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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 (ret.))

Lead Case No. BC 325201

Case No.: BC 391869

**NOTICE OF MOTION AND
MOTION FOR ORDER
TERMINATING SMALL PUMPER
CLASS COUNSEL'S
APPOINTMENT AS CLASS
COUNSEL**

Date: August 24, 2023
Time: 2:00 p.m.
Place: Telephone Via Courtcall
Judge: Hon. Jack Komar

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on August 24, 2023, at 2:00 p.m., or as
3 soon as the matter may be heard, before the Honorable Judge Komar, Superior
4 Court of California, by telephone via Courtcall, the undersigned law firm, Class
5 Counsel for the Small Pumper Class, will and hereby does move for an Order
6 Terminating Small Pumper Class Counsel's Appointment as Class Counsel. The
7 hearing shall not be held in person but rather by telephonic appearance via
8 Courtcall. This Motion is based on this Notice, the attached Memorandum of
9 Points and Authorities with exhibits, the Declaration of Michael D. McLachlan,
10 and such other and further evidence as may be presented at the hearing.

11
12 DATED: July 31, 2023

McLACHLAN LAW, APC
LAW OFFICE OF DANIEL M. O'LEARY

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15 By: /s/ Michael D. McLachlan
MICHAEL D. MCLACHLAN
16 Attorneys for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In 2008, Michael McLachlan of McLachlan Law, APC and Daniel O’Leary
4 of Law Office of Daniel M. O’Leary were appointed class counsel for the Small
5 Pumper Class. Mr. Michael McLachlan and Mr. Daniel O’Leary actively pursued
6 the class claims on behalf of the Class throughout the adjudication. In 2015, this
7 Court entered a Judgment adopting a Physical Solution for the management of
8 the Antelope Valley basin. Now that the Judgment has become final after appeal,
9 and all post-appeal trial court proceedings regarding attorneys’ fees and costs
10 have been fully resolved, Class Counsel seek an order terminating their
11 appointment as Class Counsel.

12 **II. FACTUAL BACKGROUND**

13 On September 2, 2008, the Court issued an order certifying the Small
14 Pumper Class, defined as follows:

15 “All private (i.e., non-governmental) persons and entities that own
16 real property within the Basin, as adjudicated, and that have been
17 pumping less than 25 acre-feet per year on their property during any
18 year since 1946 to the present. The Class excludes the defendants
19 herein, any person, firm, trust corporation, or other entity in which
20 any defendant has a controlling interest or which is related to or
21 affiliated with any of the defendants, and the representatives, heirs,
22 affiliates, successors-in-interest or assigns of any such excluded
23 party. The Class also excludes all persons and entities that are
24 shareholders in a mutual water company.

25 (Doc. No. 841).

26 The same order appointed the law firm of McLachlan Law, APC (formerly
27 named Law Offices of Michael D. McLachlan APC) and Law Office of Daniel M.
28 O’Leary as class counsel. (*Id.*) After phase six of the coordinated proceedings, on
December 28, 2015, the Court entered a Judgment which adopted a Physical
Solution for the management of the Antelope Valley Basin (“2015 Judgment”).

(Doc. No. 11020). In 2016, various parties filed appeals, including the Small Pumper Class filed a Notice of Appeal of the trial court’s 2015 Judgment (“Merits Appeal”). (Doc. No. 11207).

On March 16, 2021, the Court of Appeal affirmed the trial court's 2015 Judgment. (*Willis v. LA District 40 etc. et, al.*, (2021) 62 Cal.App.5th 992). On August 24, 2021, the Court of Appeal issued its Opinion reversing this Court’s rulings on the Small Pumper Class fees motions, and certain collateral rulings directly related to these fee orders. Because all defendants except Los Angeles County Waterworks District No. 40 (“District 40”) had previously settled either at the trial or during the appeals, the remanded issues only pertained to District 40. (McLachlan Decl. ¶ 3.)

After remittitur, on February 24, 2022 and pursuant to Rule of Court 3.542, the Court reassigned the *Wood* case for hearing on all matters relating to the remanded attorneys’ fees and costs matters. (Doc. No. 12236.) These matters were assigned to Judge Cunningham, who ruled on all remanded fees and costs issue in two orders each dated September 29, 2022 (*See* Doc. No. 12402 (Exhibit 1).) On November 23, 2022, District 40 appealed Judge Cunningham’s fee orders. (*Ibid.*)

On June 6, 2023, Class Counsel executed a release agreement in favor of District 40 in exchange for payment in full of Judge Cunningham’s fee orders. (McLachlan Decl. ¶ 4.) Thereafter, District 40 requested dismissal of its most recent appeal. The dismissal and remittitur were both issued on June 23, 2023. (McLachlan Decl. Exs. 1 & 2.) Hence, all matters relating to *Wood* fee and costs claims are fully resolved.

III. ARGUMENT

Despite the finality of the underlying Judgment as to the Small Pumper Class, the administration of the 2015 Judgment by the Watermaster and this Court will continue in perpetuity and proceedings unrelated to the merits action

1 and/or fee petition of the Small Pumper Class will continue without the
2 participation of the Small Pumper Class. For example, the docket reflects filing
3 by the Watermaster of changes to the Watermaster rules and regulations, status
4 conference set by the trial court, and the filing by various parties of motions to
5 intervene. With respect to the Small Pumper Class members, the Physical
6 Solution adopted by the trial court in the 2015 Judgment sets forth provisions
7 for the continued and future management of the Antelope Valley Basin,
8 including an application procedure under which individual Small Pumper Class
9 landowners may apply to pump groundwater. The Physical Solution also
10 provides individual Class members the ability to seek Court review in an
11 individual capacity of the Watermaster's decisions. Those issues are limited to
12 the individual's interests and are not applicable class wide.

13 Class counsel "owe absent class members a fiduciary duty to protect
14 the absentees' interests throughout the litigation." (*Barboza v. West Coast*
15 *Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546). That duty has been
16 fulfilled in this litigation. There must be a clearly defined terminus to the
17 continued representation of the Small Pumper Class by Class Counsel.
18 Accordingly, Class Counsel believe they should now be relieved of any
19 potential or actual duties to represent the interest of the Class or any of the
20 individual class members.

21 For clarity and to ensure that Mr. McLachlan or Mr. O'Leary do not
22 have a continued obligation to represent the Small Pumper Class, an order
23 terminating counsel's future participation is necessary. The 2015
24 Judgment contains notice provisions relating to the Court's ongoing
25 jurisdiction over the small pumpers.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Class Counsel respectfully request this
3 Court enter an order terminating the role of Class Counsel of the Small
4 Pumper Class. The Court should also re-assert full jurisdiction over the
5 former members of the Small Pumper class because the scope of the re-
6 assignment order had been fully satisfied.

7
8 DATED: July 31, 2023

McLACHLAN LAW, APC
LAW OFFICE OF DANIEL M. O'LEARY

9
10 By: /s/ Michael D. McLachlan
11 MICHAEL D. MCLACHLAN
12 Attorneys for Plaintiff and the Class
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On July 31, 2023, I caused service in the manner indicated below of the foregoing document(s) described as **NOTICE OF MOTION AND MOTION FOR ORDER TERMINATING SMALL PUMPER CLASS COUNSEL'S APPOINTMENT AS CLASS COUNSEL** to be served on the parties in this matter as follows:

- /s/ Katelyn Furman
Katelyn Furman