1 2	David R. Denton (SBN 204618) ddenton@dt-law.com Media Benjamin (SBN 236953)	
3	mbenjamin@dt-law.com	
4	DENENBERG TUFFLEY PLLC 1900 Avenue of the Stars, Suite 300	
5	Los Angeles, California 90067	E-FILED
	Phone: 310.356.4683 Fax: 310.284.9089	10/14/2021 1:12 PM
6	Daniel C. Cederborg (SBN 124260)	Superior Court of California County of Fresno
7	dcederborg@fresnocountyca.gov Deputy County Counsel	By: I. Herrera, Deputy
8	OFFICE OF THE FRESNO COUNTY COUN 2220 Tulare Street, Room 500	SEL
9	Fresno, California 93721	
10	Phone: 559.600.3479 Fax: 559.600.3480	
11	Attorneys for Plaintiffs	
12		
13	SUPERIOR COURT OF T	THE STATE OF CALIFORNIA
14	FOR THE COUNTY OF FRESNO	
15		
16	COUNTY OF FRESNO; LEXINGTON	Case No.: 21CECG03058
17	INSURANCE COMPANY, as subrogee of the County of Fresno,	COMPLAINT FOR DAMAGES:
18	Plaintiffs	1. INVERSE CONDEMNATION
19	VS.	2. DANGEROUS CONDITION 3. NUISANCE
20	CITY OF FRESNO, and DOES 1-50, inclusive,	
21	Defendants	
22	Defendants.	
23	Plaintiffs COUNTY OF FRESNO ("County"), and LEXINGTON INSURANCE COMPANY,	
24	as subrogee of the County of Fresno ("Lexington"), allege as follow:	
25	FIRST CAUSE OF ACTION	
26	(For Inverse Condemnation)	
27	1. At all times herein mentioned, Plaintiff Lexington is a corporation duly organized and	
28	existing under and by virtue of the laws of the United States. Lexington was, and is now, a surplus	
1	I .	

lines insurer that provides insurance in California on a non-admitted basis. Lexington insured the County of Fresno's Brix-Mercer building located at 1221 Fulton Avenue, in Fresno, California, including its contents therein.

- 2. At all times herein mentioned, Plaintiff County was, and is now, a public entity duly organized and existing under and by virtue of the laws of the state of California. At all times herein mentioned, the County was the owner and/or occupier of those certain premises known as the Brix-Mercer building located at 1221 Fulton Avenue, in Fresno, California, which in part housed the County of Fresno's Public Health Department ("the subject premises").
- 3. At all times herein mentioned, defendant the City of Fresno ("the City") was, and is now, a public entity duly organized and existing under and by virtue of the laws of the state of California.
- 4. Plaintiffs are unaware of the true names and capacities, whether individual, corporate, associate or otherwise of defendants sued herein as Does 1 through 50, inclusive, and, therefore, sues said defendants by such fictitious names and will ask leave of Court to amend this Complaint to show their true names and capacities when the same have been ascertained.
- 5. At all times herein mentioned, defendants, and each of them, were the agents, employees, joint venturers, joint tortfeasors and partners of each of their co-defendants and, in doing the things herein described, were acting within the course and scope of their authority as such agents, employees, joint venturers, joint tortfeasors and partners.
- 6. At all times herein mentioned, Lexington, as part of a program of insurance, insured the County under a written policy of insurance by the terms of which policy Lexington was obligated to indemnify its insured for losses sustained at the subject premises.
- 7. At all times herein mentioned, defendants, and each of them, owned, controlled and maintained certain water lines / water mains ("the subject water main") located adjacent to the subject premises. The subject water main contained an inherent risk to substantially cause damage to adjacent property if it failed to function as designed, constructed, and/or maintained. The subject water main provided water to the public and /or the City of Fresno, and was a public improvement and/or part of a

public improvement owned, controlled, and/or maintained by the City of Fresno, and does 1-50, to perform as a water supply.

- 8. On or about October 17, 2018, the subject water main that was supplying water to the public of the City of Fresno, burst. The area of the main that burst was adjacent to the subject premises. The subject water main burst was substantially caused by, and as a result of, the inherent risks with the subject water main and associated water distribution system's design, construction, and/or maintenance in that upon failing the subject water main can and will substantially cause damage to adjacent property, e.g. such as failing due to age, type of construction used, "wait until breaks" maintenance, system design, and/ or other similar factors with such water system design, construction and maintenance.
- 9. On or about October 17, 2018, as a result of the subject water main bursting, water from the subject water main then entered onto, and into, the subject premises, causing damages. The foregoing occurrence directly and legally resulted in the "taking" of the subject premises and was substantially caused by, and as a result of, the necessary or probable result of the water main's construction, design, and maintenance and / or was the immediate, direct and necessary effect that when a water main bursts, adjacent property will be damaged.
- 10. The "taking" of the subject premises, as aforesaid, deprived the County the use and enjoyment of its property, and caused Lexington to issue payments as per the policy of insurance with the County. As a direct result of the "taking" of the subject premises, Plaintiffs sustained damages for which neither received reasonable compensation, pursuant to the California Constitution, Article I, §19.
- 11. As a direct and legal result of the "taking" of the subject premises, Plaintiffs were damaged in an amount in excess of this Court's jurisdictional minimum.
- 12. Plaintiffs received no compensation from defendants, and each of them, for the damages which resulted from the water loss caused by the subject water main owned, controlled and maintained by defendants, and each of them.

- 13. Plaintiffs incurred and will incur attorney's fees recoverable in this action under the provisions of Code of Civil Procedure section 1036.
- 14. Pursuant to its policy of insurance with the County, Lexington made payments to its insured in excess of this Court's jurisdictional minimum and is subrogated to all rights of its insured / the County to the extent of such payments and is entitled to recover the amount of all such payments, together with attorney's fees, expert fees and costs from defendants, and each of them. These rights are involved because the County suffered a loss for which the Defendant is liable; the insuring entities have provided compensation for the loss via their policies of insurance; the County's causes of action that exist against Defendant, to the extent of payments made, are now shared with the insurer Plaintiff; and the insurer Plaintiff suffered damages chargeable to the Defendant and the law requires it to be so charged.

SECOND CAUSE OF ACTION

(For Dangerous Condition of Public Property)

- 15. Plaintiffs hereby incorporate by reference paragraphs 1 through 14, inclusive, of the First Cause of Action as though fully set forth at length herein.
- 16. On or about November 14, 2018 Plaintiffs timely filed a claim for damages ("the claim") with the City.
 - 17. On December 3, 2018, the City acknowledged receipt of the claim.
 - 18. The City did not timely deny the claim pursuant to Government Code section 912.4.
- 19. On or about October 17, 2018, the subject water main /water distribution system owned, controlled and operated by defendants, and each of them, was in a dangerous condition making the subject water main highly susceptible to bursting and causing water damage to adjacent properties.
- 20. The failure of defendants, and each of them, to ensure the subject water main would not fail created a reasonably foreseeable risk of harm to the subject premises.
- 21. The dangerous condition was directly attributable to the negligent and/or wrongful acts of defendants, and each of them, in failing to properly maintain or repair the subject water main.

- 22. On or about October 17, 2018, as a direct and legal result of the failure of defendants, and each of them, to properly maintain or repair the subject water main, the subject water main burst causing damage to the subject premises. Defendants, and each of them, had actual, constructive, or otherwise reasonable notice that such a failure would, or likely would, occur within its water system.
- 23. As a direct and legal result of said conduct, Plaintiffs sustained substantial damage to the subject premises.
- 24. As a direct and legal result of said conduct, Plaintiffs were damaged in an amount in excess of this Court's jurisdictional minimum.

THIRD CAUSE OF ACTION

(For Nuisance Against All Defendants)

- 25. Plaintiffs hereby incorporate by reference the First and Second Causes of Action as though fully set forth at length herein.
- 26. On or about October 17, 2018 defendants, and each of them, owned, controlled, and maintained the subject water main in such a dangerous manner as to constitute a nuisance as defined by applicable <u>Civil Code</u> sections 3479 through 3503 in that they unreasonably created a water flood event that resulted in water spreading onto and into the subject premises.
- 27. As a direct and legal result of the fire, Plaintiffs were damaged in an amount in excess of this Court's jurisdictional minimum.

WHEREFORE, Plaintiffs prays for judgment against defendants, and each of them, as follows:

1. For damages for Lexington in at least the amount of \$10,881,853.69 as according to proof at trial, subject to any further claim payments; and for damages for the County for at least \$25,000 as according to proof at trial, subject to the claim size increasing pending further adjustment of the County's claim;

ı	
ı	//
ı	11
ı	

///

///

1	2. For costs of suit, attorney's fees and expert fees as permitted by law; and
2	3. For such other and further relief as the Court may deem just and proper.
3	a company accompany and and propert
4	Dated: October 14, 2021 DENENBERG TUFFLEY PLLC
5	An Age
6	By: David R. Denton, Esq.
7	Media Benjamin, Esq.
8	Attorneys for Plaintiffs, LEXINGTON INSURANCE
9	
10	Dated: October 14, 2021 OFFICE OF THE FRESNO COUNTY COUNSEL
11	
12	By: /s/Daniel C. Cederborg
13	Daniel C. Cederborg, Esq. Deputy County Counsel for Plaintiff,
14 15	COUNTY OF FRESNO
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	