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October 16, 2012

Planning Director
Kern County Planning and Community Development Department
2700 M St. Suite 100
Bakersfield, CA 93301-2323

Re: Beacon Photovoltaic Project

Dear Planning Director:

This letter responds to Michael Kavanaugh's comments regarding the Beacon Photovoltaic Project's Environmental Impact Report (EIR) alleging that the Beacon Photovoltaic Project is likely to result in some form of "urban decay" and that the EIR's analysis and proposed mitigation of cumulative impact of the abandonment of PV solar projects is inadequate. Dr. Kavanaugh submitted comments on August 21, 2012 and again on September 21, 2012. Based on my review as a professional economist, I have concluded that Dr. Kavanaugh's comments are pure conjecture and speculation and are not supported by economic theory, economic evidence, or common sense. I support this conclusion through a point-by-point response to Dr. Kavanaugh's concerns presented below.

1. The Project and Physical Deterioration

Dr. Kavanaugh contends that the project will lead to "deterioration of structures" and thus to some form of "urban decay." He posits that the fact that there are "several abandoned structures in the area ... near the site access point," proves that the area is vulnerable to "vacancy, structural deterioration and abandonment". There is no merit to this contention. It is not surprising to find abandoned buildings in an area that has long fallen into disuse as the project site has.¹ Land records show that the project site was last farmed almost 30 years ago (DEIR, p 10). This is not evidence that the area is susceptible to further deterioration especially if the land is put back to use or that the proposed project will cause such deterioration. Indeed, the Beacon Photovoltaic project will not add to deterioration and has already eliminated abandoned and blighted structures on site. Land that becomes unattractive for one use often becomes attractive for another resulting in improvements not deterioration. This is not uncommon and is consistent with economic theory. There are ample examples of this even in the rust belt cities referenced by Dr. Kavanaugh in his August 21, 2012 comments (p.7). Re-use of the project site after 30 years of no productive use is significantly more likely to lead to economic improvement rather

¹ An aerial view of the region using Google Earth indicates that there very few structures of any kind present suggesting that the area is not vulnerable to widespread deterioration and abandonment. See Attachment 1.

than economic deterioration. Furthermore, the re-use of the project site will generate revenue for the County, including increased property taxes.

Dr. Kavanaugh also asserted in his August 21, 2012 comments that Beacon along with other photovoltaic (PV) projects has “the potential to put downward pressure on local employment and labor earnings (including agricultural income and employment).” (p.3). This he contends may lead to deterioration of residential and commercial structures. There is no evidence to suggest that this is the case. First, he presents no evidence that the project will lead to downward pressure on labor earnings. The Beacon Photovoltaic Project site currently supports no employment at all, agricultural or otherwise. Further, even if the 31,808 acres (including 2298 acres for the Beacon project) that Dr. Kavanaugh lists as associated with PV projects were on agricultural lands they would represent about 3.6% of the 874,599 acres harvested in Kern County in 2011.² There is no evidence that approval of PV solar projects throughout the County is putting farming operations out of business or that farm workers are being laid off as a result. Second, Dr. Kavanaugh presents no evidence to connect his theorized downward pressure on earnings with deterioration of residential and commercial facilities. For there to be such a link, Dr. Kavanaugh would need to not only show that that the downward pressure on wages existed, but that it was substantial enough to cause workers to neglect their homes and businesses. He makes no such showing. Finally, because PV projects consume virtually no water, they may actually help agriculture on other sites by reducing water demand relative to conventional fossil fired power plant that would be built in their absence.

2. Project Size Measured in Megawatts and Acres

Dr. Kavanaugh claims that the Beacon Photovoltaic Project is less efficient in its land use than other PV solar projects planned or approved in Kern County, and as a result the project is more likely to contribute to structural deterioration. This claim too is without merit or supporting evidence. It appears that Dr. Kavanaugh believes that a “less efficient” solar project is bad because such a project takes up more land than would be used for other purposes, such as agriculture. As I noted above, there is no evidence that the land in question would be used for agricultural or any other purpose in the absence of the project. Furthermore, Dr. Kavanaugh has offered no evidence suggesting, and there is no reason to expect, that the project site would be used for agricultural purposes again over the next 30 years or more. No other use has been proposed. Consequently, there are no opportunity costs associated with the use of these acres for the Beacon Photovoltaic Project because no other economically productive use of the land is contemplated or likely. Moreover, the additional acres attributable to Beacon relative to the average of the site identified by Dr. Kavanaugh, about 443 acres, would represent a trivial loss in agriculture employment even if the land would otherwise be placed back into agricultural production – approximately 2 jobs.³ Agricultural land does not typically generate many direct

² Kern County Department of Agriculture and Measurement Standards. Kern County Crop Reports. Available at: <http://www.kernag.com/caap/crop-reports/crop-reports.asp> (Last accessed: October 2012).

³ If Beacon’s land use was the average of the sites listed by Dr. Kavanaugh, it would use about 443 fewer acres ($9.19\text{acres/mw} \times 250 - 7.47\text{acres/mw} \times 250 = 443$). At $.00477 \text{ jobs/acre} \times 443$, only 2 jobs would be gained if the land would otherwise be in agricultural production.

local jobs. Almonds, a major crop in Kern County for example, generate only 0.00477 jobs per acre because of technological advances.⁴

Finally, Dr. Kavanaugh's megawatt to acre (MW/acre) comparison is seriously flawed. The fact that Beacon Photovoltaic Project's MW/acre ratio is higher than the average tells us nothing about its economic efficiency.⁵ To judge this, one has to take into account the amount of sunlight, the technology used, the cost of the technology, operating costs, and land costs. Presumably Beacon Photovoltaic Project's investors accounted for the price of the land in their investment decision and found the project attractive. Dr. Kavanaugh cannot say that the Beacon project is any more or less economically efficient than the other local projects he lists without this information. Imposing a standard value for land use as Dr. Kavanaugh suggests, in the absence of these other factors, is likely to result in less not more efficient plant development.

3. Decommissioning Plans and Financial Assurances

Dr. Kavanaugh argues that the financial assurances proposed by Kern County are inadequate. He fails, however, to demonstrate that this is the case in quantitative terms. First, PV solar projects, even at the end of their useful lives, have value for recycling and reuse, especially aluminum and glass components that comprise a sizable fraction of the facilities. Two elements used in panels Tellerium (Te) and Indium (In) in smaller amounts are very rare and are likely to grow in value in the future. An active market for solar module recycling is anticipated as the technology gains greater market penetration.⁶ Given the prospects for recycling or reusing much of the solar facilities themselves, it is highly unlikely that such components would be simply abandoned. Instead, solar operators are anticipated to have financial incentive to decommission the solar facilities in order to realize the salvage value of the facilities. Dr. Kavanaugh neglects to take this fact into account. Second, Dr. Kavanaugh seems to think that expected costs of decommissioning a PV solar project to the County are like those of a nuclear plant or at least an industrial site. There is no basis for such a concern and no reason to expect that the County will ultimately be responsible for cleaning up a highly contaminated site. PV plants do not contain large amounts of toxic substances and as noted above much of the material is recyclable.⁷

4. Temporary or Permanent

Dr. Kavanaugh thinks that a date certain for decommissioning and restoration should be set – regardless of whether the project is operational or at the end of its useful life. This makes no

⁴ The UC Cooperative Extension budget for almonds in the South San Joaquin Valley in 2008. University of California Cooperative Extension. Crop Budgets. Available at: <http://coststudies.ucdavis.edu> (Last accessed October 2012). The budget provides labor hours that can be converted to full time equivalent jobs.

⁵ It is useful to note that the Beacon project's MW/acre according to the values presented by Dr. Kavanaugh is not statistically different than the ratio for the plants listed.

⁶ Lauren Craig, "Recycling Solar Panels A Big Money Maker," downloaded from www.earthtechling.com/2012/01/recycling-solar-panels-a-big-money-maker/

⁷ See for example, Vasilis M. Fthenakis, "End-of-Life Management and Recycling of PV Modules," Energy Policy, 28 (2000), pp.1051-1058 and Solar Energy Industries Association, Issues and Policies, PV Recycling (<http://www.seia.org/policy/environment/pv-recycling>).

October 16, 2012

Page 4


sense. As I indicated above, the life of the Beacon Photovoltaic Project is unknown. The solar project may be in operation for 35 years. The life of the project could also be extended beyond this point because of technological gains. It is also possible that the solar project could shut down sooner if alternative forms of energy become more attractive although this not contemplated in forecasts that I am familiar with. In either case, requiring that any restoration be completed with a reasonably prescribed time, as is required by the EIR and Mitigation Measure MM 4.9-1, can be accomplished without setting specific restoration dates in advance.

Conclusion

None of the comments made by Dr. Kavanaugh in his August 21, 2012 and September 21, 2012 comment letters raise any legitimate concerns, and no changes in the EIR, mitigation measures, or project plans are required by his comments. He has provided no evidence that the Beacon Photovoltaic Project will contribute to vacancy rates or structural abandonment or deterioration. Both theory, evidence, and common sense suggest the contrary. His proposals regarding a MW/acre standard and a date certain for restoration do not address real problems and as a consequence should be rejected.

Sincerely,

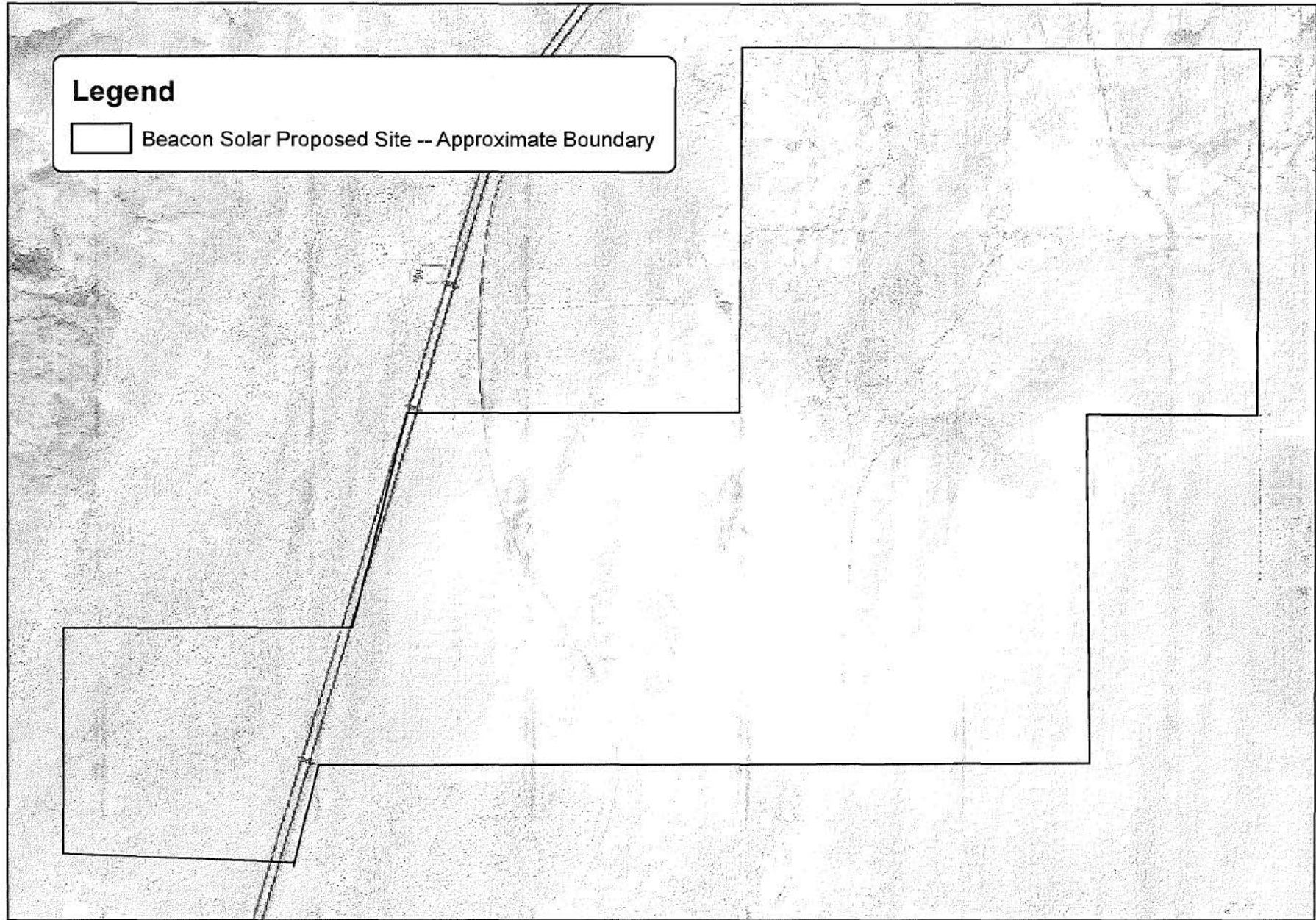
The Brattle Group



Mark Berkman, Ph.D.
Principal

The Brattle Group

Beacon Solar's Proposed Site is Undeveloped Desert as Shown by Recent Aerial Photography



Office: San Francisco, CA ♦ Phone: +1.415.217.1000 ♦ Email: Mark.Berkman@brattle.com

Dr. Mark P. Berkman is an expert in applied microeconomics. His experience spans the areas of the environment, energy, and natural resources; environmental health and safety; labor and employment; intellectual property; antitrust; commercial litigation and damages; and public finance. He has assisted both public and private clients and provided testimony before state and federal courts, arbitration panels, regulatory bodies, and legislatures.

His environmental work has involved the review of proposed air, water, solid waste, and worker and product safety regulations. Dr. Berkman has quantified the costs and benefits of these regulations, as well as toxic tort and product liability claims. In addition, he has valued natural and water resources as well as property damages associated with pollution from Superfund sites, landfills, and power plants.

His work on energy matters includes the valuation of coal resources, power plants, and transmission rights-of-way. He has also prepared energy demand and price forecasts. He has extensive experience working with Native American tribes on energy valuation matters.

Clients in a variety of industries ranging from computer chip to shoe manufacturers have sought Dr. Berkman's assistance to value patents, trade secrets, and trademarks. He has also been called on to address questions of market power in a variety of industries including solid waste, computer manufacturing, and medical devices. He has testified regarding market definition and market power and participated in Hart-Scott-Rodino proceedings.

Dr. Berkman also has substantial experience in labor and discrimination litigation. He has conducted statistical analyses of alleged discrimination in hiring, promotion, pay, and contracting, and completed damage analyses regarding these allegations. He has also conducted statistical analyses regarding mortgage lending discrimination.

Prior to joining *Brattle* he was a co-founder and director at Berkeley Economic Consulting and a vice president at both Charles River Associates and NERA Economic Consulting.

AREAS OF EXPERTISE

- ♦ *Antitrust/Competition*
- ♦ *Commercial Damages*
- ♦ *Environmental Litigation and Regulation*
- ♦ *Intellectual Property*
- ♦ *Product Liability*
- ♦ *Utility Regulatory Policy and Ratemaking*
- ♦ *Employment and Discrimination*

EDUCATION

- ◆ University of Pennsylvania, Wharton School – Ph.D. in Public Policy Analysis – Managerial Science and Applied Economics
- ◆ Harvard University – M.A. in Planning, Policy Analysis and Administration
- ◆ George Washington University, B.A. in Economics and Urban Affairs

EXPERIENCE

- ◆ 2008 – 2010: Director, *Berkeley Economic Consulting*
Responsible for managing and conducting projects in the areas of environment, energy, intellectual property, antitrust, labor, and public finance
- ◆ 2002 – 2008: Vice President, *Charles River Associates*
- ◆ 1993 – 2002: Vice President, *NERA Economic Consulting*
- ◆ 1988 – 1993: Senior Consultant, *NERA Economic Consulting*
- ◆ 1984 – 1988: Senior Analyst, *NERA Economic Consulting*
- ◆ 1983 – 1984: Economic Analyst, *NERA Economic Consulting*
- ◆ 1980 – 1983: Research Fellow, *University of Pennsylvania*
- ◆ 1977 – 1980: Associate Budget Analyst, *Congressional Budget Office*
- ◆ 1976 – 1977: Teaching Assistant, *Harvard University*
- ◆ 1975 – 1976: Research Assistant, *The Urban Institute*
- ◆ 1973 – 1975: Staff Assistant, *United States Congress, Office of Congressman Charles Vanik*

PROFESSIONAL AFFILIATIONS

- ◆ American Economic Association
- ◆ Association for Public Policy Analysis and Management
- ◆ Association of Environmental and Resource Economists
- ◆ Western Economic Association

PUBLICATIONS

- ◆ “Reply to Comment on Effect of Coal-fired Power Generation on Visibility at a Nearby National Park.” *Atmospheric Environment*, 55 (2012) 297-298.
- ◆ “The Adverse Impact of Particulate Matter on Property Values.” With Kyle Hubbard and Timothy Savage. *International Real Estate Review*, available online at http://www.umac.mo/fba/irer/forth/irer_forth_IR1143%20.html.
- ◆ “Effect of Coal-Fired Power Generation on Visibility in a Nearby National Park.” With Jonathan Terhorst. *Atmospheric Environment*, 44 (2010) 2524-2531.
- ◆ “Estimating Toxic Tort and Environmental Damages.” With Gordon Rausser in Earl Hagstrom, editor, *Perchlorate, A Scientific, Legal, and Economic Assessment*, Tucson, AZ, Lawyers and Judges Publishing Co., March 2006.
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- ◆ “What’s Wrong with America’s Airlines, and How Can It Be Fixed?” With Mark Kiefer and Robert Litan. TNR/ON, *The New Republic*, May 16, 2005, pp. 3–6.
- ◆ “Valuing Intellectual Property Assets for Licensing Transactions.” *The Licensing Journal*, Vol. 22, No. 4, April 2002.
- ◆ “Where is the Market Failure? A Review of OSHA’s Economic Analysis for Its Proposed Ergonomics Standard.” With Jesse David. *Journal of Labor Research*, Vol. XXII, No. 1, winter 2001.
- ◆ “Water Subsidies in Southern California: Do They Exist and Have They Contributed to Urban Sprawl? A Comment on an Article by Steven Erie and Pascale Joassart-Marcelli.” With Jesse David. *California Western Law Review*, Vol. 37, No. 1, fall 2000.
- ◆ “Complying with New Rules for Controlling Nitrogen Oxides Emissions.” With Jonathan Falk and John Wile. *The Electricity Journal*, January-February 2000, pp. 40–50.
- ◆ “The Regional Costs and Benefits of Acid Rain Control.” Dissertation, University of Pennsylvania, May 1991.
- ◆ “Valuing Flexibility in Utility Planning Using Dynamic Programming.” With J. Falk. *EPRI Proceedings from Conference on Decision Support Methods for the Electric Power Industry*, Cambridge, Mass., May 1990.
- ◆ “Environmental Regulation Will Affect Electric Utility Fuel Consumption Patterns.” *Energy*, August 1989.

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- ◆ “The Underpricing of Landfills.” With Fred Dunbar. *Viewpoint*, summer 1987, pp. 25–33.
- ◆ “Sanitary Landfills Are Too Cheap!” With Fred Dunbar. *Waste Age*, May 1987.
- ◆ “Regional Economic Trade-offs in Sulfur Emissions Control Policy.” With P. Blair. *Geographic Dimensions of Energy*, F. Calzonetti and B. Solomon, Dordrecht Holland: D. Reidel Publishing Co., 1985.
- ◆ “Regional Impacts of Federal Coal Policy.” With P. Blair. *International Journal of Energy Systems*, Vol. 4, No. 2, 1984.
- ◆ “Multiregional Analysis of Federal Coal Policy.” With P. Blair. *Journal of Resource Management and Technology*, Vol. 12, No. 2, April 1983.
- ◆ “Energy Development, Local Growth and the Federal Role.” Congressional Budget Office, Working Paper, Washington, D.C.: Government Printing Office, 1980.
- ◆ “The World Oil Market in the 80s: Implications for the United States.” With E. Erlich. Congressional Budget Office, Washington, D.C.: Government Printing Office, 1980.
- ◆ “An Evaluation of the Strategic Petroleum Reserve.” With B. Holt. Washington, D.C.: Government Printing Office, Committee Print 96 IFC, June 1980.
- ◆ “The Budgetary, Economic, and Energy Implications of Alternative Synthetic Fuel Proposals.” *Synthetic Fuels Report by the Subcommittee on Synthetic Fuel of the Committee on the Budget*, United States Senate, Washington, D.C.: Government Printing Office, September 1979.
- ◆ *Energy Conservation in Maine: Weatherization Improvements to the Existing Housing Stock*. Cambridge, Mass., Harvard University, June 1977.
- ◆ *An Evaluation of Solid Waste Disposal Options for Rockport, Massachusetts*. Cambridge, Mass., Harvard University, February 1977.
- ◆ “New Evidence on Racial Differences in Commuting Behavior.” With J. Goodman. *Journal of Public Data Use*, Vol. 5, No. 4, 1977.

TESTIMONY AND REPORTS*Environment, Energy, and Natural Resources*

- ◆ “The Employment Impacts of Proposed Tariffs on Chinese Manufactured Photovoltaic Cells and Modules.” With Lisa Cameron and Judy Chang. Prepared for the Coalition for Affordable Solar Energy, January 30, 2012.
- ◆ “Employment Impacts of the Proposed Bay Delta Conservation Plan Habitat Restoration Measures.” With David Sunding. Prepared for the Delta Habitat Conservation and Conveyance Program, November 3, 2011.
- ◆ “Employment Impacts for Proposed Bay Delta Water Conveyance Tunnel Options.” With David Sunding and Michelle Tran. Prepared for the Metropolitan Water District of Southern California on behalf of the Delta Habitat Conservation and Conveyance Program, September 19, 2011.
- ◆ “Economic Analysis of SB568’s Proposed Polystyrene Ban.” With David Sunding. Prepared for Dart Container Corporation, August 15, 2011.
- ◆ Deposition Testimony of Mark P. Berkman on behalf West Bay Sanitary District in the matter of *San Francisco Baykeeper v. West Bay Sanitary District*, United States District Court for the Northern District of California, Case No. cv-09-5676-EMC, regarding water pollution damages, July 28, 2011.
- ◆ Rebuttal Expert Report of Mark P. Berkman on behalf West Bay Sanitary District in the matter of *San Francisco Baykeeper v. West Bay Sanitary District*, United States District Court for the Northern District of California, Case No. cv-09-5676-EMC, regarding water pollution damages, June 2011.
- ◆ “Economic and Fiscal Impacts of the Desert Sunlight Solar Farm.” With Michelle Tran and Wesley Ahlgren. Prepared for First Solar, May 2011.
- ◆ “Economic and Fiscal Impacts of the Topaz Solar Farm.” With Michelle Tran and Stephen Hamilton. Prepared for First Solar, March 2011.
- ◆ Rebuttal Testimony of Mark P. Berkman and David L. Sunding in the Matter of the Application of California American Water Company (U 210 W) for a Certificate of Convenience and Necessity to Construct and Operate its Coastal Water Supply Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover all Present and Future Costs in Connection Therewith in Rates, Application 04009-019, on behalf of the Marina Coast Water District regarding the benefits of a regional water supply project, May 27, 2010.

- ◆ Declaration of Mark P. Berkman, PhD in Support of Real Party in Interest Potrero Hills Landfill, Inc.'s Memorandum of Points and Authorities in Opposition to Petition for Writ of Mandate, Sierra Club vs. County of Solano: Board of Supervisors of Solano County; and Does 1-10, Superior Court of the State of California, County of Solano, Case No. FCS034073, regarding the interstate nature of waste disposal, December 9, 2009.
- ◆ Direct Testimony of Mark P. Berkman and David L. Sunding in the Matter of the Application of California American Water Company (U 210 W) for a Certificate of Convenience and Necessity to Construct and Operate its Coastal Water Supply Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover all Present and Future Costs in Connection Therewith in Rates, Application 04009-019, on behalf of the Marina Coast Water District regarding the benefits of a regional water supply project, June 24, 2009.
- ◆ Deposition Testimony in the matter of *Watkins & Shepard Trucking vs Soco West, Inc*, Superior Court of the State of California for the County of Los Angeles –Central District, Case No. BC379287, on behalf of defendants regarding the influence of environmental risk on real estate price, September 9, 2008
- ◆ Deposition testimony, In Re Mt. Konocti Mutual Water Company, Inc, Official Committee of Unimproved Lot Owners vs. Mt Konocti Mutual Water Company, Case No. 90-11573, regarding water connection fee methodology on behalf of defendants, January 14, 2008.
- ◆ Declaration, In Re Mt. Konocti Mutual Water Company, Inc, Official Committee of Unimproved Lot Owners vs. Mt Konocti Mutual Water Company, Case No. 90-11573, regarding water connection fee methodology, on behalf of defendants, January 4, 2008.
- ◆ Hilmar Supplemental Environmental Project, Managing Salt in the Central Valley, submitted to the California Regional Water Quality Control Board, Central Valley Region in compliance with Order No. R5-2006-0025, with David Sunding and Yoram Rubin, November 16, 2007.
- ◆ Measures to Reduce the Economic Impacts of a Drought-Induced Water Shortage in the San Francisco Bay Area for the San Francisco Public Utilities Commission with David Sunding, Robert Gamble, and Sean Randolph, May 3, 2007.
- ◆ Analysis of the Economic Impacts of a Shutdown of Limestone Mining in Florida's Lake Belt District on behalf of the Miami Dade Limestone Products Association with Ann McDermott, March 21, 2007.
- ◆ Valuation of Hells Canyon Jet Boat Outfitters and the Impact of the River Flow Restrictions on behalf of Idaho Power Corp., April, 2006.
- ◆ Expert Testimony in the matter of *Quality Control Services, Inc. v. Dougherty County*, United States District Court for the Middle District of Georgia Albany Division, Case no. 1:05 CV-19 (WLS) on behalf of plaintiffs regarding the Pike Balancing test, 2006.

- ◆ Deposition Testimony in the Matter of *Corbitt v. American Furniture Manufacturing Inc. and W.S. Bradcock Corporation*, United States District Court, Middle District of Alabama Civil Action 2:05CV58-T, on behalf of defendants regarding product liability, November 18, 2005.
- ◆ Expert Report and Direct Testimony of Mark Berkman and David Sunding in the matter of Hilmar Cheese Company Inc., Hilmar Whey Protein Inc., California Regional Water Quality Control Board Central Valley Region, ACL Complaint No. R5-2005-0501, August 2005.
- ◆ Economic Impacts of Critical Habitat Designation for Vernal Pool Species, prepared for the U.S. Fish and Wildlife Service, U.S. Department of Interior with David Sunding, June 25, 2005.
- ◆ “Environmental liability forecasts regarding manufactured gas plant sites for Pacific Gas & Electric,” September 2004. (Confidential)
- ◆ Expert Report of Mark Berkman in the matter of *BFI Waste Systems of North America, Inc. v. City and County of Denver and Waste Management of Colorado, Inc.* on behalf of the plaintiff. Filed in the United States District Court for the District of Colorado. August 30, 2004.
- ◆ Expert report in the matter of *United Haulers Association, Inc. et al. v. Oneida-Herkimer Solid Waste Management Authority, County of Oneida and County of Herkimer* before the U.S. District Court for the Northern District of New York. Performed an analysis on behalf of the plaintiffs of the solid waste flow control laws enacted by Oneida and Herkimer Counties, New York. November 15, 2002.
- ◆ “Forecast of Environmental Remediation Liability for Pacific Gas & Electric.” With Gordon Rausser, October 10, 2002.
- ◆ “The Economic Impacts of Closing the Canton Mill.” With Burton Griffith. Prepared for Blue Ridge Paper Products, Inc., June 1, 2001.
- ◆ “Estimates of Environmental Risk Associated with the BMI Site.” Prepared for Marsh & McLennan, March 2000.
- ◆ “The Effect of CO2 Reduction Policies on the Canadian Electricity Industry and Economy.” Prepared for ATCO Electric, EPCOR, New Brunswick Power, Nova Scotia Power, Ontario Power Generation, Saskatchewan Power and TransAlta Utilities, July 5, 1999.
- ◆ “The Economic Impacts of Policies to Reduce Alfalfa Water Consumption.” Report, prepared for Natural Resources Defense Council, October 12, 1998.
- ◆ “Market Opportunities for Environmental Remediation and Site Management” Report prepared for Pacific Corp, 1998.

- ◆ “Comments on CalFed’s Draft EIS of March 1998.” Prepared for Save San Francisco Bay Association, June 30, 1998.
- ◆ “Evaluation of Tax Claim Against the State of Montana.” Prepared for the Fort Peck Reservation, September 18, 1997. (Confidential)
- ◆ Deposition Testimony on behalf of homeowners in Benicia, California, regarding property value diminution in *Lagrimes v. Southhampton et al.*, September 1997.
- ◆ Testimony before the Trade Waste Commission, City of New York on behalf of the New York City Economic Development Commission, regarding maximum rate regulation of commercial waste collection, January 21, 1997.
- ◆ “Costs and Benefits of the Proposed Enclosed Unloader at the Fresh Kills Landfill.” Prepared for the New York City Law Department, December 1996.
- ◆ Deposition Testimony on behalf of Browning-Ferris Industries, in the matter of *W.J. Curry & Son v. Velsicol Chemical Co. v. Kraft et al.* regarding the allocation of Superfund remediation costs, July 12, 1996.
- ◆ “Estimating Employment Effects of Electric Price Increases in U.S. Manufacturing Industries and Assessing Such Effects in New Jersey.” Prepared for Jersey Central Power & Light, June 28, 1996.
- ◆ “Estimate of Employment Effects of Electric Price Increases in U.S. Manufacturing Industries and Assessing Such Effects in Maryland.” Prepared for Allegheny Power, Maryland, June 17, 1996.
- ◆ Rebuttal Testimony on behalf of Central and South West Energy, Inc. in the matter of Application No. 93-2, CSW Energy, Inc. and KVA Resources, Inc., Northwest Regional Power Facility, Before the State of Washington Energy Facility Site Evaluation Council regarding the costs and benefits of controlling residual NOx and CO emissions and CO2 emissions at a proposed natural gas-fired power plant in Washington, October 1995.
- ◆ Affidavit on behalf of the New York City Law Department, in the matter of the Application of New York City Department of Environmental Protection for Renewals of the State Pollutant Discharge Elimination System Permits for New York City’s 14 Publicly Owned Treatment Works regarding the costs and benefits of proposed pollution control investments, August 24, 1995.
- ◆ “The Cost of Flow Control.” Prepared for Browning-Ferris Industries, May 3, 1995.
- ◆ “Economic Impacts of VOC Emission Reductions Beyond the 15% Plan in the Cincinnati CMSA.” Prepared for Cincinnati Gas & Electric, April 27, 1995.
- ◆ Prefiled Rebuttal Testimony before the Montana Public Service Commission, on behalf of the Montana Power Company, Docket No. 94.8.30, regarding affiliated coal prices, January 13, 1995.

- ◆ Prefiled Direct Testimony before the Montana Public Service Commission, on behalf of the Montana Power Company, Docket No. 94.8.30, regarding affiliated coal prices, August 22, 1994.
- ◆ “Water Quality Benefits of Floatable Reduction in the New York Bight.” Expert Witness Report and Testimony on behalf of the New York City Law Department before the State of New York Department of Environmental Conservation in the Matter of the Application of The New York City Department of Environmental Protection for Renewals for the State Pollutant Discharge Elimination System (SPDES) Permits for New York City’s 14 Publicly Owned Sewage Treatment Works. DEC No. 0026131, April 27, 1994.
- ◆ “Comments Regarding Water Pricing and Water Markets Under the Reclamation Reform Act of 1982,” to the U.S. Bureau of Reclamation on behalf of the Natural Resources Defense Council, March 14, 1994.
- ◆ “Initial Comments of National Economic Research Associates, Inc. on Florida DSM Employment Impacts,” prepared with J. Landon and P. Griffes for Florida Power & Light Company, January 1994.
- ◆ Rebuttal testimony before the Montana Public Service Commission on behalf of the Montana Power Company, Docket No. 93.6.24, regarding affiliated coal prices, October 15, 1993.
- ◆ Declaration on behalf of the Hacienda Improvement Association before the Superior Court of the State of California, Case No. BS 021186, *Hacienda La Puente Unified School District of Los Angeles County, et al. v. County of Sanitation District No. 2 of Los Angeles County, et al.*, regarding solid waste disposal capacity in Los Angeles, October 14, 1993.
- ◆ “A Review of Environmental Damage Studies.” Prepared for Ontario Hydro, October 1993.
- ◆ Direct prefiled testimony before the Montana Public Service Commission on behalf of the Montana Power Company, Docket No. 93.6.24, regarding affiliated coal prices, June 21, 1993.
- ◆ “Environmental Externalities Briefing Book.” Prepared for Florida Power & Light Company, April 17, 1993.
- ◆ “External Costs of Electric Utility Resource Selection in Nevada.” Prepared with D. Harrison, Jr., A. Nichols, and S. Bittenbender for Nevada Power Company, March 1993.
- ◆ “The Economic Impacts of AOX Reduction on the U.S. Pulp and Paper Industry.” Sponsored by Georgia-Pacific Corporation, October 22, 1992.
- ◆ “Appraisal of the 107th Meridian Strip Coal Reserves.” Prepared for the Crow Indian Tribe, July 1992.
- ◆ “Carbon Tax Impacts on Coal Production and Rail Shipments.” Prepared with John Wile for Association of American Railroads, May 1992.

- ◆ “Socio-Economic Impacts of Strategies to Comply with the Clean Air Act Amendments of 1990.” Prepared for The Cincinnati Gas & Electric Company Licensing and Environmental Affairs Department, May 1992.
- ◆ “The Environmental and Social Costs Associated with Wood Roof Removal Legislation.” Prepared with Clayton Environmental Consultants for Steel Roofing Manufacturers’ Association, February 1992.
- ◆ “The Economic Feasibility of VOC Control Technologies for the Wood Furniture and Cabinet Industries.” Prepared for the American Furniture Manufacturers Association, Business and Institutional Furniture Manufacturers Association, Kitchen Cabinet Manufacturers Association, National Paint and Coatings Association, January 1992.
- ◆ Rebuttal testimony before the Texas Public Utility Commission on behalf of Houston Lighting and Power, Docket No. 10473, regarding the treatment of environmental externalities, October 4, 1991.
- ◆ “Key Issues in Least-Cost Planning.” With Kent Anderson, National Economic Research Associates, Inc. Working Paper #10, August 1991.
- ◆ “Hydroelectric Relicensing: Comparing the Value of Power and Nonpower Uses.” With Mike Rosenzweig, April 1, 1991.
- ◆ Expert testimony before the District Court of the Fifth Judicial District of the State of Idaho, *State of Idaho, ex rel. R. Keith Higginson v. United States, State of Idaho, et al.*, Case No. 39576, on behalf of the United States, regarding water claims fees, February 4, 1991.
- ◆ “An Evaluation of State Efforts to Incorporate Environmental Externalities Into Electric Utility Planning.” Prepared for Central Maine Power and the Energy Research Group, with John Wile, January 1991.
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- ◆ Expert Report of Mark P. Berkman in the matter of Price v. Price, Circuit Court of the Fifteenth Circuit in and for the County of Palm Beach Florida, Case No. 50 2007 DR1982 MBFC, regarding environmental and business risks associated with a construction and demolition landfill, December 2008.
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- ◆ Deposition Testimony on behalf of the City and County of San Francisco in the matter of *City and County of San Francisco, et al. v. United States Postal Service, et al.*, United States District Court for the Northern District of California San Francisco Division No. 3:09-cv-01964-RS (EDL), regarding costs to provide centralized service to single occupancy hotels, July 7, 2011.
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- ◆ Deposition Testimony in the matter of *Carlos Torres et. al. v. Gristedes Operating Corporation et al.*, United States Court Southern District of New York, Case No. 04 CV 3316 (PAC) (ASP), October 25, 2005.
- ◆ Expert Report of Mark Berkman in the matter of *Carlos Torres et. al. v. Gristedes Operating Corporation et. al.*, United States Court Southern District of New York, Case No. 04 CV 3316 (PAC) (ASP), regarding a wages and hours claim on behalf of defendant, October 11, 2005.
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- ◆ Declaration of Mark P. Berkman PhD, in the matter of *Public Works Contract Cases, City of San Francisco, et. al. v. William D. Spencer et. al. and F.W. Spencer & Son Inc., et. al. v. David Norman, et. al.* Judicial Council Coordination Proceeding No 4379, June 10, 2005.
- ◆ Trial Testimony of Mark P. Berkman in the matter of *Barbara Niesendorf v. Levi Strauss & Company* on behalf of the defendant, regarding alleged wrongful termination. San Francisco, CA, June 10, 2004.
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- ◆ Trial Testimony in the matter of *Daniel Millar v. San Francisco Bay Area Rapid Transit District*, Superior Court for the State of California, for the County of Alameda, on behalf of San Francisco Bay Area Rapid Transit District, regarding alleged wrongful termination. Oakland, CA, October 8–9, 2003.
- ◆ Deposition Testimony of Mark P. Berkman in the matter of *Willard E. Kopetski v. Chevron Corporation et al.*, Superior Court of the State of California in and for the County of San Francisco, on behalf of defendant Chevron Corporation, regarding alleged wrongful termination. San Francisco, CA, August 18, 2003.
- ◆ Rebuttal Report of Dr. Mark P. Berkman in the matter of *Mark J. True v. Allstate Insurance Company et al.*, United States District Court, Eastern District of California, on behalf of the defendant. Report filed July 9, 2003.
- ◆ Expert Witness Report of Dr. Mark P. Berkman in the matter of *Mark J. True v. Allstate Insurance Company et al.*, United States District Court, Eastern District of California, on behalf of the defendant, outlined proper methods for damage calculation. Report filed June 18, 2003.
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- ◆ Expert Witness Report in the matter of *Alpheus Ray Brokaw v. Qualcomm, Inc.*, U.S. District Court, Southern District of California, on behalf of Qualcomm, Inc. regarding alleged wrongful termination. Report filed January 23, 2003.
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- ◆ Deposition of Mark P. Berkman before the U.S. District Court, Southern District of California, in the matter of *Durante et al. v. Qualcomm, Inc.* on behalf of Qualcomm, Inc. regarding alleged age-based termination. San Diego, CA, December 10, 2002. Declaration filed in San Diego, CA, November 6, 2002.
- ◆ Trial Testimony on behalf of the NAACP in the matter of *NAACP v. State of Florida Department of Corrections*, U.S. District Court, Middle District of Florida, Ocala Division regarding statistical evidence of race discrimination in the promotion, training and discipline of black corrections officers, Ocala, Florida, November 6, 2002.
- ◆ Expert Testimony on behalf of the NAACP in the matter of *NAACP v. State of Florida Department of Corrections*, U.S. District Court, Middle District of Florida, Ocala Division regarding the adequacy of available data for statistical analysis. Ocala, Florida, September 14, 2001.
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- ◆ Deposition of Mark P. Berkman in the matter of *Victoria Aguinaldo Boudakian v. Avco Financial Services, et al.* Testimony before the United States District Court for the Eastern District of California on behalf of Avco Financial Services regarding alleged gender-based pay discrimination and termination, Oakland, CA, June 19, 2001.
- ◆ Trial Testimony of Mark P. Berkman in the matter of *Lucy Sales et al. v. County of Contra Costa et al.*, before the U.S. District Court for the Northern District of California, on behalf of Contra Costa County regarding the utilization of minority- and women-owned firms by the County, June 18, 2001.
- ◆ Deposition of Mark P. Berkman in the matter of *Lucy Sales et al. v. County of Contra Costa et al.*, regarding comments on reports filed by plaintiff's experts, February 16, 2001.

- ◆ Affidavit of Mark P. Berkman in the matter of *National Association for the Advancement of Colored People, et al. v. State of Florida Department of Corrections, et al.*, to examine the Florida Department of Corrections data regarding the hiring and promotion of staff and analyze it for evidence of race and gender discrimination, April 4, 2001 and September 13, 2000.
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- ◆ “California Disabled Veteran Business Enterprise Availability Study.” Prepared for The Joint Utilities Subcommittee, consisting of 12 California utilities, October 15, 1996.
- ◆ “An Analysis of the Utilization and Availability of Minority and Woman-Owned Businesses in the Los Angeles Metropolitan Area.” Prepared with D. Evans et al., March 7, 1996.
- ◆ “The Oregon Health Plan Economic Impact Analysis for the Employer Mandate.” Prepared with John Gaisford et al. for the Oregon Office of the Health Care Administrator, February 10, 1995.
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- ◆ “The Utilization of Minority and Women-Owned Business Enterprises by Member Agencies of the Regional Transit Association.” Prepared with D. Evans et al., May 1993.
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- ◆ “Economic Implications of *Los Angeles Times* Job Fair-Related Activities.” Prepared with Richard T. Rapp, on behalf of the *Los Angeles Times*, October 27, 1992.
- ◆ Declaration on behalf of San Francisco Bay Area Rapid Transit District in *RGW Construction, Inc. San Francisco Bay Area Rapid Transit District, et al.*, regarding evidence of discrimination against minority contractors in the Bay Area, October 8, 1992.
- ◆ “The Utilization of Minority and Woman-Owned Business Enterprises by Alameda County.” Prepared with D. Evans et al., June 1992.
- ◆ “The Utilization of Minority and Woman-Owned Business Enterprises by Contra Costa County.” Prepared with D. Evans et al., May 1992.

Intellectual Property

- ◆ Deposition Testimony in the matter of *Quickie LLC v Greenberg Traurig et.al*, United States District Court Southern District of New York, 07Civ.10331 (RMB) (DFE), on behalf of plaintiffs, April 13, 2009.
- ◆ Expert Report of Mark P. Berkman in the matter of *CAL-PAL v. California Police Youth Charities, Inc.*, United States District Court, Northern District of California, Case No. 3:08-cv-01991-PJH on behalf of plaintiffs regarding damages regarding alleged trademark infringement and violations of the Uniform Trade Secret Act, January 9, 2009.
- ◆ Expert Rebuttal Report of Mark Berkman, PhD in the matter of *Quickie LLC v Greenberg Traurig et.al*, United States District Court Southern District of New York, 07Civ.10331 (RMB) (DFE), on behalf of plaintiffs regarding patent infringement damages, October 17, 2008.
- ◆ Expert Report of Mark Berkman, PhD in the matter of *Quickie LLC v Greenberg Traurig et.al*, United States District Court Southern District of New York, 07Civ.10331 (RMB) (DFE), on behalf of plaintiffs regarding patent infringement damages, July 21, 2008.
- ◆ Trial Testimony in the matter of *Ultra Clean Technology Systems and Service, Inc. v. Celerity, Inc.* before the United States District Court Northern District of California- San Francisco. June 12, 2007.
- ◆ Deposition Testimony in the matter of *Ultra Clean Technology Systems and Service, Inc. v. Celerity, Inc.* before the United States District Court Northern District of California- San Francisco. February 8, 2007.
- ◆ Expert Report of Mark Berkman in the matter of *Ultra Clean Technology Systems and Service, Inc. v. Celerity, Inc.* before the United States District Court Northern District of California- San Francisco. January 12, 2007.

- ◆ Deposition Testimony in the matter of Hank Spacone, on behalf of and a trustee for the General Unsecured Creditors' Liquidating Trust of At Home Corporation, and on behalf of and in the name of the At Home Liquidating Trust of At Home Corporation, Microsoft Corporation, Civil Action NO. C034739 (CW), September 27, 2005.
- ◆ Expert Report of Mark Berkman in the matter of Hank Spacone, on behalf of and a trustee for the General Unsecured Creditors' Liquidating Trust of At Home Corporation, and on behalf of and in the name of the At Home Liquidating Trust of At Home Corporation, Microsoft Corporation, Civil Action NO. C034739 (CW), August 19, 2005.
- ◆ Expert Report of Mark P. Berkman in the matter of *Monster Cable Products, Inc. v. Discovery Communications, Inc.* before the United States District Court for the Northern District of California—San Francisco. July 23, 2004. Rebuttal Report filed August 13, 2004. Deposition Testimony taken in San Francisco on August 18, 2004.
- ◆ Trial Testimony of Mark P. Berkman before the U.S. District Court for the District of Connecticut in the matter of *Raytek Corporation v. Omega Engineering, Inc. and Newport Electronics, Inc.*, regarding false advertising and a patent infringement claim. Bridgeport, CT, June 16, 2004.
- ◆ Deposition Testimony of Mark Berkman in the matter of *Vladimir I. Makhov v. Litton Systems, Inc., et al.*, providing damages estimates on behalf of respondents with regard to an alleged breach of contract. May 27, 2004.
- ◆ Supplemental Expert Report of Mark Berkman in the matter of *Vladimir I. Makhov v. Litton Systems, Inc., et al.*, providing damages estimates on behalf of respondents with regard to an alleged breach of contract. Before the American Arbitration Association, New York City Office, May 4, 2004.
- ◆ Expert Report of Mark Berkman in the matter of *Vladimir I. Makhov v. Litton Systems, Inc., et al.*, providing damages estimates on behalf of respondents with regard to an alleged breach of contract. Before the American Arbitration Association, New York City Office, April 26, 2004.
- ◆ Supplemental Expert Report of Mark P. Berkman in the matter of *Quickie, LLC, v. Medtronic, Inc.*, U.S. District Court for the Southern District of New York, on behalf of the plaintiff, Quickie, LLC, filed March 5, 2004.
- ◆ Deposition Testimony of Mark P. Berkman in the matter of *Quickie, LLC, v. Medtronic, Inc.*, U.S. District Court for the Southern District of New York, on behalf of the plaintiff, Quickie, LLC, calculating damages for alleged patent infringement. Washington, DC, August 20, 2003.
- ◆ Rebuttal report with Timothy Savage, Ph.D. and Phillip Taylor, Ph.D., in the matter of *Tyson Foods, Inc. v. ConAgra Foods, Inc.*, U.S. District Court for the Western District of Arkansas, on behalf of the defendant, responding to opposing expert's damages calculations. August 8, 2003.

- ◆ Expert witness report with Timothy Savage, Ph.D. and Phillip Taylor, Ph.D., in the matter of *Tyson Foods, Inc. v. ConAgra Foods, Inc.*, U.S. District Court for the Western District of Arkansas, on behalf of the defendant, calculating economic damages resulting from alleged false advertising under the Lanham Act. July 30, 2003.
- ◆ Expert witness report of Mark P. Berkman before the U.S. District Court for the Southern District of New York in the matter of *Quickie, LLC, v. Medtronic, Inc.* on behalf of the plaintiff, Quickie, LLC, calculating damages for alleged patent infringement. June 18, 2003.
- ◆ Expert witness report of Mark P. Berkman before the U.S. District Court for the Northern District of California in the matter of *Molecular Probes, Inc. v. Texas Fluorescence Laboratories, Inc.* on behalf of the plaintiff, Molecular Probes, Inc., calculating damages for alleged patent infringement. San Francisco, CA, November 15, 2002.
- ◆ Deposition Testimony of Mark P. Berkman before the U.S. District Court for the District of Connecticut in the matter of *Raytek Corporation v. Omega Engineering, Inc. and Newport Electronics, Inc.*, regarding false advertising and a patent infringement claim, July 18, 2001.
- ◆ Trial Testimony of Mark P. Berkman in *Caliper Technologies Corp. v. Bertram Rowland; Flehr, Hohbach, Test, Albritton & Herbert; Aclara Biosciences, Inc., and Does One Through One Hundred*, estimated damages related to the misappropriation of trade secrets for a computer chip, October 5, 2000.
- ◆ Deposition Testimony of Mark P. Berkman in *Caliper Technologies Corp. v. Bertram Rowland; Flehr, Hohbach, Test, Albritton & Herbert; Aclara Biosciences, Inc., and Does One Through One Hundred*, September 7, 2000.
- ◆ Expert Witness Report of Mark P. Berkman (Confidential) in *Baxter Healthcare Corporation v. Spectranetics, Inc.*, to determine reasonable royalties in a patent infringement suit involving medical lasers, April 25, 2000.
- ◆ Trial Testimony of Mark P. Berkman, on behalf of R.E. Service Company, Inc., in the matter of *Johnson & Johnson Associates, Inc. v. R.E. Service Co., Inc.*, in the United States District Court, Northern District of California, Case No. C 97-04382 CRB, regarding damages associated with an alleged patent infringement, October 21, 1998.
- ◆ Expert Report with Kent Anderson in *Canon v. Nu-Kote International, U.S. District Court for the Central District of California, Southern Division*, regarding damages from alleged infringement of trademark, trade dress and design patents, August, 1998.
- ◆ Deposition Testimony of Mark P. Berkman, on behalf of R.E. Service Company, Inc., in the matter of *Johnson & Johnson Associates, Inc. v. R.E. Service Co., Inc.*, in the United States District Court, Northern District of California, Case No. C 97-04382 CRB, to calculate damages regarding an alleged patent infringement, July 10, 1998.

- ◆ Second Supplemental Expert Report of Mark P. Berkman, on behalf of Cellnet Data Systems, Inc., in the matter of *Cellnet Data Systems, Inc. v. Itron, Inc.*, to calculate damages regarding Itron's alleged infringement of their patent on remote electric meter reading, June 30, 1998.
- ◆ Expert Witness Report of Mark P. Berkman, on behalf of R.E. Service Company, Inc., in the matter of *Johnson & Johnson Associates, Inc. v. R.E. Service Co., Inc.*, in the United States District Court, Northern District of California, Case No. C 97-04382 CRB, to calculate damages regarding an alleged patent infringement, June 22, 1998.
- ◆ Expert Reports of Mark P. Berkman, on behalf of Cellnet Data Systems, Inc., in the matter of *Cellnet Data Systems, Inc. v. Itron, Inc.*, to calculate damages regarding Itron's alleged infringement of their patent on remote electric meter reading, April 1, 1998 and May 19, 1998.

Antitrust

- ◆ Expert Report of Mark P. Berkman in Support for Summary Adjudication of Tesoro Refining and Marketing Company, California Public Utilities Commission, Application No. A08-09-04, regarding market power in the transport of crude oil on behalf of Tesaro, November 16, 2009.
- ◆ Deposition Testimony in the matter of *Southern Waste Systems LLC and Sun Recycling v. The City of Coral Springs Florida, Waste Management Inc., of Florida and the Broward Solid Waste Disposal District*, United States District Court Southern District of Florida Miami Division, Case No. 06-61448-CIV on behalf of plaintiffs, April 14, 2009.
- ◆ Expert Report of Mark P. Berkman in the matter of *Southern Waste Systems, LLC and Sun Recycling v. The City of Coral Springs Florida, Waste Management Inc. of Florida and the Broward Solid Waste Disposal District*, United States District Court Southern District of Florida Miami Division, Case No. 06-61448-CIV on behalf of plaintiffs regarding Commerce Clause violations and damages, February 2, 2009.
- ◆ Sworn Declaration of Mark P. Berkman in Support for Summary Adjudication of Tesoro Refining and Marketing Company, California Public Utilities Commission, Application No. A08-09-04, regarding market power in the transport of crude oil, December 18, 2008.
- ◆ Trial Testimony in the matter of *Groeniger & Co. v. Ferguson Enterprise Inc.*, Superior Court of the State of California, County of Kern, No. 253924, on behalf of defendants regarding antitrust and anticompetitive act claims, May 16, 2007.
- ◆ Deposition Testimony in the matter of *Groeniger & Co. v Ferguson Enterprises, Inc.*, Superior Court of the State of California, County of Kern, No. 253924, April 21, 2007.
- ◆ *Waste Services Inc. v. Waste Management Inc.* in the United States District Court, Middle District of Florida, Orlando Division, Case no. 6:05-CV-00320-ACC-DAB, 2006.

- ◆ In Re High Pressure Laminates Antitrust Litigation in the United States District Court for the Southern District of New York, 2004.
- ◆ Expert witness report of Mark P. Berkman before the U.S. District Court for the Northern District of California in the matter of *Molecular Probes, Inc. v. Texas Fluorescence Laboratories, Inc.* on behalf of the plaintiff, Molecular Probes, Inc., critiquing defendant's antitrust counterclaim. San Francisco, CA, December 6, 2002.
- ◆ Trial Testimony of Mark P. Berkman before the U.S. District Court for the District of Minnesota on behalf of Superior-FCR Landfill, Inc., in the matter *Superior-FCR Landfill, Inc. v. Wright County, Minnesota*, regarding the impact of a county-need based zoning decision on interstate commerce, June 15, 2001.
- ◆ Arbitration Testimony of Mark P. Berkman in the matter of *Raisin Bargaining Association v. American Raisin Packers et al.*, on behalf of the American Raisin Packers regarding the free tonnage price for raisins in 2001, April 30, 2001.
- ◆ Expert Witness Report on Damages of Mark P. Berkman in *Cardiac Pacemakers Inc, Guidant Sales Corp, and Eli Lilly Company vs. St. Jude Medical, Inc., Pacemaker, Inc., Ventritex, Inc. and John Does 1-10*, regarding alleged anti-competitive actions by plaintiff, February 26, 2001.
- ◆ Expert Witness Report of Mark P. Berkman in *Cardiac Pacemakers Inc, Guidant Sales Corp, and Eli Lilly Company vs. St. Jude Medical, Inc., Pacemaker, Inc., Ventritex, Inc. and John Does 1-10*, regarding counterclaim damages, January 18, 2001.
- ◆ Deposition Testimony of Mark P. Berkman on behalf of Superior-FCR Landfill, Inc., in the matter *Superior-FCR Landfill, Inc. v. Wright County, Minnesota*, regarding the effects on interstate commerce of Wright County's zoning policies, August 24, 2000.
- ◆ Expert Witness Report of Mark P. Berkman on behalf of Superior-FCR Landfill, Inc., in the matter *Superior-FCR Landfill, Inc. v. Wright County, Minnesota*, regarding the effects on interstate commerce of Wright County's zoning policies, April 3, 2000.
- ◆ Affidavit of Mark P. Berkman, December 29, 1999, and Supplemental Affidavit of Mark P. Berkman, January 15, 2000, prepared on behalf of Waste Management of New York in the matter of *Waste Management of New York v. Town of Oyster Bay et al.*, reviewing the Town of Oyster Bay's contracting procedures and terms for a solid waste disposal contract.
- ◆ Rebuttal Report of Mark P. Berkman, on behalf of Randy's Sanitation, Inc., in the matter of *Randy's Sanitation, Inc. v. Wright County, Minnesota, Patrick Sawatzke, and Kenneth Jude*, January 21, 1999.
- ◆ Expert Witness Report of Mark P. Berkman, on behalf of Randy's Sanitation, Inc., in the matter of *Randy's Sanitation, Inc. v. Wright County, Minnesota, Patrick Sawatzke, and Kenneth Jude*, regarding the impacts of Wright County's flow control ordinance on interstate and intrastate trade, November 2, 1998.

- ◆ Investigation of the Proposed Merger of Waste Management, Inc. with USA Waste before the U.S. Department of Justice as required by the Hart-Scott-Rodino Act, 1998.
- ◆ Testimony before the Trade Waste Commission, City of New York on behalf of the New York City Economic Development Commission, regarding maximum rate regulation of commercial waste collection, January 21, 1997.
- ◆ *Strobe Data, Inc. v. Digital Equipment Corporation*, before the United States District Court, Western District of Washington, C96-947C, 1997.
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- ◆ *Jerry Duke v. Browning Ferris Industries of Tennessee and Browning Ferris Industries*, Tennessee Circuit Court, 1996.
- ◆ Expert Witness Report of Mark P. Berkman in the matter of *Ben Oehrlein et al. v. Hennepin County, Minnesota*, in the United States District Court for the District of Minnesota Fourth Division, addresses what the market price for solid waste disposal in Hennepin County, Minnesota, would have been between 1989 and 1995 but for a County Ordinance restricting waste to designated disposal facilities, November 1, 1995.
- ◆ Affidavit of Mark P. Berkman in Support of Class Certification, on behalf of *Robinson Rubber Co. Inc., et al. v. Hennepin County, Minnesota*, before the United States District Court, District of Minnesota, Civil Court File No. 4-95-220, regarding the impact of Hennepin County's flow control ordinance on solid waste disposal costs on County residents and businesses, October 30, 1995.
- ◆ Declaration on behalf of *Ben Oehrlein et al. v. Hennepin County, Minnesota*, before the United States District Court, District of Minnesota, Civil Court File No. 4-94-63, regarding the geographic market for solid waste disposal, August 3, 1995.
- ◆ *Novadyne Computer Systems, Inc. v. Tandem Computers, Inc.*, before the United States District Court, Central District of California, No. 91-1941 THJ (KX), October, 1995.
- ◆ Affidavit on behalf of Kauai Publishing Company in *Hawaii Press Newspapers, Inc. v. Wolf Publishing et al.*, No. 88-1836-6, regarding predatory pricing claims made against Kauai Publishing, March 11, 1994.

- ◆ Investigation of the Proposed Acquisition of Attwoods, Inc. by Browning-Ferris Industries, Inc. before the U.S. Justice Department as required by the Hart Scott Rodino Act, 1994.
- ◆ Expert testimony before the U. S. District Court, District of Rhode Island, *Metals Recycling, Inc. v. American Waste Services, Inc., et al.*, on behalf of American Waste regarding market power and tying in solid waste disposal and transportation, July 17–21, 1992.
- ◆ *Metals Recycling, Inc. v. American Waste Services, Inc., and Enviroco Transportation Management, Inc.*, before the U.S. District Court, District of Rhode Island, No. 91-0149B, 1992.
- ◆ Deposition testimony on behalf of Kauai Publishing Company regarding *Hawaii Press Newspapers, Inc. v. Wolf Publishing, et al.*, First Circuit Court, State of Hawaii, Civil Case No. 88-1836-06, regarding alleged market power and predatory pricing, October 29, 1991.
- ◆ *Hawaii Press v. Wolf Publishing et al.*, before the Circuit Court of the First Circuit, State of Hawaii, No. 88-1836-06, 1991.
- ◆ *High Technology Careers, a California partnership v. San Jose Mercury News, a California Corporation*, before the U.S. District Court, Northern District of California, San Jose Division, No. 90-20579-SW, 1991.
- ◆ *BPHC Acquisition Inc. v. Penthouse International, Donald J. Trump, et al.* before the Superior Court of New Jersey, 1990.
- ◆ *Zapata Gulf Marine Corporation v. Puerto Rico Maritime Shipping Authority, et al.* before the U.S. District Court of the Eastern District of Louisiana, 1990.
- ◆ *ETSI Pipeline Project v. Burlington Northern Inc., et al.*, in the United States District Court for the Eastern District of Texas, Beaumont Division, No. B-84-979-CA, 1989.
- ◆ *Landmarks Holding Corporation, et al. v. David W. Bermant, et al.*, before the United States District Court, District of Connecticut, 1984.
- ◆ *Jefferson Disposal v. Parish of Jefferson, et al.*, before the United States District Court, for the Eastern District of Louisiana, 1984.
- ◆ *Scenic Trails, Inc. v. Greyhound Lines, Inc., et al.*, before the United States District Court, Western District of Wisconsin, 1984.

Commercial Litigation and Damages

- ◆ Expert witness report of Mark P. Berkman, Ph.D., in the matter of *Neptec Optical Solutions v. Nabuo Takahashi and Nomura Jimusho (U.S.A.)*, U.S. District Court for the Eastern District of Tennessee at Knoxville, reviewing and evaluating plaintiff's damages estimates and providing damages assessments on behalf of the defendant. November 10, 2003.—*Confidential.*

- ◆ Declaration of Mark P. Berkman before the American Arbitration Association Commercial Arbitration Tribunal in the matter of *Javad Ashjaee v. Topcon Positioning Systems, Inc.* on behalf of the plaintiff, Javad Ashjaee, calculating damages resulting from certain alleged practices by defendant Topcon Positioning Systems, Inc. that violate the Non-Compete, License and Permissible Activities Agreement between the parties. San Francisco, October 30, 2002.
- ◆ Deposition of Mark Berkman, in the matter of *Isuzu Motors Limited v. Consumers Union of United States, Inc.*, in the United States District Court, Central District of California, Case No. 97 5685 RAP (RBNx), regarding rebuttal report to plaintiff's damage estimates, July 27, 1999.
- ◆ Expert Report of Mark P. Berkman and Kenneth E. Train, in the matter of *Isuzu Motors Limited v. Consumers Union of United States, Inc.*, in the United States District Court, Central District of California, Case No. 97 5685 RAP (RBNx), rebuttal report to plaintiff's damage estimates, July 16, 1999.
- ◆ Supplemental Expert Report of Mark P. Berkman and Kenneth E. Train in the matter of *Suzuki Motor Corporation Japan v. Consumers Union of United States, Inc.*, in the United States District Court, California Central Division Case No. SACV 96-340 AHS (ANx), response to surrebuttal report to plaintiff's damage estimates, June 10, 1999.
- ◆ Declaration of Mark P. Berkman in the matter of *Walters Furniture v. Alameda Newspapers Inc.*, in Superior Court of California, County of Alameda, Case No. 800147-8, regarding damages resulting from overstated newspaper circulation claims, June 2, 1999.
- ◆ Deposition of Mark P. Berkman in the matter of *Suzuki Motor Corporation Japan v. Consumers Union of United States*, regarding damage estimates, April 9, 1999.
- ◆ Expert Report of Mark P. Berkman and Kenneth E. Train, in the matter of *Suzuki Motor Corporation Japan v. Consumers Union of United States, Inc.*, in the United States District Court, California Central Division Case No. SACV 96-340 AHS (ANx), rebuttal report to plaintiff's damage estimates, February 23, 1999.
- ◆ Expert Witness Report of Mark P. Berkman in the matter of *Ben Oehrlein et al. v. Hennepin County, Minnesota*, in the United States District Court for the District of Minnesota Fourth Division, February 6, 1998.
- ◆ Expert Testimony and Report before the United States District Court, for the District of Minnesota Fourth Division, Civil Court File No. 4-96-CIV 188, on behalf of Edward Kraemer & Sons, in the matter of *Edward Kraemer & Sons, Inc. v. Wybierala et al.*, regarding estimating the lost profits suffered by a landfill owner as a result of unauthorized discounts to customers, December 8, 1997.
- ◆ "Report on Damages Newark Group Industries, Inc. Recycled Fibers Division Eastern Region (Newark)," on behalf of Newark Group Industries, Inc., in the matter of *The Newark Group Industries, Inc. v. Joseph Merante, et al.*, Superior Court of New Jersey, Chancery Division: Essex County regarding business damage claims, November 1996.

- ◆ Expert witness report and testimony before the Rhode Island Superior Court, *Landfill & Resource Recovery, Inc. v. Department of Environmental Management of the State of Rhode Island, et al.* (Sup. Ct., C.A. No. 81-4091), on behalf of Landfill and Resource Recovery regarding the fair market value for a landfill site, July 3, 1989.

Tribal and Indian Affairs

- ◆ Testimony in the matter of Thermal Energy Company v. Bureau of Land Management, Navajo Nation, Intervenor of ILBA 2006-71, regarding the commercial quantities of coal on behalf of the Navajo Nation, January 9, 2011.
- ◆ Deposition Testimony in the matter of The Ponca Tribe of Indians of Oklahoma, et.al v. Continental Carbon Company et.al. United States District Court for the Western District of Oklahoma. Case No. CIV-05-445-C, May 30, 2008.
- ◆ Expert Report of Mark P. Berkman in the matter of The Ponca Tribe of Indians of Oklahoma, et.al v. Continental Carbon Company et.al. United States District Court for The Western District of Oklahoma Case No. CIV-05-445-C on behalf of plaintiff regarding property damage and unjust enrichment resulting from alleged failure to reduce particulate emissions, March 3, 2008.
- ◆ Deposition testimony in the matter of Rincon San Luiseño Band of Mission Indians; and HCAL Corporation, a Nevada Corporation, vs. Dan McAllister, in his official capacity as Treasurer-Tax Collector of San Diego County, on behalf of the Rincon Tribe, May 26, 2005.
- ◆ Supplemental Expert Report in the matter of Rincon San Luiseño Band of Mission Indians; and HCAL Corporation, a Nevada Corporation, vs. Dan McAllister, in his official capacity as Treasurer-Tax Collector of San Diego County, on behalf of the Rincon Tribe, May 23, 2005.
- ◆ Expert Report of Mark Berkman, PhD, “Economic Impact of the Harrah’s Rincon Casino on San Diego County, California,” in the matter of *Rincon San Luiseño Band of Mission Indians; and HCAL Corporation, a Nevada Corporation, vs. Dan McAllister, in his official capacity as Treasurer-Tax Collector of San Diego County*, on behalf of the Rincon Tribe, March 21, 2005.
- ◆ Affidavit of Mark Berkman in the matter of the *Navajo Nation v. United States of America*, on behalf of the Navajo Nation. Filed in the United States Court of Federal Claims, August 20, 2004.
- ◆ Testified before the Public Utilities Commission of the State of California on behalf of the Navajo Nation, in the matter of the Application of Southern California Edison Regarding the Future Disposition of the Mohave Generating Station, June 23, 2004.

- ◆ Prepared Superceding testimony of Mark P. Berkman, Ph.D., before the Public Utilities Commission of the State of California on behalf of the Navajo Nation, in the matter of the Application of Southern California Edison Regarding the Future Disposition of the Mohave Generating Station, May 14, 2004.
- ◆ “Preliminary Estimate of Revenues Derived by Wyoming and Fremont county from Residents and Businesses on the Wind River Reservation and Expenditures by Wyoming and Fremont County for Services to the Reservation, 1988–2002,” prepared by Mark Berkman and Benjamin Arnold for the Northern Arapaho and Shoshone Business Council, November 18, 2003.
- ◆ Prepared Direct Testimony of Mark P. Berkman before the Public Utilities Commission of the State of California on behalf of the Navajo Nation in the matter of the Application of Southern California Edison Regarding the Future Disposition of the Mohave Generating Station, March 28, 2003.
- ◆ Trial Testimony of Mark P. Berkman in *Cayuga Indian Nation of New York et al. v. George P. Pataki et al.* to calculate prejudgement interest and critique defendant’s damage estimates in a land dispute dating back to 1795, August 15, 2000.
- ◆ Expert Witness Report of Mark P. Berkman in *Cayuga Indian Nation of New York et al. v. George P. Pataki et al.* to calculate prejudgement interest and critique defendant’s damage estimates in a land dispute dating back to 1795, April 28, 2000.
- ◆ Defendant’s Expert Witness Report of Mark P. Berkman, prepared on behalf of the Crow Tribal Council, in the matter of *Railbox Co. et al. v. Crow Tribal Council* regarding the economic basis for taxation of rail cars shipped through the Crow Reservation, revised August 3, 1999.
- ◆ Affidavit of Mark P. Berkman, prepared on behalf of the Crow Tribe of Indians, in the matter of *Crow Tribe of Indians v. State of Montana* regarding the impact of Montana taxes on the Crow Tribe’s ability to manage its coal resources, October 30, 1998.
- ◆ Expert Witness Report Disclosure of Mark P. Berkman, prepared on behalf of the Crow Tribal Council, in the matter of *Railbox Co. et al. v. Crow Tribal Council* regarding the economic basis for taxation of rail cars shipped through the Crow Reservation, September 9, 1998.
- ◆ Testimony before the United States District Court, District of Montana, on behalf of the Crow Tribe of Indians and the United States in *Crow Tribe of Indians and the United States v. State of Montana, et al.*, CV-78-110 BLG-JDS, regarding unjust enrichment and damages claims made by the Crow Tribe against the State of Montana, March 31, 1994.
- ◆ Testimony before the United States District Court, District of Arizona, on behalf of the Navajo Nation in *Peabody Coal Company v. The Navajo Nation*, regarding the Navajo/Hopi coal tax dispute, March 17, 1994.

- ◆ Affidavit for Marathon Oil Company and the Shoshone and Northern Arapaho Tribes of the Wind River Indian Reservation in *Marathon Oil Company, Shoshone and Northern Arapaho Tribes of the Wind River Reservation v. State of Wyoming, et al.*, demonstrating how state and local taxes infringe on the Tribes' abilities to manage their own energy resources and to provide necessary government services on the Reservation, November 19, 1992.
- ◆ "Comments Regarding Indian Gaming Markets," prepared for the U.S. Department of Justice in the matter of *U.S. v. Trump*, 1992.
- ◆ Testimony before the Select Committee on Indian Affairs, United States Senate, on behalf of the Crow Indian Tribe regarding coal reserve appraisal, July 23, 1992.
- ◆ Testimony before Select Committee on Indian Affairs, United States Senate, "State Taxation and Indian Economic Development," May 1, 1990.
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