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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

CHINO BASIN MUNICIPAL )  
WATER DISTRICT, )  
 )  
 ) Plaintiffs, )  
 )  
 ) -vs- ) No. 164327  
 )  
 ) CITY OF CHINO, et al., )  
 )  
 ) Defendants. )  
 )

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS  
BEFORE HON. HOWARD B. WIENER, JUDGE, DEPARTMENT 7  
San Bernardino, California, October 21, 1977

APPEARANCES:

For the Plaintiff: DONALD D. STARK and  
GUIDO R. SMITH  
ATTORNEYS AT LAW  
Airport Plaza, Suite 201  
2061 Business Center Drive  
Irvine, California 92715

For Defendant, Monte MARTIN E. WHELAN, JR.  
Vista County Water ATTORNEY AT LAW  
District: 7915 South Painter Avenue  
Whittier, California 90607

ROSE HENDERSON, CSR #3616  
Official Reporter

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APPEARANCES [Cont'd]

For Defendant, Marigold Mutual Water County: STANFORD C. SHAW  
ATTORNEY AT LAW  
47038 Mojave Trail  
Newberry Springs, California 92365

For Defendant, State of California: Attorney General's Office  
Department of Justice  
3580 Wilshire Boulevard  
Los Angeles, California 90010  
BY: EDWIN J. DUBIEL and  
ANITA E. RUUD  
Deputy Attorney Generals



1 SAN BERNARDINO, CALIFORNIA, FRIDAY, OCTOBER 21, 1977

2 9:15 A.M.

3  
4 THE COURT: In the matter of Chino Basin  
5 Water District and the City of Chino, Case Number  
6 164327, the record should indicate that the Plaintiff  
7 is appearing through its counsel Donald D. Stark and  
8 Guido Smith, Martin E. Whelan is appearing for Monte  
9 Vista County Water District, Stanford Shaw for  
10 Marigold Mutual Water Company, and the Attorney  
11 General's Office through Edwin J. Dubiel and Anita E.  
12 Ruud.

13 Any other appearances that I omitted.

14 You may proceed, Mr. Stark.

15 MR. STARK: Well, if I may, your Honor, I  
16 didn't realize that we had the Reporter here. Perhaps  
17 we can just as well handle the entire matter rather  
18 than continue as we had discussed.

19 The first item, your Honor, is a motion for  
20 sanctions, if I can indicate the background of it.  
21 There are stipulations on file by all of the active  
22 parties. There have been defaults entered by -- for  
23 about fifty parties. There are four answering  
24 Defendants represented by Mr. C. Loy Mason in Los  
25 Angeles, and then there is the Federal Deposit  
26 Insurance Corporation and Dow Chemical who are in

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the process, according to their attorneys, of getting authorization for stipulation, so that in terms of contesting parties at the moment, the four individuals represented by Mr. Mason constitute the main at issue Defendants.

To put it in perspective, our information is that the clients that Mr. Mason represents are what are known as minimal producers under the judgment, and they would be incurring an aggregate potential liability under the judgment of ten dollars per year, being two five dollar a year minimum administrative assessments.

We have attempted on numerous occasions to set up some sort of conference or meeting with Mr. Mason to see if we could determine what the real problem was in view of the fairly minimal involvement of his clients. Being unable to do that, we set down a deposition of the clients as his and his secretary's declarations, which are in the file, indicate we set the deposition.

They called and asked for or his secretary called and asked for alternate dates. We agreed to an alternate date. He then had her call back and say that he wouldn't be able to take the depositions before late November. I indicated that that was not practical in view of the state of the case and that he should

1 either move for a protective order if he wanted  
2 additional time or we would stay with the depositions  
3 as noticed.

4 We heard nothing further from him and when  
5 we appeared for the deposition neither Mr. Mason nor  
6 the parties were present. According to his declaration  
7 he did not in fact inform the parties of the schedule  
8 for the depositions.

9 Accordingly, we have made a motion for  
10 sanctions which it seems to me should be directed to  
11 Mr. Mason if his declaration is taken at its face  
12 value.

13 We had hoped that through some kind of  
14 communication we could clarify and eliminate the party  
15 contention. I suspect at this point we will seek now  
16 to serve Request for Admissions and with the potential  
17 sanctions in that regard that proof of facts raised  
18 by general denials would be at the expense of the  
19 party.

20 It is an unfortunate circumstance, and I'm  
21 not really able to explain how we proceed from here,  
22 but Mr. Mason, your Honor will recall, was at the last  
23 hearing we had in Ontario and was the elderly  
24 gentleman who stood up and had some objections that  
25 he raised at that time, and the Court indicated that  
26 if he wished to support them by affidavits or so forth,

1 he could renew the objections; but the position we  
2 are in is that we have in fact had the expense of  
3 preparing for and having the court reporter attending  
4 for the deposition and then making this motion.

5 We have as yet been unable to get any direct  
6 communication with Mr. Mason. I have talked with his  
7 secretary on numerous occasions, but he is not  
8 available, and under the circumstances we believe it  
9 is both appropriate and proper that the Court enter  
10 an order awarding the requested sanction order against  
11 Mr. Mason.

12 THE COURT: Assuming that I were to make  
13 an order that is contingent upon your giving notice  
14 of depositions again, in the event that they failed  
15 to attend this time, I would grant to strike their  
16 Answer.

17 What kind of time pressure are you in?

18 MR. STARK: Our basic problem is that the  
19 stipulations require that the matter be brought to  
20 trial by the end of the year. We appear to be  
21 essentially at issue. We are not yet ready to file  
22 an at issue memorandum. There are two problems.

23 One is we have served some newly discovered  
24 parties fairly recently, and the time has not run  
25 for appearance or answer in those cases. Most of  
26 those are small producers, and the more recent

1 practice is they have had the defaults entered although  
2 they are treated the same as parties who are  
3 stipulating.

4 Mr. Whelan this morning raised a question  
5 which we are going to have to investigate. Assuming  
6 him to be correct, as I find him to be a good deal  
7 of the time, we may have some correction to make and  
8 that is he raises a question as to whether a  
9 corporation can properly appear by stipulation without  
10 counsel.

11 I was not aware that there was a restriction  
12 that prevented it, but I should say that of the  
13 stipulations on file, a number of them are by  
14 corporations who have simply stipulated through their  
15 corporate officers without representation of counsel.

16 We will check out the point that Mr. Whelan  
17 raises and we may have to go back and get an  
18 appearance by counsel to be sure that those  
19 stipulations are valid.

20 We have other house cleaning matters and  
21 accordingly, I would say if the Court would indicate  
22 if we have a deposition from them by the 3rd, which  
23 would give us time to renotice, that that probably  
24 would be sufficient if we got the notice out today.

25 THE COURT: How much is the time requirement  
26 for depositions? Twenty days?

1 MR. STARK: Ten days.

2 MR. WHELAN: Just for the record, your  
3 Honor, I am not stating -- I'm not trying to be  
4 obstructive. I am trying to see the judgment entered  
5 is valid.

6 It is my understanding that really before  
7 the clerk can say to the Court we are ready to go  
8 to trial or pretrial, we have to either have  
9 dismissals or defaults entered or proper appearances  
10 which is either in pro per or by counsel, and I would  
11 like to see the housekeeping clean so we don't have  
12 problems two years down the line.

13 THE COURT: As to the motion, I'm so  
14 conscious of a record all of the sudden. After  
15 reading this, I'm tongue-tied.

16 MR. STARK: Maybe as late as Monday, the  
17 7th. There isn't that much difference and that gives  
18 us --

19 THE COURT: The order made herein in  
20 reference to the motion involving Warren Bain, Cheryl  
21 L. Bain, Frank E. Martin, and Ruth C. Martin that  
22 Plaintiffs' Counsel shall give notice for the taking  
23 of a deposition of each of said parties on a date on  
24 or prior to November 7, 1977, at the time for the  
25 taking of the deposition. Time for notice for the  
26 taking of deposition is on the Court's own motion



1 reduced to five days.

2 That in the event parties fail to appear  
3 for the taking of said deposition as then noticed,  
4 as to any party failing to appear, that person's  
5 Answer shall be stricken and a default in accordance  
6 with law may be entered.

7 That for sanctions on the failure of parties  
8 to appear at the deposition previously noticed,  
9 Counsel C. Loy Mason shall pay the actual costs  
10 incurred for the court reporter.

11 I'm restricting it to costs only, Mr.  
12 Stark.

13 MR. STARK: Thank you, your Honor.

14 Now, on the --

15 THE COURT: You'll have to give notice of  
16 that.

17 MR. STARK: Yes, we will. We will try to  
18 get a formal order to your Honor.

19 THE COURT: Again, you know where I am so  
20 in case of ease, give me an envelope so Teresa can  
21 get it back here, and I will just sign it and mail  
22 it out.

23 MR. STARK: If it's appropriate, we can  
24 deliver it in Los Angeles to you.

25 THE COURT: Sure.

26 MR. STARK: With regard to the status

1 hearing suggested in the -- this same time, we have  
2 **filed** subsequent to the last hearing with the Court  
3 **some eleven** hundred and fifty odd stipulations of  
4 the parties in the action. Subject to the qualification  
5 that I have already mentioned that Mr. Whelan raises  
6 which we will check out -- and if there is a defect as  
7 to any corporate stipulations we will seek to have  
8 those cured within the next week to ten days -- we  
9 essentially now have the stipulations of all parties  
10 other than Mr. Mason's clients, and the Federal Deposit  
11 Insurance we confirmed by telephone yesterday ~~that it~~  
12 was appropriate to represent as we have represented  
13 in the status report that they proposed to sign ~~the~~  
14 stipulation but they are still trying to get authority  
15 out of Washington, and the Dow Chemical Company who  
16 have been studying the matter and who have indicated  
17 they will sign the stipulation although we do not have  
18 it in hand.

19 The only other area that we have potential  
20 contention is in taking defaults. We have indicated  
21 that any party as to whom we took defaults who might  
22 desire to move to vacate the default and file an  
23 Answer, that we would stipulate to the vacation of  
24 the default. That was of particular relevance to  
25 three, four Mutual Water Companies, small Mutual Water  
26 Companies, three of whom are represented by Mr. Shaw

1 who have the -- the defaults have been taken but  
2 because Mr. Shaw has been following it, we have been  
3 in communication with him and have extended the  
4 statement that we would entertain a motion to file an  
5 Answer if they desired to.

6 We have suggested, however, that we would  
7 like to have the Court set a pretrial date and in  
8 connection therewith to set a date past which the  
9 Court would not look with favor on vacating defaults.

10 In other words, if Mr. Shaw's clients or  
11 any others want to file an Answer to put something  
12 in issue, we have no objection to doing that and to  
13 trying the issue, but we think there ought to be  
14 some reasonable cutoff date prior to the pretrial  
15 so we are in a position to bring the order in.

16 We anticipate an at issue memo being filed  
17 within a week, and we would hope that we could  
18 schedule an hour to two hour pretrial hearing some  
19 place in the latter part of November, hopefully  
20 looking to an initial trial setting some place in the  
21 second week of December.

22 As the matter now stands, it would appear  
23 that the trial will be essentially a matter of  
24 putting in proof as to the defaulted defendants. I  
25 think a day is more than enough to introduce the  
26 basic hydrologic and related testimony for purposes

1 red indicates holidays, that is a short week.

2 **SONO**

MR. STARK: Oh, that is Thanksgiving.

3 I picked that because we got another pretrial  
4 on that Friday.

5 What about the 18th?

6 What day is least -- do you not have  
7 conferences and that sort of thing?

8 THE COURT: On the Ontario Motor Speedway  
9 case which I had in Ontario, I recall I set that  
10 over to the 18th. Hopefully that is not going to  
11 take too long, but I don't know. There is a number  
12 of parties involved and a number of documents that  
13 I assume have all been prepared and we may have to  
14 sign.

15 How long is this conference going to be?

16 MR. STARK: I wouldn't anticipate that it  
17 should be more than an hour for -- the stipulation  
18 provides that it shall constitute the pretrial  
19 statement of the stipulating parties and so all we have  
20 as far as I can see is a determination of what, if any,  
21 issues remain to try.

22 THE COURT: Is there any, putting aside the  
23 formality of the courtroom, a reporter, and a clerk,  
24 any reason we can't do that in L.A. also?

25 MR. STARK: I have no problem with that if  
26 we can clarify that we don't have any jurisdictional

1 of the judgment in the absence of any serious  
2 opposition.

3 We find it frankly somewhat incredible that  
4 we are in this position, but I think we do -- I think  
5 we do have substantial concurrence in the judgment  
6 out of some twelve hundred parties. The status report  
7 also in -- to some extent Mr. Smith in preparing it has  
8 set forth some of the additional accounting we are  
9 trying to get out of the way.

10 We started out with a total of some twenty-  
11 six hundred names, and we are still auditing between  
12 the staff and our office to be sure that everyone is  
13 accounted for, but in terms of active parties, ~~the~~  
14 to be bound by the judgment, we are at essentially a  
15 totally stipulated stage subject to Mr. Whelan's  
16 point as to the validity of corporate stipulations  
17 where there are no counsel.

18 There is quite a few of the dairy farms,  
19 for instance, that are incorporated but have not  
20 utilized counsel, and we would have to clarify that.

21 THE COURT: Do you want to pick a date  
22 now?

23 MR. STARK: If your Honor would care to,  
24 if we could pick a date for a pretrial hearing in  
25 the week say of the 21st of November?

26 THE COURT: Looking at that calendar if

1 problems.

2 THE COURT: Well, the 17th of November  
3 and --

4 MR. STARK: Your Honor, it --

5 THE COURT: And Teresa, as you know, guides  
6 me through the thicket of procedural problems that I  
7 am sure I create for myself, but if we want to set  
8 that, we will say on the 17th at 3:30 in the Attorney  
9 General's Office, and if you can assure me that we  
10 would have a secretary so that he or she could take  
11 down everything that we need to --

12 MR. STARK: Subject to clarifying the  
13 procedure, your Honor, that would be satisfactory,  
14 and if for some reason we find we can't do that, then  
15 we will come for a modification.

16 THE COURT: Okay.

17 Is that date okay with you?

18 MR. WHELAN: Your Honor, I have some resumed  
19 continued hearings before the Public Utilities  
20 Commission.

21 THE COURT: Why don't we go off the record  
22 and pick a date as among everybody and once we get  
23 that date, we will put it on the record.

24 [Whereupon, at this time there was an  
25 off-the-record discussion.]

26 THE COURT: On the record.

1           In this case, we will tentatively set a  
2 ~~pretrial~~ conference at 3:00 p.m. on November 21,  
3 1977, and subject to clarification as to jurisdictional  
4 issues that hearing will be at 3580 Wilshire Boulevard,  
5 Los Angeles, all to be set out in the notice to be  
6 given by Counsel.

7           MR. STARK: Could we similarly, your Honor,  
8 reserve December 13 or 14 for trial tentatively? My  
9 anticipation is that we are talking about a day. I  
10 don't know how that will --

11           THE COURT: I prefer December 16.

12           MR. STARK: December 16?

13           THE COURT: Yes.

14           MR. STARK: All right.

15           May we include in the order then the trial  
16 on December 16?

17           THE COURT: In this department.

18           MR. STARK: In this department.

19           THE COURT: But there is a caveat on it  
20 which is that assuming for the purpose of discussion  
21 only that my assignment continues at the Court of  
22 Appeal, I would come out and start the trial and work  
23 as diligently as we can in light of other matters I  
24 may have on the calendar.

25           MR. STARK: I understand.

26           THE COURT: But if I read the status report

1 correctly, you're under no commitment to conclude the  
2 trial?

3 MR. STARK: No. It's to commence the trial  
4 at least at that time.

5 THE COURT: All right.

6 MR. STARK: But I think we will be relatively  
7 short. The main thing I was concerned is our principal  
8 hydrologic witness in reserving his time and he is  
9 available during that week and he has some commitments  
10 in the Philippines.

11 THE COURT: At 9:30 for trial?

12 MR. STARK: 9:30. Very good, your Honor.

13 THE COURT: Anything further?

14 MR. SHAW: One of the apparent issues  
15 before us here was some sort of time limitation in  
16 which people might avail themselves of this agreement  
17 whereby we can plead to the case and our defaults be  
18 set aside.

19 THE COURT: What does the stipulation provide  
20 for? Is there a stipulation in the file?

21 MR. STARK: No. It's -- this is an  
22 agreement -- what we were suggesting is that the Court  
23 include in this order an indication that it would not  
24 view with favor a motion or stipulation to vacate  
25 defaults in the absence of extraordinary circumstances  
26 if it were filed after, and I would say a time ten



1        days before the -- now the pretrial was the 21st.  
2        After the 10th we will say, so that we have a ten-day  
3        period prior to the pretrial to be sure that we are  
4        not getting additional answers is all that I am -- is  
5        that satisfactory, Stan?

6                MR. SHAW: No it isn't. I would like to  
7        explain why.

8                I think that the case is not in a condition  
9        to properly make this requirement on the Defendants  
10       I represent --

11               THE COURT: Mr. Shaw, I don't want to cut  
12       you off, but I will confess that I would be reluctant  
13       to tell anybody at this juncture as to how I will  
14       view a motion to set aside a default. I understand  
15       the posture is that this is an informal agreement now  
16       that they will be set aside.

17               Whether they will be looked upon with  
18       favor, great favor, or little favor, I would be  
19       reluctant to set that out --

20               MR. STARK: The simplest thing, your Honor --

21               MR. SHAW: May I respond?

22               If that is your disposition, I have nothing  
23       to say.

24               MR. STARK: May I then for the record, your  
25       Honor, indicate that the Plaintiff has heretofore  
26       indicated that it would stipulate to such a motion to

1       **set aside** the default and for the record I would like  
2       **to clarify** that the Plaintiff intends to oppose any  
3       **motion** to set aside defaults under normal  
4       circumstances if it is made returnable after the 10th  
5       of November.

6               Just as -- so that it's clear what -- not  
7       what the Court's intent would be, but what the  
8       Plaintiffs' intent would be.

9               We want to accommodate people who want to  
10       raise issues, but we do feel compelled to bring the  
11       matter to trial as rapidly as possible, so for Mr.  
12       Shaw's or anyone else's purposes, we would be prepared  
13       to stipulate to the vacation of a default and entry  
14       of an Answer at any time prior to the 10th of  
15       November.

16               Thereafter we would require a motion to  
17       vacate and would contemplate opposition to the  
18       motion.

19               THE COURT: As to any person with whom you  
20       may have had the stipulation, you of course would give  
21       **notice for** the modification.

22       **AS COURT** MR. STARK: In fact, your Honor, the  
23       stipulation was nothing formal. It was in the course  
24       of discussions and was primarily directed to Mr. Shaw  
25       and to his clients. We have said the same thing  
26       would be true for individuals, but there has been no

1 occasion to extend it beyond that.

2 MR. SHAW: Well, I would like to be heard  
3 briefly.

4 I think that it's well understood that the  
5 concern of my clients is that if this case is going  
6 to be contested, we should like to file pleadings and  
7 be in court with status before the Court to be heard  
8 and watch our rights so to speak.

9 It is urged on the Court that the case is  
10 essentially uncontested, but that is not too reassuring  
11 at this moment. There are too many loose ends, and I  
12 don't want to appear to be indicating to Counsel how  
13 he should run his case, but it just seems to me  
14 the calendar is closing in on this case in such a  
15 fashion that what he should do is to contact his  
16 stipulating parties and change the arrangement where  
17 the stipulation is by its own terms terminated on a  
18 given date and much as with escrow instructions  
19 instead of an arrangement where the stipulations will  
20 continue through such and such a date and thereafter  
21 unless they are withdrawn by the parties.

22 He has a deadline now that I am afraid may  
23 turn out to be unrealistic. Be that as it may, to  
24 crowd the decision of parties like mine is to generate  
25 a likelihood of contest that seems to me unnecessary  
26 and, well, this matter of saying that the case is

1 essentially uncontested is like your doctor saying  
2 that the wife is essentially not pregnant.

3 It remains to be seen, I take it, and if  
4 this is going to be contested, we want to withdraw  
5 our -- we want to get out of our default position and  
6 plead to the case.

7 MR. STARK: Well, your Honor, first of all,  
8 the stipulation is a -- gives a form of judgment, and  
9 if the Court is unable to enter judgment in  
10 substantially that form, everyone is released because  
11 the stipulation is for judgment in substantially that  
12 form, so Mr. Whelan, Mr. Shaw, anybody else is in the  
13 same position there.

14 I have no objection if Mr. Shaw wants to  
15 raise issues and wants them tried. I want to get the  
16 case to trial. We have spent five years and almost  
17 three-quarters of a million dollars in bringing this  
18 matter to this stage. We have twelve hundred -- or  
19 eleven hundred and fifty stipulations. I know of the  
20 filing fee in this case, I think, is a record in the  
21 State of California.

22 THE COURT: How much is it?

23 MR. STARK: The filing fee was sixteen  
24 thousand dollars.

25 We simply are ready to go. We have a major  
26 ground water basin which has a plan prepared under

1 which it can be operated and replenished; so Mr.  
2 Shaw has behind him the successful experience of  
3 stopping the Mojave adjudication.

4 We have discussed for a long time that this  
5 Plaintiff is going to do everything in its power to  
6 be sure this adjudication is not stopped. We don't  
7 object to him filing an Answer. We're glad to try  
8 the case as to his clients or to take their  
9 stipulation. We want to be reasonable about it, but  
10 we want in the interests of the eleven hundred and  
11 fifty people who have stipulated, we want to move the  
12 case forward.

13 MR. WHELAN: Your Honor, I would like  
14 see if my understanding is correct, which I think  
15 might also solve Mr. Shaw's problems.

16 My understanding is the intent if the  
17 Court cannot enter judgment in accordance with the  
18 stipulation that all of the parties would be relieved  
19 and would be given time then in which to file any  
20 appropriate pleadings that they wish to file before  
21 the matter, the trial on the matter is concluded; is  
22 that correct?

23 MR. STARK: That's correct.

24 MR. WHELAN: So that everyone would then  
25 have an opportunity including my client to file an  
26 Answer and raise any issues or any cross-complaints

1       for the record.

2                     If someone moves to set aside a default,  
3       well maybe you're on notice, maybe you're not. I  
4       don't know.

5                     THE COURT: I think you have said it  
6       correctly.

7                     Why don't we stand in recess then until the  
8       next occasion we have to meet which at this juncture  
9       then is November 21st.

10                    Thank you, Gentlemen.

11                    MR. STARK: Thank you, your Honor.

12                    [Whereupon, at this time the foregoing  
13       proceedings were concluded.]

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1 indeed, that might have to be raised at that point.

2 MR. STARK: Yes.

3 MR. WHELAN: So I think that if that is the  
4 clear understanding of Counsel for the Plaintiff and  
5 reflected on the record, hopefully that might solve  
6 Mr. Shaw's problems of an Answer if someone comes in  
7 and contends -- and excuse me for using the first  
8 name -- if they come in and contest it and are  
9 unsuccessful then you are in a position of having the  
10 judgment put into effect and if they are successful,  
11 you are then relieved and can file any issues you want  
12 to try them.

13 That is my understanding at least.

14 Mr. Stark, is that correct for the record?

15 MR. STARK: That's right.

16 MR. SHAW: That's an ingenious observation,  
17 but we would still have facing us this matter of if we  
18 are to avail ourselves of this existing opportunity  
19 which is being unilaterally terminated of withdrawal  
20 of our default and opportunity to meet by November 10th,  
21 we have even mechanical problems of getting authority  
22 from the respective boards of directors.

23 I suggest that this is too early a date.  
24 However, I understand that it's -- it's essentially  
25 not a matter for your Honor to decide anything. The  
26 statements are made for the record. I made something

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**BONE**

CERTIFICATE OF REPORTER

STATE OF CALIFORNIA            )  
  )  ss  
COUNTY OF SAN BERNARDINO )

I, ROSE HENDERSON, official reporter of  
the Superior Court, County of San Bernardino, State  
of California, do hereby certify to the best of my  
knowledge and belief that the foregoing 21 pages  
comprise a full, true and correct transcript of the  
proceedings had in this matter.

Dated at San Bernardino, California, this  
27th day of October, 1977.

Rose Henderson  
Official Reporter  
CSR #3616

