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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 **ANTELOPE VALLEY**
12 **GROUNDWATER CASES**

) **JUDICIAL COUNCIL COORDINATION**
) **PROCEEDING NO. 4408**
)

13 This Pleading Relates to Included Action:
14 REBECCA LEE WILLIS, on behalf of
15 herself and all others similarly situated,

) **CASE NO. BC 364553**
)

16 Plaintiff,

) **CLASS PLAINTIFF'S REPLY TO**
) **LITTLE ROCK CREEK'S AND**
) **CALIFORNIA WATER SERVICE**
) **COMPANY'S OPPOSITIONS TO**
) **PLAINTIFF'S MOTION FOR AN AWARD**
) **OF ATTORNEYS' FEES**

17 vs.

18 LOS ANGELES COUNTY WATERWORKS)
DISTRICT NO. 40; CITY OF LANCASTER;)
19 CITY OF LOS ANGELES; CITY OF)
PALMDALE; PALMDALE WATER)
20 DISTRICT; LITTLE ROCK CREEK)
IRRIGATION DISTRICT; PALM RANCH)
21 IRRIGATION DISTRICT; QUARTZ HILL)
WATER DISTRICT; ANTELOPE VALLEY)
22 WATER CO.; ROSAMOND COMMUNITY)
SERVICE DISTRICT; and DOES 1 through)
23 1,000;

Date: March 22, 2011
Time: 9:00 a.m.
Dept: 15 (CCW)
Judge: Hon. Jack Komar
Coordination Trial Judge

24 Defendants.
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1 I. INTRODUCTION

2 In connection with the settlement of this matter, Plaintiff Rebecca Lee Willis and Class
3 Counsel have petitioned for an award of fees and expenses pursuant to Section 1021.5 of the
4 Code of Civil Procedure to compensate them for the over four years that they have worked on
5 this complex and demanding case without any compensation and without reimbursement for the
6 roughly \$85,000 in expenses they have incurred. Relying primarily on inapposite authorities
7 construing Civil Code Section 1717, which concerns a prevailing party’s right to attorneys’ fees
8 in breach of contract cases,¹ as well as on a grossly distorted and unsupportable interpretation of
9 the legal and practical effects of the Settlement, Defendants Littlerock Creek Irrigation District,
10 Palm Ranch Irrigation District, Desert Lake Community Services District, and North Edwards
11 Water District (the “Littlerock Defendants”), have opposed Willis’ application, arguing that
12 Willis is not a prevailing party and that the litigation has not benefitted the public. As explained
13 below, the Littlerock Defendants’ arguments are without merit. Willis is a “prevailing party” for
14 purposes of CCP § 1021.5; and the litigation has conferred a significant benefit on “the general
15 public or a large class of persons,” as required by that statute.

16 Littlerock’s arguments would mean that one could never get fees under Section 1021.5 in
17 connection with a settlement – since settlements invariably involve “good news and bad news to
18 each of the parties.” Although that may be the law in the context of the breach of contract cases
19 upon which the Littlerock Defendants primarily rely, that is not the law under Section 1021.5.²
20 To the contrary, it is well established that a plaintiff seeking fees under Section 1021.5 is deemed
21 the prevailing party whenever she achieves a settlement that provides some of the relief she
22 sought in filing suit. *See, e.g. Folsom v. Butte County Ass’n of Govts.* (1982) 32 Cal 3d 668, 671;
23 *Maria P. v. Riles* (1987) 43 Cal 3d 1281, 1290-91 (“Our prior cases uniformly explain that an

24 _____
25 ¹ Although the term “prevailing party” is used in both contexts, “the concept is treated differently
26 for fee awards in actions based on contract (under CC §1717) than for fee awards based on statutory
and equitable grounds.” R. Pearl, *California Attorney Fee Awards* §2.1 (2d ed. 2005). *See Kim v.*
Euromotors West (2007) 149 Cal. App. 4th 170, 178.

27 ² Adopting such a view would also be poor public policy because it would make it very difficult to
28 settle cases brought on a private attorney general theory.

1 attorney fee award may be justified even when plaintiff's legal action does not result in a
2 favorable judgment").

3 In determining whether the plaintiff is a prevailing party for purposes of CCP § 1021.5,
4 the California courts have followed the standard articulated by the United States Supreme Court
5 and held that "*plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if*
6 *they succeed on any significant issue in litigation which achieves some of the benefit the parties*
7 *sought in bringing suit."* *Id.* at 1292 (quoting *Hensley v. Eckerhart* (1983) 461 US 424, 433)
8 (emphasis added); see *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal. App. 4th 140, 153.
9 The settlement that Plaintiff and Class counsel reached in this case handily meets that standard.

10 The Littlerock Defendants' arguments to the contrary are predicated on a distorted and
11 inaccurate depiction of the purposes and results of this litigation. Contrary to the Littlerock
12 Defendants' erroneous claim that the settlement "elevates the Public Water Suppliers' interests in
13 [the Basin's] water from merely appropriative interest to prescriptive interest;" Memo at 4; the
14 simple fact is that *the Suppliers have given up any prescription claims as to the Willis Class* in
15 return for an agreement by the Class not to contest the Suppliers' rights to use a modest portion
16 of the Basin's groundwater.

17 In short, the Willis Class satisfies the standards for being a prevailing party. Moreover,
18 the litigation also clearly satisfies 1021.5's requirement that the case confer a significant benefit
19 on "the general public *or a large class of persons . . .*" CCP § 1021.5 (emphasis added). The
20 Willis case did so in two respects: (1) it benefitted the general public by facilitating a
21 comprehensive resolution of the problems of this Basin; and (2) it protected the property rights
22 of the class of some 60,000 people.

23 The fact that Defendants are public entities and claim to be serving the public interest
24 does not support their argument that Plaintiff's request for an award of fees should be curtailed,
25 particularly under the circumstances of this case. To the contrary, as the Supreme Court has
26 regularly held, "[a] central function of the [private attorney general theory] is to call public
27 officials to account and to insist that they enforce the law." *Serrano v. Unruh (Serrano IV)*
28 (1982) 32 C3d 621, 632 (quotations and citations omitted).

1 of prescriptive rights that certain public water suppliers had asserted in prior cases.” Jan. 21,
2 2011 Memo in Support of Settlement. As discussed below, the Settlement achieves these
3 objectives.

4 Contrary to Defendants’ assertions, the Willis Class never claimed “absolute ownership
5 of the natural water resource.” LC mem at 4. Rather, Willis simply sought to protect the Class’
6 correlative rights to use this resource, rights which were jeopardized by the Suppliers’ assertion
7 of prescriptive rights. Willis needed to file suit for two reasons. First, when she became aware
8 that the Suppliers had asserted claims to the Basin’s water, the prescriptive period began to run
9 as to her (and arguably as to the Class). Second, the Suppliers had filed suit against a putative
10 Defendant Class and sought to name the State as class representative. With all due respect to the
11 State, Willis could not rely upon it to protect her interests and those of the Class. Those two
12 developments created the real and serious threat that, absent action by Willis, her rights and the
13 Class’ correlative rights to use the Basin’s water could be entirely lost, as occurred in *City of Los*
14 *Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199. The Littlerock Creek Defendants’
15 parsing of the various legal claims that Willis asserted cannot controvert the reality that the
16 above claims were the core matters at the heart of the Willis case.

17 2. The Effect of the Settlement

18 The Settlement fully achieved these objectives and did so at minimal cost to the Willis
19 Class. The Stipulation of Settlement expressly recognized that Willis Class Members have an
20 “overlying Right to a correlative share of 85% of the Federally Adjusted Native Safe Yield for
21 reasonable and beneficial uses on their overlying land free of any Replacement Assessment.”
22 Stip at IV. D. 2. It further provided that the “Settling Defendants will not take any positions or
23 enter into any agreements that are inconsistent” with those rights. *Id.* Further, the Suppliers
24 released the Willis Class from all claims that they had asserted or could have asserted in
25 connection with the matters at issue – including their prescription claims. Stip at VII.B.
26 Moreover, the Stipulation expressly provides that “[i]f the Settling Defendants fail to prove any
27 prescriptive rights [as to the non-settling parties], *the Agreement shall not diminish at all the*
28 *rights of Willis Class Members* to make reasonable and beneficial use of a correlative share of

1 the Basin's" water. Stip. at IV.D.2.a (emphasis added).

2 In arguing that the settlement "elevates the Public Water Suppliers' interests in water
3 from merely appropriative interest to prescriptive interest;" mem at 4; the Littlerock Creek
4 Defendants mistake their litigation position for the terms of the Stipulation. *The Stipulation*
5 *expressly states that it shall not be construed to recognize the Settling Defendants' prescriptive*
6 *claims as to the Willis Class* (though Defendants did retain the right to assert those claims against
7 the non-settling parties). Stip at IV.D.1. Moreover, by releasing their prescription claims as to
8 the Class, the Defendants are foreclosed from later challenging the Class' rights or even from
9 entering into agreements that are inconsistent with the Class' rights.

10 The simple fact is that, absent this litigation, the Willis Class faced the very real risk that
11 they would lose their rights to use the Basin's groundwater, which would have rendered their
12 properties virtually worthless. The litigation and Settlement preserved the Willis Class' rights to
13 make correlative use of the Basin's groundwater, and the Suppliers released their prescription
14 claims as to the Class. In short, the Settlement accomplished Willis' objectives in filing suit.

15 III. ARGUMENT

16 A. Plaintiff and the Class Are Prevailing Parties Under Section 1021.5.

17 Whether a party is a "prevailing party" for purposes of Section 1021.5 is a pragmatic and
18 flexible inquiry, depending more on the results achieved by the action rather than the manner in
19 which it was resolved. *See, e.g., Graham v. DaimlerChrysler Corp* (2004) 34 Cal 4th 553, 565.
20 "Plaintiffs may be considered 'prevailing parties' for attorney's fee purposes if they succeed on
21 *any significant issue* in litigation which achieves *some of the benefit* the parties sought in
22 bringing suit." *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal. App. 4th 140, 153
23 (citations and quotations omitted). Without question, the settlement agreement achieved
24 considerable benefits for the Class on its key claims as the Class members retain their correlative
25 rights to make beneficial use of 85% of the Basin's native yield.

26 In analyzing whether Plaintiff was a prevailing party, one must start by examining the
27 state of affairs prior to the litigation (the benchmark condition) that the Plaintiff sought to
28 address. The inquiry then turns to the practical results of the litigation – not the type of parsing

1 of claims that the Littlerock Defendants engage in.

2 Here, the situation immediately prior to the commencement of the Class suit was an
3 action by the Defendants that sought prescriptive rights against property owners who would later
4 become the members of the Class. Because the property owners had never pumped groundwater,
5 they lacked the important defense of self help against the prescription claims and were at risk of
6 losing all of their water rights. As a result of the litigation by the Class, the situation today is that
7 the 65,000 properties still retain the great bulk of their water rights. The primary aim of the
8 litigation by the Class was to defeat or diminish the prescription claims of the PWS. The Class
9 undeniably achieved that objective. Under any reasonable reading of the law governing fee
10 claims under Section 1021.5, the Class is a prevailing party.

11 **1. The Catalyst Theory Is Irrelevant Here**

12 The Littlerock Defendants complain that the Class' opening brief did not address the
13 "catalyst theory," but the reason is simple: we do not seek an award under that theory. The
14 catalyst theory is only applicable where a party argues for a fee award claiming that its litigation
15 caused the other party to change its conduct – but outside of the context of litigation. Here,
16 where there is a formal Stipulation of Settlement, which the Court has now approved, the catalyst
17 theory is simply irrelevant.

18 **B. Plaintiff Satisfies the Other Requirements of Section 1021.5.**

19 Defendants cannot seriously contest the fact that this action clearly satisfies 1021.5's
20 requirement that the case confer a significant benefit on "the general public *or a large class of*
21 *persons . . .*" CCP § 1021.5 (emphasis added). The Willis case did so in two respects: (1) it
22 benefitted the general public by facilitating a comprehensive resolution of the problems of this
23 Basin; and (2) it protected the property rights of the class of some 60,000 people.

24 The Littlerock Defendants' arguments that they also achieved some benefits as a result
25 of the lawsuit does not justify denying fees to the Class, where, as here, the Class satisfies the
26 standards for being a prevailing party and benefiting a large class. *Choi v. Orange County Great*
27 *Park Corp.* (2009) 175 Cal. App. 4th 524. That is particularly true in this case, where the public
28 entity defendants were seeking to deprive the Class of fundamental property rights and the Class

1 preserved at least 85% of those rights. Moreover, even if the Defendants could also be regarded
2 as prevailing parties, they are not entitled to fees under Section 1021.5, and they have cited no
3 relevant authority supporting the proposition that their limited success entitles them to an offset
4 against the Class' fees.

5 It is noteworthy in that regard that Section 1021.5 was intended to authorize an award of
6 fees to prevailing plaintiffs who pursue litigation that benefits a large class. Defendants are
7 entitled to an award of fees only if they can show that the action was frivolous or without
8 foundation, not merely if they prevail. *See Christiansburg Garment Co. v. EEOC* (1978) 434
9 U.S. 412; *Stephens v. Coldwell Banker Comm. Group, Inc.* (1988) 199 Cal App 3d 1394,
10 overruled on other grounds in *White v. Ultramar, Inc.* (1999) 21 Cal 4th 563, 574 n. 4. For this
11 reason also, Defendants argument that they are also prevailing parties is irrelevant.

12 **C. The Equities Support Plaintiff's Request for an Award of Fees.**

13 The Littlerock Defendants as well as California Water argue at length that they represent
14 the public interest and that the equities of the case favor their position. Clearly, however, the
15 mere fact that they represent public entities does not establish that fact. As the Supreme Court
16 has regularly held, "[a] central function of the [private attorney general theory] is to call public
17 officials to account and to insist that they enforce the law." *Serrano v. Unruh (Serrano IV)*
18 (1982) 32 C3d 621, 632 (quotations and citations omitted). The simple fact is that Plaintiff
19 Willis had to bring this litigation to contest the Defendants' baseless assertions that they had
20 obtained prescriptive rights to the Basin's groundwater. Because Willis succeeded in protecting
21 the constitutionally recognized rights of this large class of landowners from government
22 overreaching, the action merits a substantial fee award under CCP Section 1021.5.

23 In viewing the equities of this case, the Court should also keep in mind that, though
24 technically a plaintiff, Willis instituted this litigation to defend the Class' property rights against
25 the Public Water Suppliers' prescription claims. She did not bring suit to gain anything, but
26 rather simply to protect her rights against governmental overreaching. Further, Defendants could
27 have compromised those claims years ago, but failed to do so. Under these circumstances,
28 Willis' counsel should be fairly compensated for persevering in protecting the Class' rights.

1 Finally, it is noteworthy that for many years Defendants have been pumping
2 approximately 40,000 acre feet of water per year from this Basin – despite the fact that they
3 claim the Basin is in overdraft. In other words, Defendants, like the private pumpers, have been
4 benefitting economically from mining this resource – to the detriment of the Class members,
5 whose ability to use the water underlying their properties in the future has been diminished by
6 Defendants’ overuse. Defendants have profited from taking the landowners’ property; at a
7 minimum, Defendants should fairly compensate Class counsel for successfully defending the
8 Class’ constitutionally recognized rights to make beneficial use of the water under their
9 properties.

10 **IV. CONCLUSION**

11 As the court wrote in *Thayer v. Wells Fargo Bank* (2001) 92 Cal. 4th 819, 839, it is
12 important to “encourage ‘private attorneys general’ willing to challenge injustices in our society.
13 Adequate fee awards are perhaps the most effective means of achieving this salutary goal.
14 Courts should not be indifferent to the realities of the legal marketplace or unduly parsimonious
15 in the calculation of such fees.” The Supreme Court has further held that attorney fee awards
16 under section 1021.5 “*should be fully compensatory*,” and that “an ... award should ordinarily
17 include compensation for all hours reasonably spent.” *Ketchum v. Moses* (2001) 24 Cal 4th 1122,
18 1133. For the foregoing reasons, Plaintiff respectfully requests that the Court grant her fee
19 petition and award the fees and costs she requested.

20 Dated: March 15, 2011

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

/s/Ralph B. Kalfayan

Ralph B. Kalfayan, Esq.

David B. Zlotnick, Esq.

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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17 DISTRICT NO. 40; CITY OF LANCASTER;
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18 PALMDALE; PALMDALE WATER
DISTRICT; LITTLEROCK CREEK
19 IRRIGATION DISTRICT; PALM RANCH
IRRIGATION DISTRICT; QUARTZ HILL
20 WATER DISTRICT; ANTELOPE VALLEY
WATER CO.; ROSAMOND COMMUNITY
21 SERVICE DISTRICT; MOJAVE PUBLIC
UTILITY DISTRICT; and DOES 1 through
22 1,000;

23 Defendants.

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4408

CASE NO. BC 364553

Assigned to The Honorable Jack Komar

PROOF OF SERVICE

24
25 I, David B. Zlotnick, declare:

26 I am a resident of the State of California and over the age of eighteen years, and not a
27 party to the within action; my business address is 625 Broadway, Suite 635, San Diego,
28 California, 92101. On **March 15, 2011**, I served the within document(s):

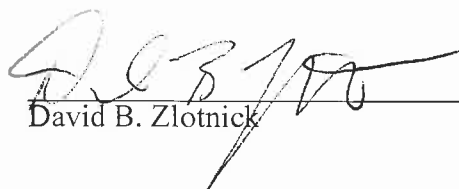
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1. CLASS PLAINTIFF'S REPLY TO LITTLEROCK CREEK'S AND CALIFORNIA WATER SERVICE COMPANY'S OPPOSITIONS TO PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES

[X] by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.

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

Executed on **March 15, 2011**, at San Diego, California.



David B. Zlotnick