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DISTRICT NO. 40

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No. BC
325201;

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-CV-
254-348;

Wm. Bolthouse Farms, Inc. v. City of Lancaster,
Diamond Farming Co. v. City of Lancaster,
Diamond Farming Co. v. Palmdale Water Dist.,
Superior Court of California, County of Riverside,
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

RICHARD WOOD, on behalf of himself and all
other similarly situated v. A.V. Materials, Inc., et
al., Superior Court of California, County of Los
Angeles, Case No. BC509546

**EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103**

Judicial Council Coordination
Proceeding No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053

Assigned to the Honorable Jack Komar

**PUBLIC WATER SUPPLIERS'
OPPOSITION TO WILLIS CLASS'
SECOND SUPPLEMENTAL
MOTION FOR ATTORNEY FEES,
REIMBURSEMENT OF
EXPENSES, AND CLASS
REPRESENTATIVE INCENTIVE
AWARD**

Date: April 1, 2016

Time: 1:30 p.m.

Dept.: 1 (Santa Clara Superior)

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1 **I. INTRODUCTION**

2 Los Angeles County Waterworks District No. 40, City of Palmdale, City of Lancaster,
3 Rosamond Community Services District, Littlerock Creek Irrigation District, Palm Ranch
4 Irrigation District, Desert Lake Community Services District, Palmdale Water District, Quartz
5 Hill Water District, and California Water Service Company (collectively “Public Water
6 Suppliers”) oppose the Willis Class’ Second Supplemental Motion for an Award of Attorneys’
7 Fees, Reimbursement of Expenses and Class Representative Incentive Award (“motion”).

8 Despite being paid well over \$1 million in attorneys’ fees for its efforts in obtaining a
9 settlement with the Public Water Suppliers, which includes an agreement to be bound by a
10 subsequent court-approved physical solution, the Willis Class now seeks an additional \$2,143,340
11 in attorneys’ fees, expenses and an incentive award for the post-settlement Willis Class’
12 redundant, unsuccessful motions, objections, and challenges to the court-approved physical
13 solution as part of the final judgment in these coordinated proceedings (“Final Judgment”).

14 The Willis Class counsel is not entitled to recover additional fees and expenses from the
15 Public Water Suppliers because: (1) such recovery is prohibited under the court-approved
16 settlement between the Willis Class and the Public Water Suppliers; and (2) the Willis Class has
17 not met its burden under Code of Civil Procedure Section 1021.5.

18 **II. THE WILLIS CLASS REQUEST FOR FEES AND COSTS IS INAPPROPRIATE**
19 **AND PROHIBITED BY THE WILLIS CLASS SETTLEMENT**

20 Pursuant to the court-approved settlement (“Settlement”) between certain Public Water
21 Suppliers¹ and the Willis Class, the Willis Class can recover additional attorney fees under
22 limited circumstances which do not apply here.

23 Section VIII.D of the Settlement, in relevant part, provides:

24 Willis Class Counsel agree that they will not seek any attorneys’
25 fees and/or costs from Settling Defendants for any efforts Willis
26 Class Counsel undertake after the Court’s entry of Final Judgment
approving the Settlement, except with respect to the following: (a)
any reasonable and appropriate efforts by Willis Class Counsel to

27 _____
28 ¹ City of Lancaster is not a party to the Stipulation of Settlement with the Willis Class.

1 enforce the terms of this Stipulation against Settling Defendants in
2 the event Settling Defendants fail to comply with a provision of this
3 Stipulation; (b) any reasonable and appropriate efforts by Willis
4 Class Counsel to defend against any new or additional claims or
5 causes of action asserted by Settling Defendants against the Willis
6 Class in pleadings or motions 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 specified efforts from Settling Defendants pursuant to Code of
Civil Procedure section 1021.5

7 (Willis Class' Notice of Lodgment ("NOL"), Ex. 3 [Settlement] at p. 17.)

8 First, the Willis Class cannot recover additional attorney fees under subpart (a) because
9 the Public Water Suppliers have complied with the Settlement and there is no court finding that
10 the Public Water Suppliers were not in compliance with the Settlement. As this Court found in its
11 Statement of Decision for the Phase 6 trial, "the Physical Solution is consistent with the Willis
12 Class Stipulation." (NOL, Ex. 11 [Statement of Decision] at p. 25; see also, Declaration of
13 Jeffrey V. Dunn ("Dunn Decl.") at Ex. "A" [Minute Order Dated June 15, 2015] [denying Willis
14 Class Motion to Enforce Judgment].) Moreover, the claimed reimbursement is patently
15 unreasonable given the Willis Class' redundant and unsuccessful motions and objections after the
16 Settlement. Thus, the Willis Class is not entitled to recover additional attorney fees and costs
17 under the Settlement's Section VIII.D, subdivision (a).

18 Second, the Public Water Suppliers presented no new or additional claims or causes of
19 actions against the Willis Class after the Settlement. The Willis Class argues that by stipulating
20 to a physical solution with other landowner parties, the Public Water Suppliers have, in effect,
21 alleged new claims or causes of action. Yet, the Judgement contains the court's physical solution
22 and not a physical solution by stipulation. In any event, the Willis Class agreed to be bound by a
23 subsequent court-approved physical solution. (NOL, Ex. 3 [Settlement] at p. 12 ["The Settling
24 Parties agree to be part of such a Physical Solution to the extent it is consistent with the terms of
25 this Stipulation and to be subject to Court-administered rules and regulations consistent with
26 California and Federal law and the terms of this Stipulation."].) Stated simply, the Public Water
27 Suppliers cannot be subject to additional attorney fees and costs for agreeing with or proposing a
28 physical solution to the Court or for the Court adopting its own physical solution.

Moreover, the motion provides no reasonable explanation as to how a physical solution can be construed as “new claims or causes of action.” As the Court recognized and as set forth in the Settlement, the Willis Class agreed to accept “whatever is later to be determined by the Court as their reasonable correlative right to the Basin’s native safe yield for actual reasonable and beneficial uses.” (NOL, Ex. 11 [Statement of Decision] at p. 25.) The fact that the Willis Class disagrees with the Court’s own physical solution and determination of the Willis Class correlative right, cannot constitute a new claim or cause of action by the Public Water Suppliers.

Third, there is no “written Court order stating that, pursuant to this [Section VIII.D(c) of the Settlement], Willis Class counsel may seek additional fees for specified efforts from Settling Defendants pursuant to Code of Civil Procedure section 1021.5.” To seek fees and expenses under this provision, the Willis Class must first establish that: (1) the Court issued an order directing it to take certain actions; (2) the order permits the Willis Class to seek fees under the Settlement; (3) recovery is permitted under section 1021.5; and (4) its efforts were reasonable and appropriate. (NOL, Ex. 3 [Settlement Stipulation] at p. 17.) That did not happen in these coordinated and consolidated proceedings.

The Willis Class contends that the Court’s case management orders for the Phase 6 trial mandated Willis Class’ participation in the coordinated proceeding after the Settlement. (Motion at pp. 2-3.) Nothing in those orders requires that the Willis Class participate in the Phase 6 trial. At best, the court orders set forth a schedule for any non-stipulating parties to object to the Physical Solution and to assert their claims, if any. (NOL, Ex. 7.) The orders do not require any party to participate in the trial.²

Even if the case management orders did require the Willis Class’ participation – which they did not – the motion fails to establish the other requisite elements under Section VIII.D, subdivision (c), to recover attorney fees and expenses from the Public Water Suppliers. *Subdivision (c) requires the court orders to specifically permit the Willis Class to seek fees.* The

² If the Court determines that the case management orders satisfy the requirements under the Settlement’s Section VIII.D, subdivision(c), the Willis Class would only be entitled to reasonable fees for appropriate efforts after the issuance of the first Phase 6 case management order on March 4, 2014.

1 case management orders do not contain such authorizations.

2 No order issued by the Court after the Settlement states that the Willis Class is allowed to
3 recover additional attorney fees and costs, and the Court denied the Willis Class' request for such
4 an order. (Dunn Decl. at Exs. "B" [Motion for Order Permitting Willis Class Counsel to Seek
5 Additional Attorneys' Fees] & "C" [Minute Order Dated March 26, 2015].)

6 In summary, the Willis Class cannot recover additional attorney fees and costs because the
7 Willis Class did not meet any one of the limited exceptions in the Settlement Section VIII.D

8 **III. THE WILLIS CLASS HAS NOT MET ITS BURDEN UNDER CODE OF CIVIL**
9 **PROCEDURE SECTION 1021.5**

10 The Willis Class has not demonstrated that it is entitled to additional attorney fees and
11 costs under Code of Civil Procedure Section 1021.5 which, in relevant part, provides:

12 Upon motion, a court may award attorneys' fees to a successful
13 party against one or more opposing parties in any action which has
14 resulted in the enforcement of an important right affecting the
15 public interest if: (a) a significant benefit, whether pecuniary or
16 nonpecuniary, has been conferred on the general public or a large
17 class of persons, (b) the necessity and financial burden of private
enforcement, or of enforcement by one public entity against another
public entity, are such as to make the award appropriate, and (c)
such fees should not in the interest of justice be paid out of the
recovery, if any.

18 As an initial matter, no legal adversity existed between the Willis Class and the Public
19 Water Suppliers after the Settlement. (See *McGuigan v. City of San Diego* (2010) 183
20 Cal.App.4th 610 [no fees under section 1021.5 after parties reached a settlement].) In fact, the
21 Willis Class admits in its Reply in Support of Willis Class' Renewed Motion to Add Lead
22 Plaintiff that "the interests of Willis Class Members and the Public Water Suppliers are not
23 merely no longer adverse; rather their interests are in fact completely aligned with each other
24 based on the rights and obligations agreed to as part of the Stipulation of Settlement." (Dunn
25 Decl., Ex. "D" at p. 3 [emphasis in original].)

26 Moreover, the Willis Class has failed to establish that it was a "successful party." After
27 the Settlement, the Willis Class filed multiple motions, objections and other case filings but none
28

1 were successful.³ Indeed, the Court approved the Physical Solution without making any
2 alteration despite numerous repeated objections by the Willis Class.

3 Nonetheless, the Willis Class asks the Court to ignore their unsuccessful efforts and,
4 instead, focus only on the “impact of the action rather than on the manner in which the action is
5 resolved.” (Motion at p. 4.) This argument flatly disregards the Settlement and ignores the plain
6 language of section 1021.5

7 The Stipulation prohibits the settling Public Water Suppliers from “tak[ing] any positions
8 or enter into any agreements that are inconsistent with the exercise of the Willis Class Members’
9 Overlying Right” and from subjecting the Willis Class to a physical solution inconsistent with the
10 Stipulation, or any rules and regulations inconsistent with state and federal law. (NOL, Ex. 3
11 [Settlement Stipulation] at pp. 10 & 12.) The Court made findings that the Settlement is
12 consistent with the Court’s physical solution. (NOL, Ex. 11 [Statement of Decision] at p. 25.) As
13 the Public Water Suppliers complied with the Settlement, participation by the Willis Class after
14 the Willis Class Judgment was not necessary and ultimately had no impact on the outcome of
15 these coordinated proceeding.

16 The Willis Class’ comparison between the rights it receives under the physical solution
17 with those of the defaulted parties is misguided. The key difference between the defaulted parties
18 and the Willis Class is that the Public Water Suppliers had agreed that the Willis Class is entitled
19 to a correlative share of the overlying water rights. Any impact that the Willis Class’
20 participation had on the outcome of the case occurred prior to the entry of the Willis Class
21 Judgment, for which the Public Water Suppliers had already paid fees and costs.

22 **IV. THE REQUESTED FEES AND MULTIPLIER ARE UNREASONABLE AND**
23 **INAPPROPRIATE**

24 The Willis Class unabashedly requests a 1.5 lodestar multiplier for its counsel’ fee award.
25 To the extent the Court finds that the Willis Class is entitled to attorney fees, the Public Water
26 Suppliers request that the Court apply a negative multiplier of zero because:

27 _____
28 ³ The Willis Class admitted as much by appealing the Court’s Final Judgment. (Dunn Decl., Ex.
“E” [Notice of Appeal].)

- The Willis Class counsel filed numerous redundant, unnecessary and unsuccessful motions. (Dunn Decl., Exs. “F” & “G” [Docket Search Results].)
- The Willis Class counsel attempted to have multiple expert witnesses testify at trial but their testimony was largely inadmissible, patently unpersuasive, and did not cause the Willis Class to prevail on any of its objections or motions. (Dunn Decl., Exs. “I” [Witness Lists].)

V. AN INCENTIVE AWARD IS NOT APPROPRIATE HERE

The motion fails to cite any relevant authority providing for an incentive award to a lead plaintiff in a class action, where no relief has been obtained for the class since the substitution of the former lead plaintiff. As discussed above, no benefit has been obtained for the class that would have been obtained but for Mr. David Estrada’s participation. Any and all benefits conferred to the Willis Class was a result of the Wills Class Judgment, which was entered before Mr. Estrada became the lead plaintiff.

VI. CONCLUSION

For the above reasons, the Court should deny the motion or, at the very least, significantly reduce the amount of fees and costs award to zero.

Dated: March 15, 2016

BEST BEST & KRIEGER LLP

By



ERIC L. GARNER
JEFFREY V. DUNN
WENDY Y. WANG
Attorneys for
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

PROOF OF SERVICE

I, Sandra Rosales, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On March 15, 2016, I served the following document(s):

PUBLIC WATER SUPPLIERS' OPPOSITION TO WILLIS CLASS' SECOND SUPPLEMENTAL MOTION FOR ATTORNEY FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARD



by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 15, 2016, at Los Angeles, California.


Sandra Rosales

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