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

12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF SANTA CLARA**

14 **COORDINATION PROCEEDING**
15 **SPECIAL TITLE (Rule 1550(b))**

) **Judicial Council Coordination Proceeding No.**
) **4408**

16 **ANTELOPE VALLEY GROUNDWATER**
17 **CASES**

) **CASE NO. 1-05-CV-049053**

18 **INCLUDED ACTIONS:**

19 **LOS ANGELES COUNTY**
20 **WATERWORKS DISTRICT NO. 40 v.**
21 **DIAMOND FARMING COMPANY, et al.,**
22 **Los Angeles Superior Court Case No.**
23 **BC325201**

) **NOTICE OF MOTION AND MOTION**
) **TO COMPEL DEPOSITION**
) **TESTIMONY OF LOS ANGELES**
) **COUNTY WATERWORKS DISTRICT**
) **NO. 40 PERSON MOST**
) **KNOWLEDGEABLE; MEMORANDUM**
) **OF POINTS AND AUTHORITIES;**
) **DECLARATION OF RICHARD G.**
) **ZIMMER**

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

29 **DIAMOND FARMING COMPANY, and**
30 **W.M. BOLTHOUSE FARMS, INC., v.**
31 **CITY OF LANCASTER, et al.,**
32 **Riverside Superior Court**
33 **Case No. RIC 344436 [c/w case no. RIC**
34 **344668 and 353840]**

) **DATE: May 13, 2013**
) **TIME: 9:00 a.m.**

35 **AND RELATED ACTIONS**

) **Trial Date: May 28, 2013**
) **Action Filed: October 26, 2005**

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1 TO LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 AND THEIR
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on May 13, 2013 at 9:00 a.m. in Department 222 of Los
4 Angeles County Superior Court located at 111 N. Hill Street, Los Angeles, California, Wm.
5 Bolthouse Farms, Inc. and Bolthouse Properties, LLC, hereinafter "Bolthouse", will and
6 hereby do, move this Court for an Order compelling Los Angeles County Waterworks District
7 No. 40, pursuant to *Code of Civil Procedure Section 2025.450*, to submit their person(s) most
8 knowledgeable to deposition.

9 This Motion is made pursuant to *Code of Civil Procedure Section 2025.450*, on the
10 grounds that the deposition was properly set and Los Angeles County Waterworks District No.
11 40 failed to file any appropriate objection and failed to produce the witness for deposition.

12 This Motion will be based on this Notice of Motion, the Memorandum of Points and
13 Authorities, the Declaration of Richard G. Zimmer, and all pleadings, papers and records on
14 file herein, and any and all such other oral or documentary evidence as may be presented at the
15 hearing of this Motion.

16 DATED: May 10, 2013

Respectfully submitted.

17 CLIFFORD & BROWN

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20 By:


21 RICHARD G. ZIMMER, ESQ.

22 Attorneys for
23 BOLTHOUSE PROPERTIES, LLC and
24 WM. BOLTHOUSE FARMS, INC.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

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

6 On April 5, 2013, attorney Michael McLachlan, set the deposition of Adam Ariki to be
7 taken on April 12, 2013 requesting production of documents by Mr. Ariki. A copy of the
8 deposition notice is attached as Exhibit "A" to the Declaration of Richard G. Zimmer attached
9 hereto and herein incorporated by reference.

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

17 District 40 failed to file a proper objection and refused to produce the witness for the
18 deposition. (See Exhibit "C" to the Declaration of Richard G. Zimmer attached hereto and
19 herein incorporated by reference.)

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

25 The deposition notice served by Mr. McLachlan requested only appearance by one
26 individual, Adam Ariki. The deposition notice served by Bolthouse requested production of
27 the person or persons most knowledgeable based upon specifically articulated issues relevant
28 to the Phase 4 Trial.

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

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

24 It is also noteworthy that the documents requested in the person(s) most knowledgeable
25 deposition notice were not produced in the "Response to Discovery Order for Phase IV Trial".
26 Additionally, Mr. Dunn refused to allow counsel to inquire whether Mr. Ariki would testify at
27 the Phase IV Trial on behalf of District 40. (See Exhibit "E" to the Declaration of Richard G.
28 Zimmer attached hereto and herein incorporated by reference.)

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

8 Contrary to assertions of counsel and the meet and confer conference with this Court at
9 the last Case Management Conference, counsel for Bolthouse did notify the liaison committee
10 of the setting of the deposition of the person most knowledgeable. (See Exhibit “G” to the
11 Declaration of Richard G. Zimmer attached hereto and herein incorporated by reference.)

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

20 II.

21 STATUTORY AUTHORITY FOR THE MOTION

22 Pursuant to *Code of Civil Procedure Section 2025.450(a)*:

23 “If, after service of a deposition notice, a party to the action or an
24 officer, director, managing agent, or organization that is a party
25 under Section 2025.230, without having served a valid objection
26 under Section 2025.410, fails to appear for examination, or to
27 proceed with it, or to produce for inspection any document,
28 **electronically stored information**, or tangible thing described in
the deposition notice, the party giving the notice may move for an
order compelling the deponent’s attendance and testimony, and the
production for inspection of any document, **electronically stored
information**, or tangible thing described in the deposition notice.”

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4 **III.**

5 **DISTRICT 40 IMPROPERLY FAILED TO PRESENT THE PERSON MOST**
6 **KNOWLEDGEABLE FOR DEPOSITION**

7 District 40 never served a written objection on the parties seeking to take the deposition
8 and all other attorneys or parties on whom the deposition notice was served at least three
9 calendar days before the deposition as required by *Code of Civil Procedure Section 2025.410*
10 although some emails were exchanged, regarding the deposition, District 40 did not advise that
11 it would not produce the witness until April 18, 2013, the day before the deposition. (See
12 Exhibit "G" attached hereto and herein incorporated by reference.)

13 **IV.**

14 **DISTRICT 40 SHOULD BE ORDERED TO PRODUCE THE PERSON MOST**
15 **KNOWLEDGEABLE FOR DEPOSITION**

16 For all the reasons set forth in the Statement of Facts and Declaration of Richard G.
17 Zimmer attached to this Motion, District 40 should be ordered to produce the person(s) most
18 knowledgeable for deposition and be ordered to produce the documents requested. The
19 testimony of the person(s) most knowledgeable and documents requested are relevant and
20 critical to the landowners, including the moving party herein. In order to properly defend
21 against the return flow claims set for trial in Phase 4. The person(s) most knowledgeable
22 deposition includes specific issues for which the person(s) most knowledgeable is to be
23 designated. Additionally, the person(s) most knowledgeable deposition notice specifically
24 identifies documents and things to be produced by the person(s) most knowledgeable which are
25 necessary to evaluate for purposes of the return flow claims in the Phase 4 Trial. Accordingly,
26 it is requested that the Court order the person(s) most knowledgeable to be designated and that
27 the documents requested be produced for deposition prior to the Phase 4 Trial.

28 **V.**

1 **CONCLUSION**

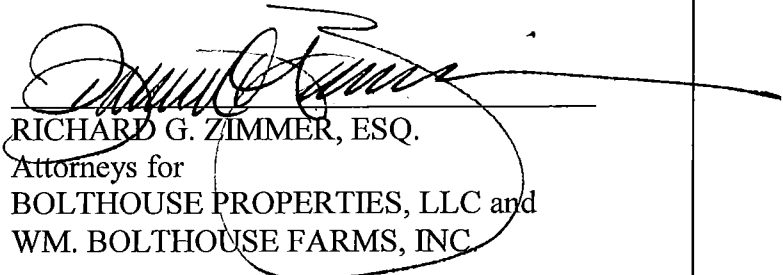
2 The deposition of the Los Angeles County Waterworks District No. 40 person(s) most
3 knowledgeable regarding return flows and for production of documents specifically articulated
4 therein related to the return flow claims is critical to the landowners' ability to properly defend
5 the return flow claims being made by District 40 and others in the Phase 4 Trial. The
6 deposition and request for production was properly noticed. It respectfully requested that the
7 Court grant an order that District 40 identify and produce the person(s) most knowledgeable
8 and to produce the documents identified in the person(s) most knowledgeable deposition notice
9 prior to the Phase 4 Trial.

10 DATED: May 10, 2013

Respectfully submitted.

11 CLIFFORD & BROWN

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14 By:


15 RICHARD G. ZIMMER, ESQ.
16 Attorneys for
17 BOLTHOUSE PROPERTIES, LLC and
18 WM. BOLTHOUSE FARMS, INC.
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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, Suite 900, Bakersfield, CA 93301.

**NOTICE OF MOTION AND MOTION TO COMPEL DEPOSITION TESTIMONY OF
LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 PERSON MOST
KNOWLEDGEABLE; MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATION OF RICHARD G. ZIMMER**

X BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX LITIGATION
PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


VICKI STREET
2455-2