

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
MALISSA HATHAWAY McKEITH, SB# 112917

2 E-Mail: [mckeith@lbbslaw.com](mailto:mckeith@lbbslaw.com)

JOSEPH SALAZAR, JR., SB# 169551

3 E-Mail : [salazar@lbbslaw.com](mailto:salazar@lbbslaw.com)

JACQUELINE MITTELSTADT, SB#172188

4 E-Mail: [mittelstadt@lbbslaw.com](mailto:mittelstadt@lbbslaw.com)

KIMBERLY A. HUANGFU, SB# 252241

5 E-mail: [huangfu@lbbslaw.com](mailto:huangfu@lbbslaw.com)

221 North Figueroa Street, Suite 1200

6 Los Angeles, California 90012

Telephone: 213.250.1800

7 Facsimile: 213.250.7900

8 Attorneys for ANAVERDE LLC

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SANTA CLARA**

11 **ANTELOPE VALLEY GROUNDWATER**  
12 **CASES:**

13 **Included Actions:**

14 Los Angeles County Waterworks District No.

40 v. Diamond Farming Co.

Superior Court of California

15 County of Los Angeles, Case No. BC325201

16 Los Angeles County Waterworks District No.

40 v. Diamond Farming Co.

17 Superior Court of California

County of Kern, Case No. S-1500-CV-254-

18 348

19 Wm. Bolthouse Farms, Inc. v. City of  
Lancaster

20 Diamond Farming Co. v. City of Lancaster

Diamond Farming Co. v. Palmdale Water Dist.

21 Superior Court of California

County of Riverside, consolidated actions

22 Case Nos. RIC 353840, RIC 344436,

23 RIC 344668

Judicial Council Coordination  
Proceeding No. 4408

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

**CROSS-DEFENDANT ANAVERDE LLC's  
OPPOSITION TO MOTION TO QUASH  
TRIAL SUBPOENA OF N. THOMAS  
SHEAHAN**

**Date:** October 31, 2008

**Time:** 9:00 a.m.

**Dept.:** 17C

**Phase 2 Trial:** November 3, 2008

**Time:** 9 a.m.

**Location:** LASC, Dept. 1

26 **INTRODUCTION**

27 Bolthouse Properties, LLC's and Wm. Bolthouse Farm's Inc.'s (collectively "Bolthouse")  
28 designated rebuttal expert N. Thomas Sheahan is scheduled to enjoy a large 70<sup>th</sup> birthday with

1 eighteen of his family members in Hawaii from Nov. 3, 2008 through Nov. 14, 2008. (Declaration  
2 of N. Thomas Sheahan in Support of Bolthouse Properties, LLC's and Wm. Bolthouse Farm's  
3 Inc.'s Motion to Quash Trial Subpoena of N. Thomas Sheahan ("Sheahan Decl.") ¶¶ 3, 4.)  
4 Anaverde, LLC ("Anaverde") does not wish to interfere with this joyous celebration. However, to  
5 proceed with the completion of trial absent Mr. Sheahan's personal appearance, violates the legal  
6 requirements of a party's right to deposition, right to cross-examine a witness at trial, the rules  
7 regarding the use of video testimony at trial, and the rules regarding the use of deposition  
8 testimony in lieu of live testimony.  
9

10 Anaverde respectfully renews its requests that all parties, the court and the witness are  
11 available on Nov. 17, 2008. Trial reconvene on that date to allow Mr. Sheahan to testify and to  
12 reduce prejudice to Anaverde. Mr. Zimmer, counsel for Bolthouse, informed the Court that he  
13 preferred to have Mr. Sheahan provide live testimony, which could occur subsequent to his return  
14 from his birthday celebration. (Declaration of Kimberly Huangfu In Support of Anaverde's  
15 Opposition To Motion To Quash Trial Subpoena Of N. Thomas Sheahan ("Huangfu  
16 Declaration"), attached as Exhibit 1, ¶ .) Anaverde repeatedly requested continuance of this trial  
17 date until Nov. 17, 2008. The Court previously advised the parties it was available on Nov. 17,  
18 2008. Mr. Sheahan returns from his vacation on Nov. 14, so he too would be available on Nov.  
19 17, 2008.  
20

21 Such a result is further warranted because Bolthouse' assertions in its Motion to Quash that  
22 Anaverde "will have" an opportunity to depose AND to cross-examine Mr. Sheahan are not true.  
23 (Mot. To Quash 5:9-10; 8:10-12, 14-17, 18-21; 9:19-25.) Anaverde was not afforded an  
24 opportunity to depose Mr. Sheahan at all. (Huangful Decl. ¶ 13; Antelope Valley Groundwater  
25 Adjudication Sheahan Rough Depo Transcript 102708, 10/28/08 ("Sheahan Rough Depo.")  
26 Exhibit 2, 1:25, 2-5.) Additionally, due to the Court's denial of Anaverde's Motion to Continue  
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1 the Trial Date, Anaverde's Trial counsel was unavailable to cross examine Mr. Sheahan, thereby  
2 prejudicing Anaverde. (Sheahan Rough Depo. 1, 4-6.) Finally, even despite Anaverde's substitute  
3 attorney's (who is legally blind) best efforts, Anaverde was unable to complete its cross-  
4 examination within the Bolthouse-established arbitrary timeframes.

5  
6 To grant Bolthouse' Motion to Quash, this Court would endorse a complete circumvention  
7 of numerous Codes of Civil Procedure requirements all of which are intended to protect the rights  
8 of respective parties' rights. While sensitive to Mr. Sheahan's celebration, Anaverde's due process  
9 rights mandate that Mr. Sheahan be made available to testify at trial. Anaverde is willing to  
10 modify the subpoena date to any future date convenient to the Court, all parties and Mr. Sheahan.  
11 Anaverde recommends Nov. 17, 2008 as that alternative date.

#### 12 STATEMENT OF FACTS

13  
14 Mr. Sheehan was previously properly noticed to appear for a deposition and production of  
15 documents. (Huangfu Decl. ¶ 4.) All parties agreed that Mr. Sheehan's deposition would proceed  
16 on Oct. 1, 2008. (Huangfu Decl. ¶ 15.) In an artful attempt to not produce Mr. Sheehan for  
17 deposition, Bolthouse de-designated Mr. Sheehan as an expert. (Huangfu Decl. ¶ 15.) Bolthouse  
18 unilaterally took the deposition of Mr. Sheehan previously off-calendar. (Huangfu Decl. ¶ 15.) At  
19 the time, Anaverde did not object, despite its desire to depose Mr. Sheehan, only because it relied  
20 on Bolthouse' promise that should they later decide to call Mr. Sheehan as a witness at trial,  
21 Bolthouse would honor and respect Anaverde's right to depose him, and would present Mr.  
22 Sheehan as a witness prior to trial. (Huangfu Decl. 10.) This Court should be aware that the  
23 current situation which is causing prejudice to Anaverde is the direct result of i) Bolthouse  
24 unilateral act of failing to produce a witness for a properly scheduled deposition, and ii)  
25 Anaverde's courtesy in allowing the deposition to be taken off calendar in reliance on Bolthouse  
26 promise that no prejudice would result: Anaverde could later depose the witness prior to trial. To  
27 avoid Court sanctioned sand-bagging, the Motion to Quash must be denied. Instead, the Court may  
28 modify the appearance date of Mr. Sheehan's subpoena.

1 During Anaverde's Ex Parte Motion to Compel Discovery Responses from the District,  
2 heard on approximately Sept. 22, 2008, the Court informed Anaverde that it's case would  
3 commence on approximately Oct. 14, 2008. (Huangfu Decl. ¶ 2.) As a result, Anaverde's trial  
4 counsel had no conflicts with the proposed trial calendar. (Huangfu Decl. ¶ 3.) Similarly,  
5 Bolthouse did not raise any concern that their possible expert would be unavailable for trial at any  
6 time. (Huangfu Decl. ¶ 4.)

7 Merely three days prior to trial, on Oct. 3, 2008, for the first time, Bolthouse notified all  
8 parties of its intention to call Mr. Sheahan as a rebuttal witness for trial. (Huangfu Decl. ¶ 17.) In  
9 response, Anaverde immediately informed Bolthouse of its intent to depose Mr. Sheahan pursuant  
10 to Bolthouse prior representations that it would allow Anaverde to do so, prior to the time of trial.  
11 (Huangfu Decl. ¶ 18.) Instead of responding, and in contravention of it's prior promises on which  
12 Anaverde expressly relied, Bolthouse posted a notice that the deposition transcript would be used  
13 in lieu of live testimony. (Huangfu Decl. ¶ 16.) Anaverde's right to depose the witness prior to  
14 trial would successfully be circumvented by Bolthouse's actions.

15 On the fourth day of trial, the court apprised the parties for the first time that it would be  
16 dark the week of Oct. 13, 2008. The Court's proposed alternative trial dates all conflicted with  
17 Anaverde trial counsel Joseph Salazar's trial calendar. (Huangfu Decl. ¶ 5.) The Court denied  
18 Anaverde's verbal entreaties to continue the matter beyond Nov. 3, 2008. (Huangfu Decl. ¶ 6.)  
19 Bolthouse also apprised the Court that Mr. Sheehan was unavailable from Nov. 3, through Nov.  
20 14, 2008. (Huangfu Decl. ¶ 7.) The Court advised the parties to essentially meet and confer  
21 regarding this scheduling conflict. (Huangfu Decl. ¶ 8.) During a conference to schedule  
22 witnesses, heard on Oct. 24, 2008, the Court directed counsel for Bolthouse to follow the Code  
23 requirements regarding the use of video in trial. To date, this has not occurred. (Huangfu Decl. ¶  
24 9.)

25 On Oct. 27, 2008, at the commencement of what was supposed to be Anaverde's  
26 deposition of Mr. Sheahan, counsel for Bolthouse refused to allow a deposition prior to his  
27 "leading the witness" on the record through a thorough direct-examination, asserting this was the  
28 "Court approved process." (Sheahan Rough Depo. 3:6-10.) Anaverde disagrees that the Court

1 approved a process wherein which a deposition would NOT occur. As a result, with the  
2 commencement of "direct examination" by counsel for Bolthouse, Anaverde was materially  
3 prejudiced and was deprived of its opportunity to "take first shot" at the witness in a deposition,  
4 prior to counsel leading him through a pre-prepared direct examination.

5 In fact, not only was Anaverde denied its right to depose Mr. Sheahan, but in light of  
6 Bolthouse actions during the alleged deposition, Anaverde was also deprived of its right to "cross-  
7 examine" the witness (assuming arguendo that questioning a witness for the first time after a  
8 "direct examination" has been performed by an attorney other than trial counsel constitutes a  
9 "cross-examination—a proposition to which Anaverde objects). (Sheahan Rough Depo. 1:25, 2-5.)  
10 Bolthouse counsel exhausted in excess of one full day, in conducting his own questioning of his  
11 witness. (Huangfu Decl. ¶ 13.) When it came time for Anaverde to question Mr. Sheehan,  
12 sometime after 2 p.m. on the second day, Bolthouse demanded that Anaverde proceed with the  
13 deposition through completion until midnight, under threat of Bolthouse refusing to produce the  
14 witness the following day. (Declaration of Malissa Hathaway McKeith In Support of Anaverde's  
15 Opposition To Motion To Quash Trial Subpoena Of N. Thomas Sheahan ("McKeith Decl."),  
16 attached as Exhibit 2, ¶ 8.)

17 This threat caused Anaverde counsel extreme duress. (McKeith Decl. ¶ 7.) Ms. McKeith  
18 was forced to stand in for Anaverde lead counsel Joseph Salazar, because the Court denied  
19 Anaverde's Motion to Continue this matter until Nov. 17, 2008, so that trial counsel could be  
20 available. (McKeith Decl. ¶ 4-5.) Had that motion been granted, Mr. Salazar also would have been  
21 available to conduct the deposition/alleged cross-examination of Mr. Sheehan. (McKeith Decl. ¶  
22 5.) Instead, Ms. McKeith, who is a transactional attorney, was forced to handle this proceeding.  
23 (McKeith Decl. ¶ 2.) Ms. McKeith is blind. (McKeith Decl. ¶ 8.) Participating in proceedings  
24 where there is a heavy use of charts, exhibits, reports and documents is a challenge for her in the  
25 best of situations. (McKeith Decl. ¶ 10.) For Bolthouse to place her under the added pressure of  
26 completing the deposition/alleged cross-examination in a matter of less than three hours (when  
27 Bolthouse went for over one day) was egregious and without compassion to Ms. McKeith, in  
28 addition to prejudicing Anaverde. Finally, Bolthouse relented and produced the witness a third

1 day. (McKeith Decl. ¶ 11.) However, Bolthouse again threatened that if Ms. McKeith failed to  
2 complete the questioning by 12 p.m. the witness no longer would be made available to her for  
3 questioning. (McKeith Decl. ¶ 11.)

#### 4 ARGUMENT

##### 5 I. BOLTHOUSE FAILED TO SATISFY THE REQUIREMENTS FOR THIS 6 COURT TO QUASH THE SUBPOENA, ANAVERDE REQUESTS MERELY A 7 REVISION OF THE DATE OF THE TIME TO APPEAR.

8 Bolthouse raises two grounds on which the subpoena should be quashed: 1) there is “no good  
9 cause for the subpoena to Thomas Sheahan,” (Mot. To Quash, 8:14-17), and 2) any further  
10 testimony at trial would be immaterial (Mot. To Quash, 8:18-21.) Each ground fails because it  
11 assumes Anaverde had an opportunity to depose the witness and had a meaningful opportunity to  
12 cross-examine the witness. (*Id.*) The court may make an order quashing a subpoena entirely,  
13 modifying it, or directing compliance with it upon conditions the court may dictate. (Code of Civ.  
14 Proc. § 1987.1) Valid grounds for challenging a subpoena include privilege (attorney-client  
15 privilege, physician-patient privilege, or privilege against self-incrimination). *Roberts v. Superior*  
16 *Court* (1983) 9 Cal 3d 330, 342 (psychotherapist-patient privilege). Courts have quashed  
17 subpoenas on the ground that the testimony is inadmissible. *People v. Rhone* (1968) 267  
18 Cal.App.2d 652, (witness testimony is not relevant); *Spencer v. Hibernia Bank* (1960) 186 Cal.  
19 App. 2d 702 (matters sought must be competent evidence and admissible at trial); *Pelton Motors,*  
20 *Inc. v. Superior Court* (1953) 120 Cal. App. 2d 565 (subpoena may be quashed for being too  
21 broad). When a video deposition is noticed that will preserve testimony for trial of an expert,  
22 another party may wish to first conduct a discovery deposition when the circumstances warrant, to  
23 ensure effective cross-examination at the videotaping. (Code of Civ. Proc. §§ 2025.220(a)(6),  
24 2025.620(d), 2025.420(b)).  
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1 First, the court may modify a subpoena. If the court finds that Bolthouse raises sufficient  
2 issues upon which to take action on the Motion to Quash, the appropriate remedy is to modify the  
3 subpoena to alter the date of Mr. Sheahan's appearance to date which accommodates his travel  
4 plans.

5 Bolthouse' bases it's request for the Motion to Quash entirely on the grounds there is no  
6 good cause. This assertion is untrue. Bolthouse first argues that because Mr. Sheahan will be  
7 deposed as an expert for purposes of trial testimony on 10/27/2008, there is not good cause. (Mot.  
8 To Quash, 5:9-10.) Also, because Mr. Sheahan was subpoena'd as a lay witness, Bolthouse argues  
9 that lay testimony is immaterial to the matters at issue. (Mot. To Quash, 5:11-13.) Further, because  
10 Mr. Sheehan is designated as a consultant for Bolthouse, Bolthouse asserts that this testimony  
11 could involve privilege. (Mot. To Quash, 5:13-16.) Finally, because phase II trial involves "expert  
12 opinions regarding hydrologic connection which is not the subject of lay testimony, but rather  
13 requires expert testimony," Bolthouse argues this testimony is inadmissible." (Mot. To Quash,  
14 5:16-19.) However, these factors are inaccurate.

15 Anaverde has good cause. As described above, Anaverde was not giving any opportunity  
16 to depose the witness despite its express request to do so. (Huangfu Decl. ¶ 11.) Rather, Anaverde  
17 was only allowed to question the witness after he provided responses to counsel for Bolthouse  
18 questioning. (Huangfu Decl. ¶ 11.) In its letter dated Oct. 24, 2008, Anaverde advised Bolthouse  
19 of its intention, under Section 2025.420(d), to conduct a discovery deposition prior to the "direct"  
20 examination of Mr. Sheahan (Huangfu Decl. ¶ 11.) Bolthouse did not object. Rather, at  
21 commencement of the deposition, at a time when Anaverde could not seek any protective order,  
22 Bolthouse rejected Anaverde's request to conduct a discovery deposition. As a result, any  
23 assertion by Bolthouse that Anaverde has had an opportunity to depose Mr. Sheahan is not true.  
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1 Anaverde's rights to discovery have been entirely circumvented by Bolthouse' unreasonable  
2 actions.

3 Further, any alleged "cross-examination" which did not allow for the usual preparation  
4 between the time for deposition and the time for cross-examination, with the opportunity to reflect  
5 upon reports used, exhibits introduced, and consultation with experts as may be required, was  
6 expressly rushed and/or limited by Bolthouse' unreasonable and arbitrary time limitations.  
7 (McKeith Decl. ¶ 7, 11.) This problem was further compounded because Anaverde did not have  
8 trial counsel conduct the alleged cross-examination. The attorney whom Bolthouse placed under  
9 extreme pressure to conduct her examination of the witness, within Bolthouse' abbreviated and  
10 arbitrary time limitations, was blind. Truly, there is good cause present to require Mr. Sheahan's  
11 personal appearance at trial. Anaverde requests that either the Court order Mr. Sheahan to be  
12 present the first day of trial at the expense of Anaverde in which he would only miss one day of  
13 his trip, (McKeith Decl. ¶ 12), or most preferably to all parties, including Anaverde, modify the  
14 subpoena for a future trial date, possibly Nov. 17, 2008.

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17 Assertions that Mr. Sheahan was served as a "lay witness" are mere red herrings. Process  
18 servers use the same subpoena whether they are serving a lay witness or an expert. (Huangfu Decl.  
19 ¶ 19.) Whether Mr. Sheahan should be paid lay witness fees versus expert fees is inapplicable,  
20 because were Mr. Sheahan to appear at trial as an expert, which is what Bolthouse is attempting to  
21 circumvent yet still enjoy the benefit of his opinions, Bolthouse would have paid any and all fees  
22 to Mr. Sheahan for this trial appearance. Bolthouse' assertions that any further testimony at trial  
23 would be immaterial because Mr. Sheahan is an expert who was cross-examined for purposes of  
24 trial also is a falsehood. (testimony as a non-expert, would not be relevant to hydraulic connection  
25 at issue in Phase II, Mot. To Quash, 8:18-21.) Anaverde has not had an opportunity to depose Mr.  
26 Sheahan. Anaverde's trial counsel has not had an opportunity to cross-examine Mr. Sheahan.  
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1 Whether questions were intended to be for the “purpose of trial” as asserted by Bolthouse,  
2 Bolthouse overlooks the point of cross-examination. Normally, to perform cross-examination a  
3 party would have had an opportunity to first question that witness in a deposition, review the  
4 exhibits, file, discuss with other witnesses or experts, and only thereafter, with the benefit of the  
5 previously transcribed testimony of that witness in hand, engage the witness in cross-examination.  
6 Certainly, future testimony would not be “immaterial.” More appropriately, it should be  
7 considered critical to avoid a complete circumvention of the rules of discovery, and a violation of  
8 Anaverde’s due process rights.  
9

10 Unfortunately, a pre-paid vacation, however empathetic the Court may be, does not legally  
11 suffice to grant Bolthouse Motion to Quash. At a minimum, the Court should merely modify the  
12 appearance date to allow for Mr. Sheahan’s trial testimony after his return from Hawaii.  
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14 **II. BY ASSERTING THAT A VIDEO TESTIMONY CAN OUTRIGHT BE USED,**  
15 **AND THAT A DEPOSITION MAY BE USED IN LIEU OF LIVE TESTIMONY,**  
16 **BOLTHOUSE CIRCUMVENTS THE RULES AND PROCEDURES OF**  
17 **APPLICABLE TO THESE PROCESSES.**

18 Where a party intends to offer video deposition into evidence, the party must not only notify  
19 the court in writing of that party’s intent to do so, but also must designate the proposed portions to  
20 be offered at trial. (Code of Civ. Proc. §§ 2025.620, 2025.340(m) emphasis added.) The written  
21 notice and designation must be made in sufficient time to allow for both objections to be made and  
22 ruled on by the trial judge, and for editing of the recording. (*Id.*) Bolthouse has not complied with  
23 the express statutory requirements regarding use of video testimony. Anaverde respectfully  
24 requests that the Court require that Bolthouse follow proper procedures to provide notice to all  
25 parties regarding which portions of the video will be used at trial, to allow the opposing parties to  
26 timely file written objections to the proposed portions (with accompanying written transcriptions).  
27 Even if Bolthouse’ Motion to Quash were granted entirely (as opposed to the preferred  
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1 modification of appearance date requested herein), the remedy is not that the video comes sailing  
2 in. Bolthouse must comply with the legal requirements of entering a video. Mere notice of its  
3 intent to do so, fails to satisfy the requirements of Section 2025.340(m).

4 Although a video deposition of an expert may be used in lieu of live testimony of that expert at  
5 trial, this may be done only after the party offering the testimony notifies the court and all parties  
6 in writing of both the intent, but also of the "parts of the recording to be offered." (Civ. Proc. §§  
7 2025.620(d)). Similarly, the notice to the court and to the parties must be made in sufficient time  
8 for objections to be made and ruled on by the judge, and for any editing of the recording. (*Id.*)  
9 None of these procedures have been filed by Bolthouse. This Court must allow Anaverde an  
10 opportunity to be apprised of the portions sought for introduction by Bolthouse, to object, and to  
11 edit the video as necessary. It is inappropriate to circumvent these rules by way of granting a  
12 Motion to Quash the subpoena without affording Anaverde additional statutorily required  
13 procedural protections.  
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16 **III. ANAVERDE'S OPPOSITION TO THE MOTION TO QUASH, OR**  
17 **ALTERNATIVE REQUEST FOR MODIFICATION OF THE APPEARANCE**  
18 **DATE IS NOT MADE IN BAD FAITH OR WITHOUT SUBSTANTIAL**  
19 **JUSTIFICATION, BUT IS JUSTIFIED BECAUSE ANAVERDE HAD NO**  
20 **OPPORTUNITY TO DEPOSE THE WITNESS, AND NO MEANINGFUL**  
21 **OPPORTUNITY TO CROSS-EXAMINE MR. SHEAHAN.**

22 Anaverde's request that this Court modify the Subpoena to a date which accommodates Mr.  
23 Sheahan's 70<sup>th</sup> birthday celebration is not in bad faith. Bolthouse erroneously states that "...in  
24 discussion with the Court and counsel regarding this issue, the Court advised that it will accept  
25 Mr. Sheahan's expert testimony by videotape, that other counsel will be given full opportunity to  
26 cross-examine Mr. Sheahan at the time of his deposition, and that third parties will have a full  
27 opportunity to make objections at the time of the deposition as they deem necessary." (Mot. To  
28 Quash, 9:19-25.) Anaverde disagrees. In the hearing on Oct. 25, 2008, the Court directed Mr.  
Zimmer to follow the Code requirements regarding use of video deposition testimony. Further, in

1 violation of Section 2025.420(b), Bolthouse deprived Anaverde of its right to conduct a discovery  
2 deposition. Finally, Bolthouse' imposition of unreasonable and unfounded limitations on the  
3 availability of its witness for "cross" examination, deprived Anaverde of any meaningful right to  
4 conduct a meaningful cross-examination. And, Anaverde's trial counsel was unavailable to  
5 conduct it, given the court calendar. These issues are properly brought to the Court's attention by  
6 way of this Opposition to the Motion to Quash. As a result, in preservation of legitimate due  
7 process rights, Anaverde requests this Court deny any award of Bolthouse' attorney's fees and  
8 costs. Anaverde does not desire to ruin Mr. Sheahan's obviously important celebration in Hawaii,  
9 but Anaverde also desires to protect its own rights, particularly in light of Bolthouse' unreasonable  
10 actions relating to the manner of Mr. Sheahan's testimony this week commencing Oct. 27, 2008.

### 11 CONCLUSION

12  
13 Bolthouse created this entire situation by removing Mr. Sheahan from the agreed upon  
14 deposition date of Oct. 1, 2008. Anaverde courteously accommodated Bolthouse' request because  
15 of the reciprocating promise to reproduce Mr. Sheehan in advance of trial for a deposition. By  
16 taking it off calendar, and then by refusing to allow Anaverde to conduct a discovery deposition,  
17 Bolthouse successfully has circumvented its discovery obligations. Further, if the Court allows  
18 introduction of the video without forcing Bolthouse to comply with even minimal requirements  
19 regarding introduction of a videotaped deposition at trial, not only will the Court be subjected to  
20 three full days of a video-taped deposition un-edited (far less efficient than reconvening at some  
21 later date for approximately one day for live testimony), but the Court's granting of this Motion to  
22 Quash would deprive Anaverde of its statutory right to object and edit the video accordingly.

23 Anaverde requests that the Motion to Quash be denied. No valid legal basis exists upon  
24 which to grant it. Rather, with minimal inconvenience to the parties, this Court should order Mr.  
25 Sheehan, as well as all parties, to appear for trial on Nov. 17, 2008, likely for merely one day, to  
26 complete the trial with live testimony. This minimal inconvenience is heavily outweighed by the  
27 reduction of material prejudice to Anaverde which would otherwise result.  
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DATED: October 29, 2008

Respectfully submitted,  
  
MALISSA HATHAWAY McKEITH  
JOSEPH SALAZAR, JR.  
JACQUELINE MITTELSTADT  
KIMBERLY A. HUANGFU  
LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/  
KIMBERLY A. HUANGFU  
Attorneys for ANAVERDE, LLC.