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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

DECLARATION OF JEFFREY V. DUNN IN SUPPORT OF 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 Ex Parte Application] 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)

DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn, declare:

- 1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law.
- 2. I am an attorney licensed to practice law in the State of California. I am a partner of Best, Best & Krieger LLP, attorneys of record for Los Angeles County Waterworks District No. 40 ("District No. 40").
- 3. Counsel for the Public Water Suppliers and Bolthouse Properties LLC and Wm. Bolthouse Farm, Inc. ("Bolthouse") met and conferred telephonically and via correspondence regarding the issues contained in this application in attempt to resolve this matter informally, but Bolthouse refused to withdraw its notice of deposition of Mr. Scalmanini. I learned late in the evening on Monday, January 13, 2014, that Mr. Zimmer and Bolthouse were attempting to serve a subpoena upon Mr. Scalmanini at his home. I called Mr. Zimmer's office the next morning, January 14, 2014, at approximately 9:15 a.m., to attempt to meet and confer, but he was unavailable. I left a voicemail message as to the purpose of my call and to provide notice of this *ex parte* application. I also left a voicemail message with his legal assistant immediately afterwards because she did not answer the phone.
- 4. In compliance with California Rules of Court, Rule 3.1203, I caused to be posted a letter to the court's designated website for this coordinated proceeding at 9:53 a.m., on January 14, 2014 notifying all parties of this *ex parte* application, the location and time, the specific relief to be requested, and asking whether any party or counsel would oppose the application. Attached as **Exhibit A** is a true and correct copy of the referenced letter and proof of service.
- 5. District No. 40 served its objections to Bolthouse's notice on January 10, 2014. Attached as **Exhibit B** is a true and correct copy of District No. 40's objections to Bolthouse's deposition notice of Joseph Scalmanini.
- 6. On December 30, 2013, Bolthouse served a notice of deposition of Joseph Scalmanini, setting it for January 17, 2014. A true and correct copy of Bolthouse's notice is attached as **Exhibit C**.

7. Bolthouse deposed Mr. Scalmanini in the Phase III	trial over eleven sessions in
January of 2011.	
8. On January 7, 2014, Bolthouse sent corresponden	ce acknowledging that Mr.
Scalmanini is not a designated expert for Phase V. A true and	correct copy of Bolthouse's
correspondence is attached as Exhibit D .	
9. On January 13, 2014, Bolthouse served additional cor	respondence referencing Mr.

- 9. On January 13, 2014, Bolthouse served additional correspondence referencing Mr. Scalmanini's disability. A true and correct copy of Bolthouse's correspondence is attached as **Exhibit E**.
- 10. Attached as **Exhibit F** is a true and correct copy of the Court's Order re Application and Request Under California Rule of Court 1.100 and the Americans with Disabilities Act by the Public water Suppliers and the City of Los Angeles Department of Water and Power, dated January 13, 2011. Mr. Scalmanini was diagnosed with Amyotrophic Lateral Sclerosis (ALS), also known as Lou Gehrig's disease in the Fall of 2010. Since that time, his physical condition has continued to deteriorate, and he is unable to testify.
- 11. Mr. Scalmanini's Phase III trial testimony was videotaped. Bolthouse and other public and private landowner parties are attempting to re-litigate the State Water Project water return flow contribution to the Basin's safe yield.

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

Executed this 14th day of January, 2014, at Los Angeles, California.

leffrey V. Dunn

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