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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 CLASS SETTLEMENT;
MEMORANDUM OF POINTS
AND AUTHORITIES**

**[filed concurrently with
Declaration of Michael D.
McLachlan; Declaration of
Richard A. Wood]**

Date: August 3, 2015
Time: 10:00 a.m.
Room: 222

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 3, 2015, at 10:00 a.m., or as soon
thereafter as the matter may be heard, at 111 North Hill Street, Los Angeles,

**NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT**

1 California, in Room 222, Richard Wood will move for final approval of the Small
2 Pumper Class Settlement. Plaintiff brings this motion pursuant to California
3 Rules of Court, Rule 3.769.

4 The Motion is based on this Notice, the Memorandum of Points and
5 Authorities, the Declaration of Michael D. McLachlan, the Declaration of Richard
6 A. Wood, the various documents attached thereto, the records and file herein,
7 and on such evidence as may be presented at the hearing of the Motion.

8
9 DATED: July 9, 2015

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

10
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12 By: _____

13 MICHAEL D. MCLACHLAN
14 Attorneys for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Richard Wood has entered into a Stipulation of Settlement
4 ("Agreement" or "Settlement") with California Water Services Company, City of
5 Palmdale, Desert Lake Community Services District, Littlerock Creek Irrigation
6 District, Los Angeles, County Waterworks District No. 40, North Edwards Water
7 District, Palm Rach Irrigation District, and Quartz Hill Water District
8 (collectively, the "Settling Defendants"), all of whom are referred to as the
9 "Settling Parties," subject to Court approval, notice to the Class, and a final
10 approval and fairness hearing.

11 The Plaintiff requests that the court adopt the Order Granting Final
12 Approval of Class Action Settlement.

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

14 **A. History of the Small Pumper Class Action**

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

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

1 year from 1946 to the present. The Class excludes the defendants
2 herein, any person, firm, trust, corporation, or other entity in which
3 any defendant has a controlling interest or which is related to or
4 affiliated with any of the defendants, and the representatives, heirs,
5 affiliates, successors-in interest or assigns of any such excluded
party. The Class also excludes all persons and entities that are
shareholders in a mutual water company.

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

13 **B. The January 2014 Partial Settlement:**

14 On January 7, 2014, the Court approved a partial settlement of the Small
15 Pumper Class. Specifically, the Small Pumper Class settled with the City of
16 Lancaster, Palmdale Water District, Phelan Piñon Hills Community Services
17 District, and Rosamond Community Services District. The 2014 settlement was
18 reached after hundreds of hours of effort, both in litigation and settlement
19 negotiations.

20 **C. Current Small Pumper Class Settlement Agreement**
21 **Background And Terms**

22 Throughout the negotiations that led to the 2014 settlement, class counsel
23 continued to negotiate, and litigate, the class claims against the remaining
24 defendants. Those efforts have led to the current settlement.

25
26
27 ¹ If not defined in this Motion, all capitalized references are defined in the
28 Settlement Agreement. (McLachlan Decl., ¶ 5, Ex. 1.)

1 As a result of further, and extensive, negotiations, the Settling Parties
2 ultimately agreed upon the terms that form the Small Pumper Class Agreement,
3 which is attached in part to the Declaration of Michael D. McLachlan (¶ 5).

4 Class Counsel believes that the Small Pumper Class Agreement, and the
5 terms provided therein, is fair to all concerned, including the non-settling parties,
6 although the Agreement does not bind the non-settling parties. Several of the
7 material terms agreed upon in this Agreement are: (1) members of the Small
8 Pumper Class will have the right to pump up to three acre-feet per year (afy) of
9 groundwater for reasonable and beneficial use without having to pay a
10 replacement water assessment; (2) the Settling Defendants will not assert
11 prescriptive rights to diminish the Small Pumper class-members' water rights;
12 (3) the Small Pumper class will not challenge certain Settling Parties' right to
13 recapture return flows from water that they import; (4) the Small Pumper class
14 agrees to be bound by a basin-wide groundwater management plan, subject to
15 court oversight; and (5) the Settling Parties will mutually release one another
16 from claims asserted in this litigation.

17 This Settlement also settles claims between the Small Pumper Class and a
18 number of parties—none of whom have been sued by the Class—that claim
19 groundwater rights in the basin. This group of parties has all signed off on the
20 Judgment and Physical Solution.²

21 None of the substantive terms concerning water rights or the potential
22 physical solution are binding on the Court or any of the non-settling parties in
23 these coordinated proceedings. In other words, the Agreement only impacts the
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25 ² The Second Amended Stipulation for Entry of Judgment and Physical
26 Solution is the operative global settlement document, and was filed on July 9,
27 2015, with a modified Exhibit 4 (Dkt. No. 10,106). The Proposed Judgment of
28 Physical Solution was filed on March 4, 2015 (Dkt. No. 9,623). It remains the
same other than the modified Exhibit 4.

rights existing between the Settling Parties, and does not in any way limit the Court's ability to rule on the Class' ultimate water rights, the Settling Defendants' water rights, or any element of a potential physical solution. By resolving the prescriptive claims pending against the Class, the settlement substantially reduces the risk faced by the class in the overall litigation, and as such presents a clear benefit to the Class.

III. ARGUMENT

A. Standard For Final Approval

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

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

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

13 The proposed Settlement Agreement is well within the "range of
14 reasonableness" and thus merits approval. Although Plaintiff and the Class
15 believe that their claims have merit, they recognize that, proceeding with this
16 litigation carries considerable risk. It is, therefore, in the best interests of
17 Plaintiff and the Class to settle with, and receive reasonable and prompt benefits
18 from, the Settling Defendants. Indeed, the Court acknowledged this in approving
19 the partial settlement in January 2014.

20 It is elemental that a settlement is a compromise and, thus, does not
21 ordinarily provide a plaintiff with the full relief or recovery originally sought at
22 the time the action was filed. (*Wershba, supra*, 91 Cal.App.4th at 250 ("In the
23 context of a settlement agreement, the test is not the maximum amount plaintiffs
24 might have obtained at trial on the complaint, but rather whether the settlement
25 is reasonable under all of the circumstances.").) Even under the Agreement,
26 however, the Class will benefit substantially by avoiding the prescription claims
27 and limiting the scope of future challenges to their water rights. The Class is
28 giving up very little; primarily, the recognition of the right of the Settling

1 Defendants to pump groundwater in reasonable amounts (all subject to Court
2 determination in the future).

3 The Agreement represents a compromise and allows for dismissal of
4 Settling Defendants' prescription claims. It also resolves as between these
5 parties, many of the issues remaining to be decided, thereby limiting the risk for
6 both sides and decreasing the contested issues before the Court.

7 In sum, given the many risks faced by Plaintiff and the Class in pursuing
8 this litigation, the Agreement represents a reasonable resolution of otherwise
9 complex and strongly contested issues. Had the Class not settled, the resolution
10 of those issues would likely have resulted in a longer and more expensive trial,
11 and most importantly, would have put the Class at risk of a substantial adverse
12 judgment on the prescription claims, resulting in diminished water rights. The
13 Agreement is reasonable in light of these circumstances.

14 **C. The Settlement Is the Product and Informed and Arm's** 15 **Length Negotiations**

16 This Agreement is the result of years of discovery and contested law and
17 motion proceedings, all of which educated counsel on both sides as to the
18 strengths and weaknesses of their claims. Class Counsel reviewed and analyzed
19 thousands of pages of documents produced by Defendants, and have engaged in
20 extensive research in relation to the legal and factual issues central to Plaintiff's
21 claims. Furthermore, after the Phase 3 trial, and the determination of overdraft,
22 the risks of continuing litigation are no longer hypothetical.

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

27 Class Counsel also has experience in complex class action litigation. Class
28 Counsel was thus well-informed and strategically positioned to negotiate an

1 appropriate settlement agreement, which was negotiated at arms-length over
2 many years' time. Furthermore, Richard Wood has served ably as the
3 representative for the Class, going beyond and above the typical "call of duty."
4 (*See Generally* Wood Decl.)

5 **D. The Class Received Adequate Notice.**

6 Notice of a class action settlement must "present a fair recital of the subject
7 matter and proposed terms [and provide] an opportunity to be heard to all class
8 members." (*In re Equity Funding Corp. of America Sec. Litig.* (1979) 603 F.2d
9 1353, 1361; *see also, Phillips v. Shutts* (1985) 472 U.S. 797, 812.)

10 The Court-approved Class notice adequately protected the due process
11 rights of all Class Members and satisfied California Rules of Court, rule 3.766.
12 The manner of giving notice and the content of the notice must "fairly apprise the
13 prospective members of the class of the terms of the proposed settlement and of
14 the options that are open to them in connection with the proceedings. (*7-Eleven*
15 *Owners for Fair Franchising v. Southland Corp.* (2001) 85 Cal.App.4th 1135,
16 1164 (citation omitted).) An appropriate notice will have a "reasonable chance of
17 reaching a substantial percentage of the class members." (*Wershba, supra*, 91
18 Cal.App.4th at 251 (citation omitted).)

19 Mailed notice was sent to 4,310 Class members on April 3, 2015, by first
20 class mail, after updating the existing class list through the national change of
21 address database. (Keough Decl., filed on June 4, 2015, ¶¶ 5-6; McLachlan Decl.,
22 filed June 4, 2015, ¶ 3.) Published notice was transmitted in accord with this
23 Court's order by publishing the approved notice by in the Los Angeles Times,
24 Antelope Valley Press, and Bakersfield Californian on consecutive weekends at
25 the start of the notice period. (McLachlan Decl. ¶ 3.) Another factor that may be
26 considered at final approval is the reaction of class members to the settlement.
27 (*Dunk, supra*, 48 Cal.App.4th at 1801.) The reaction here has been very positive;
28

no objections have been received. (McLachlan Decl. ¶ 9.) Thus, this factor also weighs in favor of final approval.

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

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

IV. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion and enter judgment pursuant to California Rules of Court 3.769(h), retaining continuing jurisdiction pursuant to California Code of Civil Procedure sections 664.6 and 382.

Plaintiff will submit a request for an award of attorneys' fee and an incentive award for Richard Wood at a later date, to be heard after the Court has approved the Settlement.

DATED: July 9, 2015

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

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