

FILED  
TULARE COUNTY SUPERIOR COURT  
VISALIA DIVISION

AUG 03 2018

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CASE MANAGEMENT CONFERENCE

5 Attorneys for Plaintiff

Hearing Date: 12.4.18  
Time: 8:30 am  
7 Department: 7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF TULARE

BRET D. HILLMAN  
Assigned to Judicial Officer \_\_\_\_\_

10 For All Purposes

11 DAVID W. FROST,

12 Plaintiff,

13 vs.

14 JAMES GREG NUNLEY aka GREG  
15 NUNLEY, an individual; DRIVEN  
CONSTRUCTION, INC., a California  
16 corporation; GREAT VALLEY BUILDERS,  
INC., a California corporation; HIDDEN  
17 OAK DEVELOPMENT COMPANY, INC., a  
California corporation; DEL LAGO PLACE,  
18 LLC, a California limited liability company;  
CITY OF TULARE, a municipal corporation,  
19 and Does 1 through 50, inclusive,

20 Defendants.

Case No. 274926

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF FOR:

- (1) Violations of the Conflict of Interest Provisions of The Political Reform Act of 1974;
- (2) Violations of the Common Law Doctrine Against Conflicts of Interest by Public Officials;
- (3) Violation of Government Code §1090; and
- (4) Violation of the Economic Disclosure Provisions of the Political Reform Act of 1974.

21  
22  
23 Plaintiff alleges:

24 **GENERAL ALLEGATIONS**

25 1. Plaintiff David W. Frost is a retired Lieutenant with the Tulare Police Department,  
26 a resident of the City of Tulare, and a taxpayer to the City of Tulare.

27  
28 COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

1 2. Defendant James Greg Nunley (*Nunley*) is a member of the Tulare City Council,  
2 having been sworn into office on December 6, 2016.

3 3. Defendant City of Tulare (*the City*) is a municipal corporation in the State of  
4 California.

5 4. Plaintiff alleges on information and belief that the City is a necessary party to the  
6 relief requested in this action and, as such, is not adverse to plaintiff.

7 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein  
8 as Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.  
9 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

#### 10 NUNLEY RELATED DEFENDANTS

##### 11 (Allegations Regarding Piercing the Corporate Veil)

###### 12 *Driven Construction, Inc.*

13 6. Defendant Driven Construction, Inc. (*Driven Construction*), is a California corporation  
14 conducting business in the City of Tulare.

15 7. Plaintiff alleges on information and belief that at various times mentioned in this  
16 complaint Nunley was an officer, director, and the sole shareholder of Driven Construction.

17 8. At all times herein mentioned there existed a unity of interest and ownership  
18 between Nunley and Driven Construction, such that any individuality and separateness between  
19 them have ceased, and Driven Construction is in essence the alter ego of Nunley.

20 9. Adherence to the fiction of the separate existence of Driven Construction as an  
21 entity distinct from Nunley would permit an abuse of the corporate privilege, and would sanction  
22 fraud or promote injustice upon the taxpayers and citizens of the City.

###### 23 *Great Valley Builders, Inc.*

24 10. Defendant Great Valley Builders, Inc. (*Great Valley Builders*), is a California  
25 corporation conducting business in the City of Tulare.

26 11. Plaintiff alleges on information and belief that at all times mentioned in this complaint  
27 Nunley was an officer, director, and the sole shareholder of Great Valley Builders.

1           12.    At all times herein mentioned there existed a unity of interest and ownership  
2 between Nunley and Great Valley Builders, such that any individuality and separateness between  
3 them have ceased, and Great Valley Builders is in essence the alter ego of Nunley.

4           13.    Adherence to the fiction of the separate existence of Great Valley Builders as an  
5 entity distinct from Nunley would permit an abuse of the corporate privilege, and would sanction  
6 fraud or promote injustice upon the taxpayers and citizens of the City.

7           ***Hidden Oak Development, Inc.***

8           14.    Defendant Hidden Oak Development Company, Inc. (*Hidden Oak Development*),  
9 is a California corporation conducting business in the City of Tulare.

10          15.    Plaintiff alleges on information and belief that at all times mentioned in this complaint  
11 Nunley held himself out to be an officer, director, or shareholder of Hidden Oak Development.

12          16.    At all times herein mentioned there existed a unity of interest and ownership  
13 between Nunley and Hidden Oak Development, such that any individuality and separateness  
14 between them have ceased, and Hidden Oak Development is in essence the alter ego of Nunley.

15          17.    Adherence to the fiction of the separate existence of Hidden Oak Development as  
16 an entity distinct from Nunley would permit an abuse of the corporate privilege, and would  
17 sanction fraud or promote injustice upon the taxpayers and citizens of the City.

18           ***Del Lago Place, LLC***

19          18.    Defendant Del Lago Place, LLC (*Del Lago Place*), is a California limited liability  
20 company conducting business in the City of Tulare.

21          19.    Plaintiff alleges on information and belief that at all times mentioned in this complaint  
22 Nunley held himself out to be the managing member of Del Lago Place.

23          20.    At all times herein mentioned there existed a unity of interest and ownership  
24 between Nunley and Del Lago Place, such that any individuality and separateness between them  
25 have ceased, and Del Lago Place is in essence the alter ego of Nunley.

1 21. Adherence to the fiction of the separate existence of Del Lago Place as an entity  
2 distinct from Nunley would permit an abuse of the corporate privilege, and would sanction fraud  
3 or promote injustice upon the taxpayers and citizens of the City.

4 **FIRST CAUSE OF ACTION**

5 **Violation of the Conflict of Interest Provisions of The Political Reform Act:**

6 **Non-Payment of Development Impact Fees in the amount of \$336,249.00**

7 **(Nunley and Driven Construction - Oak Creek Apartments)**

8 22. Plaintiff realleges and incorporates by reference each and every allegation contained  
9 in paragraphs 1 through 21 of this complaint.

10 23. As an elected member of the Tulare City Council, Nunley is a "Public Official," as  
11 that term is defined in The Political Reform Act of 1974 (Government Code §87100, *et seq.*),<sup>1</sup> and  
12 the Regulations adopted thereunder (Reg. §18700(c)(1).)

13 24. On March 10, 2016, Nunley filed an application with the City for the issuance of a  
14 building permit for the construction of 32 residential multi-family units commonly referred to as  
15 "Oak Creek Apartments" (*the Oak Creek Project*).

16 25. At the time Nunley applied for the Oak Creek Project building permit, he represented  
17 to the City that he and his wife were the owners of the real property upon which the project was  
18 located (*the Oak Creek Property*). This representation was false, and Nunley knew the  
19 representation was false at the time it was made.

20 26. The true facts are that at all times mentioned in this complaint the Oak Creek  
21 Property was owned by Seminole 32, LLC, a California limited liability company (*Seminole 32*).

22 27. Plaintiff alleges on information and belief that Nunley has never had an ownership  
23 interest in Seminole 32, and that Nunley knew of Seminole 32's ownership of the Oak Creek  
24 Property at the time he falsely represented to the City that the property was owned by himself and  
25 his wife.

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26  
27 <sup>1</sup> All statutory references in this complaint are to the Government Code unless otherwise indicated.

1           28. Pursuant to Government Code §§66001 through 66009, and §8.56.040 of the Tulare  
2 City Ordinances, the City imposed developer impact fees relating to the 32 unit Oak Creek Project  
3 in the amount of \$336,249.00.

4           29. Pursuant to the provisions of City Ordinance §8.56.040, developer impact fees are  
5 ordinarily due and payable prior to the issuance of building permits for the construction of  
6 improvements.

7           30. Neither Nunley nor Seminole 32 paid the developer impact fees assessed against  
8 the Oak Creek Project prior to the issuance of the building permit for the project.

9           31. Under the provisions of City Ordinance §8.56.080, an applicant for a residential  
10 building permit may request that payment of developer impact fees be deferred until the date of  
11 final inspection.

12           32. Nunley requested that payment of the developer impact fees for the Oak Creek  
13 Project be deferred, and on or about June 23, 2016, Driven Construction ("Greg Nunley - Owner")  
14 and the City entered into an "Agreement for Issuance of Building Permits and Deferral of Payment  
15 of Impact Fees" (*the Oak Creek Deferral Agreement*), a copy of which is attached hereto as  
16 Exhibit 1.

17           33. At the time Driven Construction entered into the Oak Creek Deferral Agreement,  
18 Nunley represented to the City that Driven Construction was the owner of the Oak Creek Property  
19 upon which the project was to be constructed. This representation was false, and Nunley knew  
20 the representation was false at the time it was made.

21           34. At the time Driven Construction entered into the Oak Creek Deferral Agreement, it  
22 purported to grant a statutory lien to the City, encumbering the Oak Creek Property, so as to  
23 secure payment of the development impact fees.

24           35. Plaintiff alleges on information and belief that no such lien could be granted by  
25 Driven Construction, as it never owned the Oak Creek Project or the real property upon which the  
26 project is situated, and that Nunley knew of this fact at the time the Oak Creek Deferral  
27 Agreement was entered into.

1 36. At the time the Oak Creek Deferral Agreement was entered into Nunley was the  
2 Responsible Managing Officer for Driven Construction (General Building Contractor License no.  
3 887984).

4 37. On June 28, 2016, the Oak Creek Deferral Agreement, Exhibit 1 hereto, was  
5 recorded with the Tulare County Recorder, as instrument no. 2016-0037800.

6 38. On June 30, 2016 (two days after the Oak Creek Deferral Agreement was recorded),  
7 Nunley disassociated himself as the Responsible Managing Officer of Driven Construction with  
8 the California State Contractors License Board.

9 39. Pursuant to the terms of the Oak Creek Deferral Agreement, Driven Construction  
10 was allowed to defer payment of \$336,249.00 in development impact fees due the City until the  
11 date of final inspection or the date of a certification of occupancy was issued for the project.

12 40. On July 13, 2016, the City issued building permit no. BLD-16-06840 for the  
13 construction of the 32 residential multi-family units in the Oak Creek Project, a copy of which is  
14 attached hereto as Exhibit 2. Nunley and his wife were named as the owners of the project, and  
15 Driven Construction was named as the contractor on the project.

16 41. On December 6, 2016, Nunley was sworn in as a member of the Tulare City Council.

17 42. On September 11, 2017, Seminole 32 caused to be recorded Parcel Map 5202,  
18 dividing the Oak Creek Property into three separate parcels of land. The 32 unit Oak Creek  
19 Project is located upon Parcel 1 of Parcel Map 5202, a copy of which is attached hereto as Exhibit  
20 3.

21 43. Four days after the recording of this parcel map, on September 15, 2017, Seminole  
22 32 conveyed Parcels 2 and 3 to Great Valley Builders, another Nunley entity. A Grant Deed  
23 evidencing this conveyance was recorded as Tulare County Recorder Instrument no. 2017-  
24 0053551, a copy of which is attached hereto as Exhibit 4.

25 44. On October 10, 2017, City inspectors certified 28 of the 32 multi-family units as "OK  
26 to occupy." Copies of each inspection card evidencing the units as finalized and fit for occupancy  
27 are attached hereto as Exhibit 5.

1 45. Each of the inspection cards reflects that Nunley is the owner of the project.

2 46. Plaintiff alleges on information and belief that the multi-family units have been  
3 occupied from and after October of 2017.

4 47. Plaintiff is informed and believes that the City has attempted to secure payment of  
5 the deferred development impact fees from Nunley and/or his related entities, and that Nunley has  
6 used his official position to influence, or attempt to influence, the City's decision to seek payment  
7 of these fees.

8 48. Nunley has a direct financial interest in the City's decision to collect the deferred  
9 development impact fees.

10 49. It is reasonably foreseeable that the City's decision will have a material financial  
11 effect on Nunley, distinguishable from its effect on the general public.

12 50. Plaintiff alleges on information and belief that as a result of multiple, intentional  
13 violations of the Political Reform Act, Nunley has received an economic benefit totaling  
14 \$336,249.00.

15 51. Plaintiff desires a judicial determination that Nunley has impermissibly used his  
16 official position to influence, or attempt to influence, a governmental decision in which he knows  
17 or has reason to know he has a financial interest, in violation of §87100. Plaintiff further seeks  
18 an order that Nunley and Driven Construction be ordered to forthwith pay to the City the  
19 development impact fees described in this cause of action in the amount of \$336,249.00.

20 52. Plaintiff seeks to recover his attorney's fees in this action under the provisions of  
21 Government Code §§91003 and §91012, as well as Code of Civil Procedure §1021.5.

22 **SECOND CAUSE OF ACTION**

23 **Violation of the Common Law Doctrine Against Conflicts of Interest by Public Officials:**

24 **Non-Payment of Development Impact Fees in the amount of \$336,249.00**

25 **(Nunley and Driven Construction - Oak Creek Apartments)**

26 53. Plaintiff realleges and incorporates by reference each and every allegation contained  
27 in paragraphs 1 through 52 of this complaint.

1 54. As an elected public official, Nunley has failed to exercise the powers conferred  
2 upon him with disinterested skill, zeal, and diligence primarily for the benefit of the public.

3 55. As an elected public official, Nunley has used his position to advance his own private  
4 interests at the expense of the public.

5 56. Plaintiff is informed and believes and thereon alleges that as a result of the conduct  
6 described above, Nunley has received an economic benefit totaling \$336,249.00, for which Nunley  
7 and Driven Construction should be ordered to pay the City.

8 57. Plaintiff seeks to recover his attorney's fees in this action under the provisions of  
9 Code of Civil Procedure §1021.5.

10 **THIRD CAUSE OF ACTION**

11 **Violation of the Conflict of Interest Provisions of The Political Reform Act:**  
12 **Non-Payment of Development Impact Fees in the amount of \$92,492.00**  
13 **(Nunley, Great Valley Builders, and Hidden Oak Development - Bella Oaks)**

14 58. Plaintiff realleges and incorporates by reference each and every allegation contained  
15 in paragraphs 1 through 57 of this complaint.

16 ***2001 and 2003 Bella Oaks Drive***

17 59. On May 22, 2017, while a member of the Tulare City Council, Nunley caused to be  
18 filed an application with the City for the issuance of a building permit for the construction of a  
19 duplex residential unit at 2001 and 2003 Bella Oaks Drive (*Duplex #1*).

20 60. Plaintiff alleges on information and belief that Nunley requested that payment of the  
21 developer impact fees for Duplex #1, assessed at \$23,123.00, be deferred until the issuance of  
22 a certificate of occupancy, and on or about June 21, 2017, Nunley was presented with a Deferral  
23 Agreement for execution by Great Valley Builders ("Greg Nunley - Owner"), a copy of which is  
24 attached hereto as Exhibit 6.

25 61. Plaintiff alleges on information and belief that Nunley failed to return a signed copy  
26 of the Deferral Agreement to the City.



1           62.    On April 5, 2018, the City issued Building Permit no. BLD-17-09776, authorizing the  
2 construction of Duplex #1, a copy of which is attached hereto as Exhibit 7.

3           63.    Neither Nunley nor any of his related business entities paid the development impact  
4 fees at the time Building Permit no. BLD-17-09776 was issued, in violation of City Ordinance  
5 §8.56.040.

6           **2007 and 2011 Bella Oaks Drive**

7           64.    On May 22, 2017, while a member of the Tulare City Council, Nunley caused to be  
8 filed an application with the City for the issuance of a building permit for the construction of a  
9 duplex residential unit at 2007 and 2011 Bella Oaks Drive (*Duplex #2*).

10          65.    Plaintiff alleges on information and belief that Nunley requested that payment of the  
11 developer impact fees for Duplex #2, assessed at \$23,123.00, be deferred until the issuance of  
12 a certificate of occupancy, and on or about June 21, 2017, Nunley was presented with a Deferral  
13 Agreement for execution by Great Valley Builders ("Greg Nunley - Owner"), a copy of which is  
14 attached hereto as Exhibit 8.

15          66.    Plaintiff alleges on information and belief that Nunley failed to return a signed copy  
16 of the Deferral Agreement to the City.

17          67.    On April 5, 2018, the City issued Building Permit no. BLD-17-09777, authorizing the  
18 construction of Duplex #2, a copy of which is attached hereto as Exhibit 9.

19          68.    Neither Nunley nor any of his related business entities paid the development impact  
20 fees at the time Building Permit no. BLD-17-09777 was issued, in violation of City Ordinance  
21 §8.56.040.

22           **2013 and 2017 Bella Oaks Drive**

23          69.    On May 22, 2017, while a member of the Tulare City Council, Nunley caused to be  
24 filed an application with the City for the issuance of a building permit for the construction of a  
25 duplex residential unit at 2013 and 2017 Bella Oaks Drive (*Duplex #3*).

26          70.    Plaintiff alleges on information and belief that Nunley requested that payment of the  
27 developer impact fees for Duplex #3, assessed at \$23,123.00, be deferred until the issuance of

1 a certificate of occupancy, and on or about November 6, 2017, Nunley was presented with a  
2 Deferral Agreement for execution by Hidden Oak Development ("Greg Nunley - Owner"), a copy  
3 of which is attached hereto as Exhibit 10.

4 71. Plaintiff alleges on information and belief that Nunley failed to return a signed copy  
5 of the Deferral Agreement to the City.

6 72. On April 5, 2018, the City issued Building Permit no. BLD-17-09779, authorizing the  
7 construction of Duplex #3, a copy of which is attached hereto as Exhibit 11.

8 73. Neither Nunley nor any of his related business entities paid the development impact  
9 fees at the time Building Permit no. BLD-17-09779 was issued, in violation of City Ordinance  
10 §8.56.040.

11 ***2021 and 2025 Bella Oaks Drive***

12 74. On May 22, 2017, while a member of the Tulare City Council, Nunley caused to be  
13 filed an application with the City for the issuance of a building permit for the construction of a  
14 duplex residential unit at 2021 and 2025 Bella Oaks Drive (*Duplex #4*).

15 75. Plaintiff alleges on information and belief that Nunley requested that payment of the  
16 developer impact fees for Duplex #4, assessed at \$23,123.00, be deferred until the issuance of  
17 a certificate of occupancy, and on or about November 6, 2017, Nunley was presented with a  
18 Deferral Agreement for execution by Hidden Oak Development ("Greg Nunley - Owner"), a copy  
19 of which is attached hereto as Exhibit 12.

20 76. Plaintiff alleges on information and belief that Nunley failed to return a signed copy  
21 of the Deferral Agreement to the City.

22 77. On April 5, 2018, the City issued Building Permit no. BLD-17-09780, authorizing the  
23 construction of Duplex #4, a copy of which is attached hereto as Exhibit 13.

24 78. Neither Nunley nor any of his related business entities paid the development impact  
25 fees at the time Building Permit no. BLD-17-09780 was issued, in violation of City Ordinance  
26 §8.56.040.

1 79. Plaintiff is informed and believes that Nunley has used his official position to  
2 influence, or attempt to influence, the City's decision to immediately seek payment of these fees.

3 80. Nunley has a direct financial interest in the City's decision to collect the deferred  
4 development impact fees.

5 81. It is reasonably foreseeable that the City's decision will have a material financial  
6 effect on Nunley, distinguishable from its effect on the general public.

7 82. Plaintiff alleges on information and belief that as a result of multiple, intentional  
8 violations of the Political Reform Act, Nunley has received an economic benefit totaling  
9 \$92,492.00.

10 83. Plaintiff desires a judicial determination that Nunley has impermissibly used his  
11 official position to influence, or attempt to influence, a governmental decision in which he knows  
12 or has reason to know he has a financial interest, in violation of §87100. Plaintiff further seeks  
13 an order that Nunley, Great Valley Builders, and Hidden Oak Development be ordered to forthwith  
14 pay to the City the development impact fees described in this cause of action in the amount of  
15 \$92,492.00.

16 84. Plaintiff seeks to recover his attorney's fees in this action under the provisions of  
17 Government Code §§91003 and §91012, as well as Code of Civil Procedure §1021.5.

18 **FOURTH CAUSE OF ACTION**

19 **Violation of the Common Law Doctrine Against Conflicts of Interest by Public Officials:**

20 **Non-Payment of Development Impact Fees in the amount of \$92,492.00**

21 **(Nunley, Great Valley Builders, and Hidden Oak Development - Bella Oaks)**

22 85. Plaintiff realleges and incorporates by reference each and every allegation contained  
23 in paragraphs 1 through 84 of this complaint.

24 86. As an elected public official, Nunley has failed to exercise the powers conferred  
25 upon him with disinterested skill, zeal, and diligence primarily for the benefit of the public.

26 87. As an elected public official, Nunley has used his position to advance his own private  
27 interests at the expense of the public.

1 88. Plaintiff is informed and believes and thereon alleges that as a result of the conduct  
2 described above, Nunley has received an economic benefit totaling \$92,492.00, for which Nunley,  
3 Great Valley Builders, and Hidden Oak Development should be required to pay the City.

4 89. Plaintiff seeks to recover his attorney's fees in this action under the provisions of  
5 Code of Civil Procedure §1021.5.

6 **FIFTH CAUSE OF ACTION**

7 **Violation of the Conflict of Interest Provisions of The Political Reform Act:**

8 **Non-Payment of Development Impact Fees in the amount of \$14,277.00**

9 **(Nunley and Great Valley Builders - 2088 Diamonte Drive)**

10 90. Plaintiff realleges and incorporates by reference each and every allegation contained  
11 in paragraphs 1 through 89 of this complaint.

12 91. In the summer of 2017, while a member of the Tulare City Council, Nunley became  
13 involved in a residential development project located at 2088 Diamonte Drive (*the Diamonte*  
14 *Project*).

15 92. The City imposed developer impact fees relating to the Diamonte Project in the  
16 amount of \$14,277.00.

17 93. Nunley requested that payment of the developer impact fees for the Diamonte  
18 Project be deferred, with Great Valley Builders ("Greg Nunley - Owner") and the City entering into  
19 a Deferral Agreement dated May 16, 2017 (*the Diamonte Deferral Agreement*), a copy of which  
20 is attached hereto as Exhibit 14.

21 94. At the time Great Valley Builders entered into the Diamonte Deferral Agreement,  
22 Nunley represented to the City that Great Valley Builders was the owner of the Diamonte Property  
23 upon which the project was to be constructed. This representation was false, and Nunley knew  
24 the representation was false at the time it was made.

25 95. The true facts are that five months before he falsely represented to the City that  
26 Great Valley Builders owned the Diamonte Property, Nunley himself (as the managing member  
27 of Del Lago Place) had executed a Grant Deed conveying the property to Ronald L. Wilbourn and

1 Linda S. Wilbourn, Trustees of the Ronald L. and Linda S. Wilbourn 1997 Trust. A copy of this  
2 deed, recorded December 16, 2016, as Instrument no. 2016-0079958, is attached hereto as  
3 Exhibit 15.

4 96. At the time Great Valley Builders entered into the Diamonte Deferral Agreement, it  
5 purported to grant a statutory lien to the City, encumbering the Diamonte Property, so as to secure  
6 payment of the development impact fees.

7 97. Plaintiff alleges on information and belief that no such lien could be granted by Great  
8 Valley Builders, as it never owned the Diamonte Property, and Nunley knew of this fact at the time  
9 the Diamonte Deferral Agreement was entered into.

10 98. On August 21, 2017, the Diamonte Deferral Agreement, Exhibit 14 hereto, was  
11 recorded with the Tulare County Recorder, as instrument no. 2017-0048083.

12 99. Plaintiff is informed and believes that the City has attempted to secure payment of  
13 the deferred development impact fees from Nunley and/or his related entities, and that Nunley has  
14 used his official position to influence, or attempt to influence, the City's decision to seek payment  
15 of these fees.

16 100. Nunley has a direct financial interest in the City's decision to collect the deferred  
17 development impact fees.

18 101. It is reasonably foreseeable that the City's decision will have a material financial  
19 effect on Nunley, distinguishable from its effect on the general public.

20 102. Plaintiff alleges on information and belief that as a result of multiple, intentional  
21 violations of the Political Reform Act, Nunley has received an economic benefit totaling  
22 \$14,277.00.

23 103. Plaintiff desires a judicial determination that Nunley has impermissibly used his  
24 official position to influence, or attempt to influence, a governmental decision in which he knows  
25 or has reason to know he has a financial interest, in violation of §87100. Plaintiff further seeks  
26 an order that Nunley and Great Valley Builders be ordered to forthwith pay to the City the  
27 development impact fees described in this cause of action in the amount of \$14,277.00.

1 104. Plaintiff seeks to recover his attorney's fees in this action under the provisions of  
2 Government Code §§91003 and §91012, as well as Code of Civil Procedure §1021.5.

3 **SIXTH CAUSE OF ACTION**

4 **Violation of the Common Law Doctrine Against Conflicts of Interest by Public Officials:**

5 **Non-Payment of Development Impact Fees in the amount of \$14,277.00**

6 **(Nunley and Great Valley Builders - 2088 Diamonte Drive)**

7 105. Plaintiff realleges and incorporates by reference each and every allegation contained  
8 in paragraphs 1 through 104 of this complaint.

9 106. As an elected public official, Nunley has failed to exercise the powers conferred  
10 upon him with disinterested skill, zeal, and diligence primarily for the benefit of the public.

11 107. As an elected public official, Nunley has used his position to advance his own private  
12 interests at the expense of the public.

13 108. Plaintiff is informed and believes and thereon alleges that as a result of the conduct  
14 described above, Nunley has received an economic benefit totaling \$14,277.00, for which he  
15 should be required to pay the City.

16 109. Plaintiff seeks to recover his attorney's fees in this action under the provisions of  
17 Code of Civil Procedure §1021.5.

18 **SEVENTH CAUSE OF ACTION**

19 **Violation of the Conflict of Interest Provisions of The Political Reform Act:**

20 **Threatening Retaliation against City Employees**

21 **(Nunley)**

22 110. Plaintiff realleges and incorporates by reference each and every allegation contained  
23 in paragraphs 1 through 109 of this complaint.

24 111. On or about July 20, 2018, City inspectors posted a stop work notice, also known  
25 as a red tag, on a Nunley project located at 2013 & 2017 Bella Oaks Drive. The red tag was  
26 issued due to the failure of Nunley or his employees to call for two required inspections.

1 112. Plaintiff alleges on information and belief that in July of 2018, City inspectors notified  
2 Nunley that a temporary certificate of occupancy that had been issued with respect to a  
3 commercial project located at 1504 East Prosperity Avenue would be withdrawn unless certain  
4 punch list items were addressed by a date certain.

5 113. Plaintiff alleges on information and belief that Nunley, upon learning of the actions  
6 described above, called Willard Epps, the Interim City Manager, and demanded that at least two  
7 City employees be fired.

8 114. Plaintiff alleges on information and belief that Interim City Manager Epps refused  
9 to comply with Nunley's demand, at which time Nunley threatened to have Epps removed from  
10 his position as Interim City Manager and have Darlene Mata brought in to replace him.

11 115. Plaintiff alleges on information and belief that Darlene Mata currently serves as the  
12 Property Management Director for the City of Hanford, and that she was formerly employed by  
13 one or more Nunley business entities.

14 116. Nunley's threatened conduct is a blatant attempt to use his official position to  
15 influence, or attempt to influence, City personnel in a manner to his benefit at the expense of the  
16 general public and should be enjoined by this court.

17 117. Nunley has a direct financial interest in employing City personnel that will give him  
18 and his multiple business entities favorable treatment.

19 118. It is reasonably foreseeable that the City's employment of personnel favorable to  
20 Nunley will have a material financial effect on Nunley, distinguishable from its effect on the public,  
21 within the meaning of §87103.

22 119. Plaintiff seeks an injunction, enjoining Nunley, and all persons acting under or in  
23 concert with him, from threatening retaliation, in any manner whatsoever, against City personnel  
24 while Nunley serves on the Tulare City Council.

25 120. Plaintiff seeks to recover his attorney's fees in this action under the provisions of  
26 Government Code §§91003 and §91012, as well as Code of Civil Procedure §1021.5.

1 **EIGHTH CAUSE OF ACTION**

2 **Violation of the Common Law Doctrine Against Conflicts of Interest by Public Officials:**  
3 **Threatening Retaliation against City Employees**  
4 **(Nunley)**

5 121. Plaintiff realleges and incorporates by reference each and every allegation contained  
6 in paragraphs 1 through 120 of this complaint.

7 122. As an elected public official, Nunley has failed to exercise the powers conferred  
8 upon him with disinterested skill, zeal, and diligence primarily for the benefit of the public.

9 123. As an elected public official, Nunley has used his position to advance his own private  
10 interests at the expense of the public.

11 124. As an elected public official, Nunley has exposed the City to liability for harassing  
12 and threatening City employees.

13 125. Plaintiff seeks an injunction, enjoining Nunley, and all persons acting under or in  
14 concert with him, from threatening retaliation, in any manner whatsoever, against City personnel  
15 while Nunley serves on the Tulare City Council.

16 126. Plaintiff seeks to recover his attorney's fees in this action under the provisions of  
17 Code of Civil Procedure §1021.5.

18 **NINTH CAUSE OF ACTION**

19 **Violation of the Conflict of Interest Provisions of The Political Reform Act:**  
20 **Failure to Identify Conflict of Interest**  
21 **(Nunley and Del Lago Place - Tesori Subdivision Improvements)**

22 127. Plaintiff realleges and incorporates by reference each and every allegation contained  
23 in paragraphs 1 through 126 of this complaint.

24 128. On October 22, 2013, Nunley executed, on behalf of Del Lago Place, an "Agreement  
25 and Undertaking for Installation and Construction of Required Subdivision Improvements," relating  
26 to a development commonly referred to as the Tesori Subdivision (*the Tesori Subdivision*  
27 *Agreement*).



1 129. The Tesori Subdivision Agreement was entered into for the benefit of the City, and  
2 was recorded with the Tulare County Recorder on November 7, 2013, as Instrument no. 2013-  
3 0072845. A copy of the Tesori Subdivision Agreement is attached hereto as Exhibit 16.

4 130. Under the terms of the Tesori Subdivision Agreement, Del Lago Place was to install  
5 and construct certain street and relocation improvements, sanitary sewer improvements, storm  
6 drain improvements, and water system improvements estimated to cost \$1,048,622.00.

7 131. The improvements were to be installed with one year of the date of the agreement,  
8 but Del Lago Place has secured multiple extensions of its obligations under the Tesori Subdivision  
9 Agreement, and as of the date of filing this complaint, the subdivision improvements have not  
10 been completed.

11 132. On June 5, 2018, at a regular meeting of the Tulare City Council, Del Lago Place  
12 sought to amend the Tesori Subdivision Improvement Agreement by securing an additional 12  
13 month extension of its obligations under the agreement.

14 133. Nunley was present, sitting at the council dais, at the time the Tesori agenda item  
15 was called for discussion.

16 134. At the time the Tesori agenda item came up for discussion, Nunley had a financial  
17 interest in the decision of the council, within the meaning of §87100.

18 135. At the time the Tesori agenda item came up for discussion, Nunley failed to publicly  
19 identify the financial interest giving rise to his conflict of interest, as required under §87105(a)(1).

20 136. At the time the Tesori agenda item came up for discussion, Nunley failed to  
21 immediately step down from the council dais, as required under §87105(a)(3).

22 137. At the time the Tesori agenda item came up for discussion, Nunley failed to leave  
23 the room until the council's discussion and vote was concluded, as required under §87105(a)(3).

24 138. At the time the Tesori agenda item came up for discussion, Nunley directly  
25 addressed the council and urged the council to amend the agreement, in violation of  
26 §87105(a)(2). The council thereafter voted to amend the agreement.

1 139. In doing the things alleged herein, Nunley has used his official position to participate  
2 in, influence, or attempt to influence, the council's decision to amend the Tesori Subdivision  
3 Agreement.

4 140. At all times herein mentioned, Nunley had a direct financial interest in the council's  
5 decision to amend the Tesori Subdivision Agreement.

6 141. At all times herein mentioned, it was reasonably foreseeable that the council's  
7 decision to amend the Tesori Subdivision Agreement would have a material financial effect on  
8 Nunley, distinguishable from its effect on the general public.

9 142. Plaintiff desires a judicial determination against Nunley and Del Lago Place that  
10 Nunley has impermissibly used his official position to participate in, influence, or attempt to  
11 influence, a governmental decision in which he knows or has reason to know he has a financial  
12 interest, in violation of §87100. Plaintiff further seeks an order that the amendment of the Tesori  
13 Subdivision Agreement be declared void, as it is in violation of public policy and was secured  
14 under circumstances violating the Political Reform Act.

15 143. Plaintiff seeks to recover his attorney's fees in this action under the provisions of  
16 Government Code §§91003 and §91012, as well as Code of Civil Procedure §1021.5.

17 **TENTH CAUSE OF ACTION**

18 **Violation of the Common Law Doctrine Against Conflicts of Interest by Public Officials:**

19 **Failure to Identify Conflict of Interest**

20 **(Nunley and Del Lago Place - Tesori Subdivision Improvements)**

21 144. Plaintiff realleges and incorporates by reference each and every allegation contained  
22 in paragraphs 1 through 143 of this complaint.

23 145. As an elected public official, Nunley has failed to exercise the powers conferred  
24 upon him with disinterested skill, zeal, and diligence primarily for the benefit of the public.

25 146. As an elected public official, Nunley has used his position to advance his own private  
26 interests at the expense of the public.

1 147. Plaintiff desires a judicial determination against Nunley and Del Lago Place that  
2 Nunley has impermissibly used his official position to participate in, influence, or attempt to  
3 influence, a governmental decision in which he knows or has reason to know he has a financial  
4 interest. Plaintiff further seeks an order that the amendment of the Tesori Subdivision Agreement  
5 be declared void, as it is in violation of public policy and was secured under circumstances  
6 violating the common law doctrine against conflicts of interest by public officials.

7 148. Plaintiff seeks to recover his attorney's fees in this action under the provisions of  
8 Code of Civil Procedure §1021.5.

9 **ELEVENTH CAUSE OF ACTION**

10 **Violation of Government Code §1090**

11 **(Nunley and Del Lago Place - Tesori Subdivision Improvements)**

12 149. Plaintiff realleges and incorporates by reference each and every allegation contained  
13 in paragraphs 1 through 148 of this complaint.

14 150. At all times herein mentioned, Nunley and Del Lago Place were "financially  
15 interested" (as that term is defined in Government Code §1090), in the amendment of the Tesori  
16 Subdivision Agreement.

17 151. At the time the Tesori agenda item came up for discussion, Nunley failed to fully  
18 disclose the nature of his interest in the Tesori Subdivision, as required under §1091.1(a), which  
19 conditionally exempts public officials from the general prohibition against contracting with public  
20 bodies or boards of which they are members.

21 152. At the time the Tesori agenda item came up for discussion, Nunley failed to  
22 immediately step down from the council dais.

23 153. At the time the Tesori agenda item came up for discussion, Nunley failed to leave  
24 the room until the council's discussion and vote was concluded.

25 154. At the time the Tesori agenda item came up for discussion, Nunley directly  
26 addressed the council and urged the council to amend the agreement.

1 155. Plaintiff desires a judicial determination against Nunley and Del Lago Place that  
2 Nunley's actions as described herein constitute a violation of §1090, and an order that the  
3 amendment of Tesori Subdivision Agreement be declared void.

4 156. Plaintiff seeks to recover his attorney's fees in this action under the provisions of  
5 Code of Civil Procedure §1021.5.

6 **TWELFTH CAUSE OF ACTION**

7 **Failure to File Statement of Economic Interests**

8 **(Nunley)**

9 157. Plaintiff realleges and incorporates by reference each and every allegation contained  
10 in paragraphs 1 through 156 of this complaint.

11 158. As an elected public official, Nunley is required to annually file a Statement of  
12 Economic Interests (Form 700) with the California Fair Political Practices Commission.

13 159. Nunley failed to file his 2018 Statement of Economic Interests, due April 2, 2018.

14 160. On July 12, 2018, the Fair Political Practices Commission issued and served upon  
15 Nunley a Notice of Non-Filing. Nunley has yet to respond.

16 161. Plaintiff seeks an order from this court directing Nunley to comply with the law and  
17 file his 2018 Statement of Economic Interests with the California Fair Political Practices  
18 Commission.

19 WHEREFORE, plaintiff prays judgment as follows:

20 ON THE FIRST CAUSE OF ACTION:

21 1. For a judicial determination that Nunley has impermissibly used his official position  
22 to influence, or attempt to influence, a governmental decision in which he knows or has reason  
23 to know he has a financial interest, in violation of §87100.

24 2. For an order that Nunley and Driven Construction be ordered to forthwith pay to the  
25 City development impact fees in the amount of \$336,249.00.

1 ON THE SECOND CAUSE OF ACTION:

2 1. For an order that Nunley and Driven Construction be ordered to forthwith pay to the  
3 City development impact fees in the amount of \$336,249.00.

4 ON THE THIRD CAUSE OF ACTION:

5 1. For a judicial determination that Nunley has impermissibly used his official position  
6 to influence, or attempt to influence, a governmental decision in which he knows or has reason  
7 to know he has a financial interest, in violation of §87100; and

8 2. For an order that Nunley and Driven Construction be ordered to forthwith pay to the  
9 City development impact fees in the amount of \$92,492.00.

10 ON THE FOURTH CAUSE OF ACTION:

11 1. For an order that Nunley and Driven Construction be ordered to forthwith pay to the  
12 City development impact fees in the amount of \$92,492.00.

13 ON THE FIFTH CAUSE OF ACTION:

14 1. For a judicial determination that Nunley has impermissibly used his official position  
15 to influence, or attempt to influence, a governmental decision in which he knows or has reason  
16 to know he has a financial interest, in violation of §87100; and

17 2. For an order that Nunley and Driven Construction be ordered to forthwith pay to the  
18 City development impact fees in the amount of \$14,277.00.

19 ON THE SIXTH CAUSE OF ACTION:

20 1. For an order that Nunley and Driven Construction be ordered to forthwith pay to the  
21 City development impact fees in the amount of \$14,277.00.

22 ON THE SEVENTH AND EIGHTH CAUSES OF ACTION:

23 1. For an injunction, enjoining Nunley, and all persons acting under or in concert with  
24 him, from threatening retaliation, in any manner whatsoever, against City personnel while Nunley  
25 serves on the Tulare City Council.

1 ON THE NINTH CAUSE OF ACTION:

2 1. For a judicial determination that Nunley has impermissibly used his official position  
3 to influence, or attempt to influence, a governmental decision in which he knows or has reason  
4 to know he has a financial interest, in violation of §87100; and

5 2. For an order that the amendment of Tesori Subdivision Agreement be declared void,  
6 as it is in violation of public policy and was secured under circumstances violating the Political  
7 Reform Act.

8 ON THE TENTH CAUSE OF ACTION:

9 1. For an order that the amendment of Tesori Subdivision Agreement be declared void,  
10 as it is in violation of public policy and was secured under circumstances violating the common  
11 law doctrine against conflicts of interest by public officials.

12 ON THE ELEVENTH CAUSE OF ACTION:

13 1. For a judicial determination against Nunley and Del Lago Place that Nunley's actions  
14 as described herein constitute a violation of §1090, and an order that the amendment of Tesori  
15 Subdivision Agreement be declared void.

16 ON THE TWELFTH CAUSE OF ACTION:

17 1. For an order directing Nunley to comply with the law and file his 2018 Statement of  
18 Economic Interests with the California Fair Political Practices Commission.

19 ON ALL CAUSES OF ACTION:

- 20 1. For reasonable attorneys' fees in an amount to be shown according to proof;  
21 2. For costs of suit incurred herein; and  
22 3. For such other relief as this court may consider proper.

23  
24  
25 Dated: August 3, 2018

  
26 LAW OFFICES OF MICHAEL J. LAMPE  
Attorneys for Plaintiffs  
27 By: Michael J. Lampe

28  
COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF