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

ANTELOPE VALLEY GROUNDWATER  
CASES

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

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

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

RICHARD WOOD, on behalf of himself and  
all other similarly situated v. A.V. Materials,  
Inc., et al., Superior Court of California,  
County of Los Angeles, Case No. BC509546

EXEMPT FROM FILING FEES  
UNDER GOVERNMENT CODE  
SECTION 6103

Judicial Council Coordination Proceeding  
No. 4408

CLASS ACTION

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

LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40'S *EX*  
*PARTE* APPLICATION FOR MOTION TO  
QUASH DEPOSITION NOTICE OF  
JOSEPH SCALMANINI AND MOTION  
FOR PROTECTIVE ORDER

*[Filed concurrently with Declaration of  
Jeffrey V. Dunn and [Proposed] Order]*

Date: January 15, 2014  
Time: 9:00 a.m.  
Dept.: Department 1 (via CourtCall only)

Trial Date: February 10, 2014 (Phase V)

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on January 15, 2014, at 9:00 a.m. or as soon thereafter  
3 as the matter may be heard, Los Angeles County Waterworks District No. 40 ("District No. 40")  
4 will move and hereby does move this Court by way of an *ex parte* application to quash Bolthouse  
5 Properties LLC and Wm. Bolthouse Farm, Inc.'s ("Bolthouse") deposition notice of Joseph  
6 Scalmanini. District No. 40 also moves for a protective order regarding the same. Good cause  
7 exists for the relief sought. Specifically:

8 1. Mr. Scalmanini was diagnosed with Amyotrophic Lateral Sclerosis (ALS), also  
9 known as Lou Gehrig's disease late 2010. His condition continues to deteriorate and he is unable  
10 to testify. Bolthouse knows that Mr. Scalmanini was diagnosed with Amyotrophic Lateral  
11 Sclerosis (ALS), also known as Lou Gehrig's disease, in 2010 because the Court had ordered that  
12 Mr. Scalmanini's testimony for the Phase III trial – including his testimony on return flows – be  
13 videotaped. Bolthouse and other landowner parties examined Mr. Scalmanini in the Phase III  
14 trial on safe yield including the yield from returns flows.

15 2. Mr. Scalmanini gave a lengthy deposition before the Phase III trial on the safe  
16 yield of the Basin including the return flow component of the Basin's safe yield. Bolthouse and  
17 other landowner parties examined him extensively regarding his opinions (throughout eleven  
18 volumes of testimony). Bolthouse has not obtained leave of Court to take a subsequent  
19 deposition of Mr. Scalmanini, and its attempt to do so now violates the "one deposition" rule.

20 3. Mr. Scalmanini is not designated as an expert for Phase V, and discovery  
21 (excepting expert witnesses) closed on January 10, 2014. Thus, Bolthouse's attempt to depose  
22 him at this juncture is untimely. Counsel for the Public Water Suppliers and Bolthouse met and  
23 conferred telephonically and via correspondence to attempt to resolve these issues informally, but  
24 Bolthouse refused to withdraw its notices of deposition of the Phase III experts including Mr.  
25 Scalmanini. (See Declaration of Jeffrey V. Dunn, concurrently filed herewith, ¶¶ 3, 8 & 9.)

26 The hearing of this application will occur telephonically via CourtCall only in Department  
27 1 of the Santa Clara Superior Court, located at 161 North First Street, San Jose, California, or in  
28 such other location as the Court may designate. No court reporter will be present.


1 In compliance with California Rules of Court, Rule 3.1203, counsel for District No. 40  
2 provided notice at 9:53 a.m. on January 14, 2014 to all parties of this *ex parte* motion, the  
3 location and time, the specific relief to be requested, and asked whether counsel would appear and  
4 oppose. (See Dunn Decl., ¶ 4, Ex. A.)

5 This *ex parte* application is made pursuant to California Rules of Court, rules 3.1200 *et*  
6 *seq.*, and Code of Civil Procedure sections 2025.410, 2025.420, and 2025.610. It is based on this  
7 notice, the attached memorandum of points and authorities, the concurrently filed Declaration of  
8 Jeffrey V. Dunn and exhibits thereto, the [Proposed] Order, the pleadings and papers on file  
9 herein, and on such further argument and material as the Court may consider at the hearing on  
10 this matter.

11 Dated: January 14, 2014

BEST BEST & KRIEGER LLP

By

  
ERIC J. GARNER

JEFFREY V. DUNN

WENDY Y. WANG

Attorneys for Cross-Complainant

LOS ANGELES COUNTY WATERWORKS

DISTRICT NO. 40

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

This Court should quash Bolthouse's defective deposition notice and grant District No. 40 protection from Bolthouse's abusive discovery practices. Namely, Bolthouse seeks to take the deposition of Joseph Scalmanini. Mr. Scalmanini cannot testify. He suffers from Lou Gehrig's disease, and Bolthouse is well aware of this fact. Further, Bolthouse already deposed Mr. Scalmanini over eleven (11) sessions in 2011 for the Phase III trial; its attempt to take a subsequent deposition violates the "one deposition" rule. Moreover, the Court ordered that Mr. Scalmanini's Phase III trial testimony be videotaped. Mr. Scalmanini has not been designated as an expert witness in the Phase V trial. Bolthouse's attempt to depose him after the close of discovery is inappropriate. Immediate Court intervention is necessary because Mr. Zimmer and Bolthouse attempted to serve a subpoena upon Mr. Scalmanini last night for a deposition only a few days from now.

### II. BACKGROUND

Mr. Scalmanini is unable to testify. Bolthouse knows that Mr. Scalmanini was diagnosed with Amyotrophic Lateral Sclerosis (ALS), also known as Lou Gehrig's disease, in December of 2010. (See the Public Water Suppliers' confidential application under Rule 1.100 and the Americans With Disabilities Act requesting accommodations for Mr. Scalmanini due to his illness, filed on January 3, 2011, which more fully addresses the nature of Mr. Scalmanini's illness and the limitations it imposes on him.) This Court has ruled that Mr. Scalmanini is an "unavailable witness" and ordered his testimony be preserved by a videotaped deposition to be presented at trial. (See Dunn Decl., ¶ 10, Ex. F.) Further, counsel for Boathouse served correspondence on January 13, 2014, conceding its knowledge that Mr. Scalmanini "has health problems." (See Dunn Decl., ¶ 9, Ex. E.) Boathouse, however, insists on deposing Mr. Scalmanini again unless the Public Water Suppliers and the Court agree to ignore Mr. Scalmanini's testimony on return flows, to which Mr. Scalmanini already testified in the Phase III trial, and was considered by this Court in issuing its Statement of Decision for the Phase III trial.

Furthermore, discovery closed on January 10, 2014, excepting depositions of expert

witnesses. Mr. Scalmanini is **not** designated as an expert witness for the Phase V trial. On December 30, 2013, Bolthouse served a notice of deposition of Joseph Scalmanini, setting it for January 17, 2014, one week after the close of non-expert discovery. (See Dunn Decl., ¶ 6, Ex. C.) On January 7, 2014, Bolthouse served correspondence that acknowledges that Scalmanini is not a designated expert witness for Phase V. (See Dunn Decl., ¶ 8, Ex. D.) District No. 40 served its objections to Bolthouse's notice on January 10, 2014. (See Dunn Decl., ¶ 5, Ex. B.) Bolthouse has already deposed Mr. Scalmanini in the Phase III trial over eleven sessions. (See Dunn Decl., ¶ 3.)

### III. ARGUMENT

Code of Civil Procedure section 2025.410 provides that a party served with a deposition notice may move for an order quashing the notice, and section 2025.420 provides that a party may also move for a protective order to prevent unwarranted annoyance, oppression or undue burden or expense. (Code Civ. Proc. §§ 2025.410, 2025.420.) Mr. Scalmanini was diagnosed with Amyotrophic Lateral Sclerosis (ALS), also known as Lou Gehrig's disease in late 2010. His health precludes his ability to testify beyond the ample testimony that he has already provided. The Court previously ruled that Mr. Scalmanini is an unavailable witness and granted him accommodations for his illness. (See Dunn Decl., ¶ 10, Ex. F.) Bolthouse deposed him for trial preservation purposes at a location near his home over eleven sessions in January of 2011. (See Dunn Decl., ¶ 7.) Bolthouse's attempt to re-depose Mr. Scalmanini now is both procedurally defective subject to quashing and can only be deemed unwarranted annoyance, embarrassment, and oppression that warrants the Court's protection.

#### A. The Court Has Authority to Quash Bolthouse's Notice.

After serving written objections, the objecting party may move for an order staying the deposition and quashing the deposition notice. The filing of a motion to quash automatically stays the taking of the deposition until the matter is determined. (Code Civ. Proc. 2025.410, subd. (c).)

Here, District No. 40 served objections which identified the defects in Bolthouse's notice. (See Dunn Decl., ¶ 5, Ex. B.) The Public Water Suppliers attempted to reach an informal

1 resolution of this matter with Bolthouse, but Bolthouse maintained its desire to depose Mr.  
2 Scalmanini and stated that the parties would have to “agree to disagree.” (See Dunn Decl., ¶ 9,  
3 Ex. E.)

4 Bolthouse’s notice is defective because it violates the one-deposition rule. California  
5 Code of Civil Procedure section 2025.610, subdivision (a), provides that “[o]nce any party has  
6 taken the deposition of any natural person...neither the party who gave, nor any other party who  
7 has been served with a deposition notice pursuant to Section 2025.240 may take a subsequent  
8 deposition of that deponent.” However, for good cause shown, the court may grant leave to allow  
9 a subsequent deposition. (Code Civ. Proc. § 2025.610(b).) Thus, absent a court order based on a  
10 showing of good cause by the party that desires to take a subsequent deposition of a witness who  
11 has been previously deposed, that witness cannot be deposed again. Bolthouse noticed and took  
12 Mr. Scalmanini’s deposition during Phase III. (See Dunn Decl., ¶ 7.) It has not obtained a court  
13 order to take a subsequent deposition of Mr. Scalmanini. Its notice is thus defective for violating  
14 Code of Civil Procedure section 2025.610.

15 Bolthouse’s notice is also defective because it attempts to depose a witness beyond the  
16 discovery cutoff. Except for expert witnesses, discovery closed on January 10, 2014. While Mr.  
17 Scalmanini was a designated expert in Phase III, Bolthouse acknowledged that Mr. Scalmanini is  
18 not a Phase V designated expert witness. (See Dunn Decl., ¶ 8, Ex. D.) Bolthouse’s attempt to  
19 depose him after discovery cutoff is untimely.

20 Because Bolthouse’s deposition notice is defective, this Court should quash it.

21 **B. The Court Has Authority to Grant an Order that Protects District No. 40**  
22 **from Bolthouse’s Abusive Discovery Tactics.**

23 Code of Civil Procedure section 2025.420 expressly states that at any time before or  
24 during a deposition, any party may move for a protective order upon a showing of good cause:

25  
26 The court, for good cause shown, may make any order that  
27 justice requires to protect any party, deponent, or other natural  
28 person or organization from unwarranted annoyance,  
embarrassment, or oppression, or undue burden and expense.  
This protective order may include, but is not limited to....[t]hat  
the deposition not be taken at all.

(Code of Civ. Proc. § 2025.420(b).)

Because Bolthouse is aware of Mr. Scalmanini's illness and unavailability, its improper attempt to re-depose him can only be deemed unwarranted annoyance, embarrassment, and oppression, which also results in undue burden and expense requiring this motion practice. Thus, pursuant to Code of Civil Procedure section 2025.420(b)(1), this Court should order that Mr. Scalmanini's deposition, in this and all subsequent phases, "not be taken at all."

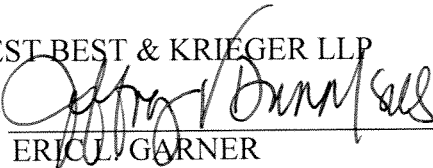
**IV. CONCLUSION**

For the reasons discussed herein, and for good cause having been shown, District No. 40 respectfully requests that this application be granted.

Dated: January 14, 2014

BEST BEST & KRIEGER LLP

By



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DISTRICT NO. 40

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