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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 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;

Defendants.

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING NO. 4408
)
)

) CASE NO. BC 364553
)
)

) **PLAINTIFF'S REPLY MEMORANDUM**
) **IN SUPPORT OF APPLICATION FOR**
) **ATTORNEYS' FEES AND IN RESPONSE**
) **TO THE MARCH 18, 2011**
) **SUPPLEMENTAL BRIEF FILED BY THE**
) **PUBLIC WATER SUPPLIERS**

) Date: March 22, 2011
) Time: 10:00 a.m.
) Dept: 15 (CCW)
) Judge: Hon. Jack Komar
) Coordination Trial Judge
)
)
)

1 **I. INTRODUCTION**

2 On March 18, 2011, the Public Water Suppliers (“Suppliers” or “District 40”) filed a
3 Supplemental Brief in Response to the Willis Class’ Supplemental Notice of Lodgment of Time
4 Records (the “Supplemental Brief”). The new issues raised by District 40 are wholly without
5 merit. Rather than supporting District 40’s implied assertion that Class Counsel have fabricated
6 their time records, an accurate assessment of the issues that District 40 raises in its Supplemental
7 Brief demonstrates that Class Counsel’s billings were reasonable and appropriate. District 40’s
8 arguments to the contrary are based entirely on conjecture and misrepresentations of the record.
9

10 Class Counsel recognize that our fee petition seeks a substantial amount. But that is due
11 to the complexities of the factual investigations and legal research, as well as complicated and
12 multiple settlement proceedings, that this case involved over more than 50 months. Notably,
13 Class Counsel had to perform that work without the support that the Public Water Suppliers had
14 from sophisticated clients and a team of experts. Rather than reveal the number of hours spent
15 on this matter – which would have been the most probative evidence as to the complexity of the
16 case and the reasonableness of Class Counsel’s billings, District 40 distorts the facts and wrongly
17 accuses Class Counsel of billing for efforts they did not perform and of grossly overbilling. That
18 is simply not the case. In fact, the very examples that District 40 “cherry-picks” from this 4 year
19 record show that counsel spent their time reasonably and appropriately. Because the fees
20 requested are reasonable given the complexities and work required by this matter, the fee petition
21 should be approved.
22

23 **ARGUMENT**

24 **A. Class Counsel Performed The Work That They Billed For.**

25 District 40 wrongly asserts that Class Counsel has billed for work that they did not in fact
26 perform. *That serious charge is unmerited and is based on distortions of the record and willful*
27

1 *ignorance of the relevant facts.*

2 **1. Messrs. Zlotnick and Kalfayan Did Not Engage in Extensive Efforts on**
3 **Other Matters While Billing a Full Day to This Case.**

4 District 40 wrongly argues that Class Counsel were extensively involved in other matters
5 on days that they billed a full day to this case. That argument is simply false.

6 The simple fact is that most litigators, perhaps even counsel for District 40, work more
7 than an 8 hour day when the demands of their work require that. More importantly, though,
8 Class Counsel did not engage in extensive or significant work on other matters on the days in
9 question and did, in fact, spend those days working on this case.

10 **a. Mr. Kalfayan's Work on *I-Flow* Was Limited.**

11 District 40 first argues that Mr. Kalfayan billed slightly in excess of 8 hours on four days
12 on which Hearings were held in another matter in which he was counsel of record: *I-Flow Corp.*
13 *v. Apex Medical Technologies, Inc.*, No. 3:07cv1200 (S.D. Cal.). But, as Mr. Kalfayan's
14 Declaration makes clear, *I-Flow* was a patent matter, which was primarily handled by other
15 counsel and in which he had a limited role. Declaration of Ralph B. Kalfayan at ¶ 5. *Indeed, he*
16 *did not attend three of the four I-Flow hearings that Defendants reference – largely because of*
17 *the obligations he had to this matter.* *Id.* at ¶ 6. On the days in questions, he was actively
18 engaged in working on this case.

19 **b. Mr. Zlotnick Did Not “Double Bill” For the *Sobel* Case and this Case.**

20 District 40 similarly argues without merit that Mr. Zlotnick billed over eight hours to this
21 case on April 22, 2008, and December 1, 2008, days on which there were hearings in Reno,
22 Nevada on another class case in which he is counsel, *Sobel v. The Hertz Corp.*, No. 3:06cv545
23 (D. Nev.). But, once again, District 40 has blatantly distorted the relevant facts. **Most**
24 **significantly, District 40 has misrepresented Mr. Zlotnick's billings in this very case.**

Defendants state unequivocally that “on April 22, 2008, the same day as a status conference in *Sobel* (Doc. 44), Mr. Zlotnick also billed 8.6 hours in this Adjudication, and again on December 1, 2008, the day of a hearing on a motion to compel in *Sobel* (Doc. 74), Mr. Zlotnick billed 8.3 hours in this Adjudication.” Suppliers’ Supplemental Brief at p.5. **That is just plain wrong.** Mr. Zlotnick billed 1.75 hours to this case on April 22, 2008 – not 8.6 hours; and he billed only 1 hour on this case on December 1, 2008 – not 8.3 hours, as District 40 states. Supplemental Declaration of David B. Zlotnick ¶ 4. Moreover, because of Mr. Zlotnick’s concerns about not duplicating efforts, he participated in one of those hearings in *Sobel* telephonically and did not participate in the other hearing at all. *Id.* at 5. ***In short, District 40’s accusations that counsel billed inappropriately are demonstrably false.***

c. Class Counsel’s Failure to Double Bill for Conferences Was and Is Commendable and Is Not Evidence of False Billing.

District 40 further argues that questions are raised by the fact that Mr. Kalfayan and Mr. Zlotnick frequently billed for a conference with the one another, which the other counsel did not bill for. But that is a function that Class counsel deliberately did not “double bill” for efforts on one matter. Except for a few complicated or extended matters that required significant efforts from both counsel, Class Counsel divided responsibilities between them. Zlotnick Suppl. Dec at ¶7. Generally, counsel made a point of not double billing for short conferences where one person had primary responsibility for the task at issue. *Id.* That is the reason that numerous conferences between Mr. Kalfayan and Mr. Zlotnick appear on only one counsel’s records.

B. Class Counsel Did Not Charge \$18,075 to Prepare a 3-Page Opposition.

District 40 is just as dead wrong in arguing that “Class Counsel appears to have charged \$18,075 to prepare a 3-page opposition without legal authority.” Supplemental Brief at 2. The time records we submitted make that clear and do not reflect \$18,075 of fees for a 3 page

1 opposition. District 40 pretends that all 39 hours Mr. Kalfayan fees billed over the period from
2 June 1 to June 15, 2010 related exclusively to a 3 page opposition. It ignores the fact that during
3 that period, Class counsel filed three (3) motions that furthered the interests of the class and
4 responded to four (4) motions filed by opposing parties. Preparation of these motions,
5 particularly one Memorandum of Points and Authorities, required substantial legal research and
6 required considerable time to prepare. In addition counsel performed other necessary tasks such
7 as conversations with title companies, emails with Mr. Dunn, and involvement in the
8 Waldo mediation. In addition, on June 11, 2010, Mr. Dunn led Mr. Kalfayan to believe that our
9 deal was in jeopardy. Mr. Dunn emailed Mr. Kalfayan, stating, "I don't know if you are going to
10 get this over the weekend but you have pretty much killed any deal." See e-mail attached as
11 exhibit A to Kalfayan Declaration.
12

13 **C. Class Counsel Did Not Charge \$1,720 to Prepare a Boilerplate Stipulation.**

14 Similarly, the November 22, 2010 time entry was reasonable. In order to prepare what
15 District 40 mischaracterizes as a "boilerplate stipulation," Mr. Kalfayan had to compare the
16 Court's November 18, 2010 Order to the proposed notice, edit the proposed notice as necessary,
17 and compare the edits to the stipulation of settlement. In addition, Mr. Dunn requested edits
18 be made to the proposed notice for items that were not mentioned in the Court's order, which we
19 worked through and resolved. Kalfayan Suppl Dec. at 3. .
20

21 **CONCLUSION**

22 The record demonstrates that the time that Class counsel has spent on this complex matter
23 has been reasonable and not excessive. Counsel have handled this litigation as efficiently as
24 possible given the (1) number of opposing parties, (2) the number and complexity of the issues
25 raised in this matter in which the Court's docket shows some 4,335 filings (not including
26 discovery) since late 2005, (3) the fact that the Class is composed of approximately 60,000
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28

1 persons, many of whom contacted Class counsel for information regarding the case, some on a
2 number of occasions; and (4) the fact that Class Counsel had neither sophisticated clients nor
3 experts to assist them. For all of the foregoing reasons, Plaintiff respectfully requests that the
4 Court approve her application for attorneys' fees and costs, as well as an incentive award.

5 Dated: March 21, 2011

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

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7
8 /s/Ralph B. Kalfayan
9 Ralph B. Kalfayan, Esq.
10 David B. Zlotnick, Esq.
11 Attorneys for Plaintiff and the Class
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