BEST BEST & KRIEGER LLP
ERIC L. GARNER, Bar No. 130665
JEFFREY V. DUNN, Bar No. 131926
WENDY Y. WANG, Bar No. 228923
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612
TELEPHONE: (949) 263-2600
TELECOPIER: (949) 260-0972
Attorneys for Cross-Complainant
LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40

OFFICE OF COUNTY COUNSEL
COUNTY OF LOS ANGELES
MARY WICKHAM, BAR NO. 145664
COUNTY COUNSEL
WARREN WELLEN, Bar No. 139152
PRINCIPAL DEPUTY COUNTY COUNSEL
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012
TELEPHONE: (213) 974-8407
TELECOPIER: (213) 687-7337
Attorneys for Cross-Complainant
LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40

EXEMPT FROM FILING FEES UNDER GOVERNMENT CODE SECTION 6103

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:
Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Los Angeles, Case No. BC 325201;
Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Kern, Case No. S-1500-CV-254-348;
Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. City of Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior Court of California, County of Riverside, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668
Rebecca Lee Willis v. Los Angeles County Waterworks District No. 40, et al., Superior Court of California, County of Los Angeles, Case No. BC364533
Richard Wood v. Los Angeles County Waterworks District No. 40, et al., Superior Court of California, County of Los Angeles, Case No. BC391869

Judicial Council Coordination Proceeding No. 4408

CLASS ACTION

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

REPLY IN SUPPORT OF MOTION TO STRIKE, OR IN THE ALTERNATIVE TAX, COSTS; SUPPLEMENTAL DECLARATION OF JEFFREY V. DUNN

Date: July 28, 2016
Time: 10:00 a.m.
Dept.: Room 222

After failing to meet the procedural requirements for a timely memorandum of costs, the Wood Class only now claims that it is entitled to costs under contract and Code of Civil Procedure section 1032 et seq.[1] As discussed in the Motion and below, there is no basis for the Wood Class to recover costs.

I. THE WOOD CLASS HAS NO CONTRACTUAL CLAIM TO COSTS

It is important to note that the Wood Class never requested costs pursuant to contract. When the Wood Class filed its Motion for Award of Attorneys' Fees, Costs and Incentive Award on January 27, 2016, it based the motion solely on section 1021.5. (Supplemental Declaration of Jeffrey V. Dunn ("Dunn Suppl. Decl."), Ex. "G" ["Plaintiff brings this motion pursuant to California Code of Civil Procedure section 1021.5."]) The Wood Class neither brought its motion or even cited section 1032 et seq. nor claimed a contractual right to costs in its initial motion. (*Id.*) Only in an opposition to this motion does the Wood Class seek costs under section 1032 et seq., after the Court determined that there is no right to recover costs under section 1021.5. (Dunn Decl., Ex. "B" at pp. 14-15.)

Even if the Wood Class had sought costs pursuant to section 1032 et seq., the Wood Class could not establish a contractual right to costs to unallowable costs under the Code of Civil Procedure because the settlement stipulation between the Moving Parties[2] and the Wood Class provides:

> The Settling Parties understand that Small Pumper Class counsel intend to seek an award of their fees and costs from the Court at the time set for the Final Approval Hearing. **Any such awards will be determined by the Court unless agreed to by the Settling Parties.** Settling Defendants will likely oppose the motion for attorneys' fees and costs. (Dunn Suppl. Decl., Ex. "H" at p. 11 [emphasis added].)

[1] Unless otherwise specified, all section references are to the Code of Civil Procedure.

[2] The Moving Parties are Los Angeles County Waterworks District No. 40 ("District No. 40"), Quartz Hill Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, and North Edwards Water District.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

Contrary to the Wood Class contention, Moving Parties did not agree to pay for "all reasonable costs incurred by Class Counsel." (Opposition at p. 2.) Rather, Moving Parties stipulated that, in the absence of a contractual agreement to pay certain costs, the Wood Class could apply for costs in accordance to law and Moving Parties will pay such amounts as the law deems it to be their responsibility. (Dunn Suppl. Decl., Exs. "H" & "I".)

Even assuming *arguendo* that the Wood Class properly and timely moved to recover costs pursuant to contract, Moving Parties never agreed to pay unreasonable costs or costs after the judgment is entered. (See, e.g., Dunn Suppl. Decl., Ex. "I" at p. 4 [Amended Stipulation for Entry of Judgment] ["The Public Water Suppliers], which includes parties other than the Moving Parties,] and no other Parties to this Stipulation **shall pay all reasonable Small Pumper Class attorneys' fees and costs through the date of the final Judgment in the Action, in an amount either pursuant to an agreement reached between the Public Water Suppliers and the Small Pumper Class or as determined by the Court**."] [emphasis added].)

The Court should not award any costs based on a contractual claim as the Wood Class failed to assert that claim by a noticed motion and the Wood Class has not and cannot establish a contractual right to costs. Nonetheless, if the Court is inclined to award any costs based on a contractual claim, the Court should tax all post-judgment costs, and all unsubstantiated, unreasonable, or unnecessary costs.

II. THE WOOD CLASS FAILED TO SATISFY PROCEDURAL REQUIREMENTS TO RECOVER COSTS

A. The Declarations Are Insufficient to Meet the Requirements of Sections 1032 et seq.

At the core of the Wood Class' excuse for not complying with the requirements of sections 1032 et seq., is its use of declarations in lieu of memorandum of costs. However, such argument is flawed for several reasons.

First, while the use of judicial council forms may be optional, any party requesting for costs under sections 1032 et seq., must submit a "Memorandum of Costs", which the Wood Class did not do until May 11, 2016—135 days after the entry of the final judgment and the Small

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

Pumper judgment.[3] (Code Civ. Proc. § 1034, subd. (a) ["Prejudgment costs allowable under this chapter shall be claimed and contested in accordance with rules adopted by the Judicial Council."]; Rules of Court, Rule 3.1700, subd. (a) ["A prevailing party who claims costs must serve and file **a memorandum of costs**"] [emphasis added].)

The Wood Class relies on *Kaufman v. Diskeeper Corp*. (2014) 229 Cal.App.4th 1, 9 ("*Kaufman*") for its contention that a memorandum of costs is not required. However, the issue in *Kaufman* is whether a memorandum of costs **that is required under Rule 3.1700 for trial costs** is also required under Rule 3.1702 for attorney fees. (*Id.*) The *Kaufman* court held that under Rule 3.1702, a memorandum of costs is not required for a request for an award of contractual attorney's fees, and supports a strict reading of Rule 3.1700. (*Id.* ["Here, rules 3.1700 and 3.1702 establish distinct procedures for asserting and contesting claims within their scope: whereas the former rule imposes relatively brief periods for the filing of a memorandum of costs and motion to tax costs, the latter rule affords a much longer period for the filing of a motion for attorney fees in unlimited civil actions."].) Hence, the declarations may not be filed in lieu of memorandum of costs.

Second, the declarations of Messrs. Daniel O'Leary and Michael McLachlan cannot constitute memoranda of costs as they lack the required information that a memorandum of costs must contain, such as the purpose for which the costs are incurred. (Dunn Decl., Ex. "E" [approximately half of the entries do not specify the purpose of the costs] & "F" [several entries are merely listed with the date, the amount, and "General Journal" as the description of the costs].) In comparison, the Judicial Council requires information such as the name of the vendor paid, the date the costs were incurred, and the purpose for which the costs were incurred. (See Judicial Council Form MC-010; McLachlan Decl., Ex. 1.) Without such information, neither the Moving Parties nor the Court can determine whether the Wood Class is entitled to such costs. (See *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131 ("*Nelson*") [the costs must appear proper on its face].) Such details are especially important as the Wood Class admits in its

[3] The Motion to Strike, or in the Alternative Tax, Costs, mistakenly states that the memorandum of costs was filed 231 days after entry of judgment.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

opposition that it is seeking costs prohibited under section 1033.5. (E.g., Opposition at p. 9 [photocopying charges unrelated to trial exhibits, which are prohibited under section 1033.5, subdivision (b)(3)].)

Third, even if declarations may be submitted in lieu of memorandum of costs, they were not timely submitted. The Declaration of Mr. O'Leary was submitted on January 27, 2016—30 days after notice of entry of the final judgment were served—and the Supplemental Declaration of Mr. McLachlan was not submitted until March 11, 2016—74 days after notice of entry of judgment were served. (Dunn Decl., Exs. "E" & "F".) While courts may set briefing schedule for motions filed pursuant to section 1021.5, they lack the authority to extend filing deadline under sections 1032 et seq. for more than 30 days. (Rules of Court, Rule 3.1700, subd. (b)(3); *Hydratec, Inc. v. Sun Valley 260 Orchard & Vineyard Co.*(1990) 223 Cal.App.3d 924, 929 ["The time provisions relating to the filing of a memorandum of costs, while not jurisdictional, are mandatory."].) More importantly, the Wood Class never sought an extension of deadlines set forth under sections 1032 et seq. (Dunn Suppl. Decl., Ex. "K" [Wood Class requested for an extension of filing date for "Motion for Attorneys' Fees and Award of Incentive Payment", but not for costs].) Even if the Wood Class did make such a request and even if the Court had granted the permitted 30 days extension, Mr. McLachlan's supplemental declaration for costs should have been filed by February 11, 2016 (45 days after notice of entry of judgment was served). Thus, costs should not be awarded.

B. <u>The Deadline to File a Memorandum of Costs Is 15 Days</u>

In its attempt to justify a belated memorandum of costs, the Wood Class applied a tortured reading of Rule 3.1700 to imply that the deadline to file is 180 days instead of 15 days. Rule 3.1700, subdivision (a)(1) provides: "A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first. " The 180 days deadline is invoked only if there is no notice of entry of judgment; otherwise, the 15-day deadline applies. Here, the Notice of Entry of Judgment was

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

served to all parties on December 28, 2015. The omission of the Wood Class action from the judgment's caption was a clerical mistake that has been corrected *nunc pro tunc*. (Dunn Suppl. Decl., Ex. "J.")

Furthermore, it is unfair for the Wood Class to claim that the Notice of Entry of Judgment was defective, when the Wood Class was well aware that the judgment was entered in 2015, especially since it was the Wood Class counsel that filed the Judgment Approving Small Pumper Class Action Settlements on December 28, 2015. The cases cited by the Wood Class are inapposite as they do not apply to the factual circumstances here and contradict the Wood Class' contention. (See *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 905 ["No document entitled 'Notice of Entry' exists."]; *Sunset Millennium Associates, LLC v. Le Songe, LLC* (2006) 138 Cal.App.4th 256, 260 ["It is established law that a technical defect in the notice of entry of judgment cannot be invoked to avoid the rule 2(a) 60-day period for filing a notice of appeal, **unless the defect was arguably so egregious as effectively to preclude any actual notice of entry of judgment**."] [emphasis added] [quotation marks and citation omitted].)

Lastly, the Wood Class failed to cite any authority that supports the court's exercise of discretion in enforcing the 15-day deadline. In the case cited by the Wood Class, *Douglas v. Willis* (1994) 27 Cal.App.4th 287, 290-291, the appellate court upheld the trial court's denial of a section 473 motion for relief from failure to file a motion to tax costs. The *Douglas* court found that the mandatory provision of section 473 does not apply to a costs motion. (*Id.* at p. 290.) Moreover, even if the Court has any discretion to extend the filing deadline for the memorandum of costs under section 473, the Wood Class has yet to file such a motion or submit any evidence that its failure to submit a timely memorandum of costs was due to a justifiable or excusable mistake, inadvertence, or neglect.

III. THE MOTION IS TIMELY

The Wood Class contends that the Moving Parties should have filed their Motion within 15 days after its initial motion for fees was filed. As previously indicated, the Wood Class' January 27, 2016 motion requested for costs under section 1021.5, which the Moving Parties timely responded to in their oppositions. The Moving Parties had no prior notice that the Wood

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

Class will be requesting for costs pursuant to sections 1032 et seq. and, therefore, had no obligation to file a motion to strike or tax costs until the Wood Class submitted the memorandum of costs.

IV. *OLSEN*'S STANDARD FOR PREVAILING PARTY SHOULD BE FOLLOWED

There is no question that the Wood Class failed to obtain any monetary relief. In the absence of such relief, a court must determine if the nonmonetary reliefs obtained by one party are in excess of those obtained by other parties. (*Olsen v. Breeze, Inc.* (1996) 48 Cal.App.4th 608, 627.) The Opposition does not cite to any authority that contradicts the *Olsen* case. The case cited in the Opposition neither discredits *Olsen* nor applies to sections 1032 et seq. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 877 [in determining a prevailing party under section 1717 claim for contractual attorney fees, the court held that "a party who is denied direct relief on a claim may nonetheless be found to be a prevailing party if it is clear that the party has otherwise achieved its main litigation objective."].) As discussed in the Motion and District No. 40's opposition to the Wood Class' supplemental fee motion, it is the Public Water Suppliers, not the Wood Class, that achieved their primary objective in this adjudication.

V. THE WOOD CLASS FAILED TO PROVIDE DETAILS TO SUBSTANTIATE ITS COSTS OR JUSTIFY COSTS THAT ARE PROHIBITED, UNREASONABLE OR UNNECESSARY

As discussed above, the Moving Parties' objections to individual cost entries for being unsubstantiated, unreasonable, unnecessary, or prohibited are not based on whether the Wood Class filed declarations instead of a memorandum of costs. On the contrary, the Moving Parties compared the Wood Class' memorandum of costs with declarations of Messrs. McLachlan and O'Leary and still found them lacking in substance. (See Motion at pp. 4-5 and *infra*, II.A.) Specifically, section 1033.5 allows specific costs and explicitly prohibits other costs. The party requesting the costs must minimally provide sufficient information for the opposing party and the court to determine whether the costs are allowable or prohibited. The appellate court in *Nelson* set forth the applicable standard:

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

> We agree the mere filing of a motion to tax costs may be a "proper objection" to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face. (See *Oak Grove School Dist. v. City Title Ins. Co.* (1963) 217 Cal. App. 2d 678, 698-699 [32 Cal. Rptr. 288].) However, "[i]f the items appear to be proper charges the verified memorandum is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant [citations], and the burden of showing that an item is not properly chargeable or is unreasonable is upon the [objecting party]." (*Id.*, at p. 699qu; see also *Miller v. Highland Ditch Co*. (1891) 91 Cal. 103, 105-106 [27 P. 536].)
>
> **The court's first determination, therefore, is whether the statute expressly allows the particular item, and whether it appears proper on its face.** (Cf. *Ladas v. California State Auto. Assn.*, *supra*, 19 Cal. App. 4th at pp. 774-776.) If so, the burden is on the objecting party to show them to be unnecessary or unreasonable. (*Decoto School Dist. v. M. & S. Title Co.* (1964) 225 Cal. App. 2d 310, 317 [37 Cal. Rptr. 225].) (*Id.*, *supra*, 72 Cal.App.4th at p. 131 [emphasis added].)

Here, neither the memorandum of costs nor the declarations contain sufficient specificity to establish a prima facie case that the requested costs are proper. (See Motion at p. 4; Dunn Decl., Ex. "E" [approximately half of the entries do not specify the purpose of the costs] & "F" [several entries are merely listed with the date, the amount, and "General Journal" as the description of the costs].) Such information is especially important when the Wood Class admits that it is requesting for costs prohibited by statute. (E.g., Opposition at p. 9 [photocopying charges unrelated to trial exhibits, which is prohibited under section 1033.5, subdivision (b)(3); Memo at pp. 3, 5-6 [fees for experts no ordered by the court, postage . . . etc.].) Consequently,

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

any and all unsubstantiated costs, including the $32,232.75 in "other costs" identified in the Motion, should be taxed.

Moreover, the Wood Class failed to cite authority that the prohibited costs identified by the Moving Parties are otherwise allowable. It remains undisputed that the Wood Class is seeking:

1. $2,611.61 in costs incurred after judgment was entered on December 28, 2015 (Motion at p. 5; Opposition at p. 9);
2. $655 in costs related to a writ filing, the purpose and necessity of which the Wood Class has not explained; (Memo at p. 4 [Item 1.g]; Motion at p. 5; Opposition at p. 9);
3. $1,458.40 in deposition costs for Charles Tapia and Mark Ritter, neither of which challenged the physical solution or the Small Pumper Settlement, but fought to have their water rights established or the default judgment against it lifted (Memo at p. 5 [Item 4.e]; Motion at p. 5; Opposition at p. 9);
4. $2,132.70 in prohibited photocopy costs (Memo at p. 6 [Item 13 ($228.51 in class notice copy costs)]; Dunn Decl., Ex. "E" [Exhibit 13 at pp. 3 [$214.23 for copies of writ] & 13 [$1,689.96 (40 percent of the total in house photocopy charges) in photocopies unrelated to trial exhibits]; Motion at p. 5; Opposition at p. 9);
5. $1,717.98 in prohibited postage and Federal Express mailing charges (Memo at pp. 5-6 [Item 13]; Dunn Decl., ¶ 7 & Ex. "E"; Motion at p. 5; Opposition at p. 9); and
6. At least $726.37 in other costs not reasonably necessary to the conduct of the Wood Class litigation (Memo at p. 6 [Items 13]; Dunn Decl., Exs. "E" & "F" [meals]; Motion at p. 5; Opposition at p. 9).

These unallowable costs total $9,302.06.

Moreover, the Wood Class claims that the $1,699 it incurred in FTP storage files are necessary instead of "merely convenient or beneficial." (Opposition at p. 9.) No evidence has been presented as to the actual file size of the electronic files stored on the FTP site.

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

Additionally, the Wood Class has failed to explain why these electronic files cannot be stored, and subsequently transferred, on a USB drive or an external hard drive, the costs of which are significantly less than the maintenance of a FTP storage site.

The Wood Class also implied that the Court ordered the deposition of Dr. Williams and, hence, the $1,625 in expert fees are not prohibited. (Opposition at p. 9.) This argument fails as the Court did not issue such an order. A case management order that permits the deposition of experts is merely that—a permission to proceed. This Court did not order the Wood Class to take the deposition of Dr. Williams. Furthermore, Dr. Williams is not an expert "ordered by the court." As such, any fees paid to him are not allowable, regardless of the circumstances. (Code Civ. Proc. §1033.5, subd. (b)(1).)

Lastly, in an attempt to minimize the costs to be taxed, the Wood Class contends that most of the $16,119.35 in prohibited costs had been paid for by other parties. Such argument does not hold water. Other parties agreed to pay for costs regardless of whether they are allowable under statute. The Moving Parties did not agree to such payment and should not have to pay for costs not permitted under the law. If the Court is inclined to award costs, the Court should review the costs entries to determine which costs are allowable and then subtracts the paid amount from the total allowable costs.

VI. CONCLUSION

For the foregoing reasons, the Moving Parties respectfully request the Court to strike the Wood Class' request for costs, or in the alternative, tax costs that are unsubstantiated, unreasonable, unnecessary, or prohibited.

Dated: July 21, 2016

BEST BEST & KRIEGER LLP

By: _____

ERIC L. GARNER
JEFFREY V. DUNN
WENDY Y. WANG
Attorneys for Defendant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

SUPPLEMENTAL DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn declare:

1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law.

2. I am an attorney licensed to practice law in the State of California. I am a partner of Best, Best & Krieger LLP, attorneys of record for Los Angeles County Waterworks District No. 40 ("District No. 40").

3. Attached as Exhibit "G" is a true and correct copy of the Wood Class' Notice of Motion and Motion for Award of Attorney Fees, Costs and Incentive Award.

4. Attached as Exhibit "H" is a true and correct copy of an excerpt from the Small Pumper Class Stipulation of Settlement.

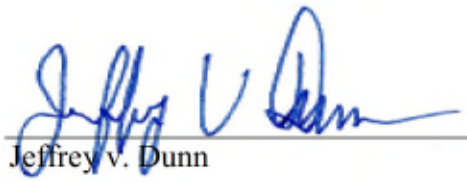
5. Attached as Exhibit "I" is a true and correct copy of an excerpt from the Amended Stipulation for Entry of Judgment and Physical Solution.

6. Attached as Exhibit "J" is a true and correct copy of the Order to Amend Judgment *Nunc Pro Tunc*.

7. Attached as Exhibit "K" is a true and correct copy of the Stipulation re Date for Filing of Motion for Attorneys' Fees.

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

Executed this 21st day of July, 2016, at Los Angeles, California.



Jeffrey V. Dunn

EXHIBIT G

Michael D. McLachlan (State Bar No. 181705)
LAW OFFICES OF MICHAEL D. McLACHLAN, APC
44 Hermosa Avenue
Hermosa Beach, California 90254
Telephone: (310) 954-8270
Facsimile: (310) 954-8271
mike@mclachlan-law.com

Daniel M. O'Leary (State Bar No. 175128)
LAW OFFICE OF DANIEL M. O'LEARY
2300 Westwood Boulevard, Suite 105
Los Angeles, California 90064
Telephone: (310) 481-2020
Facsimile: (310) 481-0049
dan@danolearylaw.com

Attorneys for Plaintiff Richard Wood and the Class

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES _____ RICHARD A. WOOD, an individual, on behalf of himself and all others similarly situated, Plaintiff, v. LOS ANGELES COUNTY 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 MOTION FOR AWARD OF ATTORNEY FEES, COSTS AND INCENTIVE AWARD** **[filed concurrently with Declarations of Michael D. McLachlan, Daniel M. O'Leary, Richard M. Pearl, Richard A. Wood, and David B. Zlotnick]** Location: Dept. TBA Santa Clara Superior Court 191 N. First Street San Jose, California Date: March 21, 2016 Time: 1:30 p.m.

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 21, 2016, at 1:30 p.m., or as soon thereafter as the matter may be heard, at 191 North First Street, San Jose, California, in a department to be determined by the Court, Richard Wood moves for approval of an award of attorney fees, costs and an incentive award.

Plaintiff brings this motion pursuant to California Code of Civil Procedure section 1021.5.

The Motion is based on this Notice, the Memorandum of Points and Authorities, the Declaration of Michael D. McLachlan, the Declaration of Daniel M. O'Leary, the Declaration of Richard M. Pearl, the Declaration of Richard A. Wood, the Declaration of David B. Zlotnick, the various documents attached thereto, the records and file herein, and on such evidence as may be presented at the hearing of the Motion.

DATED: January 27, 2016

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

Michael D. McLachlan

Digitally signed by Michael D. McLachlan
DN: cn=Michael D. McLachlan, o=Law Offices of Michael D. McLachlan, ou, email=mike@mclachlanlaw.com, c=US
Date: 2016.01.27 16:44:10 -08'00'

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After nearly eight years of litigation, through five phases of trial consuming nearly 6,000 hours of attorney time, Plaintiff Richard Wood entered into a Stipulation of Settlement ("Agreement" or "Settlement") with eight Non-Settling Defendants: California Water Service Company, Desert Lake Community Services District, Littlerock Creek Irrigation District, Los Angeles Waterworks District No. 40 ("District 40"), North Edwards Water District, Palm Ranch Irrigation District, Quartz Hill Water District , and the City of Palmdale (collectively, the "Settling Defendants").[1] This Settlement has received final approval from the Court and judgment has been entered.

Class counsel now seeks approval of an award of attorney's fees at a lodestar of $3,348,160, with a multiplier of 2.5, and costs of $75,242.06. Plaintiff also seeks an incentive award in the form of a more complete water right of 5 acre-feet per year or, alternatively, a monetary payment of $25,000.

II. RELEVANT FACTS

A. History of the Small Pumper Class Action

The Court is familiar with the history of this action and the details surrounding the Small Pumper Class (the "Class"). Briefly, Plaintiff Richard Wood ("Plaintiff") filed this action on June 2, 2008 to protect his rights, and those of other Antelope Valley landowners who have been pumping less than 25 acre feet year ("afy") of groundwater from the Antelope Valley Groundwater

---

[1] In 2013, the Class settled with the following Defendants: City of Lancaster, Palmdale Water District, Phelan Piñon Hills Community Services District, and Rosamond Community Services District. Pursuant to the 2015 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.

Basin ("Basin"). Plaintiff filed this action so that he and the members of the Class could continue to extract groundwater from the Basin for reasonable and beneficial use. This action was, in large measure, filed to contest claims of prescriptive rights asserted by the "Settling Defendants." The court certified Class by Order dated September 2, 2008, in which the court defined the Wood Class as:

> All private (i.e., non-governmental) persons and entities that own real property within the Basin, as adjudicated, and that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present. The Class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the representatives, heirs, affiliates, successors-in interest or assigns of any such excluded party. The Class also excludes all persons and entities that are shareholders in a mutual water company.

After three rounds of Class Notice in 2009, 2013, and 2015, as well as a litany of motions to add or drop Class members, the total Class size at judgment was just a few people shy of 4,300.

B. The Litigation

Class Counsel was first contacted about this litigation in the summer of 2007, and subsequently declined to participate for a variety of reasons. (McLachlan Decl., ¶ 44.) Class Counsel for the Willis Class, with some assistance from Mr. McLachlan, tried for eight months to located counsel for the Small Pumper Class, to no avail. (Zlotnick Decl., ¶¶ 5-9; McLachlan Decl. ¶ 45; O'Leary Decl. ¶ 8.)

Ultimately, in May of 2008, Class counsel agreed to represent Richard Wood, and shortly thereafter filed a Complaint on behalf of the Class. Class counsel litigated the matter through at least five phases of trial, and several other related evidentiary hearings, while simultaneously engaging in long-running settlement discussions. The Declaration of Michael D. McLachlan contains a

more detailed summary of the types of work that were performed over these eight years. (¶¶ 8-25.)

C. The Settlements

In 2013, the Class reached a partial settlement with four of the defendants (*see* FN 1, *ante*) on terms substantially similar to the final settlement, but containing less detail on elements of the physical solution than the 2015 Settlement. (McLachlan Decl. ¶ 23.) In 2015, the Class settled with the remaining eight defendants in the *Wood* action, identified above in Section I.

As part of the final settlement, the Settling Defendants released their prescription claims against the Class. The terms of this Settlement were memorialized, in part, in the Judgment and Physical Solution (the "Judgment") entered by the Court in December of 2015. The terms of the Settlement allows larger-producing Class members to pump up to 3 acre-feet of water per year, but does not over-allocate water to the Class because the Class' allocation is predicated on an average water use of 1.2 acre-feet per year (a number closely supported by Mr. Thompson's report). (McLachlan Decl., ¶ 27.) Hence, there is flexibility and respect for the diverse forms of historical water use within the Class. And nearly all of the Class members will be free from any cutbacks or replacement assessments, which cannot be said for any other party but for the United States. The settlement also minimizes the burdensome costs of installing and monitoring meters, and instead leaves the watermaster with a more flexible system whereby the bulk of the smaller water users in the Class can be left alone.

Of particular note is the fact that Class members have substantial protection from future reductions of their water rights, unlike nearly any other overlying party in this adjudication. The Class is not subject to Section 18.5.10 ("Change in Production Rights in Response to Change in Native Safe Yield") of the Judgment because the Class is not listed on Exhibit 3 or 4. (McLachlan Decl., ¶ 28.) There are only three parties in this position: (1) The United States; (2) the

State of California; and (3) the Small Pumper Class. Additionally, the Class has preserved its rights under Water Code section 106, which provides priority to domestic use over farming. (Judgment §§ 5.1 and 5.1.3.1.) These provisions give the Class members a very strong chance of persisting in their way of lives indefinitely into the future, and well-beyond the ability of Class counsel to protect their interests in Court. Class counsel have done everything possible protect the Class members' existing rights, but also to ensure that the Class members are in the best possible position in the future. (*Ibid.*)

D. Attorneys' Fees and Costs Incurred.

Class counsel have worked a total of 5,815.1 attorney hours and incurred 842.6 hours of paralegal time on this case. (McLachlan Decl., ¶ 29; O'Leary Decl., ¶ 3.) In conjunction with the 2013 Settlement and by stipulation of the parties, Class Counsel was paid attorneys' fees totaling $719,829 and costs in the amount of $17,038. (McLachlan Decl., at ¶ 30.) Pursuant to the 2013 settlement, Class Counsel have been compensated for 1276.3 hours of attorney time, and 163.1 hours of paralegal time, leaving a total of 4,538.8 attorney hours and 679.5 paralegal hours at issue in this motion. (*Id.* at ¶ 32.)

To date, Class counsel has incurred a total of $92,280.14 in litigation costs and expenses. (McLachlan Decl., ¶ 33; O'Leary Decl., ¶ 4.) Pursuant to the 2013 settlement, Class counsel were paid $17,038.08 for cost reimbursement by the settling defendants, leaving the total sum at issue in this motion of $75,242.06. (McLachlan Decl., at ¶ 34; O'Leary Decl., ¶ 4.)

Class counsel requests a lodestar rate of $3,348,160, based on hourly rates of $720 for the 4538.8 hours claimed by Plaintiff's two attorney and $110-125 per hour for the 679.5 paralegal hours claimed, as shown in the following chart:

TIMEKEEPER	TOTAL HOURS	HOURLY RATE	TOTAL
Michael D. McLachlan	4,184.9	$720	$3,013,128
Daniel M. O'Leary	353.9	$720	$254,808
Paralegals	314.2	$110	$34,562
Paralegals	365.3	$125	$45,662
TOTAL			**$3,348,160**

The requested hourly rates are reasonable market rates. (Pearl Decl. ¶¶ 10-15; McLachlan Decl. ¶ 42.)

E. The Attorney Fee Multiplier

Class counsel request of multiplier of 2.5. There are a wide array of facts supporting this multiplier request, including (in summary form): the novelty and complexity (McLachlan Decl., ¶¶ 8-25); the excellent outcome for the nearly 4,300 members of the class (¶¶26-28; Wood Decl., ¶ 20); the case's long duration (eight years); the risks of loss and uncertainty (McLachlan Decl., ¶¶ 44-50); the high quality and great efficiency of the work (¶¶ 36-41); the inability to take on other business (¶¶ 51-54); as well as the great personal and financial toll this case has taken on counsel (¶¶ 51-54). (McLachlan Decl., ¶ 43; *see generally*, O'Leary Decl., ¶¶ 5-9; Pearl Decl., ¶¶ 19-28.) In short, this is a highly unique, long-running case of great public importance, and one that was highly undesirable to the pool of available and qualified attorneys' who turned the case down. (Zlotnick Decl., ¶¶ 5-9; McLachlan Decl. ¶ 45; O'Leary Decl. ¶ 8.)

F. Incentive Award to Richard Wood

Richard Wood has represented the Class with the highest possible level of excellence and devotion. (McLachlan Decl., ¶¶ 63-64.) Indeed, in 15 years of class action experience, Class Counsel has never had a single client, nor even a collection of clients, put 2,200 hours and nearly $10,000 of their own money into

a lawsuit without ever uttering single complaint. (*Id.* at 63; Wood Decl., ¶¶ 3-4.) This is unheard of. From start to finish, Richard Wood held fiercely and decisively to the interest of the Class in every detail, and the result we achieve is as much a testament to his refusal to accept anything less than what he believed to be fair. (McLachlan Decl., ¶ 64.) The benefit that he has conferred on the Small Pumper Class and the Antelope Valley as a whole cannot be overstated.

Setting aside the money he spent and time commitment in fighting for the Class, Richard Wood set his own personal interests aside. Mr. Wood has historically pumped more water than the average Class member, and so had some incentive to go it on his own and prove up a larger water right than 3 acre-feet per year. (Wood Decl., 6-19.) He surrendered that right to look out for all the Class Members. (McLachlan Decl., ¶ 64.) Mr. Wood's actual water use varies between 3.5 and 5.0 acre-feet per year – or, in a dry year, about 2 acre-feet above the allocation provided to Class Members in the Judgment. (Wood Decl., ¶ 11.) This water use has been reliably established and is consistent with reasonable and beneficial uses for his property. (*Id.* at ¶¶ 12-19, Exs. 11-13.)

III. ARGUMENT

A. An Award of Fees And Costs Is Appropriate under C.C.P § 1021.5

Attorneys' fees and expenses are recoverable from the Defendants under a "private attorney general" theory pursuant to Code of Civil Procedure § 1021.5. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) Fees and reasonable litigation costs are awardable under the "private attorney general" doctrine embodied in § 1021.5 where: (1) the claims litigated by counsel have vindicated an important right affecting the public interest has been enforced; (2) a significant benefit has been conferred on the general public or a large class of persons; and (3) the necessity and financial burden of private enforcement are such that an award is

appropriate, and, in the interest of justice, the fee should not be paid out of the recovery. (*Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1413.)

For example, in *Beasley*, the plaintiffs recovered excess fee assessments levied against thousands of bank customers. The court found that "such [consumer protection] actions have long been held to be in the public interest." (*Id.* at 1418.) Thus, the court concluded that there was an important interest at stake. (*Id.*) The significance of the benefits is determined from a "realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case." (*Woodland Hills Residents Association v. City Council* (1979) 23 Cal.3d 917, 939; *see Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d. 311, 321 n.10 (action affecting 3,000 persons conferred significant benefit).)

Each of the three criteria for the payment of "private attorney general" fees set forth in § 1021.5 is met in this case. Both the action and the Settlement have vindicated important rights to the use of water, and specifically, the surrender of prescriptive rights that threatened to take the water away from over 4,300 residents of the Antelope Valley. Beyond the Class members, this action created a massive benefit to the public at large, likely in perpetuity, i.e. persons not even born yet will benefit greatly from the stable groundwater basin for generations to come. Without the Class, it cannot be disputed that there would have been no comprehensive adjudication. (See, *e.g.*, McLachlan Decl., Ex. 9, 5:14-6:5 ("The benefit to all others living or owning property in the Antelope Valley is enormous . . .").) There can be little argument that no individual Class member would have stepped up to incur millions of dollars of attorneys' fees to litigate for the Class, as the individual stake of any Class member is comparatively small.

B. The Court Should Grant the Attorney Fee Request in Full.

1. The Legal Framework

California courts approve the use of a lodestar enhanced by a multiplier in awarding attorneys' fees under a statutory fee-shifting approach. (*Dept. of Transportation v. Yuki* (1995) 31 Cal.App.4th 1754; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 954.) The "lodestar and multiplier" approach is also the most common approach used to award fees under the "private attorney general theory."

The baseline of the lodestar method is determined by multiplying the reasonable number of hours expended by the reasonable hourly rate. (*See, e.g.*, *Serrano*, 20 Cal.3d at 48-49.) However, the lodestar is merely the *starting point* for the calculation of reasonable attorneys' fees, and California courts have endorsed turning to factors more subjective than a mere hourly fee analysis to determine the "multiplier" to be applied to counsel's time. (*Rebney v. Wells Fargo Bank* (1991) 232 Cal.App.3d 1344, 1347.) These include the risk of non-payment, delay in counsel's receipt of their fees, the quality of counsel's work and the novelty and difficulty of the issues involved. (*Serrano,* 20 Cal.3d at 49; *Beasley,* 235 Cal.App.3d at 1419-20. *Coalition for Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251 (consideration of additional factors such as risk and skill "required"); *Lealao v. Beneficial California Inc.* (2000) 82Cal.App.4th 19, 42-43 (discussing California's "relatively permissive attitude on the use of multipliers."); *Rader v. Thrasher* (1962) 57 Cal.2d 244, 253 (contingent recovery of fee, "since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable").)

While there is no firm rule concerning multipliers (*Lealao,* 82 Cal.App.4th at 40) the factors generally considered in applying a multiplier include: (1) the time and labor required; (2) the novelty and difficulty of the questions presented;

(3) the requisite legal skill necessary; (4) the preclusion of other employment due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount at controversy and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. (*See generally Serrano*, 20 Cal.3d at 49.)

Many of these factors have been expressly adopted by California courts in one form or another, and nearly all are present in this case, some to a very significant degree. This issue is discussed further below, and covered at length in the McLachlan, O'Leary, Pearl, and Zlotnick Declarations.

2. The Lodestar Amount Requested Is Reasonable

The hours incurred were all reasonable given the monumental scope of this litigation and the eight year duration of the case. Indeed the write-offs, judicious billing, and lack of nearly any double-billing, are plainly evident in the 243 pages of detailed billing records. (Pearl Decl., ¶¶ 16-18; McLachlan Decl., ¶¶ 36-41.)

The total attorney time used in the calculation was 4,538.8 hours (including 30 hours for future work), with 679.5 hours of paralegal time (excluding hours paid in the 2013 settlement). (McLachlan Decl. ¶¶ 29-32.) While the production of detailed billing records is not required for the purpose of awarding legal fees under C.C.P section 1021.5, Class Counsel nevertheless has submitted their complete, unredacted[2] fee bills should the Court wish to examine the work performed in more detail. (McLachlan Decl., Ex. 3; O'Leary Decl, Ex. 1.)

The hourly rate of $720 an hour is slightly below what could be requested in the current market rates, but is entirely reasonable. The Pearl Declaration and Exhibits contain a substantial amount of evidence regarding market rates. (at ¶¶

---

[2] There is a single work-product redaction related to this motion.

10-14.) Indeed, $720 per hour is a lower rate than those of many firms in Los Angeles. (Pearl Decl., ¶ 12, Ex. C.) The 2013 fees survey for Ty Metrix/Legal Analytics found that third quartile partner rates in 2012 were $812 per hour – nearly one hundred dollars higher. (Pearl Decl., ¶ 12, Ex. D.) Average partner rates for big firms in 2013 were $880 per hour. (*Id.*, Ex. E.)

A year ago, Class Counsel was approved by the Central District of California at a rate of $690 in a class context. (McLachlan Decl., ¶ 42.) The rate of $720 per hour is an upward adjustment of just over 4% over that Court-approved rate of $690 per hour.

One of the other methods employed by Courts in assessing an appropriate hourly rate is the Laffey Fee Matrix, which is frequently used in Federal Court's across the County, as well as by California Superior Courts. (*See, e.g.*, *Fernandez v. Victoria Secret Stores, LLC* (C.D. Cal. 2008) 2008 WL 8150856 *14-15 (showing detailed application of the matrix); *Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641, 651 (upholding an hourly rate established by the Laffey Matrix).) The Laffey Matrix is a publicly available and regularly updated study of average hourly billing rates.[3] The Matrix presently lists an hourly rate of $796 per hour for attorneys with 20+ 19 years of experience, and a paralegal rate of $180 per hour, both of which are well in excess of the discounted rates requested.

Furthermore, the Laffey method requires the hourly rate to be adjusted based upon the cost of living in the location where the services were performed, as against the baseline. The cost of living in Los Angeles is approximately 4.37% higher in Los Angeles than the baseline (District of Columbia) and thus the appropriate hourly rate would be in excess of $800 per hour. For these reasons, the rate of $720 is certainly reasonable.

---

[3] www.LaffeyMatrix.com

3. A Multiplier of 2.5 Is Appropriate in this Case.

The contingent risk involved in this case is significant, and is often considered the most important factor in setting a multiplier. (Pearl Decl., ¶ 20.) "It is well-established that lawyers who assume a significant financial risk on behalf of their clients rightfully expect that their compensation will be significantly greater than it would be if no risk or delay was involved, *i.e.*, under the traditional arrangement where the client is obligated to pay for costs and fees incurred on a monthly basis." (*Ibid.*) Attorneys enter into such contingency fee arrangements only if they can expect to receive significantly higher effective hourly compensation in successful cases, particularly in cases that are expected to be hard fought and where the result is uncertain. "That is how the legal marketplace works, and market value fees are the standard that fee-shifting statutes are intended to provide: as the courts have recognized, such arrangements do not result in any "windfall" or undue "bonus" for the attorney; rather, they are "*earned compensation*," reflecting the need for fee awards to mirror the legal services market by compensating attorneys for the risk of non-payment, which in many cases involves thousands of hours of time spent and dollars advanced." (*Ibid.*; *see Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.)

Court-awarded fees that reflect that risk of loss make contingent representation competitive in the legal marketplace. (*Id.* at 1132-1133.) Indeed, that view was affirmed again by the California Supreme Court in *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579, and other cases. (*Building a Better Redondo Beach, Inc. v City of Redondo Beach* (2012) 203 Cal.App.4th 852, 874; *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1251.) For these reasons, a significant lodestar enhancement for contingent risk is necessary in this case to reflect the true and full market value of Plaintiff's attorneys' work.

A fee enhancement is particularly appropriate here because the of the huge amount of time and money invested in the case over an eight year period, with only a small fraction of it being compensated in year six. The several decertification motions, long-running expert witness problems, and many other hostile motions filed throughout the entire span of the case – even after settlement, e.g. the Willis conflict motion – constantly threatened to bring an end to the case. There was also constant opposition to settlement efforts, and one derailed settlement attempt in 2011. But in the face of this, and the extreme financial hardship posed by this case (McLachlan Decl., ¶¶ 57-58), Class Counsel continued to fight. This action also presents exceptional novelty, and complex issues not reflected in any published opinion in U.S. history. The interjection of a class proceeding into a non-class litigation by itself magnified the difficulty of the litigation many fold. The high level of work required significantly impacted counsel's ability to take on other good, paying work. (McLachlan Decl. ¶¶ 51-54.)

Furthermore, it is difficult to dispute that the outcome was excellent for the Class. (McLachlan Decl., ¶¶26-28; Wood Decl., ¶ 20). Under such circumstances, courts frequently apply a multiplier of at least two times the lodestar. (3 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992), § 14.03 at 14-5 fns. 20 & 21 and cases cited therein. *See Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1129-39 (affirming multiplier of 2.0); *see also Vizcaino v Microsoft* (9th Cir. 2000) 290 F.3d 1043, 1051-54, *cert. denied sub nom., Vizcaino v. Waite*(2002) 537 U.S. 1018 (survey of decisions in common fund class action cases showing multipliers between 2 and 4 are common).

A number of relevant cases are discussed in the Pearl Declaration, at paragraphs 27 and 28. Many of these cases have very similar procedural and factual similarities (although none appear to involve litigation of this level of complexity). For example, in *Thompson v. Santa Clara County Open Space Authority* (Santa Clara County Superior Court No. 1-02-CV-804474), the

plaintiffs sued for return of improper special tax assessments County-wide that were imposed by a public agency. (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority*, (2008) 44 Cal.4th 431, 439-40.) In that litigation, which also lasted for eight years, the Court awarded a multiplier of 2.85, finding many of the same enhancement factors present in this case. (Pearl Decl., Exs. G & H.) It would be difficult to argue that the establishment of a permanent right to water is not a more significant public benefit that overturning a relatively small tax assessment. (*See also* McLachlan Decl., Exs. 8 (at 21:22-28), 9 (at p. 5-6), & 11 (at 37:20-38:12).)

Based upon the law and facts of this case, a 2.5 multiplier is entirely justified.[4]

C. The Outstanding Litigation Costs Should Also Be Awarded.

To date, Class counsel has incurred a total of $92,280.14 in litigation costs and expenses. (McLachlan Decl., ¶ 33; O'Leary Decl., ¶ 4.) Pursuant to the 2013 settlement, we have been paid $17,038.08 for cost reimbursement by the settling defendants, leaving the total sum at issue in this motion of $75,242.06. (McLachlan Decl., at ¶ 34; O'Leary Decl., ¶ 4.) All of these costs are standard items incurred and charged in litigation.

D. Allocation of Fees and Costs Among the Defendants.

The attorneys' fees and costs could be awarded jointly and severally as to the seven defendants in question, or the Court could allocate them. The issue of allocation is discussed in more detail in the McLachlan Declaration, at paragraphs 59 to 62. Class Counsel does not have strong feelings about how the

---

[4] As noted above in Section II.E, the facts supporting the award of a multiplier are voluminous, and discussed in more detail in the supporting declarations.

award should be imposed among the Settling Defendants, should they or the Court feel strongly about allocating the total award and incentive payment.

E. Richard Wood Should Be Granted An Incentive Award Commensurate With to the Incredible Level of Service He Has Rendered.

Plaintiff has set the all-time bar for service by a class representative – service levels that will likely stand unsurpassed for as long as the Judgment in this matter lasts. Richard Wood requests an incentive payment of an additional two acre-feet per year production right beyond the 3 acre-feet afforded him under the Judgment. This water right would put afford Mr. Wood a right equal to the water he actually uses (Wood Decl., ¶ 11.), and not put him in worse position than had he not elected to serve his fellow Small Pumpers so admirably.

Since Mr. Wood can reasonably establish this higher than average water use historically, this request is not so much in the vein of an incentive award, but rather a request that he be allowed to establish a water right above that set for the Class. (*Id.* at ¶¶ 12-19, Exs. 11-13.) Since Mr. Wood can reasonably establish this water use history, he could prove such a right. As such, in granting the right to two additional acre-feet per year, assessment free, the Court is not giving Mr. Wood something that he could not have established at law. The fact that this right is not diminished by prescription or rampdown is entirely consistent with the Judgment provisions applicable to all Class Members. Class counsel knows of nothing in the law that prevents the Court from exercising its discretion and equitable powers in this regard, particularly given the fact that Judgment has now been entered for the Class. For these reasons and given incredible level of service Mr. Wood provided to the Class and to the entire Antelope Valley, the request for the additional two acre-feet per year, standing alone, is entirely reasonable.

The Stipulation for Entry of Judgment provides that none of the stipulating parties object to Richard Wood receiving an additional right of 2 afy, in lieu of a monetary payment. (Stipulation For Entry of Judgment and Physical Solution, ¶ 13.) Plaintiff believes there will be no objections to this request from any non-stipulating party.

If the Court will not grant this request, and instead believes that it can only award a monetary incentive payment, such payment should be in the amount of $25,000. (McLachlan Decl., Ex. 12, 4:17-6:10 (and cases cited therein for award of $25,000 incentive award).) While this sum comes nowhere close to compensating Mr. Wood for his time, it is at the upper end of the range of such awards. (*Ibid.*) It will cover the $10,000 in out of pocket costs Mr. Wood has incurred, and will pay him at a rate of $6.85 per hour for his time – a fairly insulting figure. If Class Counsel could find sufficient authority for doubling this monetary award in this context, it should be more like $50,000 or more. The upper bounds for monetary awards only seem so to underscore that the proper means of compensating Mr. Wood is with the additional water right. But if not, $25,000 would buy Mr. Wood some portion of than two acre-feet per year.

IV. CONCLUSION

For all of the foregoing reasons, Plaintiff Richard Wood requests that the Court approve a lodestar rate of $3,348,160, with a multiplier of 2.5, and costs of $75,242.06.

Further, Richard Wood should be awarded water right of up to 5 acre-feet per year, or alternatively, $25,000.

DATED: January 27, 2016

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

By: Michael D. McLachlan

Digitally signed by Michael D. McLachlan
DN: cn=Michael D. McLachlan, o=Law Offices of Michael D. McLachlan, ou, email=mike@mclachlanlaw.com, c=US
Date: 2016.01.27 16:43:51 -08'00'

MICHAEL D. MCLACHLAN
Attorneys for Plaintiff and the Class

EXHIBIT H

Michael D. McLachlan, Bar No. 181705
LAW OFFICES OF MICHAEL D. McLACHLAN, APC
44 Hermosa Avenue
Hermosa Beach, California 90254
Phone: (310) 954-8270; Fax: (310) 954-8271

Daniel M. O'Leary, Bar No. 175128
LAW OFFICE OF DANIEL M. O'LEARY
2300 Westwood Boulevard, Suite 105
Los Angeles, California 90064
Phone: (310) 481-2020; Fax: (310) 481-0049

Attorneys for Plaintiff and the Class

Eric L. Garner, Bar No. 130665
Jeffrey V. Dunn, Bar No. 131926
BEST BEST & KRIEGER LLP
3750 University Avenue, Suite 400
P.O. Box 1028
Riverside, California 92502
Phone: (951) 686-1450 Fax: (951) 686-3083
Attorneys for Defendant
Los Angeles County Waterworks District No. 40

(ADDITIONAL COUNSEL ARE LISTED ON SIGNATURE PAGES)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES This Pleading Relates to Included Action: RICHARD WOOD, on behalf of himself and all others similarly situated, Plaintiff, v. LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, et al. Defendants.	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408 Case No. BC391869 **SMALL PUMPER CLASS STIPULATION OF SETTLEMENT**

The Settling Parties recognize that not all parties to the Coordinated Actions have entered into this Stipulation and that a trial of claims may be necessary between the Settling Defendants as against Non-Stipulating Parties. The Settling Parties agree to cooperate and coordinate their efforts in any such trial or hearing so as to obtain entry of judgment consistent with the terms of this Stipulation; this provision, however, will not require Small Pumper Class counsel to participate in any such trial or render any efforts absent written agreement of Settling Defendants to compensate them for such efforts. Nor shall this Stipulation preclude Settling Plaintiffs from participating in any further proceedings that may affect their rights.

C. Fees And Costs of Settling Plaintiff's Counsel.

1. The Settling Parties understand that Small Pumper Class counsel intend to seek an award of their fees and costs from the Court at the time set for the Final Approval Hearing. Any such awards will be determined by the Court unless agreed to by the Settling Parties. Settling Defendants will likely oppose the motion for attorneys' fees and costs. Notwithstanding any other provisions in this Agreement, the Settling Parties agree this Agreement does not restrict, compromise or otherwise prohibit Settling Defendants' rights to seek contribution for Small Pumper Class counsel's fees and costs, if such fees and costs are awarded to Class Counsel. The Settling Defendants hereby expressly reserve their rights to seek contribution for such fees and costs.

2. Settling Defendants understand that Class Counsel shall continue to represent the interests of the Class as required by California law, including, for example, litigating issues in the Coordinated Action that occur prior to the Effective Date of this Agreement. Agreement in no way limits the rights of Plaintiff and Class counsel to recover attorneys' fees and costs as permitted by applicable law.

3. Settling Defendants shall continue to be responsible for satisfying their respective financial obligations to the Court-appointed expert until such time as the Court enters an order relieving any of them of their respective duties.

D. Incentive Award to Richard Wood.

Contemporaneously with the filing of this Agreement and the Stipulation of Judgment,

EXHIBIT I

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

Coordination Proceeding Special Title (Rule 1550 (b)) **ANTELOPE VALLEY GROUNDWATER CASES**	Judicial Council Coordination Proceeding No. 4408 [Assigned to The Honorable Jack Komar, Judge Santa Clara County Superior Court, Dept. 17] Santa Clara Court Case No. 1-05-CV-049053 **AMENDED STIPULATION FOR ENTRY OF JUDGMENT AND PHYSICAL SOLUTION**

1. The undersigned Parties ("Stipulating Parties") stipulate and agree to the entry of the proposed Judgment and Physical Solution ("Judgment"), attached hereto as Exhibit 1 and incorporated herein by reference, as the Judgment in this Action. This Stipulation is expressly conditioned, as set forth in Paragraph 4 below, upon the approval and entry of the Judgment by the Court.

2. The following facts, considerations and objectives, among others, provide the basis for this Stipulation for Entry of Judgment ("Stipulation"):

a. The Judgment is a determination of all rights to Produce and store Groundwater in the Basin.

b. The Judgment resolves all disputes in this Action among the Stipulating Parties.

10. As consideration for this Stipulation between the Stipulating Parties, District No. 40 specifically agrees to the following:

a. District No. 40 agrees to identify all landowners in the Basin, to confirm that each landowner was served, and to confirm that each landowner is a part of the Non-Pumper Class, the Small Pumper Class, the Stipulating Parties, a Defaulting Party, or a Party that has appeared, as the case may be. District No. 40 will file a report containing this information with the Court and with all Parties.

b. District No. 40 agrees to take all available steps and procedures to prevent any Person that has not appeared in this Action from raising claims or otherwise contesting the Judgment.

11. The Public Water Suppliers and no other Parties to this Stipulation shall pay all reasonable Small Pumper Class attorneys' fees and costs through the date of the final Judgment in the Action, in an amount either pursuant to an agreement reached between the Public Water Suppliers and the Small Pumper Class or as determined by the Court. The Public Water Suppliers reserve the right to seek contribution for reasonable Small Pumper Class attorneys' fees and costs through the date of the final Judgment in the Action from each other and Non-Stipulating Parties. Any motion or petition to the Court by the Small Pumper Class for the payment of attorneys' fees in the Action shall be asserted by the Small Pumper Class solely as against the Public Water Suppliers (excluding Palmdale Water District, Rosamond Community Services District, City of Lancaster, Phelan Piñon Hills Community Services District, Boron Community Services District, and West Valley County Water District) and not against any other Party.

12. In consideration for the agreement to pay Small Pumper Class attorneys' fees and costs as provided in Paragraph 11 above, the other Stipulating Parties agree that during the Rampdown established in the Judgment, a drought water management program ("Drought Program") shall be implemented as provided in Paragraphs 8.3, 8.4, 9.2 and 9.3 of the Judgment.

13. The Stipulating Parties do not object to the award of an incentive to Richard Wood, the Small Pumper Class representative, in recognition of his service as Class representative. The Judgment shall provide that Richard Wood has a Production Right of up to five (5) acre-feet per year for

EXHIBIT J

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Los Angeles, Case No. BC 325201;

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Kern, Case No. S-1500-CV-254-348;

Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. City of Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior Court of California, County of Riverside, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County Waterworks District No. 40, et al., Superior Court of California, County of Los Angeles, Case No. BC364553

Richard Wood v. Los Angeles County Waterworks District No. 40, et al., Superior Court of California, County of Los Angeles, Case No. BC391869

Judicial Council Coordination Proceeding No. 4408 JCCP4408

CLASS ACTION

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

[PROPOSED] ORDER TO AMEND JUDGMENT *NUNC PRO TUNC*

DATE: May 25, 2016
TIME: 9:00 a.m.
DEPT.: Room 222 (LASC)

[PROPOSED] ORDER

Los Angeles County Waterworks District No. 40's motion to amend the judgment *nunc pro tunc* ("Motion") came on regularly for hearing on May 25, 2016 at 9:00 a.m., in Department 222 of the above-entitled court, the Honorable Jack Komar, presiding.

Moving party appeared by Jeffrey V. Dunn of Best Best & Krieger LLP. Appearances for other parties are shown in the Court's Minute Order for this hearing. A court reporter was present.

Having considered the papers filed in support of and in opposition to the Motion and the arguments of counsel, the Court HEREBY GRANTS THE MOTION.

IT IS FURTHER ORDERED that the caption page of the judgment entered on December 28, 2015 be replaced with the caption page attached as Exhibit "A" hereto and that this order be entered *nunc pro tunc* as of December 28, 2015.

DATED: June 28, 2016

HON. JACK KOMAR
JUDGE OF THE SUPERIOR COURT

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

EXHIBIT K

Michael D. McLachlan (State Bar No. 181705)
LAW OFFICES OF MICHAEL D. McLACHLAN, APC
44 Hermosa Avenue
Hermosa Beach, California 90254
Telephone: (310) 954-8270
Facsimile: (310) 954-8271
mike@mclachlan-law.com

Daniel M. O'Leary (State Bar No. 175128)
LAW OFFICE OF DANIEL M. O'LEARY
2300 Westwood Boulevard, Suite 105
Los Angeles, California 90064
Telephone: (310) 481-2020
Facsimile: (310) 481-0049
dan@danolearylaw.com

Attorneys for Plaintiff Richard Wood and the Class

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES RICHARD A. WOOD, an individual, on behalf of himself and all others similarly situated, Plaintiff, v. LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; et al. Defendants.	Judicial Council Coordination Proceeding No. 4408 Lead Case No. BC 325201 Case No.: BC 391869 **STIPULATION RE: DATE FOR FILING OF MOTION FOR ATTORNEYS' FEES**

The Public Water Suppliers and Richard Wood, through Class Counsel, hereby stipulate to move the filing date for the Motion for Attorneys' Fees and Award of Incentive Payment from January 22, 2016 to January 27, 2016. All other dates set forth in the Court's minute order of January 8, 2016 remain unchanged.

DATED: January 22, 2016

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

Michael D. McLachlan

Digitally signed by Michael D. McLachlan
DN: cn=Michael D. McLachlan, o=Law Offices of Michael D. McLachlan, ou, email=mike@mclachlanlaw.com, c=US
Date: 2016.01.22 17:18:42 -08'00'

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

DATED: January 22, 2016

BEST BEST & KRIEGER LLP

By: //s//
ERIC L. GARNER
JEFFREY V. DUNN
Attorneys for Defendant and Cross-Complainant LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

PROOF OF SERVICE

I, Rosanna R. Pérez, 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,300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On July 21, 2016, I served the following document(s):

REPLY IN SUPPORT OF MOTION TO STRIKE, OR IN THE ALTERNATIVE TAX, COSTS; SUPPLEMENTAL DECLARATION OF JEFFREY V. DUNN

☒ **BY ELECTRONIC TRANSMISSION.** I caused such document(s) to be electronically served, via One Legal, on all interested parties in this action, the list of which was obtained from scefiling.org. Electronic service is complete at the time of transmission. The proof of electronic service through One Legal is printed and maintained with the original documents in our office. My electronic notification email address is Rosanna.perez@bbklaw.com.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 21, 2016, at Los Angeles, California.

Rosanna R. Pérez

55440.00002\29095286.1