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6 DISTRICT NO. 40

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
16

17 **ANTELOPE VALLEY
GROUNDWATER CASES**

18 Included Actions:
19 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
20 Court of California, County of Los
Angeles, Case No. BC 325201;

21 Los Angeles County Waterworks District
22 No. 40 v. Diamond Farming Co., Superior
Court of California, County of Kern, Case
23 No. S-1500-CV-254-348;

24 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
25 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
26 California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668
27
28

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**OPPOSITION TO H&N DEVELOPMENT
CO. WEST, INC.'S MOTION TO SET
ASIDE ENTRY OF DEFAULT**

Hearing

Date: October 5, 2012

Time: 9:00 a.m.

Location: Dept. 1, Room 534
111 North Hill Street
Los Angeles, CA 90012

1 **I. INTRODUCTION**

2 Contrary to the contention of Cross-Defendant H&N Development Co. [West?](“H&N”),
3 Los Angeles County Waterworks District No. 40 (“District No. 40”) made attempts, through a
4 process server, to serve H&N’s officer and agent for service of process, Wendell Naraghi. Only
5 when such attempts were unsuccessful did District No. 40 seek permission from this Court for
6 service by publication. Upon obtaining this Court’s permission, District No. 40 published the
7 summons in the Los Angeles Times, the Bakersfield Californian and the Antelope Valley Press,
8 which are newspapers of general circulation within Kern County, the location of the H&N
9 property. (District 40 Request for Judicial Notice (“District 40 RJN”), Ex. B [Request for Entry
10 of Default, filed on March 20, 2012]; H&N Request for Judicial Notice (“H&N RJN”), Ex. 3.)

11 It is disingenuous for H&N to claim that an incorrect entity was named when H&N failed
12 to grant the land to H&N Development Co., West until 2011, three years after attempted service.
13 H&N concedes it did not record its deed until a year after service by publication was completed.
14 H&N failed to establish that its alleged lack of actual notice was not caused by its avoiding
15 service or by inexcusable neglect. Even now, months after H&N admittedly became aware that it
16 was a cross-defendant in this action, H&N has yet to file or serve a proposed responsive pleading.
17 (See Code Civ. Proc. § 473.5, subd. (b) [party moving to set aside a default judgment and for
18 leave to defend the action “shall serve and file with the notice [of motion] a copy of the answer,
19 motion, or other pleadings proposed to be filed in the action”].)

20 The court should deny H&N’s motion to set aside the default.

21 **II. RELEVANT FACTUAL HISTORY**

22 **A. District 40 Correctly Named H&N As A Property Owner**

23 District 40 obtained the list of property owner cross-defendants from the public property
24 tax records. (Declaration of Jeffrey V. Dunn [“Dunn Decl.”] at ¶ 2.) When District 40 searched
25 for owners of real property within the adjudication boundaries in Kern County, public records
26 identified H&N Development Co., Inc., as landowners. (See Dunn Decl., ¶3; see also, District
27 40RJN, Ex. A [Grant Deed, dated May 31, 2011];.) H&N only recently changed its ownership
28 from H&N Development Co., to H&N Development Co., West by a grant deed in 2011 - three

1 years after attempted service and a year after service by publication was complete. (District 40
2 RJN, Ex. A.)

3 **B. District 40 Properly Served H&N**

4 Prior to service by publication, District No. 40 attempted to serve H&N by personal
5 service of the Summons, First-Amended Complaint and related papers upon Wendell Naraghi,
6 who was then the Chief Executive Officer and H&N agent for service of process in September,
7 2008. (See Dunn Decl., ¶4; H&N RJN, Ex. 3; Declaration of Wendell Naraghi [“W. Naraghi
8 Decl.”], Exs. A & B.) District 40 made *ten attempts* to serve H&N during September of 2008 at
9 its designated Escalon address. (H&NRJN, Ex. 3.) Although no one accepted service during any
10 of the ten attempts to serve at the Escalon address, the process server saw that the residence was
11 occupied. (*Id.*) For example, on September 2, 2008, the lights were lit inside the residence; on
12 September 6 and 7, 2008, gardening supplies were present and then moved; and on September 8,
13 2008, three vehicles were present on the premise. (*Id.*) Only after these attempts did District 40
14 request permission from this Court to serve H&N by publication. (*Id.*)

15 Contrary to H&N’s contention, in addition to publishing notice of these coordinated
16 actions in the Los Angeles Times and the Bakersfield Californian, District 40 also published the
17 notice in the Antelope Valley Press. (District No. 40 RJN, Ex. B (Request for Entry of Default,
18 filed on March 20, 2012).) These newspapers were chosen by the court because they are the
19 major newspapers covering the entire area wherein the property at issue lies and therefore, one
20 can reasonably assume, are most likely to provide notice to all cross-defendants, including H&N.
21 (H&N RJN, Ex. 3.)

22 **III. THE ENTRY OF DEFAULT IS VALID BECAUSE DISTRICT 40 PROPERLY**
23 **SERVED H&N**

24 Contrary to H&N’s contentions, the court entry of default is not void. District No. 40
25 exerted more than reasonable diligence to serve H&N prior to seeking an order to allow service
26 by publication. Judicial Council Comment to Section 415.50 of the Code of Civil Procedure,
27 which governs service by publication, provides that “[a] number of honest attempts to learn
28 defendant’s whereabouts or his address[, including] . . . investigation of . . . the real and personal

1 property index in the assessors' office, near the defendant's last known location, are generally
2 sufficient." (See also, *Stern v. Judson* (1912) 163 Cal. 726, 727-28.) As discussed above, District
3 No. 40 made diligent efforts in ascertaining the service address of the cross-defendants by
4 identifying the owner of the property, finding a valid address to personally serve H&N, and
5 making repeated attempts to personally serve H&N's named officer, director, and agent for
6 service. (Dunn. Decl., ¶¶2-5.) District No. 40 only resorted to service by publication when those
7 attempts failed. (H&N's RJN, Ex. 3.)

8 Code of Civil Procedure section 416.10 provides that a corporation must be served by
9 delivering a copy of the summons and the complaint to (1) "the designated agent for service of
10 process" or (2) "the president, chief executive officer, or other head of the corporation, . . . or a
11 person authorized by the corporation to receive service of process". According to the H&N 2007
12 and 2008 Statements of Information, Wendell Naraghi was the Chief Executive Officer, a
13 director, and agent for service of process of H&N.¹ (W. Naraghi Decl., Exs. A & B.) By H&N's
14 own admission, "had [Mr. Naraghi] been found there by the process server, then service would
15 have been effective." (H&N Motion at 7:28-8:1.) The process server had no reason to believe
16 that Mr. Naraghi could not be located at the Escalon address. During several of the process
17 server's ten visits to the Escalon address, the process server noticed signs that the residence was
18 occupied but no one answered the door. (H&N's RJN, Ex. 3.)

19 Furthermore, H&N misplaces its reliance upon cases that do not concern service by
20 publication after multiple failed attempts to serve a corporation's officer, director and agent for
21 service. (Compare *Watts v. Crawford* (1995) 10 Cal.4th 743, 749, n. 5 [defendant is an
22 individual]; *Mennonite Bd. of Missions v. Adams* (1983) 462 U.S. 791, 798 [no attempt was made
23 to personally serve or mail notice to mortgagee of a property]; *Bakersfield Hacienda, Inc. v.*
24 *Superior Court of Kern County* (1962) 199 Cal.App.2d 798, 805 [plaintiff failed "to show any
25 diligence whatsoever in attempting to serve a corporate defendant by personal service on one of

26 ¹ A California corporation must file a Statement of Information with the Secretary of State on an annual basis. The
27 State of Information lists (1) address of principal executive office; (2) address of principal place of business in
28 California; (3) name and addresses of the corporation's chief executive officer, secretary and chief financial officer;
(4) names and addresses of all corporate directors; (5) name and address of agent for service of process; and (6) the
corporation's type of business.

1 the officers”].) Here, in contrast, prior to seeking leave to serve by publication, District 40
2 identified the property owner, identified H&N’s officer and agent for service, and made ten
3 attempts to personally serve the summons pursuant to Section 416.10. (H&N RJN, Ex. 3; W.
4 Naraghi Decl., Exs. A & B.) Consequently, District No. 40 has shown reasonable diligence in
5 serving H&N prior to publishing notice.

6 Furthermore, service of process by publication is valid because District No. 40 published
7 notice of this action in major publications covering the area wherein the H&N property lies and
8 where H&N conducts business by leasing its property to Rod Stiefvater (District 40 RJN, Ex. B;
9 H&N RJN, Ex. 3; H&N Motion at 4:11-12.) The Los Angeles Times, the Bakersfield
10 Californian, and the Antelope Valley Press are widely circulated newspapers within the Kern
11 County, where H&N conducts its business—a fact that H&N does not deny. (*Id.*) Consequently,
12 this court should deny H&N’s request to set aside the default as void.

13 **IV. H&N FAILED TO ESTABLISH ITS LACK OF ACTUAL NOTICE WAS NOT**
14 **CAUSED BY ITS AVOIDANCE OF SERVICE OR INEXCUSABLE NEGLECT;**
15 **AND H&N HAS FAILED TO FILE AN ANSWER AS REQUIRED BY SECTION**
473.5

16 H&N ignores the requirements to set aside a default under Section 473.5. Its “is [to allow
17 a party without actual notice an opportunity] to answer to the merits of the action.” (*Brockman v.*
18 *Wagenbach* (1957) 152 Cal.App.2d 603, 616.) To that end, the moving party is required to (1)
19 seek leave to defend the action, (2) submit an affidavit showing that its lack of actual notice in
20 time to defend the action was not caused by its avoidance of service or inexcusable neglect, and
21 (3) serve and file with the notice of motion “a copy of the answer, motion, or other pleading
22 proposed to be filed in the action.” (Code Civ. Proc. § 473.5, subd. (b).) H&N has failed to meet
23 all three requirements.

24 Nowhere in its motion did H&N request leave to defend this action as required by Section
25 473.5. Consistent with H&N’s failure to acknowledge its obligation to defend itself in this action,
26 H&N also failed to file with this motion a copy of responsive pleading that it intends to file, if the
27 Court decides to set aside the default. (See Code Civ. Proc. § 473.5, subd.(b).)

28 Similarly, the declarations filed in support of H&N’s motion similarly fail to meet the

requirements of Section 473.5. H&N submitted declarations of Norik Naraghi and Wendell Naraghi, wherein both persons declared that they allegedly had no actual notice of the Cross-Complaint. (Declaration of Norik Naraghi (“N. Naraghi Decl.”) at ¶7; W. Naraghi Decl. at ¶4.) Noticeably missing from both declarations is any statement that their ignorance is not due to their avoidance of service or neglect.

Neither Norik nor Wendell discusses the extent of H&N’s business in Kern County nor whether in conducting matters on behalf of H&N they have read articles published in the Los Angeles Times, the Bakersfield Californian, or the Antelope Valley Press. With at least six parcels of land, some of which is used for agricultural purposes, in Kern County, Norik and Wendell’s alleged ignorance of this highly publicized case is beyond belief. Moreover, Wendell’s declaration failed to discuss why, even though his personal residence was occupied during September of 2008, no one answered the door to accept service.

Finally, H&N improperly attempts to shift its own negligence to timely and properly update its property records, to District 40. (Motion at 11:11-17.) H&N admits that at the time District 40 added “H&N Development Co., Inc.” as a cross-defendant in July of 2007, H&N had already changed its name. (Motion at 11:11-14.) H&N failed to update its property record until May of 2011 when it filed a grant deed to transfer the title of the property from its former name to its current name. (District 40RJN, Ex. A.) During 2007 and 2008 —when District 40 added H&N as a cross-defendant and when District 40 attempted to serve H&N via its officer and agent for service — the listed owner on the deed for the property was “H&N Development Co., Inc.”

V. EQUITY DEMANDS THAT THIS COURT TO DENY H&N’S REQUEST

As a final argument to set aside the default, H&N argues that the court should set aside the default for equitable purposes. H&N is in essence asking this court to ignore District No. 40’s efforts to identify the property owner, multiple attempts to personally serve H&N’s officer and agent of service, and service by publication in three major newspapers that are widely circulated in Kern County, wherein the Property lies. In contrast to District No. 40’s diligence, H&N has displayed an incredulous amount of neglect to its own corporate affairs. By its own admission, H&N’s corporate status was suspended prior to 2004 and during the period of suspension, another

1 company had registered under H&N's former name. (H&N Motion at 4:2-9.) Even after H&N
2 finally reinstated its corporate status, it did not bother to change the grant deed until recently.
3 (District 40 RJN, Ex. A (Grant Deed, dated May 31, 2011).) Furthermore, H&N has not
4 indicated its willingness to participate and defend itself in this action, if the court does grant its
5 motion. In considering the equities for this, this court should weigh District No. 40's earnest
6 efforts against H&N's continuous neglect for their corporate affairs.

7 **VI. CONCLUSION**

8 For the reasons stated herein, District No. 40 respectfully request this court deny H&N's
9 motion to set aside default.

10
11
12 Dated: September 24, 2012

BEST BEST & KRIEGER LLP

13
14 By 

15 ERIC L. GARNER
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17 STEFANIE D. HEDLUND
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19 LOS ANGELES COUNTY
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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California, 92614. On September 24, 2012, I served the within document(s):

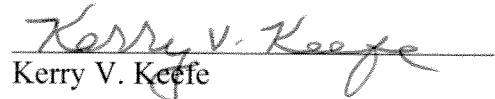
**OPPOSITION TO H&N DEVELOPMENT CO. WEST, INC.'S MOTION TO SET
ASIDE DEFAULT**

- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on September 24, 2012, at Irvine, California.


Kerry V. Keefe