

1 RICHARD G. ZIMMER - SBN 107263
2 T. MARK SMITH - SBN 162370
3 CLIFFORD & BROWN
4 A Professional Corporation
5 Attorneys at Law
6 Bank of America Building
7 1430 Truxtun Avenue, Suite 900
8 Bakersfield, CA 93301-5230
9 (661) 322-6023

6 Attorneys for Cross-Defendants, Bolthouse Properties, LLC and Wm.
7 Bolthouse Farms, Inc.,

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 * * *

11	COORDINATION PROCEEDING	)	Judicial Council Coordination
12	SPECIAL TITLE (Rule 1550(b))	)	Proceeding No. 4408
13	ANTELOPE VALLEY GROUNDWATER)	
14	CASES	)	CASE NO. 1-05-CV-409053
15	INCLUDED ACTIONS:)	
16	LOS ANGELES COUNTY WATERWORKS	)	BOLTHOUSE PROPERTIES, LLC'S AND
17	DISTRICT NO. 40 v. DIAMOND	)	WM. BOLTHOUSE FARMS, INC.'S
18	FARMING COMPANY, et al.,	)	OBJECTION TO MOTION FOR
19	Los Angeles Superior Court	)	ALLOCATION OF EXPERT WITNESS
20	Case No. BC325201	)	COSTS
21	LOS ANGELES COUNTY WATERWORKS)	
22	DISTRICT NO. 40 v. DIAMOND)	
23	FARMING COMPANY, et al.,)	
24	Kern County Superior Court)	
25	Case No. S-1500-CV-254348)	
26	DIAMOND FARMING COMPANY, and)	
	W.M. BOLTHOUSE FARMS, INC., v.)	
	CITY OF LANCASTER, et al.,	)	DATE: June 12, 2009
	Riverside Superior Court	)	TIME: 9:00 a.m.
	Case No. RIC 344436 [c/w case	)	DEPT: 17
	no. RIC 344668 and 353840])	
)	
)	
)	
)	
)	

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Bolthouse Properties, LLC and Wm.
3 Bolthouse Farms, Inc., object to any attempt to require Bolthouse
4 Properties, LLC and/or Wm. Bolthouse Farms, Inc. to pay or share
5 the cost of expert fees incurred by the Small Pumpers Class and
6 the retention of an expert by the Small Pumpers Class. Although
7 no motion ever has been made for appointment of an expert paid
8 for by Bolthouse Properties, LLC and/or Wm. Bolthouse Farms,
9 Inc., or any other landowner, Bolthouse makes the following
10 observations and objections to the Motion for Allocation of
11 Costs:

12 No Motion ever has been made for appointment of an expert
13 paid for by Bolthouse Properties, LLC and/or Wm. Bolthouse Farms,
14 Inc. and/or paid for by any other landowner. Accordingly, it
15 would be improper and a denial of due process, to allocate
16 costs and/or expert fees against Bolthouse and/or any other
17 landowners.

18 **DENIAL OF DUE PROCESS**

19 The original motion for appointment of expert was denied.
20 It later was denied without prejudice to making a motion at a
21 later time. After that, it was amended to grant the motion
22 subject to a determination in the future when and if expert work
23 becomes necessary. Now, the motion is apparently being granted
24 without any delay. In any event, all of this has occurred
25 without notice and opportunity to be heard, a denial of due
26

1 process to Bolthouse and other landowners who were not subject to
2 the motion in the first instance.

3 **APPOINTMENT OF EXPERT SOLELY TO AVOID NAMING AND SERVING PARTIES**

4 The purported purpose in needing the Court to appoint an
5 expert at this point is solely to assist the Small Pumpers Class
6 and the Purveyors in properly defining a class. Certification of
7 the classes to begin with was solely to assist the Purveyors in
8 the prosecution of their basin wide adjudication lawsuit to save
9 them the cost of naming and serving all necessary parties and to
10 achieve a comprehensive adjudication required by inclusion of the
11 United States in the action.

12 **BOLTHOUSE OBJECTED TO CLASS CERTIFICATION AND DOES NOT BENEFIT**
13 **FROM APPOINTMENT OF EXPERT**

14 Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.
15 objected to, and continues to object to, certification of the
16 classes in this matter for all for the reasons previously stated
17 and argued, which are incorporated by reference herein. There is
18 no benefit whatsoever to Bolthouse Properties, LLC and Wm.
19 Bolthouse Farms, Inc. in the appointment of an expert to the
20 Purveyors and/or the Small Pumpers Class since certification was
21 ordered over the objection of Bolthouse. Further certification
22 of the classes is adverse to the rights and interests of
23 Bolthouse.

24 \\\

25 \\\

26 \\\

1 ALLOWING USE OF EXPEPRT OTHER THAN TO PROPERLY IDENTIFY CLASS
2 WOULD BE PREJUDICIAL TO OTHER PARTIES

3 The Rebecca Willis' and the Class' Memorandum of Points and
4 Authorities in Support of Plaintiff Wood's Motion for Allocation
5 of Expert Witness Costs suggests, on Page 2, Line 1, and again
6 on Page 3, Lines 21 through 22, that the appointment of Entrix,
7 and/or some other expert, "may continue in the future."
8 Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc. object
9 to any Court appointed expert conducting any activity which can
10 or could be used against Bolthouse Properties, LLC and/or Wm.
11 Bolthouse Farms, Inc. and/or against any other landowner.

12 It would be improper to allow a Court appointed expert,
13 funded by other parties to the litigation, to be used against
14 other parties in the litigation. A party should not be required
15 to pay any portion of the fee of an expert who is to in any way
16 be used against such party. Court appointment of an expert for
17 one party in an action, in the absence of appointment of experts
18 for other parties, would be grossly prejudicial. Appointment of
19 such an expert paid for by other parties would exhibit a bias in
20 favor of some parties in the action to the detriment of other
21 parties, resulting in a denial of equal protection.

22 LIMITED AGREEMENT WITH WILLIS ARGUMENT

23 Bolthouse agrees with the Rebecca Willis observations on
24 Page 2 of the Willis' Points and Authorities that the appointment
25 of experts was approved by the Court solely for the purpose of
26 determining class members and that other parties were not

1 consulted and do not benefit whatsoever from such expert
2 retention.

3 COURT SHOULD CLARIFY LIMITED PURPOSE AND USE OF COURT APPOINTED
4 EXPERT

5 The Court should make clear to all parties that appointment
6 of the expert is solely for the purpose of determining
7 appropriate class members and that such expert work cannot, and
8 will not, be used in any manner against any other party in any
9 phase or proceeding of this litigation other than to properly
10 determine class members.

11 CONCLUSION

12 For the reasons stated above, Bolthouse Properties, LLC and
13 Wm. Bolthouse Farms, Inc. request that this Court order that the
14 appointment of Entrix is solely for the purpose of properly
15 defining proper members of the Small Pumpers Class, that the
16 Court order appointing an expert is solely for this purpose and
17 that testimony and/or work of this expert may be used for no
18 other purpose in this litigation other than properly defining
19 class members.

20
21 DATED: June 8, 2009

Respectfully submitted,
CLIFFORD & BROWN

22
23
24 By: 

RICHARD G. ZIMMER, ESQ.
T. MARK SMITH, ESQ.
Attorneys for plaintiff/defendant,
W. M. BOLTHOUSE FARMS, INC.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30

Santa Clara County Superior Court Case No. 1-05-CV-049053

On June 8, 2009, I served the foregoing document(s) entitled:

1