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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 RICHARD M.
PEARL IN SUPPORT OF MOTION
FOR AWARD OF ATTORNEYS'
FEES**

Location: Dept. TBA
Santa Clara Superior Court
191 N. First Street
San Jose, California

Date: March 21, 2016
Time: 1:30 p.m.

1 I, RICHARD M. PEARL, hereby declare the following:

2 1. I am a member in good standing of the California State Bar. I am in
3 private practice as the principal of my own law firm, the Law Offices of Richard
4 M. Pearl, in Berkeley, California. I specialize in issues related to court-awarded
5 attorneys' fees, including the representation of parties in fee litigation and
6 appeals, serving as an expert witness, and serving as a mediator and arbitrator in
7 disputes concerning attorneys' fees and related issues. In this case, I have been
8 asked by Plaintiff's counsel, Michael McLachlan and Daniel O'Leary, to render
9 my opinion on the reasonableness of the attorneys' fees their firms are requesting
10 in this matter. I make this Declaration in Support of Plaintiff's Motion for Award
11 of Attorneys' Fees.

12 2. Briefly summarized, my background is as follows: I am a 1969
13 graduate of Boalt Hall (now Berkeley) School of Law, University of California,
14 Berkeley, California. I took the California Bar Examination in August 1969 and
15 passed it in November of that year, but because I was working as an attorney in
16 Atlanta, Georgia for the Legal Aid Society of Atlanta (LASA), I was not admitted
17 to the California Bar until January 1970. I worked for LASA until the summer of
18 1971, when I then went to work in California's Central Valley for California Rural
19 Legal Assistance, Inc. (CRLA), a statewide legal services program. From 1977 to
20 1982, I was CRLA's Director of Litigation, supervising more than fifty attorneys.
21 In 1982, I went into private practice, first in a small law firm, then as a sole
22 practitioner. Martindale Hubbell rates my law firm "AV." I also have been
23 selected as a Northern California "Super Lawyer" in Appellate Law for 2005,
24 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, and 2015. A copy of my
25 Resume is attached hereto as **Exhibit A**.

26 3. Since 1982, my practice has been a general civil litigation and
27 appellate practice, with an emphasis on cases and appeals involving court-
28 awarded attorneys' fees. I have lectured and written extensively on court-

1 awarded attorneys' fees. I have been a member of the California State Bar's
2 Attorneys' Fees Task Force and have testified before the State Bar Board of
3 Governors and the California Legislature on attorneys' fee issues. I am the author
4 of California Attorney Fee Awards (3d ed Cal. CEB 2010) and its 2011, 2012,
5 2013, 2014, and 2015 Supplements. I also was the author of California Attorney
6 Fee Awards, 2d Ed. (Calif. Cont. Ed. of Bar 1994), and its 1995, 1996, 1997, 1998,
7 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008 Supplements.
8 This treatise has been cited by the California appellate courts on more than 35
9 occasions. *See, e.g., Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553,
10 576, 584; *Lolley v. Campbell* (2002) 28 Cal.4th 367, 373; *Chacon v. Litke* (2010)
11 181 Cal.App.4th 1234, 1259; *Syers Properties III, Inc. v. Rankin* (2014) 226
12 Cal.App.4th 691, 698, 700. I also authored the 1984, 1985, 1987, 1988, 1990,
13 1991, 1992, and 1993 Supplements to its predecessor, CEB's California Attorney's
14 Fees Award Practice. In addition, I authored a federal manual on attorneys' fees
15 entitled Attorneys' Fees: A Legal Services Practice Manual, published by the
16 Legal Services Corporation. I also co-authored the chapter on "Attorney Fees" in
17 Volume 2 of CEB's Wrongful Employment Termination Practice, 2d Ed. (1997).

18 4. More than 90% of my practice is devoted to issues involving court-
19 awarded attorney's fees. I have been counsel in over 190 attorneys' fee
20 applications in state and federal courts, primarily representing other attorneys. I
21 also have briefed and argued more than 40 appeals, at least 30 of which have
22 involved attorneys' fees issues. In the past several years, I have successfully
23 handled four cases in the California Supreme Court involving court-awarded
24 attorneys' fees: 1) *Delaney v. Baker* (1999) 20 Cal.4th 23, which held that
25 heightened remedies, including attorneys' fees, are available in suits against
26 nursing homes under California's Elder Abuse Act; 2) *Ketchum v. Moses* (2001)
27 24 Cal.4th 1122, which held, *inter alia*, that contingent risk multipliers remain
28 available under California attorney fee law, despite the United States Supreme

1 Court's contrary ruling on federal law (note that in *Ketchum*, I was primary
2 appellate counsel in the Court of Appeal and "second chair" in the Supreme
3 Court); 3) *Flannery v. Prentice* (2001) 26 Cal.4th 572, which held that in the
4 absence of an agreement to the contrary, statutory attorneys' fees belong to the
5 attorney whose services they are based upon; and 4) *Graham v. DaimlerChrysler*
6 *Corp.* (2004) 34 Cal.4th 553, which I handled, along with trial counsel, in both
7 the Court of Appeal and Supreme Court. I also successfully represented the
8 plaintiffs in a previous attorneys' fee decision in the California Supreme Court,
9 *Maria P. v. Riles* (1987) 43 Cal.3d 1281. I also represented and argued on behalf
10 of *amicus curiae* in *Conservatorship of McQueen* (2014) 59 Cal.4th 602, and,
11 along with Richard Rothschild, filed an *amicus curiae* brief in *Vasquez v. State of*
12 *California* (2009) 45 Cal.4th 243. I also have handled numerous other appeals,
13 including: *Davis v. City & County of San Francisco* (9th Cir. 1992) 976 F.2d
14 1536; *Mangold v. CPUC* (9th Cir. 1995) 67 F.3d 1470; *Velez v. Wynne* (9th Cir.
15 2007) 2007 U.S.App.LEXIS 2194; *Camacho v. Bridgeport Financial, Inc.* (9th
16 Cir. 2008) 523 F.3d 973; *Center for Biological Diversity v. County of San*
17 *Bernardino* (2010) 185 Cal.App.4th 866; and *Environmental Protection*
18 *Information Center v. California Dept. of Forestry & Fire Protection et al* (2010)
19 190 Cal.App.4th 217. For an expanded list of my appellate decisions, see **Exhibit**
20 **A**.

21 5. I also have been retained by various governmental entities, including
22 the California Attorney General's office, at my then current rates to consult with
23 them regarding their affirmative attorney fee claims.

24 6. I am frequently called upon to opine about the reasonableness of
25 attorneys' fees, and my declarations on that issue have been cited favorably by
26 numerous federal and state courts. These include the following California
27 appellate courts: *Kerkeles v. City of San Jose* (2015) 243 Cal.App.4th 88; *Habitat*
28 *and Watershed Caretakers v. City of Santa Cruz* (2015) 2015 Cal.App.Unpub.

1 LEXIS 7156; *In re Tobacco Cases I* (2013) 216 Cal.App.4th 570; *Heritage Pacific*
2 *Financial LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009; *Children's Hospital*
3 *& Medical Center v. Bonta* (2002) 97 Cal.App.4th 740 (challenge to government
4 decision); *Wilkinson v. South City Ford* (2010) 2010 Cal.App.Unpub. LEXIS
5 8680. My declaration also has been cited favorably by the following federal
6 courts: *Prison Legal News v. Schwarzenegger* (9th Cir. 2010) 608 F.3d 446, 455,
7 in which the expert declaration referred to in that opinion is mine); *Antoninetti v.*
8 *Chipotle Mexican Grill, Inc.* (9th Cir. 2012) Order filed Dec. 26, 2012; *Gutierrez v.*
9 *Wells Fargo Bank* (N.D. Cal. 2015) 2015 U.S.Dist.LEXIS 67298; *Holman et al v.*
10 *Experian Information Solutions, Inc.* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS
11 173698; *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D.Cal. 2013) No. M
12 07-1827 SI, MDL, No. 1827, Report and Recommendation of Special Master re
13 Motions for Attorneys' Fees etc., filed Nov. 9, 2012, adopted in relevant part,
14 2013 U.S.Dist.LEXIS 49885; *Rosenfeld v. United States Dept. of Justice* (N.D.
15 Cal. 2012) 904 F.Supp.2d 988; *Stonebrae v. Toll Bros.* (N.D. Cal. 2011) 2011
16 U.S.Dist.LEXIS 39832, at *9 (thorough discussion), *aff'd* (9th Cir. 2013) 2013
17 U.S.App.LEXIS 6369; *Hajro v. United States Citizenship & Immigration Service*
18 (N.D.Cal 2012) 900 F.Supp.2d 1034, 1054; *Armstrong v. Brown* (N.D. Cal. 2011)
19 2011 U.S.Dist.LEXIS 87428; *Californians for Disability Rights, Inc. v. California*
20 *Dept. of Transportation* (N.D. Cal. 2010) 2010 U.S.Dist.LEXIS 141030; *Prison*
21 *Legal News v. Schwarzenegger* (N.D. Cal. 2008) 561 F.Supp.2d 1095 (an earlier
22 motion); *Oberfelder v. City of Petaluma* (N.D. Cal. 2002) 2002 U.S.Dist. LEXIS
23 8635 (an individual police misconduct action), *aff'd* (9th Cir. 2003) 2003
24 U.S.App.LEXIS 11371; *Bancroft v. Trizechahn Corp.*, C.D. Cal. No. CV 02-2373
25 SVW (FMOx), Order Granting Reasonable Attorneys' Fees etc., filed Aug. 14,
26 2006; *Willoughby v. DT Credit Corp.*, C.D. Cal. No. CV 05-05907 MMM (Cwx),
27 Order Awarding Reasonable Attorneys' Fees After Remand, filed July 17, 2006;
28 *A.D. v. California Highway Patrol* (N.D.Cal. 2009) 2009 U.S.Dist.LEXIS 110743

(police misconduct action), *rev's'd on other grounds* (9th Cir. 2013) 636 F.3d 955; *National Federation of the Blind v. Target Corp.* (N.D.Cal. 2009) 2009 U.S.Dist.LEXIS 67139; *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628 (anti-SLAPP case).

7. Through my writing and practice, I have become familiar with the attorneys' fees charged by attorneys in California and elsewhere. I have obtained this familiarity in several ways: (1) by handling attorneys' fee litigation; (2) by discussing fees with other attorneys; (3) by obtaining declarations regarding prevailing market rates in cases in which I represent attorneys seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as surveys and articles on attorney's fees in the legal newspapers and treatises.

8. In this case, I have consulted with counsel for Plaintiff regarding their fee application for their work in this matter culminating in their victory before the Los Angeles County Superior Court. I have become familiar with the nature of this case, its results, and counsel's work, as well as counsel's respective backgrounds and experience. Moreover, I previously worked with Mr. McLachlan on the fee motion in another difficult and complex case, *Anderson v. County of Ventura*, C.D. Cal. No. CV 13-03517 SJO (VBKx), and found the quality of his work, his analytical skills, and the relief he achieved for his clients all to be first-rate (*i.e.*, in the upper-strata of trial attorneys). I also have been made aware of the lodestar requested by Plaintiff's attorneys' in this case. To form my opinion, I also have read counsel's draft declarations for this motion, which include a description of the history of this litigation; I also have read the Court's final Statement of Decision, the Judgment and Physical Solution, the Motion for Final Approval of the Small Pumper Class Settlement, and the Order Granting Motion for Approval of Award of Attorney Fees and Costs. I also have fully reviewed the settlement website, www.avgroundwater.com.

9. Specifically, I am aware that Plaintiff's counsel request a lodestar rate of \$3,348,160, based on hourly rates of \$720 for the 4533.8 hours claimed by Plaintiff's two attorney and \$110-125 per hour for the 679.5 paralegal hours claimed, as shown in the following chart:

TIMEKEEPER	TOTAL HOURS	HOURLY RATE	TOTAL
Michael D. McLachlan	4,184.9	\$720	\$3,013,128
Daniel M. O'Leary	353.9	\$720	\$254,808
Paralegals	314.2	\$110	\$34,562
Paralegals	365.3	\$125	\$45,662
TOTAL			\$3,348,160

I also am aware that Plaintiff's attorneys are requesting a 2.5 lodestar enhancement, based on the non-lodestar factors that go into determining a reasonable attorney's fee. In my opinion, for the reasons discussed below, the attorneys' fees that Plaintiff's attorneys request is quite reasonable for such long, hard-fought, important litigation.

COUNSEL'S HOURLY RATES ARE REASONABLE

10. Under California law, Plaintiff's attorneys are entitled to their requested rates if those 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 [CHMC]* (2002) 97 Cal.App.4th 740, 783. Based on the information regarding hourly rates that I have gathered, some of which is summarized below, my opinion is that the hourly rates requested by Plaintiff's attorneys are well within the range of non-contingent market rates charged for reasonably similar services by Los Angeles Area attorneys of reasonably similar qualifications and experience. The following data support my opinion:

Rates found reasonable in other cases.

11. The following hourly rates have been found reasonable by various local courts for reasonably comparable services:

(1) *Perfect 10, Inc. v. Giganews, Inc.* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 54063, filed March 24, 2015, a copyright infringement action, in which the court found the following hourly rates reasonable:

<u>Years of Experience</u>	<u>2015 Rates</u>
29	\$825-930
18	750
17	705-750
12	610-640
11	660-690
10	670
9	660-690
8	470-525
7	640
5	375-560
4	350-410
3	505
2	450
1	360-370
Paralegals	240-345
Discovery Support	245-290
Staff	

(2) *Anderson v. County of Ventura*, C.D. Cal. No. CV 13-03517 SJO (VBKx), Fee Order filed March 5, 2015, a multi-plaintiff Fair Labor Standards Act case, in which the court found the following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rates</u>
19	\$690
15	590
12	590
2	330
Paralegals	140-190

(3) *Rodriguez v. County of Los Angeles*, C.D. Cal. No. 2:10-cv-06342-CBM-AJW, Order Granting Plaintiffs' Motion for Attorneys' Fees, filed December 29, 2014, a civil rights action on behalf of five county jail prisoners, in which the court found the following hourly rates reasonable, plus a 2.0 lodestar multiplier for merits work performed on the plaintiffs' California cause of action:

<u>Years of Experience</u>	<u>Rate</u>
45	\$975
28	700-775
26	775
10	600
6	500
Senior Paralegal	295
Other Paralegals	175-235
Law Clerk	250

(4) *Doe v. United Healthcare Insurance Co., et al.*, C.D. Cal. No. SACV 13-0864 DOC(JPRx), Order Granting Attorney's Fees and Costs, filed October 15, 2014, a multi-Plaintiff consumer action, in which the court found the following hourly rates reasonable:

Whatley Kallas

<u>Years of Experience</u>	<u>Rate</u>
36	\$950
27	900
32	800
33	750
21	700
10	600
4	400
2	375
Paralegal	225

Consumer Watchdog

35	\$925
19	650
4	425

(5) *Carpio v. California Department of Social Services, Los Angeles County Superior Court*, No. BS 135127, Order Granting Plaintiff's Motion for Attorney's Fees, filed July 24, 2014, a government benefits writ of mandate, in which the court found the following hourly rates reasonable:

<u>Years</u>	<u>Rate</u>
39	\$750
35	730
13	500
8	460

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<u>Years</u>	<u>Rate</u>
6	440

(6) *Laffitte v. Robert Half International Inc.*, Los Angeles Superior Court No. BC321317, review granted February 25, 2015 (vacated opinion at 231 Cal.App.4th 860),¹ a wage and hour class action, in which the trial court approved, over a class member’s objection, a 33% common fund fee award, cross-checked against a lodestar based on the following hourly rates (prior to application of a 2.13 multiplier):

<u>Years Since Bar Admission</u>	<u>Rate</u>
25-27	\$750
14-16	600
12	500

(7) *Hao v. United States of America*, C.D. Cal. No. CV 01-01758 CBM (Ex), Order Granting Motion for Attorneys’ Fees, filed January 26, 2015, a damages action against the United States requesting fees under the Equal Access to Justice Act (28 U.S.C. §2412(b)) for the government’s “bad faith”, in which the court found the following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
28	\$725
23	660
15	575
3	375
Paralegal	125

¹ To the best of my knowledge, the issue before the Supreme Court in *Laffitte* is whether under California law, percentage-based fees may be awarded from a common fund. It does not involve the hourly rates found reasonable as part of the trial court’s lodestar cross-check.

(8) *Pierce v. County of Orange* (C.D. Cal. 2012) 905 F.Supp.2d 1017, a civil rights class action brought by pre-trial detainees, in which the court approved a lodestar based on the following 2011 rates:

<u>Years of Experience</u>	<u>Rate</u>
42	\$850
32	825
23	625
18	625
Law Clerks	250
Paralegals	250

Rate Information from Surveys

12. I also base my opinion on several credible surveys of legal rates, including the following:
- On January 5, 2015, the National Law Journal published an article about its most recent rate survey entitled “Billing Rates Rise, Discounts Abound.” A true and correct copy of that article is attached hereto as **Exhibit B**. It contains the rates charged by numerous Los Angeles area law firms handling comparably complex litigation. Plaintiff’s attorneys’ rates are well in line with those rates.
 - On January 13, 2014, the National Law Journal published an article about its most recent rate survey. That article included a chart listing the billing rates of the 50 firms that charge the highest average hourly rates for partners. A true and correct copy of that article is attached hereto as **Exhibit C**. Of the 50 firms listed, several have offices in the Los Angeles Area and many others have significant litigation experience in this area. And, although the rates that Plaintiff’s counsel are requesting here are *lower* than many of

1 the rates charged by the listed firms, the NLJ chart does show the
2 *range* of rates charged for similar services, which is the applicable
3 standard. *See CHMC*, 97 Cal.App.4th at 783.

- 4 • The 2013 Real Rate Report Snapshot published by Ty Metrix/Legal
5 Analytics summarizes the “real rates” for partners and associates in
6 various cities. A copy of the relevant pages is attached hereto as
7 **Exhibit D**. It shows that for the Los Angeles Area attorneys
8 surveyed (972 partners, 1,239 associates), the Third Quartile partner
9 rate in 2012 was **\$816.89** per hour and the associate rate was
10 **\$531.63** per hour. Given the excellent quality of the work performed
11 and results obtained here, in my opinion rates higher than the Third
12 Quartile are the most appropriate measure. Moreover, since 2012,
13 most Los Angeles Area firms have raised their rates by at least 5-
14 10%.
- 15 • In an article entitled “On Sale: The \$1,150-Per Hour Lawyer,”
16 written by Jennifer Smith and published in the Wall Street Journal
17 on April 9, 2013, the author describes the rapidly growing number of
18 lawyers billing at **\$1,150** or more revealed in public filings and
19 major surveys. A true and correct copy of that article is attached
20 hereto as **Exhibit E**. The article also notes that in the first quarter
21 of 2013, the 50 top-grossing law firms billed their partners at an
22 *average* rate between \$879 and \$882 per hour.

23 **Hourly Rates Charged by Other Law Firms**

24 13. Plaintiff’s counsels’ rates also are supported by the standard hourly
25 non-contingent rates for comparable civil litigation stated in court filings,
26 depositions, surveys, or other reliable sources by numerous California law firms
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that have offices in or regularly practice in the Los Angeles area.² These rates include, in alphabetical order:

Alexander, Krakow & Glick

2014 Rates:	Years of Experience	Rate
	36	\$750
	27	750
	13	625
	Law Clerks	200

Arnold Porter

LLP

2015 Rates:	Years of Experience	Rate
	40	\$1,085
	20	920
	6	710
	4	640

2014 Rates:	Years of Experience	Rate
	49	\$995
	39	1,035
	19	875
	5	645
	3	570

2013 Rates:	Level	Rate
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² Although some of these firms are based in Northern California, the fact is that hourly rates charged in the Los Angeles area are generally higher than Northern California rates. Accordingly, if rates are reasonable by Northern California standards, they also are reasonable as Los Angeles area rates.

1	Average Partner	\$815
2	Highest Partner	950
3	Lowest Partner	670
4	Average Associate	500
5	Highest Associate	610
6	Lowest Associate	345

Bingham McCutchen

9	2013 Rates:	Average Partner	\$795
10		Highest Partner	1,080
11		Lowest Partner	220
12		Average Associate	450
13		Highest Associate	605
14		Lowest Associate	185

16	2011 Rates:	Years of Experience	Rate
17		30	\$780

19	2010 Rates:	Years of Experience	Rate
20		13	\$655
21		4	480
22		2	400

Cohelan Khoury & Singer

25	2012 Rates:	Years of Experience	Rate
26		38	\$750
27		28	750

Cohelan Khoury & Singer

11	400
Paralegal	170

Cooley LLP

Years of Experience	2012	2013	2014
31	\$975	\$1,035	\$1,095
17	670	710	770
9	550	645	685
7	500	585	685
6		530	620
3		355	445
Paralegal		260	325
Paralegal	245	260	275
			290

Covington Burling

2015 Rates	Years of Experience	Rate
	30	\$805
	2	410

2014 Rates	Years of Experience	Rate
	35	\$825
	29	780
	15	695
	6	530
	3	425

Covington Burling

1 350

Level

Average Partner \$780

Highest Partner 890

Lowest Partner 605

Average Associate 415

Highest Associate 565

Lowest Associate 320

2013 Rates: Years of Experience Rate

28 \$750

16 670

14 670

7 510

5 490

2 375

Litigation Support 110-355

2012 Rates: Years of Experience Rate

27 \$730

15 632-650

13 650

2011 Rates: Years of Experience Rate

26 \$710

14 640

12 600

Covington Burling

9	565
7	550
5	425
3	390
1	320

Fenwick & West

2014 Rates	Years of Experience	Rate
	45	\$750
	35	750
	23	725
	19	695
	5	400
	3	350
	Paralegal	125
2013 Rates	18	\$755
	11	595
	2	425
2012 Rates	40	\$865
	17	755
	10	595

Gibson Dunn & Crutcher LLP

2015 Rates:	Years of Experience	Rate
	37	\$1,125
	23	955

Gibson Dunn & Crutcher LLP

	3	575
2014 Rates:	Years of Experience	Rate
	36	\$1,080
	22	910
	9 (Of Counsel)	740
	6	690
	2	485
2013 Rates	Years of Experience	Rate
	35	\$1,040
	5	625
	Paralegal	345

Greenberg, Traurig, LLP

2010 Rates:	Years of Experience	Rate
	22	\$850

Greines, Martin, Stein & Richland

2012 Rates:	Years of Experience	Rate
	41	\$850
	29	850
	23	650
	18	500
	Law Clerks	100

**Hadsell, Stormer, Richardson &
Renick**

**Hadsell, Stormer, Richardson &
Renick**

2015 Rates:	Years of Experience	Rate
	42	\$1,050
	20	750
	26	700
	16	650
	13	600
	5	425
	4	375
	Law Clerks	225
	Paralegals	175-250

2012 Rates:	Years of Experience	Rate
	38	\$825
	33	775
	22-23	625
	17	600
	12	525
	10	425
	4	275
	3	250

Hausfeld LLP

2014 Rates:	Years of Experience	Rate
	45	\$985
	37	935-895
	15	610-510

Hausfeld LLP

14	600
7	490
3	370
Paralegals	300-320
Law Clerks	325

Irell & Manella

2013 Rates:	Average Partner	\$890
	Highest Partner	975
	Lowest Partner	800
	Average Associate	535
	Highest Associate	750
	Lowest Associate	395

Jones Day

2013 Rates:	Average Partner	\$745
	Highest Partner	975
	Lowest Partner	445
	Average Associate	435
	Highest Associate	775
	Lowest Associate	205

Kaye, McLane, Bednarski & Litt

2014 Rates	Years of Experience	Rate
	45	\$975
	28	700-775

Kaye, McLane, Bednarski & Litt

26	775
10	600
6	500
Senior Paralegal	295
Other Paralegals	175-235
Law Clerk	250

Kiesel, Boucher, Larson LLP

2012 Rates:	Years of Experience	Rate
	Partners	
	27-28	\$890
	Associates	625-325

Kingsley & Kingsley

2010 Rates:	Years of Experience	Rate
	14	\$655
	8	475-515
	7	475
	6	485
	5	375
	3	350
	2	300

Kirkland & Ellis

2013 Rates:	Average Partner	\$825
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Kirkland & Ellis

Highest Partner	995
Lowest Partner	590
Average Associate	540
Highest Associate	715
Lowest Associate	235

Knapp, Petersen & Clarke

2012 Rates:	Years of Experience	Rate
	36	\$753
	9	554
	6	383

Latham & Watkins

2013 Rates:	Average Partner	\$990
	Highest Partner	1,100
	Lowest Partner	895
	Average Associate	605
	Highest Associate	725
	Lowest Associate	465

**Lieff Cabraser Heimann & Bernstein,
LLP**

2015 Rates:	Years of Bar Admission	Rate
	1972	\$975
	1989	850
	2001	625

**Lieff Cabraser Heimann & Bernstein,
LLP**

	2006	435
	2009	435
2014 Rates:	Years of Bar Admission	Rate
	1998	\$825
	2001	600
	2006	435
	2009	415
	2013	325
	Paralegal/Clerk	305
2013 Rates:		
	1975	\$925
	1998	800
	2001	525
	2003	490
	2006	415
	2009	395
	2013	320
	Paralegal/Clerk	285

Litt, Estuar, & Kitson, LLP

2012 Rates:	Years of Experience	Rate
	42	\$825
	18	625
	17	625
	5	425

Litt, Estuar, & Kitson, LLP

3	375
Senior Paralegals	125-235
Law Clerks	225
2011 Rates:	Years of Experience Rate
42	\$825
18	625
17	625
5	425
3	375
Senior Paralegals	125-235
Law Clerks	225

Manatt, Phelps & Phillips

2013 Rates:	Average Partner	\$740
	Highest Partner	795
	Lowest Partner	640
2010 Rates:	Partners	525-850
	Associates	200-525

McKenna Long & Aldridge LLP

2015 Rates:	Years of Experience	Rate
31		\$775
10		650
	Senior Paralegal	350
	Paralegal	225
2014 Rates:	Years of Experience	Rate

McKenna Long & Aldridge LLP

30	\$775
9	650
5	420
Litigation Support Mgr.	350
Paralegals	225

Morrison Foerster LLP

2013 Rates:	Average Partner	\$865
	Highest Partner	1,195
	Lowest Partner	595
	Average Associate	525
	Highest Associate	725
	Lowest Associate	230
	Years of Experience	Rate

2011 Rates:

22	\$775
11	625
10	620
1	335

2009 Rates:	Years of Experience	Rate
	24	\$750

O'Melveny & Myers

2013 Rates:	Level	Rate
	Average Partner	\$715

O'Melveny & Myers

Highest Partner 950

Lowest Partner 615

2012 Rates:	Years of Experience	Rate
	12	\$695
	4	495

Orrick Herrington & Sutcliffe

2014 Rates:	Level	Rate
	Average Partner	\$845
	Highest Partner	1,095
	Lowest Partner	715
	Average Associate	560
	Highest Associate	710
	Lowest Associate	375

Paul Hastings LLP

2014 Rates:	Level	Rate
	Average Partner	\$815
	Highest Partner	900
	Lowest Partner	750
	Average Associate	540
	Highest Associate	755
	Lowest Associate	350

Pillsbury Winthrop Shaw Pittman LLP

2013 Rates:	Level	Rate
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Pillsbury Winthrop Shaw Pittman LLP

Average Partner	\$865
Highest Partner	1,070
Lowest Partner	615
Average Associate	520
Highest Associate	860
Lowest Associate	375

2010 Rates:	Level	Rate
	30 years	\$705-775
	Other Partners	595-965
	Associates	320-650
	Paralegals/Support Staff	85-380

Quinn Emanuel Urquhart & Sullivan

2013 Rates:	Average Partner	\$915
	Highest Partner	1,075
	Lowest Partner	810
	Average Associate	410
	Highest Associate	675
	Lowest Associate	320

Reed Smith LLP

2014 Rates:	Years of Experience	Rate
	37	\$830
	18	695
	15	585
	6	485

Reed Smith LLP

	5	435
2013 Rates:	Years of Experience	Rate
	Partner	
	36	\$830
	30	805
	17	610-615
	14	570
	Associates	
	8	450-535
	6	495

**Schonbrun, DeSimone, Seplow, Harris
& Hoffman**

2014 Rates:	Years of Experience	Rate
	29	\$750
	24	700
2012 Rates:	Years of Experience	Rate
	27	\$695
	22	630

Skadden, Arps, Slate, Meagher & Flom

2013 Rates:	Average Partner	\$1,035
	Highest Partner	1,150
	Lowest Partner	845
	Average Associate	620
	Highest Associate	845

Skadden, Arps, Slate, Meagher & Flom

Lowest Associate	340
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Law Office of Carol Sobel

2015 Rate:	Years of Experience:	Rate:
	37	\$875

Wilson Sonsini Goodrich & Rosati PC

2010 Rates:	Level	Rate
	28 years	\$875
	Other Partners	650-975
	Associates	290-610
	Paralegals/Litigation	120-300
	Support	

Zelle Hofmann Voelbel & Mason, LLP

2012 Rates:	Level	Rate
	Partners	Up to \$950
	Associates	Up to \$540
	Paralegals	Up to \$290
	Law Clerks	Up to \$250

14. The hourly rates set forth above are those charged where full payment is expected promptly upon the rendition of the billing and without consideration of factors other than hours and rates. If any substantial part of the payment were to be contingent or deferred for any substantial period of time, for example, the fee arrangement would be adjusted accordingly to compensate the attorneys for those factors.

1 15. In my experience, fee awards are almost always determined based on
2 current rates, *i.e.*, the attorney's rate at the time a motion for fees is made, rather
3 than the historical rate at the time the work was performed. This is a common
4 and accepted practice to compensate attorneys for the delay in being paid.

5 **COUNSEL'S HOURS ARE REASONABLE**

6 16. I also have reviewed Plaintiff's counsel's detailed timesheets, which
7 consist of approximately 243 pages, and numerous other documents, as set out in
8 paragraph 8 *supra*. While I do not purport to have done a full review of the file, I
9 do have extensive experience with complex cases involving land and water use
10 and raising similar challenges: I have handled the fee applications and/or appeals
11 in numerous such actions (see, e.g., *Planning and Conservation League v.*
12 *California Dept. of Water Resources*, (2000) 83 Cal. App. 4th 892 (on remand);
13 *Environmental Protection Info. Ctr. v. Pacific Lumber Co.* (N.D. Cal. 2002) 229
14 F.Supp.2d 993, *aff'd* (9th Cir. 2004) 103 Fed.Appx. 627 (*EPIC I*); *Environmental*
15 *Protection Info. Ctr. v Department of Forestry & Fire Protection* (2010) 190
16 Cal.App.4th 217 (*EPIC II*); *Center for Biological Diversity v. County of San*
17 *Bernardino (Nursery Prods., LLC)* (2010) 185 Cal.App.4th 866, 891) and have
18 testified by declaration on the reasonableness of attorneys' fees in countless other
19 environmental matters (see, e.g., *Living Rivers Council v. State Water Resources*
20 *Control Board*, Alameda Superior Court No. RG 10543923, Fee Order filed
21 March 23, 2013, *aff'd by unpublished opinion*, 2014 Cal.App.Unpub. LEXIS
22 7321). As a result, I am familiar with the number of hours generally required by
23 such actions. In my opinion, the fact that Plaintiff's request is based on
24 contemporaneous time records, set out in .1 intervals, *prima facie* shows that the
25 time claimed is reasonable. See *Horsford v. Bd. of Trustees* (2005) 132
26 Cal.App.4th 359, 396. Additionally, although for a matter of this size, duration,
27 and complexity, having several billers is normal and appropriate, the potential for
28

1 unreasonable duplication of effort here has been minimized by the extremely low
2 number of billers.

3 17. Further, I am aware that Mr. McLachlan and Mr. O'Leary have
4 exercised billing judgment by writing down or writing off over 300 hours and
5 nearly \$220,000 of legal services (at lodestar rates) for items performed in the
6 handling of the case. The reasonableness of counsel's time also is shown by the
7 fact that the attorney billers on the matter, Mr. McLachlan and Mr. O'Leary,
8 averaged slightly less than 60 hours per month combined on this case; in my
9 view, this is a modest amount, given the number and complexity of legal and
10 factual issues in this case. Accordingly, the time spent by Plaintiff's counsel
11 appears to be appropriate to the novel and complex issues presented, to the
12 stakes involved, to the high quality of the work product produced, to the vigorous
13 defense presented, and to the results obtained.

14 18. For each of these reasons, in my opinion, at the requested lodestar
15 hourly rates listed in paragraph 9 above, the number of hours spent by Plaintiff's
16 counsel would have been billable to a fee-paying client and represent a
17 reasonable number of hours for litigating this matter.

18 **A 2.5 MULTIPLIER IS REASONABLE**

19 19. I am familiar with the legal standards governing the recovery of
20 enhanced lodestars, commonly known as "multipliers," in cases in which
21 reasonable attorneys' fees are awarded under Code of Civil Procedure section
22 1021.5 and similar statutes. In my opinion, a 2.5 multiplier is appropriate in this
23 case given: 1) the extremely high financial risk taken by Plaintiff's small law
24 firms; 2) the exceptional novelty, complexity, and duration of the action and the
25 concomitant skills required to win it; 3) the preclusion of other employment for
26 Plaintiff's counsel; 4) the excellent results achieved, both directly and indirectly,
27 in an extremely efficient manner; 5) the public benefits conferred; and 6) the
28 multipliers applied in comparable cases.

1 **20. Contingent Risk.** In my experience, contingent risk is the most
2 important and influential factor in determining a lodestar multiplier. It is simply
3 basic economics that when a law firm takes a difficult case on a contingent fee
4 basis, it should get a significantly higher fee than a firm that is guaranteed
5 payment (and paid along the way), win or lose. It is well-established that lawyers
6 who assume a significant financial risk on behalf of their clients rightfully expect
7 that their compensation will be significantly greater than it would be if no risk or
8 delay was involved, *i.e.*, under the traditional arrangement where the client is
9 obligated to pay for costs and fees incurred on a monthly basis. In my
10 experience, attorneys are willing to enter into such contingency fee arrangements
11 only if they can expect to receive significantly higher effective hourly rates in
12 successful cases, particularly in cases that are expected to be hard fought and
13 where the result is uncertain. That is how the legal marketplace works, and
14 market value fees are the standard that fee-shifting statutes are intended to
15 provide: as the courts have recognized, such arrangements do not result in any
16 “windfall” or undue “bonus” for the attorney; rather, they are “*earned*
17 *compensation*,” reflecting the need for fee awards to mirror the legal services
18 market by compensating attorneys for the risk of non-payment, which in many
19 cases involves thousands of hours of time spent and dollars advanced. See
20 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138. Court-awarded fees that reflect
21 that risk of loss simply make such representation competitive in the legal
22 marketplace. 24 Cal.4th at 1132-1133. Indeed, that view was affirmed again by
23 the California Supreme Court in *Graham v. DaimlerChrysler Corp.* (2004) 34
24 Cal.4th 553, 579, as well as by the Second District of the Court of Appeal in such
25 cases as *Building a Better Redondo Beach, Inc. v City of Redondo Beach* (2012)
26 203 Cal.App.4th 852, 874, and *Taylor v. Nabors Drilling USA, LP* (2014) 222
27 Cal.App.4th 1228, 1251. For these reasons, a significant lodestar enhancement for
28

1 contingent risk is necessary in this case to reflect the true and full market value of
2 Plaintiff's attorneys' work.

3 21. A contingent risk enhancement is particularly appropriate in cases
4 such as this one, which has required more than **4,538 hours** of uncompensated
5 work,³ incurred over a period of more than eight years. That risk was
6 exacerbated by the facts that it involved uncharted areas of the law and a large
7 factual record, and had so many parties with potentially conflicting interests that
8 settlement was a long shot. As Mr. McLachlan explains, he also faced the
9 seemingly insurmountable problem of requiring vital but expensive expert
10 testimony, without funding to obtain those experts of the prospect of a court-
11 awarded reimbursement of those expenses. Indeed, the riskiness was evident
12 from the difficulty Mr. Zlotnick, who represented the Willis Class, had in finding
13 any attorney willing to represent the group of small pumpers on a contingent fee
14 basis. The risk and undesirable nature of this litigation is also reflected in the
15 McLachlan Declaration at paragraphs 43-50. The odds of winning such a case
16 against well-funded defendants, with such novel and complex issues, and with
17 the huge stakes involved, are daunting.

18 22. Based on the information provided by Plaintiff's counsel, Plaintiff's
19 prospects for success when they decided to litigate this case were a very open
20 question, at best. And, while Mr. McLachlan and Mr. O'Leary did receive some
21 compensation from this Court's Fee Order on the 2013 settlement, that covered
22 only 1,276 hours of their work, at reduced rates and with no multiplier – the
23 remaining 4,538 hours have remained totally unpaid and at risk of never being
24 compensated if the case was lost. ⁴Counsel's only realistic means of recovering

26 ³ The 4,538 hours do not include the 1,276 hours paid in conjunction with
27 the 2013 fee award for six years of previously uncompensated work.

28 ⁴ Risk multipliers are perfectly appropriate in cases where some fees are
partially paid. See *Building a Better Redondo Beach, Inc. v City of Redondo*

1 full marketplace compensation for the excellent services provided was by winning
2 a merits victory or a settlement that provided significant relief to the class
3 members they represented and then prevailing in this motion for recovery of
4 attorney's fees under section 1021.5. Those risks were obviously quite substantial,
5 far greater than the typical case, and in the legal marketplace and here, should be
6 reflected in the fee award. Such an award will meet one of the principal purposes
7 of section 1021.5: to provide fully compensatory fees in successful cases in order
8 to encourage competent counsel to take on difficult but important cases like this
9 one.

10 **23. The exceptional novelty and complexity of the action and**
11 **the concomitant skills required to win it.** The exceptional novelty and
12 difficult of this action, and the concomitant skill required to win it – skill that
13 goes beyond counsel's modest hourly rates – are fully set forth in Mr.
14 McLachlan's declaration, and I concur in their assessment. This was no routine
15 or "cookie-cutter" action: it was high-stakes, hard-fought litigation involving the
16 very fundamental right to water and their clients' concomitant ability to remain
17 in their homes and communities, fought against a formidable set of opponents
18 and raising numerous novel issues of water law. In the legal marketplace, the fee
19 charged by counsel in exceptionally complex cases often exceeds the normal
20 "lodestar"-type fee that would be charged to a fee-paying client in a less complex
21

22
23 *Beach* (2012) 203 Cal.App.4th 852, 874 (affirming risk multiplier, even though
24 25% of lodestar was non-contingent). I also know from representing the
25 Plaintiff's attorneys in *EPIC II*, *supra*, 190 Cal.App.4th 217, and from reviewing
26 the trial court fee award in *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th
27 1157, that the fees in both cases were only partially contingent; yet, the trial court
28 in *EPIC II* applied a 2.0 multiplier (though later remanded on other grounds),
and in *Amaral*, the trial court applied a 1.65 multiplier, which was expressly
affirmed on appeal (163 Cal.App.4th at 1216). In reality, counsel's risk here was
greater than in those cases because they did not even have the benefit of a

1 and novel case requiring less skill. As such, these factors also support the
2 lodestar enhancement sought.

3 **24. The preclusion of other employment for Plaintiff's counsel.**
4 Cases that are as heavily fought as this one over a considerable period of time can
5 take a heavy toll on a small law firm's "book of business" because other cases,
6 some of which may be quite lucrative, simply have to be turned away. In such
7 cases, clients can be and are charged a higher fee if this turns out to be true. It is
8 my understanding that this has happened to Plaintiff's counsel here, costing him
9 several very lucrative cases. See McLachlan Decl. ¶¶ 51-54. As such, it also
10 justifies the lodestar enhancement sought.

11 **25. The excellent results achieved, both directly and indirectly.**
12 Again, the excellent results achieved here, both in terms of the settlement finally
13 achieved and approved by the Court, and the collateral benefits that the litigation
14 provided to the entire community, are fully described in Mr. McLachlan's
15 declaration (¶¶ 7-10). In the legal marketplace, clients often pay an additional fee
16 in cases that achieve such remarkable success.

17 **26. The public benefits conferred.** This Court has previously
18 recognized the immense public value Plaintiff's lawsuit, along with others, has
19 conferred on the public: "By virtue of [the Willis and Woods class actions], the
20 Court is able to adjudicate the claims of virtually all groundwater users in the
21 Antelope Valley which adheres to the benefit of every resident and property
22 owner in the adjudication area...Even without the federal government
23 involvement, without the filing of a class action, it would have been impossible to
24 adjudicate the rights of all persons owning property and water rights within the
25 valley... The inability of the judicial system to conduct such adjudication in any
26

27
28 guaranteed or prepaid fee of *any* kind, only an interim, discounted payment for
the part of their work that qualified for fees in its own right.

1 other way is beyond argument. The benefit to all class members is clear and the
2 benefit to all others living or owning property in the Antelope Valley is
3 enormous...” Order After Hearing On Motion By Plaintiff Rebecca Lee Willis And
4 The Class For Attorneys' Fees, Reimbursement Of Expenses And Class
5 Representative Incentive Award, filed May 4, 2011. Here, Plaintiff's counsel have
6 enforced these purposes, to the benefit of everyone in the Antelope Valley
7 community.

8 **27. Multipliers applied in comparable cases.** Multipliers applied
9 in comparable cases also support the enhancement requested. See *Vizcaino v.*
10 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050 (looking to multipliers
11 awarded in comparable cases as evidence of reasonableness); *Wershba v. Apple*
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 (noting that “[m]ultipliers can
13 range from 2 to 4 or even higher”).

14 **28.** Lodestar multipliers are an integral part of fee awards in highly-
15 contested, complex, and risky litigation like this case, and the multipliers
16 awarded in other cases also support my opinion. For example, in *Chau et al v.*
17 *CVS RX Services, Inc.*, Los Angeles County Superior Court No. BC349224,
18 Order Granting Final Approval of Class Action Settlement, Reasonable
19 Attorneys' Fees and Costs and Service Payments to the Class Representatives,
20 filed September 24, 2008, a wage and hour class action, a 3.8 multiplier was
21 applied based primarily on contingent risk and the “excellent results [] obtained
22 [] with relative efficiency”). **Exhibit F**, p. 5:7. In *Thompson v. Santa Clara*
23 *County Open Space Authority*, Santa Clara County Superior Court No. 1-02-CV-
24 804474, Order re Final Approval of Class Action Settlement and For Attorneys'
25 Fees and Litigation Expenses, filed September 21, 2009, a challenge to an
26 invalid tax statute, the trial court determined that the plaintiff's lodestar, which
27 mainly consisted of appellate work, was \$2,598,122.50, to which it applied a
28 2.85 multiplier. **Exhibits G & H** (p. 4:9-20; p. 5:23). In *Jordan v. Dept. of*

1 *Motor Vehicles*, JAMS Ref. No. 1100040574, Arbitration Award and Decision,
2 dated April 14, 2004 (arbitrating fees incurred in Sacramento Superior Court
3 Nos. 95AS05228, 01CS0006, 01CS0007), a lodestar of \$716,000 was found
4 reasonable for defending the trial court's judgment on appeal, and a 2.5
5 multiplier was applied to that lodestar. In *Hope v. State of California*,
6 *Department of Youth Authority*, the Los Angeles County Superior Court No. BC
7 258985, the court awarded appellate fees, at 2006 rates of up to \$750 per hour
8 that included a 2.0 multiplier. **Exhibit I** (Order re: Award of Appellate
9 Attorney Fees Pursuant to Government Code § 12965, filed April 21, 2006), p.
10 2:12. In *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, a non-
11 contingent case, a 2.43 multiplier was applied to the entire case, including
12 appellate work. All of these prior awards support the lodestar enhancement
13 sought here. Other cases include:

- 14 • *Coalition for Los Angeles County Planning v. Board of*
15 *Supervisors* (1977) 76 Cal.App.3d 241 (2.1 multiplier for land use
16 challenge);
- 17 • *Uphold Our Heritage v. Town of Woodside*, San Mateo Superior
18 Court No. 444270, *aff'd by unpublished decision*, 2008
19 Cal.App.Unpub. LEXIS 8875 (2.0 multiplier). **Exhibit J**, p. 4.
- 20 • *EPIC v. California Dept. of Fire & Forestry (EPIC II)*, Humboldt
21 County Superior Court Nos. CV990445 and CV990452 (2.0
22 multiplier, reversed and remanded for reconsideration in light of
23 appellate decision on merits (see 190 Cal.App.4th 217). **Exhibit**
24 **K**, p. 14.
- 25 • *Sierra Club v. County of San Diego*, San Diego County Superior
26 Court No. 37-2012-00101054-CU-TT-CTL, Fee Order filed August
27 7, 2015 (2.0 multiplier in CEQA case). **Exhibit L**, p. 5.

- *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125 (5.2 multiplier reasonable for common fund fee award in jail conditions class action).

These awards also support my opinion that the lodestar enhancement requested here is reasonable.

If called as a witness, I could and would competently testify from my personal knowledge to the facts stated herein. I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of January, 2016 in Berkeley, California.



RICHARD M. PEARL