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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINN

COUNTY OF LINN, on behalf of itself and  
others similarly situated,

Plaintiff,

v.

STATE OF OREGON; and STATE  
FORESTRY DEPARTMENT, an Oregon  
administrative agency,

Defendants.

Case No. 16CV07708

STATE'S SECOND SUPPLEMENTAL  
MEMORANDUM IN OPPOSITION TO  
MOTION FOR CLASS CERTIFICATION

**ORS 20.140 - State fees deferred at filing**

**INTRODUCTION**

At the hearing on July 11, 2016, the Court gave the parties leave to file additional memoranda by August 3 based on ongoing discovery. Defendants State of Oregon and State Forestry Department (the "State") therefore submit this supplemental memorandum opposing class certification to address information disclosed in plaintiff Linn County's Rule 32 M(2) Submission, filed on the close of briefing, and in the State's follow-up discovery efforts. This additional information confirms that plaintiff Linn County is neither a typical nor an adequate representative of the putative class because the case it filed was designed, shaped and prosecuted for the benefit of timber industry interests. Even if Linn County asserts these private timber industry interests are aligned with the County's, the private timber interests are plainly narrower, distinct, and in conflict with the broader interests of the putative class of Oregon counties and their residents.

1 **FACTS**

2 **A. Private Timber Interests Developed and Funded this Litigation Filed by a**  
3 **Public Body**

4 Plaintiff’s July 5, 2016 Rule 32 M(2) Submission disclosed critical facts with respect to  
5 the typicality and adequacy of plaintiff Linn County at issue in its class certification motion.  
6 First, Plaintiff’s Rule 32 M(2) Submission disclosed that Linn County’s attorneys fees to date  
7 and through the Court’s class certification decision have and will be paid by timber companies  
8 and timber industry groups pursuant to a “Litigation Agreement.” (2016 Rule 32 M(2)  
9 Submission, Ex. 2). These entities are Stimson Lumber Company (“Stimson”), Hampton Tree  
10 Farms, LLC (“Hampton”), Oregon Forest Industries Council and The Sustainable Forests Fund.<sup>1</sup>  
11 (*Id.* Ex. 2 at 1). Portland-based Stimson and Hampton are defined in the Litigation Agreement as  
12 “State Purchasers.” (*Id.*). Together with the two industry groups, the funders of the County’s  
13 lawsuit are defined as “Outside Parties.” Recital A to the plaintiff’s Litigation Agreement states  
14 that “the anticipated Litigation Effort” is “further described” in a “Confidential Memorandum  
15 dated July 22, 2015” to “Signatories to a Common Privilege Interest Agreement” between  
16 “Stimson Lumber Company and Collaborating Parties [a term not defined or explained].” *Id.*  
17 Recital C to the Litigation Agreement explains that “[t]he Outside Parties would like to  
18 incentivize Private Counsel to represent the County in the Litigation by agreeing to fund  
19 litigation costs associated with the Litigation Effort, including court fees, legal fees and expert  
20 witness fees,” as provided in the Litigation Agreement. (*Id.*)

21 The Litigation Effort contemplated by Stimson and “Collaborating Parties” would be a  
22 “phased approach to litigation, whereby ‘**Phase I**’ would involve preparing for and announcing

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24 <sup>1</sup> The only public information on The Sustainable Forests Fund indicates that it was registered  
25 with the Secretary of State on January 11, 2016, one day before the Litigation Agreement and  
26 two days before the County’s contract with its counsel were executed, and that it shares its office  
with a Portland law firm.  
<http://records.sos.state.or.us/webdrawer/webdrawer.dll/webdrawer/rec/4333223/view/SOS%20-%20Corporation%20-%20Business%20Entity%20Filing%20Records%20-%20117703991.PDF>

1 the litigation,” ‘**Phase II**’ would involve pursuing class certification, and Phase III would  
2 involve taking the case to trial.” (*Id.* (emphasis in original)). Section 1 of the Litigation  
3 Agreement States that “the Outside Parties agree to pay all Litigation Expenses up to completion  
4 of Phase II of the Litigation Effort, as further described in the attached Memo.” (*Id.*). However,  
5 the “Memo” was not attached to Plaintiff’s Rule 32 M(2) Submission.

6 **B. Plaintiff Agreed to a Contingency Fee that Could Exceed \$200 Million**

7 Second, the new information disclosed that if a class is certified, the attorneys fees  
8 arrangement changes from an hourly to a contingent fee basis. (*Id.* Ex. 1 at 8). Based on  
9 plaintiff’s \$1.4 billion damages claim, subject to the Court’s approval *plaintiff’s counsel stands*  
10 *to recover a fee award of \$210,000,000*. To put this in context, the potential fee award alone  
11 would exceed 60 percent of the budget<sup>2</sup> for the entire Oregon Department of Forestry for the  
12 2015-2017 biennium and 200 percent of the budget for the management of the State Forests.  
13 Plaintiff does not disclose whether other counties agree to this massive reallocation of resources  
14 from the management of State Forests to a private, Seattle-based law firm, but conflicts on this  
15 issue are, to say the least, highly likely.

16 **C. Discovery Efforts after the July 11, 2016 Hearing**

17 Following the July 11 hearing, counsel for plaintiff and the State met and conferred  
18 regarding the discoverability of the Memo. (Declaration of Scott J. Kaplan in Support of State’s  
19 Second Supplemental Memorandum in Opposition to Class Certification (Kaplan Decl.) ¶ 2).  
20 The State pointed out ORCP 32 M(2)(b) requires that representative parties in a putative class  
21 action submit to the Court a copy of any written agreement “concerning financial arrangements  
22 or fees.” The County’s counsel asserted that the Memo itself contained privileged legal advice,  
23 that the discussion of the structure of Outside Parties’ funding of the litigation was only a small

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25 <sup>2</sup>

26 [https://www.oregon.gov/ODF/Board/Documents/BOF/20150723/BOFMIN\\_20150723\\_ATTCH\\_01.pdf](https://www.oregon.gov/ODF/Board/Documents/BOF/20150723/BOFMIN_20150723_ATTCH_01.pdf).

1 part of the document, and that it would not be feasible to redact privileged material. (*Id.*) Rather  
2 than resort to discovery motions, counsel agreed to a compromise: Linn County’s counsel would  
3 describe in writing the structure of the funding arrangement under the Memo and the State would  
4 not seek production of the document itself. (*Id.*)

5 Counsel’s July 22, 2016 written summary of the Contract for Personal Services between  
6 Linn County and Davis Wright Tremaine LLP (“DWT”) and of the fee structure under the Memo  
7 is attached as Exhibit 1 to the Kaplan Decl. Regarding DWT’s contract with the County, the  
8 summary explains, “[t]he Contract for Professional Services and engagement letter provide for a  
9 contingent fee in the amount of 15% of any recovery subject to final approval by the court. The  
10 agreement permits DWT to withdraw and renegotiate its arrangement with Linn County if the  
11 court denies the pending certification motion.” (*Id.*, Ex. 1). The summary goes on to explain  
12 that the funding arrangement by the Other Parties, the timber companies and industry groups,  
13 encompasses plaintiff’s Rule 32 H letter, “presentations to representatives of the executive and  
14 legislative branches, press and public,” initial discussions with the State, and then “Phase II,”  
15 which includes:

- 16 a. Finalizing and filing the Complaint.
- 17 b. Follow ups to service and preliminary contacts with the Department of  
Justice lawyers handling the case.
- 18 c. Preparation and filing of the motion to certify the class.
- 19 d. Analyzing the State’s Response to the Certification Motion and  
anticipated motions to dismiss.
- 20 e. Drafting and filing the Plaintiff’s Reply to the State’s Answering Brief on  
Certification, and
- 21 f. The hearing on the Motion to Certify the Class. (*Id.*)

22 The summary also provides that the Other Parties would pay the costs of responding to the  
23 State’s Rule 21 Motions and that the “Joint Funding Commitment expires on class certification.”  
24 *Id.*

25  
26

1 **ARGUMENT**

2 **A. The Litigation Funding Arrangement Confirms Linn County is Not Typical**

3 There should be no debate that, at a minimum, it is highly unusual for an Oregon  
4 government entity to outsource the development of its case strategy and the funding of its  
5 litigation to interested private parties. Linn County plainly is not typical in its approach to this  
6 case. Indeed, it is significant that no other county joined Linn County as putative representative  
7 plaintiff.

8 Linn County may argue that its outsourcing approach to litigation terminates if the class  
9 is certified, at which point the only relevant private interest would be DWT’s potential  
10 \$210,000,000 contingent fee award. However, this argument ignores the fact that the case going  
11 forward, whether or not it is a class action, has been framed by the Complaint drawn up in  
12 conjunction with the Other Parties and paid for by parties that are not public government entities  
13 similarly situated to Linn County and that have a private business interest in the outcome of the  
14 case. The legal issues have been framed by the County’s response to the State’s Rule 21 motion  
15 and oral argument on those motions, also paid for by private industry interests. Indeed, it is  
16 highly significant that the “Litigation Effort” as defined by plaintiff’s Litigation Agreement was  
17 described in the July 22, 2015 Memo, *five months before Linn County retained DWT*. Thus,  
18 Linn County is in essence lending its name to a litigation strategy and case design already  
19 developed by private industry groups and to a case that has been framed to advance their  
20 interests.

21 This is made clear in documents produced by plaintiff. On January 21, 2016, a week  
22 after plaintiff sent its ORCP 32 H notice, county members of the Council of Forest Trust Land  
23 Counties (“CFTLC”) discussed in internal emails that “we have been served up by OFIC  
24 [Oregon Forest Industries Council] and we will now have to live with the actions they have  
25 chosen.” (Kaplan Decl., Ex. 2 at 2). As expressed by the CTFLC representative from Polk  
26 County, “I feel like OFIC is in control now.” (*Id.*) The Polk County representative lamented in

1 light of OFIC control of this lawsuit that “I wish I could feel like CTFLC had a voice in the  
2 outcomes of the near future.” (*Id.*) Plaintiff confirmed on July 22 it has no additional  
3 nonprivileged communications with class members. (*Id.*, Ex. 1 at 3). Thus, the record is  
4 essentially undisputed that Linn County, the proposed representative plaintiff, is willing to turn  
5 over “control” of litigation to an outside private interest group that is not representative of the  
6 class.

7 Moreover, as shown in the State’s Opposition to Plaintiff’s Motion for Class Certification  
8 (at 6-9), Oregon counties had varying points of view about the Greatest Permanent Value (GPV)  
9 Rule and implementing Forest Management Plans at issue in this case. Benton County, for  
10 example, believed that the GPV Rule over-emphasized timber production at the expense of other  
11 values. (*Id.* at 7). Other differences between Linn County’s position and those taken by other  
12 counties were also pointed out the State’s Opposition brief. However, in order to be typical, a  
13 representative plaintiff must rely on “the same legal theory” as other class members. *Newman v.*  
14 *Tualatin Development Co., Inc.*, 287 Or 47, 50 (1979). A putative representative plaintiff’s  
15 deployment of a legal theory developed by timber industry entities in a lawsuit crafted and  
16 funded by these outside parties simply cannot be typical of Oregon counties at large.<sup>3</sup> At a  
17 minimum, plaintiff has not met its burden of proving that a lawsuit developed by private industry  
18 asserts legal theories typical of the views of 15 Oregon counties and supported by their elected  
19 representatives. *See Pearson v. Philip Morris, Inc.*, 358 Or 88, 100, 107-108 (2015) (plaintiff  
20 has the burden of proving elements of class certification through facts in the record at the  
21 certification hearing).

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<sup>3</sup> The State took no position on the attempt of several environmental organizations to appear as intervenors or amicus, and would not have opposed any effort by timber groups to appear in the same capacities. The point is not that views of timber industry groups are unimportant or should not be heard in the appropriate forum, just that these views are not likely to be typical of those of the citizens of 15 counties spread throughout Oregon and their elected representatives.

1 **B. The Litigation Funding Shows That Linn County Does Not Satisfy the Adequacy**  
2 **Requirement for Class Certification**

3 The County also has the burden of proving that it is “adequate” as a class representative  
4 under ORCP 32 A(4), which requires it to prove: “the interests of the class can be adequately  
5 protected if (1) there are no disabling conflicts of interest between the class representatives and  
6 the class; and (2) the class is represented by counsel competent<sup>4</sup> to handle such matters.” *Alsea*  
7 *Veneer, Inc. v. State*, 117 Or App 42, 53 (1992), *aff’d in part, rev’d in part on other grounds*,  
8 318 Or 33 (1993); *see also Amchem Products, Inc. v. Windsor*, 521 US 591, 625 (1997)(the  
9 adequacy inquiry “serves to uncover conflicts of interest between named parties and the class  
10 they seek to represent.”)

11 Here, the conflict is apparent between a case developed by timber industry groups  
12 interested in increasing timber sales and counties that, while also interested to a greater or lesser  
13 degree in those timber sales, have other interests, such as recreation, fish and wildlife and  
14 watershed protection. It is not only Benton County that (as discussed above) recognizes interests  
15 that conflict with those of the timber industry groups. Washington County, for example,  
16 encourages visitors to “[c]onsider yourself invited to explore the Tillamook State Forest,”  
17 “[w]hether you’re planning a family picnic in the woods, hoping to watch spawning salmon or  
18 looking for an adventurous climb to the top of a forest fire lookout.”<sup>5</sup> Tillamook County also  
19 recommends among the “places to visit” in the County the Tillamook Forest Center: “Oregon’s  
20 forest education and recreation center.”<sup>6</sup> Lane County boasts that “[t]he region is ideal for  
21

22 <sup>4</sup> The State does not question the competency, skills and resources of the Seattle-based DWT  
23 firm and its nationwide group of 450+ lawyers. However, conflicts are likely to arise between  
24 putative class members about whether the funds constituting a contingency fee of up to  
\$210,000,000 would be better allocated to other purposes, such as the management of the State  
Forests or other contributions to Oregon’s rural economy.

25 <sup>5</sup> The Washington County “Visiting Washington County” webpage,  
<http://www.co.washington.or.us/VisitingWashingtonCounty.cfm>, links to the Tillamook Forest  
Center. <http://www.tillamookforestcenter.org/>.

26 <sup>6</sup> <http://www.co.tillamook.or.us/Variou/CommunityLinks.htm>

1 sightseers and outdoor enthusiasts. You can experience whitewater rafting, fishing, sailing,  
2 skiing, hiking, mountain biking and more.”<sup>7</sup> Lincoln County asserts that it “is one of the most  
3 popular visitor destinations on the Oregon Coast.”<sup>8</sup>

4 In contrast to the broader values held by county governments, the funders and developers  
5 of this lawsuit are from one particular industry with one particular interest: increased timber  
6 sales from State Forests. For example, over the last 10 years, Hampton has purchased  
7 approximately \$170 million in timber from the State Forests, and Stimson over \$144 million,  
8 totaling over 1 billion board feet. Indeed, each of their purchases are more than double that of  
9 the next largest purchaser. (Declaration of Daniel Corgan, ¶ 2). Significantly, however, only  
10 0.84 percent of Hampton’s purchases were from Linn County, and none of Stimson’s were. (*Id.*)  
11 In fact, the largest purchaser of Linn County timber, Freres Lumber, does not even appear to be a  
12 member of OFIC, the industry group funding and shaping the litigation. (*Id.* ¶ 3). This  
13 demonstrates clearly that the funders of this lawsuit have an agenda unrelated to anything that  
14 might occur in Linn County.

15 The conflict between the industry entities that developed this case and the county putative  
16 class members becomes even more evident when considering the case from the perspective of  
17 the timber industry’s interest (even beyond Stimson’s and Hampton’s historical lack of Linn  
18 County timber purchases.) If the case is tried and damages awarded, only two parties will obtain  
19 monetary benefit: the counties and the counties’ lawyers. Industry would gain nothing in  
20 monetary compensation for its up-front investment in the first two phases of the litigation. It is  
21 unlikely, however, that industry is footing the bill without expecting some economic benefit in  
22 return. That economic benefit could only come from a change in the State management policy  
23 regime providing for larger timber harvests across the State Forest land base, not just in Linn  
24 County. Thus, industry’s interest in crafting, funding and prosecuting this case as a class action

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26 <sup>7</sup> <http://www.lanecounty.org/About/Pages/VisitingLaneCounty.aspx>

<sup>8</sup> <http://www.co.lincoln.or.us/ourcounty/page/about-lincoln-county>



1 lawsuit is in policy and regulatory change, while the counties’ interest—at least according to  
2 Linn County—is solely in the recovery of damages. That Linn County was willing to disregard  
3 the conflicts between the interest of a public government body and those of a specific private  
4 industry—instead choosing to prosecute a lawsuit engineered by industry with narrower interests  
5 than those of the counties—demonstrates that Linn County is neither a typical nor an adequate  
6 class plaintiff.

7 Thus, these outside entities are plainly are using this litigation and Linn County as a  
8 putative representative plaintiff to advance a particular agenda that is distinct from and in  
9 conflict with the broader interests of the county putative class members. Indeed, in 2014,  
10 Tillamook County’s counsel (who handled the *Tillamook II* case), confirmed in documents  
11 produced by plaintiff that the “[t]wo previous lawsuits responded to particular actions the Board  
12 [of Forestry] made related to its management and interests of Trust Lands. We understand that  
13 no similar ‘act’ has occurred or is pending that would detrimentally impact the Counties.”  
14 (Kaplan Decl. Ex. 3).

15 The unavoidable conflicts between, on the one hand, a representative plaintiff funded by  
16 timber industries framing a case about the management of Oregon’s public forests solely in terms  
17 of increasing timber harvesting and, on the other hand, the diversified economies and interests of  
18 Oregon counties require that plaintiff’s motion be denied for failure to meet the adequacy  
19 requirement under ORCP 32 A(4). At a minimum, plaintiff has not made a factual record of how  
20 it would overcome these conflicts and consequently has not met its burden of proof. *See*  
21 *Pearson.*, 358 Or at 107-108 (plaintiff’s burden of proof on class certification).

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1 **CONCLUSION**

2 The County's motion should be denied. Failing that, it should be postponed under ORCP  
3 32 C(2) until after the Court rules on the merits

4 DATED August 3, 2016.

5 Respectfully submitted,

6 ELLEN F. ROSENBLUM  
7 Attorney General

8  
9 *s/ Scott J. Kaplan*  
10 FRANK HAMMOND #852239  
11 SCOTT KAPLAN #913350  
12 Senior Assistant Attorneys General  
13 Trial Attorneys  
14 Tel (503) 947-4700  
15 Fax (503) 947-4792  
16 Frank.Hammond@doj.state.or.us  
17 Scott.Kaplan@doj.state.or.us  
18 Of Attorneys for State of Oregon  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINN

COUNTY OF LINN, on behalf of itself and  
others similarly situated,

Plaintiff,

v.

STATE OF OREGON; and STATE  
FORESTRY DEPARTMENT, an Oregon  
administrative agency,

Defendants.

Case No. 16CV07708

DECLARATION OF SCOTT KAPLAN IN  
SUPPORT OF SECOND SUPPLEMENTAL  
MEMO IN OPPOSITION TO CLASS  
CERTIFICATION

**ORS 20.140 - State fees deferred at filing**

I, Scott J. Kaplan, declare:

1. I am a Senior Assistant Attorney General with the Trial Division of the State of Oregon, Department of Justice. This office represents the State of Oregon and State Forestry Department (collectively, the “State”) in this matter. I have personal knowledge of the matters set forth herein.

2. Following the July 11 hearing in this action, I met and conferred by telephone and email with lead counsel for plaintiff regarding the discoverability of the “Confidential Memorandum dated July 22, 2015” (“Memo”) referenced in Plaintiff’s July 5, 2016 Rule 32 M(2) Submission Memo. The State pointed out ORCP 32 M(2)(b) requires that representative parties in a putative class action submit to the Court a copy of any written agreement “concerning financial arrangements or fees.” Plaintiff’s counsel asserted that the Memo itself contained privileged legal advice, that the discussion of the structure of Outside Parties’ funding of the litigation was only a small part of the document, and that it would not be feasible to redact privileged material. Rather than resort to discovery motions, we agreed to a compromise:

1 plaintiff's counsel would describe in writing the structure of the funding arrangement under the  
2 Memo and the State would not seek production of the document itself.

3 3. Attached hereto as **Exhibit 1** is a copy of plaintiff's counsel's July 22, 2016  
4 summary of the billing arrangements between plaintiff and its counsel, Davis Wright Tremaine  
5 LLP ("DWT"), and of the fee structure under the Memo

6 4. Attached hereto as **Exhibit 2** is a copy of a January 22, 2016 Council of Forest  
7 Trust Land Counties ("CFTLC") email produced by plaintiff in this action, number stamped  
8 LINN 02505-06. The underlining and bracketing in the document is as it was produced.

9 5. Attached hereto as **Exhibit 3** is a copy of a the first page of a July 22, 2014 letter  
10 to the Tillamook County board of Commissioners from counsel that represented it in the  
11 *Tillamook II* case (LINN 01931). The remaining pages of the letter do not appear to have been  
12 produced.

13 **I hereby declare that the above statement is true to the best of my knowledge and**  
14 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**  
15 **for perjury.**

16 DATED August 3, 2016.

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s/ Scott J. Kaplan  
SCOTT J. KAPLAN

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July 22, 2016

***First Class Mail***Scott J. Kaplan  
DOJ Trial Division  
Oregon Department of Justice Trial Division  
100 SW Market Street  
Portland, OR 97201Re: *County of Linn v. State of Oregon, et al.*  
Linn County Circuit Court Case No. 16CV07708

Dear Scott:

In lieu of additional discovery prior to the hearing on the pending class certification motion, you have requested a summary of how the existing Agreement between Davis Wright Tremaine (“DWT”), Oregon Forest Industries Council, the Sustainable Forest Fund, Stimson Lumber Company and Hampton Tree Farms (“the Litigation Agreement”) functions, in light of the engagement letter and Contract for Professional Services that exists between DWT and Linn County. In addition, you have requested a statement from me as to whether my client has fully complied with the State’s Request for Production No. 13 contained in Defendant’s First Set of Requests for Production of Documents to Plaintiff.

**I. The Engagement Relationship**

The engagement relationship between DWT and our client, Linn County, Oregon, is controlled by a Contract for Personal Services between DWT and the Plaintiff and which incorporates an engagement letter dated January 12, 2016, all of which are appended to Plaintiff’s Rule 32M(2) Submission as Exhibit 1. The Contract for Professional Services and engagement letter provide for a contingent fee in the amount of 15% of any recovery subject to final approval by the court. The agreement permits DWT to withdraw and renegotiate its arrangement with Linn County if the court denies the pending certification motion. Should DWT withdraw, no fees are owed by Linn County. In addition, DWT may withdraw if its professional responsibilities so require. Linn County may dismiss or discharge DWT in its discretion. Should DWT withdraw or be dismissed, the engagement letter controls the determination of fees which would be owing by Linn County to DWT in those circumstances.

DWT 30080814v4 0106057-000004

Anchorage  
Bellevue  
Los AngelesNew York  
Portland  
San FranciscoSeattle  
Shanghai  
Washington, D.C.[www.dwt.com](http://www.dwt.com)

The engagement letter also (i) discloses the existence of the Litigation Agreement between the Oregon Forest Industries Council, the Sustainable Forest Fund, Stimson Lumber Company and Hampton Tree Farms (“the Funders”), (ii) states that these parties have agreed to pay DWT’s attorneys’ fees, costs and disbursements in representing the County in this case through the class certification process, (iii) and furthermore discloses that DWT has agreed with the Funders that if the court awards DWT an attorney fee award in this case, then DWT will reimburse the Funders for their payments to the extent that the amount DWT recovers from the Defendants under a court-approved award is sufficient to reimburse the Funders for their payments to DWT.

DWT discloses this information for the purpose of complying with RPC 1.8(f) and obtaining informed consent of Linn County prior to proceeding with its representation. Linn County has agreed to the terms of the engagement letter and has furthermore acknowledged the disclosures and consented to the arrangement.

## **II. The Litigation Agreement**

The Litigation Agreement requires the Funders to pay all litigation expenses up to completion of Phase II of the litigation effort including responding to mediation budgets and preliminary motion practice budgets. The Joint Funding Commitment involves reimbursement of DWT’s fees for the following purposes:

1. Phase I activities which include:
  - a. Meetings with Plaintiff, issuance of Rule 32H letter, presentations to representatives of the executive and legislative branches, press, and public to place decision makers on notice of the theory of the case and other pre-filing activities
  - b. Consultation with lawyers at the Department of Justice to explain the Rule 32H letter and for the purpose of apprising opposing counsel as to Plaintiff’s theories.
2. Phase II activities which include:
  - a. Finalizing and filing the Complaint.
  - b. Follow-ups to service and preliminary contacts with the Department of Justice lawyers handling the case.
  - c. Preparation and filing of the motion to certify the class.
  - d. Analyzing the State’s Response to the Certification Motion and anticipated motions to dismiss.

- e. Drafting and filing the Plaintiff's Reply to the State's Answering Brief on Certification, and
- f. The hearing on the Motion to Certify the Class.

3. Preliminary Motion Practice. This phase anticipates that the Defendants respond with a variety of preliminary motions, including motions to dismiss pursuant to ORCP 21. To the extent these motions are pending during the course of Phase II and prior to a decision from the court regarding class certification, the fees incurred therein become part of the Joint Funding Commitment.

4. The Joint Funding Commitment expires upon class certification. However, in the event that the litigation effort yields an attorney fee recovery to DWT under DWT's contingent fee arrangement with Linn County, then DWT agrees to reimburse the Funders up to lesser of the contingent fee or the paid amount under the Funding Commitment. Other provisions are provided for in the Litigation Agreement. The Litigation Agreement is appended to the Rule 32 M(2) submission as Exhibit 2.

DWT believes that neither the Litigation Agreement nor the Joint Funding Commitment will interfere in any way with DWT's and its lawyers' independence or professional judgment or with the existing client-lawyer relationship between DWT and Linn County. In addition, the engagement letter notes that the County has entered into a common interest privilege agreement with the parties to the Litigation Agreement and DWT.

Because the Joint Funding Commitment expires upon class certification there is no opportunity for the parties to the Litigation Agreement to be in a position to interfere with the independence of DWT or its zealous pursuit of Linn County's claims.

### **III. REPRESENTATIONS CONCERNING REQUEST FOR PRODUCTION NO. 13.**

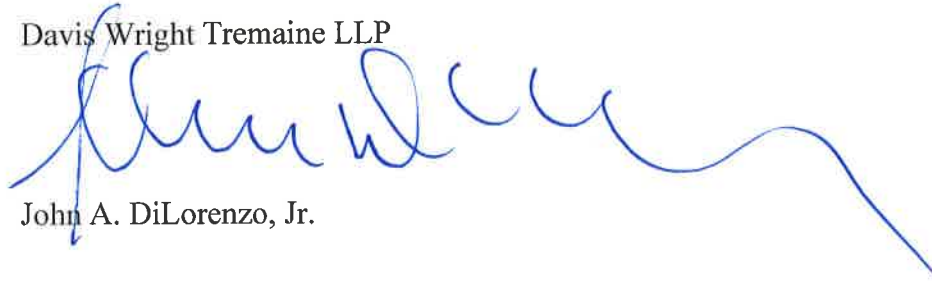
You also asked that I confirm, to the best of our knowledge, that our client has fully complied with production of documents responsive to the State's Request for Production No. 13 ("All documents related to all communications with any other putative class members related to this action."). Subject to Plaintiff's Response to Defendant's Request for Production No. 13, Plaintiff believes that it has produced all documents which could be identified following a reasonable and good faith search that constitute communications between the above-referenced parties, with the exception of privileged documents including those subject to a Common Interest Privilege Agreement which exists between Linn County and some of the putative class members.

Scott Kaplan  
July 22, 2016  
Page 4

Thank you for resolving our current discovery issues with respect to the pending Motion for Class Certification in this way.

Very truly yours

Davis Wright Tremaine LLP

A handwritten signature in blue ink, appearing to read "John A. DiLorenzo, Jr.", with a long, sweeping flourish extending to the right.

John A. DiLorenzo, Jr.



**Gravelle, Heather**

---

**From:** Tim Josi <tjosi@co.tillamook.or.us>  
**Sent:** Friday, January 22, 2016 9:41 AM  
**Subject:** FW: CFTLC membership meeting Feb. 5.- draft agenda and queries.

Please don't pass this along. Read and delete.  
Tim

**From:** Tim Josi  
**Sent:** Friday, January 22, 2016 9:31 AM  
**To:** 'Pope, Craig'; Gil Riddell  
**Cc:** Mark Rasmussen; Mike McArthur; Greg Wolf  
**Subject:** RE: CFTLC membership meeting Feb. 5.- draft agenda and queries.

- Is Paul Levesque available and willing to opine on item #2? He will be retired by then. I have asked him to come but can't guarantee his attendance.
- "Moderated discussion" means Tim and Craig retain tight control but permit thorough-going discussion. Are you up to it? I'm not too worried. I've chaired many contentious meetings. This meeting is more informational than anything else.
- Do you want time blocks to give more structure? If so, what are they? Put together an agenda Gil with time blocks and I will look it over.
- Do you want to vote on any of these questions posed? If so, one county-one vote, majority rules? Each county needs to go home and confer with their legal counsel and then decide if they wish to opt out – if the Class is certified.
- Do you want a block for open discussion about any relevant matter? Or will that take care of itself in the course of the meeting? It should take care of itself.
- Do you want to give specific time for John Di to describe his case and answer questions? How long? 20 minutes should suffice, then follow with a Q & A.
- Mark, will you have your materials ready to send with the agenda on Jan. 29? Gil, let me know when you know regarding Mark.
- Is Carson Bowler available and willing to participate? [If I cannot get an authority for item #2, I will delete it, in spite of knowing the question will arise] He is coming. Let me know if there are specific issues you want him to address.

Tim

**From:** Pope, Craig [<mailto:pope.craig@co.polk.or.us>]  
**Sent:** Thursday, January 21, 2016 7:03 PM  
**To:** Gil Riddell  
**Cc:** Tim Josi; Mark Rasmussen; Mike McArthur; Greg Wolf  
**Subject:** Re: CFTLC membership meeting Feb. 5.- draft agenda and queries.

I think I am up to helping with control but clearly won't be in the drivers seat. I have no idea what the strategy will be to keep this meeting from becoming a free for all if there is disagreement on any of the agenda items. We absolutely should have a timeline structure in the agenda that will help us keep the room on task.

What good will voting do on any of these issues? We are done talking with the Department and the BOF while this lawsuit threat is dominating and most counties will not have the authority of their boards to make decisions at this meeting. I certainly believe we should get a census on each of the questions however. That was supposed to be the some of the purpose of the March 8 meeting.

I hope Paul L. will be able to attend but we should have someone with substantial legal background to help address the question about deeds. This issue will be ripe for DiLorenzo and Linn Co. to weigh in on and the CFTLC members need to hear from someone who cares about giving defensible advise to the counties. I feel like OFIC is in control now.

I believe DiLorenzo and company will be chomping at the bit to dive into their strategy to convince the rest of the counties as quickly as they can and could be disruptive without an allotted time on the agenda. At least if we have a time certain and budgeted time for the lawsuit we can encourage folks to hold their discussion for that time.

Given the size of the issues that must be discussed and the potential for the number of people that will be interested in the comments in this public meeting I am very worried that the venue will not be adequate. If the room is packed (or overfilled) and people are uncomfortable they may be more agitated and less interested in a "conversation" with an eye on solutions. The press will certainly be there. Many Commissioners and their legal counsels will be there. OFIC will most likely be there as will the conservation interests. I would also anticipate seeing representation from the state in some manner. I hope I'm wrong, but if I'm right this will be a pretty big group....all wanting to share their thoughts or to hear ours.

I wish I could feel like CFTLC had a voice in the outcomes of the near future, but I think we have been served up by OFIC and will now have to live with the actions they have chosen.

Craig

On Thu, Jan 21, 2016 at 4:30  
Gentlemen

Please examine the attached

- Is Paul Levesque available for discussion.
- "Moderated discussion" Are you up to it?
- Do you want time blocked?
- Do you want to vote on it?
- Do you want a block course of the meeting if in the
- Do you want to give specific time for John Di to describe his case and answer questions? How long?
- Mark, will you have your materials ready to send with the agenda on Jan. 29?
- Is Carson Bowler available and willing to participate? [If I cannot get an authority for item #2, I will delete it, in spite of knowing the question will arise]

There will be press. It is an open meeting.

We can do this right and well!

Gil

**CARSON BOWLER**  
Direct Line: 503-796-2078  
E-Mail: cbowler@schwabe.com

July 22, 2014

Tillamook County Board of Commissioners  
Tillamook County Courthouse  
201 Laurel Avenue  
Tillamook, OR 97141

RE: Litigation Strategy

Dear Commissioners:

This letter outlines issues for the Commission to consider in its evaluation of a suit to clarify the duties the Board of Forestry owes to Tillamook County as a Forest Trust Land County.

**I. SUMMARY**

- Tillamook County has requested an opinion exploring the possibility of a suit against the State Board of Forestry (“Board” or “State”) related to the lands deeded to the State by the Counties pursuant ORS 530.010 to ORS 530.040 (“Trust Lands”).
- We understand that a lawsuit is being considered in conjunction with legislation that proposes to address gaps and ambiguities in the existing statute with respect to the primacy the Board must give to revenue generation from the Trust Lands.
- Two previous lawsuits responded to particular actions that the Board made related to its management and ownership of Trust Lands. We understand that no similar “act” has occurred or is pending that would detrimentally impact the Counties.
- The Counties have long supported greater harvest levels from the Trust Lands, and have expressed this support in public fora.
- It is possible to bring a lawsuit against the State seeking a declaration of rights, status and legal relations of the State and Counties regarding State management of the Trust Lands.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINN

COUNTY OF LINN, on behalf of itself and  
others similarly situated,

Plaintiff,

v.

STATE OF OREGON; and STATE  
FORESTRY DEPARTMENT, an Oregon  
administrative agency,

Defendants.

Case No. 16CV07708

DECLARATION OF DANIEL CORGAN IN  
SUPPORT OF SECOND SUPPLEMENTAL  
MEMO IN OPPOSITION TO CLASS  
CERTIFICATION

**ORS 20.140 - State fees deferred at filing**

I, Daniel Corgan, declare:

1. I am the Contracts Team Leader with the State Forests Program of the Oregon Department of Forestry. I have been the Contracts Team Leader since 1995. As such I am responsible for timber sale processing, support and tracking. I have personal knowledge of the matters set forth herein.

2. Over the last 10 years, Hampton Tree Farms (“Hampton”) has purchased approximately \$170 million in timber from the State Forests, and Stimson Lumber Company (“Stimson”) over \$144 million, totaling over 1 billion board feet. Each of their purchases are more than double that of the next largest purchaser. During this period, only 0.84 percent of Hampton’s purchases have been from State Forests in Linn County. Stimson had no Linn County purchases during this time period.



1 **CERTIFICATE OF SERVICE**

2 I certify that on August 3, 2016, I served the foregoing:

- 3 • **STATE'S SECOND SUPPLEMENTAL MEMORANDUM IN OPPOSITION**
- 4 **TO MOTION FOR CLASS CERTIFICATION**
- 5 • **DECLARATION OF SCOTT KAPLAN IN SUPPORT OF SECOND**
- 6 **SUPPLEMENTAL MEMO IN OPPOSITION TO CLASS CERTIFICATION**
- 7 • **DECLARATION OF SCOTT KAPLAN IN SUPPORT OF SECOND**
- 8 **SUPPLEMENTAL MEMO IN OPPOSITION TO CLASS CERTIFICATION**

9 upon the parties hereto by the method indicated below, and addressed to the following:

10  
 11 John DiLorenzo Jr  
 12 Christopher McCracken  
 13 Gregory A. Chaimov  
 14 Aaron K. Stuckey  
 15 Christopher Swift  
 16 Davis Wright Tremaine LLP  
 17 1300 SW 5th Ave Ste 2400  
 18 Portland OR 97201  
 19 Of Attorneys for Plaintiff

- \_\_\_ HAND DELIVERY
- MAIL DELIVERY
- \_\_\_ OVERNIGHT MAIL
- \_\_\_ E-SERVE

19 s/ Scott J. Kaplan  
 20 FRANK HAMMOND #852239  
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 Of Attorneys for State of Oregon