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(SPACE BELOW FOR FILING STAMP ONLY)

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9 Side Park Mutual Water Co., Shadow Acres Mutual Water Co., Antelope Park Mutual Water
10 Co., Averydale Mutual Water Co., Sundale Mutual Water Co., Evergreen Mutual Water Co.,
11 Aqua J Mutual Water Co., Bleigh Flat Mutual Water Co., Colorado Mutual Water Co.,
12 Sunnyside Farms Mutual Water Co., Land Projects Mutual Water Co., Tierra Bonita Mutual
13 Water Co. and Landale Mutual Water Co.; **collectively known as A.V. United Mutual Group**

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

16 **ANTELOPE VALLEY**
17 **GROUNDWATER CASES**

Judicial Council Coordination Proceeding
No. 4408

18 Included Actions:
19 Los Angeles County Waterworks District
20 No. 40 v. Diamond Farming Co., Superior
21 Court of California, County of Los Angeles,
22 Case No.: BC 325201;

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**A.V. UNITED MUTUAL GROUP'S
WRITTEN ARGUMENT AGAINST
PROPOSED AMENDED CLASS
CERTIFICATION ORDER**

23 Los Angeles County Waterworks District
24 No. 40 v. Diamond Farming Co., Superior
25 Court of California, County of Kern, Case
26 No.: S-1500-CV-254-348;

27 Wm. Bolthouse Farms, Inc. v. City of
28 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

DATE: March 28, 2008
TIME: 11:00 a.m.
DEPT: 17C
JUDGE: Hon. Jack Komar
Coordination Trial Judge

29 This Document Relates To:

30 REBECCA LEE WILLIS, on behalf of
31 herself and all others similarly situated,
32 Plaintiff,

33 vs.

34 LOS ANGELES COUNTY
35 WATERWORKS DISTRICT NO. 40, et al;
36 Defendants.

37 Case No. BC 364553

1 A.V. UNITED MUTUAL GROUP respectfully submits the following written argument
2 against the so-called Public Water Suppliers' ("Suppliers") Motion to amend the "Class
3 Certification Order" herein.¹ Simply put, it would be an abuse of discretion for the court to
4 approve the proposed Amended Class Certification Order for the same reason it was an abuse of
5 discretion for the court to approve the original class certification order herein. Neither the
6 original order nor the proposed amended order **are supported by any evidence whatsoever.**

7
8 Despite requests by several parties for the court to hold **evidentiary hearings** before
9 ruling on the various class proposals, the court has failed to hold one. To be sure, different
10 parties herein have filed many documents containing arguments by counsel advocating or
11 opposing various proposals for a plaintiffs' class.² But arguments by counsel are not evidence.
12 *Beagle v. Vasold* (1966) 65 Cal2d 166. Likewise, unsubstantiated opinions and concerns are not
13 substantial evidence. *Gentry v. Murrieta* (1995) 36 Cal.App.4th 1359, 1422-1423.

14
15 At this point of time in these consolidated cases, the court is considering whether it
16 should certify a plaintiffs' class. Certainly, this is something that the court can consider.
17 However, based upon the state of the record before the court at this time, it would be prejudicial
18 error for the court to certify any plaintiffs' class.

19 In *J.P. Morgan v. Superior Court* (2003) 113 Cal.App.4th 195, the Court of Appeal
20 stated that: The burden is on the party seeking certification to establish the existence of both an
21 ascertainable class and a well-defined community of interest among the class members. It is the
22 moving party's burden to show that questions of law or fact predominate over the questions of
23 law or fact predominate over the questions affecting the individual members. The issue of
24

25
26 ¹ A.V. does not concede that the original Class Certification Order herein is valid.

27
28 ² There was even a proposal for a defendants' class.

1 community of interest is determined on the merits and the (moving party). ³ *must establish the*
2 *community as a matter of fact.* In summary, it does not matter if some evidence relevant to a
3 class action determination may also be relevant to the merits of the case. (*Id.* At p.223-224)

4
5 In *J. P. Morgan*, supra, at p. 225, the Court of Appeal also stated:

6 “[We] must consider whether the record contains substantial
7 evidence to support the trial court’s preponderance finding, **as**
8 **a certification ruling not supported by substantial evidence**
9 **cannot stand.**” [Emphasis supplied].

10
11
12 “Substantial” evidence means that evidence must be of ponderable legal significance. It
13 must be reasonable in nature, credible, and of solid value. ⁴*County of Riverside v. City of*
14 *Murrieta* (1998) 65 Cal.App.4th 616, 627.

15 A.V. does not contend that, following a complete evidentiary hearing, that this court will
16 be unable to certify some groups of non-producers or producers as a “class”. However, at the
17 present time, there is no evidence in the record that would allow this court to certify any class. If
18 the court nevertheless does so, it will be a reversible error.

19 Dated: March 28, 2008

COVINGTON & CROWE, LLP

20 By: 

ROBERT E. DOUGHERTY

WILLIAM A. HAUCK

Attorneys for Cross-Defendants and Cross-
Complainants A.V. United Mutual Group

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22
23
24
25 ³ Normally a plaintiff would be the moving party. However, in this case, it appears that the “moving parties” are
the defendants whom Willis is suing.

26 ⁴ Determination of the issue of whether a trial court’s decision is supported by substantial evidence is the function
27 of the reviewing court. Except in special circumstances, Evidence Code section 115 requires that the trial court, in
28 making factual findings, apply the preponderance of evidence burden of proof. *Wollersheim v. Church of*
Scientology International (1999) 69 Cal. App.4th 1012.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is Covington & Crowe, LLP, 1131 West Sixth Street, Suite 300, Ontario, California 91762.

On March 28, 2008, I served the foregoing document described as
**A.V. UNITED MUTUAL GROUP'S WRITTEN ARGUMENT AGAINST PROPOSED
AMENDED CLASS CERTIFICATION ORDER** on the interested parties in this action:

☒ by posting the document listed above to the Santa Clara County Superior Court e-filing website under the Antelope Valley Groundwater matter pursuant to the Court's Order dated October 27, 2005.

☐ by placing ☐ the original ☐ a true copy thereof enclosed in a sealed envelope addressed as follows:

☐ BY MAIL

☐ * I deposited such envelope in the mail at Ontario, California. The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Ontario, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE** I delivered such envelope by hand to the offices of the addressee.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 28, 2008, at Ontario, California.


DOLORES C. CRUZ