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6 Attorneys for Cross-Defendants, Bolthouse Properties, LLC and Wm.
7 Bolthouse Farms, Inc.,

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 * * *

11 COORDINATION PROCEEDING) Judicial Council Coordination
12 SPECIAL TITLE (Rule 1550(b))) Proceeding No. 4408
13)
14 ANTELOPE VALLEY GROUNDWATER) CASE NO. 1-05-CV-049053
15 CASES)
16 INCLUDED ACTIONS:) OBJECTION TO PUBLIC WATER
17) SUPPLIER'S NOTICE OF MOTION AND
18) MOTION TO AMEND OR MODIFY
19) SEPTEMBER 11, 2007 ORDER
20) CERTIFYING PLAINTIFF CLASS
21)
22) DATE: March 3, 2008
23) TIME: 8:45 a.m.
24) DEPT: D-1, Room 534
25)
26) Location:
Los Angeles Superior Court
Central District
111 North Hill Street
Los Angeles, CA 90012
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])
ROSAMOND COMMUNITY SERVICES)
DISTRICT,)
CROSS-COMPLAINANT,)
)
)
)

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that cross-defendants, BOLTHOUSE
3 PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC., hereby object to
4 Public Water Supplier's Notice of Motion and Motion to Amend or
5 Modify September 11, 2007 Order Certifying Plaintiff Class.
6 These objecting parties have objected numerous times on numerous
7 occasions to class action treatment of the above-captioned
8 matter. Those previous objections, and the objections of other
9 counsel to class action, are herein incorporated by reference as
10 if set forth at length verbatim.

11 These objecting parties make the following further
12 observations identified by the corresponding number in the Public
13 Water Suppliers' Notice:

14 2. Determination of the basin's characteristics, including
15 yield is an improper trial phase. It lacks any triable cause of
16 action and lacks determination of any dispositive issue.
17 Nevertheless, if the Court selects the above-described trial
18 phase, no other trial phases should occur until there is proper
19 creation of sub-classes to avoid conflicts of interest between
20 pumpers and non-pumpers and other similar conflicts. These
21 objecting parties further object to bifurcation of the
22 prescriptive rights and physical solution issues. The Public
23 Water Suppliers have the burden of proof on these issues and they
24 should be tried together to conserve party and judicial
25 resources.

26

1 These objecting parties also object to the extent that the
2 Public Water Suppliers' Motion to Amend incorporates the Willis
3 proposed language expanding the definition of the Class.
4 Specifically, these objecting parties object to any class which
5 includes "the successors and assigns of Class members who become
6 owners of property in the Basin at a later date."

7 "A defendant class should be certified and
8 such an action tried only after the most
9 careful scrutiny is given to preserving the
10 safeguards of adequate representation, notice
and standing." (*Mark Simons, et al. v. Benjamin Horowitz, et al.* [1984] 151
Cal.App.3d 834, 845.)

11 "In attempting to define an ascertainable
12 class, the goal is to use terminology that
13 will convey sufficient meaning to enable
persons hearing it to determine whether they
14 are members of the class plaintiffs wish to
15 represent. Ascertainability is not a problem
16 limited to the determination of damages so
17 that it could be solved by decertifying the
18 class after the questions of liability have
19 been resolved. Rather, it goes to the heart
of the question of class certification, which
20 requires a class definition that is precise,
21 objective and **presently** ascertainable.
Otherwise, it is not possible to give
adequate notice to class members or to
determine after the litigation has concluded
who is barred from relitigating." (*Global Minerals & Metals Corporation v. The Superior Court of San Diego County; National Metals, Inc.* [2003] 113 Cal.App.4th 836; 7
Cal.Rptr.3d 28.) [Emphasis added.]

22 The proposed Willis Class is not currently ascertainable in
23 that it attempts to incorporate successors and assigns who later
24 acquire the property. This could and should, be properly cured
25 by a proper *in rem* action identifying all properties subject to
26 the adjudication. These objecting parties contend that this


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lawsuit cannot be properly adjudicated on an *in personum* class action basis.

DATED: February 15, 2008

Respectfully submitted,

CLIFFORD & BROWN

By: 
RICHARD G. ZIMMER, ESQ.
T. MARK SMITH, ESQ.
Attorneys for Cross-Defendant,
BOLTHOUSE PROPERTIES, LLC and
WM. BOLTHOUSE FARMS, INC.

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 not a
6 party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

7 On February 15, 2008, I served the foregoing document(s) entitled:

8 **OBJECTION TO PUBLIC WATER SUPPLIER'S NOTICE OF MOTION AND MOTION TO
9 AMEND OR MODIFY SEPTEMBER 11, 2007 ORDER CERTIFYING PLAINTIFF CLASS**

10 XX by placing the true copies thereof enclosed in sealed envelopes
11 addressed as stated on the attached mailing list.

12 — by placing _ the original, _ a true copy thereof, enclosed in a sealed
13 enveloped addressed as follows:

14 X **BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX
15 LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER
16 27, 2005.**

17 Executed on February 15, 2008, at Bakersfield, California.

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

20 — (Federal) I declare that I am employed in the office of a member of the Bar of
21 this Court at whose direction the service was made.

22 
23 NANETTE MAXEY
24 2455-2
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