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Government Code § 6103

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City of Lancaster and Rosamond Community  
6 Services District  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES  
10

11 **ANTELOPE VALLEY GROUNDWATER  
CASES**

12 Included Actions:

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

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

18 Wm. Bolthouse Farms, Inc. v. City of  
19 Lancaster, Diamond Farming Co. v. City of  
Lancaster, Diamond Farming Co. v. Palmdale  
20 Water Dist., Superior Court of California  
County of Riverside, consolidated actions; Case  
21 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  
FOR DETERMINATION OF GOOD  
FAITH SETTLEMENT BY THE WOOD  
CLASS SETTLING DEFENDANTS;  
SUPPORTING MEMORANDUM OF  
POINTS AND AUTHORITIES**

DATE: December 11, 2013  
TIME: 9:00 a.m.  
DEPT: 1

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 Department 1 of the above-referenced Court, located at 191 North First  
4 Street, San Jose, California, the Rosamond Community Services District, City of Lancaster, Palmdale  
5 Water District, and Phelan Pinon Hills Community Services District (collectively, "Settling  
6 Defendants") will, and hereby do move this Court for a determination of good faith settlement and  
7 limiting Settling Defendants' liability for Wood Class' attorneys' fees ("Motion"), including  
8 subsequent claims for indemnity or contribution by other parties.

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

12  
13 DATED: November 15, 2013 MURPHY & EVERTZ LLP

14  
15 By: 

16 Douglas J. Evertz  
17 Attorneys for CITY OF LANCASTER and ROSAMOND  
18 COMMUNITY SERVICES DISTRICT  
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1 **MEMORANDUM OF POINT AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 The Wood Class Stipulation of Settlement (“Settlement”) provides in pertinent part: “...the  
4 Court finds and determines that the settling defendants have no further liability for payment of  
5 attorneys’ fees, costs and expenses, *either directly or indirectly...*” (Settlement, p. 20:6-8 [emphasis  
6 added].) Subject to granting the Motion for Final Approval of the Settlement, the Rosamond  
7 Community Services District, City of Lancaster, Palmdale Water District, and Phelan Pinon Hills  
8 Community Services District (collectively, “Settling Defendants”) request an order that they will have  
9 no continuing exposure to any and all fees and costs associated with the efforts of Wood Class  
10 Counsel, including subsequent claims for indemnity or contribution by other parties. Such an order is  
11 appropriate, as the Settling Defendants may protect themselves from liability to non-settling parties,  
12 for the following reasons:

- 13 (1) “Clear-sailing agreements” such as that in the Settlement are proper;
- 14 (2) Allocation of attorneys’ fees and costs, as done in the Settlement, is appropriate under  
15 controlling authorities;
- 16 (3) Code of Civil Procedure section 877 allows Settling Defendants to be forever  
17 discharged, while also allowing non-settling defendants to be credited with the amount paid by  
18 Settling Defendants; and,
- 19 (4) Public policy favors settlements, including that sought by the Settlement, with the  
20 Court holding broad discretion to approve the Settlement, particularly based on ample authority  
21 supporting the Settlement.

22 Here, non-settling parties may choose to continue to litigate with the Wood Class for an  
23 indefinite period of time. It is neither fair nor equitable to hold the Settling Defendants hostage to  
24 subsequent claims of contribution or indemnity by parties who may elect to continue to litigate with  
25 the Wood Class for years.

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1 **I. THE COURT CAN AND SHOULD LIMIT THE SETTling DEFENDANTS'**  
2 **LIABILITY FOR WOOD CLASS' ATTORNEYS' FEES.**

3 **A. A Court of Equity.**

4 "Equality of liability among persons whose respective situations are not equal is inequitable."  
5 (*Jans v. Nelson* (2000) 83 Cal.App.4th 848, 857.) It is appropriate and well supported as a matter of  
6 law, equity, and fact for the Court to limit the Settling Defendants' liability to pay Wood Class  
7 attorneys' fees and costs as agreed to amongst the settling parties. That is to say also that non-settling  
8 parties are not entitled to contribution from the Settling Defendants, but instead to an offset of what is  
9 paid to the Wood Class by the Settling Defendants.

10 Here, Settling Defendants have done what other parties have been unable or unwilling to do -  
11 settle claims. By doing so, the settling parties bestow benefits to the Court and other parties by  
12 narrowing the field and depth of disputes.

13 **B. Settling Defendants' "Deal" to Pay a Portion of Wood Class Attorneys' Fees and**  
14 **Costs.**

15 What is sought by the Settling Defendants on the issue of Wood Class attorneys' fees and costs  
16 is for the Settling Defendants to pay reasonable attorneys' fees and costs (to be determined by the  
17 Court) up to the amount specified in the Settlement, which covers Wood Class's past attorneys' fees  
18 and costs and allows for the Settling Defendants to be exposed to future fees and costs *only if* the  
19 Settling Defendants breach the Settlement.

20 The import of whether the Settling Defendants' arrangement for Wood Class attorneys' fees  
21 and costs is improperly "limiting liability to parties" turns on whether legal authority supports such  
22 an arrangement. Indeed such authority exists, as set forth below, allowing this Court to approve the  
23 Settling Defendants' arrangement, including as to attorneys' fees and costs.

24 Whether the Court finds the Wood Class attorneys' fees and costs as presented to the Court to  
25 be "reasonable" is a separate analysis. And, whether the Court awards the fees and costs amongst  
26 settling and non-settling defendants (*i.e.*, the other public water suppliers who are not settling with  
27 Wood Class) is irrelevant. After all, the submitted fees and costs are for services rendered (*i.e.*, past  
28 services), making it so that the non-settling parties' liability for Wood Class attorneys' fees and costs

1 for “is what is” (subject to the “reasonableness” finding) for purposes of final approval of the Wood  
2 Class Settlement.

3 Ultimately, the amount of an award of attorneys’ fees and costs is within the discretion of the  
4 trial court. (*Western Concrete Structures Co. v. James I. Barnes Construction Co.* (1962) 206  
5 Cal.App.2d 1, 10.)

6 **C. The Court Has Discretion to Approve the Wood Class Settlement Agreement’s**  
7 **Attorneys’ Fees and Costs Provisions.**

8 To the extent the Settlement Agreement’s attorneys’ fees and costs provisions are perceived as  
9 “limiting liability to parties,” the law supports these provisions and the Court is authorized to approve  
10 these provisions within its broad discretion.

11 **1. A “Ceiling” on Attorneys’ Fees and Costs Is Permissible.**

12 The parties “may properly negotiate a ceiling on fees to be sought by class counsel and agree  
13 that defendant will not oppose the application...[s]uch an agreement is commonly known as a ‘clear  
14 sailing agreement.’” (*California Practice Guide: Civ. Pro. Before Trial* Weil & Brown *et al.*, The  
15 Rutter Group (2013), §14:140.5, citing to, *In Re Consumer Privacy Cases* (2009) 175 Cal.App.4th  
16 545, 553.) “Class action ‘settlement agreement[s] typically include[] a ‘clear sailing’ clause...In fact,  
17 commentators have agreed that such an agreement is proper.” (*Id.*)

18 This is precisely what the Settling Defendants have done with the Wood Class Settlement.  
19 And, the clear sailing agreement is appropriate even if it precludes liability of the Settling Defendants’  
20 to the non-settling defendants because the law allows the Settling Defendants’ liability to be limited,  
21 as set forth herein.

22 **2. The Court Has Discretion to Allocate a Fee Award Among the Defendants.**

23 “California law has recognized, in different contexts, that trial courts have the discretion not  
24 only in setting the amount of an award of attorney fees, but in allocating the award among various  
25 defendants based on their relative culpability.” (*Gorman v. Tassajara Development Corp.* (2009) 178  
26 Cal.App.4th 44, 97; see, e.g., *Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151 [allocated one-  
27 half to city, one-half to real party in interest].)

1 In *Washburn v. City of Berkeley* (1987) 195 Cal.App.3d 578, 592, the trial court allocated one-  
2 ninth of certain fees under section 1021.5 to one defendant. The plaintiff objected, saying that  
3 defendant should be responsible for the full amount, and if others should share the fee burden,  
4 defendant could seek contribution from them. The Court of Appeal affirmed, stating that the trial  
5 court's procedure was consistent with its discretion to allocate a fee award to the parties responsible.  
6 (195 Cal.App.3d at 593.) The Court stated:

7 Neither party cites a California case in which the court has calculated a fee  
8 award as did the trial court in this case. As Rabkin points out, however,  
9 federal courts have adopted various methods of apportioning or allocating  
10 fees among defendants in cases involving fee awards pursuant to 42 United  
11 States Code section 1988, and this court may look to federal law in applying  
12 section 1021.5. In *Grendel's Den, Inc. v. Larkin* (1st Cir. 1984) 749 F.2d 945  
13 the court instructed, '[A] number of theories for apportioning fees have been  
14 advanced .... Among them are the simplest approach of dividing the award  
15 equally among the defendants ..., and the more sophisticated approaches of  
16 apportionment by degree of each defendant's liability ..., and apportionment  
17 by relative time spent litigating against each defendant. ... Each of these  
18 theories may be more or less valid in a given case.' (*Id.*, at pp. 959-960.)

19 *Id.* at 592. Similarly, the Court has the discretion here to allocate fees among the Settling Defendants,  
20 and such an allocation will not be joint and several. There will thus be no right of contribution from  
21 the Settling Defendants.

22 **3. Code of Civil Procedure section 877 Allows the Defendants to Be Released**  
23 **from Further Liability.**

24 Code of Civil Procedure section 877 (Effect of release, dismissal, or covenant to sue or enforce  
25 judgment)("Section 877") provides:

26 *Where a release, dismissal with or without prejudice, or a covenant not to sue*  
27 *or not to enforce judgment is given in good faith before verdict or judgment*  
28 *to one or more of a number of tortfeasors claimed to be liable for the same*

1 tort, or to one or more other co-obligors mutually subject to contribution  
2 rights, *it shall have the following effect:*

3 (a) It shall not discharge any other such party from liability unless its  
4 terms so provide, *but it shall reduce the claims against the others in the*  
5 *amount stipulated by the release*, the dismissal or the covenant, or in the  
6 amount of the consideration paid for it, whichever is the greater.

7 (b) *It shall discharge the party to whom it is given from all liability for*  
8 *any contribution to any other parties.*

9 [Emphasis added.]

10 Thus, Section 877 subsection (a) limits the non-Settling Defendants liability by the amount the  
11 Settling Defendants agree to, while subsection (b) discharges the Settling Defendants' liability even to  
12 non-settling parties.

13 Section 877 establishes two policies: (i) equitable sharing of costs among the parties at fault;  
14 and (ii) encouragement of settlements. These sections together provide that while a good faith  
15 settlement cuts off the right of other defendants to seek contribution or comparative indemnity from  
16 the settling defendant, the non-Settling Defendants obtain in return a reduction in their ultimately  
17 liability to the plaintiff. (See *Regan Roofing Co. v. Superior Court* (1994) Cal.App.4th 1685, 1700.)

18 Section 877 applies to any release (or to any dismissal or covenant not to sue or not to enforce  
19 judgment) that is given in good faith before verdict or judgment to one or more of a number of  
20 tortfeasors claimed to be liable for the same tort or to one or more of a number of co-obligors mutually  
21 subject to contribution rights. A good faith settlement bars non-settling defendants from seeking  
22 contribution from a settling defendant, but in return the non-settling defendants' ultimate liability to  
23 the plaintiff is reduced by the amount stipulated by the release or by the amount of consideration paid.  
24 (*Arbuthnot v. Relocation Realty Services Corp.* (1991) 227 Cal.App.3d 682, 687.)

25 The statutory language refers to liability for "contribution" rather than indemnity, however, the  
26 California Supreme Court expanded the term "contribution" as used in the statute to include  
27 comparative indemnity, thus the terms are synonymous for purposes of establishing the Wood Class  
28 attorneys' fees and costs. (*American Motorcycle Ass'n. v. Superior Court* (1978) 20 Cal.3d 578, 604.)

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1 Section 877 is meant to eliminate the distinction between joint tortfeasors and concurrent or  
2 successive tortfeasors by permitting broad application of the statute. (*Mesler v. Bragg Management*  
3 *Co.* (1985) 39 Cal.3d 290, 302.)

4 Where an alleged joint tortfeasor, prior to judicial determination of his liability, in good faith  
5 settles a claim against him, he is forever discharged of further obligation to claimant and to other joint  
6 tortfeasors, by way of contribution or otherwise. (*Stambaugh v. Superior Court* (9176) 62 Cal.App.3d  
7 231, 235.)

#### 8 4. Good Faith.

9 For reasons found by the Court doing the preliminary approval hearing on October 25, 2013  
10 and as further set forth herein, the Wood Class Settlement is made in good faith. "A good faith  
11 settlement discharges the settling tortfeasor from all liability for comparative indemnity to any other  
12 parties." (Code Civ. Proc., §877(b); see also *Tech-Bilt, Inc. v. Woodward-Clyde Associates* (1985) 38  
13 Cal.3d 488, 499.) In "a complex multiparty case," such as this case, "a trial court may make an initial  
14 allocation when making the determination that a settlement is made in good faith." (See *El Escorial*  
15 *Owners' Assoc. v. DLC Plastering, Inc.* (2007) 154 Cal.App.4th 1337, 1351-1352.)

#### 16 5. Policy.

17 California courts favor settlement. The Court has broad powers to determine whether a  
18 proposed settlement is fair under the circumstances of the case. (*Mallick v. Superior Court* (1979) 89  
19 Cal.App.3d 434, 438.)

20 Ultimately, the Settling Defendants are attempting to do what other parties have not been able  
21 or willing to do - settle claims. As a matter of law, equity, and fact, the Wood Class Settlement is  
22 appropriate and justified, including agreement between the Settling Defendants as to Wood Class  
23 attorneys' fees and costs. As such, the Court should approve the Settlement.

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1 **III. CONCLUSION.**

2 For all the foregoing reasons and authorities, the Settling Defendants respectfully request that  
3 the Court enter an order finding that the Settlement was entered into in good faith and for a further  
4 order finding that the Settling Defendants have no further liability in the form of contribution and  
5 indemnity to any non-settling party. Such a ruling is fair, equitable and justified, as the Settling  
6 Defendants should not be held hostage or be rendered victim to further claims from any party that has  
7 voluntarily elected to continue litigation with the Wood Class.

8  
9 DATED: November 15, 2013 MURPHY & EVERTZ LLP

10  
11 By: 

12 Douglas J. Evertz  
13 Attorneys for CITY OF LANCASTER and ROSAMOND  
14 COMMUNITY SERVICES DISTRICT  
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1 **PROOF OF SERVICE**

2 **ANTELOPE VALLEY GROUNDWATER CASES**

Judicial Council Coordination, Proceeding No. 4408

3 Santa Clara Case No. 1-05-CV 049053

4 Assigned to the Honorable Jack Komar

Los Angeles County Superior Court, Central, Dept. 1

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

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

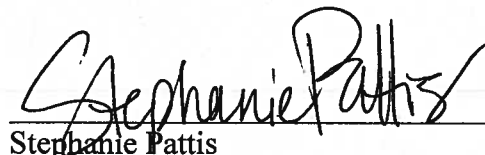
9 **NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH**  
10 **SETTLEMENT BY THE WOOD CLASS SETTLING DEFENDANTS; SUPPORTING**  
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

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

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

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

20   
21  
22 Stephanie Pattis