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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.

) RELATED CASE TO JUDICIAL  
) COUNCIL COORDINATION  
) PROCEEDING NO. 4408  
)

) **PLAINTIFF WILLIS' REPLY BRIEF  
IN SUPPORT OF MOTION TO  
COMPEL DISCOVERY**

) Date: March 14, 2011  
) Time: 9:00 a.m.  
) Judge: Hon. Jack Komar

**I. INTRODUCTION**

On February 23, 2011, the Willis class offered to compromise this discovery dispute and

1 agreed not to further pursue this discovery if Defendants provided monthly summaries of the  
2 total hours billed on this case by their counsel, the total fees billed, and the hourly rate by  
3 timekeeper. We proposed that all narrative descriptions that might reveal privileged information  
4 or attorney work product could be removed. With the exception of Phelan, no defendant  
5 responded to the proposed compromise. Not surprisingly, Defendants wish to keep their bills a  
6 secret. The limited discovery that Plaintiff has agreed to accept is relevant to matters at issue,  
7 not privileged, and would not be burdensome to produce. Plaintiff respectfully requests that the  
8 Court order Defendants to respond to the discovery within 48 hours and compel the PWS to  
9 produce redacted versions of their billing records, limited to the above information. The Court  
10 should grant the motion for the reasons stated below.

## 12 **II. BACKGROUND**

13 On January 11, 2011, the Willis class propounded discovery on the Defendants seeking,  
14 inter alia, the fees Defendants had incurred in the defense of the case over the past four years  
15 along with the supporting billing records. This discovery sought Defendants' counsel's hourly  
16 rates, billing hours, tasks performed, and amounts paid. The purpose of the discovery was to  
17 provide additional evidence for the Court as to the reasonableness of Class Counsel's fees. The  
18 discovery consisted of only five interrogatories and four document requests. On February 14,  
19 2011, the PWS filed and served objections to the discovery. Each discovery request was  
20 objected to generally on the grounds of relevance and the claim that the discovery was protected  
21 from disclosure by the attorney client privilege and work product doctrine.

23 On March 9, 2011, Defendants opposed Class Counsel's fee petition on the grounds that  
24 the time spent and the billing rates are excessive. Six (6) opposition briefs were filed  
25 challenging class counsel's entitlement to fees and the reasonableness of the requested fees.  
26 The PWS claimed, among other things, that class counsel had engaged in unnecessary tasks and  
27  
28

1 had spent excessive time staffing of the case, and had been inefficient in reviewing documents  
2 and performing other tasks.

### 3 **III. ARGUMENT**

#### 4 **A. THE REQUESTED INFORMATION IS RELEVANT BECAUSE IT** 5 **SUBSTANTIATES COUNSEL’S BILLED HOURS.**

6 The only reasonably objective basis for valuing an attorney’s services is the  
7 evaluation of the careful compilation of the hours spent and reasonable value of each attorney’s  
8 time. *Serrano v. Unruh* (1982) 32 Cal.3d 621, 642. By claiming that Plaintiff’s rates and hours  
9 were excessive, Defendants made their rates and the hours they spent on this matter relevant. As  
10 the court in *Democratic Party of Washington State* reasoned, “one particularly good indicator of  
11 how much time [by a lawyer] is necessary [...] is how much time the other side’s lawyers spent.”  
12 *Democratic Party of Washington v. Reed* (9th Cir. 2004) 388 F.3d 1281, 1287. The court further  
13 reasoned that while “comparison of the hours spent in particular tasks by the attorney” does not  
14 necessarily indicate whether the hours were excessive, litigation “has something of the tennis  
15 game, something of war, to it; if one side hits the ball, or shoots heavy artillery, the other side  
16 necessarily spends time hitting the ball or shooting the heavy artillery back.” *Id.* Here, Plaintiff’s  
17 request for production of Defendants counsels’ billing records are relevant because those records  
18 will reveal the extremely complex nature of this litigation and the fact that Plaintiff was engaged  
19 in arduous litigation with formidable opponents who expended significant efforts on this matter.  
20 To some extent the Court is already aware of this. But much of the litigation process, especially  
21 discovery, occurs outside of the Court’s view; thus, this discovery will help the Court better  
22 understand the obstacles that Plaintiff faced.

23  
24  
25 Defendants cite *Serrano* for the proposition that *salaries* are not relevant or  
26 discoverable. Dkt. 4322, at p. 4, citing *Serrano, supra*. Plaintiffs do not disagree. Salaries paid  
27 to counsel are not at issue. But Defendants have disputed the reasonableness of Plaintiff’s  
28 billing rates and time incurred, and they cannot deny that their rates and time spent are, at least,

1 relevant to that inquiry. Accordingly, Plaintiff's discovery is indisputably relevant to issues  
2 raised by Defendants' oppositions to the fee petition.

3 **B. THE INFORMATION REQUESTED DOES NOT INFRINGE THE**  
4 **ATTORNEY-CLIENT PRIVILEGE BECAUSE THE NUMBER OF**  
5 **HOURS BILLED AND THE HOURLY BILLING RATES OF AN**  
6 **ATTORNEY ARE NOT PROTECTED BY ATTORNEY-CLIENT**  
7 **PRIVILEGE.**

8 Although certain information in Defendants' counsel's bills may be privileged, basic  
9 billing information such as the total number of hours billed, hourly billing rates, and the total  
10 fees billed *are not protected by attorney-client privilege*. Plaintiff does not disagree with  
11 Defendant's position that information protected by privilege should not be produced. Even  
12 Defendant's cases, however, demonstrate the information requested by Plaintiffs falls outside  
13 the scope of attorney-client privilege and is therefore not protected by the privilege.

14 The purpose of the attorney client privilege is to encourage clients to be open with their  
15 counsel by protecting communications between clients and counsel that would disclose  
16 confidential information that clients provided. Counsel's billing rates and the time counsel spent  
17 on a matter do not reveal client confidences and are not protected by the privilege.

18 **i. NEITHER ATTORNEY-CLIENT PRIVILEGE NOR THE WORK PRODUCT**  
19 **DOCTRINE PROTECTS ATTORNEY BILLING STATEMENTS FROM**  
20 **DISCLOSURE BECAUSE THEY ARE NOT OPINION OR WORK PRODUCT.**

21 Attorney-client privilege protects "information transmitted between a client and his or her  
22 lawyer" that "includes a legal opinion formed and the advice given by the lawyer in the course of  
23 that relationship." Cal.Evid.Code § 952. Furthermore, the California Code of Civil Procedure  
24 defines work product as "a writing that reflects an attorney's impressions, conclusions, opinions,  
25 or legal research or theories." Cal.C.C.P. § 2018.030.

26 Here, basic billing information such as the total number of hours billed, hourly billing  
27 rates, and total fees billed do not include a legal opinion nor advice because they are underlying  
28 and objective facts—this information exists as an independent truth disconnected from any

1 opinion or work product of the attorney. In addition, this basic information, specifically  
2 excluding itemized descriptions and summaries for each billing entry, cannot possibly reflect an  
3 attorney's impressions, conclusion, opinions, or legal research or theories.

4 The Courts have interpreted the attorney-client privilege in accordance with Plaintiff's  
5 position. For example, in *Clarke*, which Defendants cite, the court held that "the identity of the  
6 client, **the amount of the fee**, the identification of payment by case file name, and **the general**  
7 **purpose of the work performed are usually not protected from disclosure by the attorney-**  
8 **client privilege."** *Clarke v. American Commerce National Bank* (9th Cir. 1992) 974 F.2d 127,  
9 128. The Court held that bills could be privileged **when they also reveal the motive of the**  
10 **client.**

12 Plaintiff's position is supported by the full text of *Salas* which is the operative quote  
13 found in *Clark*. In *Salas* the court contrasted "bills, ledgers, statements, time records, and the  
14 like which also reveal the nature of the services provided," that are likely protected under  
15 privilege with "a simple invoice requesting payment for unspecified services rendered [that]  
16 reveals nothing more than the amount of the fee and would not normally be privileged." *In re*  
17 *Grand Jury Witness (Salas and Waxman)*, 695 F.2d 359, 362 (9th Cir. 1982), *see also, Real v.*  
18 *Continental Group Inc.* (N.D. Cal. 1986) 116 F.R.D. 211. Here, Plaintiffs request only general  
19 information relating to the total number of hours billed, hourly billing rates, and total fees billed.  
20 This information constitutes a simple invoice for unspecified services rendered and in no way  
21 reveals anything more than the amount of the fee and should not, as it would not normally be,  
22 privileged.  
23

24 **C. LOS ANGELES COUNTY BAR ASSOCIATION'S ETHIC COMMITTEE, FORMAL**  
25 **OPINION NO. 456 DOES NOT APPLY TO THE PRESENT CASE.**

26 The Los Angeles County Bar Association's Ethic Committee Formal Opinion No. 456  
27 ("Opinion") does not apply to this case because the opinion explicitly states that it does not  
28

1 apply to the circumstance of this case; and because the information requested by Plaintiff does  
2 not fall under attorney-client privilege for the reasons discussed in the previous section.

3 First, the Opinion provides in relevant part “this opinion does not address disclosure of  
4 billing information in connection with application for payment of attorney fees in a judicial  
5 proceeding.” *Los Angeles County Bar Association’s Ethics Committee*, Formal Opinion No. 456  
6 (August 21, 1989) at 2. Despite Defendant’s rather curious assertion that the Opinion provides  
7 “seminal analysis” of the present issue, it does not. The Opinion provides in plain text that it  
8 does not address the issue present here. Further, the present issue does not concern an ethical  
9 question because there exists no attorney-client privilege here—an indispensable requirement for  
10 an alleged potential breach of an ethical duty flowing from said duty. For these reasons, the  
11 Opinion is immaterial to Plaintiff’s request for production.  
12

13 **D. ADDITIONAL DISCOVERY REQUIREMENTS HAVE BEEN**  
14 **SATISFIED.**

15 i. **THE REQUEST FOR PRODUCTION IS PROPER AND IS NOT BURDENSOME.**

16 Plaintiff’s request for production of total number of hours billed, hourly rate, and total fees  
17 charged is not burdensome and overbroad because production by Defendants will not take  
18 substantial time to produce. Plaintiff’s current request, in response to Defendant’s objections  
19 and in the spirit of cooperation and expediency, seeks only limited and non-privileged  
20 information readily available to Defendants. The information requested by Plaintiff should not  
21 take more than moments to produce. Thus, Plaintiff’s request is not burdensome.  
22

23 ii. **WILLIS COUNSEL PROVIDED AN ADEQUATE STATEMENT OF ITEMS IN**  
24 **DISPUTE.**

25 Counsel does not contest the applicable California Rule of Court. Counsel has provided an  
26 adequate statement of items in dispute.

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1 **IV. CONCLUSION**

2 Plaintiffs respectfully request this Court **grant the motion** to compel discovery based on  
3 the reasons stated above.

4 Dated: March 11, 2011

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SLAVENS, LLP

7 /s/ Ralph B. Kalfayan

8 Ralph B. Kalfayan, Esq.

9 David B. Zlotnick, Esq.

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