

**LAW OFFICES OF
SHELDON R. BLUM**

2242 CAMDEN AVENUE, SUITE 201

SAN JOSE, CALIFORNIA 95124

TEL: (408) 377-7320

FAX: (408) 377-2199

STATE BAR NO. 83304

Attorney for Defendant SHELDON R.
BLUM, Trustee For The SHELDON
R. BLUM TRUST, 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)}

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Actions:

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.

Judicial Council Coordination
Proceeding No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

**NOTICE OF HEARING OF DEMURRER
OF DEFENDANT SHELDON R. BLUM,
TRUSTEE TO SECOND AMENDED
COMPLAINT OF PLAINTIFF WM.
BOLTHOUSE FARMS, INC.**

Hearing Date: January 28, 2008

Time: 9:00 a.m.

Dept. No.: 1

Judge: Hon. Jack Komar

Complaint Filed: 1/25/01

First Amended Complaint Filed: 5/1/01

Second Amended Complaint Filed:
11/14/03, and 12/3/03

Trial Date: Not Set

LAW OFFICES OF SHELDON R. BLUM
2242 CAMDEN AVENUE, SUITE 201
SAN JOSE, CALIFORNIA 95124
TEL: (408) 377-2199, FAX: (408) 377-2199

TO: Plaintiff WM. BOLTHOUSE FARMS, INC., and to it's Attorneys of Record:

NOTICE IS HEREBY GIVEN that on January 28, 2008, at 9:00 a.m., or soon thereafter as the matter may be heard in Department 1 of the above-entitled Court, the Court will hear the Demurrer of Defendant SHELDON R. BLUM, Trustee For The SHELDON R. BLUM TRUST, to the Second Amended Complaint to Quiet Title of Plaintiff WM. BOLHOUSE FARMS, INC.,

The Demurrer is based on this Notice, the Demurrer; Memorandum of Points And Authorities; Declaration of Sheldon R. Blum, Trustee, attached Exhibits "A", and "B", served herewith, and on all of the papers and pleadings filed in this action, the records of which this Court must or may take Judicial Notice, and on the oral argument which may be presented at the hearing.

Dated: December 11, 2007

Law Offices 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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**ANTELOPE VALLEY GROUNDWATER
CASES**

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

Included Actions:

**DEMURRER OF DEFENDANT SHELDON
R. BLUM, TRUSTEE TO SECOND
AMENDED COMPLAINT TO QUIET
TITLE OF PLAINTIFF WM. BOLTHOUSE
FARMS, INC.; REQUEST FOR AWARD
OF ATTORNEY FEES; MEMORANDUM
OF POINTS AND AUTHORITIES; &
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
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Consolidated Action Nos. RIC 344 840,
RIC 344 436, RIC 344 668

Trial Date: Not Set

AND RELATED CROSS-ACTIONS.

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2. Lease Agreement dated 8/2/01 "B"

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DEMURRER

Defendant SHELDON R. BLUM, Trustee For The SHELDON R. BLUM TRUST
(hereinafter "Blum Trustee"), demurs to the Verified Second Amended Complaint (hereinafter "SAC") of
Plaintiff WM. BOLTHOUSE FARMS, INC., (hereinafter "Plaintiff" or "Bothouse Farms"), on the
following grounds:

1. There is another action pending between the same parties or their privies on the same
cause of action. (Code of Civil Proc. § 430.10(c)).

2. There is a defect or misjoinder of parties. (Code of Civil Proc. § 430.10(d)).

3. The SAC does not state facts sufficient to constitute a cause of action to Quiet
Title against Defendant Blum Trustee. (Code of Civil Proc. § 430.10(e)).

4. The SAC is uncertain, which includes ambiguous and unintelligible. (Code of
Civil Proc. § 430.10 (f)).

Blum Trustee further requests the Court to award reasonable attorney fees to him as
provided in the contract between Blum Trustee and Plaintiff, pursuant to Civil Code § 1717, and
allowable as costs of suit under Code of Civil Procedure § 1033.5(a)(10)(A). (see Lease Agreement,
Exhibit "B"; See also Discussion *infra* Part 9, Pg. 12).

Dated: December 11, 2007

Law Offices 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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MEMORANDUM OF POINTS AND AUTHORITIES

1. Request for Judicial Notice.

Pursuant to Evidence Code § 453, mandatory judicial notice applies to the contents of the file in the Riverside County Superior Court, Case Nos.: RIC 353 840; RIC 344 668; & RIC 344 436, and to the contents of the file in the Santa Clara County Superior Court, Case No.: 1-05-CV-049053. In particular, but not by way of limitation, Blum Trustee requests judicial notice of the Cross-Complaint of Bolthouse Properties, LLC., filed on January 2, 2007, in the above-referenced Santa Clara County action, a copy of which is attached hereto, marked as Exhibit "A", (hereinafter "Bolthouse Properties" or "LLC Cross-Complaint") (See also Defendant's Motion to Dismiss/Strike, Exhibit "A", Plaintiff Bolthouse Farms Verified Second Amended Complaint).

In the alternative, Blum Trustee asks the Court to take permissive judicial notice of the contents of said files pursuant to Evidence Code § 452(d). The Court may take judicial notice of the records in the above-referenced cases to the extent that such matters are not subject to mandatory judicial notice. (*Cote v. Henderson* (1990) 218 Cal.App.3d 796, 802; *Tarr v Merco Constr. Engineers, Inc.* (1978) 84 Cal.App. 3d 707, 712).

Blum Trustee further asks the Court to take permissive judicial notice of the Lease Agreement dated August 2, 2001, by the terms of which Plaintiff leases the Blum Parcels from Blum Trustee. A true and correct copy of the Lease Agreement is attached hereto, and marked as Exhibit "B". The existence of the Lease Agreement is of such common knowledge within the territorial jurisdiction of this Court that it cannot be the subject of dispute. (Evid. Code § 452(g)). Furthermore, the existence of the Lease Agreement is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (*Id.* subd. (h); *Estate of Randolph* (1980) 112 Cal.App.3d 81, 84).

2. Facts Plead in the Second Amended Complaint.

The material facts alleged in the SAC which correspond to its paragraph numbers are

as follows:

1. Plaintiff Wm. Bolthouse Farms, Inc., is an active Michigan corporation, authorized to do business in California.

2. Plaintiff claims to own in fee or to lease certain parcels of real property (individually referred to as a "PARCEL") in the Antelope Valley area of Los Angeles County. Exhibit "A", attached to and incorporated into the SAC sets forth the owner of each PARCEL, whether it is under lease, the property legal description, and APN. The SAC refers to the PARCELS collectively as "PROPERTIES".

3. Each PARCEL overlies percolating groundwater, the extent of which is unknown to Plaintiff.

4, 5. The SAC identifies Defendant City of Lancaster together with Defendant water companies and districts. It is alleged that each agency is a purveyor of water to customers in portions of Los Angeles County.

6. Plaintiff claims to be ignorant of the true names of the defendants named as "All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien or Interest in the PROPERTIES Described in this Complaint Adverse to Plaintiff's Title or Any Could Upon Plaintiff's Title Thereto." Plaintiff purports to sue these defendants pursuant to Code of Civil Procedure §§ 762.020, and 762.060. These defendants are alleged to be all person who claim the right to extract groundwater "for non-overlying use" based on rights co-equal with, or superior to Plaintiff's rights. Plaintiff seeks a binding and conclusive judgment against all these unknown persons.

7. Plaintiff purports to be ignorant of the true names of defendants DOES 1 through 200. There are no DOE defendants named in the caption of the SAC. The SAC states that Plaintiff will amend the pleadings to allege the true names of the DOES when they are

1 ascertained. The above-referenced court files do not contain an amendment substituting Blum
2 Trustee in place of a DOE defendant or otherwise in place of an "Unknown Person" described in
3 paragraph 6.

4 8. "By virtue of the location of each PARCEL overlying groundwater", Plaintiff claims
5 overlying water rights to groundwater, including the right to extract and use the water for the
6 benefit of the property ("plaintiff's overlying water rights")."

7 9. Plaintiff alleges on information and belief that each defendant currently extracts
8 groundwater "for use on property not held by the extracting defendant or for some other non-
9 overlying use."

10 10, 11, 12, 13, 14. Plaintiff alleges that its reasonable and beneficial overlying use of
11 groundwater is superior to any non-overlying use by defendants. It is further alleged that each
12 defendant, whether by prescription or otherwise, claims groundwater extraction rights for non-
13 overlying uses and further claims that their claims are superior to, or co-equal with Plaintiff's
14 overlying rights. Plaintiff finally alleges that each of the claims by defendants is "without basis in
15 law or equity", and therefore seeks a quiet title determination to the superior priority of plaintiff's
16 overlying water rights as to each PARCEL against the claims of each defendant.

17 The SAC incorporates by reference Exhibit "A", which consists of a list of each PARCEL
18 defined in the SAC, including the Blum Parcels, the Owner's name, whether it is "LEASED", the
19 legal description and APN. The listing of the Blum Parcels states that it is in fact "LEASED" to
20 Plaintiff.

21 **3. Procedural History.**

22 Plaintiff commenced this action on January 25, 2001, by filing a Verified Complaint to
23 Quiet Title in the Riverside County Court, Case Nos.: RIC 353840, & RIC 344346. On May 1,
24 2001, Plaintiff filed a Verified First Amended Complaint herein, and later a Second
25

1 Amended Complaint on November 14, 2003. However, the latter pleading was not verified.
2 Therefore, on December 3, 2003, Plaintiff filed the verified SAC, which is now the operative
3 complaint. No Complaint has ever been served on Blum Trustee.

4 On January 2, 2007, a related "Privy", [Assignee/Transferee] entity called Bolthouse
5 Properties, LLC., (represented by the same attorneys as Plaintiff herein), filed an unverified
6 Cross-Complaint in the Santa Clara County Superior Court, under Case No.: 1-05-CV-049053.
7 The LLC Cross-Complaint includes a cause of action to Quiet Title to alleged overlying water
8 rights and/or other appurtenant rights to pump and use groundwater underlying the same
9 PARCELS, including the Blum Parcels, as Bolthouse Farms alleged in its SAC. (See, Ex. "A",
10 p. 5, ¶¶ 2, 5, 7 & 10). Bolthouse Properties has not served its LLC. Cross-Complaint on Blum
11 Trustee.
12

13 **4. The SAC is subject to demurrer on the grounds set forth in Code of Civil**
14 **Procedure § 430.10.**

15 **A. Authority for Demurrer.**

16 Code of Civil Procedure § 430.30(a), provides in part:

17 When any ground for objection to a complaint . . . appears on
18 the face thereof. . . the objection on that ground may be taken
by a demurrer to the pleading.

19 In addition to the facts appearing on the face of the pleading, judicially noticed
20 matters may be read into the complaint in determining the sufficiency. (*E.H. Morrill Co v. State*
21 *of California* (1967) 65 Cal.2nd 787, 795).

22 **B. Grounds for Demurrer.**

23 Among the grounds for demurrer listed in Code of Civil Procedure § 430.10, four (4) apply to
24 the SAC:
25

26 The party against whom a complaint . . . has been filed may object by demurrer
27 . . . to the pleading on any one or more of the following grounds:

28

(c) There is another action pending between the same parties on the same cause of action.

(d) There is a defect or misjoinder of parties.

(e) The pleading does not state facts sufficient to constitute a cause of action.

(f) The pleading is uncertain, which includes ambiguous and unintelligible.

5. **The SAC does not state facts sufficient to constitute a cause of action to Quiet Title.**

A. The SAC fails to allege facts sufficient to establish Plaintiff's 'Standing to Sue'.

Failure to establish standing is a separate ground for demurrer based on a failure to allege facts sufficient to constitute a cause of action. (Code of Civil Proc. § 430.10(e)); *Parker v. Bowron* (1935) 40 Cal.2d 344, 351). Similarly, Code of Civil Procedure § 367, requires that every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute. (*Killian v Millard* (1991) 228 Cal.App.3d 1601, 1605). "A complaint filed by someone other than the real party in interest is subject to a general demurrer on the ground that it fails to state a cause of action." (*Redevelopment Agency of San Diego v. San Diego Gas & Electric Co.* (2003) 111 Cal.App.4th 912, 921). Although an action does not abate by the transfer of the interest in the action, under Civil Code § 368.5, the action can only be continued in the name of the original party or otherwise the Court may allow substitution in the name of the transferee. Not both, simultaneously.

The Lease Agreement between Blum Trustee and Plaintiff Wm. Bolthouse Farms, Inc., (Ex. "B", herein), identifies Plaintiff as the only Tenant and grants only to Plaintiff the right to pump overlying groundwater on the Blum Parcels. The LLC Cross-Complaint (Ex. "A", herein), claims those same rights. The allegations of ownership of parcels and/or water rights in the SAC and the LLC Cross-Complaint are essentially the same. The SAC reads at Page 2, Paragraph 2, as follows:

"2. Plaintiff either owns in fee or leases certain parcels of real property (hereinafter individually referred to as a "PARCEL") in

Defendant Blum Trustee's Demurrer to Second Amended Complaint of Plaintiff Wm. Bolthouse Farms, Inc.,

1 the Antelope Valley area of Los Angeles County, California.
2 Each PARCEL is identified by the legal description that are
3 attached as Exhibit "A" hereto and incorporated herein by
4 this reference."

5 Unlike the SAC, the LLC Cross-Complaint has no list of "PARCELS" or other exhibits attached
6 to it. Instead, the LLC Cross-Complaint expressly refers to the same "PARCELS" and water rights as
7 stated in Exhibit "A" to the SAC, at Page 3, Paragraph 2, as follows:

8 "2. Cross-Complainant owns in fee certain parcels of real
9 property, and/or own water rights for certain properties,
10 (hereinafter individually referred to as a "PARCEL") in the
11 Antelope Valley area of Los Angeles County, California.
12 Each Parcel has previously been identified in previous
13 Complaints filed by WM. BOLTHOUSE FARMS, INC. in the
14 Riverside action . . ."

15 From the face of the two pleadings, the Court can discern that both Bolthouse Farms and
16 Bolthouse Properties are seeking to Quiet Title to exactly the same "PARCELS" and water rights. If
17 Bolthouse Properties is in fact the "real party in interest" in its cross-action, it could only have acquired
18 that status by way of an "Assignment" or "Transfer" by Plaintiff Wm. Bolthouse Farms, Inc. If Plaintiff
19 did assign or transfer it's groundwater rights to Bolthouse Properties, then Plaintiff no longer holds
20 such rights, is not the "real party in interest", and has no "standing" to bring this action. (Code of Civil
21 Proc. § 430.10(e); *Redevelopment Agency of San Diego* 111 Cal.App.4th at p. 21).

22 The SAC and the LLC Cross-Complaint allege overlying groundwater rights, and not
23 appropriative water rights. Those allegations, even if true, would make both Bolthouse Farms
24 and Bolthouse Properties "overlying pumpers" on the same Parcel. Under California law,
25 groundwater is part and parcel of the land above it. The owner of land overlying the
26 groundwater basin has the prior and paramount right to use the groundwater beneath his
27 property. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240-1241).

28 Therefore, neither of the Bolthouse entities can rightfully claim ANY title to the same water rights

1 on the Blum Parcels. It follows that the SAC fails to state facts sufficient to constitute a cause of
2 action. (Code of Civil Proc. § 430.10(e); See also Discussion *infra* Part 7, Pg. 11; Another action
3 pending between the same parties or privies CCP § 430.10 (c)).

4 **B. The SAC fails to allege a cause of action by not alleging the jurisdictional**
5 **fact of 'Adverse Possession'.**

6 The SAC also fails to state facts sufficient to constitute a cause of action to Quiet Title
7 in that it does not, and cannot allege the jurisdictional fact that it holds the Blum Parcels
8 adversely to Blum Trustee. Civil Code § 1006, provides:

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

12 Plaintiff's occupancy of the Blum Parcels would be a sufficient basis for the present
13 action only if that occupancy has "ripened into title by prescription." However, by law it is
14 impossible for Plaintiff to acquire prescriptive title to the Blum Parcels because "a lessee in
15 possession of real property under a lease cannot dispute his landlord's title nor can he hold
16 adversely to him while holding under the lease." (*Swartzbaugh v. Sampson* (1936) 11
17 Cal.App.2d 451, 462). As such, the SAC fails to state facts sufficient to constitute a cause of
18 action to Quiet Title against Blum Trustee. (Code of Civil Proc. § 435.10(e)).

19
20 **C. The SAC fails to plead facts establishing the claimed basis of Plaintiff's**
21 **title.**

22 Plaintiff alleges that it holds overlying water rights "by virtue of the location of each
23 PARCEL overlying groundwater." (SAC, p. 4 ¶ 8). Code of Civil Procedure § 761.020(b),
24 requires that a complaint to quiet title allege facts showing "the basis of the title". Where the
25 Plaintiff does not claim to have fee title, a general allegation of ownership is treated as a
26 conclusion of law, unless detailed facts on which ownership is predicated are alleged. (*Stafford*

1 v. *Ballinger* (1962) 199 Cal.App.2nd 289, 292). The absence of this essential allegation renders
2 the SAC insufficient to state a cause of action. (*Ibid.*).

3 **D. Plaintiff cannot state a cause of action to Quiet Title based on 'Quasi**
4 **Equitable Ownership'.**

5 Plaintiff cannot hold legal title to the Blum Parcels which it admits are "LEASED", and
6 Owned in fee by Blum Trustee. At best, Plaintiff holds a "quasi equitable title" based under the
7 Lease Agreement, and therefore a quiet title action will not lie in favor of an equitable title as
8 against the holder of a legal title. (*G.R. Holcomb Estate Co. v. Burke* (1935) 4 Cal.2nd 289,
9 297).

10 **6. The SAC is demurrable because of a defect or misjoinder of parties.**

11 The SAC seeks to quiet title to the overlying groundwater rights to the Blum Parcels,
12 among others. Exhibit "A", incorporated by reference into the SAC, includes at Page 5, Blum
13 Trustee's name, a legal description of his property, and its APN. Despite having expressly
14 identified Blum Trustee in its Complaint, and despite having actual knowledge of Blum Trustee's
15 adverse claim to overlying and/or non-overlying water rights, Plaintiff claims to be "ignorant of
16 the true names of defendants having such adverse claims. (SAC, at p. 3, ¶ 6). A plaintiff's
17 claimed ignorance of a defendant's name "must, of course, be real, and not feigned . . . "
18 (*Dieckmann v. Superior Court* (1985) 175 Cal.App.3d 345, 353). If a complaint identifies a
19 defendant by a fictitious name, then "When his true name is discovered, the pleading . . . must
20 be amended accordingly. . . " (Code of Civil Proc. § 474 (emphasis added)). Here, there has
21 been no such amendment, nor has Blum Trustee ever been served with the SAC, either in his
22 true name, or as a fictitiously named defendant.

23 Under Code of Civil Procedure § 389, joinder of an indispensable party such as Blum
24 Trustee is compulsory. Specifically, with respect to Quiet Title actions, Code of Civil Procedure
25
26

1 §§ 762.010, and 762.060(b), state that the Plaintiff shall name as defendants the persons having
2 adverse claims to the title of Plaintiff against which a determination is sought, that are of record
3 or known to the Plaintiff or reasonably apparent. Evidence Code § 11, declares that in a statute,
4 the word "shall is mandatory . . ." (*Williams v. Superior Court* (2003) 111 Cal.App.4th Supp. 1, 6).

5 Here, Blum Trustee's interest in his parcel is a matter of public record, which has
6 been well known to Bolthouse Farms for well over 8 years. By virtue of the Lease Agreement
7 with Blum Trustee, Plaintiff has always had actual knowledge of Blum Trustee's identity,
8 whereabouts, and adverse claims. The absence of Blum Trustee as a named defendant
9 constitutes a fatal defect of misjoinder of parties. (Code of Civil Proc. § 430.10(d)).

10
11 **7. There is another action pending between the same parties [or privies] on the
12 same cause of action.**

13 Code of Civil Procedure § 430.10(c), provides that a party may demur to a pleading
14 on the ground that "there is another action pending between the same parties on the same
15 cause of action." Both Bolthouse Farms and Bolthouse Properties are sufficiently related that
16 they should be treated as one party. *Black's Law Dictionary* (7th ed. 1999), defines "privity" as
17 "the connection or relationship between two parties, each having a legally recognized interest in
18 the same subject matter (such as a . . piece of property) . . ." "The concept [of privity] has
19 been expanded to refer to such an identification in interest or one person with another as to
20 represent the same legal rights." (*Mayer v. L & B Real Estate* (2006) 136 Cal.App.4th 947, 960).
21 By these definitions, Bolthouse Properties is in privity [or its assignee or transferee] with
22 Bolthouse Farms. Each claim the same legal rights, title and interests to the same parcels and
23 water. (See Discussions *supra* Part 5(A), Pg. 7, 'Standing to Sue' / 'Real Party in Interest')

24
25 The cross-action of Bolthouse Properties is "another action pending" between Plaintiff
26 and Blum Trustee, which is proceeding without abatement. Accordingly, the Court should

1 sustain Blum Trustee's demurrer on this ground.

2 **8. The SAC is uncertain.**

3 The parcels and water rights of both Bolthouse entities are identical and therefore
4 mutually exclusive. The ownership allegations of the SAC, being inconsistent and contradictory
5 with those of the LLC Cross-Complaint, render the SAC fatally uncertain within the meaning of
6 Code of Civil Procedure § 430.10(f).

7 Second, the SAC is also uncertain in another respect. Blum Trustee's identity and
8 adverse interests appear on the face of Exhibit "A", which is incorporated into the SAC. Yet, the
9 SAC alleges that Plaintiff is ignorant of that same information.

10 Third, the SAC is fatally uncertain in that it fails to allege when or how Plaintiff
11 supposedly acquired ownership of the parcels and/or water rights, as well as fails to allege the
12 nature of those rights (i.e. legal or equitable). A complaint that fails to state the date of a
13 material event is uncertain. (*Gonzales v. State of California* (1977) 68 Cal. App.3d. 621), 634).
14 Mere recital, or references to, material facts that are left to surmise are subject to demurrer for
15 uncertainty. (*Berstein v. Piller* (1950) 98 Cal.App.2d 441, 443-444).

16 Fourth, the SAC is uncertain in other additional respects, as follows:

- 17
- 18 1. The SAC includes Diamond Farming Company as a plaintiff in the caption,
19 but does not identify the legal capacity of the company or make charging allegations on its
20 behalf.
21
- 22 2. The verification attached to the SAC was signed well before the SAC was written.
23 3. SAC purports to sue DOE defendants without naming DOES in the caption.

24 **9. Blum Trustee is entitled to reasonable attorney fees by contract.**

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

26 "In any action on a contract, where the contract specifically provides
27 that attorney fees and costs . . . shall be awarded . . . to the prevailing

1 party, then the party who is determined to be the party prevailing on the
2 contract . . . shall be entitled to reasonable attorney fees in addition to
3 other costs.

4
5 Reasonable attorney fees shall be fixed by the court, and shall be an
6 element of the cost of suit.

7 If the Court should sustain the present demurrer without leave to amend, Blum
8 Trustee would be the 'prevailing party' under Civil Code 1717(a). Under Code of Civil
9 Procedure § 1032(b), a prevailing party is entitled as a matter of right to recover costs. Code of
10 Civil Procedure § 1033.5(a)(10)(A), states that the items allowable as costs under § 1032,
11 includes attorney fees when authorized by contract.

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

18 "Reasonable attorney fees and other expenses, whether personally
19 performed by Lessor or otherwise incurred by Lessor in enforcing any
20 provision of this Lease or in any action or proceeding in which Lessor
21 is successful by reason of a default by Lessee or by anyone holding
22 under Lessee . . . or incurred by Lessor by reason of any action to
23 which Lessor shall be [a party] and shall constitute additional rent
24 under the Lease . . ."

25 The bracketed words in the above quoted paragraph were inadvertently omitted.
26 However, the parties intent is clear: The Lessor is entitled to recover from Lessee, as additional
27 rent, reasonable attorney fees incurred by Lessor as a result of conduct by Lessee or any
28 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

1 as a part of his costs of suit.

2 **10. Conclusion.**

3 The face of the SAC reflects four (4) separate grounds for the demurrer: (1) There is
4 another action pending between the same parties on the same cause of action; (2) A
5 defect or misjoinder of parties; (3) Failure to state facts sufficient to constitute a cause of action;
6 and (4) Uncertainty. Based on the foregoing, Blum Trustee asks the Court to sustain the
7 demurrer, without leave to amend. To afford Plaintiff yet a fourth attempt to draft a sufficient
8 complaint would be futile. Plaintiff may be able to fix the uncertainties in the SAC, but no
9 amendment can change the fact that by law, Plaintiff cannot allege a cause of action to Quiet
10 Title against its lessor. Finally, Blum Trustee requests that the Court award him reasonable
11 attorney fees as part of his costs of suit.

12 Dated: December 11, 2007

13 Law Offices of Sheldon R. Blum

14
15
16 By: 

17 SHELTON R. BLUM, ESQ.

18 Attorney For Defendant Sheldon R. Blum,
19 Trustee For The Sheldon R. Blum Trust

20 **DECLARATION OF SHELTON R. BLUM, TRUSTEE**

21 I, Sheldon R. Blum, declare, as follows:

22 1. I am an attorney at law duly licensed to practice before this Court and all courts
23 of the State of California, with my Law Office located at 2242 Camden Avenue, Suite 201, San
24 Jose, CA 95124. I make this Declaration of Defendant Sheldon R. Blum, Trustee For The
25 Sheldon R. Blum Trust, an 'Unserved Defendant Claiming an Interest Adverse', in Support of
26

1 the Demurrer to Plaintiff's verified Second Amended Complaint to Quiet Title.

2 2. I have personal knowledge of the facts set forth herein, and if called to testify,
3 could and would competently testify thereto, except as to those facts stated herein on
4 information and belief and as to those matters I believe them to be true and correct.

5 3. Since 1985, Sheldon R. Blum, Trustee for the Sheldon R. Blum Trust has been
6 the fee owner of 120 acres, more or less, located in the Antelope Valley area, at Avenue J and 70th
7 Street East, in the City of Lancaster, State of California, bearing APN 3384-009-001 & 3384-009-
8 006, hereinafter "Blum Parcels". The Blum Parcels overlies percolating groundwater of unknown
9 extent and quantity.
10

11 4. I have personally known Plaintiff Wm. Bolthouse Farms, Inc., for over eight years
12 under a Lessor/Lessee business relationship. Plaintiff has been occupying the Blum Parcels to
13 cultivate and harvest it's crops under a written Lease Agreement dated August 2, 2001, up to the
14 present. The subject lease was extended on May 17, 2004, by written Modification Agreement up
15 through December 31, 2009. A true and correct copy of the subject Lease Agreement is attached
16 hereto, and marked as Exhibit "B", herein.

17 5. In default and breach of the Lease Agreement, and without my knowledge or waiver,
18 Bolthouse Farms has either assigned or transferred the above-stated Lease Agreement to Cross-
19 Complainant Bolthouse Properties, LLC., based on the allegations made in the Cross-Complaint.
20 Therefore, Bolthouse Properties has and still continues to irrigate it's crops on the Blum Parcels in
21 violation of the lease agreement. In addition, both Bolthouse Farms and Bolthouse Properties are
22 in default and breach of the Lease Agreement by reason of importing water onto the Blum Parcels
23 from it's adjacently owned properties through a underground pipeline system which runs
24 underneath 70th Street East and Avenue J. I am informed and believe and on such information and
25 belief state that to date, the total quantity of imported water onto the Blum Parcels is greater
26

1 than 6 million gallons.

2 6. Neither Bolthouse Farms nor Bolthouse Properties have any superior, coequal
3 and/or appurtenant water rights to pump any overlying groundwater on the Blum Parcels. In
4 addition, these entities do not have any rights, title or interests to extract the Blum Parcels
5 groundwater for non-overlying uses. Bolthouse Farms was accorded the exclusive right under the
6 lease agreement to repair and pump overlying groundwater for the beneficial use of the Blum
7 Parcels via the operational use of the Blum Parcels repaired water wells. The Blum Parcels were to
8 acquire and be allocated overlying groundwater rights under the California priority water allocation
9 system through Bolthouse Farms' farming operations on the Blum Parcels.
10

11 7. At all times herein mentioned, I have never been notified nor served with Plaintiff
12 Wm. Bolthouse Farms, Inc., verified Complaint and/or Second Amended Complaint to Quiet Title,
13 notwithstanding Plaintiff's awareness that I have adverse and competing claims to the overlying
14 groundwater beneficially used on the Blum Parcels, and/or to extract groundwater for non-overlying
15 uses.

16 8. I did not discover the existence of Plaintiff's verified Complaint and/or Second
17 Amended Complaint to Quiet Title pending actions, until September 14, 2007, and then only by a
18 chance conversation with an attorney representing one of the parties in this consolidated action.
19 Upon my receipt and review of Plaintiff's pleadings, I was extremely surprised to have learned that
20 I am identified by true name and capacity in the attached Exhibit "A", at Page 5, as one of the
21 collective "Properties" Plaintiff seeks a Quiet Title determination.
22

23 9. At all times herein mentioned, Plaintiff intentionally and actively concealed this
24 litigation from myself individually, and/or in the capacity of Sheldon R. Blum, Trustee For The
25 Sheldon R. Blum Trust, and otherwise engaged in 'extrinsic fraud' to my prejudice. Throughout
26 the years, Plaintiff has taken unfair advantage over my property rights, despite recognizing
27

1 that I am an indispensable party to its action requiring my compulsory joinder.

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

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

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