1 2 3 4 5 6 7 8	Michael D. McLachlan (State Bar No. 18170 LAW OFFICES OF MICHAEL D. McLA 523 West Sixth Street, Suite 215 Los Angeles, California 90014 Telephone: (213) 630-2884 Facsimile: (213) 630-2886 mike@mclachlanlaw.com Daniel M. O'Leary (State Bar No. 175128) LAW OFFICE OF DANIEL M. O'LEARY 523 West Sixth Street, Suite 215 Los Angeles, California 90014 Telephone: (213) 630-2880 Facsimile: (213) 630-2886 dan@danolearylaw.com	ĊHLAN, APC
9	Attorneys for Plaintiff	
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12	SUPERIOR COURT FOR THE STATE OF CALIFORNIA	
13	COUNTY OF I	LOS ANGELES
14 15	Coordination Proceeding Special Title (Rule 1550(b))	Judicial Council Coordination Proceeding No. 4408
15	ANTELOPE VALLEY GROUNDWATER CASES	(Santa Clara Case No. 1-05-CV-049053, Honorable Jack Komar)
17 18	RICHARD A. WOOD, an individual, on behalf of himself and all others similarly situated,	Case No.: BC 391869 SMALL PUMPER CLASS' STATEMENT RE LACK OF OPT-
19 20	Plaintiff,	OUT PROVISION IN WILLIS CLASS NOTICE
21	v.	
22	LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; et al.	
23	Defendants.	
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28		TEMENT RE LACK OF OPT-OUT LLIS CLASS NOTICE

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 (2005) 4th Ed. § 21.611.) "This second opt-out opportunity helps to provide the 18 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

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

1	adjudicated basin. Under the holdings of <i>Shutts</i> 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.	
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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.	
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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 Attorneys for Plaintiff	
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	SMALL PUMPER CLASS' STATEMENT RE LACK OF OPT-OUT PROVISION IN WILLIS CLASS NOTICE	

1	PROOF OF SERVICE	
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3	I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 10490 Santa Monica Blvd., Los Angeles, California 90025.	
4		
5	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:	
6	(X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa	
7 8	Clara County Superior Court website: <u>www.scefiling.org</u> regarding the Antelope Valley Groundwater matter.	
	() (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and	
9 10	processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in sealed envelope(s) addressed to the parties as noted above,	
11	with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Los Angeles, California, addressed to:	
12	() (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other	
13	overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designed by the express service carrier; deposited in a	
14	facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided	
15	for; addressed as shown on the accompanying service list.	
16 17	() (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.	
18 19	(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.	
20	() (FEDERAL) I declare under penalty of perjury under the laws of the United States of	
21	America that the foregoing is true and correct.	
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23	//s//Ana Horga	
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_~	4 SMALL PUMPER CLASS' STATEMENT RE LACK OF OPT-OUT PROVISION IN WILLIS CLASS NOTICE	