

COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO

REBECCA LEE WILLIS, individually and
as a class representative of the Willis Class,

Petitioner

v.

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

Respondent

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40;
LITTLEROCK CREEK IRRIGATION
DISTRICT; PALM RANCH
IRRIGATION DISTRICT; NORTH
EDWARDS WATER DISTRICT; and
DESERT LAKE COMMUNITY
SERVICES DISTRICT

Real Party In Interest

4th Civil No.
Related to 4th Civil No. EO55412
JCCP No. 4408
LACSC Case No BC 364553

Hon. Jack Komar

**DECLARATION OF RALPH B. KALFAYAN, ESQ., SUBMITTED IN
SUPPORT OF PETITION FOR WRIT OF MANDATE**

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Attorneys for Petitioner Rebecca Lee Willis and the Class

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

1. I am a partner at the law firm of Krause Kalfayan Benink & Slavens, LLP (“KKBS”), counsel for the Willis Class in the above captioned matter. I submit this declaration in support of Plaintiffs’ Petition for a Writ of Mandate. The matters stated herein are true to the best of my own personal knowledge and, if called upon as a witness to testify thereto, I would and could competently do so.

2. After four (4) years of litigation, the parties to the Willis case entered into a Stipulation of Settlement (the “Stipulation”). The Stipulation included a proposed form of a final judgment to be entered by the Court after final approval hearing. Attached as *Exhibits 1 and 2* to my declaration are true and correct copies of the Stipulation and proposed form of final judgment.

3. On November 18, 2010, the Superior Court granted preliminary approval of the proposed settlement and directed that notice be sent to the Class in the form and language negotiated by the parties and approved by the court. Notice was mailed out to more than 65,000 landowners in the Antelope Valley.

4. On March 1, 2011, the Court entered an Order granting final approval of the Settlement. At class counsel’s request, the Superior Court deferred entry of Judgment so that Plaintiffs’ motion for an award of attorneys’ fee could be decided prior to entry of Judgment. Class counsel sought deferral of entry of judgment as District 40 insisted on a provision in the settlement stipulation that drastically

limited Plaintiffs' ability to seek fees for any efforts rendered after entry of Judgment.

5. On May 6, 2011, the Court issued its order awarding class counsel fees and costs for four years of effort on this complex matter. Attached as *Exhibit 3* to my declaration is a true and correct copy of the Order on attorneys' fees and costs. On May 13, 2011, the Court entered the Final Judgment approving the settlement in the same form that the parties had agreed upon. Attached as *Exhibit 4* to my declaration is a true and correct copy of the Final Judgment. On May 19, 2011, Plaintiff served the Notice of Entry of Judgment.

6. Then, on July 12, 2011, Plaintiff filed a Motion for a Supplemental Fee Award with respect to the efforts counsel had engaged in during the period from January 1, 2011 through May 13, 2011. By Order dated September 7, 2011, the Court awarded the supplemental fees. Attached as *Exhibit 5* to my declaration is a true and correct copy of the Supplemental Order on attorneys' fees.

7. Notwithstanding the language of the Stipulation, Defendant refused to pay the foregoing fee awards unless those awards were included in an Amended Judgment. District 40 submitted a proposed Amended Judgment on September 21, 2011, which the Court entered on September 26, 2011. Attached as *Exhibit 6* to my declaration is a true and correct copy of the Amended Judgment. There was no

change from the original judgment to the amended judgment other than the addition of fees and costs that were previously awarded by the court.

8. The sole change from the original Final Judgment was the addition of a final paragraph (21) which stated as follows:

The Court after considering the pleadings on file herein, and the arguments of counsel, awards the Willis Class attorneys fees in the amount of \$1,839,494, an incentive award for Ms. Rebecca Willis in the amount of \$10,000, costs in the amount of \$65,057.68, and supplemental attorneys' fees in the amount of \$160,622.50. Judgment in the amount of \$2,075,174.18 is hereby entered for the Willis Class against Los Angeles County Waterworks District No 40 . . .

9. Plaintiff served a Notice of Entry of the Amended Judgment on September 27, 2011. Thereafter, Plaintiff settled the fee award with several Defendants, including Palmdale Water District, which filed an Acknowledgement of Partial Satisfaction of Judgment on October 11, 2011 in the amount of \$567,165.

10. On October 27, 2011, District 40 filed an Election to make Periodic Payments of the Judgment pursuant to Government Code section 984. District 40 conceded in its filing, that such an Election is only available when a judgment exceeds \$1,507,222.94. District 40's filing erroneously stated that the Judgment was in the amount of \$2,075,174.18, ignoring the fact that the Judgment at issue had been partially satisfied.

11. Defendant served a Notice of Appeal on November 28, 2011, but did not file the Notice of Appeal until November 29, 2011; some 61 days after Plaintiffs had served the Notice of Entry. Defendant filed the appeal in the Second Appellate District instead of the Fourth Appellate District contrary to the order of coordination dated June 17, 2005. Attached as *Exhibit 7* is a true and correct copy of the Order of Coordination.

12. Defendant was at all times aware that the Fourth Appellate District was the appropriate reviewing court as it filed the Petition which precipitated the Order of Coordination and was aware of three prior Writs that were filed by other parties in the case, appellate case numbers E050466, E050437, and E049581. Plaintiff believes that Defendant deliberately filed the notice of appeal in the wrong district in order to cause delay.

13. On December 21, 2011, the Court of Appeal for the Second Appellate District issued an Order to Show Cause regarding the timeliness of Defendant's appeal. Attached as *Exhibit 8* is a true and correct copy of the Order to Show Cause.

14. On January 11, 2012, the Clerk of the Court of Appeal for the Second Appellate District transferred the case to the Clerk of the Court of Appeal for the Fourth Appellate District. Attached as *Exhibit 9* is a true and correct copy of the transfer letter.

15. On January 20, 2012, the Court of Appeal for the Fourth Appellate District issued an Order that deemed the Willis response to the Order to Show Cause a motion to dismiss the appeal and indicated that the appeal of any matter encompassed within the May 13, 2011 judgment was untimely. Attached as *Exhibit 10* is a true and correct copy of the Order.

16. On February 15, 2012, the Court of Appeal for the Fourth Appellate District issued an Order regarding the Willis' Motion to Dismiss. This Court ruled that appellants may not challenge any rulings encompassed in the May 6, 2011, order or the May 13, 2011, judgment. Attached as *Exhibit 11* is a true and correct copy of the Order.

17. On March 14, 2012, class counsel filed a motion requesting that the Respondent Court revise its order granting Defendants' election to make periodic payments of the fee award insofar as such payments related to the May 13, 2011 judgment or, in the alternative, modify the periodic payment order pursuant to Government Code section 984(e)(4). The request related solely to the attorneys' fees awarded under the May 6, 2011 Order and the May 13, 2011 judgment, not the September 6, 2011 supplemental fee order. Attached as Exhibit 12 is a true and correct copy of the Motion. On April 19, 2012, the trial court denied the motion based on the mistaken assumption that District 40's pending appeal deprived the

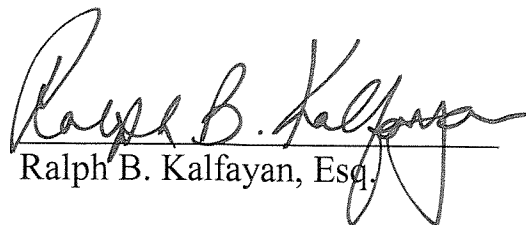
court of subject matter jurisdiction to grant the Class's request. Attached as Exhibit 13 is a true and correct copy of that Order.

18. I have reviewed appellant's designation of the record on appeal and it appears to include virtually every document filed in this litigation from 9/28/05 to 12/6/11. This record includes hundreds of filings and commences at a time before Willis ever became a party to the action. Plaintiff believes Defendant deliberately over designated the record and included pleadings not relevant to the pending appeal in order to cause delay.

19. I have reviewed appellant's designation of the reporter's transcript and it appears to include the transcript of every hearing from 3/12/07 to 10/21/11. A substantial number of these transcripts are not relevant to the pending appeal. Plaintiff believes Defendant deliberately over designated the record in order to cause delay.

20. In my opinion, appellant's delay in filing the appeal, filing it in the wrong appellate district, and including in the record matters that are not reasonably material to the appeal were in bad faith and violate California Rule of Court 8.276.

Dated: June 4, 2012


Ralph B. Kalfayan, Esq.