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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **SACRAMENTO DIVISION**
11

12 Dilevon Lo, Jerry Vang, Nathan Thao, Mao
13 Thao, Pao Lee, Antonio Lee, Koua Lee, Nhia
14 Thai Vang, Zeng Lee, Der Lee, and Khue
Cha,

15 Plaintiffs,

16 v.

17 County of Siskiyou; Jeremiah LaRue and
Jesus Fernandez, in their official capacities
as members of the Siskiyou County
18 Sheriff's Department and in their individual
capacities; and Brandon Criss, Ed
19 Valenzuela, Michael N. Kobseff, Nancy
Ogren, and Ray A. Haupt, in their official
20 capacities as members of the Siskiyou
County Board of Supervisors and in their
21 individual capacities; Edward Kiernan, in
his official capacity as County Counsel for
22 Siskiyou County and in his individual
capacity; California Department of Forestry
23 and Fire Protection; and DOES 1-100,

24 Defendants.
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Case No.: 2:21-cv-00999-KJM-DMC

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND DAMAGES:**

1. **CLAIM FOR DECLARATORY AND
INJUNCTIVE RELIEF FOR
UNCONSTITUTIONAL ORDINANCES
IN VIOLATION OF THE
FOURTEENTH AMENDMENT OF U.S.
CONSTITUTION (42 U.S.C. 1983)**
2. **CLAIM FOR DAMAGES FOR
VIOLATION OF THE FOURTEENTH
AMENDMENT OF U.S.
CONSTITUTION (42 U.S.C. 1983)**
3. **CLAIM FOR DAMAGES FOR
VIOLATION OF THE FOURTH
AMENDMENT OF U.S.
CONSTITUTION (42 U.S.C. 1983)**

DEMAND FOR JURY TRIAL

1 COME NOW PLAINTIFFS DILEVON LO, JERRY VANG, NATHAN THAO, MAO
2 THAO, PAO LEE, ANTONIO LEE, DER LEE, KHUE CHA, KOUA LEE, NHIA THAI VANG,
3 and ZENG LEE, by and through their undersigned counsel, and hereby bring the following
4 Amended Complaint (“Complaint”) against DEFENDANTS COUNTY OF SISKIYOU *et al.*,
5 (hereinafter collectively “Defendants”) as follows:

6 **PRELIMINARY STATEMENT**

7 1. This is an action for declaratory and injunctive relief and damages arising from
8 Defendants’ prevention of water delivery to Plaintiffs and those similarly situated due to poorly
9 conceived and executed eradication efforts to stem cannabis cultivation in Siskiyou County.
10 Plaintiffs challenge the prevention of the use of water trucks and any other vehicle used to
11 transport water to residents and landowners of service under color of ordinance and resolution of
12 DEFENDANT COUNTY OF SISKIYOU enforced by the Sheriff’s Department of Siskiyou
13 County as violations of the Fourteenth Amendment Due Process and Equal Protection Clauses,
14 and Fourth Amendment, of the United States Constitution.

15 2. The Civil Rights Act, section 1983, allows a plaintiff to sue state and local
16 officials who have violated U.S. constitutional or statutory rights. See *Livadas v. Bradshaw*, 512
17 U.S. 107, 132 (1994) (affirming that it is 42 U.S.C. §1983 that provides a federal cause of action
18 for the deprivation of rights secured by the United States Constitution).

19 3. This is an action brought for violations of Plaintiffs’ rights to due process of law
20 and to equal protection of the laws under the Fourteenth Amendment to the United States
21 Constitution, for which Plaintiffs seek declaratory and injunctive relief pursuant to United States
22 Code, Annotated, Title 42, Sections 1981 and 1983 (42 U.S.C.A. §§ 1981, 1983) and United
23 States Code, Annotated, Title 28, Sections 2201, 2202 (28 U.S.C.A. § 2201, 2202). This action
24 also seeks redress for violations of Plaintiffs’ rights against unreasonable searches and seizures
25 under the Fourth Amendment to the United States Constitution.

26 4. Plaintiffs, who are residents of, and, in some cases, family members of owners of
27 real property, in the County of Siskiyou, hereby seek to enjoin enforcement of County of
28 Siskiyou, Ordinance No. 21-07 (“Ordinance No. 21-07”), Ordinance No. 21-08 (“Ordinance No.

1 21-08”), and Ordinance No. 20-13 (“Ordinance No. 20-13”) copies of which are attached,
2 marked “Exhibit A,” “Exhibit B,” and “Exhibit C,” respectively, and hereby made part of this
3 Complaint. Ordinances No. 21-07, No. 21-08, and 20-13 are unconstitutional on their face and as
4 construed and applied to Plaintiffs as a violation of due process and equal protection under the
5 law, and a violation of the Fourth Amendment’s prohibition on unreasonable searches and
6 seizures.

7 **PARTIES**

8 5. Plaintiffs, Dilevon Lo, Jerry Vang, Nathan Thao, Mao Thao, Pao Lee, Antonio
9 Lee, Koua Lee, Nhia Thai Vang, Zeng Lee, Der Lee, and Khue Cha (collectively “Plaintiffs”)
10 reside in Siskiyou County, California. Plaintiffs’ primary, if not sole, source of potable water for
11 basic life necessities, comes from “water trucks” as defined by Ordinance No. 21-08.

12 6. Defendant COUNTY OF SISKIYOU is now, and at all times mentioned in this
13 Complaint has been, a government entity in the State of California organized and existing under
14 the Constitution of the State of California. Defendant COUNTY OF SISKIYOU engages in
15 legislative acts in the form of ordinances through its Board of Supervisors as advised by its
16 County Counsel. Local governmental units such as counties or municipalities are “persons”
17 within the meaning of 42 U.S.C. section 1983. *Monell v. New York City Dept. of Social Services*,
18 436 U.S. 658, 690–691 & n.54 (1978); *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 70
19 (1989).

20 7. Defendant BRANDON CRISS is the duly elected board member for District 1
21 within the County of Siskiyou and was a board member involved in promulgating Ordinance No.
22 21-07, Ordinance No. 21-08, and Ordinance No. 20-13.

23 8. Defendant ED VALENZUELA is the duly elected board member for District 2
24 within the County of Siskiyou and was a board member involved in promulgating Ordinance No.
25 21-07, Ordinance No. 21-08, and Ordinance No. 20-13.

26 9. Defendant MICHAEL N. KOBSEFF is the duly elected board member for
27 District 3 within the County of Siskiyou and was a board member involved in promulgating
28 Ordinance No. 21-07 and Ordinance No. 21-08.

1 10. Defendant NANCY OGREN is the duly elected board member for District 4
2 within the County of Siskiyou and was a board member involved in promulgating Ordinance No.
3 21-07, Ordinance No. 21-08, and Ordinance No. 20-13.

4 11. Defendant RAY A. HAUPT is the duly elected board member for District 5
5 within the County of Siskiyou and was a board member involved in promulgating Ordinance No.
6 21-07, Ordinance No. 21-08, and Ordinance No. 20-13.

7 12. Defendant EDWARD KIERNAN is the County Counsel for Defendant COUNTY
8 OF SISKIYOU who supports activities, contracts and litigations as needed. Plaintiffs are
9 informed and believe and thereupon allege that Defendant EDWARD KIERNAN supported
10 Defendant COUNTY OF SISKIYOU in its promulgation of Ordinance No. 21-07 and Ordinance
11 No. 21-08 by and through its Board of Supervisors, including, but not limited to, its
12 promulgation and execution including the method of enforcement through a COUNTY OF
13 SISKIYOU Resolution which Plaintiffs are informed and believe and thereupon allege was put
14 into practice by members of the Siskiyou County Sheriff's Department as more specifically
15 alleged herein.

16 13. Defendant JEREMIAH LARUE is the head Sheriff of the Siskiyou County
17 Sheriff's Department, who has ultimate responsibility for promulgation, implementation, and
18 enforcement of the policies, procedures, and practices of the Siskiyou County Sheriff's
19 Department.

20 14. Defendant JESUS FERNANDEZ is a member of the Siskiyou County Sheriff's
21 Department who has enforced Ordinance No. 21-07 and Ordinance No. 21-08 against Plaintiffs
22 and members of the Hmong community in Siskiyou County, California, by detaining them and
23 impounding their vehicles. DOES 1-100 are currently unknown and unidentified employees or
24 agents of Siskiyou County, California, who participated in the development or enforcement of
25 Ordinance Nos. 21-07 and 21-08 and the unnumbered Resolution at issue in this case.

26 15. Defendant CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE
27 PROTECTION ("CAL FIRE") is now, and at all times mentioned in this Complaint has been, a
28 government entity in the State of California organized and existing under the Constitution of the

1 State of California. Defendant CAL FIRE is a fire department of the California Natural
2 Resources Agency and is responsible for fire protection in various areas under state
3 responsibility. In addition, CAL FIRE provides varied emergency services in Siskiyou County
4 via a contract with Siskiyou County. CAL FIRE was responsible for fire protection and
5 emergency services in the Shasta Vista subdivision of Siskiyou County during the Lava Fire,
6 which was first reported on June 25, 2021, and resulted in the mandatory evacuation of the
7 Shasta Vista subdivision.

8 16. As to all claims presented herein against them, Defendants JEREMIAH LARUE,
9 JESUS FERNANDEZ, BRANDON CRISS, ED VALENZUELA, MICHAEL N. KOBSEFF,
10 NANCY OGREN, RAY A. HAUPT, and EDWARD KIERNAN, are being sued in their
11 individual capacities for damages associated with clearly established federal rights, and in their
12 official capacities for injunctive and declaratory relief. At all relevant times, Defendants
13 JEREMIAH LARUE, JESUS FERNANDEZ, BRANDON CRISS, ED VALENZUELA,
14 MICHAEL N. KOBSEFF, NANCY OGREN, RAY A. HAUPT, and EDWARD KIERNAN
15 have acted under color of state law.

16 **JURISDICTION AND VENUE**

17 17. This lawsuit is brought pursuant to 42 U.S.C. section 1983 against all Defendants
18 for actions under color of state law in violation of the Fourteenth and Fourth Amendments to the
19 United States Constitution. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 1983
20 and 28 U.S.C. § 1331 and 1343(a)(3), in that this action is brought to redress deprivation, under
21 color of law, of rights secured by the Constitution of the United States. This Court has
22 jurisdiction to grant declaratory relief pursuant to 28 U.S.C. § 2201 and 2202 and is empowered
23 to grant injunctive relief pursuant to Fed. R. Civ. P. 65.

24 18. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a
25 substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this
26 district.

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FACTUAL ALLEGATIONS

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2 19. Plaintiffs are members of the Hmong tribe of Northern Laos who either actively,
3 or through parents and grandparents, performed as fighters for the United States when the U.S.
4 government recruited the Hmong people in the late 1960s to fight the communists in Laos. When
5 U.S. military forces pulled out of Southeast Asia in 1975, tens of thousands of Hmong were
6 trapped in mountainous enclaves. All aid was cut off to the Hmong. In response to the plight of
7 Indochinese communities such as the Hmong after the Vietnam War, the U.S. Congress enacted
8 legislation to enable Southeast Asian refugees to come to the United States.

9 20. The Hmong people immigrated to various parts of the United States
10 beginning in the early 1980. Admissions picked up between 1987 and 1994, when more than
11 50,000 Hmong entered the country. From 2004 until 2006, pressure from human rights groups
12 contributed to the resettlement to the United States of an additional 15,000 Hmong immigrants
13 from a refugee camp in Thailand. Afterward, immigration from northern Laos to the United
14 States slowed. By early 2015, Hmong began arriving in the County of Siskiyou.

15 21. More than a half-century ago, land speculators carved Siskiyou County’s
16 unbuildable high desert and mountain slopes into half a dozen large subdivisions with “vacation”
17 parcels that had little market value. Mount Shasta Vista, rising along the western edge of the
18 valley, contained many of these “vacation” parcels which in 2014, remained fallow. By the end
19 of 2016, approximately a third of the Mount Shasta Vista parcels were owned by the Hmong
20 people. More than a half-century ago, land speculators carved Siskiyou County’s unbuildable
21 high desert and mountain slopes into half a dozen large subdivisions with “vacation” parcels that
22 had little market value. Mount Shasta Vista, rising along the western edge of the valley,
23 contained many of these “vacation” parcels which in 2014, remained fallow. By the end of 2016,
24 approximately a third of the Mount Shasta Vista parcels were owned by the Hmong people.

25 22. The Mount Shasta Vista Subdivision of Siskiyou County consists of 1600 lots, the
26 majority of which are occupied by Hmong families. The population of the Hmong community in
27 the subdivision is over 1,000 men, women, and children. Siskiyou County has approximately
28 4,000 Hmong residents, concentrated in the areas near the Mount Shasta Vista subdivision.

1 23. In 2015, Defendant COUNTY OF SISKIYOU, by and through its Board of
2 Supervisors, passed an ordinance to ban outdoor cultivation of marijuana, punishable by a fine.
3 Marijuana crops could also be destroyed if authorities determined they were for commercial sale.

4 24. The old gold mining town of Yreka in Siskiyou County for decades sold water to
5 anyone wanting it. But in July 2016, the town council declared the Hmong farmers' use
6 "undesired" and cut off sales to those living outside of city limits.

7 25. The Siskiyou County's Sheriff's department engaged in years of eradications,
8 seizures and arrests to eradicate marijuana cultivation. Through these efforts, the Hmong people
9 often became targets.

10 26. In an article titled "Hmong cannabis growers pouring into Siskiyou County"
11 originally appearing on pressdemocrat.com on September 21, 2017, released to the wire service
12 on September 25, 2017, the former Sheriff of Siskiyou County, Sheriff Jon Lopey, is quoted as
13 stating "This is war" in his description of eradication efforts targeted at the Hmong community
14 in Siskiyou County.

15 27. When the Mount Shasta Vista Subdivision of Siskiyou County was created, a
16 water well was built to supply water to the properties within the subdivision. That well is located
17 on a nearby property along highway A-12 owned by Stephen Griset. At the time of creation of
18 the subdivision, everyone understood that the water from that well would provide for the
19 residents of the subdivision, and the residents understood they would be able to access this water
20 for their daily living needs. The water is used by the entire Mount Shasta Vista subdivision
21 including over 1,000 Hmong residents, and is what is left over from Mr. Griset's well pumping
22 for his own agricultural needs. If it was not used by the subdivision residents, it would be
23 wasted.

24 28. For the past several years, the residents of the Mount Shasta Vista Subdivision of
25 Siskiyou County have depended on the water provided by Stephen Griset for survival. The well
26 in question provides most of the water needs of the residents of the subdivision. The manner
27 much of the needed water can be provided to the residents is by having it brought to the
28 subdivision by truck. On August 4, 2020, the Siskiyou County Board of Supervisors passed

1 Ordinance 20-13, the first of three ordinances cutting off the water supply to the Hmong
2 community. Ordinance 20-13 makes it illegal to “engage in the act of wasting or unreasonably
3 using groundwater by extracting and discharging groundwater underlying Siskiyou County for
4 use in cultivating cannabis in violation of Chapter 14 or Chapter 15 of Title 10 of the Siskiyou
5 County Code.” The following month, the Griset family, who continued to allow the Hmong
6 community and other neighbors to use their private well after the ordinance passed, was sued by
7 Siskiyou County (Case No. SC CV 20-810) for allegedly violating this ordinance.

8 29. In 2020, while he was Undersheriff of the Siskiyou County Sheriff’s Department,
9 KARL G. HOUTMAN drafted a document entitled “Fiscal Year 2021 Annual Strategic
10 Plan.” In Paragraph 1, A, under the heading “Domestic Cannabis Intelligence Overview: Self-
11 Assessment,” KARL G. HOUTMAN wrote: “We are dealing with all different ethnic groups
12 (Hmong, Hispanic, Bulgarian, Caucasian and Chinese) on private land but have seen the largest
13 increase in Chinese working at many private land sites.” The report estimated “upwards of 2500
14 illegal marijuana cultivation site [sic.] in Siskiyou County,” and that 80 of those cultivation sites
15 (3.2% of the total) were in the Mount Shasta subdivision.

16 30. Plaintiffs are informed and believe and thereupon allege that KARL G.
17 HOUTMAN’s ideas set forth in the document “Fiscal Year 2021 Annual Strategic Plan” were
18 communicated, received and adopted by Defendant COUNTY OF SISKIYOU by and through its
19 Board of Directors.

20 31. On May 4, 2021, the Board of Supervisors promulgated Ordinance No. 21-07 and
21 Ordinance No. 21-08. The ostensible purpose of the ordinances was to prevent extraction
22 (pumping) of large volumes of groundwater from groundwater resources and local wells in
23 Siskiyou County. The stated reason for the need for this “urgency” legislation is due to drought
24 conditions in the county and excess water being expended daily on illicit cannabis production in
25 Siskiyou County.

26 32. The remedy for the water conservation measures set forth in Ordinance No. 21-08
27 is to prohibit “Water Trucks” in certain areas of Siskiyou County because said “Water Trucks”
28 have “created dangerous driving conditions, health hazards from dust and diesel exhaust, noise

1 pollution, traffic congestion, and generally conditions that detract from the quality of life and
2 welfare of those who reside alongside and near these highways” (Exhibit B hereto). “Water
3 Trucks” are defined in Ordinance No. 21-08 as “a vehicle designed or being used to carry water
4 of not less than 100 gallons or any vehicle designed or carrying or towing tanks or bladders of
5 100 gallons of water or more or a “Water Tender Vehicle,” as defined in California Vehicle
6 Code section 676.5 (3-4.1501, subd. (a), of Ordinance No. 21-08 - Exhibit B hereto).

7 33. The target of enforcement for the prohibition on “Water Trucks” as defined by
8 Ordinance No. 21-08 was to prevent their travel on Siskiyou County roads to be determined by
9 Defendant COUNTY OF SISKIYOU, by and through its Board of Supervisors, as specified by
10 resolution (Section 3-4.1501, subd. (b), of Ordinance No. 21-08 - Exhibit B hereto).

11 34. At Defendant COUNTY OF SISKIYOU’s Board of Supervisors meeting of May
12 4, 2021, discussion, direction and action took place regarding the Resolution setting forth roads
13 included within Section 3-4.1501 of Ordinance No. 21-08 and the Board of Supervisors passed
14 the Resolution identifying the roads on which the travel of the water trucks would be
15 prohibited. There was no discussion at the meeting regarding why the particular roads listed in
16 the Resolution were included and why others were not. A true and correct copy of said proposed
17 Resolution is attached hereto as Exhibit D.

18 35. Those roads listed in Exhibit D, located in Butte Valley and Big Springs, are
19 actively being targeted by Siskiyou County Sheriff’s Department for enforcement as more
20 specifically alleged herein.

21 36. These roads identified in Butte Valley and Big Springs are used for the ingress
22 and egress for parcels occupied and/or owned predominately by the Hmong people of Siskiyou
23 County. The enforcement of Ordinance Nos. 20-13, 21-07 and 21-08 by and through the
24 Siskiyou County Sheriff’s Department (including, but not limited to Defendant Deputy Sheriff
25 JESUS FERNANDEZ) has had the effect of depriving the Plaintiffs (and the Hmong people of
26 Siskiyou County generally) of potable water.

27 37. Plaintiffs are informed and believe and thereupon allege that Defendant
28 COUNTY OF SISKIYOU, by and through its Board of Supervisors and/or members of its

1 Sheriff's Department, mapped out the impact of areas affected by enforcement of Ordinance
2 Nos. 21-07 and 21-08, as more specifically targeted through the unnumbered Resolution (Exhibit
3 D hereto), in the map attached hereto and incorporated herewith as Exhibit E.

4 38. As reflected on the map (Exhibit E hereto), there are six (6) large areas of
5 Siskiyou County identified as Areas of Marijuana Cultivation in the 2021 Strategic Plan with
6 large blue stars, covering an area encompassing from the northern Highway 96 corridor bordered
7 by the Pacific Coast Ranges to the west to the Six Rivers National Forest to the south then along
8 the Shasta Trinity National Forest to the south-east to Tulelake in the north-east, thousands of
9 square miles. The map (Exhibit E hereto) also identifies three (3) locations designated as "Areas
10 affected by Water Ordinance" with large orange stars covering only a small portion of the total
11 area starting at locations adjacent to Shasta Vista, Mac Doel and Dorris, an area that is
12 exclusively in the north-eastern area of the map (Exhibit E) where the Hmong people reside.

13 39. Cutting off the water to the Mount Shasta Vista Subdivision of Siskiyou County
14 has caused a humanitarian crisis. The over 1,000 Hmong people who are living in the
15 subdivision depend on the water for personal survival, to be used for food crops and for human
16 and animal consumption. Without water, the residents will be forced to move and lose their
17 investment in their property.

18 40. According to United States Geological Survey estimates, 23,300,000,000 gallons
19 of water per day is consumed for domestic use by 283,000,000 people, or approximately 82.3
20 gallons per person per day. Based on the USGS report the over 1,000 Hmong people living in
21 the Mount Shasta Vista Subdivision of Siskiyou County require more than 82,300 gallons of
22 water per day for personal consumption. The USGS report indicates California consumption is
23 higher than the average. In a study conducted by the Hamilton Project of the Brookings
24 Institution, the daily domestic consumption of water is 124 gallons of water per day per
25 person. Based on the Hamilton Project data, in California, 1,000 people would require 124,000
26 gallons of water per day for domestic purposes, or 45,260,000 gallons of water per year. Based
27 on this data, a substantial portion of the water provided by Mr. Griset to the Hmong community
28 goes to domestic use and is necessary for subsistence to those living in the subdivision.

1 41. The County of Siskiyou has not worked with the residents of the Mount Shasta
2 Vista Subdivision of Siskiyou County to provide an alternate solution to this issue. During the
3 public comment period at the May 4, 2021, Board of Supervisors meeting when the Ordinances
4 and Resolution were passed, Paul Manasian, an attorney representing Mr. Griset, proposed that
5 the County have a meeting with Hmong community and farmers to discuss a solution to water
6 issues, and explained that the Hmong sites do not have their own water. The County did not take
7 Mr. Manasian up on his offer. Also during the public comment period at the May 4, 2021, Board
8 of Supervisors meeting when the Ordinances and Resolution were passed, a farmer told the
9 Board of Supervisors that he uses water trucks all the time to transport water around the County
10 for various legitimate purposes, and explained that unforeseen consequences would result from
11 water truck ban due to all the legitimate agriculture going on in the County.

12 42. As quoted in a Sacramento Bee article dated May 26, 2021, entitled “Asian pot
13 growers face sheriff raids, bulldozers in Northern California. They blame racism,” Siskiyou
14 County District Attorney Kirk Andrus has stated about the water truck ban, “We’re not
15 pretending that this is something that’s trying to regulate anything except for water being used
16 for cannabis. It’s a way to enforce California’s and Siskiyou’s cannabis laws. That’s what it’s
17 for. It is not designed to protect the aquifer, or the groundwater.” In the Ordinance passing the
18 water truck ban, however, the Board of Supervisors purported to justify the ban on the basis that
19 there was a “drought” and that the water on the trucks was “depleting precious groundwater ...
20 resources and these losses jeopardize the lawful agricultural, recreational, private and
21 environmental use of water for thousands of residents.” The District Attorney has thus
22 confirmed that the Ordinances were not, in fact, adopted for the reasons for which the Board of
23 Supervisors claimed it was adopting the Ordinances.

24 43. At the public hearing on May 4, 2021, where Defendant COUNTY OF
25 SISKIYOU by and through its Board of Supervisors, welcomed Defendant JEREMIAH LARUE
26 to give comment on a related Ordinance (Ordinance No. 21-07) imposing an Administrative
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1 Permit Process for groundwater extraction further restricting access to water, and to “educate the
2 board on why this would be effective and the previous method isn't,”¹ he stated:

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4 — “first off, I think it's important that we direct our anger at the right people. Um, you
5 know, we have good people in this county that have agriculture. And we have people that
6 are abusing that. We know who they are, and frankly I'm perplexed that those individuals
7 are not shamed more by not only other people in the agg, um, world, but also the county.
8 Um, I know we talk a lot about that, but really, that's... Those people, not just the
9 growers, are helping this be established. And you know, honestly, they're, they're making
10 a lot of money off of that. And so, I just hope everyone who's listening and involved in
11 this room, later on that we, we focus on the people that are causing the problems.”²

12 — “And we're going to aggressively enforce and fine to the extreme that we can, um...
13 Whatever we can do, we're going to do.”³

14 — “You know, this is not going to get done by just having the, the government show up
15 and save everybody. Historically, that has never happened. So, we need the cooperation
16 of our local people to help us get to the bottom of this, and really choke it out.”⁴

17 — “Um, if people are going to do it right, um, well I'll say... They would have done it
18 right from the beginning. Um, it's 100% illegal, regardless of how great the community
19 thrives. It's still leg- illegal activity. Um, it's not wanted here. It's prohibited here. That's
20 just the rules. That's, that's the law. So, um, the argument that suddenly if we were to
21 legally permit everything, people would start complying. That never happens. Um,
22 because there is no incentive to comply, even if it's permitted. Um, so anyways. I digress,
23 digress on that, but the importance of this ordinance... Both of them, we haven't gotten to
24 the other one, it just another tool for us to choke out the, the water issue that's enabling
25 everything.”⁵

26 — “So again, pressure. Where is the pressure? Why aren't these people called out? I think
27 that, uh, you know, I hear a lot of, ‘Why isn't the county doing anything?’ We are. But I
28 also throw it back to the community. Um, we have to take this together. And we have to
29 have support. And I think we hea- we hear quite a bit of it. Uh, I don't discount that, but I,
30 I just recognize again, we all have to come together on this. It's not just the Sheriff's
31 Department or code, or the board, or the county. I mean, it's everybody. It's, it's the
32 entirety of us, so, um, I'm here to answer any questions related to that. I just want to
33 convey the seriousness of this, and that we're going to go out and aggressively enforce
34 it. That's what, that's what we do. If there's laws on the books that we can use, it's not a
35 matter that we don't want to do it. We just have to have the right teeth.”⁶

36 44. Plaintiffs are informed and believe and thereupon allege that the group of “those
37 people, not just the growers” Defendant JEREMIAH LARUE referred to in his public statements
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¹ See Transcript of May 4, 2021 BOS meeting, at 6:159-60.
² See Transcript of May 4, 2021 BOS meeting, at 6:162-71.
³ See Transcript of May 4, 2021 BOS meeting, at 6:189-90.
⁴ See Transcript of May 4, 2021 BOS meeting, at 7:204-07.
⁵ See Transcript of May 4, 2021 BOS meeting, at 7:212-20.
⁶ See Transcript of May 4, 2021 BOS meeting, at 8:230-38.

1 were and are the Hmong people of Siskiyou County as a group regardless of the criminality of
2 their conduct or lack thereof.

3 45. On June 24, 2021, the Lava Fire was ignited by lightning near Weed, California,
4 and began spreading. As of June 29, 2021, the fire had reached a size of 13,300 acres, and had
5 prompted the evacuation of many communities, including the Shasta Vista subdivision in
6 Siskiyou County. Defendant CAL FIRE was responsible for providing fire protection and
7 emergency services to residents of the Shasta Vista subdivision during the Lava Fire. During the
8 Lava Fire, many Hmong residents of the Shasta Vista subdivision put out fires in the subdivision
9 using water trucks, buckets, and dirt, saving homes in the process. As the Lava Fire burned
10 through the Shasta Vista subdivision, representatives of Defendant COUNTY OF SISKIYOU,
11 including members of the Siskiyou County Sheriff's Department, ordered the Hmong people to
12 stop their firefighting efforts in the subdivision and to leave the subdivision. After the residents
13 of the Shasta Vista subdivision were ordered to evacuate, representatives of Defendant CAL
14 FIRE passively let the Lava Fire burn through the subdivision, without engaging in active
15 firefighting efforts in the subdivision. CAL FIRE actively worked to extinguish fires in other,
16 similarly-situated communities threatened by the Lava Fire that did not have a significant
17 population of Hmong residents.

18 46. Plaintiff DILEVON LO was pulled over by Deputy Sheriff JESUS FERNANDEZ
19 of the Siskiyou County Sheriff's Department on May 4, 2021, while driving a truck full of water
20 on Juniper Road in Siskiyou County. His truck was seized and impounded.

21 47. Plaintiff JERRY VANG was pulled over by J. RANDALL of the Siskiyou County
22 Sheriff's Department, who was driving an unmarked red pickup truck, on May 5, 2021, while
23 driving a rented truck on a private road that had less than 100 gallons of water on it. His truck
24 was seized and impounded.

25 48. Plaintiff NATHAN THAO was a passenger in a truck he owned that was pulled
26 over by a representative of the Siskiyou County Sheriff's Department four times in the past six
27 months.

1 49. Plaintiff MAO THAO was driving a truck containing water that was followed for
2 several minutes and then pulled over on Highway A-12 in Siskiyou County by a representative
3 of the Siskiyou County Sheriff's Department on May 11, 2021.

4 50. Plaintiff PAO LEE was driving a truck containing water that was pulled over by a
5 representative of the Siskiyou County Sheriff's Department on May 14, 2021. His truck was
6 seized and impounded.

7 51. Plaintiff ANTONIO LEE was pulled over May 14, 2021 by a representative of the
8 Siskiyou County Sheriff's Department. The truck was seized and impounded.

9 52. Plaintiff KOUA LEE lives in the Shasta Vista subdivision and previously relied
10 on water trucks as a source of water for drinking, cooking, bathing, animals, and growing
11 vegetables, but has not had enough water to use for these purposes since Ordinance Nos. 21-07
12 and 21-08 were passed.

13 53. Plaintiff NHIA THAI VANG lives in the Shasta Vista subdivision and relies upon
14 chickens and ducks for food. Many of his chickens and ducks have died due to lack of water
15 since the passage of Ordinance Nos. 21-07 and 21-08, and he now has no reliable source of water
16 for daily living needs and must ask friends to borrow water when possible.

17 54. Plaintiff ZENG LEE lives in the Shasta Vista subdivision and previously
18 depended on water trucks to bring water to his property for daily living needs. Since the passage
19 of Ordinance Nos. 21-07 and 21-08, many of his chickens and pheasants have died due to lack of
20 water, and his family does not have enough water to bathe more than once per week. He is
21 currently receiving small amounts of water from friends on a temporary basis but has no known
22 source of water after July 2021.

23 55. Plaintiff DER LEE lives in the Shasta Vista subdivision and previously depended
24 on water trucks to bring him water for daily living needs. He has applied for a well permit on his
25 property but has not yet received it. He relies on ducks and chickens, and a vegetable garden, for
26 food, but has not had enough water for his garden and animals since the passage of Ordinance
27 Nos. 21-07 and 21-08. He does not know how he will care for his remaining animals and his
28 family if he cannot find a solution to get more water.

1 56. Plaintiff KHUE CHA lives in the Shasta Vista subdivision and previously relied
2 on water trucks for water for daily living needs. He relies on his chickens and vegetable garden
3 for food, but since the passage of Ordinance Nos. 21-07 and 21-08, he has had a water shortage,
4 and all the vegetables in his garden have died. He now barely has enough water for personal use
5 after providing water to the six or seven remaining chickens to keep them alive. He has had to
6 ask friends to borrow water when possible.

7
8 **CLAIMS FOR RELIEF**

9 **FIRST CAUSE OF ACTION**

10 **Declaratory and Injunctive Relief for Unconstitutional Ordinances Pursuant to 42 U.S.C. §**
11 **1983 – Fourteenth Amendment – Against Defendant COUNTY OF SISKIYOU**

12 57. Plaintiffs reallege and incorporate herein by reference each of the allegations
13 contained in the preceding paragraphs of this Complaint.

14 58. A district court is empowered to exercise its fundamental obligation to determine
15 the constitutionality of a county ordinance under the Declaratory Relief Act, 28 U.S.C. § 2201.
16 Where the unconstitutionality of an ordinance as violative of the Fourteenth Amendment, and
17 plaintiffs' damages from enforcement would be irreparable because no one could be compelled
18 to respond therefor, a federal court of equity will normally enjoin enforcement if the ordinance
19 unconstitutionally invades plaintiffs' property rights. *Terrace v. Thompson* 263 U.S. 197, 214,
20 216 (1923); *Davis & Farnum Mfg. Co. v. Los Angeles*, 189 U.S. 207, 218 (1903).

21 59. The Hmong people of Siskiyou County live on land in the affected areas (Butte
22 Valley and Big Springs) and many, if not all, do not have access to potable water without having
23 it brought to them by vehicle and/or picking up water themselves and traversing the roads
24 identified in the Resolution (Exhibit D) hereto. According to reports from urban water agencies
25 in California submitting monthly data on residential water use to the State Water Resources
26 Control Board (SWRCB) and as reported by the Legislative Analyst's Office (the California
27 Legislature's nonpartisan fiscal policy advisor), the average residential water use in 2016 was 85
28 gallons per person per day.

1 60. Ordinance No. 21-08 prohibits any vehicle designed or carrying or towing tanks
2 or bladders of 100 gallons of water or more traveling on roads identified in the Resolution
3 (Exhibit D hereto) in the Butte Valley and Big Springs areas of Siskiyou County, thereby
4 creating an undue burden on the Hmong people who live in that designated area from obtaining
5 potable water. Ordinance No. 21-07 prohibits water extraction for use off-parcel without a
6 permit. Ordinance 20-13 purports to prohibit extraction or discharge of water “for use in
7 cultivating cannabis” in violation of the Siskiyou County Code, and has been used by Siskiyou
8 County to cut off access to water to the Hmong community, including by the County suing
9 farmer and well owner Stephen Griset in Siskiyou County Superior Court Case Number CV 20-
10 810, for allegedly violating Ordinance 20-13.

11 **Plaintiffs Have a Property Right to Access to Water**

12 61. While the Constitution protects against states infringing upon property interests
13 without due process, those “[p]roperty interests . . . are created and their dimensions defined by
14 existing rules or understandings that stem from an independent source such as state law”
15 *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). Bases for a claim of entitlement to property
16 interests arise from either a state law or a contract between the state and the citizen. See *id.* at
17 577-78. The right to water service may not be a fundamental right guaranteed by the
18 Constitution, however the Constitution does protect the rights of those granted a property interest
19 by State law.

20 62. Ownership of California’s water is vested generally in the state’s residents.
21 California maintains a “dual system” of water rights, which distinguishes between the rights of
22 “riparian” users, those who possess water rights by virtue of owning the land by or through
23 which flowing water passes, and “appropriators,” those who hold the right to divert such water
24 for use on noncontiguous lands. For historical reasons, California further subdivides
25 appropriators into those whose water rights were established before and after 1914. Post–1914
26 appropriators may possess water rights only through a permit or license issued by the Board, and
27 their rights are circumscribed by the terms of the permit or license. See *Millview County Water*
28 *Dist. v. State Water Resources Control Bd.* (2014) 229 Cal.App.4th 879, 888-90.

1 63. Under California law, property interests in water take the form of a usufruct, *i.e.*,
2 a right to use the resource. “ ‘It is laid down by our law writers, that the right of property in water
3 is usufructuary, and consists not so much of the fluid itself as the advantage of its use.’ [*Eddy v.*
4 *Simpson*, 3 Cal. 249 (1853)] Hence, the cases do not speak of the ownership of water, but only of
5 the right to its use.” *National Audubon Society v. Superior Court*, 33 Cal.3d 419, 441 (1983).

6 64. It has long been settled law in California that use of water for domestic purposes
7 (natural use) is first entitled to preference over commercial (artificial) use. *Hale v. Mclea*, 53 Cal.
8 578, 584 (1879). *Smith v. Corbitt*, 116 Cal. 587, 592 (1897); *Bathgate v. Irvine*, 126 Cal. 135,
9 142 (1899); *Cowell v. Armstrong*, 210 Cal. 218, 224-25 (1930); *Rancho Santa Margarita v. Vail*,
10 11 Cal.2d 501, 561 (1938); *Lux v Haggin*, 69 Cal. 255, 395 (1884), *Stanford v. Felt*, 71 Cal. 249,
11 250 (1886). *Drake v. Tucker*, 43 Cal.App. 53, 58 (1919).

12 65. In addition, the right to water to be used in irrigation is a right in real property.
13 *Schimmel v. Martin*, 190 Cal. 429, 432 (1923). A trio of cases has also found the right to water
14 is an easement appurtenant to land. *Stanislaus Water Co. v. Bachman*, 152 Cal. 716, 724 (1908);
15 *San Juan G. Co. v. San Juan R. etc. Assn.*, 34 Cal.App.2d 159, 174 (1939); *Relovich v. Stuart*,
16 211 Cal. 422, 428 (1931).

17 66. Plaintiffs had a legitimate expectation, grounded in state law, that continued
18 access to water in Siskiyou County would be available to them on reasonable terms and
19 conditions without regard to Defendants’ eradication efforts. In *Memphis Light, Gas & Water*
20 *Div. v. Craft*, 436 U.S. 1, 9 (1978), customers of a municipal utility were found by the Supreme
21 Court to have a protected interest in the service provided to their home, thus requiring the
22 municipality to provide proper notice of a possible disconnection, including informing the
23 customer of the right to a hearing or procedure to challenge the validity of the decision prior to
24 any termination of service. *Memphis Light*, 436 U.S. at 14-15. “[I]ndeed the discontinuance of
25 water or heating for even short periods of time may threaten health and safety.” *Id.* at 18.
26 Plaintiffs state facts giving rise to a “legitimate claim of entitlement” to access to water in
27 Siskiyou County. *Id.*, at 11.

1 **Defendant COUNTY OF SISKIYOU Failed to Follow Proper Procedure in**
2 **Enacting Ordinance No. 21-08**

3 67. A duly enacted county ordinance is a “law of this State” within the meaning of a
4 penal statute proscribing the violation of such law. *In re Groves*, 54 Cal.2d 154, 158 (1960);
5 *County of Plumas v. Wheeler*, 149 Cal. 758, 768 (1906). A board resolution is not. *City of*
6 *Sausalito v. County of Marin*, 12 Cal.App.3d 550, 566 (1970). “A resolution by a county board
7 of supervisors is usually a mere declaration with respect to future purpose or proceedings of the
8 board. An ordinance is a local law which is adopted with all the legal formality of a statute.”
9 *McPherson v. Richards*, 134 Cal.App. 462, 466 (1933).

10 68. Section 3-4.1501, subd. (b), of Ordinance No. 21-08 (Exhibit B hereto) merely
11 states: “Pursuant to the authority provided Siskiyou County under California Vehicle Code
12 Section 21101 (c), Water Trucks are prohibited from traveling over such streets (as defined in
13 California Vehicle Code Section 590) and highways (as defined in California Vehicle Code
14 Section 360) *that the Board of Supervisors may specify by resolution.*” (Emphasis added.)

15 69. A resolution adopted without the “formality” required of an ordinance cannot be
16 deemed an ordinance. *City of Sausalito, supra*, at 12 Cal.App.3d at 566 (citing 5 McQuillin,
17 *Municipal Corporations* (1969 rev. vol.) ss 15.02—15.08, pp. 46—47.) California’s Legislature
18 has been explicit concerning this distinction. It has exacted certain “formalities” in the enactment
19 of an ordinance by the supervisors of a county (Gov. Code, §§ 25120—25121), but not of their
20 adoption of a resolution. It has specified certain requirements relative to the publication of a
21 county ordinance after its passage (Gov. Code, § 25124), its deferred effective date in the typical
22 case (s 25123), and its mandatory recording in an “ordinance book” (Gov. Code, §§ 25102, subd.
23 (b), 25122)). None of these requirements applies to board resolutions. *City of Sausalito, supra*, at
24 12.

25 70. By contrast, in lieu of entering resolutions in full in the minute book, the clerk,
26 with the approval of the board, may keep a resolution book in which he shall enter all resolutions
27 in full. In such cases, references in the minute book to resolutions may be made by number and
28 subject reference. (Gov. Code, § 25102.1.) Because the difference between a “resolution” and an

1 “ordinance” is thus substantive, under case law and by deliberate legislative definition, the one
2 (unnumbered Resolution – Exhibit D hereto) cannot be construed as having amounted to the
3 other (Ordinance No. 21-08 – Exhibit B hereto). *City of Sausalito, supra*, at 12 Cal.App.3d at
4 566.

5 71. By purporting to identify specific roads in Butte Valley and Big Springs as being
6 the subject for enforcement of Ordinance No. 21-08 in the proposed Resolution (Exhibit D
7 hereto), Defendants COUNTY OF SISKIYOU, BRANDON CRISS, ED VALENZUELA,
8 MICHAEL N. KOBSEFF, NANCY OGREN and RAY A. HAUPT effectively shielded from the
9 “formality” requirements mentioned above (Gov. Code, §§ 25120—25124) of an ordinance the
10 determination that Hmong people living along certain county roads, regardless of their status as
11 criminals or law-abiding citizens, would be deprived of delivery of water for their basic needs.
12 Plaintiffs are informed and believe and thereupon allege that promulgating in this manner was
13 designed to conceal the fact that the roads designated in the Resolution impacted primarily the
14 Hmong people of Siskiyou County. Plaintiffs are further informed and believe and thereupon
15 allege that as the County Counsel for Defendant COUNTY OF SISKIYOU, Defendant
16 EDWARD KIERNAN aided and abetted this concealment.

17 72. In bypassing the formal requirements of an ordinance by enacting the Resolution
18 (Exhibit D hereto) that identified the specific roads in Butte Valley and Big Springs as being the
19 subject for enforcement of Ordinance No. 21-08, Defendants COUNTY OF SISKIYOU,
20 BRANDON CRISS, ED VALENZUELA, MICHAEL N. KOBSEFF, NANCY OGREN, RAY
21 A. HAUPT and EDWARD KIERNAN prevented meaningful participation of the public,
22 including Plaintiffs and the Hmong people of Siskiyou County generally.

23 **Defendant COUNTY OF SISKIYOU Provided No Meaningful Notice and Opportunity to**
24 **Challenge the Execution of Ordinance Nos. 20-13, 21-07, and 21-08**

25 73. Ordinance Nos. 20-13, 21-07 and 21-08 contain no requirement that termination
26 of access to water include a notice of an opportunity for a pre-termination hearing or review nor
27 means to redress the seizure of property lawfully obtained by those traversing on Siskiyou
28 County roads identified in the Resolution (Exhibit D hereto). Nor was adequate notice given to

1 residents of Siskiyou County that the roads identified in the Resolution (Exhibit D hereto) would
2 subject them to scrutiny.

3 74. Existing regulations found in Sec. 5-8.01, *et seq.*, of Chapter 8 of Title 5 of the
4 Siskiyou County Code adopted February 28, 1961, effective March 31, 1961 and beginning with
5 Supplement No. 15 and supplemented thereafter addresses only the construction, reconstruction,
6 repair, and destruction of water wells, cathodic protection wells, and monitoring wells but does
7 not address access to water by citizens without such wells.

8 75. The due process clause of the Fourteenth Amendment warrants that “No State
9 shall . . . deprive any person of life, liberty, or property without due process of law.” U.S. Const.
10 amend. XIV § 1. Therefore, once the property interest in access to water is created, proper notice
11 of the potential termination of access to that water must consist of both a declaration that the
12 access will be terminated or extremely limited at some point in the future, and a notification of
13 the opportunity for a hearing to voice concerns, uncover misuse or discuss the existence of
14 hardships. By failing to give timely and adequate notice to Plaintiffs, including notice of an
15 opportunity for a hearing prior to termination of access to water, Defendant COUNTY OF
16 SISKIYOU unlawfully deprived Plaintiffs of their rights under the Due Process Clause of the
17 Fourteenth Amendment to the United States Constitution.

18 **Defendant COUNTY OF SISKIYOU’s Adoption of the Methods and Means of Execution**
19 **of Ordinance No. 21-08 Through the Unnumbered Resolution Was Arbitrary and**
20 **Capricious**

21 76. Plaintiffs’ private interest in the continued access to water in Siskiyou County is
22 affected by the official action of Defendant COUNTY OF SISKIYOU and the risk of an
23 erroneous deprivation of such interest through the procedures adopted through Ordinance No.
24 21-08 and the unnamed Resolution (Exhibit D hereto) is overwhelming.

25 77. Here, Defendants COUNTY OF SISKIYOU, BRANDON CRISS, ED
26 VALENZUELA, MICHAEL N. KOBSEFF, NANCY OGREN, RAY A. HAUPT and
27 EDWARD KIERNAN articulated their rationale for the “urgency” in adopting Ordinance No.
28 21-08 as based on emergency drought conditions affecting most of California as well as criminal

1 activity, to wit: “Local law enforcement officers and code enforcement officers have observed
2 large quantities of groundwater being extracted from local wells and then delivered in water
3 trucks off the parcel from which extraction occurred to illegal cannabis cultivation sites, most of
4 which are without legally established residences and are used exclusively for illegal cannabis
5 cultivation.” (Exhibit B, p. 1, Section 1, subsection F.)

6 78. Nowhere in its findings in Ordinance No. 21-08 or in the public statements made
7 in connection with Ordinance No. 21-08’s consideration on May 4, 2021, or the unnumbered
8 Resolution (Exhibit D hereto) did Defendants COUNTY OF SISKIYOU, BRANDON CRISS,
9 ED VALENZUELA, MICHAEL N. KOBSEFF, NANCY OGREN, RAY A. HAUPT and
10 EDWARD KIERNAN provide information of the fact that the Hmong people occupying Mount
11 Shasta Vista Subdivision of Siskiyou County rely substantially on water trucks to deliver to them
12 potable water.

13 79. Plaintiffs are informed and believe and thereupon allege that Defendants
14 COUNTY OF SISKIYOU, BRANDON CRISS, ED VALENZUELA, MICHAEL N.
15 KOBSEFF, NANCY OGREN, RAY A. HAUPT and EDWARD KIERNAN did not consider
16 reasonable alternatives to de facto water eradication and the creation of water scarcity for the
17 Hmong people of Siskiyou County in adopting Ordinance No. 21-08. Instead, Plaintiffs are
18 informed and believe and thereupon allege that Defendants instead directed Defendant
19 JEREMIAH LARUE to immediately enforce Ordinance No. 21-08 by stopping and detaining the
20 Hmong people of Siskiyou County for pretextual reasons in order to seize water and vehicles as
21 more specifically alleged herein.

22 80. The probable value of additional or substitute procedural safeguards is not
23 outweighed by Defendant COUNTY OF SISKIYOU’s stated interest in drought abatement and
24 illicit marijuana cultivation, including the function involved and the fiscal and administrative
25 burdens that the additional or substitute procedural requirement would entail. See *Memphis*
26 *Light, supra*, 436 U.S. at 17 and *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

1 81. The deprivation of Plaintiffs’ access to water, a protectable property interest, was
2 by means that were arbitrary and capricious. *Wedges/Ledges of Cal. v. City of Phoenix*, 24 F.3d
3 56, 62 (9th Cir.1994).

4 **Ordinance Nos. 20-13, 21-07, and 21-08 are Overboard**

5 82. A law is overbroad if it “does not aim specifically at evils within the allowable
6 area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary
7 circumstances constitute an exercise of [a fundamental right]” *Thornhill v. Alabama*, 310
8 U.S. 88, 97 (1940) (freedom of speech); *see also Clark v. City of Los Angeles*, 650 F.2d 1033,
9 1039 (9th Cir.1981) (same). The Supreme Court has required that the overbreadth “not only be
10 real, but substantial as well, judged in relation to the statute’s plainly legitimate sweep.”
11 *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

12 83. By not considering other less intrusive and effective means to abate drought
13 conditions and/or illicit marijuana cultivation, Ordinance Nos. 20-13, 21-07, and 21-08 are
14 overbroad and substantially overburden the Hmong people of Siskiyou County in obtaining
15 potable water, including the Plaintiffs. This burden outweighs Defendants’ interests in drought
16 control and drug eradication.

17 **Ordinance No. 21-08 and Unnumbered Resolution Violate the Equal Protection Clause of**
18 **the Fourteenth Amendment to the United States Constitution as a Result of Intentionally**
19 **Treating the Hmong People of Siskiyou County as a Suspect Class**

20 84. To state an equal protection claim, Plaintiffs must prove they were “intentionally
21 treated differently from others similarly situated and that there is no rational basis for the
22 difference in treatment.” *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). To
23 determine whether a rational basis exists for the Defendants, and each of them, the intent of the
24 Defendants in establishing the method of enforcement of Ordinance No. 21-08 must be weighed
25 against the effect of the policy on its “water users.” There can be no rational basis for state action
26 “that is malicious, irrational, or plainly arbitrary.” *Squaw Valley Development Co. v. Goldberg*,
27 375 F.3d 936, 944 (9th Cir.2004), *overruled on other grounds by Lingle v. Chevron U.S.A., Inc.*,
28 544 U.S. 528 (2005).

1 85. Remarks by officials with Defendant COUNTY OF SISKIYOU as alleged herein
2 (Defendant JEREMIAH LARUE and former Siskiyou County Sheriff Jon Lopey [“This is war”])
3 reflect an animus toward the Hmong people of Siskiyou County. The arbitrary nature of
4 prohibiting all vehicles with 100 gallons of water or more on county roads identified in the
5 unnumbered Resolution (Exhibit D hereto) that has a disparate impact on the Hmong people of
6 Siskiyou County and Plaintiffs are informed and believe that these types of remarks for public
7 consumption are and were designed to vilify all Hmong people of Siskiyou County regardless of
8 their criminal conduct or lack thereof.

9 86. Plaintiffs are informed and believe and thereupon allege that Defendants
10 COUNTY OF SISKIYOU, BRANDON CRISS, ED VALENZUELA, MICHAEL N.
11 KOBSEFF, NANCY OGREN, RAY A. HAUPT and EDWARD KIERNAN intentionally
12 concealed an unconstitutional policy and practice implemented through Ordinance Nos. 20-13,
13 21-07 and 21-08 and the unnamed Resolution (Exhibits A-D hereto) in order to avoid public
14 comment and scrutiny. Plaintiffs are informed and believe and thereupon allege that said
15 Defendants targeted the Hmong people of Siskiyou County residing in the Mount Shasta Vista
16 Subdivision of Siskiyou County because of the five-plus year campaign by Defendant COUNTY
17 OF SISKIYOU to make them a suspect class of persons regardless of their conduct by
18 associating them with the illicit marijuana industry.

19 87. By justifying prevention of water trucks on the roads identified in the unnumbered
20 Resolution (Exhibit D hereto), moreover, on the goal to deny access to water to the growers and
21 “those people, not just the growers,” identified by Defendant JEREMIAH LARUE in his public
22 statements the day Ordinance Nos. 21-07 and 21-08 were considered on May 4, 2021,
23 Defendants, and each of them, made the Hmong people a suspect class as a whole regardless of
24 their criminality or lack thereof.

25 88. The Supreme Court has noted that “an invidious discriminatory purpose may
26 often be inferred from the totality of the relevant facts, including the fact, if it be true, that the
27 law bears more heavily on one race [or national origin] than another. It is also not infrequently
28 true that the discriminatory impact . . . may for all practical purposes demonstrate

1 unconstitutionality because in various circumstances the discrimination is very difficult to
2 explain on nonracial grounds.” *Washington v. Davis*, 426 U.S. 229, 242 (1976). A classification
3 that is ostensibly neutral but is an obvious pretext for racial discrimination or for discrimination
4 on some other forbidden basis is subject to heightened scrutiny and ordinarily invalidation. *See*,
5 *e.g.*, *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Guinn v. United States*, 238 U.S. 347 (1915);
6 *Lane v. Wilson*, 307 U.S. 268 (1939); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

7 89. Regardless of the intent of the Defendants, and each of them, Ordinance Nos. 20-
8 13, 21-07 and 21-08 and the Unnumbered Resolution (Exhibits A-D hereto) have disparate
9 impacts on the Hmong People of Siskiyou County.

10 **A Case in Controversy Exists Warranting Declaratory and Injunctive Relief**

11 90. Defendant COUNTY OF SISKIYOU’s Ordinance Nos. 20-13, 21-07 and 21-08
12 and Unnumbered Resolution and its enforcement methods impacting the Plaintiffs and the
13 Hmong people of Siskiyou County in general present a concrete case in controversy. Plaintiffs
14 lack an adequate remedy at law afforded to them in state or federal courts due to the substantial
15 continuing, present adverse effects of these enforcement efforts on their access to water in
16 Siskiyou County.

17 91. The past wrongs suffered by Plaintiffs as alleged herein are evidence that there is
18 a real and immediate threat of repeated injury and Defendants continue to enforce Ordinance
19 Nos. 20-13, 21-07 and 21-08 and the Unnumbered Resolution in the manner Defendants have in
20 the past.

21 WHEREFORE, Plaintiffs pray for relief as set forth herein.

22 **SECOND CAUSE OF ACTION**

23 **(Claims for Monetary Damages for Violations of Due Process and Equal Protection Clauses**
24 **of the Fourteenth Amendment to United States Constitution Arising Out of an**
25 **Unconstitutional Policy and Practice Pursuant to 42 U.S.C. § 1983 – Against All**
26 **Defendants)**

27 92. Plaintiffs reallege and incorporate herein by reference each of the allegations
28 contained in the preceding paragraphs of this Complaint.

1 93. Plaintiffs, and each of them, have had their rights to equal protection of the laws
2 and their rights to not be deprived of liberty and property without due process of law violated in
3 contravention of the rights guaranteed by the Fourteenth Amendment to the United States
4 Constitution. Such violations were committed by Defendants who were acting under the color of
5 state law.

6 94. There is a direct causal link between the conduct of the Defendants, and each of
7 them, and the constitutional deprivations alleged herein. Plaintiffs, and each of them, have been
8 damaged by the unconstitutional conduct of the Defendants, and each of them.

9 95. The violations of the Plaintiffs' Fourteenth Amendment rights for being targeted
10 for enforcement of Ordinance Nos. 20-13, 21-07 and 21-08 and their unnumbered Resolution
11 were carried out by individual members of the Board of Supervisors and agents of Defendant
12 COUNTY OF SISKIYOU as alleged herein. These constitutional violations were the product of
13 an unconstitutional policy of Defendant COUNTY OF SISKIYOU. The individually named
14 Defendants above the rank of deputy sheriff put into place these policies with knowledge that the
15 Hmong people would be the target of enforcement since water interdiction efforts were confined
16 to geographic locations where the Hmong people predominantly reside. As such, these
17 "supervisor" individual defendants personally participated in the deprivation of constitutional
18 rights or knew of the violations and failed to act to prevent them. *See Taylor v. List*, 880 F.2d
19 1040, 1045 (9th Cir.1989).

20 96. During the Lava Fire, Plaintiffs' Fourteenth Amendment rights to equal protection
21 of the laws were also violated by CAL FIRE and its agents, who failed to engage in active
22 firefighting efforts in the Shasta Vista subdivision, and passively let fires burn through the
23 subdivision, after residents of the subdivision were ordered to cease their own firefighting efforts
24 and evacuate. CAL FIRE and its agents engaged in active firefighting efforts in other areas
25 threatened by the Lava Fire that were not populated with a significant number of Hmong
26 residents.

27 97. As a direct and proximate result of Defendants' conduct in violation of Plaintiffs'
28 Fourteenth Amendment rights as set forth above, Plaintiffs have suffered, and continue to be

1 deprived of their access to water, their property and they suffer physical and emotional distress,
2 and lost income.

3 98. Defendants' actions and inactions are motivated by evil motive and intent and are
4 committed with reckless and callous indifference to Plaintiffs' federally protected rights.

5 WHEREFORE, Plaintiffs pray for relief as set forth herein.

6 **THIRD CAUSE OF ACTION**

7 **(Claims for Monetary Damages for Violations of Fourth and Fourteenth Amendments to**
8 **United States Constitution Arising Out of an Unconstitutional Policy and Practice**
9 **Pursuant to 42 U.S.C. § 1983 — Against All Defendants)**

10 99. Plaintiffs reallege and incorporate herein by reference each of the allegations
11 contained in the preceding paragraphs of this Complaint.

12 100. The Fourth Amendment to the United States Constitution seeks to secure “the
13 privacies of life” against “arbitrary power.” *Carpenter v. U.S.*, 138 S.Ct. 2206, 2214, 201
14 L.Ed.2d 507 (2018). A central aim of the Framers of the Fourth Amendment was “to place
15 obstacles in the way of a too permeating police surveillance.” *United States v. Di Re*, 332 U.S.
16 581, 595 (1948).

17 101. The Fourth Amendment to the United States Constitution seeks to secure “the
18 privacies of life” against “arbitrary power.” *Carpenter v. U.S.*, 138 S.Ct. 2206, 2214, 201
19 L.Ed.2d 507 (2018). A central aim of the Framers of the Fourth Amendment was “to place
20 obstacles in the way of a too permeating police surveillance.” *United States v. Di Re*, 332 U.S.
21 581, 595 (1948).

22 102. The violations of the Plaintiffs' Fourth and Fourteenth Amendment rights for
23 being targeted for enforcement of Ordinance Nos. 21-07 and 21-08 and the Unnumbered
24 Resolution were carried out by individual members of the Siskiyou Sheriff's Department as
25 alleged herein. The violations of the Plaintiffs' Fourteenth Amendment rights by not providing
26 Hmong residents with firefighting and other emergency services during the Lava Fire, while
27 providing such services to other, non-Hmong, communities, were carried out by agents of CAL
28 FIRE as alleged here. These constitutional violations were the product of unconstitutional
policies of Defendants COUNTY OF SISKIYOU and CAL FIRE. The individually named

1 Defendants above the rank of deputy sheriff put into place these policies with knowledge that the
2 Hmong people would be the target of enforcement since water interdiction efforts were confined
3 to geographic locations where the Hmong people predominantly reside. As such, these
4 “supervisor” individual defendants personally participated in the deprivation of constitutional
5 rights or knew of the violations and failed to act to prevent them. See Taylor v. List, 880 F.2d
6 1040, 1045 (9th Cir.1989).

7 103. There is a direct causal link between the conduct of the Defendants, and each of
8 them, and the constitutional deprivations alleged herein. Plaintiffs, and each of them, have been
9 damaged by the unconstitutional conduct of the Defendants, and each of them.

10 104. As a direct and proximate result of Defendants’ conduct in violation of Plaintiffs’
11 Fourteenth Amendment rights as set forth above, Plaintiffs have suffered, and continue to be
12 deprived of their access to water and their property, and they suffered and continue to suffer
13 physical and emotional distress, and lost income.

14 WHEREFORE, Plaintiffs pray for relief as set forth herein.

15 **PRAYER FOR RELIEF**

16 The conduct previously alleged, unless and until enjoined by order of this Court, will
17 cause great and irreparable injury to Plaintiffs. Further, a judicial declaration is necessary and
18 appropriate at this time so that all parties may know their respective rights and act accordingly.

19 WHEREFORE, Plaintiffs pray for judgment as follows:

20 1. A declaration that Defendants’ actions, described herein, violate both the due
21 process clause and equal protection clause of the Fourteenth Amendment to the United States
22 Constitution;

23 2. A declaration that Ordinance No. 21-07 (Exhibit A hereto), Ordinance No. 21-08
24 (Exhibit B hereto) and the improperly conjoined unnumbered Resolution (Exhibit D hereto) are
25 void as being in violation of the “formality” requirements required by Government Code §§
26 25120—25124;

27 3. A declaration that Ordinance Nos. 20-13, 21-07 and 21-08 are overbroad;
28

1 4. A declaration that Ordinance Nos. 20-13, 21-07 and 21-08 discriminate against
2 the Hmong people of Siskiyou County;

3 5. An order enjoining all Defendants and their employees, agents, and any and all
4 persons acting in concert with them from further violation of Plaintiffs' civil rights under the
5 Fourteenth Amendment to the United States Constitution;

6 6. An order enjoining all Defendants and their employees, agents, and any and all
7 persons acting in concert with them from further violation of Plaintiffs' civil rights under the
8 Fourth Amendment to the United States Constitution;

9 7. An order awarding actual damages in an amount to be proven at trial for
10 violations of federally protected rights that have been clearly established;

11 8. An order awarding punitive damages in an amount to be proven at trial for
12 violations of federally protected rights that have been clearly established;

13 9. An order awarding Plaintiffs' reasonable attorneys' fees, litigation expenses and
14 costs pursuant to 42 U.S.C. § 1988 and any other applicable law;

15 10. An order awarding such other and further relief as the Court deems just and
16 proper.

17
18 Dated: July 15, 2021

19 Respectfully submitted,

20 /s/ Allison B. Margolin

21 Attorney for Plaintiffs
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