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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

Lead Case No. BC 325201

Case No.: BC 391869

**MOTION FOR ORDER SETTING
PARAMETERS FOR
TERMINATION OF SMALL
PUMPER CLASS COUNSEL'S
APPOINTMENT AS CLASS
COUNSEL**

1 **I. INTRODUCTION**

2 This case presents a highly unusual scenario whereby the Court will retain
3 jurisdiction over the Judgment in perpetuity, even after the Judgment becomes
4 final after appeal. Given that Class Counsel are both natural persons, they
5 cannot represent a Class in perpetuity, even if they desired to do so. For this
6 reason, Class Counsel seeks an order from this Court that the duties of Class
7 Counsel to the members of Small Pumper Class shall terminate upon the
8 Judgment becoming final for appellate purposes.

9 **II. PERTINENT FACTS**

10 On September 2, 2008, the Court issued its order certifying the Small
11 Pumper Class action. [D.E. 1865.] In that Order, the Court appointed the Law
12 Offices of Michael D. McLachlan, APC, and the Law Office of Daniel M. O’Leary
13 as counsel for the Class. On December 28, 2015, the Court entered Judgment in
14 these coordinated proceedings. [D.E. 11021.] This judgment included a final
15 judgment for *Wood v. Los Angeles County Waterworks District No. 40 et al.*
16 [D.E. 11025.]

17 At least four parties have filed notices of appeal to the master Judgment,
18 and the appellate process has commenced.

19 **II. ARGUMENT**

20 Neither the California Rules of Court nor existing case law address the
21 issue of termination of Class Counsel’s role under the set of procedural facts set
22 forth above. Indeed, the law makes little mention of this issue – almost certainly
23 because every class case eventually becomes final at the trial court level, either
24 by dismissal or judgment.

25 It is clear that class counsel “owe absent class members a fiduciary duty to
26 protect the absentees’ interests throughout the litigation.” (*Barboza v. West*
27 *Coast Digital GSM, Inc.* (2009) 179 Cal. App.4th 540, 546; *Janik v. Rudy,*
28 *Exelrod & Zieff* (2004) 119 Cal.App.4th 930, 938.) The trial court, “as the

1 guardian of the rights of the absentees, is vested broad administrative, as well as
2 adjudicative power.” (*Greenfield v. Villager Indus., Inc.* (3d Cir. 1973) 483 F.2d
3 824, 832.) Just as the Court is required to issue orders certifying a class (C.R.C.
4 3.765), so too does it have the power to amend such orders as necessary. (C.R.C.
5 3.765 & 3.767(b).)

6 Here, the Judgment will become final at some point, but its
7 administration through the watermaster and this Court, will continue in
8 perpetuity. There must be some clearly defined terminus to the continued
9 representation of the Small Pumper Class by Class Counsel. Class Counsel
10 believe the end of their representation should be the point in time when the
11 Judgment becomes final. Obviously, Class Counsel will continue to litigate the
12 matter for the Class during the appeals. After the Judgment is final, the
13 watermaster takes a primary role in management and reporting to the Class,
14 including on issues impacting the Small Pumpers. The Judgment contains
15 necessary provisions for protecting the Small Pumpers interests, including
16 specific notice provisions for the Class (Judgment and Physical Solution §
17 18.4.4.) In this fashion, the Judgment provides for the ongoing means for the
18 Court to supervise the Small Pumpers through the direct administrative arm of
19 the watermaster.

20 For these reasons, Class Counsel request an order that terminates the
21 role of Class Counsel upon finality of the Judgment.

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23 DATED: March 9, 2016

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24
25
26 By: _____
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