

1 David R. Denton (SBN 204618)
2 ddenton@dt-law.com
3 Media Benjamin (SBN 236953)
4 mbenjamin@dt-law.com
5 **DENENBERG TUFFLEY PLLC**
6 1900 Avenue of the Stars, Suite 300
7 Los Angeles, California 90067
8 Phone: 310.356.4683 Fax: 310.284.9089

9 Daniel C. Cederborg (SBN 124260)
10 dcederborg@fresnocountyca.gov
11 Deputy County Counsel
12 **OFFICE OF THE FRESNO COUNTY COUNSEL**
13 2220 Tulare Street, Room 500
14 Fresno, California 93721
15 Phone: 559.600.3479 Fax: 559.600.3480

16 Attorneys for Plaintiffs

E-FILED
10/14/2021 1:12 PM
Superior Court of California
County of Fresno
By: I. Herrera, Deputy

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF FRESNO**

19 COUNTY OF FRESNO; LEXINGTON
20 INSURANCE COMPANY, as subrogee of the
21 County of Fresno,

22 Plaintiffs

23 vs.

24 CITY OF FRESNO, and DOES 1-50, inclusive,

25 Defendants.

Case No.: [21CECG03058](#)

COMPLAINT FOR DAMAGES:

1. INVERSE CONDEMNATION
2. DANGEROUS CONDITION
3. NUISANCE

26 Plaintiffs COUNTY OF FRESNO (“County”), and LEXINGTON INSURANCE COMPANY,
27 as subrogee of the County of Fresno (“Lexington”), allege as follow:

FIRST CAUSE OF ACTION

(For Inverse Condemnation)

28 1. At all times herein mentioned, Plaintiff Lexington is a corporation duly organized and
existing under and by virtue of the laws of the United States. Lexington was, and is now, a surplus

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

4 2. At all times herein mentioned, Plaintiff County was, and is now, a public entity duly
5 organized and existing under and by virtue of the laws of the state of California. At all times herein
6 mentioned, the County was the owner and/or occupier of those certain premises known as the Brix-
7 Mercer building located at 1221 Fulton Avenue, in Fresno, California, which in part housed the County
8 of Fresno's Public Health Department ("the subject premises").

9 3. At all times herein mentioned, defendant the City of Fresno ("the City") was, and is
10 now, a public entity duly organized and existing under and by virtue of the laws of the state of
11 California.

12 4. Plaintiffs are unaware of the true names and capacities, whether individual, corporate,
13 associate or otherwise of defendants sued herein as Does 1 through 50, inclusive, and, therefore, sues
14 said defendants by such fictitious names and will ask leave of Court to amend this Complaint to show
15 their true names and capacities when the same have been ascertained.

16 5. At all times herein mentioned, defendants, and each of them, were the agents,
17 employees, joint venturers, joint tortfeasors and partners of each of their co-defendants and, in doing
18 the things herein described, were acting within the course and scope of their authority as such agents,
19 employees, joint venturers, joint tortfeasors and partners.

20 6. At all times herein mentioned, Lexington, as part of a program of insurance, insured the
21 County under a written policy of insurance by the terms of which policy Lexington was obligated to
22 indemnify its insured for losses sustained at the subject premises.

23 7. At all times herein mentioned, defendants, and each of them, owned, controlled and
24 maintained certain water lines / water mains ("the subject water main") located adjacent to the subject
25 premises. The subject water main contained an inherent risk to substantially cause damage to adjacent
26 property if it failed to function as designed, constructed, and/or maintained. The subject water main
27 provided water to the public and /or the City of Fresno, and was a public improvement and/or part of a
28

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

3 8. On or about October 17, 2018, the subject water main that was supplying water to the
4 public of the City of Fresno, burst. The area of the main that burst was adjacent to the subject
5 premises. The subject water main burst was substantially caused by, and as a result of, the inherent
6 risks with the subject water main and associated water distribution system's design, construction,
7 and/or maintenance in that upon failing the subject water main can and will substantially cause damage
8 to adjacent property, e.g. such as failing due to age, type of construction used, "wait until breaks"
9 maintenance, system design, and/ or other similar factors with such water system design, construction
10 and maintenance.

11 9. On or about October 17, 2018, as a result of the subject water main bursting, water from
12 the subject water main then entered onto, and into, the subject premises, causing damages. The
13 foregoing occurrence directly and legally resulted in the "taking" of the subject premises and was
14 substantially caused by, and as a result of, the necessary or probable result of the water main's
15 construction, design, and maintenance and / or was the immediate, direct and necessary effect that
16 when a water main bursts, adjacent property will be damaged.

17 10. The "taking" of the subject premises, as aforesaid, deprived the County the use and
18 enjoyment of its property, and caused Lexington to issue payments as per the policy of insurance with
19 the County. As a direct result of the "taking" of the subject premises, Plaintiffs sustained damages for
20 which neither received reasonable compensation, pursuant to the California Constitution, Article I,
21 §19.

22 11. As a direct and legal result of the "taking" of the subject premises, Plaintiffs were
23 damaged in an amount in excess of this Court's jurisdictional minimum.

24 12. Plaintiffs received no compensation from defendants, and each of them, for the damages
25 which resulted from the water loss caused by the subject water main owned, controlled and maintained
26 by defendants, and each of them.
27
28

- 1 2. For costs of suit, attorney’s fees and expert fees as permitted by law; and
2
3 3. For such other and further relief as the Court may deem just and proper.

4 Dated: October 14, 2021

DENENBERG TUFFLEY PLLC

6 By: 

7 David R. Denton, Esq.
8 Media Benjamin, Esq.
9 Attorneys for Plaintiffs,
10 LEXINGTON INSURANCE

11 Dated: October 14, 2021

**OFFICE OF THE FRESNO
COUNTY COUNSEL**

12 By: */s/ Daniel C. Cederborg*

13 Daniel C. Cederborg, Esq.
14 Deputy County Counsel for Plaintiff,
15 COUNTY OF FRESNO
16
17
18
19
20
21
22
23
24
25
26
27
28