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15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SAN FRANCISCO

18
19 SAN DIEGO COUNTY WATER AUTHORITY,

No. CPF-10-510830

20 Petitioner and Plaintiff,

21 v.

22 METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; ALL PERSONS
INTERESTED IN THE VALIDITY OF THE
23 RATES ADOPTED BY THE METROPOLITAN
WATER DISTRICT OF SOUTHERN
24 CALIFORNIA ON APRIL 13, 2010 TO BE
EFFECTIVE JANUARY 2011; and DOES 1-10,

**NOTICE OF DEMURRERS AND
DEMURRERS TO, AND NOTICE OF
MOTIONS AND MOTIONS TO
STRIKE PORTIONS OF, SDCWA'S
FIRST AMENDED PETITION FOR
WRIT OF MANDATE AND
COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF BY
METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA**

25 Respondents and Defendants.

26 Date: January 4, 2012
27 Time: 1:30 p.m.
28 Dept.: 304
Judge: Hon. Richard A. Kramer

1 **NOTICE OF DEMURRERS AND MOTIONS TO STRIKE**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on January 4, 2012 at 1:30 p.m. or as soon thereafter as
4 the matter may be heard in Department 304 of the Superior Court of California, County of San
5 Francisco, located at 400 McAllister Street, San Francisco, CA 94102, Respondent and
6 Defendant Metropolitan Water District of Southern California (“MWD”) will and hereby does
7 demur to, and will and hereby does move to strike portions of, the San Diego County Water
8 Authority’s (“SDCWA’s”) First Amended Petition for Writ of Mandate and Complaint for
9 Damages and Declaratory Relief (“FAC”) pursuant to California Code of Civil Procedure §§
10 425.16, 430.10(e), 435, and 436. The hearing on the demurrers and motions to strike will be
11 held on January 4, 2012 in accordance with this Court’s October 27, 2011 Order. *See* October
12 27, 2011 Tr. at p. 13:5-17, 15:19-21.

13 The demurrers are made on the grounds that the fourth, fifth, sixth, and eighth causes of
14 action in the FAC fail to state facts sufficient to constitute causes of action for breach of contract,
15 breach of the covenant of good faith and fair dealing, breach of fiduciary duty, or declaratory
16 relief regarding the preferential rights calculation as a matter of law.

17 A motion to strike is made on the grounds that, as a matter of law, portions of the FAC
18 contained in the fifth cause of action are not drawn or filed in conformity with the laws of this
19 state, and therefore should be stricken pursuant to California Code of Civil Procedure §§ 435 and
20 436.

21 A special motion to strike is made on the grounds that portions of the FAC – the sixth
22 cause of action in its entirety and the related prayer – constitute a Strategic Lawsuit Against
23 Public Participation (“SLAPP”) pursuant to California Code of Civil Procedure § 425.16, and are
24 therefore subject to a special motion to strike. It is further based on the grounds that SDCWA
25 cannot establish a reasonable probability of prevailing on the merits of the sixth cause of action.

26 These demurrers and motions to strike will be and hereby are based on this Notice, the
27 attached Demurrers and Motions to Strike, the Memorandum of Points and Authorities in support
28 thereof filed concurrently herewith, the Request for Judicial Notice filed concurrently herewith,

1 the Appendix of Non-California Authorities filed concurrently herewith, all pleadings and papers
2 on file in this action, and such argument as may be presented at the hearing.

3
4 DATED: December 2, 2011

BINGHAM MCCUTCHEN LLP

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6 By: James J. Dragna *TSR*
7 James J. Dragna
8 Attorneys for Respondent and Defendant
9 Metropolitan Water District of Southern California
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1 **DEMURRERS AND MOTIONS TO STRIKE**

2 MWD hereby demurs to, and moves to strike portions of, SDCWA’s FAC on each of the
3 following grounds:

4 **Demurrer By MWD To Fourth Cause Of Action**

5 **Breach Of Contract**

6 1. The fourth cause of action in the FAC (asserting breach of the Exchange
7 Agreement between SDCWA and MWD) fails to state facts sufficient to constitute a cause of
8 action. Cal. Code Civ. Proc. § 430.10(e). The cause of action is barred based on SDCWA’s
9 failure to comply with the Government Claims Act, set forth in California Government Code §§
10 945.4 and 935(a)-(b). The cause of action is also barred by the applicable one year statute of
11 limitations set forth in California Government Code § 911.2 and MWD Administrative Code §
12 9306(a).

13 **Demurrer By MWD To Fifth Cause Of Action**

14 **Breach Of The Covenant Of Good Faith And Fair Dealing**

15 2. The fifth cause of action in the FAC (asserting breach of the covenant of good
16 faith and fair dealing) fails to state facts sufficient to constitute a cause of action. Cal. Code Civ.
17 Proc. § 430.10(e). The cause of action is barred based on SDCWA’s failure to comply with the
18 Government Claims Act, set forth in California Government Code §§ 945.4 and 935(a)-(b).

19 **Demurrer By MWD To Sixth Cause Of Action**

20 **Breach Of Fiduciary Duty**

21 3. The sixth cause of action in the FAC (asserting breach of an alleged fiduciary
22 duty) fails to state facts sufficient to constitute a cause of action. Cal. Code Civ. Proc.
23 § 430.10(e). The cause of action is barred by the Government Claims Act, set forth in California
24 Government Code § 815.

25 **Demurrer By MWD To Eighth Cause Of Action**

26 **Declaratory Relief Re: Preferential Rights Calculation**

27 4. The eighth cause of action in the FAC (asserting declaratory relief re: preferential
28 rights calculation) fails to state facts sufficient to constitute a cause of action. Cal. Code Civ.

1 Proc. § 430.10(e).

2 **Motion To Strike Portions Of Fifth Cause Of Action**

3 5. MWD moves to strike SDCWA's allegations contained in paragraph 93, page 27,
4 lines 9-12 of the FAC's fifth cause of action, the words beginning "By passing the resolution"
5 and ending "unlawful rate setting, and" pursuant to California Code of Civil Procedure §§ 435
6 and 436. These allegations are not drawn or filed in conformity with the laws of this state
7 because they are time-barred by the applicable one year statute of limitations, set forth in
8 California Government Code § 911.2 and MWD Administrative Code § 9306(a).

9 **Special Motion To Strike Sixth Cause Of Action And Related Prayer**


10 6. The sixth cause of action in the FAC (asserting breach of an alleged fiduciary
11 duty) contained in paragraphs 94-107, page 27, line 22-page 33, line 22 should be stricken in its
12 entirety, and the related prayer contained in paragraph 5 of the FAC's Prayer for Relief, page 38,
13 line 10-page 39, line 11 should be stricken, under California Code of Civil Procedure § 425.16.
14 These portions of the FAC should be stricken because the sixth cause of action arises from an act
15 of a person or government entity in furtherance of the person's or government entity's rights of
16 petition and free speech, specifically: "any written or oral statement or writing made in
17 connection with an issue under consideration or review by a legislative, executive, or judicial
18 body, or any other official proceeding authorized by law" and "any other conduct in furtherance
19 of the exercise of the constitutional right of petition or the constitutional right of free speech in
20 connection with a public issue or issue of public interest." Further, SDCWA cannot establish a
21 reasonable probability of prevailing on the merits of the sixth cause of action.

22 MWD respectfully requests that the Court issue an order sustaining its demurrers and
23 granting its motions to strike without leave to amend.

24 DATED: December 2, 2011

BINGHAM MCCUTCHEN LLP

25
26 By: _____


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**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA'S
DEMURRERS TO, AND MOTIONS TO
STRIKE PORTIONS OF, SDCWA'S
FIRST AMENDED PETITION FOR
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27 Date: January 4, 2012
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