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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

Judicial Council Coordination Proceeding
No. 4408

CLASS ACTION

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

**LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
REPLY IN SUPPORT OF ITS
ELECTION FOR PERIODIC
PAYMENTS**

Date: October 18, 2016

Time: 9:00 a.m.

Dept.: Room 222 (LASC)

Contrary to the Wood Class' contention, Los Angeles County Waterworks District No. 40's ("District No. 40") Notice of Election for Periodic Payments is timely and proper under Government Code section 984,¹ and a ten-year payment period is appropriate for the award of attorney fees and costs to the Wood Class counsel.

I. CODE OF CIVIL PROCEDURE SECTION 1008 DOES NOT APPLY

The Wood Class mischaracterizes District No. 40's present election of periodic payments as a second motion in violation of Code of Civil Procedure section 1008. The Wood Class ignores the fact that District No. 40's installment payments election is in response to a *different* Court order that was entered *after* the ruling on District No. 40's prior election of periodic payments and which modified the Court's prior orders.

Moreover, District No. 40's prior election for periodic payments did not encompass the entire fees and costs awarded now augmented and clarified by court order dated August 15, 2015. District No. 40 elects installment payments of the total fees and costs awarded under the three separately entered court orders:

1. Order After Hearing on April 1, 2016, dated April 25, 2016 and entered on June 17, 2016 ("Initial Fee Order"), as incorporated into, modified, and finalized by the Order After Hearing on July 28, 2016;

2. Order Clarifying Order After Hearing on April 1, 2016, entered on June 28, 2016 ("Clarifying Order"), as clarified and finalized by the Order After Hearing on July 28, 2016; and

3. Order After Hearing on July 28, 2016, dated August 15, 2016 and electronically served on August 18, 2016 ("Final Order").

The Final Order modified both the Initial Order and the Clarifying Order. The Initial Fee Order did not specify the amount of fees for which District No. 40 would be responsible. Additionally, the Initial Order indicated that the Court was continuing the issue of the amount of costs to be awarded until an additional cost memorandum was filed. (Declaration of Jeffrey V.

¹ Unless otherwise indicated, all section references are to Government Code.

1 Dunn (“Dunn Decl.”) Ex. 3 at p. 3:13-15.) The cost issue was not resolved until August 15, 2016,
2 as set forth in the Final Order.

3 The Clarifying Order specified the amount of fees for which District No. 40 was
4 responsible and gave notice to District No. 40 that it met the threshold to file a notice of election
5 of installment payments under section 984. District No. 40 timely filed an election to make
6 periodic payments on August 12, 2016—56 days after the Initial Fee Order was served and 45
7 days after Clarifying Order was entered. As indicated above, the Clarifying Order was also
8 clarified and modified by the Final Order. (Dunn Decl., Ex. 3 at pp. 7:18-8:2.)

9 At the time District No. 40 made its election, it did not and could not have known that the
10 Court would issue the Final Order on August 18, 2016. Nor could District No. 40 wait for the
11 Final Order prior to making its initial election without risking deadlines set forth in Rule 3.1804
12 and waiving its rights to make such an election.

13 Furthermore, this election differs from the prior election in that the Final Order awarded
14 the Wood Class costs and not just attorney fees. The Final Order also awards post-judgment costs
15 and fees, whereas the Initial Order and Clarifying Order only awarded fees through the judgment.
16 The Court’s Initial Fee Order and Clarifying Order did not consider costs or post-judgment fee
17 awards.

18 The issuance of the Final Order necessitated District No. 40’s present installment payment
19 election. It would be inequitable and unjust to apply section 1008 to the present election when
20 District No. 40 could not have brought it earlier and in response to a subsequently entered order,
21 which modified and finalized the Court’s prior orders. This election does not constitute a motion
22 for reconsideration and is made pursuant to District No. 40’s rights under section 984 in response
23 to the Final Order.

24 **II. THE ELECTION IS TIMELY**

25 Under California Rules of Court, Rule 3.1804, subdivision (a), an election under section
26 984 must be made within the earlier of 30 days of service of entry of order or 60 days after entry
27 of order. The opposition disregards the date of the Final Order, which clarified and modified the
28 Initial Fee Order and Clarifying Order. As set forth in the memorandum accompanying District

No. 40's notice of election, District No. 40's deadline to elect to make periodic payments for attorney fees and costs awarded under the Final Order was September 21, 2016.² District No. 40's filed and served its installment payment election on September 20, 2016; thus the election was timely.

III. THE WOOD CLASS ACTION IS AN ACTION FOR MONEY AND DAMAGES

A claim for money or damages against a government agency is subject to the Government Claims Act. (*Baines Pickwick v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 307.) A local government agency may elect to make a periodic payments for money or damages awarded under the Government Claims Act. (Code Civ. Proc., § 984.) Whether the attorney fees award constitutes costs or damages is inconsequential because it is an action for damages against District No. 40, a local government agency. Unless specifically excepted, "any action for money or damages, whether sounding in tort, contract or some other theory [such as the recovery of attorney fees under the private attorney general theory]" against a government agency is subject to the Government Claims Act and therefore section 984. (*Alliance Financial v. City and County of San Francisco* (1998) 64 Cal.App.4th 635, 642.) Section 984 does not exempt costs; District No. 40 is thus still entitled to make periodic payments of attorney fees, even if they constitute costs.

The Wood Class concedes that its "complaint contained tort claims." (Opposition at p. 7:1.) Those tort claims required the Wood Class to hire class counsel, the fees for which constitute an economic loss, or damages, arguably caused by the alleged torts of District No. 40 and the other public water suppliers. Tort claims "obviously fall within the [Government] Claims Act," and when a complaint contains both tort claims for money damages as well as requests for equitable or declaratory relief, it too is clearly within the Government Claims Act. (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1080-1081.) It is inconsequential that the tort claims were not litigated. The Wood Class complaint was, in part, based in tort resulting in economic loss. Thus, the Government Claims Act applies, and any

² The Final Order was served on August 18, 2016. It remains unclear whether this order has been entered by the Los Angeles County Superior Court.

claim for money or damages arising therefrom may be paid by periodic payments over time pursuant to section 984.

IV. THE MONETARY THRESHOLD FOR DISTRICT NO. 40'S PERIODIC PAYMENT ELECTION IS \$1,450,000

Section 984, subdivision (d), sets forth a minimum threshold amount for a local public agency to be able elect installment payments: "Effective January 1, 1996, that amount shall be seven hundred twenty-five thousand dollars (\$725,000), and thereafter, the seven hundred twenty-five thousand dollar (\$725,000) amount shall be increased 5 percent on January 1 of each year." (Gov. Code § 984, subd. (d).)

The Wood Class contends that the 5 percent annual increase in the threshold amount should be compounded yearly, resulting in a threshold amount of \$1,923,640.84. This interpretation of section 984 contradicts the plain reading of the statute, which does not require the amount to be compounded. (See *In re Corrine W.* (2009) 45 Cal.4th 522, 529 [in interpreting statutes, courts must "begin with the statute's plain language, as the words the Legislature chose to enact are the most reliable indicator of its intent"].) A leading treatise similarly concludes that the amount is not compounded. (Ahart & Paris, California Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2016) paragraph 6:56.12, page 6A-33 [the threshold is \$1,450,000 and is "calculated by increasing the \$725,000 1996 threshold amount by 5%, or \$36,250, on January 1 of each year commencing 1997"].)

Had the legislature intended to have the 5 percent increase be compounded annually, it would have so indicated as it has done elsewhere in the Government Code. (E.g., Gov. Code § 9934 ["For each fiscal year thereafter, the total amount of monies appropriated for support of the Legislature shall not exceed an amount equal to that expended for support in the preceding fiscal year, adjusted and compounded by an amount equal to the percentage increase or decrease in state General Fund spending for that fiscal year.'], § 21330 ["The adjusted monthly allowance shall be equal to the base allowance increased by 3 percent per year compounded for the number of years intervening between the end of the base year and the beginning of the calendar year in which the adjustment is made.'], § 29551, subd. (e) ["The maximum rate of the fee charged by each local

1 agency pursuant to subdivision (d) shall be the rate charged as of June 30, 2006, pursuant to
2 Section 29550 or 29550.3, increased for each subsequent fiscal year by the California Consumer
3 Price Index as reported by the Department of Finance plus 1 percent, compounded annually.”] &
4 § 75523, subd. (b) [“No adjustment shall be made unless the cost-of-living increase equals or
5 exceeds 1 percent. The allowance shall not be increased more than 3 percent in a single year.
6 Increases shall be compounded.”] [emphasis added].) The absence of such language in section
7 984 mandates a plain reading interpretation of an annual 5 percent threshold increase of \$36,250.

8 In lieu of applicable legal authority, the Wood Class erroneously contends that District
9 No. 40 is judicially estopped from asserting that \$1,450,000 is the threshold amount because
10 District No. 40 and certain other public water suppliers previously applied a 5 percent increase
11 and calculated the threshold amount to be higher in their notice of election to make periodic
12 payments on the Willis Class judgment.

13 The purpose of the judicial estoppel doctrine is to “prevent[] fraud on the courts.”
14 (Opposition at 9:5 [quoting *M. Perez Co., Inc. v. Base Camp Condominiums Assn. No. One*
15 (2003) 111 Cal.App.4th 456, 463]; see also, *Jackson v. County of Los Angeles* (1997) 60
16 Cal.App.4th 171, 181 [“The doctrine of judicial estoppel, sometimes referred to as the doctrine of
17 preclusion of inconsistent positions, is invoked to prevent a party from changing its position over
18 the course of judicial proceedings when such positional changes have an adverse impact on the
19 judicial process”] [emphasis added] [quoting *Russell v. Rolfs* (9th Cir. 1990) 893 F.2d 1033,
20 1037].)

21 Here, there is no showing that District No. 40 committed a fraud or is attempting to
22 defraud the Court. Any alleged mathematical calculation of a higher threshold by District No. 40
23 and certain public water suppliers in 2011 did not harm or otherwise affect the Wood Class. And
24 District No. 40 certainly did not benefit from any alleged miscalculation nor was the Court
25 defrauded.

26 Lastly, District No. 40’s position is neither “contrary” to nor “inconsistent” with the
27 position taken by certain public water suppliers in 2011. In fact, without compounding the annual
28 increase, the threshold amount in 2011 would be \$1,268,750 – an amount the public water

suppliers easily surpassed. Thus, while the calculations of the threshold are different, they would not have resulted in contrary positions or different results.

**V. THERE IS NO REQUIREMENT THAT DISTRICT NO. 40 ESTABLISH
HARDSHIP IN ORDER TO MAKE PAYMENTS OF ATTORNEY FEES OVER
TEN YEARS UNDER SECTION 984**

Unlike section 970.6, a showing of hardship is not required for a governmental entity to make payments of attorney fees over a period of ten years under section 984. The only requirement is that the amount owed must reach a certain dollar threshold. The statute's public policy recognizes budgetary constraints that public agencies may have in paying large judgments. In short, section 984 acknowledges that large judgments are *de facto* hardships for government entities, and thus, no other showing is required to make periodic payments.

Moreover, any hardship that the Wood Class counsel may claim is mitigated by section 984's requirement to pay 50 percent of the amount owed as soon as the amounts become due. (Gov. Code § 984, subd. (d).) Additionally, the Wood Class counsel has settled its attorney fees claims with certain other public water supplier, and presumably, received their settlement payments.³

VI. CONCLUSION

For the reasons stated above and in its Notice of Election, District No. 40 respectfully requests that the Court order periodic payments as detailed in the previously filed proposed order.

Dated: October 11, 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

³ The Wood Class' partial settlement in 2014 resulted in an award of \$719,892.29 in attorney fees and \$17,037.71 in costs.

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 October 11, 2016, I served the following document(s):

**LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S REPLY IN SUPPORT
OF ITS ELECTION FOR PERIODIC PAYMENTS**



BY ELECTRONIC TRANSMISSION. I caused such document(s) to be electronically served, via One Legal, to all parties appearing on the 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 October 11, 2016, at Los Angeles, California.


Rosanna R. Pérez

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