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8 Attorneys for Defendants

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**
11

12 CITIZENS FOR FREE SPEECH, LLC,
13 and MICHAEL SHAW,

14 Plaintiffs,

15 v.

16 COUNTY OF ALAMEDA; ALAMEDA
17 COUNTY EAST COUNTY BOARD OF
18 ZONING ADJUSTMENTS; FRANK J.
19 IMHOFF, SCOTT BEYER, and
20 MATTHEW B. FORD, in their official
21 capacity as members of the Alameda
County East County Board of Zoning
Adjustments,

22 Defendants.
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Case No. 4:18-cv-00834-SBA

**Declaration of Matthew D. Zinn in
Support of Defendants' Opposition
to Motion for Preliminary
Injunction**

Date: April 11, 2018
Time: 1:00 p.m.

The Hon. Sandra Brown Armstrong

1 I, Matthew D. Zinn, declare as follows:

2 1. I am an attorney licensed to practice in the State of California and a partner
3 at Shute, Mihaly & Weinberger LLP, attorneys for Defendants in this action. I have
4 personal knowledge of the facts set forth herein, except as to those stated on information
5 and belief, and as to those, I am informed and believe them to be true. If called as a
6 witness, I could and would competently testify to the matters stated herein.

7 2. On October 25, 2017, I sent an email to Joshua Furman, who was at the time
8 counsel for Plaintiffs in this action. I indicated that the County of Alameda was preparing
9 a notice of a hearing in the County's code enforcement action before the Board of Zoning
10 Adjustments ("BZA"). I also wrote that the County would take no action to remove
11 Plaintiffs' signs until the completion of the County's administrative code enforcement
12 process, which provides for a hearing by the BZA and a right of appeal to the Board of
13 Supervisors. A true and correct copy of that email is attached as Exhibit 1.

14 3. The County set the initial hearing before the BZA for December 14, 2017, and
15 I provided a courtesy notice of the hearing to Mr. Furman in an email on October 31, 2017,
16 which he acknowledged. A true and correct copy of those emails is attached as Exhibit 2.
17 That date was later changed to December 7 due to unavailability of one of the BZA
18 members, and I informed Mr. Furman of the change on November 21. A true and correct
19 copy of that email is attached as Exhibit 3.

20 4. On November 27, 2017, Plaintiffs' current counsel, Timothy Kassouni,
21 informed the County that he would be representing Plaintiffs and that he was unavailable
22 on December 7. A true and correct copy of an email thread containing Mr. Kassouni's
23 email is attached as Exhibit 4.

24 5. On December 28, 2017, Mr. Kassouni indicated he would be available for a
25 hearing on February 8, 2018. A true and correct copy of Mr. Kassouni's email is included
26 in Exhibit 4.

1 6. Accordingly, on January 4, 2018, the County sent a formal letter notifying
2 Plaintiffs of the BZA hearing set for February 8, 2018. A true and correct copy of that
3 letter is attached as Exhibit 5.

4 7. On January 26, 2018, I received a voicemail from Mr. Kassouni indicating
5 that he now had a conflict for the February 8 hearing date. The County then agreed to
6 continue the hearing date to February 15, when Mr. Kassouni indicated he was available.
7 A true and correct copy of Mr. Kassouni's email is attached as Exhibit 6.

8 8. On February 8, 2018, I received an email from Mr. Kassouni indicating that
9 Plaintiffs had filed the instant action against the County and would seek to enjoin the
10 County's administrative enforcement proceeding. I responded with a reminder that the
11 County had committed not to take action to remove Plaintiffs' signs until conclusion of the
12 County's administrative proceeding. A true and correct copy of the email thread with Mr.
13 Kassouni's email and my response is attached as Exhibit 7.

14 9. To avoid the need to litigate an expedited motion for a TRO, the County
15 agreed to suspend the BZA hearing until after this Court ruled on Plaintiffs' motion for
16 preliminary injunction. A true and correct copy of a February 9 email from Mr. Kassouni
17 memorializing that agreement is included in Exhibit 7.

18 10. On February 14, 2018, I sent an email to Mr. Kassouni memorializing a
19 telephone conversation with him in which I again reiterated that the County would take
20 no action to remove Plaintiffs' signs until the completion of the County's administrative
21 proceeding and further would take no such action until the time provided in the County
22 Code for Plaintiffs to challenge the outcome of that proceeding in court had elapsed. A true
23 and correct copy of that email is attached as Exhibit 8.

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1 I declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct.

3 Executed March 20, 2018, at San Francisco, California.
4

5 /s/ _____
6 Matthew D. Zinn
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EXHIBIT 1

From: Matthew D. Zinn <zinn@smwlaw.com>
Sent: Wednesday, October 25, 2017 9:49 AM
To: Joshua R. Furman
Subject: Lockaway

Josh-

Quick update. The County is currently preparing notice of a hearing before the Board of Zoning Adjustments. The County will not take action to abate the signs until after completion of the BZA hearing and any appeal to the Board of Supervisors.

On another topic, I saw that the County also received a letter from another attorney, Kassouni, about this matter. Are you both representing the landowner here? I want to be sure we have clear lines of communication.

Thanks
Matt

Matthew D. Zinn
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes St.
San Francisco, CA 94102
415.552.7272
415.552.5816 (fax)
www.smwlaw.com<<http://www.smwlaw.com>>

EXHIBIT 2

From: Joshua R. Furman <jrf@furmanlawyers.com>
Sent: Tuesday, October 31, 2017 10:18 AM
To: Matthew D. Zinn
Subject: Re: Alameda BZA hearing

Thanks.

From: Matthew Zinn <zinn@smwlaw.com>
Date: Tuesday, October 31, 2017 at 10:01 AM
To: "Joshua R. Furman" <jrf@furmanlawyers.com>
Subject: Alameda BZA hearing

Josh—

FYI, the County is scheduling the BZA code enforcement hearing for December 14. I believe the hearings are held in the Pleasanton City Council chambers.

This is just a courtesy notice; a formal notice will go out later.

Matt

Matthew D. Zinn
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes St.
San Francisco, CA 94102
415.552.7272
415.552.5816 (fax)
www.smwlaw.com

EXHIBIT 3

From: Matthew D. Zinn <zinn@smwlaw.com>
Sent: Tuesday, November 21, 2017 9:20 AM
To: jrf@furmanlawyers.com
Subject: Lockaway

Josh—

The County has had to change the hearing date from Dec 14 to Dec 7 due to unavailability of one of the board members on Dec 14. I understand they will be getting out a formal notice today or tomorrow.

Happy Thanksgiving.

Matt

Matthew D. Zinn
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, CA 94102-4421
v: 415/552-7272 x253
f: 415/552-5816
www.smwlaw.com



Please consider the environment before printing this e-mail or attachments.

EXHIBIT 4

From: Timothy Kassouni <timothy@kassounilaw.com>
Sent: Thursday, December 28, 2017 4:42 PM
To: zinn@smwlaw.com
Subject: RE: Michael Shaw BZA hearing; 8555 Dublin Canyon Road

Yes Matt, please forward formal notice. Thanks,

Tim Kassouni

Timothy V. Kassouni
Kassouni Law
621 Capitol Mall, Suite 2025
Sacramento, CA 95814
(916) 930-0030

On 12/21/2017 9:25 am, Matthew D. Zinn wrote:

Tim, are you available for a hearing on Feb. 8 at 1:30 pm?

Thanks

Matt

From: timothy@kassounilaw.com [<mailto:timothy@kassounilaw.com>]
Sent: Wednesday, December 06, 2017 2:25 PM
To: Matthew D. Zinn
Subject: Re: Michael Shaw BZA hearing; 8555 Dublin Canyon Road

Thanks for the update

Timothy Kassouni

Kassouni Law

621 Capitol Mall, Suite 2025

Sacramento, CA. 95814

(916) 930-0030

On Dec 6, 2017, at 2:11 PM, Matthew D. Zinn <zinn@smwlaw.com> wrote:

As of yesterday they were still trying to work out a date for which they will have a quorum of BZA members. I conveyed your unavailability on Jan. 11.

I'll let you know as soon as I hear back.

Matt

Matthew D. Zinn

SHUTE, MIHALY & WEINBERGER LLP

396 Hayes St.

San Francisco, CA 94102

415.552.7272

415.552.5816 (fax)

www.smwlaw.com

From: Timothy Kassouni [<mailto:timothy@kassounilaw.com>]

Sent: Wednesday, December 06, 2017 1:56 PM

To: Matthew D. Zinn

Subject: RE: Michael Shaw BZA hearing; 8555 Dublin Canyon Road

Matthew,

Checking in regarding the hearing date, thanks,

Tim Kassouni

Timothy V. Kassouni
Kassouni Law
621 Capitol Mall, Suite 2025
Sacramento, CA 95814
(916) 930-0030

On 11/29/2017 12:17 pm, Matthew D. Zinn wrote:

I'm checking with the County and will get back to you.

Matthew D. Zinn

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396 Hayes St.

San Francisco, CA 94102

415.552.7272

415.552.5816 (fax)

www.smwlaw.com

From: timothy@kassounilaw.com [<mailto:timothy@kassounilaw.com>]

Sent: Wednesday, November 29, 2017 8:40 AM

To: Matthew D. Zinn

Subject: Re: Michael Shaw BZA hearing; 8555 Dublin Canyon Road

Thanks Matt I checked with my clients and that date poses a calendar conflict. The first available in February is best if 1-25 does not work for County. I do have a week trial starting 2-26. I look forward to hearing from you

Timothy Kassouni

Kassouni Law

621 Capitol Mall, Suite 2025

Sacramento, CA. 95814

(916) 930-0030

On Nov 28, 2017, at 3:15 PM, Matthew D. Zinn <zinn@smwlaw.com> wrote:

Mr. Kassouni:

We represent Alameda County in this matter. I've been communicating with Josh Furman previously, but understand from Josh that you are representing Mr. Shaw at least with respect to the BZA hearing. County staff also forwarded me your email below.

It turns out that January 25 will not work for the County. Are you available for a hearing on January 11? The County has not confirmed that a quorum of the BZA will be available on that date, but I thought I would confirm your availability while they are investigating that.

Best,

Matt Zinn

Matthew D. Zinn

SHUTE, MIHALY & WEINBERGER LLP

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415.552.5816 (fax)

www.smwlaw.com

-----Original Message-----

From: Timothy Kassouni [<mailto:timothy@kassounilaw.com>]

Sent: Monday, November 27, 2017 03:28 PM

To: Orduna, Rodrigo, CDA <rodrigo.orduna@acgov.org>

Subject: Michael Shaw BZA hearing; 8555 Dublin Canyon Road

Dear Mr. Orduna,

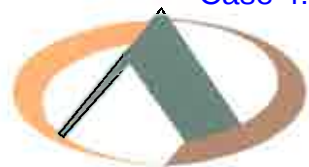
I represent Mr. Shaw. As we just discussed, this will confirm that the hearing in this matter before the East County Board of Zoning Adjustments will be continued from December 7, 2017 to the new date of January 25, 2018. I have a direct calendar conflict on December 7 and appreciate the continuance, consistent with County Code section 17.59.060. I look forward to being copied on formal notice of the continuance. Thank you for your attention.

Tim Kassouni

--

Timothy V. Kassouni
Kassouni Law
621 Capitol Mall, Suite 2025
Sacramento, CA 95814
(916) 930-0030

EXHIBIT 5



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Winton Ave.
Room 111

Hayward
California
94544

phone
510.670.5400
fax
510.785.8793

www.acgov.org/cda

NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE

January 4, 2018

Michael C. Shaw
32 Seascape Village
Aptos, CA 95003

Property: 8555 Dublin Canyon Rd., Castro Valley CA 94552

APN: 085A-0800-008-01

Violation: 1) Four unauthorized signs, including support structures, in violation of Alameda County Zoning Ordinance Sections 17.18.120 and Ordinance No. O-89-3 and 2) One unauthorized digital billboard, including support structure, in violation of Alameda County Zoning Ordinance Sections 17.18.120, 17.52.515 and Ordinance No. O-89-3.

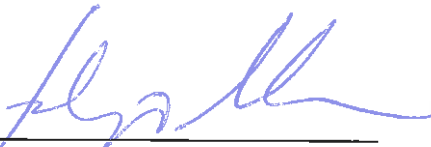
This is a notice of public hearing before the Alameda County East County Board of Zoning Adjustments to ascertain whether the property, situated in the County of Alameda, state of California, known and designated as 8555 Dublin Canyon Rd. in said county and more particularly described as APN 085A-0800-008-01, is in violation of the Alameda County Zoning Ordinance and a public nuisance, subject to abatement by rehabilitation, repair, removal or demolition of certain signs and structures located there. The alleged violations are described above. The recommended method of abatement is the demolition and removal of the five signs identified above and shown in the attached photographs, including support structures.

If said property, in whole or part, is found to constitute a "Public Nuisance," as defined in the Alameda County Zoning Ordinance, and if the same is not promptly abated by the owner, such nuisance may be abated by the County of Alameda. The cost of such rehabilitation, repair, removal and/or demolition will be assessed upon such property and all costs related to County contractor actions, Code Enforcement staff time, hearing costs, administrative fees and penalties will be charged to the property owner(s) for violation(s) of the provisions of the County ordinances and will constitute a lien upon the property until paid. In addition, you the owner(s) may be cited for violation of the provisions of County ordinances and subject to a fine.

Notice of Administrative Hearing
January 4, 2018
Page 2

All persons having an interest in said matters may attend the hearing. Their testimony and evidence will be heard and given due consideration prior to the East County Board of Zoning Adjustments' decision.

Time & Date of Hearing: February 8, 2018 at 1:30 PM
Location of Hearing: City of Pleasanton, City Council Chambers
200 Old Bernal Avenue
Pleasanton, CA 94566



Rodrigo Orduña
Code Enforcement Division

cc: Joshua R. Furman, Esq., Joshua R Furman Law, 14724 Ventura Blvd Suite 509, Sherman Oaks, CA 91403
Timothy Kassouni, Kassouni Law, 621 Capitol Mall, Suite 2025, Sacramento, CA 95814
Lockaway Storage, 8555 Dublin Canyon Rd., Castro Valley CA 94552

Enclosures: 10 photographs of signs





EXHIBIT 6

From: Timothy Kassouni <timothy@kassounilaw.com>
Sent: Tuesday, January 30, 2018 2:51 PM
To: zinn@smwlaw.com
Subject: Re: Hearing date

Yes, thank you Matt.

Timothy V. Kassouni
Kassouni Law
621 Capitol Mall, Suite 2025
Sacramento, CA 95814
(916) 930-0030

On 01/30/2018 9:51 am, Matthew D. Zinn wrote:

Tim—

Could you do February 15?

Matt

Matthew D. Zinn

SHUTE, MIHALY & WEINBERGER LLP

396 Hayes St.

San Francisco, CA 94102

415.552.7272

415.552.5816 (fax)

www.smwlaw.com

EXHIBIT 7

From: Timothy Kassouni <timothy@kassounilaw.com>
Sent: Friday, February 09, 2018 12:35 PM
To: zinn@smwlaw.com
Subject: Re: Citizens for Free Speech v. Alameda County; meet and confer

Matt,

I will be sending a formal letter, but wanted to quickly recap our call this morning. You agreed to postpone the BZA hearing, currently scheduled for 2-15-18, pending a Federal Court ruling on a motion for preliminary injunction. You also indicated that you will be able to accept electronic service on behalf of the defendants. In the meantime we will work out a mutually agreeable date for the hearing on the preliminary injunction motion, that date being as soon as possible.

I understand you are traveling today, but a quick responding e-mail confirmation when time permits today would be appreciated.

Thanks for your prompt response,

Tim

Timothy V. Kassouni
Kassouni Law
621 Capitol Mall, Suite 2025
Sacramento, CA 95814
(916) 930-0030

On 02/08/2018 6:59 pm, Matthew D. Zinn wrote:

> Tim, I'm in LA for a Ninth Circuit argument tomorrow morning. I'll try
> to connect with the County after that.

>
> Josh Furman and I discussed this. I committed to him that the county
> would not take any steps to remove the signs until the completion of
> the BZA process and any appeal. I assume he communicated that to you.

>
> Would you please email me a copy of the complaint?

>
> Thanks
> Matt

>
> Sent from my iPhone

>
>> On Feb 8, 2018, at 5:08 PM, Timothy Kassouni
>> <timothy@kassounilaw.com>
>> wrote:

>>
>> Matt,

>>
>> I tried calling but you were in a meeting. Citizens for Free Speech
>> and Michael Shaw have initiated a new action against the County, the

>> BZA, and the BZA members (in their official capacities) for
>> injunctive relief to preclude any County administrative hearing
>> procedure, including a BZA hearing, to enforce its determination of a
>> code violation relative to the signs. (Northern District Case No. 18-834).
>> We would like to stipulate with you to simply postpone any such
>> hearing, including a BZA hearing, until we can have a hearing on a
>> motion for preliminary injunction in the action. This would obviate
>> the need for a TRO, especially in light of the likely Court request
>> that we work out such a stipulation in any event. Please give me a
>> call as soon as you get a chance. If I am not in the office please
>> try my cell at 916-607-8493. I would appreciate hearing from you as
>> soon as possible. Thanks,
>>
>> Tim
>>
>> --
>> Timothy V. Kassouni
>> Kassouni Law
>> 621 Capitol Mall, Suite 2025
>> Sacramento, CA 95814
>> (916) 930-0030
>>

EXHIBIT 8

From: Matthew D. Zinn <zinn@smwlaw.com>
Sent: Wednesday, February 14, 2018 2:00 PM
To: Timothy Kassouni
Subject: RE: Meet and Confer; Citizens for Free Speech v. County of Alameda

Tim--

I'm free and prepared to meet and confer on your draft motion. Are you free to talk at 3:00?

As you know, the County has already committed that it will take no action to remove the signs until the BZA has rendered a decision and any administrative appeals from that decision are exhausted. The County also will take no action to remove the signs until the time for filing a writ proceeding challenging the County's determination has lapsed under the ordinance. My understanding is that this is the County's standing practice, but the County is nevertheless committing to adhere to that practice in this case.

Thanks,
Matt

Matthew D. Zinn
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes St.
San Francisco, CA 94102
415.552.7272
415.552.5816 (fax)
www.smwlaw.com

-----Original Message-----

From: Timothy Kassouni [<mailto:timothy@kassounilaw.com>]
Sent: Tuesday, February 13, 2018 11:02 AM
To: Matthew D. Zinn
Subject: Meet and Confer; Citizens for Free Speech v. County of Alameda

Matt,

Per Judge Armstrong's standing order, I am initiating a meet and confer regarding our motion for preliminary injunction. Attached is a draft which sets forth our arguments. I look forward to discussing with you.
Thanks for your attention.

Tim Kassouni

--

Timothy V. Kassouni
Kassouni Law
621 Capitol Mall, Suite 2025
Sacramento, CA 95814
(916) 930-0030