

Michael G. Marderosian (SBN 77296)
mick@mcc-legal.com
Heather S. Cohen (SBN 263093)
heather@mcc-legal.com
MARDEROSIAN & COHEN
7797 N. First Street, Suite 101-5
Fresno, CA 93720
Telephone: (559) 441-7991
Facsimile: (559) 441-8170

Attorneys for: Plaintiffs CITY OF MERCED; McSWAIN UNION ELEMENTARY SCHOOL DISTRICT; EZIO A. SANSONI, individually and dba SANSONI FARMS ORCHARDS; ELEANOR C. SANSONI, individually and dba SANSONI FARMS ORCHARDS; EZIO A. SANSONI AND ELEANOR C. SANSONI LIVING TRUST DATED APRIL 17, 1998; ALDO SANSONI; SANSONI LIVING TRUST DATED JUNE 10, 1977; JOSEPH B. SANSONI; JOSEPH B. SANSONI LIVING TRUST DATED JUNE 6, 2016; JOE SCOTO; SCOTO BROTHERS FARMING INC.; SCOTO PROPERTIES LLC; SHAWN SLATE; DINA SLATE; JOHN WALSH; EDWARD HOEKSTRA; HILLCREST DAIRY; TIM PELLISSIER; JUDY DOUGLAS; LINDA PELLISSIER; PELLISSIER FARMS; SIMON VANDER WOUDE; VANDER WOUDE DAIRY; VANDER WOUDE FARMS; ROBERT FRAGULIA; EDWARD TRINDADE; PAUL VAN WARMERDAM

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MERCED

CITY OF MERCED; McSWAIN UNION ELEMENTARY SCHOOL DISTRICT; EZIO A. SANSONI, individually and dba SANSONI FARMS ORCHARDS; ELEANOR C. SANSONI, individually and dba SANSONI FARMS ORCHARDS; EZIO A. SANSONI AND ELEANOR C. SANSONI LIVING TRUST DATED APRIL 17, 1998; ALDO SANSONI; SANSONI LIVING TRUST DATED JUNE 10, 1977; JOSEPH B. SANSONI; JOSEPH B. SANSONI LIVING TRUST DATED JUNE 6, 2016; JOE SCOTO; SCOTO BROTHERS FARMING INC.; SCOTO PROPERTIES LLC; SHAWN SLATE; JOHN WALSH; EDWARD HOEKSTRA; HILLCREST DAIRY; TIM PELLISSIER; JUDY

Case No. 23CV-03845

**COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DOUGLAS; LINDA PELLISSIER;
PELLISSIER FARMS; SIMON
VANDER WOUDE; VANDER WOUDE
DAIRY; VANDER WOUDE FARMS;
ROBERT FRAGULIA; EDWARD
TRINDADE; PAUL VAN
WARMERDAM,

Plaintiffs,

v.

STATE OF CALIFORNIA;
CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE; and DOES 1-100,
inclusive,

Defendants.

COME NOW, Plaintiffs CITY OF MERCED; McSWAIN UNION ELEMENTARY SCHOOL DISTRICT; EZIO A. SANSONI, individually and dba SANSONI FARMS ORCHARDS; ELEANOR C. SANSONI, individually and dba SANSONI FARMS ORCHARDS; EZIO A. SANSONI AND ELEANOR C. SANSONI LIVING TRUST DATED APRIL 17, 1998; ALDO SANSONI; SANSONI LIVING TRUST DATED JUNE 10, 1977; JOSEPH B. SANSONI; JOSEPH B. SANSONI LIVING TRUST DATED JUNE 6, 2016; JOE SCOTO; SCOTO BROTHERS FARMING INC.; SCOTO PROPERTIES LLC; SHAWN SLATE; JOHN WALSH; EDWARD HOEKSTRA; HILLCREST DAIRY; TIM PELLISSIER; JUDY DOUGLAS; LINDA PELLISSIER; PELLISSIER FARMS; SIMON VANDER WOUDE; VANDER WOUDE DAIRY; VANDER WOUDE FARMS; ROBERT FRAGULIA; EDWARD TRINDADE; and PAUL VAN WARMERDAM and submit the following Complaint for Damages and Demand for Jury Trial.

PARTIES

A. CITY PLAINTIFF

1. Plaintiff CITY OF MERCED (“MERCED”) is a governmental entity. The City of Merced’s City Hall is located at 678 W. 18th Street, Merced, CA 95340.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. SCHOOL DISTRICT PLAINTIFF

2. Plaintiff McSWAIN UNION ELEMENTARY SCHOOL DISTRICT is an agency responsible for overseeing schools within the school district.

3. Plaintiff MUESD’s principal office is located at 926 Scott Road, Merced, CA 95341.

4. The entity referred to in Paragraph 2 is referred to as (“MUESD”).

C. AGRICULTURAL PLAINTIFFS

5. Plaintiff EZIO A. SANSONI, an individual, and Plaintiff ELEANOR C. SANSONI, an individual, reside in Atwater, California. Plaintiff EZIO A. SANSONI and Plaintiff ELEANOR C. SANSONI collectively do business as Plaintiff SANSONI FARMS ORCHARDS. Plaintiff EZIO A. SANSONI and Plaintiff ELEANOR C. SANSONI are trustees and beneficiaries of Plaintiff EZIO A. SANSONI AND ELEANOR C. SANSONI LIVING TRUST DATED APRIL 17, 1998, which holds property located in the County of Merced which is the subject of this litigation. Plaintiff ALDO J. SANSONI, is an individual who resides in Atwater, California. Plaintiff SANSONI LIVING TRUST DATED JUNE 10, 1977, Aldo J. Sansoni trustee, is a trust which holds property located in the County of Merced which is the subject of this litigation. Plaintiff JOSEPH B. SANSONI is an individual and resides in Atwater, California. Plaintiff JOSEPH B. SANSONI LIVING TRUST DATED JUNE 6, 2016, is a trust which holds property located in the County of Merced which is the subject of this litigation. Collectively the aforementioned Plaintiffs in this Paragraph shall be referred to as “SANSONI PLAINTIFFS”.

6. Plaintiff JOE SCOTO, an individual, resides in Merced, California. Plaintiff JOE SCOTO owns Plaintiff SCOTO BROTHERS FARMING INC., a California corporation, and Plaintiff SCOTO PROPERTIES LLC, a California limited liability company. Collectively the aforementioned Plaintiffs in this Paragraph shall be referred to as “SCOTO PLAINTIFFS”. Plaintiff JOE SCOTO owns and/or operates the real properly located at 1861 N. Southern Pacific Avenue at Bear Creek and Black Rascal Creek in Merced County, CA. Plaintiff SCOTO PROPERTIES LLC owns and/or operates the real property located at the southeast corner of Bear Creek and El Capital Canal in Merced County, CA. Plaintiff SCOTO BROTHERS FARMING, INC., owns and/or operates the real property located on the north and south sides of Miles Creek at State Highway 59 in Merced County,

1 CA, and 1/4 mile north northeast corner of State Highway 140/Rogers Road/Bear Creek in Merced
2 County, CA.

3 7. Plaintiff SHAWN SLATE, an individual, and Plaintiff DINA SLATE, an individual
4 reside in Atwater, California. Collectively the aforementioned Plaintiffs in this Paragraph shall be
5 referred to as "SLATE PLAINTIFFS". The SLATE PLAINTIFFS own and operate the real property
6 located at 1350 N. Gurr Road, Atwater, CA, 1225 N. Gurr Road, Atwater, CA, 1800 N. Gurr Road,
7 Atwater, CA, and 1810 N. Gurr Road, Atwater CA.

8 8. Plaintiff JOHN WALSH ("WALSH") is an individual who resides in Atwater,
9 California. Plaintiff JOHN WALSH owns and operates the property located at 1490 Rogers Road,
10 Atwater, CA.

11 9. Plaintiff EDWARD HOEKSTRA is an individual who resides in Le Grand, CA.
12 Plaintiff EDWARD HOEKSTRA owns and operates Plaintiff HILLCREST DAIRY, LP, a California
13 Limited Partnership. Collectively the aforementioned Plaintiffs in this Paragraph shall be referred to
14 as "HOEKSTRA PLAINTIFFS". The HOEKSTRA PLAINTIFFS own and/or operate the real
15 property located at APN 053-150-006, Merced County, CA.

16 10. Plaintiff TIM PELLISSIER, an individual, Plaintiff JUDY DOUGLAS, an individual,
17 and Plaintiff LINDA PELLISSIER, an individual, reside in Merced, CA. Collectively, Plaintiff TIM
18 PELLISSIER, Plaintiff JUDY DOUGLAS, and Plaintiff LINDA PELLISSIER own, operate and do
19 business as PELLISSIER FARMS. Collectively the aforementioned Plaintiffs in this Paragraph shall
20 be referred to as "PELLISSIER PLAINTIFFS". The PELLISSIER PLAINTIFFS own and operate
21 properties located at APN Nos.: 238-030-021, 238-030-041, 238-030-032, 238-030-037, 061-020-040,
22 061-020-041, 061-020-042, 066-010-016, 066-010-017, 061-290-021, 061-290-048, 061-290-021,
23 061-290-025, and 067-030-003. All of the aforementioned properties are located in Merced County,
24 California.

25 11. Plaintiff SIMON VANDER WOUDE an individual, resides in Merced, CA. Plaintiff
26 SIMON VANDER WOUDE owns and operates Plaintiff VANDER WOUDE DAIRY and Plaintiff
27 VANDER WOUDE FARMS. Collectively the aforementioned Plaintiffs in this Paragraph shall be
28 ///

1 referred to as “VANDER WOUDE PLAINTIFFS”. The VANDER WOUDE PLAINTIFFS own and
2 operate property located at APN 065-110-032 and 065-110-032 in Merced, CA.

3 12. Plaintiff ROBERT FRAGULIA (“FRAGULIA”), an individual, resides in Atwater,
4 CA. Plaintiff ROBERT FRAGULIA owns and operates the property located at 4244 W. Avenue One
5 in Atwater, CA.

6 13. Plaintiff EDWARD TRINDADE (“TRINDADE”), an individual, resides in Merced,
7 CA. Plaintiff EDWARD TRINDADE owns and operates the real property located at 503 Reilly Road
8 in Merced, CA.

9 14. Plaintiff PAUL VAN WARMERDAM (“VAN WARMERDAM”), an individual,
10 resides in Winton, CA. Plaintiff PAUL VAN WARMERDAM owns and operates real property
11 located at 2618 S. Highway 59, Merced, CA.

12 15. The persons and/or entities identified in Paragraphs 5 through 14 are collectively
13 referred to as the “AGRICULTURAL PLAINTIFFS”.

14 16. All persons and/or entities identified in Paragraphs 1 through 15 are collectively
15 referred to as Plaintiffs.

16 **D. DEFENDANTS**

17 17. Defendant STATE OF CALIFORNIA (“CALIFORNIA”) was and is a duly formed
18 governmental entity. Defendant CALIFORNIA, acting by and through Defendant CALIFORNIA
19 DEPARTMENT OF FISH AND WILDLIFE (“CDFW”), and DOES 1 through 30, inclusive, have as
20 a purpose the responsibilities and duties to own, control, occupy, possess, lease, maintain, design
21 supervise, patrol, inspect, operate, repair, construct, etc certain waterways within CALIFORNIA,
22 including but not limited those in and around the County of Merced which are the subject of this
23 litigation and to carry out the aforementioned responsibilities and duties in a safe manner and in a
24 manner that does not harm municipalities, agencies, and residents who own, operate, conduct
25 business, and reside within its borders and in a manner that is reasonable and safe in accordance with
26 scientific, legal, and technical standards.

27 18. Defendant CDFW, formerly referred to as California Department of Fish and Game,
28 and DOES 31 through 60, inclusive is now, and at all times herein alleged was, an agency of

1 Defendant CALIFORNIA which was and is funded, at least in substantial part, by licenses, permits,
2 fees, and fines. Defendant CDFW controlled the maintenance and operation of the waterways within
3 CALIFORNIA, including but not limited to, those in and around the County of Merced which are the
4 subject of this litigation and to carry out the aforementioned responsibilities and duties in a safe and
5 reasonable manner and in a manner that does not harm municipalities, agencies, and residents who
6 own, operate, conduct business, and reside within its borders and in a manner that is reasonable and
7 safe in accordance with scientific, legal, and technical standards.

8 19. Defendants DOES 1 through 30, inclusive, are sued herein under fictitious names and
9 are believed to be employees, representatives, agents, partners, and/or co-conspirators of Defendant
10 CALIFORNIA. Their true names and capacities are unknown to PLAINTIFFS. When their true
11 names and capacities are ascertained, PLAINTIFFS will amend this Complaint by inserting their true
12 names and capacities herein.

13 20. Defendants DOES 31 through 60, inclusive, are sued herein under fictitious names and
14 are believed to be employees, representatives, agents, partners, and/or co-conspirators of Defendant
15 CDFW. Their true names and capacities are unknown to PLAINTIFFS. When their true names and
16 capacities are ascertained, PLAINTIFFS will amend this Complaint by inserting their true names and
17 capacities herein.

18 21. Plaintiffs are informed and believe and upon information and belief allege that DOES
19 61 through 100, and each of them, is legally responsible in the same manner for the events and
20 happenings referred to and proximately caused the damages to PLAINTIFFS as herein alleged. When
21 their true names and capacities are ascertained, PLAINTIFFS will amend this Complaint by inserting
22 their true names and capacities herein.

23 22. Unless specifically identified, the term “DEFENDANTS” as used throughout this
24 complaint, will refer to each and every Defendant identified above.

25 **JURISDICTION AND VENUE**

26 23. This case is subject to the unlimited jurisdiction of the Superior Court in that the
27 amount in controversy exceeds \$50,000.

28 ///

1 24. Venue is proper in this judicial district pursuant to Cal. Civ. Proc. § 392(a) because the
2 real property that is the subject of this action is located in the County of Merced, California.

3 **COMPLIANCE WITH CALIFORNIA’S TORT CLAIM ACT**

4 25. On June 30, 2023, the VANDER WOUDE PLAINTIFFS, SCOTO PLAINTIFFS and
5 MUESD submitted Government Claims to the Department of General Services Office of Risk and
6 Insurance Management on behalf of the State of California and its agencies. On July 20, 2023, the
7 State of California rejected each and every tort claim made by these Plaintiffs.

8 26. On June 30, 2023, the HOEKSTRA PLAINTIFFS, PELLISSIER PLAINTIFFS,
9 SANSONI PLAINTIFFS, VAN WARMERDAM, SCOTO PLAINTIFFS, and WALSH submitted
10 Government Claims to the Department of General Services Office of Risk and Insurance Management
11 on behalf of the State of California and its agencies. On July 27, 2023, the State of California rejected
12 each and every tort claim made by these Plaintiffs.

13 27. On June 30, 2023, MERCED submitted a Government Claim to the Department of
14 General Services Office of Risk and Insurance Management on behalf of the State of California and
15 its agencies. On September 9, 2023, the State of California this claim.

16 28. On July 14, 2023, SLATE PLAINTIFFS submitted Government Claims to the
17 Department of General Services Office of Risk and Insurance Management on behalf of the State of
18 California and its agencies. No rejections to these claims have been received by the State of California
19 and therefore this claim is rejected as a matter of law.

20 **GENERAL ALLEGATIONS**

21 29. In and around the County of Merced, there are numerous canals, creeks, and streams
22 which flow in and around the City of Merced, Planada, and Le Grand. These waterways include but
23 are not limited to: (1) Bear Creek; (2) Black Rascal Creek; (3) Man Made Black Rascal (4) Black
24 Rascal Diversion Channel; (5) Burns Dam and Reservoir; (6) Miles Creek; (7) Owens Creek Diversion
25 Channel; and (8) Mariposa Creek.

26 30. California Water Code § 12650 establishes minimum capacities for some of these
27 facilities. Specifically:

28 ///

1 1) Burns Creek: 2,000 cubic feet per second on Burns Creek from its
2 confluence with Bear Creek upstream to the section line common to
Sections 3 and 10, T. 7 S., R. 15 E., M. D. B. & M.

3 (2) Bear Creek: 2,000 cubic feet per second from its confluence with
4 Burns Creek upstream to the section line common to Sections 11 and
5 12, T. 7 S., R. 15 E., M. D. B. & M.; 4,000 cubic feet per second from
6 its confluence with Black Rascal Creek Diversion upstream to its
7 confluence with Burns Creek; 7,000 cubic feet per second from its
8 confluence with the head of Black Rascal Slough to the Black Rascal
9 Creek Diversion; not less than 3,100 cubic feet per second from its
10 confluence with the lower end of Black Rascal Slough to the
11 confluence with the head of Black Rascal Slough, so that the combined
12 capacity of Bear Creek and Black Rascal Slough is not less than 7,000
13 cubic feet per second; 7,000 cubic feet per second from the section line
14 common to Sections 2 and 3, T. 8 S., R. 12 E., M. D. B. & M.,
15 upstream to the confluence of Bear Creek with the lower end of Black
16 Rascal Slough.

17 (3) Black Rascal Slough: Not less than 3,900 cubic feet per second and
18 so that the combined capacity of Black Rascal Slough and Bear Creek
is not less than 7,000 cubic feet per second.

19 (4) Miles Creek: 1,000 cubic feet per second from the Merced-El Nido
20 Highway upstream to the section line common to Sections 25 and 26,
21 T. 7 S., R. 15 E., M. D. B. & M.

22 (5) Owens Creek: 400 cubic feet per second from Owens Creek
23 Diversion to the bridge crossing at the section line common to Sections
24 29 and 30, T. 7 S., R. 16 E., M. D. B. & M.

25 (6) Mariposa Creek: 1,000 cubic feet per second from Owens Creek
26 Diversion upstream to the bridge located in SW. ¼ of Section 10, T. 8
27 S., R. 16 E., M. D. B. & M.; 1,250 cubic feet per second from El Nido
28 Highway upstream to Owens Creek Diversion.

31. Defendants CALIFORNIA and CDFW have the exclusive authority as to when and
how maintenance can be performed on the canals, creeks, and streams which flow in and around the
City of Merced, Planada, and Le Grand.

32. On or about January 10, 2023, there was a rain storm in the Central Valley of
California, including in and throughout the County of Merced, the City of Merced, City of Planada
and City of Le Grand.

33. At the time of the subject rain storm, the waterways throughout the County of Merced
had been choked up with sandbars, trees, stumps, brush, and other detritus which resulted in a
significantly diminished capacity. As a result, the storm water was too great to be contained in the
subject canals, creeks, and streams and resulted in overtopping and/or collapse of the aforementioned

1 canals, creeks, and streams in various locations. As a result, storm water escaped from the canals,
2 creeks, and streams and traveled onto PLAINTIFFS’ properties causing substantial damage, the
3 magnitude of which is still being determined.

4 **FIRST CAUSE OF ACTION**
5 **(Inverse Condemnation- Strict Liability)**
6 **Against all Defendants**

7 34. PLAINTIFFS incorporate herein by reference each and every previous and subsequent
8 allegation as though fully set forth herein.

9 35. Defendants, and each of them, through their employees, agents and contractors, owned,
10 operated, constructed, managed, maintained, supervised, controlled, and/or substantially participated
11 in the planning, design, approval, construction, maintenance, and/or operation of the levees, channel
12 and water levels of adjoining canals, laterals and creeks throughout the County of Merced which are
13 the subject of this Action.

14 36. The subject canals, channels, creeks, laterals, levees, and waterways included canals,
15 channels, creeks, laterals, levees, and waterways which were not part of a designated flood control
16 system and which were used to deliver irrigation water throughout the Central Valley of California.
17 The contribution and/or failure of these canals, channels, creeks, laterals, levees, and waterways to the
18 PLAINTIFFS’ harm and damages entitles PLAINTIFFS to the application of a “strict liability”
19 standard. See e.g., Albers v. County of Los Angeles, 62 C2d 250, 263-264 (1965); *Bunch II v.*
20 *Coachella Valley Water District*, 14 Cal.4th 432 (1997); *Paterno v. State of California*, 113 Cal.App.4th
21 998 (2003); *Atkins v. State of California*, 61 Cal.App.4th 1 (1998).

22 37. As a direct and necessary result of Defendants’ ownership, construction, management,
23 maintenance and control of the levees, channel, and water levels and/or the substantial participation
24 in the planning, design, approval, construction, maintenance, and/or operation of the levees, channel
25 and water levels of adjoining canals, laterals and creeks throughout the County of Merced as aforesaid,
26 PLAINTIFFS’ properties were flooded on January 10, 2023. The flooding was caused by the system
27 of canals, laterals and creeks’ diminished capacity due to the manner in which the Defendants and
28 each of them owned, operated, constructed, managed, maintained, supervised and controlled the

1 levees, channel and water levels of adjoining canals, laterals and creeks and prevented and/or severely
2 limited the proper cleaning and/or maintenance of same. The Defendants' conduct led to the
3 overtopping and collapse of the banks which resulted in the release of significant flood water onto
4 PLAINTIFFS' properties.

5 38. As a result of the above-described conduct and resultant damage to PLAINTIFFS'
6 properties, PLAINTIFFS suffered damage in the form of injury to property, including but not limited
7 to, damage to land, damage to structures, damage to trees and crops, loss of use, loss of income, loss
8 of business goodwill and profits, loss of use of enjoyment of tenancy, relocation costs, restoration
9 costs, repair costs, remedial costs, cleanup costs, investigative costs to determine the nature and extent
10 of damages, diminution of value, stigma damage, mitigation costs, past, present, and future.

11 39. In addition, as to the individually named AGRICULTURAL PLAINTIFFS, and each
12 of them, as a result of the above-described conduct and resultant damage to AGRICULTURAL
13 PLAINTIFFS' properties, the individually named AGRICULTURAL PLAINTIFFS suffered
14 emotional distress, fear, anxiety, stress, sleeplessness, worry, panic, sadness, feelings of helplessness
15 and hopelessness.

16 40. PLAINTIFFS have received no compensation for the damage to their property.

17 41. PLAINTIFFS have incurred and will incur attorneys, appraisal and engineering fees,
18 and expert costs because of this proceeding, in amount that cannot yet be ascertained, which are
19 recoverable in this action under the provisions of California Code of Civil Procedure Section 1036.

20 **SECOND CAUSE OF ACTION**

21 **(Inverse Condemnation- Reasonableness Standard)**

22 **Against all Defendants**

23 42. PLAINTIFFS incorporate herein by reference each and every previous and subsequent
24 allegation as though fully set forth herein.

25 43. Defendants, and each of them, through their employees, agents and contractors, owned,
26 operated, constructed, managed, maintained, supervised, controlled, and/or substantially participated
27 in the planning, design, approval, construction, maintenance, and/or operation of the levees, channel
28 ///

1 and water levels of adjoining canals, laterals and creeks throughout the County of Merced which are
2 the subject of this action.

3 44. As a direct and necessary result of Defendants' ownership, construction, management,
4 maintenance and control of the levees, channel, and water levels and/or the manner in which the
5 Defendants, and each of them, substantially participated in the planning, design, approval,
6 construction, maintenance, and/or operation of the levees, channel and water levels of adjoining
7 canals, laterals and creeks throughout the County of Merced as aforesaid, PLAINTIFFS' properties
8 was flooded on January 10, 2023. The flooding was caused by the system of canals, laterals and
9 creeks' diminished capacity due to the manner in which the Defendants and each of them owned,
10 operated, constructed, managed, maintained, supervised and controlled the levees, channel and water
11 levels of adjoining canals, laterals and creeks and prevented and/or severely limited the proper
12 cleaning and/or maintenance of same. The Defendants' conduct led to the overtopping and collapse
13 of the banks which resulted in the release of significant flood water onto PLAINTIFFS' properties.

14 45. As a result of the above-described conduct and resultant damage to PLAINTIFFS'
15 properties, PLAINTIFFS suffered damage in the form of injury to property, including but not limited
16 to damage to land, damage to structures, damage to trees and crops, loss of use, loss of income, loss
17 of business goodwill and profits, loss of use of enjoyment of tenancy, relocation costs, restoration
18 costs, repair costs, remedial costs, cleanup costs, investigative costs to determine the nature and extent
19 of damages, diminution of value, stigma damage, mitigation costs, past, present, and future.

20 46. In addition, as to the individually named AGRICULTURAL PLAINTIFFS, and each
21 of them, as a result of the above-described conduct and resultant damage to AGRICULTURAL
22 PLAINTIFFS' properties, the individually named AGRICULTURAL PLAINTIFFS suffered
23 emotional distress, fear, anxiety, stress, sleeplessness, worry, panic, sadness, feelings of helplessness
24 and hopelessness.

25 47. PLAINTIFFS have received no compensation for the damage to their property.

26 48. PLAINTIFFS have incurred and will incur attorneys, appraisal and engineering fees,
27 and expert fees because of this proceeding, in amount that cannot yet be ascertained, which are
28 recoverable in this action under the provisions of California Code of Civil Procedure Section 1036.

THIRD CAUSE OF ACTION

(Dangerous Condition)

Against all Defendants

49. PLAINTIFFS incorporate herein by reference each and every previous and subsequent allegation as though fully set forth herein.

50. Defendants, and each of them, through their employees, agents and contractors, owned, operated, constructed, managed, maintained, supervised, controlled, and/or substantially participated in the planning, design, approval, construction, maintenance, and/or operation of the levees, channel and water levels of adjoining canals, laterals and creeks throughout the County of Merced which are the subject of this action.

51. Defendants, and each of them, through their employees, agents and contractors, knew of the dangerous condition in that they, and each of them, owned, operated, constructed, managed, maintained, supervised, and/or controlled the levees, channel and water levels and/or substantially participated in the planning, design, approval, construction, maintenance, and/or operation of the levees, channel and water levels of adjoining canals, laterals and creeks throughout the County of Merced which are the subject of this action and knew or should have known of their dangerous character sufficiently in advance of January 10, 2023, so as to have taken protective measures and/or allowed protective measures to have been taken.

52. Defendants, and each of them, through their employees, agents and contractors, breached their duty of care owed PLAINTIFFS in that PLAINTIFFS' property was flooded on January 10, 2023. This damage was caused by the system of canals, laterals and creeks' diminished capacity due to the manner in which the Defendants and each of them owned, operated, constructed, managed, maintained, supervised and controlled the levees, channel and water levels of adjoining canals, laterals and creeks and prevented and/or severely limited the proper cleaning and/or maintenance of same. The Defendants' conduct led to the overtopping and collapse of the banks which resulted in the release of significant flood water onto PLAINTIFFS' properties.

53. As a result of the above-described conduct and resultant damage to PLAINTIFFS' properties, PLAINTIFFS suffered damage in the form of injury to property, including but not limited

1 to damage to land, damage to structures, damage to trees and crops, loss of use, loss of income, loss
2 of business goodwill and profits, loss of use of enjoyment of tenancy, relocation costs, restoration
3 costs, repair costs, remedial costs, cleanup costs, investigative costs to determine the nature and extent
4 of damages, diminution of value, stigma damage, mitigation costs, past, present, and future.

5 54. In addition, as to the individually named AGRICULTURAL PLAINTIFFS, and each
6 of them, as a result of the above-described conduct and resultant damage to AGRICULTURAL
7 PLAINTIFFS' properties, the individually named AGRICULTURAL PLAINTIFFS suffered
8 emotional distress, fear, anxiety, stress, sleeplessness, worry, panic, sadness, feelings of helplessness
9 and hopelessness.

10 **FOURTH CAUSE OF ACTION**
11 **(Nuisance)**
12 **Against all Defendants**

13 55. PLAINTIFFS incorporate herein by reference each and every previous and subsequent
14 allegation as though fully set forth herein.

15 56. On or about January 10, 2023, Defendants, and each of them, through their employees,
16 agents and contractors, carelessly, negligently and improperly owned, operated, constructed, managed,
17 maintained, supervised, and controlled the levees, channel, water levels of adjoining canals, laterals
18 and creeks and/or substantially participated in the planning, design, approval, construction,
19 maintenance, and/or operation of the levees, channel and water levels of adjoining canals, laterals and
20 creeks throughout the County of Merced which are the subject of this action so as to cause water to
21 escape the channel and flood PLAINTIFFS' properties.

22 57. The aforementioned careless, negligent and improper ownership, operation,
23 construction, management, maintenance and supervision, and control of the levees, channel, water
24 levels which allowed the overtop and escape of rain water so as to flood PLAINTIFFS' properties
25 constitute a nuisance in that it deprived PLAINTIFFS of the quiet enjoyment of their properties.

26 58. As a result of the above-described conduct and resultant damage to PLAINTIFFS'
27 properties, PLAINTIFFS suffered damage in the form of injury to property, including but not limited
28 to: damage to land, damage to structures, damage to trees and crops, loss of use, loss of income, loss

1 of business goodwill and profits, loss of use of enjoyment of tenancy, relocation costs, restoration
2 costs, repair costs, remedial costs, cleanup costs, investigative costs to determine the nature and extent
3 of damages, diminution of value, stigma damage, mitigation costs, past, present, and future.

4 59. In addition, as to the individually named AGRICULTURAL PLAINTIFFS, and each
5 of them, as a result of the above-described conduct and resultant damage to AGRICULTURAL
6 PLAINTIFFS’ properties, the individually named AGRICULTURAL PLAINTIFFS suffered
7 emotional distress, fear, anxiety, stress, sleeplessness, worry, panic, sadness, feelings of helplessness
8 and hopelessness.

9 **FIFTH CLAIM FOR RELIEF**
10 **(Negligent Maintenance)**
11 **Against all Defendants**

12 60. PLAINTIFFS incorporate herein by reference each and every previous and subsequent
13 allegation as though fully set forth herein.

14 61. Defendants, and each of them, through their employees, agents, and contractors, whose
15 identities are presently unknown, failed to exercise due care in the maintenance of the embankments
16 and channels previously identified so as to cause portions of the embankments to collapse and the
17 water to otherwise overtop the embankments.

18 62. As a legal result of the negligent maintenance as alleged above, PLAINTIFFS real and
19 personal property was flooded, such that they sustained damage to land, damage to structures, damage
20 to trees and crops, loss of use, loss of income, loss of business goodwill and profits, loss of use of
21 enjoyment of tenancy, relocation costs, restoration costs, repair costs, remedial costs, cleanup costs,
22 investigative costs to determine the nature and extent of damages, diminution of value, stigma
23 damage, mitigation costs, past, present, and future. PLAINTIFFS have incurred and will continue to
24 incur costs of repair for this damage, in an amount not yet ascertained.

25 63. As a legal cause of the negligent maintenance as alleged above, PLAINTIFFS’ real
26 property was flooded and has and will continue to be damaged such that PLAINTIFFS have been
27 prevented from the use and enjoyment of their properties, all to their damage in an amount not yet
28 ascertained.

65. As a further legal result of the negligent maintenance as alleged above, PLAINTIFFS have suffered and will continue to suffer emotional distress, anxiety, fear of illness, depression and other psychological, emotional and mental injuries resulting from the contamination and flooding as alleged above.

(Trespass)

12 66. PLAINTIFFS incorporate herein by reference each and every previous and subsequent
13 allegation as though fully set forth herein.

15 68. Defendants, and each of them, intentionally, recklessly, or negligently caused water to
16 flood PLAINTIFFS' properties.

18 70. PLAINTIFFS, and each of them, have suffered significant damages as a result of the
19 Defendants' conduct.

72. In addition to substantial damage to PLAINTIFFS' real and personal property, PLAINTIFFS have incurred, and will continue to incur, attorney's fees, appraisal fees, consulting fees, engineering fees, and other fees and costs, which are recoverable pursuant to California Code of Civil Procedure § 1021.9.

26 WHEREFORE, PLAINTIFFS pray that the Court grant the following relief:

1. For special damages including, but not limited to, damage to land, damage to structures, damage to trees and crops, loss of use, loss of income, loss of business goodwill and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

profits, loss of use of enjoyment of tenancy, relocation costs, restoration costs, repair costs, remedial costs, cleanup costs, investigative costs to determine the nature and extent of damages, diminution of value, stigma damage, mitigation costs, past, present, and future.

2. As to the individually named AGRICULTURAL PLAINTIFFS, for general damages according to proof;

3. For interest on said damages according to proof;

4. For attorneys fees and cost of suit incurred herein, including but not limited to expert costs, consulting fees, engineering fees, and appraisal fees, pursuant to California Code of Civil Procedure § 1036 and 1021.9.

5. For costs other than those recoverable under California Code of Civil Procedure §§ 1036 and 1021.9.

6. For such other and further relief as the court deems just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFFS hereby demand a jury trial.

Dated: October 16, 2023

MARDEROSIAN & COHEN



By: _____
Michael G. Marderosian,
Attorney for PLAINTIFFS