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**I. INTRODUCTION**

Class Plaintiff Rebecca Lee Willis (“Willis”) respectfully submits this Objection And Response To Bolthouse Properties LLC’s (“Bolthouse”) Supplemental Objection To Motion For Order Granting Preliminary Approval Of Class Action Settlement And Approving Notice To The Class. Besides being grossly untimely, Bolthouse’s Supplemental Objections are wholly without merit. The proposed settlement handily meets the applicable standards, and the Court should grant Plaintiff’s Motion for Preliminary Approval of the Settlement (the “Motion”).

**II. ARGUMENT**

**A. Bolthouse’s Supplemental Objection Is Improper and Should Be Disregarded.**

This is a complex, multi-party case, in the context of which the parties and their counsel should be expected and required to follow at least the spirit of the applicable Code provisions. Bolthouse’s initial 3 page response to Plaintiff’s Motion for Preliminary Approval was filed and served on September 24, 2010, one day after the due date provided by Code of Civil Procedure Section 1008. We ignored that modest tardiness and responded on the merits. Not satisfied with one response, Bolthouse later filed an 8 page “supplemental objection” that raised many new arguments. The second response was filed seven (7) days after the prescribed due date under the Code. As explained below, Bolthouse’s new arguments are no more valid than the few issues it raised earlier. But, particularly in the context of a

1 complex case such as this, Bolthouse should not be permitted to disregard the Code  
2 and file multiple briefs on its own schedule. The Court should disregard Bolthouse's  
3 improper "supplemental" submission and instruct its counsel to comply with the  
4 Code.  
5

6 **B. Bolthouse's Supplemental Objections Are Without Merit.**

7 Willis responds below to the basic points that we understand Bolthouse to be  
8 raising in its shotgun supplemental objections. Initially, however, it is important to  
9 recognize the fundamental fact that Bolthouse (like AGWA and others) has no  
10 interest in protecting the Class' members' rights, but rather is threatened by the  
11 Settlement's recognition that the dormant landowners have meaningful rights.  
12 Thus, Bolthouse's arguments that the Settlement is unfair to the Class members  
13 should be seen for what they are – the arguments of a large agricultural producer  
14 that wants to maximize its use of the Basin's water and deprive the Class members  
15 of rights to that water. Further, many of Bolthouse's arguments are based on the  
16 misconception that the Class will cease to exist and/or that Class counsel will not  
17 represent the Class in further proceedings in this litigation. To be sure, counsel  
18 expect that the Class' role in many aspects of this matter will be minimized as a  
19 result of this Settlement; but we recognize that there may well be future new issues  
20 that involve the Class and work to be done on behalf of the Class. If, for example,  
21 Bolthouse or AGWA actually seek to subordinate the Class' rights and file a related  
22 pleading, rather than merely threaten to do so, counsel will protect the interests of  
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1 the Class. The Settlement clearly and unambiguously provides that the Court  
2 retains jurisdiction over the Settling Parties. And counsel do not intend or expect  
3 to withdraw (which would be subject to Court approval in any event). There are no  
4 legitimate concerns in that regard.  
5

6 **1. The Settlement’s Recognition of the Class’ Correlative Rights**  
7 **Does Not Bind Bolthouse or Other Non-Settling Parties.**

8 The Proposed Settlement was carefully crafted not to impinge on the rights of  
9 the non-settling parties, expressly providing in the proposed Final Judgment as  
10 follows: “As provided in the Consolidation Order, this Final Judgment shall not be  
11 construed to prejudice the rights of any of the Non-Settling Parties in the  
12 Consolidated Actions nor shall it prejudice the claims and defenses that the Settling  
13 Parties may assert with respect to such Non-Settling Parties.” ¶ 11. We believe  
14 that statement is clear and unequivocal and fully consistent with this Court’s prior  
15 rulings as well as applicable principles of law.  
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18 The proposed Settlement does not “settle correlative rights of the Willis  
19 Class.” Nothing in the Settlement precludes Bolthouse from seeking to subordinate  
20 the Class Members’ rights or contest the Class Members’ correlative rights. The  
21 Bolthouse parties need only to amend their pleading. It is noteworthy though that,  
22 although the Willis Class has been participating in these proceedings for almost 4  
23 years, neither Bolthouse nor other landowners have filed a pleading challenging the  
24 Class Members’ correlative rights. If they have an issue in this regard, they should  
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1 raise it. Contrary to Bolthouse’s contention, until some party challenges the Class’  
2 correlative rights, the Class need not affirmatively “prove their correlative rights,”  
3 especially given the fact that the Willis Class Members are not currently exercising  
4 those rights.  
5

6 **2. The Scope of the Settlement and Releases Is Appropriate.**

7 Bolthouse incorrectly argues that the “settlement purports to settle much  
8 broader issues than the [Willis] complaint asserts.” We fail to see the problem with  
9 a settlement agreement that settles and compromises issues related to but beyond  
10 those asserted in the pleadings. Such provisions are normal. In any event,  
11 Bolthouse ignores the fact that the Settlement properly relates to and resolves not  
12 simply the issues raised in the Willis Complaint, but also issues raised in the  
13 purveyors’ cross-complaint that could impact the Class. Only by doing so, can the  
14 Settling Parties fully and finally settle their differences. In short, the Settlement  
15 and releases properly compromise and release the various claims that were raised  
16 by and among all of the Setting Parties in their various pleadings.  
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19 **3. The Class Is Not Required to Participate in the Safe Yield Trial,**  
20 **Particularly Given the Fact of the Settlement.**

21 The Basin’s yield has been studied by numerous experts, and Class Counsel  
22 are confident that the Court will have more than adequate information before it  
23 (including the testimony of Bolthouse’s expert) to reach an appropriate  
24 determination of yield. By agreeing to be bound by the Court’s ultimate findings in  
25 that regard, Class Counsel have properly protected the interests of the Class and  
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1 have not interfered with the rights of Bolthouse or other non-settling parties.  
2 Bolthouse is free to prove the Basin's yield, and the Class will abide by the Court's  
3 findings in that regard. The Settlement is fair to all concerned.  
4

5 **4. The Settlement Is Fair and Consistent with California Law.**

6 Bolthouse argues without merit that the proposed Settlement is unfair and  
7 contrary to California law, quibbling with some of the definitions contained in the  
8 Stipulation. All of those terms are fairly defined and in a manner that is consistent  
9 with California law. Moreover, those definitions only bind the signatories to the  
10 Settlement. There will be no problem of inconsistent judgments. We recognize and  
11 expressly provided that this judgment may ultimately be merged into and  
12 superceded by an overall Physical Solution.  
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14 **5. Bolthouse's Remaining Arguments Are Without Merit.**

15 Apparently in an effort to preserve potential issues, Bolthouse raises a  
16 number of other arguments, all of which, for the reasons explained above, lack  
17 merit. We are happy to address any such arguments at the Hearing should the  
18 Court so desire.  
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**III. CONCLUSION**

For the foregoing reasons, as well as those set forth in Plaintiff's moving papers, we respectively request that the Court: overrule Bolthouse's objections and enter the proposed Order preliminarily approving the proposed Settlement. A revised form of Order reflecting new dates for the mailing of notice and scheduling a final fairness Hearing is submitted herewith.

Dated: November 12, 2010

KRAUSE KALFAYAN BENINK  
& SLAVENS LLP

*/s/Ralph B. Kalfayan*

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