

1 Whether the accommodation is necessary for the
2 facility's financial viability;

3 And whether the existing supply of facilities
4 of a similar nature and operation is sufficient to
5 provide disabled individuals with an equal opportunity to
6 live in a residential setting.

7 As usual, Staff analyzed the reasonableness and
8 the necessity of these requests with regard to current
9 residents and prospective residents, since they are
10 individuals that are situated differently.

11 As to the current residents, Staff found that
12 the request was necessary and reasonable. The City is
13 not in the practice of attempting to abate current
14 residents who were there at the time that this issue was
15 heard.

16 As to protective residents, the analysis showed
17 that the request number one was not necessary and was not
18 reasonable.

19 And the necessity issue, Applicant did not
20 submit evidence that it required the requested
21 accommodation in order to be financially viable, and did
22 not present evidence that required accommodation for
23 therapeutic benefit.

24 It did submit a statement that living together
25 while in recovery with others who were also in recovery

1 was a therapeutic benefit, and the City does not dispute
2 that. What the City disputes is whether this specific
3 accommodation is necessary to provide the therapeutic
4 benefit to individuals living with others in a licensed
5 residential care facility that enhances their recovery.

6 To continue that issue, we look at the
7 alternate housing opportunities. Because the Newport
8 Beach Municipal Code authorizes a consideration of other
9 available facilities that are of a similar type and
10 nature.

11 As of July 6th, we had 200 -- of the approved
12 facilities, that means the ones that are not subject to
13 abatement and that are licensed within the City, there
14 are 207 ADP licensed beds within the City. Many of those
15 are in duplex and apartment buildings on the Balboa
16 Peninsula and West Newport.

17 If someone's looking to recover and live with
18 other persons in recovery in a licensed environment and
19 to be near the beach, there's a number of other similar
20 alternatives they can choose from.

21 As to current residents, as we've discussed,
22 the use is subject to abatement with the Use Permit
23 denial and if the reasonable accommodation is denied,
24 and, therefore, current residents would lose their
25 housing.

1 Prospective residents. The future residents
2 would lose their ability to live in this duplex, but not
3 in other similar facilities, as we've discussed.

4 Then we moved to the issue with request number
5 one of whether request number one is reasonable with the
6 combination of factors that the Municipal Code tells to
7 us consider:

8 Would the accommodation fundamentally alter the
9 character of neighborhood;

10 Whether it results in a substantial increase in
11 traffic or parking issues;

12 Whether granting the accommodation would
13 substantially undermine any express purpose under General
14 Plan or Specific Plan;

15 And whether the accommodation would create
16 institutionalized environment due to the number and
17 proximity of other similar uses.

18 We also look at other required findings:

19 Would granting the request impose an undue
20 financial administrative burden;

21 Would granting the request result in a
22 fundamental alteration in the nature of the City's zoning
23 program.

24 Generally, when we're looking at an exemption
25 from this particular section of the Municipal Code, we

1 look at the purposes of, especially for our purposes,
2 both the R2 zone versus the MFR zone, or the zone we're
3 trying to establish.

4 And we did less analysis on this this time
5 because there was more analysis required in other areas.
6 And because of the determinations in those areas, this
7 issue really didn't need to be dealt with in depth. But
8 there are the purposes of our R2 and MFR zones.

9 Under other conditions, this finding could be
10 made that with 14 residents in seven apartment units, the
11 density was similar to that which would be common in R2
12 residential zone for a non-conforming building.

13 Then we look at what the purpose of the Use
14 Permit is, whether we undermine the purposes the Use
15 Permit was supposed to achieve by allowing it to be in
16 operation without the Use Permit.

17 Use Permits are required for uses with
18 operating characteristics that require special conditions
19 to enable them to not have an adverse impact on other
20 uses in the area.

21 And Ordinance 2008-05 requires the Use Permit
22 for non-conforming uses in residential areas. This is to
23 ensure the purposes of the Zoning Code are achieved, and
24 to mitigate adverse secondary impacts.

25 Purposes that are specifically enumerated in

1 the Code are to promote the public health, safety and
2 welfare, and implement goals of the General Plan by
3 ensuring that conditional uses don't change the character
4 of residential neighborhoods.

5 And equally important, to protect and implement
6 the recovery and reintegration of the disabled, in part
7 by avoiding the overconcentration that would lead to an
8 institutionaliation of the area.

9 And would the Use Permit purpose be undermined?
10 Our analysis was that because of the Applicant's conduct
11 that we have found out since January of this year, that
12 the findings required to issue a Use Permit could not be
13 made for this facility. If you were looking de novo at
14 the factors that you have to find -- that you were
15 allowed to look at and the findings that you have to
16 make, we believe that the finding to issue a Use Permit
17 could not be made today.

18 We talked about current.

19 Prospective residents. All required findings
20 cannot be made. One of the basic purposes of the zoning
21 program would be undermined if the Use Permit were
22 granted, or if the reasonable accommodation waiving the
23 Use Permit were granted.

24 That purpose, as we've discussed, is discussed
25 earlier in the Use Permit hearing. There was a

1 requirement put into the Municipal Code that no one who
2 is operating a facility operated a similar facility with
3 a pattern or demonstrated pattern or practice of
4 violating state or local law.

5 We also admit that we can anticipate the
6 administrative burden of monitoring facility and
7 prosecuting substantiated complaints.

8 With conditions, could the use conform to the
9 operational standards of 20.91A.050? Because that's one
10 of the first requirements for a Use Permit to be given.

11 Was it operated in compliance with state and
12 local law, with management plan of a 24-hour contact?

13 Staff continues to assert that it is not
14 operating in compliance with state law. I believe the
15 Department of Social services letter that was dated April
16 1, 2009, the Notice of Violation which was sent, says,
17 "You are here" -- was it in this -- I believe, the
18 exhibit that you'd find this in is Council's packet that
19 was given to the City Council. That was where it was
20 last located.

21 "You are hereby notified the above-referenced
22 facility is operating without a license, which is a
23 violation of California Health and Safety Code section
24 1508." Social Services determined and confirmed that
25 this facility violated state law. And it violated it

71

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1 twice, once with each minor. So that's two instances
2 that we can confirm.

3 I cannot give you instances over a year. I
4 can't show you 10 or 12 instances. Our Code does not
5 define "pattern." It doesn't define "practice." I don't
6 know of a clear bright line test for what's a pattern and
7 what's a random incident.

8 But I think you've seen since April, we've
9 had -- since late March, we've seen a number of instances
10 arise that cause Staff deep concern. And we believe that
11 it does show that there's a pattern of violation of state
12 law and, therefore, that finding cannot be made.

13 Whether the property is physically suited to
14 accommodate use;

15 Whether there's sufficient parking;

16 Whether the use will change the character of
17 the surrounding residential neighborhood.

18 Generally, Staff looked at this issue when it
19 made its recommendation back in January and determined
20 that it would not be an issue, that, with conditions, the
21 facility could meet those required findings.

22 However, with the violations of state law that
23 we have documented and which ADP is in the -- ADP is in
24 the process of investigating. The Social Services'
25 investigation is complete, and Social Services confirmed

1 what we know.

2 Moving to request number two, start with a
3 threshold issue. None of the requested -- separately
4 requested accommodations, if they were granted, would
5 allow the Applicant to continue their operation just on
6 their own.

7 As a reminder, those are 18 residents, maximum
8 occupancy;

9 The waiver of the Use Permit occupancy
10 requirements;

11 Exemptions from parking;

12 Treating them as legal non-conforming use.

13 We'll go through those, but as a reminder,
14 those are some of the specific elements they are asking
15 for exemptions from.

16 There are four factors required to show
17 necessity, as we've discussed. This is just a reminder
18 slide, because it was seen earlier in the presentation.

19 This is what they asked for exception from.

20 And Staff determined that the individual
21 requests made by the Applicant were not necessary for
22 disabled individuals to enjoy equal opportunities to
23 housing, and they were not reasonable.

24 We discussed the financial viability aspect a
25 little bit when they were asking for 14 residents. At 18

73

1 residents, that's more than 14. In the past, we've done
2 an analysis. But we've asked for Applicant to
3 show -- evidence to show why they need a larger size
4 facility than recommended by Staff. And the Staff -- the
5 Applicant expressly objected to that request.

6 They have also not submitted evidence that they
7 required accommodations, any of the exempted, you know,
8 the waiver of the parking, treating them as a legal
9 non-conforming use, overconcentration, they have haven't
10 asked for those as a therapeutic benefit.

11 We've seen the slide about the Bryant Woods Inn
12 about the size -- increasing the size of the facility to
13 a size requested by an applicant. It might provide
14 financial benefit to the operator, but did not provide
15 any particular benefit to the residents that the laws are
16 concerned with.

17 That's a summary of some of the factors the
18 Court looked at in regards to the Bryant Woods case. The
19 similarity of other facilities with vacancy rates in the
20 area, failure to present -- Plaintiff's failure to
21 present evidence, and failure to show that a larger size
22 will be therapeutically beneficial.

23 And the Court noted that "If Bryant Woods Inn's
24 position were taken to its limit, it would be entitled to
25 construct a 10-story building housing 75 residents, just

1 because the residents had handicaps."

2 So moving to the specific factors, the 18
3 residents, there's no evidence of viability or
4 therapeutic benefit to having 18 residents. Alternate
5 housing exists. There is a licensed male facility for
6 males with 18 residents that has been granted a Use
7 Permit that's a block away.

8 Waiver of occupancy restrictions. We were very
9 confused by this request, because there are nine -- even
10 if you take out the one apartment unit that's being used
11 as an office, there's still nine bedrooms left in the
12 facility.

13 And under the occupancy restrictions, that
14 would allow them 19 residents, not the 18 they requested.
15 So we can dismiss the request for the waiver of the
16 occupancy restriction, because they don't need it to get
17 the number they've asked for.

18 Very similar in the parking. The facility has
19 six on-site parking spaces. The Newport Beach Code
20 requires three -- one parking space onsite for every
21 three residential care facility beds. They already have
22 the parking spaces they need for 18 residents. It is not
23 necessary.

24 Visitor parking. There was no evidence that
25 visitor parking conditions had any impact or prevented

75

1 therapeutic benefit or financial viability.

2 As far as whether it's necessary to treat
3 people at Newport Coast Recovery as a non-conforming use,
4 no. The City has always treated Newport Coast Recovery
5 like a non-conforming use.

6 The Newport Beach -- we've seen other
7 situations where it wasn't necessarily legally
8 established, so that an accommodation was made during the
9 period where they weren't involved in the administrative
10 system. But in this case, there's never been any
11 question how they have been treated.

12 California Building Code requires that the
13 application -- that the Code sections that were in place
14 when the occupant-type changes are the appropriate ones
15 to apply.

16 And our Fire Marshal made the accommodation, if
17 you will, to apply the 2008 Codes, because there were
18 some restrictions in prior versions of the Building Code
19 that Applicant would have found it very, very difficult,
20 if not impossible, achieve.

21 And, therefore, he had made the offer of
22 applying 2008, but if the Applicant wants to apply the
23 1997 Building Codes, I'm sure the Fire Marshal will be
24 happy to advance the Building Code requirement. That we
25 can do.

76

1 Waiver of other factors. Proximity of parks
2 schools, other facilities. I'd like you to know that
3 there's nothing in our Municipal Code that requires you
4 to consider proximity to churches or playgrounds. It's
5 schools, parks and facilities. We determined that that
6 waiver was not necessary, because there were no
7 playgrounds -- we'll get to that one later. There's
8 another slide.

9 These factors would be considered. The
10 proximity to other uses. Those factors would be
11 considered when determining whether the use would be
12 compatible with the character of the neighborhood,
13 whether it would contribute to changing of the
14 neighborhood. It is not a flat finding that you have to
15 make that there is no proximity of other uses like that.

16 Would waiving the factors be necessary to
17 afford a disable individual an equal opportunity to enjoy
18 a dwelling? We decided no. Because of the other issues
19 that we're going to address, there were reports of lack
20 of supervision and violations of state law by the
21 Applicant.

22 Supervision of the individuals who reside
23 within the facilities has been important in the past in
24 order to reduce the impact on the neighbors, and that is
25 why we have the lengthy list of conditions when a Use

1 Permit is granted. They are non-rebuttable
2 considerations. Violations of the state law are very
3 important to us for the reasons that we've stated
4 already.

5 Therefore, Staff determined that the required
6 finding in 20.91A.060 can't be made, and that's because
7 one of the crucial operating standards required that
8 20.91A.050(c)(4) cannot be met.

9 Waiving the requested factors that they
10 enumerated, the proximity issues, overconcentration,
11 consideration, that was not necessary, because it
12 wouldn't result in continued facility operation, because
13 we couldn't make another crucial finding.

14 Would there be an undue financial or
15 administrative burden? Well, I will tell you 8 o'clock
16 at night when Mr. Kiff and I were still at our desks
17 trying to help the two moms who were trying to find
18 their -- the one child who, from Newport Coast Recovery,
19 had moved to an unlicensed facility in Costa Mesa, the
20 thought of administrative burden did cross my mind. I
21 believe that there would continue to be an administrative
22 burden.

23 Would granting the requested accommodation
24 result in a fundamental alteration in City's Zoning
25 program?

1 If we waive the overconcentration factors as
2 requested, yes, we would be undermining a very important
3 factor and a very important purpose that the Ordinance
4 was adopted to achieve. Preventing overconcentration was
5 a fundamental program. And part of that program is not
6 just to protect the residents but to protect the
7 residents of the facility.

8 The purpose of community-based care, as we
9 understand it, as ADP has explained it to us, is to allow
10 individuals in recovery to begin to reintegrate into the
11 surrounding neighborhood and to learn the skills of
12 living in a neighborhood surrounding by others who are
13 not, you know, essentially using alcohol and drugs.

14 Overconcentration, which transforms a
15 neighborhood into a quasi institutional area, defeats
16 that purpose. This was stated better by the Court in
17 U.S. v City of Chicago Heights, where they stated,

18 "There may be situations in which the distance
19 between homes was so little, that it could fundamentally
20 alter the City's purpose of avoiding clustering and
21 preserving the residential character of certain
22 neighborhoods."

23 Other areas. When we look at fundamental
24 alterations of the Zoning Codes, the parking requirement
25 that the Applicant -- the waiver that the Applicant

1 requested. The purposes of having an off-site parking
2 requirement are stated in other areas of the Municipal
3 Code.

4 To ensure the off-street parking and loading
5 facilities are provided for new land uses and alterations
6 of existing uses;

7 To establish the parking standards that are
8 consistent with the needs and uses of -- the needs of the
9 use and feasibility;

10 And to ensure that off-street parking and
11 loading facilities are designed to ensure efficiency,
12 protect public safety, and to insulate surrounding land
13 uses from adverse impacts.

14 Anybody in this room is very likely to know
15 what the impacts of excessive use of a facility in the
16 summertime parking could be, especially when they are
17 doing treatment of individuals who do not reside on-site.

18 The Applicant also has a history of parking
19 violation, particularly behind the facility when they
20 were not using the garage for parking purposes. They
21 provide counseling to visitors who do not reside on-site.
22 Granting the waiver would undermine the purposes that
23 that requirement was put in place to achieve.

24 And I would also encourage you to see the Staff
25 report, where we do a comparison of what the -- what

1 restrictions, if any, were placed on another home
2 occupation on, say, an individual living next door to
3 Newport Coast Recovery who was running a business, a
4 counseling business, and having clients visit his
5 home -- his or her home to provide the counseling.

6 There are requirements in the Municipal Code
7 that limit the impacts on neighbors there. And there's
8 also requirements that all on-site parking be retained,
9 not reduced. And that there no substantial increase in
10 the pedestrians or automobile parking. We do not put
11 similar -- called it out restrictions on pedestrian
12 activity for these facilities.

13 Waiver of the considerations of proximity to
14 schools, parks and alcoholic beverage outlets. There
15 could be situations in which it would determine
16 that -- which you could determine that a basic purpose of
17 the Zoning Code would not be undermined by waiving
18 consideration of the factors. But these are factors
19 only, and they are considered by you on a case-by-case
20 basis.

21 And that is the end. Unless you have any
22 questions for me, I think that concludes the Staff
23 presentation.

24 Thank you.

25 MR. ALLEN: One question. And I just was not

1 previously aware that the Bryant Woods case talked about
2 a vacancy factor. And I don't think we get that far into
3 an analysis in the reports that I've seen about vacancies
4 in the units that are available; correct?

5 MS. WOLCUTT: We have not reported on the
6 specifics on that. I believe Mr. Kiff might be in a
7 better position than I am to know what the vacancy rates
8 are. Sometimes facility operators tell him, you know,
9 what their vacancy is.

10 Do you have information on that, Dave?

11 MR. KIFF: The information is anecdotal, and
12 the vacancy rates are running anywhere from half the beds
13 open and vacant to 40 percent.

14 MR. ALLEN: Okay. Thanks.

15 Does that complete the Staff presentation, City
16 staff?

17 MR. KIFF: Yes.

18 MR. ALLEN: All right. Applicant ready to go
19 forward?

20 MR. BRANCART: Thank you very much.

21 Let me begin with a few observations that much
22 of the presentation that was just presented to you, based
23 upon the analysis of fundamental alternation, was
24 boot-strapped from information that you heard at the
25 first part of this hearing.

1 It was boot-strapped from information based
2 upon a claim by the City that they had demonstrated a
3 pattern of violation of law, a finding that you expressly
4 stated less than an hour ago could not be made. And that
5 runs through this entire presentation.

6 In fact, City staff is so direct as to say that
7 the only thing that keeps us from standing before you as
8 a Hearing Officer and re-endorsing our original Staff
9 report is this after-acquired evidence, of which you have
10 found, one, that the Applicant could, without violating
11 ethical and confidentiality rules, could present evidence
12 in that forum about that, and two, that was a Notice of
13 Violation that was issued. That's it.

14 And therefore, I think you need to take what
15 you've just saw on these slides, and put it in the
16 context of the findings that you rendered earlier this
17 afternoon.

18 It is striking also in the Staff presentation
19 how little there is to contest in some respects. Staff
20 concedes that there would be no need to request an
21 accommodation regarding the existing parking regulation;

22 There would be no need to request accommodation
23 or exception to the existing occupancy restriction;

24 That the Fire Marshal -- there's no need to do
25 that, because we can apply Code either in '97 or 2008.

1 So what it then comes down to, fundamentally,
2 is this question of overconcentration and necessity. Let
3 me begin with the question first of necessity.

4 Staff concedes that there is a necessity as to
5 those individuals who presently reside at Newport Coast
6 Recovery. Staff claims that there is no such necessity,
7 even though the same services would be provided to the
8 same disabled individuals in the same state of need, the
9 same -- because there are other institutions who could
10 provide those same services.

11 That is false. Newport Coast Recovery is the
12 only facility -- it is the only facility which is an
13 all-male residential primary treatment facility. Let me
14 repeat that. It is the only facility that is an all-male
15 residential primary care facility. Please, as the
16 Hearing Officer, press the Staff to be very clear when
17 they put out broad and unsubstantiated claims that there
18 is comparable treatment beds available.

19 Because each of these facilities provides a
20 very different and narrow type of housing, and Newport
21 Coast Recovery is the only one here on the West
22 Peninsula -- and could be in the City -- that is a
23 primary -- that is, after somebody comes out of detox,
24 primary care all-male residential facility.

25 Yes, there are all-male facilities, but this is

1 the only one that fits that. So this is a unique service
2 that Staff has not addressed. So let's put in context,
3 then, that there is actually no necessities claimed by
4 Staff, because people could have, according to them, go
5 across the street and obtain the same services, which, in
6 fact, is patently, patently false.

7 The second thing that's claimed by Staff,
8 anecdotally right now by Mr. Kiff, is the claim that
9 there are substantial numbers of treatment beds available
10 and, therefore, there is no need. In fact, the City of
11 Newport Beach has repeatedly told the federal government
12 in reports certified by the City Council just the
13 opposite. I'd like to share with you an exhibit.

14 What I'm presenting to you, as the Hearing
15 Officer, are exerts of documents that were prepared by
16 the City of Newport Beach and submitted pursuant to
17 Federal law to United States Department of Housing and
18 Urban Development.

19 These reports are mandated by Federal law and
20 are required to be presented to HUD both on an annual and
21 also on a periodic basis. Pursuant to submitting these
22 reports, the City obtains Federal monies, and obtains
23 monies based upon the truth of the reports that are
24 submitted here by the City to the Federal government.

25 If you, as Hearing Officer would please turn to

85

1 page 1 of this, you can see this is the Consolidated
2 Plan, one version, that was presented by the City of
3 Newport Beach to the United States Department of Housing
4 and Urban Development for the time period that we have
5 before you.

6 If you turn to the second page, part of this
7 presentation requires the City to state what its priority
8 needs are for its special populations. And as you see
9 there, the City has specifically told HUD that "persons
10 with alcohol and other drug addictions is a high priority
11 need." That certainly contradicts what you've been told
12 here today.

13 Please turn to page 3. Also in that same
14 report, you will see that, as indicated, substance abuse
15 services, again, is a high priority need that has been
16 submitted by the City to the Federal government in order
17 for the City to obtain Federal money with the promise
18 that these reports are accurate.

19 Please turn to page 4. The City has to tell
20 HUD what its enumerated goals are to do with the Federal
21 money. And one of them, as you can see here, is goal
22 number three on page 4, "to increase the supportive
23 services for persons suffering from substance abuse."

24 Please turn to page 5. This is not only
25 something that's been submitted in consolidated plan for

86

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1 period of 0509 by the City, but in the previous
2 consolidated plan, the City has repeatedly stated to the
3 Federal government that the types of services that they
4 now claim are not necessary to you, as a Hearing Officer,
5 are absolutely one of the highest priorities of the City
6 of Newport Beach.

7 Specifically, if you turn to page number 6, as
8 reported by the City to the Federal government, it
9 indicates that "persons with alcohol and drug addictions
10 were one of the activities that needed to be assisted."

11 And if you turn to the top of page 7, it tells
12 what you the obstacle is, "the ability of any funding and
13 social service agencies that can provide those services."
14 Obviously, individuals who are operating therapeutic
15 homes are providing, indeed, those services.

16 If you would turn to page number 8, page number
17 8 is a report from earlier. And it repeats, as you can
18 see at the bottom of page number 9, that, in fact, one of
19 the crying needs, according to the City, was the "need
20 for programs that included room and board and counseling
21 for improved supportive services of those in substance
22 addiction."

23 Please turn to page number 10. And while we're
24 going through this, I want you, as the Hearing Officer,
25 to please understand that pursuant to Federal statute,

87

1 the City Council has adopted and approved these reports.
2 Pursuant to Federal statute, the City has prepared these
3 reports to be submitted to HUD in order to obtain
4 funding.

5 So unlike coming here and not testifying under
6 oath and the informality of this procedure, these are
7 documents that are not only vetted through City staff,
8 but then adopted by the City, and then submitted with
9 certification to the Federal government saying, "This is
10 true. This is the problem we need to fix in the City of
11 Newport Beach. Give me money." And the Federal
12 government has given the City, in fact, relying on those
13 reports, hundreds of thousands, millions of dollars.

14 Page 11, I think you're being deceived. Page
15 11, this is the Strategic Plan for City of Newport Beach.
16 Of course, item number three under "Strategic Plan, we
17 must improve services to those with substance
18 addictions."

19 Page number 12, the Con Plan. Part of this Con
20 Plan, you see on page 13, was an indication of, how did
21 the services and needs of people with substance abuse
22 housing services fit within the continuum of care that's
23 available generally in the county?

24 Putting us in a larger context of county, which
25 was part of -- this, by the way, was submitted by the

88

1 City, but it looks at the broader County issue in order
2 to assess need. You can see under "substance abuse
3 treatment beds," that they talk about the substantial
4 gap.

5 And in terms, again, of priority, as
6 consistently has been reported by the City to the Federal
7 government to obtain funding, it is always the highest
8 priority that we obtain -- that we address the substance
9 abuse issues.

10 There's a repeat of that, of course, on page
11 14, and it goes on. That's a sampling of what's been
12 told to you that I think contradicts certainly, if not
13 the very word that you've been told here, the spirit of
14 what's been said to you.

15 I want to make a second point, because the time
16 period that we had to respond to this is so short. I
17 would urge you to consider and demand from Staff that
18 they provide to you the reports that have been issued
19 finding the City in violation of the housing elements
20 provisions of the General Plan requirements, as
21 administered by the State Department of Housing and
22 Community Development.

23 And would I would please ask you them to
24 provide you with the violation letters that have been
25 issued by the State of California against the City

1 regarding non-compliance with housing elements. And
2 specifically ask them about the, quote, disability
3 issues.

4 Because that, again, you'll see, as reflected
5 here, that in terms of compliance with State law
6 regarding these very issues, the State would beg to
7 differ with what you have just been told.

8 So what, then, have we been told? One, that
9 people can go across the street and get the very same
10 services. That is patently untrue. There are unique
11 services that are offered here by Newport Coast Recovery.

12 Second, we are told that we have a super
13 abundance of those. Mr. Kiff will say here that it's
14 merely anecdotal. In fact, that contradicts what's been
15 repeated told by the City to the Federal government, as
16 approved by City Council, in order to get Federal monies.

17 And last, I would urge you to take a look at
18 the violation letters issued by HCD, Housing and
19 Community Development. Housing and Community
20 Development, in connection with the noncompliances of the
21 housing provisions. Those are available on the Web site.
22 You'll be able to find this on the Web site if you'd like
23 to find them yourselves.

24 Let me talk to you a minute about this issue of
25 cost. In substantial consultation with Mr. Kiff, Newport

1 Coast Recovery arrived at these numbers of 14 and 18.
2 These were the break point numbers that they needed to go
3 ahead and operate in economic viability. And these were
4 discussions that were done between Mr. Newman and
5 Mr. Kiff at length.

6 At the end of the day, they were prepared to
7 make their financial break with 14 beds, and that's why
8 the first accommodation they submitted was the 14 bed
9 request, which was essentially adopt the Staff report
10 that had previously been submitted to you. So let's
11 not -- so let's not say there's been no economic or
12 economic determination here. They have made the
13 compromise.

14 Keeping in mind, just so we put this in
15 context, they are licensed to have 29 beds. They are
16 willing to make the accommodation in order to maintain
17 financial viability down to 14 beds. That's why they say
18 "Adopt the Staff report," and that's something that came
19 out of lengthy discussions between Mr. Newman and
20 Mr. Kiff about, where's the break point to keep the
21 facility viable? And, therefore, I think it is
22 disingenuous for Staff to say that there has been no
23 discussion or analysis regarding that.

24 Let me focus on this overconcentration issue.
25 The issue of overcontration is perhaps the most ill

1 defined and misused concept in this entire process. I
2 say that because it has literally no meaningful standards
3 by which you do apply, both in determining similarities
4 of facilities, densities of population, natures of use,
5 and any other meaningful criteria.

6 Merely having you take a yard stick and measure
7 from one housing dwelling to another of persons who
8 happen to be of a certain disability class tells you
9 actually nothing about whether or not there's
10 overconcentration.

11 I want to emphasize a second important point.
12 You are basically asked -- and you did in your last set
13 of findings. You took a yard stick and you said, "These
14 people are 300, 400 whatever," with absolutely no
15 meaningful finding as to what the law requires, but also
16 nor has Staff given you this information.

17 And I think it would be unfair for them to give
18 it to you now, nor have you been given for what the City
19 would like to consider and what's driving this larger
20 agenda. And what I mean by that is, one, merely the
21 proximity between these facilities, there is not
22 admissible meaningful measurable concrete evidence of
23 adverse impact upon the communities.

24 Nor is there any analysis provided to you by
25 Staff that if we add these individuals at this distance,

92

1 that's going to create this set of adverse impacts. It
2 is all complete speculation that they provided to you
3 glossed over with the words "overconcentration."

4 Nowhere is that made more painfully obvious
5 than the presentation that was just presented to you by
6 City Staff in which they talk about overconcentration
7 being for the benefit of people -- avoiding
8 overconcentration for the benefit of people who are
9 disabled.

10 And, in fact, I think Staff did get it right
11 here, and it's been wrong the way they have been
12 presented it to you, and I think that it's wrong in the
13 Ordinance, is that the only time you should appropriately
14 consider overconcentration is when it's to establish that
15 there is a benefit to people with disability, i.e., we're
16 not going to give you housing. We're going to deprive
17 you of the ability to get housing, which we have
18 repeatedly told the Federal government you need here in
19 town, because that would put you in an overconcentration.
20 So by doing you a favor, we're denying you the
21 opportunity to housing.

22 But I think it's most important here for
23 purposes of your termination is that nowhere in these
24 volumes of papers that we get before the 4th of July
25 holiday is there any evidence to show that this is

1 intended to benefit the disabled. None. Whatsoever.

2 What you are given, essentially, is, at the end
3 of day when you parse it all the way, is the yard stick.
4 This facility is here at 70 feet. That facility is here.
5 There's no evidence, meaningful competent evidence, to
6 say that because of this proximity, because Newport Coast
7 Recovery happens to be where it's located, people in
8 other facilities who are disabled are being detrimentally
9 affected in terms of their -- and there's just -- it's
10 just not there.

11 We're stating the standard, we're misapplying
12 it, and we're not providing you with any evidence. If
13 you would like, as the Hearing Officer, to say, "Look.
14 I'm determining overconcentration just based upon the
15 relationship of proximity of these places," you certainly
16 are entitled to do that and make that finding.

17 I mean, they are facts on the ground. But that
18 in not a competent legal finding. The competent legal
19 finding is because of this overconcentration, there has
20 been detriment to specific disabled individuals. And I
21 would argue, strenuously, depriving them of the
22 opportunity of housing that we've repeatedly told the
23 Federal government that we need is not of their benefit.

24 It is a very pernicious standard that the City
25 is applying here. And I won't be -- well, if you

1 substituted any other protective class in for disabled,
 2 any other class for disabled, and you said, you know, "We
 3 can't have people living in this kind of proximity
 4 because of overconcentration of any other particular
 5 class of persons," we would all find it naturally quite
 6 offensive. And that's what's going on here, because
 7 there's no underlying analysis of it.

8 Let me end on this issue about burden. Staff
 9 had to work late one night responding to telephone calls,
 10 and I do appreciate their diligence in doing that. But
 11 what is strikingly missing from your report here is any
 12 real competent evidence of the impact that this facility
 13 has on City services.

14 I have been told, and it's not here. I don't
 15 see Police Department run sheets. I've been told that
 16 the number of runs that were made to this dwelling is
 17 comparable or fewer than would be made to a comparable
 18 multi-family housing unit in this part of the City.

19 I've also been told that the relatively few of
 20 the run sheets I've looked at in 2008, that some of them
 21 had to do with parking. They were unrelated, because in
 22 Balboa, people park, and there were police called out,
 23 and they cited people.

24 In other words, you're told that, why is this a
 25 burden? And we're told, one, because we worked late one

1 night. And second, because as a part of working late, we
2 have found this evidence, that you have determined you
3 can't make a finding on, is something that's going to
4 keep us active. And that's just not competent evidence.
5 That's not competent evidence.

6 And where are the run sheets? And not just
7 saying, "Okay, we can produce some run sheets that show
8 that there were eight or ten police calls to this area."
9 But let's go ahead and analyze those sheets, and show
10 that they are truly connected to this dwelling, and that
11 they are meaningful in the context of run sheets to
12 understand how the police were responding to calls.
13 Let's look at how the run sheets for comparable,
14 comparable multi-family dwellings.

15 I mean, you know, as what happens so often in
16 this case with these applicants is we bring them in here
17 and we focus on that, and we say how bad they are. But
18 we put them in the context of the fact that there are
19 people in the community, businesses that are operating
20 that don't update their Web sites, other businesses that
21 have contract dispute with customers, other people who do
22 get the police called.

23 We focus on one, and we think in isolation.
24 Well, this is just not right, and I think that that's
25 ultimately unfair. But what I think is most

1 important -- well, I think that's ultimately unfair. Let
2 me end on this point.

3 You've been presented with information that, I
4 think at this point, you should grant the reasonable
5 accommodation based upon the information you have here.
6 But if you are inclined to deny this reasonable
7 accommodation -- and I'd urge to you grant it right now,
8 it ought to be granted -- and it ought to be granted, and
9 let me be specific.

10 And this is it -- ought to be granted, but it
11 ought to be granted in the context of Staff's original
12 report of 14 beds, okay? Because that was what Staff
13 originally agreed with.

14 And also I think that it's -- for consistency
15 sake, we should get off 18, and let's go back down to 14,
16 so that we say that we're looking at comparable numbers.
17 Staff report is at 14, or waive all these specific
18 requirements, put it down to 14. I think you ought to
19 grant it, and I think that that's as well for all the
20 reasons I've stated.

21 But if you are inclined to deny it, I do think
22 it's incumbent upon the process, in fairness to the
23 process, that we have an opportunity to respond to what
24 was written here.

25 You know, just putting Bryant Woods, which is a

1 4th Circuit case, and pulling snippets out of it, but
2 which is not a mainline case in terms of where the
3 reasonable accommodation law is in terms of its
4 application, to my mind, just by putting in Bryant Woods
5 is not telling you a lot about what the law is, and why
6 we believe fundamentally we're making an erroneous turn
7 here.

8 So I'd ask that you give the Applicant an
9 opportunity to supply you with appropriate briefing to
10 respond to what the City Staff has presented, if you're
11 inclined to deny. But I'd urge you, there is ample
12 evidence that's been presented here that you should grant
13 this accommodation, 14 beds, original staff
14 recommendation.

15 I appreciate your time.

16 MR. ALLEN: Does anyone else from the Applicant
17 here or that would want to speak or --

18 MR. BRANCART: No. We presented what we need
19 to say.

20 MR. ALLEN: Okay. Does Staff want to make any
21 responses to that? Should we wait until public --

22 MR. KIFF: I'm sure Mr. Bobko has some notes,
23 too, and I will not address the legal ones.

24 But Mr. Brancart, I wanted to some help
25 answering a question that I actually asked back on April

1 18th, and you asserted that it again, as did Mr. Newman,
2 in his request to have Mr. Allen's original denial
3 appealed.

4 And it was that, indeed, Newport Coast provides
5 a unique service in the community, that being the only
6 men's only primary care facility in the Newport Beach.
7 Quote, other facilities require 30 days of primary care
8 prior to entrance.

9 And as I stated to Mr. Newman back in April, I
10 said, "To me, that implies that Newport Coast offers Day
11 One non-medical detoxification services, something that
12 ADP does, indeed, license." But I don't see on ADP's
13 records where Newport Coast is authorized to provide
14 non-medical detox. The classification on ADP's list for
15 Newport Coast is, quote, RES versus RES-Detox.

16 And all that said, I might misunderstand how
17 that works in the continuum of care. So I was hoping
18 either you or Mr. Newman could inform me as to why and
19 how -- whether or not you are, indeed, licensed by the
20 ADP to provide non-medical detox, because that's not
21 listed that way.

22 MR. BRANCART: As I understand the continuum
23 care issue, what makes this facility unique is because
24 it's for individuals that come out of that initial -- and
25 you heard reference to it earlier, 24-, 72-hour detox,

99

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1 and they can go directly into that primary
2 care -- primary care facility.

3 And I can illuminate it further, because --

4 MR. ALLEN: Can you define what primary care
5 is? Because you've used that term repeatedly. I didn't
6 hear -- I hadn't heard that term before in this context.

7 MR. BRANCART: It is that facility that
8 individuals can go directly to, and this is a social
9 model, not a medical model.

10 MR. ALLEN: Who is establishing those
11 definitions, and so forth?

12 MR. BRANCART: It is my understanding that
13 those are definitions that are used in both describing it
14 from a governmental context, but also these are used in
15 the industry terms of how we route people through a
16 system to lead them to care.

17 I do think that -- because I don't want to
18 speak beyond my area of expertise, that I can go ahead
19 and provide you with supplementation regarding this, if
20 the record is left open.

21 If you're inclined to deny this application,
22 then I'd urge to you leave the record open, let us
23 provide you with that, so that we're not here relying
24 upon my inadequate ability to explain what is unique
25 about this housing, quite to the contrary of what you've

100

1 been told by the City. And I will do that. We'll just
2 need time or my Co-Counsel can do that.

3 MR. ALLEN: Okay.

4 MR. KIFF: I think arguably, Mr. Allen, that's
5 a fair thing for us to continue to look into, because it
6 would be my assertion, based on what Mr. Brancart said,
7 that there are, again, a number of care facilities in
8 Newport that provide that identical model. But neither
9 of us are experts on what ADP does and -- in part on the
10 continuum care, which is why I asked the question.

11 MR. BOBKO: Thank you, Mr. Allen. I will try
12 to move quickly. I know there are people who would like
13 to speak, so I won't consume the remaining time.

14 I think, first and foremost, that we can put
15 any questions about the Applicant's due process concerns
16 to rest. There was clearly time to produce documents and
17 refer to things on the Web site. This suggestion that
18 there was not adequate time to prepare I think has now
19 been laid to rest finally.

20 Having said that, being that the City does not
21 have to or that the Applicant does not share the City's
22 obligation to produce everything that it intends to
23 provide at that hearing, I have not had a chance to
24 review the documents that Mr. Brancart has given to me
25 for the first time about 8 minutes ago or 9 minutes ago.

101

1 But I have had a chance to look at it just
2 briefly, and I note, and I would direct the Hearing
3 Officer's attention to the top of page 2, where it says
4 "Homeless needs."

5 So when we have the circle with the arrow,
6 "persons with alcohol and other drug addictions," and
7 then I don't know what the top of the box says. It only
8 says "high," we don't know what the "high" refers to.
9 But I'm willing to suggest that that document has to do
10 with homeless people. And unless I'm misinformed, I
11 don't believe that homeless people inhabit Newport Coast
12 Recovery, because certainly they are unable to pay.

13 I think if you flip through the document,
14 you'll find other places where things have been provided
15 to you, and they were given a rather rough going over. I
16 also note on page 9, it suggests that the program that is
17 circled, the first sentence says "This program provided
18 access to recovery programs to homeless and low income
19 individuals."

20 Again, harkening back to testimony that we
21 heard at the beginning of the hearing from the woman who
22 had a child there, the homeless and lower income
23 individuals, I don't think, are the ones who are pulling
24 up \$35,000 for a stay. So I don't think that these
25 documents are necessarily relevant at all. And certainly

1 I don't believe that giving them such a short shrift here
2 proves much of anything.

3 The overconcentration, again, I don't want to
4 get into too much of this, because I know there are
5 people who want to speak. The City vehemently,
6 vehemently disagrees that we are applying a simple yard
7 stick, as Mr. Brancart suggests. And we also take issue
8 with the idea that there's no hard evidence in the record
9 about impacts on the community.

10 If we get in our time machine and harken back
11 in December 8, 2008, there are a number of people who
12 gave testimony about very direct impact that they've
13 sustained because of this place.

14 Mr. Myers, Jeff Myers, said, and I quote, "I've
15 lost tenants in my rental unit because of the proximity
16 to noise and profanity coming from this place. So I've
17 had a financial burden."

18 Mr. Schoonover came forward and told us, "They
19 use profanity all the day long. My truck has been stolen
20 from in front of my house. There's been graffiti on it.
21 It's been broken into three or four times. My stereo's
22 been stolen."

23 If we go, then, fast forward a little bit to
24 January, January 12th, in front of you again, Mr. Bacich
25 came forward, and you asked him who he was and if he was

1 the duplex owner that was the subject of the discussion.

2 And he said, and I'm quoting now, "I own -- I
3 own the duplex directly behind it. And one of the
4 owners' comments was that there had not been any police
5 reports. Yes, we never filed any police reports in our
6 complaints, and we had many of them. We went directly to
7 the manager of the facility and tried to deal with them
8 that way."

9 So all of this pointing to a simple yard stick
10 belies the fact that, on at least two different occasions
11 in front of you, people have come forward and given
12 concrete evidence with direct impacts. It's certainly
13 not hearsay about things that they have suffered because
14 of the management and operation of the facility.

15 Now, that is, of course, one facility of many.
16 But I don't think it takes much extrapolation to say that
17 if you have a number of facilities operating in a very
18 close proximity in type of environment, it's not only bad
19 for the people who are trying to regain their health, but
20 it's also bad for the people who live next door.

21 And I will make one last comment about the
22 pattern and practice. My colleague, Ms. Wolcott, touched
23 on it briefly, but I'd like to suggest and I am aware
24 that you have recently made a finding on this.

25 But we have brought you not one incident. We

104

1 didn't come in here and say with an e-mail or something
2 that was clearly speculative a position suggesting that
3 the way that this place is operating is outside of the
4 law.

5 We brought you two people, and she's sitting
6 right here. You got to hear her speak. Mr. Kiff found
7 other woman who wanted to speak over the phone. Now, I
8 can't provide with you data points over time. I
9 certainly can't provide you with a line of people that
10 would prove a pattern and practice.

11 But given that this is the only evidence that's
12 in the record, and that evidence was direct testimony
13 from people who have direct experience with this
14 operator, given that you have heard that, the only
15 evidence that you, I think, can consider -- and again, I
16 think that it is -- the City would suggest that it is
17 within your purview to draw inferences from the evidence
18 that's before you, that it is not unreasonable to believe
19 that Newport Coast Recovery operates this way as a matter
20 of course.

21 The only evidence in front of you is that they
22 do. Mr. Brancart has very -- assured -- strongly refused
23 to provide any evidence to the contrary. You, yourself,
24 noted in your last finding that you thought that he was
25 under an obligation to do so.

1 So in most courts -- and again, I understand
2 that the strict rules of evidence don't apply here. But
3 in most courts, when you have evidence, and you are able
4 to draw reasonable inferences from that evidence, and
5 that evidence is uncontroverted, we think the conclusion
6 is that there is a pattern and practice here. And, in
7 fact, there's no evidence to the contrary.

8 Thank you.

9 MR. ALLEN: All right. Unless there's
10 something compelling, we need to get going with the
11 public hearings, so okay.

12 Let's open the public hearing, and, please,
13 we've use a lot of time here, unfortunately, in all these
14 presentations by the lawyers, but we need to hear from
15 you, too. So come in and make it concise, and let's go.

16 MS. FUNDENBERG: Good afternoon. My name is
17 Louise Fundenberg, F-u-n-d-e-n-b-e-r-g. I'm president of
18 the Central Newport Beach Community Association.

19 And it's been brought to my attention by many
20 members that there's some people in our group that would
21 like to speak but they have withheld, because they were
22 afraid of -- let's put it out flat -- retaliation.

23 And wonder if these people then could speak
24 under the seal that was suggested, a seal of evidence,
25 that would give them a chance to bring evidence to the

106

1 Hearing Officer. And that's my question. - - -

2 Thank you.

3 MR. ALLEN: Just generally speaking, that just
4 does not -- is not done in the public hearing context for
5 land use matters, I'm certain. And I really don't think
6 it would apply in this hearing context either.

7 They're certainly more than welcome to present
8 whatever they wish to by writing, and this Staff is very
9 good about getting that written material out there, and
10 that's every bit as important in our analysis as the
11 voice communications here.

12 MR. WOOD: My name is Douglas Wood. I live at
13 1214 East Balboa Boulevard. My family owns rental
14 property at 1119 West Bay Avenue.

15 In the midst of the overconcentration of
16 commercial rehab for-profit businesses, directly across
17 the alley from our property is 1132 West Balboa, a
18 for-profit commercial rehab business. Nearby, at 1120
19 West Balboa Boulevard, is a non-licensed for-profit
20 commercial or rehab business.

21 Across the street, at 1115 West Balboa
22 Boulevard, is another profit commercial rehab business.
23 In the block -- in the next block north, at 1217 West Bay
24 Avenue, is another for-profit commercial rehab business.
25 Behind 1217 West Bay Avenue, at 1216 West Balboa

107

1 Boulevard, is subject for-profit commercial rehab
2 business.

3 In this residential zone within the 1100 and
4 1200 blocks, there are five for-profit commercial rehab
5 businesses. This is clearly overconcentration. This
6 overconcentration results in fundamental alteration in
7 the nature of the City's zoning program.

8 Additionally, these rehab homes have resulted
9 in an exorbitant waste of City time and resources, and
10 that's a real expense. I urge to you deny the reasonable
11 accommodation as recommended by the Staff.

12 MR. ALLEN: Thank you.

13 MS. OBERMAN: Denys Oberman speaking on behalf
14 of Saul Benbothway (phonetic) and broker by the residence
15 at 12th Street.

16 With regard to the reasonable accommodation,
17 first of all, I'm tired of being the mouth piece. There
18 are a lot of people, the residence have suggested, that
19 are afraid of retaliation. So I'd like to have that
20 entered yet again in the record, and their reasons for
21 fear are well founded.

22 First of all, we wondered about this whole
23 process of reasonable accommodation. So in addition to
24 talking with the City Staff and others, we did directly
25 contact an official HUD to obtain some clarification on

108

1 this issue. And what we were advised is the following:

2 One, obligations with respect to illegal
3 operations. There is no obligation to consider or grant
4 reasonable accommodation if either an individual with a
5 disability or provider of housing to the so-called
6 disabled does, in fact, demonstrate illegal behavior.
7 So, that's our illegal practices that would be counter to
8 the intent and the letter of the law, so --

9 MR. ALLEN: Did they give you something in
10 writing?

11 MS. OBERMAN: Actually, there was something on
12 the Web site, which we followed up with HUD. And we have
13 requested a written confirmation.

14 Secondly, with regard to overconcentration, HUD
15 did, again, affirm that overconcentration is not in the
16 best interests of the disabled, and it is something that
17 they look on with disfavor.

18 Having said that, this is an emerging and
19 non-maturing area of law. And the only place that there
20 are any matrix of overconcentration that we've been able
21 to find and that they were able to cite was in the
22 courts.

23 And there's specifically a case called
24 Minneapolis-St. Paul, that was several years ago, where
25 there was already existing overconcentration that was

109

1 less concentrated -- and I'm getting rather long winded,
2 and I apologize -- that was less concentrated that these
3 five facilities within between 300 and 50 feet that
4 Mr. Wood previously described.

5 And furthermore, less concentrated than the
6 number of the total number of facilities that we
7 currently have even after this Ordinance has been
8 implemented on the Balboa Peninsula/West Newport/Lido
9 area. So they did affirm that overconcentration is a
10 concern, and that they look on it with disfavor.

11 So that's what we got directly from HUD
12 relative to the issue of overconcentration. I believe
13 the City got a similar indication based on the Staff
14 report that I read.

15 And lastly, why -- there is also an opportunity
16 to look at reasonable accommodation, HUD says, on a
17 case-by-case basis. So the taking into account various
18 element of the situation and the facts and various
19 factors that pertain to any specific case is something
20 that's appropriate and acceptable to do, according to
21 HUD. So I did just want to clarify those things. I
22 think Staff did already cover them.

23 And I want to lastly say that, why on earth
24 should you grant a reasonable accommodation in the
25 instance of the overconcentration and, probably more

110

1 importantly, to an operator that's proven to operate
2 repeatedly illegally in practice, and also irresponsibly
3 with public health and safely risk?

4 Thank you.

5 MR. LOPEZ: Paul Lopez, 1125 1/2 Balboa.

6 First of all, just in observing the process, I
7 haven't been to all these hearings, is that we're in the
8 midst of a reasonable accommodation hearing, and the
9 Staff and the Applicant are still not very clear in
10 regards to what primary care is, the differentiation of
11 why this particular facility or operation provides
12 something that unique here on the Peninsula.

13 I would that this burden would fall on the
14 shoulders of the Applicant. I heard that Dave asked the
15 Applicant back in April. I think it's July 7th today.
16 Why that hasn't been responded to. So if that becomes a
17 key component of their argument, I'm quite surprised that
18 they didn't come up with that definition.

19 I think the impacts to the community, we talked
20 about this Applicant as an operator. I think that is
21 part of the use hearings that the management supervision
22 of this facility has been very well documented by the
23 community. So all the public feedback that we received
24 as part of the use hearing I think would be applicable
25 here.

111

1 And I would just say that I think the record
2 speaks that this operator has not -- has not managed this
3 facility in the way that is not detrimental to the
4 community.

5 Thank you.

6 MR. ALLEN: A number of people spoke -- and
7 come, please come on up -- at the hearings previously on
8 this, and I would certainly be interested in hearing from
9 anyone from the public who has observed a different level
10 of conduct, improvement or lack thereof, since that time.

11 MR. MATHENA: Larry Mathena, I'm going to go
12 directly to that point. I just want to hit a couple of
13 issues that were raised by the Applicant.

14 Specifically -- and I think Mr. Bobko did a
15 good job discussing this, the statistical evidence
16 presented. I just want to point out a few things.

17 Even accepting the explanations given for those
18 a statistics, the point of comparison here is not the
19 City of Newport Beach as a whole, it's the Peninsula.
20 The Peninsula generally is terribly overconcentrated,
21 does have a disproportionate number of units and is,
22 frankly, overburdened by them. It's number one.

23 Number two, the characterization of the
24 licensing on the ADP side for Newport Coast Recovery is
25 identical to the recovery facility at Ocean Recovery a

112

1 block away that this gentleman has disputed saying it
2 provides something different.

3 I don't understand how it can provide something
4 different if they have exactly the same license. Above
5 and beyond that, if you look at their Web sites, if
6 anything, the implication is that Ocean Recovery provides
7 more services, not less.

8 So when you add that to the fact that Mr. Kiff
9 is actually pushed for an explanation, I think the
10 certainty until pressed on the point that the Applicant
11 presents that, "Oh, they are unique," with no explanation
12 why, whatsoever, and challenging some of the points that
13 the City's made without support, there is no support that
14 they have given for their unique status regarding primary
15 care. Period. Not in the record and not in what's been
16 said.

17 And if that's such an important thing, by the
18 way, for them to achieve, gee, that they are presenting
19 something nobody else is, with such a lynch pinpoint for
20 reasonable accommodation, I would think they would be
21 packed for bear to deal with the point, and they are not.

22 So I don't see that they presented any evidence
23 to justify reasonable accommodation because they present
24 something that anybody else does or doesn't.

25 Secondly, to go back to the point that of high

113

1 priority, I do accept that the City, as a whole, does
2 view taking care of disabilities -- including drug issues
3 as a high priority. But that does not mean that at this
4 particular location that it's not inappropriate to say
5 that there are enough facilities, and that you don't have
6 enough data to decide that reasonable accommodation is
7 not granted.

8 Specifically, based on the evidence in front of
9 you, I question whether or not you can find that their
10 facility enhances quality of life. We do have a high
11 risk of an undue burden.

12 And last but not least, overconcentration is
13 here. You found it in the Use Permit, and there's no
14 reason not to find it in this hearing either.

15 Thank you.

16 MR. ALLEN: We're moving rapidly toward our
17 departure time. Who else would like to speak? And
18 whoever wants to speak next, hop up and getting right up
19 here ready to go.

20 MS. MC BRIDE: Hi. I'm Julie McBride. I live
21 at 1200.

22 And I just wanted to speak a little bit as to
23 the change of the characteristics of the neighborhood.
24 Our neighborhood is a great neighborhood. I have a
25 3-year-old son, but I don't take my son down the alley

114

1 past this home, nor do I take him down the boulevard in
2 front of this home.

3 And the reason being is I don't want my son to
4 hear that kind of language that I hear consistently
5 coming from this house, or to inhale the second-hand
6 smoking that I hear or smell in the alley when I'm
7 walking past. So it has changed the character of our
8 neighborhood, and I just wanted to let you know that, at
9 least in my household, we feel it.

10 Thank you.

11 MS. WILLIS: Hi. Christina Willis again.

12 I did want to thank you very much on what he
13 was talking about, you know. They talk about the Fire
14 Codes, and whatnot. When you have 15 or 14 residents,
15 plus all of these staff, that's out there smoking and
16 flicking cigarette butts, I guarantee there's a Fire Code
17 hazard.

18 And my boys weren't allowed to lock their doors
19 at night. I thought that was pretty interesting. These
20 are young kids that can't lock a door, and you've got
21 grown men coming in and out who are convicts that have
22 told the boys, "Well, I was in prison for 15 years, and
23 this is what I did," and giving them an explanation of
24 that type of thing, which was unnecessary. They didn't
25 know who these people are that they are supposed to be

115

1 looking up to to change their life.

2 As far as the specialty, when we got there, we
3 were promised detox with these boys. In the contract, it
4 states they have to be detoxed for 72 hours beforehand.
5 They specifically asked the boys, and they did drug test
6 and they come up positive. But they never sent them
7 anywhere. They argued whether or not to send them to
8 Hoag or to just let them sleep it off.

9 Of course, being that Christopher had diabetes,
10 he could have died. It was very risky to his life.
11 There was nothing special about that. The kids were
12 suffering. They begged and begged to get some kind of
13 specialty help, going to the doctor to detox, to get some
14 kind of a pill, anything to help them, which I know now
15 that Ativan could have helped.

16 We were told by a woman on Mike's staff point
17 blank, "There's no detox for cocaine. There's nothing."
18 And I'm offering this up because, again, I would never
19 want to see anybody put children through that or even
20 grown men.

21 I mean, a drug habit is a bad thing. We all
22 know that. But it can cause death. It can cause death
23 if it's not handled properly. And it wasn't. There was
24 nothing special about that.

25 And last but not least, I read all of these

116

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1 cover to cover back before all of this. And I realized
2 that in the public hearings, Mr. Newman had mentioned
3 several times that nobody had cars on the premises. That
4 was actually a resident there. That's untrue as well.

5 Like I said before in my statement, my child
6 was getting in the car with another resident that lived
7 there, because his car was parked right out front. So,
8 getting in there, driving, going to places at night, I
9 was completely unaware that they were even leaving the
10 premises. And we were promised that he would be well
11 watched over, flashlights in the room the whole night,
12 all that. Never, there was nothing special about that.

13 So I would hope they deny it.

14 MR. ALLEN: Anyone else?

15 MR. WILLIS: Hi. My name is Joseph Willis,
16 W-i-l-l-i-s.

17 MR. BOBKO: Do you have any questions?

18 MR. WILLIS: Do I have any questions? Do you
19 have any questions?

20 MR. ALLEN: How old are you?

21 MR. WILLIS: 17 years old. I give permission.

22 MR. ALLEN: I don't have any other questions.
23 Thank you.

24 MR. WILLIS: Thank you.

25 MR. ALLEN: Anyone else wish to speak?

117

1 Okay. We're already out of time. But, okay,
2 Mr. Brancart?

3 MR. BRANCART: Just to rebut. We end with the
4 Applicant being able to speak to the issues.

5 MR. ALLEN: All right. What can we do
6 time-wise here? Because I don't want to deny anybody the
7 opportunity to say what they'd like to say. The public
8 hearing is closed, incidentally. And if we can -- I
9 don't know. What do you suggest?

10 MR. KIFF: My intent, Mr. Allen, was to allow
11 the Park, Beaches and Recreation Commission to meet as
12 scheduled on -- at 6. I am seeing, though, that they may
13 have canceled their meeting at this time due to a lack of
14 a quorum from an e-mail. So I suppose we could stay
15 longer if we need to.

16 MR. ALLEN: It would be highly desirable to put
17 a wrap on this tonight, I would think.

18 MR. KIFF: Understood.

19 MR. ALLEN: Can we do that? I mean, is there
20 anyone that's compelled to leave that's instrumental to
21 the decision-making process?

22 All right. Then, Mr. Brancart, would you like
23 to go ahead and make a presentation here to put a wrap on
24 it?

25 MR. BRANCART: I will, and I will be brief.

1 MR. ALLEN: I wouldn't feel the need -- don't
2 feel the need to be brief as long as we have the time.

3 MR. BRANCART: It's self-inflicted. Let me
4 make three observations.

5 First, as indicated at the initiation of this
6 rather lengthy afternoon, I indicated to you that we
7 would provide you with a substantial amount of material.
8 Counsel concedes that it was before the 4th of July
9 holiday.

10 If you are inclined to deny the reasonable
11 accommodation, I ask that we be permitted to submit a
12 written submission that we were unable to do that
13 because, essentially, we had six days with a holiday,
14 and, of course, there may have been additional time taken
15 off as well. And I think it's worth doing.

16 Second of all, I would urge that -- well,
17 second of all, speaking about the issues that were
18 discussed in the first use hearing and also reiterated
19 here, it is extremely problematic for any person, in this
20 case, the Applicant, to come before you and rebut
21 allegations of misconduct that occurred two or three,
22 five or six times more than a year ago.

23 As I read through the transcript, what I was
24 struck by was individuals who felt genuinely hurt by
25 these quality-of-life infractions, smoking, cussing, and

119

1 sometimes people parked their van in the wrong place.
2 Another van breaking. Someone put trash in someone
3 else's trash can.

4 It is impossible for the Applicant to rebut
5 those types of allegations. And what I have said
6 before -- and I know it is true of Newport Coast Recovery
7 now -- is that if, in fact, there are these complaints of
8 quality-of-life infractions, the proper and responsible
9 course is to contact the police, because only the police,
10 not this hearing, months and sometimes years after the
11 fact of individuals, only the police can determine was
12 there, indeed, an infraction, and what is the source of
13 the infraction?

14 The gentleman claims his car was vandalized and
15 a truck stolen. We will never know who that person was
16 who actually did the vandalizing or stealing the truck.
17 The other gentleman claimed that, in fact, trash was put
18 into someone's trash can. We'll never know who put the
19 trash there.

20 There was a claim that there was wiring that
21 was done that perhaps was done improperly. We'll never
22 know that the wiring was that was not done. This is why
23 we have code enforcement and police officers who can, at
24 the time of the alleged infraction is occurring, go to
25 the scene, observe the infraction, and determine the

120

1 source of it.

2 Because what we have right now is just, well,
3 in many cases, we have speculation. In other
4 cases -- and it puts the Applicant in an impossible
5 position to respond to those, quote, quality-of-life
6 infractions, unquote. And these are serious, and I don't
7 mean to minimize it, and I'm not. But it does put us in
8 an untenable position, and there's certainly no way to
9 make a determination to know who did what and who was
10 responsible for what happened.

11 The second thing I would say is, to go back and
12 reiterate what I said before, is that there are some
13 objective standards, but they have to be measured in the
14 context with other similar facilities, like similar
15 apartment building, or things like that, run sheets and
16 thing like that, which, you know, we're not presented
17 with.

18 These are objective. And it's not just saying
19 "Here's the run sheet." But what were these offenses
20 they are running? Were these offenses, not just by tag,
21 by address, but were they actually truly people in the
22 housing that we're claiming about?

23 The last observation I would make is this,
24 because of the shortness of time. There was a question
25 that was raised by the City. I've asked you if would you

121

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1 please take a look at the State's Housing and Community
2 Development Web site concerning licensing. I reiterated
3 we would like an opportunity to file a written response
4 to you in response to the City's Staff report, and I
5 think, frankly, that's fair.

6 I mean, you know, just amongst lawyers here,
7 you don't get hundreds of pages of document the day
8 before a three-day holiday, and then be expected to come
9 to a hearing and respond to it. That's just generally
10 not the way these types of determinations are handled.

11 And this is not -- and I want to be clear on
12 this. This is not to say that the City was not working
13 hard and diligently. I'm sure they were working hard.
14 But the fact of the matter is, it is patently difficult
15 and in some ways was unfair to ask an applicant to
16 respond to that notice on a Tuesday afternoon, when we
17 have one day before the 4th of July holiday. That's the
18 long and the short of it.

19 I really appreciate your time, and thank you.

20 MR. ALLEN: Does the City want to do a response
21 or --

22 MR. BOBKO: I only say, if it's your
23 inclination to go, we'd stipulate to a brief, if you
24 think it would help.

25 MR. ALLEN: That's fine. One thing I'm not

122

1 going do is go find the City's Web site, and then housing
2 element and try to ferret out what might be going on in
3 the housing element, and so forth, with this. So if you
4 have something that -- please present it, because I won't
5 do that.

6 MR. BRANCART: Understood.

7 MR. ALLEN: And correspondingly, if the City has
8 any issues that it believes can support or otherwise
9 controvert Mr. Brancart's claim of the housing element,
10 let's go ahead and submit that.

11 Okay. Anyone else need to say anything or --

12 MR. KIFF: Mr. Allen, I would ask that if,
13 indeed, you're leaning towards some additional
14 information being provided to you, I think it is
15 important for the Applicant to address a couple of things
16 that we've raised.

17 We -- I think the City has an obligation to
18 discuss the pattern or practice, and I believe we have
19 shown, but can show in a more concise method, how there's
20 a pattern and practice of breaking the law. We've seen
21 just today about Ms. Golden's testimony, Ms. Willis'
22 testimony, Mr. Hamilton's e-mail.

23 I would also like the Applicant to come back
24 and answer a couple of questions for me that I raised in
25 the Staff report. And I think Mr. Brancart's point is

123

1 well taken that, "Gosh, Web sites get outdated."

2 But there are a couple of key things. One,
3 especially, is that their medical advisor, who is
4 Dr. Michael Rudolf, who may be a terrific guy, but the
5 Web site says that he is board certified in addiction
6 medicine.

7 And if I'm Ms. Willis at home in Henderson,
8 Nevada, I think I might look to that and say, "Gosh, this
9 is a place where I want to be." Well, it turned out, at
10 least from what I -- my limited research, and it involves
11 calling his office, he's not board certified in addiction
12 medicine.

13 And this is something that gets to the heart of
14 a thing that we've discussed a little bit here today is
15 that Newport Beach, as a City, is not in a position to
16 directly decide licensing issues for ADP. But we're
17 certainly in a position to say, for people like
18 Mrs. Willis coming from out of state, that we have a
19 regulatory device that allows us -- if a business is
20 here, that it's a credible business, and especially the
21 way -- as important as recovery is to people, that it's a
22 good recovery business. And we have allowed now, what,
23 upwards of 280 beds from what I think are good, reputable
24 companies.

25 And when I see things like that, that there may

124

1 be overstating the qualifications of their own medical
2 director, I think that's a business that the community
3 here doesn't want to be associated with. And I guess
4 that's where maybe my lay person's understanding of this
5 as a Staff member is that I don't want to look Ms. Willis
6 in the face and say "That's a business that is here and
7 is operating, apparently, in violation of the things that
8 our Ordinance was meant to protect her and her child
9 from."

10 So with that, I'd make that one request, after
11 that long-winded comment about verifying Dr. Rudolph's
12 board certification, and the couple of other things are
13 always helpful to understand what truly is correct on
14 that Web site with the four issues that I raised.

15 Thank you.

16 MR. ALLEN: Okay. From my perspective, as the
17 Hearing Officer, I am strongly inclined -- I'll wait
18 until you gentlemen complete your conference.

19 I am strongly inclined to deny this reasonable
20 accommodation application. And the primary focus of my
21 thinking remains the overconcentration issue that I think
22 was founded in the first Resolution we did.

23 I fully understand Mr. Brancart's comments with
24 respect to a lack of specificity, that all we have is a
25 yard stick. But there's a lot more to it than that that

125

1 is subjective and judgmental. But that yard stick really
2 helps out there on the ground, on the street, as to how
3 many there are per block or unit, and I realize this
4 doesn't take into account density.

5 But my feeling, personally, and what I plan to
6 do in future ones, if they came forward, where there was,
7 in fact, another overconcentration issue, was to look
8 very carefully not just at whether a facility existed,
9 but whether -- how many beds there were and what the
10 nature of the intensity and density of the use was. And
11 Mr. Wood made a good point in describing how many there
12 are right here in this immediate location.

13 So in any event, my inclination, strongly, is
14 to deny the reasonable accommodation on that basis and
15 also on the basis of the lack of necessity. I think
16 there's a much stronger burden that should be carried
17 here to demonstrate the need for the facility. And that,
18 in turn, does tie in to Mr. Brancart's contention about
19 primary care and comments by the public or two that the
20 same kind of care can be obtained, quote, unquote, right
21 across the street.

22 So here's an additional point I see. As the
23 Hearing Officer at this level, I would like to get as
24 much input as I could on behalf of the City, because it
25 turns out that, in this process that the City has

126

1 adopted, the City Council really can't ask for additional
2 information on appeal, and it makes it for difficult for
3 them.

4 So I think that we should take a relatively
5 short period of time, and you're working on a date, by
6 which both sides can present that additional information.
7 And then that can become a part of the record as the
8 final decision is made and provide a more complete record
9 for the City Council.

10 So once again, I have that strong inclination,
11 which conceivably can be overturned if there was a
12 compelling, unique service provided by this that was not
13 elsewhere available along the mid Peninsula. That would
14 make a significant difference. I accept that.

15 So with that in mind, is there a date to which
16 we can continue this?

17 And incidentally, we don't need any more public
18 hearing, in my estimation. I don't want to diminish the
19 importance of that, but we've really heard a lot from the
20 public, and they have said the same things again. And I
21 really do understand what their position is with regard
22 to these, and I take that strongly into account in
23 looking at this. But I don't think we need any
24 additional public hearing presentation. If someone needs
25 to make a presentation, they can send something in

127

1 writing within the period of time.

2 MR. BRANCART: Thank you. I agree with that
3 analysis, except for the part that you're strongly
4 inclined to deny the application. I agree with the
5 analysis that there are issues that do call for further
6 information. What I would propose is this:

7 To gather -- this information be gathered
8 largely by my Co-Counsel, Steve Polin, and Mr. Polin
9 is the one we've discussed that handles the
10 administrative City side of things.

11 I would estimate that to pull that together, we
12 should have 10 days. And then after 10 days -- two weeks
13 from today. And then after that, what I would
14 like -- because I agree with you. We have had ample
15 public comment -- because he is located out of state,
16 that what we could do is convene a telephone conference,
17 we convene here. He could appear telephonically, and
18 largely it's a discussion of what is the information
19 that's now presented addressing these specific issues, if
20 there's a need to present any.

21 Well, that would be my proposal. Would that be
22 acceptable to you?

23 MR. ALLEN: I think that works. We can convene
24 here is what you were suggesting, and then Mr. Polin
25 could be conferenced in and make his whatever additional

128

1 presentation he would like to make.

2 MR. BOBKO: I don't see any need to conference
3 anyone in. I think this can be done on paper. I think
4 we can merely brief this completely. I'm a little
5 reticent to start going through, you know, Mr. Polin.
6 But he won't present any testimony. Mr. Polin can't
7 present testimony. So I don't see any need to reconvene
8 by tele-conference or otherwise. We can just do this on
9 paper.

10 MR. ALLEN: That's fine.

11 MR. BRANCART: I don't entirely disagree with
12 Mr. Bobko. But what I have found is that once you review
13 the submissions, you may have questions. So I would
14 propose that, why don't we set that within two weeks,
15 we'll submit our responses.

16 If that's submitted directly to you and copied
17 to the other side, we can do that, or we'll submit it
18 directly to the City attorney, and they will provide a
19 copy to you, whatever procedure we're directed to do.

20 And then after you've had an opportunity to
21 review them, if you have questions, then you, as a
22 Hearing Officer, have the authority to convene any kind
23 of conference you want. And we can do it in a three-way
24 conference call from your office and the City attorney's
25 office and Mr. Polin in Washington D.C.

129

1 MR. ALLEN: I think that works. So
2 let's -- each side -- I'm fine with two weeks to make the
3 submissions. I think Mr. Bobko's point is well taken.

4 And if it does necessitate a conference, we'll
5 do it. But there wouldn't be one scheduled at this
6 point. And I would base it upon the written material,
7 then render a determination, either recorded at City
8 offices or simply in writing, and probably the latter.

9 MR. BRANCART: Thank you.

10 MR. ALLEN: All right. I think that
11 concludes -- unless there's anything?

12 That concludes our hearing, then. Thank you
13 very much.

14 (Ending time: 6:07 p.m.)
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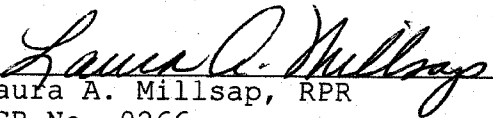
1
2
3 I, the undersigned, a Certified Shorthand
4 Reporter for the State of California, do hereby certify:

5 That prior foregoing proceedings were taken
6 before me at the time and place herein set forth; that
7 any witnesses in the foregoing proceedings, prior to
8 testifying, were placed under oath; that a verbatim
9 record of the proceedings was made by me using machine
10 shorthand which was thereafter transcribed under my
11 direction; further, that the foregoing is an accurate
12 transcription thereof.

13 I further certify that I am neither financially
14 interested in the action nor a relative or employee of
15 any attorney of any of the parties.

16 IN WITNESS WHEREOF, I have this date subscribed
17 my name.

18
19 Dated: JUL 15 2009

20
21 
22 Laura A. Millsap, RPR
23 CSR No. 9266
24
25

WORD
INDEX

NEWPORT BEACH RECOVERY - 7/7/2009

A				
abandoning (1)	59:19 60:2,18	add (6) 22:17,21	78:15,20,21	124:3
8:9	61:10,11,12,14	50:4 52:5	128:10	advocacy (1)
abate (2) 43:7	61:16,20,23,25	92:25 113:8	admissible (1)	57:3
66:13	65:6,14,20,25	addiction (3)	92:22	affiliated (1)
abatement (2)	66:1,21,22	87:22 124:5,11	admit (1) 71:5	21:6
67:13,22	67:3,23 68:8	addictions (4)	admitted (3)	affirm (2)
ability (7) 25:3	68:12,15 70:22	86:10 87:9	41:8 55:16	109:15 110:9
28:5 54:15	76:8,16 78:23	88:18 102:6	56:1	affirmatively (1)
68:2 87:12	83:21,22 91:8	addition (3)	adolescent (3)	65:20
93:17 100:24	91:16 97:5,7	11:16 26:17	7:16,18,21	afford (5) 36:25
able (9) 8:25	98:3,13 108:11	108:23	adolescents (1)	60:7,20 65:10
21:22 26:25	108:16,23	additional (15)	7:22	77:17
34:11 90:22	109:4 110:16	12:19 18:7	adopt (3) 62:16	afforded (2)
106:3 109:20	110:24 111:8	44:2,5,6 53:6	91:9,18	27:17 42:15
109:21 118:4	113:20,23	55:7 64:3	adopted (7) 55:2	afraid (4) 41:23
above-referen...	114:6 119:11	119:14 123:13	61:8 64:8 79:4	41:24 106:22
71:21	125:20 126:14	126:22 127:1,6	88:1,8 127:1	108:19
absolutely (2)	accommodatio...	127:24 128:25	adoption (1)	afternoon (6)
87:5 92:14	60:5,6,11 73:4	Additionally (1)	58:19	40:21 43:10
absorb (1) 22:4	74:7	108:8	ADP (25) 7:10	83:17 106:16
abundance (1)	account (5)	address (5)	7:18,19 10:2,4	119:6 122:16
90:13	35:22 46:20	77:19 89:8	10:8 13:10	after-acquired...
abuse (6) 7:5	110:17 126:4	98:23 121:21	14:10,20,23	4:23 5:2,22 6:1
86:14,23 88:21	127:22	123:15	16:2 17:21	6:12 10:13
89:2,9	accurate (4)	addressed (1)	26:3 30:4	12:20 13:18
accept (5) 12:16	18:15,15 86:18	85:2	35:16 57:7	18:2 19:5,10
44:1 57:14	131:11	addressing (1)	67:14 72:23,23	29:3 83:9
114:1 127:14	achieve (7) 61:8	128:19	79:9 99:12,20	age (1) 7:24
acceptable (4)	65:15 69:15	adequate (4)	101:9 112:24	agencies (4)
27:12 54:4	76:20 79:4	12:13 18:10	124:16	14:11 15:1
110:20 128:22	80:23 113:18	51:24 101:18	ADP's (2) 99:12	16:11 87:13
acceptance (1)	achieved (1)	adequately (1)	99:14	agenda (4) 4:6
57:15	69:23	13:1	adult (2) 7:11	5:17 58:22
accepted (1) 7:8	acquired (6)	adjudicate (2)	19:24	92:20
accepting (1)	5:15 31:25,25	13:19 14:18	adults (2) 41:22	ago (9) 12:11
112:17	32:5 56:9,18	adjudicated (2)	42:14	18:7 34:24
access (1) 102:18	act (5) 43:4,5,6	57:7,8	advance (4) 8:20	47:8 83:4
accommodate ...	60:3,12	administered (1)	22:1,2 76:24	101:25,25
72:14	acted (1) 5:14	89:21	advantage (1)	109:24 119:22
accommodatio...	action (1) 131:14	administrative...	48:12	agree (5) 34:14
4:19 5:5,19	active (1) 96:4	3:9 16:10,10	adverse (5)	34:18 128:2,4
6:10 19:12	activities (2)	16:19 17:22	69:19,24 80:13	128:14
29:4 43:8	44:19 87:10	26:13 27:15	92:23 93:1	agreed (1) 97:13
58:12,23 59:3	activity (1)	28:9 44:11	advised (1)	agrees (1) 20:3
	81:12	61:2 68:20	109:1	ahead (9) 26:5
	actual (1) 47:17	71:6 76:9	advisor (1)	28:14 31:12

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NEWPORT BEACH RECOVERY - 7/7/2009

46:14 91:3	98:20 100:4,10	alternatives (1)	59:25 80:14	77:21 79:25,25
96:9 100:18	101:3,4,11	67:20	113:24 116:19	80:18 82:18
118:23 123:10	106:9 107:3	amazing (2)	118:6	83:10 98:8,16
Al (1) 48:5	108:12 109:9	37:23 40:2	anyway (1)	101:21 111:9
Albertson's (1)	112:6 114:16	ambulance (1)	35:14	111:14,15,20
9:7	117:14,20,22	39:18	APA (1) 64:21	112:13 113:10
alcohol (4) 79:13	117:25 118:5	ameliorate (1)	apartment (4)	118:4 119:20
86:10 87:9	118:10,16,19	54:5	67:15 69:10	120:4 121:4
102:6	119:1 122:20	amenable (1)	75:10 121:15	122:15 123:15
alcoholic (2)	122:25 123:7	53:7	apologize (1)	123:23
64:25 81:14	123:12 125:16	Amendments (...)	110:2	applicants (5)
allegation (3)	128:23 129:10	60:12	apparent (2) 7:9	22:12,12,13
12:7,8 30:9	130:1,10	amount (5) 4:25	31:16	33:17 96:16
allegations (13)	Allen's (1) 99:2	22:3 24:8	apparently (4)	Applicant's (8)
12:24 16:5	alley (3) 107:17	26:16 119:7	7:7 40:3 63:3	19:2,4 23:8,9
17:1,17 20:10	114:25 115:6	ample (2) 98:11	125:7	25:3 62:12
21:22 22:25	allow (9) 26:10	128:14	appeal (3) 10:16	70:10 101:15
23:25 24:3,8	45:9,13 53:5	analysis (15)	32:16 127:2	application (8)
40:25 119:21	61:11 73:5	62:13 65:8	appealed (2)	4:12 24:14
120:5	75:14 79:9	66:16 69:4,5	5:13 99:3	58:2 76:13
allege (1) 12:25	118:10	70:10 74:2	appear (1)	98:4 100:21
alleged (6) 7:12	allowed (7)	82:3,23 91:23	128:17	125:20 128:4
7:23 9:11 23:9	12:16 34:7	92:24 95:7	APPEARANC...	applications (1)
23:11 120:24	36:1 48:1	107:10 128:3,5	3:1	4:9
alleging (1)	70:15 115:18	analyze (1) 96:9	applicable (4)	applies (1) 59:15
15:24	124:22	analyzed (2)	6:16 53:12,14	apply (13) 27:16
Allen (90) 1:9	allowing (2) 34:2	59:20 66:7	111:24	28:8,18 44:15
4:4,7 5:8,9	69:15	analyzing (1)	applicant (75)	51:13 64:15
10:14,17,21,23	allows (3) 7:16	61:19	5:11,20,24 6:5	76:15,17,22
15:22 18:22	65:19 124:19	anecdotal (2)	6:7 10:23 11:1	83:25 92:3
25:19 27:4,8,9	all-male (4)	82:11 90:14	11:9 12:1	106:2 107:6
28:19,23 29:5	84:13,14,24,25	anecdotally (1)	19:15 21:15,21	applying (3)
29:10,12 31:22	Alms (1) 35:15	85:8	21:25 22:5	76:22 94:25
32:25 33:5,7	alter (2) 68:8	Angeles (1) 3:5	23:3,3,12,13	103:6
34:14,21 39:21	79:20	annual (1) 85:20	23:16,22 24:1	appreciate (8)
40:6,10,19	alteration (5)	answer (5) 36:9	24:11,13,14	33:21 46:9
44:24 45:4,11	61:4,6 68:22	37:25 38:21	26:10,22 28:6	49:6,22 57:22
45:19,23 46:2	78:24 108:6	53:24 123:24	28:11,12 34:8	95:10 98:15
46:9 49:1,8,15	alterations (2)	answering (1)	45:3,10 50:20	122:19
49:19 50:6,12	79:24 80:5	98:25	50:23 52:3	appropriate (4)
50:15,19 52:18	alternate (2)	answers (1) 6:7	53:5 55:21	33:11 76:14
52:19 53:19,21	67:7 75:4	anticipate (1)	58:1,22 59:5,7	98:9 110:20
54:22 57:17	alternation (1)	71:5	59:18 62:2	appropriately ...
58:6,9,13,18	82:23	anticipation (1)	63:14,15 66:19	93:13
58:21 81:25	alternative (1)	11:7	73:5,21 74:2,5	approve (1) 59:9
82:14,18 98:16	62:2	anybody (5)	74:13 76:19,22	approved (4)

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

24:15 67:11 88:1 90:16 approximately... 59:18 April (7) 5:13 7:3 71:15 72:8 98:25 99:9 111:15 area (8) 69:20 70:8 74:20 79:15 96:8 100:18 109:19 110:9 areas (5) 69:5,6 69:22 79:23 80:2 arguably (2) 53:5 101:4 argue (1) 94:21 argued (1) 116:7 argument (2) 30:23 111:17 arises (1) 30:18 arrived (1) 91:1 arrow (1) 102:5 aside (3) 30:21 30:21,22 asked (35) 7:25 11:12,12,21,23 12:3,12,15 13:19 17:8,11 17:12,13 29:23 46:20 50:24 62:15 63:19,24 63:25 64:1,9 64:15 65:15 73:19 74:2,10 75:17 92:12 98:25 101:10 103:25 111:14 116:5 121:25 asking (12) 24:5 24:6,25 25:1,4 25:14,17 29:10 29:11 32:13 73:14,25	asks (1) 49:16 aspect (2) 34:15 73:24 assert (2) 9:8 71:13 asserted (1) 99:1 assertion (2) 52:20 101:6 assess (1) 89:2 assign (1) 16:8 Assistant (2) 3:8 3:9 assisted (1) 87:10 Associate (1) 3:9 associated (2) 44:20 125:3 Association (1) 106:18 assuming (1) 37:8 assured (3) 38:5 39:11 105:22 Ativan (1) 116:15 attached (1) 19:22 attachment (1) 52:24 attempted (1) 9:24 attempting (3) 9:3,15 66:13 attended (1) 43:12 attention (3) 8:12 102:3 106:19 attorney (7) 3:8 3:13 18:25 35:24 59:15 129:18 131:15 attorneys (1) 36:8 attorney's (1) 129:24	audience (2) 5:10 59:12 authorities (1) 44:14 authority (1) 129:22 authorized (1) 99:13 authorizes (1) 67:8 authorizing (1) 7:21 automobile (1) 81:10 available (7) 67:9 82:4 84:18 85:9 88:23 90:21 127:13 avenue (6) 3:5 35:25 36:7 107:14,24,25 avoiding (3) 70:7 79:20 93:7 aware (3) 41:6 82:1 104:23 awhile (1) 55:17	103:10 111:15 113:25 117:1 121:11 123:23 background (2) 5:9 60:2 bad (6) 35:7,11 96:17 104:18 104:20 116:21 Balboa (12) 5:12 40:23 41:5 67:15 95:22 107:13,17,19 107:21,25 110:8 111:5 bank (1) 37:10 Barbara (1) 35:15 base (1) 130:6 based (19) 11:12 11:22 13:22 17:1 31:3 33:13 34:17 42:9 56:11 57:9,24 82:22 83:1 85:23 94:14 97:5 101:6 110:13 114:8 basic (3) 61:7 70:20 81:16 basically (3) 8:23 9:6 92:12 basis (7) 7:19 55:10 81:20 85:21 110:17 126:14,15 battle (1) 37:14 Bay (3) 107:14 107:23,25 beach (30) 1:10 2:8,9 3:3,7,10 4:1 6:18 8:5 52:13 58:24 62:5,9 63:8,20 65:18 67:8,19 75:19 76:6	85:11,16 86:3 87:6 88:11,15 99:6 106:18 112:19 124:15 Beaches (1) 118:11 bear (3) 15:7 25:8 113:21 bearing (1) 44:25 bears (1) 25:3 bed (1) 91:8 bedroom (1) 64:3 bedrooms (1) 75:11 beds (13) 67:14 75:21 82:12 84:18 85:9 89:3 91:7,15 91:17 97:12 98:13 124:23 126:9 beg (1) 90:6 begged (2) 116:12,12 beginning (2) 2:9 102:21 behalf (7) 2:7 23:8 40:22 43:24 60:15 108:13 126:24 behavior (1) 109:6 belies (1) 104:10 believe (35) 6:22 6:24 19:20 20:19 21:20,24 22:7 24:21 25:6 26:15 29:1 36:6 43:3 43:24 45:2 46:6 51:1 52:7 56:5,10,20 57:11,24 70:16 71:14,17 72:10
--	---	--	---	---

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

98:6 102:11 103:1 105:18 110:12 123:18 believes (1) 123:8 belong (1) 36:6 Benbothway (1) 108:14 Bend (1) 8:14 beneficial (1) 74:22 benefit (17) 34:11 61:24 62:1 65:22 66:23 67:1,4 74:10,14,15 75:4 76:1 93:7 93:8,15 94:1 94:23 best (6) 23:4 27:17 36:21 37:22 52:9 109:16 better (4) 9:22 48:25 79:16 82:7 beverage (2) 64:25 81:14 beyond (3) 33:3 100:18 113:5 bias (1) 32:15 biggest (2) 12:21 12:22 bit (10) 23:14,25 27:2 32:23 62:14 73:25 103:23 107:10 114:22 124:14 blank (1) 116:17 block (6) 64:22 75:7 107:23,23 113:1 126:3 blocks (1) 108:4 board (4) 87:20 124:5,11 125:12	Bobko (28) 3:4 19:3 22:19,19 25:19 26:3,6,7 27:14 28:20 32:3 33:21 34:20 53:16,17 53:20,22 58:8 58:9,10,15 98:22 101:11 112:14 117:17 122:22 129:2 129:12 Bobko's (1) 130:3 body (5) 14:2,4 14:17 17:15,17 bones (1) 27:23 boot-strapped ... 82:24 83:1 bottom (2) 41:16 87:18 boulevard (7) 2:8 3:10 107:13,19,22 108:1 115:1 boundaries (1) 32:22 bounds (1) 25:2 box (2) 3:17 102:7 boy (2) 8:2 39:23 boys (6) 7:8,25 115:18,22 116:3,5 Brancart (39) 3:16,16,16 10:25 11:1 16:4 20:3,19 21:2 28:22 29:1,9,14 32:12 45:2 49:24 50:24 56:25 57:22 58:7 82:20 98:18,24 99:22 100:7,12 101:6	101:24 103:7 105:22 118:2,3 118:22,25 119:3 123:6 128:2 129:11 130:9 Brancart's (4) 123:9,25 125:23 126:18 brand (1) 15:25 breach (2) 52:10 52:14 breaching (1) 52:6 break (4) 58:11 91:2,7,20 breaking (2) 120:2 123:20 BRIDE (1) 114:20 brief (7) 5:22 28:22,23 118:25 119:2 122:23 129:4 briefing (1) 98:9 briefly (2) 102:2 104:23 bright (1) 72:6 bring (3) 57:25 96:16 106:25 broad (1) 84:17 broader (1) 89:1 brochure (1) 37:22 broken (1) 103:21 broker (1) 108:14 brought (8) 7:14 8:12 52:22,23 52:24 104:25 105:5 106:19 BROWN (1) 3:9 Bryant (6) 74:11 74:18,23 82:1 97:25 98:4	building (9) 9:16 64:16 69:12 74:25 76:12,18 76:23,24 121:15 buildings (1) 67:15 bullet (1) 24:21 bullying (1) 13:6 burden (13) 43:6 61:3 68:20 71:6 78:15,20 78:22 95:8,25 103:17 111:13 114:11 126:16 Bureau (1) 9:23 business (16) 9:23 36:2,6 42:16 81:3,4 107:18,20,22 107:24 108:2 124:19,20,22 125:2,6 businesses (5) 52:12 96:19,20 107:16 108:5 butts (1) 115:16	47:20 124:11 calls (8) 19:17 36:9 37:2 46:22 47:8 95:9 96:8,12 canceled (1) 118:13 car (5) 9:12 38:16 117:6,7 120:14 card (1) 9:7 care (25) 9:5 62:6 64:22,24 67:5 75:21 79:8 84:15,24 88:22 99:6,7 99:17,23 100:2 100:2,4,16 101:7,10 111:10 113:15 114:2 126:19 126:20 carefully (1) 126:8 cares (1) 37:2 carried (1) 126:16 cars (2) 38:13 117:3 case (15) 8:12,12 9:14,21 11:2 60:9 74:18 76:10 82:1 96:16 98:1,2 109:23 110:19 119:20 caseload (1) 44:18 cases (5) 52:22 54:9 61:18 121:3,4 case-by-case (2) 81:19 110:17 cash (1) 37:10 cause (3) 72:10 116:22,22
---	--	---	--	---

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

cell (1) 45:21	68:9 70:3	circled (1)	84:22 85:10,12	95:1,2,5
centers (1) 64:24	72:16 77:12	102:17	85:16,22,24	classification (1)
Central (3) 8:11	79:21 115:7	Circuit (3) 60:9	86:2,7,9,16,17	99:14
40:23 106:18	characteristics...	65:16 98:1	86:19 87:1,2,5	clear (10) 10:9
certain (9) 6:16	69:18 114:23	circumstances...	87:8,19 88:1,2	17:25 53:3,8
9:4 13:6 15:4	characterizati...	16:15	88:7,8,10,12	55:14 57:1
30:8 63:20	112:23	cite (1) 109:21	88:15 89:1,6	72:6 84:16
79:21 92:8	characterized ...	cited (1) 95:23	89:19,25 90:15	111:9 122:11
107:5	42:8	cities (1) 60:13	90:16 92:18	cleared (3) 15:20
certainly (16)	charge (1) 36:4	citizens (1) 41:6	93:6 94:24	20:21,22
23:7,16 24:1	charged (1) 15:1	city (174) 2:8 3:3	95:13,18 98:10	clearing (1)
26:18 41:15	check (1) 8:25	3:7,8,8 4:8,11	101:1,20 103:5	62:22
86:11 89:12	checked (1)	4:14 5:13,14	105:16 108:9	clearly (5) 12:17
94:15 102:12	35:13	6:8 10:15,18	108:24 110:13	44:11 101:16
102:25 104:12	checks (3) 37:7,9	11:5,9,14 12:4	112:19 114:1	105:2 108:5
105:9 107:7	37:11	12:5,10,18,18	121:25 122:12	clients (2) 42:7
112:8 121:8	Chicago (1)	12:23 13:6,23	122:20 123:7	81:4
124:17	79:17	14:15 15:5,8	123:17 124:15	close (4) 6:4 45:3
certainty (1)	child (16) 7:4	15:12 16:23,24	126:24,25	45:7 104:18
113:10	8:6,8 36:20,24	17:1,6,7,8,11	127:1,9 128:10	closed (3) 50:6
certification (2)	36:25 37:24	17:12,25 18:3	129:18,24	59:7 118:8
88:9 125:12	39:9,10 47:3	18:3,3,4,19,23	130:7	closing (1) 41:10
certified (5) 2:11	47:16 50:9	18:25 19:6,7	City's (13) 12:16	clothes (1) 48:6
85:12 124:5,11	78:18 102:22	22:11,13,20	22:15 24:7	clustering (1)
131:3	117:5 125:8	23:2,2,4,20	44:19 52:18	79:20
certify (2) 131:4	children (7) 35:5	24:10 25:20	68:22 78:24	Coast (65) 1:8
131:13	35:13 36:2	28:1,1,4 29:22	79:20 101:21	3:12 4:5,13,19
cetera (2) 41:1	37:17 38:25	31:20,23 33:12	108:7 113:13	5:11,12 7:5,7,9
42:23	41:23 116:19	33:22 34:1	122:4 123:1	7:10,15,17,21
challenges (1)	child's (1) 37:6	41:6,15 42:19	claim (8) 7:15	7:22,24 8:7,8
15:12	choice (1) 65:25	42:22,24,25	43:23 53:25	8:14,19,19,21
challenging (1)	choose (2) 44:23	43:6,16,16,22	83:2 85:8 87:4	9:2,4,11,19,22
113:12	67:20	43:24 44:21,25	120:20 123:9	9:23 10:5 11:2
chance (4) 34:5	Chris (2) 11:1	45:10 50:10,22	claimed (5) 7:3	12:23 15:8,11
101:23 102:1	40:11	51:17 52:12	8:22 85:3,7	15:20 19:23,25
106:25	Christina (3)	54:5,11,13	120:17	20:9,15 29:18
change (5) 64:17	29:12 35:3	55:5,8 56:3,7	claiming (1)	35:21 46:4
70:3 72:16	115:11	56:11,16,17	121:22	49:25 51:8
114:23 116:1	Christopher (3)	59:1,14 60:9	claims (4) 10:3	52:15 55:18
changed (1)	3:16 46:13	60:10 61:3,5	84:6,17 120:14	58:23 64:13
115:7	116:9	62:25 64:12,13	clarification (1)	76:3,4 78:18
changes (1)	churches (1)	64:15 65:17,19	108:25	81:3 84:5,11
76:14	77:4	66:12 67:1,2	clarify (2) 6:6	84:21 90:11
changing (1)	cigarette (1)	67:13,14 71:19	110:21	91:1 94:6 99:4
77:13	115:16	76:4 79:17	clarity (1) 32:13	99:10,13,15
character (6)	circle (1) 102:5	82:15 83:2,6	class (4) 92:8	102:11 105:19

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

112:24 120:6 Coast's (1) 8:2 cocaine (1) 116:17 code (39) 6:13 6:16,18 21:3 21:11 24:7 25:2,16 41:13 41:14 54:12 58:24 60:22 62:5,10 63:21 64:6,16 65:18 67:8 68:6,25 69:23 70:1 71:1,23 72:4 75:19 76:12,13 76:18,24 77:3 80:3 81:6,17 83:25 115:16 120:23 codes (7) 51:12 51:13,14 76:17 76:23 79:24 115:14 colleague (1) 104:22 collected (1) 32:22 colognes (1) 48:6 combination (1) 68:6 come (29) 8:15 8:19 16:6,25 23:16 26:11 32:6 33:24 34:8 35:2 36:22 38:17 40:5 41:24 42:6,13 55:9 61:19 99:24 104:11 105:1 106:15 111:18 112:7,7 116:6 119:20 122:8 123:23 comes (5) 7:1	12:9 32:15 84:1,23 coming (7) 10:20 23:6 88:5 103:16 115:5 115:21 124:18 commence (4) 4:4 5:7 58:21 58:25 comment (7) 4:24 46:3 50:4 52:3 104:21 125:11 128:15 comments (11) 5:24 6:3,6 29:2 46:6 50:21 56:24 59:6 104:4 125:23 126:19 commercial (7) 107:16,18,20 107:22,24 108:1,4 Commission (2) 22:11 118:11 common (1) 69:11 communicatin... 23:21 communicatio... 107:11 communities (1) 92:23 community (15) 41:22 42:13,14 89:22 90:19,19 96:19 99:5 103:9 106:18 111:19,23 112:4 122:1 125:2 community-ba... 79:8 companies (1) 124:24 comparable (6)	84:18 95:17,17 96:13,14 97:16 comparison (2) 80:25 112:18 compatible (1) 77:12 compelled (1) 118:20 compelling (2) 106:10 127:12 competence (1) 24:4 competent (13) 14:6,20 17:16 25:12 31:6 51:25 57:2 94:5,18,18 95:12 96:4,5 compile (1) 27:23 complaint (3) 16:7,8 19:20 complaints (7) 15:6 16:5 19:17 42:4 71:7 104:6 120:7 complete (8) 33:11,20 65:3 72:25 82:15 93:2 125:18 127:8 completed (1) 45:8 completely (6) 22:24 23:13,24 34:14 117:9 129:4 compliance (6) 53:12,14 63:12 71:11,14 90:5 complicated (1) 62:13 comply (1) 30:15 component (1) 111:17	comprehensiv... 5:4 comprising (1) 11:6 compromise (1) 91:13 Con (2) 88:19,19 concede (1) 25:9 concedes (3) 83:20 84:4 119:8 conceding (1) 57:4 conceivably (1) 127:11 concentrated (3) 110:1,2,5 concept (1) 92:1 concern (7) 13:8 33:18,22 52:7 55:7 72:10 110:10 concerned (2) 48:13 74:16 concerning (3) 13:3,10 122:2 concerns (3) 12:3 27:10 101:15 concise (2) 106:15 123:19 conclude (4) 4:22 25:7 45:5 49:20 concluded (2) 58:14,18 concludes (5) 10:12 53:15 81:22 130:11 130:12 conclusion (1) 106:5 conclusions (1) 24:25 concrete (2) 92:22 104:12	condition (2) 6:19 7:19 conditional (1) 70:3 conditions (11) 6:17 62:18 63:13,18,18 69:9,18 71:8 72:20 75:25 77:25 conduct (4) 55:14,23 70:10 112:10 conducted (2) 15:18 63:6 conference (6) 125:18 128:16 129:2,23,24 130:4 conferenced (1) 128:25 confidential (3) 13:2 15:7 54:11 confidentiality... 13:2 14:6,17 16:14 21:17,18 22:23 23:15 29:16 50:2 51:7,14 52:6 54:6 83:11 confidently (1) 14:25 confirm (2) 20:10 72:2 confirmation (1) 109:13 confirmed (6) 20:14,15,17,25 71:24 72:25 conform (1) 71:8 conforms (1) 6:15 confrontations... 42:2 confused (1)
--	---	--	---	---

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

75:9	construct (2)	contradicts (3)	50:10 55:6	credible (1)
connected (1)	56:21 74:25	86:11 89:12	56:7,12,16,17	124:20
96:10	consultation (1)	90:14	71:19 85:12	crime (1) 36:20
connection (7)	90:25	contrary (7)	88:1 90:16	criteria (1) 92:5
13:19 15:17	consume (1)	12:3,18 24:12	127:1,9	crooks (1) 35:21
29:15 51:1	101:13	27:22 100:25	Council's (2)	cross (1) 78:20
56:23 61:25	contact (7) 20:1	105:23 106:7	12:18 71:18	cross-examine...
90:20	39:23 45:17	contribute (1)	Counsel (15)	50:2
consent (1)	47:21 71:12	77:13	11:8,16 16:12	crucial (2) 78:7
35:14	108:25 120:9	controls (1) 9:17	19:2,2,4 22:14	78:13
consider (13)	contacted (4)	controvert (1)	22:20 24:10	crying (1) 87:19
5:15,18 31:24	47:1,2,5,19	123:9	27:21 28:3,20	CSR (1) 131:22
32:10,20 65:19	contended (1)	convene (4)	40:22 52:20	cured (1) 30:11
68:7 77:4	56:15	128:16,17,23	119:8	current (11)
89:17 92:19	contention (1)	129:22	counseling (7)	62:16 64:8
93:14 105:15	126:18	convicts (2) 38:8	63:3,5,9 80:21	65:2,4,7 66:8
109:3	contest (1) 83:19	115:21	81:4,5 87:20	66:11,13 67:21
consideration ...	context (14)	cooked (1) 9:6	Counsel's (1)	67:24 70:18
19:12 64:23	20:23 24:7	copied (1)	22:23	currently (1)
67:8 78:11	83:16 85:2	129:16	count (1) 36:16	110:7
81:18	88:24 91:15	copy (1) 129:19	counter (1)	curtail (3) 28:5
considerations...	96:11,18 97:11	correct (6) 10:16	109:7	32:23 34:15
64:21 78:2	100:6,14 107:4	42:20 45:10	county (3) 88:23	cussing (1)
81:13	107:6 121:14	50:16 82:4	88:24 89:1	119:25
considered (9)	continuance (1)	125:13	couple (6) 43:11	customers (1)
10:15,18 19:14	33:23	correction (1)	112:12 123:15	96:21
33:15 56:18	continue (10)	24:19	123:24 124:2	
60:25 77:9,11	4:20 34:13	correspondedl...	125:12	D
81:19	56:22 59:10	123:7	course (12)	Dan's (1) 46:13
considering (1)	63:17 67:6	corresponden...	11:18 26:12	darkness (1)
20:6	73:5 78:21	20:13	34:3 45:9	27:20
consistency (1)	101:5 127:16	cost (1) 90:25	51:18 88:16	data (2) 105:8
97:14	continued (6)	Costa (5) 8:3,5	89:10 104:15	114:6
consistent (4)	42:2 43:6	8:17 48:8	105:20 116:9	date (7) 27:25
15:9 16:22	62:10,16 63:19	78:19	119:14 120:9	28:2 33:16
17:3 80:8	78:12	Council (44)	court (5) 27:14	34:13 127:5,15
consistently (2)	continues (1)	4:11,14 5:13	61:18 74:18,23	131:16
89:6 115:4	71:13	5:14 10:15,19	79:16	dated (2) 71:15
consisting (1)	continuum (4)	12:4,5,18 17:6	courts (3) 106:1	131:19
12:12	88:22 99:17,22	17:8,11,13,25	106:3 109:22	daughter (1)
consolidated (3)	101:10	18:3,4,4,19	cover (3) 110:22	47:5
86:1,25 87:2	contract (5)	19:6,7,11	117:1,1	Dave (4) 3:8
constitute (2)	46:18 52:10,14	22:11 24:17,19	Co-Counsel (2)	45:25 82:10
30:7,8	96:21 116:3	24:20,22 31:20	101:2 128:8	111:14
constitutes (2)	contracts (1)	31:23 32:3,13	create (2) 68:15	day (12) 9:2
55:10,13	55:18	33:12 44:25	93:1	11:18 31:6

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

64:24 91:6	defending (2)	126:14 128:4	determine (10)	66:10
94:3 99:10	21:21 54:20	denying (1)	6:4 31:1 51:6	difficult (3)
103:19 122:7	defense (3) 54:7	93:20	51:22 55:23	76:19 122:14
122:17	54:18,19	Denys (2) 40:22	64:13 81:15,16	127:2
days (12) 8:22	defenseless (1)	108:13	120:11,25	diligence (1)
11:10,10,15	23:24	department (9)	determined (7)	95:10
12:14 22:1,8	define (4) 61:19	7:13 8:7 10:10	51:23 71:24	diligently (1)
47:23 99:7	72:5,5 100:4	53:1 71:15	72:19 73:20	122:13
119:13 128:12	defined (1) 92:1	85:17 86:3	77:5 78:5 96:2	diminish (1)
128:12	definitely (1)	89:21 95:15	determining (3)	127:18
de (1) 70:13	41:2	departure (1)	77:11 92:3	direct (10) 42:9
deal (4) 12:7	definition (1)	114:17	94:14	42:10 61:16,25
36:13 104:7	111:18	deposit (1) 8:20	detox (7) 84:23	83:6 102:2
113:21	definitions (2)	deprive (1)	99:14,20,25	103:12 104:12
dealing (5) 16:16	100:11,13	93:16	116:3,13,17	105:12,13
23:5 29:16	degree (1) 42:11	depriving (2)	detoxed (1)	directed (2) 19:8
31:8 36:9	demand (1)	65:4 94:21	116:4	129:19
dealt (3) 20:8	89:17	depth (1) 69:7	detoxification ...	direction (1)
65:6 69:7	demonstrate (3)	Deputy (3) 3:8	8:16 99:11	131:11
dearth (1) 23:7	42:12 109:6	18:25 59:14	detriment (1)	directly (13)
death (2) 116:22	126:17	described (3)	94:20	20:7 44:25
116:22	demonstrated ...	11:22 61:6	detrimental (1)	100:1,8 104:3
deceived (1)	6:20 25:21	110:4	112:3	104:6 107:16
88:14	31:3 51:16	describing (2)	detrimentally ...	108:24 110:11
December (1)	71:3 83:2	100:13 126:11	94:8	112:12 124:16
103:11	demonstrating...	designated (1)	Development (6)	129:16,18
decide (6) 24:8	55:10	4:8	85:18 86:4	director (2) 8:18
25:2,14,16	demonstration...	designed (2)	89:22 90:19,20	125:2
114:6 124:16	29:24 50:25	43:18 80:11	122:2	disabilities (1)
decided (2)	denial (5) 44:2	desirable (1)	device (1)	114:2
26:18 77:18	55:20 57:16	118:16	124:19	disability (5)
decision (8) 5:13	67:23 99:2	desks (1) 78:16	diabetes (2)	65:21 90:2
13:20 15:2	denied (6) 4:12	despite (4) 9:12	39:16 116:9	92:8 93:15
25:13 33:8,13	5:10 55:4,5	14:2,3 52:2	diabetic (1) 39:9	109:5
34:17 127:8	65:23 67:23	determination...	died (1) 116:10	disable (1) 77:17
decisions (2)	densities (1)	6:8,9 16:12	differ (1) 90:7	disabled (19)
14:7 51:25	92:4	17:10 18:5	difference (2)	60:15,20 61:11
decision-maki...	density (3) 69:11	51:11 56:8,13	44:10 127:14	61:13,24 65:11
118:21	126:4,10	57:11,23 91:12	different (9)	65:23 66:5
deem (1) 44:15	deny (18) 43:7	121:9 130:7	9:22 44:9 59:9	70:6 73:22
deep (1) 72:10	44:4,7 57:21	determination...	59:19 84:20	84:8 93:9 94:1
defeats (1) 79:15	59:9 65:1,5	11:22,24 14:13	104:10 112:9	94:8,20 95:1,2
defend (2) 16:22	97:6,21 98:11	14:14,19 16:18	113:2,4	109:6,16
22:24	100:21 108:10	17:19,23 30:24	differentiation...	disagree (4)
defendant (1)	117:13 118:6	31:7,13 59:9	111:10	28:21 32:12
23:3	119:10 125:19	69:6 122:10	differently (1)	58:3 129:11

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

disagrees (1) 103:6	72:23 111:22	57:7	either (11) 17:15	entirely (2) 19:18 129:11
discovered (2) 4:14 32:18	documents (6) 31:9 85:15	due (9) 26:10	59:8 61:1,20	entities (1) 14:9
discretionary (...) 22:12,14	88:7 101:16,24	27:18 45:11	63:5 83:25	entitled (2) 74:24 94:16
discrimination... 60:4	102:25	53:17,19 59:16	99:18 107:6	entrance (1) 99:8
discuss (1) 123:18	doing (10) 19:21	68:16 101:15	109:4 114:14	enumerated (3) 69:25 78:10
discussed (11) 17:6 19:4	27:16 28:4	118:13	130:7	86:20
67:21 68:3	31:21 38:18	duped (1) 37:12	element (5) 41:10 110:18	environment (4) 65:16 67:18
70:24,24 73:17	57:20 80:17	duplex (4) 67:15	123:2,3,9	68:16 104:18
73:24 119:18	93:20 95:10	68:2 104:1,3	elements (3) 73:14 89:19	equal (9) 60:7,21
124:14 128:9	119:15	duty (8) 21:18	90:1	61:17,22 65:11
discussing (1) 112:15	dollars (1) 88:13	42:19,24,25,25	else's (1) 120:3	65:24 66:5
discussion (5) 7:2 46:3 91:23	donuts (1) 40:4	57:18 60:10,13	emerging (1) 109:18	73:22 77:17
104:1 128:18	door (4) 9:16	dwelling (9) 60:8	emphasize (2) 17:24 92:11	equally (1) 70:5
discussions (2) 91:4,19	81:2 104:20	60:22 61:12,14	employee (1) 131:14	equity (1) 42:6
disfavor (2) 109:17 110:10	115:20	65:12 77:18	empty (1) 14:22	equivalent (1) 22:10
disingenuous (1) 91:22	doors (1) 115:18	92:7 95:16	enable (1) 69:19	erroneous (1) 98:6
dismiss (1) 75:15	Douglas (1) 107:12	96:10	encourage (1) 80:24	especially (5) 48:13 69:1
disparaging (1) 17:16	downfall (1) 36:18	dwellings (1) 96:14	encouraged (1) 8:18	80:16 124:3,20
disproportion... 112:21	dozens (1) 52:11	D.C (2) 3:14	ended (1) 41:9	ESQ (4) 1:9 3:4
dispute (2) 67:1	Dr (2) 124:4	E	enforcement (1) 120:23	3:8,16
96:21	125:11	earlier (5) 70:25	enforcing (1) 44:14	essentially (5) 63:17 79:13
disputed (1) 113:1	draft (1) 56:22	73:18 83:16	enhance (1) 65:20	91:9 94:2
disputes (2) 52:16 67:2	drag (1) 37:16	87:17 99:25	enhances (2) 67:5 114:10	119:13
distance (2) 79:18 92:25	dragged (1) 23:23	earth (1) 110:23	enjoy (6) 60:8,21	establish (3) 69:3 80:7
doctor (1) 116:13	draw (3) 24:25	East (1) 107:13	65:11,24 73:22	93:14
document (6) 52:25 53:3,9	105:17 106:4	Eastern (2) 22:6	77:17	established (4) 22:15 60:11
102:9,13 122:7	drawn (1) 31:21	22:8	ensuring (1) 70:3	64:17 76:8
documented (2)	drive (3) 35:9	echo (1) 27:18	entered (5) 49:10,12 55:17	establishing (1) 100:10
	38:1,2	economic (3) 91:3,11,12	55:18 108:20	estimate (1) 128:11
	driving (3) 38:16	Edmonds (1) 65:17	entire (3) 64:3	estimation (1) 127:18
	92:19 117:8	effect (2) 8:9	83:5 92:1	et (2) 41:1 42:23
	86:10 87:9	55:1		ethical (7) 13:13
	102:6 114:2	effective (1) 8:23		
	116:5,21	efficiency (1) 80:11		
	drugs (3) 36:4	efficient (1) 19:13		
	47:14 79:13	effort (1) 22:2		
	DSS (13) 13:10	efforts (1) 14:3		
	14:10,21,23	eight (2) 6:19		
	15:16,18 16:2	96:8		
	17:21 26:6,8			
	26:17 30:5			

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

15:10 16:22	exact (1) 22:10	122:8	62:7 64:22,24	87:18 88:12
17:4 50:1 51:7	exactly (3) 32:5	expense (1)	66:3 67:9,12	90:14 93:10
83:11	43:23 113:4	108:10	68:3 74:19	96:18 104:10
evening (1) 9:1	exaggerates (1)	experience (2)	77:2,5,23 80:5	106:7 109:6
event (1) 126:13	9:20	42:10 105:13	80:11 81:12	113:8 120:7,11
everybody (1)	Exaggerating ...	experienced (1)	84:19,25 92:4	120:17 122:14
47:22	10:3	24:1	92:21 94:8	126:7
everybody's (1)	examine (1)	expertise (3)	99:7 101:7	factor (2) 79:3
46:23	11:11	14:25 57:24	104:17 110:3,6	82:2
evidence (98)	example (5)	100:18	114:5 121:14	factors (15)
4:13,24 5:2,15	18:12,14 53:13	experts (2) 31:9	facility (78) 7:17	65:18 68:6
5:18,23 6:2,12	54:9,10	101:9	8:3,3,8,16 9:17	70:14 73:16
10:13,14,17,18	excellent (1)	explain (1)	16:7 20:16,17	74:17 75:2
12:5,9,20	58:13	100:24	20:21,22 21:6	77:1,9,10,16
13:18 15:14	exception (2)	explained (2)	21:17,19,21	78:9 79:1
18:2 19:10	73:19 83:23	48:22 79:9	23:9 25:24	81:18,18
20:4 23:7	exceptions (2)	explanation (3)	26:2 35:5	110:19
24:20,21,23,24	60:13 64:5	113:9,11	38:15 40:4	facts (4) 6:1
25:1,5,15 26:9	excessive (1)	115:23	41:4,9 42:3	28:15 94:17
26:16 27:16,23	80:15	explanations (1)	49:10,13 55:16	110:18
28:8 29:3	exclusively (1)	112:17	61:21 64:4,17	failure (4) 30:15
31:25,25 32:1	5:1	explicitly (1)	64:18,18 65:2	74:20,20,21
32:4,5,7,8,22	exculpatory (1)	18:19	65:13 67:5	fair (14) 18:10
42:11 44:6,12	23:17	express (2) 12:3	70:13 71:2,2,6	18:13 39:2,2
50:10 51:6,24	exempted (1)	68:13	71:22,25 72:21	51:4,5,5 52:1
52:1,2,3 53:24	74:7	expressed (2)	74:4,12 75:5	53:5,23 60:3
54:1,3,15,18	exemption (5)	41:25 52:7	75:12,18,21	60:12 101:5
54:19,20 55:7	60:19 62:4,4,9	expressly (2)	78:12,19 79:7	122:5
56:9,18 66:20	68:24	74:5 83:3	80:15,19 82:8	fairest (1) 34:6
66:22 74:3,6	exemptions (3)	extrapolation ...	84:12,12,13,14	fairly (1) 33:16
74:21 75:3,24	62:3 73:11,15	104:16	84:15,24 91:21	fairness (2) 42:6
83:9,11 92:22	exerting (1) 54:7	extremely (2)	94:4,4 95:12	97:22
93:25 94:5,5	exerts (1) 85:15	43:21 119:19	99:6,23 100:2	faith (1) 52:23
94:12 95:12	exhaustively (1)	ex-husband (3)	100:7 104:7,14	fall (1) 111:13
96:2,4,5 98:12	59:20	47:1,2,11	104:15 111:11	fallacious (1)
103:8 104:12	exhibit (2) 71:18	e-mail (3) 105:1	111:22 112:3	43:25
105:11,12,15	85:13	118:14 123:22	112:25 114:10	false (2) 84:11
105:17,21,23	existed (2) 51:24	e-mails (4) 28:10	126:8,17	85:6
106:2,3,4,5,7	126:8	28:14,16 34:5	facility's (1) 66:2	falsely (1) 35:17
106:24,25	existing (5) 66:3		fact (30) 16:2,3	familiar (1) 60:1
112:15 113:22	80:6 83:21,23	F	19:4 23:20	families (4)
114:8	109:25	face (2) 38:7	25:12 26:1	36:14 41:21,22
evidentiary (1)	exists (1) 75:5	125:6	28:17 35:6	63:4
55:23	exorbitant (1)	facilities (31)	43:20,22 52:2	family (10) 8:13
evidently (1)	108:9	6:21 7:14 21:7	55:25 57:21	10:20 37:16,19
44:8	expected (1)	25:22 56:1	83:6 85:6,10	37:19 63:3,9,9

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

63:10 107:13	68:20 73:24	4:22 23:1	follow-up (2)	47:19
far (7) 22:2	74:14 76:1	24:12,13,23	7:19 30:10	frankly (6)
32:17 38:15	78:14 91:7,17	26:24 33:10	foregoing (3)	29:10 35:20
42:22 76:2	103:17	46:11,15 50:18	131:5,7,11	44:6 53:24
82:2 116:2	financially (3)	50:21 60:24	foremost (1)	112:22 122:5
fast (1) 103:23	61:21 66:21	62:12 63:16	101:14	fraudulent (1)
father (6) 8:10	131:13	64:17 65:9	forgotten (1)	46:18
8:20 9:3,8,14	find (20) 9:15	71:10 82:25	50:20	free (1) 29:16
9:18	17:5 26:19	84:3 91:8	form (4) 41:4	friend (3) 37:5
favor (1) 93:20	37:17 39:8,14	101:14,25	43:16 44:20	37:13 38:12
fear (3) 41:25	44:2 48:8	102:17 108:17	47:14	friends (2) 8:25
42:4 108:21	57:20 70:14	108:22 111:6	former (1) 19:24	36:21
feasibility (1)	71:18 78:17	119:5,18	forth (5) 7:15	front (10) 44:12
80:9	90:22,23 95:5	125:22	52:24 100:11	53:3,9 103:20
federal (22) 60:3	102:14 109:21	first-hand (1)	123:3 131:6	103:24 104:11
60:12 63:12	114:9,14 123:1	34:8	forty-five (1)	105:21 114:8
85:11,17,19,22	finding (35) 6:13	fit (3) 24:11	48:20	115:2 117:7
85:24 86:16,17	6:22,24 19:21	25:11 88:22	forum (5) 16:21	fully (2) 57:6
86:20 87:3,8	25:19,25 27:10	fits (1) 85:1	29:17 31:12	125:23
87:25 88:2,9	29:23 30:2,13	five (12) 8:22	57:2 83:12	full-blown (1)
88:11 89:6	31:2 50:24	24:21 35:9	forward (16) 5:4	55:23
90:15,16 93:18	51:21 53:10	36:15,15 37:25	23:6,16 32:6	fundamental (8)
94:23	55:8 57:2,9,12	40:8 41:19	41:24 42:7,13	61:4,6 68:22
feedback (1)	57:15 58:3	58:8 108:4	50:22 55:20,22	78:24 79:5,23
111:23	69:9 70:16	110:3 119:22	82:19 103:18	82:23 108:6
feel (5) 21:13	72:12 77:14	five-minute (1)	103:23,25	fundamentally...
37:12 115:9	78:6,13 83:3	58:11	104:11 126:6	13:17 14:1
119:1,2	89:19 92:15	fix (1) 88:10	for-profit (6)	68:8 79:19
feeling (1) 126:5	94:16,18,19	flashlights (1)	107:16,18,19	84:1 98:6
feet (2) 94:4	96:3 104:24	117:11	107:24 108:1,4	Fundenberg (2)
110:3	105:24	flat (2) 77:14	found (13) 8:6	106:16,17
felony (1) 36:4	findings (11)	106:22	9:24 19:21	funding (3)
felt (2) 47:15	13:19 51:3	flicking (1)	47:24 61:19	87:12 88:4
119:24	55:2 58:4	115:16	66:11 70:11	89:7
ferret (1) 123:2	68:18 70:12,15	flip (1) 102:13	76:19 83:10	further (12) 9:19
fewer (1) 95:17	70:19 72:21	Floor (1) 3:5	96:2 105:6	27:5 33:1 55:6
file (1) 122:3	83:16 92:13	focus (5) 29:22	114:13 129:12	55:14 56:21,24
filed (1) 104:5	fine (4) 45:23	91:24 96:17,23	Foundation (1)	59:8 100:3
files (2) 54:10,12	122:25 129:10	125:20	8:17	128:5 131:11
final (2) 33:12	130:2	fog (1) 23:13	founded (2)	131:13
127:8	fingers (1) 27:22	folks (1) 59:11	108:21 125:22	furthermore (1)
finally (3) 44:17	fire (6) 41:14	followed (1)	four (6) 9:24	110:5
47:16 101:19	76:16,23 83:24	109:12	10:1 36:15	future (2) 68:1
financial (12)	115:13,16	following (3)	73:16 103:21	126:6
48:15 61:2	fires (1) 41:14	17:22 51:3	125:14	F-u-n-d-e-n-b...
65:15 66:2	first (31) 4:6,10	109:1	four-month (1)	106:17

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

G	34:9 55:25 71:10,19 88:12 92:16,18 94:2 101:24 102:15 104:11 105:11 105:14 112:17 113:14 giving (6) 23:6 36:3 39:7 46:8 103:1 115:23 glossed (1) 93:3 go (36) 24:16 26:5 31:12,18 36:24 37:8,24 39:2 43:13 45:20 46:14 48:2 50:22 55:22 56:13 73:13 82:18 85:4 90:9 91:2 96:9 97:15 100:1,8,18 103:23 106:15 112:11 113:25 114:19 118:23 120:24 121:11 122:23 123:1 123:10 goal (1) 86:21 goals (2) 70:2 86:20 God (1) 48:15 goes (4) 15:5 31:16 37:10 89:11 going (48) 4:16 5:6,21 9:25 10:4 19:1 25:6 26:23 27:5 28:5 29:2 30:20,20,21,22 30:25 31:5 38:3,13,16,23 39:11,12 45:21 46:4 49:5 52:17 54:23	56:3,19 57:6,7 58:10 77:19 87:24 93:1,16 93:16 95:6 96:3 102:15 106:10 112:11 116:13 117:8 123:1,2 129:5 Golden (11) 45:25 46:7,12 46:12,15 49:2 49:6,14,16,21 50:17 Golden's (1) 123:21 good (17) 14:3,4 26:7 34:20 37:5,10 38:6 40:21 43:10 48:24 52:22 106:16 107:9 112:15 124:22 124:23 126:11 Gosh (2) 124:1,8 gotten (1) 39:17 government (11) 85:11,24 86:16 87:3,8 88:9,12 89:7 90:15 93:18 94:23 governmental ... 100:14 governs (1) 7:14 graffiti (1) 103:20 Grand (1) 3:5 grander (1) 44:11 grant (8) 6:14 63:16 97:4,7 97:19 98:12 109:3 110:24 granted (13) 7:18 61:12 62:4 70:22,23 73:4 75:6 78:1	97:8,8,10,11 114:7 granting (6) 61:1 68:12,19 68:21 78:23 80:22 great (3) 23:21 36:18 114:24 ground (2) 94:17 126:2 grounds (3) 44:2 44:7,8 group (5) 4:9 40:23 43:18 44:20 106:20 groups (1) 42:23 grown (2) 115:21 116:20 guarantee (1) 115:16 guess (2) 48:11 125:3 guy (2) 40:2 124:4	30:19 35:12 37:20 121:10 happening (4) 12:22,22 13:17 39:15 happens (2) 94:7 96:15 happy (3) 43:14 54:14 76:24 hard (3) 103:8 122:13,13 hardily (1) 13:22 harken (1) 103:10 harkening (1) 102:20 hazard (1) 115:17 HCD (1) 90:18 health (6) 41:13 43:1 70:1 71:23 104:19 111:3 hear (15) 21:14 26:24 27:13 45:1,23 46:6 49:8 51:25 55:20 100:6 105:6 106:14 115:4,4,6 heard (16) 26:11 38:11 46:23 50:14,16 51:17 52:5,7 66:15 82:24 99:25 100:6 102:21 105:14 111:14 127:19 hearing (107) 1:7,9 2:7 4:6,8 4:9,10,11,12 4:14,17,18,19 4:22 5:3,16,18 5:19,20,21,25 6:5,10,13 11:4 11:10,15,20
H				
habit (1) 116:21 half (1) 82:12 Hamilton's (1) 123:22 hand (3) 26:24 29:21 57:18 handicapped (1) 60:7 handicaps (1) 75:1 handle (2) 31:7 45:20 handled (2) 116:23 122:10 handles (1) 128:9 happen (2) 34:12 92:8 happened (7) 10:20 23:4,12				

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

12:6 13:10,18	104:13	home (10) 4:9	109:5 121:22	impacts (8)
14:17 16:13	heart (1) 124:13	9:6 36:4 43:18	122:1 123:1,3	69:24 80:13,15
17:9 21:14	Heights (1)	81:1,5,5 115:1	123:9	81:7 93:1
22:9 23:18	79:17	115:2 124:7	HUD (11) 15:12	103:9 104:12
26:21 27:15	held (2) 7:16	homeless (5)	85:20 86:9,20	111:19
28:1,9 31:1,19	10:8	102:4,10,11,18	88:3 108:25	implement (2)
31:24 32:10	Hello (1) 45:25	102:22	109:12,14	70:2,5
33:10,24 34:11	help (14) 35:8	homes (4) 44:20	110:11,16,21	implemented (1)
34:15,17,22,23	36:3,5,19,19	79:19 87:15	hundreds (5)	110:8
43:2 45:1,5,8,9	37:15 39:8	108:8	11:6 12:12	implication (1)
45:12 46:1,2,6	48:15 49:3	honest (1) 39:25	52:12 88:13	113:6
49:11 50:7,21	78:17 98:24	Honor (5) 24:4	122:7	implies (1) 99:10
51:2,21,22	116:13,14	27:14 32:3	hung (1) 47:12	importance (1)
55:8 56:19	122:24	40:21 53:22	hurt (1) 119:24	127:19
57:23 58:12	helped (1)	hop (1) 114:18	hurting (1) 36:3	important (16)
59:5,6,7 63:15	116:15	hope (2) 43:4	husband (3)	11:20 32:20
64:12 65:19	helpful (2) 43:12	117:13	46:17,21 47:18	40:15 50:8
70:25 82:25	125:13	hopefully (1)		70:5 77:23
83:8 84:16	helps (1) 126:2	43:11	I	78:3 79:2,3
85:14,25 87:4	Henderson (1)	hoping (3) 36:20	ID (1) 47:15	92:11 93:22
87:24 94:13	124:7	36:22 99:17	idea (10) 4:25	97:1 107:10
101:23 102:2	He'll (2) 36:10	hostage (1)	23:12,23 27:1	113:17 123:15
102:21 106:12	38:21	36:12	28:4 47:16,18	124:21
107:1,4,6	Hi (3) 114:20	hour (2) 8:17	47:23 58:13	importantly (1)
111:8,24 112:8	115:11 117:15	83:4	103:8	111:1
114:14 118:8	high (8) 59:21	hours (3) 38:6	identical (2)	impose (2) 61:2
119:18 120:10	86:10,15 102:8	62:20 116:4	101:8 112:25	68:19
122:9 125:17	102:8 113:25	house (3) 20:16	identify (2)	impossible (4)
126:23 127:18	114:3,10	103:20 115:5	34:25 46:10	22:24 76:20
127:24 129:22	higher (1) 9:22	housed (2) 20:11	identity (2)	120:4 121:4
130:12	highest (2) 87:5	20:14	21:18,20	improperly (1)
hearings (12)	89:7	household (1)	ill (1) 91:25	120:21
4:5,22 26:13	highly (2) 11:25	115:9	illegal (8) 41:1,2	improve (1)
41:8 43:13	118:16	housing (37)	41:3,4,11	88:17
55:15,23	history (1) 80:18	10:11 12:8	109:2,6,7	improved (1)
106:11 111:7	hit (1) 112:12	30:4,16 60:3	illegally (2)	87:21
111:21 112:7	hitting (1) 59:21	60:10,12 65:4	42:17 111:2	improvement ...
117:2	Hoag (1) 116:8	65:24 67:7,25	illuminate (1)	112:10
hearsay (18)	hold (4) 25:11	73:23 74:25	100:3	inadequate (2)
11:23 13:22	45:20 49:7,23	75:5 84:20	immediate (1)	14:16 100:24
14:15 17:1	holding (1)	85:17 86:3	126:12	inappropriate ...
20:7 26:11	36:12	88:22 89:19,21	impact (8) 41:13	114:4
27:1,9,12	holiday (6)	90:1,18,19,21	63:7 69:19	incident (2) 72:7
28:17 31:4,8	11:19 93:25	92:7 93:16,17	75:25 77:24	104:25
34:4,10 38:21	119:9,13 122:8	93:21 94:22	92:23 95:12	incidentally (3)
41:1 42:9	122:17	95:18 100:25	103:12	4:7 118:8

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

127:17	13:3,8,14 14:5	13:10	integrity (1)	13:25,25 17:10
incidents (5)	15:6 21:19	initial (1) 99:24	13:2	18:9,19 21:9
23:9 39:14	52:10 55:15	initiation (1)	intend (1) 33:1	27:9 29:3 44:5
41:17,18 42:5	65:21,23 66:5	119:5	intended (2)	53:18 56:12,17
inclination (3)	66:10 67:4	Inn (1) 74:11	65:3 94:1	57:3 61:18
122:23 126:13	73:22 77:22	Inn's (1) 74:23	intends (1)	65:22 66:14,19
127:10	79:10 80:17	input (2) 55:6	101:22	67:6 68:4 69:7
inclined (8) 97:6	84:5,8 87:14	126:24	intensity (1)	70:12,16 72:18
97:21 98:11	92:25 94:20	inquire (1) 42:21	126:10	72:20 73:3
100:21 119:10	99:24 100:8	inquiries (1)	intent (2) 109:8	89:1 90:24
125:17,19	102:19,23	12:19	118:10	91:24,25 95:8
128:4	119:24 120:11	inspect (1) 20:9	interested (2)	99:23 103:7
include (1) 28:13	industry (1)	inspecting (1)	112:8 131:14	109:1 110:12
included (2)	100:15	20:17	interesting (1)	125:21 126:7
28:15 87:20	inferences (2)	inspection (4)	115:19	issued (8) 10:10
includes (2)	105:17 106:4	15:19 20:5,21	interests (1)	15:16,18 20:5
52:25 60:4	inflammatory ...	30:10	109:16	83:13 89:18,25
including (2)	17:2	Inspector (1)	Internet (1) 9:19	90:18
63:18 114:2	inform (1) 99:18	20:8	investigated (1)	issues (27) 7:6
income (2)	informality (1)	instance (4) 9:5	35:16	9:3 13:3,7
102:18,22	88:6	10:8 56:14	investigating (4)	18:12 19:3
incorrect (1)	information (3...	110:25	10:5 14:24	21:17 31:8
42:20	10:12 11:4,8	instances (7)	16:2 72:24	33:8,15,22
increase (3)	13:21 14:15	9:24 29:7	investigation (4)	41:16 68:11
68:10 81:9	15:7,23 16:9	55:12 72:1,3,4	7:13 10:6,7	77:18 78:10
86:22	19:5 20:2,7	72:9	72:25	89:9 90:3,6
increasing (1)	23:8 24:16	institutional (1)	investigator (1)	112:13 114:2
74:12	28:13 33:19	79:15	16:9	118:4 119:17
incumbent (2)	45:17 50:13	institutionalia...	invited (1) 46:5	123:8 124:16
51:2 97:22	51:9,10,18	70:8	involved (7) 8:6	125:14 128:5
indicate (2)	54:11 57:10	institutionaliz...	14:5 34:7	128:19
34:16 44:12	82:10,11,24	68:16	44:14,19 50:14	item (1) 88:16
indicated (4)	83:1 92:16	institutions (1)	76:9	i.e (1) 93:15
34:24 86:14	97:3,5 123:14	84:9	involves (3) 8:13	
119:5,6	127:2,6 128:6	instructed (2)	10:19 124:10	J
indicates (1)	128:7,18	7:24 12:4	involving (2) 9:5	JANET (1) 3:9
87:9	infraction (4)	instructions (1)	64:21	January (8) 5:10
indication (2)	120:12,13,24	12:19	in's (1) 23:10	5:15 6:23
88:20 110:13	120:25	instrumental (1)	irresponsibly (...)	62:11 70:11
individual (11)	infractions (3)	118:20	111:2	72:19 103:24
50:2 60:16,21	119:25 120:8	insufficient (1)	isolated (1)	103:24
61:11,13 65:8	121:6	42:11	41:17	Jeff (1) 103:14
65:11 73:20	inhabit (1)	insulate (1)	isolation (1)	job (2) 33:12
77:17 81:2	102:11	80:12	96:23	112:15
109:4	inhale (1) 115:5	insulin (1) 47:15	issue (40) 4:23	Jody (3) 49:4,11
individuals (28)	inherent (1)	Intake (2) 16:7,8	5:2,14 10:24	50:17

PRECISE REPORTING SERVICE
(800) 647-9099

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

light (3) 44:5 51:12 52:9	62:17 114:4 126:12	56:15 98:5 106:13 108:18	Mathena (5) 43:10,10 54:24	medicine (2) 124:6,12
limit (4) 49:4 64:2 74:24	lock (2) 115:18 115:20	125:25 127:19	112:11,11	meet (2) 72:21 118:11
81:7	long (9) 39:7 43:21 45:23	Louise (1) 106:17	matrix (1) 109:20	meeting (3) 37:19,19 118:13
limited (5) 4:16 4:23 6:1,3 124:10	47:8 59:18 103:19 110:1	low (1) 102:18	matter (8) 5:4 14:18 21:3	member (3) 7:15 43:14 125:5
line (4) 41:17 47:11 72:6 105:9	119:2 122:18	lower (1) 102:22	29:15 31:23 57:6 105:19	members (5) 17:13 19:18 29:2 63:10 106:20
link (1) 61:16	longer (2) 47:9 118:15	LP (1) 1:8	122:14	men (3) 7:11 115:21 116:20
list (2) 77:25 99:14	long-winded (1) 125:11	Lynn (1) 46:12	matters (4) 14:24 24:6 27:6 107:5	mentioned (1) 117:2
listed (1) 99:21	look (28) 31:9,19 54:15 60:1,24	M	maximum (3) 62:17 63:25 73:7	men's (1) 99:6
listened (1) 40:25	61:9,15 65:9 65:13 67:6	machine (2) 103:10 131:9	mayor (1) 17:12	merely (4) 90:14 92:6,20 129:4
literally (1) 92:2	68:18 69:1,13	mainline (1) 98:2	MC (1) 114:20	Mesa (5) 8:4,5 8:17 48:8 78:19
little (11) 20:22 23:14 43:21	70:15 79:23	maintain (1) 91:16	McBride (1) 114:20	met (2) 11:17 78:8
62:13 73:25	90:17 94:13	making (6) 6:23 27:10 39:10	McGary (1) 60:8	method (1) 123:19
79:19 83:19	96:13 101:5	55:2 59:2 98:6	meals (3) 9:5,6,7	MFR (3) 62:7 69:2,8
103:23 114:22	102:1 109:17	male (1) 75:5	mean (16) 17:21 18:12 26:6	Michael (2) 20:12 124:4
124:14 129:4	110:10,16	males (1) 75:6	35:17 37:22	mid (1) 127:13
live (9) 61:12,13 61:22 66:6	113:5 122:1	managed (1) 112:2	39:24 48:14,23	middle (1) 36:11
67:17 68:2	124:8 125:5	management (4) 42:3 71:12	92:20 94:17	midst (2) 107:15 111:8
104:20 107:12	38:7,8 72:18	104:14 111:21	96:15 114:3	Mike (2) 35:20 39:25
114:20	74:18 95:20	manager (4) 3:8 6:20 25:21 104:7	116:21 118:19	Mike's (1) 116:16
lived (2) 35:19 117:6	looking (10) 19:19 30:12	mandated (1) 85:19	121:7 122:6	millions (1) 88:13
lives (1) 36:23	39:14 61:18	manner (3) 43:17,17 44:22	meaningful (7) 44:15 92:2,5 92:15,22 94:5 96:11	Millsap (2) 2:11 131:21
living (6) 8:3 66:24 67:4	67:17 68:24	March (2) 7:3 72:9	means (2) 12:10 67:12	mind (7) 44:3 47:14 55:22 78:20 91:14
79:12 81:2	70:13 97:16	Marshal (3) 76:16,23 83:24	meant (2) 32:23 125:8	
95:3	116:1 127:23	master (2) 62:24 63:1	measurable (1) 92:22	
loading (2) 80:4 80:11	looks (1) 89:1	material (8) 11:11 18:8,18 22:4 59:24	measure (1) 92:6	
local (5) 21:8 53:12 63:13	Lopez (2) 111:5 111:5	107:9 119:7 130:6	measured (1) 121:13	
71:4,12	Los (1) 3:5		medical (3) 100:9 124:3 125:1	
located (6) 19:25 40:23 62:7	lose (3) 36:15 67:24 68:2			
71:20 94:7	lost (4) 9:11 31:16 39:5			
128:15	103:15			
location (4) 5:20	lot (11) 11:8 22:4 33:8,21 38:11			

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

98:4 127:15	100:9 101:8	24:7 25:2,16	necessities (1)	124:8
mine (2) 35:14	moment (3)	51:12 62:5,9	85:3	never (11) 37:15
37:6	30:22 49:7	63:21 65:18	necessity (9)	37:19 40:3
minimize (1)	53:18	67:8 68:6,25	60:19 66:8,19	76:10 104:5
121:7	moments (1)	71:1 77:3 80:2	73:17 84:2,3,4	116:6,18
Minneapolis-S...	25:6	81:6	84:6 126:15	117:12 120:15
109:24	moms (1) 78:17	Myers (2)	need (39) 10:9	120:18,21
minor (14) 7:8	money (13) 9:3	103:14,14	33:15 40:17	nevertheless (1)
7:25 8:1,2,9,9	35:22 36:2,12	N	44:2 45:6	33:17
10:8 20:14	37:1,3 39:3,5	name (8) 10:25	55:22 56:21	new (5) 5:20
24:18 29:13	46:17 48:17	19:22 35:1,3	59:23 69:7	11:8 12:5
30:4 50:17,18	86:17,21 88:11	106:16 107:12	74:3 75:16,22	15:25 80:5
72:1	monies (4) 52:8	117:15 131:17	83:14,20,22,24	newly (5) 31:24
minors (19) 7:11	85:22,23 90:16	named (1) 20:12	84:8 85:10	31:25 32:5
7:16,23 10:11	monitoring (1)	names (3) 23:19	86:11,15 87:19	56:9,18
10:19 12:8	71:6	28:12 54:4	88:10 89:2	Newman (13)
16:15 17:10	month (1) 40:4	narrow (4) 5:2	93:18 94:23	9:15 35:8,20
19:21 20:11,16	months (1)	29:3 30:18	98:18 101:2	36:11 37:8,25
20:18,24,24	120:10	84:20	106:10,14	39:25 91:4,19
26:2 29:13	Moore (1) 8:16	narrowly (1)	118:15 119:1,2	99:1,9,18
30:17 35:7	moot (1) 14:22	31:20	123:11 126:17	117:2
50:14	morning (2)	naturally (1)	127:17,23	Newport (99)
minor's (1) 8:4	47:4 63:7	95:5	128:20 129:2,7	1:8,10 2:8,8,9
minute (1) 90:24	mornings (1)	nature (9) 16:16	needed (4) 37:15	3:3,7,10,10,12
minutes (9) 6:3	63:7	17:17 55:25	39:17 87:10	4:1,5,13,19
12:11 18:7	mother (7) 7:3	61:5 66:4	91:2	5:11,12 6:18
34:24,25 40:9	7:12,23 8:11	67:10 68:22	needs (9) 23:20	7:4,7,9,10,15
58:8 101:25,25	19:20 40:11	108:7 126:10	56:24 80:8,8	7:17,20,22,24
mirrors (1) 27:2	46:13	natures (1) 92:4	86:8 87:19	8:2,5,6,8,14,19
misapplying (1)	motion (1) 18:8	near (1) 67:19	88:21 102:4	8:19,21 9:1,4
94:11	mouth (1)	Nearby (1)	127:24	9:11,18,21,23
misconduct (1)	108:17	107:18	neglectful (1)	10:5 11:2
119:21	move (6) 4:18	necessarily (3)	39:19	12:23 15:8,11
misinformed (1)	5:3,4 6:9 36:23	51:19 76:7	neighborhood ...	15:19 19:23,25
102:10	101:12	102:25	68:9 72:17	20:9,15 29:18
misleading (2)	moved (2) 68:4	necessary (18)	77:12,14 79:11	35:20 39:14
20:23 23:14	78:19	60:6,19,20	79:12,15	46:4 49:25
missed (1) 47:10	movie (1) 48:3	61:10,20 65:10	114:23,24,24	51:8 52:13,15
missing (2) 47:3	moving (3) 73:2	65:10 66:1,12	115:8	55:18 58:22,24
95:11	75:2 114:16	66:17 67:3	neighborhood...	62:5,9 63:20
misunderstan...	multi-family (2)	73:21 75:23	70:4 79:22	64:13 65:18
99:16	95:18 96:14	76:2 77:6,16	neighbors (2)	67:7,16 75:19
misused (1) 92:1	multi-volume ...	78:11 87:4	77:24 81:7	76:3,4,6 78:18
mitigate (2) 63:7	11:5	neccessitate (1)	neither (3) 37:9	81:3 84:5,11
69:24	municipal (18)	130:4	101:8 131:13	84:20 85:11,16
model (3) 100:9	6:13,18 21:3		Nevada (2) 8:11	86:3 87:6

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

88:11,15 90:11	notes (1) 98:22	objected (1) 74:5	occasions (1)	55:8 56:19
90:25 94:6	notice (10) 12:23	objection (3)	104:10	57:24 63:16
99:4,6,10,13	15:16,17 30:6	11:3 30:21	occupancy (9)	64:12 65:19
99:15 101:8	30:11,14 53:2	34:10	62:17 63:25	83:8 84:16
102:11 105:19	71:16 83:12	objections (1)	64:2 73:8,9	85:15,25 87:4
106:18 112:19	122:16	57:1	75:8,13,16	87:24 94:13
112:24 120:6	noticed (2) 4:6	objective (2)	83:23	107:1 125:17
124:15	33:24	121:13,18	occupant-type...	126:23 129:22
Newport/Lido ...	notified (1)	obligation (5)	76:14	officers (1)
110:8	71:21	59:12 101:22	occupation (1)	120:23
nice (1) 38:9	notifying (1) 8:4	105:25 109:3	81:2	Officer's (2)
night (8) 36:11	noting (1) 9:19	123:17	occur (1) 15:11	21:14 102:3
38:5 78:16	notion (1) 55:9	obligations (8)	occurred (10)	offices (1) 130:8
95:9 96:1	NOV (1) 20:5	13:13 15:10	23:9,14 29:7	official (1)
115:19 117:8	novo (1) 70:13	16:23 17:4	30:9 41:19	108:25
117:11	number (44)	29:18 50:1	52:15 55:24	officials (1) 31:7
nine (2) 75:9,11	9:19 23:19	51:7 109:2	57:13,21	off-site (3) 7:25
Nobody's (1)	36:15,15 41:12	OBORNY (2)	119:21	63:2 80:1
15:23	41:16,24 42:12	3:9 40:8	occurring (4)	off-street (2)
noise (1) 103:16	44:1 48:14	observation (2)	14:2 21:13	80:4,10
noncomplianc...	54:24 58:21	42:10 121:23	52:11 120:24	oh (4) 21:24
90:20	59:22 65:2,5,7	observations (3)	Ocean (2)	46:12 48:18
non-complian...	65:9,10 66:17	12:2 82:21	112:25 113:6	113:11
90:1	67:19 68:4,5	119:4	offenses (2)	okay (33) 10:21
non-conformi...	68:16 72:9	observe (2)	121:19,20	17:20 18:22
64:14 69:12,22	73:2 75:17	44:17 120:25	offensive (1)	27:9 34:20,23
73:12 74:9	86:22 87:7,16	observed (1)	95:6	39:6,7,12 40:6
76:3,5	87:16,18,23	112:9	offer (2) 45:14	40:10,16,18
non-licensed (1)	88:16,19 95:16	observing (1)	76:21	45:7 46:7
107:19	101:7 103:11	111:6	offered (1) 90:11	47:14 49:1,18
non-maturing ...	104:17 110:6,6	obstacle (1)	offering (1)	49:21 50:19
109:19	112:6,21,22,23	87:12	116:18	53:21 57:16
non-medical (3)	numbers (4)	obtain (6) 85:5	offers (1) 99:10	58:6 82:14
99:11,14,20	85:9 91:1,2	86:17 88:3	office (4) 75:11	96:7 97:12
non-rebuttabl...	97:16	89:7,8 108:25	124:11 129:24	98:20 101:3
78:1	NW (1) 3:14	obtained (2)	129:25	106:11 118:1,1
Nope (1) 58:17		32:2 126:20	officer (42) 1:9	123:11 125:16
normal (2) 44:21	O	obtaining (1)	4:8,11,12,15	old (5) 49:9,12
45:9	oath (2) 88:6	30:3	6:14 11:4,21	49:14 117:20
north (1) 107:23	131:8	obtains (2) 85:22	12:7 13:18	117:21
Northern (1)	Oberman (5)	85:22	14:18 17:9	once (4) 40:4
49:2	40:21,22	obvious (1) 93:4	23:18 31:1,19	72:1 127:10
note (3) 52:17	108:13,13	obviously (6)	31:24 32:11	129:12
102:2,16	109:11	29:16,19 51:12	45:1 46:2,6	ones (7) 50:9
noted (3) 5:17	object (2) 44:22	52:20 56:25	49:12 51:2,21	62:13 67:12
74:23 105:24	57:1	87:14	51:22 54:10	76:14 98:23

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

102:23 126:6 ongoing (1) 37:14 online (2) 37:22 39:13 onsite (1) 75:20 on-site (7) 10:11 62:21 63:6 75:19 80:17,21 81:8 open (9) 5:25 9:16 34:18,22 34:23 82:13 100:20,22 106:12 opened (1) 59:7 operate (2) 91:3 111:1 operated (6) 26:2 41:4 53:11,14 71:2 71:11 operates (1) 105:19 operating (16) 6:20 21:5 25:21,23 42:16 44:21 69:18 71:2,14,22 78:7 87:14 96:19 104:17 105:3 125:7 operation (16) 4:20 15:19 21:6 41:1,3,10 53:2 62:10 63:17,19 66:4 69:16 73:5 78:12 104:14 111:11 operational (1) 71:9 operations (2) 41:2 109:3 operator (17) 5:12 9:15	20:12 41:8,20 42:2,16 44:4,7 44:16 52:21 53:10 74:14 105:14 111:1 111:20 112:2 operators (2) 43:19 82:8 opinion (1) 11:12 opponent (2) 34:3 53:22 opportunities ... 67:7 73:22 opportunity (2... 6:6 10:24 18:10,13 26:14 26:24 46:8 59:6 60:7,21 61:17,22 65:11 65:24 66:5 77:17 93:21 94:22 97:23 98:9 110:15 118:7 122:3 129:20 opposing (3) 27:21 28:2,20 opposite (2) 43:23 85:13 order (17) 6:14 11:10 19:11 26:10 27:20 31:20 32:14 50:11 63:22 64:4 66:21 77:24 86:16 88:3 89:1 90:16 91:16 Ordinance (8) 14:3,7 64:8 69:21 79:3 93:13 110:7 125:8 ordinary (1) 17:22	Oregon (1) 8:14 organize (1) 18:17 original (5) 28:7 83:8 97:11 98:13 99:2 originally (1) 97:13 ought (5) 97:8,8 97:10,11,18 outcome (2) 14:12,13 outdated (1) 124:1 outlets (2) 64:25 81:14 outside (5) 19:2 22:19 40:1 42:14 105:3 out's (1) 23:10 overburdened ... 112:22 overconcentra... 112:20 overconcentra... 55:3 64:20 70:7 74:9 78:10 79:1,4 79:14 84:2 91:24 92:10 93:3,6,8,14,19 94:14,19 95:4 103:3 107:15 108:5,6 109:14 109:15,20,25 110:9,12,25 114:12 125:21 126:7 overcontratio... 91:25 overstatement... 23:25 27:3 28:6 32:24 54:21 overstating (1) 125:1	overturned (1) 127:11 owner (2) 6:19 104:1 owners (1) 104:4 owns (1) 107:13 o'clock (6) 11:17 22:7,8 46:25 47:4 78:15 P Pacino (1) 48:6 pack (1) 48:7 packed (1) 113:21 packet (1) 71:18 page (19) 86:1,6 86:13,19,22,24 87:7,11,16,16 87:18,23 88:14 88:14,19,20 89:10 102:3,16 pages (4) 11:6 12:13 59:18 122:7 paid (2) 8:20 46:18 painfully (1) 93:4 paper (2) 129:3 129:9 papers (3) 9:9,10 93:24 parameters (1) 25:16 Pardon (1) 33:5 parent (6) 29:13 35:4 36:9 37:4 37:6 45:13 parents (14) 8:4 8:10 35:4,14 35:22 40:5 42:7,13 50:3,9 50:12,13 52:23 55:18 park (3) 63:10	95:22 118:11 parked (2) 117:7 120:1 parking (33) 62:21,22,24 63:2,2,8,18 64:5,6,7,10 68:11 72:15 73:11 74:8 75:18,19,20,22 75:24,25 79:24 80:1,4,7,10,16 80:18,20 81:8 81:10 83:21 95:21 parks (3) 77:1,5 81:14 parse (1) 94:3 part (18) 5:17,19 41:20 42:2 52:5 70:6 79:5 82:25 86:6 88:19,25 95:18 96:1 101:9 111:21,24 127:7 128:3 particular (9) 4:17 30:19 44:16,18 68:25 74:15 95:4 111:11 114:4 particularly (2) 64:21 80:19 parties (1) 131:15 partners (1) 36:20 pass (1) 24:5 passport (1) 9:12 Pat (1) 8:16 patently (4) 85:6 85:6 90:10 122:14 patients (1) 42:7 PATRICK (1)
--	--	---	--	--

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

3:4	88:21 90:9	63:2 69:17	16:14 17:18	44:25 56:23
pattern (30)	92:14 93:7,8	permitted (1)	30:23 38:7	89:15 91:2,20
6:20 21:7	93:15 94:7	119:11	47:25 64:7,16	92:11 97:2,4
22:15 25:21,23	95:3,22,23	pernicious (1)	76:13 80:23	112:12,16,18
26:19 29:24,24	96:19,21	94:24	103:13,16	113:10,21,25
29:25 30:13	100:15 101:12	person (10) 17:9	105:3 109:19	116:16 123:25
31:3,3 41:2	102:10,11	19:19 21:5	120:1 124:9	126:11,22
42:12 50:25	103:5,11	24:23 25:11,17	131:6	130:3,6
55:10,13 56:10	104:11,19,20	34:24 60:7	placed (2) 81:1	pointing (1)
59:4 71:3,3	105:5,9,13	119:19 120:15	131:8	104:9
72:5,6,11 83:3	106:20,23	personal (1) 8:1	places (3) 94:15	points (7) 24:22
104:22 105:10	108:18 112:6	personally (3)	102:14 117:8	43:11 44:9
106:6 123:18	115:25 120:1	37:12 44:23	plain (4) 37:2	57:4 59:21
123:20	121:21 124:17	126:5	39:19 49:25	105:8 113:12
patterns (1) 44:8	124:21	persons (8) 34:7	50:4	police (14) 8:6,7
Paul (2) 109:24	people's (1) 36:2	67:18 86:9,23	Plaintiff's (1)	54:10 95:15,22
111:5	percent (1)	87:9 92:7 95:5	74:20	96:8,12,22
Pause (1) 58:20	82:13	102:6	plan (13) 68:14	104:4,5 120:9
pay (4) 35:23	perfectly (1)	person's (2)	68:14 70:2	120:9,11,23
46:24,24	54:4	16:16 125:4	71:12 86:2,25	policies (2) 60:5
102:12	performed (1)	perspective (2)	87:2 88:15,16	60:14
pedestrian (1)	21:15	43:15 125:16	88:19,20 89:20	Polin (10) 3:13
81:11	period (10)	pertain (1)	126:5	11:17 45:15,20
pedestrians (1)	33:19 43:21	110:19	Planner (1) 3:9	128:8,8,24
81:10	46:3 76:9 86:4	PESCADERO...	planning (2)	129:5,6,25
Penal (1) 54:12	87:1 89:16	3:17	22:11 28:24	pooh-pooed (1)
penalties (1)	113:15 127:5	phone (10) 38:1	playgrounds (3)	42:1
44:15	128:1	40:12 45:15,16	64:24 77:4,7	population (2)
Peninsula (8)	periodic (1)	45:22 46:1,22	please (19) 46:14	65:14 92:4
40:24 63:11	85:21	47:11 50:17	49:7,9 50:22	populations (1)
67:16 84:22	permission (1)	105:7	57:2,14 58:5	86:8
111:12 112:19	117:21	phonetic (4)	84:15 85:25	Portland (1)
112:20 127:13	permit (32) 4:12	46:13 47:7,25	86:13,19,24	60:9
Peninsula/We...	5:12,18,21	108:14	87:23,25 89:23	position (14)
110:8	6:14 15:13	phrased (1)	106:12 112:7	12:16 14:19
people (60) 14:4	21:5 41:7 44:4	63:15	122:1 123:4	33:7 35:7
14:20 23:5,10	44:7 59:4 62:8	physically (1)	pledges (1) 9:4	43:18 57:12
26:13,22 27:4	63:23 64:1,4	72:13	plot (1) 29:14	74:24 82:7
29:5 32:6	65:2 67:22	pick (1) 48:2	plus (2) 64:3	105:2 121:5,8
33:23 34:2,4	69:14,15,16,21	piece (2) 15:14	115:15	124:15,17
34:11,19 38:8	70:9,12,16,21	108:17	podium (1) 35:2	127:21
38:9,13,23	70:23,25 71:10	pieces (1) 20:4	point (33) 6:5,9	positive (1)
39:16 42:12	73:9 75:7 78:1	pill (1) 116:14	8:5 9:21 14:22	116:6
48:19,22 52:7	114:13	pinpoint (1)	15:3 16:20	possible (2) 5:3
59:24 63:5	permits (5)	113:19	17:13,23,24	54:23
76:3 85:4	22:13,14 62:24	place (17) 13:9	30:12 31:11,23	possibly (2) 54:1

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

posture (1) 11:25	55:16 66:22 74:20,21 83:11	pressed (1) 113:10	88:10	37:21 38:20
potential (3) 10:2 30:15 44:2	107:7 113:23 123:4 127:6 128:20 129:6,7	pretty (3) 53:3 55:19 115:19	problematic (2) 17:5 119:19	116:3 117:10
potentially (1) 30:3	presentation (...) 5:7,22 6:12 10:24 18:2	prevent (3) 21:12 32:15 54:6	procedural (2) 11:25 17:18	promote (1) 70:1
Powerpoint (1) 59:16	31:8 33:12,20 51:5 52:2	prevented (2) 57:19 75:25	procedure (5) 16:10,19 54:14 88:6 129:19	proper (3) 16:13 19:19 120:8
practice (16) 5:23 21:7 22:15 26:19 27:12 50:20 56:11 66:13 71:3 72:5 104:22 105:10 106:6 111:2 123:18,20	53:23 57:14,19 59:3,5,22 73:18 81:23 82:15,22 83:5 83:18 86:7 93:5 118:23 127:24,25 129:1	Preventing (1) 79:4	proceeding (2) 27:15 58:20	properly (1) 116:23
practices (3) 60:5,14 109:7	presentations ... 60:1 106:14	prevents (1) 21:21	proceedings (3) 131:5,7,9	property (5) 53:11,13 72:13 107:14,17
pray (1) 48:15	presented (32) 11:11 12:5,10 13:21 14:15 15:15 18:8 19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19	previous (1) 87:1	process (22) 12:25 13:9 15:13 16:17 17:6,21 26:10 27:18 29:18 31:17 51:4 53:18,19 72:24 92:1 97:22,23 101:15 108:23 111:6 118:21 126:25	proposal (1) 128:21
precedent (1) 21:25	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19	previously (6) 41:25 55:2 82:1 91:10 110:4 112:7	processes (2) 17:22 44:21	propose (2) 128:6 129:14
precisely (2) 32:17,21	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19	pre-obtaining ... 30:16	produce (3) 96:7 101:16,22	prosecuting (1) 71:7
preclude (1) 51:8	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19	primary (13) 84:13,15,23,24 99:6,7 100:1,2 100:4 111:10 113:14 125:20 126:19	profanity (2) 103:16,19	prospective (3) 66:9 68:1 70:19
prejudice (2) 33:23 34:1	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19	prior (7) 22:5 30:4 41:7 76:18 99:8 131:5,7	proffer (3) 24:20 32:8,19	protect (11) 13:1 14:4 21:12,18 23:19 43:1 70:5 79:6,6 80:12 125:8
prejudices (1) 12:1	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19	priorities (1) 87:5	profit (1) 107:22	protected (1) 23:20
premises (2) 117:3,10	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19	priority (7) 86:7 86:10,15 89:5 89:8 114:1,3	program (12) 36:25 37:1 41:23 61:5 68:23 70:21 78:25 79:5,5 102:16,17 108:7	protecting (2) 14:5 21:20
preparation (1) 43:21	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19	prison (1) 48:23 prison (3) 48:3 48:23 115:22	programs (2) 87:20 102:18	protection (1) 42:17
prepare (5) 11:15 12:13,15 56:3 101:18	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19	probably (7) 4:24 26:3 43:20 46:21 59:15 110:25 130:8	prohibited (1) 54:19	protections (1) 42:16
prepared (5) 9:7 45:18 85:15 88:2 91:6	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19	problem (4) 12:21,22 26:12	promise (1) 86:17	protective (2) 66:16 95:1
presence (1) 17:7	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19		promised (4)	protocol (1) 43:2
present (16) 32:7 33:1 50:10 54:3	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19			prove (2) 38:1 105:10
	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19			proven (1) 111:1 proves (1) 103:2
	19:6 24:20 28:9 31:1,4 32:1,8 33:9,14 52:4,9 57:13 82:22 85:20 86:2 93:5,12 97:3 98:10,12 98:18 112:16 113:22 121:16 128:19			provide (27) 22:2 55:19 61:21,23 66:5 67:3 74:13,14 80:21 81:5 84:10 87:13 89:18,24 99:13

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

99:20 100:19 100:23 101:8 101:23 105:8,9 105:23 113:3 119:7 127:8 129:18 provided (17) 11:5,9,16 13:23 28:14 50:13 51:18 63:4,10 80:5 84:7 92:24 93:2 102:14,17 123:14 127:12 provider (2) 60:10 109:5 provides (5) 84:19 99:4 111:11 113:2,6 providing (2) 87:15 94:12 provision (1) 30:8 provisions (7) 6:16 14:17 50:2 51:15,23 89:20 90:21 proximity (14) 64:23 68:17 77:1,4,10,15 78:10 81:13 92:21 94:6,15 95:3 103:15 104:18 public (39) 1:7 2:7 4:17 5:24 6:4 19:19 29:3 29:17 33:3 34:15,22,23 43:12,14 45:5 45:7,8,12 46:3 50:6,21 59:6,7 70:1 80:12 98:21 106:11 106:12 107:4 111:3,23 112:9	117:2 118:7 126:19 127:17 127:20,24 128:15 pull (1) 128:11 pulled (1) 39:24 pulling (2) 98:1 102:23 purchased (1) 62:24 purpose (11) 18:1 61:7 68:13 69:13 70:9,24 79:3,8 79:16,20 81:16 purposes (13) 4:8 50:8 69:1,1 69:8,14,23,25 70:20 80:1,20 80:22 93:23 pursuant (4) 85:16,21 87:25 88:2 purview (4) 26:18 43:2,3 105:17 pushed (1) 113:9 put (27) 35:5 45:15,21 46:19 46:20 47:19 48:25 54:16 71:1 80:23 81:10 83:15 84:17 85:2 91:14 93:19 96:18 97:18 101:14 106:22 116:19 118:16 118:23 120:2 120:17,18 121:7 puts (1) 121:4 putting (3) 88:24 97:25 98:4 p.m (6) 2:9,10 4:2,2 22:6	130:14 P.O (1) 3:17 Q qualifications ... 9:21 10:3 125:1 qualified (3) 14:4,10 17:16 qualities (1) 9:20 quality (5) 9:5 13:6 15:4 65:21 114:10 quality-of-life ... 119:25 120:8 121:5 quasi (1) 79:15 question (17) 24:6 26:14 28:7,15,16 34:12 38:21 54:13 76:11 81:25 84:2,3 98:25 101:10 107:1 114:9 121:24 questions (17) 6:7 15:21 25:10 46:5 49:18,19 54:6 59:8 81:22 101:15 117:17 117:18,19,22 123:24 129:13 129:21 quickly (4) 16:1 27:24 54:23 101:12 Quiet (1) 62:20 Quit (1) 47:20 quite (7) 24:12 31:20 33:25 35:20 95:5 100:25 111:17 quorum (1) 118:14	quote (11) 14:7 30:17 41:9 53:10 60:8 90:2 99:7,15 103:14 121:5 126:20 quoted (1) 44:9 quoting (1) 104:2 R raised (6) 7:6 112:13 121:25 123:16,24 125:14 ran (3) 39:3,13 45:17 random (1) 72:7 rank (1) 11:23 rapidly (2) 5:3 114:16 rates (3) 74:19 82:7,12 rating (1) 9:22 reach (1) 47:18 read (5) 17:25 39:15 110:14 116:25 119:23 ready (4) 34:16 36:14 82:18 114:19 real (3) 42:4 95:12 108:10 realize (1) 126:3 realized (1) 117:1 really (10) 27:13 47:22 48:14 69:7 107:5 122:19 126:1 127:1,19,21 reason (6) 21:10 39:13 47:10 55:4 114:14 115:3 reasonable (41)	4:18 5:5,19 6:10 12:14 19:12 22:3 29:4 43:8 58:11,23 59:3 59:19 60:2,4 60:11,17,25 66:12,18 67:23 68:5 70:22 73:23 97:4,6 98:3 106:4 108:10,16,23 109:4 110:16 110:24 111:8 113:20,23 114:6 119:10 125:19 126:14 reasonableness... 66:7 reasons (4) 41:24 78:3 97:20 108:20 rebut (6) 6:5 24:3 26:25 118:3 119:20 120:4 rebuttal (2) 45:10 50:4 recall (1) 29:22 receive (5) 22:1 22:14 36:19 63:22 64:4 received (8) 18:6 19:17 22:5 30:14 51:5 52:8 62:1 111:23 receiving (1) 13:3 Reckers (1) 47:24 recognition (2) 17:14,14 recognize (1) 22:3 recognizing (1)
--	--	--	--	---

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

54:25	76:3,4 78:18	74:18 111:10	31:23 50:11	110:14 122:4
recommend (1)	79:10 81:3	regulation (1)	remanded (8)	123:25
43:4	84:6,11,21	83:21	10:16 18:1	reported (4)
recommendati...	90:11 91:1	regulatory (6)	19:8,8 45:1	41:6 82:5 87:8
6:24 62:15	94:7 102:12,18	13:14 30:8,15	55:7 56:8,12	89:6
72:19 98:14	105:19 112:24	44:10,14	remark (1)	Reporter (2)
recommendati...	112:25,25	124:19	53:16	2:11 131:4
65:1	113:6 120:6	rehab (9) 48:25	reminder (5)	reports (15)
recommended...	124:21,22	107:16,18,20	59:3,11 73:7	13:22 22:15
24:13,15 62:11	Recovery's (2)	107:22,24	73:13,17	77:19 82:3
62:19 74:4	5:11 29:18	108:1,4,8	removed (1) 8:2	85:12,19,22,23
108:11	Recreation (1)	rehearing (1)	render (6) 14:6	86:18 88:1,3
reconvene (1)	118:11	19:9	14:19 15:1	88:13 89:18
129:7	redact (1) 23:18	reimbursed (1)	33:7 51:25	104:5,5
record (25) 7:20	redacted (1)	46:17	130:7	represent (1)
10:9 12:4,17	54:3	reintegrate (1)	rendered (2)	11:1
12:17 17:25	reduce (1) 77:24	79:10	57:9 83:16	representative...
18:9 35:1	reduced (1) 81:9	reintegration (1)	rental (2) 103:15	41:18
43:13 45:24	refer (1) 101:17	70:6	107:13	represented (1)
46:11 49:25	reference (2)	reiterate (2) 54:2	reopen (5) 5:18	30:1
50:5 57:1,12	14:12 99:25	121:12	12:4,17 18:9	reputable (1)
100:20,22	referred (1) 16:7	reiterated (2)	45:12	124:23
103:8 105:12	referring (3)	119:18 122:2	reopened (1)	request (39)
108:20 112:1	16:11 17:10	relapsed (1) 8:2	50:7	4:19 5:5,11
113:15 127:7,8	20:19	related (1) 19:22	repeat (2) 84:14	12:14 18:9
131:9	refers (1) 102:8	relationship (1)	89:10	20:6,7 21:24
recorded (1)	reflected (2)	94:15	repeated (1)	43:7 45:12
130:7	58:4 90:4	relative (2)	90:15	60:15,17,18,24
records (2) 38:1	refusal (1) 60:4	110:12 131:14	repeatedly (7)	61:9 62:3,12
99:13	refuse (1) 35:23	relatively (2)	13:7 85:11	63:14,16 65:1
recover (1)	refused (1)	95:19 127:4	87:2 93:18	65:5,7,9,9
67:17	105:22	relevant (2)	94:22 100:5	66:12,17 68:4
recovery (59)	regain (1)	19:11 102:25	111:2	68:5,19,21
1:8 3:12 4:5,13	104:19	reluctance (1)	repeats (1) 87:17	73:2 74:5 75:9
4:20 7:5,7,9	regard (10)	38:6	report (32) 10:1	75:15 83:20,22
8:8,15,19,21	22:22 23:15	relying (2) 88:12	10:6,7 11:6,7	91:9 99:2
9:11 10:5 11:2	24:4 25:10	100:23	11:16,24 12:12	125:10
12:24 15:8,11	28:25 41:1	remain (1) 29:18	12:15 19:22	requested (17)
15:20 19:23,25	66:8 108:16	remaining (1)	20:14 22:1	11:9 20:9
20:10,15 21:19	109:14 127:21	101:13	24:14 27:19	61:16,25 62:2
35:21 46:4	regarding (8)	remains (1)	52:25 58:25	65:14,14 66:20
49:25 51:8	50:3 58:2	125:21	59:17,18,23	73:3,4 74:13
52:15 58:23	83:21 90:1,6	remand (10)	62:11 80:25	75:14 78:9,23
64:14,18 65:16	91:23 100:19	4:10,17 10:19	83:9 86:14	79:2 80:1
66:25,25 67:5	113:14	12:6 18:4	87:17 91:9,18	109:13
67:18 70:6	regards (2)	19:11,13 31:19	95:11 97:12,17	requesting (1)

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

requests (6) 59:19,23 60:25 65:8 66:8 73:21	19:25 61:24 64:3 117:4,6	19:1,3 28:6 29:19 30:22 31:22 34:5 36:8 53:6 54:1 89:16 97:23 98:10 121:5 122:9,16	43:17 reticent (1) 129:5	RPR (2) 2:11 131:21
require (7) 25:25 60:13 62:3,4 65:13 69:18 99:7	residential (16) 62:6 64:11,18 64:22 66:6 67:5 69:12,22 70:4 72:17 75:21 79:21 84:13,15,24 108:3	responded (1) 111:16	retribution (2) 24:12 27:2	Rudolf (1) 124:4 Rudolph's (1) 125:11
required (23) 14:25 25:20 27:11 61:17,20 61:23 62:18 63:12,19,22 66:20,22 68:18 69:5,17 70:12 70:19 72:21 73:16 74:7 78:5,7 85:20	residents (43) 21:21 40:23 42:3,6,23,23 43:1,6 62:17 62:25 63:1,4 63:20,25 64:9 65:2,4,7 66:9,9 66:11,14,16 67:21,24 68:1 68:1 69:10 70:19 73:7,25 74:1,15,25 75:1,3,4,6,14 75:22 79:6,7 115:14	responding (3) 51:9 95:9 96:12	return (5) 5:14 6:5 29:4 39:4 59:7	rule (1) 28:17 rules (6) 27:15 28:8 60:5,14 83:11 106:2
requirement (9) 21:4,10 30:15 61:7 71:1 76:24 79:24 80:2,23	resident's (1) 8:1 Resolution (9) 55:1 56:4,4,6,7 56:20,22 58:19 125:22	response (9) 11:14 18:17,23 36:10 50:21 52:18 122:3,4 122:20	returns (1) 37:2 review (7) 4:15 16:1 32:14 33:2 101:24 129:12,21	run (10) 37:1 41:8 95:15,20 96:6,7,11,13 121:15,19
requirements ... 30:19 31:10 63:21 64:2,5,6 64:7,10,16 71:10 73:10 81:6,8 89:20 97:18	resources (1) 108:9	responses (2) 98:21 129:15	re-endorsing (1) 83:8	running (4) 21:7 81:3 82:12 121:20
requires (8) 6:13 62:6 69:21 75:20 76:12 77:3 86:7 92:15	respect (9) 4:17 29:6,7 45:12 53:4 55:6,24 109:2 125:24	responsible (2) 120:8 121:10	RICHARDS (1) 3:4	runs (3) 31:17 83:5 95:16
RES (1) 99:15	respectfully (3) 45:16 52:19 58:3	rest (2) 101:16 101:19	right (29) 4:4 6:25 14:24 17:9,21 22:17 31:21 32:25 34:17 38:21 50:19 54:22 57:22 58:21 82:18 85:8 93:10 96:24 97:7 105:6 106:9 114:18 117:7 118:5,22 121:2 126:12 126:20 130:10	R2 (3) 69:2,8,11
research (1) 124:10	respects (2) 41:3 83:19	restrict (1) 4:25	risks (1) 51:19	S
researching (1) 9:18	respond (28) 11:13 12:12,24 13:5,7,12,15 14:16 15:9 17:3 18:10,14	restriction (3) 62:5 75:16 83:23	rises (1) 51:19	S (1) 3:5
reside (5) 63:6 77:22 80:17,21 84:5		result (5) 7:1 61:4 68:21 78:12,24	risk (2) 111:3 114:11	safe (1) 9:13
residence (2) 108:14,18		resulted (2) 7:19 108:8	risky (1) 116:10	safeguard (1) 13:1
resident (5)		results (2) 68:10 108:6	room (5) 46:1 59:12 80:14 87:20 117:11	safeguards (5) 13:9 14:5 16:14 17:18 29:20
		RES-Detox (1) 99:15	roommate (2) 47:6,8	safely (2) 41:13 111:3
		retained (1) 81:8	rough (1) 102:15	safety (4) 43:1 70:1 71:23 80:12
		retaliation (5) 15:4 41:25 43:24 106:22 108:19	roughly (1) 50:13	sake (2) 30:23 97:15
		retaliatory (3) 19:16 20:2	route (1) 100:15	sampling (1) 89:11
				sanctions (1) 44:15
				sat (1) 38:5
				Saul (1) 108:14
				savings (1) 39:5
				saw (2) 38:6 83:15
				saying (4) 88:9

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

96:7 113:1 121:18 says (12) 6:19 20:20 52:25 53:1,22 71:16 102:3,7,8,17 110:16 124:5 scary (2) 48:9,12 scattered (1) 26:13 scene (1) 120:25 scheduled (3) 4:7 118:12 130:5 schools (4) 64:24 77:2,5 81:14 Schoonover (1) 103:18 screaming (1) 23:24 scuzzy (1) 38:7 seal (5) 23:18 54:3,13 106:24 106:24 search (2) 19:21 20:2 second (21) 4:18 8:13 10:20 12:2 17:5,24 30:6 50:17 51:16,20,20 63:14 85:7 86:6 89:15 90:12 92:11 96:1 119:16,17 121:11 secondary (1) 69:24 Secondly (4) 23:15 41:12 109:14 113:25 second-hand (1) 115:5 section (10) 6:16 6:18 21:3 53:10 60:22	62:6,10 64:6 68:25 71:23 sections (1) 76:13 Security (1) 7:13 see (28) 17:7 24:19,23 27:4 36:14 38:23 39:1 43:5 50:6 50:19 59:17 80:24 86:1,8 86:14,21 87:18 88:20 89:2 90:4 95:15 99:12 113:22 116:19 124:25 126:22 129:2,7 seeing (1) 118:12 seek (1) 55:6 seeking (1) 58:23 seeks (1) 15:13 seen (12) 15:23 20:13 24:22 28:11,12 72:8 72:9 73:18 74:11 76:6 82:3 123:20 select (1) 33:16 selected (3) 27:25 28:2 63:21 self-inflicted (1) 119:3 send (3) 36:25 116:7 127:25 sending (1) 42:14 sent (6) 34:4 37:7 56:16,17 71:16 116:6 sentence (1) 102:17 sentences (1) 48:23 separate (5) 29:7	37:7,9 56:12 62:13 separately (1) 73:3 series (1) 41:17 serious (1) 121:6 service (4) 85:1 87:13 99:5 127:12 services (31) 7:14 10:11 20:5,8,12,16 20:25 53:1 55:19 60:6 71:15,24 72:24 72:25 84:7,10 85:5 86:15,23 87:3,13,15,21 88:17,21,22 90:10,11 95:13 99:11 113:7 sessions (1) 63:5 set (10) 12:2,17 29:6 30:20,21 30:22 92:12 93:1 129:14 131:6 setting (1) 66:6 seven (1) 69:10 shady (1) 38:7 shape (3) 43:16 44:20,22 share (2) 85:13 101:21 sheet (1) 121:19 sheets (8) 95:15 95:20 96:6,7,9 96:11,13 121:15 SHIRLEY (1) 3:9 shoes (1) 53:25 short (5) 38:2 89:16 103:1 122:18 127:5 shorthand (3)	2:11 131:3,10 shortly (2) 8:21 33:16 shortness (1) 121:24 shots (3) 39:11 39:17 47:15 shoulders (1) 111:14 shoveled (1) 27:20 show (12) 26:16 36:5 72:4,11 73:16 74:3,3 74:21 93:25 96:7,9 123:19 showed (1) 66:16 shown (1) 123:19 shows (1) 35:16 shrift (1) 103:1 shuttle (1) 63:11 side (4) 112:24 128:10 129:17 130:2 sides (1) 127:6 signed (1) 9:9 significant (2) 33:15 127:14 similar (15) 6:21 42:17 59:4 66:4 67:9,19 68:3,17 69:11 71:2 75:18 81:11 110:13 121:14,14 similarities (1) 92:3 similarity (1) 74:19 similarly (1) 4:25 simple (5) 37:2 39:20 55:19 103:6 104:9	simply (5) 28:8 54:17 55:7 58:10 130:8 sir (5) 10:22 13:18 14:9 33:3 45:2 site (14) 9:4,20 18:13,14 35:17 48:17 90:21,22 101:17 109:12 122:2 123:1 124:5 125:14 sites (3) 96:20 113:5 124:1 sitters (1) 37:17 sitting (2) 14:18 105:5 situated (1) 66:10 situation (5) 21:13 48:10,12 48:24 110:18 situations (5) 21:11 54:9 76:7 79:18 81:15 six (7) 22:8 24:21 40:8 62:21 75:19 119:13,22 size (5) 74:3,12 74:12,13,21 skills (1) 79:11 sleep (1) 116:8 slide (3) 73:18 74:11 77:8 slides (1) 83:15 smell (1) 115:6 smoke (1) 27:1 smoking (3) 115:6,15 119:25 snippets (1) 98:1 sober (2) 8:3 36:22 social (14) 7:13
--	--	---	---	---

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

10:10 20:4,8 20:12,16,25 53:1 71:15,24 72:24,25 87:13 100:8 solely (3) 4:23 5:1 27:11 solicit (2) 15:6 29:2 solicitations (1) 15:11 solicited (2) 12:9 19:16 somebody (1) 84:23 someone's (2) 67:17 120:18 somewhat (1) 43:15 son (23) 8:15,18 8:21 9:1,6,8,8 35:8,11,18 36:17 37:12 38:11,13 47:12 47:23 48:2,25 49:9,12 114:25 114:25 115:3 son's (5) 8:14,20 8:25 9:12 48:5 sorry (7) 7:12 23:3 26:7 36:15 46:10 51:13 56:5 sort (1) 21:12 sorts (1) 48:7 sounded (1) 37:23 sounds (1) 32:9 source (5) 60:12 60:22 65:17 120:12 121:1 so-called (1) 109:5 space (1) 75:20 spaces (3) 62:21 75:19,22	speak (26) 26:23 29:17 34:2,8 34:25 40:20 41:15 45:4,6 45:13,18 50:21 59:25 98:17 100:18 101:13 103:5 105:6,7 106:21,23 114:17,18,22 117:25 118:4 speaker (3) 45:15,16 46:1 speaking (5) 27:10 40:22 107:3 108:13 119:17 speaks (3) 28:17 45:3 112:2 special (6) 48:18 69:18 86:8 116:11,24 117:12 specialty (2) 116:2,13 specific (13) 12:6 18:1 28:12 63:24 67:2 68:14 73:14 75:2 94:20 97:9,17 110:19 128:19 specifically (9) 53:15 69:25 86:9 87:7 90:2 109:23 112:14 114:8 116:5 specificity (1) 125:24 specifics (1) 82:6 speculation (2) 93:2 121:3 speculative (1) 105:2 speed (1) 59:16 spell (1) 35:1	spirit (1) 89:13 spite (1) 12:13 spoke (5) 9:18 35:8 45:18 50:12 112:6 staff (99) 6:8,23 7:15,24 9:1,23 10:1,21 11:5,6 11:9,24 17:7 18:3 19:22 20:14 22:1,14 24:12,13,16 26:8 27:19,22 29:11 31:22 40:22 41:15 43:16 52:19,20 52:24 53:8,16 55:9 56:3,21 56:23 58:15,25 59:5,17,17,23 62:11,19,25 63:1,4 65:1 66:7,11 71:13 72:10,18 73:20 74:4,4 78:5 80:24 81:22 82:15,16 83:6 83:8,18,19 84:4,6,16 85:2 85:4,7 88:7 89:17 91:9,18 91:22 92:16,25 93:6,10 95:8 97:12,17 98:10 98:13,20 107:8 108:11,24 110:13,22 111:9 115:15 116:16 122:4 123:25 125:5 staff's (2) 6:11 97:11 stand (1) 57:1 standard (6) 21:5 22:6,8 64:21 94:11,24	standards (8) 58:24 63:22,24 71:9 78:7 80:7 92:2 121:13 standing (1) 83:7 start (2) 73:2 129:5 starting (1) 47:22 state (31) 14:11 21:1,8,15 25:12 42:20,21 42:24 44:13 51:23 53:12,14 63:13 65:17 71:4,11,14,25 72:11,22 77:20 78:2 84:8 86:7 89:21,25 90:5 90:6 124:18 128:15 131:4 stated (11) 5:25 19:15 49:24 78:3 79:16,17 80:2 83:4 87:2 97:20 99:9 statement (3) 20:22 66:24 117:5 statements (3) 17:1 23:17 31:4 states (4) 21:4 85:17 86:3 116:4 State's (1) 122:1 stating (2) 9:21 94:11 statistical (1) 112:15 statistics (1) 112:18 status (1) 113:14 statute (2) 87:25 88:2	stay (5) 8:17,21 65:3 102:24 118:14 stealing (1) 120:16 stereo's (1) 103:21 Steve (2) 3:13 128:8 stick (7) 92:6,13 94:3 103:7 104:9 125:25 126:1 stipulate (2) 54:14 122:23 stolen (3) 103:19 103:22 120:15 stories (1) 23:6 straight (2) 36:17 55:20 Strategic (2) 88:15,16 street (8) 3:14 41:5 85:5 90:9 107:21 108:15 126:2,21 strenuously (1) 94:21 strict (2) 28:17 106:2 strictly (1) 13:22 strike (1) 16:20 striking (1) 83:18 strikingly (1) 95:11 strong (1) 127:10 stronger (1) 126:16 strongly (6) 105:22 125:17 125:19 126:13 127:22 128:3 struck (1) 119:24
---	--	---	---	---

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

stuck (1) 22:16	substituted (1) 95:1	supply (2) 66:3	114:25 115:1	93:23
student (1) 36:17	suffered (4) 37:13,13 39:18	98:9	122:1 126:4	terms (8) 44:17
stuff (1) 37:17	104:13	support (3) 113:13,13	127:4,22	62:11 89:5
subject (7) 53:2	suffering (3) 39:1 86:23	123:8	taken (10) 2:7	90:5 94:9 98:2
58:18 64:10	116:12	supportive (3) 65:16 86:22	7:25 8:3 35:21	98:3 100:15
67:12,22 104:1	sufficient (4) 33:17 44:12	87:21	37:1 74:24	terrible (1) 48:3
108:1	66:4 72:15	supports (1) 52:1	119:14 124:1	terribly (1) 112:20
subjective (1) 126:1	suggest (8) 24:17	suppose (2) 35:6	130:3 131:5	takes (2) 47:15
submission (1) 119:12	30:25 31:5	118:14	104:16	talk (5) 42:5
submissions (2) 129:13 130:3	32:21 102:9	supposed (6) 37:19 38:15,19	89:3 90:24	89:3 90:24
submit (8) 23:17	104:23 105:16	39:9 69:15	93:6 115:13	testify (7) 27:5
32:3 66:20,24	118:9	115:25	talked (4) 18:12	29:6 34:19
119:11 123:10	suggested (5) 24:11 25:23	sure (12) 27:17	70:18 82:1	35:18 42:15
129:15,17	32:19 106:24	28:20 32:16	111:19	43:14,21
submitted (14) 10:15,18 42:4	108:18	34:25 38:3	talking (3) 16:15	testifying (2) 88:5 131:8
74:6 85:16,24	suggesting (2) 105:2 128:24	39:10,23 46:12	108:24 115:13	testimony (21) 5:1,25 25:5
86:16,25 88:3	suggestion (5) 4:21 22:23	46:23 76:23	technical (1) 55:24	26:23,24 29:15
88:8,25 91:8	54:17 63:5	98:22 122:13	telephone (3) 3:13 95:9	33:4,25 34:9
91:10 129:16	101:17	surprised (1) 111:17	128:16	42:8,8,9 44:24
submitting (1) 85:21	suggests (2) 102:16 103:7	surprising (1) 57:20	telephonically ... 128:17	49:20 102:20
subscribed (1) 131:16	suited (1) 72:13	surrounding (4) 72:17 79:11,12	tele-conferenc... 129:8	103:12 105:12
subsequent (2) 4:13 7:12	summarize (3) 8:15 9:25 17:2	80:12	129:8	123:21,22
subsidiary (3) 51:3,20 58:3	summary (1) 74:17	sustained (1) 103:13	tell (7) 15:17	129:6,7
substance (8) 7:5 86:14,23	summertime (1) 80:16	sweetest (1) 40:2	32:17 49:11,17	thank (36) 5:8
87:21 88:17,21	Sunday (1) 63:7	system (3) 63:11	78:15 82:8	10:25 18:21,22
89:2,8	super (1) 90:12	76:10 100:16	86:19	18:24 22:17
substantial (6) 68:10 81:9	supervision (3) 77:20,22	T	telling (2) 7:20	25:18 26:7
85:9 89:3	111:21	tag (1) 121:20	98:5	28:19 32:25
90:25 119:7	supervisors (1) 16:11	tainted (1) 32:15	tells (3) 68:6	40:19 43:9
substantially (2) 11:25 68:13	supplemental ... 56:4,6	take (24) 8:7	87:11 92:8	45:7 46:7
substantiated ... 71:7	supplementati... 100:19	18:20 29:15	temporarily (1) 50:7	49:15,21 52:17
substantive (2) 15:14 20:3		31:19 35:7	temporary (1) 30:16	58:7 81:24
		36:2 37:16,24	ten (1) 96:8	82:20 101:11
		40:15 48:8,16	tenants (1) 103:15	106:8 107:2
		58:8,11 75:10	Tennyson (1) 3:14	108:12 111:4
		83:14 90:17	term (2) 100:5,6	112:5 114:15
		92:6 103:7	termination (1)	115:10,12
				117:23,24
				122:19 125:15
				128:2 130:9,12
				Thanks (2) 40:6
				82:14
				therapeutic (9)

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

61:24 65:22	72:8 81:22	threshold (1)	55:1 59:22	64:13 76:2
66:23 67:1,3	82:2 83:14	73:3	70:17 86:12	treated (2) 76:4
74:10 75:4	88:14 89:12	tie (1) 126:18	111:15 123:21	76:11
76:1 87:14	91:21 92:17	tied (3) 43:22	124:14 128:13	treating (2)
therapeutically...	93:10,12,22	60:19 65:22	today's (1) 5:17	73:12 74:8
74:22	96:23,24,25	time (61) 8:14	told (31) 8:7	treatment (15)
thereof (2)	97:1,4,14,18	10:15 11:17	13:7 14:23	7:4,8,16 8:23
112:10 131:12	97:19,21	12:13 16:13	16:24 18:18	13:4,8 16:16
they'd (1) 118:7	100:17 101:4	17:8 18:3	32:5,14 38:14	16:17 50:3
thickens (1)	101:14,18	19:13,14 20:18	38:20 47:5	55:25 80:17
29:14	102:13,23,24	21:20 22:3,6,7	49:16 85:11	84:13,18 85:9
thing (18) 17:5	104:16 105:15	22:8,11 28:14	86:9,11 89:12	89:3
22:21 25:14	105:16 106:5	33:10,17 35:7	89:13 90:7,8	tried (4) 35:24
30:1,13 31:14	107:5 110:22	35:12 37:16	90:12,15 93:18	36:7 39:10
31:14 36:10	111:15,19,20	38:2,24 40:7	94:22 95:14,15	104:7
83:7 85:7	111:24 112:1	43:22 47:8	95:19,24,25	trips (1) 48:1
101:5 113:17	112:14 113:9	49:4 50:10,14	101:1 103:18	troubling (1) 7:6
115:24 116:21	113:20 118:17	53:6 59:25	115:22 116:16	truck (3) 103:19
121:11,16	119:15 122:5	64:16 66:14	tone (1) 19:16	120:15,16
122:25 124:14	122:24 123:14	69:4 86:4	tonight (1)	true (5) 9:25
things (25) 9:20	123:17,25	89:15 93:13	118:17	20:11 52:9
18:16 23:1	124:8,23 125:2	98:15 101:2,13	top (3) 87:11	88:10 120:6
27:18 31:9	125:21 126:15	101:16,18,25	102:3,7	truly (3) 96:10
38:11,12 48:5	127:4,23	103:10 105:8	top-to-bottom ...	121:21 125:13
48:7 52:6 55:3	128:23 129:3,3	106:13 108:9	15:19 20:20	truth (1) 85:23
56:15 101:17	130:1,3,10	112:10 114:17	total (1) 110:6	try (4) 27:23
102:14 104:13	thinking (1)	118:1,13 119:2	touch (1) 15:7	39:14 101:11
110:21 112:16	125:21	119:14 120:24	touched (1)	123:2
121:15 123:15	Third (1) 30:12	121:24 122:19	104:22	trying (7) 28:1
124:2,25 125:7	Thomas (3) 1:9	127:5 128:1	town (1) 93:19	37:10 38:2
125:12 127:20	4:7 46:2	130:14 131:6	traffic (1) 68:11	69:3 78:17,17
128:10	thought (5) 40:2	times (7) 35:9	transcribed (1)	104:19
think (95) 4:24	53:4 78:20	38:1 39:19	131:10	Tuesday (4) 1:11
11:20 12:14	105:24 115:19	44:19 103:21	transcript (1)	2:10 4:1
17:12 20:21	thousands (1)	117:3 119:22	119:23	122:16
23:14,25 25:7	88:13	time-wise (1)	transcription (...)	turn (13) 5:6
26:3,8,9 27:2	three (12) 34:25	118:6	131:12	29:21 85:25
28:6 31:15,16	38:9 39:18	Tina (1) 46:16	transforms (1)	86:6,13,19,24
32:23 33:14	59:9 62:24	tired (1) 108:17	79:14	87:7,11,16,23
34:1,6 35:20	75:20,21 86:22	title (1) 9:12	transported (1)	98:6 126:18
36:1 37:24	88:16 103:21	today (25) 4:5,10	63:11	turned (3) 54:10
40:14 46:16,22	119:4,21	5:5 14:2 17:8	trash (5) 120:2,3	54:12 124:9
48:11 53:15	three-day (1)	18:6,15 28:18	120:17,18,19	Turning (1) 65:8
54:5,21,22	122:8	33:8,10,14,24	travesty (1)	turns (1) 126:25
55:12 56:12	three-way (1)	34:2,12 35:25	48:21	twice (2) 17:11
57:18 58:13	129:23	43:5 45:14	treat (4) 7:11,22	72:1

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

7:8 10:19 14:9 14:20 15:1,4 17:10 23:1 29:7 35:13 36:22 37:4,7,9 38:9 39:18 44:1,9 48:13 50:14,15 52:6 52:7,22 55:12 55:15 56:1 58:22 59:19 62:2,12 64:2 64:22 65:5 72:1 73:2 78:17 83:12 104:10 105:5 112:23 119:21 126:19 128:12 129:14 130:2 type (7) 41:9 54:7 65:24 67:9 84:20 104:18 115:24 types (9) 12:24 13:9 16:17 17:18,23 42:15 87:3 120:5 122:10 typically (1) 45:14	underlying (1) 95:7 undermine (4) 43:18 68:13 69:14 80:22 undermined (3) 70:9,21 81:17 undermining (2) 61:7 79:2 undersigned (1) 131:3 understand (12) 11:21 28:24 29:5 79:9 87:25 96:12 99:22 106:1 113:3 125:13 125:23 127:21 understanding... 27:7 42:19 100:12 125:4 understood (3) 30:18 118:18 123:6 undertake (1) 12:19 undertaken (1) 15:6 undue (5) 43:5 61:2 68:19 78:14 114:11 unfair (4) 92:17 96:25 97:1 122:15 unfairness (1) 31:17 unfortunately ... 106:13 unintelligible (1) 48:16 unintelligible (...) 46:24 48:5,11 48:20 unique (9) 85:1 90:10 99:5,23 100:24 111:12	113:11,14 127:12 unit (6) 16:7,8 75:10 95:18 103:15 126:3 United (2) 85:17 86:3 units (3) 69:10 82:4 112:21 unlawful (1) 60:3 unlicensed (1) 78:19 unnecessary (1) 115:24 unquote (2) 121:6 126:20 unreasonable ... 60:25 105:18 unrelated (1) 95:21 unsolicited (3) 19:17,18,18 unsubstantiat... 84:17 unsupervised (...) 8:24 untenable (1) 121:8 untrue (2) 90:10 117:4 update (1) 96:20 uphold (2) 42:19 42:24 upwards (1) 124:23 Urban (2) 85:18 86:4 urge (8) 31:18 89:17 90:17 97:7 98:11 100:22 108:10 119:16 use (69) 4:12 5:11,18,21 6:14,15 21:5	25:4,4,8,17,17 26:21 41:7 43:7 44:4,7 55:4,5 59:4 60:7,21 62:8 62:16,23 63:1 63:22 64:1,4 64:14,18,19 65:11 67:22,22 69:13,14,16,17 69:21 70:9,12 70:16,21,23,25 71:8,10 72:14 72:16 73:9,12 74:9 75:6 76:3 76:5 77:11,25 80:9,15 92:4 103:19 106:13 107:5 111:21 111:24 114:13 119:18 126:10 uses (12) 64:11 68:17 69:17,20 69:22 70:3 77:10,15 80:5 80:6,8,13 usual (2) 60:14 66:7 utterly (1) 43:24 U.S (2) 60:22 79:17	vandalized (1) 120:14 vandalizing (1) 120:16 variety (2) 41:3 42:22 various (3) 42:22 110:17 110:18 vehemently (3) 52:15 103:5,6 vehicle (1) 8:1 verbal (1) 59:22 verbatim (1) 131:8 verify (1) 9:24 verifying (1) 125:11 version (1) 86:2 versions (1) 76:18 versus (3) 44:11 69:2 99:15 vetted (1) 88:7 viability (7) 65:15 66:2 73:24 75:3 76:1 91:3,17 viable (3) 61:21 66:21 91:21 view (1) 114:2 vigor (1) 15:5 violate (2) 13:13 50:1 violated (4) 44:21 51:23 71:25,25 violating (5) 26:20 31:3 56:11 71:4 83:10 violation (42) 6:21 7:9 10:10 14:8 15:16,18 15:20 20:25 21:8 24:8
---	--	--	--	---

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

25:22,24 26:1	waiver (21) 7:16	3:14 65:17	weight (1) 25:5	72:8,9 73:17
26:17 29:25	7:18,21 30:4	129:25	welcome (2)	74:1,2,11 76:6
30:2,6,7,8,11	30:16 31:10	wasn't (4) 9:9	40:15 107:7	78:3 94:22
30:13,14 44:13	63:19,20,21	34:16 76:7	welcomed (1)	106:13 109:20
51:1,17,19,24	64:1,20,23	116:23	5:24	123:16,20
52:16 53:2	73:9 74:8 75:8	waste (1) 108:9	welfare (1) 70:2	124:14 127:19
55:11,13 56:14	75:15 77:1,6	watched (1)	went (4) 36:3,17	128:9
71:16,23 72:11	79:25 80:22	117:11	36:18 104:6	whatnot (2)
80:19 83:3,13	81:13	WATSON (1)	weren't (3) 56:2	23:17 115:14
89:19,24 90:18	waiving (4)	3:4	76:9 115:18	whatsoever (2)
125:7	70:22 77:16	way (24) 18:18	West (11) 5:12	94:1 113:12
violations (15)	78:9 81:17	25:7 26:2	41:5 67:16	Wheatfield (1)
10:2 12:25	walked (3) 9:14	37:22 38:19	84:21 107:14	47:7
13:11,24 21:15	9:15 48:10	43:16 44:4,20	107:17,19,21	WHEREOF (1)
29:6 30:3	walking (2) 48:2	46:22 50:5	107:23,25,25	131:16
41:13,14,18	115:7	51:8 54:25	we'll (11) 4:4	Whichever (1)
44:8 55:24	want (41) 6:11	88:25 93:11	45:7 56:23	50:22
72:22 77:20	17:24 22:21	94:3 99:21	73:13 77:7	willing (4) 33:25
78:2	29:17 31:14,15	104:8 105:3,19	101:1 120:18	45:22 91:16
visit (2) 40:5	34:15 37:24	112:3 113:18	120:21 129:15	102:9
81:4	38:23 39:1	121:8 122:10	129:17 130:4	Willis (19) 29:12
visitation (1)	42:18 43:13	124:21	we're (40) 4:16	35:3,3 39:22
47:20	46:10 47:12	ways (4) 23:19	11:12 12:11,15	40:11,14,17
visitor (2) 75:24	49:25 50:4,4	24:2 44:22	16:14 24:25	50:18 115:11
75:25	53:17 87:24	122:15	25:1,14 27:11	115:11 117:15
visitors (3) 62:25	89:15 92:11	Web (18) 9:4,20	28:24 30:12	117:15,18,21
64:9 80:21	98:17,20	18:13,14 19:21	31:18,21 34:17	117:24 123:21
visits (1) 40:3	100:17 103:3,5	35:17 48:17	38:3 46:3 53:6	124:7,18 125:5
vis-a-vis (1) 26:2	110:21,23	90:21,22 96:20	57:4 65:3	winded (1) 110:1
voice (1) 107:11	112:12,16	101:17 109:12	68:24 69:2	wiring (2)
volumes (1)	115:3,12	113:5 122:2	77:19 87:23	120:20,22
93:24	116:19 118:6	123:1 124:1,5	93:15,16,20	wisdom (2)
voluminous (1)	122:11,20	125:14	94:11,11,12	26:15 44:3
11:24	124:9 125:3,5	Wednesday (1)	95:25 97:16	wish (4) 34:7
vote (2) 18:4,4	127:18 129:23	11:18	98:6 100:23	40:20 107:8
W	wanted (11) 4:14	week (2) 9:7	111:7 114:16	117:25
W (2) 1:9 4:7	24:2 34:16	52:13	118:1 121:16	wishes (2) 23:16
wade (1) 22:4	35:8 38:18	weekdays (1)	121:22 124:16	53:7
wait (2) 98:21	39:24 54:2	47:17	129:19	withheld (1)
125:17	98:24 105:7	weekend (4)	we've (29) 18:1	106:21
waiting (2) 37:7	114:22 115:8	27:21 37:18,18	21:22 36:13	WITNESS (1)
39:25	wants (3) 17:2	48:18	40:25 41:25	131:16
waive (2) 79:1	76:22 114:18	weekends (1)	42:21 50:6	witnesses (1)
97:17	warrant (1)	47:17	51:17 52:5	131:7
waived (1) 63:25	16:13	weeks (3) 128:12	54:8 67:21	Wolcott (11) 3:8
	Washington (3)	129:14 130:2	68:3 70:24	18:24,24 22:22

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

27:19 47:22	130:6	\$15,000 (2)	1217 (2) 107:23	200 (2) 46:22
59:2,14,14	wrong (5) 13:17	48:18,19	107:25	67:11
82:5 104:22	14:1 93:11,12	\$1500 (1) 46:20	1219 (1) 41:5	20015 (1) 3:14
woman (3)	120:1	\$35,000 (2)	13 (1) 88:20	2002-09 (1) 56:5
102:21 105:7	W-i-l-l-i-s (2)	35:23 102:24	14 (16) 62:17	2008 (5) 76:17
116:16	35:4 117:16	\$45,000 (1)	63:17 69:10	76:22 83:25
wonder (1)		48:17	73:25 74:1	95:20 103:11
106:23	Y	\$5,000 (2) 37:9	89:11 91:1,7,8	2008-05 (1)
wondered (1)	yard (7) 92:6,13	46:24	91:17 97:12,15	69:21
108:22	94:3 103:6	\$55 (1) 9:6	97:17,18 98:13	2009 (6) 1:11
Wood (4) 107:12	104:9 125:25		115:14	2:10 4:1 5:14
107:12 110:4	126:1	0	14th (1) 5:14	7:3 71:16
126:11	Yeah (1) 32:9	0509 (1) 87:1	15 (4) 12:11 18:7	2009-002 (1)
Woods (6) 74:11	year (4) 5:10		115:14,22	56:6
74:18,23 82:1	70:11 72:3	1	1508 (1) 71:24	202 (1) 3:15
97:25 98:4	119:22	1 (3) 7:3 71:16	17 (2) 49:14	207 (1) 67:14
word (2) 26:11	years (7) 41:5,19	86:1	117:21	213 (1) 3:6
89:13	49:14 109:24	1/2 (3) 38:6	17-year-old (2)	24 (1) 99:25
words (3) 51:6	115:22 117:21	47:23 111:5	7:4 55:15	24-hour (1)
93:3 95:24	120:10	1:30 (1) 22:6	17-year-olds (1)	71:12
work (5) 26:4	yesterday (1)	10 (10) 11:10,10	56:1	24/7 (1) 38:15
28:25 38:8	46:20	11:15 12:14	18 (12) 49:17	280 (1) 124:23
56:20 95:9	young (3) 41:22	22:1 47:3 72:4	63:20,25 73:7	29 (1) 91:15
worked (2)	42:14 115:20	87:23 128:12	73:25 75:2,4,6	29th (1) 47:1
27:22 95:25	youth (2) 7:14	128:12	75:14,22 91:1	
workers (1) 47:4	7:14	10-day (2) 21:24	97:15	3
working (4) 96:1	Z	33:19	18th (1) 99:1	3 (2) 6:3 86:13
122:12,13	zone (5) 69:2,2,2	10-story (1)	19 (1) 75:14	3-year-old (1)
127:5	69:12 108:3	74:25	1997 (2) 64:19	114:25
works (3) 99:17	69:8	11 (2) 88:14,15	76:23	3:00 (2) 2:9 4:2
128:23 130:1	zones (2) 62:7	1100 (1) 108:3		30 (1) 99:7
world (1) 40:2	69:8	1115 (1) 107:21	2	30th (1) 7:3
worse (1) 38:24	zoning (13)	1119 (1) 107:14	2 (4) 22:7 38:6	300 (2) 92:14
worth (1) 119:15	13:20,24 14:18	1120 (1) 107:18	47:23 102:3	110:3
wouldn't (3)	21:2,9 51:13	1125 (1) 111:5	20.10.020 (2)	3034 (1) 3:14
78:12 119:1	68:22 69:23	1132 (1) 107:17	62:6,10	3300 (2) 2:8 3:10
130:5	70:20 78:24	12 (4) 46:25 63:6	20.66.030 (1)	331-5848 (1)
Wow (1) 37:24	79:24 81:17	72:4 88:19	64:7	3:15
wrap (2) 118:17	108:7	12th (5) 5:10,16	20.91A.050 (2)	355 (1) 3:5
118:23	\$	62:11 103:24	53:11 71:9	3604(f)(3)(B) (1)
writing (5) 15:24	\$10,000 (4) 8:20	108:15	20.91A.050(c)(...	60:23
107:8 109:10	35:23 37:7	1200 (2) 108:4	78:8	39 (1) 59:18
128:1 130:8	39:21	114:21	20.91A.050.C4...	
written (6) 97:24	\$12,000 (1)	1214 (1) 107:13	21:4	4
107:9 109:13	48:19	1216 (2) 5:12	20.91A.060 (2)	4 (2) 86:19,22
119:12 122:3		107:25	6:18 78:6	4th (6) 11:18

PRECISE REPORTING SERVICE
(800) 647-9099

NEWPORT BEACH RECOVERY - 7/7/2009

27:21 93:24	101:25 102:16			
98:1 119:8	9th (2) 60:9			
122:17	65:16			
40 (1) 82:13	9:30 (1) 47:3			
40th (1) 3:5	90071-3101 (1)			
400 (1) 92:14	3:5			
42 (1) 60:22	92658-8915 (1)			
	3:10			
5	9266 (2) 2:12			
5 (4) 11:17 22:5	131:22			
22:8 86:24	94060 (1) 3:17			
5:45 (2) 4:21	949 (1) 3:11			
59:13	97 (1) 83:25			
5:50 (1) 4:2				
50 (1) 110:3				
6				
6 (2) 87:7 118:12				
6th (1) 67:11				
6:07 (2) 2:10				
130:14				
626-8484 (1) 3:6				
644-3002 (1)				
3:11				
650 (1) 3:18				
686 (1) 3:17				
7				
7 (4) 1:11 2:10				
4:1 87:11				
7th (3) 27:25				
28:2 111:15				
70 (1) 94:4				
72 (2) 8:17 116:4				
72-hour (1)				
99:25				
75 (1) 74:25				
8				
8 (5) 78:15 87:16				
87:17 101:25				
103:11				
897-0141 (1)				
3:18				
9				
9 (4) 63:6 87:18				

PRECISE REPORTING SERVICE
(800) 647-9099