EXHIBIT 16

Minute Order from a Los Angeles Superior Court Judge in the case *Gandsey v. SoCalGas*

(civil litigation related to Aliso Canyon)

February 20, 2020

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 12

BC601844 February 20, 2020
WILLAM GANDSEY VS SOUTHERN CALIFORNIA GAS COMPANY ET AL 8:14 AM

Judge: Honorable Carolyn B. Kuhl
Judicial Assistant: Lori M'Greené
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 02/11/2020 for Hearing on Motion for Sanctions of Private Plaintiffs for monetary, evidentiary and issue sanctions and an adverse-inference jury instruction (BC601844) on case BC601844, now rules as follows:

Motion of Private Plaintiffs for Monetary, Evidentiary, and Issue Sanctions and an Adverse-Inference Jury Instruction

Court's Ruling: The motion is granted in part. For the reasons set forth below, the court awards monetary sanctions of $525,610 against Defendant and defense counsel jointly, payable within 20 days. The court also orders that Private Plaintiffs are allowed to reopen any deposition at the expense of Defendants up until the date of the final status conference, so long as Plaintiffs have a colorable claim that a document that was withheld under a claim of privilege, but then produced after November 1, 2019, will be the subject of the deposition. Defendants are ordered to pay both the costs and attorneys' fees for any such depositions. Plaintiffs may submit an accounting of such reasonable costs and fees to the court, to be accompanied by briefing if necessary. The court also imposes the following issue sanctions: (1) all documents on Defendants' privilege logs that were produced after November 1, 2019 shall be deemed authenticated; and (2) all documents on Defendants' privilege logs that were produced after November 1, 2019 shall be deemed admissible under the business records exception to the hearsay rule (but Defendants may object to a hearsay statement within such documents).

I. The Current Motion

Private Plaintiffs bring the current motion in order to seek monetary, evidentiary and issue sanctions, which Plaintiffs premise on Defendants' repeated failure to provide sufficient justification for the withholding of thousands of supposedly privileged documents. Plaintiffs

argue that sanctions are warranted because Defendants have violated this court's September 18, 2019 order requiring production of a good faith and legally compliant privilege log and have engaged in a pattern of abusive discovery by repeatedly withholding large numbers of documents without substantial justification and by producing privilege logs that are insufficient to allow Plaintiffs or the court to evaluate Defendants' claims of privilege. Plaintiffs seek hundreds of thousands of dollars in monetary sanctions and numerous evidentiary and issue sanctions as set forth in Private Plaintiffs' Amended Notice of Motion, filed on January 16, 2020. They also seek a jury instruction pursuant to Evidence Code section 413.

Defendants argue that their claims of privilege were made in good faith and that their decisions to withdraw multiple claims of privilege also should be viewed as evidence of their good faith conduct of discovery. They point out that this case is large and complex, making discovery very burdensome for Defendants and state that they have done their best to meet their discovery obligations while acknowledging that some mistakes were made. They argue that this court's September 18, 2019 order is unenforceable, but that they have tried to comply with this court's "high standards" for claiming privilege. Defendants also argue that the requested sanctions are inappropriate, grossly excessive, and unavailable as a matter of law.

In their Reply papers, Plaintiffs challenge the argument that they will not suffer significant prejudice as a result of the late production of documents previously designated as privileged by Defendants. Lead counsel for Plaintiffs, Mr. Panish, explains that, with four months until trial, Plaintiffs have been placed at a significant disadvantage in trial preparation because they now will be required to spend time reviewing thousands of late-produced documents, and potentially have to reconvene completed depositions and spend substantial time questioning witnesses about those documents. (See Panish Decl. ISO Reply, ¶¶ 9-13.) Moreover, Mr. Panish states that continuing the trial date would prejudice his clients, as it would delay much-needed relief for a community that has been waiting for relief for over four years. (Panish Decl. ISO Reply, ¶ 8.)

II. Chronology of Defendants' Prior Unsubstantiated Claims of Privilege in this Case

The chronology below is largely repeated from this court's prior ruling of January 14, 2020 on Private Plaintiffs' Motions to Compel. It is equally relevant to the current Motion for Sanctions.

A. Summary of Prior Claims of Privilege and Extent of Unsubstantiated Claims

The current motion must be decided against the backdrop of the prior history of Defendants' withholding of documents purportedly on the basis of privilege. In summary:

• As to one group of documents (AECOM communications), Defendants originally claimed privilege with respect to 771 documents; after two motions, claims of privilege were sustained as to a mere 6 documents.
• As to another group of documents (communications with public relations firms), an initial claim of privilege as to 358 documents was eventually reduced to 32 claims of privilege after this court required trial counsel to personally assert that there was a good faith basis for assertion of the privilege as to each document.
• Regarding a third group of documents (documents concerning development of data to be furnished to regulatory agencies) claims of privilege with respect to more than 4,000 documents were eventually reduced to 176 documents.
• SoCalGas listed more than 36,000 privileged documents on a privilege log in June of 2019. On September 18, 2019 there were 14,417 documents still listed. And 3,472 documents of the original 36,000 documents claimed to be privileged were listed on the November 1, 2019 SoCalGas privilege log.

Based on the prior history of this case up to the time Defendants filed their November 1, 2019 privilege logs, Defendants' initial claims of privilege are unsupportable and/or are withdrawn an average of 94 percent of the time.

As demonstrated by the tortured history below, the documents that were withheld by Defendants were provided only after extraordinary efforts by Plaintiffs' counsel and by the court to force defense counsel to abandon unreasonable claims of privilege. What is not evident from this recitation, but is undeniably the case, is that the Plaintiffs were deprived of relevant documents during the time they were taking percipient discovery to meet the discovery deadline agreed to by the parties. (On July 2, 2019 this court set a trial date of June 24, 2020 for the first phase trial. Although counsel for defense requested a later trial date, both sides agreed to set the cut-off for percipient discovery of January 31, 2020. (See Minute Order of July 31, 2019.))

B. Detailed Chronology Regarding Defendants' Prior Claims of Privilege

AECOM was an environmental consultant to SoCalGas. On August 2, 2017, Private Plaintiffs issued a deposition subpoena for production of documents to AECOM. SoCalGas served objections, including objections on the basis of attorney client and work product privilege. After meet and confer efforts between counsel, AECOM produced documents on December 5, 2017, December 28, 2017 and June 7, 2018; eventually the production totaled 53,000 documents. The June 7, 2018 production included a 34-page privilege log listing 771 items. Subsequent to meet and confer discussions between Private Plaintiffs and SoCalGas, on July 26, 2018, AECOM,

with SoCalGas's permission, produced 62 documents previously withheld on the basis of privilege. (Private Plaintiffs' Motion to Compel Production of Documents, Aug. 1, 2018, at pp. 4-5.)

At a hearing on August 27, 2018, the Hon. Lisa Hart Cole ordered the parties to continue to meet and confer in order to either resolve the issues or to narrow them for the court's consideration. Pursuant to the meet and confer, SoCalGas authorized the production of an additional 97 documents that previously were asserted to be privileged. (Defendant SoCalGas Company's Supplemental Brief in Opposition to Motion to Compel Production of Documents Relating to AECOM, Oct. 12, 2018, at p. 1.)

On October 18, 2018, the Hon. John Wiley ruled on Private Plaintiffs' Motion with respect to the remaining assertedly privileged AECOM documents and held as follows:
For the most part, Southern California Gas Company has failed to prove the voluminous and diverse communications among Company employees, people at third-party contractor AECOM, and Company lawyers were "reasonably necessary" for the lawyers to represent the Company. [Citations omitted.] There is no attorney work product privilege for the same reason. There is an exception, however, for four categories of documents: One: Documents that AECOM authored at the request of a Company lawyer. Two: Documents Company lawyers gave to AECOM for review and comment regarding technical expertise that would assist the lawyers in developing legal strategy. Three: Documents containing legal opinions that Company lawyers gave to AECOM for the purpose of evaluating whether technical information in the document was accurate. Four: Documents that are communications with the Company's retained (but not testifying) experts. As to these four categories of documents, the motion is denied. These four categories of documents are privileged.
(Notice of Ruling on Private Plaintiffs' Motion to Compel Third Party AECOM's Production of Documents, Oct. 19, 2018.) Defendants were ordered to produce all documents not included in these four specific categories. As explained below, Defendants did not do so.

When this court took over as the coordination trial judge for this proceeding, privilege issues had proliferated. In a Status Conference statement filed April 26, 2019, Plaintiffs attached a 26-page Appendix discussing Plaintiffs' disagreements with Defendants' claims of privilege and the status of meet and confer efforts with respect to those issues.

In a Minute Order dated May 1, 2019, the court ordered counsel to file (1) a joint statement of issues with respect to interpretation and application of Judge Wiley's ruling regarding documents involving AECOM and (2) a joint statement of issues regarding documents withheld by

Defendants on the basis of privilege regarding development of data to be furnished by Defendants to regulatory authorities.

Having reviewed those joint statements, at a hearing on June 17, 2019 this court ordered Defendants to file a motion for protective order "[w]ith respect to privilege issues concerning the 400+ documents subpoenaed from AE Com [sic] that have been withheld on grounds of privilege." (Minute Order, June 17, 2019.) With respect to "the 4000+ documents withheld by So Cal Gas on the theory that the data collection for regulatory agencies was directed by in-house counsel" the court ordered that Defendants "supplement the privilege log within 30 days by adding a column giving dates and names of counsel who directed the strategy for a particular data request that is the subject of the document and/or what other attorney involvement justifies the assertion of privilege as to that document." (Id.)

In the Joint Status Conference Report filed August 12, 2019, Private Plaintiffs stated that they had become aware at a deposition that Defendants had withheld as privileged all communications between Defendants and a public relations firm. Defendants contended that Private Plaintiffs were incorrect in their "extreme, categorical position that no communications between a client, its attorneys and a public relations consultant can ever be protected by the attorney-client privilege or attorney work product doctrine." (Joint Status Conference Statement for August 14, 2019, Aug. 12, 2019, at p. 13 (emphasis in original).) Defendants did not contest Private Plaintiffs' representation that Defendants had withheld all communications with the public relations firm. Defendants asserted that the issue was not "ripe" for the court's decision and that further meet and confer should take place. (Id. at pp. 13-16.)

On August 12, 2019, the court heard argument on Defendants' Motion for a Protective Order with respect to the AECOM documents on which Defendants continued to claim privilege. The court ruled on the Motion on August 15, 2019. In the Motion, Defendants continued to claim privilege with respect to 174 AECOM documents. The court ordered all but 6 documents to be produced. The court ordered sanctions against Defendants because "there was not a colorable claim of privilege supported by this motion as to the vast majority of the documents at issue." In litigating this motion, and true to a pattern of updating privilege logs only once formally challenged, Defendants filed an "updated version of the AECOM [privilege] Log" with its Reply brief. Even after the court issued a tentative ruling on August 11, 2019, on the day of the hearing Defendants attempted to file a supplemental declaration to support their privilege claims. The court did not consider those manifestly late-filed documents. (Minute Order, Aug. 15, 2019.)

The court's level of concern with respect to Defendants' good faith in claiming privilege was

heightened at that juncture. Defendants had claimed privilege on a group of 771 AECOM documents. After a ruling by Judge Wiley, they continued to claim privilege on over 400 documents, and then on 174 documents. Defendants' claims of privilege were colorable only as to 6 of the original 771 documents.

Because of the court's concern over the good faith basis for Defendants' privilege claims, the court issued an order that was unprecedented in this court's 24 years of experience on the bench (including more than 12 years in a complex civil litigation assignment). With respect to the 358 documents evidencing communications between Defendants and their public relations consultant, the court ordered trial counsel to submit a "declaration stating that counsel has personally reviewed the documents in this category as to which privilege continues to be claimed, that counsel is familiar with the relevant case law and statutes pertaining to privilege concerning such documents and that there is a good faith basis for withholding such documents on the basis of privilege." (Minute Order, Aug. 14, 2019 (emphasis added).)

On September 3, 2019, trial counsel for Defendants filed declarations with respect to the 358 documents involving or referencing public relations consultants that had been withheld based on privilege. Counsel stated that attorneys under their direction or control had reviewed the documents, that SoCalGas was continuing to claim privilege as to 32 such documents, and that the declarants had a good faith basis to assert SoCalGas's attorney-client or work product privilege as to the 32 documents. (Declarations of James J. Dragna and Michelle Park Chiu, Sept. 3, 2019.) In a subsequent joint status conference report, counsel for Private Plaintiffs asserted that, of the 32 documents listed on that privilege log, only 17 continued to be withheld in their entirety, and that 14 documents had an identical redaction of an email communication. (Joint Status Conference Statement filed Sept. 20, 2019, at p. 14.)

On July 17, 2019, Defendants produced a revised privilege log with regard to the documents pertaining to data collection for regulatory agencies. Defendants continued to withhold 1,293 such documents (out of the original 4000+ documents claimed to be privileged). Private Plaintiffs contended that there was no appropriate basis for privilege disclosed in the revised privilege log. (Joint Status Conference Statement for Sept. 11, 2019, at pp. 16-19, 43-44.)

At the September 11, 2019 status conference, the court issued the following order: "Defense counsel shall report to the court at a specially set status conference on Sept. 18, 2019 at 1:45 pm as to how they propose to address the problem of Defendants' over-designation of privileged documents." (Minute Order, Sept. 11, 2019.)

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CSR: None
ERM: None
Deputy Sheriff: None

At the September 18, 2019 status conference, after hearing argument from counsel, the court ordered as follows:
• Within 45 days defense counsel shall review all previously produced privilege logs and shall produce, on a rolling basis, all documents as to which privilege is not legally supportable. Defense counsel shall correct and re-serve the privilege logs previously produced so as to accurately describe and designate as privileged only documents as to which a privilege is legally supportable.
• Before the September 25, 2019 status conference, defense counsel shall produce to plaintiffs all "data request" documents as to which privilege is not legally supportable and shall re-serve the privilege log previously produced for this category of documents so as to accurately describe and designate as privileged only documents as to which a privilege is legally supportable. To the extent any document is redacted to protect a legally supportable privilege, the redacted document shall be produced to plaintiffs. Defense counsel shall bring to the September 25, 2019 status conference all documents in the "data request" category that have been fully or partially withheld on the basis of privilege.
• Counsel shall meet and confer with respect to the deadline(s) for defendants to prepare and serve additional legally supportable privilege logs for documents that have been and will be produced in the future.

At the September 25, 2019 status conference, counsel for Defendants reported that 176 "data request" documents remained on the Defendants' privilege log. Originally, privilege had been claimed on more than 4000 of these documents, and the previous privilege log (of July 17, 2019) listed 1293 documents in this set. The court reviewed the privilege log and discussed with both counsel several of the documents on which privilege continued to be claimed. The revised log had been produced at 6:00 pm the prior evening, and counsel for Private Plaintiffs had little time to prepare for the informal discussion with the court. The court ordered counsel to meet and confer if Plaintiffs' counsel had additional questions with respect to the "data request" group of documents.

On November 1, 2019, Defendants produced a privilege log for SoCalGas with over 150,000 entries, as well as a privilege log for Sempra with 5,913 entries. As stated above, on September 18, 2019 the court had ordered Defendants to "correct and re-serve the privilege logs previously produced so as to accurately describe and designate as privileged only documents as to which a privilege is legally supportable." At a status conference on December 4, 2019, the court asked counsel for Defendants to state how many documents that had been listed on previous privilege logs remained on the November 1, 2019 privilege log. In response to the court's query, defense counsel reported that, whereas there had been 36,295 documents on SoCalGas's privilege log in

June 2019, on September 18, 2019 there were 14,417 documents still listed, and of those, 3,472 documents remained on the November 1, 2019 SoCalGas privilege log. (Declaration of Deanne L. Miller re Minute Order of December 4, 2019 Regarding Defendant Southern California Gas Company's Privilege Log, ¶¶ 3-10.)

At the December 4, 2019 status conference, this court ordered counsel for Private Plaintiffs to lodge 80 consecutive pages of the November 1, 2019 SoCalGas privilege log for the court's review. The court also ordered counsel for each side to file a two-page document on December 9, 2019 making a recommendation as to how the court should address the extent to which Defendants' claims of privilege were proper in light of Private Plaintiffs' claims that they were overbroad.

On December 10, 2019, the court held an informal discovery conference to discuss the court's observations about the sufficiency of the November 1, 2019 defense privilege logs. The court will let the court reporter's record for that hearing speak for itself and will not attempt to summarize the discussion. At the conclusion of the December 10, 2019 status conference, the court stated that Private Plaintiffs would be permitted to file a motion to compel with respect to Defendants' privilege claims.

C. Plaintiffs' Motion to Compel Production of Documents Listed on Defendants' November 1, 2019 Privilege Logs

On December 19, 2019, Private Plaintiffs filed a Motion to Compel Production of 136,504 of the documents as to which SoCalGas claimed privilege in its November 1, 2019 privilege log and a Motion to Compel Production of 5,459 of the documents as to which Sempra claimed privilege in its November 1, 2029 privilege log. These Motions were set for hearing on January 14, 2020.

Although Defendants' Opposition Briefs on the Motions to Compel contended that the November 1, 2019 privilege logs were sufficient to meet legal requirements, Defendants nevertheless filed substitute privilege logs with their Opposition Briefs on January 6, 2020. These privilege logs dropped claims of privilege as to 33,787 documents listed on the SoCalGas November 2019 privilege log, and as to 1,550 documents listed on the Sempra November 2019 privilege log. The January 6, 2020 privilege logs also provided some additional information as to claims of privilege for some documents for which privilege continued to be asserted. (On January 10, 2020, Private Plaintiffs filed the current Motion for Sanctions.)

On January 14, 2020, this court heard argument on the Motions to Compel and issued its

decision. The court's reasoning is set forth at length in the January 14, 2020 Minute Order. The court ordered Defendants to produce by February 11, 2020 a privilege log for all documents that continue to be claimed as privileged by Defendants. The court required the privilege log to comply with the prior rulings of the court (including the prior rulings of Judge Wiley), and required it to be sufficient under the law set forth in the court's January 14 ruling. Further, the court required the revised privilege logs to be accompanied by a declaration of trial counsel that there is a good faith basis for the assertion of the privileges claimed. The court ordered rolling production of documents on which the Defendants will not be claiming privilege as a result of this further review. As of the date the current Motion for Sanctions was argued, the revised privilege logs and declarations of counsel had not been filed. Thus, the legal sufficiency of those privilege logs and of the claims of privilege included therein are not considered in ruling on the current motion.

The court also ordered Defendants to produce by Friday, January 17, 2020 all documents listed on the January 6, 2020 privilege logs that are claimed to be privileged solely on the basis that they were attachments to a privileged communication. This order extended to documents where the asserted basis for the privilege claim was only the following: "Attachment to confidential communication between client and in-house and/or outside counsel made in the course of the attorney-client relationship." This portion of the court's order subsequently was stayed by the Court of Appeal after Defendants (without seeking a stay from this court) filed a petition for writ of mandate and request for an immediate stay. The Court of Appeal ordered a briefing schedule, which was concluded on January 31, 2020. The stay was lifted by the Court of Appeal on February 19, 2020, but this court has not considered the substance of the appellate court's order in this ruling on the Motion for Sanctions.

III. Sanctions Are Warranted in Light of Defendants' Abuse of the Discovery Process

A court may impose monetary, issue, evidence, terminating, and contempt sanctions "against anyone engaging in conduct that is a misuse of the discovery process." (Code Civ. Proc., § 2023.030.) "Misuse of the discovery process" includes, but is not limited to, such actions as "[e]mploying a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense," "[m]aking, without substantial justification, an unmeritorious objection to discovery," or "[m]aking an evasive response to discovery." (Code Civ. Proc., § 2023.010.) Code of Civil Procedure Section 128(a)(4) empowers a court to "compel obedience to its judgments, order, and process . . . ." (See also Peat, Marwick, Mitchell & Co. v. Superior Court (1988) 200 Cal.App.3d 272, 288 (holding that courts have the inherent power to curb abuses and promote fair process");

Rutherford v. Owens-Illinois, Inc. (1997) 16 Cal.4th 953, 967 ("courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them").)

The court finds that Defendants' (1) abusive misconduct in discovery; (2) repeated, unmeritorious objections to discovery by assertion of unsubstantiated claims of privilege; (3) repeated failure to provide opposing counsel and the court with legally required information to permit opposing counsel and the court to evaluate Defendants' claims of privilege; and (4) willful violation of court orders addressing these issues, when taken together, warrant sanctions under Code of Civil Procedure section 2023.030, under Code of Civil Procedure section 128(a)(4), and pursuant to the inherent authority of the court.

A. Unmeritorious Objections to Discovery

As set forth above in the "Summary of Prior Claims of Privilege and Extent of Unsubstantiated Claims," more than 90 percent of Defendants' initial claims of privilege either have been determined by the court to be unsupportable or have been withdrawn by Defendant. As described in detail above in the "Detailed Chronology," the documents that were withheld by Defendants were provided only after extraordinary efforts by Private Plaintiffs' counsel and by the court to force defense counsel to abandon unreasonable claims of privilege. Thus, Defendants have misused the discovery process by making unmeritorious objections to discovery without substantial justification and by using those objections, and the quantity of unsupported objections, to delay Plaintiffs' right to discovery of relevant documents.

Defendants attempt to defend their conduct by asserting that they removed from earlier privilege logs "approximately 36.40% of the 197,513 documents over which Defendants have asserted privilege in the course of these proceedings (not 94%)." (Defs' Opp., at p. 16.) Defendants' calculation is based on initial claims of privilege that include the more than 150,000 documents on the November 1, 2019 privilege log. However, it remains to be seen how many of the documents listed as privileged on the November 1, 2019 privilege log will meet the test of a good faith assertion of privilege. This court ordered on January 14, 2020 that Defendants were required to produce by February 11, 2020 a privilege log that "compl[ies] with the prior rulings of this court (including the prior rulings of Judge Wiley), [is] sufficient under the law set forth [in this court's order of January 14, 2020] and [is] accompanied by a declaration of trial counsel that there is a good faith basis for the assertion of the privileges claimed." (Minute Order, Jan. 14, 2020.) The court further ordered that documents on which the Defendants are no longer claiming privilege are to be produced on a "rolling" basis. (Id.) As stated above, because the

February 11, 2020 compliance date was the same date that the current Motion for Sanctions was heard, the court has no final tally with which to calculate the percentage of initial claims of privilege on the November 1, 2019 privilege log that will be withdrawn or determined to be without merit. Defendants do not take issue with the court's calculation of 94% as the percentage of their claims of privilege withdrawn or determined to be unsupported prior to November 1, 2019.

Defendants argue that their initial claims of privilege have been made in good faith. The record does not support that characterization. Defendants complain that they have produced more than 1.5 million documents in this case and have borne an exceptional burden to collect and produce these documents as well as to prepare privilege logs for withheld documents. The necessary document production in this case has been exceptional, but it has not necessarily been more challenging than the burden other mass tort defendants face in JCCP or MDL litigation (for example, in litigation against pharmaceutical defendants). The firm appearing to represent Defendants in this case does not contend that it lacks the resources to properly litigate this case.

Defendants argue that the privilege issues were difficult and that initially they lacked clear guidance. However, even when Defendants had clear guidance from a prior court order, they ignored those legal standards. As discussed above, on October 18, 2018 then-Judge John Wiley ruled on a discovery motion and explained that Defendants had failed to demonstrate privilege as to "the voluminous and diverse communications" between SoCalGas and AECOM. The court's order carefully delineated four specific categories of documents involving AECOM as to which privilege could be claimed. (Notice of Ruling on Private Plaintiffs' Motion to Compel Third Party AECOM's Production of Documents, filed Oct. 19, 2018.) Rather than carefully apply Judge Wiley's ruling, Defendants required this court to hear another Motion, with respect to 174 AECOM documents. The court determined that all but 6 documents were required to be produced and determined that "there was not a colorable claim of privilege supported by this motion as to the vast majority of the documents at issue." (Minute Order, Aug. 15, 2019.)

With respect to the data request documents, Defendants admit that they did not make sufficient inquiry to determine whether there was a defensible claim of privilege for each document when submitting the privilege logs. Defendants state: "In order to comply with the evidentiary requirements this Court requires for Defendants to protect their privileged communications, Defendants would have had to muster proof of attorney involvement and direction on a document-by-document basis for tens thousands [sic] of data request documents. … [T]hat would have been extremely burdensome and in many instances, impossible." (Defs' Opp., at p. 11.) When a party asserts a claim of privilege on the ground that an attorney directed the actions

of non-attorneys in creating documents so as to assist counsel in providing legal advice, the party must have a basis for stating that the attorney did provide such direction and that the documents claimed to be privileged resulted from carrying out that direction. (See Costco Wholesale Corp. v. Superior Court (2009) 47 Cal.4th 725, 735-736 (fact-gathering by an attorney is privileged where its purpose is to allow the attorney to render legal advice); Cal. Prac. Guide Civ. Trials & Ev. (The Rutter Group) Ch. 8E-A ¶ 8:1946 ("[t]he party claiming a privilege has the burden of establishing whatever preliminary facts are essential to the claim (e.g., existence of privileged relationship when communication was made") (emphasis in original).) Whether or not this is burdensome, it is legally required. The size of these proceedings does not give Defendants license to hide behind unjustified privilege claims; nor does it mean that Plaintiffs and the court must be subject to an infinite process wherein Defendants' logs are reviewed, challenged, and then ordered to be re-served with greater detail to justify the privilege claims.

In their papers, Defendants repeatedly make reference to the court's "high standards" for claims of privilege. (See, e.g., Def's Opp., at p. 4.) Defendants do not argue in opposing the current Motion that the court's standards for review of privilege have been wrong—just "high." The requirements for a claim of privilege are established by case law. "It is established that otherwise routine, non-privileged communications between corporate officers or employees transacting the general business of the company do not attain privileged status solely because in-house or outside counsel is 'copied in' on correspondence or memoranda." (Zurich American Ins. Co. v. Superior Court (2007) 155 Cal.App.4th 1485, 1504.) "[T]he attorney-client privilege attaches only to confidential communication made in the course of or for the purposes of facilitating the attorney-client relationship." (Catalina Island Yacht Club v. Superior Court (2015) 242 Cal.App.4th 1116, 1129, fn. 5 (Catalina Island).) Sometimes these determinations can be made on the face of the document; sometimes they cannot. Certainly, further inquiry is necessary when the document is not itself a communication to or from an attorney. For example, many of the documents concerning development of data to be furnished to regulatory agencies were not directed to or from an attorney. In order to have a reasonable basis to claim privilege on these documents, inquiry beyond the face of the document was necessary. Defendants apparently take the position that they can claim privilege without making an individualized inquiry as to the basis for a claim of privilege where the basis for the claim of privilege is not apparent on the face of the document. By this reasoning, Defendants have attempted to shift the burden to the Plaintiffs to challenge Defendants' broad claims of privilege. However, our discovery statutes make clear that it is sanctionable conduct to "[m]ak[e], without substantial justification, an unmeritorious objection to discovery." (Code Civ. Proc., § 2023.010, subd. (e).)

In many ways, what is most upsetting about the litigation tactics of Defendants is that they have

only asserted good faith objections when threatened with sanctions or when this court required trial counsel to declare under penalty of perjury that there was a good faith basis for the privilege claims asserted. As described in the chronology above, after finding that the Defendants' claims of privilege for the AECOM documents were not substantially justified (even after a prior order by Judge Wiley), the court continued to be faced with extensive, broad claims of privilege that were insufficiently described on existing privilege logs. This court then issued an order that the court never before had felt necessary in the court's previous 24 years of experience as a judge. The August 14, 2019 Minute Order required, as to 358 documents that involved Defendants' public relations firm, that trial counsel declare under penalty of perjury that there was a good faith basis for a claim of privilege. When counsel's declaration was filed, there were 32 documents remaining on the privilege log. (In a subsequent status conference report, Plaintiffs asserted that of the 32 documents only 17 continued to be withheld in their entirety and 14 had an identical redaction of an email communication; Defendants did not take issue with this characterization.)

On the basis of that exercise of good faith by counsel, the court did not require trial counsel's declaration under penalty of perjury to support the privilege log revisions ordered by the court on September 18, 2019. The court expected that counsel would ensure that only objections in good faith and with substantial justification would be made when the court ordered that privilege logs be prepared "so as to accurately describe and designate as privileged only documents as to which a privilege is legally supportable." (Minute Order, Sept. 18, 2019.) The court did not wish to impose a specific burden on Defendants' trial counsel in the midst of the many depositions that were occurring at that time. However, the November 1, 2019 privilege logs had over 155,000 entries and the court has found that these privilege logs were legally insufficient. (Minute Order, Jan. 14, 2020.) It is disturbing, to say the least, that the court only can obtain legally compliant litigation conduct by making outside trial counsel individually responsible in a posture that could support sanctions against counsel personally.

B. Defendants Have Repeatedly Failed to Provide Legally Adequate Privilege Logs in a Manner that Has Caused Private Plaintiffs Undue Burden and Expense

As the procedural history above makes clear, this court has repeatedly found that Defendants have failed to offer sufficient explanation to support their claims of privilege. In this court's January 14, 2020 Minute Order deciding Private Plaintiffs' Motions to Compel, the court found that Defendants' November 1, 2019 privilege logs did not provide the information required by the caselaw and did not provide Private Plaintiffs or the court with sufficient information to evaluate Defendants' claims of privilege as to the 155,000 documents listed on those privilege

logs. (Minute Order, Jan. 14, 2020.)

In part this court found:
The November 1, 2019 privilege logs do not meet the standard set forth in Catalina Island. As the court noted at the December 10, 2019 status conference, after the court had reviewed 80 pages of the November 1, 2019 log entries, the logs substantially employ generic macros that fail to offer a sufficiently detailed explanation of the basis for withholding individual documents. Thousands of documents contain the explanation "Confidential communication between client and in-house and/or outside counsel made in the course of the attorney-client relationship." Seldom does the accompanying description of the document itself meet the statutory requirement of "provid[ing] sufficient factual information for other parties to evaluate the merits of [the privilege] claim . . . ." (CCP sec. 2031.240(c)(1).) "Even assuming all of the documents were communications with an attorney, not all communications with an attorney are privileged. Instead, the attorney-client privilege attaches only to confidential communication made in the course of or for the purposes of facilitating the attorney-client relationship." (Catalina Island, supra, 242 Cal.App.4th at p. 1130, fn. 5.) "The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege." (Hernandez v. Superior Court (2003) 112 Cal.App.4th 285, 292.) "The information in the privilege log must be sufficiently specific to allow a determination of whether each withheld document is or is not in fact privileged." (Wellpoint Health Networks v. Superior Court (1997) 59 Cal.App.4th 110, 130.)

Many of the documents on which privilege is claimed have an attorney listed among several "cc" recipients and have a generic "re" line subject matter. Defendants' conclusory statement that such documents are communications "made in the course of the attorney-client relationship" are insufficient to allow Private Plaintiffs or the court to evaluate whether each withheld document is or is not in fact privileged. This is particularly so when the attorney name is an in-house counsel, who may be involved in a communication in a business capacity. As discussed in previous rulings of this court, when business persons are doing their work and copying an in-house lawyer, the communication may not be privileged unless the business person is seeking advice of counsel or is providing information requested by counsel so as to assist counsel in providing legal advice. (Minute Order of Sept. 11, 2019 at pp. 3-4.) "It is established that otherwise routine, non-privileged communications between corporate officers or employees transacting the general business of the company do not attain privileged status solely because in-house or outside counsel is 'copied in' on correspondence or memoranda." (Zurich American Ins. Co. v. Superior Court (2007) 155 Cal.App.4th 1485, 1504.) Unless Defendants provide factual information to indicate the purpose of the communication, Defendants have not met the requirements for

creating a legally compliant privilege log.

(Minute Order, Jan. 14, 2020 at pp. 10-11.) This court also found that Defendants had failed to provide a complete list of attorneys who had represented Defendants and whose names appeared on the privilege logs until January 6, 2020. (Id. at pp. 11-12.) Finally, the court found that Defendants had improperly claimed privilege for documents attached to emails sent to attorneys on the sole basis that such documents were sent to counsel. (Id. at pp. 12-15.) The court's order as to the latter finding currently was stayed by the Court of Appeal until yesterday. In ruling on the current Motion for Sanctions, the court does not rely on its prior finding with respect to attachments claimed to be privileged on that basis alone.

The undue burden and expense caused to Private Plaintiffs by Defendants' insufficient privilege logs is obvious. The chronology set forth above details Private Plaintiffs' repeated attempts to challenge Defendants' claims of privilege and to find a way to overcome the disadvantage of privilege logs that were manifestly inadequate to allow Plaintiffs or the court to evaluate the claims of privilege. Defendants further manipulated the vague claims of privilege to present a moving target as they backed off substantial numbers of claims of privilege tardily and only when challenged. Such behavior continued even as Plaintiffs' Motions to Compel were being litigated in December 2019 and January 2020. With their Opposition to Plaintiffs Motion to Compel, Defendants submitted, on January 6, 2020, privilege logs that dropped claims of privilege as to 22% of the documents on the November 1, 2019 privilege logs and provided more detail as to the claims of privilege for some of the privilege claims. The undue burden and expense caused to Private Plaintiffs was substantially magnified by the fact that Plaintiffs were deprived of documents to which they were entitled during periods of intense litigation activity while the majority of Defendants' current and former employees were deposed.

C. Defendants' Conduct Was Willful and Violated Court Orders

Judge Wiley issued an order on October 18, 2018 stating that Defendants had, for the most part, failed to prove that voluminous claims of privilege with regard to communications involving third-party contractor AECOM were privileged. As part of that order, Judge Wiley defined four specific categories of AECOM documents as to which privilege could be claimed and ordered all other AECOM documents to be produced. (Notice of Ruling on Private Plaintiffs' Motion to Compel Third Party AECOM's Production of Documents, filed Oct. 19, 2018.) Nearly a year later, Defendants had not complied with Judge Wiley's Order. On August 12, 2019, this court heard argument on Defendants' Motion for a Protective Order with respect to the AECOM documents as to which Defendants continued to claim privilege. As to all but 6 of the 174

documents still being withheld by Defendants the court found "there was not a colorable claim of privilege supported by this motion . . . ." (Minute Order, Aug. 15, 2019.) The failure to produce these documents during the 10-month period following Judge Wiley's ruling was without substantial justification and constituted a violation of Judge Wiley's order.

As the pattern of Defendants' over-designation and insufficient designation of purportedly privileged documents continued to reveal itself (as described in the detailed chronology set forth above) the court ordered as follows: "Defense counsel shall report to the court at a specially set status conference on Sept. 18, 2019 at 1:45 pm as to how they propose to address the problem of Defendants' over-designation of privileged documents." (Minute Order, Sept. 11, 2019.) The court already had ordered defense trial counsel to declare under penalty of perjury that there was a good faith basis for withholding documents evidencing communications between Defendants and their public relations consultants. (Minute Order, Aug. 14, 2019.) The court was searching for a way to ensure that only good faith claims of privilege were asserted without imposing on trial counsel the personal obligation to review each document and declare under penalty of perjury that there was a good faith basis for claiming privilege. At the September 18, 2019 status conference, after hearing argument from counsel, the court ordered that, by November 1, 2019:

• [D]efense counsel shall review all previously produced privilege logs and shall produce, on a rolling basis, all documents as to which privilege is not legally supportable. Defense counsel shall correct and re-serve the privilege logs previously produced so as to accurately describe and designate as privileged only documents as to which a privilege is legally supportable.
. . . . .
• [D]efendants [shall] prepare and serve additional legally supportable privilege logs for documents that have been and will be produced in the future.

(Minute Order, Sept. 18, 2019.)

As discussed above, the court's January 14, 2020 order determined that the November 1, 2019 privilege logs were "insufficient to meet the legal requirement that a privilege log contain sufficient information to allow the requesting party to evaluate whether there is a colorable basis for the assertion of privilege." (Minute Order, Jan. 14, 2020, at p. 9.) This violation of the court's September 18, 2019 Order was not limited to a few document descriptions – it was widespread in the logs of 156,000 documents.

Defendants contend that this court's September 18, 2019 order "cannot support the imposition of nonmonetary sanctions" because the order "was issued following a discussion by counsel during

a status conference and was not based on the identification of specific documents or any briefing." (Defs' Opp., at p. 23.) Appellate precedent does not allow a trial court's orders to be so lightly dismissed. Unless appellate review is timely sought, even an erroneous trial court order "does not excuse the failure to obey; i.e., disobedient parties may not avoid sanctions by challenging the validity of the order." (Cal. Prac. Guide Civ. Pro. Before Trial (The Rutter Group) Ch. 8M-5 ¶ 8:2150 (emphasis in original), citing Marriage of Niklas (1989) 211 Cal.App.3d 28, 34-35.) Defendants also argue (without citation) that "[a] general directive to limit privilege claims to those that are 'legally supportable' is not so definite and does not compel production of certain documents; it permits good-faith privilege positions . . . ." (Defs' Opp., at p. 23.) Given the prior history of the case, there was nothing vague about the court's direction to produce legally supportable privilege logs. Defendants had previously been instructed as to the required content of a privilege log sufficient to allow opposing counsel and the court to evaluate the claims of privilege. Indeed, the court's order did permit good faith assertions of privilege and a good faith effort to present a compliant privilege log. The clear and widespread deficiencies in the privilege logs demonstrate that Defendants' noncompliance with the September 18, 2019 order was not in good faith but rather was part of a continuing effort to delay production of documents to which Plaintiffs were entitled while critical depositions proceeded.

Before Private Plaintiffs filed their Motions to Compel, this court had held an informal discovery conference based on review of 80 pages of the November 1, 2019 privilege logs and informed Defendants of the court's tentative views that the privilege log was substantially insufficient. The court also had given Defendants an opportunity to state how the court should address the extent to which Defendants' claims of privilege were proper. (Minute Order, Dec. 4, 2019.) Defendants did not offer to revise the November 1, 2019 privilege logs or to re-review and produce documents when the claim of privilege was not substantially justified. (See, e.g., Defendants' Statement Pursuant to December 4, 2019 Minute Order, filed Dec. 9, 2019.) It is especially telling that Defendants, in a pattern that had already become familiar, attempted to derail a formal motion to challenge their actions by submitting revised (although still insufficient) privilege logs on January 6, 2020, with Defendants' Opposition Brief to Private Plaintiffs' Motion to Compel.

The intentionality of Defendants' conduct in asserting unsubstantiated privilege claims and stonewalling Plaintiffs' efforts to challenge those claims is evident from Defendants' conduct (through its counsel) dating back to 2017. As recited in Plaintiffs' Opening Brief on this Motion, and as supported by accompanying evidence, a privilege log produced by Defendants in 2017 had an identifiable attorney listed on only 2% of the 12,000 entries, and a privilege log produced

in 2018 with 39,000 entries had an attorney identified on only 2% of the entries. (Motion for Sanctions, at p. 5, lines 8-12, p. 7, lines 15-19.) While documents that are not directed from or to an attorney may be privileged under certain circumstances (for example, if they disclose the legal advice of counsel), subsequent events have demonstrated that Defendants' claims of privilege where no attorney is an author or recipient have frequently been unsupported and withdrawn. Subsequently, defense counsel sought to shift the burden to Plaintiffs to identify documents from the privilege logs that did not include an attorney, provide a basis for why Plaintiffs required more information to evaluate such privilege claims, and provide legal authority for why non-attorney communications were not privileged. (Id. at p. 7, lines 10-14.)

In 2018, Plaintiffs filed three motions to compel production of documents withheld as privileged. Two of the motions addressed documents listed as privileged involving two custodians who were to be deposed as PMQ witnesses. In their Opposition briefs on these motions, Defendants represented that they had not refused to produce non-privileged documents pertaining to these witnesses. Private Plaintiffs withdrew those motions and proceeded with the PMQ depositions without the documents listed as privileged. Plaintiffs assert that they did so based on the presumed good faith of Defendants' assurances. However, according to Plaintiffs' evidence, in the past two months as Defendants have produced documents previously claimed to be privileged, Defendants produced 2,362 documents involving those two PMQ witnesses. (Id. at p. 7, line 20, to p.8, line 4.)

Thus, Defendants, through their counsel, stonewalled over an extended period of this litigation by misusing claims of privilege to attempt to throw Plaintiffs' counsel off the track with respect to documents to which they were entitled. As a result, Plaintiffs' counsel were delayed in obtaining documents at a time when they could have been used in deposing Defendants' current and former employees.

When resisting the production of documents listed on deficient privilege logs, Defendants have relied on Catalina Island, supra, to argue that a trial court may not find a waiver of attorney-client privilege and work product doctrine when an objecting party submits an inadequate privilege log. (See Catalina Island, 242 Cal.App.4th at p. 1120.) But the court in Catalina Island did not leave Plaintiffs without a remedy in the face of Defendants' repeated failure to justify the withholding of documents they claim to be privileged.

The court in Catalina Island offered guidance for the very situation before this court:
If the response and any privilege log provide sufficient information to permit the court to determine whether the asserted privilege protects specific documents from disclosure, the court

may rule on the merits of the objection by either sustaining it or overruling it as to each document. [Citation.]

If the response and any privilege log fail to provide sufficient information to allow the trial court to rule on the merits, the court may order the responding party to provide a further response by serving a privilege log or, if one already has been served, a supplemental privilege log that adequately identifies each document the responding party claims is privileged and the factual basis for the privilege claim. [Citations.] In ordering a further response, the court also may impose monetary sanctions on the responding party if that party lacked substantial justification for providing its deficient response or privilege log. (§ 2031.310, subd. (h).)

If the responding party thereafter fails to adequately comply with the court's order and provide the information necessary for the court to rule on the privilege objections, the propounding party may bring another motion seeking a further response or a motion for sanctions. At that stage, the sanctions available include evidence, issue, and even terminating sanctions, in addition to further monetary sanctions. (§ 2031.310, subd. (i).) But the court may not impose a waiver of the attorney-client privilege or work product doctrine as a sanction for failing to provide an adequate response to an inspection demand or an adequate privilege log. [Citations.]

(Id. at pp. 1127 (emphasis added) (citations omitted).) Notwithstanding Defendants' arguments to the contrary, it is clear that Defendants have failed to adequately comply with court orders, and that sanctions are therefore justified under the structure adopted by Catalina Island as an alternative to requiring production of assertedly privileged documents.

Refusal to furnish an adequate privilege log is not an insignificant violation of the duty to abide by the rules of discovery. A privilege log not only allows the opposing party to assess the claims of privilege; a factual description of withheld documents also permits a judicial evaluation of the claim of privilege. (Best Products, Inc. v. Superior Court (2004) 119 Cal.App.4th 1181, 1188–1189.) In the absence of a good-faith attempt to inform the parties and the court of the basic facts supporting a claim of privilege, a party's privilege claims could easily serve as a mere strategy for flaunting the discovery rules and thereby avoiding the disclosure of relevant information. That is the case here.

"A trial court has broad discretion to impose discovery sanctions, but two facts are generally prerequisite to the imposition of nonmonetary sanctions . . . : (1) absent unusual circumstances, there must be a failure to comply with a court order, and (2) the failure must be willful." (Biles v. Exxon Mobil Corp. (2004) 124 Cal.App.4th 1315, 1327.) Findings that a party "acted

intentionally and in bad faith are the functional equivalent of a finding that it acted willfully." (Karlsson v. Ford Motor Co. (2006) 140 Cal.App.4th 1202, 1225 (Karlsson).) A finding of bad faith need not be based only on the circumstances surrounding a violation of a court order or orders, but may consider "a persistent pattern of discovery abuse." (Id. at p. 1217.)

Given the history of Defendants' repeated failure to submit adequate privilege logs, the court concludes that Defendants' failure to comply with the September 18, 2019 order was willful. The court, through its past orders and comments during hearings and status conferences, gave more than sufficient guidance on what the law requires in preparing privilege logs; Defendants repeatedly failed to comply.

Defendants have repeatedly failed to stand by their initial privilege claims. The court, after viewing the conduct of Defendants and defense counsel over the course of the proceedings, determines that Defendants make blanket, unsupported claims of privilege, which then force Plaintiffs to dedicate hours reviewing deficient privilege logs and bringing privilege issues to this court's attention. Pushed to offer basic justifications for the withholding of documents, Defendants either make unsupported statements to try to deter Plaintiffs from pursuing assistance from the court or hand over some documents and further edit the privilege logs. The sheer number of privilege assertions that ultimately were unsupportable is evidence that Defendants' conduct is the result of a concerted policy, and not the hapless mistakes of a few document-review attorneys.

The court already has discussed and rejected Defendants' excuse that the work was burdensome and that a document-by-document review should not be expected. The court has merely required that Defendants meet their most basic obligations under the discovery rules: namely, that an assertion of privilege be made in good faith and supported by sufficient factual information so that it can be evaluated by Plaintiffs and by this court; anything less would allow a party to hide relevant, non-privileged documents from its opponent, thereby undermining the entire litigation process. Plaintiffs and the court cannot be subjected to an infinite process wherein Defendants' logs are reviewed, challenged, and then ordered to be re-served with greater detail to justify the privileges. Catalina Island offers the imposition of sanctions as Plaintiffs' only way out of such an impasse.

The court finds that Defendants' pattern of conduct in this case with respect to Defendants' claims of privilege, including repeated assertion of unmeritorious objections, repeated refusal to furnish a legally compliant privilege log, violation of court orders (in particular this court's September 18, 2019 order) and related efforts over an extended period (as discussed above) to

misuse claims of privilege to attempt to deprive Plaintiffs of documents to which they are entitled, was willful, intentional and in bad faith.

IV. Determination of Appropriate Sanctions

There is clear prejudice to Plaintiffs resulting from Defendants' conduct. Fact discovery as to Defendants' current and former employees and as to the initial discovery group of individual Plaintiffs was ordered to end (by agreement of the parties) on January 31, 2020. Ninety-four depositions occurred before November 1, 2019, when Defendants submitted yet another set of inadequate privilege logs. More documents may be produced with the privilege logs required to be filed February 11, 2020. The late production of documents for which there was no colorable claim of privilege has meant that Plaintiffs conducted many depositions without access to necessary documents, that deposition witnesses were improperly instructed on the grounds of privilege not to answer questions, and that Plaintiffs have been delayed in general case preparation and strategy.

Moreover, while defense counsel now can turn to depositions of third-party witnesses and to preparing for expert depositions, Plaintiffs' counsel is required to (1) continue to analyze yet another revised privilege log to be produced with a declaration by trial counsel on February 11, 2020; (2) review for the first time key documents recently produced (as described by Plaintiffs' counsel at oral argument on this Motion) and documents that will be produced with the again-revised privilege logs of February 11; (3) make decisions as to which witnesses that have already have been deposed will need to be deposed again in order to allow Plaintiffs' counsel to question witnesses as to key documents recently produced; (4) as part of the decision as to which witnesses to depose again, weigh the potential value of a renewed deposition against the loss of time and effort from other trial preparation tasks; and (5) prepare experts for their testimony without knowing whether recently produced documents can be authenticated and without having a deposition to lay a foundation for the business records exception to the hearsay rule. These are substantial disadvantages to Private Plaintiffs in this challenging litigation.

Where "sanctions are called for, they " '… "should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery." [Citations.] " '… [¶] The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks, but the court may not impose sanctions which are designed not to accomplish the objects of discovery but to impose punishment. [Citations.]' " [Citations.]' [Citation.]" (Do it Urself, supra, 7 Cal.App.4th at p. 35.)" (Biles v. Exxon Mobil Corp. (2004) 124 Cal.App.4th 1315, 1327.)

"Sanctions should be designed to remedy discovery abuses, but should not put the party seeking the sanctions in a better position than he or she would have been in, had the requested discovery been provided." (NewLife Sciences, LLC v. Weinstock (2011) 197 Cal.App.4th 676, 689, fn. 10.) In other words, the court should utilize sanctions to level the playing field in light of the discovery abuse.

A. Monetary Sanctions

In their motion, Plaintiffs seek a total of $949,699.50 in monetary sanctions: $498,650 in monetary sanctions against Defendants and their counsel for time spent directly on privilege disputes; and $451,049.50 in monetary sanctions against Defendants and their counsel for lost productivity and inefficiencies related to depositions resulting from Defendants' misuse of discovery. Given Defendants' discovery abuses, Plaintiffs are entitled to recover "the reasonable expenses, including attorney's fees, incurred by anyone as a result of [Defendants'] conduct." (Code Civ. Proc., § 2023.030, subd. (a).)

As for the first category of sanctions, Defendants point to time spent directly on privilege disputes, "including meet and confers, analysis of Defendants' privilege logs, court hearings, and motion practice." (Pls' Mot., at p. 26.) To support this claim, Plaintiffs point to the declarations of Jesse Creed, Devin Bolton, Gary Praglin, Kelly Weil, Michael Kelly, Patricia Oliver, Brian Panish, and Alexander Behar. For example, Mr. Praglin states that he has been in practice for 38 years, his published billing rate is $850.00, and that he spent approximately three hours meeting and conferring regarding privilege issues and preparing his declaration. (Praglin Decl., ¶¶ 11-13.) Mr. Panish gives his billing rate as $1,500 per hour and asserts that he spent approximately 10 hours on activities such as meeting and conferring on privilege issues with Defense counsel and collaborating with Mr. Creed on privilege issues. (Panish Decl., ¶¶ 1-7.) Mr. Behar states that he spent 3 hours preparing an ex parte application related to privilege issues in this coordinated proceeding and provides a billing rate of $250 per hour. (Behar Decl., ¶ 2-5.) Ms. Weil declares that she spent 10 hours meeting and conferring regarding privilege and contributing to Plaintiffs' motion to compel, that she spent 1.5 hours preparing her declaration, and that her published hourly billing rate is $650. (Weil Decl., ¶ 12-14.) Mr. Kelly states that he spent one hour preparing his declaration in support of the Motion for Sanctions, and that his hourly billing rate is $950.00. (Kelly Decl., ¶¶ 15-16.) Mr. Bolton states that he has spent 303.49 hours working to resolve privilege issues and to obtain the discovery to which Plaintiffs believe they are entitled, and that he anticipates spending another 10 hours responding to this issue, for a total of $172,419.50 at an hourly rate of $550. (Bolton Decl., ¶¶ 31-33.) Mr. Creed, who claims an hourly billable rate of $650, requests $196,878.50 in fees for 302.89 hours spent on privilege

issues. (Creed Decl., ¶¶114-117.)

The vast majority of hours claimed are from Mr. Creed, Ms. Oliver, and Mr. Bolton. Mr. Creed offers a detailed account of his hours spent on privilege issues. (See Creed Decl., ¶ 14.) Though Mr. Creed includes travel time to and from court in his total hours, he only does so where his participation in a status conference was due to the fact that privilege issues were set to be discussed at the hearing. (Creed Decl., ¶ 14(g), fn. 1.) Similarly, Mr. Bolton has lodged with the court a ten-page document offering a detailed account of his time spent working on privilege issues. (See Bolton Decl., Ex. 28.) The court is satisfied by Exhibit 28 that Mr. Bolton's claimed costs are reasonable.

Ms. Oliver asserts that her team spent 238.30 hours (with a cost of more than $101,277 in attorney fees) reviewing privilege logs, and that this time estimate excludes paralegal work. (Oliver Decl., ¶ 21.) To explain the billing rate, Ms. Oliver states that her team "relied almost entirely on first year attorneys billing at $425 to assess these privilege log issues to avoid excess costs." (Oliver Decl., ¶ 21.) She also states that she spent approximately 2 hours preparing her declaration, and that her hourly billing rate is roughly $675. (Oliver Decl., ¶ 23-24.) The court credits Ms. Oliver's statement that her team spent 238.30 hours reviewing privilege logs. Defendants have not challenged any of the hourly rates sought by the various members of Plaintiffs' counsel's team.

The court credits the declarations of counsel and finds that the billable rates and time spent on privilege issues are reasonable in light of the large number of documents at issue. The majority of these costs are due to the fact that Plaintiffs, rather than Defendants, were required to expend time reviewing the withheld documents to assess the claims of privilege. These costs were the result of Defendants' conduct.

With their Reply papers, Plaintiffs request an additional $33,460 for time spent on the privilege disputes after the filing of the current motion. Mr. Creed asserts that he has spent 38.4 hours preparing for oral argument on the January 14, 2020 privilege motions, on appearing for that hearing, on reviewing Defendants' Opposition to the current motion, and preparing the Reply papers for the current motion. (Creed Decl. ISO Reply, ¶ 22.) This time amounts to $24,960. (Creed Decl. ISO Reply, ¶ 23.) Similarly, Mr. Praglin asserts that, since the time of the filing of the current motion, he has spent approximately 10 hours in connection with evaluating privilege issues for the current motion: i.e., reading the Opposition papers, reviewing privilege claims and making comparisons to previous versions, searching deposition transcripts, and conferring with co-counsel. (Praglin Decl. ISO Reply, ¶ 9.) Given Mr. Praglin's hourly rate of $850, the cost of

such time is $8,500. (Praglin Decl. ISO Reply, ¶ 9.) These costs are reasonable.

The court may not award monetary sanctions on top of monetary sanctions that already have been awarded based on Defendants' unmeritorious privilege claims. In denying Defendants' Motion for a Protective Order with respect to the vast majority of AECOM documents, the court awarded monetary sanctions in the amount of $6,500. (Minute Order, Aug. 15, 2019, at p. 1.) The court therefore deducts that amount from the monetary sanctions awarded on this Motion.

The court awards monetary sanctions in favor of Private Plaintiffs' counsel and jointly against Defendants and defense counsel in the amount of $525,610, payable within 20 days. Counsel should meet and confer with respect to how Private Plaintiffs' counsel desire to receive payment.

With respect to the monetary sanctions Plaintiffs' counsel request for lost productivity, however, the court finds that Plaintiffs' counsel have failed to offer a reasonable basis on which to award sanctions. To illustrate what Plaintiffs mean by "lost productivity and inefficiencies," they offer the example of Mr. Creed, who states that, when preparing for a deposition, he has "repeatedly had [the] experience of searching for unprivileged versions of improperly redacted documents that are clearly privileged." (Creed Decl., ¶ 133.) Other declarants note that the prevalence of claims of privilege slows down the deposition, requires more preparation, and may ultimately require that some depositions be retaken. (See, e.g., Weil Decl., ¶¶ 2-10.) From these claims, most counsel declarants take the position that roughly 20% of the total time spent on preparing for and completing depositions can be attributed to inefficient or lost time because of privilege issues. (Weil Decl., ¶ 11; Praglin Decl., ¶ 9; Oliver Decl., ¶ 22; Baymann Decl., ¶ 3.) Apart from lacking sufficient evidentiary support, the 20% figure appears to be an arbitrary number that is not likely to represent the actual amount of time wasted because of privilege issues. At oral argument Mr. Panish stated that there were inefficiencies because he would fully prepare to depose a witness only to receive, the night before the deposition, newly produced documents as to which Defendants previously had claimed privilege. The court does not doubt that additional time had to be spent preparing for depositions of defense witnesses when counsel taking the deposition had to add preparation time because of recently produced documents. But there has been no reliable estimate to show that this added preparation time resulted in a 20% inefficiency as to every deposition.

As Plaintiffs state, the effect of Defendants' conduct is likely to result in the reopening of certain depositions, given that previously withheld documents have since been produced or may be produced in the future. A more certain calculation of Plaintiffs' reasonable costs with respect to depositions can thus be determined based on the time spent in taking those future depositions.

Therefore, the court rules that Private Plaintiffs counsel are entitled to reasonable costs, including attorneys' fees, for the taking of any future depositions that are reopened due to the late production of documents over which Defendants previously asserted privilege or work product protection. The court will allow Plaintiffs to reopen any deposition at the expense of Defendants up until the date of the final status conference, so long as Plaintiffs have a colorable claim that a document which was withheld under a claim of privilege, but then produced after November 1, 2019, will be the subject of the deposition. Once such depositions are concluded, Plaintiffs may submit an accounting of such costs and fees to the court, to be accompanied by briefing if necessary.

B. Non-monetary Sanctions

Given the conduct of Defendants and Defense counsel, the court may "impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process," "impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses," and/or "impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence." (Code Civ. Proc., § 2023.030, subds. (b), (c).)

This court is not able to level the playing field for the parties to try this case by precluding the party that misused the discovery process from introducing previously withheld documents that are unfavorable to that party. Nevertheless, the court needs to consider how the delay in production of documents previously claimed to be privileged has adversely affected Plaintiffs' trial preparation, and to determine whether that disadvantage can be mitigated.

Ninety-four depositions took place prior to November 1, 2019, the date on which Defendants produced another inadequate privilege log. Plaintiffs were disadvantaged during those depositions because they were unable to question witnesses based on Defendants' documents that were initially withheld on the basis of privilege but produced after November 1, 2019. Because of the delay in production of purportedly privileged documents, Plaintiffs are now put to the choice of whether to spend valuable trial preparation time setting additional days of deposition of previously deposed witnesses merely to lay a foundation for documents that were withheld on the basis of Defendants' claims of privilege. Plaintiffs are now having to depose third party witnesses based on such documents without knowing whether a foundation can be laid for the admissibility of such documents. And Plaintiffs are having to prepare their experts' testimony without knowing whether they will be able to lay an evidentiary foundation for the

admissibility of such documents.

These adverse effects on Private Plaintiffs caused by Defendants' unwarranted withholding of documents on the basis of privilege can be mitigated by an issue sanction that limits the grounds upon which Defendants can challenge the admissibility of any document that once appeared on Defendants' privilege logs but was produced after November 1, 2019. In order to attempt to even the playing field but not punish Defendants, the court determines that Defendants may not oppose admissibility of such documents on the basis of lack of authenticity or the inapplicability of the business records exception to the hearsay rule. These are, after all, Defendants' own records. Defendants are not precluded, however, from objecting to a hearsay statement within such documents.

These sanctions will allow Plaintiffs to immediately begin relying on the documents as to which Defendants' improperly delayed production on grounds of privilege. However, such sanctions are not sufficient to level the playing field in light of Defendants' misconduct. Private Plaintiffs do not have unlimited resources and they do not have unlimited time. Defendants repeatedly say that there is still plenty of time for Plaintiffs to prepare their case set for trial four months from now. But Defendants cannot deny that the preparation of this case for trial is such a mammoth undertaking that Defendants themselves argued strenuously for a trial in September, 2020, not June, 2020, on the assumption that the cut-off for discovery of Defendants' and Plaintiffs' witnesses would be January 31, 2020. It ill-behooves Defendants now to argue that four months is plenty of time for Plaintiffs to prepare for trial.

Plaintiffs should not have to accept a trial continuance in order be able to properly prepare for trial in light of Defendants' misconduct. There are 36,000 Plaintiffs in this case and, despite this court's best efforts, not a single trial has begun. The event that is the subject of this lawsuit occurred in 2015 and the five-year rule on the first cases filed would run in November 2020 if the parties had not waived that rule in light of the exigencies of case management and trial preparation. The Plaintiffs' right to present their case to a jury should not be further delayed as a result of Defendants' misconduct.

At this time, Plaintiffs have not made a sufficient showing to justify issue sanctions that affect proof of the elements of Plaintiffs' claims. However, even on the eve of the hearing on this Motion for Sanctions, Plaintiffs were reviewing for the first time recently produced documents that, Plaintiffs contend, contradicted the positions that Defendants' witnesses had taken in deposition. Without the documents, Plaintiffs assertedly were unable effectively to cross examine Defendants' witnesses at deposition. Nevertheless, the Motion currently before the

court does not draw a sufficient connection between late-produced or still-withheld documents formerly claimed by Defendants to be privileged and a disadvantage suffered by Plaintiffs in their ability to prove a particular element of their claims against Defendants. Without such a connection, issue sanctions that would find Plaintiffs to have made out a prima facie case on an element or elements of one of their claims or would preclude Defendants from offering a defense on a matter at issue in the case are not currently appropriate.

As to Plaintiffs' request for a jury instruction pursuant to Evidence Code section 413, such an instruction is meant to inform a jury about their consideration of evidence when a party's conduct has made evidence unavailable, or effectively unavailable, at trial. (CACI 204; Karlsson, supra, 140 Cal.App.4th at pp. 1215, 1224-1227.) Evidence Code section 413 allows a jury to have insight into the discovery process (e.g., spoliation of evidence) and invites them to draw conclusions unfavorable to a party when evidence is absent. As with Private Plaintiffs' request for stronger issue sanctions, the current Motion does not sufficiently connect the Defendants' misuse of privilege claims, privilege logs, or late production of evidence to specific categories of documents that have not been made available to them. The court will not, at this stage of the proceedings, determine that CACI 204 should be given to the jury.

The sanctions imposed herein are made under the assumption that Defendants will keep their promise that "Plaintiffs have received or will receive by the deadline set by this Court's January 14, 2020 order every document to which they are entitled." (Defs' Opp., at p. 22.) If Defendants fail to keep their promise to abide by this court's January 14, 2020 order, then the court will allow further briefing and consider stricter additional evidentiary and issue sanctions, as well as a jury instruction under Evidence Code section 413. The court also may permit Private Plaintiffs to seek additional sanctions based on information about withheld documents that have only recently been disclosed to them.

The Judicial Assistant hereby gives notice.

Clerk's Certificate of Service By Electronic Service is attached.

A copy of this minute order will append to the following coordinated case under JCCP4861: BC601844.

EXHIBIT 17

Los Angeles Times, "*SoCalGas Union Leader Threatened Protest 'Potentially Adding To This Pandemic,*" by Sammy Roth

May 6, 2020

Los Angeles Times

CLIMATE & ENVIRONMENT

How to stop a climate vote? Threaten a ‘no social distancing’ protest

As San Luis Obispo planned to vote on a climate change policy, a SoCalGas union leader emailed city officials saying he would bus in hundreds of protesters. (Alex Gallardo / Los Angeles Times)

By SAMMY ROTH
STAFF WRITER

MAY 6, 2020 | 5 AM

San Luis Obispo was on the verge of passing an ambitious climate change policy when the proposal's most vocal critic, Eric Hofmann, found a trump card: fear of the coronavirus.

Elected officials in this city along California's Central Coast planned to vote on an energy code that would encourage construction of all-electric buildings, which don't use gas appliances and aren't hooked up to the gas grid. It's an increasingly popular tool for cities looking to phase out fossil fuels — and a threat to the gas industry, which has mounted a vigorous counteroffensive.

On March 16, Hofmann sent an email to San Luis Obispo officials that left them shocked.

"If the city council intends to move forward with another reading on a gas ban I can assure you there will be no social distancing in place," he wrote. "I strongly urge the city council to kick this can down the road to adhere to public health safety measures. Please don't force my hand in bussing in hundreds and hundreds of pissed off people potentially adding to this pandemic."

Hofmann is president of Utility Workers Union of America Local 132, which represents thousands of employees of Southern California Gas Co. — one of the nation's largest gas utilities, and a prominent crusader against local efforts to phase out gas. He also chairs the board of directors of Californians for Balanced Energy Solutions, a pro-gas advocacy group that has received funding from SoCalGas and worked closely with the utility to generate opposition to all-electric building policies.

"We will pull permits and close streets and have a massive protest on April 7th. Now is not the time to do this," Hofmann wrote. "Please tell mayor harmon and the rest of the council for the sake of people's health, that their efforts are better focused on how to better deal with this pandemic than to stir up all the emotions of people losing their jobs along with this disease."

The next week, San Luis Obispo officials scrapped plans for an April 7 vote on the energy code. The vote has not been rescheduled.

The city's community development director, Michael Codron, attributed the indefinite delay in part to Hofmann's threat.

"There's no way to know whether it was bluster," he said in an interview.

A sign declares the boundary line of the Southern California Gas Company gas fields at Aliso Canyon. (Michael Owen Baker)

The fight in San Luis Obispo is a particularly intense example of a battle playing out across the state.

More than two dozen California cities have approved policies over the last year banning or discouraging the use of natural gas for space heating, water heating and cooking in new buildings.

Climate activists and many energy experts see transitioning to all-electric buildings as the best way to slash emissions from homes and businesses. Gas is a fossil fuel that contributes to climate change, whereas California's electricity is increasingly supplied by climate-friendly sources such as solar and wind farms.

SoCalGas has responded by convincing nearly 120 cities and counties to approve similarly worded resolutions, originally drafted by the gas company, calling for "balanced energy solutions." The company's climate solution of choice is renewable natural gas — a fuel that could replace some of the fossil gas that contributes to climate change, but which experts say has serious limitations.

CLIMATE & ENVIRONMENT

California ditched coal. The gas company is worried it's next

Natural gas workers, fearful for their livelihoods, are on the front lines of the battle.

The Utility Workers Union of America has joined SoCalGas in funding Californians for Balanced Energy Solutions, or C4BES, which critics deride as a front for the gas company. In addition to Hofmann, two other UWUA officials serve on the group's board.

Separately, a union representing Los Angeles utility workers protested Mayor Eric Garcetti's decision last year to shut down three gas-fired power plants along the coast. The International Brotherhood of Electrical Workers Local 18 attacked Garcetti over his climate agenda, and briefly used its political influence to hold up the city's approval of a record-cheap contract for solar power.

Under San Luis Obispo's proposed energy code, all-electric buildings would be the preferred option for new construction. Developers would still be allowed to build homes and commercial structures that use gas, so long as they retrofit an existing building, or pay a fee to the city to reduce gas consumption elsewhere. Existing homes and businesses would not be affected.

California's electricity is increasingly supplied by climate-friendly sources such as solar and wind farms. (Mark Boster / Los Angeles Times)

Hofmann described the policy proposal in existential terms. Asked about his March 16 email, he sent The Times a written statement claiming that San Luis Obispo "has made a provocative attack on the livelihood of our members with its anti-gas policy."

"That has stirred vehement reactions from our members, including mass attendance at past City Council meetings," Hofmann wrote. "When the City Council announced that it would re-start its anti-gas effort at the April 7th meeting, we thought it best to both organize our members' attendance in an orderly way, and at the same time try to persuade the City Council to postpone its anti-gas effort to a more prudent time."

"Fortunately the Council agreed and did so," he added.

Hofmann also noted that his email "predated the Governor's COVID-crisis shutdown."

Gov. Gavin Newsom didn't issue a statewide stay-at-home order until three days after Hofmann's email. But Newsom's office had already announced that public events "can proceed only if the organizers can implement social distancing of 6 feet per person." San Luis Obispo had reiterated Newsom's directive, noting that "there will be limited capacity" for attendance at council meetings.

Hofmann's email was obtained by the Climate Investigations Center, a fossil fuel industry watchdog group, under the California Public Records Act, and shared with The Times. He addressed the message to Codron, copying several other city officials.

Michael,

If the city council intends to move forward with another reading on a gas ban I can assure you there will be no social distancing in place. I strongly urge the city council to kick this can down the road to adhere to public health safety measures. Please don't force my hand in bussing in hundreds and hundreds of pissed off people potentially adding to this pandemic.

We will pull permits and close streets and have a massive protest on April 7th. Now is not the time to do this. Please tell mayor harmon and the rest of the council for the sake of people's health, that their efforts are better focused on how to better deal with this pandemic than to stir up all the emotions of people losing their jobs along with this disease. Let's be smart about this

Let me know how you'd like to proceed.

-Eric

A screenshot of Eric Hofmann's March 16 email to city officials in San Luis Obispo.

San Luis Obispo Mayor Heidi Harmon, a longtime climate activist, said it is "incredibly disappointing and disturbing and concerning to hear that this group is willing to risk our community's health and safety." She described Hofmann's threat as consistent with the fossil fuel industry's willingness to "continue down this incredibly dangerous path" of heating the planet.

Harmon said she's sympathetic to gas utility workers fearful of losing their jobs. But she feels strongly that fossil fuels need to stay in the ground, and that government ought to help fossil fuel workers transition to new jobs in the clean-energy economy.

She also pointed to emerging scientific research suggesting that poor air quality makes people more vulnerable to COVID-19.

"All these things are interconnected and interrelated," Harmon said.

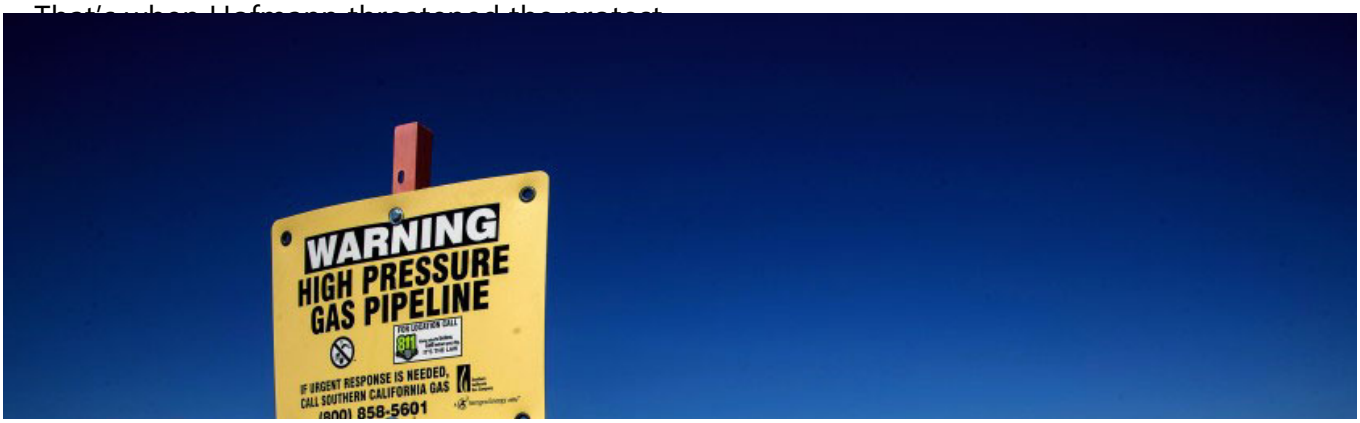
CALIFORNIA

Exposure to air pollution linked to higher coronavirus-related death rates

San Luis Obispo's city council had voted in September to approve the new energy code, after a packed meeting where dozens of people commented for and against the policy, including SoCalGas employees. But before the council could vote a second time — which was required for the policy to take effect — UWUA Local 132 accused council member Andy Pease of a conflict of interest, saying she should have recused herself because she's a partner in a consulting firm that specializes in energy-efficient buildings.

Pease said at the time that she didn't believe she had a conflict. And the energy code would have passed even without her vote. But city officials delayed a final vote and asked the state's Fair Political Practices Commission to review the union's complaint.

With no answer yet from the FPPC, San Luis Obispo staff decided to bring the energy code back to the City Council in April for a redo of the first vote, with Pease recusing herself.



A key pipeline for SoCalGas, Line 235, runs through the desert near Newberry Springs, California. The line carries natural gas toward the Los Angeles Basin. (Brian van der Brug / Los Angeles Times)

Hofmann, a lead construction tech at SoCalGas, is on a three-year leave of absence from the company due to his union leadership position. SoCalGas said he did not discuss or coordinate his protest threat with company executives or managers.

The company otherwise declined to comment on Hofmann's email.

"SoCalGas workers are out there on the front lines performing the work needed to safely maintain our infrastructure, while also protecting the safety and well-being of the communities we serve," gas company spokesman Chris Gilbride said in an email.

Jon Switalski, executive director of Californians for Balanced Energy Solutions, didn't respond to a request for comment about whether Hofmann discussed or coordinated his threatened protest with C4BES before emailing San Luis Obispo officials.

The SoCalGas-backed advocacy group published a Facebook post March 13 warning that San Luis Obispo "could put in place rules that will make natural gas energy in new and existing buildings too expensive and out of reach for many Californians."

SoCalGas, meanwhile, continues to face accusations that it has inappropriately used ratepayer funds to fight clean energy policies — potentially including in San Luis Obispo. California Public Utilities Commission staff ruled last week that their ongoing investigation into the utility's expenditures could include questions raised by the commission's Public Advocates Office, and by the Sierra Club, about whether SoCalGas has used customer money to lobby against city ordinances promoting all-electric buildings.

CLIMATE & ENVIRONMENT

SoCalGas shouldn't be using customer money to undermine state climate goals, critics say

The gas company sent a comment letter to San Luis Obispo last year opposing the city's proposed energy code.

It's unclear when San Luis Obispo will reschedule the vote. Codron said city officials determined that "having a council meeting with extraordinary participation just wasn't something that was appropriate to move forward with." The city recently started hosting digital council meetings open to public commenters, but they've been "fraught with technical challenges," Codron said.

"We're going to look for the soonest opportunity where the logistics of a meeting of this scope can be managed," he said.

SLO Climate Coalition chair Eric Veium, who advocated for the new energy code, noted that San Luis Obispo leaders have set a goal of carbon neutrality by 2035 — one of the country's most ambitious climate targets. He's confident they won't back down.

"We will not allow the fossil fuel industry and their front groups to bully us," he said.

CLIMATE & ENVIRONMENT BUSINESS CORONAVIRUS PANDEMIC

EXHIBIT 18

CalMatters, "*California Officials Should Look Into SoCalGas Threat Of A COVID-19 Protest Against San Luis Obispo*,"
by San Luis Obispo Mayor Heidi Harmon
May 22, 2020

CALMATTERS

MY TURN COMMENTARY ENVIRONMENT

California officials should look into SoCalGas threat of a COVID-19 protest against San Luis Obispo

BY GUEST COMMENTARY

PUBLISHED: MAY 22, 2020

The chairman of Californians for Balanced Energy Solutions, a group created and funded by SoCalGas Co., threatened to bring hundreds of protesters who would add to the COVID-19 pandemic in San Luis Obispo, if the city council voted on an ordinance to encourage construction of all-electric buildings that would not use gas appliances. Photo via iStock

By Heidi Harmon, Special to CalMatters

The COVID-19 pandemic invites us to grapple with our interconnectedness as we rely on each other to keep ourselves safe and supported. Yet amid efforts to collaborate and creatively solve problems, Southern California Gas Co. is capitalizing on this crisis to bully and to sow division.

That was the case when the city of San Luis Obispo, where I lead as mayor, received an unusual threat from the chairman of Californians for Balanced Energy Solutions, a group that SoCalGas created and funds. The chairman threatened a protest with "no social distancing" as he planned to bus in "hundreds and hundreds of pissed off people potentially adding to this pandemic," if the city council voted on an ordinance to encourage construction of all-electric buildings that would not use gas appliances.

We took the threat seriously – we care about the health of our community and those workers – and removed the agenda item. But this situation was a continuation of a series of bullying tactics and misinformation that has been deployed by SoCalGas and other fossil fuel interests since August.

They want to divide our community over our efforts to address climate change and improve public health – and it's something we simply won't stand for, especially right now.

Fossil fuel executives have cultivated a toxic culture in which they fight progress by any means necessary – at the cost of public health, public dollars, their own workers and the precious time we have left to transition to clean energy and cut climate pollution before it's too late.

I am as concerned about the future of SoCalGas workers as I am about the climate crisis. And I look forward to working with them to create a world where their jobs are as safe as our future. These two issues are intimately linked. That's why California is already engaged in a long-term transition off of gas – which will help us plan for a just transition for gas utility workers over this decades-long process.

Yet SoCalGas has chosen to fight rather than participate, and instead has become one of California's primary obstacles to local and statewide efforts to plan for the future of their workers as we move to a clean-energy economy powered by zero-emission technologies.

And unfortunately, California's Public Utility Commission, which is tasked with overseeing the behavior of regulated utilities like SoCalGas, has not stopped them. Last summer it was revealed that SoCalGas and Californians for Balanced Energy Solutions had violated a number of laws in their efforts to fight building electrification. It's now been nine months, and still the utility has not been held to account**.** That inaction allowed my city to continue to be bullied.

We are living through a terribly difficult time. People are frightened for their health. More than 30 million people have lost their jobs since March. Wildfire season is coming. We must address these compounding crises with compassionate, proactive solutions – protecting public health, putting people back to work in the clean economy and phasing out fossil fuels to combat the climate crisis.

We need to show workers that the people of California will not allow them to be sacrificed. With a Green New Deal, they won't be. Clean technologies like offshore wind require some of the same skills in use by oil and gas workers. There can be a rich future for the fossil fuel workforce so long as we aren't prevented from planning for their transition by corporate executives' obstruction.

Coronavirus has proven we can afford the Green New Deal that puts workers first, and that we cannot afford to delay action any longer. It's proven that people, when tested, can band together for the good of all. This is the spirit we need to carry forward. Workers, CEOs, activists, rate payers, elected officials – our fates are woven together. By supporting climate policies that lower emissions while supporting workers to move into careers in clean energy sectors that will exist for decades to come, we can thrive.

I call on state leadership to be part of this vision for a prosperous California by ensuring that SoCalGas leaves their schoolyard bullying behind and joins us in creating a better world where – in times of crisis – we turn toward each other and not on each other.

_____

Heidi Harmon is the mayor of San Luis Obispo, Hharmon@slocity.org. She wrote this commentary for CalMatters.

EXHIBIT 19

SoCalGas Response to

CalAdvocates-SC-SCG-2019-07, Q 4

QUESTION 4:

The banner ad referenced in question 1 directs to SoCalGas' website "Our Vision." The "Our Vision" page lists "Local Municipalities that have adopted Balanced Energy Resolutions." For each local municipality (103 total) listed on https://www.socalgas.com/vision/balanced-energy-resolutions, in attachment B please provide the costs associated with lobbying each municipality to adopt a balanced energy resolution as listed below. Include the cost center, IO, and general ledger (G/L) account and designation of whether that account was originally recorded to a ratepayer or shareholder funded account.

a. Employee Labor

b. Employee Expenses

c. Materials Cost

d. Other Costs

Attachment B.xlsx

RESPONSE 4:

There are no lobbying costs associated with the municipalities in attachment B that have adopted Balanced Energy Resolutions. It is appropriate for SoCalGas to present our, and our customers', view with respect to what is happening from an energy perspective in the state. Such discussion allows local governments to take those views into consideration in making informed and balanced decisions.

SoCalGas' Regional Public Affairs ("RPA") initiated outreach to municipalities about how to achieve the State's 2030 and 2050 emission reduction goals. RPA discussed the importance of using all the tools and resources at the state's disposal – including electricity and natural gas to achieve these goals. RPA further discussed how a balanced energy policy in California takes into account existing infrastructure, customer choice, affordability and reliability. RPA also provided interested municipalities with inclusive language for their consideration as a resolution.

The inclusive language is consistent with state goals. The balanced energy resolution states: *"That the city or county supports balanced energy solutions that provide it with the decision-making authority and resources needed to achieve the state's climate goals and supports proposed state legislation and regulation that retains local control by allowing all technologies*

and energy resources that can power buildings and fuel vehicles, and also meet or exceed emissions reductions regulations."

Indeed, the California Public Utility Commission (CPUC) has acknowledged a future energy resource mix that includes natural gas. In September 2019, the CPUC issued the document titled, "Building Decarbonization: Fact vs. Fiction," which includes the following language:

> **Myth #1: The CPUC is mandating that all buildings stop using natural gas**
> **Reality:** There is no such mandate. The BUILD and TECH programs create incentives for utility customers to invest in new low carbon-emitting building technologies. The programs will be created in accordance with state statute and do not include any mandate to dismantle or diminish California's existing natural gas pipeline infrastructure.

The document further stated:

> **Myth #2: Californians will be forced to retrofit their homes**
> **Reality:** Nobody will be forced to convert any of their appliances. Both BUILD and TECH are entirely voluntary programs. If a homebuilder does not want to construct new residential housing that utilizes near-zero-emission building technologies, they do not have to. Similarly, a consumer planning to retrofit her home with a new appliance will have no obligation to purchase electric appliances instead of natural gas appliances. Consumers will continue to be free to purchase whatever appliance best meets their needs.

As stated in the direct GRC testimony of Gina Orozco Mejia, RPA's engagement with local governments on this issue is consistent with traditional RPA activities: *"…RPA's primary focus is supporting field operations through its work with regional and local governments and municipal districts on issues regarding permitting, proposed regulations, franchises and emergency preparedness and response. RPA also informs county, city officials and special districts about SoCalGas issues that could impact customers. To a somewhat lesser degree, RPA is also a point of contact in the communities SoCalGas serves, educating stakeholders about SoCalGas construction activities, customer programs and service offerings, responding to customer and media inquiries, and resolving customer complaints. These activities are crucial to mitigating operational costs that would otherwise put upward pressure on customer rates." (GOM-81, Lines 17-25)*

"RPA also provides elected officials with information – both proactively and in response to inquiries – about pending operational and regulatory matters that could impact customers, planned or proposed rate changes, utility safety, and utility programs and services. By informing elected officials, RPA enables them to share critical information with their

constituents, thereby allowing those constituents to realize the full benefits of SoCalGas' service." (GOM-83, Lines 8-12).

Educating municipalities about various means of achieving state goals for greenhouse gas reductions that preserve customer choice and energy affordability is related to pending regulatory matters before the Commission and is consistent with RPA's role.

EXHIBIT 20

SoCalGas Response to CalAdvocates-SC-SCG-2019-08, Q 1

SOUTHERN CALIFORNIA GAS COMPANY

(DATA REQUEST CALADVOCATES SC-SCG-2019-08)
Date Received: November 20, 2019
Date Submitted: December 6, 2019

QUESTION 1:

For each local municipality (103 total) listed on https://www.socalgas.com/vision/balanced-energy-resolutions, please identify the total costs to SoCalGas associated with communications between the municipality and SoCalGas' Regional Public Affairs (RPA) department, since January 1, 2018. This should include, but not be limited to, costs associated with the following types of activities:

a. In person meetings (public and private)
b. Signed letters from the Company
c. Writing or furnishing a draft resolution
d. Email communication with city officials

RESPONSE 1:

SoCalGas objects to this question as overbroad and unduly burdensome, as well as vague with respect to the phrases "total costs to SoCalGas associated with" and "costs associated with." Subject to and without waiving its objection, SoCalGas responds as follows:

SoCalGas did not track the costs associated with communications between Regional Public Affairs employees and municipalities. The Regional Public Affairs employees who communicated with the municipalities are all salaried employees.

EXHIBIT 21

Sempra Energy Political Activities Policy

Revised July 23, 2018

Political Activities

Responsible Dept.: External Affairs
Responsible Officer: VP Corporate Communications & Sustainability
Applicability: **All Employees of Sempra Energy & the Sempra Energy Companies**

EFFECTIVE DATE: 2/23/2012
REVISION DATE: 07/23/2018
REVIEW DATE: 07/23/2018
INFORMATION TYPE: Internal

Questions?
See Policy Contact List

1. POLICY:

Engaging with policymakers is an important, necessary and appropriate part of doing business as long as it is conducted in a legal and transparent manner. We track hundreds of proposed laws, rules, regulations and policies annually and engage in political activity to ensure that the perspectives of our company, shareholders, customers and employees are represented before lawmakers and regulators. When warranted, we may take positions for or against proposals and sometimes suggest amendments as part of the public policy process. In the U.S., there are federal, state and local lobbying registration and disclosure laws with which Sempra Energy and the Sempra Energy Companies comply, and the company has a robust training and reporting program in place to ensure compliance.

This policy sets forth rules and procedures regarding lobbying, political contributions and gift activities for the Sempra Energy Companies as well as employee contributions to political candidates and participation in political campaigns for office in the United States (U.S.) federal, state and local jurisdictions.

Political activities, including gifts and political contributions, outside of the U.S. jurisdictions are governed by the Anti-Bribery and Anti-Corruption policy as well as country-specific Sempra Energy Company policies. Management oversight for corporate political activity resides with the highest-ranking external affairs executive of the company.

Personal Political Activity

Allowable Activity:

- *Making Personal Campaign Contributions:* Most employees can make personal contributions to candidates without triggering any reporting obligation. However, company officers, registered lobbyists or any employee directly involved in bidding, negotiating, or contracting with a jurisdiction over which the candidate presides **must** contact Political Reporting and Compliance prior to making any contribution and, once the contribution is screened and approved by Political Compliance and Reporting**,** report his or her personal contribution using the Sempra Energy's Lobbying Activity Tracking System (LATS). It is important to note that *anything* that benefits a candidate's campaign for office (e.g., money, time, or use of the company's facilities or assets) can be considered a contribution.
- *Running for Elected Office or Being Appointed to a Government Position:* It is an employee's right to run for elected office or serve in an appointed government position, however, if the employee plans to continue to work for Sempra Energy or one of the Sempra Companies, he or she must be mindful of potential conflict of interest issues, both with the elected/appointed position and the employee's position at Sempra Energy. Employees should be sure to check with their supervisor and contact the Political Reporting and Compliance department for specific guidance *before* deciding to run for elected office or being considered for an appointed position.

Prohibited Activity:

- Working on a political campaign for a candidate, ballot measure or proposition during working hours, or using the facilities or property of Sempra Energy for such purpose unless it is a campaign or measure sponsored by the Sempra Company and/or you are an employee who has been designated to support the effort.
- Coercing or bringing undue pressure on an employee, contract employee, company vendor or business partner to contribute to, support, or oppose any political group, candidate or ballot measure.
- Displaying political messaging in common areas. Employees should also use common sense when it comes to personal office space and the use of political buttons, pins, signage and other materials.

Corporate Political Contributions

Sempra Energy makes corporate political contributions as permitted by law only from special budgets funded at shareholder expense.

- Sempra Energy may contribute to candidates, political parties, ballot measure committees and political action committees (PAC), but does not make contributions to officeholder accounts or federal "Super PACs". The company rarely allows any contributions to 527 organizations. Any employee wanting to make a contribution to a state level 527 organization cannot do so unless approved, in advance, by the most senior Sempra Energy External Affairs officer prior to making a commitment.
- Sempra Energy will not use company funds to make independent expenditures to expressly advocate for the election or defeat of federal, state, or local candidates.
- Sempra Energy shall comply with all federal, state and local laws as well as reporting requirements governing corporate political contributions.
- Political contributions must always be submitted to the Political Compliance department and never processed in individual departments' cost centers.
- Sempra Energy's contributions are posted on Sempra.com semi-annually for transparency purposes.
- No contributions shall be given in anticipation of, in recognition of, or in return for, any official act.
- Employees are never allowed to make political contributions to candidates from personal funds and then seek reimbursement from the company.

Please refer to the procedures in APPENDIX 2 of this policy before committing to make a contribution to a Government Official.

Employee Political Action Committee Contributions

Employees of Sempra Energy or the Sempra Energy Companies meeting specific eligibility requirements can join the Sempra Energy's federal FEC-registered political action committee, Sempra Energy Employee's Political Action Committee ("SEEPAC").

- SEEPAC is a voluntary political action committee independent of any political party.
- The Company also sponsors a California-registered political action committee, also named SEEPAC, which may make contributions at the state and local level.
- Political spending by SEEPAC is reviewed and approved by the SEEPAC Board of Directors and receives political reporting and compliance clearance before checks are issued.
- SEEPAC complies with all applicable reporting requirements and political contribution laws.
- All SEEPAC contributions must be requested, submitted and approved by Federal Government Affairs before being sent to the Political Reporting and Compliance department for clearance and processing.
- Employees are never to make political contributions to candidates from personal funds, and then seek reimbursement from SEEPAC.

Lobbying

Lobbying is any action intended to influence legislative or administrative action, including activities to influence government officials ("Government Official"), political parties, or ballot measures. Lobbyists can be individual employees or the company that employees them, referred to as a Lobbyist-Employer.

- Only employees authorized to act on behalf of the company may perform lobbying activities and only if permitted by law.
- Even customary and ordinary communications with elected or appointed regulatory or agency officials or their staff may be considered lobbying activity that is subject to rules in certain jurisdictions.
- Employees who engage in these activities are required to report this activity in LATS and/or register as a lobbyist if certain thresholds are met.

Contact Political Reporting and Compliance to ensure compliance with applicable registration and reporting laws prior to engaging in any lobbying or communications activities with officials or their staffs at any level of government.

Retention of Lobbyists or Firms that Lobby

You must obtain prior approval before hiring a lobbyist or lobbying firm by following the process set forth in the procedures found here. You will subsequently need to enter all related expenses on a monthly basis into LATS. It is the responsibility of the employee who hires the firm to relay this policy to outside consultants and ensure compliance. These procedures apply for all jurisdictions.

Revolving-Door Laws

Former Government Officials who become employees of private or public companies may be subject to "revolving-door" restrictions on their work. If you are considering hiring former Government Officials who will be representing Sempra Energy externally, you **must** obtain approval in advance of hiring from the most senior Sempra Energy External Affairs officer.

Business Courtesies to Government Officials

Business courtesies ("Business Courtesies") that provide personal benefit to a Government Official or to their families are covered by rules and regulations that vary widely by jurisdiction.

For all U.S. jurisdictions, such gifts are often either prohibited or subject to strict yearly and/or monthly limits, and often trigger reporting requirements that can cause officials to be disqualified from voting on matters related to the Sempra Energy or can cause reputational damage to the company once publicly reported.

Please refer to the procedures in Appendix 1 of this policy before giving any gift or courtesy to a Government Official or any of their staff members.

Required Training

All employees who are directly involved in activities that could involve contact with a Government Official as well as those who provide support to those employees, are required to complete Political Reporting training, which is provided on a periodic basis.

2. BACKGROUND INFORMATION

Political activity is heavily regulated at all levels of government and often requires reporting to government agencies. U.S. law governing political reporting and compliance generally requires disclosure on a consolidated basis, including in many cases, direct and indirect relationships (e.g., subsidiaries, JVs, etc.). Accordingly, the compliance and reporting function for all the Sempra Companies is administered by Sempra Energy's Political Reporting and Compliance department.

For guidance on non-U.S. political contributions and gifts, refer to the Anti-Bribery and Anti-Corruption Policy and contact the Legal Department. You must seek guidance prior to acting.

3. KEY TERMS

Business Courtesies – Generally anything that has a value provided to an elected or appointed official. Examples include gifts, meals, drinks (e.g., cup of coffee), edibles (such as boxes of chocolates, fruit baskets), entertainment (such as tickets to sporting events or concerts), recreation (such as golf course fees or sailing excursions), raffles, honoraria, transportation, discounts, promotional items and accommodations.

Government Official –An officer, employee, agent or representative of any government agency, department, entity or political subdivision, or any candidate for political office, political party or an official of a political party at the federal, state and local level of government, as well as their staff members. Each jurisdiction defines Government Official differently and requires different levels of reporting.

Lobbying – Although definitions vary greatly by jurisdiction, lobbying is generally defined as communication with a Government Official intended to influence legislative or administrative action. You do not have to be a registered lobbyist to engage in lobbying.

Political Action Committee or PAC – An organization that raises money in order to contribute money to political campaigns. Sempra Energy sponsors an employee-funded political action committee (SEEPAC), which raises money from its eligible employees.

Sempra Energy Company/Sempra Company – A subsidiary or other entity as to which Sempra Energy has majority ownership and control.

4. RELATED DOCUMENTS

Anti-Bribery and Anti-Corruption Policy
Business Courtesies Policy
Contributions Policy
Memberships Policy

5. INFORMATION RETENTION GUIDANCE

For guidance as to the appropriate retention period for information related to this policy, please refer to the Information Management Policy.

APPENDIX 1: Required Steps **Before** Giving a Gift or Extending a Courtesy to a Government Official

1. **Obtain clearance.** Due to strict restrictions on gifts at all levels of government, before giving any gift to any Government Official, obtain clearance from Political Reporting and Compliance. Send an email to PoliticalReporting@Sempra.com with an estimate of the gift value and the name, title and jurisdiction of the Official. If for any reason prior approval is not obtained, you must contact Political Reporting and Compliance immediately by phone at (619) 696-2599 or via email at PoliticalReporting@Sempra.com to report the gift.

2. **Be transparent.** Once clearance is obtained, you should let the Official know that if they choose to accept the gift/courtesy, they will receive a gift letter from you, as a courtesy, outlining the cost of the gift (e.g., ticket, meal, beverages) in case they want to reimburse the Company for these gifts within a 30-day period.

3. **Retain all receipts.** Once you have attended the meeting or event with the official, you should retain relevant receipts of the expenditures, clearly marking the names, titles and agencies of those who benefited from the expenditure. This will be required for your reimbursement of the expense, and may also be required by Political Reporting & Compliance.

   As a general rule and unless otherwise noted on the receipt, the full cost of the tab will be divided equally by the number of people in attendance.

4. **Report the expense.** The gift expense must be reported in the Gift Section of LATS **within 5 days of the event or meeting**. This information will be used to track whether a particular official is approaching applicable limits. It is extremely important to be expedient with entering the data into LATS, as the window for seeking reimbursements or making changes is very narrow.

These procedures apply for all domestic jurisdictions, unless the most senior Sempra Energy External Affairs officer, in consultation with the Law Department, determines that a different procedure is appropriate under applicable law and approves the gift.

APPENDIX 2: Required Steps **Before** Committing to Make a Political Contribution to a Government Official

Steps 1-3 are annual in nature and must be successfully addressed in Quarter 1 of each calendar year:

1. **Obtain senior management budget approval:** Corporate political spending plans are reviewed by senior management annually, based on input and feedback from government affairs employees.

2. **Present to board for review:** Political spending budgets are reviewed by the Sempra Energy Company boards of directors before being submitted to Sempra Energy for review and approval.

3. **Obtain consolidated budget approval:** The most senior Sempra Energy External Affairs officer shall approve consolidated budgets for political spending once the Sempra Energy Company boards have reviewed spending plans.

Steps 4-9 articulate what authorized employees must do prior to making a commitment to provide a political contribution to a candidate for office or Government Official throughout the course of the year:

4. **Obtain VP approval for each contribution request:** Send an email to PoliticalReporting@Sempra.com to request a political contribution request form. Once the form is completed, each contribution request must be approved and authorized by a vice president or higher level officer and submitted to the Political Reporting and Compliance department.

5. **Submit to Political Reporting and Compliance for legal review:** Send the request to the Political Reporting and Compliance department at PoliticalReporting@Sempra.com. The team will review the contributions and ensure compliance with all applicable laws. Contributions are never to be processed in cost centers other than the approved cost center.

6. **Obtain Executive VP approval for certain contributions:** Contributions over $100,000 and those in excess of the approved budget require approval of the most senior Sempra Energy External Affairs officer at the Company. In addition, any employee wanting to make a contribution to a candidate, PAC, or ballot measure under investigation, in legal trouble, or controversial in any way cannot do so unless approved, in advance, by the most senior Sempra Energy External Affairs officer.

7. **Submit to AP for processing:** Once legal review is complete, the Political Reporting and Compliance department will submit a check request for processing.

8. **Send check:** Once the check is received, the Political Reporting and Compliance department will send the check with instructions to the recipient, unless prior delivery plans have been made.

9. **Report contributions:** The Political Compliance department shall report all contributions to the government as required by law and posts them semi-annually on the Sempra Energy website.

These procedures apply for all domestic jurisdictions, unless the most senior Sempra Energy External Affairs officer, in consultation with the Law Department, determines that a different procedure is appropriate under applicable law and approves the contribution.