

EXHIBIT 2

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SANTA CLARA**

12 **ANTELOPE VALLEY GROUNDWATER
CASES:**

13 **Included Actions:**

14 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.

15 Superior Court of California
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-
348

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

20 Diamond Farming Co. v. City of Lancaster

21 Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California

22 County of Riverside, consolidated actions
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

**DECLARATION OF MALISSA
HATHAWAY MCKEITH IN SUPPORT
OF 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

24
25 I, Malissa Hathaway McKeith, declare and state as follows:

26 1. I am an attorney at law, duly licensed to practice before the courts of the State of California. I
27 am a member of the law firm of Lewis Brisbois Bisgaard & Smith, LLP, attorneys for Anaverde LLC
28 ("Anaverde"). I am a partner responsible for the handling the transactional obligations of matters

1 relating to this client, and I present this declaration in support of Anaverde's Opposition to the Motion
2 to Quash Trial Subpoena of N. Thomas Sheahan. I have personal knowledge of the matters set forth
3 below, and if called upon to do so, I could and would competently testify to the following:

4 2. I am a transactional attorney for Lewis, Brisbois, Bisgaard & Smith.

5 3. Prior to this case, I have not handled a trial, nor conducted a cross-examination of a trial
6 witness.

7 4. Due to the Court's denial of Anaverde's Motion to Continue the Trial date to Nov. 17, 2008,
8 Joseph Salazar, trial counsel for this matter, was unavailable to conduct the extremely important
9 deposition of Mr. Thomas Sheahan.

10 5. Due to the Court's denial of Anaverde's Motion to Continue the Trial date to Nov. 17, 2008,
11 Joseph Salazar, trial counsel for this matter, was unavailable to conduct what Bolthouse is asserting
12 amounts to the "cross-examination" of Mr. Thomas Sheahan.

13 6. Mr. Sheahan became available for my questioning no sooner than 2 p.m. on Oct. 28, 2008.

14 7. At that time, Mr. Zimmer, counsel for Bolthouse demanded that I complete questioning on
15 Oct. 28, 2008.

16 8. This threat caused me extreme duress because I had obligations preventing my ability to
17 continue past 5:30 p.m., and I have different abilities—I am legally blind, which renders it even more
18 time-consuming and challenging for me to conduct such an examination.

19 9. If trial could have commenced on Nov. 17, 2008, Mr. Salazar would have been available to
20 conduct the deposition/alleged cross-examination of Mr. Sheehan.

21 10. It is extremely difficult for me to participating in proceedings where there is a heavy use of
22 charts, exhibits, reports and documents. I could not feasibly complete an examination of Mr. Sheahan
23 in the arbitrary amount of time, Mr. Zimmer was attempting to limit me too.

24 11. Although Mr. Zimmer finally relented and produced the witness a third day. Again, Bolthouse
25 threatened that I must complete my questioning and imposed another arbitrary deadline of 12 p.m. or
26 the witness no longer would be made available to me for questioning.

27 12. On Oct. 25, 2008, in an e-mail to Mr. Zimmer I extended Anaverde's offer to pay for Mr.
28 Sheahan's roundtrip ticket to Hawaii to travel on Nov. 4, 2008, thereby only missing one day of his

1 vacation, yet would allow him to offer the critical live testimony at trial. (E-mail correspondence dated
2 Oct. 25, 2008, hereto attached as Exhibit A.)

3 I declare under penalty of perjury that the foregoing is true and correct. I make this Declaration on
4 the 29th day of October 2008 in Los Angeles, California.

5 /s/ _____
6 Malissa Hathaway McKeith
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EXHIBIT A

From: Malissa McKeith
To: rzimmer@clifford-brownlaw.com
CC: Sheahan, Tom
Date: 10/25/2008 6:46 PM
Subject: Accommodations for Tom Sheahan

Dear Mr. Zimmer:

I want to apologize about the subpoena that was served on Tom Sheahan in my absence. I've known and worked with Tom for years, and I do not want to be responsible for interfering with his vacation plans.

Nevertheless, I have to protect my client who already has unsuccessfully tried to move November 3 trial in part due to the unavailability of Messrs. Sheahan and Scalmanini.

Having now read Tom's declaration of the 24th about the Hawaii trip, I want to propose a solution that might avoid our having to edit a video deposition for trial and the motion to quash. If Tom is amendable, we would pay a first class round trip ticket for him to leave on the 4th instead of the 3rd thereby allowing us to depose him Monday and for him to testify after Mr. Lambie on the 3rd. I suspect the cost savings would be well worth it for both our clients.

I only just received Tom's report yesterday, and it was based, in part, upon a March 2008 report that was apparently not produced as part of the Technical Memorandum data provided last August by Mr. Dunn's office to Anaverde. We agreed to take Mr. Sheahan's originally scheduled deposition of October 1, 2008 off calendar per your request so long as he was made available for a deposition before he testified. The scope of Tom's report goes well beyond information allowed by rebuttal witnesses because it is introducing entirely new opinions and his deposition essentially will become his trial testimony without meaningful time to prepare in advance. For example, we will only have the opportunity to review Tom's complete files simultaneously with taking the deposition on Monday. This is extremely burdensome given the last minute production of information and the technical nature of the reports. My impression of Judge Komar is that he is interested in a full and complete input from experts which is hard to accomplish if we collapse the deposition and trial testimony into one. Beyond that, the judge tends to ask better questions than the rest of us so having live witnesses in this technical case facilitates

a better trial.

I appreciate that you were recently on vacation yourself and that this fact may have lead to the late production of Tom's work product and the confusion over whether he would even be a witness. I do know that Kimberly Huangfu called your office and spoke to your associate several times in an effort to clarify matters.

Whatever the circumstances, I hope you will consider the plane ticket as a workable compromise. I will see you on Monday. Please feel free to call my cell phone if you want to discuss the above sooner. I'm sure you can anticipate what I'll be doing tomorrow.

Regards.