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10 a California corporation

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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15 IN AND FOR THE COUNTY OF LOS ANGELES
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Coordination Proceeding Special Title
(Rule 1550 (b))

ANTELOPE VALLEY GROUNDWATER
CASES

Included actions:

Los Angeles County Waterworks District No.
40 vs. Diamond Farming Company
Los Angeles Superior Court
Case No. BC 325201

Los Angeles County Waterworks District No.
40 vs. Diamond Farming Company
Kern County Superior Court
Case No. S-1500-CV 254348 NFT

Diamond Farming Company vs. City of
Lancaster
Riverside County Superior Court
Lead Case No. RIC 344436 [Consolidated
w/Case Nos. 344668 & 353840]

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

**SEPARATE STATEMENT IN
SUPPORT OF MOTION TO COMPEL
PUBLIC WATER SUPPLIERS TO
PROVIDE FURTHER RESPONSES TO
REQUEST FOR PRODUCTION OF
DOCUMENTS [SET ONE]; AND FOR
MONETARY SANCTIONS**

[Filed concurrently with Plaintiff's Notice of
Motion and Motion, Points and Authorities
and Declaration of Bob H. Joyce]

Date: October 12, 2007

Time: 9:00 a.m.

Dept.: 1

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1 Pursuant to Rule 3.1020 of the California Rules of Court, plaintiff submits the following Separate
2 Statement to Request for Production of Documents [Set One] for which plaintiff seeks a further
3 response. The following are the requests, verbatim, the response received, verbatim, and the reasons
4 why further response should be compelled.

5 DEFINITIONS

6 Words in **BOLDFACE CAPITALS** in this production request are defined as follows:

7 (a) **YOU** includes you, the responding party, your agents, your employees, your consultants,
8 their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting
9 on your behalf.

10 (b) **PERSON** includes a natural person, firm, association, organization, partnership, business
11 trust, limited liability company, corporation, or public entity.

12 (c) **BASIN** means the area located within the jurisdictional boundary of the Antelope
13 Valley Groundwater Cases as defined by the Revised Order After Hearing on Jurisdictional Boundary
14 dated March 12, 2007.

15 (d) **WRITING** includes the original or a copy of handwriting, typewriting, printing,
16 photostating, photographing, and every other means of recording upon any tangible thing, any form of
17 communication or representation, including letters, words, pictures, sounds, and symbols, or
18 combinations thereof. (Evid. Code, § 250.)

19 ITEMS TO BE PRODUCED

20 REQUEST NO. 1:

21 Produce each WRITING which YOU contend supports your contention that all landowners had
22 actual notice of your adverse claim of right.

23 Defendants' Response

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

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1 **Legal Authority in Support of Further Response:**

2 Defendants have the burden of justifying their objections or their failure to fully answer the
3 request. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v. Superior Court* (1962)
4 58 Cal.2d 210, 220-221.)

5 “At the hearing of such a motion the burden is on the party interrogated, in this case the
6 defendants, ‘of showing facts from which the trial court might find that the
7 interrogatories were interposed for improper purposes.’ [Citation]. In short, the burden
is on defendants to show that their objections are valid.” (*Columbia Broadcasting
System, Inc. v. Superior Court of Los Angeles County* (1968) 263 Cal.App.2d 12, 18.)

8 Defendants will be unable to satisfy this burden because the objections asserted to this request have no
9 merit and are otherwise too general to preclude disclosure of the requested information.

10 **1. Premature**

11 Code of Civil Procedure section 2031.020 governs the time in which a Demand for Inspection
12 may be propounded.

13 “(a) A defendant may make a demand for inspection without leave of
14 court at any time.

15 “(b) A plaintiff may make a demand for inspection without leave of court
16 at any time that is 10 days after the service of the summons on, or in
unlawful detainer actions five days after service of the summons on or
17 appearance by, the party to whom the demand is directed, whichever
occurs first.”

18 Code of Civil Procedure section 2019.020 provides that there is no required sequence of
19 discovery. In general, fairness demands adherence to the statutory procedures, since they were designed
20 to place the parties “on roughly equal footing.” (*Kalaba v. Gray* (2002) 95 Cal.App.4th 1416, 1422.)
21 Whether as a plaintiff or a defendant, the discovery propounded by Diamond Farming complied with
22 the time requirements set forth in Code of Civil Procedure. The Public Water Suppliers have no legal
23 basis or authority to assert this objection which is designed simply to avoid providing a response, thereby
24 keeping the landowners in the dark as to their vaguely pled claims of prescription.

25 The premature claim also seeks to compromise the purpose of pretrial discovery which is to
26 obtain all of the facts relative to a claim or defense. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782.)
27 “[T]o assist the parties and the trier of fact in ascertaining the truth; to encourage settlement by educating
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1 the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial;
2 to prevent delay; and to safeguard against surprise. [Citations.]" (*Britts v. Superior Court* (2006) 145
3 Cal.App.4th 1112, 1128.) A party responding to discovery requests may be required to state whether
4 or not he or she makes a particular contention, and to disclose the evidentiary facts underlying each such
5 contention, as well as each allegation of his Complaint or affirmative defense. (*Burke v. Superior Court*
6 (1969) 71 Cal.2d 276, 281.) The information sought by way of this request will force the Public Water
7 Purveyors to provide basic information about their claim of prescription. This is information that they
8 will have to provide in any event, prior to any resolution of their claim of prescription.

9 **2. Burdensome**

10 The assertion of this objection is insufficient to justify the Public Water Suppliers' refusal to
11 respond to Request for Production of Documents [Set One] because these entities cannot show that the
12 burden of providing a response will result in injustice.

13 "[S]ome burden is inherent in all demands for discovery. The objection of burden is valid
14 only when that burden is demonstrated to result in injustice. Hence, the trial court is not
15 empowered to sustain an objection in toto, when the same is predicated upon burden,
16 unless such is the only method of rendering substantial justice. (*W. Pico Furniture Co.*
17 *v. Superior Court* (1961) 56 Cal.2d 407, 418.)

18 In the present action, the Public Water Suppliers have alleged prescriptive claims against more
19 than 100,000 landowners whose property overlies the Antelope Valley Groundwater Basin. Notice is
20 a key element of prescription that must be proven by the Water Suppliers if they are to succeed in their
21 claim. Diamond's requests are directed at this element. The attempt to hide behind the enormity of their
22 own allegation under a claim of burden is improper and cannot be sustained.

23 The fact alone that the response to an interrogatory may be expensive and burdensome
24 does not justify a refusal to answer. (*Alpine Mut. Water Co. v. Superior Court of Ventura*
25 *County* (1968) 259 Cal.App.2d 45, 55 citing *West Pico Furniture Co. v. Superior Court*
26 (1961) 56 Cal.2d 407, 417-418.)

27 **3. Oppression**

28 "[T]o support an objection of oppression there must be some showing either of an intent
to create an unreasonable burden or that the ultimate effect of the burden is
incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court of*
Los Angeles County (1961) 56 Cal.2d 407, 417.)

1 The propounding of Production of Documents [Set One] was not served with any ill intent.
2 Contrary to the Public Water Suppliers' assertion, the requests are not unreasonable as each of the six
3 requests posed relate directly to the allegations raised by the Public Water Suppliers through their
4 various Complaints, Cross-Complaints and Answers. The burden on providing a response through
5 discovery is no greater than the burden that must be born by these entities at trial. If they are able to
6 meet this burden, they should be compelled to do so now when such disclosure will help foster
7 settlement and resolution of this matter without the necessity of a trial. As stated above, these reasons
8 are the very purpose of pre-trial discovery. The information sought must be produced before trial and
9 the court is not empowered to deny Diamond's discovery rights solely on the unsubstantiated claim of
10 oppression.

11 "While it is true that the trial court has a broad discretion in passing on an objection that
12 there has been harassment and oppression [Citation], such discretion is not absolute. As
13 was said in *Cembrook*, such discretion does not authorize the trial court 'to make blanket
14 orders barring disclosure in toto when the factual situation indicates that a just and
equitable order could be made that would authorize disclosure with limitations.'" (*Coy*
v. Superior Court of Contra Costa County (1962) 58 Cal.2d 210, 221-222.)

15 4. Objections Based on Class Certification

16 The Public Water Suppliers attempt to limit their obligation to respond on the grounds that class
17 certification has not yet been completed. This objection holds no merit as the right to discovery prior
18 to class certification has been recognized by the Appellate Court in *Louis E. Carabini, et al. vs. The*
19 *Superior Court of Orange County* (1994) 26 Cal.App.4th 239, discovery directed at class certification
20 is both appropriate and permitted in order to ensure a fair hearing.

21 "Appellate courts have recognized the importance of such orders by creating an
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23 or we treat this as a petition for writ of mandate, the issue of the class certification order
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25 [196 Cal.Rptr. 69]; see also 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 85, p. 106.)
26 Due process requires an order with such significant impact on the viability of a case not
be made without a full opportunity to brief the issues and present evidence. This is true
whether the issue is presented in a motion or by way of an order to show case issued by
the court. 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.

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1 Additionally, the request in question is not posed to a class of water purveyors, nor does it seek
2 information about water purveyor class members. A plain reading of the request evidences that it was
3 directed to the specific public water suppliers concerning the specific elements of each entity's specific
4 claim. If, and to the extent, the request can be characterized as seeking information about some future
5 undefined class, a response is still warranted.

6 “Absent some specific showing by the objecting party to justify a contrary ruling, such
7 as privilege, a representative plaintiff can be compelled to supply his adversary with the
8 information about his class which is in his possession or readily available to him and
9 which is not equally available to an adversary. A representative plaintiff cannot be
10 compelled to supply information concerning members of his class or their interests in the
11 action which is neither in his possession nor control, unless the interrogatory is directly
12 related to his own standing to maintain the action, to the existence of an ascertainable
13 class, or to the existence of that community of interest which is required to sustain a class
14 action. [Citation] A representative cannot be compelled to respond to interrogatories
15 about any class member's separate claim as distinguished from the common claim of the
16 class which may be tried with or as a part of the class action.” [Emphasis Added] (*Alpine*
17 *Mut. Water Co. v. Superior Court of Ventura County* (1968) 259 Cal.App.2d 45, 54-55.)

18 Based on the foregoing, the Public Water Suppliers' objections have no merit and have been
19 interposed to these requests for the sole purpose of avoiding the disclosure of information that is fatal
20 to their claim of prescription. In order to facilitate settlement and a timely resolution of this matter, the
21 Public Water Suppliers must be ordered to respond to Diamond Farming's Production of Documents
22 [Set One].

23 **REQUEST NO. 2:**

24 Produce each WRITING which YOU contend supports your contention that any landowner had
25 actual notice of your adverse claim of right.

26 **Defendants' Response**

27 Objection. This request is premature, burdensome and oppressive. This request seeks
28 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.

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1 **Legal Authority in Support of Further Response:**

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System, Inc. v. Superior Court of Los Angeles County* (1968) 263 Cal.App.2d 12, 18.)

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18 Code of Civil Procedure section 2019.020 provides that there is no required sequence of
19 discovery. In general, fairness demands adherence to the statutory procedures, since they were designed
20 to place the parties “on roughly equal footing.” (*Kalaba v. Gray* (2002) 95 Cal.App.4th 1416, 1422.)
21 Whether as a plaintiff or a defendant, the discovery propounded by Diamond Farming complied with
22 the time requirements set forth in Code of Civil Procedure. The Public Water Suppliers have no legal
23 basis or authority to assert this objection which is designed simply to avoid providing a response, thereby
24 keeping the landowners in the dark as to their vaguely pled claims of prescription.

25 The premature claim also seeks to compromise the purpose of pretrial discovery which is to
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7 Purveyors to provide basic information about their claim of prescription. This is information that they
8 will have to provide in any event, prior to any resolution of their claim of prescription.

9 **2. Burdensome**

10 The assertion of this objection is insufficient to justify the Public Water Suppliers' refusal to
11 respond to Request for Production of Documents [Set One] because these entities cannot show that the
12 burden of providing a response will result in injustice.

13 "[S]ome burden is inherent in all demands for discovery. The objection of burden is valid
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18 In the present action, the Public Water Suppliers have alleged prescriptive claims against more
19 than 100,000 landowners whose property overlies the Antelope Valley Groundwater Basin. Notice is
20 a key element of prescription that must be proven by the Water Suppliers if they are to succeed in their
21 claim. Diamond's requests are directed at this element. The attempt to hide behind the enormity of their
22 own allegation under a claim of burden is improper and cannot be sustained.

23 The fact alone that the response to an interrogatory may be expensive and burdensome
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6 meet this burden, they should be compelled to do so now when such disclosure will help foster
7 settlement and resolution of this matter without the necessity of a trial. As stated above, these reasons
8 are the very purpose of pre-trial discovery. The information sought must be produced before trial and
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11 "While it is true that the trial court has a broad discretion in passing on an objection that
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v. Superior Court of Contra Costa County (1962) 58 Cal.2d 210, 221-222.)

15 4. Objections Based on Class Certification

16 The Public Water Suppliers attempt to limit their obligation to respond on the grounds that class
17 certification has not yet been completed. This objection holds no merit as the right to discovery prior
18 to class certification has been recognized by the Appellate Court in *Louis E. Carabini, et al. vs. The*
19 *Superior Court of Orange County* (1994) 26 Cal.App.4th 239, discovery directed at class certification
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23 or we treat this as a petition for writ of mandate, the issue of the class certification order
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25 [196 Cal.Rptr. 69]; see also 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 85, p. 106.)
26 Due process requires an order with such significant impact on the viability of a case not
be made without a full opportunity to brief the issues and present evidence. This is true
whether the issue is presented in a motion or by way of an order to show case issued by
the court. 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.

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1 Additionally, the request in question is not posed to a class of water purveyors, nor does it seek
2 information about water purveyor class members. A plain reading of the request evidences that it was
3 directed to the specific public water suppliers concerning the specific elements of each entity's specific
4 claim. If, and to the extent, the request can be characterized as seeking information about some future
5 undefined class, a response is still warranted.

6 “Absent some specific showing by the objecting party to justify a contrary ruling, such
7 as privilege, a representative plaintiff can be compelled to supply his adversary with the
8 information about his class which is in his possession or readily available to him and
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18 Based on the foregoing, the Public Water Suppliers' objections have no merit and have been
19 interposed to these requests for the sole purpose of avoiding the disclosure of information that is fatal
20 to their claim of prescription. In order to facilitate settlement and a timely resolution of this matter, the
21 Public Water Suppliers must be ordered to respond to Diamond Farming's Production of Documents
22 [Set One].

23 **REQUEST NO. 3:**

24 Produce each WRITING which YOU contend supports your contention that all landowners had
25 constructive notice of your adverse claim of right.

26 **Defendants' Response**

27 Objection. This request is premature, burdensome and oppressive. This request seeks
28 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.

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1 **Legal Authority in Support of Further Response:**

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9 which is not equally available to an adversary. A representative plaintiff cannot be
10 compelled to supply information concerning members of his class or their interests in the
11 action which is neither in his possession nor control, unless the interrogatory is directly
12 related to his own standing to maintain the action, to the existence of an ascertainable
13 class, or to the existence of that community of interest which is required to sustain a class
14 action. [Citation] A representative cannot be compelled to respond to interrogatories
15 about any class member's separate claim as distinguished from the common claim of the
16 class which may be tried with or as a part of the class action.” [Emphasis Added] (*Alpine*
17 *Mut. Water Co. v. Superior Court of Ventura County* (1968) 259 Cal.App.2d 45, 54-55.)

18 Based on the foregoing, the Public Water Suppliers' objections have no merit and have been
19 interposed to these requests for the sole purpose of avoiding the disclosure of information that is fatal
20 to their claim of prescription. In order to facilitate settlement and a timely resolution of this matter, the
21 Public Water Suppliers must be ordered to respond to Diamond Farming's Production of Documents
22 [Set One].

23 **REQUEST NO. 4:**

24 Produce each WRITING which YOU contend supports your contention that any landowner had
25 constructive notice of your adverse claim of right.

26 **Defendants' Response**

27 Objection. This request is premature, burdensome and oppressive. This request seeks
28 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.

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1 **Legal Authority in Support of Further Response:**

2 Defendants have the burden of justifying their objections or their failure to fully answer the
3 request. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v. Superior Court* (1962)
4 58 Cal.2d 210, 220-221.)

5 “At the hearing of such a motion the burden is on the party interrogated, in this case the
6 defendants, ‘of showing facts from which the trial court might find that the
7 interrogatories were interposed for improper purposes.’ [Citation]. In short, the burden
is on defendants to show that their objections are valid.” (*Columbia Broadcasting
System, Inc. v. Superior Court of Los Angeles County* (1968) 263 Cal.App.2d 12, 18.)

8 Defendants will be unable to satisfy this burden because the objections asserted to this request have no
9 merit and are otherwise too general to preclude disclosure of the requested information.

10 **1. Premature**

11 Code of Civil Procedure section 2031.020 governs the time in which a Demand for Inspection
12 may be propounded.

13 “(a) A defendant may make a demand for inspection without leave of
14 court at any time.

15 “(b) A plaintiff may make a demand for inspection without leave of court
16 at any time that is 10 days after the service of the summons on, or in
unlawful detainer actions five days after service of the summons on or
17 appearance by, the party to whom the demand is directed, whichever
occurs first.”

18 Code of Civil Procedure section 2019.020 provides that there is no required sequence of
19 discovery. In general, fairness demands adherence to the statutory procedures, since they were designed
20 to place the parties “on roughly equal footing.” (*Kalaba v. Gray* (2002) 95 Cal.App.4th 1416, 1422.)
21 Whether as a plaintiff or a defendant, the discovery propounded by Diamond Farming complied with
22 the time requirements set forth in Code of Civil Procedure. The Public Water Suppliers have no legal
23 basis or authority to assert this objection which is designed simply to avoid providing a response, thereby
24 keeping the landowners in the dark as to their vaguely pled claims of prescription.

25 The premature claim also seeks to compromise the purpose of pretrial discovery which is to
26 obtain all of the facts relative to a claim or defense. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782.)
27 “[T]o assist the parties and the trier of fact in ascertaining the truth; to encourage settlement by educating
28 the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial;

1 to prevent delay; and to safeguard against surprise. [Citations.]" (*Britts v. Superior Court* (2006) 145
2 Cal.App.4th 1112, 1128.) A party responding to discovery requests may be required to state whether
3 or not he or she makes a particular contention, and to disclose the evidentiary facts underlying each such
4 contention, as well as each allegation of his Complaint or affirmative defense. (*Burke v. Superior Court*
5 (1969) 71 Cal.2d 276, 281.) The information sought by way of this request will force the Public Water
6 Purveyors to provide basic information about their claim of prescription. This is information that they
7 will have to provide in any event, prior to any resolution of their claim of prescription.

8 **2. Burdensome**

9 The assertion of this objection is insufficient to justify the Public Water Suppliers' refusal to
10 respond to Request for Production of Documents [Set One] because these entities cannot show that the
11 burden of providing a response will result in injustice.

12 "[S]ome burden is inherent in all demands for discovery. The objection of burden is valid
13 only when that burden is demonstrated to result in injustice. Hence, the trial court is not
14 empowered to sustain an objection in toto, when the same is predicated upon burden,
unless such is the only method of rendering substantial justice. (*W. Pico Furniture Co.*
v. Superior Court (1961) 56 Cal.2d 407, 418.)

15 In the present action, the Public Water Suppliers have alleged prescriptive claims against more
16 than 100,000 landowners whose property overlies the Antelope Valley Groundwater Basin. Notice is
17 a key element of prescription that must be proven by the Water Suppliers if they are to succeed in their
18 claim. Diamond's requests are directed at this element. The attempt to hide behind the enormity of their
19 own allegation under a claim of burden is improper and cannot be sustained.

20 The fact alone that the response to an interrogatory may be expensive and burdensome
21 does not justify a refusal to answer. (*Alpine Mut. Water Co. v. Superior Court of Ventura*
County (1968) 259 Cal.App.2d 45, 55 citing *West Pico Furniture Co. v. Superior Court*
22 (1961) 56 Cal.2d 407, 417-418.)

23 **3. Oppression**

24 "[T]o support an objection of oppression there must be some showing either of an intent
25 to create an unreasonable burden or that the ultimate effect of the burden is
26 incommensurate with the result sought." (*West Pico Furniture Co. v. Superior Court of*
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1 The propounding of Production of Documents [Set One] was not served with any ill intent.
2 Contrary to the Public Water Suppliers' assertion, the requests are not unreasonable as each of the six
3 requests posed relate directly to the allegations raised by the Public Water Suppliers through their
4 various Complaints, Cross-Complaints and Answers. The burden on providing a response through
5 discovery is no greater than the burden that must be born by these entities at trial. If they are able to
6 meet this burden, they should be compelled to do so now when such disclosure will help foster
7 settlement and resolution of this matter without the necessity of a trial. As stated above, these reasons
8 are the very purpose of pre-trial discovery. The information sought must be produced before trial and
9 the court is not empowered to deny Diamond's discovery rights solely on the unsubstantiated claim of
10 oppression.

11 "While it is true that the trial court has a broad discretion in passing on an objection that
12 there has been harassment and oppression [Citation], such discretion is not absolute. As
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14 orders barring disclosure in toto when the factual situation indicates that a just and
equitable order could be made that would authorize disclosure with limitations.'" (*Coy*
v. Superior Court of Contra Costa County (1962) 58 Cal.2d 210, 221-222.)

15 4. Objections Based on Class Certification

16 The Public Water Suppliers attempt to limit their obligation to respond on the grounds that class
17 certification has not yet been completed. This objection holds no merit as the right to discovery prior
18 to class certification has been recognized by the Appellate Court in *Louis E. Carabini, et al. vs. The*
19 *Superior Court of Orange County* (1994) 26 Cal.App.4th 239, discovery directed at class certification
20 is both appropriate and permitted in order to ensure a fair hearing.

21 "Appellate courts have recognized the importance of such orders by creating an
22 exception to the rule denying appellate review. 'Whether the order is directly appealable
23 or we treat this as a petition for writ of mandate, the issue of the class certification order
24 is and should be before us.' (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 871, fn. 9
25 [196 Cal.Rptr. 69]; see also 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 85, p. 106.)
26 Due process requires an order with such significant impact on the viability of a case not
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whether the issue is presented in a motion or by way of an order to show case issued by
the court. 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.

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1 Additionally, the request in question is not posed to a class of water purveyors, nor does it seek
2 information about water purveyor class members. A plain reading of the request evidences that it was
3 directed to the specific public water suppliers concerning the specific elements of each entity's specific
4 claim. If, and to the extent, the request can be characterized as seeking information about some future
5 undefined class, a response is still warranted.

6 “Absent some specific showing by the objecting party to justify a contrary ruling, such
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18 Based on the foregoing, the Public Water Suppliers' objections have no merit and have been
19 interposed to these requests for the sole purpose of avoiding the disclosure of information that is fatal
20 to their claim of prescription. In order to facilitate settlement and a timely resolution of this matter, the
21 Public Water Suppliers must be ordered to respond to Diamond Farming's Production of Documents
22 [Set One].

23 **REQUEST NO. 5:**

24 Produce each WRITING which YOU contend supports your contention that the right of any
25 property owner to pump water from the BASIN is subordinate to your prescriptive right.

26 **Defendants' Response**

27 Objection. This request is premature, burdensome and oppressive. This request seeks
28 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.

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1 **Legal Authority in Support of Further Response:**

2 Defendants have the burden of justifying their objections or their failure to fully answer the
3 request. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v. Superior Court* (1962)
4 58 Cal.2d 210, 220-221.)

5 “At the hearing of such a motion the burden is on the party interrogated, in this case the
6 defendants, ‘of showing facts from which the trial court might find that the
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is on defendants to show that their objections are valid.” (*Columbia Broadcasting
System, Inc. v. Superior Court of Los Angeles County* (1968) 263 Cal.App.2d 12, 18.)

8 Defendants will be unable to satisfy this burden because the objections asserted to this request have no
9 merit and are otherwise too general to preclude disclosure of the requested information.

10 **1. Premature**

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12 may be propounded.

13 “(a) A defendant may make a demand for inspection without leave of
14 court at any time.

15 “(b) A plaintiff may make a demand for inspection without leave of court
16 at any time that is 10 days after the service of the summons on, or in
unlawful detainer actions five days after service of the summons on or
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19 discovery. In general, fairness demands adherence to the statutory procedures, since they were designed
20 to place the parties “on roughly equal footing.” (*Kalaba v. Gray* (2002) 95 Cal.App.4th 1416, 1422.)
21 Whether as a plaintiff or a defendant, the discovery propounded by Diamond Farming complied with
22 the time requirements set forth in Code of Civil Procedure. The Public Water Suppliers have no legal
23 basis or authority to assert this objection which is designed simply to avoid providing a response, thereby
24 keeping the landowners in the dark as to their vaguely pled claims of prescription.

25 The premature claim also seeks to compromise the purpose of pretrial discovery which is to
26 obtain all of the facts relative to a claim or defense. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782.)
27 “[T]o assist the parties and the trier of fact in ascertaining the truth; to encourage settlement by educating
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1 the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial;
2 to prevent delay; and to safeguard against surprise. [Citations.]" (*Britts v. Superior Court* (2006) 145
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4 or not he or she makes a particular contention, and to disclose the evidentiary facts underlying each such
5 contention, as well as each allegation of his Complaint or affirmative defense. (*Burke v. Superior Court*
6 (1969) 71 Cal.2d 276, 281.) The information sought by way of this request will force the Public Water
7 Purveyors to provide basic information about their claim of prescription. This is information that they
8 will have to provide in any event, prior to any resolution of their claim of prescription.

9 **2. Burdensome**

10 The assertion of this objection is insufficient to justify the Public Water Suppliers' refusal to
11 respond to Request for Production of Documents [Set One] because these entities cannot show that the
12 burden of providing a response will result in injustice.

13 "[S]ome burden is inherent in all demands for discovery. The objection of burden is valid
14 only when that burden is demonstrated to result in injustice. Hence, the trial court is not
15 empowered to sustain an objection in toto, when the same is predicated upon burden,
unless such is the only method of rendering substantial justice. (*W. Pico Furniture Co.*
v. Superior Court (1961) 56 Cal.2d 407, 418.)

16 In the present action, the Public Water Suppliers have alleged prescriptive claims against more
17 than 100,000 landowners whose property overlies the Antelope Valley Groundwater Basin. Notice is
18 a key element of prescription that must be proven by the Water Suppliers if they are to succeed in their
19 claim. Diamond's requests are directed at this element. The attempt to hide behind the enormity of their
20 own allegation under a claim of burden is improper and cannot be sustained.

21 The fact alone that the response to an interrogatory may be expensive and burdensome
22 does not justify a refusal to answer. (*Alpine Mut. Water Co. v. Superior Court of Ventura*
County (1968) 259 Cal.App.2d 45, 55 citing *West Pico Furniture Co. v. Superior Court*
23 (1961) 56 Cal.2d 407, 417-418.)

24 **3. Oppression**

25 "[T]o support an objection of oppression there must be some showing either of an intent
26 to create an unreasonable burden or that the ultimate effect of the burden is
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27 *Los Angeles County* (1961) 56 Cal.2d 407, 417.)

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2 Contrary to the Public Water Suppliers' assertion, the requests are not unreasonable as each of the six
3 requests posed relate directly to the allegations raised by the Public Water Suppliers through their
4 various Complaints, Cross-Complaints and Answers. The burden on providing a response through
5 discovery is no greater than the burden that must be born by these entities at trial. If they are able to
6 meet this burden, they should be compelled to do so now when such disclosure will help foster
7 settlement and resolution of this matter without the necessity of a trial. As stated above, these reasons
8 are the very purpose of pre-trial discovery. The information sought must be produced before trial and
9 the court is not empowered to deny Diamond's discovery rights solely on the unsubstantiated claim of
10 oppression.

11 "While it is true that the trial court has a broad discretion in passing on an objection that
12 there has been harassment and oppression [Citation], such discretion is not absolute. As
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v. Superior Court of Contra Costa County (1962) 58 Cal.2d 210, 221-222.)

15 4. Objections Based on Class Certification

16 The Public Water Suppliers attempt to limit their obligation to respond on the grounds that class
17 certification has not yet been completed. This objection holds no merit as the right to discovery prior
18 to class certification has been recognized by the Appellate Court in *Louis E. Carabini, et al. vs. The*
19 *Superior Court of Orange County* (1994) 26 Cal.App.4th 239, discovery directed at class certification
20 is both appropriate and permitted in order to ensure a fair hearing.

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22 exception to the rule denying appellate review. 'Whether the order is directly appealable
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be filed." *Carabini, supra*, pp. 243-244.

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1 Additionally, the request in question is not posed to a class of water purveyors, nor does it seek
2 information about water purveyor class members. A plain reading of the request evidences that it was
3 directed to the specific public water suppliers concerning the specific elements of each entity's specific
4 claim. If, and to the extent, the request can be characterized as seeking information about some future
5 undefined class, a response is still warranted.

6 “Absent some specific showing by the objecting party to justify a contrary ruling, such
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18 Based on the foregoing, the Public Water Suppliers' objections have no merit and have been
19 interposed to these requests for the sole purpose of avoiding the disclosure of information that is fatal
20 to their claim of prescription. In order to facilitate settlement and a timely resolution of this matter, the
21 Public Water Suppliers must be ordered to respond to Diamond Farming's Production of Documents
22 [Set One].

23 **REQUEST NO. 6:**

24 Produce each WRITING identified or described in any response to any of the requests which
25 were served concurrently with this request.

26 **Defendants' Response**

27 Objection. This request is premature, burdensome and oppressive. This request seeks
28 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.

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1 **Legal Authority in Support of Further Response:**

2 Defendants have the burden of justifying their objections or their failure to fully answer the
3 request. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v. Superior Court* (1962)
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23 Dated: September 12, 2007

LeBEAU • THELEN, LLP

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By: _____

BOB H. JOYCE
Attorneys for DIAMOND FARMING COMPANY,
a California corporation