

Attorneys for Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.,

COUNTY OF SANTA CLARA

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) Judicial Council Coordination  
 ) Proceeding No. 4408

CASE NO. 1-05-CV-409053

BOLTHOUSE PROPERTIES, LLC'S AND  
WM. BOLTHOUSE FARMS, INC.'S  
CASE MANAGEMENT CONFERENCE  
STATEMENT

DATE: AUGUST 17, 2009  
TIME: 9:00 a.m.  
DEPT: 17C

DEPT: 17C

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC.  
3 (hereinafter collectively referred to as "Bolthouse") file this  
4 Case Management Conference Statement.

5 PROCEDURAL ISSUES

6 All of the current Motions are inextricably intertwined with  
7 the procedural status of this matter. In particular, the  
8 pleadings are in a state of disarray. The pleadings form the  
9 basis for any litigated matter. In the absence of clarify  
10 regarding which parties are suing which other parties and upon  
11 what legal theories, the case cannot properly proceed.

12 As the Opposition to Notice of Motion and Motion to Transfer  
13 and to Consolidate for all Purposes properly sets forth,  
14 consolidation of all matters is not proper. In particular,  
15 consolidation of complex matters is not proper. The rationale  
16 for this rule is that pleadings in complex matters generally are  
17 not straight forward. Complex actions commonly involve multiple  
18 parties and complicated legal and factually intensive causes of  
19 action. Attempting to merely consolidate several different  
20 lawsuits, including numerous complaints, cross-complaints and  
21 answers, with inconsistent and varying legal and factual claims,  
22 without clarity of the pleadings, simply does not provide the  
23 proper procedural basis to begin and/or to finish a lawsuit.

24 As noted below, all of the current motions and issues before  
25 the Court at the upcoming hearing, stem from problems with the  
26 pleadings. Only by requiring that all parties be made either

1 plaintiffs or defendants to the Los Angeles County Cross-  
2 Complaint, along with appropriate Answers and/or Cross-  
3 Complaints, will the pleadings be appropriately clarified.  
4 Consolidation will not accomplish this.

5 Motion By The Wood Class Requesting Apportionment Of Costs For  
6 Expert Witness Fees.

7 The Motion by the Wood Class requesting apportionment of  
8 costs for expert witness fees cannot properly be considered,  
9 heard and/or apportioned without clarity of the pleadings. It is  
10 not clear what claims and causes of action are being asserted  
11 against the Wood Class. Likewise, it is not clear what claims or  
12 causes of action the Wood Class is asserting. Accordingly, it is  
13 impossible to know on what issues a court appointed expert would  
14 be appropriate and/or on what issues apportionment of costs would  
15 be appropriate.

16 Motion By The Willis Class For Appointment Of An Expert Witness.

17 Likewise, the Motion by the Willis Class for appointment of  
18 an expert witness cannot properly be considered and/or ruled upon  
19 until there is clarity of the pleadings. Without knowing what  
20 claims or causes of action are being asserted against the Willis  
21 Class, and without knowing what claims the Willis Class is  
22 making, consideration of whether an expert should be appointed by  
23 the Court cannot properly be considered.

24 The Motion For Stay Of The Proceedings.

25 The Motion for Stay of the Proceedings is primarily being  
26 opposed by Los Angeles County, the two Classes and the United

1 States. Statements have been made to the Court and to counsel  
2 indicating that the Classes and the United States are currently  
3 attempting to negotiate a resolution of the case. Statements  
4 have been made by class members that non-class members will be  
5 unhappy with the results of such a settlement. This suggests  
6 that the potential settling parties believe they can obtain a  
7 more favorable outcome than other defendant parties. However, in  
8 the absence of clarity of the pleadings, attempting to settle the  
9 matter with Justice Robie at this juncture probably will be a  
10 waste of time.

11 Given the fact that the case has been filed by Los Angeles  
12 County as a comprehensive adjudication of water rights, and the  
13 absence of clarity regarding what each party is claiming against  
14 each and every other party, it cannot be determined whether one  
15 party or group of parties may settle in the absence of settlement  
16 of other parties. For example, Los Angeles County appears to be  
17 claiming prescriptive rights against all landowners. If so, all  
18 landowners must be parties to the lawsuit since their rights are  
19 correlative. Further, limited parties may not settle to the  
20 exclusion of other parties since they have no right to settle  
21 correlative rights in a vacuum. Any attempt to impose a physical  
22 solution also would be inappropriate as against only limited  
23 parties. Accordingly, based upon the Los Angeles County filing  
24 of a basin wide adjudication, a limited claim by the Classes  
25 purportedly relating only to the prescription claims, would not  
26

1 resolve necessary matters at issue even if the matters are  
2 consolidated.

3 **The Motion To Dismiss The Public Water Suppliers' First Amended**  
4 **Complaint For Lack Of Indispensable Parties.**

5 The Motion to Dismiss the Public Water Suppliers' First  
6 Amended Complaint for lack of indispensable parties also arises  
7 as a result of improper pleading. As noted above, in order to  
8 litigate a comprehensive adjudication of water rights, the  
9 pleadings must be clarified and all necessary parties joined. A  
10 proper way to accomplish this goal is to require responsive  
11 pleadings by all defendants to the Los Angeles County Cross-  
12 Complaint along with cross-complaints by any and all cross-  
13 defendants who make such claims.

14 **The Motion To Disqualify The Law Firm Of Lemieux & O'Neil.**

15 The Motion to Disqualify the Law Firm of Lemieux & O'Neil is  
16 also demonstrative of problems with the pleadings and has  
17 resulted in admissions by the various parties that the pleadings,  
18 including the claims and causes of actions of the parties, are  
19 not clear. Lemieux represents both purveyors and landowners.  
20 However, Lemieux contends that because the parties are physically  
21 located in different places in the basin, that they are not  
22 making claims against one another and therefore, that there is no  
23 conflict. It is unclear how these claims, causes of actions or  
24 theories would be made in the context of the litigation.  
25 However, it is also clear that in the absence of pleading clarity  
26 regarding each party's claims and causes of action, the matter

1 cannot be properly litigated. Likewise, judgment cannot properly  
2 issue in the absence of clear claims and causes of action. How  
3 can the Court enter a meaningful judgment by simply consolidating  
4 the current mess of Complaints, Cross-Complaints, Answers, etc.  
5 The parties admit that the claims and causes of action are  
6 unclear. Lemieux offered to create a matrix in an attempt to  
7 clarify the pleadings. However, a matrix cannot replace proper  
8 pleadings. The pleadings must make the claims and causes of  
9 action clear at the beginning of the case for purposes of  
10 discovery and litigation. The pleadings also must be clear to  
11 enter a meaningful judgment.

12 **The Request By Bolthouse Properties, LLC And Wm. Bolthouse Farms,**  
13 **Inc. To Amend Exhibit.**

14 The request by Bolthouse Properties, LLC and Wm. Bolthouse  
15 Farms, Inc. to amend exhibits to properly reflect properties  
16 placed before the Court also cannot be evaluated without proper  
17 clarification of the pleadings. Without knowing which parties  
18 are asserting claims against Bolthouse Properties, LLC and Wm.  
19 Bolthouse Farms, Inc., and the types of claims being asserted  
20 against Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.,  
21 it is impossible for Bolthouse Properties, LLC and Wm. Bolthouse  
22 Farms, Inc. to properly evaluate what properties need to be  
23 included and in which actions these properties need to be  
24 included. Once again, proper pleading is necessary.

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1     California Water Service Motion For Relief From Notice  
2     Requirements.

3             California Water Service has moved for relief from notice  
4     requirements. Once again, without knowing what claims are being  
5     made by California Water Service and what claims are being made  
6     against California Water Service, it is impossible to properly  
7     consider the Motion for Relief from Notice Requirements. Is  
8     California Water Service a defendant subject to claims of  
9     prescription, or a purveyor claiming prescription? Clarification  
10    of these claims is necessary in order to evaluate these claims,  
11    conduct discovery, litigate the issues and to enter a meaningful  
12    judgment.

13    Motion By The Public Water Suppliers To Transfer And Consolidate  
14    The Cases For All Purposes.

15            Finally, the Motion by the Public Water Suppliers to  
16    transfer and consolidate the cases for all purposes cannot  
17    properly be evaluated in the absence of proper pleading. What  
18    does "for all purposes" mean? In the absence of pleadings  
19    clearly setting forth each cause of action by each party, the  
20    term "for all purposes" has no meaning. Only by acquiring  
21    responsive pleadings by all the parties to the Los Angeles County  
22    Cross-Complaint, along with Cross-Complaints by all parties  
23    making such claims, can the issues be properly framed for  
24    litigation, trial and entry of judgment.

25    ///

26    ///





1 them. Additionally, until the claims, causes of action and  
2 cross-complaints are known, discovery cannot be effectively  
3 drafted, served and answered. It is enlightening to note that  
4 the parties seeking an early trial date either already know what  
5 they are claiming, even though the pleadings are unclear and fail  
6 to give the defendants proper notice and opportunity to conduct  
7 discovery, or believe they will somehow obtain preferential  
8 treatment by way of a settlement agreement.

9 Our system of jurisprudence evolved over hundreds of years.  
10 This system requires pleading for a reason, to clarify the claims  
11 and causes of action between the parties. These pleading  
12 requirements provide the foundation for the litigation, serve to  
13 clarify discovery needs, and affect selection of experts and  
14 preparation for trial. Finally, the pleadings provide the frame  
15 work, coupled with proof or lack thereof, for the judgment.  
16 Notwithstanding the desires of all parties including Bolthouse  
17 Properties, LLC and Wm. Bolthouse Farms, Inc., to move this  
18 matter along promptly, we cannot abandon the proper procedural  
19 and due process requirements fundamental to our system of  
20 justice.

21 DATED: August 11, 2009

Respectfully submitted.

22 CLIFFORD & BROWN

23  
24 By: 

25 RICHARD G. ZIMMER, ESQ.  
26 Attorneys for BOLTHOUSE PROPERTIES,  
LLC and WM. BOLTHOUSE FARMS, INC.

