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

12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF SANTA CLARA**

14 * * *

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

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

19 INCLUDED ACTIONS:

20 LOS ANGELES COUNTY) **DECLARATION OF RICHARD G.**
21 WATERWORKS DISTRICT NO. 40 v.) **ZIMMER IN SUPPORT OF MOTION**
22 DIAMOND FARMING COMPANY, et al.,) **TO COMPEL DEPOSITION**
23 Los Angeles Superior Court Case No.) **TESTIMONY OF LOS ANGELES**
24 BC325201) **COUNTY WATERWORKS DISTRICT**
25) **NO. 40 PERSON MOST**
26) **KNOWLEDGEABLE**

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

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])

1 I, Richard G. Zimmer, declare:

2 1. I am an attorney licensed to practice law in the State of California. I am a
3 member of the law firm of Clifford & Brown. In such capacity I am the attorney primarily
4 responsible for the above-captioned matter on behalf of Wm. Bolthouse Farms, Inc. and
5 Bolthouse Properties, LLC.

6 2. The following declaration is based upon personal knowledge and information
7 and belief. As to matters based upon information and belief, I believe them to be true.

8 3. Pursuant to the First Amendment to Case Management Order For Phase Four
9 Trial, this Court set the deadline for taking depositions for the Phase 4 Trial for April 26, 2013.

10 4. On April 5, 2013, attorney Michael McLachlan, set the deposition of Adam
11 Ariki to be taken on April 12, 2013 requesting production of documents by Mr. Ariki. A copy
12 of the deposition notice is attached as Exhibit "A" and herein incorporated by reference.

13 5. On April 12, 2013, this law firm and the undersigned set the deposition of the
14 person most knowledgeable for Los Angeles County and Los Angeles County Waterworks
15 District No. 40 ("District 40") on April 19, 2013, along with requests for production of
16 documents. (See Exhibit "B" attached hereto and herein incorporated by reference.) The
17 deposition was set for the person most knowledgeable, since given the issues specifically identified
18 in the person most knowledgeable deposition, it was not known who the most knowledgeable
19 person would be. The deposition was timely served.

20 6. District 40 failed to file a proper objection and refused to produce the witness
21 for the deposition. (See Exhibit "C" attached hereto and herein incorporated by reference.)

22 7. In order to avoid duplication of effort, and at the request of the Court, I have
23 reviewed the deposition transcript of Adam Ariki taken by Mr. McLachlan on April 12, 2013,
24 along with the deposition notice for that deposition including the request for production. I have
25 also reviewed the documents produced pursuant to that deposition.

26 8. The deposition notice served by Mr. McLachlan requested only appearance by
27 one individual, Adam Ariki. The deposition notice served by this office requested production
28

1 of the person or persons most knowledgeable based upon specifically articulated issues relevant
2 to the Phase 4 Trial.

3 9. A review of the notice of deposition of Adam Ariki and the notice of deposition
4 of the person (s) most knowledgeable reveals that the notice for the person(s) most
5 knowledgeable is much more specific regarding the scope of the testimony. The person(s)
6 most knowledgeable deposition notice also contains more detailed requests for production
7 directed specifically to return flow issues. (See Exhibits "A" and "B".) For example, the
8 person(s) most knowledgeable deposition notice demands documents showing actions by
9 District 40 to make use of return flows, showing the intent to recapture return flows, showing
10 the physical capability to recapture return flows, requests water supply assessments, will serve
11 notices, actions to confirm adequate water supply for new development, documents showing
12 migration of return flows, documents showing the breakdown of return flows attributed to
13 municipal, industrial, irrigation, septic tank, municipal sewage systems and other sources,
14 requests the percentages of return flows from various types of water including calculation of
15 transmission losses, documents showing any return flows from use of return flows and requests
16 documents regarding any presentations regarding the availability of groundwater and/or the
17 extent which return flows have been relied upon as an existing and/or future water supply. (See
18 Exhibit "B".)

19 10. Review of the transcript of Mr. Ariki's deposition also reveals the following.

20 The McLachlan Ariki deposition notice requested production of "all documents Los
21 Angeles Waterworks District No. 40 ("Waterworks") intends on submitting to the Court at the
22 Phase 4 Trial (other than those records produced in its December 21, 2012 'Response to
23 Discovery Order for Phase IV Trial')". These documents were not provided based upon an
24 objection by Mr. Dunn at the deposition. (See Exhibit "D" attached hereto and herein
25 incorporated by reference.)

26 It is also noteworthy that the documents requested in the person(s) most knowledgeable
27 deposition notice were not produced in the "Response to Discovery Order for Phase IV Trial".
28 Additionally, Mr. Dunn refused to allow counsel to inquire whether Mr. Ariki would testify at

1 the Phase IV Trial on behalf of District 40. (See Exhibit "E" attached hereto and herein
2 incorporated by reference.)

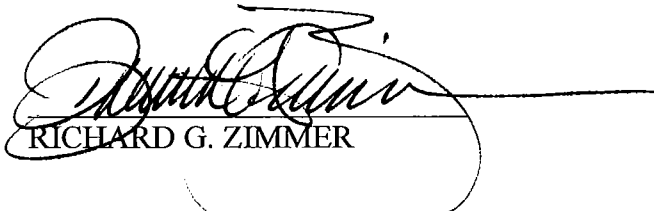
3 The only request for production related to return flows in the Ariki request for
4 production was Request No. 6 requesting "any documents generated by or relied upon by
5 Waterworks to assess its return flows from imported water (other than the Summary Expert
6 Report, which need not be produced.) (See Exhibit "A".) The only documents provided by
7 District 40 in response to this request for production were the 2000, 2005 and 2010 Urban
8 Water Management Plans. (See Exhibit "F" attached hereto and herein incorporated by
9 reference)

10 Contrary to assertions of counsel and the meet and confer conference with this Court at
11 the last Case Management Conference, I did notify the liaison committee of the setting of the
12 deposition of the person most knowledgeable. (See Exhibit "G" attached hereto and herein
13 incorporated by reference.)

14 The person most knowledgeable deposition and the production of documents pursuant
15 to the deposition is critical to the landowners' ability to defend against the return flow claims
16 which are at issue in the Phase 4 Trial. Attorney Bob Joyce, for Diamond Farming, originally
17 was scheduled to set and take the deposition of the person(s) most knowledgeable. However,
18 he could not set and take the deposition because he was in trial. Accordingly, the undersigned
19 set the deposition. There are other landowner attorneys who desire to attend the deposition of
20 the person(s) most knowledgeable as well and to seek documents requested in the person(s)
21 most knowledgeable deposition notice.

22 I declare under the laws of the State of California that the foregoing is true and correct.
23 Executed under penalty of perjury this 10th day of May, 2013, at Bakersfield, California.

24
25 By:


26 RICHARD G. ZIMMER
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