TEMPORARY STAY REQUESTED
Nature of Request: Temporary Stay
Phase VI/Physical Solution Trial: **September 28, 2015**
Trial Court: Honorable Jack Komar*
Rowena Walker, Clerk (408) 882-2286

COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO

Coordination Proceeding
Special Title (Rule 1550(b))
ANTELOPE VALLEY GROUNDWATER CASES

REBECCA LEE WILLIS and DAVID ESTRADA, on behalf of themselves and others similarly situated,

Petitioners,

v.

SUPERIOR COURT FOR LOS ANGELES COUNTY, STATE OF CALIFORNIA,

Respondent.

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; CITY OF LANCASTER; CITY OF PALMDALE; PALMDALE WATER DISTRICT; LITTLEROCK CREEK IRRIGATION DISTRICT; PALM RANCH IRRIGATION DISTRICT; QUARTZ HILL WATER DISTRICT; ANTELOPE VALLEY WATER CO.; ROSAMOND COMMUNITY SERVICE DISTRICT; PHELAN PINON HILL COMMUNITY SERVICE DISTRICT;

Real Parties In Interest.

RICHARD A. WOOD, an individual, on behalf of himself and all others similarly situated;

Real Party In Interest.

CASE NO. _____

LACSC Case No. BC 391869
Hon. Jack Komar, Judge Presiding

Writ filed in the Fourth Appellate District, Division 2 pursuant to Judicial Council's Coordination Order

*Judge Komar is assigned to Los Angeles Superior Court
Sitting From Santa Clara County Superior Court

PETITION FOR WRIT OF MANDATE;
MEMORANDUM OF POINTS AND AUTHORITIES

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TO: THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION TWO

INTRODUCTION

An irreconcilable attorney-client conflict of interest has arisen within two class action water rights cases that are part of the largest groundwater adjudication in the State of California - the Antelope Valley Groundwater Adjudication ("Adjudication"). The Adjudication includes a number of different lawsuits involving in excess of $1.2 Billion worth of groundwater rights in the Antelope Valley. All cases were coordinated into a Judicial Council Coordinated Proceeding in the Los Angeles Superior Court, JCCP 4408. (EXH 1; EXH 2). The Adjudication area covers 1,000 square miles or 831,000 acres of land and includes an aquifer capable of sustaining 82,300 acre feet of groundwater on an annual basis. Members of the two classes that were formed within the Adjudication -- the only classes ever formed by any court in the United States in the context of a groundwater adjudication -- own over 530,000 acres, which is more than 60% of the land in the Adjudication area. (EXH 3). Specifically, the "Willis Class" was formed to adjudicate the rights of "Nonpumpers" – private landowners who own property on which they have never pumped groundwater in the past. (EXH 4, 008:5-8, 21-27; 009:3-11). The "Wood Class" was formed to adjudicate the rights of "Small Pumpers" – private landowners who own property on which they have

pumped less than 25 acre feet per year of groundwater at any time since 1946. (EXH. 5). The Willis Class has over 18,000 Class Members, while the Wood Class has approximately 3,400 Class Members.

Up until March 2015, the Willis Class and Wood Class co-existed without any actual attorney-client conflicts of interest arising within either class. In fact, the Willis Class and Wood Class were both aligned against the Public Water Suppliers because both classes had a joint interest in defeating the Public Water Suppliers' claims of prescription. However, on March 4, 2015, the Wood Class filed a joint Settlement Agreement and Stipulated Judgment and proposed Physical Solution ("SPPS") which includes provisions that are directly adverse to and essentially extinguish the water rights of the Nonpumper Willis Class.[1] (EXH 6). Willis Class Counsel is ethically obligated to oppose the SPPS to protect the water rights and property values of the absent class members who have never pumped groundwater on their parcels, such as Class Representative Mr. Estrada. Wood Class Counsel, on the other hand, supports and advocates terms which strip the Willis Class Members of their rights to pump groundwater in the future. As of March 4, 2015, the interests of the two classes are now in direct and actual conflict with one another.

[1] The Respondent Court has preliminarily approved the SPPS. (EXH 7).

On August 25, 2015, the Respondent Court ruled that a person or landowner who owns multiple parcels, at least one Nonpumper parcel and at least one Small Pumper parcel, may be a member in *both classes, i.e.*, the Nonpumper Willis Class and the Small Pumper Wood Class – these persons are so-called "Dual Class Members." (EXH 8, 087; EXH 9, 123:15-28, 124:1-2, 24-27). The Nonpumper Willis Class and the Small Pumper Wood Class, however, were formed specifically to avoid overlap and actual conflicts of interest. (EXH 4, 008:5-8). If Willis Class Counsel's clients (absent Class Members) are in *both classes*, then as of March 4, 2015, Willis Class Counsel has a direct and irreconcilable conflict of interest: Willis Class Counsel are duty-bound to litigate against and object to the SPPS on behalf of their Nonpumper Class Member clients[2], while simultaneously representing 2,400 of those *same* clients who also own Small Pumper parcels and who do not want their attorneys to object to the SPPS with respect to

[2] Paragraph 9.2.2 of the SPPS unequivocally (and illegally) states that the Willis Class' water rights have been "modified" and that the Nonpumper Willis Class has no right to pump groundwater from the Native Safe Yield. (EXH 6, 052 ¶ 9.2.2). Paragraph 18.5.13 *et. seq*. of the SPPS illegally requires Willis Class Members to comply with onerous and expensive requirements before the Watermaster, in its discretion, approves a Member's application to pump groundwater. (EXH 6, 069 ¶18.5.13 *et. seq.*). It is undisputed that adoption of the SPPS "as is" would extinguish the Nonpumpers' right to pump from the Native Safe Yield and would be catastrophic to the property values of the Nonpumping parcels in the Basin. Consequently, advocating adoption of the SPPS "as is" by Wood Class Counsel is directly adverse to Willis Class Members (and Wood Class Members) who own Nonpumping parcels in the Basin.

their stipulated water rights as Small Pumpers.[3] Under the California Code of Professional Conduct, attorneys cannot breach their duty of undivided loyalty to their clients in this manner.

It is no answer to this irreconcilable conflict of interest to say that Class Counsel can "compartmentalize" their clients and represent the 2,400 "Dual Class Members" who are in both the Willis Class and Wood Class by requiring Willis Class Counsel to *only* represent their clients' interests as to their Nonpumper parcels and Wood Class Counsel to *only* represent their clients' interests as to their Small Pumper parcels. That is akin to legally sanctioning attorneys to look their clients in the eye and tell them you will zealously represent their property interests on one matter, but at the same time, the moment they turn around you will proverbially "stab" your clients in the back by actively litigating against their other property interests *in the very same litigation*. This cannot be the law and the Respondent Court erred by placing Willis Class Counsel (as well as Wood Class Counsel) in this

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[3] For example, under the SPPS, Wood Class Members can assert Water Code 106 priority to the Native Safe Yield, while Willis Class Members who seek domestic use are prohibited from doing so. Also, Wood Class Members are not required to install meters to monitor their groundwater pumping, while Willis Class Members are required to install meters, if they are even allowed to pump groundwater. Moreover, even though the Court-appointed expert testified that the median groundwater use of Wood Class Members was only 1.2 AFY (acre feet per year), the SPPS provides Wood Class Members with a permanent allocation of 3 AFY free of replacement assessment, while Willis Class Members are permanently excluded from the Native Safe Yield under the SPPS.

entirely untenable position of forcing them to breach their duty of undivided loyalty to 2,400 of their clients.[4]

Upon learning of these conflicting interests between Members of the Willis Class[5], Willis Class Counsel informed the Respondent Court of the irreconcilable conflict of interest by way of a Motion to Withdraw or, in the Alternative, for a Continuance of the Phase VI/Physical Solution Trial. (EXH 10). If the 2,400 landowners were considered both Wood Class and Willis Class Members under the Court's interpretation of the class definitions, then Willis Class Counsel asked that they be allowed to withdraw based on an irreconcilable and actual conflict of interest that would result in Willis Class Counsel's breach of their duty of loyalty to 2,400 of their Class Members. (EXH. 11). Alternatively, Willis Class Counsel requested that the Court continue the Phase VI/Physical Solution Trial to allow the 2,400 "Dual

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[4] Of the 3,400 Wood Class Members, 2,400 are "Dual Class Members," meaning these landowners are in both the Wood Class *and* the Willis Class. That also means that only 1,000 of the 3,400 Wood Class Members own Small Pumper parcels exclusively and are in the Wood Class only, placing those 1,000 Wood Class Members, including Class Representative Richard Wood, in the minority. Consequently, Mr. Wood is no longer an adequate class representative.

[5] Because the Wood Class and the Willis Class had never been in actual conflict prior to March 4, 2015, and because Willis Class Counsel relied on the Court's September 2, 2008 Order which required no overlap between the Willis Class and Wood Class, Willis Class Counsel was unaware that there were 2,400 landowners on both the Willis Class and Wood Class lists until they spent over 100 paralegal hours comparing the two class lists in June 2015 when they first learned of the potentially massive overlap between the two classes.

Class Members" to either be separately served or to create a subclass or subclasses to ensure that both their Nonpumper and Small Pumper property rights were adequately represented and not subject to divided loyalties of their Class Counsel. (EXH 12). Willis Class Counsel noted that the 2,400 must be recognized as an unrepresented (or inadequately represented) group of landowners entitled to their own representation, either individually or as a subclass or subclasses, in connection with the Respondent Court's Phase VI/Physical Solution Trial scheduled to commence on September 28, 2015. (EXH 8, 088).

The Respondent Court denied Petitioners' Motion, leaving Willis Class Counsel with an irreconcilable and actual conflict of interest and an impossible ethical dilemma.

REQUEST FOR TEMPORARY STAY

Petitioners have requested a temporary stay in this case to allow the Court adequate time to read and consider their petition for writ of mandate. The Respondent Court has denied Petitioners' Motion to Withdraw or, in the Alternative, for Continuance of the Phase VI/Physical Solution Trial. (EXH 8, 087). The Phase VI/Physical Solution Trial including Petitioners' Objections to Real Parties' joint settlement and proposed physical solution (the SPPS) is set to begin on September 28, 2015. (EXH 8, 088). As discussed in more detail below, the Respondent Court's ruling requires Class Counsel for Petitioners to appear and represent the best interests of their

clients. However, given the directly conflicting nature of the interests of the Willis Class as defined by the Respondent Court, Class Counsel for Petitioners cannot effectively and/or ethically proceed with such representation.

An appellate court can make any order "in aid of its jurisdiction." (Code of Civil Procedure § 923; *People ex rel San Francisco Bay, etc. Commission v. Town of Emeryville* (1968) 69 Cal.2d 533, 537.) Under this authority, "an appellate court has the power to issue a temporary stay of [a trial court's] proceedings to maintain the *status quo* pending the determination of a petition for extraordinary relief ...." (*Markley v. Superior Court* (1992) 5 Cal.App.4th 738, 750, fn. 15; *Kernes v. Superior Court* (2000) 77 Cal.App.4th 525, 531, fn. 4; Eisenberg, *California Practice Guide: Civil Appeals and Writs* (TRG 2014) ¶ 7:318.) Where appropriate, the court may even grant a *temporary stay* in the first instance without opposition. (*Kernes v. Superior Court, supra,* at 531, fn. 4.).

PETITION

A. Interested Parties.

Petitioners REBECCA WILLIS and DAVID ESTRADA, on behalf of themselves and others similarly situated ("Petitioners"), are the named class representatives for the "Willis Class." The Willis Class was formed to adjudicate the rights of "Nonpumpers" – private landowners who own

property in the Antelope Valley on which they have never pumped groundwater in the past. The Willis Class seeks to enforce their Judgment by ensuring that the Respondent Court merges and incorporates the Willis Judgment into a physical solution as required by the Respondent Court's Consolidation Order and by California law. (EXH 13; EXH 14; EXH 15, 234:25-28, 235:1). The Antelope Valley groundwater adjudication cases have all been coordinated and the proceeding is entitled ANTELOPE VALLEY GROUNDWATER CASES, Judicial Council Coordination Proceeding No. 4408 ("Underlying Action").

Real Parties in Interest LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; PALMDALE WATER DISTRICT; QUARTZ HILL WATER DISTRICT; LITTLEROCK CREEK IRRIGATION DISTRICT; PALM RANCH IRRIGATION DISTRICT; NORTH EDWARDS WATER DISTRICT; DESERT LAKE COMMNUNITY SERVICES DISTRICT and ROSAMOND COMMUNITY SERVICE DISTRICT are Public Water Suppliers who claim groundwater rights in the Basin and, as such, were named as Defendants in the Willis Class Action Lawsuit that is part of the Underlying Action. The Public Water Suppliers are parties to the Willis Class Judgment.

Real Party in Interest RICHARD A. WOOD, an individual, on behalf of himself and all others similarly situated, is the class representative for the "Wood Class" of landowning plaintiffs in a separate class action lawsuit that

is part of the Underlying Action. The Wood Class was formed to adjudicate the rights of "Small Pumpers" – private landowners who own property in the Antelope Valley on which they have pumped less than 25 acre feet per year of groundwater at any time since 1946. The Defendants in the Willis Class Action Lawsuit are the same Defendants in the Wood Class Action Lawsuit, *i.e.*, the Public Water Suppliers previously listed above. Both the Willis Class Action Lawsuit and the Wood Class Action Lawsuit are part of the Underlying Action.

The Respondent Court – appointed by the Judicial Council to hear and determine the underlying coordinated proceeding – is now, and at all times mentioned in this petition was, a duly constituted court exercising judicial functions in connection with the Underlying Action.

B. <u>Statement of Facts and Procedural History.</u>

The Underlying Action has been complicated and protracted. Up until March 2015, the Willis Class and Wood Class co-existed without any actual attorney-client conflicts of interest arising within either class. In fact, the Willis Class and Wood Class were both aligned against the Public Water Suppliers because both classes had a joint interest in defeating the Defendants' claims of prescription. (EXH 16; EXH 17). The Willis Class settled all of their claims with Defendants in the Willis Class Action Lawsuit by way of Stipulation of Settlement (EXH 13) and Judgment entered May 13, 2011 (EXH 14A) (amended on September 22, 2011-EXH 14B) – which

Judgment provided that in any future settlement with any of the parties including the Wood Class and in any future physical solution proceedings, Defendants would not contest the Willis Class' rights to pump groundwater in the future free of replacement assessment from the Native Safe Yield. The Willis Class is defined in the May 13, 2011 Judgment as follows:

"All private (i.e., non-governmental) persons and entities that own real property within the Basin, as adjudicated, that are not presently pumping water on their property and have not done so at any prior time ("the Class"). The Class includes the successors-in-interest by way of purchase, gift, inheritance, or otherwise of such landowners.

The Class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes all persons to the extent their properties are connected and receive service from a municipal water system, public utility, or mutual water company. The Class shall [further] exclude all property(ies) that are listed as 'improved' by the Los Angeles County or Kern County Assessor's' office, unless the owners of such properties declare under penalty of perjury that they do not pump and have never pumped water on those properties." (EXH 14A, 220:3-13).

Per Order dated September 2, 2008, the Wood Class was defined as follows to "avoid any overlap between the classes":

All private (ie., non-governmental) persons and entities that own real property within the Basin, as adjudicated, and that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present.

The Class excludes the defendants herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes all persons and entities that are shareholders in a mutual water company. (EXH 5).

On March 4, 2015, the Wood Class entered into a settlement with the Defendants[6] and filed a joint Wood Class Settlement/Stipulated Judgment and proposed Physical Solution ("SPPS") (EXH 6; EXH 18) which includes provisions that are directly adverse to and essentially extinguish the water rights of the Willis Class, to wit:

1) Paragraph 9.2.2 of the SPPS unequivocally (and illegally) states that the Willis Class' water rights have been "modified" and that the Willis Class has no right to pump groundwater from the Basin. (EXH 6, 052 ¶ 9.2.2).

2) Paragraph 18.5.13 *et. seq.* of the SPPS illegally requires Willis Class Members to comply with onerous and expensive requirements before the Watermaster, in its discretion, approves a Member's application to pump groundwater. (EXH 6, 069 ¶ 18.5.13 *et. seq.*).

3) The SPPS also allows Wood Class Members to assert a "Water Code 106 priority," while Willis Class Members who seek domestic use are prohibited from doing so. (EXH 6, 033 ¶ 5.1, 071 ¶ 18.5.13.2).

4) Wood Class Members are not required to install meters to monitor their groundwater pumping, while Willis Class Members are required to install meters – assuming they are even allowed to pump groundwater. (EXH 6, 048 ¶ 8.1; 067 ¶ 18.5.5).

5) Finally, the SPPS provides Wood Class Members with a permanent allocation of 3 acre feet of water per year (AFY) free of replacement assessment, while Willis Class Members

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[6] The Settlement entered into by Defendants with the Wood Class directly violates and constitutes an undeniable breach of the prior Settlement Agreement entered into by Defendants with the Willis Class. However, Willis Class' Motion to Enforce the Willis Settlement Agreement with Defendant Public Water Suppliers is still pending before the Respondent Court and is not directly at issue with respect to this Petition for Writ of Mandate.

are permanently excluded from the Native Safe Yield under the SPPS.[7] (EXH 6, 035 ¶ 5.1.3; 052 ¶ 9.2.2).

The joint Wood Class Settlement/Stipulated Judgment and proposed Physical Solution (or SPPS) has been preliminarily approved by the Respondent Court. (EXH 7). It is undisputed that final adoption of the SPPS "as is" would extinguish the Willis Class' right to pump groundwater from the Basin and would be catastrophic to the property values of Nonpumper parcels of land owned by Willis Class Members. Accordingly, Willis Class Counsel is ethically obligated to oppose the SPPS in the upcoming Phase VI/Final Approval Hearing/Physical Solution Trial to protect the water rights and property values of the absent class members who own parcels on which they have never pumped groundwater.

However, on August 25, 2015, the Respondent Court ruled that landowners who are class members in the Small Pumper Wood Class are also in the Nonpumper Willis Class if they also own land on which they have never pumped groundwater (*i.e.*, so-called "Dual Class Members"). (EXH 9, 123:15-28, 124:1-2, 24-27). Consequently, Willis Class Counsel has been placed in an irreconcilable and actual conflict of interest of litigating against

[7] The Court-appointed expert testified that the median groundwater use of Wood Class Members was only 1.2 AFY. Willis Class Counsel will argue at the Phase VI/Physical Solution Trial that Wood Class Members are only entitled to pump 1.2 AFY free of replacement assessment from the NSY. However, this position is directly adverse to the property interests of 2,400 of Willis Class Counsel's own clients, i.e, the "Dual Class Members."

and objecting to the very same settlement agreement, *i.e.* the SPPS, to which 2,400 of their own clients are beneficiaries. *See William H. Raley Co. v. Superior Court* (1983) 149 Cal.App.3d 1042, 1044-1045 ["law firm was in effect on both sides of a lawsuit"]. Willis Class Counsel initially asked for permission to withdraw from representation of the entire Willis Class based on the resulting actual conflict of interest in representing Dual Class Members. (EXH 10). However, recognizing that they cannot ethically abandon the Willis Class on the eve of trial yet also cannot ethically represent the 2,400 Dual Class Members, Willis Class Counsel essentially pleaded with the Respondent Court to continue the upcoming trial to allow them to withdraw from representation of the Dual Class Members and to allow time to either segregate the 2,400 Dual Class Members into a subclass or subclasses or to individually serve them.

The partial withdrawal of representation by Willis Class Counsel and continuance of the upcoming Phase VI Trial would allow time to ensure that these 2,400 absent class members' property interests are adequately represented by counsel who can uphold their duty of loyalty to their clients. Trial court judges have the discretion to create subclasses or to require individual service of process of class members any time before trial. *See, e.g., Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 476 ("Under Rule 23(c) and (d) the court may modify, alter or amend its class action order at any time before a decision on the merits is reached. Included therein is the

power to create sub-classes or terminate class action status at such time as it appears that an insolvable conflict of interest has arisen (citations omitted).").

AVAILABILITY OF WRIT RELIEF

Where (as here) a trial court abuses its discretion in denying an attorney's motion to withdraw from representation of a client, a peremptory writ of mandate will issue directing the court to vacate its order and to enter a new order granting the motion. *Lempert v. Superior Court* (2003) 112 Cal.App.4th 1161, 1175 [peremptory writ of mandate in the first instance]; *Leversen v. Superior Court* (1983) 34 Cal.3d 530, 539-540 [writ issued compelling withdrawal where conflict would adversely affect the lawyer's performance as the defendant's lawyer].

BASES FOR WRIT RELIEF

Rules of Professional Conduct, rule 3-700(B)(2) provides counsel must withdraw if "[t]he member knows or should know that continued employment will result in violation of these rules or of the State Bar Act . . . ." Under the Rules of Professional Conduct, Rule 3–310 (Rule 3–310) **an attorney** may not *accept* a new representation of multiple clients when there exists a *potential* conflict of interest between those prospective clients, and **must *withdraw* from an existing representation of multiple clients when an *actual* conflict of interest arises among those existing clients. (Rule 3–310, subds. (C)(1), (2)**.). *Carroll v. Superior Court* (2002) 101 Cal.App.4th 1423, 1425 (emphasis supplied).

These ethical statutes impose obligations upon lawyers, as well as the court before which the attorneys practice. Willis Class Counsel was duty-bound to alert the trial court of the irreconcilable actual conflict of interest that arose after March 4, 2015, based on the adverse impact on 2,400 absent class members. *See, Pettway v. Am. Cast Iron Pipe Co.*, (5th Cir. 1978) 576 F.2d 1157, 1176; *In re Agent Orange Prod. Liab. Litig.*, (2d Cir. 1986) 800 F.2d 14, 18 (" . . . the attorney's duty to the class requires him to point out conflicts to the court so that the court may take appropriate steps to protect the interests of absentee class members."). The trial court is vested with the solemn duty to maintain professionalism and ethics in the matters that are brought before it. (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1438-1439; *Cal Pak Delivery, Inc. v. United Parcel Service, Inc.* (1997) 52 Cal.App.4th 1, 13; *Morrow v. Superior Court* (1994) 30 Cal.App.4th 1252, 1262).

While it is true that traditional rules of professional conduct cannot be applied mechanically in the realm of class actions (*see Lazy Oil Co. v. Witco Corp.* (3rd Cir.1999) 166 F.3d 581, 589–590) and that the circumstances of each case must be evaluated (*see In re Agent Orange Prod. Liab. Litig.* (2d Cir. 1986) 800 F.2d 14, 18), the circumstances of this case make it impossible for Willis Class Counsel to uphold their duty of undivided loyalty to the 2,400 Dual Class Members. Indeed, trial courts have applied the Rules of Professional Conduct regarding the duty of loyalty in the class action context

under strikingly similar circumstances. For example, in *Moreno v. Autozone, Inc.*, the District Court Judge (applying California law) found an actual conflict of interest and resulting breach of the duty of loyalty to concurrent class action clients because the clients had adverse interests relating to a settlement agreement entered in a separate class action. *Moreno v. Autozone, Inc.*, No. C05-04432 MJJ, 2007 WL 4287517, at *4-5 (N.D. Cal. Dec. 6, 2007).

The Respondent Court has required Willis Class Counsel to zealously represent their clients' property interests as Nonpumpers, but simultaneously required Willis Class Counsel to actively litigate against 2,400 of those *same* clients with respect to their property interests as Small Pumpers and as signatories to the SPPS. Stated more bluntly, the Respondent Court has forced Willis Class Counsel to breach their duty of loyalty to 2,400 of their own clients and to proverbially stab them in the back *in the very same litigation.* Not only is this a completely unacceptable situation for the 2,400 Dual Class Members to have their Class Counsel put in a position of breaching their duty of loyalty to them, but the remaining 15,000-plus absent Willis Class Members would lose trust in Willis Class Counsel if they knew that Willis Class Counsel also represented 2,400 of their litigation adversaries, *i.e.*, Wood Class Members[8]:

[8] The last Notice sent to Willis Class Members notified them of the Preliminary Approval of the Willis Class Settlement with the Defendant

> A client who learns that his or her lawyer is also representing a litigation adversary, even with respect to a matter wholly unrelated to the one for which counsel was retained, cannot long be expected to sustain the level of confidence and trust in counsel that is one of the foundations of the professional relationship. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 285). The strict proscription against dual representation of clients with adverse interests thus derives from a concern with protecting the integrity of the attorney-client relationship rather than from concerns with the risk of specific acts of disloyalty or diminution of the quality of the attorney's representation. (*Developments in the Law—Conflicts of Interest in the Legal Profession* (1981) 94 Harv.L.Rev. 1244, 1295–1302.)

Forrest v. Baeza, (1997) 58 Cal.App.4th 65, 74.

The integrity of the attorney-client relationship is so paramount that appellate courts have issued writs of mandate involving the denial of a motion to withdraw even in the middle of trial. As an example, in *Leversen v. Superior Court* (1983) 34 Cal.3d 530, a defense attorney asked to be relieved in the middle of criminal trial after he discovered that his office had previously represented one of his co-defendants' rebuttal witnesses. The

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Public Water Suppliers and their right to pump groundwater in the future. (EXH 19). The Class has not received any Notice whatsoever regarding the attempted extinguishment of their water rights via the SPPS and the resulting actual conflict of interest created within the Willis Class as a result of the SPPS. (EXH 20). Final approval of a class settlement has been overturned on appeal where a second but related class did not receive proper notice of the first class settlement and its potential impact on the second class action. *See, e.g., Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1974) 48 Cal.App.3d 134. The "Small Pumper" Wood Class Notice did not alert Dual Class Members regarding the impact of that proposed settlement on their rights as Nonpumpers.

attorney informed the trial court that if the witness was called to testify, he would declare a conflict of interest based on confidential information he received as a result of his firm's representation of the witness. When the co-defendant called the witness to testify, the attorney moved to withdraw, but the trial court denied the motion. The attorney sought a writ of mandate from the appellate court to allow him to withdraw as counsel. Noting that the attorney's conflict would adversely affect the lawyer's performance as the defendant's lawyer, the Court of Appeal issued a writ of mandate directing the trial court to grant petitioner's motion to be removed.

IRREPARABLE HARM

Generally, representation by an attorney who has a conflict of interest effectively denies a client of a fair trial; denial of withdrawal or disqualification is reversible error *per se*. *Hammett v. McIntyre* (1952) 114 Cal. App. 2d 148, 158; *Harris v. Superior Court* (2014) 225 Cal.App.4th 1129, 1144.

TIMELINESS OF PETITION

There are no absolute deadlines on petitioning for a non-statutory writ. (*Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 701 ["an appellate court may consider a petition for an extraordinary writ at any time"].) However, since the writs are equitable in nature, relief may be barred by laches if the petitioner has unreasonably delayed filing the petition

to the real party in interest's prejudice. (*H.D. Arnaiz, Ltd. V. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368.)

The Respondent Court's Minute Order in this case was issued August 25, 2015. (EXH 8). The expedited transcript from the Hearing was made available to Petitioners on September 2, 2015. This Petition has been filed with the Court as expeditiously as possible by Willis Class Counsel and two weeks before the commencement of the Phase VI Trial to allow the Court adequate time to consider the request for relief. However, Petitioners have also requested a stay to prevent irreparable harm to Petitioners and avoid the issue becoming moot.

There has been no unreasonable delay; the Real Party in Interest has not been prejudiced. The Petition is timely. *See Cal West Nurseries, Inc. v. Superior Court* (2005) 129 Cal.App.4th 1170, 1173; *Volkswagen of America, Inc. v. Superior Court, supra,* 94 Cal.App.4th at 701.

INADEQUACY OF OTHER REMEDIES

Where (as here) a party believes he is being forced to proceed with an attorney who has a conflict of interest, the party's remedy is to seek immediate appellate review by petitioning the reviewing court for a writ of mandamus, asserting that the remedy by appeal is not adequate. (*Reed v. Superior Court* (2001) 92 Cal.App.4th 448, 435 [citing *Chambers v. Superior Court* (1981) 121 Cal.App.3d 893].

AUTHENTICITY OF EXHIBITS

Pursuant to California Rules of Court, rule 8.490(c)(2), the exhibits to this Petition and accompanying Memorandum of Points and Authorities include true and correct copies of all documents and exhibits submitted to Respondent Court. This consists of two volumes of separate "Exhibits to Petition for Writ of Mandate." The exhibits are paginated consecutively from page 1 through page 332 and are separated by numbered side tabs. The Reporter's Transcript of hearing in this matter is included in the Exhibits.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for the following relief:

1. An immediate temporary stay of the proceedings before the Respondent Court to allow this Court time to consider this petition and any requested responses/arguments;

2. A writ of mandate compelling the Respondent Court to vacate its order denying Petitioners' Motion to Withdraw and to Continue the Phase VI/Physical Solution Trial;

3. A writ of mandate compelling the Respondent Court to (a) enter an order granting Petitioners' Motion to Withdraw with respect to the 2,400 Dual Class Members; and (b) take corrective action by creating a separate or sub class of plaintiffs who may be separately represented in the

upcoming proceedings or by requiring that the 2,400 Dual Class Members be individually served in the Underlying Action;

4. For costs incurred by Petitioners in connection with this proceeding;

5. For such other and further relief as this Court may deem just and proper.

DATED: September 15, 2015

Respectfully submitted,

KRAUSE KALFAYAN BENINK & SLAVENS, LLP

By:
Ralph B. Kalfayan, Esq.
Lynne M. Brennan, Esq.
Class Counsel for Petitioners, the Willis Class

VERIFICATION

I, the undersigned, state:

I am an attorney of record for Petitioners in the underlying litigation. I have been present throughout the proceedings at issue. I have read the Petition and can competently state that all facts alleged in the document, and not otherwise supported by citations to the record, exhibits or other documents, are true to my personal knowledge.

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

Executed this 15 day of September, 2015 at San Diego, California.

Respectfully submitted,

KRAUSE KALFAYAN BENINK
& SLAVENS, LLP

By:
Ralph B. Kalfayan, Esq.
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the Willis Class

MEMORANDUM OF POINTS AND AUTHORITIES

I.
WRIT RELIEF IS APPROPRIATE IN THIS CASE.

The trial court is vested with the solemn duty to maintain professionalism and ethics in the matters that are brought before it. *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1438-1439; *Cal Pak Delivery, Inc. v. United Parcel Service, Inc.* (1997) 52 Cal.App.4th 1, 13; *Morrow v. Superior Court* (1994) 30 Cal.App.4th 1252, 1262.

Where (as here) a trial court abuses its discretion in denying an attorney's motion to withdraw from representation of a client, a peremptory writ of mandate will issue directing the trial court to vacate its order and to enter a new order granting the motion. *Lempert v. Superior Court* (2003) 112 Cal.App.4th 1161, 1175 [peremptory writ of mandate in the first instance].

Rules of Professional Conduct, rule 3-700(B)(2) provides counsel must withdraw if "[t]he member knows or should know that continued employment will result in violation of these rules or of the State Bar Act . . . ." Under the Rules of Professional Conduct, Rule 3–310 (Rule 3–310) **an attorney** may not *accept* a new representation of multiple clients when there exists a *potential* conflict of interest between those prospective clients, and **must *withdraw* from an existing representation of multiple clients when an *actual* conflict of interest arises among those existing clients. (Rule 3–**

310, subds. (C)(1), (2).). *Carroll v. Superior Court* (2002) 101 Cal.App.4th 1423, 1425 (emphasis supplied).

These ethical statutes impose obligations upon lawyers, as well as the court before which the attorneys practice. Willis Class Counsel was duty-bound to alert the trial court of the irreconcilable actual conflict of interest that arose after March 4, 2015, based on the adverse impact on 2,400 absent class members. *See, Pettway v. Am. Cast Iron Pipe Co.*, (5th Cir. 1978) 576 F.2d 1157, 1176; *In re Agent Orange Prod. Liab. Litig.*, (2d Cir. 1986) 800 F.2d 14, 18 (" . . . the attorney's duty to the class requires him to point out conflicts to the court so that the court may take appropriate steps to protect the interests of absentee class members."). The trial court is vested with the solemn duty to maintain professionalism and ethics in the matters that are brought before it. (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1438-1439; *Cal Pak Delivery, Inc. v. United Parcel Service, Inc.* (1997) 52 Cal.App.4th 1, 13; *Morrow v. Superior Court* (1994) 30 Cal.App.4th 1252, 1262).

While it is true that traditional rules of professional conduct cannot be applied mechanically in the realm of class actions (*see Lazy Oil Co. v. Witco Corp.* (3rd Cir.1999) 166 F.3d 581, 589–590) and that the circumstances of each case must be evaluated (*see In re Agent Orange Prod. Liab. Litig.* (2d Cir. 1986) 800 F.2d 14, 18), the circumstances of this case make it impossible for Willis Class Counsel to uphold their duty of undivided loyalty to the 2,400

Dual Class Members. Indeed, trial courts have applied the Rules of Professional Conduct regarding the duty of loyalty in the class action context under strikingly similar circumstances. For example, in *Moreno v. Autozone, Inc.*, the District Court Judge (applying California law) found an actual conflict of interest and resulting breach of the duty of loyalty to concurrent class action clients because the clients had adverse interests relating to a settlement agreement entered in a separate class action. *Moreno v. Autozone, Inc.*, No. C05-04432 MJJ, 2007 WL 4287517, at *4-5 (N.D. Cal. Dec. 6, 2007).

The Respondent Court has required Willis Class Counsel to zealously represent their clients' property interests as Nonpumpers, but simultaneously required Willis Class Counsel to actively litigate against 2,400 of those *same* clients with respect to their property interests as Small Pumpers and as signatories to the SPPS. Stated more bluntly, the Respondent Court has forced Willis Class Counsel to breach their duty of loyalty to 2,400 of their own clients and to proverbially stab them in the back *in the very same litigation*. Not only is this a completely unacceptable situation for the 2,400 Dual Class Members to have their Class Counsel put in a position of breaching their duty of loyalty to them, but the remaining 15,000-plus absent Willis Class Members would lose trust in Willis Class Counsel if they knew

that Willis Class Counsel also represented 2,400 of their litigation adversaries, *i.e.*, Wood Class Members[9]:

> A client who learns that his or her lawyer is also representing a litigation adversary, even with respect to a matter wholly unrelated to the one for which counsel was retained, cannot long be expected to sustain the level of confidence and trust in counsel that is one of the foundations of the professional relationship. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 285). The strict proscription against dual representation of clients with adverse interests thus derives from a concern with protecting the integrity of the attorney-client relationship rather than from concerns with the risk of specific acts of disloyalty or diminution of the quality of the attorney's representation. (*Developments in the Law—Conflicts of Interest in the Legal Profession* (1981) 94 Harv.L.Rev. 1244, 1295–1302.)

Forrest v. Baeza, (1997) 58 Cal.App.4th 65, 74.

The integrity of the attorney-client relationship is so paramount that appellate courts have issued writs of mandate involving the denial of a motion to withdraw even in the middle of trial. As an example, in *Leversen v. Superior Court* (1983) 34 Cal.3d 530, a defense attorney asked to be

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[9] The last Notice sent to Willis Class Members notified them of the Preliminary Approval of the Willis Class Settlement with the Defendant Public Water Suppliers and their right to pump groundwater in the future. (EXH 19). The Class has not received any Notice whatsoever regarding the attempted extinguishment of their water rights via the SPPS and the resulting actual conflict of interest created within the Willis Class as a result of the SPPS. (EXH 20). Final approval of a class settlement has been overturned on appeal where a second but related class did not receive proper notice of the first class settlement and its potential impact on the second class action. *See, e.g., Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1974) 48 Cal.App.3d 134. The "Small Pumper" Wood Class Notice did not alert Dual Class Members regarding the impact of that proposed settlement on their rights as Nonpumpers.

relieved in the middle of criminal trial after he discovered that his office had previously represented one of his co-defendants' rebuttal witnesses. The attorney informed trial court that if the witness was called to testify, he would declare a conflict of interest based on confidential information he received as a result of his firm's representation of the witness. When the co-defendant called the witness to testify, the attorney moved to withdraw, but the trial court denied the motion. The attorney sought a writ of mandate from the appellate court to allow him to withdraw as counsel. Noting that the attorney's conflict would adversely affect the lawyer's performance as the defendant's lawyer, the Court of Appeal issued a writ of mandate directing the trial court to grant petitioner's motion to be removed. *Id.* at 539-540.

II.
THE RESPONDENT COURT ABUSED ITS DISCRETION BY DENYING PETITIONERS' MOTION TO WITHDRAW AND TO CONTINUE THE PHASE VI/PHYSICAL SOLUTION TRIAL.

Rules of Professional Conduct, rule 3-700(B)(2) provides counsel must withdraw if "[t]he member knows or should know that continued employment will result in violation of these rules or of the State Bar Act . . . ." Under the Rules of Professional Conduct, Rule 3–310 (Rule 3–310) **an attorney** may not *accept* a new representation of multiple clients when there exists a *potential* conflict of interest between those prospective clients, and **must *withdraw* from an existing representation of multiple clients when an *actual* conflict of interest arises among those existing clients. (Rule 3–**

310, subds. (C)(1), (2).). *Carroll v. Superior Court* (2002) 101 Cal.App.4th 1423, 1425 (emphasis supplied).

Here, Willis Class Counsel has an undivided duty of loyalty to all absent class members in the certified Willis Class, including the 2,400 absent Class Members who own both Nonpumper and Small Pumper parcels, *i.e.* Dual Class Members. This creates an irreconcilable conflict for Willis Class Counsel. The Dual Class Members do not want Willis Class Counsel to oppose the SPPS as to the stipulated rights obtained for the Small Pumper Wood Class in the SPPS. Conversely, Willis Class Representative David Estrada and the remaining 15,000-plus absent Willis Class Members who only own Nonpumper parcels want Willis Class Counsel to oppose the entire SPPS, including the stipulated water rights obtained for the 2,400 Dual Class Members.

In addressing this ethical dilemma, "The Court begins with California law's emphasis on the duty of loyalty. The prohibition on concurrent representation is designed to ensure the attorney's duty of undivided loyalty, and the client's legitimate expectation thereof. *Flatt*, 9 Cal.4th at 284, 36 Cal.Rptr.2d 537…. 'Attorneys who concurrently represent more than one client should not have to choose which client's interests are paramount or make a choice between conflicting duties.' *Sharp* v. *Next Entertainment*, (2008) 163 Cal.App.4th at 428…." *White v. Experian Info. Solutions* (C.D.

Cal. 2014) 993 F.Supp.2d 1154, 1167 (class action case applying California law).

The Court's analysis must focus on the extent and permanence of the actual conflict of interest in the class action case (or cases). Where the conflict of interest is "short-lived, did not pit current clients against one another, and did not substantially affect the terms of the settlement," then class counsel will not be deemed to have breached their duty of loyalty to absent class members. *See White*, 993 F.Supp.2d at 1167. On the other hand, when class counsel "simultaneously represented two different sets of clients who actively had adverse interests in the class actions, one who wanted settlement and another who did not," then a breach of the duty of loyalty to actual and potential absent class members existed, thereby preventing class counsel from continuing their representation of the putative class in a second class action. *See Andrews Farms v. Calcot, LTD.*, No. CV-F-07-0464LJOSKO, 2010 WL 4010146, at *3 (E.D. Cal. Oct. 13, 2010) [citing *Moreno v. Autozone, Inc.*, No. C05-04432 MJJ, 2007 WL 4287517 (N.D. Cal. Dec. 6, 2007)].

That is precisely the case here. One set of clients wants the SPPS entered as a judgment; one set of clients does not. That is an actual conflict, and bars continued class representation as currently structured.

For example, Mr. Olaf Landsgaard, who is but one of the 2,400 Nonpumper Willis Class Members who is also a Small Pumper Wood Class

Member (or Dual Class Member), made an appearance at the first day of the Phase VI (Physical Solution) trial on August 3, 2015. (EXH 21, 310: 6-9). Mr. Landsgaard had filed a declaration with the trial court on July 10, 2015 (EXH 22), stating his support for the SPPS as to the Small Pumper properties in the Basin that he owns, but objecting to the SPPS as to the Nonpumper properties in the Basin that he also owns. Per the Court's Order of August 25, 2015, Mr. Landsgaard is a Dual Class Member and therefore in both the Wood Class and in the Willis Class. Class Representative Mr. Estrada and other 15,000-plus "pure" Nonpumper Class Members have an interest in challenging Mr. Landsgaard and the other 2,400 Dual Class Members' permanent allocation of water rights under the Wood Class Settlement/SPPS. Mr. Landsgaard and the other 2,400 Dual Class Members, however, have an interest in protecting their Small Pumper Wood Class stipulated rights that are part the Wood Class Settlement/SPPS as well as seeking to protect their groundwater rights for their Nonpumper parcels. Mr. Landsgaard's interest vis-à-vis Mr. Estrada conflict. Willis Class Counsel cannot challenge one client's interest in favor of another client. On the macro level, Willis Class Counsel cannot challenge the interests of 2,400 clients in favor of 15,000-plus other clients. [10]

[10] The economic stakes for all absent class members are very substantial. Thus, both the Willis Class Action and the Wood Class Action are not your typical, run-of-the-mill, "low value" class action cases where the stakes are $20 or so in refunds or coupons for an overpriced consumer product, for

In addition, at the August 3, 2015 hearing, Mr. Landsgaard, as an attorney and Wood Class Member, wanted to pose questions to Mr. Wildermuth, a witness called to testify at trial by Wood Class Counsel. (EXH 21, 305:1-3; 310:1-9). Willis Class Counsel had no objections to Mr. Landsgaard cross-examining Mr. Wildermuth. However, Wood Class Counsel objected to Mr. Landsgaard examining the trial witness on the basis that Mr. Landsgaard was represented by Wood Class Counsel and did not have an independent right to examine the witness. (EXH 21, 310:10-19). Wood Class Counsel then asked the Court to allow him to "confer with his client," Mr. Landsgaard. (EXH 21, 312:20-22). The Court agreed and Wood Class Counsel (Mr. McLachlan) and Mr. Landsgaard had a private conversation at the back of the courtroom. (EXH 21, 312:28, 313:1-8). Following the conversation, Wood Class Counsel stated on the record that

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example. To the contrary, the economic value of both the water rights and property values at stake in these class actions are individually (per class member) in the thousands to tens of thousands and even millions of dollars and in excess of one billion dollars in the aggregate. In other words, unlike more "typical" class actions, these unprecendented class actions in the context of a groundwater adjudication are of considerable economic value and consequence to each and every absent class member. The economic value and consequence of the Willis Class Action and the Wood Class Action underscores the need for and significance of Class Counsel to uphold their fiduciary duties to each and every absent class member, including the duty of loyalty, and also underscores the need for and significance of the Respondent Court's fiduciary duty owed to each and every absent class member.

Mr. Landsgaard had agreed to "withdraw" his questions that he wanted to pose to Mr. Wildermuth. (EXH 21, 313:5-19).

The sequence of events that occurred at the trial on August 3rd with respect to Mr. Landsgaard highlights serious ethical problems that have arisen since the filing of the SPPS. Willis Class Counsel never had the opportunity to speak to Mr. Landsgaard regarding the questions he intended to ask Mr. Wildermuth. Mr. Landsgaard's intended questions and the testimony elicited from those questions might have been helpful to the interests of the Nonpumper Willis Class.[11] However, Wood Class Counsel asserted the attorney-client privilege as to his private communication with Mr. Landsgaard.[12] Thus, Willis Class Counsel was prevented from speaking to their own client based on the assertion of attorney-client privilege by Mr. Landsgaard's "other attorney", *i.e.* Wood Class Counsel. Moreover, Willis Class Counsel's communication with Mr. Landsgaard would be a violation of the California Code of Professional Responsibility Rule 2-100 which prohibits attorneys from communicating with parties represented by counsel.

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[11] If the Court ruled that Mr. Landsgaard would not be permitted to ask questions of the witness because he is not Counsel of Record for any party, then Willis Class Counsel could have asked Mr. Landsgaard's questions of the witness during Willis Class Counsel's cross-examination of Mr. Wildermuth.

[12] Likewise, Mr. McLachlan references "at least 50" discussions with "Dual Class Members" in his Opposition Declaration that Willis Class Counsel were not privy to and cannot ethically discuss with those 50 Wood Class Members who also are Members of the Willis Class. (EXH 23, 325:2-7).

Multiply the scenario that occurred with Mr. Landsgaard at trial by 2,400 clients and it is readily apparent that Willis Class Counsel cannot possibly proceed with their preparation for the remaining Phase VI/Physical Solution Trial without violating their undivided duty of loyalty to their Class Members.

The filing of the SPPS on March 4, 2015, created ethical violations by Willis Class Counsel (through no fault of their own) of their undivided duty of loyalty to their clients. Willis Class Counsel cannot continue to violate their duty of loyalty to these clients. Willis Class Counsel could continue to represent the "pure" Nonpumpers in the Willis Class (such as David Estrada and the Archdiocese of Los Angeles) if the "Dual Class Members" are placed in a separate or sub class or if the Dual Class Members are individually served with a Complaint by the Public Water Suppliers. Trial court judges have the discretion to create subclasses or to require individual service of process of class members any time before trial. *See, e.g.*, *Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 476 ("Under Rule 23(c) and (d) the court may modify, alter or amend its class action order at any time before a decision on the merits is reached. Included therein is the power to create sub-classes or terminate class action status at such time as it appears that an insolvable conflict of interest has arisen (citations omitted).").

In *Moreno v. Autozone, Inc.*, the District Court Judge (applying California law) found an actual conflict of interest and resulting breach of

the duty of loyalty to concurrent class action clients because the clients had adverse interests relating to a settlement agreement entered in a separate class action:

> The Court finds that Moreno and Medrano, as objectors to the *Martinez* settlement, have an actual conflict of interest with, and adverse interest to, declarants McDaniel, Knox and Velox, each of whom is a *Martinez* class member that has not objected to the settlement and has submitted a claim form for payment. Bailey Pinney's representation of Moreno and Medrano from late 2005 to the present has obligated the law firm to advocate that the settlement and judgment in *Martinez* should not be approved-a position that Bailey Pinney has zealously advanced before the state trial and appellate courts. This advocacy is adverse to the interests of McDaniel, Knox and Velox, also clients of Bailey Pinney since at least November 2006, as they are *Martinez* class members who have approved the settlement, submitted claim forms, and await payment. *Cf. Georgine v. Amchem Products, Inc.*, 160 F.R.D. 478, 495 n. 25 (E.D.Pa.1995) (noting that objectors often have adverse interests to class members approving settlement); *In re Corn Derivative Antitrust Litig.*, 748 F.2d 157, 162 (3d. Cir.1984) (affirming disqualification of attorney representing objector to class settlement on appeal because his firm had previously represented class members who supported the settlement).
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> Bailey Pinney's assertion that no actual conflict of interest has existed because "[h]ow adamantly plaintiffs and declarants do or do not oppose the settlement is unknown" flies in the face of the positions taken by the declarants and the Plaintiffs in the *Martinez* action. Contrary to Bailey Pinney's representations in its opposition brief and at oral argument, Moreno and Medrano challenged not merely the scope of the release created by the *Martinez* settlement, but the substance of the *Martinez* settlement itself. *See Martinez*, 2007 WL 1395477 at *5; *see also* Docket No. 16, Exh. 10. Accordingly, the Court rejects Bailey Pinney's assertion that the interests of Knox, McDaniel, Veloz, Medrano and Moreno have all aligned during the relevant time periods where there has been concurrent representation. Since at least November 2006 (when Bailey Pinney began representing Knox, McDaniel and Veloz in this

> matter), Bailey Pinney has represented clients with an actual conflict of interest with respect to the outcome of the *Martinez* settlement.

Moreno v. Autozone, Inc., No. C05-04432 MJJ, 2007 WL 4287517, at *4-5 (N.D. Cal. Dec. 6, 2007).

Like class counsel in *Moreno v. Autozone,* Willis Class Counsel represents thousands of clients with adverse interests relating to the Wood Class Settlement/SPPS. Significantly, Willis Class Counsel did not do anything to bring about the actual conflict of interest created by the SPPS. To the contrary, prior to the creation of the SPPS, Willis Class Counsel negotiated a settlement with the Public Water Suppliers that fully respected the correlative rights of the Wood Class. Importantly, Willis Class Counsel also repeatedly attempted to be brought into the settlement negotiations that ultimately led to the Wood Class Settlement/SPPS. (EXH 24). Every attempt by Willis Class Counsel to be brought into the settlement negotiations was rejected by Real Parties. Willis Class Counsel's banishment from settlement negotiations leading up to the Wood Class Settlement/SPPS resulted in the conflict of interests between and within the two classes which has now arisen.

Petitioners ask the Court of Appeal to prevent the irreconcilable and actual conflict of interest within the Willis Class by directing Respondent Court to recognize that an actual conflict of interest exists within the Willis Class and allow Willis Class Counsel to withdraw as to the Dual Class

Members and by remanding the matter to the Respondent Court to take corrective action by creating a separate or sub class or separately serving each Dual Class Member who owns both Small Pumper and Nonpumper parcels of land in the Antelope Valley.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Court of Appeal issue a writ of mandate compelling the Respondent Court to vacate its order denying Petitioners' Motion to Withdraw and for a Continuance of the Phase VI/Physical Solution Trial and compelling the Respondent Court to (a) enter an order granting Petitioners' Motion to Withdraw with respect to the 2,400 Dual Class Members; and (b) take corrective action by creating a separate or sub class of plaintiffs who may be separately represented in the upcoming proceedings or by requiring that the 2,400 Dual Class Members be individually served in the Underlying Action.

DATED: September 15, 2015

Respectfully submitted,

KRAUSE KALFAYAN BENINK & SLAVENS, LLP

By: _____
Ralph B. Kalfayan, Esq.
Lynne M. Brennan, Esq.
Class Counsel for Petitioners,
the Willis Class

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the accompanying petition for writ of mandate contains 9,585 words (including footnotes) as counted by the Microsoft Word 2007 Program.

DATED: September 15, 2015

Respectfully submitted,

KRAUSE KALFAYAN BENINK & SLAVENS, LLP

By:
Ralph B. Kalfayan, Esq.
Lynne M. Brennan, Esq.
Class Counsel for Petitioners,
the Willis Class

State of California)
County of San Diego)

Proof of Service by:
Hand Delivery

I, Cindy Barba, declare that I am not a party to the action, am over the age of 18 years of age and my business address is: 550 West "C" Street, Suite 530, San Diego, CA 92101.

On September 15, 2015 I have caused one copy of the within Petition for Writ of Mandate; Memorandum of Points and Authorities to be hand delivered for service to:

Eric L. Gardner, Esq.
Jeffrey V. Dunn, Esq.
Wendy W. Wang, Esq.
BEST BEST & KRIEGER LLP
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Counsel for Real Parties in Interest,
Richard Wood and the Class

I further declare that this same day I have caused one copy of the within Petition for Writ of Mandate; Memorandum of Points and Authorities to be hand delivered for service to the:

Clerk for the Hon.
Jack Komar
Superior Court of California
County of Santa Clara
191 N. First Street
San Jose, CA 95113

Presiding Judge
Respondent Court

I further declare that this same day I electronically submitted one copy of the within Petition for Writ of Mandate; Memorandum of Points and Authorities to the California Court of Appeal, Fourth Appellate District, Division Two (per Rule 8.71).

I further declare that this same day I have caused the original and four copies of the within Petition for Writ of Mandate; Memorandum of Points and Authorities to be hand delivered for filing to:

Clerk of the Court
CALIFORNIA COURT OF APPEAL
Fourth Appellate District, Division Two
3389 12th Street
Riverside, CA 92501

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

DATED: September 15, 2015

Signature:

Cindy Barba

Cindy Barba