

1 Ralph B. Kalfayan (SBN 133464)
Lynne M. Brennan (SBN 149131)
2 KRAUSE KALFAYAN BENINK &
SLAVENS, LLP
3 550 West C Street, Suite 530
San Diego, CA 92101
4 Tel: (619) 232-0331
Fax: (619) 232-4019

5 Attorneys for the Willis Class
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 **ANTELOPE VALLEY**
11 **GROUNDWATER CASES**

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

15 *Plaintiffs,*

16 v.

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

25 *Defendants.*
26
27
28

RELATED CASE TO JUDICIAL COUNCIL
COORDINATION PROCEEDING NO. 4408

REPLY IN SUPPORT OF WILLIS' CLASS'
RENEWED MOTION TO ADD LEAD
PLAINTIFF

Date: January 22, 2015

Time: 9:00 AM

Place: Santa Clara County Superior Court,
191 N. 1st St., San Jose, CA 95113, Dept. 1

Judge: Hon. Judge Komar

1 It is irrefutable that the Archdiocese of Los Angeles (“Archdiocese”) is indeed a member
2 of the Willis Class. District 40 does not argue otherwise. Having conceded this crucial fact,
3 Defendants now seek to bar the Archdiocese as a Lead Plaintiff based on a brand new “conflict of
4 interest” allegation. This new allegation has no merit whatsoever. In fact, the interests of the
5 Archdiocese and the Willis Class members are completely aligned at this stage of the
6 adjudication. The Defendant Public Water Suppliers and the Willis Class entered into a binding
7 Stipulation of Settlement that ultimately became a Judgment of this Court on September 22, 2011.
8 The Archdiocese has precisely the same interest in enforcing the terms of the Stipulation as the
9 other members of the Class. That fundamental fact negates any alleged “adversity” between the
10 Archdiocese and other class members. Moreover, the fact that certain members of the
11 Archdiocese may obtain water from the Public Water Suppliers does not create any conflict,
12 especially here where the Class and the Suppliers have settled all claims between and among
13 them.
14

15
16 The amendment to add the Archdiocese as Lead Plaintiff is necessary, as the Court has
17 acknowledged that the adjudication of groundwater rights in the Antelope Valley will require a
18 Judgment in Equity for many years to come. The addition of more than one plaintiff as class
19 representative has been specifically sanctioned by the California Supreme Court and is
20 particularly necessary in this case because the continuing jurisdiction of this Court over this
21 dispute will last for decades.
22

23 None of the Defendants’ objections are sustainable. Accordingly, the Willis Class
24 respectfully requests that its renewed motion to add the Archdiocese as Lead Plaintiff be granted.
25
26
27
28

1 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff David Estrada (“Estrada”) respectfully submits this reply memorandum in
3 support of the Willis’ Class’ Renewed Motion to Add Lead Plaintiff.

4 I. **THERE IS NO CONFLICT OF INTEREST TO PRECLUDE THE**
5
6 **ARCHDIOCESE FROM SERVING AS A CLASS REPRESENTATIVE**

7 Contrary to the repeated assertions made by the Defendant Public Water Suppliers in their
8 Opposition, the Archdiocese does not have a conflict of interest with the remainder of the Willis
9 Class. This Court’s Judgment dated September 22, 2011, gave full force and effect to the
10 Stipulation of Settlement entered into between the Willis Class and the Public Water Suppliers on
11 July 13, 2010. Before the Stipulation of Settlement was reached, the Willis Class contended that
12 the Public Water Suppliers had no rights to the Basin’s Native Safe Yield (“NSY”), while the
13 Public Water Suppliers claimed prescriptive rights to a large percentage of the NSY. By way of
14 compromise, after several years of hard-fought litigation, the Willis Class and the Public Water
15 Suppliers reached a comprehensive and binding Stipulation of Settlement regarding their rights to
16 the NSY with respect to each other. Not surprisingly, the Stipulation of Settlement included
17 Mutual Releases of all claims, known and unknown, between the Willis Class and the Public
18 Water Suppliers. *See*, Stipulation of Settlement dated 07/13/10, ¶ VII, Exh. A to Reply
19 Declaration of Lynne M. Brennan in Support of Willis’ Class’ Renewed Motion to Add Lead
20 Plaintiff (hereinafter “Brennan Reply Decl.”). Based upon the Settlement and Mutual Releases,
21 there can be no conflict of interest between Willis Class Members and individuals and entities
22 who receive their water supply from the Public Water Suppliers.

23 Indeed the interests of Willis Class Members and the Public Water Suppliers are not
24 merely no longer adverse; rather their interests are in fact completely aligned with each other
25 based on the rights and obligations agreed to as part of the Stipulation of Settlement. In
26
27
28

1 particular, the Stipulation of Settlement and Judgment provide the following material terms to
2 which all Willis Class Members and Public Water Suppliers are bound:

3 **1. The Willis Class and the PWS may Pump the NSY Free of Any Replacement**
4 **Assessment**

5 “The Settling Parties agree that the Willis Class Members have an Overlying Right to a
6 correlative share of 85% of the Federally Adjusted Native Safe Yield for reasonable and
7 beneficial uses on their overlying land *free of any Replacement Assessment*.” [Emphasis added].
See, Stipulation of Settlement dated 07/13/10, ¶ IV.D.2., Exh. A to Brennan Reply Decl.

8 “The Settling Parties agree that the Settling Defendants collectively have the right to
9 produce up to 15% of the Basin’s Federally Adjusted Native Safe Yield *free of any Replacement*
Assessment.” [Emphasis added]. *Id.* at ¶ IV.D.1.

10 **2. PWS Agree Not to Impair Those Rights**

11 “The Settling Defendants will not take any positions or enter into any agreements that are
12 inconsistent with the exercise of the Willis Class Members’ Overlying Right to produce and use
13 their correlative share of 85% of the Basin’s Federally Adjusted Native Safe Yield.” *Id.* at ¶
IV.D.2.

14 **3. PWS Agree to Cooperate with Willis Class**

15 “The Settling Parties agree to cooperate and coordinate their efforts in any such trial or
16 hearing so as to obtain entry of judgment consistent with the terms of this Stipulation...” *Id.* at ¶
VIII.B.

17 **4. The Willis Settlement will be Incorporated into the Future Physical Solution**

18 “Physical Solution means a mechanism that comprehensively resolves the competing
19 claims to the Basin’s water and provides for the management of the Basin. The Settling Parties
anticipate that this Settlement will later be incorporated into a Physical Solution.” *Id.* at ¶ III.N.

20
21 **5. Any Physical Solution must be Consistent with the Willis Settlement**

22 “The Settling Parties agree to be part of such a Physical Solution to the extent it is
23 consistent with the terms of this Stipulation...” *Id.* at ¶ V.B.

24 The Settling Defendants, i.e., the Public Water Suppliers, are bound to not take any
25 positions or enter into any agreements that are inconsistent with the Willis Class Members’
26 Overlying Rights as detailed in the Stipulation and Judgment. Moreover, the Settling Parties, i.e.,
27 the Public Water Suppliers and the Willis Class Members, agree to cooperate and coordinate their
28

1 efforts in any such trial or hearing (referring to a Physical Solution proceeding) so as to obtain
2 entry of judgment consistent with the terms of the Stipulation.

3 This Court must reject the Public Water Suppliers' latest attempt to renege on the deal
4 they struck more than four years ago, which was approved and entered as a Final Judgment by
5 this Court more than three years ago. In this instance, the PWS are attempting to renege on their
6 deal by conjuring up "conflicts of interest" with respect to the ongoing adjudication where none
7 exist. The fact that the Archdiocese also owns properties in the Antelope Valley that are supplied
8 with water by the PWS is immaterial in light of the terms agreed to by the PWS in the Stipulation
9 of Settlement and Judgment. Likewise, the fact that the Archdiocese has church members who
10 likely own or rent homes in the Antelope Valley that are supplied with water by the PWS is
11 immaterial.¹ The fact that the Archdiocese and its church members own properties that receive
12 water service from the PWS simply does not create any "antagonism" or "conflict of interest" that
13 would prevent the Archdiocese from adequately representing the absent Willis Class Members.
14 Plaintiff has amply demonstrated that no conflict of interest exists and Defendants have shown
15 "no present and substantial conflict between the interests of the absent class members and the
16 [proposed] named plaintiffs." *Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 479 (1981)
17 (emphasis supplied). Even if this Court were to recognize some level of "conflict" between
18 church members and the Archdiocese based on Defendants' unsupported allegation, the alleged
19 "conflict" certainly does not support a finding of a "substantial" conflict as required by the
20 California Supreme Court to reject a proposed class representative. Therefore, this Court should
21 grant Plaintiff's request to add the Archdiocese as a class representative.

22 Furthermore, unlike the original class representatives in *La Sala*, the Archdiocese has
23 plenty at stake in this adjudication and will undoubtedly devote sufficient energy to the continued
24

25 ¹ Indeed, with over 65,000 members in the Willis Class, it also is likely that the Archdiocese has many church
26 members who are Willis Class Members who also own or rent homes that receive water from the PWS.
27

1 prosecution of this action. *La Sala v. American Sav. & Loan Assn.* 5 Cal.3d 864, 871-872
2 (1971). It is undisputed that the Archdiocese owns eleven properties that fall within the definition
3 of the Willis Class. The Archdiocese is committed to ensuring that the absent class members and
4 the Archdiocese itself receive all of the rights and benefits set forth in the Stipulation of
5 Settlement and Judgment by pursuing a Physical Solution that is consistent with the Stipulation of
6 Settlement and Judgment.
7

8 Finally, Defendants' reliance on *Howard Gunty Profit Sharing Plan v. Superior Court*, 88
9 Cal.App.4th 572, 577-580 (2001), is meritless. Defendants cite *Howard Gunty* for the proposition
10 that "a trial court is to deny class certification if the proposed class representative is simply
11 lending its name to a lawsuit that is controlled entirely by the attorney for the proposed class." As
12 a preliminary matter, this Court certified the Willis Class on September 11, 2007. Therefore,
13 *Howard Gunty* has no bearing on this case. Notwithstanding this fact, more than seven years later
14 and after Judgment has been entered in the case, Defendants infer (without any support
15 whatsoever) that the Archdiocese is "simply lending its name to a lawsuit that is controlled
16 entirely by the attorney for the proposed class." In stark contrast to Defendants' baseless
17 allegation, the Archdiocese has submitted sworn testimony that it "understands the requirements
18 of serving as a class representative and voluntarily undertake[s] the burdens associated with the
19 role of class representative." *See*, Declaration of the Archdiocese of Los Angeles in Support of
20 Motion to Substitute Lead Plaintiff dated October 2, 2014, ¶ 3. Defendants' inference that the
21 Archdiocese is simply "lending its name" to this lawsuit is entirely false and must be rejected by
22 this Court. Indeed, the notion that the Archdiocese, a substantial enterprise which has
23 experienced in-house counsel, would just "lend its name" to a Class Action suit is just plain
24 frivolous.
25
26
27
28

1 II. **IT IS NECESSARY TO ADD THE ARCHDIOCESE AS AN ADDITIONAL**
2 **CLASS REPRESENTATIVE**

3 At the November 4th Hearing, this Court correctly and repeatedly stated that the physical
4 solution in this proceeding will have to accommodate landowners who currently do not pump
5 water. For example, “. . . the Court is going to have to make provisions for processing people
6 such as [the Willis Class Members] who don’t pump who may wish to pump at some time in the
7 future.” 11/04/14 Hearing Transcript at 36:19-22, Exh. B to Brennan Reply Decl.; “. . . the
8 Watermaster is going to ask the Court when somebody wants to pump that they make an
9 application and that they indicate what their purpose is and how much they intend to pump and
10 that they do not have access to water otherwise so they wish to pump on their own land. That will
11 raise an issue that the Court in Equity is going to have to deal with.” *Id.* at 36:2-8. Indeed, this
12 Court acknowledged that the overall physical solution “. . . is a Judgment in Equity that will be
13 around for a long time.” 11/4/14 Hearing Transcript at 10:13-15.

14 It is a matter of public record that groundwater adjudications and the continuing
15 jurisdiction of the courts to preside over the resulting judgments, i.e. physical solutions, lasts for
16 decades. *See, e.g., Hillside Mem'l Park & Mortuary v. Golden State Water Co.*, 205 Cal.App.4th
17 534, 538 (2nd Dist. 2011) *dismissed, remanded and ordered published sub nom. Hillside Mem'l*
18 *Park & Mortuary v. Golden State Water Co.*, 280 P.3d 534 (Cal. 2012) (“This is [a 2011] appeal
19 by the parties moving to amend a judgment . . . dating back to 1961 imposing a ‘physical
20 solution’ on the West Coast Groundwater Basin (the West Basin)”). Thus, as this Court
21 recognizes, it is imperative for the Willis Class to be represented by an institutional class
22 representative that can protect the interests of the Willis Class for decades to come. The
23 Archdiocese has volunteered to act as class representative and it is ready, willing, and able to
24 protect the rights of the absent class members for decades to come.

1 III. THE WILLIS CLASS HAS COMPLIED WITH THE COURT'S
2 NOVEMBER 4, 2014 INSTRUCTIONS

3 The Archdiocese submitted a Declaration, Exhibit, and Attachment which opted in all
4 Archdiocese properties falling within the definition of the Willis Class and also verified for the
5 Court that it no longer owns the Leslie Property.² See, Declaration of the Archdiocese of Los
6 Angeles Relating to the "Leslie Property" and Opt-In Form in Support of Renewed Motion to
7 Add Lead Plaintiff dated November 21, 2014, ¶¶ 2-5, Exh. A & Attachment A thereto. The
8 Reply Declaration of the Archdiocese complies with the final two requirements of the Court.
9 Specifically, the Reply Declaration verifies that the new owner of the Leslie Property has been
10 informed of the status of the Leslie Property and also states that outside counsel for the
11 Archdiocese has been instructed to file a Request to Dismiss the Answer of the Leslie Property.
12 See, Reply Declaration of the Archdiocese of Los Angeles Relating to the Leslie Property in
13 Support of Renewed Motion to Add Lead Plaintiff, ¶¶ 2-3, dated December 15, 2014, and filed
14 concurrently herewith.
15
16

17
18 IV. CONCLUSION

19 There is no conflict of interest between the Archdiocese and the absent class members.
20 The Archdiocese is necessary as an additional plaintiff to ensure that the interests of the Willis
21 Class are protected decades into the future. Finally, the Archdiocese has complied with all of the
22 Court's November 4 instructions.
23

24 ///

25 ///

26 ///

27 _____
28 ² Plaintiff also notes that in the past the Court has routinely permitted named parties to join the Willis
Class. See, Order dated June 15, 2011, Exh. C to Brennan Reply Decl.

1 For all the foregoing reasons, Plaintiff and the Willis Class respectfully request that the
2 Court grant their renewed motion to add the Archdiocese of Los Angeles as a class representative.

3 Respectfully submitted,
4

5 /s/ Ralph B. Kalfayan
6

7

Ralph B. Kalfayan, Esq.
8 Lynne M. Brennan, Esq.
9 KRAUSE, KALFAYAN, BENINK &
10 SLAVENS, LLP
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28