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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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FOR THE COUNTY OF LOS ANGELES

14 **ANTELOPE VALLEY**
15 **GROUNDWATER CASES**

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

19 *Plaintiff,*

20 v.

21 LOS ANGELES COUNTY
22 WATERWORKS DISTRICT NO. 40;
23 CITY OF LANCASTER; CITY OF
24 PALMDALE; PALMDALE WATER
25 DISTRICT; LITTLEROCK CREEK
26 IRRIGATION DISTRICT; PALM
27 RANCH IRRIGATION DISTRICT;
28 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

**WILLIS' CLASS' NOTICE AND MOTION
FOR LEAVE TO ADD OR SUBSTITUTE
CLASS REPRESENTATIVES**

Date: November 4, 2014
Time: 9:00 AM
Place: Department 3 Room 224
Judge: Hon. Judge Komar

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

1 Estrada are members of the Willis class with overlying rights and plan to pump groundwater in
2 the future. Substitution or addition of the two proposed class representatives will not alter the
3 Willis Class's post judgment status. The other parties involved in the Basin groundwater
4 adjudication will not be prejudiced by this substitution, as the parties will not be required to re-
5 litigate any aspect of the class' claims or face any new claims.
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7 **II. RELEVANT FACTS**

8 On or about January 11, 2007 Rebecca Lee Willis filed her Class Action Complaint to
9 contest certain public entities' claims that those entities had obtained prescriptive rights to a
10 portion of the Antelope Valley Groundwater Basin's ("Basin") groundwater. The class was
11 certified and was defined to include:

12 "All private (i.e., non-governmental) persons and entities that own real property within the Basin,
13 as adjudicated, that are not presently pumping water on their property and have not done so at any
14 prior time ("the Class"). The Class includes the successors-in-interest by way of purchase, gift,
15 inheritance, or otherwise of such landowners. The Class excludes the defendants herein, any
16 person, firm, trust, corporation, or other entity in which any defendant has a controlling interest or
17 which is related to or affiliated with any of the defendants, and the representatives, heirs,
18 affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes all
19 persons to the extent their properties are connected and receive service from a municipal water
20 system, public utility, or mutual water company. The Class shall [further] exclude all
21 property(ies) that are listed as 'improved' by the Los Angeles County or Kern County Assessor's'
22 office, unless the owners of such properties declare under penalty of perjury that they do not
23 pump and have never pumped water on those properties."
24

25 On or about July 13, 2010, the parties to the Willis case resolved all claims contained in
26 the pleadings. The court-approved notice of the settlement was mailed out to over 65,000
27 landowners who own over 500,000 acres and are a part of the Willis class. After the final
28 approval hearing, the Court entered judgment under the terms of the Stipulation of Settlement.
The judgment was subsequently amended by the Public Water Suppliers to include the order on
attorneys' fees. A few of the Public Water Suppliers appealed the entry of judgment insofar as it

1 provided for an award of fees. After some preliminary appellate proceedings, the parties settled
2 the appeal and a remittitur issued by the court of appeal.

3 Even though a Judgment has been entered in this case, this Court retained jurisdiction over
4 the Parties, including the Willis Class, for purposes of incorporating and merging this Judgment
5 into a physical solution or other Judgment that is *consistent* with the Willis judgment. Recently
6 class counsel was handed a draft proposed physical solution from the public water suppliers. The
7 draft proposed physical solution subordinates if not extinguishes the correlative rights of the
8 Willis class. Class counsel has made clear to all counsel that attempts to subordinate or extinguish
9 the Class' rights will be met with vigorous opposition from the class. Alternative terms have
10 been proposed by class counsel to District 40 and to date there has been no response. As class
11 counsel continues to negotiate and represent the interests of the Willis class, a new class
12 representative may now be warranted since Ms. Willis has sold her property.

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15 The Archdiocese of Los Angeles (“the Archdiocese”) is a member of the Willis Class. The
16 Archdiocese owns real property within the area of adjudication and is not presently pumping
17 water on their property nor have they done so at any prior time. (See Declaration of Michael T.
18 Davitt, Director of Real Estate for the Archdiocese of Los Angeles). David Estrada (“Estrada”) is
19 also a member of the Willis class. He owns real property within the Basin and is not presently
20 pumping water on his property and has not done so at any prior time. (See Declaration of David
21 Estrada).

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23 Because Willis arguably no longer has standing to represent the class, the Archdiocese
24 and Estrada seek to become class representatives to represent the interests of the absent class
25 members in enforcing the Judgment and participating in a Physical Solution *consistent* with the
26 Willis judgment. Given the policy favoring liberal amendments, particularly allowing for
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1 substitution of class representatives, and the absence of any prejudice to the other parties, Willis
2 should be permitted to add or substitute the Archdiocese and Estrada as class representatives.

3 4 **II. ARGUMENT**

5 **A. Substitution Of New Class Representatives Is Generally Permitted At All Stages** 6 **Of Class Action Litigation**

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8 California courts regularly allow for substitution of one class representative for another
9 when the current class representative no longer possesses the required standing to represent the
10 class. *See In re Tobacco II Cases* (2009) 46 Cal.4th 298, 328-329; *see also California Air*
11 *Resources Bd. v. Hart* (1993) 21 Cal.App.4th 289, 300-301 (attorney general substituted for state
12 administrative agency when agency lacked standing to sue); *Jensen v. Royal Pools* (1975) 48
13 Cal.App.3d 717, 720-723 (condominium owners substituted for owners' association when
14 association lost standing). "If... the [trial] court concludes that the named plaintiffs can no longer
15 suitably represent the class it should at least afford plaintiffs the opportunity to amend their
16 complaint to redefine the class, or to add new individual plaintiffs, or both, in order to establish a
17 suitable representative." *La Sala v. American Sav. & Loan Assn.* (1971) 5 Cal.3d 864, 872. This
18 rule is typically applied in situations where the class representative originally had standing, but
19 has since lost it by intervening law or facts. *See, e.g., Branick v. Downey Savings & Loan Assn.*
20 (2006) 39 Cal.4th 235, 243.

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23 This Court certified Rebecca Willis ("Willis") as representative of a class made up of
24 private landowners that are not presently pumping water and have not pumped water on their
25 property. Willis represented the interests of the class through settlement with the Public Water
26 Suppliers and the entry of Judgment in September 2011. However, sometime after entry of
27 Judgment, Rebecca Willis sold her property in the Antelope Valley and she may arguably no
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1 longer have standing to pursue this action on behalf of the Willis class. (See Declaration of
2 Rebecca Lee Willis). Like the plaintiffs in *La Sala* and *Branick*, Willis may no longer be suitable
3 in representing the class and she should be permitted to substitute new class representatives with
4 standing to represent the absent class members.

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6 Courts permit the substitution of class plaintiffs for prior plaintiffs who no longer have
7 standing at any time before or after commencement of trial. *See Cal. Code Civ. Proc.* §473
8 (addition or substitution of name?); *Cal. Code Civ. Proc.* §576 (any time through trial). Courts
9 liberally allow such amendments in the absence of prejudice to the adverse parties. *See Higgins v.*
10 *Del Faro* (1981) 123 Cal.App.3d 558, 564-565. Specifically, a plaintiff may be substituted for
11 another unless the substitute plaintiff states facts that give rise to “a wholly distinct and different
12 legal obligation.” *Klopstock v. Superior Court* (1941) 17 Cal.2d 13, 20 (court allowed substitution
13 when the substitute and original plaintiff sought to enforce the same liability against defendants).
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15 Willis meets the standards of sections 473 and 576 because the proposed substitution is
16 extremely limited and only adds two new plaintiffs. Willis does not seek to change the nature of
17 the claims asserted, modify any factual or legal questions presented, or alter liability or
18 obligations of any other party. On the contrary, Willis seeks to add or substitute the Archdiocese
19 and Estrada who are already members of the class of injured landowners Willis has represented
20 and who allege the same issues originally alleged by Willis. Thus, no parties will be prejudiced
21 by this substitution. Willis only seeks to provide continued representation to the class. She does
22 not seek to make any amendments to any pleadings outside of substituting the names of the class
23 representatives.
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25 The Willis Class already settled its claims and this Court entered Judgment approving the
26 Willis Class’s settlement in 2011. At this stage in the litigation, substitution is only necessary to
27 enforce the Judgment entered into between the Willis Class and Public Water Suppliers. This
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1 limited amendment done for the sole good faith purpose of protecting the class members'
2 interests should be granted.

3 **B. The Proposed Class Representatives Will Adequately Represent The Interests Of**
4 **The Class**

5 To adequately represent the class, the class representative must be part of the class,
6 possess the same interest, and suffer the same injury as the class members. *See Global Minerals*
7 *& Metals Corp. v Superior Court* (2003) 113 Cal.App.4th 836, 851.

9 The Archdiocese and Estrada are suitable substitute class representatives because they are
10 both already members of the class they seek to represent as defined in the original pleadings. The
11 Archdiocese and Estrada each acquired and currently owns land in the Antelope Valley and have
12 not pumped water on their respective properties. The Willis Class judgment protects the overlying
13 correlative rights of non-pumpers. Both the Archdiocese and Estrada seek to protect these same
14 rights. Importantly, both proposed class representatives and class members would suffer the same
15 injury to their groundwater rights should the parties' proposed physical solution be approved.
16 Furthermore, the Archdiocese and Estrada understand their obligations as class representatives
17 and have agreed to replace Willis to protect the interests of the class. As the Archdiocese and
18 Estrada are already members of the Willis class, possess the same interest as all of the class
19 members, and are threatened with the same injury as the class members, the Court should approve
20 the Archdiocese and Estrada as suitable substitute class representatives.
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23 **III. CONCLUSION**

24 Willis brings this motion to add or substitute the Archdiocese and Estrada as class
25 representatives to ensure that the interests of the absent class members are protected. The
26 proposed changes do not alter any of the substantive aspects of Willis' case and the other parties
27 will not suffer any prejudice from the substitution. The Archdiocese and Estrada will adequately
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1 represent the interests of the class, as they are already members of the class, possess the same
2 interests as the class, and would suffer the same injury as the class. Accordingly, Willis
3 respectfully requests that this Court grant Willis's motion to substitute the class representative.
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6 Respectfully submitted,

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8 /s/ Ralph B. Kalfayan

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KRAUSE, KALFAYAN, BENINK &
SLAVENS, LLP
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