had no relief,  
20 so they just abused it to death.

21 We've had, since the order, four months, about 14  
22 depositions. Then, of course, none for two weeks. Then they  
23 put three on the same day and there's not another one until  
24 July 17.

25 I mean, come on, Judge. This is -- and they just  
26 dribble out the dates.

27 Then they say, oh, your order says you can redepose the  
28 people. Then I find all these new witnesses and all these

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25

1 documents.

2 This is how it works, Judge, to do the deposition.

3 You have to go through the documents. We haven't been  
4 able to review them all, 1.9 million. We have to go cull  
5 through them and find what we can use with this witness that  
6 we haven't seen, and there are many for every witness.

7 Then it takes about a day, because I've been doing it,  
8 to prepare for the deposition.

9 Then it takes a day to take the deposition.

10 Then on Zoom you get probably 30 percent less content  
11 because of all the delays, which is that is what it is.

12 So we have to fight to get the days. Many of these  
13 essential employees like Arriola, they go "he's essential."

14 They go "he's essential." I write to Mr. Schrader.  
15 Give me a declaration, show me why he's essential. He's a  
16 communications guy at Sempra, but he was the CEO and directly  
17 involved in all of this. Thousands of documents from him were  
18 withheld.

19 Mr. Schrader doesn't even tell me. I find out he's  
20 leaving the company, this essential employee.

21 Mr. Schrader, he says the State of California found  
22 Sempra to be an essential company. That's the response. It's  
23 in the letter attached to his declaration.

24 This guy was so essential he left the company.

25 Then they say you have got to do his depo on June 30th.  
26 That's the only day we can do it. I said I already told you I  
27 can't depose him that day.

28 Then he says, well, you can do it in mid July, when he

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26

1 never could do it any other day. Come on.

2 Debbie Reed, the CEO, is involved. Seven thousand  
3 documents withheld relating to her. I couldn't even get  
4 another day. I finally get a day. They cancel it the first  
5 time.

6 Then two weeks ago Mr. Creed and I are spending two  
7 days on Zoom going through documents, preparing for the  
8 deposition.

9 While we're doing that, at 2:00 o'clock in the  
10 afternoon Ms. Miller sends me a threatening email and says if  
11 you don't agree to restrict your time and be done at the end  
12 of this day, we're pulling the depo.

13 I don't even get the email because I'm preparing to  
14 take the deposition.

15 At 6:00 o'clock I finish. I look at my emails.  
16 They've already canceled the deposition.

17 Then I have to go around and round and round.

18 So first you have to get the deposition. Then when you  
19 get there, what happens? Then you get there, the most evasive  
20 witnesses you've ever seen, the most coaching and cueing all  
21 the time, showing them documents, them saying they don't  
22 refresh their recollection and the witness not answering the  
23 question.

24 Then the deposition is over and they say there's a  
25 seven-hour limit.

26 Number 1, it doesn't apply in complex.

27 Number 2, it wasn't part of your order.

28 They said we resist -- Mr. Lotterman, we resist all

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27

1 future attempts to depose this witness.

2 Then they come in and they say we're filing a motion  
3 right after the second depo. They write a letter. This is  
4 improper.

5 Judge, the witness gets in and lies. You'll have to  
6 use another doctor to impeach him.

7 Remember, Arriola, all these guys are leaving. We are  
8 going to have to rely on videos which are non-responsive,  
9 evasive answers. How do we get a fair trial and level playing  
10 field? How does that happen when the witness won't answer.

11 I have no way of doing it. I can't come down here.

12 Are you going to be available every day for us, because  
13 I'm going to be down here every day because these abuses are  
14 not stopping.

15 Let me continue on.

16 THE COURT: Can I just ask you a question?

17 If I granted all of the issue sanctions you're  
18 requesting, you would still need all of these depositions and  
19 you would still need to use all of these documents, would you  
20 not?

21 MR. PANISH: I wouldn't need all the depositions.

22 THE COURT: Let me finish a minute. And I know it's  
23 hard because we're wearing masks.

24 But your case is a punitive damages case.

25 MR. PANISH: Well, first of all, we have to prove  
26 liability, okay?

27 They're defending it. They're saying we've complied  
28 with every statute. The PUC cited them for 400 violations,

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28

1 but they keep saying we complied with every applicable state,  
2 federal, local ordinance. That's false.

3 And they keep going on. So I have to prove liability  
4 first. Then I have to prove damages.

5 Many of these documents that have been withheld go  
6 directly to the damages that they misrepresented to the Public  
7 Health, to the AQMD, to the plaintiffs on their posts, on  
8 their websites. That goes directly to damages.

9 It never stops. It's not going to stop.

10 They're going to get up here and say, oh, we get the  
11 message. The minute we walk out of here, it will be back to  
12 what the Court has -- I don't want to say allowed, but what  
13 has occurred is hand to hand combat on every question, to get  
14 a deposition, to get a document.

15 We start the depositions. Mr. McMahon, I'm taking his  
16 deposition. The man is just very evasive, very hostile, wrote  
17 discriminatory emails. I'll leave it at that. Denies that he  
18 wrote it, when you see it's him, relating to telling people to  
19 put attorneys' names on the documents to create, fabricate,  
20 manufacture privilege.

21 Then I see these documents. There are ten other  
22 witnesses. I've never heard of them. And he's testified  
23 they're critical.

24 I'm trying to notice depositions.

25 Mr. Schrader writes me back. Oh, no, we're not giving  
26 you any new depositions because that's not in the court order.

27 Now, are you telling me that the spirit of your order  
28 was you can only redepose witnesses you deposed?

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1           What about all the ones we didn't know about from the  
2 documents they withheld?

3           Then, what about when we get in the deposition last  
4 week, two depositions, Mr. Van Houten and Mr. Healy. They say  
5 there are other documents relating to this that they don't  
6 know where they are and they haven't been produced.

7           As this continues on every time there's a deposition.  
8 We send letters, where are these documents. They don't  
9 respond. They just blow us off.

10          Mr. Schrader and Dragna, they haven't been in any  
11 depositions.

12          It is repeated obstructionism. How does the playing  
13 field get level when they won't let us take depositions of  
14 people we didn't know about?

15          Did I misunderstand your order, Judge? Was that the  
16 spirit to level the playing field if they've withheld a  
17 document and a witness, we don't get that deposition?

18          Is it the spirit of your order that there's a limit on  
19 how long you can go?

20          Then it just goes on and on.

21          Then let's go to how do we get a fair trial? We're  
22 going to talk about that later. But I had to email  
23 Mr. Schrader 12 times to get a single deposition date. Then  
24 we go to this whole Zoom protocol. It's such a waste of time.

25          Remember the last time we were here when you sanctioned  
26 them 500 grand? What did Mr. Dragna say? It's a bunch of  
27 rubbish. That's how they view your orders.

28          Now, then we have all these other people that have been

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1       deposed, Jimmy Cho, COO, Brent Lane, the one who made the  
2       decisions, Alexander, all of them they won't produce.  
3       Essential, essential.

4               Come on, Judge. How can that happen in 2020? How can  
5       a case like this get into this posture?

6               How can that happen in the Los Angeles Superior Court,  
7       complex division, the largest trial court in the world, with a  
8       judge that's been a presiding judge, assistant presiding  
9       judge, complex presiding judge, civil presiding judge? How  
10       does that happen in 2020, today?

11               Never seen it in 42 years. I haven't seen it in 36  
12       years. How do we get here?

13               There is only one reason, because the defendant and  
14       their counsel are engaged in improper conduct, and nothing is  
15       happening.

16               Let me go on. I talked about the witnesses. It's a  
17       joke, really, Judge. In the depositions, the coaching.  
18       Remember, there is a prior order on coaching or cueing,  
19       non-stop, non-stop.

20               Depositions, hundreds of objections. I calculated them  
21       out for you in my declaration.

22               Then they object and then the witness thinks and he  
23       says can you repeat the question? I don't remember.

24               You should allow all the objections to be played so the  
25       jury can see what happened. That should be another sanction.

26               Then, which to me is one of the most outrageous things,  
27       the first thing is Mr. Lotterman, who is practicing here --  
28       it's hard -- on a pro hac vice, which is a privilege, he

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31

1 shouldn't be allowed to do this.

2 He's only admitted in the District of Columbia. They  
3 don't allow this. I've litigated there. Lawyers don't behave  
4 like that.

5 How can a lawyer say I don't authorize you to testify  
6 about that and then a witness say I'm not authorized to  
7 testify about a critical issue in a case.

8 Have you ever heard that objection before, Judge? I  
9 haven't. What is that? How can that be allowed.

10 Then Mr. Lotterman, who claims he's a law professor  
11 expert, cites Rule 771. It's section 771, number 1.

12 Number 2, it doesn't say what he says.

13 Number 3, by the way, Judge, on page 19 of our brief,  
14 we did cite that case. Is it Monsanto?

15 THE COURT: Montrose, I believe.

16 MR. PANISH: The Montrose case. We did cite it. You  
17 noted it in your order. Plaintiffs didn't bring that up, but  
18 we did cite it on page 19.

19 Just like we're the ones that brought to the Court's  
20 attention, the Siry case regarding the discretion and  
21 prejudice in discovery sanctions.

22 So what happens? Mr. Lotterman coaches this witness,  
23 the key witness. We don't get the testimony on the Creed  
24 punitive damage issue.

25 Then he comes in and attacks us, says he's right, this  
26 is proper. He doesn't even know the rule. He continues to do  
27 this repeatedly in the depositions.

28 I write to Mr. Schrader. At times I can communicate

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32

1 with him. At times. I say, Mr. Schrader, these people are  
2 abusing the deposition process.

3 You know what he writes back? I've reviewed it.  
4 They're all appropriate.

5 This Mr. Lotterman pulling that nonsense and coaching  
6 that witness at the highest level and claiming this Rule 771,  
7 the Court should strike his pro hac. He shouldn't be allowed  
8 to practice in this Court.

9 You are allowing a lawyer that swore that he would  
10 follow the rules and know the rules to practice in this Court.  
11 He has never passed the bar in this state. That's not right  
12 that you can bring an out-of-state lawyer to abuse the  
13 discovery process with no accountability. How can that  
14 happen?

15 I'll bring every deposition and show you. And I'll  
16 defend every question because, you know, their version is,  
17 well, that document was produced before.

18 Well, yeah, we wouldn't have to use the Code of Conduct  
19 if your witness wasn't lying to get him to admit what the Code  
20 of Conduct was. Yeah, it was produced.

21 When the witness says, yeah, that never happened, we  
22 have to bring out another document to impeach them because we  
23 don't even know if we're going to have them to show up for  
24 trial, because that's another issue.

25 I mean, it's non-stop every day, realtime.

26 I would like to have -- since we're getting nowhere  
27 here, I'd like to have a hearing every day at 4:00 o'clock  
28 down here because there are so many issues. You're only

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1 seeing the iceberg above the ocean.

2 Let me give you another example, Judge. I'm in there  
3 deposing this Mr. Healy and Ms. Miller is obstructing the  
4 deposition. During the deposition -- we started at a quarter  
5 to 9:00. At 3:15 she says to me, by the way, Mr. Panish, did  
6 you see the email we sent you?

7 I said, well, I've been in a deposition.

8 Oh, there are some documents there. They involve this  
9 witness. They may not be relevant, but you should look at  
10 them. Six hours into the deposition.

11 The gamesmanship, the brinksmanship, the trial by word.  
12 It's unbelievable.

13 And then in the middle of the deposition, at 3:15 in  
14 the afternoon, we get two more letters. This is two days ago.

15 I'm trying to depose the witness. We have another  
16 deposition going on. I don't even see these until after.

17 One comes from Mr. Dragna and one comes from  
18 Ms. Weissman. Uncovering a bunch more documents. I'd like to  
19 lodge those with the Court. I gave counsel a copy of that.

20 Can I do that, your Honor? I already gave them a copy  
21 of that.

22 Well, look at this. This is two days ago.

23 In one of them, there are 1,300 documents, and they're  
24 claiming, oh, it's just some minor thing.

25 This is ongoing every single day. Then they don't tell  
26 us where the documents came from, were they responsive.

27 Just like this trial counsel alleged review. They  
28 didn't say what documents they reviewed. They were too busy

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1 working on the clawback.

2 Do we even have to have a hearing on that, Judge?

3 We've spent hours opposing the clawback, but I  
4 thought -- did I miss something? Did the appellate court --  
5 supreme court appellate division rule? Now they're saying  
6 inadvertently they produced documents.

7 That is ridiculous. That is a frivolous motion.

8 I mean, come on, Judge. We have to spend the time to  
9 do it.

10 Then because we follow our obligations, we're  
11 concerned. We can't use these documents in the depositions.  
12 They're going to try to disqualify us.

13 How is that making it a level playing field?

14 This clawback, multiple clawbacks. Then they have a  
15 motion going, oh, you're not getting any more depositions.  
16 We're cutting off the deposition process. That's it. We're  
17 filing a motion on that.

18 Hand to hand combat on every issue. If you can't see  
19 it by now, Judge -- I mean, you see it, but nothing is  
20 happening and it's not leveling the playing field.

21 Let me go on. There's more.

22 Then the April 20 log that they did produce, these  
23 lawyers -- you saw it. Instead of working on reviewing  
24 documents, 43 documents a day they reviewed. Instead of that,  
25 they're working on clawback motions. They're doing other  
26 stuff.

27 They used 6,400 hours. How much are we going to need?  
28 Three times that to review for substance?

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1 But then on the 20th they claim 55,785 documents, which  
2 means they removed 104,000 -- excuse me, 100,400 documents  
3 from their November 19. Again, multiple violations, that's  
4 according to Ms. Blair, paragraph 55.

5 In other words, even though the Court ordered them on  
6 September 18, 2019 that they produce all non-privileged  
7 documents by November 1st, 2019 -- the defendants produce all  
8 non-privileged documents by November 1st -- their 2020 log  
9 shows that they've now produced two-thirds of the documents  
10 off the November log that they were ordered many times to do  
11 and they still didn't do.

12 All right. I'm upset, Judge. Yeah, I cussed at a  
13 deposition because what I said is true. It's nonsense. I'll  
14 take whatever penalty I get, because I did it. I'm  
15 accountable. But no one over there is accountable. That's  
16 the problem. When they are all accountable, no one is  
17 accountable. I told you -- you told me to be -- I'm  
18 accountable for everything I do. I've never done it again. I  
19 haven't done it, but that's how frustrating this  
20 obstructionism is.

21 To put it in the pandemic, look, the Court knows. You  
22 were displaced. I had to be in the jury room doing  
23 depositions. How many cases do you have like that going on?

24 We're in the jury room doing depositions. The Court's  
25 displaced. It's a stressful situation. You've experienced it  
26 yourself. Put on it these people five years later. Nothing,  
27 nothing.

28 The coaching, I already told you about it.

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1           The documents not being produced. The seven-hour  
2 limit.

3           I cussed, so be it.

4           This 771 -- by the way, we did cite that Montrose case.

5           THE COURT: Yes, thank you.

6           MR. PANISH: Okay. But what am I going to tell my  
7 clients? All the clients that call me constantly. They want  
8 the trial. What happened with the Court? I did what the  
9 Court told me I had to do. Why aren't they doing it? What do  
10 I tell them?

11           Why is the Court not awarding 50,000 a day? They  
12 didn't comply. You admit it. They admit it. You said if  
13 they don't comply, that's another warning. No enforcement.

14           We've proved it.

15           Now, you don't believe them. You even said you  
16 questioned their credibility. I seriously question it. I  
17 don't believe a lot of what they say because I've seen other  
18 documents that impeach them.

19           But there's more there. I guarantee you this is not  
20 the end of it.

21           I've told you that every single time, and I've been  
22 right. We've been back here again every time.

23           Everything we allege in the motion you found was true.  
24 Four of the five factors, severe prejudice, you found all of  
25 that and easily the fifth factor is applied.

26           It's just a game of brinksmanship, Rambo litigation --  
27 you read about it. The ABA and all these big firm Rambo  
28 litigators, et cetera. That's what it is. And they don't

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1 care.

2 They're not accountable, none of them.

3 They could have been reviewing all those documents  
4 still, but they didn't. They said, well, we need 120 days.  
5 They had six months.

6 So it's been four months since your order. Not a lot  
7 has happened.

8 So I could go on for hours. It's a realtime thing,  
9 Judge. So the playing field is not leveled. It's only getting  
10 much more steep.

11 THE COURT: Let me just ask you --

12 MR. PANISH: Yes, go ahead.

13 THE COURT: -- with regard to the issue sanctions,  
14 okay?

15 If you got all of those issues sanctions, you would  
16 still have to be asking about all of these late-produced  
17 documents and having these depositions -- wait a minute -- and  
18 having these depositions because this is a punitive damages  
19 case, which is what you said in your declaration.

20 MR. PANISH: That's part of it.

21 THE COURT: Let me finish.

22 Remember the admonition, keep your on the ball?  
23 Remember that one?

24 MR. PANISH: How do I do that with them doing this  
25 conduct?

26 THE COURT: I think you're being distracted by it,  
27 quite honestly.

28 If you got all those issue sanctions, you would still

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1 need all these depositions.

2 MR. PANISH: No, I wouldn't.

3 THE COURT: Well, tell me about that. How can you --  
4 these are punitive damages documents.

5 MR. PANISH: Right.

6 But if I have negligence -- a lot of these are for  
7 negligence. These are well integrity corrosion people. Why  
8 the well blew out. They're not admitting that.

9 I say to you here, *res ipsa loquitur*, was it a  
10 terrorist that did it? Was it a Scud missile? No. The  
11 people who lived there, the thing blew out. But they still  
12 won't admit any of that.

13 Then you asked me -- oh, shoot, I forgot your last  
14 question, because I did have an answer and then I interrupted  
15 you.

16 THE COURT: So punitive damages.

17 MR. PANISH: No, there was one before that.

18 THE COURT: Well, let's get to punitive damages.

19 Your case is about punitive damages, right?

20 MR. PANISH: No. Our case is about liability,  
21 causation, damages -- because punitive damages are tied to  
22 non-economic or economic loss.

23 So every document cuts across every aspect of the case.  
24 Not if the Court makes these findings. I've had other cases.  
25 This is exactly what happened, published decisions cited.  
26 I've been here.

27 This is a billion-plus-dollar exposure case. That's  
28 what they say with their filings with the SEC.

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1 500,000 is peanuts in a world of elephants.

2 Obviously -- and the Court knows this -- it hasn't done  
3 one thing. It hasn't done one thing. It's gotten worse.

4 They're just emboldened in their conduct, and  
5 entitled -- hold on one second, Mr. Creed. I don't know. Am  
6 I allowed to go over there?

7 Here, why don't you just throw it over here.

8 THE COURT: Just write it.

9 MR. PANISH: I know what you said about texting, but  
10 the text doesn't work here.

11 THE COURT: Let's do notes, then. I just want  
12 everybody to be safe.

13 MR. PANISH: Well, one point, we still don't know how  
14 many documents we don't have.

15 Keep your eye on the ball. Have they kept their eye on  
16 the ball, when you said give them the depositions and they  
17 don't give us dates?

18 THE COURT: Mr. Panish, do you want the discovery  
19 referee option -- not with regard to the depositions. We'll  
20 get to that.

21 They said they would pay for a discovery referee to  
22 review every single outstanding document. If you wanted that,  
23 I would grant that. It would cause further delay.

24 MR. PANISH: Yeah, of course. But I wanted to talk  
25 about that. I have a plan on that, on multiple levels.

26 THE COURT: Okay. Not the depositions.

27 MR. PANISH: I know, but this goes glove and fist --  
28 glove and hand with that. I spent a lot of time thinking

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1 about it.

2 Judge, I have all this time. At 2:00 o'clock I'm  
3 co-lead counsel on the Thomas Fire cases. You were on one of  
4 the depositions. There's no problem in that case. But I'm going to  
5 get a trial date.

6 I could have done all these depositions. I normally  
7 don't have to get involved in these kinds of fights because  
8 this isn't normal.

9 Ask the Kirkland & Ellis lawyers if what they've seen  
10 in this case -- they're on big complex cases -- ask them if  
11 that is what is normal that they've seen since they've been on  
12 the case.

13 I have to wait another how much time for the referee to  
14 look at these documents that you had ordered produced four  
15 months ago?

16 THE COURT: That's my concern. That's my concern.  
17 But if you want that, I will grant it.

18 MR. PANISH: Well, let me consider that.

19 But on the other referee thing, we're going to talk  
20 about it at the appropriate time.

21 THE COURT: We'll talk about it at an appropriate time.

22 MR. PANISH: So I'm not going to bring that up.

23 I want to make sure I'm answering your question about  
24 the punitive damages.

25 But this is not just a punitive damage case. There are  
26 35,000 people, your Honor, 717 that have been affected.

27 This is about people.

28 And they have all the information, the health studies.

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1 There is a three-mile, the eight-mile -- they have the same  
2 issue with the methane release down in Alabama. We're trying  
3 to get that discovery. They're resisting that. We had to go  
4 to Alabama and file a motion. It goes to the health effects.

5 This cuts across the entire case, the  
6 misrepresentation. We have summary judgment motions. We  
7 don't have documents to oppose. They say we're not going to  
8 give you an extension. Just file your opposition and request  
9 more time.

10 I mean, we want dates. We're going to start filing  
11 motions to compel, motions on the conduct.

12 My goal, my duty to all these people is to try to get  
13 the case to trial, a fair trial, and that's what we've been  
14 trying to do.

15 I have been keeping my eye on the ball. They give me  
16 deposition dates every time, except for one. I accept the  
17 date, every date.

18 We haven't had any depositions for two weeks. They put  
19 three on the same day.

20 Then no more for two weeks.

21 You need to make an order right now. We need all the  
22 dates in ten days. If they haven't been deposed, we need to  
23 get them deposed.

24 If they're not a redepo -- we found out we need to have  
25 them, but we're going to have to litigate all of that. So  
26 let's get the motions. It's never going to get worked out.

27 Can we get dates to set all those motions?

28 This Court needs to get more involved because they're

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1 not respecting your orders.

2 Have you ever had a case where the lawyers disrespect  
3 your orders this many times? I think you've told us the  
4 answer is no.

5 THE COURT: I agree that I need to get involved. I've  
6 been precluded from doing that in the past three months.

7 The problems with the depositions were certainly  
8 exacerbated by the lack of my ability to --

9 MR. PANISH: Well, you read my deposition that you were  
10 refereeing part of it, Mansdorfer. You overruled 99 percent  
11 of the objections. The questions are appropriate.

12 We have experienced lawyers. There are five lawyers  
13 doing all these depositions. We're not -- we don't want to  
14 just go waste time and keeping our eye on the ball. We want  
15 to get to trial.

16 Why do we want to go track down and spend three days on  
17 one witness we can't even finish? Why do we want to do that,  
18 Judge? That's what they're accusing us of.

19 I'm lead counsel in other case, Woolsey. That's going  
20 to be going to trial right across the hall. I'm trying to be  
21 efficient and get the work done. That's what I do, and that's  
22 what I've been doing for 36 years practicing. I'm not wasting  
23 time in depositions.

24 But what do I tell the 35,717 clients why they can't  
25 have a fair trial, a level playing field? When are they going  
26 to get the discovery that they're entitled? What do I tell  
27 them? Because when I read the order, you find everything we  
28 said, factor of five, which usually can be found, but

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1 everything we allege you found is true.

2 You found you don't believe their logs.

3 Because I write a letter to Mr. Schrader. Your logs  
4 are deficient. Oh, tell us how.

5 We have to point it out to them when we're preparing  
6 for depositions. Is that what an officer of the court does?  
7 Is that what we're going to allow to happen in the complex  
8 court here in Los Angeles County?

9 It has been and it hasn't stopped, and it's only  
10 getting worse. And we're not getting any relief and it's  
11 frustrating. It's turned to lawlessness.

12 I don't want to have to respond. And it's very hard  
13 for me, but I've kept my cool except for once when I cussed.

14 But I know how to deal with lawyers like this, Judge.  
15 And we don't want to go there, but I know how to do it.

16 This lawlessness has to stop, and this prejudice that  
17 you found has to stop.

18 I'm here to answer any questions. You haven't asked me  
19 any questions other than how does getting these issue  
20 sanctions prevent punitive damages. Well, you have to try  
21 punitive damages. You can't assess it against somebody  
22 without evidence. That would be improper.

23 THE COURT: You have to try punitive damages, and you  
24 need all these documents and the depositions in order to do  
25 that.

26 MR. PANISH: But I'm not getting them.

27 THE COURT: And you haven't asked for terminating  
28 sanctions, which would turn over the damage determinations to

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1 the Court. And I don't think you probably want that either.

2 MR. PANISH: Well, you haven't given us any relief.

3 Why would I move for terminating sanctions?

4 My read of you, with all due respect, you think 500,000  
5 was a big deal, okay? It wasn't.

6 THE COURT: Excuse me, Mr. Panish. I never said it was  
7 a big deal.

8 MR. PANISH: Well, you said you've already done it and  
9 look at what I've done.

10 That was two, three motions ago. And do you think,  
11 based on what you wrote, that things got better as a result of  
12 that? I don't think anyone could say that, but they will.

13 Then when I get done, they will come up here and say  
14 we've done everything and we're complying. It was human  
15 error.

16 How about that, Judge? Human error. Have you ever  
17 heard that before? Or you're not authorized to answer the  
18 question with in-house counsel sitting right there?

19 These are all new things to me. I've never seen in the  
20 Evidence Code the objection you're not authorized.

21 I know the Court hasn't seen it. And I know the Court  
22 has spent a lot of your life trying to preserve the civil  
23 justice system. And we've lost it here. We've lost it in  
24 this case in this Court.

25 That's all I've got, Judge.

26 I'm happy to answer any questions.

27 THE COURT: I'm going to need an answer about the  
28 discovery referee offer with respect to review of documents.

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1 I need to know.

2 MR. PANISH: Well, let me tell you.

3 I proposed a discovery referee in the depositions, but  
4 they won't pay.

5 THE COURT: Okay. I'm not talking about that. I'm  
6 talking about the privilege issue and the documents, okay?

7 MR. PANISH: Okay.

8 THE COURT: So in their brief they said that they would  
9 pay for a discovery referee to review every document that  
10 remains on the privilege log. They said they would pay for  
11 that.

12 MR. PANISH: Right, right. And how long is that going  
13 to take? Let's see, it took them 6,400 hours to review for  
14 privilege.

15 THE COURT: May I finish, Mr. Panish?

16 MR. PANISH: I'm sorry, your Honor. I'm very upset.  
17 I've never had it happen in 36 years, ever.

18 THE COURT: Are you finished so that I can continue?

19 MR. PANISH: Yes. I'm sorry.

20 THE COURT: In your brief you did not address their  
21 offer.

22 So I said in my tentative I'm not going to impose that  
23 on you because it's going to take time. But if you are truly  
24 at this point -- and, you know, Mr. Creed has done work like  
25 I've never seen in this case in terms of ferreting out the  
26 problems.

27 If you feel that you still have important documents  
28 that are on the privilege log that you don't have, then you

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1 need to tell me that you need that discovery referee. But you  
2 have to decide. Your side has to decide.

3 MR. PANISH: Can you give me a minute on that?

4 THE COURT: Yes. Okay. Let me just finish,  
5 Mr. Panish.

6 MR. PANISH: Sure. I'm sorry. I thought you finished.  
7 I can't tell.

8 THE COURT: I understand.

9 Your side has to decide if it's worth the delay. I'm  
10 very concerned about the delay.

11 You don't have to tell me even right now, okay? But I  
12 need to know that, because their offer puts them in a place  
13 where they can say to an appellate court some day, you know,  
14 we shouldn't have to write a check on this case because the  
15 Court entered issue sanctions when we offered to have every  
16 document reviewed by a discovery referee, because we aren't  
17 hiding anything.

18 That's where we are, you see.

19 MR. PANISH: Well, I harken back to their statement,  
20 6,400 hours. I don't even know. There are 24 hours in a day.  
21 Let's see, how long is that for one referee?

22 I think we need like three referees. If we get four or  
23 five referees, maybe we can get it done faster. I would agree  
24 to that, multiple referees properly instructed by the Court  
25 splitting up the documents and starting with certain ones that  
26 we identify that they're paying for.

27 Because just like the depositions and all this, they  
28 created the whole problem. They don't ever admit that.

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1           The only reason we're taking these depositions is  
2 because they withheld all these documents.

3           THE COURT: I completely agree that they created the  
4 whole problem.

5           MR. PANISH: Then they want us to pay for the referee.

6           Then they file a motion on the clawback, Judge. Can we  
7 just get that resolved?

8           We can't use the documents. So now we have to go back  
9 and depose other people because they're claiming clawback on  
10 documents that have been two courts -- I have to consult with  
11 ethics counsel and find out what I should do.

12          THE COURT: So that motion or OSC, whatever it is, is  
13 set for July 8. If you want to hear it more quickly --

14          MR. PANISH: Let's hear it right now.

15          THE COURT: -- I'll hear it on at briefing schedule.

16          MR. PANISH: It's all been briefed.

17          THE COURT: It must be briefed.

18          Have all sides have filed their briefs?

19          MR. DRAGNA: We have not filed our reply, your Honor.

20          THE COURT: I will hear it as soon as you want.

21          MR. PANISH: They're just going to keep filing  
22 frivolous motions.

23          Then they're going out and doing all their discovery,  
24 Judge.

25          You make that look at me. I don't know if it's your  
26 mask or what, but it is frivolous. You know.

27          The Court of Appeal and Supreme Court already affirmed  
28 the order and now they say they inadvertently turned over

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1 documents. Come on.

2 I mean, there is so much, Judge. It's a nonstop, every  
3 day, real time event. It's never going to stop. I'll be back  
4 again, like I've told you before four other times. They  
5 misrepresent, half-truths. They're going to come up and say  
6 how compliant they are.

7 So let's hear it and then I would like to respond.

8 Thank you.

9 THE COURT: Thank you.

10 Okay. I'll hear from defense, please.

11 MS. ELIZABETH: Your Honor, if I may, just briefly, on  
12 behalf of the developer plaintiffs?

13 THE COURT: Yes. This would be an appropriate time.  
14 Okay.

15 Spray the microphone.

16 MS. ELIZABETH: It will be very brief, your Honor. We  
17 respect the Court's tentative regarding --

18 THE COURT: By the way, welcome. Sorry I can't see  
19 your faces.

20 MS. ELIZABETH: Thank you very much, your Honor.

21 THE COURT: Kirkland & Ellis here. You're welcome.

22 MS. ELIZABETH: We're excited to be a part of the  
23 party.

24 We do respect the Court's tentative regarding Toll's  
25 joinder. We would just reserve the right to file an amended  
26 joinder at a later time that details the relevant legal  
27 authority as well as the specific prejudice to Toll  
28 specifically.

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1 So we would reserve that right, your Honor.

2 I just also would note that we have received permission  
3 from the other developer plaintiffs, Kirkland has, to become  
4 liaison counsel for developer plaintiffs.

5 So if there is a procedure in which we need to comply  
6 in order to make that happen, we would love to do that.

7 Thank you, your Honor.

8 THE COURT: I think it's enough for you to be stating  
9 on the record that you're taking over the liaison counsel  
10 role. We'll put that in the minute order today.

11 Thank you for that.

12 What you all need to focus on is getting up to speed.

13 As you acknowledge in the joint statement, there was  
14 discovery on your side that needed to be done, as well.

15 MS. ELIZABETH: Absolutely. I'm prepared to speak  
16 about that later, your Honor.

17 THE COURT: All right. We will talk about it later,  
18 but yes.

19 MS. ELIZABETH: Thank you.

20 THE COURT: Okay. Thank you.

21 All right. I'll hear from defense.

22 MR. SCHRADER: Thank you, your Honor. David Schrader.

23 Your Honor, Mr. Panish has stood up and made a number  
24 of allegations and personal attacks against counsel in this  
25 case, including me, which are not only not unsupported by the  
26 record here, they're false.

27 The idea that Mr. Panish has to contact me 12 times to  
28 get a deposition date in this case is false. It's a false

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1 attack on a member of the bar.

2 I would be pleased to present to this Court every  
3 communication between myself and Mr. Panish. And your Honor  
4 will see I respond promptly and professionally, and the same  
5 is not true on the other side.

6 The types of personal attacks that we are subject to  
7 for simple communication is inappropriate and unlike anything  
8 that I have seen in 30 years practicing here.

9 The idea that I would risk 30 years of my career at the  
10 direction of a client to do something in violation of this  
11 Court's order is false and it's offensive.

12 My clients have never directed me to violate a court  
13 order, nor would I follow such a direction.

14 To give you an example, Mr. Panish stood up here and  
15 said four times that the clawback motion is based on a claim  
16 of inadvertent produced documents. It absolutely is not.  
17 That's not what the motion is about.

18 The motion acknowledges that it was a compulsory  
19 production of documents. It was a misstatement to say that  
20 that is our argument. It is not.

21 THE COURT: Well, we'll hear that in due course.

22 MR. SCHRADER: I know, your Honor, but it was claimed  
23 multiple times that that was what that motion was about. It  
24 is not.

25 THE COURT: That's what clawback usually is about.

26 MR. SCHRADER: Usually is about.

27 THE COURT: Well, we are not going to argue that motion  
28 right now.

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1 MR. SCHRADER: Your Honor, I've read the Court's  
2 tentative several times, the Court's tentative for today. It  
3 stings each time I read it, but I have taken it very  
4 seriously. I'm not going to try to convince the Court to  
5 change its tentative in any way, but there are a couple things  
6 that I would like to address to clear up any misconception.

7 The first, I want the Court to know that myself, my  
8 team, my client are committed to complying with this Court's  
9 order. There is no higher priority.

10 This is not business as usual. We understand the  
11 Court's dissatisfaction with our discovery responses and  
12 privilege logs, in particular, to date.

13 And in particular, between -- I have to take a moment,  
14 your Honor. It's hard to breathe through this thing.

15 In particular, your Honor, with respect to the period  
16 between March and April 20th, there was no higher priority  
17 that I or a member of my team had in complying with this  
18 Court's order.

19 I spent every single day during that 30-day period  
20 working on complying with and meeting this Court's order.

21 I went back and looked. One of those days was Easter  
22 Sunday. I spent multiple hours that day reviewing documents  
23 to get it done.

24 I'm not asking sympathy from the Court. I just want  
25 the Court to know that I and everyone on my team and my client  
26 have taken that obligation seriously.

27 THE COURT: Mr. Schrader, it's still not a pretty  
28 picture. Because at the same time that you and your team were

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1 supposed to be devoting your efforts to making sure that your  
2 representations with respect to whether claimed privileged  
3 documents were properly claimed in protection of the  
4 plaintiffs' interest, in protection of the interests of  
5 justice, you were also reviewing documents to protect -- to  
6 try to protect your client where your team determined that  
7 things were supposed to be produced.

8 So you're reviewing -- you're taking your time to  
9 review those as well to protect your client.

10 So it was not the effort I would have expected.

11 MR. SCHRADER: Your Honor, let me address that.

12 The purpose of addressing those small percentage of  
13 documents coming off the log was to get an overall picture of  
14 how the team was performing its work.

15 As I said in my declaration, I almost never overruled  
16 the team with respect to those calls and said you have to  
17 bring those documents back. That was not the purpose.

18 The purpose was to ensure that the team was following  
19 the guidelines and the protocol appropriately, and seeing what  
20 they were removing, at least a small sample of those seemed  
21 like an appropriate thing to do to confirm the validity of the  
22 team's work.

23 There was also in the Court's tentative a concern that  
24 we were spending time with respect to the clawback motion. I  
25 did not spend a single hour reviewing documents with respect  
26 to that motion. I don't believe a member of the trial team  
27 did either. That was done by an entirely different team.

28 This trial team's work was not distracted or diverted

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1 for purposes of that motion.

2 THE COURT: I believe the motion was signed by  
3 Mr. Dragna.

4 MR. SCHRADER: I'm talking about reviewing the  
5 documents, your Honor. I said I did not spend a single hour  
6 and I don't believe a member of the trial team reviewed those  
7 documents.

8 And I didn't spend time actually working on the motion.  
9 I know Mr. Dragna spent some time discussing the motion and  
10 whether we were ethically obligated to file it. So my  
11 personal time was zero with respect to that issue.

12 THE COURT: Counsel on the phone, please mute your  
13 phones.

14 MR. SCHRADER: We have been providing deposition dates.  
15 We have not taken the position that we are barring all  
16 depositions, that we're stopping the deposition process.

17 There are some depositions, new depositions, where we  
18 have received notice of recently that we don't believe are  
19 appropriate under the Court's order, and we are going to  
20 identify those for the plaintiffs. And we would like to come  
21 up with a process for the Court to decide if those depositions  
22 are appropriate or not.

23 With respect to the others, we are producing the  
24 witnesses on dates as they become available.

25 Let me give you an example.

26 Mr. Arriola. Mr. Arriola's job responsibilities were  
27 increased as a result of COVID-19-related activities.

28 We found out he was going to be leaving the company. I

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1 offered June 30th as a deposition date for Mr. Arriola.

2 Mr. Panish told me that he was unavailable on that  
3 date. He said any date in mid July.

4 I went back. I got July 15th. I haven't heard back  
5 whether that's an acceptable date yet or not.

6 So the idea that I am stonewalling or not responding  
7 and interfering with the scheduling of these depositions, or  
8 that anybody on my team is, is not accurate.

9 With respect to resolving these deposition issues going  
10 forward, there are two things that I would request.

11 One is a process to address the number of depositions  
12 that we think are not within the scope of the Court's order.  
13 And we can either do that either by motion or by a conference  
14 with the Court after we identify them and talk to the  
15 plaintiffs about them.

16 The second -- and I understand this is a subject for  
17 later discussion -- is the discovery referee. We absolutely  
18 need that to keep these depositions on track with respect to  
19 scope and conduct at the depositions.

20 Let me respond to a few of the comments that Mr. Panish  
21 made.

22 He said that we're winning. It does not feel like  
23 winning on our side, at all.

24 We are devoting substantial efforts to get things  
25 right, to comply with this Court's order.

26 The Court has imposed monetary sanctions which are  
27 significant.

28 I think I mentioned to the Court before I've been

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1 practicing for 30 years. One time in the 1990s I was  
2 sanctioned for \$250 and that was reversed. Never before.

3 THE COURT: Well, in terms of winning or losing, it  
4 does appear that these late-produced documents are of some  
5 considerable importance to the plaintiffs' case -- some of  
6 them.

7 MR. SCHRADER: Well, so the ones that have been  
8 identified, your Honor, that we've talked about them, the fact  
9 that somebody sent something to the in-house lawyer and said  
10 I'm sending it to the in-house lawyer for his review --

11 THE COURT: Counsel on the phone -- do we have counsel  
12 that are appearing for the 10:30 motion for preliminary  
13 approval?

14 Okay. Everybody, please mute your phones.

15 Go ahead.

16 MR. SCHRADER: This Court has imposed a remedy to level  
17 the playing field with respect to these depositions. It's  
18 being done at considerable expense to our client and to the  
19 people who are being redeposed.

20 I'm not complaining. I'm just noting that that is a  
21 remedy this Court has proposed. And we want to get those on  
22 track.

23 As I said, we'll talk about this later, but we think a  
24 discovery referee is the best way to do it.

25 I think I'll just end there, your Honor, unless your  
26 Honor has any questions of me at this time.

27 THE COURT: All right. Thank you.

28 MR. DRAGNA: Your Honor, can I just make a couple

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1 comments before he starts, please?

2 THE COURT: Is there any objection hearing from  
3 Mr. Dragna as well?

4 Go ahead, Mr. Dragna.

5 MR. DRAGNA: Just very quickly, your Honor, and I won't  
6 repeat what Mr. Schrader said.

7 There are a couple things that Mr. Panish said that I  
8 would like to clarify for the record.

9 There was some talk -- I'm not sure if it was sarcasm  
10 or if it was real, but the talk about and the ridicule of  
11 essential employees at Southern California Gas Company.

12 We are in an unprecedented pandemic. There are tens of  
13 thousands of SoCalGas employees that are locked out the office  
14 that are working from home. They have to provide gas for  
15 hundreds of thousands of customers. They have to make sure  
16 that people have uninterrupted service that can't pay for  
17 their service.

18 And there are dozens of senior executives who the  
19 company has decided and who the State has decided need to be  
20 at their posts, need to be working, and are honestly not  
21 available on an immediate schedule on an immediate notice for  
22 deposition.

23 We are trying to work with the plaintiffs, but we need  
24 to have some understanding that this is a serious lifetime  
25 event, that SoCalGas needs to have these essential people  
26 focusing, working on what they're supposed to do.

27 THE COURT: Then the depositions, some of them, will  
28 have to be on the weekends. I'm sure that all the lawyers

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1 here work on weekends anyway.

2 MR. DRAGNA: Your Honor, we are working with the  
3 plaintiffs to make these people available. My only point is  
4 it's not fair to say that for some reason essentialness is an  
5 excuse here.

6 Second, with respect to Ms. Reed, there was some  
7 suggestion about Ms. Reed --

8 THE COURT: I've read as much as I want to read about  
9 Ms. Reed.

10 Thank you very much.

11 MR. DRAGNA: That's fine, your Honor.

12 Finally, with respect to the clawback, I did sign the  
13 motion, but I, like Mr. Schrader, did not dedicate any time  
14 reviewing the clawback documents.

15 In fact, one doesn't need to review the clawback  
16 documents in any detail. There was a team who did that in  
17 large part because these are legal briefs, draft briefs, these  
18 are legal memoranda from clients -- for clients from law  
19 firms. These are not documents that require intensive review  
20 to determine their privileged status.

21 Thank you, your Honor.

22 MR. SCHRADER: Sorry, Mr. Panish, one last comment.

23 MR. PANISH: How many lawyers do they have now? At  
24 least a hundred we know of.

25 MR. DRAGNA: 89 law firms. And this kind of attack --

26 MR. PANISH: Mr. Dragna --

27 THE COURT: Mr. Dragna, sit down, please.

28 MR. PANISH: Mr. Dragna --

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1 THE COURT: Mr. Panish.

2 MR. PANISH: This is where we've gotten, Judge.

3 THE COURT: Mr. Panish, trust me, I have read the  
4 transcripts of the depositions. It's not a pretty picture.  
5 And there is fault on both sides. I'm sorry, Mr. Panish. In  
6 the Mansdorfer deposition you said you were bigger than  
7 Mr. Lotterman and he was older.

8 MR. PANISH: Right. So because of that you're going to  
9 let them off all the penalties? You're going to criticize me.

10 I had to come to the jury room. I couldn't get answers  
11 to the questions because there was obstruction. I said that.

12 So sanction me. I'm happy to be sanctioned if that's  
13 what you think.

14 THE COURT: Mr. Panish, we'll go in the order that I  
15 choose, all right?

16 Mr. Schrader. Anything else?

17 MR. SCHRADER: I'm sorry. I got a note, as your Honor  
18 had suggested, if I may just add something with respect to the  
19 documents.

20 Your Honor made a comment about the documents being of  
21 some importance.

22 As we laid out in our opposition brief with respect to  
23 the documents that the plaintiffs identified, there was one  
24 that was suggesting that I'm sending this to the lawyer. He's  
25 going to review it for us. There was a redaction of that.

26 We determined -- we agreed that was not an appropriate  
27 redaction. There is a communication about a lawyer. That's  
28 of no significance, at all.

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1           The issue that the plaintiffs have talked about that  
2 has some significance, the risk registries, as we've shown in  
3 our papers, the exact same text has been produced dating back  
4 to 2017.

5           So I did want to just make that point, your Honor.  
6 Thank you.

7           MR. PANISH: That is absolutely false.

8           THE COURT: We're going to take a break.

9           MR. PANISH: Can I respond after the break?

10          THE COURT: Of course you may.

11          MR. PANISH: Okay.

12          THE COURT: We have a 10:30 matter that I may take  
13 during the break. We will see if they're ready.

14          And we'll see you all back here at, let's say ten  
15 minutes to 11:00.

16          MR. PANISH: Can we leave our stuff here?

17          THE COURT: Yes, you may.

18          Be sure to be careful if you're going to into the  
19 hallways and to the restrooms to socially distance. This is  
20 probably the biggest group we had on this floor this week and  
21 we're feeling our way.

22          Thank you very much. We are in recess.

23          (Recess.)

24          THE COURT: All right. Counsel are present as before.  
25 We're still hearing argument on the motion for  
26 sanctions.

27          Mr. Panish.

28          MR. PANISH: Yes, thank you, your Honor.

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1 Do you know what day today is, your Honor? It's the  
2 day the trial was supposed to begin.

3 I went back and I talked to Mr. Creed and I looked at  
4 the depositions, because I have a list so far but I continue  
5 to find more names.

6 If the Court were to grant the issue sanctions on the  
7 evidence relating to negligence and relating to Semptra, I  
8 believe 15 or 20 depositions, max, we'll be able to complete  
9 for the case to do the punitive damage trial. That's all.

10 Now there's probably 70 or more.

11 Every day -- and your order, Mr. Schrader has objected  
12 to anyone that wasn't deposed before. But documents, as I  
13 read them for the depositions and I ask about them, there are all  
14 these other people of the 20,000 employees that we don't even  
15 know who they -- we never heard of them ever.

16 So now we have to go through that whole process.

17 So 15 to 20 targeted depositions if you were to give us  
18 those sanctions.

19 But if you're not, you need to impose some kind of  
20 monetary sanction.

21 You found they violated the order. We showed it to  
22 them. They kind of admitted, but nothing has been done,  
23 nothing.

24 Mr. Schrader, the first thing he gets up here and he  
25 tells you that 100 percent of his trial team, these five  
26 lawyers who put in declarations, did nothing but work on these  
27 documents. He even worked on Easter. Well, I was working on  
28 Easter too preparing for depositions. But we know that's not

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1 true.

2 Mr. Dragna wrote letters to us about the clawback. He  
3 signed them.

4 Mr. Dragna put in a motion during the same period of  
5 time. So did he sign a motion he didn't read?

6 We know that Mr. Schrader is working 24 hours a day, he  
7 says, reviewed 43 documents a day. That's what he did.

8 Now, I made a mistake. That June 22nd letter that I  
9 just put up to the Court, there are 3,700 other documents that  
10 weren't produced that they just sent us two days ago.

11 In those documents many of them have speaker comments  
12 and changes that are critical for impeachment.

13 For them to say this argument, oh, you already had the  
14 information, that's ridiculous and that's false and that's not  
15 true.

16 So you said if they didn't comply, it's \$50,000 a day.  
17 And they didn't comply. But you said you were going to  
18 incentivize them to comply.

19 On the referee we have proposed in our motions four  
20 separate times to have the Court appoint a referee on the  
21 review of the privilege matters. The defendants objected to  
22 it every single time. Too little. Too late.

23 Now what are we going to do, wait six months for the  
24 referee to review the documents and then learn there is  
25 another thousand documents and we have to go back and re-take  
26 these depositions? That's not an adequate remedy.

27 They fought it since last September. They could have  
28 agreed and it all would have been over, but no, they fought

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1 it, fought it, fought it.

2 Now when it's convenient they make that suggestion and  
3 the Court throws it back at us.

4 That doesn't solve anything. It just delays it more.

5 THE COURT: I'm sorry, Mr. Panish. I really don't  
6 recall the plaintiffs having earlier proposed a referee.

7 MR. PANISH: Yes.

8 MR. CREED: In camera review.

9 MR. PANISH: In camera review of all the documents. We  
10 proposed that on three occasions and they opposed it.

11 That is when I said referee. I meant in camera review  
12 of these alleged privileged documents. To me that's the same  
13 thing as a referee if you looked at them.

14 I don't know how you would have the time to look at  
15 them. You have a case load here.

16 But how did we get to this point?

17 You know, Judge, you said I said I'm bigger or younger.  
18 That's just some cherry-picked quotes out of tens of thousands  
19 of pages of depositions.

20 Yeah, the only reason we're doing these depositions is  
21 because they withheld all this evidence.

22 THE COURT: That has nothing to do with the ruling on  
23 the motion. It's neither here nor there except that we do  
24 have issues with regard to conduct at depositions, which we're  
25 going to get to.

26 MR. PANISH: Okay. You singled me out, just like in  
27 the deposition when they were obstructing me and you were  
28 upset and you threw your papers down and started yelling at

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1 me.

2 I was asking appropriate questions, and you overruled  
3 the objections that you reviewed.

4 Does the Court not remember that? You're looking at me  
5 like you don't remember that. It was right there in the jury  
6 room when I was deposing Mr. Mansdorfer and your dog was here  
7 in chambers and you were displaced from your home.

8 THE COURT: I'm sorry, Mr. Panish. I'm not going to  
9 take the bait on that, okay?

10 MR. PANISH: I'm just asking you.

11 Sir -- or your Honor, excuse me.

12 On this I don't respond. I responded to Mr. Dragna and  
13 Mr. Schrader about Ms. Reed and the depositions that at the  
14 end of the day today I would tell them.

15 I didn't tell them this, but I have to go to Judge  
16 Buckley at 2:00 o'clock. He's setting up dates for the Thomas  
17 trial and the discovery in key depositions. So when that's  
18 decided, I will respond.

19 But Mr. Schrader writes to me a week ago you need to do  
20 it on the 30th. That's the only day he can do it. He's  
21 leaving the company.

22 I said I can't do it. I already told Mr. Dragna I  
23 couldn't do Ms. Reed.

24 Then he says -- I said that's unfair. Then he comes  
25 back with another date. But he told me the only date at first  
26 was the 30th. They're trying to jam us up. It's  
27 gamesmanship.

28 Now, Mr. Schrader says, well, I understand, your Honor.

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1 But he basically doesn't accept responsibility. They say it  
2 looks bad, but they haven't done anything to correct it.

3 They attacked me. They attacked the plaintiffs. We  
4 want too many depositions. We want too many documents.

5 They created this situation, Judge.

6 Then for Mr. Dragna to get up and blame the pandemic  
7 and that Mr. Arriola is leaving the company and can't give a  
8 deposition -- they don't respond to any request for these  
9 depositions. They say they're essential. He said the State  
10 of California ordered these individuals essential. That's  
11 false. They didn't order them essential.

12 Then we have a summary judgment on Sempra, but we can't  
13 even get the depositions.

14 They read 43 documents a day. We have to read about --  
15 it's going to take us eight months to do it.

16 And you heard Mr. Schrader. They're not really going  
17 to agree on the depositions. Now we have to have a whole protocol.  
18 We have to decide can we take this depo, can we not take that  
19 depo. Now we're back to hand-to-hand combat on every depo.

20 Then it will be every document and it's every objection  
21 at the deposition. That's not leveling the playing field at  
22 all.

23 Now, those documents yesterday, the letters we got two  
24 days ago that I submitted to the Court, they knew that three  
25 months ago, if you look at the letters, but they didn't give  
26 it to us until right before the hearing after the time to file  
27 briefing was done.

28 If you look at the letter, why did they wait till then

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1 to give it to us? It's all gamesmanship.

2 They are winning, because the way they win when you're  
3 liable is your client pays less money. And they are winning,  
4 Judge. They're making more money reviewing the documents, and  
5 they paid a little sanctions.

6 That's all I have, your Honor.

7 I mean, I am losing confidence in the civil justice  
8 system as a result of this case. And there's --

9 THE COURT: Okay.

10 MR. PANISH: All I'm trying to do is represent clients  
11 and do what you told me to do, make sure everyone is prepared  
12 and do this. That is what I've been doing.

13 Yeah, I get upset with the lawyers.

14 THE COURT: With regret, I have to take a break. Judge  
15 Buckley is on the phone, and I need to speak with him about a  
16 court matter.

17 We'll resume. It shouldn't be more than three or four  
18 minutes. So if you will just remain. Thank you.

19 (Recess.)

20 THE COURT: I apologize for the interruption.

21 Mr. Panish, anything else?

22 MR. PANISH: Yes, your Honor, I know you want to get on  
23 to the agenda, so two quick points.

24 The first one is where do we start off with. The  
25 misrepresentations on the documents produced, not 34,000 but  
26 41,000.

27 That continues to happen. And it worked on you. You  
28 were misled. Think how it's going for us every day dealing

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1 with that.

2 Second point, how would discovery look differently if  
3 the Court granted the relief that we're seeking? I think you  
4 kind of keep asking me that indirectly. And here's the  
5 answer.

6 If the Court -- first of all, Sempra, then we wouldn't  
7 have to deal with that motion or any depositions and negligence.  
8 All we would need would be 15, maybe 20 targeted depositions  
9 on punitive damages and we would be to trial.

10 That's my goal, to get a fair trial as fast as  
11 possible, keeping my eye on the ball, doing it once and doing  
12 it right -- that's what we've done, they haven't -- and  
13 preserving our credibility, which we've done.

14 You've commented on their credibility.

15 And for them to say all my team worked on this 24 hours  
16 and they're doing clawbacks? Come on. It doesn't pass the  
17 test.

18 So I know you want to know how it's going to move the  
19 case. I think that's how it's going to move the case.

20 But monetary sanctions, they didn't comply with the  
21 order, and all the warnings haven't done any good.

22 Thank you, your Honor.

23 THE COURT: Thank you, Mr. Panish.

24 I want to see that argument. I'm looking at Mr. Creed  
25 there, because I think it's probably his idea about how to cut  
26 the depositions. Maybe it's yours. I'm sorry.

27 MR. PANISH: No, it's both of us. It's actually both  
28 of us.

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1 I have a list.

2 THE COURT: Please be seated. I want to see that  
3 argument in writing. Just be seated, Mr. Panish. It's not in  
4 the motion, and I can't consider it.

5 MR. PANISH: How would -- sorry, I can't tell --

6 THE COURT: May I finish, please. I'll let you know  
7 when I'm finished.

8 MR. PANISH: Okay.

9 THE COURT: So it also goes to a showing of prejudice.

10 I told you that prejudice really wasn't linked to a  
11 particular proof aspect of the case.

12 But, you know, the goal here is to get this case tried  
13 on the merits. You know, if it takes all these depositions to  
14 do it, we can do that. But if the prejudice goes to a  
15 particular issue -- I mean, I'll take a look at that. I  
16 haven't had a chance to think about that argument because it  
17 hasn't been presented.

18 I will give you ten days to put that argument in  
19 writing.

20 So let's set a date for that, the supplemental brief.

21 Okay. File that on July 6th.

22 MR. PANISH: I'm sorry, that's the day we file?

23 THE COURT: That's the day you file. Is that  
24 acceptable?

25 MR. CREED: Yes.

26 MR. PANISH: Sure.

27 THE COURT: Okay.

28 And then defendants can respond on the 13th, okay?

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1           And I'll re-hear the motion. We'll set a date for  
2 that.

3           MR. PANISH: Just to respond to your comment, we didn't  
4 raise it in the motion because we didn't know that was the  
5 issue.

6           And on the tethering or closely tailored, I think the  
7 Siry case handles that issue.

8           So anyway. Thank you.

9           THE COURT: Okay. Supplemental briefing.

10          MR. CREED: Page limit, your Honor?

11          THE COURT: And I really don't want to hear anything  
12 about conduct in the depositions in this motion.

13          MR. PANISH: Page limit?

14          THE COURT: Do we need a page limit, counsel?

15          MR. CREED: No, I don't think so.

16          THE COURT: Neither side says we need a page limit.

17          What I need to do, then, we have to figure out when  
18 that will be argued. And the last brief is -- what did I say,  
19 the 13th?

20          MR. PANISH: Yes.

21          THE COURT: And we'll have to set an argument date.

22          Mr. Schrader, did you want to be heard?

23          MR. SCHRADER: Yes, very briefly, your Honor.

24          Counsel mentioned that they had requested some new  
25 depositions of people who have not been deposed.

26          THE COURT: We're not there yet.

27          MR. SCHRADER: I was responding to that.

28          You wanted to focus on the supplemental brief, your

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1 Honor?

2 THE COURT: I do.

3 MR. SCHRADER: I apologize.

4 THE COURT: We'll set a hearing date.

5 MR. PANISH: Is there a reply to that, your Honor?

6 THE COURT: No. This is your supplemental brief.

7 MR. PANISH: Okay.

8 THE COURT: And they get to oppose it.

9 MR. PANISH: Okay. No problem.

10 THE COURT: All right. We are probably going to have  
11 to adjust our future dates because hopefully we'll be using  
12 L.A. Court Connect. You probably heard about that. It's  
13 going to be a video conference, something like Zoom, that will  
14 be available for a very reasonable price. So probably you've  
15 already signed up. If you haven't, please do.

16 I assume you will want video appearances at least for  
17 some of you in the future after July 6th, right?

18 MR. PANISH: Yes, your Honor.

19 THE COURT: So they have asked us to have the hearings  
20 in the afternoon because of concern about overtaxing the  
21 system.

22 We have lots of lawyers appearing. And this is being  
23 used in probate and other places when they have their  
24 calendars in the morning, so we're going to need to move our  
25 hearings to the afternoon. I know that's hard with  
26 depositions.

27 Will you be able to do that?

28 MR. PANISH: It just depends on what the date is.

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1           You know, when they're trying to triple set and we have  
2 to work on that, there are probably some that the Court is  
3 going to have to take control of.

4           We're not really able to work much out at this time.

5           THE COURT: Okay. Well, the clerk will send out --  
6 we'll look at the future hearing dates, and the clerk will  
7 send out revised notices to when -- we'll try to keep it on  
8 the same day but move it to the afternoon, all right?

9           I realize that's inconvenient. It's inconvenient for  
10 me as well, but we just have to see how things go.

11           Okay. Point six, I had several dates of hearings that  
12 are there.

13           Are all of those correct?

14           MR. CREED: Yes.

15           THE COURT: Okay. Thank you.

16           MR. SCHRADER: They are, your Honor.

17           MR. CREED: They are, your Honor.

18           THE COURT: So we will work with those and try to keep  
19 the same day and move them to the afternoon.

20           Maybe you can start your depositions earlier or  
21 something. We just have to move the time around within the  
22 day.

23           Defendants have a discovery motion that they say they  
24 want to bring at the bottom of page 2.

25           If I haven't been clear about the essential nature of  
26 conducting the reopened depositions and the broad leeway that  
27 I'm giving the plaintiffs on that, let me say it now, okay?  
28 If you still want to bring a motion, file the motion and --

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1 you know, I can't stop you from filing a motion. If I were  
2 you, I'd re-think that one.

3 The one to compel sampling and testing data, have you  
4 all finished whatever discussion you can have about that? I  
5 assume that this is testing that was done for plaintiffs who  
6 were not in phase one; is that correct?

7 MR. SCHRADER: It could be phase one and outside and in  
8 addition to phase one plaintiffs.

9 So it's broader than the phase one plaintiffs. We're  
10 looking for the data so that's the issue.

11 THE COURT: Okay. Plaintiffs are aware of this issue  
12 and you're going to oppose the motion?

13 MR. PANISH: Yeah.

14 THE COURT: This is an issue where you're at  
15 loggerheads; is that correct?

16 MR. PANISH: Yes, your Honor. Can I go back to a prior  
17 agenda item?

18 THE COURT: Yes.

19 MR. PANISH: Number 6.

20 First, Mr. Creed had something to say on this and then  
21 I had something.

22 MR. CREED: Number 6, your Honor.

23 MR. PANISH: Speak up. I can't hear you.

24 MR. CREED: As Mr. Panish mentioned in the argument,  
25 your Honor, for number 8 we would like to get that set as  
26 quickly as possible.

27 THE COURT: Okay. When is the reply currently due?

28 MR. DRAGNA: June 30th, your Honor, next week.

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1 THE COURT: Next week, the 30th.

2 I'll tell you what. I had another issue on here about  
3 a pretrial conference -- a trial setting conference. I had  
4 mentioned it in the April order about COVID, but there was a  
5 reference to it and it wasn't really set.

6 So we have to figure out when it is we're going to  
7 discuss trial setting, quite honestly, and whatever ideas the  
8 plaintiffs have about this.

9 MR. PANISH: Yeah, we have a lot of ideas about it.  
10 But we can talk about it later in the agenda.

11 THE COURT: That's fine. Do you want to talk about  
12 it -- you all have appearances this afternoon, and I have a  
13 meeting at noon. So we're going to have to move this along  
14 here.

15 MR. PANISH: I think I'm the only one that has the  
16 appearance.

17 THE COURT: Okay.

18 MR. PANISH: With Judge Buckley.

19 MR. CREED: How does this relate to the scheduling of  
20 that motion?

21 THE COURT: The question is when are we going to  
22 discuss trial setting? Are we going to have an informal  
23 discussion of that or are we going to have a discussion on the  
24 record, informal first and then a record discussion?

25 And the timing of that means that maybe I can hear the  
26 OSC motion on that date.

27 MR. PANISH: I would weigh in on that.

28 Number 1, you could hear the OSC on July 1st. We are

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1 not ready to do that at this time -- the trial setting, I'm  
2 sorry. We can do the motion on July 1.

3 I believe July 1 would be premature for the trial  
4 setting.

5 First of all, we have no idea. But we want to visit  
6 the parameters of the trial in light of the pandemic and  
7 everything else.

8 What I will propose is that we'll prepare a written  
9 proposal on how we think the trial should look, and we'll give  
10 it to the defendants. And I'm sure it won't be worked out,  
11 but at least they'll know.

12 Each side can make their positions and brief it for the  
13 Court, and then we'll have to get a ruling from the Court. So  
14 I think that is the way we should proceed.

15 We want to obviously -- is it okay to talk about this  
16 whole subject now?

17 THE COURT: Sure.

18 MR. PANISH: I know we have a time limit.

19 THE COURT: It's the most important one.

20 MR. PANISH: Okay. Well, we're looking at, what are we  
21 going to have 500 trials, a thousand? We're looking at how to  
22 consolidate, how to get this moving faster. There are a lot  
23 of adjustments we can maybe make. If we get this trial done,  
24 maybe we have to put more people in.

25 Then we have to go to other trials. Are we going to  
26 have to re-video people's testimony to give out to different  
27 courts? You've talked about this before.

28 The case is going to trial. I've been in litigation

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1 with this company on many occasions. I know their strategies.  
2 So we need to figure out how we're going to try as many of  
3 these cases as efficiently as we can. So that's what we'll  
4 give them, a written proposal.

5 They'll respond, and then you'll have to make  
6 decisions.

7 MR. SCHRADER: That sounds fine. I don't know what the  
8 proposal is. I have some thoughts myself. We'll exchange  
9 those.

10 MR. PANISH: Fair enough.

11 THE COURT: All right. That's fine. You're going to  
12 do what you're going to do.

13 MR. PANISH: What number are we on, your Honor?

14 THE COURT: Well, I think you jumped ahead.

15 So you're not going to be prepared by, let's say,  
16 July 1 to talk about trial, right?

17 Quite honestly, if the reply brief is filed on June 30,  
18 I'm not going to be prepared on July 1 to hear the matter.

19 And the 3rd is a holiday. So quite honestly, I'm just  
20 going to have to leave that motion on for July 8, I'm afraid.

21 MR. PANISH: Okay.

22 THE COURT: Will you be ready by July 8 to talk about  
23 trial, do you think?

24 MR. PANISH: Mr. Boucher says yes, so we'll be ready.

25 THE COURT: Okay. Very good.

26 MR. PANISH: Well, wait a minute. I might have a  
27 deposition on -- no. There is no depo set.

28 I have to find out what happens today at 2:00 o'clock,

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1 your Honor. It's a very important hearing on the trial in  
2 Thomas.

3 As you know, that's a large, multi-plaintiff  
4 proceeding. I just have to juggle that and the Woolsey case.

5 THE COURT: Okay. So we'll plan on July 8 for  
6 discussion about trial.

7 You give me whatever you can about that subject sooner  
8 than the day before. Let's put it that way, okay?

9 MR. PANISH: Okay. Fair enough.

10 THE COURT: So I have time to think about it. All  
11 right?

12 So for my staff, July 8 is already the hearing on the  
13 OSC. It also becomes -- I'm going to call it a trial setting  
14 conference. Counsel to file their views informally at this  
15 point by close of business on July 6th, okay?

16 MR. PANISH: Okay.

17 THE COURT: So that's very important.

18 MR. DRAGNA: Your Honor, is there a sense of backup in  
19 terms of timing, jury selection? That will help.

20 THE COURT: Judge Brazile has expressed his best  
21 understanding of what's going to happen, which as he's talked  
22 to the bar about is that preference cases might be able to  
23 begin the end of April -- excuse me, the end of August. No  
24 jury trial before August 22 is still the date.

25 We might be able to begin before the end of August.

26 August 22, if we can keep that date, we'll start with a  
27 preference trial.

28 Judge Brazile has said informally to the bar that we

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1 might be able to start jury trials in other cases end of  
2 September, early October. I frankly doubt that because it's  
3 just a big logistical problem.

4 What we do not know now is what kind of a response rate  
5 we're going to get with respect to jurors.

6 They have summoned for criminal trials in July. That's  
7 going to tell us a lot.

8 We ordinarily, if you want to know, get a little bit  
9 north of a 20 percent response rate to jury subpoenas, so that  
10 can tell you it's going to be tough to get people in.

11 MR. PANISH: So I was on the committee with Judge  
12 Brazile and Taylor and Judge Jessner ran it. We had discussed  
13 all of these issues. There are so many myriad of issues to be  
14 dealt with.

15 I kind of agree with the Court. August is very, very  
16 optimistic in light of everything, in light of the criminal  
17 background and then the UD backlog. And then the last day  
18 cases I heard it was over a thousand for the criminal.

19 But we're not going to be ready. I mean, we haven't  
20 even completed discovery of getting documents in depositions.

21 THE COURT: Well, that's important. Okay?

22 MR. PANISH: How many times are we going to be able to  
23 do this trial. We have to talk about that.

24 THE COURT: Right. So let's talk about getting ready  
25 for trial.

26 Protocol for remote video depositions. Do you have  
27 something in writing?

28 MR. PANISH: No. But we have no problem.

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1           The only problem, a couple times the Morgan Lewis  
2 lawyers because of security apparently --

3           THE COURT: You have nothing in writing?

4           MR. PANISH: No.

5           THE COURT: I would like you to have something in  
6 writing. The reason is because you can't just assume that  
7 it's all going to be fine.

8           The witness might have somebody in the room with them  
9 prompting them. Okay. We have to have a rule against that.

10          MR. PANISH: We covered that with questions.

11          We have covered all of that. There hasn't been an  
12 issue.

13          MR. SCHRADER: Your Honor, we exchanged versions of a  
14 protocol. I thought it was agreed on. It had exactly the  
15 issue you identified in it, among other things.

16          THE COURT: I want it because I'm going to have to  
17 enforce it, okay?

18          MR. SCHRADER: Understood.

19          THE COURT: I want your agreements as to how you're  
20 going to handle it, because I'm going to have to enforce it,  
21 okay?

22          So I want that by the next time we get together, which  
23 it sounds like it's going to be July 8. I want an agreement  
24 on what the parameters are.

25          MR. PANISH: First of all, neither of them have been at  
26 any of the depositions, but how they've proceeded has not been  
27 an issue of somebody being in the room or documents.

28          There have been other issues, but those haven't been

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1 the issues.

2 MR. SCHRADER: Your Honor, if you want a protocol, we  
3 will get you a protocol. We had one I thought that we had  
4 exchanged and all the terms have been agreed upon, but we'll  
5 get it to you by next time.

6 THE COURT: Whatever it is, I want a protocol because  
7 it has to be enforced.

8 If something goes wrong, I want to know what you  
9 believe are the appropriate parameters for a video.

10 Have you been using Zoom? Is that what you've been  
11 using?

12 MR. PANISH: Yes, your Honor. We have a special -- I  
13 don't want to get into all of that.

14 THE COURT: I did view a deposition on Steno which was  
15 one being handled in Judge Buckley's case because he and I  
16 wanted to know what it looked like because we're going to be  
17 regulating it. It was on Steno.

18 MR. PANISH: I was involved in that. The protocol  
19 there was drafted with Judge Buckley. We were able to access  
20 Judge Buckley, and we were able to have a separate platform on  
21 that one.

22 But this one is the same. And it's a different  
23 provider, but that's been no problem on that either.

24 THE COURT: Okay. So let's jump ahead to number 10,  
25 potential referee for deposition supervision.

26 At this point I'm supervising the depositions. I will  
27 Zoom in when you need me. If I have to be -- so you let me  
28 know and I'll Zoom in.

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1           Just so you know, my first statement will be ask your  
2 next question, okay?

3           I don't want to hear about what's gone on before. I  
4 don't want to hear the argument. When I come into the  
5 deposition -- when I come into the deposition, I want to see a  
6 deposition conducted, okay?

7           So it will be ask your next question. Make sure you  
8 get an answer. Objection to the form only, not coaching.  
9 We're going to go from there.

10          That's the way it's going to be, all right?

11          MR. PANISH: On that issue.

12          THE COURT: Yes, sir.

13          MR. PANISH: One of the biggest problems, and there are  
14 many, is the witnesses refusing to answer the questions, the  
15 evasiveness and the non-responsiveness and the volunteering.

16          So what we're going to need from you, I guess, is  
17 rulings right then to get the witnesses to answer the  
18 questions.

19          THE COURT: We were able to do that with  
20 Mr. Mansdorfer, for example, when there was the issue of his  
21 retirement, okay?

22          MR. PANISH: Well, there were many, yes. But that's  
23 what it's going to be.

24          We'll give you a list we'll send to the Court of all  
25 the Zooms. We'll be ready to go.

26          THE COURT: I will be there. I'll supervise it.

27          MR. PANISH: But then every time we have to stop --

28          THE COURT: And that's right. That's what you're going

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1 to have to do.

2 Mr. Panish, otherwise what would happen in my judgment  
3 is that you would have to be working with the referee's  
4 schedule, which is going to slow it down, number 1.

5 Number 2, you have an appeal to me, so it's another  
6 lawyer in between.

7 So we'll see how it works, but I want to make sure that  
8 this case is under control and moving forward.

9 With respect to deposition scheduling, by the time you  
10 come back on the 8th, I want all of the depositions scheduled.

11 Let's make sure we start with the ones that plaintiffs'  
12 side says are going to be necessary even if I issue sanctions,  
13 okay? Let's make sure we get those locked down because those,  
14 I gather, are the most important ones.

15 Let's get dates on calendar for everything.

16 What we're going to -- and in terms of time limits,  
17 based on what I saw in a Zoom-type deposition, it does take  
18 longer, no question about it. So I'm not -- we'll just deal  
19 with the time situation.

20 You start the deposition. You'll do the best you can.  
21 You'll invite me to come in if you need me.

22 We'll have each deposition scheduled for one day, but  
23 there's not going to be any ruling by me that it has to be  
24 done in one day. And we're not going to argue over that.

25 Does defense understand that?

26 MR. SCHRADER: Understood, your Honor.

27 THE COURT: You're going schedule the deposition and  
28 you're not going to have a predetermined demand with respect

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1 to whether the deposition is going to be done or not, okay?  
2 I'll take care of that after the fact.

3 MR. PANISH: Your Honor --

4 THE COURT: With regard to Ms. Reed and the seven  
5 hours, schedule Ms. Reed, get going on it. I'll regulate the  
6 timing after the fact.

7 I know I said seven hours. It may take longer on Zoom.  
8 We just have to do the best we can.

9 MR. PANISH: Well, first of all -- can I speak now?

10 THE COURT: Yes, you may.

11 MR. PANISH: First of all, on the time, I put in my  
12 declarations. I went and looked at the depositions I took  
13 before and after, and there is a significant difference,  
14 number 1.

15 THE COURT: I said that, Mr. Panish. Do you have to  
16 argue with me on things that I agree with you on?

17 MR. PANISH: I'm getting to the next point. That was  
18 foundational.

19 The problem also is the witness taking up to 20 minutes  
20 to review the documents. I try to say that shouldn't count.

21 Now, look, the deposition should go from 9:00 to 6:00,  
22 okay? That's fine. If it's at seven hours, it doesn't mean  
23 we're done. We can stop for the day. I'm fine with that.

24 But what has been imposed on us is taking our time away  
25 when there's been 20 minutes or more to review a document.

26 Now, you said in a court proceeding, in the  
27 transcript -- if you want me to pull it out I could -- that  
28 that time should be deducted.

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1 Now, it's not a formal order, and I said it to the  
2 counsel that you said that. They say, no, it's not true. It  
3 doesn't count.

4 So that's one issue.

5 The time that --

6 THE COURT: Mr. Panish, I've already taken care of  
7 that. You're going to get your deposition. You're going to  
8 from 9:00 to 6:00. You're going to do the best you can.

9 Defendants are not going to be able to demand that the  
10 deposition be done in one day. It's in everybody's interest  
11 to get this done as rapidly as possible. If it can't be done,  
12 for whatever reason, then we'll have whatever discussion we  
13 need to about whether there needs to be another day, okay?

14 MR. PANISH: Well, there is about seven right now that  
15 are not complete. Do we get to resume those depositions or  
16 are we going to have to have motion practice on those?

17 THE COURT: I'm not sure, but let's get a schedule for  
18 the remaining depositions. I told you I want one day for each  
19 deposition scheduled.

20 MR. PANISH: Do they have to give us dates for some  
21 that are not completed is my question.

22 THE COURT: Not at this time.

23 MR. PANISH: Well, some of those are the essential  
24 witnesses that go to the issue that we talked about.

25 THE COURT: Well, we're going to have to have some time  
26 to talk about that, and unfortunately I don't have that time  
27 today.

28 MR. PANISH: I understand.

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1           And the next question is with your order, and I was  
2           arguing and I thought you'd give me some clarity.

3           Your order, if we didn't know of a witness, we didn't  
4           have these documents, and now we learned of a witness and they  
5           refuse to produce them, what do we do?

6           THE COURT: So my order did not cover additional  
7           witnesses. I don't think it was a subject of prior  
8           discussion.

9           It would seem to me, as I sit here right now, that it's  
10          well within the scope of my prior order of attempting to  
11          correct the prejudice that plaintiffs have had from late  
12          discovered documents that plaintiffs should be able to have  
13          depositions of new people, okay?

14          MR. PANISH: I understand completely. Thank you.

15          MR. SCHRADER: Your Honor, just for clarification, if  
16          those new people, their depositions are based on newly  
17          produced documents, right? Like the other depositions.

18          THE COURT: It would be like the other depositions.

19          But, first of all, you know, I've seen the argument  
20          that, well, but you had this document in a different form  
21          earlier and/or it wasn't very different earlier. You had it  
22          earlier and you should have used it earlier.

23          Well, defendants haven't been able to control the  
24          production of documents, so why should you expect plaintiffs  
25          to have total control of the production and mastery of the  
26          documents?

27          So if they have a document that was late-produced, even  
28          if there is some version of it later, it's a late-produced

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1 document and they get to go forward on it.

2 They also get to go -- they also get to discuss issues  
3 within the parameter of that document, okay?

4 So it may lead them to go back over something they've  
5 already asked with regard to other documents.

6 I am giving them broad leeway. You need to understand  
7 that. Defendants need to understand that.

8 If you think I won't pull the trigger on issue  
9 sanctions or terminating sanctions, you may just be wrong,  
10 okay?

11 We have to fix the problem. That's my goal. And it's  
12 going to take a lot of deposition time to do that because it's  
13 been a lot of documents. And I can't believe we're still  
14 seeing, oh, there was a technical difficulty and now there's  
15 more.

16 So they get the broadest possible leeway. I don't know  
17 how I can express that to you better. It's not normal time  
18 here. It's not a normal circumstance where, you know, a  
19 plaintiff would say, well, you know, there's another subject  
20 that came up later that we forgot to cover and we need to  
21 re-open the deposition.

22 No. It's defendants' conduct that has caused the  
23 problem. So plaintiffs get more leeway on this. All right?

24 MR. SCHRADER: Understood, your Honor.

25 MR. PANISH: Can I ask that -- because these two  
26 gentlemen, they haven't been at any deposition. Could all the  
27 lawyers that show up be told these things and they don't  
28 object that that's beyond the scope?

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1           That is almost every question an objection, beyond the  
2 scope, or that document was produced on this date. That's  
3 just obstructionism.

4           THE COURT: All right. I think that I have explained  
5 my position, which was not expressed earlier because the issue  
6 hadn't arisen.

7           So, Mr. Schrader, you'll see to it that that's  
8 communicated to the team, yes?

9           MR. SCHRADER: I believe most of them are on the  
10 telephone, but I will make sure --

11           MR. PANISH: Actually Colin West is not on the phone.  
12 He's been one of the worst offenders.

13           MR. SCHRADER: Come on. Your Honor, I just said I  
14 believe most of them are on the telephone.

15           Just the relentlessness personal attacks are hard to  
16 take.

17           I asked the question. I understand the Court's  
18 direction. I get it. I understand, your Honor.

19           THE COURT: Okay. Very good.

20           MR. PANISH: I'm personally attacked in every single  
21 deposition. I've been at every single deposition, your Honor.

22           THE COURT: Mr. Panish, we're trying to move along so  
23 you get the discover you're entitled to.

24           MR. PANISH: Well, it's not really happening.

25           THE COURT: So we've covered deposition scheduling and  
26 what my expectations are with regard to the appropriate  
27 breadth of the depositions.

28           Let me just ask to wrap up the discovery referee thing

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1 and my intervening in the depositions. How are you going to  
2 let me know?

3 MR. PANISH: I'm going to file with the Court a list of  
4 the depositions and when they're set with the Zoom  
5 information. I'll have it provided to the Court for each day.

6 And then we'll have a procedure where we notify. As  
7 you know, when we're here we just came and asked the clerk and  
8 when the Court was free, the Court was able to join.

9 THE COURT: So you'll call court staff.

10 MR. PANISH: Right. And we're going to let them know.  
11 We'll let them know ahead of time. I know which ones are  
12 going to be problems.

13 And I'm going to say, if we have a problem, I'll put  
14 you on notice. Is the judge going to be available today?  
15 What's the best time, when is the judge not available, so I  
16 don't have to keep calling and try to bother you.

17 THE COURT: You're going to set the depositions in  
18 order to get them done.

19 If you have a problem in the course of the deposition,  
20 you will call the clerk and I'll get on if I can.

21 If I can't at that moment, I'll say whether I can get  
22 on a bit later.

23 If I can't get on, maybe we'll terminate the deposition  
24 and start another day. I don't know.

25 Third-party discovery, item 12. There are a lot of  
26 names listed. Are those re-depositions based on late-produced  
27 documents or is that part of the third-party discovery that  
28 didn't get done?

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1 MR. SCHRADER: There is one that is a re-deposition out  
2 of that list. That's Dr. Mc Daniel.

3 The others have been identified for a long time.

4 THE COURT: All right. Plaintiffs' counsel, it's a  
5 long list. I want you to take a look at it and see if you  
6 need all those people.

7 MR. PANISH: We'll do that.

8 THE COURT: Okay. And if you do, then let's schedule  
9 those, okay?

10 I want as comprehensive as possible of a list by  
11 July 8. That's because we're going to try to figure out when  
12 this case can be ready for trial.

13 So the IMEs and the depositions of the first phase  
14 plaintiffs' treating physicians, should we go ahead and  
15 schedule those?

16 I didn't know what plaintiffs' side was saying in terms  
17 of if you wanted a different trial plan.

18 MR. PANISH: Well, we do, but some of them, I guess,  
19 they can take.

20 But then again, we're not getting our discovery and  
21 they've been getting all theirs.

22 So, yes, there are some they can take, but I think we  
23 should wait until we have our meeting on the trial plan.

24 THE COURT: Mr. Schrader.

25 MR. SCHRADER: My understanding is that we have been  
26 working cooperatively on that issue with Ms. Mc Connell  
27 primarily and that there has been progress made with respect  
28 to scheduling those IMEs.

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1           Some of those depositions -- we can start that process  
2 over again, but I --

3           THE COURT: I would encourage you to get on with it,  
4 quite honestly, because I think this is a time when doctors  
5 aren't as busy as they usually are.

6           MR. PANISH: The problem is a lot of people don't want  
7 to go to a doctor's office right now. If they can't do it by  
8 Telehealth, it's kind of a problem.

9           THE COURT: I understand that's true with regard to the  
10 IMEs, but the treating physician depositions ought to be more  
11 available than they otherwise would be.

12          MR. PANISH: That's fine.

13          MR. SCHRADER: I believe we are making accommodations  
14 for the IMEs as well to address that issue.

15          My understanding is there has been discussions about  
16 holding them in some sort of a neutral site, not a doctor's  
17 office, but that issue has been addressed.

18          THE COURT: Okay. So expert designations, I want you  
19 to sit down -- again, there are lots of these experts. You  
20 know, we're not going to have a trial with every single one of  
21 them used at trial. It's just not going to happen that way.

22          Both sides have a lot, so let's sit down, figure out  
23 where there are redundancies and see if we can reduce that  
24 list, and then hopefully we'll be ready to go when we finish.

25          MR. PANISH: Can we set a date for a motion on that,  
26 your Honor?

27          Mr. Boucher and Mr. Schrader have been corresponding,  
28 but just in case we don't resolve it, I would like to -- I

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1 don't really see it being resolved, but I would like to have a  
2 date set. It can be far enough in the future. It doesn't  
3 have to be in a month, but it's a big issue. I'm not sure  
4 it's going to get worked out.

5 THE COURT: I will give you prompt dates for your  
6 motions.

7 The summary judgments, let's take that up on July 8,  
8 but I will tell you my view on that.

9 My view is as follows. Based on what plaintiffs have  
10 said in motions and status reports and everything, it's my  
11 view that the plaintiffs believe they have enough information  
12 currently to oppose those motions.

13 I would like to schedule them at a relatively early  
14 date to see whether they're going to be granted or denied.

15 If the plaintiffs say they need more discovery, which  
16 you may well, but if I'm not in a position to deny the motion,  
17 then we'll let you file supplementation and rehear it.

18 The defendants are not going to be in any position to  
19 discuss settlement until we resolve those motions. That's  
20 just reality.

21 MR. PANISH: But what day are they going to be heard  
22 on? Are we going to have to file an opposition then without  
23 the documents and then say we need more documents?

24 THE COURT: That's correct.

25 MR. PANISH: We can't come in ex parte and get a  
26 continuance of the motion?

27 THE COURT: Correct.

28 MR. PANISH: So what is the date set for the motion

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1 now?

2 THE COURT: You should confer and find something in  
3 September or thereabouts and let me know on July 8.

4 Okay. With regard to the developer plaintiffs, I did  
5 want to put on the record that there is no objection to leave  
6 to file the second-amended complaint. So that may be filed.

7 And I did read the issues you're having with discovery,  
8 but I was glad to see you wanted to work on a joint discovery  
9 plan.

10 Both sides need things here, so I'll wait until next  
11 time on that.

12 MR. SCHRADER: Thank you, your Honor.

13 THE COURT: Unless there's some guidance I can give you  
14 at the moment.

15 MS. ELIZABETH: Can I be heard, your Honor?

16 THE COURT: Yes.

17 MS. ELIZABETH: So just briefly on that, your Honor.

18 The parties have at this time agreed to a mutual fact  
19 discovery cutoff of October 31st, 2020. But the main dispute  
20 is about the scope of that discovery.

21 Toll's position is very simple, your Honor. We want to  
22 be able to serve written discovery and notice depositions just  
23 like defendants have.

24 Defendants have currently noticed 21 Toll-related  
25 witnesses. We have given them multiple dates for those  
26 witnesses. We will continue to give them additional dates and  
27 we will put those witnesses up for deposition.

28 I don't believe we will have as many as 20 depositions

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1 to take, but we do respectfully, your Honor, want to take the  
2 depositions that are important to us and important to Toll's  
3 claims, including the very important special relationship  
4 between Toll and SoCalGas which has frankly existed over the  
5 past three decades with respect to the Porter Ranch  
6 development and specifically involves SoCalGas' daily use of  
7 easements granted by Toll to SoCalGas in order to effectuate  
8 construction and maintenance on its gas infrastructure as well  
9 as get access to Aliso Canyon by way of Toll-built roads.

10 So that is a very important issue to us, your Honor.  
11 We want to be able to take depositions on that.

12 We want to be able to take depositions on our physical  
13 harm to our property that resulted from the blowout which  
14 resulted in release of crude oil and other physical  
15 contaminants that resulted in harm to not only our land but  
16 also our past and present purchasers, as well as other  
17 allegations that we are adding to our complaint, including the  
18 330 violations identified in the CPUC's 2019 investigation of  
19 SoCalGas.

20 THE COURT: If you could just tie this together a  
21 little bit for me at this point.

22 How does the special relationship affect your theories  
23 of recovery?

24 MS. ELIZABETH: So, your Honor, we believe that there  
25 is a special relationship between Toll and SoCalGas that does  
26 not require us to show any physical harm to our property.

27 We believe that there are particular remedies that are  
28 available to us if we are able to prove special relationship,

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1 and therefore we want to be able to serve very targeted  
2 written discovery and take depositions of additional witnesses  
3 on that issue.

4 THE COURT: Go ahead, Mr. Dragna.

5 MR. DRAGNA: Yes, your Honor.

6 THE COURT: Do you have a list of the witnesses the  
7 developers want to take?

8 MR. DRAGNA: No. We've asked for that. We've never  
9 received the list. Let me just -- I'm sorry.

10 THE COURT: Go ahead. I'm sorry. I've forgotten your  
11 name.

12 MS. ELIZABETH: Sierra Elizabeth. No problem, your  
13 Honor.

14 MR. DRAGNA: I'm happy to wait until she finishes.

15 THE COURT: Go ahead.

16 MS. ELIZABETH: I think I was nearly finished, your  
17 Honor.

18 I would just say that we do need a bit of flexibility  
19 in this process in order to be able to identify additional  
20 relevant witnesses that may come up through discovered facts  
21 and through the additional document productions that the  
22 defendants continue to serve in this case.

23 So to give us limits when the defendants have no  
24 limits, whether it relates to scope or topic or, you know,  
25 number of depositions I think is, you know, unjust. We just  
26 want a fair, mutual scope of discovery until the October 31st  
27 agreed upon cutoff.

28 THE COURT: Okay. So you need to give defense counsel

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1 a list and help them understand the type of discovery that you  
2 need and why it's not duplicative of discovery that has been  
3 taken, okay?

4 MS. ELIZABETH: One point of clarification, your Honor.  
5 When you say list, do you mean of the deponents, of the  
6 written discovery that we want to serve?

7 THE COURT: I thought we were dealing with depositions.  
8 So, yes, of depositions of witnesses.

9 Then give them an idea of the kind of discovery,  
10 written discovery, that you need.

11 Because all of that -- you say you've agreed on an  
12 October 31 deadline, and all that bears on the reasonableness  
13 of that deadline.

14 I would like a joint discovery plan, in short.

15 MR. DRAGNA: We're trying.

16 A couple issues.

17 First of all, the special relationship issue is an  
18 issue that is created by virtue of a Supreme Court's decision  
19 on the economic loss rule.

20 Absent a special relationship, there are no claims.

21 So our position is there is no such special  
22 relationship, and hence the claims that are driven by the  
23 economic loss rule are barred.

24 With respect to discovery, I think it's important to  
25 keep in mind some perspective here. We had a January 31st  
26 discovery deadline of defendants -- of defendants' witnesses.

27 Toll has participated and the developers have  
28 participated in over 120 depositions. They've appeared in all

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1 of them. They've been given the opportunity to ask questions,  
2 and they've had an opportunity to identify witnesses.

3 Nevertheless, we wanted to work with new counsel to see  
4 if there were a number of witnesses. We had just a couple of  
5 conditions. One is we wanted the number to be small.

6 Tell us who you would like to depose, and we'll see if  
7 we can cabin that number.

8 We proposed six. If six wasn't enough, then we would  
9 come back to the Court for discussions.

10 THE COURT: I don't think that's the best way to do it.  
11 I think you need to know what they need and who they  
12 are.

13 MR. DRAGNA: That's fine.

14 THE COURT: Then work with that. See if you can reach  
15 agreement.

16 If it's 40 -- you need to understand what the issues  
17 are and how they intend to proceed on those issues.

18 MR. DRAGNA: The second point of guidance, your Honor,  
19 that would be extremely helpful, we don't want to re-open  
20 depositions. We don't want a situation where Bill Smith, who  
21 was deposed by the plaintiffs and Toll, is now re-opened for  
22 different purposes. We want them to be --

23 THE COURT: Well, see if they want to, okay?

24 MR. DRAGNA: That's what we're trying to work out. If  
25 we get the list, we'll be able to work through it.

26 THE COURT: If they have a new issue that's specific to  
27 them and they didn't ask questions at the prior deposition,  
28 that raises a different point than if they did ask questions

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1 on that point in prior depositions.

2 MR. DRAGNA: Well, they had the opportunity to ask  
3 those questions.

4 THE COURT: I understand.

5 MR. DRAGNA: Thank you, your Honor.

6 THE COURT: All right. See if you can come up with a  
7 joint discovery plan.

8 And if you're ready, we'll take that up at the July 8  
9 status conference.

10 I'll need you to file something probably the Friday  
11 before, if you can, if there is any detail to it, but you may  
12 not be finished with your discussions. So just tell me.

13 MR. DRAGNA: Well, our ability to have those -- we've  
14 had discussions. Counsel and I have communicated actively  
15 over the last week or so.

16 We're at a nadir because we don't know who the  
17 witnesses are they'd like to depose.

18 THE COURT: I think they'll tell you.

19 MR. DRAGNA: So that will be helpful, your Honor.  
20 Thank you.

21 MS. ELIZABETH: Thank you, your Honor.

22 THE COURT: Just give it to me on July 6. You have a  
23 lot to do on this. Get as far as you can by July 6. Give me  
24 a joint report just between Toll -- not Toll, but developer  
25 liaison counsel and defendants, okay?

26 MS. ELIZABETH: Will do.

27 Thank you, your Honor.

28 THE COURT: Okay. We can discuss the authenticity

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1 stipulations and so forth and how you would like me to  
2 memorialize the objections, my rulings on the depositions.  
3 You can talk about that next time.

4 When is the last time you talked with a mediator?

5 MR. PANISH: Well, I would like to address that  
6 subject, because last time we were on the phone with the Court  
7 when I was in Africa Mr. Dragna told the Court that the  
8 mediators had to move the dates because of the pandemic.

9 That's just not true. And that's not what happened and  
10 what he told you. So that was not true.

11 The mediators can tell you all about it.

12 MR. DRAGNA: I'm not even going to reduce that to a  
13 response.

14 Your Honor, let me answer your question without getting  
15 into invective.

16 We have had multiple sessions with the mediators. We  
17 have -- we were presented a position by the plaintiffs. We  
18 responded with a position to the plaintiffs.

19 We had separate, we call them shuttle diplomacy  
20 meetings with the mediators. We had one last week. We  
21 exchanged offers.

22 We are -- I would say on a scale of one to ten in terms  
23 of timing, we're probably at two, but we're moving. We're  
24 moving.

25 We are working in good faith. Mr. Boucher on behalf of  
26 the plaintiffs, myself, we're working in good faith to try to  
27 move these things forward.

28 The mediators are actively involved.

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1           We're resuming on mediation sessions. So I can't tell  
2 you --

3           THE COURT: I think you answered my question, which I  
4 gather the answer is the last time you talked to the mediator  
5 was last week, and you're having ongoing discussions; is that  
6 correct?

7           MR. BOUCHER: Our team is having ongoing discussions  
8 with the mediators. SoCalGas is having ongoing discussions  
9 with the mediators.

10           It has been a slow process.

11           What I understand at this point is that the mediators  
12 would like to meet, and SoCal has indicated that they can't do  
13 that until the middle of August.

14           So we're trying to work through that issue and process.

15           THE COURT: You mean meet with both sides?

16           MR. BOUCHER: Potentially, if we are able to gain any  
17 narrowing of the parameters that we currently exist within in  
18 terms of the sides.

19           MR. DRAGNA: Just to be clear, your Honor, the August  
20 schedule is a week.

21           The plan of the mediators is to do shuttle diplomacy  
22 between the initial joint meeting we had via Zoom, shuttle  
23 diplomacy on particular issues. We're in the middle of that  
24 process.

25           They want a full week to actually roll up their sleeves  
26 and see if we can make a run at it.

27           Now we've given them dates. We don't have a week yet  
28 we've picked, but that's the process.

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1 THE COURT: I wanted you to be in touch with someone  
2 who was a neutral who can talk to you about ongoing activity  
3 in the case and the input of the -- and the effect of the  
4 pandemic on strategies for both sides, because I think there  
5 are effects.

6 Anyway, you've answered my question.

7 MR. DRAGNA: Would you like to know who they are, your  
8 Honor?

9 THE COURT: You said it was Judge -- Retired Judge  
10 Meisinger.

11 MR. DRAGNA: And Judge Gordon.

12 THE COURT: Oh, Judge Gordon.

13 MR. DRAGNA: So they're double teamed.

14 THE COURT: Got it. Very good. You've answered my  
15 question. I'm glad you're in discussions with the mediator.

16 Obviously, I don't want to know your discussions, but  
17 it's important.

18 MR. DRAGNA: We're winning, your Honor.

19 MR. BOUCHER: Pardon?

20 MR. PANISH: There you go.

21 MR. DRAGNA: Oh, come on.

22 MR. PANISH: It's all a joke. That's what we deal with  
23 here.

24 THE COURT: Okay. I'm sorry we don't have more time.  
25 But I think we're at a place where we know what we're going to  
26 do next time at least.

27 And you do have depositions between now and July 8,  
28 correct?

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1 MR. PANISH: No, not until July 17.

2 We have none -- we had three set on one day this week.  
3 None for two more weeks.

4 Can I ask on that issue, can we have a date by which --  
5 you said they have to give us a date by July 8th. What is the  
6 end date when they have to get the depos done? Because  
7 they're already setting dates, you know, months.

8 Can you say, like, by October all these have to be done  
9 or something like that? Otherwise, they'll start giving us  
10 more further and further out deposition dates.

11 THE COURT: I'll see what the dates look like when I  
12 see them in July and whether there is a realistic date that I  
13 can give you as a deadline at that time.

14 MR. PANISH: And one more on that issue.

15 THE COURT: Yes.

16 MR. PANISH: There are basically five, maybe six of the  
17 lawyers that are taking the depositions. Because you said we  
18 have to be prepared, and I've clamped down and am involved on  
19 everything. We can't just do two and three a day.

20 One a day, and you have to have a little time to  
21 prepare.

22 As I told you, it's three days. One to read the  
23 documents, one to prepare, one to do the depo.

24 THE COURT: It depends on what your goals are for the  
25 case.

26 If your goals are for the case that you have 60  
27 witnesses before we get to experts and you have to do them one  
28 at a time, then your goal for the case is that the case is not

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1 ready for trial for quite a while.

2 I would strongly urge double tracking and getting it  
3 done, but if you're unwilling to do that, I'm taking a cue  
4 from the plaintiffs, quite honestly.

5 MR. PANISH: We were doing that. We have been doing  
6 triple. We were triple set.

7 I'm just saying it's a big burden on a lawyer to  
8 spend -- you know, we're trying to get this ready for trial.  
9 This is supposed to be pretrial discovery. We're five years  
10 in the case. We're still getting documents two days ago.

11 THE COURT: Let me just put it this way.

12 If you can't agree on dates for these depositions, I  
13 will tell you what ultimately will happen. The Court will set  
14 a date, and it will not be moved, okay?

15 So that creates an incentive to agree.

16 I don't know whether plaintiffs' side can double track.  
17 I would urge you to double track because I think that's the  
18 way to get things ready for trial. But if your position is  
19 that you can't double track, I'll take that up next time.

20 MR. PANISH: No, I'm not saying that. I'm saying if  
21 you give us three depositions in three weeks and you put them all on  
22 the same day, that's not right.

23 THE COURT: Okay. Plaintiffs to give notice, okay?

24 MR. PANISH: Yes, your Honor.

25 MR. SCHRADER: Thank you, your Honor.

26 THE COURT: Thank you.

27 (End of proceedings.)

28

