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County of Alameda

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF ALAMEDA**

9
10 CITIZENS FOR BALANCED GROWTH,

11 Plaintiff,

12 vs.

13 CITY OF LIVERMORE,

14 Defendant.

Case No. **24CV095130**

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND FOR
DAMAGES AND RESTITUTION**

Breach of contract (damages, restitution,
specific performance);

CCP § 1060 (declaratory relief)

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1 **INTRODUCTION**

2 1. In 1999, Plaintiff CITIZENS FOR BALANCED GROWTH and Defendant CITY
3 OF LIVERMORE entered into the Dougherty Valley Settlement Agreement (DVSA), which
4 created a fund that was to be used for the acquisition of permanent easements or fee title for
5 conservation or agricultural preservation purposes. Under the DVSA, City staff are required to meet
6 and confer with Citizens prior to formulating recommendations to the City Council for acquisitions
7 using the DVSA Fund. The DVSA also requires the City to provide all information as may be
8 reasonably necessary for Citizens to carry out its responsibilities under the agreement.

9 2. In December of 2023, City staff informed Citizens that the City intends to acquire
10 property using the DVSA Fund and sought a meeting pursuant to the terms of the DVSA. However,
11 City staff refused, when asked, to provide information necessary for Citizens to conduct a
12 meaningful meet and confer about these acquisitions. In July of 2024, the City breached the DVSA
13 when City staff made a report to the City Council with recommendations to acquire certain parcels
14 of land using the DVSA Fund, without ever having met and conferred with Citizens, and without
15 ever having provided all of the information required for such a meet and confer.

16 3. By way of this Complaint, Citizens seeks to hold the City accountable for its
17 unexcused breach of the DVSA. Citizens also seeks a judgment compelling the City to perform
18 under the terms of the DVSA by a) providing Citizens requested information related to the
19 acquisition of parcels using the DVSA Fund; b) compelling the City to engage in a meaningful meet
20 and confer with Citizens prior to making recommendations requiring DVSA Fund expenditures to
21 the City Council; and c) ensuring that the DVSA Fund is made whole by returning it to its funding
22 status prior to the breach.

23 **PARTIES**

24 1. Plaintiff CITIZENS FOR BALANCED GROWTH is registered 501(c)(3) non-profit
25 organization in California. Founded in 1982, Citizens strives to support activities which enhance the
26 quality of life for residents of the Tri-Valley area, which includes Livermore, Pleasanton, Sunol,
27 and Dublin. Citizens’ goals are to promote growth appropriate for available water and sewer
28 capacities; promote a balance of residences and jobs in the Livermore-Amador Valley; preserve

1 agriculture as a viable industry; reduce pollution of air and water for a healthful environment; keep
2 the crime rate down; keep traffic congestion down; and urge Valley agencies to work together in
3 planning Valley growth. This is an all-volunteer organization, with no salaries or significant
4 administrative expenses. Citizens is a beneficiary of the DVSA, entitled to enforce the terms
5 therein.

6 2. Defendant CITY OF LIVERMORE is a municipality located in Alameda County,
7 California. The City is the beneficiary of the DVSA, with duties and obligations described therein.

8 JURISDICTION AND VENUE

9 3. Jurisdiction in this Court is proper because each of the causes of action set forth in
10 this Complaint arises under California law, because the amount of damages in controversy is within
11 the jurisdiction of the Superior Court, because the contract was entered in the County of Alameda,
12 because defendant is a city located within Alameda County, and because this action concerns the
13 purchase of property located within Alameda County.

14 4. Venue is proper in Alameda County pursuant to Code of Civil Procedure, section
15 394, subdivision (a) because defendant is a city situated in Alameda County.

16 GENERAL ALLEGATIONS OF FACT

17 **The Dougherty Valley Settlement Agreement**

18 5. In November 1999, the parties entered into an agreement entitled “Agreement to
19 Settle Water Litigation,” also known as the Dougherty Valley Settlement Agreement (DVSA). The
20 DVSA resolved litigation initiated by Citizens in 1998 to challenge the legality of an amendment
21 to a water supply agreement relating to a proposed real estate development project.

22 6. The DVSA created a fund to be used for conservation efforts. (DVSA, Section 6.)
23 The developers paid the City approximately \$1,000 per residential dwelling unit as an open space
24 conservation fee, to be used by the City “exclusively for the purchase from willing sellers of
25 permanent easement or fee title for conservation or agricultural preservation purposes.” (Id. at §
26 6(a).)

27 7. In order to expend the funds generated under this provision of the DVSA provided
28 that the City “will receive recommendations from its staff concerning proposed acquisitions of

1 permanent easements or fee title for conservation or agricultural preservation purposes.” (Id. at §
2 6(d)(i).) The DVSA also required that City “staff will meet and confer with Citizens prior to
3 formulating its recommendations for acquisitions.” (Id.)

4 8. If City staff’s recommendations differ from what Citizens would have preferred,
5 “the staff report to the City Council shall specify and explain the differences.” (Id.)

6 9. “Following receipt of the staff report, the City Council will place the proposed
7 acquisitions(s) on its agenda for public discussion; and only after such discussion render its
8 decision.” (Ibid.)

9 10. Under Section 9(d) of the DVSA, the parties “shall execute and deliver to the others
10 all such further instruments and documents as may be reasonably necessary to carry out the terms
11 and provisions of [the DVSA] and secure to the others the full and complete enjoyment of their
12 respective rights and privileges hereunder.”

13 **Defendant’s Notice of Intent to Spend DVSA Funds**

14 11. On December 11, 2023, City staff informed Citizens of staff’s intent to make certain
15 unspecified acquisitions using the DVSA Fund, pursuant to the DVSA, Section 6, and requested a
16 meeting with Citizens.

17 12. On December 15, 2023, Citizens informed City staff that the proposed meeting
18 times would not work and sought more information about the details of the proposed meeting. This
19 request for information was reiterated on December 16, 2023.

20 13. On December 18, 2023, City staff responded, providing the following limited
21 information: “The City is in negotiations with two different property owners to purchase
22 approximately 112 total acres that would provide scenic, habitat, and recreational values. Both
23 properties are in North Livermore (north of I-580) and east of Collier Canyon.” The City agreed to
24 delay the proposed meeting until after the new year.

25 14. That same day, Citizens responded, asking for more information and explaining the
26 importance of obtaining that information prior to the meeting, as well as providing a commitment
27 to maintaining confidentiality of any information provided. Specifically, Citizens sought the parcel
28 numbers for the properties in question, the identity of the prospective buyers, and an estimate of

1 how much of the DVSA Fund would be sought.

2 15. Citizens were particularly concerned because City staff had never proposed to
3 acquire more than one parcel at a time during the meet and confer process. Citizens worried it
4 would not be able to meaningfully meet and confer to provide or withhold its recommendation to
5 City Council, as required under the DVSA, without sufficient information. Making matters more
6 complex, Citizens learned that City staff proposed to purchase one parcel that was the subject of
7 significant litigation, and staff refused to answer questions about that parcel in public or in private.

8 16. On January 23, 2024, City staff sent an invitation to Citizens for a meeting to occur
9 on January 30th, and the invitation was enthusiastically accepted by Citizens.

10 17. On January 26, 2024, City staff unilaterally cancelled the January 30th meeting.

11 18. On February 3, 2024, Citizens reached back out to City staff, again asking for
12 information, and reiterating their request to obtain the identity of the potential buyers.

13 19. On February 6, 2024, City staff responded with an incomplete answer to Citizens’
14 requests for information, providing only that the City will be the buyer.

15 20. On March 18, 2024, City staff requested a meeting with Citizens, and transmitted
16 some, but not all, of the information requested by Citizens.

17 21. On March 24, 2024, Citizens informed City staff that Citizens was drafting a
18 response to staff’s incomplete transmission of information.

19 22. On April 9, 2024, City staff provided a letter to Citizens informing Citizens that this
20 was the “final request to meet-and-confer” regarding the recommendation being formulated by
21 City staff to the City Council regarding the expenditure of monies from the DVSA Fund.

22 23. On April 11, 2024, Citizens agreed to meet, but requested the following information
23 in order to prepare for such a meeting:

- 24 a. Any existing letters of intent for purchase for each of the properties targeted for
25 DVSA funding;
- 26 b. Proposed sales contracts for each of the properties targeted for DVSA funding;
- 27 c. Purchase agreements and all encumbrance documents for the Eddie’s Flat and
28 Farber properties, both funded a few years ago by DVSA. This information would

- 1 be used to compare the City’s current proposals with what was done in the past and
2 assess/compare conservation mechanisms;
- 3 d. Plans, in progress or complete, for environmental stewardship in perpetuity for
4 targeted acquisitions; and,
 - 5 e. Contact information for the controlling trustee for the parcel targeted for acquisition
6 that is involved in significant litigation.

7 24. On April 21, 2024, the City responded to Citizens’ request for information; however,
8 the response was inadequate insofar as it did not contain all of the requested information.

9 Specifically, the City made the following responses:

- 10 a. City staff provided old versions of the letters of intent that had been replaced by
11 newer versions;
- 12 b. City staff declined to share any sales contracts for the properties in question;
- 13 c. City staff informed Citizens that the City was not in possession of the Eddie’s Flat
14 and Farber properties’ purchase agreements and encumbrance documents, and
15 refused to assist Citizens in obtaining them;
- 16 d. City staff informed Citizens that they had not made any plans for environmental
17 stewardship in perpetuity for the targeted acquisitions; and,
- 18 e. City staff refused to provide contact information for the controlling trustee for the
19 property targeted for acquisition that is the subject of significant litigation.

20 25. Citizens informed City staff on April 22, 2024 that Citizens did not have the
21 necessary documents required for a responsible review of the proposed expenditure of DVSA funds,
22 and informed the City that Citizens opposed staff making recommendations to the City Council
23 without the required conference.

24 26. On July 2, 2024, City Staff posted the meeting agenda for the regular meeting of the
25 Livermore City Council scheduled to occur on July 8, 2024. Agenda Item Number 5.5 included
26 City staff recommendations for land acquisitions discussed using DVSA funds.

27 27. At the July 8, 2024, City Council meeting, Citizens spoke to City Council,
28 informing them of its effort to meet and confer with City staff and explaining staff’s failure to

1 provide the necessary information to conduct a meaningful meet and confer about these
2 acquisitions. The City Council continued Item 5.5 to the following City Council meeting on July
3 22, 2024.

4 28. On July 9, 2024, City staff requested a meeting with Citizens to take place that
5 week, and Citizens responded with a list of information that was still outstanding. Citizens
6 informed City staff that a meeting that week would not be possible because Citizens needed time to
7 speak with counsel in light of the City's apparent breach of the DVSA's meet and confer
8 requirements.

9 29. On July 11, 2024, City staff finally transmitted two of the requested purchase
10 agreements to Citizens, as well as a "draft response" to Citizens' July 9th questions. But again,
11 City staff failed to provide requested information, including current letters of intent and
12 environmental stewardship plans.

13 30. On July 19, 2024, Citizens' attorney sent a letter to City staff reiterating the
14 importance of the meet and confer process and demanding formal access to Citizens' requested
15 information and documents.

16 31. On July 22, 2024, the City Council met to consider acquisition of the "Hartford
17 Property" with DVSA Funds. By a 4-0 vote, City Council approved the acquisition request, with a
18 modification to the item to allow the city manager to alternatively utilize "a dedicated funding
19 source for the purchase of open space, and the city manager can make that determination in her
20 discretion."

21 32. Following this meeting, Citizens made several requests to City staff and the escrow
22 company to determine if the City had elected to proceed with using the DVSA as the source of
23 funding for the purchase of the "Hartford Property." To date, nobody has responded to Citizens'
24 requests for information.

1 **CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

3 **(Breach of Written Contract – DVSA, Section 9)**

4 33. Plaintiff hereby realleges and incorporates each of the above paragraphs as if fully
5 set forth herein.

6 34. On November 2, 1999, Citizens and the City entered into the Dougherty Valley
7 Settlement Agreement (DVSA).

8 35. Section 9 of the DVSA requires each of the settling parties to the DVSA to “execute
9 and deliver to the others all such other further instruments and documents **as may be reasonably**
10 **necessary to carry out the terms and provisions of [the DVSA]** and secure to the others the full
11 and complete enjoyment of their respective rights and privileges hereunder.” [Emphasis added.]

12 36. Defendant violated Section 9 of the DVSA when it refused, repeatedly, to provide
13 the information that Citizens requested in order to conduct a meaningful meet and confer about the
14 proposed property acquisitions using the DVSA Fund.

15 37. The information Citizens requested was reasonably necessary to conduct a
16 meaningful meet and confer under Section 6 of the DVSA.

17 38. Defendant provided some, but not all, of the documents requested by Citizens, and
18 in some cases, provided the documents *after* City staff had already formulated recommendations
19 and presented them to City Council.

20 39. By its acts and omissions, defendant has materially breached Section 9 of the DVSA.

21 40. Citizens performed all of its obligations under the DVSA, except to the extent that
22 Citizens was unable to because of defendant’s failures to provide required information and
23 documents.

24 41. As a direct and proximate result of defendant’s breach of the DVSA, the DVSA
25 Fund has suffered damages.

26 42. Citizens is entitled to an award of costs of suit and attorney’s fees incurred herein,
27 pursuant to Section 8(d)(v) of the DVSA.

1 **SECOND CAUSE OF ACTION**

2 **(Breach of Written Contract – DVSA, Section 6)**

3 43. Plaintiff hereby reallege and incorporate all of the above paragraphs as if fully set
4 forth herein.

5 44. Under DVSA, Section 6, “City staff will meet and confer with [Plaintiff] **prior to**
6 **formulating its recommendations for acquisitions.**” [Emphasis added.]

7 45. The DVSA requires the meet and confer process to occur before City staff
8 formulates its recommendations for acquisitions, not after.

9 46. Defendant breached DVSA, Section 6, when, on July 2, 2024, City staff presented to
10 City Council recommendations formulated without ever having met and conferred about those
11 recommendations with Citizens.

12 47. Defendant further breached the DVSA, when City staff again presented its
13 recommendations to City Council on July 22, 2024, without ever having met and conferred with
14 Citizens.

15 48. By its acts and omissions, defendant has materially breached the DVSA.

16 49. Citizens performed all of its obligations under the DVSA, except to the extent that
17 Citizens was unable to because of defendant’s failures to provide the required documents.

18 50. As a direct and proximate result of defendant’s breach of the DVSA, the DVSA
19 Fund has suffered damages.

20 51. Restitution is appropriate to make the DVSA Fund whole.

21 52. Citizens is entitled to an award of costs of suit and attorney’s fees incurred herein,
22 pursuant to Section 8(d)(v) of the DVSA.

23 **THIRD CAUSE OF ACTION**

24 **(Specific Performance and Restitution)**

25 53. Plaintiff hereby reallege and incorporate all of the above paragraphs as if fully set
26 forth herein.

27 54. Citizens and the City entered into a specifically enforceable contract that is
28 sufficiently certain in its terms; namely, Citizens and the City entered the DVSA by which the City

1 agreed to provide all documents reasonably necessary for Citizens to comply with its obligations
2 under the DVSA, which include the obligation to meet and confer with City staff prior to any
3 formulation of recommendations about the acquisition of properties under Section 6 of the DVSA.

4 55. Citizens and the City both provided adequate consideration under the DVSA.

5 56. Citizens has performed all of its obligations under the DVSA, except to the extent
6 that it was unable to do so because of defendant's failures to provide the required documents.

7 57. Defendant has breached the DVSA by failing to provide documents to Citizens that
8 were reasonably necessary for Citizens to comply with its obligations; and, by presenting
9 recommendations for the use of DVSA funds to City Council without first having met and
10 conferred about the recommendations with Citizens.

11 58. Citizens has no adequate remedy at law for defendant's failures.

12 59. Citizens is entitled to specific performance of Sections 6 and 9 of the DVSA.

13 60. Restitution is appropriate to make the DVSA Fund whole.

14 61. Citizens is entitled to an award of costs of suit and attorney's fees incurred herein,
15 pursuant to Section 8(d)(v) of the DVSA.

16 **FOURTH CAUSE OF ACTION**

17 **(Declaratory Relief, Code Civ. Proc., § 1060)**

18 62. Plaintiff hereby reallege and incorporate all of the above paragraphs as if fully set
19 forth herein.

20 63. Citizens is informed and believes and thereon alleges that an actual controversy
21 exists between Citizens and the City relative to the DVSA.

22 64. Citizens prays that the Court adjudicate the rights, interests, duties, and obligations
23 of Citizens and the City under the DVSA, and Citizens specifically prays that the Court determine
24 that defendant violated the DVSA by failing to provide all necessary documents required for
25 Citizens to perform its obligations under the DVSA, and that defendant violated the DVSA by
26 failing to meet and confer with Citizens prior to submitted its recommendations about the
27 acquisition of certain properties using the DVSA Fund.

28 65. In conjunction therewith, Citizens requests that this Court issue temporary,

1 preliminary, and permanent injunctive relief, which prohibits the City acquiring properties using
2 monies from the DVSA Fund until this case can be decided on the merits.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for the following relief:

- 5 A. For a declaration that defendant has violated Sections 6 and 9 of the DVSA;
- 6 B. For an order requiring defendant to replenish the DVSA Fund if monies were
7 expended in violation of the DVSA, as alleged herein, in restitution;
- 8 C. For a temporary, preliminary, and permanent injunction compelling defendant to
9 comply with the DVSA at all times in the future;
- 10 D. For an accounting of the DVSA Fund, made available to the Court and to Citizens
11 immediately;
- 12 E. For an order compelling defendant to specifically perform under the DVSA;
- 13 F. For a declaration of plaintiff's and defendant's respective rights, duties, interests, and
14 obligations;
- 15 G. For an order awarding plaintiffs its costs and attorneys' fees incurred in this action
16 and,
- 17 H. For any other legal and equitable relief as this Court deems just and proper.

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19 Dated: October 9, 2024

Respectfully submitted,

20 GREENFIRE LAW, PC

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22 By:



23 Jessica L. Blome
24 Attorneys for Plaintiff
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