

**SUPERIOR COURT OF CALIFORNIA**

**County of San Diego**

**DATE: August 3, 2006                      DEPT. 71                      REPORTER A:                      CSR#**

**PRESENT HON. Ronald S. Prager                      REPORTER B:                      CSR#**

**JUDGE**

**CLERK: K. Sandoval**

**BAILIFF:                      REPORTER'S ADDRESS: P.O. BOX 120128  
SAN DIEGO, CA 92112-4104**

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**CLARIFICATION NUNC PRO TUNC ORDER-KELLY**

**IN RE: JCCP 4221/4224/4226&4428 – Natural Gas Anti-Trust Cases (Pipeline)**

The attached Court's ruling applies to all cases listed as follows:

- 4221-00001      PHILLIP vs EL PASO MERCHANT ENERGY**
- 4221-00002      PHILLIP vs EL PASO MERCHANT ENERGY**
- 4221-00003      CONTINENTAL FORGE COMPANY vs SOUTHERN  
CALIFORNIA GAS COMPANY**
- 4221-00004      BERG vs SOUTHERN CALIFORNIA GAS COMPANY**
- 4221-00005      THE CITY OF LONG BEACH vs SOUTHERN CALIFORNIA  
GAS COMPANY**
- 4221-00006      THE CITY OF LOS vs SOUTHERN CALIFOR**
- 4221-00005      SWEETIE'S A CALIFORNIA PARTNERSHIP vs EL PASO  
CORPORATION**
- 4221-00006      THE CITY OF LOS ANGELES vs SOUTHERN CALIFORNIA  
GAS COMPANY**
- 4221-00007      SWEETIE'S A CALIFORNIA PARTNERSHIP vs EL PASO  
CORPORATION**
- 4221-00008      CALIFORNIA DAIRIES INC vs EL PASO CORPORATION**
- 4221-00009      DRY CREEK CORPORATION (JCCP 4228) vs EL PASO  
NATURAL GAS COMPANY**
- 4221-00010      HACKETT vs EL PASO CORP**
- 4221-00011      THE COUNTY OF LOS ANGELES vs SOUTHERN  
CALIFORNIA GAS COMPANY**
- 4221-00012      THE CITY OF VERNON vs SOUTHERN CALIFORNIA GAS  
COMPANY**

- 4221-00013      WORLD OIL CORP vs SOUTHERN CALIFORNIA GAS COMPANY**
- 4221-00014      CITY OF UPLAND vs SOUTHERN CALIFORNIA GAS COMPANY**
- 4221-00015      THE COUNTY OF SAN BERNARDINO vs SOUTHERN CALIFORNIA GAS COMPANY**
- 4221-00016      EDGINGTON OIL COMPANY vs SOUTHERN CALIFORNIA GAS COMPANY**
- 4221-00017      THE CITY OF CULVER CITY vs SOUTHERN CALIFORNIA GAS COMPANY**
- 4221-00018      THE CITY OF BURBANK vs SOUTHERN CALIFORNIA GAS COMPANY**
- 4221-00019      THUMS LONG BEACH COMPANY vs SOUTHERN CALIFORNIA GAS COMPANY**

**TENTATIVE RULING**

**JCCP #4221, 4224, 4226 and 4228**

The motion for nunc pro tunc order for clarification of pro hac vice admission of James Tynan Kelly ("Kelly") as class counsel is denied. Preliminarily, the court notes Kelly has not submitted any new evidence to support why this court should enter the revised order, but relies on his declaration in support of attorney's fees. Objector Candy Tomkinson claims that Kelly failed to comply with Code of Civil Procedure section 1008. Prior to the entry of judgment, the court could have exercised its inherent power to set this hearing on its own motion to revise and nunc pro tunc the October 3, 2002 order granting Kelly's pro hac vice application based upon *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108.

However, the court has lost jurisdiction to revise or modify the prior order because judgment was been entered and this is not simply a correction of a clerical error. The reservation of jurisdiction under the settlement terms only included provisions under the settlement agreement, including their administration, consummation and enforcement. (Judgment, ¶21.) The application for pro hac vice did not request that the

order expand the time to 2000, when Kelly began to work on the case. The order also does not discuss any retroactivity. (Objector's Ex. 1, and Ex. 2, T. 2:11-14.) Accordingly, this is not merely a correction of a prior order and the motion is denied.

Nonetheless, the court had previously and extensively considered many of these same arguments raised by Objector Candy Tomkinson in her opposition to the request for attorney's fees by Kelly. The court overruled Candy Tomkinson May 23, 2006's objections in their entirety. (Amended Ruling After Oral Argument Pipeline Settlement, dated June 27, 2006, pages 5 and 8.) Furthermore, the order granting Plaintiffs' counsel's request for attorneys' fees has not been challenged and is not before the court.

Any party who wishes to orally argue the motion must appear on the date and at the time set for the hearing. Failure to appear shall be deemed a waiver of oral argument. If neither party appears at the scheduled hearing, this tentative ruling shall become the final order of the court on the date set for hearing.

**IT IS SO ORDERED.**