

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

**ORDER AFTER HEARING ON
MOTION BY PLAINTIFF
REBECCA LEE WILLIS AND THE
CLASS FOR AN AWARD OF
SUPPLEMENTATTORNEYS' FEES,**

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

Hearing Date(s): August 30, 2011
Time: 8:00 a.m.
Location: Central Civil West

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, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judge: Honorable Jack Komar

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

4 Plaintiff Rebecca Lee Willis and the Class have entered into a stipulation of settlement
5 with defendants Los Angeles County Waterworks District No. 40, City of Palmdale, Palmdale
6 Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill
7 Water District, California Water Service Company, Rosamond Community Service District,
8 Phelan Piñon Hills Community Services District, Desert Lake Community Services District,
9 and North Edwards Water District (collectively, the "Settling Defendants").

10 The Court previously granted Plaintiff's motion for preliminary and final approval of the
11 settlement and on May 4, 2011, the Court granted an award of attorneys' fees, reimbursement of
12 expenses, and an incentive award for lead plaintiff Rebecca Lee Willis. Plaintiff now brings
13 this motion seeking a supplemental award of attorneys' fees for services rendered between
14 January 1, 2011 and May 13, 2011, the date the Court entered judgment approving the
15 settlement.

16 On August 30, 2011, at 8:00 a.m., the Court heard oral argument on the motion
17 seeking attorneys' fees pursuant to Code of Civil Procedure § 1021.5 as a prevailing party in its
18 action against the Public Water Suppliers based on the settlement between the parties. The
19 Willis Class asserts that its attorneys have collectively spent approximately 472.78 hours of
20 time on the case from January 1, 2011 (the cutoff date for the previous fee request) to the date
21 of the entry of the Judgment.

22 Based upon the various hourly rates, the collective lodestar for work of all counsel,
23 clerks and paralegals, is \$209,624.50. There is no request for a multiplier.

24 The opposition to the motion asserts a variety of reasons why the motion should be
25 denied in its entirety or the amount awarded significantly reduced, including that the fees are
26 unreasonable, that there is block billing (corrected in some later billing), that excessive time is
27 spent generating expense reports, identical hours are claimed by a clerk and a paralegal on the
28 same days down to the tenth of an hour alleged to have been expended speaking with class
members (apparently disputing the veracity of the time keeping), that a water lawyer expert

1 engaged for his expertise spent multiple hours on non-water law issues, that multiple hours
2 were expended on futile discovery motions related to fees charged by public lawyers, and that
3 the supplemental fee request is akin to private interest litigation since it relates largely to
4 attorneys' fees.

5 At the conclusion of the oral argument on the motion, the Court ordered the matter
6 submitted.

7 The Court having considered the arguments of counsel and the briefs submitted, and
8 good cause appearing, the Court makes the following order.

9
10 ORDER
11

12 The Willis Class seeks attorneys' fees pursuant to Code of Civil Procedure § 1021.5. a
13 codification of the private attorney general doctrine adopted by the California Supreme Court in
14 *Serrano v. Priest* (1977) 20 Cal.3d 25 [141 Cal.Rptr. 315, 569 P.2d 1303] (Serrano III). The
15 Court in its previous decision ordering attorneys' fees to the Class did find that the Class was a
16 successful party and did confer a substantial benefit on the public generally under CCP 1021.5.

17
18 (*Hull v. Rossi* (1993) 13 Cal. App. 4th 1763, 1766-1767.)
19

20 Section 1021.5 states, in relevant part:

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

27 In sum, the Willis Class has met the requirements of Code of Civil Procedure § 1021.5
28 and is entitled to attorneys' fees.

1 “ [T]he fee setting inquiry in California ordinarily begins with the “lodestar,”
2 i.e., the number of hours reasonably expended multiplied by the reasonable
3 hourly rate. “California courts have consistently held that a computation of time
4 spent on a case and the reasonable value of that time is fundamental to a
5 determination of an appropriate attorneys’ fee award.” [Citation.] The
6 reasonable hourly rate is that prevailing in the community for similar work.
[Citations.] The lodestar figure may then be adjusted, based on consideration of
factors specific to the case, in order to fix the fee at the fair market value for the
legal services provided.

7
8 (*Plcm Group v. Drexler* (2000) 22 Cal. 4th 1084, 1095.)

9 As indicated in the Court’s previous order on attorneys’ fees in this case, some factors to
10 be considered in adjusting the lodestar figure include:

- 11 (1) The novelty and difficulty of the questions involved, and
the skill displayed in presenting them;
- 12 (2) The extent to which the nature of the litigation precluded
13 other employment by the attorneys;
- 14 (3) The contingent nature of the fee award, both from the point
15 of view of eventual victory on the merits and the point of view
of establishing eligibility for an award;
- 16 (4) The fact that an award against the state would ultimately
17 fall upon the taxpayers;
- 18

19
20 (See *Serrano III*, *supra*, 20 Cal.3d at p. 49.)

21 “There is no precise rule or formula for making these determinations. The [trial]
22 court may attempt to identify specific hours that should be eliminated, or it may
23 simply reduce the award to account for the limited success. The court
necessarily has discretion in making this equitable judgment....”

24
25 (*Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 247-248, quoting *Hensley v.*
26 *Eckerhart* (1983) 461 U.S. 424, 436-437, 439-440.)

27
28 The Willis Class argues that its counsel’s lodestar of \$209,624.50 is reasonable given
the complexity of the case. The Opposing Parties contend that the amount of time expended by

1 Class Counsel was excessive and, in many instances, unnecessary. As the Court stated in its
2 previous order on fees, while it is possible to use hindsight to look back and determine that
3 effort expended by Class Counsel on a particular issue or motion might have been unnecessary,
4 that does not mean that Class Counsel is not entitled to fees for that work. Absent
5 circumstances rendering the award unjust, an attorney fee award should ordinarily include
6 compensation for all the hours *reasonably* spent, including those relating solely to the fee.
7 (*Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1133.) Further, the trial court has broad authority
8 to determine the amount of a reasonable fee. (*Id.* at p. 1095.) A trial court may make its own
9 determination of the value of the services contrary to, or without the necessity for, expert
10 testimony. (*Id.* at p. 1096.) Therefore, the Court can use its knowledge of the case and the
11 efforts of Class Counsel to determine an equitable fee award.

12 An attorneys' fee award is generally based on the lodestar amount with a reduction or
13 enhancement, based on the circumstances of the case. In this instance, as indicated in the
14 Court's previous order on the request for attorneys' fees, there are several factors that weigh in
15 favor of reducing the lodestar amount. While this is a complicated case, except for the amount
16 of hours expended on the fee award, virtually all the significant work was performed by counsel
17 prior to the time the Court granted preliminary approval of the settlement. Again, as stated in
18 the previous fee award, "block billing" has made it impossible for the Court to analyze the time
19 spent on the some of the various functions performed by counsel.¹

20 Regarding Class Counsel's billing rates, Class Counsel have provided evidence that
21 their billing rates are reasonable. The lodestar was based on hourly rates of \$400 per hour for
22 Ralph B. Kalfayan, \$450 per hours for David B. Zlotnick, and \$400 hourly for Gregory James²
23 and lesser amounts for clerks and paralegals who worked on the case. These rates are
24 reasonable.

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28 ¹ Block Billing involves lumping together separate work functions in a single item without indicating how much
time is allotted to each function. Plaintiffs' counsel's billing practices have been modified to eliminate block billing.

² Mr. James appropriately reduced his hourly rate while traveling to \$150.00 hourly; not so other counsel.

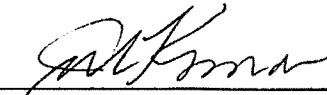
1 This Court has been presided over this case since the order of coordination and is
2 familiar with the work of counsel for all parties, the complexity of the various issues, and the
3 time necessarily involved in effectively representing the Willis Class. The Court has carefully
4 reviewed all of the time claimed in the lodestar computation and concludes that the lodestar
5 should be reduced for the same reason the previous request for fees was reduced. In addition,
6 excessive time was spend on discovery matters, on expense and fee analysis, and hourly rates
7 for travel were excessive in several instances.

8 Accordingly, in reviewing all the time spent by counsel and others, considering the time
9 accorded to various of the issues by relative import and consequence, it is the decision of the
10 Court that reasonable supplemental attorney fees in this matter is the sum of \$160,662.50.

11 Supplemental Attorneys fees in the sum of \$160,662.50 are therefore awarded to
12 counsel for the Willis Class against the "Settling Defendants". Moving party asserts that sums
13 have already been paid or agreed to be paid by several of the parties as reflected in the Reply
14 brief. While the Court does not doubt the representation of counsel, the Court at this time makes
15 no orders concerning the apportionment of any credits paid or agreed to be paid by any of the
16 parties since that issue is not presented in the motion filed.

17
18 SO ORDERED

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20 Dated: September 6, 2011



Hon. Jack Komar
Judge of the Superior Court