

CASE #: B347681, Div: 5

2d Civil No. B 347681

IMME
Order Invading Privilege
Takes Effect at 10 a.m., July 21, 2025

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 5

PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. Rodrigo Castro-Silva, the Los Angeles
County Counsel; COUNTY OF LOS ANGELES,
a political subdivision of the State of California;
LOS ANGELES COUNTY FLOOD CONTROL
DISTRICT, a special district; CONSOLIDATED
FIRE PROTECTION DISTRICT OF LOS
ANGELES COUNTY, a special district,

Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF LOS ANGELES

Respondent.

PROLOGIS, INC., a Maryland corporation;
LIBERTY PROPERTY LIMITED
PARTNERSHIP, a Pennsylvania limited
partnership,

Real Parties in Interest.

[Additional Parties are Listed on Next Page]

Los Angeles Superior Court

Case No.: 22STCV01489

*[Related to Lead Case No.
21STCV38929 and all other
related cases]*

Honorable David S. Cunningham

Department: SS11

Telephone: (213) 310-7011

**PETITION FOR WRIT OF MANDATE, PROHIBITION,
OR OTHER APPROPRIATE RELIEF**

[Exhibits Filed Under Separate Cover]

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**Court of Appeal
State of California
Second Appellate District, Division _____**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case No.: B_____

Superior Court Case No.: 22STCV01489
[Related to Lead Case No. 21STCV38929 and
all other related cases]

Case Name: *People of the State of California, et al. v. Superior Court of
Los Angeles County (Prologis, Inc., et al.)*

Please check the applicable box:

- There are no interested entities or parties to list in this Certificate per California Rules of Court, Rule 8.208.
- Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest
1.	
2.	
3.	

/s/ Stefan C. Love

Signature of Attorney/Party Submitting Form

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INTRODUCTION

The trial court has ordered immediate disclosure of privileged material. The order disregards the law of attorney-client privilege and work product privilege. What is more, the court lacked jurisdiction even to issue the order. Only this Court can prevent the forced disclosure of confidential, privileged materials. Petitioners therefore ask this Court for an immediate stay and for an order to the trial court to vacate its order compelling disclosure and deny defendants' motion to compel.

A. Background.

Petitioners, the County of Los Angeles and related entities, sued numerous defendants after a massive fire at defendants' warehouse contaminated the Dominguez Channel and forced thousands of residents to relocate.

Some of the defendants moved to compel production of (1) a document arising from the County Counsel's investigation of the fire and (2) confidential correspondence between the County's attorneys and attorneys at the Los Angeles Regional Water Control Board, which sued defendants for the same incident. The trial court granted the motion.

B. The Legal Issues.

The legal issues here are not complex. They show multiple errors and abuses of discretion in the trial court's order.

The trial court lacked jurisdiction to rule on the motion. There is a strict, jurisdictional deadline to file a motion to compel further responses: 45 days from the other side's verified

response. (Code Civ. Proc., § 2031.310; *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1409–1410.) Defendants filed their motion 104 days after the County’s latest verified response—indeed, 67 days after the County served its *privilege log*. Because defendants missed their deadline, the trial court lacked jurisdiction to rule on the motion.

The trial court construed defendants’ motion as one to compel compliance, thus, not subject to any deadline. But the motion only challenged the County’s assertions of privilege—a standard, statutory basis for a motion to compel further responses, subject to the 45-day deadline. (Code Civ. Proc., § 2031.310, subd. (a)(3).) The motion did not seek to compel *compliance* with anything.

The trial court ordered disclosure of privileged attorney work product. Document 337 in the County’s privilege log was an email from a fire engineer to the County Fire Department. County Counsel directed the Fire Department to obtain the information in the email in connection with Counsel’s investigation into potential claims related to the warehouse fire. That makes document 337 qualified attorney work product. (See *Coito v. Superior Court* (2012) 54 Cal.4th 480, 494, 496; *Southern California Edison Co. v. Superior Court* (2024) 102 Cal.App.5th 573, 586.) As qualified work product, the document cannot be ordered disclosed: defendants made no showing, and the trial court made no determination, that denial of disclosure would result in unfair prejudice or injustice to defendants. (Code Civ. Proc., § 2018.030, subd. (b).)

The trial court ruled that the email could not be attorney work product because it was not authored by or sent to an attorney. This is contrary to law. (See *Coito, supra*, 54 Cal.4th at p. 496 [attorney work product includes documents obtained “by an attorney’s agent at the attorney’s behest”].)

The trial court ordered disclosure of privileged attorney-client materials. Documents 791, 792, 794, 795, 797, 799, and 804 in the County’s privilege log were correspondence between the County’s attorneys and attorneys at the Regional Board, which is pursuing similar claims against defendants. The County established “a prima facie claim” of attorney-client privilege over these documents because they are “communication[s] made in the course of an attorney-client relationship.” (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.) That prima facie claim stands un rebutted. Instead, the trial court ordered these documents’ disclosure because they date from before the County and the Regional Board executed their *written* common interest agreement.

The common interest doctrine preserves the attorney-client privilege on confidential information when it is communicated between parties with common legal interests. (*OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 891.) Despite the court’s ruling, two parties do *not* need to enter a written agreement for the common interest doctrine to apply. (E.g., *Seahaus La Jolla Owners Assn. v. Superior Court* (2014) 224 Cal.App.4th 754, 762–763, 774–777.) And all elements of the doctrine were satisfied here.

C. The Need For Writ Relief.

Writ review is the only viable remedy where, as here, a court grants discovery that undermines a privilege. (E.g., *Doe v. Superior Court* (2011) 194 Cal.App.4th 750, 754 [“Extraordinary review of a discovery order will be granted when a ruling threatens immediate harm, such as loss of a privilege against disclosure”].)

The County should be afforded immediate review here because the trial court’s order was clearly erroneous—because the court exceeded its jurisdiction and because the order compels disclosure of clearly privileged materials. To allow these errors to stand will cause immediate, irreparable harm and undermine the rules of civil procedure and the law of evidentiary privileges.

Writ relief will also provide guidance to trial courts and litigants statewide on several recurring, fundamental issues: the distinction between a motion to compel further responses and a motion to compel compliance (Code Civ. Proc., §§ 2031.310, 2031.320); the qualified work product privilege; and the attorney-client privilege and common interest doctrine. These critical issues shape litigation strategy statewide.

D. The Need For An Immediate Stay.

Per the trial court’s order, the County must disclose these privileged materials by 10 a.m. on Monday, July 21. The Court should therefore issue an immediate stay of the discovery order to allow meaningful review of this petition.

PETITION

People of the State of California, et al., Petitioners, allege:

A. The Parties.

1. Petitioners People of the State of California, ex rel. Rodrigo Castro-Silva, the Los Angeles County Counsel; County of Los Angeles, a political subdivision of the State of California; Los Angeles County Flood Control District, a special district; and Consolidated Fire Protection District of Los Angeles County (together, “the County”), are the plaintiffs in civil case No. 22STCV01489 and related cases pending in respondent court.

2. Respondent Superior Court of the State of California, County of Los Angeles, is the trial court exercising jurisdiction over the action.

3. Real parties in interest Prologis, Inc., a Maryland corporation; Liberty Property Limited Partnership, a Pennsylvania limited partnership; Prologis, L.P., a Delaware limited partnership and trustee of the Liberty Property Trust; Day To Day Imports Inc., a California corporation; Virgin Scent Inc. d/b/a Artnaturals, a California corporation; Akiva Nourollah, an individual; Yosef Nourollah, an individual; Yehuda Nourollah, an individual; Yaakov Nourollah, an individual; Gordon Laboratories, Inc., a California corporation; and Farzad Nourollah, an individual, are the defendants in the Los Angeles Superior Court action.

B. The County Action.

1. After a large warehouse fire, County Counsel asks the Fire Department to obtain information to help County Counsel investigate potential legal claims.

4. The action below arises from a large fire at a warehouse property in Carson, California. (1 Exh. 12 [¶ 1].) The County alleges that millions of pounds of hazardous and flammable material (e.g., hand sanitizer), illicitly stored at a warehouse property, caught fire in September 2021. (1 Exh. 12 [¶ 1].)

5. The County further alleges that extinguishing the fire caused vast quantities of the hazardous material to discharge into nearby storm drains and the Dominguez Channel, “causing a chemical and biological reaction,” “releasing large amounts of hydrogen sulfide gas, and its characteristic foul odor, into the air,” “creat[ing] a public nuisance,” and requiring “thousands of impacted residents and families to temporarily relocate from their homes.” (1 Exh. 12 [¶ 1].)

6. In November and December 2021, Dusan Pavlovic, Senior Deputy County Counsel, directed Fernando Florez, assistant fire chief of the County Fire Department, to obtain information to help County Counsel’s office evaluate potential legal claims against defendants. (4 Exh. 1497 [¶ 28], 1669–1673.)

7. At County Counsel’s request, the Fire Department corresponded with the Golden State Water Company, who

performed modeling regarding the water used to extinguish the fire. (5 Exh. 1978–1982 [emails], 1986 [entry 337].)

2. The County sues defendants for discharging pollutants into the Dominguez Channel in connection with the fire.

8. Based on the fire and the aftermath, the County asserts various civil causes of action against defendants, who are entities and individuals allegedly connected with the warehouse or the materials stored there. (1 Exh. 15–20 [¶¶ 10–39], 44–65 [¶¶ 122–193].) The County’s suit seeks compensatory and punitive damages, civil penalties, and injunctive relief. (1 Exh. 65–66.)

C. The Regional Board Action.

1. The Los Angeles Regional Water Quality Control Board sues defendants for the same incident.

9. Around this time, County Counsel learned that the Los Angeles Regional Water Quality Control Board (the “Regional Board”) was also investigating this contamination and odor incident. (2 Exh. 902 [¶ 4].)

10. The Regional Board determined that the incident resulted from the discharge of pollutants from the warehouse into the Dominguez Channel. (2 Exh. 902 [¶ 4].) The Regional Board sued defendants on the same theory as the County, seeking civil penalties. (2 Exh. 902 [¶ 4].)

2. The County and the Regional Board work together and enter into a common interest agreement.

11. In early 2022, attorneys representing the County and the Regional Board exchanged emails and documents regarding the “Dominguez Channel Odor Issue,” “Common Interest/Joint Prosecution Agreement,” and a “public records request.” (5 Exh. 2003–2004.)

12. On March 22, 2022, the County and the Regional Board, through their attorneys, entered into a formal agreement to maintain the confidentiality of privileged information exchanged between them related to this incident. (4 Exh. 1578 [entry 531].)

D. The Discovery Dispute.

1. The County asserts that certain documents are subject to attorney-client privilege, work product privilege, and other privileges.

13. Several defendants, Prologis, Inc., Prologis L.P., and Liberty Property Limited Partnership (hereinafter, capital “Defendants”) propounded three sets of requests for production, and the County served verified responses on January 3, September 30, and December 18, 2024. (1 Exh. 199–258.)

14. The County objected to the requests on the basis of the attorney-client privilege, attorney work product privilege, and common interest doctrine, among other objections. (1 Exh. 206–207, 228–229, 248–249.)

15. On January 24, 2025, the County served its first privilege log, which listed 1,920 documents, mainly emails. (1 Exh. 260–574.)

16. Defendants alerted the County to perceived deficiencies in the privilege log. (2 Exh. 655 [¶ 7].) The County told Defendants that it was reviewing the log and it intended to remove the privilege designation from some of the documents and file an amended privilege log. (2 Exh. 655 [¶ 8], 700–704.)

17. On February 13, 2025, the court held a hearing in the separate, but related, Regional Board action. (2 Exh. 655–656 [¶ 14].) Defendants asked the court to conduct an informal discovery conference (IDC) at the same hearing regarding the County’s privilege log. (2 Exh. 655–656 [¶ 14].) The court refused to discuss it. (2 Exh. 655–656 [¶ 14].) The court told Defendants to schedule another IDC. (2 Exh. 655–656 [¶ 14].) Defendants did not do so. (2 Exh. 656 [¶ 15].)

2. Defendants move to compel further responses—104 days after the County’s latest verified response.

18. On April 1, 2025, Defendants moved to compel the County to produce responsive documents that Defendants argued the County had improperly logged or failed to log. (1 Exh. 183–185.) The motion argued that the County had improperly withheld documents based on assertion of various privileges. (1 Exh. 186–194.)

19. In April 2025, the County released 1,125 documents listed on the privilege log. (2 Exh. 655 [¶¶ 9–10].) The County

also served an amended privilege log. (2 Exh. 655 [¶ 11], 708–823.)

20. The County opposed the motion to compel on procedural and substantive grounds.

21. Procedurally, the County argued that Defendants’ motion was filed long after the 45-day time limit to file a motion to compel following a verified response. (1 Exh. 640–642, citing Code Civ. Proc., § 2031.310, subd. (c).) The County served its final verified response on December 18, 2024, and Defendants filed their motion 104 days later. (1 Exh. 640–641.) Defendants filed their motion 67 days after the County served its original privilege log. (1 Exh. 640–641.)

22. Substantively, the County defended its assertion of the attorney-client privilege, work product privilege, and common interest doctrine. (1 Exh. 644–648.)

3. Interpreting Defendants’ motion as one to compel compliance, the court rules that it is subject to “no fixed time limit,” and refers the dispute to a discovery referee.

23. The court rejected the County’s procedural arguments. (4 Exh. 1200–1201.) Adopting Defendants’ argument, the court noted that Defendants “partly filed the motion pursuant to Code of Civil Procedure section 2031.320,” which imposes “*no fixed time limit.*” (4 Exh. 1200; see 2 Exh. 913.)

24. On its face, section 2031.320¹ applies when a party has provided a “statement of compliance” to a discovery request and then fails to act “in accordance with” the “statement of compliance.” (§ 2031.320, subd. (a).) Defendants made no argument that the County failed to act in accordance with a statement of compliance, and the court made no finding to that effect. Instead, Defendants themselves characterized their motion as seeking to “compel LA County to produce responsive documents being improperly withheld based on assertions of privilege.” (2 Exh. 913.)

25. At the parties’ request, the court referred to a discovery referee the substantive disputes about the asserted privileges. (4 Exh. 1201.)

E. The Referee’s Recommendations.

1. The referee finds that the common interest agreement between the County and the Regional Board is subject to the attorney-client privilege and the work product privilege.

26. The parties disputed the scope of the referee’s review. (4 Exh. 1229–1235, 1333–1337.) The court granted Defendants’ request that the referee review only the privilege log entries. (4 Exh. 1442, 1454–1455.)

27. The referee found that the common interest agreement between the County and the Regional Board, dated

¹ Unassigned statutory references are to the Code of Civil Procedure.

March 22, 2022, was protected by the attorney-client privilege and the work product privilege. (4 Exh. 1632–1633.) The referee also cited her own finding in the separate Regional Board action that “the common interest doctrine applies to information shared between” the County and the Regional Board “since March 2022.” (4 Exh. 1638–1639.)

28. The referee also made recommendations concerning hundreds of other documents. (4 Exh. 1639–1641; 5 Exh. 1832 [¶¶ 22–23].)

29. The court adopted the referee’s findings only as to the documents for which the referee rejected Defendants’ arguments and as to the documents that Defendants were not challenging. (5 Exh. 1958–1959.) Regarding the other documents, at the County’s request, the court directed the referee to reconsider her recommendations and clarified that she could also review redacted emails, other documents, and declarations. (5 Exh. 1832–1833 [¶¶ 26–27], 1959–1963.)

2. The referee finds that a water engineer’s email to the Fire Department in furtherance of County Counsel’s investigation is not subject to the official information privilege, but does not address the work product privilege.

30. The referee issued a supplemental report and recommendations. (5 Exh. 1965–1975.)

31. Document 337 on the County’s amended privilege log is an email to the Fire Department from a water engineer at the Golden State Water Company arising from the County attorney’s

investigation into the fire and contamination. (2 Exh. 756 [entry 337]; 5 Exh. 1834–1835 [¶ 37].) The County asserted that this document was subject to the official information privilege and the work product privilege. (2 Exh. 756 [entry 337].)

32. The referee reviewed document 337 *in camera* and, in the supplemental report and recommendations, found that it was not subject to the official information privilege. (5 Exh. 1833–1834 [¶¶ 30–32]; see 5 Exh. 2046 [court identifies entry 337 as reviewed *in camera*].)

33. The referee did not address the work product privilege. (5 Exh. 1822–1824, 1834 [¶ 33].)

3. The referee finds that communications between the County’s attorneys and the Regional Board’s attorneys cannot be subject to any privilege before the County and Regional Board entered into a written common interest agreement.

34. Documents 791, 792, 794, 795, 797, 799, and 804 on the County’s amended privilege log were emails between the County’s attorneys and the Regional Board’s attorneys. (5 Exh. 2003–2004.) The County asserted that these documents were subject to the attorney-client privilege via the common interest doctrine. (5 Exh. 2003–2004.)

35. Based on the privilege log entries, the referee found that these documents were not privileged because they dated from before the County and the Regional Board executed a written common interest agreement and because “there was no

attorney-client relationship between the County and the [Regional] Waterboard.” (5 Exh. 1974.)

F. The Trial Court’s Rulings.

1. The County objects to the report and recommendations.

36. The County objected that the report and recommendations did not address whether document 337 was subject to the attorney work product privilege. (5 Exh. 1822–1824.)

37. The County also objected that the communications between the County’s attorneys and the Regional Board’s attorneys were subject to the common interest doctrine even before the parties executed the written common interest agreement. (5 Exh. 1824–1826.)

2. The court adopts the report and recommendations.

38. On July 11, 2025, at the hearing on the County’s objections and in a written order that same day, the court adopted the referee’s report and recommendations. (5 Exh. 2045–2046, 2099–2122.)

3. The court additionally rules that the water engineer’s email to the Fire Department in furtherance of County Counsel’s investigation is not subject to the work product privilege.

39. At the hearing, the County reiterated its argument that document 337 was qualified work product. County Counsel explained that the document was the product of work he directed

the Fire Department to perform to aid his investigation. (5 Exh. 2103.)

40. The court ruled that document 337 was not attorney work product. (5 Exh. 2045–2046, 2115–2120.)

4. The court stays enforcement of the order until July 21, 2025, to allow the County to seek writ relief.

41. Upon hearing the court’s ruling, the County requested a stay of the court’s order until July 21 to allow the County to seek a writ. (5 Exh. 2120.) The court agreed. (5 Exh. 2045–2046, 2120–2122.)

G. The Trial Court’s Order Is Clearly Wrong.

1. Defendants’ motion to compel further responses was untimely, meaning the court lacked jurisdiction to grant it.

42. The trial court erred by granting Defendants’ motion. That motion was filed more than 45 days after the County served its verified discovery responses. (1 Exh. 183–258.) The parties did not agree to extend Defendants’ deadline for filing a motion to compel. Therefore, the motion was untimely. (Code Civ. Proc., § 2031.310, subd. (c).)

43. When a motion to compel further responses is filed after the deadline, the trial court lacks jurisdiction to grant the motion. (*Vidal Sassoon, Inc. v. Superior Court* (1983) 147 Cal.App.3d 681, 683 (*Vidal*) [issuing a writ of mandate on the grounds that the statutory deadline is “mandatory and the court may not entertain a belated motion to compel”].)

44. Yet the trial court granted Defendants’ motion to compel. The trial court ruled that it was in fact a motion to compel compliance under section 2031.320, and thus not subject to any deadline—even though the motion didn’t say anything about compelling compliance. (4 Exh. 1200.)

45. That was plain error. Courts have distinguished between a motion like Defendants’, that challenges allegedly “nonmeritorious objections,” and a motion to compel compliance, which challenges “a failure in the actual compliance with the demand.” (*Standon Co. v. Superior Court* (1990) 225 Cal.App.3d 898, 903.)

46. Defendants’ motion was the former, not the latter. Defendants challenged the County’s assertions of privilege on their merits. The motion did not attempt to secure *compliance*. Nor could it have: the County invoked privilege and stated on that basis that it would *not* produce documents. (2 Exh. 913.)

47. Defendants claimed that their deadline for moving to compel was stayed when they sent a meet and confer letter to the County on January 28, 2025. (2 Exh. 913.) That argument—which the trial court did not reach—fails as well. The letter did not stay any deadlines, nor did the parties’ subsequent informal discovery conference. The case management order that Defendants cited in support of this argument was “superseded” more than six months before Defendants sent the letter. (1 Exh. 123–124.)

48. Defendants missed their deadline. As a result, Defendants waived their right to file a motion to compel. The trial court's order granting the motion exceeded its jurisdiction. It must be reversed. (*Vidal, supra*, 147 Cal.App.3d at p. 683.)

2. The email from the water engineer to the Fire Department to assist County Counsel's investigation is qualified attorney work product.

49. Under the privilege for qualified attorney work product, an attorney's work product is privileged unless "denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." (Code Civ. Proc., § 2018.030, subd. (b).)

50. The Supreme Court holds that "as a matter of law," "qualified work product" includes "witness statements obtained as a result of interviews conducted by an attorney, or by an attorney's agent at the attorney's behest." (*Coito v. Superior Court* (2012) 54 Cal.4th 480, 494, 496.)

51. This Court holds that "witness statements" protected as qualified work product include emails and documents "prepared as part of an attorney led internal investigation" into potential legal claims. (*Southern California Edison Co. v. Superior Court* (2024) 102 Cal.App.5th 573, 586.) Such emails and documents are qualified work product even if they were exchanged between non-attorneys, as long as they arose from an attorney's direction "to obtain information" related to a claim. (*Ibid.*)

52. By plain application of these rules, document 337, the email from Golden State Water company to the Fire Department, is qualified attorney work product. County Counsel asked the Fire Department to obtain the information in the email to assist him in investigating and evaluating potential legal claims. (4 Exh. 1497 [¶ 28]; 5 Exh. 1833 [¶ 30]; 2 Exh. 756 [entry 337].)

53. No evidence supports disclosure of document 337 as qualified work product. Defendants did not offer evidence, and the court did not determine, “that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party’s claim or defense or will result in an injustice.” (Code Civ. Proc., § 2018.030, subd. (b).) Defendants will be able to question the witness who prepared document 337 regarding the underlying facts. (5 Exh. 1834–1835 [¶ 37], 2102–2103.)

54. The trial court ruled that document 337 was not attorney work product. (5 Exh. 2045–2046, 2115–2120.) This was legally erroneous and an abuse of discretion.

3. Communications between the County’s attorneys and the Regional Board’s attorneys are protected by the attorney-client privilege and the common interest doctrine, even before the County and Regional Board entered into a written common interest agreement.

55. When a communication would ordinarily be subject to the attorney-client privilege, the privilege is not waived by disclosure to another party if the two parties have “a reasonable expectation that information disclosed will remain confidential”

and “have in common an interest in securing legal advice related to the same matter” for which disclosing the information is “reasonably necessary.” (*OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 891.) This is the “common interest doctrine.”

56. The trial court found that the common interest doctrine applied to attorney communications between the County and the Regional Board only *after* the parties entered a written common interest agreement on March 22, 2022. (5 Exh. 2111–2112; see 5 Exh. 1974.) On that basis, it ordered disclosure of documents 791, 792, 794, 795, 797, 799, and 804 on the County’s privilege log. (5 Exh. 2045–2046.)

57. However, all elements of the doctrine were met months earlier, and the doctrine applied to those communications from at least January 2022—including all the documents whose disclosure the court ordered.

58. The County and Regional Board had a reasonable expectation of confidentiality as early as January 2022, when they were already discussing formalizing a common interest agreement. (5 Exh. 2003–2004.) The County and Regional Board also had a common interest in securing legal advice related to the same matter because they had both sued the same defendants based on the same incident. Finally, given the close alignment of their interests, the exchange of privileged information was reasonably necessary to advancing their litigation interests.

59. The court and referee were mistaken that whether the common interest doctrine applies depends on the existence of a written agreement. Parties do not need to enter into a written agreement for the common interest doctrine to apply. (E.g., *Seahaus La Jolla Owners Assn. v. Superior Court* (2014) 224 Cal.App.4th 754, 762–763, 774–777 [doctrine applied to communication from homeowners’ association’s attorney to owners within a meeting].)

60. Documents 791, 792, 794, 795, 797, 799, and 804 are protected by the attorney-client privilege. (See Evid. Code, §§ 952, 954.) These are emails between attorneys for the County and the Regional Board. (5 Exh. 2003–2004.) They concern legal matters in which the County and Regional Board have a shared interest. (5 Exh. 2003–2004.) This satisfies the County’s burden of showing the documents were “communication[s] made in the course of an attorney-client relationship” and establishes “a prima facie claim of privilege.” (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.) Defendants did not even attempt to meet their resulting burden of showing that the privilege does not apply. (See *ibid.*) And neither the court nor the referee made any finding to that effect.

61. Because these documents are protected by attorney-client privilege and the common interest doctrine prevented any waiver, the court abused its discretion in ordering their disclosure.

H. Writ Relief Is Necessary And Proper.

1. Writ relief is necessary to prevent the forced disclosure of privileged material.

62. Writ review is the *only* remedy available where, as here, a court grants discovery that undermines a privilege. Review by appeal is necessarily inadequate, because a reversal on appeal cannot cure the prejudicial disclosure of information that was by statute inviolate. (E.g., *Doe v. Superior Court* (2011) 194 Cal.App.4th 750, 754 [“Extraordinary review of a discovery order will be granted when a ruling threatens immediate harm, such as loss of a privilege against disclosure”]; *City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1031 [writ review appropriate for “a ruling compelling discovery that violates a privilege”; “[a]n appeal following a final judgment does not offer an adequate remedy because there is no way to undo the harm resulting from the disclosure of privileged materials”].)

63. The County has no plain, speedy, or adequate remedy at law. If the County complies with the trial court’s unlawful order, it cannot re-create the cloak of privilege or protection over what it discloses. It will forever lose the important rights afforded to it and to all persons. Appeal in that event cannot remedy the trial court’s error. (*City of Petaluma, supra*, 248 Cal.App.4th at p. 1031.)

2. Writ relief is necessary to guide courts on these important issues.

64. The scope of the privileges asserted by the County, and the applicability of the jurisdictional deadline for moving to

compel discovery, are questions that litigants face every day. They ought to be clear. The trial court’s multiple errors suggest they merit further clarification.

65. Given the importance of these privilege issues and jurisdictional discovery deadlines, the bench and the bar need guidance as to their scope and effect. That need for guidance is itself a reason to grant writ review. (*Brandt v. Superior Court* (1985) 37 Cal.3d 813, 816 [writ relief appropriate to address issue of “widespread interest”].)

I. The Trial Court’s Order Takes Effect On July 21, 2025, Requiring An Immediate Stay To Allow This Court To Consider The Issues.

66. The County has been ordered to produce documents protected by the attorney-client privilege and the work product privilege. The order exceeds the trial court’s jurisdiction. And if those documents are disclosed, they can never be “undisclosed.”

67. To allow the County to seek writ relief, the trial court has imposed only a very limited stay, through 10 a.m. on July 21, 2025. (5 Exh. 2045–2046.)

68. An immediate stay is imperative to allow this Court to fully consider the important principles at issue concerning the form and substance of discovery motions and the attorney-client and qualified work product privileges.

PRAYER

Petitioners therefore pray that this Court:

1. Issue an immediate stay of the trial court's July 11, 2025 order adopting the discovery referee's report and recommendation no. 2, to last until this Court decides this petition;
2. Issue a peremptory writ of mandate or other appropriate relief directing the trial court to
 - a. vacate its July 11, 2025 order, and
 - b. enter a new order denying Defendants' April 1, 2025 motion to compel;

or, in the alternative;

3. Issue an alternative writ of mandate or other appropriate relief directing the trial court to show cause why such a peremptory writ should not issue, and then issue such a peremptory writ;
4. Award Petitioners their costs in this proceeding; and

5. Grant such other relief as may be proper.

DATED: July 18, 2025

Respectfully submitted,

OFFICE OF THE LOS ANGELES COUNTY
COUNSEL

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By: /s/ Stefan C. Love

Stefan C. Love

Attorneys for Petitioners PEOPLE OF THE
STATE OF CALIFORNIA, COUNTY OF LOS
ANGELES, LOS ANGELES COUNTY FLOOD
CONTROL DISTRICT, and CONSOLIDATED
FIRE PROTECTION DISTRICT OF LOS
ANGELES COUNTY

VERIFICATION

I, Dusan Pavlovic, declare as follows:

I am licensed to practice law in California and am a Senior Deputy County Counsel for the County of Los Angeles, representing the County in this lawsuit. I make this declaration because I am more familiar with the particular facts, i.e. the procedural history of the case, than my clients. I have personal knowledge of the facts set forth in this petition or have reviewed and am familiar with the records and files described in, and that are the subject of, this petition. On the basis of that knowledge, I affirm that the allegations in this petition are true and correct.

I declare under penalty of perjury that the foregoing is true and correct and that this verification is executed on July 18, 2025, at Los Angeles, California.

/s/ Dusan Pavlovic
Dusan Pavlovic

MEMORANDUM OF POINTS AND AUTHORITIES

- I. **The Trial Court Lacked Jurisdiction To Rule On Defendants’ Motion To Compel Further Responses.**
 - A. **A motion to compel must be filed within 45 days of service of verified responses.**

Code of Civil Procedure section 2031.310(c) governs the deadline for a motion to compel further responses. It provides: “Unless notice of this motion is given *within 45 days of the service of the verified response*, or any supplemental verified response, or on or before any specific later date to which the demanding party and the responding party have agreed in writing, *the demanding party waives any right to compel a further response to the demand.*” (Italics added.)

The statute could hardly be clearer. Absent an agreement in writing, the propounding party must file its motion to compel within 45 days of receiving verified responses. Otherwise, the party “waives any right to compel a further response to the demand.” (Code Civ. Proc., § 2031.310, subd. (c).)

Caselaw has interpreted this section to mean what it says. In *Standon Co. v. Superior Court* (1990) 225 Cal.App.3d 898, the court addressed a motion to compel that challenged objections of work-product privilege. (*Id.* at pp. 901–903.) The *Standon* court applied the 45-day rule: “Thus, the procedure contemplated is that nonmeritorious objections in the response must be attacked by motion within 45 days of its service.” (*Id.* at pp. 902–903.) Because the motion was filed more than 45 days after service of

verified responses, the right to compel further responses had been waived. (*Id.* at p. 902.)

B. The court lacked jurisdiction to grant Defendants’ motion because Defendants filed the motion after its 45-day deadline had passed.

The 45-day deadline is “mandatory and jurisdictional[.]” (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1409–1410.) Thus, failure to file within the 45-day deadline “renders the court without authority to rule on motions to compel other than to deny them.” (*Id.* at p. 1410.)

Indeed, the Court of Appeal has granted writ relief to enforce this jurisdictional bar. In *Vidal Sassoon, Inc. v. Superior Court* (1983) 147 Cal.App.3d 681, the propounding party filed its motion to compel further responses to interrogatories 54 days after receiving written responses. (*Id.* at p. 685.) The court held that this was improper, as the statutory deadline is “mandatory and the court may not entertain a belated motion to compel.” (*Id.* at p. 683; see also *Standon, supra*, 225 Cal.App.3d at p. 902 [applying *Vidal*’s rule to a late-filed motion to compel further responses to document requests]; *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 137 [motion to compel responses to interrogatories, filed one day after deadline, properly denied as untimely].)

Defendants had 45 days from service of the County’s verified responses to move to compel. There was no agreement to extend the deadline, and Defendants failed to file their motion

within 45 days. Defendants thus “waive[d] any right to compel a further response to the demand.” (§ 2031.310, subd. (c).)

Defendants persuaded the trial court, however, that the 45-day deadline did not apply. We now address this argument.

C. Regardless of how it was styled, Defendants’ motion was to compel further responses under Code of Civil Procedure section 2031.310.

1. The motion challenged the merits of the County’s privilege objections, and was thus governed by section 2031.310.

Defendants’ motion was a motion to compel further responses. This is plain from the applicable statutory language, the substance of the motion, and applicable caselaw.

The statutory language is dispositive. Section 2031.310(a) provides the basis for a motion to compel. It states three grounds, including if the propounding party believes that “[a]n *objection* in the response is *without merit* or too general.” (Italics added.)

That was the substance of Defendants’ motion. Its motion challenged the merits of the County’s objections—attorney-client privilege, attorney work product, and the common-interest doctrine, among others. (2 Exh. 913, italics added [“Prologis is moving to compel LA County to produce responsive documents being improperly withheld *based on assertions of privilege*”].) This confirms that Defendants’ motion was one to compel further responses, and thus subject to the mandatory 45-day deadline.

Standon is instructive. There, responding party objected to document production based on work-product privilege and the failure to show good cause for production—that “the documents requested were privileged and thus not subject to discovery.” (*Standon, supra*, 225 Cal.App.3d at p. 901.) The propounding party filed its motion to compel more than 45 days after receipt of verified responses, and it urged that a later date (the date for production of documents) was the beginning of the 45-day period. (*Id.* at p. 902.)

The court in *Standon* disagreed. It held that the 45-day deadline of section 2031.310(c) applied to bar the motion. Central to the holding was the fact that the challenged objections were “substantive bars to compelled production” that “gave notice that the allegedly protected materials would not be disclosed.” (*Standon, supra*, 225 Cal.App.3d at p. 901.) As the court stated, “we construe these objections as containing an implicit refusal to produce the items sought.” (*Ibid.*)

This case and *Standon* are on all fours. Defendants moved to compel documents “being improperly withheld *based on assertions of privilege*.” (2 Exh. 913, italics added.) The propounding party in *Standon* moved to compel based on the responding party’s objection that “the documents requested were privileged and not thus subject to discovery.” (*Standon, supra*, 225 Cal.App.3d at p. 901.) Both were filed late. *Standon* rejected the motion as untimely. This Court should too.

Defendants argued that its motion was one to compel compliance under section 2031.320. (2 Exh. 913.) The trial court agreed. (4 Exh. 1200.) Not so.

A motion to compel *compliance* lies when the responding party responds to the demand for production and “thereafter fails to permit the inspection . . . *in accordance with that party’s statement of compliance.*” (Code Civ. Proc., § 2031.320, subd. (a), italics added.) On those grounds, *Standon* distinguished between a motion like Defendants’, which challenges allegedly “nonmeritorious objections,” and a motion to compel compliance, which challenges “a failure in the *actual compliance* with the demand.”² (*Standon, supra*, 225 Cal.App.3d at p. 903, italics added.) That distinction is dispositive. Defendants challenged the County’s objections on their merits—a textbook case of a motion to compel further responses.

The trial court, however, deemed Defendants’ motion a motion to compel compliance, and ruled that it was not subject to any time limit. That misinterpreted the relevant statutes and led the court to exceed its jurisdiction. No matter how Defendants styled their motion, in substance, it was a challenge

² *Standon* cited Code of Civil Procedure sections 2031, subdivisions (l) and (m). Those are the predecessor statutes to sections 2031.310 and 2031.320. The substance of the rules discussed in *Standon* did not change with the reorganization of the Civil Discovery Act in 2005. (See *Board of Registered Nursing v. Superior Court* (2021) 59 Cal.App.5th 1011, 1033 [agreeing with *Standon*’s analysis of the time limits applicable to a motion to compel further responses and a motion to compel compliance].)

to the County’s assertions of privilege: in their own words, Defendants “mov[ed] to compel LA County to produce responsive documents being improperly withheld *based on assertions of privilege.*” (2 Exh. 913, italics added.) “The law respects form less than substance.” (Civ. Code, § 3528.) Defendants’ motion was to compel further responses. (*Standon, supra*, 225 Cal.App.3d at p. 903.)

The trial court’s ruling also goes against the Legislature’s intent. Under the trial court’s logic, Defendants could have waited many months or even years to bring their motion to compel,³ because there was no deadline at all. That might make sense when a motion asks a party to comply with *its own prior representations*; it doesn’t make sense when a motion challenges assertions of privilege, as Defendants’ did. As the court noted in *Sexton*, the Discovery Act’s pattern of “restrictions, sanctions, and the attempt to force cooperation clearly evinces the legislative intent that discovery proceed not only smoothly, but swiftly as well.” (*Sexton, supra*, 58 Cal.App.4th at p. 1409, citing *Professional Career Colleges, Magna Institute, Inc. v. Superior Court* (1989) 207 Cal.App.3d 490, 493–494.)

The trial court’s ruling undermines the Legislature’s intent, and it sets aside the County’s assertions of privilege in the process.

³ Indeed, Defendants filed their motion nearly *fifteen months* after receiving the County’s verified responses to their first set of requests.

D. Defendants’ deadline was not stayed.

Defendants also argued that its motion was filed within section 2031.310(c)’s 45-day deadline. Defendants’ argument is not persuasive, nor was it even reached by the trial court.

Defendants claimed that the meet and confer letter they sent on January 28, 2025, stayed their motion to compel deadline under the trial court’s Case Management Order No. 9 discovery protocol. (2 Exh. 913.)⁴ But Case Management Order No. 9 was not in effect. Instead, it had been “superseded” a year earlier. (1 Exh. 123–124.)

Moreover, long before Defendants sent this letter, the deadline had already passed for Defendants to make this motion regarding the County’s first *two* verified responses. (1 Exh. 640.) Defendants offer no argument whatsoever that their motion was timely with respect to these responses.

There is no question about it. Defendants’ motion was subject to a 45-day jurisdictional deadline, and it was not filed within 45 days of the County’s verified responses.

II. This Court Reviews Privilege Rulings For An Abuse Of Discretion.

This Court reviews discovery rulings on privilege issues for an abuse of discretion. (*County of Los Angeles v. Superior Court* (2006) 139 Cal.App.4th 8, 12.) This includes the rulings at issue

⁴ Defendants actually cited “CMO 7,” but it is clear in context they meant to refer to Case Management Order No. 9 in this case. (1 Exh. 123–124.) “CMO 7” applies to a related lawsuit filed by private plaintiffs against defendants. (*Ibid.*)

here regarding documents 337, 791, 792, 794, 795, 797, 799, and 804.

“A court abuses its discretion when it applies the wrong legal standard.” (*City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1031.) Similarly, “[a]n order that implicitly or explicitly rests on an erroneous reading of the law necessarily is an abuse of discretion.” (*State Comp. Ins. Fund v. ReadyLink Healthcare, Inc.* (2020) 50 Cal.App.5th 422, 465.) “Although an act exceeding the bounds of reason manifestly constitutes an abuse of discretion, abuse is not limited to such an extreme case.” (*Department of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 831, fn. 3.) An action “that transgresses the confines of the applicable principles of law” may also constitute an abuse of discretion because it falls outside the scope of discretion. (*State Comp. Ins. Fund, supra*, 50 Cal.App.5th at p. 465.)

III. The Trial Court’s Order Clearly Violates The Attorney Work Product Privilege By Ordering Disclosure Of The Water Engineer’s Email To The Fire Department In Furtherance Of County Counsel’s Investigation.

A. Under the Supreme Court’s decision in *Coito* and this Court’s decision in *SoCal Edison*, the email to the Fire Department in furtherance of County Counsel’s investigation is qualified attorney work product.

The law. The Code of Civil Procedure lays out the privilege protecting qualified attorney work product: “The work product of an attorney” remains privileged “unless the court

determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." (Code Civ. Proc., § 2018.030, subd. (b).) The statute does not define "work product." The Supreme Court examined this term in *Coito v. Superior Court* (2012) 54 Cal.4th 480.

Coito held that "qualified work product," "as a matter of law," includes "witness statements obtained as a result of interviews conducted by an attorney, or by an attorney's agent at the attorney's behest." (*Coito, supra*, 54 Cal.4th at p. 494.) *Coito* explained that such statements reflect the attorney's "time and effort" in determining and recording "what information the witness has that is relevant to the litigation." (*Id.* at p. 496.) *Coito* also explained that extending work product protection to these materials encourages attorneys to thoroughly investigate potential claims without "worry about discovery." (*Id.* at pp. 496–497.)

The decision also discussed the purpose and history of the statutory work product privilege. The privilege "protect[s] the lawyer's normal work processes" and promotes "the rights of litigants and prospective litigants to obtain advice of experts, make investigations and do other acts, without fear of unlimited or indiscriminate disclosures to, and use by adversaries." (*Coito, supra*, 54 Cal.4th at p. 493.) Indeed, a draft of the statute had expressly extended qualified work product protection to "any opinion or report of an expert prepared for or in anticipation of litigation and any writing or things created by or for a party or

his agent in preparation for or in anticipation of litigation,” but the Legislature deleted this language—not to narrow the scope of the privilege, but to broaden it and allow it to evolve. (*Id.* at pp. 492–493, italics removed.)

Applying *Coito*, this Court has held that qualified work product includes emails “prepared as part of an attorney led internal investigation” into a fire. (*Southern California Edison Co. v. Superior Court* (2024) 102 Cal.App.5th 573, 586 (*SoCal Edison*)). In *SoCal Edison*, a utility company investigated the Creek Fire. (*Id.* at pp. 579–580.) The company asserted that emails it “created as part of an investigation” into the fire “initiated by its in-house counsel” were privileged work product. (*Id.* at p. 580.) “The documents at issue include emails between employees in [the company’s] claims department (Claims employees) *on which no attorney was copied*, emails between Claims employees and [company] employees in other non-legal departments, and *emails that did not include any Claims employees or attorneys.*” (*Ibid.*, italics added.)

This Court found that these documents were “the type of materials typically entitled to work product protection” under *Coito*. (*SoCal Edison, supra*, 102 Cal.App.5th at p. 586.) In particular, because the company’s “in-house counsel directed Claims employees to obtain information from employees referred to as ‘subject-matter experts’ in other departments,” those experts’ communications back “to Claims employees would contain information regarding the Creek Fire and/or [the company’s] equipment, and thus be witness statements like those

at issue in *Coito*. Under *Coito*, these communications, as well as other communications and documents relating to the interview process, are at least entitled to qualified work product protection.” (*Ibid.*)

This Court rejected the other side’s argument that the Claims employees were not agents of the company’s counsel. In finding that the employees *were* counsel’s agents, the Court cited the company’s “multiple declarations establishing that attorney Cardoza instructed the claims department to investigate the cause of the Creek Fire to assist in providing legal advice to [the company], and that the documents at issue were ‘part of and in furtherance of’ that investigation.” (*SoCal Edison, supra*, 102 Cal.App.5th at p. 587.)

Document 337 is qualified work product. *Coito* and *SoCal Edison* require the conclusion that document 337, the email from Golden State Water Company to the Fire Department in furtherance of County Counsel’s investigation, is qualified attorney work product. As in *SoCal Edison*, the County submitted multiple declarations—along with a supplemental description—establishing that the email arose from County Counsel’s direction to investigate potential legal claims related to the fire:

- “The communication in question [document 337] pertains to the investigation conducted by the County Fire Department at my request.” (4 Exh. 1497 [¶ 28]; 5 Exh. 1833 [¶ 30].)

- Counsel “request[ed] that assistant fire chief Fernando Florez,” recipient of the email, “obtain certain information that would assist my office with, among other things, evaluating legal claims against the defendants and preparing a complaint. I initially wanted to contact the [Golden State] water company myself but then decided that Fire Department should do so.” (4 Exh. 1497 [¶ 28]; 5 Exh. 1833–1834 [¶¶ 30–32], 1984–1988; 2 Exh. 708–823.)
- The emails “between the Fire Department and Golden State Water Company reflect[] preliminary flow modeling sought by the Fire Department at the County attorney’s request during investigation and preparation of the complaint in this action.” (5 Exh. 1833–1834 [¶ 32], 1986.)

This evidence establishes that the Fire Department acted at County Counsel’s direction and was, for the purpose of document 337, Counsel’s agent. This makes the document subject to qualified work product protection under *Coito* and *SoCal Edison*.

The trial court erred. The trial court reached the contrary conclusion. It was mistaken as a matter of law.

In support, the court said, “there’s no lawyer involved in this” email chain, “it doesn’t appear that it involves any direction on the part of an attorney, and it doesn’t look like it contains their impression, and it doesn’t at all seem to fit within the *Coito*

case at all because it's not a statement that a lawyer took at all.” (5 Exh. 2115.)

But *Coito* expressly includes materials obtained “by an attorney’s agent at the attorney’s behest.” (*Coito, supra*, 54 Cal.4th at pp. 494, 496.) That makes it irrelevant whether an attorney was copied on the email and whether an attorney took the statement. *Coito* requires only that the work product arise from an attorney’s direction or investigation, not that the materials themselves expressly include “direction on the part of an attorney.” (5 Exh. 2115.) And nothing in *Coito* limits “witness statements” to written notes or transcription of an oral interview. Rather, as *SoCal Edison* explained, even emails and documents connected to “an attorney led internal investigation” are “witness statements like those at issue in *Coito*.” (*SoCal Edison, supra*, 102 Cal.App.5th at p. 586.)

Under *Coito*, document 337 is qualified attorney work product “as a matter of law.” (*Coito, supra*, 54 Cal.4th at p. 497.) The trial court abused its discretion in holding to the contrary.

B. Defendants made no showing justifying disclosure.

“Qualified work product is not subject to disclosure ‘unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party’s claim or defense or will result in an injustice.’” (*SoCal Edison, supra*, 102 Cal.App.5th at p. 590, quoting Code Civ. Proc., § 2018.030, subd. (b).) The trial court made no such

determination here. The Defendants did not even offer evidence that could support such a determination.

Indeed, the County offered ample contrary evidence that Defendants will suffer *no* unfair prejudice or injustice from maintaining the privilege. Defendants have noticed and scheduled the deposition of Joseph Zhao, the water company engineer who corresponded with the Fire Department in document 337. (5 Exh. 1834–1835 [¶ 37], 2103–2104.) Defendants “can examine the witness on the underlying facts” of document 337 at the deposition. (5 Exh. 2104.)

Likewise in *SoCal Edison*, this Court found no basis to overcome the qualified work product privilege. The party seeking discovery could “obtain[] the information [the company] allegedly withheld” from other sources, and the party had “not demonstrated any inability to take discovery of fact witnesses” regarding the underlying issues. (*SoCal Edison, supra*, 102 Cal.App.5th at pp. 590–591.) The Court preserved the privilege in that case. It should do the same here.

IV. The Trial Court’s Order Clearly Violates The Attorney-Client Privilege By Ordering Disclosure Of Confidential Communications Between The County’s Attorneys And The Regional Board’s Attorneys Regarding Their Common Litigation Interests.

A. The common interest doctrine applies to the communications even before the County and the Regional Board entered into a written common interest agreement.

“[P]arties who possess common legal interests may share privileged information without losing the protection afforded by the privilege.” (*OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 887–888 (*OXY*)). This “common interest doctrine” is not an evidentiary privilege; it is “a nonwaiver doctrine.” (*Id.* at p. 889.)

The common interest doctrine applies when two parties have “a reasonable expectation that information disclosed will remain confidential” and “have in common an interest in securing legal advice related to the same matter” for which disclosing the information is “reasonably necessary.” (*OXY, supra*, 115 Cal.App.4th at p. 891.) In that case, information exchanged between the parties that “would *otherwise* be protected from disclosure by a claim of privilege,” such as attorney-client privilege, remains privileged despite the disclosure. (*Id.* at p. 890, italics added.)

Parties do not need to enter into a written agreement for the common interest doctrine to apply. For example, in *Seahaus La Jolla Owners Assn. v. Superior Court* (2014) 224 Cal.App.4th 754, attorneys for a homeowners’ association shared information

about ongoing litigation with owners, and the common interest doctrine preserved the attorney-client privilege on the information. (*Id.* at pp. 762–763, 774–777.) The case did not involve a written common interest agreement. Instead, the doctrine applied because its elements were met on the facts. (*Id.* at pp. 774–777.)

Here, the court adopted the referee’s finding that the common interest doctrine applied to communications between the County and the Regional Board starting on March 22, 2022, when the parties entered a written common interest agreement. (5 Exh. 2046, 2112.) But the County offered unrebutted evidence establishing that the elements of the common interest doctrine were met even before then, and that the doctrine therefore applies to documents 791, 792, 794, 795, 797, 799, and 804.

Reasonable expectation of confidentiality. “As early as January 2022, the County and Water Board were already discussing the need for collaboration between the two parties and the potential for an official written agreement memorializing their common interest for the purpose of this litigation.” (5 Exh. 1835 [¶ 38].) The County’s document log confirms this. The log describes document 791, the first email in dispute, dated January 25, 2022, as “Correspondence between counsel discussing Common Interest Agreement.” (5 Exh. 2003.) Document 794, dated February 8, is described as “Correspondence between counsel attaching draft of Common Interest Agreement.” (*Ibid.*) Communications between counsel with the intention of forming

a written common interest agreement evince a clear expectation of confidentiality.

Common interest. The County and Regional Board both sued the same defendants based on the same contamination incident. There is no question they “have in common an interest in securing legal advice related to the same matter.” (*OXY, supra*, 115 Cal.App.4th at p. 891.)

Reasonable necessity. The exchange of privileged information between the County and the Regional Board “advanced the[ir] common interest” in “investigating the circumstances and events that caused or contributed to the hydrogen sulfide odor” and in “recovering damages, civil penalties or other appropriate relief against the responsible parties.” (2 Exh. 903 [¶ 5].) Given the close alignment of interests, the exchange of privileged information in these documents was reasonably necessary to advancing the County’s and Regional Board’s litigation interests.

This is especially true of two of the disputed emails, documents 791 and 794. In these emails, attorneys for the County and the Regional Board discuss the intended common interest agreement and exchange a draft agreement. (5 Exh. 2003.) These emails ultimately led to the parties’ written common interest agreement, which greatly facilitated further exchange of privileged information. Therefore, these emails themselves were reasonably necessary to advancing the County’s and Regional Board’s shared interests.

The referee found that emails from before the written common interest agreement were not subject to the common interest doctrine. (5 Exh. 1833 [¶ 29], 1974.) The referee concluded the doctrine did not apply “because there was no attorney-client relationship between the County and the Waterboard, and there is no declaration stating that the County was counsel for the Regional Waterboard.” (*Ibid.*)

The court adopted this finding. (5 Exh. 2046.) The referee’s “bright line test,” the court concluded, “works great, effectively and fairly”: “before versus after” the written agreement. (5 Exh. 2112.)

This “bright line test,” however, is not the law. Neither the referee nor the court applied the correct test for the common interest doctrine, determining whether the doctrine’s elements were met. The County offered un rebutted evidence that the elements *are* met. This ruling, therefore, was an abuse of discretion.

B. The communications are protected by the attorney-client privilege.

As explained above, the common interest doctrine protects only communications that “would otherwise be protected from disclosure by a claim of privilege.” (*OXY, supra*, 115 Cal.App.4th at p. 890.)

The attorney-client privilege protects from disclosure all “confidential communications between client and lawyer,” and it applies when the substance of those communications is shared with other persons “to whom disclosure is reasonably necessary”

to pursue “the purpose for which the lawyer is consulted.” (Evid. Code, §§ 952, 954.) It includes the lawyer’s “legal opinion[s] formed” and “advice given by the lawyer in the course of that relationship.” (Evid. Code, § 952.)

“The party claiming the privilege has the burden of establishing the preliminary facts necessary to support its exercise, i.e., a communication made in the course of an attorney-client relationship.” (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733 (*Costco*)). The party having met that burden, “the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply.” (*Ibid.*)

The disputed emails are all protected by the attorney-client privilege. The privilege log establishes that the emails are between attorneys for the County and the Regional Board. (5 Exh. 2003–2005.) They concern legal matters in which the County and Regional Board have a shared interest, including the parties’ common interest agreement to facilitate exchanging privileged information and how to address a public records request. (*Id.*) The County thus met its burden of showing the emails were “communication[s] made in the course of an attorney-client relationship” and established “a prima facie claim of privilege.” (*Costco, supra*, 47 Cal.4th at p. 733.)

Nothing in the record refutes that claim. Defendants did not even attempt to meet their burden of establishing that these

communications were not confidential or that the privilege does not apply for some other reason. (See *Costco, supra*, 47 Cal.4th at p. 733.) And neither the referee nor the court made any finding to that effect. They found that the common interest doctrine did not apply and stopped the analysis there.

We have already shown above why the common interest doctrine also applies, meaning that the County did not waive the privilege by exchanging the privileged information with the Regional Board.

The Court should therefore direct the trial court to enter a new order overruling the Defendants' objections to the assertion of the attorney-client privilege regarding these documents.

CONCLUSION

The trial court clearly erred in ordering disclosure of documents 337, 791, 792, 794, 795, 797, 799, and 804 on the County's privilege log. Defendants filed their motion to compel further disclosure long after its 45-day deadline, meaning the trial court did not even have jurisdiction to issue the order. And the order forces the disclosure of documents protected by the attorney work product privilege and attorney-client privilege.

Writ review is the only way to avoid compelled disclosure of that privileged material—an appeal at the end of the case cannot provide effective relief, because by then the material will have been disclosed.

The Court should therefore order an immediate stay and grant the County's writ petition.

DATED: July 18, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Counsel of record hereby certifies that pursuant to rules 8.204(c)(1) and 8.486(a)(6) of the California Rules of Court, the **PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER APPROPRIATE RELIEF** contains 9,470 words, not including the tables of contents and authorities, the caption page, the verification page, signature blocks, or this certification page.

DATED: July 18, 2025

/s/ Stefan C. Love

Stefan C. Love

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 6420 Wilshire Boulevard, Suite 1100, Los Angeles, California 90048; email pherndon@gmsr.com.

On July 18, 2025, I hereby certify that I electronically served the foregoing **PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES; REQUEST FOR STAY** through the Court's electronic filing system, TrueFiling. I certify that all participants in the case who are registered TrueFiling users and appear on its electronic service list will be served pursuant to California Rules of Court, rule 8.70. Electronic service is complete at the time of transmission:

***** SEE ATTACHED ELECTRONIC SERVICE LIST *****

Executed on July 18, 2025 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Pauletta L. Herndon

Pauletta L. Herndon

People of the State of California, et al. v. Superior Court (Prologis, Inc., et al.)
Los Angeles Superior Court Case No. 22STCV01489
[Related to Lead Case No. 21STCV38929 and all other related cases]

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