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Exempt from filing fee
Government Code § 6103

5 Attorneys for Defendants
6 City of Lancaster and Rosamond Community
7 Services District

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 ANTELOPE VALLEY GROUNDWATER
12 CASES

13 Included Actions:

14 Los Angeles County Waterworks District
15 No. 40 v. Diamond Farming Co.
16 Superior Court of California, County of
17 Los Angeles, Case No. BC325201;

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

22 Wm. Bolthouse Farms, Inc. v. City of
23 Lancaster, Diamond Farming Co. v. City of
24 Lancaster, Diamond Farming Co. v. Palmdale
25 Water Dist., Superior Court of California
26 County of Riverside, consolidated actions; Case
27 Nos. RIC 353 840, RIC 344 436, RIC 344 668.

LASC Case No. BC 325201

Judicial Council Coordination
Proceeding No. 4408

CLASS ACTION

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

**NOTICE OF MOTION AND MOTION
OF WOOD CLASS SETTLING
DEFENDANTS TO BE RELIEVED OF
ALL COURT ORDERS FOR PAYMENT
OF COURT-APPOINTED EXPERT FEES
AND COSTS; SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

DATE: December 11, 2013
TIME: 9:00 a.m.
DEPT: TBD

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 11, 2013, at 9:00 a.m., or as soon thereafter as
3 the matter can be heard, in a department to be determined by the Court, located at 161 North First
4 Street, San Jose, California, the Rosamond Community Services District, City of Lancaster, Palmdale
5 Water District, and Phelon Hills Community Services District (collectively, "Settling Defendants")
6 will, and hereby do move this Court for an order relieving the Settling Defendants from all court
7 orders for payment of the court-appointed expert fees and costs incurred from and after any final
8 approval of the Settling Defendants' settlement with the Wood Class ("Motion").

9 This Motion is made on the grounds that the Settling Defendants, subject to the Court granting
10 the pending Motion for Final Approval, have reached a settlement and have resolved their claims as
11 against the Wood Class, including claims for prescription. Pursuant to Evidence Code section 731(c),
12 costs for the court-appointed expert should no longer be apportioned and charged to the Settling
13 Defendants from and after any granting of the pending Motion for Final Approval of the Wood Class
14 Stipulation of Settlement.

15 This Motion is based upon this Notice of Motion and Motion, the attached Memorandum of
16 Points and Authorities and all other pleadings and papers on file herein, and as such evidence and
17 argument as may be presented at or before the time of the hearing of this Motion.

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19
20 DATED: November 14, 2013 MURPHY & EVERTZ LLP

21
22 By: 

Douglas J. Evertz

Attorneys for CITY OF LANCASTER and ROSAMOND
COMMUNITY SERVICES DISTRICT

1 **MEMORANDUM OF POINT AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 On December 11, 2012, the Court granted "Richard Wood's Motion for an Order Authorizing
4 the Court-Appointed Expert Witness Work." As ordered by the Court, the court-appointed expert has
5 been performing expert services relative to the assessment of water use of the Small Pumpers Class.
6 Pursuant to the Court's order, various Public Water Suppliers referenced therein were ordered to pay
7 the bills of the court-appointed expert on a "per capita basis in equal amounts."

8 Subject to the granting of the pending Motion for Final Approval of the Wood Class
9 Stipulation of Settlement ("Final Approval Motion"), and in furtherance of the full and complete
10 settlement between the parties, the Settling Defendants request to be released from all further
11 payments of the court-appointed expert's fees and costs from and after any granting of the Final
12 Approval Motion.

13 **II. THE COURT-APPOINTED EXPERT'S FEES AND COSTS SHOULD NOT BE**
14 **FURTHER APPORTIONED AND CHARGED AGAINST THE SETTLING**
15 **DEFENDANTS.**

16 While at some point in time, allocation of the court-appointed expert's fees and costs as
17 against all water producers in the basin may be necessary and equitable when the Court ultimately
18 fashions a physical solution, the current status of the proceeding is that only Public Water Suppliers
19 have been named and served as defendants in the Wood Class complaint. Accordingly, and based
20 upon the current alignment of the parties, the court-appointed expert's fees and costs are only being
21 apportioned and charged to those Public Water Suppliers asserting claims for prescription against the
22 Wood Class. Now that the Settling Defendants have, subject to Court approval, settled their claims
23 for prescription with the Wood Class, the Settling Defendants should no longer be responsible and
24 allocated costs associated with the work of the court-appointed expert.

25 **A. The Settling Defendants Should Be Relieved From Future Payments Associated**
26 **With The Work Performed By The Court-Appointed Expert.**

27 The Wood Class' Stipulation of Settlement is a compromise and dismissal of various claims
28 and defenses between the parties to the settlement - - including exposure to additional fees and costs.

1 In this regard, and in furtherance of settlement, the Settling Defendants desire to be relieved from all
2 future payments associated with the work of the court-appointed expert. In this regard, Section VIII D
3 4 of the Stipulation for Settlement provides:

4 “Settling Defendants shall continue to be responsible for satisfying their
5 financial obligations to the court-appointed expert until such time as the
6 Court enters an Order relieving them of those duties and allocating the costs
7 to the Non-Settling Defendants or other parties to the Consolidated Actions.
8 The Settling Defendants’ failure to meet these obligations shall be a material
9 breach of this Agreement. As part of this Stipulation, Settling Defendants
10 intend to bring a motion to be relieved from all existing court orders for
11 payment of the court-appointed expert fees incurred after a date specified by
12 the Court. Such motion will be brought concurrently with the Motion for
13 Final Approval of this Stipulation. If the Court does not grant such motion
14 concurrently with the granting of the Motion for Final Approval, any Settling
15 Defendant may declare this Stipulation null and void as to that Settling
16 Defendant.”

17 The Non-Settling Defendants have elected to continue to litigate with the Wood Class,
18 including their claims for prescription. These Non-Settling Defendants have every right to continue to
19 pursue their claims as against the Wood Class - - but it is neither fair nor equitable to force the Settling
20 Defendants to continue incur fees and costs when they have elected to settle and resolve their claims.

21 Evidence Code section 731 reserves full discretion and authority with the trial court to
22 apportion and charge fees of a court-appointed expert as the court “may determine.” Because the
23 Settling Defendants have now elected to settle with the Wood Class and fully and finally resolve their
24 claims against one another, these Settling Defendants should be relieved of any and all obligations to
25 pay the fees and costs of the court-appointed expert from and after the granting of the Final Approval
26 Motion.

1 **IV. CONCLUSION.**

2 For all the foregoing reasons and authorities, the Settling Defendants respectfully request, in
3 furtherance of Section VIII D 4 of the Wood Class' Stipulation of Settlement, that they be relieved
4 from all existing court orders for payment of the court-appointed expert's fees and costs from and
5 after the granting of the Final Approval Motion.

6
7 DATED: November 14, 2013 MURPHY & EVERTZ LLP

8
9 By: 

10 Douglas J. Evertz

11 Attorneys for CITY OF LANCASTER and ROSAMOND
12 COMMUNITY SERVICES DISTRICT
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1 **PROOF OF SERVICE**

2 **ANTELOPE VALLEY GROUNDWATER CASES**
3 Judicial Council Coordination, Proceeding No. 4408

4 Santa Clara Case No. 1-05-CV 049053
5 Assigned to the Honorable Jack Komar
6 Los Angeles County Superior Court, Central, Dept. 1

7 I am a resident of the State of California, over 18 years of age and not a party to this action. I
8 am employed in the County of Orange, State of California. My business address is 650 Town Center
9 Drive, Suite 550, Costa Mesa, California 92626.

10 On November 15, 2013, I served the within document(s):


11 **NOTICE OF MOTION AND MOTION OF SETTLING DEFENDANTS TO BE
12 RELEASED OF ALL COURT ORDERS FOR PAYMENT OF COURT-APPOINTED
13 EXPERT FEES AND COSTS; SUPPORTING MEMORANDUM OF POINTS AND
14 AUTHORITIES**

15 ☒ by posting the document(s) listed above to the website <http://www.scefiling.org>, a
16 dedicated link to the Antelope Valley Groundwater Cases; Santa Clara Case
17 No. 1-05-CV 049053, Assigned to the Honorable Jack Komar, said document(s) is
18 electronically served/distributed therewith.

19 I am readily familiar with Murphy & Evertz, LLP's practice for collecting and processing
20 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service
21 on the same day that the correspondence is placed for collection and mailing, it is deposited in the
22 ordinary course of business with the United States Postal Service, in a sealed envelope with postage
23 fully prepaid.

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

26 Executed on November 15, 2013, at Costa Mesa, California.

27 
28 Stephanie Pattis