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July 18, 2007

Via Electronic Posting & Overnight Delivery

Hon. Jack Komar
Superior Court of the State of California
Santa Clara County
191 No. First Street, Dept. 17
San Jose, CA 95113

Re: *Antelope Valley Groundwater Adjudication*
Judicial Council Coordination No. 4408
Court Supervised Meet & Confer re Diamond Farming Company
Pre-Certification Hearing Discovery

Dear Judge Komar:

On January 10, 2007, the "Public Water Suppliers" filed their Notice of Motion and Motion for Class Certification. Thereafter, numerous parties filed oppositions to and objections to the proposed defendant class and certification. The hearing was held on March 12, 2007. The court at that time gave leave to the "Public Water Suppliers" to file the Amended Cross-Complaint containing the defendant class allegations. In response to that amended Cross-Complaint, Diamond Farming Company filed a motion in limine to establish a uniform evidentiary standard for the proof of the notice element to the proposed class for the prescriptive claims alleged and also, and in the alternative, a motion to strike the class allegations as the same pertained to the cause of action asserting prescriptive rights. On May 21, 2007, both motions were denied and the court then made clear that it had not yet ordered class certification and in fact then scheduled a hearing date for class certification to be held on August 20, 2007.

As is set forth in my Declaration in Support of the Ex Parte Application for an order setting this court supervised meet and confer, on May 25, 2007, Diamond Farming Company served on each Cross-Complainant "Public Water Supplier":

a. Request for Admissions [Set One] and required Declaration;
b. Form Interrogatories [Set One];

c. Special Interrogatories [Set One]; and,
d. Request for Production of Documents [Set One].

Twenty-six days following the service of that discovery, the "Public Water Suppliers" collectively demanded that the discovery be withdrawn by letter dated June 20, 2007. On June 21, 2007, that demand was rejected. Thereafter, on June 26, 2007, each "Public Water Supplier" served the same substantive and virtually identical objection to each and every separate interrogatory, request for admission, and request for production of documents as follows:

> "Objection. The request is premature, burdensome and oppressive. This request seeks information concerning class members and the court has not yet completed its class certification process. No class representative has yet been approved by the court."

Thereafter, I, on behalf of my client, filed an objection to the class certification hearing currently scheduled for August 20, 2007, and my declaration in support of said objection. That objection was based upon the appellate court's holding in *Louis E. Carabini, et al. v. The Superior Court of Orange County* (1994) 26 Cal.App.4th 239. Therein the court held that discovery directed at class certification is both appropriate and permitted in order to ensure a fair hearing. Additionally, on the same day, I initiated an effort to informally meet and confer regarding the blanket objections to the written discovery as is required. Shortly thereafter, I was contacted by and then communicated with Keith Lemieux, an attorney for one of the Public Water Suppliers, but achieved no resolution. Not having received any response from any other Public Water Supplier and having confirmed with Mr. Lemieux that he could not speak on behalf of all, I then sought the ex parte application for a court order setting this court supervised meet and confer. That ex parte application was held telephonically on July 10, 2007, and this court then granted that application and scheduled the court supervised meet and confer to be held concurrently with the upcoming Case Management Conference on July 20, 2007.

A review by this court of the discovery in issue (a courtesy copy is being provided with this letter to the Court) demonstrates that in large part that discovery is directed to factual issues involving the prescriptive claims made by each Public Water Supplier in the amended class action Cross-Complaint. The Special Interrogatories consist of nine contention interrogatories seeking to elicit factual information which will likely have a bearing upon the propriety or impropriety of class certification of a defendant class with reference specifically to the claim of prescription asserted by each Public Water Supplier. Likewise, the Request for Admissions conjoined with the Form Interrogatory 17.0, are directed and intended to elicit factual information bearing upon that same claim of prescription asserted by each Public Water Supplier. The Request for Production of Documents is likewise directed at that same core issue.

The universally and collectively asserted objection that all of the discovery propounded is premature because no class representative has yet been approved by this court is without merit. As this court made clear when it set the evidentiary hearing for August 20, 2007, the class certification motion, to be heard on that date, will of necessity require evidence to support class certification. As we more completely and thoroughly argued the issue in our opposition to the originally filed motion for class certification, the certification hearing itself will be an evidentiary hearing and thus, consistent with the appellate court's holding in *Louis v. Carabini, et al. v. The Superior Court of Orange County* (1994) 26 Cal.App.4th 239, the propounded discovery is appropriate.

> "In addition, each party should have an opportunity to conduct discovery on class action issues before its documents in support of or in opposition to the motion must be filed." (*Carabini, supra, pp. 243-244*)

Additionally, the universal blanket objection that the discovery sought by Diamond Farming Company is burdensome and oppressive is not well taken. The fact that the response to the discovery will require some work on the part of the responding party is not alone and in and of itself a sufficient reason to support the objection. (*See, West Pico Furniture Co. v. Superior Court of Los Angeles* (1961) 56 Cal.2d 407.) With reference to the objection that the discovery is oppressive, it is the burden of the objecting party to demonstrate by detailed evidence precisely how much work would be required to respond and it must appear that the amount of work required to answer the question is so great, and the utility of the information sought so minimal, that it would defeat the ends of justice to require the responding party to answer. (*See, Columbia Broadcasting System, Inc. v. Superior Court of Los Angeles* (1968) 263 Cal.App.2d 12, at p. 19; *see also, West Pico Furniture, supra.*)

As this court is aware, this is a coordinated action involving an action originally filed by Diamond Farming Company in October of 1999. Thereafter, in November 2004, the Public Water Supplier, Los Angeles County Waterworks District No. 40, sought leave to file a Cross-Complaint in the Riverside County Superior Court action, converting Diamond Farming Company's quiet title action into a basin-wide adjudication. That Motion for Leave to file that Cross-Complaint was denied, and thereafter, two new actions were initiated, one in Los Angeles County and one Kern County, on November 29, 2004 and December 1, 2004, respectively. The proposed Cross-Complaint and both new Complaints alleged claims of prescription against all named defendants and all Doe defendants within the Antelope Valley, therein alleging that all landowners had "actual and/or constructive notice" of those prescriptive claims.

Thereafter, all actions were coordinated and are now before this court. Those two new actions have in essence been replaced by a Cross-Complaint and now an amended Cross-Complaint, both alleging the same factual claim on the issue of prescription, that is, that all landowners had actual and/or constructive notice of those claims. Diamond Farming Company has persistently argued that as to those claims of prescription that evidence of the fact of, nature of, and quality of the evidence of notice necessary to support that element of the prescription claim is and would be a core issue in this litigation.

It is inconceivable that the Public Water Suppliers have proceeded, during the intervening 2 years and 8 months since November of 2004, under the assumption that they would never be called upon to support the allegations made with evidence. The discovery which is the subject of this court supervised meet and confer is directed at those very issues. The fact that the evidence which will be obtained through proper responses to the discovery may be relevant to the ultimate merits of the action does not diminish its relevance to the issue of class certification, and is thus appropriate. (*See, Caro v. Procter & Gamble Co., et al.* (1993) 18 Cal.App.4th 644 at p. 656.)

In closing, it is respectfully submitted that if no resolution to this discovery dispute can be achieved at the informal court supervised meet and confer that the court authorize the undersigned to immediately thereafter file an appropriate motion to compel responses and seek appropriate monetary sanctions for the nonresponsive blanket objections. The blanket objections with no "good faith" effort to respond to any of the discovery is "bad faith." (See *Michael Cembrook v. Superior Court of the County of San Francisco* (1961) 56 Cal.2d 423.)

Very truly yours,

BOB H. JOYCE

BHJ:cy
cc: Jeffrey A. Green, Esq.