

MICHAEL T. FIFE (State Bar No. 203025)
BRADLEY J. HERREMA (State Bar No. 228976)
BROWNSTEIN HYATT FARBER SCHRECK, LLP
1020 State Street
Santa Barbara, California 93101
Telephone No: (805) 963-7000

Attorneys for: Gene T. Bahlman, Mark W. and Nancy L. Benz, Thomas and Julie Bookman 2007 Trust, James and Elizabeth Bridwell, Brittner Trust, Glen Brittner, Trustee, John A. Calandri, Calandri Water Company, LLC; John A. Calandri and Shannon C. Calandri as co-trustees of the John and Shannon Calandri 1992 Trust"; Katherine J. Calandri Nelson, Trustee of "The Katherine J. Calandri Nelson 2008 Trust, Sal and Connie L. Cardile, Irma Ann Carle Trust, Irma-Anne Carle, Trustee, Effren Chavez, C. Louise R. Close Living Trust, Del Sur Ranch LLC, Randall and Billie Dickey, Lawrence Dean Evans, Jr. and Susan Evans, Ruth C. Findley, Leah Frankenberg, Denise Godde, Steven F. Godde, Pamela M. Godde and Gary M. Godde; Denise Godde and Steven Godde as Trustees of the D & S Godde Trust, Gorrindo Resourceful LLC, Laura Griffin, trustee of the Family Bypass Trust created under the Leonard W. Griffin And Laura Griffin Trust, dated July 9, 1993, Jane Healy and Healy Enterprises Inc., Gailen W. Kyle and Julie Kyle, Trustees of The Kyle Revocable Living Trust, James M. Leer, III and Diana Leer, Jose M. Maritorena and Marie P. Maritorena, Trustees of the Maritorena Living Trust Dated March 16, 1993, Dennis M. and Diane K. McWilliams, Richard Miner, Barry and Sharon Munz 2014 Revocable Trust, Terry A. & Kathleen M. Munz, Eugene B. Nebeker, Richard Nelson, Willow Springs Co., R and M Ranch, Inc., John and Adrienne Reca, Suzanne J. Richter, Sahara Nursery and Farm, Lawrence J. Schilling and Mary P. Schilling, Trustees of the L&M Schilling 1992 Family Trust, Lilia Mabel Selak, TTEE; Barbara Aznarez Decd Trust and Selak, Mabel Trust, Jeffrey and Nancee Siebert, Tierra Bonita Ranch, Triple M Property Co., Turk Trust dated December 16, 1998, Marie A. Unini and Robert J. LeClair, Vulcan Materials Co., Vulcan Lands Inc., Consolidated Rock Products Co., Calmat Land Co., and allied Concrete & Materials, Michael and Dolores A. Weatherbie, Donna & Lee Wilson, **collectively known as the Antelope Valley Groundwater Agreement Association ("AGWA")**

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

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 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV-254-348 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, consolidated actions, Case No. RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination Proceeding
No. 4408

CLASS ACTION

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

**PARTIAL JOINDER AND PARTIAL
RESPONSE TO OPPOSITIONS OF LA
COUNTY WATERWORKS AND THE
WOOD CLASS TO MOTION TO SET
ASIDE JUDGMENT**

INTRODUCTION

The Antelope Valley Groundwater Agreement Association (“AGWA”) partially joins in the Oppositions filed by Los Angeles County Waterworks and the Wood Class. AGWA agrees that the Motion should be denied, and agrees that a variety of reasons support this denial. AGWA disagrees that the prior interaction between AGWA and Pauline Ritter is relevant to this denial. It would be legally incorrect to base a denial of the Motion on this prior interaction. Neither LA County Waterworks nor the Wood Class cites to any law to support the relevance of their discussion of this prior interaction, and the Wood Class even acknowledges that the outcome of this matter does not depend on this prior interaction and that the Motion can be ruled upon and denied based on other factors. (Wood Opposition, p. 4, n.1.)

The stipulating parties and the Court have gone to great lengths to ensure that the parties who were not involved in the Stipulation would not be prejudiced. The terms of the Judgment provide a mechanism whereby parties who are not part of the Stipulation can present their claims and become a part of the Judgment without prejudice to their rights. Mr. Ritter was provided the same opportunity to present a claim as every other non-stipulating party in a non-discriminatory manner. However, unlike the other parties, he did not submit a declaration to support his claim of right until November 9, 2015, well after the close of evidence. By definition then he belongs on the list of parties who appeared in the action but did not prove their rights at trial.

I. THE PARTIES

The Judgment impacts a number of parties related to the Ritter family:

Pauline Ritter as an individual

Edgar Ritter as an individual

Pauline Ritter as Trustee of the Ritter Family Trust

Mark Ritter as an individual

Dana Ritter as an individual

Mark Ritter as Successor Trustee of the Ritter Family Trust

LV Ritter Ranch, LLP

None of these parties are “Stipulating Parties” as that term is defined in the Judgment.

1 Judgment Exhibits B & D¹ list Pauline Ritter as an individual, Edgar Ritter as an
2 individual, and Pauline Ritter as Trustee of the Ritter Family Trust. Both of these individuals are
3 deceased, and Pauline Ritter is no longer Trustee of the Ritter Family Trust. The Motion is not
4 filed on behalf of these parties and no request is in front of the Court with respect to them.

5 The Motion is filed by Mark Ritter as an individual, Dana Ritter as an individual, and
6 Mark Ritter as Successor Trustee of the Ritter Family Trust.

7 It appears that the real property previously contained in the Ritter Family Trust has been
8 transferred out of the Trust to Mark and Dana Ritter as individuals, and to Mark Ritter's sister,
9 who has as yet been unidentified in these proceedings. (Declaration of Mark Ritter, Individually
10 and as Successor Trustee dated November 9, 2015 p.2, lines 4-7; Notice of Errata dated
11 November 9, 2015 p.2, line 11; Deposition Transcript of Mark Ritter 14:10-16:3².) Mark and
12 Dana Ritter as individuals currently own three parcels of property, two of which they own by
13 virtue of distribution from the Trust, and one that they have owned for many years prior to the
14 initiation of the adjudication. (Deposition Transcript of Mark Ritter 8:4-9:7, 35:9-35:22.) It
15 appears that there is at least a domestic well on this third parcel. (Deposition Transcript of Mark
16 Ritter, 8:7-8:15.) In all of the Wood Class' voluminous filings on the Ritter issue there is no
17 mention of Mark and Dana Ritter as individuals belonging to the Wood Class. This omission
18 requires explanation.

19 LV Ritter Ranch, LLP is decreed by the Judgment to have an allocation of 0 acre-feet.
20 (Judgment p.2, line 17; Statement of Decision p.12, line 22.). Though there appears to be a
21 historical family connection between LV Ritter Ranch, LLP and the other Ritters at issue here, it
22 does not appear at this time that LV Ritter Ranch, LLP is relevant to the current Motion.
23 (Deposition Transcript of Mark Ritter 34:2-34:15.)

24 The Motion specifies that the issue in question is the inclusion of the moving parties on
25 Exhibit "D" to the Judgment and asks that this ruling be set aside. (Motion p.4, line 8.)
26

27 ¹ It is not clear why there are two exhibits – both appear identical to each other.

28 ² A full copy of the rough draft of Mark Ritter's deposition transcript is attached to the LA
County Waterworks Opposition.

1 **II. RITTER MOTION**

2 Mark Ritter made his first appearance date on September 4, 2015, appearing both for
3 himself individually and as a trustee. It appears however, that the Trust ceased being relevant to
4 this action in January of 2015 when Mark Ritter, acting as successor trustee, transferred the real
5 property away from the Trust and to himself as an individual. (Deposition Transcript of Mark
6 Ritter 32:12-32:25.) The Trust does not currently contain any real property in the Antelope
7 Valley. (Deposition Transcript of Mark Ritter 32:23-32:25, 36:14-37:14.)

8 The Judgment states that: “This Judgment shall not bind the parties that cease to own real
9 property within the Basin” (Judgment p.4, lines 1-2.) Thus, once the Judgment became
10 effective, any involvement of the Ritter Family Trust formally ended by the terms of the
11 Judgment itself. Therefore, it appears that a possible ground for denial of the Motion is that it is
12 moot.

13 At the time of his appearance, a number of other parties were also surfacing to claim
14 rights. Some of these parties, such as Robar and White Fence Farms No. 3, were similarly
15 situated to the Ritter Family Trust. As stated in the declaration of AGWA counsel attached to the
16 Motion, it was our understanding that Ritter was not at that time singled-out, but that all the non-
17 stipulating parties were given the same opportunity to advance their claims. The Wood Class goes
18 to great length to challenge the veracity of this declaration on the very specific basis that the
19 Ritter claim was not “severed” at the September 21 hearing. However, the declaration of AGWA
20 counsel does not state that the Ritter claim was severed, only that at the September 21 hearing the
21 Ritters were not singled out and the same opportunity to present a claim was made available to
22 them as was made to each of the other parties.

23 However, after this point the parties all took varying courses of action. Robar asserted
24 that it did not have sufficient time to gather its evidence and asked to be severed, which it was.
25 The other parties provided declarations of their water use and proceeded to negotiate settlements
26 of their claims. Mark Ritter as Successor Trustee of the Ritter Family Trust, on the other hand
27 did nothing, and for this reason was ultimately put on to Exhibit B & D.

III. AGWA INVOLVEMENT WITH THE RITTERS

The Wood Class has spent a tremendous amount of energy attempting to draw some relevance out of the appearance for a time of Edgar and Pauline Ritter as individuals and as Trustee on the AGWA masthead.

Note that in all of this discussion, no facts have been offered to suggest that there was any involvement of Edgar and Pauline Ritter in AGWA except that they were listed for a time during the early portion of the litigation on AGWA's masthead. No claims were ever presented on behalf of the Ritters in any way, neither in Phase IV nor after. The appearance of the Ritters on the AGWA masthead was a mistake which was corrected as soon as the claims of specific parties became relevant to the litigation. Mr. Ritter was clear in his sworn deposition testimony that he never believed an attorney-client relationship existed with the Brownstein firm or its predecessor Hatch & Parent, nor does he believe that Pauline Ritter believed that an attorney-client relationship existed.

"Except for those situations where an attorney is appointed by the court, the attorney-client relationship is created by some form of contract, express or implied, formal or informal." (*Responsible Citizens v. Sup. Ct.* (1993) 16 Cal. App. 4th 1717, 1732.) Critically, "the distinction between express and implied in fact contracts relates only to the manifestation of assent; both types are based upon the expressed or apparent *intention* of the parties." (*Responsible Citizens*, 16 Cal.App.4th at 1732-33 [emphasis added].) Accordingly, "[a]n attorney-client relationship is not created by the unilateral declaration of one party to the relationship." (*Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 729.)

Here, Pauline Ritter never expressed any intention to form an attorney-client relationship with the Brownstein firm or its predecessor Hatch & Parent. In deposition, Mark Ritter stated that Pauline Ritter never retained any attorney with respect to this litigation. (Deposition Transcript of Mark Ritter 17:20-23, 27:11-29:17.) This is consistent with the complete absence of any documentary evidence suggesting that an attorney-client relationship had been formed such as a signed retention agreement or the payment of any kind of fees. Nor did Mark Ritter, who became the successor trustee, ever have any communication with the Brownstein firm.

1 (Deposition Transcript of Mark Ritter 10:15-11:1.)

2 It would be contrary to the law to impute an attorney-client relationship merely from the
3 inadvertent inclusion of Pauline Ritter's name in a pleading caption. For example, the California
4 Supreme Court has held that merely describing a defendant in a caption as the administrator of an
5 estate was insufficient to charge that defendant as the estate's administrator. (*People v.*
6 *Houghtaling* (1857) 7 Cal. 348, 350.) In the context of leave to amend a complaint, courts have
7 consistently deemed a caption error to be "only an amendable formal defect." (*See, e.g., Bell v.*
8 *Tri-City Hosp. Dist.* (1987) 196 Cal.App.3d 438, 446, *disapproved of on unrelated grounds by*
9 *State v. Sup. Ct. (Bodde)* (2004) 32 Cal. 4th 1234.) As one court noted, "the caption usually is not
10 considered a part of the pleader's statement of claim" and "is not determinative as to the parties to
11 the action." (*Bell*, 196 Cal.App.3d at 446, quoting 5 Wright & Miller, Federal Practice and
12 Procedure (1969) § 1321, pp. 458-461.)

13 The inclusion of Pauline Ritter on the pleading caption cannot be binding on her or her
14 successor because an attorney's unauthorized acts cannot affect a client's substantive rights.
15 (*Romadka v. Hoge* (1991) 232 Cal. App. 3d 1231, 1235 ["The attorney is authorized by virtue of
16 his employment to bind the client in procedural matters arising during the course of the action but
17 he may not impair the client's substantial rights or the cause of action itself."]) In particular, an
18 attorney "may not agree to the entry of a default judgment [and] may not compromise his client's
19 claim" without the client's authority. (*Linsk v. Linsk* (1969) 70 Cal. 2d 272, 278.) Since no
20 attorney-client relationship existed in the first place, it is impossible for AGWA's counsel to have
21 acted with authorization.

22 Neither LA County Waterworks nor the Wood Class cites any authority to support using
23 Pauline Ritter's prior interaction with AGWA³ as a basis to deny the Motion. In its opposition
24 the Wood Class also raises the issue of reliance, again without any legal support. While it might
25 be an interesting exercise to explore the factual basis for such reliance, including the Court

26 ³ LA County Waterworks' characterization of the Ritters as being members of AGWA – and
27 represented by AGWA counsel – is curious, as counsel for LA County Waterworks, Best, Best &
28 Krieger, communicated directly with Pauline Ritter in 2009, when it sent her a Notice of
Acknowledgement and then posted her execution of the same to the Court's website. (Dunn
Decl., para 6, Ex. E.)

1 process associated with Phase IV and the negotiation process that occurred in the years thereafter,
2 as well as determining why the Wood Class apparently took no notice when the Ritters
3 “disappeared” from the masthead and no claims were ever presented on their behalf, such
4 investigation would be irrelevant. Even if the Wood Class’ claim of reliance was justified, there is
5 no legal support for using such purported reliance to justify the imposition of a substantive
6 detrimental result on the Ritters, who had no part in the circumstances which created the reliance.

7
8 Dated: February 2, 2016

BROWNSTEIN HYATT FARBER SCHRECK, LLP

9
10 By: 

11 MICHAEL T. FIFE
12 BRADLEY J. HERREMA
13 ATTORNEYS FOR AGWA
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PROOF OF SERVICE

I, Olga Rittershaus, am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: Brownstein Hyatt Farber Schreck, LLP, 1020 State Street, Santa Barbara, California 93101.

On February 2, 2016, I served the foregoing document described as:

PARTIAL JOINDER AND PARTIAL RESPONSE TO OPPOSITIONS OF LA COUNTY WATERWORKS AND THE WOOD CLASS TO MOTION TO SET ASIDE JUDGMENT

on the interested parties in this action.

By posting the document listed above to the Santa Clara Superior Court website: www.scefilings.org by 5:00 p.m. on February 2, 2016.

This posting was reported as complete and without error.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed in Santa Barbara, California, on February 2, 2016.



OLGA RITTERSHAUS

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