

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

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

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

Judicial Council Coordination
Proceeding No. 4408

CLASS ACTION

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

**OBJECTION TO PLAINTIFF
RICHARD WOOD'S BRIEF RE:
PAYMENT OVER YEARS AND
ORDER CLARIFYING FEE
RULING**

Los Angeles County Waterworks District No. 40 (“District No. 40”), Littlerock Creek Irrigation District, Palm Ranch Irrigation District, North Edwards Water District, Desert Lake Community Services District, and Quartz Hill Water District respectfully submit the following Objection to the Wood Class’ Brief re: Payment Over Years and Order Clarifying Fee Ruling (“Brief”).

I. INTRODUCTION

The Wood Class Brief is procedurally improper, and the Court should deny the request contained therein. The Brief is little more than a veiled request for reconsideration, which fails to meet the requirements of Code of Civil Procedure section 1008, and should be denied. On April 25, 2016, the Court issued the Order after hearing on April 1, 2016, awarding the Wood Class attorneys’ fees (“April 25, 2016 Order”). The Wood Class subsequently requested clarification of the April 25, 2016 Order regarding a number of issues, including the payment period of the attorneys’ fees. Various interested parties submitted briefings regarding the request for clarification. The request for clarification was heard, and all interested parties participated in the hearing. After considering all participants’ arguments, the Court signed the clarification order that is now at issue in the Brief (“Clarification Order”). The Clarification Order was served on July 15, 2016. The Clarification Order reflected the parties’ understanding of the Court’s tentative decision at the clarification hearing and provides that the non-settling public agency defendants are entitled to pay the Wood Class counsel’s fees in ten (10) equal payments over a period of ten (10) years. (Brief, Exhibit 1 at p. 2.) The Wood Class now contends that this installment payment option is not appropriate and has requested that the Court amend the Clarification Order. However, in lieu of filing a noticed motion as required by Code of Civil Procedure to permit the affected parties an opportunity to be heard, the Wood Class chose to submit the Brief. The Brief is procedurally improper and cannot be considered by the Court.

II. THE WOOD CLASS BRIEF SHOULD BE REJECTED BECAUSE IT IS AN IMPROPER MOTION FOR RECONSIDERATION.

In its Brief, the Wood Class asks the Court to decide the same matter that has already been decided and adopted by the Court—namely, clarifying what the Court meant in its April 25th

1 Order regarding payment of attorneys' fees. Code of Civil Procedure section 1008 sets forth a
2 particular procedure that the Wood Class must follow to request the Court to reconsider a decided
3 matter. Specifically, section 1008 requires the Wood Class to present this request in the form of a
4 noticed motion, which the Wood Class has failed to do. Rather than complying with section
5 1008, the Wood Class attempts to skirt the mandatory requirements of section 1008 by calling its
6 motion for reconsideration a brief.

7 As the appellate court in *Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1577
8 noted, "[t]he name of a motion is not controlling, and, regardless of the name, a motion asking the
9 trial court to decide the same matter previously ruled on is a motion for reconsideration under
10 Code of Civil Procedure section 1008." As clearly set forth in the Clarification Order, the Court
11 has already decided that the Wood Class attorneys' fees may be paid in installments. The Wood
12 Class has requested that the Court "decide the same matter previously ruled on," which thus
13 constitutes a motion for reconsideration under Code of Civil Procedure section 1008. (*Id.*)
14 Because of the Wood Class' failure to comply with the mandatory provisions of the Code of Civil
15 Procedure, the Court should not consider the Wood Class' request until the Wood Class submits a
16 proper noticed motion, providing the parties an opportunity to be heard on this issue.

17 Even if the Court were to construe the Wood Class Brief as a motion for reconsideration,
18 the motion should nevertheless fail because it does not meet the requirements for Code of Civil
19 Procedure section 1008. In order to prevail on a motion for reconsideration, the motion must be
20 filed "within 10 days after service upon the party of written notice of entry of the order." (Code
21 Civ. Proc. § 1008, subd. (a).) The Wood Class admits the Order was served on July 15, 2016
22 (Brief at p. 2:5-6), but it filed its request for reconsideration on August 1, 2016, which is more
23 than ten (10) days after July 15, 2016. The request is therefore untimely and should be denied.

24 Further, a moving party must show that there are new or different facts or circumstances,
25 or new law other than what was before the Court at the original ruling, and that any newly
26 presented evidence could not have been previously presented. (Code Civ. Proc. § 1008, subd. (a);
27 *Morris v. AGFA Corp.* (2006) 144 Cal.App.4th 1452, 1460.) The moving party must also provide
28 specific testimony, including whether any previously applications for reconsideration were made

1 and on what new facts, circumstances or law are the motion based. (*Id.*; *see also Branner v.*
2 *Regents of Univ. of Calif.* (2009) 175 Cal.App.4th 1043, 1048.) The Wood Class does not meet
3 these prerequisites for a motion for reconsideration, and its request should be denied.

4 **III. ALTERNATIVELY, THE WOOD CLASS BRIEF SHOULD BE REJECTED**
5 **BECAUSE IT IS AN IMPROPER MOTION TO VACATE.**

6 Alternatively, the Wood Class Brief may be construed as an improper motion to vacate
7 and substitute the Clarification Order pursuant to Code of Civil Procedure section 663. An order
8 of the court may be set aside and replaced when there is an incorrect or erroneous legal basis for
9 the decision only pursuant to a noticed motion. (Code Civ. Proc. §§ 663, 663a.) Further, a party
10 must designate the grounds upon which the motion will be made and specify “the particulars in
11 which the legal basis for the decision is not consistent with or supported by the facts.” (Code Civ.
12 Proc. §663a.) No proper motion has been filed and served nor has the Wood Class specified the
13 purported legal error in the Clarification Order.

14 The Wood Class argues, without explaining, that the Clarification Order is inconsistent
15 with the law and that the Court can correct any such error on its own motion. This is not so.
16 Though the trial court can correct its own inadvertence or clerical error or set aside an order
17 obtained by extrinsic fraud, it can correct a judicial error only on a motion to vacate under section
18 663. (*Greene v. Superior Court of San Francisco* (1961) 55 Cal. 2d 403, 405-406; *Duff v. Duff*
19 (1967) 256 Cal.App.2d 781, 784-785 [“Upon entry of a judgment, in the absence of clerical error
20 in the rendition or entry of that judgment, the trial court may not summarily amend the judgment,
21 no matter how erroneous it may be, on its own motion”].)

22 Again, the Wood Class has attempted to shirk its procedural duties. The Court should not
23 consider the Brief.

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1 **IV. CONCLUSION**

2 For the reasons stated herein, the Wood Class' Brief is procedurally improper, and the
3 request to modify the Clarification Order should not be considered until a proper motion is before
4 the Court.

5
6 Dated: August 9, 2016

BEST BEST & KRIEGER LLP

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8 By: 

ERIC L. GARNER

JEFFREY V. DUNN

WENDY Y. WANG

Attorneys for Defendant

LOS ANGELES COUNTY

WATERWORKS DISTRICT NO. 40

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 August 9, 2016, I served the following document(s):

**OBJECTION TO PLAINTIFF RICHARD WOOD'S BRIEF RE: PAYMENT
OVER YEARS AND ORDER CLARIFYING FEE RULING**



BY ELECTRONIC TRANSMISSION. I caused such document(s) to be electronically served, via One Legal, to all parties appearing on the www.scefiling.org electronic service list for the Antelope Valley Groundwater Cases; proof of electronic-filing through One Legal is then printed and maintained with the original documents in our office. Electronic service is complete at the time of transmission. 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 August 9, 2016, at Los Angeles, California.


Rosanna R. Pérez

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