

1 Fred Kia
2 5225 Wilshire Boulevard
3 Suite 1000
4 Los Angeles, California 90036
5 Telephone: (323) 934-5000
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7 Defendant in *Pro Per*

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
Water District, Superior Court of California,
County of Riverside, consolidated actions
21 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

EX PARTE APPLICATION FOR
ORDER CONTINUING TRIAL DATE:
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
FRED KIA; AND [PROPOSED] ORDER

DATE: September 29, 2008
TIME: 8:15 a.m.
DEPT: 17C

Telephonic Hearing
Conference call-in: (877)445-3798
Passcode: 092908

CIT/CASE: JCCP4408 LEA/DEF#:
RECEIPT #: CCH18828005
DATE PAID: 09/26/08 08:58:14 AM
PAYMENT: \$360.00 0310
RECEIVED:
CHECK:
CASH:
CHANGE:
CARD: 360.00
THIS IS A REPRINT OF THE ORIGINAL.

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 8:15 a.m. on September 29, 2008, a telephonic ex
3 parte motion by Cross-Defendant Fred Kia, individually doing business as Gateway Triangle
4 Properties ("Gateway"), call-in number (877)445-3798, passcode 092908, will be heard in
5 Dept. 17C. Gateway will apply ex parte to the Court for an order to continue the October 6th,
6 2008 trial date.

7 Gateway makes this application pursuant to California Rule of Court 379 on an ex parte
8 basis on the grounds that (1) absent relief from the court, Gateway will be required to defend it
9 self at the currently scheduled October 6th, 2008 trial, (2) Gateway was just recently served
10 with a copy of the Summons and Complaint with its answer due on or about September 27,
11 2008, (literally 5 working days before the commencement of October 6th trial date), and
12 therefore only just became subject to the jurisdiction of this court in the instant action; (3)
13 Gateway has not retained its experts in this action; (4) Gateway has not conducted its discovery
14 in this action; (5) there is no prejudice to Cross-Complainants in continuing the October 6th,
15 2008 trial date; and (6) there is prejudice to Gateway if hearing is not continued. Without a
16 continuance Gateway's due process rights will be severely prejudiced in that it will not have
17 sufficient time to prepare its defense, to retain its own experts, conduct discovery, analyze
18 Cross-Complainants cursory conclusions, investigate the contentions of Cross-Complainants,
19 among other things. Therefore, the interests of justice are best served by granting a trial
20 continuance.

21 Gateway has not been allowed sufficient time to prepare for the upcoming trial. If
22 Gateway is not granted a continuance it would be substantially and irreparably prejudiced. In
23 contrast, a continuance would not prejudice Cross-Complainants. Gateway respectfully seeks
24 relief from this court to continue the trial date of October 6th, 2008 trial for a reasonable time as
25 the court determines in order to allow for presentation of adequate evidence to assist the court
26 in making the proper findings.

27 Furthermore, there have been no prior requests to continue and/or continuances by
28 Gateway in this matter.

1 This application is based on this Notice, the attached memorandum of points and
2 authorities, accompanying declaration of Fred Kia filed herewith, all pleadings, papers and
3 records on file, and such evidence and argument as may be presented at the hearing.
4

5 Dated: September 26, 2008
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8 By: _____

9 Fred Kia
10 doing business as Gateway Triangle
11 Properties
12 Defendant in *Pro Per*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. GOOD CAUSE EXISTS FOR EX PARTE RELIEF AND DUE PROCESS**
3 **MANDATES CONTINUANCE BECAUSE GATEWAY WAS JUST**
4 **RECENTLY SERVED WITH THE CROSS-COMPLAINT.**

5 Gateway makes this application pursuant to California Rule of Court 379 on an ex parte
6 basis on the grounds that absent relief from the court, Gateway is required to defend itself at
7 the October 6th, 2008 trial, and therefore there is no time to retain its own experts, conduct
8 discovery, analyze Cross-Complainants cursory conclusions, and to place a rebuttal before the
9 court. Gateway has sought Cross-Complainants agreement to continue the trial but was unable
10 to obtain one. (See, Declaration of Fred Kia, ¶ 1, 2, 3, 4 & 5). Moreover, Gateway was only
11 served with the Summons and Complaint in this matter recently, with its answer due on or
12 about September 27, 2008, (literally 5 working days before the October 6th trial date), and
13 therefore only just became subject to the jurisdiction of this court in the instant action.

14 Gateway, risks being irreparably harmed if it does not obtain a reasonable continuance
15 of the October 6th, 2008 trial, because it, (1) will not have sufficient time to retain its own
16 experts in this action; (2) cannot conduct its discovery in this action; (3) cannot analyze Cross-
17 Complainants cursory conclusions, and investigate the contentions of Cross-Complainants; and
18 (4) thereafter prepare for upcoming trial.

19 In preparation for the upcoming October 6th trial, Gateway should be given sufficient
20 time to depose Cross-Complainant's experts who have had approximately a few years to hire
21 its own experts to investigate the issues related to sub-basins within the Antelope Valley
22 Groundwater Basin and to prepare their opinions. Indeed, given the fact that Gateway was just
23 became subject to the jurisdiction of this court in the instant action and the Cross-Complainants
24 have been litigating this action since year 1999 or 2000 (approximately 8 o 9 years), justice
25 and due process mandate a continuance to give Gateway adequate time to present its evidence
26 on this issue.

27 If a continuance of trial is not granted, Gateway's due process rights would be violated
28 and Gateway would be denied the opportunity to place before the court evidence related to

1 issues of the existence of sub-basins within the Antelope Valley Groundwater Basin. However,
2 such a result would be fundamentally unfair and unconstitutional.

3
4 **2. A COURT HAS THE AUTHORITY AND DISCRETION TO CONTINUE A**
5 **TRIAL DATE UPON REQUEST BY ANY OF THE PARTIES.**

6 A court has inherent power to grant a continuance. (Rules of Court, Rule 3.1332; See
7 also, 7 Witkin, California Procedure (3rd ed.) Trial, § 7 at p. 28.) California Rules of Court,
8 Rule 3.1332, subdivision (c) provides that "[a]lthough continuances of trials are disfavored,
9 each request for a continuance must be considered on its own merits." The trial court may
10 grant a continuance upon a showing of good cause.

11 Rule 3.1332, subdivision (d) further provides that "in ruling on a motion or application
12 for continuance, the court *must consider all the facts and circumstances that are relevant to the*
13 *determination.*" (Emphasis added.) Other facts and circumstances may include the following:

14 (1) the proximity of the trial date; (2) whether there was any
15 previous continuance, extension of time, or delay of trial due to any
16 party; . . . (5) the prejudice the parties or witnesses will suffer as a
17 result of the continuance; (7) the court's calendar and the impact of
18 granting a continuance on another pending trial; (8) whether trial
counsel is engaged in another trial; and (11) any other fact or
circumstance relevant to the fair determination of the motion or
application. (Cal. Rules of Court, Rule 3.1223(d)(1)-(11).)

19 The trial judge must necessarily exercise broad discretion in determining a motion for
20 continuance. Such discretion must be exercised with due regard for all interests involved, and
21 a refusal to grant a continuance which has the practical effect of denying the applicant a fair
22 hearing has been held to be reversible error. (*Cohen v. Herbert* (1960) 186 Cal.App.2d 488.)
23 Courts are liberal in granting continuances when the facts justify such action. (*Ross v.*
24 *Thirwall* (1929) 101 Cal.App. 411.)

25 For the reasons set forth below, Gateway respectfully requests the currently scheduled
26 trial date of October 6, 2008 in this action be continued for a period of 180 days, or a date soon
27 thereafter, to allow this matter to be brought to trial in an orderly and efficient manner.
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2 **3. FAILURE TO CONTINUE OCTOBER 6, 2008 TRIAL WOULD VIOLATE**
3 **GATEWAY'S SUBSTANTIVE DUE PROCESS RIGHTS.**

4 The Court would also violate Gateway's substantive due process rights if it fails to
5 continue the October 6th, 2008 trial, since Gateway could not put on an adequate defense in this
6 action. Both state and federal environmental laws provide due process to responsible parties by
7 giving them the right to assert defenses to liability. The right to due process of law is
8 embedded in the California and United States Constitutions. The California State Constitution
9 provides that "[n]o person shall be deprived of life, liberty, or property, without due process of
10 law." (Cal. Const.) Similarly, the United States Constitution prohibits a state from "depriv[ing]
11 any person of life, liberty, or property, without due process of law." (U.S. Const. 14th
12 Amend.) In California, due process requires that parties whose rights are affected by a
13 governmental proceeding have a meaningful opportunity to be heard, and notice calculated to
14 advise the parties of the proceeding to allow them the opportunity to present defenses. If any
15 "significant property interest" is at stake, the safeguards afforded by due process are
16 applicable.

17 In this case, the issues relating to existence of sub-basins within the Antelope Valley
18 Groundwater Basin involves a complexity of legal and factual issues. Absent any discovery,
19 Gateway will not be able to rebut the Cross-Complainants claims and/or adequately contest the
20 issues raised by the Cross-Complainants. Failure to continue October 6, 2008 trial would not
21 only circumvent the procedural safeguards established by the statutory scheme, but also
22 constitute a violation of Gateway's substantive due process rights.

23
24 **4. THERE IS NO PREJUDICE TO CROSS-COMPLAINANTS IN**
25 **CONTINUING THE OCTOBER 6, 2008 TRIAL.**

26 Gateway was just became subject to the jurisdiction of this court in the instant action
27 and the Cross-Complainants have been litigating this action since year 1999 or 2000
28 (approximately 8 or 9 years). Cross-Complainants had the capability of serving Gateway at the

1 time it served other parties in this action. However, it appears that because no urgency exists,
2 Cross-Complainant voluntarily delayed the service of the Complaint on Gateway, until a few
3 weeks before the October 6th trial.

4 The issues relating to existence of sub-basins within the Antelope Valley Groundwater
5 Basin involves a complexity of legal and factual issues. Furthermore, due to the size and
6 complexity of this dispute, Gateway should not be forced to litigate this matter on a haphazard
7 basis, when at its no fault, was just recently served. In this circumstance, a rush to commence
8 trial will unduly prejudice Gateway from its constitutional rights.

9 Therefore, the Cross-Complainant will suffer no prejudice due to trial date continuance
10 and there is no urgency to conduct the October 6th trial.

11 **5. PREJUDICE TO GATEWAY IF NO CONTINUANCE.**

12 There are important factors at issue at the October 6th trial, which seeks to deal with
13 issues related to the existence of sub-basins within the Antelope Valley Groundwater Basin.

14 As the Court is aware, and pursuant to pleading on file since 1999 or 2000, other parties
15 to this action have had a prolonged and extended battle over the issues of this action for over 8
16 years. Gateway necessitates additional time to obtain essential documents, material evidence,
17 discovery responses and documents, in which Gateway's experts to prepare their opinion and
18 adequately prepare for trial. Gateway anticipates that it will take approximately 180 days for
19 Gateway's prospective experts to review, analyze and prepare opinions and reports. Put
20 simply, Gateway's experts will not be able to prepare valuation statements in time for the
21 October 6th, 2008 trial.


22 Without this continuance, Gateway would be denied the opportunity to place before the
23 court evidence of the issues related to the existence of sub-basins within the Antelope Valley
24 Groundwater Basin. If Gateway is not given the opportunity to present this Court with proper
25 rebuttal to the Cross-Complainant claim, Gateway will suffer substantial hardship and
26 irreparable injury and harm.

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6 Dated: September 26, 2008

By:  Fred Kia
doing business as Gateway
Triangle Properties
Defendant in *Pro Per*

Fred Kia
doing business as Gateway
Triangle Properties

~~Defendant in Pro Per~~

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2 **DECLARATION OF FRED KIA**

3 I, Fred Kia, declare as follows:

4 The following statements are within my own personal knowledge and, if called as a
5 witness, I could and would testify competently thereto.

6 1. On or about September 10, 2008, I personally contacted via email Mr. Jeffrey
7 Dunn, Attorney of record for the Cross-Complainants in this matter.

8 2. I explained in my email to Mr. Dunn that Gateway was just recently served with
9 the Complaint in this matter.

10 3. I further explained in my email to Mr. Dunn that I would like a reasonable
11 continuance of the October 6th, 2008 trial, in order to have time to properly analyze and assess
12 this matter, including conducting discovery.

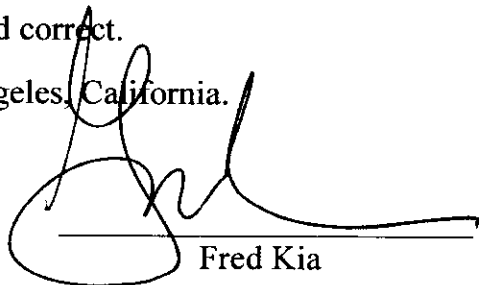
13 4. I then requested Mr. Dunn whether the Cross Complainants would voluntarily
14 agree to continue the trial currently scheduled for October 6, 2008, subject to court's
15 approval.

16 5. Subsequently, Mr. Dunn via email informed me that the Cross-Complainants
17 would not voluntarily agree to a continuance of the October 6th hearing.

18 6. Without the continuance of October 6th, 2008 trial, Gateway's due process rights
19 will be prejudiced in that it will not have sufficient time to properly prepare its defense, to
20 retain its own experts, conduct discovery, analyze Cross-Complainants conclusions, and
21 investigate the contentions of Cross-Complainants as Gateway deems necessary.

22 7. I declare under penalty of perjury under the laws of the State of California that to
23 the best of my knowledge the foregoing is true and correct.

24 Executed on September 26, 2008 at Los Angeles, California.

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27 Fred Kia
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES, CENTRAL DIVISION
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11 **ANTELOPE VALLEY GROUNDWATER**
12 **CASES:**

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21 County of Riverside, consolidated actions
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344668

Judicial Council Coordination
Proceeding No. 4408

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

Assigned to the Honorable Jack Komar

**[PROPOSED] ORDER RE CROSS-
DEFENDANT GATEWAY TRIANGLE
PROPERTIES EX PARTE
APPLICATION TO CONTINUE TRIAL**

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25 The Court, having reviewed and considered cross-defendant Fred Kia, doing business as
26 Gateway Triangle Properties ("Gateway") Ex parte Application to Continue October 6, 2008
27 trial, and good cause appearing therefore:

28 IT IS HEREBY ORDERED as follows:

- The Motion is granted;
- The trial for Phase 2 currently set for October 6, 2008, is continued to _____, 2008 at _____ in Department ____.

Dated: _____

Judge of the Superior Court of California

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PROOF OF SERVICE


STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I declare that:

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

On September 26, 2008, I served **NOTICE OF EX PARTE APPLICATION FOR CONTINUANCE OF TRIAL DATE** by posting the document(s) listed above to the Santa Clara Superior website (<http://www.scefiling.org>) under the Antelope Valley Groundwater matter.

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



JOSEPHINE VILLAMENA