

# EXHIBIT A

**In The Matter Of:**

*Rincon EV Realty, LLC, et al. v.  
CP III Rincon Towers, Inc., et al.*

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*Reporter's Transcript of Proceedings  
March 26, 2012*

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*Behmke Reporting and Video Services, Inc.  
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San Francisco, California 94105  
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**Min-U-Script® with Word Index**

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 1

1 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 2 IN AND FOR THE COUNTY OF SAN FRANCISCO  
 3 - - - - -  
 4 RINCON EV REALTY LLC, )  
 5 et al., )  
 6 Plaintiff, ) Case No.  
 7 vs. ) CGC 10-496887  
 8 CP III RINCON TOWERS, INC., )  
 9 et al., )  
 10 Defendants. )  
 11 - - - - -  
 12  
 13 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
 14 BEFORE THE HONORABLE MARLA J. MILLER  
 15 400 McALLISTER STREET, DEPARTMENT 604  
 16 SAN FRANCISCO, CALIFORNIA 94102  
 17 MONDAY, MARCH 26, 2012  
 18  
 19  
 20  
 21 BEHMKE REPORTING AND VIDEO SERVICES, INC.  
 22 BY: MELINDA M. SELLERS, CSR NO. 10686, RPR, CCRRA  
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BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 2

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BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 3

1 MONDAY, MARCH 26, 2012; 9:05 A.M.  
 2  
 3 **THE COURT:** Good morning, everybody.  
 4 **MR. LEE:** Good morning, your Honor.  
 5 **MR. SHAPIRO:** Good morning, your Honor.  
 6 **THE COURT:** Calling the matter of Rincon EV Realty  
 7 LLC, et al., versus CP III Rincon Towers, Incorporated,  
 8 et al.  
 9 Appearances, please.  
 10 **MR. SHAPIRO:** Good morning, your Honor. David  
 11 Shapiro, Boies, Schiller & Flexner, for the plaintiffs.  
 12 **MR. PRITT:** Maxwell Pritt for the plaintiffs.  
 13 **THE COURT:** Good morning.  
 14 **MR. LEE:** Good morning, your Honor. Barry Lee,  
 15 Manatt Phelps, for defendants.  
 16 **MS. HEIMBERGER:** Ann Heimberger, Manatt Phelps, for  
 17 defendants.  
 18 **MR. BAKER:** Christian Baker, Manatt Phelps, for  
 19 defendants.  
 20 **MR. WEISS:** Lenard Weiss from Manatt. Same.  
 21 **THE COURT:** Good morning, everybody.  
 22 We have a number of matters on calendar.  
 23 We'll start with the simplest first. This is  
 24 defendants' motion to seal confidential investment  
 25 committee report. It was originally set for hearing on

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 4

1 March 16th, but when the parties requested that we move  
 2 this hearing until today, this was continued.  
 3 So I've read all the papers filed in support  
 4 of and in partial opposition, and my tentative view is  
 5 to grant the motion for the good cause shown in the  
 6 motion to seal.  
 7 Does anybody wish to be heard?  
 8 **MR. SHAPIRO:** No, your Honor.  
 9 **MS. HEIMBERGER:** No, thank you, your Honor.  
 10 **THE COURT:** All right. So I'll sign the order.  
 11 Okay. The next is the motion to strike  
 12 portions of the fourth amended complaint. This was  
 13 continued from the last hearing that we had on -- when  
 14 was that originally?  
 15 **MR. LEE:** Looks like the 24th.  
 16 **MS. HEIMBERGER:** February 24th.  
 17 **THE COURT:** Is that when it was?  
 18 **MS. HEIMBERGER:** Oh, wait.  
 19 **THE COURT:** Yeah, time flies. February 24th.  
 20 And I've read the surreply filed by the  
 21 plaintiffs to the motion to strike, as well as the  
 22 defendants' surreply in support of the motion to strike  
 23 portions of the fourth amended complaint, as well as  
 24 considered your previous arguments and briefs.  
 25 And this is my thought: My tentative view is

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 5

1 to deny the motion, particularly in light of the fact  
2 that this is going to be a court trial. I will better  
3 be able to address the issues raised by the motion to  
4 strike; that is, to what extent, if any, any legal  
5 arguments about Section 726 have merit or remain in  
6 light of Judge Busch's ruling after I've heard all the  
7 evidence.  
8 I've read your briefs. I've read the judge's  
9 order. I'm dubious, the way things stand, that there  
10 is a Section 726 claim, but it seems to me that it's  
11 not something that's best decided on the papers at this  
12 stage as the motion to strike. If there is something  
13 that the plaintiffs come forward with that's different  
14 from what Judge Busch ruled on, I'll certainly hear it  
15 and hear it with an open mind. But it seems to me to  
16 be not a good use of resources at this point to try to  
17 define whether a legal argument can stand when I  
18 haven't heard the evidence that supports the legal  
19 argument.  
20 It also seems to me that this won't really  
21 affect the issues to be proven at trial, in the sense  
22 of what evidence we'll need to put on -- will need to  
23 be put on because it seemed to me that the 726 argument  
24 that the plaintiff was trying to make is a legal  
25 argument that falls out of the evidence that's going to

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 6

1 be put on in any event. It's not a separate 726 claim.  
2 So I just think it makes more sense to let the  
3 plaintiffs put on their evidence, see whether they wish  
4 to proceed with the 726 argument that's different from  
5 the one that Judge Busch ruled on, and then hear  
6 motions or argument at trial as to whether or not that  
7 evidence should be precluded or the law should be --  
8 let me start over -- or whether, after hearing the  
9 evidence or at trial, whether the judge's prior motion  
10 for summary adjudication precludes the plaintiff from  
11 making the argument in this case. That's my tentative  
12 thought.  
13 And my tentative view also is, as I stated  
14 last time, to deny the motion to strike the other  
15 particular portions of the complaint which were the  
16 subject of defendants' motion for the reasons that I  
17 stated last month.  
18 So Ms. Heimberger?  
19 **MS. HEIMBERGER:** Yes. Thank you, your Honor.  
20 I think first, just one point that wasn't  
21 raised in the papers -- because I think you know we've  
22 briefed these issues a couple times now, so I don't  
23 want to repeat ourselves, but the point about evidence,  
24 I think there is additional evidence that defendants  
25 will need to put on if these claims stay in the

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 7

1 complaint that would not otherwise be necessary, in our  
2 view, at this time, and that's substantial evidence  
3 about the actual factual allegations about the flow of  
4 funds through the accounts.  
5 Our original motion and the argument here have  
6 to do with the argument that, even as pled, the facts  
7 don't raise a claim. But the fact is that we deny that  
8 the allegations are true; and in order to prove that,  
9 the evidence that's going to come in is financial  
10 statements for, you know, a year or more and  
11 complicated expert testimony about the flow of funds  
12 through this sort of waterfall of accounts and where it  
13 went from the lockbox account through the cash  
14 management account through all these other reserve  
15 accounts, and what happened to the money on any given  
16 day at any given time.  
17 And that's evidence that otherwise, I don't  
18 think, is going to be necessary to be put in. But if  
19 these claims stay, stay in the case, that will be  
20 additional evidence that will need to be submitted.  
21 **THE COURT:** All right. Well, you do have Judge  
22 Busch's decision, and you have stipulations or the lack  
23 of dispute on the part of the plaintiffs to a large  
24 number of the facts that were put in evidence by your  
25 motion for summary judgment. So it's not clear to me

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 8

1 that -- it's not immediately clear to me that there  
2 can't be a stipulation or a simpler way to proceed.  
3 But it's your case. I'm not sure.  
4 **MR. LEE:** Barry Lee for Manatt.  
5 I think one of the problems we have is we  
6 don't really see, based on the allegations or the  
7 argument, what is different about the claim, the 726  
8 claim they're trying to raise now. We don't really see  
9 the difference. Therefore, we've got to prepare our  
10 defense for all kinds of things, which will entail, I  
11 think, in part, this rather fact-intensive description  
12 of the flow of funds for the period in question because  
13 we're not sure what they're claiming other than what  
14 they already claimed.  
15 **THE COURT:** All right. Thank you.  
16 Mr. Shapiro.  
17 **MR. SHAPIRO:** I'll respond to what counsel argued  
18 today as best I can because I'm not actually sure that  
19 I follow it.  
20 But I think what they're saying is that they  
21 would want to present evidence about the way money came  
22 in from tenants, went into different reserve accounts,  
23 and then went out to pay for things. I think that's  
24 part of the case, regardless of whether the 726 is in  
25 or not. I'm not really sure what defense counsel is

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 9

1 arguing about that.  
2 One of the claims in the complaint is for an  
3 accounting, which had exactly to do with that, that the  
4 plaintiffs never really knew how much money was in the  
5 account by the time of July or October 2010. And I do  
6 think that if there's evidence that we don't have about  
7 the way funds went in and out, defendants ought to give  
8 it to us.  
9 And maybe we can reach a stipulation about  
10 that. That seems to be pretty simple to me. Whatever  
11 their argument may be, whatever our argument may be  
12 about the money, it is what it is. If there are  
13 account statements, we should have those.  
14 So it's hard for me to really argue, other  
15 than I think that your -- you know, obviously, I'm not  
16 going to argue the tentative on the motion to strike,  
17 but I don't think that questions of evidence really are  
18 relevant at this point.  
19 **THE COURT:** Okay. Anything further?  
20 **MR. LEE:** My only comment would be this -- and  
21 maybe this just plays out at trial -- during the period  
22 that the plaintiffs owned the property, it's their  
23 financial statements that demonstrated the flow of  
24 funds. It's not anybody else's. There are bank  
25 statements, obviously, but it's their financial

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 10

1 statements. So they have the information.  
2 The extra evidence is people coming in and  
3 saying here's how this flowed out, but off of  
4 plaintiffs' financial statements.  
5 But we'll submit at that point.  
6 **THE COURT:** All right. So the tentative ruling  
7 is -- the ruling of the Court on the motion to strike,  
8 it is denied in its entirety, without prejudice to  
9 making any argument at trial or after trial about the  
10 effect of Judge Busch's order for summary adjudication.  
11 The last thing we have is the case management  
12 conference, and I just received and have not had a  
13 chance to look at the Defendants' Supplement to Case  
14 Management Statement.  
15 So perhaps we could just go off the record for  
16 a minute, and I'll review the different dates that you  
17 have here.  
18 **MR. LEE:** Okay.  
19 **THE COURT:** Do you want the case management  
20 conference reported?  
21 **MR. SHAPIRO:** Sure.  
22 Is it okay?  
23 **MR. LEE:** Yes, yes.  
24 **THE COURT:** Why am I getting this now?  
25 **MR. SHAPIRO:** We got theirs on Friday afternoon.

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 11

1 **MS. HEIMBERGER:** Your Honor, we apologize, but we  
2 weren't aware that -- I don't think your Honor  
3 requested case management statements. We weren't  
4 planning on submitting one until we saw theirs.  
5 **THE COURT:** I thought I would get something that  
6 was an agreed-upon schedule.  
7 So let me read this. I'm going to take a  
8 short recess. I'll be right back.  
9 (Recess taken.)  
10 **THE COURT:** All right. So I've looked over the  
11 case management conference statements that I received.  
12 To what extent did the parties meet and confer  
13 on the subject of pretrial dates and bifurcation, in  
14 light of the fact that it's a court trial?  
15 **MR. SHAPIRO:** We got a proposed schedule from the  
16 defendants, I think, on Wednesday or Tuesday last week.  
17 We sent them back our proposed schedule, which  
18 wasn't -- which was different for certain things. Ours  
19 was closer to trial. And then we didn't hear back from  
20 them about that so we filed our proposed schedule.  
21 With respect to the bifurcation, Mr. Lee and I  
22 talked about it, and he said he wanted to think  
23 about -- and I raised the possibility of trying the  
24 foreclosure cause of action, though I did say, and he  
25 recognized, that your ruling on the motion to strike

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 12

1 might affect that, and he was going to think about it.  
2 So that's what we talked about last time, about  
3 possibly doing that.  
4 But I see from their filing today that I don't  
5 think they agree with it.  
6 **THE COURT:** All right.  
7 **MR. LEE:** We sent our schedule on Tuesday last  
8 week. We had a conference call on Wednesday, about an  
9 hour -- just short of an hour, I guess. We did talk  
10 about the proposed bifurcation.  
11 I didn't fully understand exactly what they  
12 were calling the foreclosure action. I understood  
13 better after I saw their statement that they're really  
14 talking about sort of the procedural components of  
15 that.  
16 We did get their proposed schedule dates on  
17 Thursday of last week.  
18 **THE COURT:** Okay. Well, are you prepared to  
19 discuss this now, or do you think, now that you've -- I  
20 mean, my inclination is to put you in a jury room and  
21 have you discuss this. You know, I just received this  
22 from both of you. My fallback is we'll try the whole  
23 case at once.  
24 I don't think it's worth spending case  
25 management conference after case management conference

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 13

1 to try to figure out what to try first if the parties  
2 can't agree.  
3 But if you can agree and there's a way to be  
4 more efficient, I'd like to do that. But receiving  
5 statements on Friday and Monday when we walk into court  
6 indicates to me that you haven't really been talking  
7 about how you really want the case to go forward.  
8 **MR. SHAPIRO:** I think that the big time-saver will  
9 be things that we can stipulate to, facts in evidence  
10 we can stipulate to.  
11 I think that since it is going to be a judge  
12 trial, the bifurcation and phasing is just less  
13 critical because you can adjust our showing up to court  
14 to fit your schedule and we don't have to worry about  
15 jurors.  
16 So Barry and I -- Mr. Lee and I talked briefly  
17 about trying to stipulate to certain of the facts, and  
18 I think we should be able to do that because there are  
19 things that are just not in dispute. And I -- we just  
20 haven't done -- I don't think we've done enough work on  
21 that.  
22 **THE COURT:** Well, I would hope so.  
23 But I have to tell you, given the fact that  
24 the parties cannot even agree on whether all of the  
25 documents should be filed under seal or not and that I

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 14

1 get, you know, two rounds of briefing on that issue,  
2 I'm really concerned about what the contours of the  
3 pretrial stipulations are going to be, if any.  
4 I know it's a court trial, which gives me more  
5 flexibility, but I am stacked back to back to back with  
6 trials. And so there are going to be trial time limits  
7 set on this, even though we don't have jurors. I don't  
8 have, you know, an endless amount of time for this.  
9 And, also, given the fact that it is a court  
10 trial, not a jury trial, it makes it much harder for  
11 me, something I never appreciated when I was a lawyer,  
12 to stop and start and stop and start on your case  
13 because I have to -- it's all fresh in your mind, but I  
14 have to then go back and pick up where I left off when  
15 I'm the finder of fact.  
16 So I do want to try this efficiently. It  
17 seems to me that trying the foreclosure action first in  
18 its entirety, procedural and substantive, makes sense,  
19 but you know how the facts go in, and I don't.  
20 So that would be my thinking. If there's one  
21 issue that can be tried first, it ought to be that.  
22 But if you can't agree on that, we'll have to talk  
23 more.  
24 So what's the situation now with the trial  
25 date? Have you heard anything from Judge Hamilton, or

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 15

1 is that case still going forward?  
2 **MR. SHAPIRO:** Right now, yes. She hasn't responded  
3 to our -- my advising her that she's had a trial date  
4 that conflicted with this. But we think that if that  
5 goes, when she set it, she's -- it's only going to be a  
6 two-week trial.  
7 So you may recall I originally asked for the  
8 beginning of July, and then we pushed it back to  
9 June 25th at the defendants' request.  
10 So I still think Mr. Boies' schedule could fit  
11 into that July time frame.  
12 **THE COURT:** Was the Court -- was it brought to the  
13 attention -- start over.  
14 Did plaintiffs' counsel bring to the Court's  
15 attention the fact that we had a trial set on June 25th  
16 when the --  
17 **MR. SHAPIRO:** Yes.  
18 **THE COURT:** Before that date was set by Judge  
19 Hamilton? -- I'm sorry, it's by Judge Anderson -- it's  
20 Judge Armstrong, right?  
21 **MR. SHAPIRO:** No. Judge Hamilton. It's the SAP  
22 trial.  
23 That's not my case. I -- we came in on the  
24 24th. I told my partners we were set for June 25th. I  
25 think they were -- had submitted something that day --

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 16

1 and this is just what I think happened -- and then they  
2 told Judge Hamilton June 25th is the date for the  
3 Rincon trial. I think that's the order of events.  
4 But, in any event, they told her if -- if they  
5 didn't tell her before, they told her immediately after  
6 you set the date.  
7 **THE COURT:** All right.  
8 **MR. LEE:** Your Honor, we need to get this trial  
9 started.  
10 **THE COURT:** I'm going to keep it at June 25th until  
11 such time as we hear from the federal court that  
12 they're not going to change the date, and then we'll  
13 have to go from there. But at this point I'm going to  
14 keep it at that date.  
15 **MR. LEE:** Our issue, as we just highlighted briefly  
16 in our submission today -- and I apologize for the  
17 lateness. We just didn't get plaintiffs' until Friday.  
18 We didn't know we were submitting anything -- we have  
19 already scheduled our, particularly, third-party  
20 witnesses, most of whom are on the East Coast. You  
21 know, we've got them in a two-week window,  
22 two-and-a-half-week window, as well as our experts.  
23 I have great respect for Mr. Boies, but I've  
24 got trial set -- a very large trial beginning August 7.  
25 I've got a week arbitration beginning August 27th.

1 Starting in July, knowing how these cases work -- and I  
2 actually personally have to prepare for the trial. I  
3 don't just pick the file up and go in -- we are -- very  
4 vigorously oppose anything moving off June 25. This  
5 has been scheduled many times.  
6 **THE COURT:** At this point I'm not going to change  
7 it.  
8 **MR. LEE:** Okay.  
9 **THE COURT:** And I understand that there's been a  
10 request to change a trial date that was set after ours  
11 was. No response has been given to that. So at this  
12 point I'm just going to keep the date on the 25th; and,  
13 pending something further, that's what I'm going to do.  
14 Because I don't know what to do otherwise. Otherwise,  
15 it's just too much of a moving situation.  
16 If we hear something to the contrary, I have  
17 to deal with it. But right now I'm going to keep it at  
18 the 25th.  
19 **MR. SHAPIRO:** Mr. Lee said something -- and I think  
20 that makes sense, said something that triggered a  
21 thought, and that is he's talked about third-party  
22 witnesses being scheduled.  
23 I don't know whether I should make a motion to  
24 ask for this or we can just get a commitment -- because  
25 we would do the same -- if either side is going to be

1 calling live witnesses who have not been deposed, for  
2 whatever reason, I would like the opportunity to depose  
3 anybody who is going to be called as a witness who has  
4 not been deposed. If I'm going to do that, I'll be  
5 happy to tell the defendants, you know, so-and-so  
6 witness is going to come and testify live.  
7 I hope I don't have to make a motion to ask  
8 for that.  
9 **THE COURT:** Is that acceptable?  
10 **MR. LEE:** I think it will be, but let me discuss  
11 with -- we have a very involved client.  
12 **THE COURT:** All right. Okay.  
13 Well, let's go over dates -- well, actually,  
14 let me back up for just a minute.  
15 You're in agreement on a lot of these dates,  
16 except that the plaintiffs are -- the only ones that  
17 you're not in agreement on are where the plaintiffs  
18 have indicated that they want to follow what the Code  
19 of Civil Procedure would require and defendants  
20 proposed earlier dates, for example, fact and expert  
21 discovery cutoffs and motions -- I guess those were the  
22 two things -- relating to those.  
23 What's the issue here? About a month apart, I  
24 guess.  
25 **MR. SHAPIRO:** Right.

1 I think we need the additional time. We've  
2 had a lot of discovery disputes, and there are  
3 scheduling issues, and I don't see any reason why we  
4 have to cut it off earlier than what the code provided.  
5 **MR. LEE:** And our view is, as has been the case in  
6 this case, every deadline that gets set, things get  
7 done right up until the end of it. And this is a big  
8 case, with significant issues, legal and factual, and  
9 there's no reason the parties can't get their fact  
10 discovery done early, earlier than the code. It will  
11 permit a better-prepared case for your Honor to try.  
12 **THE COURT:** Okay.  
13 **MR. LEE:** It's as simple as that.  
14 **MR. SHAPIRO:** If there were no disputes, I would  
15 agree with Mr. Lee. But the problem is that when  
16 there's a dispute, it doesn't get resolved in two days.  
17 There's always briefing, waiting, making sure Judge  
18 Garcia is available. So it's weeks long.  
19 So I think that, in a perfect world, yeah,  
20 everything would be smooth.  
21 **THE COURT:** How much more fact discovery needs to  
22 be done? Are there more depositions to be --  
23 **MR. SHAPIRO:** There are some more, not a lot more.  
24 **THE COURT:** Are they all noticed?  
25 **MR. SHAPIRO:** We're going to serve a few more

1 deposition notices on some Federal Reserve Bank/Maiden  
2 Lane witnesses. There's a motion we have to make to  
3 compel Bank of America -- they're not here -- to  
4 produce documents, but that's not more depositions.  
5 And there are probably a few more document disputes.  
6 **THE COURT:** Okay. And did you have more  
7 depositions you'll be taking?  
8 **MR. LEE:** Yes. But I believe -- I don't want to  
9 misspeak. I believe all of the remaining we're  
10 interested in have already been noticed and subpoenaed.  
11 Not blaming anyone on that side, but there's  
12 one of the four law firms that are representing the  
13 plaintiffs now had just recently asked for a number --  
14 three depositions that were scheduled to be moved  
15 because of her schedule. I'm happy to do that. So I  
16 don't know when they're going to start.  
17 But I don't believe there are any remaining  
18 witnesses that we have not already subpoenaed with  
19 notices of deposition. The dates are moving a little  
20 bit.  
21 **THE COURT:** Well, the defendants are proposing  
22 April 30th as the cutoff; the plaintiffs are proposing  
23 May 28 as the cutoff for discovery.  
24 Is it possible to aim to have it all completed  
25 by April 30th, notwithstanding that the deadline is

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 21

1 May 28th? Is that a doable thing, to try to schedule  
2 all remaining discovery so that it happens in April?  
3 **MR. SHAPIRO:** We'll certainly try.  
4 **THE COURT:** Does that work for defendants?  
5 **MR. LEE:** Yes, that was -- yes.  
6 **THE COURT:** Okay. So the goal will be to get  
7 everything done by April the 30th, that will be the  
8 completion of all depositions by that time.  
9 Then expert discovery, May the 28th versus  
10 June the 11th. Can you aim to have all the expert  
11 discovery done by May the 28th?  
12 **MR. SHAPIRO:** Well, yes. It looks like the  
13 defendants take the position that the expert exchange  
14 identifications back last year was it. I know we have  
15 one more -- one different expert than we had.  
16 **THE COURT:** Have you disclosed that person?  
17 **MR. SHAPIRO:** Not yet. I mean, well, they know  
18 because we're actually trying to get him to go inspect  
19 the property. We have a motion about that because we  
20 have not been able to get him to be able to go inspect  
21 the property.  
22 **THE COURT:** Has the name been disclosed?  
23 **MR. SHAPIRO:** I don't know because it's not my  
24 witness, and I haven't been talking to this --  
25 **THE COURT:** No, the name has not been disclosed.

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 22

1 **MR. LEE:** The answer is no.  
2 **MR. SHAPIRO:** It's Paul Habibi. He's a professor  
3 at UCLA.  
4 **THE COURT:** Paul Habibi?  
5 **MR. SHAPIRO:** Paul Habibi. That's a person who  
6 comes to mind.  
7 I assume, from what the defendants say, that  
8 they have no other experts they're planning to  
9 disclose.  
10 **MR. LEE:** We see what this designation is. And  
11 it's not our contention that the exchange occurred; it  
12 did occur back at the first time.  
13 I understand they're looking to supplement. I  
14 fully expect the Court to grant that request.  
15 **THE COURT:** Okay.  
16 **MR. LEE:** And once we see what they're designating,  
17 it may be that we want somebody to rebut that. I don't  
18 know right now.  
19 **THE COURT:** Okay.  
20 **MR. LEE:** But all of our experts have been  
21 disclosed.  
22 **THE COURT:** Well, can you aim to have the expert  
23 discovery completed by May the 28th?  
24 **MR. SHAPIRO:** We can certainly try. I think there  
25 were a total of about ten experts listed between the

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 23

1 two sides. So it's -- you know, it's quite a few  
2 people. We can certainly try.  
3 **THE COURT:** Okay. Well, you've got two months  
4 before it's May 28th. Okay.  
5 And then the hearing on motions, you have made  
6 the 8th versus -- I'm sorry, June the 8th versus June  
7 the 15th, which is the code.  
8 **MR. LEE:** That's for expert discovery --  
9 **THE COURT:** Right.  
10 **MR. LEE:** -- hearings.  
11 **THE COURT:** Okay.  
12 **MR. LEE:** Expert discovery motions.  
13 **THE COURT:** So I'm going to stick to the code  
14 dates.  
15 So the plaintiffs' proposed date, to the  
16 extent they differ with the defendants' proposed dates,  
17 will be the governing dates -- and the only reason for  
18 that is that they do comply with the Code of Civil  
19 Procedure -- with the understanding that the parties  
20 are going to try to complete fact and expert discovery  
21 by April 30th and May 28th, respectfully.  
22 **MR. LEE:** Point of clarification.  
23 **THE COURT:** Sure.  
24 **MR. LEE:** On our chart, which is, I think, kind of  
25 easy to look at because it's got our proposal,

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 24

1 plaintiffs' proposal, and the code, if you -- fifth box  
2 from the bottom of the first page, last date to serve  
3 opposition to motions in limine -- well, it's actually  
4 just serve motions in limine, both parties have agreed  
5 to the 1st. So I assume that stands and it won't be  
6 supplanted by the code.  
7 **THE COURT:** That's right.  
8 **MR. LEE:** If they agree, then we'll go with the  
9 agreement?  
10 **THE COURT:** Absolutely.  
11 **MR. LEE:** Okay.  
12 **THE COURT:** So I'm basically -- if you just look  
13 down that center column that you have, plaintiffs'  
14 proposed dates, those are the dates that I'm adopting.  
15 In all except four instances, those are also  
16 defendants' proposed dates. To the extent you've  
17 stipulated around the code or local rule requirements,  
18 that's completely fine with me.  
19 **MR. LEE:** Okay. I just wanted to make sure.  
20 **THE COURT:** Let me say something about motions  
21 in limine, and I'm probably going to give a written  
22 order about all of this, but I'm not expecting there  
23 will be very many, given that this is a court trial,  
24 and -- all right.  
25 Having said that, you must meet and confer



BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 25

1 before you file motions in limine. So you have to  
2 disclose to each other what the substance is of the  
3 motion and see if there's an agreement. Only if you  
4 cannot agree can you file a motion in limine. Then you  
5 must attach a declaration saying that you did provide  
6 notice, that you did meet and confer, and that you  
7 couldn't reach an agreement under penalty of perjury.  
8 Do not repeat the mistakes made by the lawyers  
9 in the following case: Kelly versus New West, 49  
10 Cal. App. 4th 659 at 670, which is a 1996 case, which  
11 says, and I quote, "Many of the motions filed were not  
12 properly the subject of motions in limine, were not  
13 adequately presented, or sought rulings which would be  
14 declaratory of existing law or would not provide any  
15 meaningful guidance for the parties or witnesses,"  
16 closed quote.  
17 So don't file a motion that says exclude  
18 hearsay or things that don't have foundation. Please  
19 don't file a motion saying there should be a 24-hour  
20 disclosure. That is going to be the rule -- or maybe  
21 more than that. You don't need to file a motion that  
22 excludes witnesses who haven't yet testified.  
23 And if you do make a motion to exclude certain  
24 testimony, you just have to be really, really specific  
25 as to what the testimony is.

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 26

1 And I also refer you to Amtower,  
2 A-m-t-o-w-e-r, versus Photo Dynamics, 158 Cal. App. 4th  
3 1582 at 1593 to 1596. It's a 2008 case, which also  
4 describes the proper uses of motions in limine.  
5 To the extent you do file any, please number  
6 them sequentially -- so plaintiffs' motion in limine 1,  
7 opposition to motion in limine 1 by the defendant -- so  
8 I can keep track of them. And, please, if you moved  
9 for -- if you make a motion in limine, provide a chart  
10 with all the motions that you've requested for ruling.  
11 Now, I know that last point makes it sounds  
12 like I'm expecting a lot. I'm really not. But I like  
13 to be able to keep them straight. So that's the  
14 motions in limine.  
15 What shall we do here about -- to the  
16 extent -- to what extent we're going to bifurcate this  
17 trial?  
18 **MR. LEE:** Your Honor, our position, which is laid  
19 out, we do think that if we're going to try -- there  
20 may be some advantage to trying the foreclosure,  
21 procedural and substantive, and the June 2009 default  
22 issues first.  
23 If plaintiffs are not amenable to that, let's  
24 just go to trial, put the witnesses on, and we'll  
25 cross-examine and put our witnesses on.

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 27

1 We've advanced our reasoning.  
2 **THE COURT:** Okay. Mr. Shapiro, you want more time  
3 to talk to counsel about this?  
4 **MR. SHAPIRO:** We may be able to do that. But I'd  
5 like to talk to Mr. Lee about it. Because sometimes  
6 you can agree to a concept, and then each one of you  
7 has a completely different idea of what that entails.  
8 **THE COURT:** I know.  
9 **MR. SHAPIRO:** So I would like -- I will try to be  
10 as specific with him as possible about what I think  
11 that means.  
12 **THE COURT:** Okay. Let's pick a date by which you  
13 can present in writing to me an agreed-upon proposal  
14 for trying the case in something other than the whole  
15 thing. And if you can agree and it makes sense, I'll  
16 go along with it.  
17 When can you do that?  
18 **MR. SHAPIRO:** Can we have at least two weeks, maybe  
19 three?  
20 **THE COURT:** You need three weeks?  
21 **MR. SHAPIRO:** I don't know. I mean, we can -- you  
22 know, I could always say we couldn't do it. I can try  
23 in two weeks. I think, to think through, since we have  
24 to go first -- or we get to go first, I think I want to  
25 make sure I --

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 28

1 **MR. LEE:** I'll go first.  
2 **MR. SHAPIRO:** I want to make sure that I have  
3 thought through each thing. But if I could have two  
4 weeks, that would be --  
5 **THE COURT:** All right. You can have two weeks.  
6 **MR. SHAPIRO:** Okay.  
7 **THE COURT:** So two weeks from today?  
8 **MR. LEE:** Is the 9th of April.  
9 **THE COURT:** 9th of April.  
10 So two weeks from today, give the Court a  
11 detailed written agreement as to how the case will be  
12 bifurcated. If you can agree, great. If you can't,  
13 maybe I'll come up with something. But, more likely,  
14 we'll try the whole thing.  
15 Is there anything further for today?  
16 **MR. LEE:** No.  
17 **MR. SHAPIRO:** No, your Honor.  
18 **THE COURT:** Okay. I'll set a future case  
19 management conference after receiving the April 9th  
20 submission if it seems like it's required.  
21 Okay. Thank you very much. We're off the  
22 record.  
23 (The proceedings concluded at 9:51 a.m.)  
24  
25

BEHMKE REPORTING AND VIDEO SERVICES, INC. Page 29

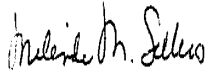
1 STATE OF CALIFORNIA )  
2 ) ss  
3 COUNTY OF SAN MATEO )  
4

5 I hereby certify that the foregoing in the  
6 within-entitled cause was taken at the time and place  
7 herein named; that the transcript is a true record of  
8 the proceedings as reported by me, a duly certified  
9 shorthand reporter and a disinterested person, and  
10 was thereafter transcribed into typewriting by  
11 computer.

12 I further certify that I am not interested  
13 in the outcome of the said action, nor connected  
14 with, nor related to any of the parties in said  
15 action, nor to their respective counsel.

16 IN WITNESS WHEREOF, I have hereunto set my  
17 hand this 26th day of March, 2012.

18  
19  
20  
21  
22  
23  
24  
25



MELINDA M. SELLERS, CSR# 10686  
STATE OF CALIFORNIA

	27:16 always (2) 19:17;27:22		5:14;6:5 Busch's (3) 5:6;7:22;10:10	23:22 clear (2) 7:25;8:1
<b>A</b>		<b>B</b>		<b>client (1)</b> 18:11
able (6) 5:3;13:18;21:20,20; 26:13;27:4	amenable (1) 26:23	back (11) 11:8,17,19;14:5,5,5, 14:15:8;18:14;21:14; 22:12	<b>C</b>	<b>closed (1)</b> 25:16
Absolutely (1) 24:10	amended (2) 4:12,23	BAKER (2) 3:18,18	Cal (2) 25:10;26:2	<b>closer (1)</b> 11:19
acceptable (1) 18:9	America (1) 20:3	bank (2) 9:24;20:3	calendar (1) 3:22	<b>Coast (1)</b> 16:20
account (4) 7:13,14;9:5,13	amount (1) 14:8	Bank/Maiden (1) 20:1	call (1) 12:8	<b>Code (9)</b> 18:18;19:4,10;23:7, 13,18;24:1,6,17
accounting (1) 9:3	Amtower (1) 26:1	Barry (3) 3:14;8:4;13:16	called (1) 18:3	<b>column (1)</b> 24:13
accounts (4) 7:4,12,15;8:22	A-m-t-o-w-e-r (1) 26:2	based (1) 8:6	Calling (3) 3:6;12:12;18:1	<b>coming (1)</b> 10:2
action (3) 11:24;12:12;14:17	Anderson (1) 15:19	basically (1) 24:12	came (2) 8:21;15:23	<b>comment (1)</b> 9:20
actual (1) 7:3	Ann (1) 3:16	beginning (3) 15:8;16:24,25	can (24) 5:17;8:18;9:9;13:3,9, 10,13;14:21;17:24; 21:10;22:22,24;23:2; 25:4;26:8;27:6,13,15, 17,18,21,22;28:5,12	<b>commitment (1)</b> 17:24
actually (5) 8:18;17:2;18:13; 21:18;24:3	apart (1) 18:23	best (2) 5:11;8:18	case (26) 6:11;7:19;8:3,24; 10:11,13,19;11:3,11; 12:23,24,25;13:7; 14:12;15:1,23;19:5,6,8, 11;25:9,10;26:3;27:14; 28:11,18	<b>committee (1)</b> 3:25
additional (3) 6:24;7:20;19:1	App (2) 25:10;26:2	better (2) 5:2;12:13	cases (1) 17:1	<b>compel (1)</b> 20:3
address (1) 5:3	Appearances (1) 3:9	better-prepared (1) 19:11	cash (1) 7:13	<b>complaint (5)</b> 4:12,23;6:15;7:1;9:2
adequately (1) 25:13	appreciated (1) 14:11	bifurcate (1) 26:16	cause (2) 4:5;11:24	<b>complete (1)</b> 23:20
adjudication (2) 6:10;10:10	April (8) 20:22,25;21:2,7; 23:21;28:8,9,19	bifurcated (1) 28:12	center (1) 24:13	<b>completed (2)</b> 20:24;22:23
adjust (1) 13:13	arbitration (1) 16:25	bifurcation (4) 11:13,21;12:10; 13:12	certain (3) 11:18;13:17;25:23	<b>completely (2)</b> 24:18;27:7
adopting (1) 24:14	argue (2) 9:14,16	big (2) 13:8;19:7	certainly (4) 5:14;21:3;22:24; 23:2	<b>completion (1)</b> 21:8
advanced (1) 27:1	argued (1) 8:17	bit (1) 20:20	center (1) 24:13	<b>complicated (1)</b> 7:11
advantage (1) 26:20	arguing (1) 9:1	blaming (1) 20:11	certainty (3) 11:18;13:17;25:23	<b>comply (1)</b> 23:18
advising (1) 15:3	argument (13) 5:17,19,23,25;6:4,6, 11;7:5,6;8:7,9;11,11; 10:9	Boies (2) 3:11;16:23	cases (1) 17:1	<b>components (1)</b> 12:14
affect (2) 5:21;12:1	arguments (2) 4:24;5:5	Boies' (1) 15:10	cash (1) 7:13	<b>concept (1)</b> 27:6
afternoon (1) 10:25	Armstrong (1) 15:20	both (2) 12:22;24:4	chance (1) 10:13	<b>concerned (1)</b> 14:2
agree (11) 12:5;13:2,3,24; 14:22;19:15;24:8;25:4; 27:6,15;28:12	around (1) 24:17	bottom (1) 24:2	change (3) 16:12;17:6,10	<b>concluded (1)</b> 28:23
agreed (1) 24:4	assume (2) 22:7;24:5	box (1) 24:1	chart (2) 23:24;26:9	<b>confer (3)</b> 11:12;24:25;25:6
agreed-upon (2) 11:6;27:13	attach (1) 25:5	briefed (1) 6:22	Christian (1) 3:18	<b>conference (7)</b> 10:12,20;11:11;12:8, 25,25;28:19
agreement (6) 18:15,17;24:9;25:3, 7;28:11	attention (2) 15:13,15	briefing (2) 14:1;19:17	Civil (2) 18:19;23:18	<b>confidential (1)</b> 3:24
aim (3) 20:24;21:10;22:22	August (2) 16:24,25	briefly (2) 13:16;16:15	claim (5) 5:10;6:1;7:7;8:7,8	<b>conflicted (1)</b> 15:4
al (2) 3:7,8	available (1) 19:18	briefs (2) 4:24;5:8	claimed (1) 8:14	<b>considered (1)</b> 4:24
allegations (3) 7:3,8;8:6	aware (1) 11:2	bring (1) 15:14	claiming (1) 8:13	<b>contention (1)</b> 22:11
along (1)		brought (1) 15:12	claims (3) 6:25;7:19;9:2	<b>continued (2)</b> 4:2,13
		Busch (2)	clarification (1)	



19:18 <b>gets (1)</b> 19:6 <b>given (6)</b> 7:15,16;13:23;14:9; 17:11;24:23 <b>gives (1)</b> 14:4 <b>goal (1)</b> 21:6 <b>goes (1)</b> 15:5 <b>Good (9)</b> 3:3,4,5,10,13,14,21; 4:5;5:16 <b>governing (1)</b> 23:17 <b>grant (2)</b> 4:5;22:14 <b>great (2)</b> 16:23;28:12 <b>guess (3)</b> 12:9;18:21,24 <b>guidance (1)</b> 25:15	19:11;26:18;28:17 <b>hope (2)</b> 13:22;18:7 <b>hour (2)</b> 12:9,9	<b>jury (2)</b> 12:20;14:10	28:13 <b>limine (11)</b> 24:3,4,21;25:1,4,12; 26:4,6,7,9,14 <b>limits (1)</b> 14:6 <b>listed (1)</b> 22:25 <b>little (1)</b> 20:19 <b>live (2)</b> 18:1,6 <b>LLC (1)</b> 3:7 <b>local (1)</b> 24:17 <b>lockbox (1)</b> 7:13 <b>long (1)</b> 19:18 <b>look (3)</b> 10:13;23:25;24:12 <b>looked (1)</b> 11:10 <b>looking (1)</b> 22:13 <b>Looks (2)</b> 4:15;21:12 <b>lot (4)</b> 18:15;19:2,23;26:12	<b>meaningful (1)</b> 25:15 <b>means (1)</b> 27:11 <b>meet (3)</b> 11:12;24:25;25:6 <b>merit (1)</b> 5:5 <b>might (1)</b> 12:1 <b>mind (3)</b> 5:15;14:13;22:6 <b>minute (2)</b> 10:16;18:14 <b>misspeak (1)</b> 20:9 <b>mistakes (1)</b> 25:8 <b>MONDAY (2)</b> 3:1;13:5 <b>money (4)</b> 7:15;8:21;9:4,12 <b>month (2)</b> 6:17;18:23 <b>months (1)</b> 23:3 <b>more (17)</b> 6:2;7:10;13:4;14:4, 23;19:21,22,23,23,25; 20:4,5,6,21:15;25:21; 27:2;28:13 <b>morning (7)</b> 3:3,4,5,10,13,14,21 <b>most (1)</b> 16:20 <b>motion (30)</b> 3:24;4:5,6,11,21,22; 5:1,3,12;6:9,14,16;7:5, 25;9:16;10:7;11:25; 17:23;18:7;20:2,21:19; 25:3,4,17,19,21,23; 26:6,7,9 <b>motions (13)</b> 6:6;18:21;23:5,12; 24:3,4,20;25:1,11,12; 26:4,10,14 <b>move (1)</b> 4:1 <b>moved (2)</b> 20:14;26:8 <b>moving (3)</b> 17:4,15;20:19 <b>much (5)</b> 9:4;14:10;17:15; 19:21;28:21 <b>must (2)</b> 24:25;25:5	
<b>H</b>	<b>I</b>	<b>K</b>	<b>M</b>	<b>N</b>	
<b>Habibi (3)</b> 22:2,4,5 <b>Hamilton (4)</b> 14:25;15:19,21;16:2 <b>happened (2)</b> 7:15;16:1 <b>happens (1)</b> 21:2 <b>happy (2)</b> 18:5;20:15 <b>hard (1)</b> 9:14 <b>harder (1)</b> 14:10 <b>hear (6)</b> 5:14,15;6:5;11:19; 16:11;17:16 <b>heard (4)</b> 4:7;5:6,18;14:25 <b>hearing (5)</b> 3:25;4:2,13;6:8;23:5 <b>hearings (1)</b> 23:10 <b>hearsay (1)</b> 25:18 <b>Heimberger (8)</b> 3:16,16;4:9,16,18; 6:18,19;11:1 <b>here's (1)</b> 10:3 <b>highlighted (1)</b> 16:15 <b>Honor (13)</b> 3:4,5,10,14;4:8,9; 6:19;11:1,2;16:8;	<b>idea (1)</b> 27:7 <b>identifications (1)</b> 21:14 <b>III (1)</b> 3:7 <b>immediately (2)</b> 8:1;16:5 <b>inclination (1)</b> 12:20 <b>Incorporated (1)</b> 3:7 <b>indicated (1)</b> 18:18 <b>indicates (1)</b> 13:6 <b>information (1)</b> 10:1 <b>inspect (2)</b> 21:18,20 <b>instances (1)</b> 24:15 <b>interested (1)</b> 20:10 <b>into (3)</b> 8:22;13:5;15:11 <b>investment (1)</b> 3:24 <b>involved (1)</b> 18:11 <b>issue (4)</b> 14:1,21;16:15;18:23 <b>issues (6)</b> 5:3,21;6:22;19:3,8; 26:22	<b>keep (6)</b> 16:10,14;17:12,17; 26:8,13 <b>Kelly (1)</b> 25:9 <b>kind (1)</b> 23:24 <b>kinds (1)</b> 8:10 <b>knew (1)</b> 9:4 <b>knowing (1)</b> 17:1	<b>L</b>	<b>lack (1)</b> 7:22 <b>laid (1)</b> 26:18 <b>Lane (1)</b> 20:2 <b>large (2)</b> 7:23;16:24 <b>last (11)</b> 4:13;6:14,17;10:11; 11:16;12:2,7,17;21:14; 24:2;26:11 <b>lateness (1)</b> 16:17 <b>law (3)</b> 6:7;20:12;25:14 <b>lawyer (1)</b> 14:11 <b>lawyers (1)</b> 25:8 <b>least (1)</b> 27:18 <b>LEE (39)</b> 3:4,14,14;4:15;8:4,4; 9:20;10:18,23;11:21; 12:7;13:16;16:8,15; 17:8,19;18:10;19:5,13, 15;20:8;21:5;22:1,10, 16,20;23:8,10,12,22, 24;24:8,11,19;26:18; 27:5;28:1,8,16 <b>left (1)</b> 14:14 <b>legal (5)</b> 5:4,17,18,24;19:8 <b>Lenard (1)</b> 3:20 <b>less (1)</b> 13:12 <b>light (3)</b> 5:1,6;11:14 <b>likely (1)</b>	<b>name (2)</b> 21:22,25 <b>necessary (2)</b>

7:1,18 <b>need (8)</b> 5:22,22;6:25;7:20; 16:8;19:1;25:21;27:20 <b>needs (1)</b> 19:21 <b>New (1)</b> 25:9 <b>next (1)</b> 4:11 <b>notice (1)</b> 25:6 <b>noticed (2)</b> 19:24;20:10 <b>notices (2)</b> 20:1,19 <b>notwithstanding (1)</b> 20:25 <b>number (4)</b> 3:22;7:24;20:13; 26:5	<b>ought (2)</b> 9:7;14:21 <b>Ours (2)</b> 11:18;17:10 <b>ourselves (1)</b> 6:23 <b>out (7)</b> 5:25;8:23;9:7,21; 10:3;13:1;26:19 <b>over (4)</b> 6:8;11:10;15:13; 18:13 <b>owned (1)</b> 9:22	26:2 <b>pick (3)</b> 14:14;17:3;27:12 <b>plaintiff (2)</b> 5:24;6:10 <b>plaintiffs (13)</b> 3:11,12;4:21;5:13; 6:3;7:23;9:4,22;18:16, 17:20;13,22;26:23 <b>plaintiffs' (7)</b> 10:4;15:14;16:17; 23:15;24:1,13;26:6 <b>planning (2)</b> 11:4;22:8 <b>plays (1)</b> 9:21 <b>please (4)</b> 3:9;25:18;26:5,8 <b>pled (1)</b> 7:6 <b>point (10)</b> 5:16;6:20,23;9:18; 10:5;16:13;17:6,12; 23:22;26:11 <b>portions (3)</b> 4:12,23;6:15 <b>position (2)</b> 21:13;26:18 <b>possibility (1)</b> 11:23 <b>possible (2)</b> 20:24;27:10 <b>possibly (1)</b> 12:3 <b>precluded (1)</b> 6:7 <b>precludes (1)</b> 6:10 <b>prejudice (1)</b> 10:8 <b>prepare (2)</b> 8:9;17:2 <b>prepared (1)</b> 12:18 <b>present (2)</b> 8:21;27:13 <b>presented (1)</b> 25:13 <b>pretrial (2)</b> 11:13;14:3 <b>pretty (1)</b> 9:10 <b>previous (1)</b> 4:24 <b>prior (1)</b> 6:9 <b>PRITT (2)</b> 3:12,12 <b>probably (2)</b> 20:5;24:21 <b>problem (1)</b> 19:15 <b>problems (1)</b>	8:5 <b>procedural (3)</b> 12:14;14:18;26:21 <b>Procedure (2)</b> 18:19;23:19 <b>proceed (2)</b> 6:4;8:2 <b>proceedings (1)</b> 28:23 <b>produce (1)</b> 20:4 <b>professor (1)</b> 22:2 <b>proper (1)</b> 26:4 <b>properly (1)</b> 25:12 <b>property (3)</b> 9:22;21:19,21 <b>proposal (3)</b> 23:25;24:1;27:13 <b>proposed (10)</b> 11:15,17,20;12:10, 16;18;20;23:15,16; 24:14,16 <b>proposing (2)</b> 20:21,22 <b>prove (1)</b> 7:8 <b>proven (1)</b> 5:21 <b>provide (3)</b> 25:5,14;26:9 <b>provided (1)</b> 19:4 <b>pushed (1)</b> 15:8 <b>put (10)</b> 5:22,23;6:1,3,25; 7:18,24;12:20;26:24, 25	17:12;13;13:6,7;14:2; 25:24,24;26:12 <b>Realty (1)</b> 3:6 <b>reason (4)</b> 18:2;19:3,9;23:17 <b>reasoning (1)</b> 27:1 <b>reasons (1)</b> 6:16 <b>rebut (1)</b> 22:17 <b>recall (1)</b> 15:7 <b>received (3)</b> 10:12;11:11;12:21 <b>receiving (2)</b> 13:4;28:19 <b>recently (1)</b> 20:13 <b>recess (2)</b> 11:8,9 <b>recognized (1)</b> 11:25 <b>record (2)</b> 10:15;28:22 <b>refer (1)</b> 26:1 <b>regardless (1)</b> 8:24 <b>relating (1)</b> 18:22 <b>relevant (1)</b> 9:18 <b>remain (1)</b> 5:5 <b>remaining (3)</b> 20:9,17;21:2 <b>repeat (2)</b> 6:23;25:8 <b>report (1)</b> 3:25 <b>reported (1)</b> 10:20 <b>representing (1)</b> 20:12 <b>request (3)</b> 15:9;17:10;22:14 <b>requested (3)</b> 4:1;11:3;26:10 <b>require (1)</b> 18:19 <b>required (1)</b> 28:20 <b>requirements (1)</b> 24:17 <b>reserve (3)</b> 7:14;8:22;20:1 <b>resolved (1)</b> 19:16 <b>resources (1)</b> 5:16 <b>respect (2)</b>
<b>O</b>	<b>P</b>		<b>Q</b>	
<b>obviously (2)</b> 9:15,25 <b>occur (1)</b> 22:12 <b>occurred (1)</b> 22:11 <b>October (1)</b> 9:5 <b>off (6)</b> 10:3,15;14:14;17:4; 19:4;28:21 <b>once (2)</b> 12:23;22:16 <b>one (10)</b> 6:5,20;8:5;9:2;11:4; 14:20;20:12;21:15,15; 27:6 <b>ones (1)</b> 18:16 <b>only (5)</b> 9:20;15:5;18:16; 23:17;25:3 <b>open (1)</b> 5:15 <b>opportunity (1)</b> 18:2 <b>oppose (1)</b> 17:4 <b>opposition (3)</b> 4:4;24:3;26:7 <b>order (6)</b> 4:10;5:9;7:8;10:10; 16:3;24:22 <b>original (1)</b> 7:5 <b>originally (3)</b> 3:25;4:14;15:7 <b>otherwise (4)</b> 7:1,17;17:14,14	<b>page (1)</b> 24:2 <b>papers (3)</b> 4:3;5:11;6:21 <b>part (3)</b> 7:23;8:11,24 <b>partial (1)</b> 4:4 <b>particular (1)</b> 6:15 <b>particularly (2)</b> 5:1;16:19 <b>parties (8)</b> 4:1;11:12;13:1,24; 19:9;23:19;24:4;25:15 <b>partners (1)</b> 15:24 <b>Paul (3)</b> 22:2,4,5 <b>pay (1)</b> 8:23 <b>penalty (1)</b> 25:7 <b>pending (1)</b> 17:13 <b>people (2)</b> 10:2;23:2 <b>perfect (1)</b> 19:19 <b>perhaps (1)</b> 10:15 <b>period (2)</b> 8:12;9:21 <b>perjury (1)</b> 25:7 <b>permit (1)</b> 19:11 <b>person (2)</b> 21:16;22:5 <b>personally (1)</b> 17:2 <b>phasing (1)</b> 13:12 <b>Phelps (3)</b> 3:15,16,18 <b>Photo (1)</b>		<b>quite (1)</b> 23:1 <b>quote (2)</b> 25:11,16	<b>R</b>
			<b>raise (2)</b> 7:7;8:8 <b>raised (3)</b> 5:3;6:21;11:23 <b>rather (1)</b> 8:11 <b>reach (2)</b> 9:9;25:7 <b>read (5)</b> 4:3,20;5:8,8;11:7 <b>really (14)</b> 5:20;8:6,8,25;9:4,14,	

<p>11:21;16:23 <b>respectfully (1)</b> 23:21 <b>respond (1)</b> 8:17 <b>responded (1)</b> 15:2 <b>response (1)</b> 17:11 <b>review (1)</b> 10:16 <b>right (19)</b> 4:10;7:21;8:15;10:6; 11:8,10;12:6;15:2,20; 16:7;17:17;18:12,25; 19:7;22:18;23:9;24:7, 24;28:5 <b>Rincon (3)</b> 3:6,7;16:3 <b>room (1)</b> 12:20 <b>rounds (1)</b> 14:1 <b>rule (2)</b> 24:17;25:20 <b>ruled (2)</b> 5:14;6:5 <b>ruling (5)</b> 5:6;10:6,7;11:25; 26:10 <b>rulings (1)</b> 25:13</p>	<p>5:21;6:2;14:18; 17:20;27:15 <b>sent (2)</b> 11:17;12:7 <b>separate (1)</b> 6:1 <b>sequentially (1)</b> 26:6 <b>serve (3)</b> 19:25;24:2,4 <b>set (11)</b> 3:25;14:7;15:5,15, 18,24;16:6,24;17:10; 19:6;28:18 <b>shall (1)</b> 26:15 <b>SHAPIRO (33)</b> 3:5,10,11;4:8;8:16, 17;10:21,25;11:15; 13:8;15:2,17,21;17:19; 18:25;19:14,23,25; 21:3,12,17,23;22:2,5, 24;27:2,4,9,18,21;28:2, 6,17 <b>short (2)</b> 11:8;12:9 <b>showing (1)</b> 13:13 <b>shown (1)</b> 4:5 <b>side (2)</b> 17:25;20:11 <b>sides (1)</b> 23:1 <b>sign (1)</b> 4:10 <b>significant (1)</b> 19:8 <b>simple (2)</b> 9:10;19:13 <b>simpler (1)</b> 8:2 <b>simplest (1)</b> 3:23 <b>situation (2)</b> 14:24;17:15 <b>smooth (1)</b> 19:20 <b>so-and-so (1)</b> 18:5 <b>somebody (1)</b> 22:17 <b>sometimes (1)</b> 27:5 <b>sorry (2)</b> 15:19;23:6 <b>sort (2)</b> 7:12;12:14 <b>sought (1)</b> 25:13 <b>sounds (1)</b> 26:11 <b>specific (2)</b></p>	<p>25:24;27:10 <b>spending (1)</b> 12:24 <b>stacked (1)</b> 14:5 <b>stage (1)</b> 5:12 <b>stand (2)</b> 5:9,17 <b>stands (1)</b> 24:5 <b>start (6)</b> 3:23;6:8;14:12,12; 15:13;20:16 <b>started (1)</b> 16:9 <b>Starting (1)</b> 17:1 <b>stated (2)</b> 6:13,17 <b>Statement (2)</b> 10:14;12:13 <b>statements (9)</b> 7:10;9:13,23,25; 10:1,4;11:3,11;13:5 <b>stay (3)</b> 6:25;7:19,19 <b>stick (1)</b> 23:13 <b>still (2)</b> 15:1,10 <b>stipulate (3)</b> 13:9,10,17 <b>stipulated (1)</b> 24:17 <b>stipulation (2)</b> 8:2;9:9 <b>stipulations (2)</b> 7:22;14:3 <b>stop (2)</b> 14:12,12 <b>straight (1)</b> 26:13 <b>strike (9)</b> 4:11,21,22;5:4,12; 6:14;9:16;10:7;11:25 <b>subject (3)</b> 6:16;11:13;25:12 <b>submission (2)</b> 16:16;28:20 <b>submit (1)</b> 10:5 <b>submitted (2)</b> 7:20;15:25 <b>submitting (2)</b> 11:4;16:18 <b>subpoenaed (2)</b> 20:10,18 <b>substance (1)</b> 25:2 <b>substantial (1)</b> 7:2 <b>substantive (2)</b></p>	<p>14:18;26:21 <b>summary (3)</b> 6:10;7:25;10:10 <b>supplanted (1)</b> 24:6 <b>Supplement (2)</b> 10:13;22:13 <b>support (2)</b> 4:3,22 <b>supports (1)</b> 5:18 <b>sure (10)</b> 8:3,13,18,25;10:21; 19:17;23:23;24:19; 27:25;28:2 <b>surreply (2)</b> 4:20,22</p>	<p>28:7,10,15 <b>told (4)</b> 15:24;16:2,4,5 <b>total (1)</b> 22:25 <b>Towers (1)</b> 3:7 <b>track (1)</b> 26:8 <b>trial (28)</b> 5:2,21;6:6,9;9:21; 10:9,9;11:14,19;13:12; 14:4,6,10,10,24;15:3,6, 15,22;16:3,8,24,24; 17:2,10;24:23;26:17, 24 <b>trials (1)</b> 14:6 <b>tried (1)</b> 14:21 <b>triggered (1)</b> 17:20 <b>true (1)</b> 7:8 <b>try (15)</b> 5:16;12:22;13:1,1; 14:16;19:11;21:1,3; 22:24;23:2,20;26:19; 27:9,22;28:14 <b>trying (8)</b> 5:24;8:8;11:23; 13:17;14:17;21:18; 26:20;27:14 <b>Tuesday (2)</b> 11:16;12:7 <b>two (11)</b> 14:1;18:22;19:16; 23:1,3;27:18,23;28:3,5, 7,10 <b>two-and-a-half-week (1)</b> 16:22 <b>two-week (2)</b> 15:6;16:21</p>
<b>S</b>				
<p><b>Same (2)</b> 3:20;17:25 <b>SAP (1)</b> 15:21 <b>saw (2)</b> 11:4;12:13 <b>saying (4)</b> 8:20;10:3;25:5,19 <b>schedule (10)</b> 11:6,15,17,20;12:7, 16;13:14;15:10;20:15; 21:1 <b>scheduled (4)</b> 16:19;17:5,22;20:14 <b>scheduling (1)</b> 19:3 <b>Schiller (1)</b> 3:11 <b>seal (3)</b> 3:24;4:6;13:25 <b>Section (2)</b> 5:5,10 <b>seemed (1)</b> 5:23 <b>seems (6)</b> 5:10,15,20;9:10; 14:17;28:20 <b>sense (5)</b></p>	<p><b>S</b></p>	<p><b>S</b></p>	<p><b>T</b></p>	<p><b>T</b></p>
<p><b>talk (4)</b> 12:9;14:22;27:3,5 <b>talked (4)</b> 11:22;12:2;13:16; 17:21 <b>talking (3)</b> 12:14;13:6;21:24 <b>ten (1)</b> 22:25 <b>tenants (1)</b> 8:22 <b>tentative (6)</b> 4:4,25;6:11,13;9:16; 10:6 <b>testified (1)</b> 25:22 <b>testify (1)</b> 18:6 <b>testimony (3)</b> 7:11;25:24,25 <b>theirs (2)</b> 10:25;11:4 <b>Therefore (1)</b> 8:9 <b>thinking (1)</b> 14:20 <b>third-party (2)</b> 16:19;17:21 <b>though (2)</b> 11:24;14:7 <b>thought (5)</b> 4:25;6:12;11:5; 17:21;28:3 <b>three (3)</b> 20:14;27:19,20 <b>Thursday (1)</b> 12:17 <b>times (2)</b> 6:22;17:5 <b>time-saver (1)</b> 13:8 <b>today (7)</b> 4:2;8:18;12:4;16:16;</p>	<p><b>U</b></p>	<p><b>U</b></p>	<p><b>U</b></p>	<p><b>U</b></p>
<p><b>UCLA (1)</b> 22:3 <b>under (2)</b> 13:25;25:7 <b>understood (1)</b> 12:12 <b>up (6)</b> 13:13;14:14;17:3; 18:14;19:7;28:13 <b>use (1)</b> 5:16 <b>uses (1)</b> 26:4</p>	<p><b>V</b></p>	<p><b>V</b></p>	<p><b>V</b></p>	<p><b>V</b></p>
<p><b>versus (6)</b></p>	<p><b>V</b></p>	<p><b>V</b></p>	<p><b>V</b></p>	<p><b>V</b></p>

3:7;21:9;23:6,6; 25:9;26:2 <b>view (5)</b> 4:4,25;6:13;7:2;19:5 <b>vigorously (1)</b> 17:4	<b>year (2)</b> 7:10;21:14	25:9 <b>4th (2)</b> 25:10;26:2			
<b>W</b>	<b>1</b>	<b>6</b>			
<b>wait (1)</b> 4:18 <b>waiting (1)</b> 19:17 <b>walk (1)</b> 13:5 <b>waterfall (1)</b> 7:12 <b>way (5)</b> 5:9;8:2,21;9:7;13:3 <b>Wednesday (2)</b> 11:16;12:8 <b>week (4)</b> 11:16;12:8,17;16:25 <b>weeks (8)</b> 19:18;27:18,20,23; 28:4,5,7,10 <b>WEISS (2)</b> 3:20,20 <b>weren't (2)</b> 11:2,3 <b>West (1)</b> 25:9 <b>what's (2)</b> 14:24;18:23 <b>whole (3)</b> 12:22;27:14;28:14 <b>window (2)</b> 16:21,22 <b>wish (2)</b> 4:7;6:3 <b>without (1)</b> 10:8 <b>witness (3)</b> 18:3,6;21:24 <b>witnesses (9)</b> 16:20;17:22;18:1; 20:2,18;25:15,22; 26:24,25 <b>work (3)</b> 13:20;17:1;21:4 <b>world (1)</b> 19:19 <b>worry (1)</b> 13:14 <b>worth (1)</b> 12:24 <b>writing (1)</b> 27:13 <b>written (2)</b> 24:21;28:11	26:6,7 <b>11th (1)</b> 21:10 <b>158 (1)</b> 26:2 <b>1582 (1)</b> 26:3 <b>1593 (1)</b> 26:3 <b>1596 (1)</b> 26:3 <b>15th (1)</b> 23:7 <b>16th (1)</b> 4:1 <b>1996 (1)</b> 25:10 <b>1st (1)</b> 24:5	<b>659 (1)</b> 25:10 <b>670 (1)</b> 25:10	<b>7</b>	<b>7 (1)</b> 16:24 <b>726 (7)</b> 5:5,10,23;6:1,4;8:7, 24	
	<b>2</b>	<b>8</b>	<b>8th (2)</b> 23:6,6		
		<b>9</b>			
		<b>9:05 (1)</b> 3:1 <b>9:51 (1)</b> 28:23 <b>9th (3)</b> 28:8,9,19			
	<b>2008 (1)</b> 26:3 <b>2009 (1)</b> 26:21 <b>2010 (1)</b> 9:5 <b>2012 (1)</b> 3:1 <b>24-hour (1)</b> 25:19 <b>24th (4)</b> 4:15,16,19;15:24 <b>25 (1)</b> 17:4 <b>25th (7)</b> 15:9,15,24;16:2,10; 17:12,18 <b>26 (1)</b> 3:1 <b>27th (1)</b> 16:25 <b>28 (1)</b> 20:23 <b>28th (6)</b> 21:1,9,11;22:23; 23:4,21				
	<b>3</b>				
	<b>30th (4)</b> 20:22,25;21:7;23:21				
	<b>4</b>				
<b>Y</b>	<b>49 (1)</b>				