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November 5, 2019

VIA E-MAIL AND PERSONAL DELIVERY

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San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: Proposed Increase to the Jobs-Housing Linkage Fee

Dear Board of Supervisors:

We write on behalf of our client The Alliance 1849, LLC (Alliance). As a preliminary matter, the Alliance wishes to emphasize that it strongly supports efforts to address affordable housing issues in the City and County of San Francisco (City) and the greater Bay Area.

Increasing the Jobs-Housing Linkage Fee is likely to have significant and long-standing impacts in the City and elsewhere. Given the stakes, the Board must make its decision based on accurate and reliable data. In addition, the Board should only consider analyses that rely on reasonable assumptions supported by reliable evidence. It appears the Board has yet to receive information that would support adoption of the ordinance.

Enclosed is a copy of an expert report that identifies serious flaws with the nexus study and increases to the Jobs-Housing Linkage Fee. At this time and on this record, the Alliance asks that the Board decline to adopt the proposed ordinance. There is insufficient support for the proposed fee increases.

Lastly, and as the Board knows, there is significant public interest and controversy surrounding the proposed legislation. More time and consideration (including public participation) is needed before a decision is made on this important legislation.

Respectfully submitted



Navi S. Dhillon

Enclosure

cc: Chris Carr
Kevin Vickers

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THE **Brattle** GROUP

SF Board of Supervisors

CITY HALL – SAN FRANCISCO

PREPARED BY

The Brattle Group/Mark Berkman

November 4, 2019

THE **Brattle** GROUP

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Executive Summary

At the request of The Alliance 1849, LLC (Alliance), I reviewed materials provided to the Board of Supervisors (Board) by City Staff in support of the proposal in front of the Board under File No. 190548 to increase the Jobs-Housing Linkage Fee from \$28.57/ gross square foot (gsf) to \$69.60/ gsf for Office space for “Large Capital Projects” (50,000 gsf and above), and for the other proposed Jobs-Housing Linkage Fee increases for “Small Capital Projects” Office space and Laboratory space. The materials I reviewed include two studies prepared for the City, a jobs-housing nexus analysis prepared by Keyser Marston Associates, Inc. in May 2019 and a feasibility study prepared by Economic & Planning Systems, Inc. (EPS) in June 2019. I also reviewed several memoranda prepared by the City’s Planning Department, the Mayor’s Office of Housing and Community Development, and the City Attorney’s office.¹ Based on my current review, I am concerned that these materials fail to support the proposed Linkage Fee increases to the levels specified in the version of the proposed ordinance, which was passed on first reading as amended by the Board on October 29, 2019. It appears that the nexus analysis relies on several critical but unfounded assumptions, including those related to the relationship of new buildings to new jobs, and the nexus between jobs in San Francisco and housing demand in San Francisco. The assumption that all new employees will demand housing in San Francisco is unfounded and leads to an excessive housing demand estimate. In addition, the rate increase proposal fails to fully account for the EPS Feasibility Analysis results. Below, I provide a brief summary of my qualifications, a description of the Linkage Fee and the process used to update it, and a discussion of several concerns.

¹ The materials I relied on are listed as attachments to the San Francisco Planning Department Executive Summary Planning Code Text Amendment Hearing Date September 19, 2019, Extended Deadline: November 13, 2019, p6.

I. Qualifications

1. I am a managing principal of The Brattle Group, an economics and financial consulting firm headquartered in Boston, with offices in San Francisco, New York, Washington, and Chicago in the US as well as Toronto, Sydney, London, Madrid, Rome, and Brussels. I have over 30 years of experience as an economist. Prior to joining Brattle in 2011, I was a director at Berkeley Economic Consulting, and a vice president at both Charles River Associates, and NERA Economic Consulting. I also held research positions at the Congressional Budget Office and the Urban Institute. I earned a Bachelor's Degree in Urban Studies and Economics from George Washington University, a Master's Degree in City Planning and Public Policy from Harvard University, and a PhD in Managerial Science and Applied Economics from the University of Pennsylvania's Wharton School.
2. I have worked for both public and private clients on a wide range of economic matters including economic impacts of public and private investments, benefit-cost analysis of proposed regulations, environmental impacts from industrial projects, rate setting, and race and gender discrimination. I have assisted the San Francisco City Attorney's office, MUNI, and the SFPUC and the San Francisco Redevelopment Agency on several occasions.

II. Background

3. At issue is the proposed increase to the Jobs-Housing Linkage Fee. This fee, charged to developers of new and expanded non-residential buildings, is intended to provide revenues sufficient to support the City's efforts to subsidize the cost of constructing housing for low- and moderate-income households. The fee is determined by estimating the demand for housing units from low- and moderate-income households that are attributed to the new construction by what is called a "nexus study" and multiplying this by a per unit subsidy based on an estimate of the costs required to add each unit. In this instance, the City retained Keyser Marston to conduct the nexus study. The costs of the subsidy were calculated for the Mayor's Office of Housing and Community Development by unnamed consultants. The resulting rate of \$69.60/gsf (which would be applied to Large Capital Projects Office space) determined from these components were apparently calculated by the Mayor's Office and the Planning Department, but the materials provided to the public do not show these calculations.
4. Potential fee increase scenarios were also subjected to a financial study test to make sure that the magnitude of potential fee increases would not substantially discourage new office construction. The City retained EPS to conduct this study. EPS created a range of prototype buildings and conducted cash flow analyses to measure the impact of potential fee increases on the financial viability (measured principally by rate of return) on them. The EPS study found that any fee increase greater than \$10/gsf would seriously impinge the viability of all

the prototypes. The proposed ordinance passed by the Board on October 29, 2019, would increase the fees by amounts far in excess of \$10/gsf (e.g., a \$41.03/gsf increase for Large Capital Projects Office space). In addition, the EPS study determined that in the face of current building costs and market conditions, a fee increase of only \$10/gsf would still have negative consequences for five of the six building prototypes considered. The Mayor's Office concluded that a fee higher than this would limit new construction, leading to an "ever tightening market for office space, resulting in only top paying companies being able to afford new office space in San Francisco, while smaller and less profitable companies will be forced to compete for existing office space."²

5. A memo from The Mayor's Office of Housing and Community Development also noted the nexus study had relied on an extreme and unsupported assumption that all new jobs attributable to new office construction would result in housing demand in San Francisco. The nexus study did not explicitly make this assumption, however, there is no evidence that any adjustment was made to the housing projections to account for the fact that many employees at new non-residential buildings would commute from outside San Francisco. This is despite the fact the study readily acknowledges that a regional labor and housing market, not a City market will determine the residence of new building employees.

² This was noted by the Mayor's Office of Housing and Community Development in a memo dated June 7, 2019, pp. 3-4.

III. Critique of the Nexus Study by Keyser Marston

6. The Keyser Marston study does not prove a nexus; instead, it assumes one. It relies on ratios from various census and other data, but does not present an economic or statistical study demonstrating that employment levels at new office or other building types is linked with housing demand from households at any income level. This is insufficient as a basis for a fee increase. New employees at new buildings are not necessarily new city residents. There are at least three reasons for this. First, many new employees may already be employed in the City and already housed. They may be transferred from other offices in the City. While they may be moving to make room for new employees from outside the City, they may be moving because they need better space or because they are being displaced from their previous offices because their buildings are being repurposed or torn down. Second, many new employees will be from elsewhere in the region and will already be housed. Third, there are numerous reasons that employees at new buildings from outside the region would not seek housing in San Francisco. New employees from outside the region would consider among other factors, relative housing cost, commuting time, employment location of spouse, school preferences, climate preferences and so on. None of these factors are expressly accounted for in the Keyser Marston study.
7. In fact, the Keyser Marston study assumes all households from new office jobs result in the demand for housing in San Francisco although it recognizes that employees may locate

throughout the San Francisco Bay region. This assumption alone, as indicated by The Mayor's Office of Housing and Community Development and the Planning Department's Executive Summary, Planning Code Text Amendment Summary explains much of the proposed 140 percent increase. As noted, the existing rate reflected the assumption that 45% of new employees would seek housing outside San Francisco. A review of recent data from the California Employment Development Department confirms this indicating that approximately 265,000 employees commute daily into San Francisco from surrounding counties out of approximately 595,665 employees in the City.³ Using this statistic would decrease the proposed rate by 55% or from \$69.60/gsf to \$38.28/gsf. The number of employees seeking housing in San Francisco may well be lower still for other reasons noted above.

8. Keyser Marston acknowledges that, “[a]ny given new building may be occupied partly, or even perhaps totally by employees relocating from elsewhere in the region. Buildings are often entirely leased to firms relocating from other buildings in the same jurisdiction. However, when a firm relocates to a new building from somewhere in the region, there is space in an existing building that is vacated and occupied by another firm. That building in turn may be filled in some combination of newcomers to the area and existing workers. Somewhere in the chain there are new jobs in the region. The net effect is that new buildings accommodate new employees, although not necessarily inside the new buildings themselves.” Thus, while the study fails to address the potential loss of office space and, as noted above,

³ www.labormarketinfo.edd.ca.gov>county-to-county-commute-patterns.html.

that many new employees either already have housing in San Francisco or elsewhere in the region, and that new employees from outside the region may choose housing elsewhere in the region, it does recognize the regional nature of the labor and housing markets. Despite this, the study fails to account for new employees seeking housing outside San Francisco.

9. The only evidence the study cites regarding the nexus of employment in new building to housing is that the number of jobs per square feet of office space has remained relatively constant between 1990 and 2017. This does not in any fashion say anything about housing demand in San Francisco.
10. Further, as the EPS financial feasibility study shows, fee increases of the magnitudes under consideration are likely to have negative impacts on new construction. As noted by the Mayor's office in of June 7, 2019, fee increases would have related revenue implications for San Francisco. A 140percent rate increase could bring construction to a standstill. Even the more modest \$10 increase will have negative impacts on the construction of several of the building prototypes considered by EPS. Indeed, the EPS study finds that only 1 of its 6 prototypes is financially viable at \$10/gps increase. Three of six could support only a \$5/gsf increase. Consequently, the net impact of the fee increase could be negative for San Francisco's financial condition.
11. Finally, much of the Keyser Marston study is poorly documented, and the materials and data made available to the public do not persuasively support the conclusions set forth in the nexus study. For example, general references to data sources are provided, but no worksheets or detailed sourcing is provided. As a result, I have not been able to reproduce any of their

findings, including their calculations of how many new employees are expected to be either very-low-income, low-income or moderate-income. This is a critical component of the analysis.

12. In sum, the nexus study and the materials made available to the public do not support an increase of the Jobs-Housing Linkage Fee.

IV. Signature

13. This report, with Appendices, is contained herein, and presents a summary of my opinion and the bases and reasons therefore as of this date.

By:

A handwritten signature in blue ink that reads "Mark Berkman". The signature is written in a cursive style with a long, sweeping underline.

Mark Berkman

Dated: November 4, 2019

V. APPENDIX A – Resume for Mark Berkman

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

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

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

Dr. Berkman has also been involved in several Lanham Act cases where he has determined the value of consumer product characteristics. The products include food, wine, electronic devices, cosmetics, and software. Clients in a variety of industries ranging from computer chip to shoe manufacturers have sought Dr. Berkman's assistance to value patents, trade secrets, and trademarks. He has also been called on to address questions of market power in antitrust proceedings in a variety of industries including solid waste, computer manufacturing, and medical devices. He has testified regarding market definition and market power and participated in Hart-Scott-Rodino proceedings.

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

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

AREAS OF EXPERTISE

- Antitrust/Competition
- Commercial Damages
- Environmental Litigation and Regulation
- Intellectual Property
- Product Liability

- Utility Regulatory Policy and Ratemaking
- Employment and Discrimination

EDUCATION

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

EXPERIENCE

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

PROFESSIONAL AFFILIATIONS

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

PUBLICATIONS

“The Accuracy of Benefits Transfer for Environmental Valuation,” with Martha Rogers and Gina Waterfield,” *Trends*, July/August 2018, ABA Section of Environment Energy, and Resources.

"Response to Amory Lovins' reply comments," with Dean Murphy, *The Electricity Journal*

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- "Effect of Coal-Fired Power Generation on Visibility in a Nearby National Park," with Jonathan Terhorst. *Atmospheric Environment*, 44 (2010) 2524-2531.
- "Estimating Toxic Tort and Environmental Damages," with Gordon Rausser in Earl Hagström, editor, *Perchlorate, A Scientific, Legal, and Economic Assessment*, Tucson, AZ, Lawyers and Judges Publishing Co., March 2006.
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- “Complying with New Rules for Controlling Nitrogen Oxides Emissions,” With Jonathan Falk and John Wile, *The Electricity Journal*, January-February 2000, pp. 40–50.
- “The Regional Costs and Benefits of Acid Rain Control,” Dissertation, University of Pennsylvania, May 1991.
- “Valuing Flexibility in Utility Planning Using Dynamic Programming,” with J. Falk. *EPRI Proceedings from Conference on Decision Support Methods for the Electric Power Industry*, Cambridge, Mass., May 1990.
- “Environmental Regulation Will Affect Electric Utility Fuel Consumption Patterns,” *Energy*, August 1989.
- “Equal Time: Dunbar & Berkman Reply,” a reply to M. Crew and P. Kleindorfer, “Landfill Tipping Fees Should Be Much Higher,” *Waste Age*, February 1988, p. 134.
- “The Underpricing of Landfills,” with Fred Dunbar. *Viewpoint*, summer 1987, pp. 25–33.
- “Sanitary Landfills Are Too Cheap!” with Fred Dunbar. *Waste Age*, May 1987.
- “Regional Economic Trade-offs in Sulfur Emissions Control Policy,” with P. Blair. *Geographic Dimensions of Energy*, F. Calzonetti and B. Solomon, Dordrecht Holland: D. Reidel Publishing Co., 1985.
- “Regional Impacts of Federal Coal Policy,” with P. Blair, *International Journal of Energy Systems*, Vol. 4, No. 2, 1984.
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- “An Evaluation of the Strategic Petroleum Reserve,” with B. Holt. Washington, D.C.: Government Printing Office, Committee Print 96 IFC, June 1980.
- “The Budgetary, Economic, and Energy Implications of Alternative Synthetic Fuel Proposals,” *Synthetic Fuels Report by the Subcommittee on Synthetic Fuel of the Committee on the Budget*, United States Senate, Washington, D.C.: Government Printing Office, September 1979.
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- *An Evaluation of Solid Waste Disposal Options for Rockport, Massachusetts*, Cambridge, Mass., Harvard University, February 1977.
- “New Evidence on Racial Differences in Commuting Behavior,” with J. Goodman. *Journal of Public Data Use*, Vol. 5, No. 4, 1977.

TESTIMONY AND REPORTS

Environment, Energy, and Natural Resources

- Prefiled Testimony of Dr. Mark Berkman on behalf of Colville, Inc. In the Matter of the Tariff Revision Designated as a TA17-231, Filed by North Slope Borough for an Interim and Permanent Rate Increase for Service Area Ten Refuse Collection and Disposal, Regulatory Commission of Alaska, Docket No. U-18-085, March 6, 2019.
- Deposition Testimony on behalf of Ameren Missouri in the matter of United States of America, Plaintiff, and the Sierra Club, Plaintiff-Intervenor v. Ameren Missouri, Defendant, United States District Court, Eastern District of Missouri, Eastern Division, Case No. 4:11-cv-00077-RWS, July 3, 2018.
- Responsive Expert Report of Dr. Mark Berkman on behalf of Ameren Missouri in the matter of United States of America, Plaintiff, and the Sierra Club, Plaintiff-Intervenor v. Ameren Missouri, Defendant, United States District Court, Eastern District of Missouri, Eastern Division, Case No. 4:11-cv-00077-RWS, May 7, 2018.
- Salem and Hope Creek Nuclear Plants’ Contribution to the New Jersey Economy, prepared for Exelon and Public Service Gas and Electric by Mark Berkman and Dean Murphy, November 2017.
- Rebuttal Expert Report of Mark P. Berkman on behalf of Exxon Mobil Corp. in the matter of *Louisiana Environmental Action Network and Stephanie Anthony, Plaintiffs, v. Exxon Mobil Corp. d/b/a ExxonMobil Chemical Co., Defendant*, United States District Court, Middle District of Louisiana, Case No. 3:16-cv-00144-SDD-RLB, regarding air pollution control violations, May 19, 2017. This included an application of the BEN model.
- Response to Comments by Gregory House to Kern County California Regarding Agricultural Elements of the Willow Springs Solar Project, with Stephen Hamilton on behalf of First Solar, January 20, 2016.
- Deposition Testimony of Dr. Mark Berkman in the matter of The Chickasaw Nation and The Choctaw Nation v. United States Department of the Interior, *et al.*, United States District Court for the Western District of Oklahoma, No. Civ. 05-1524-W, on behalf of plaintiff’s breach of trust claims, May 8, 2015.
- Deposition Testimony of Dr. Mark Berkman in the matter of Briggs, et.al vs. Freeport McMoran, *et al.*, United States District Court for the Western District of Oklahoma, Case

No. 13-cv-1157-M, on behalf of plaintiffs regarding class certification, April 8, 2015.

- “Surviving the Storm,” with Bay Area Council Economic Institute, March 2015.
- Declaration of Dr. Mark Berkman in the matter of Briggs, *et al.* vs. Freeport McMoran, *et al.*, United States District Court for the Western District of Oklahoma, Case No. 13-cv-1157-M, on behalf of plaintiffs regarding class certification, February 23, 2015.
- Expert Report of Mark P. Berkman, PhD on behalf of The Chickasaw Nation and The Choctaw Nation v. United States Department of the Interior, *et al.*, United States District Court for the Western District of Oklahoma, No. Civ. 05-1524-W, on behalf of plaintiff’s breach of trust claims, January 15, 2015
- “Comments on the Draft Amendments to the Statewide Water Quality Control Plans to Control Trash: The Role of Polystyrene Bans,” with David Sunding. Prepared for Dart Container Corporation. August 5, 2014.
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- “The Employment Impacts of Proposed Tariffs on Chinese Manufactured Photovoltaic Cells and Modules.” With Lisa Cameron and Judy Chang. Prepared for the Coalition for Affordable Solar Energy, January 30, 2012.
- “Economic Analysis of SB568’s Proposed Polystyrene Ban.” With David Sunding. Prepared for Dart Container Corporation, August 15, 2011.
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- Rebuttal Expert Report of Mark P. Berkman on behalf of West Bay Sanitary District in the matter of *San Francisco Baykeeper v. West Bay Sanitary District*, United States District Court for the Northern District of California, Case No. cv-09-5676-EMC, regarding water pollution damages, June 2011.
- Rebuttal Testimony of Mark P. Berkman and David L. Sunding in the Matter of the Application of California American Water Company (U 210 W) for a Certificate of Convenience and Necessity to Construct and Operate its Coastal Water Supply Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover all Present and Future Costs in Connection Therewith in Rates, Application 04009-019, on behalf of the Marina Coast Water District regarding the benefits of a regional water supply

project, May 27, 2010.

- Direct Testimony of Mark P. Berkman and David L. Sunding in the Matter of the Application of California American Water Company (U 210 W) for a Certificate of Convenience and Necessity to Construct and Operate its Coastal Water Supply Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover all Present and Future Costs in Connection Therewith in Rates, Application 04009-019, on behalf of the Marina Coast Water District regarding the benefits of a regional water supply project, June 24, 2009.
- Deposition Testimony in the matter of *Watkins & Shepard Trucking vs Soco West, Inc.*, Superior Court of the State of California for the County of Los Angeles –Central District, Case No. BC379287, on behalf of defendants regarding the influence of environmental risk on real estate price, September 9, 2008
- Deposition testimony, In Re Mt. Konocti Mutual Water Company, Inc., Official Committee of Unimproved Lot Owners vs. Mt Konocti Mutual Water Company, Case No. 90-11573, regarding water connection fee methodology on behalf of defendants, January 14, 2008.
- Declaration, In Re Mt. Konocti Mutual Water Company, Inc., Official Committee of Unimproved Lot Owners vs. Mt Konocti Mutual Water Company, Case No. 90-11573, regarding water connection fee methodology, on behalf of defendants, January 4, 2008.
- Hilmar Supplemental Environmental Project, Managing Salt in the Central Valley, submitted to the California Regional Water Quality Control Board, Central Valley Region in compliance with Order No. R5-2006-0025, with David Sunding and Yoram Rubin, November 16, 2007.
- Measures to Reduce the Economic Impacts of a Drought-Induced Water Shortage in the San Francisco Bay Area for the San Francisco Public Utilities Commission with David Sunding, Robert Gamble, and Sean Randolph, May 3, 2007.
- Valuation of Hells Canyon Jet Boat Outfitters and the Impact of the River Flow Restrictions on behalf of Idaho Power Corp., April, 2006.
- Deposition Testimony in the Matter of *Corbitt v. American Furniture Manufacturing Inc. and W.S. Bradcock Corporation*, United States District Court, Middle District of Alabama Civil Action 2:05CV58-T, on behalf of defendants regarding product liability, November 18, 2005.
- Expert Report and Direct Testimony of Mark Berkman and David Sunding in the matter of Hilmar Cheese Company Inc., Hilmar Whey Protein Inc., California Regional Water Quality Control Board Central Valley Region, ACL Complaint No. R5-2005-0501, August 2005.

- Economic Impacts of Critical Habitat Designation for Vernal Pool Species, prepared for the U.S. Fish and Wildlife Service, U.S. Department of Interior with David Sunding, June 25, 2005.
- Expert Report of Mark Berkman in the matter of *BFI Waste Systems of North America, Inc. v. City and County of Denver and Waste Management of Colorado, Inc.* on behalf of the plaintiff. Filed in the United States District Court for the District of Colorado. August 30, 2004.
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- “Estimates of Environmental Risk Associated with the BMI Site.” Prepared for Marsh & McLennan, March 2000.
- “The Effect of CO2 Reduction Policies on the Canadian Electricity Industry and Economy.” Prepared for ATCO Electric, EPCOR, New Brunswick Power, Nova Scotia Power, Ontario Power Generation, Saskatchewan Power and TransAlta Utilities, July 5, 1999.
- “Market Opportunities for Environmental Remediation and Site Management” Report prepared for Pacific Corp, 1998.
- “Comments on CalFed’s Draft EIS of March 1998.” Prepared for Save San Francisco Bay Association, June 30, 1998.
- “Evaluation of Tax Claim Against the State of Montana.” Prepared for the Fort Peck Reservation, September 18, 1997. (Confidential)
- Deposition Testimony on behalf of homeowners in Benicia, California, regarding property value diminution in *Lagrimes v. Southhampton et al.*, September 1997.
- Testimony before the Trade Waste Commission, City of New York on behalf of the New York City Economic Development Commission, regarding maximum rate regulation of commercial waste collection, January 21, 1997.
- “Costs and Benefits of the Proposed Enclosed Unloader at the Fresh Kills Landfill.” Prepared for the New York City Law Department, December 1996.
- Deposition Testimony on behalf of Browning-Ferris Industries, in the matter of *W.J. Curry & Son v. Velsicol Chemical Co. v. Kraft et al.* regarding the allocation of Superfund remediation costs, July 12, 1996.
- Rebuttal Testimony on behalf of Central and South West Energy, Inc. in the matter of Application No. 93-2, CSW Energy, Inc. and KVA Resources, Inc., Northwest Regional Power Facility, Before the State of Washington Energy Facility Site Evaluation Council regarding the costs and benefits of controlling residual NOx and CO emissions and CO2

emissions at a proposed natural gas-fired power plant in Washington, October 1995.

- Affidavit on behalf of the New York City Law Department, in the matter of the Application of New York City Department of Environmental Protection for Renewals of the State Pollutant

Discharge Elimination System Permits for New York City's 14 Publicly Owned Treatment Works regarding the costs and benefits of proposed pollution control investments, August 24, 1995.

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- Expert Report of Mark P. Berkman in the matter of Western Sugar Co-operative *et.al.* v. Archer Daniels Midland et.al, United States District Court Central District of California, Case No. CV11-3473 CBM (MANx), on behalf of plaintiffs provided rebuttal to defendant's counterclaim damage estimate, September 30, 2014.
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- Deposition Testimony of Mark Berkman in the matter of *Vladimir I. Makhov v. Litton Systems, Inc., et al.*, providing damages estimates on behalf of respondents with regard to an alleged breach of contract. May 27, 2004.
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- Second Supplemental Expert Report of Mark P. Berkman, on behalf of Cellnet Data Systems, Inc., in the matter of *Cellnet Data Systems, Inc. v. Itron, Inc.*, to calculate damages regarding Itron's alleged infringement of their patent on remote electric meter reading, June 30, 1998.
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- Expert Report of Mark Berkman, Ph.D. and John Simpson, Ph.D. in the matter of *Arger, et al. v. Renown Health, et al.* on behalf of St. Mary's Hospital for mediation purposes, February 2015. Confidential.
- Expert Report of Mark P. Berkman in Support for Summary Adjudication of Tesoro Refining and Marketing Company, California Public Utilities Commission, Application No. A08-09-04, regarding market power in the transport of crude oil on behalf of Tesoro, November 16, 2009.
- Deposition Testimony in the matter of Southern Waste Systems LLC and Sun Recycling v. The City of Coral Springs Florida, Waste Management Inc., of Florida and the Broward Solid Waste Disposal District, United States District Court Southern District of Florida Miami Division, Case No. 06-61448-CIV on behalf of plaintiffs, April 14, 2009.
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- Expert Witness Report on Damages of Mark P. Berkman in *Cardiac Pacemakers Inc., Guidant Sales Corp, and Eli Lilly Company vs. St. Jude Medical, Inc., Pacesetter, Inc., Ventritex, Inc. and John Does 1-10*, regarding alleged anti-competitive actions by plaintiff, February 26, 2001.
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- *Novadyne Computer Systems, Inc. v. Tandem Computers, Inc.*, before the United States District Court, Central District of California, No. 91-1941 THJ (KX), October, 1995.
- Affidavit on behalf of Kauai Publishing Company in *Hawaii Press Newspapers, Inc. v. Wolf Publishing et al.*, No. 88-1836-6, regarding predatory pricing claims made against Kauai Publishing, March 11, 1994.
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Superior Court of New Jersey, 1990.

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- Deposition Testimony of Dr. Mark Berkman on behalf of Ambac Assurance Corporation and The Segregated Account of Ambac Assurance Corporation, Plaintiffs v. Countrywide Home Loans, Inc., Countrywide Wide Securities, Corp., Countrywide Financial Corp., and Bank of America Corp., Defendants, Supreme Court of the State of New York, New York County, Index No. 653979/2014, March 7, 2019.
- Expert Report of Dr. Mark Berkman In the Matter of Ambac Assurance Deposition Testimony of Dr. Mark Berkman on behalf of Ambac Assurance Corporation and The Segregated Account of Ambac Assurance Corporation, Plaintiffs v. Countrywide Home Loans, Inc., Countrywide Wide Securities, Corp., Countrywide Financial Corp., and Bank of America Corp., Defendants, Index No. 653979/2014, January 7, 2019.
- Expert and supplemental reports of Daniel J. McFadden on behalf of plaintiffs in the matter of *United States v. Novartis Pharmaceuticals Corp.*, United States District Court, Southern District of New York, No. 11 Civ. 0071 (PGG), August 14 and September 22, 2017.
- Expert report of Daniel J. McFadden in the matter of *United States of America v. Countrywide Financial Corporation et.al.* (12CIV.1422 (JSR)), May 7, 2013 and a revised report on June 6, 2013.
- Expert witness report of Mark P. Berkman, Ph.D., in the matter of *Neptec Optical Solutions v. Nabuo Takahashi and Nomura Jimusho (U.S.A.)*, U.S. District Court for the Eastern District of Tennessee at Knoxville, reviewing and evaluating plaintiff's damages estimates and providing damages assessments on behalf of the defendant. November 10, 2003.—*Confidential.*
- Declaration of Mark P. Berkman before the American Arbitration Association Commercial

Arbitration Tribunal in the matter of *Javad Ashjaee v. Topcon Positioning Systems, Inc.* on behalf of the plaintiff, Javad Ashjaee, calculating damages resulting from certain alleged practices by defendant Topcon Positioning Systems, Inc. that violate the Non-Compete, License and Permissible Activities Agreement between the parties. San Francisco, October 30, 2002.

- Deposition of Mark Berkman, in the matter of *Isuzu Motors Limited v. Consumers Union of United States, Inc.*, in the United States District Court, Central District of California, Case No. 97 5685 RAP (RBNx), regarding rebuttal report to plaintiff's damage estimates, July 27, 1999.
- Expert Report of Mark P. Berkman and Kenneth E. Train, in the matter of *Isuzu Motors Limited v. Consumers Union of United States, Inc.*, in the United States District Court, Central District of California, Case No. 97 5685 RAP (RBNx), rebuttal report to plaintiff's damage estimates, July 16, 1999.
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- "Report on Damages Newark Group Industries, Inc. Recycled Fibers Division Eastern Region (Newark)," on behalf of Newark Group Industries, Inc., in the matter of *The*

Newark Group Industries, Inc. v. Joseph Merante, et al., Superior Court of New Jersey, Chancery Division: Essex County regarding business damage claims, November 1996.

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Tribal and Indian Affairs

- “Relative Needs of the MHA Nation and North Dakota for Fort Berthold Oil and Gas Revenues,” prepared for The Mandan, Hidatsa, and Arikara Nation, March 4, 2019.
- Expert Report of Dr. Mark Berkman on behalf of Mark Curry; American Web Loan, Inc.; AWL, Inc.; Red Stone, Inc.; Medley Opportunity Fund II LP; and Medley Capital Corporation in the matter of *George Hengle and Lula Williams, on behalf of themselves and all individuals similarly situated v. Mark Curry; American Web Loan, Inc., AWL, Inc.; Red Stone, Inc.; Medley Opportunity Fund II LP; and Medley Capital Corporation*, United States District Court for the Eastern District of Virginia, Richmond Division, Case No.: 3:18-cv-00100 REP, November 19, 2018.
- Expert Report on behalf of plaintiffs in the matter of Chickasaw Nation and Choctaw Nation v. United States Department of Interior, U.S. District Court for Western District of Oklahoma, No. CIV 05-1524-W, regarding the valuation of tribal land including timber, natural gas, and gravel assets allegedly improperly sold by the Department, April, 2015.
- Testimony in the matter of Thermal Energy Company v. Bureau of Land Management, Navajo Nation, Intervenor of ILBA 2006-71, regarding the commercial quantities of coal on behalf of the Navajo Nation, January 9, 2011.
- Deposition Testimony in the matter of The Ponca Tribe of Indians of Oklahoma, *et al.* v. Continental Carbon Company *et al.* United States District Court for the Western District of Oklahoma. Case No. CIV-05-445-C, May 30, 2008.
- Expert Report of Mark P. Berkman in the matter of The Ponca Tribe of Indians of Oklahoma, *et al.* v. Continental Carbon Company *et al.* United States District Court for The Western District of Oklahoma Case No. CIV-05-445-C on behalf of plaintiff regarding property damage and unjust enrichment resulting from alleged failure to reduce particulate emissions, March 3, 2008. This included an application of the BEN model.

- Deposition testimony in the matter of Rincon San Luiseño Band of Mission Indians; and HCAL Corporation, a Nevada Corporation, vs. Dan McAllister, in his official capacity as Treasurer-Tax Collector of San Diego County, on behalf of the Rincon Tribe, May 26, 2005.
- Supplemental Expert Report in the matter of Rincon San Luiseño Band of Mission Indians; and HCAL Corporation, a Nevada Corporation, vs. Dan McAllister, in his official capacity as Treasurer-Tax Collector of San Diego County, on behalf of the Rincon Tribe, May 23, 2005.
- Expert Report of Mark Berkman, PhD, “Economic Impact of the Harrah’s Rincon Casino on San Diego County, California,” in the matter of *Rincon San Luiseño Band of Mission Indians; and HCAL Corporation, a Nevada Corporation, vs. Dan McAllister, in his official capacity as Treasurer-Tax Collector of San Diego County*, on behalf of the Rincon Tribe, March 21, 2005.
- Affidavit of Mark Berkman in the matter of the *Navajo Nation v. United States of America*, on behalf of the Navajo Nation. Filed in the United States Court of Federal Claims, August 20, 2004.
- Testified before the Public Utilities Commission of the State of California on behalf of the Navajo Nation, in the matter of the Application of Southern California Edison Regarding the Future Disposition of the Mohave Generating Station, June 23, 2004.
- Prepared Superseding testimony of Mark P. Berkman, Ph.D., before the Public Utilities Commission of the State of California on behalf of the Navajo Nation, in the matter of the Application of Southern California Edison Regarding the Future Disposition of the Mohave Generating Station, May 14, 2004.
- “Preliminary Estimate of Revenues Derived by Wyoming and Fremont county from Residents and Businesses on the Wind River Reservation and Expenditures by Wyoming and Fremont County for Services to the Reservation, 1988–2002,” prepared by Mark Berkman and Benjamin Arnold for the Northern Arapaho and Shoshone Business Council, November 18, 2003.
- Prepared Direct Testimony of Mark P. Berkman before the Public Utilities Commission of the State of California on behalf of the Navajo Nation in the matter of the Application of Southern California Edison Regarding the Future Disposition of the Mohave Generating Station, March 28, 2003.
- Trial Testimony of Mark P. Berkman in *Cayuga Indian Nation of New York et al. v. George P. Pataki et al.* to calculate pre-judgment interest and critique defendant’s damage estimates in a land dispute dating back to 1795, August 15, 2000.
- Expert Witness Report of Mark P. Berkman in *Cayuga Indian Nation of New York et al. v. George P. Pataki et al.* to calculate pre-judgment interest and critique defendant’s damage

estimates in a land dispute dating back to 1795, April 28, 2000.

- Defendant's Expert Witness Report of Mark P. Berkman, prepared on behalf of the Crow Tribal Council, in the matter of *Railbox Co. et al. v. Crow Tribal Council* regarding the economic basis for taxation of rail cars shipped through the Crow Reservation, revised August 3, 1999.
- Affidavit of Mark P. Berkman, prepared on behalf of the Crow Tribe of Indians, in the matter of *Crow Tribe of Indians v. State of Montana* regarding the impact of Montana taxes on the Crow Tribe's ability to manage its coal resources, October 30, 1998.
- Expert Witness Report Disclosure of Mark P. Berkman prepared on behalf of the Crow Tribal Council, in the matter of *Railbox Co. et al. v. Crow Tribal Council* regarding the economic basis for taxation of rail cars shipped through the Crow Reservation, September 9, 1998.
- Testimony before the United States District Court, District of Montana, on behalf of the Crow Tribe of Indians and the United States in *Crow Tribe of Indians and the United States v. State of Montana, et al.*, CV-78-110 BLG-JDS, regarding unjust enrichment and damages claims made by the Crow Tribe against the State of Montana, March 31, 1994.
- Testimony before the United States District Court, District of Arizona, on behalf of the Navajo Nation in *Peabody Coal Company v. The Navajo Nation*, regarding the Navajo/Hopi coal tax dispute, March 17, 1994.
- Affidavit for Marathon Oil Company and the Shoshone and Northern Arapaho Tribes of the Wind River Indian Reservation in *Marathon Oil Company, Shoshone and Northern Arapaho Tribes of the Wind River Reservation v. State of Wyoming, et al.*, demonstrating how state and local taxes infringe on the Tribes' abilities to manage their own energy resources and to provide necessary government services on the Reservation, November 19, 1992.
- "Comments Regarding Indian Gaming Markets," prepared for the U.S. Department of Justice in the matter of *U.S. v. Trump*, 1992.
- Testimony before the Select Committee on Indian Affairs, United States Senate, on behalf of the Crow Indian Tribe regarding coal reserve appraisal, July 23, 1992.
- "Appraisal of the 107th Meridian Strip Coal Reserves." Prepared for the Crow Indian Tribe, July 1992.
- Testimony before Select Committee on Indian Affairs, United States Senate, "State Taxation and Indian Economic Development," May 1, 1990.
- "Preliminary Estimate of Revenues Derived by Wyoming and Fremont County from Residents and Businesses on the Wind River Reservation and Expenditures by Wyoming

and Fremont County for Services to the Reservation.” Prepared for the Shoshone and Arapaho Tribes, June 3, 1988.

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- “Household Eligibility Certification: Evidence from Major Income Transfer Programs and the Experimental Housing Allowance program.” Working paper, Washington, D.C.: The Urban Institute, 1977.
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VI. APPENDIX B – About The Brattle Group

The Brattle Group answers complex economic, regulatory, and financial questions for corporations, law firms, and governments around the world. We aim for the highest level of client service and quality in our industry. We are distinguished by our credibility and the clarity of our insights, which arise from the stature of our experts, affiliations with leading international academics and industry specialists, and thoughtful, timely, and transparent work. Our clients value our commitment to providing clear, independent results that withstand critical review.

For additional information about The Brattle Group's experts and services, please visit brattle.com.

OUR CLIENTS

We pride ourselves on cultivating lasting client relationships built on trust and mutual respect. Our clients rank among the world's best performing and most admired companies, law firms, industry organizations, and U.S. and international regulatory and government agencies. We have worked for more than 80 of the AM LAW 100 and more than 100 of the Fortune Global 500.

OUR VALUES

As a privately held firm, we set our own objectives, take a long view, and focus on doing the best possible job for our clients. We work in accordance with following principles:

- **Performance.** We take an uncompromising approach to quality. Clients have peace of mind when working with our experts.
- **Collaboration.** We work closely with our clients to understand their needs and to communicate results in the most useful way. We seek opportunities to tap into our colleagues' expertise to improve quality, creativity, and efficiency.
- **Integrity.** We do not shy away from telling hard truths to our clients, nor will we compromise our results or conclusions for client preferences. Our insights will be clear and able to withstand critical review.
- **Respect.** We are passionate about maintaining a strong culture of respect for others, and treat our clients' resources with the same care as our own. We make sure that our insights are practical and useful for our clients.

OUR PEOPLE

Brattle's team of economists and advisors includes seasoned experts from the private and public sectors, as well as leading international academics and industry specialists. We are not merely service providers, but trusted advisors to our clients.

- **Principals.** Principals hold advanced degrees in economics, finance, management, and engineering from top universities around the world. They have earned reputations as leading experts and have worked in private corporations, academia, and government.

- **Academic Advisors.** We maintain affiliations with highly regarded academics and industry specialists who serve as experts on many client engagements. They bring to our team academic and research expertise as well as strong industry credentials.
- **Consultants.** Our consultants have exceptional analytic and research skills. They hold graduate degrees in economics, finance, law, or business, and are passionate about how applied microeconomics and policy inform real-world questions.