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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	Judicial Council Coordination Proceeding No. 4408 (Honorable Jack Komar)
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.: BC 391869 **REPLY BRIEF IN SUPPORT OF MOTION FOR APPROVAL OF AWARD OF ATTORNEY FEES AND COSTS** **[filed concurrently with Supplemental Declaration of Michael D. McLachlan]** Date: January 7, 2014 Time: 10:00 a.m. Dept: Los Angeles Superior Court, Old Dept 1

REPLY BRIEF IN SUPPORT OF MOTION FOR APPROVAL OF AWARD OF ATTORNEY FEES AND COSTS

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

No class members have objected to the Settlement or the Settling Defendants' agreement to pay a sum certain in fees in costs in order to control their monetary exposure. Only one party has filed opposition: Los Angeles County Waterworks District No. 40 (hereinafter "D40").

Because D40 is not a Class member and is not deprived of any of its claims by virtue of this Settlement, it is questionable whether it has standing to challenge this Motion, as discussed in the Reply Brief on the Motion for Final Approval (and such authority incorporated herein by this reference). D40 does not indicate how any of its rights are adversely impacted by this Settlement, but to the extent such a theoretical impact can be argued, Plaintiff, through his counsel, hereby stipulates that any and all of D40s available arguments as against the Class are preserved if and when D40 faces a fee motion at some future date.

Nevertheless, Plaintiff addresses below some of D40's misguided arguments on issues that may be relevant to the Court's own duty of inquiry on the reasonableness of the attorneys' fees. In short, Plaintiff believes the Court should find the agreed upon legal fees to be fair and reasonable, and should approve the fee request in whole with an award of attorney's fees in the total amount of $719,829 and costs in the amount of $17,038.

II. ARGUMENT

A. There Has Been No Collusion, Conflict or Simultaneous Negotiation of Fees

For yet a third time, District 40 asserts without a shred of factual foundation, that the legal fees were simultaneously negotiated.[1] (Opposition, 2:13-22.) In advancing this

[1] This argument was featured prominently in D40's oppositions to the motions for preliminary approval and final approval. (*See, e.g.,* District 40's Opp. to Preliminary Approval at 5:18-6:6.) At the October 25, 2013 hearing, Mr. Dunn stated that he had concerns about the simultaneous negotiation of fees, and indicated that "all the

utterly baseless argument as it leading argument, D40 ignores the sworn declarations of class counsel and three of its fellow water supplier counsel: Thomas Bunn, Douglas Evertz, and Wesley Miliband. (Declarations of Settling Defendants, ¶¶ 3 [Dkt #7682]; McLachlan Declaration In Support of Final Approval Motion, ¶ 5 [Dkt # 7452].) In their declarations, Mssrs. Bunn, Evertz and Miliband state under oath that they "did not negotiate with the Wood Class (including its legal counsel) about the Wood Class attorneys' fees or costs that are included within the Settlement Agreement until after [they] came to an agreement with the Wood Class on the substantive terms of the Settlement Agreement that do not relate to the payment of the Wood Class' attorneys' fees and costs." (Declarations of Settling Defendants, ¶¶ 3.)

There was no simultaneous negotiation of legal fees in this settlement. But D40's repeated advancement of this baseless argument highlights one of the primary reasons Class counsel has incurred substantial fees over the past six years and why the full negotiated fee should be granted: D40 advocated and supported the formation of the Class so that it could have its comprehensive adjudication, and then proceeded to fight nearly every issue of importance to the maintenance and interests of the Class. (*See, e.g.*, Supp. McLachlan Decl, Ex. 4. (Transcript of Hearing, December 18, 2007) at 17:19-20:11; *Leuzinger v. County of Lake* (N.D.Cal. March 30, 2009) 2009 US Dist. LEXIS 29843, at *29 (2.0 multiplier for aggressively litigated case by defense and rebuffed settlement efforts).

The apparent purpose of raising the simultaneous negotiation of fees is to advance an argument that the Court should apply "heightened scrutiny" to this Motion. (Opp. at 2:13.) D40 has made this new standard out of whole cloth; there is no authority for it.

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information that we have indicates that [the fees were negotiated simultaneously]." (Hearing Transcript of October 25, 2013, at 14:15-25.) Mr. Dunn did not elaborate on this "information," and has not done so to date. This allegation is totally unfounded; there was no simultaneous negotiation of fees or costs. (McLachlan Declaration In Support of Final Approval Motion, ¶ 5; Declarations of Settling Defendants, ¶¶ 3.)

Indeed, if anything, the Court should take the negotiated fees and cost amounts as a strong indicator of their reasonableness. Each of the three settling defense counsel are partners at respected Southern California law firms, each with extensive experience in land use and water rights issues. The defense counsel vigorously pushed their desire to limit their fee exposure by negotiating a sum certain that the Defendants would pay for Class Counsel's fees and costs. (McLachlan Decl. In Support of Motion for Fees, ¶ 12.) They could have opted to place the matter entirely in the Court's hands, but instead opted to negotiate a fixed fee arrangement so as to limit the exposure to a larger fee award on what has been a complicated and hard-fought lawsuit. In short, the defense lawyers negotiating the deal believed that a rate of $550 an hour was fair and reasonable, particularly given the strong potential for a fee multiplier.

It is entirely rational, and if fact common practice, for litigants to try to limit their respective risks by negotiating reasonable fee compromise. When the fee negotiation occurs after the substantive settlement terms are reached, "[t]this practice serves to facilitate settlements and avoids a conflict, and yet it gives the defendant a predictable measure of exposure of total monetary liability for the judgment and fees in a case. To the extent it facilitates settlements, this practice should not be discouraged." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 553.) Where the fee is being paid by the defendant rather than from a common fund, as is the case here, the concerns of adverse impact on the class are significantly reduced. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 744 (approving full fee negotiated in non-common fund settlement). D40 has not pointed to anything in the terms of the settlement that suggest unfairness or collusion.

B. The Settlement Confers Substantial Benefit on the Class

In approving the Settlement on December 11, 2013, the Court determined that the settlement conferred a significant benefit on the Class. District 40 nevertheless argues that fees cannot be awarded because the Settlement does not confer a benefit on the

Class. (Opp at 3:23-24.)[2] The inquiry here need go no further than the fact that over one-third of the potential prescription claim against the Class is being surrendered by the Settling Defendants, not to mention the complete resolution of all claims against these Settling Defendants. As to these Settling Defendants, this is a uneqivocal and complete victory for the Class.

D40 argues that the Settlement fails because it does not confer a water right. This argument is a red herring, and conveniently ignores the goals of the litigation and the specific legal claims advanced in the First Amended Class Action Complaint, which are what frame the measure of the benefit. The First Amended Class Complaint, filed June 2, 2008, defines the "Nature of the Action" as follows:

> This action is necessary in that defendants assert a common law prescriptive right to the groundwater in the Basin which right they claim is superior to that of Plaintiff and the Class. By definition, a prescriptive right requires a wrongful taking of non-surplus water from the Basin, in an open, notorious, continuous, uninterrupted, hostile and adverse manner to the original owner for the statutory period of five years. To the extent defendants fail to prove any element of prescription or the evidence shows that defendants have indeed taken non-surplus water in derogation of the rights of overlying landowners, plaintiff's and the Class's property interests have been damaged and/or infringed.

(First Amended Complaint, 2:9-16.)

Similarly, the first and primary cause of action of the First Amended Class Complaint is one for declaratory relief and alleges in paragraph 28:

> Plaintiff and the Class seek a judicial determination that

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[2] The great irony in D40's position here is that D40 was the largest proponent of the Class, and argued extensively for the formation of the Class, but now insists that Class counsel should not be paid for doing exactly the work D40 advocated so forcefully in favor of. (*See*, *e.g.*, Supp. McLachlan Decl., Ex. 4 (Transcript of Hearing, December 18, 2007) at 17:19-20:11 (Describing the situation as a "roadblock: ""Mr. Dunn: . . . I think where this case has to be headed, quite frankly, is in order to move it along is that we will need a class mechanism or class mechanisms for both groups [Willis and Wood]." (*Id.* at 18:13-15.)

> their rights as overlying users are superior to the rights of all non-overlying users and that they have correlative rights vis-à-vis other overlying landowners.

(First Amended Complaint, ¶ 28, 9:2-4.)

As between the Wood Class and the Settling Defendants, the issues raised by the Wood Class Complaint have been fully resolved. The Settlement preserves any alleged overlying rights of the Wood Class Members and precludes the Settling Defendants from diminishing any overlying rights of the Wood Class through claims of prescription. (Settlement Agreement, § IV.D.2., p. 11.)[3] As to the Wood Class' overlying correlative rights, Section IV.C.2 (at page 9) of the Wood Class Stipulation for Settlement ("Settlement") provides:

> The Settling Parties agree between and among themselves, that the Wood Class Members have an Overlying Right to a correlative share of the Native Safe Yield for reasonable and beneficial uses on their overlying land. The Settling Defendants will not take any positions or enter into any agreements that are inconsistent with the Wood Class Members' Overlying Right to produce and use their correlative share of the Basin's Native Safe Yield.

Nowhere in the First Amended Class Action Complaint does the Class seek a specific quantification of its water rights, collectively or individually. The questions of basin-wide adjudication and comprehensive determination of water rights arise from the Water Suppliers' First Amended Cross-Complaint, which introduced the United States and the attendant McCarran Amendment concerns. But that Cross-complaint is not operative as to the Classes because the Water Suppliers never pursued the class allegations. Hence, the only legal claims pending between the Settling Defendants and

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[3] This section provides: "Safe Harbor: The Wood Class Members acknowledge that the Settling Defendants may at trial prove prescriptive rights against all groundwater pumping of the Basin during a prior prescriptive period. If the Settling Defendants do acquire prescriptive rights, those prescriptive rights shall not be exercised to reduce the Wood Class Members' Overlying Rights."

the Wood Class are in the Class Action Complaint, which have been fully settled and released. (While a specific water right for the Class may be established as a byproduct of the larger coordinated proceeding, that is not germane to this Motion.)

The magnitude of significant benefit conferred on the general public of a large class of persons was eloquently summarized by this Court in in conjunction with the Willis Class, as follows:

> As for the benefit conferred, although the Willis Class did not recover any monetary payment, it was successful in achieving a significant benefit by preventing the Public Water Suppliers from proceeding on their prescription claims and by maintaining certain correlative rights to the reasonable and beneficial use of water underlying their land. By virtue of the Willis Class Action (and the Woods Class Action), the Court is able to adjudicate the claims of virtually all groundwater users in the Antelope Valley which adheres to the benefit of every resident and property owner in the adjudication area. . . . Even without the federal government involvement, without the filing of the class action, it would have been impossible to adjudicate the rights of all persons owning property and water rights within the valley. . . . The inability of the judicial system to conduct such adjudication in any other way is beyond argument. The benefit to all class members is clear and the benefit to all others living of owning property in the Antelope Valley is enormous . . . .

(Dunn Decl., Ex. F, p. 5-6.)

Further, the suggestion that no "water right" is being conferred on the Class inaccurate. The surrender of a large portion of the potential prescriptive claim puts each Class member that much closer to being whole in their water use, shift the balance of the relative water claims, and improves each Class members position with respect to his continued ability to use groundwater. Given the fact that water is a commodity regularly traded in the California market, the Class is obtaining an economic benefit if the prescriptive claims are indeed viable.

C. The Agreed Upon Attorneys' Fees Are Reasonable

1. <u>The Proper Meaning of "Similar Work" Does Not Mean Other Water Rights Adjudications</u>

The first argument D40 raises is that Class counsel should not be afforded the

negotiated hourly rate of $550 because they are not water lawyers. (Opp. 6:14-16.)[4] The authority D40 cites in its brief does not stand for the proposition that in evaluating an hourly rate, "similar work" means the specific subject matter at issue, e.g. water adjudications. "[R]ates are generally not limited to those charged or awarded in cases involving the same subject matter." (*Cal. Attorney Fee Awards, 3rd Ed.* (2013) § 9.106, *citing* (among more than twelve other cases) *Prison Legal News v. Schwarzenegger* (9th Cir. 2010) 608 F.3d 446, 454 (applicable comparison is to rates charged in relevant community for equally complex litigation); *see also Utility Reform Network v. PUC* (2008) 166 Cal.App.4th 522, 535 (in determining market rates for similar services, PUC may not limit rates to those awarded PUC practitioners); *Camacho v. Bridgeport Fin., Inc*. (9th Cir. 2008) 523 F.3d 973, 979 (consumer attorneys not limited to rates charged by or awarded to other consumer attorneys).

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[4] As has been demonstrated by the work performed by Class Counsel to date, what is far more important for Class counsel in this matter is experience and ability to litigate complex class actions matters, as that has been the bulk of the work performed. In any event, there is in fact no market for class action water lawyers – there is no evidence that any even exist. Indeed, there is no indication that any attorney has ever litigated this type of matter on a Class-basis – a fact that militates in favor of a higher rate, not a lower one. (Supp. McLachlan Decl. ¶ 7.)

While Mr. Dunn is not a water lawyer per se (as is true of nearly all of the water supplier counsel), he is an accomplished general land use litigator who himself litigates a wide variety of matters across a very broad spectrum. However, the litany of mistakes he and his co-counsel have made when trying to venture into the class action arena strongly suggest that is it far more important to have the class action and complex litigation experience than it is to have read a handful of water law cases. The failed attempt at pursuing a defense class action within the water suppliers' the First Amended Cross-complaint is perhaps the most notable blunder. If the numerous misstatements of law and inapposite arguments contained in the Opposition brief to the instant motion are not intentional, then that brief provides further testament to the difficulty class litigation can pose to those unfamiliar with it. Nevertheless, it is no doubt the case that the water supplier counsel are not discounting their hourly rates for the class action defense work they have endeavored to undertake, even though they have all professed to having no experience in this arena. This is how the practice of law and legal markets often work.

To the contrary, California Courts and Federal Courts look to the fees charged by attorneys of reasonably comparable experience, skill and expertise for cases requiring similar skills. (*Blum v. Stenson* (1984) 465 U.S. 886 (rates that prevail are for other types of equally complex litigation).) And, while D40 tries to minimize the extensive groundwater litigation experience of Mr. McLachlan (McLachlan Decl. ¶ 7), that experience should properly be considered as a factor supporting a higher rate. (*Building a Better Redondo Beach, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 870-71 (and approving $550 hourly rate in non-class land use case.) This extensive experience in groundwater litigation has been directly relevant and indeed has been essential to litigating this matter over a nearly five year period in which Class Counsel was deprived of a groundwater expert to consult with on technical hydrologic issues. (Supp. McLachlan Decl. ¶ 5-6.)

2. The Negotiated Rate of $550 Per Hour is Certainly Reasonable

D40 next argues that the negotiated rate that its three brethren agreed to pay is too high. (Opp. at 6:4-9:6.) None of these arguments are well taken.

D40 asserts that the market rates should be defined by the rates prevalent in the Antelope Valley. (Opp. at 7:19-8:7.) Again, D40 asserts the wrong standard. "The determination of 'market rate' is generally based on the rates prevalent in the community where the court is located." (*Cal. Attorney Fee Awards, 3rd Ed.* (2013) § 9.114, *citing MBNA Am. Bank v. Gorman* (2006) 147 Cal.App.4th Supp. 1, 13.) The Supreme Court has also affirmed the use of rates prevailing in the market where counsel's office is located. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096 (office in San Francisco, litigation in Los Angeles). In this case, the litigation has occurred in Los Angeles and the Bay Area, and hence the rates in those communities are relevant.[5]

[5] Similarly, it is of no relevance that Ralph Kalfayan and David Zlotnick did not request market rates, and instead opted to pursue their own discounted hourly rates for the San Diego market (rates that are now several years out of date). (*PLCM Group*, *infra*, 22 Cal.4th at 1098; *Nemecek and Cole v. Horn* (2012) 208 Cal.App.4th 641, 651.)

The reasonable market value of the attorney's services is the measure of a reasonable hourly rate. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133; PLCM Group, *infra*, 22 Cal.4th at 1094.) To determine a reasonable market value, courts must determine whether the requested rates are "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work." (*Children's Hosp. & Med. Ctr. V. Bonta* (2002) 97 Cal.App.4th 740, 783.) Furthermore, the size of the law firm is not relevant a relevant factor. (*See, e.g., U.S. v. City & County of San Francisco* (N.D.Cal 1990) 748 F.Supp. 1416, 1431 (sole practitioners, small law firms and nonprofit firms are entitled to commercial rates charged by "corporate attorneys of equal caliber.").) The fees for skilled solo practitioners are properly based on the rates charged by large firms. (*Building a Better Redondo Beach, infra*, 203 Cal.App.4th 852, 872 (approving small firm reliance on national survey of large firm rates); *Auer v. Robbins* (1997) 519 U.S. 452 ("the district court may not reduce the established market rate by some factor that it believes accounts for the differences between large and small firms.").)

D40 asserts that the unadjusted Laffey Matrix should be considered. (Opp. at 8:8-16.) Numerous courts have noted that the unadjusted Laffey Matrix underestimates hourly rates due to its sole reliance on consumer price index increases. (*Fernandez v. Victoria Secret Stores, LLC* (C.D. Cal. 2008) 2008 WL 8150856 at *16; *Housing Rights Center*, 2005 WL 3320738 at *3; *Smith v. District of Colombia* (D.D.C. 2006) 466 F.Supp.2d 151, 156 (adjusted Matrix is more accurate); *Interfaith Comm. Org. v. Honeywell International, Inc.* (3rd Cir. 2005) 426 F.3d 694 (same).) But even if the Court relied on both the adjusted and unadjusted Laffey schedules, the midpoint between the two is $545 per hour. Furthermore, the published billing rates in California as well as the rates awarded by California Courts fully support the negotiated rate of $550. (Supp. McLachlan Decl. ¶¶ 14-18, Exs. 5-8.)

D40 also asserts that the Court should apply multiple hourly rates over the applicable time period, or should apply something other than current rates. (Opp. at 8:17-9:1.) But, aside from the discount already built into the hourly rate, D40 also ignores the fact that the delay in payment over the years must be accounted for. The California Supreme Court has expressly recognized that delay in payment can be compensated by using historical rates with an enhancement or by using current rates. (*Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal.4th 553, 583; *Perdue v. Kenny A.* (2010) 559 U.S. 542, 555 (same).) But even if the Court were to use older rates, which it should not, a rate of $550 per hour is a reasonable market rate. (Supp. McLachlan Decl. ¶¶ Exs. 5-8.)

3. The Factors Used to Set a Proper Lodestar All Favor A High Rate

It has been very difficult to litigate a class case inside a series of coordinated non-class cases, often against parties that are not defendants in this action. There should be no argument that this matter is very complicated, unique, and required a great degree of skill.[6] The assessment of these factors all weigh in favor of a high market rate for the services rendered. However, one factor not typically found in most cases is present here, and further supports a high hourly rate: "the undesirability of the case."

The "undesirability of the case may also be a factor in determining reasonable hourly rates." (*Cal. Attorney Fee Awards*, at § 10.48; *Camacho v. Bridgeport Fin., Inc.* (9th Cir. 2008) 523 F.3d 973, 982, n.1 (listing "the 'undesirability' of the case" as relevant lodestar adjustment factor); *Horsford v. Board of Trustees* (2005) 132 Cal.App.4th 359, 399 (upward fee adjustment or lodestar enhancement).) Here, there is ample evidence of the undesirability of this case. Indeed, for the better part of a year, this case was largely

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[6] Ultimately, [t]he experienced trial judge is the best judge of the value of professional services rendered in his court." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) The Court's expressed view of Class Counsel's work has been consistently favorable over the years, e.g.: "I think that what you have done here is admirable. And it the – as far as I'm concerned, in the highest standards of the profession stepping forward . . . representing these people . . ." (Hearing Transcript, April 24, 2009, 21:22-26.)

stalled for want of counsel willing to represent the small pumpers. In 2007, David Zlotnick and Michael McLachlan made inquiries of many class attorneys in California in attempt to obtain counsel for the small pumpers, but nobody would take the case. (Supp. McLachlan Decl. Ex. 4 (Hearing Transcript, December 18, 2007) at 4:27-6:24; Supp. McLachlan Decl. ¶ 3.)

In May of 2008, after nearly a year if inability to locate counsel, the Court observed: "But as you can perceive, the Court is getting very frustrated with our inability to move forward with this case. . . . I know I am not alone in my frustrations." (Hearing Transcript, May 5, 2008.) Later that month, Class Counsel agreed to take the case after lengthy discussion about the serious barriers presented *vis a vis* the then-recent opinion in *Olsen v. Automobile Club of Southern California*, which prevented the recovery of expert costs in this case. ((2008) 42 Cal.4th 1142, 1150-51; Dunn Decl., Ex C (Ex. 4 thereto, May 14, 2008 letter); Hearing Transcript, May 22, 2008, 7:6-18-20.) As the Court is aware, and is reflected in the voluminous numbers of related filings in this matter, the expert issue has occupied a great deal of time and had made the representation of the Class exceptionally challenging, as well as greatly troubling for Class Counsel. (Supp. McLachlan Decl., ¶¶ 5-6.) In sum, the case was undesirable from the outset for good reason, and has proven to be quite onerous.

For these reasons, the discounted hourly rate of $550 is entirely reasonable, and should be approved.

D. The Court Should Award the Full Negotiated Amount As The Hours Worked Were Necessary and Reasonable

D40 raises several minor and unfounded critiques of the work performed. First, D40 asserts that counsel spent unreasonable amounts of time researching water law – as if doing so would be improper. However, D40 does not site to a single instance of such unreasonable legal research, largely because there have been none. The one example D40 attempts to reference in September of 2011 (Opp. 10:1-4), actually involves

absolutely no legal research. D40 overstates the quantity of work at 21.9 hours, but more importantly mistakes what is entirely technical research on numerous water use issues impacting the Class, and directly relevant to the then-ongoing settlement discussions as well as the substance of the overall litigation. (Supp. McLachlan Decl., ¶ 8.) While a portion of this work might have been done by an expert witness, D40 did its level best to stop any expert work until December of 2012.

The remaining few complaints D40 raises about the work performed all fall into a category roughly summarized as "someone below Mr. McLachlan's pay grade should have done that work." (Opp at 10:5-11:10.) This is not the applicable standard. Rates must be based on the staffing pattern that the claiming attorneys actually used, not on some model (e.g., a pyramidal staffing pattern) that they did not use." (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1114-15 (reversing trial court for second-guessing staffing and speculating on how other firms might staff a case);[7] *Building a Better Redondo Beach, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 874 (rejecting argument that associate should have been assigned tasks performed by a partner).) In this case, all of the work performed by lawyers was proper (Supp. McLachlan ¶¶ 9-13), and firms in questions did not employ associates. (*Id.* at ¶ 9.)

E. The Multiplier

If the Court approves the hourly rate of $550, there is no need to assess the applicability of a multiplier. (*See Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 744.) However, if the Court feels the need to use a lower hourly rate

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[7] "It must also be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee. It would therefore be the highly atypical civil rights case where plaintiff's lawyer engages in churning. By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d at 1112.)

for some reason, than a multiplier should be applied in a percentage sufficient to approve the total stipulated attorneys' fees. These bargained for fees are supported by the market, and are entirely reasonable in total.

With regard to the multiplier question, D40 advances the spurious notion that there should be no fee enhancement because the Settling Defendants are public agencies. (Opp. at 12:27-13:5.) The payment of fees taxpayers is not a basis, standing alone, to justify the denial of a lodestar enhancement. (*Horsford v. Board of Trustees* (2005) 132 Cal.App.4th 359, 400 ("trial court's reliance on public entity status of the defendant to completely deny an enhancement multiplier in this case was abuse of discretion."); *In re Lugo* (2008) 164 Cal.App.4th 1522, 1546 (rejecting arguments that taxpayer factor required reversal of multipliers applied by trial court); *Bernardi v. County of Monterey* (2008) 167 Cal.App.4th 1379, 1395 (same); *Cates v. Chiang* (2013) 213 CalApp.4th 791, 826 (same; upholding multiplier of 1.85 in six-year litigation).)

> *Serrano III, Horsford* and *Schmid* preclude a rule which awards less than the fair market value of the attorneys' fees merely because the case was filed against a government agency. We also see a strong public policy against such a rule. Allowing properly documented attorneys' fees to be cut simply because the losing party is a government entity would defeat the purpose of [] section 1021.5 and would also incentivize government agencies to negligently and deliberately run up a claimant's attorneys' fees, without any concern for the consequences.

(*Rogel v. Lynwood Redev. Agency* (2011) 194 Cal.App.4th 1319, 1332.) Denying a multiplier or reducing the fees here based solely on public agency status would not only be contrary to law, but would also incentivize D40 to continue to refuse reasonable settlement terms and perpetuate the endless cycle of litigation.

The two cases D40 cites are not contrary to the law cited above, as both involved numerous other negative multiplier factors not present here. The taxpayer factor should also be ignored here because the costs of the fees are not borne by taxpayers, but rather ratepayers who have a direct stake in the litigation, and should expect their water rates to

fluctuate depending on the outcome of the case.[8] In this regard, there is no rational basis to favor one water user simply because he is attached to a public pipeline, at the expense of another who is not.

In sum, regardless of how the Court assesses the fee request, the result should capture the full measure of the value of the services rendered by Class Counsel. "In *Serrano IV*, applying the same principles to the statutory fee award under Code of Civil Procedure section 1021.5, we reiterated that fee awards should be fully compensatory." (Ketchum, *infra*, 24 Cal.4th at 1133.) Plaintiff suggests that the Court simply approve the negotiated hourly rate, and defer the question of any multiplier to a later fee motion, if and when that were to occur. (*See Cho v. Seagate*, 177 Cal.App.4th at 744.)

III. CONCLUSION

For all of the foregoing reasons, Plaintiff Richard Wood, with the support of the Settling Defendants, requests that the Court approve of an award of attorney's fees in the total amount of $719,829 and costs in the amount of $17,038, which are uncontested and stipulated.

DATED: December 31, 2013

LAW OFFICES OF MICHAEL D. McLACHLAN
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[8] [T]he funding of a governmental entity's ongoing operations has little, if any, bearing on the "fair market value" of attorney's fees for the legal work performed by lawyers who represented a prevailing party in an action against a government entity." (*Id.* at 1331.)