

1 **RICHARD G. ZIMMER - SBN 107263**
2 **T. MARK SMITH - SBN 162370**
3 **CLIFFORD & BROWN**
4 **A Professional Corporation**
5 **Attorneys at Law**
6 **Bank of America Building**
7 **1430 Truxtun Avenue, Suite 900**
8 **Bakersfield, CA 93301-5230**
9 **(661) 322-6023**

10 Attorneys for Bolthouse Properties, LLC
11 and Wm. Bolthouse Farms, Inc.

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SANTA CLARA

14 * * *

15 COORDINATION PROCEEDING
16 SPECIAL TITLE (Rule 1550(b))

) Judicial Council Coordination Proceeding No.
4408

17 ANTELOPE VALLEY GROUNDWATER
18 CASES

) CASE NO. 1-05-CV-049053

19 INCLUDED ACTIONS:

20 LOS ANGELES COUNTY
21 WATERWORKS DISTRICT NO. 40 v.
22 DIAMOND FARMING COMPANY, et al.,
23 Los Angeles Superior Court Case No.
24 BC325201

) **BOLTHOUSE PROPERTIES, LLC and**
) **WM. BOLTHOUSE FARMS INC.'s**
) **OPPOSITION TO LOS ANGELES**
) **COUNTY WATERWORKS DISTRICT**
) **NO. 40's MOTION FOR AN ORDER (1)**
) **REQUIRING DISCLOSURE OF EX**
) **PARTE COMMUNICATIONS; (2)**
) **PRECLUDING INFORMATION**
) **PROTECTED BY THE MEDIATION**
) **CONFIDENTIALITY AS EVIDENCE; (3)**
) **ENJOINING FURTHER DISCLOSURE**
) **OF INFORMATION PROTECTED BY**
) **THE MEDIATION PRIVILEGE; AND (4)**
) **TO SHOW CAUSE RE IMPOSITION OF**
) **SANCTIONS AND OTHER**
) **APPROPRIATE RELIEF**

25 LOS ANGELES COUNTY
26 WATERWORKS DISTRICT NO. 40 v.
27 DIAMOND FARMING COMPANY, et al.,
28 Kern County Superior Court Case No. S-
1500-CV-254348

DIAMOND FARMING COMPANY, and
W.M. BOLTHOUSE FARMS, INC., v.
CITY OF LANCASTER, et al.,
Riverside Superior Court
Case No. RIC 344436 [c/w case no. RIC
344668 and 353840]

) DATE: May 13, 2013
) TIME: 9:00 a.m.

ROSAMOND COMMUNITY SERVICES
DISTRICT,
CROSS-COMPLAINANT,

///

1 COME NOW BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS,
2 INC. (hereinafter "Bolthouse") in opposition to Los Angeles County Waterworks District No.
3 40's Motion for an Order (1) Requiring Disclosure of Ex Parte Communications; (2)
4 Precluding Information Protected by the Mediation Confidentiality as Evidence; (3) Enjoining
5 Further Disclosure of Information Protected by the Mediation Privilege; and (4) to Show Cause
6 re Imposition of Sanctions and Other Appropriate Relief.

7 **INTRODUCTION**

8 The purveyor parties, including Los Angeles County Waterworks District No. 40, which
9 filed this Motion, entered into mediation with Justice Ronald Robie. Because of Justice
10 Robie's knowledge of water law and the recommendation of this court, District 40 and other
11 parties engaged in mediation. During this early mediation process with Justice Robie, District
12 40 provided the Court with information about the mediation process and ultimately requested
13 approval of a settlement agreement with the Willis Class. Numerous discussions also have
14 been conducted with the court regarding the settlement negotiations between District 40 and the
15 Wood Class.

16 The purveyor parties later requested that the remaining landowners also mediate with
17 Justice Robie. Once again, the Court encouraged this. The remaining landowners and parties
18 engaged in mediation with the purveyors for over a year. During the course of this lengthy
19 process, the Court requested updates as to the status of these settlement negotiations and
20 advised that it encouraged a settlement even if all parties could not agree. The Court advised
21 that even a seventy to eighty percent settlement would be potentially meaningful.

22 Numerous case management conferences were held over the course of this lengthy
23 mediation process and the Court was updated generally as to the status of mediation since the
24 status of mediation would affect potential issues for trial before the Court. Mediation was
25 discussed on many occasions with reference to how settlement of many parties on particular
26 issues would affect issues left to be tried in the Phase 4 Trial. The Court requested that parties
27 address the status of settlement negotiations in the context of case management conference
28 statements in order to determine the issues to be tried.

1 Following the mediation session on November 30, 2012, the Court was apprised that
2 roughly seventy-nine percent (79%) of the parties had agreed to settle or were neutral and
3 information was provided regarding an approximation of how much production in the
4 groundwater basin this covered. However, the terms of the partial settlement were not
5 disclosed including any potential allocation agreement. A true and correct copy of a transcript
6 of the proceedings is attached as Exhibit "A" to the Declaration of Richard G. Zimmer attached
7 hereto. At this hearing, with regard to comments made by attorney Sheldon Blum regarding
8 what was said at the mediation, this Court advised on page 14, lines 19 through 24,

9 "I am not interested in knowing what anybody said during the
10 course of the mediation procedure. That really is an inappropriate
11 reference in Mr. Blum's statement. I'm going to strike it so it's not
12 part of the record. That is his trial setting brief."

13 Thereafter, as the transcript of the proceedings made clear, the parties were careful not
14 to discuss what was said at the mediation while at the same time providing the Court
15 information about the potential number of parties settling and the potential claims which would
16 be settled if such a settlement was achieved and what issues remained to be tried in the Phase 4
17 Trial.

18 On page 42 of the transcript, this Court addressed Mr. Dunn's objection to making
19 reference to anything said at the mediation and the reference by Mr. Blum was stricken from
20 the record.

21 On page 71, lines 18 through 25, Mr. Dunn again raised the objection. The Court
22 correctly commented, "Well, I disagree with you, Mr. Dunn. We're not talking about the
23 mediation. We're talking about what is purported to be an agreement that is to be presented to
24 the Court." The Court further noted on page 72 that the Court was "disregarding anything that
25 was said and done in the mediation".

26 There was no significant discussion of mediation following the November 11, 2012
27 hearing until the filing of this motion on March 22, 2013, more than three months later. The
28 only thing new raised in the motion was alleged ex parte communications with the Court,
apparently based upon non-authenticated comments in a declaration that was reportedly sent to

1 the purveyor parties. In any event, the Court made clear at the last hearing, that the Court had
2 not received any ex parte communications with the exception of a letter received a long time
3 ago which was provided to all the parties.

4 I

5 **There Is No Need For The Court To Order Parties To Provide Alleged Information**
6 **Concerning The Anonymous Letter Since The Court Advised It Did Not Receive This**
7 **Letter Nor Any Other Ex Parte Communication Other Than The Letter Received**
8 **Long Ago By The Court.**

9 There is no basis for, nor any need for, any further orders regarding alleged ex parte
10 communications with the court.

11 II

12 **Although Mediation Statements, Writings And Things Said At Mediation Are**
13 **Privileged, And May Not Be Introduced Into Evidence, There Is No Preclusion From**
14 **Discussing The Status Of Settlement Discussions Generally With The Court So That**
15 **The Court Knows What Issues Need To Be Tried.**

16 The preclusion of statements made by parties or briefs filed by parties at mediation is
17 grounded in the Evidence Code, sections 1121 and 1119. Both sections provide that such
18 statements and writings are not “admissible or subject to discovery, nor may such statements or
19 writings be submitted to a Court or other adjudicative body for consideration on an issue.” The
20 purpose of these sections is to prevent admissions from being used as evidence against a party
21 on the trial of that issue. At the request of the court, the parties submitted general information
22 to the court regarding the status of settlement to determine necessary Phase 4 Trial issues.
23 None of the alleged information from the mediation has been offered as evidence of any
24 adjudicated issue nor submitted as evidence of any admission or other statement bearing on an
25 adjudicated issue.

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III

Although Forwarding A Letter Such As That Submitted To The Court By District 40 Should Not Have Occurred, There Is No Authentication Of The Letter As Being Submitted By Any Particular Landowner And The Clear Intent Of The Letter Is To Prejudice The Court Against A Landowner Or Landowners.

Although counsel for District 40 provides a copy of comments made on a pleading and includes an envelope apparently sent to Best, Best & Krieger, there is no authentication or verification of who made the interlineations on the document or who mailed the document.

The Court clearly indicated that it did not receive this document and had not considered the document in any way. Accordingly, the Court acted properly in disregarding the uncouth, juvenile and improper, interlineations in the document. As this court properly observed, cases are decided on the facts, unaffected by attempts to prejudice the court with matters which are not properly in evidence.

IV

District 40 Improperly Attempts to Connect the Unauthenticated Interlineated Pleading to Landowners Against Whom They Seek Sanctions, Without Any Basis Whatsoever That These Landowners Were Somehow Involved in Sending This Document.

Bolthouse clearly had nothing to do with the document submitted by the purveyors to this Court. Nevertheless, the purveyor parties apparently attempt to incite the Court by providing the Court with the interlineated document which makes untrue and crass remarks about the trial judge. The alleged discussion about mediation occurred over three months prior to the filing of this motion and the document submitted to the Court has nothing to do with the prior hearing.

Bolthouse did what it thought the Court was requesting in terms of keeping the Court apprised of the status of mediation so that the Court could decide what issues needed to be tried in the Phase 4 Trial. Any comments in the Case Management Conference Statement, are those of Mr. Zimmer, attorney for Bolthouse, and not those of any other party. Bolthouse contends that sanctions are not appropriate. Nevertheless, sanctions against parties which only generally

1 joined in the Bolthouse Case Management Statement recommending issues for the Phase 4 trial
2 over three months ago, would be inappropriate.

3 **CONCLUSION**

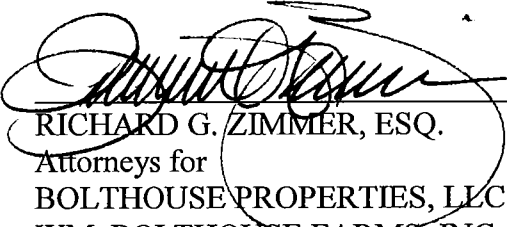
4 The late filed District 40 motion appears to have been filed in an attempt to
5 prejudice the Court against landowners and to disrupt settlement discussions.

6 The Court already advised that it has not received any ex parte communications other
7 than a letter received a long time ago which was provided to all the parties. Accordingly, there
8 is no basis for this motion. Discussions regarding the status of mediation were properly raised
9 in the context of what issues remain to be tried in Phase 4. Accordingly, sanctions are not
10 appropriate.

11
12 DATED: April 29, 2013

Respectfully submitted,
CLIFFORD & BROWN

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14
15 By:


16 RICHARD G. ZIMMER, ESQ.
17 Attorneys for
18 BOLTHOUSE PROPERTIES, LLC and
19 WM. BOLTHOUSE FARMS, INC.
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1 PROOF OF SERVICE (C.C.P. §1013a, 2015.5)
2 Antelope Valley Groundwater Cases
3 Judicial Counsel Coordination Proceeding No. 4408
4 Santa Clara County Superior Court Case No. 1-05-CV-049053

5 I am employed in the County of Kern, State of California. I am over the age of 18 and
6 not a party to the within action; my business address is 1430 Truxtun Avenue, Suite 900,
7 Bakersfield, CA 93301.

8 On April 29, 2013, I served the foregoing document(s) entitled:

9 **BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS INC.'s**
10 **OPPOSITION TO LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40's**
11 **MOTION FOR AN ORDER (1) REQUIRING DISCLOSURE OF EX PARTE**
12 **COMMUNICATIONS; (2) PRECLUDING INFORMATION PROTECTED BY THE**
13 **MEDIATION CONFIDENTIALITY AS EVIDENCE; (3) ENJOINING FURTHER**
14 **DISCLOSURE OF INFORMATION PROTECTED BY THE MEDIATION**
15 **PRIVILEGE; AND (4) TO SHOW CAUSE RE IMPOSITION OF SANCTIONS AND**
16 **OTHER APPROPRIATE RELIEF**

17 by posting the DOCUMENT listed above to the Santa Clara Superior Court website in regard
18 to the Antelope Valley Groundwater Matter. All parties listed on the Santa Clara Superior
19 Court in regard in regard to this matter are hereby incorporated herein by this reference.

20 Executed on April 29, 2013, at Bakersfield, California.

21 X (State) I declare under penalty of perjury under the laws of the State of
22 California that the above is true and correct.

23 

24 VICKI STREET

25 2455-2