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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; et al.

Defendants.

Case No.: BC391869

(related to JUDICIAL COUNCIL
COORDINATION PROCEEDING No.
4408; Santa Clara Case No. 1-05-CV-
049053, Honorable Jack Komar)

**EX PARTE APPLICATION FOR
RELIEF FROM EXPERT
DISCLOSURE DEADLINE AND
REQUEST FOR ORDER
TRANSFERRING THIS CASE;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: June 25, 2008

Time: 8:15 a.m.

Place: Telephonic/Courtcall

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Richard A. Wood (“Wood”) requests: (1) relief from the June 27, 2008
4 expert disclosure deadline; and (2) an order transferring this case from Judge Lichtman to
5 the coordinated JCCP proceeding.

6
7 **II. RELIEF FROM THE EXPERT DESIGNATION DEADLINE**

8 Plaintiff requests a 60-day extension of the expert designation deadline, from June
9 27, 2008 to August 28, 2008. The reasons supporting good cause for this request are
10 numerous.

11 Plaintiff has only had a Complaint on file for 3 weeks. There has been no time yet
12 for any discovery, or even discussions with the water purveyor’s experts (as discussed at
13 the May 22 hearing). (See McLachlan Decl., ¶2.) Because of the prior discovery stay on
14 all parties – lifted on May 22, 2008 – the record of information available to Plaintiff from
15 other sources is seriously lacking. Counsel needs time to determine what the potential
16 class will be facing at the critical phase II trial before determining whether experts are
17 necessary, and if so what types. If expert opinions are necessary to adequately protect the
18 interests of the small pumpers, Plaintiff may file a motion for appointment of an expert.

19 Moreover, it is not reasonable to require Plaintiff and proposed class to designate
20 experts without an order certifying a class. There is little sense in spending substantial
21 resources on an expert to represent a class that does not exist.

22 More generally, the appropriators have had years to develop their expert opinions,
23 which are exceedingly voluminous. Plaintiff and his counsel must have adequate time to
24 get up to speed, and digest the materials generated by the purveyor experts. With so
25 much at stake for these thousands of small pumpers, it would be manifestly unfair to
26 force them to make crucial litigation decisions in the dark.

1 Additionally, the availability of qualified experts who have not been retained
2 already is a serious problem. Plaintiff’s counsel has made a good deal of investigation
3 into potential water experts, and has found it hard to find one in California who could
4 serve the proposed class.

5 Plaintiff is also now under an order staying discovery, and hence preventing him
6 from designating experts in the absence of relief from that order (See Section III, below).

7
8 **III. PLAINTIFF REQUESTS ORDER TRANSFERRING THIS CASE TO**
9 **JUDGE KOMAR**

10 At the time of filing of the Complaint three weeks ago, Plaintiff also filed a
11 Notice of Related cases that has not yet effectuated the transfer of the case. The
12 presiding complex civil judge, the Honorable Victoria Chaney, has assigned the case to
13 Judge Lichtman, and issued an order staying all further proceedings, including discovery.
14 (*See* Notice of Complex Designation, Exhibit A (filed concurrently with this
15 Application).)

16 While Plaintiff was hopeful that an “Add-on” Petition would be unnecessary, it
17 appears that additional steps will need to be taken to effectuate the transfer of the case to
18 the coordinated JCCP proceeding. Since the case has been designated as complex,
19 Plaintiff must technically either obtain a stipulation from all Parties in all of the
20 consolidated actions, or file a noticed Motion. (Weil & Brown, *Civ. Procedure Before*
21 *Trial* (2008) ¶12:355-360; C.C.P. § 1048(a); Cal. Rule of Court 3.350.) Because there
22 are hundreds of parties in these actions, a stipulation is not feasible. Plaintiff prefers to
23 resolve this without noticed motion, if possible, so that he can propound written
24 discovery.

25 Plaintiff would like to try to short-circuit this process by obtaining an order from
26 Judge Komar transferring case. Plaintiff would then appear ex parte before Judge
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Lichtman to obtain relief from the stay order and an official transfer of this case.

DATED: June 24, 2008

LAW OFFICES OF MICHAEL D. McLACHLAN
LAW OFFICE OF DANIEL M. O'LEARY

By: _____ //s//
Michael D. McLachlan
Attorneys for Plaintiff

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PROOF OF SERVICE

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 523 West Sixth Street, Suite 215, Los Angeles, CA, 90014. On the date set forth below, I served the within document(s) by posting the document(s) listed below to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter: **EX PARTE APPLICATION FOR RELIEF FROM EXPERT DISCLOSURE DEADLINE AND REQUEST FOR ORDER TRANSFERRING THIS CASE; MEMORANDUM OF POINTS AND AUTHORITIES**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 24, 2008, at Los Angeles, California.

//s//
Carol Delgado