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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 APPROVAL OF AWARD OF
ATTORNEY FEES AND COSTS;
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 moves for approval of an an
5 award of attorney fees and costs.

6 Plaintiff brings this motion pursuant to California Code of Civil Procedure
7 section 1021.5.

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

12
13 DATED: November 17, 2013

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

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16 By: _____
17 MICHAEL D. MCLACHLAN
18 Attorneys for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 **I. INTRODUCTION**

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

10 Per the stipulation of the Settling Parties, Plaintiff seeks approval of an award of
11 attorney’s fees in the total amount of \$719,829 and costs in the amount of \$17,038.

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

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

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

24 All private (i.e., non-governmental) persons and entities that own real
25 property within the Basin, as adjudicated, and that have been pumping less
26 that 25 acre-feet per year on their property during any year from 1946 to the
27 present. The Class excludes the defendants herein, any person, firm, trust,
28 corporation, or other entity in which any defendant has a controlling
interest or which is related to or affiliated with any of the defendants, and
the representatives, heirs, affiliates, successors-in interest or assigns of any

1 such excluded party. The Class also excludes all persons and entities that
2 are shareholders in a mutual water company.

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

4 The Settlement Agreement provide the Class Member with substantial benefit by,
5 *inter alia*, obtaining the surrender of prescriptive claims against the class in an aggregate
6 amount of approximately 40% of the current groundwater production. (*See* Amended
7 Statement of Partial Decision for Phase IV, June, 29, 2013.) The Settlement also limits
8 the Settling Defendants’ right to challenge the Class’ assertion of a right to produce up to
9 three-acre feet of groundwater per annum free of replacement assessment.¹
10

11 **III. ARGUMENT**

12 **A. An Award of Fees And Costs Is Appropriate under C.C.P § 1021.5**

13 Attorney fees and expenses are recoverable from the Defendants under a “private
14 attorney general” theory pursuant to Code of Civil Procedure § 1021.5. (*Serrano v.*
15 *Priest* (1977) 20 Cal.3d 25, 49.) Fees and reasonable litigation costs are awardable under
16 the “private attorney general” doctrine embodied in § 1021.5 where: (1) the claims
17 litigated by counsel have vindicated an important right affecting the public interest has
18 been enforced; (2) a significant benefit has been conferred on the general public or a
19 large class of persons; and (3) the necessity and financial burden of private enforcement
20 are such that an award is appropriate, and, in the interest of justice, the fee should not be
21 paid out of the recovery. (*Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407,
22 1413.)

23 For example, in *Beasley*, the plaintiffs recovered excess fee assessments levied
24 against thousands of bank customers. The court found that “such [consumer protection]
25

26
27 ¹ The balance of the substantive settlement terms are described in more detail in
28 the concurrently filed motion for final approval, and are incorporated here by this
reference.

actions have long been held to be in the public interest.” (*Id.* at 1418.) Thus, the court concluded that there was an important interest at stake. *Id.* The significance of the benefits is determined from a “realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case.” (*Woodland Hills Residents Association v. City Council* (1979) 23 Cal.3d 917, 939; *see Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d. 311, 321 n.10 (action affecting 3,000 persons conferred significant benefit).)

Each of the three criteria for the payment of “private attorney general” fees set forth in § 1021.5 is met in this case. Both the action and the Settlement have vindicated important rights to the use of water, and specifically, the surrender of prescriptive rights that threatened to take the water away from over 4,300 residents of the Antelope Valley.

B. The Court Should Approve the Stipulated Amounts of Fees and Costs

1. The Legal Framework

California courts approve the use of a lodestar enhanced by a multiplier in awarding attorneys’ fees under a statutory fee-shifting approach. (*Dept. of Transportation v. Yuki* (1995) 31 Cal.App.4th 1754; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 954.) The “lodestar and multiple” approach is also the most common approach used to award fees under the “private attorney general theory.”

The baseline of the lodestar method is determined by multiplying the reasonable number of hours expended by the reasonable hourly rate. (*See, e.g., Serrano*, 20 Cal.3d at 48-49.) However, the lodestar is merely the *starting point* for the calculation of reasonable attorneys’ fees, and California courts have endorsed turning to factors more subjective than a mere hourly fee analysis to determine the “multiplier” to be applied to counsel’s time. (*Rebney v. Wells Fargo Bank* (1991) 232 Cal.App.3d 1344, 1347.) These include the risk of non-payment, delay in counsel’s receipt of their fees, the quality of counsel’s work and the novelty and difficulty of the issues involved. (*Serrano*, 20 Cal.3d at 49; *Beasley*, 235 Cal.App.3d at 1419-20. *Coalition for Los Angeles County*

1 *Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251 (consideration of
2 additional factors such as risk and skill “required”); *Lealao v. Beneficial California Inc.*
3 (2000) 82Cal.App.4th 19, 42-43 (discussing California’s “relatively permissive attitude
4 on the use of multipliers.”); *Rader v. Thrasher* (1962) 57 Cal.2d 244, 253 (contingent
5 recovery of fee, “since it involves a gamble on the result, may properly provide for a
6 larger compensation than would otherwise be reasonable”).)

7 While there is no firm rule concerning multipliers (*Lealao*, 82 Cal.App.4th at 40)
8 the factors generally considered in applying a multiplier include: (1) the time and labor
9 required; (2) the novelty and difficulty of the questions presented; (3) the requisite legal
10 skill necessary; (4) the preclusion of other employment due to acceptance of the case; (5)
11 the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations
12 imposed by the client or the circumstances; (8) the amount at controversy and the results
13 obtained; (9) the experience, reputation, and ability of the attorneys; (10) the
14 “undesirability” of the case; (11) the nature and length of the professional relationship
15 with the client; and (12) awards in similar cases. (*See generally Serrano*, 20 Cal.3d at
16 49.)

17 Many of these factors have been expressly adopted by California courts in one
18 form or another, are present in this case and would thus support the award of a multiplier.
19 This case required considerable time and labor, as described above. Class Counsel
20 undertook large risks in filing and pursuing this case. In addition, Class Counsel agreed to
21 represent Plaintiffs on a full contingency basis. Unlike defense counsel, who were
22 compensated on a current basis, Class Counsel have not received any compensation for
23 their services to date and have litigated the case from inception without any assurance of
24 compensation for their work. Furthermore, Class Counsel devoted enormous time and
25 money to the prosecution of this action. In the nearly year and a half that this action was
26 pending, virtually every aspect of it was hotly contested.

2. The Amounts of Attorneys Fees and Costs are Reasonable

Plaintiff, through his counsel, has negotiated attorney fees of a set amount, based upon the total hours incurred, multiplied by \$550 an hour for attorney time and \$110 an hour for paralegal time, and allocated amongst the Settling Defendants based upon their relative groundwater production as compared to the total production of all ten water supplier defendants. (McLachlan Decl. ¶ 16.) The total attorney time used in the calculation was 3,736.2 hours (plus 30 for settlement approval work), with an estimated 477.3 hours of paralegal time. (McLachlan Decl. ¶ 13.) While the production of detailed billing records is not required for the purpose of awarding legal fees under C.C.P section 1021.5, Class Counsel nevertheless has submitted its complete, unredacted fee bills should the Court wish to examine the work performed in more detail. (McLachlan Decl., Ex. 2; O’Leary Decl, Ex. 1.)

The stipulated attorney fees and costs per defendant are as follows:

<u>Defendant</u>	<u>Fees</u>	<u>Costs</u>	<u>Total</u>
Palmdale Water District	\$576,798.94	\$13,651.46	\$590,450.40
Phelan Piñon Hills CSD	\$35,193.80	\$832.95	\$36,026.75
Rosamond CSD	\$107,899.55	\$2,553.73	\$110,453.28
TOTAL	\$719,892.29	\$17,038.14	\$736,930.43

While the Court does hold the gatekeeping authority, great consideration should be given to the fact that the Settling Defendants have stipulated to set amount of attorneys’ fees and costs, which amounts Plaintiff is requesting. These amounts arise from bargained for concessions by Class Counsel to the Settling Defendants in part to facilitate this partial settlement to the benefit of the Class. (McLachlan Decl. ¶ 12.)

Independent of this point, the amounts are entirely reasonable. The negotiated amounts are in line with Class Counsel’s normal billing rates, and are consistent with applicable market rates. (McLachlan Decl. ¶ 17.)

1 One of the more sensible and popular methods employed by Courts in assessing an
2 appropriate hourly rate is the Laffey Fee Matrix, which is frequently used in Federal
3 Court's across the County, as well as by California Superior Courts. (*See, e.g.,*
4 *Fernandez v. Victoria Secret Stores, LLC* (C.D. Cal. 2008) 2008 WL 8150856 *14-15
5 (showing detailed application of the matrix); *Nemecek & Cole v. Horn* (2012) 208
6 Cal.App.4th 641, 651 (upholding an hourly rate established by the Laffey Matrix).) The
7 Laffey Matrix is a publicly available and regularly updated study of average hourly
8 billing rates. (McLachlan Decl., Ex 3.). The Matrix presently lists an hourly rate of \$640
9 per hour for attorneys with 11 to 19 years of experience, and a paralegal rate of \$175 per
10 hour, both of which are well in excess of the discounted rates of \$550 and \$110 offered
11 by Class Counsel. (*Ibid.*)

12 Furthermore, the Laffey method requires the hourly rate to be adjusted based upon
13 the cost of living in the location where the services were performed, as against the
14 baseline. The cost of living in Los Angeles is approximately 4.37% higher in Los
15 Angeles than the baseline (District of Columbia) and thus the appropriate hourly rate
16 would be \$668 per hour.

17 Given the stipulation to a sum certain, the Court need not consider a loadstar
18 multiplier here, but certainly could if it so chose. The fact at hand certainly justify a 2 to
19 1 multiplier, so the Court could, for example, use an hourly rate of \$275 per hour, and
20 arrive at the same total fee award. Perhaps more sensibly, the multiplier analysis can be
21 used to simply bolster the propriety of total stipulated fees, notwithstanding the fact that
22 the truth is that the negotiated fees and costs were arrived at without consideration of a
23 multiplier.

24 Due to the numerous hurdles and unique problems Class Counsel faced in this
25 litigation, a high level of skill was required to prosecute this action. Class Counsel faced
26 tenacious opposition from Defendant and their counsel who fought vigorously throughout
27 this litigation. Despite the risks and obstacles facing them, Class Counsel were able to
28 negotiate a settlement that confers substantial benefits to approximately 4,300 class

1 members. Under such circumstances, courts frequently apply a multiplier of at least two
2 times the lodestar. (3 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992),
3 § 14.03 at 14-5 fns. 20 & 21 and cases cited therein. *See Ketchum v. Moses* (2001) 24
4 Cal.4th 1122, 1129-39 (affirming multiplier of 2.0); *see also Vizcaino v Microsoft* (9th
5 Cir. 2000) 290 F.3d 1043, 1051-54, *cert. denied sub nom., Vizcaino v. Waite*
6 (2002) 537 U.S. 1018 (survey of decisions in common fund class action cases showing
7 multipliers between 2 and 4 are common). The sacrifices and hardships presented by this
8 litigation have been uniquely high, and would justify a much higher multiplier.
9 (McLachlan Decl ¶¶ 20-21.)

10 **C. The Stipulated Amount of Costs Should Also Be Awarded.**

11 Class counsel have incurred a total of \$49,877 in the six years of litigating this
12 matter. Using the same formula used to negotiate the fee stipulation, the total costs agree
13 to by the Settling Parties and sought by way of this motion is \$17,038.

14
15 **IV. CONCLUSION**

16 For all of the foregoing reasons, Plaintiff Richard Wood, with the support of the
17 Settling Defendants, requests that the Court approve of an award of attorney's fees in the
18 total amount of \$719,829 and costs in the amount of \$17,038, and specifically in the
19 individual amounts set forth for each of the three paying defendants in the proposed
20 Partial Judgment.

21
22 DATED: November 17, 2013

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

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25 By: _____
MICHAEL D. MCLACHLAN
26 Attorneys for Plaintiff and the Class
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