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Unserved Party Claiming Adverse Interest

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - CENTRAL DISTRICT

Coordinated Proceedings
Special Title {Rule 1550 (b)}

Judicial Council Coordination
Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER
CASES**

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

Included Actions:

**NOTICE OF MOTIONS AND MOTION OF
DEFENDANT SHELDON R. BLUM,
TRUSTEE FOR ORDERS:
(1) DISMISSING ACTION AS TO
MOVING PARTY; (2) STRIKING
SECOND AMENDED COMPLAINT OF
PLAINTIFF WM. BOLTHOUSE FARMS,
INC., OR ALTERNATIVELY, STRIKING
PORTIONS THEREOF; (3) AWARDING
ATTORNEY FEES; MEMORANDUM OF
POINTS AND AUTHORITIES; AND
DECLARATION IN SUPPORT THEREOF**

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.

Los Angeles County Superior Court
Case No. BC 325 201

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.

Kern County Superior Court
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc., v. City of
Lancaster; Diamond Farming Co. v. City of
Lancaster; Diamond Farming Co. v. City of
Palmdate Water District.

Riverside County Superior Court
Consolidated Action Nos. RIC 344 840,
RIC 344 436, RIC 344 668

AND RELATED CROSS-ACTIONS.

Hearing Date: January 28, 2008

Time: 9:00 a.m.

Dept.: 1

Judge: Hon. Jack Komar

Complaint Filed: 1/25/01

1st Amended Complaint Filed: 5/1/01

2nd Amended Complaint Filed: 11/14/03,
& 12/3/03

Trial Date: Not Set

TO: Plaintiff WM. BOLTHOUSE FARMS, INC., and to its Attorneys of Record:

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LIST OF EXHIBITS

Exhibit

1.	Plaintiff Wm. Bolthouse Farms, Inc. Verified Second Amended Complaint to Quiet Title	"A"
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NOTICE OF MOTIONS

NOTICE IS HEREBY GIVEN that on January 28, 2008, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 1 of the above-entitled court, located at 111 North Hill Street, Los Angeles, CA 90012, Defendant SHELDON R. BLUM, Trustee For The SHELDON R. BLUM TRUST (hereinafter "Blum Trustee"), will, and hereby does, move the Court:

1. For an Order dismissing the present action as to Blum Trustee. This motion is made pursuant to Civil Code § 1006, and Code of Civil Procedure § 435(b), on the ground that the Verified Second Amended Complaint (hereinafter "SAC"), fails to state facts sufficient to constitute a cause of action against Blum Trustee.

2. For an Order dismissing this action as to Blum Trustee. This motion is made pursuant to Code of Civil Procedure §§ 389; 583.210; 583.250; 762.010; 762.060(b),(c); and 474, on the ground that Plaintiff has not served the Summons and SAC on Blum Trustee within three (3) years after commencing the action, which was mandatory and not subject to extension, excuse or exception, and on the additional ground that the Quiet Title Action is barred by the doctrine of Laches.

3. For an Order striking the SAC in its entirety. This motion is made pursuant to Code of Civil Procedure §§ 435(b), and 436(b), on the ground that the SAC is not drawn in conformity with the laws of this state. In the alternative, for an Order pursuant to Code of Civil Procedure §§ 435(b), and 436(a), striking certain portions of the SAC on the grounds that those matters are irrelevant, false, improper to be inserted in any pleadings, and not drawn in conformity with the law.

4. For an Order awarding attorney fees to Blum Trustee, as provided under Civil Code § 1717, and Code of Civil Procedure § 1033.5(a)(10)(A), pursuant to the Lease Agreement between the parties. (See Demurrer of SAC, Lease Agreement, Exhibit "B", p. 10 ¶ 15(c)).

All motions are based on this Notice, the Memorandum of Points & Authorities; the

1 Declaration of Sheldon R. Blum, and attached Exhibit "A", filed herewith, all of the papers and
2 pleadings filed in this action, the records of which this Court must or may take Judicial Notice and on
3 oral argument which may be presented at the hearing of these motions.

4 Dated: December 11, 2007

5 Law Offices of Sheldon R. Blum

6
7 By: 

8 SHELTON R. BLUM, ESQ.

9 Attorney For Defendant Sheldon R. Blum,
Trustee For The Sheldon R. Blum Trust

10 **I. STATEMENT OF FACTS**

11 Defendant Blum Trustee is, and since 1985, has been, the fee owner of 120 acres, more
12 or less, located in the Antelope Valley area, at Avenue J and 70th Street East, in the City of
13 Lancaster, California, bearing APN: 3384-009-001; and 3384-009-006, (hereinafter "Blum Parcels")
14 The Blum Parcels overlies percolating groundwater of unknown extent and quality. (See SAC p. 2,
15 ¶ 3).

16 Plaintiff Wm. Bolthouse Farms, Inc., (hereinafter "Bolthouse Farms" or "Plaintiff"), is an
17 active Michigan corporation authorized to do business in the State of California. Bolthouse Farms
18 occupies the Blum Parcels, and cultivates and harvests crops thereon, under a Lease Agreement
19 dated August 2, 2001. The Lease has been in full force and effect from that date to the present. On
20 May 17, 2004, the parties executed a Modification of Lease Agreement extending the lease term
21 through December 31, 2009.

22 Plaintiff owns the adjacent properties directly across the street from the Blum Parcels
23 bordered on one side by 70th Street East, and on the other side by Avenue J. Without Blum
24 Trustee's knowledge or authorization, Plaintiff installed two (2) underground pipeline systems that
25 import groundwater from Plaintiff's adjacent properties onto the Blum Parcels. One pipeline runs
26 underneath 70th Street East, and the other pipeline runs underneath Ave. J to the Blum Parcels.
27
28

1 For an unknown period of time, Plaintiff and/or its assignees/transferees have been
2 irrigating their crops by using the above-described pipeline system to deliver groundwater pumped
3 from it's owned properties to the Blum Parcels. Defendant is informed and believes that Plaintiff has
4 imported more than six million gallons of groundwater to the Blum Parcels. Despite Blum Trustee's
5 adverse and competing claims to the groundwater "beneficially used" on the Blum Parcels, under
6 the terms of the Lease Agreement, Plaintiff throughout the past years has engaged in 'extrinsic
7 fraud', and has otherwise manipulated the California priority water allocation system by allocating
8 overlying groundwater rights to Plaintiff that rightfully belong to the account of the Blum Parcels.
9

10 **II. PROCEDURAL HISTORY**

11 Plaintiff commenced this action on January 25, 2001, by filing a Verified Complaint to
12 Quiet Title in the Riverside County Court, Case Nos.: RIC 353840, & RIC 344346. On May 1, 2001,
13 Plaintiff filed a Verified First Amended Complaint herein, and later a Second Amended Complaint on
14 November 14, 2003. However, the latter pleading was not verified. Therefore, on December 3,
15 2003, Plaintiff filed the verified SAC, which is now the operative complaint, which is attached and
16 marked as Exhibit "A". No Complaint has ever been served on Blum Trustee. Blum Trustee did not
17 discover the existence of this action until **September 14, 2007**, and then only by chance via a
18 telephone conversation with an attorney representing a party in this consolidated action.
19

20 **III. THE SECOND AMENDED COMPLAINT**

21 By the SAC's first, and only cause of action, Bolthouse Farms¹ seeks to quiet title to the
22 overlying groundwater of numerous parcels, including the Blum Parcels, each of which are listed in
23 Exhibit "A", by Owner Name, Property Legal Description, and APN. The SAC refers to the parcels
24 collectively as the "PROPERTIES". The true identity of Blum Trustee and legal description of the
25 Blum Parcels appears at page 5, in Exhibit "A", to the SAC which reads, as follows:
26

27 ¹ 1. Although the caption identifies two Plaintiffs, namely, Diamond Farming Co., and Wm. Bolthouse Farms,
28 Inc., the SAC does not identify Diamond Farming Co., or it's legal capacity in the pleading, and makes no
charging allegations on it's behalf.

"SHELDON R. BLUM
(LEASED)
-116.29 ACRES

N ½ OF NW ¼ (EX OF STS) OF SEC 24 T 7N R 11W

LOT COM N 400 FT FROM CENTER OF SEC 24 T 7N R 11W TH W
108 FT TH W TO SW COR OF SE ¼ OF NW ¼ OF SD SEC TH N TO
NW COR OF SD SE ¼ OF NW ¼ ...SEE MAPBOOK FOR MISSING
PORTION SEC 24 T 7N R 11W

APN: 3384-009-001 3384-009-006"

Notwithstanding Plaintiff's 'judicial admission' of recognizing Blum Trustee's true name,
legal capacity and title of record to the property against which a determination is sought, Plaintiff
alleges in disguise to be:

"ignorant of the true names and capacities of Defendants named in
this complaint as All Persons Unknown Claiming Any Legal Or
Equitable Right, Title, Estate, Lien, Or Interest In the PROPERTIES
Described in this Complaint Advers to Plaintiff's Title Thereto..."
(SAC, Pg. 3 ¶ 6).

The SAC also purports to sue "DOES 1 through 100" (SAC, Pg. 3, ¶ 7), but the caption
does not include any DOES. A Plaintiff's claimed ignorance of a defendant's name "must of course,
be real, and not feigned.....". (*Dieckmann v Superior Court* (1985) 175 Cal. App. 3d 345, 353,
quoting *Rosencratz v Rogers* (1871) 40 Cal. 489, 490-491). Moreover, if a complaint identifies a
defendant by a fictitious name, then "when his true name is discovered, the pleading....must be
amended accordingly...." (Code of Civil Procedure § 474. Emphasis added). Here, the SAC does
not include any such amendment substituting Blum Trustee in place of a "Unknown Person" or
otherwise in place of a "DOE" defendant described in paragraph 6.

The charging allegations against the defendants, including Blum Trustee appear at SAC,
Pg. 4, as follows:

" 8. By virtue of the location of each PARCEL overlying groundwater,
plaintiff holds an overlying water right to groundwater, entitling Plaintiff
to extract groundwater and to put the water to reasonable and beneficial
use on the Property ("plaintiff's overlying water rights").

10. Any reasonable and beneficial overlying use of groundwater is superior in right to any non-overlying use. Therefore, plaintiff's overlying water rights are superior to any rights defendants may have to take groundwater for non-overlying use.

12. Plaintiff is informed and believes, and on the basis of such information and belief alleges, that the claim of each defendant to superior or coequal rights to extract and use groundwater is without basis in law or equity.

14. Plaintiff seeks to quiet title to the superior priority of plaintiff's overlying water rights as to each PARCEL against the claims of each defendant to a superior or coequal right to extract and use groundwater for non-overlying use."

Likewise, Plaintiff's prayer for judgment under 1,2 and 3, seeks a determination that Plaintiff has superior priority rights and/or coequal rights to extract groundwater overlying the Blum Parcels, which obviously solidifies the parties adverse and competing property claims. Plaintiff does not favor the Court with facts showing how Plaintiff supposedly acquired its title of "overlying water rights" on "LEASED" property (e.g. by purported prescription). Plaintiff has not alleged any 'appropriative water rights'. A person cannot acquire legal water rights merely "by virtue of the location" of his/her property. (See Blum Trustee's Demurrer to SAC, filed herewith).

MEMORANDUM OF POINTS AND AUTHORITIES

Motion to Dismiss

1. Request for Judicial Notice.

Pursuant to Evidence Code § 453, mandatory judicial notice applies to the contents of the Court's file in this case and to those in the file of Riverside County Superior Court Case Nos.: RIC 353840, and RIC 344346. In the alternative, Blum Trustee asks the Court to take permissive judicial notice of the contents of said files pursuant to Evidence Code § 452. The Riverside County file reflects that: (1) Plaintiff commenced this action on January 25, 2001, and (2) There are no Declarations that Plaintiff has served any Summons and Complaint on Blum Trustee.

2. The Court should Order the action dismissed as to Blum Trustee for Plaintiff's

1 failure to serve the Summons and Complaint within Three (3) years.

2 A. Dismissal is Mandatory.

3 The motion to dismiss poses little difficulty. Plaintiff commenced this action on January 25,
4 2001, which it amended on three (3) occasions, including on December 3, 2003. Six years nine
5 months later or otherwise over four years later, Plaintiff still has not served the Summons and
6 Complaint on Blum Trustee. Code of Civil Procedure § 583.210(a), provides:

7 "The summons and complaint shall be served upon a defendant
8 within three years after the action is commenced against the
9 defendant. For the purpose of this subdivision, an action is
10 commenced at the time the complaint is filed."
(Emphasis added).

11 Code of Civil Procedure § 583.130, explains that "[I]t is the policy of the state that a plaintiff
12 shall proceed with reasonable diligence in the prosecution of the action. . . ."

13 "The purpose of the statute requiring dismissal for failure to
14 serve a summons and complaint within three years is to move
15 suits expeditiously towards trial and to promote trial before
16 evidence is lost, destroyed or unavailable.
(*Chambers v. Santa Cruz City School Dist.* (1987) 193 Cal. App.
3d 518, 522).

17 Code of Civil Procedure § 762.062, is significant as it provides in part:

18 (b) In [Quiet Title actions], the plaintiff shall name as defendants
19 the persons having adverse claims that are of record or known
20 to the plaintiff or reasonably apparent from an inspection of the
property.

21 (c) If the plaintiff admits the validity of any adverse claim, the
22 complaint shall so state.
(Emphasis added).

23 Code of Civil Procedure § 583.250, makes it unequivocal that upon a duly noticed
24 motion under § 583.210, dismissal is mandatory:

25 (a) If service is not made in an action within the time prescribed
26 in this article:

27
(2) The action shall be dismissed . . . on motion of any
28 person interested in the action, whether named as a party or not,

1 after notice to the parties. (b) The requirements of this article are
2 mandatory and are not subject to extension, excuse, or exception
except as expressly provided by statute. (Emphasis added).

3 **B. There are no applicable statutory extensions, excuses or exceptions.**

4 There are no such statutory exceptions applicable to the case at bar. Code of Civil
5 Procedure § 583.230, allows for an extension of the time limit upon stipulation between the
6 parties, which is not applicable as well. Under Code of Civil Procedure § 583.240, the time for
7 service excludes any time during which:

- 8 (a) The defendant was not amenable to the process of the
9 court.
10 (b) The prosecution of the action or proceedings in the action
was stayed and the stay affected service.
11 (c) The validity of service was the subject of litigation by the
parties.
12 (d) Service, for any other reason, was impossible, impracticable
or futile due to causes beyond the plaintiff's control. Failure to
13 discover relevant facts or evidence is not a cause beyond the
plaintiff's control for the purpose of this subdivision.

14
15 None of the foregoing exclusions are applicable here. Blum Trustee has always been
16 readily available for service, there is no stay or pending litigation on the validity of service, and
17 Blum's whereabouts has always been well known to Plaintiff.

18 Similarly, the action is barred by the doctrine of "Laches". A complaint in equity that on its
19 face shows a great lapse of time between the filing of the Complaint and lack of good faith and
20 reasonable diligence to serve the same on an indispensable party requiring "Compulsory Joinder"
21 under Code of Civil Procedure § 389, makes it inequitable to enforce or litigate the claim. (*Estate of*
22 *Peebles* (1972), 27 Cal. App. 3d 163,166).

23
24 **C. Plaintiff has actively concealed this litigation from Blum Trustee.**

25 By virtue of the Lessor-Lessee contract with Blum Trustee, and because Blum
26 Trustee's title to the Blum Parcels are a matter of public record, Plaintiff at all times herein
27 mentioned, had actual knowledge of Blum Trustee's identity, whereabouts, and his ownership
28

1 interests in the Blum Parcels. Plaintiff further knew that: (1) Blum Trustee's claim to overlying
2 and/or non-overlying groundwater rights is adverse and superior to Plaintiff's claim (See SAC, Pgs.
3 4, ¶¶ 8, 10, & 12). (2) That Blum Trustee and Plaintiff have competing priority water allocation rights
4 to extract groundwater on the Blum Parcels (See SAC, Pgs. 3 & 4, ¶¶ 6, 8, 10, 12, & 14), and that
5 (3) Blum Trustee is an indispensable party whose joinder is compulsory. (Code of Civil Procedure
6 §§ 389, 474, 761.020, 762.010, 762.060(b)). Blum Trustee should have been joined and served as
7 a defendant even under the rules of "Permissive Joinder". (Code of Civil Procedure § 379).

8 This is not a close call. Given that Plaintiff's failure to serve Blum Trustee was intentional
9 and calculated to take unfair advantage over Blum Trustee and Blum Parcels, Plaintiff is not
10 entitled to tolerance or consideration from the Court. Plaintiff's claimed ignorance of Blum Trustee's
11 identity is nothing less than feigned. Exhibit "A", to the Verified SAC is a 'judicial admission' of this
12 egregious inconsistency rendering the SAC fatally defective, but telling. In *Maginn vs. City of*
13 *Glendale* (1999), 72 Cal. App. 4th 1102, the court held: "If service is delayed three years, the court
14 must dismiss the action, unless specific statutory exceptions apply." (*Id.* at Pg. 110), (Emphasis
15 added).

17 3. Conclusion.

18 Based on the foregoing facts and law, and the equitable interests of justice, dismissal
19 of the entire Verified SAC, or alternatively, dismissal as to Blum Trustee and the Blum Parcels
20 are mandatory and not subject to exception together with an award of costs of suit, including
21 attorney fees (See Discussion *infra*, Part 2, Page 13).

23 Motion to Strike

24 1. The Court may strike matter from the SAC that is irrelevant, false, improper or not
25 drawn in conformity with the law.

26 A. Statutory Authority.

27 Code of Civil Procedure § 436, provides:

28 The court may, upon a motion made pursuant to Section 435,

1 and upon terms it deems proper:

2 (a) Strike out any irrelevant, false, or improper matter inserted
3 in any pleadings.

4 (b) Strike out all or any part of a pleading not drawn in
5 conformity with the laws of this state, a court rule, or an Order
6 of the court.

7 **B. The portions of Exhibit "A", to the SAC that identifies Blum Trustee and**
8 **describes his property is irrelevant.**

9 "Relevant evidence" is defined as "evidence. . . . having any tendency in reason to
10 prove or disprove any disputed fact that is of consequence to the determination of the action."
(Evidence Code § 210). "No evidence is admissible except relevant evidence." (*Id.* at § 350).

11 Here, if the Court grants the Motion to Dismiss, Blum Trustee will no longer be a party to
12 Plaintiff's Quiet Title action and the Court under Res Judicata and Collateral Estoppel will have
13 adjudicated Plaintiff's claim against Blum Trustee and the Blum Parcels. There is nothing in the
14 SAC concerning Blum Trustee or Blum Parcels that has any tendency in reason to prove or
15 disprove any fact of consequence in Plaintiff's case.

16 **C. The allegations in the SAC at Paragraphs 6, 7, 8, 9, 10, 12 & 14, are false.**

17 As established above, Plaintiff's claims of ignorance as to Blum Trustee's identity
18 and/or whereabouts are false (SAC, Pg. 3, ¶¶ 6, 7). Second, the allegation that Plaintiff holds an
19 overlying groundwater right to extract groundwater on the Blum Parcels, whether superior or co-
20 equal is false (SAC, Pgs. 4-5, ¶¶ 8, 10, 12, 14). Third, the allegation that Blum Trustee currently is
21 extracting groundwater for non-overlying use on the Parcels or otherwise that the claim of Blum
22 Trustee is without basis in law or equity are false (SAC, Pg. 4, ¶¶ 9, 10). Such allegations may be
23 stricken from a verified pleading under Code of Civil Procedure § 436(a).
24

25 **D. The allegations of the SAC identified above are improper.**

26 Allegations that are irrelevant or false may also be "improper" within the meaning of Code
27 of Civil Procedure § 436(a). Also improperly pleaded are paragraphs 8, and 10, of the SAC since
28

1 they state conclusions of law rather than facts and fail to allege Plaintiff's title and the basis of
2 Plaintiff's title as to the "LEASED" Parcels identified in Exhibit "A". The Court may strike such
3 improper allegations from the SAC.

4 **E. The SAC is not filed or drawn in conformity with the laws and therefore**
5 **must be stricken.**

6 A Complaint that fails to state facts sufficient to constitute a cause of action is not filed or
7 "drawn in conformity with the laws of this state", as required by Code of Civil Procedure § 436(b).
8 (*Velez v. Smith* (2006) 142 Cal. App. 4th 1154, 1161). Here, the SAC has not been filed or drawn in
9 conformity with the law in the following respects:

10 1. As a matter of law, the SAC fails to state facts sufficient to constitute a cause of
11 action. Cal. Civil Code § 1006, provides:

12 "The title conferred by occupancy is not a sufficient interest
13 in real property to enable the occupant . . . to commence or
14 maintain an action to quiet title, unless the occupancy has
15 ripened into title by prescription."

16 Here, Plaintiff's occupancy would be sufficient to enable Plaintiff to commence or maintain
17 the present action only if its occupancy has "ripened into title by prescription." However, as a matter
18 of law, it is impossible for Plaintiff to acquire such title to the Blum Parcels. It is well settled that "a
19 lessee in possession of real property under a lease cannot dispute his landlord's title, nor can he
20 hold adversely to him while holding under the lease." (*Swartzbaugh v. Sampson*
21 (1936), 11 Cal. App. 2nd 451, 462), (Emphasis added).

22 The SAC cannot, and does not allege that it holds the Blum Parcels adversely to Blum
23 Trustee. It follows that Plaintiff's occupancy cannot have ripened into the prescriptive title required
24 by section 1006, for Plaintiff to "commence or maintain" the present action against Blum Trustee.
25 Therefore, as a matter of law, the SAC fails to state facts sufficient to constitute a cause of action
26 against Blum Trustee. (Code of Civil Procedure § 435.10(e)). "The purpose of the motion [to
27 dismiss] is to test the sufficiency of the pleadings. . . (Swartzbaugh at p. 462) and "the defect may
28

1 be reached by motion to dismiss." (*Monahan v. Blossom* (1948) 88 Cal.App.2d 951, 952).

2 2. Similarly, as a matter of law, it has been repeatedly held that an action to Quiet Title
3 will not lie in favor of the holder of an equitable title as against the holder of a legal title. (*G.R.*
4 *Holcomb Estate Co. v. Burke* (1935) 4 Cal.2nd 289, 297, 48 P.2nd 669).

5 3. The Verification attached to the SAC was signed more than 15 days before the SAC
6 was written, and therefore not filed in conformity to Code of Civil Procedure §§ 446, and 761.020,
7 equivalent to a "sham pleading".

8 4. Plaintiff violated Code of Civil Procedure § 761.010(b), as it did not "[I]mmediately
9 upon commencement of the action. . . file a notice of the pendency of the action in the office of the
10 county recorder of each county in which any real property described in the complaint is located."

11 5. The SAC fails to allege facts sufficient to support the basis of its alleged superior
12 and/or coequal overlying title to the Blum Parcels under Code of Civil Procedure § 761.020(b), and
13 Plaintiff's prayer for judgment is not supported by the facts. (SAC ¶¶ 2, 8, 10, 12, 14, & Prayer for
14 Judgment ¶¶ 1,2 & 3).

15 6. The SAC purports to sue DOE defendants without naming DOES in the caption
16 required under Code of Civil Procedure § 425.10.

17 7. The SAC has never been amended to substitute Blum Trustee in place of a
18 fictitiously named defendant, despite Blum Trust being a well known indispensable party (Code of
19 Civil Procedure 389), having an adverse interest to Plaintiff (Code of Civil Procedure §§ 762.010,
20 762.060(b)).

21 8. Despite Plaintiff's actual knowledge of the identity, property interest, and
22 location of Blum Trustee, the SAC has no amendment substituting Blum Trustee in place of a
23 fictitiously named defendant (Code of Civil Procedure § 474).

24 9. The SAC names Diamond Farming Company as a Plaintiff in the caption
25 without identifying the legal capacity of the company or stated charging allegations on its behalf, as
26
27
28

1 required under Code of Civil Procedure § 425.10.

2 In addition to the other available remedies, the Court has discretion to dismiss the SAC
3 under Code of Civil Procedure § 436(b), on the ground that it is not drawn in conformity with the
4 law.

5 **2. Blum Trustee is entitled to reasonable attorney fees by contract.**

6 Civil Code § 1717(a), states in part:

7 "In any action on a contract, where the contract specifically provides
8 that attorney fees and costs . . . shall be awarded . . . to the prevailing
9 party, then the party who is determined to be the party prevailing on the
10 contract . . . shall be entitled to reasonable attorney fees in addition to
other costs.

11
Reasonable attorney fees shall be fixed by the court, and shall be an
12 element of the cost of suit.

13 If the Court should sustain the present Motions, Blum Trustee would be the 'prevailing
14 party' under Civil Code 1717(a). Under Code of Civil Procedure § 1032(b), a prevailing party is
15 entitled as a matter of right to recover costs. Code of Civil Procedure § 1033.5(a)(10)(A), states
16 that the items allowable as costs under CCP § 1032, includes attorney fees when authorized by
17 contract.

18 The provision for an award of attorney fees in the Lease Agreement between Plaintiff
19 and Blum Trustee is broader than the usual attorney fee clause. Most contracts typically provide
20 for an award of attorney fees to the prevailing party in litigation to enforce the contract. But here,
21 the Exhibit "B", Lease Agreement between Blum Trustee (Lessor) and Plaintiff (Lessee),
22 provides for the recovery of Lessor's attorney fees under various scenarios expressed in part at
23 Page 10, Paragraph 15(c):
24

25 "Reasonable attorney fees and other expenses, whether personally
26 performed by Lessor or otherwise incurred by Lessor in enforcing any
27 provision of this Lease or in any action or proceeding in which Lessor
28 is successful by reason of a default by Lessee or by anyone holding
under Lessee . . . or incurred by Lessor by reason of any action to
which Lessor shall be [a party] and shall constitute additional rent

under the Lease . . ."

The bracketed words in the above quoted paragraph were inadvertently omitted.

However, the parties intent is clear: The Lessor is entitled to recover from Lessee, as additional rent, reasonable attorney fees incurred by Lessor as a result of conduct by Lessee or anyone holding under Lessee which requires Lessor to engage in any form of corrective action and/or litigation. Accordingly, the Court should award Blum Trustee reasonable attorney fees as a part of his costs of suit.

3. Conclusion

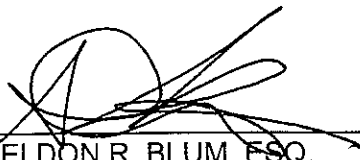
Based on the foregoing authorities, Blum Trustee requests an Order striking:

- (1) The verified SAC in its entirety. In the alternative, Blum Trustee requests an Order striking:
- (1) The irrelevant, false and improper allegations in Paragraphs 6, 7, 8, 10, 12 and 14, of the SAC;
- (2) The attached Exhibit "A", at Page 5, which references "Sheldon R. Blum (LEASED), 116.29 ACRES", together with the legal description and APN; (3) Prayer for Judgment numbers 1, 2 & 3; and (4) Diamond Farming Company, a California Corporation from the caption of the pleadings; together with an award of costs of suit, including attorney fees.

Dated: December 11, 2007

Law Office of Sheldon R. Blum

By


SHELDON R. BLUM, ESQ.

Attorney for Defendant SHELDON R. BLUM,
Trustee for the SHELDON R. BLUM TRUST

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DECLARATION OF SHELDON R. BLUM, TRUSTEE

I, Sheldon R. Blum, declare as follows:

1. I am an attorney at law duly licensed to practice before this Court and all courts of the State of California, with my Law Office located at 2242 Camden Avenue, Suite 201, San Jose, CA 95124. I make this Declaration of Defendant Sheldon R. Blum, Trustee for the Sheldon R. Blum Trust, an 'Unserved Defendant Claiming an Interest Adverse to Plaintiff', in Support of Motions for an Order to: (1) Dismiss with prejudice Plaintiff Wm Bolthouse Farms, Inc., Verified Second Amended Complaint to Quiet Title as to Defendant Sheldon R. Blum, Trustee, for the Sheldon R. Blum Trust and/or (2) Strike the entire action or alternatively strike out portions, thereof.

2. I have personal knowledge of the facts set forth herein, and if called to testify, could and would competently testify thereto, except as to those facts stated herein on information and belief, and as to those facts I am informed and believe that they are true and correct.

3. Since 1985, Sheldon R. Blum Trustee for the Sheldon R. Blum Trust has been the fee owner of 120 acres, more or less, located in the Antelope Valley area, at Avenue J and 70th Street East, in the City of Lancaster, State of California, bearing APN 3384-009-001 & 3384-009-006, hereinafter "Blum Parcels". The Blum Parcels overlies percolating groundwater of unknown extent and quantity.

4. I have personally known Plaintiff Wm. Bolthouse Farms, Inc., for over eight years under a Lessor/Lessee business relationship. Plaintiff has been occupying the Blum Parcels to cultivate and harvest it's crops under a written Lease Agreement dated August 2, 2001, up to the present, which was extended on May 17, 2004, by written Modification Agreement up through December 31, 2009.

5. In default and breach of the Lease Agreement, and without my knowledge or waiver, Plaintiff and/or its assignee(s)/transferee(s) has and still continues to irrigate it's crops on the Blum Parcels via importing water from it's adjacently owned properties through a underground pipeline

1 system which runs underneath 70th Street East and Avenue J. I am informed and believe and on
2 such information and belief state that to date, Plaintiff and/or its assignee(s)/transferee(s) has
3 imported more than 6 million gallons of groundwater to the Blum Parcels.

4 6. Plaintiff does not have any superior, coequal and/or other appurtenant rights, title or
5 interests to pump any overlying groundwater on the Blum Parcels. In addition, Plaintiff does not
6 have any rights, title or interests to extract the Blum Parcels' groundwater for non-overlying uses.
7 Plaintiff was accorded the exclusive right under the lease agreement to repair and extract overlying
8 groundwater for the beneficial use of the Blum Parcels via the operational use of the Blum Parcels
9 repaired water wells. The Blum Parcels was to acquire and be allocated and credited overlying
10 groundwater rights under the California priority allocation system through Plaintiff's farming
11 operations on the Blum Parcels.
12

13 7. At all times herein mentioned, I have never been notified and/or served with Plaintiff
14 Wm. Bolthouse Farms, Inc., verified Complaint and/or Second Amended Complaint to Quiet Title,
15 notwithstanding Plaintiff's awareness that I have adverse and competing claims to the overlying
16 groundwater beneficially used on the Blum Parcels, and/or to extract groundwater on the Blum
17 Parcels for non-overlying use.
18

19 8. I did not discover the existence of Plaintiff's verified Complaint and/or Second
20 Amended Complaint to Quiet Title pending actions, until **September 14, 2007**, and then only by a
21 chance conversation with an attorney representing one of the parties in this consolidated action.
22 Upon my receipt and review of Plaintiff's pleadings, I was extremely surprised to have read in the
23 attached Exhibit "A", at Page 5, second paragraph that I am identified by true name, capacity,
24 property legal description, and LA County Assessor Parcel Number, as one of the collective
25 "Properties" Plaintiff seeks a Quiet Title determination.
26

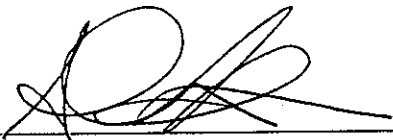
27 9. At all times herein mentioned, Plaintiff intentionally and actively concealed this
28 litigation from myself individually, and/or in the capacity of Sheldon R. Blum, Trustee for the

1 Sheldon R. Blum Trust, and otherwise engaged in 'extrinsic fraud' to my prejudice.

2 Throughout the years, Plaintiff has taken unfair advantage over my property rights, despite
3 recognizing that I am an indispensable party to it's action requiring my compulsory joinder.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct, including those matters stated on information and belief, in which I
6 believe them to be true.

7 Executed this 11th day of December, 2007, in San Jose, California.

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10 Defendant Sheldon R. Blum, Trustee
11 For The Sheldon R. Blum Trust
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