

1 Ralph B. Kalfayan, SBN133464
David B. Zlotnick, SBN 195607
2 KRAUSE, KALFAYAN, BENINK
& SLAVENS LLP
3 625 Broadway, Suite 635
San Diego, CA 92101
4 Tel: (619) 232-0331
Fax: (619) 232-4019

5 Attorneys for Plaintiff and the Class
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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:)
13 REBECCA LEE WILLIS, on behalf of herself)
and all others similarly situated,)

14 Plaintiff,

15 vs.

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

23 Defendants.

) RELATED CASE TO JUDICIAL
) COUNCIL COORDINATION
) PROCEEDING NO. 4408
)
) The Honorable Jack Komar
) Coordination Trial Judge
)
) REBECCA WILLIS' AND THE NON-
) PUMPING LANDOWNER CLASS' EX
) PARTE APPLICATION FOR LEAVE TO
) FILE MOTION TO COMPEL
) DISCOVERY AND FOR ORDER
) SHORTENING TIME FOR HEARING
) ON MOTION TO COMPEL DISCOVERY;
) MEMORANDUM IN SUPPORT
) THEREOF; DECLARATION OF RALPH
) B. KALFAYAN
)
)
) DATE: February 24, 2011
) TIME: 10:00 a.m.
) PLACE: Dept. 1
) — Los Angeles Superior Court
)
) JUDGE: Hon. Jack Komar

24
25 **INTRODUCTION**

26 Pursuant to Rule of Court 3.1200 et. seq., the Willis Class submits this Ex Parte
27 Application for Leave to File a Motion to Compel Discovery and for an Order Shortening Time
28

1 for Hearing on Motion to Compel Discovery. The Discovery in dispute is Willis' third set of
2 Interrogatories and third set of Request for Production of Documents that relate to Plaintiff's
3 motion for attorneys fees. For the reasons stated below, the Application should be granted.

4 **BACKGROUND**

5 In mid 2010, the Willis class entered into a Stipulation of Settlement with all Defendant
6 Public Water Suppliers and the City of Palmdale ("PWS") resolving all claims between the
7 parties (the "Settling Parties"). Notice of the proposed settlement has been sent to the Class, and
8 the fairness Hearing is scheduled for February 24, 2011. As to Plaintiff's counsel fees and costs,
9 the Settling Parties agreed that the Court would make the final determination absent agreement
10 by the parties. On January 24, 2011, Willis petitioned the Court for an award of fees pursuant to
11 CCP Section 1021.5 and submitted itemized billing statements of the time Class counsel spent
12 and costs they incurred in the case over the preceding four-plus years. The PWS have stated that
13 they intend to oppose Class Counsel's fee petition on the grounds that the time spent and billing
14 rates are excessive.

15 On January 11, 2011, Willis class propounded discovery on the PWS seeking, inter alia,
16 the amount of fees Defendants incurred in the defense of the case over the past four years along
17 with supporting billing records. This discovery seeks information regarding Defendants'
18 counsel's hourly rates, billing hours, and amounts paid. The purpose of the discovery was to
19 provide additional evidence for the Court as to the reasonableness of Class Counsel's fees. The
20 discovery consisted of only five interrogatories and four document requests. On February 14,
21 2011, the PWS filed and served objections to the discovery. Each discovery request was
22 objected to generally on the grounds of relevance and the claim that the discovery was protected
23 from disclosure by the attorney client privilege and product doctrine. See statement of items in
24 dispute attached as Exhibit A and Declaration of Ralph B. Kalfayan.

25 **ARGUMENT**

26 Defendants' objections lack merit. The discovery that Plaintiff requested is relevant and
27 generally non-privileged. It is likely to be highly probative on the subject matter of the
28 reasonableness of Class Counsel's fee request. To the extent there is any privileged information

1 in the Defendants' bills, that information can easily be redacted. Further, the Public Records Act
2 supports the disclosure of these records. Finally, Defendants should not be heard to complain as
3 they represented to the Court that the information would be disclosed.

4 **I. THE REQUESTED INFORMATION IS RELEVANT.**

5 The scope of discovery is broad. "[A]ny party may obtain discovery regarding any matter,
6 not privileged, that is relevant to the subject matter involved in the pending action ... if the matter
7 either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of
8 admissible evidence." Code Civ. Pro. § 2017.010. Plaintiff seeks to discover the Public Water
9 Suppliers attorneys' bills in order to show the reasonableness of Class Counsel's fee request.
10 Since the Public Water Suppliers plan to challenge the reasonableness of Class Counsel's hours
11 and billing rates, the hours and rate of the Public Water Suppliers are certainly relevant. At a
12 minimum, the discovery will provide the Court with information that can be useful to properly
13 evaluate the reasonableness of Class Counsel's fee request. In the past, California courts have
14 benefited from such comparisons. *See Deane Gardenhome Ass'n vs. Denktas* (1993) 13 CA4th
15 1394 (comparing opposing party's fees with prevailing party's claim for fees); *Real v.*
16 *Continental Group, Inc.*, 116 F.R.D. 211, 213 (N.D. Cal. 1986) (the "hours expended by the
17 defendant on matters pertaining to this case, counsel's hourly rates, as well as total billings and
18 costs, are at least minimally relevant to the plaintiff's fees and costs petition").

19 **II. THE INFORMATION DOES NOT INFRINGE THE ATTORNEY CLIENT**
20 **PRIVILEGE**

21 Defendants' privilege objections lack merit. First, the information Class Counsel
22 requested in the discovery is not confidential information that reveals legal advice, legal opinion,
23 or litigation strategy. Answering interrogatories that ask for the dollars billed by counsel hardly
24 impinges on the attorney client privilege.

25 The attorney client privilege protects only "confidential" communication between a
26 lawyer and client. To gain the protection from disclosure, the confidential communication must
27 include a *legal opinion* or *advice* given by the lawyer to the client in the course of the
28 relationship. See Evidence Code 952. Here, the propounded discovery does not require

1 defendants to disclose confidential communication. The interrogatories ask for a summary of the
2 dollars billed by counsel, a summary of hours billed by counsel, and aggregate attorneys' fees
3 paid by the each public water supplier related to the litigation. This information is not
4 privileged, as it does not reveal any confidences conveyed by the client nor any legal opinion or
5 advice by the lawyer to the client. Similarly, the request for documents seeks the detailed billing
6 records of each defendant. While the detailed bills *may* contain some confidential information,
7 defendants can and should redact the confidential communication much like plaintiffs redacted
8 their bills in support of their motion for fees.

9 The limited California case law that addresses this issue supports Plaintiffs' position. In
10 *Willis v. Superior Court* (1980) 112 Cal. App. 3d 277, the Court of Appeal commented as
11 follows:

12 Although the attorney-client privilege is couched in broad terms, not every
13 communication during the attorney-client relationship is deemed matter given in
14 confidence. Because the privilege tends to suppress otherwise relevant facts,
15 it is construed so that certain species of information communicated to the attorney
16 may nevertheless be subject to disclosure as nonprivileged. . . . [M]any courts
17 have held that the nature of the attorney's fee arrangements with his client, in an
18 appropriate case, is not absolutely protected by the ambit of the privilege.

19 *Id.* at 291. The Willis Court upheld the Superior Court's Order requiring discovery of billing
20 information as "being directly relevant to the issues" and "outside the purview of the attorney-
21 client privilege." *Id.* at 294-95.

22 Although there is little California law directly on point, the federal courts in California
23 have consistently found that billing information is generally not privileged. See *Real v.*
24 *Continental Group, supra*, 116 F.R.D. at 214 (basic billing facts are not privileged). As the
25 Ninth Circuit held in *Clarke v. American Commerce Natl. Bank*, 974 F.2d 127, 129 (9th Cir.
26 1992), at least some fee related information is "not protected from disclosure by the attorney-
27 client privilege;" *New Amsterdam Project Mgmt. Hum. Found. v. Laughrin*, 2009 WL 102816 at
28 *7 (N.D. Cal. 2009) (Lloyd, Mag. Judge) ("the amount of fees paid to an attorney are not
privileged, so billing records are generally discoverable").

**III. DEFENDANTS SHOULD BE ESTOPPED FROM WITHHOLDING THE
REQUESTED INFORMATION**

1 On February 4, 2011, Defendants sought relief from this court on an Ex Parte basis to
2 continue the hearing date on Plaintiff's motion for attorneys' fees. One of the reasons they gave
3 for the continuance, as outlined in their Ex Parte papers, was the time needed to "sift through,
4 review, and redact, as necessary, all the documents in the records adduced." See Public Water
5 Suppliers Ex Parte Application dated February 2, 2011, page 3 lines 17-18. The Court, after
6 argument by counsel, granted the defendants' request and postponed the hearing date by almost
7 four (4) weeks, from February 24, 2011 to March 22, 2011. Having argued before the Court for
8 additional time to produce records responsive records to plaintiffs' discovery requests and
9 getting the relief that they requested, Defendants should not now be heard to change course and
10 refuse to provide the information. To do so would be to condone a falsehood perpetrated by the
11 Defendants.

12 **IV. THE PUBLIC RECORDS ACT SUPPORTS DISCOVERY**

13 In enacting the California Public Records Act the legislature stated that access to
14 information concerning the conduct of the People's business is a fundamental and necessary
15 right for every person in the State. Cases interpreting the California Public Records have also
16 emphasized that its primary purpose is to give the public the opportunity to monitor the
17 functioning of the government. The CPRA evidences the fact that "access to information
18 concerning the conduct of the people's business is a fundamental and necessary right of every
19 person in this state." Govt. Code Section 6250.

20 While the attorney client privilege is incorporated into the CPRA, disclosure of the non
21 privileged information requested in the instant discovery, such as the amounts that counsel have
22 been paid by public entities in connection with this matter, fosters the goals and objectives of the
23 CPRA.

24 **V. GOOD CAUSE EXISTS FOR THE ORDER SHORTENING TIME**

25 Class Counsel's fee petition is set for hearing on March 22, 2011. Their reply brief is due
26 by March 15, five court days prior to the hearing. Unless an order shortening time is granted,
27 the discovery dispute cannot be resolved prior to the fee hearing. Plaintiff respectfully suggests
28 the following schedule.

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March 1, 2011 – Defendants’ Opposition to Motion to Compel

March 7, 2011 – Plaintiff’s Reply Brief

March 9, 2011 – Hearing on Motion to Compel

CONCLUSION

For the foregoing reasons, this Court should enter the accompanying Order treating these papers as a Motion to Compel and shortening the time for briefing and the Hearing on this Motion.

Dated: February 22, 2011

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

/s/ Ralph Kalfayan
Ralph B. Kalfayan, Esq.
David B. Zlotnick, Esq.
Attorneys for Plaintiff and the Class