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

11 **ANTELOPE VALLEY**
12 **GROUNDWATER CASES**

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

16 Plaintiff,

17 vs.

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

24 Defendants.

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO. 4408
)
) CASE NO. BC 364553
)
) **NOTICE OF MOTION AND MOTION**
) **FOR RECONSIDERATION OF THE**
) **COURT'S NOVEMBER 16, 2011 ORDER**
) **RE ELECTION FOR PERIODIC**
) **PAYMENTS OF THE AMENDED FINAL**
) **JUDGMENT APPROVING WILLIS CLASS**
) **ACTION SETTLEMENT OR, IN THE**
) **ALTERNATIVE, FOR RELIEF**
) **PURSUANT TO CCP SECTION 984(e)(4);**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES**

) Date: April 17, 2012
) Time: 9:00 a.m.
) Dept: Room 1515 (CCW)
) Judge: Hon. Jack Komar
) Coordination Trial Judge

25 **PLEASE TAKE NOTICE** that, pursuant to section 1008 of the Code of Civil Procedure
26 (“CCP”), on April 17, 2012, at 9:00 a.m., Plaintiff Rebecca Willis will move before this Court
27 for an order granting reconsideration of the Court’s November 16, 2011 Order re Election for
28

1 Periodic Payments of the Amended Final Judgment Approving Willis Class Action Settlement.
2 In the alternative, Plaintiff Willis moves the Court to exercise its discretion under CCP Section
3 984(e) (4) and modify its prior Order. In support of this Motion, Plaintiff Willis relies upon the
4 following Memorandum of Points and Authorities and on the accompanying Notice of Lodgment
5 and Declaration of Ralph B. Kalfayan, Esquire, as well as the record of this matter and any
6 argument that may be presented at the Hearing.
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8 Dated: March 14, 2012

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **RECONSIDERATION OF THE COURT’S NOVEMBER 16, 2011 ORDER RE**
3 **ELECTION FOR PERIODIC PAYMENTS OF THE AMENDED FINAL JUDGMENT**
4 **APPROVING WILLIS CLASS ACTION SETTLEMENT OR, IN THE ALTERNATIVE,**
5 **FOR RELIEF PURSUANT TO CCP SECTION 984(e)(4);**

6 **I. INTRODUCTION**

7 Pursuant to section 1008 of the Code of Civil Procedure (“CCP”), Class Plaintiff Rebecca
8 Lee Willis respectfully requests that the Court reconsider and vacate its November 21, 2011
9 Order approving Los Angeles County Waterworks District Number 40’s (“District 40’s”) Election for Periodic Payments of the Amended Final Judgment Approving Willis Class Action
10 Settlement. The recent Order issued by the Court of Appeal makes crystal clear that this Court’s
11 May 6, 2011 fee award was final when this Court entered its Final Judgment on May 13, 2011.
12 Under Rule 3.1804 of the Rules of Court, Defendant District 40 had no more than 60 days (or
13 until July 12, 2011) to make an election under Government Code section 984, but District 40 did
14 not make such an election until October 27, 2011, over three months late. Because District 40’s
15 election was untimely, this Court should reconsider and reverse its November 16, 2011 Order
16 allowing that election.

17
18 In the alternative, Plaintiff requests that the Court rescind or modify the installment
19 payment order in the interests of justice pursuant to CCP Section 984(e)(4).

20 **II. RELEVANT PROCEDURAL HISTORY**

21 The Court is familiar with the history of this complex litigation. For present purposes, it
22 is sufficient to note the following relevant events.

23 1. By Order dated March 1, 2011, this Court approved the Stipulation of Settlement
24 (the “Stipulation”) in this class action entered into between, inter alia, Plaintiff Willis and
25 District 40. The Stipulation provides, in pertinent part, that, absent an agreement among the
26 parties, Class Counsel would petition the Court for an award of attorneys’ fees and that
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1 defendants would “exercise their best efforts to pay any fee award within a reasonable period of
2 time or as required pursuant to Court Order.” Stip at ¶ VIII.D.

3 2. Class Counsel filed such a fee petition, which was opposed by defendants. By
4 Order dated May 6, 2011, this Court awarded fees and costs to Class Counsel in the total amount
5 of \$1,904,551.68.

6 3. On May 13, 2011, this Court entered Final Judgment approving the Willis Class
7 Settlement (in the form agreed to by the parties).

8 4. On September 7, 2011, this Court awarded supplemental fees and costs to Class
9 Counsel in the amount of \$160,662.50.

10 5. Notwithstanding the above referenced terms of the Stipulation, District 40 refused
11 to pay the fees that the Court had awarded and insisted that the Court enter an amended judgment
12 setting forth the amount of fees it had awarded. At District 40’s request, this Court entered such
13 an amended judgment on September 22, 2011.

14 6. On October 27, 2011, District 40 filed an election to make periodic payments of
15 the fee award pursuant to Government Code Section 984.

16 7. On November 16, 2011, this Court entered an Order approving District 40’s
17 election.

18 8. On November 28, 2011, District 40 filed a Notice of Appeal of this Court’s fee
19 awards.

20 9. Pursuant to the Court of Appeal’s direction, the parties filed letter briefs
21 addressing the issue of whether District 40 had appealed this Court’s fee awards in a timely
22 manner.

23 10. By Order dated February 15, 2013, the Court of Appeal held that District 40’s
24 appeal was timely as to this Court’s September 6, 2011 supplemental fee award, but was
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1 untimely as to this Court's original May 6, 2011 fee award. The Court of Appeal's Order states
2 in that regard as follows:

3 It is true that the May 6, 2011, order granting attorneys fees, cost and class representative
4 award was either a separately appealable collateral order, or was made appealable by the
5 May 13, 2011 judgment. No timely appeal was filed either from the May 6, 2011, order
6 or from the May 13, 2011, judgment. Appellants therefore, may not challenge any rulings
7 encompassed in the May 6, 2011, order or the May 13, 2011, judgment.

8 February 15, 2012 Order at p. 2 (citations omitted).

9 **III. ARGUMENT**

10 **A. District 40's Election Under Government Code Section 984 Was 11 Untimely and Is Invalid as to the May 2011 Fee Award.**

12 District 40's election to make periodic payments under Government Code section 984
13 was untimely as to the Court's initial (May 6, 2011) fee award. Rule 3.1804(a) of the California
14 Rules of Court mandates as follows:

15 A public entity electing to pay a judgment against it by periodic payments
16 under Government Code section 984 must serve and file a notice of election
17 stipulating to the terms of such payments, or a notice of hearing on such
18 terms, by the earlier of:

- 19 (1) 30 days after the clerk sends, or a party serves, notice of entry of
20 judgment; or
- 21 (2) 60 days after entry of judgment.

22 The recent Order of the Court of Appeal makes clear that this Court's May 6, 2011 fee
23 award was final by May 13, 2011 at the latest. Hence, it is clear that District 40's October 27,
24 2011 election was untimely as to that initial fee award.

25 **B. This Court's Supplemental Fee Award Was Well Below the Amount 26 Required for an Election Under Government Code Section 984.**

27 This Court's September 6, 2011 Supplemental Award of fees and costs was in the amount
28 of \$160,662.50, substantially below the threshold amount (\$1,507,222.94) required for District
40 to invoke any rights under Section 984. *See* District 40 Notice of Election at p. 2. Hence,

1 even though District 40 may have filed a timely election as to the supplemental award, the
2 election was not and is not valid even as to that later award.

3
4 **C. Pursuant to CCP Section 1008, This Court Should Reconsider**
5 **and Reverse Its Order Approving District 40's Election to**
6 **Make Periodic Payments.**

7 Section 1008(a) of the Code of Civil Procedure provides in pertinent part as follows:

8 When an application for an order has been made to a judge, or to a court, and
9 . . . granted, any party affected by the order may, *within 10 days after service*
10 *upon the party of written notice of entry of the order* and based upon new or
11 different facts, circumstances, or law, make application to the same judge or
12 court that made the order, to reconsider the matter and modify, amend, or
13 revoke the prior order. [Emphasis added].

14 For the reasons stated below, the circumstances here warrant reconsideration and
15 mandate that the Court revoke its order approving District 40's election.

16 1. Plaintiff's Motion Is Timely.

17 Although the Court entered its Order on November 21, 2011, the Code allows a motion
18 for reconsideration to be filed at any time "within 10 days after service upon the party of written
19 notice of entry of the order." Where, as here, there has been no formal notice of entry, the time
20 period has not yet run. *See, e.g., Forrest v. Department of Corporations* (2007) 150 Cal. App. 4th
21 183, 202-03 (disapproved on other grounds in *Shalant v. Girardi* (2011) 51 Cal. 4th 1164, 1172 n.
22 3); *Advanced Bldg. Maint, v. State Com. Ins. Fund* (1996) 49 Cal. App. 4th 1388, 1392.

23 2. New Circumstances Warrant Relief.

24 As discussed above, the Court of Appeal recently made clear that, contrary to District
25 40's argument, the initial fee order was final as of this Court's May 13, 2011 entry of the Final
26 Judgment. Accordingly, it is now clear that District 40's Election was untimely and invalid. This
27 Court should vacate and correct its prior Order, so that the parties are not required to pursue
28 further litigation over an issue that has effectively been decided by the recent Court of Appeal

1 ruling.

2 **D. This Court Should Rescind or Modify Its Order In the Interests of**
3 **Justice Pursuant to CCP Section 984(e)(4).**

4 CCP Section 984(e)(4) expressly gives the Court ongoing authority to amend or modify
5 an order providing for installment payments in the interests of justice and provides as follows:

6 The court shall retain jurisdiction in order to enforce, amend, modify, or
7 approve settlement of the installment payments as may be just. Upon a motion
8 by the judgment-creditor, the court shall accelerate the installment payments if
it finds any unreasonable delay in, or failure to make payments.

9 Here, contrary to District 40's representations in making the election that it would pay
10 50% of the fees awarded within 15 days, it has appealed this Court's fee awards and not made
11 any payment. That remains true today, even though the Court of Appeal has made clear that
12 District 40 did not timely appeal the initial fee award (which constitutes approximately 90% of
13 the total amount). Under these circumstances, the interests of justice require a modification of
14 the Court's prior Order authorizing the deferred payments.

15 **IV. CONCLUSION**

16 For the foregoing reasons, Plaintiff respectfully requests that the Court reconsider and
17 revoke its November 16, 2011 Order approving District 40's Election to make periodic payments
18 of the fees awarded in this matter or amend that Order to expedite those payments.

19 Dated: March 14, 2012

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