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7 Defendant in *Pro Per*

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OF ORIGINAL FILED
Los Angeles Superior Court

SEP 26 2008

John A. Clarke, Executive Officer/Clerk
By A. Henderson Deputy

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES, CENTRAL DIVISION

10
11 **ANTELOPE VALLEY GROUNDWATER**
12 **CASES:**

13 Included Actions:

14 Los Angeles County Waterworks District No.
15 40 v. Diamond Farming Co. Superior Court
of California, County of Los Angeles, Case
No. BC325201;

16 Los Angeles County Waterworks District No.
17 40 v. Diamond Farming Co. Superior Court
of California, County of Kern, Case No. S-
1500-CV254-348;

18 Wm. Bolthouse Farms, Inc. v. City of
19 Lancaster, Diamond Farming Co. v. City of
20 Lancaster, Diamond Farming v. Palmdale
21 Water District, Superior Court of California,
County of Riverside, consolidated actions
Case Nos. RIC 353840, RIC 344436, RIC
344668

Judicial Council Coordination
Proceeding No. 4408

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

Assigned to the Honorable Jack Komar

**GATEWAY TRIANGLE PROPERTIES
ANSWER AND AFFIRMATIVE
DEFENSES TO ALL COMPLAINT AND
CROSS-COMPLAINTS**

22
23
24
25 COME NOW, cross-defendants Fred Kia and Alan Kia, individually and doing business
26 as Gateway Triangle Properties (collectively referred to as "Gateway") hereby answer
27 Complaint and all Cross-Complaints which have been filed as of this date, including without
28 limitations, those California Water Service Company, City of Lancaster, City of Palmdale,

Littlerock Creek Irrigation District, Los Angeles County Waterworks District No. 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District and Quartz Hill Water District, on file herein, and in answer to such additional Complaints and/or Cross-Complaints which may hereinafter be filed, admit, deny, and allege as follows:

1. Gateway is the fee owner of several real properties located in Kern County, State of California. The Cross-Complaint fails to address in specificity as to which properties of Gateway, the Cross-Complainants claims to extract water and/or claim the right to extract groundwater.

2. Defendant does intend to participate at trial or other proceedings of this action.

3. Article I, Section 19 of the California Constitution provides that private property shall not be taken or damaged for public use without just compensation being paid to the owner thereof. Gateway has been deprived of just compensation. The precise amount of such sums is not now known to Gateway. Gateway will seek leave to amend this Answer to specify such amount when the same has been ascertained.

GENERAL DENIAL

4. Pursuant to Code of Civil Procedure section 431.30, Gateway hereby generally denies each and every allegation set forth in the Complaint and Cross-Complaint, and the whole thereof, and further denies that the Cross-Complainant were damaged in the sums therein alleged or in any sum or are entitled to any relief whatsoever or at all against Gateway.

FIRST AFFIRMATIVE DEFENSE

(Failure to state a Cause of Action)

5. The Complainant and Cross-Complainant and every purported cause of action contained therein fail to allege facts sufficient to constitute a cause of action against Gateway so as to bar the claims herein.

1 **SECOND AFFIRMATIVE DEFENSE**

2 (Statue of Limitation)

3 6. Each and every cause of action contained in the Complaint and Cross-Complaint
4 is barred, in whole or in part, by the applicable statues of limitation, including, but not limited
5 to, sections 318, 319, 321, 338, and 343 of the California Code of Civil Procedure.

6
7 **THIRD AFFIRMATIVE DEFENSE**

8 7. The Complainant and Cross-Complainant and every purported cause of action
9 contained therein, is barred because Cross-Complainant's claim are not ripe for adjudication.

10
11 **FOURTH AFFIRMATIVE DEFENSE**

12 8. The Complaint and Cross-Complaint is uncertain and defective in that if fails to
13 describe with specificity the groundwater basin or aquifer or aquifers or pertinent sub-basins, if
14 any, from which Cross-Complainants are extracting, or claim the right to extract, groundwater.

15
16 **FIFTH AFFIRMATIVE DEFENSE**

17 (Willful Misconduct by Public Agency)

18 9. Gateway alleges the allegations referred to in the Complaint and the Cross-
19 Complaint constitute willful misconduct by a public agency in violation of public trust and
20 public policy so as to bar the claims herein.

21
22 **SIXTH AFFIRMATIVE DEFENSE**

23 (Laches)

24 10. Cross-Complainant has delayed an unreasonable period of time in bringing this
25 action, which delay has been prejudicial to Gateway. The Complaint and Cross-Complaint, and
26 each and every cause of action contained therein, is barred by the doctrine of laches.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 (Deceitful/Fraudulent Filing of Water Supply Documents)

3 16. The Cross-Complainant deceitfully and/or fraudulently filed water supply
4 documents including but not limited to Water Supply Assessments, Environmental Impact
5 Reports, Will Serve Letters etc resulting in justifiable reliance by Gateway that the water
6 supply was sufficient and that no taking could occur which would give rise to a claim of
7 adverse possession or prescription and that Plaintiff and Cross-Complainant should be
8 estopped from asserting a claim inconsistent with such entities representations.

9
10 **THIRTEENTH AFFIRMATIVE DEFENSE**

11 (Negligent Misrepresentations)

12 17. The Cross-Complainant negligently misrepresented the water supply in order to
13 induce Gateway to justifiably rely on such representations causing Gateway to take no action
14 to stop actions on the part of the Cross-Complainant and that Cross-Complainant should be
15 estopped from asserting a claim inconsistent with such entities representations.

16
17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 (Intentional Misrepresentations)

19 18. The Cross-Complainant intentionally misrepresented the water supply in order to
20 induce Gateway to justifiably rely on such representations to cause Gateway to take no action
21 to stop actions on the part of Cross-Complainant and that the Cross-Complainant knowing that
22 such representations were untrue and Cross-Complainant should be estopped from asserting a
23 claim inconsistent with such entities representations.

24
25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 (Self Help)

27 19. Gateway have, by virtue of the doctrine of self-help, preserved its paramount
28 overlying right to extract groundwater by continuing, during all times relevant hereto, to

1 extract groundwater and put it to reasonable and beneficial use on its property, thus bars the
2 claims, allegations and remedies requested by Cross-Complainants.

3
4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 (California Constitution Article X, Section 2)

6 20. Cross-Complainant's methods of water use and storage are unreasonable and
7 wasteful in the arid conditions of the Antelope Valley and thereby violate Article X, Section 2
8 of the California Constitution.

9
10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 21. The Prescriptive claims asserted by the governmental entity Cross-Complainants
12 are *ultra vires* and exceed the statutory authority by which each entity may acquire property as
13 set forth in Water Code sections 22456, 31040, and 55370.

14
15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

16 22. The Prescriptive claims asserted by the governmental entity Cross-Complainants
17 are barred by the provisions of Article 1 Section 19 of the California Constitution.

18
19 **NINETEENTH AFFIRMATIVE DEFENSE**

20 23. The Prescriptive claims asserted by the governmental entity Cross-Complainants
21 are barred by the provisions of the 5th Amendment to the United States Constitution as applied
22 to the states under the 14th Amendment of the United States Constitution.

23
24 **TWENTIETH AFFIRMATIVE DEFENSE**

25 24. Cross-Complainants prescriptive claims are barred due to their failure to take
26 affirmative steps that were reasonably calculated and intended to inform each overlying
27 landowner of cross-complainants' adverse and hostile claim as required by the due process
28 clause of the 5th and 14th Amendments of the United States Constitution.

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 25. The prescriptive claims asserted by Cross-Complainants are barred by the
3 provisions of Article 1 Section 7 of the California Constitution.

4
5 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

6 26. The Cross-Complainants actions violated the Fifth Amendment of the United
7 States Constitution.

8
9 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

10 27. The Cross-Complainants actions violated the Fourteenth Amendment of the
11 United States Constitution.

12
13 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

14 28. The governmental entity Cross-Complainants were permissively pumping at all
15 times.

16
17 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

18 29. The request for the court to use its injunctive powers to impose a physical
19 solution seeks a remedy that its violation of the doctrine of separation of powers set forth in
20 Article III, Section 3 of the California Constitution.

21
22 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

23 30. Cross-Complainants are barred from asserting their prescriptive claims by
24 operation of law as set forth in Civil Code sections 1007 and 1214.

25 ///

26 ///

27 ///

28 ///

1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 (Unclean Hands)

3 31. Each Cross-Complainant is barred from recovery under each and every cause of
4 action contained in the Cross-Complainant by the doctrine of unclean hands and/or unjust
5 enrichment.

6
7 **TWENTY-EIGHT AFFIRMATIVE DEFENSE**

8 (Indispensable Parties)

9 32. The Cross-Complainant is defective because it fails to name indispensable parties
10 in violation of California Code of Civil Procedure Section 389(a).

11
12 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

13 (Indispensable Parties: McCarran Act)

14 33. The Cross-Complainant is defective because it fails to name indispensable parties
15 in violation of McCarran Act.

16
17 **THIRTIETH AFFIRMATIVE DEFENSE**

18 34. The governmental entity Cross-Complainants are barred from taking, possessing
19 or using Gateway's property without first paying just compensation.

20
21 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

22 (Unlawful Taking)

23 35. Cross-Complainants are barred by State and Federal Constitutions which prevent
24 taking without just compensation and without appropriate legal procedures to assure no taking
25 without due process of law.

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27 ///

28 ///

1 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

2 (CEQA Non Compliance)

3 36. The governmental entity Cross-Complainants are seeking to transfer water right
4 priorities and water usage which will have significant effects on the Antelope Valley
5 Groundwater basin and the Antelope Valley. Said actions are being done without complying
6 with and contrary to the provisions of California's Environmental Quality Act (CEQA)
7 (Pub.Res.C.2100 et seq.)

8
9 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

10 (Superior Water Right)

11 37. Gateway's water rights are superior and senior to, and take precedence over, any
12 rights asserted in the Cross-Complaint.

13
14 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

15 (Failure to Prove Priority Rights)

16 38. Cross-Complainant have failed to prove priorities under California water law as
17 between appropriators and overlying landowners and as between all others necessary for the
18 court to cut back water production in time of shortage based upon the California priority water
19 allocation system.

20
21 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

22 39. Any imposition by this court of a proposed physical solution that reallocated the
23 water right priorities and water usage within the Antelope Valley will be *ultra vires* as it will
24 be subverting the pre-project legislation requirements and protections of California's
25 Environmental Quality Act (CEQA) (Pub. Res.C. 2100 et seq).

26 ///

27 ///

28 ///

1 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

2 (Denial of Equal Protection)

3 40. The Cross-Complaint and each cause of action alleged therein are barred by State
4 and Federal Constitutions which require equal protection of law to Gateway.

5
6 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

7 (Appurtenant Rights)

8 41. Gateway alleges it has an appurtenant right to pump and reasonably use
9 groundwater on its properties which is superior to the rights of Cross-Complainants.

10
11 **THIRTY-EIGHT AFFIRMATIVE DEFENSE**

12 (Insufficient Information)

13 42. This answering defendant has insufficient knowledge or information upon which
14 to form a belief as to whether there may be additional, as yet unstated, affirmative defenses
15 available, and answering defendant reserves the right to assert such additional affirmative
16 defenses in the event discovery indicates they are proper.

17
18 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

19 (Additional Defenses)

20 43. The Complainant and Cross-Complainant do not share their allegations with
21 sufficient clarity to enable Gateway to determine what additional defenses may exist to the
22 Complainant and Cross-Complainant's causes of action. Gateway therefore reserve the right to
23 assert all other defenses which may pertain to the Complainant and Cross-Complainant.

24
25 **FORTIETH AFFIRMATIVE DEFENSE**

26 44. Gateway objects to Complainant and Cross-Complainant right to take the water
27 rights of Gateway's properties on the ground that Complainant and Cross-Complainant failed
28 to make a precondemnation offer of compensation as required by California Government Code

1 section 7267.2. (Gov. Code, § 7267.2; Code Civ. Proc., § 1245.230 subd. (c)(4)) and/or the
2 California Constitution.

3
4 **FORTY-FIRST AFFIRMATIVE DEFENSE**

5 45. Gateway objects to Complainant and Cross-Complainant's right to take
6 Gateway's water rights on the ground that Complainant and Cross-Complainant failed to
7 engage in efforts to acquire the Gateway's rights and interests that is being taken expeditiously
8 and by negotiation, in violation of California Government Code section 7267.1. (Gov. Code,
9 § 7267.1.)

10
11 **FORTY-SECOND AFFIRMATIVE DEFENSE**

12 46. Complainant and Cross-Complainant failed to satisfy all State and Federal
13 procedural prerequisites to filing of the action, and as such, Complainant and Cross-
14 Complainant's Complaint must be dismissed.

15
16 **FORTY-THIRD AFFIRMATIVE DEFENSE**

17 (Additional Defenses)

18 47. Defendant reserve the right to raise additional affirmative defenses at trial in this
19 matter.

20
21 WHEREFORE, Gateway prays that judgment be entered as follows:

22
23 1. That the Cross-Complainant take nothing by reason of its Complaint and Cross-
24 Complaint;

25 2. That the governmental entity Cross-Complaint be dismissed with prejudice, and
26 Gateway recover any and all consequential damages, pre-condemnation damages, litigation
27 expenses, and costs that have been caused and/or incurred by reason of Cross-Complainants
28 actions.

1 If the court determines that Cross-Complainants are entitled to any relief against
2 Gateway, in such event, Gateway prays as follows:

3 3. That the amount of just compensation for interests being taken be ascertained,
4 determined and awarded to Gateway;

5 4. That the amount of just compensation for the amount of mitigation damages be
6 ascertained, determined and awarded to Gateway;

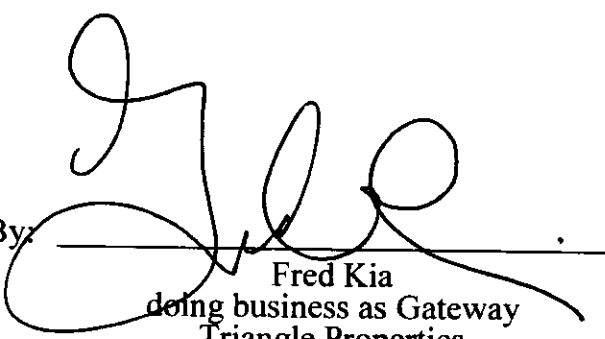
7 5. That the amount of just compensation for the interests being taken and damaged,
8 including without limitations, precondemnation damages, loss of use and lost rental income be
9 ascertained, determined and awarded to Gateway;

10 6. That the amounts of just compensation so ascertained and determined be paid to
11 Gateway, together with interest thereon as provided by law;

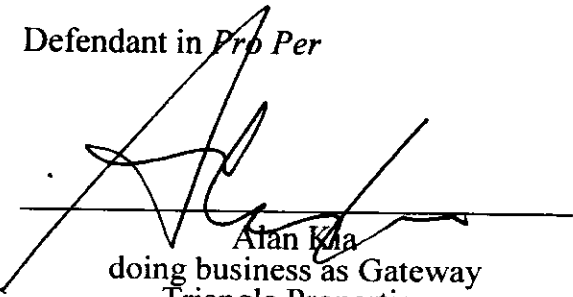
12 7. That Gateway be awarded for litigation expenses, attorney's and expert's and
13 costs of suit; and

14 8. For such other and further relief as the Court may deem just, equitable and
15 proper.

16
17 Dated: September 26, 2008

18
19
20 By: 
21 Fred Kia
22 doing business as Gateway
23 Triangle Properties

24 Defendant in *Pro Per*

25 By: 
26 Alan Kia
27 doing business as Gateway
28 Triangle Properties

Defendant in *Pro Per*

1
2 **PROOF OF SERVICE**
3

4 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

5 I declare that:

6 I am employed in the County of Los Angeles, State of California. I am over the age of
7 eighteen years and not a party to the within action. My business address is 5225 Wilshire
8 Boulevard, Suite 1000, Los Angeles, California 90036.

9 On September 26, 2008, I served **GATEWAY TRIANGLE PROPERTIES**
10 **ANSWER AND AFFIRMATIVE DEFENSES TO ALL COMPLAINT AND CROSS-**
11 **COMPLAINTS** by posting the document(s) listed above to the Santa Clara Superior website
12 (<http://www.scefiling.org>) under the Antelope Valley Groundwater matter.

13 I declare under penalty of perjury under the laws of the State of California that the
14 above is true and correct, executed on September 26, 2008.
15

16 
17 _____
18 JOSEPHINE VILLAMENA
19
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28