

1 Michael D. McLachlan (State Bar No. 181705)
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**
3 10490 Santa Monica Boulevard
4 Los Angeles, California 90025
5 Telephone: (310) 954-8270
6 Facsimile: (310) 954-8271
7 mike@mclachlanlaw.com

8 Daniel M. O'Leary (State Bar No. 175128)
9 **LAW OFFICE OF DANIEL M. O'LEARY**
10 10490 Santa Monica Boulevard
11 Los Angeles, California 90025
12 Telephone: (310) 481-2020
13 Facsimile: (310) 481-0049
14 dan@danolearylaw.com

15 Attorneys for Plaintiff

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

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

JUDICIAL COUNCIL COORDINATION
PROCEEDING No. 4408

20 ANTELOPE VALLEY GROUNDWATER
21 CASES

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

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

Case No.: BC391869

25 Plaintiff,

**RICHARD WOOD'S OPPOSITION TO
EX PARTE APPLICATION TO
CONTINUE FAIRNESS HEARING;
DECLARATION OF MICHAEL D.
MCLACHLAN**

26 v.

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

Date: November 26, 2013
Time: 8:30 a.m.
Place: Telephonic (Courtcall)

Defendants.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Richard Wood submits the following Opposition to Waterworks District
4 No 40's ("District 40") Ex Parte Application to Continue the Fairness Hearing on the
5 Partial Wood Class Settlement (the "Application"). Notwithstanding the fact that the
6 motions for final approval of the settlement (and a related good faith settlement motion)
7 as well as the supporting declaration were all timely filed, and notice to the Class has
8 been completed for the December 11, 2013 hearing date, District 40 alone contends that
9 the fairness hearing should be continued because of the related fee motion was filed two
10 weekend days after the other motions.

11 The Application is not supported by the law, presents a misleadingly inaccurate
12 rendition of the facts, and should be denied because District 40 cannot conduct discovery,
13 has made no showing that it could or would conduct discovery, and because it lacks
14 standing to oppose the fee motion. The Motion grossly over-reaches, and is not
15 supported by any actual showing of prejudice – indeed, it does not even mention the fact
16 that in order to resolve this matter, Class counsel offered to provide District 40 with an
17 additional 5 days to file its opposition papers.

18 **II. ARGUMENT**

19 **A. District 40 Has No Right to Conduct Discovery**

20 District 40 asserts that it has a generic right to conduct discovery when in fact it
21 does not. The case District 40 cites for this proposition, *Save Open Space Santa Monica*
22 *Mountains v. Superior Court* (2000) 84 Cal.App.4th 235, 246, is very limited and not
23 applicable in this context. Although, *Save Open Space* recognized that earlier case law
24 denied discovery on fee motions under Section 1021.5 (*Id.* at 248, n.7), it permitted
25 limited discovery on a highly unique and narrow issue having nothing to do with the
26 amount of the legal services or the work performed. (*Id.* at 250.) At issue in *Save Open*
27 *Space* was the question of whether a third party was funding the litigation for the benefit
28

1 of a few non-party individuals, thus undermining the applicability of the named plaintiff
2 to obtain an award of attorney fees under Section 1021.5. (*Id.* at 249.) The court’s
3 holding in *Save Open Space* was expressly limited to this narrow set of unusual facts,
4 which are totally inapplicable to the instant action. (*Id.* at 250.) This narrow holding has
5 not been extended to any other context, nor has any other case held that discovery is
6 generally permitted on a motion for attorney fees under Section 1021.5.¹

7 **B. District 40 Has No Standing to Oppose the Fee Motion**

8 The Settlement Agreement in question provides for a negotiated and stipulated
9 sum-certain for attorney fees and costs. (McLachlan Decl. ¶ 2.) It does not by its terms
10 impact or alter the legal rights of District 40.² In such instance, “nonsettling defendants
11 in a multiple defendant litigation context have no standing to object to the fairness or
12 adequacy of the settlement by other defendants . . .” (*Newberg on Class Actions, 4th Ed.*
13 (2013) § 11:55.) Because of the strong public policy to encourage settlement, non-
14 settling class defendants have long been held to lack standing to challenge settlements.
15 (*Quad / Graphics, Inc. v. Fass* (7th Cir. 1983) 724 F.2d 1230; *Waller v. Financial Corp of*
16 *America* (9th Cir. 1987) 828 F.2d 579, 583 (to have standing, the settlement agreement
17 must strip the non-settling defendant of a cause of action); *In re Fine Paper Antitrust*
18 *Litigation* (E.D.Pa 1979) 1979 WL 1743.)

19 District 40 cites no authority for the proposition that they should have a voice in
20 the amount of attorneys’ fees the Settling Defendants agreed to pay upon arms’ length
21 negotiation. They are free to raise those concerns if and when they are the parties being
22

23 ¹ It has been eight days since District 40 received the fee bills in question. To date
24 District 40 has not propounded any discovery, nor does it even state that it will do so, or
25 why it would need to do so. Query what discovery could it propound? The fee bills are
26 completely unredacted, and at over 140 single-spaced pages, likely of sufficient detail to
27 advise of the work performed.

28 ² In its Application, District 40 quotes a portion of paragraph VIII.D.3 in the
Settlement Agreement (at page 20), apparently in support of the implied assertion that the
Settlement Agreement strips it of a legal claim or right. As the rest of the quoted
sentence makes apparent, the Settling Defendants’ relief from attorneys’ fees and costs is
solely to the Class and Class Counsel. Nothing in the Agreement limits the rights as
being Settling and Non-Settling Defendants.

1 asked to pay.³ Until then, absent authority to object, which they do not cite, they have no
2 standing to oppose the instant fee motion, and thus no standing to pursue this
3 Application.

4 **C. Even if District 40 Did Have a Right to Oppose, It Is In Not Prejudiced**

5 The Motion for Final Approval and supporting paperwork was filed on Friday,
6 November 15, 2013. The Motion for Approval of an Award of Fees was filed on Sunday,
7 November 17. The opposition papers are due to be filed on November 26, 2013, with
8 reply papers due December 4, 2013. When District 40 announced its need for additional
9 time, Class Counsel responded by providing five additional days, through and including
10 December 1, giving District 40 two weeks to prepare its opposition:

11 Jeff,

12 There are 143 pages of billing records. If you need more time, I have already
13 offered you two days into our reply period. I'll go a bit further and give you to
14 December 1, so long as your papers are filed by the end of the day. That gives you
15 ten more days, and fourteen total, which should be more than ample time. If you
16 would like to take us up on this offer, we would need to memorialize that in a
17 stipulation.

18 We are not postponing the fairness hearing date as the class has already been given
19 notice of that date. The non-Settling Defendants have no standing to challenge (at
20 least at this time), the fee motion on substance, so you should be focusing on
21 Doug's motion. If you want to talk further on this, give me a call.

22 (McLachlan Decl. Ex A (Nov. 21, 2013 e-mail from M. McLachlan to J. Dunn).)

23 Hence, even if it did have standing to oppose the motion, which it does not,
24 District 40 has plenty of time to do so – and even more so had it agreed to take Class
25 Counsel up on its offer instead of filing this Application (which offer still stands). Most
26 important to the assessment of the request is the fact that District 40 is not entitled to

27 ³ The Application is founded on a flawed premise that, assuming District 40 even
28 had standing, it is entitled to extensive scrutiny of the fee bills in question. Indeed, the
motion for approval of attorneys' fees does not require the support of detailed billing
records, and hence there is not inherent right for a party to comb through such records for
days on end. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)

1 conduct an exhaustive analysis of the fee bills in question, even if it had standing to try.
2 The California Supreme Court has on multiple occasions made clear that the analysis of
3 an attorney fee motion is not to be an exhaustive analysis of the minutia of fee bills:

4 “We do not want ‘a [trial] court, in setting an attorney’s fee, [to] become
5 enmeshed in a meticulous analysis of every detailed facet of the professional
6 representation. It . . . is not our intention that the inquiry into the adequacy of the
7 fee assume massive proportions”

8 (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1098, quoting *Serrano v. Unruh*
9 (1982) 32 Cal.3d 621, 642.)

10 **D. The Application Grossly Over-Reaches**

11 The Application requests that the hearing on the Motion for Final Approval be
12 continued notwithstanding the fact that there is no question that it was timely filed.
13 Notice has been given to the Class through direct mail and publication at a cost of more
14 than \$12,000. (McLachlan Decl. ¶ 4.) District 40 cites no authority whatsoever for
15 continuing this timely-filed motion, upon which it has made no suggestion of a need for
16 discovery.

17 **III. CONCLUSION**

18 For the foregoing reasons, the Application should be denied and the final approval
19 hearing should remain on calendar for December 11, 2013.

20 DATED: November 25, 2013

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

21
22
23
24
25 By: _____
26 Michael D. McLachlan
27 Attorneys for Plaintiff
28

1 **DECLARATION OF MICHAEL D. MCLACHLAN**

2 I, Michael D. McLachlan, declare:

3 1. I make this declaration of my own personal knowledge, except where stated
4 on information and belief, and if called to testify in Court on these matters, I could do so
5 competently.

6 2. The Settlement Agreement in question provides for a negotiated and
7 stipulated sum-certain for attorney fees and costs, which were agreed to reasonable by the
8 Settling Defendants as a means to controlling their risk of a potentially much larger
9 adverse fee award, and to limit future exposure to legal fees.

10 3. On November 21, I offered to provide District 40 with an additional five
11 days' time to oppose the motion for fees, if they were going to insist on doing so.
12 Attached as Exhibit A is a true and correct copy of my e-mail containing this offer, which
13 still remains open. I felt obliged to extend this additional time because the motion for
14 approval of the award of fees was filed two days after the motion for final approval. In
15 the very early hours of November 15, I sustained a serious back injury and was unable to
16 sit for walk for nearly three days, hence causing the delay in filing of the yet unfinished
17 fee motion, which I filed on Sunday November 17.

18 4. Notice has been mailed to the Class, and provided through newspaper
19 publication, for the final approval hearing on December 11, 2013 in San Jose, California.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed this 25th day of November, 2013, at Los Angeles,
22 California.

23
24 _____
25 Michael D. McLachlan
26
27
28

Exhibit A

Mike McLachlan

From: Mike McLachlan
Sent: Thursday, November 21, 2013 5:24 PM
To: 'Jeffrey Dunn'
Cc: Wellen, Warren; Wendy Wang; Thomas S. Bunn III (TomBunn@lagerlof.com); Doug Evertz (DEvertz@murphyvertz.com); Keith Lemieux (keith@Lemieux-Oneill.com); Bradley T. Weeks Esq. (Brad@charltonweeks.com); John Tootle (jtootle@calwater.com); Steve Orr; Dan Oleary
Subject: RE: AV - Wood Class motion for approval of attorney fees and costs

Jeff,

There are 143 pages of billing records. If you need more time, I have already offered you two days into our reply period. I'll go a bit further and give you to December 1, so long as your papers are filed by the end of the day. That gives you ten more days, and fourteen total, which should be more than ample time. If you would like to take us up on this offer, we would need to memorialize that in a stipulation.

We are not postponing the fairness hearing date as the class has already been given notice of that date. The non-Settling Defendants have no standing to challenge (at least at this time), the fee motion on substance, so you should be focusing on Doug's motion. If you want to talk further on this, give me a call.

Mike McLachlan

Law Offices of Michael D. McLachlan, APC
10490 Santa Monica Boulevard
Los Angeles, CA 90025
Office: 310-954-8270
Fax: 310-954-8271

From: Jeffrey Dunn [<mailto:jeffrey.dunn@BBKLAW.COM>]
Sent: Thursday, November 21, 2013 5:01 PM
To: Mike McLachlan
Cc: Wellen, Warren; Wendy Wang; Thomas S. Bunn III (TomBunn@lagerlof.com); Doug Evertz (DEvertz@murphyvertz.com); Keith Lemieux (keith@Lemieux-Oneill.com); Bradley T. Weeks Esq. (Brad@charltonweeks.com); John Tootle (jtootle@calwater.com); Steve Orr
Subject: AV - Wood Class motion for approval of attorney fees and costs

Mike,

District No. 40 needs additional time to review the approximately 170 pages of billing records that you and Dan submitted. In the light of the voluminous records and the fact that these documents were not posted until days after they were ordered by Judge Komar to be posted, will you stipulate to postponing the Final Fairness Hearing to a later date so that we can have the needed additional time to review the attorneys' fees and costs?

If you are unwilling to postpone the Final Hearing Date, we may submit an ex parte application to do so. Additionally, the Wood Class's Motion for Approval of Award of Attorney Fees and Costs did not comply with the statutory notice requirement and the court's order. The motion should be denied on those grounds. Please let me know your decision as soon as possible. Thanks.

Thanks, Jeff.

Jeffrey V. Dunn, Esq.
Best Best & Krieger LLP
18101 Von Karman Avenue, Suite 1000 | Irvine, CA 92612
Direct: (949) 263-2616 | Cell: (714) 926-5491 | jeffrey.dunn@bbklaw.com

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