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

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

\* \* \*

COORDINATION PROCEEDING ) Judicial Council Coordination Proceeding  
SPECIAL TITLE (Rule 1550(b)) ) No. 4408

ANTELOPE VALLEY GROUNDWATER ) CASE NO. 1-05-CV-409053  
CASES ) Trial Date: 02/11/13

INCLUDED ACTIONS:

LOS ANGELES COUNTY )  
WATERWORKS DISTRICT NO. 40 v. )  
DIAMOND FARMING COMPANY, et al., )  
Los Angeles Superior Court Case No. )  
BC325201 )

**ALTERNATIVE REQUEST TO EX  
PARTE APPLICATION REGARDING  
PHASE 4 TRIAL**

LOS ANGELES COUNTY )  
WATERWORKS DISTRICT NO. 40 v. )  
DIAMOND FARMING COMPANY, et al., )  
Kern County Superior Court Case No. S- )  
1500-CV-254348 )

**DATE: DECEMBER 20, 2012  
TIME: 8:30 A.M.  
DEPT: TELEPHONIC HEARING  
(COURTCALL) - TBA**

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] )

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1 This request is submitted due to the events that have transpired since last week's case  
2 management conference. As the Court is aware, a vast majority of parties participated in  
3 extensive mediation efforts to resolve this case so that further litigation expense and water  
4 supply uncertainty could be avoided. A lot of time and money was spent on this process in  
5 good faith. Fortunately, as reported to the Court last week, a large contingent of parties has  
6 reached a partial stipulated settlement that was endorsed on the record by the mediator Justice  
7 Robie.

8 After last week's hearing, the Court issued a discovery order and case management  
9 order for the Phase 4 trial. The discovery order seeks, among other things, information on all  
10 parties' production during various years over the last decade, with responses due by this Friday.  
11 The trial has been set to address, among other things, the issues of current production as well as  
12 proof of claimed reasonable and beneficial use of water for each parcel to be adjudicated, with  
13 expert disclosures due at the beginning of January, depositions for the remainder of January,  
14 and trial to commence in early February.

15 The parties to the partial stipulated settlement would appreciate having at least the  
16 opportunity to avoid all of this litigation, and therefore request the ability to present to the  
17 Court their partial settlement. Unfortunately, the discovery and trial calendar, along with the  
18 issues that are being addressed, prevents the parties from being able to accomplish that goal.  
19 Clients are simply unable to devote resources to settlement while at the same time conducting  
20 discovery and defending their production in a trial set to commence in less than two months.  
21 More problematic is that many parties are beginning to call into question the viability of the  
22 settlement in light of the issues for trial that have been set. Accordingly, the undersigned  
23 parties submit that the Court should consider:

- 24 1. Vacating the discovery and trial setting orders,
- 25 2. Allowing the settling parties to submit their partial settlement on or before  
26 February 4, and then,
- 27 3. Evaluating on February 11 at a further case management conference what issues  
28 remain to be tried.

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1 This course of action will conserve a tremendous amount of resources. This request is  
2 submitted for consideration as a further case management conference proposal to be heard in  
3 conjunction with an ex parte request that it is understood has already been tentatively reserved  
4 for this Thursday, December 20, 2012, at 9:30 a.m.

5  
6 DATED: December 17, 2012

Respectfully submitted.

7 CLIFFORD & BROWN

8  
9 By: 

10 RICHARD G. ZIMMER, ESQ.  
11 Attorneys for BOLTHOUSE PROPERTIES,  
12 LLC and WM BOLTHOUSE FARMS, INC.

13 WILLIAM SLOAN, ESQ.

14 BOB JOYCE, ESQ.

15 ROBERT KUHS, ESQ.

16 MICHAEL FIFE, ESQ.

17 SCOTT KUNEY, ESQ.

18 JOE HUGHES, ESQ.

19 TED CHESTER, ESQ.

20 RYAN BEZERRA, ESQ.

21 JENNIFER SPALETTA, ESQ.

22 JIM LEWIS, ESQ.

**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 December 17, 2012, I served the foregoing document(s) entitled:

**ALTERNATIVE REQUEST TO *EX PARTE* APPLICATION REGARDING PHASE 4 TRIAL**

— 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-FILEING IN COMPLEX LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.**

Executed on December 17, 2012, 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