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12 NO. 40

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

16 **ANTELOPE VALLEY GROUNDWATER**
CASES
17 Included Actions:
18 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
19 California, County of Los Angeles, Case No.
BC 325201;
20 Los Angeles County Waterworks District No.
21 40 v. Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-
22 CV-254-348;
23 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
24 Lancaster, Diamond Farming Co. v. Palmdale
Water Dist., Superior Court of California,
25 County of Riverside, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668
26
27
28

RELATED CASE TO JUDICIAL
COUNCIL COORDINATION
PROCEEDING NO. 4408

**EX PARTE APPLICATION FOR
EXTENSION OF HEARING DATE FOR
PLAINTIFF WILLIS CLASS' MOTION
FOR AN AWARD OF ATTORNEYS'
FEES, REIMBURSEMENT OF
EXPENSES, AND CLASS
REPRESENTATIVE AWARD AND
EXTENSION FOR PUBLIC WATER
SUPPLIERS TO RESPOND TO WILLIS
CLASS DISCOVERY; DECLARATION
OF JEFFREY V. DUNN; [PROPOSED]
ORDER**

DATE: February 3, 2011
TIME: 1:30 p.m.
DEPT: 4

1 **EX PARTE APPLICATION FOR ORDER EXTENDING HEARING DATE ON**
2 **ATTORNEYS' FEES MOTION**

3 **I. INTRODUCTION**

4 Pursuant to California Rules of Court, Rule 3.1200 et set., the Public Water Suppliers,¹
5 together with the City of Lancaster and the Rosamond Community Services District, hereby make
6 this ex parte application for an order continuing the hearing date for Class Plaintiff Willis' Motion
7 for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Award
8 ("Fee Motion") from February 24, 2011 to a date some time after the completion of the Phase III
9 trial and to extend the Public Water Suppliers deadline to respond to Willis Class discovery by 60
10 days.

11 **II. BACKGROUND**

12 As the Court is aware, Phase III commenced on January 4, 2011 and is currently
13 scheduled through February 17, 2001. The Phase III trial will resume on March 14, 2011. It is
14 anticipated that the trial will continue for several weeks after March 14, 2011. It is therefore not
15 practical for the Public Water Suppliers to *simultaneously* address both Phase III and Plaintiff
16 Willis' Fee Motion. The complexity of the issues litigated in Phase III alone is time-demanding
17 and has required Counsel's uncompromised attention.

18 **III. ARGUMENT**

19 **A. The Court Has Authority To Grant An Evidentiary Hearing Or Limited**
20 **Discovery For Purposes Of Challenging Section 1021.5 Attorneys' Fees.**

21 The court has authority to grant a party opposing section 1021.5 attorneys' fees post-
22 judgment discovery for purposes of contesting the fees sought. (See *Save Open Space Santa*
23 *Monica Mountains v. Superior Court* (2000) 84 Cal.App.4th 235, 246 ("*Save Open Space*").) A
24 party may obtain discovery regarding unprivileged matters that "[are] relevant to the subject
25 matter involved in the pending action or to the determination of *any motion made in that action*, if
26

27 ¹ The Public Water Suppliers do not include the City of Lancaster and Rosamond Community
28 Services District. The City of Lancaster and Rosamond Community Services District, however,
 join the with Public Water Suppliers in the requested ex parte relief.

1 the matter either is itself admissible in evidence or appears reasonably calculated to lead to the
2 discovery of admissible evidence.” (Code Civ. Proc., § 2017(a); *Save Open Space, supra*, at 246.)

3 Management of discovery lies within the sound discretion of the trial court. (*Save Open*
4 *Space, supra*, 84 Cal.App.4th at 245.) It is for the trial court in its discretion to decide the scope
5 of permissible discovery, and its decisions as to the types of discovery appropriate or necessary
6 for the section 1021.5 attorneys’ fee inquiry should be made on a case-by-case basis. (*Id.* at 250.)

7 The court also has the authority to order evidentiary hearings to determine the
8 applicability of section 1021.5 attorneys’ fees. (See *Graham et al. v. DaimlerChrysler Corp.*
9 (2004) 34 Cal.4th 553, 576 (“*Graham*”) [holding that “[w]hen the suit is mooted early in its
10 prosecution ... it may generally be established during the attorney fee proceeding by declarations,
11 or, at the discretion of the trial court, by an abbreviated evidentiary hearing”] [emphasis added].)
12 Like a trial, the purpose of an evidentiary hearing is to resolve disputed issues of fact, or to
13 provide the court with a sufficient factual basis for deciding an issue. (See *Sablan v. Department*
14 *of Finance* (9th Cir. 1988) 856 F.2d 1317, 1322 (“*Sablan*”), a federal court decision cited with
15 approval in *Graham, supra*, at 576.)

16 Fee awards need not be preceded by an evidentiary hearing if the record and supporting
17 affidavits are sufficiently detailed to provide an adequate basis for calculating an award, and if
18 the material facts necessary to calculate the award are not genuinely in dispute. (*Sablan, supra*,
19 856 F.2d at 1322.) However, if the material facts necessary to calculate the award are genuinely
20 in dispute, or if a party is questioning the reasonableness of the attorneys’ fees requested in a
21 motion for attorneys’ fees, an evidentiary hearing is more likely to be granted. (*Ibid.*)

22 A defendant may also move to continue a scheduled hearing date on a plaintiff’s motion
23 for attorneys’ fees in order to allow the defendant time to engage in discovery or analysis
24 regarding the request for fees. However, whether such a continuance is granted is solely within
25 the discretion of the court. (*Sablan, supra*, 856 F.2d at 1320-1321.)

26 For example, in *Save Open Space*, the court concluded that where the party opposing a
27 section 1021.5 attorneys’ fee award had produced evidence suggesting that a public interest
28 organization was litigating an action primarily for the benefit of non-litigants, “the court should,

1 in order to resolve the issue, allow the opposing party to conduct limited discovery.” (84
2 Cal.App.4th at 245.) This discovery includes the use of depositions. (*Id.* at 244 [where the court
3 allowed post-judgment deposition of plaintiff to determine applicability of section 1021.5].)

4 In this case, the Public Water Suppliers need additional time to evaluate the substantive
5 claims raised in the Fee Motion. Additionally, the Public Water Suppliers plan to conduct
6 discovery as to the request for fees.

7 **B. The Public Water Suppliers Need Additional Time To Respond To The**
8 **Discovery Propounded By The Willis Class.**

9 As set forth above, the Public Water Suppliers’ Counsel is fully dedicated both in their
10 commitment of time and resources to Phase III of trial and would therefore not be able to
11 adequately respond to both matters if conducted on parallel tracks. Additional time is therefore
12 needed to allow Counsel to properly evaluate the substantive claims raised in the Fee Motion and
13 to allow for necessary discovery to determine the basis for the requested fee award—
14 \$3,525,985—that Plaintiff Willis now seeks. Also, the Public Water Suppliers will need
15 additional time to respond to the discovery propounded by the Willis Class on January 11, 2011,
16 which due to the voluminous amount of records propounded, requires a considerable number of
17 hours to thoroughly sift through, review, and redact, as necessary, all of the documents in the
18 records adduced.

19 **IV. CONCLUSION**

20 For the reasons discussed herein, and for good cause having been shown, the Public Water
21 Suppliers respectfully request that this Order be granted.

22 Dated: February 2, 2011

BEST BEST & KRIEGER LLP

23
24 By 

ERIC L. GARNER

JEFFREY V. DUNN

STEFANIE D. HEDLUND

JESSICA L. HIRSCH

Attorneys for Cross-Complainants

LOS ANGELES COUNTY

WATERWORKS DISTRICT NO. 40

DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn, declare:

1. I am an attorney duly admitted to practice before the California courts and I am a partner at Best Best & Krieger LLP, attorneys for Los Angeles County Waterworks District No. 40. I have personal knowledge of each fact herein and would testify competently thereto under oath.

2. I gave notice of this ex parte application to Willis Class Counsel, Ralph Kalfayan on February 1, 2011.

3. On February 1, 2011, Mr. Kalfayan responded to said notice and stated that he would oppose this ex parte application and any attempt to continue the hearing date on the Fee Motion now scheduled for February 24, 2011.

4. Mr. Kalfayan also stated that he was available on Thursday, February 3, 2011 for an ex parte appearance regarding the continuance of the hearing date on the Fee Motion.

5. Discovery will be necessary to adequately vet the basis for the Willis Class' fee request of up to \$3,525,985. My time is fully committed to the Phase III trial, however, and I am therefore unable to allocate the number of hours required to appropriately analyze and review the claims raised in the Fee Motion while simultaneously representing my client during Phase III.

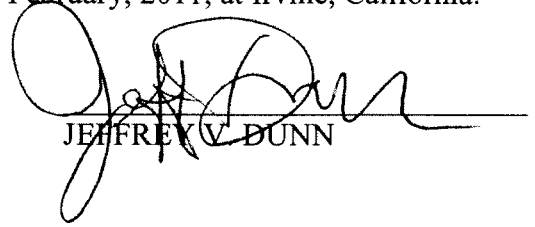
6. The discovery propounded by the Willis Class on January 11, 2011 adduced a voluminous amount of documents and it will take a significant amount of time to review, analyze, and redact all of those documents. Additional time is therefore required to respond to the Willis Class' discovery.

Therefore, the Public Water Suppliers, together with the City of Lancaster and Rosamond Community Services District, respectfully request the Court continue the hearing date on the Fee Motion to a date after Phase III has ended and allow the Public Water Suppliers an additional 60 days to respond to the Willis Class' discovery propounded on January 11, 2011.

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed this 2nd day of February, 2011, at Irvine, California.

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5 JEFFREY V. DUNN
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1 **[PROPOSED] ORDER**

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3 For good cause shown, **IT IS HEREBY ORDERED:**

4 1. The hearing date on Plaintiff Willis Class' Motion for an Award of Attorneys'
5 Fees, Reimbursement of Expenses, and Class Representative Award, is hereby continued from
6 February 24, 2011 to a new date, to be determined by the Court, some time after the completion
7 of the Phase III trial.

8 2. The Public Water Suppliers will have an additional sixty (60) days to respond to
9 the Willis Class discovery propounded on January 11, 2011.

10 IT IS SO ORDERED.

11

12 Dated: _____

13 _____
14 HON. JACK KOMAN