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ELECTRONICALLY

FILED

*Superior Court of California,
County of San Francisco*

08/24/2023
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11
12 COUNTY OF SAN FRANCISCO

CGC-23-608635

13 ANTHONY J. ARMSTRONG; BETH
14 ARMSTRONG; LINDA ANTOINETTE
15 LICALSI, individually, and as trustee of
16 THE CARLA LICALSI REVOCABLE
17 TRUST; ANITA CARLA LICALSI,
18 individually, and as trustee of THE
19 ANITA CARLA LICALSI REVOCABLE
20 TRUST, and as trustee of THE CARLA
21 LICALSI REVOCABLE TRUST;
22 ARTHUR SCAMPA; GREG HARRIS;
23 MEGHAN HARRIS; ALICE K. YEE,
24 individually, and as trustee of THE
25 THIRD AMENDMENT AND SECOND
26 RESTATEMENT OF THE ALICE K.
27 AND BENNY Y. YEE LIVING TRUST
28 UNDER AGREEMENT DATED
NOVEMBER 22, 2004; BENNY Y. YEE,
individually, and as trustee of THE
THIRD AMENDMENT AND SECOND
RESTATEMENT OF THE ALICE K.
AND BENNY Y. YEE LIVING TRUST
UNDER AGREEMENT DATED
NOVEMBER 22, 2004; RONALD C. K.
JEW, individually, and as trustee of
THE JEW FAMILY TRUST DATED
AUGUST 23, 1994; KAREN Y. L. JEW,
individually, and as trustee of THE JEW
FAMILY TRUST DATED AUGUST 23,
1994; ROBERT WILLIAM SCHULT as
an individual, and as trustee of THE
SCHULT FAMILY TRUST, DATED

Case No.

**COMPLAINT FOR DAMAGES,
DECLARATORY AND INJUNCTIVE
RELIEF**

1. Inverse condemnation
2. Nuisance
3. Dangerous Condition of Property
4. Negligence
5. Failure to Maintain a Public
Improvement
6. Trespass
7. Declaratory and Injunctive Relief

DEMAND FOR JURY TRIAL

1 MAY 24, 2017; NOA LAUREN CLARK
2 SCHULT as an individual, and as
3 trustee of THE SCHULT FAMILY
4 TRUST, DATED MAY 24, 2017; SETH
5 GERSCH, individually, and as trustee of
the GERSCH GEAN REVOCABLE
6 LIVING TRUST UTA DATED 7/9/2007;
ALISA GEAN, individually, and as
7 trustee of the GERSCH GEAN
REVOCABLE LIVING TRUST UTA
8 DATED 7/9/2007; CAROL WANG;
MICHAEL K. ACKRELL, individually,
9 and as trustee of the MICHAEL K.
ACKRELL REVOCABLE TRUST
10 DATED DECEMBER 18, 2001;
WILLIAM S. CANIHAN, individually,
11 as trustee of THE WILLIAM S.
CANIHAN AND JODY S. CANIHAN
12 TRUST A, and as trustee of the
WILLIAM S. CANIHAN AND JODY S.
13 CANIHAN TRUST B; MORGAN C.
LEE, individually, and as trustee of
14 THE MORGAN C LEE & DAISY LONG
LEE FAMILY TRUST DATED
15 06/07/1989; DAISY L. LEE, individually,
and as trustee of THE MORGAN C LEE
& DAISY LONG LEE FAMILY TRUST
16 DATED 06/07/1989; JACOB TAL;
RIVKA BARLEVTAL; LYNDA DE
17 PETRIS, individually, and as trustee of
THE DE PETRIS FAMILY LIVING
TRUST, DATED JANUARY 17, 2000;
WALTHER DE PETRIS, individually,
18 and as trustee of THE DE PETRIS
FAMILY LIVING TRUST, DATED
19 JANUARY 17, 2000; VICTOR MAKRAS;
FARAH MAKRAS; JENNIFER
20 WALSKE; STEVEN WALSKE; CASA
MARINA LLC; ASHLEY WESSINGER,
individually, and as trustee of THE
21 MINOTT WESSINGER AND ASHLEY
P. MCGOVERN WESSINGER
REVOCABLE TRUST, UTA DTD
22 10/10/05; MINOTT WESSINGER,
individually, and as trustee of THE
23 MINOTT WESSINGER AND ASHLEY
P. MCGOVERN WESSINGER
REVOCABLE TRUST, UTA DTD
24 10/10/05; JENNIFER VATARU,
individually, and as trustee of THE
25 EDDY AND JENNIFER VATARU 2015
LIVING TRUST, ESTABLISHED MAY
26 18, 2015; EDDY VATARU, individually,
and as trustee of THE EDDY AND
27 JENNIFER VATARU 2015 LIVING
28 JENNIFER VATARU 2015 LIVING

1 TRUST, ESTABLISHED MAY 18, 2015;
2 DONALD R. VIEGAS, individually, and
3 as trustee of THE DONALD R. VIEGAS
4 AND DANIEL J. JOHNSON TRUST
5 U/A APRIL 26, 2013; DANIEL J.
6 JOHNSON, individually, and as trustee
7 of THE DONALD R. VIEGAS AND
8 DANIEL J. JOHNSON TRUST U/A
9 APRIL 26, 2013; XING FANG; DEEPAK
10 SRIVASTAVA, individually, and as
11 trustee of THE DEEPAK AND DENISE
12 SRIVASTAVA REVOCABLE TRUST
13 DATED MARCH 06, 2015; DENISE
14 SRIVASTAVA, individually, and as
15 trustee of THE DEEPAK AND DENISE
16 SRIVASTAVA REVOCABLE TRUST
17 DATED MARCH 06, 2015; DARLENE
18 D. HINES, individually, and as trustee
19 of THE DARLENE D. HINES 2022
20 LIVING TRUST DATED OCTOBER 26,
21 2022; MARK DEMPSTER; KIM
22 DEMPSTER; SF CASA BLANCA, LLC;
23 ELIZABETH COOPER; DANIEL P.
24 NOYES; JOE MONTANA, individually,
25 and as trustee of THE MONTANA 1990
26 FAMILY TRUST, UDT DATED
27 AUGUST 26, 1990; JENNIFER
28 MONTANA, individually, and as trustee
of THE MONTANA 1990 FAMILY
TRUST, UDT DATED AUGUST 26,
1990; AUSSY MANUHU; GRANT
SETTELMIER, individually, and as
trustee of THE SETTELMIER
REVOCABLE TRUST UNDER
AGREEMENT DATED FEBRUARY 1,
1989; JONI SETTELMIER, individually,
and as trustee of THE SETTELMIER
REVOCABLE TRUST UNDER
AGREEMENT DATED FEBRUARY 1,
1989; LISA GIANNONE; MICHAEL
DILLINGHAM; SHELTON JANN,
individually, and as trustee of THE
JANN BY-PASS TRUST (TRUST "B"),
and as trustee of THE JANN
SURVIVOR'S TRUST (TRUST "A"); IAN
MORTON; and KIM MORTON,

25 Plaintiffs,

26 v.

27 THE CITY AND COUNTY OF SAN
28 FRANCISCO, by and through the SAN
FRANCISCO PUBLIC UTILITIES
COMMISSION and the DEPARTMENT

1 OF PUBLIC WORKS, and Does 1
2 through 50, inclusive,

3 Defendants.

4 **GENERAL BACKGROUND**

5 **I. THE PLAINTIFFS**

6 1. Plaintiffs are all individual residents of the State of California, LLCs or
7 legal entities of California and owners, tenants, or occupants of real property situated
8 in the City and County of San Francisco in the neighborhood commonly known as the
9 Marina. San Francisco is unusual among major cities in the Western United States,
10 in that its sewage and storm water system is combined. The part of this system that
11 runs through the Marina is antiquated and has been neglected and inadequately
12 maintained by the City and County of San Francisco. As a result, the system
13 routinely gets overwhelmed, overflows, and inundates Plaintiffs' properties and
14 neighborhood with untreated sewage and contaminated water. Thus, Plaintiffs are
15 the owners, tenants, or occupants of the real property that was taken and damaged
16 by the Defendants, and each of them, as described in more detail below.

17 **II. THE DEFENDANTS**

18 2. Defendant City and County of San Francisco (the "City") is a public
19 entity organized and existing pursuant to a duly adopted Charter, as authorized by
20 the Constitution of the State of California.

21 3. Plaintiffs are unaware of the true names and capacities of those
22 defendants sued herein as Does 1 through 50, inclusive, and, therefore, sue such
23 defendants by fictitious names. Plaintiffs are informed and believe and, based upon
24 such information and belief, allege that each of the defendants designated as Does 1
25 through 25, inclusive, is contractually, intentionally, negligently, legally, or in some
26 manner responsible for the events and occurrences more fully described below and
27 which proximately caused injuries and/or damages to Plaintiffs as alleged herein.
28 Plaintiffs will seek leave to amend this complaint to set forth the true names and

1 capacities of those defendants if and when they have been ascertained.

2 4. Plaintiffs are informed and believe and, based upon such information
3 and belief, allege that at all times mentioned each of the defendants was the agent
4 and/or employee of the remaining defendants, and was at all times acting within the
5 scope and purpose of this agency and/or employment and with the consent and
6 permission of the remaining defendants.

7 5. Does 1 through 20 are contractors who were hired by the City and/or the
8 San Francisco Public Utilities Commission to perform various work on the storm
9 drainage and sewer system, including the paving of roadways and the alteration of
10 the drainage slope for the diversion of water into catch basins. In performing work
11 for the City and/or the San Francisco Public Utilities Commission, Does 1 through 20
12 were engaged in the nondelegable duty of the City as the owner of the
13 aforementioned works of improvement to maintain the improvements in a reasonably
14 safe condition. In addition, the work for which said contractors were hired, involved a
15 particular risk of harm that arises out of the nature of the work on said storm
16 drainage system and sewer system and against which a reasonable person or entity
17 would recognize the necessity of taking special precaution. As such, the City is jointly
18 and severally liable for the acts and omissions of Does 1 through 20.

19 **III. GOVERNMENT ENTITY CLAIMS**

20 6. Each Plaintiff timely submitted a written claim to the City for the
21 damages and events that are the subject of this Complaint, pursuant to the
22 provisions of the 1963 California Tort Claims Act, as subsequently amended, codified
23 at Government Code sections 810-916, et seq. Each such claim was, within the six
24 months preceding the filing of this Complaint, denied by the City, or otherwise
25 denied by operation of law.

26 **IV. VENUE ALLEGATIONS**

27 7. Venue is proper in San Francisco County because the Defendants, or
28 some of them, reside in San Francisco County, and because the harms and losses

1 described occurred in San Francisco County and a defendant is the City and County
2 of San Francisco.

3 **V. FACTUAL BACKGROUND**

4 8. At all times mentioned herein, by and through the San Francisco Public
5 Utilities Commission, the City has owned a system of public improvements to collect
6 and divert the accumulation of both storm water and sewage, consisting primarily of
7 paved streets sloping to catch basins, drains and underground culverts to divert
8 rainfall and other water into San Francisco Bay, and combined therewith a system of
9 plumbing lines, pipes and culverts to transfer sanitary sewage into one of three
10 wastewater facilities for treatment. At all times mentioned herein, by and through
11 the Department of Public Works, the City has operated and maintained (or failed to
12 maintain) the storm water and sewage system as a public work of improvement. In
13 the area at issue in this Complaint, the storm and sanitary sewer systems collect
14 both sewage and storm water runoff in a single set of culverts, for transport to the
15 three wastewater treatment facilities.

16 9. A significant number of the components of the storm drainage and
17 sewer system were constructed over 100 years ago, and have, over time, deteriorated
18 because of age, lack of reinforcement, lack of improvement, and lack of maintenance.

19 10. The storm drainage and sewer system that was built and owned by the
20 City was constructed and is operated for the benefit of all citizens of the City. The
21 City has not, however, either equitably or adequately fulfilled its obligation to
22 maintain the system in a reasonably safe condition, and has devoted substantially
23 greater money and time for the maintenance of those portions of the system located
24 “upstream” rather than in the area that is the subject of this Complaint. In fact, over
25 the past decade, the City has continued to repair and improve its system “upstream”
26 of the Plaintiffs’ properties having the direct effect of channeling even greater and
27 greater amounts of water and sewage into the areas surrounding Plaintiffs’
28 properties at a time when no significant “downstream” improvements have been

1 performed. The net effect of the City's actions has been to create more extensive
2 damage to Plaintiffs' properties, even at times when there is less water and sewage
3 moving through the system.

4 11. For a significant period of time, the City has had actual and constructive
5 knowledge that in the neighborhoods where Plaintiffs live and work, the storm
6 drainage and sewer system cannot handle the storm water and sewage created by
7 even modest winter storms. Defendants have also had actual and constructive
8 knowledge, by virtue of their expertise and familiarity with the "dual design" of the
9 storm drainage and sewer system, that the inadequate capacity of the system would
10 not only cause the overflow of rainwater during various storms but would
11 additionally cause the release of raw and untreated sewage into Plaintiffs' homes,
12 businesses and onto their land.

13 12. This dangerous lack of drainage and processing capacity was further
14 exacerbated by: the City's failure to adequately maintain the storm drainage and
15 sewer system, both due to deterioration of the physical components of the system and
16 additionally due to the City's failure to clear the system's culverts of accumulated
17 silt, sediment and debris; the City's failure to clear obstructions to the catch basins;
18 and the City's actions in changing the configuration of surface streets and sidewalks
19 without making corresponding changes needed to facilitate the collection and
20 diversion of storm water and sewage.

21 13. Over time, this dangerous lack of drainage and processing capacity was
22 further exacerbated by the City's issuance of occupancy permits for new businesses
23 and residences, which increased the runoff of water flowing to the system from, over,
24 and through driveways, other impervious surfaces, building gutters, and collection
25 pipes, all of which increased discharge of sewage into the system. During that time
26 and since, the City failed to take steps to update the storm drainage and sewer
27 system or to replace its components, and the City failed to increase or even maintain
28 the system's drainage capacity to keep abreast of population growth.

1 14. In addition, the dual design of the storm drainage and sewer system
2 routinely overwhelmed the capacity of the wastewater treatment facilities during
3 heavy storms, causing untreated sewage to be dumped into San Francisco Bay. To
4 meet various clean water regulations, the City ultimately constructed new treatment
5 facilities at a cost of more than \$1.5 billion, and it maintains detailed monitoring of
6 sewage discharge into the San Francisco Bay, which can result in sizeable fines to
7 the City. During significant rainstorms, the system cannot handle the combined
8 volume of storm water and untreated sewage flowing into the treatment facilities,
9 and the discharge gates at the wastewater treatment facilities must occasionally be
10 opened during significant rains and allow raw sewage to be discharged into San
11 Francisco Bay.

12 15. City officials knew, or should have known, especially in light of past
13 litigation, that the City's failure to maintain and improve the storm drainage and
14 sewer system in Plaintiffs' neighborhoods would reduce the volume of storm water
15 that would flow to the wastewater treatment facilities during significant rains and
16 the system would continue to fail. Accordingly, the City's failure to maintain the
17 system actually provided a benefit to the City as a whole, by minimizing the risk of
18 raw sewage being discharged into San Francisco Bay. However, this benefit to the
19 citizens of the City as a whole comes at a direct cost to Plaintiffs, who are left with
20 inadequate storm drainage and sewer system service and are stuck carrying the
21 burden for the rest of the City. In essence, Plaintiffs, through the inundation of the
22 storm water and sewage into their homes, properties and streets, are acting as a
23 catch basin so that the contaminants do not flow onto other San Francisco properties
24 and so that less of the contaminants pollute the ocean and San Francisco Bay and
25 fines are avoided. It is precisely this type of unequal burden on Plaintiffs as
26 compared with the rest of the citizenry that the laws of inverse condemnation were
27 enshrined in our Constitution, and further developed through case law. Moreover,
28 these are precisely the circumstances under which fair compensation *must* be

1 provided.

2 16. In addition, Plaintiffs are informed and believe, and thereupon allege,
3 that the City operates the discharge gates at its wastewater treatment facilities in
4 such a way that during significant rains, the volume of water that collects at the
5 treatment facilities before the discharge gates are opened creates an obstruction that
6 prevents the storm drainage and sewer culverts from operating even at the reduced
7 level of capacity caused by their current dilapidated condition. Plaintiffs are further
8 informed and believe that the volume of water that collects at the treatment facilities
9 before the discharge gates are opened causes further diversion of water from the
10 storm drainage and sewer system onto the properties adjacent to the system
11 particularly at its lower elevations – including the properties owned and occupied by
12 Plaintiffs in this lawsuit.

13 17. The inadequacy of San Francisco's combined sewage and storm water
14 system (in its current condition) to handle the storm water and sewage created by
15 even modest winter storms is well known to the City. Defendants observed the
16 system failures and significant damages incurred by many of the Plaintiffs in this
17 case as well as many other San Francisco residents related to storm events for
18 decades. Large historical storm surge events commonly occur in the Bay Area, and
19 impact cities all across the Bay, including San Francisco. Such events occurred
20 including, but not limited, on the following dates: December 1955; January 1963;
21 January 1973; January 1982; January 1983; December 1983; February 1986,
22 November 1994; February 1998; December 2003; January 2004, February 2004;
23 December 2005-January 2006; December 2014; March 2016; and October 2021.

24 18. Litigation followed as a result of failures of the City's combined sewage
25 and storm water system during December of 2003, February of 2004, and December
26 of 2014. In the course of this litigation, the issue of whether the City's combined
27 sewer and storm drain system is a "flood control project" subject to the *Belair v.*
28 *Riverside County Flood Control Dist.* (1988) 47 Cal.3d 550 reasonableness standard

1 was briefed, argued, and ruled upon. The Superior Court of San Francisco County
2 found in the negative, holding that the City's combined sewer and sanitary system is
3 not a flood control project within the meaning of *Belair*. Accordingly, the liability of
4 the City was premised and found upon strict liability, and not a reasonableness
5 standard. Because this issue was actually litigated in this former proceeding, the
6 City was a party to the former proceeding, the City had a full and fair opportunity to
7 litigate the issue in the former proceeding, the Court's decision was final and on the
8 merits, and in order to promote judicial economy, Plaintiffs allege that the City
9 should be collaterally estopped from relitigating this issue in the instant matter and
10 that issue preclusion applies to plaintiffs' inverse condemnation cause of action here.

11 19. Following each litigation and thereafter, the City has represented that it
12 was taking the necessary steps to upgrade or fix the system to avoid future failures.
13 The systems' continued failures demonstrate that these known hazards were not
14 fixed, despite the fact that it is reasonably expected that heavy rainfall events will
15 continue to become heavier and more frequent in the future, and at a minimum
16 remain as described above.

17 20. In 2011, the City began a Sewer System Improvement Program as a
18 twenty-year, city-wide investment to purportedly enhance the reliability and
19 performance of its wastewater system. In 2014, the U.S. Environmental Protection
20 Agency's ("EPA") Region 9 ("Region") shared an early draft National Pollutant
21 Discharge Elimination System ("NPDES") permit with San Francisco. The permit
22 reissuance process was put on hold when the Region and the California State
23 Regional Water Quality Control Board sought additional information. In 2016, the
24 Region sent an information request after receiving reports of "raw sewage mixed with
25 stormwater...overflowing from the City and County of San Francisco' [CSS] into
26 streets, sidewalks, residences and businesses." In 2017, the Regional Water Quality
27 Control Board sent San Francisco a request for additional monitoring data to better
28 understand the quality of the wet weather discharges.

1 21. In March 2018, the City submitted a Long Term Control Plan Synthesis
2 (“LTCP”) to the Regional Water Quality Control Board in the context of its Bayside
3 permit requirements. In response to that submission, the Regional Water Quality
4 Control Board informed San Francisco that the Synthesis did not adequately address
5 the minimum required elements of the Bayside Permit requirement to update its
6 LTCP, in part because the document did not reflect “current circumstances.” San
7 Francisco gave a written response to the Regional Water Quality Control Board’s
8 comments, but it did not submit a revised Synthesis. Then, in April 2019, the Region
9 and the Regional Water Quality Control Board issued another public notice and
10 opportunity to comment on the City’s draft NPDES permit and received additional
11 comments from numerous members of the public asking the permitting authorities to
12 stop allowing San Francisco to discharge sewage into people’s homes and businesses.

13 22. Instead of acting with reasonable care for its citizens, San Francisco
14 continued to resist required updates, and, in January 2020, the City petitioned the
15 Environmental Appeals Board to review the Region’s permit decision to discharge
16 from its existing combined sewer system into the Pacific Ocean, contesting *inter alia*
17 the requirement to report on sewer overflows from the combined sewer system and
18 the requirement to update its LTCP. The City argued that the Region had neither
19 the authority nor the requisite jurisdiction to regulate the subject decisions and
20 conduct. The Environmental Appeals Board denied the City’s petition, concluding
21 that the requirement to report on isolated sewer overflows is not to “regulate” the
22 City, but rather that the frequency, cause, and location of isolated sewer overflows
23 can be indicative of whether the permitted combined sewer system is operating
24 appropriately; including in compliance with the permit’s requirement to maximize
25 storage without increasing upstream flooding into basements and streets, which can
26 “negatively impact human health and the environment.”

27 23. The City chose not to update the storm drainage and sewer system,
28 knew or should have known that by failing to do so, more sewage would discharge

1 into the bay subjecting it to fines and adverse consequences, violate permitting, and
2 instead of facing those consequences the City chose to operate and maintain the
3 system such that it would cause discharge onto Plaintiffs' property.

4 24. The City knew, or should have known, that the Marina district was a
5 specifically vulnerable neighborhood with respect to the incapability of the City's
6 combined storm drainage and sewer system to handle precipitation events, and the
7 consequent untreated sewage and stormwater overflow issue.

8 25. To make matters worse for the Marina residents, and instead of
9 properly repairing and maintaining its sewer system infrastructure to prevent
10 further overflows like a reasonably careful person would, in May 2021, the City
11 decided to close the Pierce Street Outfall, a combined sewer discharge outfall that
12 allows overflow from the Marina to flow directly into the Bay.

13 26. City officials knew, or should have known, that decommissioning the
14 Pierce Street Outfall would further increase destructive inundations of properties
15 located in the Marina neighborhood because the decommissioning of the Pierce Street
16 Outfall would increase both maximum inundation depth and enclosed flood volume
17 on Marina Boulevard in the event of heavier precipitations, which the City knew, or
18 should have known, were bound to occur.

19 27. In October 2021, a rainstorm passed through San Francisco that
20 resulted in 4.5 million gallons of untreated wastewater inundating homes in the
21 Marina.

22 28. Then, again, starting on or around December 31, 2022, and lasting into
23 January 2023, a rainstorm passed through San Francisco. Due to the acts, events,
24 and conditions recited above, the City's failed yet again, backing up and overflowing
25 during the storm, and causing torrents of water and untreated sewage to inundate
26 Plaintiffs' properties.

27 29. As a direct result of the December 2022/January 2023 failures of the
28 combined storm drainage and sewer system, a mix of raw sewage and storm water

1 flowed in and around Plaintiffs' properties, permeating the soils, walls, and floors,
2 and depositing highly contaminated and toxic fecal and other raw sewage matter in
3 and around Plaintiffs' homes. The City has failed to take any remedial steps to
4 properly remove the contaminants from Plaintiffs' properties and surrounding soils
5 despite knowing that Plaintiffs, their families, their children and other citizens are
6 being exposed to these contaminants on a continuing basis.

7 30. As a direct, proximate and legal result of the City's acts and omissions,
8 the failure of its public work of improvement, including its failure to maintain the
9 storm water and sewage system, the damage to Plaintiffs would not have occurred.
10 That damage includes but is not limited to:

- 11 a. Damage to personal property;
- 12 b. Damage to real property;
- 13 c. Costs of cleanup and repair;
- 14 d. Costs of replacement;
- 15 e. Dangerous exposure to raw sewage;
- 16 f. Dangerous exposure to mold, which still plagues many of
- 17 Plaintiffs' properties;
- 18 g. Loss of business and business inventory;
- 19 h. Loss of occupancy;
- 20 i. Loss of enjoyment and use of property; and
- 21 j. Reduction in the value of Plaintiffs' properties.

22 31. By virtue of the failure of the City's storm and sewer system, its acts
23 and omissions as set forth above, each Plaintiff has suffered general damages in a
24 sum exceeding the jurisdictional minimum of this Court.

FIRST CAUSE OF ACTION

(Inverse Condemnation)

27 32. Plaintiffs incorporate by reference herein, as though set forth in full, the
28 allegations of paragraphs 1 through 31, above.

1 33. The City and Does 11 through 20 (hereafter jointly referred to as "the
2 City"), through a public project, have caused Plaintiffs to suffer a taking or damaging
3 of private property for public use without just compensation, in violation of article 1,
4 section 19 of the California Constitution, and have caused Plaintiffs to suffer an
5 invasion of their property rights which resulted from a deliberate act, carrying with
6 it the purpose of fulfilling a public work of improvement for the general population of
7 San Francisco.

8 34. As a proximate result of the failure of the combined storm drainage and
9 sewer system (hereafter sometimes referred to as “the public improvement”)
10 Plaintiffs have suffered significant damage to private property as herein described.

11 35. In addition, Plaintiffs have incurred costs, disbursements, and expenses,
12 including attorney's fees, interest, appraisal and engineering fees because of this
13 proceeding in amounts that cannot yet be ascertained, but which are recoverable in
14 this action pursuant to, among other provisions, Code of Civil Procedure section
15 1036.

SECOND CAUSE OF ACTION

(Dangerous Condition of Public Property)

18 36. Plaintiffs incorporate by reference herein, as though set forth in full, the
19 allegations of paragraphs 1 through 35, above.

20 37. The City created, installed, designed, constructed, owned, possessed,
21 maintained and controlled the public improvement. By its acts and omissions as set
22 forth above, however, the City caused the public improvement to become and remain
23 in a dangerous and defective condition, which in its operation is hazardous, toxic,
24 dangerous and unsafe to Plaintiffs and to other residents of the City adjacent to the
25 public improvement in those areas of the City where Plaintiffs' reside and work. The
26 City also had notice of the herein described dangerous condition for long enough time
27 to have protected against it.

28 38. The public improvement creates a substantial and foreseeable risk of

1 harm to persons using the public improvement and the properties adjacent thereto.
2 The City has, despite knowing of the danger to persons and property caused by the
3 public improvement, negligently and carelessly failed to remedy the dangerous
4 conditions, and has further failed to warn of the dangers, instead allowing Plaintiffs
5 to be exposed to dangerous levels of raw sewage and mold and allowing Plaintiffs'
6 property to be damaged.

7 39. The dangerous condition caused by the public improvement continues to
8 this day, and damage to Plaintiffs and others is constantly threatened.

9 40. As a proximate and foreseeable result of the dangerous condition of the
10 public improvement, Plaintiffs have each been damaged in a sum exceeding the
11 jurisdictional minimums of this Court and subject to proof at trial.

THIRD CAUSE OF ACTION

(Failure to Maintain)

14 41. Plaintiffs incorporate by reference herein, as though set forth in full, the
15 allegations of paragraphs 1 through 40, above.

16 42. Pursuant to, among other provisions, California Government Code
17 section 38900, the City has had a duty to maintain the public improvement. The need
18 for maintenance of the public improvement, and the dangers caused by its current
19 condition, have been known to the City for substantially longer than the period of
20 time reasonably needed to implement repairs.

21 43. Nonetheless, the City has failed in its obligation to maintain the public
22 improvement, and has allowed the system to lapse into a state of dilapidation and
23 disrepair.

24 44. As a proximate result of the City's failure to maintain the public
25 improvement, Plaintiffs have each been damaged in a sum exceeding the
26 jurisdictional minimums of this Court and subject to proof at trial.

27 | / / /

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FOURTH CAUSE OF ACTION

(Negligence)

45. Plaintiffs incorporate by reference herein, as though set forth in full, the allegations of paragraphs 1 through 43, above.

46. In performing work on, adjacent to or related to the public improvement, the City and Does 1 through 10 fulfilled their work, or failed to fulfill their work and obligations, in a careless and a negligent manner, failing to act reasonably to prevent harm and instead causing the public improvement to further fail in its ability to divert storm water safely to the San Francisco Bay.

10 47. As a proximate result of this negligence, Plaintiffs have each been
11 damaged in a sum exceeding the jurisdictional minimums of this Court and subject to
12 proof at trial.

FIFTH CAUSE OF ACTION

(Nuisance)

15 48. Plaintiffs incorporate by reference herein, as though set forth in full, the
16 allegations of paragraphs 1 through 47, above.

17 49. Defendants, and each of them, have by their acts and omissions as set
18 forth above, obstructed the free use of Plaintiffs' property, so as to interfere with each
19 Plaintiff's comfortable enjoyment of life and property. Said acts constitute a nuisance
20 with the meaning of California Civil Code section 3479.

21 50. This nuisance is continuous in nature.

22 51. As a proximate result of the nuisance, Plaintiffs have each been
23 damaged in a sum exceeding the jurisdictional minimums of this Court and subject to
24 proof at trial.

SIXTH CAUSE OF ACTION
(Trespass)

27 52. Plaintiffs incorporate by reference herein, as though set forth in full, the
28 allegations of paragraphs 1 through 51, above.

53. Defendants, and each of them, have by their acts and omissions as set forth above, caused the diversion and trespass of water and sewage onto Plaintiffs' properties, a violation of Article X, Section 7 of the California Constitution.

54. Plaintiffs never consented to the trespass of water and sewage onto
their properties.

6 55. As a proximate result of the trespass, Plaintiffs have each been
7 damaged in a sum exceeding the jurisdictional minimums of this Court and subject to
8 proof at trial.

SEVENTH CAUSE OF ACTION

(Declaratory and Injunctive Relief)

11 56. Plaintiffs incorporate by reference herein, as though set forth in full, the
12 allegations of paragraphs 1 through 55, above.

13 57. The acts and omissions of Defendants as set forth herein constitute an
14 ongoing nuisance and ongoing trespass. Moreover, rather than taking steps to
15 remedy the damage caused to Plaintiffs by the inundation of their homes with raw
16 sewage and contaminated water, Defendants have acted and continue to act to
17 *increase* the damage through the issuance of occupancy permits for new businesses
18 and residences that continually increase the runoff of water flowing to the system
19 from, over, and through driveways, other impervious surfaces, building gutters, and
20 collection pipes, increasing the discharge of sewage into the system.

21 58. An actual and present controversy exists among the litigants, as
22 Plaintiffs contend that it is an abuse of administrative discretion and a violation of
23 environmental protection laws and environmental regulations for the City to issue
24 permits and allow construction activity that further overstresses the deficient
25 capacity of the system without taking steps to mitigate the natural and obvious
26 impacts of that construction activity.

27 59. Plaintiffs are informed and believe, and thereon allege, that the City
28 purports to include in its permit fees certain charges to address the known impacts to

1 the system by such construction, but that it has diverted those fees to other uses and,
2 contrary to its express promises, has neither used the fees that it has collected to
3 update the system to handle the increased discharges of water and sewage, nor
4 compensated Plaintiffs for their losses and damage.

5 60. In this way, the City diverts revenues intended to mitigate Plaintiffs'
6 losses and instead exacerbates those losses and damages. Such diversion of funds
7 collected for a restricted purpose are a violation of the law and an abuse of
8 administrative discretion, causing an ongoing nuisance that has resulted and will
9 result in repeated trespasses onto Plaintiffs' property. Plaintiffs are informed and
10 believe, and thereon allege, that the City denies its obligations to limit the issuance
11 of new building permits until the system's capacity is capable of safely handling the
12 concomitant increased discharge of water and sewage into the system. Plaintiffs are
13 informed and believe, and thereon allege, that the City denies its obligations to take
14 reasonable steps to limit the discharge of toxic effluents into the streets, into the Bay,
15 and most pertinent to the instant allegations, into Plaintiffs' homes. Plaintiffs are
16 informed and believe, and thereon allege, that the City denies its obligations to abate
17 the ongoing nuisance caused by its acts and omissions. Plaintiffs are informed and
18 believe, and thereon allege, that the City denies its obligations to cease and desist
19 from trespassing onto Plaintiffs' properties through the knowing diversion of sewage
20 and overwhelming, unnatural quantities of water.

21 61. An actual controversy thus exists, and Plaintiffs thus seek a declaration
22 specifying the City's obligations in: (a) issuing new permits that authorize the
23 discharge of ever greater quantities of water and sewage into the system; (b)
24 collecting fees justified for the impacts of new construction on the system without
25 using those fees to upgrade the system; and (c) adequately maintaining the system
26 and upgrading its capacity.

27 62. Moreover, unless the City is enjoined from issuing permits that further
28 overstress the system, Plaintiffs will continue to be subjected to harm that includes

1 property damage to unique property, mold borne illnesses, toxic contamination, and
2 irreparable physical injury and loss.

3 63. Apart from an injunction, no adequate remedy at law exists to redress
4 these threatened harms. Further, because Defendants' actions constitute an ongoing
5 nuisance, they are properly subject to an order and judgment requiring that they
6 abate the nuisance conditions and they be enjoined from ongoing acts that contribute
7 to the nuisance, including the issuance of new building permits that authorize the
8 discharge of ever greater quantities of water and sewage into the system unless and
9 until the system is upgraded to handle the extra stresses visited upon it. As a
10 trespasser and as the owner of the system, including the streets that collect water
11 and divert it onto Plaintiffs' real property, the City is subject to the same standards
12 that govern private landowners under Article X section 7 of the California
13 Constitution. An order and judgment enjoining the City from further causing
14 trespass through the diversion of water outside of its natural channels and onto
15 Plaintiffs' real property is thus both necessary and appropriate.

PRAYER FOR RELIEF

17 WHEREFORE, Plaintiffs pray judgment, damages and relief from defendants
18 and each of them as follows:

- 19 a. On all causes of action, for general (non-economic) and economic
damages according to proof at trial;
- 20 b. On the second and fifth causes of action, for a decree enjoining
defendants from maintaining a dangerous condition of public
property and an order to abate the nuisance caused by
defendants;
- 21 c. On the sixth and seventh causes of action, for a preliminary and
permanent injunction to prevent further diversion of trespassing
water onto Plaintiffs' real property.
- 22 d. On the seventh cause of action, for a declaration of the parties'

1 rights and obligations, and for a preliminary and permanent
2 injunction prohibiting the City from issuing new building permits
3 upstream from Plaintiffs or that would otherwise add discharge of
4 water or sewage into the system until such time that the system
5 has been upgraded with sufficient capacity to safely handle the
6 additional discharges into it.

7 e. For attorneys' fees, expert fees, appraisal fees, engineering fees,
8 interest and other expenses allowable under Code of Civil
9 Procedure sections 1036 and 1268.311;

10 f. For costs of suit herein incurred;

11 g. For prejudgment interest as allowed by law; and

12 h. For such other and further relief as the Court may deem just and
13 proper.

14 Dated: August 24, 2023

WALKUP, MELODIA, KELLY & SCHOENBERGER

15 By: 

16
17 DOUGLAS S. SAELTZER
18 KHALDOUN A. BAGHDADI
19 MAX SCHUVER
20 MARTIN P. NEIRA
21 Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues to triable.

Dated: August 24, 2023

WALKUP, MELODIA, KELLY & SCHOENBERGER

By:

DS

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