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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 \* \* \*

11 COORDINATION PROCEEDING	)	Judicial Council Coordination
SPECIAL TITLE (Rule 1550(b))	)	Proceeding No. 4408
12	)	
13 ANTELOPE VALLEY GROUNDWATER	)	CASE NO. 1-05-CV-049053
CASES	)	
14 INCLUDED ACTIONS:	)	
15	)	
16 LOS ANGELES COUNTY WATERWORKS	)	
DISTRICT NO. 40 v. DIAMOND	)	OPPOSITION TO MOTION TO DISMISS
FARMING COMPANY, et al.,	)	AND MOTION TO STRIKE OF SHELDON
Los Angeles Superior Court	)	R. BLUM, TRUSTEE, THE SECOND
Case No. BC325201	)	AMENDED COMPLAINT OF
17	)	WM. BOLTHOUSE FARMS, INC.
18 LOS ANGELES COUNTY WATERWORKS	)	
DISTRICT NO. 40 v. DIAMOND	)	
19 FARMING COMPANY, et al.,	)	
Kern County Superior Court	)	
20 Case No. S-1500-CV-254348	)	
21	)	
22 DIAMOND FARMING COMPANY, and	)	
W.M. BOLTHOUSE FARMS, INC., v.	)	
23 CITY OF LANCASTER, et al.,	)	
Riverside Superior Court	)	
Case No. RIC 344436 [c/w case no.	)	
RIC 344668 and 353840]	)	
24	)	
25 ROSAMOND COMMUNITY SERVICES	)	
DISTRICT,	)	
CROSS-COMPLAINANT,	)	
26	)	



1 Plaintiff/Cross-Defendant, WM. BOLTHOUSE FARMS, INC.  
2 (hereinafter "BOLTHOUSE FARMS"), hereby submits its Opposition to  
3 the Motion to Dismiss and Motion to Strike of Sheldon R. Blum  
4 Trustee (hereinafter "BLUM"), the Second Amended Complaint of WM.  
5 BOLTHOUSE FARMS, INC.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I**

8 **BLUM IS NOT A DEFENDANT TO THE SECOND AMENDED COMPLAINT**

9 BLUM filed the instant Motion without standing to do so and  
10 upon a patent misunderstanding of the thrust and target of the  
11 Second Amended Complaint (hereinafter the "SAC"). The SAC, like  
12 its predecessors, sought to quiet title to BLOTHOUSE FARMS'  
13 interests, both leasehold and fee, to certain identified parcels  
14 against *certain municipal purveyors only*. The SAC asserts no  
15 rights adverse to BLUM as an overlying landowner, so he is not a  
16 defendant and cannot, therefore, attack the SAC by Motion to  
17 Dismiss or Strike. On this simple ground alone, BLUM'S Motion,  
18 in its entirety, should be denied. Furthermore, dismissing BLUM  
19 from a pleading to which he is not a defendant would be  
20 pointless.

21 **II**

22 **BLUM'S DECLARATION IS IMPROPER MATERIAL**

23 ***[Motion to Dismiss § 1. & Declaration of Sheldon R. Blum]***

24 Sheldon R. Blum's attached Declaration is improper material  
25 outside the "four corners" of the pleading, and should be  
26 disregarded. (Code Civ. Proc. § 430.30(a)(b)) BLUM'S request for



1 judicial notice is also procedurally defective in that it is not  
2 made in a separate document as required by *Rule of Court*  
3 *3.1306(c)*.

4 **III**

5 **BLUM STATES NO APPROPRIATE GROUNDS FOR A DISMISSAL**

6 **[Motion to Dismiss § 2.]**

7 Assuming, *arguendo*, that BLUM is a defendant with standing  
8 to challenge the sufficiency of the SAC, he is nevertheless not  
9 entitled to a dismissal as requested. BLUM cites to numerous  
10 statutes which BLUM claims provide the remedy of dismissal on  
11 Motion. BOLTHOUSE FARMS cannot be clearer than to state that  
12 BLUM is not a defendant to the SAC, be it named, as a DOE  
13 defendant or as an indispensable/interested party. The SAC is  
14 directed at the *municipal purveyors only*. Accordingly, none of  
15 the statutes cited provides a vehicle for dismissal as requested  
16 by BLUM, because he is not a defendant. BLUM'S rogue pleading  
17 need not be considered by the court, and certainly does not set  
18 forth a cognizable claim for the relief sought therein.

19 **IV**

20 **THE IDENTIFIED ALLEGATIONS CANNOT BE STRICKEN**

21 **[Motion to Strike § 1.]**

22 Again, BLUM is not a defendant to the SAC and his interests  
23 as an overlying landowner are not affected by the relief sought  
24 thereby. BLUM cites several authorities for the proposition that  
25 a lessee cannot take from his lessor by adverse possession.  
26 (Schwarzbaugh v. Sampson, (1936) 11 Cal.App.2d 451; *Civil Code* §



1 1006) BOLTHOUSE FARMS asserts no claim of right to water beneath  
2 BLUM'S property paramount or adverse to BLUM.

3 A lessee of BLUM'S parcels is free to assert rights to  
4 subsurface waters to which his lease grants him use. Such a  
5 claim of right asserted by a lessee is not paramount to his  
6 lessor, but rather, is subservient and founded upon the rights  
7 conferred by the lease. Accordingly, the SAC need not assert  
8 allegations specific to BLUM to establish its quiet title claim  
9 against the municipal purveyors. Additionally, the  
10 identification of BLUM'S parcels is necessary to identify those  
11 parcels to which BOLTHOUSE FARMS alleges a lessee's water right  
12 to, and does not operate to seek title adverse to BLUM. The  
13 ultimate determination of rights to waters underlying parcels  
14 identified by WM. BOLTHOUSE FARMS, INC. will be in conformity  
15 with the authority cited by BLUM and not adverse to his rights as  
16 an overlying landowner.

17 **V**

18 **ATTORNEY'S FEES ARE NOT APPROPRIATE**

19 ***[Motion to Strike § 2.]***

20 BLUM'S concurrently filed pleadings included a request for  
21 judicial notice of a lease which were each ineffective as set  
22 forth therein. BLUM did not include such a request for judicial  
23 notice of a lease so the court need not reach the issue of  
24 contractual attorney's fees thereunder because the matter is  
25 patently outside the "four corners" of the SAC.

26 ///



1 Even if the court could take judicial notice of the Lease,  
2 the Civil Code § 1717 argument asserted by plaintiff is absurd.  
3 Under Civil Code § 1717(a) contractual attorney's fees are  
4 recoverable only upon the enforcement of the contract, which is  
5 not the case here on Demurrer. Pursuant to Civil Code § 1717(b)  
6 BLUM must be successful on his Motion, then file a separate motion  
7 with the court seeking a determination of who the prevailing party  
8 on the contract is and fixing reasonable fees under the contract.  
9 BLUM'S request should be summarily denied.

10 **VI**

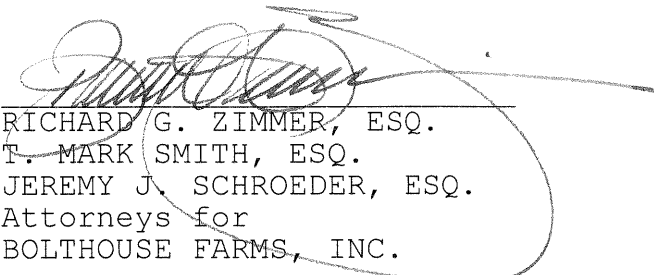
11 **CONCLUSION AND REQUEST FOR RELIEF**

12 WM. BOLTHOUSE FARMS, LLC. respectfully requests that BLUM'S  
13 request for judicial notice be denied, that the materials attached  
14 to the Demurrer be disregarded and that the Motion to Dismiss and  
15 Motion to Strike each be denied.

16 DATED: January 25, 2008

17 CLIFFORD & BROWN

18  
19 By:

  
20 RICHARD G. ZIMMER, ESQ.  
21 T. MARK SMITH, ESQ.  
22 JEREMY J. SCHROEDER, ESQ.  
23 Attorneys for  
24 BOLTHOUSE FARMS, INC.  
25  
26



**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 January 25, 2008, I served the foregoing document(s) entitled:

**OPPOSITION TO MOTION TODISMISS AND MOTION TO STRIKE OF SHELDON R.  
BLUM, TRUSTEE, THE SECOND AMENDED COMPLAINT OF WM. BOLTHOUSE FARMS,  
INC.**

XX 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-FILING IN COMPLEX  
LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER  
27, 2005.**

Executed on January 25, 2008, 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  
2450-37