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*Exempt from filing fees pursuant to
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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF TRINITY

12
13 **PEOPLE OF THE STATE OF
CALIFORNIA, EX REL. THE REGIONAL
14 WATER QUALITY CONTROL BOARD,
15 NORTH COAST REGION,**

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL LIABILITY**

16 Plaintiff,

17 v.

18 **INDEPENDENCE CORPORATE
OFFICES, INC., a California Corporation;
19 CLAY TUCKER, an individual;
RINCON LAND HOLDINGS LLC, an
20 Arizona Corporation; and
DOES 1 through 50, inclusive,**

21 Defendants.

22 **INTRODUCTION**

23
24 1. This action is brought by the Attorney General at the request of plaintiff State of
25 California Regional Water Quality Control Board, North Coast Region (Regional Water Board)
26 pursuant to provisions of the Porter-Cologne Water Quality Control Act (Wat. Code, Division 7,
27 §§ 13000-14958) and the law of nuisance. The action seeks (1) injunctive relief to halt violations
28 of the federal Clean Water Act, Porter-Cologne Water Quality Control Act, and the North Coast

1 Regional Water Quality Control Board Basin Plan; (2) civil liability for violations of federal
2 Clean Water Act section 301, Porter-Cologne Water Quality Control Act section 13376, and the
3 North Coast Regional Water Quality Control Board Basin Plan; and (3) abatement of the
4 continuing public nuisance arising from the unpermitted construction activities of defendants
5 Independence Corporate Offices, Inc., Rincon Land Holdings LLC, and Clay Tucker
6 (collectively, Defendants).

7 **PARTIES**

8 2. The Regional Water Board is a state agency, and is part of the California
9 Environmental Protection Agency. (Wat. Code, §§ 175, 13100.) The Regional Water Board is
10 one of nine such regional boards created to establish and enforce water quality control plans,
11 policies, and regulations to ensure the protection of beneficial uses of waters of the state within
12 nine designated regions in California. (Wat. Code, §§ 13200, 13201, & 13240, et seq.) The
13 North Coast Region “comprises all basins . . . draining into the Pacific Ocean from the California-
14 Oregon state line southerly to the southerly boundary of the watershed of Estero de San Antonio
15 and Stemple Creek in Marin and Sonoma Counties.” (Wat. Code, § 13200, subd. (a).)
16 Defendants’ activities take place in Trinity County.

17 3. The Regional Water Board’s responsibilities include regulating discharges to waters
18 of the state through the issuance of waste discharge requirements. (Wat. Code, § 13263.) The
19 Regional Water Board is also authorized to “investigate the quality of any waters of the state”
20 within the North Coast Region by inspecting the facilities of any person and by requiring
21 submittal of technical and monitoring reports to determine compliance with the Porter-Cologne
22 Act. (Wat. Code, § 13267.) To further these goals, the Regional Water Board has primary
23 enforcement authority, including the power to remedy unlawful discharges and to achieve cleanup
24 and abatement of water pollution and nuisance. (Wat. Code, § 13300, et seq.) The Attorney
25 General may bring an action to enforce these provisions at the request of the Regional Water
26 Board. (See, e.g., Wat. Code, § 13361.)

27 4. The Regional Board is also responsible for adopting, and revising as necessary, basin
28 plans that describe the resources and beneficial uses to be protected in the basin, identify water

1 quality objectives, provide implementation plans to achieve those water quality objectives,
2 describe the statewide plans and polices that apply to the basin waters, and describe the
3 monitoring and surveillance activities in the region. (Wat. Code §§ 13241-13247.)

4 5. Public records indicate that defendant Independence Corporate Offices, Inc. (ICO) is
5 a California corporation. ICO's business address is 64695 Nantucket Drive, Redding, California
6 and its agent for service of process is Clay Tucker. On information and belief, at all times
7 relevant to the matters alleged in this complaint, Clay Tucker was and is an officer of ICO.

8 6. Public records indicate that defendant Rincon Land Holdings LLC (Rincon) is an
9 Arizona corporation doing business in the State of California. On information and belief,
10 defendant Rincon owned properties on which violations occurred during the time some of those
11 violations occurred.

12 7. Defendant Clay Tucker is an individual. On information and belief, Mr. Tucker
13 registered ICO on or about May 4, 2005, and has been an officer of the corporation continuously
14 up to and including the present time.

15 8. The true names and capacities, whether corporate, individual, associate or otherwise
16 of defendants Does 1 through 50, inclusive, are unknown to plaintiff, who therefore sues said
17 defendants by such fictitious names, and plaintiff will request the Court's leave to amend this
18 Complaint to show their true names and capacities when the same have been ascertained.
19 Plaintiff is informed and believes that each of the defendants named herein as a Doe is
20 responsible in some manner for the events, occurrences, and circumstances that form the basis of
21 this lawsuit, and is thereby liable for the relief sought herein. This complaint refers below to
22 ICO, Clay Tucker, Rincon, and Does 1 through 50, inclusive, collectively, as Defendants.

23 9. Plaintiff alleges, on information and belief, that each of the Defendants was an agent,
24 servant, and/or employee of, and/or engaged in a joint venture with, each of the remaining
25 Defendants, and in doing the acts alleged in this complaint was at all times acting within the
26 scope of such agency, employment, or joint venture and with the permission and consent of each
27 of the remaining Defendants.

28

1 **VENUE AND JURISDICTION**

2 10. Venue is appropriate in the County of Trinity pursuant to Code of Civil Procedure
3 sections 393, 395 and 395.5 and Water Code section 13361, subdivision (b), because: (1) the
4 violations giving rise to the statutory obligations and liability herein alleged against all
5 Defendants occurred in Trinity County; and (2) the discharges at issue occurred and continue to
6 occur in Trinity County, and the conditions causing the discharges and threatening to cause
7 further discharges occurred and are continuing to occur in Trinity County.

8 11. The Superior Court has jurisdiction of this matter as an unlimited civil case.

9 **FACTUAL ALLEGATIONS**

10 **The Indian Creek Watershed**

11 12. Indian Creek is a tributary to the Middle Fork Trinity River. Accordingly, Indian
12 Creek is a water of the United States and a water of the State of California.

13 13. The Indian Creek watershed contains valuable spawning habitat for juvenile
14 salmonids.

15 14. Frietas Gulch is a Class II stream¹ in the Indian Creek watershed and a water of the
16 State of California. It is located on or near parcel number 015-170-04.

17 15. Mule Gulch is a Class II stream in the Indian Creek watershed and a water of the
18 United States and State of California based on its drainage area exceeding 150 acres. It is located
19 on or near parcel numbers 015-170-40 and 015-170-07.

20 16. An unnamed gulch draining directly into Indian Creek lies east of Frietas Gulch and
21 west of Mule Gulch. The unnamed gulch is a Class II stream in the Indian Creek watershed and is
22 a water of the United States and State of California based on its drainage area exceeding 150
23 acres. It is located on or near parcel numbers 015-180-38 and 015-180-06.

24 17. The area surrounding Frietas Gulch, the unnamed gulch, and Mule Gulch contain a
25 number of Class III tributaries that are also waters of the State of California and waters of the

26 _____
27 ¹ A Class II stream is one that supports aquatic life, such as aquatic non-fish vertebrates
28 and aquatic macroinvertebrates, but where fish are not present. A Class III stream does not
support aquatic life, but is capable of transporting sediment to a Class II or Class I stream.

1 United States for purposes of the Clean Water Act. This area also contains several unnamed
2 tributaries that drain into Mule Gulch and an unnamed gulch, both of which are tributaries to
3 Indian Creek.

4 18. The Middle Fork Trinity River is listed as impaired due to sediment pursuant to Clean
5 Water Act section 303(d).

6 19. On or about December 20, 2001, the United States Environmental Protection Agency
7 approved a Total Maximum Daily Load (TMDL) for sediment that indicates a “Cold Water
8 Fishery” as one of the beneficial uses currently impaired in the Indian Creek Watershed.

9 20. The North Coast Regional Water Quality Control Board issued a Water Quality
10 Control Plan for the North Coast Region in May 2011 (Basin Plan). This Basin Plan sets forth
11 numerous beneficial uses for the Middle Trinity Hydrologic Area, including groundwater
12 recharge, cold freshwater habitat, migration and spawning aquatic habitats, and wildlife habitat,
13 including habitat for rare, threatened, and endangered species.

14 21. The Basin Plan also sets forth an action plan for logging, construction, and associated
15 activities that prohibits “discharge of soil, silt, bark, slash, sawdust, or other organic and earthen
16 material from any logging, construction, or associated activity of whatever nature into any stream
17 or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses” and
18 the placement or disposal of such materials “at locations where such material could pass into any
19 stream or watercourse in the basin in in quantities which could be deleterious to fish, wildlife, or
20 other beneficial uses.”

21 **Defendants’ Property, Easements, and Agreements in the Indian Creek Watershed**

22 22. On information and belief, between 2011 and 2013, Clay Tucker, ICO, or Rincon,
23 owned at least eight parcels of land in the Indian Creek Watershed north of Indian Creek Road
24 and slightly west of Mule Gulch Road. The parcels owned by Clay Tucker, ICO, or Rincon at
25 some point between 2011 and 2013 include parcel numbers 015-170-07, 015-170-39, 015-170-40,
26 015-170-29, 015-170-32, 015-170-34, 015-170-27, and 015-170-24.

27 23. On information and belief, parcel number 015-170-07 was owned by Clay and Erika
28 Tucker and Rincon between approximately June 2011 and February 2012. Rincon sold the

1 property to William Roblen in or about February 2012 and repurchased it in or about March 2013
2 following a trustee's sale by ICO. Rincon sold the property to its current owner in or about
3 December 2013.

4 24. On information and belief, parcel number 015-170-39 was owned by Rincon between
5 approximately December 2011 and June 2012. Rincon sold the property to William Roblen in or
6 about June 2012 and repurchased it in or about March 2013 following a trustee's sale by ICO.
7 Rincon sold the property to its current owner in or about December 2013.

8 25. On information and belief, parcel number 015-170-40 was owned by Rincon between
9 approximately November 2012 and December 2013.

10 26. On information and belief, parcel number 015-170-29 was owned by Clay Tucker
11 between approximately December 2011 and March 2012, when it was sold to ICO. ICO sold the
12 property in or about June 2012.

13 27. On information and belief, parcel number 015-170-32 was owned by Clay and Erika
14 Tucker between approximately February and late March 2012. It was transferred to ICO in or
15 about March 2012 and sold to a third party in or about June 2012.

16 28. On information and belief, parcel number 015-170-34 was owned by Clay and Erika
17 Tucker and Rincon between approximately June 2011 and June 2012. It was transferred to ICO
18 in or about June 2012 and immediately sold to a third party.

19 29. On information and belief, parcel number 015-170-27 was owned by Clay and Erika
20 Tucker between approximately February and March 2012. It was transferred to ICO in or about
21 March 2012 and sold to a third party in or about June 2012.

22 30. On information and belief, parcel number 015-170-24 was owned by Rincon between
23 approximately March and June 2012.

24 31. On information and belief, on or about October 3, 2011, John Kimball granted an
25 access easement in favor of Clay and Erika Tucker and Rincon. This easement was for the
26 benefit of numerous parcels, including 015-170-07, 015-170-39, and 015-170-40. The easement
27 was re-recorded with respect to several parcels on or about March 27, 2012.
28

1 32. On information and belief, on or about February 16, 2012, a road easement on parcel
2 numbers 015-170-39 and 015-170-40 was granted to Clay Tucker.

3 33. On information and belief, on or about May 25, 2012, a road easement on parcel
4 numbers 015-170-39, 015-170-40, 015-170-29, 015-170-32, 015-170-34, 015-170-27, and 015-
5 170-24 was granted from ICO to Clay Tucker and Rincon.

6 34. On information and belief, on or about April 5, 2013, Rincon granted an access
7 easement benefiting several parcels, including 015-170-07, 015-170-39, 015-170-40, 015-170-29,
8 015-170-32, 015-170-34, 015-170-27, and 015-170-24. On information and belief, the three
9 easements identified in this grant were built into the extensive road system observed during the
10 April 2015 inspections of parcel numbers 015-170-07, 015-170-39, and 015-170-40.

11 35. On information and belief, on or about July 7, 2011, Clay Tucker submitted a
12 Notification of Lake or Streambed Alteration to the California Department of Fish and Game
13 (2011 Application). In the 2011 Application, Mr. Tucker indicated he was an easement holder
14 and would be performing approximately 2 days of emergency repair work on a failing drainage
15 crossing in the Frietas Gulch Road System. Mr. Tucker indicated that he would replace an 18"
16 culvert with a 54" half round-bottomless culvert with angle footer and provided specifications and
17 plans for installation and backfill of the project.

18 36. On information and belief, in the 2011 Application, Mr. Tucker indicated that the
19 work would be completed near the shared border of parcel numbers 015-170-04 and 015-170-06.
20 On information and belief, including observations made during an inspection of the culvert after it
21 failed, the work described in the 2011 Application was insufficient to adequately replace the
22 culvert in question.

23 37. On information and belief, on or about September 2, 2011, Mr. Tucker signed Lake or
24 Streambed Alteration Agreement no. 1600-2011-0164-R1. In signing that agreement, Mr. Tucker
25 indicated that he was an easement holder and the responsible party for the work to be completed
26 near the border of parcel numbers 015-170-04 and 015-170-06. On information and belief,
27 including observations made during an inspection of the culvert after it failed, the contents of
28

1 Agreement no. 1600-2011-0164-R1 are inconsistent with the scope and magnitude of the culvert
2 replacement project actually performed.

3 **The Regional Water Board's Inspections of the Properties**

4 38. On or about April 9 and 10, 2015, pursuant to an inspection warrant issued by Trinity
5 County Superior Court, representatives of the Regional Water Board inspected several properties
6 in the Indian Creek Watershed accompanied by representatives of California Department of Fish
7 and Wildlife and the Trinity County Sheriff's Office. The inspections included several parcels
8 previously owned by Clay Tucker, ICO, or Rincon.

9 39. Inspectors identified an extensive road system across various inspected properties
10 with significant run off. The roads consisted of unsurfaced, uncompacted, sidecast material on
11 steep slopes, resulting in roads prone to failure and high erosion rates when exposed to rainfall
12 and under saturated soil conditions. The deep ruts along the road, the rills and gullies on the bare
13 side slopes, and culverts plugged with sediment are evidence of erosion.

14 40. The roads were an efficient method of sediment transport, which had resulted in prior
15 discharges to the relevant waters. In addition, due to faulty construction, the roads became more
16 efficient transport as erosion wore them down, making each rain more likely to result in
17 discharges and deposits into the relevant waters.

18 41. Where streams and roads crossed paths, the road was either bulldozed through the
19 stream, or had an undersized culvert installed, resulting in the immediate deposit of sediment into
20 the stream from the bulldozing or from water bypassing the culvert, and a subsequent efficient
21 track from the road directly into the stream for future sediment transport.

22 42. While inspecting parcel number 015-170-07, inspectors identified several water
23 quality violations, including without limitation a failure to obtain a construction storm water
24 permit for the road construction, failure to file a report of discharge or obtain a certification from
25 the Regional Water Board pursuant to sections 401 and/or 404 of the Clean Water Act, violations
26 of the Basin Plan, discharges of sediment from the poorly constructed roads and undersized
27 culverts on the parcel, and threatened discharges of sediment.

28

1 43. While inspecting parcel number 015-170-39, inspectors identified several water
2 quality violations, including without limitation a failure to obtain a construction storm water
3 permit, failure to file report of a discharge or obtain a certification from the Regional Water
4 Board pursuant to sections 401 and/or 404 of the Clean Water Act, discharges of sediment from
5 undersized culverts on the parcel, violations of the Basin Plan, and threatened discharges of
6 sediment.

7 44. While inspecting parcel number 015-170-40, inspectors identified several water
8 quality violations, including without limitation roads illegally constructed through streams
9 actively discharging sediment, discharges of sediment from undersized culverts on the parcel,
10 unpermitted road construction, violations of the Basin Plan, and threatened discharges of
11 sediment.

12 45. While inspecting parcel numbers 015-170-29 inspectors identified several potential
13 water quality violations, including without limitation violations of the Basin Plan and threatened
14 discharges of sediment.

15 46. While inspecting parcel number 015-170-32, inspectors identified several potential
16 water quality violations, including without limitation violations of the Basin Plan and threatened
17 discharges of sediment.

18 47. While inspecting parcel number 015-170-34, inspectors identified several potential
19 water quality violations, including without limitation violations of the Basin Plan and threatened
20 discharges of sediment from road surfaces and instream road crossings.

21 48. While inspecting parcel number 015-170-27, inspectors identified several potential
22 water quality violations, including without limitation violations of the Basin Plan and threatened
23 discharges of sediment from road surfaces and instream road crossings.

24 49. While inspecting parcel number 015-170-24, inspectors identified several potential
25 water quality violations, including without limitation violations of the Basin Plan and threatened
26 discharges of sediment from graded surfaces, side slopes, and instream road crossings.

27 50. While inspecting parcel number 015-170-04, inspectors identified several water
28 quality violations, including without limitation actual discharges of sediment resulting in instream

1 erosion, failure to obtain a permit pursuant to sections 401 and/or 404 of the Clean Water Act,
2 violations of the Basin Plan, and threatened discharges of sediment. Several of these violations
3 relate to the installation, and later failure, of an undersized culvert on the road bordering the
4 southern end of the parcel, alongside parcel number 015-170-06. On information and belief, the
5 blown out culvert identified in the inspection of parcel number 015-170-04 is the same culvert
6 installed under the 2011 Application and subsequent Agreement.

7 51. On information and belief, the failed culvert was associated with work done by Mr.
8 Tucker relating to the 2011 Application and subsequent Agreement

9 52. On information and belief, the road work described above on parcel 015-170-07 was
10 done by Clay Tucker.

11 53. On information and belief, the road work described above on parcel 015-170-39 was
12 done by Clay Tucker.

13 54. On information and belief, the road work described above on parcel 015-170-40 was
14 done by Clay Tucker.

15 55. On information and belief, an associate of Clay Tucker was operating heavy
16 machinery on a parcel adjacent to parcel 015-170-40 on or about March 1, 2016.

17 56. On information and belief, the road work described above on parcel 015-170-29 was
18 done by Clay Tucker.

19 57. On information and belief, an employee of Clay Tucker was operating heavy
20 machinery on a parcel adjacent to parcel 015-170-29 on or about October 6, 2015.

21 **FIRST CAUSE OF ACTION**
22 **(Water Code Section 13385 – Violation of Water Code Section 13376 and**
23 **Federal Water Pollution Control Act [Clean Water Act] by Unpermitted Discharges to**
24 **Waters of the United States)**

25 58. Plaintiff re-alleges and incorporates herein by reference the allegations in paragraphs
26 1 through 57, inclusive, of this Complaint.

27 59. Chapter 5.5 of the California Water Code was enacted in part to authorize the state of
28 California to implement the federal Water Pollution Control Act (33 U.S.C. § 1311, et seq.)
(Clean Water Act), which includes administration and enforcement of the National Pollutant

1 Discharge Elimination System (NPDES) permit program to regulate the discharge of pollutants
2 from point sources to waters of the United States. (Wat. Code, § 13372.)

3 60. A person who discharges pollutants or proposes to discharge pollutants to the waters
4 of the United States within the state of California is required to file a report of the discharge with
5 a regional water board at least 180 days prior to the discharging of pollutants. (Wat. Code, §
6 13376.)

7 61. At all times relevant to this Complaint, Water Code section 13376 has prohibited
8 “[t]he discharge of pollutants or dredged or fill material... except as authorized by waste
9 discharge requirements or dredged or fill material permits.”

10 62. At all times relevant to this Complaint, Defendants have not been authorized to
11 discharge pollutants or dredged or fill material. Defendants do not have a NPDES permit or other
12 discharge authorization. Defendants’ work has allowed discharge of sediment into Frietas Gulch
13 and/or Indian Creek, waters of the United States, and Defendants have not filed a discharge report
14 as required under Water Code section 13776.

15 63. At all times relevant to this Complaint, Water Code section 13385, subdivision (a),
16 subparagraph (1), has provided for civil liability against anyone who violates Water Code section
17 13376. (Wat. Code, § 13385, subd. (a)(1).) This liability may be as high as \$25,000 per violation
18 per day and \$25 per gallon over 1,000 gallons discharged and not cleaned up. (Wat. Code, §
19 13385, subd. (b)(1)(A).) In determining the amount of the liability, the court considers the
20 seriousness of the violations, the violator’s ability to pay, and other factors. (Wat. Code, § 13385,
21 subd. (e).)

22 64. At all times relevant to this Complaint, Water Code section 13386 has authorized the
23 Attorney General to petition the court for the issuance of a preliminary and/or permanent
24 injunction enjoining any threatened or continuing violation of Water Code section 13376 or Clean
25 Water Act section 301. (Wat. Code, § 13386.)

26 65. Clean Water Act section 301 provides, “[e]xcept as in compliance with this section
27 and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any
28 person shall be unlawful.”

1 as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free
2 passage or use, in the customary manner, of any navigable...stream....”

3 85. A “public nuisance” is defined in Civil Code section 3480 as a nuisance “which
4 affects at the same time an entire community or neighborhood, or any considerable number of
5 persons...” Civil Code section 3490 provides that no lapse of time can legalize a public nuisance.

6 86. On information and belief, Defendants’ activities and discharges in the Indian Creek
7 watershed were a public nuisance that continues to endanger the beneficial uses of the waters of
8 the state of California, and obstructs the customary use of a navigable stream.

9 87. Defendants’ activities and discharges into the Indian Creek watershed affect
10 numerous downstream users and members of the public.

11 88. The seriousness of the harm caused by Defendants’ activities and discharges
12 outweighs any social utility of Defendants’ conduct.

13 89. The nuisance is capable of abatement to applicable regulatory standards, but plaintiff
14 is informed and believes that Defendants will, unless restrained and enjoined by this Court,
15 continue to maintain the public nuisance and the acts complained of herein, and the threat to the
16 waters of the United States and the state of California, and to the environment, will continue.

17 90. Plaintiff has no plain, speedy or adequate remedy at law to address the public
18 nuisance. Injunctive relief is expressly authorized by statute. (Code Civ. Proc., § 526.)

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays that the Court:

21 1. Pursuant to the First Cause of Action, issue a preliminary and permanent injunction
22 ordering Defendants to cease discharges to Frietas Gulch and/or Indian Creek in violation of the
23 Clean Water Act and Water Code section 13376.

24 2. Enter judgment awarding plaintiff civil liability according to proof against
25 Defendants as appropriate pursuant to the First and Second Causes of Action.

26 3. Pursuant to the First, Second, and Third Causes of Action, issue a preliminary and
27 permanent injunction prohibiting Defendants from further violations of the Water Code, including
28 a prohibition on conducting unpermitted work on any parcels in the State of California.

1 4. Pursuant to the First and Third Causes of Action, issue a preliminary and permanent
2 injunction ordering Defendants to submit a report of waste discharge to the Regional Water Board
3 in connection with any current or future discharges or proposed changes to discharges to waters
4 of the State or waters of the United States as required by Water Code sections 13260, subdivision
5 (c), and 13376.

6 5. Pursuant to the Fourth Cause of Action, issue a preliminary and permanent injunction
7 requiring Defendants to take immediate action to abate the public nuisance created by
8 Defendants' activities in and around Frietas Gulch and/or the Indian Creek watershed.

9 6. Issue preliminary and permanent injunctions ordering Defendants to remedy all other
10 violations alleged in this Complaint.

11 7. Pursuant to all causes of action, grant plaintiff its costs of suit herein.

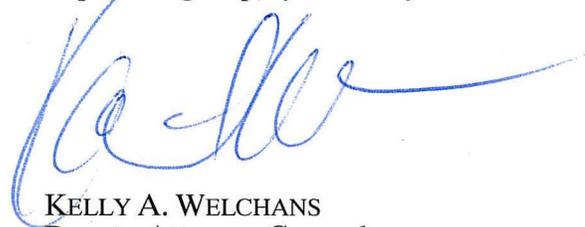
12 8. ~~Award plaintiff expert fees, reasonable attorney's fees, and all costs of investigating~~
13 and prosecuting this action, as provided in Code of Civil Procedure section 1021.8.

14 9. For such other and further relief as the Court deems just and proper.

15 Dated: September 8, 2017

Respectfully Submitted,

17 XAVIER BECERRA
18 Attorney General of California
19 TRACY L. WINSOR
20 Supervising Deputy Attorney General



21 KELLY A. WELCHANS
22 Deputy Attorney General
23 *Attorneys for Plaintiff*

24 ***[Code Civ. Proc. § 446 Requires***
25 ***Verification of the Answer to this***
26 ***Complaint]***