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7 THE CITY OF OAKLAND

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**

10 THE CITY OF OAKLAND, a municipal
11 corporation,
12 Plaintiff,
13 v.
14 EAST BAY MUNICIPAL UTILITY
DISTRICT, and DOES 1 through 20,
15 inclusive,
16 Defendants.

Case No. RG 07325396

**COMPLAINT FOR DAMAGES, PUBLIC
NUISANCE, PREMISES LIABILITY,
VIOLATION OF PUBLIC RECORDS ACT
AND INJUNCTIVE RELIEF**
(Unlimited Civil Case)

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19 Plaintiff, the City of Oakland, alleges against Defendants, and each of them, as
20 follows:

- 21 1. Plaintiff, the City of Oakland, is a municipal corporation and a chartered city
22 organized, and existing under the laws of the State of California.
23 2. Defendant, East Bay Municipal Utility District, is a public water utility with its
24 principal offices located in Oakland, California.

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2 3. Defendants DOES 1 through 20 are sued as fictitious names, their names
3 and capacities being unknown to plaintiff. When their true names and capacities are
4 ascertained, plaintiff will amend this complaint.

5 4. Whenever reference is made to an act performed by defendant East Bay
6 Municipal Utility District, such allegations indicate defendant, its agents, managers,
7 representatives, employees or DOES One through Twenty inclusive, who performed or
8 authorized such acts while engaged in the operation, management, direction or control of
9 the defendant's affairs, acting within the scope of their duties.

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11 **FACTUAL ALLEGATIONS**

12 5. Plaintiff incorporates by reference Paragraphs 1 through 4 as though fully set
13 forth herein.

14 6. Plaintiff has complied with all claim filing requirement of the California
15 Government Code by submitting a claim to Defendant East Bay Municipal Utility District on
16 March 22, 2007. The claim was rejected in its entirety by East Bay Municipal Utility District
17 on May 4, 2007.

18 7. Defendant East Bay Municipal Utility District (hereinafter "EBMUD") owns,
19 operates and maintains potable water delivery services throughout Alameda County,
20 including Oakland, California. As part of its water delivery system, EBMUD owns,
21 operates and is responsible for maintaining a water reservoir known as the Central
22 Reservoir located at or near E. 29th Street and Interstate 580 (The MacArthur Freeway) in
23 Oakland, CA.

24 8. Plaintiff, City of Oakland, has a duty to maintain public works of
25 improvement within the City of Oakland, including all public streets and thoroughfares.
26 Public works of improvement within the City of Oakland include E. 29th Street and McKillop

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2 Road. E. 29th Street and McKillop Road are immediately adjacent to and abut the Central
3 Reservoir that EBMUD owns, operates and is responsible to maintain.

4 9. The Central Reservoir was originally built by the People's Water Company in
5 1910. In the early 1950's, soil and homes in the 3000 and 3100 block of McKillop Road
6 began to slide and the homes were eventually torn down. No homes were rebuilt in this
7 slide zone immediately adjacent to the Central Reservoir. As a result of the slide, the
8 Central reservoir was drained, inspected, patched and cleaned in the winter of 1954/55.
9 Plaintiff believes and thereupon alleges that water leaking and draining from the Central
10 Reservoir caused the homes on McKillop Road to slide.

11 10. The last and only substantial "modernization" of the reservoir occurred in the
12 late 1950's with construction continuing into at least 1961. At that time, the Central
13 Reservoir was relined and a roof erected to protect the water from evaporation. Despite
14 numerous inspections of Central Reservoir showing cracks and other failures of the
15 protective lining and other structures intended to stop or deter water leakage, there has
16 been no consistent and lasting repair or maintenance of Central Reservoir since at least
17 1961.

18 11. Beginning in at least 2001 and continuing to the present, cracks in the lining
19 of Central Reservoir were found by divers conducting inspections of the reservoir. The
20 cracks were not repaired by EBMUD and these cracks as well as new cracks were noted
21 as late as July 2006 by divers performing inspections of Central Reservoir. Plaintiff is
22 informed and believes and thereupon alleges that EBMUD continues to fail to adequately
23 repair leaks and cracks in Central Reservoir to prevent leakage and seepage of water from
24 Central Reservoir to the detriment of the City of Oakland and homes on McKillop Road
25 and E. 29th Street.

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12. Cracks and other failures in the panelcraft lining, drainage system and related structures of Central Reservoir caused and continue to cause water to escape and drain from Central Reservoir. Commencing in at least April 2006 and continuing to the present time, the water which escaped and drained and continues to escape and drain from Central Reservoir caused the erosion, slumping and failure of adjacent soils and related support structures for homes in the 2800, 2900 and 3000 block of McKillop Road and on E. 29th Street in Oakland, CA. The water that escaped and drained and continues to escape and drain from Central Reservoir also endangered and undermined and continues to endanger and undermine the soils and support structures for public works of improvement maintained by the City of Oakland known as McKillop Road and E. 29th Street.

13. The water that leaked and drained from Central Reservoir constitutes a public nuisance. As a result of the nuisance water leaking and draining unchecked from Central Reservoir, the City of Oakland has been forced to undertake repairs and shoring of its public works of improvement and will continue to repair and shore McKillop Road and E. 29th Street and their supporting structures and soils. This work must be performed to ensure that McKillop Road and E. 29th Street will remain passable and safe for persons traveling thereon and for the ingress and egress of emergency vehicles to locations on those streets. The cost of repairs and shoring to McKillop Road and E. 29th Street due to damage from nuisance water from EBMUD's Central Reservoir, and the continuous leakage therefrom, is nearly \$3 million.

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FIRST CAUSE OF ACTION
Against EBMUD, and DOES 1 through 20
MAINTENANCE OF A PUBLIC NUISANCE

14. Plaintiff incorporates by reference Paragraphs 1 through 13 as though fully set forth herein.

15. Plaintiff brings this action pursuant to California Code of Civil Procedure §731 to abate a public nuisance. This action is also brought under Oakland Municipal Code Chapter 15.08.

16. Defendant's maintenance of the Central Reservoir, or lack thereof, constitutes a continuing public nuisance. (CA. Civ. Code §§ 3479, 3480.) That is, defendant's failure to maintain and repair Central Reservoir adversely affects not only the City of Oakland, which must maintain public works of improvement adjacent to Central Reservoir, but also the surrounding community. The continuous and unabated water seepage and leakage from Central Reservoir caused and continues to cause the undermining, movement and destruction of homes and related structures on E. 29th Street and the 2800, 2900 and 3000 blocks of McKillop Road as well as the soil and support structures for public works of improvement known as McKillop Road and E. 29th Street. The condition of the Central Reservoir is injurious to health, offensive to the senses, and unlawfully undermines, degrades and obstructs the free use of the public streets as well as neighboring properties.

17. Defendant's maintenance of the Central Reservoir in the condition described in this complaint is a continuing public nuisance as described in Oakland Municipal Code including but not limited to §§ 15.08.340B, C, and D and 15.08.170 and California Civil Code §§ 3479 and 3480 and is a nuisance per se.

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2 18. Defendant was notified of the cracks and leakage from its reservoir as early
3 as 2001 and possibly earlier. The Central Reservoir previously leaked and caused
4 damage to homes on McKillop Road in the early 1950's as well. Despite this knowledge,
5 defendant has failed to abate these hazardous conditions with the result being the public
6 nuisance that exists today.

7 19. Unless stopped by this Court, EBMUD will continue to maintain the Central
8 Reservoir in the above-described substandard and dangerous condition and continue to
9 cause irreparable injury to the public's health, safety and welfare.

10 20. Plaintiff has no adequate remedy at law.

11 21. Plaintiff is informed and believes that defendant will not correct these
12 violations or abate the nuisance within a reasonable period of time. The City of Oakland is
13 in the process of repairing and shoring its public works of improvement on McKillop Road
14 and E. 29th Street in Oakland, CA at a cost of nearly \$3 million. The cost to repair and
15 stabilize homes and related structures on McKillop Road and E. 29th Street is unknown but
16 substantial and in excess of the jurisdiction of this court.

17 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

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19 **SECOND CAUSE OF ACTION**
20 **Against EBMUD and DOES 1 through 20**
21 **PREMISES LIABILITY**

22 22. Plaintiff incorporates by reference Paragraphs 1 through 21 as though fully
23 set forth herein.

24 23. Defendant has a duty to maintain its water storage facilities in a safe
25 condition, free of defects, cracks and leaks through which water can seep and drain onto
26 nearby properties causing damage, slippage and destruction.

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2 28. EBMUD has failed and continues to fail to provide all of the documents
3 requested by City of Oakland pursuant to its Public Records Act Request. In some
4 instances EBMUD has failed to provide the documents requested in a particular category.
5 In other instances, EBMUD has redacted pertinent text from documents claiming privilege
6 or "National Security" as the basis for redaction.

7 29. In withholding documents in a particular category or redacting documents
8 based upon unsupported claims of privilege or "National Security", defendant has violated
9 the provisions of California Government Code §6250, et seq. Plaintiff is informed and
10 believes that information within the public documents being withheld by EBMUD
11 demonstrates ongoing knowledge of leaks from Central Reservoir and expedited efforts by
12 EBMUD to repair the offending leaks prior to the time of the filing of this action.

13 30. No statutory or legal authority exists that supports EBMUD's failure to
14 produce the public documents requested by the City of Oakland or the redactions made by
15 EBMUD. The actions of EBMUD are arbitrary, capricious, wholly lacking in evidentiary
16 support and fail to conform to state law.

17 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

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19 **FOURTH CAUSE OF ACTION**
20 **Against EBMUD and DOES 1 through 20**
21 **INJUNCTIVE RELIEF**

22 31. Plaintiff incorporates by reference Paragraphs 1 through 30 as though fully
23 set forth herein.

24 32. EBMUD's wrongful conduct, unless and until enjoined by this court, has
25 caused and continues to cause irreparable harm and injury to plaintiff and the residents of
26 McKillop Road and E. 29th Street in Oakland, CA. McKillop Road and E. 29th Street

1 continue to be undermined and damaged by water seeping and leaking from Central
2 Reservoir. Homes and associated residential buildings on McKillop Road and E. 29th
3 Street have been undermined, damaged and destroyed by creeping soils caused by
4 seepage and leaks from Central Reservoir.
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6 33. Plaintiff has no adequate remedy at law for the injuries suffered as a result of
7 the wrongful conduct of EBMUD and its failure to maintain Central Reservoir, which has
8 become a public nuisance in Oakland, CA. This court must compel EBMUD to repair and
9 maintain Central Reservoir, pay for repair of damage to McKillop Road and E. 29th Street
10 and repair the slide area to ensure the safety of residences and associated structures on
11 McKillop Road and E. 29th Street in Oakland, CA.
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13 WHEREFORE, plaintiff prays for relief as hereinafter set forth.
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15 **PRAYER FOR RELIEF**

16 WHEREFORE plaintiff prays for judgment as follows:
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- 18 1. For a temporary restraining order, preliminary and permanent injunctions
19 compelling EBMUD and its agents:
 - 20 a. To replace or comprehensively repair Central Reservoir to ensure that
21 seepage and leaks cease;
 - 22 b. To pay for the cost of repair of McKillop Road and E. 29th Street in
23 Oakland, CA which is nearly \$3 million;
 - 24 c. To repair the area of the slide caused by intrusion of EBMUD waters from
25 Central Reservoir to ensure the safety of residences abutting the slide
26 area;

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2. For compliance with the provisions of the Public Records Act and production of materials and information wrongfully withheld from the City of Oakland;
3. That EBMUD abate its public nuisance and repair Central Reservoir such that leakage and seepage that is detrimental to the public's health, safety and welfare ceases;
4. For the costs of suit herein;
5. For such other and further relief as the court deems just and proper.

Dated: May 10, 2007

JOHN A. RUSSO, City Attorney
RANDOLPH W. HALL, Chief Assistant City Attorney
JAMES F. HODGKINS, Supervising Trial Attorney

By: _____
Attorneys for Plaintiff
CITY OF OAKLAND