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

**ANTELOPE VALLEY
GROUNDWATER CASES**

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO. 4408
)
)

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

) CASE NO. BC 364553
)
)

Plaintiff,

vs.

) **CLASS PLAINTIFF'S REPLY IN**
) **SUPPORT OF EX PARTE APPLICATION**
) **FOR ENTRY OF [PROPOSED]**
) **AMENDMENT TO FINAL JUDGMENT**
) **APPROVING CLASS ACTION**
) **SETTLEMENT TO ADD PROVISION RE**
) **ATTORNEYS FEES AND COSTS**
)

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

DATE: September 22, 2011
TIME: 9:00 a.m.
PLACE: Telephonic
)
)

Defendants.

) Judge: Hon. Jack Komar
) Coordination Trial Judge

I. INTRODUCTION

Without a word of explanation as to why Plaintiff's proposed Amendment to the Judgment is inadequate or why its alternative is preferable, Los Angeles County Waterworks District No. 40 ["District 40"] has lodged a [Proposed] Amended Final Judgment Approving

Willis Class Action Settlement, which would amend the Final Judgment approving Willis Class Action Settlement entered by this Court on May 13, 2011 (“The Final Judgment”). District 40’s proposal violates fundamental principles of California law as well as the parties’ agreement and should be rejected.

II. BACKGROUND

Counsel for Willis and the Public Water Suppliers – primarily, counsel for District 40 – painstakingly negotiated the terms of the Stipulation of Settlement and related documents, including the language of the Final Judgment that the Court entered on May 13, 2011, over a period of six months. The Stipulation of Settlement signed by District 40 and its counsel provides, in pertinent part, as follows:

“Final Judgment” means a final judgment to be entered by the Court in the above matter, which approves the terms and provisions of this Stipulation, and is substantially in the form attached hereto as Exhibit A.

Stipulation at ¶ III.I.

“Settlement” means this Stipulation, including the Exhibits appended hereto.

Stipulation at ¶ III.T.

This Stipulation constitutes the entire, complete and integrated agreement among the Settling Parties, and supersedes all prior or contemporaneous undertakings of the Settling Parties in connection herewith. The Stipulation may not be modified or amended except in writing executed by the Settling Parties and approved by the Court.

Stipulation at ¶ VIII.H.

Because the parties did not have an agreement as to Class Counsel’s entitlement to fees, much less the amount thereof, the parties separated that matter from the merits of the Settlement and Judgment. Stipulation at ¶ VIII.D. Accordingly, the Final Judgment expressly provides that “[w]ithout affecting the finality of this Judgment, the Court hereby reserves and retains jurisdiction over this Settlement, including the administration and consummation of the Settlement, . . .” ¶ 20. The Final Judgment further provides that the “court retains jurisdiction to consider an application by Plaintiff and Class Counsel for an award of attorneys’ fees and

1 reimbursement of costs . . . and the Court retains jurisdiction to enter such further Orders.” ¶ 21
2 [Emphasis Added].

3 *No party sought reconsideration of or appealed from the Final Judgment. And the time*
4 *to do so has now long passed.* Further, certain of the Public Water Suppliers have either paid a
5 portion of the fee award (based on their proportion of total pumping) or have agreed to do so.

6 **III. ARGUMENT**

7 Defendant Los Angeles County Waterworks District No. 40 now asks the Court to amend
8 the Final Judgment, purportedly so that Defendants may pay the fee award under the provisions
9 provided by Government Code Section 965 et seq. For at least three reasons, the proposed
10 amended judgment submitted by District 40 should be rejected. First, it is contrary to hornbook
11 California law governing the finality of judgments. Second, it is directly contrary to the terms of
12 the parties’ Stipulation. District 40 should not be permitted to belatedly renege on the terms of
13 its settlement, over a year after agreeing to it and over four months after the Final Judgment was
14 entered by this Court. Third, District 40’s proposed Amended Judgment would improperly enter
15 judgment for over \$2,000,000 against those Public Water Suppliers that have already paid their
16 share of the fees awarded by the Court.
17

18
19 If the Court nonetheless decides to enter the Amended Judgment proffered by District 40
20 it should add a paragraph making clear that the Amended Judgment does not affect the finality of
21 the Courts’ May 13, 2011 Final Judgment with respect to the merits.

22 **A. It Is Improper to Amend the Final Judgment At This Time.**

23 It is hornbook law that the Court does not have the authority to make substantive
24 revisions to a judgment once it has been entered. As Witkin explains:

25 Prior to entry, the judge may freely alter the judgment rendered. But once the judgment
26 is *entered*, the judge loses this unrestricted power to change it. If the entry conforms to
27 the judgment as rendered, and there is no clerical error in the rendition or entry, there can
28 be no summary amendment by the court itself no matter how wrong in law the decision

may be.

Witkin, 7 Cal. Procedure § 67 (4th ed. 1997) (citations omitted). As Witkin explains, the Court may correct purely clerical errors in a judgment, but may not make other changes to a judgment once it has been entered. *Id.* at §§ 67-71. The reason is simple; judgments are intended to be final and mistakes in them “can only be rectified by the regular procedures for attack on judgment: motion for a new trial, motion to vacate judgment, appeal, or an independent action in equity.” *Id.* at § 67.

B. District 40 Consented to the Terms of the Final Judgment and Should Be Estopped From Now Changing Those Terms.

District 40 should not be permitted to now argue for a revision in the terms of the Final Judgment, which it agreed to as part of the Settlement. The language of the Final Judgment entered by the Court in May was negotiated between and among the Settling Parties. Because there was no agreement as to Class Counsel's request for fees, that matter was deliberately excluded from the Judgment and left for separate determination by Court Order. Plaintiff and Class Counsel properly wanted the merits of the Settlement to be approved and become final irrespective of any ongoing issues regarding counsel's fee request. District 40's proposal undercuts the document that it expressly agreed to be bound by. It should be estopped from proposing any change to the terms of the Final Judgment.

C. The Proposed Amended Judgment Would Improperly Enter Judgment Against Those Parties that Have Paid or Agreed to Pay Counsel's Fees.

The Amended Judgment proposed by District 40 would improperly enter judgment against parties that have paid or agreed to pay their share of Class Counsel's fees, including Palmdale Water District, Rosamond Community Services District, Quartz Hill Water District and Phelan Pinon Hills Community Services District. Hence, the only proper way to resolve

District 40's request to have the fee award rendered in a Judgment is to enter a separate Amendment to the Judgment in the form submitted by Class Counsel.

D. If the Court Amends the Judgment, It Should Expressly Provide that the Amendment Does Not Affect the Finality of the Court's May 13, 2011 as to the Merits.

The most significant problem with District 40's proposal is that it raises the risk of reopening the merits of the Court's now final May 13, 2011 Final Judgment, which is no longer appealable. Although Plaintiff believes that the Proposed Amended Judgment should not have that effect, the Court should make that clear if it enters an Amended Judgment. That could be accomplished by adding the following paragraph to the Amended Judgment proffered by District 40:

22. This Amended Judgment is ministerial in nature and is intended solely to incorporate the Court's prior awards of fees and costs into the judgment. This amendment is not intended to and shall not affect the finality of the Court's May 13, 2011 Judgment as to the merits.

IV. CONCLUSION

For the reasons stated above, the Court should not enter the Amended Judgment proffered by District 40. If a Final Judgment can be revised in such a cavalier manner, there is no true finality. In the alternative, if the Court enters an Amended Judgment, it should include language making clear that the Amendment does not affect the finality of the Court's May 13, 2011 Judgment on the merits.

Date: September 21, 2011

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