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12 LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
16

17 **ANTELOPE VALLEY GROUNDWATER**
18 **CASES**

19 Included Actions:

20 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
21 California, County of Los Angeles, Case No.
BC 325201;

22 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
23 California, County of Kern, Case No. S-1500-
CV-254-348;

24 Wm. Bolthouse Farms, Inc. v. City of
25 Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v. Palmdale
26 Water Dist., Superior Court of California,
County of Riverside, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

RELATED CASE TO JUDICIAL
COUNCIL COORDINATION
PROCEEDING NO. 4408

**PUBLIC WATER SUPPLIERS’
SUPPLEMENTAL BRIEF IN
RESPONSE TO WILLIS CLASS’
SUPPLEMENTAL NOTICE OF
LODGMET OF TIME RECORDS**

DATE: MARCH 22, 2011
TIME: 10:00 A.M.
DEPT: 1
JUDGE: HON. JACK KOMAR

1 **I. INTRODUCTION**

2 On March 9, 2011, the Los Angeles County Waterworks District No. 40 (“District 40”)
3 filed its brief opposing the Willis Class Fee Award (*see* “Los Angeles County Waterworks
4 District No. 40’s Brief Re Equitable Apportionment of Willis Class Fee Award” [“Opposition
5 Brief”]). One day later, on March 10, 2011, Willis Class Counsel filed in a “Supplemental Notice
6 Of Lodgment In Support Of Motion For An Award Of Attorney’s Fees; Reimbursement Of
7 Expenses; And Class Representative Incentive Award” [“Supplemental Fee Notice”]. The
8 Supplemental Fee Notice presented new evidence not contained in their moving papers: time
9 record entries for Mr. Zlotnick for the period identified as “Inception through December 31,
10 2008.” As a result of their late filing, District 40 had no opportunity to examine the newly
11 submitted billing entries or compare those entries with the entries provided by Mr. Kalfayan prior
12 to the filing of its Opposition Brief. District 40 thus submits this Supplemental Brief regarding
13 additional evidence demonstrating the inflated basis of the fees sought by Willis Class Counsel
14 that were unnecessarily incurred in this Adjudication and are unreasonable.

15 **II. DISCUSSION**

16 **A. The Willis Class Should Not Be Awarded Fees That Have Been Inflated And**
17 **That Bear No Reasonable Relation To The Representation Of The Class And**
18 **Their Fee Award Should Be Considerably Reduced.**

19 As a general matter, a fee award must be *reasonable* in terms of the number of hours
20 expended and the amount of time billed for any single entry. (*Graham v. DaimlerChrysler Corp.*
21 (2004) 34 Cal.4th 553, 578-579.) A key role a court assumes in relation to any fee motion is to
22 evaluate the value of the legal services performed relative to the skill of the attorney and the
23 nature of the task at hand. (*Ibid.*) A court may exercise its discretion and discount or strike fees
24 that are unreasonably inflated and/or cannot realistically be attributed to the type of work
25 performed. (*See, e.g., Thompson Pacific Construction, Inc. v. City of Sunnyvale* (2007) 155
26 Cal.App.4th 525, 554-58 [striking fees incurred from unnecessary and unjustifiable
27 representation]; *see also The People ex rel. Dep’t of Transportation v. Yuki* (1995) 31
28

1 Cal.App.4th 1754, 1767-76 [discounting fees unreasonably related to the representation].¹ In the
2 present case, a majority of the fees claimed by the Willis Class for time billed by Class Counsel
3 (Messrs. Kalfayen and Zlotnick) is for legal work that bore no relationship to the time reasonably
4 expended by attorneys of similar rank attending to like tasks.² This is demonstrated in numerous
5 time entries; only a few examples are discussed herein.

6 **1. Class Counsel Appears To Have Charged \$18,075.00 To Prepare A 3-**
7 **Page Opposition Without Legal Authority.**

8 The first example concerns work related to a Court hearing held on June 14, 2010 for the
9 Public Water Suppliers' Motion and Proposed Order regarding the Court's jurisdiction over
10 property transferees. The moving papers, which totaled a mere 9 pages and consisted of a 7-page
11 Memorandum of Points & Authorities and a 2-page Proposed Order, contained cites to only 9
12 legal authorities (6 cases and 3 statutes). One of the 6 cases mentioned was the seminal water law
13 decision: *Pasadena v. Alhambra* (1949) 33 Cal.2d 908—the principles with which any
14 experienced water attorney would be very familiar. A few parties filed opposing papers, the
15 United States included, all of which totaled 20 pages containing few legal cites, and five parties
16 filed 1-page joinders. Mr. Kalfayen filed two opposing documents totaling 3 pages, *neither of*
17 *which contained any legal authority*. Both Messrs. Kalfayen and Zlotnick appeared at the hearing
18 by court call. How a 3-page opposition **without any legal cites** and one court call appearance
19 consumed 39 hours of Mr. Kalfayen's time and generated \$15,560³ in legal fees is difficult to
20 comprehend. (See Declaration of Jeffrey V. Dunn ["Dunn Decl."], ¶¶ 3, 5.) That together Mr.
21 Kalfayan and Mr. Zlotnick charged \$18,075 to prepare, draft, and defend the Class position on

22 _____
23 ¹ The previous briefs filed by various Public Water Supplies include several citations to case law.
24 This supplemental brief does not repeat those citations and is focused on pointing out a few
25 examples of the unreasonableness of the fees sought by Willis class counsel.

26 ² Many of Messrs. Kalfayen and Zlotnick's time entries are block billed, and even though this
27 makes it challenging to determine how much time has been devoted to the completion of each
28 individual task where numerous tasks are listed, it is still clear that the total amount of time billed
bears no reasonable relationship to the tasks identified. There are many instances, for example,
where Class Counsel has devoted full billing days to time spent reviewing a few emails and
making a few telephone calls.

³ Many of Messrs. Kalfayen and Zlotnick's time entries have been block billed, thereby making it
difficult to discern with certainty the precise amount of time and fees generated in connection
with their attendance at these "meetings."

1 this single issue is unreasonable and therefore untenable. This example alone invites
2 consideration of the fees generated, and the recompense now sought, throughout the entirety of
3 the 4-year period for which the Willis Class claims fees.

4 **2. Class Counsel Appears To Have Charged \$1720 For Preparing A 157-**
5 **Word, Boilerplate Stipulation.**

6 The second example concerns a Stipulation and Class Notice that Messrs. Kalfayen and
7 Zlotnick revised on November 22, 2010. On this day, Mr. Kalfayen billed a total of 4.3 hours—
8 more than half a day—for the following work: (1) preparing a one-page boilerplate Stipulation
9 regarding Class Notice; (2) making minor edits in a three-minute period to a 7-page Notice
10 prepared by Best Best & Krieger; and (3) sending a 3-sentence, 31-word e-mail to Mr. Dunn
11 regarding the same. (Dunn Decl., ¶¶ 3, 4.) Mr. Kalfayen thus billed 4.3 hours for work that
12 arguably should have taken half the time. In short, Mr. Kalfayen’s generous approach to billing is
13 not a practice this Court should endorse.

14 **3. Approximately 300 Meetings Appear In Class Counsel’s Time Sheets**
15 **And Only A Fraction Are Confirmed As Having Occurred.**

16 Out of approximately three hundred meetings (both in-person and by telephone) between
17 Messrs. Kalfayen and Zlotnick, only a fraction of those meetings are confirmed on both time
18 sheets. For example, in the period “Inception through December 31, 2008” a total of 68 entries
19 (\$57,375 in fees)⁴ alluding to meetings or conference calls with Mr. Kalfayen appear in Mr.
20 Zlotnick’s time sheets, but not a single one of those same meetings or calls appear in Mr.
21 Kalfayen’s time sheets.⁵ (Dunn Decl., ¶ 3; *see* Supplemental Fee Notice, Ex. 1.)

22 Overall, Mr. Zlotnick billed a total of 271 hours—amounting to \$121,950—for meetings

23 ⁴ *See* footnote 3, *supra*.

24 ⁵ *See* Plaintiff’s Supplemental Fee Notice, Ex. 1 (10/20/2006, 10/23/2006, 11/7/2006, 11/30/2006,
25 2/15/2007, 3/13/2007, 4/6/2007, 5/4/2007, 8/14/2007, 8/17/2007, 10/24/2007, 12/20/2007,
26 2/26/2008, 3/4/2008, 3/14/2008, 3/18/2008, 3/25/2008, 3/28/2008, 4/7/2008, 4/10/2008,
27 4/11/2008, 4/14/2008, 4/15/2008, 4/20/2008, 4/24/2008, 5/6/2008, 5/13/2008, 5/14/2008,
28 5/15/2008, 5/23/2008, 5/27/2008, 6/4/2008, 6/11/2008, 6/18/2008, 6/20/2008, 6/24/2008,
6/25/2008, 6/27/2008, 7/8/2008, 7/10/2008, 7/11/2008, 7/20/2008, 7/25/2008, 7/29/2008,
8/5/2008, 8/12/2008, 8/21/2008, 9/10/2008, 9/22/2008, 9/29/2008, 9/30/2008, 10/1/2008,
10/6/2008, 10/7/2008, 10/27/2008, 10/31/2008, 11/3/2008, 11/10/2008, 11/11/2008, 11/12/2008,
11/13/2008, 11/17/2008, 11/20/2008, 12/1/2008, 12/5/2008, 12/10/2008, 12/11/2008,
12/17/2008).

1 allegedly held with Mr. Kalfayen,⁶ but **none** of those meetings described by Mr. Zlotnick appear
2 in Mr. Kalfayen's entries. (Dunn Decl., ¶ 3.) Similarly, Mr. Kalfayen billed time for attending, in
3 person or by telephone, some 152 meetings with Mr. Zlotnick, yet curiously, only 87 of those 152
4 meetings are found in Mr. Zlotnick's time entries.⁷ (Dunn Decl., ¶ 3.) That Mr. Kalfayen
5 rationalized 185.9 billable hours and \$74,360 for legal fees incurred by attending meetings not
6 verified *by the only other attendee at the meeting* seems outright absurd. These discrepancies
7 alone equate to 456.9 billable hours—or \$196,310.⁸ At a minimum the fee award should be
8 reduced, or stricken entirely.

9 There are many inconsistent entries appearing throughout the time records submitted by
10 Willis Class Counsel, and countless entries based on seemingly unjustified legal work that
11 appears to have resulted in inflated fee amounts. The examples provided here in this
12 Supplemental Brief are intended to demonstrate the unreasonableness of the fees sought and
13 further justify the basis upon which a reduction in—or outright denial of—the total fee award is
14 appropriate.

15 **4. A Review Of Court Dockets In Other Lawsuits Raises Questions**
16 **Regarding The Billing Practices Of Messrs. Zlotnick and Kalfayan.**

17 The questionable billing practices exhibited by both Willis class counsel in this
18 Adjudication seem more circumspect when considered in relation to cases simultaneously
19 occurring. Thus, for instance, in *I-Flow Corp. v. Apex Medical Technologies, Inc.*, No.
20 3:07cv1200 (S.D. Cal. filed June 29, 2007) [*"I-Flow"*], a matter in which Mr. Kalfayen
21 represented counterclaimant/defendant Apex Medical Technologies, Mr. Kalfayan billed in the
22 Antelope Valley Groundwater Adjudication 8.6 hours on July 8, 2008, the same day that a claims
23 construction hearing was held in *I-Flow* (Doc. 75); 9.8 hours on August 7, 2008, the same day as
24 a mandatory settlement conference in *I-Flow* (Doc. 82); 8.3 hours on July 31, 2009, the same day
25 as a pretrial conference in *I-Flow* (Doc. 263); and 8.1 hours on November 16, 2009, the same day
26 as a mandatory settlement conference in *I-Flow* (Doc. 447). Likewise, in *Sobel et al. v. The Hertz*

27 ⁶ This represents time record entries from the 4-year period 2006 through 2010.

28 ⁷ *Ibid.*

⁸ See footnote 3, *supra*.

1 Corp., No. 3:06cv545 (D. Nev. filed Oct. 13, 2006) [*"Sobel"*], an action in which Mr. Zlotnick
2 represented plaintiffs, on April 22, 2008, the same day as a status conference in *Sobel* (Doc. 44),
3 Mr. Zlotnick also billed 8.6 hours in this Adjudication, and again on December 1, 2008, the day
4 of a hearing on a motion to compel in *Sobel* (Doc. 74), Mr. Zlotnick billed 8.3 hours in this
5 Adjudication.

6 All things considered, a billing day exceeding 8 hours is a high billing day by most
7 attorney standards, particularly since those hours do not reflect the non-billable tasks that
8 consume a large part of every day. It is questionable how substantial blocks of time could have
9 been dedicated to this Adjudication on the very days in which court hearings and other important
10 matters took place in other pending proceedings.

11 **III. CONCLUSION**

12 For the reasons stated herein, and previously stated in the oppositions filed by the Public
13 Water Suppliers, District 40 respectfully submits that in the event the Court awards fees to Class
14 Counsel, that the Court reduce the fee award to reflect only those fees that were reasonable and
15 proportionate to the time expended by Class Counsel on necessary and relevant tasks.

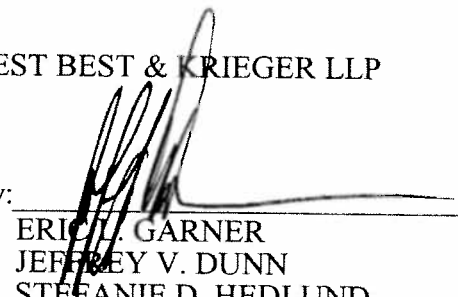
16 Alternatively, given that the credibility of Class Counsel's bills are at issue, and to the
17 extent the Court cannot discern whether block billed entries represent time reasonably spent in
18 Counsels' representation of the Class, then District 40 asks that the Court continue the hearing on
19 the Fee Motion to provide District 40 with additional time to conduct further discovery and
20 investigation, including taking depositions of Class Counsel, into the basis of the fees sought by
21 them. Moreover, District 40 requests that the Court order Class Counsel to submit billing records
22 that reflect the actual amount of time spent on each individual task for which they seek fees.

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Dated: March 14, 2011

BEST BEST & KRIEGER LLP

By:



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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On March 18, 2011, I served the within document(s):

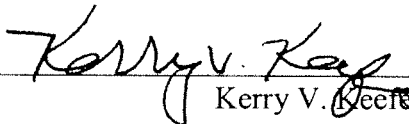
PUBLIC WATER SUPPLIERS' SUPPLEMENTAL BRIEF IN RESPONSE TO WILLIS CLASS' SUPPLEMENTAL NOTICE OF LODGMNT OF TIME RECORDS

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on March 18, 2011, at Irvine, California.


Kerry V. Keefe