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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

Lead Case No. BC 325201

Case No.: BC 391869

**SMALL PUMPER CLASS'
NOTICE OF MOTION AND
MOTION FOR APPELLATE AND
POST-JUDGMENT ATTORNEYS'
FEES**

[filed concurrently with Appendix,
Declarations of Richard M. Pearl,
Michael McLachlan & Daniel O'Leary]

Date: TBD
Time: TBD
Dept.: TBD

1 TO THE COURT AND ALL INTERESTED PARTIES:

2 PLEASE TAKE NOTICE that on a date and time to be determined by the
3 Court,¹ Richard Wood on behalf of himself and those similarly situated, will and
4 hereby does move for an Order awarding attorneys' fees for time spent on the
5 appellate proceedings in this action. These fees are sought based on Code of Civil
6 Procedure section 1021.5, the agreement of the interested parties, the case of
7 *Serrano v. Unruh* (1982) 32 Cal.3d 621, all of which provide an entitlement to
8 fees for time spent securing the fee award relating to the underlying action.

9 The Motion is based on this Notice, the Memorandum of Points and
10 Authorities, the Declaration of Michael D. McLachlan, the Declaration of Daniel
11 M. O'Leary, the Declaration of Richard M. Pearl, the Appendix of Fee Motion
12 Filings (including the declarations of attorneys MaryBeth LippSmith and
13 Rolando Gutierrez), the records and file herein, and on such evidence as may be
14 presented at the hearing of the Motion.

15 DATED: February 28, 2022 McLACHLAN LAW, APC
16 LAW OFFICE OF DANIEL M. O'LEARY

17
18 By: //s// Michael D. McLachlan
19 Michael D. McLachlan
20 Attorneys for Plaintiff
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25 ¹ On October 4, 2021, Judge Jack Komar consented to his replacement
26 following the filing of a Statement of Disqualification under C.C.P. section 170.3.
27 He promptly requested the Judicial Council replace him but as of this date – the
28 date the parties have stipulated to filing this motion – that has not occurred.
Hence, this case presently has no assigned Judge with jurisdiction to hear this
motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 For the nearly 14 years, the Wood class and its counsel represented the
4 interests of approximately 4,300 class members in the Antelope Valley that rely
5 solely on groundwater wells for their domestic water use. Following years of trial
6 court litigation concerning the water rights in the entire Antelope Valley, the trial
7 court awarded the Wood class over \$2.5 million in attorney's fees and costs.
8 Liability for those fees predominately rests with Los Angeles County Waterworks
9 District No. 40 ("District 40"), the only party to challenge the fee award through
10 completion of appeal.

11 Both the Wood Class and District 40 appealed the fee award. Following an
12 additional five and one-half years on appeal, the Wood class prevailed. District
13 40 unsuccessfully sought review by the Supreme Court. The case was remanded
14 for further trial court findings on the amount (but not entitlement) to fees for
15 Class counsel's work. Remittitur issued on December 6, 2021.

16 This motion seeks attorney's fees for the appeal and post-judgment work
17 subsequent to the trial court's final fee order in 2016. The bulk of this work was
18 for the appeal itself. As the Supreme Court has held, an attorney fee award
19 "should ordinarily include compensation for all hours reasonably spent, including
20 those relating solely to the fee." (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 624.)
21 Here, that amounts to 916.4 attorney hours, at current market rates of
22 \$915/\$775/\$670, for a total of \$876,874, plus 102.3 paralegal hours at \$150, or
23 \$15,345 in total. Hence, the total lodestar requested in this motion is \$892,219.
24 The Wood Class also requests a lodestar multiplier of 1.5, which is entirely
25 appropriate and necessary given the nearly six-years since the appeals started.

26 The Class additionally seeks \$5,020.78 in appellate costs, by way of a
27 Memorandum of Costs on Appeal, filed with the Court in January of 2022.

II. RELEVANT FACTUAL BACKGROUND

The Court of Appeal opinion summarizes the complex factual and procedural background of the Antelope Valley Groundwater Adjudication. (Appendix, Ex. A.) Following entry of judgment, the trial court issued two orders, awarding attorney fees to the Wood Class under the Private Attorney General statute, Code of Civil Procedure section 1021.5, and under a related contract theory relating to the Stipulation of Settlement, which was made part of the final Judgment. (Appendix, Exs. B & C.) In total, the trial court awarded \$2,399,700 in attorney fees and \$84,586.50 in paralegal fees. In a separate order, the trial court found a number of water suppliers were severally liable for the total award, with District 40 bearing 74.76% responsibility.² (Appendix, Ex. U at 1381.)

All involved parties appealed the fee orders. The Wood Class claimed the fees were inadequate because of improperly low hourly rates and the failure to award a multiplier. District 40 claimed primarily that the Wood Class was not a prevailing party in the first place. Both sides also raised claims regarding costs and whether District 40 could pay any award over a 10-year period per several Government Code statutes.

The Court of Appeal affirmed the Wood Class' entitlement to fees, on a contract basis under District 40s stipulation to liability under Section 1021.5. It let stand the trial court's ruling Wood was entitlement to fees under Section 1021.5, independent of the stipulation. In its remand of the case for a determination of the amount of fees, the Court of Appeal made clear that the trial court erred in reducing the lodestar and not applying a fee multiplier. It rejected District 40's Government Code arguments. It also remanded the cost issues to fix minor mathematical inconsistencies in the trial court's order.

² Six other parties were severally responsible for the remaining 25.24%. The Wood class has settled with all six.

1 The Court of Appeal awarded the Wood Class its costs on appeal and
2 remanded for a determination of fees on the appeal (“we defer to the trial court to
3 rule on issues of fees on appeal”). (Appendix, Ex. A at 64.) By way of this
4 motion, the Wood Class seeks its fees for the appeal, as well as other post-
5 judgment work after June of 2016, including the time spent pursuing these
6 motions, all of which is legally compensable work. (McLachlan Decl., ¶¶ 5-10, Ex.
7 2; O’Leary Decl., ¶ 3-6, Ex. 1.)

8 **III. THE WOOD CLASS PREVAILED ON APPEAL**

9 The Wood Class won in the Court of Appeal. That is beyond dispute. The
10 Opinion demonstrates that Class counsel were undercompensated for their work,
11 because the trial court arbitrarily picked a low hourly rate and refused to apply a
12 multiplier to account for both the delay in payment and risk of loss.

13 The delay was real. This representation began in 2007. Judgment was
14 entered in 2015. Fees were awarded in 2016. But the Wood class continues to
15 seek actual payment of the fees from District 40.

16 The risk of loss was real. In fact, District 40’s main argument on appeal
17 was that the Wood class was not entitled to fees in any amount. Following the
18 issuance of the Opinion, District 40 unsuccessfully sought review with the
19 Supreme Court in its effort to strip Class counsel of all compensation for their
20 work.

21 The net result should be a fee award that is substantially larger than the
22 fees awarded in 2016.

23 **IV. THE WOOD CLASS IS ENTITLED TO APPELLATE AND POST- 24 JUDGMENT FEES.**

25 The Court of Appeal awarded the Wood Class its costs on appeal, but
26 deferred ruling on the entitlement to fees on appeal to the trial court on remand.
27 Under well-established California law, the Wood Class is entitled to appellate
28 fees, even though those fees were largely incurred in litigating the fee award

1 itself. Stated another way, the fact that the Court of Appeal Opinion did not
2 address any substantive water rights of the Wood Class itself does not mean that
3 Class counsel is not entitled to fees for the time spent litigating the appeal.

4 **A. Fees Generated in Securing or Protecting a Fee Award Are**
5 **Recoverable.**

6 The Supreme Court has addressed the exact issue here: whether counsel's
7 efforts to secure an attorney fee award under Code of Civil Procedure section
8 1021.5 are themselves recoverable. The answer is "Yes." The case is *Serrano v.*
9 *Unruh* (1982) 32 Cal.3d 621 (referred to as "*Serrano IV*").

10 In *Serrano IV*, the Supreme Court stated and answered the question in the
11 first paragraph:

12 The principal question in this appeal and cross-appeal is whether a
13 fee award under a private-attorney-general theory properly
14 compensates counsel for fee-related services. We conclude that,
15 absent circumstances rendering an award unjust, the fee should
16 ordinarily include compensation for all hours reasonably spent,
17 including those relating solely to the fee.

18 (*Serrano IV*, 32 Cal.3d at 623-24.)

19 *Serrano IV* involved an appeal by public entity defendants of a trial court
20 order awarding fees for a prior appeal that itself involved the appropriateness of a
21 fee award, along with a cross-appeal by the prevailing plaintiff of an order
22 denying fees for time spent preparing the fee motions. The public entity
23 defendants argued that the prior appeal of the initial fee award was not, of itself,
24 public interest litigation justifying an award of fees. It was, they claimed, an
25 exercise of the plaintiff's attorneys' private interest in getting paid, with no
26 benefit to the actual client. (*Id.*, 32 Cal.3d at 626.)

27 The Supreme Court rejected this argument. It set out a detailed history of
28 attorney fee claims for services involving the fee, as opposed to the merits of fee-

1 generating cases. It noted that the policy behind Section 1021.5 was to encourage
2 private actions to vindicate important rights.

3 Implicit is the recognition that without some mechanism authorizing
4 the award of attorney fees, private actions to enforce important
5 public policies will as a practical matter frequently be infeasible. [¶]
6 Thus the doctrine will often be frustrated, sometimes nullified, if
7 awards are diluted or dissipated by lengthy, uncompensated
8 proceedings to fix or defend a rightful fee claim.

9 (*Id.*, 32 Cal.3d at 632, citations omitted.) That is exactly what has happened
10 here. Class counsel have engaged in a complicated and lengthy appeal both to
11 defend their entitlement to fees and to obtain adequate compensation for the
12 underlying representation. If they do not receive compensation for that time,
13 their “effective rate for all the hours expended on the case will be correspondingly
14 decreased. . . It could permit fees to be determined by the litigiousness of losing
15 parties.” (*Id.*, 32 Cal.3d at 634.)

16 The Supreme Court in *Serrano IV* summarized the state of the law by
17 noting that “it is established that fees, if recoverable at all—pursuant to statute or
18 parties’ agreement—are available for services at trial and on appeal. . . This rule
19 governs whether or not the sole issue on appeal has been fee entitlements.” (*Id.*,
20 32 Cal.3d at 637.) Here, the trial court awarded fees based both on Section
21 1021.5 and District 40s contractual stipulation to liability for such fees. The
22 Court of Appeal affirmed the fee award based on the parties’ agreement and let
23 stand the independent fee entitlement under Section 1021.5. Under either
24 option, *Serrano IV* holds the Wood Class is entitled to fees for time spent
25 securing the fee award.

26 A number of federal and California cases have awarded fees on appeals
27 vindicating only the right to an award of fees for trial services. (*See, e.g.*,
28 *Wilkerson v. City of Placentia* (1981) 118 Cal.App.3d 435, 444-45; *Downey Cares*

1 *v. Downey Comm. Development Comm.* (1987) 196 Cal.App.3d 983, 998-99;
2 *Gunn v. EDD* (1979) 94 Cal.App.3d 658, 665-66; *Copeland v. Marshall* (1980)
3 641 F.2d 880, 902 [“government cannot litigate tenaciously and then be heard to
4 complain about the time necessarily spend by the plaintiff in response.”].)

5 *Serrano IV* affirmed the award of fees for the fee appeal and remanded the
6 case to allow for the plaintiff to receive fees for time spent preparing the fee
7 motion. At bottom, it held that all attorney time involved was compensable, even
8 time spent securing the fee award after the merits have been finalized.

9 The same outcome should occur here. The Wood Class is entitled to fees
10 incurred securing and defending the fee award on appeal. Otherwise, the fee
11 award would be diluted due to District 40’s intransigence.

12 **B. Attorneys’ Fees Subject to this Motion**

13 Class counsel have worked a total of 886.4 hours on this case since the trial
14 court’s most recent fee award, and are seeking an additional 30 hours for work on
15 reply briefs, and preparation for and attending hearings on these motions.
16 Hence, they request an award of 916.4 attorney hours, plus 102.3 paralegal hours.
17 (McLachlan Decl., ¶ 8, Ex. 2; O’Leary Decl., ¶ 5, Ex. 1; Appendix, Exs. X and Y
18 (LippSmith and Gutierrez Declarations).) These hours are documented in the
19 attached Declarations. (*Ibid.*) Class counsel requests compensation at the
20 current market rates, as set forth below:

Attorney Name	Graduation Date	Hourly Rate	Hours	Lodestar
Michael D. McLachlan	1995	\$915.00	741.9	\$678,838
Daniel M. O’Leary	1994	\$915.00	151.6	\$138,714
Marybeth LippSmith	2002	\$775.00	67.9	\$52,622
Rolando Gutierrez	2011	\$670.00	10.0	\$6,700
Paralegal (several)		\$150.00	102.3	\$15,345
Total				\$892,219

27 These rates are slightly below current market rates and are well supported

1 by a wide array of available evidence. (Pearl Decl., ¶¶ 20-31.) These rates reflect
2 a 5% annual increase over the 2016 rate of \$720 an hour.

3 **V. A MULTIPLIER IS WARRANTED.**

4 The basic purpose of lodestar multipliers was summarized in *Ketchum v.*
5 *Moses*:

6 Under *Serrano III*, the lodestar is the basic fee for comparable legal
7 services in the community; it may be adjusted by the court based on factors
8 including ... (1) the novelty and difficulty of the questions involved, (2) the
9 skill displayed in presenting them, (3) the extent to which the nature of the
10 litigation precluded other employment by the attorneys, (4) the contingent
11 nature of the fee award. [Citation.] The purpose of such adjustment is to
12 fix a fee at the fair market value for the particular action. In effect, the
13 court determines, retrospectively, whether the litigation involved a
14 contingent risk or required extraordinary legal skill justifying
15 augmentation of the unadorned lodestar in order to approximate the fair
16 market rate for such services.

17 (24 Cal.4th at 11231-1132.) In *Graham*, the California Supreme Court expressly
18 recognized that the same factors apply to the determination of reasonable
19 attorneys' fees for litigation over entitlement to fees. (*Graham v.*
20 *DaimlerChrysler Corp.*, (2004) 34 Cal. 4th 553, 579; *Mandel v. Lackner* (1979)
21 92 Cal.App.3d 747, 752-754.)

22 As set forth at length in fee expert Richard Pearl's declaration, all of the
23 applicable factors are met by a significant margin here. (Pearl Decl., ¶¶ 37-51.)
24 Class counsel faced significant financial risk in pursuing their appeals and
25 defending against the cross-appeals "amply justify a fee that is 1.5 higher than the
26 fee they would have recovered had they represented a fee-paying client." (Pearl
27 Decl., ¶ 39.) That risk was magnified by District 40's insistence on appealing
28 counsel's entitlement to any fees at all: the 14 pages that the Court of Appeal

devoted to this argument is indicative of how seriously Class counsel were required to take this argument and respond to it. A reversal on these grounds would have resulted in *no* compensation for nearly 15 years and of hard work. For many reasons, the appeals involved very high levels of risk. (*Id.* at ¶ 46.)

As noted by Mr. Pearl, these risks are greatly magnified for smaller firms due the consumption of very high percentage of the firm's resources. (*Id.* at ¶ 44.) The chances of Class counsel reversing the trial court's hourly rate and multiplier decisions to obtain a more favorable award was very small, perhaps 10 to 20 percent. (*Id.* at ¶ 48.) As the Court of Appeal noted in its various opinions on the *Antelope Valley Groundwater Cases*, including the one at issue on the *Wood* fee appeals, this case involved highly novel and unique issues, i.e., there is no prior history in California (or anywhere else for that matter) of successful adjudication of groundwater rights on a class-wide basis. (Pearl Decl., ¶ 50.) Additionally, the time that has passed without payment is unusually long for an appeal, at over five and a half years.

Under the applicable facts, the 1.5 multiplier sought here is modest or perhaps low, but well in line with published decisions regarding appellate fees, as well as various other trial court rulings. In *City of Oakland v. Oakland Raiders*, (1988) 203 Cal.App.3d 78, a 2.34 multiplier was applied to the entire case, including appellate work, on a four-year delay in payment. (*Id.* at 83-85; *see also* Pearl Decl., pp. 26-28, *citing* various trial court decisions including *Horsford v. Board of Trustees* (2005) 132 Cal.App.4th 359 (on remand from the appellate decision, the Fresno County Superior Court applied a 1.5 multiplier to counsel's fee for appellate services); *Lealao v. Beneficial California, Inc.*, San Francisco County Sup. Ct. No. 972921, Fee Order filed Dec. 5, 2000, on remand from 82 Cal.App.4th 19 (2000) (a 2.5 multiplier was applied to time spent on counsel's successful appellate reversal of an unreasonably low fee award).)

1 **VI. CONCLUSION**

2 For the foregoing reasons, the Wood Class and its counsel request a
3 lodestar of \$892,219, with a multiplier of 1.5 and appellate costs of \$5,020.78.
4

5 DATED: February 28, 2022 McLACHLAN LAW, APC
6 LAW OFFICE OF DANIEL M. O'LEARY

7
8 By: //s// Michael D. McLachlan
9 Michael D. McLachlan
10 Attorneys for Plaintiff
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On February 28, 2022, I caused the foregoing document(s) described as **SMALL PUMPER CLASS' NOTICE OF MOTION AND MOTION FOR APPELLATE AND POST-JUDGMENT ATTORNEYS' FEES** to be served on the parties in this action, as follows:

- /s/ Katelyn Furman
Katelyn Furman