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

**ANTELOPE VALLEY  
GROUNDWATER CASES**

This Pleading Relates to Included Action:  
REBECCA LEE WILLIS, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

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; and  
DOES 1 through 1,000;

Defendants.

) RELATED CASE TO JUDICIAL  
) COUNCIL COORDINATION  
) PROCEEDING NO. 4408  
)

) **PLAINTIFF'S MEMORANDUM OF**  
) **POINTS AND AUTHORITIES IN**  
) **SUPPORT OF MOTION FOR AN**  
) **AWARD OF ATTORNEYS' FEES,**  
) **REIMBURSEMENT OF EXPENSES,**  
) **AND CLASS REPRESENTATIVE**  
) **INCENTIVE AWARD**

) Date: February 24, 2011  
) Time: 10:00 a.m.  
) Judge: Hon. Jack Komar

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**I. INTRODUCTION**

During the over four years that Krause Kalfayan Benink & Slavens LLP (“KKBS” or the “Firm”) has worked as counsel for the dormant landowner Class, Messrs. Kalfayan and Zlotnick, supported by firm associates and paralegals (1) have attended at least 20 Hearings, mostly in Los Angeles but also in San Jose on several occasions, (2) have attended over 20 days of mediations, mostly in Palmdale, but also in Sacramento and Burbank, (3) have conducted document inspections at the 10 defendants’ offices, mostly in the Antelope Valley, (4) have reviewed tens of thousands of pages of documents, many of them highly technical materials relating to the hydrology and geology of the Antelope Valley Basin (the “Basin”), (5) have attended at least 10 depositions as well as the Phase 2 trial, (6) have prepared and served over 100 documents, including briefing at least 7 significant law and motion matters and preparing and responding to numerous discovery requests, and done the substantial legal and factual research necessary to properly prepare those documents, (7) have reviewed hundreds of filings made by other parties, frequently reviewing cases and other background materials that were cited, (8) have had hundreds of conversations with other counsel and expert consultants regarding the technical, economic, and legal issues raised by this matter, (9) and have had numerous conversations and e-mail exchanges with many hundreds of the approximately 65,000 class members. The KKBS lawyers (including their consultant Greg James) working on this matter have collectively spent some 5,293.9 hours of professional time and their paralegals and clerks have spent an additional 431.5 hours on this case during the past 51 months. They have done this work since late 2006 without being paid a single penny for their efforts on this matter. To the contrary, Messrs. Kalfayan and Zlotnick and the firm have incurred unreimbursed expenses of over \$86,000 during the course of their work on this matter, over \$64,000 of which was hard out of pocket costs, such as travel, transcripts, and filing fees. All of this work was done on a contingent basis, without

1 any guarantee of compensation.

2 Pursuant to Section 1021.5 of the Code of Civil Procedure, Willis Class Counsel now  
3 seek an award of fees and expenses to compensate them for their efforts on this matter over the  
4 last 51 months.<sup>1</sup>

## 5 **II. HISTORY OF THE WILLIS LITIGATION**

6 The history of this litigation and, in particular, the role of Class Plaintiff Willis and her  
7 counsel, KKBS, is set forth in detail in the accompanying Declaration of Ralph B. Kalfayan in  
8 Support of Motion For an Award of Attorneys' Fees, Reimbursement of Expenses, and Class  
9 Representative Incentive Award (the "Kalfayan Fee Decl."). In summary, during the past 51  
10 months, Plaintiffs' Counsel have vigorously prosecuted this matter on behalf of the dormant  
11 landowner Class, ultimately negotiating the settlement that is now before the Court. KKBS  
12 counsel have collectively spent 5,293.9 hours litigating this matter, and their clerks and  
13 paralegals have spent another 431.5 hours, with an additional 265.4 hours spent by Greg James,  
14 who consulted on technical water law issues. Their collective lodestar is \$2,300,618. Further,  
15 they have incurred over \$86,000 in expenses during that time. They have not been paid a penny  
16 for their efforts and have handled this matter on a contingent basis, with no guarantee that they  
17 would ever be paid for their time or reimbursed for the expenses they incurred.  
18

19  
20 After almost three years of litigation, and months of settlement negotiations, the Willis  
21 Class reached a settlement in principle with Defendants in September 2009 with the assistance of  
22 the Honorable Ronald Robie. Counsel then worked actively for over six months ironing out the  
23 details of the Stipulation of Settlement and related documents. In essence, the Settlement with  
24 the Public Water Supplier Defendants ("Suppliers" or "Defendants") provides as follows: All  
25 parties agreed to be bound by the yield determinations that would ultimately be made by the  
26

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27 <sup>1</sup> This petition seeks an award of fees and costs for the period from the inception of this matter  
28 through December 31, 2010. Consistent with the parties' agreement, Plaintiff reserves the right to

1 Court. The Class agreed that the Suppliers were collectively entitled to up to 15% of the Basin's  
2 native yield, as well as the return flows from water they had imported. The Suppliers agreed to  
3 release their prescription claims against the Class and support the Class' correlative rights to  
4 make reasonable and beneficial use of 85% of the Basin's native yield. The parties did not agree  
5 on any payment of fees, leaving that matter to the Court's determination.

6 **III. ARGUMENT**

7  
8 A fee award is appropriate here under Section 1021.5 of the Code of Civil Procedure,  
9 which provides as follows:

10 Upon motion, a court may award attorneys' fees to a successful party against one  
11 or more opposing parties in any action which has resulted in the enforcement of  
12 an important right affecting the public interest if: (a) a significant benefit, whether  
13 pecuniary or nonpecuniary, has been conferred on the general public or a large  
14 class of persons, (b) the necessity and financial burden of private enforcement,  
or of enforcement by one public entity against another public entity, are such as to  
make the award appropriate, and (c) such fees should not in the interest of justice  
be paid out of the recovery, if any.

15 As discussed below, this case satisfies all of the requirements for an award of fees under CCP  
16 Section 1021.5.

17 **A. THIS MATTER SATISFIES ALL OF THE CRITERIA FOR AN**  
18 **AWARD OF FEES UNDER CCP SECTION 1021.5**

19 This case meets all of the criteria for an award of fees from the water purveyors under  
20 Section 1021.5 of the California Code of Civil Procedure. Specifically, (a) the action has  
21 resulted in the enforcement of an important right affecting a large group of people as well as the  
22 public interest; (b) the action has conferred a significant benefit on a large class of persons; (c)  
23 the necessity and financial burden of private enforcement are such as to make a fee award  
24 appropriate; and (d) there is no pecuniary recovery out of which fees can be paid. *See*  
25 *generally Graham v. DaimlerChrysler*, 34 Cal. 4<sup>th</sup> 553 (2005).  
26

27  
28 submit a supplemental petition at a later date.

1           **1. The Class Is a Prevailing Party For Purposes of Section 1021.5.**

2           In evaluating whether a party is the “prevailing party” for purposes of an award of  
3 attorneys’ fees, the court looks to the impact of the action, not whether there was a “verdict” for  
4 one side or the other. *Graham, supra*, 34 Cal. 4<sup>th</sup> at 566. If a party obtains some relief as a result  
5 of the lawsuit, then that party is a prevailing party. *Id.* Courts consider litigants prevailing  
6 parties when they reach reasonable settlements that afford them relief. “[A] plaintiff need not  
7 achieve favorable final judgment in order to be a successful party. A defendant’s voluntary  
8 action induced by plaintiff’s lawsuit will still support an attorney’s fee award on the rationale  
9 that the lawsuit spurred defendant to act or was a catalyst speeding defendant’s response.”  
10 *Californians for Responsible Toxics Mgmt. v. Kizer* (1989) 211 Cal. App. 3d 961, 967. *See*,  
11 *Graham, supra*, 34 Cal. 4<sup>th</sup> at 575. Plaintiff handily meets this standard here. Defendants have  
12 agreed to limit the water they use from the Basin, release their claims for prescriptive rights, and  
13 respect the Class’ correlative rights. Plaintiff is a prevailing party for purposes of Section  
14 1021.5.  
15

16           **2. The Action Has Resulted in the Enforcement of an Important Right**

17           First, the action has resulted in the enforcement of an important right affecting a large  
18 group of persons in that the case protected the property and water rights of some 65,000  
19 landowners in the Basin. It cannot reasonably be controverted that landowners’ ability to make  
20 use of the groundwater under their properties is a critical interest, particularly in an arid  
21 environment like the Basin. Moreover, the California Constitution declares the public interest in  
22 the proper use of the State’s water resources. Absent the involvement of the Class, a  
23 comprehensive adjudication of the Basin would not have been possible because, without the  
24 participation of these 65,000 landowners, the Court would not have had jurisdiction over all of  
25 the parties necessary for a comprehensive adjudication. Thus, Willis and her counsel have not  
26 only protected the rights of the 65,000 Class members, their involvement has facilitated a  
27  
28



1 resolution of this large Basin's problems.

2 As the California Supreme Court explained in *Graham, supra*, “[t]he trial court in its  
3 discretion must realistically assess the litigation and determine, from a practical perspective,  
4 whether or not the action served to vindicate an important right so as to justify an attorney fee  
5 award under section 1021.5.” *Id.* at 147-48 (quotations and citation omitted). In *Graham*, the  
6 Supreme Court upheld a fee award in a case that was the catalyst for defendant's offer to  
7 repurchase trucks that had been sold based on misrepresentations about their towing capacity.  
8 The result here is at least as significant.

9  
10 The California Courts have consistently concluded that cases less significant than this one  
11 resulted in the enforcement of an important right affecting the public interest and have therefore  
12 awarded fees under Section 1021.5. *See, e.g., Graham*, 34 Cal 4<sup>th</sup> at 156 (“It is well settled that  
13 attorney fees under section 1021.5 may be awarded for consumer class actions benefitting a large  
14 number of people’); *Friends of the Trails v. Blasius*, 78 Cal. App. 4<sup>th</sup> 810 (2000)(fees awarded in  
15 case enforcing common law right to easement for public trail); *Beasley v. Wells Fargo Bank*,  
16 235 Cal. App. 3d 1407 (1991)(action challenging credit card overcharges was a “consumer  
17 protection action” and satisfied requirements for fee award). If the preservation of an easement  
18 for a trail is enough to warrant a fee award, certainly such an award is warranted here.

19  
20 Further, it is clear that this case satisfies the requirement that it confer a significant  
21 benefit on a large number of persons. In *Graham, supra*, there were fewer than 1,000 California  
22 purchasers of the trucks at issue. This case involves a class of over 65,000 landowners and, as  
23 noted above, has served the important public interest of protecting the Basin.

24 **3. The Case Has Conferred a Significant Benefit on the Class and Public.**

25 Plaintiff's prosecution of this case has conferred a significant benefit on the Class. The  
26 Settlement involves not only the Public Water Suppliers' compromise and release of their  
27 prescription claims against the class members, but also their agreement to recognize the  
28

1 correlative rights of the dormant landowner class. Absent counsel’s willingness to prosecute  
2 this action for the Class, the Class members’ rights to make beneficial use of the groundwater  
3 under their properties could well have been reduced or lost due to the prescription claims of the  
4 Public Water Suppliers. Although the Agreement does not preclude other parties from attempting  
5 to subordinate the Class, the simple fact is that only the Suppliers expressly challenged the Class’  
6 rights and no one else has attempted to do so during the last four years. Given the integral  
7 importance of water in this arid environment, it is no overstatement to say that counsel’s efforts  
8 have substantially preserved the value of the hundreds of thousands of acres owned by the class  
9 members. Moreover, by enabling a comprehensive action, the Class’ and counsel’s involvement  
10 have done much to facilitate a long-term solution of the Basin’s water issues. In short, counsels’  
11 efforts have conferred significant benefits.  
12

#### 13 **4. The Necessity of Private Enforcement**

14 Third, the necessity and burden of private enforcement are such as to make a fee award  
15 appropriate here. This element involves two issues – whether private enforcement was necessary  
16 and whether the financial burdens of private enforcement warrant an award of fees to the  
17 plaintiffs. Both elements are satisfied here. It is clear that private enforcement was necessary,  
18 given the fact that no one else stepped to the plate to represent the interests of the small  
19 landowners.<sup>2</sup> See *City of Santa Monica v. Stewart*, (2005) 126 Cal. App. 4<sup>th</sup> 43; *City of*  
20 *Sacramento v. Drew* (1989) 207 Cal. App. 3d 1287. In any event, the governing standard is  
21 whether the plaintiffs “had an individual stake that was out of proportion to the costs of the  
22 litigation.” *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal. App. 3d 213, 231;  
23 *City of Sacramento, supra*. That standard is easily met here. Rebecca Lee Willis’ ten acres of  
24 land, though very significant to her, could not possibly justify the expense involved in complex  
25  
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27 <sup>2</sup> Indeed, the Public Water Suppliers initially suggested that the State of California represent  
28 the dormant landowner Class, but the State refused to take on that burden.

1 and protracted litigation like this. Indeed, many larger landowners have joined or remained in  
2 the Class because of the burdens and expense of getting involved in this complicated case.  
3 Clearly, the costs of the litigation were out of proportion to Ms. Willis' stake.

4 **5. The Court Should Award Fees Here Under § 1021.5.**

5 As discussed above, the various criteria justifying a fee award under Section 1021.5 are  
6 met here. And, although the statute is worded in discretionary terms (“a court *may* award  
7 attorneys’ fees”), the case law is clear that, where the statutory criteria are met, fees *should* be  
8 awarded absent special circumstances that mandate a different result. *See Serrano v. Unruh*, 32  
9 Cal 3d 621, 633 (1982) (fees should be awarded except where “special circumstances would  
10 render such an award unjust”); *City of Sacramento v. Drew*, 207 Cal. App. 3d 1287, 1297 n.3  
11 (1989)(no discretion to deny a fee award if criteria are met); *Schmid v. Lovette*, 154 Cal. App. 3d  
12 466 (1984)(defendant’s good faith belief that it was complying with law is not a basis to deny or  
13 reduce a fee award).

14  
15 **B. COUNSEL ARE ENTITLED TO A SUBSTANTIAL MULTIPLIER OF**  
16 **THEIR LODESTAR IN THIS CASE.**

17 **1. The Lodestar Approach is the Proper Means to Determine Counsel’s Fees.**

18 Where, as here, attorney’s fees are not paid from a common fund, the lodestar method,  
19 rather than the “percentage of recovery method,” is the appropriate manner to determine the  
20 reasonableness of the fee. The lodestar method is also fitting because the benefit bestowed on the  
21 class cannot be easily quantified. *See Dunk, supra*, 48 Cal.App.4th at 1809 (“common fund” is  
22 useful only when the value of the settlement is easily determined.)

23  
24 The lodestar method is produced by multiplying the number of hours reasonably  
25 expended by counsel by a reasonable hourly rate. *In re Consumer Privacy Cases* 175  
26 Cal.App.4th at 556 [citations omitted]; *see also Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311,  
27 322. “Once the court has fixed the lodestar, it may increase or decrease that amount by applying  
28

1 a positive or negative ‘multiplier’ to take into account a variety of other facts, including the  
2 quality of the representation, the novelty and complexity of the issues, the results obtained, and  
3 the contingent risk presented.” *In re Vitamin Cases* (2003) 110 Cal.App.4th 1041, 1052  
4 [citations omitted]. Regardless of the method utilized, the goal is to award a reasonable fee to  
5 compensate counsel for their efforts. *Apple Computer, Inc. v. Superior Court* (2005) 126  
6 Cal.App.4th 1253, 1270.

7  
8 **2. Counsel’s Lodestar is Reasonable Given the Complexity of the Case**

9 Plaintiff’s Counsel’s lodestar is \$2,300,618, based on 5,990.8 hours of work multiplied  
10 by the attorneys’ ordinary hourly rates that they charge other clients. (Kalfayan Decl. ¶¶ 51 &  
11 NOL, Exh. 1).

12 The number of hours was determined by referencing time records contemporaneously  
13 maintained by the attorneys during their prosecution of this case. Although Plaintiffs’ Counsel  
14 have devoted substantial time to this matter over the last 51 months, given the complexity of the  
15 issues and the number of parties, that time has been spent reasonably and appropriately. After  
16 initially researching the history of the litigation and the issues raised by the case, counsel have  
17 actively prosecuted the action, as detailed in the Kalfayan Declaration. Those efforts involved  
18 attending numerous hearings, mostly in Los Angeles but also in San Jose on several occasions;  
19 attending at least 20 days of mediations, mostly in Palmdale, but also in Sacramento and  
20 Burbank; conducting document inspections at the 10 defendants’ locations, mostly in the  
21 Antelope Valley; reviewing tens of thousands of pages of documents, many of them highly  
22 technical materials relating to the hydrology and geology of the Antelope Valley Basin (the  
23 “Basin”); preparing and serving numerous documents, including briefing at least 7 significant  
24 law and motion matters and preparing and responding to numerous discover requests; doing the  
25 substantial legal and factual research necessary to properly prepare those documents; reviewing  
26 the hundreds of filings made by other parties, including frequently reviewing cases and other  
27  
28

1 background materials that were cited; having hundreds of communications with other counsel  
2 and expert consultants regarding the technical, economic, and legal issues raised by this matter;  
3 and having numerous conversations and e-mail exchanges with many hundreds of the  
4 approximately 65,000 class members. Given the magnitude of these efforts, counsel's  
5 expenditure of time has been reasonable.

6 Counsel's billing rates are also reasonable. Generally, the reasonable hourly rate is the  
7 prevailing rates for comparable work in the community where the court is located. *Davis v.*  
8 *Mason County* (9th Cir. 1991) 927 F.2d 1473, 1488. Although the plaintiff has the burden of  
9 proving the reasonable hourly rate in determining the appropriate lodestar, "the moving party  
10 may satisfy its burden through its own affidavits, without additional evidence." *Davis v. City of*  
11 *San Diego* (2003) 106 Cal.App.4th 893, 902-904 (approving hourly rate based on evidence that  
12 attorney had earned the same hourly rate in similar matters.) Counsel's rates here are their  
13 normal hourly rates, and are well within the norms for rates charged by other lawyers in the  
14 community for comparable work.

15  
16 Plaintiff's Counsel's lodestar was based on hourly rates of \$400 per hour for partner  
17 Ralph B. Kalfayan, \$450 for Counsel, David B. Zlotnick, and lesser amounts for the associates  
18 who worked on the case. These are the hourly rates the firm charges their hourly-rate clients.  
19 (Kalfayan Decl. ¶ 24.) The firm handles complex securities, antitrust, qui tam, and consumer  
20 litigation, and Messrs Kalfayan and Zlotnick have achieved recoveries of more than \$500 million  
21 in the various actions they have handled over the past 20 years. Their rates have been approved  
22 by a number of Federal and State courts in recent years.

23  
24 In brief, counsel's lodestar is reasonable given the nature and complexity of this litigation  
25 and the efforts involved.

26 ///

27 ///

28

1                   **3. The Lodestar Multiplier Requested by Plaintiff's Counsel is Reasonable**

2                   California law recognizes the appropriateness of “risk multipliers” in enhancing fee  
3 awards under Section 1021.5 (and other statutes). *Ketchum v. Moses*, 24 Cal 4<sup>th</sup> 1122 (2001)  
4 (expressly rejecting federal rule and holding that contingent risk is a factor that the court should  
5 consider in determining an appropriate fee award); *see Mangold, supra*, 67 F.3d at 1479  
6 (applying California law and upholding risk multiple). Obviously, this case raised complex legal  
7 issues and involved substantial risks. A risk multiplier is warranted, if not mandated, by  
8 applicable California law. Moreover, counsel are entitled to compensation for the delay in  
9 payment, after working for over four years without payment. Plaintiff respectfully requests a  
10 modest multiple of 1.5 times counsel’s lodestar.  
11

12                   The Supreme Court explained the rationale for a contingency multiplier in *Ketchum v.*  
13 *Moses* (2001) 24 Cal.4th 1122:

14                   The economic rationale for fee enhancement in contingency cases has been explained as  
15 follows: “A contingent fee must be higher than a fee for the same legal services paid as  
16 they are performed. The contingent fee compensates the lawyer not only for the legal  
17 services he renders but for the loan of those services. The implicit interest rate on such a  
18 loan is higher because the risk of default (the loss of the case, which cancels the debt of  
19 the client to the lawyer) is much higher than that of conventional loans.” (Posner,  
20 *Economic \*1133 Analysis of Law* (4th ed.1992) pp. 534, 567.) “A lawyer who both bears  
21 the risk of not being paid and provides legal services is not receiving the fair market  
22 value of his work if he is paid only for the second of these functions. If he is paid no  
23 more, competent counsel will be reluctant to accept fee award cases.”

24 *Id.* at 1133; *see also Rade v. Thrasher* (1962) 57 Cal.2d 244, 253 (“[a] contingent fee contract,  
25 since it involves a gamble on the result, may properly provide for a larger compensation than  
26 would otherwise be reasonable.”) (citation omitted); *see also Saltron Bay Marina v. Imperial*  
27 *Irrig. Dist.* (1985) 172 Cal.App.3d 914, 955 (“difficulty or contingent nature of the litigation is a  
28 relevant factor in determining a reasonable attorney fee award”).

                  In determining an appropriate multiplier, the courts consider factors such as the quality of  
the representation, the novelty and complexity of the issues, and the results obtained. *See In re*

1 *Vitamin Cases* (2003) 110 Cal.App.4th 1041, 1052. It cannot be gainsaid that this case has  
2 involved novel and challenging issues concerning the water rights of “dormant” landowners.  
3 Plaintiff’s Counsel undertook a high risk that this challenging case could be successfully  
4 prosecuted without any promise or guarantee of payment. They risked their own funds for the  
5 benefit of the Class. This settlement was reached only after extended negotiations and multiple  
6 mediations. Given the investment made by counsel, the risks of the litigation and the delay in  
7 obtaining compensation, Counsel deserve the modest multiple they seek.

8  
9 **4. Public Policy Favors an Award of a Reasonable Fee to Encourage Competent  
Counsel**

10 Public policy supports awarding counsel the fees they seek. Awarding a fair fee is  
11 favored because it ensures that competent lawyers will be willing to take on high-risk cases, such  
12 as this. *See Estate of Stauffer* (1959) 53 Cal.2d 124, 132 (stating that purpose of awarding fees in  
13 representative actions is to encourage counsel to undertake and diligently prosecute the action.)  
14 The complexity and societal importance of this type of representation calls for the most able  
15 counsel obtainable. This Court will undoubtedly recall the difficulties in getting counsel to  
16 represent the classes in this risky matter. Fee awards should be sufficient to encourage capable  
17 attorneys to represent plaintiffs on a contingent basis in this type of complex litigation.  
18 Awarding counsel a multiplier of 1.5 times their lodestar will help ensure that competent counsel  
19 will be willing to take on such difficult matters.

20  
21 **C. PLAINTIFF’S REQUEST FOR REIMBURSEMENT OF EXPENSES IS  
22 REASONABLE**

23 As set forth in the Kalfayan Declaration, Plaintiff’s Counsel have incurred costs of over  
24 \$86,000 in connection with their prosecution of this matter. Plaintiff recognizes that certain of  
25 these costs are not recoverable under the Code and seeks an award of \$65,057.68 in costs.  
26 Kalfayan Decl at ¶ 51; Polyascko Decl at 3. The expenses incurred were reasonable and  
27 necessary to the prosecution of the litigation. (Id.)  
28

1           **D.     PLAINTIFF’S REQUEST FOR INCENTIVE AWARD IS REASONABLE.**

2           Incentive payments are often paid to the lead plaintiffs in class actions in recognition of  
3 the results achieved, and the time, risk and expense incurred in assuming the role of lead  
4 plaintiff. See Van Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F.Supp.294, 299  
5 (awarding \$50,000); Enterprise Energy Corp. v. Columbia Gas Transmission Corp. (S.D. Ohio  
6 1991) 137 F.R.D. 240, 250 (awarding \$50,000 to each of six plaintiffs); In re Dun & Credit  
7 Services Customer Lit. (S.D. Ohio 1990) 130 F.R.D. 366, 374-376 (awarding \$35,000 - \$55,000  
8 payments). Here, Plaintiff seeks an incentive award of \$10,000 to compensate her in part for  
9 the efforts and expense she has incurred in this matter.  
10

11           Plaintiff Willis retained Plaintiff’s Counsel to prosecute these claims. She has been in  
12 regular communication with Plaintiff’s Counsel about the status of the case over the years, has  
13 attended many hearings as well as settlement conferences, and reviewed and commented on  
14 various documents. Ms. Willis was integral in helping Class Counsel analyze the claims and the  
15 evidence. She met with Class Counsel at the outset of the action, responded to interrogatories,  
16 searched for and produced documents to forward the litigation, requested and received reports  
17 from Class Counsel, communicated with Class Counsel and monitored the status of the case.  
18 Without a lead plaintiff who demonstrated the courage and willingness to challenge Defendants’  
19 conduct, no benefits for the Class would have been obtained. A modest incentive award of  
20 \$10,000 is warranted. Plaintiff’s Counsel recognize that there is no statutory authority for  
21 assessing such an incentive award against an opposing party and will pay the award to Ms. Willis  
22 from their attorneys’ fee award, if approved by the Court.  
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1 **IV. CONCLUSION**

2 For the forgoing reasons, Plaintiff respectfully requests that the Court award the fees,  
3 expense reimbursements and incentive payments being requested.

4  
5 Dated: January 24, 2011

KRAUSE, KALFAYAN, BENINK &  
SLAVENS, LLP

6  
7 */s/ Ralph B. Kalfayan*  
8 Ralph B. Kalfayan, Esq.  
9 David B. Zlotnick, Esq.  
Attorneys for Plaintiff and the Class

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