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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;

RICHARD WOOD, on behalf of himself and
all other similarly situated v. A.V. Materials,
Inc., et al., Superior Court of California,
County of Los Angeles, Case No. BC509546.

**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

**LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
OPPOSITION TO MOTION FOR
DETERMINATION OF GOOD FAITH
SETTLEMENT BY THE WOOD CLASS
SETTLING DEFENDANTS**

*[Filed concurrently with Declaration of
Jeffrey V. Dunn]*

1 **I. INTRODUCTION**

2 Los Angeles County Waterworks District No. 40 (“District No. 40”) opposes Defendants
3 Rosamond Community Services District, City of Lancaster, Palmdale Water District and Phelan
4 Hills Community Services District’s (“collectively, “Settling Defendants”) Motion for
5 Determination of Good Faith Settlement (“Motion”) because the Motion improperly seeks the
6 Court’s determination that the Stipulation of Settlement (“Partial Settlement”) was made in good
7 faith under Code of Civil Procedure sections 877 and 877.6, which apply solely to settlements
8 made by joint tortfeasors or co-obligors on a contract debt.¹ Moreover, the Partial Settlement is
9 an attempt to limit the Settling Defendants’ potential liability for attorneys’ fees and costs
10 prematurely such that the non-settling defendants, including District No. 40, will be required to
11 pay more than their fair share of costs following resolution of this case in direct contravention of
12 the public policy basis behind the good faith settlement law. As such, the Court should deny the
13 Motion on the basis that it is improper and that Settling Defendants have failed to demonstrate
14 that the Partial Settlement was made in good faith.

15 **II. NO LEGAL BASIS EXISTS FOR THE COURT TO MAKE A DETERMINATION**
16 **THAT THE PARTIAL SETTLEMENT IS A GOOD FAITH SETTLEMENT**
17 **UNDER CIVIL CODE SECTIONS 877 AND 877.6**

18 The effect of a good faith settlement, and procedures for making and opposing motions to
19 determine good faith, are set forth in Code of Civil Procedure sections 877 and 877.6. “These
20 statutes apply when defendants are alleged to be joint tortfeasors or co-obligors on a contract
21 debt.” (California Civil Procedure Before Trial (4th ed. Cal. CEB 2004), § 50.2 *citing* Code Civ.
22 Proc., § 877.6.) A determination by a court that a settlement was made in good faith under
23 Section 877.6 bars any other joint tortfeasor or co-obligor on a contract debt from asserting
24 further claims against the settling party for equitable comparative contribution or partial or
25 comparative indemnity based on comparative negligence or comparative fault. (Code Civ. Proc.,
26 § 877.6(c); see *Fullerton Redev. Agency v. Southern Cal. Gas Co.* (2010) 183 Cal.App.4th 428,
27 431 [good faith settlement by settling tortfeasor under Section 877.6 bars contribution and
28 indemnity claims under Health & Safety Code section 25363 by a joint tortfeasor]; *Britz, Inc. v.*

¹ All section references are to the Code of Civil Procedure unless otherwise indicated.

1 *Dow Chem. Co.* (1999) 73 Cal.App.4th 177 [joint tortfeasor that obtained good faith settlement
2 determination and was dismissed from case could not bring separate indemnity action against its
3 former codefendants after they also settled with plaintiff and received good faith settlement
4 determination].)

5 The Settling Defendants claim that “Code of Civil Procedure section 877 allows the
6 Settling Defendants to be forever discharged, while also allowing non-settling defendants to be
7 credited with the amount paid by Settling Defendants.” (Motion, pp. 1, 4-5.) As noted by the
8 court in *Herrick Corp. v. Canadian Ins. Co.* (1994) 29 Cal.App.4th 753, 759, “California’s good
9 faith settlement law, sections 877 and 877.6 of the Code of Civil Procedure, provides a means for
10 some settling litigants to insulate themselves from contribution claims.” The good faith
11 settlement law does not, however, apply universally to all settling litigants:

12 Section 877 provides that where a dismissal is given in good faith
13 before judgment to “one or more of a number of tortfeasors claimed
14 to be liable for the same tort, or to one or more other co-obligors
15 mutually subject to contribution rights,” the dismissal shall
16 discharge that party from all liability for contribution to any other
17 parties. Section 877.6 provides that after a settling joint tortfeasor
18 or co-obligor on a contract debt successfully obtains the trial court’s
imprimatur on the good faith of a settlement, that determination
“shall bar any other joint tortfeasor or co-obligor” from prosecuting
any further claims for “equitable comparative contribution, or
partial or comparative indemnity, based on comparative negligence
or comparative fault.”

19 Nothing in the good faith settlement statutes suggests that they
20 apply to litigants other than “joint tortfeasors” (alternatively
described as “tortfeasors claimed to be liable for the same tort”) or
“co-obligors on a contract debt.”

21 (*Id.* at 759-60 [emphasis added]; see also *Rohr Industries, Inc. v. First State Ins. Co.* (1997) 59
22 Cal.App.4th 1480, 1487-88; *Pacific Estates, Inc. v. Superior Court* (1993) 13 Cal.App.4th 1561,
23 1571.) The *Pacific Estates* court explained that “[a]lthough there are no reported decisions
24 construing the phrase ‘co-obligors on a contract debt,’ the plain language of the statute dictates
25 the interpretation of this phrase refers to parties to a contract dispute which itself is the subject of
26 the underlying litigation.” (*Pacific Estates, supra*, 13 Cal.App.4th at p. 1571.)

27 There is a distinction in the language of Sections 877 and 877.6. Specifically, Section 877
28 employs the term “co-obligors mutually subject to contribution rights” while Section 877.6 refers

1 to “co-obligors on a contract debt.” As explained by the court in *Tiffin Motorhomes, Inc. v.*
2 *Superior Court* (2011) 202 Cal.App.4th 24, in interpreting the statutes together, the more
3 restrictive phrase should apply, which would be “co-obligor on a contract debt”:

4 Section 877.6, subdivision (a)(1), allows a motion to be made by
5 “[a]ny party to an action in which it is alleged that two or more
6 parties are joint tortfeasors or co-obligors on a contract debt.”
7 Subdivision (c) simply refers to “any other joint tortfeasor or co-
8 obligor.” Section 877, which sets out the *substantive* rule as to
9 which section 877.6 prescribes the procedure, employs the terms
10 “one or more of a number of tortfeasors claimed to be liable for the
11 same tort, or to one or more other co-obligors mutually subject to
12 contribution rights.” Despite the slight differences in language,
13 these terms are to be construed in a like manner. To do so, *it is*
14 *obviously necessary to focus on the most restrictive phrase, which*
15 *would be “co-obligor on a contract debt.”* The crucial word is
16 “a”—the parties must be co-obligors on “a” single contract. In other
17 words, they must share the *same* contractual obligation. It is, of
18 course, axiomatic that where language in a statute is clear, courts
19 have nothing to interpret or construe. Hence, the plain meaning of
20 the statute is that its benefits apply to codefendants who are liable
21 on the *same* contract.

22 (*Id.* at 29 citing *Topa Ins. Co. v. Fireman's Fund Ins. Companies* (1995) 39 Cal.App.4th 1331,
23 1337, *Cummings v. Stanley* (2009) 177 Cal.App.4th 493, 507–508, *American Nat. Ins. Co. v. Low*
24 (2000) 84 Cal.App.4th 914, 924 [emphasis added].)

25 Here, the underlying action concerns the adjudication of groundwater rights in the
26 Antelope Valley Groundwater Basin. The action is not based in tort nor contract. Because there
27 is no basis to establish that Settling Defendants are either joint tortfeasors or co-obligors on a
28 contract debt with the non-settling defendants, the good faith settlement law will not prevent a
29 suit for contribution. (*Herrick, supra*, 29 Cal.App.4th at pp. 761-62 [court holds that insurers of
30 two insureds, who were deemed “joint tortfeasors,” could not avail themselves of the protection
31 under the good faith settlement statutes because they were not considered “joint tortfeasors” or
32 “co-obligors on a contract debt” since the insurers did not commit the torts and the obligations to
33 the insured arose from separate contracts]; *Tiffin Motorhomes, supra*, 202 Cal.App.4th at p. 30
34 [court holds that manufacturers of auto parts that are liable to the plaintiff on the theory of breach
35 of an express or implied warranty attached to those parts are *not* “co-obligors on a contract debt”
36 such that the court could render a determination of good faith settlement].) In both *Herrick* and

1 *Tiffin Motorhomes*, there was at least a connection to an underlying contract or tort, which the
2 court nevertheless found to be too tenuous to support a finding of good faith settlement. Given
3 the narrowed scope of the good faith settlement law, which is not intended to apply to settlements
4 by other than joint tortfeasors or co-obligors on a contract debt, it would be improper for this
5 Court to make a determination that the Partial Settlement constitutes a good faith settlement under
6 Sections 877 and 877.6. Such a determination would be improper as it would not preclude the
7 non-settling defendants from seeking contribution.

8 **III. THE SETTling PARTIES FAILED TO DEMONSTRATE THAT THE PARTIAL**
9 **SETTLEMENT IS A GOOD FAITH SETTLEMENT**

10 Even assuming *arguendo* that Sections 877 and 877.6 apply to a lawsuit not based in tort
11 or contract, the Partial Settlement cannot satisfy the factors necessary for the Court to deem it a
12 good faith settlement. Although there is no precise measure for a “good faith” settlement, any
13 such determination must harmonize the public policy favoring settlements with the competing
14 public policy favoring equitable sharing of costs among the joint tortfeasors or co-obligors.
15 (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 498-99.) Whether a
16 settlement is made in good faith requires application of the “reasonable range” test established by
17 the court in *Tech-Bilt, supra*, which provides that the settlement must be “within the reasonable
18 range of the settling tortfeasor’s proportional share of comparative liability for the plaintiff’s
19 injuries.” (*Id.* at p. 499.) The “reasonable range” test requires evaluation of information available
20 at the time of settlement, including:

- 21 (1) A rough approximation of plaintiff’s total recovery and the settlor’s proportionate
22 liability;
- 23 (2) The amount paid in settlement;
- 24 (3) A recognition that a settlor should pay less in settlement than if found liable after
25 trial;
- 26 (4) The allocation of the settlement proceeds among plaintiffs;
- 27 (5) The settlor’s financial condition and insurance policy limits, if any; and
- 28 (6) Evidence of any collusion, fraud, or tortious conduct between the settlor and the

1 plaintiffs aimed at making the non-settling parties pay more than their fair share.
2 (*Ibid.*)

3 As shown above, good faith settlement law is exclusively intended to apply to settlements
4 made in tort and contract actions, not adjudications of groundwater rights. (*Herrick, supra*, 29
5 Cal.App.4th at pp. 759-60.) Therefore, the “reasonable range” test set forth in *Tech-Bilt, supra*, is
6 not well suited or intended for evaluating whether the Partial Settlement was made in good faith
7 by the settling parties. Notwithstanding, the Partial Settlement implicitly violates the underlying
8 public policy in support of a good faith determination and is at best premature.

9 **A. The Partial Settlement Will Result In An Inequitable Sharing of Costs Among**
10 **the Settling Defendants and Non-Settling Defendants**

11 As the court in *River Garden Farms, Inc. v. Superior Court* (1972) 26 Cal.App.3d 986,
12 993 observed, “[t]he major goals of the [good faith settlement laws] are, first, equitable sharing of
13 costs among the parties at fault, and second, encouragement of settlements.” (*River Garden*
14 *Farms, Inc., supra*, 26 Cal.App.3d at p. 993.) The Settling Defendants make perfunctory
15 reference to the public policy in favor of settlement, but fail to emphasize the equally, if not more,
16 significant public policy goal of ensuring equitable sharing of costs. (Motion, at pp. 1, 6.)

17 As the Settling Parties repeatedly stated on record, the Partial Settlement does not
18 establish water rights. (Declaration of Michael McLachlan in Support of Motion for Final
19 Approval of Partial Class Settlement (“McLachlan Decl.”), Ex. 2 at p. 2 [“Does this settlement
20 give me a water right? No.”]; see Declaration of Jeffrey V. Dunn (“Dunn Decl.”), Ex. A at 52:12-
21 16 [Class counsel represented at the October 25, 2013 hearing that the class is not asking the
22 Court to approve an allocation number as being reasonable].) As the Partial Settlement does not
23 establish water rights for the Wood Class, the Partial Settlement will not affect the Wood Class’s
24 obligations to (1) prove its reasonable and beneficial use; and (2) defend against water rights
25 claims of non-settling parties, including all private landowner parties. In other words, even if all
26 Public Water Suppliers had agreed to the Partial Settlement, the Wood Class would still continue
27 its litigation against private landowners and other public landowner parties all of whom would be
28 potentially responsible for their respective proportionate shares of Wood Class’s legal fees.

1 The Partial Settlement is an attempt by the Settling Parties to artificially cap their potential
2 attorneys' fees and costs, for which the Settling Parties would otherwise be liable. It has the
3 collusive effect of disproportionately apportioning costs as between the Settling Parties and the
4 non-settling private and public defendants. While the Partial Settlement purports to limit the
5 Settling Parties liability for attorneys' fees and costs and, in conjunction with the Motion To Be
6 Relieved of All Court Orders For Payment of Court-Appointed Expert Fees and Costs ("Relief
7 Motion"), the court appointed expert fees, it does not limit either the Settling Parties' water rights
8 at issue in the upcoming Phase 6 trial or the legal expense that the Wood Class will continue to
9 incur. Accordingly, the Settling Defendants will have the unfair advantage of their capped
10 liability for attorney fees' and costs that they would have had to pay if all public and private non-
11 settling parties had entered into the Partial Settlement.

12 **B. There is No Proper Basis to Make a Rough Approximation of the Settling**
13 **Parties' Proportionate Liability or the Amount Paid in Settlement**

14 The "reasonable range" test requires the court to evaluate, among other factors, a rough
15 approximation of plaintiff's total recovery and the settlor's proportionate liability and the amount
16 paid in settlement. (*Tech-Bilt, supra*, 38 Cal.3d at p. 499.) But the Partial Settlement does not in
17 any way limit the Court's ability to rule on the Wood Class's later determination of water rights,
18 the Settling Parties' water rights or any element of an ultimate physical solution to the Basin's
19 overdraft condition. (Wood Class's Motion for Final Approval of Partial Class Settlement, at p.
20 5.) Instead, The Settling Parties have unambiguously stated that they intend to participate in the
21 Phase 6 trial to have their respective water rights determined by the Court. Thus, it is impossible
22 now to properly provide even a rough approximation of the value of the Wood Class's potential
23 total recovery or that of the Settling Parties' claims against the Wood Class because such
24 approximation is premature before the Phase 6 trial. In light of the foregoing, the Court has no
25 basis to make an adequate determination now that the Partial Settlement is a good faith
26 settlement.
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28

1 **IV. CONCLUSION**

2 For the reasons stated above, District No. 40 respectfully requests the Court to deny the
3 Motion.
4

5 Dated: December 23, 2013

BEST BEST & KRIEGER LLP

7 By

8 
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10 Attorneys for LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40
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PROOF OF SERVICE

I, Kerry V. Keefe, 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, 5 Park Plaza, Suite 1500, Irvine, California, 92614. On December 23, 2013, I served the within document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO
MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT BY THE WOOD
CLASS SETTLING DEFENDANTS

- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on December 23, 2013, at Irvine, California.


Kerry V. Keefe