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 OAKLAND BULK AND OVERSIZED TERMINAL, *Plaintiff*
 12 OAKLAND GLOBAL RAIL ENTERPRISE, LLC, *and Counter-*
 Defendant CALIFORNIA CAPITAL & INVESTMENT GROUP

13 SUPERIOR COURT OF CALIFORNIA

14 IN AND FOR THE COUNTY OF ALAMEDA

15
 16 OAKLAND BULK AND OVERSIZED
 TERMINAL, LLC, a California limited liability
 17 company and OAKLAND GLOBAL RAIL
 ENTERPRISE, LLC, a California limited
 18 liability company,

19 Plaintiffs,

20 v.

21 CITY OF OAKLAND, a California municipal
 corporation,

22 Defendant.

23 CITY OF OAKLAND,

24 Counter-Plaintiff,

25 v.

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

28 Counter-Defendants.

Consolidated Case Nos. RG18930929 /
 RG20062473

Unlimited Civil Case / Assigned to
 Judge Noël Wise, Dept. 514

**PLAINTIFFS' [PROPOSED]
 STATEMENT OF DECISION RE
 REMEDIES**

Trial Date: July 10, 2023 (Phase 1)
 November 28, 2023 (Phase 2)

1 Plaintiff and Counter-Defendant Oakland Bulk & Oversized Terminal, LLC (“OBOT”) and
2 Plaintiff Oakland Global Rail Enterprise, LLC (“OGRE”) (collectively, “Plaintiffs”) submit the
3 following [Proposed] Statement of Decision in connection with the recently concluded remedies
4 phase of trial.

5 **Plaintiffs’ Requested Remedies**

6 Under Section 22.1 of the Ground Lease (Ex. 68), Plaintiffs are entitled to recover (1)
7 “actual damages” incurred as a direct result of the City’s default; and (2) “equitable relief,” which
8 under Section 20.1 of the Lease includes specific performance. At trial, Plaintiffs presented two
9 alternative scenarios seeking remedies expressly authorized by Section 22.1. Under Scenario 1, the
10 Lease remains in full force and effect and Plaintiffs obtain specific performance plus actual
11 damages they incurred during the period from February 2016 through entry of judgment based on
12 the City’s default. Under Scenario 2, Plaintiffs treat the Lease as terminated and obtain actual
13 damages from February 2016 through February 2082—the entire 66-year Lease term—for all harm
14 suffered by them as a direct result of the City’s breaches and wrongful termination of the Lease.

15 The Court awards the following alternative awards under both scenarios. Plaintiffs will be
16 required to elect between Scenario 1 and Scenario 2 prior to entry of judgment.

17 **Scenario 1**

18 The Court finds that the Ground Lease and Development Agreement (Ex. 7) (“DA”) and
19 OGRE’s sublease (Ex. 162) remain in full force and effect. The City is ordered to comply with the
20 terms of the Lease and DA as written subject to the following modifications:

21 1. The “Initial Milestone Date,” as that term is defined in Section 6.1.1.1 of the Lease
22 and as it is used elsewhere in the Lease, is extended due to events of Force Majeure by 2 years and
23 180 days from the date of entry of judgment in this matter.

24 2. The City’s obligations under Section 6.3.1 of the Lease to identify and pursue
25 Additional Funds as that term is used in the Lease and its obligations under Section 37.9.1 to use
26 commercially reasonable efforts to obtain third-party permits or approvals shall also be extended
27 by 2 years and 180 days from the date of entry of judgment in this matter.

28 OBOT is entitled to an extension of time to perform equal to “the period of time during

1 which performance [was] hindered” plus “such additional time thereafter as may reasonably be
2 required to complete performance of the hindered act.” (Ex. 68-132 (GL, Art. 40); *see also* Ex. 68-
3 84 (GL § 16.1).) The evidence at trial established that the City’s acts hindered, affected, and delayed
4 OBOT’s performance for at least 2 years and 180 days. As this Court has already determined, the
5 City’s acts of Force Majeure were already delaying the Project on May 15, 2018 when the Federal
6 Decision was issued—almost 5 years and 7 months ago.

7 Plaintiffs also presented uncontested evidence that a reasonable estimate of time to
8 Commence Construction of the Minimum Project is 2 years and 180 days. (RT 4419:18-4445:1,
9 4445:25-4448:23, 4449:8-4453:13.) The City presented no evidence on the amount of time it will
10 take to Commence Construction or on the length of extension that the Court should grant in equity.
11 (*See* RT 5113:14-5115:12.) The Court finds that Plaintiffs’ requested extension of 2 years and 180
12 days is reasonable.

13 In addition to the foregoing, the Court finds that OBOT is entitled to the following actual
14 damages for the period from February 16, 2016 through December 31, 2023:

15 1. Out-of-pocket damages for fees incurred in the Federal Litigation in the amount of
16 four million nine hundred and fifty thousand one hundred and four dollars (\$4,950,104);

17 2. Out-of-pocket damages for additional staff time and expenses incurred from June
18 2018 through December 31, 2023 due to the City’s breaches in the amount of two hundred seventy-
19 four thousand seven hundred and one dollars (\$274,701);

20 3. Out-of-pocket damages for extra costs incurred to install K-rail barriers to prevent
21 illegal dumping which would not have been incurred but for the City’s breach in the amount of five
22 thousand dollars (\$5,000);

23 4. Out-of-pocket damages for extra costs to repair and maintain the Property due to
24 illegal dumping which would not have been incurred but for the City’s breach in the amount of
25 thirty-seven thousand nine hundred and eighty-two dollars (\$37,982); and

26 5. Lost profits in the amount of nineteen million three hundred thousand dollars
27 (\$19,300,000) for the period June 2018 through December 31, 2023.

28 The foregoing award is without prejudice to Plaintiffs’ right to apply for and to obtain an

1 award of prevailing party attorneys' fees and costs pursuant to the terms of the parties' contracts.

2 **Scenario 2**

3 The Court finds that Plaintiffs are entitled to the following declaratory relief:

4 1. The Ground Lease (Ex. 68) is terminated consistent with Section 30.1 of the Lease,
5 and neither OBOT, OGRE, nor the City shall have any further rights or obligations under the Lease.
6 OGRE's sublease is also terminated.

7 2. The Development Agreement (Ex. 7) is terminated as it relates to OBOT.

8 3. The Development Agreement shall continue to remain in full force and effect as to
9 all other parties to that contract.

10 The Court also finds that OBOT is entitled to actual damages in the amount of one hundred
11 and fifteen million sixty-seven thousand seven hundred and eighty-seven dollars (\$115,067,787),
12 consisting of five million two hundred sixty-seven thousand seven hundred and eighty-seven
13 dollars (\$5,267,787) in out-of-pocket costs that OBOT incurred as a direct result of the City's
14 breaches of contract and one hundred nine million eight hundred thousand dollars (\$109,800,000)
15 in lost profits through the term of the Lease.

16 The Court finds that OGRE is entitled to actual damages in the amount of forty-four million
17 six hundred thousand dollars (\$44,600,000), consisting of lost revenues through the term of the
18 Lease.

19 The foregoing award is without prejudice to Plaintiffs' right to apply for and to obtain an
20 award of prevailing party attorneys' fees and costs pursuant to the terms of the parties' contracts.

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Date: December 4, 2023

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