

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION - LOS ANGELES)

LA ALLIANCE FOR HUMAN RIGHTS,)	CASE NO: 2:20-cv-02291-DOC-KESx
ET AL.,)	
)
Plaintiffs,)	CIVIL
)
vs.)	Los Angeles, California
)
) Tuesday, February 10, 2026
CITY OF LOS ANGELES, ET AL.,)	(9:02 a.m. to 11:32 a.m.)
) (1:02 p.m. to 3:00 p.m.)
Defendants.)	

HEARING RE:

ORDER TO SHOW CAUSE RE CONTEMPT CITY OF LOS ANGELES
[DKT.NO.1066] ;

MOTION TO ENFORCE A TERM OF THE PARTIES' SETTLEMENT AGREEMENT
[DKT.NO.1122]

BEFORE THE HONORABLE DAVID O. CARTER,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Los Angeles, California; Tuesday, February 10, 2026; 9:02 a.m.

--oOo--

THE COURT: And we're back in session on the LA Alliance matter. And, counsel, would you make your appearances beginning with the LA Alliance, then the City, then the intervenors please, and then the County.

MS. MITCHELL: Good morning, Your Honor, Elizabeth Mitchell, Umhofer Mitchell & King on behalf of plaintiff LA Alliance. My partner Matthew Umhofer will be here shortly.

THE COURT: All right. Thank you. Counsel.

MS. EVANGELIS: Good morning, Your Honor, Theano Evangelis on behalf of the City.

THE COURT: Morning.

MR. MCRAE: Good morning, Your Honor, Marcellus McRae on behalf of the City.

THE COURT: Good morning.

MS. KUMAR: Good morning, Your Honor, Poonam Kumar on behalf of the City.

THE COURT: Good morning.

MR. HAMBURGER: Good morning, Your Honor, Bradley Hamburger on behalf of the City.

THE COURT: Good morning.

MS. MYERS: Good morning, Your Honor, Shayla Myers on behalf of the intervenors.

THE COURT: Morning.

1 **MS. HASHMALL:** Good morning, Your Honor, Mira
2 Hashmall here for the County of Los Angeles.

3 **THE COURT:** Good morning.

4 Just to recap where we are today, the Court's become
5 concerned about possible misrepresentations made by
6 representatives of the City, related to the approval of the
7 encampment reduction plan in January of 2024. This issue is
8 separate and distinct from the issue being decided by Judge Kin
9 in the state court. And after considering the briefing filed
10 by counsel, this Court's inclined to believe it can resolve
11 this issue without intruding on the state Brown Act litigation,
12 pending before my colleague Judge Kin or the jurisdiction of
13 the state court.

14 The issue regarding potential misrepresentations made
15 by the City to this Court initially arose when the City
16 attorney seemed to represent to this Court that a vote had been
17 taken in closed session by the City Council on the encampment
18 reduction plan on January 31st of 2024.

19 This representation was seemingly soon contradicted
20 when the City attorney represented that there was nothing to
21 report from the City Council's closed session that occurred
22 that day.

23 There's been subsequent testimony before this Court
24 that, in fact, no vote was taken. These contradictions and
25 others lead to this inquiry about whether a vote was, in fact,

1 taken concerning the encampment reduction plan in closed
2 session on January 31st, 2024.

3 I want to ensure that all parties and intervenors are
4 provided with due process and the opportunity to be heard. So,
5 counsel, I want to hear your thoughts and if it's acceptable to
6 the parties, I'll begin with the City, moving to the
7 intervenors or LA Alliance, your decision, and then a rebuttal
8 round, a short rebuttal round by everyone after you've heard
9 your respective positions.

10 So, counsel on behalf of the City.

11 **MS. EVANGELIS:** Good morning, Your Honor, Theane
12 Evangelis on behalf of the City of Los Angeles and I appreciate
13 the opportunity to be heard.

14 Your Honor, the City objects to this entire line of
15 questioning. We've made our objections known to the Court.
16 We've also filed a petition for relief from the Ninth Circuit.
17 And the Ninth Circuit is considering that and has ordered
18 briefing on it, which will be complete next week.

19 So we would ask the Court, if the Court is inclined
20 to continue down this path, and especially if the Court wishes
21 to hear witness testimony if that's what's on the table right
22 now, we would ask at a minimum that we not proceed that far
23 until we've heard from the Ninth Circuit.

24 We would also ask that the Court please specify what
25 was the specific statement. So Your Honor has mentioned the

1 representation and I believe the Court said that the City
2 seemed to represent that a vote was taken. Your Honor, we
3 never represented that a vote was taken. So we will start
4 there and just please ask the Court to point to what
5 representation was made, because we've asked and we still have
6 not gotten the who, what, when, where so that we can adequately
7 respond to this issue.

8 So I would like to go through our objections, but as
9 I've said, they are all presented to the Ninth Circuit and we
10 would ask the Court to reserve ruling because, Your Honor, we
11 respectfully disagree that this proceeding, that this inquiry
12 can happen without completely nullifying the city's rights in
13 the state court proceeding.

14 The two proceedings will be on a collision course.
15 The only way to defend ourselves and to respond to the Court's
16 concerns about what happened in that closed session, would be
17 to discuss what happened in that closed session, which we
18 cannot do.

19 We've explained that for a number of reasons. The
20 Brown Act, attorney/client privilege, deliberative process
21 privilege, legislative process privilege, and so forth. All of
22 those issues are squarely presented in the state court
23 proceeding.

24 But, Your Honor, I want to take a step back here and
25 just express our bewilderment why this is a concern because

1 nobody is challenging the encampment reduction plan, nobody,
2 not the City, not intervenors, not the Alliance, everyone
3 agrees that that was a valid and binding plan. We're actually
4 here on the 8.2 motion which is all about compliance with that
5 plan. We've never taken the position that somehow that wasn't
6 validly approved, that somehow that doesn't apply or that
7 there's any infirmity with the encampment reduction plan. We
8 might disagree about what it entails, but that's about the
9 interpretation of it, not the validity of it.

10 So as an initial matter, there is nothing about the
11 Congress litigation in state court that could affect that.
12 It's off the table.

13 So, Your Honor, I'll go back to what are the Court's
14 concerns. There --

15 **THE COURT:** Counsel, would you mind for just one
16 moment.

17 Sir, there's no photographs allowed in the federal
18 court, so the CSO speak to the gentleman in the brown who's
19 been taking photographs, please, and if necessary, remove him.
20 Thank you. I apologize, counsel, there's no photographs and it
21 has nothing to do with your presentation but it was
22 distracting.

23 **MS. EVANGELIS:** Thank you, Your Honor.

24 So I'd like to go back to what was the --

25 **THE COURT:** No, no, it's the -- I'm sorry, I

1 apologize. It's the gentleman behind him, right there. Thank
2 you very much. The CSO is going to see you, sir, thank you
3 very much. And, counsel, I apologize for the interruption.

4 **MS. EVANGELIS:** Thank you, Your Honor.

5 **THE COURT:** Just a moment. If you'd take the
6 gentleman outside so we're not distracted it would be
7 appreciated. And, counsel, would you give us one moment,
8 please.

9 And, sir, you're welcome to return once we're assured
10 you have -- aren't taking anymore photographs. Thank you very
11 much.

12 **(Pause)**

13 **THE COURT:** And, counsel, if you'd like to start at
14 any place because of the interruption.

15 **MS. EVANGELIS:** Thank you, Your Honor. I'd like to
16 go back to where the Court began here. Because there is no
17 representation in the record about a vote. So that's the
18 entire premise for this hearing, without that, there is really
19 no reason for us to be having this proceeding so we're just
20 still in the dark about where in the record that supposed
21 representation was.

22 So we haven't found one. We -- it's our position we
23 never made any representation about a vote. Our best guess was
24 a joint stipulation that was filed on April 4th, 2024 which, of
25 course, the Court is familiar with where the parties said that

1 9,800 -- the 9,800 encampment resolution plan and milestones
2 was presented to the City Council on January 31st, 2024 which
3 approved them without delay.

4 There's nothing about that statement that's untrue.
5 It doesn't say whether a vote happened, whether a vote didn't
6 happen, says nothing about a vote. Doesn't say anything about
7 how approval happened, just says it was approved and it was and
8 we can perceive there's no question that that plan is valid and
9 binding.

10 So it's just not true that approval equals vote,
11 there's no basis for that anywhere. No one said anything about
12 a vote. Of course, Your Honor, when we're talking about closed
13 sessions, just as a general matter, that's when the City
14 Council receives advice from its -- from the City Attorney's
15 Office, when legal advice is discussed, those are privileged
16 communications, of course, lots of actions can be considered,
17 discussed and approved through a lot of different ways, it
18 doesn't mean there's a formal roll call vote like in a regular
19 budget session of the City Council.

20 So -- and, Your Honor, how it was approved, what the
21 contours of that was, who said what, none of that is properly
22 before this Court, because actually that is subject to all of
23 the privileges that have been raised by the City in the state
24 court proceeding.

25 And, Your Honor, this is a classic case of -- for

1 Younger (phonetic) abstention. This is a situation where there
2 is a parallel state court proceeding that is ongoing, it
3 implicates legitimate important state interests, maybe some of
4 the most important state interests that there are, governance,
5 what rules, legislative bodies abide by.

6 The legislature's -- the City Council's ability to
7 prescribe its own rules, the state's interests in all of that,
8 the Tenth Amendment concerns implicated by all this are very
9 concerning to the City.

10 And so we take issue with intruding into that. And
11 if this Court proceeds down the path of inquiring into what
12 happened, who said what, and all of that, that will have the
13 effect of an injunction really of enjoining the state court
14 proceeding of imposing something on the state court proceeding.

15 Judge Kin right now has not even issued a final
16 judgment in that action. There have been objections filed.
17 The parties are briefing it. If, in fact, he orders the
18 proceedings of that closed session to be disclosed, that would
19 be a mandatory injunction. The City has already indicated it
20 will appeal. Under state law, there's an automatic stay
21 pending all appeals for mandatory injunctions.

22 So we are really a long time away from a final ruling
23 in the state court matter. So there is nothing to do here and,
24 Your Honor, there's nothing to see here, because again I go
25 back to the fact that no one's questioning the encampment

1 reduction plan.

2 So the -- all of this is really irrelevant. But,
3 Your Honor, we're very concerned that the Court in your order
4 yesterday said that you're concerned about a willful
5 misrepresentation. That is very serious stuff. And we take it
6 seriously. But there is no evidence in this record whatsoever
7 that any representative of the City said anything that that
8 representative thought was untrue or knew was untrue.

9 The encampment reduction plan was approved. Full
10 stop. That's all that was said. And that's true. So it
11 didn't say anything about it was approved according to certain
12 procedures or in a particular way, it said nothing about a
13 vote, it said nothing about any of that.

14 So, Your Honor, to the extent that we start probing
15 all of those questions, we have serious, serious concerns.
16 Again, we're running head long into the Cangress litigation.
17 And so this is very important that we proceed carefully and
18 there is no reason to hurry here. There is no urgency, there
19 is no emergency, but if we begin asking witnesses questions
20 about what was said in a closed session with counsel, with the
21 City attorney representatives that were there, we are
22 destroying all of these privileges. We are eviscerating the
23 City's right to an appeal, all of its rights will be gone the
24 minute a witness gets up on the stand and then is ordered to
25 answer a question that will eviscerate all of those privileges.

1 And, Your Honor, it's a violation of state law for
2 City employees and others to disclose the contents of a closed
3 session. So not only are we talking about the City's
4 privileges, we're talking about personal jeopardy for a witness
5 who comes in to this courtroom to start testifying. I don't
6 want to put anyone in that position.

7 For the Court to put someone in that position right
8 now seems unnecessary, seems we should proceed with caution.
9 We should really not rush into this.

10 So I'll again say that nobody has ordered disclosure
11 of anything that happened in that session and that will be
12 litigated, that is being litigated right now. And so in light
13 of all of those privileges and concerns, we think we should
14 proceed cautiously.

15 And, Your Honor, we have not had an opportunity to
16 even brief these questions. So intervenors yesterday mentioned
17 the city charter. Well, we think that the city charter
18 actually doesn't say what they think it says in Section 2782
19 for example that talks about when the city attorney is managing
20 litigation and it does so at the direction of the City Council
21 and how that all plays out. There's no mention of a vote. But
22 let us brief that question, Your Honor, we haven't had a chance
23 to brief these privileges.

24 This is all just innuendo and assumptions and we
25 don't even know what's at issue. We really don't have a clear

1 target to even shoot at here.

2 So we think that it would be wise, Your Honor, at
3 least to wait for the Ninth Circuit, at least to allow us to
4 brief this question, at least to point out where in the record
5 there's evidence of a misrepresentation, let us have an
6 opportunity to truly defend ourselves.

7 And we really appreciate that we have the opportunity
8 to be heard today, but there's no need for a compressed
9 schedule. There's no need respectfully, Your Honor, for us to
10 move quickly within the next week to do things, to ring bells
11 that can't be unrung. This is the classic example of that
12 problem so let's proceed cautiously.

13 So I also want to address the point that intervenors
14 mentioned yesterday. They said the City has already disclosed
15 what occurred in session. That -- nothing could be further
16 from the truth than that statement, Your Honor, that's just
17 wrong. That's absolutely wrong.

18 To say that a client, we're all lawyers here, to say
19 that a client approved a course of action doesn't disclose what
20 you discussed with your client. To say that a client didn't
21 approve an action or didn't authorize someone to make a
22 settlement or -- and so forth. None of that discloses the
23 substance of the communication. This is serious stuff. This
24 is the core of attorney client privilege and no one has waived
25 that. We have not, we will not, Your Honor, waive that.

1 So we haven't disclosed any of that. No one said
2 what happened in that closed session and no one can say what
3 happened in that closed session. So, Your Honor, that waiver
4 argument is just really -- there's no basis for it whatsoever.

5 So I would welcome any questions the Court has in and
6 an opportunity to respond to intervenors, the Alliance, and
7 anyone else who will be heard today, but Your Honor, I just
8 want to again highlight that if we go down this path, we will
9 be eviscerating all of the City's privileges, we will be
10 destroying the City's right to appeal the state court
11 proceeding. We will be effectively enjoining Judge Kin from
12 his decision in that case and from proceeding in the normal
13 course.

14 So that litigation is ongoing, let's have an
15 opportunity to brief this. Let's pause for a minute. Thank
16 you.

17 **THE COURT:** Counsel, I saw some notes being passed,
18 why don't you consult with your colleagues for just a moment --

19 **MS. EVANGELIS:** Thank you.

20 **THE COURT:** -- as a courtesy, so you're certain
21 you've covered the arguments in your opening.

22 **(Pause)**

23 **MS. EVANGELIS:** Thank you.

24 **THE COURT:** Thank you. Then LA Alliance or
25 intervenors, who would prefer to present next.

1 **MS. MYERS:** That's what I think, so you got up, so.

2 **MR. UMHOFFER:** I know.

3 **MS. MYERS:** Thank you, Your Honor. Shayla Myers on
4 behalf of the intervenor, LACAN. I think it's important to
5 note, Your Honor, that the Los Angeles Community Action Network
6 who is an intervenor in this case and has been in this case
7 since the beginning brought the Congress litigation not as an
8 intervenor in this case, but rather a member of the public that
9 is extremely committed to the issue of transparency and
10 particularly the issue of transparency when it comes to
11 clearing 10,000 almost encampments from the street and ensuring
12 that the politicians and the City are accountable for the
13 decisions that they make. That is the position that they took
14 when they brought this Brown Act litigation, separate and apart
15 from this case.

16 Certainly, Your Honor, the intervenors knew about the
17 Brown Act violation as a result of this litigation, but their
18 status as a petitioner in that case is separate and apart. And
19 as we noted in our filing yesterday, we don't disagree with the
20 City's position that we should leave the Brown Act litigation
21 to itself.

22 But, Your Honor, that does not mean that this Court
23 does not have a role in interrogating the veracity of
24 statements made by the City to this Court for purposes of
25 resolving sanctions motions pending before the Court.

1 Your Honor, in the course of defending against a
2 sanctions motion and a motion for settlement enforcement, the
3 City of Los Angeles, through its -- the Assistant City Attorney
4 Scott Marcus represented that the City Council approved the
5 encampment reduction plan. That statement and the stipulation
6 that was submitted to this Court that resulted in the
7 resolution of the settlement compliance motion and was a part
8 of the resolution of that, that representation could not be
9 more clear. The City Council approved the encampment reduction
10 plan without delay.

11 Your Honor, words have meaning. The word approve
12 means something. When Scott Marcus from the City Attorney's
13 Office represented to this Court that the City Council approved
14 it, that meant without a doubt, that the City Council did it
15 consistent with the City's obligations under its charter to
16 approve actions.

17 And, Your Honor, I would point the City -- I would
18 point the Court to the City charter, which states that as
19 except as otherwise provided in the charter, action by the
20 Council shall be taken by a majority vote of the entire
21 membership of the Council.

22 And so, Your Honor, while the City did not say and
23 the City Attorney's Office did not represent that a vote was
24 taken, when the City Attorney's Office states that the City
25 Council approved without delay a plan, it is implicit and

1 important that the Court can understand the respect that that
2 was done consistent with the City charter.

3 And that, Your Honor, is the problem that we are
4 having with the City of Los Angeles and that I think Your Honor
5 has raised in the course of these contempt proceedings. Is
6 that the City of Los Angeles says things, and then when they
7 are held to account for those representations, they inform the
8 Court and the plaintiff and the intervenors and the public that
9 the words they say mean something else.

10 Well, Your Honor, that's why we're here today is to
11 ask that question, if the City Attorney's Office when they said
12 that the City Council approved it meant something else, then we
13 get to ask, what else did they mean. Because the charter is
14 very clear that approval means a vote.

15 And, Your Honor, the City absolutely should be held
16 to account to answer that fundamental question. When you said
17 approved, what did you mean? And, Your Honor, that does not
18 need to impede into the privileges that the City continues to
19 assert in the Brown Act litigation related to those closed --
20 that closed session. That is about what the City Attorney's
21 Office represented to this Court, what they meant when they
22 said that they approved the encampment reduction plan.

23 And, Your Honor, I think it is important to note
24 while the City's attorneys can say that the intervenors are
25 wrong when we say they opened the door, the City Attorney's

1 Office represented what occurred during closed session. The
2 City Attorney's Office represented that the encampment
3 reduction plan was approved in closed session. And Your Honor
4 is well within the authority of the Court to interrogate then
5 what the City meant when it says those words and that can be
6 done, Your Honor, without asking the question what was said in
7 closed session.

8 If the City Attorney's Office can point to a process
9 by which the encampment reduction plan was approved, it is
10 separate and apart from the confines of the charter, then
11 certainly they can do so. And if they do so, then it's up to
12 Your Honor to determine whether it was a misrepresentation to
13 the Court that a vote occurred.

14 Your Honor, this issue arose because in the course of
15 the Brown Act litigation, the Congress asked for a disclosure
16 of the vote. And in response to the question, what was the
17 vote, because that's how the charter says, actions have to be
18 taken by the City Council and the City represented that an
19 action was taken by the City Council, the City Attorney's
20 Office represented that no vote was taken.

21 Your Honor, City Attorney's Office represented no
22 vote was taken, which means, Your Honor, not only did they
23 disclose that an approval was given, but they included details
24 about how that approval was given, or in this case, how the
25 approval was not given, Your Honor. And that too is another

1 instance in which the City, when it is convenient for them, are
2 opening the door to what occurred during that closed session.

3 Likewise, Your Honor, in the course of the litigation
4 and in the course of the hearing, Matt Szabo testified that the
5 encampment reduction plan was approved by the City Council.
6 Your Honor, this is not just one instance or two instances,
7 this is multiple instances in which the City when it supports
8 their position is allowed to testify about what occurred or put
9 forward evidence or represents about what occurred during that
10 closed session, but when called to account about contradictory
11 statements about what occurred during that closed session, the
12 City claims that they can't disclose anything about that.

13 Your Honor, we are very clear about what the confines
14 of the Brown Act case is about, you know, I have the honor of
15 being counsel of record in both of these proceedings, and we
16 would do nothing to interfere with the sovereignty of Judge Kin
17 in those proceedings. That case was brought for a very
18 specific reason because it implicates as Ms. Evangelis says,
19 very important state interests.

20 But those interests are not implicated by the very
21 important federal interests at issue here, which is the
22 sanctity and integrity of these court proceedings. The City of
23 Los Angeles should not be allowed to make material
24 representations and contradict those material representations
25 in other instances and not be held to account, or at least,

1 Your Honor, to question about what the City intended, what it
2 meant when it said actions were taken.

3 Your Honor, these proceedings have gone on for months
4 and I think the Court has recognized, I think all of the
5 parties have recognized that much of what we are fighting about
6 are what words mean. That when the City makes representations
7 and we attempt to hold them to account, the definitions shift
8 like the winds as the court proceedings go.

9 The charter is very clear about the process by which
10 the City Council can take actions. And when the City
11 Attorney's Office represents that those actions are taken, it
12 is not on us as the parties opposing the City or Your Honor as
13 the judge in these proceedings, to in those instances clarify
14 every single question. Words have to be given meaning and when
15 the City comes back and says, words have different meanings,
16 then it's well within Your Honor's authority and obligation to
17 the sanctity of these proceedings to actually ask those
18 questions what do those words mean when they say them.

19 Your Honor, again we completely agree that these are
20 important issues. We also agree, though, that these are issues
21 that the Court is well within its authority and responsibility
22 to be interrogating.

23 In terms of the timing of it, we don't take a
24 position about whether or not the Court should wait for the
25 Ninth Circuit related to this. This issue has been outstanding

1 for quite a bit of time because there's not been a process by
2 which to raise these issues. We don't object to allowing the
3 Ninth Circuit to rule on these particular issues, because of
4 the potential concern that the City raises. That said, we
5 don't think that there's any merit whatsoever to the City's
6 position. And if the Court does choose to go forward, we do
7 have specific questions and we would represent that we don't
8 intend to ask questions specifically about what was said in
9 closed session, what -- or those sorts of things. We're simply
10 asking for clarification about the inconsistencies related to
11 the City's position and what it means for purposes of the
12 City's representations in these proceedings. Thank you.

13 **THE COURT:** The same courtesy. If you have anyone
14 here --

15 **MS. MYERS:** No one's asked, Your Honor.

16 **THE COURT:** All right. Thank you very much. Now
17 turn to LA Alliance.

18 **MR. UMHOFFER:** Thank you, Your Honor. I just want to
19 run through --

20 **THE COURT:** And would you also once again state your
21 name for the record.

22 **MR. UMHOFFER:** I'm sorry, Matthew Umhofer on behalf of
23 the LA Alliance and thank you for hearing us on this issue. I
24 just want to run through the arguments that were made by the
25 City. None of them work.

1 The City pretends to be confused about what this is
2 about. This Court has issued multiple orders specifically
3 identifying its concern about whether a representation, a
4 misrepresentation was made to the Court about the encampment
5 reduction plan.

6 The City's known about this issue already because
7 it's involved in the Cangress action, the Brown Act litigation,
8 but it also knows because on January 14th, the Court issued an
9 order about this. The City has had plenty of time and notice
10 about what's going on here and about what the concern is.

11 And, of course, the City pretended to guess at what
12 the representation was, but it knows exactly what the
13 representation was. It was made in Docket No. 713 at paragraph
14 8, a stipulation that the City entered into to resolve one of
15 its many, many failures to comply with the settlement agreement
16 in this case.

17 And in paragraph 8, the 9,800 encampment reduction
18 plan and milestones were presented to the City Council on
19 January 31st, 2024, which approved them without delay. They
20 said what happened.

21 The Court is concerned, the plaintiffs are concerned
22 and the intervenors are concerned about whether that was true.
23 Nobody's made a decision about that. We need to find the
24 facts. The City wants to prevent this Court from inquiring
25 into the facts that they put at issue. That's remarkable.

1 The City wants to both say what happened, but not say
2 what happened. They want to make representations to the Court,
3 but be unable to back them up or explain them when asked
4 questions about them. It's a remarkable amount of hubris that
5 the City thinks it's immune from questions around this kind of
6 thing. Immune from simply fact finding around this issue.

7 So the idea that they are confused about what's at
8 issue here just doesn't stand up to the record here. They know
9 exactly what they're -- what this hearing is about and why the
10 Court is concerned. And it is their -- it is in the manner in
11 which they've approved this, their last minute briefings, their
12 runs to the Ninth Circuit that exposes their nervousness about
13 this issue and fact finding into it.

14 So the next thing, next argument -- so the first
15 argument was we're confused, Your Honor, we don't know what
16 this is about. They do, the Court has given adequate notice
17 and they've had plenty of time to assess this issue and I don't
18 believe they need more, but they are certainly asking for more
19 and they're asking for more in two categories.

20 One, wait for the Ninth Circuit. The Ninth Circuit
21 already spoke. The Ninth -- they asked to stop this hearing.
22 And last night the Ninth Circuit issued an order not granting
23 that and simply -- and denying the administrative stay they
24 requested, so the Ninth Circuit has spoken about whether a
25 hearing should be stopped today. We have an answer on that.

1 And so the next question is, should we wait for the
2 Ninth Circuit to make a decision about their request, which is
3 to stop this hearing and extraordinarily remove this Court from
4 these proceedings. The Ninth Circuit has set briefing days
5 from now, we'll brief it, but the Ninth Circuit has spoken
6 about whether this hearing can go forward.

7 They asked, the Ninth Circuit did not grant a stay of
8 this hearing. So this hearing, this fact finding alone can
9 move forward.

10 They also asked, second, that we wait until the
11 entirety, I think including appeals of the Brown Act litigation
12 is concluded. If we wait that long, Your Honor, through
13 appeals, the settlement agreement will expire. That is
14 unacceptable.

15 The notion that we should wait until the Brown Act
16 litigation is complete seems to be rooted in arguments based on
17 Younger. And you heard the reach, Your Honor, in the argument
18 by the City. The reach was, this is essentially going to
19 enjoin what's happening in the Brown Act litigation to just ask
20 questions about representations made in this Court and the
21 truthfulness of it. Essentially enjoining is what I heard, or
22 words to that effect. That's the reach, Your Honor, because
23 it's not an injunction.

24 And the reason why they're putting it that way is
25 because that's what's required to get Younger abstention. To

1 get Younger abstention, they would have to show that the
2 contemplated fact finding that would happen here would enjoin
3 the state proceeding or have the practical effect of doing so.
4 But let's be clear about what that hearing -- what the Brown
5 Act litigation is about.

6 The Brown Act litigation is about whether the City
7 violated the Brown Act by doing things in closed session. That
8 question is not before the Court. The question before the
9 Court is, what is the truth of the representations that the
10 City has made, both in a stipulation filed with this Court
11 which was pretty darned important to resolving a series of
12 misleading statements by the City and which the Court relied on
13 in resolving that issue. And then Mr. Szabo also took the
14 stand during the proceedings and talked about how the City
15 Council had voted on -- had approved the encampment reduction
16 plan, his words were approved.

17 And so if we go to those statements, those can be
18 found on Docket No. 555 -- excuse me 955, page 132 of 304. And
19 he is asked,

20 "So this chart constitutes the encampment
21 reduction plan that was approved by City Council,
22 correct?"

23 Objections, overruled.

24 "I believe so, yes."

25 So we have a representation both in the stipulation

1 and in testimony and those are the two places that we've
2 identified thus far. The Court has certainly relied on the
3 representation that the representations, and by the way, the
4 questioning goes on by Ms. Myers and the answers continue
5 concerning the approval of the encampment reduction plan on
6 page 132 and 133.

7 And so we have these representations. They are
8 separate from the question of whether they should have --
9 whether what happened, this approval should have happened in
10 closed session or open session. The question here is, the City
11 made a representation. Was it true? And that matters.

12 Look, Your Honor, I -- the one thing that I was happy
13 to hear from the City is that they're not backing away from
14 their commitments under the encampment reduction plan, although
15 they actually are, because they've been trying to reduce
16 encampment reduction obligations in this action and we have
17 been pushing back on that. They can't meet those numbers.
18 They're way under where they need to be on that. They are
19 terrified of that 9,800 number, that commitment that they made
20 in writing to this Court because they can't meet it.

21 So I'm glad to hear they're sticking with it, I'm
22 glad to hear they're not backing off of it, but we are very
23 concerned any representation that's been made by the City about
24 that because it's such a critical piece.

25 We've entered into this agreement. Let's create some

1 beds. Let's reduce encampments humanely and let's do it right
2 and let's get people out of encampments and into beds. That's
3 the point. And a misrepresentation about one of those pieces
4 is critically important to what we're trying to accomplish
5 here.

6 And I would echo the arguments by Ms. Myers as well
7 and submit to any questions by the Court. If there are none,
8 I'll sit down.

9 **THE COURT:** On behalf of the County?

10 **MS. SOBEL:** The County has no position on these
11 issues, Your Honor.

12 **THE COURT:** Rebuttal by the City?

13 **MS. EVANGELIS:** Your Honor, may we have three
14 minutes?

15 **THE COURT:** Certainly.

16 **MS. EVANGELIS:** Thank you.

17 **(Pause)**

18 **THE COURT:** Okay. We're back on the record. And,
19 counsel, this is the rebuttal by the City. State your name
20 again.

21 **MS. EVANGELIS:** Thank you, Your Honor, Theane
22 Evangelis on behalf of --

23 **THE COURT:** Thank you.

24 **MS. EVANGELIS:** -- the City.

25 Your Honor, I'd like to talk about the big reach

1 here. We heard about a reach. The biggest reach of all is the
2 notion that the City made any representation about a vote.
3 What you just heard was nothing to substantiate that. In fact,
4 Ms. Myers said that it was implicit that there was a vote.
5 Implicit is not a willfulness representation. It's not a
6 misrepresentation at all.

7 So why are we here? Nobody can point to any
8 statement about a vote. And, Your Honor, the notion that we
9 are not on a collision course with state court is just
10 absolutely untrue. I mean, it is demonstrably false on what we
11 just heard. Ms. Myers said we need to interrogate the veracity
12 of the City's statements about what happened in closed session.
13 They need to back up their statements said Mr. Umhof (sic),
14 explain their statements.

15 How in the world can the City explain and defend
16 itself that its statements about what Council approved in that
17 closed session, how can it defend itself against the allegation
18 that it misrepresented that without disclosing what happened in
19 that closed session?

20 How could anyone say I didn't lie about this. I'll
21 tell you what really happened, I didn't lie. I mean, that is
22 absolutely ridiculous. The notion that we could defend
23 ourselves without disclosing what happened in that closed
24 session.

25 And, Your Honor, that's exactly what Ms. Myers is

1 seeking as a remedy before Judge Kin. That's the very remedy
2 at issue that's being briefed. She wants there to be full
3 disclosure of everything that happened. So that is exactly the
4 remedy being sought in state court and it's exactly what we
5 would need to do to defend ourselves.

6 And, Your Honor, to be ridiculed for guessing what
7 statement is at issue here, I'm really offended by that.
8 Because no one has told us the statement. So, Your Honor, the
9 only statement that we've identified is that the City Council
10 approved the encampment reduction plan.

11 So this shell game about what representation was made
12 about approval or about votes and hiding the ball, why hide the
13 ball. We're just really trying to understand here what the
14 allegations are so we can defend ourselves. And still nobody
15 has pointed to a single representation about a vote having
16 happened.

17 There is no way to thread the needle of somehow
18 walking the line between the state court proceeding and
19 misrepresentations about the state court proceeding in federal
20 court and the City charter, let's talk about that for a minute,
21 Your Honor. We've never had an opportunity to brief it.

22 Those are core state law issues, state interests.
23 And, Your Honor, the city charter only requires a vote when the
24 City Council's approval is required by law. And no City
25 Council approval was required by law of the encampment

1 reduction plan.

2 So this is all just again improper. And so we heard
3 that there was just sheer speculation that approval is -- it's
4 implicit. It means a vote. No, actually it doesn't. People
5 can approve things in lots of different ways, it can approve of
6 things, they can disapprove of them, they don't have to take
7 votes. And that is certainly contemplated by the charter and
8 by the way the City operates.

9 So it is really a fallacy and that fallacy is the
10 basis for a potential inquiry into the heart of attorney/client
11 privileged communications. No one here is hiding anything.
12 Your Honor, we are protecting the privilege. There is nothing
13 more sacrosanct in our system of justice than the
14 communications between a client and their counsel. And so,
15 yes, we will stand up for that because that is so important.
16 And that's our job here. We have to.

17 So, Your Honor, the fact that we may have disclosed
18 the result that a client approved of a course of conduct does
19 not waive the privilege over the conversations that went into
20 that decision. Of course, it didn't. That never is the case.

21 So also saying something didn't happen doesn't waive
22 the substantive communications that went into considering
23 whether it would happen. This is all just so far afield.

24 And compliance with the City charter and with local
25 laws, ordinances, state laws, none of those are federal

1 questions. None of those are questions that we should be
2 probing right now when there's a state court action that is
3 probing the very same thing. And, yes, that is exactly the
4 case for a Younger abstention. And Your Honor recited the
5 perfect case about Brown Act violations in fact, it was Lake
6 Luciana v County of Napa. It was from the Northern District of
7 California in 2009. We cited it in our papers.

8 And in that decision there was no injunction by the
9 district court, but there was the effective injunction, the
10 effective derailing of a state court proceeding because it was
11 asking the same questions and answering them in a way that
12 would intrude on the prerogatives of a separate sovereign. So
13 that is exactly what Younger abstention requires.

14 So also, Your Honor, the first I heard about
15 Mr. Szabo's testimony being at issue here was just now. Nobody
16 has said that was at issue. Nobody put that in front of us and
17 said, here's a misrepresentation. We didn't have notice of
18 that. We're -- it wasn't a misrepresentation. Again it was
19 consistent, it was City Council approved.

20 But the notion that we knew what this was all about
21 is just false. So, Your Honor, we haven't had plenty of time,
22 we just filed objections and we just got an order from the
23 Court today, respectfully still not answering our questions
24 about what the representations were.

25 And all of these questions, these are thorny legal

1 questions about state law, local city procedures, what's
2 required, all of those again are the subject of tons of
3 briefing and hearings and proceedings in state court, but we
4 even haven't had even so much as a chance to brief them here,
5 so why are we going to rush ahead to judgment, put witnesses on
6 the stand and force them to answer questions that would divulge
7 all of these -- the contents of a closed session, destroy these
8 privileges, eviscerate our appellate rights.

9 So the only questions that would be asked, Your
10 Honor, are questions about what happened in that closed
11 session. Because how else could the City defend itself. I'll
12 go back to that. Because as I stand here today, I can think of
13 no other way that we could defend ourselves than to say what
14 actually happened and why that constituted approval and, of
15 course, we cannot do that. So this is an impossible position
16 for us to be in.

17 So, Your Honor, this exactly what is going to be
18 decided by the state court, and yes, we should wait, we should
19 wait. And, Your Honor, no one misrepresented anything to this
20 Court. There's absolutely no representation about a vote,
21 innuendo, implicit statements, coded language, none of that
22 amounts to proof or even an indication of a misrepresentation,
23 not even a hint.

24 So we think this really should all be improper and
25 out of bounds for this proceeding. But, Your Honor, we would

1 ask for a minimum to brief it. We can brief if simultaneously
2 while the Ninth Circuit is considering it. But let's all
3 proceed with caution. Thank you.

4 **THE COURT:** And why don't you check with your
5 colleagues for just a moment to make certain you've covered all
6 of your arguments.

7 **(Pause)**

8 **MS. EVANGELIS:** Thank you.

9 **THE COURT:** Have you covered your arguments? Thank
10 you very much. Ms. Myers.

11 **MS. MYERS:** Thank you, Your Honor. Shayla Myers on
12 behalf of the intervenors. Just a quick point of clarification
13 related to one of the representations.

14 Actually, we did identify Mr. Szabo's testimony on
15 page 7, including reference to the transcript by page citation.
16 So that was very clearly represented to the City of Los Angeles
17 related to this in the filing that we submitted to the Court,
18 which you referenced many times.

19 **MS. EVANGELIS:** Yesterday?

20 **MS. MYERS:** Yes. But, Your Honor, I think the issue
21 before the Court is not about innuendo. The issue before the
22 Court is not what was intimated to the Court. It's what was
23 said to the Court. Your Honor, the City Attorney's Office
24 represented that the city council approved the Encampment
25 Reduction Plan. And, Your Honor, I do think it is very clear

1 and has been clear throughout the course of the past few days,
2 certainly, if not longer, that that was what was at issue here.
3 And I think your order is very clear that the issue is the
4 City's representation about what occurred related to the
5 approval of the Encampment Reduction Plan and the
6 representation by the City that the city council approved the
7 Encampment Reduction Plan.

8 And the question comes down to whether or not the
9 city council approved the Encampment Reduction Plan. And there
10 is potentially, as the City wants to now argue, a question
11 about whether a vote was required or not. But the question
12 remains, how did the city council approve the Encampment
13 Reduction Plan? That is the question before the Court for
14 purposes of determining whether or not the city council
15 actually approved it. What was the process that was used?
16 It's not about the conversation that the city council had with
17 the City Attorney's Office. It's not about why they chose the
18 course of conduct that they chose. It's about what course of
19 conduct did the city council use to approve the Encampment
20 Reduction Plan.

21 And then, Your Honor, is the question about whether
22 that was sufficient for legal purposes to constitute an
23 approval. Your Honor, if the City wants to go down that path
24 and argue that they could have engaged in a different process
25 rather than what the charter requires, i.e., a vote, then the

1 City can make that argument. But the City needs to disclose
2 what process it used to approve the Encampment Reduction Plan.
3 The City made the representation that it approved the
4 Encampment Reduction Plan. That did not come out in the course
5 of any forced disclosure related to anything that is unrelated
6 to whether or not the City was properly in a closed session
7 related to the Brown Act. The City made a representation in a
8 sanctions proceeding in order to get out of a sanctions order
9 by this Court. They made a representation. They chose to make
10 that representation of their own volition.

11 And Your Honor has then the ability to test the
12 veracity of that statement. And that's what is at issue here,
13 is the veracity of the statement that the city council approved
14 it. And the City cannot hide behind the Brown Act or Brown Act
15 litigation and avoid an inquiry into whether or not the City
16 actually did what it said to this Court that it did. It would
17 be premature to brief the issue of whether or not the City's
18 process is sufficient under the city charter unless we know
19 what that process actually was. We know what it wasn't,
20 because the City freely, when put to the test and questioned,
21 disclosed what it didn't do. And that's the problem, Your
22 Honor, is the City is engaging in selective disclosure about
23 what occurred. And when the selective disclosure contradicts
24 other selective disclosures about what occurs, the City wants
25 to then argue that Your Honor's hands are tied.

1 There is no question that attorney-client privilege
2 is incredibly important. But, Your Honor, the suggestion that
3 the sanctity of the federal court and the City's
4 representations and the truthfulness of the City's
5 representations is any less important is ridiculous. If the
6 City makes a representation of its own accord, to serve its own
7 purpose, and there is contradictory evidence about the veracity
8 of that statement, the suggestion that this Court's hands are
9 tied about asking questions about what occurred to satisfy
10 itself about what actually occurred is a complete abrogation of
11 this Court's responsibility if the Court takes that into
12 account.

13 The Court needs to know that when the City says --
14 when the City makes representations, that those statements are
15 true. After years of these courts' proceedings, we have had
16 ample reason to be suspect about those representations. And
17 particularly in instances like this, when what appears to be at
18 issue is the City applying its own definition about what it
19 means for the city council to approve it.

20 The City wants to apply its own definition, Your
21 Honor, about what it means to approve the Encampment Reduction
22 Plan, then all we are asking, Your Honor, is an opportunity to
23 ask that question. If the City didn't mean that it approved it
24 consistent with its obligations under the charter, then what
25 did it mean when it said that it approved the Encampment

1 Reduction Plan? That's what we need for purposes of continuing
2 these proceedings. That's what we are seeking for purposes of
3 witness testimony today. And that's what we believe is well
4 within this Court's authority and does not impede in the state
5 court proceedings. Thank you.

6 **THE COURT:** And you have no one else there that you
7 need to consult with, correct?

8 **MS. MYERS:** No, Your Honor.

9 **THE COURT:** As a courtesy, then, back to LA Alliance,
10 please. Rebuttal.

11 **MR. UMHOFFER:** Thank you, Your Honor. Matthew Umhofer
12 again on behalf of the Alliance.

13 The message from the City is, trust us, there was no
14 misrepresentation. That's the message that was said. Your
15 Honor, there was no misrepresentation. Let's find some facts,
16 Your Honor. Let's find some facts.

17 Now, the City wants to prevent that, and they have
18 posed two sort of hurdles. One is the privilege, and the
19 privilege is important. There's some very interesting
20 questions about privilege raised by the fact that the City
21 actually represented not just the outcome, but what happened in
22 the room approved. So in the context of the attorney-client
23 privilege, if I say what happened in a room with my client and
24 I say the client approved something, that is a disclosure, that
25 is potentially a waiver. But let's take this step-by-step,

1 Your Honor. Let's get some fact-finding going.

2 They can assert the privilege and answer the
3 questions. If the Court concludes that there's waiver, the
4 Court wants more briefing, we can do it at that point or after
5 the witness is questioned. So we can take it step-by-step.
6 Let's get witnesses in here. Let's find some facts. They can
7 assert the privilege. If the Court orders people to answer
8 over an assertion of privilege, then they have an opportunity
9 for that witness to refuse, to bear the consequences of that,
10 and to take it up to the Ninth Circuit. That's the proper
11 procedure, not to run to the Ninth Circuit before anything has
12 happened. There may be a way for us to navigate these hearings
13 without intruding upon the privilege. There may be a way for
14 us to find those facts.

15 Counsel has already suggested one of those
16 ways. They can say what didn't happen. There are many ways
17 for us to navigate this, but finding a fact is something the
18 City should not be afraid of, but they really seem to be. I
19 want to come back to Younger because it is at the core of their
20 argument about why this Court shouldn't go any further and
21 should wait for the Ninth Circuit and, indeed, wait for the
22 entirety of the state proceedings, which conveniently would
23 fall to conclude, including appeals, which would conveniently
24 fall after this Court has lost jurisdiction over this case.

25 So I talked about one reason why under Younger that

1 they can't meet the requirements. The Ninth Circuit has made
2 it clear you've got to meet all four requirements. And the
3 last requirement imposed by the Ninth Circuit was, of course,
4 that there would have to be essentially that proceeding here
5 would be an injunction. And that's not the case. The Court is
6 not considering enjoining any conduct right now. The Court is
7 considering whether the City misrepresented facts. But another
8 aspect of the Younger abstention, which I think is important
9 here, is it's a federalism issue. And the Ninth Circuit has
10 specifically said that duplication, potential for duplication
11 in federal court and state court, is not alone enough to
12 prevent a federal court from proceeding.

13 And this is what the court said in Green v. City of
14 Tucson, 255 F.3d 1086. Since the possibility of duplicative
15 litigation is the price of federalism, federal and state
16 courts, the prospect of such duplication without more does not
17 constitute interference with state court proceedings justifying
18 a federal court's dismissal of a case properly brought within
19 its jurisdiction or in this case, a federal court's contempt
20 proceedings.

21 So all they have and their core argument is you might
22 be deciding something. There might be a duplicative ruling in
23 this court and there, and the Ninth Circuit said that isn't
24 enough alone. The Ninth Circuit has gone on to say that there
25 must be a vital interest at stake in the state proceeding.

1 It's beyond the norm. The vital interest can't just be the
2 state's judicial functions. It can't be a state's generic
3 interest in the resolution of a case. It has to be specific.
4 It has to be of such universal value that the prompt resolution
5 of the case is not cognizable for Younger abstention. Rather,
6 the interest at stake must go to the core of the administration
7 of the state's judicial system and its importance must be
8 measured by considering its significance broadly. That's the
9 Ninth Circuit speaking about that.

10 They haven't even tried to identify a vital interest
11 other than the state court's proceedings, which is not enough,
12 according to the Ninth Circuit. So, Your Honor, neither the
13 privilege nor Younger poses a burden or an obstacle to
14 proceeding with fact-finding here. They can assert their
15 privileges. We can work it through. But what they can't do is
16 prevent this Court from even engaging in fact-finding.

17 Let's find some facts, Your Honor, and if they're
18 right that no misrepresentation was made, let's move forward
19 together. But given the history of this case, I think it's
20 highly likely that there was a misrepresentation made. And
21 that's important, Your Honor. And the Court has an independent
22 obligation and right to inquire into candor to this Court. And
23 I would submit on that, Your Honor.

24 **THE COURT:** On behalf of the County.

25 **MS. SOBEL:** No position, Your Honor.

1 **(Pause)**

2 **THE COURT:** Counsel, I'll have a decision with you or
3 for you shortly, and we'll give everyone a chance for a brief
4 recess. But before we take that recess, perhaps it's best to
5 go back, so we're all on the same page, to the January 31st,
6 2024 session. And I'm going to take judicial notice of that
7 session. And Anne or Megan, would you put up that session?
8 And it will have the opening that will show January 31st of
9 2024. And we'll show the recess to -- of this item, either
10 item 21 or 22. And then we'll show whatever representations
11 were made, so that we have no disagreement about what was said
12 that day. And this will be brief, so that we all have the same
13 genesis that's caused the Court's concern.

14 **(Pause)**

15 **MR. MCRAE:** Your Honor, is this a statement that was
16 made to the Court?

17 **THE COURT:** Counsel, this will be so evident in just
18 a moment.

19 **(Pause)**

20 **THE COURT:** All right, Counsel, the first image that
21 will come up on the screen is Los Angeles City Council agenda
22 for January 31st, 2024, which you're viewing at this time.
23 You'll have adequate time for any objections or comments in
24 just a moment. And, Counsel, this is a rather lengthy meeting
25 by the council. And unless there's objection, I'll take

1 judicial notice of it. But can you see this on the screens in
2 front of you?

3 **SPEAKER:** Yes, Your Honor.

4 **THE COURT:** I want to make sure the screens are
5 functioning.

6 **MR. UMHOFFER:** Yes, Your Honor, we can.

7 **THE COURT:** Can you? Okay.

8 **(Pause)**

9 **(At 10:11 a.m., video played)**

10 **"SPEAKER:** -- says we've already met about it in
11 committee, so we can go ahead and vote. But at that
12 moment, the public is not heard, typically. And
13 that's the problem, because there's a substantial
14 change when you do announce, we're going to spend \$50
15 billion filling a hole that Blumenfeld created by
16 overlooking the bicycle lobby or something. But when
17 that information comes out, the public has a right to
18 say nay, yay, or hooray. But it's not acceptable the
19 way you do it now, so I'm going to have to -- I've
20 said this to Corcoran before. He doesn't seem to
21 care, because he's, as he said the other day, his
22 best-by date is approaching very quickly. But this
23 is not a system that works. We showed you that the
24 special meeting rules that you were breaking didn't
25 work. I encourage you to do the appropriate thing,

1 and like you should be doing with some of these
2 recounts, mediate a resolution.

3 **"SPEAKER:** Mr. Patton, your time has expired.

4 **"SPEAKER:** Thank you very much. That'll close public
5 comment on all agenda items and close general
6 public --"

7 **THE COURT:** Let's stop this tape for just a moment.
8 You obviously recognize different council members. Mr. Marcus
9 of the City Attorney's Office is the gentleman to my right, to
10 your left, standing by the door in a blue suit, red tie, and
11 white shirt with his hand in his pocket. Would you please
12 continue now? We're trying to identify the location where the
13 counsel goes into closed session.

14 **(At 10:13 a.m., video played)**

15 **"SPEAKER:** Mr. Clerk, what's now before us?

16 **"SPEAKER:** Mr. President, the council may now vote on
17 items 12 through 21.

18 **"SPEAKER:** Okay. 12 through 21 are before us,
19 members. I see no members wishing to be heard, so
20 let's go ahead and open the roll, close the roll, and
21 tabulate the votes.

22 **"SPEAKER:** Twelve ayes.

23 **"SPEAKER:** Very good. Is there any other business
24 that can be taken up in open session?

25 **"SPEAKER:** Not at this time, sir. The council may

1 now proceed to closed session item 22.

2 **"SPEAKER:** All right, let's go ahead and prepare the
3 chambers for closed session, please."

4 **THE COURT:** Now, there's a period of time in closed
5 session. You'll see this on the tape. But instead of
6 belaboring the time spent, we'll go to the end when the council
7 comes out of closed session, so we all have the beginning of
8 this issue before the Court.

9 **(At 10:14 a.m., video played)**

10 **"SPEAKER:** All right, after a lengthy closed session
11 discussion, the council is back now in open
12 session. Mr. City Attorney, is there anything to
13 report from the closed session?

14 **"SPEAKER:** There is not.

15 **"SPEAKER:** And if I may, Mr. President, I'll call
16 roll.

17 **"SPEAKER:** Oh, thank you very much. Let's call the
18 roll, please, Mr. Clerk.

19 **"SPEAKER:** Thank you, Mr. President. Blumenfield, De
20 Leon, Harris-Dawson, Hernandez, Hutt, Krekorian, Lee,
21 McOsker, Padilla, Park, Price, Raman, Rodriguez,
22 Soto-Martinez, Yaroslavsky. Eleven members present
23 in our quorum, Mr. President.

24 **"SPEAKER:** Thank you very much.

25 Mr. City Attorney, again, is there any actionable

1 item that needs to be reported from closed session?

2 **"SPEAKER:** No, Mr. President. There is nothing to
3 report out of closed session.

4 **"SPEAKER:** Very good. With that, Mr. Clerk, what's
5 next before us?

6 **"SPEAKER:** Council has motions for posting and
7 referral."

8 **MR. MCRAE:** Your Honor, did you want our objections
9 now?

10 **THE COURT:** Counsel, just one moment, please.

11 **(Pause)**

12 **THE COURT:** Each of you have cited or referred to
13 document 668-1, which was the declaration in support of the
14 motion wherein the -- I'm sorry, Docket 713, my apologies --
15 where the statement of facts signed by the Chief Assistant City
16 Attorney, Scott Marcus, then counsel of record for the City of
17 Los Angeles in a joint stipulation stated, quote, that the
18 9,800 encampment reduction plan and milestones were presented
19 to the city council on January 31st, 2024, which approved them
20 without delay, and much of the argument today has centered
21 around the word approved.

22 Upon further inquiry, in a response from the City of
23 Los Angeles on November 27th of 2024, a contraposition was
24 taken by Strefan Fauble on page 2 of document 1152-1, that
25 regarding the January 31st, 2024 closed session, no settlement

1 or agreement was voted on or approved. In fact, no vote was
2 taken. That's also found in document 668. Strike that. Once
3 again, in document 773, page 3 and 4.

4 Subsequent to that, the Court had received a direct
5 testimony, and could I have the -- well, document 955, if
6 counsel would turn to that. You've already referenced the
7 statement by Matt Szabo that a vote was taken.

8 **SPEAKER:** Your Honor, did you just say --

9 **THE COURT:** Counsel, I'm sorry. Please let me
10 finish, and then I'll pay you all the courtesy and the time,
11 okay, all the time you need without interruption.

12 And, Megan, if you'd help me again with this
13 transcript. I think I can find it. And I refer you to page
14 126 of 955, where Mr. Szabo states in line 25 it was
15 approved. And this is referred to in lines 11 through
16 13. Okay, and so then the Encampment Reduction Plan, you said
17 that was approved by the city council, and Mr. Szabo, 25
18 answers, it was approved. I want to think about your arguments
19 concerning Younger obsession for a few moments, and certainly
20 courtesy to the circuit. So I want a little bit of time for
21 reflection.

22 This has raised the issue of whether, in fact, a vote
23 was even taken. I tentatively believe that this can be
24 resolved without intruding on the State Brown Act litigation
25 pending before Judge Kin, but I very much appreciate your oral

1 arguments today, and I want to reflect on that once again after
2 your arguments to the Court today.

3 And what's caused this concern is the potential
4 misrepresentations by the City that once again initially arose
5 with these contradictory statements, this Court needs to ensure
6 due process and your opportunity to be heard, which is why I've
7 opened this up for oral argument today. And, in fact, I want
8 time to tentatively consider that and come back to you in
9 probably 20 minutes to half an hour.

10 I want due process. I want to make certain that
11 there's no confidentiality breach by the City, as you've
12 alluded to, and whether the parties simply wish to rest on the
13 state of this record or if we did proceed forward, who in fact
14 would be called. And in the briefing that I received in
15 document 1152 on page 9, lines 7 through 12 or 7 through 10, it
16 states that the intervenors have requested that Matt
17 Szabo, Scott Marcus, Strefan Fauble appear at the hearing on
18 February 10th. The City has informed intervenors that
19 Mr. Szabo is not available, but Mr. Marcus and Mr. Fauble are
20 available. And in footnote 3 that the City indicated it would
21 object to the testimony of these witnesses.

22 You mentioned that the circuit was presented with a
23 requested stay. Was that yesterday or last evening you said?

24 **MS. EVANGELIS:** Yes, Your Honor and --

25 **THE COURT:** And what was the holding? In other

1 words, I'd like to see what the circuit stated regardless of
2 your representations on either side.

3 **MS. EVANGELIS:** Yes.

4 **THE COURT:** So that -- has the circuit stayed this
5 proceeding?

6 **MS. EVANGELIS:** Your Honor, we requested a stay and
7 the Ninth Circuit did not grant an administrative stay, but it
8 did call for briefing and the brief -- the response to our
9 petition is due in seven days, and then we have three days for
10 a reply thereafter.

11 **THE COURT:** So the circuit has not stayed this
12 proceeding, but it's called for briefing.

13 **MS. EVANGELIS:** That's correct.

14 **THE COURT:** Okay. Fair enough. Is there any
15 disagreement that this is a portion at least that's been played
16 in court of the January 31st, 2024, council meeting?

17 **MR. MCRAE:** Your Honor, respectfully, we didn't have
18 any notice of this. We need to confer with our client and
19 review this in full context --

20 **THE COURT:** Why don't you confer?

21 **MR. MCRAE:** -- to answer the Court's question as to
22 whether we have an objection, as opposed to having a snippet.

23 **THE COURT:** All right. Sure. Well, why don't you do
24 that? Then we'll take a recess and I think this is common
25 counsel. It's -- every one of the city council meetings are

1 viewable by the public and why don't you call your client and
2 see if they're objecting to this.

3 **MR. MCRAE:** We can do that. Can we state our other
4 objections, though?

5 **THE COURT:** Oh, absolutely.

6 **MR. MCRAE:** Okay. So for starters as I just
7 indicated, we have filed at least two different requests to get
8 a basic understanding not by deduction, not by us guessing.
9 That's not what due process is, but by asking the Court what
10 exactly is the misrepresentation? When was it made? By whom?
11 Why does the Court think it's a misrepresentation? And what is
12 the legal and factual basis that's going to inform the
13 landscape of the hearing?

14 We shouldn't have to get up here and be mocked
15 because we have to guess at the answer to those questions and
16 as we're sitting here now, we're hearing snippets out of
17 documents. We're hearing references to other people's
18 testimony from briefs that were filed yesterday. What -- why?
19 Why is there this shroud of mystery around this? Give us an
20 opportunity to fully digest whatever it is that is the source
21 of concern for the Court and then set a briefing schedule to
22 proceed in a logical, linear progression, starting with is
23 there a legal basis to say that a vote must be taken for there
24 to be approval? Starting point.

25 If you don't have the answer to that question

1 legally, why are you even proceeding? Because you're basically
2 operating into assumption that there is a misrepresentation,
3 when you haven't determined that the statement made could not
4 be factually correct. That's number one.

5 And then going beyond that, judicial notice as the
6 Court knows is a vehicle only to take notice of the fact that
7 something exists, not for the truth. That's the point of
8 judicial notice. So if the Court is relying on whatever that
9 was as a basis to make some decision, obviously we object,
10 because it has an evidentiary limitation that's built into the
11 doctrine of judicial notice.

12 Also, we had no idea who was speaking and as the
13 Court started with its statement, this is a rather long
14 proceeding. Well, we clearly didn't have a chance to ingest
15 all of that and to distill it to make a quick statement on
16 whether we object to it, whether it's completely out of
17 context, and more to the point, how many different items were
18 the source of that meeting? Meaning if the Court is trying to
19 draw some type of deduction that something that it heard must
20 mean that there's an inconsistency with something that was
21 said, the -- one of the first questions is was any statement
22 that was played in that snippet inexorably limited to a
23 singular issue or maybe there were multiple issues where
24 different courses of action could or could not have been
25 taken.

1 Again, it's speculation and assumption because it
2 cannot overcome the cognitive dissonance that you can defend a
3 misrepresentation without disclosing speech. The -- we're
4 literally -- after playing all of that in the exact same
5 position of no one has answered the question other than
6 uttering abstractions, how is the City to defend an alleged
7 misrepresentation regarding what happened in a closed session
8 without talking about what happened in the closed session? And
9 we could start with, you know what, there are more than one
10 ways to have approval, but who are we kidding? That's not
11 going to satisfy the people pressing on this because it'll be
12 then well, no, but how, and when, and what was said, meaning
13 you are essentially making a distinction without a difference
14 and asking for the content of that information.

15 I think the other point is the Court made reference
16 to maybe it was inconsistency or seeming inconsistency. There
17 are two statements that the Court made reference to. Matt
18 Szabo saying approved and a letter from Mr. Fauble saying
19 approved. How is that inconsistent with the stipulation? All
20 three of them say approved.

21 I go back to Ms. Evangelis's question, where is the
22 statement that someone made a misrepresentation? Also, where
23 did someone say there was a vote? Now, here's what appears to
24 be happening. You could try to fashion an inconsistency if you
25 were to -- if you were to inject the statement approval that it

1 means vote, but if you're doing that, you're not actually
2 properly determining whether or not there's an inconsistency or
3 misrepresentation. You're creating a misrepresentation by
4 operating on a factual assumption about what a word means
5 and determining in advance, without the benefit of legal
6 briefing, that it could only mean a vote. That's not
7 a searching inquiry in terms of a factual basis for
8 inconsistency or misrepresentation. Again, it's trying to
9 basically create one for whatever reason, which is not really
10 clear.

11 And so as far as -- you know, this whole point about
12 you know, what is the -- how this connects to this? I asked
13 the Court earlier. Was whatever we just saw, was that a
14 representation to the Court? Because as I understood the
15 impetus of the Court's concern was a misrepresentation to the
16 Court. One would think that that would mean a
17 misrepresentation to the Court. This is something that was
18 said to the -- in the general public. And again, the full
19 context we don't have the benefit of, so how is it even
20 relevant to what was said to the Court or what wasn't said to
21 the Court? And how many questions would we have to answer
22 about the very thing that we all saw was in closed session to
23 distill whether or not it indeed contains any probative
24 information for this proceeding.

25 And so I -- we could not object more strenuously to

1 whatever that was that was just played. Also, we object to why
2 didn't we have notice of all of this before we came in here?
3 We've asked multiple times for it and I concur and join in
4 everything that Ms. Evangelis said about can we please, as
5 opposed to deciding whether somebody has to testify to
6 something, have briefing. This -- why is this any different
7 than anything else where you determine issues to be decided?

8 Let's start with framing the legal landscape. What
9 is the salient and applicable law that governs this question?
10 How procedurally can we go about doing it? Then we can ask do
11 we even need evidence? And if so, how do we do that while
12 protecting appellate rights and rights to appeal? Can we do
13 that first? And if we do that, then we can get to the question
14 of whether or not we ever come to a point about taking
15 evidence. So those are our objections.

16 **THE COURT:** Thank you. I want to pay the other
17 parties any opportunity to respond if you'd like to.

18 **MR. UMHOFFER:** Before I respond to that, Your Honor,
19 I -- this is again Matthew Umhofer on behalf of the LA
20 Alliance. I do want to note that we have two people who were
21 invited by the Court to attend, at least two. I believe the
22 first Assistant United States Attorney is here, Mr. Saley, and
23 Mr. Hockman are -- is also here. And I know we're focused on
24 these arguments, but I do want to be respectful of their time.

25 **THE COURT:** I want to thank you. And also I believe

1 LAHSA is here as well. And if you'd just identify yourself
2 with the Court's appreciation.

3 **MS. O'NEILL:** Sure, Your Honor. Interim CEO, Gita
4 O'Neill.

5 **THE COURT:** Thank you very much. It'll stop a lot of
6 the misinformation. You're here to personally hear firsthand
7 about these proceedings, so I appreciate your presence. And
8 also, while you're here, I'd like to say to the County, I
9 appreciate, and I think the public appreciates, your last
10 notice to the Court concerning the attempted recovery of the
11 \$50.8 million that was distributed in 2018-19 with no
12 milestones and no contracts.

13 And I think you've endeavored to bring the Court up
14 to date about the attempts to recover those monies. And from
15 memory, I had noticed that there was initially about \$2 million
16 that had been recovered in some form when the Court took notice
17 of this. That's subsequently been reduced into the 40 million,
18 37 million, and it's represented about \$30 million is still
19 outstanding. I'd ask if you'd be so kind to break that down
20 into those in-kind contributions versus the cash contributions
21 that have been recovered. And I'm using contributions, and it
22 was represented by another LAHSA official here two or three
23 hearings ago. I'd have to go back that they would attempt to
24 do so, but in the last couple of hearings, we've moved on to
25 other subjects.

1 And so I haven't come back to that, but if you could
2 help the Court and the public in terms of whether those are in-
3 kind repayments by providers or whether they're cash
4 repayments, I'd appreciate that. But other than that, I
5 appreciate the County's efforts in that regard.

6 **MS. HASHMALL:** Thank you, Your Honor. I'll convey
7 that to my client.

8 **THE COURT:** All right, now, Mr. Umhofer, why don't
9 you finish, and I'll turn to Ms. Myers.

10 **MR. UMHOFFER:** Yes, Your Honor. I think two
11 questions. I think the central question posed by the post was,
12 I think, an objection to the video. Let's start with
13 relevance. Is it relevant what happened before the city
14 council in and around this apparent approval? Yes, it's
15 absolutely relevant. The suggestion that this isn't even
16 relevant is highly questionable.

17 The second question that sort of, I think I gleaned
18 from counsel's passionate presentation was, shouldn't we start
19 with briefing? And that's not typically how evidentiary
20 hearings work. We do evidentiary hearings, and then we have
21 briefing. They're complaining about notice. We think it's
22 clear. It's up to the Court to determine whether they've had
23 enough notice. We think they have. The Court's issued several
24 orders. There's no mystery here.

25 The suggestion that the City would be surprised by a

1 city council meeting video seems a little bit far afield. We
2 think the video is acceptable as a subject of judicial notice.
3 The City will have time to process that because we won't finish
4 this hearing today, and they will be able to brief it after.
5 The notion that we need rounds of briefing before, and then an
6 evidentiary hearing, and then rounds of briefing after, I
7 think, doesn't square with the proper procedure here. So we
8 would submit that evidence could be taken today from the two
9 witnesses who are available. The City can have time to process
10 the video that the City owns and already has. And we can
11 proceed with this hearing, and then briefing can come
12 after. But there's no reason to stop this hearing from
13 proceeding.

14 I would also note that, and I can read the text of
15 the Ninth Circuit's decision last night. I apologize, I
16 mistakenly believe that this Court received decisions by the
17 Ninth Circuit, and that is our fault for not notifying this
18 court of decisions by the Ninth Circuit. But what I can
19 represent, we will get copies of that, of both the briefing
20 that was submitted to the Ninth Circuit by the City. We didn't
21 have time, and we're not permitted to submit an opposing brief.
22 Then the Ninth Circuit issued its order last night, expressly
23 denying an administrative stay of this hearing. So we'll get
24 that to the Court during the break.

25 **THE COURT:** All right. Thank you. Ms. Myers?

1 **MS. MYERS:** Thank you, Your Honor. Cognizant that
2 Your Honor wanted to take some time to review this, I'll just
3 say one point about the statements by the City of Los Angeles,
4 and sort of the shocking statement that I think sums up the
5 issues that have been before the Court for the last few months.
6 Is asking whether the Court can make a factual assumption about
7 what a word means. Your Honor, we consistently have this fight
8 in this court. The factual assumptions that underlie what a
9 word means.

10 Mr. Marcus represented that the city council approved
11 the encampment reduction plan. What we are here today, what
12 our inquiry would be focused on, is what Mr. Marcus meant when
13 he said the city council approved the encampment reduction
14 plan. We can brief what the charter means, and I quoted the
15 charter, but certainly what is at issue is what the city
16 council did when it approved the encampment reduction plan.
17 And with that on the table, Your Honor, then we can brief the
18 question about whether or not that was sufficient for purposes
19 of the charter to constitute approval. But without that
20 information, then we lack the factual assumption about what a
21 word means.

22 Your Honor, words do not exist in a vacuum. They
23 exist within the legal confines, the plain understanding of
24 those words. When the City says that the city council did
25 something, i.e. approves something, and we have to be able to

1 rest assured that the City is relying on a reasonable
2 interpretation of that word. We have to know what the City
3 meant, and that's what we would like to ask today. And after
4 that, then we can proceed with briefing. Thank you, Your
5 Honor.

6 **THE COURT:** All right. Well, I thank all of you.
7 We'll be in recess for half an hour, please. Thank you.

8 **(Recessed at 10:39 a.m.; to reconvene at 11:29 a.m.)**

9 **THE COURT:** We're back on the record. All counsel
10 are present. After thoughtful deliberation and consideration,
11 this Court still believes it can resolve the misrepresentation
12 issue without intruding into the State Brown Act litigation if
13 the testimony in this Court is focused and limited and
14 respectful of any applicable privilege claim.

15 So let's have Scott Marcus and Strefan Faubel, who
16 the parties represented were available over this afternoon,
17 have everyone go to lunch. It's 11:30 now and let's extend
18 that, but ordered to be back and present at 1:00 p.m. for their
19 testimony. And we'll hear very limited testimony on the issue
20 of whether a vote was taken and what the word approval means if
21 it was used. We're going to get the facts out on this limited
22 issue, but what's really an issue here is a very narrow issue
23 that I've said repeatedly can be resolved quickly and is
24 separate and distinct from the state court proceedings, that
25 privileges can be protected by focusing on this very narrow

1 issue.

2 So I'd like to hear the facts on this issue, and
3 we'll follow the evidence to find the truth in this matter.
4 And once we have the facts, then we can have briefing on the
5 legal effects of those facts and discuss the timing of
6 that. So counsel, we'll be in recess until 1 o'clock. Thank
7 you very much.

8 **MR. MCRAE:** Your Honor, may I make one correction to
9 something I said? I would appreciate it because I want the
10 record to be clear. I need to correct something very briefly.

11 **THE COURT:** Certainly.

12 **MR. MCRAE:** When I was talking about the statement
13 made by Mr. Fauble, the correction I need to make is that what
14 he actually said, and I believe this is the letter that the
15 court was referring to, that regarding the January 31st 2024
16 closed session, no settlement or agreement was voted on or
17 approved. And then it says in fact no vote was taken,
18 therefore there could be -- excuse me, therefore, there could
19 not be anything to report out of the January 31st, 2024, closed
20 session.

21 So when I was responding to the snippet that we saw
22 earlier, I believe I said that Mr. Fauble had said that the
23 referring to the encampment reduction was approved. That is
24 not correct, at least as far as I'm seeing in this letter. I
25 want to be very clear. I've read what he said and obviously

1 the City's position is the same, which is that that statement
2 that no settlement or agreement was voted on or approved is not
3 inconsistent with saying that the encampment reduction plan was
4 approved. Thank you, Your Honor.

5 **THE COURT:** I expect that this document may become a
6 part of the record, so there won't be any issue. I want to
7 thank you for being here. We're going to have a hearing this
8 afternoon. I don't know if LAHSA's presence is needed or
9 required. You're always welcome, so you have first-hand
10 knowledge, okay? And for any of the other parties, the United
11 States Attorney Nathan Hockman was here, et cetera. If you
12 choose to be, so be it, but otherwise, thank you for your
13 courtesy, as well as LAHSA. Thank you.

14 **(Recessed at 11:32 a.m.; reconvened at 1:02 p.m.)**

15 **THE COURT:** All right, then we're back on the
16 record. All counsel are present. The parties I believe are
17 present. And, counsel, who's present?

18 **MS. MITCHELL:** I'm sorry, Your Honor?

19 **THE COURT:** Who's present to testify?

20 **MS. MITCHELL:** So I believe that Ms. Myers is going
21 to be calling witnesses.

22 **MS. MYERS:** Yes, for a change of pace, Your Honor,
23 I'll be going first today.

24 **THE COURT:** All right.

25 **MS. MYERS:** We'll call Scott Marcus.

1 **THE COURT:** Thank you very much. Mr. Marcus, would
2 you come forward, please. And, sir, would you be kind enough
3 to raise your right hand, please?

4 **SCOTT MARCUS, INTERVENORS' WITNESS, SWORN**

5 **THE COURT:** Thank you, sir. Would you please be
6 seated? And after you're seated, would you state your full
7 name, please?

8 **THE WITNESS:** Scott Marcus.

9 **THE COURT:** Would you spell your last name, sir?

10 **THE WITNESS:** M-A-R-C-U-S.

11 **THE COURT:** Direct examination, please.

12 **MS. KUMAR:** Your Honor, may I just be heard?

13 **THE COURT:** Please.

14 **MS. KUMAR:** Your Honor, again, obviously, it's --

15 **THE COURT:** Would you use the microphone, though, or
16 go to the lectern so we can hear you.

17 **MS. KUMAR:** Your Honor, just for the record, the
18 City, of course, repeats its objections to any witnesses being
19 called for all of the reasons that were discussed at length
20 this morning, including but not limited to the fact that this
21 threatens the Brown Act protections, of course, as well as the
22 protections of the attorney-client privilege, the deliberative
23 process privilege, the legislative privilege, and the official
24 information privilege, as well as the other reasons set forth
25 by my colleagues, Ms. Evangelis and Mr. McRae.

1 We'd also, Your Honor, just state for the record that
2 we object to the Court's use of introduction sua sponte of the
3 courts -- of the city council meeting that took place on
4 January 31st, 2024. Of course, that was not previously
5 introduced by any party to the City's knowledge, and it was the
6 Court seemingly doing its own investigation, finding that video
7 and showing it, and suggesting that that was a basis for a
8 possible contradiction and for a contempt finding or willful
9 misrepresentation finding.

10 So, Your Honor, we just state those objections for
11 the record.

12 **THE COURT:** Let's take the last issue first
13 concerning due process. The Court can move slowly in this
14 matter, but the January 31st, 2024 video speaks for itself, but
15 I won't receive it if there's an objection at this time. You
16 can have a further foundation. Second, acts are not
17 privileged. Confidential communications may be privileged, and
18 the Court will be very careful in that arena. And finally, the
19 record that I've made will suffice concerning the Brown Act,
20 and the Court will pay deference and follow the law
21 thoughtfully so that there's no interference with my colleague,
22 Judge Kin, in the Superior Court. Counsel.

23 **MS. MYERS:** Thank you, Your Honor. Shayla Myers with
24 the Legal Aid Foundation of Los Angeles on behalf of the
25 intervenors.

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DIRECT EXAMINATION

BY MS. MYERS:

Q Good afternoon, Mr. Marcus. Thank you for being here today.

A Good afternoon.

Q Are you currently employed by the City of Los Angeles?

A Yes.

Q And what is your job title?

A My title is chief of the criminal branch.

Q Is that within the City Attorney's Office?

A Yes.

Q Okay. You were previously counsel of record in this case, correct?

A I was one of the counsels of record in this case, yes.

Q Do you know the dates where you were counsel of record?

A I believe the case was filed sometime in February or March of 2000, and I continued in that role until roughly April or so of 2024.

Q Just to clarify, do you mean 2020?

A Yes.

Q Okay. Were you counsel of record when this case settled?

A Yes.

Q And were you involved in the settlement?

A Yes.

Q And so are you familiar with the settlement agreement in

1 this case?

2 A Yes.

3 Q Did you sign the settlement agreement?

4 A I may have, I don't recall.

5 Q Just give me one second. I'm going to show you what's
6 been previously marked as Exhibit 25. You can just take a
7 minute to look at this, starting here on page 6 of the
8 document. Is this a settlement agreement that you previously
9 referred to?

10 A Yes, it appears to be.

11 Q Okay. So I'm going to show you Section 5.2 of the
12 settlement agreement. This is under Section Milestones and
13 Deadlines. Are you familiar with this paragraph?

14 A Yes.

15 Q With regards to Section 5.2, where it says, thereafter the
16 City will create plans and develop milestones and --

17 **THE COURT:** Just a little slower, counsel.

18 **MS. MYERS:** Sure.

19 **BY MS. MYERS:**

20 Q Where it says, thereafter the City will create plans and
21 develop milestones and deadlines, are you familiar with this
22 paragraph?

23 A Yes.

24 Q To the best of your knowledge, did the City of Los Angeles
25 create the plans and develop milestones related to this

1 provision?

2 A Yes, I believe we did.

3 Q And so specifically with regards to Section 5.2.2 and 4,
4 those plans that it refers to refer to the City's plans for
5 encampment engagement, cleaning and reduction, correct?

6 A That's what it says, yes.

7 Q And did the City create those plans and develop milestones
8 and deadlines related to those two provisions of the settlement
9 agreement?

10 **MS. KUMAR:** Objection, Your Honor. It lacks personal
11 knowledge. I would just ask to the extent that this witness
12 knows and can speak to that point.

13 **THE COURT:** Overruled. You can answer the question.

14 **THE WITNESS:** I don't believe deadlines is included.

15 **BY MS. MYERS:**

16 Q You don't believe deadlines were included in what the City
17 created?

18 A I don't believe deadlines are included in what was
19 required under Paragraph 5.2.

20 Q Where it says, thereafter, the City will create plans and
21 develop milestones and deadlines?

22 A I see that now. Thank you.

23 Q Okay. So does that change your testimony about whether
24 deadlines are included?

25 **THE COURT:** Counsel, just one moment. A little bit

1 slower. I can see already that it's too quick to record.

2 Q So does that change your testimony about whether deadlines
3 are included?

4 A Yes.

5 Q Okay. So did the City create plans, develop milestones
6 and deadlines consistent with the requirement under 5.2?

7 A I believe we did, yes.

8 Q Okay. Do you know when the City created those plans?

9 A We created and proposed different plans at different
10 times. I don't recall when the final plan was agreed to by the
11 Alliance.

12 Q Okay. Were you counsel of record in this case on January
13 31st, 2024?

14 A I was one of the counsels of record, yes.

15 Q Was there a meeting of the Los Angeles City Council on
16 that date?

17 A Yes.

18 Q Did you attend that meeting?

19 A Yes.

20 Q Did the city council meet in closed session to discuss the
21 LA Alliance case during that meeting?

22 A Yes.

23 Q Were you present in the closed session meeting?

24 A Yes.

25 Q And were you there in your capacity as an attorney for the

1 City of Los Angeles in this matter?

2 A Yes.

3 Q Following that closed session meeting, the plaintiffs in
4 this case filed a motion for settlement compliance against the
5 City of Los Angeles, correct?

6 A I recall the plaintiffs filing many motions for
7 compliance. I believe there was one in February of 2024, if
8 that's the one you're referring to.

9 Q Yes. And if you know, was part of the sanctions motion
10 that was filed in February of 2024 after that closed session
11 meeting, based on what the LA Alliance perceived as a delay in
12 approving the milestones and dates and deadlines in compliance
13 with the settlement agreement?

14 A Again, there were many motions that were filed. I would
15 have to look at the motion to see what was included and what
16 wasn't.

17 Q In terms of resolving one of the motions for settlement --
18 or for compliance, do you recall submitting a stipulation of
19 facts to the court?

20 A Yes.

21 Q And that stipulation of facts was along with Ms. Mitchell,
22 the counsel for the plaintiffs, correct?

23 A Yes.

24 Q And I'm going to show you what was previously marked as
25 Exhibit 326.

1 **THE COURT:** Can we put that up on the screen?

2 **MS. MYERS:** Is it not up on the screen?

3 **MS. MITCHELL:** It's on our screen, Your Honor.

4 **THE COURT:** Do you have it?

5 **THE WITNESS:** I have it, yes.

6 **THE COURT:** All right. Thank you.

7 **BY MS. MYERS:**

8 Q And this is Docket 713 filed in this case. Is this the
9 stipulation that you were referring to?

10 A It appears to be, yes.

11 Q And I apologize, I have it in front of me. I'm happy to
12 scroll through if you need to, if you need to look at any other
13 part of it to ensure that this is stipulation you're referring
14 to.

15 **THE COURT:** Counsel, would you repeat that just a
16 little bit?

17 **MS. MYERS:** Just offering to scroll through for
18 Mr. Marcus to ensure that this is the stipulation that he was
19 referring to.

20 **BY MS. MYERS:**

21 Q Do you want me to scroll through?

22 A I'm good.

23 Q So this is the stipulation that you were referring to?

24 A It appears to be, yes.

25 Q So I want to refer to paragraph 7. If you can just read

1 paragraph 7 to yourself, starting with the parties met on
2 January 4th.

3 A Okay.

4 Q Just backing up a minute. When you prepared this
5 stipulation of facts, were you familiar with the facts that you
6 were stipulating to?

7 **MS. KUMAR:** Objection, Your Honor. Privilege.

8 **MS. MYERS:** I can go fact by fact, Your Honor, if
9 that would be helpful.

10 **THE COURT:** Would you restate that question?

11 **MS. MYERS:** Mr. Marcus, were you -- do you have
12 personal knowledge of the facts that you stipulated to in this
13 declaration?

14 **THE WITNESS:** Yes.

15 **THE COURT:** He can answer the question.

16 **BY MS. MYERS:**

17 Q So paragraph 7 says, two days after this meeting, the City
18 proposed encampment milestones of 9,800, agreeing to and
19 rounding up from the LA Alliance's proposed number of
20 9,782. Do you have personal knowledge of that fact?

21 A Yes.

22 Q Did that occur?

23 A Yes.

24 Q And then later on in the paragraph it says, on January
25 10th, 2024, the City agreed to LA Alliance's demand for 9,800

1 encampment reductions, including district-by-district
2 milestones over four years, and rejected LA Alliance's other
3 demands. Is that correct?

4 A Yes.

5 Q So is it accurate then that the City and the LA Alliance
6 agreed to the reduction plans and milestones on January 10th,
7 2024?

8 A I believe this describes the process of the negotiations
9 that were ongoing at the time. I don't recall if we reached
10 final agreement on all the terms by January 10th.

11 Q Okay. But with regards to when it says the City agreed to
12 LA Alliance's demand for 9,800 encampment reductions, is that
13 accurate?

14 A Yes. We agreed to the number, but we rejected other
15 demands that they made at the time.

16 Q Okay. And so paragraph 8 of the declaration states, 9,800
17 encampment reduction plan and milestones were presented to the
18 city council on January 31st, 2024. Is that statement
19 accurate?

20 A Yes.

21 Q And were you present when the plan was presented to the
22 city council?

23 A Yes.

24 Q And then it says that the plan was approved without --
25 which approved them without delay, that the city council

1 approved the plan and milestones without delay?

2 A Yes.

3 Q And did that approval occur on January 31st, 2024?

4 A Yes.

5 Q And the plan that was approved, the plan and milestones
6 that you're referring to, is this what the LA Alliance and the
7 City agreed to on January 10th, 2024?

8 A Again, I can't recall if we reached agreement on all of
9 the terms on January 10th.

10 Q So I'm asking only about the plan and milestones that was
11 approved by the city council on January 31st.

12 A What was presented to council and approved by council was
13 agreed to by the Alliance and the City. Yes.

14 Q On January 10th.

15 A I don't recall if that -- I don't recall if we reached
16 full agreement by the 10th or not.

17 Q Okay. And so the next statement where it says on February
18 1st, 2024, the milestones and deadlines agreed to on January
19 10th, 2024, were sent to plaintiff's counsel. Does that
20 refresh your recollection about whether or not the plan and
21 milestone that we agreed to by the city council were agreed to
22 on January 10th?

23 A No, it does not.

24 Q Okay. So where it says that the 2020, the milestones and
25 deadlines agreed to on January 10th were sent to plaintiff's

1 counsel, is it possible that that plan is different than the
2 one that was approved by the city council?

3 A No.

4 Q Okay. So the plan that was sent on February 1st was the
5 plan that was approved by the city council on January 31st,
6 2024. Is that correct?

7 A Yes.

8 Q Okay. So then it would follow then that if both of these
9 statements are true then, that the plan that was approved by
10 the city council on January 31st is the milestones and
11 deadlines that were agreed to on January 10th. Is that
12 correct?

13 A It appears to be yes.

14 Q So you have no reason to doubt the accuracy of this at
15 this point?

16 A Of the stipulation? No.

17 Q Okay. And you have personal knowledge as to the facts of
18 the stipulation?

19 A Yes.

20 Q Did the city council vote to approve the encampment
21 reduction plan?

22 A There was no vote.

23 Q There was no vote. So the city council did not vote to
24 approve the plan. How did the city council approve the plan?

25 **MS. KUMAR:** Objection, Your Honor. I would instruct

1 the witness not to answer to the extent the answer to that
2 question --

3 **THE COURT:** I'm not going to sustain it, but I'm
4 going to take that under submission. You don't have to answer
5 that at the present time. I want to think about that question.

6 **BY MS. MYERS:**

7 Q What process --

8 **THE COURT:** Can you mark that for the court reporter
9 so I can see that question during the recess? Thank you.

10 Q What process did the city council use to approve the plan
11 if it did not use a voting process?

12 **MS. KUMAR:** Objection, Your Honor. I would instruct
13 the witness not to answer for the same reasons.

14 **THE COURT:** I'm going to ask you not to answer that
15 question for the present time until I have some time to think
16 about this.

17 **BY MS. MYERS:**

18 Q When you stated in this declaration to the Court that the
19 city council approved that the milestones were presented to the
20 city council on January 31st, which approved them without
21 delay, what did you mean by the term approved?

22 **MS. KUMAR:** Objection, Your Honor. I would instruct
23 the witness to answer only to the extent he can answer without
24 revealing any information about what occurred in the closed
25 session and without revealing and waiving any of the privileges

1 for which he does not have authority to waive at this time.

2 **THE COURT:** I want to be very careful about any
3 disclosure of any communications, but an act is substantially
4 different. And when this question is asked, I'm going to limit
5 your answer to your subjective or your meaning or mindset about
6 what approval meant. I want to be very careful that your
7 answer doesn't involve communication with members of the
8 council. Is that clear? And if not, I'll restate that.

9 **THE WITNESS:** No, that's clear.

10 **THE COURT:** Thank you. Then you can respond.

11 **THE WITNESS:** I meant it was approved.

12 **THE COURT:** I'm sorry, I didn't hear the answer.

13 **THE WITNESS:** I meant it was approved.

14 **BY MS. MYERS:**

15 Q And what did you mean by the term approved?

16 **MS. KUMAR:** Objection, Your Honor. I would again
17 instruct the witness not to answer to the extent doing so would
18 disclose anything that occurred in closed sessions, actions or
19 statements that occurred in closed sessions which were
20 protected by the Brown Act and otherwise covered by all of the
21 aforementioned privileges.

22 **THE COURT:** This will be limited to what your
23 subjective mindset was concerning the word approved and what it
24 meant.

25 **MS. KUMAR:** Your Honor, I would also object to the

1 extent that that's work product or otherwise privileged because
2 Mr. Marcus, at the time we're asking what was in his mind, was
3 and remains counsel to the city.

4 **THE COURT:** Overruled. Counsel, you can answer, sir.

5 **THE WITNESS:** I stand by the stipulation.

6 Q That was my question, Mr. Marcus.

7 A That is my answer, Ms. Myers.

8 Q Well, that's not an answer to the question. So what did
9 you mean when you said approved?

10 A I meant approved.

11 Q Okay. When you submitted this stipulation to the Court,
12 were you aware that the city council had not voted to approve
13 the encampment reduction plan?

14 **MS. KUMAR:** Objection, Your Honor. Asked and
15 answered.

16 **THE COURT:** Overruled.

17 **THE WITNESS:** Yes.

18 **BY MS. MYERS:**

19 Q Are you familiar with the city council rules for the Los
20 Angeles City Council?

21 A Not particularly.

22 Q I'm going to show you what I've marked as Exhibit 576.

23 **MS. KUMAR:** Objection, Your Honor. Witness just said
24 he wasn't familiar with these.

25 **MS. MYERS:** Yeah, so I'm going to show them to him.

1 **THE COURT:** Overruled.

2 Q So when you testified that the city council approved the
3 encampment reduction plan, you were not familiar with the rules
4 of the Los Angeles City Council.

5 **MS. KUMAR:** Objection, Your Honor. Misstates the
6 witness's testimony.

7 **THE COURT:** It was asked slightly differently or
8 different than the first question. Which question are you
9 asking? Just re-ask it.

10 Q When you submitted the stipulation saying that the city
11 council approved the encampment reduction plan, as the counsel
12 of record for the City of Los Angeles, is it your testimony
13 then that you are not familiar with the rules of the Los
14 Angeles City Council?

15 A I am familiar with some rules more than others.

16 Q Let's go then to Rule 25. I'm going to show you Rule
17 25. Are you familiar with what the asterisk means for purposes
18 of the city council rules?

19 A I'm not.

20 Q So we're clear. So this is page 1 of the rules, which the
21 asterisk below says, rules marked with an asterisk may not be
22 suspended. That's what it says, correct?

23 A That's what it says, yes.

24 Q I know you're familiar with that rule.

25 A I wasn't until now, no.

1 Q So I'm going to show you Rule 25. It says ten members of
2 the council shall constitute a quorum for the transaction of
3 business, but a smaller number may adjourn from time to time
4 until a quorum is present --

5 **THE COURT:** Counsel, would you repeat that more
6 slowly and start again, please? It's too quick.

7 **BY MS. MYERS:**

8 Q Ten members of the council shall constitute a quorum for
9 the transaction of business, but a smaller number may adjourn
10 from time to time until a quorum is present and may compel the
11 attendance of the absentees. Except as otherwise required by
12 the Charter or other law or by these rules, where not
13 inconsistent therewith, action by the council shall be taken by
14 a majority vote of the entire membership of the council. Are
15 you familiar with that rule?

16 A I see that rule.

17 Q Were you familiar with that rule before I just read it to
18 you?

19 A I believe I was familiar with the general concept of the
20 rule, maybe not the specific wording of the rule.

21 Q Okay. Do you know if you were familiar with that rule on
22 January 31st, 2024?

23 A The basic contours of the rule, yes.

24 Q So that would mean that when you submitted the stipulation
25 to the Court, you were familiar with the general contours of

1 this rule, correct?

2 A Yes.

3 Q So when you attested that the city council approved the
4 encampment resolution plan, were you relying on any other
5 specific council rule to support your statement that the city
6 council approved the encampment reduction plan?

7 **MS. KUMAR:** Objection, Your Honor. It's
8 argumentative, and also there's no mention of city council
9 rules anywhere in the stipulation. It merely uses the word
10 approved.

11 **THE COURT:** Overruled. Overruled, you can answer the
12 question, sir.

13 **THE WITNESS:** I did not have any city council rule
14 particularly in mind when I filed the stipulation.

15 **BY MS. MYERS:**

16 Q Okay. Are you familiar with the Los Angeles City Charter?

17 A Somewhat.

18 Q Are you familiar with Charter Section 244?

19 A Not by number.

20 Q This is the section of the Charter that states, except as
21 otherwise provided in the Charter, actions by the council shall
22 be taken by a majority vote of the entire membership of the
23 city council. Are you familiar with that provision?

24 A I'm familiar with the concept of that provision, yes.

25 Q So when you attested that the city council approved the

1 encampment resolution plan, were you relying on Section 244 to
 2 attest that the city council had approved the encampment
 3 resolution plan?

4 A I'm sorry, did you say attempted?

5 Q When you attested.

6 A I did not have any particular council rule in mind in
 7 filing the stipulation.

8 Q How about provision of the city council Charter?

9 A As counsel for the City, my actions are somewhat guided by
 10 provisions of the Charter as they relate to the City Attorney's
 11 Office and the handling of litigation. And I think those are
 12 always in the back of our minds when we are conducting
 13 ourselves as counsel for the City.

14 Q You attested in your stipulation that the city council
 15 approved the encampment reduction plan, correct?

16 A Yes.

17 Q So when you attested, when you stipulated that the city
 18 council approved the encampment reduction plan, were you making
 19 that statement in consideration of the City Charter?

20 **MS. KUMAR:** Objection, Your Honor. Privilege, work
 21 product, and all of the previous --

22 **THE COURT:** Overruled. You can answer the question.

23 **THE WITNESS:** I'm not sure how to answer that
 24 question. Can you repeat it?

25 //

1 **BY MS. MYERS:**

2 Q Sure. When you attested that the city council approved
3 the encampment reduction plan, was your statement, was that in
4 consideration of the provisions of the City Charter related to
5 council approval?

6 A Nothing in the stipulation is inconsistent with the
7 Charter or the council rules.

8 **THE COURT:** I'm sorry, would you repeat that?

9 **THE WITNESS:** Sure. Nothing in the stipulation is
10 inconsistent with the Charter or the council rules.

11 Q Okay, can you tell me which council rules you relied on to
12 support that testimony?

13 A By number, no.

14 Q Would you like the rules? Would you like to take a look
15 at them so you can tell us which rules the stipulation is
16 consistent with?

17 **MS. KUMAR:** Objection, Your Honor. This is simply
18 not relevant. Mr. Marcus is here to testify about whether the
19 fact in the stipulation was true. He has testified that it
20 was. Whether or not it complied with some sort of city council
21 rule or City Charter is irrelevant as to whether this statement
22 was true or not, which is the purported scope of this inquiry.

23 **THE COURT:** Overruled. You can answer that question
24 as to the reliance. You can answer the question, sir.

25 **THE WITNESS:** Can you repeat the question?

1 **BY MS. MYERS:**

2 Q Sure. When you testified just now that nothing was
3 inconsistent with the city council rules in the stipulation,
4 can you tell me what provisions of the council rules you were
5 acting consistently with with regards to that provision of the
6 stipulation?

7 A I believe I was acting consistent with all of them.

8 Q So can you point specifically to the ones that are
9 relevant for purposes of your testimony?

10 **MS. KUMAR:** Objection, Your Honor. Same objection.

11 **THE COURT:** Overruled.

12 **THE WITNESS:** Again, it was consistent with all of
13 them. I don't believe it was inconsistent with any of them.
14 It's a better way to say it.

15 **BY MS. MYERS:**

16 Q Okay. So you're testifying then that it was consistent
17 with a requirement that actions by the council shall be taken
18 by a majority vote of the entire membership of the council.

19 **MS. KUMAR:** Objection, Your Honor. Misstates the
20 witness's testimony.

21 **THE COURT:** Overruled.

22 **THE WITNESS:** Yes.

23 Q Okay. But no vote was taken.

24 A Correct.

25 Q And at this point, you're refusing to answer any questions

1 about the process by which the city council approved the
2 Encampment Reduction Plan.

3 **MS. KUMAR:** Your Honor, objection. Argumentative. I
4 have made the objection at the request of counsel.

5 **THE COURT:** It's argumentative at the present time.
6 You can restate the -- it's a proper area, counsel. You can
7 re-ask the question.

8 Q Is it your position today that you refuse to answer any
9 questions related to the process by which the city council
10 approved the Encampment Reduction Plan?

11 **MS. KUMAR:** Objection, Your Honor. Argumentative.
12 Trying to impugn this witness's character when at the direction
13 of counsel, his not answering the question is inappropriate.

14 **THE COURT:** No, you can --

15 **MS. MYERS:** I'm simply asking if he's following his
16 counsel's instructions.

17 **THE COURT:** I'm sorry, both of you. Thank you very
18 much. No, you can answer the question, sir. Overruled.

19 **THE WITNESS:** I haven't refused to answer anything
20 yet. The Court put those question on hold.

21 **BY MS. MYERS:**

22 Q Okay. So with regards to the City Charter, are there
23 specific provisions that you were relying on in the City
24 Charter related to the Encampment Reduction Plan when you
25 testified -- when you stated that the Encampment Reduction Plan

1 was approved by the city council?

2 A I don't believe that the stipulation is inconsistent with
3 any of the provisions of the Charter.

4 Q That wasn't my question, Mr. Marcus. So my question was,
5 when you attested that the city council approved the Encampment
6 Reduction Plan, were you informed by or relying on any specific
7 provisions of the Charter to inform your testimony that the
8 city council approved the Encampment Reduction Plan?

9 A No specific provision comes to mind.

10 Q So there wasn't a specific provision or process in the
11 Charter that provides for the approval of the Encampment
12 Reduction Plan such that it informed your testimony that the
13 city council approved the ERP?

14 **MS. KUMAR:** Objection, Your Honor. Misstates
15 witness's testimony, and compound.

16 **THE COURT:** Overruled.

17 **THE WITNESS:** Approval of the Encampment Reduction
18 Plan isn't required by or covered by the Charter.

19 **BY MS. MYERS:**

20 Q Is it required by or covered -- so it's your testimony
21 then that approval of the Encampment Reduction Plan is not
22 required by or covered by the Charter. Is that correct? Is
23 that your testimony?

24 A Yes, in the context that you are asking it, yes.

25 Q I'm asking in the context of a federal court proceeding.

1 I'm not so -- I'm not sure what you mean by that as a
2 qualification. Is it your testimony that the approval of the
3 Encampment Reduction Plan is not required by the city council
4 Charter.

5 **MS. KUMAR:** Objection. Calls for a legal conclusion.

6 **THE COURT:** Overruled.

7 **THE WITNESS:** The approval of the Encampment Plan did
8 not require a vote as that is defined in the Charter of the
9 council rules.

10 Q Why not?

11 A Because it is not an action taken as that term is used in
12 the council rule you have in front of me.

13 **THE COURT:** I'm sorry. You dropped your voice.
14 There's not an action taken --

15 **THE WITNESS:** By the council -- it's not an action by
16 the council as that term is being used in the Council Rule No.
17 25 that I see in front of me.

18 **BY MS. MYERS:**

19 Q So it's your testimony that the city council approval of
20 the Encampment Reduction Plan is not an action taken by the
21 city council for purposes of the city council rule?

22 **MS. KUMAR:** Objection, Your Honor. Misstates the
23 witness's assessment.

24 **THE COURT:** Overruled. Can you answer the question,
25 sir.

1 **THE WITNESS:** Yes, I believe that's correct.

2 Q What would an action taken by the city council be that
3 would be required by Rule 25 for purposes of this to get to
4 your understanding of what you testified to?

5 **MS. KUMAR:** Objection, Your Honor. Relevance.

6 **THE COURT:** If you have an example, you can state it.

7 **THE WITNESS:** One example would be approval of a
8 settlement agreement itself to resolve litigation. Settlement
9 agreements themselves within certain parameters need to be
10 approved by the city council by action.

11 Q So it's your testimony that -- back up on that. So it's
12 your testimony that the city council approval of the Encampment
13 Reduction Plan was not an action by the city council for
14 purposes of the city council rules, is that correct?

15 **MS. KUMAR:** Objection, Your Honor. Calls for a legal
16 conclusion.

17 **THE COURT:** Overruled.

18 **THE WITNESS:** Yes.

19 **BY MS. MYERS:**

20 Q And for purposes of the City Charter, is it also your
21 testimony that it was not an action, that the approval of the
22 Encampment Reduction Plan was not an action by the city
23 council?

24 **MS. KUMAR:** Same objection, Your Honor.

25 **THE COURT:** Overruled.

1 **THE WITNESS:** It was not an action requiring a vote
2 by the city council, correct?

3 Q That's not what I asked. So I asked if it was an action
4 by the city council.

5 A An action by definition can only be taken by a vote of the
6 council, so the answer is no. It was not an action requiring a
7 vote.

8 Q It's not an action requiring a vote because the city
9 council didn't vote, is that your testimony?

10 A No, it was not -- the approval of the Encampment Plan was
11 not an action that required a vote.

12 Q Why not?

13 A Because it wasn't necessary.

14 Q Why not?

15 **MS. KUMAR:** Objection, Your Honor. Calls for a legal
16 conclusion and relevance.

17 **THE COURT:** Overruled.

18 **THE WITNESS:** The Encampment Reduction Plan was a
19 step being taken by the CAO's office and the City Attorney's
20 Office to negotiate compliance with the settlement agreement.

21 **BY MS. MYERS:**

22 Q And so the city council didn't need to approve it, is that
23 correct?

24 A In my opinion, no. They did not need to approve it under
25 the Charter or the council rules.

1 Q But you testified in your stipulation that they did
2 approve it, correct?

3 A Yes.

4 Q And so, but as you sit here, you're not -- you will not
5 testify as to what process was used to approve it.

6 **MS. KUMAR:** Objection, Your Honor. Same objection,
7 asked and answered, argumentative. The Court is the one that
8 took those questions --

9 **THE COURT:** Well, this is from his opinion, his
10 objective mindset.

11 **THE WITNESS:** Well, I believe her question was, I'm
12 refusing to testify to something and those questions haven't
13 been put to me in that manner. The Court has taken them under
14 submission.

15 **BY MS. MYERS:**

16 Q So as you sit here today, is it your testimony that the
17 city council approved the Encampment Reduction Plan in this
18 closed session on January 31st, 2024?

19 A Yes, that's what's in the stipulation.

20 Q That's not what I asked. So I asked if it was your
21 testimony today that the city council approved the Encampment
22 Reduction Plan in closed session on January 31st, 2024.

23 A Yes.

24 Q The city council did not, however, take a vote on the
25 Encampment Reduction Plan related to -- did not take a vote

1 during the closed session, correct?

2 **MS. KUMAR:** Objection, Your Honor. Asked and
3 answered, I think, now twice or three times.

4 **THE COURT:** Overruled. You can answer the question,
5 sir.

6 **THE WITNESS:** There was no vote.

7 Q And there's no provision of the charter that you can point
8 to that provides for the approval of the encampment reduction,
9 that provides for the approval outside of through a vote,
10 correct?

11 **MS. KUMAR:** Objection, Your Honor. Calls for a legal
12 conclusion, relevance.

13 **THE COURT:** This is for your mindset. You can answer
14 the question, sir.

15 **THE WITNESS:** I didn't understand the question.

16 **THE COURT:** All right. Just please repeat, Counsel.

17 **BY MS. MYERS:**

18 Q Sure. So when you said that the city council approved the
19 Encampment Reduction Plan, you were not referring to any
20 specific provision of the charter that provided for the
21 approval by any other way other than a vote, is that correct?

22 A That question presumes that approval can only be done by a
23 vote, and I am disagreeing with that presumption.

24 Q I'm not making that presumption, Mr. Marcus. I'm simply
25 asking if it is your testimony that there are no other

1 provisions of the charter upon which you were basing your
2 statement that the city council approved the Encampment
3 Reduction Plan.

4 A I still didn't get that.

5 Q So the charter provides various ways the city council must
6 conduct its business, correct?

7 A I believe so, yes.

8 Q And Section 244 provides a mechanism by which the city
9 council can approve things, correct?

10 A I believe it's actions is what it says.

11 Q Okay, so can take actions pursuant to a vote, correct?

12 A Yes.

13 Q And so there's no other provision in the charter that you
14 are relying on when you testify that the city council approved
15 the Encampment Reduction Plan?

16 A The provisions refer to actions by the council, yes, and
17 this approval was not an action requiring a vote by the
18 council.

19 Q So we're not talking about a vote, Mr. Marcus, and I know
20 you keep wanting to come back to a vote. I'm not asking that.
21 I'm asking about whether or not there are any other provisions
22 in the city charter that you were relying on when you made the
23 statement that the city council approved the Encampment
24 Reduction Plan.

25 **MS. KUMAR:** Objection, Your Honor, assumes that there

1 was any reliance on any city council rule or City charter.
2 She's testifying for the witness.

3 **THE COURT:** Overruled. Overruled. You can answer
4 the question, sir.

5 **THE WITNESS:** Again, I don't believe there was any
6 specific provision in mind other than my general adherence to
7 charter provisions and city council provisions and my role as
8 counsel for the City.

9 **BY MS. MYERS:**

10 Q And are there any provisions that you can point to that
11 you relied on in determining, for purposes of this stipulation,
12 that the city council approved the Encampment Reduction Plan?

13 **MS. KUMAR:** Objection, Your Honor. Calls for a legal
14 conclusion and calls for privilege.

15 **THE COURT:** This is his mindset. You can answer the
16 question, sir.

17 **THE WITNESS:** If there is a provision you believe was
18 violated, that might help.

19 **BY MS. MYERS:**

20 Q I'm not asking about what I believe or even what your
21 counsel believes. I'm asking what you believed when you
22 submitted a stipulation to the federal court saying that it was
23 approved, whether you were relying on any provisions of the
24 city charter to support your testimony that the city council
25 approved the ERP.

1 A Again, no specific provision.

2 Q Were you relying on any specific council rule to support
3 your statement that the city council approved the ERP?

4 A No.

5 **MS. MYERS:** No further questions at this time.
6 Obviously, we reserve --

7 **THE COURT:** The cross-examination would turn to LA
8 Alliance, if it's acceptable, and then back to the City.

9 **MS. MYERS:** Your Honor, we reserve, obviously, the
10 right to call Mr. Marcus back once you've issued your ruling on
11 those questions.

12 **THE COURT:** I'm sorry?

13 **MS. MYERS:** We reserve the right to call Mr. Marcus
14 back once you've ruled on the specific questions.

15 **THE COURT:** Well, I'm going to also take a recess
16 with the court reporter. There's a couple of questions
17 answered that I'd like to later ruling on. Counsel, your
18 cross-examination.

19 **MS. MITCHELL:** Thank you, Your Honor. Good
20 afternoon, Mr. Marcus.

21 **THE COURT:** Would you state your name for the record?

22 **MS. MITCHELL:** Yes, thank you. Elizabeth Mitchell on
23 behalf of the Alliance.

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CROSS EXAMINATION

BY MS. MITCHELL:

Q What are the different ways the city council can approve something?

A Council can approve things by a vote. They can also approve things on unanimous consent. They can approve things by consensus.

Q And what is -- oh, I'm sorry. Anything else?

A That's what comes to mind.

Q Okay. What is unanimous consent?

A There's a, I believe, actually a council rule that talks about what it is, or maybe it's a Roger (phonetic) rule of procedure, one of those things. It's a way of doing business without taking formal votes.

Q And what is consensus? When city council approves something by consensus, what does that mean?

A It means, in general, there's a discussion and an agreement how to move forward.

Q And how does that happen without a vote? How is there an agreement to move forward on something without a vote?

A There can be an agreement to move forward without a vote. It's a consensus discussion.

Q What types of things have you seen city council approve without a vote?

MS. KUMAR: Objection, Your Honor. I would direct

1 the witness to only answer to those that have no reference to
2 anything in the closed session.

3 **THE COURT:** Overruled.

4 **THE WITNESS:** Sorry, can you ask the question again,
5 please?

6 **BY MS. MITCHELL:**

7 Q Sure. What types of things have you seen city council
8 approve without a vote?

9 **MS. KUMAR:** Same objection, Your Honor.

10 **THE COURT:** I'm going to take that under submission.
11 I want some time to think about that question, counsel.

12 **MS. MITCHELL:** Okay.

13 **THE COURT:** Whether it gets into communication versus
14 act. Okay. Could the court reporter mark that for me? Thank
15 you.

16 **MS. MITCHELL:** Thank you, Your Honor.

17 **BY MS. MITCHELL:**

18 Q Let me try to ask it maybe a different way. Without
19 revealing communications that you have had in closed session or
20 outside of the public view, have you seen city council approve
21 anything without a vote?

22 A Yes.

23 Q And again, only referring to the public actions, what
24 types of things have you seen city council approve without a
25 vote?

1 A The encampment reduction plan.

2 Q Okay. Anything else?

3 A Nothing else comes to mind.

4 **THE COURT:** Just one moment, please. Thank you.
5 Please continue.

6 Q Are you still in the position of advising city council?

7 **MS. KUMAR:** Objection, Your Honor. Relevance.

8 **THE COURT:** What's the relevance, counsel?

9 **MS. MITCHELL:** Well, my question essentially is how
10 long was he in the position of advising city council?

11 **THE COURT:** Okay. You can ask the question.

12 Q So I'll ask that question, Mr. Marcus. How long were you
13 in that position of advising city council if, in fact, that was
14 part of your role?

15 A I served as counsel representing the City from 2016
16 through 2024, and during that time in various litigation
17 matters, I would advise council.

18 Q And no other -- I don't want to call it an action because
19 I think that's a term of art that you're using, but there's
20 nothing else that you can think of where you saw city council
21 approve something either by unanimous consent or by consensus
22 without a vote?

23 **MS. KUMAR:** Objection, Your Honor. I direct the
24 witness not to answer anything about anything he's observed in
25 any closed session. He just referred to litigation.

1 **THE COURT:** Both of you are way too quick for the
2 record. Would you restate that more slowly and then your
3 objection more slowly?

4 **MS. MITCHELL:** Sure.

5 **THE COURT:** Repeat the question, please.

6 **MS. MITCHELL:** Sure. My question is in that time in
7 those eight years, there's nothing that you can think of where
8 you witnessed city council do something by unanimous consent or
9 by consensus, i.e. without a vote?

10 **THE COURT:** We're talking about the act, not the
11 communication.

12 **MS. KUMAR:** Your Honor, I would direct the witness
13 not to answer about any circumstances in which he participated
14 in a closed session. Revealing those closed sessions not only
15 violates the privilege but also subjects Mr. Marcus to
16 discipline under the Brown Act.

17 **THE COURT:** Overruled. You can answer the
18 question. This pertains to an act, not any communication.

19 **THE WITNESS:** So I have observed city council in open
20 session approve things by unanimous consent and by
21 consensus. I think an answer with respect to any closed
22 session would invade attorney-client privilege, and I refuse to
23 answer on closed sessions.

24 //

25 //

1 **BY MS. MITCHELL:**

2 Q Okay. So specifically referring to open session matters,
3 what types of items have you seen the city council approve
4 without a vote?

5 A It happens all the time. I couldn't give you one example
6 over another, but I've seen it happen.

7 Q Okay. Now, when something is approved by unanimous
8 consent or by consensus, isn't that considered a unanimous vote
9 when city council does that?

10 **MS. KUMAR:** Objection, Your Honor. Calls for a legal
11 conclusion.

12 **THE COURT:** Overruled.

13 **THE WITNESS:** I don't believe so, no.

14 Q It doesn't go into the minutes as a unanimous vote?

15 A I don't take the minutes. I don't know how it's recorded.

16 Q So I'm going to try to ask this very
17 specifically. Without disclosing any communications that
18 happened in closed session, can you tell us what action was
19 taken to cause you to believe that the encampment reduction
20 plan was approved?

21 **MS. KUMAR:** Objection, Your Honor. I direct the
22 witness not to answer anything about what occurred during the
23 closed session for fear of Brown Act and all of the privileges
24 that we've previously objected on the basis for. I direct him
25 not to answer the question.

1 **THE COURT:** I'd like the court reporter to mark that
2 question for the Court, please.

3 **MS. MITCHELL:** Thank you, Your Honor.

4 **BY MS. MITCHELL:**

5 Q Now, Mr. Marcus, your testimony is that approval of the
6 encampment reduction plan was not required by the city charter
7 or city council rules. Is that right?

8 A Sorry, can you say that again?

9 Q Yeah. Your testimony was that approval of the encampment
10 reduction plan in question was not required by the city charter
11 or by the city council rules. Is that right?

12 A That's my understanding, yes.

13 Q And your understanding is based on what?

14 A Based on my familiarity with the charter and the rules and
15 my years serving as counsel for the city.

16 Q What actions require a vote by city council to approve?

17 **MS. KUMAR:** Objection, Your Honor. Asks -- calls for
18 a legal conclusion. Relevance.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** I couldn't give you a list of all of
21 them.

22 **BY MS. MITCHELL:**

23 Q Then how do you know that the encampment reduction plan
24 was not one of them?

25 A It was not because it was a step being taken by counsel

1 for the City and the CAO's office in compliance with a
2 settlement agreement.

3 Q If the city council was not required to approve it, why
4 did you submit it to city council for approval?

5 **MS. KUMAR:** Objection, Your Honor. I order the
6 witness not to answer to the extent it would reveal any
7 privilege or his communications with his client, the City.

8 **THE COURT:** Overruled.

9 **THE WITNESS:** One of the reasons it was submitted to
10 council was because the LA. Alliance demanded it be so before
11 they would agree to it.

12 Q And in what context did the LA Alliance demand it to be so
13 before the Alliance would agree to it?

14 A I don't recall if it was a letter or an email or a
15 conversation.

16 Q With me, correct?

17 A I believe it was with you, yes.

18 Q And the LA Alliance required or informed you that city
19 council was required, in the Alliance's view, to approve it
20 before the Alliance would agree to it. Is that right?

21 **MS. KUMAR:** Objection, Your Honor. Hearsay.
22 Relevance as to the Alliance's thinking of what was required
23 and not.

24 **THE COURT:** Overruled.

25 **THE WITNESS:** Could you repeat the question?

1 **BY MS. MITCHELL:**

2 Q Yeah, it was actually a bad question. Let me re-ask
3 that. You were informed by me that the LA Alliance would not
4 agree to the encampment reduction plan unless the city council
5 approved it. Is that true?

6 A I don't recall the precise words, but generally, yes.

7 Q Okay. And so that is the reason that you caused the
8 encampment reduction plan to be submitted to city council for
9 approval. Is that true?

10 A I would say that was a reason, yes.

11 Q And so when you reported back to me that the city council
12 had approved it, did you ever communicate that that was not
13 done by vote?

14 **MS. KUMAR:** Objection, Your Honor. Relevance as to
15 what this witness told Ms. Mitchell. It's not relevant. It
16 doesn't have anything to do with her purported
17 misrepresentation to this Court.

18 **THE COURT:** Overruled.

19 **THE WITNESS:** Can you repeat the question?

20 **BY MS. MITCHELL:**

21 Q Yeah. When you reported back to the Alliance that the
22 city council had approved the proposed encampment reduction
23 plan, did you report back to the Alliance that that was not
24 done by a vote?

25 **MS. KUMAR:** Objection. Relevance, hearsay,

1 argumentative.

2 **THE COURT:** Overruled.

3 **THE WITNESS:** I don't recall.

4 Q Did you at any point inform the Court that the approval
5 was not done by vote by the city council?

6 A The stipulation we filed said that it was approved. The
7 approval wasn't required to be done by a vote, but we did not
8 mention the word vote in the stipulation, I do not believe.

9 **MS. MITCHELL:** Okay. May I have a moment, Your
10 Honor?

11 **THE COURT:** You may.

12 **(Pause)**

13 **BY MS. MITCHELL:**

14 Q Mr. Marcus, you mentioned that because the LA Alliance
15 asked for City Council approval of the encampment reduction
16 plan prior to agreeing to it, that was one of the reasons that
17 you submitted it to City Council for approval. What are the
18 other reasons?

19 **MS. KUMAR:** Objection. I direct the witness not to
20 answer to the extent it will reveal any privileged
21 conversations he had with his client, the City.

22 **THE COURT:** I'm concerned whether that overlaps into
23 any communication and please don't answer that. Mark that,
24 counsel, and I'm concerned that the question is broad and
25 therefore it might invoke a communication. Can you narrow that

1 question?

2 **MS. MITCHELL:** Sure.

3 Q Without revealing any communications that you may have
4 with your client, specifically my question is, other than
5 reflecting on communications with your client, are there any
6 other reasons why you submitted the encampment reduction plan
7 to City Council for approval?

8 **THE COURT:** And this is limited to your mindset.

9 **MS. KUMAR:** Objection, Your Honor, and also object to
10 things related to his mindset as he's counsel, so anything he's
11 thinking is necessarily work product and privileged.

12 **THE COURT:** Overruled.

13 **THE WITNESS:** Any answer to that question would evade
14 the privilege and I decline to answer.

15 **MS. MITCHELL:** Okay. Your Honor, we'll submit at
16 this time, subject to reopening and being able to ask those
17 questions that the Court is still considering.

18 **THE COURT:** All right. Thank you. And then on
19 behalf of the City please. Just a moment. I had assumed
20 something. Does the County have any questions?

21 **MS. BRODY:** No, Your Honor, thank you.

22 **THE COURT:** My apologies. The City, please, and
23 would you once again state your name.

24 **MS. KUMAR:** Yes, Your Honor, thank you, Poonam Kumar
25 on behalf of the City.

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CROSS EXAMINATION

BY MS. KUMAR:

Q Good afternoon, Mr. Marcus.

Mr. Marcus, we've gone through some of this, but just so that we're clear, you were present in the closed session of the City Council on January 31st, 2024; is that correct?

A Yes.

Q And based on what you observed, you understood that the encampment reduction plan was approved by the City Council; is that right?

A Yes.

Q In your role as counsel working in the City Attorney's Office have you observed other City Council sessions?

A Yes.

Q How many would you say?

A Dozens.

Q Okay. Have you observed and participated in other closed sessions? Now, I didn't want to hear what happened, but just whether you have, in fact, participated in or observed other closed sessions.

A Yes.

Q And how many closed sessions have you observed or participated in?

A Dozens.

Q Based on your employment with the City -- in the City

1 Attorney's Office and your observations in these sessions and
2 without reference to any particular session or meeting, can you
3 describe to us some of the ways that the City Council can
4 approve something in your understanding.

5 A It's -- yes. What I mentioned before, they can approve
6 things by a vote, they can approve things on unanimous consent.
7 They can approve things via consensus. They can approve things
8 via discussion.

9 Q Okay. To your knowledge, Ms. Myers showed you Section 5.2
10 of the settlement agreement. Do you recall that?

11 A Yes.

12 Q And I can show it to you if you need but, Mr. Marcus, do
13 you recall anything in Section 5.2 of the settlement agreement
14 requiring that there be City Council approval for the
15 encampment reduction plan?

16 A No.

17 Q Do you recall anything in Section 5.2 of the settlement
18 agreement that required there be a vote by the City Council?

19 A No.

20 **MS. KUMAR:** Excuse me, Your Honor.

21 **(Pause)**

22 **BY MS. KUMAR:**

23 Q Mr. Marcus, you were shown a stipulation that was filed
24 and that you signed in April of 2024 by Ms. Myers. Do you
25 recall that?

1 A I recall seeing the stipulation, I don't recall the
2 specific date.

3 Q Okay. Fair enough. I'm just going to bring it up on the
4 screen. Let me show you the first page. Does this look like
5 the stipulation that Ms. Myers showed you?

6 A It appears to be, yes.

7 Q Okay. And for the record, that is Exhibit 326, Docket
8 entry 713. If I turn your attention, Mr. Marcus, to paragraph
9 8 of that -- well, let me first show you the signature. Do you
10 see that you signed that stipulation on behalf of the City?

11 A Yes.

12 Q I show you paragraph 8 and that first sentence. Do you
13 see where it reads, which approved them without delay, do you
14 see that?

15 A Yes.

16 Q Mr. Marcus, in anywhere in that stipulation does it state
17 that the City Council approved the encampment reduction plan
18 with a vote?

19 A I don't believe so, no.

20 Q Is there any statement in paragraph 8 of this stipulation
21 that specifies the manner in which the City Council approved
22 the encampment reduction plan?

23 A No.

24 Q Is there any indication here, any reference to the City
25 Council rules in this paragraph?

1 A No.

2 Q Any reference to any definitions within the City Council
3 rules referenced?

4 A No.

5 Q Is there any reference to the City charter in paragraph 8?

6 A No.

7 Q Any reference to any definitions contained within the City
8 charter in paragraph 8?

9 A No.

10 Q Ms. Marcus -- excuse me, Ms. Myers asked you about the
11 City Council charter and she specifically asked you about
12 Section 244. Do you recall that?

13 A Yes.

14 Q Are you also familiar and I'm going to put this before you
15 and I don't know what exhibit number we're on.

16 **MS. KUMAR:** I will come back to Your Honor on the
17 exhibit number, because I don't recall where we left off.

18 Q Do you see before you Section 272 control of litigation
19 before you?

20 A Yes.

21 Q Do you see that -- do you recognize that as a part of the
22 City charter?

23 A Yes.

24 Q And does it say at the outset, Mr. Marcus, that in the
25 second sentence, the City Attorney shall defend the City in

1 litigation. Do you see that?

2 **THE COURT:** Counsel, would you read that again,
3 closer to the microphone.

4 **MS. KUMAR:** Sure.

5 **BY MS. KUMAR:**

6 Q In the second sentence it says, the City Attorney shall
7 defend the City in litigation. Do you see that, Mr. Marcus?

8 A Yes.

9 Q Okay. And if we go through a few sentences later, it
10 says, the City Attorney shall manage all litigation of the
11 City, subject to client direction in accordance with this
12 section and subject to the City Attorney's duty to act in the
13 best interests of the City and to conform to professional and
14 ethical obligations. Did I read that correctly?

15 A Yes.

16 Q Does it say there, subject to City Council vote?

17 A It does not say that.

18 Q And, in fact, do you see the word vote anywhere in Section
19 272?

20 A I do not.

21 Q Now, Mr. Marquez, you referenced in your cross-examination
22 by Ms. Myers that a settlement or an agreement may be something
23 that would require a vote; is that right?

24 A Yes.

25 Q And that is specifically laid out in Section 273 of the

1 charter; isn't that right?

2 A I'd have to see the section in front of me, but that could
3 be.

4 Q If I have it. I don't, but we'll come back to that,
5 Mr. Marcus. Ms. Myers also referenced the City Council rules.
6 Do you remember that?

7 A Yes.

8 Q She pointed you out to City Council Rule 25, if memory
9 serves.

10 A Yes.

11 Q Let me show you -- first, I'll show you the cover page.
12 Do you see the rules of the Los Angeles City Council as
13 amended, do you see that, Mr. Marcus?

14 A Yes.

15 Q I'm going to turn your attention to, excuse me, oops,
16 Chapter 7 -- oh, no, that's not it. There we go. Chapter 8,
17 voting. Do you see that?

18 A Yes.

19 Q And I'd like to direct your attention specifically to
20 Section 49 -- Rule 49. Do you see that?

21 A I see it on the screen.

22 Q It says roll calls are required and then it has a long
23 list of items. Do you see that?

24 A Yes.

25 Q Do you see an encampment resolution plan listed there?

1 A No.

2 Q And, in fact, this is a list of things where a vote is
3 required; isn't that right, Mr. Marcus?

4 **MS. MYERS:** Objection, misstates the document.

5 **THE COURT:** Overruled, you can answer the question.

6 **THE WITNESS:** It appears to be.

7 **BY MS. KUMAR:**

8 Q So by extension, there are things where a vote is not
9 required?

10 **MS. MYERS:** Objection, misstates the document and is
11 testifying for the witness.

12 **THE COURT:** Well, counsel, there will be
13 redirect/recross. You can answer the question, sir.

14 **THE WITNESS:** Can you repeat the question?

15 Q By extension, if these are the items in which there has to
16 be a vote, is it inferable that there are items in which no
17 votes is necessary?

18 A I think that's a reasonable inference, yes.

19 **THE COURT:** Just a moment. Would you put the
20 document back up for just a minute?

21 **MS. KUMAR:** Sure.

22 **THE COURT:** I didn't have time to read it.
23 Counsel, thank you.

24 **MS. KUMAR:** Nothing else at this time, Your Honor.

25 **THE COURT:** Why don't you check with your team. You

1 have --

2 **MS. KUMAR:** I did already, Your Honor, thank you.

3 **THE COURT:** Then, counsel, would be this redirect I
4 believe.

5 **MS. MYERS:** Yes, thank you, Your Honor.

6 **THE COURT:** Ms. Myers, once again, would you state
7 your name for the record.

8 **(Pause)**

9 **REDIRECT EXAMINATION**

10 **BY MS. MYERS:**

11 Q Okay. I'm just going to start where your counsel left
12 off, which is Section -- Chapter 8, voting, which is the
13 section we were just referring to. Section 49. Do you
14 understand the difference between -- what do you understand a
15 roll call to be?

16 A A roll call vote, I would believe, is when they just that,
17 have a roll call vote so that every person's vote is
18 registered.

19 Q So is it your understanding that if a roll call is not
20 conducted then a vote is not conducted?

21 **MS. KUMAR:** Objection, Your Honor, calls for a legal
22 conclusion.

23 **THE COURT:** Overruled.

24 **THE WITNESS:** I don't know if -- I'm not familiar
25 enough with the rules to know if there are other ways of

1 voting, that Council can vote.

2 Q If you look at Rule 49 where it says, on other matters, if
3 opportunity is given and no objection is raised, the presiding
4 officer may announce a unanimous approval of an item under
5 consideration and the clerk so record. Does that give you an
6 indication of when else a vote may be taken that does not
7 include a roll call?

8 A I interpret that sentence to refer to the unanimous
9 consent.

10 Q So when you were testifying about unanimous consent, this
11 is the provision of the rules that you were referring to?

12 A I don't know that I was referring to a specific provision
13 when I was testifying, but looking at this sentence in front of
14 me now, this is what I would infer to mean unanimous consent.

15 Q Okay. So when there's a unanimous approval of an item
16 under consideration that is what you were referring to as
17 unanimous consent; is that correct?

18 **MS. KUMAR:** Objection, Your Honor, misstates the
19 witness' testimony --

20 **THE COURT:** Overruled.

21 **MS. KUMAR:** -- he just said it wasn't.

22 **THE COURT:** Overruled.

23 **THE WITNESS:** I think unanimous consent can apply
24 both to items under consideration and approvals and other
25 forms.

1 **BY MS. MYERS:**

2 Q So what I'm asking about is you testified about unanimous
3 consent. So I'm -- is what you -- when you referred to
4 unanimous consent in the rules is this provision in the rules
5 that you were referring to, is this unanimous approval
6 provision?

7 A Again, I wasn't referring to a specific provision when I
8 mentioned unanimous consent earlier. But this sentence does
9 seem to apply to unanimous consent, yes.

10 Q Okay. So unanimous consent in your mind is the same as
11 unanimous approval of an item under consideration?

12 **MS. KUMAR:** Objection, Your Honor, misstates the
13 witness' testimony.

14 **THE COURT:** Overruled.

15 **THE WITNESS:** I don't know if I would say it is
16 exactly the same, but this sentence does seem to refer to
17 unanimous consent.

18 **BY MS. MYERS:**

19 Q Okay. Are there other provisions in the City Council
20 rules that refer to unanimous consent?

21 A I don't know.

22 Q Okay. You testified that the City Council can give
23 approval via unanimous consent; is that correct?

24 A I believe it can, yes.

25 Q And that may be what is referred to here as unanimous

1 approval; is that correct?

2 A Yes.

3 Q And it's your testimony that when the City Council gives
4 unanimous approval they are not voting?

5 A I wouldn't consider unanimous consent a vote, no.

6 Q How is it recorded, do you know, by the city clerk?

7 A I don't.

8 Q Because it says, the clerk shall so record.

9 A That's what this sentence says, yes.

10 Q But you don't understand that to be recording a unanimous
11 vote?

12 **MS. KUMAR:** Objection, Your Honor, lacks personal
13 knowledge. This witness just said he didn't know.

14 **THE WITNESS:** I don't work at the clerk's office, so
15 I don't know how they record things.

16 **BY MS. MYERS:**

17 Q Tell me what you mean by consensus, Mr. Marcus. You
18 testified that the City Council can approve things via
19 consensus; is that correct?

20 A In certain circumstances, yes.

21 Q What are those circumstances?

22 A Again, I think the answer to that question would cause me
23 to disclose matters from closed sessions, so I don't believe I
24 can answer that.

25 Q Consensus to you is different than unanimous approval of

1 an item?

2 A Yes.

3 Q And how is it different?

4 **MS. KUMAR:** Objection, calls for a legal conclusion.

5 **THE COURT:** Overruled.

6 **THE WITNESS:** I think there is a difference between
7 City Council approving items on an agenda and counsel approving
8 or providing guidance in a closed session.

9 **BY MS. MYERS:**

10 Q And what is the difference?

11 A Approval of items on an agenda in open session is governed
12 by various rules and closed session is just that, it is a
13 closed session discussion between the City and its counsel.

14 Q And so that doesn't require a following the rules related
15 to votes that are taken in open session, is that your
16 testimony?

17 **MS. KUMAR:** Objection, Your Honor, misstates the
18 testimony and argumentative.

19 **THE COURT:** Would you restate that question?

20 Q So is it your testimony that these discussions in closed
21 session are not governed by the same rules as decisions made in
22 open session?

23 **MS. KUMAR:** Objection, Your Honor, calls for a legal
24 conclusion, relevance, and argumentative.

25 **THE COURT:** Overruled.

1 **THE WITNESS:** I would say that what happens in a
2 closed session sometimes requires a vote or other action in
3 open session and sometimes does not.

4 **BY MS. MYERS:**

5 Q That wasn't my question. So you testified that the --
6 that actions taken in closed session are different for purposes
7 of the rules than actions taken in open session.

8 A If you're using action in the sense that the word action
9 is used in the charter and the Council rules, I think we need
10 to be careful what word you're using. Actions by the City
11 Council need to be taken by a vote, you showed me that earlier.
12 That's different than things that happened in closed session,
13 discussions and the results of those discussions in closed
14 session do sometimes require votes and other actions in open
15 session, based on the rules, and sometimes do not.

16 Q And who decides whether things that happen in closed
17 session need to occur in open session?

18 **MS. KUMAR:** Objection, lack of personal knowledge,
19 foundation.

20 **THE COURT:** Overruled.

21 **THE WITNESS:** It's governed by the charter and by the
22 rules.

23 **BY MS. MYERS:**

24 Q Okay. So the charter and the rules define when things
25 that happen in closed session need to occur in open session.

1 A I can't speak to that, I don't know off the top of my head
2 a charter provision or Council rule that's specific to closed
3 sessions.

4 Q What types of things, we'll use your language, what types
5 of things can the City approve by discussion?

6 **MS. KUMAR:** Objection, Your Honor, I direct the
7 witness not to answer any question that would divulge
8 privileged information or other information protected by the
9 Brown Act.

10 **THE COURT:** I don't believe that that question is
11 going to get into communication. You can answer that question,
12 sir.

13 **THE WITNESS:** Can you ask it again, please?

14 **BY MS. MYERS:**

15 Q What types of things, to your use your language, can be
16 decided by the City Council through discussion?

17 A Guidance in litigation, for example.

18 Q What else?

19 A I'm sure there's others, that's the one that comes to
20 mind.

21 Q And where do you base your understanding that things can
22 be decided by discussion?

23 **MS. KUMAR:** Objection, Your Honor, relevance.

24 **THE COURT:** Overruled.

25 **THE WITNESS:** As an attorney working for the City we

1 sometimes seek guidance or instruction from our client. Those
2 conversations take place in closed sessions.

3 Q Yes, that's not what I was asking. So I'm asking when you
4 said that things can be decided by discussion, I'm asking where
5 you're grounding your understanding that the City of Los
6 Angeles and the City Council can decide things by discussion.

7 A That's the purpose of having a closed session.

8 Q So that the City Council decide things by discussion.

9 A Within the context of a litigation, yes.

10 Q Okay. I'm asking for purposes of -- so before I showed
11 you Rule 25, which says that actions taken by the City Council
12 have to be done by vote, is there a City Council rule or a
13 charter provision that provides that the City Council can
14 decide things by discussion?

15 **MS. KUMAR:** Objection, Your Honor, calls for a legal
16 conclusion.

17 **THE COURT:** Do you understand the question?

18 **THE WITNESS:** I do. It's not every decision by the
19 City Council is an action requiring a vote. It's just that
20 simple.

21 **BY MS. MYERS:**

22 Q That's not my question. My question is, you testified
23 that the City Council can decide things by discussion and I'm
24 asking you if there's a City Council rule or a provision of the
25 charter that guides you in your understanding of that? Is it

1 grounded in a City Council rule or charter provision?

2 A Not -- there's no single provision or rule that comes to
3 mind. It is how the City and its counsel communicate with each
4 other.

5 Q Okay. And so this deciding things by discussion is
6 limited only to litigation. Is that -- to guidance and
7 litigation; is that correct?

8 A I can't say that. That is certainly my personal
9 understanding because that is my role or was my role as counsel
10 for the City. Whether it occurs in other contexts, I couldn't
11 speak to.

12 Q So as counsel for the City, you leave open the possibility
13 that other things could be decided by the City Council by
14 discussion?

15 A Again I can't speak to what's beyond my experience.

16 Q Things that are decided by discussion, would those be
17 considered approval by the City Council in your mind?

18 **MS. KUMAR:** Objection, Your Honor, vague and beyond
19 the scope of this witness' knowledge.

20 **THE COURT:** Counsel, would you repeat that, I missed
21 the question, I'm sorry.

22 **BY MS. MYERS:**

23 Q You said things are decided by discussion, would that be
24 considered in your mind approval by the City Council if the
25 City Council decided something by discussion?

1 A It could be.

2 Q And what would be the factors that you would look to to
3 determine whether a thing that was decided by discussion
4 constituted approval for purposes of the City Council?

5 **MS. KUMAR:** Objection, Your Honor, this is work
6 product and asking this witness to testify in the abstract
7 about a hypothetical without any reference to specifics. I
8 don't see its relevance.

9 **THE COURT:** And repeat that question one more time,
10 counsel.

11 **MS. MYERS:** Sure, Your Honor.

12 **BY MS. MYERS:**

13 Q So if you have things that are decided by discussion, what
14 factors would go into your determination that constituted
15 approval by the City Council?

16 **MS. KUMAR:** Same objection, Your Honor.

17 **THE COURT:** Overruled. You can answer the question,
18 sir.

19 **THE WITNESS:** Again, I think the question invades the
20 attorney/client privilege in discussions that take place in
21 closed session, so I don't think I can answer that.

22 Q Okay. You testified in response to a question from your
23 attorney that you believed that the City Council approved the
24 encampment resolution plan, correct?

25 A Yes.

1 Q And what factors -- what facts support your testimony that
2 the City Council approved the encampment reduction plan?

3 MS. KUMAR: Objection, Your Honor, I direct the
4 witness not to answer the question to the extent it would
5 reveal anything that occurred in closed session and otherwise
6 covered by the attorney/client privilege, the lawyer privilege,
7 the legislative privileges, any official information.

8 THE COURT: And that's specific to the encampment
9 reduction plan?

10 MS. MYERS: Yes, Your Honor.

11 THE COURT: I'll have that marked by the clerk.

12 MS. MYERS: And I'd like to be heard on this
13 particular point.

14 THE COURT: Please.

15 MS. MYERS: Your Honor, the City asked Mr. Marcus to
16 testify about his view of what occurred during the meeting,
17 specifically testifying about his view that the City Council
18 had approved the encampment reduction plan. The City can't now
19 object to us asking the facts that support his opinion and his
20 view of what happened. They opened the door to this specific
21 question.

22 If they did not want this line of questioning asked
23 here, Your Honor, they simply should not have asked Mr. Marcus
24 to testify to that. This is -- they opened the door.

25 MS. KUMAR: Your Honor, Ms. Myers asked the

1 question --

2 **THE COURT:** Just a moment, both of you --

3 **MS. MYERS:** -- immediately.

4 **THE COURT:** -- I want to make sure you've finished
5 your argument and then I'll turn to the City. Have you
6 concluded?

7 **MS. MYERS:** Your Honor, whether -- if we asked the
8 question, that's fine, but the City asked the question and he
9 was allowed to testify on that point. When I asked the
10 question, the City objected, then they went forward and asked
11 that question and he testified, Your Honor. If they don't want
12 this line of questioning, they need to not ask him and allow
13 him to testify in support of their position. That's our whole
14 argument, Your Honor, this morning.

15 **MS. KUMAR:** Your Honor, this is the central
16 problem --

17 **THE COURT:** Just a moment, have you finished. I'm
18 going to turn to the City in just a moment.

19 **MS. MYERS:** Yes, Your Honor.

20 **THE COURT:** Counsel, on behalf of the City.

21 **MS. KUMAR:** This is the quintessential example of the
22 problem with this hearing, Your Honor. The City is being asked
23 to defend itself against questioning by Ms. Myers and
24 Ms. Mitchell about what happened and what goes into that
25 stipulation.

1 Then subject to the City's objections we stated all
2 this morning and at the outset of the questioning of the
3 witnesses and again throughout the testimony, because the City
4 asked the same question that Ms. Myers and Ms. Mitchell asked,
5 the City is somehow waiving its privilege or sometimes using it
6 as a sword and a shield. The City can't be expected to defend
7 itself with both hands tied behind its back, Your Honor, that
8 is entirely inappropriate.

9 They asked the question. The Court asked the
10 question. And over objection, we're still here having this
11 witness testify.

12 **MS. MYERS:** But when we ask the questions, Your
13 Honor, they object to it and say he shouldn't be allowed to
14 testify and again, this is what has happened time and again,
15 Your Honor, in these proceedings. Is that we ask questions,
16 the City objects, but when those questions benefit the City
17 then they ask the questions and their witnesses are allowed to
18 testify. This is exactly what occurred, Your Honor, in which
19 Mr. Marcus testified in his stipulation about what occurred in
20 closed session. And then when we ask questions about what
21 occurred, he's not allowed to testify about it. Exactly the
22 same as the issues related to the vote.

23 We asked questions about the procedure and they
24 refuse to answer questions. But when it benefits them, then
25 they are -- then they put it forward. This is exactly the

1 definition of waiver, Your Honor, is that the City is not
2 allowed to condition its privileges whenever it wants to. They
3 asked Mr. Marcus this question. We are allowed to interrogate
4 the facts that support his testimony, Your Honor.

5 **THE COURT:** Okay. Counsel, on behalf of the City.

6 **MS. KUMAR:** Your Honor, I cannot more strenuously
7 object. The idea that the entire morning we spent talking
8 about the City's objection to this very testimony. The Court
9 assured the City that it would be narrow, still over the City's
10 objection we proceeded.

11 Ms. Myers and Ms. Mitchell asked questions about this
12 very paragraph in the stipulation. We objected to that, the
13 Court overruled, and he was ordered to testify. So then I'm
14 not allowed to ask any questions in an attempt to try to
15 protect the City from a ruling that this Court is going to do
16 on an incomplete record.

17 Your Honor, I have to say this is the central problem
18 with this hearing and proceeding in this fashion. If the Court
19 is inclined to direct Mr. Marcus to answer that question,
20 several things are going to have to happen and I won't go there
21 unless the Court is inclined to do that, but I would like to be
22 heard if the Court is going to do that.

23 **THE COURT:** I want to thank you both. We're going to
24 take a recess in just a moment, but broadly speaking a
25 democracy depends upon transparency. And that means the

1 ability of the public to participate, to give their input to
2 Council, to give different viewpoints. And on one hand, I'm
3 going to be extraordinarily careful in terms of communication.
4 On the other hand, these questions seem to evolve around the
5 criteria being used to make these decisions and what you or the
6 City, in particular you relied upon.

7 So let me take a few moments for reflection and give
8 each of you a break for a moment.

9 **MS. KUMAR:** Your Honor, can I be heard on one more
10 point?

11 **THE COURT:** No, not right now, counsel. I think it's
12 time to take a break and when we come back you certainly can.
13 Okay? All right. We're in recess for about 20 minutes,
14 counsel. You may step down, sir, thank you.

15 **(Recessed at 2:21 p.m.; reconvened at 2:40 p.m.)**

16 **THE COURT:** The witness is returned to the stand,
17 Ms. Myers and counsel, all parties are present.

18 This is being used as a sword and a shield. You're
19 allowed to answer these questions. So, Ms. Myers, if you'd
20 continue please.

21 **MS. KUMAR:** Your Honor, I have to reiterate our
22 objection. I would ask the Court to stay its decision until we
23 can seek relief from the Ninth Circuit. You're asking --
24 deciding on the spot whether or not the City can maintain its
25 privileges without an adequate basis. We'd at least ask for

1 briefing on the topic before that's done, and I -- you know,
 2 and I also -- Your Honor, at this point if the Court is going
 3 to order Mr. Marcus to testify over the objection and direction
 4 of counsel, I mean, Mr. Marcus -- we don't represent Mr. Marcus
 5 individually. We represent the City. So we're in an untenable
 6 situation where he needs separate advice about whether or not
 7 he should follow the Court's order.

8 **THE COURT:** All right. Thank you. Counsel, your
 9 question please.

10 **REDIRECT EXAMINATION (CONTINUED)**

11 **BY MS. MYERS:**

12 Q So you previously testified that you believed based on
 13 your observations during the City Council meeting that the City
 14 Council had approved the encampment reduction plan; is that
 15 fair?

16 A Yes.

17 Q And what were the facts that supported your determination
 18 that the City Council approved the encampment reduction plan?

19 **MS. KUMAR:** Your Honor, I repeat my objection and ask
 20 for a stay and ask for an opportunity to brief this question
 21 and ask the opportunity for Mr. Marcus to consult separate
 22 counsel.

23 **THE COURT:** This is mindset, counsel, it's not a
 24 communication. You can answer the question.

25 **THE WITNESS:** Has anyone denied that the Council

1 approved the plan?

2 **MS. MYERS:** Your Honor --

3 **THE WITNESS:** Is there anyone denying that the City
4 Council approved the plan?

5 **MS. MYERS:** Your Honor, would you instruct Mr. Marcus
6 to answer. That's -- obviously that's not an answer to the
7 question that I posed.

8 **THE COURT:** Repose the question, please.

9 **BY MS. MYERS:**

10 Q What facts support your testimony that you observed --
11 that you believed that the City Council approved the encampment
12 reduction plan?

13 **MS. KUMAR:** Same objections, Your Honor, she's asking
14 for facts, not acts necessarily involves communications.

15 **THE COURT:** Just rephrase that, counsel.

16 Q You testified that based on your observations, the City
17 Council approved the encampment reduction plan. So I'm asking
18 what you observed that informed your opinion that the City
19 Council approved the encampment reduction plan.

20 **MS. KUMAR:** Objection, same objection, Your Honor,
21 observations include communications and include acts that are
22 privileged.

23 **THE COURT:** Overruled. This door was opened,
24 counsel. It can't be used as a sword and a shield, you can
25 answer, sir.

1 **THE WITNESS:** That question would require me to
2 invade the attorney/client privilege and I decline to answer
3 it.

4 **MS. MYERS:** I'd ask for an instruction from the Court
5 to answer the question, they're not going to answer the
6 question.

7 **THE COURT:** Pardon me?

8 **MS. MYERS:** The witness is declining to answer the
9 question.

10 **THE COURT:** I'll leave the record as it is, counsel.

11 **MS. MYERS:** Your Honor, we have a number of
12 additional questions outstanding that the Court has not yet
13 ruled on, is the Court prepared to make a ruling on those?
14 Should I ask those questions again or is the Court going to
15 refer to those questions?

16 **THE COURT:** I wanted to look at those questions and I
17 didn't want to do that haphazardly during the recess.

18 **MS. MYERS:** Sure.

19 **THE COURT:** It was only 20 minutes and I want to be
20 careful with this. You've asked that the gentleman be
21 available for return, you've also requested Mr. Szabo be
22 present. I don't know what that date would be yet. We have
23 another witness in the audience, I think we ought to be polite
24 to and have on the stand today.

25 **MS. KUMAR:** Your Honor, can I just advise that per

1 discussions I've had with Ms. Myers Mr. Fogel has a conflict at
2 3, we've had these conversations.

3 **THE COURT:** At 3 o'clock? Okay.

4 **MS. MYERS:** I understood it was 3:30, is it 3?

5 **MS. KUMAR:** 3.

6 **THE COURT:** Well, we can be in continuous session and
7 I'm not going to inquire about the conflict, but we can
8 certainly come back tomorrow. Counsel.

9 **BY MS. MYERS:**

10 Q So at this point, you are declining to answer questions
11 related to the basis of your testimony that you observed that
12 the City Council -- that you believed that the City Council
13 approved the encampment reduction plan.

14 **MS. KUMAR:** Same objections, Your Honor, and
15 argumentative.

16 **THE COURT:** Counsel, you can answer the question.

17 **THE WITNESS:** The question you just asked me I
18 believe would require me to invade the attorney/client
19 privilege in order to answer it and I'm declining to answer
20 that question.

21 **MS. MYERS:** If I can just have one moment, Your
22 Honor.

23 **THE COURT:** Surely.

24 **MS. MYERS:** I do not have any further questions for
25 this witness at this time, but obviously I would defer pending

1 a ruling on the additional questions.

2 **THE COURT:** Back to LA Alliance, please.

3 **MS. MITCHELL:** Again, we have no further questions
4 subject to the questions that the Court is taking under
5 consideration. Thank you.

6 **THE COURT:** All right. And back to the City. I'm
7 sorry, to the County, pardon me.

8 **MS. BRODY:** Nothing from the County, Your Honor.

9 **THE COURT:** And the City?

10 **MS. KUMAR:** And nothing further, Your Honor, pending
11 further questioning obviously so if we could let Mr. Marcus go.
12 And then, of course, as I advised Mr. Coble -- Foble (phonetic)
13 has a conflict at 3.

14 **THE COURT:** Okay. And the clerk was kind enough to
15 mark those questions and I can go over those with you this
16 evening. And what's the next available date for Mr. Strobel
17 (phonetic)?

18 **MS. KUMAR:** I can find out, if you give me a moment,
19 Your Honor.

20 **MS. MYERS:** Your Honor, I only have a couple of
21 questions, but it's -- I mean, I'm happy to come back but I
22 only have a few questions.

23 **THE COURT:** Well, I don't know if 15 minutes we're
24 going to accomplish -- I just don't know what your questions
25 are. I'd rather hear it continuously.

1 **MS. MYERS:** Thank you, Your Honor.

2 **(Pause)**

3 **THE COURT:** And, counsel, we're back on the record.
4 And it'll be difficult for all of us to get one calendared
5 event. All of you are busy.

6 I'd like to hear again the briefing schedule from the
7 Ninth Circuit, the dates.

8 **MR. HAMBURGER:** Yes, Your Honor, the Ninth Circuit
9 yesterday set a seven day deadline for a response for the real
10 parties in interest to file a response and invited the Court to
11 file a response, so that was seven days from yesterday. So six
12 days from today. And then a reply is due three days after
13 that.

14 **THE COURT:** Do you know the schedule concerning my
15 colleague Judge Kin and when his next hearing date is?

16 **MS. MYERS:** Your Honor, the parties -- sorry about
17 that, Your Honor. The parties are meeting and conferring and
18 we expect that the Court will set an OSC regarding the issuance
19 of the judgment, so at this point it's not clear what the
20 Court's briefing schedule will be.

21 **THE COURT:** One consideration is that there's been
22 testimony concerning privileges and other issues that the
23 Circuit could examine and if the Court's correct can proceed in
24 trying to make these rulings. The other is if the Court's
25 incorrect, the Court can be corrected by the Circuit.

1 I'd hoped to get both the testimony today, as I
2 reflected over the recess of both Mr. Strobel and at least the
3 present witness up to the circuit in a package. But I didn't
4 know when Mr. Szabo was available. I can go back into session
5 literally any time. But --

6 **MS. KUMAR:** He's unavailable, Your Honor, until next
7 week.

8 **THE COURT:** Until next week?

9 **MS. KUMAR:** Yeah.

10 **THE COURT:** What day next week?

11 **MS. KUMAR:** He can be available beginning Tuesday.

12 **THE COURT:** On Tuesday. All right. Just a moment.

13 **MS. KUMAR:** And I believe Mr. Foble and Mr. Marcus
14 are also available on Tuesday. At some point during the day
15 Mr. -- you know, there may be appointments but we can confer
16 with counsel.

17 **THE COURT:** Well, first of all, Mr. Strobel, you're
18 in the audience, you have a 3 o'clock, why don't you go about
19 whatever that personal obligation is. And we can inform you
20 about the date, so as we discuss those dates, you're not
21 sitting waiting, okay.

22 And I know your representation is short, but I don't
23 think that in 10 to 15 minutes all of you are going to conclude
24 no matter how short the questions are and I'd rather hear that
25 in a block of time.

1 So a number of factors, courtesy to the Circuit,
2 availability of the witnesses, trying to get the Court's
3 decisions to the Circuit to reflect upon, try to take into
4 account my colleague in the state court system, but somewhat
5 setting a tenor also of the parameters that I've drawn trying
6 to narrow this to X, they're not privileged versus confidential
7 communications that may be privileged.

8 What's your suggestion, counsel? In other words,
9 when should the Court reconvene?

10 **MS. KUMAR:** May we have a moment for discussion?

11 **THE COURT:** Well, I know from the City probably
12 never, just joking, but you know --

13 **MS. KUMAR:** I don't want to repeat myself, Your
14 Honor, but at the conclusion of --

15 **THE COURT:** No, I understand --

16 **MS. KUMAR:** -- the Cangress litigation.

17 **THE COURT:** -- your position is, but it's, you know.

18 **MS. MITCHELL:** May we have a moment to discuss?

19 **THE COURT:** Yeah, why don't you.

20 **MS. MITCHELL:** Exchange schedules? Thank you.

21 **THE COURT:** Now, I can't make it convenient for
22 everyone, but I'd like to pay that courtesy to all of those
23 from the Circuit to the litigants and --

24 **(Pause)**

25 **THE COURT:** Counsel, I have a suggestion for all of

1 you because -- counsel. My suggestion is this, it's next
2 Wednesday for a couple of reasons. First of all, Monday is a
3 holiday. The Court has a huge calendar which is why I had to
4 move you from the request by the City to have this on Monday to
5 this Tuesday. I had to move that one day just because we had
6 so many cases on our calendar. We also have a huge calendar
7 set for next Tuesday, so I'm going to request next Wednesday.
8 And I can be here at 7:30, I can stay as late as late as Judge
9 Gee will let me.

10 **MS. MITCHELL:** Wednesday works for us, Your Honor.

11 **MS. MYERS:** That's fine, Your Honor.

12 **MS. KUMAR:** Your Honor, I just need to confer with --
13 I mean I did not ask that one day with Mr. --

14 **THE COURT:** Yeah, well I'm smiling at all of you
15 which means it's probably next Wednesday.

16 **MS. KUMAR:** Yeah, understood. I just wanted to make
17 sure the witness --

18 **THE COURT:** So why don't you talk very quickly and
19 communicate. Mr. Szabo should be available, Mr. Strobel should
20 be available and that way I can examine the questions,
21 Mr. Marcus, that I've delayed and --

22 **MS. KUMAR:** And is the City's 2.8 motion be heard
23 that day?

24 **THE COURT:** Are there any more questions at least at
25 this time of Mr. Marcus?

1 **MS. MITCHELL:** Not at this time, not from the
2 Alliance, Your Honor.

3 **THE COURT:** At least at this time.

4 **MS. KUMAR:** And nothing else from the City, Your
5 Honor.

6 **THE COURT:** Let me ask that you be available, but
7 we'll be courteous. We'll try to fit into your schedule next
8 Wednesday also and give you plenty of due notice, but if you're
9 needed back. Okay?

10 **THE WITNESS:** Understood.

11 **THE COURT:** Thank you very much, sir, if you'd step
12 down.

13 Then next Wednesday what time would you like to
14 reconvene? Is 9 o'clock acceptable, would you like 8 o'clock
15 or 7:30?

16 **MS. KUMAR:** 9 o'clock sounds great, Your Honor.

17 **THE COURT:** 9 o'clock good?

18 **MS. MITCHELL:** That's fine, Your Honor.

19 **THE COURT:** 9 o'clock?

20 **MS. MYERS:** That's fine, Your Honor.

21 **THE COURT:** All right. And I'd like to be apprised
22 of the schedule of Judge Kin, if possible.

23 **MS. MYERS:** As soon as we have an update, Your Honor,
24 we will let you know.

25 **THE COURT:** Okay. Thank you very much. Counsel,

have a nice week and we'll see you next Wednesday at 9 o'clock.
We're in recess.

(Proceedings concluded at 3:00 p.m.)

* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.



Signed

February 11, 2026

Dated

TONI HUDSON, TRANSCRIBER