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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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**ANTELOPE VALLEY  
GROUNDWATER CASES**

Included Actions:  
Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co., Superior  
Court of California, County of Los  
Angeles, Case No. BC 325201

Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co., Superior  
Court of California, County of Kern, Case  
No. S-1500-CV-254348

Wm. Bolthouse Farms, Inc. v. City of  
Lancaster, Diamond Farming Co. v. City of  
Lancaster, Diamond Farming Co. v.  
Palmdale Water Dist., Superior Court of  
California, County of Riverside, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053

**REPLY BRIEF IN SUPPORT OF  
MOTION TO SET ASIDE DEFAULT**

Hearing Date: October 12, 2012

Time: 9:00 a.m.

Location: Dept. 1, Room 534  
111 North Hill Street  
Los Angeles, CA 90012

**I. INTRODUCTION**

It is undisputed that H&N DEVELOPMENT CO. WEST (“H&N West”) was purportedly served with process in the above-entitled action *by publication only*. It is undisputed that H&N West was never personally served and, in fact, did not learn that this lawsuit even existed until May of this year. LOS ANGELES COUNTY WATERWORKS

1 DISTRICT NO. 40 (the “County”) attempts to distort the law and the issues by erroneously  
2 suggesting that it was supposedly “diligent” in service.

3 The County makes the following arguments in support of its effort to deny  
4 H&N West its day in court:

- 5 ➤ A diligent attempt at service on a corporation is made when service is attempted  
6 on a corporate officer at his personal address alone, with no attempt whatsoever  
7 at the business address of the corporation or at the designated place for service  
8 of process (Opposition at 2:23-3:18, 5:10-12);
- 9 ➤ A diligent attempt at service on a corporation is made when the process server  
10 attempts service at any location so long as the process server has no reason to  
11 believe that a corporate officer will not be found there (Opposition at 3:15-16);
- 12 ➤ Publication of a summons may be made in any area where a corporation owns  
13 land, regardless of whether that corporation actually has a business address in  
14 that area and regardless of whether the plaintiff is actually aware that the  
15 corporation resides in a different county (Opposition at 4:6-12);
- 16 ➤ Even though the County concedes that H&N West had no actual notice of this  
17 lawsuit, H&N West was obligated to discuss in the Motion its officer’s  
18 newspaper-reading habits in order to have the default set aside (Opposition at  
19 5:6-8); and
- 20 ➤ A corporation has a duty to record new grant deeds upon a change of corporate  
21 name, and a delay in recording new grant deeds subjects the corporation to  
22 service of process at any location chosen by a plaintiff, regardless of the address  
23 for service of process on file with the Secretary of State (Opposition at 5:13-20).

24 The evidence shows that the County was not the least bit “diligent” and that the  
25 default must be set aside because the County’s purported service of process was defective.  
26 Despite California law unequivocally holding that service by publication is to “be utilized only  
27 as a last resort,” the County fails to address in its Opposition: (1) why it ignored the addresses  
28 for service of process set forth in H&N West’s Statement of Information filed with the

1 Secretary of State, and posted on the Secretary of State’s website, and instead chose to attempt  
2 service at the personal address of H&N West’s president; (2) why it failed to leave a copy of  
3 the Complaint at such address on any of the alleged ten service attempts, and why it failed to  
4 mail a copy of the Complaint to any address that it had for H&N West; and (3) why it chose  
5 not to publish notice in Stanislaus County, despite knowing that H&N West had its principal  
6 place of business there and despite the fact that Stanislaus County was the address for its agent  
7 for service.

8 It is appalling that the County – a public agency that ostensibly acts in the  
9 public’s interest – is attempting to deny H&N West its day in court to defend the rights of  
10 H&N West to its water. For the reasons set forth herein, the Court should grant H&N West’s  
11 motion to set aside the default.

## 12 II. LEGAL ARGUMENT

### 13 A. The Default Must Be Set Aside Because The County’s Service By Publication Is 14 Void As A Matter Of Law.

15 “If there is any situation in which strict compliance can reasonably be required,  
16 it is that of service by publication.” (*County of Riverside v. Sup. Ct. (Hill)* (1997) 54  
17 Cal.App.4th 443, 450; see also *Katz v. Campbell Union High School Dist.* (2006) 144  
18 Cal.App.4th 1024, 1034.) If the factual allegations in an affidavit supporting an application for  
19 service by publication turn out to be insufficient or false, service would be ineffective and any  
20 default judgment based thereon would be void. (*Olvera v. Olvera* (1991) 232 Cal.App.3d 32,  
21 41; *Transamerica Title Ins. Co. v. Hendrix* (1995) 34 Cal.App.4th 740, 742-3 [affidavit stated  
22 defendant's address was “unknown” but plaintiff admittedly knew defendant had a post office  
23 box in Calif. at which it could be served by mail].) Errors or defects in the affidavit can be  
24 challenged by motion to set aside the default judgment based on service by publication. (*Id.*)

25 The omissions in the County’s Opposition highlight that the County was far  
26 from “strict compliance” with the statutory requirements for service by publication.

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1           **1.     The County Fails To Explain Why It Did Not Or Could Not Ascertain the**  
2           **Designated Addresses For Service Upon H&N West Prior To Service By**  
3           **Publication.**

4           Code of Civil Procedure Section 415.50(b), the code section defining service of  
5           process by publication, states in relevant part that the court shall order summons to be  
6           published in a newspaper “most likely to give actual notice” and further require a copy of the  
7           summons and complaint to be “mailed to such party if his address is ascertained before  
8           expiration of the time prescribed for the publication of the summons.”

9           In *Olvera v. Olvera, supra*, at 36, the plaintiffs had obtained a default judgment  
10          against the defendant after obtaining substituted service by publication in a Riverside  
11          newspaper. The defendant moved to set aside the judgment over a year later under CCP  
12          section 473.5. (*Id.*) The declarations in support of the plaintiff’s application for service by  
13          publication averred that the defendant no longer lived in Riverside County, and could not be  
14          found, and had left no forwarding address. (*Id.* at 35.) The court granted the defendant’s  
15          motion to set aside the default judgment, stating that “strict compliance” with the statutes was  
16          required, and “[i]t is not actual ignorance that permits resort to service by publication, but the  
17          inability to accomplish personal service despite the exercise of reasonable diligence.” (232  
18          Cal.App.3d at 41, 42.) The *Olvera* court further criticized the choice of newspaper in which  
19          service was published, noting that the plaintiff provided nothing in his affidavit supporting the  
20          use of that newspaper. (*Id.* at 42-43.)

21          Here, the only evidence offered by the County is that it *attempted* personal  
22          service at the home address of the president of H&N West, Wendell Naraghi, on Jones Road in  
23          Escalon prior to resorting to service by publication. Nowhere in its Opposition does the  
24          County explain (1) why in 2008 it believed Wendell Naraghi could be served at such address,  
25          (2) why it ignored, or did not bother looking up, the addresses listed on the Statement of  
26          Information filed with the Secretary of State, or (3) why it ignored, or did not bother looking  
27          up, the address listed on the Secretary of State’s website for H&N West’s agent for service of  
28          process. In the words of the Court of Appeal in *Olvera*, the County has failed to show an

1 “inability to accomplish personal service despite the exercise of reasonable diligence.” (*Id.* at  
2 42.)

3       2.     **The County Made No Diligent Efforts to Serve H&N West and Misled the**  
4             **Court in Its Application to Serve by Publication.**

5             The County claims that it made “diligent efforts” to serve H&N West but this  
6 claim is not supported by its own evidence. The declaration of Jeffrey Dunn states that the law  
7 firm for the County investigated the identity of the landowners. (Decl. J. Dunn ¶ 2.) He then  
8 states that his firm hired a process server to locate the agent for service of process and attempt  
9 service. (Decl. J. Dunn ¶ 4.) Mr. Dunn does not explain why the process server attempted  
10 service at the Escalon address on Jones Road. The County does not provide a declaration from  
11 the process server that shows where the Jones Road address came from in 2008 or why the  
12 County believed Wendell Naraghi could be located there. Why the County attempted to serve  
13 H&N West at the Escalon location remains a mystery. In the absence of such evidence, the  
14 County has failed to show it made diligent efforts to serve H&N West.

15             In an effort to obscure its failures, the County resorts to making a misleading  
16 statement in its Opposition, where it refers to the Escalon address where service was attempted  
17 as the “designated Escalon address” for H&N West. (Opposition at 2:8-9.) But the County has  
18 not produced any corporate documents that “designate” the Escalon address as having any  
19 significance for H&N West.

20             In contrast, H&N West provided this Court with the relevant Statements of  
21 Information filed with the Secretary of State for H&N West at the time service was attempted.  
22 These Statements show that the Oakdale address in Modesto was the designated address for  
23 service as well as the business address for H&N West. The County’s efforts at service cannot  
24 be described as “diligent” where the County ignored the publicly accessible information on  
25 where H&N West could be served and, instead, chose some other location for its service  
26 attempts.

27             Oddly, the County asserts that “[t]he process server had no reason to believe  
28 that Mr. Naraghi could not be located at the Escalon address.” (Opposition at 3:15-16.) The

1 County appears to be saying that it would be reasonable for the process server to attempt  
2 service at *any* location so long as the process server did not have a reason to believe Mr.  
3 Naraghi would not be there. The County's proposed standard raises serious due process  
4 concerns.

5 The County also does not address the fact that it misled the Court in its  
6 application for publication, where the County represented that it attempted service on the  
7 business office of H&N West. Confronted with the evidence presented in the Motion showing  
8 that these locations were in Modesto rather than Escalon, according to publically available  
9 documents, the County is now deafeningly silent in its Opposition as to why it believed the  
10 representations made in the application for publication were true. Instead, the County  
11 contradicts its own application by now stating that the address where service was attempted  
12 was the *personal residence* of a corporate officer. Is the County to be believed in its  
13 application or now in its Opposition? The false statements in the application for publication  
14 alone provide sufficient grounds to grant the motion to set aside the default.

15 **3. H&N West Owed No Duty to Update Its Tax Records or Record a New**  
16 **Grant Deed.**

17 Backed into a corner, the County attempts to shift its "diligence" requirement  
18 onto H&N West by assuming—without authority—that H&N West has a duty to update its tax  
19 records so that plaintiffs may locate and serve H&N West. (Opposition at 5:16-18.) The  
20 reason that the County cites no authority for this proposition is that there is none. H&N West  
21 filed its required Statements of Information with the Secretary of State notifying the world  
22 where H&N West could be served. The County chose to ignore this information and attempted  
23 service at some other location.

24 Likewise, the County appears to argue that H&N West should have recorded a  
25 grant deed to "H&N Development Co. West, Inc." following its change of corporate name  
26 more quickly than it did to avoid confusion arising from the name change. This argument is  
27 beside the point because the County did not attempt to serve either "H&N Development Co.,  
28 Inc." or "H&N Development Co. West, Inc." at the addresses designated in their Statements of

1 Information. The County was never on the correct path for service, regardless of any claimed  
2 confusion over the corporate name, and now attempts to “back into” its claim of confusion.

3       **4. The Failure to Attempt Service at H&N West’s Designated Address Shows**  
4       **the Lack of Diligent Efforts to Serve and No Neglect by H&N West Has**  
5       **Been Shown**

6       In short, the County did not exercise due diligence in locating the proper  
7 addresses for service upon H&N West, nor can it show an “inability to accomplish personal  
8 service despite the exercise of reasonable diligence.” Before resorting to the “last resort” of  
9 service by publication, the County apparently did not even bother to check the address  
10 information on file with the Secretary of State, and never bothered to effectuate service for  
11 H&N West upon the Secretary of State. To obtain the order for publication, the County  
12 misrepresented to this Court that it attempted service upon the “business address” of H&N  
13 West. The County’s failures and misrepresentations are a far cry from “strict compliance” with  
14 the statutes.

15       Although the County has attempted to shift its burden to H&N West, the fact  
16 remains that the County has not disputed that H&N West had no actual notice of this case  
17 before its default was taken. Because H&N West had no actual notice of the lawsuit, it could  
18 not have “avoided” service or committed “inexcusable neglect” in failing to timely respond  
19 before the default. Moreover, H&N West was not neglectful in providing notice to the world  
20 regarding how service of process should be made. H&N West filed an amendment with the  
21 Secretary of State formally changing its name prior to the County’s attempt at service. H&N  
22 West also filed Statements of Information with a designated address for service of process,  
23 which the County ignored. H&N West should not be blamed for the County’s own neglect.

24       **5. The County Fails To Explain Why It Did Not Mail The Summons And**  
25       **Complaint To H&N West and Relied Solely on Publication.**

26       Service by publication is not adequate notice for due process purposes for  
27 defendants whose whereabouts are known, and who therefore could be notified by means such  
28 as personal service or mail. (*Mennonite Board of Missions v. Adams* (1983) 462 U.S. 791, 795;  
see also *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478, 491.) If a

1 defendant's address is ascertainable, some other method of service must be employed “because  
2 constitutional principles of due process of law, as well as the authorizing statute, require that  
3 *service by publication be utilized only as a last resort.*” (*Watts v. Crawford* (1995) 10 Cal.4th  
4 743, 749 n5. [emphasis added].) Service by mail under Code of Civil Procedure § 415.30 is  
5 “another manner of service” within the meaning of § 415.50. Therefore, if a defendant's  
6 mailing address in California is known—even if it is only a post office box—reasonable  
7 attempts must be made to serve defendant by mail pursuant to § 415.30 before seeking an order  
8 for publication of summons. (*Transamerica Title Ins. Co. v. Hendrix* (1995) 34 Cal.App.4th  
9 740, 745.)

10 Here, the County’s position is simple – it was unsuccessful in its ten attempts at  
11 personally serving the president of H&N West at his personal residence, and therefore H&N  
12 West should be denied its day in court. Apparently, the County did not bother leaving a copy  
13 of the Summons and Complaint at the residence of Wendell Naraghi during any of those ten  
14 service attempts, nor did the County ever attempt to effectuate service by mail at any address  
15 that it had for H&N West (including the addresses mentioned above that it should have had if it  
16 had done its due diligence). If service by publication is to “be utilized only as a last resort,” the  
17 County cannot merely rely upon failed personal service attempts, without effectuating service  
18 by mail to at least the address known by the County, prior to resorting to service by  
19 publication.

20 **6. Publication In The Newspapers Chosen By The County Was Not “Most**  
21 **Likely to Give Actual Notice.”**

22 The statutory requirement codified in Code of Civil Procedure § 415.50(b),  
23 requiring that service by publication be in a newspaper “most likely to give actual notice,” is  
24 “not met if plaintiffs *know* defendant is not in the locale where the newspaper is published.”  
25 (Rylaarsdam et al., Cal. Practice Guide: Civ. Proc. Before Trial (The Rutter Group 2012), at ¶  
26 4:269, citing *Olvera v. Olvera* (1991) 232 Cal.App.3d 32, 43.)

27 Here, the County believed H&N West was located in Stanislaus County, but did  
28 not serve by publication in Stanislaus County. Instead, the County asserts that it may publish



1 where the property at issue was located, even if it is aware that the landowner is a corporation  
2 located in another county. (Opposition at 4:6-12.) This is nonsensical. If the legislature  
3 desired to allow publication in a newspaper in a county in which the party to be served owns  
4 land, regardless of whether such publication “is most likely to give actual notice,” section  
5 415.050 would have been written differently. Owning property within a county does not  
6 subject the landowner to service by publication within that county if that publication is not  
7 likely to give actual notice.

8 **C. The Proposed Answer to Complaint of H&N West**

9 In this complex matter, the Court has provided prospective cross-defendants  
10 with a sample form answer to the cross-complaint. H&N West intends to adopt the sample  
11 answer in response to the cross-complaint. Accordingly, there has been no prejudice to the  
12 County. H&N West is attaching a copy of the proposed answer to this Reply as **Exhibit C**.

13 **III. CONCLUSION**

14 The default must also be set aside because the County’s service by publication  
15 is void as a matter of law. Despite California law unequivocally holding that service by  
16 publication is to “be utilized only as a last resort,” the County fails to explain: (1) why it  
17 ignored the addresses for service of process set forth in H&N West’s Statement of Information  
18 filed with the Secretary of State, and posted on the Secretary of State’s website, and instead  
19 chose to dig up and attempt service at the personal residential address of H&N West’s  
20 president; (2) why it failed to leave a copy of the Complaint at such address on any of the  
21 alleged ten service attempts, and why it failed to mail a copy of the Complaint to any address  
22 that it had for H&N West; and (3) why it chose not to publish notice in Stanislaus County,  
23 despite knowing that H&N West had its principal place of business there and despite the fact  
24 that Stanislaus County was the address for its agent for service. The County went so far as to  
25 mislead this Court in its application for service by publication by misrepresenting that it  
26 attempted service at H&N West’s “business address.” These facts do not come close to the  
27 “strict compliance” required by the law. H&N West simply asks for its day in court, and  
28

1 respectfully requests that this Court grant its Motion and set aside the default and deem filed  
2 the attached answer to the cross-complaint.

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5 Date: September 28, 2012

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