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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  
)  
) **REPLY MEMORANDUM IN SUPPORT OF**  
) **MOTION FOR RECONSIDERATION OF**  
) **THE COURT'S NOVEMBER 16, 2011**  
) **ORDER RE ELECTION FOR PERIODIC**  
) **PAYMENTS OF THE AMENDED FINAL**  
) **JUDGMENT APPROVING WILLIS CLASS**  
) **ACTION SETTLEMENT OR, IN THE**  
) **ALTERNATIVE, FOR RELIEF**  
) **PURSUANT TO CCP SECTION 984(e)(4);**  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES**

Date: April 17, 2012  
Time: 9:00 a.m.  
Dept: Room 1515 (CCW)  
Judge: Hon. Jack Komar  
Coordination Trial Judge

1 **I. INTRODUCTION**

2 Any reasonable reading of the Court of Appeal's February 15, 2012 Order makes clear  
3 that Los Angeles County Waterworks District Number 40 ("District 40") did not timely appeal  
4 this Court's initial award of fees and costs to class counsel on May 6, 2011. The appeal is now  
5 limited to the Supplemental fees order. As a result, it is now clear that this Court's November  
6 21, 2011 Order approving District 40's Election for Periodic Payments of the Amended Final  
7 Judgment Approving Willis Class Action Settlement (the "Election Order") was invalid because  
8 the criteria justifying such an election were not met. Alternatively, even if the Election Order  
9 was valid, District 40 has not complied with the payment terms of the Election Order despite the  
10 Court of Appeal's decision that the appeal of the May Judgment/fee Order is untimely. District  
11 40's efforts to avoid fulfilling its agreement under the Stipulation of Settlement to timely pay the  
12 fees awarded by this Court are without merit. Moreover, because Plaintiff did not appeal the  
13 Election Order, this Court has jurisdiction to revise that Order and, in the interests of justice,  
14 should do so.  
15

16 **II. ARGUMENT**

17 **A. The Initial Fee Award Was Not Timely Appealed.**

18 By Order dated February 15, 2012, the Court of Appeal held that District 40's appeal was  
19 timely as to this Court's September 6, 2011 supplemental fee award, but was untimely as to this  
20 Court's original May 6, 2011 fee award. The Court of Appeal's Order states in that regard as  
21 follows:  
22

23 It is true that the May 6, 2011, order granting attorneys fees, cost and class representative  
24 award *was either a separately appealable collateral order, or was made appealable by*  
25 *the May 13, 2011 judgment. No timely appeal was filed either from the May 6, 2011,*  
26 *order or from the May 13, 2011, judgment. Appellants therefore, may not challenge any*  
27 *rulings encompassed in the May 6, 2011, order or the May 13, 2011, judgment.*

28 February 15, 2012 Order at p. 2 (citations omitted) (emphasis added). District 40's denial of this

unequivocal statement by the Court of Appeal shows its bad faith. District 40's appeal is now solely limited to the September 6, 2011, Supplemental fees order.

**B. District 40's Election Under Government Code Section 984 Was Untimely and Invalid.**

District 40's election to make periodic payments under Government Code section 984 was untimely as to the Court's initial (May 6, 2011) fee award. Rule 3.1804(a) of the California Rules of Court mandates as follows:

A public entity electing to pay a judgment against it by periodic payments under Government Code section 984 must serve and file a notice of election stipulating to the terms of such payments, or a notice of hearing on such terms, by the earlier of:

- (1) 30 days after the clerk sends, or a party serves, notice of entry of judgment; or
- (2) 60 days after entry of judgment.

The recent Order of the Court of Appeal makes clear that this Court's May 6, 2011 fee award was final by May 13, 2011 at the latest. Hence, it is clear that District 40's October 27, 2011 election was untimely as to that initial fee award.

Moreover, this Court's September 6, 2011 Supplemental Award of fees and costs was only in the amount of \$160,662.50, substantially below the threshold amount (\$1,507,222.94) required for District 40 to invoke any rights under Section 984. *See* District 40 Notice of Election at p. 2. Hence, District 40's election was not and is not valid even as to that later award.

**C. This Court Has Jurisdiction to Decide This Matter.**

As District 40 correctly notes, no party appealed from this Court's November 21, 2011 Order allowing District 40's election to make installment payments. After an appeal is filed, the trial court is divested of jurisdiction to reconsider matters embraced within the four corners of the order(s) appealed from; but the law is clear that the trial court retains jurisdiction to decide

1 matters that are not before the Court of Appeal. Indeed, CCP section 916(a) expressly provides  
2 that “the trial court may proceed upon any other matter embraced in the action and not affected  
3 by the judgment or order [at issue on appeal].” The test is whether the further proceedings would  
4 impair or limit the effectiveness of the appeal. *See Franklin & Franklin v. Owners for Fair*  
5 *Franchising* (2000) 85 Cal. App. 4<sup>th</sup> 1168; *Laidlaw Waste Svs., Inc. v. Bay Cities Svs., Inc.*  
6 (1996) 43 Cal. App. 4<sup>th</sup> 630.  
7

8 Here, modifying the Election Order would not impair or effect District 40’s appeal of the  
9 underlying fee awards at all. Hence, this Court has jurisdiction to grant the requested relief.

10 **D. Plaintiff Is Not Estopped From Seeking This Relief.**

11 District 40 incorrectly argues that Plaintiff should be estopped from seeking this relief.  
12 For three reasons, that argument is without merit. First, Plaintiff did not consent to the  
13 installment payment terms that District 40 sought and that this Court approved. Second, District  
14 40 has not complied with the Election Order in that it has not made the required payments;  
15 hence, District 40 cannot claim any rights under the Order. Third, and most fundamentally,  
16 Plaintiff did not oppose the Installment Order previously because the original fee order was final  
17 and District 40 promised to pay half of the award within 15 days pursuant to their request to  
18 periodicize.  
19

20 **E. This Court Should Rescind or Modify Its Order In the Interests of**  
21 **Justice Pursuant to CCP Section 984(e)(4).**

22 Plaintiff is entitled to relief pursuant to CCP Section 1084, given the Court of Appeal’s  
23 recent Order, which makes clear that the Election Order was invalid. In addition, GC Section  
24 984(e)(4) expressly gives the Court ongoing authority to amend or modify an order providing for  
25 installment payments in the interests of justice and provides as follows:

26 The court shall retain jurisdiction in order to enforce, amend, modify, or  
27 approve settlement of the installment payments as may be just. Upon a motion  
28 by the judgment-creditor, the court shall accelerate the installment payments if

1 it finds any unreasonable delay in, or failure to make payments.

2 Here, contrary to District 40's agreement in the Stipulation to pay any fee award within a  
3 reasonable time and its representations in making the election that it would pay 50% of the fees  
4 awarded within 15 days, it has appealed this Court's fee awards *and not made any payment*. That  
5 remains true today, even though the Court of Appeal has made clear that District 40 did not  
6 timely appeal the initial fee award (which constitutes approximately 90% of the total amount).  
7 Under these circumstances, the interests of justice require a modification of the Court's prior  
8 Order authorizing the deferred payments. District 40's bad faith refusal to pay any of the fees  
9 that this Court awarded and that it agreed to pay warrants modification of the Election Order.  
10

### 11 **III. CONCLUSION**

12 For the foregoing reasons, Plaintiff respectfully requests that the Court reconsider and  
13 revoke its November 16, 2011 Order approving District 40's Election to make periodic payments  
14 of the fees awarded in this matter.

15 Dated: April 10, 2012

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18  
19 /s/Ralph B. Kalfayan  
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