



LAW OFFICES

OF

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Honorable Jack Komar
Superior Court of California, County of Santa Clara
Old Courthouse, Dept. 17
191 N. First Street
San Jose, CA 95113

September 2, 2008

Re: ANTELOPE VALLEY GROUNDWATER CASES
Judicial Council Proceedings No. 4408
Santa Clara County Superior Court Case No. 1-05-CV-049053

Dear Judge Komar:

Please be advised that Sheldon R. Blum, Trustee For The Sheldon R. Blum Trust (hereinafter Blum Trust), objects to the filing of the Amended Cross-Complaint of Bolthouse Properties, LLC., and Wm. Bolthouse Farms, Inc., (hereinafter Bolthouse Farms and Bolthouse Properties), on the following grounds:

1. That the Amended Pleadings now names a new additional party, namely, Cross-Defendant Sheldon R. Blum, Trustee for the Sheldon R. Blum, which is wholly contrary from the original pleadings and Mr. Zimmer's prior representations, and therefore subject to the same Demurrer and Motion to Dismiss/Strike, filed by Blum Trust on December 13, 2007, bearing efiled Document Nos. 1070 & 1071. (See also *Rosefiled Packing Co. v Superior Court* (1935) 4 C2d. 120, 124, 47 P2d 716, See generally 5 *Witkin, California Procedure, Pleadings* §1120 (4th ed. 1997); *Wiener v Superior Court* (1976) 58 CA3d 525, 130 CR 61; *Ingram v. Sup. Ct. (Slinkard)* (1979) 98 CA3d 483, 492, 159 CR 557, 561-562; and *Woo v. Sup. Ct. (Zarabi)* (1999) 75 CA4th 169, 176, 89 CR 2d 20, 24). In ruling on such challenges, courts can take Judicial Notice of pleadings already on file. (*Amid v. Hawthorne Comm. Med. Group* (1989) 212 CA 3d 1383, 1390, 261 CR 240, 244).

2. That the Amended Cross-Complaint is prejudicial and wholly defective and uncertain as to Blum Trust, since the title of the action omits Blum Trust as a named party; there are no statement of facts constituting any cause of action and/or demand for judgment against Blum Trust upon which relief can be granted, and the amended Cross-Complaint would not serve the ends of justice regarding Blum Trust. [*Civ. Code of Procedure* §§ 422.40, 425.10(a)(1)(2), and 473(a)(1)].

3. That the Amended Cross-Complaint must be supported by Declaration and specify: (1) The purpose and effect of the proposed amended pleadings, (2) Why the proposed amended pleadings are necessary and proper; (3) When the facts giving rise to the proposed amendment were discovered; and (4) The reasons why the request for amending the pleadings were not made earlier. [*CRC 3.1324(b)*].

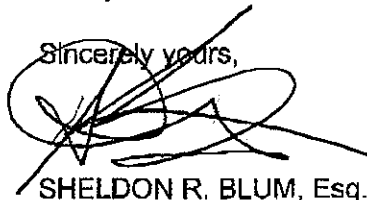
4. That Bolthouse Properties & Bolthouse Farms have previously filed a total of 3 different Amended Complaints and a Cross-Complaint on the same subject matter against the same parties, arising out of the same conduct, which allege contradicted material facts as to groundwater right claims, as well as real party in interest/standing right claims to bring the action on leased Parcels. Therefore, Bolthouse Properties and Bolthouse Farms' Joint Amended Cross-Complaint patently fails to state facts sufficient to constitute a cause of action, in addition to being fatally uncertain. [Code of Civ. Proc. §430.10(e)(f)]

5. That the alleged Quiet Title action on leased Parcels are legally improper under Civil Code §1006; and the Amended Cross-Complaint is patently prejudicial and adverse as to each identified Lessor referenced in Exhibit "A", of the pleadings, which required Compulsory Joinder resulting in misjoinder of parties. [Code of Civ. Proc. §§ 389, 430.10(d), 474, 583.210(a), 762.010, and 762.060(b)]. Consistent with equity, the Bolthouses should now be precluded from any relief under the doctrines of laches and failure to timely serve their pleadings on their Lessors of leased Parcels.

6. That the subject Amended Cross-Complaint of Bolthouse Properties and Bolthouse Farms was first proposed by Mr. Zimmer via letter 'To All Counsel' dated January 21, 2008, (efiled Doc. No. 1152), which was objected to by Mr. Blum via letter dated January 23, 2008. (efiled document no. 1160). Similarly, Mr. Zimmer's reinstated request by letter 'To All Counsel' dated March 31, 2008, was again rejected by Mr. Blum both orally on the telephone and by letter dated April 3, 2008. Therefore it is a misstatement of fact for Mr. Zimmer to represent that no counsel has ever objected to the proposed Joint Amended Cross-Complaint.

7. That the Amended Cross-Complaint is without the requisite attached Verification, as required by Code of Civ. Proc. §761.020, and therefore not drawn in conformity with the law rendering it fatally defective under [Code of Civ. Proc. §436(b)].

Based on the foregoing, it is respectfully requested that Bolthouse Properties, and Bolthouse Farms request to file the subject Joint Amended Cross-Complaint be denied.

Sincerely yours,

SHELDON R. BLUM, Esq.

Cc: Richard Zimmer, Esq., and Jeremy Schroeder, Esq.