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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

**NOTICE OF MOTION AND  
MOTION TO STRIKE, OR IN THE  
ALTERNATIVE TAX, COSTS;  
DECLARATION OF JEFFREY V.  
DUNN**

Date: To be set by the Court  
Time: To be set by the Court  
Dept.: To be set by the Court

1 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on a date, time and location to be set by the Court, Los  
3 Angeles County Waterworks District No. 40 ("District No. 40"), California Water Service  
4 Company, Quartz Hill Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation  
5 District, Desert Lake Community Services District, and North Edwards Water District  
6 (collectively, the "Moving Parties") will and hereby move to strike, or in the alternative tax, costs  
7 requested by the Wood Class.

8 This Motion is made and based upon this Notice of Motion, the accompanying Motion  
9 and Declaration of Jeffrey V. Dunn, all matters currently on file with the Court regarding this  
10 case, all evidence that may be presented at the hearing of this matter, and all matters of which the  
11 Court may take judicial notice.

12 Dated: May 31, 2016

BEST BEST & KRIEGER LLP

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15 By: 

16 ERIC L. GARNER  
17 JEFFREY V. DUNN  
18 WENDY Y. WANG  
19 Attorneys for Defendant  
20 LOS ANGELES COUNTY  
21 WATERWORKS DISTRICT NO. 40  
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Los Angeles County Waterworks District No. 40 (“District No. 40”), California Water Service Company, Quartz Hill Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, and North Edwards Water District (collectively, the “Moving Parties”) hereby move to strike the Wood Class’ request for costs as the request was untimely and the Wood Class is not a prevailing party pursuant to Code of Civil Procedure section 1032 et seq.<sup>1</sup> To the extent the Court determines that the request is timely and the Wood Class is a prevailing party, the Court should tax costs that are unsubstantiated, unreasonable, unnecessary or prohibited.

**I. FACTUAL BACKGROUND**

The Notice of Entry of Judgment was served on all parties in this coordinated proceeding on December 28, 2015. (Declaration of Jeffrey V. Dunn (“Dunn Decl.”) at Ex. “A”.) The Wood Class sought attorneys’ fees and costs under Section 1021.5 on or about January 27, 2016. On April 25, 2016, the Court issued an order awarding attorney fees, but declined to award costs because costs are not available under Section 1021.5. (Dunn Decl. at Ex. “B”.) The April 25, 2016 Order, in relevant part, provides:

Counsel for the Wood Class is directed to file a Memorandum of Costs under the provisions of the Code of Civil Procedure. The court will hear any motions to tax costs or other challenges to the cost bill in accord with the Code of Civil Procedure and the Rules of Court. (*Id.* at p. 14.)

The Wood Class filed a memorandum of costs on May 11, 2016.

**II. ARGUMENT**

**A. The Memorandum of Costs Was Untimely and the Court Does Not Have Discretion to Extend the Filing Deadline**

The Wood Class submitted a memorandum of costs on May 11, 2016—231 days after the Notice of Entry of Judgment was served on all parties. (Dunn Decl. at Ex. “A”.) Pursuant to California Rules of Court, Rule 3.1700, subdivision (a)(1), “a memorandum of costs [must be

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<sup>1</sup> Unless otherwise specified, all section references are to the Code of Civil Procedure.

1 filed] within 15 days after the date of service of the notice of entry of judgment.” An extension of  
2 the filing timeframe may be granted either by parties’ agreement or by court order. (Rules of  
3 Court, Rule 3.1700, subd. (b)(3).)

4 Here, no agreement was reached between the parties and the Wood Class never requested  
5 that the Court extend the filing deadline. Thus, the deadline for the Wood Class to its  
6 memorandum of costs was January 12, 2016. The failure to submit a timely memorandum of  
7 costs is a waiver of the right to recover costs. (See *Hydratec, Inc. v. Sun Valley 260 Orchard &*  
8 *Vineyard Co.* (1990) 223 Cal.App.3d 924, 929 [“[I]f the claimant fails to present a cost bill, a  
9 waiver of the right to costs results. The time provisions relating to the filing of a memorandum of  
10 costs, while not jurisdictional, are mandatory.”].)

11 The Court’s April 25, 2016 order is not an order to extend the deadline to file the  
12 memorandum of costs. Even if it were, a court can extend the filing deadline by 30 days. (Rules  
13 of Court, Rule 3.1700, subd. (b)(3) [“In the absence of an agreement, the court may extend the  
14 times for serving and filing the cost memorandum or the notice of motion to strike or tax costs for  
15 a period not to exceed 30 days.”].) Thus, the Wood Class cannot recover costs under section  
16 1032 et seq., and the motion to strike costs should be granted.

17 **B. The Wood Class Is Not a Prevailing Party Under Section 1032, Subdivision**  
18 **(a)(4)**

19 To recover costs, a party must meet section 1032’s definition of a “prevailing party.”  
20 (Code Civ. Proc. § 1032, subd. (a)(4).) While the Court awarded attorneys’ fees to the Wood  
21 Class under section 1021.5, such award does not mean the Wood Class is entitled to costs. A  
22 “‘successful party’ within the meaning of Code of Civil Procedure section 1021.5 is not the same  
23 as the definition of the ‘prevailing party’ pursuant to Code of Civil Procedure section 1032.”  
24 (*Ventas Finance I, LLC v. Franchise Tax Bd.* (2008) 165 Cal.App.4th 1207, 1234.)

25 Under Section 1032, subdivision (a)(4), a prevailing party is: (a) “the party with a net  
26 monetary recovery”; (b) “a defendant in whose favor a dismissal is entered”; (c) “a defendant  
27 where neither plaintiff nor defendant obtains any relief”; and (d) “a defendant as against those  
28 plaintiffs who do not recover any relief against that defendant.” Alternatively, “[w]hen any party

1 recovers other than monetary relief and in situations other than as specified, the ‘prevailing party’  
2 shall be as determined by the court, and under those circumstances, the court, in its discretion,  
3 may allow costs or not and, if allowed may apportion costs between the parties on the same or  
4 adverse sides pursuant to rules adopted under Section 1034.” (Code Civ. Proc. § 1032, subd.  
5 (a)(4).)

6 The Wood Class does not meet the section 1032 definition of a prevailing party. As a  
7 plaintiff, the Wood Class can recover costs only if it is the party with a net monetary recovery or  
8 it obtains nonmonetary relief in excess of those obtained by the defendants. (*Id.*; *Olsen v. Breeze,*  
9 *Inc.* (1996) 48 Cal.App.4th 608, 627 [plaintiff is not a prevailing party where plaintiff sought to  
10 strike releases of a liability agreement, but defendants ultimately agreed to modify the releases].)

11 In its First Amended Class Action Complaint, the Wood Class sought the following:

- 12 1. Economic and compensatory damages;
- 13 2. Declaration that its rights are superior to all non-overlying users;
- 14 3. Apportioning water rights in a fair and equitable manner and enjoining any and all  
15 uses;
- 16 4. Damages from public entities that will compensate the Wood Class for past and  
17 future takings; and
- 18 5. Costs.

19 (Dunn Decl., Ex. “C” at pp. 15-16.)

20 Three of the five requests are monetary; yet, the judgment does not afford the Wood Class  
21 any monetary recovery. As such, the Wood Class did not obtain a “net monetary recovery.”

22 Furthermore, the Wood Class did not obtain any of its requested nonmonetary relief. It  
23 failed to establish that its rights are superior to those of the Moving Parties and it failed to have  
24 water rights apportioned equitably. In fact, the Wood Class unsuccessfully opposed Public Water  
25 Suppliers’ effort to declare the existence of the overdraft in the groundwater basin during the  
26 Phase 3 trial. The Court’s findings in Phase 3 meant that District No 40’s adverse groundwater  
27 use can be prescribed against the Wood Class’ water rights. Moreover, while there was an  
28 allocation of production rights in the judgment, that allocation was *not* done by an equitable

1 apportionment as sought for in the Wood Class complaint; instead, the court determined the  
2 groundwater rights for each party based on the evidence including present and historical  
3 groundwater uses as requested by the Public Water Suppliers’ complaints and cross-complaints.  
4 The Public Water Suppliers, not the Wood Class, are the prevailing parties under section 1032.

5 To the extent the Wood Class obtained any nonmonetary relief, it is negligible compared  
6 to the relief obtained by the Moving Parties. While the judgment awarded the Wood Class  
7 3,806.4 acre-feet per year (“afy”) of production rights, the non-overlying water producers were  
8 awarded 12,345 afy – more than three times the amount obtained by the Wood Class. (Dunn  
9 Decl., Ex. “D”.) District No. 40 alone was awarded 6,789.26 afy—an amount that exceeds that  
10 awarded to the Wood Class by 2,982.86 afy. (*Id.*) As such, under the standard set forth in *Olsen*,  
11 *supra*, 48 Cal.App.4th 608, the Wood Class cannot be the prevailing party.

12 **C. Unsubstantiated, Unreasonable, Unnecessary, or Prohibited Costs Should Not**  
13 **Be Allowed**

14 To the extent the Court determines that the Wood Class’ request for costs is timely and  
15 that the Wood Class is a prevailing party under section 1032 et seq., the Court should tax  
16 unsubstantiated, unreasonable, unnecessary, or prohibited costs.

17 1. Unsubstantiated Costs Should Not Be Allowed

18 The Wood Class’ memorandum of costs omits crucial information necessary for the Court  
19 and other parties to determine whether the costs are recoverable or not. For example, item 9 of  
20 the memorandum of costs requests that the Wood Class “specify” “court-ordered transcripts”.  
21 Rather than specifying the proceeding by date(s), the Wood Class merely states “trial transcripts.”  
22 Similarly, the Wood Class did not specify the exhibits or phases of trial for which it seeks  
23 photocopy costs. (Item 11 of the memorandum of costs.) Specificity and details are especially  
24 important when the Wood Class is requesting \$32,232.75 in “other costs”. (Item 13 of the  
25 memorandum of costs.) Without the date or the purpose for which those costs were incurred, it is  
26 impossible for the Court or any party to determine which of the included costs are permitted or  
27 reasonable under Section 1032 et seq. The omission is inexcusable considering the fact that the  
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Wood Class had 231 days to prepare the memorandum. As such, all unsubstantiated costs should be taxed.

2. Wood Class Requests Prohibited Costs

Only certain costs are recoverable under section 1032 et seq. The prohibited costs include: (a) post-judgment costs; (b) “fees for experts not ordered by the court”; (c) “[p]ostage, telephone, and photocopying charges, except for exhibits”; (d) “[t]ranscripts of court proceedings not ordered by the court”; and (e) costs not “reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial.” (Code Civ. Proc. § 1034, subd. (a) & § 1033.5, subds. (b) & (c).)

While the memorandum of costs lacks sufficient detail to determine whether each claimed cost is allowable, District No. 40 has identified at least \$16,119.35 in prohibited costs:

1. \$3,569.96 in costs incurred after Judgment was entered on December 28, 2015 (Dunn Decl., ¶7, Ex. “E”; Memorandum of Costs (“Memo”) at p. 4 [Item 1.g., Motion for Attorneys’ Fees, Motion for Order Setting Parameters for Termination, Glotrans Electronic Filing Fees post-dating December 28, 2015]);
2. \$655 in unnecessary costs related to a writ filing (Memo at p. 4 [Item 1.g.]);
3. \$1,458.40 in deposition costs unnecessary for the prosecution of the Wood Class complaint (Memo at p. 5 [Item 4.e (depositions costs for Charles Tapia and Mark Ritter)]);
4. \$1,625.00 in fees for experts not ordered by the court (Memo at p. 3 [Item 8.b., expert fees for Dennis Williams]);
5. \$4, 667.64 in photocopy costs (Memo at p. 6 [Item 13 (class notice copy costs)]; Dunn Decl., Ex. “E” [Exhibit 13 at pp. 3 & 13]); and
6. \$1,717.98 in postage and Federal Express mailing charges (Memo at pp. 5-6 [Item 13]; Dunn Decl., ¶ 7 & Ex. “E”);
7. At least \$2,425.37 in other costs not reasonably necessary to the conduct of the Wood Class litigation (Memo at pp. 6 [Items 13 (court expert FTP storage site fees)]; Dunn Decl., Exs. “E” & “F” [meals]).

1 The Court should tax these prohibited costs and not award costs where there is improper  
2 or complete lack of evidence to support the requested cost.

3 **III. CONCLUSION**

4 For the foregoing reasons, the Moving Parties respectfully request the Court to strike the  
5 Wood Class' request for costs, or in the alternative, tax costs that are unsubstantiated,  
6 unreasonable, unnecessary, or prohibited.

7  
8 Dated: May 31, 2016

BEST BEST & KRIEGER LLP

9  
10 By: 

11 ERIC L. GARNER  
12 JEFFREY V. DUNN  
13 WENDY Y. WANG  
14 Attorneys for Defendant  
15 LOS ANGELES COUNTY  
16 WATERWORKS DISTRICT NO. 40  
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**DECLARATION OF JEFFREY V. DUNN**

I, Jeffrey V. Dunn declare:

1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law.

2. I am an attorney licensed to practice law in the State of California. I am a partner of Best, Best & Krieger LLP, attorneys of record for Los Angeles County Waterworks District No. 40 ("District No. 40").

3. Attached as Exhibit "A" is a true and correct copy of the Notice of Entry of Judgment (without the attachments) that my office served on all parties on December 28, 2015.

4. Attached as Exhibit "B" are true and correct copies of excerpts from the Order After Hearing on April 1, 2016.

5. Attached as Exhibit "C" is a true and correct copy of the Wood Class' First Amended Class Action Complaint.

6. Attached as Exhibit "D" are true and correct copies of excerpts from the Judgment.

7. Attached as Exhibit "E" is a true and correct copy of Supplemental Declaration of Michael D. McLachlan in Support of Motion for Award of Attorneys' Fees, Costs and Incentive Award. Of the \$87,256.28 costs allegedly incurred by Mr. Michael McLachlan, \$3,569.96 was incurred after December 28, 2015. In addition to the \$1,288.75 in in-house postage meter costs, Mr. McLachlan listed additional \$216.76 in postage costs and \$212.47 in Federal Express charges related to postage.

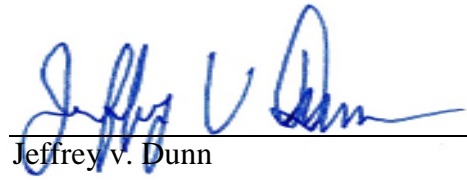
8. Attached as Exhibit "F" is a true and correct copy of an excerpt from Declaration of Daniel M. O'Leary in Support of Motion for Award of Attorneys' Fees, Costs and Incentive Award.

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

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1 Executed this 31st day of May, 2016, at Los Angeles, California.

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Jeffrey v. Dunn

**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 May 31, 2016, I served the following document(s):

**NOTICE OF MOTION AND MOTION TO STRIKE, OR IN THE ALTERNATIVE  
TAX, COSTS; DECLARATION OF JEFFREY V. DUNN**



by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 31, 2016, at Los Angeles, California.

  
Rosanna R. Pérez

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