STEPHEN M. FLYNN (SBN 245823)
Law Offices of Stephen M. Flynn
71 Stevenson Street, Suite 400
San Francisco, CA 94105
Phone: (415) 655-6631
Fax: (415) 655-6601
smflynn@smflynn-law.com
www.smflynn-law.com

Attorney for Plaintiff GREEN VALLEY LANDOWNERS ASSOCIATION

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SOLANO

GREEN VALLEY LANDOWNERS ASSOCIATION, a California mutual benefit corporation, on behalf of its members and others similarly situated,

Plaintiff,

vs.

THE CITY OF VALLEJO, and DOES 1 through 1000, inclusive,

Defendants.

Case No. _____

CLASS ACTION (Plaintiff Class) (CCP §382)

COMPLAINT FOR:

1. **BREACH OF IMPLIED CONTRACT;**
2. **BREACH IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
3. **BREACH OF CONTRACT (THIRD PARTY BENEFICIARY);**
4. **BREACH OF DUTY TO CHARGE REASONABLE WATER RATES;**
5. **BREACH OF FIDUCIARY DUTY**
6. **INJUNCTIVE RELIEF(AGAINST SALE);**
7. **INJUNCTIVE RELIEF(AGAINST SALE WITHOUT LAND);**
8. **INJUNCTIVE RELIEF (SURCHARGE FEE);**
9. **INJUNCTIVE RELIEF(FUTURE RATES);**
10. **SPECIFIC PERFORMANCE;**
11. **DECLARATORY RELIEF;**
12. **ACCOUNTING.**

DEMAND FOR JURY TRIAL

Plaintiff GREEN VALLEY LANDOWNERS' ASSOCIATION ("Plaintiff"), on behalf of its members and all others similarly situated, complains and alleges the following against THE CITY OF VALLEJO ("Defendant") and DOES 1-1000:

NATURE OF THE CASE

1. This action involves the right of approximately 809 families, schools, churches, businesses and property owners who reside outside Defendant's city limits to receive affordable water.

2. In the late 1800's and early 1900's, Defendant created a large municipal water system for the benefit of its own residents called the Lakes Water System ("**LWS**").

3. Over the years, Defendant contractually agreed to allow approximately 809 non-resident families and property owners in rural Solano and Napa Counties to connect to the LWS and receive potable water.

4. For almost 100 years, the use and cost of operating the LWS was shared between Defendant's residents and the non-resident customers of the LWS. Plaintiff is informed and believes that from its inception until 1992, Defendant's city residents paid at least 98% of the cost of operating the LWS.

5. In 1992, Defendant unexpectedly and unilaterally breached its contractual and legal obligations to the non-resident customers of the LWS by passing an ordinance which required the approximately 809 non-resident families and property owners within the LWS to pay 100% of the cost of operating the LWS. Water rates for the non-resident customers skyrocketed as a result.

6. In 2009, Defendant passed another ordinance which further dramatically raised rates on the 809 non-resident families and property owners within the LWS. The 2009 ordinance, like the 1992 ordinance, forces the 809 non-resident families and property owners to pay 100% of the cost of the LWS. This breach continues to this date and is the subject of a tolling agreement entered into between Plaintiff and Defendant.

7. In essence, after constructing a large-scale waterworks project for its own municipal benefit, Defendant unilaterally divested itself from the LWS and left a handful of disenfranchised non-residents to pay for the cost of operating the entire municipal waterworks system.

8. To compound this harm, for the first 100 years of its existence, Defendant failed to maintain and replace the infrastructure within the LWS. As a result, not only were the 809 non-residents forced to pay for the entire cost of operating a municipal water system, but the municipal water system forced upon them was terribly outdated and in need of immediate repair and replacement.

9. Currently, the majority of the infrastructure within the LWS is thirty to fifty years or more beyond its useful life and in need of immediate replacement at an approximate cost of $24,000,000. Within the next decade, additional infrastructure will need to be replaced at an approximate cost of $6,000,000. Defendant intends to pass these deferred capital costs, plus the ordinary costs of operating the LWS, onto just 809 non-resident connections.

10. Because just 809 connections are paying to operate and maintain a municipal-sized water system, current rates for the LWS customers are among the very highest in the State. However, to make matters even worse, after neglecting to maintain or improve the LWS and after unilaterally divesting itself of any obligation to pay for the cost of the LWS, Defendant now intends on selling the LWS to a private, investor-owned utility. If such a sale were to occur, rates within the LWS (already among the highest in the state) could increase by approximately 300% over the next decade alone.

11. Plaintiff, on behalf of its members and all others similarly situated, seeks to enjoin Defendant's illegal rate structure, to force Defendant to once again share in the cost of operating the LWS, and to recover damages incurred as a result of Defendant's actions.

JURISDICTION AND VENUE

12. The Court has personal jurisdiction over Defendant because Defendant is physically present and situated in Solano County, State of California.

13. Venue is proper in this Court in accordance with California Code of Civil Procedure §394(a) because Solano County is the county in which Defendant is situated.

PARTIES

14. Plaintiff GREEN VALLEY LANDOWNERS ASSOCIATION is now, and at all times mentioned in this Complaint was a California mutual benefit corporation with its principal offices in Solano County, California.

15. Defendant CITY OF VALLEJO is an incorporated California municipality.

16. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 1000, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

17. Plaintiff is informed and believes and thereon alleges that, at all times herein mentioned, each of the defendants sued herein was the agent and/or employee of each of the remaining defendants and was at all times acting within the purpose and scope of such agency and/or employment

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action on behalf of its members and all others similarly situated as a class action pursuant to California Code of Civil Procedure §382. The class that Plaintiff seeks to represent is composed of and defined as follows:

> **All persons and entities who paid for, are paying, or will pay for water service (as defined in Vallejo Municipal Code §11.04.140) from Vallejo within Vallejo's "Lakes service area" (as defined in Vallejo Municipal Code §11.48.010(B)) since July 1, 2009 (the "Class")**.

19. This action has been brought and may properly be maintained as a class action against Defendant pursuant to California Code of Civil Procedure §382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

20. *Numerosity*. Plaintiff does not know the exact size of the Class, but is informed and believes, and on that basis alleges that there are approximately 809 metered connections within the LWS. All of these metered connections are outside Defendant's city limits in unincorporated Solano and Napa Counties. Plaintiff believes that the Class is so numerous that joinder of all Class members is impracticable.

21. *Common Questions Predominate*. This action involves common questions of law and fact to the potential Class and each Class member's claim derives from Defendant's actions as described herein. The common questions of law and fact involved predominate over questions that only affect individual Class members. Thus, proof of a common or single set of facts will establish the right of each member of the Class to recover. Among the questions of law and fact common to the Class are:

a. Whether Defendant breached an implied contractual agreement with the each Class member (or their predecessors in interest) to pay for the cost of the LWS;

b. Whether Defendant breached its fiduciary duties of care and loyalty to each Class member by refusing to pay for any of the LWS and by failing to care for and maintain the infrastructure within the LWS;

c. Whether a rate structure which excludes Defendant from any obligation to pay for the cost of the LWS is unlawful and unreasonable;

d. Whether and to what extent injunctive relief should be imposed on Defendants to prevent a further breach of Defendant's contractual, fiduciary and legal obligations to pay its share of the LWS;

e. Whether and to what extent injunctive relief should be imposed on Defendants to prevent Defendant from selling the LWS to a private, investor owned utility;

f. Whether and to what extent injunctive relief should be imposed on Defendants to prevent Defendant from selling the pipes, pumps, storage tanks and water treatment plant within the LWS separately from the three reservoirs, the related watershed and non-watershed real property associated with the LWS, and water rights associated with the LWS;

g. Whether and to what extent Defendant has received money from the Surcharge and Connection Fees (as defined below) which are due and owing to the Class for the benefit of capital improvements within the LWS;

h. Whether the Class is the intended third party beneficiary of written agreements in which Defendant agreed to provide certain quantities of free water to certain customers within the LWS, and whether Defendant breached those written agreements by passing the cost of providing free water onto the Class.

22. *Typicality*. The claims of Plaintiff's members are typical of the Class. Plaintiff's members reside in Green Valley in unincorporated Solano County. Plaintiff is informed and believes and on that basis alleges that the vast majority of the non-resident customers of the LWS reside in Green Valley. Plaintiff's members sustained the same injuries and damages arising out of Defendant's conduct as did the rest of the Class which likewise receives its water from Defendant's LWS. The injuries and damages of each Class member were caused directly by Defendant's wrongful conduct as alleged herein.

23. *Adequacy*. Plaintiff will fairly and adequately protect the interest of all Class members because Plaintiff is a mutual benefit corporation formed for the purposes of protecting the interests of its members and non-members in rural Solano and Napa Counties who also receive water from the

LWS. Plaintiff has formed a series of "water committees" which, for over two decades, have protected the interests of all Class members. Money has been contributed to Plaintiff from its own members and from non-members who are a part of the Class, such as those Class members who reside in Gordon Valley and elsewhere. Volunteers from the Class, consisting of members and non-members of Plaintiff, have served on Plaintiff's water committees. In 2009, Plaintiff, on behalf of all Class members, entered into a tolling agreement with Defendant. This tolling agreement has been extended and signed by mutual agreement ten times between 2009 and 2013. Since 2009, Plaintiff's water committee has worked with and negotiated with Defendant to find a solution to the problem at hand. Plaintiff and its counsel have the necessary financial resources to adequately and vigorously litigate this class action. No conflict of interest exists between Plaintiff and the Class members because all questions of law and fact regarding liability are common to the Class members and predominate over the individual issues which may exist, such that by proving the claim of its own members, Plaintiff necessarily will establish Defendant's liability to all Class members. Plaintiff and counsel are aware of their fiduciary responsibilities to the Class members and are determined to diligently discharge those duties seeing the maximum possible recovery for the Class members.

GENERAL ALLEGATIONS

A History of the Lakes Water System – 1893-1992

24. The LWS is a large municipal water system created by Defendant in the late 1800's and early 1900's to provide potable water for municipal purposes within the City of Vallejo. The LWS was one of the very first municipal water works projects within the State of California.

25. The LWS consists primarily of three reservoirs and large, municipal-sized transmission pipes designed to convey water from the reservoirs over 20 miles to the City of Vallejo.

26. Two reservoirs, Lakes Frey and Madigan, are located in the hills above Solano County's Green Valley area. Lake Frey was completed in 1894. Lake Madigan was completed in 1908. These reservoirs hold a combined 2,819 acre-feet of water and are situated above a diversion dam constructed by Defendant in 1893.

27. In addition to Lakes Frey and Madigan, Defendant owns approximately 1,171 acres of non-watershed land and 1,400 acres of watershed land in the vicinity of Lakes Frey and Madigan in Solano County.

28. For decades, water from Lakes Frey and Madigan was transmitted to the City of Vallejo via a 14-inch transmission pipeline which brought water to Defendant's residents via Jameson Canyon (the "**Green Line**").

29. Shortly after their creation, Lakes Frey and Madigan were insufficient to meet the water needs of Defendant's growing municipal population. The increasing demand prompted Defendant to apply for a permit to store 37,000 acre-feet of water in the hills above Gordon Valley in Napa County. The permit was subsequently amended to limit storage to 10,000 acre-feet.

30. In pursuance of its permit, Defendant constructed a dam and reservoir in Napa County known as Lake Curry. Lake Curry was completed in December 1925. Lake Curry is fed by a 19-square mile watershed in Napa County owned by Defendant.

31. Until 1992, water from Lake Curry was transmitted to the City of Vallejo via a 24-inch gravity-fed transmission line (the "**Gordon Line**").

32. In order to transport the water from Lakes Frey, Madigan and Curry to the City of Vallejo, Defendant needed to acquire easements from the property owners along the Green Line, the Gordon Line and elsewhere within the LWS service area.

33. In exchange for granting the easements, Defendant contractually agreed in writing to provide a certain quantity of "free water" to the owners of the servient estates. In other instances, Defendant condemned by eminent domain the property needed for the easements, a power available to Defendant because it was putting the property to a public use for its own residents.

34. In addition to the easements, Vallejo also contractually agreed in writing to provide certain quantities of "free water" to certain non-residents in exchange for riparian water rights.

35. Plaintiff is informed and believes and on that basis alleges that Defendant contractually obligated itself in writing to provide some quantity of free water to approximately 60 non-resident customers and that these 60 customers were the first, or among the first, non-resident consumers of Defendant's LWS.

36. Over the decades, Defendant contractually agreed to provide potable water to additional non-resident customers within the LWS. The non-resident consumers were geographically located on or near the Gordon Line and Green Line. The decision to provide potable water to the non-resident customers within the LWS was incidental and auxiliary to the main purpose of providing water to Defendant's own resident municipal population. These service extensions to non-residents were done without the benefit of a master plan for the LWS and, on information and belief, were granted as a means for Defendant to raise additional revenue.

37. Plaintiff is informed and believes and on that basis alleges that but for Defendant's agreement to allow the non-resident customers to connect to the LWS, most, if not all, of the areas outside of the City of Vallejo currently served with LWS water, would never have been developed due to, amongst other things, the lack of reliable and/or adequate ground water sources and/or the lack of other sources of surface water from surrounding municipalities or otherwise. The non-residents who developed their properties did so in reliance upon the promise of adequate, reasonable priced water from Defendant's LWS.

38. In 1958, Defendant passed an ordinance (No. 324 N.C.) which required all new non-resident LWS customers to agree to annex to Defendant "upon demand."

39. From 1893 through the 1950's, the municipal water needs of Defendant were met exclusively by the LWS. In the 1950's Vallejo obtained water rights from the Sacramento River Delta (Cache Slough) and contracted for water from the Solano Project (Lake Berryessa). Vallejo never applied these water rights for the benefit of the non-resident customers within the LWS.

40. New drinking water treatment regulations were adopted by the California Department of Health Services in 1991.

41. In 1992, water quality from Lake Curry had deteriorated and the Lake Curry treatment plant could no longer provide treated water which met the new California Department of Health Services requirements.

42. Instead of fixing the water quality problem, or improving the water treatment facilities, Defendant voluntarily and unilaterally elected to shut down the Lake Curry water treatment plant and to

discontinue all municipal use of Lake Curry water. As a result of Defendant's decision, for the first time in approximately 99 years, Defendant no longer received any water from the LWS.

43. Although Defendant voluntarily stopped using LWS water within its municipal boundaries in 1992, Defendant represented to the Federal Government in 2003 that Lake Curry was "critical to the City in meeting its existing and future [water] demands." In 2008, Defendant represented to the State Water Resource Control Board that it "continues to attempt to be able to use Lake Curry water for municipal use" within the City of Vallejo.

Beginning in 1992, Defendant Passes the Full Cost of the LWS onto 809 Non-Residents

44. From 1893 through 1992, the costs of the LWS were paid for predominately by Defendant and/or Defendant's resident population. Although the non-resident consumers who did not receive "free water" paid for their share of the LWS, the overwhelming majority of the costs were paid for by Defendant's municipal population which always vastly exceeded the population of non-residents within the LWS service area.

45. Between 1893 and 1951, Defendant's residents and the non-resident customers of the LWS paid the same water rates. Beginning in 1951, Defendant began to charge all non-resident water customers water rates which were sometimes slightly higher than the rates it charged its own municipal residents. Although the non-resident customers of the LWS sometimes paid slightly higher rates beginning in 1951, at all times, Defendant continued to pay for the vast majority of the cost of the LWS.

46. Plaintiff is informed and believes, and on that basis alleges that from the creation of the LWS in the late 1800's until 1992, Defendant and/or Defendant's municipal residents paid at least 98% of the cost of the LWS and the non-resident customers of the LWS paid less than 2% of the cost of the LWS (the "**Historic Cost Sharing Ratio**").

47. At no time prior to 1992 did Defendant represent or suggest to the non-resident customers that the cost of the LWS would be paid for other than through the Historic Cost Sharing Ratio.

48. In 1992, the same year it elected to discontinue using LWS water, Defendant passed an ordinance (No. 1211 N.C. (2d), the "**1992 Ordinance**") which broke with the Historic Cost Sharing

Ratio and passed 100% of the cost of operating the LWS onto approximately 809 non-resident customers. The non-resident customers had no say and no vote in this decision.

49. To put this in perspective, in 1991, the cost of the LWS was paid for by approximately 30,809 metered connections, with approximately 30,000 of those metered connections being within the City of Vallejo. The 1992 Ordinance had the effect of shifting the cost of the LWS onto the backs of the 809 non-resident customers of the LWS. This dramatic departure from the Historic Cost Sharing Ratio represented a 98% drop in the number of connections paying for the cost of the LWS.

50. As a result of the 1992 Ordinance, water rates for the non-resident customers immediately increased by over 230%. In the same 1992 Ordinance, the municipal residents of the City of Vallejo received a significant decrease in their water rates. Plaintiff is informed and believes and on that basis alleges that the decrease in the rates charged to Defendant's resident customers was attributable to the fact Defendant was no longer contributing to the costs of the LWS.

51. Defendant raised water rates for the non-resident LWS customers again in 1995 pursuant to Ordinance No. 1334 N.C. (2d) (the "**1995 Ordinance**"). In addition to increasing water consumption charges, the 1995 ordinance increased the fixed service charges on the non-resident LWS customers by approximately 625%. A large portion of the increased fixed costs were attributable to an "upgrade surcharge" (as described below) to pay for the cost of making deferred improvements to the LWS.

52. In 2009, Defendant enacted another ordinance (No. 1619 N.C. (2d), the "**2009 Ordinance**") which substantially raised the water consumption and fixed service charges on the non-resident customers of the LWS. The 2009 Ordinance took effect on July 1, 2009 and will end on June 30, 2014.

53. Plaintiff is informed and believes and on that basis alleges that a majority of the members of the Class timely and adequately objected to the 2009 Ordinance under Article 13D, §4(e) of the California Constitution which prohibits the levying of a property related fee over the protests of a majority of the property owners. Despite the protests of the Class, Defendant maintained that a majority of all its water customers, both within and outside Defendant's city limits, needed to object to the 2009 Ordinance. In other words, a majority protest of the non-resident customers was insufficient,

and instead, a majority of Defendant's total water service customers, both its resident customers and the non-resident customers combined, were needed to block the 2009 Ordinance from taking effect.

54. Like the 1992 Ordinance and the 1995 Ordinance, the 2009 Ordinance continues the practice of shifting 100% of the cost of operating the LWS onto the approximately 809 non-resident customers.

55. Plaintiffs are informed and believe and on that basis allege that the cost of operating the LWS between July 1, 2009 and June 30, 2014 will total at least $12,241,807. The approximately 38,000 metered connections currently within the City of Vallejo will pay none of these costs.

56. As a result of the 2009 Ordinance, the non-resident customers of the LWS currently pay water consumption charges which are approximately 350% higher than the rates paid by similarly situated customers within the City of Vallejo and fixed service charges which are at least approximately 450% higher than the rates paid by similarly situated customers within the City of Vallejo. Plaintiff is informed and believes and on that basis alleges that current water rates within the LWS are among the highest in the State of California.

57. On June 9, 2009, Plaintiff, on behalf of the Class, entered into a tolling agreement with Vallejo (the "**Tolling Agreement**"). The Tolling Agreement tolls "any applicable statutes of limitations regarding a potential challenge to the rate increase [which occurred in 2009]." The Tolling Agreement was extended for a tenth time on June 13, 2013 and expired on December 31, 2013.

58. Plaintiff is informed and believes, and on that basis alleges, that Defendant is in the process of preparing a new five-year rate study for the LWS which will take effect on July 1, 2014. Like the 2009 Ordinance and the 1992 and 1995 Ordinances before that, all costs of the LWS will continue to be borne by the 809 non-resident customers.

59. Defendant's breach continues and is ongoing with each bi-monthly imposition and collection of water consumption charges and fixed service charges from the Class.

The Current Condition of the LWS

60. Between 1893 and 1992, the LWS consisted of two separate transmission systems (the Green Line and the Gordon Line, respectively) which transmitted water from two separate water sources (Lakes Frey and Madigan, on the one hand, and Lake Curry on the other) to the City of Vallejo.

Separate water treatment plants existed at Lake Curry and in Green Valley below Lakes Frey and Madigan.

61. As a result of its historic configuration, non-resident customers of the LWS who received water from one transmission line were connected to customers who received water from the other transmission line only in the sense that both customers received water from Defendant. As a practical matter, customers along the Green Line received water from a separate source and through a separate transmission system from those customers along the Gordon Line, and vice versa.

62. When Defendant unilaterally decided to abandon Lake Curry and to stop using water from the LWS in 1992, it changed the purpose and physical design of the LWS dramatically from a transmission system (which brought water to the City of Vallejo) into a distribution system (which distributed water within the LWS service area). This unforeseeable change has resulted in a number of inefficiencies which have increased costs, pose a threat to health and safety and have otherwise damaged the Class:

a. The 809 non-resident customers Defendant agreed to provide water to were geographically located upon or near the historic Gordon and Green transmission lines. The system prior to 1992 was coherent only because the non-resident customers were easily served with water along the transmissions lines which were otherwise being used to transport water to the City of Vallejo.

b. After Defendant stopped transmitting water to its own city residents, the LWS lacked any coherence as a distribution system. The current LWS has been described as an "octopus" with arms (i.e., water lines) extending across a geographically large and incoherent service area which includes Spurs Ranch in American Canyon, Old Cordelia, parts of Willotta Oaks and Gordon Valley, in addition to Green Valley. Water is distributed to these customers through miles of oversized ancient pipes as a result of Defendant's decision to so fundamentally transform the LWS.

c. Because the Gordon Line and Green Line were built to convey large quantities of water directly from the water source to the residents of the City of Vallejo, the size of the pipes and other infrastructure within the LWS greatly exceeds the needs of a water system reconfigured to serve just 809 connections. Plaintiff is informed and believes and on that basis alleges that water systems with fewer than 1,000 metered connections generally rely on ground water and/or surface water treated

and supplied by a municipality, and that it is very unusual for a system of fewer than 1,000 metered connections to contain reservoirs or a water treatment plant.

d. Due to new federal and state drinking water requirements, in 1997, Defendant installed a costly water treatment plant in Green Valley at an original cost of almost $7,000,000. The water treatment plant is operated twenty-four hours a day, seven days per week. In 2005, Defendant added a "Mi Ex" filtration system to the Green Valley water treatment plant to remove organic contaminants at a cost of almost $1,000,000. As discussed above, water systems with fewer than 1,000 connection typically do not have their own water treatment plant, but due to the fact Defendant no longer paid for or used water from the LWS, this huge infrastructure cost was paid for (and continues to be paid for) by just 809 customers within the LWS.

e. In addition, the three reservoirs within the LWS have a combined storage capacity which is approximately twenty-six times the annual water use of the non-resident LWS customers, resulting in increased maintenance costs and other inefficiencies. In order to reduce the cost of maintaining the earthen dams at Lakes Frey, Madigan and Curry, Defendant has lowered the water levels in all three lakes and has discontinued all use of Lake Curry as a drinking water resource. Plaintiff is informed and believes that the decision to lower the water levels in Lakes Frey, Madigan and Curry was done to prevent a leak or breach of the dams. Rather than fixing the underlying problem, Defendant's decision to lower the water levels in Lakes Frey and Madigan has resulted in deteriorating water quantity and quality, as well as higher water treatment costs.

f. With respect to the Gordon Line, since water was no longer being transmitted (via gravity) down the Gordon Line to the City of Vallejo, Defendant was forced to pump water almost ten miles up the oversized 24" Gordon Line to serve approximately 64 households residing in the Gordon Valley area. Because of the age of the Gordon Line and the change in its use (from a large transmission pipe which brought large quantities of water directly from the source into a reverse fed distribution line which pumps water uphill to a handful of end-use customers in Gordon Valley), service interruptions are common. The useful life of the Gordon Line expired in or about 1970 and the approximate replacement cost for this ten mile section of pipe (even after accounting for the oversized

pipe) is over $7,000,000. This means that it will cost approximately $115,500 per connection to continue to provide water to the customers in Gordon Valley.

g. In addition, because of the time it takes to transmit water from the Green Valley water treatment plant up the oversized Gordon Line, Plaintiff is informed and believes and on that basis alleges that the current configuration and distribution of water along the Gordon Line raises water quality concerns, in particular, the presence of organic chemical contaminants (specifically, trihalomethanes or "THM's") which exceed or may exceed existing or new maximum contaminant levels under federal and state water quality regulations. THM's are regulated contaminants under federal and state drinking water regulations and their presence in drinking water is linked to liver, kidney and central nervous system problems and an increased risk of cancer.

h. Today, customers as far away as Spurs Ranch in American Canyon are provided LWS water. Plaintiff is informed and believes that there are approximately twenty customers in Spurs Ranch who receive water from a single metered water connection. These customers receive water which is transmitted through approximately six miles of the oversized 14" Green Line (which previously transmitted water through Jameson Canyon to the City of Vallejo). The useful life of this particular section of the Green Line expired in or about 1960, and the replacement cost (even after adjusting for the oversized pipe) is almost $5,000,000. The approximate cost to replace the six miles of pipe to serve approximately twenty customers in Spurs Ranch is roughly $250,000 per customer.

i. As discussed above, Defendant contractually agreed to provide free water to approximately 60 non-resident connections within the LWS in exchange for easements. The incremental cost of providing this free water was previously shared by Defendant's city customers. However, when Defendant divested itself from any obligation to contribute to the LWS, there were fewer connections over which to spread the cost of providing free water. Today, in addition to the cost of operating a municipal utility, the paying customers are forced to subsidize a significant number (approximately 7.5%) of the customers who receive free water.

63. At or about the time Defendant passed the 1992 Ordinance, a meeting was held at the Green Valley Country Club. Present at the meeting were members of Plaintiff as well as City of Vallejo representatives Walt Gram (the then City Manager) and Tony Intintoli (the then City Mayor).

64. At the meeting, the City Manager and City Mayor represented to the Class that the LWS was free of liabilities and debt.

65. In reality, at the time Defendant made this representation, the vast majority of the assets within the LWS were already beyond their useful life representing a multi-million dollar unfunded liability. Plaintiff first discovered this liability when it received a copy of the appraisal (described below) in or about June 2013.

66. When Plaintiff received the appraisal in or about June 2013, Plaintiff also first learned that virtually no capital improvements had been made to the infrastructure within the LWS since its inception in the late 1800's and early 1900's. Plaintiff is informed and believes, and on that basis alleges, that between 1894 and 1992, Defendant performed virtually no capital improvements to or replacements of the infrastructure within the LWS, including the pipes, pumps, storage tanks, and the earthen reservoirs. Defendant's failure to maintain or improve the LWS was done over the objections and pleas of the chief reservoir keeper for the LWS. As a result, when Defendant unilaterally decided it would no longer honor its obligation to pay for the cost of the LWS, a significant portion of the infrastructure within the LWS was already beyond its useful life and in need of immediate replacement.

67. Plaintiff is informed and believes, and on that basis alleges, that after 1992, very few capital improvements, especially with respect to the aging pipe infrastructure, were made within the LWS. Further, of the few capital improvements that were made, most were made after 1992 and were therefore paid for by the Class exclusively.

68. The appraisal revealed that tens of millions of dollars of infrastructure within the LWS is thirty to fifty years beyond its useful life and in need of immediate replacement. It also shows that within the next ten years, millions of dollars of additional infrastructure within the LWS will have reached the end of its useful life and will need to be replaced. Defendant expects the Class to pay for 100% of these unfunded liabilities.

69. Plaintiff is informed and believes, and on that basis alleges, that as a result of Defendant's decision to pass 100% of the cost of the LWS onto the approximately 809 non-resident families and property owners, the per-connection asset cost of the LWS is the highest, or amongst the highest, in the State of California.

70. Because of the age of the pipe infrastructure within the LWS, Defendant is unable to and will not allow others to test fire-fighting facilities within the LWS for fear that the extra water pressure generated by such a test would cause a failure of the pipes.

71. Plaintiff is informed and believes, and on that basis alleges, that in order to save costs associated with maintaining and operating the earthen dams within the LWS, Defendant unilaterally elected to lower the water levels in Lakes Frey, Madigan and Curry, thereby reducing storage capacity and water quality within the LWS and making the water more expensive to treat under existing federal and state water quality regulations.

Defendant's Appraisal and Proposed Sale of the LWS to a Private Utility

72. In or about November 2009, a meeting was held between members of Plaintiff's board of directors and Robert Adams (the then City Manager), John Nagel (the then City Attorney) and Erik Nugteren (the then City Water Superintendent).

73. At the meeting, Defendant's representatives represented to Plaintiff that Defendant would negotiate in good faith with Defendant in connection with a possible sale of the LWS by Defendant to Plaintiff.

74. At the same meeting, Defendant's representatives promised that Defendant would prepare an appraisal of the LWS to serve as a basis for good faith negotiations, and that the appraisal would include all assets within the LWS, including the watershed and non-watershed land associated with the LWS, water rights, and the pipes, pumps, storage tanks, treatment plant and other infrastructure within the LWS.

75. Defendant's representatives promised to provide a copy of the appraisal to Plaintiff and to meet with Plaintiff in early 2010 to discuss a possible transfer of the LWS to Plaintiff. No such appraisal was produced and no such meeting occurred.

76. Plaintiff is informed and believes and on that basis alleges that after these representations were made, Defendant commissioned two separate appraisals. The first appraisal included only the watershed and non-watershed land surrounding Lakes Frey and Madigan and was completed on or about December 31, 2010. The second appraisal, which was completed in late 2012 or early 2013, included only the pipes, pumps, storage tanks and water treatment plant within the LWS.

77. Plaintiff received a copy of the appraisal of the pipes, pumps, storage tanks and water treatment plant in or about June 2013 – almost four years after Defendant agreed to commission an appraisal. Plaintiff was not informed of the separate appraisal of the land surrounding Lakes Frey and Madigan, and to date, has not received a copy of the land appraisal, despite Plaintiff's repeated requests for a copy of the land appraisal.

78. The appraisal of the pipes, pumps, storage tanks and water treatment plan is deeply flawed and on information and belief, was artificially inflated in order to boost the purchase price (and thereby increase the cost to the Class after a sale to a private, investor-owned utility). The flaws of the appraisal, include, amongst other things:

a. The appraised price of the LWS improperly includes millions of dollars in "capital in aid of construction" which is capital contributed to Defendant by the Class and others (as opposed to being paid for by Defendant). Examples of capital in aid of construction include the Surcharge and the Connection Fees (both defined below). Including capital in aid of construction in the valuation of the LWS means that the Class would be forced to pay for the same assets twice, once when it paid for the assets originally, and a second time when the costs of the same assets are recoupled (plus profit) from the Class by the private, investor owned utility.

b. Defendant failed to maintain historical cost records (even for recently completed components of the LWS). As a result, the appraisal relied upon substantially higher replacement cost values which further inflated the value of the LWS.

c. The appraisal improperly failed to exclude from the value the cost of the infrastructure which was overbuilt well in excess of the existing needs of the LWS customers.

d. The appraisal improperly attributed a useful life to assets which were decades beyond their useful life further inflating the alleged value of the LWS.

79. Plaintiff is informed and believes, and on that basis alleges, that Defendant has engaged and is in the process of engaging in negotiations with more than one private, investor-owned utility to arrange a sale of the pipes, pumps, storage tanks and treatment plant within the LWS. Plaintiff is informed and believes, and on that basis alleges, that the inflated and flawed appraisal of the pipes, pumps, storage tanks and water treatment plant is being used as the basis for such negotiations.

80. Defendant has issued or will be issuing a request for proposals from private, investor-owned utilities to purchase the pipes, pumps, storage tanks and treatment plant within the LWS.

81. Plaintiff is informed and believes, and on that basis alleges, that Defendant has not offered to include any of the three reservoirs or any of the watershed and non-watershed real property in the proposed sale to a private, investor-owned utility.

82. Plaintiff is informed and believes, and on that basis alleges, that a sale to a private, investor-owned utility would not include the sale of the reservoirs or any water rights, meaning the LWS would be sold without any vested water rights or direct access to watershed lands.

83. Plaintiff is informed and believes, and on that basis alleges, that Defendant intends on separately selling the three reservoirs or their surrounding watershed and non-watershed real property and to keep the proceeds of such a sale for the benefit of itself, its general fund and its own residents without investing any of the proceeds into the LWS.

84. Plaintiff is informed and believes, and on that basis alleges, that Defendant intends on separately selling the water rights associated with the LWS and to keep the proceeds of such a sale for the benefit of itself, its general fund and its own residents.

85. Plaintiff is informed and believes, and on that basis alleges, that Defendant will only consider selling the LWS to Plaintiff (or a water district or service district created by Plaintiff) at a premium price of almost $3,000,000 over and above Defendant's already flawed appraised value of the LWS. The premium allegedly represents a "loan" or "subsidy" Defendant purportedly "lent" to the LWS customers prior to 2009. Plaintiff was unaware of such loan or subsidy prior to its receipt of the appraisal and never consented to nor entered into any loan transaction with Defendant.

Surcharge and Connection Fees

69. The 1995 Ordinance imposed an upgrade surcharge (the "**Surcharge**") on the non-resident customers within the LWS.

70. The express purpose of the Surcharge was "to generate sufficient revenue to construct improvements in the Lakes Water System; primarily, water treatment facilities improvements and requirements that will comply with the new surface water treatment required by the U.S. Environmental

Protection Agency and the State of California, Department of Health Services, and associated debt service" (Vallejo Municipal Code §11.48.181).

71. The 1995 Ordinance expressly required that "The moneys received [from the Surcharge fee] shall be deposited into a dedicated account, and shall be expended and/or withdrawn from said account only for the purposes herein indicated" (*id.*).

72. The 1995 Ordinance also provided that "The Lakes Water System upgrade surcharge shall expire on September 30, 2015. The surcharge shall be removed on the date of the next succeeding billing cycle" (*id.*, §11.48.183).

73. Plaintiff is informed and believes, and on that basis alleges, that money received from the Surcharge fee was not deposited into a dedicated account and was comingled with other funds maintained by Defendant.

74. Plaintiff is informed and believes, and on that basis alleges, that money received from the Surcharge fee was not used for the purposes of constructing improvements within the LWS, but was instead used for other purposes, including, but not limited to supplementing Defendant's general municipal fund or other enterprise funds.

75. Plaintiff is informed and believes, and on that basis alleges, that the debt associated with Defendant's municipal water system (including the LWS) has been refinanced on multiple occasions and will not be repaid before September 30, 2015, and that as a result, Defendant intends to continue the Surcharge after its express expiration date on September 30, 2015.

76. In addition to the Surcharge, Defendant has charged and continues to charge water connection fees for new water service connections within the LWS (the "**Connection Fee**").

77. The purpose of the Connection Fee is "is to create revenue to assist in providing for capital costs of additions and improvements to the municipal water system" (*id.*, §11.16.021).

78. The ordinance further provides that all Connection Fees "shall be deposited in the capital reserve account of the municipal water system fund" and the "shall be used, after approval of the city council, to pay for acquisition, installation, or construction of components (including easements, rights-of-way and/or land) of the municipal water system" (*id.*).

79. Plaintiff is informed and believes, and on that basis alleges, that money received from the Collection Fees were not deposited into a capital reserve account for the benefit of the LWS or otherwise, and were not used to pay for acquisition, installation, construction or other capital improvements within Defendant's municipal water system (including the LWS).

Government Claims Act Requirement

80. On December 3, 2013, Plaintiff filed and served a claim pursuant to California Government Code §910 on behalf of Plaintiff and the Class. To date, Defendant has not issued any determination as to Plaintiff's claim.

81. On December 3, 2013, Plaintiff also served Defendant with a detailed demand letter explaining the factual and legal basis for Plaintiff's claims as well as a detailed letter discussing the flaws in Defendant's appraisal of the infrastructure within the LWS. To date, Defendant has not received any response to either the demand letter or the appraisal letter.

FIRST CAUSE OF ACTION

Breach of Implied Contract

(Against Defendant and Does 1-1000)

82. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

83. The relationship between Defendant and the Class is contractual.

84. Defendant and the Class (or their predecessors in interest) entered into written, oral and/or implied contracts whereby Defendant agreed to provide potable water service to the Class, and, in exchange, the Class promised to pay for such water at reasonable rates.

85. A municipality which provides water to non-residents has a duty and obligation to continue to supply water to the non-resident consumers. As a result, these contracts are binding on Defendant and its assigns and successors in interest.

86. A contract may be express or implied. A promise may be stated in words, either or written, or may be inferred wholly or partly from conduct. An implied promise is one, the existence and terms of which are manifested by the acts and conduct of the parties, interpreted in the light of the

subject-matter and of the surrounding circumstances. There is no legal difference between an express promise and an implied promise.

87. In each of the contracts between Defendant and the Class (or their predecessors in interest) there was an implied promise and/or agreement that Vallejo (and its successors and assigns) would indefinitely share in the cost of operating, maintaining and improving the LWS and that the costs would be shared according to the Historic Cost Sharing Ratio.

88. The Class performed all, or substantially all, of the significant things that the contract required the Class to do.

89. Defendant first breached the contract in 1992 when it passed the 1992 Ordinance. Defendant has continued to breach the implied contract, most recently in 2009 when it passed the 2009 Ordinance. The 2009 Ordinance violated the Historic Cost Sharing Ratio and imposed upon the Class the obligation to pay for 100% of the cost of operating, maintaining and improving the LWS.

90. Defendant cannot, by ordinance or otherwise, change, modify or alter its contracts with the Class without the consent of the Class. The Class did not consent to the 2009 Ordinance or to any rate structure which deviated from the Historic Cost Sharing Ratio.

91. This breach is a continuing and ongoing violation and occurs and repeats anew with each bi-monthly levy and assessment of the water fees upon the Class. The breach arising from the 2009 Ordinance is also subject to the Tolling Agreement.

92. The Class was damaged as a proximate result of Defendant's breach in the estimated amount of at least approximately $11,996,971, subject to proof at trial. Damages, at a minimum, equal the difference between what the Class paid under the 2009 Ordinance and what the Class should have paid had Defendant honored the contractual Historic Cost Sharing Ratio.

93. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

//

//

//

//

SECOND CAUSE OF ACTION

Breach of Implied Covenant of Good Faith and Fair Dealing

(Against Defendant and Does 1-1000)

94. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

95. In every contract there is an implied covenant of good faith and fair dealing that neither party will do anything which will injure the right of the other party to receive the benefits of the agreement.

96. Each party to a contract has a duty to do everything that the contract presupposes that he will do to accomplish its purpose and a duty not to prevent or hinder performance by the other party.

97. Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.

98. The purpose of the LWS was to supply water to the City of Vallejo and the parties justifiably expected that the costs of the LWS would be shared, according to the Historic Cost Sharing Ratio, between Defendant and the Class.

99. Defendant breached the implied covenant of good faith and fair dealing when it passed the 1992 Ordinance, the 1995 Ordinance and again when it passed the 2009 Ordinance. These ordinances violated and breached the Historic Cost Sharing Ratio and imposed upon the Class the obligation to pay for 100% of the cost of operating, maintaining and improving the LWS in violation of the common purpose of the parties' agreements and the justified expectations of the Class.

100. This breach is a continuing and ongoing violation and occurs and repeats anew with each bi-monthly levy and assessment of the water fees upon the Class. The breach arising from the 2009 Ordinance is also subject to the Tolling Agreement.

101. The Class was damaged as a proximate result of Defendant's breach in the estimated amount of at least approximately $11,996,971, subject to proof at trial. Damages, at a minimum, equal the difference between what the Class paid under the 2009 Ordinance and what the Class should have paid had Defendant honored the contractual Historic Cost Sharing Ratio.

102. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

THIRD CAUSE OF ACTION

Breach of Contract (Third Party Beneficiary)

(Against Defendant and Does 1-1000)

103. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

104. The Class were and are expressly intended beneficiaries of the written agreements entered into between Defendant and the approximately 60 non-resident property owners within the LWS who receive some quantity of "free water."

105. In its agreements with the recipients of free water, the owners of the servient estates provided to Vallejo easements and/or riparian water rights. The easements were necessary for the construction of the reservoirs, the Green Line and the Gordon Line. Without the easements and water rights, the LWS could not have been constructed and neither Defendant nor any of the non-resident customers of the LWS ever would have received water from the LWS. The non-resident customers are therefore the intended beneficiaries of these agreements.

106. Instead of paying market cash consideration for the easements and/or riparian water rights, Vallejo agreed to provide certain quantities of "free water" in lieu of cash payment. The obligation to provide free water was Defendant's and the obligation ran with the land meaning that Defendant was contractually obligated to provide free water to the servient properties in perpetuity.

107. Defendant breached its obligation to the Class when it divested itself of any obligation to pay for the LWS and forced the members of the Class to pay for and subsidize the provision of free water to the servient property owners. In essence, Defendant transferred its contractual obligation to provide and pay for the free water and has improperly shifted that obligation to the Class.

108. This breach is a continuing and ongoing violation and occurs and repeats anew with each bi-monthly levy and assessment of the water fees upon the Class and is subject to the Tolling Agreement.

109. The Class performed all, or substantially all, of the significant things that the contract required the Class to do.

110. The Class was damaged as a proximate result of Defendant's breach in the estimated amount of at least approximately $900,000, subject to proof at trial. Damages, at a minimum, equal the consumption and fixed costs associated with providing free water to the owners of the servient estates since the enactment of the 2009 Ordinance.

111. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

FOURTH CAUSE OF ACTION

Breach of Duty to Charge a Reasonable Water Rate

(Against Defendant and Does 1-1000)

112. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

113. A municipality which supplies water to non-residents has a duty to provide such water at a reasonable rate. A rate which is unreasonable, unfair or fraudulently or arbitrarily established is discriminatory and therefore unlawful. The Class has a primary right to not be charge an unreasonable rate for water service.

114. A water rate which excludes Defendant from any obligation to pay for the costs and expenses of operating the LWS is an unreasonable and unlawful rate. As alleged above, it was always implied understood and agreed that the cost of operating the LWS would be shared by Defendant and/or its resident water customers and therefore spread among a large rate paying base.

115. Defendant breached its obligation to provide water at a reasonable rate when it passed the 1992 Ordinance, the 1995 Ordinance and the 2009 Ordinance which breached the Historic Cost Sharing Ratio and imposed upon the Class the obligation to pay for 100% of the cost of operating, maintaining and improving the LWS.

116. As a result of Defendant's breach, the Class pays water rates which are almost five times higher than the rates paid for by Defendant's resident water users.

117. This breach is a continuing and ongoing violation and occurs and repeats anew with each bi-monthly levy and assessment of the water fees upon the Class. The breach arising from the 2009 Ordinance is also subject to the Tolling Agreement.

118. The Class has been damaged as a proximate result of Defendant's breach in the estimated amount of at least approximately $11,996,971, subject to proof at trial. Damages, at a minimum, equal the difference between what the Class paid under the 2009 Ordinance and what the Class should have paid had Defendant honored the contractual Historic Cost Sharing Ratio.

119. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

FIFTH CAUSE OF ACTION

Breach of Fiduciary Duty

(Against Defendant and Does 1-1000)

120. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

121. Defendant holds title to the LWS as a mere trustee and is bound to apply it to the use of the Class who are the beneficiaries of such trust.

122. The trustee-beneficiary relationship between Defendant and the Class gives rise to a fiduciary relationship between Defendant and the Class, meaning that Defendant owes fiduciary duties of care and loyalty to the Class.

123. Defendant's fiduciary duty of loyalty disallows the pursuit of self-interest. Where there are more than two beneficiaries of a trust (here, the non-resident customers and Defendant's residential customers), the trustee (here, Defendant) has a duty to deal impartially with them.

124. Defendant's fiduciary duty of care requires it to act with care, competence and diligence in the operation and maintenance of the LWS. Defendant has a duty to provide reasonably adequate facilities to serve the present and future needs of the LWS and the Class. The fiduciary duty of care requires Defendant to maintain, repair and replace existing infrastructure so that it may continue to meet the needs of the LWS customers.

125. Defendant breached its fiduciary duties to the Class by, amongst other things:

a. Putting the interests of its own residents ahead of the interests of the Class by unilaterally breaching the Historic Cost Ratio and unilaterally deciding it would no longer contribute to the cost of the LWS;

b. Failing to fund, replace or improve infrastructure which had passed the end of its useful life;

c. Failing to fund, replace or improve infrastructure which has caused a threat to health and safety to the LWS customers and their property;

d. Putting the interests of its own residents ahead of the interests of the Class by failing to fund, replace or improve infrastructure within the LWS during the time Defendant honored the Historic Cost Sharing Ratio and then passing the aged system onto the Class with the expectation that the Class would pay 100% of the cost to replace and improve the same infrastructure;

e. Not attempting to sell and not selling excess watershed and/or non-watershed real property associated with the LWS in order to fund deferred and necessary replacement and improvement projects within the LWS;

f. Putting the interests of its own residents ahead of the interests of the Class by forcing the Class to pay 100% of the cost of the LWS while simultaneously representing to the Federal and State Governments that the LWS (specifically, Lake Curry) was critical to Defendant's own municipal water supply;

g. Putting the interests of its own residents ahead of the interests of the Class by passing the 2009 Ordinance over the objections of the Class while simultaneously maintaining that the LWS was its own separate water system (distinct from Defendant's own municipal water system);

h. Misrepresenting the condition of the LWS as being free of debt and liabilities when in fact at the time such representations were made, the LWS had multi-million dollar unfunded capital improvement liabilities.

126. As a result of Defendant's breach, the Class has been damaged in the estimated amount of at least approximately $11,996,971, subject to proof at trial.

127. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

SIXTH CAUSE OF ACTION

Injunctive Relief (Sale of LWS)

(Against Defendant and Does 1-1000)

128. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

129. Plaintiff is informed and believes and on that basis alleges that Defendant presently intends to sell the pipes, pumps, storage tanks and water treatment facilities within the LWS to a private, investor owned utility.

130. Plaintiff is informed and believes and on that basis alleges that Defendant intends the sale to be free and clear of Defendant's contractual, fiduciary and legal obligations to share in the cost of the LWS according to the Historic Cost Sharing Ratio, or otherwise. As a result, Defendant intends that the transferee, assignee or successor in interest to the LWS would be allowed to pass the full cost of operating, maintaining and improving the LWS onto the Class.

131. Plaintiff has demanded and requested that Defendant refrain from selling the pipes, pumps, storage tanks and water treatment facilities within the LWS to a private, investor owned utility, but Defendant has failed and refused the request and, unless restrained by an order of this Court, will continue to attempt to sell the pipes, pumps, storage tanks and water treatment facilities within the LWS to a private, investor owned utility.

132. Defendant's wrongful conduct, unless and until enjoined and restrained by order of this court, will cause great and irreparable injury to Plaintiff, including, but not limited to the following:

a. Defendant intends that the transferee, assignee or successor in interest to the LWS would take title free and clear of Defendant's contractual, legal and fiduciary duties to the Class as detailed in this Complaint;

b. Defendant intends that the transferee, assignee or successor in interest to the LWS would be allowed to pass the full cost of operating, maintaining and improving the LWS onto the Class which would result in a significant increase in the already high water rates being paid by the Class;

c. If the LWS is sold (in whole or in part) to a private, investor owned utility, such utility would not only be allowed to recover not only the full purchase price and the full cost of operating, maintaining and improving the LWS from the Class, but it would also be entitled to earn a profit in addition to recovering the costs of operating, maintaining and improving the LWS, thereby driving costs for the Class even higher;

d. If the LWS is sold (in whole or in part) to a private, investor owned utility, water rates for the non-resident customers (already among the highest in the State) could triple, making the cost of water prohibitively expensive and causing a dramatic decline in property values within the LWS service area;

e. Because the appraised price of the LWS improperly includes millions of dollars in "capital in aid of construction", the Class would be forced to pay for the same assets twice, once when it paid for the assets originally, and a second time when the costs of the same assets are recoupled (plus profit) from the Class by the private, investor owned utility;

f. Because of the other flaws in the appraisal, as alleged above, the private, investor owned utility would recoup (plus profit) costs which should have been excluded from the value of the LWS;

g. The sale would not include any of the watershed or non-watershed land associated with the LWS and thus the proceeds of the eventual sale of that land would not be set aside for capital improvements within the LWS, but would instead be placed in Defendant's general fund for the benefit of Defendant's residents;

h. According to Defendant's appraisal, the sale would not include any water rights, meaning that there is no way of ensuring that the Class would have any vested water rights once the LWS is transferred to a private, investor-owned utility, and, even if such rights could be obtained, the Class would be forced to pay for such rights on the open market, plus profit payable to the investor-owned utility.

133. Plaintiff has no adequate remedy at law for the injuries which would be suffered in that it will be impossible for Plaintiff to determine the precise amount of damage it will suffer if Defendant's conduct is not restrained because Plaintiff is unaware what costs, plus profits, the private, investor

owned utility will recover from the Class, and Plaintiff will be forced to institute a multiplicity of suits, against Defendant and its successor, transferee or assignee to obtain adequate compensation for its injuries. Plaintiff would likewise be precluded from purchasing the system by virtue of the $3,000,000 "premium" Defendant intends to collect upon any sale of the LWS to Plaintiff or the Class.

134. Plaintiff therefore seeks injunctive relief, both preliminary and permanent, to enjoin and stop Defendant from selling all or any part of the LWS during the pendency of this litigation.

135. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

SEVENTH CAUSE OF ACTION

Injunctive Relief (Sale of LWS without Land)

(Against Defendant and Does 1-1000)

136. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

137. Plaintiff is informed and believes and on that basis alleges that Defendant presently intends to sell the pipes, pumps, storage tanks and water treatment facilities within the LWS to a private, investor owned utility.

138. Plaintiff is informed and believes and on that basis alleges that Defendant does not intend on selling any of the watershed or non-watershed excess real property associated with the LWS as a part of the threatened sale to a private, investor owned utility.

139. Rather, Plaintiff is informed and believes and on that basis alleges that Defendant intends to sell the watershed or non-watershed excess real property associated with the LWS in a separate sale and to apply the proceeds for the benefit of Defendant's general municipal fund without investing any of the proceeds into the LWS.

140. The policy of the State of California encourages the sale of excess land associated with a water system and requires that proceeds from the sale be invested for capital improvements within the water system.

141. As a trustee and fiduciary of the Class, in the event the watershed or non-watershed excess real property associated with the LWS is sold, Defendant is obligated and required to invest all

of the sale proceeds into the LWS for purposes of performing deferred maintenance and capital improvements.

142. Plaintiff has demanded and requested that Defendant refrain from selling any part of the LWS without including in the sale the watershed or non-watershed excess real property associated with the LWS which are required to be invested into the LWS for purposes of performing deferred maintenance and capital improvements. Defendant has failed and refused the request and, unless restrained by an order of this Court, will continue to attempt to sell the pipes, pumps, storage tanks and water treatment facilities within the LWS separately without including the watershed or non-watershed excess real property and without investing the proceeds of the real property into the LWS.

143. Defendant's wrongful conduct, unless and until enjoined and restrained by order of this court, will cause great and irreparable injury to Plaintiff in that the proceeds of the watershed or non-watershed excess real property associated with the LWS are desperately needed to fund over a century of deferred maintenance and capital improvements within the LWS. Without these proceeds, the Class will be obligated to fund the deferred maintenance and capital improvements by itself in amounts which are not yet known. Given the magnitude of the deferred improvements which must be made, the costs to the Class would be astronomical and financially unbearable for many, if not most, Class members.

144. Plaintiff has no adequate remedy at law for the injuries which would be suffered in that it will be impossible for Plaintiff to determine the precise amount of damage it will suffer if Defendant's conduct is not restrained because Plaintiff is unaware what costs, plus profits, the private, investor owned utility will recover from the Class, and Plaintiff will be forced to institute a multiplicity of suits to obtain adequate compensation for its injuries.

145. Plaintiff therefore seeks injunctive relief, both preliminary and permanent, to enjoin and stop Defendant from (i) selling any part of the LWS without including in that sale the watershed or non-watershed excess real property associated with the LWS and (ii) applying the proceeds of any sale of the watershed or non-watershed excess real property associated with the LWS to purposes other than deferred maintenance and capital improvements within the LWS.

146. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

EIGHTH CAUSE OF ACTION

Injunctive Relief (Surcharge Fee)

(Against Defendant and Does 1-1000)

147. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

148. The purpose of the Surcharge (which began with the 1995 Ordinance) was "to generate sufficient revenue to construct improvements in the Lakes Water System; primarily, water treatment facilities improvements and requirements that will comply with the new surface water treatment required by the U.S. Environmental Protection Agency and the State of California, Department of Health Services, and associated debt service" (Vallejo Municipal Code §11.48.181).

149. The 1995 Ordinance provides that "The Lakes Water System upgrade surcharge shall expire on September 30, 2015. The surcharge shall be removed on the date of the next succeeding billing cycle" (*id.*, §11.48.183). This promise creates a contractual and legal obligation upon Defendant to end the Surcharge on September 30, 2015.

150. Plaintiff is informed and believes, and on that basis alleges, that Vallejo intends to continue the Surcharge after its expiration on September 30, 2015.

151. Plaintiff has demanded and requested that Defendant refrain from continuing the Surcharge past September 30, 2015, but Defendant has failed and refused the request and, unless restrained by an order of this Court, will continue to impose the Surcharge after September 30, 2015.

152. Defendant's wrongful conduct, unless and until enjoined and restrained by order of this court, will cause great and irreparable injury to Plaintiff. Recovering Surcharge fees imposed after September 30, 2015 will require a multiplicity of actions against Defendant. Further, the Surcharge fees may be spent and the prospects of recovering the Surcharge fees from Defendant is questionable given its financial history.

153. Plaintiff has no adequate remedy at law for the injuries which would be suffered in that it will be impossible for Plaintiff to determine the precise amount of damage it will suffer if Defendant's conduct is not restrained because Plaintiff is unaware what Surcharge fee Defendant will attempt to

collect from the Class, and Plaintiff will be forced to institute a multiplicity of suits to obtain adequate compensation for its injuries.

154. Plaintiff therefore seeks injunctive relief, both preliminary and permanent, to enjoin and stop Defendant from continuing the Surcharge (in any form) after September 30, 2015.

155. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

NINTH CAUSE OF ACTION

Injunctive Relief (Future LWS Rates)

(Against Defendant and Does 1-1000)

156. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

157. Plaintiff is informed and believes and on that basis alleges that on July 1, 2014, new rates for the LWS Class members will go into effect. Defendant's rate structure in 2014 and beyond, like the existing rate structure, will require the Class to pay 100% of the cost of operating, maintaining and improving the LWS.

158. Plaintiff has demanded and requested that Defendant refrain from forcing the Class to pay 100% of the cost of operating, maintaining and improving the LWS and has demanded and requested that Vallejo share in the cost of operating, maintaining and improving the LWS pursuant to the Historic Cost Sharing Ratio. Defendant has failed and refused the request and, unless restrained by an order of this Court, will continue to breach its contractual, fiduciary and legal duties and obligations to the Class by not honoring the parties implied agreement and the Historic Cost Sharing Ratio and by forcing the Class to pay 100% of the cost of operating, maintaining and improving the LWS.

159. Defendant's wrongful conduct, unless and until enjoined and restrained by order of this court, will cause great and irreparable injury to Plaintiff in that the Class will be forced, in violation of their contractual and legal rights, to continue to pay 100% of the cost of operating, maintaining and improving the LWS.

160. Plaintiff has no adequate remedy at law for the injuries which would be suffered in that it will be impossible for Plaintiff to determine the precise amount of damage it will suffer if Defendant's

conduct is not restrained. Because the future costs of operating, maintaining and improving the LWS are unknown, damages, if awarded for any future rate structures, cannot be properly ascertained at this time (since they have not yet been incurred) and will be inadequate to compensate the Class. In addition, any future rate structure which exclude Defendant and its residents from paying for any of the LWS will necessitate a multiplicity of legal actions to enforce the contractual and legal rights of the Class. Further, overcharges collected from the Class may be spent and the prospects of recovering the overcharges from Defendant is questionable given its financial history.

161. Plaintiff therefore seeks injunctive relief, both preliminary and permanent, to enjoin and stop Defendant from imposing any future rate structure which excludes Defendant and/or its municipal residents from their obligation to share in the cost of operating, maintaining and improving the LWS according to the Historical Cost Sharing Ratio.

162. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

TENTH CAUSE OF ACTION

Specific Performance

(Against Defendant and Does 1-1000)

163. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

164. The relationship between Defendant and the Class is contractual.

165. Defendant and the Class (or their predecessors in interest) entered into written, oral and/or implied contracts whereby Defendant agreed to provide potable water service to the Class, and, in exchange, the Class promised to pay for such water at reasonable rates.

166. In each of the contracts between Defendant and the Class (or their predecessors in interest) there was an implied promise and agreement that Vallejo would share in the cost of operating, maintaining and improving the LWS indefinitely according to the Historic Cost Sharing Ratio.

167. The Class performed all, or substantially all, of the significant things that the contract required the Class to do.

168. Defendant breached the contract in 2009 when it passed the 2009 Ordinance. The 2009 Ordinance did not honor the Historic Cost Sharing Ratio and imposed upon the Class the obligation to pay for 100% of the cost of operating, maintaining and improving the LWS. This breach is a continuing and ongoing violation.

169. Beginning on July 1, 2014 and thereafter, Defendant will establish a new rate structure or structures for the LWS. Like the 2009 Ordinance, Defendant intends on forcing the Class to pay 100% of the cost of operating, maintaining and improving the LWS in violation and breach of the parties' implied agreement that Defendant and/or its municipal residents would share in the cost of operating, maintaining and improving the LWS for so long as the LWS was in existence according to the Historic Cost Sharing Ratio.

170. With respect to future rate structures which violate the parties' implied agreement and the Historic Cost Sharing Ratio, the Class has no adequate legal remedy. Future rate structures which exclude Defendant and its residents from paying for any of the LWS will necessitate a multiplicity of legal actions to enforce the contractual and legal rights of the Class. Further, since the future costs operating, maintaining and improving the LWS are unknown, damages, if awarded for any future rate structures, cannot be properly ascertained at this time (since they have not yet been incurred) and will be inadequate to compensate the Class. In addition, overcharges collected from the Class may be spent and the prospects of recovering the overcharges from Defendant is questionable given its financial history.

171. The Class is entitled to specific performance of the implied contract and/or agreement between Defendant and the Class (or their predecessors in interest), by court decree, among other things, ordering Defendant to share in the cost of operating, maintaining and improving the LWS according to the Historical Cost Sharing Ratio.

172. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

//

//

//

ELEVENTH CAUSE OF ACTION

Declaratory Relief

(Against Defendant and Does 1-1000)

173. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

174. An actual controversy has arisen and now exists between the Class and Defendant concerning their respective rights and duties.

175. The Class contends that:

a. Defendant has contractual, fiduciary and legal obligations to share in the cost of the LWS pursuant to the Historic Cost Sharing Ratio and that Defendant must honor this obligation now and when it sets new rates for the LWS beginning on July 1, 2014 and thereafter.

b. Should Defendant sell the LWS, Defendant's contractual, fiduciary and legal obligations are binding upon any transferee, assignee or successor in interest to the LWS.

c. Should Defendant sell the excess watershed and non-watershed land associated with the LWS, it is required and to apply all proceeds of such a sale for the purposes of performing deferred capital improvements and maintenance projects within the LWS.

176. Defendant disputes the Class' contentions and contends that it has no obligation to share in or pay for the cost of the LWS pursuant to the Historic Cost Sharing Ratio or otherwise. Defendant further contends that Defendant may sell, transfer or assign the LWS free and clear of any obligation to share in or pay for the cost of the LWS pursuant to the Historic Cost Sharing Ratio or otherwise. Defendant further contends that it is under no obligation to apply the proceeds from a sale of the land associated with the LWS for the purposes of performing deferred capital improvements and maintenance projects within the LWS.

177. As a result of this unsettled state of affairs, Plaintiff is informed and believes and on that basis alleges that Defendant presently intends to sell the pipes, pumps, storage tanks and water treatment plant within the LWS to a private, investor owned utility free and clear of any obligation to share in or pay for the cost of the LWS pursuant to the Historic Cost Sharing Ratio or otherwise. Plaintiff is further informed and believes and on that basis alleges that Defendant intends to sell the

excess watershed and non-watershed land and water rights associated with the LWS and to keep the proceeds for the exclusive benefit of its general municipal fund. Plaintiff is further informed and believes that the new rates which will take effect on or about July 1, 2014 will continue to violate the Historical Cost Sharing Ratio by forcing the non-resident customers of the LWS to pay 100% of the cost of operating, maintaining and improving the LWS.

178. A judicial declaration is necessary and appropriate at this time under the circumstances in order that the Class may ascertain its rights and duties.

179. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

TWELFTH CAUSE OF ACTION

Accounting

(Against Defendant and Does 1-1000)

180. Plaintiff incorporates by reference all of the allegations contained in the Paragraphs above as though fully set forth herein.

181. Money received from the Surcharge and Connection Fees is required to be placed in dedicated accounts and used for purposes of constructing capital improvements within the LWS.

182. Plaintiff is informed and believes, and on that basis alleges, that money received from the Surcharge and Connection Fees was not placed into dedicated accounts and was not used exclusively for the purposes of constructing capital improvements within the LWS.

183. As a result, Defendant has received money from the Surcharge and Connection Fees a portion of which is due to the Class (for the benefit of capital improvements within the LWS).

184. The amount of money due from Defendant to the Class is unknown to Plaintiff and cannot be ascertained without an accounting of the receipts and disbursements of the Surcharge and Connection Fees.

185. Plaintiff has demanded an accounting from Defendant, but Defendant has failed and refused, and continues to fail and refuse, to render such an accounting.

186. Plaintiff is further entitled to recover from Defendant its reasonable costs and attorney fees incurred in bringing this action pursuant to Code of Civil Procedure §1021.5.

PRAYER FOR RELIEF

THEREFORE, Plaintiff asks the Court to enter the following judgment:

1. Approving of the Class, certifying Plaintiff as the representative of the Class, and designating their counsel as counsel for the Class;
2. Granting general and compensatory damages, in the estimated amount of at least approximately $12,896,971, subject to proof at trial;
3. Granting special damages, the amount of which is to be determined at trial;
4. Granting interest at the legal rate on the foregoing sums;
5. Granting injunctive relief to:
    a. Stop Vallejo from selling all or any part of the LWS during the pendency of this litigation;
    b. Stop Vallejo from selling any part of the LWS without including the watershed and non-watershed real property in the sale and without investing the proceeds of the sale of the watershed and non-watershed real property in the LWS for purposes of deferred maintenance and capital improvements;
    c. Stop Vallejo from continuing the Surcharge fee after September 30, 2015;
    d. Stop Vallejo from imposing future rate structures which do not require Defendant to share in the cost of operating, maintaining and improving the LWS according to the Historical Cost Sharing Ratio;
6. Granting specific performance of Defendant's obligation to share in the cost of operating, maintaining and improving the LWS according to the Historical Cost Sharing Ratio;
7. Granting declaratory relief;
8. Granting reasonable attorney fees and costs pursuant to California Code of Civil Procedure §1021.5;
9. Granting costs of suit incurred; and
10. For such other and further relief that the Court may deem just and proper.

//

DEMAND FOR JURY TRIAL

Plaintiff and the members of the Class further request a trial by jury on all issues so triable.

Respectfully submitted,

DATED: January 22, 2014

LAW OFFICES OF STEPHEN M. FLYNN

Stephen M. Flynn
Attorney for Plaintiff GREEN VALLEY LANDOWNERS ASSOCIATION