

NO. 2019-33415

ABEL AND NANCY VERA, et al, <i>Plaintiffs,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
FIGURE FOUR PARTNERS, LTD., PSWA, INC., and LJA	§	
<i>Defendants</i>	§	234 <sup>TH</sup> JUDICIAL DISTRICT

**DEFENDANT LJA’S RESPONSE IN OPPOSITION TO  
PLAINTIFFS’ MOTION TO COMPEL EXECUTION OF THE  
[PROPOSED] MASTER SETTLEMENT AGREEMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, LJA Engineering, Inc. (“LJA”), a Defendant in the above-entitled and numbered cause, and files this its Response in Opposition to Plaintiffs’ Motion to Compel [Defendants’] Execution of the [Proposed] Master Settlement Agreement, and would respectfully show the Court the following:

**I.  
THE PARTIES ARE DILIGENTLY WORKING TOWARDS AN AGREED UPON  
GLOBAL SETTLEMENT**

Although, to LJA’s knowledge, there is no formal/written mediation settlement agreement, the parties through the mediation process (including continuing discussions for several weeks in order to achieve a global resolution) do have a settlement in principle subject to agreeing to the terms of a Master Settlement Agreement. Further, the parties have been working diligently towards reaching agreement on the terms of the Master Settlement Agreement realizing that there are seven (7) parties (some of whom have more than one counsel), at least one if not two or more insurers for each of the defendants, and general counsel for some of the defendants, all of whom have to review and approve the terms of any settlement agreement. Further, the negotiations have been ongoing during the July and August time frame while lawyers, general counsel, and insurance contacts have been on vacation. Throughout this time,

counsel for Perry Homes, Figure Four and PSWA has taken the lead in the negotiations and provided updated versions to all other parties, received the input back from those parties and has done a remarkable job in moving the process forward. There are many persons who have to review and approve the language. However, it appears to counsel for LJA that the terms of the agreement are largely agreed upon with less than a handful of provisions that are still being negotiated.

LJA has been an active participant in the interim, good faith negotiations related to the form and content of the proposed Master Settlement Agreement as such negotiations progressed. Some of LJA's requested revisions to the content of the Master Settlement Agreement have been incorporated into the latest draft of the Agreement, but other necessary modifications are still being discussed. LJA has not yet accepted or approved a final form of the Master Settlement Agreement, including but not limited to the version unilaterally signed by Plaintiffs' counsel, Jason Webster on August 26, 2021 and first distributed to counsel for the Defendants on that date. This latest version had several changes of material terms from the prior version and are still being reviewed by the parties, their representative, their insurers and their general counsel. LJA is continuing to engage in good faith negotiations over the terms and conditions of the Master Settlement Agreement. However, LJA cannot be compelled to execute a Master Settlement Agreement which contains certain material terms and conditions to which LJA did not agree, hasn't had time to consider or which omits certain material terms and conditions deemed essential by LJA.

## **II. ARGUMENT AND AUTHORITIES**

To be enforceable, a settlement agreement must be in writing, signed, and filed with the papers as part of the record, or it must be made in open court and entered of record. *See*, TEX. R. CIV. P. 11; *Padilla v. LaFrance*, 907 S.W.2d 454, 460 (Tex. 1995). The agreement must contain

all essential terms of the settlement, including but not limited to the amount of compensation and the liability to be released. *Disney v. Gollan*, 233 S.W.3d 591, 595 (Tex. App. – Dallas 2007, no pet.); *Padilla v. LaFrance*, at 460. Currently, there is no enforceable settlement agreement. The mediation agreement was conditioned on the parties agreeing to the terms of Master Settlement Agreement.

Plaintiffs' request that the Court compel LJA to sign a Master Settlement Agreement with material terms and conditions which have not yet been agreed to by the parties is premature and seeks to have this court cut off the negotiations at a point where the parties are still in discussions over the final terms. LJA remains ready and willing to sign a Master Settlement Agreement containing the material terms and conditions essential to approval of such Agreement by and on behalf of LJA, and to continue good faith negotiations to arrive at a form of Master Settlement Agreement that is acceptable to all parties.

### **III. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant, LJA Engineering, Inc., prays that the Court deny Plaintiffs' Motion to Compel Execution of the [proposed] Master Settlement Agreement with respect to settlement of the Plaintiffs' claims. Defendant also prays for such other and further relief, whether general or special, legal or equitable, to which this Defendant may show itself to be justly entitled.

Respectfully submitted,

**LORANCE THOMPSON**



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of August, 2021, a true and correct copy of the foregoing instrument was served electronically, in person, by mail, by commercial delivery service, by fax, or by email, to the following counsel of record:

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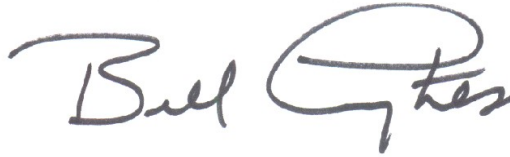
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A handwritten signature in black ink, appearing to read "Bill Luyties". The signature is written in a cursive, flowing style.

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William K. Luyties

### Automated Certificate of eService

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