

# Exhibit 10

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 ANTELOPE VALLEY  
11 GROUNDWATER CASES

12 This Pleading Relates to Included Action:  
REBECCA LEE WILLIS and DAVID  
13 ESTRADA, on behalf of themselves and  
all others similarly situated,

14 *Plaintiffs,*

15  
16 v.

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

25 *Defendants.*  
26  
27  
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RELATED CASE TO JUDICIAL COUNCIL  
COORDINATION PROCEEDING NO. 4408

**WILLIS CLASS' NOTICE OF MOTION AND  
MOTION TO WITHDRAW BASED ON  
CONFLICT OF INTEREST OR,  
IN THE ALTERNATIVE, MOTION FOR  
CONTINUANCE OF THE PHASE VI  
PHYSICAL SOLUTION TRIAL**

Date: August 3, 2015

Time: 10:00 A.M.

Place: Los Angeles Superior Court  
111 North Hill Street, Dept. 1  
Los Angeles, CA 9002

Judge: Hon. Judge Komar

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TABLE OF CONTENTS

**INTRODUCTION**..... 1

**STATEMENT OF FACTS** ..... 2

**“Dual” Wood/Willis Class Member: Mr. Olaf Landsgaard**..... 2

**Willis Class Counsel’s Discussion with Wood Class Counsel Re Conflict of Interest**..... 4

**Massive Number of Persons in Both the Wood Class and the Willis Class** ..... 4

**LEGAL ARGUMENT** ..... 5

**If Court Rules That Wood Class Members Cannot Also Be Willis Class Members**..... 6

**If Court Rules That Wood Class Members Also Can Be Willis Class Members** ..... 9

**CONCLUSION**..... 13

TABLE OF AUTHORITIES

**CASES**

*Anderson v. Eaton*,  
211 Cal. 113 (1930) .....11

*Bobele v. Superior Court*,  
199 Cal.App.3d 708 (1988) .....12

*Carroll v. Superior Court*,  
101 Cal.App.4th 1423 (2002) .....10

*Cox v. Delmas*,  
99 Cal. 104 (1893) .....11

*DCH Health Services Corp. v. Waite*,  
95 Cal.App.4th 829 (2002) .....8

*Dettamanti v. Lompoc Union School Dist.*,  
143 Cal.App.2d 715 (1956) .....11

*Fox v. Pollack*,  
181 Cal.App.3d 954 (1986).....7

*In re Agent Orange Prod. Liab. Ltig.*,  
800 F.2d 14 (2d Cir. 1986).....5, 10

*Jackson v. Ingersoll–Rand Co.*,  
42 Cal.App.4th 1163 (1996) .....12

*Koo v. Rubio's Restaurants, Inc.*,  
109 Cal.App.4th 719 (2003) .....7, 8

*Kornbau v. Evans*,  
66 Cal.App.2d 677 (1944) .....11

*Lazy Oil Co. v. Witco Corp.*,  
166 F.3d 581 (3rd Cir.1999) .....10

*Mitton v. State Bar*,  
71 Cal.2d 525 (1969) .....12

*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.*,  
6 Cal.App.4th 1256 (1992) .....12

*Pettway v. Am. Cast Iron Pipe Co.*,  
576 F.2d 1157 (5th Cir. 1978).....5

1 *Responsible Citizens v. Superior Court,*  
2 16 Cal.App.4th 1717 (1993) ..... 7

3 *San Francisco Unified Sch. Dist. ex. rel. Contreras v. First Student, Inc.,*  
4 213 Cal.App.4th 1212, (2013) .....12

5 *Snider v. Superior Court,*  
6 113 Cal.App.4th 1187 (2013).....12

7 *Upjohn Co. v. United States,*  
8 449 U.S. 383 (1981) .....11

9 *Zador Corp. v. Kwan,*  
10 31 Cal.App.4th 1285 (1995) .....11

11 **STATUTES**

12 Bus. & Prof. Code 6068) .....11

13 **OTHER AUTHORITIES**

14 California Rules of Professional Conduct,  
15 Rule 3-310.....10

16 Rule 2-100.....11, 12

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1 PLEASE TAKE NOTICE that on August 3, 2015 at 10:00 a.m. or as soon thereafter as  
2 the matter may be heard, before the Honorable Judge Komar, Los Angeles County Superior Court,  
3 111 North Hill St., Los Angeles, CA 90012, the undersigned law firm, Class Counsel for the Willis  
4 Class, will and hereby does move for a Court Order to Withdraw Based on Conflict of Interest or  
5 in the Alternative, Motion for Continuance of the Phase VI Physical Solution Trial.  
6

7 This Motion is based on this Notice, the attached Memorandum of Points and Authorities,  
8 the Declaration of Ralph B. Kalfayan, Declaration of Olaf Landsgaard, Declaration of Cindy Barba,  
9 Declaration of Robin Griffin, and such other and further evidence as may be presented at the  
10 hearing.

## 11 MEMORANDUM OF POINTS AND AUTHORITIES

### 12 INTRODUCTION

13  
14 In 2008, in recognition that the interests of the Small Pumper Class and the Nonpumper  
15 Class were in potential and even actual conflict, the Court ordered that “**the [Nonpumper] Willis**  
16 **Class shall exclude all persons to the extent they own property within the Basin on which they**  
17 **have pumped water at any time.**”<sup>1</sup> Despite this Court’s explicit Order to the contrary, Willis  
18 Class Counsel just learned within the past two weeks that there are *over 1000* Small Pumper/Wood  
19 Class who are also listed as Members of the Nonpumper/Willis Class. Wood Class Counsel has  
20 informed many of these landowners that they in fact are in both the Willis Class and the Wood  
21 Class (hereinafter “Dual Wood/Willis Class Members”). The substantial noncompliance with the  
22 Court’s Order has resulted in irreconcilable conflicts of interest within the Small Pumper/Wood  
23 Class between “true” Wood Class Members who have pumped water (like Class Representative  
24 Richard Wood) and “Dual” Wood Class Members who are in both the Small Pumper/Wood Class  
25

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<sup>1</sup> Order re Class Certification dated September 2, 2008 (emphasis supplied).

1 **and** the Nonpumper/Willis Class.

2 If these Dual Wood/Willis Class Members are determined to in fact be Members of both  
3 Classes, then Willis Class Counsel has irreconcilable conflicts of interest within the  
4 Nonpumper/Willis Class between “true” Willis Class Members who have never pumped water on  
5 any parcels of land (like Class Representative David Estrada and the Archdiocese of Los Angeles)  
6 and “Dual” Willis Class Members who are in both the Nonpumper/Willis Class **and** the Small  
7 Pumper/Wood Class. It is and has always been the position of Willis Class Counsel that no person  
8 who pumped groundwater in the past can be in the Willis Class. This is the definition of the Willis  
9 Class. If Wood Class Counsel is correct however (which he is not), then Willis Class Counsel must  
10 withdraw as Class Counsel due to irreconcilable conflicts of interest.  
11

#### 12 STATEMENT OF FACTS

#### 13 “Dual” Wood/Willis Class Member: Mr. Olaf Landsgaard

14 Willis Class Counsel first learned of this conflict of interest crisis when they were contacted  
15 by Mr. Olaf Landsgaard, one of the Dual Wood/Willis Class Members. As an attorney and  
16 concerned landowner in the Antelope Valley Basin, Mr. Landsgaard had reviewed and analyzed  
17 the Wood Class Settlement and Stipulated Judgment and proposed Physical Solution (“SPPS”) that  
18 was filed with the Court and approved of the Settlement as a Wood Class Member, but objected to  
19 it as a Willis Class Member because it essentially made his vacant land worthless. *See Declaration*  
20 *of Olaf Landsgaard, ¶¶ 11 and 14 (“Landsgaard Declaration”).* Mr. Landsgaard contacted Wood  
21 Class Counsel Mike McLachlan and was told that he only represented him with respect to the parcel  
22 of land that had pumped water and that Willis Class Counsel Ralph Kalfayan represented him with  
23 respect to the parcels of land that had not pumped water. *Id* at ¶ 13.  
24  
25

26 Mr. Landsgaard told Mr. Kalfayan that he objected to the fact that under the Wood Class  
27

1 Settlement and incorporated SPPS, he would not have the right to pump groundwater in the future  
2 on the currently dormant parcels that he owned. Landsgaard Declaration, ¶¶ 14 and 15. After  
3 informing Mr. Landsgaard that the Willis Class formally objected to the Wood Class Settlement  
4 and SPPS (in publicly-available court documents) because those agreements violate the rights of  
5 Willis Class Members, Mr. Kalfayan then informed Mr. Landsgaard that he does not represent him  
6 because Mr. Landsgaard also owns property in the Basin on which he has pumped water. See  
7 Declaration of Ralph B. Kalfayan, ¶ 4 (hereinafter “Kalfayan Decl.”). Mr. Kalfayan informed Mr.  
8 Landsgaard that pursuant to the Court’s 2008 Order that “the [Nonpumper] Willis Class shall  
9 exclude all persons to the extent they own property within the Basin on which they have pumped  
10 water at any time,” Mr. Kalfayan did not represent Mr. Landsgaard. *Id.*

11  
12 Further, Mr. Kalfayan knew that since March 4, 2015, and the filing of the Wood Class  
13 Settlement and incorporated SPPS, the legal interests of the Willis Class were in actual and direct  
14 conflict with the interests of the Wood Class. Kalfayan Decl., ¶ 5. As Willis Class Counsel, Mr.  
15 Kalfayan had filed objections to the Wood Class Settlement and SPPS and continues to object.  
16 Given this actual conflict of interest, Mr. Kalfayan concluded he could not represent Mr.  
17 Landsgaard and any other Wood Class Members who also own land on which they have not  
18 pumped water. Kalfayan Decl., ¶ 6. In accordance with the 2008 Order, persons such as Mr.  
19 Landsgaard are not in fact Willis Class Members. *Id.*

20  
21  
22 Mr. Landsgaard was very concerned that he had received conflicting advice from Wood  
23 Class Counsel Mr. McLachlan and Willis Class Counsel Mr. Kalfayan regarding who represented  
24 him and his property interests in the Basin. Landsgaard Decl., ¶ 16. Mr. Landsgaard also was  
25 concerned that his rights as Wood Class Member (as an owner of land on which he pumped water)  
26 were now in conflict with his rights as a Willis Class Member (as an owner of land on which he  
27



1 had not pumped water) or as an unrepresented owner of currently dormant land in the Basin.  
2 Landsgaard Decl., ¶ 17. Mr. Kalfayan informed Mr. Landsgaard that Willis Class Counsel would  
3 bring these fundamental conflict and attorney-client relationship issues to the Court's attention as  
4 soon as possible. Kalfayan Decl., ¶ 7.

5  
6 **Willis Class Counsel's Discussion with Wood Class Counsel Re Conflict of Interest**

7 In late June 2015, Mr. Kalfayan, Willis Class Counsel, contacted Mr. McLachlan, Wood  
8 Class Counsel, to discuss the issue. Mr. McLachlan informed Mr. Kalfayan, Willis Class Counsel,  
9 that he had spoken to "at least a dozen" of his Small Pumper/Wood Class clients within that prior  
10 week who are also Members of the Willis Class (according to Mr. McLachlan) because they also  
11 own parcels on which they have never pumped water. Kalfayan Decl., ¶ 8. Mr. McLachlan further  
12 informed Mr. Kalfayan that the survey responses obtained by the Court-appointed expert, Mr.  
13 Thompson, indicated that as many as thirty percent (30%) of Wood Class Members also owned  
14 dormant parcels of land in the Basin. *Id.* Mr. Kalfayan responded that such persons are not  
15 Members of the Willis Class because as Wood Class Members, by definition, they "own property  
16 within the Basin on which they have pumped water" and therefore were excluded from the Willis  
17 Class by Court Order. *Id.* Mr. Kalfayan also raised the undeniable actual conflict of interest that  
18 now exists between the Wood Class and Willis Class as a further basis for his position that persons  
19 cannot be in the Wood Class and Willis Class simultaneously. *Id.* Mr. McLachlan disagreed and  
20 stated that he would continue informing his clients in the Wood Class that if they also own dormant  
21 parcels of land, they are also in the Willis Class and are represented by Willis Class Counsel. *Id.*

22  
23  
24 **Massive Number of Persons in Both the Wood Class and the Willis Class**

25 After the discussions with Mr. Landsgaard and Mr. McLachlan regarding persons who  
26 currently are in both the Wood Class and the Willis Class, Mr. Kalfayan directed his paralegal staff  
27

1 to conduct a thorough comparison of persons listed in the Wood Class with persons listed in the  
2 Willis Class.<sup>2</sup> The purpose of the comparison is to determine how many persons are simultaneously  
3 in both the Wood Class and Willis Class. This comparison of Class lists is very detailed, time-  
4 intensive, and laborious and is still ongoing. See Declaration of Cindy Barba, ¶ 4. Thus far, the  
5 names of 1372 out of 3100 Wood Class Members have been compared to the list of Willis Class  
6 Members. See *Id.* at ¶ 5; see also Declaration of Robin Griffin, ¶ 5. Of those 1372 Wood Class  
7 Members, 1045 of them are also Willis Class Members. *Id.* In other words, so far 76% of Wood  
8 Class Members are also Willis Class Members. Of course, Willis Class Counsel will complete this  
9 comparison as expeditiously as possible and then immediately file the complete results with the  
10 Court, thereby also notifying all Parties to this adjudication of the complete results.

11  
12 However, based on the results thus far, at least 1045, but likely as many as 2000 Wood  
13 Class Members are also Willis Class Members.  
14

### 15 LEGAL ARGUMENT

16 The Willis Class is not claiming that any of the attorneys in this case have committed  
17 intentional ethical violations. Rather, in compliance with their ethical duties, Willis Class Counsel  
18 are informing this Court of a recently-discovered and substantial conflict of interest created by the  
19 existence of at least 1045 (likely 2000-plus) “Dual” Wood/Willis Members that must be addressed  
20 by this Court immediately. See, *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1176 (5th Cir.  
21 1978); *In re Agent Orange Prod. Liab. Litig.*, 800 F.2d 14, 18 (2d Cir. 1986) (“ . . . the attorney's  
22 duty to the class requires him to point out conflicts to the court so that the court may take appropriate  
23

25  
26  
27 <sup>2</sup> Best Best & Krieger (“BB&K”) has been the administrator of the Willis Class throughout the entirety of the  
28 Antelope Valley adjudication. BB&K was the administrator of the Wood Class as well up until 2014 when Garden  
City Group became the administrator for the Wood Class. Accordingly, Willis Class Counsel obtained the list of Willis  
Class Members from BB&K and the most recent list of Wood Class Members from Garden City Group (via Wood  
Class Counsel) to conduct the detailed comparisons of the Class lists.

1  
2 steps to protect the interests of absentee class members.”).

3           As a preliminary matter, this Court must confirm the attorney-client status of the 1372-plus  
4 (likely 2000-plus) Wood Class Members, such as Mr. Landsgaard, who believe to be in the Willis  
5 Class. Is the Court going to enforce its September 2, 2008 Order mandating the exclusion from the  
6 Willis Class of all persons who own land in the Basin on which they have pumped water at any  
7 time? Or will the Court agree with Wood Class Counsel and rule that persons in the Wood Class  
8 who own land in the Basin on which they have pumped water at any time can also be Members of  
9 the Willis Class because they also own land on which they have never pumped water? Whichever  
10 way the Court rules on this critical issue, there will be significant and impactful consequences on  
11 this adjudication. It is the position of Willis Class Counsel that a person is not in the Willis Class  
12 if he or she pumped groundwater in the past.

13  
14  
15           **If Court Rules That Wood Class Members Cannot Also Be Willis Class Members**

16           If the Court enforces its Order of September 2, 2008, then there are at least 1045 (likely  
17 2000-plus) persons such as Mr. Landsgaard who are Small Pumper/Wood Class Members and who  
18 were sent Notices by BB&K informing them that they may be Nonpumpers in the Antelope Valley  
19 Basin and had the ability to opt out of the Willis Class. For those 1045-plus persons like Mr.  
20 Landsgaard who did not opt out of the Willis Class, they believed they were in the Willis Class as  
21 well as the Wood Class. If the Court rules that these persons were excluded by definition from the  
22 Willis Class and are not **in fact** Members of the Willis Class, then these persons are only Members  
23 of the Wood Class.  
24

25           Willis Class Counsel always has maintained that they do not and cannot represent Small  
26 Pumpers. Thus, Willis Class Counsel informed Mr. Landsgaard that they do not represent him.  
27

1  
2           Until the recent analysis of the actual overlap between the Wood Class and Willis Class  
3 prompted by Mr. Landsgaard’s phone call, Willis Class Counsel was completely unaware that at  
4 least 1045 Wood Class Members, i.e. Small Pumpers, also are listed as Willis Class Members. The  
5 inclusion of Mr. Landsgaard and at least 1045-plus other Wood Class Members in Willis Class  
6 Notice mailings does not convert Mr. Landsgaard and other Wood Class Members (who own  
7 property on which they have pumped water) into clients of Willis Class Counsel or Members of the  
8 Willis Class:  
9

10           An attorney-client relationship is not created by the unilateral declaration of one party to  
11 the relationship. (See *Fox v. Pollack* (1986) 181 Cal.App.3d 954, 959, 226 Cal.Rptr. 532  
12 [individuals cannot unilaterally create an attorney-client relationship without the agreement  
13 of the attorney].) Rather, the relationship can only be created by contract, express or  
14 implied. (*Responsible Citizens v. Superior Court* (1993) 16 Cal.App.4th 1717, 1732,  
15 20Cal.Rptr.2d 756; *Fox v. Pollack, supra*, 181 Cal.App.3d at p. 959, 226 Cal.Rptr. 532.)

16 *Koo v. Rubio's Restaurants, Inc.*, 109 Cal.App.4th 719, 729 (2003)

17           To the extent Wood Class Counsel argues that the mailings created an attorney-client  
18 relationship between Willis Class Counsel and Small Pumper/Wood Class Members such as Mr.  
19 Landsgaard via an “implied” contract, this Court must look at the “totality of the circumstances” to  
20 determine if an attorney-client relationship was in fact established:

21           In determining the existence of an attorney-client relationship we should ask  
22 whether the “totality of the circumstances” so indicate. (*Responsible Citizens v.*  
23 *Superior Court, supra*, 16 Cal.App.4th at p. 1733, 20 Cal.Rptr.2d 756.) “The  
24 question of whether an attorney-client relationship exists is one of law. [Citations.]  
25 However, when the evidence is conflicting, the factual basis for the determination  
26 must be determined before the legal question is addressed. [Citation.]” (*Ibid.*)

27 *Koo v. Rubio's Restaurants, Inc.*, 109 Cal.App.4th 719, 732 (2003).

28 Voluminous mailings by BB&K cannot possibly form the basis of an “implied” contract for an  
attorney-client relationship between Willis Class Counsel and the 1045-plus Small Pumper/Wood

1  
2 Class Members such as Mr. Landsgaard. Like the class counsel in *Koo*, it is simply untenable  
3 that Willis Class Counsel would announce to the Court that it was simultaneously representing  
4 Wood Class and Willis Class Members:  
5

6 It is untenable that experienced, and presumably ethical, class action defense  
7 counsel would deliberately undertake the representation of both the potential class  
8 members, i.e., the individual managers in their individual capacities, and the class  
9 action defendant, and then announce to the court that it was representing both sides.  
(See *DCH Health Services Corp. v. Waite* (2002) 95 Cal.App.4th 829, 834, 115  
Cal.Rptr.2d 847 [“the court should start with the presumption that, unless proven  
otherwise, lawyers will behave in an ethical manner”].)

10 *Koo v. Rubio's Restaurants, Inc.*, 109 Cal. App. 4th 719, 733 (2003).

11 The totality of the circumstances proves that there never was an attorney-client relationship  
12 between the 1045-plus Wood Class Members such as Mr. Landsgaard and Willis Class Counsel.  
13

14 However, without representation by Willis Class Counsel, these persons who are Small  
15 Pumper/Wood Class Members and Nonpumpers in the Basin would not have any representation  
16 as to their Nonpumping properties. Wood Class Counsel cannot and has not represented the rights  
17 of Nonpumpers in the Basin. Thus, even though at least 33%, but more likely at least 66%, of the  
18 Wood Class also consists on Nonpumpers, Wood Class Counsel has had the continuing duty to  
19 represent the interests of Small Pumpers only, not Nonpumpers.  
20

21 Indeed, like Mr. Landsgaard, these 1045-plus (likely 2000-plus) Wood Class Members  
22 would object to the SPPS because it does not protect their interests as Nonpumping landowners and  
23 makes “vacant land worthless” (Landsgaard Decl. ¶ 14). However, Wood Class Counsel is only  
24 representing the interests of Small Pumpers and obviously is advocating for Final Approval of the  
25 Wood Class Settlement and incorporated Physical Solution because the Small Pumpers’ rights are  
26 protected in those agreements. To state the obvious, Wood Class Counsel is not going to object to  
27

1  
2 the Wood Class Settlement and incorporated SPPS on behalf of the 1045-plus (likely 2000-plus)  
3 Wood Class Members such as Mr. Landsgaard who believe their additional rights as Nonpumping  
4 landowners are not protected in those agreements. This is true even though at least 33%, but more  
5 likely at least 66%, of the Wood Class also are Nonpumpers.  
6

7 Accordingly, if this Court enforces its 2008 Order and agrees with Willis Class Counsel that  
8 they do not and cannot represent Small Pumper/Wood Class Members, then this Court must  
9 continue the upcoming Phase VI Physical Solution Trial to determine how to ensure that the Court  
10 has jurisdiction over landowners in the Basin who are in the Wood Class and who also are  
11 Nonpumpers. Whether these 1045-plus (likely 2000-plus) landowners must be individually served  
12 in their capacity as Nonpumpers or if a third Class of “Dual” Landowners (Small Pumpers and  
13 Nonpumpers) is formed is for this Court to determine. Whatever the Court decides, it is clear that  
14 the *status quo* cannot continue. Mr. Landsgaard and the other 1045-plus (likely 2000-plus) Wood  
15 Class Members must have their property interests as Nonpumpers represented by counsel.  
16

17 **If Court Rules That Wood Class Members Also Can Be Willis Class Members**

18 Despite the Court’s 2008 Order and despite Willis Class Counsel’s position regarding the  
19 nonexistence of an attorney-client relationship with Wood Class Members who were mailed Willis  
20 Class Notices, Wood Class Counsel asserts that their Wood Class clients are also Willis Class  
21 Members and clients of Willis Class Counsel. If the Court agrees with Wood Class Counsel, then  
22 under the California Rules of Professional Conduct and pursuant to ethical obligations, Willis Class  
23 Counsel must withdraw from their representation of the Willis Class due to irreconcilable conflicts  
24 of interest.  
25

26 If the 1045-plus Wood Class Members are also Willis Class Members, then Willis Class  
27

1  
2 Counsel are representing clients with directly conflicting interests. “Pure” Willis Class  
3 Nonpumpers who do not own any properties on which they have pumped water have no conflicting  
4 interests. Therefore, these “pure” Willis Class Members can object and have objected to the Wood  
5 Class Settlement and SPPS because those agreements do not protect their property rights as  
6 Nonpumpers. However, Small Pumper/Wood Class Members who are also Willis Class Members  
7 have objected to the very same agreements to which they are a Party as Members of the Wood  
8 Class. There simply is no getting around the fact that Nonpumper Willis Class Members are in  
9 conflict with Small Pumper/Wood Class Members who are also Nonpumper Willis Class Members.  
10 There are at least 1045 “objectors” to the Wood Class Settlement and SPPS included in the Willis  
11 Class. In other words, there are at least 1045 Wood Class Members who have actually objected to  
12 their own Settlement Agreement if the Court rules that Wood Class Members can also be Members  
13 of the Willis Class.  
14  
15

16 As Willis Class Counsel, we cannot continue to represent 1045-plus (likely 2000-plus)  
17 Wood Class Members who have interests directly opposed to the “pure” Nonpumpers in the Willis  
18 Class. As provided by the California Rules of Professional Conduct:

19 Under California Rules of Professional Conduct, Rule 3–310 (Rule 3–310) **an attorney**  
20 **may not *accept* a new representation of multiple clients when there exists a *potential* conflict**  
21 **of interest between those prospective clients, and *must withdraw from an existing***  
22 **representation of multiple clients when an *actual* conflict of interest arises among those**  
**existing clients. (Rule 3–310, subs. (C)(1), (2).)**

23 *Carroll v. Superior Court*, 101 Cal.App.4th 1423, 1425 (2002) (emphasis supplied).

24 It is true that traditional rules of professional conduct cannot be applied mechanically in the realm  
25 of class actions. *See, Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581, 589–590 (3rd Cir.1999). Rather,  
26 the circumstances of each case must be evaluated. *In re Agent Orange Prod. Liab. Litig.*, 800 F.2d  
27

1 14, 18 (2d Cir. 1986). The circumstances of this case make it impossible for Willis Class Counsel  
2 to ethically and zealously represent the interests of Willis Class Members if 1045-plus Wood Class  
3 Members are also deemed Members of the Willis Class.

4 When “Dual” Wood/Willis Class Members such as Mr. Landsgaard contact Willis Class  
5 Counsel, Willis Class Counsel is prohibited from discussing any confidential information these  
6 Dual Wood/Willis Class Members have disclosed to Wood Class Counsel or that Wood Class  
7 Counsel disclosed to them:

9 The relation between attorney and client is a fiduciary relation of the very highest  
10 character, and binds the attorney to most conscientious fidelity—*uberrima fides*.” (*Cox v.*  
11 *Delmas* (1893) 99 Cal. 104, 123 (emphasis in original); see also *Kornbau v. Evans* (1944)  
12 66 Cal.App.2d 677, 685). Among other things, the fiduciary relationship requires that the  
13 attorney respect his or her client’s confidences. (Bus. & Prof.Code, 6068, subd. (e);  
*Anderson v. Eaton* (1930) 211 Cal. 113, 116). It also means that the attorney has a duty  
of loyalty to his or her clients. (*Anderson v. Eaton, supra*, 211 Cal. 113, 116, 293 P. 788;  
*Dettamanti v. Lompoc Union School Dist.* (1956) 143 Cal.App.2d 715).

14 *Zador Corp. v. Kwan*, 31 Cal.App.4th 1285, 1293 (1995) (parallel citations omitted).

15 To uphold these attorney-client obligations, contact with represented parties is proscribed to  
16 preserve the attorney-client relationship from an opposing attorney’s intrusion and interference,  
17 whether intentional or unintentional:

19 Rule 7–103 [now Rule 2-100] operates to protect a represented party from being taken  
20 advantage of by adverse counsel. The Rule “shields the opposing party not only from an  
21 attorney’s approaches which are intentionally improper, but, in addition, from approaches  
22 which are well intended but misguided. The rule was designed to permit an attorney to  
function adequately in his proper role and to prevent the opposing attorney from impeding  
his performance in such role ...” (*Mitton v. State Bar* (1969) 71 Cal.2d 525, 534, citing  
former Rule 12.)

23 As the respondent court recognized, the ultimate purpose of Rule 7–103 [now Rule 2-100]  
24 is to preserve the confidentiality of attorney-client communications. “[T]he [attorney-  
25 client] privilege exists to protect not only the giving of professional advice to those who  
26 can act on it but also the giving of information to the lawyer to enable him to give sound  
and informed advice.” *Upjohn Co. v. United States* (1981) 449 U.S. 383, 390, 101 S.Ct.  
677, 683, 66 L.Ed.2d 584, 592.



1 *Bobele v. Superior Court*, 199 Cal.App.3d 708, 712 (1988).

2 In this case, it would be absolutely impossible for Willis Class Counsel to discuss strategy  
3 and reveal as well as procure confidential information from Dual Wood/Willis Class Members  
4 without encroaching on their attorney-client relationship with Wood Class Counsel. That is why a  
5 “bright line” test exists that prohibits contact with represented parties:  
6

7 “Contact with represented parties is proscribed to preserve the attorney-client relationship  
8 from an opposing attorney's intrusion and interference.” (*Jackson v. Ingersoll-Rand Co.*  
9 (1996) 42 Cal.App.4th 1163, 1167) “Moreover, with regard to the ethical boundaries of an  
10 attorney's conduct, a bright line test is essential. As a practical matter, an attorney must be  
11 able to determine beforehand whether particular conduct is permissible; otherwise, an  
12 attorney would be uncertain whether the rules had been violated until ... he or she is  
13 disqualified. Unclear rules risk blunting an advocate's zealous representation of a client.”  
14 (*Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6  
15 Cal.App.4th 1256, 1264).

16 *Snider v. Superior Court*, 113 Cal.App.4th 1187, 1197-98 (2003).

17 It is no answer for Wood Class Counsel to “consent” to Willis Class Counsel’s contact with  
18 Wood Class Members/Clients as permitted by Rule 2-100.<sup>3</sup> Given the vast numbers of Dual  
19 Wood/Willis Class Members, it would be impossible for both Wood Class Counsel and Willis Class  
20 Counsel to be present when communicating with these Dual Members as contemplated in the recent  
21 *San Francisco Unified* decision:

22 If a party's counsel is present when an opposing attorney communicates with a party,  
23 counsel can easily correct any element of error in the communication or correct the effect  
24 of the communication by calling attention to counteracting elements which may exist.  
25 (*Mitton v. State Bar* (1969) 71 Cal.2d 525, 534 [discussing former rule 12].)

26 *San Francisco Unified Sch. Dist. ex. rel. Contreras v. First Student, Inc.*, 213 Cal.App.4th 1212,  
27 1230 (2013).

28 Moreover, as discussed previously, Willis Class Counsel has objected to the Small Pumper

<sup>3</sup> Rule 2-100 provides: “(A) While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.”

1 Class Settlement and needs to be able to communicate freely with Willis Class Members regarding  
2 confidential information and legal strategies that would support those objections. However, it  
3 would be unethical and prohibited to discuss confidential information with Dual Wood/Willis Class  
4 Members due to their status as Wood Class Members. Yet Willis Class Counsel must zealously  
5 represent their clients (all Class Members) and would be duty-bound to have all 1045-plus Dual  
6 Wood/Willis Class Members object to the Wood Class Settlement.  
7

8 **CONCLUSION**

9 Willis Class Counsel very recently discovered the existence of 1045-plus Dual Wood/Willis  
10 Members. Willis Class Counsel contends that these "Dual" Members are not in fact Willis Class  
11 Members and we do not represent them. If the Court agrees, the Court must continue the upcoming  
12 Phase VI/Physical Solution Trial to ensure that jurisdiction is established over and legal  
13 representation obtained for these persons who are Wood Class Members and who also are  
14 Nonpumpers.  
15

16 Alternatively, if this Court determines that these Dual Wood/Willis Class Members are in  
17 fact Members of the Willis Class and, therefore, clients of Willis Class Counsel, then Willis Class  
18 Counsel must withdraw from representation of the Willis Class as presently constituted due to  
19 irreconcilable conflicts of interests within the Willis Class.  
20

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Respectfully submitted,

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24 

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