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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

OAKLAND BULK AND OVERSIZED
 TERMINAL, LLC, a California limited
 liability company, and OAKLAND GLOBAL
 RAIL ENTERPRISE, LLC, a California
 limited liability company

Plaintiffs,

v.

CITY OF OAKLAND, a California municipal
 corporation,

Defendant.

Consolidated Case Nos. RG18930929 /
 RG20062473

Unlimited Civil Case/Assigned to Dept. 514
 (Hon. Noël Wise)

**CITY OF OAKLAND'S [PROPOSED]
 REMEDIES PHASE STATEMENT OF
 DECISION**

Action Filed: December 4, 2018
 Trial Date: July 10, 2023
 Cont. Trial Date: Nov. 28, 2023

CITY OF OAKLAND

Counter-Plaintiff,

v.

OAKLAND BULK AND OVERSIZED
 TERMINAL, LLC, and CALIFORNIA
 CAPITAL INVESTMENT GROUP,

Counter-Defendants.

1 The City of Oakland provides the enclosed proposed Statement of Decision resolving the
2 issues raised by Plaintiffs OBOT and OGRE’s request for remedies in this action subject to all
3 rights by the City with respect any aspect of this Court’s decisions regarding the liability and
4 remedies phases of this trial. The City in no way concedes any rights with respect to the Court’s
5 decision on liability by offering this proposed language for consideration. The City has also
6 attached a chart identifying the evidentiary objections for this Court’s further ruling.

7
8 Dated: December 4, 2023

Respectfully submitted,

9
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11 Stacey M. Leyton
12 Danielle Leonard
13 Jonathan Rosenthal
14 Emanuel Waddell

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17 By: /s/ Danielle Leonard
18 Attorneys for CITY OF OAKLAND

1 Having considered the evidence and applicable law, the Court rules as follows:

2 **I. Specific Performance and Incidental Damages.** The City conceded prior to trial that
3 specific performance is available (*see also* §§20.2; 22.1). The scope is governed by the contract
4 terms. *E.g., Henderson v. Fisher* (1965) 236 Cal.App.2d 468, 473. Here, force majeure sets the
5 parameters for an appropriate extension (“such additional time thereafter as may reasonably be
6 required to complete performance of the hindered act,” Ex. 68-84, 132 (§16.1; Art. 40)), and in
7 light of the entire contract, that extension cannot exceed 180 days plus two years, §§1.7.2; 6.1.1.1.
8 OBOT offered mixed proof of the amount of time needed, ranging from “12 to 14 months” in
9 phase one, to 29 months in phase two, in light of current circumstances. Trial Tr. 1376:18-22,
10 4437:11-15. The Court grants an extension of the Initial Milestone deadline of ___ months.¹

11 Should OBOT elect this remedy, the Court will order the following: 1) Effective
12 immediately, the City’s October 23, 2023 Notice of Default and corresponding November 22,
13 2023 termination of the West Gateway Ground Lease are rescinded, as is the corresponding
14 termination of the 2013 Development Agreement (“DA”) between CCIG and the City as it
15 pertains to the West Gateway only; 2) The City shall grant OBOT a ___ month extension from the
16 date of Judgment, for the Initial Milestone deadline in Section 6.1.1.1; and 3) The Court makes no
17 order, express or implied, with respect to: any aspect of the DA that applies to any property
18 beyond the West Gateway; or any other deadlines in the Ground Lease and/or DA.²

19 Along with an order of specific performance, this Court concludes that OBOT is permitted
20 by Section 22.1 to seek those “[p]roject costs or expenses incurred by OBOT that have been ‘lost’
21 and will need to be repaid or replaced” to complete the project. Nov. 21, 2023 Order at 4.
22 However, OBOT failed at trial to prove any such damages via admissible evidence.³

23 _____
24 ¹ OBOT also requested a different extension (Section 6.3.1), but that exceeds the scope of
25 this Court’s prior finding of breach, which made no findings with respect to that deadline.

26 ² This Court previously ruled on OBOT’s declaratory relief claim (*see* Nov. 22, 2023
27 Statement of Decision at 94). OBOT’s request for additional relief stating that the Ground Lease
28 and DA are valid and in effect is denied as improper reconsideration per C.C.P. §1008, and moot
in light of the above order of specific performance. In addition, no declaratory relief is warranted
if OBOT elects contract damages. *E.g., Travers v. Loudon* (1967) 254 Cal.App.2d 926, 931.

³ This Court twice requested OBOT provide an itemized list (including amounts and dates)

1 OBOT sought \$19 million in out-of-pocket expenses and lost profits through the time of
2 trial. OBOT offered: two witnesses (Mr. Tagami and expert Peter Brown) who testified only as to
3 the *totals* of expenses; no underlying documentation; and no witnesses testifying with personal
4 knowledge of the accounting records used to identify and calculate the amounts. *E.g.*, Trial Tr.
5 4565:1-24, 4484:21-4485:12, 4708:3-4713:8. The Tagami and Brown testimony is not sufficient
6 proof. In particular, Mr. Brown’s opinions are inadmissible, as he communicates case-specific
7 hearsay (the data and documentation of the items that comprise these totals) which, for reasons
8 not in the record, OBOT did not attempt to introduce in this case. *People v. Sanchez* (2016) 63
9 Cal.4th 665; *see also People v. Valencia* (2021) 11 Cal.5th 818, 837. And without admissible
10 support, testimony totaling the amounts is plainly unreliable speculation in violation of *Sargon*
11 *Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747.⁴ While Mr. Tagami
12 confirmed that he was aware of general amounts spent over the years, he was not involved at all
13 in the calculations, and does not have personal knowledge of the documentation or data. Trial Tr.
14 4561:10-4562:4. Nor did OBOT offer any evidence that these expenses would “need to be repaid
15 or replaced” to move forward. Finally, the federal fees are unavailable because they: 1) were
16 plainly not caused by the City’s breach *in this case*; and 2) are barred by *res judicata*.

17 Next, OBOT’s alleged lost future profits from the ITS sublease (whether before the trial or
18 after) are consequential damages that are barred in the Ground Lease. These are entirely
19 dependent on a later separate third-party contract, in which the City had no say, and the terms of
20 which OBOT and ITS could alter at any time without the City’s involvement. *Lewis Jorge*
21 *Construction Mgmt. v. Pomona Unified School Dist.* (2004) 34 Cal.4th 960, 975; Trial Tr.
22 4528:21-4529:9, 4531:7-15. The evidence received in both phases of trial confirms that these are
23 consequential damages waived by OBOT in §§22.1 and 24.1. And, even if these were
24 cognizable, Mr. Brown’s opinions again violate *Sanchez* and *Sargon*. There was no dispute ITS
25 was paying OBOT *some* rent during 2018-2023. Mr. Brown’s opinions calculating the rents due

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27 of damages it seeks. OBOT only ever provided general totals, and never offered *any* supporting
28 documentation or data, notwithstanding the standards of admissibility and proof.

⁴ The Court admitted OBOT’s expert testimony subject to further ruling on the City’s
Sanchez and *Sargon* objections to admissibility, which are addressed in the attached appendix.

1 in light of offsetting ITS payments received rests on case-specific underlying documentation and
2 data not in evidence, contrary to *Sanchez*. And, Mr. Brown disregarded OBOT and ITS's 2021
3 and 2022 agreements to defer (rather than waive) the very ITS rent payments at issue, rendering
4 his conclusions unreliable in violation of *Sargon*. Exs. 962, 344. The City proved that any award
5 along with the above order would be a double recovery.

6 **II. Alternative Contract Damages.** As an alternative remedy subject to election, OBOT
7 projected hundreds of millions in revenue from the ITS Sublease over the life of the 66-year
8 Ground Lease, and OGRE projected billions in revenue from business with the ITS terminal.
9 Plaintiffs relied on the testimony of Mr. Brown to calculate the projected amounts that could be
10 earned, as well as to offer opinions that these *would be earned* to a reasonable certainty. As
11 above, these are waived consequential damages.

12 Moreover, even if these were not waived, Mr. Brown's testimony again violates both
13 *Sanchez* and *Sargon*.⁵ He relied on extensive case-specific information (documents and extensive
14 conversations), almost all of which is not in the record, to offer opinions about what *would*
15 happen over 66 years. The bases for these opinions are largely inadmissible under *Sanchez*, and
16 without that foundation, this testimony falls far short of the reasonable certainty required by
17 *Sargon*, rendering it doubly inadmissible. Mr. Wolff further undermined Mr. Brown's reliability
18 by testifying that the central assumption that the terminal would ship only coal and soda ash
19 (justifying the failure to analyze the markets for other commodities) *was not reasonable*. Trial Tr.
20 4975:24-4976:7. To prove lost future profits from unestablished businesses like OBOT, OGRE
21 and ITS over 66 years, in a volatile and complex commodities market, *Sargon* requires far more.
22 Without Mr. Brown's inadmissible testimony, OBOT has offered no proof of contract damages.

23 Notwithstanding this Court's denial of alternative contract damages, OBOT still has the
24 right to elect between specific performance and terminating its contractual relationship with the
25 City, and shall do so in the timeframe set by this Court's prior orders.

26 _____
27 ⁵ Mr. Brown provided only a single-point calculation, not just of what could be but what *would*
28 be, with no range addressing uncertainty. The City's expert economist Dr. Borck offered an
effective critique of these opinions as unreliable and speculative.

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IT IS SO ORDERED.

Hon. Noel Wise
Alameda County Superior Court Judge

APPENDIX OF EVIDENTIARY OBJECTIONS FOR RULINGS

“*Sanchez*” refers to objection based on *People v. Sanchez* (2016) 63 Cal.4th 665 because testimony communicates case-specific hearsay that has not been admitted in this case, in particular hearsay in the form of OBOT and CCIG’s financial records, and other materials relied upon by Mr. Brown for his conclusions that lost profits would occur. Where the City has objected to expert testimony on *Sanchez* grounds, it also objects to the offered testimony on “*Sargon*,” grounds, referring to *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, because without an admissible foundation it is inherently unreliable and speculative. The remaining *Sargon* and other objections are self-explanatory on the record. Finally, the City has included at times questions to provide context below, recognizing that questions are not admissible evidence that needs to be struck.

Transcript Cite	City’s Objection	Ruling by Court on Objections
4656:21-24 (Brown) THE WITNESS: No. My opinion on – with respect to OGRE and OBOT’s accounting and business practices is very high. I believe that they keep very -- a very clean set of books.	<i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)	___ Sustained ___ Overruled
4664:14-15 (Brown) A. It is on the second row. The total damages are \$19.3 million.	<i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)	___ Sustained ___ Overruled
4664:19-21 (Brown) A. That number is entirely related to legal fees and other costs that were incurred by OBOT in the federal trial.	<i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)	___ Sustained ___ Overruled
4668:3 (Brown) [Q. How did you -- first of all, did you calculate that number of \$4.6 million in actual out-of-pocket damages?] A. Yes.	<i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)	___ Sustained ___ Overruled

Transcript Cite	City's Objection	Ruling by Court on Objections
<p>4668:25-4669:3 (Brown)</p> <p>A. That represents a portion of the legal fees that were incurred in the federal trial, and also other out-of-pocket expenses, extra expenses that were incurred by OBOT as a result of the city's breach.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4669:6-8 (Brown)</p> <p>A. The 5.2 million represents OBOT's total out-of-pocket costs for the period February 2016 through December of 2023.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4670:12-15 (Brown)</p> <p>A. Well, I took the \$5.2 million in out-of-pocket costs, the 19.3 damages that OBOT incurred, and the \$5.4 million of losses that OGRE incurred to come up with a total damage figure of \$19.1 million.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4672:16 (Brown)</p> <p><i>[Q. And does -- do these damages include the damages that were part of the specific performance award that we just talked about, the 19.1 million total?]</i></p> <p>A. Yes.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4673:2 (Brown)</p> <p><i>[Q. So let me then just talk about the damages from January 2024, after this case, through February of 2082. What did you determine OBOT's actual damages to be during that period?]</i></p> <p>A. 90,500,000.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4673:15-18 (Brown)</p> <p>A. They primarily represent the lease payments that are being made by ITS and OGRE to OBOT, and then subtracting OBOT's costs related to those lease payments.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>

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Transcript Cite	City's Objection	Ruling by Court on Objections
<p>4673:23 (Brown)</p> <p>[Q. And did you determine OGRE's actual damages for the period of January 2024 through February 2082?</p> <p>A. Yes.</p> <p>Q. And what is that number?]</p> <p>A. \$50 million.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4674:18-21 (Brown)</p> <p>A. The damages for OGRE represent the lost opportunity for short line rail services that OGRE would provide to the terminal as a result of the city's breaches.</p>	<p><i>Sargon</i> (No reliable basis for this statement)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4680:18 (Brown)</p> <p>[Q. The information that is on page 17 of Exhibit 646, is that consistent with other information that you received about this terminal?]</p> <p>A. Yes.</p>	<p>New/undisclosed opinion (document not relied upon by expert)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4680:20 (Brown)</p> <p>[Q. Is -- 646, page 17, is that new information?]</p> <p>A. Not in my mind, no.</p>	<p>New/undisclosed opinion (document not relied upon by expert)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4681:12-16 (Brown)</p> <p>THE WITNESS: This document, again, shows one of the advantages of the Oakland port and the ability to reach open water quickly. It also delineates the advantage it has over the Stockton and Richmond port, which takes a number of days to navigate.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4682:21 (Brown)</p> <p>[Q. And let me ask you to look at page 20 of Exhibit 646. Does this contain information about another advantage of the terminal?]</p> <p>THE WITNESS: Yes.</p>	<p>New/undisclosed opinion (document not relied upon by expert)</p>	<p>___ Sustained</p> <p>___ Overruled</p>

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Transcript Cite	City's Objection	Ruling by Court on Objections
<p>4684:14 (Brown)</p> <p><i>[Q. Did anything in your research into the terminal cause you to doubt the viability of this terminal?]</i></p> <p>A. No.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4685:1-5 (Brown)</p> <p>A. Well, coal was the -- was the -- I call it the "must have" to get the terminal built. Coal was the reason why the financing was going to be made available. It really was driving the overall development of the terminal as of 2018.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4685:18 (Brown)</p> <p><i>[Q. Were you able to satisfy yourself that there is a sufficient supply of coal over the life of this lease?]</i></p> <p>A. Yes.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4691:23-25 (Brown)</p> <p>A. Well, I believe that there was financing lined up, essentially that was ready to go as of the fall of 2018.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4697:21 (Brown)</p> <p><i>[Q. As a result of your work, did you conclude that it was reasonably certain that OBOT and OGRE suffered lost profits due to the city's breach?]</i></p> <p>A. Yes.</p>	<p><i>Sargon</i> (testimony lacks any reliable basis; speculation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4708:10 (Brown)</p> <p><i>[Q. And what was the amount of sublease base rent, the minimum payment that ITS was required to pay to OBOT under the sublease from June 2018 through December 2023?]</i></p> <p>A. 8,250,000.</p>	<p><i>Sargon</i> (testimony lacks any reliable basis; speculation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>

Transcript Cite	City's Objection	Ruling by Court on Objections
<p>4709:2 (Brown)</p> <p>[Q. Did you calculate the balloon rent that ITS was required to pay to OBOT under the sublease from June 2018 through December 2023?</p> <p>A. Yes.</p> <p>Q. What was that amount?]</p> <p>A. 13,640,000.</p>	<p><i>Sargon (testimony lacks any reliable basis; speculation)</i></p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4709:8 (Brown)</p> <p>[Q. Did you also calculate the lease takedown payments that ITS was required to pay to OBOT from June 2018 through December 2023?</p> <p>A. Yes.</p> <p>Q. What was that amount?]</p> <p>A. \$11,062,279.</p>	<p><i>Sanchez (testifying as to case-specific hearsay documents) and Sargon (testimony not reliable without admissible foundation)</i></p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4709:23 (Brown)</p> <p>[Q. And did you subtotal all of those amounts for the period June 2018 through December 2023?</p> <p>A. Yes.</p> <p>Q. What was that subtotal?]</p> <p>A. \$35,720,447.</p>	<p><i>Sargon (testimony lacks any reliable basis; speculation)</i></p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4710:4-5 (Brown)</p> <p>A. Those were amounts that were paid by Autumn Winds to OBOT. They are \$11,739,989.</p>	<p><i>Sanchez (testifying as to case-specific hearsay documents) and Sargon (testimony not reliable without admissible foundation)</i></p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4710:14 (Brown)</p> <p>[Q. And then did you calculate the net revenue for the period June 2018 through December 2023?</p> <p>A. Yes.</p> <p>Q. What was that figure?]</p> <p>14 A. 23,983,458.</p>	<p><i>Sanchez (testifying as to case-specific hearsay documents) and Sargon (testimony not reliable without admissible foundation)</i></p>	<p>___ Sustained</p> <p>___ Overruled</p>

Transcript Cite	City's Objection	Ruling by Court on Objections
<p>4713:4-8 (Brown)</p> <p>A. Okay. So ground lease base rent, 66,562,927. Sublease base rent minimum payment, 463,862,964. Additional payment based on volume, 135,848,591. Balloon rent 74,800,000. Zero for takedown payments. OGRE base rent, 37,468,697.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4714:22 (Brown)</p> <p>[Q. What was the total revenue inputs that you calculated for the period January 2024 through February of 2082?]</p> <p>THE WITNESS: 778,543,179.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4717:8-9 (Brown)</p> <p>[A. That is the discount associated with the time value money and a discount rate that we use at 12 percent. And that goes out for the life of the lease, all the way out to 2082.]</p> <p>And that discount is 520,344,152.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4720:1 (Brown)</p> <p>[Q. After you apply the discount rate to the numbers, what is your calculation of the total lost profits suffered by OBOT from January 2024 through February of 2082?]</p> <p>THE WITNESS: 90,500,000.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4720:9 (Brown)</p> <p>[Q. Can you do that again with the actual numbers?]</p> <p>A. It is 778,534,179.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>

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Transcript Cite	City's Objection	Ruling by Court on Objections
<p>4720:11-15 (Brown)</p> <p>[Q. <i>Those are the net lost revenues?</i>]</p> <p>A. Yes. Minus six -- excuse me. Minus 167,712,022. That should equal 610,831,157. Subtract from that the discount, which is 520,344,152. You arrive at 90,487,005, which we round simply for easy of discussion and presentation purposes to 90,500,000.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4723:8-15 (Brown)</p> <p>A. So OGRE was intended to earn revenues for last mile rail service to be paid by Union Pacific. This is based primarily on a declaration and discussions that I had with Dave Buccalo, who is a rail expert. So there's a rate that has to be paid and it is on a per-car basis. That rate starts out at \$200 per car. It is the same rate for both coal and for soda ash, and that's the basis for that calculation.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4734:25-4735:5 (Brown)</p> <p>A. So that is based on a rate per car which starts out at \$200 per car and then goes up by CPI every three years. And it is the amount that UP pays to OGRE for delivering the cars, providing the last mile service once the unit trains reach Oakland to deliver those cars to the terminal.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4736:20-22 (Brown)</p> <p>A. So if you do that math and you multiply it by 200, you will get the first year of full operation for that revenue.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>

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Transcript Cite	City's Objection	Ruling by Court on Objections
<p>4737:5 (Brown)</p> <p>[Q. And so did you calculate the revenue that OGRE would generate from last mile service from UP for the period January 2024 through February of 2082?</p> <p>A. Yes.</p> <p>Q. And what did you determine that number to be?]</p> <p>A. It is 2,176,727,871.</p>	<p>Sanchez (testifying as to case-specific hearsay documents) and Sargon (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4737:11 (Brown)</p> <p>[Q. Just to be clear, that is 2,176,727,871?]</p> <p>A. That's correct.</p>	<p>Sanchez (testifying as to case-specific hearsay documents) and Sargon (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4738:7-9 (Brown)</p> <p>THE WITNESS: The indexing revenue per unit train for coal is \$2,800, and the indexing revenue per unit train for soda ash is \$5,600.</p>	<p>Sanchez (testifying as to case-specific hearsay documents) and Sargon (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4738:19 (Brown)</p> <p>[Q. Then did you use those figures to determine the total indexing revenue that would have been paid by ITS to OBOT over the period from January 2024 to February 2082?</p> <p>A. Yes.</p> <p>Q. And what did you determine that number to be?]</p> <p>THE WITNESS: 380,320,407.</p>	<p>Sanchez (testifying as to case-specific hearsay documents) and Sargon (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4739:3 (Brown)</p> <p>[Q. And did you add the total of the last mile service revenue with the indexing revenue?</p> <p>A. Yes.</p> <p>Q. And what did you determine that subtotal to be?]</p> <p>THE WITNESS: 2,557,048,278.</p>	<p>Sanchez (testifying as to case-specific hearsay documents) and Sargon (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>

Transcript Cite	City's Objection	Ruling by Court on Objections
<p>4741:21-25 (Brown)</p> <p>A. Well, OGRE was anticipated to own one locomotive and lease three locomotives, so these are the costs associated with leasing those locomotives. Again, this is another item that comes from Mr. Buccalo's declaration.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4746:19 (Brown)</p> <p>[Q. Did you total up all of the expenses that OGRE was to incur over this period from 2024 to 2082?</p> <p>A. Yes.</p> <p>Q. What was that amount?]</p> <p>A. 1,671,468,017.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4747:7 (Brown)</p> <p>[Q. And so that is taking the net lost revenues of 2,557,000 – I'm sorry, 557,048,278 and subtracting the net but-for expenses of \$2,671,468,017; is that correct?]</p> <p>A. That's correct.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4747:11 (Brown)</p> <p>[Q. And what was that total?]</p> <p>THE WITNESS: 885,580,261.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4747:20 (Brown)</p> <p>[Q. And what was the total amount of the discount that you applied to the damages, or the discount for present value]</p> <p>A. 835,559,781.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4748:1 (Brown)</p> <p>[Q. What was the final number of the damages that you estimated that OGRE incurred for the period 2024 through 2082?]</p> <p>THE WITNESS: 50,020,480.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>

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Transcript Cite	City's Objection	Ruling by Court on Objections
4748:4 (Brown) <i>[Q. That was 50,020,480?]</i> A. That's correct.	<i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
4748:22 (Brown) <i>[What was the amount of damages that you concluded that OBOT and OGRE incurred over the period of February 2016 through May 2018]</i> THE WITNESS: 159,600,000.	<i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
4749:5 (Brown) <i>[Q. The total number of damages that OBOT and OGRE incurred over the period of June 2018 through December 2023]</i> THE WITNESS: 14,500,000.	<i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
4749:12 (Brown) <i>[Q. And what was the damages that you included that OBOT and OGRE suffered for the period January 2024 through February of 2082]</i> THE WITNESS: 140,500,000.	<i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
4749:17 (Brown) <i>[Q. And what was the total of all of those damage?]</i> THE WITNESS: 159,600,000.	<i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
4750:10-14 (Brown) My understanding is that the estoppel certificates and the non-disturbance agreement were sought in connection with the financing, specifically the GACP, or Great American Capital Partners, financing.	<i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

Transcript Cite	City's Objection	Ruling by Court on Objections
<p>4769:11-12 (Brown)</p> <p>The but-for world was this was going to go forward as planned</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4814:24-4815:1 (Brown)</p> <p>And there is a volume component there, but that volume component, regardless of the commodity, is probably going to remain fairly consistent.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4817:2-5 (Brown)</p> <p>That's not what -- I don't think anybody on the OBOT/OGRE side of the table would say that. I think that they all believe that they had lots of options with respect to commodities.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4820:16-18 (Brown)</p> <p>If you look at the Sumitomo financing deck, it is all based on JERA's demand for five million tons of coal per year, yes.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4823:1-5 (Brown)</p> <p><i>[Well, again, we can go back to the Sumitomo deck where JERA,] it is clearly evident in there that they were interested in taking an ownership interest in the terminal. That would have given -- if that would have occurred, they would have had a longer term interest other than ten years.</i></p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4830:12-13 (Brown)</p> <p>I think it was reasonably certain to be financed, that's correct.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>

Transcript Cite	City's Objection	Ruling by Court on Objections
<p>4834:14-18 (Brown)</p> <p>None of them said that the terminal would not be financially viable. I am not aware of any evidence in this case that would indicate that the terminal was not going to be financially viable.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4884:5-7 (Brown)</p> <p>THE WITNESS: I believe this is a complete and accurate calculation of all the money that OBOT received from ITS.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4886:15 (Brown)</p> <p><i>[Q. What did you conclude was the amount of certainty that OBOT and OGRE suffered lost profits in this matter?]</i></p> <p>A. I consider it to be very high.</p>	<p>New/undisclosed opinion (contrary to prior testimony re: 51%; changed overnight)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4887:17-4888:2 (Brown)</p> <p>if they would have obtained the estoppel certificates and the NDA, I believe the JACP funding would have been provided. That would have unlocked the Utah money. That would have given them approximately \$100 million to start construction and pay the takedown payments to OBOT. Once that was in place, I believe the SMBC funding would have come in. So I believe all of that would have occurred, but for the city's actions, which were to deny the estoppel certificates and the NDA.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>
<p>4890:20-22 (Brown)</p> <p>I believe that any credible valuation analyst would look at this deal and put a number on it that is in the 150 to \$160 million range.</p>	<p><i>Sanchez</i> (testifying as to case-specific hearsay documents) and <i>Sargon</i> (testimony not reliable without admissible foundation)</p>	<p>___ Sustained</p> <p>___ Overruled</p>

Transcript Cite	City's Objection	Ruling by Court on Objections
4891:16 (Brown) [A. I think if they're asked to value the business opportunity, the value of OBOT walking away from this deal, or the city terminating this deal and the city having to pay OBOT for that lost opportunity, they're going to put a value on this deal that is in the neighborhood of] 150 to \$160 million.	Sanchez (testifying as to case-specific hearsay documents) and Sargon (testimony not reliable without admissible foundation)	___ Sustained ___ Overruled
4903:6-16 (Wolff) A. That this particular facility was dual served by both the BNSF railroad and the Union Pacific, providing access to virtually all of the western United States on single-line service. That it had a 50-foot draft allowing for the best-in-class capesize vessels to reduce transit costs -- transit cost across the Pacific Rim. And that it had the capacity to move, we believe, up to ten to 15 million tons out of one location on an export basis. But it also had the ability to bring imports into Northern California.	Lay opinion without proper foundation per 800	___ Sustained ___ Overruled
4954:25-4955:1 (Wolff) THE WITNESS: It proffers alternative structures for the financing of the terminal.	Hearsay	___ Sustained ___ Overruled
4955:25-4956:1 (Wolff) Alternative structures to finance the construction of the terminal.	Hearsay	___ Sustained ___ Overruled

Dated: December 4, 2023

Respectfully submitted,

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