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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

**PARTIAL OPPOSITION TO
MOTION TO AMEND
JUDGMENT NUNC PRO TUNC**

Date: May 25, 2016
Time: 9:00 a.m.
Dept: Room 222 (LASC)

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND FACTUAL BACKGROUND**

3 Los Angeles County Waterworks District No. 40 (“District 40”) moves to
4 amend the December 28, 2015 judgment to change the judgment’s caption. The
5 Wood Class of small pumpers (“the Small Pumper Class”) does not oppose this
6 request, but for the request to have the amendment *nunc pro tunc*. The Small
7 Pumper Class opposes this—**the judgment should be amended to correctly**
8 **reflect the coordinated cases but not *nunc pro tunc*** because the proposed
9 amendments have potential jurisdictional implications. They may affect
10 appellate and post-trial deadlines. Thus, they are not merely clerical in nature
11 and not subject to *nunc pro tunc* correction.

12 Specifically, the judgment includes the JCCP 4408 caption, but omits the
13 two class action cases. Notice of Entry of Judgment was served by electronic
14 posting on the day of the judgment’s entry: December 28, 2015. The service of
15 the Notice of Entry carries jurisdictional limitations for the filing of a Notice of
16 Appeal and other post-trial filings. The timing of the Notice of Entry is
17 important to the Small Pumper Class because the Court directed the Class to file
18 a memorandum of costs in its April 25, 2016 Order partially granting the Class’s
19 motion for attorney’s fees.¹ An argument could be raised that the memorandum of
20 costs would be untimely—and the Court would lack jurisdiction to award the
21 Class costs-- if the Notice of Entry of Judgment is deemed to have been served in
22 the Small Pumper Class case as of December 28, 2015.

23 Thus, the *nunc pro tunc* request could, if granted, substantially prejudice
24 the Small Pumper Class.

25 _____
26 ¹ Notwithstanding that Class counsel followed the exact same procedure
27 utilized by the Willis class in seeking costs in 2011, i.e., to include the recoverable
28 costs in the motion for attorney’s fees, the Court requested a Memorandum of
Costs, which the Class filed on May 11, 2016.

1 **II. RELEVANT ISSUES**

2 **A. The Judgment.**

3 As the motion indicates, the Court entered judgment on December 28,
4 2015. Notice of Entry of Judgment was served (by posting) the same day. The
5 first page of the judgment lists some, but not all, of the cases included in the
6 JCCP 4408 proceeding. Importantly, it does not include the Small Pumper Class
7 action (although it does include the *Wood v. A.V. Materials case*), and it does not
8 include the Willis Class. District 40 now seeks to have the judgment amended to
9 include the omitted cases on the caption.

10 The rules of coordinated actions require that a judgment in any
11 coordinated case list the original case name and number: “The judgment entered
12 in each coordinated action must bear the title and case number assigned to the
13 action at the time it was filed.” (Rule of Court 3.545(c).) Without that, the
14 judgment is not effective and the Notice of Entry cannot establish any post-trial
15 deadlines.

16 The Small Pumper Class knows that the Court consolidated the cases, in
17 addition to the JCCP coordination of the cases. But California law does not allow
18 for the complete consolidation of class cases with non-class cases. As Brown &
19 Weil state, class actions “cannot be consolidated under the applicable procedural
20 law” with non-class cases. (Weil & Brown, ¶¶ 12:345, 12:405; Code Civ. Proc. §
21 403, 404.) Thus, the existing judgment, and the corresponding Notice of Entry,
22 do not establish post-trial deadlines for the two class cases omitted from the
23 judgment’s caption. This is a technical analysis, but it is the correct analysis.

24 **B. Small Pumper Class Costs.**

25 The issue is important to the Small Pumper Class for one reason. In its
26 April 25, 2016 Order partially granting the Class’s request for attorney’s fees, the
27 Court arguably denied all of the Class’s litigation costs, despite noting that costs
28 are recoverable under Code of Civil Procedure section 1033 and the parties’

1 Stipulation for Entry of Judgment. The Court stated: “Counsel for the Wood
2 Class is direct to file a Memorandum of Costs under the provisions of the Code of
3 Civil Procedure.”

4 While the Small Pumper Class followed the Court’s direction and filed a
5 Memorandum of Costs, the Rules of Court require a Memorandum of Costs to be
6 filed within 15 days of Notice of Entry of Judgment or 180 days after entry of
7 judgment, whichever occurs first. (Rule of Court 3.1700(a)(1).) Thus, if the
8 December 28, 2015 Notice of Entry of Judgment was effective as to the Small
9 Pumper Class (or becomes retroactively effective as a result of this motion), the
10 Class’s Memorandum of Costs could be deemed untimely.

11 This would be patently unfair to the Small Pumper Class. It would
12 potentially result in the complete failure of the Class to recover what the Court
13 has acknowledged are recoverable costs. It would certainly result in further,
14 otherwise unnecessary motion work which the Class seeks recoverable costs to
15 which it is entitled.

16
17 **III. THE COURT SHOULD CORRECT THE JUDGMENT, BUT NOT**
18 **NUNC PRO TUNC.**

19 The Court has inherent power to amend the judgment. (See *Williamson v.*
20 *Plant Insulation Co.*, (1994) 23 Cal.App.4th 1406, 1415-16.) The judgment here
21 contains an error of omission that should be corrected. But it should not be
22 corrected *nunc pro tunc*, which cannot be used to alter the actual meaning or
23 effect of a judgment:

24 The function of a *nunc pro tunc* order is merely to correct the record
25 of the judgment and not to alter the judgment actually rendered—not
26 to make an order now for then, but to enter now for then an order
27 previously made.

28 (*In re Marriage of Padgett* (2009) 172 Cal.App.3d 830, 852.)

1 Here, because of the issue of the Small Pumper Class's recoverable
2 costs, the *nunc pro tunc* request would alter the judgment, and potentially
3 cut off the Class's ability to recover costs under Code of Civil Procedure
4 section 1033 and the Stipulation for Entry of Judgment. Thus, the judgment
5 should be corrected and the correction should be effective in the two class
6 actions as of the date of the Order, not earlier.

7
8 **IV. CONCLUSION**

9 The Court should grant the Motion to Amend the judgment, but should not
10 do so nunc pro tunc because of the potential jurisdictional implications.

11
12 DATED: May 12, 2016

LAW OFFICES OF MICHAEL D. McLACHLAN
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15 By: _____
16 MICHAEL D. MCLACHLAN
17 Attorneys for Plaintiff and the Class
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