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14 **SOUTHERN CALIFORNIA EDISON COMPANY**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

13 ANTELOPE VALLEY  
14 GROUNDWATER CASES,

15 Included Actions:

16 Los Angeles County Waterworks District  
17 No. 40 v. Diamond Fanning Co.  
18 Los Angeles County Superior Court  
19 Case No. BC 325201

20 Los Angeles County Waterworks District  
21 No. 40 v. Diamond Farming Co.  
22 Kern County Superior Court  
23 Case No. S-1500-CV -254-348

24 Wm. Bolthouse Farms, Inc. v. City of  
25 Lancaster, Diamond Farming Co. v. City  
26 of Lancaster, Diamond Fanning Co. v.  
27 Palmdale Water Dist.  
28 Riverside County Superior Court  
Consolidated actions  
Case Nos. RIC 353 840, RIC 344 436,  
RIC 344 668

Judicial Council Coordination No. 4408

For filing purposes only:  
Case No.: 1-05-CV-049053

Assigned to the Honorable Jack Komar

**CROSS-DEFENDANT SOUTHERN  
CALIFORNIA EDISON COMPANY'S  
OBJECTIONS TO THE NOTICE TO  
APPEAR AND PRODUCE DOCUMENTS  
IN LIEU OF SUBPOENA SUBMITTED BY  
CHARLES TAPIA AND THE NELLIE  
TAPIA FAMILY TRUST**

Trial Date: October 15, 2015  
Time: 8:30 a.m.  
Dept.: L.A.S.C. Rm. 222

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 Cross-Defendant Southern California Edison Company (“Edison”) hereby objects to the  
3 Notice to Appear and Produce Documents in Lieu of Subpoena (“Notice”) served by Charles Tapia  
4 and the Nellie Tapia Family Trust (collectively “Tapia”) on October 5, 2015, which calls for the  
5 appearance at trial of Edison employee Rich Koch or the Edison custodian of records, on the  
6 following grounds:

7 1. The Notice is untimely. Under Code of Civil Procedure 1987(b), a party witness can  
8 be compelled to appear at trial without the service of a subpoena by serving a notice to appear on  
9 party counsel at least 10 days “before the time required for attendance unless the court prescribes a  
10 shorter time.” Code Civ. Proc. § 1087(b). Tapia did not serve the witness with a subpoena, but  
11 rather only served the Notice on counsel for Edison on October 5, 2015 via email and on October 6,  
12 2013 via the eservice, demanding Edison’s witness to appear at trial on October 15, 2015, ten and  
13 nine calendar days later, respectively. Under Code of Civil Procedure § 1010.6, however, electronic  
14 service extends a period of notice by two court days, which thus extended the required notice period  
15 to October 1, 2015. Because Tapia did not obtain a court order allowing the Notice to be served on  
16 shortened time, the Notice was untimely. Because of its untimeliness, the Notice does not have the  
17 same effect as the service of a subpoena under Code of Civil Procedure § 1987(b), and cannot  
18 compel the presence any Edison witness at trial.

19 2. The Notice calls for improper lay and expert opinions. The Notice states that one of  
20 the two categories of testimony sought is the “interpretation” of business records previously  
21 produced to all parties by Edison pursuant to a subpoena served by Los Angeles County Waterworks  
22 District 40. These business records consist of Tapia’s billing history and the written results of an  
23 Edison “pump test,” a technical test of groundwater wells used to gauge their energy efficiency.  
24 Edison performed a pump test at the Tapia property in 2013. The first category of testimony thus  
25 goes beyond merely asking the witness to authenticate documents as a custodian of records, goes  
26 beyond the proper scope of lay opinion, and asks for improper expert opinion. A proper lay opinion  
27 must not go beyond the facts the witness personally observed or otherwise perceived or acquired  
28 through the senses. Evid. Code §170; *People v. McAlpin* (1991) 53 Cal.3d 1289, 1308. A proper lay

1 opinion must be within the general knowledge of lay people and taken from the witness' own  
2 perception; otherwise, only an expert's opinions are admissible. *Jambazian v. Borden* (1994) 25  
3 Cal. App. 4th 836, 848-849. The opinion must involve concepts within the common experience of  
4 most people and must not be based on analysis regarding scientific or technical expertise. *People v.*  
5 *Williams* (1992) 3 Cal. App. 4th 1326, 1332. Here, the "interpretation" of Edison records calls for  
6 an individual with knowledge of Edison billing procedures, the particular billing history of Tapia,  
7 the history of electrical usage by Tapia, technical expert knowledge of electrical systems, and  
8 technical expert knowledge of electrical pump tests. This knowledge: (1) is beyond the personal  
9 knowledge of the witness in the case of Tapia's electrical usage and billing history; (2) is beyond the  
10 general knowledge of lay people with regard to the significance of the items in Tapia's billing  
11 history and the technical knowledge of electrical system operations and pump tests; and (3) requires  
12 expert technical knowledge and analysis with regard to those same topics. Neither Mr. Koch nor any  
13 other Edison employee has been retained or designated as an expert witness by Tapia, and therefore  
14 cannot offer any expert opinions at trial. On these bases, Edison cannot be required to provide any  
15 "interpretations" of the business records it provided pursuant to a subpoena.

16         3.         The Notice calls for information that is beyond the personal knowledge of Edison and  
17 its employees. The second category of testimony in the Notice calls for testimony regarding the  
18 "location of any equipment connected to the electrical meter(s) referenced in the records produced  
19 (pursuant to the Los Angeles County Waterworks District 40 subpoena)." Edison has no personal  
20 knowledge of the facilities or equipment Tapia has chosen to connect to electrical power on its  
21 property or elsewhere, and therefore cannot offer any such testimony at trial. Evid. Code § 702.


22         4.         The Notice's demand for Edison to bring documents to trial that have already been  
23 produced by Edison to Tapia is unduly burdensome, oppressive, and unreasonably duplicative. The  
24 documents referenced in the Notice which Edison is demanded to bring to Court on October 15,  
25 2015 are documents Edison already produced in the litigation in response to a subpoena served on  
26 Edison by the Los Angeles County Waterworks District 40 on September 3, 2015. Edison produced  
27 these documents to Tapia and all parties via the eservice on September 16, 2015. Edison then  
28 provided a supplemental response to Tapia and all other parties via the eservice on October 6, 2015.

1 Accordingly, Edison produced the documents sought and Tapia has those documents in its  
2 possession. It would be unduly burdensome, oppressive, and unreasonably duplicative to require  
3 Edison to produce the documents again.

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DATED: October 9, 2015

EDWARD J. CASEY  
ROGER CERDA  
ANDREW BRADY  
**ALSTON & BIRD LLP**

  
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Andrew Brady  
Attorneys for Cross-Defendant  
**SOUTHERN CALIFORNIA EDISON COMPANY**

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**PROOF OF SERVICE**

I, Yolanda S. Ramos, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071.

On October 9, 2015, I served the document(s) described as **CROSS-DEFENDANT SOUTHERN CALIFORNIA EDISON COMPANY'S OBJECTIONS TO THE NOTICE TO APPEAR AND PRODUCE DOCUMENTS IN LIEU OF SUBPOENA SUBMITTED BY CHARLES TAPIA AND THE NELLIE TAPIA FAMILY TRUST** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.

BY ELECTRONIC MAIL: By posting the document listed above to the Santa Clara Superior Court website: [www.scefiling.org](http://www.scefiling.org) regarding the ANTELOPE VALLEY GROUNDWATER matter.

BY FEDERAL EXPRESS  UPS NEXT DAY AIR  OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by  FEDERAL EXPRESS  UPS  Overnight Delivery [specify name of service: ] with delivery fees fully provided for or delivered the envelope to a courier or driver of  FEDERAL EXPRESS  UPS  OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

[State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 9, 2015, at Los Angeles, California.

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YOLANDA S. RAMOS