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

17 **ANTELOPE VALLEY**
GROUNDWATER CASES
18
19 Included Actions:
Los Angeles County Waterworks District
20 No. 40 v. Diamond Farming Co., Superior
Court of California, County of Los
Angeles, Case No. BC 325201;
21
22 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
Court of California, County of Kern, Case
23 No. S-1500-CV-254-348;
24 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
25 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
26 California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
OPPOSITION TO WILLIS CLASS'
MOTION FOR RECONSIDERATION OF
THE COURT'S NOVEMBER 16, 2011
ORDER RE ELECTION FOR PERIODIC
PAYMENTS OF THE AMENDED FINAL
JUDGMENT APPROVING WILLIS
CLASS ACTION SETTLEMENT OR, IN
THE ALTERNATIVE, FOR RELIEF
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 984(e)(4)**

Date: April 17, 2012
Time: 9:00 a.m.
Dept: Room 1515 (CCW)

1 **I. INTRODUCTION**

2 The Willis Class asks the Court to no longer allow Los Angeles County Waterworks
3 District No. 40's election to make installment payments on the Willis Class award of attorney
4 fees and costs, but the Willis Class had earlier agreed in court to allow the installment payments.
5 Moreover, the Willis Class never appealed the Court's "Order re Election for Periodic Payments
6 of the Amended Final Judgment Approving the Willis Class Action Settlement ("Order"), and the
7 time for appealing the Order has long since passed.

8 The Willis Class improperly seeks a reconsideration of the Court's Order. The Willis
9 Class should be estopped from seeking reconsideration of the Court's Order, there are no valid
10 reasons for the Court to grant a motion to reconsider the Order, and the Court lacks jurisdiction to
11 consider the Motion.

12 **II. PROCEDURAL HISTORY**

13 After Los Angeles County Waterworks District No. 40 ("District 40"), City of Palmdale,
14 Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
15 Quartz Hill Water District, California Water Service Company, Rosamond Community Service
16 District, and North Edwards Water District (collectively, the "Settling Defendants") entered into a
17 settlement stipulation with the Willis Class, this Court signed its Initial Order for Fees and Costs
18 on May 4, 2011 and a Final Judgment Approving Willis Class Action Settlement ("Judgment")
19 on May 12, 2011.

20 The Initial Order for Fees and Costs and Judgment did not include an award of attorneys
21 fees and costs for the Willis Class Counsel between January 1, 2011 and May 13, 2011. The
22 Willis Class subsequently brought a motion for attorneys' fees for services rendered during that
23 period.

24 On September 6, 2011, this Court granted the Willis Class's request for additional fees
25 and issued an order, awarding supplemental attorneys' fees ("Supplemental Order for Fees").
26 This Court then issued its Amended Judgment on September 22, 2011, which superseded the
27 Judgment.

28 Within the required time for an appeal, District No. 40 filed its Notice of Election for

1 Periodic Payments of the Amended Final Judgment (“Notice of Election for Periodic Payments”),
2 and requested that the judgment, in the amount of \$2,075,174.18, be paid over the course of ten
3 years. (Notice of Election for Periodic Payments at 2:22-23 [Doc. 4654].) The Willis Class did
4 not object and agreed to the Public Water Suppliers’ election for periodic payments but only
5 sought to shorten the installment payment period from ten to five years. (Memorandum in Partial
6 Opposition to The Public Water Suppliers’ Election Under Govt. Code Section 984(d) (“Partial
7 Opposition to Periodic Payments”) at 1:8-2:2 [Doc. 4658].)

8 At the November 15, 2011 hearing on this matter, the Court asked the Willis Class
9 Counsel if he had anything to contribute during the oral argument. The Willis Class Counsel
10 responded, “we submit on the paperwork.” (Declaration of Jeffrey V. Dunn (“Dunn Decl.”), Ex.
11 “B” at 1:10-18.) The Court, noting that there was no objection to the application of Government
12 Code section 984, subdivision(d), approved the election. (*Id.* at 1:19-25; see generally, Order re
13 Periodic Payments [Doc. 4693].) The Willis Class did not appeal the Order re Periodic Payments.

14 On November 28, 2011, District No. 40 filed its notice to appeal the award of attorney
15 fees and costs in the Amended Final Judgment Approving the Willis Class Settlement entered on
16 September 22, 2011. (Notice of Appeal at 1 [Doc. 4696].) Littlerock Creek Irrigation District
17 filed their joinder in the appeal on November 29, 2011.

18 The Willis Class filed an objection with the Court of Appeal regarding the timeliness of
19 the appeals. After review of the moving papers, the Court of Appeal issued an Order finding that
20 the appeals are timely. (Notice of Lodgment, Ex. G at 2 [Doc. 4924].)

21 The Willis Class based its Motion for Reconsideration on the Court of Appeal’s recent
22 order regarding recognizing the timeliness of Los Angeles County Waterworks District No. 40’s
23 appeal of the Amended Judgment Approving the Willis Class Settlement (“Amended
24 Judgment”). The Willis Class misconstrues this order to indicate an untimely appeal of this
25 Court’s May 4, 2011 Order (“Initial Order for Fees and Costs”), despite the fact that the appellate
26 court held that the Public Water Suppliers “filed a timely challenge” to the Amended Judgment.
27 (Willis Class’s Notice of Lodgment (“Notice of Lodgment”), Ex. G at 2 [Doc. 4924].)
28 Importantly, the May 4, 2011 Order was not an appealable order and the May 13, 2011 Initial

1 Judgment does not express or guarantee an award for attorneys fess and costs.

2 **III. THIS COURT LACKS JURISDICTION TO RECONSIDER THE ORDER RE**
3 **PERIODIC PAYMENTS.**

4 The Public Water Suppliers timely appealed the Amended Judgment and all subsequent
5 trial court proceedings relating to the Amended Judgment are automatically stayed. Section
6 916(a) of Code of Civil Procedure provides “the perfecting of an appeal stays proceedings in the
7 trial court upon the judgment or order appealed from or upon the matters embraced therein or
8 affected thereby, including enforcement of the judgment or order, but the trial court may proceed
9 upon any other matter embraced in the action and not affected by the judgment or order.

10 (Code Civ. Proc., § 916(a); *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal. 4th 180, 198
11 [“section 916, as a matter of logic and policy, divests the trial court of jurisdiction over the
12 subject matter on appeal—*i.e.*, jurisdiction in its fundamental sense.”].)

13 Moreover, a judgment solely for attorneys’ fees and costs pursuant to Section 1021 *et seq.*,
14 is automatically stayed by appeal. (Code Civ. Proc., § 917.1(d); *Vadas v. Sosnowski* (1989) 210
15 Cal. App. 3d 471, 475 [“judgment for costs alone is automatically stayed without bond pending
16 appeal”].) The purpose of the automatic stay is to preserve “the status quo until the appeal is
17 decided.” (*Varian Medical Systems, Inc. v. Delfino, supra*, 35 Cal. 4th at p. 198.)

18 The Amended Judgment “award[ed] attorneys fees in the amount of \$1,839,484, an
19 incentive award for Ms. Rebecca Willis in the amount of \$10,000, costs in the amount of
20 \$65,057.68, and supplemental attorneys’ fees in the amount of \$160,622.50.” (Amended
21 Judgment at 6:3-6 [Doc. 4619]; Initial Order for Fees and Costs at 6:10-11, 10:26-11:5, 11:18-19
22 [Doc. 4431]; Supplemental Order for Fees at 3:27-28 [Doc. 4588].) The incentive award for Ms.
23 Willis is to be paid “by counsel [for the Willis Class] out of attorneys’ fees awarded.” (Initial
24 Order for Fees and Costs at 11:18-19 [Doc. 4431].) These fees and costs are the subject matter of
25 the appeals and are essential to and inseparable from the Order re Periodic Payments. (Notice of
26 Appeal [District 40 is appealing “the award of attorney fees and costs in the Amended Final
27 Judgment”] [Doc. 4696]; Joinder in Notice of Appeal [Doc. 4698]; Order re Periodic Payments at
28 1:9-11 [“IT IS ORDERED that the \$2,075,174.18 award in the Amended Final Judgment . . .

1 shall be paid in periodic payments”] [Doc. 4693] .)

2 The Willis Class request to accelerate the payments violates the stay provisions of Section
3 916 *et seq.* (*Varian Medical Systems, Inc. v. Delfino, supra*, 35 Cal. 4th at p. 198 [without the
4 stay, “the trial court could render the appeal futile by altering the appealed judgment or order by
5 conducting other proceedings that may affect it.”] [citation and quotation marks omitted].) This
6 Court would not be able to reconsider or modify the Order without violating the automatic stay
7 and infringing on the jurisdiction of the Court of Appeal.

8 The Public Water Suppliers perfected their appeal of the Amended Judgment. District No.
9 40 filed its Notice of Appeal on November 28, 2011. (Notice of Appeal [Doc. 4696]; Joinder in
10 Notice of Appeal [Doc. 4698].) The Court of Appeal, in its February 15, 2012 order held that the
11 “appellants filed a timely challenge.” (Notice of Lodgment, Ex. G at 2 [Doc. 4924].) The filing
12 of a Notice of Appeal is sufficient to terminate the jurisdiction of the trial court. (*Olson v.*
13 *Superior Court of Sacramento County* (1969) 274 Cal. App. 2d 311, 314.) Therefore, until the
14 Court of Appeal makes a final determination as to the Amended Judgment, this Court lacks
15 jurisdiction to reconsider the Order re Periodic Payments.

16 **IV. THE COURT OF APPEAL’S FEBRUARY 15, 2012 ORDER AFFIRMS THE**
17 **RIGHT TO APPEAL THE AMENDED FINAL JUDGMENT AND DOES NOT**
18 **DEEM THE INITIAL JUDGMENT FINAL**

19 Prior to the Amended Judgment, there was no appealable order or judgment, from which
20 the Public Water Suppliers could appeal the amount of the attorney fees award. Section 904.1
21 provides that only final judgments and specified orders are appealable. Neither the Initial Order
22 for Fees and Costs nor the Judgment meet the criteria set forth under Section 904.1 to appeal an
23 amount of attorney fees awarded.

24 While Section 904.1 permits a party to appeal post-judgment orders and orders awarding
25 monetary sanctions, it does not allow an appeal of an order awarding non-punitive attorneys fees
26 and costs issued before final judgment. (See generally, Code Civ. Proc., § 904.1.) Hence, the
27 Initial Order for Fees and Costs, issued before any judgment was entered, is simply not
28 appealable.

Further, the Initial Order for Fees and Costs could not have been made appealable by the

1 May 12, 2011 Judgment because the judgment itself was not final and appealable. (See Code
2 Civ. Proc., § 904.1(a)(1) & (a)(2).) A judgment is final when “where no issue is left for future
3 consideration except the fact of compliance or noncompliance with the terms of the first decree,
4 that decree is final, but where anything further in the nature of judicial action on the part of the
5 court is essential to a final determination of the rights of the parties, the decree is interlocutory.”
6 (*Olson v. Cory* (1983) 35 Cal.3d 390, 399 [citation and quotation marks omitted].) The mere fact
7 the Judgment was titled, “Final Judgment Approving Willis Class Action Settlement,” carries no
8 weight in the determination of the Judgment’s finality. (*Jackson v. Wells Fargo Bank* (1997) 54
9 Cal.App.4th 240, 244 [“no effect can or should be given to such a label [of “Final Judgment”] if
10 the judgment does not *in fact* conclude matters between the parties.”] [emphasis in original].)
11 Under the test set forth in *Olson*, the Judgment does not meet the criteria for a final judgment on
12 the issue of attorneys fees because the Judgment did not state the amount of attorney fees and
13 costs. (See generally, Initial Judgment [Doc. 4453].)

14 The Judgment stated that issues concerning “attorneys’ fees and reimbursement of costs,
15 as well as an incentive award . . . as well as any other collateral matters . . . shall be addressed by
16 separate Order.” (Initial Order at 6:11-13 [Doc. 4453].) As the Judgment did not include any
17 award of fees or costs, enforcement of the Judgment would not have required the Public Water
18 Suppliers to make any payments – a point that counsel for District No. 40 raised during the
19 August 30, 2011 hearing. (Dunn. Decl., Ex. “A” at 27:7-9 [in referencing why the Initial
20 Judgment must be revised before the Public Water Suppliers may elect periodic payments,
21 District No. 40 stated: “All we asked is for an amended Judgment. Under the terms of the
22 Government Code Section 984, it talks about the judgment as the basis for the payment by the
23 governmental entity.”].) Until the attorneys’ fees and costs were incorporated into the Amended
24 Judgment in September 2011, there was not an order or judgment, from which the Public Water
25 Supplier could appeal.

26 The parties could never have intended the Initial Order for Fees and Costs and the earlier
27 Judgment to be the final judgment. As discussed above, the earlier Judgment did not include
28 attorneys’ fees for services rendered between January 1, 2011 and May 13, 2011. (Supplemental

1 Order for Fees at 2:13-15 [Doc. 4588].)

2 Furthermore, if the Willis Class truly believes that the Initial Order for Fees and Costs
3 (dated May 4, 2011) and the earlier Judgment (dated May 12, 2011) to be final, the Willis Class
4 would have objected to the timeliness of District No. 40's Notice of Election for Periodic
5 Payments filed on October 27, 2011.

6 Pursuant to Rule 3.10804(a) of the California Rules of Court, the moving party must file
7 its notice of election within the earlier of 30 days of service of notice of entry or 60 days after
8 entry of judgment. Counsel for the Willis Class served the notice of entry of the Initial Judgment
9 on May 19, 2011. (Proof of Service of Notice of Entry of Judgment [Doc. 4462].) Assuming that
10 the parties intended the earlier Judgment to be the final judgment, the Willis Class would had to
11 object to any election of periodic payments made after June 18, 2011 or 30 days after service of
12 notice of entry.

13 When District No. 40 submitted its Notice of Election for Periodic Payments in October
14 2011, however, the Willis Class did not object to the Public Water Suppliers' election. (Partial
15 Opposition to Periodic Payments at 1:8-2:2 [Doc. 4658].) Rather, the Willis Class conceded
16 installment payments were appropriate and only requested to shorten the payment period from
17 statutorily permitted ten years to five. (*Id.*) When this Court asked the Willis Class's counsel if
18 he had anything to contribute to the oral arguments, he responded, "we submit on the paperwork."
19 (Dunn Decl., Ex. "B" at 1:10-18.).

20 **V. THE WILLIS CLASS FAILED TO MEET ITS BURDEN UNDER SECTION 1008**
21 **FOR A MOTION FOR RECONSIDERATION**

22 The Willis Class's motion fails to satisfy the two-prong criteria under Section 1008 for a
23 court to reconsider a prior order:

24 When an application for an order has been made to a judge, or to a
25 court, and . . . granted, . . . any party affected by the order may,
26 *within 10 days after service upon the party of written notice of entry*
27 *of the order and based upon new or different facts, circumstances,*
28 *or law, make application to the same judge or court that made the*
order, to reconsider the matter and modify, amend, or revoke the
prior order.

(Code Civ. Proc., § 1008(a) [emphasis added].) The Court of Appeal order does not present new

1 facts or circumstances that the Willis Class was unaware of at the time it filed its Partial
2 Opposition to Periodic Payments.

3 A. **The Court of Appeal’s February 15, 2012 Order Did Not Create New or**
4 **Different Facts, Circumstances or Law**

5 A motion for reconsideration can only be granted if the moving party “provide[s] not only
6 new evidence but also a satisfactory explanation for the failure to produce that evidence at an
7 earlier time.” (*Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1198 [“In
8 short, the moving party’s burden is the same as that of a party seeking new trial on the ground of
9 ‘newly discovered evidence, material for the party making the application, which he could not,
10 with reasonable diligence, have discovered and produced at the trial.’”] [quoting *Blue Mountain*
11 *Development Co. v. Carville* (1982) 132 Cal.App.3d 1005, 1013].) “[N]ew or different facts,
12 circumstances, or law” that would justify reconsideration must not been known to the moving
13 party. (*New York Times Co. v. Superior Court* (2005) 135 Cal. App. 4th 206, 213; see also,
14 *Foothills Townhome Assn. v. Christiansen* (1998) 65 Cal.App.4th 688, 692 [plaintiff’s belief that
15 certain evidence was not necessary at the hearing was insufficient to justify reconsideration],
16 disapproved on another ground in *Navellier v. Sletten* (2002) 29 Cal.4th 82.)

17 The Willis Class fails to meet its burden under Section 1008(a). There is no new fact or
18 circumstance but only an argument that “the initial fee order was final as of this Court’s May 13,
19 2011[]entry of the Final Judgment.” (Motion at 6:23-24.) Instead, the Willis Class misplaces its
20 reliance upon the February 15, 2012 Order issued by the Court of Appeal. The alleged finality of
21 the Initial Order for Fees and Costs is not something that the Willis Class “could not, with
22 reasonable diligence, have discovered” and argued at the November 15, 2011 hearing. (*Baldwin*
23 *v. Home Savings of America, supra*, 59 Cal. App. 4th at p. 1198.) If the Willis Class believed the
24 Public Water Suppliers’ Notice of Election for Periodic Payments was untimely, it could have
25 raised that argument during the briefing process and at the November 2011 hearing. *Instead, the*
26 *Court noting that there was no objection by the Willis Class to the application of Government*
27 *Code section 984, subdivision (d), this Court approved the election. (Id. at 1:19-25; see generally,*
28 *Order re Periodic Payments [Doc. 4693].)*

1 Moreover, the Willis Class could have appealed the Order re Periodic Payments, but
2 choose not to do so. The February 2012 order by the Court of Appeal is not a new circumstance
3 justifying a motion for reconsideration after the Willis Class conceded the application of
4 Government Code section 984. Nothing prevented the Willis Class from claiming untimeliness in
5 the election of periodic payments at the November 15, 2011 hearing.

6 It is disingenuous for the Willis Class to now seek reconsideration when it did not object
7 to the validity of election at the November 15, 2011 hearing or file an appeal after the Order was
8 issued. The new facts or circumstances required by Section 1008, subdivision (a), for
9 reconsideration do not exist here.

10 Moreover, District 40 is puzzled by the Willis Class's assertion that its Motion must be
11 granted "so that the parties are not required to pursue further litigation over an issue that has
12 effectively been decided by the recent Court of Appeal ruling." (Motion at 6:25-7:1.) As
13 discussed above, the parties have not submitted their opening briefs to the Court of Appeal and
14 the Court of Appeal has not made any decisions regarding the Amended Final Judgment. This
15 threat of "further litigation" is emanating solely from the Willis Class's refusal to let a settled
16 issue lie.

17 Further, the Willis Class has no basis to pursue further litigation if this Court denies its
18 request for reconsideration. Section 1008, subdivision(g), specifies that "[a]n order denying a
19 motion for reconsideration made pursuant to subdivision (a) is not separately appealable. If an
20 order subject of a motion for reconsideration is appealable, the denial of the motion for
21 reconsideration is reviewable as part of an appeal from that order." (Code Civ. Proc. § 1008(g).)
22 Even if the Order re Periodic Payments is appealable, the Willis Class did not appeal the Order.
23 Therefore, the Order re Periodic Payments is final for the purposes of the settling parties.

24 **VI. JUSTICE IS NOT SERVED BY MODIFYING THE ORDER RE PERIODIC**
25 **PAYMENTS**

26 Contrary to the Willis Class's allegations, modifying the Order re Periodic Payments does
27 not serve the interest of justice. Government Code section 984, subdivision (e)(4)¹, permits the

28 ¹ Plaintiff's motion cites to Code of Civil Procedure section 984(e)(4). The opposition assumes that Plaintiff intended to cite to Government Code section 984(e)(4).

1 Court to amend Order re Periodic Payments “as may be just.” (Gov. Code § 984(e)(4).) The
2 Willis Class seeks to eliminate the Public Water Suppliers’ right to appeal the Amended
3 Judgment. (Motion at 7:9-13.) As discussed above, the Public Water Suppliers have not made
4 the initial payment because the appeal automatically stayed the requirement to do so. If District
5 No. 40 makes payments now it would defeat the purpose of the automatic stay – maintaining the
6 parties’ status quo – and would unfairly prejudice District No. 40. This Court should not punish
7 District No. 40 for exercising its statutory right.

8 The Willis Class has received partial payments from several Public Water Suppliers.
9 After receiving the benefits of the award, the Willis Class should not be permitted to claim
10 injustice for delay in payments.]

11 **VII. CONCLUSION**

12 For the reasons herein stated, Los Angeles County Waterworks District No. 40
13 respectfully requests the Willis Class Motion be denied.

14 Dated: April 4, 2012

BEST BEST & KRIEGER LLP

15
16 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 April 4, 2012, I served the within document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO WILLIS CLASS' MOTION FOR RECONSIDERATION OF THE COURT'S NOVEMBER 16, 2011 ORDER RE ELECTION FOR PERIODIC PAYMENTS OF THE AMENDED FINAL JUDGMENT APPROVING WILLIS CLASS ACTION SETTLEMENT OR, IN THE ALTERNATIVE, FOR RELIEF PURSUANT TO CCP SECTION 984(e)(4)

- 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 April 4, 2012, at Irvine, California.


Kerry V. Keefe

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