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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

The Save the Peaks Coalition, et al,  
  
Appellants/Plaintiffs,  
  
v.  
  
USFS et al,  
  
Appellees/Defendants.

**No.: 10-17896**

**D.C. No.: 3:09-CV-08163-MHM**

**PLAINTIFFS'/APPELLANTS'  
RESPONSE IN OPPOSITION TO  
ARIZONA SNOWBOWL RESORT  
LIMITED PARTNERSHIP'S  
MOTION FOR SANCTIONS**

Plaintiffs, and their counsel, hereby Respond in Opposition to Arizona  
Snowbowl Resort Limited Partnership's (Snowbowl's) Motion for sanctions.  
Snowbowl's Motion is based on unfounded allegations of wrongdoing, vexatious  
behavior and harassment on the part of Plaintiffs and Plaintiffs' counsel. These  
allegations are being raised for the first time only after the mandate in this case was  
issued by the Ninth Circuit. Snowbowl made no claim for sanctions based on bad  
faith or vexatious behavior in the lower court or during the appeal process. Indeed,

1 Snowbowl's Motion appears to be driven solely by statements included in the instant  
 2 panel's decision. The panel, however, was not in a fact finding position and never  
 3 raised any of these concerns with counsel at oral argument.<sup>1</sup> Significantly, Snowbowl,  
 4 which voluntarily intervened in this litigation, conducted discovery on the issues that  
 5 form the basis of its Motion of discovery which, while serving to prolong this  
 6 litigation, yielded no support for Snowbowl's claims. In other words, Snowbowl's  
 7 counsel is aware that the allegations that form the basis of its Motion and which  
 8 appeared in the panel decision, are unfounded. Plaintiffs and their counsel were  
 9 mortified by the allegations of wrongdoing included in the panel's opinion, allegations  
 10 which will permanently injure their reputations. Neither the Court's nor Snowbowl's  
 11 assertions of wrongdoing are, however, supported by the record or any other  
 12 instrument of fact. Neither Plaintiffs nor their attorney engaged in any sort of bad  
 13 faith or vexatious behavior.

14 Snowbowl's Motion is, at its essence, intended to stifle the enthusiasm [and]  
 15 chill the creativity that is the very life blood of the law. See, *Mone v. C.I.R.*, 774  
 16 F.2d 570, 574 (2d Cir. 1985). The Court should remain cognizant of the need not to  
 17 discourage the filing of meritorious actions and the chilling effect an award of  
 18 sanctions in this case would have on the public's willingness to pursue legitimate

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<sup>1</sup> At the close of oral argument, the panel commended counsel for their legal work and presentation on appeal.

grievances. It is well settled that the power to assess sanctions is a power that must be strictly construed and utilized only in instances evidencing a serious and standard disregard for the orderly process of justice. *Dreiling v. Peugeot Motors*, 768 F.2d 1159, 1165 (10<sup>th</sup> Cir. 1985); *Mone*, 774 F.2d at 574 (We recognize this power carries with it the potential for abuse, and therefore the statute should be construed narrowly and with great caution . . .). As discussed below, nothing in this case supports the imposition of sanctions against Plaintiffs or their counsel, especially when the authority to impose sanctions is construed narrowly, as it must be.

Finally, Snowbowl erroneously asserts that 28 U.S.C. § 1927 sanctions, and sanctions based on the inherent authority of the Court, should be levied against Plaintiffs and their counsel because of alleged actions that took place prior to the filing of the instant case.<sup>2</sup> Indeed, Snowbowl asserts that Plaintiffs and their counsel abused the judicial process by bringing this case in its entirety. Even assuming, *arguendo*, that there was some basis in fact for these assertions (there is not), it is well settled that because [28 U.S.C. § 1927] authorizes sanctions only for the multiplication of proceedings, it applies only to unnecessary filings and tactics once a lawsuit has

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<sup>2</sup> The standard for an exercise of the Court's inherent authority is similar to that under 28 U.S.C. § 1927. Thus, sanctions based on the court's inherent powers cannot be based solely on conduct that was reckless or an abuse of the judicial process. . . . Instead, counsel's conduct must constitute or be tantamount to bad faith. *In re: Keegan*, 78 F.3d at 436. There was no bad faith in the instant case.

1 begun. *In re: Keegan Management Co.*, 78 F.3d 431, 435(9<sup>th</sup> Cir. 1996).

2 Notwithstanding, Snowbowl seeks fees and costs associated with the filing and  
3  
4 prosecution of the instant appeal without citation to any specific brief, motion, and/or  
5 action within the confines of the appeal that unreasonably and vexatiously  
6 multiplied the proceedings. *See*, 28 U.S.C. §1927. Snowbowl fails to cite any  
7  
8 legitimate basis for the imposition of sanctions.

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10 **A. Sanctions are Not Warranted in This Case – Snowbowl’s Own Motion**  
11 **Unreasonably and Vexatiously Multiplies the Litigation**

12 Snowbowl chose to intervene in this case. Snowbowl chose to hire both  
13 Arizona and Washington, D.C. counsel and to have, at least, three lawyers at oral  
14 argument in San Francisco.<sup>3</sup> It was Snowbowl who conducted abusive discovery and  
15 filed numerous marginal motions in the lower court. Snowbowl now seeks sanctions  
16 based on allegations they know to be false and a misapplication of the law. None of  
17 the elements required to impose sanctions on Plaintiffs or their counsel are present in  
18 the instant case.  
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25 <sup>3</sup> In Snowbowl’s billing statements included with the Motion, Snowbowl, *inter*  
26 *alia*, redacted the names of time keepers, dates, and hours. It is unclear as to how this  
type of information can be considered privileged or confidential.

1           **1. Plaintiffs' Counsel has Not Unreasonably and Vexatiously Multiplied**  
 2           **the Proceedings**

3           To be subject to sanction under 28 U.S.C. § 1927, a lawyer must multiply the  
 4 proceedings in any case unreasonably and vexatiously. . . See, 28 U.S.C. § 1927.

5           Such sanctions apply only to unnecessary filings and tactics once a lawsuit has  
 6 begun. *In re: Keegan*, 78 F.3d 431, 435 (9<sup>th</sup> Cir. 1996). The statute does not  
 7 authorize imposition of sanctions in excess of costs reasonably incurred because of  
 8 such conduct. *Kirshner v. Uniden Corp.*, 842 F.2d 1074, 1081 (9<sup>th</sup> Cir. 1988).  
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10          Snowbowl, however, alleges improper behavior and conduct prior to commencement  
 11 of litigation as a basis for sanctions and seeks fees and costs associated with the  
 12 prosecution of the instant appeal without citation to any specific brief, motion, and/or  
 13 action within the confines of the appeal that unreasonably and vexatiously  
 14 multiplied the proceedings. *See*, 28 U.S.C. § 1927.  
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 18           **2. Sanctions Must be Supported by a "Finding of Subjective Bad**  
 19           **Faith", Which is Not Present in the Instant Case**

20          Sanctions, whether pursuant to the Court's inherent authority or 28 U.S.C. §  
 21 1927, must be supported by a finding of subjective bad faith. *In re: Keegan*, 78  
 22 F.3d at 436. Bad faith is present when an attorney knowingly or recklessly raises a  
 23 frivolous argument, or argues a meritorious claim for the purpose of harassing an  
 24 opponent. *Id*; see, also, e.g., *Protect Lake Pleasant, LLC v. Connor*, 2011 WL  
 25  
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1 11414, \*2 (D. Ariz. 2011) (̈This is a high threshold . . . [n]egligent or inadvertent  
2 conduct does not constitute bad faith, nor does mere recklessness.̈).

3  
4 As an initial matter, Plaintiffs did not name Snowbowl as a defendant.  
5 Snowbowl voluntarily intervened in this case. More significantly, Plaintiffs and their  
6 counsel neither knowingly nor recklessly raised any frivolous argument. *See*, Ex. 1  
7 (Declaration of Howard Shanker) at ¶¶ 2&4. Indeed, Plaintiffs and their counsel still  
8 maintain a good faith belief in the merits of their claim(s). *Id.* Plaintiffs prevailed on  
9 the laches issue on appeal and had a valid and good faith belief in the merits of their  
10 NEPA claim. Moreover, notwithstanding the lack of precedential value of *Navajo*  
11 *Nation I*, the fact that a prior panel of this Court found that the Forest Service violated  
12 NEPA on the same law and the same facts should, at least, be sufficient to  
13 demonstrate that Plaintiffs and their counsel had a legitimate basis for their good faith  
14 belief in the validity of their claim. Even if non-precedential, this is a significant,  
15 valid indicator that Plaintiffs' NEPA claim was not without merit. Plaintiffs filed  
16 nothing that was frivolous.

17 Neither Plaintiffs nor their counsel submitted any briefs or motions that could  
18 even be remotely construed as having been filed to harass Snowbowl or to delay  
19 the proceeding. *See, In re: Keegan*, 78 F.3d at 436. Indeed, Snowbowl does not point  
20 to any specific document or filing as being made in bad faith. To the contrary,  
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1 Snowbowl seems to argue that the appeal was intended to ðharassö and ðdelayö  
 2 construction ó not necessarily the proceeding. Even assuming, *arguendo*, that such an  
 3 argument can provide the basis for the imposition of sanctions (it cannot), there is no  
 4 support for such an allegation. Snowbowl began construction as soon as it received its  
 5 permits and was not in any way hindered by this action from continuing construction  
 6 during the appeal. No stay or injunction was in place during the pendency of the  
 7 appeal. This case, including the instant appeal, was filed and pursued in good faith,  
 8 was meritorious, and not intended to ðdelayö or ðharass.ö See, e.g., Ex. 1 (Declaration  
 9 of Howard Shanker) at ¶¶ 2&4; Ex. 2 (Deposition Excerpts of Jeneda Benally) at 45-  
 10 46:

14 (ðQ. Now, at the time your family meeting about being plaintiffs in the  
 15 2009 case concluded, at least you and your brother Clayson and your  
 16 mother, Berta, you decided to become plaintiffs. Correct? A. Yes. Q.  
 17 Why was it necessary to go out and find other plaintiffs? . . . A. Why not?  
 18 I didnø see that there wouldnø be any reason in not looking for other  
 19 people as well. Q. Well, wouldnø the three of you have been enough? . .  
 20 . . A. Letø see. No. I donø think so. I think that, I think that everybody  
 21 who has an opportunity to make a statement, or who had made a  
 22 comment, should fairly have the opportunity to find recourse. . .ö).

21 Plaintiffs and their counsel maintained a good faith belief that they would  
 22 prevail on the merits. Plaintiffsø counsel brought this matter (*pro bono*) solely  
 23 because of the legitimacy and importance of the claims. *Id.* Indeed, Plaintiffs and  
 24 their counsel still believe that, had the instant case been assigned to another panel, it is  
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possible that Plaintiffs could have prevailed on the merits. Whether the instant panel (which again, was not sitting in a fact-finding capacity when it issued its opinion) shares this belief or not, neither Snowbowl nor this Court can make the “subjective finding of bad faith” necessary to support the requested sanctions. *See, In re: Keegan*, 78 F.3d at 436.

**B. The Allegations in the Opinion That Provide the Basis for Snowbowl’s Motion are Simply Not True**

The allegations that provide the basis for Snowbowl’s Motion are not true. Indeed, Snowbowl conducted extensive factual discovery into the allegations that form the basis of its Motion yet it cites to nothing substantive from the discovery process to support its claims.<sup>4</sup>

**1. Plaintiffs’ Counsel Neither “Enlisted” Plaintiffs in an Attempt to “Evade Res Judicata and Collateral Estoppel” Nor “Engaged in Strategic Gamesmanship”**

Snowbowl asserts that “Mr. Shanker enlisted the Save the Peaks plaintiffs to ‘evade res judicata and collateral estoppel’ and engaged in strategic gamesmanship . . . to hinder development and impose costs unnecessarily . . .” Motion at 7, *citing, Save the Peaks Coalition*, 669 F.3d at 1032 (“The ‘new’ parties in this litigation appear to

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<sup>4</sup> Discovery in this administrative record case was limited by the lower court to the issues of *res judicata* and standing. Defense counsel’s interrogation of Plaintiffs was, however, significantly broader than otherwise allowed or contemplated. The fortunate result of this transgression is that the allegations at issue are demonstrably false.

1 be little more than a vehicle for the Navajo Nation Plaintiffs' counsel to evade res  
 2 judicata and collateral estoppel. These assertions are simply not true. As clearly  
 3 set forth in the attached deposition testimony and the declaration of Plaintiffs'  
 4 counsel, Plaintiffs' counsel did not enlist anybody. Counsel was contacted by  
 5 Plaintiffs to represent them in this matter. *See, e.g.*, Ex. 1 (Declaration of Howard  
 6 Shanker) at ¶ 3; Ex. 2 (Deposition Excerpt of Jeneda Benally) at 47-48 (Q. What  
 7 was the next thing that happened after the members of your family, perhaps people  
 8 you contacted, and the Save the Peaks Coalition decided to become plaintiffs in this  
 9 lawsuit? . . . A. We talked about being plaintiffs. We decided that we would contact  
 10 Howard Shanker. Q. Why did you contact Mr. Shanker? A. Because he was the  
 11 attorney in the, in the last NEPA case and he's known for being a NEPA lawyer.);  
 12 Ex. 3 (Deposition Excerpts of Berta Benally) at 19-21, 22, 59-60, 61:

17 (Q. And based on what you saw from the judge, then you thought that  
 18 you should take that further? A. Yes. Q. Now, you said that after you  
 19 were looking into going with the NEPA, and then you called friends is  
 20 that right? A. Yes. Q. And, so, who did you call and talk to about  
 21 thinking about bringing a lawsuit? A. I called my family. I went through  
 22 the DEIS a little bit and called Frederica Hall, Rachel Tso, asked them  
 23 what their opinion was. . . . Q. So, I'm just trying to understand. What is  
 24 it that you looked at in the DEIS that led you to names of people to call?  
 25 A. Looking for the wastewater, the reclaimed water and if there was ever  
 26 any mention of ingesting the snow with reclaimed water. That's what I  
 was really looking for. . . I was looking at the DEIS, and then I was  
 looking for comments to see if anybody had made any comments of  
 people ingesting reclaimed water. Q And how did you come up with the  
 idea of going to the DEIS and trying to figure out who had commented

1 on reclaimed water. . . . Q. Was it your idea. . . A. Yeah. Q. ó was it  
 2 someone else's? A. Yeah. I just, you know, you're investigative and  
 3 you're inquisitive, you're going to go to the source. . .

4 Q. And what happened after you had then made a couple of these phone  
 5 calls and talked with your family? What was the next step? A. to request  
 6 Howard to ask him if he could be our lawyer.

7 Q. Now, I think you said a little earlier that after you'd had some  
 8 discussions with your family, and I think Rachel Tso and Frederica Hall,  
 9 you had then called Mr. Shanker about representing you and whoever  
 10 else might join you in the lawsuit. Is that right? A. Yes. Q. And did you  
 11 talk to Mr. Shanker about how you might go about, or whether you  
 12 should go about digging up other people to join the lawsuit? A. No. Q.  
 13 Now, Mrs. Benally, were you ever promised any kind of benefit or  
 14 anything else to, in order to get you to file this lawsuit? A. No. Q. Did  
 15 you ever promise anything to any of the other individual plaintiffs to  
 16 suggest that they should join this lawsuit? A. No. . . .

17 Q. When you were deciding ó when you had been deciding about filing  
 18 this lawsuit, did you talk to any other lawyers about handling this case?  
 19 A. Yes. Q. And who else did you contact. . . Q. Did you call somebody?  
 20 A. Yes. Q. Who did you call? A. Bryant Barber . . . Q. And is Mr. Barber  
 21 here in Flagstaff? A. No. Q. Where is his practice? A. Phoenix. Q. And  
 22 why did you not retain Mr. Barber as the attorney for this action? A. I  
 23 like the way Howard works.ö)

24 Ex. 4 (Deposition Excerpts of Rachel Tso) at 16-17 (öQ. After this group decided that  
 25 they would proceed with the lawsuit, did you and Mr. Shanker talk at all about trying  
 26 to find other people to join the lawsuit? A. No.ö).

27 Contrary to Snowbowl's assertions Plaintiffs' counsel did not öenlistö anybody.  
 28 The Plaintiffs in this case had legitimate, unresolved claims and were not otherwise  
 29 precluded from attempting to vindicate their rights and the public interest in NEPA

1 compliance. The lower court ruled that *res judicata* did not apply. Plaintiffs were not  
 2 surrogates or agents of the Navajo Nation or any other prior plaintiff. Snowbowl did  
 3 not appeal the lower court's ruling on this issue. The statement, that, "[t]he new  
 4 parties in this litigation appear to be little more than a vehicle for the Navajo Nation  
 5 Plaintiff's counsel to evade res judicata and collateral estoppel," is simply not correct.  
 6  
 7 *See, Save the Peaks Coalition*, 669 F.3d at 1032. Plaintiffs, and their counsel, pursued  
 8 the instant case (including the appeal) to ensure compliance with NEPA and had a  
 9 good faith basis for doing so. *See, e.g.*, Ex. 1 at ¶¶ 1-9.

## 12                   **2. Plaintiffs and their Counsel Did Not "Strategically Hold Back** 13                   **Claims"**

14                   Snowbowl and the panel asserted that "the new plaintiffs and their counsel  
 15 have grossly abused the judicial process by strategically holding back claims that  
 16 could have, and should have, been asserted in the first lawsuit . . . ." *Save the Peaks*  
 17 *Coalition*, 669 F.3d at 1025.<sup>5</sup> There is, however, no legal or ethical obligation for all

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20                   <sup>5</sup> The panel further asserted that the ingestion issue "would have been decided  
 21 earlier but for counsel's procedural errors in raising those claims." *Id.* at 1028.  
 22 Counsel, however, respectfully disagrees with this accusation. This issue was  
 23 properly raised, briefed, argued and decided in the lower court in the *Navajo Nation*  
 24 case. A panel of this Court in *Navajo Nation I* unanimously confirmed that the issue  
 25 was properly raised in the lower court and ruled, on the merits, against the Forest  
 26 Service. The only other time the prospect of a procedural error was ever raised was  
 by the majority (three judges dissented on this issue) of the *en banc* panel "with no  
 opportunity to respond to the assertion."

1 potential and prospective plaintiffs, whether related or not, to file whatever claims  
 2 they may have, at the same time. Indeed, the implication that such an obligation exists  
 3 runs contrary to fundamental notions of due process.  
 4

5 Notwithstanding, Plaintiffs did not hide in the bushes waiting to file suit.  
 6 Plaintiffs did not retain counsel until April, 2009 or shortly after they made the  
 7 decision to pursue litigation. *See, e.g.*, Ex. 1 at ¶ 3; Ex. 2 at 47-48; Ex. 3 at 19-21, 22,  
 8 59-60, 61. It is incomprehensible that Plaintiffs' counsel can be charged with bad  
 9 faith stemming from any alleged delay in filing. He did not represent Plaintiffs during  
 10 this time.  
 11

12 The procedural facts of this case also do not support any finding of improper  
 13 motive or bad faith. In 2005 a three judge panel of the Ninth Circuit found that, "[t]he  
 14 FEIS does not satisfy NEPA with respect to the possible risks posed by human  
 15 ingestion of the artificial snow." *Navajo Nation v. U.S.*, 479 F.3d 1024, 1053-1054  
 16 (9th Cir. 2007) (*Navajo Nation I*).<sup>6</sup> The suggestion that Plaintiffs should, or even  
 17 could have filed suit, or that they were somehow conspiring to file suit or asserting that  
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23 <sup>6</sup> The panel asserts that *Navajo Nation I* was vacated by the *en banc* panel. *Save*  
 24 *the Peaks Coalition*, 669 F.3d at 1030. In the Ninth Circuit, however, such cases are  
 25 not vacated, but rather rendered non-precedential thereby maintaining their  
 26 informational value. *See, Navajo Nation*, 506 F.3d 717; *Animal Legal Defense Fund*  
*v. Veneman*, 490 F.3d 725 (9th Cir. 2007).

1 the Forest Service failed to comply with NEPA with respect to risks posed by human  
 2 ingestion ó while *Navajo Nation I* was in place makes no sense.

3  
 4 In 2008, a majority of the *en banc* panel in *Navajo Nation v. U.S.*, 535 F.3d  
 5 1058 (9th Cir. 2008) (*Navajo Nation II*) held that the "ingestion" claim was not  
 6 properly raised in a complaint to the lower court and therefore waived - it never  
 7 addressed the merits of this issue. *Id.* at 1079-1080. In June 2009, the Ninth Circuit  
 8 issued its mandate in the *Navajo Nation* case. In September 2009, approximately  
 9 three months later, Plaintiffs filed the instant case. Plaintiffs did not lay in wait to  
 10 ambush Snowbowl for a number of years. *See, e.g.*, Ex. 1 at ¶¶1-9; Ex. 2 at 47-48; Ex.  
 11 3 at 19-21, 22, 59-60, 61.

12  
 13 Plaintiffs did not conspire to not file suit in 2005. They simply made a decision  
 14 to pursue meritorious, unresolved, claims in 2009 ó within the applicable statute of  
 15 limitations and over two-years before Snowbowl even received its final approvals to  
 16 begin construction. Plaintiffsø actions were not made in bad faith. They were not  
 17 made to òdelayö the litigation or òharass.ö Certainly, Plaintiffsø counsel ó who did not  
 18 represent Plaintiffs until 2009 ó cannot be found to have acted with subjective bad  
 19 faith.  
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1           **3. A Subjective Assertion that “Snowbowl Could Not Have Anticipated**  
 2           **Litigation” is Not a Basis for Punishing Plaintiffs and Their Counsel**

3           Snowbowl and the panel assert that the USFS and the ASRLP [Snowbowl] had  
 4           good reason to believe that the issues involved in the case had been fully and fairly  
 5           litigated, and that their legal nightmare had ended. Little did they know what awaited  
 6           them. *Save the Peaks Coalition*, 669 F.3d at 1030; Motion at 3, 7. Whether or not  
 7           Snowbowl anticipated litigation, however, has no relevance as to whether Plaintiffs  
 8           (and their counsel's) actions were taken in bad faith. Moreover, Snowbowl was never  
 9           dragged into court, it chose to intervene in the proceeding(s) even though its interests  
 10          were more than adequately represented by the Forest Service. i.e., it chose to  
 11          participate in the legal nightmare.

12           As a practical matter, with regard to the ingestion issue, the majority of the *en*  
 13          *banc* panel in *Navajo Nation II* found that:

14           the specific allegations at issue were not included in the complaint. . .  
 15           Rather, the Navajo Plaintiffs assert this NEPA claim was adequately  
 16           presented to the district court because the claim was briefed at summary  
 17           judgment by all parties and presented at oral argument to the district  
 18           court. . . raising such claim in a summary judgment motion is [however]  
 19           insufficient to present the claim to the district court.

20           *Navajo Nation II*, 535 F.3d at 179-1080; *see also*, nt. 5, *supra*.

21           Based on the foregoing it is not readily apparent that Snowbowl would have had  
 22          good reason to believe that the issues involved in the case had been fully and fairly  
 23          litigated. *See, Save the Peaks Coalition*, 669 F.3d at 1030.

1 **C. Conclusion**

2 Because [28 U.S.C. § 1927] authorizes sanctions only for the multiplication  
 3 of proceedings, it applies only to unnecessary filings and tactics once a lawsuit has  
 4 begun. *In re: Keegan Management Co.*, 78 F.3d at 435. Snowbowl, however, seeks  
 5 fees and costs associated with the filing and prosecution of the instant appeal without  
 6 citation to any specific brief, motion, and/or action within the confines of the appeal  
 7 that “unreasonably and vexatiously” multiplied the proceedings. Moreover,  
 8 Snowbowl has not provided this Court with any factual information that would  
 9 support a finding of “subjective bad faith” on the part of Plaintiffs or their counsel. *In*  
 10 *re: Keegan*, 78 F.3d at 436 (sanctions must be supported by a finding of “subjective  
 11 bad faith”).  
 12

13 Finally, the accusations against Plaintiffs and their counsel are simply not true:  
 14 (1) this was a legitimate/meritorious case and a legitimate appeal ó neither Plaintiffs  
 15 nor their counsel abused the judicial process; (2) there was no bad faith on the part of  
 16 Plaintiffs or their attorney; (3) Snowbowl voluntarily intervened in these proceedings;  
 17 (4) as soon as Snowbowl received the requisite approvals from the Forest Service,  
 18 they began construction and were not delayed in any way by the instant appeal; and  
 19 (5) there was no claim for sanctions made in the lower court ó Snowbowl’s Motion  
 20 appears to be driven solely by the conclusory statements included in the panel’s  
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1 decision. The panel, however, was not in a fact finding position and never raised any  
2 of these concerns with counsel at oral argument.  
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4 Plaintiffs and their counsel were mortified by the language and assertions  
5 included in the panel decision. The legal nightmare here has become that of the  
6 Plaintiffs and their counsel, who will have to live with the panel's statements for the  
7 balance of their lives and careers. While Snowbowl clearly senses the opportunity to  
8 exact additional pounds of flesh, there exists no basis here to worsen the nightmare  
9 through the imposition of the sanctions it seeks.  
10  
11

12 Respectfully submitted May 11, 2012.

13  
14 THE SHANKER LAW FIRM, PLC.

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22 (Attorneys for Plaintiffs/Appellants)  
23  
24  
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26

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system on May 11, 2012.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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By s/Howard M. Shanker

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# Exhibit 1

## Declaration of Howard Shanker

Howard M. Shanker (AZ 015547)  
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*Attorneys for Plaintiffs*

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**No.: 10-17896**

**D.C. No.: 3:09-CV-08163-MHM**

**DECLARATION OF HOWARD M.  
SHANKER**

I, Howard Shanker, declare and attest to the best of my knowledge and on personal information and belief as follows:

1. I received my law degree from the Georgetown University Law Center in 1989. I also hold a Master's Degree in Public Administration. In addition to being a Member of the Shanker Law Firm, PLC, I am an adjunct professor at the Sandra Day O'Connor School of Law. I am admitted to practice, and have practiced, law in a variety of forums and courts;

2. In my approximately 20 years of practice, I have never engaged in any sort of bad faith or vexatious behavior. This includes the instant case. I had a good faith basis for the pursuit of the claim(s) at issue. I believed (and still believe) that the claims were meritorious. The claims were not frivolous and were not brought with the intent to harass or delay the proceeding, construction, or anything else;

DECLARATION OF HOWARD M. SHANKER

- 1 -

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# Exhibit 2

## Deposition Excerpt of Jeneda Benally

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

THE SAVE THE PEAKS COALITION; )  
KRISTIN HUISINGA; CLAYSON BENALLY, )  
SYLVAN GREY; DON FANNING; JENEDA )  
BENALLY; FREDERICA HALL; BERTA )  
BENALLY; RACHEL TSO; LISA TSO, )  
 )  
Plaintiffs, ) 3:09-CV-08163-PCT-MHM  
vs. )  
 )  
U.S. FOREST SERVICE; NORA RASURE )  
(in her capacity as Forest )  
Supervisor for the Coconino )  
National Forest), )  
 )  
Defendants. )  
 )  
ARIZONA SNOWBOWL RESORT LIMITED )  
PARTNERSHIP, )  
 )  
Intervenor-Defendant. )  
 )

DEPOSITION OF JENEDA BENALLY

VOLUME I

Flagstaff, Arizona  
March 26, 2010

PERFORMANCE REPORTERS, INC.  
121 East Birch Avenue, Suite 501  
Flagstaff, Arizona 86001  
By: Annette Satterlee, RPR, CRR  
Arizona Certified Reporter #50179

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1 wasn't thrown out in 2005. It was the 2005 Navajo Nation  
2 case had a NEPA technicality.

3 BY MR. JOHNSON:

4 Q. Do you recall what that technicality was?

5 A. The ingestion of snow, of the artificial snow.

6 Q. Were there other parts of the Navajo Nation  
7 case where the NEPA claims did not get thrown out?

8 A. I don't know.

9 Q. Did you have a desire to be more involved  
10 directly in the Navajo Nation case?

11 A. Could you be more specific?

12 Q. Well, did anyone ever ask you to be a plaintiff  
13 in the Navajo Nation case?

14 A. No.

15 Q. So, we're talking about, in the 2009 case, now,  
16 this NEPA technicality, as you called it. When.

17 Did you first become aware of that?

18 A. I believe it was thrown out in San Francisco,  
19 and that's --

20 Q. Okay.

21 A. So, it was during, during the case when it was  
22 thrown out is when I was aware of that.

23 Q. And, then, did you then do anything about the,  
24 this NEPA technicality? Did you look into it?

25 A. Yes.

1 Q. What did you do, exactly?

2 A. Well, I researched my comments through the  
3 environmental impact statement and the draft  
4 environmental impact statement to see if I might be a  
5 plaintiff in a NEPA case.

6 MR. JOHNSON: Let's go off the record.  
7 Why don't we take about a ten-minute break.

8 (Recess taken from 6:58 to 7:12 p.m.)

9 BY MR. JOHNSON:

10 Q. Let's go back on the record.

11 Miss Benally, when we went off the record a few  
12 minutes ago, we were talking about the NEPA part of the  
13 Navajo Nation case. Do you remember that?

14 A. Yes.

15 Q. Okay. And I asked you a question that wasn't  
16 too artfully put. Let me ask it again.

17 Do you realize that there was part of the  
18 Navajo Nation case involving NEPA claims that was not  
19 thrown out on a technicality, as you put it, but did get  
20 ruled on by the court?

21 A. I don't recall.

22 Q. Now, you said one of the things you did after  
23 you took a look at this NEPA part of the Navajo Nation  
24 case was that you started reviewing your comments on the  
25 DEIS.

1 A. Yeah. The DEIS and the EIS.

2 Q. And you understand that the DEIS refers to the  
3 draft environmental --

4 A. The draft.

5 Q. -- impact statement?

6 A. Yes.

7 Q. And the EIS is the environmental impact  
8 statement?

9 A. Yes.

10 Q. How did you know that there was a connection  
11 between reviewing comments on the DEIS or the EIS and the  
12 NEPA part of the case?

13 A. How did I know?

14 Q. Yes. How did you know to suddenly go to the  
15 DEIS and the EIS and start looking for comments when you  
16 became concerned about the NEPA part of the case?

17 A. Because the draft environmental impact  
18 statement and the environmental impact statement is the,  
19 the basis for the case, as I understand it.

20 Q. Did you talk to anybody about your concerns  
21 concerning the NEPA part of the case that you were  
22 focused on?

23 A. I talked with my family.

24 Q. And what was that discussion about?

25 A. That was a long time ago. I don't recall.

1 Q. But do you recall talking to your family about  
2 it?

3 A. Yes. Yes, of course.

4 Q. Did you ever talk to a lawyer about the  
5 relationship between the DEIS or EIS comments on the NEPA  
6 part of the case?

7 A. Not -- no.

8 Q. You're not a lawyer yourself, are you?

9 A. No. I enjoy law, but I'm not a lawyer.

10 Q. Have you ever taken an environmental law case?

11 A. An environmental law class?

12 Q. Yes.

13 A. No.

14 Q. Now, let's continue on the story of how you  
15 became a plaintiff in this case.

16 You became focused on this NEPA issue and you  
17 started reviewing the EIS and DEIS comments. What's the  
18 next thing that happened?

19 A. Let's see. I read my comments and spoke with  
20 my family and -- let's see.

21 That's what I remember. That's what I  
22 remember, is that I read my comments, I spoke with my  
23 family, and we realized that we could probably be  
24 plaintiffs.

25 Q. And what was the piece of knowledge or the

1 realization you had that led you to the conclusion that  
2 you, as you put it, could be plaintiffs?

3 A. The ingestion of snow.

4 Q. What about the ingestion of snow?

5 A. That it hasn't been studied as with -- that the  
6 ingestion of snow hasn't been studied on children who  
7 might ingest it while in the SUP area.

8 Q. Okay. What was the next thing that happened  
9 after that with respect to this 2009 case and your being  
10 a plaintiff?

11 A. Let's see. We -- what did I do. I talked to  
12 people.

13 Q. Who did you talk to?

14 A. I talked to friends, other people as well.

15 Q. And what was the purpose of talking to these  
16 friends or other people?

17 A. To get feedback.

18 Q. What kind of feedback did they give you?

19 A. To get feedback of if it seemed like a, if it  
20 seemed like a case or -- you know, I don't, I don't  
21 recall completely all the feedback. Yeah. I don't recall  
22 all the feedback.

23 Q. Did anybody tell you they didn't think it was a  
24 case?

25 A. It wasn't so much that I was asking whether or

1 not it was a case but, you know, but, rather, you know,  
2 just asking people if it was a good idea.

3 Q. Was there anybody you talked to that didn't  
4 think it was a good idea?

5 A. No. I don't, I don't recollect.

6 Q. Did you talk to other people about the  
7 possibility of their becoming a plaintiff in the case?

8 A. Yes.

9 Q. Who did you talk to in that regard?

10 A. I spoke with, well, of course my family. I  
11 spoke with people, but I can't remember exactly who  
12 because it was so long ago.

13 Q. Well, let's look at the list of plaintiffs on  
14 Exhibit 1. And the list of plaintiffs is contained in  
15 the little box at the top of the little box on page one.

16 A. Uh-huh.

17 Q. Do you see the list of plaintiffs there?

18 A. Yes.

19 Q. Did you talk to anyone from the Save the Peaks  
20 Coalition about being a plaintiff?

21 A. Yes.

22 Q. Who did you talk to?

23 A. The thing about the Save the Peaks Coalition is  
24 that it's so -- I'm not sure who is a member in the Save  
25 the Peaks Coalition. But I did talk to people --

1 Q. Okay.

2 A. -- who may have come to meetings. I don't  
3 recollect who they were. But I did speak -- let's see.  
4 Who did I speak with.

5 I think I spoke with Sylvan.

6 Q. That's Sylvan Grey?

7 A. Yes. Sylvan Grey.

8 Q. Did you speak to her about her becoming a  
9 plaintiff in this case?

10 A. I did.

11 Q. What did you say to her?

12 A. That she had -- she had comments about  
13 ingesting reclaimed wastewater.

14 Q. And you discovered that from when you reviewed  
15 the DEIS and the EIS?

16 A. Yes. But I wasn't the only one who was looking  
17 at the DEIS and the EIS.

18 Q. Who else was looking at it?

19 A. I believe -- actually, let's see. Different  
20 people. I can't recollect exactly who was looking at it.

21 I'm sorry. I wish I wasn't so jetlagged  
22 because my memory would be so much better.

23 Q. Now, did you speak to any of the other  
24 plaintiffs about the possibility of their becoming a  
25 plaintiff in this case?

1 A. Anybody else on this list?

2 Q. On the list of plaintiffs that are on  
3 Exhibit 1, yes.

4 A. I don't recall if I tried to contact Kristin  
5 Huisinga.

6 Q. Let's stop there for a second.

7 Do you know Kristin Huisinga?

8 A. No.

9 Q. How would you have known to try and contact  
10 her, then, about becoming a plaintiff?

11 A. From Googling her on the internet.

12 Q. But why did you Google her to find out about  
13 her to contact her to be a plaintiff?

14 A. Because she has the same comments as well.

15 Q. Was there anyone else on this list besides your  
16 brother Clayson and your mother that you talked to about  
17 becoming a plaintiff in this case?

18 A. I --

19 Q. And obviously Sylvan Grey.

20 A. Right. Yes. I spoke with Frederica Hall and  
21 Rachel Tso.

22 Q. And do you remember what you said to Frederica  
23 Hall?

24 A. No. I don't recall.

25 Q. And did you otherwise know Frederica Hall?

1 A. Yes.

2 Q. But you contacted her because you saw that she  
3 made certain comments in the DEIS and EIS?

4 A. I'm not the only one who -- you're making it  
5 sound like I'm the only one who, who was, who was doing,  
6 who was researching the plaintiffs. And, certainly, I  
7 was not.

8 Q. But you can't, you don't know who else was  
9 researching the plaintiffs?

10 A. Other people within the Save the Peaks  
11 Coalition, yes, were.

12 Q. Do you know the names of any of those people?

13 A. Let's see. I don't know if they're members of  
14 the Save the Peaks Coalition, but I had asked people at  
15 meetings.

16 Let's see. I think everybody's been  
17 researching it. That would -- you know what, but I'm not  
18 going to assume.

19 Q. So, you also talked to Rachel Tso about the  
20 possibility of her becoming a plaintiff?

21 A. Yes.

22 Q. And why did you pick Rachel Tso to talk to  
23 about that?

24 A. She is a friend and relative.

25 Q. Any other reasons?

1 A. Because she has the same comments.

2 Q. Do you also know Lisa Tso?

3 A. I do.

4 Q. Did you talk to her about becoming a plaintiff?

5 A. No.

6 Q. Now, with respect to the discussions you had  
7 with your family about becoming plaintiffs in this 2009  
8 lawsuit, who was in on those discussions in your family?

9 A. Let's see. My mother, my father, and my  
10 brothers; my boyfriend; and, and I believe my brother  
11 Clayson's wife, I'm sure, also was part of that  
12 discussion.

13 Q. So you talked to both your brother Clayson and  
14 your brother Klee about the possibility of becoming  
15 plaintiffs? Or they were involved in this discussion  
16 about --

17 A. Right. Right. I'm not -- I didn't go out  
18 seeking plaintiffs. So I think that that should be made  
19 clear.

20 Q. Well, what were you doing when you called up  
21 Sylvan Grey if you weren't seeking plaintiffs?

22 A. Okay. Let me rephrase that, then.

23 I was not -- let's see. How do I phrase this.  
24 We were looking that, myself and maybe -- oh. I don't  
25 recall. But, yes. Of course, you know, we're looking

1 for plaintiffs.

2 Q. Okay. Let's go back --

3 A. I don't think I'm making very much sense.

4 Q. Let's go back to the discussions you had with  
5 your family.

6 A. Okay.

7 Q. It turns out that some of the members of your  
8 family became plaintiffs and some didn't. Correct?

9 A. Correct.

10 Q. Why was it that your father didn't become a  
11 plaintiff?

12 A. I'm not -- I don't know if I can -- he just, he  
13 decided not to.

14 Q. Did he tell you the reasons why he decided not  
15 to?

16 A. No.

17 Q. How about your boyfriend? He didn't become a  
18 plaintiff, did he?

19 A. No. He doesn't have any comments.

20 Q. And how about your brother Clayson's wife? She  
21 didn't become a plaintiff, did she?

22 A. No.

23 Q. Do you know why that was?

24 A. Because she's, she doesn't have the comments.

25 Q. How about your brother Klee? He didn't become

1 a plaintiff, did he?

2 A. No.

3 Q. Do you know why?

4 A. He wasn't interested.

5 Q. He wasn't interested in becoming a plaintiff?

6 A. Yes.

7 Q. Did he explain to you why he wasn't interested  
8 in becoming a plaintiff?

9 A. No.

10 Q. Well, he's been pretty active in this whole  
11 thing starting with the Save the Peaks Coalition and the  
12 2005 Navajo Nation lawsuit, hasn't he?

13 MR. SHANKER: Let me object. This is  
14 fact discovery, not reasonably calculated to lead to the  
15 discovery of admissible evidence.

16 You can answer.

17 THE WITNESS: Okay. Repeat that, please.

18 MR. JOHNSON: Read it back, please.

19 (The last question was read.)

20 THE WITNESS: What role has he played in  
21 the Navajo Nation lawsuit?

22 BY MR. JOHNSON:

23 Q. Well, he's a part of the Save the Peaks  
24 Coalition, right?

25 A. But what role did the Save the Peaks Coalition

1 have in the lawsuit?

2 Q. The way the deposition works is I ask you  
3 questions --

4 A. Oh.

5 Q. -- and you answer them. And if you want to  
6 banter back and forth or try and argue with me, we're  
7 going to be here for a really long time.

8 A. I'm not trying to argue with you. I'm just  
9 trying to get clarification.

10 Q. Okay. Let's talk about your brother Klee for a  
11 minute.

12 Was your brother Klee involved in the founding  
13 of the Save the Peaks Coalition?

14 A. A founding member, yes.

15 Q. Did he attend the trial in Prescott in the  
16 Navajo Nation case?

17 MR. SHANKER: Same objection.

18 THE WITNESS: In Prescott, he did not  
19 attend the trial, no.

20 BY MR. JOHNSON:

21 Q. Was he outside in the square protesting during  
22 the time the trial was taking place?

23 A. Yes.

24 Q. Okay.

25 A. Wait. You know, I wouldn't call it so much

1 protesting. I'm not sure if it was protesting or  
2 supporting for the plaintiffs.

3 Q. Okay. So, what he was doing in the courthouse  
4 square in Prescott was either supporting the plaintiffs  
5 or protesting?

6 A. Yes. I'm not sure which he was doing.

7 Q. Okay. Did you attend the trial in Prescott of  
8 the Navajo Nation case?

9 A. I did for one day, I believe.

10 Q. Now, given your brother Klee's involvement in  
11 the Save the Peaks Coalition and his supporting or  
12 demonstrating outside the courthouse in Prescott, he had  
13 interests in, or an interest in the Navajo Nation case,  
14 didn't he?

15 MR. SHANKER: Same objection.

16 THE WITNESS: I think that you would have  
17 to ask him that question. I don't feel comfortable  
18 answering questions about my brother's opinion.

19 BY MR. JOHNSON:

20 Q. But he was involved in the Save the Peaks  
21 Coalition; and by supporting, it at least appears to me  
22 that he was interested in what was going on in the 2005  
23 Navajo Nation case. Right?

24 MR. SHANKER: Same objection.

25 THE WITNESS: It would appear that he

1 would have an interest, yes.

2 BY MR. JOHNSON;

3 Q. And given that appearance of an interest, did  
4 he ever talk to you about why he didn't become a  
5 plaintiff in the 2009 case?

6 MR. SHANKER: Same objection.

7 THE WITNESS: Yes. He said he wasn't  
8 interested.

9 BY MR. JOHNSON:

10 Q. Did he tell you why he wasn't interested?

11 MR. SHANKER: Same objection.

12 THE WITNESS: No.

13 BY MR. JOHNSON:

14 Q. Now, at the time your family meeting about  
15 being plaintiffs in the 2009 case concluded, at least you  
16 and your brother Clayson and your mother, Berta, you  
17 decided to become plaintiffs. Correct?

18 A. Yes.

19 Q. Why was it necessary to go out and find other  
20 plaintiffs?

21 MR. SHANKER: Same objection.

22 THE WITNESS: Why not? I didn't see that  
23 there wouldn't be any reason in not looking for other  
24 people as well.

25

1 BY MR. JOHNSON:

2 Q. Well, wouldn't the three of you have been  
3 enough?

4 MR. SHANKER: Same objection.

5 THE WITNESS: Let's see. No. I don't  
6 think so. I think that, I think that everybody who has  
7 an opportunity to make a statement, or who had made a  
8 comment, should fairly have the opportunity to find  
9 recourse or to -- oh, gosh, I'm tired.

10 That people -- I'm completely lost. I'm sorry.  
11 I'm so tired.

12 Could you please read that back.

13 BY MR. JOHNSON:

14 Q. You know, actually, I think we will just move  
15 on.

16 Were you involved in the decision that was made  
17 by the Save the Peaks Coalition to become a plaintiff?

18 A. Yes.

19 Q. And what happened in that process?

20 A. Let's see. Specifically, what do you mean,  
21 what happened in that process?

22 Q. Well, how did the Save the Peaks Coalition  
23 decide to become a plaintiff?

24 A. By dialogue.

25 Q. Was there a meeting?

1 A. Yes.

2 Q. Was there just one meeting?

3 A. No.

4 Q. How many meetings were there?

5 A. I don't recall.

6 Q. But more than one.

7 A. Yes.

8 Q. And this dialogue took place at, at least these  
9 two meetings?

10 MR. SHANKER: Object to form.

11 THE WITNESS: The dialogue took place at  
12 at least these two meetings?

13 BY MR. JOHNSON:

14 Q. Right.

15 A. Yes.

16 Q. And how did the -- was there a vote taken at  
17 the end of the second meeting, or how did the Save the  
18 Peaks Coalition decide to become a plaintiff?

19 A. Through consensus.

20 Q. Were there any people at these meetings who  
21 didn't think it was a good idea for the Save the Peaks  
22 Coalition to become a plaintiff?

23 A. I don't recall.

24 Q. What was the next thing that happened after the  
25 members of your family, perhaps people you contacted, and

1 the Save the Peaks Coalition decided to become plaintiffs  
2 in this lawsuit? Do you remember what the next step was?

3 A. The next step after -- can you repeat the  
4 question? I'm sorry.

5 Q. We've talked about how your family or certain  
6 members of your family decided to become plaintiffs. We  
7 have talked about how the Save the Peaks Coalition  
8 decided to become a plaintiff.

9 What's the next thing you remember about the  
10 lawsuit going forward?

11 A. We talked about being plaintiffs. We decided  
12 that we would contact Howard Shanker.

13 Q. Why did you decide to contact Mr. Shanker?

14 A. Because he was the attorney in the, in the last  
15 NEPA case and he's known for being a NEPA lawyer.

16 Q. So you knew that he had been an attorney in the  
17 Navajo Nation case?

18 A. Yes.

19 Q. Did you contact Don Fanning about becoming a  
20 plaintiff in the 2009 case?

21 A. Not that I can recall.

22 Q. Now, with respect to the 2009 case, do you have  
23 any understanding about whether you are obligated to pay  
24 any part of Mr. Shanker's fees or costs for that case?

25 A. I don't believe I have any obligation to pay.

1 Q. And what's that belief based on?

2 A. I haven't seen a bill.

3 Q. Did Mr. Shanker tell you you had no obligation  
4 to pay?

5 A. Yeah.

6 Q. Yes?

7 A. Yes.

8 Q. I think you said you attended the Navajo Nation  
9 case trial in Prescott for one day.

10 A. I believe it was one day.

11 Q. What did you do while you were there?

12 A. I listened.

13 Q. So you went inside the courtroom?

14 A. Yes.

15 Q. Do you recall what was happening in the  
16 courtroom when you were there?

17 A. Yes.

18 Q. What was happening?

19 A. I recall president Joe Shirley speaking about  
20 the sacred Navajo medicine medal.

21 Q. So you were there during the day that president  
22 Shirley testified?

23 A. Yes.

24 Q. Did you do anything else in Prescott having to  
25 do with the Snowbowl trial that day?

# Exhibit 3

## Deposition Excerpt of Berta Benally

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

THE SAVE THE PEAKS COALITION; )  
KRISTIN HUISINGA; CLAYSON BENALLY,) )  
SYLVAN GREY; DON FANNING; JENEDA )  
BENALLY; FREDERICA HALL; BERTA )  
BENALLY; RACHEL TSO; LISA TSO, )

Plaintiffs, )

vs. )

U.S. FOREST SERVICE; NORA RASURE )  
(in her capacity as Forest )  
Supervisor for the Coconino )  
National Forest), )

Defendants. )

ARIZONA SNOWBOWL RESORT LIMITED )  
PARTNERSHIP, )

Intervenor-Defendant. )

3:09-CV-08163-PCT-MHM

DEPOSITION OF BERTA BENALLY

Flagstaff, Arizona  
March 26, 2010

PERFORMANCE REPORTERS, INC.  
121 East Birch Avenue, Suite 501  
Flagstaff, Arizona 86001  
By: Annette Satterlee, RPR, CRR  
Arizona Certified Reporter #50179

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1 A. I can't recall. I think it may have been in  
2 the fall.

3 Q. So --

4 A. Or, actually -- but I really can't recall.

5 Q. Was that meeting before this lawsuit was filed?

6 A. Yes.

7 Q. And this lawsuit was filed in September of  
8 2009. I can represent that to you, and we will look at  
9 the complaint a little later.

10 So, am I correct, you're saying it was after  
11 the Supreme Court made up its mind but before this  
12 lawsuit was filed?

13 A. Yes.

14 Q. Okay.

15 A. I'm sorry. I'm trying to recall, and I really  
16 cannot recall when the last meeting was. I know that  
17 we've had meetings with plaintiffs to get this case  
18 going, but I don't -- it wasn't a Coalition meeting.

19 Q. Well, let's talk about that, then.

20 You said you can remember meetings that you've  
21 had with plaintiffs to get this case going. Tell me  
22 about those. What kind of meetings have you had?

23 A. Well, after the case wasn't heard in the  
24 Supreme Court, we looked into going with the NEPA case.  
25 And, so, we had called a bunch of friends of ours and,

1 you know, asked them if they would be interested to hire  
2 Howard and to pursue this case.

3 Q. All right. Let me go back and ask you some  
4 questions about what you've just said.

5 You said that after you heard about what  
6 happened in the Supreme Court that you looked into going  
7 with the NEPA. What do you mean by that?

8 A. The NEPA case was eliminated from, I believe,  
9 the original, some of the original court cases. And the  
10 RFRA case is what went to the Supreme Court, was trying  
11 to get to the Supreme Court.

12 Q. So, when you say you were looking into going  
13 with the NEPA, what is it that you mean by that?

14 A. To prevent wastewater on the Peaks.

15 Q. But you're talking about the kind of claim --  
16 I'm just trying to understand what you're saying.

17 You were looking into going with NEPA claims  
18 relating to the wastewater.

19 A. The goal is to prevent reclaimed water from  
20 being used on this mountain.

21 Q. And what was your understanding of what the  
22 Supreme Court or the 9th Circuit had said about the NEPA  
23 claims relating to the reclaimed water?

24 A. One of the judges had asked about a face plant  
25 and what do you do when you ingest the snow. And, so, it

1 was one of the judges that had asked that question.

2 Q. And based on what you saw from the judge, then  
3 you thought that you should take that further?

4 A. Yes.

5 Q. Now, you said that after -- you were looking  
6 into going with the NEPA, and then you called friends.  
7 Is that right?

8 A. Yes.

9 Q. And, so, who did you call and talk to about  
10 thinking about bringing a lawsuit?

11 A. I called my family. I went through the DEIS a  
12 little bit and called Frederica Hall, Rachel Tso, asked  
13 them what their opinion was.

14 Q. Did you call other persons who had filed  
15 appeals of the Forest Service's decision?

16 A. I don't recall.

17 Q. So, but where did you -- you said you went  
18 through the DEIS. What were you looking for there? As  
19 far as how were you using that to get names of people to  
20 call?

21 A. It's listed.

22 Q. So it was the people who commented on it?

23 A. There were comments.

24 Q. And that's --

25 A. But I didn't really go through that. There's,

1 I think, like 5,000 comments.

2 Q. So, I'm just trying to understand. What is it  
3 that you looked at in the DEIS that led you to names of  
4 people to call?

5 A. Looking for the wastewater, the reclaimed water  
6 and if there was ever any mention of ingesting the snow  
7 with reclaimed water. That's what I was really looking  
8 for.

9 Q. You were looking for people who had --

10 A. I was looking at the DEIS, and then I was  
11 looking for comments to see if anybody had made any  
12 comments of people ingesting reclaimed water.

13 Q. And how did you come up with the idea of going  
14 to the DEIS and trying to figure out who had commented on  
15 reclaimed water?

16 A. The Forest Service had given me copies.

17 Q. They had given you copies of the documents, but  
18 how did you come up with the idea of taking that document  
19 and looking at the comments on reclaimed water as a way  
20 to find plaintiffs?

21 A. I don't know.

22 Q. Was it your idea or --

23 A. Yeah.

24 Q. -- was it someone else's?

25 A. Yeah. I just, you know, you're investigative

1 and you're inquisitive, you're going to go to the source.

2 Q. Did you go to the list of people who had filed  
3 appeals that included issues related to reclaimed water?

4 A. I went to the back of the book, and you have,  
5 like, numbers. And, so, I scanned it. It was too much  
6 for me. I made phone calls.

7 Q. And when you talk about the back of the book,  
8 are you talking about the back of the draft EIS or the --

9 A. Yes.

10 Q. The draft EIS. So you looked into going with  
11 the NEPA and then you were calling friends and, as well  
12 as other names that you got from the draft EIS.

13 A. No.

14 Q. Then what did I get wrong?

15 A. I only ended up calling some friends.

16 Q. And you identified Rachel Tso and Frederica  
17 Hall.

18 A. Yes.

19 Q. Was there anybody else that you can think of  
20 that you called?

21 A. No.

22 Q. So just those two?

23 A. Yes. And my family.

24 Q. And did you -- when you were talking to Rachel  
25 Tso and Frederica Hall, did you then ask them to make

1 phone calls?

2 A. Yes.

3 Q. And do you know if they did make phone calls?

4 A. I don't know.

5 Q. And what happened after you had then made a  
6 couple of these phone calls and talked with your family?  
7 What was the next step?

8 A. To request Howard to ask him if he could be our  
9 lawyer.

10 Q. Do you remember when you first talked to  
11 Mr. Shanker about that?

12 A. No.

13 Q. Was it after the Supreme Court's decision?

14 A. I don't recall. I think so, yes.

15 Q. And did you meet with Rachel and Frederica and  
16 maybe some other people before you got in touch with  
17 Mr. Shanker?

18 A. Yes.

19 Q. And do you remember when you met --

20 A. No.

21 Q. -- with them?

22 Do you remember where?

23 A. It could have been my house.

24 Q. And were the only people there your family and  
25 Rachel Tso and Frederica Hall?

1 A. I don't recall.

2 Q. Do you remember whether there was more than one  
3 meeting with the people who might be interested in  
4 pursuing this lawsuit?

5 A. I think so. You don't get things done in a  
6 day.

7 Q. I completely agree with that.

8 Do you remember a meeting -- and I'm going to  
9 completely get this name wrong. Are you familiar with a  
10 place called the Taala Hooghan or --

11 A. Yes.

12 Q. -- the Infoshop? How should I be saying that?

13 A. Taala Hooghan.

14 Q. Are you familiar with that place?

15 A. Yes.

16 Q. And did you have a meeting with people there to  
17 talk about possibly bringing this lawsuit?

18 A. Yes.

19 Q. And do you remember when that one was?

20 A. I can't recall.

21 Q. And do you remember who was at that meeting?

22 A. The plaintiffs.

23 Q. All the plaintiffs who are currently in this  
24 lawsuit?

25 A. No. Not all.

1 Q. Do you know which plaintiffs were not at the  
2 meeting?

3 A. I don't remember.

4 Q. Can't remember. But you remember that some of  
5 the plaintiffs were missing.

6 A. Yes.

7 Q. Were there other people besides individuals who  
8 later became plaintiffs at this meeting?

9 A. No.

10 Q. Now, we've heard from some of the other  
11 plaintiffs that the meeting at Taala Hooghan was a larger  
12 meeting and there were many more people, maybe up to 50  
13 people at that meeting.

14 Does that ring a bell for you? Do you remember  
15 any such meeting there that was of that size?

16 A. Yes.

17 Q. And that was a separate meeting than the one  
18 you're talking about?

19 A. Yes.

20 Q. Okay. Well, let's put that one aside for a  
21 minute.

22 So the meeting that you're describing where  
23 plaintiffs -- it was plaintiffs only, but some of them  
24 were missing. Was that before or after you had contacted  
25 Mr. Shanker?

1 A. After.

2 Q. And was Mr. Shanker at that meeting?

3 A. No.

4 Q. Do you remember what it was that the plaintiffs  
5 discussed at this meeting?

6 A. This case.

7 Q. And what about this case?

8 A. To approach it, to -- it's the U.S. Forest  
9 Service that we are having a lawsuit against.

10 Q. Was this meeting to -- had the decision already  
11 been made to file a lawsuit by the time you had the  
12 meeting that you're describing with just the plaintiffs?

13 A. Yes.

14 Q. And were you discussing what kind of claims  
15 should be included in the case?

16 A. No.

17 Q. Were you talking about who should represent you  
18 in the case?

19 A. No.

20 Q. Had that already been decided?

21 A. Yes.

22 Q. And that was going to be Mr. Shanker.

23 A. Yes.

24 Q. Were you talking about when the lawsuit should  
25 be filed?

1 A. You'll have to excuse me. I'm trying to recall  
2 all this.

3 Q. Take your time.

4 A. I believe we were just reaffirming our belief  
5 in trying to protect this mountain.

6 Q. So, just kind of pulling together. You'd made  
7 a decision, and now we're just kind of firming up, making  
8 sure everybody is on board?

9 A. Yes.

10 Q. All right.

11 Let's turn, then, to the other meeting that may  
12 have occurred at Taala Hooghan. The larger meeting.  
13 Now, was that meeting before or after the meeting we've  
14 just talked about, the smaller meeting?

15 A. There's been many meetings there. I'm trying  
16 to recall which meeting you're actually discussing.

17 Q. I wasn't aware that there were many. We've  
18 only, at this point, heard about the one larger meeting.  
19 And if there were more than one, we would like to hear  
20 about that.

21 A. Well, there's many meetings on many subjects.  
22 The Taala Hooghan is a community space. So I'm trying  
23 for you to clarify what meeting you're talking about,  
24 about what subject.

25 Q. Let me try to do that.

1 BY MS. HUBER:

2 Q. So, what we were talking about is how Save the  
3 Peaks Coalition got into the lawsuit. And my question  
4 had been -- which we just had a little confusion, I  
5 think, when I first asked it -- was were you involved in  
6 the decision to have Save the Peaks Coalition join the  
7 lawsuit?

8 A. Yes.

9 Q. And who else was involved in making that  
10 decision?

11 A. I believe there was a meeting.

12 Q. A meeting of interested Coalition members?

13 A. Yes.

14 Q. And do you remember what Coalition volunteers  
15 were at that meeting?

16 A. I can't recall.

17 Q. Were your children at the meeting?

18 A. Yes.

19 Q. Were any of the other plaintiffs, the  
20 individuals that we've talked about, were any of them at  
21 this meeting as well? Rachel Tso, Frederica Hall, Sylvan  
22 Grey, Don Fanning?

23 A. I can't recall.

24 Q. Were there Coalition volunteers other than the  
25 people involved who became plaintiffs that were at this

1 meeting to talk about having the Coalition join?

2 A. Yes.

3 Q. And do you remember who any of those folks  
4 were?

5 A. I can't recall.

6 Q. So there was a meeting to discuss whether or  
7 not the Coalition should become part of the lawsuit.

8 A. Yes.

9 Q. And what was the nature of the discussion? Was  
10 there a discussion of the pros and cons of having the  
11 Coalition in the case?

12 A. I believe so.

13 Q. Do you remember what any of the pros or the  
14 cons were that people mentioned as to why the Coalition  
15 should be in or why they shouldn't be in?

16 A. I think it was a necessity.

17 Q. And why do you think it was a necessity?

18 A. Because the reclaimed water issue is left  
19 without a -- there's still many questions about the usage  
20 of reclaimed water.

21 Q. And because of the questions, you thought it  
22 was a necessity that the Coalition itself be a plaintiff  
23 in the lawsuit?

24 A. I'm sorry. I'm trying to think back here.

25 Q. And take your time.

1 A. That's what I'm doing.

2 Can you repeat the question?

3 MS. HUBER: Can you read it back.

4 (The last question was read.)

5 THE WITNESS: I wouldn't call it a  
6 necessity. I think there was an ask if there was an  
7 interest.

8 BY MS. HUBER:

9 Q. And when you say there was an ask if there was  
10 an interest, you mean there was an ask to the Coalition  
11 members if the Coalition should join?

12 A. Yes.

13 Q. And was it then a decision by consensus for the  
14 Coalition to join?

15 A. Yes.

16 Q. Do you remember whether or not there were any  
17 individuals who were at the meeting who felt that the  
18 Coalition should not be a plaintiff?

19 A. I can't recall.

20 Q. Do you know Andy Bessler?

21 A. Yes.

22 Q. And how do you know Mr. Bessler?

23 A. He's a community member.

24 Q. And how long have you known him?

25 A. Ten, 15 years, maybe. But I can't recall.

1 Q. And have you ever seen Mr. Bessler at any  
2 events that have been sponsored by the Sierra Club?

3 A. He joined the Sierra Club. I can't, I don't  
4 remember when he joined the Sierra Club.

5 Q. So you're aware that he has an affiliation with  
6 the Sierra Club.

7 A. Yes.

8 Q. And did you discuss with Mr. Bessler the  
9 possible names of plaintiffs --

10 A. No.

11 Q. -- or persons who might join this lawsuit?

12 A. No.

13 Q. Now, I think you said a little earlier that  
14 after you'd had some discussions with your family, and I  
15 think Rachel Tso and Frederica Hall, you had then called  
16 Mr. Shanker about representing you and whoever else might  
17 join you in the lawsuit. Is that right?

18 A. Yes.

19 Q. And did you talk to Mr. Shanker about how you  
20 might go about, or whether you should go about finding  
21 other people to join the lawsuit?

22 A. No.

23 Q. Now, Mrs. Benally, were you ever promised any  
24 kind of a benefit or anything else to, in order to get  
25 you to file this lawsuit?

1 A. No.

2 Q. Did you ever promise anything to any of the  
3 other individual plaintiffs to suggest that they should  
4 join this lawsuit?

5 A. No.

6 Q. And have you had any conversations with the  
7 plaintiffs from the 2005 lawsuit and making any promises  
8 to them about this lawsuit?

9 A. No.

10 Q. Now, when you made your personal decision  
11 about, yes, I'm going to go forward and file a lawsuit,  
12 did you know of anyone else at that time who had made a  
13 decision that they would also be a plaintiff in this  
14 action?

15 A. I believe so, yes.

16 Q. And who was that?

17 A. Rachel Tso and Frederica Hall. And Clayson and  
18 Jeneda.

19 Q. Now, how long have you known Mr. Shanker?

20 A. We met in Prescott.

21 Q. So you met him during the proceedings on the  
22 2005 case?

23 A. Yes.

24 Q. And at the time that you met Mr. Shanker, were  
25 you aware that he was one of the attorneys for a set of

1 the plaintiffs in that case, in those cases?

2 A. Yes.

3 Q. When you were deciding -- when you had been  
4 deciding about filing this lawsuit, did you talk to any  
5 other lawyers about handling this case?

6 A. Yes.

7 Q. And who else did you contact?

8 A. There was never a formal meeting.

9 Q. With another lawyer?

10 A. There was never a --

11 Q. Did you call somebody?

12 A. Yes.

13 Q. Who did you call?

14 A. Bryant Barber.

15 Q. Bryant, with a T?

16 A. Yeah.

17 Q. Barber.

18 A. Family friend.

19 Q. And is Mr. Barber here in Flagstaff?

20 A. No.

21 Q. Where is he in practice?

22 A. Phoenix.

23 Q. And why did you not retain Mr. Barber as the  
24 attorney for this action?

25 A. I like the way Howard works.

1 Q. Was there anyone other than Mr. Barber that you  
2 spoke to about the possibility of handling this lawsuit?

3 A. No.

4 Q. Now, Mrs. Benally, do you have any agreement  
5 with Mr. Shanker regarding his fees for litigating this  
6 case?

7 A. No.

8 Q. Do you have a representation agreement with  
9 him?

10 A. No.

11 Q. So you have no agreement, no written agreement  
12 with him?

13 A. No. I don't think so.

14 Q. I understand that you gave --

15 A. Wait. I did sign a paper. I'm sorry.

16 Q. That's okay. I thought so, but I --

17 A. I'm sorry. Yes.

18 Q. So you have an agreement with him regarding his  
19 representation.

20 A. Yes.

21 Q. And does that include any provisions regarding  
22 his fees and expenses in litigating this case?

23 A. No.

24 Q. Let me put it this way: Does his agreement say  
25 that you are not responsible for paying any of his fees

1 and expenses?

2 A. I, I haven't seen any invoices.

3 Q. You have received no invoices for fees from  
4 Mr. Shanker. Is that right?

5 A. Correct. Yes.

6 Q. And am I correct that your agreement with  
7 Mr. Shanker says that you are not, have no obligation to  
8 pay any of his fees or expenses?

9 A. I believe so.

10 Q. Now, I understand that you gave Mr. Shanker  
11 \$10,000 to help defray the fees and expenses that he will  
12 incur. Is that right?

13 A. Yes.

14 Q. And where did that \$10,000 come from?

15 A. It was a gift to me from a lady in France.

16 Q. And was that -- and that was a gift to be used  
17 for this litigation?

18 A. No.

19 Q. But you just chose then to use it for the  
20 litigation.

21 A. Yes.

22 Q. And is there an expectation that you'll do any  
23 fundraising or anything else to offset some of the fees  
24 and expenses incurred by Mr. Shanker?

25 A. I would like to try.

1 Q. But at this point, there's nothing --

2 A. No.

3 Q. -- scheduled?

4 MR. SHANKER: Let me just -- wait for the  
5 question to be done and then answer. Okay? It's going  
6 to be hard to get all that on the record.

7 BY MS. HUBER:

8 Q. In your understanding, what happens if  
9 Mr. Shanker should bill enough hours that he will have  
10 expended the \$10,000? What happens then?

11 A. I will try and raise more money.

12 Q. Is it your understanding that you are obligated  
13 to raise more money?

14 A. No.

15 Q. You've been in the Flagstaff area for a long  
16 time, right?

17 A. Yes.

18 Q. And, so, you're very familiar with the Snowbowl  
19 ski resort area.

20 A. Yes.

21 Q. When was the last time you went up to the, what  
22 I'll call the ski area?

23 A. Last year.

24 Q. So would that be sometime during the calendar  
25 2009?

1 A. No. Well, let's back that up.

2 Yes.

3 Q. And where do you go?

4 A. Wilderness areas.

5 Q. Is there any particular wilderness area that  
6 you have gone to?

7 A. My husband is a medicine man, and so he's  
8 always going to pray in different places and areas.  
9 Sometimes I have to help him. But --

10 Q. Can you think of any particular places -- are  
11 you talking about the Kachina wilderness, or are we  
12 talking about further afield away from Flagstaff?

13 A. Towards the reservation.

14 Q. You went to a lot of the proceedings for the  
15 trial of the 2005 case. We've talked about that already.  
16 Have you ever been asked, personally, to contribute  
17 towards the expenses or fees that were incurred to  
18 litigate that case?

19 A. No.

20 Q. Have you ever volunteered and contributed money  
21 towards the fees and expenses in that case?

22 A. No.

23 Q. And have you ever done any volunteer work or  
24 fundraising or benefits to support and help pay the fees  
25 and expenses from that 2005 case?

1 A. No.

2 Q. What about Blackfire?

3 A. Awareness.

4 Q. So just raising awareness?

5 A. Yes.

6 Q. What about the Save the Peaks Coalition? Have  
7 they ever contributed goods or services or done  
8 fundraising?

9 A. No.

10 MS. HUBER: We will mark this as 3.  
11 (Exhibit No. 3 was marked for  
12 identification.)

13 BY MS. HUBER:

14 Q. You have been given what's been marked as  
15 Exhibit No. 3, Mrs. Benally. Take a look at that.  
16 Does that flyer look familiar?

17 A. No.

18 Q. It does not --

19 A. I wasn't there.

20 Q. Well, you may not have been at the concert, but  
21 were you aware that Blackfire did this benefit concert  
22 that's reflected in Exhibit No. 3?

23 A. I think they were on tour then.

24 Q. So you don't think that Blackfire was at this  
25 concert?

1 Q. Who checks the P.O. box for mail?

2 A. Jeneda.

3 Q. Do you ever check it yourself as well?

4 A. Once in a long while.

5 Q. So if checks were sent to this P.O. box in  
6 accordance with what the Coalition's website says, what  
7 would happen to those checks? Would they be forward to  
8 Mr. Shanker's law firm?

9 A. Yes.

10 Q. All right. Thank you. I think we are done  
11 with No. 4, then.

12 Mrs. Benally, were you ever asked to become a  
13 plaintiff in the 2005 lawsuit?

14 A. No.

15 Q. Was anybody in your family ever asked to become  
16 a plaintiff?

17 A. No.

18 Q. Did you ask to join the lawsuit?

19 A. No.

20 Q. Did anyone in your family ask to join the  
21 lawsuit?

22 A. I can't recall.

23 Q. Now, why didn't you ask to join the 2005  
24 lawsuit?

25 A. Well, why wasn't I asked to join the lawsuit?

1 Q. No. I'm asking -- you said you were not asked  
2 to join, and I asked if you had thought about, if you had  
3 asked any of the other parties to join the lawsuit, and  
4 you said no. That's what I believe your answer was.

5 And then the question is, why didn't you ask to  
6 join, to participate in that lawsuit?

7 A. I'm really not a legal buff, and --

8 Q. Well, then --

9 A. -- I'm not -- through the years, I'm learning.  
10 But I'm trying to recall here. Just give me a minute.

11 I can't recall.

12 Q. At the time that the 2005 lawsuit was filed,  
13 you already knew Mr. Nez, right? Or, no. Had you met  
14 Mr. Nez yet?

15 A. No.

16 Q. But you knew Mr. Tilousi.

17 A. Yes.

18 Q. And you knew Mr. Preston?

19 A. I'm not sure of the year. I can't recall.

20 Q. I would have to go back and look at my notes.  
21 But you at least knew Mr. Tilousi --

22 A. Yes.

23 Q. -- before the 2005 lawsuit was filed.

24 So you didn't pick up the phone and talk to him  
25 about whether you should participate in that lawsuit?

# Exhibit 4

## Deposition Excerpt of Rachel Tso

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

THE SAVE THE PEAKS COALITION; )  
KRISTIN HUISINGA; CLAYSON BENALLY, )  
SYLVAN GREY; DON FANNING; JENEDA )  
BENALLY; FREDERICA HALL; BERTA )  
BENALLY; RACHEL TSO; LISA TSO, )

Plaintiffs, ) 3:09-CV-08163-PCT-MHM

vs. )

U.S. FOREST SERVICE; NORA RASURE )  
(in her capacity as Forest )  
Supervisor for the Coconino )  
National Forest), )

Defendants. )

ARIZONA SNOWBOWL RESORT LIMITED )  
PARTNERSHIP, )

Intervenor-Defendant. )

DEPOSITION OF RACHEL TSO

Flagstaff, Arizona  
March 24, 2010

PERFORMANCE REPORTERS, INC.  
121 East Birch Avenue, Suite 501  
Flagstaff, Arizona 86001  
By: Annette Satterlee, RPR, CRR  
Arizona Certified Reporter #50179

CERTIFIED  
COPY

1 illegible, knowing his handwriting.

2 BY MS. HUBER:

3 Q. So, if there had been a record of his appeal,  
4 he probably would have joined the lawsuit?

5 MR. SHANKER: Same objection.

6 THE WITNESS: I don't know.

7 BY MS. HUBER:

8 Q. Did he want to join the lawsuit?

9 MR. SHANKER: Same objection.

10 THE WITNESS: I don't know.

11 BY MS. HUBER:

12 Q. Who told him that he, that there was no record  
13 of his having filed an appeal or comments?

14 MR. SHANKER: Same objection.

15 THE WITNESS: The United States Forest  
16 Service.

17 BY MS. HUBER:

18 Q. You've described in the context of the  
19 Coalition deposition we just concluded a little bit about  
20 how a group of individuals went and talked with  
21 Mr. Shanker and then made a decision to proceed. Is that  
22 right?

23 A. Yes.

24 Q. After this group decided that they would  
25 proceed with the lawsuit, did you and Mr. Shanker talk at

1 all about trying to find other people to join the  
2 lawsuit?

3 A. No.

4 Q. Did you talk to your sister-in-law, Lisa Tso,  
5 about trying to find other people to join the lawsuit?

6 A. I asked her to be a part of it with me, but I  
7 didn't ask her to ask other people.

8 Q. But you talked with her to ask her to join the  
9 lawsuit.

10 A. Yes.

11 Q. And do you recall when that was?

12 A. I don't recall.

13 Q. It was after you had decided that you would  
14 file a lawsuit, or before that?

15 A. It was before.

16 Q. Did you talk to her husband, Sam, about joining  
17 the lawsuit?

18 A. No.

19 Q. Do you know whether she spoke to her husband  
20 about joining the lawsuit?

21 A. I don't know.

22 Q. Did you ask your husband to join the lawsuit?

23 MR. SHANKER: Same objection.

24 THE WITNESS: No.

25

1 BY MS. HUBER:

2 Q. Did you ask your older daughter to join the  
3 lawsuit?

4 MR. SHANKER: Same objection.

5 THE WITNESS: No.

6 BY MS. HUBER:

7 Q. Were you ever given a list of the people who  
8 had filed appeals of the Snowbowl project?

9 MR. SHANKER: Same objection.

10 THE WITNESS: I, I don't -- I'm not sure.

11 BY MS. HUBER:

12 Q. Do you know whether or not any of the  
13 individual plaintiffs were ever given a list of all of  
14 the people who had appealed the Snowbowl project?

15 MR. SHANKER: Same objection.

16 THE WITNESS: I don't know.

17 BY MS. HUBER:

18 Q. Have you ever seen such a list?

19 MR. SHANKER: Same objection.

20 THE WITNESS: I don't know.

21 BY MS. HUBER:

22 Q. Do you have any idea how Kristin Huisinga  
23 became a plaintiff in this lawsuit?

24 MR. SHANKER: Same objection.

25 THE WITNESS: I think either I or maybe

1 Jeneda contacted her, and I don't remember how we knew  
2 about her. But I know that we, one of us contacted her  
3 and asked her if she wanted to come to a meeting with us.

4 BY MS. HUBER:

5 Q. Do you remember how you got her name?

6 MR. SHANKER: Same objection.

7 THE WITNESS: No.

8 BY MS. HUBER:

9 Q. Had she ever participated in a Coalition, Save  
10 the Peaks Coalition activity that you know of?

11 MR. SHANKER: Same objection.

12 THE WITNESS: No.

13 BY MS. HUBER:

14 Q. Do you know if she's friends or knows Jeneda?

15 MR. SHANKER: Same objection.

16 THE WITNESS: I don't know.

17 BY MS. HUBER:

18 Q. How did the group of plaintiffs decide who  
19 would join the group to file the lawsuit?

20 MR. SHANKER: Same objection.

21 THE WITNESS: We decided individually.

22 BY MS. HUBER:

23 Q. And once you had made your individual decision,  
24 who did you relay that decision to?

25 A. Mr. Shanker.

1 Q. And you did that without knowing whether or  
2 not -- what anybody else's decision was?

3 A. Correct.

4 MR. SHANKER: Same objection.

5 THE WITNESS: Correct.

6 BY MS. HUBER:

7 Q. Do you have any sort of a financial agreement  
8 with Mr. Shanker about the payment of his fees and costs  
9 for this litigation?

10 MR. SHANKER: Same objection.

11 THE WITNESS: No.

12 BY MS. HUBER:

13 Q. If the plaintiffs don't win the lawsuit, will  
14 you be obligated to pay all or a portion of his fees and  
15 costs?

16 MR. SHANKER: Same objection.

17 THE WITNESS: No.

18 BY MS. HUBER:

19 Q. Do you know if anyone is obligated to pay  
20 Mr. Shanker's fees and costs?

21 A. I don't know.

22 Q. As I understand it, you've been to the Snowbowl  
23 ski area quite a number of times. Is that right?

24 A. Yes.

25 Q. When was the first time you went up to the

1 Q. When you called Lisa Tso and possibly others to  
2 become plaintiffs in the 2009 lawsuit, did you get a list  
3 from somebody of who to call?

4 A. No.

5 Q. After the initial meeting with Mr. Shanker  
6 concerning the 2009 lawsuit, did you make any follow-up  
7 calls to anyone?

8 MR. SHANKER: Objection; asked and  
9 answered.

10 THE WITNESS: I don't think so.

11 BY MR. JOHNSON:

12 Q. When you called Lisa Tso about becoming a  
13 plaintiff, were you calling on your own behalf or on  
14 behalf of Save the Peaks Coalition?

15 A. I was calling on my own behalf.

16 (Exhibit No. 10 was marked for  
17 identification.)

18 BY MR. JOHNSON:

19 Q. The court reporter has handed you Exhibit 10.  
20 Have you seen Exhibit 10 before?

21 A. Yes.

22 Q. And what is Exhibit 10?

23 A. It is my answers to the intervenor-defendant's  
24 first set of nonuniform interrogatories to plaintiffs.

25 Q. And if you turn over to the last page of