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9 Revocable Trust; DeWayne Boccali; Emily V. Brown; Carty Ojai LLC; Steven Norman Feig and
10 Maria Olympia Feig, Trustees of the Steve and Maria Feig Living Trust; Rosanna Garrison; Gregg
11 Garrison; Richard Gilleland; Alex Glasscock; Brandon Hansen; C.B. Heller and Miranda Heller,
12 Trustees of the Heller Family Trust; Michael L. Rockhold, Trustee of The Michael Rockhold
13 Trust; Linn Thompson; Bre Thompson; SISAR Mutual Water Company; and Denise Wizman,
14 Trustee of the Denise Wizman Revocable Trust.

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES

17 SANTA BARBARA CHANNELKEEPER,
18 a California non-profit corporation,
19 Petitioner,

20 v.

21 STATE WATER RESOURCES CONTROL
22 BOARD, a California State Agency,

23 CITY OF SAN BUENAVENTURA,
24 a California municipal corporation,
25 incorrectly named as City of Buenaventura,

26 Respondents.

27 CITY OF SAN BUENAVENTURA,
28 a California municipal corporation,
Cross-Complainant

v.

DUNCAN ABBOTT, an individual, et al.
Cross-Defendants.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

REPLY TO OPPOSITION OF MOTION FOR
JUDGMENT ON THE PLEADINGS

Action Filed: Sept. 19, 2014

Trial Date: Feb. 14, 2022

Hearing: January 18, 2022

Time: 1:30 PM

Dept.: 10

GARRISON LAW CORPORATION

1 TO CROSS-COMPLAINANT CITY OF BUENAVENTURA, THEIR ATTORNEYS OF
2 RECORD AND ALL PARTIES AND COUNSEL OF RECORD:
3

4 Garrison Law Corporation (hereinafter “GLC”) represents a wide variety of Cross-
5 Defendants whose properties are in both the Ventura River Watershed and the Santa Clara River
6 Watershed. In addition to these two watersheds, GLC’s represented Cross-Defendants have
7 properties located in four groundwater basins. We move this Court to grant our JUDGMENT ON
8 THE PLEADINGS and REPLY as to the First, Second, Third, Fourth, Fifth, Sixth, Seventh,
9 Eighth, and Ninth claims for relief in Cross-Complainant’s *Third Amended Complaint*
10 (hereinafter “TAC”).
11

12 This REPLY incorporates by reference the additional Motions for Judgment on the
13 Pleadings filed by the other Cross-Defendants in this action, and those motions are made a part
14 hereto for any subsequent relief granted by the Court for those Cross-Defendants against the City
15 of Ventura (hereinafter “COV”). This REPLY is based on the complete pleadings, files and
16 records of this action, and on such other oral and/or documentary evidence as may be presented
17 at the hearing on the Motion.
18

19 I. MISREPRESENTATION OF COV’S CLAIMS OF PUEBLO WATER RIGHTS

20 Pursuant to the California Lands Commission, the Pueblo designation was never granted
21 to the City of San Buenaventura (See [https://www.slc.ca.gov/land-types/rancho-pueblo-presidio-](https://www.slc.ca.gov/land-types/rancho-pueblo-presidio-mission-lands)
22 [mission-lands](https://www.slc.ca.gov/land-types/rancho-pueblo-presidio-mission-lands)). It follows that Ventura has no Pueblo water rights. COV’s claim of nonexistent
23 Pueblo rights is a false misrepresentation to the Court, parties, and Cross-Defendants that forfeits
24 their standing to maintain this action and the *in rem* jurisdiction.
25

26 A. Uncompensated Takings: COV misrepresents that it has Pueblo rights solely to claim
27 *in rem* jurisdiction for the taking of existing water rights of the Cross-Defendants. “The City is a
28 successor to the pueblo rights which gives it a priority water right to use sufficient water from

1 the Ventura River to meet its needs.” (TAC, Paragraph 124) The misrepresentation of Pueblo
2 rights is also used as the foundation for the uncompensated taking COV seeks from Cross-
3 defendants. This is not permissible.
4

5 In the trial of such an action as this, the testimony of witnesses as to the facts and
6 circumstances which affect the application of these conflicting water rights [by and
7 between a municipality and riparian water right owners] is not only permissible but
8 essential to a proper evaluation by the jury. Expert witnesses, who understand these
9 rights, and who believe they affect value and damage, may say so, and explain the
reasons for their opinions. *City of San Diego v. Sloane* (1969) 272 Cal.App.2d 663,
670 [77 Cal.Rptr. 620]. See also *City of Los Angeles v. Pomeroy*, supra, 124 Cal.
597, 615.

10 B. CEQA Special Judicial Mechanism: The Pueblo rights wrongly claimed by the COV
11 also affects the analysis of CEQA. California provides for special treatment of CEQA cases
12 generally. Indeed, California has made available some special judicial mechanisms to adjudicate
13 CEQA matters. Specifically, California Public Resources Code § 21167.1(b) provides:

14 To ensure that actions or proceedings brought pursuant to [CEQA] may be quickly
15 heard and determined in the lower courts, the superior courts in all counties with a
16 population of more than 200,000 shall designate one or more judges to develop
17 expertise in this division and related land use and environmental laws, so that those
18 judges will be available to hear, and quickly resolve, actions or proceedings brought
pursuant to [CEQA].” (*United States v. STATE WATER RESOURCES CONTROL*
BD. (2019) 418 F.Supp.3d 496, 508.)

19 COV seeks legal and equitable relief in this Court through its claim of Pueblo rights. However,
20 COV does not have Pueblo water rights, nor has it adhered to the due process guaranteed by the
21 Constitution and CEQA to protect the water rights of the Cross-Defendants guaranteed under the
22 Public Trust Doctrine.
23

24 C. COV’s Governmental Immunity is Not Absolute: A public entity is not immune, that
25 is, it is liable and legally responsible for damages caused by it and any public employee’s
26 intentional or negligent misrepresentation when the misrepresentations are meant to harm the
27 Cross-Defendants, their rights, and their businesses. (*Government Code* Section 818.8).
28

1 D. COV and Government Employees Are Liable for Deceit: Further, the COV and its
2 employees are liable for any intentional or negligent misrepresentation when he or she is guilty
3 of "actual fraud, corruption or actual malice." (*Government Code* Section 822.2).
4

5 The employee "immunity afforded by *Government Code* Section 822.2 applies unless, in
6 addition to the essentials of common law deceit, a public employee is motivated by corruption or
7 actual malice, i.e., a conscious intent to deceive, vex, annoy or harm the injured party in his
8 business". (*Schonfeld v. City of Vallejo* (1975) 50 Cal. App.3d 401, 409-410).
9

10 II. COV's STATUTORY DEFENSES IN ITS OPPOSITION ARE FORFEITED DUE
11 TO ITS MISREPRESENTATIONS AND DECIET IN ITS PLEADINGS

12 Our MOTION FOR JUDGMENT ON THE PLEADINGS documents the COV's
13 violations — as an unworthy fiduciary to the people, environment, and the Ventura River itself
14 — of the CEQA process and usurpation of the Constitutional protections of the 5th Amendment
15 (Takings Clause) and 14th Amendment (Due Process Clause). Based on COV's violations alone,
16 the Court is allowed to grant Cross-Defendants' relief. COV's conduct violates the standard of
17 care of both the Public Trust Doctrine and the fiduciary duties, obligations, and promises of
18 elected officials and a municipality. The COV's OPPOSITION states, "And even if the Garrison
19 Group had a CEQA claim, which they do not, that claim would have been time-barred years
20 ago." (Page 2, lines 18-19.) Fraud is never time barred. COV's scienter runs deeper beneath the
21 surface of its *Third Amended Crosscomplaint*. COV's misrepresentations of its Pueblo rights
22 violate the Clean Hands Doctrine.
23

24 As a fiduciary, COV misrepresents to the Court, the public, and the Cross-Defendants by
25 claiming Pueblo rights, standing and *in rem* jurisdiction not recognized by the State of
26 California. The court of appeal in *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76
27 Cal.App.4th 970, 978-79, summarized the doctrine of "Unclean Hands" as follows:
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The defense of unclean hands arises from the maxim, “He who comes into Equity must come with clean hands.” The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim. The defense is available in legal as well as equitable actions. Whether the doctrine of unclean hands applies is a question of fact.

The unclean hands doctrine protects judicial integrity and promotes justice. It protects judicial integrity because allowing a plaintiff with unclean hands to recover in an action creates doubts as to the justice provided by the judicial system. Thus, precluding recovery to the unclean plaintiff protects the court’s, rather than the opposing party’s, interests. The doctrine promotes justice by making a plaintiff answer for his own misconduct in the action. It prevents “a wrongdoer from enjoying the fruits of his transgression.”

The conduct of COV that violates the Clean Hands Doctrine is not limited to the TAC.

Throughout this matter, COV has a pattern and practice that breaches its fiduciary standard of care, including but not limited to: withholding discovery; not providing with specificity the boundaries of the basins; the subversion of the CEQA process; and the uncompensated takings sought by way of its TAC, constituting a pattern and practice that undermines fundamental fairness and the Public Trust Doctrine.

The Public Trust Doctrine serves the function in that integrated system of preserving the continuing sovereign power of the state to protect public trust uses, a power which precludes anyone from acquiring a vested right to harm the public trust, and imposes a continuing duty on the state to take such uses into account in allocating water resources. *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 452 [189 Cal.Rptr. 346, 658 P.2d 709].

III. CEQA VIOLATIONS AND UNJUST TAKINGS BY THE COV

COV as a governmental fiduciary must adhere to the CEQA process and the governmental takings protections afforded the Cross-Defendants that are critical environmental, due process, and Constitutional mandates under the Public Trust Doctrine and the California Constitution. As the court in *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978 states,

He who comes into Equity must come with clean hands. The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come

1 into court with clean hands, and keep them clean, or he will be denied relief,
2 regardless of the merits of his claim.

3 Here, our fiduciary COV has fallen so far below its required standard of care as a
4 fiduciary and a municipality charged with the protection of all rights holders and the Watershed,
5 it has forfeited its right to maintain this action. COV forfeits its standing and the relief it seeks
6 because of its deliberate misrepresentations that shock the conscious, offend fundamental
7 fairness, the Doctrines of Public Trust and Clean Hands as well as the constitutions of our
8 Democracy. The public demands more. The environment deserves more.
9

10 IV. CONCLUSION

11 Based on the foregoing facts, arguments, and points of law, the Court is respectfully
12 urged to grant this motion for judgment on the pleadings as to the First, Second, Third, Fourth,
13 Fifth and Sixth, Seventh, Eighth, and Ninth Claims for Relief without leave to amend, or in the
14 event that the Court is inclined to grant leave to amend, that the Court require Cross-
15 Complainant to show how they can amend their *Third Amended Cross-complaint*, and how that
16 amendment will change the effect of their *Third Amended Cross-complaint*. Additionally, the
17 Court may consider remanding this matter to the special judicial mechanisms for adjudication of
18 CEQA matters.
19

20 Dated: January 10, 2022



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24 Gilbert, Trustees of The Loa E. Bliss 2006 Revocable
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