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16 *Attorneys for Plaintiffs and the Putative Class*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF FRESNO**

19 KAREN MICHELI, et al.,

20 Plaintiffs,

21 v.

22 THE CITY OF FRESNO, a Municipal  
Corporation, et al,

23 Defendants.  
24  
25

26 **AND CONSOLIDATED ACTION:**  
27 *Flannery, et al. v. City of Fresno, et al.,*  
28 *Case No. 17CECG01724*

E-FILED  
3/8/2021 6:00 PM  
Superior Court of California  
County of Fresno  
By: A. Ramos, Deputy

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Lead Case No. 16CECG02937  
Consolidated with Case No.: 17CECG01724

**CLASS ACTION**

**CONSOLIDATED FIFTH AMENDED  
CLASS ACTION COMPLAINT**

1. Negligence
2. Nuisance
3. Breach of Contract
4. Unjust Enrichment
5. Breach of Implied Warranty

**REQUEST FOR JURY TRIAL**

Lead Action Filed: 9/9/2016  
Consolidated Action Filed: 5/17/2017  
Trial Date: Not Set

1 Plaintiffs in the lead action, KAREN MICHELI, Individually and as Trustee of the  
2 Michael Micheli and Karen Micheli Trust, MICHAEL MICHELI, Individually and as Trustee of  
3 the Michael Micheli and Karen Micheli Trust, FAITH NITSCHKE, Individually and as Trustee of  
4 the Nitschke Family Trust of 2000, DAVID NITSCHKE, Individually and as Trustee of the  
5 Nitschke Family Trust of 2000, and JEANETTE GRIDER, and Plaintiffs in the consolidated  
6 action, Jackie Flannery, Guadalupe Meza, Ronda Rafidi, Shann Conner, Marirose Larkin, Patricia  
7 Wallace-Rixman aka Patty Wallace-Rixman (“Patricia Wallace-Rixman”), Harry Rixman, And  
8 Kelly Unruh, Individually and as Trustee of the Kelly D. Unruh Living Trust, (“Plaintiffs”) by and  
9 through their respective undersigned counsel, bring this individual and class action against  
10 defendants the CITY OF FRESNO (the “CITY”) and DOES 1-100, inclusive (collectively,  
11 “Defendants”), on behalf of themselves and all persons residing within and around the Northeast  
12 Fresno, California, area whose homes and plumbing have been damaged from aggressive,  
13 corrosive, degraded, and substandard water supplied by the CITY OF FRESNO’s Northeast  
14 Surface Water Treatment Facility (“NESWTF”).

15 **I. NATURE OF THE ACTION**

16 1. For decades, the CITY OF FRESNO has relied exclusively on groundwater from  
17 more than 250 deep wells to supply its residents with potable water. With a growing population,  
18 ongoing drought conditions, and concerns of over-drafting its groundwater, the CITY saw a need  
19 to develop an additional source of water to supply homes in the City Of Fresno. As a result, in  
20 2004 the CITY brought online the Northeast Surface Water Treatment Facility despite knowing  
21 that introducing surface water into its water supply would likely cause corrosion and damage to  
22 the many homes in Northeast Fresno with galvanized piping. Since the NESWTF’s activation, a  
23 large number of residents within and around Northeast Fresno began experiencing issues with  
24 their water, including discoloration.

25 2. In or about January 2016, the CITY OF FRESNO launched an investigation into  
26 water problems based on reports from over three hundred residents of the Northeast area of  
27 Fresno, California. Testing conducted on the water in numerous homes, including Plaintiffs’,  
28 revealed corrosive damage to Plaintiffs’ plumbing and the presence of lead, iron, and other toxic

1 contaminants at levels in excess of allowable limits in the drinking water supplied to them by the  
2 CITY. An analysis completed by consultants hired by the CITY OF FRESNO confirmed that the  
3 probable cause of discoloration in these residents' water and corrosion in their galvanized piping  
4 was the CITY's addition of treated surface water into the water distribution system that  
5 previously relied solely on groundwater from the wells in and around the City. An example of the  
6 corrosive pipes is depicted in the photographs below.



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16 3. This class action is brought on behalf of Northeast Fresno residents who, like  
17 Plaintiffs, were supplied municipal water by the CITY through the Northeast Surface Water  
18 Treatment Facility. As a result of Defendants' deliberate decision, or wrongful conduct,  
19 Plaintiffs—and identifiable Class members—have suffered harm and injuries including but not  
20 limited to damaged pipes and plumbing, diminished property values, the cost of remediation and  
21 re-plumbing, the cost of contaminated water. Specifically, Plaintiffs' injuries are a result of:

22 a. The CITY OF FRESNO, having constructed the NESWTF in furtherance of  
23 public objectives to provide additional water to residents of the city, took a calculated risk that  
24 damage might occur to some residents' properties with galvanized pipe, including the plumbing of  
25 homeowners in Northeast Fresno receiving water from the NESWTF as designed and constructed;

26 b. The CITY OF FRESNO's failure to comply with the regulatory scheme,  
27 which includes legislatively mandated water testing, notification, and reporting requirements  
28 including but not limited to the Environmental Protection Agency's ("EPA") Lead and Copper

1 rule 40 C.F.R. § 141.80, *et seq.*, and California’s Lead and Copper rule, 22 CCR 64670, *et seq.*  
2 (collectively, “LCR”), and failure to comply with California’s Safe Drinking Water Act and its  
3 implementing regulations, including but not limited to Health and Safety Code section 116550(a),  
4 by failing to operate the NESWTF with State-mandated corrosion control treatment in violation of  
5 its water permit, failing to rigorously control the pH levels of its water, and by modifying its  
6 corrosion control treatment without approval from the State Board;

7 c. The CITY OF FRESNO’s maintenance and operation of its NESWTF  
8 relating to the function and purpose of the plant as conceived, including but not limited to the  
9 introduction of the surface water to the existing groundwater system without appropriate treatment  
10 to address the changing chemistry and its impact to Fresno’s water supply, which caused it to  
11 deliver highly aggressive and corrosive water; and

12 d. The CITY OF FRESNO’ negligent installation of pipe connections between  
13 Plaintiffs’ and Class members’ homes and the public water supply, which caused the pipes  
14 connecting the CITY’s water supply to Plaintiffs and Class members’ properties to corrode and  
15 leach lead and other toxic metals into their drinking water.

16 4. Notwithstanding knowledge to the contrary, the CITY has continually denied  
17 responsibility for issues relating to the water supply it delivers and claims that the water is not  
18 defective or harmful to people or property. The CITY was aware that these issues would likely  
19 manifest at the time it undertook to build and develop the NESWTF.

20 5. A report by HDR Engineering, Inc., drafted in 1998, alerted the CITY that the  
21 NESWTF, as deliberately designed and conceived, might cause damage to occur in the homes and  
22 plumbing of Northeast Fresno homeowners with galvanized piping. The report warned the CITY  
23 that introducing treated surface water into its water distribution system would change the water’s  
24 chemistry make up, strip Plaintiffs’ galvanized piping of its zinc coating, and cause ongoing and  
25 continuous damage to their homes.

26 6. Despite longstanding knowledge of the cause of Plaintiffs’ and Class members’  
27 water problems, the CITY continued to misrepresent to Plaintiffs and Class members that the  
28 problems were harmless and not the result of any action on the part of the CITY.

1           7.       On or about September 16, 2016, Dr. Vernon L. Snoeyink and Water Quality &  
2 Treatment Solutions, Inc., consultants hired by the CITY to evaluate the water problems in Fresno,  
3 submitted a report to the CITY. The report concluded and confirmed that the likely cause of the  
4 discolored water problem is the CITY's introduction of treated surface water into a water system  
5 that for decades relied solely upon groundwater. The report further acknowledged that the  
6 discoloration issue will not be completely eliminated so long as the Northeast Surface Water  
7 Treatment Facility continues supplying water to homes with galvanized piping installed.

8 **II.     JURISDICTION AND VENUE**

9           8.       This California Superior Court has jurisdiction over this matter pursuant to  
10 California Code of Civil Procedure section 410.10. Both the individual and aggregate monetary  
11 damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior  
12 Court and will be established at trial, according to proofs.

13          9.       The California Superior Court has personal jurisdiction over Defendants because  
14 they are entities and/or persons with sufficient minimum contacts in California, are citizens of  
15 California, or have contacts with California so as to render the exercise of jurisdiction over them  
16 by the California courts consistent with traditional notions of fair play and substantial justice.

17          10.      Venue is proper in the Superior Court of California, Fresno County pursuant to  
18 Code of Civil Procedure sections 394(a), 395(a), and 395.5. Furthermore, this Court is the proper  
19 venue because a substantial amount of Defendants' conduct occurred in this County, and because  
20 Plaintiffs reside in and were injured in this County.

21 **III.    PARTIES**

22           **A.     Plaintiffs**

23          11.      Plaintiffs KAREN MICHELI and MICHAEL MICHELI are citizens of the State of  
24 California and residents of the County of Fresno. Plaintiffs KAREN MICHELI and MICHAEL  
25 MICHELI purchased and have lived in their Northeast Fresno, California area home since 1995.  
26 They are the sole trustees of the Michael Micheli and Karen Micheli Trust, in which capacity they  
27 own the property. During the relevant time period, Plaintiffs KAREN MICHELI and MICHAEL  
28 MICHELI were unaware of the corrosive nature and growing toxicity of the discolored water

1 supplied to them by the CITY, and regularly drank and used their water for certain, normal  
2 household purposes. As a result of Defendants' actions and inactions, as set forth herein, the pipes  
3 supplying water from the CITY to their home have corroded and caused lead in excess of  
4 permissible levels to leach into the water entering their home. The CITY OF FRESNO'S  
5 Department of Public Utilities tested the water in the Micheli home on or about February 2, 2016,  
6 February 9, 2016, and again on February 19, 2016. The CITY failed to inform Plaintiffs KAREN  
7 MICHELI and MICHAEL MICHELI that the lead levels in their home exceeded the  
8 Environmental Protection Agency's (EPA) Action Level standard (0.015 mg/L) until  
9 approximately March 15, 2016, in violation of the Lead and Copper Rules. The CITY, through its  
10 misrepresentations and omissions, led Plaintiffs KAREN MICHELI and MICHAEL MICHELI to  
11 believe that pipes on their property were the source of their water problems and that the water was  
12 safe for all purposes. Plaintiffs have suffered significant harm including, but not limited to the  
13 diminution of their property value, other economic harm including the cost of re-plumbing their  
14 home, ongoing exposure to excessive levels of lead and other toxic substances, as well as  
15 substantial and unreasonable interference with their comfortable enjoyment of life and property.

16 12. Plaintiffs KAREN MICHELI and MICHAEL MICHELI have substantially  
17 complied with all applicable notice and claim requirements by their presentation of written  
18 administrative claims in accordance with the California Tort Claims Act (Cal. Govt. Code § 810 *et*  
19 *seq.*). They submitted their government claims to the City of Fresno and the State of California by  
20 U.S. Mail on or about August 22, 2016. On or about September 13, 2016, KAREN and  
21 MICHAEL MICHELI submitted their amended claim forms to the City of Fresno. The City of  
22 Fresno rejected their claims by letter on or about October 12, 2016. The California Department of  
23 General Services rejected KAREN MICHELI's government claim on September 15, 2016. The  
24 time period for the State of California to respond to their government claims has lapsed without  
25 response as to MICHAEL MICHELI's government claim. The failure to timely respond is treated  
26 as a rejection of the claim. Cal. Govt. Code § 912.4(a).

27 13. Plaintiffs FAITH NITSCHKE and DAVID NITSCHKE are citizens of the State of  
28 California and residents of the County of Fresno. Plaintiffs FAITH NITSCHKE and DAVID

1 NITSCHKE purchased their home in the Northeast Fresno, California area in 1992, and are the  
2 original homeowners. They have lived in this home continuously since they purchased it. They are  
3 the sole trustees of the Nitschke Family Trust of 2000, in which capacity they own the property.  
4 During the relevant time period, Plaintiffs FAITH NITSCHKE and DAVID NITSCHKE were  
5 unaware of the corrosive nature and growing toxicity of the water supplied to them by the CITY,  
6 and regularly drank and used their water for normal household purposes. As a result of  
7 Defendants' actions and inactions, as set forth herein, the pipes supplying water from the CITY to  
8 their home have corroded and caused lead in excess of permissible levels to leach into the water  
9 entering their home. The CITY OF FRESNO's Department of Public Utilities tested the water in  
10 the Nitschke home on or about January 26, 2016, February 13, 2016, and again on February 19,  
11 2016. The CITY failed to inform Plaintiffs FAITH NITSCHKE and DAVID NITSCHKE that the  
12 lead levels in their water exceeded the EPA's Action Level standard until approximately April 6,  
13 2016, in violation of the Lead and Copper Rules. Plaintiffs have suffered significant harm  
14 including, but not limited to the diminution of their property's value, other economic harm  
15 including the cost of re-plumbing their home, ongoing exposure to excessive levels of lead and  
16 other toxic substances, as well as substantial and unreasonable interference with Plaintiffs'  
17 comfortable enjoyment of life and property.

18 14. Plaintiffs FAITH NITSCHKE and DAVID NITSCHKE have substantially  
19 complied with all applicable notice and claim requirements by presentation of their written  
20 administrative claims in accordance with the California Tort Claims Act (Cal. Govt. Code § 810 *et*  
21 *seq.*). They submitted their government claims to the City of Fresno and the State of California by  
22 U.S. Mail on or about August 29, 2016. On or about September 13, 2016, FAITH and DAVID  
23 NITSCHKE submitted their amended claim forms to the City of Fresno. The City of Fresno  
24 rejected their claims by letter on or about October 19, 2016. The time period for the State of  
25 California to respond to their government claims has lapsed without response. The failure to  
26 timely respond is treated as a rejection of the claim. Cal. Govt. Code § 912.4(a).

27 15. Plaintiff JEANETTE GRIDER is a citizen of the State of California and a resident  
28 of the County of Fresno. Plaintiff JEANETTE GRIDER purchased her home together with her

1 husband in the Northeast Fresno, California area in 1992. She and her husband are the original  
2 homeowners, and they continue to live in this home. During the relevant time period, Plaintiff  
3 JEANETTE GRIDER was unaware of the corrosive nature and growing toxicity of the water  
4 supplied to her by the CITY, and regularly drank and used her water for normal household  
5 purposes. As a result of Defendants' actions and inactions, as set forth herein, the pipes supplying  
6 water from the CITY to her home have corroded and caused lead in excess of permissible levels to  
7 leach into the water entering her home. The CITY OF FRESNO'S Department of Public Utilities  
8 tested the water in JEANETTE GRIDER's home on or about January 25, 2016 and February 8,  
9 2016. The CITY failed to inform Plaintiff JEANETTE GRIDER that the lead levels in her home  
10 exceeded the EPA's Action Level standard until approximately March 15, 2016, when she  
11 received the test results, in violation of the Lead and Copper Rules. Plaintiff has suffered  
12 significant harm including, but not limited to the diminution of her property value, other economic  
13 harm, and ongoing exposure to toxic levels of lead and other toxic substances, and substantial and  
14 unreasonable interference with Plaintiff's comfortable enjoyment of life and property.

15         16. Plaintiff JEANETTE GRIDER has substantially complied with all applicable notice  
16 and claim requirements by presentation of her written administrative claims in accordance with the  
17 California Tort Claims Act (Cal. Govt. Code § 810 *et seq.*) for herself and the Class. Plaintiff  
18 Grider, on behalf of herself and the Class members, submitted their government claims to the City  
19 of Fresno and the State of California by U.S. Mail on or about September 7, 2016. The time period  
20 for the City of Fresno and State of California to respond to their government claims has lapsed  
21 without response. The failure to timely respond is treated as a rejection of the claim. Cal. Govt.  
22 Code § 912.4(a).

23         17. Plaintiff JACKIE FLANNERY is a citizen of the State of California and a resident  
24 of the County of Fresno. Plaintiff JACKIE FLANNERY purchased and has lived in her Northeast  
25 Fresno, California area home since 1996. During the relevant time period, Plaintiff JACKIE  
26 FLANNERY was unaware of the corrosive nature and growing toxicity of the discolored water  
27 supplied to her by the CITY, and regularly drank and used the water for certain, normal household  
28 purposes. As a result of Defendants' actions and/or inactions, as set forth herein, the pipes

1 supplying water from the CITY to her home have corroded and caused lead in excess of  
2 permissible levels to leach into the water entering her home. The CITY, through its  
3 misrepresentations and/or omissions, led Plaintiff JACKIE FLANNERY to believe that pipes on  
4 her property were the source of the water problems and that the water was safe for all purposes.  
5 Plaintiff JACKIE FLANNERY has suffered significant harm including, but not limited to the  
6 diminution of her property value, other economic harm, ongoing exposure to excessive levels of  
7 lead and other toxic substances, as well as substantial and unreasonable interference with her  
8 comfortable enjoyment of life and property. Plaintiff JACKIE FLANNERY has substantially  
9 complied with all applicable notice and claim requirements of the California Tort Claims Act (Cal.  
10 Govt. Code § 810 *et seq.*).

11       18. Plaintiff GUADALUPE MEZA is a citizen of the State of California and a resident  
12 of the County of Fresno. Plaintiff GUADALUPE MEZA purchased and has lived in her Northeast  
13 Fresno, California area home since 1990. During the relevant time period, Plaintiff  
14 GUADALUPE MEZA was unaware of the corrosive nature and growing toxicity of the discolored  
15 water supplied to her by the CITY, and regularly drank and used the water for certain, normal  
16 household purposes. As a result of Defendants' actions and/or inactions, as set forth herein, the  
17 pipes supplying water from the CITY to her home have corroded. The CITY, through its  
18 misrepresentations and/or omissions, led Plaintiff GUADALUPE MEZA to believe that pipes on  
19 her property were the source of the water problems and that the water was safe for all purposes.  
20 Plaintiff GUADALUPE MEZA has suffered significant harm including, but not limited to the  
21 diminution of her property value, other economic harm, ongoing exposure to excessive levels  
22 toxic substances, as well as substantial and unreasonable interference with her comfortable  
23 enjoyment of life and property. Plaintiff GUADALUPE MEZA has substantially complied with  
24 all applicable notice and claim requirements of the California Tort Claims Act (Cal. Govt. Code §  
25 810 *et seq.*).

26       19. Plaintiff RONDA RAFIDI is a citizen of the State of California and a resident of  
27 the County of Fresno. Plaintiff RONDA RAFIDI purchased and has lived in her Northeast  
28 Fresno, California area home since 2003. During the relevant time period, Plaintiff RONDA

1 RAFIDI was unaware of the corrosive nature and growing toxicity of the discolored water  
2 supplied to her by the CITY, and regularly drank and used the water for certain, normal household  
3 purposes. The CITY, through its misrepresentations and/or omissions, led Plaintiff RONDA  
4 RAFIDI to believe that pipes on her property were the source of the water problems and that the  
5 water was safe for all purposes. As a result of Defendants' actions and/or inactions, as set forth  
6 herein, the pipes supplying water from the CITY to her home have corroded and caused lead in  
7 excess of permissible levels to leach into the water entering her home. The CITY, through its  
8 misrepresentations and/or omissions, led Plaintiff RONDA RAFIDI to believe that pipes on her  
9 property were the source of the water problems and that the water was safe for all purposes.  
10 Plaintiff has suffered significant harm including, but not limited to the diminution of her property  
11 value, other economic harm, ongoing exposure to excessive levels of lead and other toxic  
12 substances, as well as substantial and unreasonable interference with her comfortable enjoyment  
13 of life and property. Plaintiff RONDA RAFIDI has substantially complied with all applicable  
14 notice and claim requirements of the California Tort Claims Act (Cal. Govt. Code § 810 *et seq.*).

15         20. Plaintiff SHANN CONNER is a citizen of the State of California and a resident of  
16 the County of Fresno. Plaintiff SHANN CONNER purchased and has lived in her Northeast  
17 Fresno, California area home since 2001. During the relevant time period, Plaintiff SHANN  
18 CONNER was unaware of the corrosive nature and growing toxicity of the discolored water  
19 supplied to her by the CITY, and regularly drank and used the water for certain, normal household  
20 purposes. As a result of Defendants' actions and/or inactions, as set forth herein, the pipes  
21 supplying water from the CITY to her home have corroded and caused lead in excess of  
22 permissible levels to leach into the water entering her home. The CITY, through its  
23 misrepresentations and/or omissions, led Plaintiff SHANN CONNER to believe that pipes on her  
24 property were the source of the water problems and that the water was safe for all purposes.  
25 Plaintiff has suffered significant harm including, but not limited to the diminution of her property  
26 value, other economic harm, ongoing exposure to excessive levels of lead and other toxic  
27 substances, as well as substantial and unreasonable interference with her comfortable enjoyment  
28 of life and property. Plaintiff SHANN CONNER has substantially complied with all applicable

1 notice and claim requirements of the California Tort Claims Act (Cal. Govt. Code § 810 *et seq.*).

2           21. Plaintiff MARIROSE LARKINS is a citizen of the State of California and a  
3 resident of the County of Fresno. Plaintiff MARIROSE LARKINS purchased and has lived in her  
4 Northeast Fresno, California area home since 2000. During the relevant time period, Plaintiff  
5 MARIROSE LARKINS was unaware of the corrosive nature and growing toxicity of the  
6 discolored water supplied to her by the CITY, and regularly drank and used the water for certain,  
7 normal household purposes. As a result of Defendants' actions and/or inactions, as set forth  
8 herein, the pipes supplying water from the CITY to her home have corroded and caused lead in  
9 excess of permissible levels to leach into the water entering her home. The CITY, through its  
10 misrepresentations and/or omissions, led Plaintiff MARIROSE LARKINS to believe that pipes on  
11 her property were the source of the water problems and that the water was safe for all purposes.  
12 Plaintiff has suffered significant harm including, but not limited to the diminution of her property  
13 value, other economic harm, ongoing exposure to excessive levels of lead and other toxic  
14 substances, as well as substantial and unreasonable interference with her comfortable enjoyment  
15 of life and property. Plaintiff MARIROSE LARKINS has substantially complied with all  
16 applicable notice and claim requirements of the California Tort Claims Act (Cal. Govt. Code §  
17 810 *et seq.*).

18           22. Plaintiff PATRICIA WALLACE-RIXMAN is a citizen of the State of California  
19 and a resident of the County of Fresno. Plaintiff began living in and was added to the title of her  
20 husband Harry Rixman's Northeast Fresno, California area home in 1999. During the relevant  
21 time period, Plaintiff PATRICIA WALLACE-RIXMAN was unaware of the corrosive nature and  
22 growing toxicity of the discolored water supplied to her by the CITY, and regularly drank and  
23 used the water for certain, normal household purposes. As a result of Defendants' actions and/or  
24 inactions, as set forth herein, the pipes supplying water from the CITY to her home have corroded  
25 and caused lead in excess of permissible levels to leach into the water entering her home. The  
26 CITY, through its misrepresentations and/or omissions, led Plaintiff PATRICIA WALLACE-  
27 RIXMAN to believe that pipes on her property were the source of the water problems and that the  
28 water was safe for all purposes. Plaintiff has suffered significant harm including, but not limited

1 to the diminution of her property value, other economic harm including the cost of re-plumbing  
2 her home, ongoing exposure to excessive levels of lead and other toxic substances, as well as  
3 substantial and unreasonable interference with her comfortable enjoyment of life and property.  
4 Plaintiff PATRICIA WALLACE-RIXMAN has substantially complied with all applicable  
5 requirements of the California Tort Claims Act (Cal. Govt. Code § 810 et seq.).

6         23. Plaintiff HARRY RIXMAN is a citizen of the State of California and a resident of  
7 the County of Fresno. Plaintiff purchased and has lived in his Northeast Fresno, California area  
8 home since 1989. During the relevant time period, Plaintiff HARRY RIXMAN was unaware of  
9 the corrosive nature and growing toxicity of the discolored water supplied to him by the CITY,  
10 and regularly drank and used the water for certain, normal household purposes. As a result of  
11 Defendants' actions and/or inactions, as set forth herein, the pipes supplying water from the CITY  
12 to his home have corroded and caused lead in excess of permissible levels to leach into the water  
13 entering his home. The CITY, through its misrepresentations and/or omissions, led Plaintiff  
14 HARRY RIXMAN to believe that pipes on his property were the source of the water problems  
15 and that the water was safe for all purposes. Plaintiff has suffered significant harm including, but  
16 not limited to the diminution of his property value, other economic harm including the cost of re-  
17 plumbing his home, ongoing exposure to excessive levels of lead and other toxic substances, as  
18 well as substantial and unreasonable interference with her comfortable enjoyment of life and  
19 property. Plaintiff HARRY RIXMAN has substantially complied with all applicable requirements  
20 of the California Tort Claims Act (Cal. Govt. Code § 810 et seq.).

21         24. Plaintiff KELLY UNRUH is a citizen of the State of California and a resident of  
22 the County of Fresno. Plaintiff purchased and has lived in her Northeast Fresno, California area  
23 home since 1991. KELLY UNRUH is a trustee of the KELLY D. UNRUH LIVING TRUST, in  
24 which capacity she has owned the property since 2012. During the relevant time period, Plaintiff  
25 KELLY UNRUH was unaware of the corrosive nature and growing toxicity of the discolored  
26 water supplied to her by the CITY, and regularly drank and used the water for certain, normal  
27 household purposes. As a result of Defendants' actions and/or inactions, as set forth herein, the  
28 pipes supplying water from the CITY to her home have corroded and caused lead in excess of

1 permissible levels to leach into the water entering her home. The CITY, through its  
2 misrepresentations and/or omissions, led Plaintiff KELLY UNRUH to believe that pipes on her  
3 property were the source of the water problems and that the water was safe for all purposes.  
4 Plaintiff KELLY UNRUH has suffered significant harm including, but not limited to the  
5 diminution of her property value, other economic harm including the cost of re-plumbing her  
6 home, ongoing exposure to excessive levels of lead and other toxic substances, as well as  
7 substantial and unreasonable interference with her comfortable enjoyment of life and property.  
8 Plaintiff KELLY UNRUH has substantially complied with all applicable requirements of the  
9 California Tort Claims Act (Cal. Govt. Code § 810 et seq.).

10 **B. Defendants**

11 25. Defendant CITY OF FRESNO is a municipal corporation, duly organized and  
12 existing under the laws of the State of California. The CITY OF FRESNO, by and through the  
13 Department of Public Utilities, provides municipal services to its residents such as disposing  
14 garbage, collecting recycling, and supplying water. The CITY OF FRESNO'S Department of  
15 Public Utilities oversees the Water Division, which manages and operates the CITY OF  
16 FRESNO'S public water system. Defendant CITY OF FRESNO'S Department of Public Utilities  
17 delivers drinking water to approximately 500,000 urban residential, commercial, and industrial  
18 customers within the City of Fresno.

19 26. DEFENDANT DOES: Plaintiffs are unaware at this time of the true names and  
20 capacities of the defendants sued herein as DOES 1-100, inclusive, and therefore sue these  
21 defendants by such fictitious names. Plaintiffs are informed and believe that each of the fictitious  
22 named defendants are legally responsible in some manner for the occurrences herein alleged,  
23 assisted in and about the wrongs complained herein by providing financial support, advice,  
24 resources, and/or other assistance. Plaintiffs will amend the complaint to allege their true names  
25 and capacities when ascertained.

26 27. Unless otherwise specified, "Defendants" as used herein shall refer collectively to  
27 Defendants CITY OF FRESNO and DOES 1-100, inclusive.

28 28. At all relevant times, each of the Defendants, including DOES 1-100, inclusive,

1 was the agent, servant, employee, co-conspirator, alter ego, and/or joint venture of each of the  
2 other Defendants. In doing the things herein alleged, each and every Defendant was acting within  
3 the course and scope of this agency, employment, conspiracy, alter ego, and/or joint venture, and  
4 was acting with the consent, permission and authorization of each of the other Defendants. All  
5 actions of each Defendant, as alleged in the causes of action stated herein, were ratified, approved,  
6 and/or authorized by every other Defendant with full knowledge of such acts. Defendants are thus  
7 jointly and severally liable for such actions.

8         29. The allegations in this Complaint are based upon information and belief, except for  
9 those allegations pertaining to the Plaintiffs named herein and their counsel. Plaintiffs’  
10 information and the allegations in this Complaint are based upon information and belief except for  
11 those allegations pertaining to the Plaintiffs named herein and their counsel. Plaintiffs’  
12 information and beliefs are based upon, *inter alia*, the investigation conducted to date by Plaintiffs  
13 and their counsel. Each allegation in this Complaint either has evidentiary support or is likely to  
14 have evidentiary support upon further investigation and discovery.

15 **IV. GENERAL ALLEGATIONS**

16         30. All allegations made herein are pled in the alternative to the extent they present any  
17 actual conflict.

18         **A. THE CITY OF FRESNO’S DECISION TO CHANGE THE WATER**  
19         **SOURCE BY INTRODUCING SURFACE WATER CAUSED THE**  
20         **CORROSION OF PIPES USED TO DELIVER WATER TO THE**  
21         **RESIDENTS OF FRESNO.**

22         31. Historically, the CITY relied exclusively on water from groundwater wells with  
23 relatively high mineral content as its source of water to service these residents. As a result, the  
24 zinc coating of the galvanized piping in residents’ homes developed a protective barrier to  
25 corrosion. Groundwater is extremely non-corrosive to galvanized piping.

26         32. However, in or around 2004, the CITY constructed a public improvement to  
27 increase its water supply to the City of Fresno and the growing Northeast Fresno community, in  
28 doing so it changed its primary water source by introducing surface water from Kings River and  
San Joaquin River, received through the Enterprise Canal, treated at the NESWTF. The NESWTF

1 supplies more than 20 million gallons of water per day to thousands of homes in the Northeast  
2 area of Fresno, California. As designed and conceived the NESWTF water causes damage to  
3 Plaintiffs' and Class members' homes.

4 33. In or about 1998, well before the activation of the NESWTF, the CITY retained a  
5 consultant, HDR Engineering, Inc., to evaluate the consequences of changing the water supply  
6 source from groundwater to combined or blended groundwater and surface water from the  
7 Enterprise Canal. In its 1998 report drafted to the CITY, HDR Engineering, Inc. advised the CITY  
8 that changing its water source would likely cause degradation in the water's aesthetic quality  
9 ("colored water") since a new water source with an entirely different chemical composition is  
10 being introduced to pipes that were previously acclimated to the characteristics of a particular  
11 source of water. The 1998 report further warned that potential water quality issues may manifest in  
12 the form of increased release of particulates, red water episodes, and the increased corrosion on  
13 the base metal of the piping's wall.

14 34. The groundwater previously supplied by the CITY to the homes of Fresno,  
15 including Plaintiffs' and Class members' homes, was heavily mineralized with a moderate  
16 concentration of alkalinity and hardness. Enterprise Canal surface water, as designed, conceived,  
17 and maintained on the other hand, has a far lower mineral content, lower overall hardness, and a  
18 lower chloride and sulfate content. Whereas the previously supplied groundwater did not cause  
19 corrosion or harm to the homes or piping systems in the homes of Northeast Fresno, the blended  
20 Enterprise Canal water and groundwater has caused and continues to cause such corrosion and  
21 harm.

22 35. The 1998 report informed the CITY that there would be a strong likelihood of  
23 corrosion in galvanized piping due to the significant differences in these water sources' inorganic  
24 character. The CITY knew modifying its water source from heavily mineralized groundwater with  
25 moderate concentrations of alkalinity and hardness, a significant contribution of chloride, sulfate,  
26 and other inorganic constituents, to combined groundwater and surface water, which contains a  
27 significantly different chemical composition, would have adverse effects on the galvanized pipes  
28 by destabilizing the material built up in the pipes in most of the Northeast Fresno residents'

1 homes, including the homes of Plaintiffs.

2           36.     The CITY at the time knew that “galvanized piping predominates with well over  
3 50% of the installation in Fresno households.” The CITY knew that providing water from the  
4 NESWTF as designed and conceived would cause these homes to be susceptible to discoloration  
5 in their water and corrosion in their piping, which would likely lead to the leaching of metals,  
6 including toxic metals such as iron and lead, into the water that Fresno residents drink or  
7 otherwise ingest and use, and ultimately require replacement of as a result.

8           37.     The above notwithstanding the CITY constructed the Northeast Fresno Surface  
9 Water Treatment Facility which went into operation in 2004, with the inherent risk that surface  
10 water used to provide for the growing demand of the public would cause damage and injury to  
11 those homes with galvanized pipes by stripping their protective zinc coating and causing  
12 corrosion. After the NESWTF became active and began combining the ground and surface waters,  
13 the CITY OF FRESNO’s Department of Public Utilities, namely its Water Division, began  
14 receiving complaints from a few Fresno residents who had not previously experienced water  
15 quality problems.

16           38.     For several months prior to January 2016, the CITY began receiving increasing  
17 complaints relating to its water quality. As a result, it publicly disclosed the issue and undertook  
18 an investigation.

19           39.     In or around September, 2016, a report prepared by hired consultants Dr. Vernon L.  
20 Snoeyink and Water Quality & Treatment Solutions, Inc. analyzed the test results and examined  
21 extracted pipes from some of the affected homes. The report confirmed that the NESWTF water  
22 was causing galvanized piping in the homes to be damaged and to corrode. The report also  
23 concluded that the more likely cause of the discolored water is the CITY’s introduction of treated  
24 NESWTF water into a water system that had served groundwater for decades. The CITY’s  
25 deliberate decision to continuously switch its water source back and forth between groundwater  
26 and surface water only served to intensify the problem.

27           40.     The September 2016 report proffered a number of recommendations to the CITY  
28 OF FRESNO, including informing its residents to let the water run for a period of time to reduce

1 the concentration of lead in their water and replacing the corroded galvanized piping in their  
2 homes.

3 41. Notwithstanding the CITY's continued representations that its water supply is  
4 clean, safe, and reliable, in approximately 2005 or 2006, the CITY nevertheless provided a select  
5 and favored number of residents in the CITY with ongoing supplies of bottled water, which  
6 continues to this day, for everyday use, including drinking, showering, and cooking. The CITY did  
7 not offer safe bottled drinking water to members of the Class, nor did it disclose to Plaintiffs and  
8 Class members the fact that it was preferentially providing safe drinking water to a select few  
9 resident of Northeast Fresno.

10 42. CITY officials also failed to report the results of tests revealing contaminated and  
11 discolored water in its water supply to the State of California or take sufficient system-wide  
12 measures to remedy the problem in order to mitigate or prevent further damages to its residents  
13 and their properties. Instead, the CITY denied having knowledge of the widespread issue,  
14 contending that it had only recently discovered the issue in January, 2016.

15 43. The CITY ignored irrefutable evidence, before January 2016, that the water  
16 supplied to residents of Northeast Fresno was not and is not potable or safe, and exposed and  
17 continues to expose these residents, including Plaintiffs and Class members, to toxic metals such  
18 as lead, which caused and continues to cause residents to suffer property damage, other economic  
19 losses, and the risk of serious health hazards.

20 44. At all times relevant herein, Defendants, and each of them, concealed and omitted  
21 relevant facts that would have allowed Plaintiffs and Class members to discover the true nature  
22 and degree of the water contamination issues. As a result of these misrepresentations and  
23 omissions, equitable tolling of the statute of limitations applies as to the claims asserted by  
24 Plaintiffs and the Class. Any applicable statute of limitations that might otherwise bar certain of  
25 the claims at issue should be tolled because Defendants, and each of them, actively misled  
26 Plaintiffs and the Class through affirmative representations and omissions with respect to the true  
27 nature, quality, and hazards of use of the water as described herein and above.

28 45. Plaintiffs and Class members exercised due diligence to discover Defendants'

1 wrongdoing. However, such wrongdoing and/or the full extent and degree of such wrongdoing  
2 was not reasonably discoverable prior to the date of the filing of this action and/or prior to the  
3 statutory period for the filing of this action and since Defendants, and each of them, concealed  
4 their wrongdoing through misrepresentations and omissions, Plaintiffs exercised due diligence by  
5 promptly filing this Complaint after discovering the facts giving rise to these claims.

6 **V. CLASS ACTION ALLEGATIONS**

7 46. Plaintiff brings this class action individually and on behalf of all others similarly  
8 situated pursuant to California Code of Civil Procedure section 382. This action may be brought  
9 and properly maintained as a class action because Plaintiffs satisfy the numerosity, adequacy,  
10 typicality, and commonality pre-requisites for suing as a representative party pursuant to  
11 California Code of Civil Procedure section 382.

12 47. Plaintiffs seeks to represent a Class and subclasses, defined by objective criteria, as  
13 follows:

14 All owners of residential, single family real property located within the City of  
15 Fresno's Discolored Water investigation area (from E. Copper Avenue to E. Sierra  
16 Avenue, and from State Route 41 to N. Willow Avenue), who, anytime between  
17 January 1, 2016 and present: (1) had galvanized iron plumbing; (2) received water  
service from the City of Fresno; (3) reported discolored, "rusty" water at that  
address to the City of Fresno; and (4) have not released their claims against the City  
("Class").

18 All owners of residential, single family real property located within  
19 the City of Fresno's Discolored Water investigation area (from E.  
20 Copper Avenue to E. Sierra Avenue, and from State Route 41 to N.  
21 Willow Avenue), who, anytime between January 1, 2016 and  
22 present: (1) had galvanized iron plumbing; (2) received water  
23 service from the City of Fresno; (3) reported discolored, "rusty"  
water at that address to the City of Fresno; (4) obtained water  
quality test results from the City of Fresno indicating iron at any  
tested fixture above 0.3 mg/L; and (5) have not released their claims  
against the City ("**Subclass 1**").

24 All owners of residential, single family real property located within  
25 the City of Fresno's Discolored Water investigation area (from E.  
26 Copper Avenue to E. Sierra Avenue, and from State Route 41 to N.  
27 Willow Avenue), who, anytime between January 1, 2016 and  
28 present: (1) had galvanized iron plumbing; (2) received water  
service from the City of Fresno; (3) reported discolored, "rusty"  
water at that address to the City of Fresno; (4) have not obtained  
water quality test results from the City of Fresno; and (5) have not  
released their claims against the City ("**Subclass 2**").

1  
2 48. At all relevant times, Plaintiffs named herein were and are within the proposed  
3 Class as described above.

4 49. Excluded from the proposed Class are Defendant City of Fresno or any entity or  
5 division therein, and its legal representatives, officials and employees; also excluded is any  
6 judicial officer presiding over this action, the judge's staff members, and any member of the  
7 judge's immediate family. Plaintiffs reserve the right to modify the proposed class definition and  
8 to add or modify subclasses.

9 50. Numerosity. The proposed Class is so numerous that joinder of all members is  
10 unfeasible and impractical. The CITY maintains that its Northeast Surface Water Treatment  
11 Facility supplies more than 20 million gallons of water per day to thousands of homes in the  
12 Northeast Fresno area, and more than 1,500 residents have complained to the CITY about issues  
13 relating to their water. In addition, the City has reported that over 300 homes tested reveal levels  
14 of lead and nearly 120 of them have lead levels in excess of acceptable thresholds. The City  
15 maintains records of its water service customers, including databases of residents within the City's  
16 Discolored Water investigation area who reported discolored water to the City and obtained water  
17 quality test results, including test results for iron, lead and other contaminants. These records  
18 identify over a thousand class member homes where iron results exceeded the standard. The  
19 proposed Class is sufficiently numerous, making individual joinder of Class members' claims  
20 impracticable.

21 51. Ascertainability. Class members are ascertainable through the CITY and State of  
22 California's public records. Moreover, the CITY has conducted water testing throughout Fresno,  
23 and has sent monthly reports with such information to the State of California. This action is  
24 properly suited for class action treatment because a well-defined community of interest in the  
25 litigation exists and the proposed class is readily and easily ascertainable.

26 52. Typicality. Plaintiffs' claims are typical of the claims of all members of each Class  
27 Plaintiffs seek to represent because all members of the Class sustained injuries arising out of  
28 Defendants' common course of conduct in violation of law and the injuries of all members of the

1 Class were caused by Defendants' wrongful conduct in violation of law, as alleged herein.  
2 Plaintiffs', like all Class members, have been harmed by Defendants' misconduct and failure to  
3 act, and Plaintiffs have suffered harm and incurred damages and losses related to the aggressive,  
4 corrosive, degraded, and substandard water supplied by Fresno's public water system, which  
5 caused the corrosion of pipes and Plaintiffs to be exposed to an excess levels of lead, iron, and  
6 other hazardous substances. Furthermore, the CITY's failure to test, report, and investigate its  
7 issues with its water supply and notify and warn the public of the same is the basis of these  
8 Defendants' misconduct. This action and/or failure to act represents a common course of  
9 misconduct that caused harm to Plaintiffs and Class members.

10 53. Adequacy. Plaintiffs are adequate representatives of the class they seek to represent  
11 and will fairly protect the interests of Class members. Plaintiffs' interests do not conflict with  
12 Class members' interests. Plaintiffs have no interest antagonistic to those of Class members, and  
13 Defendants have no defenses unique to Plaintiffs. Plaintiffs have retained counsel competent and  
14 experienced in complex class action litigations, and Plaintiffs intend to vigorously pursue  
15 favorable resolution of this suit on behalf of themselves and the members of the Class.

16 54. Predominant Common Questions of Law and/or Fact. This is a well-defined  
17 community of interest and common questions of law and fact exist as to all members of the  
18 proposed Class and predominate over questions affecting only individual Class members; these  
19 common questions will drive the resolution of this litigation. Common questions applicable to all  
20 classes include:

- 21 a. Whether Defendants engaged in the conduct alleged herein;
- 22 b. Whether the CITY OF FRESNO undertook a public improvement by  
23 developing and bringing online the NESWTF;
- 24 c. Whether the NESWTF as deliberately designed and conceived damaged  
25 Plaintiffs' and Class members' homes;
- 26 d. Whether the CITY OF FRESNO was acting in furtherance of its public  
27 objectives to provide additional water to its residents by developing, building, and maintaining the  
28 NESWTF;

- 1 e. Whether the CITY OF FRESNO was taking a calculated risk that damage to  
2 Plaintiffs' and Class members' plumbing and homes may occur;
- 3 f. Whether the CITY OF FRESNO owed a duty to Plaintiffs and Class  
4 members by operating and maintaining the NESWTF that provides over 20 million gallons of  
5 water per day to over thousands of residents in Fresno;
- 6 g. Whether the CITY OF FRESNO acted reasonably in the operation and  
7 maintenance of the NESWTF;
- 8 h. Whether the CITY OF FRESNO was negligent in its operation and  
9 maintenance of its public water system;
- 10 i. Whether the CITY OF FRESNO complied with the mandatory duty to test  
11 the municipal water supply in conformance with requirements under the state and federal Safe  
12 Drinking Water Act, 42 U.S.C. § 300f, *et seq.*, Cal. Health & Saf. Code § 116270, *et seq.*, and the  
13 federal and state Lead and Copper Rule, 40 C.F.R. § 141.80, *et seq.*; 22 C.C.R. 64670, *et seq.*;
- 14 j. Whether the CITY OF FRESNO was negligent in not reporting the  
15 complaints or taking corrective action upon discovery of these water issues;
- 16 k. Whether the CITY OF FRESNO made unlawful, misleading, and false  
17 representations or material omissions with respect to the drinkability and safety of Fresno's public  
18 water system;
- 19 l. Whether Defendants' actions and inactions were a substantial factor in  
20 causing harm to Plaintiffs and Class members;
- 21 m. Whether Defendants' misconduct constitutes interference with Plaintiffs'  
22 and Class members' enjoyment of their lives and properties;
- 23 n. Whether Defendants have caused a nuisance;
- 24 o. Whether Defendants have violated any California statutes;
- 25 p. Whether the CITY OF FRESNO's actions or inactions breached its  
26 contracts with Plaintiffs and Class members for water services;
- 27 q. Whether the CITY OF FRESNO was unjustly enriched by their actions or  
28 inactions alleged herein;

1           r.       Whether the CITY OF FRESNO breached implied warranties to Plaintiffs  
2 and Class members by their actions or inactions alleged herein;

3           s.       Whether Defendants' breaches of duty to Plaintiffs and Class members was  
4 the actual and proximate cause of Plaintiffs' and Class members' injuries;

5           t.       Whether Defendants' misconduct, actions, and/or inactions have caused  
6 injuries; and

7           u.       Whether Plaintiffs are entitled to injunctive relief against the CITY OF  
8 FRESNO.

9       55.    Superiority. A class action is superior to any other available method for the fair and  
10 efficient adjudication of the claims of Class members because Defendants have acted or refused to  
11 act on grounds generally applicable to all Class members, thereby making appropriate final  
12 injunctive relief on a class-wide basis. In addition, Plaintiffs and Class members will not be able to  
13 obtain effective and economical legal redress unless the action is maintained as a class action.  
14 Finally, without class certification, the prosecution of separate actions by individual Class  
15 members would create the risk of:

16           a.       Inconsistent or varying adjudications with respect to individual Class  
17 members, which would establish incompatible standards of conduct for Defendants;

18           b.       Adjudications with respect to the individual members which would, as a  
19 practical matter, be dispositive of the interests of other members not parties to the adjudication, or  
20 would substantially impair or impede their ability to protect their interests;

21           c.       Defendants necessarily gaining an unconscionable advantage because  
22 Defendants would be able to exploit and overwhelm the limited resources of each individual  
23 member of the Class with Defendants' vastly superior financial and legal resources; and

24           d.       Unnecessary delay and expense to all parties and to the court system.

25       56.    Plaintiffs do not anticipate any difficulty in the management of this litigation.

26 ///

27 ///

28 ///

1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **NEGLIGENCE**

4 **(Against the CITY OF FRESNO AND DOES 1-100, Inclusive)**

5 57. Plaintiffs re-allege and incorporate herein by reference all of the allegations  
6 contained in paragraphs 1-2, 3b, 3c, 3d, and 4-56, as though fully set forth herein.

7 58. THE CITY OF FRESNO (the “CITY”) and Does 1 through 100, inclusive owe a  
8 mandatory duty to Plaintiffs and Class members to comply with the United States Safe Drinking  
9 Water Act, 42 U.S.C. § 300f, *et seq.*, the California Safe Drinking Water Act, Cal. Health & Saf.  
10 Code § 116270, *et seq.*, **22 CCR** § 64664, and the federal and state Lead and Copper Rules, 40  
11 C.F.R. § 141.80 *et seq.*, and 22 CCR 64670, *et seq.*

12 59. The United States Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*, the  
13 California Safe Drinking Water Act, Cal. Health & Saf. Code § 116270, *et seq.*, 22 CCR § 64664,  
14 and the federal and state Lead and Copper Rules, 40 C.F.R. § 141.80 *et seq.*, and 22 CCR 64670,  
15 *et seq.* are designed to protect against the harms suffered by Plaintiffs and Class members, namely  
16 the provision of public water that is not pure, wholesome, potable or safe for public consumption.

17 60. The CITY violated mandatory duties imposed and required pursuant to the United  
18 States Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*, the California Safe Drinking Water Act,  
19 Cal. Health & Saf. Code § 116270, *et seq.*, **22 CCR** § 64664, and supporting federal and state  
20 regulations.

21 61. The Environmental Protection Agency (“EPA”) is responsible for establishing  
22 regulations pursuant to the United States Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*  
23 Enforcement and implementation of those rules is delegated to state and local environmental  
24 agencies and municipalities.

25 62. The California State Legislature enacted the California Safe Drinking Water Act,  
26 Cal. Health & Saf. Code § 116270, *et seq.*, to improve upon the minimum requirements of the  
27 federal Safe Drinking Water Act, and to establish primary drinking water standards that are at least  
28 as stringent as those established under the federal Safe Drinking Water Act.

1           63.     The federal and state Lead and Copper Rules (“LCRs”), 40 C.F.R. § 141.80 *et seq.*,  
2 and 22 C.C.R. § 64670, *et seq.* were enacted to establish protocols to ensure the public water  
3 systems do not allow unsafe levels of lead and copper to contaminate municipal water supplies.

4           64.     The LCRs require the CITY’s water utilities to test its water supply from the taps of  
5 consumers.

6           65.     In order to comply with the LCRs, California enacted detailed laws and regulations  
7 governing the testing of its water supply. The manner and method of water supply testing is not  
8 discretionary pursuant to California Government Code section 815.6, which states:

9  
10           *Where a public entity is under a mandatory duty imposed by an enactment that is*  
11           *designed to protect against the risk of a particular kind of injury, the public entity*  
12           *is liable for an injury of that kind proximately caused by its failure to discharge the*  
13           *duty unless the public entity establishes that it exercised reasonable diligence to*  
14           *discharge the duty.*

15           66.     The CITY OF FRESNO failed to discharge its mandatory duty to conduct water  
16 supply testing.

17           67.     The LCRCs and California law require that the CITY report the results of all tap  
18 samples, including those samples that exceed the federal action level of more than 15 parts per  
19 billion (“ppb”) of lead, to the State. These state and federal reporting requirements are not  
20 discretionary.

21           68.     The CITY OF FRESNO failed to discharge its mandatory duty to report the results  
22 of lead levels in excess of 15 ppb.

23           69.     The California Safe Drinking Water Act, Cal. Health & Saf. Code § 116450,  
24 requires the CITY to file a report with the State when any primacy drinking water standard—  
25 including in those set forth in the LCRs—is not complied with, or when a monitoring requirement  
26 is not performed. This state reporting requirement is not discretionary.

27           70.     The CITY failed to discharge its mandatory duty to report its water supply’s  
28 noncompliance with drinking water standards.

          71.     The CITY failed to discharge its mandatory duty to report that a monitoring  
requirement, namely proper lead and copper testing pursuant to the LCRs was not performed.

1           72.     The California Safe Drinking Water Act, Cal. Health & Saf. Code § 116450,  
2 requires the CITY to notify the public when any primacy drinking water standard—including the  
3 standards set forth in the LCRs—is not complied with, or when a monitoring requirement is not  
4 performed. This public notification requirement is not discretionary.

5           73.     The CITY failed to discharge its mandatory duty to notify the public that a  
6 monitoring requirement, namely proper lead and copper testing, was not performed.

7           74.     The California Code of Regulations, 22 CCR § 64664 requires the CITY to report  
8 all citizen water quality complaints to the State of California on a monthly basis. This reporting  
9 requirement is not discretionary.

10          75.     The CITY failed to discharge its mandatory duty to report all citizen water quality  
11 complaints to the State of California on a monthly basis.

12          76.     The laws and regulations enacted pursuant to the United States Safe Drinking  
13 Water Act, 42 U.S.C. § 300f, *et seq.* are intended to protect against the kind of injury suffered by  
14 Plaintiffs and Class members, namely the contamination of public drinking water with unsafe  
15 levels of toxic substances including but not limited to lead.

16          77.     The Defendants' breach of the mandatory duties described above was a substantial  
17 factor in causing injuries to Plaintiffs and the Class.

18          78.     The CITY's decision to introduce surface water treated by the NESWTF into the  
19 water supply without taking known and necessary measures to protect the piping systems in  
20 Plaintiffs' and Class members' homes caused discolored water, accelerated corrosion in pipes  
21 delivering water, and eventually the contamination of the water with excessive levels and lead,  
22 iron, and other hazardous substances.

23          79.     The CITY disregarded, for over a period of years, numerous citizen complaints  
24 regarding the Fresno water supply. The CITY negligently failed to investigate and/or remedy the  
25 problem and failed to follow legislatively mandated water testing, monitoring, and reporting  
26 requirements. CITY officials also failed to report the results of tests revealing contaminated and  
27 discolored water in the water supply to the State of California or take sufficient system-wide  
28 measures to remedy the problem in order to mitigate or prevent further damages to its residents

1 and their properties, all of which has only served to prolong, intensify, and aggravate the  
2 degrading of Plaintiffs' galvanized piping and the exposure of Plaintiffs' and Class members'  
3 persons and properties to unsafe levels of lead, iron, and other hazardous substances in their  
4 drinking water. The harm Plaintiffs and Class members suffered, and continue to suffer, is a direct  
5 result of Defendants' actions and inactions.

6 80. The CITY has instead simply denied having knowledge of this widespread issue,  
7 contending that it only recently discovered the issue in January, 2016.

8 81. Plaintiffs and Class members relied on the CITY to perform its duties and to ensure  
9 that unsafe levels of lead, iron, copper, and/or other toxins did not contaminate its water supplies.

10 82. The CITY breached its duties to Plaintiffs and members of the putative class in  
11 ways including, but not limited to, the following:

- 12 a. Failing to require proper corrosion control treatment of City of Fresno  
13 water;
- 14 b. Failing to implement proper corrosion control treatment of City of Fresno  
15 water;
- 16 c. Failing to require proper testing of Fresno's water;
- 17 d. Failing to conduct proper testing of Fresno's water;
- 18 e. Failing to respond to evidence that water supplied from NESWTF was not  
19 safe for public consumption when supplied to homes with galvanized steel pipes;
- 20 f. Failing to conduct a reasonable investigation after receiving evidence that  
21 drinking water was not safe for public consumption;
- 22 g. Failing to promptly report evidence of lead and other hazardous substances  
23 in the water supply to the State of California, Plaintiffs, and members of the putative class;
- 24 h. Failing to promptly notify Plaintiffs and members of the putative class to  
25 the presence of lead in their water;
- 26 i. Withholding and concealing information showing that the water was unsafe  
27 to drink;
- 28 j. Failing to warn Plaintiffs and the public that the water supplied from the

1 NESWTF to Plaintiffs' properties, particularly properties with galvanized steel pipes, was not safe  
2 to drink;

3 k. Publicly declaring contaminated unsafe water to be safe, clean, and reliable  
4 to drink; and

5 l. Failing to take steps to mitigate the impact of the corrosive nature of the  
6 Northeast Fresno Water Treatment Facility on Plaintiffs' and Class members' pipes.

7 83. Plaintiffs' and Class members' properties suffered foreseeable harm as a result of  
8 the CITY's breach of its mandatory duties and as a result of their negligent implementation and  
9 operation of the NESWTF.

10 84. The CITY OF FRESNO knew, or should have known that its failure to abide by  
11 their duties to test, report, investigate, and remediate problems with the water supply, and notify  
12 the public of same, could result in corrosion of pipes and excessive levels of lead, iron, and other  
13 hazardous substances to leach into residents' water. The CITY knew or should have known that  
14 the failures of the foregoing could, and would cause physical damage to Plaintiffs' and Class  
15 members' properties.

16 85. As a result of Defendants' breach of its mandatory duty to test, report and  
17 investigate problems with the water supply and notify the public of same, Plaintiffs' and Class  
18 members' properties were, and are, being physically invaded by corrosive water supplied by the  
19 CITY OF FRESNO.

20 86. As a result of the CITY's breach of its mandatory duties, Plaintiffs and Class  
21 members suffered property damages as alleged herein, including physical injury to their property,  
22 as corroborated by testing of their water revealing the presence of lead in excess of allowable  
23 levels.

24 87. As a result of the CITY's breach of its mandatory duties, Plaintiffs and Class  
25 members suffered and will continue to suffer the loss of the quiet use and enjoyment of their  
26 properties.

27 88. As a result of the CITY's breach of its mandatory duties, Plaintiffs and Class  
28 members have suffered legal injury and damages, in an amount to be proven at trial, including, but

1 not limited to, property damage, diminution of value of real estate, the cost to repair the damage,  
2 plus the value of their lost use of the property as a result of the CITY's negligence.

3 89. Pursuant to California Government Code section 815.6, the CITY is liable to  
4 Plaintiffs and Class members for all damages arising from the breach of their mandatory duties,  
5 including compensatory and injunctive relief, and attorneys' fees pursuant to Cal. Civ. Proc. Code  
6 § 1021.5.

7 **SECOND CAUSE OF ACTION**

8 **PRIVATE NUISANCE**

9 **(Against All DEFENDANTS)**

10 90. Plaintiffs re-allege and incorporate herein by reference all of the allegations  
11 contained in paragraphs 1-~~89~~, inclusive, as though fully set forth herein.

12 91. Plaintiffs and Class members own or lease property in Fresno, California.

13 92. The CITY OF FRESNO owes a mandatory duty to Plaintiffs and Class members to  
14 comply with the United States Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*, the California  
15 Safe Drinking Water Act, Cal. Health & Saf. Code § 116270, *et seq.*, **22 CCR** § 64664, and the  
16 federal and state Lead and Copper Rules, 40 C.F.R. § 141.80 *et seq.*, and 22 CCR 64670, *et seq.*

17 93. The United States Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*, the  
18 California Safe Drinking Water Act, Cal. Health & Saf. Code § 116270, *et seq.*, **22 CCR** § 64664,  
19 and the federal and state Lead and Copper Rules, 40 C.F.R. § 141.80 *et seq.*, and 22 CCR 64670,  
20 *et seq.* are designed to protect against the harms suffered by Plaintiffs and Class members, namely  
21 the provision of public water that is not pure, wholesome, potable or safe for public consumption.

22 94. DEFENDANTS' actions, and the CITY OF FRESNO's breach of the duties  
23 described above, created a nuisance and substantially and unreasonably interfered with Plaintiffs'  
24 and Class members' comfortable enjoyment of life and property, by causing known, corrosive  
25 NESWTF water to be delivered to Plaintiffs' and Class members' homes, resulting in foul,  
26 discolored, and lead-contaminated water, which harmed their properties and persons.

27 95. Neither Plaintiffs nor Class members consented to the invasion of corrosive water  
28

1 that would cause the piping in their home to degrade, resulting in foul, discolored, and lead-  
2 contaminated water in their persons or properties.

3 96. The contamination of Class members' drinking water has interfered with the rights  
4 of Plaintiffs and Class members to use and enjoy their property. Indeed, this interference is  
5 substantial in nature. It has caused and is causing Plaintiffs and Class members to, inter alia,  
6 refrain from using water to drink, cook, or bathe, which has, in turn, caused significant  
7 inconvenience and expense. DEFENDANTS' conduct has also substantially interfered with  
8 Plaintiffs' and Class members' ability to enjoy their property, to avail themselves of their  
9 property's value as an asset and/or source of collateral for financing, and to use their property in  
10 the manner that each Plaintiff or Class member so chooses.

11 97. DEFENDANTS' negligent, reckless and/or intentional acts and omissions, and the  
12 CITY OF FRESNO's breach of their duties, were unreasonable and constitute a continuous  
13 invasion of the property rights of Plaintiffs and Class members.

14 98. As a result of DEFENDANTS' acts and/or failures to act, and the CITY OF  
15 FRESNO's breach of their mandatory duties, Plaintiffs and the putative class have incurred, and  
16 will continue to incur, costs and expenses related to the investigation, treatment, remediation and  
17 monitoring of drinking water and the contamination of their respective properties.

18 **THIRD CAUSE OF ACTION**

19 **BREACH OF CONTRACT**

20 **(Against the CITY OF FRESNO AND DOES 1-100, Inclusive)**

21 99. Plaintiffs re-allege and incorporate herein by reference all of the allegations  
22 contained in paragraphs 1 to **89**, inclusive, as though fully set forth herein.

23 100. At all times herein, the CITY OF FRESNO (the "CITY"), pursuant to Chapter 6,  
24 Article 1 of the Municipal code of the City of Fresno, offered services to provide for payment  
25 potable, clean, safe, and reliable water that meets all federal and state drinking water standards to  
26 their residents.

27 101. Plaintiffs accepted the offer by applying to the CITY for water service, utilizing the  
28

1 CITY's water, agreeing to pay for the water, and tendering payment for the water.

2 102. To receive water services, Plaintiffs and Class members were required to, and did,  
3 apply for an account, either through the written application process on the CITY's website or  
4 through telephone. The application contains terms including the location of the premises to be  
5 served, the person(s) authorized on the water service account, and the date water service is to  
6 commence. The CITY also has conditions precedent to final acceptance of Plaintiffs' and Class  
7 members' water service applications, as listed in Chapter 6, Article 1 of the CITY's municipal  
8 code. Plaintiffs and Class members were provided with a monthly bill detailing the amount owed  
9 to the CITY, to which they paid and the CITY collected. Plaintiffs and Class members may also  
10 discontinue their water service upon request, to which the CITY will complete within forty-eight  
11 hours of the request.

12 103. Thus, Plaintiffs, Class members, and the CITY OF FRESNO entered into a contract  
13 for the purchase and sale of potable, clean, safe, and reliable, non-corrosive, and non-harmful  
14 water that meets all federal and state drinking water standards.

15 104. The CITY has admitted that the water provided to Plaintiffs and Class members  
16 was substandard and degraded, and therefore not fit for its intended uses in Plaintiffs' and Class  
17 members' homes.

18 105. The CITY materially and irreparably breached the contract with Plaintiffs and  
19 Class members by failing to provide non-corrosive, non-harmful, potable, clean, and safe water,  
20 and instead provided substandard and degraded water unfit for use in Plaintiffs and Class  
21 members' homes.

22 106. As a result of the CITY's breach, Plaintiffs and Class members suffered damages in  
23 the amount of all debts and obligations for Fresno water, whether tendered or untendered, and as  
24 stated throughout this complaint.

25 107. The CITY is liable to Plaintiffs and the putative class for all amounts billed and/or  
26 collected, whether paid or unpaid, for corrosive water that was supplied to Plaintiffs and Class  
27 members.

28

1 **FOURTH CAUSE OF ACTION**

2 **UNJUST ENRICHMENT (RESTITUTION)**

3 **(Against the CITY OF FRESNO AND DOES 1-100, Inclusive)**

4 108. Plaintiffs re-allege and incorporate herein by reference all of the allegations  
5 contained in paragraphs 1 to **89 and 99-102**, inclusive, as though fully set forth herein. **This cause**  
6 **of action is plead in the alternative to Plaintiffs’ third cause of action for breach of contract,**  
7 **in the event the agreements with the CITY for water are invalid or unenforceable for any**  
8 **reason.**

9 109. The CITY OF FRESNO (the “CITY”) has received the benefits of the funds paid  
10 by Plaintiffs and Class members for substandard and degraded water that was, and is, unfit for use  
11 in Plaintiffs’ homes. **Plaintiffs and Class members paid more than the reasonable value for**  
12 **the water they received from the City.**

13 110. The CITY has utilized these **excess** funds for the operation of the government(s) of  
14 Fresno, California.

15 111. The retention of the benefit of the **excess** funds paid by Plaintiffs and Class  
16 members constitutes unjust enrichment in the amount of all funds paid for water that was unfit for  
17 human consumption.

18 112. It would be unjust to allow the CITY to retain the benefit they obtained from  
19 Plaintiffs.

20 113. Plaintiffs seek restitution and restitutionary disgorgement of the CITY’s funds.

21 **FIFTH CAUSE OF ACTION**

22 **BREACH OF IMPLIED WARRANTY**

23 **(Against the CITY OF FRESNO AND DOES 1-100, Inclusive)**

24 114. Plaintiffs re-allege and incorporate herein by reference all of the allegations  
25 contained in paragraphs 1 to 89, inclusive, as though fully set forth herein.

26 115. The CITY OF FRESNO (the “CITY”) directly promised to provide to Plaintiffs  
27 and Class members water that was potable, clean, safe, reliable, and fit for use in their homes  
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1 and/or impliedly promised that the water provided to Plaintiffs and Class members was non-  
2 corrosive and non-harmful when supplied to their homes.

3 116. The CITY has admitted that the water provided to Plaintiffs and Class members  
4 was substandard and degraded and therefore clearly not fit for its intended uses.

5 117. The provision of water unfit for its intended purpose and/or the admission that the  
6 water was not fit for its intended purpose constitute material breaches of an implied warranty  
7 and/or contract.

8 118. As a result of the CITY breach, Plaintiffs and Class members suffered damages in  
9 the amount of all debts and obligations for Fresno water, whether tendered or untendered, and as  
10 stated throughout this complaint.

11 119. The CITY is liable to Plaintiffs and the putative class for all amounts billed and/or  
12 collected, whether paid or unpaid, for water that was unfit for human consumption.

13 **VII. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray  
15 for judgment against Defendants, and each of them, as follows:

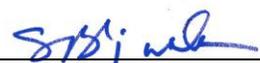
- 16 1. For an order certifying the Class and appointing Plaintiffs as representatives of the  
17 Class and appointing the undersigned as Class Counsel;
  - 18 2. For an award of actual damages as against the CITY OF FRESNO;
  - 19 3. For an award of restitution and restitutionary disgorgement as against the CITY OF  
20 FRESNO;
  - 21 4. For an award of attorneys' fees and costs under Code of Civil Procedure section  
22 1021.5 and all other applicable laws;
  - 23 5. For an injunction prohibiting the CITY OF FRESNO from continuing the wrongful  
24 conduct alleged herein;
  - 25 6. For pre-judgment and post-judgment interest to the extent allowed by law; and
  - 26 7. For such other and further relief as the Court deems just and proper.
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DATED: March 8, 2021

Respectfully submitted,

BOUCHER LLP

By:   
RAYMOND P. BOUCHER  
SHEHNAZ M. BHUJWALA

CHANDLER LAW

STUART R. CHANDLER

*Attorneys for Micheli Case Plaintiffs and the Putative Class*

DATED: March 8, 2021

Respectfully submitted,

COTCHETT, PITRE & MCCARTHY

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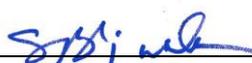
1 **REQUEST FOR JURY TRIAL**

2 Plaintiffs, individually and on behalf of a Class of other similarly situated, hereby  
3 respectfully request a trial by jury of all causes of action and issues so triable.

4 DATED: March 8, 2021

Respectfully submitted,

5 BOUCHER LLP

6  
7  
8 By: 

RAYMOND P. BOUCHER  
SHEHNAZ M. BHUJWALA

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10 CHANDLER LAW

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STUART R. CHANDLER

12 *Attorneys for Plaintiffs and the Putative Class*

13  
14 DATED: March 8, 2021

Respectfully submitted,

15 COTCHETT, PITRE & MCCARTHY

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18 By: 

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25 *Attorneys for Flannery Case Plaintiffs and the*  
26 *Putative Class*

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**PROOF OF SERVICE**

**Karen Micheli, et. al. v. The City of Fresno, et. al.  
Lead Case No. 16CECG02937**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 21600 Oxnard Street, Suite 600, Woodland Hills, CA 91367-4903.

On March 8, 2021, I served true copies of the following document(s) described as **CONSOLIDATED FIFTH AMENDED CLASS ACTION COMPLAINT** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Pursuant to Code of Civil Procedure section 1010.6 and California Rule of Court 2.251, or pursuant to the Court’s order authorizing electronic service, or by an agreement of the parties, I caused the document(s) to be sent from e-mail address Nelson@boucher.la to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 8, 2021, at Woodland Hills, California.

*Natalie Nelson*

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Natalie Nelson

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**SERVICE LIST**  
*Karen Micheli, et. al. v. The City of Fresno, et. al.*  
**Lead Case No. 16CECG02937**

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