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**EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103**

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES
16

17 **ANTELOPE VALLEY**
GROUNDWATER CASES
18
19 Included Actions:
Los Angeles County Waterworks District
20 No. 40 v. Diamond Farming Co., Superior
Court of California, County of Los
Angeles, Case No. BC 325201;
21
22 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
Court of California, County of Kern, Case
23 No. S-1500-CV-254-348;
24 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
25 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
26 California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668
27

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**PUBLIC WATER SUPPLIERS'
OPPOSITION TO WOOD CLASS
MOTION FOR ORDER AUTHORIZING
COURT-APPOINTED EXPERT WITNESS
WORK**

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1
2 **I. INTRODUCTION**

3 The Wood Class again seeks court approval for expert Timothy Thompson for work that
4 benefits the Wood Class. Despite the fact that the Wood Class action is part of coordinated and
5 consolidated proceedings for a comprehensive groundwater rights adjudication, the Wood Class
6 would have only the Public Water Suppliers pay the entire cost of Mr. Thompson's work.

7 Further, the Wood Class request would have the Court ignore the nature of the Wood
8 Class claims to groundwater rights: a correlative overlying right together with other landowner
9 parties sharing the same overlying rights, the Wood Class rights exist in an amount only
10 determined in relationship to other landowners' overlying rights and public entities. It is unfair to
11 assess the cost of Mr. Thompson's work only upon the Public Water Suppliers.

12 A hearing on this instant motion was initially set for February 14, 2012. At that hearing,
13 the Court directed Defendant Los Angeles County Waterworks District No. 40 ("District 40") to
14 file its opposition to the Wood Class' motion. At the March 13, 2012 hearing, the Court indicated
15 that it would continue the Wood Class' motion to April 17, 2012. The Public Water Suppliers
16 again oppose the motion and request the Court deny the motion.

17
18 **II. HISTORY OF PLAINTIFF WOOD'S MOTIONS FOR COURT-APPOINTED
19 EXPERT AND STATUS OF SETTLEMENT**

20 By a stipulation executed on May 5, 2009, certain parties agreed to lift the Court's stay of
21 the appointment of expert Timothy Thompson.¹ (See Order filed 4/24/2009 [Doc. 2595] [staying
22 appointment of expert "until certain issues ha[d] been adjudicated"; see also Stipulation and
23 Order Re: Small Pumper Class Notice Issues [Doc. 2642].) Mr. Thompson was thus hired for the
24 limited purpose of "conduct[ing] a statistically significant assessment as to the percentage of the
25 Class members actually satisfying the Class definition." (See Stipulation and Order Re: Small
26 Pumper Class Notice Issues [Doc. 2642] at ¶¶ 5-7.) Relying on data generated from the Wood
27 Class notice response forms, supplemented as needed by further field work, Mr. Thompson was

28 ¹ Plaintiff Wood had moved for the appointment of an expert on March 30, 2009. (See Wood's Renewed Motion for Appointment of Expert [Doc. 2525].)

1 instructed to formulate reliable estimates of the water usage of the Class. (*Ibid.*) Mr. Thompson
2 worked on this matter from May 1, 2009 though June 26, 2009, and tendered an invoice for
3 \$4,784.68 on February 10, 2011 to Mr. McLachlan for payment. (See Plaintiff Wood’s
4 Supplemental Brief re Motion for Allocation of Court-Appointed Expert Witness Fees [Doc.
5 3400], Ex. 4.) By Supplemental Motion, on March 2, 2010, Plaintiff Wood moved this Court to
6 (1) allocate the payment of Mr. Thomas’ expenses only among the Public Water Suppliers and (2)
7 authorize Mr. Thompson to analyze the water usage of the Class Members in preparation for
8 Phase III’s determination of overdraft and safe yield (as further outlined in the proposal from
9 Entrix). (Plaintiff Wood’s Supplemental Brief re Motion for Allocation of Court-Appointed
10 Expert Witness Fees [Doc. 3400]; see also *id.*, Ex. 3 (Entrix proposal).) The Court, in turn,
11 ordered certain Public Water Suppliers to pay Mr. Thompson’s fees, but declined to approve the
12 Wood Class’s request for additional expert services, finding them immaterial to the Phase III
13 issues of overdraft and safe yield. (See Order filed 5/25/2010 [Doc. 3603].)

14 On May 2, 2011, the Wood Class filed its Motion for Preliminary Approval of Class
15 Settlement [Doc. 4423], which this Court denied at a hearing held on June 16, 2011. (See Minute
16 Order filed 6/17/2011 [Doc. 4485].)

17 Manufacturing an illusion of some strategized delay, Wood Class Counsel proclaims that
18 Mr. Thompson is needed to help defend the Wood Class against “a very unfair deal ... hatched []
19 with the farmers.” (Motion for Expert at 6:4-14.) Although not participating in the Justice Robie
20 mediation, Wood Class Counsel claims the Wood Class’ water use will be an obstacle to
21 settlement and, on these grounds, requests that Mr. Thompson be allowed to proceed with the
22 work defined in items “D” and “E” of Entrix’s proposal. (See Motion for Expert, Ex. 5.) More
23 specifically, Wood Class asks this Court to authorize Mr. Thompson to (1) determine the amount
24 of water historically produced by the Wood Class and (2) opine on the groundwater usage
25 attributed to the Wood Class during a trial that has not yet been set. (See Motion for Expert, Ex.
26 5.)
27
28

1 **III. WOOD CLASS SEEK AN COURT APPOINTED EXPERT FOR THE WOOD**
2 **CLASS CLAIMS**

3 The purpose for which the Wood Class seek an expert—to litigate issues particular to
4 Plaintiff Wood and the Class Members — has no legal basis. There is no precedent to support the
5 motion.

6 Evidence Code Section 730, which the Wood Class erroneously relies upon, vests
7 discretion in the court to appoint a neutral expert for use by the parties to the litigation, or by the
8 court, in the development of issues universal to the lawsuit. (Evid. Code § 730.) The Wood
9 Class motion, however, does not ask the Court to appoint an expert for universal issues (*i.e.*, safe
10 yield of the Basin) but only as to issues unique to the Wood Class, their own groundwater use.

11 The Wood Class' efforts, to cast their request as something that would benefit the Court,
12 misses the point. Arguably, any time an expert testifies, there is a benefit to the Court but that
13 would not justify having the Court having the Court appoint an expert on every issue raised by a
14 party. Stated simply, the Wood Class motion is a thinly-veiled disguise to have the Court appoint
15 the expert for the benefit of the Wood Class.

16 Moreover, if the Wood Class needs to know how much groundwater they use, they can so
17 inform the Wood Class Counsel – and all the other parties.

18 Wood Class Counsel was appointed by the Court based upon their representation they
19 were capable, ready and willing to represent the Wood Class members as required by California
20 law. Wood Class Counsel's threats to withdraw as Class Counsel unless the Court appoints the
21 expert at the Public Water Suppliers' expense can never be good cause to grant the motion.

22 **IV. CONCLUSION**

23 This Court has, on several occasions, continued Wood Class motions to appoint an expert
24 on account of settlement discussion or for other reasons. It would be improper to require the
25 Public Water Suppliers to pay for an expert to assist the Wood Class in their case. Should Wood
26 Class Counsel disagree, they should retain Mr. Thompson, but on the condition that the cost be
27 wholly borne by them.

28 ///

1 The Public Water Suppliers respectfully request the motion be denied.

2
3 Dated: April 4, 2012

BEST BEST & KRIEGER LLP

4
5 By: 

6 ERIC L. GARNER
7 JEFFREY V. DUNN
8 STEFANIE D. HEDLUND
9 Attorneys for Cross-Complainant
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11 WATERWORKS DISTRICT NO. 40

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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California, 92614. On April 4, 2012, I served the within document(s):

OPPOSITION TO PLAINTIFF RICHARD WOOD'S NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING COURT-APPOINTED EXPERT WITNESS WORK

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on April 4, 2012, at Irvine, California.


Kerry V. Keefe

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