OFFICE OF THE CITY CLERK
1243 National City Blvd., National City, California 91950
619-336-4228 phone / 619-336-4229 fax

To: Risk Manager Date: 5/6/24

From: City Clerk's Office

Re: [redacted] Personal Information

(Claimant / Plaintiff / Requester)

Our office received the following document/s:

- ☐ Claim for Damages – Hand-Delivered
- ☑ Claim for Damages – Delivered via USPS Mail – (1) via certified; (1) via regular mail
- ☐ Claim for Damages – Delivered via UPS
- ☐ Claim for Damages – Delivered via FED-EX

Date Received: 5/6/24

Staff member to contact for questions regarding receipt: [redacted] Personal Signature

We are forwarding the above document/s to your office for further action.

City Of National City

RECEIVED
MAY 06 2024
Office of the City Clerk
City of National City

CLAIM FOR DAMAGES TO PERSON OR PROPERTY

INSTRUCTIONS

1. Read entire claim form before filing.
2. This claim form must be signed at bottom.
3. Attach separate sheets, if necessary, to give full details. SIGN EACH SHEET.
4. Claims must be filed with the City Clerk, 1243 National City Boulevard, National City, CA 91950 (619) 336-4228.
5. Inquiries regarding status of filed claims should be directed to the Risk Manager at (619) 336-4370.

Attention: City Clerk

The undersigned hereby presents the following claim to the City of National City, in accordance with the laws of the State of California.

1. Name of Claimant: Personal
2. Home Address of Claimant: Personal Information
   Home Telephone Number: Personal Information /Cell:
   Email: jordan@schacklawgroup.com
3. Give address to which you desire notices or communications to be sent regarding this claim:
   16870 West Bernardo Drive, Suite 400, San Diego, California 92127
4. How did DAMAGE or INJURY occur? Give full particulars:
   See Attachment
5. When did DAMAGE or INJURY occur? Give the date and time of day:
   January 22, 2024, approximately 11:00 am.
6. Where did DAMAGE or INJURY occur? Describe fully, and attach diagram where appropriate. Give street names and addresses and measurements from landmarks:
   Personal Information National City, CA and surrounding areas.

mpa/2018

7. What particular ACT or OMISSION do you claim caused the injury or damage? Give names of City employees causing the injury or damage, if known:

See Attachment

8. What DAMAGE or INJURIES do you claim resulted? Give full extent of injuries or damages claimed:

See Attachment

9. NAMES of physicians, hospitals, etc.: N/A.

10. What AMOUNT do you claim on account of each item of injury or damage as of date of presentation of this claim? Explain how you calculated this amount. Approximately $225,000.00 based on damage to personal property, displacement and non-economic damages, among other things.

Give ESTIMATED AMOUNT as far as known you claim on account of each item of future injury or damage, giving basis of computation: TBD.

11. What INSURANCE PAYMENTS did you receive, if any, and what were the names of any Insurance Company(ies): N/A.

12. What EXPENDITURES did you make on account of accident or injury: (Date-Item) (Amount): TBD/Ongoing.

13. Give NAMES AND ADDRESSES of Witnesses, Doctors and Hospitals:

Personal Information

Attach COPIES of any photos, documents or receipts you wish considered.

I declare under penalty of perjury that I have read the foregoing claim and the papers attached thereto, and that the same are true and correct to the best of my knowledge.

DATE: 05/02/2024

Personal Signature

Claimant or Agent

Jordan L. Kellogg, Attorney for Claimant

16870 West Bernardo Drive, Suite 400, San Diego CA

Address of Above

858-485-6535

Telephone No. of Above

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City Of National City

FREQUENTLY ASKED QUESTIONS REGARDING THE CLAIMS PROCESS

- **Where do I get a Government Tort Claim form?**

  Download Claim for Damages to Person or Property Form at www.nationalcityca.gov or you may pick up a claim form at the Office of the City Clerk, located at 1243 National City Boulevard, National City, CA 91950. The City Clerk's telephone number is (619) 336-4228. Also, you can request a claim form be mailed to you via telephone at (619) 336-4300.

- **Does it cost me anything to file a claim?**

  No. The City does not charge a fee to file a claim.

- **How long do I have to file a claim?**

  Most claims must be submitted to the City Clerk within 6 months of the time the event or incident giving rise to the injury, loss or damage occurred. However, certain types of claims may be filed within 1 year of the date of the event or incident. Additionally, the Government Code provides for other exceptions to the general 6 month period. If you aren't sure whether or not you fall within one of the exceptions, you should contact an attorney. City staff members are prohibited from providing legal advice.

- **What information may I send with my claim form?**

  You may provide any information you believe will support your claim. For example, claims are often submitted along with photographs, receipts, estimates or diagrams. Please keep copies of any documents you submit because the City will not return any documents to you.

- **Can I fax or email the completed claim form to the City Clerk, instead of mailing or dropping it off?**

  The City only accepts properly completed claims that are either (1) personally delivered to the City Clerk's office, or (2) mailed to the City Clerk's office. The claimant's original signature must appear on the claim form. The City does not accept claims submitted by email or facsimile.

- **What happens to the claim after I submit it?**

  The City Clerk forwarded to the Risk Manager for review and further investigation. Depending on the facts or nature of the incident, most claims are processed within 45 days pursuant to the Government Code. You will be contacted if the Risk Manager has questions regarding your claim. If not, the Risk Manager will determine whether to approve, compromise, or deny the claim. The City's final decision will be mailed to the address listed on the claim submitted to the City.

- **What happens if my claim is denied?**

  As required by the Government Code, the City provides all claimants (whose claims have been denied) a standard, written response outlining a claimant's legal remedies.

- **Is the City responsible for claims that happen while riding a public trolley or bus?**

  Both the San Diego Trolley and San Diego Transit (public buses) are under the jurisdiction of the Metropolitan Transit System ("MTS"). To file a claim against MTS, contact Public Transit Customer Service at (619) 238-0100.

ATTACHMENT TO GOVERNMENT CLAIM FORM – CITY OF NATIONAL CITY

Personal Information

Name of Claimant:

Personal Information ("Claimant", "Claimants" or Personal).

How did DAMAGE or INJURY occur? Give full particulars:

Claimant brings this claim for damages suffered as a result of severe flooding that occurred on or about January 22, 2024, at approximately 11:00 a.m., at and around Perso Personal Information in National City, California (hereinafter the "Subject Incident"). As further detailed herein, the unsafe, dangerous, and negligent condition of the watersheds, channels, basins, ditches, canals, waterways, creeks and/or storm drains within the area surrounding Claimants' Property—which the City of National City ("the City" or "Respondent" or "Respondents") owned, operated, designed, maintained, inspected and/or occupied—were caused by the City's negligence and/or misconduct.

At all times relevant hereto, the City of National City has negligently owned, occupied, operated, repaired, managed, controlled, designed, maintained, supervised, and/or inspected all or part of the San Diego Bay Watershed and/or the Pueblo San Diego Watershed, which encompasses an area of approximately 60 square miles with no central stream system. The Pueblo San Diego Watershed covers approximately 36,000 acres, and is comprised of three hydrologic areas, including Point Loma, San Diego Mesa, and National City. The City of National City also owned, occupied, operated, repaired, managed, designed, maintained, supervised and/or inspected all or some of the channels, canals, culverts, ditches, basins, streams, waterways, creeks and/or storm drains that compromise the Pueblo San Diego Watershed; the San Diego Bay watershed, channels, canals, culverts, ditches, basins, streams, waterways, creeks and drains within 15 miles of Claimants' Property; the Paleta Creek and Chollas Creek ("Subject Waterways"). One of the major water features included in the Pueblo San Diego Watershed includes Paleta Creek, specifically, the Cottonwood segments ("Cottonwood"). The Cottonwood is directly adjacent to Claimant's apartment building, Highland View Apartments, and is located approximately 270 feet from Cottonwood.

The City of National City has a Jurisdictional Runoff Management Program and Water Quality Improvement Plan that together govern water quality, runoff, discharge and the storm water program. The Jurisdictional Runoff Management Program encapsulates and adopts National City Ordinance No. 2008-2308. Pursuant to City of National City Ordinance No. 2008-2308, Section 14.22.050, subd. (A) "[a]ny person engaged in activities, which will or may result in pollutants entering the City storm water conveyance system shall undertake measures to reduce such pollutants to the MEP." The section further requires that "[e]very person owning or operating any activity, operation or facility will comply with storm water BMPs adopted by federal, state, regional or local agencies, as applicable." Pursuant to City of National City Ordinance No. 2008-2308, Section 14.22.060, "[E]very person owning property thorugh which a watercourse passes or such person's lessee or tenant, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation and other

obstacles which would pollute, contaminate or significantly retard the flow of water through the watercourse..."

In accordance with the Jurisdictional Runoff Management Program the City is also responsible for street sweeping, street-related BMP implementation and maintenance, installation and maintenance of flood control-related BMPs and maintenance and repair of City MS4 and sanitary sewer system. As the owners and/or occupiers of the relevant segments of the Pueblo San Diego Watershed, the San Diego Bay Watershed and the Subject Waterways, the City owed a duty to use reasonable and due care to keep the premises in a reasonably safe condition, and to protect against reasonably foreseeable risks of injury that might result from dangerous conditions. As the owner and/or occupier of the relevant segments of the Pueblo San Diego Watershed, the San Diego Bay Watershed and the Subject Waterways, the City owed a duty to conduct maintenance on the watershed, remove excess trash, debris, vegetation, contaminants, grates and/or other obstructions from the Subject Waterways, including but not limited to the Cottonwood. As the owner and/or occupier of the Subject Waterways, the City is required and obligated to conduct maintenance and repairs to facilities within its control, including but not limited to, removing excessive trash, debris, and vegetation, and/or maintaining grates and other obstructions from watersheds within its control.

Per Federal regulations, the State of California also issues a Municipal Stormwater permit to municipalities. Under this permit, each municipality *must* develop a stormwater management program designed to control the discharge of pollutants into and from the municipal separate storm sewer systems (MS4) (or from being discharged directly into the MS4).[1] The City of National City's MS4 Permit requires that inspections of systems are performed at an appropriate frequency to confirm that BMPs are implemented. The Jurisdictional Runoff Management Program further delineates the Best Management Practices (BMPs) and what is required of the City of National City.

The City of National City, City of San Diego and the County of San Diego are Copermittees that own and/or operate an MS4 through which they discharge storm water and non-storm water into waters of the U.S. within the San Diego Region. The City of San Diego, the City of National City, and the County of San Diego are three of several Copermittees responsible for the Pueblo San Diego Watershed. San Diego Municipal Code §43.0309 provides that "any person owning or occupying a *premises* through which the *MS4* passes shall: (a) Keep and maintain that part of the *premises* reasonably free of trash, debris and other obstacles which would pollute, contaminate, or retard the flow of water through the *MS4;* and (b) Maintain existing structures within or adjacent to the *MS4* so that those structures will not become a

[1] A Municipal Separate Storm Sewer System (MS4) is a A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designated or used for collecting or conveying storm water; (iii) Which is not a combined sewer; (iv) Which is not part of the Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.26.

hazard to the use, function, or physical integrity of the *MS4*." As further detailed below, the City is in violation of San Diego Municipal Code § 43.0309, among other laws, in that it failed to maintain the San Diego Bay Watershed, the Subject Waterways, the Pueblo San Diego Watershed and/or Cottonwood segments free of excessive trash, debris, obstructions, grates, and/or other materials. Respondent further failed to maintain storm drains, channels, culverts, ditches, watersheds, canals and drains in the 5 mile area surrounding Claimant's property (the "Subject Waterways") by, among other things, allowing the accumulation of debris, materials or obstructions, grates, and/or installing obstructions and the creation of dangerous conditions. In addition to being noncompliant, this condition is inherently dangerous, creates a threat to public health, and is a continuing nuisance.

Upon information and belief, the City of San Diego, City of National City and/or County of San Diego received complaints about the accumulation of trash, debris and other materials or obstructions or grates in the San Diego Bay Watershed, the Subject Waterways, the Pueblo San Diego Watership and Cottonwood segments. Despite knowledge of the excessive vegetation, debris, obstructions, and trash buildup within the Subject Waterways, the City failed to clear out excessive debris and vegetation, remove obstructions or take steps to correct the condition. As a foreseeable result of the dangerous condition at the City's watershed, on or about January 22, 2024, beginning at approximately 11:00 a.m., excessive buildup of vegetation, debris, garbage, materials and/or obstructions caused the watershed to overflow during a foreseeable and reasonable rain event. This buildup and failure to keep the Subject Waterways in a reasonably safe condition proximately caused severe flooding in the surrounding area. The flooding occurred into the surrounding neighborhood of Southeastern San Diego, including at Claimant's apartment building, Highland View Apartments, flooding several units in the 42-unit complex at an alarming rate upon the rain's commencement. The City allowed this dangerous condition to persist, and, as a result, excessive flooding occurred in nearby homes and businesses, including in Claimant's home.

Due to the City's failure to mitigate the condition throughout the watershed, specifically, the Cottonwood segments, storm drains, and/or other areas of the Subject Waterways, Claimant incurred two feet of hazardous stormwater in his home, was forced to evacuate, and throw away almost all of his personal property. Claimant did not consent to the City's conduct, as alleged herein. Claimant has therefore suffered damage and harm as a result of the City's mitigation and maintenance failure through lost property, incurred costs, and emotional damages he would otherwise not have incurred.

The City knew or should have known that the condition of the Subject Waterways, and that it posed a foreseeable risk of flooding and contaminating the surrounding homes and businesses. Additionally, Respondents allowed debris and other materials to build up next to grates and/or other obstructions in nearby storm drains. As a direct and legal result of the City's misconduct and/or negligence, Claimant's home and surrounding homes/businesses were flooded with several feet of hazardous stormwater, destroying personal property. Claimant was forced to evacuate his home, throw away almost all of his personal property, and has/will continue to be displaced from his home for over two months. An ordinary person would be reasonably annoyed, disturbed, and/or harmed by the City's misconduct and/or negligence. Claimant suffered and will continue to suffer harm different than the type of harm suffered by the general public, through

the injuries described herein. Furthermore, the City's negligent and intentional conduct in failing to maintain the Pueblo San Diego Watershed, the San Diego Bay Watershed, Chollas Creek, Paleta Creek, and the canals, channels, streams, culverts, waterways, ditches, and drains within the 15-mile area surrounding Claimant's property (the "Subject Waterways"), was a substantial factor in causing the injuries to Claimant described herein, thereby supporting claims for, among other things, negligence, trespass, nuisance, inverse condemnation, and statutory violations, among others. Lastly, the seriousness of the harm outweighs any public benefit of the City's misconduct and/or negligence.

Through the conduct alleged herein, Claimant has incurred damages as a result of the City's trespass on his property. Claimant rightfully leased, or otherwise rightfully possessed and/or occupied the property located at Personal Information, National City, California ("Claimant's Property"). At all times relevant hereto, the City owned and/or occupied segments of the Pueblo San Diego Watershed, including, but not limited to, segments of Paleta Creek and the Cottonwood. The City further owns, occupies and/or manages canals, channels, ditches, culverts, waterways, streams, drains and watersheds in the 15-mile area surrounding Claimant's Property (collectively the "Subject Waterways"). As detailed above, the City negligently allowed the Subject Waterways, including but not limited to the Cottonwood segments of the Pueblo San Diego Watershed and/or nearby storm drains to become hazardous and dangerous, which then became unable to mitigate the flow of stormwater when the storm occurred on January 22, 2024. This caused extreme flooding to the nearby properties and businesses, including, but not limited to, the property of Claimant, which Claimant did not authorize or consent to. Flooding began within approximately an hour of the storm's commencement. This caused damage to said property and harmed Claimant. The City's conduct in operating and maintaining the Pueblo San Diego Watershed and/or surrounding storm drains in a hazardous and unsafe manner and allowing distribution of stormwater to Southeastern San Diego and surrounding neighborhoods was a substantial factor that resulted in loss of possession of his real property by Claimant. As a direct, proximate, and substantial cause of the trespass, for which Claimant did not grant permission, Claimant has and will continue to suffer damages, including but not limited to damage to property, discomfort, annoyance, inconvenience and emotional distress. The City's interference with Claimant's use and enjoyment of his property was substantial and unreasonable in that it prevented and continues to prevent and/or obstruct Claimant from occupying his property, and was harmful to health, among other things. As such, the above facts also support claims for nuisance, inverse condemnation, and premises liability by Claimant.

Through the conduct alleged herein and on information and belief, the City also violated regulations with respect to the condition and operation of the Subject Waterways, supporting claims for negligence per se and statutory violations. Specifically, the City violated code sections including, but not limited to, National City Ordinance No. 2008-2308, San Diego Municipal Code § 43.0309, and California Government Code § 831.8. These violations were a proximate cause of Claimant's resulting injuries, by and through the pollution, contamination, and obstruction of the flow of water through the relevant watershed and/or nearby storm drains.

Given the harm and injuries to Claimant and homes/businesses in surrounding neighborhoods, the City's conduct was outrageous and unreasonable. As a result of said conduct,

and as described herein, Claimant suffered significant damage, including to his property, for which the City should be held responsible.

What particular ACT or OMISSION do you claim caused the injury or damage? Give names of City employees causing the injury or damage, if known:

The City caused Claimant's injuries because it allowed a dangerous condition to persist on its property despite knowledge of said condition. Specifically, the City negligently owned, occupied, operated, repaired, managed, controlled, maintained, supervised, and/or inspected the the Subject Waterways. As discussed above, the City occupied and failed to maintain segments of the watershed, channels, culverts, waterways, ditches, streams, drains and canals, including, but not limited to, the Cottonwood segments, which filled with excessive vegetation, debris, trash, and other obstructions, and ultimately caused stormwater to overflow on January 22, 2024, into and around Claimant's property. The condition was inherently dangerous because over two feet of stormwater, containing trash and other debris, contaminated Claimant's property and surrounding businesses. Due to the inherently dangerous condition, of which the City had knowledge, the Subject Waterways could not operate at its capacity and therefore resulted in severe flooding to surrounding areas, including to Claimant's home.

The City and the employees controlling and maintaining the Subject Waterways, the Pueblo San Diego Watershed, and/or surrounding storm drains knowingly permitted this condition to continue. In particular, the City knew or should have known of the risk of debris, trash, excessive vegetation, grates, and/or obstructions blocking vital watersheds, streams, waterways, basins, channels, culverts, ditches and canals and/or storm drains in the 15-mile area surrounding Claimant's property and the risk of severe flooding as a result. Furthermore, the City also knew or should have known that the capacity of the Subject Waterways and/or surrounding drains that it owns and/or occupies would be severely impacted if they were not cleaned out and contained excessive debris, vegetation, grates, obstructions and/or trash. Despite this knowledge, the City and its employees did nothing to correct and/or mitigate the condition, but rather allowed it to persist. Furthermore, the City failed to protect the individuals residing at the Highland View Apartments, including Claimant, and surrounding neighborhoods from this dangerous condition and the hazardous flooding that resulted.

Because of this dangerous condition and the City's negligence, on or around January 22, 2024, beginning at approximately 11:00 a.m., stormwater, trash, debris, water and other materials from the Subject Waterways overtook Claimant's property. This contaminated and unsafe water then trespassed upon and severely damaged the property of Claimant, causing excessive damage, outlined and detailed further herein. Based on the general facts contained above, the City is liable under claims for trespass, inverse condemnation, nuisance, negligence, violation of Government Code § 815.6, as further detailed below.

Trespass

At all times relevant herein, Claimants were the owners, tenants, and/or lawful occupants of property damaged by Respondent. Respondent negligently and/or intentionally allowed the Subject Waterways to become excessively contaminated with debris, trash, obstructions, and/or

other material, and/or maintained grates such that it obstructed the flow of water. In a reasonably foreseeable manner, this contamination prevented water from passing through the Subject Waterways. This water then entered Claimant's property and caused damage. Respondent's failure to keep the Subject Waterways in a reasonably safe condition and/or remove excessive debris and other material from said areas was a substantial factor that resulted in Claimant's harm. Claimants did not grant permission for Respondent to cause the water to enter their property or for Respondent's to enter their property in the manner it did and/or Respondent exceeded any permission. Respondent's entry onto Claimant's property was unauthorized and tangible and interfered with Claimant's exclusive possessory rights. As a direct, proximate and substantial cause of the trespass, Claimant has suffered and will continue to suffer damages, including but not limited to personal injury, property damage, discomfort, annoyance, and inconvenience, in an amount to be proven at trial. Respondent's conduct was a substantial factor in causing Claimant's harm.

Inverse Condemnation

Article I, Section 19 of the California Constitution states in relevant part, "private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner." California Government Code § 905.1 provides that no claim is required to be filed to maintain an action against a public entity for taking of, or damage to, private property, pursuant to Section 19, Article I of the California Constitution. At all times relevant hereto, Respondent was a public entity that owned, controlled, maintained, operated, inspected, funded, planned, mapped, surveyed, engineered, constructed, designed, improved, monitored, permitted, and/or operated the Subject Waterways. At all times relevant hereto, Respondent operated the Subject Waterways at or near Claimant's Property. The Subject Waterways were and are a public improvement deliberately owned, controlled, maintained, operated, funded, planned, designed, altered, and implemented by Respondent for the purposes of diverting water and providing flood control in the City of National City.

The City deliberately controlled, owned, maintained, operated, planned, altered, approved and/or supervised the Subject Waterways with actual or constructive knowledge of the dangerous condition at the Subject Waterways, including the accumulation of debris, obstructions, the blockage and the high risk of overflow as a result, thereby causing the flooding to adjacent properties, which directly, proximately, and substantially caused damage to Claimants' possessory interests in their property and/or directly and legally resulted in the taking of Claimants' properties. At all times relevant herein, Claimants' possessed, leased, owned, and/or had an interest in certain property that was harmed by the City's Subject Waterways.

The foregoing occurrence directly and legally resulted in an unlawful "taking" and/or damage of property in accordance with Claimants' damages as alleged herein. The conduct of City, as alleged herein, resulted in the taking of and/or damage of the private property of Claimants. The "taking" and/or damage of property as alleged herein, was substantially caused by Respondent City and deprived Claimants of their use and enjoyment of their property, causing damage. As a direct result of the "taking" and/or damage of Claimants' properties, Respondent City caused damage to Claimants' properties for which they have not received just

compensation.

The conduct as described herein constitutes damage to a property interest protected by Article I, § 19 of the California Constitution, which entitles Claimants to just compensation for all damages incurred. The acts and/or omissions of Respondents constitute a physical invasion of Claimants' real property for public use, placing a burden on each Claimants' properties that is direct, substantial, and peculiar to the property itself. Under and pursuant to California Code of Civil Procedure section 1036, Claimants are entitled to recover all litigation costs and expenses with regard to the compensation for damage of properties, including but not limited to attorneys' fees, expert fees, consulting fees, and litigation costs.

Failure to Perform Mandatory Duty – Violation of Government Code § 815.6

The City is a public entity organized and existing under the laws of the State of California. At all times relevant, the employees of the City were acting within the scope of their employment by the City of National City. Pursuant to California Government Code section 815.6, Respondent is liable for injury proximately caused by their failure to discharge a mandatory duty.

Among other things, the Respondent City had a mandatory duty to ensure that the Subject Waters were not subject to overlfow under normal operating conditions. This mandatory duty is imposed by enactments, as defined in California Government Code section 810.6, promulgated to lawmaking authority delegated by the Legislature to, among others, the City of San Diego, County of San Diego and City of National City.

The enactments promulgated by the legislature and others, and as stated herein, specifically, explicitly and affirmatively require that Respondent keep the Subject Waterways free of excessive debris, trash, materials, vegetation, grates, obstructions or contaminants, among other things. San Diego Municipal Code §43.0309 provides that "any person owning or occupying a *premises* through which the *MS4* passes shall: (a) Keep and maintain that part of the *premises* reasonably free of trash, debris and other obstacles which would pollute, contaminate, or retard the flow of water through the *MS4;* and (b) Maintain existing structures within or adjacent to the *MS4* so that those structures will not become a hazard to the use, function, or physical integrity of the *MS4.*" The City has further obligations and duties pursuant to the Municipal Waterways Maintenance Plan, including City of San Diego Council Policy No. 800-04.

Respondents violated San Diego Municipal Code §43.0309, the Municipal Waterways Maintenance Plan, and the City of San Diego Council Policy No. 800-04, among other mandatory duties and laws, by failing to keep the Subject Waterways sufficiently clear of hazards, trash, grates, obstructions, and obstacles, among other things.

As a direct and proximate result of Respondent's acts and omissions, as alleged herein, Claimants were harmed and have suffered foreseeable injuries and damages of the particular kind sought to be prevented by the enactments discussed, and in an amount to be proven at trial, but believed to be above this Court's jurisdictional minimum. Respondent's

failure to perform its duties was a substantial factor in causing the harm to Claimants. As a direct, legal, proximate, and substantial result of Respondent's breaches of their duties, Claimants suffered injuries including, but not limited to, property damage, destruction of and/or damage to real and personal property, loss of income, restoration costs, loss of earning capacity, loss of goodwill, loss of use, loss of enjoyment of their property, benefit, goodwill and diminution in value and/or enjoyment of such property, loss of profits, increased expenses, economic damages, mental pain and suffering, worry, emotional distress, anguish, anxiety, nervousness, medical expenses, physical injury, annoyance, discomfort and inconvenience, among other things.

Strict Liability for Ultrahazardous Activity

Respondents were engaged in an ultrahazardous activity. Among other things, Respondents were engaged in the handling, storing, treatment and containment of storm drain substances, untreated water and other substances containing unsafe materials. Respondents were also engaged in flood control and flood prevention Respondents elected to keep a dangerous condition at their Subject Waterways such that they posed a significant threat of flooding to surrounding properties. Respondent's operation of the Subject Waterways in a manner that created a risk of flooding was an ultrahazardous activity in that it created health risks, was unsanitary, created the potential to spread illnesses, compromise properties, endanger lives and had a potential to cause severe property damage and was unsafe.

As a direct, proximate, and substantial result of Respondents' ultrahazardous activity, Claimants suffered damages and injuries including, but not limited to, property damage, destruction of and/or damage to real and personal property, loss of income, restoration costs, loss of earning capacity, loss of goodwill, loss of use, benefit, goodwill and diminution in value and/or enjoyment of such property, physical injury, loss of profits, increased expenses, economic damages, mental pain and suffering, worry, emotional distress, anguish, anxiety, nervousness and costs associated with clean-up and reopening, among other things.
As further alleged herein, Claimants have therefore suffered damages in an amount to be proven at trial, but believed to be above this Court's jurisdictional minimum. The harm suffered by Claimants was the kind of harm that would be anticipated as a result of the risk created by Respondents' conduct and its operation of the Subject Waterways in a dangerous condition. Respondents' ultrahazardous activities were a substantial factor in causing the harm to Claimants.

Public Nuisance

Respondent's actions, conduct, omissions, negligence, trespass and failure to act resulted in the flooding, dangerous conditions at the Subject Waterways, a health hazard and sanitation issue, and a foreseeable obstruction to the free use of Claimants' properties. In addition, Respondent's actions, conduct, omissions, negligence, trespass and failure to act also invaded their right to use the property of Claimants and interfered with their enjoyment of said property, causing them unreasonable harm and substantial actual damages constituting a nuisance. Respondent's conduct created a condition and/or permitted a condition to exist,

including but not limited to the obstruction of the Subject Waterways, unsafe and/or dangerous conditions of the Subject Waterways and otherwise allowed flooding to occur, that was harmful to health and was dangerous in that it was unsanitary and created a risk of flooding, illness, damage and danger.

Respondent's conduct, as alleged herein, resulted in the severe flooding in the County of San Diego and the City of National City. As a result, Respondent's conduct obstructed the free use of property and interfered with the comfortable enjoyment of life or property by Claimants. Claimants did not consent to Respondent's conduct, as alleged herein. Respondent's conduct, and the dangerous condition of the Subject Waterways, which resulted in the severe flooding, affected a substantial number of people in the City of National City at the same time. An ordinary person would be reasonably annoyed or distributed by Respondent's conduct and the condition of the Subject Waterways, as well as the flooding that resulted therefrom. The serious nature of the harm, including but not limited to the health risks, sanitation issues, the flooding, and forced displacement of individuals, outweighs the social utility of Respondent's conduct.

Claimants suffered harm that was different from the type of harm suffered by the general public. Among other things Claimants' properties flooded and Claimants were forced to evacuate as a result of Respondent's conduct and the resulting flooding. Respondent's conduct, as alleged herein, was a substantial factor in causing the harm to Claimants.

Private Nuisance

Claimants owned, leased, controlled, occupied or otherwise rightfully possessed property in the City of San Diego within a 15-mile radius of the Subject Waterways. Respondent's actions, conduct, omissions, negligence, trespass and failure to act resulted in the flooding of the Subject Waterways, the dangerous conditions of the Subject Waterways, the obstruction of the Subject Waterways and the foreseeable obstruction to the free use of Claimants' properties. In addition, Respondent's actions, conduct, omissions, negligence, trespass and failure to act also obstructed the free use of the Claimants' Property and interfered with their comfortable enjoyment of said property, causing them unreasonable harm and substantial actual damages constituting a nuisance.

Respondent's conduct created a condition and/or permitted a condition to exist that was harmful to health and was dangerous in that it was unsanitary and created a risk of flooding. Respondent's conduct, as alleged herein, resulted in the flooding of Claimants' property. As a result, Respondent's conduct substantially interfered with Claimants' use and enjoyment of their property. Claimants did not consent to Respondent's conduct, as alleged herein. An ordinary person would be reasonably annoyed or distributed by Respondent's conduct, the accumulation of debris in the Subject Waterways, the dangerous condition and the flooding, as well as the damage that resulted therefrom.

As further alleged herein, Claimants were harmed by Respondent's conduct. Among other things, Claimant's suffered loss of use and damage to their property. Respondent's conduct,

as alleged herein, was a substantial factor in causing the harm to Claimant. The serious nature of the harm, including but not limited to the health risks, sanitation issues, flooding, and evacuations, outweighs the public benefit of Respondent's conduct.

Negligence

Respondents were the owners, operators, managers, and/or proprietors of the Subject Waterways, some of which are near or adjacent to the property of Claimants. Having undertaken the planning, construction, operation, design, maintenance, and/or oversight of the Subject Waterways, Claimants had a duty to use due care in the same. As the owners, operators, managers, and/or proprietors of the Subject Waterways, Respondents owed a duty, including to Claimants, to use reasonable care to keep the premises in a reasonably safe condition. This included, among other things, a duty to protect against reasonably foreseeable risks of injury that might result from dangerous conditions at said Subject Waterwys (i.e. on Respondents' property). As the owners or operators of the Subject Waterways, Respondents further had a duty: (1) to take reasonable and ordinary care to minimize the risk of flooding of the Subject Waterways; (2) to use reasonable care to prevent dangerous conditions that would contaminate or obstruct the Subject Waterways; (3) not to create dangerous conditions that would flood the Subject Waterways and/or Claimants' property; and (4) a duty to prevent flooding, among other things.

Respondents owed the duties alleged herein to Claimants, who reasonably relied on Respondents to maintain the Subject Waterways. Respondents so negligently and carelessly owned, operated, managed, controlled, supervised, and/or maintained the Subject Waterways so as to expose Claimants to an unreasonable risk of injury, thereby breaching the duties owed to Claimants. Respondent's breached their duty by, among other things: (1) allowing, creating, permitting and/or maintaining a dangerous condition at the Subject Waterways; (2) operating the Subject Waterways with obstructions, excessive debris, trash, grates or other materials; (3) failing to maintain the Subject Waterways; and (4) creating a contamination hazard. At all times relevant herein, Respondents planned, constructed, operated, designed, altered, maintained and/or the Subject Waterways in a dangerous condition.

In particular, Respondent negligently, carelessly, recklessly and without due regard to the safety of Claimants, created, permitted, continued, and/or maintained an unreasonably dangerous and unsafe condition at the Subject Waterways. As alleged herein, the Subject Waterways were in a dangerous condition in that, among other things, they had excessive debris, trash or other materials in them, were obstructed and/or not operating properly. These conditions were dangerous in that they created a foreseeable risk of flooding.

The risk of flooding and the compromising/obstruction of the Subject Waterways was reasonably foreseeable, if not expected, by a reasonable and prudent person and were reasonably foreseeable and to be expected by Respondent. As further alleged herein, the dangerous condition created a reasonably foreseeable risk of the kind of injury which occurred. Respondent had actual or constructive notice of the dangerous conditions at the Subject Waterway. As owners, operators, managers, or the parties responsible for the Subject Waterways, Respondents knew or should have known that the Subject Waterways were in an

unsuitable condition and they failed to take corrective action(s). Respondents also knew or should have known that the Subject Waterways were subject to flooding.

As a result of the dangerous conditions at the Subject Waterways, and as further alleged herein, the Subject Waterways became obstructed and compromised, resulting in the Flooding during reasonable and foreseeable rain, thereby causing damage to Claimants. Respondent's failure to comply with their duties of care and their allowing a dangerous condition to persist at the Subject Waterways proximately caused damage to Claimants. The negligence of Respondent was a substantial factor causing the damages suffered by Claimants.

Respondent placed the Subject Waterways in a dangerous condition and had other means available to take alternative action that would not have created the dangerous conditions. In addition, Respondent had sufficient time prior to the injuries alleged herein to take measures to protect against the dangerous condition and/or correct the dangerous condition. Respondent, however, did not take any measures to protect against the dangerous condition at the Subject Waterways or correct the dangerous conditions. Alternatively, a negligent or wrongful act or omission of an employee of the Respondent, within the scope of his or her employment, created the dangerous condition. Due to the Respondent's conduct, the Subject Waterways were in a dangerous condition at the time of the injuries alleged herein.

As a direct, proximate, and substantial result of Respondent's negligence, Claimants suffered damages and injuries including, but not limited to, property damage, destruction of and/or damage to real and personal property, loss of income, restoration costs, loss of earning capacity, loss of goodwill, loss of use, benefit, goodwill and diminution in value and/or enjoyment of such property, loss of profits, increased expenses, economic damages, mental pain and suffering, worry, emotional distress, anguish, anxiety, personal injury, nervousness and costs associated with clean-up and reopening, among other things. As alleged herein, Claimants lost the use and enjoyment of their property and incurred expenses as a consequence of that loss and the flooding. As further stated herein, Claimants have therefore suffered damages. The injuries sustained by Claimants were proximately caused by the dangerous condition alleged herein.

Negligence Per Se

Through the acts, omissions, and conduct alleged herein, Claimants have violated multiple California laws, statutes, ordinances, safety regulations and/or enactments, including but not limited to: (1) San Diego Municipal Code §43.0309; (2) the Municipal Waterways Maintenance Plan; (3) National City Ordinance No. 2008-2308; and (4) California Government Code § 831.8. Respondents' violations of California laws, regulations and statutes, as alleged herein, were a substantial factor in bringing about the harm suffered by Claimants. The harm and/or injury that resulted from Respondents' conduct was the nature of which the laws, statutes, or regulations were designed to prevent. Claimants, who suffered injury as a result of Claimants' conduct, were of the class of persons for whose protection the above laws and regulations were adopted.

What DAMAGE or INJURIES do you claim resulted? Give full extent of injuries or damages claimed:

As a direct and legal result of the City's negligence/misconduct and failure to maintain a dangerous condition on its property, Claimant suffered damages including but not limited to the following: (1) the loss of use, benefit, goodwill, diminution of value and/or enjoyment of such property; (2) damage to and/or total loss of personal property; (3) costs related to clean-up, repair, disposal, depreciation and/or replacement of property and/or other related consequential damages; (4) costs of evacuation, alternate living expenses, and other incurred expenses as a result of complete loss of primary residence; (5) economic damages related to the property; and (6) mental pain and suffering including worry, emotional distress, anguish, anxiety, and nervousness.

As stated herein, Claimant was forced to evacuate her home as a result of the flooding that occurred on January 22, 2024 in and around Personal Information National City, California. Claimant has been and will continue to be out of her home, and has thrown away almost all of his personal property due to the negligent and egregious conduct on behalf of the City. Claimant suffered and therefore claims damages in the amount of at least appx. $225,000, according to proof at trial. In light of this damage, Claimant requests damages in excess of $225,000 according to proof at trial. Claimant will also seek attorney's fees pursuant to Code of Civil Procedure 1021.5, 1035, or other applicable law.

For the reasons detailed herein, the City is responsible for Claimant's damages and injuries, resulting from the negligent operation and maintenance of the Subject Waterways, which resulted in severe flooding to Claimant's property.

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City Clerk
1243 National City Boulevard
National City, CA 91950

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City Clerk
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National City, CA 91950

Redaction Log

Reason	Page (# of occurrences)	Description
Personal Information	**1** (1) **2** (4) **3** (1) **5** (5) **8** (1) **16** (1)	Under Government Code section 6255(a), personal contact information is exempt under protection of the California Public Records Act, and has been withheld on some documents responding to your request. Personal information being withheld is in the interest of the applicantowner and their right to privacy which outweighs the public interest of disclosure.
Personal Signature	**1** (1) **3** (1)	Personal Signature - Redacted for cyber protection