



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CPF-10-510830

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ORDER

**SAN DIEGO COUNTY WATER AUTHORITY VS. METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA et al**

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DEC 4 - 2014

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

SAN DIEGO COUNTY WATER
AUTHORITY,

Plaintiff/Petitioner,

vs.

METROPOLITAN WATER DIST. OF
SOUTHERN CALIFORNIA, et al.

Defendants/Respondents.

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

ORDER DENYING METROPOLITAN'S
MOTION TO REOPEN EXPERT
DISCOVERY FOR LIMITED PURPOSE

Metropolitan asks to re-open expert discovery to allow additional experts on contract damages. The motion was filed July 1, 2104, and argued August 6. Two days later I memorialized an order denying the motion without prejudice; after hearings on one of San Diego's theories of damages (which I have rejected), Metropolitan asked at the last case management conference, held December 2, that I now rule on the merits. We discussed the matter at that conference.

The matter of re-opening discovery for further experts was discussed in the CMC statement dated November 25, 2014 ('Statement'). The Statement has helped to focus the issue. I had previously asked the parties to discuss in that Statement their theories of contract damages,

1 and I reiterated in writing my oral request that a party not ask me to conduct a trial on a theory of
2 damages which it contends I have no power or jurisdiction to do. Nevertheless, Metropolitan has
3 done that, and it is in aid of that effort that it desires me to re-open expert discovery.

4 Metropolitan's words in the latest Statement plainly lay this out. On page 16, ll. 9 et seq. of the
5 Statement, Metropolitan makes it clear (as it has done many times in the past, orally and in
6 writing) that it contends this court has no power to award contract damages in this case, because
7 the only way those could possibly be calculated would be through, in effect, a rate setting
8 procedure as to which this court lacks 'jurisdiction'. But it is to this that the proposed expert
9 would testify. Statement at 17. See also, Metropolitan's Reply In Support of Motion [...] to
10 Reopen Expert Discovery, Etc., dated July 30, 2014 at 2, lines 22-23.

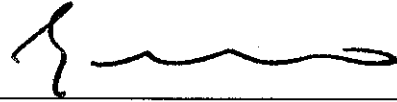
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13 No party—specifically San Diego, which has the burden of showing damages—contends
14 that this sort of sort rate making expert has any relevance. This is not a situation where plaintiff
15 has a theory of damages, and defendant, while disputing the theory is any good, nevertheless
16 needs to have an expert to oppose the plaintiff's expert. No one, including Metropolitan, actually
17 contends Metropolitan's proposed expert has anything relevant to contribute.

18
19 Were I to grant Metropolitan's motion, we would then indeed have the scenario in which
20 one party must go out and get an expert to counter the other side's witnesses—San Diego would
21 then have the right to locate, prepare and produce an expert on rate setting; and sustain the
22 concomitant costs. This is a senseless waste.

23
24 If Metropolitan is right that there is no way to measure damages other than through an
25 ersatz rate setting process, it wins ('jurisdictional issues' and experts on rate setting aside)
26 because San Diego won't present the ersatz rate setting process.
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1 The motion is denied.¹

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4 Dated: December 3, 2014



Curtis E.A. Karnow
Judge Of The Superior Court

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26 ¹ Metropolitan did not submit anything resembling a meet and confer declaration under C.C.P. § 2016.040. Such a
27 declaration must accompany a motion to reopen discovery under C.C.P. § 2024.050(a), which Metropolitan has not
disputed applies. Reply, 12. For this reason alone, the motion should be denied, but San Diego did not raise this
ground and I do not rest on it.

Superior Court of California
County of San Francisco

SAN DIEGO COUNTY WATER
AUTHORITY,

Plaintiff(s)

vs.

METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA, et al
Defendant(s)

Case Number: CFP-10-510830
CFP-12-512466

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On December 4, 2014, I electronically served THE ATTACHED ORDER via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: December 4, 2014

T. Michael Yuen, Clerk

By:


DANIAL LEMIRE, Deputy Clerk