

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

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Judicial Council Coordination  
Proceeding No. 4408

Santa Clara Case No. 01-05-CV-049053  
Assigned to the Honorable Jack Komar

BOLTHOUSE PROPERTIES, LLC'S AND  
WM. BOLTHOUSE FARMS, INC.'S  
JOINDER AND OBJECTIONS TO CLASS  
CERTIFICATION AND CLASS  
CERTIFICATION HEARING AND  
COMMENTS REGARDING FURTHER  
HANDLING OF MATTER

DATE: August 20, 2007  
TIME: 9:00 A.M.  
DEPT: 1

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC.,  
3 hereby join in the pleadings in opposition to class  
4 certification, including but not limited to: Objection to Class  
5 Certification Hearing currently scheduled for August 20, 2007,  
6 and Declaration of Bob H. Joyce in Support Thereof, Diamond  
7 Farming Co.'s Observations in Response to the Plaintiff Willis'  
8 Motion for Class Certification, Objection to the Public Water  
9 Suppliers' Statement of Support for a Modified Class as Proposed  
10 by Rebecca Lee Willis and Renewal of Objection to Class  
11 Certification Hearing Until After Discovery Responses Have Been  
12 Provided by the Public Water Suppliers, and Objection to the  
13 Declaration of Joseph C. Scalmanini in Support of Public Water  
14 Suppliers' Statement of Support for a Modified Class as Proposed  
15 by Rebecca Lee Willis filed by Diamond Farming in the above-  
16 captioned matter, as well as Statement of Clarification;  
17 Statement of Support for Plaintiff Willis' Withdrawal of Motion  
18 for Class Certification; Joinder in Objections by Diamond Farming  
19 Company filed by AGWA.

20 Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc. make  
21 the following further observations regarding how to proceed at  
22 this juncture:

23 1. No Motion for Class Certification currently is pending  
24 before the Court. Accordingly, the Public Water Purveyors should  
25 identify the operative pleading which sets forth all causes of  
26 action against all defendants they have chosen to sue in this

1 lawsuit. The Court then should order service of the lawsuit on  
2 all named parties.

3 2. The parties should be required to comply with the *Code*  
4 *of Civil Procedure* to assure procedural and substantive clarity.

5 3. If the Public Water Purveyors are somehow provided the  
6 opportunity to file a Motion for Class Certification,  
7 investigation, discovery and trial must properly be allowed  
8 regarding said certification prior to ruling by the Court as to  
9 whether a class or classes will be certified. To date, the  
10 Public Water Purveyors have refused to respond to discovery  
11 necessary to evaluate the efficacy of their position that this  
12 matter should be tried as a class action. Additionally, in light  
13 of the failure of the Public Water Purveyors to respond to  
14 discovery, and in light of the untimely filed Declaration of  
15 Joseph Scalmanini, along with Public Water Purveyors' recent  
16 filings, Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.  
17 have scheduled the deposition of Joseph Scalmanini regarding the  
18 basis for his declaration, as well as serve discovery similar to  
19 that propounded by Diamond Farming.

20 4. Once all parties have been served, filed responsive  
21 pleadings and/or defaulted, the Court should set a trial on the  
22 issue of alleged prescription. It is clear based upon filings of  
23 the parties, that prescription is a pivotal issue in the lawsuit.  
24 Parties have made it clear that there is a difference of opinion  
25 as to the legal standard for notice and the legal standard for  
26 proving a prescriptive claim based upon the alleged taking of

1 water rights. Determination of these issues will be helpful to  
2 resolution of the overall lawsuit. Additionally, these issues  
3 have been investigated and discovered significantly in the  
4 Riverside action, which should expedite trial of these issues in  
5 this matter.


6 5. The parties have agreed independent of the Court  
7 process to retain Bill Dendy as a private mediator to assist in  
8 resolution of the matter. It is clear under California law that  
9 a judicial reference is not appropriate under these  
10 circumstances. In any event, given that the parties already have  
11 agreed to use him privately, he would not be appropriate for  
12 court reference. Finally, there should be no communication with  
13 the Court by this privately retained mediator.

14  
15 DATED: August 16, 2007

Respectfully submitted,

16 CLIFFORD & BROWN

17  
18 By:

  
19 RICHARD G. ZIMMER, ESQ.  
20 T. MARK SMITH, ESQ.  
21 Attorneys for Cross-Defendants,  
22 BOLTHOUSE PROPERTIES, LLC and  
23 WM. BOLTHOUSE FARMS, INC.  
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*Santa Clara County Superior Court Case No. 1-05-CV-049053*

On August 16, 2007, I served the foregoing document(s) entitled:

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