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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
(Honorable Jack Komar)

Lead Case No. BC 325201

Case No.: BC 391869

**NOTICE OF MOTION AND
SUPPLEMENTAL MOTION FOR
AWARD OF ATTORNEY FEES
AND COSTS**

**[filed concurrently with
Declarations of Michael D.
McLachlan, Daniel M. O'Leary]**

Location: Room 222
Stanley Mosk Courthouse
Los Angeles, California
Date: July 20, 2016
Time: 10:00 a.m.

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 20, 2016, at 1:30 p.m., or as soon
3 thereafter as the matter may be heard, at 111 North Hill Street, San Jose,
4 California, in Room 222, Richard Wood moves for approval of a supplemental
5 award of attorney fees and costs.

6 Plaintiff brings this motion pursuant to California Code of Civil Procedure
7 section 1021.5 and 1033.5 et seq.

8 The Motion is based on this Notice, the Memorandum of Points and
9 Authorities, the Declarations of Michael D. McLachlan (served January 1, 2014,
10 January 27, 2016, March 11, 2016, March 25, 2016, and June 27, 2016), the
11 Declarations of Daniel M. O'Leary (January 27, 2016, March 29, 2016, and June
12 27, 2016), the Declaration of Richard M. Pearl (January 27, 2016), the
13 Declaration of David B. Zlotnick (same), the various documents attached thereto,
14 the records and file herein, and on such evidence as may be presented at the
15 hearing of the Motion.

16
17 DATED: June 27, 2016

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

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20 By: _____
21 MICHAEL D. MCLACHLAN
22 Attorneys for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Richard Wood (“Plaintiff”) requests approval of a supplemental
4 award of attorneys’ fees for the period of January 27, 2016 through the date of
5 hearing on this Motion as against the eight Non-Settling Defendants: California
6 Water Service Company, Desert Lake Community Services District, Littlerock
7 Creek Irrigation District, Los Angeles Waterworks District No. 40 (“District 40”),
8 North Edwards Water District, Palm Ranch Irrigation District, Quartz Hill Water
9 District , and the City of Palmdale (collectively, the “Settling Defendants”).¹

10 By its Order of April 25, 2016, the Court granted Plaintiffs earlier motion
11 for fees and costs, with the issue of costs pending further hearing at the same
12 time as this supplemental fee motion. Much of the evidence submitted in support
13 of that earlier fee motion is relevant to this one. Given the voluminous nature of
14 that material as well as the record in this case as well, Plaintiff will not re-attach
15 those earlier declarations, and will not re-argue legal issues resolved by the
16 Court’s April 25, 2016 Order, e.g. issues bearing on entitlement to attorneys’ fees,
17 prevailing party status and the like. Plaintiff rely upon and incorporate reference
18 the earlier Declarations and documentary evidence, and in particular the
19 evidence related to billing rates, including the following declarations: Michael D.
20 McLachlan (served January 1, 2014 , January 27, 2016 [D.E. 11144], March 11,
21 2016 [D.E. 11279], March 25, 2016 [D.E. 11355]); Daniel M. O’Leary (January 27,
22 2016 [D.E. 11145] and March 29, 2016 [D.E. 11364]); the Declaration of Richard
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24
25 ¹ In 2013, the Class settled with the following Defendants: City of
26 Lancaster, Palmdale Water District, Phelan Piñon Hills Community Services
27 District, and Rosamond Community Services District. Pursuant to the 2015
28 Stipulation for Entry of Judgment, which has been approved by the Court under
the master judgment, these Settling Defendants are not subject to this fee motion.
Per the terms of the 2015 Settlement, the City of Palmdale is not subject to
attorneys’ fees or costs because it dropped its prescription claims in 2008.

1 M. Pearl (January 27, 2016 [D.E. 11146]; and the Declaration of David B. Zlotnick
2 (same [D.E. 11148])).

3 Class counsel now seeks approval of an award of attorney's fees with a
4 lodestar totaling \$204,485.75, as well as additional costs of \$1,838.37.

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6 **II. RELEVANT FACTS**

7 **A. Attorneys' Fees and Costs Incurred.**

8 From January 27, 2016 to date, Michael McLachlan has incurred 207.8
9 hours of attorney time and 34.9 paralegal hours. (McLachlan Decl., ¶ 10, Ex. 2.)
10 Mr. O'Leary has worked at additional 45.3 hours. (O'Leary Decl. ¶ 3, Ex. 1.) We
11 also retained attorney Richard M. Pearl to assist with certain aspects of the initial
12 fee motion, and he worked 9.15 hours at a total cost of \$7,091.25. (McLachlan
13 Decl., ¶ 10, Ex. 3.) Class Counsel reasonably anticipate that they will spend
14 another 15 hours opposing the motion to tax costs, preparing reply papers on this
15 motion, and attending the hearing. Those future hours have been split this
16 evenly in the table below.

17 Based on the foregoing, Plaintiff requests approval of a total of 269.7 hours
18 of attorney time, including the time incurred by Mr. Pearl (whose experience and
19 qualifications are summarized in his January 27, 2016 declaration [Dkt. No.],
20 and 34.9 hours of paralegal time. The fee request is summarized as follows:

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TIMEKEEPER	TOTAL HOURS	HOURLY RATE	TOTAL
Michael D. McLachlan	207.8	\$720	\$155,016
Daniel M. O'Leary	52.8	\$720	\$38,016
Richard M. Pearl	9.15	\$775	\$7,091.25
Paralegals	34.9	\$125	\$4,362.5
TOTAL			\$204,485.75

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1 Plaintiff also seeks award of additional costs of \$1,838.37. (McLachlan
2 Decl., ¶ 11, Ex. 4; O’Leary Decl., ¶ 4.)
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5 **III. ARGUMENT**

6 As noted above, the Court has already ruled that Plaintiff is a prevailing
7 party for the purpose of awarding attorneys’ fees. The Court is also familiar with
8 the lodestar methodology, which was briefed in the earlier fee motion, so Plaintiff
9 will not address that again here, other than to note that the lodestar standard is
10 the applicable to this motion as well. Consequently, Plaintiff will restrict the
11 argument here to the law related to the time at issue in this Motion.

12 **A. An Award of Fees And Costs Is Appropriate.**

13 It is well established that a prevailing party is entitled to attorneys’ fees for
14 time spent litigating the fee claim. (*Serrano v. Unruh (Serrano IV)* (1982) 32
15 Cal.3d 621.) As a matter of policy, the court held that to deny fees for fee-related
16 services would permit the fee to “vary with the nature of the opposition.” (*Id.* at
17 638.) The court stated that a defendant “cannot litigate [a fee motion]
18 tenaciously and then be heard to complain about the time necessarily spent by
19 the plaintiff in response.” (*Ibid.*; see also *Graham v. DaimlerChrysler Corp.*
20 (2004) 34 Cal.4th 553, 581 (expressly reaffirming the rule of *Serrano IV*);
21 *Ketchum v. Moses* (2001) 24 Cal.4th 1122 (same); *612 South LLC v. Laconic*
22 *United Partnership* (2010) 184 Cal.App.4th 1270, 1284 (court must consider fees
23 incurred after fee motion filed).) “Absent unusual circumstances, [a plaintiff is]
24 entitled to recover compensation for all the hour its attorneys spent prosecuting
25 the attorney fees motion.” (*Hogar Dulce Hogar v. Community Dev. Comm’n*
26 (2007) 157 Cal.App.4th 1358, 1371.)

27 Here, the opposition briefs totaled nearly 45 pages, and were accompanied
28 by many substantive declarations. Given that, and the eight years of time at
issue, the 30-page reply brief and additional fee-related work is entirely

1 appropriate and should be compensated in full. Similarly, work not expressly
2 related to the fee motion is all necessary are reasonable the ongoing
3 representation of the Class, and should be compensated in full.

4 **B. The Court Should Apply Current Market Rates.**

5 It is well established the Courts must use market rates in the lodestar
6 analysis. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122; *PLCM Group, Inc. v. Drexler*
7 (2000) 22 Cal.4th 1084, 1094.) To determine reasonable market value, courts
8 must determine whether the requested rates are “within the range of reasonable
9 rates charged by and judicially awarded comparable attorneys for comparable
10 work.” (*Children’s Hosp. & Med. Ctr. V. Bonta* (2002) 97 Cal.App.4th 740, 783.)²

11 The hourly rate of \$720 an hour is below what could be requested in the
12 current market rates, but is entirely reasonable in light of current rates being
13 charged and awarded.³ (Pearl Decl. ¶¶ 10-15; McLachlan Decl. (June 27, 2016), ¶¶
14 14-20; McLachlan Decl. (January 27, 2016) ¶ 42.)

15 The Pearl Declaration and Exhibits contain a substantial amount of
16 evidence regarding market rates. (at ¶¶ 10-14.) Indeed, \$720 per hour is a lower
17 rate than those of many firms in Los Angeles. (Pearl Decl., ¶ 12, Ex. C.) The 2013
18 fees survey for Ty Metrix/Legal Analytics found that third quartile partner rates
19 in 2012 were \$812 per hour – nearly one hundred dollars higher. (Pearl Decl., ¶
20 12, Ex. D.) Average partner rates for big firms in 2013 were \$880 per hour. (*Id.*,
21 Ex. E.) Additional materials on market rates are included in the McLachlan
22 Declaration (June 27, 2016), at paragraphs 14 to 19 and Exhibits 5 through 11.

24 ² Historic rates can only be used if there is an enhancement to the lodestar,
25 i.e. fee awards must be based on current rates and should compensate for the
26 delay in payment. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553,
583; *Perdue v. Kenny A.* (2010) 559 U.S. 542, 555.)

27 ³ Over a year ago, Mr. McLachlan was approved by the Central District of
28 California at a rate of \$690 in a class context. (McLachlan Decl. (January 27,
2016), ¶ 42.) The rate of \$720 per hour is an upward adjustment of just over 4%
over that Court-approved rate of \$690 per hour.

1 **C. The Recent Litigation Costs Should Also Be Awarded.**

2 Class counsel has incurred new and additional litigation costs totaling
3 \$1,838.37. (McLachlan Decl., ¶ 11, Ex. 4; O’Leary Decl., ¶ 4.) All of these costs
4 are standard items incurred and charged in litigation, and the Court should
5 award them under Section 1033.5.

6 **D. Allocation of Fees and Costs Among the Defendants.**

7 As noted in the reply to the Motion for Clarification of the initial attorney
8 fee order [D.E. , the Stipulation for Entry of Judgment establishes that pure
9 several liability is not appropriate here. Plaintiff should not bear the burden if
10 one of the defendants fails to pay the fee award. There is no entitlement to
11 apportionment of a fee award under Section 1021.5. (*Friends of the Trails v.*
12 *Blasius* (2000) 78 Cal.App.4th 810, 837-838.)

13 Treating the *Code of Civil Procedure* section 1021.5 obligation of more than
14 one opposing parties as joint is consistent with the purposes of that statute.

15 If the obligation is apportioned in the sense that it is not joint the
16 successful party faces greater difficulty in collection of the judgment for
17 attorney’s fees and some of the attorney’s fees will not be recoverable if any
18 opposing party is insolvent.

19 (*Id.* at 838.)

20 For these reasons, the Court should make the award joint, not several.

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22 **IV. CONCLUSION**

23 For all of the foregoing reasons, Plaintiff Richard Wood requests that the
24 Court approve the supplemental award of attorneys’ fees in the amount of
25 \$204,485.75, as well as additional costs of \$1,838.37.

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DATED: June 27, 2016

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

By: _____
MICHAEL D. MCLACHLAN
Attorneys for Plaintiff and the Class