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10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF FRESNO, CENTRAL DIVISION**

12 BUILDING INDUSTRY ASSOCIATION OF
13 FRESNO/MADERA COUNTIES, INC.;
14 GRANVILLE HOMES, INC.; WATHEN
15 CASTANOS PETERSON HOMES, INC.; and
16 LENNAR HOMES OF CALIFORNIA, INC.,

17 Petitioners and Plaintiffs,

18 v.

19 CITY OF FRESNO; CITY COUNCIL OF THE
20 CITY OF FRESNO; ALL PERSONS
21 INTERESTED IN THE VALIDITY OF (1)
22 CITY OF FRESNO BILL NO. B-17,
23 AMENDING ARTICLE 5 OF CHAPTER 6 OF
24 THE FRESNO MUNICIPAL CODE AND
25 ARTICLE 4.5 OF CHAPTER 12 AND (2) THE
26 CITY OF FRESNO'S APPROVAL OF A
27 RESOLUTION, ON OR ABOUT APRIL 6,
28 2017, ENCOMPASSING THE 530TH
AMENDMENT TO THE MASTER FEE
RESOLUTION NO. 80-420 ADOPTING
WATER CAPACITY FEES UNDER THE
PUBLIC UTILITIES SECTION, AND (3) ALL
ACTS RELATING TO THE
ENVIRONMENTAL REVIEW OF SUCH
ACTIONS; and DOES 1 through 100, inclusive,

Respondents and Defendants.

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FRESNO COUNTY SUPERIOR COURT

By: C Prendergast, Deputy

Case No. **17CECG01669**

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR REVERSE
VALIDATION, DECLARATORY
RELIEF, AND INJUNCTIVE RELIEF**

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1 Petitioners and Plaintiffs Building Industry Association of Fresno/Madera Counties,
2 Inc.; Granville Homes, Inc.; Wathen Castanos Peterson Homes, Inc.; and Lennar Homes of California,
3 Inc. (collectively, "Petitioners") bring this Petition for Writ of Mandate and Complaint for Reverse
4 Validation, Declaratory Relief, and Injunctive Relief (the "Petition"), and allege as follows:

5 INTRODUCTION

6 1. Petitioners have brought this action challenging new water capacity fees ("Proposed
7 Fees" or "Fees") proposed by Respondents and Defendants, the City of Fresno and the City Council
8 for the City of Fresno (collectively, the "City" or "Respondents") on the grounds that the Proposed
9 Fees violate applicable law, including but not limited to the California Environmental Quality Act,
10 Public Resources Code, Section 21000, *et seq.* ("CEQA"); the Mitigation Fee Act, Government Code,
11 Section 66013, subdivision (a); and the California Constitution.

12 2. According to the City, the Proposed Fees are intended to update the City's existing
13 water supply systems by funding new or expanded connections to water systems and building new, or
14 upgrading existing, infrastructure. The City specifically contends over one-half of the Proposed Fees
15 are necessary to recover costs for the future expansion of the City's Northeast Surface Water
16 Treatment Plant (the "NESWTP Expansion") from its existing capacity of 30 million gallons/day
17 ("mgd") to 60 mgd.

18 3. The Proposed Fees will significantly increase the City's water capacity fees for new
19 connections, which will commensurately increase the price of homes within the City. Ultimately,
20 homebuyers within the City – and particularly new homebuyers – will suffer due to decreased
21 affordability of new homes.

22 4. As a result of these practical concerns, it is particularly important for public agencies
23 such as the City to meet their constitutional and statutory obligations to ensure the fees (i) are no
24 greater "than necessary to cover the reasonable costs of the governmental activity," and are allocated
25 in a manner that "bear[s] a fair or reasonable relationship to the payor's burdens on, or benefits
26 received from, the governmental activity," (Cal. Const., art. XIII C, § 1, subd. (e)); (ii) are limited to
27 the "reasonable cost of providing the service . . . for which the fee is charged," (Govt. Code, § 50076);
28 and (iii) do not exceed the estimated reasonable cost of providing the service for which the fee or

1 charge is imposed, (Govt. Code, § 66013, subd. (a)), absent submission of the Proposed Fees to the
2 voters for approval by a two-thirds majority. The City, however, failed to make a requisite showing
3 under California law sufficient to base the Proposed Fees on the NESWTP Expansion.

4 5. Moreover, while Petitioners and their members are often required to fully engage in the
5 environmental review process under CEQA for their development projects, the City itself did not
6 engage in any environmental review under CEQA for the NESWTP Expansion – even though the City
7 has asserted (i) it “plans to construct additional surface water system improvements,” including the
8 “NE Surface Water Treatment Plant Expansion (30 mgd to 60 mgd),” (ii) the nexus study specifically
9 calculates the amount of the Proposed Fees based on the NESWTP Expansion, and (iii) California law
10 mandates that the City may expend the fees collected “solely for the purposes for which the charges
11 were collected.” (Govt. Code, § 66013, subd. (c).)

12 6. The City cannot have it both ways. Either the NESWTP Expansion is a “project” that
13 must be evaluated under CEQA, or the City lacks the constitutional nexus and/or statutory basis to
14 implement the Proposed Fees.

15 7. As a result, Petitioners respectfully request that this Court declare the Proposed Fees
16 invalid, find that the Proposed Fees do not comply with applicable law, and issue a writ of mandate
17 ordering the City to rescind its approval of the Proposed Fees.

18 JURISDICTION & VENUE

19 8. This Court has jurisdiction under Sections 1085 and 1094.5 of the Code of Civil
20 Procedure and Sections 21168 and 21168.5 of the Public Resources Code. This is a reverse validation
21 proceeding pursuant to Section 860, *et seq.* of the Code of Civil Procedure, including Sections 861.1
22 and 863, and Sections 66013 and 66022 of the Government Code. This Court also has jurisdiction
23 over Petitioners’ requests for injunctive and declaratory relief, pursuant to Sections 526, *et seq.* and
24 1060, *et seq.* of the Code of Civil Procedure.

25 9. Venue is also proper in this Court pursuant to Sections 394, 860, and 863 of the Code
26 of Civil Procedure. In addition, the acts and events giving rise to Petitioners’ claims occurred in this
27 County.

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1 **SERVICE OF PROCESS**

2 10. Petitioners will serve Defendants the City of Fresno and the Fresno City Council with
3 summons and the Petition in this action in the manner provided by law for the service of summons in a
4 civil action.

5 11. Published notice of this action in a newspaper of general circulation published in the
6 County of Fresno, within which the City of Fresno is located, is the method most likely to give notice
7 to persons interested in these proceedings. Petitioners will seek an order *ex parte* ordering:

8 a. Publication of the summons in a newspaper of generation circulation in the
9 County of Fresno pursuant to Section 861 of the Code of Civil Procedure; and

10 b. That notice be given by mailing a copy of the summons and complaint to those
11 persons, if any, or their attorneys, who notify Petitioners' attorneys of record in writing of their
12 interest in the matter on or before the date on which publication of the summons is complete or such
13 other date as the Court may order.

14 **PARTIES**

15 12. Petitioner and Plaintiff Building Industry Association of Fresno/Madera Counties, Inc.
16 (the "Fresno/Madera BIA") is, and at all times mentioned herein was, a nonprofit corporation
17 incorporated under the laws of California. The Fresno/Madera BIA is a membership-based
18 organization representing builders, developers, subcontractors, and affiliated businesses in the
19 residential, commercial, and industrial building industry in Fresno and Madera Counties.
20 Fresno/Madera BIA's mission includes, among other things, the promotion of housing affordability
21 and economic development within Fresno and Madera Counties.

22 13. Petitioner and Plaintiff Granville Homes, Inc. is, and at all times mentioned herein was,
23 a corporation incorporated under the laws of California and in the business of building and
24 constructing private, residential homes.

25 14. Petitioner and Plaintiff Wathen Castanos Peterson Homes, Inc. is, and at all times
26 mentioned herein was, a corporation incorporated under the laws of California and in the business of
27 building and constructing private, residential homes.

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1 15. Petitioner and Plaintiff Lennar Homes of California, Inc. is, and at all times mentioned
2 herein was, a corporation incorporated under the laws of California and in the business of building and
3 constructing private, residential homes.

4 16. Petitioners have standing to assert the claims presented herein because they, and their
5 members, are beneficially interested in the subject matter of the proceeding, insofar as they would be
6 impacted by Respondents' enactment of the Proposed Fees. In addition, the interests Petitioners seek
7 to protect in this action include ensuring full and forthright compliance by the City with CEQA,
8 California law, and the United States and California Constitutions. Petitioners and/or their members
9 will be injured by the implementation of the Proposed Fees without full compliance with CEQA,
10 California law, and the United States and California Constitutions.

11 17. Petitioners and/or their members have performed any and all conditions precedent to
12 the filing of this Petition. Petitioners have exhausted any and all administrative remedies required by
13 law by, *inter alia*, participating in the administrative and environmental review process, and objecting
14 to the Proposed Fees in writing.

15 18. Petitioners complied with the requirements of Section 21167.5 of the Public Resources
16 Code by mailing written notice of this action to the City. A copy of the letter providing written notice
17 to the City, and proof of service of that letter, is attached hereto as Exhibit "A."

18 19. Petitioners will timely provide notice to the State Attorney General as required by
19 section 21167.7 of the Public Resources Code and section 388 of the Code of Civil Procedure.

20 20. Petitioners have complied with Section 21167.6 of the Public Resources Code by filing
21 a request concerning the preparation of the record of administrative proceedings relating to this action
22 concurrently with the Petition, a copy of which is attached hereto as Exhibit "B."

23 21. Respondent and Defendant the City of Fresno is, and at all times mentioned herein was,
24 a municipal corporation in the State of California, incorporated under the laws of California.

25 22. Respondent and Defendant the City Council for the City of Fresno is the City of
26 Fresno's governing legislative body, and its principal place of business is located in the County of
27 Fresno.

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1 23. Other than the City of Fresno and the City Council for the City of Fresno, Respondents
2 and Defendants named herein as "ALL PERSONS INTERESTED IN THE VALIDITY OF (1) CITY
3 OF FRESNO BILL NO. B-17, AMENDING ARTICLE 5 OF CHAPTER 6 OF THE FRESNO
4 MUNICIPAL CODE AND ARTICLE 4.5 OF CHAPTER 12 AND (2) THE CITY OF FRESNO'S
5 APPROVAL OF A RESOLUTION, ON OR ABOUT APRIL 6, 2017, ENCOMPASSING THE
6 530TH AMENDMENT TO THE MASTER FEE RESOLUTION NO. 80-420 ADOPTING WATER
7 CAPACITY FEES UNDER THE PUBLIC UTILITIES SECTION, AND (3) ALL ACTS RELATING
8 TO THE ENVIRONMENTAL REVIEW OF SUCH ACTIONS" (the "Interested Person
9 Defendants"), are persons interested in the matters set forth in this Petition (including the Second
10 Cause of Action for Reverse Validation, and are named pursuant to the authority set forth in Section
11 860, *et seq.* of the Code of Civil Procedure, including Sections 861.1 and 863, and Section 66022 of
12 the Government Code.

13 24. Petitioners are currently ignorant of the true names and capacities of the Respondents
14 and Defendants sued herein as DOES 1 through 100, inclusive, and therefore sue said Respondents
15 and Defendants by such fictitious names pursuant to Section 474 of the California Code of Civil
16 Procedure. Petitioners are also informed and believe, and on that basis allege, that each of the said
17 fictitiously named Respondents and Defendants are in some manner responsible for the acts and
18 occurrences, as alleged herein, as well as the harmed suffered by Petitioners, as alleged herein.
19 Petitioners will therefore amend this Petition to allege their true names and capacities when
20 ascertained, together with any appropriate charging allegations. Whenever the terms the "City," the
21 "City of Fresno," the "City Council for the City of Fresno," "Respondents," the "Interested Person
22 Defendants," "All Persons," or "Defendants" are used herein, said terms shall also be construed as
23 including Respondents and Defendants DOES 1 through 100, inclusive.

24 **GENERAL ALLEGATIONS**

25 25. On March 9, 2017, the City introduced a proposed bill and resolution seeking to modify
26 the Fresno Municipal Code and the City's Master Fee Resolution for the purpose of adopting the
27 Proposed Fees.

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1 26. Petitioners are informed and believe, and based thereon allege, that the Proposed Fees
2 were calculated based on a February 27, 2017, Water Capacity Fee Study (the “Nexus Study”)
3 prepared by Bartle Wells Associates. The Nexus Study, among other things, states that one
4 component of the fees is based on “the cost of existing and future surface water supply projects needed
5 to meet the next 30 mgd capacity needs of growth.” According to the Nexus Study, “[t]his fee
6 component is based on the costs of expanding the Northeast Surface Water Treatment Plant from 30 to
7 60 mgd”

8 27. Petitioners are informed and believe, and based thereon allege, that the City continued
9 the hearing on the proposed bill and resolution to March 23, 2017, and April 6, 2017.

10 28. Throughout this time, Petitioners submitted numerous comments against the portion of
11 the Proposed Fees based on the NESWTP Expansion, objecting to the fact that, among other things,
12 the City had not engaged in any environmental review under CEQA and had failed to meet its
13 requirements for the adoption of the Proposed Fees under California law.

14 29. Petitioners are informed and believe, and based thereon allege, that at the April 6,
15 hearing, the City Council for the City of Fresno, (i) conducted a first reading of the bill amending
16 Article 5 of Chapter 6 of the Fresno Municipal Code and Article 4.5 of Chapter 12 of the Fresno
17 Municipal Code “to repeal various fees associated with providing water capacity for new and
18 expanded connections to the water system and create a new Water Capacity Fee classification, and to
19 adopt Water Capacity Fees as proposed by and justified in the nexus study prepared by Bartle Wells
20 Associates,” and (ii) approved a Resolution, encompassing the 530th amendment to the Master Fees
21 Resolution No. 80-420 adopting Water Capacity Fees under the Public Utilities Section. The City
22 Council also found the Proposed Fees were not a “project” under CEQA.

23 30. Petitioners are informed and believe, and based thereon allege, that the City Council on
24 April 13, 2017, adopted Bill No. B-17, Amending Article 5 of Chapter 6 of the Fresno Municipal
25 Code and Article 4.5 of Chapter 12 of the Fresno Municipal Code “to repeal various fees associated
26 with providing water capacity for new and expanded connections to the water system and create a new
27 Water Capacity Fee classification, and to adopt Water Capacity Fees as proposed by and justified in
28 the nexus study prepared by Bartle Wells Associates.”

1 **FIRST CAUSE OF ACTION**

2 **Writ of Mandate for Failure to Comply with CEQA (Pub. Resource Code § 21000, et seq.)**

3 31. Petitioners re-allege and incorporate by reference paragraphs 1 through 30 as though set
4 forth fully herein.

5 32. Under CEQA, all proposed discretionary “projects” carried out by the City must
6 receive environmental review, unless those activities are exempt from CEQA. (See Pub. Resources
7 Code, § 21080, subd. (a).)

8 33. A “project” means an activity that has a *potential* for causing either a direct, or
9 reasonably foreseeable indirect, physical change in the environment, and which is any of the
10 following: (a) an activity directly undertaken by a public agency, (b) an activity which receives
11 financial assistance from a public agency, or (c) an activity involving the issuance of a lease, permit,
12 license, or other entitlement for use by a public agency. (Pub. Resources Code § 21065; 14 Cal. Code
13 Regs. [“CEQA Guidelines”] § 15378, subd. (a).)

14 34. In this case, the City asserted that the primary reason for the Proposed Fees is to fund
15 the “construct[ion of] additional surface water system improvements,” including the “NE Surface
16 Water Treatment Plant Expansion (30 mgd to 60 mgd).” The City also asserted a constitutional nexus
17 existed between the amount of the Proposed Fee and the cost of specific infrastructure improvements,
18 including the proposed NESWTP Expansion. By law, the City may only use the Proposed Fees for the
19 purposes for which the charge is collected. Thus, by approving the Proposed Fees, the City committed
20 itself to a definite course of action with respect to the NESWTP Expansion such that an “approval” of
21 a “project” occurred under, *inter alia*, Section 15352, subdivision (a) of the CEQA Guidelines.

22 35. In addition, there are no statutory or categorical exemptions that would apply to the
23 Proposed Fees such that the City could avoid environmental review of the Proposed Fees under CEQA
24 and, even if exempt, there is a reasonable possibility that the Proposed Fees will have a significant
25 impact on the environment due to unusual circumstances under Section 15300.2, subdivision (e) of the
26 CEQA Guidelines.

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1 36. Despite this, the City declined to conduct an initial study or perform any environmental
2 review under CEQA for the Proposed Fees and the NESWTP Expansion, and instead approved the
3 Project without discharging its obligations under CEQA.

4 37. The City prejudicially abused its discretion, and failed to proceed in a manner required
5 by law, by approving the Proposed Fees without having performed any environmental review under
6 CEQA.

7 38. Under Sections 1085 and 1094.5 of the Code of Civil Procedure and Sections 21168
8 and 21168.5 of the Public Resources Code, Petitioners are entitled to petition this Court for a writ of
9 mandate enjoining the City to comply with CEQA.

10 39. Petitioners have a clear, present, and beneficial right to performance by the City of its
11 duties under CEQA, and the City has the duty and capacity to perform its duties under CEQA.

12 40. Petitioners also have a clear, present, and beneficial interest in the issuance of a writ of
13 mandate by virtue of the facts set forth in this Petition and Complaint, in that they, and their members,
14 are and will continue to be adversely affected by the City's continuing violations of CEQA. The
15 failure of the City to perform its duties under the law requires this Court to issue a writ of mandate
16 directing it to discharge its duties under Sections and 1094.5 of the Code of Civil Procedure and
17 Sections 21168 and 21168.5 of the Public Resources Code.

18 41. Petitioners have no plain, speedy, or adequate remedy at law, and injunctive relief is
19 expressly authorized by Sections 526 and 731 of the Code of Civil Procedure.

20 SECOND CAUSE OF ACTION

21 Determination of Invalidity (CCP § 860, *et seq.*; Gov. Code § 66022)

22 42. Petitioners re-allege and incorporate by reference paragraphs 1 through 41 above as
23 though set forth fully herein.

24 43. Section 66022 of the Government Code authorizes an action pursuant to Section 860 *et*
25 *seq.* of the Code of Civil Procedure to challenge a public agency's adoption of rates that include
26 capacity charges as defined in Section 66013 of the Government Code.

27 44. Section 863 of the Code of Civil Procedure provides that "any interested person may
28 bring an action . . . to determine the validity of the matter" when a public agency could bring a

1 validation action. Because Petitioners and/or their members are required to pay the Proposed Fees and
2 are most injured by them, they are “interested persons” within the meaning of Section 863 of the Code
3 of Civil Procedure.

4 45. The Proposed Fees are invalid under the California Constitution, art. XIII C, section 1,
5 subdivision (e) because such charges are greater “than necessary to cover the reasonable costs of the
6 governmental activity,” and are not allocated in a manner that “bear[s] a fair or reasonable relationship
7 to the payor’s burdens on, or benefits recieved from, the governmental activity.” The Proposed Fees
8 are also invalid under art. XIII A, section 4 of the California Constitution (adopted by Proposition 13),
9 and Section 50076 of the Government Code, because the rates and charges are not limited to the
10 “reasonable cost of providing the service . . . for which the fee is charged.” (Govt. Code, § 50076.)
11 The Proposed Fees are also invalid under Section 66013, subdivision (a) of the Government Code,
12 because they exceed the estimated reasonable cost of providing the service for which the fee or charge
13 is imposed, and the City did not submit the Proposed Fees to the voters for approval by a two-thirds
14 majority. The Proposed Fees violate the above provisions for numerous reasons, any one of which
15 alone is sufficient to validate the Proposed Fees:

16 a. The City contends the Proposed Fees are not a “project” under CEQA because
17 they are “intended to fund as-yet unknown, future projects,” and they do not commit the City to
18 approve any particular project, program, or capital improvement. The City also contends any “future
19 projects” are “unidentified,” and that adoption of the Poposed Fees “involves no commitment to any
20 project which may result in a significant physical impact on the environment” While Petitioners
21 disagree with these assertions, if the City is correct, the City cannot demonstrate the Proposed Fees: (i)
22 are no greater “than necessary to cover the reasonable costs of the governmental activity,” (ii) “bear a
23 fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental
24 activity,” (iii) include only the “reasonable cost of providing the service . . . for which the fee is
25 charged,” and (iv) do not exceed the estimated reasonable cost of providing the service for which the
26 fee or charge is imposed.

27 b. There is no evidence in the record to support the City’s finding that the
28 NESWTP Expansion is “needed to meet the capacity needs for serving the next phase of growth.”

1 Without such evidence, the City cannot demonstrate the Proposed Fees: (i) are no greater “than
2 necessary to cover the reasonable costs of the governmental activity,” (ii) “bear a fair or reasonable
3 relationship to the payor’s burdens on, or benefits received from, the governmental activity,” (iii)
4 include only the “reasonable cost of providing the service . . . for which the fee is charged,” and (iv)
5 do not exceed the estimated reasonable cost of providing the service for which the fee or charge is
6 imposed.

7 c. There is no evidence in the record that existing ratepayers will not benefit from
8 the NESWTP Expansion, and thus that the costs of the expansion should be borne fully by new
9 connections. Without such evidence, the City cannot demonstrate the Proposed Fees: (i) are no greater
10 “than necessary to cover the reasonable costs of the governmental activity,” (ii) “bear a fair or
11 reasonable relationship to the payor’s burdens on, or benefits received from, the governmental
12 activity,” (iii) include only the “reasonable cost of providing the service . . . for which the fee is
13 charged,” and (iv) do not exceed the estimated reasonable cost of providing the service for which the
14 fee or charge is imposed.

15 d. If the existing 30 mgd capacity of the NESWTP, in conjunction with the
16 planned capacity of the Southeast Surface Water Treatment Plant, is sufficient to meet the existing
17 needs of the City, there is no evidence or analysis in the administrative record: (i) suggesting that the
18 NESWTP Expansion would be necessary to adequately serve new connections, (ii) as to what extent
19 the NESWTP Expansion is necessary to serve new connections, and (iii) what capacity is needed to
20 adequately serve new connections (as there is no evidence to support the notion that new connections
21 would require 30 mgd or 33,600 AF of treated surface water). Without such evidence, the City cannot
22 demonstrate the Proposed Fees: (i) are no greater “than necessary to cover the reasonable costs of the
23 governmental activity,” (ii) “bear a fair or reasonable relationship to the payor’s burdens on, or
24 benefits received from, the governmental activity,” (iii) include only the “reasonable cost of providing
25 the service . . . for which the fee is charged,” and (iv) do not exceed the estimated reasonable cost of
26 providing the service for which the fee or charge is imposed.

27 e. One of the issues identified in the Water Capacity Fee Study as a need for the
28 Proposed Fees was the Sustainable Groundwater Management Act of 2014 (“SGMA”), which requires

1 the formation of local agencies (known as “Groundwater Sustainability Agencies”) that will ultimately
2 monitor and evaluate overdraft within the subbasin, and adopt Groundwater Sustainability Plans
3 (“GSP”) identifying and adopting measures needed to achieve the sustainable yield. The City of
4 Fresno is a member of the North Kings GSA, which only recently provided notice of formation to the
5 Department of Water Resources. The North Kings GSA has not yet adopted a GSP or any
6 implementation measure within a GSP. Until such time as the North Kings GSA formally identifies
7 the subbasin’s sustainable yield, and specifies what measures the City must implement as a member of
8 the North Kings GSA to help achieve sustainable yield, it is presently unknown whether displacing
9 groundwater recharge with direct surface water use (particularly through the proposed NESWTP
10 Expansion) will even be a necessary or effective measure for the City to meet its obligations under
11 SGMA and/or the GSP. Until these events occur, the City cannot show the extent to which new
12 connections will result in impacts that would necessitate the NESWTP Expansion. Without this
13 information, the City cannot demonstrate the Proposed Fees: (i) are no greater “than necessary to
14 cover the reasonable costs of the governmental activity,” (ii) “bear a fair or reasonable relationship to
15 the payor’s burdens on, or benefits received from, the governmental activity,” (iii) include only the
16 “reasonable cost of providing the service . . . for which the fee is charged,” and (iv) do not exceed the
17 estimated reasonable cost of providing the service for which the fee or charge is imposed.

18 f. The City’s documents show that, with the presently permitted capacity of the
19 NESWTP of 30 mgd, the City is projected to remain within its “safe yield” through 2035, and that the
20 aquifer underlying the City would not be in a state of overdraft without the NESWTP Expansion. In
21 other words, there is no evidence to support the assertion that the NESWTP Expansion is necessary for
22 the City to remain within its “safe” or “sustainable yield.” Without such evidence, the City cannot
23 demonstrate the Proposed Fees: (i) are no greater “than necessary to cover the reasonable costs of the
24 governmental activity,” (ii) “bear a fair or reasonable relationship to the payor’s burdens on, or
25 benefits received from, the governmental activity,” (iii) include only the “reasonable cost of providing
26 the service . . . for which the fee is charged,” and (iv) do not exceed the estimated reasonable cost of
27 providing the service for which the fee or charge is imposed.

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1 g. The City does not anticipate the NESWTP Expansion will be operational until
2 2035. Thus, the 30 mgd capacity added through the NESWTP Expansion is not actually necessary to
3 accommodate new connections associated with growth contemplated under the 2035 General Plan. As
4 a result, for new connections within the area covered by the 2035 General Plan and elsewhere, the City
5 cannot demonstrate the Proposed Fees: (i) are no greater “than necessary to cover the reasonable costs
6 of the governmental activity,” (ii) “bear a fair or reasonable relationship to the payor’s burdens on, or
7 benefits received from, the governmental activity,” (iii) include only the “reasonable cost of providing
8 the service . . . for which the fee is charged,” and (iv) do not exceed the estimated reasonable cost of
9 providing the service for which the fee or charge is imposed.

10 h. Some of the materials provided by City Staff suggest the revenue from the
11 Proposed Fees would be allocated 50% toward debt service and 50% toward developer
12 reimbursements, and may not be used for the NESWTP. If accurate, this would preclude the revenues
13 from being used to support the infrastructure identified in the Water Capacity Fee Study, and for a use
14 substantially different from those identified in the Water Capacity Fee Study. As a result, the City
15 cannot demonstrate the Proposed Fees: (i) are no greater “than necessary to cover the reasonable costs
16 of the governmental activity,” (ii) “bear a fair or reasonable relationship to the payor’s burdens on, or
17 benefits received from, the governmental activity,” (iii) include only the “reasonable cost of providing
18 the service . . . for which the fee is charged,” and (iv) do not exceed the estimated reasonable cost of
19 providing the service for which the fee or charge is imposed.

20 i. The City has provided no evidence that the City’s “safe yield” or “sustainable
21 yield” under SGMA cannot be met through the recharge, storage, banking of groundwater, or other
22 programs and facilities. As a result, the City cannot demonstrate the Proposed Fees: (i) are no greater
23 “than necessary to cover the reasonable costs of the governmental activity,” (ii) “bear a fair or
24 reasonable relationship to the payor’s burdens on, or benefits received from, the governmental
25 activity,” (iii) include only the “reasonable cost of providing the service . . . for which the fee is
26 charged,” and (iv) do not exceed the estimated reasonable cost of providing the service for which the
27 fee or charge is imposed.

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1 j. The City has not provided substantial evidence to support the finding that the
2 NESWTP Expansion is necessary to meet demands associated with new connections. As a result, the
3 City cannot demonstrate the Proposed Fees: (i) are no greater “than necessary to cover the reasonable
4 costs of the governmental activity,” (ii) “bear a fair or reasonable relationship to the payor’s burdens
5 on, or benefits received from, the governmental activity,” (iii) include only the “reasonable cost of
6 providing the service . . . for which the fee is charged,” and (iv) do not exceed the estimated
7 reasonable cost of providing the service for which the fee or charge is imposed.

8 46. For each of the above reasons, the Proposed Fees constitute a tax. Because this tax was
9 not approved by a two-third majority of qualified voters, it is invalid under art. XIII C, section 1,
10 subdivision (e) and article XIII A, section 4 of the California Constitution, and Section 66013,
11 subdivision (a) of the Government Code.

12 47. Based on the foregoing, Petitioners are entitled to judgment and to a declaration
13 determining that:

14 a. The acts, actions, findings, determinations and proceedings required to be made,
15 performed and conducted under all applicable laws, prior to and at the time of the approval of the
16 Proposed Fees were not properly and lawfully made, performed and conducted by the City; and the
17 Proposed Fees have not been duly, properly and lawfully adopted pursuant to and in accordance with
18 all laws, whether statutory, constitutional, or decisional;

19 b. The Proposed Fees, and each of the ordinances and resolutions purporting to
20 enact such Proposed Fees, are illegal, void, and invalid, and must be set aside.

21 **THIRD CAUSE OF ACTION**

22 **Writ of Mandate for Violation of the Constitutions of the United States and State of California**

23 48. Petitioners re-allege and incorporate by reference paragraphs 1 through 47 above as
24 though set forth fully herein.

25 49. Although City Defendants purported to approve a “nexus study,” they failed to
26 demonstrate that the Proposed Fees are reasonably related to any impacts on public facilities or
27 services caused by new development, or justified by any reasonable “nexus” between impacts caused
28 by new development and the fees, or that the amount of the fees is “roughly proportional” to the costs

1 of alleviating or addressing any public needs caused by new development, and deprived Plaintiffs
2 members' of their rights in violation of the mandates of the United States and California Constitutions.
3 (See *Koontz v. St. John's River Management Dist.* (2013) 133 S. Ct. 2586; *Nollan v. Cal. Coastal*
4 *Comm.* (1987) 483 U.S. 825; *Dolan v. City of Tigard* (1994) 512 U.S. 374; *Ehrlich v. City of Culver*
5 *City* (1996) 12 Cal.4th 854). The Proposed Fees were not justified by evidence of any reasonable
6 relationship or nexus to effects caused by new development upon which the fees may be imposed, and
7 unreasonably and unlawfully require that citizens including Petitioners and/or their members be
8 deprived of their constitutional rights, including rights to just compensation, in violation of the
9 doctrine of unconstitutional conditions. (See, e.g., *Koontz, supra*; *Lingle v. Chevron USA, Inc.* (2005)
10 544 U.S. 528, 547; *Bagley v. Washington Township Hospital District* (1966) 65 Cal.2d 499, 504.)

11 50. Because the Proposed Fees exceed the estimated reasonable cost of providing the
12 service for which the Proposed Fee are charged, the City has violated the Constitution of the State of
13 California, including but not limited to article I, section 19, and article I, section 7. Petitioners are
14 entitled to issuance of a writ of mandate or other relief deemed appropriate by the Court, directing and
15 commanding City Defendants to set aside the actions and approvals above.

16 **FOURTH CAUSE OF ACTION**

17 **Injunctive and Declaratory Relief (CCP §§ 1060, 526)**

18 51. Petitioners re-allege and incorporate by reference paragraphs 1 through 50 as though set
19 forth fully herein.

20 52. An actual controversy exists between Petitioners and the City over the characterization
21 of the Proposed Fees and its validity under the California Constitution and applicable Government
22 Code sections as set forth above, and with regard to Petitioners' rights and City's duties thereunder.

23 53. Petitioners maintain the City's actions were unlawful and unauthorized as set forth in
24 this Petition.

25 54. Petitioners are informed and believe, and on that basis allege, that the City's actions
26 were inconsistent with, and violated, federal and state constitutional law, and state law limiting the
27 establishment of development impacts fees, limiting the establishment of taxes in the guise of "fees,"
28 and other provisions of law.

1 55. Petitioners are informed and believe, and on that basis allege, that the City disputes the
2 foregoing contentions and maintain the contrary, such that an actual controversy exists between the
3 parties. Accordingly, declaratory relief is appropriate and necessary to determine the controversy and
4 to judicially declare the invalidity of the City's actions, and establishment of the Proposed Fees.

5 56. Petitioners are informed and believe, and on that basis allege, that the City is
6 implementing or are intending to implement the Proposed Fees and to impose the Proposed Fees.

7 57. Implementation of the Proposed Fees by the City will cause irreparable and permanent
8 harm, and will unlawfully burden and deter the production of needed housing and other development
9 within the City, to the detriment of the public at large.

10 58. Petitioners have no adequate remedy at law to prevent or mitigate the imminent harm
11 and actions described above, have exhausted all available administrative remedies including multiple
12 letters submitted to the City objecting to the Proposed Fees, and therefore issuance of preliminary and
13 permanent injunctive relief is necessary to restrain and enjoin the City, and all other acting in concert
14 with them from in any way seeking to adopt the Proposed Fees and other actions.

15 59. To remedy the City's violation of law as described above, Petitioners seek a judicial
16 declaration that the Proposed Fees are invalid, and that the City's actions and processes were contrary
17 to law. Such a declaration is a necessary and proper exercise of the Court's power to prevent future
18 actions by the City in violation of law. Petitioners also seek equitable relief, including injunctive
19 relief.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Petitioners and Plaintiffs pray that judgment be entered against Respondents
22 and Defendants, as follows:

23 1. As to the First Cause of Action, a peremptory writ of mandate under CEQA and the
24 Code of Civil Procedure directing the City to immediately rescind and set aside its approval of the
25 Proposed Fees, and commanding the City to refrain from taking any further actions in furtherance or
26 implementation of the Proposed Fees, unless and until the City complies with all controlling laws,
27 including, without limitation, CEQA.

28 ///

1 2. As to the Second Cause of Action, a determination that the Proposed Fees are invalid
2 and must be set aside, and that the City cannot impose the Proposed Fees or any portion of such fees
3 on new connections within the City of Fresno.

4 3. As to the Third Cause of Action, a writ of mandate directing the City to immediately
5 rescind and set aside the approvals for the Proposed Fees, and commanding the City to refrain from
6 taking any further actions in furtherance or implementation of the Proposed Fees, unless and until the
7 City complies with all controlling laws.

8 4. As to the Fourth Cause of Action, declaratory and injunctive relief against the City as
9 requested above.

10 5. As to all Causes of Action, for an award of reasonable attorneys' fees, litigation
11 expenses, and costs of suit as permitted or required by law; and for such other and further relief as the
12 Court deems just and proper.

13 Dated: May 11, 2017

WANGER JONES HELSLEY PC

14
15 By: 

16 Timothy Jones
17 John P. Kinsey
18 Lawrence J.H. Liu
19 Attorneys for Petitioners and Plaintiffs
20 Building Industry Association of
21 Fresno/Madera Counties, Inc.; Granville
22 Homes, Inc.; and Wathen Castanos Peterson
23 Homes, Inc.

24 Dated: May 11, 2017

POWELL SLATER, LLP

25
26 By: 

27 Michael P. Slater
28 Attorneys for Petitioner and Plaintiff
Lennar Homes of California, Inc.

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR REVERSE
VALIDATION, DECLARATORY RELIEF,
AND INJUNCTIVE RELIEF**

EXHIBIT “A”

WANGER JONES HELSLEY PC
ATTORNEYS

OLIVER W. WANGER
TIMOTHY JONES*
MICHAEL S. HELSLEY
PATRICK D. TOOLE
SCOTT D. LAIRD
JOHN P. KINSEY
KURT F. VOTE
TROY T. EWELL
JAY A. CHRISTOFFERSON
MARISA L. BALCH
PETER M. JONES**
JENA M. HARLOS***
MICAELA L. NEAL
ERIN T. HUNTINGTON
STEVEN K. VOTE
JENNIFER F. DELAROSA
LAWRENCE J.H. LIU

265 E. RIVER PARK CIRCLE, SUITE 310
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OFFICE ADMINISTRATOR
LYNN M. HOFFMAN

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email@wjhatorneys.com

Website:
www.wjhatorneys.com

* Also admitted in Washington
** Of Counsel
*** Also admitted in Wisconsin

May 10, 2017

VIA FACSIMILE, EMAIL & UNITED STATES MAIL

Douglas Sloan
City Attorney
FRESNO CITY ATTORNEY'S OFFICE
2600 Fresno Street
Fresno, California 93721

Honorable Members of the City Council
Attn: City Clerk
FRESNO CITY COUNCIL
2600 Fresno Street
Fresno, California 93721

Re: **Notice of Intent to Sue:**

- (1) City of Fresno Bill No. B-17, amending Article 5 of Chapter 6 of the Fresno Municipal Code and Article 4.5 of Chapter 12 of the Fresno Municipal Code, and
- (2) City of Fresno's April 6, 2017, approval of a resolution, encompassing the 530th amendment to the Master Fees Resolution No. 80-420 adopting water capacity fees under the Public Utilities section

Dear Mr. Sloan and Members of the City Council:

PLEASE TAKE NOTICE under Section 21167.5 of the Public Resources Code, that on or about May 11, 2017, Petitioners and Plaintiffs Building Industry Association of Fresno/Madera Counties, Inc.; Granville Homes, Inc.; Wathen Castanos Peterson Homes, Inc.; and Lennar Homes of California, Inc. (collectively "Petitioners") will file a joint petition for writ

WANGER JONES HELSLEY PC

May 10, 2017

Page 2

of mandate and complaint for reverse validation, declaratory relief, and injunctive relief (the "Petition") under the provisions of the California Environmental Quality Act, Public Resources Code, Section 21000 *et seq.* ("CEQA") in Fresno County Superior Court, challenging actions taken by Respondents and Defendants the City of Fresno and the City Council of the City of Fresno (collectively, the "City") in connection with its adoption of water capacity fees, including but not limited to (1) City of Fresno Bill No. B-17, amending Article 5 of Chapter 6 of the Fresno Municipal Code and Article 4.5 of Chapter 12 of the Fresno Municipal Code and (2) the City of Fresno's approval of a resolution, dated on or about April 6, 2017, encompassing the 530th amendment to the Master Fees Resolution No. 80-420 adopting water capacity fees under the Public Utilities section.

The Petition will seek, *inter alia*, a peremptory writ of mandate under CEQA and the Code of Civil Procedure directing the City to immediately rescind and set aside its approval of the Proposed Fees, and commanding the City to refrain from taking any further actions in furtherance or implementation of the water capacity fees, unless and until the City complies with all controlling laws, including, without limitation, CEQA.

Dated: May 10, 2017

WANGER JONES HELSLEY PC

By: 

Timothy Jones

John P. Kinsey

Lawrence J.H. Liu

Attorneys for Petitioners and Plaintiffs
Building Industry Association of
Fresno/Madera Counties, Inc.;
Granville Homes, Inc.; and Wathen
Castanos Peterson Homes, Inc.

Dated: May 10, 2017

POWELL SLATER, LLP

By: 

Michael P. Slater

Attorneys for Petitioner and Plaintiff
Lennar Homes of California, Inc.

PROOF OF SERVICE

My business address is 265 E. River Park Circle, Suite 310, Post Office Box 28340, Fresno, California 93720. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as **NOTICE OF INTENT TO SUE** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Douglas Sloan
City Attorney
FRESNO CITY ATTORNEY'S OFFICE
2600 Fresno Street
Fresno, California 93721
Facsimile: 559-488-1084
E-mail: douglas.sloan@fresno.gov

Honorable Members of the City Council
Attn: City Clerk
FRESNO CITY COUNCIL
2600 Fresno Street
Fresno, California 93721
Facsimile: 559-488-1005
E-mail: clerk@fresno.gov

 X (BY MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Fresno, California.

 (BY PERSONAL SERVICE) I caused delivery of such envelope(s), by hand, to the office(s) of the addressee(s).


 X (BY ELECTRONIC MAIL) I caused such documents to be scanned into PDF format and sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designated.

 X (BY FACSIMILE) I caused the above-referenced document to be delivered by facsimile to the facsimile number(s) of the addressee(s).

 (BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

EXECUTED ON May 10, 2017, at Fresno, California.

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


Belinda Ordway

Belinda Ordway

From: Belinda Ordway [bordway@wjhattorneys.com]
Sent: Wednesday, May 10, 2017 5:05 PM
To: Belinda Ordway
Subject: Transmission Result : OK Fax Message NO.4500
Attachments: 20170510170447811.tif

This E-mail was sent from "RNP0026739414F3" (MP C6502).

Queries to: ricohuser@wjhattorneys.com

***** Communication Result Report(2017. 5.10 17:04) *****

Sender:
Time : 2017/ 5/10 17:00

[Dest.] G3 :15594881084
[Sent Page/Total Page] 4/ 4 [Result] OK
[Dest.] G3 :15594881005
[Sent Page/Total Page] 4/ 4 [Result] OK

Reason for error

- E.1) Hang up or line fail
- E.2) Busy
- E.3) No answer
- E.4) No facsimile connection
- E.5) Exceeded max. E-mail size
- E.6) Destination does not support IP-Fax

Belinda Ordway

From: Belinda Ordway
Sent: Wednesday, May 10, 2017 5:40 PM
To: 'douglas.sloan@fresno.gov'; 'clerk@fresno.gov'
Cc: John Kinsey; Lawrence Liu
Subject: Notice of Intent to Sue
Attachments: Notice of Intent to Sue w-Proof to Douglas Sloan Honorable Members of the Council (00714080).pdf

Good afternoon,

Per Mr. Kinsey's instructions, please see attached Notice of Intent to Sue. Should you have any questions, please contact Mr. Kinsey directly at the below number.

Belinda Ordway, Legal Assistant to:
Timothy Jones
John P. Kinsey
Calendar Clerk

WANGER JONES HELSLEY PC

265 E. River Park Circle, Suite 310
Fresno, California 93720
Phone: (559) 233-4800, Ext. 268 / Fax: (559) 233-9330
Website: www.wjhattorneys.com

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To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

WANGER JONES HELSLEY PC

ATTORNEYS

OLIVER W. WANGER
TIMOTHY JONES*
MICHAEL S. HELSLEY
PATRICK D. TOOLE
SCOTT D. LAIRD
JOHN P. KINSEY
KURT F. VOTE
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* Also admitted in Washington
** Of Counsel
*** Also admitted in Wisconsin

May 10, 2017

VIA FACSIMILE, EMAIL & UNITED STATES MAIL

Douglas Sloan
City Attorney
FRESNO CITY ATTORNEY'S OFFICE
2600 Fresno Street
Fresno, California 93721

Honorable Members of the City Council
Attn: City Clerk
FRESNO CITY COUNCIL
2600 Fresno Street
Fresno, California 93721

Re: **Notice of Intent to Sue:**

- (1) City of Fresno Bill No. B-17, amending Article 5 of Chapter 6 of the Fresno Municipal Code and Article 4.5 of Chapter 12 of the Fresno Municipal Code, and
- (2) City of Fresno's April 6, 2017, approval of a resolution, encompassing the 530th amendment to the Master Fees Resolution No. 80-420 adopting water capacity fees under the Public Utilities section

Dear Mr. Sloan and Members of the City Council:

PLEASE TAKE NOTICE under Section 21167.5 of the Public Resources Code, that on or about May 11, 2017, Petitioners and Plaintiffs Building Industry Association of Fresno/Madera Counties, Inc.; Granville Homes, Inc.; Wathen Castanos Peterson Homes, Inc.; and Lennar Homes of California, Inc. (collectively "Petitioners") will file a joint petition for writ

WANGER JONES HELSLEY PC

May 10, 2017

Page 2

of mandate and complaint for reverse validation, declaratory relief, and injunctive relief (the "Petition") under the provisions of the California Environmental Quality Act, Public Resources Code, Section 21000 *et seq.* ("CEQA") in Fresno County Superior Court, challenging actions taken by Respondents and Defendants the City of Fresno and the City Council of the City of Fresno (collectively, the "City") in connection with its adoption of water capacity fees, including but not limited to (1) City of Fresno Bill No. B-17, amending Article 5 of Chapter 6 of the Fresno Municipal Code and Article 4.5 of Chapter 12 of the Fresno Municipal Code and (2) the City of Fresno's approval of a resolution, dated on or about April 6, 2017, encompassing the 530th amendment to the Master Fees Resolution No. 80-420 adopting water capacity fees under the Public Utilities section.

The Petition will seek, *inter alia*, a peremptory writ of mandate under CEQA and the Code of Civil Procedure directing the City to immediately rescind and set aside its approval of the Proposed Fees, and commanding the City to refrain from taking any further actions in furtherance or implementation of the water capacity fees, unless and until the City complies with all controlling laws, including, without limitation, CEQA.

Dated: May 10, 2017

WANGER JONES HELSLEY PC

By: 

Timothy Jones

John P. Kinsey

Lawrence J.H. Liu

Attorneys for Petitioners and Plaintiffs
Building Industry Association of
Fresno/Madera Counties, Inc.;
Granville Homes, Inc.; and Wathen
Castanos Peterson Homes, Inc.

Dated: May 10, 2017

PO ELL SLATER, LLP

By: 

Michael P. Slater

Attorneys for Petitioner and Plaintiff
Lennar Homes of California, Inc.

PROOF OF SERVICE

My business address is 265 E. River Park Circle, Suite 310, Post Office Box 28340, Fresno, California 93720. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as **NOTICE OF INTENT TO SUE** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

City Clerk
CITY OF FRESNO
2600 Fresno Street
Fresno, California 93721
Facsimile: 559-488-1084
E-mail: clerk@fresno.gov

 X (BY MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Fresno, California.

_____ (BY PERSONAL SERVICE) I caused delivery of such envelope(s), by hand, to the office(s) of the addressee(s).

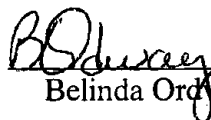
 X (BY ELECTRONIC MAIL) I caused such documents to be scanned into PDF format and sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designated.

 X (BY FACSIMILE) I caused the above-referenced document to be delivered by facsimile to the facsimile number(s) of the addressee(s).

_____ (BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

EXECUTED ON May 10, 2017, at Fresno, California.

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



Belinda Ordway

Belinda Ordway

From: Belinda Ordway [bordway@wjhattorneys.com]
Sent: Wednesday, May 10, 2017 5:32 PM
To: Belinda Ordway
Subject: Transmission Result : OK Fax Message NO.4501
Attachments: 20170510173139250.tif

This E-mail was sent from "RNP0026739414F3" (MP C6502).

Queries to: ricohuser@wjhattorneys.com

***** Communication Result Report(2017. 5.10 17:31) *****

Sender:
Time : 2017/ 5/10 17:29

[Dest.] G3 :15594881084
[Sent Page/Total Page] 4/ 4 [Result] OK

Reason for error

- E.1) Hang up or line fail
- E.2) Busy
- E.3) No answer
- E.4) No facsimile connection
- E.5) Exceeded max. E-mail size
- E.6) Destination does not support IP-Fax

Belinda Ordway

From: Belinda Ordway
Sent: Wednesday, May 10, 2017 5:40 PM
To: 'clerk@fresno.gov'
Cc: John Kinsey; Lawrence Liu
Subject: Notice of Intent to Sue
Attachments: Ntc of Intent to Sue w-Proof to City Clerk, City of Fresno (00714079).pdf

Good afternoon,

Per Mr. Kinsey's instructions, please see attached Notice of Intent to Sue. Should you have any questions, please contact Mr. Kinsey directly at the below number.

Belinda Ordway, Legal Assistant to:

Timothy Jones

John P. Kinsey

Calendar Clerk

WANGER JONES HELSLEY PC

265 E. River Park Circle, Suite 310

Fresno, California 93720

Phone: (559) 233-4800, Ext. 268 / Fax: (559) 233-9330

Website: www.wjhattorneys.com

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To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR REVERSE
VALIDATION, DECLARATORY RELIEF,
AND INJUNCTIVE RELIEF**

EXHIBIT “B”

1 **WANGER JONES HELSLEY PC**
2 265 East River Park Circle, Suite 310
3 Fresno, California 93720
4 Telephone: (559) 233-4800
5 Facsimile: (559) 233-9330

6 Timothy Jones #119841
7 John P. Kinsey #215916
8 Lawrence J.H. Liu #312115

9 Attorneys for: Petitioners and Plaintiffs Building Industry Association of Fresno/Madera Counties,
10 Inc.; Granville Homes, Inc.; and Wathen Castanos Peterson Homes, Inc.

11 *Additional counsel on the following page*

12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF FRESNO, CENTRAL DIVISION**

14 BUILDING INDUSTRY ASSOCIATION OF
15 FRESNO/MADERA COUNTIES, INC.;
16 GRANVILLE HOMES, INC.; WATHEN
17 CASTANOS PETERSON HOMES, INC.; and
18 LENNAR HOMES OF CALIFORNIA, INC.,

19 Petitioners and Plaintiffs,

20 v.

21 CITY OF FRESNO; CITY COUNCIL OF THE
22 CITY OF FRESNO; ALL PERSONS
23 INTERESTED IN THE VALIDITY OF (1)
24 CITY OF FRESNO BILL NO. B-17,
25 AMENDING ARTICLE 5 OF CHAPTER 6 OF
26 THE FRESNO MUNICIPAL CODE AND
27 ARTICLE 4.5 OF CHAPTER 12 AND (2) THE
28 CITY OF FRESNO'S APPROVAL OF A
RESOLUTION, ON OR ABOUT APRIL 6,
2017, ENCOMPASSING THE 530TH
AMENDMENT TO THE MASTER FEE
RESOLUTION NO. 80-420 ADOPTING
WATER CAPACITY FEES UNDER THE
PUBLIC UTILITIES SECTION, AND (3) ALL
ACTS RELATING TO THE
ENVIRONMENTAL REVIEW OF SUCH
ACTIONS; and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No.

**REQUEST FOR PREPARATION OF
RECORD OF PROCEEDINGS**

[Pub. Resources Code, § 21167.6]

1 **POWELL SLATER, LLP**
7522 N. Colonial Ave., Suite 100
2 Fresno, California 93711
Telephone: (559) 228-8034
3 Facsimile: (559) 228-6818

4 Michael P. Slater #150583

5 Attorneys for: Lennar Homes of California, Inc.

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1 Pursuant to Section 21167.6 of the Public Resources Code, Petitioners and Plaintiffs Building
2 Industry Association of Fresno/Madera Counties, Inc.; Granville Homes, Inc.; Wathen Castanos
3 Peterson Homes, Inc.; and Lennar Homes of California, Inc. (collectively "Petitioners") hereby request
4 that Respondents and Defendants the City of Fresno and the City Council of the City of Fresno
5 ("Respondents") prepare the administrative record of proceedings in this action.

6 Petitioners will pay the costs of preparation of the record on notice of the estimated costs of
7 preparation.

8 Dated: May 11, 2017

WANGER JONES HELSLEY PC

9
10 By: 

11 Timothy Jones
12 John P. Kinsey
13 Lawrence J.H. Liu
14 Attorneys for Petitioners and Plaintiffs
Building Industry Association of
Fresno/Madera Counties, Inc.; Granville
Homes, Inc.; and Wathen Castanos Peterson
Homes, Inc.

15 Dated: May 10, 2017

POWELL SLATER, LLP

16
17 By: 

18 Michael P. Slater
19 Attorneys for Petitioner and Plaintiff
20 Lennar Homes of California, Inc.

VERIFICATION
[CCP §§ 446, 1096]

I, Darius Assemi, am the Chief Executive Officer of Granville Homes, Inc. ("Granville"), a petitioner and plaintiff in this action. I am authorized to execute this verification on behalf of Granville.

I have read the foregoing Petition for Writ of Mandate and Complaint for Reverse Validation, Declaratory Relief, and Injunctive Relief (the "Petition"), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

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

Executed this 11 day of May, 2017 in Fresno, California.



Darius Assemi

VERIFICATION
[CCP §§ 446, 1096]

I, Mike Miller, am the Vice President of Lennar Homes of California, Inc. (“Lennar”), a petitioner and plaintiff in this action. I am authorized to execute this verification on behalf of Lennar.

I have read the foregoing Petition for Writ of Mandate and Complaint for Reverse Validation, Declaratory Relief, and Injunctive Relief (the “Petition”), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

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

Executed this 11 day of May, 2017 in Fresno, California.



Mike Miller, Vice President

VERIFICATION
[CCP §§ 446, 1096]

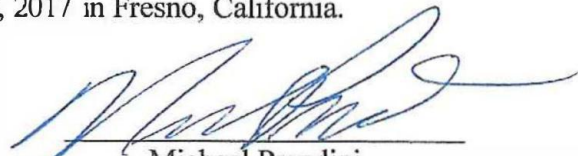
I, Michael Prandini, am the Chief Executive Officer of the Building Industry Association of Fresno/Madera Counties, Inc. (the "Fresno/Madera BIA"), a petitioner and plaintiff in this action. I am authorized to execute this verification on behalf of the Fresno/Madera BIA.

I have read the foregoing Petition for Writ of Mandate and Complaint for Reverse Validation, Declaratory Relief, and Injunctive Relief (the "Petition"), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

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

Executed this 9th day of May, 2017 in Fresno, California.



Michael Prandini

VERIFICATION
[CCP §§ 446, 1096]

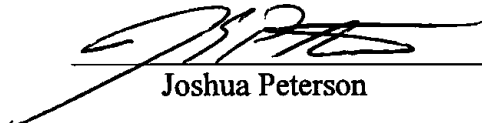
I, Joshua Peterson, am the President of Wathen Castanos Peterson Homes, Inc. (“Wathen”), a petitioner and plaintiff in this action. I am authorized to execute this verification on behalf of Wathen.

I have read the foregoing Petition for Writ of Mandate and Complaint for Reverse Validation, Declaratory Relief, and Injunctive Relief (the “Petition”), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

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

Executed this 8 day of May, 2017 in Fresno, California.


Joshua Peterson