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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 **ANTELOPE VALLEY**) **JUDICIAL COUNCIL COORDINATION**
12 **GROUNDWATER CASES**) **PROCEEDING NO. 4408**

13)
14 This Pleading Relates to Included Action:) **CASE NO. BC 364553**
15 REBECCA LEE WILLIS, on behalf of)
herself and all others similarly situated,)

16 Plaintiff,) **NOTICE OF MOTION AND MOTION**
17 vs.) **FOR ORDER GRANTING PRELIMINARY**
18) **APPROVAL OF CLASS ACTION**
19) **SETTLEMENT AND APPROVING**

20 LOS ANGELES COUNTY WATERWORKS) **NOTICE TO THE CLASS;**
21 DISTRICT NO. 40; CITY OF LANCASTER;) **MEMORANDUM OF POINTS AND**
22 CITY OF LOS ANGELES; CITY OF) **AUTHORITIES IN SUPPORT**

23 PALMDALE; PALMDALE WATER)
24 DISTRICT; LITTLEROCK CREEK)
25 IRRIGATION DISTRICT; PALM RANCH)
26 IRRIGATION DISTRICT; QUARTZ HILL)
27 WATER DISTRICT; ANTELOPE VALLEY)
28 WATER CO.; ROSAMOND COMMUNITY)
SERVICE DISTRICT; and DOES 1 through)
1,000;

) **Date: October 7, 2010**
) **Time: 9:00 a.m.**
) **Dept: 1**
) **Judge: Hon. Jack Komar**
Coordination Trial Judge

Defendants.

25 **PLEASE TAKE NOTICE** that on October 7, 2010, at 9:00 a.m., Plaintiff Rebecca
26 Willis will move before this Court for an Order Granting Preliminary Approval of Class Action
27 Settlement and Directing Notice to the Class. In support of this Motion, Plaintiff Willis relies
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1 upon the following Memorandum of Points and Authorities and the accompanying Notice of
2 Lodgment of Exhibits.

3 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
4 **ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION**
5 **SETTLEMENT AND DIRECTING NOTICE TO THE CLASS**

6
7 **I. INTRODUCTION**

8 Class Plaintiff Rebecca Lee Willis has entered into a Stipulation of
9 Settlement (the “Stipulation”) with Defendants, and Los Angeles County Waterworks
10 District No. 40, City of Palmdale, Palmdale Water District, Littlerock Creek Irrigation District,
11 Palm Ranch Irrigation District, Quartz Hill Water District, California Water Service Company,
12 Rosamond Community Service District, Phelan Pinon Hills Community Services District, Desert
13 Lake Community Services District, and North Edwards Water District (collectively, the “Settling
14 Defendants”), subject to Court approval and other conditions set forth in the
15 Stipulation.
16

17 Plaintiff requests that the Court adopt the [Proposed] Order Granting
18 Preliminary Approval of Class Action Settlement and Directing Notice to the Class
19 (attached as Exhibit B to the accompanying Notice of Lodgment, which would: (i)
20 preliminarily approve the proposed settlement; (ii) approve the form of Notice to the
21 Class and authorize dissemination of the Notice; (iii) set dates and procedures for a
22 fairness hearing on the proposed settlement; and (iv) set procedures and deadlines
23 for class members to object to the settlement terms.
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1 **II. THE LITIGATION AND PROPOSED SETTLEMENT**

2 **A. History of the Litigation**

3 The Court is intimately familiar with the history of this litigation. For
4 present purposes, it is sufficient to observe that Plaintiff Willis filed this action in
5 early 2007 to (1) protect her right and the rights of Class members to make
6 reasonable and beneficial future use of the groundwater underlying their properties
7 within the Antelope Valley Basin (the “Basin”) and (2) contest claims of prescriptive
8 rights that certain parties had asserted. By Order dated September 11, 2007 (as
9 amended by Orders dated May 22, 2008 and September 2, 2008), the Court certified
10 this action to proceed as a class action on behalf of the following Class:
11

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

17 The Class excludes the defendants herein, any person, firm, trust,
18 corporation, or other entity in which any defendant has a controlling interest
19 or which is related to or affiliated with any of the defendants, and the
20 representatives, heirs, affiliates, successors-in-interest or assigns of any such
21 excluded party. The Class also excludes all persons to the extent their
22 properties are connected and receive service from a municipal water system,
23 public utility, or mutual water company. The Class shall [further] exclude
24 all property(ies) that are listed as ‘improved’ by the Los Angeles County or
25 Kern County Assesor’s’ office, unless the owners of such properties declare
26 under penalty of perjury that they do not pump and have never pumped
27 water on those properties.”

28 Notice of the Pendency of this action was sent to the approximately 60,000
members of the Willis Class in or about January 2009 and the opt-out period (as
extended) expired on August 30, 2009. Certain persons who opted out were
subsequently permitted to rejoin the Class. During that process, numerous Class

1 members contacted counsel regarding the action, and we were able to gather
2 valuable insights into the desires and priorities of those persons.

3 Over the last several years, Class counsel and the other parties have engaged
4 in extensive discovery and law and motion proceedings with respect to many critical
5 issues, including, but not limited to, (a) the Basin's yield; (b) the factual and legal
6 bases for the Suppliers' claims to prescriptive rights; (c) the Class' right to an expert
7 witness; and (d) the ability of anyone to obtain prescriptive rights against "dormant"
8 landowners.

9 By Order dated October 28, 2009, the Court stated its intent to consolidate
10 the various Actions that were coordinated as part of JCCP No. 4008, including the
11 Willis action. On February 19, 2010, the Court entered an Order Transferring and
12 Consolidating [the Coordinated] Actions for All Purposes. The Court has set
13 January 4, 2011 as a firm date for the next phase of trial.

14

15 B. **Background and Terms of the Proposed Settlement**

16 Counsel for the Willis Class engaged in settlement discussions with
17 Defendants' counsel during mid 2009. On September 2, 2009, counsel participated
18 in a mediation session before the Honorable Ronald Robie. That mediation resulted
19 in an agreement in principle among counsel for the Settling Parties to settle the
20 litigation between and among their respective clients, subject to appropriate
21 approvals. After months of difficult negotiations the parties agreed upon the terms
22 of a Stipulation of Settlement and ancillary documents. Due to the complicated
23 nature of this multi-party case, it has taken additional months to obtain the parties'
24 formal agreement to the proposed settlement. That is now finally at hand.¹

25

26 ¹ One party has yet to execute the Stipulation of Settlement, but we expect that party to
27 execute it within the next few days, at which point we will file a supplemental lodging with that
signature.

28

1 Plaintiff and the Settling Defendants have arrived at a settlement agreement
2 that is fair to all concerned – including the non-settling parties. With respect to the
3 latter, the Stipulation expressly provides that it “shall not . . . be construed to
4 prejudice the rights, claims, or defenses (whether asserted or potential) of any
5 persons who are not Settling Parties . . .” Exh. E at ¶ II. I.

7 The essential terms of the settlement provide that (1) the Class will not
8 contest the Settling Defendants’ assertions as to the Basin’s yield, and all parties
9 will accept the Court’s determination in that regard; (2) the Settling Defendants
10 agree not to seek prescriptive rights as to the Class; (3) the Settling Defendants
11 agree to recognize the Class’ correlative rights to use the Basin’s groundwater; and
12 (4) the Class agrees that Settling Defendants are entitled to 15% of the Basin’s
13 Native Yield as well as the return flows from water that they have previously
14 imported. Id. At ¶¶ IV A-D. The Settling Parties have further agreed that they
15 will cooperate in the development and implementation of a Physical Solution for the
16 Basin.
17 Basin.

18 **III. ARGUMENT**

19 **A. Standard For Preliminary Approval**

20 There is an overriding public interest in settling and quieting litigation,
21 especially in class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276
22 (9th Cir. 1992), *cert. denied*, 506 U.S. 953 (1992). No action brought as a class
23 action may be settled, compromised, or dismissed without court approval. C.R.C.
24 3.769.
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1 In deciding whether to approve a class action settlement, the Court has wide-
2 ranging discretion to determine whether a proposed settlement is fair under the
3 circumstances of the case. *Mallick v. Superior Ct.*, 89 Cal. App. 3d 434, 438 (1979).

4
5 There is a three-step process for approval of class action settlements:

- 6 1. Preliminary approval of the proposed settlements and proposed
7 notice to settlement class members;
- 8 2. Dissemination of the notice of the settlements to class members;
9 and
- 10 3. A final approval hearing, at which class members may be heard
11 regarding the settlement, and at which evidence and argument
12 concerning the fairness, adequacy and reasonableness of the
13 settlements is presented. .

14 The scope of the Court's evaluation at the preliminary hearing stage is
15 limited. The purpose of the preliminary evaluation is simply to determine whether
16 the proposed settlement is within the "range of reasonableness" and thus whether it
17 is appropriate to send notice to the class of the proposed settlement terms and
18 conditions and schedule a final settlement hearing. At the final Hearing, the Court
19 then gives the proposed Settlement de novo consideration, based in part on the
20 reaction of the Class.

21 A settlement is presumed fair where: "(1) the settlement is reached through
22 arm's length bargaining; (2) investigation and discovery are sufficient to allow
23 counsel and the court to act intelligently; (3) counsel is experienced in similar
24 litigation; and (4) the percentage of objectors is small." *Wershba v. Apple*
25 *Computer, Inc.*, 91 Cal. App. 4th 224, 244-45 (2001). A review of these factors
26
27

1 strongly favors preliminary approval of the proposed Settlement in this action.

2 **B. The Proposed Settlement Is Well Within The Range Of**
3 **Reasonableness and Merits Preliminary Approval.**

4 The Proposed Settlement is well within the “range of reasonableness” such
5 that it merits preliminary approval and full consideration following notice to the
6 Class. Although Plaintiffs believe that their claims have merit, they recognize,
7 based on discovery and lack of precedent, proceedings that there is considerable risk
8 as to their claims. Therefore, it is in the best interests of Plaintiff and the Class to
9 settle with and receive reasonable and prompt benefits rather than litigate over
10 claims that they would have difficulty proving.

11
12 The proposed settlement offers substantial benefits to the Class, including
13 the dismissal and compromise of Defendants’ prescription claims and recognition of
14 the Class members’ correlative rights. Moreover, the Class will be entitled to the
15 benefits of a higher yield number if the Court concludes that Defendants’ estimates
16 are too low. The parties labored hard, with Justice Robie’s assistance, to craft
17 settlement terms that resulted in a win-win for each side.

18
19 It is elemental that a settlement is a compromise and inevitably will not
20 provide 100 percent of what a party sought. “In the context of a settlement
21 agreement, the test is not the maximum amount plaintiffs might have obtained at
22 trial on the complaint, but rather whether the settlement is reasonable under all of
23 the circumstances.” *Wershba*, 91 Cal.App.4th at 250 (citation omitted). Given the
24 many risks that Plaintiff and the Class face, this settlement represents a
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1 reasonable resolution of a complex and contested case. It is well within the range of
2 reasonableness under all of the relevant circumstances. Further, this litigation (if
3 not settled) would be very protracted and expensive. The parties would each
4 require several experts and trial would have been involved and expensive. This is
5 clearly a case in which “a bird in hand is worth two in the bush.”
6

7 **C. The Extent Of Discovery Completed And The Stage Of Proceedings**

8 This Settlement came to fruition only after years of discovery and highly
9 contested law and motion proceedings, which educated both sides to the strengths
10 and weaknesses of their claims. Plaintiff reviewed and analyzed thousands of pages
11 of documents produced by Defendants, and have engaged in extensive research and
12 briefing of the factual and legal issues. Based on this extensive discovery and legal
13 and factual analysis, Class counsel were well situated to assess the strengths and
14 weaknesses of the claims and defenses and negotiate an appropriate settlement.
15

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17 **D. The Experience And Views Of Counsel And The Mediator**

18 Counsel for plaintiffs are experienced in complex class action litigation and
19 have regularly consulted with water rights experts, as needed. Further, the
20 Settlement was recommended after lengthy mediation by Court of Appeal Justice
21 Robie. During the mediation, counsel carefully reviewed and discussed with Justice
22 Robie the strengths and weaknesses of their respective cases. Justice Robie has
23 many years of experience in water law and complex cases such as this and
24 recommended the settlement proposed herein. His recommendation speak loudly to
25 the reasonableness of the proposed Settlement.
26

1 **E. The Proposed Notice Fairly Apprises The Settlement Class Members**
2 **of the Terms Of The Settlement And Their Options.**

3 Notice of a class action settlement must “present a fair recital of the subject
4 matter and proposed terms [and provide] an opportunity to be heard to all class
5 members.” See, e.g. *In re Equity Funding Corp. of America Sec. Litig.*, 603 F.2d
6 1353, 1361 (9th Cir. 1979); see also, *Phillips v. Shutts*, 472 U.S. 797, 812 (1985).

7
8 The proposed notice here apprises the Settlement Class Members of their
9 rights and how to exercise them. It informs Settlement Class Members of: (i) who is
10 a Settlement Class member; (ii) the history of the litigation; (iii) the terms of the
11 settlement; (iv) the binding effect of any judgment; (v) the right of Settlement Class
12 members to object to any aspect of the settlement and/or to appear at the Fairness
13 Hearing and the procedures and deadlines for doing so; (vii) the date, time and
14 location of the Fairness Hearing; and (viii) how to obtain additional information.

15
16 The method by which the notice is to be disseminated is also appropriate.
17 Defendants have agreed to send the Notice *via* the United States Postal Service
18 directly to each of the approximately 60,000 class members (at their last known
19 address), as well as publish a Summary Notice in three widely read newspapers.
20 The Notice fully satisfies all requirements of the rules and due process. See *Linder*
21 *v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 444.
22

23 **IV. CONCLUSION**

24 For all of the foregoing reasons, Plaintiffs respectively request that the Court
25 grant their application and: (1) preliminarily approve the proposed settlement; (2)
26

1 approve the Notice and authorize its dissemination; (3) schedule a Fairness Hearing
2 on the proposed settlement; and (4) set forth procedures and deadlines for
3 Settlement Class members to file objections to the proposed settlements; all as set
4 forth in the Proposed Order submitted herewith.
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6 Dated: September 15, 2010

KRAUSE KALFAYAN BENINK
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/s/Ralph B. Kalfayan
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David B. Zlotnick, Esq.
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