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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

SAN DIEGO COUNTY WATER AUTHORITY,

Petitioner and Plaintiff,

v.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA; et al.,

Respondents and Defendants.

Case No. CPF-10-510830
Case No. CPF-12-512466

SAN DIEGO COUNTY WATER AUTHORITY'S REPLY BRIEF ON SECTION 12.4(c) OF THE EXCHANGE AGREEMENT

Date: November 3, 2014
Time: 2:00 p.m.
Dept.: 304
Judge: Hon. Curtis E.A. Karnow

Actions Filed: June 11, 2010; June 8, 2012

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I. INTRODUCTION

Met's opening brief on § 12.4(c) of the Exchange Agreement mostly rehashes arguments that San Diego already refuted in its own opening brief. Nothing in Met's brief supports its attempt to evade its promise to "***forthwith*** pay the ***disputed amount***," or its misinterpretation of that provision to mean, in effect, "***later*** pay some ***other amount*** (or nothing at all)." On the contrary, Met's arguments are completely undermined by its own cases. As shown below and in San Diego's opening brief, this Court should enforce § 12.4(c) as the measure of damages.

II. ARGUMENT

A. Section 12.4(c) is enforceable as a liquidated damages provision.

Met must "forthwith pay the disputed amount" if that promise is enforceable on any basis, including—but, as demonstrated below, certainly not limited to—Civil Code § 1671, which governs liquidated damages provisions. Yet Met makes no effort to carry its burden under § 1671 to prove that § 12.4(c) "was unreasonable under the circumstances existing at the time the contract was made." Civ. Code § 1671(b). Instead, Met tries to avoid that burden entirely by arguing that the "disputed amount" is unliquidated. But § 1671 and the cases Met itself cites confirm that § 12.4(c) is a valid liquidated damages provision; Met's argument to the contrary has no support. As discussed in San Diego's opening brief, Met completely misstates the holding of *ABI v. LA*, 153 Cal. App. 3d 669 (1984), which was simply that a fee cannot constitute liquidated damages if it does not require breach. *Id.* at 685. And *Chodos v. West Publishing Co.*, 292 F.3d 992 (9th Cir. 2002), held that damages are unliquidated where, unlike here, "the amount of the debt 'depends upon a judicial determination based upon conflicting evidence.'" *Id.* at 1003 n.11.

Here, the "disputed amount" is a specific amount that Met has set aside and that, as Met has warned its bondholders, is "transferable to SDCWA if it prevails in the litigation," which San Diego now has. Ex. C at A-48-49.[1] Met concedes that the "disputed amount" does not require judicial determination, but argues that this amount was not certain when the Exchange Agreement was executed. *See* Met's Br. at 10-11, 13-14. Met is confusing its own burden of proving that the

[1] Exhibit references generally refer to the Jackson Declaration filed with San Diego's opening brief. One additional exhibit is attached to the Jackson Declaration ISO Reply ("Reply Decl.").

"***provision*** was unreasonable under the circumstances existing at the time the contract was made," Civ. Code § 1671(b) (emphasis added), with a non-existent and self-contradictory requirement that the stipulated ***damages*** must have been certain at that time. The law imposes no such requirement. *See id.*; *Lowe v. Mass. Mut. Life Ins. Co.*, 54 Cal. App. 3d 718, 736-38 (1976); *Dyer Bros. v. Central Iron Works*, 182 Cal. 588, 592 (1920); *Chodos*, 292 F.3d at 1003 n.11.

Met's argument that § 12.4(c) is not a liquidated damages clause because it does not recite supposedly "core" liquidated-damages language is also wrong as a matter of law. As the court held in *Purcell v. Schweitzer*, 224 Cal. App. 4th 969 (2014), the "applicability of Civil Code section 1671 depends upon the actual facts ***not the words which may have been used in the contract***." *Id.* at 975 (emphasis in original) (quotation marks omitted). Moreover, the "core terms" that Met contends the parties should have recited are from an inapposite consumer case, and a case decided before Civil Code § 1671 was amended in 1978 to make it unnecessary to prove, let alone recite, "that actual damages are difficult to ascertain." Met's Br. at 11-12 (citing *UCAN v. AT&T*, 135 Cal. App. 4th 1023 (2006); and *Better Food Mkts. v. Am. Dist. Tel. Co.*, 40 Cal. 2d 179 (1953)). Met's suggestion that the parties should have recited such boilerplate in the Exchange Agreement is particularly absurd because ***everyone agrees*** that damages were difficult to ascertain when the Exchange Agreement was executed. *See, e.g.*, Met's July 30, 2014 Br. at 9.

Met also argues that § 12.4(c) is unenforceable as a liquidated damages clause because San Diego "***unilaterally*** chooses any amount it desires when a dispute arises. There are no limits on its discretion." Met's Br. at 11 (Met's emphasis). But that argument is refuted by one of Met's own cases, which held that a contract giving one party the discretion to set or change the price is fully enforceable because that discretion is limited by the covenant of good faith and fair dealing. *Perdue v. Crocker Nat'l Bank*, 38 Cal. 3d 913, 923 (1985). "Likewise, a contracting party's discretionary power to vary the price or other performance does not render the agreement illusory if the party's ***actual*** exercise of that power is reasonable." *Id.* (emphasis in original) (quotation marks omitted). Thus, Met's bare and unfounded assertion that San Diego might "inflate its claim," Met's Br. at 15, cannot satisfy Met's burden to prove that § 12.4(c) was unreasonable when the parties agreed to it. *See* Civ. Code § 1671(b). Met does not and cannot

contend that San Diego acted in bad faith in its "***actual*** exercise" of its rights under § 12.4(c). *Perdue*, 38 Cal. 3d at 923 (emphasis in original).[2] Nor can Met prove that it was unreasonable for the parties to agree, as they did, that Met would have the power to set the Price, but if Met's Price is found to be unlawful, San Diego's Price will be used to determine the "disputed amount" that Met must refund to San Diego. *See* § 12.4(c). This provision is at least as reasonable as the provisions the Court approved in *Perdue*, which were truly unilateral. *See* 38 Cal. 3d at 923-24.

Because Met expressly promised to pay the "disputed amount," there is no merit to its argument that enforcing that promise would somehow violate Civil Code § 3358, which allows a contract plaintiff to recover everything it could have gained by full performance. *See* Met's Br. at 2, 14-15. Furthermore, "[t]he rule of Civil Code section 3358 cannot be invoked" by Met because it has made "no showing as to what the performance on both sides would have been." *Benard v. Walkup*, 272 Cal. App. 2d 595, 605 (1969). In *Benard*, the defendant—like Met—argued that damages should have been reduced by the amount he would have received if he had performed. But that amount was uncertain, and there was "no way of knowing precisely what amount of damages plaintiff might have gained by full performance." *Id.* "Under the circumstances, therefore, the applicable rule is that which states that one whose wrongful conduct has rendered difficult the ascertainment of damages cannot complain because the court must make an estimate of damages rather than an actual computation." *Id.* at 606. Similarly, the court in *Depalma v. Westland Software House*, 225 Cal. App. 3d 1534 (1990), rejected an attempt to offset damages through speculation about what a government agency ***might*** have done. *See id.* at 1544-46.

Thus, this Court should enforce § 12.4(c) as a liquidated damages provision. Met has not carried its burden of proving that § 12.4(c) was unreasonable when the parties agreed to it. Indeed, the reasonableness of § 12.4(c) is underscored by the general rule that, even in the absence of a contractual payout provision, an agency that imposes unlawful rates cannot avoid paying a full refund by arguing for a partial refund based on material not included in its administrative record. *See Cresta Bella, LP v. Poway Unified Sch. Dist.*, 218 Cal. App. 4th 438,

[2] The "disputed amount" is based on Met's misallocation of State Water Project costs and the Water Stewardship Rate—the same issues on which San Diego has now prevailed. *See* Ex. D.

453 (2013); *Warmington Old Town Assocs., L.P. v. Tustin Unified Sch. Dist.*, 101 Cal. App. 4th 840, 867 (2002). What is unreasonable here is Met's refusal to honor its promise to "forthwith pay the disputed amount," and its attempt, instead, to speculate beyond its own administrative record, and embroil this Court in hypothetical ratemaking that Met will try to overturn on appeal.

B. Met's own cases defeat its argument that § 12.4(c) is not compensatory.

Met also argues that if § 12.4(c) is not enforceable as a liquidated damages clause, then it is not enforceable at all because the "disputed amount" is supposedly not "compensatory." Met's Br. at 1-3. That argument fails because, as shown above and in San Diego's opening brief, § 12.4(c) ***is*** enforceable as a liquidated damages clause. Met's argument also fails because its own cases contradict its ipse dixit that the "disputed amount" is not compensatory. As the California Supreme Court held in *Lewis Jorge Const. Mgmt., Inc. v. Pomona Unified Sch. Dist.*, 34 Cal. 4th 960 (2004), because "the plaintiff is entitled to damages that are equivalent to the benefit of the plaintiff's contractual bargain," the "first question is: What performance did the parties bargain for?" *Id.* at 968, 971. Met cites *Lewis* yet ignores its "threshold inquiry." *Id.* at 971. Likewise, Met cites *Brandon & Tibbs v. George Kevorkian Accountancy Corp.*, 226 Cal. App. 3d 442 (1990), but contravenes its guiding principle that "[t]he rules of law governing the recovery of damages for breach of contract are very flexible." *Id.* at 455 (quotation marks omitted). That flexibility, and freedom of contract more generally, dictate that damages "expressly stipulated for in the contract … are part and parcel of it," and are thus ***compensatory by definition***, unless proven to be an unlawful penalty. *Id.* at 456-57 (quotation marks omitted); *accord Lewis*, 34 Cal. 4th at 971; *see also* Civ. Code §§ 1671, 3300, 3302, 3358; *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1112 (2007) (liquidated damages are compensatory).

Here, the performance the parties bargained for was that if San Diego prevails in a dispute over the rates that constitute the Price for Exchange Water, as it now has, Met "shall forthwith pay the disputed amount." § 12.4(c). This bargain is enforceable independently of § 1671, as, again, Met's own cases show. For example, the court in *Los Angeles City School District v. Landier Investment Co.*, 177 Cal. App. 2d 744 (1960), enforced the parties' agreement that, in the event of breach, "the court could, on application of the respondents, enter judgment in the

stipulated amount"—not as liquidated damages under § 1671, but on the principle that "[o]ne who agrees to waive or forego a right is precluded from afterwards asserting that right." *Id.* at 752. And in *Blank v. Borden*, 11 Cal. 3d 963 (1974), the Court held that a payout provision was not a penalty, based on its "conviction that in these circumstances the contract of the parties, entered into in a context of negotiation and at arm's length, should govern their rights and duties," and because requiring further proof of damages "would clearly degenerate into an examination of fictional probabilities." *Id.* at 973. This is precisely what Met has told the Court it wants to do—drag this case through a hypothetical ratemaking exercise, in total disregard of the plain meaning of § 12.4(c), which the parties agreed to after arm's-length negotiations.

Contrary to Met's liquidated-damages-or-nothing argument, several of Met's cases recognize that "a provision in a contract that appears at first glance to be either a liquidated damages clause or an unenforceable penalty provision may instead merely be a provision that permissibly calls for alternative performance by the obligor." *McGuire v. More-Gas Invs., LLC*, 220 Cal. App. 4th 512, 522 (2013). The *McGuire* contract required the defendant either to secure a valid amendment to covenants relating to the property the plaintiffs bought, or else refund part of the purchase price. The court held that this could be interpreted as an enforceable provision for alternative performances—*i.e.*, the defendant could perform either by obtaining the amendment or by paying the refund. *Id.* at 527. The court rejected the defendant's argument that the refund was an unenforceable penalty because—like Met—the defendant failed to prove that the alternative performances did not provide "a realistic and rational choice when viewed from the time of making the contract." *Id.* at 528. Similarly, in *Morris v. Redwood Empire Bancorp*, 128 Cal. App. 4th 1305 (2005), the court held that a termination fee was "an alternative to performance, and not a penalty." *Id.* at 1314. And in *Lowe*, the court held that the forfeiture of a deposit was enforceable, whether construed as an option or as liquidated damages. *See* 54 Cal. App. 3d at 723-38. These cases illustrate the sensible, bedrock California rule that a court must interpret a contract to "make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." Civ. Code § 1643; *Poseidon Dev., Inc. v. Woodland Lane Estates, LLC*, 152 Cal. App. 4th 1106, 1115-16 (2007).

Thus, Met's cases show that even if § 12.4(c) is not interpreted as a damages provision (which it should be), that does ***not*** mean, as Met contends, that Met can evade its promise to "forthwith pay the disputed amount." That promise must be given effect. *See id.* If, as Met argues, § 12.4(c) is not a damages provision per se, then it provides for alternative performances—Met must either set valid rates or refund the disputed amount. Met has not even attempted to prove that these were not rational alternatives when the parties executed the Exchange Agreement. *See McGuire*, 220 Cal. App. 4th at 528; *Lowe*, 54 Cal. App. 3d at 723-38.

In any event, while there is an analytical distinction between a damages provision and one for alternative performances, the end result in this case is exactly the same. Interpreting § 12.4(c) as a damages clause reaches that result directly—Met "shall forthwith pay the disputed amount" as damages, having breached the Exchange Agreement by charging an unlawful Price. § 12.4(c). The alternative-performance interpretation is just a slightly more circuitous path to precisely the same destination. Having failed to set valid rates, Met's alternative performance is to refund the disputed amount. *See id.* Its refusal to do so is "the breach of an obligation to pay money only," damages for which are defined by law as "***the amount due by the terms of the obligation***"—*i.e.*, the "***disputed amount***"—"with interest thereon." *Id.*; Civ. Code § 3302 (emphases added). Under this alternative-performance interpretation, Met must pay the disputed amount forthwith unless it proves that § 12.4(c) did not represent "a realistic and rational choice when viewed from the time of making the contract." *McGuire*, 220 Cal. App. 4th at 528. This is essentially equivalent to Met's burden, under § 1671(b), of proving that § 12.4(c) "was unreasonable under the circumstances existing at the time the contract was made"—which, as discussed above, Met does not attempt to carry. Thus, under any analysis, Met must pay the disputed amount forthwith.

C. San Diego never "conceded" that § 12.4(c) is not the measure of damages.

Met's argument that San Diego "conceded" that § 12.4(c) is not an enforceable damages provision completely misstates the facts and the law. *See* Met's Br. at 3-7. San Diego has always sought the disputed amount as damages, as Met knows. When, in discovery, Met asked San Diego to describe its damages, San Diego responded by quoting § 12.4(c). Reply Decl. Ex. A, No. 68. "At bare minimum, this is the amount by which SDCWA has been damaged by MWD's

breaches of the Exchange Agreement, and MWD will be obligated to pay the disputed amount forthwith if MWD is found to have breached the Exchange Agreement." *Id.*

As a matter of law, Met is wrong to assert that San Diego is required to "'plead and prove'" the enforceability of § 12.4(c) as a liquidated damages clause. Met's Br. at 4:10. Section 1671, as amended, puts the burden of proof on Met, not San Diego. *See* Civ. Code § 1671(b); *Weber, Lipshie & Co. v. Christian*, 52 Cal. App. 4th 645, 654 (1997); Cal. Law Revision Com. cmt.[3] Met is also wrong in contending that San Diego's prayer for compensatory damages is the "***opposite***" of its demand for the "disputed amount." Met's Br. at 4:13 (Met's emphasis). As explained above, because Met expressly promised to pay the "disputed amount," that amount is compensatory by definition: it defines the benefit of the bargain San Diego negotiated. *See, e.g.*, Civ. Code § 3302; *Lewis*, 34 Cal. 4th at 968-71; *Murphy*, 40 Cal. 4th at 1112.

Furthermore, it makes no difference that San Diego referred to "proof" of damages in its prayer for relief and during discovery. *See* Met's Br. at 3-5. In *Children's Hospital & Medical Center v. Bonta*, 97 Cal. App. 4th 740 (2002), the court rejected the argument that damages were unliquidated because the plaintiffs prayed for damages "according to proof" and presented different damages theories. *Id.* at 772. "Although the complaint did pray for damages of '$20 million or according to proof,' respondents made it clear long before trial, at the time they sought summary judgment, that they sought a specific amount of damages and that it was the product of applying a specific government-approved formula." *Id.* at 773. Likewise, Met has long known San Diego seeks the specific "disputed amount" under § 12.4(c). *See, e.g.*, Reply Decl. Ex. A.

Met's assertion that San Diego's Dan Denham testified that § 12.4(c) "is ***not*** a measure of damages," Met's Br. at 5:17-18, is simply false. In fact, Mr. Denham testified that the "disputed amount" under § 12.4(c) ***is*** the measure of contract damages. *See* Borden Decl. Ex. L at 88:13-

[3] The cases Met cites to the contrary could not overturn the plain language of § 1671, but in any event they offer no support to Met. In *Ruwe v. Cellco Partnership*, 613 F. Supp. 2d 1191 (N.D. Cal. 2009), the party who (like Met) argued that a contract provision was an "illegal penalty" had the burden of pleading and proof. *Id.* at 1196. And in *Purcell*, the court merely copied the now-inapplicable "'plead and prove'" language from a pre-amendment case as inadvertent dictum. 224 Cal. App. 4th at 975 (quoting *Cook v. King Manor*, 40 Cal. App. 3d 782, 792 (1974)). As discussed above, *Purcell*'s actual holding contradicts Met's formalistic argument that § 12.4(c) is not a liquidated damages clause because it does not use that specific legalese term. *See id.*

93:3. And, far from "acknowledg[ing] that lowering the price of conveyance charges would increase the price of 'full service' water that SDCWA purchased," Met's Br. at 5:19-20, Mr. Denham testified: "It's not certain because you don't know what Metropolitan will do with its transfer of revenue requirements from transportation to supply or perhaps some other area." Borden Decl. Ex. L at 89:8-9. For example, Met might decide to "collect those [revenue requirements] as part of property tax." *Id.* at 92:9-16. This uncertainty about how Met might have set valid rates, and what else might have happened if it had—not to mention Met's own arguments against judicially-supervised hypothetical ratemaking—made it eminently reasonable for Met to promise, as it did, to simply and immediately pay the disputed amount. *See, e.g.*, *Lowe*, 54 Cal. App. 3d at 737-38; *Depalma*, 225 Cal. App. 3d at 1544-46.

D. Met's argument that § 12.4(c) is merely a security deposit fails as a matter of law, fact, and the English language.

Met also argues that the "disputed amount" is merely a security deposit, and that actual damages must be determined after further litigation. But Met never even attempts to reconcile that interpretation with the plain language of § 12.4(c), which Met relegates to a footnote. *See* Met's Br. at 1 n.1. The meaning of "Metropolitan shall forthwith pay the disputed amount" is clear: Met must pay that amount immediately. *See* § 12.4(c).

The only cases Met cites for its contention that the "disputed amount" is merely a security deposit long precede the 1978 amendment of § 1671. In *Knight v. Marks*, 66 Cal. App. 593, 598-99 (1924), the court relied on the now-reversed presumption against liquidated damages; and in *Hanna Nielsen S.S. Co. v. Hammond S.S. Co.*, 32 F.2d 31, 34 (9th Cir. 1929), the plaintiff conceded that, under the old law, it could not claim a deposit as liquidated damages. These defunct cases do not help Met. Met's only other purported authority is the Law Revision Commission's commentary on the amendment of § 1671, but that supports San Diego's argument, not Met's. The Law Revision Commission made clear that a deposit is ***also*** liquidated damages where—as here—the parties agreed that it shall be paid to the non-breaching party, in which case "the question whether the deposit may be retained in case of a breach is determined in accordance with" § 1671(b). Cal. Law Revision Com. cmt. Thus, even if the "disputed amount"

serves as a deposit (notwithstanding Met's prior claims to the contrary, *see* Ex. I) it is ***also*** enforceable as liquidated damages because Met promised to "forthwith pay the disputed amount," and Met has not proven that its promise "was unreasonable under the circumstances existing at the time the contract was made." Civ. Code § 1671(b); Cal. Law Revision Com. cmt.

Although Met quotes page after page of deposition testimony and other extrinsic evidence, Met admits that, under the parol evidence rule, "extrinsic evidence may not be admitted to vary, alter or add to the terms of a fully integrated contract." Met's Br. at 12 n.6; *see also* Ex. A § 13.6 (Exchange Agreement is fully integrated). Met argues that "in the event of an ambiguity," extrinsic evidence may be introduced to explain a meaning to which the contract language is "reasonably susceptible." Met's Br. at 12 n.6. But the language at issue here, like the language the court recently considered in *Jade Fashion & Co. v. Harkham Indus., Inc.*, 177 Cal. Rptr. 3d 184, 2014 Cal. App. LEXIS 807 (Aug. 18, 2014), is ***unambiguous***. Like the contract in *Jade*, § 12.4(c) clearly provides that the disputed amount "shall be immediately due and payable." *Id.* at 199; *see* § 12.4(c). "On its face, this provision in the Agreement is unambiguous." *Jade*, 177 Cal. Rptr. 3d at 199. Like Met, the defendant in *Jade* offered extrinsic evidence supposedly showing that it was not required to pay the full amount, but "the language of the Agreement is clear, and its plain terms control." *Id.* (quotation marks omitted). No amount of extrinsic evidence can make "Metropolitan shall ***forthwith*** pay ***the disputed amount***" reasonably susceptible to Met's interpretation of that phrase to mean that it "shall ***after further litigation*** pay ***less than the disputed amount (if anything)***." *See* § 12.4(c) (emphases added).

Moreover, to the extent the extrinsic evidence is relevant at all, it does not support Met's position. Met asserts that San Diego's Scott Slater "confirmed" that § 12.4(c) "is not a damages clause," but—like Met's misrepresentation of Mr. Denham's testimony—this is false. Mr. Slater testified that § 12.4(c) "is an articulation of the damage due. You don't pay and the money is returned.... And I guess you could characterize it as a liquidated damage provision since there are no other contractual damages available.... You get your money back." Ex. K at 147:7-149:2. Again, the fact that the parties did not use the term "liquidated damages" is irrelevant. *See Dyer*, 182 Cal. at 592; *Purcell*, 224 Cal. App. 4th at 975; *UCAN*, 135 Cal. App. 4th at 1034.

Met also relies on the testimony of its own witness, Brian Thomas, to the effect that the "disputed amount" is just a security deposit, and what Met must pay is not the "disputed amount," but a "portion of the disputed amount." *See* Met's Br. at 8-10. But that litigation-driven interpretation (which Met itself has disavowed, *see* Ex. I) contradicts the plain meaning of "forthwith pay the disputed amount," which is dispositive. *See Jade*, 177 Cal. Rptr. 3d at 199.

Finally, Met asserts that San Diego "acknowledged that it would ***not*** be entitled to the entire 'disputed amount,'" Met's Br. at 10, but San Diego said nothing of the kind. In the February 2011 letter to which Met refers, San Diego assumed that "a small portion" of its overpayment for transportation "would be reallocated" to San Diego through payments for Met water, but made clear that, nevertheless, "the Exchange Agreement requires escrow of the entire Disputed Amount." Ex. D. San Diego was entirely correct to exclude any such hypothetical "offset" from the disputed amount because Met water is not the subject of the Exchange Agreement, and the existence and amount of any such "offset" is fundamentally uncertain—as Mr. Denham testified, as Met admits, and as San Diego discussed at length in its opening brief. For example, Met might have collected more property taxes; San Diego might have wheeled more water; San Diego would not have been banned from receiving Water Stewardship subsides; and so on ad infinitum. *See, e.g.*, Borden Decl. Ex. L (Denham) at 89:5-92:16. Far from supporting Met's argument, the February 2011 letter proves that Met has always known that the "disputed amount" would not include any offset for hypothetical increases in what San Diego might have paid for Met water; yet Met has nevertheless set the "disputed amount" aside for years, without an offset, and without ever contending (until now) that there should be any offset. *See* Exs. C-I.

III. CONCLUSION

Accordingly, this Court should enforce § 12.4(c) as the measure of damages. Met must "forthwith pay the disputed amount," as it promised.

Dated: October 3, 2014

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/s/ Dan Jackson

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SAN DIEGO COUNTY WATER AUTHORITY

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I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On October 3, 2014, I served the following documents described as:

SAN DIEGO COUNTY WATER AUTHORITY'S REPLY BRIEF ON SECTION 12.4(c) OF THE EXCHANGE AGREEMENT

by serving a true copy of the above-described documents in the following manner:

BY LEXIS NEXIS® FILE & SERVE

On the date executed below, I electronically served the documents described above via Lexis Nexis® File & Serve on the recipients designated on the Transaction Receipt located on the via Lexis Nexis® File & Serve website.

Executed on October 3, 2014, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Maria Canales