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

12 **ANTELOPE VALLEY**
13 **GROUNDWATER CASES**

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

17 vs.

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

24 Defendants.
25

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

) **DECLARATION OF RALPH B.**
) **KALFAYAN IN SUPPORT OF**
) **MOTION FOR A SUPPLEMENTAL**
) **AWARD OF ATTORNEYS' FEES**
)

) **Date: August 25, 2011**
) **Time: 10:00 a.m.**
) **Location: Central Civil West, 15th Floor**
) **Room: 1515**
) **Judge: Hon. Jack Komar**
)

26 I, Ralph B. Kalfayan, declare and state as follows:

27 1. I am a partner at the law firm of Krause Kalfayan Benink & Slavens, LLP
28 (hereinafter "KKBS"), Class Counsel for the Willis Class in the above captioned matter. I submit

1 this declaration in support of Plaintiffs' Motion for a Supplemental Award of Attorneys Fees.
2 The matters stated herein are true to the best of my own personal knowledge and, if called upon
3 as a witness to testify thereto, I would and could competently do so.

4 2. Class Counsel's initial Motion for an Award of Attorneys' fees covered the period
5 from inception to December 31, 2010. Since that time, Class Counsel has performed a
6 substantial amount of work in connection with the case. Specifically, work was performed
7 related to the Motion for Final Approval of the Willis Class Action settlement, Motion for an
8 Award of Attorneys Fees, Motion to Compel Discovery, and opposition briefing related to the
9 public water suppliers' request to continue hearing and conduct discovery on class counsel.
10 Consistent with the terms of the Willis Stipulation of Settlement, Class Counsel now seeks
11 attorneys' fees from January 1, 2011 to May 13, 2011, the date of the Court's entry of Final
12 Judgment.
13

14 3. The Willis Stipulation of Settlement contemplated Class Counsel's accrual of
15 attorneys' fees up to the date of the judgment. Class Counsel agreed not to seek attorneys' fees
16 after the date of entry of final judgment from settling defendants except under specific expressly
17 enumerated circumstances. The relevant terms provide:
18

19 The Settling Parties understand that Willis Class counsel intend to seek an
20 award of their fees and costs from the Court. Any such awards will be determined
21 by the Court unless agreed to by the Settling Parties. Settling Defendants will
22 likely oppose the motion for fees and costs. If Willis Class Counsel obtain an
23 award of fees, Settling Defendants agree to exercise their best efforts to pay any
24 fee award within a reasonable period of time or as required pursuant to Court
25 order. Willis Class counsel agree that they will not seek any attorneys' fees
26 and/or costs from Settling Defendants for any efforts Willis Class Counsel
27 undertake after the Court's entry of Final Judgment approving the Settlement,
28 except with respect to the following: (a) any reasonable and appropriate efforts by
Willis Class Counsel to enforce the terms of this Stipulation against Settling
Defendants in the event Settling Defendants fail to comply with a provision of
this Stipulation; (b) any reasonable and appropriate efforts by Willis Class
Counsel to defend against any new or additional claims or causes of action
asserted by Settling Defendants against the Willis Class in pleadings or motion
filed in the Consolidated Actions; (c) any reasonable and appropriate efforts by
Willis Class Counsel that are undertaken in response to a written Court order
stating that, pursuant to this provision, Class counsel may seek additional fees for

1 specified efforts from Settling Defendants pursuant to Code of Civil Procedure
2 section 1021.5; (d) any reasonable and appropriate efforts by Willis Class Counsel
3 that are undertaken in response to a written request by Settling Defendants
4 executed by counsel for all Settling Defendants that Class Counsel participate in
5 future aspects of the Consolidated Actions (e.g., the negotiation of a Physical
6 Solution); or (e) any reasonable and appropriate efforts that Willis Class Counsel
7 render to defend a fee award in their favor in the event the Settling Defendants
8 appeal such a fee award and the Court of Appeal affirms the fee award in the
9 amount of 75 percent or more of the fees awarded by the Superior Court. Willis
10 Class Counsel remain free to seek an award of fees from other parties to the
11 litigation.

12 4. The purpose of this declaration is to describe the work performed by class counsel
13 from the period of January 1, 2011 up to the date of the Court's rendition of the Judgment, May
14 13, 2011. The factual and procedural history of this litigation was summarized in an original
15 declaration in support of the Motion for an Award of Fees. Attached to the NOL as Exhibit 1 is a
16 true and correct copy of the earlier filed declaration.¹ Biographical information of counsel and
17 KKBS was also submitted in connection with the initial Motion for an Award of Attorneys' Fees.
18 A true and correct copy of the firm resume is attached to the NOL as Exhibit 2.

19 5. In general, the work performed by Class Counsel over the course of
20 approximately five (5) months in the year 2011 can be categorized as follows: (1) Motion for
21 Final Approval of Willis Stipulation of Settlement; (2) Motion for an Award of Attorneys Fees,
22 Costs, and Incentive Award; and (3) Motions related to discovery disputes.

23 **A. Motion for Final Approval of Willis Stipulation of Settlement**

24 6. Class Counsel performed substantial work to obtain Final Approval of the Willis
25 Stipulation of Settlement. Settling Defendants mailed the Court approved Notice of Settlement
26 to over 65,000 class members on January 10, 2011 and caused to be published a summary notice
27 in three local newspapers during the month of January 2011 (Docket #4417). Since the mailing
28 of the notice, Class Counsel received and responded to numerous phone calls and e-mails from

¹ The declaration of Ralph B. Kalfayan dated January 24, 2011, docket #4240, is incorporated in full herein by reference.

1 class members. The response from class members was overwhelmingly positive. There were
2 however two objections which the Court ultimately overruled at the time of the hearing. As
3 reflected in the Class Counsel's detailed billing records, Class Counsel incurred a substantial
4 amount of time responding to class member inquiries.

5 7. On January 21, 2011, Class Counsel filed the Motion for Order Granting Final
6 Approval of the Willis Settlement and presented evidence establishing the Settlement was fair,
7 adequate, and reasonable for the Court to approve (See Docket #rs 4232-4237). Class Counsel
8 also offered evidence demonstrating Settlement was reached subsequent to Class Counsel's
9 diligent arm's length bargaining, substantial investigation, and discovery.

10 8. Two landowner parties represented by counsel objected to the Willis settlement.
11 They included Antelope Valley Ground Water Agreement Association (AGWA) and Bolthouse
12 Properties, LLC (Bolthouse) (See Docket #rs 4267 and 4270). AGWA argued that the settlement
13 provides no benefits to class members, does not dismiss prescriptive claims, and does not resolve
14 the issue of subordination. Bolthouse raised numerous arguments including the fact that the
15 settlement exceeded the scope of the pleadings, settling defendants cannot convey pumping
16 rights to class members, and Plaintiffs cannot convey a right to the settling defendants.

17 9. Two Willis class members also objected to the settlement. Mr. James Babb
18 objected and argued that the Basin's Native Safe Yield should be "calculated by a licensed
19 engineer" while Mr. Vernon Doria objected and argued that he was not given an opportunity to
20 opt out and the public water suppliers should not be allowed to obtain any "rights to the water
21 that was purchased with the property [that he owns]."

22 10. On February 17, 2011, Plaintiffs filed a reply brief (See Docket # 4285). As to
23 the two objecting class members, it was argued that the various parties retained licensed engineer
24 experts to opine on the Basin Safe Yield and the benefits of settlement far outweighed the risks
25 of further litigation. Separately, with respect to AGWA, counsel was referred to language
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1 contained in the settlement that addresses the compromise and dismissal of the prescription claim
2 and language that does not preclude AGWA from raising claims adverse to the Willis Class. In
3 addition, Bolthouse was reminded that the settlement does not bind non-settling parties nor does
4 it allocate any water rights among the parties.

5 11. On March 1, 2011, the Court entered an order overruling the objections and
6 finally approving the settlement as fair and reasonable to all affected parties. The Court deferred
7 entry of the judgment until the motion for an award of fees was determined (See Docket # 4317).
8

9 **B. Motion for Award of Fees, Costs, and Incentive Award**

10 12. On January 24, 2011, Class Counsel filed the Motion for an Award of Attorneys
11 Fees, Reimbursement of expenses and Award of Class Representative Incentive Award (See
12 Docket #rs 4238-4248). The petition sought an award of fees and costs, pursuant to CCP Section
13 1021.5, incurred over the four-year period spanning from the inception of the matter through
14 December 31, 2010. Class Counsel provided evidence in support of each element of the statute
15 including the benefit to a large class of landowners and the enforcement of an important public
16 right.
17

18 13. On March 9, 2011, the Settling defendants filed five (5) separate substantive
19 briefs in opposition to the Motion (See Docket #rs 4323, 4324, 4326, 4328, and 4329). Counsel
20 for Rosamond Community Services District and City of Lancaster (L&RCSD) argued the lack of
21 significant benefit to the class members and unreasonableness of the time spent. Counsel for
22 Littlerock Creek, Palm Ranch Irrigation District, North Edwards Water District, and Desert Lake
23 Community Service District (the "Littlerock Defendants"), argued that Plaintiffs are not
24 prevailing parties and the public interest was represented by the public water suppliers not the
25 Willis Class. Counsel for Los Angeles County Waterworks District No. 40 (LACWW)
26 challenged the reasonableness of Class Counsel's time and argued that it was excessive and
27 unjustified. LACWW also challenged the reasonableness of Class Counsel's rate given the
28

1 prevailing rates in the community. Counsel for California Water Service Company argued the
2 lack of enforcement of an important right affecting the public interest and policy behind the
3 American Rule in awarding fees. Finally, LACWW filed a brief seeking an equitable
4 apportionment of attorneys' fees to all landowners in the basin.

5 14. On March 15, 2011, Class Counsel filed four (4) separate reply briefs (See Docket
6 #rs 4338, 4341, 4343, 4350). In response to L&RCSD, Class Counsel demonstrated the benefit
7 of the settlement to class members, the public at large, and the reasonableness of the hours spent.
8 In response to LACWW apportionment argument, Class Counsel affirmed that fees were only
9 sought from parties adverse to the Willis Class and should not be apportioned to other
10 landowners. In response to LACWW argument on fees, Class Counsel justified the time spent
11 by detailing the substantive work performed and provided evidence of comparable rates for
12 attorneys in the community. In response to the Littlerock defendants, Class Counsel showed
13 how they satisfied the prevailing party standards and the significant benefit conferred on a large
14 class of persons.
15

16 15. On March 18, 2011, LACWW filed a supplemental brief in response to a
17 supplemental Notice of Lodgment filed by Willis (Docket #4358). LACWW argued that the fees
18 are excessive given the scope of work and the work performed bore no relation to the
19 representation of the class. LACWW also presented evidence related to "other lawsuits" Messrs.
20 Kalfayan and Zlotnick were involved in to cast doubt on the credibility of counsel.
21

22 16. On March 21, 2011, Class Counsel filed a response to the LACWW supplemental
23 briefing (See Docket #4365) substantiating the scope of their involvement in the other matters at
24 issue and detailed again the appropriateness of their fees and costs given the number of opposing
25 parties, the complexity of the issues, the size of the class, and the substantial funds invested in
26 the case. On May 6, 2011, the Court entered an Order awarding fees (See Docket #4431).

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1 **C. Discovery disputes**

2 17. Both parties sought discovery from each other in connection with the Motion for
3 an Award of Attorneys' Fees. Plaintiffs sought billing records of the Defendant to substantiate
4 the reasonableness of their fees. Defendants sought discovery from Class Counsel including
5 depositions to challenge Plaintiffs' evidence. Defendants resisted by arguing privilege and
6 Plaintiffs objected by arguing lack of good cause. The matters were submitted to the Court for
7 resolution.
8

9 **Defendants' discovery**

10 18. On February 2, 2011, settling Defendants filed an Ex Parte Application for
11 Extension of time to (1) hear Plaintiff's Motion for an Award of Fees, Costs, and Incentive
12 Award; and (2) respond to Willis Class Discovery (See Docket #4255). Defendants asked the
13 Court for additional time to evaluate the substantive basis for Class Counsel's: (1) claim for fees;
14 (2) redact voluminous billing records; and (3) conduct discovery on Class Counsel.

15 19. On February 3, 2011, Class Counsel opposed the PWS Ex Parte Application (See
16 Docket #4259). They argued that settling defendants had not shown good cause for modifying
17 the schedule established in the order for preliminary approval while also citing the strong
18 presumption against deposing opposing counsel. Class Counsel also argued that even if the
19 strong presumption were overcome, any discovery obtained would be of limited use because
20 counsel would assert attorney client privilege and work product doctrine.
21

22 20. On February 3, 2011, the Court granted the Settling Defendants ex parte relief and
23 extended the hearing date on the Motion for an Award of fees, Reimbursement of Expenses and
24 Incentive Award to March 22, 2011 (See Docket # 4262). The hearing date on the Motion for
25 Final Approval of Willis Settlement remained the same, February 24, 2011.
26

27 **Plaintiff's discovery**

28 21. On January 11, 2011, Class Counsel served discovery on all Public Water

1 Suppliers seeking, *inter alia*, the amount of fees Defendants incurred during their defense of this
2 case throughout the past four years as well as supporting billing records. (Docket #rs 4223 and
3 4224). On February 14, 2011, the Public Water Suppliers filed and served objections to the
4 discovery (See Docket #rs 4275-4280). The parties conferred regarding the scope, purpose, and
5 relevance of the discovery but were not able to resolve their differences.

6
7 22. On February 22, 2011, Class Counsel filed an ex parte application for: (1) leave to
8 file a motion to compel discovery; (2) an order shortening time; and (3) an informal meet and
9 confer before the court regarding the subject matter of the dispute (See Docket #4300). The
10 court heard arguments on February 24, 2011 and on March 1, 2011, granted the ex parte relief
11 and set the hearing for the motion to compel discovery on March 14, 2011 (See Docket # 4316).
12 Subsequently, on March 7, 2011, the Public Water Suppliers filed their opposition arguing
13 relevance, confidentiality and privilege (See Docket #rs 4320-4322). On March 11, 2011, Class
14 Counsel filed a reply brief (See Docket #4333). Class Counsel proffered the relevance of the
15 discovery and offered to accept redacted information to avoid work product or privilege
16 arguments. Class Counsel also offered to compromise on the issue of discovery by agreeing to
17 accept monthly summaries of total hours billed, total fees billed, and the hourly rate by the
18 timekeeper. Defendants rejected all proposals. On March 14, 2011, the Court denied the motion
19 to compel.

20
21 **D. Lodestar through date of judgment**

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23 23. Class Counsel's cumulative lodestar up to the date of the judgment is
24 \$209,624.50. Additional expenses of approximately \$5,000 were incurred but will not be sought
25 by Class Counsel at this time. Counsel's lodestar is reasonable and justified. At all times, we
26 have sought to minimize unnecessary and duplicative efforts, whenever feasible dividing
27 responsibilities between Mr. Zlotnick and myself. The Motions in dispute over the past five (5)
28 months raised significant issues for both sides and were heavily contested. Class Counsel

1 continued to prosecute the case against ten (10) public water suppliers for close to five (5) years.
2 The public water suppliers were represented by large, highly skilled, and well financed law firms
3 that specialized in water and environmental law including the law firms of Best Best & Krieger;
4 Lagerlof, Senecal, Gosney & Kruse, LLP; Lemieux & O'Neill; Charlton Weeks, LLP; Richards,
5 Watson & Gershon; and Smith, Trager, LLP.

6
7 24. In particular, the volume of work performed relative to the motion for attorneys'
8 fees was significant in this case. For example, whereas the public water suppliers generally
9 economized and filed one joint pleading in response to a motion, the attorneys' fees motion
10 triggered separate substantive response from each public water supplier. A review of the docket
11 reveals that over ten (10) briefs were filed in connection with the motion. In addition, substantial
12 time and effort was expended at mediation, before a neutral third party chosen by the public
13 water suppliers, to resolve the dispute. Lastly, both sides invested time pursuing discovery
14 opposing or supporting the motion, congruous with their respective positions.

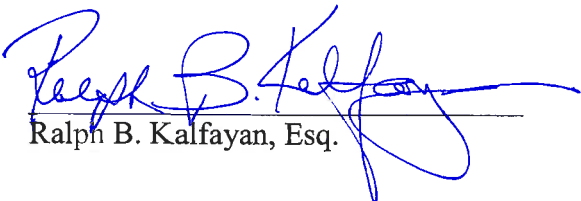
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16 25. To date Class Counsel has not been compensated for any part of their time or
17 costs in the case. In fact, despite an Order awarding fees, the public water suppliers have had no
18 communications with Class Counsel regarding fees and costs. Class Counsel anticipates that the
19 public water suppliers will continue to delay payment and cause class counsel to further incur
20 time and expenses in their effort to collect.

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22 26. The chart attached as Exhibit 3 to the NOL presents a summary of the total time
23 expended on the litigation by the respective attorneys, clerks, and paralegals at their current
24 billing rates from January 1, 2011 to May 13, 2011. The slip listing attached as Exhibit 4 to the
25 NOL presents an itemized detail of all the time entries for each lawyer, paralegal and clerk that
26 worked on the case with the exception of Messrs. Zlotnick and James whose daily time records
27 are attached separately as exhibits 5 and 6 to the NOL. The daily time records submitted by
28 counsel were prepared contemporaneously with the tasks performed. The hourly rates for the

1 attorneys are the regular billing rates charged for non-contingent cases and have been approved
2 by courts in other complex litigation. Class Counsel's rates were approved as reasonable in the
3 Court's Order Awarding Fees (Docket No. 4431). Furthermore, Class Counsel's rates are
4 comparable to the reasonable prevailing rates in the community as demonstrated in Exhibit 7 to
5 the NOL.

6
7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct in all respects and that if called as a witness, I could and would
9 competently testify thereto.

10 Executed this 12th day of July 2011 at San Diego, California.

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14 Ralph B. Kalfayan, Esq.

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