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

**ANTELOPE VALLEY
GROUNDWATER CASES**

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

Plaintiff,

vs.

LOS ANGELES COUNTY WATERWORKS)
DISTRICT NO. 40; CITY OF LANCASTER;)
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; PHELAN PINON)
HILL COMMUNITY SERVICE DISTRICT;)
and DOES 1 through 1,000;

Defendants.

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO. 4408
)
) CASE NO. BC 364553
)
) **PLAINTIFF WILLIS' MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **OPPOSITION TO PUBLIC WATER**
) **SUPPLIERS' EX PARTE APPLICATION**
) **FOR EXTENSION OF HEARING DATE**
) **FOR PLAINTIFF'S MOTION FOR AN**
) **AWARD OF ATTORNEYS' FEES,**
) **REIMBURSEMENT OF EXPENSES, AND**
) **PAYMENT OF INCENTIVE AWARD TO**
) **REPRESENTATIVE PLAINTIFF;**
) **DECLARATION OF DAVID B.**
) **ZLOTNICK**

) Date: February 3, 2011
) Time: 1:30 p.m.
) Dept: 4
) Judge: Hon. Jack Komar
) Coordination Trial Judge

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1 Although the Settling Defendants were well aware of the upcoming fee petition and,
2 indeed, of its magnitude – the Class Notice expressly stated that Class Counsel would seek fees
3 of up to \$4.5 million – well before entry of the Preliminary Approval Order last November, they
4 did not seek any discovery into the basis for that petition. Class counsel then filed their fee
5 petition on January 24, 2010, supported by substantial documentation specifying the efforts
6 undertaken by counsel and the hours spent on those matters. Although they consented to the
7 Court’s entry of the Preliminary Approval Order, the Settling Defendants now seek an indefinite
8 postponement of Plaintiff’s fee petition so they can belatedly prepare their opposition. Their
9 tardiness and desire to delay these proceedings should not be allowed to further prejudice Class
10 Counsel, who have worked on this matter for over four years without payment.

11 **ARGUMENT**

12 For three reasons, the Settling Defendants’ application must be denied. First, Defendants
13 consented to the existing schedule and waived their right to object to it. Second, they have not
14 shown any semblance of good cause for modifying this Court-established schedule. Third, their
15 request for an indefinite extension of Plaintiff’s motion for many months is extremely prejudicial
16 to Plaintiff and unjustified.

17 **A. Settling Defendants Have Waived Their Right to Object to the Present Schedule.**

18 As discussed above, Settling Defendants did not object to the timing for the submission
19 of Plaintiff’s fee application and objections thereto that was set out in this Court’s Preliminary
20 Approval Order; to the contrary, they consented to the terms of that Order. By doing so, they
21 waived their right to now belatedly object to the terms of that Order and should not be permitted
22 to belatedly object to it. Settling Defendants cannot claim surprise; the fact that Plaintiff
23 intended to seek up to \$4.5 million in fees was set out in the Class Notice that they have had for
24 months. They should live with the schedule they previously agreed to.

25 **B. Settling Defendants Have Not Shown Good Cause to Modify the Schedule.**

26 At a bare minimum, Settling Defendants must make a showing of significant good cause
27 to modify the present Court-ordered schedule to which they consented. But they have totally

1 failed to make such a showing. First, they have not explained with any detail what discovery
2 they need from Plaintiff in connection with the fee petition. Plaintiff submitted detailed time
3 records with her fee petition. What more do they want? Second, they have not shown any
4 excuse for not acting earlier to seek discovery on this motion that they have known was
5 forthcoming for over three months. *Even today, they have yet to serve any relevant discovery on*
6 *Plaintiff.* Third, given the upcoming break in the Phase III Trial, this is an appropriate time for
7 them to respond to the fee application.

8 Settling Defendants have not shown good cause for modifying the schedule that the Court
9 laid out in its Preliminary Approval Order over three months ago. Other than generally adverting
10 in their papers to the need for discovery, they have given no explanation as to what they need to
11 know. Plaintiff's counsel filed detailed daily time records with their fee petition. What more do
12 Settling Defendants need?

13 In conversations, Settling Defendants have stated that wish to take depositions of
14 Plaintiff's counsel. That is entirely unwarranted and would only lead to collateral litigation in
15 this already complex and protracted matter. The law is firmly established that a strong
16 presumption exists against deposing opposing counsel, which can only be rebutted by meeting a
17 high standard of "extremely good cause." *RSA vs. County of Riverside*, (2007) 152 CA4th 414;
18 citing *Carehouse v. Superior Court*, (2006) 143 CA4th 1558, and *Spectra Physics vs. Superior*
19 *Court*, (1988) 198 CA3d 1487. The RSA court further noted that there was no justification for
20 lengthy and expensive litigation particularly after the case has been largely resolved which
21 would merely sidetrack the parties with collateral disputes. Additionally, the court noted that,
22 like here, the County had not shown it was deprived of critical information since itemized
23 billings were provided by counsel.

24 Similarly, in this case, the PWS will not be able to rebut the presumption as: (a) Class
25 Counsel provided an itemized billing for each attorney working on this case over the past four
26 years; (b) the Court is aware of many of the proceedings Class Counsel has participated in over
27 the years and the complexities of this matter; (c) any depositions would be of limited use as

1 Class Counsel would assert necessarily privilege and work product protection as to matters that
2 went beyond their time entries, even assuming they could recall such details from years ago; and
3 (d) taking Class Counsel's deposition would disrupt their continued representation of the Class.

4 It is noteworthy that, even at this date, Settling Defendants have yet to serve a single
5 discovery request on Plaintiff identifying the information they "need" in connection with the fee
6 petition. They cannot establish good cause without explaining what they need to know and
7 pursuing it in a timely fashion, which they have failed to do. Nor have they explained any
8 justification for their failure to earlier seek discovery on Plaintiff's fee petition, which they have
9 known for many months was forthcoming. Their tardiness should not be rewarded.

10 Finally, we recognize that Defendants have recently been busy with the Phase III trial.
11 But the upcoming break in the trial schedule provides them an ideal opportunity to respond to
12 Plaintiff's fee petition. Moreover, most of the Settling Defendants are represented by large law
13 firms with substantial numbers of personnel. They can and should have devoted additional
14 personnel to this matter if they needed to.

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16 **C. Settling Defendants' Request For an Indefinite Extension of Many Months
Is Unwarranted and Highly Prejudicial to Plaintiff.**

17 Plaintiff maintains that, for the reasons set forth above, Defendants' Application must be
18 denied. But had Settling Defendants made a reasonable request, Plaintiff would have tried to
19 accommodate them. However, they have sought an indefinite extension that would clearly last
20 many months. Indeed, they seek a 60 day extension to respond to the very basic discovery that
21 Plaintiff sought from them in connection with the fee petition (consisting of only five
22 interrogatories and four document requests). See Zlotnick Declaration. Such an indefinite
23 extension is entirely unwarranted and highly prejudicial to Plaintiff. Besides the fact that
24 Plaintiff has worked on this matter for over four years without compensation, Settling
25 Defendants insisted, as a term of the Settlement Agreement, that Class Counsel would not seek
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1 further attorneys' fees from them after the Court enters its judgment approving the settlement. If
2 the hearing on the fee petition is deferred, then Class Counsel will have been duped into
3 performing additional work on their fee application without any ability to obtain compensation
4 for their time. In that regard, California law is clear that Plaintiff's counsel are entitled to
5 compensation for time reasonably spent in support of their fee application. See *Serrano v.*
6 *Unruh* (1982) 32 Cal. 3d 621, 632. At a bare minimum, this Court should make any extension of
7 limited duration and expressly contingent on Plaintiff's counsels' right to seek additional fees for
8 any additional efforts they are required to engage in after the Court's entry of judgment.
9

10 CONCLUSION

11 For all of the forgoing reasons, Settling Defendants' ex parte application should be
12 denied.
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14 Dated: February 3, 2011

KRAUSE KALFAYAN BENINK &
SLAVENS LLP

16 /s/Ralph B. Kalfayan

17 Ralph B. Kalfayan, Esq.

18 David B. Zlotnick, Esq.

19 Attorneys for Plaintiff and the Class
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