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

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER
CASES

Including Consolidated Actions:

Los Angeles County Waterworks District No. 40
v. Diamond Farming Co.; Superior Court of
California, County of Los Angeles, Case No.
BC325201

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;
Diamon Farming Co. v. Palmdale Water Dist.;
Superior Court of California, County of
Riverside, consolidated actions, Case nos. RIC
353840, RIC 344436, RIC 34468;

AND RELATED ACTIONS.

Judicial Council Coordination Proceeding
No. 44008

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

Assigned to the Honorable Jack Komar,
Judge to the Santa Clara Superior Court
Department 17C

**GARY VAN DAM'S OPPOSITION TO
MOTION TO APPROVE TRANSFER
OF WATER RIGHTS TO CRAIG VAN
DAM**

*[Filed concurrently with Declaration of
Robert J. Saperstein in support hereof]*

Date: September 8, 2023

Time: 9:00 a.m.

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1 Gary Van Dam hereby opposes the Motion to Approve Transfer Water Rights to Craig
2 Van Dam (“**Motion**”) and requests that it be denied for the reasons explained below.

3 **I. INTRODUCTION: THE MOTION SHOULD BE DENIED**

4 Fundamentally, this is a business dispute among the owners of the High Desert Dairy,
5 LLC (“**Dairy**”) the resolution of which is well beyond the Court’s limited purview in this post-
6 judgment proceeding; and certainly, well outside Watermaster’s responsibilities and expertise.
7 Through the Motion and the underlying water right transfer request made to Watermaster
8 (“**WM**”), Craig Van Dam (“**Craig**”)¹ proposes to strip the Dairy of one of its essential business
9 resources — access to low-cost groundwater to produce feed for the Dairy’s cattle. The water
10 rights held by the Dairy (an affordable local groundwater supply) are critical to its economic
11 survival. As a result of the Antelope Valley groundwater rights Judgment entered December 23,
12 2015 (“**Judgment**”), the Dairy has already modified its operations to accommodate an 80%
13 reduction in its historic groundwater use. Any further loss of groundwater will likely bankrupt the
14 Dairy.

15 As one of three members (owners) of the Dairy, Craig owes a fiduciary duty to protect and
16 support the ongoing Dairy business operations. In proposing to transfer water rights away from
17 the Dairy, Craig is breaching that legal duty to the Dairy. This Court should refrain from ruling on
18 the water rights transfer and direct the parties to resolve their issues in the proper forum.

19 In addition, the paperwork for the proposed transfer has been submitted to WM; but WM
20 has failed to obtain a vote of all five WM Board Members as required by the Antelope Valley
21 Watermaster Rules and Regulations (“**WM RR**”). Until a full Board vote is taken, or WM
22 establishes an alternative procedural mechanism to obtain a valid vote, this proposed transfer is
23 not ripe for judicial review.

24 The Motion should be denied for several reasons:

- 25 1) Resolution of the business dispute underpinning the conflict over the proposed water
26 rights transfer is beyond this Court’s jurisdiction in this setting. In the role of the Presiding
27

28 ¹ No disrespect is intended by referring to the parties by their first names; since they share a
surname, the use of first names is meant to avoid any confusion.

Judge with responsibility to oversee the post-judgment implementation of the Judgment, the Court's authority is limited. The proposed water rights transfer involves a complex financial dispute between members of a California Limited Liability Company – the Dairy. Neither the WM, nor this Court in its post-judgment oversight role, are the proper forums to resolve this dispute.

- 2) The Motion is premature (not ripe) for judicial review because the full, five-member WM Board has not voted on the matter. The WM RR expressly require all five Members of the WM Board to vote on any item. No vote of the full Board has been taken; there is not yet a proper WM decision ripe for this Court's review.
- 3) Should the Court consider this Motion ripe and within the Court's jurisdiction as the post-judgment judicial officer, the Court should deny the transfer request because Craig is in breach of his fiduciary duty to the Dairy, or in the alternative set a more complete schedule for an evidentiary hearing on the merits.

II. FACTS: THE UNDERLYING CONFLICT INVOLVES WATER RIGHTS ESSENTIAL TO DAIRY BUSINESS OPERATIONS

A. The Dairy Has Been in Operation for Almost a Century

The Van Dam family has owned and operated its dairy businesses in the Antelope Valley for almost a century. (See Declaration of Robert Saperstein filed concurrently ("Saperstein Decl."), Ex. 1 at GVD14 [¶¶ 3, 5].) The Antelope Valley offers a unique setting in southern California in that the business operations include both the land to irrigate and produce feed for the cattle (and other livestock), and the dairy operations. (See, e.g., *id.* at GVD15 [¶ 12].) The Dairy is the only operational dairy in Los Angeles County. Production of feedstock on the Dairy property is about 1/10th the cost of buying feed from a third-party. This cost advantage is crucial to the economic stability of the Dairy in this unique southern California location. (*Id.* at GVD12 [¶ 13], GVD15 [¶¶ 12, 14-15].)

In the early 1900's, the Van Dam dairy business was established as a family partnership. The Dairy was first established as an LLC in 2016, as a part of the distribution of certain family assets after the death of the family patriarch, Mr. Delmar Van Dam. Mrs. Gertrude Van Dam

(Gary and Craig Van Dam’s mother) was initially the sole member and owner of the Dairy.
(Saperstein Decl., Ex. 1 at GVD11 [¶¶ 4-6], GVD14 [¶¶ 3-6].)

Again, as a part of the distribution of certain family assets, the Dairy ownership quickly changed twice. Mrs. Van Dam included two of her sons, Craig and Dean Van Dam (“**Dean**”), as co-owners in 2016. Then in 2019, Mrs. Van Dam transferred her LLC interest and authority as everyday manager of the Dairy to Gary Van Dam (“**Gary**”). Mrs. Van Dam has submitted a declaration stating there was an error in the distribution of ownership in the LLC – her intention was that first she, then her successor son Gary, would own 50% of Dairy, and each of the two other brothers would own 25%. (Saperstein Decl., Ex. 1 at GVD11-12 [¶¶ 6-10, 14-16].) That error has not yet been corrected.

In any event, Gary has been the day-to-day manager and operator of the Dairy for about 10 years. Neither Craig nor Dean, the two other brothers and part owners of the Dairy, have taken any meaningful responsibility for the Dairy operations since the death of their father, Delmar Van Dam. Dean lives out of California and has other businesses of his own. Craig lives in California and owns or operates other businesses, some of which compete with the Dairy. (Saperstein Decl., Ex. 1 at GVD14-15 [¶¶ 8-11].)

B. Every Drop of Groundwater is Essential to the Dairy

For decades prior to the adjudication of the Antelope Valley Groundwater Basin, the Dairy used almost 10,000 acre-feet per year of groundwater to generate feed for the Dairy operations and related businesses. The Antelope Valley Judgment confirms the Pre-Rampdown Production at the Dairy was 9,931.5 acre-feet per year (“**AFY**”). To accommodate the required reduction associated with the Judgment, the Dairy was granted an Overlying Production Right of 3,215 AFY—a 68% reduction. (Saperstein Decl., Ex. 1 at GVD15 [¶ 12]; *id.* at Ex. 2, p. GVD27.)

In 2020, an additional 1,398 AFY of water rights was transferred away from the Dairy so that it now holds only 1,817 AFY of its original 9,931.5 AFY historic production. (See Saperstein Decl., Ex. 1 at GVD15 [¶ 13].) That amounts to a more than 80% reduction in groundwater rights.

The Dairy relies on groundwater to generate feed for the Dairy cattle. Feed harvested from on-site farming is about 10 times less expensive than purchasing feed from third parties. Because

1 of the other higher costs of operating the Dairy in southern California, maintaining this lower cost
2 feed source is essential to sustain the economics of the Dairy. Having to purchase a material
3 portion of the livestock feed from third parties will likely bankrupt the Dairy. (Saperstein Decl.,
4 Ex. 1 at GVD15 [¶ 13].)

5 **C. The Sanitation District Contract and Craig’s Breach of Fiduciary Duty**

6 In 2017, Craig and the former legal counsel for the Dairy, Mr. Steven Derryberry,
7 conspired to take from the Dairy a contract with Los Angeles County Sanitation District #14
8 (“**District 14**”) that would have given the Dairy access to additional low-cost feed to support the
9 Dairy operations. District 14 solicited public bids to allow a local farmer to apply District 14
10 recycled water on District 14 property to produce feed for local use. Gary had done all the work
11 necessary for the Dairy to be the successful bidder and expected Steven Derryberry, then legal
12 counsel to the Dairy, to complete the contract between the Dairy and District 14. (See Saperstein
13 Decl., Ex. 1 at GVD15-16 [¶¶ 16-19].)

14 Without Gary’s knowledge, Steven Derryberry and Craig created a competing LLC,
15 incorporated as “High Desert Dairy – Van Dam, LLC,” with Craig as its owner. Derryberry and
16 Craig Van Dam then submitted the completed contract so that the new LLC was the contracting
17 entity with District 14. To this day, Craig Van Dam continues to farm the District 14 property,
18 selling the feed both within and outside the Antelope Valley. The Dairy is forced to purchase feed
19 grown on the District 14 property at full market price; not the arrangement the Dairy
20 contemplated in the bid package Gary Van Dam submitted to District 14. (See Saperstein Decl.,
21 Ex. 1 at GVD16 [¶¶ 18-21] and GVD18-19.)

22 **D. The 2020 Dairy Property Distribution and Craig’s and Dean’s Breach of**
23 **Fiduciary Duty**

24 The attempt to take groundwater rights from the Dairy is part of a larger attempt by Craig
25 and Dean to pull critical assets from the Dairy for their own personal benefit. As Craig’s attorney
26 notes in his water rights transfer submission, the members of the Dairy did meet on February 4,
27 2020, at the offices of Genske & Mulder (accountants). (Motion, Ex. H at p. 1.) That letter does
28 not fully describe the meeting.

1 Craig and Dean Van Dam had clearly prepared for the meeting well in advance without
2 any discussion with Gary. Gary was given notice of the meeting the afternoon of February 3,
3 2020 – the day before the meeting -- and was simply told to show up at the accountant’s offices
4 the next day. He was told the brothers needed to discuss the Dairy. There was no mention of any
5 transfer of assets or capital distributions. (See Saperstein Decl., Ex. 1 at GVD16-17 [¶¶ 22-23].)

6 At the meeting, Gary was shown a spreadsheet with all the assets, accounts receivables
7 and accounts payable for the Dairy. Again, Gary had never seen these materials before the
8 meeting. After a somewhat heated discussion, Gary was shown several property transfer
9 documents, clearly prepared before the meeting. Craig and Dean Van Dam then proceeded to sign
10 documents that transferred several large Dairy assets to themselves individually, over Gary Van
11 Dam’s objections. (See Saperstein Decl., Ex. 1 at GVD16-17 [¶¶ 23-24]; Motion, Ex. H at p. 1.)

12 To be clear, there was no agreement among all the LLC members to any asset or capital
13 distribution from the Dairy. Craig and Dean did not consider in any way the impact of their
14 actions on the Dairy; they simply bullied their way into taking personal advantage to the extreme
15 detriment of the Dairy. Gary was left to manage his way through the other brothers’ pillage of the
16 Dairy assets.

17 **E. WM Has Not Yet Properly Voted on the Water Rights Transfer Request**

18 Craig has submitted the requisite paperwork to request WM’s approval of the transfer
19 request, but no vote has been taken on the proposed transfer. The June 28, 2023, WM meeting
20 minutes indicate that only three of the five WM Board Members voted on the request; one
21 Member recused himself, and another Board Member abstained from the vote. (Saperstein Decl.,
22 Ex. 3 at GVD35.) The Motion repeatedly incorrectly states that four votes were cast regarding the
23 transfer request. (*Id.*; see, e.g., Motion, pp. 4:19-21; pp. 14:10.) As discussed below, the WM RR
24 require all five WM Board Members vote unless legally prohibited. There is no record of any
25 finding by WM that either of the two non-voting but present Board Members were legally
26 prohibited from voting.

27 **III. ARGUMENT**

28 The arguments below are separated into 3 components. Part III.A argues the underlying

1 issues generating the conflict over the proposed water rights transfer are well outside the Court's
2 retained jurisdiction in this post-judgment proceeding and the Court should direct the conflicted
3 parties to resolve their conflict in a proper forum.

4 Part III.B argues the Motion is not ripe for judicial review and WM should be directed to
5 fulfill its responsibilities under the RR to complete a proper vote or amend the RR to allow for an
6 alternative voting process.

7 Parts III.C and III.D respond to the substance of the Motion; that the Court should deny
8 the transfer request because Craig is in breach of his fiduciary duty to the Dairy, or in the
9 alternative set a more complete schedule for an evidentiary hearing on the merits.

10 **A. This Conflict Is Beyond the Scope of the Court's Retained Jurisdiction**

11 The conflict surrounding the water rights transfer is a complex business issue involving
12 trust distributions of several family-owned properties and assets, management, and disposition of
13 the capital assets of a family-owned LLC, and may lead to the partition of some or all those assets
14 and dissolution of the Dairy LLC. The Court's jurisdiction is limited to enforcement of the
15 Judgment and review of any Watermaster actions and decisions. (Judgment, § 20.3.)²

16 The scope of the trial court's ongoing jurisdiction in a water rights adjudication is limited
17 by the terms of the Judgment and cannot expand beyond that. (*Baar v. Smith* (1927) 201 Cal. 87;
18 *City of San Bernardino v. City of Riverside* (1921) 186 Cal. 7; *City of Pasadena v. City of*
19 *Alhambra* (1949) 33 Cal.2d 908; *Central and West Basin Water Replenishment District v.*
20 *Southern California Water Co.* (2003) 109 Cal.App.4th 891; see *Orange County Water Dist. v.*
21 *City of Colton* (1964) 226 Cal.App.2d 642, 648-649 [modification of a judgment going beyond
22 the issues raised in the original proceedings would be "extrajudicial and invalid"] [emphasis
23 added]; see also *Municipal Water Dist. v. Bear Valley Mutual Water Co.* (1989) 207 Cal.App.3d
24 363, 376-378 [a water rights judgment may not be modified beyond its original scope].)

25 In *Baar v. Smith* (1927) 201 Cal. 87 ("*Baar*"), the court thoroughly explains the rationale
26 for requiring a judgment to be limited to the issues raised in the pleadings. In *Baar*, the Court held
27

28 ² For the Court's convenience, excerpts of all cited provisions of the Judgment are attached as Exhibit 2 to the Saperstein Declaration.

1 that even ordering delivery of certificates of shares when all that had been sought was to quiet
2 title of the shares exceeded the Court’s jurisdiction. The court held that the extraneous ruling was
3 “null and void” and described as an “open challenge to our entire system of procedure” and a
4 disregard for the purpose of pleadings altogether. (*Id.* at 97.) The California Supreme Court
5 recognized that “[s]o much of a judgment that exceeds the issues . . . tried or involved, is coram
6 non judice and void.” (*Id.* at 99.)

7 The court in *Orange County Water Dist. v. City of Colton* relied on *Baar*, explaining that
8 basic and essential due process protections and jurisdictional limitations constrain actions in all
9 proceedings. (See Code Civ. Proc., § 580 [a court’s jurisdiction is limited to what the parties put
10 before that Court].) In *Orange County Water Dist. v. City of Colton*, *supra*, 226 Cal.App.2d 642,
11 the court concluded that

[A] judgment outside the issues is not a mere irregularity; it is
extrajudicial and invalid. (*Baar v. Smith*, 201 Cal. 87, 101, 255 P. 827.)
Even though the subject matter falls within the category or class over
which the court has jurisdiction, present jurisdiction if not conferred by the
pleadings or pre-trial proceedings, cannot be conferred by consent, waiver
of estoppel (*Summers v. Superior Court*, 53 Cal.2d 295, 298, 1 Cal.Rptr.
324, 347 P.2d 688.) To hold otherwise would be to open a veritable
‘Pandora’s box’ of uncalculated results. Not only do the parties, but also
others whose rights or liabilities might be affected by specific litigation
between the parties, have a right to know by reference to the records
before, or at least at the time of trial, the issues which can be determined
in that particular action. (*Baar v. Smith*, *supra*, 201 Cal. 87, 101, 255 P.
827.)

18 (*Id.* at 649.)

19 The Judgement provides that “[t]he Court retains and reserves full jurisdiction, power and
20 authority for the purpose of enabling the Court... to make such further or supplemental order or
21 directions as may be necessary or appropriate to interpret, enforce, administer or carry out this
22 Judgment and to provide for such other matters as are not contemplated by this Judgment and
23 which might occur in the future, and which if not provided for would defeat the purpose of this
24 Judgment.” (Judgment, § 6.5.)³ The business dispute at issue in this situation far exceeds the
25 Court’s retained jurisdiction to “interpret, enforce, administer or carry out this Judgment” and
26 does not fall under matters that were “not contemplated by this Judgment and which might occur
27 in the future, and which if not provided for would defeat the purpose of this Judgment.” (*Id.*) The
28

³ Saperstein Decl., Ex. 2.

1 fiduciary duties owed by the members of the LLC do not impact the enforceability of this
2 Judgment, and should therefore be determined separately.

3 Of significant relevance too, WM is no position to judge or litigate the complex business
4 issues surrounding this proposed transfer. WM has no expertise in adjudicating claims involving
5 trust distributions, real property conflicts, responsibilities and duties of LLC members, the proper
6 distribution of corporate assets, etc. These matters should be resolved in separate, proper legal
7 forums before requests are made of WM within its realm of responsibilities. WM, however,
8 should preserve the status quo to avoid harm to the extent practical. (*Church of Christ in*
9 *Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, 1257.) In other words, in matters like
10 this, WM should postpone its decision and request the parties resolve their conflicts in the proper
11 forum.

12 **B. The Proposed Transfer Is Not Ripe For Judicial Review—WM Has Not Yet**
13 **Acted**

14 Craig has submitted the requisite paperwork to WM to request the transfer of water rights
15 from the Dairy, but no legally cognizable WM vote has been taken on the proposed transfer. The
16 WM RR require “[a]ll Watermaster decisions shall be by Unanimous Vote, except as otherwise
17 determined by Unanimous Vote of the Watermaster.” (WM RR, § 4.9.6.1(b)⁴ [voting].) This
18 express and clear mandate is repeated in WM RR section 4.9.6.4. Unanimous Vote is defined in
19 WM RR section 2.c(18) [definitions]: “Unanimous Vote shall mean the vote of five out of five
20 Members of the Watermaster Board.” Further, the WM RR mandates that all Board Members
21 have a duty to vote—RR section 4.9.6.2 provides: “Duty to Vote. When present, all Members
22 have a duty to vote unless prohibited by law.”

23 There is no finding in the record that either of the non-voting WM Members were
24 “prohibited by law” from voting. Certainly, there is a distinction between disqualification leading
25 to a recusal and abstention. As to the abstaining Member, her non-vote abstention was a choice to
26 voluntarily refrain from voting. (Saperstein Decl., Ex. 3 at GVD35.) The abstaining Member’s
27

28 ⁴ For the Court’s convenience, all of the relevant excerpts from the WM RR have been compiled
and attached as Exhibit 4 to the Saperstein Declaration.

1 vote is not counted in favor of or against the action. (*Dry Creek Valley Assn., Inc. v. Board of*
2 *Supervisors* (1977) 67 Cal.App.3d 839; see also Friedman, Cal. Practice Guide: Corporations
3 (The Rutter Group 2022) ¶ 6:223.1.) But there is no provision in the WM RR to allow a Board
4 Member to abstain from voting. In other words, the WM RR mandate a vote if there is no legal
5 prohibition preventing it.

6 The recused Member (Mr. Knudson) did not vote because he is an employee of Antelope
7 Valley East-Kern Water Agency and Gary is an elected board member of that agency. (Saperstein
8 Decl., Ex. 3 at GVD35.) This may be a proper exercise of the obligation to recuse oneself, but
9 there is no finding in the record of that legal determination. A public official may be legally
10 required to not participate in the decision-making process due to an actual or potential financial
11 conflict of interest (as defined by statute) or other relationships. A disqualified board member
12 must identify the conflict with some detail so it is understandable by the public, recuse
13 themselves from participating in the matter, and leave the room until after the vote or other
14 disposition. (See e.g., Gov. Code, § 87105.) It is unclear from the record whether this Member
15 was legally prohibited from voting because of his employment status. (Saperstein Decl., Ex. 3 at
16 GVD35.)

17 At no time has WM actually obtained the vote of all five of its Board Members on this
18 transfer request. The WM Board has attempted to vote, as the record indicates. The three-Member
19 vote does not qualify as a “vote of five out of five members.” The WM meeting minutes of June
20 28, 2023, incorrectly characterize that the “application was not approved.” (Saperstein Decl., Ex.
21 3 at GVD35.) Without five votes, no action was taken. Without a proper vote of WM, this appeal
22 of the proposed transfer is simply not yet ripe for judicial review.

23 This Court sits as the supervisory and reviewing body for WM rulemaking and decision-
24 making and the Court should require WM to fulfill its responsibilities. The Court should not
25 substitute its judgment for what should be a WM Board decision. (See *Kopp v. Fair Pol.*
26 *Practices Com.* (1995) 11 Cal.4th 607 “[t]his court cannot ..., in the exercise of its power to
27 interpret, rewrite the [RR]...That is . . . not a judicial function.”.)

28 The Judgment and the WM RR provide the pathway for WM actions. That is, WM must

1 either conduct a proper vote as discussed above, or WM may develop amendments to the WM RR
2 to allow for an alternative voting process. (See Judgment, § 18.4.2 [requiring public participation,
3 notice and court approval of WM RR amendments]⁵.)

4 The unanimous voting requirements in the WM RR were integral to the overall resolution
5 of the Judgment and the original WM RR approved by this Court. Responding to the Motion and
6 ruling on its merits eviscerates the current voting process in the WM RR, and substitutes this
7 Court for WM as the decision-making body. That is not the Court's function in this instance.

8 On August 24, 2023, WM provided notice to all parties that it intends to consider
9 modifications to the unanimous voting requirement. (Saperstein Decl., Ex. 5 at GVD42.) WM
10 legal counsel acknowledges the current rules do not adequately deal with the situations where one
11 or more directors recuse or abstain from voting. (*Id.*)

12 **C. The Proposed Transfer is a Breach of Fiduciary Duty**

13 Craig has repeatedly shown a complete disregard of his fiduciary obligations to the Dairy.
14 The three brothers, Gary, Craig, and Dean are the current members of the Dairy. Only Gary is
15 involved in operating the business since their father's death. Nonetheless, Craig has a legal
16 responsibility, as a member of the Dairy, to protect and support the ongoing Dairy business
17 operations. This proposed groundwater transfer is the most recent of Craig's repeated actions that
18 put his own self-interest above the Dairy, in violation of his legal responsibilities.

19 Members of a limited liability company (LLC) owe the LLC duties of loyalty and care,
20 referred to as fiduciary duties. (Corp. Code, § 17704.09.) LLC members must be able to trust one-
21 another to promote the interest of the LLC above their own or some other outside interest.
22 Members are supposed to put the success of and benefits to the LLC above any personal or
23 individual advantages. In showing loyalty to the LLC, members must act honestly in any dealings
24 with the LLC and avoid any conflicts of interest between the LLC's objectives and their own
25 personal goals. (*Feresi v. The Livery, LLC* (2014) 232 Cal.App.4th 419, 425 [members owe the
26 LLC the utmost loyalty and the highest good faith, such that the person owing the duty may not
27 obtain any advantage by even the slightest misrepresentation or concealment].) As part of the

28 _____
⁵ Saperstein Decl., Ex. 2.

1 duty of loyalty, a person may not take advantage of any LLC business opportunities, amass secret
2 profits from the LLC's commercial activities, or compete directly with the LLC. Every LLC
3 member owes a duty of good faith and fair dealing to the LLC itself and the other members. (*Berg*
4 & *Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020.)

5 Breach of that fiduciary duty—that is, conduct that harms the LLC or the membership
6 interests—subjects the bad-acting member to a wide range of liability, including punitive
7 damages. (See e.g., *Feresi, supra*, 232 Cal.App.4th 419.) A member can also be personally liable
8 for any tortious conduct that harms the LLC or its membership interests (see *People v. Pacific*
9 *Landmark* (2005) 129 Cal. App. 4th 1203), including conversion (see *Holistic Supplements, LLC*
10 *v. Christopher Stark* (2021) 61 Cal.App.5th 530). Third parties who conspire or knowingly enable
11 a bad acting member may also be liable for damages to the LLC. (*American Master Lease, LLC v.*
12 *Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451.)

13 Craig has shown a complete disregard for the business interests of the Dairy. He has and
14 continues to compete with and take business opportunities from the Dairy. Attempting to profit
15 for his own business advantage by taking approximately 30% of the Dairy's low cost
16 groundwater supplies is the most recent, and most potentially devastating example of his breach
17 of fiduciary duty to the Dairy.

18 **D. The Court Should Order the Parties to Meet and Confer to Develop a**
19 **Complete Schedule for an Evidentiary Hearing**

20 Despite the arguments above, should the Court determine it has the retained jurisdiction to
21 adjudicate the Van Dam parties' respective rights and claims to the Dairy and needs more
22 information to resolve the conflict, the Court should schedule a 3–4 day hearing to allow witness
23 testimony. The property rights at issue—the water rights and the financial integrity of the Dairy—
24 are worth tens of millions of dollars. Fundamental due process considerations support a deliberate
25 and comprehensive consideration of the parties' respective claims.

26 **IV. CONCLUSION**

27 Craig Van Dam's request strips critical assets from the Dairy without regard to the
28 financial impacts to the Dairy. His request is part of a larger selfish effort to accumulate personal


1 wealth at the expense of the Dairy. The transferred water rights will either be sold to a third-party
2 for some new use, or Craig will exercise the water right for his personal benefit—all prospective
3 new uses. In contrast, the Dairy is using the groundwater now for its essential business purposes.
4 Loss of this lower-cost water supply, generating affordable feed for the Dairy business, will likely
5 destroy the Dairy business.

6 For the reasons set forth above, we respectfully request the Court:

- 7 1) Deny the Motion and order the conflicted parties to resolve their business conflict
8 in the proper forum;
- 9 2) In the alternative, deny the Motion and order WM to conduct a proper and
10 complete vote on the proposed transfer or develop a proposed amendment to the
11 WM RR to allow for an alternative voting process;
- 12 3) In the alternative, deny the Motion on the merits because the evidence confirms a
13 transfer of groundwater rights from the Dairy to Craig Van Dam will materially
14 harm the Dairy operations which constitutes a breach of fiduciary duty; or
- 15 4) In the alternative, set a hearing date for a 3-4 day trial on the merits and order the
16 parties to meet and confer regarding a discovery and trial schedule.

17 Dated: August 25, 2023

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

19
20 By: 
Robert J. Saperstein

21 Attorneys for Defendant
22 GARY VAN DAM

PROOF OF SERVICE
[Code Civ. Proc. §§ 1011, 1013, 1013(a)(3) & 2015.5]

ANTELOPE VALLEY GROUNDWATER CASES
Case No. 1-05-CV-049053 (For filing purposes only)
JCCP 4408

(STATE OF CALIFORNIA, COUNTY OF SACRAMENTO)

I am a resident of the United States and employed in Santa Barbara County. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1021 Anacapa Street, Second Floor, Santa Barbara, CA 93101. My electronic service address is cmalone@bhfs.com.

On August 25, I served the following documents on the parties in this action described as follows:

GARY VAN DAM'S OPPOSITION TO MOTION TO APPROVE TRANSFER OF WATER RIGHTS TO CRAIG VAN DAM

[X] BY ELECTRONIC SERVICE: by posting the document(s) listed above to the Antelope Valley Groundwater Cases to all parties listed on the Santa Clara Superior Court Service List as maintained via Glotrans. Electronic service completed through <http://www.avwatermaster.org>.

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

Executed on this 25th day of August, 2023, at Santa Barbara, California.

Caitlin K. Malone
Caitlin K. Malone