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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER
CASES

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.

Judicial Council Coordination
Proceeding No. 4408

(Honorable Jack Komar)

Case No.: BC 391869

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF
PARTIAL CLASS SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

**[filed concurrently with Declaration of
Michael D. McLachlan]**

Date: December 11, 2013
Time: 9:00 a.m.
Dept: Santa Clara Superior Court, 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
3 thereafter as the matter may be heard, at 191 North First Street, San Jose, California, in a
4 department to be determined by the Court, Richard Wood, City of Lancaster, Palmdale
5 Water District, Phelan Piñon Hills Community Services District, and Rosamond
6 Community Services District (collectively “Settling Parties”) jointly move for final
7 approval of the Wood Class Settlement.

8 These Settling Parties bring this motion pursuant to California Rules of Court,
9 Rule 3.769.

10 The Motion is based on this Notice, the Memorandum of Points and Authorities,
11 the Declaration of Michael D. McLachlan, the various documents attached thereto, the
12 records and file herein, and on such evidence as may be presented at the hearing of the
13 Motion.

14
15 DATED: November 15, 2013 LAW OFFICES OF MICHAEL D. McLACHLAN
16 LAW OFFICE OF DANIEL M. O’LEARY

17
18 By: _____
19 MICHAEL D. MCLACHLAN
20 Attorneys for Plaintiff and the Class

21 DATED: November 15, 2013 LAGERLOF, SENEAL, GOSNEY & KRUSE, LLP

22
23 By: _____ //s//
24 THOMAS S. BUNN
25 Attorneys for Defendant Palmdale Water District
26 and on behalf of the other Settling Defendants
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**
2 **FOR FINAL APPROVAL OF PARTIAL CLASS SETTLEMENT**
3

4 **I. INTRODUCTION**

5 Plaintiff Richard Wood has entered into a Stipulation of Settlement (“Agreement”
6 or “Settlement”) with Defendants City of Lancaster, Palmdale Water District, Phelan
7 Piñon Hills Community Services District, and Rosamond Community Services District
8 (collectively, the “Settling Defendants”), all of whom are referred to as the “Settling
9 Parties,” subject to Court approval, notice to the Class, and a final approval and fairness
10 hearing.

11 The Settling Parties request that the court adopt the Order Granting Final Approval
12 of Class Action Settlement, including approval of the legal fees and costs of Class
13 Counsel.

14 **II. THE LITIGATION AND PROPOSED SETTLEMENT**

15 **A. History of the Wood Class Action**

16 The court is familiar with the history of this action and the details surrounding the
17 Wood Class (the “Class”). Briefly, Plaintiff Richard Wood (“Plaintiff”) filed this action
18 on June 2, 2008 to protect his rights, and those of other Antelope Valley landowners who
19 have been pumping less than 25 acre feet year (“afy”) of groundwater from the Antelope
20 Valley Groundwater Basin (“Basin”). Plaintiff filed this action so that he and the
21 members of the Class could continue to extract groundwater from the Basin for
22 reasonable and beneficial use. This action was, in large measure, filed to contest claims
23 of prescriptive rights asserted by the “Settling Defendants”. The court certified the Wood
24 Class Action by Order dated September 2, 2008, in which the court defined the Wood
25 Class as:

26 All private (i.e., non-governmental) persons and entities that own real
27 property within the Basin, as adjudicated, and that have been pumping less
28 that 25 acre-feet per year on their property during any year from 1946 to the

1 present. The Class excludes the defendants herein, any person, firm, trust,
2 corporation, or other entity in which any defendant has a controlling
3 interest or which is related to or affiliated with any of the defendants, and
4 the representatives, heirs, affiliates, successors-in interest or assigns of any
5 such excluded party. The Class also excludes all persons and entities that
6 are shareholders in a mutual water company.

7 Notice of the Pendency of the Wood Class Action was sent by first class mail to
8 all Wood Class Members¹ who could be identified with reasonable effort on or about July
9 7, 2009 and a Summary Notice was published as instructed by the court. The deadline
10 for putative Class Members to exclude themselves (as extended) ended on December 4,
11 2009. Throughout this process, the court made various orders allowing certain parties
12 who had opted-out to rejoin the Class.

13 **B. Wood Class Settlement Agreement Background And Terms**

14 Large settlement negotiations with the parties to the Wood Action have been
15 ongoing since 2009. All parties previously entered into a comprehensive settlement in
16 2011, but that did not obtain Court approval. The Settling Parties in the current
17 settlement agreement commenced settlement negotiations as a group earlier this year, and
18 those discussions were generally consistent with the proceeding efforts after the failed
19 settlement attempt in 2011. As a result of the extensive negotiations, the Settling Parties
20 ultimately agreed upon the terms that form the Wood Class Agreement, attached to the
21 Declaration of Michael D. McLachlan as Exhibit 1.

22 Class Counsel believes that the Wood Class Agreement, and the terms provided
23 therein, is fair to all concerned, including the non-settling parties, although the
24 Agreement does not bind the non-settling parties. Several of the material terms agreed
25 upon in this Agreement are: (1) the Wood Class agrees not to contest the Settling
26 Defendants' estimates of the Basin's Native Safe Yield as long as it is at least 82,300
27 acre-feet of water per year; (2) the Wood Class will not contest the Settling Defendants'

1 right to produce specified quantities of water from the Basin; (3) the Wood Class has a
2 correlative right along with other overlying landowners) to produce at groundwater from
3 the Basin in amount to be determined by the Court in the future; (4) the prescriptive
4 rights of the Settling Defendants, if any, shall not be exercised to diminish the rights of
5 the Wood Class; (5) if the Court imposes a Physical Solution, the Wood Class will be
6 bound by it subject to the terms of the Agreement; (6) in the event of a Physical Solution,
7 Settling Defendants will not object to each Wood Class Member being granted a right to
8 pump up to and including 3 acre-feet for reasonable and beneficial domestic use on their
9 overlying land from the Native Safe Yield; (7) Settling Parties agree that the Wood Class
10 members pumping in excess of 3 acre-feet per year should generally be treated the same
11 as other non-Class Member overlying property owners with respect to the payment of
12 assessments for replacement water; (8) the Wood Class releases the Settling Defendants
13 from taking claims.

14 None of the substantive terms concerning water rights or the potential physical
15 solution are binding on the Court or any of the non-settling parties in these coordinated
16 proceedings. In other words, the Agreement only impacts the rights existing between the
17 Settling Parties, and does not in any way limit the Court's ability to rule on the Class'
18 ultimate water rights, the Settling Defendants' water rights, or any element of a potential
19 physical solution. Although the Agreement does not resolve all of the prescriptive claims
20 pending against the Class, it does substantially reduce those, and is such presents a clear
21 benefit to the Class.

22 **III. ARGUMENT**

23 **A. Standard For Final Approval**

24 There is an overriding public interest in settling and quieting litigation, especially
25 class actions. (*Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276,
26

27 ¹ If not defined in this Motion, all capitalized references are defined in the
28 Settlement Agreement. (McLachlan Decl., Ex. 1.)

cert. denied, 506 U.S. 953.) Court approval is required before any action certified as a class action may be settled or compromised and subsequently dismissed. Cal Rules of Court, Rule 3.769. In deciding whether to approve a class action settlement, the court has broad discretion to determine whether a proposed settlement is fair under the circumstances of the case. (*Mallick v. Superior Ct.* (1979) 89 Cal.App.3d 434, 438.)

In evaluating the fairness of a class settlement, courts consider the relevant factors, including “the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, and the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 (citation omitted).) The above factors are not exhaustive, and the court “is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

Generally, a presumption of fairness exists where: (1) the settlement is reached through arm’s length negotiations; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) Ultimately, the Court must “satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness,” which requires receiving “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)

B. The Proposed Settlement Agreement Is Fair, Adequate and Reasonable.

The proposed Settlement Agreement is well within the “range of reasonableness” and thus merits approval. Although Plaintiff Wood and the Class believe that their

1 claims have merit, they recognize that, proceeding with this litigation carries considerable
2 risk. It is, therefore, in the best interests of Plaintiff and the Class to settle with, and
3 receive reasonable and prompt benefits from, the Settling Defendants.

4 It is elemental that a settlement is a compromise and, thus, does not ordinarily
5 provide a plaintiff with the full relief or recovery originally sought at the time the action
6 was filed. (*Wershba, supra*, 91 Cal.App.4th at 250 (“In the context of a settlement
7 agreement, the test is not the maximum amount plaintiffs might have obtained at trial on
8 the complaint, but rather whether the settlement is reasonable under all of the
9 circumstances.”).) Even under the Agreement, however, the Class will benefit
10 substantially by avoiding the prescription claims and limiting the scope of future
11 challenges to their water rights. The Class is giving up very little; primarily, the
12 recognition of the right of the Settling Defendants to pump groundwater in reasonable
13 amounts (all subject to Court determination in the future).

14 The Agreement represents a compromise and allows for dismissal of Settling
15 Defendants’ prescription claims. It also resolves as between these parties, many of the
16 issues remaining to be decided, thereby limiting the risk for both sides and decreasing the
17 contested issues before the Court.

18 In sum, given the many risks faced by Plaintiff and the Class in pursuing this
19 litigation, the Agreement represents a reasonable resolution of otherwise complex and
20 strongly contested issues. Had the Class not partially settled, the resolution of those
21 issues would likely have resulted in a longer and more expensive trial, and most
22 importantly, would have put the Class at risk of a substantial adverse judgment on the
23 prescription claims, resulting in diminished water rights. The Agreement is within the
24 range of reasonableness in light of these circumstances.

25 **C. The Settlement Is the Product of Informed and Arm’s Length Negotiations**

26 This Agreement is the result of years of discovery and contested law and motion
27 proceedings, all of which educated counsel on both sides as to the strengths and
28 weaknesses of their claims. Class Counsel reviewed and analyzed thousands of pages of

documents produced by Defendants, and have engaged in extensive research in relation to the legal and factual issues central to Plaintiff's claims. Furthermore, after the Phase 3 trial, and the determination of overdraft, the risks of continuing litigation are no longer hypothetical.

As the Court is well aware, Class counsel has spent literally hundreds of hours mediating this Case both globally and individually over a period of five years, through Mediators Dendy, Waldo, and Robie, as well as extensive direct negotiations run by the parties and their counsel. (McLachlan Decl. ¶ 4-5.)

Class Counsel also has experience in complex class action litigation. Class Counsel was thus well-informed and strategically positioned to negotiate an appropriate settlement agreement, which was negotiated at arms-length over many years' time. Furthermore, Richard Wood has served ably as the representative for the Class, going beyond and above the typical "call of duty." (McLachlan Decl. ¶ 5.)

D. The Class Received Adequate Notice.

Notice of a class action settlement must "present a fair recital of the subject matter and proposed terms [and provide] an opportunity to be heard to all class members." (*In re Equity Funding Corp. of America Sec. Litig.* (1979) 603 F.2d 1353, 1361; *see also*, *Phillips v. Shutts* (1985) 472 U.S. 797, 812.)

The Court-approved Class notice adequately protected the due process rights of all Class Members and satisfied California Rules of Court, rule 3.766. The manner of giving notice and the content of the notice must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings. (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2001) 85 Cal.App.4th 1135, 1164 (citation omitted).) An appropriate notice will have a "reasonable chance of reaching a substantial percentage of the class members." (*Wershba, supra*, 91 Cal.App.4th at 251 (citation omitted).)

Mailed notice was sent to 4,313 Class members on October 31, 2013, by first class mail, after updating the existing class list through the national change of address

1 database. (McLachlan Decl. ¶ 7, Ex. 2.) Published notice was transmitted in accord with
2 this Court's order by publishing the approved notice by in the Los Angeles Times,
3 Antelope Valley Press, and Bakersfield Californian on consecutive weekends at the start
4 of the notice period. (McLachlan Decl. ¶ 7.) To this point, there has only been one opt
5 out, and only eighteen returned mailings. Another factor that may be considered at final
6 approval is the reaction of class members to the settlement. (*Dunk, supra*, 48 Cal.App.4th
7 at 1801.) The reaction here has been very positive; no objections have been received. .
8 (McLachlan Decl. ¶ 8.) Thus, this factor also weighs in favor of final approval.

9 **E. The Order Approving This Settlement Is Final as to the Parties**

10 The Settlement completely resolves all of the pending causes of action that
11 Plaintiffs have brought against the Settling Defendants and is thus a final judgment
12 subject to appeal upon entry of the order approving this Settlement. (*California Dental*
13 *Ass'n v. California Dental Hygienists Ass'n* (1990) 222 Cal.App.3d 49, 60; *G.E. Hetrick*
14 *& Assoc. v. Summit Const. & Maint. Co.* (1992) 11 Cal.App.4th 318, 325-326 (absence of
15 cross-complaint by non-settling parties against settling parties renders judgment final);
16 *C.C.P.* § 902.1.) Furthermore, a judgment that is otherwise final between the parties
17 does not become interlocutory even though its terms may be subsequently modified by
18 the Court. (*Marriage of de Guigne* (2002) 97 Cal.App.4th 1353, 1359.)²

19 **IV. CONCLUSION**

20 For all of the foregoing reasons, Plaintiff Wood and the Settling Defendants
21 respectively request that the Court grant this Motion and enter judgment pursuant to
22

23
24
25 ² Although not the regular course, partial class action settlements do occur and are
26 permissible, just as in any other type of lawsuit. (*See, e.g., In re Homestore.com Inc.*
27 (2004) 225 F.R.D. 252, 254-55; *Smith v. Arthur Anderson LLP* (9th Cir. 2005) 421, F.3d
28 989, 1000; *see also In re Cipro Cases*, JCCP 4154 and 4220 (San Diego Superior Court),
<https://ciprosettlement.com/Portals/0/Documents/2013-10-01%20Proposed%20Final%20Approval%20Order%20and%20Judgment%20w%20ex.pdf>

1 California Rules of Court 3.769(h), retaining continuing jurisdiction pursuant to
2 California Code of Civil Procedure sections 664.6 and 382.

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4 DATED: November 15, 2013 LAW OFFICES OF MICHAEL D. McLACHLAN
LAW OFFICE OF DANIEL M. O'LEARY

5
6
7 By: _____
MICHAEL D. MCLACHLAN
8 Attorneys for Plaintiff and the Class

9
10 DATED: November 15, 2013 LAGERLOF, SENECA, GOSNEY & KRUSE, LLP

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13 THOMAS S. BUNN
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and on behalf of the other Settling Defendants