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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

Lead Case No. BC 325201

Case No.: BC 391869

**APPENDIX RE: SMALL PUMPER  
CLASS' MOTIONS FOR  
ATTORNEYS' FEES**

**[Volume 4 of 4]**

1 Plaintiff Richard Wood, on behalf of himself and those similarly situated,  
2 submits the following Appendix of relevant filings regarding the current motions  
3 for attorneys' fees.

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DATED: February 25, 2022      McLACHLAN LAW, APC  
LAW OFFICE OF DANIEL M. O’LEARY

By:     //s// Michael D. McLachlan      
Michael D. McLachlan  
Attorneys for Plaintiff

## **Exhibit Q**



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15 Attorneys for Plaintiff Richard Wood and the Class

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**COUNTY OF LOS ANGELES**

Coordination Proceeding  
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER  
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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

**SUPPLEMENTAL  
DECLARATION OF DANIEL M.  
O'LEARY IN SUPPORT OF  
MOTION FOR AWARD OF  
ATTORNEYS' FEES, COSTS AND  
INCENTIVE AWARD**

Location: Dept. 1  
Santa Clara Superior Court  
191 N. First Street  
San Jose, California

Date: April 1, 2016  
Time: 1:30 p.m.

1                                   **DECLARATION OF DANIEL O'LEARY**

2   I, Daniel O'Leary, declare:

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

6           2.     I am co-counsel of record of record for Plaintiff Richard Wood and  
7   the Class, and am duly licensed to practice law in California.

8           3.     In 2012, after the phase 3 trial in this matter, the Daily Journal (Los  
9   Angeles) voted the *Antelope Valley Groundwater Litigation* as the Top Verdict of  
10  2011 based on its impact. Attached as **Exhibit 21** is a true and correct copy of  
11  this article, in which Mr. Dunn is quoted speaking about the fact that this case  
12  "affects the public in a great way . . . ."

13          4.     On December 25, 2015, the Antelope Valley Press, which states that  
14  it is the largest newspaper circulated in the valley, ran a story about this case as  
15  its front page headline. The article entitled "Merry Christmas, water drinkers,"  
16  had a photo of the Judge signing the Judgment with this byline: "Judge signs  
17  agreement after 16-year court battle." Attached as **Exhibit 22** is a true and  
18  correct copy of this article.

19          5.     On December 31, 2015, the Antelope Valley Press ran the story:  
20  "Groundwater deal AV Story of the Year." Attached as **Exhibit 23** is a true and  
21  correct copy of this article.

22          6.     On January 22, 2016, the Daily Journal ran another story on this  
23  case, describing its "particularly complex" nature. It quoted W. Keith Lemieux  
24  stating that "[if the final] trial phase had gone forward . . . it probably would  
25  couldn't have been litigated in anyone's lifetime." Counsel for District 40, Eric  
26  Garner, noted that he has "been working on this case almost one-third of [his]  
27  life." Attached as **Exhibit 24** is a true and correct copy of this article.

1 I declare under penalty of perjury under the laws of the State of California  
2 that the foregoing is true and correct. Executed this 29<sup>th</sup> day of March 2016, at  
3 Los Angeles, California.

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7 Daniel O'Leary  
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## **Exhibit 21**



# Daily Journal

www.dailyjournal.com

VOL. 125 NO. 977

FRIDAY, APRIL 26, 2012

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## Justices ok partial gag order on attorneys

State Supreme Court rules that orders be evaluated under a prejudice test.

By John Roemer  
Daily Journal Staff Writer

California trial judges can order criminal defense lawyers not to talk to their clients about hostile witness testimony under a Thursday ruling from the state Supreme Court.

A prejudice test must be used to evaluate such gag orders, the high court voted, 7-0, in rejecting defense claims that the orders are structural flaws that automatically invalidate a trial's outcome. *People v. Hernandez*, 2012 DJDAR 4970.

Reversing the 9th District Court of Appeal, which found the gag order in an attempted murder trial was a structural error, the justices sent the case back to the lower court for an analysis of whether the order prejudiced the defendant's fair trial rights.

The decision was the first on the issue in California. The U.S. Supreme Court has held that

blanket court orders restricting attorney-client discussions violate a defendant's Sixth Amendment right to counsel and require automatic reversal. *Geders v. U.S.*, 425 U.S. 80 (1975).

Until Thursday, neither the state nor the federal high court had ruled on what should happen when the restriction is limited to a particular topic or piece of evidence.

The decision in a Northern criminal street gang prosecution in Santa Cruz County following a shooting tried to balance the judge's fears about possible reprisals against a witness with defendant Jacob Towndey Hernandez' right of full consultation with his lawyer.

Santa Cruz County Superior Court Judge John J. Alquist — at prosecutors' request — sealed a sworn statement by a co-defendant whose jailhouse safety was endangered if he took a plea deal in exchange for his testimony against Hernandez.

The jury found Hernandez guilty of attempted murder. He appealed, contending the judge's order fatally barred his trial under the Sixth Amendment's right to counsel.

But the high court disagreed. Writing Associate Justice Kathryn M. Werdegar for her colleagues, a violation of the right to counsel

See Page 4 — HIGH COURT

### EARTH DAY SPECIAL

## Fight against fracking is bubbling up

Technology is facing more scrutiny in state.

By Fiona Smith  
Daily Journal Staff Writer

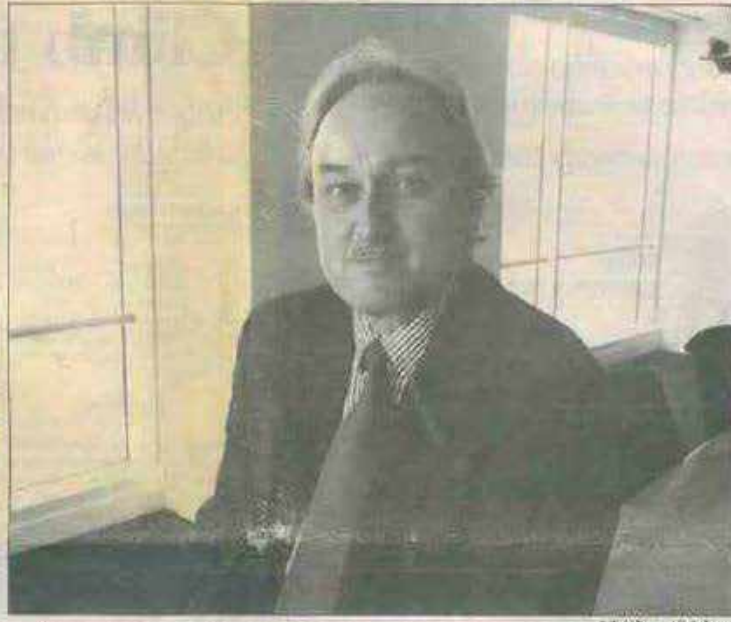
A controversial technology that has brought a massive boom to the natural gas industry in many parts of the country has been quietly used in California for decades.

Called hydraulic fracturing or fracking, the practice involves injecting a soup of water, sand and chemicals miles down into oil and gas wells to fracture rocks and tap previously unavailable fuel.

The practice has sparked public fear over the large amount of water it uses and the potential for contamination of drinking water. Fights over regulating fracking have raged in other states and now the issue is bubbling up in California as lawmakers and environmentalists push for oversight.

"There might be cases of pollution associated with fracking but we don't know because we don't know where fracking has occurred," said Bill Alquist, California director of government affairs for the nonprofit Environmental Working Group. "We can't just trust the industry to say it's a clean, safe process. We need to make sure our watchdog agency is on top of this and they have not been."

Several states have already put some type of fracking regulations



Earl Hagstrom is a former oil industry geologist turned environmental attorney, now at Sedgwick LLP.

into place, including requiring disclosure of where it is happening and what chemicals are being used. On Wednesday, the federal Environmental Protection Agency finalized rules to curb air pollution related to

fracking and it is currently doing a study on the public health effects of the practice.

In California — the country's fourth largest oil producing state — there are more than 32,000 oil

wells scattered in 29 counties. Fracking has been done in oil wells in the state for decades but as drilling technology has improved in recent years, there is a potential for increased fracking in California.

While the state Division of Oil, Gas and Geothermal Resources, DOGGR, regulates the oil and gas drilling, it has not specifically monitored fracking and has no figures where and when it is happening.

That would change under AB 30, a bill proposed by Assemblyman B. Wieckowski (D-Fremont), who would require the industry go forward to disclose where and when it is fracking, the amount and source of the water it used to crack and chemicals in the fracking fluid.

In the meantime, DOGGR officials have scheduled a listening tour in April to get public input on potential fracking rules and in March sent a letter to energy companies requesting they voluntarily disclose where they are fracking.

"The Division is unaware of any environmental damage related to the use of hydraulic fracturing in California," wrote DOGGR spokesman Don Drysdale in an email. "Existing regulations related to water integrity have protected the health and well being of Californians in their environment. That being said, we understand that people are interested and have concerns, primarily because there isn't a mechanism in place to track the use of hydraulic fracturing."

The nonprofit Environmental Working Group is sponsoring AB 301 and the oil industry is currently supporting the bill, which was amended this month to include more trade secrets protection for the disclosure of chemicals in fracking fluid.

"Initially there was a sense we

See Page 5 — FIGHT

## Case may not spell end of break suits

Plaintiffs' lawyers see options for class actions after Brinker.

By Brian Sumers  
Daily Journal Staff Writer

When the state Supreme Court released its long-awaited opinion last week in a pivotal meal-and-rest break case, representatives for employers rejoiced, saying it offers a road map for how to avoid class actions.

All they must do — they say — is institute a clear policy permitting most workers to take a meal break during the first five hours of their shift and allowing two rest breaks during a six-to-ten-hour shift.

Since 2001, when California implemented a law allowing workers to recover premium pay if their bosses asked them to remain on the



## In conversation a trial's highs — and lows

On March 16, the Daily Journal held a roundtable discussion with lawyers on a list of top verdicts in California for 2011. They talked about how they won the cases and offered trial tips. The panelists were Brad D. Brink of Monger, Tolles & Co.; Jennifer Keller of Keller Rockinckers; Jeffrey K. Dunn of Best, Best & Krieger; Todd Malynn and James Gale of Felton Gale. The panel was moderated by Superior Court Judge Terry Friedman, Los Angeles, now of JAMS. Here's an edited version of the chat.

JUDGE FRIED

case that was the top verdict that you were

1127  
JA 161737



## EARTH DAY SPECIAL

# Fight against fracking is bubbling up

Technology is facing more scrutiny in state.

By Fiona Smith  
Daily Journal Staff Writer

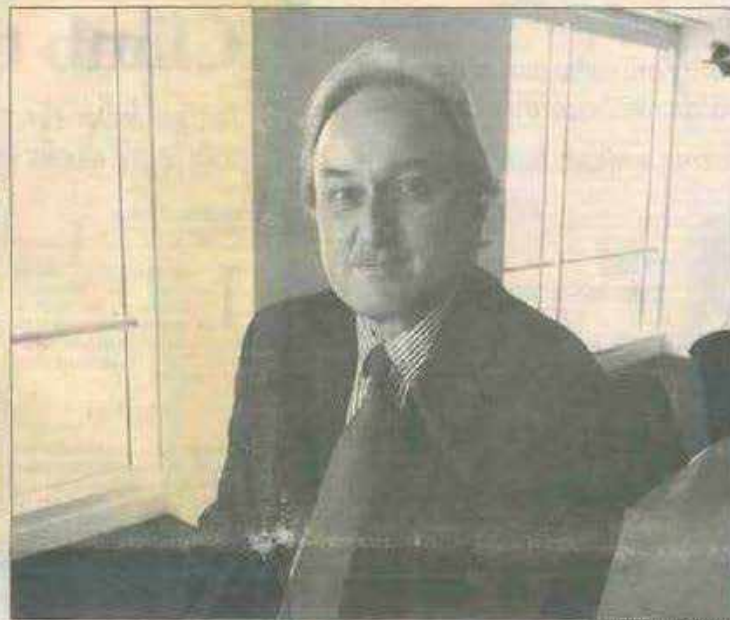
A controversial technology that has brought a massive boom to the natural gas industry in many parts of the country has been quietly used in California for decades.

Called hydraulic fracturing or fracking, the practice involves injecting a soup of water, sand and chemicals miles down into oil and gas wells to fracture rocks and tap previously unavailable fuel.

The practice has stirred public fear over the large amount of water it uses and the potential for contamination of drinking water. Fights over regulating fracking have raged in other states and now the issue is bubbling up in California as lawmakers and environmentalists push for oversight.

There might be cases of pollution associated with fracking but we don't know because we don't know where fracking has occurred," said Bill Alayash, California director of government affairs for the nonprofit Environmental Working Group. "We can't just trust the industry to say it's a clean, safe process.... We need to make sure our watchdog agency is on top of this and they have not been."

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fracking and it is currently doing a study on the public health effects of the practice.

In California — the country's fourth largest oil producing state — there are more than 52,000 oil

wells scattered in 29 counties. Fracking has been done in oil wells in the state for decades but as drilling technology has improved in recent years, there is a potential for increased fracking in California.

While the state Division of Oil, Gas and Geothermal Resources, or DOGGR, regulates the oil and gas drilling, it has not specifically monitored fracking and has no figures on where and when it is happening.

That would change under AB 591, a bill proposed by Assemblyman Bob Wieckowski (D-Fresno), which would require the industry going forward to disclose where and when it is fracking, the amount and source of the water it used to track and the chemicals in the fracking fluid.

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See Page 6 — FIGHT

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Plaintiffs' lawyers see options for class actions after Brinker.

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All they must do — they say — is institute a clear policy permitting most workers to take a meal break during the first five hours of their shift and allowing two rest breaks during a six-to-ten-hour shift.

Since 2001, when California implemented a law allowing workers to recover premium pay if their bosses asked them to remain on the job, missed meal and rest breaks have been the focus of much litigation. Management lawyers were hoping last Thursday's decision would put an end to those meal-and-rest break class actions. *Brinker v. Superior Court*, S246830.

But that may not happen. California plaintiffs' attorneys have had a week to digest the decision, and many have



Matthew Rignotti, of Rignotti Giugoski, P.C., sees a future for meal and rest cases.

See Page 10 — PLAINTIFFS

## In conversation: a trial's highs — and lows

On March 16, the Daily Journal held a roundtable discussion with lawyers on our list of top verdicts in California for 2011. They talked about how they won their cases and offered trial tips. The panelists were Brad D. Brian of Menger, Tolles & Olson, founder of Keller, Ruckelshaus, Jeffrey V. Dunn of Best, Best & Krieger and Todd Malynn and James Gale of Feldman Gale. The panel was moderated by retired Superior Court Judge Terry Friedman of Los Angeles, now of JAMS. Here's an edited version of the conversation.

**JUDGE FRIEDMAN:** Describe the case that was the top verdict that you were involved with. What was the outcome and pick one highlight.

**GALE:** We were involved in the case of *Paesetter vs. Nervicon*. The case as set forth in the public record [is] a theft of trade secrets case. A former employee took materials from the company and left and went to China and built a competing organization. And when he did so, he would

See Page 6 — IN CONVERSATION

## MORE NEWS

### Litigation Climbing to the Top



Judge John Kronstad climbs mountains for fun while he mucks out new challenges in his career. *Judicial Profile*

Page 2

### Litigation LEEDigation tsunami?



Predictions of a wave of litigation arising from the design and construction of green buildings are yet to come this. By Robert C. Bernier of Sullivan & Jewett LLP

Page 5

### Law Firm Business A Sizeable Commitment

Founders of Berkes Crane Robinson & Seal say they make sure to follow some key rules that bigger firms neglect when they expand.

Page 7

### Government Not So Fast, EPA

Three recent cases might signal an end to the judicial deference traditionally afforded to the EPA. By Stephen T. Holzer of Lewis, Hackman, Stoppel, Marshall & Harlan LLP

Page 8



## Roundtable Discussion: THE TOP VERDICTS OF 2011

### PLAINTIFFS' (BY AMOUNT)

#### **Pacesetter Inc. v. Nervicon Col Ltd.**

\$2.3 billion

Misappropriation of Trade Secrets

Superior Court

Los Angeles County

Judge Ruth Ann Kwan

**Plaintiff's attorneys:** James A. Gale and Todd M. Malynn of Feldman Gale P.A. in Miami and Los Angeles

**Defendant's attorney:** Soule Sanders LLP (withdrew from the case and no replacement was named)

### PLAINTIFFS' (BY IMPACT)

#### **In re: Antelope Valley Groundwater Adjudication**

Groundwater Rights

Superior Court

Los Angeles County

Judge Jack C. Kemer

**Plaintiff's attorneys:** Best Best & Krieger LLP; Jeffrey V. Dunn, Stefanie Hedlund; Los Angeles County Counsel's Office; Warren Webster, Lagorio, Senecal, Gosney & Kruse, Thomas S. Dunn III; Law Offices of Lemieux & O'Neill; Winick & Associates; Keith Gurnit; Charlton Weeks LLP; Bradley Weeks; Department of Justice, Lee Leininger, James DuBois; California Water Service Co., John S. Footle; Richards, Watson & Gershon, James Merlman, Steve Orr

**Defendant's attorneys:** Clifford & Brown; LeBeau-Thelen LLP; Kohn & Pomeroy; Brownstein Hyatt Farber Schreck LLP; Morrison & Foerster LLP; Law Offices of Michael D. McLachlan APC; Murphy & Evertz

### DEFENSE

#### **Mattel Inc. v. MGA Entertainment Inc.**

Unfair Competition

U.S. District Court

Central District

Judge David Carter

**Defendant's attorneys:** Kenney Ruckelshaus LLP; Jennifer Keller; Orlick Herrington & Sutcliffe LLP; Annette Hunt; Thomas S. McConville

**Plaintiff's attorneys:** Quinn Emanuel Urquhart & Sullivan LLP



Retired Superior Court Judge Terry Friedman, left, and Jeffrey Dunn and Jennifer Keller

## In conversation: a trial's highs and

Continued from page 1

no taking products and information that was used to build the competing products.

I think the highlight is when a jury comes back and says we award the plaintiff \$2.3 billion. That was also a nice highlight.

**JUDGE FREIDMAN:** How long was the trial?

**GALE:** The trial was a week.

**BRIAN:** That's a lot of billions for a week.

**JUDGE FREIDMAN:** Let's move on to the top defense verdict.

**KELLER:** This was a re-trial of the so-called Barbie vs. Bratz case which the first time around Mattel had won and had gotten a verdict for \$100 million and the rights to the entire Bratz line of dolls. Mattel had used MGA alleging that the Bratz dolls were actually created by a Mattel employee on Mattel time using Mattel ideas and products.

By the time of our trial, they had backed off and mostly claimed that he had had the idea while he was a Mattel employee and had done some preliminary work creating the Bratz doll. So Mattel alleged copyright infringement, trade secrets and everything but the kitchen sink.

By the time of the re-trial MGA Entertainment, the makers of Bratz, had found out that Mattel had actually been stealing our company's trade secrets for many years through a department within Mattel called the market intelligence unit. [Employees would] pose as toy retailers and go to these big international toy fairs, get into areas that otherwise they wouldn't have had access to, sometimes having to sign non-disclosure agreements, even, and then spy on their competitors' upcoming product lines, advertising plans, products and even the secret pricing. So we had to defend Mattel's allegations that Bratz belonged to Mattel, which they had won the first time around, and then we had our affirmative case against Mattel that

longer engage in the actions Mattel wanted him to engage in because he was afraid that it was exposing him to personal criminal liability and he was fearful that the stress that it was putting him under to engage in this kind of spying was having a bad effect on his health. So I would say that was a very nice little document to have. And the jurors audibly gasped when the document was presented.

**Brian:** We represented Jeffrey Gundlach who was the leading asset manager [at] Trust Company of the West. Three other individuals and a company they formed called Duvaline. They were fired by Trust Company of the West in December of 2009 for a whole lot of reasons, the most important of which allegedly was the downloading of I guess millions of documents. And they were sued for trade secrets misappropriation, breach of fiduciary duty and the like. We counter-sued for breach of contract for money we were owed. Gundlach was owed in his contracts and statutory wage claims. We had one major hurdle in the case and that was that in fact there was downloading of millions of pages of documents. We had to embrace it. And so we admitted it and our position was two-fold. One, it was never used so therefore it wasn't really material. And more importantly, our theory of our defense was that they had made

it supported our theme but because of the five senior people who were at the meeting for Trust Company of the West, mysteriously nobody seemed to remember it. I think that resonated with the jury.

TCW was seeking \$300 million or \$400 million in actual damages plus punitive. The jury gave them nothing. They did find misappropriation, which we thought they probably would since our clients had downloaded millions of pages of documents. They found no damages, no punitive damages and then awarded us \$66.7 million on our counter-claim.

**Dunn:** This is a comprehensive adjudication of ground water rights up in the Antelope Valley area. It encompasses about 1,100 square miles, includes the cities of Palmdale, Lancaster and also Edwards Air Force Base. This case is unique in the sense that in California the responsibility falls upon the Courts to resolve water rights disputes including ground water rights disputes. We've traced this dispute going back to the 1940s, and in this particular area, which is very dry, it's experienced not only a lot of urban growth but a lot of agricultural growth as well. And then we have the Edwards Air Force installation, which is one of the nation's key defense in aerospace military sites.

In some ways it's the classic water rights dispute in California, which is a big part of California's history.

The highlight in the case was finally after so many decades and 12 years of litigation getting the Court to determine what that safe yield amount is and it affects the public in a great way because this now will provide the guidance to both private and public interests both now and in the future in how to do this.

**JUDGE FREIDMAN:** Most cases — probably all cases — have ups and downs. Even though you all ended on an up with a victory, I'm sure there must have been some

with counsel in the cases because that was the time where we sort of needed to do that. So we recorded that testimony, and we have it preserved for the record.

**Brian:** One for me was the plaintiff's opening statement. There was evidence that our folks had downloaded millions of pages of documents. So when you sit there and listen to a two-hour opening about how your clients allegedly stole and allegedly stole that that's a down moment. But the lesson is that you have to stay with your theme. You cannot feel like you're got to buy into their case and play on their playing field. If you do that and you have to feel like you've got to respond to everything, you're going to lose. But it's hard to sit there and listen to some of that bad evidence. The second thing was, we had some deposition testimony on our side which — let's just say that the other side thought played well for them. And that was problematic for us because they wanted to play hours and hours of deposition testimony. I don't think a party ought to be able to play long pieces of depositions and then call the same person live. I think it's cumulative. And so we made a motion on that and I think had a positive effect. I think the judge cut back on as much as I would have hoped, but he cut back.

We made a motion for time limits on trial. We asked for 40 hours each side where each side you basically have two clocks, opening statement, direct examination and cross, and the plaintiff's case and the defense,



**Plaintiff's attorneys:**  
James A. Gale and Todd M. Malynn of Feldman Gale P.A. in Miami and Los Angeles

**Defendant's attorney:**  
Square-Sanders LLP (withdrawn from the case and no replacement was named)

## PLAINTIFFS' (BY IMPACT)

### In re: Antelope Valley Groundwater Adjudication

Superior Court

Los Angeles County  
Judge Jack C. Keller

**Plaintiff's attorneys:**  
Brett Best & Krieger LLP, Jeffrey V. Dunn, Stefanie Hedlund, Los Angeles county counsel's office, Warren Wilentz, Lagerlof, Sericeal, Gossney & Kruse, Thomas S. Binn III, Law Offices of Lemieux & O'Neill, Joseph W. Lendewick, Keith Lomewick, Charlton Weeks LLP, Bradley Weeks, Department of Justice, Lee Volokhine, James Du-Belle, California Water Service Co., John S. Tooley, Richards, Watson & Gershon, James Markham, Steve Orr

**Defendant's attorneys:**  
Clifford & Brown, Lefebvre Thelen LLP, Fuhs & Parker, Brownstein Hyatt Farber Schreck LLP, Morrison & Foerster LLP, Law Offices of Michael D. McLachlan APC, Murphy & Everts

## DEFENSE

### Mattel Inc. v. MGA Entertainment Inc.

United Competition  
U.S. District Court  
Central District  
Judge David Carter

**Defendant's attorneys:**  
Krieger Rockswold LLP, Jennifer Keller, Derek Harrington & Sublette LLP, Annette Hunt, Thomas S. McConville

**Plaintiff's attorneys:**  
Quinn Emanuel Urquhart & Sullivan LLP

### Trust Co. of the West v. Jeffrey Gundlach

Breach of Fiduciary Duty, Trade Secret Theft, Tortious Interference  
Superior Court  
Los Angeles County  
Judge Carl J. West

**Defendant's attorneys:**  
Munger, Tolles & Olson LLP, Brad D. Brian, Mark B. Helm, Gregory J. Weingart, Kevin S. Alred, Allison B. Stein, Jacob S. Kelligott, Laura D. Smolowe

**Plaintiff's attorney:** Quinn Emanuel Urquhart & Sullivan LLP



Retired Superior Court Judge Terry Friedman, left, and Jeffrey Dunn and Jennifer Keller

# In conversation: a trial's highs and

Continued from page 1

up taking products and information that was used to build the competing products.

I think the highlight is when a jury comes back and says we award the plaintiff \$2.3 billion. That was also a nice highlight.

**JUDGE FREIDMAN:** How long was the trial?

**GALE:** The trial was a week.

**BRIAN:** That's a lot of billions for a week.

**JUDGE FREIDMAN:** Let's move on to the two defense verdicts.

**KELLER:** This was a re-trial of the so-called Barbie vs. Bratz case, which the first time around Mattel had won and had gotten a verdict for \$180 million and the rights to the entire Bratz line of dolls. Mattel had used MGA alleging that the Bratz dolls were actually created by a Mattel employee on Mattel time using Mattel ideas and products.

By the time of our trial, they had backed off and mostly claimed that he had had the idea while he was a Mattel employee and had done some preliminary work creating the first Bratz doll. So Mattel alleged copyright infringement, trade secrets and everything but the kitchen sink.

By the time of the re-trial MGA Entertainment, the makers of Bratz, had found out that Mattel had actually been stealing our company's trade secrets for many years through a department within Mattel called the market intelligence unit. [Employees would] pose as toy retailers and go to these big international toy fairs, get into areas that otherwise they wouldn't have had access to, sometimes having to sign non-disclosure agreements over, and then spy on their competitors' upcoming product lines, advertising plans, products and even the secret pricing. So we had to defend Mattel's allegations that Bratz belonged to Mattel, which they had won the first time around, and then we had our affirmative case against Mattel that Mattel had actually been for many years stealing our trade secrets. This time around there was a verdict in favor of MGA. The jury returned a verdict of \$263.5 million, which was later reduced by the trial judge to \$65 million. The jury made a finding that Mattel had engaged in willful and malicious conduct, which allowed the judge to add punitive damages of another \$165 million, and he then added attorney's fees that brought the whole bundle of the judgment up to \$369 million in favor of MGA, and the jury found that Mattel owned zero of the Bratz line.

One of the highlights for me was being able to pop up on the stand a document from the head of the market intelligence department that Mattel had denied it was even a department or even existed or even had employees. And being able to pop up a letter that he had written to the general counsel of Mattel that we had only found out about in 2010 almost by accident. And the letter detailed that his manager of market intelligence, he could no

longer engage in the actions Mattel wanted him to engage in because he was afraid that it was exposing him to personal criminal liability and he was fearful that the stress that it was putting him under to engage in this kind of spying was having a bad effect on his health. So I would say that was a very nice little document to have. And the jury audibly gasped when the document was presented.

Brian: We represented Jeffrey Gundlach who was the leading asset manager [at] Trust Company of the West, three other subsidiaries and a company they formed called Gundlach. They were fired by Trust Company of the West in December of 2009 for a whole lot of reasons, the most important of which allegedly was the downloading of 2.1 gigabytes of documents. And they were fired for trade secrets misappropriation, breach of fiduciary duty and the like. We counter-sued for breach of contract for money we were owed. Gundlach was owed in his contracts and statutory wage claims. We had one major battle in the case and that was that in fact there was downloading of hundreds of pages of documents. We had to produce it. And so we admitted it and our position was two-fold. One, it was never used so therefore it wasn't really material. And more importantly, our theory of our defense was that they had made

it supported our theme but because of the five senior people who were at the meeting for Trust Company of the West, mysteriously nobody seemed to remember it. I think that resonated with the jury.

TCW was seeking \$300 million or \$400 million in actual damages plus punitive. The jury gave them nothing. They did find misappropriation, which we thought they probably would since our clients had downloaded millions of pages of documents. They found no damages, no punitive damages and then awarded us \$567 million on our counter-claim.

Dunn: This is a comprehensive adjudication of ground-water rights up in the Antelope Valley area. It encompasses about 1,100 square miles, includes the cities of Palmdale, Lancaster and also Edwards Air Force Base. This case is unique in the sense that in California the responsibility falls upon the Courts to resolve water rights disputes including general water rights disputes. We've traced this dispute going back to the 1940s, and in this particular area, which is very dry, it's experienced not only a lot of urban growth but a lot of agricultural growth as well. And then we have the Edwards Air Force installation, which is one of the nation's key defense aerospace military sites.

In some ways it's the classic water rights dispute in California, which is a big part of California's history.

The highlight in the case was finally after so many decades and 12 years of litigation getting the Court to determine what that sale yield amount is and it affects the public in a great way because this now will provide the guidance to both private and public interests both now and in the future in how to do this.

**JUDGE FREIDMAN:** Most cases — probably all cases — have ups and downs. Even though you all ended on an up with a victory, I'm sure there must have been some down events during the course of the trial.

Dunn: Our down event was a rather tragic one. The expert that we had retained back in 1999, we found out in early December — and trial started in January 2011. We found out in December that he was diagnosed with amyotrophic lateral sclerosis. And it was progressing rather rapidly. And he was not physically going to be able to travel from northern California and go through a four-month trial here in Los Angeles. We worked out with the Court allowing trial testimony to be taped in Walnut Creek.

In that type of circumstance you're going to need some cooperation with counsel. And one of the things that I would share is that particularly in these cases that are long and complex, you're going to find you need to get along with opposing counsel and other counsel in the case. If you don't, it's going to be even longer and more difficult and you just don't want that sort of happening the longer these cases go. And so it was fortunate that we had a good relationship

with counsel in the cases because that was the time where we sort of needed to do that. So we recorded that testimony, and we have it preserved for the record.

Brian: One for me was the plaintiff's opening statement. There was evidence that our folks had downloaded millions of pages of documents. So when you sit there and listen to a two-hour opening about how your clients allegedly stole and allegedly stole, that that's a down moment. But the lesson is that you have to stay with you. You cannot feel like you've got to lay into their case and play on their playing field. If you do that and you have to feel like you've got to respond to everything, you're going to lose. But it's hard to sit there and listen to some of that bad evidence. The second thing was, we had some deposition testimony on our side which — let's just say that the other side thought played well for them. And that was problematic for us because they wanted to play hours and hours of deposition testimony. I don't think a party ought to be able to play long pieces of depositions and then call the same person five. I think it's cumulative. And so we made a motion on that and I think had a positive effect. I think the judge cut back on as much as I would have hoped, but he cut back.

We made a motion for time limits on trial. We asked for 40 hours each side where each side you basically have two clocks, opening statement, direct examination and cross, not the plaintiff's case and the defense.



Atty. James Gale





Retired Superior Court Judge Terry Friedman, left, and Jeffrey Dunn and Jennifer Keller

Robert Levine / Daily Journal

## In conversation: a trial's highs and lows

Continued from page 1

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**KELLER:** This was a retrial of the so-called Barbie vs. Bratts case which the first time around Mattel had won and had gotten a verdict for \$100 million and the rights to the entire Bratts line of dolls. Mattel had used MGA alleging that the Bratts dolls were actually created by a Mattel employee on Mattel time using Mattel ideas and products.

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**BRIAN:** We represented Jeffrey Gundlach who was the leading asset manager at Trust Company of the West, three other individuals and a company they formed called Doubleline. They were hired by Trust Company of the West in December of 2009 for a whole lot of reasons, the most important of which allegedly was the downloading of 1.1 million pages of documents. And they were used for trade secrets misappropriation, breach of fiduciary duty and the like. We counter-sued for breach of contract, for money we were owed. Gundlach was owed in his contracts and statutory wage claims. We had one major hurdle in the case and that was that in fact there was downloading of millions of pages of documents. We had to enhance it. And so we admitted it and our position was two-fold: One, it was never used so therefore it wasn't really material. And more importantly, our theory of our defense was that they had made

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but what you do as a lawyer. I think that it's what we ought to do in every case. I think it rewards good lawyering, it forces lawyers — and I think the Court — to focus on what really matters. In an era of budget cutbacks, I think it's essential and I think we ought to do it in every case.

**KELLER:** Well, let me start by saying I agree with Brian on the time limits issue and it's also helpful by protecting a client like MGA from a vastly economically more powerful opponent like Mattel who could have been in trial for two years and not muddled spending the money. We also had time limits. Otherwise we'd probably still be in it.

I think my lowest moment was during the testimony of Carter Bryant, who was the former Mattel employee who had come to work for MGA and had originally designed the preliminary drawings for the Bratts dolls. He was cross-examined for days on end by Mattel by a very effective cross-examiner named Bill Price. Bill had — by the time he was done with Carter Bryant, he had been spun around to the point where he had ultimately agreed with almost anything Bill wanted him to say. And it really was disheartening to sit there and have to listen to this guy being kind of beaten up and capitulating. He was mentally and physically exhausted from seven years of litigation. He had been on top of the world because he was getting royalties from the Bratts. He was — he had made over \$3.2 million. His life had changed. He







Brad Brian, left, Jennifer Keller, Todd Malynn, and James Gale.



Jeffrey Dunn, left, and Brad Brian.

Continued from page 8

had become an icon. He had become the leading doll designer anywhere. Among the people who care about that kind of stuff and that industry, and he had become almost a household word. He had had a relationship with a partner that he loved and valued. He was — his life was good. Then Mattel sued him and they sued him before they sued MGA. He started to fall apart. He had lost over 60 pounds, he had become severely clinically depressed. The guy he had been in love with had taken the money and had invested it all right at the height of the real estate boom in all the wrong things, and he was unemployed because he had become radio active as a result of Mattel's lawsuit. So, again, Brad's story was one of taking someone and making lemonade out of what you've got to do as a trial lawyer sometimes. You have to say, "boy, he said all these things but why? What's the human story behind this?" And by the time I think we were done, the jurors could see that you know, poor Carter Bryant would have said anything just to be able to go home and leave all this behind.

The second low point we had a client who was very passionate, the CEO and owner of MGA, very passionate or emotional and had also been battered for seven years. And despite our best efforts to prepare him not to do so, he had some outbursts which were heavily covered in the press during his cross-examination. And again, that

was just something we had to deal with. There were some very unfortunate outbursts that the jurors did not care for at all. But by showing that he was an immigrant from Iran, he had come here at 17 with nothing. He had become a religious refugee because his family was Jewish and when the Ayatollah took over, they all had to flee. He had built this com-

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pany up from nothing, and he was on the verge of losing everything.

**JUDGE FREIDMAN:** Could you tell during the time of your rehabilitation examination that you were getting back with the jury or did it take until the end of the trial?

**KELLER:** With Carter Bryant I definitely knew that it was making an impact. After about half an hour of talking about all he had lost and all he had been subjected to, I looked up and two of the jurors were crying and a couple of others were trying to keep from crying.

With respect to Mr. Larian, it really took until later. I really didn't know, but I could see their faces soft-

ening as time went by and he would play with his dolls up on the stand and he would become very animated whenever you handed him a toy and let him talk about what he loved, toys. Something he had never had as a child because his family had been too poor to afford toys. He would just be like a little boy again.

**GALE:** I have to absolutely agree with what Brad said, which is stay the course. This is your case. You wait. You've got your game plan. You stay the course. And no matter what happens, you just do what it is you planned on doing. Yes, you make modifications. Yes, you have to tap dance when the need arises, but you've got to stick to the general outline.

**KELLER:** Don't chase bright shiny objects.

**GALE:** Or follow the rabbit trails.

**JUDGE FREIDMAN:** Let's follow up on that observation which is a very good one, James. You all start off with a game plan. I'm sure in these complex cases you spend a lot of time preparing. How do you adjust that game plan. You want to stick with it but you still have to be flexible enough, if necessary, to modify it.

**BRIAN:** The first big case I tried and won was a criminal case about 20 years ago. And I learned a lesson and many lessons in that case, which I've tried to live with. One is be willing to re-think your approach, pre-trial. You've got to be careful in trial although you've got to be able to react. Most importantly on

the defense side, don't feel like you have to answer every single detailed allegation. That doesn't mean you ignore bad facts. It means you embrace them. We have a saying in our firm, "there's no such thing as a bad fact." They're either good facts or irrelevant facts meaning the bad facts you concede and you make them your own.

**KELLER:** I think rigidly during trial has probably lost more cases than anything else. It's great to have a game plan and you want to stick with your game plan, but trials are sort of living, organic things. You know, there's a gestalt in a trial. There's an atmosphere to a trial. It changes. Depending on the judge, the jurors, the way the opposing counsel behaves, how the witnesses behave and you have to be able to respond to that if you're really a trial lawyer and not just somebody who reads a script.

The feeling of my colleagues before the trial began was that we should distance ourselves from Carter Bryant and say, "hey, this guy lied to us too." Until I saw Carter Bryant testify and saw how he had changed over the years and how devastated he had become, I didn't really know whether we were going to go with that examination technique or whether we were going to go with that theme.

**BRIAN:** I think there's too much emphasis on the impact of the opening statement. All these studies always say people decide after opening. I don't believe that in big trials. I actually think big trials have momentum. There are moments that happen in trial that change the course of that trial become a witness got the appeal of the jury or a witness broke down and showed that he or she was not credible and you have to be able to seize on that moment and modify your strategy and shift the — you can just feel the tension of the room.

**DUNN:** In a case like mine where you have so many years to prepare and it's expert intensive, you can pretty much put that case together in advance with your experts and it's all ready to go. But again what happened in our case and this particular expert was the key expert among a small army or a team of experts. And his testimony was so critical that it was going to go forward first but then because of his illness he wasn't allowed to do so. We had to sort of take our experts out of order. And when you have multiple experts as you know on your side of the case, some of the expert testimony is redundant to other experts. And so Jennifer is right, the righting can really kill you and so you have to be able to

the lawsuit and said my practice is not to file sanctions motions. I would appreciate it if you'd do the same thing. Let's behave professionally. I think most people appreciate that.

**KELLER:** Playing nice is great and it's what we should all do, but every once in a while you do have an opponent who simply won't. All you can do in that situation is you have to be — no matter what, you have to remain the nice person. In a long trial the jury will figure it out. And the trial judge certainly will figure it out.

**BRIAN:** Remember jurors watch you in the courtroom. Lawyers sometimes make a mistake where the Court will call a recess and the jurors are filing out and then someone will walk up and say something mean to opposing counsel or bark at a paralegal. Those are huge mistakes. Jurors are watching you every moment to see what kind of person you really are.

**KELLER:** I always tell my clients the trial begins in the parking lot. If you cut somebody off for a parking spot or you give somebody the finger or you are nasty to the cashier, you may very well pay the price for that.

**GALE:** If they're going to approach things in a pugnacious manner all the time, there's only so much you can do in trying to maintain your cool or at least I find there's only so much I could do to maintain my cool at which point you just have to go to the Court and say you know, Judge, enough's enough. We're aware of this document. We know it exists. We haven't gotten it. We want it. We need it. We demand it. And it's been hidden.

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**KELLER:** You know, that's a tough question to answer because I'm not sure it can be put in words. But it's like any relationship that you're building, you try to keep building the relationship by saying that you're credible, by showing

or like your juror. There are very few professors who are on juries. There are very few physicians or lawyers who are on juries. You have to be able to relate to the common person.

**JUDGE FREEDMAN:** At least in the California state Courts, we're anticipating some substantial impact from the state budget crisis, particularly here in Los Angeles. What do each of you anticipate this will affect your ability to try cases or the way you try cases. Is this going to encourage more use of ADR?

**BRIAN:** I'm a big believer in mediation. I think it would be a sad, sad day if cutbacks and the like eliminate jury trials or reduce the use of jury trials. I think they're really important for resolving disputes.

**KELLER:** I see it as lengthening the process. The jury trials aren't going to go away. The right to a jury trial isn't going to go away, but what's going to happen is it's going to take longer and longer to get there.

**MALYNN:** You're also going to see a greater or more of a difference between how cases are tried and litigated in federal court as compared to state court. That gap or that difference is just going to widen as a result of the budget cuts.

**JUDGE FREEDMAN:** I want to conclude with giving each of you an opportunity to present maybe one tip, either that comes from your experience in your top verdict case or any other trial that you've engaged in, recognizing that there will be a good number of young lawyers who are interested to hear how the top lawyers have achieved their success.

**GALE:** Three things: Preparation, preparation and more preparation. And do it early and often. Start the minute your case is filed. Get your theory together and then just work the case.

**MALYNN:** I would say being likable, working on being likable to the jury. If they're on your side, they like you, they think you are being fair, they may even do more for you than what you asked.

**KELLER:** Remember that every trial is about human beings. Every story has to be a human story. And no matter how dry the subject matter is, it has to be about the people who are involved in the case. And don't forget that your jurors have the same hunger that all human beings have, to be part of something larger than themselves.

**BRIAN:** I'm going to say two things: One is to repeat what was said down at the other end of the table, which is, prepare, prepare, say at the start of every case enough to prepare what I call a plan. And by that I mean you need to





wasn't something we had to deal with. There were some very unfortunate outcomes that the jurors did not care for at all. But by showing that he was an immigrant from Iran, he had come here at 17 with nothing. He had become a religious refugee because his family was Jewish and when the Ayatollah took over, they all had to flee. He had built this com-

'Remember that every trial is about human beings. Every story has to be a human story. And no matter how dry the subject matter is, it has to be about the people who are involved in the case.'

— JENNIFER KELLER

pany up from nothing, and he was on the verge of losing everything.

**JUDGE FREIDMAN:** Could you tell during the time of your rehabilitation examination that you were getting back with the jury or did it take until the end of the trial?

**KELLER:** With Carter Bryant I definitely knew that it was making an impact. After about half an hour of talking about all he had lost and all he had been subjected to, I looked up and two of the jurors were crying and a couple of others were trying to keep from crying.

With respect to Mr. Larian, it really took until later. I really didn't know, but I could see their faces soft-

ening as time went by and he would play with his dolls up on the stand and he would become very animated whenever you handed him a toy and let him talk about what he loved, toys. Something he had never had as a child because his family had been too poor to afford toys. He would just be like a little boy again.

**GALE:** I have to absolutely agree with what Brad said, which is stay the course. This is your case. You wait. You've got your game plan. You stay the course. And no matter what happens, you just do what it is you planned on doing. Yes, you make modifications. Yes, you have to tap dance when the need arises, but you've got to stick to the general outline.

**KELLER:** Don't chase bright, shiny objects.

**GALE:** Or follow the rabbit trail.

**JUDGE FREIDMAN:** Let's follow-up on that observation which is a very good one, James. You all start off with a game plan. I'm sure in these complex cases you spend a lot of time preparing. How do you adjust that game plan. You want to stick with it but you still have to be flexible enough. If necessary, to modify it.

**BRIAN:** The first big case I tried and you was a criminal case about 20 years ago. And I learned a lesson and many lessons in that case, which I've tried to live with. One is be willing to re-think your approach, pre-trial. You've got to be careful in trial although you've got to be able to react. Most importantly on

the defense side, don't feel like you have to answer every single detailed allegation. That doesn't mean you ignore bad facts. It means you embrace them. We have a saying in our firm, 'there's no such thing as a bad fact.' They're either good facts or irrelevant facts meaning the bad facts you concede and you make them your own.

**KELLER:** I think rigidity during trial has probably lost more cases than anything else. It's more to have a game plan and you want to stick with your game plan, but trials are sort of living, organic things. You know, there's a gestalt to a trial. There's an atmosphere to a trial. It changes. Depending on the judge, the jurors, the way the opposing counsel behaves, how the witnesses behave and you have to be able to respond to that if you're really a trial lawyer and not just somebody who reads a script.

The feeling of my colleagues before the trial began was that we should distance ourselves from Carter Bryant and say, 'hey, this guy led to us too.' Until I saw Carter Bryant testify and saw how he had changed over the years and how devastated he had become. I didn't really know whether we were going to go with that examination technique or whether we were going to go with that theme.

**BRIAN:** I think there's too much emphasis on the impact of the opening statement. All these studies always say people decide after opening. I don't believe that in big trials, I actually think big trials have momentum. There are moments that happen in trial that change the course of that trial because a witness got the appeal of the jury or a witness broke down and showed that he or she was not credible and you have to be able to seize on that moment and modify your strategy and shift the — you can just feel the pulse of the room.

**DUNN:** In a case like mine where you have so many years to prepare and it's expert intensive, you can pretty much put that case together in advance with your experts and it's all ready to go. But again what happened in our case and this particular expert was the key expert among a small army or a team of experts. And his testimony was so critical that it was going to go forward first but then, because of his illness he wasn't allowed to do so. We had to sort of take our experts out of order. And when you have multiple experts as you know on your side of the case, some of the expert testimony is foundational to other experts. And so Jennifer is right, the rigidity can really kill you and so you have to be able to sort of adapt as we did and take the presentation of evidence in different pieces sometimes out of order.

**JUDGE FREIDMAN:** Jeffrey, you made a comment earlier about the importance of working with opposing counsel. What if you can't? What do you do?

**DUNN:** Well, you know, one of my least favorite things to do in any case is to go to a judge that is handling the case with some type of dispute, particularly discovery disputes. I like to think that with enough effort and good faith, you can resolve most disputes. However, in the larger cases, particularly we had large numbers of counsel like we had in our case, it's not always going to be the case you can get everybody to agree.

**BRIAN:** I think the jury expects the lawyers to act professionally and cordially regardless of whatever happened pre-trial, whatever is happening during the roomness. You cannot let your bickering play out in front of a jury. I think there's far too much contentiousness in litigation. I have filed one sanctions motion in my entire 25-year career. I actually talked to opposing counsel at the outset of

the lawsuit and said my practice is not to file sanctions motions. I would appreciate it if you'd do the same thing. Let's behave professionally. I think most people appreciate that.

**KELLER:** Playing nice is great and it's what we should all do, but every once in a while you do have an opponent who simply won't. All you can do in that situation is you have to be — no matter what, you have to remain the nice people. In a long trial the jury will figure it out. And the trial judge certainly will figure it out.

**BRIAN:** Remember jurors watch you in the courtroom. Lawyers sometimes make a mistake where the Court will call a recess and the jurors are filling out and then someone will walk up and say something mean to opposing counsel or back at a paralegal. Those are huge mistakes. Jurors are watching you every moment to see what kind of person you really are.

**KELLER:** I always tell my clients the trial begins in the parking lot. If you cut somebody off for a parking spot or you give somebody the finger or you are nasty to the cashier, you may very well pay the price for that.

**GALE:** If they're going to approach things in a professional manner all the time, there's only so much you can do in trying to maintain your cool or at least I find there's only so much I could do to maintain my cool at which point you just have to go to the Court and say, you know, Judge, enough's enough. We're aware of this document. We know it exists. We haven't gotten it. We want it. We need it. We demand it. And it's been hidden.

'We have a saying in our firm, "there's no such thing as a bad fact." They're either good facts or irrelevant facts meaning the bad facts you concede and you make them your own.'

— BRAD BRIAN

**JUDGE FREIDMAN:** The comment was made about how jurors are always watching you. It seems pretty evident from some of the comments we've had today that you all watch the jurors. What are you looking for? How do you do that?

**KELLER:** You know, that's a tough question to answer because I'm not sure it can be put in words. But it's like any relationship that you're building, you try to keep building the relationship by saying that you're credible, by showing you're not hiding the ball, by not showing half of an email and grilling somebody about it when the bottom half is going to completely undermine your point.

**BRIAN:** I like to say on cross-examination I like to have a third eyeball because I think you've got to watch the witness, the judge and jury all at the same time. I think you can sense a moment when you've got to be watching the jury, you can see when a jury is expecting something to happen, and really you can see how this juror is going to respond to the testimony you think you're going to get.

**JUDGE FREIDMAN:** Is that something that's come with experience or is this a quality that some of us have and some don't, to be able to read a person's non-verbal cues?

**BRIAN:** I think it comes from experience trying cases and life's experiences.

**GALE:** I think that you have to have grown up almost being able to relate to the average person who is going to be most likely your juror

or like your juror. There are very few professors who are on juries. There are very few physicians or lawyers who are on juries. You have to be able to relate to the common person.

**JUDGE FREIDMAN:** At least in the California state Courts, we're anticipating some substantial impact from the state budget crisis, particularly here in Los Angeles. What do each of you anticipate this will affect your ability to try cases or the way you try cases. Is this going to encourage more use of ADR?

**BRIAN:** I'm a big believer in mediation, I think it would be a sad, sad day if cutbacks and the like eliminate jury trials or reduce the use of jury trials. I think they're really important for resolving disputes.

**KELLER:** I see it as lengthening the process. The jury trials aren't going to go away. The right to a jury trial isn't going to go away, but what's going to happen is it's going to take longer and longer to get there.

**MALYNN:** You're also going to see a greater or more of a difference between how cases are tried and litigated in federal court as compared to state court. That gap or that difference is just going to widen as a result of the budget crisis.

**JUDGE FREIDMAN:** I want to conclude with giving each of you an opportunity to present maybe one tip, either that comes from your experience in your top verdict case or any other trial that you've engaged in, recognizing that there will be a good number of young lawyers who are interested to hear how the top lawyers have achieved their success.

**GALE:** Three things: Preparation, preparation and more preparation. And do it early and often. Start the minute your case is filed. Get your theory together and then just work the case.

**MALYNN:** I would say being likable, working on being likable to the jury. If they're on your side, they like you, they think you are being fair, they may even do more for you than what you asked.

**KELLER:** Remember that every trial is about human beings. Every story has to be a human story. And no matter how dry the subject matter is, it has to be about the people who are involved in the case. And don't forget that your jurors have the same hunger that all human beings have, to be part of something larger than themselves.

**BRIAN:** I'm going to say two things. One is to repeat what was said down at the other end of the table, which is preparation. And I say at the start of every case that you ought to prepare what I call litigation plan. And by that I mean you need to figure out right from the beginning what your themes are. And you really ought to think about really how you're going to close the case a year down the road.

But the message I would give to young lawyers is go out and try cases. There are cases to be tried out there, a lot of people who would love to have recommendations by good, smart, young aggressive, ambitious people. And sometimes you won't get paid for it. Sometimes it's doing pre-bid work, sometimes it's doing some sort of fixed fee, minimal pay. Go out and try cases.

**DUNN:** I could not agree more with the comments you know, preparation. There's a story and there is no substitute for experience. If you want to be good at trying cases, you have to try cases. It's not something you can really read in a book or watch on TV. You've got to try cases.

An updated version of this discussion is available at [www.dailymjournal.com](http://www.dailymjournal.com).



Robert Lippert / Daily Journal

Malynn.

## **Exhibit 22**



ramble  
le contest

News ■ A8



local high school  
Golfer of Year

Sports ■ C1



What a year!  
From Adele  
to 'Star Wars'

Showcase ■ S10



Friday  
September 25, 2015

0 pages, 7 sections

75¢

100th year, No. 269

# Valley Press

Antelope

TODAY'S OUTLOOK



Cloudy and sun;  
windy colder. Highs  
in the mid-40s. Lows  
in the low 20s.

WEATHER: C8

LOTTO: B1

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YOU NEED



es in South  
ast eleven

g some last-minute  
apping gifts, families  
h spent Christmas  
losses after  
December  
ent weather  
and damaged  
tomorrow

## Merry Christmas, water drinkers

### Judge signs agreement after 16-year court battle

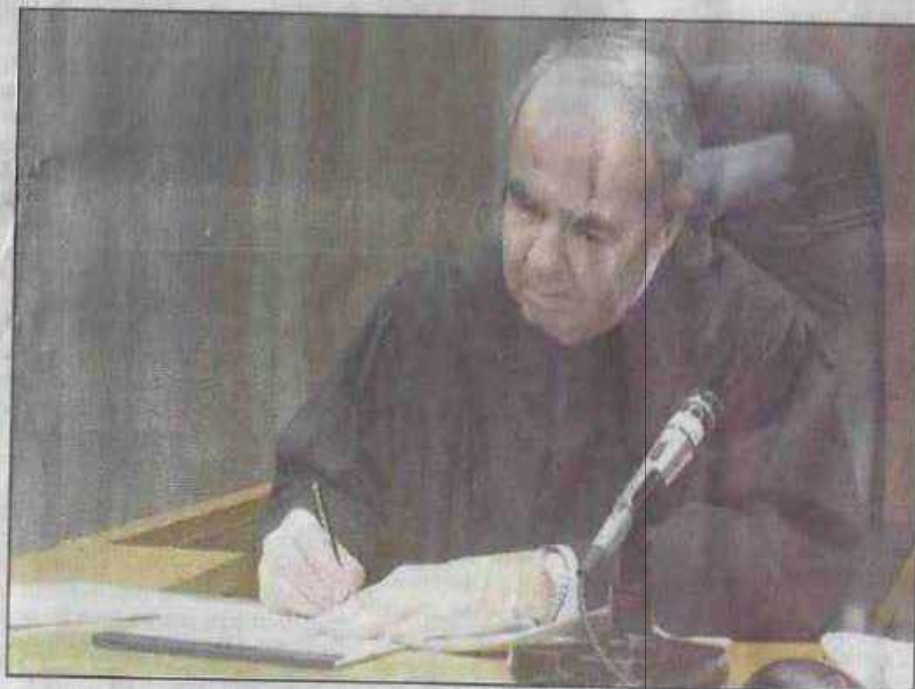
By ALISHA SEMCHUCK  
Valley Press Staff Writer

PALMDALE — After 16 years, a court battle involving thousands of litigants — city and county governments, farmers, property owners, water agencies and others — has ended with a Superior Court judge signing the final judgment settling who has the right to pump water from Antelope Valley wells.

Santa Clara Superior Court Judge Jack Komar on Wednesday approved the agreement that is intended to save the Valley's groundwater basin from depletion. The agreement goes into effect Jan. 1.

"Getting this judgment signed before the end of the year is a wonderful Christmas gift for the Antelope Valley because it enables us to begin moving toward sustainability starting Jan. 1," said attorney Tom Bunn, with the Pasadena-based law firm of Lagerlof, Senecal, Gosney & Kruse, who represented Palmdale Water District in court. "It took 16 years for the parties to agree on

See WATER on A5



**SIGNING  
DEAL**

Santa Clara Superior Court Judge Jack Komar signs the final judgment in the Antelope Valley Groundwater Adjudication cases. The agreement goes into effect Jan. 1. Contributed

JA 161746



# Bethlehem

## WATER

From A4

the judgment, and it was a minor miracle when it finally happened. A lot of shared pain went into this judgment, and it took intense dedication and commitment by all the settling parties."

The agreement will be administered by a five-member board called the "watermaster," which will monitor the Valley's underground water basin to make sure it's not being harmed. According to trial testimony, since the 1940s more water has been pumped out of wells than is naturally replenished from winter storms and other sources.

Of the five watermaster board members, one will represent Antelope Valley-East Kern Water Agency, which provides California Aqueduct water to much of the Antelope Valley, and another will represent Los Angeles County Waterworks District 40, the Valley's biggest water retailer that supplies more than 200,000 homes and businesses. Another seat will be filled by another public water utility and two more by landowners.

The first watermaster meeting is slated for Jan. 21 at Lancaster City Hall but the time has not been confirmed.

"We only know two of the five members for sure," said Frank Donato, an AVEK director. "I don't know who the other three people are. I don't know who each prospective group will appoint."

"It is definitely a Christmas gift to all of us — all the residents of the Antelope Valley and especially to the builders. It means now the builders can expect to get water, and the prospective water agencies will be able to calculate the amount of water available for future development."

"Now," Donato said, "AVEK will be building new water banks that will supply future development with imported water."

Any new development must pay to guarantee a source for the water it will use, said John Ukkestad, a consultant and spokesman for Antelope Valley United Mutual Group, an organization that comprises 16 mutual water companies.

"After the court hearing yesterday, life got a lot better," Ukkestad said. "We've got this adjudication taken care of."

However, Ukkestad lamented the money in attorneys' fees that litigants poured into the lawsuit throughout the 16 years.

"Millions and millions of dollars have gone out of the Valley," he said.

Groundwater Adjudication in court records, the case began Oct. 29, 1999, when Diamond Farming Co. of Bakersfield filed suit against the city of Lancaster, the Palmdale agency, Antelope Valley Water Co., Palm Ranch Irrigation District, Quartz Hill Water District, Rosamond Community Services District and Mojave Public Utility District, claiming pumping by those agencies infringed on Diamond's rights to well water.

Since then, more and more plaintiffs and defendants, and cross-plaintiffs and cross-defendants, were added onto the case — from city government agencies and county agencies to public water suppliers, mutual water companies, private landowners and other farmers.

It took some friendly persuasion on the part of the judge to convince all those parties to agree after years of delay resulting from mistrust.

Still a few litigants expressed discontent to the judge, based on court records.

Because of that, Ukkestad said, "We expect this (final decision) to be appealed, but we believe the judgment and physical solution will hold up under appeal."

Key elements of the settlement's "physical solution" to stabilize groundwater levels include:

- A management structure organized through a watermaster and watermaster engineer.

- A financial plan to fund the management structure and implement the physical solution.

- Flexible management tools to enable implementation of the judgment and management of the groundwater basin.

- Continuing court jurisdiction for enforcement and modification of provisions of the judgment.

The groundwater basin's "native safe yield," as determined by the court, is 82,300 acre-feet annually of water pumped from wells. An acre-foot equals 325,851 gallons, approximately the amount of water — pre-drought — used by a typical Antelope Valley household in a single-family home.

The native safe yield, coupled with a supplemental safe yield of 27,700 acre-feet per year from sources such as irrigation water that percolates underground, equals a total safe yield of 110,000 acre-feet annually, based on court findings.

To share your opinion on this article or any other article, write a letter to the editor and email it to [editor@avpress.com](mailto:editor@avpress.com) or mail it to Letters to Editor, PO Box 4050, Palmdale CA 93590-4050.

### LIVING NATIVITY

A Living Nativity scene with camels and goats on display for Christmas Eve at Desert Vineyard Christian Fellowship in Lancaster. The nativity lasted most of the afternoon and stretched into the early evening hours.

RON SIDDLE  
Valley Press

## Leaders

... of great accomplishments.

Fill out your nomination form. Be specific about your nominee's activities and achievements. Don't forget your phone number and the nominee's phone number.

Were you a Future Leader? Do you know a past Future Leader? We are also looking for former students who were featured in our Future Leaders special sections between 2001 and 2010. We want to talk to them; we want to know what they are doing today and what they have achieved.

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### ing community event?

newsroom at (661) 273-2700 between 10 a.m. and 5:30 p.m. After office hours, call (661) 267-1163 between 5:30 and 11 p.m.

## **Exhibit 23**



# Antelope Valley Press



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## Groundwater deal AV Story of the Year

*Published: 12/31/15 - Thursday - FRONT PAGE (A1)*

By: Charles F. Bostwick



It certainly wasn't the most attention-grabbing occurrence in 2015 in the Antelope Valley, but over future years it will probably prove locally to be the most significant.

After 16 years, a court battle involving thousands of litigants - city and county governments, farmers, property owners, water agencies and others - has ended

with a Superior Court judge signing the final judgment settling who has the right to pump water from Antelope Valley wells.

Called the Antelope Valley Groundwater Adjudication settlement, it was the Antelope Valley Press' selection for the Antelope Valley Story of the Year. Other news stories of significance in 2015 included Northrop Grumman Corp. winning an Air Force contract to build a new bomber and settlement of a California Voting Rights Act lawsuit challenging how Palmdale conducts its election.

The Antelope Valley Newsmaker of the Year selection will appear in Friday's paper on New Year's Day.

Here are the Stories of the Year starting from the top.

### 1. Groundwater settlement

Signed Dec. 23 by Santa Clara Superior Court Judge Jack Komar, the agreement that is intended to save the Valley's groundwater basin from depletion takes effect Friday. The agreement undoubtedly in future years will generate many more news stories.

The legal battle began Oct. 29, 1999, when Diamond Farming Co. of Bakersfield filed suit against the city of Lancaster, the Palmdale agency,





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Antelope Valley Water Co., Palm Ranch Irrigation District, Quartz Hill Water District, Rosamond Community Services District and Mojave Public Utility District, claiming pumping by those agencies infringed on Diamond's rights to well water.

Since then, more and more plaintiffs and defendants, and cross-plaintiffs and cross-defendants, were added onto the case from city government agencies and county agencies to public water suppliers, mutual water companies, private landowners and other farmers.

The parties estimate that millions of dollars were spent on attorney fees over the years.

"Millions and millions of dollars have gone out of the Valley," John Ukkestad, a spokesman for Antelope Valley United Mutual Group, an organization of 16 mutual water companies, said after the settlement.

The agreement will be administered by a five-member board called the "watermaster," which will monitor the Valley's underground water basin to make sure it's not being harmed. According to trial testimony, since the 1940s more water has been pumped out of wells than is naturally replenished from winter storms and other sources.

Of the five watermaster board members, one will represent Antelope Valley-East Kern Water Agency, which provides California Aqueduct water to much of the Antelope Valley, and another will represent Los Angeles County Waterworks District 40, the Valley's biggest water retailer, which supplies more than 200,000 homes and businesses. Another seat will be filled by another public water utility and two more by landowners.

## 2. New bomber contract

The Northrop Grumman Corp. was announced on Oct. 27 as the Air Force's choice to develop the nation's next long-range bomber, a decision that will likely mean the return of major aircraft production to the Antelope Valley and 1,100 Palmdale jobs.

The Pentagon announcement offered only details on how the contract was structured and not on the still-classified aircraft itself or where it would be built. Local officials, however, said they were told the bomber will be assembled in Palmdale - where Valley aerospace workers assembled B-1B and B-2 bombers in the 1980s and 1990s.

Northrop Grumman has about 1 million square feet of production space at Plant 42 in a facility built in the 1980s to assemble the B-2 bomber fleet.

If Northrop Grumman's competitors - Boeing and Lockheed Martin - had won, they planned to assemble the bombers in Missouri, said Steve Knight, R-Palmdale.

Even if the Boeing-Lockheed Martin team had won, Lockheed Martin was expected to put more than 1,000 employees to work on the bomber in Palmdale, officials said.

Northrop Grumman is believed to have started hiring for the project, but bomber production remains short of a sure thing.

Boeing and Lockheed Martin filed a formal protest Nov. 6 over Northrop Grumman's selection. The protest was widely expected given the scope of

the contract estimated at \$80 billion and it is the only major combat aircraft production program on the horizon.

The auditing arm of Congress, the U.S. Government Accountability Office, will have until Feb. 16 to review the protest and issue a final decision.

"Boeing and Lockheed Martin concluded the selection process for the Long Range Strike Bomber was fundamentally flawed," the companies said in a joint statement. "The cost evaluation performed by the government did not properly reward the contractors' proposals to break the upward-spiraling historical cost curves of defense acquisitions, or properly evaluate the relative or comparative risk of the competitors' ability to perform, as required by the solicitation. That flawed evaluation led to the selection of Northrop Grumman over the industry-leading team of Boeing and Lockheed Martin, whose proposal offers the government and the warfighter the best possible LRS-B at a cost that uniquely defies the prohibitively expensive trends of the nation's past defense acquisitions."

In response, the Air Force issued a statement saying, "Although it is every competitor's right to file a protest, the Air Force is confident that the source selection team followed a deliberate, disciplined and impartial process to determine the best value for the warfighter and taxpayer."

### 3. Palmdale election change

Ending three years of legal battles, city officials agreed May 6 to a court settlement under which the four City Council seats will each be assigned to a different geographic district and will come up for election in November.

They also agreed Wednesday night to pay \$4.5 million to the opposing lawyers - including Lancaster Mayor R. Rex Parris -who brought the lawsuit alleging that Palmdale's "at-large" method of electing City Council members citywide diluted the influence of African-American and Latino voters and violated the 2001 California Voting Rights Act.

"We are very pleased with the result, not only for allowing fair and inclusive elections but because other cities will look to Palmdale as an example of what happens if they fail to comply with the California Voting Rights Act," attorney Kevin Shenkman, who along with Parris is among the attorneys who brought the suit, said after the settlement. "I hope minority residents of Palmdale are now able to secure representative city government and work to reverse the decades of the City Council's apathy toward the needs of the less wealthy, predominantly minority residents of Palmdale's east side."

In a statement issued after their closed-door discussion in which they agreed to give up court appeals, city officials criticized the state law and said it is being used by attorneys to victimize California cities, counties and school districts. Statewide, they said, they know of 25 similar cases and \$13.8 million awarded in attorney fees.

Similar voting districts were created by Lancaster School District, which was sued, and Eastside Union School District, which was threatened with a lawsuit under the law. Both districts switched to a by-trustee area system and will use those for the first time this November. Antelope Valley Union High School District and Antelope Valley College officials are also looking into establishing trustee districts.

In the new voting districts' first use in November, there was no change in the ethnic makeups of the Lancaster School District and Eastside Union School District boards because voters elected all white men. Former Lancaster school board members Keith Giles and Greg Tepe were elected under new election boundaries in the Lancaster district, and Eastside trustee Joseph Pincetich was re-elected under new boundaries in the Eastside district.

#### 4. California's drought persists

Homeowners around the Antelope Valley ripped up their lawns or just let them turn brown as water-rate surcharges and other measures were enacted to meet Gov. Jerry Brown's statewide conservation mandates.

Five months into the governor's order for Californians to reduce their water use by 25%, customers of four of the Antelope Valley's six largest water suppliers were so far meeting the governor's mandate.

Compared to water use in 2013, consumption between June and October was down 46.9% among California Water Service Co.-Antelope Valley customers, 37.4% among Quartz Hill Water District customers, 34.8% among Los Angeles County Waterworks District 40 customers, and 31.8% among Rosamond Community Services District customers.

Palmdale Water District customers have cut back a cumulative 27.6%, but that reduction failed to meet the agency's target of 32%. California City has cut back 11.3%, far below its 36% target, state officials said.

Conservation targets for the Valley's six largest water agencies are all higher than the statewide 25% reduction announced by Brown last spring because state water officials calculated their per capita use at higher than statewide averages.

Rosamond was told to cut 28% from 2013 consumption, Palmdale and Waterworks District 40 were told to cut 32%, and Quartz Hill, California City and California Water Service were told to cut 36%.

Smaller water suppliers in the Antelope Valley and elsewhere around the state are expected to reduce consumption 25%, but they aren't required to supply monthly reports to the state government.

#### 5. Mud and floods in a drought

Despite the drought, Oct. 15 thunderstorms - one described by the National Weather Service as a "thousand-year rainfall event" - damaged hundreds of properties from west Lancaster to Lake Hughes, caused millions of dollars in damage, shut down the California Aqueduct, drowned a west Palmdale man and left a Boron man missing.

Killed was Robert Rasmussen, whose minivan was swept off Avenue M-8 west of 60th Street West and into a catch basin. Still missing is Richard Harvell, who was knocked down by knee deep flood water as he tried to move his pickup truck from a camping spot in a canyon northwest of Rosamond.

The flash flood that killed Rasmussen was caused by rain measured at 1.63 inches in Quartz Hill and 3.38 inches in Leona Valley on the south



side of Ritter Ridge. It flooded dozens of homes down the hill from where Rasmussen drowned.

The total number of homeowners, renters and businesses who reported storm damage to Los Angeles County and the cities of Palmdale and Lancaster was more than 280, county officials said.

Damage to the California Aqueduct alone cost \$1.1 million to repair.

Weather service forecasters say the Oct. 15 storms weren't really part of the El Nio weather pattern forecast for this winter. If El Nio is coming, it hasn't shown up yet in local rainfall statistics.

The Palmdale rainfall total since Oct. 1 - when the weather service begins counting California's "rainfall year" - measured 1.81 inches as of Wednesday. Usually by this time, rainfall as measured at Air Force Plant 42 amounts to 2.38 inches, weather service records show. Last year by this time, the rainfall since Oct. 1 measured 2.57 inches.

In Lancaster, the rainfall total since Oct. 1 is 1.29 inches, down from the normal 2.08 inches by this time, weather service records show. Last year by this time, 2.92 inches fell at William J. Fox Airfield.

At Sandberg in the mountains west of Lake Hughes, rainfall since Oct. 1 measures 1.70 inches, less than half the 3.53 inches that normally falls by this time. Last year by this time the area had 4.9 inches.

The Oct. 15 thunderstorms mostly missed official rain gauges.

At Quartz Hill, the Oct. 15 flash flood elevated the total so far at a Los Angeles County Department of Public Works rain gauge to 2.65 inches, which is more than a third of the average annual total of 7.97 inches. The Department of Public Works doesn't have average-to-date statistics for its individual weather stations.

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## **Exhibit 24**

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NEWS RULINGS VERDICTS

Friday, January 22, 2016

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## Resolution of Antelope Valley groundwater dispute concludes long battle

By Fiona Smith

It was an unusual scene in a Los Angeles courtroom recently when the largest groundwater battle in California finally resolved. Retired Santa Clara County Superior Court Judge Jack Komar, about to sign the judgment in the 16-year-old legal dispute, asked if he could snap a picture of the attorneys gathered in his courtroom.



Daily Journal photo  
Eric L. Garner represented Los Angeles County Waterworks District No. 40 in a long-running dispute over the Antelope Valley aquifer that finally settled after years of litigation.

The attorneys obliged, and then one of them, Janet Goldsmith, piped up and asked Komar if she could take his picture as he signed the papers. He agreed, and soon many of the lawyers had pulled out their own smartphones to capture the quiet denouement to what had been a mammoth case. Then they stood up and burst into applause.

"I'm not sure I've seen that in a court case before: we were just so proud of having got it done and of Judge Komar seeing us through it," said Thomas S. Bunn, who represented the Palmdale Water District in the case.

The resolution of the case will transform groundwater management in the arid Antelope Valley north of Los Angeles by putting an end to decades of uncontrolled pumping that has decimated the region's vast aquifer and caused land to buckle, including parts of Edwards Air Force Base. Groundwater use will be now slashed by 40 to 50 percent across the board. Antelope Valley Groundwater Cases, JCCP 4408.

The deal to manage the Antelope Valley aquifer, called an adjudication of groundwater rights, comes amid heightened scrutiny on groundwater management statewide as the four-year drought has led to feverish pumping in many basins, particularly in the Central Valley.

Until 2014, there was no statewide law limiting pumping, and while aquifers in many urban areas have long been adjudicated, there are hundreds around the state with no oversight.

"The challenge in settling this case was the same challenge we have with managing groundwater in California, which is that by and large the cheapest most secure source of water is simply dropping a well and pumping," said Eric L. Garner, who represented Los Angeles County Waterworks District No. 40 in the Antelope Valley adjudication. Managing groundwater means "people will have to pump less or pay more to pump."

Under the new Sustainable Groundwater Management Act, users will be required to cut withdrawals from stressed basins in the coming decades.

Anticipating a potential increase in court battles over groundwater rights, and with an eye on the marathon Antelope Valley case, the state Legislature took action last year to create new rules to streamline court processes in groundwater adjudications.

### SPECIAL REPORT

#### New Laws

A list of 2015 California laws and the codes they modified. Plus analysis from leading lawyers.



### Litigation

#### Attorneys lobby for key spots in Volkswagen emissions class action

With an overflow gallery of litigators looking on, Volkswagen AG lawyers admitted to a frustrated U.S. District Judge Charles R. Breyer that no date has been pinned down for when a fix for emissions-test cheating systems would be ready.

### Alternative Dispute Resolution

#### Real Resolutions

Mediator Floyd Siegal wants clients to feel that no stone is left unturned.

### Obituaries

#### Richards D. "Dick" Burger, 1928 - 2016

Richards D. "Dick" Burger, former state insurance commissioner and co-founder of the insurance law firm Burger & Wolen LLP, died Sunday in Pasadena at the age of 87.

### Bar Associations

#### San Diego plaintiffs' bar group welcomes new president

Brett Schreiber, a partner at Thorsnes, Bartolotta, McGuire, has been elected president of the Consumer Attorneys of San Diego.

### Corporate

#### SF-based data management company taps first GC

InsideView Inc., a customer data management and marketing provider, named Nicole K. Campbell as its first general counsel and corporate secretary Thursday.

### Solo and Small Firms

#### Prime Patents

Choosing cases based on merit allows Lowenstein & Weatherwax LLP to compete with the big firms.

### Litigation

#### State supreme court will confront if UCLA

#### Eable for near fatal classroom attack

Justices to consider if university had duty to protect chemistry student Katherine Rosen.

### Discipline

Many of the attorneys recently disciplined by the State Bar have one thing in common: prior incidents of discipline.

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The Antelope Valley litigation pulled in competing parties as diverse as Los Angeles County, carrot farmers, gravel producers and the U.S. military to determine how much everyone could safely withdraw from the aquifer.

Over the years, the case racked up more than 11,000 docket entries, involved more than 100 lawyers and the included two classes: one consisting of roughly 3,000 small water users and another representing so-called non-pumpers, or the owners of 85,000 parcels of land who had never exercised their groundwater pumping rights.

The case became particularly complex and large because the U.S. government was appearing in state court to settle the military's claim to regional groundwater, according to attorneys. For the U.S. to get involved in the state court process, the adjudication had to include every landowner in the basin, a move not typically done in groundwater adjudications and one which ballooned the size of the case.

In the midst of the court fight, Komar, a Santa Clara County Superior Court judge assigned the case early on, retired. He nonetheless stuck with it, getting specially assigned to the case post-retirement by state Supreme Court Chief Justice Tani Cantil-Sakauye. He presided over four phases of trial, to determine among other things, how much water could be drawn from the aquifer every year without depleting it.

With the next, and possibly hardest phase of trial approaching in which parties would have to hire experts and hold hearings on hundreds of individual groundwater claims, the parties became more focused on settlement, said Goldsmith, who represented the city of Los Angeles in the case.

If that trial phase had gone forward, there would have been 50 attorneys popping up to object to every question and it probably couldn't have been litigated in anyone's lifetime, said attorney W. Keith Lemieux, who is counsel for several water purveyors with groundwater claims.

Ronald B. Robie, associate justice of the 3rd District Court of Appeal, spent 10 days mediating the case and lawyers involved credit him with pushing the parties toward the ultimate settlement. The deal sets out how much water each party can pump annually and creates a court-supervised, five-person "watermaster" board to oversee aquifer management going forward. The parties have seven years to fully implement the cuts.

Once that settlement was formally hammered out, not everyone was happy, including the non-pumper class.

Komar held a hearing on objections to the agreement and ruled to impose the settlement on everyone, turning it into a final court judgment which he signed in late December.

Ralph B. Kalfayan, who represents the non-pumper class, has vowed to appeal the decision. The judgment sets up unfair barriers to landowners that may in the future want to exercise their right to pump groundwater, he said.

They are required to go through a 12-step application process after which the watermaster can accept or reject their request, according to Kalfayan.

"It's expensive and unnecessary, it's burdensome," said Kalfayan, a partner at Krause Kalfayan Benink & Slavens LLP. "It makes it extremely difficult to meet the requirements and obtain the right to be able to pump."

Even facing a potential lengthy appeals process and the task of now implementing the groundwater management plan on the ground, the judgment was a milestone, said Bunn, an attorney with Lagerlof, Senecal, Gosney & Kruse LLP.

"We're not done yet, but it's a very important place to get, and a place we didn't think we'd ever get," Bunn said.

Looking ahead, any appeal would be unlikely to stop immediate implementation of the groundwater cuts, said Garner, managing partner at Best Best & Krieger LLP. But the fact that there is a judgment in place hasn't fully sunk in yet, he said.

"I've been working on this case almost one-third of my life," Garner said.

For Goldsmith, the resolution was both a professional and personal turning point she had been putting off retirement until she could see her client through the settlement.

"It was a long, long slog," said Goldsmith, who officially retired on Dec. 31 after 39 years at Kronick Moskowitz Tiedemann & Girard. "I was not going to retire until that decree was signed."

On the cusp of a historic change in the way the L.A. County's criminal justice system deals with mentally ill offenders, one of the first tasks of the newly created L.A. County Office of Diversion and Reentry will be bringing both the clinical and legal communities to the same table.

#### California Supreme Court Anti-deficiency protections apply to short sales: Supreme Court

Lenders may not pursue borrowers for the outstanding amount on a mortgage loan after a short sale, the high court ruled Thursday.

#### Bar Associations

##### Former State Bar employee files claim over dismissal

Thomas Layton alleges he was wrongfully terminated for filing grievances and unfair practice charges against the bar.

#### Criminal

##### Attorney gets probation for brandishing weapon on homeless man

A Bakersfield lawyer on Wednesday was slapped with a three-year sentence of probation and anger management counseling following a jury's finding that he wrongfully brandished a gun on a homeless man.

#### Law Practice

##### Survey: law firm leaders bracing for economic slide

It's a new year, but law firm leaders aren't terribly excited about it. Managing partners responding to a survey indicated that they have a negative view of the overall economy for the first time since 2012.

#### Litigation

##### High court declines to revive conspiracy charges

The state Supreme Court on Wednesday denied a petition to bring back conspiracy charges against San Bernardino county officials and an Upland developer in one of the state's largest public corruption cases.

#### U.S. Supreme Court

##### Justices say ERISA claim is equitable, but not the remedy

The best things in life are worth waiting for, unless you are a plan fiduciary seeking reimbursement from a plan participant under ERISA. By Michelle L. Roberts

#### Law Practice

##### Returning to Cuba, 11 years later

In 2004, when I initially traveled to Cuba with the Beverly Hills Bar Association, the U.S. embargo against Cuba was still being strictly observed by OFAC. By Nancy Knupfer

#### Ethics/Professional Responsibility

##### Law firms should consider new insurance options

Law firms have an increasing number of options when it comes to purchasing legal malpractice insurance, as new insurers enter the malpractice marketplace, and all insurers continue to offer new products and expanded coverage at lower rates. By J. Randolph Evans and Shari Klevens

#### Letter to the Editor

##### Letter to the editor: Jan. 11 article highlights access-to-justice issues

We at Disability Rights California are deeply troubled amount:

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

Coordination Proceeding Special Title (Rule  
1550(b)) ANTELOPE VALLEY GROUNDWATER CASES  
(JCCP 4408) Included Actions: Los Angeles  
County Waterworks District No. 40

Plaintiff,  
vs.

Antelope Valley Groundwater Cases (JCCP 4408)

Lead Case No.1-05-CV-049053

Hon. Jack Komar

Diamond Farming Co. Superior Court of California County of Los Angeles, Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV-254-348 Wm. Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water Dist. Superior Court of California, County of Riverside, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

Defendant.

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## AND RELATED ACTIONS

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Tue. March 29, 2016 at 4:44 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically filed on the Court's website, <http://www.scefiling.org>, on Tue. March 29, 2016 at 4:44 PM PDT

Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct. Executed on March 29, 2016 at Oakland, California.

Dated: March 29, 2016

For WWW.SCEFILING.ORG

Andy Jamieson

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
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Electronic Proof of Service  
Page 2

Document(s) submitted by Michael McLachlan of Law Offices of Michael D. McLachlan APC on Tue. March 29, 2016  
at 4:44 PM PDT

1. Decl in Support: SUPPLEMENTAL DECLARATION OF DANIEL M. O'LEARY IN SUPPORT OF MOTION FOR AWARD  
OF ATTORNEYS' FEES, COSTS AND INCENTIVE AWARD

# **Exhibit R**

By Fax

1 Michael D. McLachlan (State Bar No. 181705)

2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**

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4 Hermosa Beach, California 90254

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County of Los Angeles

JUN 27 2016

8 Daniel M. O'Leary (State Bar No. 175128)

9 **LAW OFFICE OF DANIEL M. O'LEARY**

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14 dan@danolearylaw.com

Sherrill Garter, Executive Officer/Clerk  
By: Glorietta Robinson, Deputy

15 Attorneys for Plaintiff Richard Wood and the Class

16 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

17 **COUNTY OF LOS ANGELES**

18 Coordination Proceeding  
19 Special Title (Rule 1550(b))

20 **ANTELOPE VALLEY GROUNDWATER  
21 CASES**

22 **RICHARD A. WOOD, an individual, on  
23 behalf of himself and all others similarly  
24 situated,**

25 **Plaintiff,**

26 **v.**

27 **LOS ANGELES COUNTY  
28 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

**NOTICE OF MOTION AND  
SUPPLEMENTAL MOTION FOR  
AWARD OF ATTORNEY FEES  
AND COSTS**

**[filed concurrently with  
Declarations of Michael D.  
McLachlan, Daniel M. O'Leary]**

Location: Room 222  
Stanley Mosk Courthouse  
Los Angeles, California

Date: July 20, 2016  
Time: 10:00 a.m.

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 20, 2016, at 1:30 p.m., or as soon  
3 thereafter as the matter may be heard, at 111 North Hill Street, San Jose,  
4 California, in Room 222, Richard Wood moves for approval of a supplemental  
5 award of attorney fees and costs.

6 Plaintiff brings this motion pursuant to California Code of Civil Procedure  
7 section 1021.5 and 1033.5 et seq.

8 The Motion is based on this Notice, the Memorandum of Points and  
9 Authorities, the Declarations of Michael D. McLachlan (served January 1, 2014,  
10 January 27, 2016, March 11, 2016, March 25, 2016, and June 27, 2016), the  
11 Declarations of Daniel M. O'Leary (January 27, 2016, March 29, 2016, and June  
12 27, 2016), the Declaration of Richard M. Pearl (January 27, 2016), the  
13 Declaration of David B. Zlotnick (same), the various documents attached thereto,  
14 the records and file herein, and on such evidence as may be presented at the  
15 hearing of the Motion.

16  
17 DATED: June 27, 2016

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

18  
19 Michael D.  
20 McLachlan  
By:  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: 2016.06.27 13:08:34 -07'00'

21 MICHAEL D. MCLACHLAN  
22 Attorneys for Plaintiff and the Class  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Richard Wood (“Plaintiff”) requests approval of a supplemental  
4 award of attorneys’ fees for the period of January 27, 2016 through the date of  
5 hearing on this Motion as against the eight Non-Settling Defendants: California  
6 Water Service Company, Desert Lake Community Services District, Littlerock  
7 Creek Irrigation District, Los Angeles Waterworks District No. 40 (“District 40”),  
8 North Edwards Water District, Palm Ranch Irrigation District, Quartz Hill Water  
9 District , and the City of Palmdale (collectively, the “Settling Defendants”).<sup>1</sup>

10 By its Order of April 25, 2016, the Court granted Plaintiffs earlier motion  
11 for fees and costs, with the issue of costs pending further hearing at the same  
12 time as this supplemental fee motion. Much of the evidence submitted in support  
13 of that earlier fee motion is relevant to this one. Given the voluminous nature of  
14 that material as well as the record in this case as well, Plaintiff will not re-attach  
15 those earlier declarations, and will not re-argue legal issues resolved by the  
16 Court’s April 25, 2016 Order, e.g. issues bearing on entitlement to attorneys’ fees,  
17 prevailing party status and the like. Plaintiff rely upon and incorporate reference  
18 the earlier Declarations and documentary evidence, and in particular the  
19 evidence related to billing rates, including the following declarations: Michael D.  
20 McLachlan (served January 1, 2014 , January 27, 2016 [D.E. 11144], March 11,  
21 2016 [D.E. 11279], March 25, 2016 [D.E. 11355]); Daniel M. O’Leary (January 27,  
22 2016 [D.E. 11145] and March 29, 2016 [D.E. 11364]); the Declaration of Richard  
23

24  
25 <sup>1</sup> In 2013, the Class settled with the following Defendants: City of  
26 Lancaster, Palmdale Water District, Phelan Piñon Hills Community Services  
27 District, and Rosamond Community Services District. Pursuant to the 2015  
28 Stipulation for Entry of Judgment, which has been approved by the Court under  
the master judgment, these Settling Defendants are not subject to this fee motion.  
Per the terms of the 2015 Settlement, the City of Palmdale is not subject to  
attorneys’ fees or costs because it dropped its prescription claims in 2008.

M. Pearl (January 27, 2016 [D.E. 11146]; and the Declaration of David B. Zlotnick (same [D.E. 11148])).

Class counsel now seeks approval of an award of attorney's fees with a lodestar totaling \$204,485.75, as well as additional costs of \$1,838.37.

## **II. RELEVANT FACTS**

### **A. Attorneys' Fees and Costs Incurred.**

From January 27, 2016 to date, Michael McLachlan has incurred 207.8 hours of attorney time and 34.9 paralegal hours. (McLachlan Decl., ¶ 10, Ex. 2.) Mr. O'Leary has worked at additional 45.3 hours. (O'Leary Decl. ¶ 3, Ex. 1.) We also retained attorney Richard M. Pearl to assist with certain aspects of the initial fee motion, and he worked 9.15 hours at a total cost of \$7,091.25. (McLachlan Decl., ¶ 10, Ex. 3.) Class Counsel reasonably anticipate that they will spend another 15 hours opposing the motion to tax costs, preparing reply papers on this motion, and attending the hearing. Those future hours have been split this evenly in the table below.

Based on the foregoing, Plaintiff requests approval of a total of 269.7 hours of attorney time, including the time incurred by Mr. Pearl (whose experience and qualifications are summarized in his January 27, 2016 declaration [Dkt. No. ], and 34.9 hours of paralegal time. The fee request is summarized as follows:

<b>TIMEKEEPER</b>	<b>TOTAL HOURS</b>	<b>HOURLY RATE</b>	<b>TOTAL</b>
Michael D. McLachlan	207.8	\$720	\$155,016
Daniel M. O'Leary	52.8	\$720	\$38,016
Richard M. Pearl	9.15	\$775	\$7,091.25
Paralegals	34.9	\$125	\$4,362.5
<b>TOTAL</b>			<b>\$204,485.75</b>



1 Plaintiff also seeks award of additional costs of \$1,838.37. (McLachlan  
2 Decl., ¶ 11, Ex. 4; O’Leary Decl., ¶ 4.)  
3  
4

### 5 **III. ARGUMENT**

6 As noted above, the Court has already ruled that Plaintiff is a prevailing  
7 party for the purpose of awarding attorneys’ fees. The Court is also familiar with  
8 the lodestar methodology, which was briefed in the earlier fee motion, so Plaintiff  
9 will not address that again here, other than to note that the lodestar standard is  
10 the applicable to this motion as well. Consequently, Plaintiff will restrict the  
11 argument here to the law related to the time at issue in this Motion.

#### 12 **A. An Award of Fees And Costs Is Appropriate.**

13 It is well established that a prevailing party is entitled to attorneys’ fees for  
14 time spent litigating the fee claim. (*Serrano v. Unruh (Serrano IV)* (1982) 32  
15 Cal.3d 621.) As a matter of policy, the court held that to deny fees for fee-related  
16 services would permit the fee to “vary with the nature of the opposition.” (*Id.* at  
17 638.) The court stated that a defendant “cannot litigate [a fee motion]  
18 tenaciously and then be heard to complain about the time necessarily spent by  
19 the plaintiff in response.” (*Ibid.*; see also *Graham v. DaimlerChrysler Corp.*  
20 (2004) 34 Cal.4<sup>th</sup> 553, 581 (expressly reaffirming the rule of *Serrano IV*);  
21 *Ketchum v. Moses* (2001) 24 Cal.4<sup>th</sup> 1122 (same); *612 South LLC v. Laconic*  
22 *United Partnership* (2010) 184 Cal.App.4<sup>th</sup> 1270, 1284 (court must consider fees  
23 incurred after fee motion filed).) “Absent unusual circumstances, [a plaintiff is]  
24 entitled to recover compensation for all the hour its attorneys spent prosecuting  
25 the attorney fees motion.” (*Hogar Dulce Hogar v. Community Dev. Comm’n*  
26 (2007) 157 Cal.App.4<sup>th</sup> 1358, 1371.)

27 Here, the opposition briefs totaled nearly 45 pages, and were accompanied  
28 by many substantive declarations. Given that, and the eight years of time at  
issue, the 30-page reply brief and additional fee-related work is entirely

appropriate and should be compensated in full. Similarly, work not expressly related to the fee motion is all necessary are reasonable the ongoing representation of the Class, and should be compensated in full.

**B. The Court Should Apply Current Market Rates.**

It is well established the Courts must use market rates in the lodestar analysis. (*Ketchum v. Moses* (2001) 24 Cal.4<sup>th</sup> 1122; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4<sup>th</sup> 1084, 1094.) To determine reasonable market value, courts must determine whether the requested 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* (2002) 97 Cal.App.4<sup>th</sup> 740, 783.)<sup>2</sup>

The hourly rate of \$720 an hour is below what could be requested in the current market rates, but is entirely reasonable in light of current rates being charged and awarded.<sup>3</sup> (Pearl Decl. ¶¶ 10-15; McLachlan Decl. (June 27, 2016), ¶¶ 14-20; McLachlan Decl. (January 27, 2016) ¶ 42.)

The Pearl Declaration and Exhibits contain a substantial amount of evidence regarding market rates. (at ¶¶ 10-14.) Indeed, \$720 per hour is a lower rate than those of many firms in Los Angeles. (Pearl Decl., ¶ 12, Ex. C.) The 2013 fees survey for Ty Metrix/Legal Analytics found that third quartile partner rates in 2012 were \$812 per hour – nearly one hundred dollars higher. (Pearl Decl., ¶ 12, Ex. D.) Average partner rates for big firms in 2013 were \$880 per hour. (*Id.*, Ex. E.) Additional materials on market rates are included in the McLachlan Declaration (June 27, 2016), at paragraphs 14 to 19 and Exhibits 5 through 11.

---

<sup>2</sup> Historic rates can only be used if there is an enhancement to the lodestar, i.e. fee awards must be based on current rates and should compensate for the delay in payment. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4<sup>th</sup> 553, 583; *Perdue v. Kenny A.* (2010) 559 U.S. 542, 555.)

<sup>3</sup> Over a year ago, Mr. McLachlan was approved by the Central District of California at a rate of \$690 in a class context. (McLachlan Decl. (January 27, 2016), ¶ 42.) The rate of \$720 per hour is an upward adjustment of just over 4% over that Court-approved rate of \$690 per hour.

1           **C.     The Recent Litigation Costs Should Also Be Awarded.**

2           Class counsel has incurred new and additional litigation costs totaling  
3 \$1,838.37. (McLachlan Decl., ¶ 11, Ex. 4; O’Leary Decl., ¶ 4.) All of these costs  
4 are standard items incurred and charged in litigation, and the Court should  
5 award them under Section 1033.5.

6           **D.     Allocation of Fees and Costs Among the Defendants.**

7           As noted in the reply to the Motion for Clarification of the initial attorney  
8 fee order [D.E. , the Stipulation for Entry of Judgment establishes that pure  
9 several liability is not appropriate here. Plaintiff should not bear the burden if  
10 one of the defendants fails to pay the fee award. There is no entitlement to  
11 apportionment of a fee award under Section 1021.5. (*Friends of the Trails v.*  
12 *Blasius* (2000) 78 Cal.App.4<sup>th</sup> 810, 837-838.)

13           Treating the *Code of Civil Procedure* section 1021.5 obligation of more than  
14 one opposing parties as joint is consistent with the purposes of that statute.

15           If the obligation is apportioned in the sense that it is not joint the  
16 successful party faces greater difficulty in collection of the judgment for  
17 attorney’s fees and some of the attorney’s fees will not be recoverable if any  
18 opposing party is insolvent.

19 (*Id.* at 838.)

20           For these reasons, the Court should make the award joint, not several.

21  
22 **IV.    CONCLUSION**

23           For all of the foregoing reasons, Plaintiff Richard Wood requests that the  
24 Court approve the supplemental award of attorneys’ fees in the amount of  
25 \$204,485.75, as well as additional costs of \$1,838.37.

1 DATED: June 27, 2016

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

2 Michael D.  
3 McLachlan  
4 By: \_\_\_\_\_

Digitally signed by Michael D. McLachlan  
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Offices of Michael D. McLachlan, ou,  
email=mike@mclachlanlaw.com, c=US  
Date: 2016.06.27 13:09:02 -07'00'

5 MICHAEL D. MCLACHLAN  
6 Attorneys for Plaintiff and the Class  
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THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
ELECTRONIC FILING - WWW.SCEFILING.ORG

**c/o Glotrans**  
2915 McClure Street  
Oakland, CA94609  
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FAX: (510) 465-7348  
EMAIL: [Info@Glotrans.com](mailto:Info@Glotrans.com)

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

Coordination Proceeding Special Title (Rule  
1550(b)) ANTELOPE VALLEY GROUNDWATER CASES  
(JCCP 4408) Included Actions: Los Angeles  
County Waterworks District No. 40

Plaintiff,  
vs.

Antelope Valley Groundwater Cases (JCCP 4408)

Lead Case No.1-05-CV-049053

Hon. Jack Komar

Diamond Farming Co. Superior Court of California County of Los Angeles, Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV-254-348 Wm. Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water Dist. Superior Court of California, County of Riverside, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

Defendant.

**PROOF OF SERVICE**  
**Electronic Proof of Service**

## AND RELATED ACTIONS

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Mon. June 27, 2016 at 1:28 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically filed on the Court's website, <http://www.scefiling.org>, on Mon. June 27, 2016 at 1:28 PM PDT

Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct. Executed on June 27, 2016 at Oakland, California.

Dated: June 27, 2016

For WWW.SCEFILING.ORG

Andy Jamieson

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THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
ELECTRONIC FILING SYSTEM - WWW.SCEFILING.ORG

Electronic Proof of Service  
Page 2

Document(s) submitted by Michael McLachlan of Law Offices of Michael D. McLachlan APC on Mon. June 27, 2016 at 1:28 PM PDT

1. Mtn for Order: NOTICE OF MOTION AND SUPPLEMETNAL MOTION FOR AWARD OF ATTORNEY FEES AND COSTS

## **Exhibit S**



Michael D. McLachlan (State Bar No. 181705)  
**LAW OFFICES OF MICHAEL D. McLACHLAN, APC**  
44 Hermosa Avenue  
Hermosa Beach, California 90254  
Telephone: (310) 954-8270  
Facsimile: (310) 954-8271  
*mike@mclachlan-law.com*

Daniel M. O'Leary (State Bar No. 175128)  
**LAW OFFICE OF DANIEL M. O'LEARY**  
2300 Westwood Boulevard, Suite 105  
Los Angeles, California 90064  
Telephone: (310) 481-2020  
Facsimile: (310) 481-0049  
*dan@danolearylaw.com*

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  
SUPPLEMENTAL MOTION FOR  
AWARD OF ATTORNEYS' FEES  
AND COSTS**

Location: Room 222  
Stanley Mosk Courthouse  
Los Angeles, California  
Date: July 20, 2016  
Time: 10:00 a.m.

1                                   **DECLARATION OF MICHAEL D. MCLACHLAN**

2 I, Michael D. McLachlan, declare:

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

6           2.       I am co-counsel of record of record for Plaintiff Richard Wood and  
7 the Class. I am duly licensed to practice law in California. I make this  
8 declaration in support of the Supplemental Motion for Approval of Award of  
9 Attorney Fees and Costs.

10                                   **PERSONAL BACKGROUND**

11           3.       I will not repeat the summary of my personal background contained  
12 in prior declarations relied upon by this Motion (primarily my January 27, 2016  
13 declaration, ¶¶ 3 – 8). I will, however, supplement it on several points.

14           4.       As I have noted in prior declarations in this matter, I have  
15 conducted what I believe to be rather thorough research on the question of  
16 whether there has been a prior attempt to litigate groundwater rights on a class  
17 basis. I found no published or unpublished opinions in California or any U.S.  
18 Federal Court. That is not to say that it for certain has not been attempted  
19 before, successfully or otherwise; rather, I note this because it necessarily  
20 follows that the subset of qualified class action lawyers admitted to practice in  
21 this state who have also litigated groundwater adjudications is almost certainly  
22 limited to counsel to the two classes in this case. Having been a member or  
23 several class action attorney bar groups over the past sixteen years (one of which  
24 was statewide through the Consumer Attorneys of California), I know a great  
25 number of class action attorneys. I have never come across a single one with any  
26 experience with groundwater rights.

27           5.       As noted in paragraph seven of my January 27, 2016 Declaration, I  
28 do have substantial prior experience in groundwater-related litigation, which

1 was critical in our ability to function in this matter for over five years without aid  
2 of a retained hydrogeology expert. Furthermore, at no point did Class Counsel  
3 consult with any water lawyers – in making this observation in its April 25, 2016  
4 order, the Court is perhaps confusing the Small Pumper Class Counsel with the  
5 Willis Class Counsel.

6 6. At the time of the hearing on this Motion, it will be just two weeks  
7 short of nine years since my first involvement in this matter.

### 8 **WORK PERFORMED**

9 7. Since January 27, 2016, Class Counsel have performed work on a  
10 variety of tasks. The time was predominantly incurred in preparation of the reply  
11 paperwork in support of the initial fee motion, and preparing for and attending  
12 the hearing on that motion. The opposition brief totaled approximately 45 pages  
13 combined. Given the importance of the motion and the extensive nature of the  
14 defense arguments, Class Counsel prepared a 31-page reply brief, and further  
15 supporting declarations. There were also a couple of ex parte applications made  
16 in conjunction with the briefing and hearing dates, as well as one hearing on  
17 February 24, 2016.

18 8. We also prepared a motion for an order setting the parameters on  
19 terminating our role as Class Counsel, a motion for clarification of the fee motion  
20 ruling including a declaration and reply papers, an opposition to the Ritter  
21 motion to vacate the judgment, as well as attending several hearings on these  
22 matters and preparing subsequent orders for the Court. We also prepared, per  
23 order of the Court, a judicial council Memorandum of Costs, which summarized  
24 the costs detailed in the initial fee motion. The fee bills also include time related  
25 to the preparation of this supplemental fee motion.

26 9. The full nature of that work in detail can be ascertained from the  
27 legal bills I attach hereto as **Exhibit 2** (minimally redacted to protect privilege),  
28 as well as the legal bills from Mr. O'Leary (Exhibit 1 to O'Leary Declaration).

## TOTAL HOURS

10. From January 27, 2016 to date, I have worked 207.8 hours, with an additional 34.9 paralegal hours incurred in my office, under my supervision. Mr. O'Leary has worked at additional 45.3 hours. We also retained attorney Richard M. Pearl to assist with certain aspects of the initial fee motion, and he worked 9.15 hours at a total cost of \$7,091.25. A true and correct copy of Mr. Pearl's invoice is attached as **Exhibit 3**. I reasonably anticipate that we will spend another 15 hours opposing the motion to tax costs, preparing reply papers on this motion, and attending the hearing. I will supply more exact numbers in reply and at the time of the hearing. I have split this 15 hours evenly below between myself and Mr. O'Leary.

11. Based on the foregoing, we request approval of a total of 269.7 hours of attorney time, including the time incurred by Mr. Pearl (whose experience and qualifications are summarized in his January 27, 2016 declaration [Dkt. No. ], and 34.9 hours of paralegal time. The fee request is summarized as follows:

TIMEKEEPER	TOTAL HOURS	HOURLY RATE	TOTAL
Michael D. McLachlan	207.8	\$720	\$155,016
Daniel M. O'Leary	52.8	\$720	\$38,016
Richard M. Pearl	9.15	\$775	\$7,091.25
Paralegals	34.9	\$125	\$4,362.5
<b>TOTAL</b>			<b>\$204,485.75</b>

## LITIGATION COSTS ADVANCED

11. On March 11, 2016, I filed a supplemental declaration addressing costs incurred as of that date. Since that date, my firm has incurred \$1,558.70 in costs. A detail of these costs, excluding interest, is attached as **Exhibit 4**. Mr.



O'Leary has incurred costs of \$279.67, as noted in paragraph 4 of his declaration. The costs for which we seek reimbursement **total \$ 1,838.37.**

12. I have reviewed my cost summary and all of the costs are typical and necessary cost items I charge during litigation, they were incurred in this litigation, and all are covered in my retainer agreement with Richard Wood.

#### **FEE BILLS: TIMEKEEPING**

13. As with the earlier fee bills, these bills for both Mr. O'Leary and myself do not include significant 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. Nor do these bills include all of the attorney time. It is most often the case that Mr. O'Leary and I do not both bill for our communications, and my time always omits administrative time with staff, some telephone calls, review of filings in this case, and substantial e-mail correspondence, among others. The same is true of Mr. O'Leary's bills. The method of time-keeping for the attached bills is as describe in my January 27, 2016 declaration (§§ 37-41).

#### **HOURLY RATE**

14. We request the rate of \$720 hour for the time in question for myself and Mr. O'Leary, and \$775 an hour for Mr. Pearl. The rate of \$720 per hour for attorneys with our background and experience is clearly low in the current market.

15. As I noted in paragraph 42 of my January 27, 2016 declaration, I was approved at a rate of \$690 per hour in early 2015 in an overtime class action matter, *Anderson v. County of Ventura*, C.D. Cal. No. CV 13-03517 SJO (VBKx).

16. 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

1 my caliber and experience are charging and are being awarded, and \$720 per  
2 hour is reasonable, and more likely a good bit below, current market rates. The  
3 same is true of the paralegal rate of \$125 per hour, which is actually a good bit  
4 low compared to many firms.

5 17. There is substantial additional evidence of current fee rates included  
6 in the Pearl Declaration, and my prior declarations this year in support of the  
7 initial fee motion (CITE), all of which is incorporated here in support of this  
8 Motion. The following are additional materials regarding attorney fee rates that  
9 were not included my earlier declaration or that of Richard M. Pearl, dated  
10 January 27, 2016:

11 a. In June of 2015, a small firm received approval in the Central  
12 District of California for partners in excess of \$1,000 per hour, and for junior  
13 partners and other counsel as follows: Sountas-Argiropoulos (admitted 2008;  
14 \$675); Sekhon (admitted 2006; \$675; Keating (admitted 2008; \$650).<sup>1</sup> (Exhibit  
15 5, at Ex. 2, p.1.) Attached as **Exhibits 5** a true and correct copy of the first  
16 application for attorney fees in *In re State Fish Co*, along with Exhibits 1 and 2 to  
17 that application. Attached as **Exhibits 6** a true and correct copy of the court's  
18 order granting that application.

19 b. In 2014, a Los Angeles small firm attorney who was admitted  
20 in 1993, was awarded \$850 per hour on a statutory fee motion in the Los Angeles  
21 Superior Court. I attach as **Exhibit 7** a true and correct copy of the Order in  
22 *Kuwahara v. Gakuen et al.*, LASC Case No. 454896.

23 c. The higher end of the market in Los Angeles is well over  
24 \$1,000 per hour for litigators at or above 20 years of experience, and in excess of  
25 \$750 per hour for associates. I attach as **Exhibit 8** a true and correct copy of a

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26  
27 <sup>1</sup> The admission years cited here are either noted in Exhibit 5 to my  
28 declaration, at Exhibit 1 to the fee application in question, or in one case, I  
accessed the information through the State Bar of California website.

summary of the rates being changed by Gibson, Dunn & Crutcher in Los Angeles. I attach as **Exhibit 9** a true and correct copy of a summary of 2016 hourly rates charged by Los Angeles Attorneys at Milbank, Tweed, Hadley & McCloy.

d. In *Civil Rights Education and Enforcement Center v. Ashford Hospitality Trust, Inc.*, 2016 U.S. Dist. LEXIS 37256 (N.D. Cal. March 22, 2016), an action challenging defendants' hotels' failure to provide wheelchair accessible transportation, in which the Court found the following 2015 hourly rates reasonable:

<u>Years of Experience</u>	<u>Rates</u>
41	\$900
24	750
10	550
8	500
5	430
Paralegal	250

18. The rate of \$500 (applied by the Court in its April 25, 2016 order) is below market rates for essentially all of the time incurred on this matter, and certainly should not be used for time in 2016. Going back to the period of 2005 to 2008 – at a time when I had many fewer years' experience -- \$500 per hour was a reasonable lower-range rate for work on a fairly basic consumer class case. In *Kaplan v. Citibank, N.A.* (LASC Case No. BC / Amer. Arb. Assoc. Case No. 11 128 1007 07), I litigated this small consumer class case in state court (all merits issues litigated through Final Award at AAA), in which substantially all of my compensated time was incurred in 2005 through 2007. After prevailing, my time was approved by the arbitrator, and then subsequently by the Court, at a rate of \$500 per hour.

19. In 2008, the rate of \$550 per hour was deemed reasonable for Randy Resnick, of the Law Offices of Randy Resnick in a case pending the Central District of California (*Wang v. Chinese Daily News, Inc.*, CV04-1498). I have checked the state bar website, which states that Mr. Renick was admitted in California in the same month as me (and one year later than Mr. O'Leary). He graduated from Southwestern School of Law. The high-end rates approved in this case, for work done from 2004 through 2008, was \$800 per hour. I attach a true and correct copy of the Order in *Wang* as **Exhibit 10**.

20. My declaration of January 1, 2014 contained evidence relevant to rates in Los Angeles and California in the years 2013 and earlier. That information is relevant foundation to current rates. Since it is more remote in the record sizeable record for this matter, I attach that declaration as **Exhibit 11**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27<sup>th</sup> day of June, 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: 2016.06.27 13:10:37 -07'00'

Michael D. McLachlan



## **Exhibit 2**

# Law Office of Michael D. McLachlan, APC

# INVOICE

44 Hermosa Avenue  
Hermosa Beach, CA 90254  
Phone 310.954.8271 Fax 310.954.8271

DATE: January 2016

**Bill To:**

Wood v. Los Angeles County Waterworks et al.

**For:**

Legal services, Antelope Valley Groundwater Cases

DESCRIPTION	HOURS	PARALEGAL
1/27: [starting at 8:45 a.m.] Phone calls and emails with client re incentive issues .3; review and analysis of KD hearing transcript summary memo, and several transcripts for fee motion .4; emails with DO re motion issues .3; continue drafting of fee motion, edit declarations ISO same, review and analysis of exhibits for motion 6.4; emails with RK re fee motion .1;	7.5	
1/27: Review and analysis of AV hearing transcripts for fee motion 3.4; assist with fee motion exhibit preparation and review 2.7 KD		6.1
1/28: Phone call with DO [REDACTED] .5; phone call from Joyce re Ritter and appeal .3; phone call to Quass re TT conflict .2; emails with Pearl re fee motion .1; emails with RGK re Ritter issues .1;	1.2	
1/29: Brief research on expert conflict issue and email to JD and MF re Thompson project .3; review BB letter, email to client re same .1; emails with LO counsel re Lane challenge .1; review Stip and long email to Chester re Lane challenge .3; review and analysis re Davis voting proposal, emails with DO re same .2; emails with DO re Watermaster call .2; call from administrator and email to PWS re non payment .1; conf with KD re preparing court binders for hearing .1; email to same re filing and hearing binder .1; emails with counsel re opp to Ritter motion .4; review Fife email re Ritter issues, email to DO re same .1;	2.0	
1/30: Draft and revise long email to Fife re AGWA and Ritter .4;	.4	
1/31: Commence preparation of opposition to Ritter motion to set aside judgment, MM declaration 1.8; legal research on post judgment jurisdiction issues .9; review Lane motion and emails with RGK re handling same .3;	3.0	
TOTAL ATTORNEY HOURS	14.1	
TOTAL PARALEGAL HOURS		6.1

# Law Office of Michael D. McLachlan, APC

# INVOICE

44 Hermosa Avenue  
Hermosa Beach, CA 90254  
Phone 310.954.8271 Fax 310.954.8271

DATE: February 2016

**Bill To:**

Wood v. Los Angeles County Waterworks et al.

**For:**

Legal services, Antelope Valley Groundwater Cases

DESCRIPTION	HOURS	PARALEGAL
2/1: Attend status conference .3; phone call with MD re watermaster, Robar and settlement issues, memo to file .5; phone call with DO re same and Ritter depo and motion .7; emails with Adair re settlement issues .3; review and summary of Ritter transcript 1.2; email to Adair re settlement .2; prepare opp to Ritter motion to amend judgement and MM declaration in support of same, emails with DO re same 3.8; call and emails with Wang n/c	7.0	
2/2: Further research and analysis re fee motion issues on rates for reply .5; emails with counsel re Phelan and watermaster issues .2;	.7	
2/3: Review and analysis of Davis letter on watermaster .1; phone call and emails with RK re appeal .2; emails with RW re filing issues .1; emails with JD re notice of entry .1; conf with KD re handling judgment filing .1; review filings of last two days .1;	.7	
2/4: Phone call with DO re fee motion [REDACTED] .7; emails with defense counsel and analysis re court appointed expert non-payment .2;	.9	
2/5: review final transcript and email to KD re preparation of new Exhibit 18 for Ritter motion .2; review of new Ex. 18 and prepare MM supp decl. .4; many emails with Brumfield and DO re Ritter issues .5; phone call from RGK re Lane, Ritter, appeal and settlement issues, memo to file .9; legal research on multiplier cases for reply 1.5;	3.5	
2/5: Review and analysis of transcripts re Ritter, assist MM re exhibits 1.0		1.0
2/6: Emails to DO [REDACTED] .2;	.2	
2/8: Emails with counsel re Robar issues .2; legal research on multiplier cases and 1021.5 issues 1.7; emails with Brumfield re hearing .1; review of reply and analysis or prior Ritter record, email to DO re handling hearing on Ritter motion .6;	2.6	
2/9: Prepare for court hearings 1.1; emails with Pearl re fee motion .1;	1.2	
2/10: Prepare for hearings .5; travel to and attend hearing on Ritter motions, settlement and other matters legal 3.4; research on multiplier cases and 1021.5 issues 1.2; phone call from RGK re watermaster and settlement issues .5;	5.6	



2/11: Analysis re various fee motion issues, review of 12 cases on various fee issues for reply 1.1; emails with BB .1; commence preparation of multiplier case summary spreadsheet .6; conf with KD re working on same .1;	1.9	
2/11: Review of many multiplier cases and input data re same into Excel summary table 1.8		1.8
2/12: Emails with client about [REDACTED], [REDACTED] .2; review and analysis of multiplier summary table, prepare notes on changes to same .6; email to DO re using same in reply and hearing .1; phone call from RGK re watermaster .2; review Cortner declaration and emails with counsel on handling Robar proveup .2;	1.3	
2/13: Emails to counsel and administrator re non payment .1;	.1	
2/14: Attention to review of additional multiplier cases and memo to KD re modification of summary table 1.0;	1.0	
2/15: Supplement multiplier table, and pull new data columns 2.4		2.4
2/15: Continue review of multiplier cases, and research re relevant federal cases 2.6; email to DO re current analysis of same .2; emails with client re reply and trip .1;	2.9	
2/16: Review and analysis of Robar settlement documents and trial exhibits, long email to KB re prove up .4; emails with Carson and review SP settlement .1; emails with GCG re invoice payment status .1; review Cortner materials and emails with counsel re Robar claim .1;	.7	
2/17: Attend watermaster conference call, email to BB and RGK re SP class issues 1.7; emails with sett comm re Robar .1;	1.8	
2/18: Review Continental case .1; phone call with DO re judgment, watermaster and fee motion issues .7; review and analysis of multiplier case division and review, emails to DO re same .5;	1.3	
2/19: Call to BB re watermaster issues, email to same re contacts list .3; call from Carson re extension and Garden City bills .2; phone call with DO re [REDACTED] .5; review case filings of this week .1;	1.1	
2/22: Phone calls with DO re fee motion continuance and legal issues .6; analysis re schedule and email to Carson re hearing .2; email to DO re [REDACTED] .3; email to DO re motion to force payment of administrator .2; phone call from CM Landsgaard re [REDACTED] and email to same .2;	1.3	
2/23: Review ex parte notice, call to RW re same .1; phone call from RK re hearing issues, emails with same .2; phone calls with DO re fee motion hearing issues, timing .4; phone call to RZ and A. Ramos re Steinbeck case, email to DO re same .3; call to JD re same, memo to file .2; preparation of opposition to ex parte, and MM decl., review of relevant file materials 2.2; emails to DO re fee motion timing problems .1; review ex parte applications, research on [REDACTED], and email to DO re same .7; phone call with JD re hearing .1; phone call with DO re ex parte strategy .3; many calls and emails from JD, DO, TB, re ex parte and hearing dates, analysis and phone calls to counsel re same .8; review and revise stip, emails with counsel re same .3;	5.7	

2/24: Attend ex parte hearing .3; emails with DO re same .1; phone call to DO re fee motion issues, memo to file .5; phone call to RK re fee hearing and appellate issues, settlement .5; review and analysis of Ritter order, emails to DO re same .1; emails with Pearl re fee motion timing changes, and further issues .3; review draft opp to Willis motion, emails with counsel re same .2; email to DO re same .1; review and analysis re Willis 2011 fee order and email to DO re [REDACTED] .3; legal research on [REDACTED], email to DO re same .7; email to Pearl re public entity and taxpayer issues, arguments for same .3; review and analysis of PWS allocation, email to Penny, and email to DO re analysis of same .2;	3.6	
2/25: Review and analysis of Willis fee motion, emails with DO re same .3;	.3	
<b>TOTAL ATTORNEY HOURS</b>	<b>45.4</b>	
<b>TOTAL PARALEGAL HOURS</b>		<b>5.2</b>

# Law Office of Michael D. McLachlan, APC

# INVOICE

44 Hermosa Avenue  
Hermosa Beach, CA 90254  
Phone 310.954.8271 Fax 310.954.8271

DATE: March 2016

**Bill To:**  
Wood v. Los Angeles County Waterworks et al.

**For:**  
Legal services, Antelope Valley Groundwater Cases

DESCRIPTION	HOURS	PARALEGAL
3/1: Phone call and email to Lee Mc re Willis .1; emails with counsel and administrator re GCG payments .1;	.2	
3/2: Analysis re Willis fee motion issues and email to counsel re same .3; phone call from RGK re Willis motion, Lane, and appellate issues, many emails to same, memo to file .7; review filing of past week .1; emails with Pearl re new fee data, review of new survey .2;	1.3	
3/4: Phone call from RGK re Lane and appellate issues .4;	.4	
3/7: Review DO draft of taxpayer section for reply .2; review and analysis of new Pearl fee survey documents, research on pacer re central district opinions cited and long email to RP and DO re same 2.4; phone call with DO re handling new fee surveys and taxpayer status issue in reply .5; review and revise draft decl from RGK re settlement, many emails to same and DO .4; many emails with DO re reply issues on fee motion .2; review and execute revised decl. for RGK .1;	3.8	
3/8: Review and analysis of Willis record designation .3; phone call and emails with RGK and supp declaration .3; brief research on timing issues and phone call to DO re [REDACTED] issues on fee motion .5; email to Dunn et al re same .1; phone call with RP re new fee surveys and supplemental declaration .5; emails with PWS re ex parte on administrator payment .1;	1.8	
3/9: Phone call with JD re appeal issues, memo to file .2; phone call from Landsgaard re watermaster and class issues, memo to file .8; legal research on post judgment duties of class counsel 1.7; prepare motion for order terminating representation 1.3; emails with RWS re administrator payment .1; many emails with counsel re appellate designation issues .4;	4.5	
3/10: Phone call with June Ailin .4; analysis re transcript designations and email to KD re instructions for summary of same .3; conf with KD re transcript issues .1; review and analysis summary .2;	1.0	
3/10: Conf with MM, review and summary or record designations 1.9 KD	0	1.9



3/11: Email to JD re transcript designations, further review of summary .2; emails with defense counsel on administrator and prepare notice .2; review and analysis of cost summary and prepare supp. decl of MM re fee motion .3;	.7	
3/11: Continue record designation summary and review 3.0 KD	0	3.0
3/12: Complete Will and Phelan record designation summary and analysis KD	0	1.2
3/14: Emails with TT re conflict .1; review and analysis of Lemieux fee opposition .4;	.5	
3/15: Review and analysis of D40 opp to fee motion .6; review Willis opp .1; emails with DO re opps to fee motion .1	.8	
3/16: Review and analysis of Willis Civ App Stmt and exhibits, email to counsel re standing issues, email to DO .3; phone call from Kuhs re Lane and fee issues, memo to file .3; phone call with DO re fee motion issues .3; phone call to J Krattiger re fee motion issues, memo to file .2; review and analysis of historical settlement emails, prepare summary memo re same 2.9; email to DO re same .1; legal research on use of [REDACTED] in fee motion, email to DO re same 1.9; legal research on class costs issues, and incentive awards, review relevant cases, email to DO re same 2.5; prepare fee motion reply section on costs 1.4; emails with JD re brief length .1; review and analysis of Gov Code election sections and email to DO re same .4;	10.4	
3/17: Further review and analysis of D40 opp, prepare outline of work allocation .9; phone call with DO re same .3; phone call from RGK re Lane hearing, memo to file .2; research on page limits and prepare ex parte application re oversize brief .5; email to DO re reply brief work allocation .2; legal research on recoverable costs in 1021.5 action and 1033.5, prepare blurb for reply on same, email to DO 2.4; emails with RGK re fee motion issues, analysis of value of settlement for PWS .2; review of trial transcripts re Willis expert evidence and email to DO re use of same in reply .3; email with Leckie re settlement .1;	5.1	
3/18: Prepare notice of Errata .2; review ex parte of D40, court rules, and prepare opposition to same 1.0; emails with Quass re Thompson .1; review Willis opp to motion to terminate and email to RK .1;	1.4	
3/21: Prepare for hearing .2; emails with Pearl re reply .1; attend hearing on ex partes and Lane motion .8; phone call from Kuhs .2; emails to DO re hearing, review MO .1;	1.4	
3/22: Phone call from CM Chiodo re [REDACTED] .2; emails with same .1; phone call with DO re reply .3; review transcripts, many emails with DO re reply brief and attention to drafting same 8.8	9.4	
3/22: Review of case hearing transcripts for reply brief evidence 3.0 KD	0	3.0
3/23: Phone call from CM Quigley re class issues .2; phone calls with DO re reply .4; review and analysis of historical filings of PWS and hearing transcripts on class issues 2.4; review Ailin brief, email to DO .1; many (25+) emails with DO re reply brief issues .4; analysis of evidence and drafting of reply brief, including fact section and draft intro 6.2	9.7	

3/23: Conf with MM, review of case hearing transcripts for reply brief evidence 2.5 KD	0	2.5
3/24: Continue drafting reply brief, MM decl., analysis of evidence and many emails with DO re same 9.5	9.5	
3/25: Complete drafting and revision of reply brief, MM decl, analysis of allocation of Iodestar, many (30+) emails with DO re same 8.6; prepare ex parte re oversized brief .1;	8.7	
3/27: Emails to DO re fee hearing issues .2;	.2	
3/28: Emails with DO re fee hearing issues, [REDACTED] .5;	.5	
3/28: Download and flag all cases cited by defendants in opposition, preparation of hearing binder re same, with index 4.8 KD	0	4.8
3/29: Phone calls with DO re Powerpoint .4; phone call with client re hearing .2; review evidence for Powerpoint, many emails with DO re same .9; email and call with client re hearing .2; review and analysis of PWS primary cases on allocation, email to DO re same .1; review PWS multiplier cases, email to DO re PP intro .6; review of AV Press articles .2; prepare supp. decl. of DO .4; emails with client re incentive award .2; prepare notice of unavailability .1; many emails with DO on PP and argument issues, analyze evidence for PP .6; full review of PP draft and prepare memo to DO re changes to same 1.2;	5.1	
3/29: Prepare hearing binder and index for fee motions 1.6	0	1.6
3/30: Research and review federal cases on incentive awards, email to DO re same .9; review revised PP .8; many emails with DO re hearing issues .4	2.1	
3/31: Review evidentiary objections .2; review CRC and emails with DO re objections .2; review PP revisions and emails with DO .5; review 1021.5 cases, email excerpts to DO for PP .5; prepare for fee motion hearing 2.4	3.8	
<b>TOTAL ATTORNEY HOURS</b>	<b>82.3</b>	
<b>TOTAL PARALEGAL HOURS</b>		<b>18.0</b>

# Law Office of Michael D. McLachlan, APC

# INVOICE

44 Hermosa Avenue  
Hermosa Beach, CA 90254  
Phone 310.954.8271 Fax 310.954.8271

DATE: April 2016

**Bill To:**  
Wood v. Los Angeles County Waterworks et al.

**For:**  
Legal services, Antelope Valley Groundwater Cases

DESCRIPTION	HOURS	PARALEGAL
4/1: Preparation for hearing 2.3; travel to hearing and review of defense cases, attend hearing on fee motions and motion to be relieved 10.1;	12.4	
4/7: Review watermaster filings .1;	.1	
4/8: Review MO and emails with RW re corrections .1;	.1	
4/13: Review and analysis of watermaster motion and decls, email to DO and RGK re same .3; attend watermaster teleconference 1.1; emails with client re service on advisory comm .1;	1.5	
4/14: Emails with client on watermaster issues .2	.2	
4/15: Participate in watermaster call, memo to file 1.0; review Cortner decl n/c	1.0	
4/21: Emails with DO re supp fee motion .1;	.1	
4/25: Review and analysis of fee ruling, email to DO re same .8; email to Pearl re same .1;	.9	
4/26: Phone call from client .1; phone call with DO re appeal of fee ruling and supp motion for fees .3; further review and analysis of fee order and prepare memo re prevailing party issues, brief legal research re same 1.2; review and analysis of Cal Water public documents and corporate structure, prepare summary of same .7; analysis of judgment terms and fee ruling, prepare memo for motion for clarification 1.4	3.7	
4/27: Phone call with DO re cost memo and entry to judgment issues .2; email to DO re same .2; review of record, CRC and legal research on notice of entry, long email to DO on handling cost memo issues 1.1	1.5	
4/28: Analysis of 1033.5 issues, Nelson case, and email to DO re cost memo .5; research on CRC provisions impacting cost recovery, emails to DO re relevant caselaw .9; email with RGK re defect in notice of entry .2;	1.6	



<b>4/29: Phone call with DO re cost memo, motion for clarification, and appellate issues .6; emails with DO re cost issues and clarification motion .3; email to JD re notice of entry problem .1; research and analysis re Gov code issues relevant to clarification motion .4; analysis of DO costs .5;</b>	<b>1.9</b>	
<b>4/30: Emails with DO re supp fee motion .1;</b>	<b>.1</b>	
<b>TOTAL ATTORNEY HOURS</b>	<b>25.1</b>	
<b>TOTAL PARALEGAL HOURS</b>		<b>0</b>

# Law Office of Michael D. McLachlan, APC

# INVOICE

44 Hermosa Avenue  
Hermosa Beach, CA 90254  
Phone 310.954.8271 Fax 310.954.8271

DATE: May 2016

**Bill To:**  
Wood v. Los Angeles County Waterworks et al.

**For:**  
Legal services, Antelope Valley Groundwater Cases

DESCRIPTION	HOURS	PARALEGAL
5/2: Phone call with DO re fee ruling motion for clarification .3; emails with JD re amending judgment .1; many emails with DO re motion for clarification of fee order .3; prepare and revise motion for clarification, and MM decl 1.8	2.5	
5/3: Phone call with RGK re watermaster and appellate issues .5; review motion to amend judgment .1;	.6	
5/4: Emails with DO re opposing nunc pro tunc .2; further research on joint and several for supp motion, emails with DO re same .9;	1.1	
5/5: Review DO draft opp to motion to amend judgment, email to same .2;	.2	
5/10: Review response to clarification motion and emails with DO re same .2; conf with KD re cost memo .2; analysis re handling cost memo, brief research on issues re same .5	.9	
5/11: Legal research on amendment of judgment .9; emails with DO re same .1; attention to cost memo, conf with KD and analysis re handling of same 1.8	2.8	
5/11: Assist MM in analysis and summary of costs for memo of costs 5.6		5.6
5/12: Amend opp to motion to amend for filing .3; phone call with KL re fees issues, memo to file .4; phone call with AG re same .1; email to DO re cost issues .1; legal research on cost issues and prepare brief re same, review prior filings re same 1.0;	1.9	
5/13: Email to DO on supp fee motion .1	.1	
5/16: Phone call with RP re fee motion issues .3; email to DO re same .1; review and analysis of AV United hearing notices .2;	.6	
5/17: Prepare draft order on clarification motion, emails with DO re same .3	.3	

5/18: Review and analysis of Lemieux opp, and preparation of reply brief and MM declaration, including brief legal research on several liability 1.7; emails with DO re same .1; analysis re PWS allocations and prepare proposed order 2, email to DO re same .3; phone all from DO re motion for clarification .2; phone call with Lemieux re fee allocation and payment issues, memo to file .2; email from DO and modify Reply brief and two proposed orders .4; review D40 reply on amended J, email with DO re motion to tax .2; email to JT re fee order n/c	3.1	
5/19: Email to DO re hearings and work allocation .1;	.1	
5/20: Review D40 and Willis filings, emails to DO re legal issues and hearing .2; review AV United and other filings this week .2; emails with DO re handling motion to amend .2; analysis re Judgment and emails with DO re amendment tactics and impact on fees and costs .5;	1.1	
5/24: Phone call with DO .2; prepare for hearing .5; legal research on substantive vs. clerical amendments and appellate timing issues 1.4; review evidence and objections re AV United Motion .3; review Robar hearing filings .1;	2.5	
5/25: Travel to and attend meeting with DO and court hearings 4.5;	4.5	
5/26: Emails with administrator .1;	.1	
5/31: Review CRC 3.1700 and analysis of timing on motion to tax, email to DO re same .3; review motion to tax, emails with DO re handling same .2	.5	
<b>TOTAL ATTORNEY HOURS</b>	<b>22.9</b>	
<b>TOTAL PARALEGAL HOURS</b>		<b>5.6</b>



# Law Office of Michael D. McLachlan, APC

# INVOICE

44 Hermosa Avenue  
Hermosa Beach, CA 90254  
Phone 310.954.8271 Fax 310.954.8271

DATE: June 2016

**Bill To:**  
Wood v. Los Angeles County Waterworks et al.

**For:**  
Legal services, Antelope Valley Groundwater Cases

DESCRIPTION	HOURS	PARALEGAL
6/3: Email from JD and review watermaster material .1; VM from JD and email to DO re same .1;	.2	
6/7 Emails to DO re supp fee mtn issues .4; phone call with JD re fee order, memo to file .2	.6	
6/8: Review and analysis of May 25 hearing transcript and prepare proposed order .5; phone call to DO re proposed order .3; brief research on appellate timing issues .4; review court orders .1; phone call to DO re fee motion, settlement and gov code election issues .5; legal research on govt code elections issues and emails with KL re same .9; emails with PWS re clarification order .3; review and analysis of [REDACTED] and email to DO re same .3;	3.3	
6/9: Analysis re govt code election issue, review declarations, and emails with KL re same .4; revise proposed order and prepare notice of lodging .2; email and call with Dunn .1; prepare objection .1; call to DO .2;	1.0	
6/20: Review of court docket, email to DO re issues with same .2;	.2	
6/22: legal research on [REDACTED] supp fee motion .6; phone call with DO re [REDACTED] .5;	1.1	
6/23: Emails and call with DO re supp. fee motion .4;	.4	
6/24: Emails and call with DO re supp. fee motion .4; prepare supp fee motion 2.0	5.4	
6/25: Continue supp fee motion draft, MM declaration and review and analysis of exhibits, brief legal research for same 3.8	3.8	
6/26: Continue supp fee motion draft, MM declaration and review and analysis of exhibits, brief legal research for same 2.0	2.0	
TOTAL ATTORNEY HOURS	18	
TOTAL PARALEGAL HOURS		0

## **Exhibit 3**

LAW OFFICES OF  
**RICHARD M. PEARL**  
1816 FIFTH STREET  
BERKELEY, CA 94710

TEL: (510) 549-0810  
FAX: (510) 548-3143  
E-MAIL: rpearl@interx.net

February 9, 2016  
By email only

Mike McLachlan  
Law Offices of Michael D. McLachlan, APC  
44 Hermosa Avenue  
Hermosa Beach, CA 90254  
mike@mclachlan-law.com

**STATEMENT FOR SERVICES RENDERED**

For Services Rendered  
June 29, 2015 – January 26, 2016  
re *Antelope Valley* matter

Current Charges

FEES

9.15 hours, per attached itemization @ \$775 per hour \$7,091.25

**BALANCE DUE:** **\$7,091.25**

Mike McLachlan  
Statement for Services Rendered  
February 9, 2016  
Page 2

<u>DATE</u>	<u>DESCRIPTION OF SERVICES</u>	<u>HOURS</u>
	(by Richard M. Pearl)	
6/29/15	Exchange emails w/ Mike McLachlan (MM) re facts, issues, etc;	.10
12/9/15	Exchange emails w/ MM re 1021.5 issue	.10
12/17/15	Review emails from MM re facts; review prior fee awards in case	.20
12/30/15	Review email from MM and documents attached	.10
1/8/16	Phone conference w/ MM re schedule	.10
1/15/16	Phone conference w/MM re my declaration, etc.	.60
1/21/16	Review draft MM declaration; prepare notes re argument; prepare my declaration; phone conf. w/ MM re declarations	1.00
1/22/16	Review various pleadings and orders; revise MM and my declarations	1.25
1/23/16	Prepare my declaration; revise MM declaration, prepare email to MM re same	2.10
1/24/16	Review emails re my declaration	.10
1/25/16	Phone conf. w/ MM re declarations; review emails re declarations, attachments; revise MM and my declarations; review Daniel O'Lcary declaration, Judgment	1.90
1/26/16	Review materials from case; revise my declaration; exchange emails re cases cited	1.60
<b>TOTAL HOURS</b>		<b>9.15</b>



## **Exhibit 4**

<u>DATE</u>	<u>VENDOR</u>	<u>NOTES</u>	<u>AMOUNT</u>
3/17/2016	Glotrans	ex parte brief size	\$24.00
3/17/2016	LASC	filing fee ex parte	\$60.00
3/25/2016	CalWest	LASC (CW131614)	\$25.00
3/25/2016	Glotrans	reply -- fee motion (3x)	\$72.00
3/25/2016	LASC	filing fee ex parte	\$60.00
3/25/2016	Glotrans	ex parte reply brief	\$24.00
4/1/2016	Lexis	March	\$273.66
4/1/2016	Taxi	SJO to court	\$22.32
4/1/2016	Parking	LAX (fee motion)	\$24.71
4/1/2016	San Jose Joes	dinner airport (DOL and MM)	\$44.01
4/11/2016	Melissa Crawford CSR	April 1, 2016 hearing	\$178.00
4/21/2016	LASC	filing fee mtn for clarification	\$60.00
5/1/2016	Lexis	May	\$161.00
5/2/2016	Glotrans		\$24.00
5/11/2016	Glotrans		\$24.00
5/12/2016	Glotrans		\$48.00
5/18/2016	Glotrans		\$72.00
5/25/2016	Parking	hearings, Mosk	\$20.00
6/7/2016	Coalition Court Reporters	May 25, 2016 transcript	\$114.00
6/9/2016	Glotrans		\$48.00
6/21/2016	Glotrans		\$24.00
6/22/2016	Glotrans		\$24.00
6/25/2016	LASC	filing fee supp fee motion	\$60.00
6/26/2016	Glotrans		\$72.00
		TOTAL AFTER March 11, 2016	<b>\$1,558.70</b>

## **Exhibit 5**

David M. Stern (State Bar No. 67697)  
Michael L. Tuchin (State Bar No. 150375)  
Colleen M. Keating (State Bar No. 261213)  
Jonathan M. Weiss (State Bar No. 281217)  
KLEE, TUCHIN, BOGDANOFF & STERN LLP  
1999 Avenue of the Stars, Thirty-Ninth Floor  
Los Angeles, California 90067  
Telephone: 310-407-4000  
Facsimile: 310-407-9090  
Email: dstern@ktbslaw.com  
mtuchin@ktbslaw.com  
ckeating@ktbslaw.com  
jweiss@ktbslaw.com

*Attorneys for R. Todd Neilson, Chapter 11 Trustee*

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re  
STATE FISH CO., INC. and  
CALPACK FOODS, LLC,

Debtors.

Case Nos. 2:15-bk-11084-SK  
2:15-bk-11085-SK  
Jointly Administered

Chapter 11

**FIRST INTERIM APPLICATION OF  
KLEE, TUCHIN, BOGDANOFF & STERN  
LLP FOR ALLOWANCE AND PAYMENT  
OF FEES AND EXPENSES INCURRED  
AS BANKRUPTCY COUNSEL FOR THE  
CHAPTER 11 TRUSTEE FOR THE  
PERIOD FEBRUARY 27, 2015 THROUGH  
MAY 31, 2015; DECLARATION OF  
JONATHAN M. WEISS IN SUPPORT  
THEREOF**

THIS FILING APPLIES TO:

- ☒ ALL DEBTORS  
☐ SPECIFIED DEBTOR  
☐ STATE FISH CO., INC.  
☐ CALPACK FOODS, LLC

**Hearing**

Date: July 9, 2015  
Time: 10:00 a.m.  
Judge: Hon. Sandra R. Klein  
Place: U.S. Bankruptcy Court  
255 E. Temple St., Ctrm. 1575  
Los Angeles, CA 90012

KLEE, TUCHIN, BOGDANOFF & STERN LLP  
1999 AVENUE OF THE STARS, THIRTY-NINTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
TELEPHONE: 310-407-4000



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KLEE, TUCHIN, BOGDANOFF & STERN LLP  
1999 AVENUE OF THE STARS, THIRTY-NINTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
TELEPHONE: 310-407-4000

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KLEE, TUCHIN, BOGDANOFF & STERN LLP  
1999 AVENUE OF THE STARS, THIRTY-NINTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
TELEPHONE: 310-407-4000

**TO THE HONORABLE SANDRA R. KLEIN, UNITED STATES BANKRUPTCY JUDGE;  
THE OFFICE OF THE UNITED STATES TRUSTEE; THE CHAPTER 11 TRUSTEE;  
AND OTHER PARTIES IN INTEREST:**

Klee, Tuchin, Bogdanoff & Stern LLP (“KTB&S”), bankruptcy counsel for R. Todd Neilson, the chapter 11 trustee (the “Trustee”) of the bankruptcy estates of State Fish Co., Inc. (“State Fish”) and Calpack Foods, LLC (“Calpack” and collectively, the “Debtors”), hereby respectfully applies for an order (1) allowing interim compensation to KTB&S, for services rendered and expenses incurred during the period from February 27, 2015 through May 31, 2015 (the “First Interim Period”), in the total amount of \$676,334.70, comprised of fees for services rendered of \$651,404.00 and expenses incurred of \$24,930.70; (2) authorizing the Trustee to pay KTB&S 80% of its approved fees and 100% of its approved costs when, in the Trustee’s reasonable discretion, there is adequate cash in the estates to make such payments; and (3) granting KTB&S any other relief that this Court deems necessary and appropriate (the “Application”). The foregoing amounts do not include \$19,933.00 representing 38.60 hours of work that has been written off in the exercise of billing discretion and is reflected as “No Charge” on the billing records appended hereto.

KTB&S submits this Application pursuant to Bankruptcy Code Section 330 and 331, Federal Rules of Bankruptcy Procedure 2002(a)(6) and 2016, Local Bankruptcy Rule 2016-1, and the *Guidelines for Reviewing Applications for Compensation & Reimbursement of Expenses Filed Under 11 U.S.C. § 330*, 28 C.F.R. § 58, Appendix A (the “U.S. Trustee Guidelines”).<sup>1</sup> This Application conforms to the requirements of Local Bankruptcy Rule 2016-1(a) for interim fee applications. See Declaration of Jonathan M. Weiss (attached hereto) ¶ 9. In support of the Application, KTB&S respectfully represents and shows the following:

---

<sup>1</sup> The Revised U.S. Trustee Guidelines, set forth in 28 C.F.R. § 58, Appendix B, do not apply to these cases, because these cases involve less than \$50 million in assets and \$50 million in liabilities.



I.

SUMMARY OF KTB&S'S ENGAGEMENT

KTBS is a national boutique law firm that specializes in business reorganizations, corporate insolvency, commercial litigation, bankruptcy-related asset acquisitions, real estate matters in the bankruptcy context, bankruptcy litigation and appellate advocacy, expert witness services in the bankruptcy field and corporate transactions. These are areas in which KTB&S attorneys have extensive experience. In the insolvency area, KTB&S represents debtors, trustees, creditors, equity holders, committees, trustees, landlords, potential acquirers of assets, and other parties with interests in financially distressed businesses. KTB&S is located in Los Angeles, California. Attached hereto as Exhibit 1 is a summary of the background and qualifications of the KTB&S attorneys principally responsible for rendering services to the Trustee during the First Interim Period.

On March 10, 2015, a week after he accepted his appointment, the Trustee, on behalf of the bankruptcy estates of the Debtors, filed the *Application of R. Todd Neilson, Chapter 11 Trustee, for Order Authorizing Employment of Klee, Tuchin, Bogdanoff & Stern LLP as Bankruptcy Counsel Nunc Pro Tunc to February 27, 2015* [Dkt. No. 199] to employ KTB&S as the Trustee's bankruptcy counsel. On April 1, 2015, this Court approved KTB&S's employment as the Trustee's bankruptcy counsel, *nunc pro tunc* to February 27, 2015, pursuant to the *Order Authorizing Employment of Klee, Tuchin, Bogdanoff & Stern LLP as Bankruptcy Counsel to the Trustee Nunc Pro Tunc to February 27, 2015* [Dkt. No. 254] ("Employment Order").

In the Employment Order, the Court found that, except as otherwise disclosed, KTB&S is a "disinterested person" as that term is defined in Bankruptcy Code section 101(14), who does not hold or represent an interest adverse to the estates and does not have any connection either with the Debtors, their creditors, or any other party in interest in these cases or with their respective attorneys or accountants, or with the United States Trustee or any person employed in the Office of the United States Trustee. KTB&S supplemented its disclosures twice, on April 20, 2015 and April 22, 2015, to disclose certain connections to Karlin Real Estate, LLC, with whom the Trustee had entered into a term sheet for postpetition financing. Dkt. Nos. 276 & 282.

The KTB&S attorneys who have been principally responsible for rendering services to the Trustee have been David M. Stern, Michael L. Tuchin, Colleen M. Keating and Jonathan M. Weiss. Other KTB&S attorneys have rendered services on discrete matters from time to time, as necessary. In general, tasks have been allocated among KTB&S's attorneys based upon the necessary expertise required for the specific task. Whenever feasible, work was allocated to attorneys and/or KTB&S's paralegal with lower hourly rates.

KTBS has neither received nor been promised any compensation for the services that it has rendered or the expenses that it has incurred in these cases, and KTB&S has not previously applied to this Court for payment of its expenses and fees in these cases. Furthermore, neither KTB&S nor any member of KTB&S has any agreement or understanding of any kind to divide, pay over, or share any portion of the fees to be awarded to KTB&S with any other person or attorney except as among members and associates of KTB&S.

## II.

### SUMMARY OF COMPENSATION REQUESTED

#### A. Interim Billing.

The following table summarizes the monthly fees and expenses incurred by KTB&S during the First Interim Period:

Period	Fees and Expenses Incurred
February 27-28, 2015	Total: \$7,101.00 Fees: \$7,101.00 Expenses: \$0.00
March 1-31, 2015	Total: \$175,684.13 Fees: \$170,850.50 Expenses: \$4,833.63
April 1-30, 2015	Total: \$290,646.26 Fees: \$283,615.00 Expenses: \$7,031.26

Period	Fees and Expenses Incurred
May 1-31, 2015	Total: \$202,903.31 Fees: \$189,837.50 Expenses: \$13,065.81
<b>Total:</b>	<b>Total:</b> \$676,334.70 <b>Fees:</b> \$651,404.00 <b>Expenses:</b> \$24,930.70

As summarized in the table above, KTB&S incurred fees and expenses totaling \$676,334.70 and has not received any payments therefore. Accordingly, the balance owed to KTB&S for services rendered and expenses incurred during the First Interim Period is \$676,334.70.

Exhibit 2 lists the billing rates for each of the individuals who performed services for the Trustee and summarizes the hours billed and fees incurred by each of those individuals during the First Interim Period.

Exhibit 3 contains a monthly summary of the total fees incurred in each activity category during the First Interim Period.

Exhibit 4 contains a monthly itemization and summary of the total expenses incurred in each expense category during the First Interim Period.

Exhibit 5 contains a complete chronological listing of each billing entry – sorted by activity category – showing the services that KTB&S rendered during the First Interim Period. KTB&S has redacted portions of the descriptions of its services that are contained in the line-item listings in Exhibit 5 to avoid revealing information that would put the Trustee or the Debtors' estates at a disadvantage in pending or future litigation. Complete descriptions for these line items will be available on request at the time KTB&S files its final fee application, to the extent making such information available does not prejudice the Trustee or the Debtors' estates.

III.

BACKGROUND<sup>2</sup>

A. General Background.

On January 26, 2015 (the “Petition Date”), the Debtors each filed voluntary chapter 11 bankruptcy petitions in this Court. This Court entered an order jointly administering the Debtors’ cases on January 30, 2015. Dkt. No. 65.

On February 27, 2015, the United States Trustee filed a *Notice of Appointment of Chapter 11 Trustee* appointing the Trustee as the chapter 11 trustee in these cases. Dkt. No. 162. Also on February 27, 2015, this Court entered its *Order Approving Appointment of Chapter 11 Trustee*. Dkt. No. 167. The Trustee accepted his appointment on March 3, 2015. Dkt. No. 175. The Trustee retained KTB&S as his bankruptcy counsel, and Berkeley Research Group, LLC (“BRG”) as his financial advisors and accountants. Dkt. Nos. 199, 200. The Trustee subsequently retained Michael M. Ozawa and Robert E. Bates, through Avant Advisory Partners, LLC, as consultants. Dkt. No. 242.

Immediately after his appointment, the Trustee and his counsel held separate meetings with each of the primary parties in these cases: (i) the Official Committee of Unsecured Creditors (the “Committee”); (ii) the Debtors (through their counsel, Perkins Coie LLP, and their former Chief Restructuring Officer, George Blanco); (iii) State Fish’s prepetition lenders and the DeLuca Sisters;<sup>3</sup> and (iv) John DeLuca. The Trustee and his professionals used these meetings to gain an understanding of the Debtors’ affairs and an overview of the major disputed issues in these cases. Since these initial meetings, the Trustee, both with and without his professionals, has continued to engage with the various parties to apprise them of events in these cases and to solicit their views.

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<sup>2</sup> KTB&S requests that the Court take judicial notice of the previous declarations filed in these cases, which provide evidence in support of this background and narrative.

<sup>3</sup> State Fish’s prepetition lenders are Pan Pac LLC and the Roseann DeLuca Revocable Trust dated 10/6/2011 (the “Lenders”). The Lenders’ principals are, respectively, Vanessa DeLuca and Roseann DeLuca, who are also, with Janet Esposito, shareholders of State Fish. Vanessa DeLuca, Roseann DeLuca and Janet Esposito are referred to as the “Sisters.”

1 State Fish's core business is buying, processing, and freezing fresh fish sourced from local  
2 fishing boats in southern California (the "Wet Fish Business"), as well as importing and  
3 repackaging frozen seafood from national and international sources (the "Value Added Business").

4 In addition to seafood purchasing and processing, State Fish provides custom food  
5 processing and pasteurization services through a division called High Pressure Pasteurization Food  
6 Service ("HPP"). HPP receives pre-packaged products from its customers which are then  
7 pasteurized using HPP's two state-of-the-art pasteurization machines and returned to the customer  
8 for shipment to end users.

9 The HPP business is operated in conjunction with Calpack, which is a wholly-owned  
10 subsidiary of State Fish that produces high quality custom food and beverage products. Calpack  
11 specializes in processing and packaging fresh juices and salad dressings. Calpack customers either  
12 send large quantities of raw materials to Calpack's facility, or Calpack orders fruits and  
13 vegetables, packaging materials, seafood, seasoning and some canned items on the customer's  
14 behalf and the customer is billed directly. The business operated by HPP and Calpack is known as  
15 the "HPP/Calpack Business."

16 Through May 31, 2015, State Fish's estate has \$2,568,648 in cash and State Fish is current  
17 on all routine operating expenses, not including professional fees incurred in these cases. Through  
18 May 31, 2015, Calpack's estate has \$501,675 in cash and Calpack is current on all routine  
19 operating expenses, not including professional fees incurred in these cases. State Fish is currently  
20 operating at a loss, while Calpack is operating at a profit. Each of the Debtors has sufficient  
21 operating cash flow. The Trustee has not yet filed a plan on behalf of the Debtors. The Trustee  
22 intends to first pursue sales of the Debtors' assets and to allow the claims bar date to pass.

23 **B. Summary of Activity During First Interim Period.**

24 **1. Operation of Debtors' Businesses By Trustee.**

25 Since his appointment, the Trustee has operated the Debtors' three businesses. Because,  
26 when the Trustee was appointed, the Debtors had no officers (the Debtors' prepetition officers  
27 resigned shortly before the Petition Date), the Trustee's professionals have been heavily involved  
28



1 in overseeing the day-to-day operation of the Debtors' businesses and managing the Debtors'  
2 approximately 150 employees.

3 **2. Post-Petition Financing.**

4 After assessing the operations and finances of the Wet Fish Business, the Trustee  
5 determined that the continued viability of the Wet Fish Business as a going concern was  
6 dependent on additional financing to fund working capital during the current fishing season.  
7 Although the fishing season began on April 1, the bulk of the actual fishing begins when fish  
8 become available, which cannot be predicted with any degree of certainty. State Fish's major  
9 suppliers for the Wet Fish Business are local fishermen, with whom State Fish has developed  
10 business relationships. State Fish has no written contracts with those fishermen. In order to  
11 maintain these critical relationships with the local fishermen and maintain the Wet Fish Business  
12 as a going concern, State Fish needs to be in a position to purchase and process fish when and as  
13 the fish become available, and needs additional capital in order to be in such a position.

14 In order to obtain financing to maintain the Wet Fish Business, the Trustee solicited  
15 proposals from, engaged in negotiations with, and provided due diligence information to potential  
16 lenders. The Trustee and his professionals analyzed and explored the proposals to determine the  
17 proposal that would maximize the value of State Fish's estate, and decided to pursue financing  
18 offered by Karlin Real Estate, LLC ("Karlin"). On April 15, 2015, the Trustee and Karlin  
19 executed a term sheet that provided for, among other things, a \$3,000,000 initial term loan and a  
20 delayed draw term loan of up to \$1,000,000, secured by a first priority lien on State Fish's real  
21 property and a second priority lien on State Fish's equipment. The term sheet provided that Karlin  
22 would be entitled to a \$100,000 break-up fee under limited circumstances, and a \$70,000 expense  
23 reimbursement. KTB&S prepared, and, on April 17, 2015, filed the *Motion for Order Approving*  
24 *(I) Entry into Debtor-in-Possession Financing Term Sheet and (II) Related Lender Protections*, by  
25 which the Trustee sought Court approval of the term sheet. Dkt. No. 265. At a hearing on April  
26 23, 2015, the Court granted the Trustee's motion to approve the term sheet.

27 After approval of the term sheet, the Trustee, through KTB&S, and Karlin began  
28 negotiating loan documents. However, Karlin failed to timely confirm the satisfaction or waiver

1 of the due diligence conditions set forth in the term sheet (and did not timely extend its deadline to  
2 do so). Because the Trustee determined that the terms and conditions proposed by Karlin in the  
3 loan documents were not in the estates' best interests, the Trustee determined not to proceed with  
4 Karlin. Because Karlin did not timely confirm satisfaction of the due diligence conditions, Karlin  
5 is not entitled to a break-up fee.

6 The Trustee is exploring other options for obtaining financing for the Wet Fish Business.  
7 As of the date hereof, the bulk of the fishing during this fishing season has not yet commenced, as  
8 the fish have not yet arrived. Accordingly, there remains time to obtain financing to provide  
9 working capital for the Wet Fish Business when the fish do arrive.

10 **3. Customs Bond for Value Added Business.**

11 In order to import seafood in its Value Added Business, State Fish is required to post a  
12 customs bond to ensure compliance with federal laws and the payment of all duties, taxes, and fees  
13 owed to the federal government in respect of imports. Absent the posting of the required bond,  
14 customs authorities will not release shipments of imported seafood to State Fish. Pursuant to the  
15 foregoing, State Fish currently maintains a customs bond in the amount of \$50,000 on the required  
16 Customs Form 301 (the "\$50,000 Bond"). The surety on the \$50,000 Bond is Western Surety  
17 Company. The \$50,000 Bond became effective on May 21, 2010. State Fish also maintains a  
18 separate \$600,000 bond with the United States Customs Service on the required Customs Form  
19 301 (the "\$600,000 Bond"), the surety on which bond is also Western Surety, and which bond  
20 covered the time period May 19, 2008 through May 20, 2010. Both bonds were supported by a  
21 letter of credit issued by Farmers and Merchants Bank ("FMB") in the amount of \$600,000 (the  
22 "Letter of Credit").

23 On April 13, 2015, State Fish received a letter from Western Surety, stating that the  
24 \$50,000 Bond would be terminated as of May 20, 2015 due to a "change in underwriting status."  
25 Because of the necessity to maintain the \$50,000 Bond, the Trustee engaged in discussions with  
26 Western Surety, and was informed that Western Surety would agree to continue the \$50,000 Bond  
27 if the Letter of Credit were increased by \$50,000 on or before May 19, 2015 (or if a new letter of  
28 credit in the amount of \$50,000 were issued). FMB was willing to increase the Letter of Credit by

1 \$50,000 (i.e., to a total of \$650,000) or issue a new letter of credit as required by Western Surety,  
2 but only if the additional amount were cash collateralized by \$50,000 of State Fish's funds.  
3 Accordingly, KTB&S, on behalf of the Trustee, sought, and obtained, an order of the Court  
4 authorizing the use of \$50,000 of the Debtors' funds to cash collateralize the proposed increase to  
5 the Letter of Credit or to obtain, and cash collateralize, a new letter of credit in the amount of  
6 \$50,000. Once that order was entered, the Trustee worked with FMB and Western Surety to  
7 obtain a new \$50,000 letter of credit, which has allowed State Fish to continue importing seafood  
8 for its Value Added Business.

9 **4. Trustee's Use of Cash Collateral.**

10 In connection with his administration of the Debtors' estates, the Trustee, though KTB&S,  
11 has performed due diligence into any liens on the Debtors' property, including UCC searches and  
12 searches of the records of the United States Patent and Trademark Office and the United States  
13 Copyright Office. Those records reflect a financing statement filed by the Lenders asserting a lien  
14 on all of State Fish's personal property. KTB&S has determined that the foregoing lien is in  
15 respect of a credit agreement between State Fish and Lenders, executed in May 2014, pursuant to  
16 which the Lenders agreed to make revolving loans to State Fish up to \$7,175,000. There are no  
17 records of any liens on any real property owned by State Fish or on any assets of Calpack. The  
18 Trustee is aware that there may be one or more bases on which to challenge the Lenders' lien and  
19 claims. The Trustee believes that it is prudent to determine whether the estates are solvent and  
20 whether there is a basis for an amicable resolution of these cases before determining how to  
21 proceed with respect to any possible challenge to the Lenders' lien and claims.

22 Before the Trustee's appointment, State Fish and the Lenders had entered into a stipulation  
23 for the use of cash collateral. Dkt. No. 88-2. The stipulation provided, among other things, that  
24 State Fish was authorized to use cash collateral pursuant to the terms and conditions of the  
25 stipulation, and in accordance with the contemporaneously-filed budget. The stipulation also  
26 provided (i) a procedure for State Fish to propose and file monthly rolling budgets for the  
27 continued use of cash collateral beyond the timeframe of the initially-filed budget (the "Roll-

Forward Procedures”), and (ii) a period during which parties could challenge, among other things, the validity, enforceability, priority or extent of the Lenders’ lien.

Since his appointment, after negotiations with the Lenders, John DeLuca, and the Committee, the Trustee, through KTB&S, has prepared and lodged two cash collateral orders that modify and extend the cash collateral stipulation, *see* Dkt. Nos. 206, 236, and has filed extended budgets in accordance with the Roll-Forward Procedures. The Court has scheduled a continued hearing on cash collateral matters for June 23, 2015.

**5. Motion to Dismiss and Relief From Stay Litigation.**

On February 19, 2015, John DeLuca filed his *Motion to Dismiss Pursuant to 11 U.S.C. § 1112(b), or Abstain Pursuant to 11 U.S.C. § 305(a), or for the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104(a)* (the “Motion to Dismiss”). Dkt. No. 130. In the Motion to Dismiss, John DeLuca sought an order: (i) dismissing State Fish’s bankruptcy case<sup>4</sup> pursuant to 11 U.S.C. § 1112(b); or, alternatively, (ii) abstaining from exercising jurisdiction in State Fish’s case pursuant to 11 U.S.C. § 305(a); or, alternatively, (iii) appointing a Chapter 11 Trustee pursuant to 11 U.S.C. § 1104(a), because, among other things, John alleged that “State Fish undeniably filed bankruptcy without corporate authority to do so, and in bad faith in order to avoid the entry of a judgment against the company’s principals and majority shareholders.” Dkt. No. 130, at 1.

The Motion to Dismiss is largely based on a tentative ruling in *John DeLuca et al. v. Rose DeLuca, State Fish Co. Inc., et al.*, filed by John DeLuca and other minority shareholders of State Fish in 2006 in the Superior Court of California, County of Los Angeles (the “State Court”), Case No. BC358395 (the “Derivative Action”). On April 4, 2014, the State Court issued the tentative ruling, indicating that it would enter judgment ordering “(1) the removal of Defendants as directors of nominal defendant State Fish Co. (SFC); (2) the appointment of provisional independent directors for each vacancy on the Board created by the removal of Defendants; and

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<sup>4</sup> The Motion to Dismiss was only with respect to State Fish, although John reserved his rights with respect to Calpack.

(3) for an accounting to determine the amounts of legal fees Defendants caused SFC to expend with regard to the Trust Cases and Stolen Documents Case.”

At a hearing on February 25, 2015, in considering the Motion to Dismiss and applications to employ the Debtors’ professionals, this Court ruled that

the key factor is whether or not the sisters’ appointment of the independent directors in May violated the Court’s order, and that’s not something that this Court can determine. That’s something that needs to be decided by the State Court, and everybody’s arguing what the State Court meant by the tentative ruling and what the State Court was going to rule on January 30th, but I can’t read those tea leaves, and neither can anybody else here, and the primary focus and the crux of the litigation here is whether or not the appointment of the independent directors who then hired your firm [Perkins Coie] and who then hired Mr. Blanco along with the sisters when Mr. Blanco was hired, whether or not they were properly in place. That’s the crux of the issue. Everything else gets resolved once -- in the Court’s mind or 99 percent of the issues before this Court get resolved once that issue is determined, and that issue, the Court believes, needs to be resolved by the State Court because the question of whether or not the appointment by the sisters who were supposed to no longer be directors of the company, they then took action to appoint the independent directors.

Accordingly, the Court *sua sponte* granted relief from the automatic stay to permit the State Court to resolve the corporate governance issues raised by John DeLuca. After the parties submitted different forms of order granting relief from stay, and after a hearing on the form of such order, the Court granted relief from stay to permit the Trustee to seek an order from the State Court with respect to:

The possible removal and replacement of the “Defendants”—referenced by the Superior Court in its 4/4/14 Tentative Decision—as directors of State Fish. And, if the Superior Court determines that removal and replacement of the “Defendants” is warranted, whether such removal and replacement would be effective as of 4/4/14 or some later date; and

Whether on 5/12/14—after the Superior Court had issued its 4/4/14 Tentative Decision in which it ordered “the removal of Defendants as directors of nominal defendant [State Fish]”—the “Defendants” had the authority to appoint Mark Stolper and Kirk Waldron as directors of State Fish. See *In re State Fish Co., Inc.*, 15-bk-11084-SK, Docket #118-2 at 2 (“Written Consent to Action of the Directors in Lieu of a Meeting” dated 5/12/14).

Dkt. No. 203.



1 In accordance with that order granting relief from stay, KTB&S prepared and filed, on  
2 April 15, 2015, a motion in the State Court for an order, or in the alternative to set up a process, to  
3 answer the foregoing questions. KTB&S set a hearing on the motion for July 23, 2015, the first  
4 hearing date available before State Court Judge Hiroshige. John DeLuca filed a motion for relief  
5 from stay for permission to seek to expedite that hearing and with respect to a cross complaint in  
6 the Derivative Action that does not involve the Debtors. That motion was denied with respect to  
7 the expedited hearing.

8 At the February 25, 2015 hearing, the Court had continued the hearing on the Motion to  
9 Dismiss to June 23, 2015. Because the State Court will not have resolved the corporate  
10 governance questions before that time, the Court has ordered John DeLuca to file a copy of any  
11 ruling issued by the State Court during or after the July 23, 2015 State Court hearing, and has  
12 further continued the hearing on the Motion to Dismiss to August 20, 2015. The Court also  
13 ordered that, at the August 20, 2015 hearing, the Court may, if necessary, set a briefing schedule  
14 on the Motion to Dismiss (and the Perkins Coie and Avant/CRO employment applications). Dkt.  
15 No. 367.

16 **6. Other Litigation and Upcoming Mediation.**

17 The Derivative Action is one of several lawsuits involving the Debtors and their  
18 shareholders. Some or all of the Sisters, John DeLuca, his fish company, J. DeLuca Fish  
19 Company, and the siblings' uncle, Fred DiBernardo, have been party to numerous lawsuits over  
20 the past decade. These cases include, but are not limited to:

21 a. *John Michael DeLuca v. State Fish Company, Inc., Rose DeLuca, Vanessa*  
22 *DeLuca, Janet Esposito, and Roseann DeLuca*, Superior Court of California, County of  
23 Los Angeles, Case No. BC358395: This case is the Derivative Action and is discussed  
24 above.

25 b. *Fred J. DiBernardo v. Michael Leight, Rose DeLuca, Janet Esposito,*  
26 *Roseann DeLuca, Vanessa DeLuca and Robert C. Danner*, Superior Court of California,  
27 County of Los Angeles, Case No. BC365900: This case is referred to as the "Documents  
28 Case," and was brought by Fred DiBernardo (allegedly former general counsel to State

1 Fish) after Michael Leight (also former counsel to State Fish) allegedly came into  
2 possession of, and attempted to use, certain confidential documents which were allegedly  
3 anonymously mailed to Leight. This case was settled in May 2011.

4 c. *J. DeLuca Fish Company, Inc. v. State Fish Company, Inc.*, Superior Court  
5 of California, County of Los Angeles, Case No. BC391583: Known as the “Business  
6 Interference Case,” in this case John DeLuca’s own fish company, J. DeLuca Fish  
7 Company, Inc. sued State Fish, alleging that State Fish delayed in vacating the premises  
8 known as “Plant 2” after John DeLuca, the owner of the premises, issued a notice to State  
9 Fish to vacate the premises. J. DeLuca Fish Company argued that State Fish’s delay  
10 constituted intentional or negligent interference with J. DeLuca Fish Company’s business.  
11 This case is pending.

12 d. *John Michael DeLuca v. State Fish Company, Inc., et al.*, Superior Court of  
13 California, County of Los Angeles, Case No. BC504002: Known as the “Waste Case,” in  
14 this case John DeLuca, owner of Plant 2, alleged that defendants committed particular acts  
15 or omissions of waste in connection with State Fish’s use of Plant 2 and certain equipment  
16 therein. This case is pending.

17 e. *State Fish Company, Inc. v. Fred DiBernardo, et al.*, Superior Court of  
18 California, County of Los Angeles, Case No. NC042394: Known as the “Seastar Case,” in  
19 this case State Fish sued Fred DiBernardo, John DeLuca, Lenore DeLuca, and J. DeLuca  
20 Fish Company, alleging that, among other things, DiBernardo breached fiduciary duties to  
21 State Fish because he conducted improper business transactions with State Fish during the  
22 time that he was State Fish’s counsel. This case has been dismissed.

23 f. Superior Court of California, County of Los Angeles, Case Nos. NP012849,  
24 NP012850, NP012851, NP012852, and NP012853. Known as the “Trust Cases,” in these  
25 cases Vanessa DeLuca and Janet Esposito petitioned to remove Fred DiBernardo as trustee  
26 of trusts for the benefit of Vanessa’s and Janet’s respective children. These cases appear to  
27 have been resolved.  
28

1 g. *State Fish Co., Inc. v. John M. DeLuca, et al.*, Superior Court of California,  
2 County of Los Angeles, Case No. NC044211: In this case, State Fish sued John DeLuca  
3 alleging numerous instances of John DeLuca (and another defendant, Albert Demers)  
4 making payments not authorized by State Fish and other acts not in State Fish's best  
5 interests. This case was dismissed without leave to amend by a judgment in John's favor.

6 KTB&S has spent a substantial amount of time during the First Interim Period analyzing  
7 pleadings in the foregoing cases, because, among other things, (i) it is important for the Trustee to  
8 understand the basis of the claims that John DeLuca has indicated he intends to assert absent a  
9 settlement; (ii) understanding the history of litigation between the parties is important to the  
10 Trustee's analysis of the Motion to Dismiss and the litigation of the Derivative Action in State  
11 Court; (iii) the Trustee is hopeful that he can bring peace to the DeLuca family and these estates,  
12 which endeavor requires a strong grasp of the facts underlying the family's disputes, and (iv) in  
13 the Trustee's meetings with both John DeLuca and the Sisters, each side has emphasized the  
14 importance of these disputes.

15 In furtherance of his effort to resolve the foregoing disputes and bring peace to the DeLuca  
16 family and the estates, the Trustee suggested to each of John DeLuca and the Sisters that a global  
17 mediation session be scheduled. Each side agreed, and both sides independently selected the  
18 Honorable Dickran M. Tevrizian (ret.) as an acceptable mediator. KTB&S, on behalf of the  
19 Trustee, contacted Judge Tevrizian and has scheduled a mediation for June 24-25, 2015.<sup>5</sup> Fred  
20 DiBernardo is expected to attend as well. To prepare for the mediation, the Trustee and his  
21 professionals have solicited from the parties the issues and unresolved questions of fact and law  
22 they believe to be relevant, and the Trustee and his professionals are currently analyzing those  
23 issues.

24  
25  
26  
27 <sup>5</sup> The Trustee paid the mediation fees from the Debtors' estates pursuant to an order of this  
28 Court. Dkt. No. 349.

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**7. Provision of Access to Debtors' Records.**

During meetings with the Trustee and his professionals, both the Sisters and John DeLuca expressed concerns regarding the completeness and security of the Debtors' books and records. John DeLuca also expressed interest in reviewing those books and records. The books and records had previously been stored in various different locations. In response to those concerns, the Trustee and his financial advisors undertook a lengthy process of gathering the Debtors' records (which comprise over 600 bankers boxes) into one area in the Debtors' headquarters, and securing the records room with a new lock and with a closed-circuit camera system. In addition, the Trustee and his financial advisors reviewed the contents of these boxes and prepared an inventory of the boxes. Once this process was complete, the Trustee invited the Sisters and John DeLuca to review the records (subject to supervision by a representative of the Trustee and the requirement that a second set of all copied documents be provided to the Trustee). John's representatives have accessed the records room on several occasions. In addition, the Trustee has copied all sensitive electronic data stored on the Debtors' servers and computers in order to secure and preserve such electronic information.

**8. Sale of HPP/Calpack Business.**

Finally, during the First Interim Period, the Trustee has been exploring a sale of some or all of the Debtors' assets. The Trustee's professionals have solicited bids for the Debtors' assets, have assembled due diligence materials concerning the Debtors' assets, and have provided such materials to parties that have expressed interest to the Trustee in a possible transaction, and who have executed a confidentiality agreement. The Trustee is currently in advanced discussions with a potential purchaser for the Debtors' assets that relate to the HPP/Calpack Business, and is hopeful that documentation will be signed and filed with the Court before the end of the month.

**IV.**

**SUMMARY OF SERVICES RENDERED**

**A. Project Billing and Narrative Statement of Services Rendered.**

In accordance with the Central District Guidelines and the U.S. Trustee Guidelines, KTB&S categorized all services performed for which compensation is being sought. KTB&S

attempted to place the services performed in the category that best relates to the service provided. However, because certain services may relate to one or more categories, services pertaining to one category may, in fact, be included in another category. KTB&S has established the following billing categories:

<u>Project Categories</u>	<u>Total Hours Billed</u>	<u>Total Fees</u>
B110 – Case Administration	64.40	\$35,301.00
B115 – Reporting	20.60	\$10,326.50
B120 – Asset Analysis & Recovery	77.30	\$57,635.50
B130 – Asset Disposition	149.40	\$103,056.00
B140 – Relief from Stay/Adequate Protection	83.20	\$53,464.50
B150 – Meetings & Communications with Creditors	2.60	\$1,628.00
B160 – Employment & Fee Applications	68.90	\$31,285.00
B170 – Employment & Fee Objections	0.40	\$190.00
B180 – Avoidance Action Analysis	1.20	\$812.00
B185 – Assumption & Rejection of Leases and Contracts	10.90	\$4,792.00
B210 – Business Operations	54.20	\$35,756.50
B220 – Employee Benefits / Pensions	11.30	\$6,941.00
B230 – Financing & Cash Collateral	166.60	\$105,987.00
B240 – Tax Issues	1.00	\$717.00
B310 – Claims Administration & Objections	44.50	\$17,180.00
L120 – Analysis & Strategy	98.50	\$73,545.50
L160 – Settlement / Non-Binding ADR	36.90	\$29,875.50
L190 – Other Case Assessment, Developments & Administration	61.10	\$54,639.50
L210 – Pleadings	18.50	\$16,720.00
L250 – Other Written Motions and Submissions	2.10	\$1,295.00
L320 – Document Production	18.00	\$10,256.50
<b>Total:</b>	<b>991.60</b>	<b>\$651,404.00.00</b>



**B. Case Administration – Billing Code B110.**

For the First Interim Period, KTB&S is requesting approval of its fees in the Case Administration category in the amount of \$35,301.00, comprising 64.40 hours. The Debtors are subject to many administrative and procedural requirements imposed by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, this Court's Local Rules, and the U.S. Trustee. Time spent by KTB&S ensuring compliance with these obligations in a timely manner was billed to the Case Administration category. This category also includes review by KTB&S attorneys of the background of the cases shortly after being retained, as well as administrative tasks that did not clearly fit into one of the other activity categories.

**C. Reporting – Billing Code B115.**

For the First Interim Period, KTB&S is requesting approval of its fees in the Reporting category in the amount of \$10,326.50, comprising 20.60 hours. Time spent by KTB&S in this category includes: (i) analyzing the Debtors' Schedules of Assets and Liabilities, Statements of Financial Affairs and amendments thereto; (ii) preparing amended 7-day packages and amended Statements of Financial Affairs; and (iii) assisting the Trustee in the preparation of monthly operating reports.

**D. Asset Analysis & Recovery – Billing Code B120.**

For the First Interim Period, KTB&S is requesting approval of its fees in the Asset Analysis & Recovery category in the amount of \$57,635.50, comprising 77.30 hours. KTB&S's activity in this fee category includes investigating potential estate assets, including possible avoidance actions and several outstanding notes payable to the Debtors. The Trustee, through KTB&S, initiated discussions with various parties concerning collection of such notes and performed legal research regarding the Debtors' rights under those notes. In particular, KTB&S undertook an extensive analysis of an approximately \$4,000,000 note owing to State Fish stemming from State Fish's sale of the Atlantis Seafood business in 2012, which analysis included the review of contemporaneous transaction documentation as well as a meeting with counsel to the obligor on that note. KTB&S also spent time in this fee category advising the Trustee regarding the collection of accounts receivable.

**E. Asset Disposition – Billing Code B130.**

For the First Interim Period, KTB&S is requesting approval of its fees in the Asset Disposition category in the amount of \$103,056.00, comprising 149.40 hours. KTB&S's activity in this category was substantial, and included all matters relating to the solicitation of bids for the Debtors' various business lines; preparation, negotiation and execution of confidentiality agreements with potential bidders; and preparation, review, and dissemination of thousands of pages of due diligence material related to all of the Debtors' businesses. In addition, during the First Interim Period, the Trustee identified a potential purchaser for the HPP/Calpack Business. Accordingly, KTB&S spent a substantial amount of time during the First Interim Period negotiating an asset purchase agreement and related schedules, exhibits, and agreements with the prospective buyer, and preparing and negotiating a motion and order to approve bidding and sale procedures for the sale of the HPP/Calpack Business.

Although the Trustee did not identify a buyer during the First Interim Period for the Wet Fish Business or the Value Added Business, KTB&S also spent time during the First Interim Period reviewing due diligence materials and soliciting offers in connection with those businesses.

In addition, during the First Interim Period KTB&S prepared the *Notice of Motion and Motion for Authority to (1) Sell Property of the Estate Free and Clear of Liens; (2) Employ Van Horn Auctions and Appraisal Group, LLC as Auctioneer; and (3) Pay Compensation to the Auctioneer* [Dkt. No. 246], by which the Trustee sought, and obtained, an order permitting the Trustee to sell, at auction, two vehicles owned by State Fish. Net proceeds from that sale totaled \$30,350.

**F. Relief from Stay/Adequate Protection – Billing Code B140.**

For the First Interim Period, KTB&S is requesting approval of its fees in the Relief from Stay/Adequate Protection category in the amount of \$53,464.50, comprising 83.20 hours. KTB&S's activity in this fee category was substantial. As detailed above, immediately upon being retained by the Trustee KTB&S was required to quickly become familiar with the Court's ruling at its February 25, 2015 hearing at which the Court *sua sponte* granted relief from stay to permit the State Court to answer certain corporate governance questions. The initial proposed

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1 form of order was submitted by John DeLuca. In response, KTB&S prepared and filed the  
2 *Chapter 11 Trustee's Objection to Form of Order Granting Relief From Stay Proposed By John*  
3 *DeLuca and Notice of Lodgment of Alternative Form of Order* [Dkt. No. 177], which objected to  
4 the form of order proposed by John, and included the Trustee's own form of order. The Court  
5 held a hearing on the form of order on March 11, 2015, at which KTB&S appeared and argued on  
6 behalf of the Trustee. The Court ultimately entered an order granting the Trustee relief from stay  
7 to seek answers to the corporate governance questions. After KTB&S, in accordance with that  
8 order, set a hearing for July 23, 2015 for the State Court to consider a motion seeking answers to  
9 the questions, John DeLuca filed a motion for relief from stay for permission to seek to expedite  
10 that hearing and with respect to a cross complaint in the Derivative Action that does not involve  
11 the Debtors. KTB&S prepared and filed the *Chapter 11 Trustee's Opposition to Motion for Relief*  
12 *From Stay Filed by John DeLuca* [Dkt. No. 278] opposing the portion of that motion seeking an  
13 expedited State Court hearing. The motion was denied with respect to the expedited hearing.

14 Activity in this category also included KTB&S's analysis of the motion for relief from the  
15 automatic stay filed by Wells Fargo Equipment Finance seeking to lift the automatic stay to permit  
16 Wells Fargo Equipment Finance to exercise remedies with respect to certain equipment leased by  
17 State Fish. KTB&S conferred with counsel to Wells Fargo Equipment Finance and ultimately  
18 stipulated with Wells Fargo Equipment Finance to withdraw the motion for relief from stay.

19 **G. Meetings & Communications with Creditors – Billing Code 150.**

20 For the First Interim Period, KTB&S is requesting approval of its fees in the Meetings &  
21 Communications category in the amount of \$1,628.00, comprising 2.60 hours. KTB&S's activity  
22 in this category included (i) preparation and revision of an agreement governing the sharing of  
23 confidential information with the Committee and (ii) meetings and communications with the  
24 Committee's counsel.

25 **H. Employment & Fee Applications – Billing Code 160.**

26 For the First Interim Period, KTB&S is requesting approval of its fees in the Employment  
27 & Fee Applications category in the amount of \$31,285.00, comprising 68.90 hours. KTB&S's  
28 activity in this category includes the preparation of employment applications for itself, Berkeley

1 Research Group, LLC (the Trustee's financial advisors and accountants), Michael M. Ozawa and  
2 Robert E. Bates (the Trustee's consultants), Kathryn Tyler (the Trustee's intellectual property  
3 counsel), and Gribin Kapadia & Associates (the Trustee's real estate appraiser).

4 In addition, KTB&S spent time preparing stipulations to continue hearings on the  
5 employment applications filed by the Debtors (before the Trustee's appointment) of Gordon Rees  
6 Scully Mansukhani LLP and Antarctica Advisors LLC. Prior to the continued hearings on these  
7 applications, the Trustee withdrew these employment applications.

8 **I. Employment & Fee Objections – Billing Code B170.**

9 For the First Interim Period, KTB&S is requesting approval of its fees in the Employment  
10 & Fee Objections category in the amount of \$190.00, comprising 0.40 hours. Time spent in this  
11 category was *de minimis* and involved the analysis of John DeLuca's objection to the Debtors'  
12 application to employ Gordon Rees Scully Mansukhani LLP.

13 **J. Avoidance Action Analysis – Billing Code B180.**

14 For the First Interim Period, KTB&S is requesting approval of its fees in the Avoidance  
15 Action Analysis category in the amount of \$812.00, comprising 1.20 hours. Time spent in this  
16 category was *de minimis* and involved the analysis of materials provided to the Trustee by counsel  
17 to the Lenders regarding the Lenders' liens. Additional activity by KTB&S related to the Lenders'  
18 liens appears under Billing Code B230.

19 **K. Assumption & Rejection of Leases and Contracts – Billing Code B185.**

20 For the First Interim Period, KTB&S is requesting approval of its fees in the Assumption  
21 & Rejection of Leases and Contracts category in the amount of \$4,792.00, comprising 10.90  
22 hours. Work in this category included preparation and filing of a motion for an order extending  
23 the Trustee's time to assume or reject non-residential leases of real property.

24 **L. Business Operations – Billing Code B210.**

25 For the First Interim Period, KTB&S is requesting approval of its fees in the Business  
26 Operations category in the amount of \$35,756.50, comprising 54.20 hours. As discussed above,  
27 because, when the Trustee was appointed, the Debtors had no officers (the Debtors' prepetition  
28 officers resigned shortly before the Petition Date), the Trustee's financial advisors and consultants

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1 have been heavily involved in overseeing the day-to-day operation of the Debtors' businesses and  
2 managing the Debtors' approximately 150 employees. Accordingly, KTB&S's activity in this fee  
3 category was substantial and involved, among other things, (i) preparation of consulting  
4 agreements for certain individuals the Trustee wished to retain as consultants for the Debtors,  
5 (ii) analysis of the Debtors' intellectual property to ensure that the rights to such intellectual  
6 property were preserved, (iii) review and revisions of several contracts and agreements for, among  
7 other things, supplies and temporary labor, (iv) revisions of certain non-disclosure agreements  
8 required by several customers of the HPP/Calpack Business, (v) investigation into allegations of  
9 interference with the Debtors' Wet Fish Business operations, (vi) meetings and communications  
10 with the Trustee and BRG regarding the financial results of the Debtors' business operations, and  
11 (vii) preparation of the *Notice of Motion and Motion for Order Pursuant to Bankruptcy Code*  
12 *Sections 105(a), 363(b), and 364(d) Approving \$50,000 Cash Collateralized Letter of Credit to*  
13 *Preserve Customs Bond* [Dkt. No. 303], by which, as described in more detail above, the Trustee  
14 preserved the ability of State Fish to import frozen seafood for the Value Added Business.

15 **M. Employee Benefits / Pensions – Billing Code B220.**

16 For the First Interim Period, KTB&S is requesting approval of its fees in the Employee  
17 Benefits / Pensions category in the amount of \$6,941.00, comprising 11.30 hours. KTB&S's  
18 activity in this category included the analysis of certain employment-related claims asserted  
19 against the Debtors by current and former employees, and correspondence with representatives of  
20 the claimants (attorneys or governmental entities, as applicable) regarding the same.

21 **N. Financing & Cash Collateral – Billing Code B230.**

22 For the First Interim Period, KTB&S is requesting approval of its fees in the Financing &  
23 Cash Collateral category in the amount of \$105,987.00, comprising 166.60 hours. KTB&S's  
24 activity in this category was substantial, and was largely comprised of work on (i) seeking  
25 postpetition financing and (ii) use of cash collateral.

26 With respect to postpetition financing, KTB&S assisted the Trustee in negotiating a term  
27 sheet for postpetition financing with Karlin, and prepared and filed the *Notice of Motion and*  
28 *Motion for Order Approving (I) Entry into Debtor-in-Possession Financing Term Sheet and*



(II) *Related Lender Protections* [Dkt. No. 265] seeking Court approval of the term sheet and the lender protections contained therein. KTB&S also prepared and filed a reply in support of that motion, and appeared and argued at the hearing on the motion, which the Court granted. KTB&S then worked with counsel to Karlin to negotiate loan agreements. As noted above, the Trustee has determined not to proceed with the financing offered by Karlin.

With respect to cash collateral, KTB&S has performed due diligence into any liens on the Debtors' property and has identified a financing statement filed by the Lenders asserting a lien on all of State Fish's personal property. KTB&S has determined that the lien is in respect of a credit agreement between State Fish and Lenders, executed in May 2014, pursuant to which the Lenders agreed to make revolving loans to State Fish up to \$7,175,000. KTB&S has performed a preliminary investigation into the validity of this lien, and is aware that there may be one or more bases on which to challenge the Lenders' lien and claims. Before the Trustee's appointment, State Fish and the Lenders had entered into a stipulation for the use of cash collateral. During the First Interim Period, KTB&S negotiated with the Lenders, John DeLuca, and the Committee, and, in accordance with those negotiations, prepared and lodged two cash collateral orders that modify and extend the cash collateral stipulation, and analyzed and filed extended budgets in accordance with the procedures set forth in the stipulation.

**O. Tax Issues – Billing Code B240.**

For the First Interim Period, KTB&S is requesting approval of its fees in the Tax Issues category in the amount of \$717.00, comprising 1.00 hour. Time spent in this category was *de minimis* and involved correspondence regarding the Debtors' tax returns.

**P. Claims Administration & Objections – Billing Code B310.**

For the First Interim Period, KTB&S is requesting approval of its fees in the Claims Administration & Objections category in the amount of \$17,180.00, comprising 44.50 hours. Fees in this category primarily include the preparation and filing of the *Notice of Motion and Motion for Order (1) Fixing Deadlines for Filing Proofs of Claim, Proofs of Interest, and Certain Administrative Expense Requests; (2) Establishing Ramifications for Failure to Comply Therewith; and (3) Approving Form and Manner of Notice Thereof* [Dkt. No. 300]. The Court

1 approved that motion and set a general bar date of July 7, 2015, and KTB&S then spent time  
2 preparing, serving, and publishing notice of the bar date. In addition, KTB&S spent time in this  
3 category analyzing the Debtors' motion to pay certain Bankruptcy Code section 503(b)(9) and  
4 "PACA" claims (which motion was filed before the Trustee's appointment) and preparing an order  
5 approving that motion.

6 **Q. Analysis & Strategy – Billing Code L120.**

7 For the First Interim Period, KTB&S is requesting approval of its fees in the Analysis &  
8 Strategy category in the amount of \$73,545.50, comprising 98.50 hours. KTB&S's activity in this  
9 fee category was substantial. The Debtors and/or their shareholders are (or have been) party to  
10 numerous lawsuits over the past decade, as listed in section. These lawsuits (both those that are  
11 pending and those that have already concluded) are important to the Trustee because, among other  
12 things, (i) it is important for the Trustee to understand that basis of the claims that John DeLuca  
13 has indicated he intends to assert absent a settlement; (ii) understanding the history of litigation  
14 between the parties is important to the Trustee's analysis of John DeLuca's Motion to Dismiss;  
15 (iii) the Trustee is hopeful that he can bring peace to the DeLuca family and these estates, which  
16 endeavor requires a strong grasp of the facts underlying the family's disputes, and (iv) in the  
17 Trustee's meetings with both John and the Sisters, each side has emphasized the importance of  
18 these disputes. Accordingly, KTB&S has spent substantial time analyzing pleadings, transcripts,  
19 and other documents in and related to the State Court cases listed in section III.B.6 above,  
20 communicating with the Trustee, BRG, and counsel to the various parties regarding the facts and  
21 merits of these cases, and assessing the relative strengths and weaknesses of each party's  
22 arguments in each of these cases. KTB&S has also spent time in this fee category analyzing and  
23 conducting legal research related to John DeLuca's Motion to Dismiss.

24 **R. Settlement / Non-Binding ADR – Billing Code L160.**

25 For the First Interim Period, KTB&S is requesting approval of its fees in the Settlement /  
26 Non-Binding ADR category in the amount of \$29,875.50, comprising 36.90 hours. In the early  
27 stages of KTB&S's involvement in these cases, time spent in this category involved  
28 correspondence with counsel to the Sisters and counsel to John DeLuca regarding settlement

1 proposals. In addition, as discussed in section III.B.6 above, the Trustee has organized a  
2 mediation, set for June 24-25, 2015, at which all the parties to the Debtors' and the Debtors'  
3 shareholders' various lawsuits will attempt to resolve their disputes. KTB&S has spent substantial  
4 time during the First Interim Period preparing for the mediation, including through  
5 communications with counsel to both the Sisters and to John DeLuca, soliciting from each of them  
6 a list of issues requiring resolution, and analyzing documents and pleadings that are responsive to  
7 those issues.

8 **S. Other Case Assessment, Developments & Administration – Billing Code L190.**

9 For the First Interim Period, KTB&S is requesting approval of its fees in the Other Case  
10 Assessment, Developments & Administration category in the amount of \$54,639.50, comprising  
11 61.10 hours. KTB&S's activity in this fee category overlaps to some extent with its activity in fee  
12 category L120, and is related to KTB&S's work on the various lawsuits involving the Debtors and  
13 their shareholders. Particular tasks in this category include (i) analysis of memoranda regarding  
14 the pending litigation; (ii) research regarding certain pleadings that the Trustee was required to file  
15 on behalf of the Debtors in the State Court; (iii) correspondence with counsel to the Sisters and to  
16 John DeLuca regarding the various lawsuits; (iv) analysis of case updates in the various lawsuits;  
17 (v) meetings with the Trustee regarding litigation and settlement strategy; and (vi) correspondence  
18 with the State Court regarding setting a hearing date for the Trustee's motion regarding the  
19 corporate governance questions (as detailed in section III.B.5).

20 **T. Pleadings – Billing Code L210.**

21 For the First Interim Period, KTB&S is requesting approval of its fees in the Pleadings  
22 category in the amount of \$16,720.00, comprising 18.50 hours. KTB&S's activity in this fee  
23 category involved (i) preparing its opposition to John DeLuca's motion for relief from stay for  
24 authority to seek an expedited hearing date for the Trustee's motion regarding the corporate  
25 governance questions (as detailed in section III.B.5), and (ii) drafting pleadings that were filed in  
26 certain of the State Court lawsuits involving the Debtors, including the Trustee's motion in the  
27 Derivative Action seeking Judge Hiroshige's answers to the corporate governance questions.

**U. Other Written Motions and Submissions – Billing Code L250.**

For the First Interim Period, KTB&S is requesting approval of its fees in the Other Written Motions and Submissions category in the amount of \$1,295.00, comprising 2.10 hours. KTB&S's performed a *de minimis* amount of work in this fee category, which included additional activity regarding the Trustee's motion in the Derivative Action seeking answers to the corporate governance questions.

**V. Document Production – Billing Code L320.**

For the First Interim Period, KTB&S is requesting approval of its fees in the Document Production category in the amount of \$10,256.50, comprising 18.00 hours. During the First Interim Period, both the Sisters and John DeLuca expressed concerns regarding the completeness and security of the Debtors' books and records. John DeLuca also expressed interest in reviewing those books and records. In response to those concerns, the Trustee and his financial advisors undertook a lengthy process of gathering the Debtors' records (which comprise over 600 bankers boxes) into one area in the Debtors' headquarters, and securing the records room with a new lock and with a closed-circuit camera system. In addition, the Trustee and his financial advisors reviewed the contents of these boxes and prepared an inventory of the boxes. KTB&S was required to address numerous legal issues relating to the provision of these documents, and communicated with counsel to the Sisters and John on multiple occasions regarding these issues. KTB&S also carefully analyzed these records to ensure that privileged documents were not made available.

**II.**

**SUMMARY OF COSTS AND EXPENSES**

The U.S. Trustee Guidelines and Local Bankruptcy Rule 2016-1(a)(1)(F) require that an application seeking reimbursement of expenses include a summary listing of all expenses by category and month. Accordingly, annexed hereto as Exhibit 4 is a summary of the reimbursable expenses incurred by KTB&S on a monthly basis during the First Interim Period per expense category. The total of costs and expenses incurred during the First Interim Period for which KTB&S seeks reimbursement is \$24,930.70.

1 To assist the Court in reviewing KTB&S's request for reimbursement of the expenses  
2 incurred in connection with its representation of the Trustee, KTB&S's accounting procedures for  
3 the general categories of costs and expenses for which it seeks reimbursement by this Application  
4 are described below. All of the requested expenses are charged at rates customarily applied to  
5 KTB&S's non-debtor clients.

6 **A. Copying.**

7 KTB&S's internal photocopying projects are billed to the client at the cost of \$0.10 per  
8 page. This rate is comparable to the rate charged by a substantial number of other law firms in its  
9 community in both bankruptcy and non-bankruptcy engagements. The total expenses incurred by  
10 KTB&S in the Copying expense category during the First Interim Period at the rate of \$0.10 per  
11 page were \$6,660.30.

12 **B. Delivery Services/Messengers.**

13 When the exigencies of these cases required it, KTB&S used messenger services and  
14 overnight courier services, such as Federal Express, to deliver documents. KTB&S charges its  
15 clients for the costs of such services, without surcharge. The total expenses incurred by KTB&S  
16 in the Delivery Services/Messengers expense category during the First Interim Period were  
17 \$554.90.

18 **C. Online Research.**

19 In the course of its representation of the Trustee, it sometimes became necessary and cost  
20 efficient to research by means of computer research services such as LEXIS/NEXIS. KTB&S  
21 bills the actual cost of these services directly to its clients without any surcharge. The total  
22 expenses incurred by KTB&S in the Online Research expense category during the First Interim  
23 Period were \$9,848.98.

24 **D. Other Expenses.**

25 This expense category includes (1) viewing online pleadings in the State Court, (2) the fee  
26 for UCC searches, and (3) fees for obtaining title reports. The total expenses incurred by KTB&S  
27 in the Other Expenses expense category during the First Interim Period were \$2,190.17.  
28



**E. Parking.**

This category includes costs incurred by KTB&S for parking fees to attend various meetings and Court hearings. The total expenses incurred by KTB&S in the Parking expense category during the First Interim Period were \$23.00.

**F. Postage.**

KTB&S calculates postage costs at the rate set by the postal service for the weight and class of a given mailing. KTB&S charges its clients for the costs of such services without any surcharge. The total expenses incurred by KTB&S in the Postage expense category during the First Interim Period were \$5,511.57.

**G. Telephone (Conference Call).**

KTB&S only seeks reimbursement for actual charges for conference call services provided by a third party in this expense category, without surcharge, which during the First Interim Period totaled \$39.78.

**H. Transcripts.**

This expense category includes costs incurred by KTB&S for transcripts of various hearings in the Debtors' cases, without surcharge. The total expenses incurred in the Transcripts expense category during the First Interim Period were \$102.00.

**III.**

**REQUEST FOR INTERIM COMPENSATION**

Pursuant to Bankruptcy Code section 330, the Court may award to a professional person reasonable compensation for actual, necessary services rendered, and reimbursement for actual, necessary expenses incurred. Pursuant to Bankruptcy Code section 331, the Court may award interim compensation and reimbursement to a professional. As set forth above, the fees for which KTB&S requests compensation and the costs incurred for which KTB&S requests reimbursement are for actual and necessary services rendered and costs incurred.

The professional services rendered by KTB&S have required an expenditure of substantial time and effort. Moreover, the time and labor devoted in these cases is only one of many pertinent factors in determining an award of fees and costs. Based on the skill brought to bear in these cases

1 by KTB&S and the results obtained, KTB&S submits that the compensation requested herein is  
2 reasonable and appropriate.

3 Bankruptcy Code section 330 provides for the award of duly employed professional  
4 persons of:

5 (1) reasonable compensation for actual, necessary services  
6 rendered by such . . . professional person . . . based on the nature, the extent,  
7 and the value of such services, the time spent on such services, and the cost  
8 of comparable services other than in a case under the title; and

(2) reimbursement for actual, necessary expenses.

9 11 U.S.C. § 330(a). As stated by the Ninth Circuit Court of Appeals in *In re Yermakov*, 718 F.2d  
10 1465, 1471 (9th Cir. 1983): “The primary method used to determine a reasonable attorney fee in a  
11 bankruptcy case is to multiply the number of hours expended by an hourly rate.” *See also In re*  
12 *Hunt*, 238 F.3d 1098, 1105 (9th Cir. 2001) (citing to *In re Yermakov*).

13 The issues that arose in these cases demanded a high level of skill and perseverance by  
14 KTB&S attorneys.

#### 15 IV.

#### 16 CONCLUSION

17 The interim compensation sought in this Application is on account and is not final. Upon  
18 the conclusion of these cases, KTB&S will seek approval of fees for the totality of the services  
19 rendered as bankruptcy counsel to the Trustee based on the applicable standards. Any interim fees  
20 approved by the Court and received by KTB&S will be credited against such final fees as this  
21 Court may allow.

22 The services for which compensation is sought in this Application have been beneficial to  
23 the Debtors’ estates, the costs incurred have been necessary and proper, and the sums requested  
24 for the services rendered and the costs incurred are fair and reasonable.

25 **WHEREFORE**, KTB&S respectfully requests that the Court issue an order: (1) allowing  
26 interim compensation to KTB&S for services rendered and expenses incurred during the period  
27 from February 27, 2015 through May 31, 2015, in the total amount of \$676,334.70, comprised of  
28 fees for services rendered of \$651,404.00 and expenses incurred of \$24,930.70; (2) authorizing the

Trustee to pay KTB&S 80% of its approved fees and 100% of its approved costs when there is adequate cash in the estates to make such payments; and (3) granting KTB&S any other relief that this Court deems necessary and appropriate.

DATED: June 18, 2015

/s/ Jonathan M. Weiss

JONATHAN M. WEISS, an attorney with  
KLEE, TUCHIN, BOGDANOFF & STERN LLP  
Bankruptcy Counsel for R. Todd Neilson, Chapter 11  
Trustee

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**DECLARATION OF JONATHAN M. WEISS**

I, Jonathan M. Weiss, do hereby declare as follows:

1. I am over 18 years of age, and if called as a witness, I could and would testify from my own personal knowledge regarding the matters set forth in this declaration.

2. I am admitted to practice law in the State of California and before this Court. I am an associate of Klee, Tuchin, Bogdanoff & Stern LLP ("KTBS"), which serves as bankruptcy counsel for R. Todd Neilson, the chapter 11 trustee (the "Trustee") of the bankruptcy estates of State Fish Co., Inc. ("State Fish") and Calpack Foods, LLC ("Calpack" and collectively, the "Debtors").

3. I submit this Declaration in support of the *First Interim Application of Klee, Tuchin, Bogdanoff & Stern LLP for Allowance and Payment of Fees and Expenses Incurred as Bankruptcy Counsel for the Chapter 11 Trustee for the Period February 27, 2015 through May 31, 2015* (the "Application").

4. I prepared, am familiar with, and have read the Application. To the best of my knowledge, the facts therein are true and copies of the billing statements attached thereto are true and correct copies of KTBS's billing statements for these cases.

5. I am one of the KTBS attorneys principally responsible for rendering services to the Debtors. The other principally responsible attorneys are David M. Stern, Michael L. Tuchin, and Colleen M. Keating. Other KTBS attorneys rendered services on discrete matters from time to time, as necessary.

6. The compensation and expense reimbursements requested in the Application are billed at rates, and in accordance with billing practices, no less favorable than those customarily used by KTBS in other debtor and non-debtor engagements.

7. Neither KTBS, nor any member of KTBS, has any agreement or understanding of any kind or nature to divide, pay over or share any portion of the fees or expenses to be awarded to KTBS with any other person or attorney except as among the partners of KTBS.

8. I have reviewed KTBS's time records in these cases on a monthly basis, reviewing each line item entry. I, and other attorneys in charge of this matter, have made certain

1 write-offs to our invoices in the exercise of our billing judgment, based upon our evaluation,  
2 which totaled \$19,933.00 representing 38.60 hours of work that has been written off in the  
3 exercise of billing discretion and is reflected as “No Charge” on the billing records appended  
4 hereto. To the best of my knowledge, information and belief, formed after reasonable inquiry, no  
5 time has been billed to the Trustee outside the scope of work authorized by the order authorizing  
6 KTB&S’s employment in these cases.

7 9. I am familiar with the Bankruptcy Code, the Federal Rules of Bankruptcy  
8 Procedure, the Local Bankruptcy Rules, and the *Guidelines for Reviewing Applications for*  
9 *Compensation & Reimbursement of Expenses Filed Under 11 U.S.C. § 330, 28 C.F.R. § 58,*  
10 *Appendix A* (the “U.S. Trustee Guidelines”), which are promulgated by the Office of the United  
11 States Trustee. I believe that the Application complies with applicable law and the requirements  
12 of the U.S. Trustee Guidelines. Specifically, I have reviewed Local Bankruptcy Rule 2016-1(a)  
13 and I believe the Application complies with the rule.

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed this June 18, 2015 at Los Angeles, California.

17 /s/ Jonathan M. Weiss  
Jonathan M. Weiss

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1999 AVENUE OF THE STARS, THIRTY-NINTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
TELEPHONE: 310-407-4000

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 1999 Avenue of the Stars, 39th Floor, Los Angeles, California 90067.

A true and correct copy of the foregoing document entitled: **FIRST INTERIM APPLICATION OF KLEE, TUCHIN, BOGDANOFF & STERN LLP FOR ALLOWANCE AND PAYMENT OF FEES AND EXPENSES INCURRED AS BANKRUPTCY COUNSEL FOR THE CHAPTER 11 TRUSTEE FOR THE PERIOD FEBRUARY 27, 2015 THROUGH MAY 31, 2015; DECLARATION OF JONATHAN M. WEISS IN SUPPORT THEREOF** was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On June 18, 2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

**SEE ATTACHED SERVICE LIST**

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On June 18, 2015, I served the following persons and/or entities at the last known addresses in this bankruptcy case by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**SEE ATTACHED SERVICE LIST**

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on

June 18, 2015, I arranged for service on the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 1 business day after the document is filed.

**SERVED VIA PERSONAL DELIVERY:**

Hon. Sandra R. Klein  
U.S. Bankruptcy Court  
255 E. Temple St., Ctrm. 1575  
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

June 18, 2015  
*Date*

Jonathan M. Weiss  
*Printed Name*

/s/ Jonathan M. Weiss  
*Signature*

1223



**TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

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- Alexandre I Cornelius aicornelius@costell-law.com, jgalliver@costell-law.com;mharris@costell-law.com;cevans@costell-law.com;ladelson@costell-law.com;jlcostell@costell-law.com
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- Colleen M Keating ckeating@ktbslaw.com
- Dare Law dare.law@usdoj.gov, ron.maroko@usdoj.gov
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- Scott J Tepper scottjtepper@msn.com, scottjtepper@gmail.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov
- Jonathan M Weiss jweiss@ktbslaw.com
- Steven Werth swerth@sulmeyerlaw.com, asokolowski@sulmeyerlaw.com;slee@sulmeyerlaw.com;slee@ecf.inforuptcy.com;asokolowski@ecf.inforuptcy.com;swerth@ecf.inforuptcy.com

**TO BE SERVED BY UNITED STATES MAIL:**

State Fish Co., Inc.  
2194 Signal Place  
San Pedro, CA 90731

Calpack Foods, LLC  
2194 Signal Place  
San Pedro, CA 90731

Office of the United States Trustee  
c/o Dare Law, Esq.  
915 Wilshire Blvd., Suite 1850  
Los Angeles, CA 90017

Queen City Seafood  
Attn: Johnathan Ranard, President  
10101 Chatham Woods Drive  
Loveland, OH 45140

Robert W. Bollar  
Southern Counties Oil Co.  
dba SC Fuels  
Attn: Legal Department  
1800 W. Katella Avenue, Ste 400  
P.O. Box 4159  
Orange, CA 92863-4159

Star Box, Inc.  
Attn: Robert J Weiner, President  
1770 E. Creston Street  
Signal Hills, CA 90755

Cedar Cold Services  
Attn: Sherry Perry, CFO  
146 S. Country Club Drive  
Mesa, AZ 85210

The Donovan Offices  
915 Wilshire Boulevard - #1610  
Los Angeles, CA 90017

## **EXHIBIT 1**



## Attorneys

### DAVID M. STERN

David M. Stern is a founding member of KTB&S.

Mr. Stern is a litigation attorney, specializing in business litigation, bankruptcy, reorganization and creditor's remedies. He is a Fellow of the American College of Bankruptcy and has been listed in The Best Lawyers in America since 1995. Mr. Stern has widely written and lectured on issues of federal civil practice and discovery and co-authored the two-volume treatise, California Civil Discovery Practice (1998 and 1998 editions), published by the Continuing Education of the Bar through the University of California. Among his other writings are "Recent Developments in Truth in Lending Class Actions and Proposed Alternatives," 27 Stanford Law Review 101, "Law Firm Bankruptcies," 37 Litigation 8 and "Mediation: An Old Dog With Some New Tricks," 24 Litigation 31.



Mr. Stern served as the 1998-99 President of the Association of Business Trial Lawyers (ABTL) of which he has been a member since 1980. He has twice been a member of the Ninth Circuit Judicial Conference, from 1987 through 1991, serving as Co-Chair in 1990-91. He was reappointed in 2011 and will be serving through 2015. Mr. Stern is also a member of the American Bar Association, the Los Angeles County Bar Association, the Financial Lawyers Conference of Los Angeles and a member of the Board of Directors of Bat Tzedek.

Mr. Stern earned a Bachelor of Arts in Economics cum laude from Columbia University in 1972 and a Juris Doctor from Stanford University Law School in 1975, where he was elected to the Order of the Coif and was a member of the Stanford Law Review. Following law school, Mr. Stern served as judicial law clerk to the Honorable Ben C. Duniway of the United States Court of Appeals for the Ninth Circuit.

Mr. Stern has served as special litigation counsel in the Chapter 11 cases of Adelphia Communications, Corp., Brill Media Company, LLC, Enron Corp., Iridium Operating LLC, National Century Financial Enterprises, Inc., National Energy Gas & Transmission, Inc., and Piliant Corp., as trial and appellate counsel in connection with the bankruptcy cases of Barry's Jewelers, Inc., Brobeck, Phleger & Harrison, LLP, Crescent Jewelers, Inc., Computer Communications, Inc., Dewey & LeBoeuf, LLP, Enron Corp., Heller Ehman, LLP, Howrey, LLP,

#### Partner

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#### EDUCATION

- Stanford University (J.D.)
- Columbia University

#### BAR ADMISSIONS

- California
- US Supreme Court
- First, Fourth, Ninth and Eleventh Circuits
- US District Courts for the Northern District of CA, Central District of CA, Southern District of CA, and Eastern District of CA

#### PROFESSIONAL AFFILIATIONS

- Financial Lawyers Conference of Los Angeles
- American Bar Association
- Los Angeles County Bar Association
- Fellow, American College of Bankruptcy
- Lawdragon 500 (2012)

IndyMac Bancorp., Jefferson County, Alabama, Lake at Las Vegas Joint Venture, LLC, Tronox, Inc., Washington Group, Inc. and Washington Mutual, Inc., and as trial counsel in *In re San Juan Dupont Plaza Hotel Fire Litigation*, MDL No. 721. Reported cases include *FDIC v. Siegel* (In re IndyMac Bancorp, Inc.), 554 Fed. Appx. 668 (9th Cir. 2014); *LID Acquisition, LLC v. Lake at Las Vegas Joint Venture, LLC* (In re Lake at Las Vegas Joint Venture, LLC), 497 Fed. Appx. 709 (9th Cir. 2012); *In re Dominguez*, 51 F.3d 1502 (9th Cir. 1995); *In re Dominguez*, 995 F.2d 883 (9th Cir. 1993); *In re Rectical Foam Corp.*, 859 F.2d 1000 (1st Cir. 1988); *Computer Communications, Inc. v. Codex Corp.*, 824 F.2d 725 (9th Cir. 1987); *In re Shaw*, 16 B.R. 875 (Bankr. 9th Cir. 1982); *In re Howrey LLP*, 2014 WL 3899309 (N.D. Cal. 2014); *Siegel v. F.D.I.C.*, 2012 WL 1951474 (C.D. Cal. 2012) & 2011 WL 2883012 (C.D. Cal. 2011); *Enron Corp. v. Citigroup, Inc.*, (In re Enron Creditors Recovery Corp.), 410 B.R. 374 (S.D.N.Y. 2008); *In re Enron Corp.*, 379 B.R. 425 (S.D.N.Y. 2007); *Canada Life Assur. Co. v. Bank of America*, 2006 WL 45427 (N.D. Ill. 2006); *In re GGW Brands, LLC*, 504 B.R. 577 (Bankr. C.D. Cal. 2013); *In re Jefferson County, Ala.*, 465 B.R. 243, 469 B.R. 92, 474 B.R. 228 & 474 B.R. 725 (Bankr. N.D. Ala. 2012); *In re IndyMac Bancorp, Inc.*, 2012 WL 103748 (Bankr. C.D. Cal. 2012); *In re Balas*, 449 B.R. 567 (Bankr. C.D. Cal. 2011); *In re Adelpia Comm. Corp.*, 330 B.R. 364 (Bankr. S.D.N.Y. 2005). Mr. Stern has also served as trial or appellate counsel in numerous unreported cases and decisions.

#### News

- [Robert J. Pfister and David M. Stern Obtain Groundbreaking Ruling That The Defense of Marriage Act Is Unconstitutional](#)

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## Attorneys

### MICHAEL L. TUCHIN

Michael L. Tuchin is a founding member and co-manager of KTB&S.

Mr. Tuchin graduated with Honors and Distinction from Stanford University with a Bachelor of Arts Degree in Psychology. He received his J.D. from Boalt Hall School of Law at the University of California, Berkeley, in 1990. He served as an extern to the Honorable Joseph R. Sneed, United States Court of Appeals for the Ninth Circuit, in 1989. Mr. Tuchin represents debtors, equity holders, secured and unsecured creditors, committees, trustees, and parties interested in acquiring assets from troubled companies. Mr. Tuchin has been recognized as one of the top 100 lawyers in Los Angeles County every year since 2004 and ranked by Chambers USA in the 1st Tier for Bankruptcy and Restructuring in California every year since 2007.



#### Partner

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#### EDUCATION

- Boalt Hall, UC Berkeley (J.D.)
- Stanford University

#### BAR ADMISSIONS

- California

#### PROFESSIONAL AFFILIATIONS

- Board, Los Angeles Bankruptcy Forum
- Board of Governors, Financial Lawyers Conference of Los Angeles
- Editor, California Bankruptcy Journal
- Fellow, American Bar Foundation
- Fellow, American College of Bankruptcy

Mr. Tuchin has represented numerous debtors in court, including Metro-Goldwyn-Mayer Studios, Inc. (motion picture studio and licensor of intellectual property) in its successful chapter 11 reorganization, Lake at Las Vegas Joint Venture, LLC and Affiliates (owner-developers of a 3,592-acre master-planned residential development and resort located in Henderson, Nevada) in its successful chapter 11 case, the Town of Mammoth Lakes, California, in its successful chapter 9 case, Nevada Cancer Institute (owner and operator of non-profit cancer research and treatment facilities) in its successful chapter 11 case, American Restaurant Group (the owner of the Stuart Anderson's Black Angus chain of restaurants) in connection with their successful chapter 11 cases, Samuels Jewelers, Inc. (a national publicly traded retailer of fine jewelry operating more than 130 stores) in connection with its successful chapter 11 case, Avado Brands, Inc. and affiliates (a national operator of 90 Don Pablo's Mexican Kitchen and 22 Hops Grillhouse and Brewery restaurants in 20 states) in their successful chapter 11 cases, Fountain View, Inc. (operator of more than 50 skilled care nursing and assisted care living facilities) in connection with its successful chapter 11 reorganization, Frederick's of Hollywood, Inc. (a world-renowned retailer of innovative specialty apparel operating more than 150 stores, a catalogue, and an internet business) in connection with its successful chapter 11 case, and Maple Plaza, Ltd. (the owner of a significant commercial property in Beverly Hills, California) in its successful chapter 11 case.



Out of court, Mr. Tuchin has led successful restructurings of AMCO Mirage (one of the world's largest owners and operators of casino resorts), the Lusk Company (a large California homebuilder with close to \$1 billion in debt), a large giftware company, an international manufacturer of computer accessories, a national express delivery business, and L.A. Kings, Ltd. (the then-owner of the Los Angeles Kings hockey franchise).

Mr. Tuchin has represented creditors in chapter 11 cases across the country, including Ameriserve (Delaware), Black Hawk Casino (Denver, CO), Blockbuster, Inc. (New York, NY), Chevy's Restaurants (Oakland, CA), Circuit City Stores, Inc. (Richmond, VA), Crescent Jewelers (Oakland, CA), Diversified Restaurant Concepts (San Jose, CA), Eastman Kodak Company (New York, NY), Edwards Theatres (Orange County, CA), ERLY Industries, Inc. (Corpus Christi, TX), Falcon Industries (St. Louis, MO), Fox & Hound (Delaware), Kmart (Chicago, IL), Lodgenet Interactive Corp. (New York, NY), Merry-Go-Round (Delaware), Natrol, Inc. (Delaware), Pegasus Satellite Television (Portland, ME), Petries Retail (New York, NY), Sega Gameworks (Los Angeles, CA), Sydran Services (Oakland, CA), Tower Records (Delaware), United Airlines (Chicago, IL), Young Broadcasting, Inc. (New York, NY). Mr. Tuchin recently represented Suzuki Motor Corporation, a Japan-based manufacturer of engines and vehicles sold worldwide, as the largest creditor (secured and unsecured) in the chapter 11 case of American Suzuki Motor Corporation. He has represented Viacom, Paramount, CBS and Cerberus as creditors in numerous cases. He has represented multiple bondholder committees in restructurings (in and out of court), including in the restructurings of Physiotherapy Associates, Black Hawk Casino, ICO Global & Lieberman Broadcasting.

Mr. Tuchin currently represents the chapter 7 trustee in the high-profile Girls Gone Wild chapter 11 cases in Los Angeles, California.

Mr. Tuchin has represented numerous purchasers of assets and is an expert on successor liability issues. He recently represented Suzuki Motor of America, Inc. in connection with its purchase of the motorcycle, ATV, and marine divisions of American Suzuki Motor Corporation.

#### News

- Chambers USA Recognizes Klee, Tuchin, Bogdanoff & Stern LLP and its Attorneys with Top Ratings for 2015
- Klee, Tuchin, Bogdanoff & Stern LLP Named a Top California Boutique Firm
- Kenneth Klee Recognized by Who's Who Legal as One of the Ten Most Highly Regarded Insolvency & Restructuring Lawyers In The World for 2014
- Chambers USA Recognizes Klee, Tuchin, Bogdanoff & Stern LLP and its Attorneys with Top Ratings for 2014
- Kenneth Klee Recognized by Who's Who Legal as One of the Ten Most Highly Regarded Insolvency & Restructuring Lawyers In The World
- Chambers USA Recognizes Klee, Tuchin, Bogdanoff & Stern LLP and its Attorneys with Top Ratings for 2013
- Kenneth Klee Recognized by Who's Who Legal as One of the Ten Most Highly Regarded Insolvency & Restructuring Lawyers In The World
- Chambers USA Recognizes Klee, Tuchin, Bogdanoff & Stern LLP and its Attorneys with Top Ratings for 2012
- Chambers USA Recognizes Klee, Tuchin, Bogdanoff & Stern LLP And its Attorneys With Top Ratings for Bankruptcy and Restructuring Law



## Attorneys

### COLLEEN M. KEATING

Colleen Keating is counsel with KTB&S.

Ms. Keating received her J.D. from the UCLA School of Law in 2008 and was elected to the Order of the Coif. During law school, she was a Senior Editor of the UCLA Law Review and served as a judicial extern to the Honorable A. Wallace Tashima of the United States Court of Appeals for the Ninth Circuit. Ms. Keating received her undergraduate degree, *magna cum laude*, from Rice University in 2005.



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#### EDUCATION

- UCLA (J.D.)
- Rice University

#### BAR ADMISSIONS

- California

Following law school, Ms. Keating served as a law clerk to the Honorable Philip S. Gutierrez of the United States District Court for the Central District of California. She was named a "Rising Star" by *Super Lawyers* magazine in 2012, 2013, and 2014. Ms. Keating is a member of the Financial Lawyers Conference and the Women Lawyers Association of Los Angeles.

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## Attorneys

### JONATHAN M. WEISS

Jonathan M. Weiss is an associate with KTB&S.

Mr. Weiss received his J.D. from the UCLA School of Law, where he graduated second in his class, and his B.S. in Accounting, summa cum laude, from Yeshiva University. During law school, he was a Managing Editor of the UCLA Law Review, and a Production Editor of the Journal of International Law & Foreign Affairs. Mr. Weiss has authored "Tax Claims In Transnational Insolvencies: A 'Revenue Rule' Approach" (Virginia Tax Review 2010) and "The Need for Federal Solutions to Interstate and International Ethics Conflicts: A Case Study In Confidentiality" (forthcoming, Journal of International Business & Law 2012).



#### Associate

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#### EDUCATION

- UCLA (J.D.)
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#### PROFESSIONAL AFFILIATIONS

- The American Bar Association

Mr. Weiss was awarded the International Insolvency Institute's Gold Medal in International bankruptcy research, and, in 2013, was selected as a member of the class of delegates to the International Insolvency Institute's NextGen Leadership Program in New York. Mr. Weiss was also selected as the 2011 Distinguished Bankruptcy Student of the Ninth Circuit by the American College of Bankruptcy. In addition, his work has been recognized and published by the American Bankruptcy Institute.

Since joining KTB&S, Mr. Weiss has represented clients across the bankruptcy spectrum. On the debtor side, his work includes having represented the Nevada Cancer Institute as a chapter 11 debtor in possession, and the Town of Mammoth Lakes, California, in its chapter 9 municipal bankruptcy. Mr. Weiss also represents the trustee of the distributor of Girls Gone Wild adult entertainment, in which case the trustee has alleged that the distributor's intellectual property was transferred to an offshore entity as part of a fraudulent scheme. A sampling of Mr. Weiss's other representations includes: serving on the defense team of a defendant in a multi-billion dollar fraudulent transfer lawsuit; representation of a state-court receiver in the chapter 11 case of a technology company in the Central District of California; and serving as restructuring counsel to a California-based internet advertising company in a successful out-of-court assignment for benefit of creditors and organized wind-down.

Mr. Weiss is a member of the State Bar of California, the Financial Lawyers Conference, and the Los Angeles County Bar Association. He is admitted to

---

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## **EXHIBIT 4**

**Timekeeper Totals**  
**February 27, 2015 through May 31, 2015**

<b><u>Partners</u></b>	<b><u>Rate</u></b>	<b><u>Total Hours</u></b> <b><u>Billed</u></b>	<b><u>No Charge</u></b> <b><u>Hours</u></b>	<b><u>Amount</u></b>
David M. Stern	\$ 1,080.00	137.00	0.40	\$ 147,960.00
Michael L. Tuchin	\$ 1,080.00	104.40	4.80	\$ 112,752.00
Maria Sountas-Argiropoulos	\$ 675.00	44.00		\$ 29,700.00
Vijay S. Sekhon	\$ 675.00	58.10	0.20	\$ 39,217.50
 <b><u>Counsel</u></b>				
Colleen M. Keating	\$ 650.00	181.30	4.80	\$ 117,845.00
 <b><u>Associates</u></b>				
Samuel L. Kidder	\$ 475.00	10.80		\$ 5,130.00
Jonathan M. Weiss	\$ 475.00	316.50	7.50	\$ 150,337.50
Kathryn T. Zwicker	\$ 440.00	1.30		\$ 572.00
Sasha M. Gurvitz	\$ 395.00	74.40	13.70	\$ 29,388.00
 <b><u>Paralegal</u></b>				
Shanda D. Pearson	\$ 290.00	<u>63.80</u>	<u>7.20</u>	<u>\$ 18,502.00</u>
 <b>Total:</b>		 <b>991.60</b>	 <b>38.60</b>	 <b>\$ 651,404.00</b>



## **Exhibit 6**

David M. Stern (State Bar No. 67697)  
Colleen M. Keating (State Bar No. 261213)  
Jonathan M. Weiss (State Bar No. 281217)  
KLEE, TUCHIN, BOGDANOFF & STERN LLP  
1999 Avenue of the Stars, Thirty-Ninth Floor  
Los Angeles, California 90067  
Telephone: 310-407-4000  
Facsimile: 310-407-9090  
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ckeating@ktbslaw.com;  
jweiss@ktbslaw.com

**FILED & ENTERED**

**JUL 30 2015**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY walter DEPUTY CLERK

*Attorneys for R. Todd Neilson, Chapter 11  
Trustee*

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re  
STATE FISH CO., INC. and  
CALPACK FOODS, LLC,

Debtors.

Case Nos. 2:15-bk-11084 SK  
2:15-bk-11085 SK  
Jointly Administered

Chapter 11

**ORDER GRANTING FIRST INTERIM  
APPLICATION OF KLEE, TUCHIN,  
BOGDANOFF & STERN LLP FOR  
ALLOWANCE AND PAYMENT OF FEES  
AND EXPENSES**

**[Relates to Docket No. 379]**

**THIS FILING APPLIES TO:**

- ☒ ALL DEBTORS  
☐ SPECIFIED DEBTOR  
☐ STATE FISH CO., INC.  
☐ CALPACK FOODS, LLC

Hearing

Date: July 29, 2015  
Time: 10:00 a.m.  
Ctvm: 1575

KLEE, TUCHIN, BOGDANOFF & STERN LLP  
1999 AVENUE OF THE STARS, THIRTY-NINTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
TELEPHONE: 310-407-4000

On June 18, 2015, Klee, Tuchin, Bogdanoff & Stern LLP (“KTBS”), bankruptcy counsel to R. Todd Neilson (the “Trustee”), the duly-appointed, qualified and acting chapter 11 trustee of State Fish Co., Inc. and Calpack Foods, LLC (the “Debtors”), filed its *First Interim Application of Klee, Tuchin, Bogdanoff & Stern LLP for Allowance and Payment of Fees and Expenses Incurred as Bankruptcy Counsel for the Chapter 11 Trustee for the Period February 27, 2015 through May 31, 2015* [Docket No. 379] (the “Application”) and evidence in support of the Application. By the Application, KTBS sought (1) approval of its fees in the amount of \$651,404.00, and expenses in the amount of \$24,930.70, for the period from February 27, 2015 through May 31, 2015 (the “Application Period”), and (2) payment of 80% of its allowed fees and 100% of its allowed expenses.

There was no opposition to the Application that has not been withdrawn.

The Court has considered the Application, the declaration attached to the Application, the Declaration of R. Todd Neilson in Support of First Interim Fee Applications [Docket No. 383], the record in these cases, and all other admissible evidence properly before the Court.

Based on this review and consideration, the Court finds that: (i) notice of the Application was adequate and appropriate, and no further notice need be given; (ii) the legal and factual bases set forth in the Application establish good and sufficient cause to grant the relief requested therein; (iii) the services provided and expenses incurred by KTBS in the Application Period were necessary and appropriate; (iv) the services KTBS performed during the Application Period were performed within a reasonable amount of time, commensurate with the complexity, importance, and nature of the problems, issues and tasks that KTBS addressed during the Application Period; and (v) the rates charged by KTBS are reasonable in light of skill and experience of the professionals and consistent with comparably skilled professionals.

**THEREFORE, IT HEREBY IS ORDERED THAT:**

1. The Application is GRANTED in its entirety.


2. KTB&S's fees in the Application Period are hereby allowed in the amount of \$651,404.00, and its expenses in the Application Period are hereby allowed in the amount of \$24,930.70.

3. The Trustee is authorized to pay to KTB&S \$521,123.20, which represents 80% of its allowed fees during the Application Period and \$24,930.70, which represents 100% of its allowed expenses during the Application Period, when, in the Trustee's reasonable discretion, there is adequate cash in the estates to make such payments.

###

KLEE, TUCHIN, BOGDANOFF & STERN LLP  
1999 AVENUE OF THE STARS, THIRTY-NINTH FLOOR  
LOS ANGELES, CALIFORNIA 90067  
TELEPHONE: 310-407-4000

Date: July 30, 2015

  
Sandra R. Klein  
United States Bankruptcy Judge

## **Exhibit 7**

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Superior Court of California  
County of Los Angeles

SEP 09 2014

Sherri R. Carter, Executive Officer/Clerk  
By Anthony Ortiz, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

1 MITSUYO KUWAHARA, an individual, )

2 Plaintiff, )

3 v. )

4 ASAHI GAKUEN, a corporation; SUEKO )  
5 KAWATA, an individual; and DOES 1 )  
6 through 10, inclusive, )

7 Defendants. )

CASE NO: BC 454896

[Proposed]

ORDER

1) GRANTING PLAINTIFF'S MOTION  
FOR STATUTORY ATTORNEY'S  
FEES;

2) GRANTING PLAINTIFF'S MOTION  
FOR PRE-JUDGMENT INTEREST;  
AND

3) GRANTING, IN PART, AND  
DENYING, IN PART, DEFENDANTS'  
MOTION TO TAX COSTS

Hearing Date: August 26, 2014  
Hearing Time: 8:30 a.m.  
Hearing Dept.: 17

Complaint Filed on September 17, 2010  
Assigned to Judge Rico, Dept. 17

Per the attached Tentative (which became the ruling of the court, except as to the calculation of attorneys fees which did not include fees for the reply papers and hearing on the instant motions),

Order on Plaintiff's Motion for Attorneys Fees, Plaintiff's Motion for Pre-Judgment Interest and Defendants' Motion to Tax Costs - Page 1

**COPY** 1241



1 Plaintiff's Motion for Statutory Attorneys Fees, Plaintiff's Motion for Pre-Judgment Interest and  
2 Defendants' Motion to Tax Costs came on for hearing on August 26, 2014 at 8:30 a.m. in Department  
3 17 and before Judge Rico. Plaintiff appeared by Attorneys Arash Homampour and Kelly A. Knight.  
4 Defendants Sueko Kawata and Asahi Gakuen appeared by Attorney Joshua B. Wagner and Eleanor  
5 A. Welke.

6  
7 1. Plaintiff's Motion for Statutory Attorneys' Fees.

8 Plaintiff's attorneys sought fees for the attorneys and paralegal at the rates and total hours  
9 detailed in the chart below for an initial sum of \$1,414,707.25. Plaintiff's attorneys also sought  
10 \$26,900 as and for attorneys fees for time spent on the motions for attorneys fees, interest and  
11 opposing Defendants' motion to tax costs and \$22,865 for the time spent on Replies and the hearing.  
12 Plaintiff's attorneys also sought a multiplier of at least 2.0 for the reasons detailed in their motion,  
13 reply papers and at the hearing. Defendant opposed Plaintiff's motion arguing that the rates and hours  
14 were excessive and that there was no justification for a multiplier. As detailed in its tentative, the  
15 Court determined that the rates and hours detailed below and requested by Plaintiff's attorneys were  
16 reasonable and awarded them in full. The court declined to award a multiplier.

17  
18

FULL NAME	TYPE	YEAR ADMITTED	TOTAL HOURS	TOTAL RATE	TOTAL CHARGE
Arash Homampour	Attorney	1993	773.55	\$850	\$657,517.50
Kelly Knight	Attorney	2006	1176.1	\$495	\$582,169.50
Armine Safarian	Attorney	2010	300.80	\$395	\$118,816.00
James Yoon	Attorney	2013	29.70	\$250	\$7,425.00
Lynne Hirota	Paralegal	16 years	250.15	\$195	\$48,779.25
			2530.3	TOTAL	\$1,414,707.25

23

24 Accordingly, IT IS ORDERED that Plaintiff is awarded \$1,464,447.25 against Defendant  
25 ASAHI GAKUEN as attorney's fees under Government Code § 12965(b).

26 \\\

27 \\\

28 \\\

1           2.       Plaintiff's Motion for Pre-Judgment Interest

2           On November 30, 2011, Plaintiff served Defendants with a C.C.P. § 998 offer for \$2,000,000.00,  
3   *inclusive* of fees and costs. Pursuant to C.C.P. § 998 and Civil Code § 3291, Plaintiff sought a  
4   *minimum* sum of \$320,872.40 as and for pre-judgment interest (at 10%) on the \$1,431,765.60  
5   judgment from November 30, 2011 through the February 25, 2014 judgment date (or daily interest  
6   of \$392.26.) Plaintiff also sought interest on the entire judgment contending that it included any fees  
7   and costs awarded by the Court. Defendants opposed Plaintiff's motion arguing that Plaintiff's  
8   November 30, 2011 C.C.P. § 998 offer was not reasonable and not made in good faith and that pre-  
9   judgment interest would not accrue on fees and costs awarded. As detailed in the attached Tentative,  
10   the Court found that the November 30, 2011 C.C.P. § 998 offer was reasonable and was made in good  
11   faith. The Court granted Plaintiff's request for pre-judgment interest as to compensatory damage  
12   award only.

13  
14           Accordingly, IT IS ORDERED that Plaintiff is awarded \$320,872.40 against Defendants ASAHI  
15   GAKUEN and SUEKO KAWATA for pre-judgment interest on the \$1,431,765.60 judgment from  
16   November 30, 2011 through February 24, 2014.

17  
18           3.       Defendant's Motion to Tax Costs

19           Plaintiff submitted a Cost Memorandum seeking \$180,380.34 in costs. Defendant sought to tax  
20   Item No. 4 (\$49,586.55 for deposition costs), No. 9 (\$9,705 for trial transcripts), No. 11 (\$10,508.21  
21   for models, blowups and copies), and No. 13 (\$62,866.66 for other miscellaneous costs.) Plaintiff  
22   conceded that some costs should be stricken and otherwise opposed the motion arguing that the costs  
23   were reasonable and the Court had discretion to award them.

24  
25           As detailed in the attached tentative, the Court granted and denied Defendant's motion to tax.  
26   Specifically, the Court denied Defendant's motion as to Item No. 4, granted it as to Item No. 9,  
27   granted it as to only \$163.41 within Item No. 11, and denied it as to Item No. 13 (with Plaintiff  
28   agreeing to withdraw the \$1,800 charge for the cancelled deposition of Minoru Osada.)

1 Accordingly, IT IS ORDERED that Plaintiff is awarded \$168,711.93 against Defendants ASAHI  
2 GAKUEN and SUEKO KAWATA for costs.

3  
4 The clerk is ordered to enter these sums on the judgment or \$1,633,159.19 as and for costs and  
5 fees and \$320,872.40 for pre-judgment interest. A copy of the judgment is attached hereto.

6  
7 DATED: Sept 9, 2014

8   
JUDGE OF THE SUPERIOR COURT

9 RICHARD E. RICO  
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## **TENTATIVE RULING**

**PROCEEDINGS**

**Kuwahara v. Asahi Gakuen, et al.  
BC454896**

- (1) Plaintiff's motion for costs and prejudgment interest under CCP § 998 and Civil Code § 3291
- (2) Plaintiff's motion for statutory attorneys fees
- (3) Defendants' motion to tax costs

**TENTATIVE RULING**

Mitsuyo Kuwahara ("plaintiff") filed this action against defendants Asahi Gakuen and Sueko Kawata ("defendants") for various FEHA and Labor Code violations. The case went to trial which resulted in a verdict for the plaintiff.

**(1) Plaintiff's motion for costs and prejudgment interest under CCP § 998 and Civil Code § 3291**

Plaintiff moves for costs and prejudgment interest pursuant to CCP § 998 and Civil Code § 3291. It is undisputed that plaintiff is entitled to both. The issue here is the date from which prejudgment interest should be calculated. Plaintiff claims to be entitled to a minimum sum of \$320,872.40 for prejudgment interest (at 10%) from 11/30/11 through February 25, 2014 (the judgment date).

Plaintiff served three CCP § 998 offers on defendant Asahi: (1) 11/30/11 - \$2M, inclusive of fees and costs; (2) 5/7/13 - \$750,000, inclusive of fees and costs; and (3) 1/9/14 - \$250,000, plus fees and costs. (Knight Decl. ¶¶ 103-105, Exhibits D-F.) Judgment was entered in favor of plaintiff for \$1,431,765.60. (Homampour Decl. ¶ 51, Exhibit Q.) Plaintiff contends that with costs and expected attorneys fees, plaintiff is expected to have obtained a more favorable judgment than the \$2M offer served on Asahi. Plaintiff claims that the "judgment" consists of the damages awarded, plus costs, which includes statutory attorneys fees.

In opposition, defendants argue that the calculation of prejudgment interest should not be from 11/30/11 because that statutory offer was not a reasonable or good faith offer. Further, the "first offer" rule should not apply here. In addition, while defendants concede that plaintiff's attorneys fees can be used to calculate whether she obtained a more favorable judgment than defendants for the purposes of section 998, plaintiff has failed to establish that she is entitled to prejudgment interest based on those attorney fees.

*More favorable judgment*

"If an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment or award in any action or proceeding other than an eminent

domain action, the court or arbitrator, in its discretion, may require the defendant to pay a reasonable sum to cover postoffer costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the plaintiff, in addition to plaintiff's costs." (CCP § 998(d).)

"To determine under section 998, subdivision (d) whether a defendant fails to obtain a more favorable judgment than a section 998, subdivision (d) offer to compromise which includes a waiver of costs, the amount of the judgment is deemed to be the amount of the damages plus the amount of costs allowed under section 1033.5, subdivision (a). [Citation.]" (*Wickware v. Tanner* (1997) 53 Cal.App.4th 570, 575; see also *Wilson v. Wal-Mart Stores, Inc.* (1999) 72 Cal.App.4th 382, 392.)

Defendants concede that plaintiffs' attorney fees can be used to calculate whether plaintiff obtained a more favorable judgment than defendants for the purpose of CCP § 998. By including costs and attorneys fees, plaintiff obtained a more favorable judgment than the first section 998 offer. Further, the judgment is clearly more favorable than plaintiff's subsequent section 998 offers even without adding in costs or attorneys fees.

*Date from which prejudgment interest should be calculated*

Defendants first argue that the 11/30/11 statutory offer was not reasonable or a good faith offer. Instead, the offer was made as policy limits demand intended to create coverage issues and leverage a settlement.

"A prevailing party who has made a valid pretrial offer pursuant to Code of Civil Procedure section 998 is eligible for specified costs, so long as the offer was reasonable and made in good faith. [Citation.] Whether a section 998 offer was reasonable and made in good faith is left to the sound discretion of the trial court. [Citation.] Because MPG prevailed in the action, its 998 offer is presumed to have been reasonable, and it was Nelson's burden to show otherwise. [Citation.]" (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 134.)

Here, the court declines to find that the 11/30/11 offer was not made in good faith. Given that plaintiff ultimately prevailed in the action and obtained a judgment more favorable than the offer as well as the fact that the original offer included fees and costs, the offer was made in good faith. An examination of the attorney fees, interest and related costs which are now at issue amply demonstrates this point.

Defendant also argues that the first offer rule should not apply here, which would entitle plaintiff to prejudgment interest calculated from 11/30/11.

In *Martinez v. Brownco Const. Co., Inc.* (2013) 56 Cal.4th 1014, our Supreme Court stated that it "need not find the last offer rule or the first offer rule controlling in all circumstances. Indeed, for present purposes we may assume the propriety of applying the last offer rule where, as in *Distefano* and *Wilson*, an offeree obtains a judgment or award less favorable than a first section 998 offer but more favorable than the later offer. The



present circumstances, however, call for a different result.” (*Id.* at 1025-1026.) “Here, plaintiff made two statutory offers, and defendant failed to obtain a judgment more favorable than either. In cases such as this, section 998’s policy of encouraging settlements is better served by *not* applying the general contract principle that a subsequent offer entirely extinguishes a prior offer. [Citation.] Not only do the chances of settlement increase with multiple offers [citation], but to be consistent with section 998’s financial incentives and disincentives, parties should not be penalized for making more than one reasonable settlement offer. Nor should parties be rewarded for rejecting multiple offers where each proves more favorable than the result obtained at trial. Accordingly, we hold that where, as here, a plaintiff serves two unaccepted and unrevoked statutory offers, and the defendant fails to obtain a judgment more favorable than either offer, the trial court retains discretion to order payment of expert witness costs incurred from the date of the first offer.” (*Id.* at 1026.)

Here, the court finds that since defendant failed to obtain a judgment more favorable than any of the three offers, interest from the date of the first offer is appropriate.

*Base amount to calculate prejudgment interest*

“In any action brought to recover damages for personal injury sustained by any person resulting from or occasioned by the tort of any other person, corporation, association, or partnership, whether by negligence or by willful intent of the other person, corporation, association, or partnership, and whether the injury was fatal or otherwise, it is lawful for the plaintiff in the complaint to claim interest on the damages alleged as provided in this section. [¶] If the plaintiff makes an offer pursuant to Section 998 of the Code of Civil Procedure which the defendant does not accept prior to trial or within 30 days, whichever occurs first, and the plaintiff obtains a more favorable judgment, the judgment shall bear interest at the legal rate of 10 percent per annum calculated from the date of the plaintiff’s first offer pursuant to Section 998 of the Code of Civil Procedure which is exceeded by the judgment, and interest shall accrue until the satisfaction of judgment...” (Civil Code § 3291.)

Defendants concede that gender/sexual harassment in the workplace is a “personal injury” within the meaning of section 3291. (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal App 4th 976.) Defendants argue, however, that plaintiff has failed to establish that she is entitled to prejudgment interest based on the amount of attorney fees and instead, section 3291 provides that the “judgment” shall bear interest.

Plaintiff has stated that she is entitled to a minimum sum of \$320,872.40 for prejudgment interest on the \$1,431,765.60 judgment from 11/30/11 through 2/24/14. There is no indication that plaintiff is including attorney fees in this calculation. Thus, defendants’ argument is unnecessary.

In light of the foregoing, plaintiff’s motion is GRANTED.

## **(2) Defendants' motion to tax costs**

Defendants move to tax Item 4, 9, 11 and 13 costs.

### **4. Deposition costs-----\$49,586.55**

Defendants first move to tax various amounts for interpreter fees for the depositions of defendant Kawata and defendant's employees Jun Kitayama, Minoru Osada, Katsuko Shimizu, and Tomohisa Sato. Defendants claim that the cost of non-court appointed interpreters is not a permissible item of costs. CCP § 1033.5(a)(2) allows "Court interpreter fees for a qualified court interpreter authorized by the court for an indigent person represented by a qualified legal services project, as defined in Section 6213 of the Business and Professions Code or a pro bono attorney as defined in Section 8030.4 of the Business and Professions Code."

Defendants correctly argue that there is no specific authority permitting recovery of non-court appointed interpreters; however, plaintiff is also correct to argue that the court has discretion to award such costs. (*See Ladas v. California State Automotive Assoc.* (1993) 19 Cal.App.4th 761, 773-774.)

Here, plaintiff has indicated that these witnesses could not be deposed without the use of a Japanese interpreter and that interpreter services were required as a result of defendants' own representations to plaintiff that an interpreter would be required. (Homampour Decl. ¶3, Exhibit A.) The court finds that the interpreters were necessary and declines to tax these amounts.

Defendants also move to tax costs for the videotaped depositions of Jun Kitayama, Tomohisa Sato, and Katsuko Shimizu. Defendants claim that the cost of videos in connection with these depositions was "completely unnecessary" and that none of the witnesses were expected to be out of state at the time of trial and the video depositions were never presented in court. (Wagner Decl. ¶3.)

In opposition, plaintiff points out that the cost of video recording necessary depositions are allowable costs under CCP § 1033.5(a)(3). Plaintiff claims that the depositions were reasonably necessary because they were taken to determine what opinions the employee witnesses held and that videotaping the depositions were reasonably necessary because video captures much more information as to witness demeanor, credibility, and believability. (Homampour Decl. ¶¶4-5.) Also, while these witnesses did not ultimately testify at trial, that is not a basis to tax the costs of deposition expenses. The court finds that the cost of video recording depositions are allowed under CCP § 1033.5(a)(3) and the motion is DENIED as to these costs.

### **9. Court-ordered transcripts-----\$9,705.00**

Defendants move to tax the entire amount for the transcript of Tracy Steel Dyrness. This amount is properly taxed because CCP § 1033.5(b)(5) expressly excludes

"Transcripts of court proceedings not ordered by the court." (Wagner Decl. ¶4.) Plaintiff does not claim that this was a court-ordered transcript and instead argues that the court should exercise its discretion and allow these costs. The court finds this argument unpersuasive and the motion is GRANTED as to the amount of \$9,705.00.

11. Models, blowups, and photocopies-----\$10,508.21

Defendants move to tax \$9763 for the preparation of video exhibits for trial. Defendants argue that plaintiff did not use any video of Jun Kitayama's deposition at trial. (Wagner Decl. ¶3.) Defendants also claim that there is no evidence in any of the submitted invoices to allow a reasonable determination of how much, if any, of the video clips were used at trial. (*Id.* at ¶5, Exhibit D.)

"MPG claimed \$28,784 for models, blowups, and photocopies of exhibits. 'Models and blowups of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact.' (Code Civ. Proc., § 1033.5, subd. (a)(12).) The court disallowed expenses relating to the use of videotapes and laser discs. It held: 'It is certainly not inappropriate for a party to choose cutting edge technology to present its case to a jury. But that does not mean that it can automatically pass the high cost of that technology to the other side, especially when it is used only sporadically during the trial, and when many times when counsel attempted to use it, they were unable to and reverted to traditional 'low tech' methods for presenting the evidence.' [¶] Burden of proof is not an issue in this instance, since, having presided over the trial, the trial court had all the evidence needed to determine whether the items claimed were reasonably helpful to the trier of fact, and was in the best position to make the determination." (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 132-133.)

In opposition, plaintiff argues that the amount represents costs for video clips that were reasonable, necessary, and used during the trial multiple times. (Homampour Decl. ¶8.)

Plaintiff also request \$163.41 for "Heavy Litigation Scanning" and "Electronic Data Conversion to PDF." (*Id.*) Defendants seek to tax this amount because there is no evidence regarding what was scanned or for what purpose. They simply appear to be photocopying and scanning costs plaintiff is attempting to pass on to defendants. However, photocopying costs are not allowed. (CCP § 1033.5(b)(3).) These amounts are not specifically addressed by plaintiff in the opposition. This amount is properly taxed and the motion is GRANTED as to \$163.41.

13 Other-----\$62,866.66

These costs are for translations of trial exhibits (\$14,357.08), interpreting services (\$17,105.75), attorney service re: filing of pre-trial documents (\$715), messenger service re: trial materials and equipment (\$237), messenger service re: service of documents (\$478.39), and attorney service re: filing of documents (123.44). (Memo of Costs, Attachment 13.)

Defendants argue that the invoices attached do not show whether these costs were reasonably necessary to the conduct of litigation. Also, as noted above, there is no authority governing recovery of interpreters' fees other than for court appointed interpreters.

As for the costs of translation, plaintiff points out that it was defendants who produced large quantities of documents in Japanese to plaintiff and that plaintiff had no choice but to translate these documents. (Homampour Decl. ¶11.) Translation services were necessary to trial. (*Id.* at ¶12.) This is sufficient to justify this cost and the court declines to tax this amount. This argument applies to the interpreter costs as well.

It is noted that plaintiff agrees to withdraw \$1800 for the cancelled deposition of Minoru Osada. (Opposition p. 8.)

As for messenger fees, which are allowable in the discretion of the court, the court finds that these costs are proper and declines to tax these amounts.

### **(3) Plaintiff's motion for statutory attorneys fees**

Plaintiff moves for attorneys fees pursuant to Government Code § 12965(b) against Asahi. It is clear here that plaintiff, as the prevailing party, is entitled to fees. This is not disputed by defendants. The issue is whether the amount of fees sought is reasonable.

The lodestar amount sought by plaintiff is \$1,414,707.25. Plaintiff provides detailed declarations and billing statements to support this amount. (See Homampour and Knight Declarations and exhibits attached thereto.) Plaintiff also seeks an enhancement of at least 2.0 given the contingent risk, the time spend in the matter precluding other work, the skill of the attorneys, and the exceptional results obtained in the case. Plaintiff also seeks \$26,900 for time spent on these motions, for a total of \$2,856,314.50.

In opposition, defendants argue that the amount is unreasonable and inflated. Defendants argue that the attorneys fees rates are unreasonable and that plaintiff has failed to adequately deduct time incurred in litigating her nine wage and hour claims, which resolved prior to trial (equating to approximately 453 hours and \$237,815.50 in fees). (Welke Decl. ¶¶12-15, Exhibit E.) Further, defendants claim that a 2.0 multiplier is not justified here, as this was a single plaintiff "run of the mill" employment law case. The "exceptional skill" of counsel is already taken into account when with counsel's high hourly rate. Further, the litigation did not preclude plaintiff's counsel from taking on other cases. For instance, attorney Knight only spent approximately 26 hours a month on this case while attorney Homampour spent approximately 28 hours a month on this case. On numerous occasions, depositions and other litigation dates were rescheduled due to Homampour's packed trial schedule. (Welke Decl. ¶¶9-10.) Further, defendants claim that there were an unnecessary number of billers at the same events. (*Id.* at ¶24.) Also, defendants claim that fees based on block billing should be reduced. (*Id.* at ¶¶25-28.)

Also, there is no competent evidence attesting to the hours billed by James Yoon (except for a declaration by attorney Knight), who Knight previously stated was involved for the learning experience. (Wagner Decl. ¶11; Welke Decl. ¶30.) Finally, defendants argue that plaintiff cannot recover fees for *Tameny* or gender discrimination claims. (Welke Decl. ¶32.) Defendants argue that the total amount to be awarded to plaintiff should be \$557,482.80.

In reply plaintiff refutes the various arguments made by the defendants.

- Homampour points out that he work much if at all on the wage and hour issues. He also points out to the manner in which defendants staffed the case leading credence to the manner in which plaintiff attorneys billed for the work performed.

The court finds that although the amount sought is large, the rates of counsel and the amount of time spent on the various matters in this case are reasonable. The court, however, declines to apply a multiplier. Accordingly, the motion is GRANTED in the amount sought; \$1,441,607.25.

## **JUDGMENT**



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9 Attorneys for Plaintiff MITSUYO KUWAHARA

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12 MITSUYO KUWAHARA, an individual,

13 Plaintiff,

14 v.

15 ASAHI GAKUEN, a corporation; SUEKO  
16 KAWATA, an individual; and DOES 1 through  
10, inclusive,

17 Defendants.

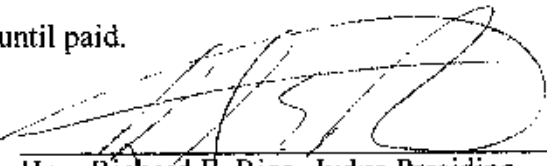
CASE NO. BC454896

(Assigned for all purposes to Hon. Richard E.  
Rico, Dep't 17)

**[PROPOSED] JUDGMENT ON SPECIAL  
VERDICT**

Action filed: February 10, 2011  
Trial date: January 14, 2014

19 The special verdict having been returned by the jury and having been duly entered on  
20 February 13, 2014, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff  
21 MITSUYO KUWAHARA recover from Defendants ASAHI GAKUEN and SUEKO KAWATA the  
22 sum of \$1,431,765.60, plus costs and attorneys fees in the amount of \$ \_\_\_\_\_  
23 and prejudgment interest under Code of Civil Procedure § 998 and Civil Code § 3291 in the amount  
24 of \$ \_\_\_\_\_. The judgment is to bear interest at the rate of ten percent  
25 (10%) per annum from February 13, 2014, until paid.

26   
27 Hon. Richard E. Rico, Judge Presiding  
28

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

FEB 25 2014

Sherri R. Carter, Executive Officer/Clerk  
By Anthony Ortiz, Deputy

**PROOF OF SERVICE**

I am over the age of 18 and not a party to the within action. I am employed in the County of Los Angeles, State of California. My business address is 15303 Ventura Blvd., Suite 1000, Sherman Oaks, CA 91403.

On September 5, 2014, I served the following document(s) described as **[PROPOSED] ORDER 1) GRANTING PLAINTIFF'S MOTION FOR STATUTORY ATTORNEY'S FEES; 2) GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST; AND 3) GRANTING, IN PART, AND DENYING, IN PART, DEFENDANTS' MOTION TO TAX COSTS** on the interested parties in said action, by placing the ☐ original to the propounding party/☒ a true copy thereof to all other parties enclosed in sealed envelopes addressed as follows:

**SEE ATTACHED SERVICE LIST**

☐ **BY MAIL:** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **BY CERTIFIED MAIL:** I deposited envelopes containing the above-described documents with the United States Postal Service for delivery to the above addresses with postage thereon fully prepaid by certified mail with proof of delivery requested.

☒ **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses on September 5, 2014. I placed the envelope or package for collection and overnight delivery at an office or a regular utilized drop box of the overnight delivery carrier.

☐ **BY PERSONAL SERVICE:** I personally delivered the document to the person at the addresses listed on September 5, 2014. Delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening.

☐ **BY FAX TRANSMISSION:** I faxed the documents to the person at the fax number listed on September 5, 2014. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

☒ **BY ELECTRONIC SERVICE (EMAIL):** I caused said document(s) to be transmitted electronically to attorney noted at the electronic notification address noted. The transmission of the document was reported as complete and without error.

☒ **STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 5, 2014 at Sherman Oaks, California.

  
CAROLINA ALMENAR

SERVICE LIST

Kuwahara v. Gakuen, et al.  
LAS Case No. BC 454896  
(as of September 5, 2014)

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⊗

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☑

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☑

*Attorneys for Defendant Asahi Gakuen and Sueko Kawata*

## **Exhibit 8**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SPORTS AUTHORITY HOLDINGS, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Obj. Deadline: May 4, 2016 at 4:00 p.m. (ET)

**SUMMARY OF FIRST MONTHLY APPLICATION OF GIBSON, DUNN &  
CRUTCHER LLP AS CO-COUNSEL TO THE DEBTORS-AND-DEBTORS IN  
POSSESSION FOR ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF  
EXPENSES INCURRED FOR THE INTERIM PERIOD FROM MARCH 2, 2016  
THROUGH AND INCLUDING MARCH 31, 2016**

Name of Applicant:	Gibson, Dunn & Crutcher LLP
Authorized to Provide Professional Services to:	Debtors and Debtors-in-Possession
Date of Retention:	March 2, 2016 (order entered March 24, 2016 <i>nunc pro tunc</i> to March 2, 2015)
Period for which compensation and reimbursement is sought:	March 2, 2016 through and including March 31, 2016
Amount of Interim Compensation sought as actual, reasonable and necessary:	\$1,803,468.93 <sup>2</sup>
Amount of Interim Expense Reimbursement sought as actual, reasonable and necessary:	\$24,684.55
This is an: <u>  X  </u> interim <u>      </u> final application	

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

<sup>2</sup> The fees set forth herein reflect a voluntary reduction by Gibson Dunn in the amount of \$110,681.07.

This application includes 17.7 hours and \$13,894.00 in fees incurred in connection with the preparation of Fee Applications.

Prior applications:

None.

**INTERIM COMPENSATION BY INDIVIDUAL**

<b>Name of Professional Person</b>	<b>Position of the Applicant, Number of Years in that Position, Prior Relevant Experience, Year of Obtaining License to Practice, Area of Expertise</b>	<b>Hourly Billing Rate (including changes)</b>	<b>Total Billed Hours</b>	<b>Total Compensation</b>
Karlan, Mitchell	Partner since 1989. Joined firm as an associate in 1984. Member of the D.C. bar since 2005; NY bar since 1980. Primary practice area: General Commercial Litigation	\$ 1295	47.6	\$ 61,642.00
Klyman, Robert	Elected partner at Latham & Watkins in 1996. Joined firm as a partner in 2014. Member of CA Bar since 1989. Primary practice area: Business Restructuring and Reorganization	1215	242.4	294,516.00
Arnold, Dennis	Partner. Joined the Firm in 1988. Member of CA bar since 1976. Primary practice area: Uniform Commercial Code, Real Estate, Banking, Creditors' Rights, Remedies.	1110	36.5	40,515.00
Battaglia, David	Partner since 1996. Joined firm as an associate in 1987. Member of CA bar since 1987; D.C. since 1990. Admitted 1987. Primary practice area: General Commercial Litigation	1110	69.6	77,256.00



Name of Professional Person	Position of the Applicant, Number of Years in that Position, Prior Relevant Experience, Year of Obtaining License to Practice, Area of Expertise	Hourly Billing Rate (including changes)	Total Billed Hours	Total Compensation
Bellah Maguire, Jennifer	Partner since 1991. Joined firm as an associate in 1983. Member of the CA bar since 1983. Primary practice area: Mergers and Acquisitions, Investment Funds Management.	1110	40.8	45,288.00
Blume, Robert	Partner since 2005. Joined firm as an associate in 2000. Member of the D.C. bar since 2001; CO bar since 2006. Primary practice area: White Collar Defense and Investigation	1090	3.0	3,270.00
Williams, Matthew	Joined the firm as partner in 2008. Member of NY bar since 1999. Primary practice area: Business Restructuring and Reorganization	1060	212.7	225,462.00
Montgomery, Cromwell	Partner since 2007. Joined firm as an associate in 2001. Member of CA bar since 1997. Primary practice area: Global Finance	1055	1.2	1,266.00
Di Vincenzo, Adam	Partner since 2013. Joined firm as an associate in 2002. Member of D.C. Bar since 2003 and NY Bar since 2002. Primary practice area: Antitrust and Compensation	950	3.5	3,325.00
Domzalski, Shawn	Associate. Joined firm as an associate in 2006. Member of CA bar since 2006.	855	10.9	9,319.50
Keats, Andrew Rosenthal	Associate. Joined firm as an associate in 2007. Member of CA bar since 2007; NY bar since 2013..	855	73.8	63,099.00

<b>Name of Professional Person</b>	<b>Position of the Applicant, Number of Years in that Position, Prior Relevant Experience, Year of Obtaining License to Practice, Area of Expertise</b>	<b>Hourly Billing Rate (including changes)</b>	<b>Total Billed Hours</b>	<b>Total Compensation</b>
Martorana, Keith	Of Counsel. Joined firm as an associate in 2008. Member of the NY and NJ bars since 2008.	855	247.9	211,954.50
Barshop, Melissa Leigh	Associate. Joined the firm in 2006. Member of the CA bar since 2006.	795	10.9	8,665.50
Bedell, Tiaunia Nyeba	Associate. Joined firm as an associate in 2007. Member of CA bar since 2007.	795	64.2	51,039.00
Graves, Jeremy Lee	Associate. Joined firm as an associate in 2008. Member of CO Bar since 2012; TX Bar since 2007. <sup>3</sup>	795	205.5	163,372.50
Kenny, Phil	Associate. Joined firm in 2006. Member of CA bar since 2007.	795	7.7	6,121.50
Benvenisty, Jessica	Associate. Joined the firm in 2013. Member of the NY bar since 2013.	775	5.7	4,417.50
Jacobs, Sabina	Associate. Joined firm as an associate in 2014. Member of CA Bar since 2010; NY Bar since 2012.	750	310.0	232,500.00
Weinrich, Kurt Joseph	Staff Attorney. Joined firm as a litigation staff attorney in 2007; Member of NY bar since 2009; NV Bar since 1996.	730	20.1	14,673.00
Marcantonio, Donata	Associate. Joined firm as an associate in 2014. Member of NY bar since 2014.	720	50.9	36,648.00
Smalley, Jazmine	Associate. Joined firm as an associate in 2013. Member of NY bar since 2014.	720	43.2	31,104.00
Hathaway-Zepeda, Taylor	Associate. Joined firm as an associate in 2012. Member of CA bar since 2013; NY bar since 2015.	675	45.4	30,645.00

<sup>3</sup> Not actively licensed to practice in Texas.

Name of Professional Person	Position of the Applicant, Number of Years in that Position, Prior Relevant Experience, Year of Obtaining License to Practice, Area of Expertise	Hourly Billing Rate (including changes)	Total Billed Hours	Total Compensation
Solow, Ryan	Associate. Joined firm as an associate in 2015. Member of CA bar since 2015; IL bar since 2011.	675	2.8	1,890.00
Speak, Emily	Associate. Joined firm as an associate in 2013. Member of CA bar since 2013.	600	70.4	42,240.00
McClelland, Cary*	Associate. Joined firm as an associate in 2015.  *Completed NY bar exam in July 2015; certification is still pending.	585	46.9	27,436.50
Roniger, Luke *	Associate. Joined firm as an associate in 2015.  *Completed NY bar exam in July 2015; certification is still pending.	585	20.6	12,051.00
Silvano, Stephanie	Associate. Joined firm as an associate in 2015. Member of NJ and NY bars since January 2016.	585	20.5	11,992.50
Epner, Justin	Associate. Joined firm as an associate in 2015. Member of CA Bar since 2014.	535	18.8	10,058.00
Grema, Yamini	Associate. Joined firm as an associate in 2014. Member of the CO Bar since 2014.	535	12.3	6,580.50
Wilhelm, Andrew	Associate. Joined the Firm in 2015. Member of the CA bar since 2015.	535	44.7	23,914.50
Chao, Eugene	Associate. Joined firm as an associate in 2015. Member of CA bar since 2015.	480	31.7	15,216.00
Cho, Erin	Associate. Joined firm as an associate in 2015. Member of CA Bar since 2015.	480	206.8	99,264.00

<b>Name of Professional Person</b>	<b>Position of the Applicant, Number of Years in that Position, Prior Relevant Experience, Year of Obtaining License to Practice, Area of Expertise</b>	<b>Hourly Billing Rate (including changes)</b>	<b>Total Billed Hours</b>	<b>Total Compensation</b>
Jones, Shannon	Associate. Joined firm as an associate in 2015. Member of CA Bar since 2015.	480	2.2	1,056.00
Lim, Eun-Sung	Associate. Joined firm as an associate in 2015. Member of CA Bar since 2015.	480	6.1	2,928.00
Kann, Stephanie	Senior Paralegal	435	2.5	1,087.50
Amponsah, Duke	Paralegal	410	3.1	1,271.00
Neal, Stephen	E-Discovery Specialist	405	3.8	1,539.00
Roymisher, Leonid	E-Discovery Specialist	405	27.5	11,137.50
Santos, F. Pamela	Paralegal	390	57.3	22,347
Green, Corey	eDiscovery Specialist	380	15.9	6,042.00
<b>Sub Total:</b>			2,347.4	\$1,914,150.00
<b>Blended Rate:</b>				\$727.25
NON-WORKING TRAVEL TIME REDUCTION (50%)				(\$16,637.25)
ADDITIONAL VOLUNTARY DISCOUNT				(\$94,043.82)
<b>Grand Total:</b>			2,347.4	\$1,803,468.93

**INTERIM COMPENSATION BY PROJECT CATEGORY**

<b>Project Category</b>	<b>Total Hours</b>	<b>Total Fees</b>
Asset Analysis & Recovery	1.3	\$ 780.00
Asset Sales	336.0	287,140.00
Assumption & Rejection of Leases & Contracts	92.8	76,008.50
Business Operations	118.9	93,241.50
Case Administration	166.6	140,598.00
Claims Administration & Objections	3.9	2,717.50
Communications & Meetings with Creditors	35.6	34,486.50
Consignments	798.6	607,055.50
Corporate Governance, Board	9.8	10,463.50
Employee Benefits & Pensions	4.5	4,039.50
Employment & Fee Application (GDC)	17.7	13,894.00
Employment & Fee Application (Others)	22.3	16,766.00
Financing, Cash Collateral & Cash Management	528.3	438,395.50
Hearings	59.5	47,733.50
Insurance	3.4	2,703.00
Non-Working Travel	33.8	33,274.50
Plan & Disclosure Statement	93.3	90,986.50
Relief from Stay & Adequate Protection	2.6	2,139.00
Reporting	14.6	9,332.00
Tax	3.9	2,395.50
<b>TOTAL</b>	<b>2347.4</b>	<b>\$1,914,150.00<sup>4</sup></b>

<sup>4</sup> The fees set forth herein *does not* reflect a voluntary reduction by Gibson Dunn in the amount of \$110,681.07.

**INTERIM EXPENSE SUMMARY**

<b>Expenses Category</b>	<b>Total Expenses</b>
CERTIFIED COPIES	\$ 1,853.45
DOCUMENT RETRIEVAL SERVICE	109.00
EDISCOVERY DATABASE HOSTING FEES	182.84
IN HOUSE DUPLICATION	3,016.51
MEALS	731.18
MESSENGER AND COURIER EXPENSE	80.50
ON-LINE RESEARCH (LEXIS)	7,284.00
ON-LINE RESEARCH (WESTLAW)	6,265.77
ON-LINE RESEARCH NEXIS - MAIN	1,442.00
SEARCHES-(UCC & OTHERS)	1,781.50
SPECIALIZED RESEARCH	6.72
TELEPHONE CHARGES	278.43
TRAVEL - AIR & RAIL	941.58
TRAVEL - TAXI & OTHER MODES/MILES	711.07
<b>TOTAL</b>	<b>\$24,684.55</b>



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SPORTS AUTHORITY HOLDINGS, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Obj. Deadline: May 4, 2016 at 4:00 p.m. (ET)

**FIRST MONTHLY APPLICATION OF GIBSON, DUNN & CRUTCHER LLP AS  
CO-COUNSEL TO THE DEBTORS AND DEBTORS IN POSSESSION FOR  
ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES  
INCURRED FOR THE INTERIM PERIOD FROM MARCH 2, 2016 THROUGH AND  
INCLUDING MARCH 31, 2016**

Pursuant to sections 330 and 331 of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 2016 of the Federal Rules of Bankruptcy Procedure, and in accordance with that certain *Order Authorizing Employment and Retention of Gibson, Dunn & Crutcher LLP as General Bankruptcy and Restructuring Co-Counsel for The Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date* [Docket No. 808] (the “Retention Order”) and that certain *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 806] (the “Interim Compensation Order”), the law firm of Gibson, Dunn & Crutcher LLP (“Gibson Dunn”) hereby applies (the “Application”) to the United States Bankruptcy Court for the District of Delaware (the “Court”) for reasonable compensation for professional legal services rendered as co-counsel to Sports Authority Holdings, Inc. and its above-captioned affiliated debtors and debtors in possession (each, a “Debtor,” and collectively, the “Debtors”), in the amount of \$1,803,468.93, together

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

with reimbursement for actual and necessary expenses incurred in the amount of \$24,684.55 for the interim period March 2, 2016 through and including March 31, 2016 (the “Interim Fee Period”). In support of this Application, Gibson Dunn respectfully represents as follows:

**BACKGROUND**

1. On March 2, 2016 (the “Petition Date”), each of the Debtors filed a voluntary petition with the Court under chapter 11 of the Bankruptcy Code.

2. Pursuant to the Retention Order, Gibson Dunn was retained to represent the Debtors as bankruptcy co-counsel in connection with these chapter 11 cases, *nunc pro tunc* to the Petition Date. In addition, prior to March 2, 2016, Gibson Dunn served as general bankruptcy counsel as described in paragraph 8 of the *Debtors’ Application for an Order Approving Employment and Retention of Gibson, Dunn & Crutcher LLP as General Bankruptcy and Restructuring Co-Counsel for The Debtors and Debtors in Possession Nunc Pro Tunc to the Petition Date* [Docket No. 233] (the “Employment Application”). The Retention Order authorizes Gibson Dunn to be compensated on an hourly basis and to be reimbursed for actual and necessary out-of-pocket expenses.

3. All services for which compensation is requested herein by Gibson Dunn were performed for or on behalf of the Debtors.

**(a) SUMMARY OF SERVICES RENDERED**

4. Attached hereto as Exhibit A is a detailed statement of fees incurred during the Interim Fee Period, showing the amount of \$1,914,150.00 due for fees. Those fees do not reflect the voluntary deductions proposed by Gibson Dunn in the amount of \$110,681.07 (comprised of a five percent reduction of fees in the amount of 94,043.82 plus the discount associated with non-working travel time in the amount of \$16,637.25).

5. The services rendered by Gibson Dunn during the Interim Fee Period are grouped into the categories set forth in Exhibit A. The attorneys and paralegals who rendered services relating to each category are identified, along with the number of hours for each individual and the total compensation sought for each category, in the attachments hereto.

**(b) DISBURSEMENTS**

6. Exhibit B attached hereto is a detailed statement of expenses paid by Gibson Dunn during the Interim Fee Period, showing the amount of \$24,684.55 for reimbursement of expenses. This out-of-pocket disbursement sum is broken down into categories of charges, including, among other things, telephone and telecopier toll and other charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, charges for mailing supplies (including, without limitation, envelopes and labels) provided by Gibson Dunn to outside copying services for use in mass mailings, travel expenses, expenses for “working meals,” computerized research, transcription costs, as well as non-ordinary overhead expenses such as secretarial and other overtime. A complete review by category of the expenses incurred for the Interim Fee Period may be found in the attachments hereto as Exhibit B.

7. Costs incurred for overtime and computer assisted research are not included in Gibson Dunn’s normal hourly billing rates and, therefore, are itemized and included in Gibson Dunn’s disbursements. Pursuant to Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), Gibson Dunn represents that its rate for duplication is \$0.10 per page, its rate for outgoing telecopier transmissions is \$1.00 per page (excluding related long distance transmission

charges), there is no charge for incoming telecopier transmissions, and there is no surcharge for computerized research.

(c) **VALUATION OF SERVICES**

8. Attorneys and paraprofessionals of Gibson Dunn have expended a total of 2,362.40 hours in connection with this matter during the Interim Fee Period.<sup>2</sup>

9. The amount of time spent by each of these persons providing services to the Debtors for the Interim Fee Period is fully set forth in the detail attached hereto as Exhibit A. These are Gibson Dunn's normal hourly rates of compensation for work of this character. The reasonable value of the services rendered by Gibson Dunn for the Interim Fee Period as counsel for the Debtors in these cases is \$1,803,468.93 (which is the net amount after application of the voluntary reduction and discount described above).

10. Gibson Dunn believes that the time entries included in Exhibit A attached hereto and the expense breakdown set forth in Exhibit B attached hereto are in compliance with the requirements of Local Rule 2016-2.

11. In accordance with the factors enumerated in section 330 of the Bankruptcy Code, the amount requested is fair and reasonable given (a) the complexity of these chapter 11 cases, (b) the time expended, (c) the nature and extent of the services rendered, (d) the value of such services, and (e) the costs of comparable services other than in a case under chapter 11 of the Bankruptcy Code.

12. This Application covers the interim fee period from March 2, 2016 through and including March 31, 2016. Gibson Dunn has continued, and will continue, to

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<sup>2</sup> It is possible that certain fees and expenses that fall within the Interim Fee Period were not timely submitted or recorded in Gibson Dunn's billing system. In that event, such fees and expenses will be captured in subsequent fee applications.

perform additional necessary services for the Debtors subsequent to the Interim Fee Period, for which Gibson Dunn will file subsequent monthly fee applications.

### **BUDGET AND STAFFING PLAN**

13. In accordance with the Retention Order and the Interim Compensation Order, attached hereto as Exhibit C is the budget and staffing plan for Gibson Dunn approved by the Debtors for the Interim Fee Period.

### **CONCLUSION**

WHEREFORE, Gibson Dunn requests that allowance be made to it in the sum of \$1,803,468.93 as compensation for necessary professional services rendered to the Debtors for the Interim Fee Period, and the sum of \$24,684.55 for reimbursement of actual necessary costs and expenses incurred during that period, and requests such other and further relief as the Court may deem just and proper.

Dated: April 19, 2016  
Wilmington, Delaware

/s/ Robert A. Klyman

Robert A. Klyman (CA No. 142723)  
Matthew J. Williams (NY No. 3019106)  
Jeremy L. Graves (CO No. 45522)  
Sabina Jacobs (CA No. 274829)  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1512  
Telephone: (213) 229-7000  
Facsimile: (213) 229-7520  
rklyman@gibsondunn.com  
mjwilliams@gibsondunn.com  
jgraves@gibsondunn.com  
sjacobs@gibsondunn.com

*Co-Counsel to the Debtors and Debtors-in-Possession*

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**VERIFICATION**

STATE OF CALIFORNIA       )  
  )  
COUNTY OF LOS ANGELES   )       ss:

Robert A. Klyman, after being duly sworn according to law, hereby deposes and says:

1. I am a Partner in the applicant firm, Gibson, Dunn & Crutcher LLP ("Gibson Dunn"), and have been admitted to appear before this Court.


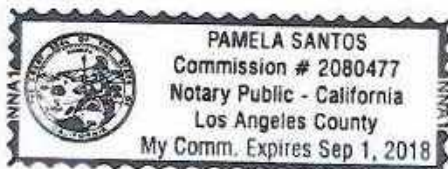
2. I have personally performed many of the legal services rendered by Gibson Dunn to Sports Authority Holdings, Inc. and its affiliated debtors and debtors in possession in connection with their chapter 11 cases, and am familiar with all other work performed on behalf of the lawyers and paraprofessionals at Gibson Dunn.

3. The facts set forth in the foregoing Application are true and correct to the best of my knowledge, information and belief.



Robert A. Klyman

SWORN TO AND SUBSCRIBED before me this 18th day of April, 2016 and proved to me on the basis of satisfactory evidence to be the person who appeared before me.

  
Pamela Santos, Notary Public  
My Commission Expires: September 1, 2018

## **Exhibit 9**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

OUTER HARBOR TERMINAL, LLC,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)

) Case No. 16-10283 (LSS)  
)

) Obj. Deadline: April 18, 2016 at 4:00 p.m. (ET)  
)  
)

**FIRST MONTHLY FEE APPLICATION OF  
MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP  
FOR INTERIM APPROVAL AND ALLOWANCE OF  
COMPENSATION FOR SERVICES RENDERED AND FOR  
REIMBURSEMENT OF EXPENSES INCURRED AS COUNSEL TO  
DEBTOR AND DEBTOR IN POSSESSION DURING PERIOD  
FROM FEBRUARY 1, 2016 THROUGH AND INCLUDING FEBRUARY 29, 2016**

Name of Applicant: Milbank, Tweed, Hadley & M<sup>c</sup>Cloy LLP

Authorized to Provide  
Professional Services to: Outer Harbor Terminal, LLC.

Date of Retention: February 1, 2016

Period for which compensation  
and reimbursement is sought: February 1, 2016 – February 29, 2016

Total Amount of Compensation  
Sought for Current Period (100%): \$407,113.75

Amount of Compensation  
Requested for Current Period (80%): \$325,691.00

Amount of Expense Reimbursement  
Requested (100%): \$9,005.41

This is a/an: X monthly \_\_\_\_\_ interim \_\_\_\_ final application.

Prior Fee Applications Filed: None.

<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 2070. The Debtor's principal place of business is located at 1599 Maritime Street, Oakland, CA 94607.

**FIRST MONTHLY APPLICATION OF MILBANK, TWEED,  
HADLEY & M<sup>C</sup>CLOY LLP AS COUNSEL TO  
OUTER HARBOR TERMINAL, LLC  
(FEBRUARY 1, 2016– FEBRUARY 29, 2016)**

<b>Name</b>	<b>Position; Experience</b>	<b>Hourly Rate</b>	<b>Total Hours</b>	<b>Total Compensation</b>
Gregory Bray	Financial Restructuring Partner at Milbank for 15 years; admitted in 1984.	\$1,350	77.30	\$104,355.00
Thomas Kreller	Financial Restructuring Partner at Milbank for 15 years; admitted in 1992.	\$1,350	31.00	\$41,850.00
Haig Maghakian	Financial Restructuring Associate at Milbank for 14 years; admitted in 2002.	\$915 \$457.5*	154.00 27.10	\$140,910.00 \$12,398.25
Greta Ulvad	Financial Restructuring Associate at Milbank for 5 years; admitted in 2011.	\$835	102.30	\$85,420.50
Stephen Silverman	Financial Restructuring Partner at Milbank for 1 year; admitted in 2015.	\$535	32.20	\$17,227.00
Charmaine Thomas	Legal Assistant	\$260	11.70	\$3,042.00
Jacqueline Brewster	Legal Assistant	\$245	7.80	\$1,911.00
<b>Total</b>		<b>\$918.16 (blended rate)<sup>2</sup></b>	<b>443.40 hours</b>	<b>\$407,113.75</b>

<sup>2</sup> The blended rate excluding paraprofessionals is \$948.72 per hour.

\* Per rule 2016-2(d)(viii) of the Local Rules of the Bankruptcy Court for the District of Delaware, Milbank bills travel time at 50% of normal rates.

**SUMMARY OF SERVICES RENDERED DURING  
MILBANK, TWEED, HADLEY & M<sup>C</sup>CLOY LLP's  
FIRST MONTHLY PERIOD AS COUNSEL TO  
OUTER HARBOR TERMINAL, LLC  
(FEBRUARY 1, 2015 – FEBRUARY 29, 2015)**

<b>PROJECT CATEGORY</b>	<b>HOURS</b>	<b>FEES</b>
Asset Dispositions	27.30	\$23,941.50
Assumption and Rejection of Leases and Contracts	2.80	\$2,562.00
Business Operations	7.10	\$6,496.50
Case Administration	103.10	\$93,917.50
Claims Administration and Objections	1.60	\$1,424.00
DIP Financing	60.50	\$68,631.50
Employee Benefits and Pensions	34.10	\$34,430.50
Employment Application (Milbank)	37.30	\$24,204.00
Employment Application (Other)	4.10	\$3,428.50
Fee Application (Other)	.80	\$692.00
Hearings (Preparation and Attendance)	34.00	\$36,330.00
Landlord Issues	82.40	\$78,807.00
Litigation: Contested Matters and Adversary Proceedings	5.60	\$4,561.00
Meetings and Communications with Creditors	1.70	\$1,555.50
Meetings and Communications with Equity Holders	.20	\$183.00
Non-Working Travel	27.10	\$12,398.25
Plan and Disclosure Statement	2.20	\$2,013.00
Relief from Stay and Adequate Protection	3.30	\$2,947.50
Reporting	5.60	\$5,124.00
Tax	2.60	\$3,466.50
<b>Total</b>	<b>443.40</b>	<b>\$407,113.75</b>

**SUMMARY OF SERVICES RENDERED DURING  
MILBANK, TWEED, HADLEY & M<sup>C</sup>CLOY LLP'S  
FIRST MONTHLY PERIOD AS COUNSEL TO  
OUTER HARBOR TERMINAL, LLC  
(FEBRUARY 1, 2016 – FEBRUARY 29, 2016)**

<b>DISBURSEMENTS</b>	<b>AMOUNT</b>
Cab Fares/Local Travel	\$455.47
Computer Database Research	\$1,935.20
Lodging	\$986.80
Meals	\$197.93
Messenger	\$295.92
Photocopies/Printing	\$639.85
Telephone	\$128.54
Travel	\$4,365.70
<b>TOTAL DISBURSEMENTS</b>	<b><u>\$9,005.41</u></b>

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
OUTER HARBOR TERMINAL, LLC, <sup>1</sup>	)	Case No. 16-10283 (LSS)
	)	
Debtor.	)	Obj. Deadline: April 18, 2016 at 4:00 p.m. (ET)
	)	
	)	

**FIRST MONTHLY FEE APPLICATION OF  
MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP  
FOR INTERIM APPROVAL AND ALLOWANCE OF  
COMPENSATION FOR SERVICES RENDERED AND FOR  
REIMBURSEMENT OF EXPENSES INCURRED AS COUNSEL TO  
DEBTOR AND DEBTOR IN POSSESSION DURING PERIOD  
FROM FEBRUARY 1, 2016 THROUGH AND INCLUDING FEBRUARY 29, 2016**

Milbank, Tweed, Hadley & M<sup>c</sup>Cloy LLP (“Milbank”), attorneys to the above-captioned debtor and debtor in possession (the “Debtor”) in the above-captioned chapter 11 case (the “Chapter 11 Case”), hereby submits this monthly application (the “Application”), pursuant to sections 328, 330, and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), rule 2016 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (as amended, the “Local Rules”), and this Court’s Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 123] (the “Interim Compensation Order”), for allowance of compensation and reimbursement of expenses for the period from February 1, 2016 through and including February 29, 2016 (the “First Monthly Period”). By this

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<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 2070. The Debtor’s principal place of business is located at 1599 Maritime Street, Oakland, CA 94607.

Application, Milbank seeks (i) interim allowance with respect to the sum of \$407,113.75,<sup>2</sup> representing one hundred percent (100%) compensation for actual, reasonable, and necessary professional services rendered during the First Monthly Period, and the sum of \$9,005.41, representing one hundred percent (100%) reimbursement of its actual, reasonable, and necessary expenses incurred during the First Monthly Period, and (ii) payment according to the procedures set forth in the Interim Compensation Order (i.e., payment of eighty percent (80%) of its requested fees in the amount of \$325,691.00) and reimbursement of one hundred percent (100%) of its expenses incurred in the amount of \$9,005.41, for a total payment of \$334,696.41. In support of this Application, Milbank respectfully represents as follows:

### **Background**

1. On February 1, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner and no committee has been appointed or designated in this chapter 11 case.

2. On February 29, 2016, this Court entered the Order Authorizing Retention and Employment of Milbank, Tweed, Hadley & M<sup>c</sup>Cloy LLP as Attorneys for the Debtor *Nunc Pro Tunc* to Petition Date [Docket No. 119], approving the Debtor’s retention of Milbank as its attorneys in this Chapter 11 Case, effective as of February 1, 2016.

### **Billing History**

3. This Application is Milbank’s first monthly application for approval and allowance of compensation and reimbursement of expenses. No prior application has been made

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<sup>2</sup> The total amount of compensation sought in connection with the First Monthly Period reflects a voluntary reduction of 5% of the total fees incurred, in the amount of \$22,122.50.

to this or any other court for the relief requested herein, nor has payment been received by Milbank for legal services provided to and on behalf of the Debtor, or for out-of-pocket expenses incurred in connection therewith, in respect of the First Monthly Period. Milbank has not entered into any agreement, express or implied, with any other party for the purpose of fixing or sharing fees or other compensation to be paid for professional services rendered in these cases. No promises have been received by Milbank or any member thereof as to compensation in connection with this Chapter 11 Case. All services for which compensation is sought herein were rendered by Milbank to the Debtor solely in connection with this Chapter 11 Case and not on behalf of any other persons.

#### **Fee Application**

4. By this Application, Milbank seeks (i) interim allowance with respect to the sum of \$407,113.75, representing one hundred percent (100%) compensation for actual, reasonable, and necessary professional services rendered on behalf of the Debtor during the First Monthly Period, and the sum of \$9,005.41, representing one hundred percent (100%) reimbursement of its actual, reasonable, and necessary expenses incurred during the First Monthly Period in connection with rendering such services, and (ii) payment according to the procedures set forth in the Interim Compensation Order (i.e., payment of eighty percent (80%) of its requested fees in the amount of \$325,691.00) and reimbursement of one hundred percent (100%) of its expenses incurred in the amount of \$9,005.41, for a total payment of \$334,696.41. The fees sought in this Application reflect an aggregate of 443.40 hours of attorney and paraprofessional time spent and recorded in performing services for the Debtor during the First Monthly Period, at a blended average hourly rate of \$918.16 for both attorneys and paraprofessionals. The blended hourly rate for attorneys only is \$948.72.



5. Milbank maintains written records of the time expended in the rendition of the professional services required by the Debtor. These records are maintained in the ordinary course of Milbank's practice.

6. For the convenience of the Court and parties in interest, attached hereto as part of the cover sheet is a billing summary for the First Monthly Period, setting forth the name of each attorney and paraprofessional for whose work on these cases compensation is sought, each attorney's year of bar admission, the aggregate time expended by each such attorney or paraprofessional, the hourly billing rate for each such attorney or paraprofessional at Milbank's current billing rates, and an indication of the individual amounts requested as part of the total amount of compensation requested. Additionally, set forth in the billing summary is further information indicating whether each attorney is a partner, counsel, or associate, how many years each attorney has held such position, and each attorney's primary area of concentration. The compensation requested by Milbank is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under the Bankruptcy Code.

7. Set forth in Exhibit A are time entries recorded in tenths of an hour and by project category with a detailed description of services performed by each attorney and paraprofessional on behalf of the Debtor.

8. Milbank also maintains contemporaneous records of all actual and necessary expenses incurred in connection with performing professional services. A summary of the expenses incurred during the First Monthly Period is set forth on the cover sheet. The summary lists the amounts and categories of expenses for which reimbursement is sought, and a breakdown of expenses by project category. Set forth in Exhibit B hereto is a breakdown of the expenses, including the date the expense was incurred, the charge, and the person incurring the

expense. The summary lists the amounts and categories of expenses for which reimbursement is sought and a breakdown of expenses by project category. Milbank has incurred actual and necessary out-of-pocket expenses during the First Monthly Period in the amount of \$9,005.41.

**Actual and Necessary Expenses**

9. In connection with the reimbursement of expenses, Milbank's policy is to charge its clients in all areas of practice for expenses, other than fixed and routine overhead expenses, incurred in connection with representing its clients. The expenses charged to Milbank's clients include, among other things, telephone toll and other charges, regular mail and express mail charges, special or hand delivery charges, photocopying charges, out-of-town travel expenses, local transportation expenses, expenses for working meals, computerized research charges, and transcription costs.

10. Milbank charges the Debtor for these expenses at rates consistent with those charged to Milbank's other bankruptcy clients, which rates are equal to or less than the rates charged by Milbank to its non-bankruptcy clients. Milbank seeks reimbursement from the Debtor at the following rates for the following expenses: (i) ten cents (\$0.10) per page for photocopying; (ii) ten cents (\$0.10) per page for black and white printing; and (iii) twenty-five cents (\$0.25) per page for color printing.

11. In accordance with section 330 of the Bankruptcy Code, Milbank seeks reimbursement only for the actual cost of such expenses to Milbank.<sup>3</sup>

12. In providing or obtaining from third parties services that are reimbursable by clients, Milbank does not include in such reimbursable amount any costs of investment,

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<sup>3</sup> The cost of expenses Milbank is seeking reflects any discounted rates based on volume or other discounts which Milbank anticipates receiving from certain outside vendors; however, Milbank does not perform a retrospective reconciliation of any "year-end" adjustments (positive or negative) to the actual discounted cost of such expenses.

equipment, or capital outlay.

13. Milbank regularly charges its non-bankruptcy clients for ordinary business hourly fees and expenses for secretarial, library, word processing, and other staff services because such items are not included in the firm's overhead for the purpose of setting billing rates. Milbank is not, however, seeking reimbursement of hourly fees of its secretarial services in this Application.

### **Summary of Services Rendered**

14. To provide an orderly and meaningful summary of the services rendered by Milbank on behalf of the Debtor, Milbank established separate project billing categories for these cases. Milbank's professionals billed time to the following categories during the First Monthly Period:

- Asset Analysis and Recovery
- Asset Dispositions
- Assumption and Rejection of Leases and Contracts
- Avoidance Action Analysis
- Business Operations
- Case Administration
- Claims Administration and Objections
- Corporate Governance Matters
- DIP Financing
- Employee Benefits and Pensions
- Employment Application (Milbank)
- Employment Application (Other)
- Fee Applications (Milbank)
- Fee Applications (Other)
- Hearings (Preparation and Attendance)
- Landlord Issues
- Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category)
- Meetings and Communications with Creditors
- Meetings and Communications with Equity Holders
- Non-Working Travel<sup>4</sup>
- Plan and Disclosure Statement

<sup>4</sup>

As set forth herein, Milbank will only seek compensation of 50% of the travel time incurred during any monthly compensation period.

- Regulatory Matters
- Relief from Stay and Adequate Protection
- Reporting
- Tax
- Valuation

15. The following summary of services rendered is intended only to highlight matters in certain of the above-listed categories where Milbank has expended a considerable number of hours on behalf of the Debtor during the First Monthly Period, and it is not meant to be a detailed description of all of the work performed. This Application does not detail each and every correspondence, meeting, discussion, court appearance, or all research conducted by Milbank during the First Monthly Period.

16. General Overview of Services Rendered. During the First Monthly Period, Milbank rendered a variety of services to the Debtor (which services are described in detail in Exhibit A attached hereto), including, among other things, tasks related to the administration of the Debtor's bankruptcy cases, research and analysis, preparation of numerous pleadings and other documents, negotiations, and other legal services as were required by and deemed to be in the best interests of the Debtor and its estate. In connection therewith, Milbank conducted numerous meetings and telephone conferences with the Debtor, its other advisors, and other parties in interest, and at all times kept the Debtor apprised of events in this Chapter 11 Case.

17. Asset Disposition. This category includes all matters relating to the disposal of property, including the use, sale, or lease of the Debtor's property. During the First Monthly Period, Milbank performed numerous tasks relating to the sale of the Debtor's assets, including, without limitation, reviewing and advising on an auction contract with Ritchie Bros. Auctioneers (America) Inc. for the auction and sale of the Debtor's equipment and miscellaneous property, reviewing and revising procedures for the Debtor's assumption and assignment of

unexpired leases of personal property and executory contracts, and drafting a motion and proposed order to approve the foregoing.

18. Assumption and Rejection of Leases and Contracts. This category includes all matters relating to the Debtor's potential assumption, assignment, and/or rejection of its executory contracts and unexpired leases. During the First Monthly Period, Milbank worked closely with the Debtor to determine which of the Debtor's executory contracts and unexpired leases would be assumed and assigned to third parties or rejected in connection with the Debtor's orderly wind down of its operations. In addition, Milbank attorneys drafted a motion and proposed order to approve certain procedures for the Debtor to reject its burdensome and/or unnecessary contracts and leases.

19. Business Operations. This category includes all matters relating to business operations, including vendor, cash management, and certain non-employee labor issues.

20. Case Administration. This category includes all matters relating to general case administration and coordination. Additionally, this project category serves as a general code for services performed that do not fit under any other project billing category. During the First Monthly Period, among other things, Milbank attorneys (i) advised the Debtor in connection with the chapter 11 process and its duties and responsibilities as a debtor in possession, (ii) participated in numerous teleconferences with the Debtor's management concerning the administration of this Chapter 11 Case, and (iii) assisted the Debtor's management in interpreting and complying with the provisions of the Bankruptcy Code, Bankruptcy Rules, and any other applicable statutes or guidelines, as well as with the consideration of and compliance with certain deadlines imposed by this Court or applicable authority. Milbank attorneys performed various other case administration tasks as well, including case calendaring, internal team meetings

regarding case status and works in progress, and otherwise assisting the Debtor in fulfilling its duties as a debtor in possession.

21. Claims Administration and Objections. This category includes all matters related to claims administration matters and bar date matters, including drafting a motion and order to establish a general claims bar date.

22. DIP Financing. This category includes matters related to the Debtor's debtor in possession financing, including the preparation of related pleadings. During the First Monthly Period, Milbank attorneys performed numerous tasks relating to the proposed debtor in possession financing, including, among other things, negotiating and working with the Debtor, the Debtor's postpetition lenders and their respective counsel, the Port of Oakland (the "Port") and its counsel, and the U.S. Trustee, through numerous meetings, telephonic conferences, and correspondence to resolve various issues and objections and to finalize the terms of the debtor in possession financing and related budget.

23. Employee Benefits and Pensions. This category includes all matters related to employee wages, benefits, and other employee relations matters. During the First Monthly Period, Milbank attended to several employment-related issues, including in connection with creating the Debtor's incentive program for substantially all of its employees, drafting a motion and order to approve such program, and numerous conferences with the Debtor regarding its structuring and implementation.

24. Employment Application (Milbank). This category includes all work performed in connection with preparing a retention application for Milbank to serve as the Debtor's counsel during this Chapter 11 Case. Specifically, during the First Monthly Period, Milbank prepared and filed the Debtor's Application for Entry of Order Authorizing Retention and Employment of

Milbank, Tweed, Hadley & McCloy LLP as Attorneys for the Debtor *Nunc Pro Tunc* to Petition Date [Docket No. 58].

25. Employment Application (Other). This category includes all work performed in connection with the retention of the Debtor's other professionals. For example, Milbank assisted the Debtor on matters relating to the retention of its claims and noticing agent, Prime Clerk, and its ordinary course professionals.

26. Fee Applications (Other). This category includes all work performed in connection with the applications of the Debtor's professionals for compensation for fees and expenses incurred in connection with the Chapter 11 Case. During the First Monthly Period, Milbank drafted and filed a motion seeking approval of procedures for interim compensation of the Debtor's professionals.

27. Hearings (Preparation and Attendance). This category includes all matters relating to preparation for and attendance at court hearings. During the First Monthly Period, Milbank attorneys prepared for, and attended, the "First Day Hearing" on February 3, 2016, as well as a telephonic hearing regarding the Debtor's postpetition financing on February 9, 2016. In addition, Milbank prepared for the "Second Day Hearing" including meeting with the Debtor's representatives to discuss matters and issues in connection with the same. In preparation for such hearings, Milbank attorneys conducted due diligence, prepped potential witnesses, and prepared hearing outlines and other materials.

28. Landlord Issues. This category includes matters in connection with the Debtor's negotiations with its landlord, the Port, in connection with the wind down of the Debtor's operations and the terms of the surrender of the leased premises to the Port. Among other things, during the First Monthly Period, Milbank reviewed and researched issues in connection with the



Port's motion to compel, drafted a settlement agreement with the Port to document a global settlement of the parties' outstanding issues, negotiated with the Port and its counsel regarding the terms of such agreement, and drafted a motion and proposed order to approve the Debtor's entry into such agreement.

29. Litigation: Contested Matters and Adversary Proceedings. This category includes matters related to potential litigation and adversary proceedings involving the Debtor. During the First Monthly Period, Milbank researched issues in connection with litigation pending in front of the National Labor Relations Board.

30. Meetings and Communications with Creditors. This category includes all matters related to responding to creditor inquiries and involving various notices supplied to creditors. Among other things, during the First Monthly Period, Milbank assisted the Debtor in preparing for, and attended, the 341 meeting of creditors held on March 9, 2016.

31. Non-Working Travel. This category includes all travel time, not otherwise chargeable. During the First Monthly Period, Milbank attorneys traveled to and from Delaware for various hearings and meetings. Pursuant to rule 2016-2(d)(viii) of the Local Rules of the Bankruptcy Court for the District of Delaware, Milbank bills travel time at 50% of normal rates.

32. Plan and Disclosure Statement. This category includes all matters related to review, formulation, negotiation, preparation, and promulgation of plans (and term sheets related thereto), disclosure statements, related corporate documentation, and research related thereto. During the First Monthly Period, Milbank reviewed and discussed with the Debtor issues in connection with the structuring of a chapter 11 plan and the plan process.

33. Relief From Stay and Adequate Protection. This category includes all matters related to issues involving the automatic stay, and all other types of actions where adequate

protection is at issue. During the First Monthly Period, Milbank reviewed a motion filed by Terex Corporation and Terex Financial Services (collectively “Terex”) that requested adequate protection and negotiated a stipulation with Terex to resolve the issues set forth in Terex’s motion.

34. Reporting. This category includes all matters related to the Debtor’s efforts to comply with its various reporting obligations. During the First Monthly Period, Milbank attorneys worked with the Debtor to prepare its Schedules of Assets and Liabilities and Statements of Financial Affairs. Also during the First Monthly Period, Milbank prepared for and attended the Debtor’s initial interview with the U.S. Trustee.

35. Tax. This category includes all matters related to various tax issues concerning the Debtor. During the First Monthly Period, Milbank review various tax issues and their implications for the Debtor and this Chapter 11 Case.

### **Valuation of Services**

36. Attorneys and paraprofessionals of Milbank have expended a total of 443.40 hours in connection with this matter during the First Monthly Period.

37. The nature of the work performed by these persons is fully set forth in Exhibit A attached hereto. These are Milbank’s normal hourly rates for work of this character. The reasonable value of services rendered by Milbank to the Debtor during the First Monthly Period is \$407,113.75, which reflects a voluntary discount of 5% of the total fees incurred, in the amount of \$22,122.50.

38. Section 331 of the Bankruptcy Code provides for interim compensation of professionals and incorporates the substantive standards of section 330 of the Bankruptcy Code to govern the Court’s award of such compensation. See 11 U.S.C. §§ 330 and 331. Section 330

of the Bankruptcy Code provides that a court may award a professional employed under section 327 of the Bankruptcy Code “reasonable compensation for actual, necessary services rendered . . . and reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1). Section 330 of the Bankruptcy Code also sets forth the criteria for the award of such compensation and reimbursement:

In determining the amount of reasonable compensation to be awarded... the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and expertise in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

39. The professional services performed by Milbank were necessary and appropriate to the administration of this Chapter 11 Case. In addition, the services were in the best interests of the Debtor and its estate and were provided without unnecessary duplication of effort or expense incurred by professionals and paraprofessionals employed by Debtor’s co-counsel, Richards, Layton & Finger, P.A. The professional services rendered by Milbank during the First

Monthly Period have required a high degree of professional competence and expertise so that the numerous issues requiring the Debtor's evaluation and action could be addressed with skill and dispatch. Milbank respectfully submits that it has rendered these services to the Debtor efficiently, effectively, economically, and without duplication of services performed by any other professional in these cases. In addition, the work involved, and thus the time expended, was carefully assigned in light of the experience and expertise required for a particular task. Milbank further submits the requested compensation is reasonable in light of the nature, extent, and value of such services to the Debtor and all other parties in interest.

40. To the best of Milbank's knowledge, this Application complies with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, any guidelines promulgated by the U.S. Trustee, the Local Rules, and the orders of this Court.

#### **Reservation Of Rights**

41. To the extent time charges for services rendered or disbursements incurred relating to the First Monthly Period were not processed prior to the preparation of this Application, or Milbank has for any other reason not sought compensation or reimbursement of expenses herein with respect to any services rendered or expenses incurred during the First Monthly Period, Milbank reserves the right to request compensation for such services and reimbursement of such expenses in a future application.

#### **Certification**

42. In accordance with Local Rule 2016-2(f), the undersigned has reviewed the requirements of Local Rule 2016-2 and certifies to the best of his information, knowledge, and belief that this Application complies with Local Rule 2016-2.

**No Prior Request**

43. No previous request for the relief sought herein has been made to this or any other court.

**Notice**

44. A copy of this Application will be served in accordance with the Interim Compensation Order. Milbank submits that, in light of the relief requested, no other or further notice need be provided.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**WHEREFORE**, Milbank respectfully requests (i) interim allowance with respect to the sum of \$407,113.75, representing one hundred percent (100%) compensation for professional services rendered during the First Monthly Period, and the sum of \$9005.41, representing one hundred percent (100%) reimbursement of its actual, reasonable, and necessary expenses incurred during the First Monthly Period, and (ii) payment according to the procedures set forth in the Interim Compensation Order (i.e., payment of eighty percent (80%) of its requested fees in the amount of \$325,691.00) and reimbursement of one hundred percent (100%) of its expenses incurred in the amount of \$9,005.41, for a total payment of \$334,696.41.

Dated: March 29, 2016

**MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP**

/s/ Gregory A. Bray

Gregory A. Bray (admitted *pro hac vice*)  
Thomas R. Kreller (admitted *pro hac vice*)  
Haig M. Maghakian (admitted *pro hac vice*)  
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-and-

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*Counsel to Debtor and Debtor in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

OUTER HARBOR TERMINAL, LLC,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)

) Case No. 16-10283 (LSS)  
)  
)  
)  
)

**VERIFICATION**

1. I am a partner in the Financial Restructuring Group of the firm Milbank, Tweed, Hadley & McCloy LLP, counsel to the Debtor in this Chapter 11 Case. I am admitted to the bar in the State of California, the State of New York, the District of Columbia, and the United States District Courts for the Central District of California and the Southern District of New York, and *pro hac vice* in this court for this Chapter 11 Case.

2. I am familiar with the work performed on behalf of the Debtor by Milbank.

3. I have reviewed the foregoing Application, and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I have reviewed Local Rule 2016-2, and submit that the Application complies with such rule.

Respectfully submitted,

/s/ Gregory A. Bray

Name: Gregory A. Bray

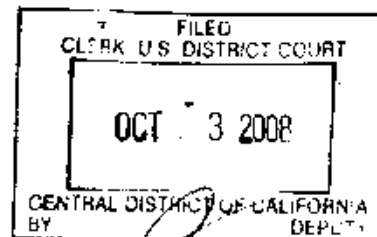
Title: Partner, Milbank, Tweed, Hadley & McCloy LLP

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 2070. The Debtor's principal place of business is located at 1599 Maritime Street, Oakland, CA 94607.



## **Exhibit 10**



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LYNNE WANG, YU FANG INES  
KAI, AND HUI JUNG PAO, ON  
BEHALF OF THEMSELVES AND  
ALL OTHERS SIMILARLY  
SITUATED,

Plaintiffs,

v.

CHINESE DAILY NEWS, INC., et al.

Defendant.

No. CV04-1498 CBM (JWJx)

CLASS ACTION

ORDER RE PLAINTIFFS' MOTION  
FOR AWARD OF ATTORNEYS' FEES

The matter before the Court is Plaintiffs' Motion for Attorneys' Fees. This Court entered Judgment in favor of Plaintiffs on all issues except for injunctive relief on February 27, 2008. Plaintiffs now seek attorneys' fees in the instant motion.

**JURISDICTION**

This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

**FACTUAL AND PROCEDURAL HISTORY**

1 Plaintiffs filed this suit on March 5, 2004, alleging multiple labor violations  
2 by Chinese Daily News, Inc. ("Defendant") pursuant to the Fair Labor Standards  
3 Act ("FLSA"), the California Business and Professions Code § 17200 et seq., and  
4 the California Labor Code. The action was tried to a jury commencing on  
5 November 28, 2006 and was submitted to the jury on January 5, 2007. On  
6 January 10, 2007 the jury returned a verdict in favor of Plaintiffs on all causes of  
7 action. A bench trial commenced on July 31, 2007, addressing Plaintiffs' claims  
8 under California Business & Professions Code § 17200, penalties under the  
9 California Labor Code and pre-judgment interest. On February 28, 2008, the  
10 Court issued its findings of fact and conclusions of law and entered Judgment in  
11 favor of plaintiffs for damages, restitution, penalties and pre-judgment interest.  
12 The Court denied Plaintiffs request for injunctive relief.

## 13 DISCUSSION

### 14 I. EVIDENTIARY OBJECTIONS

15 Defendant objects to the declarations of Della Bahan, Randy Renick,  
16 Virginia Keeny, Robert Newman and Brad Seligman submitted in support of  
17 Plaintiffs Motion for Attorneys' Fees. When Plaintiffs originally submitted their  
18 Motion for Attorneys Fees, they attached only summaries of fees billed. Plaintiffs  
19 requested the Court to review the actual billing records in camera. The Court  
20 denied this request and Plaintiffs supplemented their motion with the actual billing  
21 records. In the meantime, Defendant filed objections to the various declarations  
22 cited by Plaintiffs in their original motion. Defendant's objections focus on best  
23 evidence and foundational objections based on Plaintiffs' only referencing their  
24 fee summaries. Now that the Court and Defendant have the actual statements, the  
25 Court overrules Defendant's objections to the declarations of Della Bahan, Randy  
26 Renick and Virginia Keeny as moot. The Court considered the actual billing  
27 records in analyzing Plaintiffs' Motion for Attorneys' Fees.  
28

1 Defendant also objects to the declarations of Brad Seligman and Robert D.  
2 Newman. Plaintiffs offer these declarations of attorneys in the community as  
3 evidence to support Plaintiffs' attorney billing rates. Defendant objects on the  
4 grounds that portions of said declarations lack personal knowledge, lack  
5 foundation, call for speculation and draw legal conclusions. The Court overrules  
6 Defendant's one objection to Mr. Newman's declaration and overrules all  
7 objections to Mr. Seligman's declaration except for Defendant's objection to para.  
8 11, line 9-10, which the Court sustains.

9 **II. DOES THE CALIFORNIA FEE AWARD ANALYSIS APPLY TO PLAINTIFFS' STATE**  
10 **AND FEDERAL CLAIMS**

11 The jurisdictional basis for this case is federal question. It involved claims  
12 based on California state labor laws and the federal Fair Labor Standards Act.  
13 Plaintiffs request this Court to apply a California fee award analysis to Plaintiffs  
14 state and federal claims. (Pl. Mot. at 3.) Defendant argues that because this case  
15 involves a federal question, and is not a diversity action, "no *Erie* considerations  
16 govern here." (Def. Surreply at 2.) Therefore, Defendant argues that attorneys'  
17 fees should be awarded according to a federal fee award analysis.

18 Plaintiffs cite *Mangold v. Cal. Pub. Utils. Com'n.*, 67 F.3d 1470 (9th Cir.  
19 1995), in support of its argument. In *Mangold*, the Ninth Circuit addresses the  
20 issue of whether state or federal law controls the method of calculating attorneys'  
21 fees awarded to a plaintiff who had prevailed on discrimination claims brought  
22 under both Title VII and the California Fair Employment and Housing Act. The  
23 plaintiffs in *Mangold*, as in the instant case, succeeded on both federal and state  
24 statutory claims. Applying state law, the lower court in *Mangold* awarded fees,  
25 enhanced by a multiplier of 2.0. The defendant argued that federal law should  
26 apply based on *City of Burlington v. Dague*, where the United States Supreme  
27 Court held that contingency-fee multipliers are unavailable under federal fee-  
28 shifting statutes. *Mangold*, 67 F.3d at 1478. The defendant also asserted that

1 under an *Erie* analysis, the right to a fee is a matter of state substantive law, but  
2 the method of calculating that fee is procedural and therefore subject to federal  
3 law. The court in *Mangold* stated that “[e]xisting Ninth Circuit precedent has  
4 applied state law in determining not only the right to fees, but also the method of  
5 calculating the fees.” *Id.* Moreover, the Ninth Circuit clarified that while the *Erie*  
6 analysis applies in a diversity action, it also “applies equally in the context of  
7 pendant jurisdiction.” *Id.* (internal citations omitted). The court further noted that  
8 other circuits have applied state law in calculating the fee, and one case even used  
9 a multiplier under state law because *Dague* precluded it under federal law. *Id.*

10 Having reviewed the arguments herein, this Court applies the California  
11 state standard for awarding attorneys’ fees in the instant case.

### 12 **III. WHETHER THE PROPOSED ATTORNEYS’ FEES ARE REASONABLE**

13 The starting point of every fee award must be a calculation of the attorney’s  
14 services in terms of the time he has expended on the case. *Serrano v. Priest*, 20  
15 Cal. 3d 25, 49 n.23 (Cal. 1977) (hereafter “*Serrano III*”). As the California  
16 Supreme Court explained, “*Serrano III* requires the trial court to first determine a  
17 ‘touchstone’ or ‘lodestar’ figure based on a ‘careful compilation of the time spent  
18 and the reasonable hourly compensation for each attorney.’” *Press v. Lucky*  
19 *Stores, Inc.*, 34 Cal. 3d 311, 322 (Cal. 1983).

#### 20 **A. REASONABLENESS OF RATES**

21 California courts rely upon federal cases in stating that “a reasonable hourly  
22 rate is the product of a multiplicity of factors...the level of skill necessary, time  
23 limitations, the amount to be obtained in the limitation, the attorney’s reputation,  
24 and the undesirability of the case.” *Margolin v. Regional Planning Com.*, 134 Cal.  
25 App. 3d 999, 1004 (1982) (internal citation omitted).

26 The standard for determining a reasonable hourly rate is the market rate in  
27 the community where the case is litigated. *Carson v. Billings Police Dept.*, 470  
28

F.3d 889, 891 (9th Cir. 2006). There are many ways to support the reasonable value of services rendered by an attorney. One way is to determine what fees were sought and deemed reasonable by courts in other cases. Another method is to review rates charged by "comparable law firms for the work of similarly situated partners, associates and lay experts." *Margolin v. Regional Planning Com.*, 134 Cal. App. 3d 999, 1006 (1982). The Court may also rely on expert testimony. *Children's Hosp. and Medical Center v. Bonta*, 97 Cal. App. 4th 740, 783 (2002).

Plaintiffs provide their lodestar determination of hours worked and reasonable hours rate as follows:

Law Firm/Attorney	Hours (Rate)	Lodestar
<b>Hadsell &amp; Stormer, Inc. (associated in 2006)</b>	<b>1,625.90</b>	<b>\$707,210.00</b>
Dan Stormer	35.20 (\$800)	\$28,160.00
Virginia Keeny	417.30 (\$575)	\$239,947.50
Cornelia Dai	892.40 (\$425)	\$379,270.00
Sanjukta Paul	60.90 (\$350)	\$21,315.00
Callie White	120.20 (\$175)	\$21,035.00
Ella Wagener	38.80 (\$175)	\$6,790.00
Brooke Glass-O'Shea	49.20 (\$175)	\$8,610.00
Rachel Bloomekatz	11.90 (\$175)	\$2,082.50
<b>Bahan &amp; Associates</b>	<b>2,329.10</b>	<b>\$677,481.50</b>
Della Bahan	452.9 (\$545)	\$246,830.50
Peter Bibring	908.30 (\$240)	\$217,992.00
Jennifer Reisch	652.30 (\$230)	\$150,029.00
Maria Stroud	295.60 (\$175)	\$51,730.00
<b>Law Offices of R. Renick (associated in 2006)</b>	<b>1,865.20</b>	<b>\$882,822.50</b>
Randy Renick	1,243.50 (\$550)	\$683,925
Kathleen Langan	137.40 (\$500)	\$68,700.00
Josh Piovia-Scott	76.90 (\$375)	\$28,837.50
Matthew Sirolli	25.70 (\$325)	\$8,352.50
Ben Stormer	260.20 (\$225)	\$58,545.00
Stephen Muzio	81.30 (\$325)	\$26,422.50
Maria Stroud	40.20 (\$200)	\$8,040.00



<b>TOTAL LODESTAR</b>	<b>5,820.20</b>	<b>\$2,267,514.00<sup>1</sup></b>
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Mr. Renick, Ms. Keeny and Ms. Bahan served as Plaintiffs' senior attorneys during this action. As evidence of reasonableness of their fees, Plaintiffs provided the Court with declarations of attorneys in the community. (*See Newman, Seligman and Traber Decl.*) The declarations state that the hourly rates for the above noted attorneys were reasonable given their experience and background. (*See Seligman and Traber Decl.*) Mr. Renick's 2007 hourly rate of \$500 was approved in a number of cases, in Los Angeles Superior Court, San Francisco Superior Court and San Diego Superior Court. (Renick Decl. at ¶ 40.) Plaintiffs supplement its motion with declarations from Mr. Stormer, and exhibits attached thereto, and Barrett S. Litt. The Court finds the declarations support the reasonableness of Mr. Stormer's billing rate given his background and experience in the community. Based on the foregoing, the Court finds that the rates for Mr. Stormer, Ms. Keeny, Mr. Renick and Ms. Bahan are reasonable based their experience and background and are consistent with prevailing market rates in the community.

Mr. Renick supports the hourly rate of the associates and staff at the law offices of Randy Renick based on the National Law Journal 2007 survey of rates. He provides the Court with some hourly rates charged by law firms based on the associate class; the survey is based on the nation's largest law firms and the portion submitted to the Court as Exhibit 2 is only a "sampling." The survey provides the Court with a list of rates for several law firms in Southern California. Messrs. Matthew Sirolly and Stephen Muzio bill out at \$325/hour. Both are third year associates at Mr. Renick's firm. The Southern California law firms range from \$240-\$375 per hour for a third year associate. Mr. Renick's rates are highly competitive with those of a large Los Angeles firm; however, based on evidence

<sup>1</sup> Plaintiff seeks a Multiplier of 2.0 for their lodestar, which would bring the total amount to \$4,535,028.00. *See infra*. Section D for discussion.



1 that some third year associates bill out at substantially less, the Court reduces the  
2 rates for the above two associates to \$300/hour, or the mid-point of the above  
3 noted range, given their experience and background. Accordingly, the lodestar  
4 shall be reduced by \$2675. Mr. Ben Stormer and Ms. Stroud are law clerk and  
5 paralegal respectively at Mr. Renick's firm. Both are experienced. The median  
6 amount charged for a paralegal in the Los Angeles area is \$195 per hour based on  
7 the International Paralegal Management Association's Annual Compensation  
8 Survey for Paralegals/Legal Assistances and Managers, 2007 Edition.  
9 Accordingly, the Court finds the rates of \$225/hour and \$220/hour for Mr.  
10 Stormer and Ms. Stroud, respectively, are reasonable. The Court also finds that  
11 Mr. Piovia-Scott's rate of \$375 is reasonable for his experience and background.  
12 Lastly, Ms. Langan is a contract attorney for Mr. Renick's firm. She is an  
13 experienced attorney and has been practicing since 1989. Her rate of \$500/hour,  
14 however, is high based on her experience and work history for a comparable  
15 attorney in the community. Accordingly, the Court reduces Ms. Langan's rate to  
16 \$475/hour.

17 Ms. Keeny supports the hourly rate of the Hadsell & Stormer associates  
18 Cornelia Dai and Sanjukta Paul in her declaration. Based on their experience and  
19 background, the Court finds that the rates listed, \$425 and \$350 respectively, are  
20 reasonable. Hadsell & Stormer also notes that they had four law clerks billing at  
21 \$175/hour. Based on the law clerks' backgrounds and the median rates for  
22 paralegals in the area (\$195/hour), the rate of \$175/hour is reasonable for a law  
23 student.

24 Ms. Bahan supports the hourly rate of associates Peter Bibring and Jennifer  
25 Reisch in her declaration and supplemental declaration. Based on their experience  
26 and background, the Court finds that the rates listed, \$240 and \$230 respectively,  
27 are reasonable.  
28

## B. REASONABLENESS OF HOURS

### 1. VAGUE TIME ENTRIES

Defendant argues that some of Plaintiffs' time entries are too vague to support an award. Defendant states that the Court must be provided with sufficient detail of the dates, hours and nature of the work performed, *citing See In re Washington Pub. Power Supply Sys. Secur. Litig.*, 19 F.3d 1291, 1305-06 (9th Cir. 1994) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) stating "[w]here the documentation of hours is inadequate, the district court may reduce the award accordingly.") Defendant lists examples of vague tasks that are listed by Plaintiffs. Defendant adds that some of the tasks are often repeated. Plaintiffs argue that the time entries are sufficient to support an award of fees and moreover that California case law permits fee awards in the absence of detailed time sheets. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (Ct. App. 2001).

The "experienced trial judge is the best judge of the value of professional services rendered in his court." *Sommers v. Erb*, 2 Cal. App. 4th 1644, 1651 (1992). Having reviewed the arguments and time records, the Court, in its discretion, finds that Plaintiffs' time entries are reasonable and accordingly does not discount Plaintiffs fee award based on vagueness.

### 2. BLOCK BILLING

"Block billing" is the time-keeping method by which each lawyer and legal assistant enters the total daily time spent working on a case, rather than itemizing time expended on specific tasks. *Welch v. Metropolitan Life Ins. Co.*, 480 F.3d 942, 945 n.2 (9th Cir. 2007). If billing statements lump together multiple tasks, it is impossible for the Court to determine how much time was spent on particular activities, or to evaluate whether the time spent on such tasks was reasonable. *See id.* at 948. Furthermore, a 2003 study by the California State Bar's Committee on Mandatory Fee Arbitration concluded that block billing "may increase time by

1 10% to 30%.” *Id.* citing The State Bar of California Committee on Mandatory Fee  
2 Arbitration, Arbitration Advisory 03-01 (2003). Accordingly, the Ninth Circuit  
3 has approved fee reductions to account for increased hours attributable to block  
4 billing. *Welch*, 480 F.3d at 948, citing *Hensley*, 461 U.S. at 437, (holding that  
5 applicant should “maintain billing time records in a manner that will enable a  
6 reviewing court to identify distinct claims”); *Fischer v. SJB-P.D. Inc.*, 214 F.3d  
7 1115, 1121 (9th Cir.2000) (holding that a district court may reduce hours to offset  
8 “poorly documented” billing).

9 Approximately 40% of Plaintiffs billing entries are block billed. The Court  
10 finds that a 5% reduction should be applied to the lodestar amount to account for  
11 increased time that may have resulted from block billing. Although the Court has  
12 not calculated a precise percentage, less than half of all hours submitted by  
13 Plaintiffs are block-billed. In order to ensure that reductions are not taken on  
14 billing entries that contain single tasks, the 5% reduction will only be applied to  
15 40% of the total lodestar amount. *See Welch*, 480 F.3d at 948 (holding any  
16 reduction for block billing must fairly account for those hours actually billed in  
17 block format).

### 18 3. DUPLICATE WORK

19 Defendant argues that much of Plaintiffs work was duplicated due to the  
20 substitution of counsel a few months prior to trial — from Bahan & Associates to  
21 Hadsell & Stormer and the Law Offices of Randy Renick. Therefore, Defendant  
22 argues that the Court should discount time spent by attorneys getting up to speed  
23 and familiarizing themselves with the claims in this lawsuit. Defendant also  
24 argues that fees related to duplication of work such as multiple attorneys at  
25 hearings or depositions should be discounted. While the Court is not persuaded by  
26 Defendant’s arguments that the presence of more than one attorney at a hearing or  
27 deposition merits reduction in fees, the Court does find that some work was  
28

1 unreasonably duplicative due to Plaintiffs' substitution of counsel. In response to  
2 the Court's inquiry, Defendant provided the Court with a submission of additional  
3 information, including a chart of billing entries reflecting duplicative work. *See*  
4 Def. 8/26/08 Submission, Ex. A. Plaintiffs filed a response to Defendant's  
5 submission. The chart lists entries that result in 172 hours of work, totaling  
6 \$76,280; however, the Court finds that only some time should be reduced for  
7 unreasonable duplication. Accordingly, the Court finds that 40% of the above  
8 amount or \$30,512, is an appropriate reduction.

#### 9 **4. RESEARCH**

10 Defendant objects to Plaintiffs' fee request for certain entries involving  
11 research conducted by attorney Kathleen Langan, whose fee rate is \$500/hour.  
12 Defendant argues that the particular research conducted by Ms. Langan would be  
13 customarily done by a junior lawyer. Defendant notes that Ms. Langan billed  
14 more than 137 hours to this case.

15 Plaintiff argues that Ms. Langan took a significant role in opposing  
16 Defendant's five post-trial motions. Due to the extensive nature of each motion,  
17 Plaintiffs argue that it engaged all available personnel to work on the briefs.  
18 While much of the work performed by Ms. Langan was reasonable and necessary,  
19 the Court finds that 48.6 hours were spent by Ms. Langan doing basic research or  
20 tasks more appropriate for a junior attorney. Accordingly, the Court reduces 48.6  
21 hours of Ms. Langan's total hours to \$350/hour. This rate is in between the rate of  
22 a senior associate and a junior associate at Mr. Renick's firm.

#### 23 **5. REVIEW OF FILES**

24 Defendant objects to Plaintiffs' fee request to the extent that "Plaintiffs'  
25 billing records refer to excessive 'review of files.'" Defendant argues that  
26 Plaintiffs' records detail over two hundred hours of "mere 'review' of files" and  
27 that Plaintiffs entries are vague "such that it is impossible to determine what work  
28

1 was actually performed.” Plaintiffs state that these hours were “proper and reflect  
2 hours required to litigate this action.” Plaintiffs explained that the paralegal  
3 ‘review of files’ included reviewing, analyzing and maintaining documents for  
4 written discovery, deposition, and motions; Plaintiffs however, did not address  
5 why over two hundred hours were expended in the review. In response to the  
6 Court’s inquiry, Defendant provided the Court with a submission of additional  
7 information, including a chart of billing entries reflecting review of files. *See* Def.  
8 8/26/08 Submission, Ex. B. Plaintiffs filed a response to Defendant’s submission.  
9 The chart lists entries that result in 203.9 hours of work, totaling \$44,877.50.  
10 Based on its knowledge of the case and its review of the papers, the Court finds  
11 that Plaintiffs’ entries, listed by Defendants in Exhibit B, are excessive and  
12 include insufficient descriptions in order for the Court to determine what work  
13 was actually performed. Since a reasonable ‘review of files’ is necessary in the  
14 course of protracted litigation, the Court finds a 65% reduction of the above  
15 amount, or \$29,179.38, is appropriate.

#### 16 6. CLERICAL WORK

17 Defendant objects to Plaintiffs’ fee request to the extent Plaintiffs’ billing  
18 records demonstrate that Plaintiffs counsel charged attorney rates for clerical and  
19 secretarial work. *Cf. Missouri v. Jenkins*, 491 U.S. 274, 288 (1989). In response  
20 to the Court’s inquiry, Defendants provided the Court with a submission of  
21 additional information, including a chart of billing entries reflecting time billed for  
22 secretarial and clerical work. *See* Def. 8/26/08 Submission, Ex. E. Plaintiffs filed  
23 a response to Defendant’s submission. The chart lists entries that result in 36.6  
24 hours of work, totaling \$7,373.50. The Court finds the following entries involve  
25 secretarial and clerical work that should be excluded from the lodestar calculation:  
26 “arrange for translation on phone calls with clients; scheduling phone interviews  
27 and interpretation service; waiting for Ines Kai’s husband; [and] travel to/from  
28



1 storage to retrieve CDN payroll registers.” *Id.* Accordingly, the Court reduces the  
2 lodestar amount by \$1017.00.

### 3 **7. FEES ON UNRELATED OR UNSUCCESSFUL WORK**

4 Defendant argues that Plaintiffs should not recover fees on the two claims  
5 on which they did not ultimately prevail: reporters’ rest breaks and injunctive  
6 relief. However, Plaintiffs prevailed on 11 related claims. Since the claims for  
7 which Plaintiffs prevailed are not entirely distinct with respect to preparation,  
8 research, etc., Plaintiffs argue that the time spent is still compensable. *See*  
9 *Thomas v. City of Tacoma*, 410 F.3d 644, 649 (9th Cir. 2005) (If a lawsuit consists  
10 of related claims, a plaintiff who has won substantial relief should not have his  
11 attorney’s fee reduced because the court did not adopt each contention raised. To  
12 determine whether claims are related, the court should focus on whether the  
13 claims on which Plaintiff did not prevail “involve a common core of facts or are  
14 based on related legal theories.”) Defendant also argues that Plaintiffs pursued  
15 numerous claims that Plaintiffs later dismissed on the eve of trial or during trial.

16 The Court finds that the facts surrounding Defendant’s payroll practices  
17 support all of Plaintiffs’ claims. Plaintiffs have won “substantial relief” and  
18 therefore should not have their fees reduced because the Court did not adopt “each  
19 contention raised.” *See id.* Defendant argues that waiting time penalties under  
20 Labor Code § 203 are penalties and therefore do not fall within the purview of  
21 Labor Code § 218.5 and 1194, which pertain to non-payment of wages, overtime,  
22 fringe benefits, health and welfare, and pension fund contributions. Defendant  
23 states that neither of the above cited statutes awards fees for “penalties.”

### 24 **C. FEES FOR SECTION 203 WAITING TIME PENALTIES**

25 Defendant argues that waiting time penalties under California Labor Code §  
26 203 are penalties and therefore do not fall within the purview of California Labor  
27 Code § 218.5 and 1194, which pertain to non-payment of wages, overtime, fringe  
28

1 benefits, health and welfare, and pension fund contributions. Defendant states that  
2 neither of the above cited statutes awards fees for "penalties."

3 Plaintiffs argue that Section 203 provides up to 30 days of wages as a  
4 penalty anytime an employer fails to pay wages owed at the time of termination.  
5 Plaintiffs state that because a Section 203 violation necessarily involves the  
6 payment of wages, it triggers the fee provision of Section 218.5. Alternately,  
7 Plaintiffs argue that if Section 218.5 does not provide for an award of fees, fees  
8 should still be awarded since the claim is based on the same set of facts as the  
9 overtime and break claims; and, a plaintiff who prevails on claims that allow for  
10 the recovery of attorney's fees, along with claims which do no, is entitled to  
11 recover all of the attorney's fees incurred so long as the claims all arise from a  
12 "common core of facts." *See Hensley*, 461 U.S. at 433; *see also Bell v. Vista*  
13 *Unified School District*, 82 Cal. App. 4th 672, 687 (Ct. App. 200) ("Such fees  
14 need not be apportioned when incurred for representation on an issue common to  
15 both causes of action in which fees are proper and those in which they are not.")

16 There is little guidance on whether fees are recoverable under Section 218.5  
17 for violation of Section 203; however the Court need not reach this issue in the  
18 instant case. Plaintiffs Section 203 claim stems from issues common to causes of  
19 action in which fees are proper and therefore there should be no fee  
20 apportionment. Accordingly, the Court finds that fees related to Plaintiffs'  
21 Section 203 should not be reduced.

#### 22 **D. MULTIPLIER**

23 Plaintiffs cite *Mangold*, *see infra*. Section II, to support their argument that  
24 a multiplier of 2.0 is appropriate. *Mangold*, 67 F.3d at 1478-79. In *Mangold*, the  
25 district court awarded an upward multiplier of 2.0 in recognition of the contingent  
26 risk assumed by plaintiffs' attorneys. The Ninth Circuit affirmed the contingent  
27 fee multiplier, holding that it was bound to apply California law in determining  
28



whether a multiplier was appropriate. *Id.*<sup>2</sup> As stated, the Court finds that California law applies in the instant case. The factors to be considered based on California law in determining the proper multiplier include: “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.” *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131 (2001).

While a court may apply a multiplier in the instant case, this Court still has discretion to include a multiplier in its fee award. *See Ketchum*, 24 Cal. 4th at 1138. The Court finds that counsel represented Plaintiffs on a contingency basis and prevailed after a protracted trial and subsequent court trial on damages. The result obtained was exceptional in light of Defendant’s approach to the litigation. *See e.g. Crommie v. PUC*, 840 F.Supp. 719 (N.D. Cal. 1994). Counsel was also precluded from other employment due to the time and attention required by this case. Having considered the relevant factors noted above, this Court finds a multiplier of 1.5 appropriate.

#### **E. COSTS**

Plaintiffs filed the instant motion, including a request for \$120,699.15 in costs, prior to the determination of the Bill of Costs by the Clerk of Court. In its reply brief, Plaintiffs state that “it is Plaintiffs intention that the [sic] any award of litigation expenses made by this Court exclude or supersede any costs previously awarded by the Clerk of Court.” In its Bill of Costs, Plaintiffs sought recovery in the amount of \$48,140.85 for costs related to deposition transcripts, photocopies,

<sup>2</sup> Plaintiffs cites *Andrea Savaglio et al. v. Wal-Mart Stores, Inc., et al*, 2006 WL 3626295 (Cal.Superior) (not reported in Cal. Rptr. 3d) to support their argument that this Court should apply a multiplier of 2.0. The court in *Savaglio* applied a 2.0 multiplier in a wage and hour case due to the skill of counsel, the preclusion of other employment and the risk in undertaking such a case on a contingent basis. The court in *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 582 (Cal. 2004), held that the trial court may consider results obtained in awarding a fee multiplier. The trial court based the enhancement, in *Graham*, on the contingency of the litigation, the delay in payment and the quality of the result. In *Ketchum*, the court awarded a 2.0 multiplier for the contingency risk and delay in payment. *Ketchum*, 24 Cal. 4th at 1137.

1 and interpreter services. On April 4, 2008, costs were taxed in the amount of  
2 \$45,354.85. The Clerk disallowed "expediter costs for video depositions" and  
3 therefore reduced Plaintiffs' request by \$2,486. Plaintiffs may file a Motion to  
4 Retax Costs with this Court for the additional amount; however said motion must  
5 be filed within five days of the Clerk's decision.

6 In addition to costs already recovered from the Clerk of Court, Plaintiffs  
7 request includes costs not taxable under the local rules such as additional  
8 photocopying, travel expenses, lodging, car rental and meals, messenger services,  
9 postage/Fedex, "Lexis/Westlaw research" and "trial supplies." To support  
10 recovery of the additional costs, Plaintiffs cite California state cases permitting  
11 recovery of similar costs, if found reasonable by the court. *See e.g. Bussey v.*  
12 *Affleck*, 225 Cal. App. 3d 1162, 1163-64 (1990) *abrogated on other grounds by*  
13 *Hsu v. Semiconductor Systems, Inc.*, 126 Cal.App.4th 1330 (2005). However,  
14 Plaintiffs provide the Court with little to no specificity on the necessity or  
15 reasonableness of these costs. Plaintiffs also cite *Keith v. Volpe*, 643 F. Supp. 37,  
16 43 (C.D. Cal. 1985), to support its request. The court in *Keith* authorized  
17 additional costs because the "documented expenses" were reasonably spent and  
18 necessary, and because "declarations submitted by both parties establish that  
19 current practice is to bill separately for these expenses." While Plaintiffs cite  
20 *Keith* as support, they provide no explanation as to why the additional costs were  
21 reasonably spent and necessary. Moreover, in the instant case, parties submit no  
22 evidence of a "practice" to bill separately for these expenses. The Court finds  
23 these additional costs to be unsupported by evidence. Accordingly, the Court  
24 denies Plaintiffs request for additional costs.

#### 25 F. CONCLUSION

26 Based on the foregoing discussion, the Court finds that Plaintiffs' requested  
27 lodestar of \$2,267,514 shall be reduced by \$2,220 to adjust Ms. Langan's hourly  
28 rate, \$2,675 to adjust Messrs. Sirolly and Muzio's hourly rate, \$7,290 to adjust

Ms. Langan's hourly rate for basic research, \$45,350.28 for fees related to block billing, \$30,512 for fees related to duplicate work, \$29,179.38 for fees related to excessive review of files, and \$1,017 for fees related to clerical work. Therefore the above reductions result in a lodestar of \$2,149,270.40. Plaintiffs supplement their fee request for hours incurred since the entry of Judgment on February 28, 2008. Plaintiffs expended 458.30 hours for this time period. Finding the additional lodestar amount reasonable, the Court adds \$194,720 to the above noted lodestar totaling \$2,343,990.40. The lodestar added to a 50% enhancement of the lodestar for purposes of the multiplier equals a fees award of \$3,515,985.60.

#### **IV. REQUEST FOR JUDICIAL NOTICE**

Plaintiffs cite *Andrea Savaglio et al. v. Wal-Mart Stores, Inc., et al*, 2006 WL 3626295 (Cal.Superior) (not reported in Cal. Rptr. 3d) and requests the Court take judicial notice that said case found a lodestar multiplier of 2.0 or higher to be proper in a case similar to the present.

Federal Rule of Evidence 201 provides guidelines for when a court may take judicial notice of adjudicative facts. According to the Rule, "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The Rule requires the court to take judicial notice of a fact "if requested by a party and supplied with the necessary information." Fed. R. Evid. 201(c).

The Court finds that Rule 201 does not apply to this case and therefore denies Defendant's request for judicial notice. However, the Court advises parties that it has read and reviewed the above cited case.

#### **CONCLUSION**

For the forgoing reasons, the Court ORDERS an award of fees to Plaintiffs'

1 counsel in the amount of \$3,515,985.60.

2  
3 IT IS SO ORDERED.

4  
5 DATED: October , 2008

By 

6 CONSUELO B. MARSHALL  
7 UNITED STATES DISTRICT JUDGE  
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## **Exhibit 11**

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Attorneys for Plaintiff 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)

Case No.: BC 391869

**SUPPLEMENTAL DECLARATION  
OF MICHAEL D. MCLACHLAN IN  
SUPPORT OF MOTION FOR  
APPROVAL OF AWARD OF  
ATTORNEY FEES AND COSTS**

Date: January 7, 2014

Time: 10:00 a.m.

Dept: Los Angeles Superior Court, Old  
Dept 1

1                   **SUPPLEMENTAL DECLARATION OF MICHAEL D. MCLACHLAN**

2 I, Michael D. McLachlan, declare:

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

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

9           3.       I was first asked to participate in this litigation during the summer of 2007.  
10 I was later contacted by David Zlotnick in October of 2007, but due to my schedule and  
11 some other concerns, declined to participate at that time. I did give Mr. Zlotnick a  
12 number of potential names of class action attorneys to contact, and did in fact contact  
13 three on my own in an effort to help him, to no avail. I remained in sporadic contact with  
14 Mr. Zlotnick over the next six months, and he informed me in or about early May of 2008  
15 that he had exhausted all potential contacts and was unable to find a qualified attorney  
16 willing to take on the matter.

17           4.       Attached as Exhibit 4 is a true and correct copy of the relevant portions of  
18 the hearing transcript of December 18, 2007.

19           5.       The inherent problems with the inability to recover expert costs, and hence  
20 the inability retain work product experts, has been extremely challenging. So much so  
21 that unless and until the law changes in this regard, I would never take this sort of case  
22 again. Being put in the profoundly anxiety provoking and stressful position of being ever  
23 on the verge of non-self-induced malpractice, on the one hand, and being forced to donate  
24 large sums of unrecoverable case costs to a lawsuit of serious risk, is not a situation I  
25 would wish on anyone.

26           6.       On a particle day-to-day level, not having access to an expert for five years  
27 on a case of this technical nature, made it extremely challenging to litigate. If I did not  
28 have more than 20 years' experience working with hydrologists, hydrogeologists, and



1 engineers, as well as my own science background, it would have been impossible to  
2 adequately represent the Class.

3 7. In the early phase of my involvement in this litigation, I conducted a  
4 nationwide survey of cases, as well as an internet search, in order to determine whether a  
5 class action

6 8. The example of purportedly excessive legal research D40 attempts to  
7 reference in September of 2011 (Opp. 10:1-4), involved in fact absolutely no legal  
8 research. D40 overstates the quantity of work at 21.9 hours, and also mistakes what is  
9 entirely technical research on numerous water use issues impacting the Class, and  
10 directly relevant to the then-ongoing but settlement discussions as well as the substance  
11 of the overall litigation. While a portion of this work might have been done by an expert  
12 witness, D40 did its level best to stop any expert work until December of 2012. I will  
13 also note that I did use a paralegal where appropriate on this task (see September 7, 2011,  
14 3.8 hours).

15 9. I am not shy in using paralegal where the work to be performed is properly  
16 paralegal work. As can be seen by the billing records, we used nearly 500 hours of  
17 paralegal time on this case. Like most contingent lawyers, I use sound judgment in  
18 deploying my staffing resources, as well as my own time. The division of labor in my  
19 office, which at all relevant times has also included Mr. O'Leary's office, is one lawyer  
20 (two if you include Mr. O'Leary), paralegals, and administrative staff.

21 10. D40 questions my review and summary of the deposition transcripts of its  
22 key defense experts prior to the Phase Three Trial. This is standard practice for me in  
23 preparing for trial, although I typically do this only for the more important witnesses, as  
24 was the case here. And, much of this work involved preparing my examination outlines  
25 for the witnesses in question. It should also be noted that I did not attend the depositions  
26 of several of these witnesses, so my analysis and review of their transcripts was necessary  
27 in any event. Similarly, D40 criticizes me for having spent almost 70 hours reviewing  
28 and analyzing the incredible mass of data and reports generated by the parties and

1 experts. Again, all of this work in November of 2011 was necessary in preparation for  
2 the Phase 3 Trial. Some of this work might have been performed by an expert witness  
3 (perhaps only a small portion), but D40 insisted that we litigate without such an expert.  
4 Given the choice lay down and do nothing in the face of these obstacles, or to zealously  
5 pursue the interests of my client and Class, I chose the latter, as would have any  
6 responsible attorney.

7 11. All but one of the remaining time entries D40 questions, totaling  
8 approximately 32 hours, was all directly related to the Phase 3 and Phase 4 trials. It is  
9 unknown exactly how much discovery material was produced and generated in those  
10 years, but it was many thousands of pages (and I believe well over 10,000 pages). It  
11 would have been impossible to litigate this case without reviewing some of these  
12 materials, and it is frankly surprising to me that I did not spend much more time doing so  
13 (I am certain that I did not record a good bit of my time spent in this regard, but I have  
14 now surrendered that time).

15 12. The one other entry D40 challenges, on June 11, 2010, related to the data  
16 generated by class member survey, as well as the nearly 700 responses to the class  
17 questionnaire. This work related to primarily two things: the identification of non-class  
18 members and an assessment of the data that class members could provide regarding their  
19 water use. This was all property attorney work. As the Court can see in the time entries  
20 during the summer of 2010, I left nearly all of the paralegal-type work on these projects  
21 to paralegals, as is reflected in the large amounts of paralegal time.

22 13. What is also of note is that D40 does not cite to a single instance of block  
23 billing, or duplicative billing by either Class Counsel.

24 14. Attached hereto as Exhibit 5 is a true and correct copy of San Francisco  
25 Daily Journal Article published on August 12, 2012 summarizing the Valeo 2012  
26 Halftime Report, as survey of legal billing rates conducted by Valeo Partners, LLC. This  
27 survey shows the average partner and associate billing rates in Los Angeles are \$797 and  
28 \$550 respectively, and in San Francisco, \$750 and \$495, respectively.

1           15. Attached as Exhibit 6 are several Westlaw CourtExpress Legal Billing  
2 Reports for many California attorneys in 2009. These rates support a market rate above  
3 the negotiated rate of \$550.

4           16. Attached as Exhibit 7 is ALM's Daily Report dated February 22, 2011 of  
5 for many California attorneys. These rates support a market rate above the negotiated  
6 rate of \$550.

7           17. The following are some rates that have been found reasonable by Courts in  
8 California: *Charlebois v. Angels Baseball LP* (C.D.Cal. May 30, 2012) 2012 U.S.Dist.  
9 LEXIS 91069 [disability access class action; 22 years of experience, \$630 for 2012];  
10 *Molina, et al. v. Lexmark Inter'l*, LASC Case No. BC 339177 [class action for vacation  
11 pay; 17 years, \$600, and 20 years, \$550 for 2012]; *Stonebrae v. Toll Bros.* (N.D.Cal.  
12 2011) 2011 U.S.Dist. LEXIS 39832 [commercial action; 18 years, \$515 in 2010]; *Wren v.*  
13 *RGIS Inventory Specialists* (N.D.Cal. 2011) 2011 U.S.Dist LEXIS 38667 [class action;  
14 17 years, \$650 in 2010]; *Anderson v. Nextel Retail Stores, LLC* (C.D.Cal. 2010) U.S.Dist.  
15 LEXIS 71598 [wage and hour; 14 years, \$655 in 2010].

16           18. Attached as Exhibit 8 is a true and correct copy of a 2010 Order in the  
17 Central District of California awarding a Los Angeles attorney (Douglas Silverstein),  
18 with 15 years of experience, an hourly rate of \$700 in a wage and hour class action.

19           19. In the event it is of relevance to the Court, attached as Exhibit 9 is a true  
20 and correct copy of the allocation table used by the Settling Defendants to set the  
21 payment percentages in the Settlement Agreement. This table is based upon relative  
22 groundwater production by the various public water suppliers during the period of 2000-  
23 2006. The numbers found in this table come from the Summary Expert Report, discovery  
24 documents, and data produced by the water suppliers in this litigation.

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct. Executed this 1<sup>st</sup> day of January, 2014, at Los Angeles,  
3 California.

4 Michael  
5 McLachlan

Digitally signed by Michael McLachlan  
DN: cn=Michael McLachlan, o=Law  
Offices of Michael D. McLachlan, ou,  
email=mike@mclachlanlaw.com, c=US  
Date: 2014.01.01 09:03:15 -08'00'

6 Michael D. McLachlan  
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## **Exhibit 4**

1 LOS ANGELES, CA; TUESDAY, DECEMBER 18, 2007; 9:00 A.M.

2 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

3 CASE NO.: SANTA CLARA CASE NO. 1-05-CV-049053

4 CASE NAME: ANTELOPE VALLEY GROUNDWATER CASES

5 APPEARANCES: (AS NOTED ON TITLE PAGE)

6

7 (CHARLOTTE NICHOLAS MOHAMED, CSR #2384)

8 ---0---

9 THE COURT: GOOD MORNING.

10 IN THE ANTELOPE VALLEY MATTERS, THIS IS THE TIME  
11 SET FOR HEARING ON THE MOTION TO AMEND AND TO CERTIFY A CLASS.  
12 IT IS ALSO HERE FOR A STATUS CONFERENCE AND A CASE MANAGEMENT  
13 CONFERENCE.

14 I THINK WE HAVE A LARGE NUMBER OF PEOPLE ON THE  
15 TELEPHONE, AND SEVERAL COUNSEL ARE HERE. I THINK WHAT WE WILL  
16 DO FIRST IS GET APPEARANCES FROM THOSE WHO ARE HERE. AND I'D  
17 REMIND EACH OF YOU WHO ARE HERE AND ON THE TELEPHONE, WHEN YOU  
18 SPEAK, PLEASE IDENTIFY YOURSELF EACH TIME FOR THE BENEFIT OF  
19 THE COURT REPORTER.

20 ALL RIGHT. SO LET'S HAVE COUNSEL WHO ARE  
21 PRESENT.

22 MR. DOUGHERTY: GOOD MORNING, YOUR HONOR.

23 ROBERT DOUGHERTY FOR ANTELOPE VALLEY UNITED  
24 MUTUAL GROUP.

25 MR. WEINSTOCK: GOOD MORNING, YOUR HONOR.

26 HENRY WEINSTOCK FOR TEJON RANCH.

27 MR. LEMIEUX: GOOD MORNING, YOUR HONOR.

28 WAYNE LEMIEUX, SPECIAL APPEARANCE FOR THE

1 ANTELOPE VALLEY STATE WATER CONTRACTORS ASSOCIATES.

2 MY SON KEITH WILL BE HERE IN A MOMENT. HE IS IN  
3 ANOTHER DEPARTMENT APPEARING ON BEHALF OF LITTLE ROCK CREEK  
4 IRRIGATION DISTRICT AND SEVERAL OTHERS FOR WHICH HE HAS  
5 APPEARED IN THE PAST.

6 MR. EVERTZ: GOOD MORNING, YOUR HONOR.

7 DOUG EVERTZ FOR THE CITY OF LANCASTER.

8 MS. GOLDSMITH: GOOD MORNING, YOUR HONOR.

9 JANET GOLDSMITH FOR THE CITY OF LOS ANGELES.

10 MR. MARKMAN: GOOD MORNING, YOUR HONOR.

11 JAMES MARKMAN FOR THE CITY OF PALMDALE.

12 MR. BUNN: GOOD MORNING, YOUR HONOR.

13 THOMAS BUNN FOR PALMDALE WATER DISTRICT AND  
14 QUARTZ HILL WATER DISTRICT.

15 MR. DAVIS: GOOD MORNING, YOUR HONOR.

16 MICHAEL DAVIS, MARLENE ALLEN-HAMMARLUND, AND TINA  
17 BRISTER OF GRESHAM SAVAGE NOLAN AND TILDEN FOR SERVICE ROCK  
18 PRODUCTS, FOR HEALY ENTERPRISES, AND FOR SHEEP CREEK WATER  
19 COMPANY.

20 MR. TOOTLE: GOOD MORNING, YOUR HONOR.

21 JOHN TOOTLE FOR CALIFORNIA WATER SERVICE COMPANY.

22 MR. ZLOTNICK: GOOD MORNING, YOUR HONOR.

23 DAVID ZLOTNICK FOR PLAINTIFF WILLIS.

24 MR. BRUNICK: BILL BRUNICK FOR ANTELOPE VALLEY EAST KERN  
25 WATER AGENCY.

26 MR. PFAEFFLE: GOOD MORNING.

27 FRED PFAEFFLE, L.A. COUNTY WATER WORKS DISTRICT  
28 40.



1 MR. DUNN: GOOD MORNING, YOUR HONOR.

2 JEFFREY DUNN FOR L.A. COUNTY WATER WORKS DISTRICT  
3 NUMBER 40 AND ROSAMOND COMMUNITY SERVICES DISTRICT.

4 MR. FIFE: GOOD MORNING, YOUR HONOR.

5 MICHAEL FIFE, ANTELOPE VALLEY GROUNDWATER  
6 AGREEMENT ASSOCIATION.

7 THE COURT: ALL RIGHT. LET'S HAVE TELEPHONIC  
8 APPEARANCES, PLEASE.

9 MR. CROW: GOOD MORNING, YOUR HONOR.

10 MICHAEL CROW FOR THE STATE OF CALIFORNIA.

11 MR. BLUM: GOOD MORNING, YOUR HONOR.

12 SHELDON BLUM ON BEHALF OF THE SHELDON R. BLUM  
13 TRUST.

14 MR. KIEL: GOOD MORNING, YOUR HONOR.

15 PETER KIEL FOR [INTELLIGIBLE]

16 [SUBSEQUENT STATED TELEPHONE APPEARANCES UNINTELLIGIBLE]

17 THE COURT: OKAY. NOW I WANT EVERYBODY TO STOP FOR A  
18 MOMENT. WE MISSED A COUPLE. ACCORDING TO THE REPORTER WE  
19 MISSED ALOT OF YOU.

20 SO I'M GOING TO ASK TELEPHONIC TO START OVER  
21 AGAIN, SPEAK SLOWLY, AND SPELL YOUR LAST NAME.

22 MR. CROW: MICHAEL CROW, C-R-O-W, FOR THE STATE OF  
23 CALIFORNIA.

24 MR. BLUM: SHELDON BLUM FOR SHELDON R. BLUM TRUST,  
25 B-L-U-M.

26 MR. KIEL: PETER KIEL, K-I-E-L, FOR COUNTY SANITATION  
27 DISTRICTS.

28 MR. HERREMA: BRAD HERREMA, H-E-R-R-E-M-A, FOR ANTELOPE

1 VALLEY GROUNDWATER AGREEMENT ASSOCIATION.

2 MR. FATES: TED FATES, F-A-T-E-S, FOR DEL SUR RANCH LLC.

3 MR. LEININGER: THIS IS LEE LEININGER FOR THE UNITED  
4 STATES, SPELLED L-E-I-N-I-N-G-E-R.

5 THE COURT: ALL RIGHT. ANY OTHERS?

6 MR. SANDERS: CHRIS SANDERS, S-A-N-D-E-R-S.

7 THE COURT: ALL RIGHT. ANY OTHERS ON THE TELEPHONE?

8 MR. ZIMMER: YES, YOUR HONOR.

9 RICHARD ZIMMER, Z-I-M-M-E-R, FOR BOLTHOUSE  
10 PROPERTIES AND WILLIAM BOLTHOUSE FARMS.

11 MR. MELIN: AND, YOUR HONOR, THIS A FELIPE MELIN  
12 REPRESENTING COPA DE ORO.

13 THE COURT: SPELL YOUR LAST NAME, COUNSEL.

14 MR. MELIN: M-E-L-I-N.

15 THE COURT: ANY OTHERS?

16 [NO AUDIBLE RESPONSE]

17 THE COURT: ALL RIGHT. WE HAVE SEVERAL MATTERS NOW TO  
18 TALK ABOUT AND WE ARE GOING TO START WITH MR. ZLOTNICK,  
19 REPRESENTING MISS WILLIS.

20 MR. ZLOTNICK: GOOD MORNING, YOUR HONOR..

21 THE COURT: GOOD MORNING.

22 I RECEIVED ESSENTIALLY A STATUS STATEMENT FROM  
23 YOU BUT IT WAS NOT CLEAR TO ME WHAT YOU INTENDED TO DO.

24 MR. ZLOTNICK: YOUR HONOR, AS THE COURT IS AWARE, I  
25 MEAN, AT THIS POINT, YOUR HONOR DID CERTIFY A CLASS AND MISS  
26 WILLIS AS A REPRESENTATIVE FOR THE NON-PUMPING GROUP.

27 AT THIS POINT, DESPITE GOOD FAITH EFFORTS AND

28 OBVIOUSLY I HAD HOPED AND EXPECTED WE WOULD BE BEYOND THIS

1       STAGE BUT WE STILL DON'T HAVE EITHER A PROPOSED REPRESENTATIVE  
2       OR DEFINITIVE AGREEMENT FROM COUNSEL TO REPRESENT THE GROUP OF  
3       PUMPERS, SMALL PUMPERS.

4               SO I HAVE BEEN TALKING TO PEOPLE, WITHOUT TRYING  
5       TO TWIST ARMS, TRYING TO USE MY PERSUASIVE EFFORTS, AND YET WE  
6       HAVEN'T MADE ANY PROGRESS IN REALITY OR AT LEAST, YOU KNOW,  
7       NONE THAT HAS REACHED THAT STAGE WHERE I CAN SAY THAT THERE  
8       IS -- THAT WE HAVE A REPRESENTATIVE AND/OR COUNSEL.

9               SO ONE OF THE ISSUES -- AND THIS HAS BEEN A  
10       STUMBLING BLOCK AND A CONCERN OF MR. MC LACHLAN WHO HAD  
11       EARLIER INDICATED THAT HE WAS INTERESTED IN PROCEEDING AS  
12       COUNSEL -- ONE OF THE ISSUES THAT HE HAS IS THAT HE HAS A  
13       SMALL OFFICE AND IT IS HIS CONCERN THAT HE WOULD BE INUNDATED  
14       WITH TELEPHONE CALLS FROM CLASS MEMBERS, AND THAT WOULD BE A  
15       PROBLEM FOR HIM TO HANDLE THAT, GIVEN THE PRIOR EXPERIENCES  
16       THAT HE HAS DEALING WITH SIMILAR TYPES OF CLASSES.

17               I'VE TRIED TO DISCUSS THAT WITH THEM AND COME UP  
18       WITH WAYS THAT MIGHT AMELIORATE THAT PROBLEM.    ONE  
19       POSSIBILITY IS OBVIOUSLY IF WE WERE ABLE TO DEFER SENDING  
20       NOTICE, FOR SOME PERIOD OF TIME AT LEAST, THAT WOULD OBVIOUSLY  
21       ELIMINATE THAT CONCERN.   HE WOULDN'T BE GETTING HUNDREDS OF,  
22       WHATEVER, CALLS FROM PEOPLE.   HE MAY GET A FEW BECAUSE OF  
23       REPORTS FROM THE PRESS, BUT NOTHING VERY SIGNIFICANT.

24               I DID BROACH THAT IDEA WITH MR. DUNN WHO, WITHOUT  
25       COMMITTING HIS CLIENT, CERTAINLY FELT THAT HIS CLIENT WOULD  
26       RATHER SEND ONE NOTICE AT THE END, YOU KNOW, LATER ON IN THE  
27       CASE, IF POSSIBLE, YOU KNOW, IN THE CONTEXT OF THE SETTLEMENT  
28       RATHER THAN HAVE TO GO THROUGH THE EXPENSE TWICE.   SO THAT IS

1 ONE POSSIBILITY.

2 I HAVE CALLS OUT THERE. SOMEBODY COULD CALL ME

3 TOMORROW AND SAY THEY ARE HAPPY TO STEP FORWARD. I'VE BEEN

4 SPEAKING TO PEOPLE AND ENCOUNTERED PEOPLE WHO INDICATED

5 INTEREST BEFORE, YOU KNOW, TURNS OUT HAVE ONE PROBLEM OR

6 ANOTHER WHEN PUSH COMES TO SHOVE.

7 SO I'M IN AN AWKWARD POSITION BECAUSE I'M NOT --

8 I CAN'T REPRESENT THEM. I AM REPRESENTING THE OTHER SUB

9 CLASS. AND I CAN'T EVEN PROMISE THEM AT THIS POINT WHO WOULD

10 BE REPRESENTING THEM.

11 SO IT HAS BEEN A FRUSTRATING PROCESS, AND I'M

12 SORRY BUT WE HAVE MADE NO REAL PROGRESS.

13 THE COURT: IN TERMS OF THE NON-PUMPING CLASS, AT THIS

14 POINT, AT THIS EARLY STAGE OF THESE PROCEEDINGS, IS THEIR

15 INTEREST DIFFERENT THAN THE SMALL PUMPER WHO MAY HAVE A WELL

16 IN THE BACKYARD OR ON THE ACRE OR TWO THAT IS OWNED BY THE

17 PARTY, SUCH THAT THERE IS A CONFLICT THAT WOULD PRECLUDE THIS

18 CASE PROCEEDING WITH THE CLASS CERTIFIED?

19 I'M LOOKING FOR A WAY TO MOVE THIS CASE ALONG TO

20 AVOID FURTHER DELAYS AND TO GET INTO SOME OF THE SUBSTANTIVE

21 ISSUES WHICH WE CANNOT DO --

22 MR. ZLOTNICK: RIGHT.

23 THE COURT: -- UNLESS THE COURT HAS JURISDICTION OVER

24 ALL THE PARTIES.

25 MR. ZLOTNICK: I UNDERSTAND, YOUR HONOR.

26 WELL, I WILL -- I MEAN, I THINK TO ANSWER YOUR

27 HONOR'S QUESTION, AT THIS STAGE I DON'T THINK THERE IS A

28 CONFLICT. I THINK WHEN YOU GET TO THE SELF-HELP ISSUE THEN

1       THERE IS A POTENTIAL CONFLICT YOU HAVE OF TRYING TO NEGOTIATE  
2       A SETTLEMENT. IN THAT CONTEXT THERE IS A CONFLICT.

3               I THINK IF THERE WERE -- IF IT WERE STRUCTURED SO  
4       THAT THERE WERE ONE CLASS AND MY OFFICE WAS APPOINTED AS LEAD  
5       CLASS COUNSEL, AND THE CALLS WERE DIRECTED TO US, THAT  
6       MR. MC LACHLAN WAS SORT OF SUB-CLASS COUNSEL FOR THE OTHER  
7       PUMPING GROUP, THAT MIGHT BE ANOTHER WAY TO SOLVE THAT  
8       PROBLEM. AND WE WOULD BE GETTING THE CALLS BUT DIRECT THE  
9       CALLS FROM THE PUMPERS ONTO HIM TO THE EXTENT NECESSARY. I  
10      MEAN, WE WOULD RESOLVE WHATEVER QUESTIONS WE COULD. SO THAT  
11      MIGHT BE ANOTHER WAY TO SOLVE THE PROBLEM.

12             BECAUSE I DON'T THINK AT PRESENT, OTHER THAN THE  
13      FACT OF IN THE SETTLEMENT CONTEXT -- AND QUITE FRANKLY, GIVEN  
14      THE PRESENCE OF A NUMBER OF OTHER COUNSEL, VERY EXPERIENCED  
15      AND CAPABLE COUNSEL -- MR. FIFE, MR. ZIMMER, MR. JOYCE --  
16      REPRESENTING THE PUMPING GROUP, I'M NOT CONCERNED THAT THEIR  
17      INTERESTS AS A GROUP ARE GOING TO GO UNREPRESENTED.

18             THE COURT: WELL, THE IMPORTANT OBLIGATION WE ALL HAVE  
19      IS TO ENSURE THAT EVERY PARTY'S RIGHTS ARE PROTECTED AND THAT  
20      DUE PROCESS IS PROVIDED TO THEM.

21             I WOULD BE INTERESTED IN HEARING FROM OTHER  
22      COUNSEL CONCERNING THE SUGGESTION, THE QUESTION THAT I JUST  
23      ASKED.

24             MR. DOUGHERTY: YOUR HONOR, ROBERT DOUGHERTY.

25             THE COURT: MR. DOUGHERTY, WHY DON'T YOU SPEAK BY  
26      STEPPING UP TO THE PODIUM, PLEASE.

27             MR. DOUGHERTY: ROBERT DOUGHERTY.

28             YOUR HONOR, ON THE ISSUE OF THE POTENTIAL

1 CONFLICT, I UNDERSTAND THAT THERE ARE SOME PUMPERS THAT MAY  
2 TAKE THE POSITION THAT THE NONPUMPERS DO NOT HAVE ANY WATER  
3 RIGHTS. AND FOR THAT REASON ALONE I THINK IT WOULD BE A  
4 CONFLICT OR A POTENTIAL CONFLICT.

5 THE COURT: WELL, THAT WOULD ARISE CERTAINLY AT A LATER  
6 STAGE IN THE PROCEEDINGS, WOULDN'T IT?

7 MR. DOUGHERTY: I DON'T KNOW THAT IT WOULD.

8 THE COURT: IN THE FIRST INSTANCE, WHETHER ONE PARTY  
9 DISPUTES ANOTHER PARTY'S RIGHTS TO PUMP OR TO HAVE A CLAIM OF  
10 A RIGHT TO WATER, IT SEEMS ME IS NOT GOING TO ARISE UNTIL SUCH  
11 TIME AS THE COURT HAS DETERMINED FIRST OF ALL THAT THERE IS A  
12 CLAIM THAT IS SUPPORTABLE FOR PRESCRIPTIVE RIGHTS.

13 MR. DOUGHERTY: THAT IS POSSIBLE, YOUR HONOR. I FIGURE  
14 IF THERE IS GOING TO BE A CONFLICT AT ANY STAGE OF THE  
15 PROCEEDINGS, IT OUGHT TO BE RECOGNIZED AND AVOIDED AS SOON AS  
16 POSSIBLE.

17 THE COURT: I AGREE WITH THAT PRINCIPLE, BUT THE  
18 QUESTION THAT I HAVE IS WHETHER OR NOT WE CAN PHASE THE  
19 SUBSTANTIVE ISSUES IN SUCH A WAY THAT THE CONFLICT DOESN'T  
20 ARISE UNTIL LATER AND WE CAN DEAL WITH PROTECTING THOSE RIGHTS  
21 OF OTHERS AT THAT TIME.

22 OF COURSE THE OTHER POSSIBILITY IS THAT IF THE  
23 NOTICE IS SENT OUT AND A PARTY WISHES TO ASSERT THAT THEY ARE  
24 NOT A MEMBER OF THE CLASS OR THAT THEIR INTERESTS DIVERGE,  
25 THEY CAN CERTAINLY OPT OUT OF THE CLASS. AND THEN THEY ARE IN  
26 A DIFFERENT POSITION, AREN'T THEY?

27 MR. DOUGHERTY: YES, YOUR HONOR. BUT IN THE IDEAL  
28 WORLD YOU JUST WONDER HOW MANY OF THESE FOLKS DO GET SERVED.

1 UNLESS THEY DO CONTACT AN ATTORNEY, THEY ARE REALLY NOT GOING  
2 TO KNOW WHAT IS GOING ON HERE.

3 AND I THINK OUR EXPERIENCE UP IN SANTA MARIA  
4 SHOWS THAT YOU CAN SERVE A WHOLE BUNCH OF PEOPLE AND THEY JUST  
5 SIT THERE.

6 AND THAT IS ALL I HAVE TO SAY.

7 THE COURT: ALL RIGHT.

8 ALL RIGHT. MR. FIFE?

9 MR. FIFE: MICHAEL FIFE.

10 YOUR HONOR, THERE IS A CURRENT CONFLICT, IT IS  
11 NOT SOMETHING THAT IS IN THE FUTURE. IN THE ANTELOPE VALLEY  
12 THERE IS A STRANGE DYNAMIC WITHIN THE LANDOWNERS THAT YOU  
13 DIDN'T ENCOUNTER IN SANTA MARIA AND THAT REALLY HASN'T BEEN AT  
14 THE FOREFRONT IN PAST ADJUDICATIONS, AND THAT IS THAT THE  
15 DORMANT OVERLYERS, THAT IS THE NON-PUMPING LANDOWNERS, ARE SO  
16 NUMEROUS AND MAKE UP SUCH A LARGE PART OF THE VALLEY, THAT THE  
17 PUMPERS ARE ACTUALLY MORE ADVERSE TO THEM THAN THEY ARE TO THE  
18 PURVEYORS.

19 THE THREAT OF CORRELATIVE RIGHTS, THE THREAT THAT  
20 THOSE NONPUMPERS WOULD BEGIN TO PUMP AND THAT THE CURRENT  
21 PUMPERS' RIGHTS WOULD BE DIMINISHED PROPORTIONATELY IS A MUCH  
22 BIGGER THREAT TO THE PUMPING LANDOWNERS THAN IS THE THREAT OF  
23 PRESCRIPTION.

24 THE WHOLE USE OF PRESCRIPTION HERE, BECAUSE OF  
25 THAT DYNAMIC, WE SORT OF GET INTO A STRANGE REVERSAL FROM WHAT  
26 WE HAVE ENCOUNTERED IN PAST ADJUDICATIONS WHERE THE PUMPERS IN  
27 THE ANTELOPE VALLEY LEGALLY MAY PREFER TO BE PRESCRIBED  
28 AGAINST SO THAT THEIR RIGHTS ARE DEFINED THROUGH SELF HELP.



1 THE NONPUMPERS DON'T FACE THAT. IF THEY ARE PRESCRIBED  
2 AGAINST, THEY'LL GET NOTHING. AND SO THEY ARE INCLINED, FROM  
3 THE FIRST MOMENT, TO FIGHT AGAINST PRESCRIPTION. WHEREAS THE  
4 PUMPERS MAY ACTUALLY BE IN FAVOR OF BEING PRESCRIBED AGAINST.

5 AND SO THAT TRACES BACK THEN TO THE STAGE OF THE  
6 ADJUDICATION RIGHT NOW. AS WE MOVE INTO THE NEXT PHASE,  
7 ANYTHING THAT HAPPENS IN THIS COURTROOM THAT MOVES US TOWARDS  
8 THE PRESCRIPTIVE RIGHTS PORTION OF THE CASE, WHETHER THAT IS  
9 THE NEXT PHASE OR THE PHASE AFTER THE NEXT PHASE, THOSE TWO  
10 INTERESTS WILL DIVERGE. THAT IS THE CONFLICT IN FRONT OF THE  
11 COURT RIGHT NOW.

12 BUT THEN THERE IS ALSO THE ISSUE OF SETTLEMENT  
13 NEGOTIATIONS. WE ARE CONDUCTING SETTLEMENT NEGOTIATIONS. THE  
14 PUMPERS WILL GO INTO THE SETTLEMENT NEGOTIATIONS. AND I THINK  
15 I CAN REVEAL MY POSITION; WON'T SAY ANYTHING ABOUT OTHERS. MY  
16 POSITION GOING IN IS THAT THE NONPUMPERS GET ZERO. IF I HAVE  
17 NONPUMPERS IN MY GROUP, I'LL BE ACTING ADVERSE TO THEM.

18 I REALLY DON'T SEE HOW MR. ZLOTNICK CAN GO INTO  
19 THE SETTLEMENT NEGOTIATIONS AND SPEAK ON BEHALF OF HIS  
20 CLIENTS, THE NONPUMPERS AND THE PUMPERS AT THE SAME TIME.  
21 BECAUSE FOR THE PUMPERS, HE'LL HAVE TO SAY THAT THE NONPUMPERS  
22 GET ZERO; FOR THE NONPUMPERS HE'LL HAVE TO SAY THEY GET  
23 SOMETHING. THEY CAN'T BE RECONCILED.

24 THE COURT: EXPLAIN TO ME WHY YOU WOULD BE INTERESTED  
25 IN HAVING PRESCRIPTION RUN AGAINST YOU?

26 MR. FIFE: IF WE ARE PRESCRIBED AGAINST, THEN OUR WATER  
27 RIGHTS ARE DEFINED BY SELF HELP. AND THAT MEANS THAT OUR  
28 WATER RIGHTS ARE DEFINED IN TERMS OF OUR HISTORICAL

1 PRODUCTION.

2 THE COURT: WELL, NOT NECESSARILY SO. YOU MAY ALSO  
3 FIND YOUR RIGHTS ARE DIMINISHED.

4 MR. FIFE: THEY MAY BE DIMINISHED BUT THE POTENTIAL OF  
5 DIMINISHMENT IS MUCH GREATER IF WE HAVE TO SHARE THE SAFE  
6 YIELD OF THE BASIN CORRELATIVELY WITH THE THOUSANDS AND  
7 THOUSANDS OF DORMANT OVERLYERS, EACH OF WHOM COULD PUT AN  
8 ALFAFA FARM ON THEIR PROPERTY.

9 THE COURT: WELL, IT OBVIOUSLY WILL BE DETERMINED BY  
10 WHETHER OR NOT THE DORMANT OVERLYERS HAVE ANY RIGHTS LEFT AT  
11 ALL, BASED UPON PRESCRIPTION, SINCE THAT IS AN ISSUE THAT HAS  
12 TO BE DETERMINED.

13 MR. FIFE: EXACTLY.

14 THE COURT: BUT LET'S BACK UP JUST A LITTLE BIT.

15 IS IT NOT TRUE THAT THE CONFIGURATION OF THE  
16 VALLEY AND THE HYDROGEOLOGICAL ASPECTS OF THE VALLEY ARE  
17 ISSUES ABOUT WHICH THERE IS NOT LIKELY TO BE A CONFLICT; THAT  
18 THAT IS A DETERMINATION, HOWEVER IT TURNS OUT, THAT THE COURT  
19 IS GOING TO HAVE TO MAKE THAT IS GOING TO IMPACT ALL PARTIES  
20 EQUALLY?

21 MR. FIFE: NOT NECESSARILY. FOR EXAMPLE, THE QUESTION  
22 OF SUB-BASINS. AND JUST USING THE ANALOGY OF SANTA MARIA  
23 AGAIN. THERE WAS THE ISSUE OF SUB-BASINS IN SANTA MARIA.

24 YOU CAN ARGUE HYDROGEOLOGICALLY THAT THERE ARE  
25 SUB-BASINS, BUT YOU CAN ARGUE JUST AS VALIDLY FROM A  
26 MANAGEMENT PERSPECTIVE THAT A BASIN SHOULD BE TREATED AS ONE  
27 BASIN. AND IT CAN HAVE -- IT CAN MAKE A DIFFERENCE WHEN YOU  
28 ARE TALKING ABOUT PRESCRIPTION AND THE OVERALL WATER BALANCE,

1       WHETHER YOU ARE DOING MULTIPLE SUB-BASIN WATER BALANCES OR A  
2       BASIN-WIDE WATER BALANCE.  AND THAT'S THE REASON IT WAS AN  
3       ISSUE IN SANTA MARIA, IT WAS BECAUSE IT WAS EASIER TO SHOW.

4               THE COURT:  WELL, MR. FIFE, SHOULD WE JUST DISMISS ALL  
5       THE COMPLAINTS AND CROSS-COMPLAINTS AND SAY THAT THIS CASE IS  
6       AT AN END BECAUSE THE COURT CAN'T ADJUDICATE IT?  IS THAT WHAT  
7       WE SHOULD DO?

8               MR. FIFE:  WELL, SINCE MY CLIENTS ARE DEFENDANTS AND  
9       ARE PAYING A GREAT DEAL OF MONEY TO TRY TO DEFEND THEIR  
10      PROPERTY RIGHTS, WE WOULDN'T MIND THAT.

11              THE COURT:  HOW DO YOU THINK THAT WOULD BENEFIT YOUR  
12      CLIENTS?

13              MR. FIFE:  WELL, MY CLIENTS HAVE BEEN PUMPING FROM THE  
14      ANTELOPE VALLEY FOR THREE GENERATIONS AND THE WATER LEVELS  
15      HAVE GONE UP AND DOWN OVER THE COURSE OF THOSE GENERATIONS.  
16      AND FOR THE LAST TEN YEARS THEY HAVE BEEN FAIRLY STABLE.

17              BUT WE HAVEN'T SUGGESTED THAT.  AND WE HAVEN'T --  
18      WE DON'T THINK THAT -- WE THINK THE CASE CAN MOVE FORWARD.  
19      THERE ARE MANY AVENUES TO MOVE IT FORWARD.  WE HAVE TRIED TO  
20      ARTICULATE SOME OF THOSE IN OUR PAPERS THAT WE FILED.

21              THE COURT:  WELL, GIVE ME AN EXAMPLE OF HOW THIS CASE  
22      CAN MOVE FORWARD WITHOUT HAVING JURISDICTION OVER ALL THE  
23      PEOPLE WHO HAVE ANY CLAIM AT ALL TO WATER RIGHTS IN THIS  
24      VALLEY.

25              MR. FIFE:  THE L.A. COUNTY CAN VERY EASILY PRODUCE THE  
26      NAMES AND ADDRESSES OF EVERYONE IN THE VALLEY.  THEY CAN -- WE  
27      CAN CERTIFY A CLASS FOR NONPUMPERS.  AND ANYONE WHO CHECKS  
28      THAT BOX ON THE FORM THAT SAYS THAT THEY PUMP WATER SHOULD BE

1 INDIVIDUALLY NAMED AND SERVED. THAT IS ONE WAY TO DO IT.

2 THE COURT: OKAY. NOW THE COURT HAS PREVIOUSLY  
3 CERTIFIED A CLASS OF NONPUMPERS; IS THAT TRUE?

4 MR. FIFE: UH-HUH.

5 THE COURT: I'VE MADE AN ORDER. I HAVEN'T SEEN THE  
6 ACTUAL DESCRIPTION OF THE CLASS, BUT I THINK IT IS PRETTY  
7 CLEAR WHAT IT IS.

8 MR. FIFE: AND I'VE GOTTEN CONFUSED BY THE STATE OF THE  
9 PLEADINGS BECAUSE WE SEEM TO GO BACK AND FORTH. THE LAST I  
10 CHECKED, MR. ZLOTNICK WAS ACTUALLY GOING TO FILE A MOTION.

11 THE COURT: WELL, HIS MOTION, THOUGH, IS GOING TO  
12 ENCOMPASS THE CLASS OF SMALL PUMPERS.

13 MR. FIFE: OKAY.

14 THE COURT: BUT WHAT I WOULD LIKE TO SEE HAPPEN HERE IS  
15 COUNSEL, AT LEAST COUNSEL WHO ARE CURRENTLY INVOLVED IN THE  
16 CASE, TO COME TO SOME AGREEMENT AS TO HOW WE CAN PROCEED.  
17 BECAUSE I WOULD LIKE TO SET THIS MATTER FOR PHASING THE TRIAL  
18 AND I WOULD LIKE TO DO THAT WITH SOME REASONABLE CERTAINTY,  
19 THAT WE CAN ACCOMPLISH IT. BUT I CAN'T DO THAT UNLESS WE HAVE  
20 SOME AGREEMENT AS TO THE JURISDICTIONAL BASIS FOR EACH OF THE  
21 PARTIES WHO ARE CURRENTLY BEFORE THE COURT AS WELL AS THE  
22 CLASS OF DORMANT PUMPERS.

23 MR. FIFE: AND WE HAVE -- WE WANT THAT ALSO, YOUR  
24 HONOR. AND WE HAVE NO OBJECTION TO THE CLASS OF NONPUMPERS.  
25 WE REALLY, PROPERLY CONFIGURED, WOULD HAVE NO OBJECTION TO A  
26 CLASS OF PUMPERS. WE, IN FACT, VOLUNTEERED TO REPRESENT THEM.  
27 AND I RAISE THAT IN THE PAPERS.

28 YOU KNOW, A VERY SIMPLE WAY OF DOING THIS WHOLE

1       THING WOULD BE TO CERTIFY MR. ZLOTNICK'S CLASS FOR NONPUMPERS.  
2       YOU COULD CERTIFY A CLASS FOR PUMPERS. PUT ALL THE PUMPERS  
3       INTO ONE CLASS. OUR GROUP WILL REPRESENT THEM. AND THE  
4       PURVEYORS CAN PAY THE BILL.

5               IT'S FUNNY BUT THERE IS PRECEDENCE FOR IT. IT IS  
6       DONE IN OTHER ADJUDICATIONS.

7               THE COURT: I WOULD FAIL TO SEE THE HUMOR.

8               MR. FIFE: I'M SERIOUS THOUGH.

9               THE COURT: MY SENSE IS THAT WE CERTAINLY CAN MOVE  
10       AHEAD WITH A CLASS OF NONPUMPERS. AND EVERYBODY WITHIN THE  
11       VALLEY WHO OWNS REAL PROPERTY CAN BE SERVED WITH A COPY OF THE  
12       NOTICE. AND IF THEY CHOOSE TO REPRESENT TO THE COURT THAT  
13       THEY ARE IN FACT PUMPERS, THEY CAN BE INDIVIDUALLY SERVED AND  
14       NAMED; AND/OR IF THEY OPT OUT, THEY CAN BE CERTIFIED AND  
15       SERVED.

16              I MADE THAT SUGGESTION ABOUT TWO HEARINGS AGO  
17       AND SUGGESTED THAT IT WOULD BE AN AUTOMATIC OPT-OUT FOR  
18       ANYBODY WHO WAS A PUMPER THAT WAS NOT ALREADY SERVED HERE.

19              WHY WOULD THAT NOT CONFER JURISDICTION SUFFICIENT  
20       TO MOVE THIS CASE FORWARD AND SET IT FOR TRIAL?

21              MR. FIFE: I THINK THAT WOULD BE SUFFICIENT. AND WHEN  
22       YOU SUGGESTED THAT A COUPLE OF HEARINGS AGO, WE WERE QUITE  
23       SATISFIED WITH THAT. IT WAS THEN THAT THERE WERE OTHER  
24       PROPOSALS THAT CAME IN TO TRY TO PUT PUMPERS INTO A CLASS, AND  
25       THAT IS WHERE WE HIT THE SAME SNAG EVERY TIME. EVERY TIME  
26       THAT IT IS JUST A NONPUMPERS CLASS AND PUMPERS WOULD BE  
27       INDIVIDUALLY NAMED AND SERVED, EVERYTHING IS FINE AND THERE IS  
28       NO OBJECTION. IT ONLY GETS MESSED UP WHEN THERE IS THEN A

1 PROPOSAL THAT COMES IN TO TRY TO PUT PUMPERS IN A CLASS.

2 THE COURT: ALL RIGHT. MR. LEMIEUX.

3 MR. WAYNE LEMIEUX: THANK YOU, YOUR HONOR.

4 I SHOULD BE CLEAR: I'M WAYNE LEMIEUX. I'M HERE  
5 REPRESENTING THE LITTLE ROCK GROUP.

6 THE COURT: THE OTHER LEMIEUX.

7 MR. WAYNE LEMIEUX: THE OTHER LEMIEUX.

8 I REALLY DON'T HAVE -- WHATEVER THE EUPHEMISM  
9 IS -- "A DOG IN THIS FIGHT." I GUESS THAT IS POOR TASTE AFTER  
10 MICHAEL VICK. BUT I HAVE A SUGGESTION: PERHAPS THE NOTICE  
11 SHOULD INCLUDE THE WAIVER OF CONFLICT, BECAUSE THAT IS WHAT WE  
12 ARE TALKING ABOUT HERE IS WAIVER OF CONFLICT OR THE EXISTENCE  
13 OF A POTENTIAL CONFLICT. AND MAYBE EVEN THE COURT COULD MAKE  
14 A FINDING THAT AS OF TODAY THERE IS NO CONFLICT AND THAT UNTIL  
15 YOU SAY DIFFERENTLY THERE IS NO CONFLICT. AND THEN ALL WE  
16 HAVE TO WORRY ABOUT IS FORMER CLIENT PROBLEMS. AND IF WE STAY  
17 AHEAD OF THAT, AS WOULD BE THE CASE WITH THE NOTICE, THAT  
18 MIGHT SOLVE IT. I WOULD THINK SMALL PUMPERS COULD OPT INTO  
19 THE CLASS, IF THEY WANTED TO, BY WAIVING CONFLICT.

20 THE COURT: WELL, I THINK THERE IS HOWEVER A CONFLICT.

21 MR. WAYNE LEMIEUX: EVENTUALLY.

22 THE COURT: YEAH. AND I THINK MY RHETORICAL QUESTION  
23 ABOUT THERE NOT BEING ONE REALLY, I THINK, HELPS TO EXPLAIN  
24 THAT THERE IN FACT IS ONE.

25 I THINK THAT, HOWEVER, A PROPER NOTICE SENT OUT  
26 TO ALL PROPERTY OWNERS GIVING ANYBODY WHO IS A PUMPER WHO IS  
27 NOT ALREADY A PARTY TO THIS LAWSUIT AN OPPORTUNITY TO OPT OUT  
28 OR TO CHECK A BOX THAT SAYS THEY ARE A PUMPER THEREFORE THEY

1 ARE A MEMBER OF THE CLASS AND THEY WOULD BE OBLIGATED TO  
2 PROVIDE THE COURT WITH THAT NOTICE, WOULD THEN GIVE THE COURT  
3 AN OPPORTUNITY TO PROCEED BECAUSE THE PARTIES CAN THEN SERVE  
4 THOSE INDIVIDUALS INDIVIDUALLY.

5 MR. WAYNE LEMIEUX: I THINK I'M ONLY ADDING ONE OTHER  
6 LAYER TO THAT AND ASKING IS IT POSSIBLE FOR THAT SMALL PUMPER  
7 TO CHECK A BOX TO SAY, "I AM A PUMPER. I RECOGNIZE THERE IS A  
8 CONFLICT BUT I STILL WANT TO BE IN THE CLASS."

9 THE COURT: YES. I THINK THAT IS CERTAINLY SOMETHING  
10 THEY CAN DO. BUT WAIVER OF A CONFLICT --

11 MR. WAYNE LEMIEUX: TRICKY THING.

12 THE COURT: YEAH. I'M A LITTLE CONCERNED ABOUT THE DUE  
13 PROCESS ASPECTS OF THAT WAIVER.

14 MR. WAYNE LEMIEUX: THANK YOU, YOUR HONOR.

15 THE COURT: BUT I WOULD LIKE TO SEE, IF COUNSEL CAN  
16 AGREE AS TO A FORM OF NOTICE TO THE NON-PUMPING CLASS THAT IT  
17 WOULD ENCOMPASS THAT TYPE OF A NOTICE, I THINK WE COULD  
18 PROBABLY MOVE FORWARD.

19 MR. DOUGHERTY: ROBERT DOUGHERTY AGAIN.

20 THE CONCERN I WOULD SEE THERE IS WHAT HAPPENS IF  
21 THE FOLKS GET THE NOTICE; THAT THEY JUST DON'T DO A THING WITH  
22 IT. AND YOU CAN'T OBVIOUSLY TELL WHO IS A PUMPER OR WHO IS  
23 NOT A PUMPER. AND SO THAT KIND OF BRINGS YOU WHERE PROBABLY  
24 YOU WOULD HAVE TO SERVE THEM.

25 THE COURT: WELL, IF A PARTY RECEIVES A NOTICE THAT  
26 PUTS THEM IN THE CLASS, THEY DO HAVE AN OBLIGATION TO RESPOND  
27 TO THE COURT TO OPT OUT, TO CLAIM THEY DON'T FIT WITHIN THE  
28 CLASS, OR THAT THEY CHOOSE NOT TO BE A MEMBER OF THE CLASS



1 FOR A NUMBER OF REASONS. AND YOU ARE ASKING HOW WE MAKE  
2 EVERYBODY ACT PERFECTLY TO PROTECT THEIR OWN INTERESTS. AND I  
3 DON'T THINK I KNOW THE ANSWER TO THAT ANY MORE THAN YOU DO.

4 MR. DOUGHERTY: THAT IS TRUE, YOUR HONOR. THE QUESTION  
5 WOULD BE IF THEY DON'T RETURN THE NOTICE OR WHATEVER THEY ARE  
6 TO SIGN, THEN HOW DO WE CHARACTERIZE THEM? DO WE SAY THAT  
7 THEY ARE NONPUMPERS OR THAT THEY ARE PUMPERS? I DON'T KNOW.

8 THE COURT: WELL, THEIR RIGHTS WOULD BE DETERMINED AS A  
9 MEMBER OF THE CLASS.

10 WELL, I WOULD LIKE COUNSEL TO MEET AND CONFER  
11 CONCERNING THE FORM OF A NOTICE. AND I'M THINKING THAT I  
12 WOULD LIKE YOU TO DO THAT -- OF COURSE THERE ARE A LOT OF  
13 PEOPLE ON THE TELEPHONE THAT AREN'T HERE, SO I'M GOING TO HAVE  
14 TO GIVE YOU SOME DEADLINES FOR ACCOMPLISHING THAT, AND I WILL.

15 BUT I WOULD LIKE TO KNOW IF ANYBODY ELSE HAS  
16 ANYTHING TO OFFER CONCERNING THAT? EITHER HERE IN THE  
17 COURTROOM OR ON THE TELEPHONE.

18 MR. DUNN?

19 MR. DUNN: YOUR HONOR, JUST SO THAT SOME OF US ARE  
20 CLEAR ON WHAT DIRECTION WE ARE HEADED, MAYBE IT IS HELPFUL TO  
21 CIRCLE BACK JUST BRIEFLY FOR A MOMENT WITH HOW WE GOT TO THIS  
22 POINT.

23 THE REASON WHY I THINK WE ARE HERE TODAY  
24 GENERALLY IS THAT WE HAVE A LARGE NUMBER OF PROPERTY OWNERS IN  
25 THE ANTELOPE VALLEY WHO NEED TO BECOME PART OF THIS CASE  
26 SUBJECT TO COURT JURISDICTION. WE KNOW GENERALLY THEY EXIST  
27 IN TWO GROUPS.

28 THERE IS A GROUP OF PEOPLE WHO PUMP; PEOPLE WHO

1 DO NOT PUMP. I THINK IT IS IMPORTANT FOR US TO BRING OUT THE  
2 FACT THAT PRAGMATICALLY, REALISTICALLY, TO ACQUIRE  
3 JURISDICTION OVER THESE PROPERTY OWNERS, THE CLASS MECHANISM  
4 IS NECESSARY. AND IT WILL BE NECESSARY FOR BOTH SMALL PUMPERS  
5 AND PEOPLE WHO DO NOT PUMP, BECAUSE BOTH GROUPS ARE ESTIMATED  
6 TO BE QUITE LARGE, EXTRAORDINARILY LARGE IN NUMBER.

7 AND IF THERE WERE TO BE A SITUATION WHERE THERE  
8 WOULD ONLY BE A SINGLE CLASS OF SMALL PUMPERS -- EXCUSE ME --  
9 A SINGLE CLASS OF NONPUMPERS, REPRESENTED BY MR. ZLOTNICK, THE  
10 COURT AND THE PARTIES, THE PRESENT PARTIES, WOULD STILL BE  
11 FACED WITH THE PROBLEM OF THIS LARGE NUMBER OF ESTIMATED SMALL  
12 PUMPERS. AND SO WE COME BACK TO THAT ISSUE YET AGAIN.

13 AND SO I THINK WHERE THIS CASE HAS TO BE HEADED,  
14 QUITE FRANKLY, IS IN ORDER TO MOVE IT ALONG IS THAT WE WILL  
15 NEED A CLASS MECHANISM OR CLASS MECHANISMS FOR BOTH GROUPS.

16 TODAY WE HAVE A CLASS OF NONPUMPERS REPRESENTED  
17 BOTH BY LEGAL COUNSEL AND A CLASS REPRESENTATIVE. THE ISSUE  
18 IS HOW DO WE DEAL THEN WITH THESE "SMALL PUMPERS," AS THEY ARE  
19 COMMONLY CALLED HERE.

20 THERE HAS BEEN SOME CONCERN RAISED BY  
21 MR. ZLOTNICK THAT AGAIN THE SHEER NUMBER OF THESE FOLKS MAY  
22 INUNDATE BOTH CLASS COUNSEL, BOTH FOR THE PUMPERS AND SMALL  
23 PUMPERS. AND ONE SOLUTION TO THAT, ONE ALTERNATIVE, IS WHAT  
24 MR. ZLOTNICK SUGGESTED, AND THAT IS THAT THE COURT USE THE  
25 CLASS MECHANISM BUT IN A WAY THAT IS COMMONLY DONE BOTH IN THE  
26 FEDERAL AND STATE COURT SYSTEM IN TERMS OF NOTICE AND THAT IS  
27 THE NOTICE IS SENT TO THE CLASS MEMBERS GENERALLY AT THE TIME  
28 THAT THERE IS A SETTLEMENT PROPOSED SO IT GIVES CLASS MEMBERS

1 AN OPPORTUNITY TO NOT JUST OPT OUT OF THE CLASS BUT TO OPT OUT  
2 OF THE CLASS SETTLEMENT. AND THAT IS ONE ALTERNATIVE THAT WAS  
3 RAISED BY MR. ZLOTNICK. IN THAT THE CASE COULD MOVE FORWARD  
4 TO SOME EXTENT, PARTICULARLY ON THE SETTLEMENT SIDE, AND THE  
5 CLASS NOTICE THEN COULD GO OUT ONCE THERE IS AN PROPOSED  
6 SETTLEMENT FOR THE CLASS.

7 THE OTHER ALTERNATIVE IS WHAT THE COURT HAS  
8 BROUGHT UP THIS MORNING, AND IT HAS BEEN DISCUSSED EARLIER,  
9 AND THAT IS THE CLASS MECHANISM IS VERY PRAGMATIC. WE CAN  
10 CERTIFY A CLASS OF ALL PROPERTY OWNERS FOR THE LIMITED  
11 PURPOSES, FOR THE PURPOSES THAT THE COURT HAS DESCRIBED THIS  
12 MORNING. THERE ARE PREDOMINANT ISSUES OF FACT THAT ARE COMMON  
13 TO ALL THE PROPERTY OWNERS IN THE BASIN AND THAT HAS TO DO  
14 WITH THE YIELD OF THE BASIN, HOW MUCH WATER CAN BE SAFELY  
15 ALLOCATED REGARDLESS OF WHETHER YOU PUMP OR DON'T PUMP OR YOU  
16 ARE A PURVEYOR.

17 THERE ARE CERTAIN YIELD DETERMINATIONS AND  
18 CHARACTERISTICS OF THE BASIN THAT ARE COMMON TO ALL PROPERTY  
19 OWNERS. AND I WOULD ALSO ADD THAT PROPERTY OWNERS ALSO SHARE  
20 COMMON FACTUAL AND LEGAL ISSUES REGARDING THE RIGHTS THAT THE  
21 PUBLIC WATER SUPPLIERS HAVE.

22 THE CONCERNS THAT HAVE BEEN RAISED THIS MORNING  
23 BY VARIOUS COUNSEL FOR PROPERTY OWNERS HAVE TO DO WITH  
24 CONFLICT THAT YET MAY ARISE WHEN PROPERTY OWNERS, VIS A VIS  
25 EACH OTHER, ATTEMPT TO USE THESE LEGAL PROCEEDINGS. UNDER  
26 WELL-ESTABLISHED CLASS ACTION LAW AND PROCEDURE WE CAN DEAL  
27 WITH THAT AT A LATER TIME. AND I THINK WHAT WE ARE SUGGESTING  
28 HERE IS IT MAY BE AN ACCEPTABLE RESOLUTION OF THIS ROADBLOCK

1        THAT WE FACE TO HAVE A CLASS CERTIFIED FOR CERTAIN ISSUES.

2                    AND THEN THE LAST COMMENT IS: I AGREE WITH THE  
3        COURT; I THINK THIS CAN AND SHOULD BE WORKED OUT WITH COUNSEL.  
4        I THINK IT CAN BE DONE.

5                    OUR REQUEST IS THAT IF THE COURT IS GOING TO SET  
6        A DEADLINE TO DO THAT, I THINK IT SHOULD BE A SHORT DEADLINE,  
7        PERHAPS NO LATER THAN JANUARY 4, BECAUSE IT IS JUST OVER A  
8        COUPLE OF WEEKS. THESE ISSUES ARE NOT NEW TO THE ACTIVE  
9        COUNSEL IN THIS CASE. WE HAVE BEEN DEALING WITH THIS NOW FOR  
10       A LONG TIME. I THINK WE ARE AT A POINT WHERE WE CAN  
11       INTELLIGENTLY DISCUSS AND GET IT RESOLVED.

12                   HAVING SAID THAT, IT IS VERY DIFFICULT, WITH THE  
13       LARGE NUMBER OF ACTIVE COUNSEL IN THIS CASE, PARTICULARLY ON  
14       THE PROPERTY OWNER SIDE, TO GET PEOPLE TOGETHER, TO SIT DOWN  
15       IN A ROOM AND TRY AND DO THIS. IT HAS BEEN MUCH MORE  
16       PRODUCTIVE TO HAVE SORT OF INDIVIDUAL CONVERSATIONS WITH MR.  
17       ZLOTNICK AND WITH OTHERS.

18                   AND I'LL CLOSE BY SIMPLY SAYING I THINK WE ARE AT  
19       A POINT WHERE WE NEED TO AGAIN RE-VISIT THE LIAISON COUNSEL  
20       ROLE AND OPPORTUNITIES JUST TO HELP IN THESE KINDS OF PROBLEMS  
21       WHEN THEY COME UP WHERE WE NEED TO, WITHIN A REASONABLE PERIOD  
22       BUT SHORT PERIOD OF TIME, GET IMPORTANT ISSUES RESOLVED.

23                   I'M CONCERNED THAT IF WE DECIDE JANUARY 4 IS  
24       GOING TO BE OUR DEADLINE TO GET THIS ISSUE RESOLVED -- AND I  
25       THINK THAT IS AN APPROPRIATE DEADLINE -- IT IS GOING TO BE  
26       PARTICULARLY DIFFICULT WITH THE LARGE NUMBER OF COUNSEL. IT  
27       IS NOT AN INTENT TO EXCLUDE ANYONE BUT A REQUEST PERHAPS TO  
28       HAVE A MORE ORGANIZED APPROACH ON THE COUNSEL, LEGAL COUNSEL,

1       SIDE SO THAT WE ARE NOT COMING BACK EVERY 30 DAYS BEFORE THE  
2       COURT AND WE DON'T HAVE ISSUES RESOLVED.

3               THANK YOU.

4               THE COURT:   WELL, MR. DUNN, IT SEEMS TO ME THAT IF THE  
5       COURT SETS A DEADLINE -- I DO INTEND TO DO THAT -- I WANT A  
6       DEADLINE THAT MAY NOT NECESSARILY PRESENT TOTAL AGREEMENT BY  
7       ALL COUNSEL, BUT I WANT A PROPOSAL THAT THE COURT CAN ACCEPT  
8       AS A REASONABLE PROPOSAL THAT I CAN MAKE MY COURT ORDER.

9               SO I THINK IT APPROPRIATE TO HAVE COUNSEL MEET  
10      AND CONFER.   AND I MAY HAVE MORE THAN ONE PROPOSAL THAT THE  
11      COURT CAN CHOOSE FROM.   BUT I CERTAINLY WOULD EXPECT THAT TO  
12      OCCUR.

13              AND I AM ALSO THINKING, IN TERMS OF OUR NEXT  
14      HEARING DATE, BECAUSE THERE ARE A COUPLE OF MATTERS THAT ARE  
15      CURRENTLY SCHEDULED.

16              MR. DUNN:   YES.

17              THE COURT:   ONE ON THE 14TH, I BELIEVE, AND ONE ON THE  
18      28TH, OF JANUARY.

19              SO IT SEEMS TO ME THAT -- I WANT THIS TO HAPPEN  
20      QUICKLY.   I THINK THAT THE PROPOSAL OF THE CLASS NOTICE TO  
21      DORMANT PUMPERS IS SOMETHING THAT I EXPECT TO SEE A PROPOSAL  
22      FOR A FORM AND I WANT COUNSEL TO WORK WITH MR. ZLOTNICK.   YOU  
23      CAN DO IT INDIVIDUALLY OR YOU CAN DO IT ALL AT ONCE OR HOWEVER  
24      SEQUENTIALLY YOU FIND IT MOST APPROPRIATE; MAKING SURE THAT  
25      YOU LET -- THAT EVERY COUNSEL RECEIVES NOTICE OF WHAT YOU ARE  
26      DOING, SO THAT THEY WILL HAVE AN OPPORTUNITY TO PARTICIPATE TO  
27      SEE IF YOU CAN REACH AGREEMENT.   BUT I'M NOT INSISTING THAT  
28      YOU REACH AGREEMENT.

1 MR. DUNN: I UNDERSTAND.

2 THE COURT: I WILL MAKE AN ORDER APPROPRIATELY BASED ON  
3 A RECOMMENDATION.

4 NOW THERE ARE A COUPLE OF WAYS, AS YOU HAVE  
5 INDICATED, THAT THIS CAN BE ACCOMPLISHED. IT IS GOING TO  
6 REQUIRE NOTICE BE SENT OUT, AND IT IS GOING TO GIVE PARTIES AN  
7 OPPORTUNITY TO OPT OUT.

8 WE CAN'T SEND OUT A NOTICE OF SETTLEMENT UNLESS  
9 THE PRINCIPAL PARTIES HAVE AN AGREEMENT TO SETTLE THIS CASE.  
10 AND IT DOESN'T SEEM TO ME THAT THAT IS LIKELY TO HAPPEN  
11 QUICKLY. IT MAY ULTIMATELY HAPPEN, BUT I THINK THAT THE MAJOR  
12 PLAYERS HAVE TO BE INVOLVED HERE BEFORE THAT CAN HAPPEN.

13 SO I'D BE INTERESTED, IF ANY OTHER COUNSEL HAVE  
14 ANYTHING THEY WANT TO OFFER CONCERNING THIS PROPOSAL,  
15 INCLUDING COUNSEL ON THE TELEPHONE.

16 MR. JOYCE: YOUR HONOR?

17 THE COURT: YES.

18 MR. JOYCE: BOB JOYCE.

19 I CAME IN ON LINE LATE. I WANT TO MAKE FORMALLY  
20 MY APPEARANCE.

21 THE COURT: ALL RIGHT. THANK YOU, MR. JOYCE.

22 MR. JOYCE: THANK YOU.

23 THE COURT: OKAY. WELL, MR. DUNN, YOU THINK YOU CAN  
24 HAVE A PROPOSAL THAT REPRESENTS YOUR THOUGHTS AS WELL AS THE  
25 THOUGHTS OF OTHER COUNSEL BY THE 14TH?

26 MR. DUNN: YES, YOUR HONOR.

27 THE COURT: OKAY. THAT WILL BE THE DATE. JANUARY 14.

28 WE HAVE A MOTION THAT IS CURRENTLY SCHEDULED FOR

## **Exhibit 5**



SF Daily Journal  
August 10, 2012

## Associate billing rates start climbing again

*Average rates going  
back up after stagnation  
brought on by recession*

By Kevin Lee

Daily Journal Staff Writer

Average law firm billing rates are back on the rise after stagnating somewhat in the years following the 2008 financial crisis. But most of the action is taking place in associate billing rates, which jumped 7.5 percent in the first half of the year compared to the same period in 2011, more than twice the average rate increase in partner billing rates nationwide.

Industry experts say the discrepancy appears to be the market correcting itself after firms sloughed off associates and froze associate hiring in 2009 and 2010.

Partner billing rates, by comparison, rose 3.4 percent in the first half of the year compared to the year-earlier period, according to the latest research by Valeo Partners LLC, a Washington D.C.-based consulting firm.

Valeo compiled data on the billing rates of lawyers at 550 U.S. law firms through publicly available documents, such as court filings, fee applications and disclosure statements submitted to federal agencies.

Chuck Chandler, a Valeo co-founder and partner, said this year's rate increases were instituted to offset the lack of rate movement during the recession.

"The associates took the hit after 2008. Some firms laid off as much as 10 percent of their associates, delayed hiring new classes and froze compensation," he said. "Naturally, billing rates were slow to increase during that period."

For the first six months of this year, California markets all saw associate rate increases below the national average. Associates in San Francisco and Silicon Valley together claimed the highest average rate increase of the California markets — 7.3 percent.

"Northern California has all of the social media, the technology companies, which creates a lot of dealmaking and IPOs and also good fees and hourly rates," Chandler said.

By comparison, Los Angeles associates saw their rates go up an average of 6.6 percent. In San Diego, associate rates rose 4.2 percent.

Law firms generally increase billing rates each year, according to Sheppard, Mullin, Richter & Hampton LLP partner Marc A. Sockol, who manages the firm's Palo Alto office.

"If inflation goes up 3 percent, so do our associate billing rates, because that is what covers rent, lights, computers, telephones, desks," Sockol said. "During those first couple years of this recession, we chose not to

See Page 5 — ASSOCIATE

## Average Law Firm Billing Rates

Location	Position	2012	2011	Percent Increase
Los Angeles	Partner	\$797	\$766	4.0%
	Associate	\$550	\$516	6.6%
San Diego	Partner	\$568	\$568	0%
	Associate	\$394	\$378	4.2%
San Francisco	Partner	\$675	\$654	3.2%
	Associate	\$482	\$449	7.3%
National	Partner	\$750	\$725	3.4%
	Associate	\$495	\$460	7.5%

Source: Vaco 2012 Halftime Report

## Associate billing rates going up

Continued from page 1

boost our billing rates."

Sockol declined to provide specific billing rates but said the firm varies its associate rates by practice group and geography. For 2012, the firm raised associate billing rates roughly 3 percent, he said.

James G. Leipold, executive director of the National Association for Law Placement in Washington D.C., said the jump in billing rates results from the overall decrease of associates at law firms, especially at large law firms. Large law firms, which are the biggest employers of junior lawyers, are relying less on partnership-track associates and more on staff lawyers, paralegals and contract lawyers.

NALP data reveals that from 2008 to 2011, large law firms on average hired entry-level associates at an

annual starting salary of \$160,000. Some law firms cut their starting salaries to \$145,000 during that time but not many. Leipold said he thought more firms would follow suit.

"If inflation goes up 3 percent, so do our associate billing rates, because that is what covers rent, lights, computers, telephones, desks."

— Marc A. Sockol

"What we saw was that law firms reduced their associate class sizes dramatically, but they didn't reduce their pay," Leipold said. "They just

provided many fewer jobs."

Some large firms have turned to creating nonpartnership-track staff lawyer positions for new classes of junior lawyers, whose billing rates and compensation are lower than those of partnership-track associates.

Law firms can then maintain or increase the billing rates for the small number of associates on the partnership track, knowing they can turn to their staff lawyers, paralegals or contract lawyers to drive down the cost of legal services for clients.

"I think you'll see that [approach] more in the next couple of years," Leipold said. "It's another way for them to bring the salary structure back down and meet the cost-containment demands of clients and use people more efficiently."

kevin\_lee@dailyjournal.com

## **Exhibit 6**

***Westlaw CourtExpress***

***LEGAL BILLING REPORT***

VOLUME 11, NUMBER 1

May 2009

***BY BILLING RATE***

# California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
P Kelly, Jr., Daniel	Davis Polk & Wardwell (CA)	1999	1999	CA	\$ 990.00	4.50	\$ 4,520.00
P Cowles, Julia	Davis Polk & Wardwell (CA)	1990	1990	CA	953.00	17.00	16,735.00
P Durham, Scott	O'Melveny & Myers LLP (CA)	1975	1973	CA	860.00	1.10	846.00
P Tuchin, Michael	Klee, Tuchin, Boodanoff & Stern, LLP	1999	1990	CA	850.00	0.90	425.00
P Ballack, Karen	Well, Gotshal & Manges LLP (CA)	1996	1996	CA	793.00	0.30	639.20
P Arnold, Dennis	Gibson Dunn & Crutcher, LLP (CA)	1975	1976	CA	790.00	4.90	3,555.00
OC Montis, Michael	Hennigan Bennett & Dorman LLP	1979	1979	CA	760.00	66.20	46,552.00
P Averch, Craig	White & Case LLP (CA)	1984	1984	CA	750.00	128.10	96,075.00
P Kharsach, Ira D.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)	1982	1982	CA	750.00	2.90	2,175.00
P Kornfeld, Alan	Pachulski Stang Ziehl Young Jones & Weintraub (CA)	1987	1987	CA	725.00	0.80	580.00
A Lamb, Peter	Davis Polk & Wardwell (CA)	2005	2005	CA	680.00	101.40	68,992.00
P Irving, Jeanne E.	Hennigan Bennett & Dorman LLP	1976	1978	CA	680.00	10.30	8,868.00
P Kevane, Henry	Pachulski Stang Ziehl Young Jones & Weintraub (CA)	1985	1986	CA	675.00	19.10	12,892.50
A Gorsich, Ronald	White & Case LLP (CA)	2001	2001	CA	665.00	178.20	117,173.00
P Brown, Kenneth H.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)	1977	1981	CA	650.00	27.30	17,745.00
P Fidler, David	Klee, Tuchin, Boodanoff & Stern, LLP	1997	1998	CA	650.00	23.10	15,015.00
P Weissmann, Henry	Munger Tolles & Olson LLC	1987	1987	CA	650.00	0.20	325.00
P Benenitkul, David M.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)	1989	1993	CA	645.00	35.80	22,962.00
P Montgomery, Cromwell	Gibson Dunn & Crutcher, LLP (CA)	1997	1997	CA	635.00	0.80	608.00
P Brown, Dennis	Munger Tolles & Olson LLC	1970	1970	CA	625.00	17.80	11,125.00
A Newman, Samuel	Gibson Dunn & Crutcher, LLP (CA)	2001	2001	CA	610.00	13.90	8,235.00
A Delrahim, Shiva	White & Case LLP (CA)	2000	2003	CA	600.00	183.70	110,220.00
P Vincent, Garth	Munger Tolles & Olson LLC	1988	1988	CA	600.00	124.00	74,760.00
A Scott, Melanie	White & Case LLP (CA)	2004	2004	CA	600.00	20.40	12,540.00
P Buchanan, Laura	Klee, Tuchin, Boodanoff & Stern, LLP	1991	1991	CA	590.00	0.70	118.00
A Gar Kwang-chien, B.	Well, Gotshal & Manges LLP (CA)	2003	2003	CA	580.00	28.80	16,530.00
A Rodal, David	Gibson Dunn & Crutcher, LLP (CA)	2003	2003	CA	570.00	2.90	1,653.00
P Holitz, Jeffrey	Munger Tolles & Olson LLC	1984	1984	CA	550.00	35.10	19,305.00
P Fried, Joshua	Pachulski Stang Ziehl Young Jones & Weintraub (CA)	1995	1995	CA	535.00	21.40	11,449.00
P Ritten, James	Munger Tolles & Olson LLC	1997	1997	CA	525.00	25.40	13,545.00
A Morse, Joshua	Hennigan Bennett & Dorman LLP	2000	2000	CA	505.00	13.40	6,615.50
A Melotte, Michael	Well, Gotshal & Manges LLP (CA)	2005	2005	CA	500.00	36.80	16,250.00
A Barshop, Melissa	Gibson Dunn & Crutcher, LLP (CA)	2006	2006	CA	470.00	14.00	6,580.00
A Liu, Leslie	Well, Gotshal & Manges LLP (CA)	2006	2006	CA	465.00	45.00	21,343.50
A Kaufman, Derek	Munger Tolles & Olson LLC	2005	2005	CA	450.00	508.30	228,735.00
A Hochstetner, Brian	Munger Tolles & Olson LLC	2002	2002	CA	435.00	0.70	130.50
A Neilan, Joseph	Well, Gotshal & Manges LLP (CA)	2007	2007	CA	415.00	25.30	10,458.00
A Jasper, M. Lance	Munger Tolles & Olson LLC	2006	2006	CA	400.00	96.20	38,480.00
A Eskander, Barney	Munger Tolles & Olson LLC	2006	2006	CA	400.00	8.90	3,520.00
A Rubin, Alexandra E.	O'Melveny & Myers LLP (CA)	2006	2006	CA	355.00	8.40	3,318.00

# California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
A. Schneider, Bradley	Munger Toiles & Olson LLC	2004	2004	CA	\$ 385.00	1.30	\$ 513.50
A. Raanan, Matthew	Well, Golshai & Mandel LLP (CA)	2008	2008	CA	355.00	13.50	4,792.50
A. Guzman, Tanya	O'Mahony & Myers LLP (CA)	2007	2007	CA	330.00	2.50	825.00
PP. Neqifa, Ross	O'Mahony & Myers LLP (CA)				280.00	6.20	1,612.00
Finakson, Keitha	Pachulski Slag Ziehl Young Jones & Weintraub (CA)				225.00	27.50	6,210.00
Jeffries, Patricia J.	Pachulski Slag Ziehl Young Jones & Weintraub (CA)				225.00	0.40	90.00
PP. Pearson, Sandra	Klee, Tuchin, Broderson & Stern, LLP			CA	215.00	1.90	408.50
PP. Floyd, Kevin	Hennigan Bennett & Gorman LLP				210.00	0.30	63.00
PP. Knolls, Cheryl	Pachulski Slag Ziehl Young Jones & Weintraub (CA)				205.00	2.20	451.00
CMA Pitman, Sheryle	Pachulski Slag Ziehl Young Jones & Weintraub (CA)				125.00	2.50	325.00

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**LEGAL BILLING REPORT**

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**BY BILLING RATE**

# California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
P Tolles, Stephen L.	Gibson Dunn & Crutcher, LLP (CA)	1982	1982	CA	\$ 860.00	0.10	\$ 86.00
P Patterson, Thomas	Klee, Tuchin, Bogdanoff & Stern, LLP	1984	1984	CA	850.00	225.00	191,250.00
P Tuchin, Michael	Klee, Tuchin, Bogdanoff & Stern, LLP	1980	1980	CA	850.00	74.40	63,240.00
P Stern, David	Klee, Tuchin, Bogdanoff & Stern, LLP	1975	1975	CA	850.00	32.50	27,965.00
P Isgrer, Paul S.	Gibson Dunn & Crutcher, LLP (CA)	1988	1988	CA	840.00	6.35	5,334.00
P Arnold, Dennis	Gibson Dunn & Crutcher, LLP (CA)	1975	1975	CA	840.00	4.10	3,444.00
P Timmons, Brian	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1991	1991	CA	820.00	72.80	69,696.00
P Bellack, Karen	Well, Gotshal & Manges LLP (CA)	1986	1986	CA	810.00	40.40	32,724.00
P Ziehl, Dean A.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)	1978	1978	CA	795.00	20.30	16,138.50
P Gilmore, Osnielle	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1993	1993	CA	775.00	9.60	7,382.50
P Averch, Craig	White & Case LLP (CA)	1984	1984	CA	750.00	199.70	141,900.00
P Kaller, Tobias	Jones Day (CA)	1990	1990	CA	750.00	1.90	1,425.00
P Baker, James	Jones Day (CA)	1980	1980	CA	750.00	0.20	150.00
P Winston, Eric D.	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1999	1999	CA	740.00	7.10	5,254.00
P Ong, Johannes Y.	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1997	1997	CA	740.00	6.30	4,662.00
P Kornfeld, Alan	Pachulski Stang Ziehl Young Jones & Weintraub (CA)	1987	1987	CA	725.00	10.10	7,322.50
A Bjork, Jeffrey E.	Sigley Austin Brown & Wood LLP (CA)	1997	1998	CA	700.00	110.90	77,630.00
P Myers, Martin	Jones Day (CA)	1987	1987	CA	700.00	26.60	18,550.00
P Grassgreen, Debra L.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)	1991	1992	CA	695.00	5.50	3,822.50
A Gustafson, Mark E.	White & Case LLP (CA)	1996	1998	CA	685.00	117.70	80,624.50
P Arash, Dora	Gibson Dunn & Crutcher, LLP (CA)	1995	1995	CA	675.00	39.40	26,395.00
A Gorsich, Ronald	White & Case LLP (CA)	2001	2001	CA	665.00	221.50	147,297.50
P Montgomery, Cromwell	Gibson Dunn & Crutcher, LLP (CA)	1997	1997	CA	635.00	2.50	1,587.50
A Newman, Samuel	Gibson Dunn & Crutcher, LLP (CA)	2001	2001	CA	610.00	11.50	7,015.00
A Delaham, Shiva	White & Case LLP (CA)	2003	2003	CA	600.00	217.50	120,500.00
A Scott, Melanie	White & Case LLP (CA)	2004	2004	CA	600.00	74.90	44,340.00
P Trodella, Robert	Jones Day (CA)	1996	1998	CA	600.00	35.30	21,180.00
A Gar Kwang-chien, B.	Well, Gotshal & Manges LLP (CA)	2003	2003	CA	580.00	54.20	31,436.00
OC Metcalf, Brian	Klee, Tuchin, Bogdanoff & Stern, LLP	1989	1989	CA	575.00	12.40	7,130.00
A Esdal, David	Gibson Dunn & Crutcher, LLP (CA)	2003	2003	CA	570.00	0.50	285.00
C Crosby IV, Peter	Jones Day (CA)	1984	1984	CA	565.00	13.30	7,514.50
A Martin, Jill	White & Case LLP (CA)	2006	2006	CA	550.00	45.80	25,190.00
A Correa, Michaelina	Jones Day (CA)	2001	2001	CA	525.00	1.70	892.50
OC Brandt, Giza F.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)	1976	1976	CA	525.00	1.30	682.50
A Maletic, Michael	Well, Gotshal & Manges LLP (CA)	2005	2005	CA	500.00	175.30	87,650.00
A Rodriguez, Noel	Jones Day (CA)	2003	2003	CA	500.00	41.80	20,900.00
A Heyn, Matthew	Klee, Tuchin, Bogdanoff & Stern, LLP	2003	2003	CA	495.00	111.80	55,341.00
A Barshop, Melissa	Gibson Dunn & Crutcher, LLP (CA)	2006	2006	CA	470.00	4.10	1,927.00
A Liu, Leslie	Well, Gotshal & Manges LLP (CA)	2008	2008	CA	465.00	302.70	140,755.50
A Chun, Sebyul	White & Case LLP (CA)	2008	2008	CA	460.00	162.10	74,586.00



# California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
A Morrison, Kelley M	White & Case LLP (CA)	2008	2008	CA	\$ 460.00	105.50	\$ 48,530.00
A Hawk, Jonathan	White & Case LLP (CA)	2007	2007	CA	460.00	20.30	9,338.00
P Phillig, Lawrence	McKenna Long & Aldridge LLP (CA)	1997	1997	CA	450.00	15.00	6,750.00
P Larsen, J David	McKenna Long & Aldridge LLP (CA)	1997	1997	CA	430.00	10.00	4,500.00
A Guess, David	Klee, Tuchin, Bogdanoff & Stern, LLP	2005	2005	CA	430.00	366.70	157,681.00
A Pozmantier, Courtney	Klee, Tuchin, Bogdanoff & Stern, LLP	2005	2005	CA	430.00	23.20	9,976.00
A Dickerson, Matthew	Sidley Austin Brown & Wood LLP (CA)	2007	2007	CA	425.00	25.30	10,752.50
A Tran, William	Sidley Austin Brown & Wood LLP (CA)	2006	2006	CA	425.00	5.40	2,295.00
A Nathan, Joseph	Well, Gotshal & Manges LLP (CA)	2007	2007	CA	415.00	61.50	25,622.50
A Wilson, Loma S.	Gibson Dunn & Crutcher, LLP (CA)	2008	2008	CA	400.00	4.00	1,600.00
A Simonds, Ariella	Sidley Austin Brown & Wood LLP (CA)	2008	2008	CA	375.00	49.30	18,487.50
A Deenihan, Kevin	Klee, Tuchin, Bogdanoff & Stern, LLP	2008	2008	CA	300.00	4.70	1,410.00
A Elliot, Keri	Klee, Tuchin, Bogdanoff & Stern, LLP	2008	2008	CA	300.00	2.10	630.00
LIB Forrester, Leslie A.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				250.00	4.50	1,225.00
PP Harris, Denise A.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				225.00	8.50	1,912.50
PP Givcener, Michelle	McKenna Long & Aldridge LLP (CA)				215.00	40.60	8,729.00
PP Pearson, Sandra	Klee, Tuchin, Bogdanoff & Stern, LLP			CA	215.00	36.00	7,740.00
PP Brown, Thomas J.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				195.00	2.00	390.00
LIB Jones, Carla H.	Gibson Dunn & Crutcher, LLP (CA)				165.00	0.50	82.50

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## ***LEGAL BILLING REPORT***

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***BY BILLING RATE***

# California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
P Pachulski, Richard M.	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1979	1979	CA	\$ 865.00	287.62	\$ 257,419.90
P Paterson, Thomas	Klee, Tuchin, Boddanoff & Stern, LLP	1984	1984	CA	850.00	392.60	333,710.00
P Tuchin, Michael	Klee, Tuchin, Boddanoff & Stern, LLP	1990	1990	CA	850.00	201.40	171,180.00
P Stern, David	Klee, Tuchin, Boddanoff & Stern, LLP	1975	1975	CA	850.00	68.60	58,480.00
P Pachulski, Richard M.	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1979	1979	CA	850.00	88.00	57,000.00
P Arnold, Dennis	Gibson Dunn & Crutcher, LLP (CA)	1975	1976	CA	840.00	1.00	840.00
P Ziehl, Dean A.	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1979	1978	CA	825.00	258.25	211,406.25
P Timmons, Brian	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1991	1991	CA	820.00	240.60	197,282.00
P Lyons, Duane	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1986	1986	CA	820.00	80.20	65,764.00
P Ortel, Robert B.	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1981	1981	CA	795.00	157.30	284,053.50
P Richards, Jeremy	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1980	1981	CA	795.00	159.50	126,007.50
P Ziehl, Dean A.	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1978	1978	CA	785.00	84.00	74,730.00
P Ziehl, Dean A.	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1978	1978	CA	785.00	20.30	16,138.50
P Winston, Eric D.	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1999	1999	CA	740.00	54.00	39,960.00
P Ong, Johanna Y.	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1997	1997	CA	740.00	11.20	8,288.00
P Kornfeld, Alan	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1987	1987	CA	725.00	19.10	7,322.50
P Grassgreen, Debra L.	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1991	1992	CA	695.00	5.56	3,822.56
C Celso, Andrew	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1983	1983	CA	695.00	3.40	2,363.00
P Parker, Daryl	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1968	1970	CA	675.00	60.80	41,040.00
P Mathoney, James	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1968	1967	CA	675.00	16.60	11,205.00
P Anash, Dora	Gibson Dunn & Crutcher, LLP (CA)	1995	1995	CA	675.00	14.30	9,990.00
P Davids, Ronn	Klee, Tuchin, Boddanoff & Stern, LLP	1995	1995	CA	650.00	1.40	910.00
A Newman, Samuel	Gibson Dunn & Crutcher, LLP (CA)	2001	2001	CA	610.00	3.70	2,257.00
C Hochman, Harry	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1987	1987	CA	585.00	109.80	59,976.00
A Newmark, Victoris	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1996	1997	CA	565.00	32.50	19,337.50
C Cho, Shikay	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1997	1997	CA	595.00	19.40	11,543.00
C Hochman, Harry	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1987	1987	CA	575.00	57.60	33,120.00
A Oinkelman, Jennifer	Klee, Tuchin, Boddanoff & Stern, LLP	1998	1998	CA	575.00	1.40	805.00
QC Metcalf, Brian	Klee, Tuchin, Boddanoff & Stern, LLP	1999	1998	CA	675.00	0.70	402.50
QC Brandt, Gina F.	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1976	1976	CA	525.00	1.30	682.50
A Heyn, Mathew	Klee, Tuchin, Boddanoff & Stern, LLP	2003	2003	CA	495.00	109.70	54,301.50
P Brown, Gillian	Pachulski Stang Ziehl Young Jones & Weinraub (CA)	1999	1999	CA	495.00	0.50	247.50
A Banshop, Melissa	Gibson Dunn & Crutcher, LLP (CA)	2006	2006	CA	470.00	2.10	957.00
A Liu, Leslie	Wells, Gotschal & Meneses LLP (CA)	2006	2006	CA	465.00	9.60	4,557.00
P Phillis, Laurence	McKenna Long & Aldridge LLP (CA)	1997	1997	CA	450.00	2.70	1,215.00
A Guesz, David	Klee, Tuchin, Boddanoff & Stern, LLP	2005	2005	CA	430.00	402.00	173,247.00
PP Santos, Joseph C.	Quinn Emanuel Urquhart Oliver & Hedges, LLP				380.00	4.60	1,748.00
A Elliot, Karin	Klee, Tuchin, Boddanoff & Stern, LLP	2008	2008	CA	300.00	16.60	4,980.00
PP Lacroix, Martine	Quinn Emanuel Urquhart Oliver & Hedges, LLP				250.00	20.30	6,075.00
UB Forrester, Leslie A.	Pachulski Stang Ziehl Young Jones & Weinraub (CA)				250.00	4.90	1,225.00

# California Rate Report

PROFESSIONAL	FIRM	GRAQUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
LIB Fomester, Leslie A.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				\$ 250.00	1.80	\$ 450.00
PP Harris, Denise A.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				225.00	47.90	10,777.50
PP Harris, Denise A.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				225.00	8.50	1,912.50
PP Hentson, Felice	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				225.00	0.40	50.00
PP Grybosner, Michelle	McKenna Long & Aldridge LLP (CA)				215.00	60.40	12,985.00
PP Pearson, Sandra	Klee, Tuchin, Bogdanoff & Stern, LLP				215.00	52.40	11,265.00
PP Brown, Thomas J.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				195.00	59.75	11,651.25
PP Matteo, Mike	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				195.00	6.00	1,170.00
PP Brown, Thomas J.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				195.00	2.00	390.00
LS Everheart, Christine	McKenna Long & Aldridge LLP (CA)				180.00	3.00	540.00
PP Sabin, Andrew	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				150.00	16.90	2,535.00
PP Bass, John	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				150.00	0.80	120.00

## **Exhibit 7**

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Name	Title	Practice Area	Firm	City	State	Country	Graduated Law School	Practicing Since	2006 Rates	2007 Rates	2008 Rates	2009 Rates
Adelman, Eliza A.	Partner	Litigation	Kirkland and Ellis	San Francisco	CA	United States					520	
Agnew, Adam L.	Associate		James Day	San Francisco	CA	United States			400			
Alburt, Hans J.	Associate		Kirkland and Ellis	San Francisco	CA	United States			250			
Baker, James P.	Partner	Employee Benefits and ERISA Comp	James Day	San Francisco	CA	United States	1980	1980				750
Bask, Eric	Associate	Business Restructuring and Reorganization	Farella Braun and Menzel	San Francisco	CA	United States				400		
Barnett, Peter J.	Partner	Business Restructuring and Reorganization	James Day	San Francisco	CA	United States	1974	1974			745	776
Berning, Scott M.	Associate	Business and Finance	Morgan Lewis and Boekius	San Francisco	CA	United States	2007	2007				345
Bernthal, David M.	Partner	Commercial Litigation, Bankruptcy and Receivership	Pacholski, Wang, Zaid and Jones	San Francisco	CA	United States					595	
Boersch, Marika	Partner	Corporate Criminal Investigations	James Day	San Francisco	CA	United States		1985				725
Borstein, Jeffrey	Partner	White Collar Crime, Commercial Litigation	Kand L. Lewis	San Francisco	CA	United States				525	590	
Brown, Donald W.	Partner	Business and Finance	Osington and Burke	San Francisco	CA	United States			340			
Browning, J. Taylor	Associate	Business and Finance	Morgan Lewis and Boekius	San Francisco	CA	United States	1996	1996				550
Bucoski, Brenda N.	Partner	Tort and Environmental Litigation	Kirkland and Ellis	San Francisco	CA	United States		1994				580
Carr, Ruth Ann	Associate	Environmental	Farella Braun and Menzel	San Francisco	CA	United States				380		
Christensen, G. Murphy	Partner	Corporate Finance and Healthcare	Osington and Burke	San Francisco	CA	United States					675	
Cheskin, Ryan M.	Associate	Business Restructuring and Reorganization	Kirkland and Ellis	San Francisco	CA	United States			315			
Corn, Michaela	Associate	Business Restructuring and Reorganization	James Day	San Francisco	CA	United States	2001	2001				525
Cosby, Peter J.	Counsel	Business Restructuring and Reorganization	James Day	San Francisco	CA	United States	1984	1984			585	585
Daniel, Doug	Partner	Employment	Farella Braun and Menzel	San Francisco	CA	United States				510		
Decker, Seth	Partner	Business Transactions	Farella Braun and Menzel	San Francisco	CA	United States				450		
Diggs, Benjamin	Associate	Complex Commercial	Hecker Ehrlich	San Francisco	CA	United States				285		
Duen, Megan	Associate	Securities Litigation	Hecker Ehrlich	San Francisco	CA	United States				575		
Dobryzinski, Daniel T.	Associate	Trial	James Day	San Francisco	CA	United States	2007	2007				350
Douglas, Scott	Partner	Construction	James Day	San Francisco	CA	United States				525		
Dune, Heather	Associate		Farella Braun and Menzel	San Francisco	CA	United States			425			
			DLA Piper	San Francisco	CA	United States						

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Name	Title	Practice Area	Firm	City	State	Country	Graduated Law School	Practicing Since	2006 Rates	2007 Rates	2008 Rates	2009 Rates
Adkins, Eric A.	Partner	Litigation	Kirkland and Ellis	San Francisco	CA	United States						
Agnew, Aaron L.	Associate		Jones Day	San Francisco	CA	United States			430			
Alford, Hans J.	Associate		Kirkland and Ellis	San Francisco	CA	United States			260			
Baker, James P.	Partner	Employee Benefits and Exec Comp	Jones Day	San Francisco	CA	United States	1960	1960				750
Bass, Eric	Associate		Farrell Brown and Martel	San Francisco	CA	United States				400		
Bonvillian, Peter J.	Partner	Business Restructuring and Reorganization	Johns Day	San Francisco	CA	United States	1974	1974			745	775
Berning, Scott M.	Associate	Business and Finance	Morgan Lewis and Boekius	San Francisco	CA	United States	2007	2008				345
Bierbaum, David M.	Partner	Commercial Litigation/Bankruptcy and Restruc.	Pacholski, Sang, Ziff and Jones	San Francisco	CA	United States					695	
Boersch, Martha	Partner	Corporate Criminal Investigations	Johns Day	San Francisco	CA	United States		1965				725
Burman, Jeremy	Partner	White Collar Crime, Commercial Litigation	Kend & Gates	San Francisco	CA	United States				525	590	
Brown, Donald W.	Partner		Covington and Burley	San Francisco	CA	United States			640			
Browning, J. Taylor	Associate	Business and Finance	Morgan Lewis and Boekius	San Francisco	CA	United States	1996	1996				590
Burnside, Brenda M.	Partner	Tort and Environmental Litigation	Kraig and Spindler	San Francisco	CA	United States		1994				580
Casper, Ryan A.	Associate	Environmental	Farrell Brown and Martel	San Francisco	CA	United States				350		
Christensen, C. Beverly	Partner	Corporate Finance and Healthcare	OMMearns and Myers	San Francisco	CA	United States					675	
Christie, Ryan M.	Associate		Kirkland and Ellis	San Francisco	CA	United States			315			
Conrad, Michael	Associate	Business Restructuring and Reorganization	Johns Day	San Francisco	CA	United States	2001	2001				525
Croft, Peter J.	Counsel	Business Restructuring and Reorganization	Jones Day	San Francisco	CA	United States	1984	1984			585	585
Dacht, Doug	Partner	Employment	Farrell Brown and Martel	San Francisco	CA	United States				510		
Dobbie, Sam	Partner	Business Transactions	Farrell Brown and Martel	San Francisco	CA	United States				460		
Dodge, Benjamin		Complex Commercial	Holst Elmerin	San Francisco	CA	United States				295		
Duck, Megan		Securities Litigation	Holst Elmerin	San Francisco	CA	United States				575		
Dubrowski, Daniel T.	Associate	Trial	Johns Day	San Francisco	CA	United States	2007	2007				350
Duggan, Scott	Partner	Construction	Farrell Brown and Martel	San Francisco	CA	United States			425	525		
Dun, Robert	Associate		DLA Piper	San Francisco	CA	United States						

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Name	Title	Practice Area	Firm	City	State	Country	Graduated Law School	Practicing Since	2006 Rates	2007 Rates	2008 Rates	2009 Rates
Egan, Christine C.	Associate	Intel	Jones Day	San Francisco	CA	United States	2008	2008				525
Ellenbach, Robert L.	Partner	Bankruptcy	Cooley Godward Kronish	San Francisco	CA	United States					685	
Engel, G. Lary	Partner	Bankruptcy and Restructuring	Morrison and Foerster	San Francisco	CA	United States					725	
Edelstein, Christy	Associate		Farella Braun and Martel	San Francisco	CA	United States				333		
Ford, Robert	Partner	Labor and Employment	Jones Day	San Francisco	CA	United States	1975	1975				535
Frank, Michael T.	Partner		DLA Piper	San Francisco	CA	United States			540			
Frond, Joshua M.	Partner	Bankruptcy and Restructuring	Pechter, Chang, Ziehl and Jones	San Francisco	CA	United States					515	
Frondels, John E.	Partner	Corporate	Kirkland and Ellis	San Francisco	CA	United States					595	
Gentel, Nathaniel P.	Associate	Issues and Appeals	Jones Day	San Francisco	CA	United States	2006	2006				375
Gentel, Tyler	Associate	Bankruptcy and Creditors Rights	Farella Braun and Martel	San Francisco	CA	United States			355	355		
Gilster, Dean	Partner	Bankruptcy and Creditors Rights	Farella Braun and Martel	San Francisco	CA	United States			625	606		
Ginsberg, Neil	Partner	Bankruptcy and Creditors Rights	Farella Braun and Martel	San Francisco	CA	United States			745	745		
Grove, John	Partner	Insurance Coverage	Farella Braun and Martel	San Francisco	CA	United States					510	
Handberg, Jon	Partner	Commercial Trial	Hewlett	San Francisco	CA	United States					695	
Hall, Robert	Associate	Employment	Paul, Hastings, Janofsky and Walker	San Francisco	CA	United States					300	
Hadden, Frederick D.	Partner		Orlick, Heggington and Sullivan	San Francisco	CA	United States			605			
Hallgren, Lynn M.	Of Counsel	Litigation	Morrison and Foerster	San Francisco	CA	United States					560	
Jan, Nancy	Associate	Global Capital Markets	Hudson and White	San Francisco	CA	United States				356		
Jones, Ryan	Partner	Business Litigation	Farella Braun and Martel	San Francisco	CA	United States			465	490		
Kirchman, David D.	Partner	Business and Finance	Morgan Lewis and Bockius	San Francisco	CA	United States	1994	1994				590
Kuehn, Christopher W.	Associate		Kirkland and Ellis	San Francisco	CA	United States			415		260	
Kelly, Tobias S.	Partner	Business Restructuring and Reorganization	Jones Day	San Francisco	CA	United States	1998	1998				730
Kim, Jenny	Associate		DLA Piper	San Francisco	CA	United States			360			
Kirschner, Carl	Partner	Hospitality	OMelveny and Myers	San Francisco	CA	United States					570	
Kordetsky, David	Partner		Farella Braun and Martel	San Francisco	CA	United States				490		

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Going Rate Home Page >>		All records for firms in San Francisco CA United States												
Name	Title	Practice Area	Firm	City	State	Country	Graduated Law School	Practicing Since	2006 Rate	2007 Rate	2008 Rate	2009 Rate		
Luttrell, Justin	Counsel	Corporate Finance	QMcKee and Myers	San Francisco	CA	United States								
Marshall, Robert G.	Partner	Employee Benefits and Exec Comp	Jones Day	San Francisco	CA	United States	1997	1997				625		
Mason, Cory	Associate	Restructuring and Insolvency Trial Practice	Farrelle Braun and Martel	San Francisco	CA	United States				245				
McDaniel, Keith	Partner			San Francisco	CA	United States					540			
McDonald, Brian D.	Associate	Business and Finance	Jones Day	San Francisco	CA	United States	2002	2002				500		
McKee, Mark E.	Partner			San Francisco	CA	United States			505		580			
Myers, William A.	Partner	Insurance Liability and Recovery	Morgan Lewis and Boockin	San Francisco	CA	United States	1992	1992				595		
Myers, Mark H.	Partner			San Francisco	CA	United States	1987	1987				700		
Nagel, Adri	Associate	Litigation	Farrelle Braun and Martel	San Francisco	CA	United States				245				
Nelson, Casey M.	Associate			San Francisco	CA	United States					335			
Olson, James O.	Partner	Banking and Finance	Jones Day	San Francisco	CA	United States	1979	1979				775		
Osse, Amanda M.	Associate	Labor and Employment	Jones Day	San Francisco	CA	United States					300			
Osgood, Michael G.E.	Associate	Litigation	Kirkland and Ellis	San Francisco	CA	United States					285			
Peters, Katie	Associate			San Francisco	CA	United States					335			
Putnam, Karen M.	Of Counsel	Labor and Employment California Employment Counseling	McKee and Myers	San Francisco	CA	United States					575			
Pollock, Thomas R.	Partner	Corporate	Paul Hastings, Janofsky and Walker	San Francisco	CA	United States			350					
Porada, Alex	Associate			San Francisco	CA	United States				405				
Reynolds, Roman	Associate	Trial Practice	Paul Hastings, Janofsky and Walker	San Francisco	CA	United States	2008					390		
Rachey, Katherine S.	Partner			San Francisco	CA	United States	1995	1995			675			
Rider, Peter	Partner	Business Tax and Investment Funds	McKee and Myers	San Francisco	CA	United States					675			
Rodriguez, Noel	Associate	Business Litigation	Farrelle Braun and Martel	San Francisco	CA	United States			475	485		690		
Sabnis, Cheryl	Of Counsel	Trial Practice	Jones Day	San Francisco	CA	United States	2003	2003				455		
Schubert, William	Partner	Trial and Commercial Litigation	King and Spalding	San Francisco	CA	United States								
Spring, John	Of Counsel	Private Clients	Farrelle Braun and Martel	San Francisco	CA	United States			695	725				
		Family Wealth Group	Farrelle Braun and Martel	San Francisco	CA	United States				450				

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Name	Title	Practice Area	Firm	City	State	Country	Undisputed Law School	Practicing Since	2006 Rates	2007 Rates	2008 Rates	2009 Rates
Shepard, Michael	Associate	Securities Litigation	Heller Eisman	San Francisco	CA	United States						
Stile, Susan	Associate	Union and Employment	Holman and Williams	San Francisco	CA	United States	2008	2008				260
Stough, Linda	Associate	Commercial Litigation	K and L Gates	San Francisco	CA	United States				280	325	
Sproule, Leo	Associate	Commercial Disputes	King and Spalding	San Francisco	CA	United States		2003				390
Stapf, Eric	Associate	Business Transactions	Finkle Brown and Martel	San Francisco	CA	United States				130		
Stewart, Rhonda L.	Associate	Litigation	Arnold and Porter	San Francisco	CA	United States						410
Truitt, Alexander (Sasha)	Associate	Labor and Employment	O'Malley and Myers	San Francisco	CA	United States						395
Thompson, Grant	Associate	Tax	Finkle Brown and Martel	San Francisco	CA	United States				440		
Topol, Christine D.	Associate		Paul, Hastings, Janofsky and Walker	San Francisco	CA	United States			325			
Trapp, Holden	Associate		Finkle Brown and Martel	San Francisco	CA	United States					285	
Tridello, Robert A.	Partner	Business Restructuring and Reorganization	James Day	San Francisco	CA	United States		1996				600
Ulland, Suzanne	Partner	Finance, Corporate and Bankruptcy	O'Malley and Myers	San Francisco	CA	United States				225	320	
Vogt, Gary M.	Senior Legal Assistant	Litigation	Kirkland and Ellis	San Francisco	CA	United States						255
Waggoner, Kristine	Associate	Business Transactions	Finkle Brown and Martel	San Francisco	CA	United States				295		
Wald, Gregory A.	Senior Attorney	Labor/Employee	Scobie Sanders and Seitz	San Francisco	CA	United States						405
Wasson, Kelly	Associate	Litigation	Kirkland and Ellis	San Francisco	CA	United States						395
Whalen, Joe	Partner	Insurance and Risk Management	Finkle Brown and Martel	San Francisco	CA	United States				320		
White, Jack L.	Associate		Kirkland and Ellis	San Francisco	CA	United States			385			
Wilson, Nabihah	Counsel	Restructuring	O'Malley and Myers	San Francisco	CA	United States						565
Woodruff, Kelly	Partner	Bankruptcy and Creditors Rights	Finkle Brown and Martel	San Francisco	CA	United States				485		
Zwolsky, Michael		New Century Financial Corp	Heller Eisman	San Francisco	CA	United States						515

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Case: 94-cv-02307-CW Document: 1850-1 Filed: 03/04/11 Page: 4 of 28

## **Exhibit 8**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DARIO BARRERA, individually, and  
on behalf of all others similarly  
situated,

Plaintiff,

v.

GAMESTOP CORP.;  
GAMESTOP, INC.;  
and DOES 1 through 100, inclusive,

Defendants.

**Case No. CV 09-1399 ODW (Ex)**

[Assigned to the Hon. Otis D. Wright II,  
Courtroom 11]

**ORDER GRANTING PLAINTIFF'S  
REQUEST FOR ATTORNEYS' FEES AND  
COSTS AND CLASS REPRESENTATIVE  
ENHANCEMENT [51]**

Date: December 6, 2010  
Time: 1:30p.m.  
Place: Courtroom 11

Complaint filed: January 23, 2009  
Trial date: none set

On June 21, 2010, this Court preliminarily approved the proposed Joint Stipulation of Settlement and Release (the "Settlement Agreement") between Plaintiff Dario Barrera ("Barrera"), the proposed Settlement Class (as defined herein) and Defendants GAMESTOP CORP. and GAMESTOP, INC., (collectively

1 "GAMESTOP" or "Defendants"). All terms herein should have the same meaning  
2 as defined in the Stipulation.

3 This Court has considered the propriety of Class Counsel's application for  
4 the reasonable fee of up to 33 1/3%, or \$1,083,333.33 of the Maximum Settlement  
5 Amount in attorneys' fees for serving as Class Counsel, and \$10,000.00 for  
6 reimbursement of actual costs for serving as Class Counsel. The Court has further  
7 considered Class Counsel's request for a \$10,000.00 enhancement award for Dario  
8 Barrera, for serving as the Named Plaintiff

9 Based upon the unopposed Motion, this Court having read and considered all  
10 papers, pleadings, arguments, and evidence submitted, and good cause appearing  
11 therefore, this Court now finds and orders as follows:

### 12 FINDINGS

13 The Court finds that Class Counsel's request for a 33 1/3 % of Maximum  
14 Settlement Amount is reasonable given the benefits of the class action settlement to  
15 the class, and the amount of time and energy class counsel invested into reaching a  
16 resolution. Class Counsel's hourly rates are also reasonable compared to rates  
17 charged by similar attorneys, especially in light of Counsel's extensive experience  
18 in the field and. Specifically, the Court finds that the following hourly rates are  
19 reasonable: Douglas N. Silverstein, \$700; Michael G. Jacob, \$450; Catherine J.  
20 Roland, \$300; and, Alicia Goukasian, \$475. The Court finds that a multiplier of 1.8  
21 is reasonable in light of the contingent nature of this matter.

22 The Court also approves the Incentive Award to the Named Plaintiff to  
23 reward him for his stalwart dedication to the Class and active involvement in the  
24 suit.

25 //

26 //

**ORDER**

GOOD CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED  
THAT:

The Court hereby awards Class Counsel attorneys' fees in the amount of  
\$1,083,333.33 and costs in the amount of \$10,000.00; and

The Court also hereby awards an Incentive Award in the amount of  
\$10,000.00 to the Named Plaintiff.

IT IS SO ORDERED.

DATED: November 29, 2010

  
By: Otis D. Wright, II  
United States District Court Judge

## **Exhibit 9**



WILLIS CLASS' PROPOSAL FOR ALLOCATION OF FEES AND COSTS  
BASED ON PWS HISTORICAL PUMPING 2000 to 2006

1367

	<u>LA</u>	<u>PWD</u>	<u>LCID</u>	<u>QH</u>	<u>RCSD</u>	<u>AVWC</u>	<u>PRID</u>	<u>DLCSD</u>	<u>NECSD</u>	<u>PPHCSD</u>	<u>Total</u>
2000	17,419	9,625	1,810	1,419	1,461	827	1,147	353	250	1,000	35,311
2001	21,736	11,281	1,830	3,040	2,185	810	1,147	353	250	1,000	43,632
2002	21,196	8,281	1,950	2,801	2,359	787	1,536	353	250	1,000	40,513
2003	16,791	10,587	1,930	1,554	1,767	602	1,558	353	250	1,000	36,392
2004	21,281	10,990	2,230	1,347	1,989	595	814	353	250	1,000	40,849
2005	19,201	11,045	1,870	1,244	1,701	614	1,139	353	250	1,000	38,417
2006	12,277	11,320	2,150	1,386	2,212	534	591	353	250	1,000	32,073
Ave.	<u>21,650</u>	<u>12,188</u>	<u>2,295</u>	<u>2,132</u>	<u>2,279</u>	<u>795</u>	<u>1,322</u>	<u>412</u>	<u>292</u>	<u>1,167</u>	<u>44,531</u>
%	<u>48.62%</u>	<u>27.37%</u>	<u>5.15%</u>	<u>4.79%</u>	<u>5.12%</u>	<u>1.78%</u>	<u>2.97%</u>	<u>0.92%</u>	<u>0.65%</u>	<u>2.62%</u>	

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

Coordination Proceeding Special Title (Rule  
1550(b)) ANTELOPE VALLEY GROUNDWATER CASES  
(JCCP 4408) Included Actions: Los Angeles  
County Waterworks District No. 40

Plaintiff,  
vs.

Diamond Farming Co. Superior Court of California County of Los Angeles, Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV-254-348 Wm. Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water Dist. Superior Court of California, County of Riverside, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

Defendant.

## AND RELATED ACTIONS

Antelope Valley Groundwater Cases (JCCP 4408)

Lead Case No.1-05-CV-049053

Hon. Jack Komar

**PROOF OF SERVICE**  
**Electronic Proof of Service**

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Mon. June 27, 2016 at 1:28 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

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Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct. Executed on June 27, 2016 at Oakland, California.

Dated: June 27, 2016

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Andy Jamieson

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THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
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Page 2

Document(s) submitted by Michael McLachlan of Law Offices of Michael D. McLachlan APC on Mon. June 27, 2016 at 1:28 PM PDT

1. Decl in Support: DECLARATION OF MICHAEL D. MCLACHLAN IN SUPPORT OF SUPPLEMENTAL MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS

## **Exhibit T**

1 Michael D. McLachlan (State Bar No. 181705)  
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**  
3 44 Hermosa Avenue  
4 Hermosa Beach, California 90254  
5 Telephone: (310) 954-8270  
6 Facsimile: (310) 954-8271  
7 *mike@mclachlan-law.com*

8 Daniel M. O'Leary (State Bar No. 175128)  
9 **LAW OFFICE OF DANIEL M. O'LEARY**  
10 2300 Westwood Boulevard, Suite 105  
11 Los Angeles, California 90064  
12 Telephone: (310) 481-2020  
13 Facsimile: (310) 481-0049  
14 *dan@danolearylaw.com*

15 Attorneys for Plaintiff Richard Wood and the Class

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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)

Lead Case No. BC 325201

Case No.: BC 391869

**DECLARATION OF DANIEL M.  
O'LEARY IN SUPPORT OF  
SUPPLEMENTAL MOTION FOR  
AWARD OF ATTORNEYS' FEES  
AND COSTS**

Location: Room 222  
Stanley Mosk Courthouse  
Los Angeles, California  
Date: July 20, 2016  
Time: 10:00 a.m.

1  
**DECLARATION OF DANIEL M. O'LEARY IN SUPPORT OF SUPPLEMENTAL  
MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS**

Document received by the CA 5th District Court of Appeal.

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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.

3. After January 22, 2016 to date, I have worked 45.3 hours on this matter. Attached hereto as **Exhibit 1** is a true and correct copy of my fee bill.

4. After March 11, 2016, I have incurred costs for \$212.96 for airfare to San Jose for the hearing on the initial fee motion, \$24.71 n airport parking, one Glotrans filing of \$24.00 and \$18.00 in parking at the Los Angeles Superior Court. These case costs total \$279.67.

///

1 I declare under penalty of perjury under the laws of the State of California  
2 that the foregoing is true and correct. Executed this 27<sup>th</sup> day of June 2016, at Los  
3 Angeles, California.

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A handwritten signature in black ink, appearing to read 'D. O'Leary', is written over a horizontal line.

Daniel O'Leary

3  
**DECLARATION OF DANIEL M. O'LEARY IN SUPPORT OF SUPPLEMENTAL  
MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS**

Document received by the CA 5th District Court of Appeal.



# Exhibit 1

Document received by the CA 5th District Court of Appeal.

# STATEMENT

Law Office of Daniel M. O'Leary  
2300 Westwood Boulevard, Suite 105  
Los Angeles, CA 90064  
310-481-2020/F:481-0049

DATE: JUNE 27, 2016  
STATEMENT # [100]

BILL  
TO

COMMENTS

DATE	DESCRIPTION	HOURS	AMOUNT
	Supplemental time		
01/27/2016	Attend Mark Ritter depo	1.5	
01/29/2016	Conference call re: landowner selection process for Watermaster Board	1.2	
02/10/2016	Prep for and attend hearing on Ritter motion to set aside judgment	1.8	
02/12/2016	Review of fee multiplier cases (1.1), outline of reply brief on fees (0.4), legal research on CCP 1021.5 and public agency defendants (0.8)	2.3	
02/18/2016	Review of fee multiplier cases (1.9), outline of reply brief on fees (0.7), legal research on CCP 1021.5 and public agency defendants (0.2)	2.8	
02/22/2016	Conversation with McLachlan re: Lemieux's request for continuance of fee motion	0.1	
02/23/2016	Review of ex parte application for continuance of fee motion	0.2	
02/24/2016	Research re: Govt. Code 984	0.3	
03/07/2016	Review of fee surveys provided by R. Pearl	0.3	
03/16/2016	Review of small district opposition/declarations (0.9); review of D. 40 opposition (1.4); legal research re: Govt. Code 970.6, 970.8, 971, 975.2; (0.3) legal research re: fee multipliers (0.6)	3.2	
03/17/2016	Drafting reply brief (0.8); meet with McLachlan re: work allocation on reply (0.2)	1.0	
03/18/2016	Review of cases cited by D. 40 on negative multipliers (0.5); draft reply (3.8)	4.3	
03/21/2016	Draft reply	1.4	
03/22/2016	Draft reply	2.6	

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03/23/2016	Draft reply (1.8); emails with MM re same (0.2)	2.0	
03/24/2016	Draft reply (0.4); legal research re: incentive awards for class reps (0.5)	0.9	
03/25/2016	Finalize portions of reply (0.8); redline edit entire draft reply (0.4)	1.2	
03/29/2016	Phone calls with MM re hearing and powerpoint (0.4); create powerpoint for hearing; prepare for hearing on fee motion	3.2	
04/01/2016	Travel to and attend hearing on fee motion, and preparation for same (San Jose) 10.0	10.0	
04/28/2016	Legal research on memo of costs, email to MM re same	0.4	
05/05/2016	Draft opposition to motion to amend judgment nunc pro tunc	0.8	
05/25/2016	Travel to and attend hearing on motion to amend judgment, motion to clarify, meeting with MM (Los Angeles)	3.8	
		45.3	

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

Coordination Proceeding Special Title (Rule  
1550(b)) ANTELOPE VALLEY GROUNDWATER CASES  
(JCCP 4408) Included Actions: Los Angeles  
County Waterworks District No. 40

Plaintiff,

vs.

Diamond Farming Co. Superior Court of  
California County of Los Angeles, Case No.  
BC 325 201 Los Angeles County Waterworks  
District No. 40 v. Diamond Farming Co.  
Superior Court of California, County of  
Kern, Case No. S-1500-CV-254-348 Wm.  
Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water Dist.  
Superior Court of California, County of  
Riverside, consolidated actions, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668

Defendant.

AND RELATED ACTIONS

) Antelope Valley Groundwater Cases (JCCP  
) 4408)

) Lead Case No.1-05-CV-049053

) Hon. Jack Komar

) **PROOF OF SERVICE**  
) **Electronic Proof of Service**

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure  
Street, Oakland, CA 94609.

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Upon approval of the document by the Court, an electronic mail message was transmitted to all parties  
on the electronic service list maintained for this case. The message identified the document and provided  
instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct. Executed on June 27, 2016 at Oakland, California.

Dated: June 27, 2016

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Andy Jamieson

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1. Decl in Support: DECLARATION OF DANIEL M. O'LEARY IN SUPPORT OF SUPPLEMENTAL MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS

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## **Exhibit U**

**FILED**  
Superior Court of California  
County of Los Angeles

JUN 28 2016

Shern R. Carter, Executive Officer/Clerk  
By E. Lopez Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES**

Coordinated Proceeding  
Special Title (Rule 1550(b))

**Judicial Council Coordination No. 4408**

[Assigned to the Honorable Jack Komar]

ANTELOPE VALLEY GROUNDWATER  
CASES

CASE No. BC 391869

RICHARD A. WOOD, on behalf of himself and all  
others similarly situated

~~(Proposed)~~ **ORDER CLARIFYING ORDER  
AFTER HEARING ON APRIL 1, 2016**

Plaintiffs,

vs.

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40; CITY OF PALMDALE;  
PALMDALE WATER DISTRICT; LITTLEROCK  
CREEK IRRIGATION DISTRICT; PALM  
RANCH IRRIGATION DISTRICT; QUARTZ  
HILL WATER DISTRICT; ALTELOPE VALLEY  
WATER CO.; ROSAMOND COMMUNITY  
SERVICE DISTRICT; MOJAVE PUBLIC  
UTILITY DISTRICT; and DOES 1 through 1,000;

Defendants.

07/05/2016



1 The Court's Order of April 1, 2016 (the "Order"), addressing in part, Richard Wood's Motion for  
2 Award of Attorneys' Fees, Costs and Incentive Award, is clarified as follows:

3 The Order does not apply to Boron Community Services District or West Valley Water District.  
4 Further, California Water Service Company is not a public entity and, thus, reference in the Order to  
5 payment over a ten year period in accord with the law is not applicable to this defendant.  
6

7 The allocation of attorneys' fees and costs are allocated among the defendants as follows:

8 Los Angeles County Waterworks District No. 40: 74.76%

9 California Water Service Company: 3.78%

10 Littlerock Creek Irrigation District: 8.77%

11 Quartz Hill Water District: 6.21%

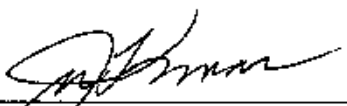
12 Palm Ranch Irrigation District: 5.13%

13 North Edward Water District: 0.54%

14 Desert Lake Community Services District 0.81%

15 Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District, Quartz Hill  
16 Water District, Palm Ranch Irrigation District, North Edward Water District and Desert Lake Community  
17 Services District shall be entitled to pay this judgment in 10 equal payments over a period of 10 years.  
18

19  
20 DATED: 6-28-16

  
HONORABLE JACK KOMAR  
Judge of the Superior Court

## **Exhibit V**

COPY

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES CENTRAL DISTRICT**

Coordination Proceeding  
Special Title (Rule 1550(b))

Judicial Council Coordination  
Proceeding No. 4408

ANTELOPE VALLEY GROUNDWATER  
CASES

CLASS ACTION  
Lead Case No. BC 325201  
Case No. BC 391869

Assigned to the Honorable Jack Kornar

RICHARD WOOD, an individual, on behalf of  
himself and all others similarly situated

Plaintiff,

v.

LOS ANGELES COUNTY WATER WORKS  
DISTRICT NO. 40; et al.

Defendants.

**LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO.  
40'S OPPOSITION TO RICHARD  
WOOD'S SUPPLEMENTAL  
MOTION FOR AWARD OF  
ATTORNEYS' FEES AND COSTS;  
JOINDER TO SMALL PUBLIC  
PURVEYORS' OPPOSITION**

Date: July 28, 2016  
Time: 10:00 a.m.  
Dept.: LASL, Room 222

EXEMPT FROM FILING FEES  
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SECTION 6103

Sealed for filing in the  
County of Los Angeles  
Superior Court  
JUL 15 2016

Sherril E. Carter, Executive Officer/Clerk  
By Nancy Alvarez, Deputy

DISTRICT NO. 40'S OPPOSITION TO SUPPLEMENTAL MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS

Document received by the CA 5th District Court of Appeal.

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1 **I. INTRODUCTION**

2 The Wood Class counsel supplemental fee motion should be denied because it fails to  
3 meet each requisite element of Code of Civil Procedure sections 1021.5 and 1032 et seq.<sup>1</sup> If the  
4 Court is inclined to award any fees or costs, they should be reduced as shown below. Los  
5 Angeles County Waterworks District No. 40 (District No. 40) incorporates by reference herein its  
6 and other Public Water Suppliers' previous oppositions to the initial Wood Class counsel Motion  
7 for Attorneys' Fees, Costs and Incentive Award filed on or about March 15, 2016, and joins the  
8 opposition filed by the Small Public Purveyors.

9 **II. FACTS**

10 The Wood Class counsel is seeking \$204,485.75 in fees for 304.65 hours of work  
11 purportedly performed. With the exception of approximately half-an hour of work invoiced by  
12 Mr. Richard Pearl, all of the fees at issue are for work performed after the final judgment was  
13 entered. (Declaration of Michael McLachlan (McLachlan Decl.), Exs. 2 & 3; Declaration of  
14 Daniel O'Leary (O'Leary Decl.), Ex. 1.) Of the 304.65 hours, only 149.1 attorney hours and 27.8  
15 paralegal hours are attributable to work performed for Wood Class counsel's initial and  
16 supplemental requests for fees, costs and incentive award, and the related fee appeals (fee  
17 litigation). (Declaration of Jeffrey V. Dunn (Dunn Decl.), ¶4 & Ex. AA.)

18 In addition to fees associated with the fee litigation, the Wood Class counsel is seeking an  
19 award for other non-recoverable fees, including:

- 20 • \$7,091.25 in fees for Mr. Richard Pearl, who is not a court-approved expert, to  
21 offer his opinion testimony for the fee litigation (McLachlan Decl., Ex. 3; Dunn  
22 Decl., ¶5 & Ex. BB)
- 23 • At least 12.2 hours for work related to Wood Class' Motion for Clarification of  
24 Order on Motion for Award of Attorneys' Fees, which District No. 40 did not  
25 oppose (Dunn Decl., Ex. AA at ¶2)
- 26 • At least 17.2 attorney hours and 1 paralegal hour for work related to Mark Ritter  
27 and Ritter Trust's attempt to set aside default judgment (Dunn Decl., Ex. AA at

28 <sup>1</sup> All section references are to the Code of Civil Procedure unless otherwise indicated.



¶(3)

- At least 12.35 hours for work related the Watermaster, including selection of Watermaster Board, which the Wood Class cannot vote for or be on (Dunn Decl., ¶6 & Exs. AA at ¶4 & CC at ¶18.1.1)
- At least 7.05 hours for work related to the Wood Class' unsuccessful opposition to District No. 40's Motion for Amend Judgment *Nun Pro Tunc* (Dunn Decl., Ex. AA at ¶5)
- At least 5.2 hours for unspecified work that has been redacted from invoices (Dunn Decl., Ex. AA at ¶6)
- At least 3.5 hours for work related to appeals by the Willis Class and Phelan Piñon Hills Community Services District (Dunn Decl., Ex. AA at ¶8)
- At least 9.3 hours for work related to other landowner issues (e.g., dispute between Lane Family and Granite Construction Company, issues concerning Rohar, expert conflict issue, Hoospack Development, Inc.'s request to set aside default, Willis Class' request for fees . . . etc.) (Dunn Decl., Ex. AA at ¶7)
- 0.5 hour for communications regarding another groundwater adjudication matter (Dunn Decl., Ex. AA at ¶9)
- At least 3.1 hours on the Wood Class counsel's unsuccessful Motion to Terminate Representation (Dunn Decl., Ex. AA at ¶10)

Furthermore, the submitted invoices contain: (1) block billing disfavored by courts (e.g., McLachlan's 2/17/16 entry ["Attend watermaster conference call, email to BB and RKG re SP class issues"], 3/15/16 entry ["Review and analysis of Willis Civ App Stmt and exhibits, email to counsel re standing issues, email to DO "], 4/27/16 entry ["review of record, CRC and legal research on notice of entry, long email to DO on handling cost memo issues"]; O'Leary entries on 4/1/16 and 5/25/16 . . . etc.); and (2) improper calculation of hours worked (e.g., 6/24/16 [Mr. McLachlan purportedly performed 2.4 hours of work but invoiced for 5.4 hours.]).

For the reasons discussed below, the requested fees should not be awarded.

1     **III.     ARGUMENT**

2             In the absence of a contractual agreement to pay fees or costs, a party must establish a  
3     statutory right to recover such fees and costs. Here, neither District No. 40 nor any other Public  
4     Water Suppliers agreed to pay for Wood Class' post-judgment fees or costs. The supplemental  
5     fee motion relies solely on Code of Civil Procedure section 1021.5 for the Wood Class' fee  
6     request and sections 1032 et seq. for its cost request. Thus, the Wood Class must establish every  
7     element under these sections to be awarded any fees or costs. (*McGuigan v. City of San Diego*  
8     (2010) 183 Cal.App.4th 610, 623 (*McGuigan*) ["Although the decision whether to award attorney  
9     fees under section 1021.5 rests initially with the trial court, the court does not have the discretion  
10    to award such fees unless the statutory criteria have been met as a matter of law." [citation and  
11    quotation marks omitted]. *Children & Families Com. Of Fresno County v. Brown* (2014) 228  
12    Cal.App.4th 45, 55 (*Brown*) citing *City of Maywood v. Los Angeles Unified School Dist.* (2012)  
13    208 Cal.App.4th 362, 429.)

14             A.     **Class Counsel's Supplemental Fee Request Is Beyond the Scope of the Private**  
15                   **Attorney General Statute.**

16             Section 1021.5 is a fee shifting statute rooted in the private attorney general theory. The  
17     statute is designed to encourage private litigants to undertake true public interest litigation—that  
18     is, litigation aimed at enforcing local governmental compliance with important constitutional and  
19     statutory provisions. (*In Adoption of Joshua S. v. Sharon S.* (2008) 42 Cal.4th 945, 954-955  
20     (*Joshua*)). There are four elements that must be satisfied before a court may award fees against  
21     the unsuccessful party: (1) the moving party must be a successful party in the litigation; (2) the  
22     litigation must have vindicated an important public right; (3) the litigation must have conferred a  
23     significant benefit on the general public or a large class of persons; and, (4) the financial burden  
24     (or personal interest) borne by the moving party must have surpassed its individual stake in the  
25     matter. (§ 1021.5; *Pacific Legal Foundation v. California Coastal Commission* (1985) 33 Cal.3d  
26     158, 166; *Woodland Hills Residents Association, Inc. v. City Council* (1979) 23 Cal.3d 917, 933 )  
27     All four elements must be met, or the fee application must be denied. (*Open Space Santa Monica*  
28     *Mountains v. Superior Court* (2000) 84 Cal.App.4th 235, 246.) As set forth below and in the

Public Water Suppliers' oppositions to the Wood Class' initial fees motion, the Wood Class failed to meet the four elements for the requested fees.

1. The Wood Class Is Not a Prevailing Party.

Private attorney general fees are available under section 1021.5 only to a "successful" party. (*Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 439.) The *McGuigan* court provides an exhaustive analysis of what it means to be a "prevailing party" under section 1021.5

"The term 'successful party,' as ordinarily understood, means the party to litigation that achieves its objectives" (*Graham, supra*, 34 Cal.4th at p. 571.) "A lawsuit's ultimate purpose is to achieve actual relief from an opponent. ... On this common understanding, if a party reaches the 'sought-after destination,' then the party 'prevails' regardless of the 'route taken.' [Citation.]'" (*Wal-Mart Real Estate Business Trust v. City Council of San Marcos* (2005) 132 Cal.App.4th 614, 621 [33 Cal.Rptr.3d 817] (*Wal-Mart Real Estate*)). In a determination of whether a party is "successful" for purposes of section 1021.5, "[t]he critical fact is the impact of the action, not the manner of its resolution." (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 685 [186 Cal.Rptr. 589, 652 P.2d 437])

Next, we look at the role of the opposing party, against whom fees may be awarded. In *Nestande v. Watson* (2003) 111 Cal.App.4th 232 [4 Cal.Rptr.3d 18] (*Nestande*) we noted: "The dictionary definition of 'opposing' is 'opposite in position' or 'active in or offering opposition.' [Citation.] An 'opposite party' means 'an adversary in litigation.' [Citation.] Thus, we construe the term 'opposing party' as used in section 1021.5 to mean a party whose position in the litigation was adverse to that of the prevailing party. Simply put, an 'opposing party' within the meaning of section 1021.5 is a losing party." (*Nestande, supra*, at pp. 240-241, italics added) (*McGuigan, supra*, 183 Cal.App.4th at pp. 625-26.)

Here, the Wood Class cannot qualify under any applicable definition of "prevailing party." The Public Water Suppliers are prevailing parties because the Wood Class did not obtain relief as against them. As discussed in the oppositions to the initial fee motion, the Wood Class lost the Phase 3 trial—the only phase of trial that the Wood Class litigated against the Public Water Suppliers.

Moreover, there can only be a prevailing party if there is an actual dispute. Although the Court has deemed the Wood Class as the prevailing party for the purpose of the initial fee motion, work performed by Class Counsel subject to this supplemental fee motion was done after the March 4, 2015 settlement, when the Wood Class interests became aligned with District No. 40.

(*McGuigan, supra*, 183 Cal.App.4th at pp. 628-29 [fees may only be awarded against an opposing party].) This is especially true after the entry of judgment on December 28, 2016 —when the only remaining dispute between the Wood Class and District No. 40 is whether District No. 40 should pay for the Class Counsel’s fees and costs. Yet, the Supplemental Motion requests that District No. 40 pay for fees that are unrelated to the fee litigation.

Of the 304.65 hours the Wood Class Counsel purportedly performed, only 149.1 attorney hours and 27.8 paralegal hours are for work attributable to the fee litigation. (Dunn Decl., ¶4 & Ex. AA.) District No. 40 should not be liable for other fees, including those related to: (1) Wood Class’ Motion for Clarification of Order on Motion for Award of Attorney Fees, which District No. 40 did not oppose; (2) Wood Class’ challenge to Mark Ritter and Ritter Trust’s attempt to set aside default judgment; (3) the selection of landowners’ Watermaster Board members; (4) Wood Class’ unsuccessful opposition to District No. 40’s Motion for Amend Judgment *Nun Pro Tunc*; (5) unspecified work that has been redacted from invoices; (6) other landowner issues (e.g., dispute between Lane Family and Granite Construction Company); (7) appeals by the Willis Class and Phelan Piñon Hills Community Services District; (8) class counsel’s unsuccessful motion to terminate representation; and (9) another groundwater adjudication matter. The Court should not allow such fees to be awarded against District No. 40 and other Public Water Suppliers.

Finally, as District No. 40 and other Public Water Suppliers are governmental entities, they are “not liable for attorney fees unless [they] lost on the merits.” (*Nestande, supra*, 111 Cal.App.4th at p. 241.) With the possible exception of the fee litigation, which is subject to pending appeals, District No. 40 did not lose on the merits on any post-judgment matters against the Wood Class; nor did the Wood Class recover relief from District No. 40. Thus, *Nestande* precludes an award of fees to the Wood Class Counsel.

2. The Wood Class Did Not Successfully Enforce an Important Right Affecting the Public’s Interest.

Section 1021.5 requires that the lawsuit enforce “an important right affecting the public’s interest.” The Wood Class did not plead or prove an enforcement of an important right affecting

1 the public's interest. It only sought to advance its members' private property interests.

2 Importantly, the California Supreme Court in *Joshua*, *supra*, 42 Cal.4th 945, excluded "private  
3 interest litigation" from section 1021.5. Private interest litigation is litigation that has "done  
4 nothing to curtail a public right other than raise an issue in the context of private litigation that  
5 results in important legal precedent" (*Id.* at 952-53.)

6 *Joshua* involved a private litigant, Sharon, who sought a declaration that certain second  
7 parent adoptions were unlawful. The defendant, Sharon's former partner, Annette, sought for  
8 attorney fees under Section 1021.5 against Sharon, after the California Supreme Court declared  
9 second parent adoption lawful. Despite Annette's victory, the Court denied her fee request.

10 Although the litigation yielded a substantial benefit (indeed, some 10,000 to 20,000 second parent  
11 adoptions would have been in jeopardy had the appellate court's contrary ruling been allowed to  
12 stand), Sharon was not the type of party against whom private attorney general fees were  
13 intended (*Joshua*, *supra*, 42 Cal.4th at 953.) According to the high court, Sharon was a private  
14 litigant and the judgment she sought would have settled only her private rights and those of  
15 Joshua's and Annette's. Following *Joshua*, "the party against whom [1021.5] fees are sought  
16 must have done or failed to do something, in good faith or not, that compromised public rights."  
17 (*Id.* at 958.)

18 Indeed, as the *Joshua* court observed, in all of the published cases where attorneys' fees  
19 have been awarded under section 1021.5, the litigation effectuated a change in the defendant's  
20 behavior, whose actions were otherwise impairing or violating statutory or constitutional rights of  
21 the public or a large class of persons. (*Id.* at pp. 954-55; see, e.g., *Wilson v. San Luis Obispo*  
22 *County Democratic Central Committee* (2011) 192 Cal.App.4th 918 (*Wilson*) [fees awarded for  
23 defending right of political parties and their members to choose their leaders], *Wal-Mart Real*  
24 *Estate Business Trust v. City Council of the City of San Marcos* (2005) 192 Cal.App.4th 918 [fees  
25 awarded for vindicating electorate's constitutional right to a referendum vote—one of the most  
26 precious rights in our democratic process]; *Hull v. Rossi* (1993) 13 Cal.App.4th 1763 [fees  
27 awarded for championing right to an accurate impartial analysis under the Elections Code].)

28 Similar to the parties in *Joshua*, the Wood Class settlement decided important private



1 rights relative to the Wood Class' ability to pump groundwater, as landowners and as overlying  
2 rights holders in the Antelope Valley Groundwater Basin. The water rights, which have been and  
3 continue to be the focus of the settlement, exemplify a category of self-serving property interests  
4 beyond the scope of this fee-shifting statute. Although a large class of persons has been impacted  
5 by the settlement, and without belittling the importance of water rights in this State, the fact  
6 remains that an important right within the meaning of section 1021.5 was not vindicated to  
7 warrant fees relative to the settlement or the fee litigation.

8 Nonetheless, to the extent the initial fee motion was granted relative to the class settlement  
9 and judgment, a fee award of the kind sought in this second motion would constitute a serious  
10 departure from the legislative intent. Most, if not all, of the work in the months that followed the  
11 entry of judgment on December 28, 2015 related to ancillary matters that brought no value to the  
12 public at large. No fees should be awarded because any success on the part of the Wood Class in  
13 preserving its private rights to water is a private right for which the public at large gains no  
14 benefit, and, thus, extending section 1021.5 to encompass the supplemental fee request does not  
15 advance public interest litigation. Rather, it is the taxpaying public (i.e., customers of District No.  
16 40 and other public water suppliers) who will unfairly bear the economic consequences should  
17 the supplemental fee request be granted.

18 3. The Wood Class Did Not Obtain a Benefit for the General Public or a  
19 Large Number of People.

20 Section 1021.5 mandates that the lawsuit confer a significant benefit on the general public  
21 or a large class of persons. (*Roybal v. Governing Bd.* (2003) 159 Cal.App.4th 1143, 1149-50 [no  
22 significant public benefit where "[r]ealistically assessed, the gains achieved by petitioners were  
23 personal."].) The moving party must establish that it obtained a result with ramifications beyond  
24 the private interests of the parties directly before the court. (*Id.* at 1149-50.)

25 Most of the post-judgment work performed by Class Counsel concerns discrete disputes  
26 between parties (e.g., dispute between Lane Family and Granite Construction Company, the  
27 Wood Class' fee litigation. . . etc.). The benefit to the public at large is the result of the court-  
28 adopted physical solution, which was entered prior to the performance of the vast majority of

work at issue in the Supplemental Motion.<sup>2</sup> Moreover, it was District No. 40 and the other Public Water Suppliers who are largely responsible for achieving this public benefit—not the Wood Class.

4. The Necessity and Financial Burden of Private Enforcement by the Wood Class Was for Its Own Private Interests and Cannot Justify an Award of Attorney Fees Against the Public Water Suppliers Who Successfully Prosecuted Their Adjudication Actions for the Public's Benefit.

The California Supreme Court has repeatedly held that “[a]n award on the ‘private attorney general’ theory is appropriate when the cost of the claimant’s legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff ‘out of proportion to his individual stake in the matter.’” (*Serrano v. Stefan Merli Plastering Co., Inc.* (2010) 52 Cal.4th 1018, 1026, fn. 9 (*Stefan*) quoting *Woodland Hills, supra*, 23 Cal.3d at p. 941; *Conservatorship of Whitley* (2010) 50 Cal. 4th 1206, 1214 (*Whitley*); *Josano, supra*, 42 Cal.4th at p. 952.) If this requisite is not met by the moving party, the section 1021.5 motion must be denied. (*Whitley*, 50 Cal.4th at 1214; *Ebbetts Pass Forest Watch v. Dept. of Forestry & Fire Prot.* (2010) 187 Cal.App.4th 376, 381 (*Ebbetts Pass*)).

The *Brown* court’s decision provided the applicable test.

The third element, the necessity and financial burden requirement, involves two issues: “ ‘whether private enforcement was necessary and whether the financial burden of private enforcement warrants subsidizing the successful party’s attorneys.’ ” (*Whitley, supra*, 50 Cal.4th at p. 1214.) It is the second prong that is at issue here. Our Supreme Court has explained this prong as follows: “In determining the financial burden on litigants, courts have quite logically focused not only on the costs of the litigation but also any offsetting financial benefits that the litigation yields or reasonably could have been expected to yield.” “An award on the ‘private attorney general’ theory is appropriate when the cost of the claimant’s legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff ‘out of proportion to his individual stake in the matter.’ [Citation.]” [Citation.] “This requirement focuses on the financial burdens and incentives involved in bringing the lawsuit.” (*Whitley, supra*, 50 Cal.4th at p. 1215.) A party seeking fees under

<sup>2</sup> The only work performed before the entry of Judgment is that performed by Mr. Richard M. Pearl. As explained below, while Mr. Pearl has law degree, his work in this matter is that of an expert. As such, his fees are costs and not recoverable under section 1021.5.

section 1021.5 has the burden of establishing its litigation costs transcend its personal interests.

(*Id.*, at p. 55 [emphasis added] [citations omitted].)

The Wood Class' request fails to meet the "first prong" of the same element—that is "whether private enforcement was necessary" by the Wood Class. The *McGuigan* court summarized its detailed analysis of the California Supreme Court cases on the first prong as a straightforward question: "An important question in determining whether the services of the private party were necessary is, 'Did the private party advance significant factual or legal theories adopted by the court, thereby providing a material non de minimis contribution to its judgment, which were nonduplicative of those advanced by the governmental entity?'" (*McGuigan*, 183 Cal.App.4th at p. 635 [citation omitted].)

Here, there is no showing that the Wood Class participation in the post-judgment court process was anything but de minimis. Most of the post-judgment work performed by Class Counsel either had little impact or was unsuccessful (e.g., opposition to motion to correct clerical mistakes on the judgment, selection of landowner Watermaster Board, and motion to terminate class counsel representation . . . etc.).

Additionally, the supplemental fee motion utterly fails to meet the second prong—that the Wood Class' "litigation costs transcend its personal interests." (*Whitley, supra*, 50 Cal.4th at p. 1214.) In deciding whether a claimant's litigation costs transcended its personal interest, the court must consider the claimant's personal pecuniary/economic interests and its personal/non pecuniary interests in pursuing the litigation. (*Whitley*, 50 Cal.4th at p. 1226.) The focus of the inquiry is whether the private interests are the real basis for the action, and the Court may legitimately restrict the award, if any, to only that portion of the attorneys' efforts that furthered the litigation of issues of public importance. (*Ibid.*)

Here, all of the fees at issue were all incurred to pursue private interest of the Wood Class or its counsel. The Wood Class counsel and his paralegal spent 176.9 hours (or approximately \$111,643) for the fee litigation, for which the Court has already awarded the Wood Class \$2,349,624 in fees (Dunn Decl., ¶4.) Thus, there was no disproportionate burden on the Wood Class in litigating this case. As such, the Court should deny this supplemental request for fees.



5. The Wood Class Did Not Successfully Enforce a Fundamental Constitutional or Statutory Policy.

In *McGuigan*, the Court of Appeal held that there is a preliminary requirement in addition to the stated criteria in section 1021.5: "This statute [section 1021.5] includes not only three enumerated criteria for the court to consider, but also certain introductory language, as follows: 'Upon motion, a court may award attorneys' fees to a successful party *against one or more opposing parties in any action* which has resulted in the enforcement of an important right affecting the public interest. . . ." (183 Cal.App.4th at p. 616 [emphasis in original].)

Although this Court found a fee award appropriate relative to Wood Class' initial fee motion, the purported basis for seeking supplemental fees is beyond the scope of section 1021.5. Specifically, none of the work performed, for which the Wood Class now seeks fees, goes to the enforcement of a fundamental or statutory policy or right. (*Brown*, 228 Cal.App.4th at pp. 54-55 [the purpose of section 1021.5 "is to encourage suits enforcing important public policies."]) quoting *Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382, 390.) The vast majority of the work at issue relate to the Wood Class or its counsel's private interest or interest of other private landowner parties (e.g., fee litigation, opposition to Motion to Amend Judgment: *Nun Pro Tunc*, dispute between Lane Family and Granite Construction Company, motion to terminate representation . . . etc.) On this basis alone, there can be no legal entitlement to attorney fees under Section 1021.5.

B. The Rate Sought for the Fee Litigation Is Neither Reasonable nor Necessary and the Award Should Be Significantly Reduced.

To the extent the Court intends to award fees related to the fee litigation, the award should be significantly reduced. Fee litigation is tangential to the primary litigation underlying the original fee request and, consequently, bears less social value relative to section 1021.5 objectives. Fees for fee litigation are generally discounted for this reason. (*Graham et al v. DaimlerChrysler Corporation* (2004) 34 Cal.4th 553, 579 ["while fees for attorney fee litigation under section 1021.5 may be enhanced under some circumstances, that enhancement should generally be lower than fees awarded in the underlying litigation".])

1 A fee award for fee litigation includes only the reasonable expenses of preparing the fee  
2 application. (*Estate of Trynin* (1989) 49 Cal. 3d 868, 875.) The court may thus reduce the award,  
3 or deny one altogether, if the hours or rates appear excessive. (*Serrano v. Unruh* (1982) 32 Cal.  
4 3d 621, 639, 639 n.28.) Here, the Court has already set the Class Counsel's hourly rate for the  
5 adjudication at \$500 per hour. The Court should reduce the rate as the fee litigation bears little  
6 social value. (*Graham, supra*, 34 Cal.4th at p. 579.) Moreover, the 176.9 hours that the class  
7 counsel spent on the fee litigation, which excludes the hours spent on motion to clarify the fee  
8 order, are excessive and deserves scrutiny by the Court. (*Serrano, supra*, 32 Cal.3d at p. 635,  
9 citing approvingly *Lund v. Affleck* (1st Cir. 1978) 587 F.2d 75, 77 [if attorneys' fees claims are  
10 "exorbitant," court should refuse compensation].)

11 **C. Class Counsel's Lodestar Figure Is Based on Unreasonable and Unnecessary**  
12 **Fees.**

13 Even if this Court imposes another fee award, equitable considerations require a reduction  
14 in the lodestar amount on the basis that the fees were both unnecessary and unreasonable. A trial  
15 court has broad discretion to determine the amount of a reasonable fee, and the award of such fees  
16 is governed by equitable principles. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,  
17 1094-1095 (*PLCM*)). The first step involves the lodestar figure—a calculation based on the  
18 number of hours reasonably expended, multiplied by the lawyer's hourly rate. (*Palm, LLC v.*  
19 *Teitler* (2008) 162 Cal.App.4th 770, 774.) The lodestar figure may then be adjusted, based on  
20 consideration of factors specific to the case, including: the nature and difficulty of the litigation,  
21 the amount of money involved, the skill required and employed to handle the case, the attention  
22 given, the success or failure, as well as the necessity for and nature of the litigation. (*PLCM,*  
23 *supra*, at p. 1096.) The court considers whether the total award so calculated under all of the  
24 circumstances of the case is more than a reasonable amount and, if so, the court must reduce the  
25 award to make it a reasonable figure. (*Id.* at 1095-96.)

26 A fee request that appears unreasonably inflated is a special circumstance permitting the  
27 trial court to reduce the award or deny one altogether. (*Serrano v. Unruh* (1977) 20 Cal. 3d 625,  
28 635; accord *Meister v. Regents of Univ. of Cal.* (1998) 67 Cal.App.4th 437, 455 (*Meisier*); see

1 also *EnPalm, LLC v. Teitler* (2008) 162 Cal. App.4th 770, 775 [fee reduction appropriate for  
2 conduct that makes much of the litigation unnecessary and yields fees unreasonably inflated].)  
3 The court in *Meister*, as one example, denied plaintiffs' request for almost \$100,000 in  
4 supplemental fees incurred in fee litigation for a case that largely effectuated a stipulation to  
5 injunctive relief, which merely mandated that defendants do little more than obey the law in the  
6 future. The court questioned whether all the hours charged were actually spent on the tasks for  
7 which they were billed, and ultimately declared the fees incurred in attempting to justify the  
8 supplemental fee request were not hours "reasonably spent" to warrant an award against  
9 defendants.

10 So that a court may properly discern hours "reasonably spent" in fee litigation from  
11 excessive hours incurred in cases churned by avaricious plaintiffs, the fee applicant bears the  
12 burden of providing detailed time records that meticulously itemize the tasks completed and the  
13 amount of time spent on each one. (*Hensley v. Eckhardt* (1983) 461 U.S. 424, 424 (*Hensley*);  
14 *Welch v. Metropolitan Life Ins. Co.* (9th Cir.) 480 F.3d 942, 945-46.) "Where the documentation  
15 of hours is inadequate, the [] court may reduce hours accordingly." (*Hensley, supra*, at 433.) The  
16 court may also exclude any hours that are excessive, redundant, or otherwise unnecessary. (*Id.* at  
17 434.)

18 The Wood Class seeks to recover \$204,485.75 for fees incurred during a relatively brief  
19 five month period. The majority of the work performed is unnecessary or duplicative of efforts  
20 made by other parties (e.g., opposition to District No. 40's Motion for Amend Judgment *Nun Pro*  
21 *Tunc*, work related to dispute between Lane Family and Granite Construction Company on  
22 selection of Watermaster board, communications regarding another groundwater adjudication  
23 matter . . . etc.). Class counsel's invoices also contain entries for unspecified work, block billing,<sup>3</sup>  
24 and miscalculation of hours worked. (See *supra* Section II.) Additionally, the requested hourly  
25 rates for attorneys' fees are exorbitant and range from \$720 to \$775.

26 Finally, for the reasons stated in the Public Water Suppliers' oppositions to the initial fee  
27

28 <sup>3</sup> A fee award should be lowered for block billing. (*Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672,  
689; *Welch v. Metropolitan Life Ins. Co.* (9th Cir. 2007) 480 F.3d 942, 945-46.)

1 motion, the Court should apply a negative multiplier.

2 **D. Mr. Richard Pearl's Fees Are Unrecoverable Costs**

3 Included in the supplemental request for fees is \$7,091.25 for Mr. Richard Pearl's fees for  
4 offering his opinion testimony. (McLachlan Decl., Ex. 3.) While Mr. Pearl has a law degree, he  
5 did not perform legal work for the Wood Class or acted as its counsel. In his declaration, Mr.  
6 Pearl states, "In this case, I have been asked by Plaintiff's counsel, Michael McLachlan and  
7 Daniel O'Leary, to render my opinion on the reasonableness of the attorneys' fees their firms are  
8 requesting in this matter." (Dunn Decl., Ex. EB [Declaration of Richard M. Pearl], at ¶1.) As  
9 such, Mr. Pearl's fees are not recoverable legal fees under section 1021.5 and are expert costs.  
10 Additionally, an award for his fees is explicitly prohibited by statute. (§ 1033.5, subd. (b)(1)  
11 ["Fees of expert not ordered by the court" "are not allowable as costs"].)

12 **E. Any Supplemental Fee Award Should Be Equitably Apportioned.**

13 Any supplemental fees awarded should be reduced so that the Public Water Suppliers pay  
14 only those fees that are attributable to them and not to other parties' disputes. Of the 304.65  
15 hours the Wood Class Counsel purportedly performed, only 149.1 attorney hours and 27.8  
16 paralegal hours are for work performed for the fee litigation. (Dunn Decl., ¶4.) Equity dictates  
17 that the Public Water Suppliers not be assessed attorney fees attributed to the other landowners.

18 To the extent the Court intends to award fees not related to the fee litigation, the Court  
19 should also take into account each party's pro rata share of the groundwater allocations. If the  
20 Wood Class had conferred a significant public benefit for its post judgment work (which it has  
21 not), the benefit is to all who pump from the Adjudication Area and it would be inequitable for  
22 the Court to place the burden of attorney's fees solely on the Public Water Suppliers. (*Sundance*  
23 *v. Municipal Court for the Los Angeles Judicial District of Los Angeles County* (1987) 192  
24 Cal.App.3d 268, 272 [The decision to apportion an award of attorneys' fees is addressed to the  
25 sound discretion of the trial court.]) Any fee award against the Public Water Suppliers should  
26 not exceed apportionment pursuant to each producer's percentage share the Adjusted Native Safe  
27 Yield as set forth in Exhibit 3 to the Judgment.

1           **F. Costs Cannot Be Awarded.**

2           In addition to its belated request for \$75,242.06 in pre-judgment costs, the Wood Class is  
3 now seeking to recover \$1,838.37 in post-judgment costs. (Suppl. Motion at 7:1-5.) This request  
4 is unsupported by law. First, the Wood Class failed to cite to any authority permitting recovery of  
5 post-judgment costs when the parties' interest are aligned. (See Code Civ. Proc. § 1034  
6 [prejudgment costs and costs on appeal may be recoverable].)

7           Second, the Wood Class failed to submit a memorandum of costs as required by Rules of  
8 Court Rule 3.1700, subdivision (a)(1).

9           Third, the Wood Class is not a prevailing party under section 1032. As a plaintiff, the  
10 Wood Class can recover costs only if it is the party with a net monetary recovery or it obtains  
11 nonmonetary relief in excess of those obtained by the defendants. (*Id.*; *Olsen v. Breeze, Inc.*  
12 (1996) 48 Cal.App.4th 608, 627 [plaintiff is not a prevailing party where plaintiff sought to strike  
13 releases of a liability agreement, but defendants ultimately agreed to modify the releases].) As  
14 specified in further detail in District No. 40's Motion to Strike Costs, the judgment does not  
15 afford the Wood Class any monetary recovery even though three of the five reliefs requested by  
16 the Wood Class are monetary and the Wood Class failed to obtain any of its requested  
17 nonmonetary reliefs (i.e., a declaration that its rights are superior to all non-overlying users, and  
18 equitable apportionment of water rights). (Motion to Strike Cost at 3:6-4.11.) To the extent the  
19 Wood Class obtained any nonmonetary relief, it is negligible compared to the relief obtained by  
20 the Moving Parties. While the judgment awarded the Wood Class 3,806.4 acre-feet per year  
21 ("afy") of production rights, the non overlying water producers were awarded 12,345 afy – more  
22 than three times the amount obtained by the Wood Class. (Declaration of Jeffrey V. Dunn in  
23 Support of Motion to Strike Costs, Ex. "D".) Under the standard set forth in *Olsen, supra*, 48  
24 Cal.App.4th 608, the Wood Class cannot be the prevailing party.

25           Fourth, even if the Wood Class is deemed to be a prevailing party for the purpose of the  
26 trial, it is not a prevailing party against District No. 40 for the purpose of these post-judgment  
27 costs. The majority of the requested costs concern the Wood Class' unsuccessful opposition to  
28 District No. 40's *ex parte* application for order permitting a memorandum in excess of page

1 limits, its unsuccessful opposition to District No. 40's Motion to Amend Judgment *Nunc Pro*  
2 *Tunc*, and the Wood Class' Motion for Clarification of Order on Motion for Award of Attorney  
3 Fees, which District No. 40 did not oppose. (Dunn Decl., at ¶7 [These costs total \$728].) District  
4 No. 40 should not be responsible for such costs.

5 Fifth, the Wood Class is requesting for costs that are not authorized by section 1032 et  
6 seq., including: (1) \$114.00 in transcript of court proceeding not ordered by the court (McLachlan  
7 Decl., Ex. 4; Code Civ. Proc. § 1033.5, subd. (b)(5)); (2) \$109.74 in parking and taxi costs (Dunn  
8 Decl., at ¶8; O'Leary Decl., at ¶4); (3) \$212.96 in airfare (O'Leary Decl., at ¶4); (4) \$24.00 in  
9 unsubstantiated costs (e.g., an alleged filing by Mr. O'Leary without corresponding filing date)  
10 (O'Leary Decl., at ¶4); (5) \$178.00 in court reporter fees (McLachlan Decl., Ex. 4); and (6)  
11 \$44.01 for dinner (McLachlan Decl., Ex. 4). These unauthorized costs total \$682.71 and should  
12 not be awarded.

13 Finally, costs are not recoverable under the private attorney general doctrine. (§ 1021.5;  
14 *Benson v. Kwikset Corp.* (2007) 152 Cal.App.4th 1254, 1283.)

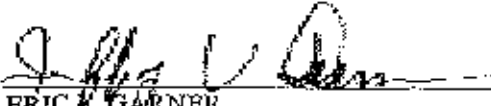
15 For the above reasons, the Court should not award any costs to the Wood Class.

16 **IV. CONCLUSION**

17 The Wood Class supplemental motion for attorneys' fees should be denied. If the Court is  
18 inclined to award any fees and costs, they should be significantly reduced for the reasons stated  
19 above.

20 Dated: July 15, 2016

BEST BEST & KRIEGER LLP

21  
22 By   
23 ERIC E. GARNER  
24 JEFFREY V. DUNN  
25 WENDY Y. WANG  
26 Attorneys for  
27 LOS ANGELES COUNTY  
28 WATERWORKS DISTRICT NO. 40



**PROOF OF SERVICE**


I, Elsa M. Garcia, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On July 15, 2016, I served the following documents(s):

**LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION  
TO RICHARD WOOD'S SUPPLEMENTAL MOTION FOR AWARD OF ATTORNEYS'  
FEES AND COSTS; JOINDER TO SMALL PUBLIC PURVEYORS' OPPOSITION**

☒ **BY ELECTRONIC TRANSMISSION.** I caused such document(s) to be electronically served, via One Legal, to all parties appearing on the [www.scefiling.org](http://www.scefiling.org) electronic service list for the Antelope Valley Groundwater Cases; proof of electronic-filing through One Legal is then printed and maintained with the original documents in our office. Electronic service is complete at the time of transmission. My electronic notification email address is [elsa.garcia@bbkllaw.com](mailto:elsa.garcia@bbkllaw.com).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 15, 2016, at Los Angeles, California.

  
Elsa M. Garcia

26345.00000059046240.3

PROOF OF SERVICE

Document received by the CA 5th District Court of Appeal.

## **Exhibit W**



7/15

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
18101 VON KARMAN AVENUE, SUITE 1000  
IRVINE, CALIFORNIA 92612

COPY

1 BEST BEST & KRIEGER LLP  
2 ERIC L. GARNER, Bar No. 130665  
3 JEFFREY V. DUNN, Bar No. 131926  
4 WENDY Y. WANG, Bar No. 228923  
5 18101 VON KARMAN AVENUE, SUITE 1000  
6 IRVINE, CALIFORNIA 92612  
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8 TELECOPIER: (949) 260-0972  
9 Attorneys for Cross-Complainant  
10 LOS ANGELES COUNTY WATERWORKS  
11 DISTRICT NO. 40

12 OFFICE OF COUNTY COUNSEL  
13 COUNTY OF LOS ANGELES  
14 MARY WICKHAM, BAR NO. 145664  
15 COUNTY COUNSEL  
16 WARREN WELLEN, Bar No. 139152  
17 PRINCIPAL DEPUTY COUNTY COUNSEL  
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22 Attorneys for Cross-Complainant  
23 LOS ANGELES COUNTY WATERWORKS  
24 DISTRICT NO. 40

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
26 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

27 ANTELOPE VALLEY GROUNDWATER CASES  
28 Included Actions:  
Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Co., Superior Court of  
California, County of Los Angeles, Case No. BC  
325201;

Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Co., Superior Court of  
California, County of Kern, Case No. S-1500-CV-  
254-348;

Wm. Bolthouse Farms, Inc. v. City of Lancaster,  
Diamond Farming Co. v. City of Lancaster,  
Diamond Farming Co. v. Palmdale Water Dist.,  
Superior Court of California, County of Riverside,  
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

RICHARD WOOD, on behalf of himself and all  
other similarly situated v. A.V. Materials, Inc., et  
al., Superior Court of California, County of Los  
Angeles, Case No. BC509546

EXEMPT FROM FILING FEES  
UNDER GOVERNMENT CODE  
SECTION 6103

Accepted for filing  
on 07/15/2016  
by Clerk of Court

JUL 15 2016

Sharon H. Gable, Executive Clerk of Court  
By Wendy Alvarez, Deputy

Judicial Council Coordination  
Proceeding

No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053  
Assigned to the Honorable Jack Komar

DECLARATION OF JEFFREY V.  
DUNN IN SUPPORT OF DISTRICT  
NO. 40'S OPPOSITION TO  
RICHARD WOOD'S  
SUPPLEMENTAL MOTION FOR  
ATTORNEY FEES AND COSTS

Date: July 28, 2016  
Time: 10:00 a.m.  
Dept.: LASC, Room 222

DECLARATION OF JEFFREY V. DUNN IN SUPPORT OF DISTRICT NO. 40'S OPPOSITION TO RICHARD WOOD'S  
SUPPLEMENTAL MOTION FOR ATTORNEY FEES AND COSTS

Document received by the CA 5th District Court of Appeal.

1 I, Jeffrey V. Dunn, declare as follows:

2 1. I am a partner with the law firm of Best Best & Krieger LLP, counsel for  
3 defendant Los Angeles County Waterworks District No. 40 ("District No. 40"). I have personal  
4 knowledge of the facts stated herein and, if called upon to do so, I could testify to these facts.

5 2. The bills attached to the Declarations of Michael D. McLachlan ("McLachlan  
6 Decl.") and Daniel M. O'Leary ("O'Leary Decl.") fail to differentiate between time spent on the  
7 complaint against the Public Water Suppliers and the fee litigation and the time spent on other  
8 matters.

9 3. Under the Judgment, Wood Class did not receive economic or compensatory  
10 damages, failed to obtain any declaration of a superior priority to groundwater water, or any  
11 award of damages against the Public Water Suppliers to compensate for alleged takings and  
12 property infringement.

13 4. Attached hereto as Exhibit AA is a true and correct copy of District No. 40's  
14 Summary of Wood Class Counsel Bills, prepared by my office at my direction. Of the 304.65  
15 hours of work the Wood Class counsel purportedly performed, only 149.1 attorney hours and 27.8  
16 paralegal hours are for work related to the fee litigation. (Exhibit AA.) At the requested \$720 per  
17 hour for attorneys' work and \$125 for the paralegals' work, the requested award for fees  
18 attributed to the fee litigation is approximately \$111,043.

19 5. Attached hereto as Exhibit BB is the true and correct copy of Declaration of  
20 Richard M. Pearl in Support of Motion for Award of Attorneys' Fees that was posted to the  
21 Court's website on or about January 27, 2016.

22 6. Attached hereto as Exhibit CC is a true and correct copy of an excerpt from the  
23 court-adopted physical solution.

24 7. At my direction, my office reviewed Exhibit 4 to Declaration of Michael D.  
25 McLachlan in Support of Supplemental Motion of Award of Attorneys' Fees and Costs, which  
26 purports to a list of costs incurred by Mr. McLachlan's office. My office compared Exhibit 4  
27 with the filings the Wood Class made to the court's website. Of the \$1,553.70 costs allegedly  
28 incurred by Mr. Michael McLachlan, \$728 appears to be for costs related to the Wood Class'

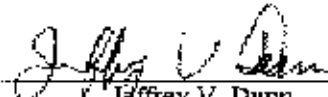
DECLARATION OF JEFFREY V. DUNN IN SUPPORT OF DISTRICT NO. 40'S OPPOSITION TO RICHARD WOOD'S  
SUPPLEMENTAL MOTION FOR ATTORNEY FEES AND COSTS

LAW OFFICES OF  
BEST, BEST & KRUGER LLP  
16101 VON KARMAN AVENUE, SUITE 1000  
IRVINE, CALIFORNIA 92619

1 unsuccessful opposition to District No. 40's *ex parte* application for order permitting a  
2 memorandum in excess of page limits, its unsuccessful opposition to District No. 40's Motion to  
3 Amend Judgment *Nunc Pro Tunc*, and the Wood Class' Motion for Clarification of Order on  
4 Motion for Award of Attorney Fees, which District No. 40 did not oppose.

5       8.       Exhibit 4 to Declaration of Michael D. McLachlan in Support of Supplemental  
6 Motion of Award of Attorneys' Fees and Costs also includes \$67.03 in parking and taxi costs.

7       I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct. Executed this 15th day of July, 2016, at Irvine, California.

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\_\_\_\_\_  
Jeffrey V. Dunn

# EXHIBIT AA

Document received by the CA 5th District Court of Appeal.

**Exhibit AA to the Declaration of Jeffrey V. Dunn**

	<b>Summary of Bills</b>	<b>Reference to Billing Entries</b>
1.	<p>Mr. McLachlan (139.6) and Mr. O'Leary (18.5) spent approximately 149.1 hours on the fee litigation (including issues concerning incentive award, costs, and appeal of fee ruling).</p> <p>Approximately 27.8 paralegal hours were spent on the fee litigation.</p>	<p>See, the following billing entries from McLachlan Decl.: 1/27/16 (0.3) (0.4) (0.3) (6.4); 1/28/16 (0.1); 1/29/16 (0.2); 2/2/16 (0.5); 2/4/16 (0.7); 2/5/16 (1.5); 2/8/16 (1.7); 2/9/16 (0.1); 2/10/16 (1.2); 2/11/16 (1.1); 2/11/16 (0.6) (0.1); 2/12/16 (0.5) (0.1); 2/14/16 (1.0); 2/15/16 (2.9); 2/18/16 (1.3); 2/22/16 (0.6); 2/23/16 (0.1) (0.4) (2.2) (0.1) (0.7) (0.1) (0.3) (0.8) (0.3); 2/24/16 (0.3) (0.1) (0.5) (0.3) (0.3) (0.2); 3/7/16 (0.2) (2.4) (0.5) (0.2); 3/8/16 (0.5) (0.1) (0.5); 3/11/16 (0.3); 3/14/16 (0.4); 3/15/16 (0.6) (0.1); 3/16/16 (0.3) (0.3) (0.2) (1.9) (2.5) (1.4) (0.1) (0.4); 3/17/16 (0.9) (0.3) (0.5) (0.2) (2.4) (0.3); 3/18/16 (0.2) (1.0); 3/21/16 (0.2) (0.1) (0.8) (0.1); 3/22/16 (0.3) (8.8); 3/23/16 (0.4) (0.1) (0.4) (6.2); 3/24/16 (9.5); 3/25/16 (8.7); 3/27/16 (0.2); 3/28/16 (0.5); 3/29/16 (5.1); 3/30/16 (2.1); 3/31/16 (3.8); 4/1/16 (12.4); 4/8/16 (0.1); 4/21/16 (0.1); 4/25/16 (0.9); 4/25/16 (0.3) (1.2); 4/27/16 (0.2) (1.1); 4/28/16 (0.5) (0.9); 4/29/16 (0.6) (0.3) (0.5); 4/30/16 (0.1); 5/4/16 (0.9); 5/10/16 (0.2) (0.5); 5/11/16 (1.8); 5/12/16 (0.1) (1.0); 5/13/16 (0.1); 5/16/16 (0.3) (0.1); 5/18/16 (0.1); 5/31/16 (0.5); 6/7/16 (0.6); 6/8/16 (0.4) (0.1) (0.5); 6/9/16 (0.1) (0.1) (0.2); 6/22/16 (0.6); 6/23/16 (0.4); 6/24/16 (2.4); 6/25/16 (3.8); 6/26/16 (2.0)</p> <p>See, e.g., the following billing entries from O'Leary Decl.: 2/12/16 (2.3); 2/18/16 (7.8); 2/22/16 (0.1); 2/23/16 (0.2); 2/24/16 (0.3); 3/7/16 (0.3); 3/16/16 (3.2); 3/17/16 (1.0); 3/18/16 (4.3); 3/21/16 (1.4); 3/22/16 (2.6)</p> <p>See, e.g., the following paralegal billing entries from McLachlan Decl.: 1/27/16 (6.1); 2/11/16 (1.8); 2/15/16 (2.4); 3/22/16 (3.0); 3/23/16 (2.5); 3/28/16 (4.8); 3/29/16 (1.6); 5/11/16 (5.6)</p>
2.	<p>Mr. McLachlan spent at least 12.2 hours on work regarding Motion for Clarification of Order on Motion for Award of Attorneys' Fees</p>	<p>See, e.g., the following billing entries McLachlan Decl.: 4/26/16 (0.7) (1.4); 4/29/16 (0.5) (0.3) (0.4); 5/2/16 (0.3) (0.3) (1.8); 5/10/16 (0.2); 5/12/16 (0.4) (0.1); 5/17/16 (0.3); 5/18/16 (1.7) (0.1) (0.3) (0.2) (0.2) (0.4); 5/19/16 (0.1); 6/8/16 (0.5) (0.3) (0.9) (0.3); 6/9/16 (0.4)</p>

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3.	<p><b>Summary of Bills</b></p> <p>Mr. McLachlan (13.9) and Mr. O'Leary (3.3) spent at least 17.2 hours on work regarding Mark Ritter and Ritter Trust's attempt to set aside default judgment</p> <p>1 paralegal hour was spent on work regarding Ritter parties</p>	<p><b>Reference to Billing Entries</b></p> <p>See, e.g., the following billing entries McLachlan Decl.: 1/28/16 (0.3); 1/28/16 (0.1); 1/29/16 (0.5); 1/30/16 (0.4); 2/1/16 (0.7) (1.2) (3.8); 2/5/16 (0.2) (0.4) (0.5); 2/5/16 (1.0) [paralegal time]; 2/8/16 (0.6); 2/9/16 (1.1); 2/10/16 (0.5) (3.4); 2/11/16 (0.1); 2/24/16 (0.1)</p> <p>See, e.g., the following billing entries from O'Leary Decl.: 1/27/16 (1.5); 2/10/16 (1.8)</p>
4.	<p>Mr. McLachlan (8.35) and Mr. O'Leary (4) spent at least 12.35 hours on work regarding Watermaster, including selection of Watermaster Board</p>	<p>See, e.g., the following billing entries McLachlan Decl.: 1/29/16 (0.4); 2/1/16 (0.5); 2/2/16 (0.2); 2/3/16 (0.1); 2/10/16 (0.5); 2/12/16 (0.2); 2/17/16 (1.7); 2/19/16 (0.3); 3/9/16 (0.8); 5/3/16 (0.5); 5/16/16 (0.2); 5/20/16 (0.2); 5/24/16 (0.3); 5/25/16 (2.25) [time split with hearing on motion to amend judgment]; 6/3/16 (0.2)</p> <p>See, e.g., the following billing entry from O'Leary Decl.: 1/29/16 (1.2); 4/7/16 (0.1); 4/13/16 (1.5); 4/14/16 (0.2); 4/15/16 (1.0)</p>
5.	<p>Mr. McLachlan spent at least 1.05 hours on work regarding opposition to District No. 40's Motion for Amend Judgment <i>Nun Pro Tunc</i></p>	<p>See, e.g., the following billing entries McLachlan Decl.: 5/3/16 (0.1); 5/4/16 (0.2); 5/5/16 (0.2); 5/11/16 (0.9) (0.1); 5/12/16 (0.3); 5/18/16 (0.1); 5/20/16 (0.1) (0.2) (0.5); 5/25/16 (0.2) (0.5) (1.4); 5/25/16 (2.25) [time split with hearing on AV United motion regarding Watermaster]</p>
6.	<p>Mr. McLachlan spent at least 5.2 hours on work on unspecified work that has been redacted from invoices</p>	<p>See, e.g., the following billing entries McLachlan Decl.: 1/28/16 (0.5); 2/6/16 (0.2); 2/12/16 (0.2); 2/19/16 (0.5); 2/22/16 (0.3) (0.2); 2/23/16 (0.7); 2/24/16 (0.3) (0.7); 3/8/16 (0.5); 3/22/16 (0.2) (0.1); 5/8/16 (0.3); 6/22/16 (0.5)</p>

	Summary of Bills	Reference to Billing Entries
7.	Mr. McLachlan spent at least 9.3 hours on work related to other landowner issues (e.g., dispute between Lane Family and Granite Construction Company, issue concerning Rohar, expert conflicts issue, Hoospack Development, Inc.'s request to set aside default, Willis Class' request for fees . . . etc.)	See, e.g., the following billing entries McLachlan Decl.: 1/27/16 (0.1); 1/28/16 (0.2); 1/29/16 (0.8); 2/1/16 (0.5) (0.3) (0.2); 2/5/16 (0.9); 2/8/16 (0.2); 2/12/16 (0.2); 2/16/16 (0.4) (0.1) (0.1); 2/17/16 (0.1); 2/24/16 (0.5) (0.2) (0.1) (0.3); 2/25/16 (0.3); 3/1/16 (0.1); 3/2/16 (0.3) (0.7); 3/4/16 (0.4); 3/7/16 (0.4) (0.1); 3/8/16 (0.3); 3/14/16 (0.1); 3/15/16 (0.1); 3/16/16 (0.3); 3/17/16 (0.2) (0.2) (0.1); 3/18/16 (0.1); 3/21/16 (0.2); 5/20/16 (0.1); 5/24/16 (0.1)
8.	Mr. McLachlan spent at least 3.5 hours on work regarding appeals by Willis Class and Phelan Pflon Hills Community Services District  6.1 paralegal hours were spent on appellate work	See, e.g., the following billing entries McLachlan Decl.: 2/3/16 (0.2); 3/4/16 (0.4); 3/8/16 (0.3); 3/9/16 (0.2) (0.4); 3/10/16 (1.0); 3/10/16 (1.9) [paralegal work]; 3/11/16 (0.2); 3/11/16 (3.0) [paralegal work]; 3/12/16 (1.2) [paralegal work]; 3/16/16 (0.3); 5/3/16 (0.5)
9.	Mr. McLachlan spent at least 0.5 hours on work regarding another case	See, e.g., the following billing entries McLachlan Decl.: 2/23/16 (0.3) (0.2) [concerning Steinbeck case]
10.	Mr. McLachlan spent at least 3.1 hours on work regarding motion to terminate representation	See, e.g., the following billing entries McLachlan Decl.: 3/9/16 (1.7) (1.3); 3/18/16 (0.1)

26345.00000(29)77572.4

# EXHIBIT BB

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15 Attorneys for Plaintiff Richard Wood and the Class

16 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
17 **COUNTY OF LOS ANGELES**

18 Coordination Proceeding  
19 Special Title (Rule 1550(b))

20 **ANTELOPE VALLEY GROUNDWATER**  
21 **CASES**

22 **RICHARD A. WOOD**, an individual, on  
23 behalf of himself and all others similarly  
24 situated,

25 Plaintiff,

26 v.

27 **LOS ANGELES COUNTY**  
28 **WATERWORKS DISTRICT NO. 4D; 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.

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

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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-

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**DECLARATION OF RICHARD M. PEARL IN SUPPORT OF MOTION FOR  
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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

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

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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; *Carnacho 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.

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

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. Bontu* (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. Trizecahn 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

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

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1 (police misconduct action), *rev's'd on other grounds* (9th Cir. 2013) 636 F.3d  
2 955; *National Federation of the Blind v. Target Corp.* (N.D.Cal. 2009) 2009  
3 U.S.Dist.LEXIS 67139; *Church of Scientology v. Wollersheim* (1996) 42  
4 Cal.App.4th 628 (anti-SLAPP case).

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

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

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

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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
<b>TOTAL</b>			<b>\$3,348,160</b>

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:

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

**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. Giganeus, 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:

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<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(IPRx), 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:

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**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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Years

Rate

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.4<sup>th</sup> 860),<sup>1</sup> 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):

Years Since Bar Admission

Rate

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:

Years of Experience

Rate

28

\$725

23

660

15

575

3

375

Paralegal

125

<sup>1</sup> 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.

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1 (8) *Pierce v. County of Orange* (C.D. Cal. 2012) 905 F.Supp.2d 1017, a  
2 civil rights class action brought by pre-trial detainees, in which the court  
3 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

11 **Rate Information from Surveys**

12 12. I also base my opinion on several credible surveys of legal rates,  
13 including the following:

- 14 • On January 5, 2015, the National Law Journal published an article  
15 about its most recent rate survey entitled "Billing Rates Rise,  
16 Discounts Abound." A true and correct copy of that article is  
17 attached hereto as **Exhibit B**. It contains the rates charged by  
18 numerous Los Angeles area law firms handling comparably complex  
19 litigation. Plaintiff's attorneys' rates are well in line with those rates.
- 20 • On January 13, 2014, the National Law Journal published an article  
21 about its most recent rate survey. That article included a chart  
22 listing the billing rates of the 50 firms that charge the highest  
23 average hourly rates for partners. A true and correct copy of that  
24 article is attached hereto as **Exhibit C**. Of the 50 firms listed,  
25 several have offices in the Los Angeles Area and many others have  
26 significant litigation experience in this area. And, although the rates  
27 that Plaintiff's counsel are requesting here are *lower* than many of  
28

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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 *CIIMC*, 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  
27  
28

13  
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that have offices in or regularly practice in the Los Angeles area.<sup>2</sup> 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	620
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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<sup>2</sup> 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.

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

7  
8 **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

15	2011 Rates:	Years of Experience	Rate
16		30	\$780

17	2010 Rates:	Years of Experience	Rate
18		13	\$655
19		4	480
20		2	400

21  
22  
23 **Cohelan Khoury & Singer**

24	2012 Rates:	Years of Experience	Rate
25		38	\$750
26		28	750

27  
28  
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**Cohelan Khoury & Singer**

11	400
Paralegal	170

**Coolcy 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

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1	<b>Covington Burling</b>	
2	1	350
3		
4	Level	
5	Average Partner	\$780
6	Highest Partner	890
7	Lowest Partner	605
8	Average Associate	415
9	Highest Associate	565
10	Lowest Associate	320

12	2013 Rates:	Years of Experience	Rate
13		28	\$750
14		16	670
15		14	670
16		7	510
17		5	490
18		2	375
19		Litigation Support	110-355

20	2012 Rates:	Years of Experience	Rate
21		27	\$730
22		15	632-650
23		13	650

24	2011 Rates:	Years of Experience	Rate
25		26	\$710
26		14	640
27		12	600

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**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	20	\$865
	17	755
	10	595

**Gibson Dunn & Crutcher LLP**

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

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**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**

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**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

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**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

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**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	300
	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

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**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

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**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**

2013 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

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**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

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1 **Reed Smith LLP**

2

3 2013 Rates:	5 Years of Experience	435 Rate
4	Partner	
5	36	\$830
6	30	805
7	17	610-615
8	14	570
9	Associates	
10	8	450-535
11	6	495

12

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

15 2014 Rates:

16	29 Years of Experience	8750 Rate
17	24	700

18 2012 Rates:

19	27 Years of Experience	\$695 Rate
20	22	630

21

22 **Skadden, Arps, Slate, Meagher & Flom**

23 2013 Rates:

24	Average Partner	\$1,035
25	Highest Partner	1,150
26	Lowest Partner	845
27	Average Associate	620
28	Highest Associate	845

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1 **Skadden, Arps, Slate, Meagher & Flom**

2 Lowest Associate 340

4 **Law Office of Carol Sobel**

5 2015 Rate: Years of Experience: Rate:  
6 37 \$875

8 **Wilson Sonsini Goodrich & Rosati PC**

9 2010 Rates: Level Rate  
10 28 years \$875  
11 Other Partners 650-975  
12 Associates 290-610  
13 Paralegals/Litigation 120-300  
14 Support

16 **Zelle Hofmann Voelbel & Mason, LLP**

17 2012 Rates: Level Rate  
18 Partners Up to \$950  
19 Associates Up to \$540  
20 Paralegals Up to \$290  
21 Law Clerks Up to \$250

22  
23 14. The hourly rates set forth above are those charged where full  
24 payment is expected promptly upon the rendition of the billing and without  
25 consideration of factors other than hours and rates. If any substantial part of the  
26 payment were to be contingent or deferred for any substantial period of time, for  
27 example, the fee arrangement would be adjusted accordingly to compensate the  
28 attorneys for those factors.

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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  
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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.

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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.4<sup>th</sup> 1122, 1138. Court-awarded fees that reflect  
21 that risk of loss simply make such representation competitive in the legal  
22 marketplace. 24 Cal.4<sup>th</sup> at 1132-1133. Indeed, that view was affirmed again by  
23 the California Supreme Court in *Graham v. DaimlerChrysler Corp.* (2004) 34  
24 Cal.4<sup>th</sup> 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.4<sup>th</sup> 852, 874, and *Taylor v. Nabors Drilling USA, LP* (2014) 222  
27 Cal.App.4<sup>th</sup> 1228, 1251. For these reasons, a significant lodestar enhancement for  
28

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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,<sup>3</sup> 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 or 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. <sup>34</sup>Counsel's only realistic means of recovering

25  
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

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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.

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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-D2-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*

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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, 01CS00006, 01CS00007), 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.4<sup>th</sup> 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.

28  
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- *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.

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

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# **Exhibit X**



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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

**REPLY BRIEF IN SUPPORT OF  
SUPPLEMENTAL MOTION FOR  
AWARD OF ATTORNEY FEES  
AND COSTS; SUPPLEMENTAL  
DECLARATION OF MICHAEL D.  
MCLACHLAN**

Location: Room 222  
Stanley Mosk Courthouse  
Los Angeles, California  
Date: July 28, 2016  
Time: 10:00 a.m.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

By way of this Supplemental Fee Motion, Plaintiff Richard Wood (“Plaintiff”) has requested approval of a supplemental award of attorneys’ fees in the amount of \$204,485.75, as well as additional costs of \$1,838.37. Subsequent to filing of this motion, Plaintiff and his counsel have entered into a settlement agreement with Defendant California Water Service Company, which requires this defendant to pay the sum of \$7,729.56 for its potential share of attorneys’ fees sought under this motion, as well as \$69.49 in supplemental costs sought in this motion.<sup>1</sup> (Supp. McLachlan Decl., ¶ 3.)

For the reasons set forth below, the Court should award the full amount of the request for supplemental fees and costs.

### **II. ADDITIONAL FACTS**

Plaintiff will not repeat the facts set forth in the Supplemental Fee Motion, the initial fee motion, or the various declarations previously submitted. As for the total fees at issue, District 40 correctly points out a typographical error on the daily total for June 24, 2016 in the McLachlan firm timesheet. The total hours for June should thus be 15 hours, not 18. However, the because the fees incurred from June 27 to the present exceed the estimate of 15 hours by more than three hours, the total hours requested remains the same. (Supp. McLachlan Decl., ¶ 4.)

Los Angeles County Waterworks District No. 40 (“District 40”) has presented the Court with a summary table of the Class Counsel fee bills at issue which, although not particularly relevant or helpful, is erroneous. District 40 has purportedly divided the work in these fee bills into ten categories outlined in Exhibit AA. The attorney hours reflected in these ten categories contain a total of only 219.5 attorney hours, but the hours on the timesheets total 245.6 hours.

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<sup>1</sup> Both of these amounts were calculated using the Court’s allocation to Cal Water of 3.78%, as set forth in the Court June 28, 2016 clarification order.

(Supp. McLachlan Decl., ¶ 5.) Aside from ignoring 26.1 hours, District 40 has mischaracterized a significant number of the time entries. (Supp. McLachlan Decl., ¶ 6.) Since all of the time at issue was reasonably incurred, there is no reason to take the analysis to any greater level of detail.

### **III. ARGUMENT**

#### **A. The Prevailing Party Arguments Are Without Merit.**

The bulk of District 40's Opposition is devoted to re-litigation of prevailing party status and related arguments as to entitlement to attorneys' fees.<sup>2</sup> The threshold assumption of this line of arguments appears to be that in the context of a supplemental request for attorneys' fees, the party claiming fees must again establish prevailing party status anew. (Opp., 3:6-7.) District 40 cites no law in support of this proposition, which is contrary to California law, as discussed below.

District 40 suggests that the Court should adopt an arbitrary temporal cutoff for the entitlement to attorneys' fees, arguing that fees should not be awarded "after the March 4, 2015 settlement, when the Wood Class interests became aligned with District No. 40." (Opp, 4:27-28.) In addition to being contrary to the law cited in the next section, this notion is factually inaccurate. The settlement was not effective until it received Court approval, and even now it is not final because of the pending appeals. Further, post-settlement, the Class has continued to litigate numerous issues against the remaining water suppliers including the manner of handling the prove-up trial, the form of the judgment, and the amendment of the judgment, among others.

Moreover, this line of argument completely ignores the fact that these defendants, as consideration for the benefits they received under the Stipulation

---

<sup>2</sup> For reasons noted below, and because the various issues relating to the right to recovery of fees have been litigated in nearly 100 pages of briefing during

1 for Entry of Judgment, contractually obligated themselves to pay all reasonable  
2 Small Pumper Class Attorneys' fees and costs. (Stipulation, ¶ 11; *see also* Order  
3 After Hearing on April 1, 2016, pp. 6-7.) As such, the question of prevailing party  
4 status is moot; the only argument should be as to the amount of fees and costs.

5 The primary case cited by District 40, *McGuigan v. City of San Diego*, is  
6 inapposite and factual distinguishable due to its "unique procedural context."  
7 ((2010) 183, Cal.App.4<sup>th</sup> 610, 618.) *McGuigan* involved a motion to fees for work  
8 defending a settlement on appeal brought by a third party objector who had not  
9 been party to the action. Subsequent authority has refused to expand the holding  
10 in *McGuigan*, citing its very narrow procedural circumstances. (*Animal*  
11 *Protection Rescue League v. City of San Diego* (2015) 237 Cal.App.4<sup>th</sup> 99, 109.)  
12 The court in *Animal Rescue* noted that the term "opposing party" is defined in a  
13 black and white fashion as "those by or against whom a suit is brought . . . , the  
14 plaintiff or defendant . . . ," and further held that fees under 1021.5 still apply  
15 after the opposing party surrenders. (*Id.* at 106-107.) In light of the procedural  
16 posture of this coordinated proceeding and the authority cited in the following  
17 section, a broader extension of the holding in *McGuigan* is contrary to  
18 established principles of attorneys' fees law.

19 **B. Applicable Law Supports Recovery For The Time At Issue**  
20 **in this Motion.**

21 Absent circumstances rendering the award unjust, fees recoverable under  
22 [Section 1021.5] ordinarily include compensation for all hours reasonably spent .  
23 . ." (*Serrano v. Unruh (Serrano IV)* (1982) 32 Cal.3d 621, 639; (*Ketchum v.*  
24 *Moses* (2001) 24 Cal.4<sup>th</sup> 1122, 1133 (same); *Center For Biological Diversity*, 185  
25 Cal.App.4<sup>th</sup> at 897 (same); *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4<sup>th</sup>  
26 1128, 1175 (attorney who takes statutory fee case "can anticipate receiving full

27  
28 the initial fee motion (filed on January 27, 2016), Plaintiff will not address these  
same arguments again here.

1 compensation for every hour spent litigating a claim even against the most  
2 polemical opponent.”)

3 If the class were a paying private party who had the same litigation goals as  
4 the class did, all the time would clearly be compensable because it was related to  
5 protecting the Class’ interests. Generally speaking, hours are reasonable if they  
6 were “reasonably expended in pursuit of the ultimate result achieved in the same  
7 manner that an attorney traditionally is compensated by a fee-paying client for all  
8 time reasonably expended on a matter. (*Hensley v. Eckerhart* (1983) 461 U.S.  
9 424, 431.) Put another way, “[t]he number of hours to be compensated is  
10 calculated by considering whether, in light of the circumstances, the time could  
11 reasonably have been billed to a private client.” (*Moreno v. City of Sacramento*  
12 (9<sup>th</sup> Cir. 2008) 534 F.3d 1106, 1111.)

13 More specifically, work performed on related proceedings is compensable.  
14 In *Children’s Hosp. & Med. Ctr. v. Bonta*, the court held that fees are recoverable  
15 for ancillary proceedings that are “closely related and useful” to the litigation, or  
16 that “materially contributed to the litigation” even if such was not “absolutely  
17 necessary.” ((2002) 97 Cal.App.4<sup>th</sup> 740, 779-780, citing *Wallace v. Consumers*  
18 *Coop. of Berkeley, Inc.* (1985) 170 Cal.App.3d 836, 847 (1021.5 award for  
19 administrative proceedings outside court litigation); see also *Heritage Pac. Fin.,*  
20 *LLC v. Monroy* (2013) 215 Cal.App.4<sup>th</sup> 972, 1011 (rejecting challenges to work on  
21 ancillary matters).

22 Similarly, even fees incurred that were necessitated by third parties to the  
23 action are compensable. (*Californians for Responsible Toxics Mgmt. v. Kizer*  
24 (1989) 211 Cal.App.3d 961, 976; *Animal Protection Rescue League, supra*, 237  
25 Cal.App.4<sup>th</sup> at 104; *R.P Richards, Inc. v. Chartered Constr. Corp.* (2000) 83  
26 Cal.App.4<sup>th</sup> 146.)

27 Here, District 40 not only persisted in pursuing claims hostile to the Class’  
28 water rights, but it initiated and pursued the comprehensive adjudication. As the

1 proponent of the consolidation of these actions (which was opposed by the Class),  
2 District 40 should not be heard to complain about a small amount of work related  
3 to other parties to the adjudication, adverse or otherwise. The fact that Class  
4 Counsel took steps to protect the Class' interest in the Judgment should be  
5 expected, is reasonable and often required. (*Barboza v. West Coast Digital GSM,*  
6 *Inc.* (2009) 179 Cal.App.4<sup>th</sup> 540, 547.)

7 As a larger matter of public policy, if the courts were to endorse the  
8 positions Defendants espouse, thereby denying compensation for substantial  
9 work performed, competent counsel will not take these types of cases. The Court  
10 is fully aware that this coordinated proceeding sat at a virtual standstill for over a  
11 year because no counsel would take on the representation. (*See generally*  
12 *Zlotnick Decl.*, filed January 27, 2016.) Courts expressly recognize the need for  
13 courts to respect the policy of awarding full fees, particularly in public interest  
14 cases like this one. (*Perdue v. Kenny A. ex rel. Winn* (2010) 559 U.S. 542, 550-  
15 52; *Kelly v. Wengler* (9<sup>th</sup> Cir. 2016) 822 F.3d 1085, 2016 U.S.App.LEXIS 9381  
16 \*39-41 (discussing difficulty in attracting counsel to take on important but  
17 undesirable cases); *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4<sup>th</sup> 553,  
18 580; *see also* Richard A. Pearl, *Cal. Attorney Fee Awards*, at § 10.67 (discussing  
19 public service element in increasing lodestar).)

### 20 **C. The Hourly Rates Requested Are Below Current Market** 21 **Rates**

22 The defendants do not dispute the fact that the Court must use current  
23 market rates in setting the lodestar, nor do they offer any evidence to suggest that  
24 \$720 per hour is not a well within the range of prevailing hourly rates for similar  
25 work in Los Angeles. (*Ketchum v. Moses* (2001) 24 Cal.4<sup>th</sup> 1122; *PLCM Group,*  
26 *Inc. v. Drexler* (2000) 22 Cal.4<sup>th</sup> 1084, 1094; *Children's Hosp. & Med. Ctr. v.*  
27 *Bonta* (2002) 97 Cal.App.4<sup>th</sup> 740, 783.) In support of the contention that the  
28 Court should apply a lower hourly rate, District 40 states that "[f]ees for fee

litigation are generally discounted . . .” In support of this proposition, District 40 mis-cites case law regarding the application multipliers in the context of fees for fee litigation. (Opp., 10:25-28 (citing *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4<sup>th</sup> 553, 579.) There is not law that states that hourly rates should be lower for work performed on fee motions.

District 40 next contends that the “Court has already set Class Counsel’s hourly rate for the adjudication at \$500 per hour.” (Opp. 11:4-5.) That rate was specifically applied by the Court for all time between billed between 2007 and January of 2016, using some form of averaging over that period. (Order After Hearing on April 1, 2016, pp. 12-13.)<sup>3</sup> The Court did not state that \$500 was a current market rate.

While Counsel could have requested a multiplier for this current time, it did not. Therefore, the Court should not entertain the Defendants’ suggestion that it apply an hourly rate below current market rates for complex litigation in this community. This is particularly true here, given the complicated nature of this litigation, the skill displayed, the delay in payment (see FN 8, *infra*), and the undesirable nature of this case.<sup>4</sup>

#### **D. The Hours Billed Should Be Awarded in Full**

Without any explanation or justification, District 40 claims the hours spent on fee related litigation are “excessive.” (Opp. 11:8.)<sup>5</sup> The defendants seem to

---

<sup>3</sup> This assertion also ignores the fact that the Court approved a rate of \$550 per hour in late 2013 in conjunction with the earlier partial settlement.

<sup>4</sup> Among the various factors that can be considered in setting the hourly rate is the “undesirability of the case.” (Pearl, *Cal. Attorney Fee Awards*, at § 10.48; *Camacho v. Bridgeport Fin., Inc.* (9<sup>th</sup> Cir. 2008) 523 F.3d 973, 982, n.1 (listing “the ‘undesirability’ of the case” as relevant lodestar adjustment factor); *Horsford v. Board of Trustees* (2005) 132 Cal.App.4<sup>th</sup> 359, 399 (upward fee adjustment or lodestar enhancement).)

<sup>5</sup> The primary problem with the oppositions is that defendants failed to meet their burden to properly challenge the work performed. Conclusory and unsubstantiated objections to a fee claim, are inadequate to rebut the presumption that the claiming party’s fees were reasonable incurred. (*Roos v.*

1 ignore the fact that they filed a combined 45 pages of opposition briefs, and very  
2 vigorously contested the fee motion – a motion that was only necessary because  
3 they refused to settle in 2013 and refused to negotiate a resolution to the fee  
4 claim subject to the January 27, 2016 motion. They also filed a sizeable motion to  
5 tax costs. A defendant “cannot litigate [a fee motion] tenaciously and the be  
6 heard to complain about the time necessarily spent by the plaintiff in response.”  
7 *Serrano IV*, 32 Cal.3d 621, 638; *see also Graham v. DaimlerChrysler Corp.*  
8 (2004) 34 Cal.4<sup>th</sup> 553, 581 (expressly reaffirming the rule of *Serrano IV*);  
9 *Ketchum v. Moses* (2001) 24 Cal.4<sup>th</sup> 1122 (same); *612 South LLC v. Laconic*  
10 *United Partnership* (2010) 184 Cal.App.4<sup>th</sup> 1270, 1284 (court must consider fees  
11 incurred after fee motion filed).)

12 The defendants do not contest any specific element of the time incurred on  
13 the fee litigation, which is entirely reasonable given the importance of the motion  
14 and the scorched-earth nature of the defense. By comparison, there are many  
15 published cases where the fees awarded for the fee litigation were far in excess of  
16 what were incurred here. (*Graham*, 34 Cal.4<sup>th</sup> at 582 (\$762,830 awarded by trial  
17 court, at least 90% of which were for fee litigation); *Weeks v. Baker & McKenzie*  
18 (1998) 63 Cal.App.4<sup>th</sup> 1128, 1169 (\$166,510 ); *U.S. v. City & County of San*  
19 *Francisco* (N.D. Cal. 1990) 748 F.Supp. 1416, 1441, *aff’d in relevant part* (9<sup>th</sup> Cir.  
20 1992), 976 F.2d 1536 (court awarded plaintiffs’ counsel for 600 hours, at full  
21 market rates plus a 100% multiplier); *Greene v. Dillingham Constr. N.A., Inc.*  
22 (2002) 101 Cal.App.4<sup>th</sup> 418 (\$102,201.50); ) *Prison Legal News v.*  
23 *Schwarzenegger* (9<sup>th</sup> Cir. 2010) 608 F.3d 446, 454 (223.7 hours on fee motion  
24 deemed reasonable); *Gates v. Rowland* (9<sup>th</sup> Cir. 1994) 39 F.3d 1439, 1448  
25 (\$177,603 award for work on fee motion upheld); *Lucas v. White* (N.D. Cal. 1999)  
26 63 F.Supp.2d 1046, 1060 (394 hours for single fee motion).

27  
28 *Honeywell Int’l, Inc.* (2015) 241 Cal.App.4<sup>th</sup> 1472, 1492 (fee opponent has burden  
to present specific objections, supported by rebuttal evidence).)



District 40 also identifies, inaccurately, various other categories of work that it seems to contend are somehow improper or non-recoverable but fails to state why. (Opp., 1:18-2:19; *see* FN5, *supra*.) Per the authority cited above in Section III.B, this time is properly recoverable.

**E. The Lemieux Firm Opposition.**

The Lemieux firm raises nearly all the same arguments contained in its opposition to the earlier fee motion. Given the extensive prior briefing, Plaintiff will not again repeat its response to these arguments in full here (see Reply Brief in Support of Motion for Award of Attorneys' Fees (filed March 25, 2016), at § III.H), but will address a few points.

**1. The Claims of Financial Hardship Are Not Substantiated Or Legally Relevant.**

The claims of poverty are both unsubstantiated,<sup>6</sup> and legally irrelevant. As before, the current opposition fails to explain why the "Small Districts"<sup>7</sup> asserted prescription claims against the Class members, why they chose not to drop their prescription claims at any juncture in the litigation, including the refusal to settle in 2013.

Furthermore, Government Code section 970.8 requires local public entities to "include in its budget a provision to provide funds in an amount sufficient to pay all judgments in accordance with this article." Here, the small districts seem

---

<sup>6</sup> According to the Opposition papers filed on the first fee motion, North Edwards Water District paid \$194,698 in attorney's fees; Desert Lake Community Service District paid \$213,123; Palm Ranch Irrigation District paid \$426,213; Littlerock Creek Irrigation District paid \$435,459; and Quartz Hill Water District paid \$1,829,939. On average, these defense fees exceed by a factor of nearly ten times each of these entities' allocated share of the April 25 fee ruling. (*See* McLachlan 2<sup>nd</sup> Supp. Decl. (March 25, 2016), ¶ 21.) Under the Court's ten year payment order, the "Small Districts" each pay between \$1,800 and \$29,000 per year.

<sup>7</sup> It is curious that the term "Small Districts" appeared at no time during this litigation until the filing of the first fee motion earlier this year.

1 to have budgeted sufficiently to pay their attorneys (over \$3,000,000) but not to  
2 have followed the requirement of section 970.8. That failure should not be borne  
3 by class counsel, particularly since the districts have the ability to raise money  
4 from their ratepayers, or through a bond (*see* Gov't Code § 971). There is no  
5 authority to place the financial burden of their choices on Class Counsel.

6 **2. The Request For An Order to Pay A Fee Award Over**  
7 **Ten Years Is Patently Improper Here.**

8 The final request that the Lemieux firm makes is that the Court again order  
9 payment of the award of ten years, citing Government Code sections 970.6 and  
10 984. In the Order Clarifying Order After Hearing on April 1, 2016 (signed June  
11 28, 2016), the Court stated that each of the non-settling defendants (other than  
12 California Water Service) “shall be entitled to pay this judgment in 10 equal  
13 payments over a period of 10 years.”<sup>8</sup> (Supp. McLachlan Decl., Ex. 12.) There are  
14 only three ways in which a judgment against a public entity can be ordered  
15 payable periodically: (1) under C.C.P section 667.7 – which applies to health care  
16 providers, thus is inapplicable here – (2) Government Code section 970.6; or (3)  
17 Government Code section 984(d). (Gov. Code § 984(c).) The election under  
18 Government Code section 984(d) is not applicable to any of the Lemieux firm  
19 clients because the amounts allocated to each of them are well-below the  
20 minimum monetary threshold, and because that section requires payment of 50  
21 percent of the net judgment immediately, which the Court did not order.

---

22  
23 <sup>8</sup> The net result of this schedule is draconian. We are now over 8 years into  
24 this litigation (ignoring Class Counsel's limited work in 2007). With the litany of  
25 appeals, the judgment will not be final for at least two and perhaps as many as  
26 five years if it is taken up by the California Supreme Court. This means if the  
27 judgment stands, payments will start sometime between late 2018 and 2021, and  
28 conclude sometime between 2028 or 2031. Hence, 24 years may very likely pass  
between the initial work on this case and final payment for that work. And  
currently, the interest accruing during this payment plan is below the rate of  
inflation (and has been for many years). This only serves to underscore the true  
inequity of not awarding current market rates and a multiplier.

1 Hence, the only possible basis for the ten year payment plan is Section  
2 970.6. But that section contains the following requirement: “The governing body  
3 of the local public entity has adopted an ordinance or resolution finding that an  
4 unreasonable hardship will result unless the judgment is paid in installments.”  
5 There is no evidence that any of the defendants have adopted such an ordinance  
6 or resolution. (Gov. Code § 970.6(a)(1).) Similarly, there has been no motion or  
7 hearing on such request, no competent evidence of hardship, nor any finding by  
8 the Court of unreasonable hardship. (Gov. Code § 970.6(a)(2).) And, in the case  
9 of Los Angeles County Waterworks District No. 40, that defendant made no  
10 discussion of financial hardship whatsoever. In short, on the record at hand, it is  
11 error to order periodic payments under Government Code section 970.6.<sup>9</sup>

12 **F. The Attorney Fees Of Richard Pearl Should be Awarded.**

13 District 40 understands that Richard Pearl is a licensed attorney in  
14 California, but nevertheless contends that his work is not compensable because  
15 “he did not perform legal work for the Wood Class . . .” (Opp. 13:5.) While it is  
16 correct that Mr. Pearl provided a declaration in support of the first fee motion,  
17 that does not make those legal services non-compensable. District 40 does not  
18 cite any authority on point. Furthermore, Mr. Pearl’s invoice makes clear that the  
19 declaration is only a portion of the work he performed, all of which was obviously  
20 legal consultation and analysis related to the initial fee motion. Just because he  
21 provided data and information in his area of expertise does not make that work  
22 any less legal work.

23 **G. The Recent Litigation Costs Should Also Be Awarded.**

24 As noted in the Opposition to the Motion to Tax Costs, submission of a  
25 Judicial Council form memorandum of costs is option, not required.

---

27 <sup>9</sup> Plaintiff respectfully suggests that the Court should, on its own motion,  
28 amend the June 28, 2016 clarification order to remove the periodic payment  
language.

1 Furthermore, there is no statutory prohibition in awarding these costs. Each of  
2 them is recoverable, either expressly or at the Court's discretion. (C.C.P. §  
3 1033.5(c)(4).)

4 **IV. CONCLUSION**

5 For all of the foregoing reasons, Plaintiff Richard Wood requests that the  
6 Court approve the supplemental award of attorneys' fees in the amount of  
7 \$204,485.75, as well as additional costs of \$1,838.37.

8  
9 DATED: July 21, 2016

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

11 Michael D.  
12 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: 2016.07.21 23:10:46 -07'00'

13 By: \_\_\_\_\_

14 MICHAEL D. MCLACHLAN  
Attorneys for Plaintiff and the Class

1                   **SUPPLEMENTAL DECLARATION OF MICHAEL D. MCLACHLAN**

2 I, Michael D. McLachlan, declare:

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

6           2.       I am co-counsel of record of record for Plaintiff Richard Wood and  
7 the Class, and have been since 2008. I am duly licensed to practice law in  
8 California.

9           3.       Subsequent to filing of this motion, Plaintiff and his counsel have  
10 entered into a settlement agreement with Defendant California Water Service  
11 Company, which requires this defendant to pay the sum of \$7,729.56 for its  
12 potential share of attorneys' fees sought under this motion, as well as \$69.49 in  
13 supplemental costs sought in this motion. Both of these amounts were calculated  
14 using the Court's allocation to Cal Water of 3.78%, as set forth in the Court June  
15 28, 2016 clarification order.

16           4.       District 40 correctly points out a typographical error on the daily  
17 total for June 24, 2016 in the McLachlan firm timesheet. The total hours for  
18 June should thus be 15 hours, not 18. However, the from June 27 to date I have  
19 worked an additional 10.4 hours on this supplemental motion including these  
20 reply papers. I have also worked 6.5 hours on the motion tax costs. Mr. O'Leary  
21 has 2.4 hours of work on these projects. So, excluding several hours of other  
22 work on this matter, and the time that will be spent preparing for the hearing and  
23 attending it, the 15 hour estimate of future time included in the Supplemental Fee  
24 Motion was more well more than three hours light.

25           5.       The ten categories listed in District 40's contain only 219.5 attorney  
26 hours. The hours on the timesheets we submitted total 245.6 hours.

27           6.       I have also reviewed many of the time entries that District 40 has  
28 allocated to certain categories, and they are frequently inaccurate.

7. The time spent on the purported Willis Class and Phelan Appeals was almost entirely prefatory to or directly related to the pending appeals on the fee motion, and specially record preparation.

8. Mr. Dunn's assertion that I billed 0.5 hours on another groundwater adjudication is wrong. My work on February 23, 2016 related to the Steinbeck case, on which I am not counsel, was purely related checking on Mr. Dunn's representations as to his alleged conflicts in that matter during January and February, which arose during his efforts to continue the briefing schedule on the initial fee motion.

9. The few redacted time entries all relate to work-product in ongoing litigation matters in this case (primarily the fee motion and cost recovery issues).

10. Attached as **Exhibit 11** is a true and correct copy of the Court's "Order Clarifying Order After Hearing on April 1, 2016."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21<sup>st</sup> day of July, 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: 2016.07.21 23:10:24 -0700'

**Michael D. McLachlan**

## **Exhibit 11**

**FILED**  
Superior Court of California  
County of Los Angeles

**JUN 28 2016**

Sherri R. Carter, Executive Officer/Clerk  
By E. Lopez Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES**

Coordinated Proceeding  
Special Title (Rule 1550(b))

) **Judicial Council Coordination No. 4408**

) [Assigned to the Honorable Jack Komar]

ANTELOPE VALLEY GROUNDWATER  
CASES

) CASE No. BC 391869

) ~~(Proposed)~~ **ORDER CLARIFYING ORDER  
AFTER HEARING ON APRIL 1, 2016**

RICHARD A. WOOD, on behalf of himself and all  
others similarly situated

Plaintiffs,

vs.

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40; CITY OF PALMDALE;  
PALMDALE WATER DISTRICT; LITTLEROCK  
CREEK IRRIGATION DISTRICT; PALM  
RANCH IRRIGATION DISTRICT; QUARTZ  
HILL WATER DISTRICT; ALTELOPE VALLEY  
WATER CO.; ROSAMOND COMMUNITY  
SERVICE DISTRICT; MOJAVE PUBLIC  
UTILITY DISTRICT; and DOES 1 through 1,000;

Defendants.



1 The Court's Order of April 1, 2016 (the "Order"), addressing in part, Richard Wood's Motion for  
2 Award of Attorneys' Fees, Costs and Incentive Award, is clarified as follows:

3 The Order does not apply to Boron Community Services District or West Valley Water District.  
4 Further, California Water Service Company is not a public entity and, thus, reference in the Order to  
5 payment over a ten year period in accord with the law is not applicable to this defendant.  
6

7 The allocation of attorneys' fees and costs are allocated among the defendants as follows:

8 Los Angeles County Waterworks District No. 40:	74.76%
9 California Water Service Company:	3.78%
10 Littlerock Creek Irrigation District:	8.77%
11 Quartz Hill Water District:	6.21%
12 Palm Ranch Irrigation District:	5.13%
13 North Edward Water District:	0.54%
14 Desert Lake Community Services District	0.81%

15 Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District, Quartz Hill  
16 Water District, Palm Ranch Irrigation District, North Edward Water District and Desert Lake Community  
17 Services District shall be entitled to pay this judgment in 10 equal payments over a period of 10 years.  
18

19  
20 DATED: 6-28-16

  
21 HONORABLE JACK KOMAR  
22 Judge of the Superior Court  
23

24  
25  
26  
27 Prop. Order, Wood/Class

- 2 -

28 ~~(Proposed)~~ ORDER CLARIFYING ORDER AFTER HEARING ON APRIL 1, 2016

1466

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On July 21, 2016, at 11:14 p.m., I caused service in the manner indicated below of the foregoing document(s) described as **REPLY BRIEF IN SUPPORT OF SUPPLEMENTAL MOTION FOR AWARD OF ATTORNEY FEES AND COSTS; SUPPLEMENTAL DECLARATION OF MICHAEL D. MCLACHLAN** to be served on all parties in this matter as follows:

- \_\_\_\_\_  
/s/ Ana Horga  
Ana Horga

## **Exhibit Y**

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1. I am an attorney admitted to practice in state and federal courts in the State of California. I am co-founder and partner at the law firm of LippSmith LLP. I graduated Order of the Coif from the University of Southern California, Gould School of Law and *magna cum laude* from Northwestern University.

3. I have been licensed to practice law in California since 2002 and will sit for the Hawai'i Bar Exam in February 2022.

5. Prior to founding and running LippSmith Law, I worked as a career law clerk to the Honorable Dorothy W. Nelson on the U.S. Court of Appeals for the Ninth Circuit for several years and as a Capital Habeas Staff Attorney for the Central District of California for six years, working exclusively on death penalty matters. I also served as an elbow law clerk to Judge Nelson upon graduating law school.

6. I am a member of various legal organizations, including Public Justice, American Association for Justice, Consumer Attorneys of California, Consumer Attorneys of Los Angeles, the Los Angeles County Bar Association, and the John M. Langston Bar Association. I have

published articles in law reviews and in a trade publication and have been selected as a Super Lawyer from 2020 through the present.

7. As co-founder and partner at LippSmith LLP, I manage and work on cases in the class action, mass tort, consumer, personal injury, intellectual property, and appellate practice areas.

8. Currently, I am serving as a member of the Steering Committee in *In re Champlain Towers South Collapse Litigation*, Circuit Court of the 11th Judicial Circuit, Miami-Dade County, Florida, Case No. 2021-015089-CA-01. This putative class action concerns the collapse of Champlain Towers South in June 2021, killing 98 people and destroying 55 units. The parties are currently briefing the defendants' motions to dismiss and engaging in ongoing discovery.

9. Currently, I also am serving as appellate counsel in *In re: Brinker Data Incident Litigation*, United States District Court, Middle District of Florida, Case No. 3:18-cv-00686-TJC-MCR. This certified class action concerns claims against Brinker International for a data breach of consumer credit card information used at its nationwide Chili's restaurants. In its order granting class certification, that court acknowledged that "it may be the first to certify a Rule 23(b)(3) class involving individual consumers complaining of a data breach involving payment cards, but it is also one of the first to consider the issue as many individual data breach cases do not reach this point either due to settlement or other disposition." Brinker International appealed the district court's class certification ruling, and the matter is pending before the Eleventh Circuit.

10. Currently, I additionally am serving as Putative Class Counsel in the following matters that have yet to conclude:

- *Carrier v. Ravi Zacharias International Ministries, Inc.*, United States District Court for the Northern District of Georgia, Atlanta Division, Civil Action File No. 1:21-cv-03161-TWT. This putative nationwide class action brings claims on behalf of contributors whose donations were taken and used for purposes other than the ministry's stated mission;

- *Street v. Amazon.com Services, LLC*, United States District Court, Western District of Washington at Seattle, Case No. 2:21-cv-00912-BJR. This putative nationwide class action brings claims on behalf of an estimated millions of Amazon device consumers with Sidewalk services enabled and use of their private bandwidth without advance consent.

11. In January and September 2019, Dan O’Leary of the Law Office of Daniel M. O’Leary, contacted me to request that I assist his office and that of Mike McLachlan, of McLachlan Law APC in an appeal arising from the *Antelope Valley Groundwater Cases*, JCCP4408. The appeal concerned an attorney fee award in favor of a class referred to as The Wood Class or the Small Pumper Class.

12. Mr. McLachlan and Mr. O’Leary provided me with a first draft of the opening brief for the appeal and retained me to rework, edit, and rewrite that draft brief. As reflected in my invoice, attached as Exhibit 1, the majority of my work in the case involved rewriting and editing the opening brief on appeal, which also included close evaluation of the trial court’s order and legal research into the substantive legal issues. I spent 67.9 total hours working on this appeal.

13. My normal contingency rate is \$800 per hour. My firm, in only its first year, achieved various settlements on consumer and employee class actions. Although I did not appear as counsel in these matters, I assisted in briefing critical issues in them. Our firm disclosed my hours and contingency rate to the courts in attorney fee applications attendant to these settlements. No court managing these matters and approving attorney fees in these matters questioned or reduced my contingency rate. These settlements include the following:

- *Sanchez v. Galleher LLC*, Superior Court of the State of California, County of San Francisco, Case No. CGC-19-579749. This wage and hour class action resolved for \$1,912,750;
- *Williams v. Voxpro Group LLC*, Superior Court of the State of California, County of Sacramento, Case No. 34-2019-00270324-CU-OE-GDS. This wage and hour class action resolved for \$750,000;

- *Mitsuoka v. Haseko Homes, Inc.*, Circuit Court of the First Circuit, State of Hawaii, Civil Case No. 12-1-3020-11-JHA. This consumer class action for Hawaii homeowners resolved for \$20 million, and part of the settlement funded a structural repair program for 621 homes that is currently underway;
- *Britton v. Castle & Cooke Waikoloa, LLC* (“*Waikoloa-PEX*”), Circuit Court of the First Circuit, State of Hawaii, Civil Case No. 13-1-2276-08-JMT. This consumer class action for Hawaii homeowners resolved for \$1,118,610.77; and
- *Britton v. Castle & Cooke Waikoloa, LLC* (“*Waikoloa-Wind*”), Circuit Court of the First Circuit, State of Hawaii, Civil Case No. 13-1-2277-08-GWBC. This consumer class action for Hawaii homeowners resolved for \$319,678.09.

14. My contingency hourly rate may be higher than prevailing billable hourly rates because “[l]awyers operating in the marketplace can be expected to charge a higher hourly rate when their compensation is contingent on success than when they will be promptly paid, irrespective of whether they win or lose.” *Blum v. Stenson*, 465 U.S. 886, 903 (1984).

15. My firm has several additional class actions on which I am a key contributor that are currently moving toward settlement and that we anticipate will fully resolve by the end of 2022. We also are set for an April 2022 trial on a traumatic brain injury case for a minor injured when a polo ball struck her in the head while she played in a designated spectator area.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 7, 2022 in Los Angeles, California.

  
MARYBETH LIPPSMITH

**MARYBETH LIPPSMITH | LIPPSMITH LAW**

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LOS ANGELES, CA 90065  
323.612.6272  
MARYBETH@LIPPSMITHLAW.COM

INVOICE  
DECEMBER 3, 2019

---

*Antelope Valley Groundwater Cases (JCCP4408)*

<b>Date &amp; Work Completed</b>	<b>Hours</b>
01/25/2019 - Call with DO re: case background	.3
09/16/2019 - Emails re: background - Reviewed/skimmed Willis/Estrada opening brief - Reviewed/skimmed Phelan opening brief	1.1
09/18/2019 - Emails re: which version of documents to put in AA	.2
09/29/2019 - Reviewed emails from 9/27 and 9/28 re: introduction, tone of fact section	.4
10/08/2019 - Reviewed emails and attached document re: multiplier section	.3
10/10/2019 - Studied trial court fee order; legal research re: same - First read of draft brief - Edited headings, part of introduction, part of conclusion - Preliminary legal research re: lodestar and multipliers	5.9
10/11/2019 - Heavy editing of statement of the case (factual background) - Emails re: class definition, fact section - Call with DO and MM re: background	5.1



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DECEMBER 3, 2019

<b>10/14/2019</b> <ul style="list-style-type: none"><li>- Edited/rewrote introduction</li><li>- Edited/rewrote conclusion</li><li>- Began edits of statement of the case (relevant procedural history); reviewed AA re: same</li></ul>	<b>3.8</b>
<b>10/15/2019</b> <ul style="list-style-type: none"><li>- Continued Editing statement of the case (relevant procedural history); reviewed AA re: same</li><li>- Re-read/re-edited brief from top through procedural history for consistency, acronyms, heading uniformity, typos, style, and substance</li></ul>	<b>4.1</b>
<b>10/16/2019</b> <ul style="list-style-type: none"><li>- Edited brief re: appealability and standard of review; legal research re: same</li><li>- Emails re: qualifications of class counsel</li><li>- Edited brief re: parts of first argument section (applicable law, trial court abused its discretion by ignoring the uncontroverted record evidence of market rates in LA in setting lodestar); legal research re: same</li><li>- Began editing brief re: first argument (trial court abused its discretion by imposing unwarranted pro bono requirement); legal research re: same</li></ul>	<b>5.3</b>
<b>10/17/2019</b> <ul style="list-style-type: none"><li>- Heavy edits in section re: unwarranted pro bono requirement; legal research re: same</li><li>- Edits re: trial court abused its discretion by averaging class counsels' hourly rate over eight years</li></ul>	<b>4.7</b>
<b>10/21/2019</b> <ul style="list-style-type: none"><li>- Reviewed edits to date for uniformity, typos, tone, consistent narrative/substantive arguments, etc.</li></ul>	<b>4.5</b>

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INVOICE  
DECEMBER 3, 2019

<ul style="list-style-type: none"><li>- Edits re: trial court abused its discretion by reducing the lodestar based on counsel's purported inexperience with groundwater litigation; legal research re: same</li></ul>	
10/22/2019 <ul style="list-style-type: none"><li>- Rewrote introductory section to second argument (trial court abused its discretion in refusing to apply a fee multiplier); legal research re: same</li><li>- Edits re: trial court abused its discretion because substantial evidence does not support decision to deny a multiplier (novelty &amp; complexity of issues, counsel's skill in presenting issues); legal research re: same</li></ul>	6.7
10/23/2019 <ul style="list-style-type: none"><li>- Edits re: trial court abused its discretion because substantial evidence does not support decision to deny a multiplier (counsel's inability to take on other work, contingency nature of fees); legal research re: same</li><li>- Edits re: trial court abused its discretion in failing to consider relevant lodestar factors; legal research re: same</li><li>- Emails re: contingent nature of relationship with Wood</li></ul>	7.0
10/24/2019 <ul style="list-style-type: none"><li>- Combed through all emails and addressed concerns questions raised by MM and DO</li><li>- Extensive legal research on relevant lodestar factors</li><li>- Legal research specifically re: <i>Horsford</i> and rewrite of discussion as to that case</li><li>- Edited brief re: periodic payments</li><li>- Edited brief re: request for fees on appeal</li><li>- Reviewed conclusion and headings</li><li>- Revamped headings throughout brief to add more detail</li><li>- Broke larger sections into smaller subsections and added headings for ease of reading</li><li>- Revamped/beefed up introduction and conclusion to follow narrative thread all the way through brief</li></ul>	11.2

**MARYBETH LIPPSMITH | LIPPSMITH LAW**

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INVOICE  
DECEMBER 3, 2019

<ul style="list-style-type: none"><li>- Read brief from start to finish to improve flow, cut down repetition, add emphasis where appropriate</li></ul>	
10/25/2019 <ul style="list-style-type: none"><li>- Final edits for typos, style, consistency, word choice, tone</li><li>- Beefed up section re: substantial evidence supporting lodestar adjustment factors</li><li>- Legal research re: multiplier cases finding trial court abused discretion in fee award</li><li>- Legal research re: cases addressing incentivizing lawyers to work on fee award cases</li><li>- Added language and citations re: abuse of discretion standards to multiplier section</li><li>- Drafted email to DO and MM re: edited brief (notes, questions, etc.)</li></ul>	6.8
11/17/2019 <ul style="list-style-type: none"><li>- Emails re: word limit/oversized brief, nunc pro tunc section</li></ul>	.2
11/18/2019 <ul style="list-style-type: none"><li>- Reviewed proposed application to file oversized brief</li><li>- Various emails with CD re: filing logistics (service, etc.)</li></ul>	.3

Total Hours: 67.9

## **Exhibit Z**

1                                   **DECLARATION OF ROLANDO J. GUTIERREZ**

2 I, Rolando Gutierrez, declare:

3           1.       I make this declaration of my own personal knowledge, and if called  
4 to testify in Court on these matters, I could do so competently.

5           2.       I am duly licensed to practice law in California. I graduated from  
6 University of California State University, Fullerton, in 2005, and from  
7 Southwestern Law School in 2009.

8           3.       I have practiced complex civil litigation, including appellate work  
9 and substantial class action work, for over ten years. My professional experience  
10 is briefly summarized as follows:

11                   a. After obtaining my license to practice law, I worked as an  
12                   associate attorney for the law firm of ARIAS OZZELLO & GIGNAC,  
13                   LLP<sup>1</sup> (“AOG”), where I focused my practice in areas of wage and  
14                   hour and consumer class actions, MDL actions, and personal  
15                   injury matters involving catastrophic injuries until May of 2015.

16                   b. Since my disassociation from AOG in May of 2015, I have  
17                   continued litigating wage and hour cases, both individual and  
18                   class action matters, as well as personal injury matters, while as a  
19                   partner and shareholder of GUTIERREZ BLANCO & ARIAS, PLC and  
20                   then as sole shareholder of GUTIERREZ LAW GROUP, APLC. I have  
21                   since joined the law firm BROWN WHITE & OSBORN, LLP as of July  
22                   1, 2021, where I continue to litigate wage and hour class action  
23                   and personal injury matters.

24           4.       In 2020, while working at GUTIERREZ LAW GROUP, APLC, attorney  
25 Michael McLachlan asked me to assist with certain discrete components of  
26 Wood’s Respondent’s Brief. The time sheet attached as Exhibit 1 was maintained  
27  
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1 contemporaneously and accurately reflects the ten hours of work I performed on  
2 the Wood Class fee appeals.

3 I declare under penalty of perjury under the laws of the State of California  
4 that the foregoing is true and correct. Executed this 8<sup>th</sup> day of February 2022 at  
5 Los Angeles, California.

6  
7   
8 Rolando J. Gutierrez

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28 <sup>1</sup> ARIAS OZZELLO & GIGNAC, LLP has since formally become ARIAS  
SANGUINETTI WANG & TORRIJOS, LLP.

**Gutierrez Law Group, APLC**

2447 Pacific Coast Highway, Suite 100  
Hermosa Beach, CA 90254  
United States  
(424) 265-8974

Invoice Date: August 25, 2020

**To:**

**Mike McLachlan**

**McLachlan Law APC**

2447 Pacific Coast Highway, Suite 100  
Hermosa Beach, CA 90254

Date	EE	Activity	Description	Hours
07/14/2020	RG	Review	Review file/case briefs and case history (1.0)	1.0
07/14/2020	RG	Research/Investigation	Conduct legal research on section on 1021.5 (1.5)	1.5
07/14/2020	RG	Research/Investigation	Conduct research on exceptions to 1021.5 and Adoption of Joshua S. (1.5)	1.5
07/14/2020	RG	DocumentPreparation	Draft memo re section 1021.5 and Adoption of Joshua S. (1.5)	1.5
07/16/2020	RG	Review/revise	Review draft of Respondent's Brief re 1021.5 and application of Adoption of Joshua (0.8); make revisions to same (0.2)	1.0
07/18/2020	RG	Research/Investigation	Conduct additional legal research re application of equitable principles to section 1021.5 and Adoption of Joshua S. (2.5)	2.5
07/18/2020	RG	Review/revise	Review draft of Respondent's Brief re 1021.5 and application of Adoption of Joshua, make revisionsto same to include equitable analysis (1.0)	1.0

Total: 10.0

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On February 28, 2022, I caused the foregoing document(s) described as **APPENDIX RE: SMALL PUMPER CLASS' MOTIONS FOR ATTORNEYS' FEES [Vol. 4]** to be served on the parties in this action, as follows:

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