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1984

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF LOS ANGELES

11 ANTELOPE VALLEY  
GROUNDWATER CASES

12 Included Actions:

13 Los Angeles County Waterworks District  
14 No. 40 v. Diamond Farming Co.  
Los Angeles County Superior Court  
15 Case No. BC 325201

16 Los Angeles County Waterworks District  
17 No. 40 v. Diamond Farming Co.  
Kern County Superior Court  
Case No. S-1500-CV-254-348

18 Wm. Bolthouse Farms, Inc. v.. City of  
19 Lancaster, Diamond Farming Co. v. City  
of Lancaster, Diamond Farming Co. v.  
20 Palmdale Water Dist.  
Riverside County Superior Court  
21 Consolidated Actions  
Case Nos. RIC 353 840, RIC 344 436,  
22 RIC 344 668

Judicial Council Coordination No. 4408

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

CASE MANAGEMENT STATEMENT  
BY DEFENDANT JUNG N. TOM,  
TRUSTEE OF THE SHENG  
IRREVOCABLE TRUST OF  
DECEMBER 27, 1984

Date: November 25, 2008  
Time: 10:30 a.m.  
Dept.: Santa Clara - Dept. 17  
Judge: The Honorable Jack Komar

23  
24 Pursuant to this Court's ORDER AFTER PHASE TWO TRIAL ON HYDROLOGIC  
25 NATURE OF ANTELOPE VALLEY entered on November 5, 2008, Defendant JUNG N. TOM, as  
26 trustee of the SHENG IRREVOCABLE TRUST OF DECEMBER 27, 1984 ("MR TOM"),  
27 previously sued as DOES 170 and 171 in the action filed in the Superior Court of California for the  
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1 County of Santa Clara, Case No. 105 CV 049053, hereby submits the following narrative Case  
2 Management Statement to address service of the class notices in these coordinated proceedings.

3 At the outset of this litigation, MR. TOM was encouraged — as were several other individual  
4 parties — to appear and file generic answers to the complaints which had been served in these  
5 coordinated proceedings. At the time, MR. TOM and his attorney were advised that, fairly soon  
6 thereafter, parties such as MR. TOM would be permitted to opt out of the everyday litigation by  
7 joining defendant or plaintiff class actions. MR. TOM and his attorney were further advised that  
8 filing the answer was nonetheless necessary to avoid the entry of defaults and to ensure that the  
9 Court obtained personal jurisdiction over all potentially interested parties.

10 On or about January 2, 2007, MR. TOM duly filed his generic Answer and tendered payment  
11 of his first appearance fees. Notwithstanding his general appearance, the generic Answer expressly  
12 alleged, “I do not intend to participate at trial or other proceedings unless ordered by the Court to do  
13 so.” (Tom Answer ln. 27 at 1 to ln. 1 at 2.) Since then, MR. TOM has appeared through counsel at  
14 multiple status conferences and certain motion proceedings. He has made every effort to minimize  
15 his participation in the coordinated actions. Nonetheless, MR. TOM has incurred over \$14,000.00 in  
16 attorneys’ fees and costs.

17 By order entered on or about September 11, 2007, the Court certified a plaintiff’s class which  
18 included individual property owners in the Basin who are not presently pumping water and who had  
19 not done so during the five years preceding January 18, 2006 (the “Non-Pumper Class”). MR. TOM  
20 believes he was and remains a member of the Non-Pumper Class. By order entered on or about May  
21 22, 2008, the Court modified the class definition for the Non-Pumper Class to exclude all persons  
22 who were already participating in the litigation unless they affirmatively elected to “opt in” to the  
23 Class to the extent they otherwise f[e]ll within the Class definition.” (5/11/08 Order ¶ 1(A) lns. 14-  
24 16 at 3.) On September 2, 2008, the Court certified a further “Small Pumpers Class” defined as  
25 property owners “that have been pumping less than 25 acre-feet per year on their property during  
26 any year from 1946 to the present.” (9/02/08 Order lns. 27-28 at 1 to ln. 1 at 2 .) The Small  
27 Pumpers Class excluded, *inter alia*, defendants in the litigation. (Id. ln. 2 at 2.)

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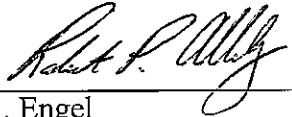
1 Throughout this litigation, MR. TOM has been assured that he would not be required to  
2 actively participate in the action or suffer a prejudicial default once the above classes, particularly  
3 the Non-Pumper Class, were certified. To the contrary, MR. TOM was assured the once the classes  
4 were certified and class notice served, he would be afforded the opportunity to opt in to the Non-  
5 Pumper Class; his Answer would be stricken without prejudice to his rights as a class member; and  
6 his rights would be ably defended and determined through the class action process. Nonetheless, for  
7 reasons that are not entirely clear, notice to the class members has not been served. Instead, the  
8 litigation has proceeded on the merits. Most recently, the Court concluded the phase two trial  
9 regarding the hydrologic nature of the Antelope Valley.

10 It is imperative that the class notices be served as soon as possible so that MR. TOM can be  
11 afforded the promised opportunity to opt in to the Non-Pumper Class; enjoy the benefits of the class  
12 action without the vulnerability of interlocutory or final judgments being set aside; and, perhaps  
13 most importantly, stop incurring the ongoing expense of having generally appeared. Indeed, MR.  
14 TOM has genuine concerns that this litigation cannot proceed further on the merits, lest  
15 adjudications — particularly those in favor of class members — are impaired or invalidated due to  
16 one-way intervention or other due process errors. See generally Fireside Bank v. Superior Court, 40  
17 Cal. 4th 1069, 1080-87 (2007)(error to grant judgment on the pleadings before class was certified  
18 and notice served because absent class members might elect to stay in a class after favorable merits  
19 rulings but opt out after unfavorable ones); accord Home Sav. & Loan Ass'n v. Superior Court, 42  
20 Cal. App. 3d 1006, 1010-11 (1974). For these reasons, MR. TOM respectfully requests that the  
21 Court direct that the class notices be served forthwith and, in any event, prior to any further  
22 adjudications regarding the merits of the parties' claims and defenses.

23 Dated: November 21, 2008

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25 By:

  
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