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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER
CASES

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; et al.

Defendants.

Judicial Council Coordination
Proceeding No. 4408

(Santa Clara Case No. 1-05-CV-049053,
Honorable Jack Komar)

Case No.: BC 391869

**SMALL PUMPER CLASS'
STATEMENT RE LACK OF OPT-
OUT PROVISION IN WILLIS CLASS
NOTICE**

1
2 The proposed form of notice to the Willis class members instructs them that they
3 do not have the right to opt-out of the settlement. This provision should be modified to
4 allow for the opportunity to opt-out of the settlement.

5 “Due process requires at a minimum that an absent plaintiff be provided with an
6 opportunity to remove himself from the class by executing and returning an “opt out” or
7 “request for exclusion” form to the court.” (*Phillips Petroleum Co. v. Shutts* (1985) 472
8 U.S. 797, 812.; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 252.)

9 Some class settlements certified under Federal Rule 23(b)(1) or (b)(2) can be
10 binding on absent class members without the right to opt-out, but these class cases do not
11 fall within those categories. Both class complaints contain numerous damages claims, all
12 of which were included in the relevant class certification orders. The contemplated *Willis*
13 settlement contains a broad release that would eliminate the class members’ damages
14 claims across the board, thereby implicating the due process standards set for in *Shutts*.

15 While the class has received prior notice of the pendency of the class, the prudent
16 course is to permit a second opt-out on the terms of the settlement, which were not before
17 the class members at the time of the original notice. (*Manual for Complex Litigation*
18 (2005) 4th Ed. § 21.611.) “This second opt-out opportunity helps to provide the
19 supervising court the ‘structural assurance of fairness, called for in *Amchem Products*
20 *Inc.*’” (*Ibid.*, quoting *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 626.)

21 There is also the problem that the class is no longer the same group of people it
22 was over a year ago when the first notice was given. With over 60,000 parcels, there are
23 surely many people in the certified class that no longer meet the class definition because
24 they have died or sold their property in the intervening period. While the real property
25 remains in the basin, ownership has changed. The current class notice will no doubt find
26 its way into the hands of many people who meet the class definition, but who never
27 received the first class notice because they did not hold title to real property in the

1 adjudicated basin. Under the holdings of *Shutts* and progeny, absent at least one
2 opportunity to opt-out, it is highly questionable whether the Court would have
3 jurisdiction over this group of new class members.

4
5 Regardless of the form of notice, the Court should require the filing of a list of all
6 class members and their respective parcels once the class is finally set so that it is clear
7 who will be bound by the judgment.

8
9 DATED: November 30, 2010 LAW OFFICES OF MICHAEL D. McLACHLAN
10 LAW OFFICE OF DANIEL M. O'LEARY

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12 By: _____ //s//

13 Michael D. McLachlan
14 Attorneys for Plaintiff
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On November 15, 2010, I caused the foregoing document(s) described as **SMALL PUMPER CLASS' STATEMENT RE LACK OF OPT-OUT PROVISION IN WILLIS CLASS NOTICE** to be served on the parties in this action, as follows:

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- Ana Horga