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Attorneys for Plaintiff Richard Wood and the Class

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)

Lead Case No. BC 325201

Case No.: BC 391869

DECLARATION OF MICHAEL D. MCLACHLAN IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS AND INCENTIVE AWARD

Location: Dept. TBA
Santa Clara Superior Court
191 N. First Street
San Jose, California
Date: March 21, 2016
Time: 1:30 p.m.

DECLARATION OF MICHAEL D. MCLACHLAN

I, Michael D. McLachlan, declare:

1. I make this declaration of my own personal knowledge, except where stated on information and belief, and if called to testify in Court on these matters, I could do so competently.

2. I am co-counsel of record of record for Plaintiff Richard Wood and the Class, and have been since 2008. I am duly licensed to practice law in California. I make this declaration in support of the Motion for Approval of Award of Attorney Fees and Costs.

PERSONAL BACKGROUND

3. I graduated with honors from the University of California at Berkeley in 1990. I graduated from the University of Southern California School of Law in 1995, where I was a member of the University of Southern California Law Review.

4. During my twenty-year career, I have specialized in complex civil litigation and consumer-related matters, including class actions, as an associate at Greenberg, Glusker, Fields, Claman & Machtinger and The Kick Law Firm, both located in Los Angeles, California.

5. Since opening my own firm nearly thirteen years ago, I have continued to focus nearly all of my efforts on complex litigation in state and federal courts, the vast majority of which has been class action litigation.

6. I have been appointed as lead class counsel on many occasions, and have tried, arbitrated, and argued class action cases on appeal in state and federal courts throughout California and in other states and federal trial and appellate courts across nation.

7. I also have extensive experience litigating complex cases involving groundwater, having worked on all but one Superfund case filed in Los Angeles County over the past twenty years, as well as the Love Canal case while working for the U.S. EPA in Washington D.C. prior to law school. While I do not have a

degree in hydrogeology, I have substantial experience in the field over many years of time working with hydrogeologists and hydrologists in a variety of contexts. I have taught a 'groundwater for lawyers' class on several occasions, and have published papers on matters impacting groundwater.

WORK PERFORMED

8. This action has been litigated vigorously on behalf of the Class for nearly eight years. We have participated in all Phases of trial from Phase 2 going forward, except that we largely sat out the mini-trial for Phelan Pinon Hills Community Services District in 2014 because the settlement with Phelan in 2013 resolved the Class' claims with Phelan (but for issues impacting the physical solution).

9. Since the Court is familiar with much of my work on this matter, I will not summarize it in detail. The nature of that work in detail can be readily ascertained from the 231 pages of my legal bills I attach hereto as **Exhibit 3,** as well as the legal bills from Mr. O'Leary (Exhibit 1 to O'Leary Declaration).

10. We have worked on this matter now for over eight years, and conducted a wide array of tasks necessary to ligate the case through three phases of trial (Phase 1 predated me). I first started working on this matter in 2007, and conducted some preliminary analysis at that time regarding the viability of the case, but did not start work in earnest until the Spring of 2008. I believe Mr. O'Leary and I have represented the class with appropriate vigor and in the highest standards of practice possible under the rather unique situation presented by this case.

11. The amount of work performed on this case is extensive. Since my initial involvement in the case, there have been more than 10,000 documents filed with the Court. According to the Court website statistics, Class Counsel has made approximately 320 filings, with more than 280 of those being substantive

(i.e. non-telephonic appearance notice) filings. I have sent and received over 26,000 individual pieces of correspondence and e-mail on this matter.

A. Client Contact.

12. Also reflected on my fee bills is a considerable amount of communication with Class members. This case has been unlike any other class action I have ever experienced or heard about, in large part because of the highly engaged nature of the Class members. This is not surprising in light of the fact that each of the Class members, by definition, has only two means of obtaining water for their homes: groundwater and water hauled in by truck. Because groundwater is the only viable option for sustaining an existence on these properties, the level of concern about this litigation was very high.

13. While there has been some limited paralegal interaction with Class members, given the complexity of the issues involved and the importance of this suit to Class members, I have had to field nearly all of the substantive phone calls and e-mail inquiries. I would estimate – and this is somewhat of a "guesstimate" because I did not record every call and e-mail in my notes or timesheets – that I have personally spoken by telephone to at least 400 to 500 class members over the last eight years.

14. I have also attended numerous in person meetings with larger numbers of Class members, often at the request of the leaders of the rural town councils that exist throughout the Antelope Valley. These client interactions have been very instrumental in formulating a settlement proposal and drafting the details of the physical solution relative to the Class members.

B. Discovery.

15. There has been extensive written discovery and depositions, and class counsel have reviewed thousands of pages of evidence, deposition transcripts, expert witness reports, and trial testimony, in addition to conducting extensive legal research and analysis regarding all of the relevant legal claims of

the Class and the Settling Defendants. I have taken and defended a number of depositions in that matter, and played a primary role in organizing discovery.

C. Expert Work

16. My billing statements also reflect a considerable amount of time in law and motion and substantive work related to the Court-appointed expert, Timothy Thompson. My attention to the issue of obtaining a Court-appointed expert began prior to my accepting this case in May of 2008 and continued throughout this litigation in one form or another. There are at least 25 separate motions and ex parte applications filed directly related to the Court-appointed expert. Between 2009 and the end of 2012, the Public Water Suppliers, who ostensibly claimed to support the Small Pumper Class at the time of its formation in 2008, vigorously opposed every effort of Class Counsel to secure the Court-appointed expert. And after that expert was appointed, they advocated for many years that he should not be allowed to commence any substantive work. That stay was not lifted until late 2012.

17. Once the stay was lifted, the Public Water Suppliers refused to timely pay the expert's invoices. This situation necessitated numerous filings with the Court and eventually led Cardno Entrix to suspend work on this matter for an extended period of time. As of March of 2014, the outstanding unpaid bills owed Cardno Entrix was nearly $83,000. Aside from the substantial personal stress this caused *vis a vis* impending and passing discovery and trial dates, it made the process of settlement negotiation particularly difficult because I was left to reasonably estimate Class water use based only on non-scientific evidence gathered from the Class members who had contacted us. As the Court may recall, this scenario resulted in the Small Pumper Class being the only party who was not able to present water use evidence at the Phase 4 trial.

18. I also spent a considerable amount of time on substantive work related to the expert analysis. I put a good deal of time into developing the survey

paradigm, and my office did substantial amounts of work administering this project (and much of that work was clerical work that was not billed). Perhaps the largest portion of that work was the dissemination of over 1,000 letters to Class members to solicit participation in the survey, as well as the collection and organization of Class member records relevant to the expert work. On the back end, after a settlement was reached, I also had to perform considerable public records research to obtain evidence necessary to expand Mr. Thompson's assessment of current Class water use back in time to cover the prescriptive period and address the issue of self-help in light of public water suppliers' insistence on establishing prescription in the context of the prove-up trial.

D. Case Management

19. As the Court may recall, I have drafted the majority of the Case Management Orders in this matter since I started working on the case. I have been on the liaison committee since its inception, and have taken a primary role in structuring the litigation proceedings.

E. Law and Motion Practice.

20. A very significant portion of the time spent on this matter was on law and motion proceedings, which were constant and ongoing throughout the case. While there were a number of smaller administrative motions, there were also a very large number of highly substantive and unique contested law and motion matters beyond just the typical class certification, discovery, and settlement approval motions typical in class proceedings. Indeed, the majority of the motions we filed or opposed were within these categories.

F. Settlement

21. If asked, I would say my most significant contributions have been in leading and driving settlement discussions. I doubt that anyone, including the defendants in *Wood*, will dispute that I have played a major and significant role in resolving this litigation. I am the only attorney who has been integrally

involved in every phase of the ongoing settlement discussions, roughly summarized as follows: (1) Mr. Bill Dendy, a privately retained mediator; (2) James Waldo, a privately retained mediator from Washington (who I located and was central in hiring); (3) Justice Ronald Robie, who acted as a volunteer mediator for nearly two years; and (4) the final phase beginning in 2013, which was unmediated.

22. It is fair and accurate to say that many of the concepts embodied in the Judgment and Physical Solution adopted by the Court were developed at early stages of the mediation and carried forward. The same can be said about the methods for allocating the native safe yield, as reflected on Exhibits 3 and 4 of the Judgment and Physical Solution. The Waldo proceedings excluded all counsel but for myself, and on a few occasions, I believe Mr. Kalfayan and/or Zlotnick may have attended. I and/or Richard Wood attended nearly all of the Waldo settlement meetings. The same is true of the meetings with Justice Robie, which were far fewer in number but nonetheless productive in certain respects.

23. The primary goal of this litigation has always been to resolve the prescriptive rights claims of the adverse public water supplier defendants. As such, Mr. O'Leary and I spent considerable time over the years trying to resolve the *Wood* case by itself. In 2013, we reached an informal global agreement with all the defendants in *Wood* to resolve all of these claims in the same fashion as with the *Willis* case, i.e. with no definite allocation of water but with agreement between the parties as to the bounds of the Class' water rights, subject to later adoption by the Court in a physical solution. As the settlement paperwork was being drawn up, District 40 pulled out of the settlement, and then pressured the other water suppliers to do the same. District 40 and these other smaller water suppliers elected to continue to litigate with the Class.

24. At this time in the Fall of 2013, there was considerable growing frustration at the many aborted settlement efforts, and the perception that

District 40 was primarily responsible for derailing those efforts. I was contacted privately by counsel for a few of the parties regarding commencing a very limited, closed door settlement process with a few lawyers. In November of 2013, myself and counsel for eight other parties commenced the process of negotiating and drafting a physical solution. This process continued and expanded and ultimately lead to the Judgment and Physical Solution (as well as the related Small Pumper Class Settlement) recently signed by the Court.

25. As a member of the settlement committee, I also personally handled the resolution of the claims of the majority of the "newly stipulating" parties who joined the settlement after it was initially filed with the Court. I continue to work in that regard.

THE RESULTS ACHIEVED

26. While few parties to a settlement ever get all of what they want, it is my opinion that the deal achieved for the Small Pumpers is excellent, and embodies essentially every element that Mr. O'Leary, Mr. Wood, and I set out to obtain. The Class is highly diverse, as noted in the expert report of Mr. Thompson. But notwithstanding that great diversity of water use, the final settlement did not receive even a single objection from any of the nearly 4,300 Class members.

27. The settlement allows larger Class members to pump up to 3 acre-feet of water per year, but does not over-allocate water to the Class because the Class' allocation is predicated on an average water use of 1.2 acre-feet per year (a number closely supported by Mr. Thompson's report). Hence, there is flexibility and respect for the diverse forms of historical water use within the Class. And nearly all of the Class members will be free from any cutbacks or replacement assessments. The settlement also minimizes the burdensome costs of installing and monitoring meters, and instead leaves the watermaster with a more flexible system whereby the bulk of the smaller water users in the Class can be left alone.

28. Of particular note is the fact that Class members have substantial protection from future reductions of their water rights, unlike nearly any other overlying party in this adjudication. The Class is not subject to Section 18.5.10 ("Change in Production Rights in Response to Change in Native Safe Yield") because the Class is not listed on Exhibit 3 or 4. There are only three parties in this position: (1) The United States; (2) the State of California; and (3) the Small Pumper Class. Additionally, the Class has preserved its rights under Water Code section 106, which provides priority to domestic use over farming. (Judgment §§ 5.1 and 5.1.3.1.) I believe these provisions give the Class members a very strong chance of persisting in their way of lives indefinitely in the future and well beyond our ability to protect their interests in Court. Mr. O'Leary and I have been at all times highly focused on the fact that this Judgment will very likely outlive us all, as well as the great hardship for any one Class member to have to hire an attorney to litigate issues in the future. I believe we have done everything possible to ensure that the Class members will not have to return to Court after their counsel have been relieved of duty.

TOTAL HOURS

29. My firm has expended 5,304 attorney hours and 755.1 paralegal hours on this litigation to date.[1] All of the attorney time is mine, and the paralegal time is that of a number of paralegals who have worked for my firm over the years, all directly under my supervision. Mr. O'Leary has incurred 511.1

[1] These numbers include a reasonable estimate of time to be spent on the reply briefing and hearing on this Motion. Hence, the fee bills submitted with this motion total 5,274 attorney hours through January 27, 2016. I have added an additional 30 hours of attorney time for work to be performed after the filing of this Motion (for which I will more accurately account in the Reply papers).

attorney hours and 87.5 paralegal hours.[2] The total attorney time spend on this case was thus 5,815.1 hours, with 842.6 hours of paralegal time.

30. In 2013, Class Counsel reached a settlement with several defendants in this case, and pursuant to that settlement, received $719,892.29 in reimbursement for attorneys' fees (including paralegal time). (**Exhibit 4** (Order Granting Motion for Approval of Award of Attorney Fees and Costs), at 1:13-18 [Dkt No. 7997].) Pursuant to the settlement agreement, Class Counsel agreed to reduced hourly rates for attorney time of $550 per hour and $110 for paralegal time. By Order dated January 15, 2014, the Court approved this attorneys' fees award as reasonable. (*Id.* at 2:9-12.)

31. I will note that there is some real question as to whether the 2013 settlement would have occurred had we insisted on full market hourly rates and pursued the multiplier. I did not like having to forego compensation we had earned, but that settlement was important to the Class, and may well have been necessary to keep Class Counsel solvent for the last two years.

32. Pursuant to the 2013 settlement, Class Counsel have been compensated for 1276.3 hours of attorney time, and 163.1 hours of paralegal time, leaving a total of **4,538.8 attorney hours and 679.5 paralegal hours** at issue in this motion.

LITIGATION COSTS ADVANCED

33. As of this date, my office has incurred a total of $85,858.86 in case costs. A detail of these costs, excluding interest, is attached as **Exhibit 5.** Mr. O'Leary has incurred $6,421.28, for a total of $92,280.14.

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[2] The 87.5 hours of paralegal time incurred Mr. O'Leary relate to his portion of paralegal hours jointly incurred by both of our firms in the early years of this case. All of this paralegal time is reflected on my firm's fee bills because it was not sensible or practicable to try to divide those shared paralegal hours, and also because I supervised that work and thus reviewed the paralegal billing entries.

34. Pursuant to the 2013 settlement, we have been paid $17,038.08 for cost reimbursement by the settling defendants, leaving the total sum at issue in this motion of **$75,242.06.** I have reviewed my cost bills, as has my paralegal, quite closely and all of the costs are typical cost items I charge, and all are covered in my retainer agreement with Richard Wood.

35. For the last five years, I have held an average of $50,000 of these case costs on my line of credit (not including two personal loans pending for several years). I cannot run my firm, cover overhead, and survive year to year with large sums of cash tied up in a case like this. Because my practice is contingent, a non-recourse line of credit has run at slightly over 12%. Although I have not calculated it exactly, over the life of this case I have incurred nearly $30,000 in interest, which is not reflected on my cost summary. Had we not secured a significant victory for our clients, this out-of-pocket expenditure would never have been recovered; as it is, the portion of these costs incurred for expert witnesses will have to be paid from the fees we will recover.

FEE BILLS

36. The fee bills do not include hundreds (likely several thousand) hours of secretarial and law clerk time. While many class attorneys bill for this time, even though the law allows for it, it has been my practice not to do so in state court cases. The administrative staff time devoted to this case that is not recorded or billed for were services that I have had to pay for these past eight years, and total at least $140,000 in labor costs of my firm (and Mr. O'Leary's to a much smaller extent).

37. The hours billed on my fee invoices do not reflect all of the work I have performed on this case, as a good deal of administrative and substantive work has been written off or not recorded. For example, I estimate that I have not recorded at least 250 phone calls over the nearly eight years, due largely to the busy pace of my practice and of this case, and due to the difficulty of

recording time while travelling or driving (during which I typically return phone calls). I have also spent a substantial amount of time in timekeeping and reviewing my bills, most of which was not billed. I cannot accurately state the amount of unrecorded or written down time, but it is certainly in excess of 300 hours over the span of the lawsuit.

38. My billing practice, which is generally shared by Mr. O'Leary, is as follows. I bill in six minute increments, and round up or down to the nearest tenth of an hour, e.g. if a project takes eight minutes, I bill 0.1 hours. I record my time as the day goes along, and typically review it at the end of the day. More often, I aggregate two or more small tasks so that the total time accurately reaches the nearest tenth of an hour. As such, my bills sometimes show two seemingly unrelated tasks billed together at a 0.1 or 0.2. If there is a small task that I have recorded that cannot be aggregated and must be rounded down to a 0.0, I record that as "n/c" (no charge).

39. The Court will note that there is very little overlap in the billing entries between Class Counsel. I typically staff cases in a lean fashion, without compromising results. For that reason, there is not a single instance where both Mr. O'Leary and I (or even a paralegal) attended a deposition. Indeed, on only a few particularly important occasions did we both attend trial or hearings together. That is not to say that overlap is not necessary, common or prudent practice in the legal profession (as has been the case with Willis Class counsel). But I do not do that unless it is truly necessary. The unfortunate side-effect to this is that in this case, it forced me to do about ninety percent of the work. The complex and cumulative nature of daily events could not be adequately communicated in full to another attorney, and as such the passage of time and momentum had me doing most of the work.

40. The result of this is that, unlike issues raised on the Willis Class fee motion in 2011 relative to double-billing, the Court should find no occasions

where one attorney was spending time holding the other's briefcase, so to speak. I did of course communicate constantly with Mr. O'Leary, and we did work jointly on many projects, but always one of the two of us performed nearly all of the work on any one project. Hence, our efficiency was about has high as it possibly could be.

41. I am not shy in using paralegals where the work to be performed is properly paralegal work. As can be seen by the billing records, we used 842.6 hours of paralegal time on this case. Like most contingent lawyers, I use sound judgment in deploying my staffing resources, as well as my own time. The division of labor in my office, which at all relevant times has also included Mr. O'Leary's office, is one lawyer (two if you include Mr. O'Leary), paralegals, and administrative staff.

42. My last class fee motion filing was in January of 2015, *Anderson v. County of Ventura*, C.D. Cal. No. CV 13-03517 SJO (VBKx). In that case, the Court approved my hourly rate at $690 per hour. We are requesting $720 per hour, which is about a 4% upward adjustment in the year that has passed since *Anderson*. I believe the evidence and authority cited by Richard Pearl in his declaration is supportive of this hourly rate. I am generally aware of the rates the Plaintiff's attorneys in Los Angeles of my caliber and experience are charging and are being awarded, and $720 per hour is reasonable market rate. Through late 2013, I had billed paralegal time at $110 per hour, and had not updated that billing rate in many years. After the 2013 settlement, I raised my paralegal billing rates by $15 per hour, to $125. I have left the earlier hours at $110 per hour, even though those rates are well below market rates for paralegal work.

THE FACTORS THAT JUSTIFY A LODESTAR MULTIPLIER

43. In addition to my hours and rates, there is a wide array of relevant facts that justify the full amount of fees we have requested here, including the multiplier of 2.5. In general, the case's long duration (eight years), the risks of

loss and uncertainty, the high quality and great efficiency of the work, the excellent outcome for the nearly 4,300 members of the class, the inability to take on other business, as well as the great personal and financial toll this case has taken on me, all weigh in favor of a 2.5 multiplier. I have already discussed some of these factors (i.e., the novelty and complexity (¶¶ 8-25, *ante*), the great efficiency (¶¶ 36-41, *ante*), the excellent results (¶¶26-28, *ante*); the other factors also strongly support this request.

The Great Risk My Firm Took

44. To begin with, this representation was entirely contingent and highly risky, for many reasons. I was first asked to participate in this litigation during the summer of 2007. I was later contacted by David Zlotnick in October of 2007, but due to my schedule and some other concerns, I declined to participate at that time. I spent a number of hours assessing it before turning it down in November of 2007 (see Zlotnick Declaration ¶ 7.) I turned it down initially because of my schedule and largely because of the great level of complex and novel issues that the case presented – which, ironically, was some of the intrigue that ultimately convinced me to take the case in 2008. Among my many concerns in 2007 was the likelihood that, in addition to the very high levels of risk and uncertainty inherent in the case, Class counsel would almost certainly have to invest several hundred thousand dollars for testifying expert work on various issues, including the water usage of the Class. At that time, I was aware that the California Supreme Court was soon to issue its opinion in *Olsen v. Automobile Club of Southern California*, (2008) 42 Cal.4th 1142, which would reconsider and potentially overturn *Beasley v. Wells Fargo Bank*, (1991) 235 Cal.App.3d 1407 (holding that expert witness fees could be recovered under Section 1021.5).[3] I

[3] The concerns over the barrier presented by the need for a substantial amount of expert witness advice and testimony were directed to the Court's

also knew that the case would have to be done on a contingent fee basis – there was no mechanism for charging the class my fees or reasonable expectation that anyone would have a stake large enough to pay for the work required.

45. In 2007 and into early 2008, I did give Mr. Zlotnick a number of potential names of class action attorneys to contact, and did in fact contact at least five – a number that is likely an underestimate as I did not keep records of those calls – on my own in an effort to help him, to no avail. I remained in sporadic contact with Mr. Zlotnick over the next six months. During that time I made a few more calls to class lawyers I knew, again to no avail. In or about early May of 2008, he informed me that he had exhausted all potential contacts and was unable to find a qualified attorney willing to take on the matter. He asked me to reconsider the matter and I agreed to discuss it with him and to come to a court hearing in this case.

46. Attached as **Exhibit 7** is a true and correct copy of the relevant portions of the hearing transcript of December 18, 2007.

47. The inherent problems with the inability to recover expert costs, and hence the inability to retain work product experts, has been extremely challenging. So much so that unless and until the law changes in this regard, I would never take this sort of case again. Being put in the profoundly anxiety provoking and stressful position of being ever on the verge of failing to provide the class with the services it needed , on the one hand, and being forced to donate large sums of unrecoverable case costs to a seriously risky lawsuit,[4] is not a situation I would wish on anyone. This is the reality Mr. O'Leary and I lived in for the entirety of this litigation, and it ultimately led us to file a motion to

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attention at the outset by letter, a copy of which is attached as **Exhibit 6.** (D.E. 1317.) These issues continued to be a major challenge throughout the litigation.

decertify the Class out of concern that the Class could not be adequately represented without expert work, and fear that one or both of us would be bankrupted having to fund those non-recoverable costs ourselves.

48. On a particle day-to-day level, not having access to an expert for over seven years on a case of this technical nature, made it extremely challenging to litigate. If I did not have more than 20 years' experience working with hydrologists, hydrogeologists, and engineers, as well as my own science background, it would have been impossible to adequately represent the Class.

49. In the early phase of my involvement in this litigation, I conducted a nationwide survey of cases, as well as an internet search, in order to determine whether a class action had ever been attempted in a context like this. I found no published opinions or publicly available reference to such a Class proceeding.

50. The resolution of this case was far from a sure thing. We settled the *Wood* matter in 2011, only to have that settlement fail to reach final approval. There have been two separate motions to decertify the Class, and at least three substantive phases of trial (as well as at least one that was avoided) that could have had partially or entirely adverse consequences for the Class and its counsel. The Class was ultimately spared the ravages of prescription through settlement. However, there is no guarantee that the settlement will survive the two to five year appellate process if that occurs.

The Preclusion of Other Employment

51. Throughout this case, I have had many occasions where I had to turn down cases, both large and small. This occurred on at least ten occasions. Since nearly all of my work comes by referral from other lawyers, typically on more

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[4] On this point, I refer to the *Olsen* case referenced above, and the fact that the Class could not be adequately represented without substantial expert work. Indeed, the billings of Cardno-Entrix and GSI in this matter total over $204,000.

difficult or complex matters, the necessity of turning down such cases has meant that my referral sources have formed other relationships.

52. Often the pace of work on this case has completely overwhelmed my practice. For example, during the six-month window of time immediately before and during the Phase 3 trial, I worked 596.3 hours on this matter. This level of work made it extremely difficult to work on other matters, including legal matters. The protracted trial timeframe – spanning over three months – caused me to have to surrender one matter set for trial then, and to forgo taking on the trial of another substantial matter, both of which were successfully litigate contingent matters. On those matters, I lost several millions of dollars and fees.

53. In 2011, I had to turn down a large (eight-digit) contingent matter involving unpaid medical services for a major surgery center. When I informed the potential client that I could not make the case my primary focus, which it certainly merited, they retained other counsel. That case has since partially settled, and the counsel has been paid in excess of $3 million. In 2012, I had to turn down a huge (nine-digit) medical billing underpayment contingent case for one of the larger chain medical providers in Southern California – a matter that later settled for a large sum of money. Again in 2013, I had to decline to take a large (over $10,000,000) contingent contact matter for a famous entertainer who was in a dispute with Walmart.

54. Over the years, I also had to decline the opportunity to substitute into two hourly matters. I do not actively market for hourly work, but when it comes, I am very reticent to turn it down. But the time demands of this case have been high and fairly constant. The related problem this case has caused is my inability to hire a quality attorney to assist in my practice, and the inability to direct the marking of my practice in the direction that I would like to take it. My practice has effectively been hi-jacked for the last eight years. At the age of 48, this is problematic for many obvious reasons.

55. Attached as **Exhibit 8** is a true and correct copy of the relevant portions of the hearing transcript of April 27, 2009.

56. Attached as **Exhibit 9** is a true and correct copy of the Court's Order After Hearing on Motion by Plaintiff Rebecca Willis and the Class For Attorneys' Fees, dated May 4, 2011.

THE EXTREME BURDEN THIS CASE HAS PLACED ON ME AND MY FAMILY

57. The great draw on my time this case caused, as well as the lack of income flowing from that work, created an extreme financial hardship on my practice and on me personally, making it highly undesirable from a personal standpoint for me and my family. The long hours required by this case has made it difficult to raise or even enjoy my small children and family. I have spent much of my family vacation time working on this case, in large part because of the ever-changing calendar and the heavy law and motion practice. For example, during my new years' vacation in Tahoe in 2013, I spent over 30 hours working on the attorney fee motion reply papers because of the holiday filing deadline. I have had to work extensively while visiting my wife's family, and on essentially every other vacation I have taken during this case. The work during the nights and weekends has been a substantial burden as well. The loss of personal time has been nearly as hard as the economic difficulties wrought by this case.

58. I have borrowed sums in excess of six-figures, and worked constantly for the last three years to make ends meet and keep my practice afloat. This financial hardship lead directly to my losing my long-time home in 2012, and I remain a renter today (this alone has cost me hundreds of thousands of dollars in rent and appreciation, as well as peace of mind). I have never experience a period of financial hardship like this in my life, and it took a profound toll on me personally, on my wife, and on my marriage. It probably goes without saying that if I knew the course that this case was going to take, I would have turned Mr.

Zlotnick down a second time in 2008. That was a decision that profoundly impacted my life and practice.

ALLOCATION AMONG DEFENDANTS

59. The allocation formula for each of the settling defendants was based on the same formula used in the Willis Settlement, which turned on relative groundwater production numbers of the ten defendant water suppliers. In the event it is of relevance to the Court, attached as **Exhibit 10** is a true and correct copy of the allocation table used by the Settling Defendants to set the payment percentages in the Settlement Agreement. The percentages for these defendants are: (1) Palmdale Water District, 27.37%; (2) Phelan Piñon Hills CSD, 2.67%; and (3) Rosamond CSD, 5.12%.

60. The Willis allocation table is based upon relative groundwater production by the various public water suppliers during the period of 2000-2006. The numbers found in this table come from the Summary Expert Report, discovery documents, and data produced by the water suppliers in this litigation. The percentages for each of the non-settling defendants are stated below, first as a percentage among the ten water suppliers, and then as a percentage among the remaining seven, for purposes of this motion:

Defendant	Relative Percentage (All Ten Defendants)	Percentage Among Non-Settling Defendants For this Motion
District No. 40	48.62	74.94
Quartz Hill Water Dist.	4.79	7.38
Littlerock Creek I.D.	5.15	7.94
California Water Svc. Co.	1.78	2.74
Desert Lake C.S.D.	0.92	1.42

Palm Ranch I.D.	2.97	4.58
North Edwards W.D.	0.65	1.00
	Total %	100.00

61. At least in some limited capacity, the Water Supplier Defendants have more recently used a slightly modified allocation, the foundation of which is not known to me. We do not care how the Water Suppliers allocate the fees and costs, so if they wish to propose alternative numbers, we likely have no opposition to that. Liability for the fee award also could be imposed on a joint and several basis.

62. I will also note that pursuant to the Stipulation for Entry of Judgment and Physical Solution, these settling defendants have agreed to bear the attorneys' fees and costs for the Small Pumper Class (and have expressly excluded from such liability, Defendants Palmdale Water District, Rosamond Community Services District, and Phelan Pinon Hills Community Services District). (Stipulation for Entry, ¶ 11.) These non-settling defendants have received consideration for this in the form of specific provisions in the Judgment and Physical Solution. (Stipulation For Entry, ¶ 12.)

INCENTIVE AWARD TO RICHARD WOOD

63. Richard Wood has represented the Class with the highest possible level of excellence and devotion. Indeed, in 15 years of class action experience, I have never had a single client, or even a collection of clients, put over 2,200 hours and $10,000 of their own money into a lawsuit without ever uttering single complaint. At every turn in this case, he was engaged and assisting us in any and all means possible. His profound insights into the politics, environment, and workings of the Antelope Valley were of great use. The benefit that he has conferred on the Small Pumper Class and the Antelope Valley as a whole cannot be adequately put into words.

64. From start to finish, Richard held fiercely and decisively to the interest of the Class in every detail, and the result we achieve is as much a testament to his refusal to accept anything less than what he believed to be fair. It must also be said that in fighting for the Class, Richard put his own personal interest aside, beyond even the money he spent and time commitment. Richard has historically pumped more water than the average Class member, and so had some incentive to "go it on his own" and prove up a larger water right than 3 acre-feet per year. He surrendered that right to look out for all the Class Members. This should be acknowledged, and while he could not seek a different right during trial, he should not be penalized for his sacrifice. In the grant of an incentive award, Richard should be permitted to exercise a water right closer to that which he pumps. He has earned that much, if not more.

65. Attached as **Exhibit 11** is a true and correct copy of the relevant portions of the hearing transcript of October 25, 2013.

66. Attached as **Exhibit 12** is a trued and correct copy of the Court's Order in *In re Cathode Ray Tube Antitrust Litigation*, (N.D.Cal., Jan. 13, 2016) Case No. 07-5944 JST.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27th day of January, 2016, at Hermosa Beach, California.

Michael D. McLachlan

Digitally signed by Michael D. McLachlan
DN: cn=Michael D. McLachlan, o=Law Offices of Michael D. McLachlan, ou, email=mike@mclachlanlaw.com, c=US
Date: 2016.01.27 15:52:01 -08'00'

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Michael D. McLachlan