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and BOLTHOUSE PROPERTIES, LLC

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

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| 11 | COORDINATION PROCEEDING |) | Judicial Council Coordination |
| 12 | SPECIAL TITLE (Rule 1550(b)) |) | Proceeding No. 4408 |
| 13 | ANTELOPE VALLEY GROUNDWATER |) | CASE NO. 1-05-CV-049053 |
| 14 | CASES |) | |
| 15 | INCLUDED ACTIONS: |) | |
| 16 | LOS ANGELES COUNTY WATERWORKS |) | |
| 17 | DISTRICT NO. 40 v. DIAMOND |) | BOLTHOUSE FARMS, INC.'S AND |
| 18 | FARMING COMPANY, et al., |) | BOLTHOUSE PROPERTIES, LLC'S |
| 19 | Los Angeles Superior Court |) | NOTICE OF MOTION AND MOTION TO |
| 20 | Case No. BC325201 |) | SEVER CROSS-COMPLAINT OF CROSS- |
| 21 | LOS ANGELES COUNTY WATERWORKS |) | COMPLAINT OF SHELDON R. BLUM, |
| 22 | DISTRICT NO. 40 v. DIAMOND |) | TRUSTEE FOR THE SHELDON R. BLUM |
| 23 | FARMING COMPANY, et al., |) | TRUST; MEMORANDUM OF POINTS AND |
| 24 | Kern County Superior Court |) | AUTHORITIES; REQUEST FOR |
| 25 | Case No. S-1500-CV-254348 |) | JUDICIAL NOTICE |
| 26 | DIAMOND FARMING COMPANY, and |) | |
| | W.M. BOLTHOUSE FARMS, INC., v. |) | |
| | CITY OF LANCASTER, et al., |) | |
| | Riverside Superior Court |) | |
| | Case No. RIC 344436 [c/w case no. |) | |
| | RIC 344668 and 353840] |) | |
| | ROSAMOND COMMUNITY SERVICES |) | |
| | DISTRICT, |) | |
| | CROSS-COMPLAINANT, |) | DATE: September 5, 2008 |
| | |) | TIME: 1:30 p.m. |
| | |) | DEPT: 17 |

1 SHELTON R. BLUM, TRUSTEE FOR)
 2 THE SHELTON R. BLUM TRUST,)
 3 Cross-Complainant,)
 4 vs.)
 5 WM. BOLTHOUSE FARMS, INC., a)
 6 Michigan corporation;)
 7 BOLTHOUSE PROPERTIES, LLC, a)
 8 California limited liability)
 9 company; and DOES 1 through)
 10 200, inclusive,)
 11 Cross-Defendants.)

12 **TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:**

13 **PLEASE TAKE NOTICE** that on September 5, 2008 at 1:30 p.m. or
 14 as soon thereafter as this matter may be heard, in Department 17
 15 of the above-entitled court, located at 191 North First Street,
 16 San Jose, California, cross-defendants, WM. BOLTHOUSE FARMS, INC.
 17 and BOLTHOUSE PROPERTIES, LLC, (hereinafter referred to
 18 collectively as "Cross-Defendants"), will move this Court for an
 19 order severing the entirety of the Cross-Complaint of SHELTON R.
 20 BLUM, TRUSTEE FOR THE SHELTON R. BLUM TRUST (hereinafter "BLUM"),
 21 on file herein, from the remaining issues in the coordinated
 22 Antelope Valley Groundwater Cases.

23 Said motion will be made pursuant to *Code of Civil Procedure*
 24 § 1048 on the grounds that there exist no common questions of law
 25 or fact between the issues presented by the Antelope Valley
 26 Groundwater Cases and BLUM'S Cross-Complaint alleging various
 causes of action relating to a lease agreement between Cross-
 Defendants and BLUM. Said motion will also be made on the

1 grounds that in light of the relative simplicity of the unrelated
2 dispute alleged in the Cross-Complaint, severance will further
3 the convenience of parties and witnesses, avoid prejudice to
4 Cross-Defendants, ensure that the numerous parties in the
5 Antelope Valley Groundwater Cases are not required to follow or
6 be served with unrelated pleadings and discovery, encourage
7 expedition of the litigation, promote economy and serve the ends
8 of justice.

9 **NOTICE IS FURTHER HEREBY GIVEN** that Cross-Defendants will,
10 and hereby do, request that the court take judicial notice of the
11 BLUM Cross-Complaint pursuant to *Evidence Code* § 452. Pursuant
12 to *Rule of Court 3.1306(c)*, a copy of the BLUM Cross-Complaint is
13 not an attachment hereto as it is part of the court's file and
14 has presumably been previously served on all parties, but rather
15 it is requested of the clerk of the court to be made available to
16 the judge for hearing on the Motion, or on any earlier date as
17 the court may request.

18 Said motion will also be based on this notice, the points and
19 authorities set forth below, the complete files and records in
20 this action and such oral and documentary evidence as may be
21 presented at the hearing of this motion.

22 DATED: July 29, 2008

CLIFFORD & BROWN

23
24 By: 

RICHARD G. ZIMMER, ESQ.

T. MARK SMITH, ESQ.

JEREMY J. SCHROEDER, ESQ.

MEMORANDUM OF POINTS AND AUTHORTIES

I

INTRODUCTION & SUMMARY OF REQUEST FOR RELIEF

As the court is fully aware, the Antelope Valley Groundwater Cases involve issues of groundwater rights among a variety of claimants, entities, individuals and municipalities within the boundaries of the basin set by the court. The instant Motion involves a party, BLUM, who has appeared in the Antelope Valley Groundwater Cases as a cross-defendant overlying landowner. BLUM concurrently filed a Cross-Complaint against WM. BOLTHOUSE FARMS, INC. and BOLTHOUSE PROPERTIES, LLC ("Cross-Defendants") alleging 1) Breach of Written Lease Agreement, 2) Breach of Implied Covenant of Good Faith & Fair Dealing, 3) Breach of Implied In-Fact Contract, 4) Fraud & Deceit/Intentional Misrepresentation, 5) Suppression of Fact, 6) Promise Made Without Intention to Perform, and 6) Abuse of Process.

The Cross-Complaint's operative facts concern a breach of contract action with ancillary claims relating solely to the contractual relationship between BLUM and Cross-Defendants. Accordingly, Cross-Defendants seek an Order of this Court severing the Cross-Complaint from the Antelope Valley Groundwater Cases because the issues raised in the Cross-Complaint are unrelated to the groundwater action and should be litigated separate and apart therefrom.

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1 II

2 AUTHORITY FOR SEVERANCE

3 Code of Civil Procedure § 1048 provides this court with the
4 statutory basis for granting the severance herein:

5 "The court, in furtherance of convenience or to avoid
6 prejudice, or when separate trials will be conducive to
7 expedition and economy, may order a separate trial of
8 any cause of action, including a cause of action
9 asserted in a cross-complaint, or of any separate issue
or of any number of causes of action or issues,
preserving the right of trial by jury required by the
Constitution or a statute of this state or of the
United States." (Code Civ. Proc. § 1048(b))

10 The decision of a court to sever causes of action, parties,
11 or claims as a whole is within the discretion of the court. This
12 rule is equally applicable to the severance of cross-complaints,
13 that the court may order separate issues or causes of action
14 plead in a cross-action be tried separately. (Simon Hardware Co.
15 v. Pacific Tire & Rubber Co. (1962) 199 Cal.App.2d 616, 619;
16 Linday v. American President Lines, Ltd. (1963) 214 Cal.App. 2d
17 146, 149.) The court in which the distinct actions are initially
18 filed may, at its discretion, sever the issues in the complaint
19 and cross-complaint, to be tried before different courts. (Omni
20 Aviation Managers, Inc. v. Municipal Court (1976) 60 Cal.App.3d
21 682, 684) Furthermore, a ruling by a trial court that severance
22 is appropriate in a given action will not be disturbed absent a
23 manifest abuse of discretion. (Downey Savings & Loan Assn. v.
24 Ohio Casualty Ins. Co. (1987) 189 Cal.App.3d 1072, 1086; McArthur
25 v. Shaffer (1943) 59 Cal.App.2d 724, 727; Caldwell v Regents of
26 University of Cal. (1917) 35 Cal.App. 639, 640; Mellone v Lewis

1 (1965) 233 Cal.App.2d 4, 7.) Where issues, presented by a Cross-
2 Complaint are purely unique between the cross-complainant and
3 cross-defendants, severance of those issues is appropriate.
4 (Bratton & Moretti v. Finerman (1959) 171 Cal.App.2d 430, 435)

5 Additionally, *Code of Civil Procedure § 396(b)* provides that
6 where an action is initiated or transferred to a court of
7 competent jurisdiction, but it is later revealed that the court
8 does not have jurisdiction over the subject matter of a
9 subsequent Cross-Complaint, said Cross-Complaint shall be
10 transferred to a court of proper jurisdiction.

11 III

12 BLUM CROSS-COMPLAINT SHOULD BE SEVERED

13 As noted above, the BLUM Cross-Complaint relates only to
14 purely unique issues between BLUM and Cross-Defendants. The
15 Cross-Complaint involves claims of breaches of obligations
16 contained in, or arising from, a written lease agreement between
17 BLUM and Cross-Defendants, not the much broader groundwater
18 rights issues before this Court in the coordinated groundwater
19 action.

20 Severing the BLUM Cross-Complaint will promote convenience
21 of the parties and Court by removing unrelated issues, pleadings
22 and discovery from the already great volume of items to be
23 considered by the parties to the groundwater litigation.
24 Further, the convenience of the parties to the Cross-Complaint
25 will be best served by severance for each would no longer be
26 required to file pleadings and discovery via the electronic

1 methods established to accommodate the volume of materials, and
2 number of parties, in the groundwater cases. In essence,
3 severance would operate to allow a discrete dispute to be
4 discovered and litigated discretely and efficiently, in a
5 separate action before a judge not already burdened by an immense
6 piece of coordinated litigation. If the BLUM Cross-Complaint
7 remains part of the groundwater litigation, all parties will be
8 burdened with monitoring the separate issues and would have their
9 already voluminous files cluttered by matters which in no way
10 concern them.

11 Severance would not result in any prejudice to BLUM's rights
12 or interests in the groundwater litigation or the lease dispute.
13 It would, however, result in benefit to BLUM in that his
14 allegations relating to the distinct lease dispute may be
15 litigated in a more expedient and focused fashion.

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1 IV

2 CONCLUSION

3 For the reasons set forth above, and pursuant to the court's
4 authority under *Code of Civil Procedure* § 396 & 1048, the BLUM
5 Cross-Complaint should be severed from the Antelope Valley
6 Groundwater Litigation and assigned to a judge in the appropriate
7 venue for the BLUM Cross-Complaint, being Los Angeles County.

8 DATED: July 29, 2008

CLIFFORD & BROWN

9
10 By: 

RICHARD G. ZIMMER, ESQ.
T. MARK SMITH, ESQ.
JEREMY J. SCHROEDER, ESQ.
Attorneys for
WM. BOLTHOUSE FARMS, INC. and
BOLTHOUSE PROPERTIES, LLC

PROOF OF SERVICE (C.C.P. §1013a, 2015.5)
Antelope Valley Groundwater Cases
Judicial Counsel Coordination Proceeding No. 4408
Santa Clara County Superior Court Case No. 1-05-CV-049053

I am employed in the County of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

On July 29, 2008, I served the foregoing document(s) entitled:

BOLTHOUSE FARMS, INC.'S and BOLTHOUSE PROPERTIES, LLS' NOTICE OF MOTION AND MOTION TO SEVER CROSS-COMPLAINT OF CROSS-COMPLAINANT OF SHELDON R. BLUM, TRUSTEE FOR THE SHELDON R. BLUM TRUST; MEMORANDUM OF POINTS AND AUTHORITIES; REQUEST FOR JUDICIAL NOTICE

— by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

— by placing _ the original, _ a true copy thereof, enclosed in a sealed enveloped addressed as follows:

X BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.

Executed on July 29, 2008, at Bakersfield, California.

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

— (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.


NANETTE MAXEY
2455-2