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9 Attorneys for Mark Ritter, Successor Trustee of the
10 Ritter Family Trust and Mark S. Ritter and Dana E.
11 Ritter

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

14 **ANTELOPE VALLEY**
15 **GROUNDWATER CASES**

16 Included Actions:

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

21 Los Angeles County Waterworks District
22 No. 40 v. Diamond Farming Co., Superior
23 Court of California, County of Kern, Case
24 No. S-1500-CV-254348

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

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053

**NOTICE OF MOTION AND MOTION TO
SET ASIDE JUDGMENT ENTERED
AGAINST MARK RITTER, SUCCESSOR
TRUSTEE OF THE RITTER FAMILY
TRUST AND MARK S. RITTER AND
DANA E. RITTER**

Date: February 10, 2016

Time: 10:00 a.m.

**Location: Mosk Courthouse, 111 N. Hill
Street, Room 222, Los Angeles, California**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on February 10, 2016, at 10:00 a.m., or as soon thereafter
as the matter may be heard, at 111 N. Hill Street, Room 222, Los Angeles, California, Mark
Ritter, Successor Trustee of the Ritter Family Trust and Mark S. Ritter and Dana E. Ritter,
individually (collectively “Ritter Parties”), will and hereby do move for an Order Setting Aside
the Judgment dated December 23, 2015.

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1 Said Motion will be and is made on the basis of Code of Civil Procedure section 473, on
2 the grounds that the Judgment was entered against the Ritter Parties in their absence at trial as the
3 result of mistake, inadvertence, surprise, or excusable neglect as a result of the Court's
4 representation that the matter would be trailed as to the Ritter Parties to allow later presentation of
5 evidence due to the confusion surrounding the Ritter Parties' prior representation.

6 The Motion will be and is based on this Notice of Motion, the accompanying
7 Memorandum of Points and Authorities, the Declarations of Robert H. Brumfield, III and
8 Michael T. Fife, the records and file herein, and on such oral or documentary evidence as may be
9 presented at the hearing of the Motion.

10 Dated: January 15, 2016

BRUMFIELD & HAGAN, LLP
A Limited Liability Partnership

11
12 By: 

13 Robert H. Brumfield, III
14 Attorneys for Mark Ritter, Successor Trustee
15 of the Ritter Family Trust and Mark S. Ritter
16 and Dana E. Ritter
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

SUMMARY OF ARGUMENT

Judgment was taken against the Ritter Parties as a result of the lack of evidence presented at the time of the Phase 6 Trial. The reason that evidence was not presented, however, is that the Court indicated at the September 21, 2015 Case Management Conference that the matter was to be trailed as against the Ritter Parties. Despite this, the matter was not trailed and the Ritter Parties were deprived of the opportunity to present evidence, and Judgment was entered by default. The Ritter Parties' reliance on the statement that the matter would be trailed was an excusable mistake. As a result, the Judgment should be set aside pursuant to Code of Civil Procedure section 473 ["Section 473"].

II.

PROCEDURAL BACKGROUND

After meeting with Mark Ritter, present counsel informed the Court of the potential new representation at the September 4, 2015 Case Management Conference. (Declaration of Robert H. Brumfield, III ["Brumfield Dec."], ¶4) At the following Case Management Conference, which was held on September 21, 2015, the Court indicated that the Ritter Parties would trail, along with Robar, in connection with the Phase 6 Trial due to the issues concerning the Ritter Parties' prior representation, and would be allowed to present evidence at a later time. (*Id.* at ¶6; Declaration of Michael Fife, ¶2.)

On November 3, 2015, the Ritter Parties filed a request to be allowed to present evidence in support of their water usage at a time and place convenient to the Court, and coordinated with the presentation of evidence by Robar (as to whom the Court had also indicated the matter would trail). (Brumfield Dec., ¶8.) The evidence to be relied upon by the Ritter Parties was filed by way of declaration on November 9, 2015. (*Id.* at ¶9.)

On December 23, 2015, the Court held a hearing regarding objections to the Proposed Statement of Decision. (*Id.* at ¶10.) In connection with that hearing, and on December 10, 2015, the Ritter Parties filed a Case Management Conference Statement and an Objection to Entering

1 Judgment by default against them. (*Id.*) There are other pleadings filed in November and
2 December of 2015 concerning the Ritter Parties' issues, but the Case Management Conference
3 Statement and Objection filed by the Ritter Parties on December 10, 2015 contain the essence of
4 the issues and background attendant to this Motion. (*Id.*)

5 Despite the Ritter Parties' written Objection and oral argument in support of the Objection
6 presented to the Court on December 23, 2015, and on the same date, the Court executed the
7 Judgment, which was then entered on December 28, 2015. (*See id.* at ¶11.) The Judgment lists
8 the Ritter Parties on Exhibit "D" to the Judgment, which identifies the Ritter Parties as failing to
9 appear in the action with Judgment therefore being entered against them. As discussed below,
10 this Judgment should be set aside because the reason for the Ritter Parties' lack of evidence in the
11 Phase 6 Trial was the representation that their portion of the case would trail due to the issues
12 surrounding their representation *vel non* by prior counsel.

13 III.

14 AUTHORITY FOR ORDER SETTING ASIDE JUDGMENT

15 A. General Principles of Section 473

16 On application, a court, "[t]he court may, upon any terms as may be just, relieve a
17 party . . . from a judgment . . . taken against him or her through his or her mistake, inadvertence,
18 surprise, or excusable neglect." (Code Civ. Proc. § 473(b) [hereinafter "Section 473"].) The
19 critical question in a motion brought under Section 473 is whether the moving party's failure to
20 act was caused by any of the grounds stated in Section 473—the existence or lack of a defense is
21 irrelevant to the analysis. (*Lipson v. Jordache Enterprises, Inc.* (1992) 9 Cal.App.4th 151, 161;
22 *Uva v. Evans* (1978) 83 Cal.App.3d 356, 362.) A motion for relief under Section 473 is
23 addressed the trial court's sound discretion. (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233;
24 *Lynch v. Spilman* (1967) 67 Cal.2d 251, 257; *Comunidad en Accion v. Los Angeles City Council*
25 (2013) 219 Cal.App.4th 1116, 1134–1135.)

26 Section 473 is intended to allow courts to relieve a party from the consequences of strictly
27 enforcing rules of procedure, by applying equitable rules in an individual case so as to do justice
28 between litigants. (*Melde v. Reynolds* (1900) 129 Cal. 308, 312.) As such, Section 473 serves as

1 statutory authority for the court to exercise its equitable power. (*Aldrich v. San Fernando Valley*
2 *Lumber Co.* (1985) 170 Cal.App.3d 725, 736.)

3 As a remedial statute, Section 473 is to be liberally construed to bring about a trial
4 on the merits whenever possible. (*Ron Burns Construction Co. v. Moore* (2010) 184
5 Cal.App.4th 1406, 1413; *Standard Microsystems Corp. v. Winbond Electronics Corp.* (2009) 179
6 Cal.App.4th 868, 894; *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 904; *A&S Air Conditioning v.*
7 *John J. Moore Co.* (1960) 184 Cal.App.2d 617, 619.)

8 To secure relief from a judgment, the moving party must present a reasonable excuse,
9 based on mistake, inadvertence, surprise, or excusable neglect that prevented the moving party
10 from presenting his or her case to the court. (*See Wilcox v. Ford* (1988) 206 Cal.App.3d 1170,
11 1176; *Guenther v. Lomas & Nettleton Co.* (1983) 140 Cal.App.3d 460, 466.)

12 B. Grounds for Relief

13 A mistake, in the context of Section 473, may be of either fact or law. In the instant case,
14 only mistake of fact is relevant. A mistake of fact occurs when a person understands the facts to
15 be other than they are; to be a valid grounds for Section 473 relief, the mistake must be excusable.
16 (*Hodge Sheet Metal Products v. Palm Springs Riviera Hotel* (1961) 189 Cal.App.2d 653, 656;
17 *Baratti v. Baratti* (1952) 109 Cal.App.2d 917, 921.)

18 Inadvertence is a lack of heedfulness or attentiveness, inattention, or fault from
19 negligence. (*Dingwall v. Vangas, Inc.* (1963) 218 Cal.App.2d 108, 113; *Kooper v. King* (1961)
20 195 Cal.App.2d 621, 626.) Rather than treating inadvertence as a distinct ground for relief, courts
21 generally consider it in conjunction with the grounds of excusable neglect, mistake, or surprise.
22 (*Lynch, supra*, 67 Cal.2d at 258; *Kooper, supra*, 195 Cal.App.2d at 626; *Gore v. Witt* (1957) 149
23 Cal.App.2d at 685; *Yarbrough, supra*, 144 Cal.App.2d at 613.)

24 As with inadvertence, the ground of surprise is often coupled with excusable neglect and
25 mistake. (*Lint v. Chisholm* (1981) 121 Cal.App.3d 615, 620; *Yarbrough, supra*, 144 Cal.App.2d
26 at 612–613.) Surprise is a condition or situation in which a party is unexpectedly placed to his or
27 her injury, without fault or negligence of his or her own. (*Credit Managers Ass'n v. National*
28 *Indep. Bus. Alliance* (1984) 162 Cal.App.3d 1166, 1173.)

1 Neglect, to be a basis of relief under Section 473, must have been an act or omission of a
2 reasonably prudent person under the same circumstances. (*Beeman v. Burling* (1990) 216
3 Cal.App.3d 1586, 1602–1603.)

4 IV.

5 **THE JUDGMENT IN THIS CASE SHOULD BE SET ASIDE**

6 While each of the grounds for relief under Section 473 may apply to this case, the most
7 apparent is that the Judgment was entered without the presentation of evidence by the Ritter
8 Parties as a direct result of mistake and excusable neglect. Counsel for the Ritter Parties, once
9 retained, brought the past confusion regarding the apparently inactive representation by the Ritter
10 Parties' prior counsel to the attention of the Court. Given the eleventh-hour nature of this issue,
11 and the desire to avoid delay to trial as to the many other parties involved, a logical solution was
12 to simply trail the matter solely as to the Ritter Parties. At the September 21, 2015 Case
13 Management Conference, the Court indicated that it would do precisely that—trail the trial as to
14 the Ritter Parties in order to present their evidence. That evidence, absent any oral testimony,
15 was presented by way of a declaration on November 9, 2015.

16 Despite the Court's statement regarding the matter being trailed, and the presentation of
17 evidence in a matter of months after the issue with the Ritter Parties' prior representation had
18 surfaced, Judgment was entered against the Ritter Parties on December 28, 2015 for failing to
19 present evidence.

20 In *Melde v. Reynolds* (1900) 129 Cal. 308, an attorney substituted in for the defendant
21 shortly before trial. (*Id.* at 310.) The new attorney attempted to ascertain the trial date, and was
22 erroneously told by both the clerk and the judge that the matter would not be tried for at least
23 three months. (*Id.*) When the defendant learned of that fact, he left San Francisco for Japan;
24 however, during defendant's absence, the trial date passed and judgment was rendered in
25 plaintiff's favor. (*Id.* at 311.) The California Supreme Court held that it was an abuse of
26 discretion to refuse to set aside the judgment, stating:

27 When these facts were made to appear to the court a proper
28 exercise of its discretion required it to set aside the judgment. . . .
[Section 473] is a remedial provision, and under the terms of

1 section 4 of the same code, which require it to be liberally
2 construed with a view to effect its objects and promote justice, is
3 best observed by disposing of causes upon their substantial merits,
4 rather than with strict regard to technical rules of procedure. The
5 discretion of the court ought always to be exercised in conformity
6 with the spirit of the law, and in such a manner as will subserve
7 rather than impede or defeat the ends of justice, regarding mere
8 technicalities as obstacles to be avoided rather than as principles
9 which effect is to be given in derogation of substantial right. (*Id.* at
10 311 [citations omitted].)

11 **The *Melde* court went on to note that the newly-retained attorney had inquired of the**
12 **court itself when the matter was going to proceed to trial, and “could not be charged with**
13 **neglect in accepting their statements as correct and acting accordingly.”** (*Id.* at 313 [emphasis
14 added].)

15 Similarly, in *Lynch v. De Boom* (1915) 26 Cal.App. 311, the plaintiff (also an attorney)
16 appeared at the time set for trial. His attorney was absent, and the clerk of the court stated that
17 the matter would be rescheduled for a later date. (*Lynch, supra*, 26 Cal.App. at 313.) Based on
18 this representation, plaintiff left the courtroom; after which, the matter was called and the case
19 dismissed in his absence. (*Id.*) The Court of Appeal held that the trial court had abused its
20 discretion in refusing to set aside the dismissal, recognizing that the plaintiff's absence from trial
21 was in reliance on the representation by the clerk that the matter would be calendared for a later
22 date. (*Id.* at 314.)

23 Thus, the proposition that the Ritter Parties should not have judgment entered against
24 them for failure to present evidence, when such failure was the result of reliance on a statement
25 by the Court, finds support in Section 473 and its legislative purpose, the case law, and reason.
26 From the time of the September 21, 2015 Case Management Conference, the Ritter Parties were
27 under the impression—justifiably, given the statement at that conference—that the Phase 6 Trial
28 would be continued as to them until such time as the evidence could be gathered and any
29 necessary discovery conducted. (*See generally, Brumfield Dec.*) As such, the judgment was the
30 result of excusable mistake and/or neglect, and should be set aside.

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V.

CONCLUSION

For the foregoing reasons, the Ritter Parties request that this Court issue and Order Setting
Aside the Judgment against them.

Dated: January 15, 2016

BRUMFIELD & HAGAN, LLP
A Limited Liability Partnership

By: 

Robert H. Brumfield, III
Attorneys for Mark Ritter, Successor Trustee
of the Ritter Family Trust and Mark S. Ritter
and Dana E. Ritter

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RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053

**DECLARATION OF ROBERT H.
BRUMFIELD, III IN SUPPORT OF
MOTION TO SET ASIDE JUDGMENT
ENTERED AGAINST MARK RITTER,
SUCCESSOR TRUSTEE OF THE RITTER
FAMILY TRUST AND MARK S. RITTER
AND DANA E. RITTER**

Date: February 10, 2016

Time: 10:00 a.m.

**Location: Mosk Courthouse, 111 N. Hill
Street, Room 222, Los Angeles, California**

21 I, Robert H. Brumfield, III, declare as follows:

22 1. I am an attorney duly licensed to practice law in the State of California, and am
23 counsel for Mark Ritter, Successor Trustee of the Ritter Family Trust and Mark S. Ritter and Dana
24 E. Ritter (collectively "Ritter Parties"). I make this declaration in support of the Ritter Parties'
25 Motion to Set Aside Judgment. The matters stated herein are of my own personal knowledge,
26 except those matters stated on information and belief, and as to those matters I believe them to be
27 true.
28

1 2. The Court executed the Judgment in this matter on December 23, 2015. As part of
2 the Judgment, the Ritter Parties were included in Exhibit D, which is a list of parties who did not
3 appear in the matter. The Motion to Set Aside seeks an Order setting aside that Judgment, on the
4 basis of the Court's statements at various Case Management Conferences that the matter would be
5 trailed as to them to allow for the presentation of evidence. As a result, the Ritter Parties' failure
6 to present evidence at the time of trial constitutes mistake, inadvertence, surprise, or excusable
7 neglect pursuant to Code of Civil Procedure section 473.

8 3. Undersigned counsel first met with Mark Ritter on August 14, 2015 as to possibly
9 representing the Ritter Family Trust in this case.

10 4. The fact of the potential new representation was mentioned to the Court at the
11 September 4, 2015 Case Management Conference.

12 5. Terms of representation were agreed to between the Ritter and Brumfield &
13 Hagan, LLP, and an Agreement for Legal Services was signed effective as of September 21, 2015.

14 6. At a Case Management Conference held on September 21, 2015, and after being
15 advised of the new representation as to the Ritter Family Trust and discussing the issues related to
16 the trust's involvement in this case, the Court stated that both Ritter and Robar would trail due to
17 the recent involvement of Robar in the case and the issues concerning Ritter's prior legal
18 representation. The stated purpose of trailing was to allow both parties to present evidence as to
19 their respective water usage in an effort to either achieve a resolution of the issues or to set a time
20 in the future for presentation of water usage evidence.

21 7. At a Case Management Conference held on October 30, 2015 in connection with
22 determining what proceedings were going to occur the following week in San Jose, and that as to
23 the situation with Ritter, the Court indicated that there had been some level of neglect of either the
24 client and/or prior counsel since the time of an answer and cross-complaint being filed on Ritter's
25 behalf in early 2007. At that Case Management Conference, undersigned counsel indicated that
26 the documentation as to water usage of Ritter was almost complete and that it would be filed the
27 following week.

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1 8. On November 3, 2015, Ritter filed a request to be allowed to present evidence in
2 support of water usage at a time and place convenient to the Court which can be coordinated to
3 take place at the same time as the presentation of evidence as to water usage by Robar. This
4 evidence was projected to take one day, if not significantly less. This request appears as
5 Document # 10925 on the Court's docket.

6 9. On November 9, 2015, Ritter filed a declaration regarding water usage that shows
7 over the past 23 years, Ritter averages pumping 803 acre-feet per year of water from two
8 agricultural wells that supply water to approximately 150 acres of property on which alfalfa is
9 grown. This request appears as Document # 10963 on the Court's docket.

10 10. On December 23, 2015, the Court held a hearing regarding objections to the
11 Proposed Statement of Decision. In connection with that hearing, and on December 10, 2015, the
12 Ritter Parties filed a Case Management Conference Statement and an Objection to Entering
13 Judgment by default against them. There are other pleadings filed in November and December of
14 2015 concerning the Ritter Parties' issues, but the Case Management Conference Statement and
15 Objection filed by the Ritter Parties on December 10, 2015 contain the essence of the issues and
16 background attendant to this Motion.

17 11. Despite the above-referenced statement at Case Management Conference that the
18 Ritter Parties would be trailed to allow presentation of evidence due to the issues with their prior
19 representation, no such opportunity was afforded. As a result, the Ritter Parties were considered to
20 have failed to appear, and Judgment was entered against them in default.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct. Executed this 15th day of January, 2016, at Bakersfield, California.

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24 
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26 Robert H. Brumfield, III
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28

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9 Attorneys for Mark Ritter, Successor Trustee of the
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CLASS ACTION

Santa Clara Case No. 1-05-CV-049053

**DECLARATION OF MICHAEL T. FIFE IN
SUPPORT OF MOTION TO SET ASIDE
JUDGMENT ENTERED AGAINST MARK
RITTER, SUCCESSOR TRUSTEE OF THE
RITTER FAMILY TRUST AND MARK S.
RITTER AND DANA E. RITTER**

Date: February 10, 2016

Time: 10:00 a.m.

**Location: Mosk Courthouse, 111 N. Hill
Street, Room 222, Los Angeles, California**

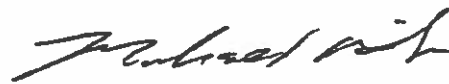
21 I, Michael T. Fife, declare as follows:

22 1. I am an attorney duly licensed to practice law in the State of California, and am
23 counsel for the AGWA parties in this matter. I make this declaration in support of the Ritter
24 Parties' Motion to Set Aside Judgment. The matters stated herein are of my own personal
25 knowledge, except those matters stated on information and belief, and as to those matters I believe
26 them to be true.

27 ///

1 2. I was present for the September 21, 2015 Case Management Conference in this
2 matter via CourtCall. I recall the Court stating, during the September 21, 2015 Case Management
3 Conference, that the Ritter Family Trust's presentation of evidence would be trailed along with
4 Robar. The stated purpose of trailing was to allow the Ritter Family Trust to present evidence as to
5 their respective water usage in an effort to either achieve a resolution of the issues or to set a time
6 in the future for presentation of water usage evidence.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct. Executed this 15th day of January, 2016, at Santa Barbara,
9 California.

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11 Michael T. Fife
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