

Exhibit 23

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

* * *

COORDINATION PROCEEDING)	Judicial Council Coordination
SPECIAL TITLE (Rule 1550(b)))	Proceeding No. 4408
ANTELOPE VALLEY GROUNDWATER)	
CASES)	CASE NO. 1-05-CV-049053
INCLUDED ACTIONS:)	
LOS ANGELES COUNTY WATERWORKS)	
DISTRICT NO. 40 v. DIAMOND)	CROSS-COMPLAINT OF BOLTHOUSE
FARMING COMPANY, et al.,)	PROPERTIES, LLC AND CROSS-
Los Angeles Superior Court)	COMPLAINT OF WM. BOLTHOUSE
Case No. BC325201)	FARMS, INC. AGAINST PHELAN
LOS ANGELES COUNTY WATERWORKS)	PINON HILLS COMMUNITY SERVICES
DISTRICT NO. 40 v. DIAMOND)	DISTRICT
FARMING COMPANY, et al.,)	
Kern County Superior Court)	
Case No. S-1500-CV-254348)	
DIAMOND FARMING COMPANY, and)	
W.M. BOLTHOUSE FARMS, INC., v.)	
CITY OF LANCASTER, et al.,)	
Riverside Superior Court)	
Case No. RIC 344436 [c/w case no.)	
RIC 344668 and 353840])	
ROSAMOND COMMUNITY SERVICES)	
DISTRICT,)	
CROSS-COMPLAINANT,)	

1 BOLTHOUSE PROPERTIES, LLC, WM.)
2 BOLTHOUSE FARMS, INC.,)
3 Cross-Complainant,)
4 v.)
5 ROSAMOND COMMUNITY SERVICES)
6 DISTRICT; LOS ANGELES COUNTY)
7 WATERWORKS DISTRICT NO. 40;)
8 PALMDALE WATER DISTRICT; CITY)
9 OF LANCASTER; CITY OF)
10 PALMDALE; LITTLE ROCK CREEK)
11 IRRIGATION DISTRICT; PALM)
12 RANCH IRRIGATION DISTRICT;)
13 CALIFORNIA WATER SERVICE)
14 COMPANY; ANTELOPE VALLEY-EAST)
15 KERN WATER AGENCY; COUNTY OF)
16 SANITATION DISTRICTS NOS. 14;)
17 and MOES 1 through 10,000,)
18 Cross-Defendants.)
19)
20)
21)
22)
23)
24)
25)
26)
AND ALL RELATED CROSS-ACTIONS.)

17 Cross-Defendants/Cross-Complainants, BOLTHOUSE PROPERTIES,
18 LLC., and WM. BOLTHOUSE FARMS, INC., complain against PHELAN
19 PINION HILLS COMMUNITY SERVICES DISTRICT, on such grounds as are
20 appropriate given the allegations in such Cross-Complaints, as
21 follows:

22 GENERAL ALLEGATIONS

23 1. Cross-Complainant, BOLTHOUSE PROPERTIES, LLC, is and at
24 all times herein mentioned was, a Limited Liability Company
25 authorized to do business in the State of California.
26

1 2. Cross-Complainant, WM. BOLTHOUSE FARMS, INC., is a
2 California Corporation authorized to do business in the State of
3 California.

4 3. Cross-Complainant BOLTHOUSE PROPERTIES, LLC, own in fee
5 certain parcels of real property, and/or own/lease water rights
6 for certain properties, (hereinafter individually referred to as a
7 "PARCEL") in the Antelope Valley area of Los Angeles County and
8 Kern County, California. Each PARCEL is identified in Exhibit "A"
9 attached hereto and herein incorporated by reference.

10 4. Cross-Complainant WM. BOLTHOUSE FARMS, INC., own in fee
11 certain parcels of real property, and/or own/lease water rights
12 for certain properties, (hereinafter individually referred to as a
13 "PARCEL") in the Antelope Valley area of Los Angeles County,
14 California. Each PARCEL has previously been identified in
15 previous Complaints filed by WM. BOLTHOUSE FARMS, INC. in the
16 Riverside action which was later coordinated with the Los Angeles
17 County and Kern County actions filed by Los Angeles County
18 Waterworks District No. 40.

19 5. Each PARCEL overlies percolating groundwater, the
20 extent of which is unknown to Cross-Complainants. Cross-
21 Complainants hereby incorporate by reference, as if set forth at
22 length verbatim, all Complaints and Cross-Complaints filed by any
23 party to this action, and/or filed in the future by any party, not
24 for the truth thereof, but as and for a basis for bringing this
25 Cross-Complaint.

26 6. Cross-Complainants are ignorant of the true names and

1 capacities, whether individual, corporate, governmental, or
2 otherwise, of the Cross-Defendants named in this Cross-Complaint
3 as Moes 1 through 10,000, inclusive, and therefore sues these
4 Cross-Defendants by these fictitious names. Cross-Complainants
5 will amend this Cross-Complaint to allege the fictitiously-named
6 Cross-Defendants' names and capacities when ascertained.

7 7. By virtue of the location of each PARCEL overlying
8 groundwater, Cross-Complainants hold an overlying water right or
9 other right to groundwater, entitling Cross-Complainants to
10 extract groundwater and to put the water to reasonable and
11 beneficial use on the property ("Cross-Complainants' overlying
12 water rights").

13 8. Cross-Complainants are informed and believe, and on the
14 basis of such information and belief allege, that each of the
15 Cross-Defendants currently extracts, and/or claims a right to
16 extract, groundwater for use on property not held by the
17 extracting Cross-Defendants or for some other non-overlying use.

18 9. Cross-Complainants have an appurtenant right and/or
19 other water right to pump and reasonably use groundwater on the
20 parcels at issue in this lawsuit. These rights to pump
21 groundwater are/may be superior to rights of the Cross-Defendants
22 and/or other Cross-Defendants depending upon the priority rights
23 of such Cross-Defendants based upon the California priority water
24 allocation system.

25 10. Cross-Complainants are informed and believe, and on the
26 basis of such information and belief, allege that each Cross-

1 Defendants' claim that it has water rights to extract groundwater
2 for uses that are superior to, or coequal with, Cross-
3 Complainants' overlying water rights, based upon an alleged
4 superior water right, claim of prescription or otherwise, whether
5 in law or in equity.

6 11. Cross-Complainants are informed and believe, and on the
7 basis of such information and belief, allege that Phelan Pinon
8 Hills Community Services District began pumping appropriated
9 surplus water from the Antelope Valley to provide water for their
10 municipal and industrial water customers. At the onset of pumping
11 by the Phelan Pinon Hills Community Services District, the same
12 was lawful and permissive and did not immediately nor
13 prospectively invade or impair any overlying right.

14 12. Over time, the urban areas within the Antelope Valley
15 continued to expand and grow both in land area and population, and
16 thus, over time the Phelan Pinon Hills Community Services District
17 increased, and today, continue to increase their demand of water.

18 Cross-Complainants are informed and believe, and on the basis of
19 such information and belief, allege that at some as yet
20 unidentified historical point, the aggregate extractions of
21 groundwater from the Antelope Valley began to exceed the safe
22 yield of the Valley. Despite the potential for damage to the
23 water supply and the rights of owners of real property within the
24 Valley, the Phelan Pinon Hills Community Services District, with
25 knowledge, continued to extract groundwater from the common
26 supply, and increased and continue to increase their extractions

1 of groundwater over time. The Phelan Pinon Hills Community
2 Services District continued the act of pumping with the knowledge
3 that the continued extractions were damaging, long term, the
4 Antelope Valley and in the short term, impairing the rights of
5 property owners, including the rights in the land owned by Cross-
6 Complainants, which is overlying and within the Antelope Valley.

7 13. Cross-Complainants are informed and believe, and on the
8 basis of such information and belief, allege that the Phelan Pinon
9 Hills Community Services District pumped and continue to pump
10 water in excess of the safe yield with the knowing intent and
11 belief that they could take by claim of prescription, without
12 compensation, the water rights of Cross-Complainants and all
13 landowners overlying the Antelope Valley. Additionally, all
14 Phelan Pinon Hills Community Services District continued to pump
15 ever increasing quantities of groundwater, knowing that even if
16 their prescriptive claims failed, they could preserve the right to
17 continue their pumping under a claim of an intervening public use.

18 Despite the knowing intent to take the overlying property
19 landowners' rights, no Phelan Pinon Hills Community Services
20 District took any steps calculated and intended to inform or
21 otherwise notify any landowner of their adverse and hostile claim
22 or that their pumping of groundwater was an invasion of and a
23 taking of the landowners' property rights.

24 14. During the material time that each Phelan Pinon Hills
25 Community Services District was pumping, none physically
26 trespassed upon nor invaded any overlying property. No Phelan

1 Pinon Hills Community Services District stopped, restricted,
2 interfered with or physically or by regulation reduced Cross-
3 Complainants' or any overlying landowners' right and ability to
4 pump groundwater from the Antelope Valley. No Phelan Pinon Hills
5 Community Services District ever took any affirmative action
6 reasonably calculated to inform or notify any overlying landowner
7 that the Phelan Pinon Hills Community Services District intended
8 to take or were taking by prescription the overlying water rights.

9 15. Between 1960 and 1980, the Antelope Valley East Kern
10 Water Agency (hereinafter "AVEK") was created to import water from
11 northern California to southern California. As part of its
12 operations, AVEK, in addition to other water importers, have
13 brought and now brings imported water to the Antelope Valley.
14 This imported water was at all material times available for
15 purchase by the Phelan Pinon Hills Community Services District.
16 Based upon information and belief, it is alleged that the Phelan
17 Pinon Hills Community Services District consciously chose to not
18 purchase all of the available higher priced imported water to meet
19 their water needs and instead chose to continue to pump and to
20 increase their extractions of groundwater from the Antelope
21 Valley, because, despite the damage to the Valley, groundwater was
22 cheaper than the imported water.

23 16. In late 2004, the Los Angeles County Board of
24 Supervisors unanimously voted to authorize Los Angeles County
25 Waterworks District 40 to file and prosecute the present legal
26 actions which seeks a judicial declaration that Los Angeles County

1 Waterworks District 40 has obtained, without compensation and
2 without due process notice, the overlying landowners' appurtenant
3 water rights through the common law doctrine of prescription.
4 Based on this authorization, Los Angeles County Waterworks
5 District 40 filed these actions.

6 17. Cross-Complainants did not have actual knowledge that
7 any Phelan Pinon Hills Community Services District's pumping of
8 groundwater was adverse to or hostile to its present and/or future
9 priority rights.

10 18. Based upon information and belief, no landowner had
11 actual knowledge that any Phelan Pinon Hills Community Services
12 District's pumping of groundwater was adverse to or hostile to its
13 present and/or future priority rights.

14 19. In January 2006, the Phelan Pinon Hills Community
15 Services District identified herein jointly filed a Cross-
16 Complaint in place of the original Complaint seeking to obtain a
17 judicial declaration that they had obtained the overlying
18 landowners' water rights, without compensation, within the
19 Antelope Valley through the common law doctrine of prescription.

20 20. In January 2007, the Phelan Pinon Hills Community
21 Services District identified herein jointly filed the present
22 First Amended Cross-Complaint in place of the Cross-Complaint and
23 in place of the original Complaint seeking to obtain a judicial
24 declaration that they had obtained the overlying landowners' water
25 rights, without compensation, within the Antelope Valley through
26 the common law doctrine of prescription.

1 21. None of the Phelan Pinon Hills Community Services
2 District have invoked the power of eminent domain nor paid any
3 compensation to Cross-Complainants or any other overlying owner of
4 land located within Antelope Valley for the property rights they
5 have allegedly and knowingly claimed to have taken.

6 22. The quantity of alleged superior and/or coequal rights
7 claimed by Cross-Defendants, each of them, currently is not known.

8 **FIRST CAUSE OF ACTION**

9 **(Quiet Title/Appurtenant Rights)**

10 23. Cross-Complainants set forth herein at length verbatim
11 the general allegations contained in paragraphs 1 through 22 of
12 this Cross-Complaint.

13 24. Cross-Complainants own PARCELS overlying the Antelope
14 Valley alluvial groundwater basin. Accordingly, Cross-
15 Complainants have appurtenant rights to pump and reasonably use
16 groundwater on such PARCELS.

17 25. Cross-Complainants herein request a declaration from
18 the Court quieting title to Cross-Complainants' appurtenant rights
19 to pump and reasonably use groundwater on their PARCELS.

20 **SECOND CAUSE OF ACTION**

21 **(Declaratory Relief)**

22 26. Cross-Complainants set forth herein at length verbatim
23 the general allegations contained in paragraphs 1 through 22 of
24 this Cross-Complaint.

25 27. Cross-complainants contend that by virtue of the filing
26 of the Complaints filed by Los Angeles County Waterworks District

1 No. 40 in Kern County and Los Angeles County, herein coordinated
2 with the Riverside action, that a current controversy exists as
3 between Cross-Complainants and Cross-Defendants and as to all
4 other Defendants in that Los Angeles County has requested a
5 complete basin-wide adjudication of all rights of all parties to
6 water in the Antelope Valley basin. Cross-Complainants request
7 quiet title and/or other appropriate declaration of the right to
8 pump and reasonably use groundwater on its PARCELS and/or to pump
9 and use other groundwater based upon its rights as declared by the
10 Court herein.

11 **THIRD CAUSE OF ACTION**

12 **(Unlawful Taking/42 USC § 1983)**

13 28. Cross-Complainants set forth herein at length verbatim
14 the general allegations contained in paragraphs 1 through 22 of
15 this Cross-Complaint.

16 29. This cause of action is brought under 42 U.S.C. § 1983
17 to recover damages against the Phelan Pinon Hills Community
18 Services District for violation of Cross-Complainants' rights
19 under the 5th and 14th Amendments of the United States Constitution
20 through the Phelan Pinon Hills Community Services District' taking
21 of Cross-Complainants' private property for public use without
22 paying just compensation and depriving Cross-Complainants' of both
23 substantive or procedural due process of law.

24 30. The Phelan Pinon Hills Community Services District, and
25 each of them, and at all times mentioned in this Cross-Complaint,
26 were governmental entities organized and operating in Los Angeles

1 and/or Kern County and in the State of California. All are
2 organized and existing under the laws of the State of California,
3 with the capacity to sue and be sued.

4 31. The Phelan Pinon Hills Community Services District, and
5 each of them, were, at all times mentioned in this Cross-
6 Complaint, acting under color of state law.

7 32. At an as yet unidentified historical point in time, the
8 Phelan Pinon Hills Community Services District began pumping water
9 from the Antelope Valley as permissive appropriators. Over the
10 course of time, it is believed and therefore alleged, that the
11 aggregate amount of water being extracted from the Valley began to
12 exceed the safe yield resulting in a condition called "overdraft."

13 Cross-Complainant is informed and believes and based thereon
14 alleges that the Phelan Pinon Hills Community Services District
15 had knowledge of the "overdraft" condition and nonetheless
16 continued pumping and increased their pumping with the specific
17 intent to impair and take all superior overlying property rights
18 to extract groundwater, including that of Cross-Complainants.
19 Each Phelan Pinon Hills Community Services District continued to
20 pump and increased its pumping of groundwater believing that given
21 the intervention of the committed public use that no injunction
22 would issue to restrain and/or compel the Phelan Pinon Hills
23 Community Services District to reduce its dependence upon
24 groundwater. Each Phelan Pinon Hills Community Services District
25 contends that despite its status as a governmental entity, it can
26 nonetheless take private property for a public use under a theory

1 of prescription and without compensation. Each Phelan Pinon Hills
2 Community Services District claims that presumed or constructive
3 knowledge of the overdraft condition alone was sufficient to
4 commence the running of the statutory prescriptive period. Each
5 Phelan Pinon Hills Community Services District did not undertake
6 any affirmative action reasonably calculated and intended to
7 provide notice and inform any affected landowner, including Cross-
8 Complainants, of its adverse and hostile claim. Each Phelan Pinon
9 Hills Community Services District contends that it has taken the
10 private property rights of Cross-Complainants and others, and has
11 committed them to a public use, without following the
12 Constitutional constraints imposed by Article 1, Section 19 of the
13 California Constitution, and the eminent domain law, *Code of Civil*
14 *Procedure*, Section 1245.230. The acts of the Phelan Pinon Hills
15 Community Services District were done under the color of state law
16 with the intent of depriving Cross-Complainants of its property
17 rights without substantive and procedural due process of law and
18 to avoid payment of compensation to Cross-Complainants for the
19 property rights taken, all in violation of the 5th and 14th
20 Amendments to the United States Constitution.

21 33. Cross-Complainants are informed and believe and thereon
22 allege that they were subjected to a violation of their right to
23 due process of law prior to the taking of their property and their
24 right to receive just compensation when their property was taken
25 for the public benefit. This violation was a direct result of the
26 knowing customs, practices and policies of the Phelan Pinon Hills

1 Community Services District to continue to pump in excess of the
2 supply, to suppress the assertion of their adverse and hostile
3 claim, and the resulting ever increasing intervening public use
4 and dependence, without acceding to Constitutional limits.

5 34. The customs, practices and policies of the Phelan Pinon
6 Hills Community Services District to prescript or adversely
7 possess the property rights of property owners and/or to establish
8 a non-enjoinable intervening use amounted to deliberate
9 indifference to the rights of persons, such as Cross-Complainants,
10 who stand to lose their rights to extract water from the Antelope
11 Valley for use on their property through the actions of each
12 Phelan Pinon Hills Community Services District and all of them.

13 35. As a direct and proximate result of the acts of the
14 Phelan Pinon Hills Community Services District, Cross-Complainants
15 have suffered injury, loss and damage, including a cloud upon
16 their title to their real property, a reduction in value, and the
17 loss of its right in the future to extract and use groundwater
18 from the Valley.

19 **FOURTH CAUSE OF ACTION**

20 **(Equal Protection/Due Process 42 USC § 1983)**

21 36. Cross-Complainants set forth herein at length verbatim
22 the general allegations contained in paragraphs 1 through 22 of
23 this Cross-Complaint.

24 37. The State and federal constitutions require equal
25 protection under the law. Cross-Defendants seek to exclude what
26 they define as "de minimus" overlying water producers and other

1 appropriators from the lawsuit. They intend not to name and/or
2 serve these individuals, thereby intentionally treating them
3 differently than similarly situated persons with no rational basis
4 for different treatment denying them equal protection under the
5 law and in violation of 42 USC § 1983.

6 38. Cross-Defendants also potentially make claims that
7 separate management areas should exist. Separate management areas
8 as between correlative overlying rights holders and treating these
9 areas differently, denies equal protection to overlying landowners
10 in violation of State and Federal Constitutions and violates 42
11 USC § 1983.

12 FIFTH CAUSE OF ACTION

13 (Declaratory Relief of *Inter Se* Appropriative Rights)

14 39. Cross-Complainants set forth herein at length verbatim
15 the general allegations contained in paragraphs 1 through 22 of
16 this Cross-Complaint.

17 40. Cross-Complainants have failed to name all
18 appropriators as defendants. In the event that Cross-Defendants
19 prove the Antelope Valley Groundwater basin is, or has been, in a
20 state of common law overdraft, cutbacks may be required to balance
21 the demand with the supply available. The California priority
22 water allocation system requires that appropriative user's cutback
23 water usage before overlying landowners are required to cutback
24 usage. Cutbacks among the appropriators are based upon priority
25 as between appropriators. Appropriators with first in time
26 appropriative rights have priority over later in time

1 appropriators. Accordingly, in order to apply the California
2 priority water allocation system, all appropriators must be
3 included in the action so that the priority of appropriative
4 rights can be litigated which will allow the Court by injunction
5 or physical solution to cutback appropriators based upon such
6 priorities in the event that Cross-Defendants prove the Antelope
7 Valley Groundwater basin is in common law overdraft and that an
8 injunction and/or physical solution is necessary to balance the
9 water demand with water supply.

10 **SIXTH CAUSE OF ACTION**

11 **(Return Flows)**

12 41. Cross-Complainants set forth herein at length verbatim
13 the general allegations contained in paragraphs 1 through 22 of
14 this Cross-Complaint.

15 42. Cross-complainants have pumped and used groundwater on
16 its PARCELS to irrigate crops. This water was pumped from a lower
17 aquifer not significantly hydraulically connected to the upper
18 aquifer and which water would not otherwise be supplied to the
19 upper aquifer. A portion of this water has reached the upper
20 aquifer by percolation. Cross-Complainants have a priority right
21 to these return flows as well as a right to store water in the
22 upper aquifer from the return flows and have a paramount right
23 against all other parties to this water and a paramount right
24 against all other parties to recapture this water or an equivalent
25 amount of such water.

26 \\\

1 Complainants request the Court enjoin parties holding inferior
2 appropriative rights from pumping and/or that the Court impose a
3 physical solution on appropriators to prevent continuing common
4 law overdraft.

5 **ELEVENTH CAUSE OF ACTION**

6 **(Declaratory Relief to Determine Applicability**
7 **of California Constitution)**

8 51. Cross-Complainants set forth herein at length verbatim
9 the general allegations contained in paragraphs 1 through 22 of
10 this Cross-Complaint.

11 52. Article 1, Section 19 of the California Constitution
12 provides as follows:

13 "Private property may be taken or damaged for
14 public use only when just compensation,
15 ascertained by a jury unless waived, has
16 first been paid to, or into court for, the
17 owner. The Legislature may provide for
18 possession by the condemner following
commencement of eminent domain proceedings
upon deposit in court and prompt release to
the owner of money determined by the court to
be the probable amount of just compensation."

19 53. The Phelan Pinon Hills Community Services District
20 contend that, even though they are political subdivisions who are
21 vested with the power of eminent domain, they are nonetheless
22 legally permitted to knowingly take private property for public
23 use without first paying just compensation.

24 54. Cross-Complainants contend that the use of the word
25 "only" within Article 1, Section 19 is a clear temporal limitation
26 on the Phelan Pinon Hills Community Services District's lawful

1 ability to knowingly take private property for the public benefit
2 to only those instances where just compensation has first been
3 paid. By virtue of the Phelan Pinon Hills Community Services
4 District's actions as set forth above, an actual controversy has
5 arisen and now exists between the Phelan Pinon Hills Community
6 Services District and Cross-Complainants concerning their
7 respective rights, duties and responsibilities.

8 55. Cross-Complainants desire a declaration of its rights
9 with respect to the application or non-application of Article 1,
10 Section 19 to the Phelan Pinon Hills Community Services District
11 and ask the court to make a declaration of such rights, duties and
12 responsibilities. Such a declaration is necessary and appropriate
13 at this time in order that Cross-Complainants' property rights may
14 be protected and to ensure that the municipal Phelan Pinon Hills
15 Community Services District proceed according to the California
16 Constitution. There are no administrative remedies available to
17 Cross-Complainants.

18 56. A timely declaration by this court is urgent for the
19 following reasons: by way of this action, the Phelan Pinon Hills
20 Community Services District are seeking to adjudicate, enjoin and
21 take the property rights of Cross-Complainants and thousands of
22 other parties who own property overlying the water supply without
23 first paying just compensation therefore, absent a timely
24 declaration by this court, injustice will result from the improper
25 taking of the Cross-Complainants' property rights should Article
26 1, Section 19 of the California Constitution be found to apply.

1 57. Cross-Complainants and numerous other private parties
2 will suffer irreparable and lasting injury unless declaratory
3 relief is granted.

4 **TWELFTH CAUSE OF ACTION**

5 **(Declaratory Relief to Determine Applicability**
6 **of Constitutional Article)**

7 58. Cross-Complainants set forth herein at length verbatim
8 the general allegations contained in paragraphs 1 through 22 of
9 this Cross-Complaint.

10 59. Article 1, Section 19 of the California Constitution
11 provides as follows:

12 "Private property may be taken or damaged for
13 public use only when just compensation,
14 ascertained by a jury unless waived, has
15 first been paid to, or into court for, the
16 owner. The Legislature may provide for
17 possession by the condemner following
commencement of eminent domain proceedings
upon deposit in court and prompt release to
the owner of money determined by the court to
be the probable amount of just compensation."

18 60. The Phelan Pinon Hills Community Services District
19 contend that, even though they are political subdivisions who are
20 vested with the power of eminent domain, they are nonetheless
21 legally allowed to knowingly take private property for public use
22 through prescription or adverse possession and without
23 compensation.

24 61. Cross-Complainants contend that the use of the word
25 "only" within Article 1, Section 19 is a clear temporal limitation
26 on the Phelan Pinon Hills Community Services District's authority

1 and the manner in which they may take private property for the
2 public benefit. That this limitation forecloses the ability of
3 any governmental entity to knowingly take or acquire private
4 property for a public use under a theory of prescription or
5 adverse possession. By virtue of the Phelan Pinon Hills Community
6 Services District's actions as set forth above, an actual
7 controversy has arisen and now exists between the Phelan Pinon
8 Hills Community Services District and Cross-Complainants
9 concerning their respective rights, duties and responsibilities.

10 62. Cross-Complainants desire a declaration of its rights
11 with respect to the application or non-application of Article 1,
12 Section 19 to the Phelan Pinon Hills Community Services District's
13 prescription claims and ask the court to make a declaration of
14 such rights, duties and responsibilities. Such a declaration is
15 necessary and appropriate at this time in order that Cross-
16 Complainants' property rights may be protected and to ensure that
17 the municipal Phelan Pinon Hills Community Services District
18 proceed according to the California Constitution. There are no
19 administrative remedies available to Cross-Complainants.

20 63. A timely declaration by this court is urgent for the
21 following reasons: by way of this action, the Phelan Pinon Hills
22 Community Services District are seeking to adjudicate, enjoin and
23 take the property rights of Cross-Complainants and thousands of
24 other parties by avoiding the due process protections provided to
25 these landowners under *Code of Civil Procedure*, Sections 1230.010
26 through 1237.040. Absent a timely declaration by this court,

1 injustice will result from the improper taking of the Cross-
2 Complainants' property rights should Article 1, Section 19 of the
3 California Constitution be found to apply.

4 64. Cross-Complainants and numerous other private parties
5 will suffer irreparable and lasting injury unless declaratory
6 relief is granted.

7 **THIRTEENTH CAUSE OF ACTION**

8 **(Declaratory Relief to Determine Validity and**
9 **Applicability of Statute)**

10 65. Cross-Complainants set forth herein at length verbatim
11 the general allegations contained in paragraphs 1 through 22 of
12 this Cross-Complaint.

13 66. In or about 1951, the Legislature of the State of
14 California enacted Section 55000, et seq., of the *Water Code*,
15 known as the County Waterworks District Law, hereinafter referred
16 to as the "Waterworks Statutes." In 1953, the Legislature added
17 Section 55370. This Section, since its adoption has been, and now
18 is, in full force and effect. This statute provides as follows:

19 "A district may acquire property by purchase,
20 gift, devise, exchange, descent, and eminent
21 domain. The title to all property which may
22 have been acquired for a district shall be
23 vested in the district."

24 67. The Phelan Pinon Hills Community Services District
25 contend that Section 55370 of the *Water Code* does not apply to, or
26 limit in any manner, its acquisition of any overlying landowners'
water rights within the Antelope Valley and that, despite its
status as public entities, Article 1, Section 19 of the California

1 Constitution, and the 5th Amendment to the Federal Constitution,
2 it is nonetheless empowered to acquire private property for public
3 use through the common law doctrine of prescription, without due
4 process and without compensation.

5 68. In or about 1943, the Legislature of the State of
6 California enacted Sections 20500, et seq., of the *Water Code*,
7 known as the Irrigation District Law, hereinafter referred to as
8 the "Irrigation Statutes." In 1943, the Legislature added Section
9 22456. This Section, since its adoption has been, and now is, in
10 full force and effect. This statute provides as follows:

11 "The district may exercise the right of
12 eminent domain to take any property necessary
to carry out its purposes."

13 69. The Phelan Pinon Hills Community Services District
14 contend that Section 22456 of the *Water Code* does not act to
15 limit, in any manner, the mode or method of acquiring an overlying
16 landowners' water rights within the Antelope Valley and that,
17 despite its status as public entities, Article 1, Section 19 of
18 the California Constitution, and the 5th Amendment to the Federal
19 Constitution, it is nonetheless empowered to acquire private
20 property for public use through the common law doctrine of
21 prescription, without due process and without compensation.

22 70. In or about 1949, the Legislature of the State of
23 California enacted Sections 30000, et seq., of the *Water Code*,
24 known as the County Water District Law, hereinafter referred to as
25 the "County Water Statutes." In 1975, the Legislature amended
26 Section 31040. This amended statute became operative on July 1,

1 1976, and since then, has been, and now is, in full force and
2 effect. This Section provides as follows:

3 "A district may take any property necessary
4 to carry out the business of the district by
5 grant, purchase, gift, devise, condemnation,
or lease with or without the privilege of
purchase."

6 71. The Phelan Pinon Hills Community Services District
7 contend that Section 31040 of the *Water Code* does not act to
8 limit, in any manner, the mode or method by which they may acquire
9 an overlying landowners' water rights within the Antelope Valley
10 and that, despite their status as public entities, Article 1,
11 Section 19 of the California Constitution, and the 5th Amendment
12 to the Federal Constitution, they are nonetheless empowered to
13 take private property for public use through the common law
14 doctrine of prescription, without due process and without
15 compensation.

16 72. Cross-Complainants contend that the statute is
17 constitutional, and when conjoined with the California state and
18 Federal Constitutions, limits the method, manner and mode by which
19 the Phelan Pinon Hills Community Services District may acquire
20 private property for a public use and the rights appurtenant
21 thereto by declaring that the only legal right of the Phelan Pinon
22 Hills Community Services District to take possession of property
23 without consent of the owners is under its power of eminent
24 domain. By virtue of the Phelan Pinon Hills Community Services
25 District' actions as set forth above, an actual controversy has
26 arisen and now exists between the Phelan Pinon Hills Community

1 Services District and Cross-Complainants concerning their
2 respective rights, duties and responsibilities under these
3 statutes and both Constitutions.

4 73. Cross-Complainants desire a declaration of their rights
5 with respect to the constitutionality and application or non-
6 application of the statute and ask the court to make a declaration
7 of such rights, duties and responsibilities, and to make a
8 declaration as to the validity and constitutionality of the
9 statutes. Cross-Complainants seek a declaration that the effort
10 of the Phelan Pinon Hills Community Services District to
11 deprioritize Cross-Complainants' overlying right is, without
12 compensation, *ultra vires* and unconstitutional. Such a declaration
13 is necessary and appropriate at this time in order that Cross-
14 Complainants' property rights be protected and to ensure that the
15 Phelan Pinon Hills Community Services District proceed according
16 to the law and Constitution of the state and Federal Constitution.

17 There are no administrative remedies available to Cross-
18 Complainants.

19 74. A timely declaration by this court is urgent for the
20 following reasons: By way of this action, the Phelan Pinon Hills
21 Community Services District are seeking to adjudicate, enjoin and
22 take the property rights of Cross-Complainants and thousands of
23 other parties who own property overlying the Antelope Valley,
24 absent a timely declaration of this court, injustice will result
25 from its improper awarding of property rights to the Phelan Pinon
26 Hills Community Services District should these statutes be later

1 found to apply.

2 75. Cross-Complainants and numerous other private parties
3 will suffer irreparable and lasting injury unless declaratory
4 relief is granted.

5 **FOURTEENTH CAUSE OF ACTION**

6 **(Declaratory Relief to Determine Applicability of Constitution)**

7 76. Cross-Complainants set forth herein at length verbatim
8 the general allegations contained in paragraphs 1 through 22 of
9 this Cross-Complaint.

10 77. Article I, Section 7 of the California Constitution
11 provides in pertinent part as follows:

12 "A person may not be deprived of life,
13 liberty, or property without due process of
14 law or denied equal protection of the laws; .
15"

16 The 5th Amendment to the Constitution as applied by the
17 14th Amendment in relevant part provides:

18 "No person shall . . . be deprived of life,
19 liberty, or property, without due process of
20 law; nor shall private property be taken for
21 public use, without just compensation."

22 78. The Phelan Pinon Hills Community Services District
23 contend that, even though they are political subdivisions who are
24 uniquely invested with the power of eminent domain, they are
25 allowed to surreptitiously take private property for public use by
26 prescription or adverse possession without providing substantive
or procedural due process of law to each overlying landowner. The
Phelan Pinon Hills Community Services District contend that

1 prescription commences with "overdraft," and that presumed or
2 constructive notice is sufficient.

3 79. Cross-Complainants contend that the Article I, Section
4 7 of the California Constitution, and the 5th Amendment as applied
5 by the 14th Amendment of the Federal Constitution, mandates that
6 governmental entities must provide substantive and procedural due
7 process of law when taking private property for a public use.
8 Cross-Complainants contend that the prescriptive period cannot
9 commence until the governmental entity takes affirmative action
10 designed and intended to give notice and inform the overlying
11 landowners of the governmental entity's adverse and hostile claim.
12 Cross-Complainants further contend that this limitation forecloses
13 the ability of any governmental agency to take or acquire private
14 property for a public use when constitutionally sufficient due
15 process notice has not been provided to the landowner. By virtue
16 of the Phelan Pinon Hills Community Services District' actions, as
17 set forth above, an actual controversy has arisen and now exists
18 between the Phelan Pinon Hills Community Services District and
19 Cross-Complainants concerning their respective rights, duties and
20 responsibilities.

21 80. Cross-Complainants desire a declaration of their rights
22 with respect to the application or non-application of Article I,
23 Section 7 of the California Constitution and the 5th Amendment to
24 the U.S. Constitution to the Phelan Pinon Hills Community Services
25 District' prescription claims and ask the court to make a
26 declaration of such rights, duties and responsibilities. Such a

1 declaration is necessary and appropriate at this time in order
2 that Cross-Complainants' property rights may be protected and to
3 ensure that the municipal Phelan Pinon Hills Community Services
4 District may proceed according to the California Constitution.
5 There are no administrative remedies available to Cross-
6 Complainants.

7 81. A timely declaration by this court is urgent for the
8 following reasons: By way of this action, the Phelan Pinon Hills
9 Community Services District are seeking to adjudicate and enjoin
10 the property rights of Cross-Complainants and thousands of other
11 parties by avoiding the due process protections provided to these
12 landowners under Article I, Section 7, the 5th and 14th Amendments
13 and *Code of Civil Procedure*, Sections 1230.010 through 1237.040.
14 Absent a timely declaration by this court, injustice will result
15 from the improper use and adjudication of Cross-Complainants'
16 property rights should the foregoing constraints and statutory
17 mandate be found applicable.

18 82. Cross-Complainants and numerous other private parties
19 will suffer irreparable and lasting injury unless declaratory
20 relief is granted.

21 **FOURTEENTH CAUSE OF ACTION**

22 **(Declaratory Relief)**

23 83. Cross-Complainants set forth herein at length verbatim
24 the general allegations contained in paragraphs 1 through 22 of
25 this Cross-Complaint.

26 84. Cross-Complainants are the owners and/or lessees of

1 real property located within the Antelope Valley. Located on
2 Cross-Complainants' property are water wells which produce water
3 from the groundwater supply. Cross-Complainants and or its
4 predecessors in interest, have continually produced water from
5 these wells without restriction and in quantities as were needed
6 to perform its farming and irrigation operations from year to
7 year.

8 85. Based on information and belief, it is alleged that
9 Phelan Pinon Hills Community Services District all pump
10 groundwater from the Antelope Valley and then sell it to other
11 individuals and entities who reside within Kern County and Los
12 Angeles Counties.

13 86. An actual controversy has arisen and now exists between
14 Cross-Complainants and the Phelan Pinon Hills Community Services
15 District concerning their respective rights and duties in that the
16 Phelan Pinon Hills Community Services District contend that they
17 have been pumping water during a continuous 5 year period during
18 which the common supply has been in a state of overdraft; that
19 this pumping has resulted in a reversal of the common law legal
20 priority granted to overlying landowners pursuant to the common
21 law doctrine of prescription. Whereas Cross-Complainants dispute
22 this contention and contend that by continuing to pump groundwater
23 from the wells on their land, and by continuing to thus meet all
24 of the water needs to perform their farming operations, Cross-
25 Complainants have preserved and maintained their priority rights
26 to the use of groundwater.

1 87. Cross-Complainants desire a judicial determination of
2 each party's rights and duties, and a declaration as to the status
3 of each party's priority rights to the water in the Valley whether
4 they be overlying, appropriative or prescriptive.

5 88. A judicial declaration is necessary and appropriate at
6 this time under the circumstances in order that Cross-Complainants
7 may ascertain their rights and duties relating to production of
8 water from the Antelope Valley.

9 **FIFTEENTH CAUSE OF ACTION**

10 **(Declaratory Relief)**

11 89. Cross-Complainants set forth herein at length verbatim
12 the general allegations contained in paragraphs 1 through 22 of
13 this Cross-Complaint.

14 90. AVEK and others provide the Antelope Valley with water
15 imported from northern California. This imported water was and is
16 available for purchase by the Phelan Pinon Hills Community
17 Services District.

18 91. Despite having knowledge that the pumping of
19 groundwater in excess of the safe yield caused damage, and despite
20 the knowledge and belief that continued pumping would damage the
21 rights of the landowners whose property overlies the water supply,
22 the Phelan Pinon Hills Community Services District have failed and
23 refused to slow, stop or reduce their groundwater extractions from
24 the supply and/or to supplement or replace their water needs from
25 the available imported AVEK water.

26 92. The California Constitution, Article X, Section 2,

1 provides, in pertinent part, as follows:

2 "It is hereby declared that because of the
3 conditions prevailing in this State the
4 general welfare requires that the water
5 resources of the State be put to beneficial
6 use to the fullest extent of which they are
7 capable, and that the waste or unreasonable
8 use or unreasonable method of use of water be
9 prevented, and that the conservation of such
10 waters it to be exercised with a view to the
11 reasonable and beneficial use thereof in the
12 interest of the people and for the public
welfare. The right to water or to the use or
flow of water in or from any natural stream
or water course in this State is and shall be
limited to such water as shall be reasonably
required for the beneficial use to be served,
and such right does not and shall not extend
to the waste or unreasonable use or
unreasonable method of use or unreasonable
method of diversion of water"

13 93. An actual controversy has arisen and now exists between
14 Cross-Complainants and each Phelan Pinon Hills Community Services
15 District concerning their respective rights and duties in that
16 Cross-Complainants contend that the Phelan Pinon Hills Community
17 Services District' continued dependence on, and use of, the
18 groundwater, their continued and increased extractions of
19 groundwater from the common supply, with knowledge that the
20 extractions exceed the safe yield, and their failure and/or
21 refusal to take all of the available imported water and the method
22 and use of groundwater taken, is unreasonable and constitutes a
23 waste in violation of Article X, Section 2 of the California
24 Constitution. The Phelan Pinon Hills Community Services District
25 dispute these contentions and contend that their dependence on
26 groundwater, their continued and increasing extractions of

1 groundwater from the Antelope Valley in excess of the safe yield
2 and their failure and refusal to take all of the available
3 imported water is reasonable and does not constitute waste of
4 groundwater and/or available imported water under Article X,
5 Section 2 of the California Constitution.

6 94. Cross-Complainants desire a declaration of their rights
7 with respect to the constitutionality and application or non-
8 application of Article X, Section 2 to the Phelan Pinon Hills
9 Community Services District' actions and ask the court to make a
10 declaration of such rights, duties and responsibilities, and to
11 make a declaration as to the validity and constitutionality of the
12 Article X, Section 2. Such a declaration is necessary and
13 appropriate at this time in order that Cross-Complainants'
14 property rights may be protected and to ensure that the Phelan
15 Pinon Hills Community Services District may proceed under the law
16 and cause no further damage to Cross-Complainants' or property
17 overlying the water supply. There are no administrative remedies
18 available to Cross-Complainants.

19 95. A timely declaration by this court is urgent for the
20 following reasons: By way of this action, the Phelan Pinon Hills
21 Community Services District are seeking to have the court ratify
22 their method and choice of water usage and declare that they have
23 the right to continue to extract groundwater from the Valley in
24 excess of the safe yield and to continue to cause damage to the
25 Valley itself as well as to the land overlying the water supply,
26 absent a timely declaration by this court, an injustice will

1 result from the improper validation of the Phelan Pinon Hills
2 Community Services District' water usage should this
3 constitutional provision be found to apply to the Phelan Pinon
4 Hills Community Services District.

5 96. Cross-Complainants and numerous other private parties
6 will suffer irreparable and lasting injury unless declaratory
7 relief is granted.

8 **SIXTEENTH CAUSE OF ACTION**

9 **(Declaratory Relief)**

10 97. Cross-Complainants set forth herein at length verbatim
11 the general allegations contained in paragraphs 1 through 22 of
12 this Cross-Complaint.

13 98. On January 8, 2006, the Phelan Pinon Hills Community
14 Services District filed a Cross-Complaint in this matter seeking
15 to implement policy objectives which were stated in Paragraph 1 as
16 follows:

17 "To promote the general public welfare in the
18 Antelope Valley; protect the public water
19 supplier's rights to pump groundwater and
20 provide water to the public; protect the
21 Antelope Valley from a loss of the public's
water supply; prevent degradation of the
quality of the public groundwater supply;
stop land subsidence; and avoid higher water
costs to the public."

22 99. In order to implement these policy objectives, the
23 Phelan Pinon Hills Community Services District have brought a
24 cause of action against all owners of property overlying the
25 Antelope Valley seeking the imposition of a "physical solution"
26 that would manage the groundwater supply by augmenting the water

1 supply, manage the pumping and storage of water and impose
2 monetary assessments on water extraction from the supply.

3 100. An actual controversy has arisen and now exists between
4 Cross-Complainants and the Phelan Pinon Hills Community Services
5 District concerning their respective rights and duties in that
6 Cross-Complainants contend that it is a violation of the
7 constitutional doctrine of the separation of powers for this Court
8 to implement the Phelan Pinon Hills Community Services District'
9 policy objectives as they are by nature legislative actions,
10 subject to the provisions of the California Environmental Quality
11 Act (hereinafter "CEAQ;" *Public Resources Code*, Sections 21000-
12 21177). That the requirements of CEQA are both procedural
13 (requiring notice, disclosure and a review process) and
14 substantive (by requiring public agencies to take affirmative
15 measures to avoid environmental harm and to also protect the
16 citizens and landowners of the State of California).

17 101. The Phelan Pinon Hills Community Services District
18 contend that they may use the judicial system to circumvent CEQA
19 and impose by judicial fiat what should be a legislative policy.
20 In doing so, they seek to avoid providing the public with the
21 required disclosures and evaluations, and thereby deny Cross-
22 Complainants and the public their procedural and substantive
23 protections required by CEQA.

24 102. Cross-Complainants desire a judicial determination of
25 the Phelan Pinon Hills Community Services District' rights and
26 duties, and a declaration as to the application of *Public*

1 Resources Code, sections 21000-21177 to any proposed water
2 management plan sought to be implemented by judicial decree by the
3 Phelan Pinon Hills Community Services District. That the
4 legislative protections afforded to the public under CEQA cannot
5 be ignored or subverted by resorting to the court to implement the
6 Phelan Pinon Hills Community Services District's plan, and that
7 such a request of this Court induces a violation of the doctrine
8 of the separation of powers.

9 103. A judicial declaration is necessary and appropriate at
10 this time under the circumstances in order that Cross-Complainants
11 may ascertain their rights and duties relating to production of
12 water from the Antelope Valley.

13 **SEVENTEENTH CAUSE OF ACTION**

14 **(Declaratory Relief)**

15 104. Cross-Complainants set forth herein at length verbatim
16 the general allegations contained in paragraphs 1 through 22 of
17 this Cross-Complaint.

18 105. On January 8, 2006, the Phelan Pinon Hills Community
19 Services District filed a Cross-Complaint in this matter seeking
20 to implement policy objectives which were stated in Paragraph 1 as
21 follows:

22 "To promote the general public welfare in the
23 Antelope Valley; protect the public water
24 supplier's rights to pump groundwater and
25 provide water to the public; protect the
26 Antelope Valley from a loss of the public's
water supply; prevent degradation of the
quality of the public groundwater supply;
stop land subsidence; and avoid higher water
costs to the public."

1 106. In order to implement these policy objectives, the
2 Phelan Pinon Hills Community Services District have brought a
3 cause of action against all owners of property overlying the
4 Antelope Valley seeking the imposition of a "physical solution"
5 that would manage the groundwater supply by augmenting the water
6 supply, manage the pumping and storage of water and impose
7 monetary assessments on water extraction from the supply.

8 107. An actual controversy has arisen and now exists between
9 Cross-Complainants and the Phelan Pinon Hills Community Services
10 District concerning their respective rights and duties in that
11 Cross-Complainants contend that it is a violation of the
12 constitutional doctrine of the separation of powers for this Court
13 to implement the Phelan Pinon Hills Community Services District'
14 policy objectives as they are by nature legislative and executive
15 actions that are within the power of the Phelan Pinon Hills
16 Community Services District to enact by following the statutory
17 requirements set forth in *Water Code*, sections 10700-10795.20.
18 These sections of the *Water Code* provide the procedural method by
19 which the Phelan Pinon Hills Community Services District must
20 implement a groundwater management plan and also ensure
21 constitutionality required process through the required public
22 hearings, notice and publication of the proposed management plan,
23 and the opportunity for public discourse, input and objection.

24 108. The Phelan Pinon Hills Community Services District
25 contend that they may use the judicial system to impose by
26 judicial fiat what would otherwise be done through legislative

1 action. In doing so, they seek to avoid providing the public with
2 the required notice, hearing and disclosures and deny them their
3 procedural and substantive protections provided by the
4 Constitution and the *Water Code*, Sections 10700-10795.20.

5 109. Cross-Complainants desire a judicial determination of
6 the Phelan Pinon Hills Community Services District' rights and
7 duties, and a declaration as to the application and propriety of
8 *Water Code*, Sections 10700-10795.20 to the proposed water
9 management project sought to be implemented by the Phelan Pinon
10 Hills Community Services District. That the legislative
11 protections afforded to the public under the *Water Code* may not be
12 ignored or subverted by the filing of a legal action by a public
13 agency, and that such action requests this court to violate the
14 doctrine of separation of power.

15 110. A judicial declaration is necessary and appropriate at
16 this time under the circumstances in order that Cross-Complainants
17 may ascertain their rights and duties relating to production of
18 water from the Antelope Valley.

19 **EIGHTEENTH CAUSE OF ACTION**

20 **(Declaratory Relief)**

21 111. Cross-Complainants set forth herein at length verbatim
22 the general allegations contained in paragraphs 1 through 22 of
23 this Cross-Complaint.

24 112. Commencing in early 2000, each Phelan Pinon Hills
25 Community Services District has claimed that the Antelope Valley
26 was in a state of "overdraft" for more than five years prior to

1 October 1999.

2 113. based on information and belief, it is alleged that
3 immediately prior to, during and after the same claimed five year
4 period of "overdraft" claimed by the Phelan Pinon Hills Community
5 Services District, the Phelan Pinon Hills Community Services
6 District did approve and have continued to approve the issuance of
7 well permits to Cross-Complainants and others, have approved large
8 scale developments and have authorized others and have thus
9 increased the demand for groundwater pumped by the Phelan Pinon
10 Hills Community Services District from the Antelope Valley. In
11 performing their ministerial and discretionary functions, each
12 Phelan Pinon Hills Community Services District has asserted that
13 the additional well permits, hook ups and added residential,
14 industrial and commercial developments, and the concomitant
15 increased pumping of groundwater caused thereby, would not, and
16 did not, have under CEQA or otherwise an adverse affect on the
17 water supply available from the Antelope Valley.

18 114. An actual controversy has arisen and now exists between
19 Cross-Complainants and each Phelan Pinon Hills Community Services
20 District concerning their respective rights and duties in that
21 Cross-Complainants contend that the Phelan Pinon Hills Community
22 Services District are barred from claiming that the Antelope
23 Valley is in a state of "overdraft" during the time that they have
24 authorized, permitted and approved new and increased pumping from
25 the supply pursuant to *Evidence Code*, Section 623. The Phelan
26 Pinon Hills Community Services District deny Cross-Complainants'

1 contentions and assert that they may assert overdraft as an
2 element of their prescription claims. Section 623 provides as
3 follows:

4 "Whenever a party has, by his own statement
5 or conduct, intentionally and deliberately
6 led another to believe a particular thing
7 true and to act upon such belief, he is not,
in any litigation arising out of such
statement or conduct, permitted to contradict
it."

8 115. Cross-Complainants desire a judicial determination of
9 its rights and duties, and a declaration as to the application of
10 the doctrine of equitable estoppel to the Phelan Pinon Hills
11 Community Services District' ability to claim that the Antelope
12 Valley was in a state of overdraft when the same Phelan Pinon
13 Hills Community Services District were issuing well permits, will
14 serve letters and adding new water customers and authorizing new
15 large scale development projects under the assertion that there
16 was an available, adequate and appropriate water supply in the
17 Antelope Valley to sustain these permits and projects.

18 116. A judicial declaration is necessary and appropriate at
19 this time under the circumstances in order that Cross-Complainants
20 may ascertain their rights and duties relating to its real
21 property that overlies the Antelope Valley.

22 **NINETEENTH CAUSE OF ACTION**

23 **(Declaratory Relief)**

24 117. Cross-Complainants set forth herein at length verbatim
25 the general allegations contained in paragraphs 1 through 22 of
26 this Cross-Complaint.

1 118. Cross-Complainants are the owners of land overlying the
2 Antelope Valley. Each of the Phelan Pinon Hills Community
3 Services District are users of water pumped from the Antelope
4 Valley which underlies Cross-Complainants' land.

5 119. Initially, the Phelan Pinon Hills Community Services
6 District, and each of them, legally used and maintained water
7 wells that extracted water from the Antelope Valley for public
8 distribution. Over time the increased urbanization and the Phelan
9 Pinon Hills Community Services District continued and increasing
10 extractions exceeded their legal boundaries, such that the water
11 extracted from the supply has exceeded the ability to naturally
12 recharge the water supply. The Phelan Pinon Hills Community
13 Services District have claimed to have knowledge that this
14 continuous and increasing use caused a progressive and chronic
15 decline in long term water supply and the available natural supply
16 is being and has been chronically depleted. Based on the present
17 trends, demand will continue to exceed supply which will cause
18 damage to private rights and ownership of real property.

19 120. The aforementioned extractions of groundwater from the
20 supply constitute a continuing progressive nuisance within the
21 meaning of Section 3479 of the *Civil Code*, in that the Phelan
22 Pinon Hills Community Services District have created a condition
23 in the future supply that is injurious to Cross-Complainants'
24 rights, in the future, to freely use and exercise its overlying
25 property rights to extract groundwater from the common supply in
26 the customary manner. The Phelan Pinon Hills Community Services

1 District are attempting, through the combined efforts of their
2 pumping groundwater and this present legal action, to take, and or
3 alter, Cross-Complainants' overlying property rights to use and
4 access the Antelope Valley supply.

5 121. In early 2000, the Phelan Pinon Hills Community
6 Services District asserted that the available groundwater supply
7 was in jeopardy and increased pumping would harm Antelope Valley
8 Water Supply. Despite this assertion, the Phelan Pinon Hills
9 Community Services District, and each of them, have continued to
10 and have increased their pumping, despite the knowledge of the
11 damages caused by that pumping. The Phelan Pinon Hills Community
12 Services District have refused, and continue to refuse, to stop or
13 reduce their pumping despite the damage to the supply and to
14 Cross-Complainants' property rights.

15 122. This nuisance affects, at the same time, a substantial
16 number of persons in that, the Phelan Pinon Hills Community
17 Services District claim that the continued pumping in excess of
18 the supply's safe yield is, and will, eventually cause a chronic
19 decline in water levels and the available natural supply will be
20 chronically depleted, that, based on the present trends, demand
21 will continue to exceed supply which will continue to cause a
22 reduction in the long term supply. Additionally, the continued
23 pumping by the Phelan Pinon Hills Community Services District
24 under these conditions will result in the unlawful obstruction of
25 the overlying landowners' rights to use the water supply in the
26 customary manner.

1 123. The Phelan Pinon Hills Community Services District, and
2 each of them, have threatened to and will, unless restrained by
3 this court, continue to pump groundwater in increasing amounts,
4 and each and every act has been, and will be, without the consent,
5 against the will, and in violation of the rights of Cross-
6 Complainants.

7 124. As a proximate result of the nuisance created by the
8 Phelan Pinon Hills Community Services District, and each of them,
9 Cross-Complainants has been, and will be, damaged in a sum to be
10 proven at trial.

11 125. Unless the Phelan Pinon Hills Community Services
12 District, and each of them, are restrained from increasing their
13 pumping from the supply by order of this court, it will be
14 necessary for plaintiff to commence many successive actions
15 against each Phelan Pinon Hills Community Services District, and
16 each of them, to secure a project by project injunction and/or
17 compensation for the continuing and repeated damages sustained,
18 thus requiring a multiplicity of suits.

19 126. Should the Phelan Pinon Hills Community Services
20 District continue to increase their pumping without replenishing
21 the Valley's water supply, Cross-Complainants will suffer
22 irreparable injury in that the usefulness and economic value of
23 Cross-Complainants' overlying property right will be substantially
24 diminished and Cross-Complainants will be deprived of the
25 comfortable, reasonable and beneficial use and enjoyment of its
26 property.

127. In maintaining this nuisance, the Phelan Pinon Hills Community Services District, and each of them, are, and have been, acting with full knowledge of the consequences and damage being caused to Cross-Complainants, and their conduct is willful, oppressive, malicious and designed to interfere with and take the Cross-Complainants' right to freely access the water supply in its customary manner. Accordingly, each Phelan Pinon Hills Community Services District has intentionally dirtied hands and no right to involve equity in these actions.

PRAYER

WHEREFORE, Cross-Complainants pray for judgment against Cross-Defendants, and each of them, and against all other persons or entities, as follows:

1. For a judgment against the Cross-Defendants;
2. For a declaration quieting title to Cross-Complainants' right to pump and reasonably use groundwater on their PARCELS and to their rights to otherwise pump groundwater;
3. If the Court determines based upon the Cross-Defendants basin-wide adjudication that the fractured bedrock and alluvial groundwater basin is in common law overdraft, for an injunction and/or a physical solution cutting back appropriative water use to prevent continuing common law overdraft;
4. For continuing jurisdiction of the Court to litigate disputes as necessary in the future consistent with the Court judgment herein and consistent with California water law;
5. For a declaration that no party hereto may hereinafter

1 obtain prescriptive rights as against any other party to this
2 action and that all parties will act in conformance with the terms
3 of any such judgment;

4 6. For a judgment for Cross-Complainants for all available
5 remedies to secure and protect Cross-Complainants' continuing
6 overlying water rights;

7 7. For an award of reasonable attorneys' fees and costs of
8 suit; and

9 8. For such other and further relief as the court deems
10 just and proper.

11
12 DATED: January 19, 2008

13 CLIFFORD & BROWN

14
15
16 By: 

RICHARD G. ZIMMER, ESQ.

T. MARK SMITH, ESQ.

Attorneys for

BOLTHOUSE PROPERTIES, LLC and

WM. BOLTHOUSE FARMS, INC.

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Santa Clara County Superior Court Case No. 1-05-CV-049053

On January 19, 2009, I served the foregoing document(s) entitled:

Nanette Maxey
NANETTE MAXEY
2455-2

Exhibit 24

**LAW OFFICES OF
SHELDON R. BLUM**

2242 CAMDEN AVENUE, SUITE 201
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STATE BAR NO. 83304

**Attorney for Cross-Complainant
SHELDON R. BLUM, Trustee For
The SHELDON R. BLUM TRUST**

**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
Assigned to Hon. Jack Komar

Included Actions:

**CROSS-COMPLAINT OF CROSS-
COMPLAINANT SHELDON R. BLUM,
TRUSTEE FOR THE SHELDON R.
BLUM TRUST AGAINST CROSS-
DEFENDANTS WM. BOLTHOUSE
FARMS, INC., and BOLTHOUSE
PROPERTIES, LLC.**

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
Palmdale Water District.

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

AND RELATED CROSS-ACTIONS.

1 SHELDON R. BLUM, TRUSTEE For The)
 SHELDON R. BLUM TRUST,)
 2 Cross-Complainant,)
 3 vs.)
 4)
 5 WM. BOLTHOUSE FARMS, INC., a)
 Michigan Corporation; BOLTHOUSE)
 6 PROPERTIES, LLC., a California Limited)
 Company; and DOES 1 through 200,)
 7 inclusive.)
 8 Cross-Defendants)

9 Cross-Complainant SHELDON R. BLUM, Trustee For The SHELDON R. BLUM
 10 TRUST complains against Cross-Defendants WM. BOLTHOUSE FARMS, INC.;
 11 BOLTHOUSE PROPERTIES, LLC.; and DOES 1 Through 200, Inclusive, and each of them,
 12 as follows:

13 **GENERAL ALLEGATIONS**

14
 15 1. Cross-Complainant SHELDON R. BLUM, Trustee For The SHELDON R. BLUM
 16 TRUST, (hereinafter "BLUM TRUSTEE"), is and since 1985, has been the fee owner of 120
 17 acres, more or less, located on Avenue J & 70 Street East in the City of Lancaster, County of
 18 Los Angeles, State of California, identified as APN: 3384-009-001, & 3384-009-006,
 19 hereinafter collectively referred to as "BLUM PARCELS". The BLUM PARCELS' legal
 20 description are, as follows: (001) The north half of the northwest quarter of Section 24,
 21 Township 24, Township 7N, Range 11W, San Bernardino Meridian; & (006) The northeast
 22 quarter of the northwest quarter of Section 24, Township 7N, Range 11W, San Bernardino
 23 Meridian, except therefrom a portion described in the Map Book. The BLUM PARCELS
 24 overlies percolating groundwater, the extent of which is unknown to Cross-Complainant.
 25

26 2. Cross-Defendant WM. BOLTHOUSE FARMS, INC., (hereinafter "BOLTHOUSE

1 FARMS"), is and at all times herein mentioned, was a Michigan corporation authorized to do
2 business in the State of California, who Cross-Complainant is informed and believes and on
3 such information and belief alleges is privy to, assigned or transferred it's leasehold interest in
4 the BLUM PARCELS to Cross-Defendant BOLTHOUSE PROPERTIES, LLC., (hereinafter
5 "BOLTHOUSE PROPERTIES"), a California Limited Liability Company, doing business in the
6 State of California. Cross-Defendants are fee owners of 2 adjacent real properties located
7 directly across the street from Cross-Complainant's PARCELS, which also overlies percolating
8 groundwater, hereinafter referred to as the "SERRANO VALLEY RANCH" & "LADE RANCH".
9

10 3. On January 31, 1999, Cross-Complainant SHELDON R. BLUM, as Lessor, and
11 Cross-Defendant BOLTHOUSE FARMS. as Lessee, entered into a written Lease Agreement
12 in connection with the terms and conditions under which Cross-Complainant agreed to lease
13 the BLUM PARCELS to Cross- Defendant, including requiring Cross-Defendant to either
14 repair and exclusively operate the existing damaged water wells when undertaking its farming
15 operations on the BLUM PARCELS, or otherwise terminate the Lease Agreement and quickly
16 vacate the property without penalty. At all times herein mentioned, the January 31, 1999,
17 Lease Agreement established the parties intent, course of dealings, practices and
18 performances, as required to be performed by each of them under their subsequently
19 executed August 2, 2001, written Lease Agreement, concerning the same BLUM PARCELS,
20 subject matter and lease terms. A true and correct copy of the parties Lease Agreement
21 dated August 2, 2001, is attached hereto, and marked as Exhibit "A", herein.
22

23 4. At all times herein mentioned, Cross-Defendants and Cross-Complainant's subject
24 Lease Agreements expressly recognized: (a) The extensive study and debate by State,
25 County and Local Governments regarding the amount of local ground water and the impact of
26 well pumping throughout the Antelope Valley area, and that (b) The possibility exists that
27

1 future water rights to, and the amount of available water for the BLUM PARCELS, including
2 the costs thereof, may be altered by State, County and/or Local Governments. Cross-
3 Complainant and Cross-Defendants further agreed that any adverse alterations would
4 negatively affect the amount and/or cost of overlying groundwater available to Cross-
5 Defendant to pump from Cross-Complainant's water wells, for the beneficial use of the BLUM
6 PARCELS, including diminution in market value.

7
8 5. At all times herein mentioned, Cross-Defendant tacitly promised as a condition
9 subsequent covenant, to use its best efforts to avert any adverse water finding on the BLUM
10 PARCELS. In furtherance of Cross-Defendant's good faith efforts, Cross-Defendant was to
11 file with the State Board on behalf of Cross-Complaint, it's groundwater usage on the BLUM
12 PARCELS in the form provided in California Water Code Section 5002, for each calendar year
13 of extracting groundwater on the BLUM PARCELS in excess of 25 acre-feet. Cross-
14 Defendant's State Board filing and compilation of accurate records on behalf of the BLUM
15 PARCELS, was to prevent having it's farming operations adversely impacted by adjudication,
16 and provide the BLUM PARCELS with overlying water rights under the California priority
17 allocation system.

18
19 6. Cross-Defendants BOLTHOUSE FARMS and BOLTHOUSE PROPERTIES, and
20 each of them, conspired and agreed among themselves, to frustrate and deprive Cross-
21 Complainant of his overlying groundwater allocation rights, as well as the commercial benefits
22 and water well capital improvements Cross-Complainant was to receive under the Lease
23 Agreement. In furtherance of the conspiracy, Cross-Defendants' engaged in a pattern of
24 defaults and breaches of the Lease Agreement, as herein alleged, including assigning /
25 transferring Cross-Defendant BOLTHOUSE FARMS, interest in the BLUM PARCELS lease to
26 Cross-Defendant BOLTHOUSE PROPERTIES in violation of the restriction on transfer, for the

1 purpose of taking unfair advantage over Cross-Complainant, become unjustly enriched, and to
2 unfairly manipulate the California priority water allocation system, resulting in the insufficiency
3 and/or failure of Cross-Defendant's consideration under the Lease Agreement.

4 7. At all times herein mentioned, and in furtherance of the conspiracy, Cross-
5 Defendant BOLTHOUSE FARMS concealed and suppressed from Cross-Complainant that on
6 January 25, 2001, Cross-Defendant filed in the Superior Court of California, Riverside County,
7 bearing Case No. RIC 353840, a Quiet Title Action, which by Second Amended Complaint to
8 Quiet Title filed in Riverside County Superior Court on November 14, 2003, & again on
9 December 3, 2003, bearing Case No. RIC 344436, identified Cross-Complainant, the legal
10 description and APN of the BLUM PARCELS. Cross-Defendant's prayer for judgment
11 includes a Court Order adjudicating it's alleged superior and/or coequal water rights overlying
12 the BLUM PARCELS' leased properties.

13 8. Despite Cross-Defendants' knowledge of Cross-Complainant's true identity,
14 capacity and whereabouts, and that Cross-Complainant is a Person "Claiming Any Legal or
15 Equitable Right, Title or Interest in the PROPERTIES described in the Complaint Adverse To
16 Plaintiff's Title", Cross-Defendant BOLTHOUSE FARMS wrongfully alleged that Plaintiff is
17 ignorant of such Person's true name and capacity. Cross-Defendant further failed to notify or
18 serve Cross-Complainant with any Complaint, including the subject verified Second Amended
19 Complaint to Quiet Title, notwithstanding under a mandatory duty to do so, pursuant to Code
20 of Civil Procedure §§ 761.020; 762.010; 762.060 (b); 379; 389; 474; & 583.210.

21 9. Cross-Defendants, and each of them, further concealed and suppressed from
22 Cross-Complainant that on or about January 2, 2007, Cross-Defendant BOLTHOUSE
23 PROPERTIES filed an unverified Cross-Complaint to Quiet Title / Appurtenant Rights;
24 Declaratory Relief, et seq, in the Santa Clara County Superior Court, bearing Case No.:
25

1 105CV049053, as well as in the Los Angeles County Superior Court. The Cross-Complaint of
2 BOLTHOUSE PROPERTIES wrongfully alleges a superior appurtenant right and/or other
3 water rights to pump and reasonably use groundwater on the "Properties" at issue in the
4 lawsuit, including the BLUM PARCELS. Cross-Defendant's prayer for judgment includes a
5 Court Order groundwater right determination consistent with it's adverse allegations.

6 10. Despite Cross-Defendant BOLTHOUSE PROPERTIES, knowledge of Cross-
7 Complainant's true name, capacity and whereabouts, and that any assignment or transfer of
8 the Exhibit "A" Lease Agreement was undertaken without Cross-Complainant's knowledge,
9 consent or waiver, in default of the lease, Cross-Defendant obtained possession of the BLUM
10 PARCELS and wrongfully alleges it owns the water rights. Cross-Complaint further states that
11 it is ignorant of Cross-Complainant's true name and capacity and thereby failed to serve
12 Cross-Complainant with it's Cross-Complaint, notwithstanding under a mandatory duty to do
13 so, pursuant to Code of Civil Procedure §§ 761.020; 762.010; 762.060(b); 379; 389; & 474.

14 11. Cross-Complainant is ignorant of the true names and capacities, whether
15 individual, corporate or otherwise, of Cross-Defendants named herein as DOES 1 through
16 200, inclusive, and therefore sues these Cross-Defendants by such fictitious names. Cross-
17 Complainant will amend this Cross-Complaint to allege their true names and capacities when
18 ascertained. Cross-Complainant is informed and believes and thereon alleges that each of
19 the fictitiously named Cross-Defendants is claiming an interest in the right to extract overlying
20 groundwater adverse to the property interests of Cross-Complainant, and/or are otherwise in
21 some manner responsible to Cross-Complainant for doing the acts and things, herein alleged.

22 12. Cross-Complainant is informed and believes and on such information and belief
23 alleges that at all times herein mentioned, each of the Cross-Defendants named herein as
24 Does 1 through 15, inclusive, was the agent and employee of each of the remaining Cross-
25

1 Defendants, and was at all times herein mentioned acting within the course and scope of such
2 agency and employment.

3 **FIRST CAUSE OF ACTION**
4 (Breach of Written Lease Agreement)

5 13. Cross-Complainant refers to and incorporates by reference, each and every
6 allegation which is made in Paragraphs 1. through 12, as though fully set forth hereat.

7 14. On August 2, 2001, Cross-Complainant/Lessor, BLUM TRUSTEE entered into a
8 written Lease Agreement with Cross-Defendant/Lesee BOLTHOUSE FARMS, in which Cross-
9 Defendant agreed to undertake it's farming operations on the BLUM PARCELS, utilizing the
10 repaired water wells. The lease term was to commence on January 1, 2002, up through
11 December 31, 2003, at the reduced rent rate of \$125.00, per acre per year, for a total
12 combined 2 year rent sum of \$30,000.00, payable in advance. The Lease Agreement further
13 provided that in the event that Cross-Defendant was not in default of any terms, conditions, or
14 covenants, Cross-Defendant had the right to extend the Lease Agreement under 2 options,
15 each for an additional 2 years, at the increased rental rate of \$36,000.00, for the calendar
16 years of 2004 and 2005, and \$42,000.00, for the calendar years of 2006 and 2007.

17 15. Consistent with the same terms, prior dealings and performances of the January
18 31, 1999, Lease Agreement, the August 2, 2001, Lease Agreement was also subject to Cross-
19 Defendant WM. BOLTHOUSE FARMS, INC., delivering to Cross-Complainant a complete
20 written list of all tests and studies to be performed on the damaged water wells, together with
21 written conformed copies of the results thereof, after completion. In the event that the findings
22 contained within the water well tests and studies performed were unacceptable to Cross-
23 Defendant, Cross-Defendant reserved the right to terminate the Lease Agreement without
24 penalty, provided that Cross-Defendant delivers Notice of Disapproval to Cross-Complainant
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26

1 within 15 days from Cross-Complainant's written acceptance of the Lease Agreement. Upon
2 Cross-Complainant's timely receipt of Cross-Defendant's Disapproval, Cross-Complainant
3 was required to return to Cross-Defendant the advanced rental sum of \$30,000.00, and
4 thereafter Cross-Defendant was to recap and seal the water wells from access and vacate the
5 BLUM PARCELS, forthwith.

6 16. It was further agreed between the parties, and as part of their prior lease course of
7 dealings, and performances, that in the event Cross-Defendant failed to deliver any Notice of
8 Disapproval of the Condition of the Water Wells to Cross-Complainant within 15 days of
9 Cross-Complainant's lease execution, Cross-Defendant acquiesced and agreed to repair the
10 damaged water wells within the 5 months of "Early Possession", without Cross-Complainant's
11 equitable contribution, and thereby timely commence it's farming operations by January 1,
12 2002.

13 17. Under the terms of the lease, Cross-Defendant was further prohibited from
14 Subleasing, Assigning, Transferring, or hypothecating the Lease without first obtaining Cross-
15 Complainant's written consent, and without being in default. As a further condition and
16 restriction, evidence of the Sublessee's, Assignee's and/or Transferee's adequate financial
17 resources and fitness in all respects was also required to be furnished to Cross-Complainant,
18 for his evaluation, satisfaction and approval.

19 20
21 18. The Lease Agreement further provides that in the event of Cross-Defendant's
22 default in any covenant, condition or promise to be performed, Cross-Complainant shall have
23 the right, with or without resuming possession of the premises or terminating the Lease, to sue
24 for and recover all rents and other sums, including damages at any time and from time to time
25 accruing thereunder, and that each and every right or remedy shall be cumulative and not
26 exclusive. Similarly, no waiver by Lessor of any default or breach by Lessee of any of it's

1 obligations under the lease shall be deemed to be a waiver of any subsequent or continuing
2 breach of the same or similar nature.

3 19. Cross-Defendant further agreed that Cross-Complainant/Lessor, as an attorney at
4 law, shall recover his reasonable attorney fees and other expenses, as additional rent,
5 whether personally performed or otherwise incurred by Cross-Complainant in enforcing any of
6 the provisions of the Lease and/or in any action or proceeding in which Cross-Complainant is
7 successful by reason of the default of Cross-Defendant, and/or by anyone holding under
8 Cross-Defendant BOLTHOUSE FARMS or otherwise incurred by Cross-Complainant by
9 reason of any action to which Cross-Complainant shall be a party or involved.
10

11 20. Cross-Complainant has performed all conditions, covenants, and promises
12 required on his part to be performed in accordance with the terms and conditions of the Lease
13 Agreement, including providing Cross-Defendant with 5 months of 'Early Possession' on the
14 BLUM PARCELS, for the sole and exclusive purpose for Cross-Defendant to engage in water
15 well tests and studies, and undertake all water well repair work for the operational and
16 beneficial use on the BLUM PARCELS by January 1, 2002.
17

18 21. Pursuant to the terms and conditions of the Lease, the parties prior course of
19 dealings and performances, Cross-Defendant acquiesced and agreed to accept the condition
20 of the water wells, and undertake all water well repair work without equitable contribution.
21 Cross-Defendant further failed to provide to Cross-Complainant any water well test results, as
22 well as notify Cross-Complainant of any reports unacceptable and/or otherwise written Notice
23 of Disapproval of the condition or findings of the water wells, despite under a duty to do so,
24 resulting in a waiver of the condition and/or finding, manifesting acceptance.

25 22. On or about May 17, 2004, and without Cross-Complainant's knowledge or
26 waiver of Cross-Defendant BOLTHOUSE FARMS ongoing defaults and breaches, as herein
27

1 alleged, Cross-Defendant wrongfully induced Complainant to accept Cross-Defendant's
2 proposed Modification of Lease Agreement, which discounted rent for the combined 2006-
3 2007, years to the total sum of \$38,000.00, in lieu of the previously agreed \$42,000.00, and
4 which extended the lease term for an additional 2 years from January 1, 2008, up through
5 December 31, 2009, in the discounted rent sum of \$42,000.00, in lieu of the standard
6 \$6,000.00, rent increase every 2 years, or \$48,000.00. A true and correct copy of the
7 Modification of Lease Agreement is attached hereto, and marked as Exhibit "B".

8
9 23. Without Cross-Complainant's knowledge or waiver, from and continuing after
10 August, 2001, up to present date, Cross-Defendant BOLTHOUSE FARMS continuously
11 engaged in a wrongful pattern and practice of defaults and breaches under the Lease
12 Agreement and extensions thereof, including without limitation, failing and refusing to:
13 (1) Provide Cross-Complainant with a complete list of all water well tests and studies to be
14 performed, in addition to conformed copies of the results thereof, including the Rottman
15 Drilling Company water well Inspection & Video Report dated July 16, 2001, which were
16 ordered by, and in the possession of Cross-Defendant BOLTHOUSE FARMS prior to the
17 parties executing the August 2, 2001, Lease Agreement. (2) Deliver to Cross-Complainant
18 within 15 days from Cross-Complainant executing the Lease Agreement, a written Notice of
19 Disapproval of the condition or findings of the water wells, and/or otherwise written Notice that
20 the condition of the well findings were unacceptable, and thereby terminate the Lease
21 Agreement without penalty. (3) Repair the damaged water wells on the BLUM PARCELS, and
22 thereby exclusively operate them for cultivating and harvesting it's crops. (4) Acquire in bad
23 faith, 5 months of "Early Possession" for the concealed and suppressed purpose of
24 commencing the Permit and/or Licensing Application and construction process of installing an
25 underground water pipeline system designed to import water from Cross-Defendant's
26

1 SERRANO VALLEY RANCH & LADE RANCH water wells onto BLUM PARCELS. (5) Secure
2 with the State Board groundwater priority allocation rights in the name of Cross-Defendants' in
3 lieu of Cross-Complainant, so that it can adversely acquire and claim all rights to the
4 groundwater beneficially used on the BLUM PARCELS, and thereby unfairly manipulate the
5 California priority water allocation adjudication system. (6) Deliver to Cross-Complainant an
6 email Excel Spreadsheet, dated August 24, 2007, entitled "Blum Ranch Water Usage", which
7 Cross-Defendant BOLTHOUSE FARMS' Legal Manager represented to be the estimated
8 Yearly Total Water Gallons beneficial used on the BLUM PARCELS to date, in the total sum
9 of 626,122,696.50. Cross-Defendants' representative further warranted to Cross-Complainant
10 that said evidentiary document is acceptable to the State Board and further assured Cross-
11 Complainant BLUM TRUSTEE that he would acquire the above-described quantity of
12 allocated groundwater pumping rights, which is inconsistent and contrary to Cross-Defendants
13 pending litigation Quiet Title claims. (7) Failing to establish utilities, meters and/or other
14 business fixtures on the BLUM PARCELS, to document and verify the quantity of pumped
15 groundwater beneficial used in cultivating it's harvest on the BLUM PARCELS. (8) Adversely
16 claim in pending litigation an overlying water right, easement / appurtenant rights, and/or other
17 superior or coequal water right on the BLUM PARCELS, including the right to pump and/or
18 import groundwater, and the quantity beneficially used on Cross-Complainant's PARCELS.
19 (9) Notify or serve Cross-Complainant with it's verified Complaint, First & Second Amended
20 Complaints and/or Cross-Complaint, including subjecting Cross-Complainant to 'extrinsic
21 fraud'. (10) Entering into Sublease Agreements, Assignment Agreements and/or Transfer
22 Agreements without Cross-Complainant's knowledge, consent or waiver in connection with
23 the BLUM PARCELS with other farmers and Cross-Defendant BOLTHOUSE PROPERTIES,
24 so as to take unfair advantage over Cross-Complainant, and become unjustly enriched.
25
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1 (11) Inducing Cross-Complainant to execute a May 17, 2004, Modification to Lease
2 Agreement while in default, so as to acquire rent reductions for the calendar years of 2004,
3 through 2009, as well as lease extensions for an additional 2 year term commencing on 1/1/08
4 through 12/31/09. (12) Causing excessive flooding, wetland water waste and a nuisance to
5 exist from the release, discharge and/or accumulation of groundwater or other substance on
6 the BLUM PARCELS; which is not in conformity with good agriculture farming operations.
7 (13) Creating and maintaining an inherently dangerous and hazardous condition and nuisance
8 to exist, likely to cause serious bodily injury and/or death, by continuously failing and refusing
9 to recap, secure and/or seal the abandoned water wells on the BLUM PARCELS in conformity
10 with the California Water Code and Regulations.
11

12 24. Based on the foregoing, and immediately upon Cross-Complainant first acquiring
13 knowledge of the same, on September 1, 2007, October 5, 2007, and October 17, 2007,
14 Cross-Complainant caused a Notice of Default Under Lease Agreement to be delivered to
15 Cross-Defendants. Within said Notice, Cross-Complainant also requested that Cross-
16 Defendants provide Cross-Complainant with any and all water well reports, including the
17 Rottman Drilling Co., July 16, 2001, Inspection & Video Report; Cross-Defendant's
18 groundwater usage business records relative to the BLUM PARCELS; copies of any and all
19 Sublease Agreements, Assignment Agreements, Transferee Agreements, and the like; a
20 statement of all sums of money or other consideration or value collected as rent from others
21 utilizing the BLUM PARCELS under said Agreements, in addition to confirmation pictures that
22 steel plates have been welded to the well openings of the damaged water wells on BLUM
23 PARCELS to prevent public access.
24

25 25. Notwithstanding Cross-Complainant's demand on Cross-Defendants, to cure
26 their aforementioned defaults and breaches, and to deliver to Cross-Complainant the above-
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1 stated documents and data, Cross-Defendants have failed and refused and still continue to
2 fail and refuse to do so.

3 26. As a result of Cross-Defendant's continuous and ongoing defaults and breach of
4 the Lease Agreement and extensions thereof, Cross-Complainant has been damaged in an
5 amount of the cost of repairing the BLUM PARCELS damaged water wells, according to proof.

6 27. As a further result of Cross-Defendant's continuous and ongoing defaults and of
7 Cross-Defendant's insufficiency and/or failure of consideration, Cross-Complainant has been
8 damaged in the difference between any and all monetary amounts and/or reasonable
9 commercial value Cross-Defendants received under any and all Sublease Agreements,
10 Assignment Agreements and/or Transferee Agreements concerning the BLUM PARCELS,
11 and the amount of rent paid by Cross-Defendant BOLTHOUSE FARMS to Cross-
12 Complainant, according to proof.

13 28. As a further result of Cross-Defendant BOLTHOUSE FARMS continuous and
14 ongoing defaults and breach of the Lease Agreement dated August 2, 2001, and lease
15 extensions commencing on January 1, 2004, January 1, 2006, and January 1, 2008, Cross-
16 Complainant has been damaged in a sum representing the difference between the amount of
17 rent paid by Cross-Defendant to Cross-Complainant and the reasonable commercial rental
18 value of the PARCELS consisting of 3 operational water wells, according to proof;
19

20 29. As a further result of Cross-Defendant's defaults and breach, and of Cross-
21 Defendant's insufficiency and/or failure of consideration, Cross-Defendants unjustly profited
22 are unjustly enriched from wrongfully and adversely engaging in it's farming operations on
23 Cross-Complainant's PARCELS, and therefore, Cross-Complainant requests an accounting
24 given the complex nature of the issues, and has been damaged in an amount not less than
25 10% of the gross yearly profits or other valuable consideration received by Cross-Defendants
26

1 BOLTHOUSE FARMS and BOLTHOUSE PROPERTIES and/or any other Sublessees,
2 Assignees and/or Transferees, less a reasonable sum for proper business expenditures and
3 deductions, arising from their beneficial use on the BLUM PARCELS, according to proof.

4 30. As a further result of Cross-Defendant's continuous defaults and breach of the
5 Lease Agreement, Cross-Complainant has suffered damages in an amount representing the
6 diminution in market value of the BLUM PARCELS, according to proof.

7 31. As a further result of Cross-Defendant's ongoing defaults and breach of the Lease
8 Agreement, Cross-Complainant has suffered damages in an amount representing the
9 reasonable value of possessing over six million gallons of overlying water rights beneficially
10 used on the BLUM PARCELS, during the calendar years of 2002, up through and including
11 2009, based on the California priority water allocation system, according to proof.

12 32. As a further result of Cross-Defendant's defaults and breaches, and as a
13 consequence of the inadequacy of damages, Cross-Complainant requests Specific
14 Performance of Cross-Defendant BOLTHOUSE FARMS to immediately repair at it's expense
15 the damaged water wells, and thereafter exclusively operate and use the same to cultivate it's
16 harvest on Cross-Complainant's PARCELS; remove any and all underground water pipelines
17 from the BLUM PARCELS, and cease and desisted from importing water; provide and
18 allocate to Cross-Complainant it's groundwater usage for the account of the BLUM PARCELS
19 with the State Board.
20

21 33. As a further result of Cross-Defendant's continuous and ongoing defaults and
22 breach of the Lease Agreement, and failure and refusals to cooperate and/or communicate
23 with Cross-Complainant in order to ascertain the true facts and aforementioned data and
24 documentation, Cross-Complainant has been compelled to expend his economic resource
25 time and may retain other attorneys, and will continue to do so, in order to enforce the terms,
26

1 covenants and conditions of the lease and obligations of Cross-Defendant BOLTHOUSE
2 FARMS. Based on the foregoing, Cross-Complainant has incurred attorney fees, expert
3 witness fees, costs and expenses, according to proof.

4 **SECOND CAUSE OF ACTION**

5 (Breach of Implied Covenant of Good Faith & Fair Dealing)

6 34. Cross-Complainant refers to and incorporates by reference each and every
7 allegation made in Paragraphs 1. through 33, as thought fully set forth hereat.

8 35. At all times herein mentioned, Cross-Defendant BOLTHOUSE FARMS engaged
9 in a ongoing pattern and practice of bad faith, prejudicial misconduct and unfair dealings with
10 Cross-Complainant, in conscious disregard and in gross indifference to Cross-Complainant's
11 rights, title and interests in and to the BLUM PARCELS, and in breach of the implied
12 covenant of good faith and fair dealing.

13 36. At all times herein mentioned, Cross-Defendant's acts and omissions were
14 undertaken for the wrongful ulterior motive to claim superior and paramount overlying water
15 rights on the BLUM PARCELS adverse to Cross-Complainant, including to claim an
16 easement/appurtenant rights and/or other groundwater rights to pump and import groundwater
17 on Cross-Complainant's PARCELS adverse to Cross-Complainant, and thereby unfairly
18 manipulate the California priority water allocation system. Cross-Defendant BOLTHOUSE
19 FARMS' Second Amended Quiet Title action & Cross-Defendant BOLTHOUSE PROPERTIES
20 Cross-Complaint were also filed and have been pursued in bad faith, consistent with unfair
21 dealings, wrongful ulterior motives, which constituted an abuse of process, and unjust
22 enrichment practices adverse to Cross-Complainant BLUM TRUSTEE, including suppressing
23 and concealing the subject litigation from Cross-Complainant and/or serve him with any
24 pleadings. Cross-Defendants actions were also calculated to prevent Cross-Complainant
25
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1 from acquiring knowledge of it's lease defaults and breaches, impede Cross-Complainant from
2 exercising his legal rights and remedies and obtaining just and reasonable compensation from
3 Cross-Defendants, including averting the termination of the Lease Agreement, and/or rejecting
4 the May 17, 2004, Modification of Lease Agreement, and require Cross-Defendants to quickly
5 vacate the property.

6
7 **THIRD CAUSE OF ACTION**
(Breach of Implied In-Fact Contract)

8 37. Cross-Complainant refers to an incorporates by reference each and every
9 allegation made in Paragraphs 1 through 36, as though full set forth hereat.

10 38. At all times herein mentioned Cross-Defendant knew or should have known under
11 the terms of the parties August 2, 2001, Lease Agreement, and as established via the parties
12 prior course of dealings, practices and performances under the executed January 31, 1999,
13 written Lease Agreement, that its failure or refusal to timely deliver to Lessor a list of water
14 well tests and studies to be performed and/or performed, including the findings thereof, and/or
15 Lessee's Notice of Disapproval or unacceptance of the conditions or findings of the damaged
16 water wells within 15 days of Lessor executing the August 2, 2001, Lease Agreement shall be
17 unequivocally construed as a waiver of a condition subsequent, and/or Lessee's manifesting
18 unconditional acquiescence and/or implied acceptance of the condition of the damaged water
19 wells, requiring Cross-Defendant BOLTHOUSE FARMS to repair the same without Cross-
20 Complainant's equitable contribution. Based on the foregoing, Cross-Defendant promised
21 within the 5 months of 'Early Possession' to repair and exclusive operation Cross-
22 Complainant's water wells on the BLUM PARCELS, and thereafter allocate the subject
23 overlying water rights to Cross-Complainant.

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25
26 39. At all times herein mentioned, Cross-Defendant knew or should have known under

1 the terms and conditions of the parties lease, and as established via their prior intent, course
2 of dealings, practices and performances that Cross-Defendant's timely Notice of Disapproval
3 of the condition or findings of the damaged water wells resulting from it's decision not to repair
4 the damaged water wells, would immediately cause a termination of the Lease Agreement
5 requiring Cross-Defendant to quickly vacate the BLUM PARCELS, without penalty. Cross-
6 Defendant further implicitly understood and agreed that proposing to Cross-Complainant an
7 equitable repair cost contribution was it's exclusive remedy to revive the Lease Agreement
8 under a Modification of Lease Agreement.
9

10 40. At all times herein mentioned, Cross-Defendant knew or should have known that it
11 is a default and breach of the Lease Agreement to import water without Cross-Complainant's
12 knowledge and consent, via any underground pipeline system onto Cross-Complainant's
13 PARCELS from it's adjacent properties, and/or to seek an adjudication of water rights through
14 judicial litigation action adverse and superior and/or coequal to Cross-Complainant's
15 groundwater rights on the BLUM PARCELS, by reason of it's farming activities.
16

17 41. At all times herein mentioned, Cross-Defendants knew or should have known that
18 importing water onto the BLUM PARCELS was never an express or implied term, nor a paid
19 for option under the terms and conditions of the parties Lease Agreement and/or extensions
20 thereof, but rather wrongful conduct, intended to circumvent, thwart or frustrate the intent of
21 the parties, Cross-Complainant's commercial expectation interests, constitutes insufficiency
22 and/or lack of consideration, and is a default and breach of the Lease Agreement.

23 42. At all times herein mentioned, Cross-Defendant BOLTHOUSE FARMS knew or
24 should have known from Cross-Defendant's prior delivery of it's Notice of Disapproval and
25 Termination of the January 31, 1999, Lease Agreement delivered to Cross-Complainant on
26 February 26, 1999, and again on March 15, 1999, that Cross-Complainant would only agree
27

1 to enter into a Lease Agreement with Cross-Defendant under a "General/Limited Partnership"
2 or otherwise a "Joint Venture" business relationship. Cross-Defendant further knew or should
3 have known and agreed that under the terms of the above-described Lessor/Lessee business
4 relationship, Cross-Defendant agreed to obtain possession of the BLUM PARCELS for a
5 period of 6 years Rent Free, during which Cross-Complainant pays all real estate taxes, in
6 consideration for Cross-Complainant receiving at least 10% of the farming operations gross
7 profits for each calendar year Cross-Defendant's engages in farming operations on Cross-
8 Complainant's PARCELS, less a reasonable sum for Cross-Defendant's business deductions
9 and associated costs for well repairs, farming, and the like.
10

11 **FOURTH CAUSE OF ACTION**

12 (Fraud & Deceit / Intentional Misrepresentation)

13 43. Cross-Complainant refers to and incorporates by reference each and every
14 allegation which is made in Paragraphs 1 through 12, as though fully set forth hereat.

15 44. During the negotiations of the Lease Agreement Cross-Defendant WM.
16 BOLHOUSE FARMS, INC., with the intent to defraud and deceive Cross-Complainant BLUM
17 TRUSTEE, and with the intent to induce Cross-Complainant to enter into a Lease Agreement,
18 represented to Cross-Complainant through their agents and representatives on the telephone
19 and in person at the site of BLUM PARCELS, that Cross-Defendant BOLTHOUSE FARMS
20 requests to enter into a Lease Agreement with Cross-Complainant under the same terms,
21 subject matter, conditions, course of dealings and performances as the January 31, 1999,
22 Lease Agreement, except for the amount of rent.
23

24 45. Cross-Defendant BOLTHOUSE FARMS further represented to Cross-Complainant
25 that Cross-Defendant will inspect and test the condition of the damaged water wells, as well
26 as deliver prior and post confirmed tests and study results to Cross-Complainant, and/or
27

1 waive inspection and testing, and repair the same for farming use on the BLUM PARCELS, or
2 otherwise if unacceptable, provide Cross-Complainant within 15 days of lease execution a
3 Notice of Disapproval of the condition or findings of the damaged water wells, terminate the
4 Lease Agreement, seal the open water wells from access, and quickly vacate the BLUM
5 PARCELS, without penalty.

6 46. Cross-Defendant further represented to Cross-Complainant that he shall benefit
7 from Cross-Defendant BOLTHOUSE FARMS tenancy and capital improvements from the
8 repaired water wells on the BLUM PARCELS, by Cross-Defendant pumping overlying
9 groundwater from the water wells on the BLUM PARCELS, and thereby undertake all
10 necessary steps to enhance Cross-Complainant's overlying groundwater allocation rights from
11 Cross-Defendant's farming operation under the California priority allocation water system,
12 resulting in an increase of market value for the BLUM PARCELS.

14 47. At all times herein mentioned, Cross-Complainant's reliance on Cross-
15 Defendant's and their agents and representations were justified, as he believed implicitly in
16 their integrity and truthfulness and reposed absolute trust and confidence in each of them, as
17 professional farmers and real estate brokers, and in Cross-Defendant's superior knowledge,
18 expertise and skills in cultivating and irrigating it's harvest, utilizing 'state of the art' techniques
19 and water well repair methods on the BLUM PARCELS.

21 48. At all times herein mentioned, Cross-Complainant was never aware of any facts
22 that made him suspicious of the veracity of Cross-Defendant's representations based on the
23 parties prior history, course of dealings and performances on these same issues and subject
24 matter. Cross-Defendant's acts and omissions were calculated to induce Cross-Complainant
25 to take no action based on Cross-Defendant's assurances to Cross-Complainant that the
26 BLUM PARCELS and Cross-Complainant's overlying water rights are being fully protected

1 and enhanced through Cross-Defendant's farming efforts. Cross-Defendant's fraudulent acts
2 and omissions were further calculated to avoid lease termination, Cross-Complainant's
3 awareness of it's lease defaults and pending litigation actions; to reframe from visiting and/or
4 inspecting the BLUM PARCELS; and prevent Cross-Complainant from knowing that Cross-
5 Defendants were wrongfully importing groundwater and/or otherwise claiming ownership water
6 rights adverse to the rights, title and interests of Cross-Complainant.

7 49. These representations were false, and Cross-Defendant knew them to be false at
8 the time Cross-Defendant made them, and at all times herein mentioned. These
9 representations, promises and suppressions were calculated to misrepresent, and conceal
10 material facts and deceive Cross-Complainant into entering into the above-described August
11 2, 2001, Lease Agreement and extensions thereof, as well as the May 17, 2004, Modification
12 of Lease Agreement. Cross-Defendant's acts and omissions as herein alleged, were also
13 calculated to cause Cross-Complainant to reasonably and justifiably rely and operate under
14 the belief that Cross-Defendant had either waived its inspection and accepted the condition or
15 findings of the damaged water wells either through inspection or within a water well repair
16 report, and therefore utilize the 5 months of Early Possession to repair the existing damaged
17 water wells for the beneficial use of the BLUM PARCELS, allocated to Cross-Complainant.

18 50. Had the true facts been fully disclosed to Cross-Complainant and not concealed
19 and suppressed, including without limitation, (1) That the findings of the July 16, 2001,
20 Inspection & Video Report were in existence and in the possession of Cross-Defendant prior
21 to executing the Lease Agreement and/or that Cross-Defendant intentionally elected to waive
22 water well inspections and tests and proceed to circumvent Cross-Complainant's commercial
23 expectation interests. (2) That in lieu of repairing Cross-Complainant's water wells while in
24 Early Possession, Cross-Defendant's fraudulently procured and secured without Cross-
25

1 Complainant's knowledge, consent or waiver, Excavating Permits & other Licensing
2 Approvals, and thereby commenced the construction of an underground pipeline system
3 under 70 Street East and Avenue J, which was used to import groundwater pumped from
4 Cross-Defendant's adjacent properties adverse to Cross-Complainant's property and overlying
5 groundwater rights. (3) Entering into Sublease, Assignment and/or Transfer Agreements with
6 others, including Cross-Defendant BOLTHOUSE PROPERTIES, while in default and breach
7 of the lease so as to secure secret and unjust profits and enrichment. (4) Filing Superior
8 Court pending actions for illegitimate ulterior motives, constituting an abuse of the court's
9 process and extrinsic fraud against Cross-Complainant, so as to take unfair advantage over
10 Cross-Complainant and deny Cross-Complainant due process and/or just compensation.
11 (5) Wrongfully claim overlying / easements / appurtenant rights and/or other superior or
12 coequal water rights on Cross-Complainant's PARCELS; (6) Unfairly manipulate and
13 appropriate to Cross-Defendant BOLTHOUSE FARMS and BOLTHOUSE PROPERTIES
14 credit and account, overlying groundwater rights on Cross-Complainant's PARCELS, in lieu of
15 Cross-Complainant, and either fail to either file for the benefit of the BLUM PARCELS, and/or
16 to wrongfully file a "Notice of Extraction and Diversion of Water" during the lease term adverse
17 to and to the exclusion of Cross-Complainant. (7) Failing to establish utilities, meters and/or
18 other business fixtures on the BLUM PARCELS to properly document and verify the quantity
19 of pumped groundwater beneficially used in cultivating and harvesting on the BLUM
20 PARCELS. (8) Wrongfully induce Cross-Complainant to execute a May 17, 2004, Modification
21 to Lease Agreement while in default, so as to acquire rent reductions for the calendar years
22 2004, through 2009, as well as lease extensions for an additional 2 year term commencing on
23 1/1/08, through 12/31/09. (9) Causing excessive flooding, wetland water waste and a
24 nuisance to exist from the release, discharge and/or accumulation of groundwater or other
25
26
27

1 substances on the BLUM PARCELS, which is not in conformity to good agriculture farming
2 operations. (10) Create and maintain an inherently dangerous, hazardous and nuisance
3 condition to exist, which was likely to cause bodily harm and/or death, by continuously failing
4 and refusing to recap, secure, and/or seal the abandoned water wells from public access, in
5 conformity with the California Water Code and Regulations.

6 51. On or about August 24, 2007, Cross-Defendant BOLTHOUSE FARMS' Legal
7 Manager further delivered to Cross-Complainant an email Excel Spreadsheet entitled "Blum
8 Ranch Water Usage", which Cross-Defendant's agent/employee represented to be the
9 estimated Yearly Total Water Gallons beneficial used on the BLUM PARCELS in the total sum
10 of 626,122,696.50. Cross-Defendant's authorized agent/employee warranted to Cross-
11 Complainant that said evidentiary document is acceptable to the State Board and assured
12 Cross-Complainant that Cross-Complainant would acquire the above-described quantity of
13 allocated groundwater pumping rights representing the calendar years 2002, up through and
14 including 2007, which was false and untrue, and inconsistent and contrary to it's pending
15 litigation quiet title claims.
16

17 52. On August 2, 2007, October 5, 2007, and again on October 17, 2007, Cross-
18 Complainant requested from Cross-Defendants to provide Cross-Complainant with the
19 Rottman Drilling Co., July 16, 2001, Inspection & Video Report, and any and all other reports,
20 water well repair costs; water usage Business Records, and water metered documents which
21 identifies the nature and extent of groundwater beneficially used on the BLUM PARCELS;
22 Copies of any and all Sublease Agreements, Assignment Agreements, Transferee
23 Agreements, together with a statement of all sums of money collected as rent on the property,
24 to which Cross-Complainant is entitled as the rightful owner of the PARCELS; an Accounting
25 of the profits, monies or other valuable consideration received for cultivating and harvesting
26

1 crops on Cross-Complainant's PARCELS, given the complex nature of the issues, as well as
2 confirmation pictures that a steel plate has been welded to the damaged well openings which
3 is to secure any access.

4 53. Cross-Defendants have failed and refused, and still continue to fail and refuse to
5 comply with Cross-Complainant's request despite his entitlement to said documentation,
6 information and data.

7 54. As a proximate result of Cross-Defendants' ongoing fraud and deceit as herein
8 alleged, and of the wrongful manner in which Cross-Defendants' have acquired possession
9 and become unjustly enriched from the methods in which they have engaged in it's farming
10 operations on the BLUM PARCELS, Cross-Defendants holds all monies or other consideration
11 of value recovered from it's cultivated harvest on the BLUM PARCELS as a Constructive
12 Trustee for Cross-Complainant's benefit and account, less a reasonable sum for proper
13 business expenditures and deductions associated thereto. Cross-Complainant does not know
14 the true and correct amount of all sums owing and therefore an accounting is necessary to
15 determine this amount and that said documentation and information is within the exclusive
16 control of Cross-Defendants.
17

18 55. As a further proximate result of Cross-Defendant's ongoing fraudulent conduct as
19 herein alleged, Cross-Complainant has been damaged in an amount of the cost of repairing
20 Cross-Complainant's damaged water wells, according to proof.
21

22 56. As a further proximate result of Cross-Defendant's ongoing fraudulent conduct as
23 herein alleged, Cross-Complainant has been damaged in an amount representing the
24 difference between any and all monetary amounts and/or other reasonable commercial value
25 Cross-Defendants received under any and all Sublease Agreements, Assignment Agreements
26 and/or Transferee Agreements, including from Cross-Defendant BOLTHOUSE PROPERTIES
27

1 relative to the BLUM PARCELS, and the amount of Cross-Defendant BOLTHOUSE FARMS
2 rental payments to Cross-Complainant, according to proof.

3 57. As a further proximate result of Cross-Defendants ongoing fraud and deceit as
4 herein alleged, Cross-Complainant has been damaged in a sum representing the difference
5 between Cross-Defendant's rental payments to Cross-Complainant for leasing the PARCELS,
6 and the reasonable commercial rental value of the PARCELS, with operational water wells,
7 according to proof.

8 58. As a further proximate result of Cross-Defendant's ongoing fraud and deceit
9 as herein alleged, Cross-Complainant has suffered a diminution in market value of the
10 PARCELS, without operational water wells, according to proof.

11 59. As a further proximate result of Cross-Defendant's continuous and ongoing fraud
12 and deceit as herein alleged, Cross-Complainant has suffered damages in the reasonable
13 value of allocating and possessing over six million gallons of overlying groundwater for the
14 beneficial use of the PARCELS during the calendar years 2002, up through and including
15 2009, based on the California priority water allocation system, according to proof.

16 60. As a further proximate result of Cross-Defendant's ongoing fraud and deceit as
17 herein alleged, Cross-Complainant has suffered and continues to suffer mental and emotional
18 distress as reasonably expected, and thereby sustained injury to his nervous system and
19 person and thereby has suffered general damages, according to proof.

20 61. As a further proximate result of Cross-Defendant's ongoing fraud and deceit as
21 herein alleged, and Cross-Defendants ongoing failure and refusal to cooperate or
22 communicate with Cross-Complainant in order to ascertain the true facts and aforementioned
23 documentation, Cross-Complainant has been compelled to expend his attorney economic
24 resource time and may have to retain other attorneys, and will continue to do so in order to
25

1 enforce the terms, conditions and obligations of Cross-Defendants BOLTHOUSE FARMS and
2 BOLTHOUSE PROPERTIES under the Lease Agreement and extensions. Based on the
3 foregoing, Cross-Complainant has incurred reasonable attorney fees, costs and expenses,
4 according to proof.

5 62. In engaging in the aforementioned conduct described above, Cross-Defendants
6 BOLTHOUSE FARMS and BOLTHOUSE PROPERTIES acted maliciously, willfully with the
7 intention of taking unfair advantage and injuring Cross-Complainant, depriving Cross-
8 Complainant of his commercial expectation interest, and groundwater rights, title, and
9 interests in and to the BLUM PARCELS. Cross-Defendants conduct is equivalent to
10 despicable conduct that subjected Cross-Complainant to cruel and unjust hardships, so as to
11 justify the award of exemplary and punitive damages against Cross-Defendant BOLTHOUSE
12 FARMS and BOLTHOUSE PROPERTIES.
13

14 **SIXTH CAUSE OF ACTION**
15 **(Suppression of Fact)**

16 63. Cross-Complainant refers to and incorporates by reference each and every
17 allegation which is made in Paragraphs 1 through 12, and Paragraphs 44 through 62, as
18 though fully set forth hereat.

19 64. The concealment, suppressions and failure to disclose material facts by Cross-
20 Defendants BOLHOUSE FARMS and BOLTOUSE PROPERTIES were undertaken with the
21 intent to induce Cross-Complainant to act in the manner herein alleged, in reliance thereon.
22

23 65. Cross-Complainant, at the time these failures to disclose and suppressions of
24 material facts occurred, and at the time Cross-Complainant took the actions herein
25 alleged, was ignorant of the existence of the true facts that Cross-Defendants concealed,
26 suppressed and failed to disclose. If Cross-Complainant had been aware of the existence of
27

1 the true facts not disclosed by Cross-Defendants, Cross-Complainant would not have taken
2 such actions, as herein alleged.

3 **SEVENTH CAUSE OF ACTION**
4 **(Promise Made Without Intention to Perform)**

5 66. Cross-Complainant refers to and incorporates by reference each and every
6 allegation which is made in Paragraphs 1 through 12, and Paragraphs 44 through 65, as
7 though fully set forth hereat.

8 67. Cross-Complainant, at the time these promises were made and at the time that
9 Cross-Complainant took the actions herein alleged, was ignorant of Cross-Defendants secret
10 intention not to perform and Cross-Complainant could not, in the exercise of reasonable
11 diligence have discovered Cross-Defendant's secret intention and therefore acted reasonably
12 in relying on Cross-Defendant's promises and assurances. If Cross-Complainant had known
13 of the actual intention of the Cross-Defendants, Cross-Complainant would not have acted in
14 reliance on Cross-Defendant's promises and assurances and taken such action, as herein
15 alleged.
16

17 **EIGHTH CAUSE OF ACTION**
18 **(Abuse of Process)**

19 68. Cross-Complainant refers to and incorporates by reference, each and every
20 allegation which is made in Paragraphs 1 through 12; 23, 36, 50, and 54 through 62, as
21 though fully set forth hereat.

22 69. Cross-Defendants BOLTHOUSE FARMS and BOLTHOUSE PROPERTIES
23 conspired among themselves to misuse and abuse the Superior Court of California, Riverside
24 County, Los Angeles County and Santa Clara County court system for illegitimate ulterior
25 motives, by filing but never serving Cross-Complainant with Cross-Defendant BOLTHOUSE
26 FARMS' verified Second Amended Complaint to Quiet Title and/or Cross-Defendant

1 BOLTHOUSE PROPERTIES unverified Cross-Complaint to Quiet Title against Cross-
2 Complainant and the BLUM PARCELS, despite their awareness that Cross-Complainant is an
3 adverse indispensable party requiring his compulsory joinder, which was not authorized in the
4 regular course of the proceedings.

5 70. The ulterior purpose and motivation of Cross-Defendants in so misusing and
6 abusing the court's process in the aforementioned described manner was to obtain collateral
7 unfair advantage over Cross-Complainant and the BLUM PARCELS, as alleged herein;
8 fraudulently claim and seek Court adjudication of overlying / easement / appurtenant water
9 right and/or other superior or coequal water rights to pump for the beneficial use of the BLUM
10 PARCELS; deny and deprive Cross-Complainant of due process; prevent him from exercising
11 his legal rights and remedies; obtaining just compensation against Cross-Defendants,
12 undertake a continuous pattern and practice to become unjustly enriched by their acts and
13 omissions; and to unfairly manipulate the California priority water allocation system.

14 WHEREFORE, Cross-Complainant prays judgment against Cross-Defendants WM.
15 BOLTHOUSE FARMS, INC., BOLTHOUSE PROPERTIES, LLC., and each of them, and all
16 others holding under them under the Lease Agreement, as follows:
17

18 1. For the production of all documentation and data to accurately verify and
19 obtain an accounting of all monies or other valuable consideration received from it's farming
20 operations on Cross-Complainant's PARCELS, in addition to an accounting on all monies and
21 other valuable consideration received in connection with any and all Sublease, Assignment
22 and/or Transfer Agreements entered into with others concerning the BLUM PARCELS;
23

24 2. For damages in the amount of all monies or other valuable consideration
25 received by Cross-Defendant found owing to Cross-Complainant, according to proof;
26

27 3. For damages in the amount of all profits, monies, consideration or other
28

1 value received by Cross-Defendants BOLTHOUSE FARMS and BOLTHOUSE PROPERTIES
2 and all other Sublessees, Assignees, and Transferees, as gross yearly profits, less a
3 reasonable sum for proper business expenditures and deductions, for each calendar year
4 Cross-Defendant's cultivated and harvested on Cross-Complainant's PARCELS, as a
5 Constructive Trustee for Cross-Complainant's benefit and account, according to proof;

6 4. For damages in a sum representing the difference between Cross-Defendant's
7 rental payments to Cross-Complainant for leasing the BLUM PARCELS, and the reasonable
8 commercial rental value of the PARCELS, with 3 operational water wells, according to proof;

9 5. For damages in a sum of at least 10% of Cross-Defendant's gross yearly
10 farming profits, monies, or other valuable consideration received, less a reasonable sum for
11 proper business expenditures and deductions, for each calendar year Cross-Defendants
12 BOLTHOUSE FARMS, BOLTHOUSE PROPERTIES, and any other Sublessees, Assignees
13 and/or Transferees, obtained arising from their beneficial use of Cross-Complainant's
14 PARCELS, according to proof;

15 6. For damages in the amount of the diminution in market value of the BLUM
16 PARCELS, as a consequence of Cross-Defendant's acts and omissions, according to proof;

17 7. For damages in the amount of the reasonable value of allocating and
18 possessing over six million gallons of groundwater rights for the beneficial use of Cross-
19 Complainant's PARCELS, from 2002, up through present date, based on the California priority
20 water allocation system, according to proof;

21 8. For damages in an amount representing the difference between any and all
22 monetary amounts, consideration and/or reasonable commercial value Cross-Defendants
23 BOLTHOUSE FARMS, BOLTHOUSE PROPERTIES, and all others holding under received
24 under any and all Sublease Agreements, Assignment Agreements and Transferee

1 Agreements concerning the PARCELS, and the amount Cross-Defendant paid to Cross-
2 Complainant for rent, according to proof;

3 9. For damages in the amount of the cost of repairing Cross-Complainant's 3
4 damaged water wells, according to proof;

5 10. For damages in such further sums as may be sustained and as are
6 ascertained before final judgment in this action;

7 11. For Specific Performance of Cross-Defendant BOLTHOUSE FARMS to
8 immediately repair at it's expense the damaged water wells, and thereafter exclusively
9 operate and use the same to cultivate and irrigate it's harvest on Cross-Complainant's
10 PARCELS, in addition to removing all underground water pipelines associated with importing
11 water onto Cross-Complainant's PARCELS, and timely file for each calendar year a "Notice of
12 Extraction and Diversion of Water" with the State Board in compliance with California Water
13 Code, Section 5001, so that the BLUM PARCELS can receive full and accurate priority water
14 allocation rights for the calendar years 2002, up through and including 2009;

15 12. For general damages, according to proof;

16 13. For damages for mental and emotional distress, according to proof;

17 14. For special damages, according to proof;

18 15. For a judgment for Cross-Complainant for all available remedies, to secure and
19 protect Cross-Complainant's PARCELS and continuing water rights;

20 16. For exemplary and punitive damages;

21 17. For an award of reasonable attorneys' fees and costs of suit;

22 18. For interest at the legal rate on all monies or other valuable consideration
23 found owing to Cross-Complainant;

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19. For such other relief as the court deems proper and just.

DATED: December 18, 2007

LAW OFFICES OF SHELDON R. BLUM

By: 

SHELDON R. BLUM, Esq.

Attorney for SHELDON R. BLUM, Trustee
For The SHELDON R. BLUM TRUST

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