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15 Attorneys for Plaintiff

16 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
17 **COUNTY OF LOS ANGELES**

18 Coordination Proceeding  
19 Special Title (Rule 1550(b))

20 ANTELOPE VALLEY GROUNDWATER  
21 CASES

22 RICHARD A. WOOD, an individual, on  
23 behalf of himself and all others similarly  
24 situated,

25 Plaintiff,

26 v.

27 LOS ANGELES COUNTY  
28 WATERWORKS DISTRICT NO. 40; et al.

Defendants.

Judicial Council Coordination  
Proceeding No. 4408

(Santa Clara Case No. 1-05-CV-049053,  
Honorable Jack Komar)

Case No.: BC 391869

**PLAINTIFF'S *EX PARTE***  
**APPLICATION FOR ORDER**  
**STOPPING SERVICE OF SUMMONS**  
**AND CROSS-COMPLAINT ON**  
**SMALL PUMPER CLASS MEMBERS**  
**AND FOR DISMISSAL OF THOSE**  
**PREVIOUSLY SERVED;**  
**DECLARATION OF MICHAEL D.**  
**MCLACHLAN**

Date: July 10, 2009  
Time: 9:00 a.m.  
Dept.: 17C (telephonic)

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Last week, Plaintiff Richard Wood learned that the purveyors are serving the  
4 summons and first amended cross-complaint on putative class members of the Small  
5 Pumper Class at the same time these parties are being sent the class notice.

6 Plaintiff requests an order halting all service efforts to these class members and  
7 compelling the purveyors to file and serve requests for dismissal, without prejudice, as to  
8 all of these class members until such time as any of them might opt out of the Small  
9 Pumper class.

10  
11 **II. RELEVANT FACTS**

12 The Willis Class response form contained a query that would allow recipients of  
13 the Willis Class notice to identify themselves as past or present groundwater pumpers.  
14 Several hundred people did in fact identify themselves as small pumpers by returning the  
15 Willis response form. (McLachlan Decl. ¶ 2). Prior to the issuance of the Willis Class  
16 notice, the Court and class counsel had agreed that these “self-identified” pumpers would  
17 be placed on the Small Pumper Class notice list and would thereafter receive the Small  
18 Pumper Class notice. (McLachlan Decl. ¶ 3).

19 In June of 2009, the purveyors filed a massive “Roe” Amendment to their first  
20 amended cross complaint, identifying Roes 625 to 2218. (McLachlan Decl. ¶ 4.) These  
21 Roes apparently represent some portion of the Willis Class opt-outs. (McLachlan Decl. ¶  
22 5; Exhibit 2.)

23 After receiving a phone call last week from one of these new Roe cross-  
24 defendants, counsel for the Small Pumper Class became aware that many, but not all, of  
25 those who self identified as pumpers were erroneously placed on this new Roe  
26 amendment, and served with the summons and first amended cross-complaint.  
27 (McLachlan Decl. ¶ 5.)

28

1 Plaintiff has made efforts to resolve this issue informally, to no avail. (McLachlan  
2 Decl. ¶ 6.)

3 **III. ARGUMENT**

4 The simultaneous service of the first amended cross-complaint and the Small  
5 Pumper Class Notice on a random subset of class members causes great confusion among  
6 these Class members and should be promptly remedied. The service of the cross-  
7 complaint at the same time as class notice will undoubtedly interfere with the class  
8 notice. Class members may assume they received the notice in error, since they are  
9 already a party to the action, and not return the response form.

10 Many of these parties are likely to, or may already have, entered a general  
11 appearance as cross-defendants by filing answers to the cross-complaint. Most of these  
12 people will also become class members, and some will no doubt incorrectly assume that  
13 class counsel will be defending them with regard to the cross-complaint. Beyond that, to  
14 the most practicable extent, class members should be treated uniformly.

15 Plaintiff requests that the Court Order the purveyors to cease all service efforts on  
16 the Roes until all of the Small Pumper class noticees included on the Roe Amendment are  
17 indentified.<sup>1</sup> Furthermore, once identified, the purveyors should dismiss all the noticees  
18 without prejudice and provide them with notice so they are aware that they are no longer  
19 cross defendants. If any of these parties opt out, they can be served with the cross  
20 complaint at that time.

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24 <sup>1</sup>A stay of service is also advisable until such time as other potentially significant  
25 problems with the purveyors' pleadings are resolved. For example, it appears the  
26 purveyors may be serving Roes with a summons that is stale. C.C.P. § 583.210 (three  
27 years). If this is correct, and such Roe defendants have a right to seek dismissal, the  
28 service of the Model Answer under the Court's imprimatur should raise concern. There  
are many other problems with the pleadings in this case that will likely be addressed in  
conjunction with the Motion to Consolidate.

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DATED: July 9, 2009

LAW OFFICES OF MICHAEL D. McLACHLAN  
LAW OFFICE OF DANIEL M. O'LEARY

By: \_\_\_\_\_ //s//  
Michael D. McLachlan  
Attorneys for Plaintiff



1 many parties on both lists, but now all of them. I would estimate, based on my limited  
2 survey, that about 10-20% of those who identified as small pumpers were named as Roes.

3 6. On July 1, 2009, I promptly wrote to Mr. Dunn to advise him of the situation and  
4 to request an immediate cessation to service efforts. My letter is attached as Exhibit 1. I  
5 also followed up with e-mail requests. Last night, I finally received a response, but there  
6 is not agreement to a remedy. (Exhibit 2.)

7 7. *EX PARTE NOTICE*: During the morning of July 8, 2009, I sent an email to  
8 several BBK attorneys informing them of this ex parte application.

9  
10 I declare under penalty of perjury under the laws of the State of California that the  
11 foregoing is true and correct. Executed this 9<sup>th</sup> day of July, 2009, at Los Angeles,  
12 California.

13  
14 \_\_\_\_\_ //s//

15 Michael D. McLachlan  
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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 523 West Sixth Street, Suite 215, Los Angeles, California 90014.

On July 9, 2009, I caused the foregoing document(s) described as **PLAINTIFF'S EX PARTE APPLICATION FOR ORDER STOPPING SERVICE OF SUMMONS AND CROSS-COMPLAINT ON SMALL PUMPER CLASS MEMBERS AND FOR DISMISSAL OF THOSE PREVIOUSLY SERVED; DECLARATION OF MICHAEL D. MCLACHLAN** to be served on the parties in this action, as follows:

- ( X ) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara County Superior Court website: [www.scefiling.org](http://www.scefiling.org) regarding the Antelope Valley Groundwater matter.
- ( ) (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in sealed envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Los Angeles, California, addressed to:
- ( ) (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designed by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.
- ( ) (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.
- (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ( ) (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

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//s//  
Carol Delgado