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PROTECTION ALLIANCE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, a non-profit corporation,

Plaintiff and Petitioner,

v.

CITY OF MODESTO, a municipality,

Defendant.

Civil Case No.: _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES AND VERIFIED PETITION FOR WRIT OF MANDATE

(Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*; California Code of Civil Procedure § 1085(a); California Water Code § 13376)

California Sportfishing Protection Alliance ("CSPA" or "Plaintiff"), by and through its counsel, hereby alleges:

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provision of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq*. (the "Clean Water Act" or "CWA"). 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws of the United States).

2. On 11 July 2012, CSPA issued a 60-day notice letter ("Notice Letter") to the City of Modesto ("City" or "Modesto"). The Notice Letter informed Modesto of its violations of the Clean Water Act and of CSPA's intention to file suit against it for these violations. The Notice Letter is attached hereto as Exhibit 1 and is incorporated herein by reference.

3. The Notice Letter specifically notified Modesto of its violations of (1) *Waste Discharge Requirements for the City of Modesto Water Quality Control Facility Stanislaus County*, Order No. R5-2012-0031, NPDES No. CA0079103 ("2012 NPDES Permit"); (2) *Waste Discharge Requirements for the City of Modesto Water Quality Control Facility Stanislaus County*, Order No. R5-2008-0059, NPDES No. CA0079103 ("2008 NPDES Permit"); (3) *Waste Discharge Requirements for the City of Modesto Water Quality Control Facility Stanislaus County*, Order No. 5-01-120, NPDES No. CA0079103 ("2001 NPDES Permit"); (4) *Waste Discharge Requirements City of Modesto Storm Water Discharge from Municipal Separate Storm Sewer System Stanislaus County*, Order No. R5-2002-0182, NPDES Permit No. CAS083526, California Regional Water Quality Control Board Central Valley Region ("the 2002 MS4 Permit"); and (5) *Waste Discharge Requirements City of Modesto Storm Water Discharge from Municipal Separate Storm Sewer System Stanislaus County*, Order No. R5-2008-0092, NPDES Permit No. CAS083526, California Regional Water Quality Control Board Central Valley Region ("the 2008 MS4 Permit").

4. Pursuant to section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A), CSPA also served the Notice Letter on the Administrator of the United States Environmental Protection Agency ("EPA"), the Administrator of EPA Region IX, the Executive Director of the State Water

Resources Control Board ("State Board"), the Executive Officer of the Regional Water Quality Control Board, Central Valley Region ("Regional Board"), and the United States Attorney General.

5. More than sixty (60) days have passed since the Notice Letter was served on the City and the State and Federal agencies.

6. CSPA is informed and believes, and thereon alleges, that neither the EPA nor the State of California has commenced or is diligently prosecuting an action to redress the violations alleged in this complaint.

7. Venue is proper in the Eastern District of California pursuant to section 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the alleged violations have occurred and continue to occur within this judicial district.

8. On October 5, 2012, CSPA sent Modesto a letter via Certified United States Mail demanding immediate performance of its mandatory duties under the Porter-Cologne Water Quality Control Act ("Porter-Cologne Act"), 2012 NPDES Permit, 2008 NPDES Permit, 2001 NPDES Permit, the 2008 MS4 Permit, and the 2002 MS4 Permit. This October 5, 2012 letter is attached hereto as Exhibit 2 and is incorporated herein by reference. In this letter, CSPA specifically requested confirmation by Modesto that its demand would be met.

9. California Code of Civil Procedure Section 1085(a) provides that "[a] writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station. . . ." The violations of law and bases for writ of mandate alleged alternatively herein arise from Modesto's illegal discharges of sewage as well as Modesto's failures to take adequate measures to prevent those discharges and violations from occurring. Thus, CSPA's state law claims arise out of a common nucleus of fact with the federal claims under the Clean Water Act. Accordingly, the Court has supplemental jurisdiction over CSPA's petition for writ of mandate under 28 U.S.C. § 1367(a).

10. Verification of the Petition for Writ of Mandate is included at the end of this Complaint and Verified Petition for Writ of Mandate.

II. INTRADISTRICT ASSIGNMENT

11. As required by L. R. 120(d), intradistrict assignment of this matter to the Fresno Division

of the Court is proper because the events or omissions which give rise to CSPA's claims have occurred and continue to occur in Stanislaus County. No event or omission giving rise to CSPA's claims occurred in any other Division of this Court.

III. PARTIES

A. California Sportfishing Protection Alliance

12. CSPA is a non-profit, public benefit conservation and research organization that is organized under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

13. CSPA was founded in 1983.

14. CSPA's mission is to conserve, restore, and enhance the state's water quality, wildlife and fishery resources, and the state's aquatic ecosystems and associated riparian habitats.

15. CSPA accomplishes its mission by actively seeking federal, state, and local agency implementation of environmental regulations and statutes and regularly participates in administrative, legislative, and judicial proceedings.

16. CSPA's office is located at 3536 Rainier Avenue, Stockton, California 95204.

17. CSPA has approximately 2,000 members, a number of whom live, use, enjoy and/or recreate in and around the areas served by the City.

18. CSPA's members use and enjoy the waters in and around the areas served by the City's sewage collection system ("Collection System") and the City's municipal separate storm sewer system ("City MS4"). These waters include the San Joaquin River, Tuolumne River, Dry Creek, and unnamed tributaries to these waters (collectively, "Receiving Waters").

19. Each of the Receiving Waters is tributary to the Sacramento-San Joaquin Delta ("the Delta").

20. CSPA's members use and enjoy the Delta and the Receiving Waters for recreational, scientific, aesthetic, educational, conservation, and commercial purposes. Specifically, CSPA's members fish, boat, swim, picnic, hike, view wildlife, and engage in scientific study in and around the Receiving Waters.

21. CSPA's members travel by foot, automobile, bicycles and other means on streets within the City where sewage spills have occurred and may occur in the future. CSPA's members own or rent

property within the City and surrounding areas adjacent to or in proximity to areas where sewage spills from the City's Collection System have occurred and may occur in the future. CSPA's members use roadways and public spaces in the City for activities such as exercising, walking, and travelling.

22. CSPA's members' use and enjoyment of the Receiving Waters has been and continues to be adversely affected by Modesto's ongoing sewer system overflows ("SSOs") from the Collection System and by Modesto's discharges to and from the City MS4 contaminated with sewage and associated pollutants.

23. Sewage contains human waste, viruses, protozoa, mold spores, and bacteria. SSOs from the Collection System and discharges to and from the City MS4 contaminated with sewage and associated pollutants are threats to human health, including the health of CSPA's members, and the environment.

24. CSPA is informed and believes, and thereon alleges, that Modesto's illegal discharges to the Receiving Waters used and enjoyed by CSPA's members degrade water quality and harm aquatic life in these waters, and thus impair CSPA's members' use and enjoyment of these waters.

25. Continuing commission of the acts and omissions alleged herein will irreparably harm CSPA's members.

26. CSPA has a beneficial interest in the performance of the duties required by the Porter-Cologne Act and Modesto's NPDES permits. These beneficial interests satisfy the requirements of California Code of Civil Procedure section 1086. CSPA further has an interest in ensuring enforcement of a public duty, namely that Modesto comply with its mandatory duties under all water quality protection laws and regulations. Accordingly, CSPA is acting in the public interest and is authorized to seek the issuance of a writ of mandate to compel Modesto to perform its mandatory duties under the law. CSPA has no other plain, speedy, or adequate remedy at law.

27. The interests of CSPA's members have been, are being, and will continue to be adversely affected by Modesto's failure to comply with the 2001 NPDES Permit, 2008 NPDES Permit, 2012 NPDES Permit, 2002 MS4 Permit, 2008 MS4 Permit, and the Clean Water Act.

B. The City of Modesto

28. Modesto is a municipality located in Stanislaus County.

29. Modesto is incorporated under the laws of the State of California.

30. Modesto provides sewage collection and treatment services to a population of approximately 224,000 people, including the City of Modesto, the community of Empire, and a portion of the City of Ceres.

31. Modesto owns the Collection System.

32. Modesto operates the Collection System.

33. Modesto's Water Quality Control Division within the Public Works Department is responsible for the day-to-day operation and maintenance of the Collection System.

34. The City's Wastewater Division maintains an office at 1221 Sutter Avenue, Modesto, California.

35. The Collection System collects and conveys sewage in the City's service area to the City's Water Quality Control Facility.

36. Modesto owns and operates the City's Water Quality Control Facility.

37. The City MS4 collects and conveys storm water in the same areas served by the Collection System.

38. Modesto owns the City MS4.

39. Modesto operates the City MS4.

40. The City's Wastewater Division within the Public Works Department is responsible for the day-to-day operation and maintenance of the City MS4.

IV. FACTUAL BACKGROUND

A. The Collection System

41. The Collection System consists of 3.6 miles of pressure sewer and 651.9 miles of gravity sewer.

42. The Collection System consists of pipes and other manmade conveyances.

43. The Collection System collects and conveys sewage from residential, commercial, and industrial sources.

44. Sewage from these sources includes without limitation: human and animal-waste, household chemicals, and wastes from restaurants, hospitals, and industrial manufacturing and

processing plants.

45. As an operator of the Collection System, Modesto's duties include: preventing illicit discharges into the Collection System; properly designing and constructing sewers and connections; ensuring access to the Collection System for maintenance; inspecting and repairing laterals owned or maintained by the City; maintaining the Collection System; limiting the discharge of fats, oils, grease, and other debris into the Collection System; and enforcing violations of its Wastewater Ordinance.

46. The City's Water Quality Control Facility consists of separate primary and secondary treatment plants. The primary treatment plant is located at 1221 Sutter Avenue, Modesto, California. The secondary treatment plant is located at 7007 Jennings Road, Modesto, California.

47. Clarified effluent from the primary treatment plant is transported 6.5 miles to the secondary treatment plant. Effluent from the secondary treatment plant is ultimately transferred to one of two storage ponds after which it is either discharged to the San Joaquin River or applied to land owned by the City.

48. The 2012 NPDES Permit authorizes the secondary treatment plant to discharge up to 70 million gallons per day of secondary effluent from 1 October to 31 May.

B. Sanitary Sewer Overflows from the Collection System

49. Modesto reported at least 310 spills of raw and/or inadequately treated sewage from its Collection System since October 15, 2007. A table setting forth the dates and locations of the 310 reported SSOs is attached hereto as Exhibit 3 and incorporated by reference.

50. In total, Modesto spilled at least 378, 994.5 gallons of sewage.

51. Modesto reported that of the approximately 378,994.5 gallons of sewage spilled, 242,068 gallons of sewage reached surface waters.

52. Modesto's reported SSOs have discharged to surface waters, as well as to the streets, curbs, gutters, other paved surfaces, storm drain pipes, rock wells, and drainage channels that comprise the City MS4.

53. CSPA is informed and believes, and thereon alleges, that once the pollutants from an SSO reach the MS4, some or all of the pollutants from the SSO will subsequently be discharged to waters of the United States from the MS4.

54. CSPA is informed and believes, and thereon alleges, that Modesto has failed to adequately operate, maintain, repair, and/or update the Collection System resulting in SSOs.

55. CSPA is informed and believes, and thereon alleges, that Modesto lacks an adequate monitoring program to detect, report, and address SSOs and their impacts.

C. The City's Municipal Separate Storm Sewer System

56. An MS4 is defined as "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains)" owned or operated by a state, city, town, or other public body having jurisdiction over disposal of storm water, that is designed or used for collecting or conveying storm water and that discharges to waters of the United States. *See* 40 C.F.R. §§ 122.26(b)(8)(i)-(ii) and 122.26(b)(18).

57. The City MS4 provides storm water drainage for the residents and businesses of Modesto in the same areas served by the Collection System.

58. The City's MS4 consists of seventy-seven (77) miles of storm drain lines and twenty (20) pump stations, as well as streets, curbs, gutters, rock wells, and other paved surfaces in the City.

59. Approximately twenty (20) percent of the storm water that enters the City MS4 is discharged to the Tuolomne River, Dry Creek and other surface waters in the area.

D. Discharges of Sewage and Associated Pollutants into the MS4

60. Modesto reported that of the 310 SSOs that have occurred since October 15, 2007, 279 reached the storm drains, streets, curbs, gutters, and paved surfaces that make up the City's MS4. A table setting forth the dates and locations of the 279 reported SSOs that reached the MS4 is attached hereto as Exhibit 4 and incorporated by reference.

61. SSOs are not storm water.

62. The City MS4, including the accompanying pipes and channels, is designed to convey approximately twenty percent of any flows that enter the City MS4 to area waters, including the Receiving Waters.

63. CSPA is informed and believes, and thereon alleges, that SSOs that reach the City MS4 will be discharged to area receiving waters.

64. CSPA is informed and believes, and thereon alleges, that Modesto has failed to

adequately manage and operate the City MS4.

65. CSPA is informed and believes, and thereon alleges, that Modesto has not implemented any operational and/or design features that effectively prohibit SSOs from reaching the City MS4.

E. The Environmental Impacts of the City's Illegal Discharges

66. The Collection System and the City MS4 ultimately drain to Receiving Waters.

67. Effluent from the Water Quality Control Facility is discharged to the San Joaquin River or applied to land owned by the City.

68. CSPA is informed and believes, and thereon alleges, that SSOs from the Collection System, as well as SSOs that enter the MS4 from the Collection System, are discharged to Receiving Waters.

69. CSPA is informed and believes, and thereon alleges, that Receiving Waters are waters of the United States as defined by the Clean Water Act and controlling legal authority.

70. The Tuolumne River is navigable.

71. Below the Don Pedro Reservoir, the Tuolumne River flows west and passes through the area served by the City until it joins with the San Joaquin River.

72. Dry Creek is a tributary to the Tuolumne River.

73. Dry Creek is navigable as it flows through Modesto.

74. Dry Creek flows east through the area served by the City until it joins with the Tuolumne River in downtown Modesto.

75. The San Joaquin River is navigable.

76. The San Joaquin River flows to the Delta.

77. The Delta is navigable.

78. The Receiving Waters and the Delta provide habitat for aquatic species, opportunities for wildlife viewing, fishing, and other water-related recreation such as swimming, wading, and kayaking.

79. The designated beneficial uses of the Receiving Waters include contact and non-contact water recreation (such as fishing), wildlife habitat, agricultural water supply and stock watering, warm and cold habitat spawning, migration of aquatic organisms for warm and cold water habitats, and warm and cold freshwater aquatic habitats. *See The Water Quality Control Plan (Basin Plan) for the*

California Regional Water Quality Control Board, Central Valley Region, The Sacramento River Basin and the San Joaquin River Basin, California Regional Water Quality Control Board, Central Valley Region (Fourth Edition, Revised October 2011) at Table II-1.

80. An impaired water body does not support the designated beneficial uses for that water body. *See* 33 U.S.C. § 1313(d).

81. The San Joaquin River in the Modesto area is listed on the State of California's 2010 Clean Water Act Section 303(d) list of impaired water bodies as impaired for boron, selenium, electrical conductivity, chlorpyrifos, diazinon, DDT, Group A pesticides, mercury, temperature, and unknown toxicity. Clean Water Act Section 303(d) List, *Available at* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml.

82. Dry Creek is impaired for chlorpyrifos, diazinon, E. coli, and unknown toxicity. *Id*.

83. The Tuolumne River in the Modesto Area is impaired for chlorpyrifos, diazinon, Group A pesticides, temperature, and unknown toxicity. *Id*.

84. A number of the pollutants impairing the waters that receive discharges from the Collection System and City MS4 are found in the raw and/or inadequately treated discharge.

85. Many of the pollutants found in raw and/or inadequately treated sewage are toxic.

86. By discharging raw and/or inadequately treated sewage and its associated pollutants to waters of the United States in violation of the Clean Water Act, Modesto has contributed to, and continues to contribute to the impairment of the Receiving Waters. As such, Modesto's violations of the Clean Water Act directly harm CSPA's members' use and enjoyment of the Receiving Waters and the Delta.

V. LEGAL BACKGROUND

A. The Clean Water Act

87. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant to waters of the United States unless the discharge is authorized by and in compliance with the terms of a NPDES permit.

88. Section 402 of the Clean Water Act, 33 U.S.C. § 1342, provides the federal framework for regulating the discharge of pollutants to waters of the United States.

89. The Clean Water Act provides for citizen enforcement actions against any "person," including for violations of any term of an NPDES permit, or for discharging without an NPDES permit. *See* 33 U.S.C. §§ 1365(a), 1365(f), and 1362(5).

90. Under the Clean Water Act, owner(s) and operator(s) of a facility or activity that violates the Clean Water Act are liable for those violations. *See* 33 U.S.C. § 1311(a); 40 C.F.R. § 122.2.

91. An action for injunctive relief under the Clean Water Act is authorized by section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a).

92. Violators of the Clean Water Act are subject to an assessment of civil penalties of up to $32,500 per day per violation occurring between 16 May 2007 and 12 January 2009, and $37,500 for all violations occurring after January 12, 2009. 33 U.S.C. §§ 1365(a) and 1319(d); 40 C.F.R. §§ 19.1–19.4 (2010).

93. The Clean Water Act authorizes the award of reasonable attorneys' fees and litigation costs. *See* 33 U.S.C. § 1365(d).

B. The Requirements of the 2012 NPDES Permit, the 2008 NPDES Permit, and the 2001 NPDES Permit

94. Discharges from the Collection System are currently regulated by the 2012 NPDES Permit.

95. The 2012 NPDES Permit became effective on 27 July 2012.

96. Discharges from the Collection System were regulated by the 2008 NPDES Permit from 14 June 2008 until 26 July 2012.

97. Discharges from the Collection System were regulated by the 2001 NPDES Permit from 30 June 2001 until 13 June 2008.

98. Any violation of the 2012 NPDES Permit, the 2008 NPDES Permit, or the 2001 NPDES Permit is a violation of the Clean Water Act. *See* 33 U.S.C. § 1365(f); 40 C.F.R. § 122.41; 2012 NPDES Permit, Attachment D § I.A.1; 2008 NPDES Permit, Attachment D § I.A.1.; 2001 NPDES Permit, Provision E.17.

99. The 2012 NPDES Permit, the 2008 NPDES Permit, and the 2001 NPDES Permit contain prohibitions on discharges from the Collection System.

100. Discharge Prohibitions, §§ A.1 and A.2 and Findings, Nos. 4-5 and 7-8 of the 2001 NPDES Permit provide that effluent can only be discharged from the storage ponds into the San Joaquin River between October 1 and May 31, and only when the flow in the River is high enough to assure a dilution of 20:1.

101. Discharge Prohibitions, § III.E of the 2008 NPDES Permit provides that effluent can only be discharged from the storage ponds into the San Joaquin River between October 1 and May 31, and only when the flow in the River is high enough to assure a dilution of 20:1

102. Discharge Prohibitions, § III.E of the 2012 NPDES Permit provides that effluent can only be discharged from the storage ponds into the San Joaquin River between October 1 and May 31, and only when the flow in the River is high enough to assure a dilution of 20:1.

103. Section A.2. of the 2001 NPDES Permit prohibits discharging treated wastewater other than from the designated outfall to the San Joaquin River and certain land application locations.

104. Section III.A. of the 2008 NPDES Permit prohibits discharging wastewater other than from the designated outfall to the San Joaquin River and certain land application locations.

105. Section III.A. of the 2012 NPDES Permit prohibits discharging wastewater other than from the designated outfall to the San Joaquin River and certain land application locations.

106. Section A.3. of the 2001 NPDES Permit prohibits the bypass or overflow of wastes to surface waters.

107. Section III.B. of the 2008 NPDES Permit prohibits the bypass or overflow of wastes into surface waters.

108. Section III.B. of the 2012 NPDES Permit prohibits the bypass or overflow of wastes into surface waters.

109. Attachment E to the 2008 NPDES Permit, at Section X.D.3., provides that "Sanitary sewer overflows are prohibited by this order."

110. Attachment E to the 20012 NPDES Permit, at Section X.D.3., provides that "Sanitary sewer overflows are prohibited by this order."

C. Requirements of the 2008 MS4 Permit and the 2002 MS4 Permit

111. The 2008 MS4 Permit contains current prohibitions and limitations on the discharge of

pollutants to the City MS4.

112. The 2008 MS4 Permit was issued on June 12, 2008.

113. The 2002 MS Permit contained prohibitions and limitations on the discharge of pollutants to the City MS4 from 18 October 2002 until 11 June 2008.

114. Any violation of the 2002 MS4 Permit and/or the 2008 MS4 Permit is a violation of the Clean Water Act. *See* 33 U.S.C. § 1365(f); 40 C.F.R. § 122.41; 2008 MS4 Permit, General Provisions A.1.

115. Prohibition B.1. of the 2002 MS4 Permit and Discharge Prohibitions B.1. of the 2008 MS4 Permit require Modesto to effectively prohibit discharges of non-storm water to the City MS4.

D. The Porter-Cologne Act

116. Section 13376 of the Porter-Cologne Act requires that an entity who discharges pollutants to navigable waters of the United States within California must do so in accordance with its waste discharge requirements.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Discharges of SSOs in Violation of the 2012 NPDES Permit, the 2008 NPDES Permit, the 2001 NPDES Permit, and the Clean Water Act

117. CSPA realleges, as if set forth fully herein, each and every allegation contained in the preceding paragraphs.

118. The City is a "person" within the meaning of Clean Water Act Section 502(5), 33 U.S.C. § 1362(5).

119. Pipes and other manmade conveyances within the Collection System are point sources under the Clean Water Act. *See* U.S.C. § 1362(14).

120. The City has discharged SSOs from the Collection System on at least three hundred and ten (310) separate occasions since October 15, 2007. The date and location of these SSOs are identified in Exhibit 3.

121. Each day from (October 15, 2007) to 13 June 2008 that an SSO was discharged from the Collection System is a separate and distinct violation of Section A.2. of the 2001 NPDES Permit and the

Clean Water Act.

122. Each day from (October 15, 2007) to 13 June 2008 that an SSO was discharged from the Collection System is a separate and distinct violation of Section A.3. of the 2001 NPDES Permit and the Clean Water Act.

123. Each day from 14 June 2008 to 26 July 2012 that an SSO was discharged from the Collection System is a separate and distinct violation of Section III.A. of the 2008 NPDES Permit, Section X.D.3 of Attachment E to the 2008 NPDES Permit, and the Clean Water Act.

124. Each day from 14 June 2008 to 26 July 2012 that an SSO was discharged from the Collection System is a separate and distinct violation of Section III.B. of the 2008 NPDES Permit and the Clean Water Act.

125. Each day since 27 July 2012 that an SSO was discharged from the Collection System is a separate and distinct violation of Section III.A. of the 2012 NPDES Permit, Section X.D.3 of Attachment E to the 2012 NPDES Permit, and the Clean Water Act.

126. Each day since 27 July 2012 that an SSO was discharged from the Collection System is a separate and distinct violation of Section III.B. of the 2012 NPDES Permit and the Clean Water Act.

127. CSPA is informed and believes, and thereon alleges, that more SSOs will be discovered through this enforcement action.

128. Modesto's violations will continue each day it discharges SSOs in violation of the requirements of the 2012 NPDES Permit and the Clean Water Act.

129. CSPA is informed and believes, and thereon alleges, that Modesto's violations are ongoing and it is likely that Modesto will continue to discharge SSOs in violation of the CWA without Court intervention.

130. By committing the acts and omissions alleged above, Modesto is subject to an assessment of civil penalties for all violations of the Clean Water Act occurring since October 15, 2007. 33 U.S.C. §§ 1319(d) and 1365(a).

131. An action for declaratory judgment is authorized by 28 U.S.C. § 2201.

132. An action for injunctive relief under the Clean Water Act is authorized by section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged

above will irreparably harm Plaintiff and the citizens of the State of California, for which harm they have no other plain, speedy, or adequate remedy at law.

133. WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

Discharges to the MS4 in Violation of the 2008 MS4 Permit, the 2002 MS4 Permit, and the Clean Water Act

134. CSPA realleges, as if set forth fully herein, each and every allegation contained in the preceding paragraphs.

135. CSPA is informed and believes, and thereon alleges, that Modesto has discharged SSOs from its Collection System to the City MS4 on at least two hundred seventy-nine (279) separate occasions since October 15, 2007.

136. CSPA is informed and believes, and thereon alleges, that Modesto's Storm Water Management Plan does not contain requirements that have or will effectively prohibit the discharge of non-storm water in the form of SSOs to the City MS4.

137. Modesto is liable for violating the 2002 MS4 Permit and the Clean Water Act for its continuing failure to effectively prohibit the discharge of non-storm water in the form of SSOs to the City MS4 each day from October 15, 2007, until 11 June 2008.

138. Modesto is liable for violating the 2008 MS4 Permit and the Clean Water Act for its continuing failure to effectively prohibit the discharge of non-storm water in the form of SSOs to the City MS4 each day since 11 June 2008.

139. At a minimum, Modesto has failed to effectively prohibit the discharge of SSOs from its Collection System to the City MS4 on at least two hundred seventy-nine (279) separate occasions since October 15, 2007.

140. Modesto's discharges of SSOs from the Collection System to the City MS4 in violation of the 2002 MS4 Permit's and 2008 MS4 Permit's discharge prohibitions are ongoing and continuous.

141. Each day that Modesto failed and continues to fail to effectively prohibit non-storm water discharges in the form of SSOs to the City MS4 is a separate and distinct violation of the 2002 MS4 Permit, the 2008 MS4 Permit, and the Clean Water Act.

142. Modesto's violations will continue each day it fails to effectively prohibit discharges in the form of SSOs into the MS4 in violation of the requirements of the 2008 MS4 Permit and the Clean Water Act.

143. By committing the act and omissions alleged above, Modesto is subject to an assessment of civil penalties pursuant to Clean Water Act sections 309(d) and 505(a), 33 U.S.C. §§ 1319(d), 1365(a), occurring from at least October 15, 2007 to the present.

144. An action for declaratory judgment is authorized by 28 U.S.C. § 2201.

145. An action for injunctive relief under the Clean Water Act is authorized by section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff and the citizens of the State of California, for which harm they have no other plain, speedy, or adequate remedy at law.

146. WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

THIRD CAUSE OF ACTION
Failure to Comply with the Mandatory Duties
Under the NPDES Permits/Waste Discharge Requirements and the Porter-Cologne Act

147. CSPA re-alleges, as if set forth fully herein, each and every allegation contained in the preceding paragraphs.

148. As described herein, Modesto has been able and required to perform the duties and obligations described above under its NPDES Permits and the Porter-Cologne Act. Notwithstanding such ability, the plain duties imposed on Modesto by law, and the demand by CSPA that Modesto perform such mandatory duties, Modesto has wrongfully failed and refused, and continues to fail and refuse, to comply with its mandatory duties by failing to:

a. completely prevent any SSO that results in the discharge of untreated or partially treated wastewater other than from the designated outfall to the San Joaquin River and certain land application locations as mandated by Section A.2. of the 2001 NPDES Permit, Section III.A. and Section X.D.3. of the 2008 NPDES Permit, and Section III.A. and Section X.D.3. of the 2012 NPDES Permit;

b. completely prevent any SSO that results in the discharge of untreated or partially treated wastewater to waters of the United States as mandated by Section A.3. of the 2001 NPDES Permit,

Section III.B. of the 2008 NPDES Permit, and Section III.B. of the 2012 NPDES Permit

149. By failing to comply with the NPDES Permits, Modesto has wrongfully failed and refused, and continues to fail and refuse, to comply with its mandatory duties under the Porter-Cologne Act section 13376, which prohibits Modesto from discharging pollutants to waters or land except as authorized by waste discharge requirements.

150. CSPA is informed and believes, and thereon alleges, that Modesto has failed and continues to fail to comply with its mandatory duties under the Porter-Cologne Act since October 15, 2007.

151. Modesto's failure and refusal to fully comply with these mandatory requirements continues to this day. Unless compelled by this Court to do the acts required by law, Modesto will continue to violate the NPDES Permits and the Porter-Cologne Act.

152. No further administrative remedies are available to CSPA for the claims set forth herein. Given Modesto's failures and/or refusals to properly comply with the terms of the NPDES Permits and the Porter-Cologne Act, CSPA has no plain, speedy, or adequate remedy in the ordinary course of law because, unless the Court grants the requested writ of mandate to require Modesto to comply with its legal duties, Modesto will proceed with its actions and inactions in violation of the applicable legal requirements.

153. If Modesto continues to fail to perform its mandatory duties by fully implementing the requirements set forth in the NPDES permits and Porter-Cologne Act identified above, CSPA and the public will suffer substantial, clear, and certain irreparable injury in that Modesto will continue to discharge SSOs to waterways, roadways and properties used by the public, including CSPA's members, fail to take all feasible steps to contain its illegal discharges and minimize their impacts, and fail to allocate adequate resource to make the necessary repairs and operational adjustments to correct its ongoing failure to perform as required by law.

WHEREFORE, CSPA prays for relief as set forth herein.

VI. RELIEF REQUESTED

154. CSPA respectfully requests that this Court grant the following relief:

a. Issue a Court order declaring Modesto to have violated the 2001 NPDES Permit and the

Clean Water Act each day that Modesto has discharged an SSO from the Collection System from October 15, 2007, until 13 June 2008;

b. Issue a Court order declaring Modesto to have violated and to be in violation of the 2008 NPDES Permit and the Clean Water Act each day that Modesto has discharged SSOs from the Collection System from 14 June 2008 until 26 July 2012;

c. Issue a Court order declaring Modesto to have violated and to be in violation of the 2012 NPDES Permit and the Clean Water Act each day that Modesto has discharged, and continues to discharge, SSOs from the Collection System since 27 July 2012;

d. Issue a Court order declaring Modesto to have violated and to be in violation of the 2002 MS4 Permit and the Clean Water Act each day that Modesto has discharged SSOs to the City MS4 or otherwise failed to effectively prohibit discharges of SSOs to the MS4 from October 15, 2007, until 11 June 2008;

e. Issue a Court order declaring Modesto to have violated and to be in violation of the 2008 MS4 Permit and the Clean Water Act each day that Modesto has discharged SSOs to the City MS4 or otherwise or otherwise failed to effectively prohibit discharges of SSOs to the MS4 since 12 June 2008.

f. Issue a Court order enjoining Modesto from violating the specific terms, conditions, and provisions of the 2012 NPDES Permit and the Clean Water Act identified in this complaint;

g. Issue a Court order enjoining Modesto from violating the specific terms, conditions, and provisions of the 2008 MS4 Permit and the Clean Water Act identified in this complaint;

h. Issue a Court order requiring Modesto to remedy any and all injury to the receiving waters and Plaintiff's members resulting from its violations of the NPDES Permits and Clean Water Act;

i. Issue a Court order pursuant to sections 309(d) and 505(a), 33 U.S.C. §§ 1319(d) and 1365(a), assessing civil penalties against Modesto of up to $32,500 per day per violation of the Clean Water Act for all violations occurring between October 15, 2007, and 12 January 2009, and $37,500 per day per violation of the Clean Water Act for all violations occurring after 12 January 2009;

j. Alternatively, issue a writ of mandate directing Modesto, its officers, agents, and all other

persons acting on its behalf or through their orders, to cease discharging SSOs from its Collection System to waters of the State of California or the City MS4 and to immediately implement a program that ensures full compliance with the requirements of the NPDES Permits and the Porter-Cologne Act;

k. Issue a Court order awarding Plaintiff its costs and fees for bringing suit for Modesto's violations of the Clean Water Act as provided for under sections 309(d) and 505(a) of the Clean Water Act, 33 U.S.C. §§ 1319(d) and 1365(a) and California Code of Civil Procedure § 1021.5;

l. Grant any such other relief as the Court deems appropriate.

LOZEAU DRURY LLP

Dated: December 13, 2012

Michael Lozeau
Douglas Chermak
Attorneys for Plaintiff and Petitioner
California Sportfishing Protection Alliance

EXHIBIT 1

July 11, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mayor Garrad Marsh
Greg Nyhoff, City Manager
Dennis Turner, Director of Public Works
City of Modesto
1010 10th Street
Modesto, CA 95354

Gary DeJesus, Deputy Director of Public Works
Department
Robert Englent, Wastewater Collections Manager
Wastewater Administration
Primary Plant
1221 Sutter Ave.
Modesto, California 95351

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

Dear Mayor Marsh and Messrs. Nyhoff, Turner, DeJesus, and Englent:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq*. ("Clean Water Act" or "CWA") caused by the City of Modesto's ("City" or "Modesto") failure to comply with the terms and conditions of (1) *Waste Discharge Requirements for the City of Modesto Water Quality Control Facility Stanislaus County*, Order No. R5-2012-0031, NPDES No. CA0079103 ("2012 NPDES Permit"); (2) *Waste Discharge Requirements for the City of Modesto Water Quality Control Facility Stanislaus County*, Order No. R5-2008-0059, NPDES No. CA0079103 ("2008 NPDES Permit"); (3) *Waste Discharge Requirements for the City of Modesto Water Quality Control Facility Stanislaus County*, Order No. 5-01-120, NPDES No. CA0079103 ("2001 NPDES Permit") (the 2012 NPDES Permit, the 2008 NPDES Permit and the 2001 NPDES Permits are referred to collectively as the "NPDES Permits"); (4) *Waste Discharge Requirements City of Modesto Storm Water Discharge from Municipal Separate Storm Sewer System Stanislaus County*, Order No. R5-2002-0182, NPDES Permit No. CAS083526, California Regional Water Quality Control Board Central Valley Region ("the 2002 MS4 Permit"); and (5) *Waste Discharge Requirements City of Modesto Storm Water Discharge from*

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Municipal Separate Storm Sewer System Stanislaus County, Order No. R5-2008-0092, NPDES Permit No. CAS083526, California Regional Water Quality Control Board Central Valley Region ("the 2008 MS4 Permit") (the 2002 MS4 Permit and 2008 MS4 Permit are referred to collectively as the "MS4 Permits").

As required by the Clean Water Act, CSPA puts Modesto on formal notice that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit Letter ("Notice Letter"), CSPA intends to file suit in Federal District Court pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. §1365(a), against Modesto for the violations described in this Notice Letter.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the owner or managing agent of the facility responsible for the violations, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, and the Executive Officer of the State of California's State Water Resources Control Board ("State Board"). *See* 40 C.F.R. § 135.2.

CSPA intends on filing suit to seek injunctive relief pursuant to CWA Sections 505(a) and (d), 33 U.S.C. §1365(a) and (d), declaratory relief, and such other relief permitted by law to remedy the CWA violations outlined below. CSPA will also seek civil penalties pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the EPA Regulation, Adjustment of Civil Monetary Penalties for Inflation, set forth at 40 C.F.R. § 19.4 (2009). These provisions authorize civil penalties for each separate violation of the Clean Water Act occurring prior to January 12, 2009 of up to $32,500 per day per violation, and $37,500 per day per violation for all Clean Water Act violations occurring after January 12, 2009. Finally, CSPA will seek to recover its litigation costs, including attorneys' and experts' fees, pursuant to CWA Section 505(d), 33 U.S.C. § 1365(d).

I. ORGANIZATION GIVING NOTICE OF CLEAN WATER ACT VIOLATIONS

CSPA is a 501(c)(3) non-profit public benefit conservation and research organization. CSPA was established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality, wildlife and fishery resources, aquatic ecosystems and associated riparian habitats. CSPA accomplishes its mission by actively seeking federal, state, and local agency implementation of environmental regulations and statutes and routinely participates in administrative, legislative and judicial proceedings. When necessary, CSPA directly initiates enforcement actions on behalf of itself and its members to protect public trust resources. CSPA's office is located at 3536 Rainier Avenue, Stockton, California 95204.

CSPA's members use and enjoy the San Joaquin River, Tuolumne River, Dry Creek, their tributaries, and the waters in and around the Sacramento-San Joaquin River Delta (the "Delta") for fishing, boating, swimming, bird watching, picnicking, viewing wildlife, and engaging in scientific study. Information available to CSPA indicates that Modesto discharges raw and/or inadequately treated sewage into the Tuolumne River and Dry Creek, waters that are tributary to the San Joaquin

River, which flows to the Delta. These discharges of sewage and associated pollutants degrade water quality and harm aquatic life in these waters, and thus impair CSPA's members' use and enjoyment of the waters. Further, Modesto's discharges of raw and/or inadequately treated sewage are ongoing and continuous. As a result, CSPA's members' use and enjoyment of these waters has been and continues to be adversely impacted by the discharges of sewage to waters used and enjoyed by CSPA's members.

II. THE ENTITY RESPONSIBLE FOR THE ILLEGAL DISCHARGES

Information available to CSPA indicates that Modesto provides wastewater collection, treatment, and disposal services to residents and business in the City of Modesto, the community of Empire, and a portion of the City of Ceres. Modesto's Water Quality Control Division within the Public Works Department is responsible for the day-to-day operation and maintenance of the sewage collection system ("Collection System"), which is owned and operated by Modesto. The City's Wastewater Division maintains an office at 1221 Sutter Avenue, Modesto, California 95351. Among other things, Modesto is responsible for operating and maintaining the Collection System, including: preventing illicit discharges into the Collection System; properly designing and constructing sewers and connections; inspecting and repairing mainline sewer pipes; inspecting and repairing laterals owned or maintained by the City; limiting the discharge of fats, oils, and grease and other debris into the Collection System; and enforcing violations of its ordinances regarding discharges to its Collection System.

Information available to CSPA further indicates that the City owns and operates a municipal separate storm sewer system ("MS4"), which provides storm water drainage in Modesto. The City's Wastewater Division within the Public Works Department also is responsible for the day-to-day operation and maintenance of the MS4. The City Manager is responsible for the operations of Modesto's government. The Mayor is a member of the City Council, presiding officer over all City Council meetings, authorized to sign legal documents on behalf of the City, and represents the City on local, state, and national levels.

III. THE COLLECTION SYSTEM, THE WASTEWATER TREATMENT PLANT, AND THE CITY'S NPDES PERMITS

The City of Modesto is a municipality incorporated under the laws of the State of California. The City owns and operates the Collection System, which consists of 3.6 miles of pressure sewer and 651.9 miles of gravity sewer. Modesto provides sewage collection and treatment services for approximately 224,000 people, including the City of Modesto, the community of Empire, and a portion of the City of Ceres. The Collection System consists of pipes and other manmade conveyances, and is a point source under the Clean Water Act. *See* 33 U.S.C. § 1362(14). The Collection System collects and conveys sewage in the City's service area to the City of Modesto's Water Quality Control Facility ("Facility"). The Facility consists of separate primary and secondary treatment plants. Clarified effluent from the primary treatment plant, located at 1221 Sutter Avenue in the City of Modesto, is transported 6.5 miles southwest to the secondary treatment plant, located at 7007 Jennings Road in Modesto. Effluent from the secondary treatment plant is ultimately transferred to one of two storage

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ponds after which it is either discharged to the San Joaquin River or applied to land owned by the discharger.

In 2001, the City obtained a permit pursuant to the Clean Water Act (the 2001 NPDES Permit), which authorizes it to discharge pollutants from the storage ponds to the San Joaquin River subject to certain terms and conditions. For example, effluent can only be discharged from the storage ponds into the San Joaquin River between October 1 and May 31, and only when the flow in the River is high enough to assure a dilution of 20:1 (receiving water: effluent flow). *See* 2001 NPDES Permit, Discharge Prohibitions, §§ A.1 and A.2 and Findings, Nos. 4-5 and 7-8. This prohibition was carried over in the 2008 NPDES Permit. *See* 2008 NPDES Permit, Discharge Prohibitions, § III.E. It was then carried over in the 2012 NPDES Permit. *See* 2012 NPDES Permit, Discharge Prohibitions, § III.E. The 2012 NPDES Permit also contains strict prohibitions regarding discharges from the City's sewage infrastructure, which includes the Collection System. 2012 NPDES Permit, § III.A and Attachment E (Monitoring and Reporting Program), § X.D.3. These provision are mirrored in the 2008 NPDES Permit. 2008 NPDES Permit, § III.A and Attachment E (Monitoring and Reporting Program), § X.D.3. The 2001 NPDES Permit likewise prohibited any discharge other than at the single, authorized discharge point. 2001 NPDES Permit, § A.2. The 2001 NPDES Permit and the 2008 NPDES Permit also prohibited, and the 2012 NPDES Permit now prohibits, the bypass or overflow of waste to surface waters. 2001 NPDES Permit, § A.3; 2008 NPDES Permit, § III.B; 2012 NPDES Permit, § III.B.

Modesto operates and manages its Collection System improperly, resulting in sewer system overflows ("SSOs") of raw and/or inadequately treated sewage. According to reports submitted by Modesto to the State Board and the Regional Water Quality Control Board for the Central Valley Region ("Regional Board"), the City has spilled raw and/or inadequately treated sewage from its Collection System on at least 310 separate occasions in the last 5 years. Attached hereto as Exhibit A is a table that lists the date and location of the 310 reported SSOs.[1] In total, the City spilled at least 411,231.5 gallons of sewage, and reported that 195,793 gallons of sewage reached surface waters. The City's ongoing and continuous SSOs are violations of the CWA and demonstrate serious problems with the City's operation and maintenance of its Collection System.

IV. THE CITY'S MS4 AND ITS OBLIGATIONS UNDER THE CLEAN WATER ACT TO KEEP SEWAGE OUT OF THE MS4

The Modesto-owned and operated MS4 provides storm water drainage for the residents and businesses of Modesto in the same areas served by the Collection System. An MS4 is a system of ditches, man-made channels, catch basins and/or storm drains owned or operated by a State, city, or town that is designed or used for collecting or conveying storm water and that discharges to waters of the United States.[2] *See* 40 C.F.R. § 122.26(b)(8)(i)-(ii); *see also* 40 C.F.R. § 122.26(b)(18). The City charges single-family residential plots $3.23 per month (for property lots between 3,501 and 7,000

[1] Exhibit A lists the SSOs the City reported in the last 5 years in SSO reports submitted to the State and Regional Board, in the District's internal SSO reports, and in other correspondence to and from the City indicating SSOs from its Collection System.

[2] An MS4 is further defined as a sewer system that is not a combined sewer, and is not part of a Publicly Owned Treatment Works. *See* 40 C.F.R. § 122.26(b)(8)(iii)-(iv).

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square feet) and commercial users $37.50 per month (for property sizes of 20,000 square feet) to provide storm water drainage services.

Modesto's MS4 consists of 77 miles of storm drain lines and 20 pump stations, as well as the streets, curbs, gutters, other paved surfaces, and rock wells in the City. Storm water is discharged to either detention/retention basins, receiving waters (either Tuolumne River or Dry Creek), Modesto Irrigation District ("MID") laterals/drains, or rock wells. Twenty percent of the city area, covering approximately 6,650 acres of the urban area, drains directly to surface waters. Of this drainage, 33% drains to the Tuolumne River, 54% to Dry Creek, and 13% to Modesto Irrigation Canals.

Clean Water Act section 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating municipal storm water discharges under NPDES Permits. Section 402(p) of the CWA requires dischargers of municipal storm water to obtain and comply with an NPDES permit. *See* 33 U.S.C. § 1342(p). Section 402(p)(3)(B) of the CWA sets forth the requirements that must be in all MS4 permits, including requirements that prohibit discharges into the storm sewers and reduce pollutants in discharges to receiving waters. 33 U.S.C. § 1342(p)(3)(B). In 1994, Modesto was first issued the MS4 Permit. The City's permit was re-issued in 2002 and 2008. Pursuant to the MS4 Permit, the City is required to effectively prohibit the discharge of non-storm water into its MS4. *See* 2008 MS4 Permit, Discharge Prohibitions, B.1; 2002 MS4 Permit, Discharge Prohibitions, B.1.

The sewage spilled from the City's Collection System is non-storm water. Thus, when this sewage flows to the City's MS4, it is a discharge of non-storm water to the MS4. Of the 301 SSOs reported in the past five (5) years, the City reported that 275 reached the storm drains, streets, curbs, gutters, rock wells and paved surfaces that make up the City's MS4. The numerous, repeated, and ongoing discharges of SSOs to the MS4 evidence a failure by the City to effectively prohibit the discharge of non-storm water in the form of SSOs to the MS4. The City's failure is due in part to the improper management and operation of the Collection System, and in part to the inadequate management and operation of the MS4. For example, the City's Storm Water Management Program ("SWMP") does not contain adequately developed or implemented measures to effectively prohibit non-storm water discharges to the MS4.

V. THE LOCAL WATERWAYS RECEIVING THE ILLEGAL DISCHARGES OF POLLUTANTS AND THE ENVIRONMENTAL IMPACTS FROM THOSE DISCHARGES

A. The Receiving Waters

SSOs from Modesto's Collection System reach the San Joaquin River, Tuolumne River, Dry Creek, and their tributaries (collectively "Receiving Waters"). Modesto's MS4 also discharges to these Receiving Waters. Dry Creek flows into the Tuolumne River which flows into the San Joaquin River, which flows to the Sacramento-San Joaquin Delta, and eventually to San Francisco Bay. The Sacramento-San Joaquin Delta, along with the San Francisco Bay, forms the largest estuary on the west coast of North America. The Sacramento-San Joaquin Delta is a 1,600-square mile area of channels and islands at the confluence of the Sacramento and San Joaquin Rivers. Water that is not diverted from the Delta to municipal and agricultural uses flows through to the San Francisco Bay

Estuary. The Delta provides habitat to many species of aquatic wildlife, including multiple federally and state protected fish species. The San Joaquin River and its tributaries provide habitat for aquatic species, as well as opportunities for wildlife viewing, fishing, and other water-related recreation such as swimming, wading and kayaking.

According to the State of California, the beneficial uses of the San Joaquin River (mouth of the Merced River to Vernalis segment) include contact and non-contact water recreation (such as fishing), wildlife habitat, agricultural water supply and stock watering, warm habitat spawning, migration of aquatic organisms for warm and cold water habitats, and warm freshwater aquatic habitat.[3] Beneficial uses of the Tuolumne River (New Don Pedro Dam to San Joaquin River segment) include contact and non-contact water recreation (such as fishing), wildlife habitat, agricultural water supply and stock watering, warm and cold habitat spawning, migration of aquatic organisms for cold water habitats, and warm and cold freshwater aquatic habitats.

The San Joaquin River in the Modesto area is listed on the State of California's 2010 Clean Water Act Section 303(d) list of impaired water bodies as impaired for boron, selenium, electrical conductivity, chlorpyrifos, diazinon, DDT, Group A pesticides, mercury, temperature, and unknown toxicity.[4] Dry Creek is impaired for chlorpyrifos, diazinon, E. coli, and unknown toxicity. The Tuolumne River in the Modesto Area is impaired for chlorpyrifos, diazinon, Group A pesticides, temperature, and unknown toxicity. Many of the pollutants found in raw and inadequately treated sewage are toxic. By discharging raw and/or inadequately treated sewage and its associated pollutants to waters of the United States in violation of the Clean Water Act, the City has contributed, and continues to contribute to the impairment of Dry Creek, the Tuolomne River and the San Joaquin River. As such, the City's violations of the Clean Water Act directly harm CSPA's members' use and enjoyment of the Receiving Waters.

B. Pollutants in Sewage and Their Impacts to the Environment and Human Health

Raw and/or inadequately treated sewage harms the Receiving Waters and poses a serious risk to fisheries, wildlife habitat, and human health. Sewage contains human waste, viruses, protozoa, mold spores and bacteria. In addition, raw and/or inadequately treated sewage contains chemicals that cause cancer or reproductive toxicity. These chemicals come from solvents, detergents, cleansers, inks, pesticides, paints, pharmaceuticals, and other chemicals used by households and businesses and then discarded to sewage collection systems.[5] High concentrations of these pollutants are typically found in

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[3] *See* Water Quality Control Plan, Sacramento and San Joaquin River Basins (Region 4), Chapter 2.
[4] *See* http://maps.waterboards.ca.gov/webmap/303d/files/2010_USEPA_approv_303d_List_Final_122311wsrcs.xls. A water body that is listed as impaired cannot support its designated beneficial uses.
[5] *See* People for Puget Sound, "Puget Sound Georgia Basin Sewage Report," February 1995; *see also* Excerpt from "Safe Substitutes at Home: Non-Toxic Household Products," Gary A. Davis and Em Turner, University of Tennessee-Knoxville Waste Management Institute, es.epa.gov/techinfo/facts/safe-fs.html; *see also* Frick, E., et al, Presence of Pharmaceuticals in Wastewater Effluent and Drinking Water, Metropolitan Atlanta, Georgia July- September 1999, Proceedings of the 2001 Georgia Water Resources Conference, March 26-27, 2001.

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raw and/or inadequately treated sewage. SSOs from the City's Collection System result in the addition of these pollutants to the City's MS4 and to the Receiving Waters.

SSOs and discharges of inadequately treated effluent also affect people who eat fish caught in the Receiving Waters. Toxic chemicals bio-accumulate in the Receiving Waters' food web; i.e., contaminants absorbed by plankton accumulate in fish and birds farther up the food chain, and ultimately transfer to human consumers. Contamination of fish is particularly harmful to people who eat an above-average amount of local fish.

SSOs that do not reach the Receiving Waters, but instead discharge to public streets, public buildings and grounds, private yards or homes, also pose significant health risks. For example, exposure to raw and/or inadequately treated sewage can cause a variety of health problems, including gastroenteritis, respiratory illness, ear, nose, and throat problems, and skin rashes. Mold spores can establish an ecological niche when they are carried onto a homeowner's property after contact with an SSO, creating an ongoing health risk from chronic exposure. SSOs also diminish property values and impose severe nuisance on local residents.

VI. THE CITY'S DISCHARGES OF SSOs FROM THE COLLECTION SYSTEM VIOLATE ITS NPDES PERMITS

The Clean Water Act requires that all regulated dischargers comply with the terms and conditions of their NPDES permit. *See* 33 U.S.C. §§ 1311(a), 1365. Any violation of the 2001 NPDES, the 2008 NPDES Permit, or the 2012 NPDES Permit is an enforceable violation of the Clean Water Act. 33 U.S.C. § 1365(f). The City's NPDES Permits prohibit the discharge of wastewater, including SSOs, from the Collection System. *See* 2012 NPDES Permit § III.A ("Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited"), § III.B ("The by-pass or overflow of wastes to surface waters is prohibited"), and Attachment E (Monitoring and Reporting Program) § X.D.3 ("Sanitary sewer overflows are prohibited by this order"); 2008 NPDES Permit § III.A ("Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited"), § III.B ("The by-pass or overflow of wastes to surface waters is prohibited"), and Attachment E (Monitoring and Reporting Program) § X.D.3 ("Sanitary sewer overflows are prohibited by this order"); 2001 NPDES Permit § A.2 and A.3 ("The by-pass or overflow of wastes to surface waters is prohibited"). Modesto has violated and continues to violate these provisions by discharging SSOs from the Collection System. At a minimum, the City violated the 2012 NPDES Permit, the 2008 NPDES Permit, and the 2001 NPDES Permit on the dates set forth in Exhibit A (identifying 301 SSOs).

CSPA believes that additional information will be discovered that indicates Modesto has not reported each and every SSO from the Collection System or has misreported SSOs occurring within the last five (5) years. Moreover, CSPA believes that the City lacks an adequate monitoring program to detect, report, and address SSOs and their impacts. Thus, CSPA believes that SSOs in addition to those identified in Exhibit A will be discovered through this enforcement action. CSPA puts Modesto on notice that all SSOs from the Collection System occurring in the last five (5) years, whether specifically reported or not, as well as any future violations, will be included in this litigation.

Each day between July 11, 2007, and April 25, 2008, that Modesto has discharged raw and/or inadequately treated sewage from the Collection System is a separate and distinct violation of Sections A.2 and A.3 of the City's 2001 NPDES Permit and the Clean Water Act. Each day between April 25, 2008, and June 6, 2012, that Modesto has discharged or continues to discharge raw and/or inadequately treated sewage from the Collection System is a separate and distinct violation of Sections III.A and III.B of the City's 2008 NPDES Permit and the Clean Water Act. Each day since June 7, 2012, that Modesto has discharged or continues to discharge raw and/or inadequately treated sewage from the Collection System is a separate and distinct violation of Sections III.A and III.B of the City's 2012 NPDES Permit and the Clean Water Act. The City's violations will continue each day it discharges SSOs in violation of the requirements of its 2012 NPDES Permit and the Clean Water Act. Modesto is subject to penalties for all violations of the NPDES Permits and the Clean Water Act occurring in the five (5) years prior to the date of this Notice Letter.

VII. THE CITY'S DISCHARGES OF SSOs TO ITS MS4 VIOLATE ITS MS4 PERMITS

As explained above, the Clean Water Act requires permittees to comply with all terms and conditions of their NPDES permits, and a violation of an NPDES permit is an enforceable violation of the Clean Water Act. *See* 33 U.S.C. §§ 1311(a), 1365. The MS4 Permits contain prohibitions and limitations on the discharge of pollutants into Modesto's MS4. Discharge Prohibition B.1 of both of the MS4 Permits require Modesto to effectively prohibit discharges of non-storm water into the MS4.[6] Modesto has violated and continues to violate these provisions by failing to effectively prohibit the discharge of SSOs from the Collection System into the MS4.

Modesto has discharged SSOs from its Collection System into the MS4 on at least 275 separate occasions in the past five (5) years. *See* Exhibit B attached hereto (identifying dates and locations of SSOs that entered the MS4).[7] As a result, Modesto has violated and continues to violate Discharge Prohibition B.1 of the MS4 Permits as well as the Clean Water Act. At a minimum, Modesto violates Discharge Prohibition B.1 of the MS4 Permits and the Clean Water Act every time an SSO from the Collection System enters the MS4.

CSPA believes that additional information will be discovered that indicates Modesto has not reported each SSO from the Collection System that has entered the MS4 in the past (5) five years. CSPA puts Modesto on notice that each discharge of an SSO into Modesto's MS4 during the past five (5) years, whether specifically reported or not, will be included in this enforcement action. CSPA will include additional violations when information becomes available.

Each day between July 11, 2007, and June 12, 2008, that Modesto has failed to effectively prohibit non-storm water discharges in the form of SSOs to the MS4 is a separate and distinct violation of the 2002 MS4 Permit and the Clean Water Act. Each day since June 12, 2008, that Modesto has failed and continues to fail to effectively prohibit non-storm water discharges in the form of SSOs to

[6] While there are certain exceptions to this prohibition, none of them pertain to SSOs.
[7] Exhibit B sets forth the SSOs Modesto reported to the State Board and Regional Board as reaching the storm drain pipes, channels, ditches, streets, curbs, gutters, other paved surfaces, and rock wells of its MS4.

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the MS4 is a separate and distinct violation of the 2008 MS4 Permit and the Clean Water Act.[8] Modesto's violations of Discharge Prohibition B.1 of the MS4 Permits are ongoing and continuous. Modesto's violations will continue every day and/or occasion it fails to effectively prohibit non-storm water discharges in the form of SSOs to the MS4 in violation of the requirements of the 2008 MS4 Permit and the Clean Water Act. Modesto is subject to penalties for all violations of the MS4 Permits and Clean Water Act occurring during the past five (5) years.

VIII. CONCLUSION

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to Lozeau Drury LLP at the address/number below:

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Upon expiration of the 60-day notice period, CSPA will file a citizen suit enforcement action pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), for the above-referenced violations. During the 60-day notice period, however, CSPA is willing to discuss effective remedies for the violations noted in this letter. If Modesto wishes to pursue such discussions prior to the initiation of litigation, we suggest that it initiate those discussions immediately.

Sincerely,

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

[8] At a minimum, Modesto violates Discharge Prohibition B.1 of the 2008 MS4 Permit and the Clean Water Act every time an SSO from the Collection System enters the MS4.

SERVICE LIST
(via registered mail, return receipt requested)

Lisa Jackson
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U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, D.C. 20460

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U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
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Tom Howard
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Pamela Creedon
Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, California, 95670-6114

Susana Alcala Wood
City Attorney
City of Modesto
1010 10th Street
Modesto, CA 95354

SSO Event ID	State Date	Location
unknown	July 2, 2007	345 Morton Avenue
unknown	July 23, 2007	1500 Phoenix Avenue
unknown	July 28, 2007	3805 Towery Avenue
656836	September 1, 2007	1010 Amherst Avenue
657068	September 9, 2007	1330 Princeton Avenue
657867	September 17, 2007	905 Hammond Street
704524	September 23, 2007	712 Tuolumne Blvd.
704469	September 26, 2007	518 Washington Street
unknown	September 27, 2007	4204 Vivian Drive
706022	October 4, 2007	Madison 617 Street
706787	October 24, 2007	2804 Hemminger Way
706776	October 28, 2007	602 Muir Road
707993	October 29, 2007	1901 Carver Road
708348	November 1, 2007	1513 Peppertree Lane
707485	November 5, 2007	436 McClure Road
707996	November 8, 2007	160 Mark Randy Place
707989	November 12, 2007	1417 Madrone Drive
708336	November 22, 2007	601 Duncan Avenue
708345	November 25, 2007	2017 Westview Court
708875	November 30, 2007	1820 Serena Avenue
708876	December 2, 2007	2105 Cheyenne Way
709621	December 3, 2007	1800 Joann Avenue
708988	December 4, 2007	1920 Cindy Avenue
710475	December 13, 2007	109 River Road
710476	December 14, 2007	509 Scenic Drive
710184	December 20, 2007	1310 Muirswood Way
710182	December 20, 2007	1812 Landini Way
710185	December 20, 2007	1804 Kruger Way
710479	December 24, 2007	2017 Girard Avenue
710483	December 25, 2007	1513 Roosevelt Way
710485	December 26, 2007	109 River Road
710484	December 26, 2007	437 Enslen Park Court
756693	January 1, 2008	1212 Valeriewood Way
756694	January 2, 2008	2517 Olympus Court
unknown	January 4, 2008	3200 Kathy Avenue
756831	January 4, 2008	1137 Lillian Drive
756832	January 4, 2008	1209 Ojai Lane
756833	January 4, 2008	3601 Woodbine Drive
756835	January 4, 2008	3409 Woodbine Drive
711386	January 7, 2008	2100 Standiford Avenue
756695	February 4, 2008	600 Paradise Road
712822	February 10, 2008	500 La Loma Ave Avenue
712826	February 10, 2008	301 El Rio Avenue
713199	February 15, 2008	2025 Celeste Drive
713092	February 18, 2008	1500 Stetson Avenue
714096	February 26, 2008	1420 Chapala Way

SSO Event ID	State Date	Location
714112	February 26, 2008	1417 Chapala Way
714118	February 26, 2008	2320 Tampico Court
715240	March 3, 2008	2513 Hemminger Way
756697	March 17, 2008	1606 Cindi Avenue
756748	March 17, 2008	1712 Silverwood Avenue
756750	March 17, 2008	1900 Silverwood Avenue
715699	March 26, 2008	1321 Magolia Avenue
unknown	March 31, 2008	2213 Peppermint Dr / 1112 Hilo Lane
756773	March 31, 2008	2213 Peppermint Drive
756774	March 31, 2008	1112 Hilo Lane
716087	March 31, 2008	1544 Ardmore Avenue
716445	April 2, 2008	1928 Cindy Avenue
716072	April 8, 2008	2043 Celeste Drive
716083	April 8, 2008	2045 Celeste Drive
716086	April 8, 2008	1904 Sage Court
716136	April 11, 2008	925 Enslen Avenue
716443	April 18, 2008	546 High Street
756768	April 25, 2008	1920 Lafayett Avenue
716927	May 1, 2008	116 Athens Avenue
756767	May 5, 2008	2617 Jennifer Drive
unknown	May 6, 2008	1340 McHenry Avenue
756765	May 8, 2008	405 Elmwood Avenue
717537	May 15, 2008	929 Roselawn Avenue
718132	May 24, 2008	1120 Ojai Lane
718133	May 24, 2008	1212 Ojai Lane
718130	May 25, 2008	920 Virginia Avenue
718136	May 26, 2008	1816 Bonanza Way
756770	June 1, 2008	3032 Darlene Lane
756769	June 1, 2008	1301 Satariano Lane
719112	June 7, 2008	807 High Street
719279	June 9, 2008	141 Morton Blvd.
724074	June 27, 2008	2200 San Lucas Court
721564	July 4, 2008	1404 Roosevelt Avenue
722496	July 9, 2008	2509 Springflower Way
722505	July 12, 2008	2904 Debbie Lane
756772	July 16, 2008	3708 Coffee Road
724891	July 19, 2008	620 El Camino Drive
756686	August 4, 2008	2309 Rivera Drive
724577	August 6, 2008	2021 Standiford Avenue
724767	August 14, 2008	126 Modesto Avenue
726021	September 7, 2008	1307 Fordham Avenue
727421	October 1, 2008	225 El Rio Avenue
728227	October 17, 2008	1525 McHenry Avenue
728558	October 18, 2008	1816 Landini Way
728559	October 18, 2008	1804 Kruger Drive
729022	November 4, 2008	816 Wright Street

SSO Event ID	State Date	Location
729203	November 1, 2008	160 Mark Randy Place
729209	November 10, 2008	140 Mark Randy Place
729473	November 14, 2008	4112 Madeline Street
729858	November 16, 2008	2821 Santa Teresa Drive
730855	December 1, 2008	1329 Lorry Avenue
730860	December 1, 2008	1333 Lorry Avenue
730126	December 2, 2008	120 Pleasant Street
unknown	December 2, 2008	114 Pleasant Street
unknown	December 10, 2008	1111 Hammond Street
730475	December 11, 2008	3200 Kathy Avenue
730595	December 12, 2008	2038 Vernon Avenue
730594	December 12, 2008	1530 LeMans Lane
730987	December 19, 2008	500 Morton Boulevard
730985	December 20, 2008	1016 Nantucket
730989	December 20, 2008	1011 Tully Road
731035	December 21, 2008	1311 E Street Street
731110	December 27, 2008	620 Paradise Road
731199	December 29, 2008	1147 Rose Avenue
731413	January 4, 2009	1626 Oakwood Drive
731497	January 7, 2009	928 South Street
731647	January 7, 2009	2416 Southridge Drive
731680	January 8, 2009	2609 Palomino Lane
731681	January 8, 2009	2800 Niabell Way
732003	January 13, 2009	2414 Counts Court
731996	January 14, 2009	2409 Counts Court
732106	January 16, 2009	1312 Ensanada Drive
732696	January 25, 2009	2112 Aloha Way
732699	January 25, 2009	1706 W. Rumble Road
732714	January 26, 2009	1002 Douglas Avenue
732711	January 26, 2009	1022 Douglas Avenue
732847	January 29, 2009	622 Chabot Avenue
733011	February 2, 2009	1334 Cypress Avenue
unknown	February 10, 2009	8224 West Grayson Road
733513	February 10, 2009	1813 Clayton Avenue
734197	February 24, 2009	901 Enslen Avenue
734436	March 1, 2009	3116 Clogston Way
734784	March 6, 2009	2700 Marlboro Place
734751	March 7, 2009	1216 Pinetree Lane
734752	March 7, 2009	2028 Riverpine Court
734855	March 10, 2009	201 S. McClure Road
734945	March 11, 2009	2036 Esther Avenue
735296	March 19, 2009	1909 Sage Court
735301	March 19, 2009	1924 Sage Court
735302	March 19, 2009	1924 Sage Court
735651	March 24, 2009	2821 Santa Teresa Drive
735656	March 24, 2009	2028 Applegate Drive

SSO Event ID	State Date	Location
735917	April 1, 2009	1900 Standiford Avenue
736006	April 4, 2009	923 Oxford Way
736043	April 6, 2009	1241 Champ Avenue
736537	April 17, 2009	1217 Roselawn Avenue
736532	April 19, 2009	1928 Oostburg Court
736534	April 19, 2009	2012 Cadzand Court
736535	April 19, 2009	2016 Zeeland Court
736547	April 20, 2009	405 Coldwell Avenue
736904	April 26, 2009	1808 Fairfax Avenue
737055	May 1, 2009	1012 Muriel Avenue
737326	May 11, 2009	2504 Bahia Way
737896	May 22, 2009	601 W. Granger Avenue
738316	May 29, 2009	1829 Manzanita Drive
738404	May 29, 2009	1501 Ensanada Drive
738458	June 2, 2009	1224 Westland Drive
unknown	June 6, 2009	4000 Yosemite Blvd.
unknown	June 11, 2009	822 9th Street
unknown	June 26, 2009	2501 W. Hackett Road
740545	June 28, 2009	617 W. Granger Avenue
740547	June 28, 2009	1912 Hagstrum Court
740549	June 28, 2009	1812 Hagstrum Court
740868	July 2, 2009	1005 Sycamore Avenue
740987	July 12, 2009	405 Riverside Drive
unknown	July 14, 2009	2501 W. Hackett Road
741356	July 15, 2009	1312 Granada Way
741402	July 15, 2009	1408 Palomar Way
741504	July 17, 2009	1109 Salisbury Lane
742497	July 27, 2009	2052 Boulder Creek Drive
742743	August 8, 2009	1412 Solano Court
unknown	August 12, 2009	2030 Evergreen Drive
743087	August 12, 2009	1826 Conifer Drive
743588	August 21, 2009	2921 Rimrock Court
743698	August 24, 2009	1308 Grinnell Street
744547	September 8, 2009	2501 Liberty Court
744548	September 8, 2009	800 9th Street
745166	September 25, 2009	144 Lee Street
745363	October 2, 2009	1500 Floyd Ave.
745354	October 2, 2009	2613 Schulenburg Avenue
745365	October 3, 2009	1600 Floyd Avenue
745420	October 4, 2009	4018 Veranda Way
745421	October 4, 2009	1717 Legend Ct.
745641	October 10, 2009	1805 Applegate Drive
745985	October 17, 2009	625 W. Briggsmore Avenue
728484	October 23, 2009	148 Bonita Circle
746180	October 24, 2009	1212 Ojai Lane
746174	October 24, 2009	1120 Ojai Lane

SSO Event ID	State Date	Location
746170	October 26, 2009	918 Sierra Drive
unknown	October 26, 2009	111 Jones Street
746707	November 10, 2009	301 Lakehead Lane
746937	November 21, 2009	1720 Woolston Way
747003	November 26, 2009	524 Needham Street
747202	November 26, 2009	1438 Kruger Drive
747201	November 29, 2009	1424 Queens Avenue
747357	December 4, 2009	3416 McHenry Avenue
747358	December 4, 2009	3320 McHenry Avenue
747409	December 8, 2009	3800 Windwood Place
747410	December 8, 2009	3733 Windwood Place
747643	December 17, 2009	1937 Coffee Road
747867	December 22, 2009	2307 Oakdale Road
747868	December 22, 2009	2307 Oakdale Road
747919	December 28, 2009	134 Magnolia Avenue
748022	December 29, 2009	3212 Inverness Street
748101	January 1, 2010	2101 Westview Court
748090	January 2, 2010	1432 Bandera Lane
748095	January 2, 2010	2529 Peseadero Place
748099	January 2, 2010	2705 Verano Avenue
748100	January 2, 2010	2613 Verano Avenue
756836	January 4, 2010	3512 Jonna Drive
748178	January 6, 2010	1704 Silvaire Drive
unknown	January 6, 2010	8224 West Grayson Road
748206	January 6, 2010	2013 Bridgewood Way
unknown	January 10, 2010	908 Cheatham Court
748343	January 13, 2010	1541 Morene Way
748963	January 23, 2010	1316 Buccaneer Court
748847	January 24, 2010	604 Duncan Avenue
749067	February 1, 2010	1500 Stetson Avenue
749375	February 12, 2010	1313 Granda Way
749377	February 12, 2010	1408 Falcon Way
749381	February 13, 2010	1920 Lafayette Avenue
749382	February 13, 2010	1832 Lafayette Avenue
749390	February 14, 2010	4100 Coffee Road
749383	February 14, 2010	1013 Athens Avenue
unknown	February 15, 2010	236 N. Riverside Drive
749385	February 15, 2010	637 El Vista Avenue
749462	February 17, 2010	1333 Lorry Avenue
749463	February 17, 2010	1328 Lorry Avenue
749464	February 17, 2010	1613 Duckart Way
749466	February 17, 2010	1513 Duckart Way
749570	February 20, 2010	1136 Springcreek Drive
750204	February 22, 2010	1018 Raube Court
750176	March 4, 2010	515 E. Orangeburg Avenue
unknown	March 7, 2010	1018 Raube Court

SSO Event ID	State Date	Location
751242	March 30, 2010	2419 W. Rumble Road
unknown	April 7, 2010	1111 Hammond Street
751615	April 12, 2010	1009 Roseburg Avenue
751760	April 17, 2010	1513 Pepper Tree Lane
751937	April 23, 2010	1516 East Orangeburg Avenue
751938	April 23, 2010	1620 East Orangeburg Avenue
751939	April 23, 2010	1428 Morene Way
752102	May 2, 2010	1829 Sky Lane Way
752169	May 4, 2010	2812 Bateman Lane
752236	May 5, 2010	3301 Ridgemont Court
752237	May 5, 2010	2801 Ashbrook Court
752328	May 7, 2010	806 Roselawn Avenue
755341	July 20, 2010	3700 Cheyenne Way
755343	July 20, 2010	2105 Cheyenne Way
755416	July 22, 2010	1313 Locke Road
unknown	August 15, 2010	409 Johnson Street
756287	August 23, 2010	645 Jeelu Way
756455	August 26, 2010	138 John Muir Court
757417	October 4, 2010	3801 Tenby Way
757418	October 4, 2010	1425 Clevenger Avenue
757410	October 5, 2010	2709 Palomino Lane
758104	October 13, 2010	601 Zeff Road
757866	October 16, 2010	1320 La Loma Avenue
757868	October 17, 2010	1105 McGuire Drive
758459	November 6, 2010	1146 Orchid Court
unknown	November 9, 2010	950 Oakldale Road
758911	November 23, 2010	3429 Wentworth Court
758914	November 24, 2010	3800 Amigo Drive
759148	December 1, 2010	1300 K Street
759461	December 13, 2010	2509 Jasmine Avenue
759640	December 19, 2010	1240 South Avenue
760436	January 6, 2011	101 North Emerald Avenue
760375	January 6, 2011	1116 Oakdale Road
762017	January 21, 2011	1201 Oakdale Road
762085	January 27, 2011	132 Drake Avenue
762504	February 2, 2011	812 Carmel Drive
762747	February 5, 2011	1113 Snead Drive
762787	February 5, 2011	1101 Avalon Drive
762733	February 5, 2011	1307 Witney Court
762842	February 5, 2011	1307 Witney Court
762728	February 8, 2011	1817 Devonshire Avenue
763197	February 14, 2011	136 John Muir Court
763203	February 14, 2011	114 John Muir Court
764423	March 15, 2011	200 S. Carpenter Road
764550	March 18, 2011	1809 Red Pine Drive
765025	March 30, 2011	801 Ramona Avenue

SSO Event ID	State Date	Location
unknown	April 8, 2011	1121 Hammond Street
unknown	April 27, 2011	218 Patricia Lane
765965	April 28, 2011	1615 F Street
766444	May 1, 2011	1709 Mable Avenue
unknown	May 5, 2011	2201 Eicher Avenue
766262	May 5, 2011	3116 Wollam Drive
767292	June 6, 2011	1240 South Avenue
767439	June 10, 2011	1116 Oakdale Road
767440	June 10, 2001	1112 Hilo Lane
768262	July 2, 2011	2633 Portsmouth Drive
768263	July 2, 2011	2609 Portsmouth Drive
768256	July 7, 2011	1505 Vermouth Way
769421	July 26, 2011	2905 Hemminger Way
770396	August 21, 2011	1009 W. Granger Avenue
770395	August 21, 2011	1913 Margate Way
770870	September 6, 2011	1908 Bloxham Street
772176	October 18, 2011	2552 Beatrice Lane
772699	November 2, 2011	3125 Conant Avenue
773279	November 17, 2011	1213 I Street
773607	November 19, 2011	1012 Muriel Avenue
773605	November 20, 2011	701 Auburn Street
773610	November 28, 2011	710 Downey Avenue
774335	December 7, 2011	1213 Chacwick Court
774551	December 20, 2011	1312 Ensanada Drive
775809	December 23, 2011	1317 Palomar Way
775810	January 12, 2012	1408 Peppertree Lane
776576	January 24, 2012	1317 Oakdale Rd
776584	January 27, 2012	444 Maple Street
777049	January 31, 2012	921 Tully Road
777054	February 8, 2012	1212 Ojai Lane
778160	February 24, 2012	1839 Skylane Way
779682	April 3, 2012	1300 K Street
781202	May 30, 2012	142 Lee Street
781771	June 19, 2012	124 Helen Avenue

SSO Event ID	State Date	Location
unknown	July 2, 2007	345 Morton Avenue
unknown	July 23, 2007	1500 Phoenix Avenue
656836	September 1, 2007	1010 Amherst Avenue
657867	September 17, 2007	905 Hammond Street
704524	September 23, 2007	712 Tuolumne Blvd.
704469	September 26, 2007	518 Washington Street
706022	October 4, 2007	Madison 617 Street
706787	October 24, 2007	2804 Hemminger Way
706776	October 28, 2007	602 Muir Road
707993	October 29, 2007	1901 Carver Road
708348	November 1, 2007	1513 Peppertree Lane
707485	November 5, 2007	436 McClure Road
707996	November 8, 2007	160 Mark Randy Place
708336	November 22, 2007	601 Duncan Avenue
708345	November 25, 2007	2017 Westview Court
708875	November 30, 2007	1820 Serena Avenue
708876	December 2, 2007	2105 Cheyenne Way
709621	December 3, 2007	1800 Joann Avenue
708988	December 4, 2007	1920 Cindy Avenue
710475	December 13, 2007	109 River Road
710184	December 20, 2007	1310 Muirswood Way
710182	December 20, 2007	1812 Landini Way
710185	December 20, 2007	1804 Kruger Way
710479	December 24, 2007	2017 Girard Avenue
710483	December 25, 2007	1513 Roosevelt Way
710485	December 26, 2007	109 River Road
710484	December 26, 2007	437 Enslen Park Court
756693	January 1, 2008	1212 Valeriewood Way
756694	January 2, 2008	2517 Olympus Court
unknown	January 4, 2008	3200 Kathy Avenue
756831	January 4, 2008	1137 Lillian Drive
756832	January 4, 2008	1209 Ojai Lane
756833	January 4, 2008	3601 Woodbine Drive
756835	January 4, 2008	3409 Woodbine Drive
756695	February 4, 2008	600 Paradise Road
713199	February 15, 2008	2025 Celeste Drive
713092	February 18, 2008	1500 Stetson Avenue
714096	February 26, 2008	1420 Chapala Way
714112	February 26, 2008	1417 Chapala Way
714118	February 26, 2008	2320 Tampico Court
715240	March 3, 2008	2513 Hemminger Way
756697	March 17, 2008	1606 Cindi Avenue
756748	March 17, 2008	1712 Silverwood Avenue
756750	March 17, 2008	1900 Silverwood Avenue
715699	March 26, 2008	1321 Magolia Avenue
unknown	March 31, 2008	2213 Peppermint Dr / 1112 Hilo Lane

SSO Event ID	State Date	Location
756773	March 31, 2008	2213 Peppermint Drive
756774	March 31, 2008	1112 Hilo Lane
716445	April 2, 2008	1928 Cindy Avenue
716072	April 8, 2008	2043 Celeste Drive
716083	April 8, 2008	2045 Celeste Drive
716086	April 8, 2008	1904 Sage Court
716136	April 11, 2008	925 Enslen Avenue
716443	April 18, 2008	546 High Street
756768	April 25, 2008	1920 Lafayett Avenue
716927	May 1, 2008	116 Athens Avenue
756767	May 5, 2008	2617 Jennifer Drive
unknown	May 6, 2008	1340 McHenry Avenue
717537	May 15, 2008	929 Roselawn Avenue
718132	May 24, 2008	1120 Ojai Lane
718133	May 24, 2008	1212 Ojai Lane
718130	May 25, 2008	920 Virginia Avenue
718136	May 26, 2008	1816 Bonanza Way
756770	June 1, 2008	3032 Darlene Lane
756769	June 1, 2008	1301 Satariano Lane
719112	June 7, 2008	807 High Street
719279	June 9, 2008	141 Morton Blvd.
724074	June 27, 2008	2200 San Lucas Court
721564	July 4, 2008	1404 Roosevelt Avenue
722496	July 9, 2008	2509 Springflower Way
722505	July 12, 2008	2904 Debbie Lane
756772	July 16, 2008	3708 Coffee Road
724891	July 19, 2008	620 El Camino Drive
756686	August 4, 2008	2309 Rivera Drive
724577	August 6, 2008	2021 Standiford Avenue
724767	August 14, 2008	126 Modesto Avenue
728227	October 17, 2008	1525 McHenry Avenue
728558	October 18, 2008	1816 Landini Way
728559	October 18, 2008	1804 Kruger Drive
729203	November 1, 2008	160 Mark Randy Place
729209	November 10, 2008	140 Mark Randy Place
729473	November 14, 2008	4112 Madeline Street
729858	November 16, 2008	2821 Santa Teresa Drive
730855	December 1, 2008	1329 Lorry Avenue
730860	December 1, 2008	1333 Lorry Avenue
730126	December 2, 2008	120 Pleasant Street
unknown	December 2, 2008	114 Pleasant Street
730475	December 11, 2008	3200 Kathy Avenue
730594	December 12, 2008	1530 LeMans Lane
730987	December 19, 2008	500 Morton Boulevard
730985	December 20, 2008	1016 Nantucket
730989	December 20, 2008	1011 Tully Road

SSO Event ID	State Date	Location
731110	December 27, 2008	620 Paradise Road
731199	December 29, 2008	1147 Rose Avenue
731413	January 4, 2009	1626 Oakwood Drive
731497	January 7, 2009	928 South Street
731647	January 7, 2009	2416 Southridge Drive
731680	January 8, 2009	2609 Palomino Lane
731681	January 8, 2009	2800 Niabell Way
732003	January 13, 2009	2414 Counts Court
731996	January 14, 2009	2409 Counts Court
732106	January 16, 2009	1312 Ensanada Drive
732696	January 25, 2009	2112 Aloha Way
732699	January 25, 2009	1706 W. Rumble Road
732714	January 26, 2009	1002 Douglas Avenue
732711	January 26, 2009	1022 Douglas Avenue
732847	January 29, 2009	622 Chabot Avenue
733513	February 10, 2009	1813 Clayton Avenue
734197	February 24, 2009	901 Enslen Avenue
734436	March 1, 2009	3116 Clogston Way
734784	March 6, 2009	2700 Marlboro Place
734751	March 7, 2009	1216 Pinetree Lane
734752	March 7, 2009	2028 Riverpine Court
734855	March 10, 2009	201 S. McClure Road
734945	March 11, 2009	2036 Esther Avenue
735296	March 19, 2009	1909 Sage Court
735301	March 19, 2009	1924 Sage Court
735302	March 19, 2009	1924 Sage Court
735651	March 24, 2009	2821 Santa Teresa Drive
735656	March 24, 2009	2028 Applegate Drive
735917	April 1, 2009	1900 Standiford Avenue
736006	April 4, 2009	923 Oxford Way
736043	April 6, 2009	1241 Champ Avenue
736537	April 17, 2009	1217 Roselawn Avenue
736532	April 19, 2009	1928 Oostburg Court
736534	April 19, 2009	2012 Cadzand Court
736535	April 19, 2009	2016 Zeeland Court
736547	April 20, 2009	405 Coldwell Avenue
736904	April 26, 2009	1808 Fairfax Avenue
737055	May 1, 2009	1012 Muriel Avenue
737326	May 11, 2009	2504 Bahia Way
737896	May 22, 2009	601 W. Granger Avenue
738316	May 29, 2009	1829 Manzanita Drive
738404	May 29, 2009	1501 Ensanada Drive
738458	June 2, 2009	1224 Westland Drive
unknown	June 6, 2009	4000 Yosemite Blvd.
unknown	June 11, 2009	822 9th Street
740545	June 28, 2009	617 W. Granger Avenue

SSO Event ID	State Date	Location
740547	June 28, 2009	1912 Hagstrum Court
740549	June 28, 2009	1812 Hagstrum Court
740868	July 2, 2009	1005 Sycamore Avenue
740987	July 12, 2009	405 Riverside Drive
741356	July 15, 2009	1312 Granada Way
741402	July 15, 2009	1408 Palomar Way
741504	July 17, 2009	1109 Salisbury Lane
742497	July 27, 2009	2052 Boulder Creek Drive
742743	August 8, 2009	1412 Solano Court
743087	August 12, 2009	1826 Conifer Drive
743588	August 21, 2009	2921 Rimrock Court
744547	September 8, 2009	2501 Liberty Court
744548	September 8, 2009	800 9th Street
745363	October 2, 2009	1500 Floyd Ave.
745354	October 2, 2009	2613 Schulenburg Avenue
745365	October 3, 2009	1600 Floyd Avenue
745420	October 4, 2009	4018 Veranda Way
745421	October 4, 2009	1717 Legend Ct.
745641	October 10, 2009	1805 Applegate Drive
746180	October 24, 2009	1212 Ojai Lane
746174	October 24, 2009	1120 Ojai Lane
unknown	October 26, 2009	111 Jones Street
746707	November 10, 2009	301 Lakehead Lane
746937	November 21, 2009	1720 Woolston Way
747003	November 26, 2009	524 Needham Street
747202	November 26, 2009	1438 Kruger Drive
747201	November 29, 2009	1424 Queens Avenue
747358	December 4, 2009	3320 McHenry Avenue
747409	December 8, 2009	3800 Windwood Place
747410	December 8, 2009	3733 Windwood Place
747643	December 17, 2009	1937 Coffee Road
747867	December 22, 2009	2307 Oakdale Road
747868	December 22, 2009	2307 Oakdale Road
747919	December 28, 2009	134 Magnolia Avenue
748022	December 29, 2009	3212 Inverness Street
748101	January 1, 2010	2101 Westview Court
748090	January 2, 2010	1432 Bandera Lane
748095	January 2, 2010	2529 Peseadero Place
748099	January 2, 2010	2705 Verano Avenue
748100	January 2, 2010	2613 Verano Avenue
756836	January 4, 2010	3512 Jonna Drive
748178	January 6, 2010	1704 Silvaire Drive
748206	January 6, 2010	2013 Bridgewood Way
unknown	January 10, 2010	908 Cheatham Court
748343	January 13, 2010	1541 Morene Way
748963	January 23, 2010	1316 Buccaneer Court

SSO Event ID	State Date	Location
748847	January 24, 2010	604 Duncan Avenue
749067	February 1, 2010	1500 Stetson Avenue
749375	February 12, 2010	1313 Granda Way
749377	February 12, 2010	1408 Falcon Way
749381	February 13, 2010	1920 Lafayette Avenue
749382	February 13, 2010	1832 Lafayette Avenue
749390	February 14, 2010	4100 Coffee Road
749383	February 14, 2010	1013 Athens Avenue
unknown	February 15, 2010	236 N. Riverside Drive
749385	February 15, 2010	637 El Vista Avenue
749462	February 17, 2010	1333 Lorry Avenue
749463	February 17, 2010	1328 Lorry Avenue
749464	February 17, 2010	1613 Duckart Way
749466	February 17, 2010	1513 Duckart Way
749570	February 20, 2010	1136 Springcreek Drive
750204	February 22, 2010	1018 Raube Court
750176	March 4, 2010	515 E. Orangeburg Avenue
unknown	March 7, 2010	1018 Raube Court
751242	March 30, 2010	2419 W. Rumble Road
unknown	April 7, 2010	1111 Hammond Street
751615	April 12, 2010	1009 Roseburg Avenue
751760	April 17, 2010	1513 Pepper Tree Lane
751937	April 23, 2010	1516 East Orangeburg Avenue
751938	April 23, 2010	1620 East Orangeburg Avenue
751939	April 23, 2010	1428 Morene Way
752102	May 2, 2010	1829 Sky Lane Way
752169	May 4, 2010	2812 Bateman Lane
752236	May 5, 2010	3301 Ridgemont Court
752237	May 5, 2010	2801 Ashbrook Court
752328	May 7, 2010	806 Roselawn Avenue
755341	July 20, 2010	3700 Cheyenne Way
755343	July 20, 2010	2105 Cheyenne Way
755416	July 22, 2010	1313 Locke Road
unknown	August 15, 2010	409 Johnson Street
756287	August 23, 2010	645 Jeelu Way
756455	August 26, 2010	138 John Muir Court
757417	October 4, 2010	3801 Tenby Way
757418	October 4, 2010	1425 Clevenger Avenue
757410	October 5, 2010	2709 Palomino Lane
758104	October 13, 2010	601 Zeff Road
757866	October 16, 2010	1320 La Loma Avenue
757868	October 17, 2010	1105 McGuire Drive
758459	November 6, 2010	1146 Orchid Court
unknown	November 9, 2010	950 Oakldale Road
758911	November 23, 2010	3429 Wentworth Court
758914	November 24, 2010	3800 Amigo Drive

SSO Event ID	State Date	Location
759148	December 1, 2010	1300 K Street
759461	December 13, 2010	2509 Jasmine Avenue
759640	December 19, 2010	1240 South Avenue
760436	January 6, 2011	101 North Emerald Avenue
760375	January 6, 2011	1116 Oakdale Road
762017	January 21, 2011	1201 Oakdale Road
762085	January 27, 2011	132 Drake Avenue
762504	February 2, 2011	812 Carmel Drive
762747	February 5, 2011	1113 Snead Drive
762787	February 5, 2011	1101 Avalon Drive
762728	February 8, 2011	1817 Devonshire Avenue
763197	February 14, 2011	136 John Muir Court
763203	February 14, 2011	114 John Muir Court
764423	March 15, 2011	200 S. Carpenter Road
764550	March 18, 2011	1809 Red Pine Drive
765025	March 30, 2011	801 Ramona Avenue
unknown	April 27, 2011	218 Patricia Lane
765965	April 28, 2011	1615 F Street
766444	May 1, 2011	1709 Mable Avenue
unknown	May 5, 2011	2201 Eicher Avenue
766262	May 5, 2011	3116 Wollam Drive
767292	June 6, 2011	1240 South Avenue
767439	June 10, 2011	1116 Oakdale Road
767440	June 10, 2001	1112 Hilo Lane
768262	July 2, 2011	2633 Portsmouth Drive
768263	July 2, 2011	2609 Portsmouth Drive
768256	July 7, 2011	1505 Vermouth Way
769421	July 26, 2011	2905 Hemminger Way
770396	August 21, 2011	1009 W. Granger Avenue
770395	August 21, 2011	1913 Margate Way
770870	September 6, 2011	1908 Bloxham Street
772176	October 18, 2011	2552 Beatrice Lane
772699	November 2, 2011	3125 Conant Avenue
773279	November 17, 2011	1213 I Street
773607	November 19, 2011	1012 Muriel Avenue
773605	November 20, 2011	701 Auburn Street
773610	November 28, 2011	710 Downey Avenue
774335	December 7, 2011	1213 Chacwick Court
774551	December 20, 2011	1312 Ensanada Drive
775809	December 23, 2011	1317 Palomar Way
775810	January 12, 2012	1408 Peppertree Lane
776576	January 24, 2012	1317 Oakdale Rd
777054	February 8, 2012	1212 Ojai Lane
778160	February 24, 2012	1839 Skylane Way
779682	April 3, 2012	1300 K Street
781771	June 19, 2012	124 Helen Avenue

EXHIBIT 2

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Via Certified United States Mail
Return Receipt Requested and Fax

October 5, 2012

Mayor Garrad Marsh
Greg Nyhoff, City Manager
Dennis Turner, Director of Public Works
City of Modesto
1010 10th Street
Modesto, CA 95354
Fax: (209) 577-5218

Gary DeJesus, Deputy Director of Public Works Department
Robert Englent, Wastewater Collections Manager
Wastewater Administration
Primary Plant
1221 Sutter Ave.
Modesto, California 95351
Fax: (209) 577-6345

Re: California Sportfishing Protection Alliance's Notice of Intent to Seek a Peremptory Writ of Mandate Ordering the City of Modesto to Comply with Statewide Waste Discharge Requirements for Sanitary Sewer Systems and with Waste Discharge Requirements for the City of Modesto Water Quality Control Facility, Stanislaus

Dear Mayor Marsh, City Manager Nyhoff, Director Turner, Deputy Director DeJesus, and Mr. Englent:

California Sportfishing Protection Alliance ("CSPA") hereby demands that the City of Modesto ("City" or "Modesto") immediately comply with its mandatory obligations under the following: (1) the *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*

("SSO WDR");[1] and (2) *Waste Discharge Requirements for the City of Modesto Water Quality Control Facility Stanislaus County*.[2]

The SSO WDR imposes mandatory duties on Modesto to prevent sanitary sewer overflows ("SSOs") from the City's sewage collection system ("Collection System")[3] to local property, streets or waterways and to comply with other mandatory pollution control measures. Similarly, the 2012 NPDES Permit imposes and the 2008 NPDES Permit imposed mandatory duties on Modesto to prevent SSOs from the Collection System to local property, streets and waterways. For at least the last three years, Modesto has violated and continues to violate these mandatory duties.[4] Modesto's failure to perform its mandatory duties under the law is grounds for an appropriate court to issue a writ of mandate ordering it to perform its duties and comply with the law. Unless Modesto immediately comes into compliance with these mandatory duties, CSPA intends to petition an appropriate court for the issuance of a peremptory writ of mandate.

A. Modesto's Failure to Act as Required by the SSO WDR and the Porter-Cologne Water Quality Control Act

CSPA's investigation of Modesto's compliance with the SSO WDR uncovered its ongoing and continuing failure to execute its mandatory duties under the law. Modesto's internal SSO reports, service requests, callout reports, and spreadsheets and tables summarizing SSOs from the Collection System, SSO reports submitted to the State Board, the Regional Board, and OES, and annual SSO reports generated by Modesto and submitted to the Regional Board demonstrate Modesto's failure to comply with the SSO WDR.

Information submitted to the State Board and Regional Board pursuant to the SSO WDR's reporting requirements demonstrates Modesto is not complying with the requirements of the SSO WDR for the Collection System, including, but not limited to the following:

---

[1] *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, State Water Resources Control Board Order No. 2006-0003-DWQ and Monitoring and Reporting Programs No. 2006-0003-DWQ and Order No. WQ 2008-0002-EXEC (MRPs).

[2] (1) *Waste Discharge Requirements for the City of Modesto Water Quality Control Facility Stanislaus County*, Order No. R5-2012-0031, NPDES No. CA0079103 ("2012 NPDES Permit"); and (2) *Waste Discharge Requirements for the City of Modesto Water Quality Control Facility Stanislaus County*, Order No. R5-2008-0059, NPDES No. CA0079103 ("2008 NPDES Permit"); (The 2012 NPDES Permit and the 2008 NPDES Permit are referred to collectively as the "NPDES Permits".)

[3] A table identifying the date and location of SSOs from the Collection System in the past three (3) years is attached hereto as Table A. Table A sets forth the SSOs from the Collection System that Modesto reported in its monthly SMRs, Modesto's spill reports, Office of Emergency Services ("OES") spill reports, spill reports submitted by Modesto to the California Integrated Water Quality System ("CIWQS"), internal reports, and correspondence to and from Modesto indicating SSOs from the Collection System.

[4] Further information regarding Modesto, its ownership and operation of the Collection System, SSOs, and the impacts of SSOs on the San Joaquin River, Tuolumne River, Dry Creek, and on CSPA and its members is provided in the notice of intent to sue for violations of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq*., issued by CSPA to Modesto on July 11, 2012, and incorporated herein by reference.

i. Failure to completely prevent any SSO that results in the discharge of untreated or partially treated wastewater to waters of the United States or that cause a nuisance as defined in California Water Code Section 13050(m) (SSO WDR, Prohibition C.1 & 2). This is demonstrated by the significant number of SSOs from the Collection System reported to the Regional and State Board since September 2, 2007, the date Modesto was required to start reporting these discharges under the SSO WDR.

ii. Failure to report all SSOs from the Collection System within the timelines established by and with the information required by the SSO WDR's MRPs (SSO WDR, Provision D.5, § G, and MRPs §§ Notification Requirements, A.4-7, A.9-11). CSPA's review of the abovementioned reports, documents and correspondence reveals that Modesto failed to report, failed to accurately report, and/or failed to timely report several SSOs that occurred since October 5, 2009 from the Collection System. For example, Modesto failed to report SSOs that occurred on January 10, 2010 and October 26, 2009 to the State Board and Regional Board as required, even though these SSOs are recorded in documents reviewed by CSPA.

iii. Failure to properly manage, operate, and maintain all parts of the Collection System (SSO WDR, Provision D.8). The high number of SSOs and the high spill rate (approximately 6.92 spills/100 miles of sewer/year since October 2009) indicate Modesto is improperly managing, operating and maintaining the Collection System. Moreover, the various causes of SSOs identified in Modesto's SSO reporting (such as inadequate capacity, debris, oil and grease, blockages, roots, etc.) indicate Modesto is not adequately maintaining the Collection System by preventing and/or clearing the Collection System of debris and blockages, or by increasing capacity.

iv. Failure to take all feasible steps and necessary remedial actions to control or limit the volume of sewage discharged, terminate the discharge, and recover sewage discharged for proper disposal (SSO WDR, Provision D.7). Approximately 63.75% of the raw sewage volume discharged from the Collection System since 5 October 2009 was not recovered. In addition, Modesto reported at least 17 SSOs over 1,000 gallons (8 of which exceeded 3,000 gallons) and many more SSOs of 100 gallons or more from the Collection System since October 2009. This demonstrates Modesto's failure to take all feasible actions to control and terminate sewage discharges.

v. Failure to allocate adequate resources for the operation, maintenance, and repair of the Collection System (SSO WDR, Provision D.9). The high number of SSOs and high spill rate demonstrate Modesto's failure to allocate adequate resources as required by the SSO WDR.

vi. Failure to provide adequate capacity to convey base flows and peak flows, including flows related to wet weather events (SSO WDR, Provision D.10). The high number of SSOs and high spill rate under both dry and wet weather conditions demonstrate Modesto's failure to provide adequate capacity to convey flows in the Collection System.

vii. Failure to keep records as required by the SSO WDR's monitoring and reporting requirements (SSO WDR, MRPs § B Record Keeping). Modesto's failure to report all SSOs from the Collection System in the manner required by the SSO WDR demonstrates Modesto is not keeping all records as required.

Modesto failed and continues to fail to carry out its mandatory duties to fully implement the requirements of the SSO WDR for the Collection System since at least 5 October 2009. CSPA demands Modesto immediately comply with these mandates. Modesto's failure to perform its mandatory duties under the SSO WDR will compel CSPA to serve and file a petition for writ of mandate ordering it to perform its duties as required by law.

B. Modesto's Failure to Act as Required by the NPDES Permits and the Porter-Cologne Water Quality Control Act

CSPA's investigation of Modesto's compliance with the NPDES Permits uncovered its ongoing and continuing failure to execute its mandatory duties under the law. Modesto's internal SSO reports, service requests, callout reports, and spreadsheets and tables summarizing SSOs from the Collection System, SSO reports submitted to the State Board, the Regional Board, and OES, and annual SSO reports generated by Modesto and submitted to the Regional Board demonstrate Modesto's failure to comply with the NPDES Permits.

The 2012 NPDES Permit became effective on 27 July 2012. Discharges from the Collection System were regulated by the 2008 NPDES Permit from 14 June 2008 until 26 July 2012.

The 2012 NPDES Permit prohibits, and the 2008 NPDES Permit prohibited, discharging wastewater other than from the designated outfall to the San Joaquin River and certain land application locations. *See* 2012 NPDES Permit, § III.A; 2008 NPDES Permit, § III.A. The 2012 NDPES Permit explicitly prohibits SSOs and the 2008 NPDES Permit explicitly prohibited SSOs. *See* 2012 NPDES Permit, Attachment E (Monitoring and Reporting Program), § X.D.3; 2008 NPDES Permit, Attachment E (Monitoring and Reporting Program), § X.D.3. The 2012 NPDES Permit prohibits, the 2008 NPDES Permit also prohibited, the bypass or overflow of waste to surface waters. 2012 NPDES Permit, § III.B; 2008 NPDES Permit, § III.B.

Each day that an SSO occurred at the Collection System from 5 October 2008 until 26 July 2012 is a violation of the above-mentioned sections of the 2008 NPDES Permit. Each day that an SSO occurred at the Collection System since 27 July 2012 is a violation of the above-mentioned sections of the 2012 NPDES Permit. CSPA demands Modesto immediately comply with the mandates under the 2012 NPDES Permit. Modesto's failure to perform its mandatory

duties under the NPDES Permits will compel CSPA to serve and file a petition for writ of mandate ordering it to perform its duties as required by law.

C. Conclusion

CSPA demands that Modesto immediately cease its violations of state law. CSPA has obtained legal counsel to represent it in this matter. CSPA's legal counsel and contact information are:

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Douglas Chermak
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We currently are scheduled to meet with the City this coming Tuesday, 9 October, to discuss these violations alleged in CSPA's 11 July 2012 Notice of Intent to Sue. The above State law concerns are related to the Notice letter and CSPA intends to include the above State law violations in the discussion.

Sincerely,

Douglas Chermak
Lozeau Drury LLP
Attorneys for CSPA

Attachment

cc via e-mail: Layne Friedrich, Lawyers for Clean Water, Inc.
Bill Jennings, California Sportfishing Protection Alliance
Kanwarjit Dua, Attorney for City of Modesto

ATTACHMENT

SSO Event ID	State Date	Location
745641	October 10, 2009	1805 Applegate Drive
745985	October 17, 2009	625 W. Briggsmore Avenue
728484	October 23, 2009	148 Bonita Circle
746180	October 24, 2009	1212 Ojai Lane
746174	October 24, 2009	1120 Ojai Lane
746170	October 26, 2009	918 Sierra Drive
unknown	October 26, 2009	111 Jones Street
746707	November 10, 2009	301 Lakehead Lane
746937	November 21, 2009	1720 Woolston Way
747003	November 26, 2009	524 Needham Street
747202	November 26, 2009	1438 Kruger Drive
747201	November 29, 2009	1424 Queens Avenue
747357	December 4, 2009	3416 McHenry Avenue
747358	December 4, 2009	3320 McHenry Avenue
747409	December 8, 2009	3800 Windwood Place
747410	December 8, 2009	3733 Windwood Place
747643	December 17, 2009	1937 Coffee Road
747867	December 22, 2009	2307 Oakdale Road
747868	December 22, 2009	2307 Oakdale Road
747919	December 28, 2009	134 Magnolia Avenue
748022	December 29, 2009	3212 Inverness Street
748101	January 1, 2010	2101 Westview Court
748090	January 2, 2010	1432 Bandera Lane
748095	January 2, 2010	2529 Peseadero Place
748099	January 2, 2010	2705 Verano Avenue
748100	January 2, 2010	2613 Verano Avenue
756836	January 4, 2010	3512 Jonna Drive
748178	January 6, 2010	1704 Silvaire Drive
unknown	January 6, 2010	8224 West Grayson Road
748206	January 6, 2010	2013 Bridgewood Way
unknown	January 10, 2010	908 Cheatham Court
748343	January 13, 2010	1541 Morene Way
748963	January 23, 2010	1316 Buccaneer Court
748847	January 24, 2010	604 Duncan Avenue
749067	February 1, 2010	1500 Stetson Avenue
749375	February 12, 2010	1313 Granda Way
749377	February 12, 2010	1408 Falcon Way
749381	February 13, 2010	1920 Lafayette Avenue
749382	February 13, 2010	1832 Lafayette Avenue
749390	February 14, 2010	4100 Coffee Road
749383	February 14, 2010	1013 Athens Avenue
unknown	February 15, 2010	236 N. Riverside Drive
749385	February 15, 2010	637 El Vista Avenue
749462	February 17, 2010	1333 Lorry Avenue
749463	February 17, 2010	1328 Lorry Avenue
749464	February 17, 2010	1613 Duckart Way

SSO Event ID	State Date	Location
749466	February 17, 2010	1513 Duckart Way
749570	February 20, 2010	1136 Springcreek Drive
750204	February 22, 2010	1018 Raube Court
750176	March 4, 2010	515 E. Orangeburg Avenue
751242	March 30, 2010	2419 W. Rumble Road
unknown	April 7, 2010	1111 Hammond Street
751615	April 12, 2010	1009 Roseburg Avenue
751760	April 17, 2010	1513 Pepper Tree Lane
751937	April 23, 2010	1516 East Orangeburg Avenue
751938	April 23, 2010	1620 East Orangeburg Avenue
751939	April 23, 2010	1428 Morene Way
752102	May 2, 2010	1829 Sky Lane Way
752169	May 4, 2010	2812 Bateman Lane
752236	May 5, 2010	3301 Ridgemont Court
752237	May 5, 2010	2801 Ashbrook Court
752328	May 7, 2010	806 Roselawn Avenue
755341	July 20, 2010	3700 Cheyenne Way
755343	July 20, 2010	2105 Cheyenne Way
755416	July 22, 2010	1313 Locke Road
unknown	August 15, 2010	409 Johnson Street
756287	August 23, 2010	645 Jeelu Way
756455	August 26, 2010	138 John Muir Court
757417	October 4, 2010	3801 Tenby Way
757418	October 4, 2010	1425 Clevenger Avenue
757410	October 5, 2010	2709 Palomino Lane
758104	October 13, 2010	601 Zeff Road
757866	October 16, 2010	1320 La Loma Avenue
757868	October 17, 2010	1105 McGuire Drive
758459	November 6, 2010	1146 Orchid Court
unknown	November 9, 2010	950 Oakldale Road
758911	November 23, 2010	3429 Wentworth Court
758914	November 24, 2010	3800 Amigo Drive
759148	December 1, 2010	1300 K Street
759461	December 13, 2010	2509 Jasmine Avenue
759640	December 19, 2010	1240 South Avenue
760436	January 6, 2011	101 North Emerald Avenue
760375	January 6, 2011	1116 Oakdale Road
762017	January 21, 2011	1201 Oakdale Road
762085	January 27, 2011	132 Drake Avenue
762504	February 2, 2011	812 Carmel Drive
762747	February 5, 2011	1113 Snead Drive
762787	February 5, 2011	1101 Avalon Drive
762733	February 5, 2011	1307 Witney Court
762842	February 5, 2011	1307 Witney Court
762728	February 8, 2011	1817 Devonshire Avenue
763197	February 14, 2011	136 John Muir Court

SSO Event ID	State Date	Location
763203	February 14, 2011	114 John Muir Court
764423	March 15, 2011	200 S. Carpenter Road
764550	March 18, 2011	1809 Red Pine Drive
765025	March 30, 2011	801 Ramona Avenue
unknown	April 8, 2011	1121 Hammond Street
unknown	April 27, 2011	218 Patricia Lane
765965	April 28, 2011	1615 F Street
766444	May 1, 2011	1709 Mable Avenue
unknown	May 5, 2011	2201 Eicher Avenue
766262	May 5, 2011	3116 Wollam Drive
767292	June 6, 2011	1240 South Avenue
767439	June 10, 2011	1116 Oakdale Road
767440	June 10, 2001	1112 Hilo Lane
768262	July 2, 2011	2633 Portsmouth Drive
768263	July 2, 2011	2609 Portsmouth Drive
768256	July 7, 2011	1505 Vermouth Way
769421	July 26, 2011	2905 Hemminger Way
770396	August 21, 2011	1009 W. Granger Avenue
770395	August 21, 2011	1913 Margate Way
770870	September 6, 2011	1908 Bloxham Street
772176	October 18, 2011	2552 Beatrice Lane
772699	November 2, 2011	3125 Conant Avenue
773279	November 17, 2011	1213 I Street
773607	November 19, 2011	1012 Muriel Avenue
773605	November 20, 2011	701 Auburn Street
773610	November 28, 2011	710 Downey Avenue
774335	December 7, 2011	1213 Chacwick Court
774551	December 20, 2011	1312 Ensanada Drive
775809	December 23, 2011	1317 Palomar Way
775810	January 12, 2012	1408 Peppertree Lane
776576	January 24, 2012	1317 Oakdale Rd
776584	January 27, 2012	444 Maple Street
777049	January 31, 2012	921 Tully Road
777054	February 8, 2012	1212 Ojai Lane
778160	February 24, 2012	1839 Skylane Way
779682	April 3, 2012	1300 K Street
781202	May 9, 2012	142 Lee Street
781771	May 30, 2012	124 Helen Avenue
782627	June 27, 2012	1706 W Rumble Road
783568	July 11, 2012	905 Middlecoff Avenue
784383	July 28, 2012	720 Del Rey Avenue
785336	August 19, 2012	2301 Coston Avenue
785640	August 24, 2012	107 S Riverside Drive
785885	September 2, 2012	1917 Mt Vernon Avenue

EXHIBIT 3

SSO Event ID	Start Date	Location
706787	October 24, 2007	2804 Hemminger Way
706776	October 28, 2007	602 Muir Road
707993	October 29, 2007	1901 Carver Road
708348	November 1, 2007	1513 Peppertree Lane
707485	November 5, 2007	436 McClure Road
707996	November 8, 2007	160 Mark Randy Place
707989	November 12, 2007	1417 Madrone Drive
708336	November 22, 2007	601 Duncan Avenue
708345	November 25, 2007	2017 Westview Court
708875	November 30, 2007	1820 Serena Avenue
708876	December 2, 2007	2105 Cheyenne Way
709621	December 3, 2007	1800 Joann Avenue
708988	December 4, 2007	1920 Cindy Avenue
710475	December 13, 2007	109 River Road
710476	December 14, 2007	509 Scenic Drive
710184	December 20, 2007	1310 Muirswood Way
710182	December 20, 2007	1812 Landini Way
710185	December 20, 2007	1804 Kruger Way
710479	December 24, 2007	2017 Girard Avenue
710483	December 25, 2007	1513 Roosevelt Way
710485	December 26, 2007	109 River Road
710484	December 26, 2007	437 Enslen Park Court
756693	January 1, 2008	1212 Valeriewood Way
756694	January 2, 2008	2517 Olympus Court
unknown	January 4, 2008	3200 Kathy Avenue
756831	January 4, 2008	1137 Lillian Drive
756832	January 4, 2008	1209 Ojai Lane
756833	January 4, 2008	3601 Woodbine Drive
756835	January 4, 2008	3409 Woodbine Drive
711386	January 7, 2008	2100 Standiford Avenue
756695	February 4, 2008	600 Paradise Road
712822	February 10, 2008	500 La Loma Ave Avenue
712826	February 10, 2008	301 El Rio Avenue
713199	February 15, 2008	2025 Celeste Drive
713092	February 18, 2008	1500 Stetson Avenue
714096	February 26, 2008	1420 Chapala Way
714112	February 26, 2008	1417 Chapala Way
714118	February 26, 2008	2320 Tampico Court
715240	March 3, 2008	2513 Hemminger Way
756697	March 17, 2008	1606 Cindi Avenue
756748	March 17, 2008	1712 Silverwood Avenue
756750	March 17, 2008	1900 Silverwood Avenue
715699	March 26, 2008	1321 Magolia Avenue
unknown	March 31, 2008	2213 Peppermint Dr / 1112 Hilo Lane
756773	March 31, 2008	2213 Peppermint Drive
756774	March 31, 2008	1112 Hilo Lane

SSO Event ID	Start Date	Location
716087	March 31, 2008	1544 Ardmore Avenue
716445	April 2, 2008	1928 Cindy Avenue
716072	April 8, 2008	2043 Celeste Drive
716083	April 8, 2008	2045 Celeste Drive
716086	April 8, 2008	1904 Sage Court
716136	April 11, 2008	925 Enslen Avenue
716443	April 18, 2008	546 High Street
756768	April 25, 2008	1920 Lafayett Avenue
716927	May 1, 2008	116 Athens Avenue
756767	May 5, 2008	2617 Jennifer Drive
unknown	May 6, 2008	1340 McHenry Avenue
756765	May 8, 2008	405 Elmwood Avenue
717537	May 15, 2008	929 Roselawn Avenue
718132	May 24, 2008	1120 Ojai Lane
718133	May 24, 2008	1212 Ojai Lane
718130	May 25, 2008	920 Virginia Avenue
718136	May 26, 2008	1816 Bonanza Way
756770	June 1, 2008	3032 Darlene Lane
756769	June 1, 2008	1301 Satariano Lane
719112	June 7, 2008	807 High Street
719279	June 9, 2008	141 Morton Blvd.
724074	June 27, 2008	2200 San Lucas Court
721564	July 4, 2008	1404 Roosevelt Avenue
722496	July 9, 2008	2509 Springflower Way
722505	July 12, 2008	2904 Debbie Lane
756772	July 16, 2008	3708 Coffee Road
724891	July 19, 2008	620 El Camino Drive
756686	August 4, 2008	2309 Rivera Drive
724577	August 6, 2008	2021 Standiford Avenue
724767	August 14, 2008	126 Modesto Avenue
726021	September 7, 2008	1307 Fordham Avenue
727421	October 1, 2008	225 El Rio Avenue
728227	October 17, 2008	1525 McHenry Avenue
728558	October 18, 2008	1816 Landini Way
728559	October 18, 2008	1804 Kruger Drive
729022	November 4, 2008	816 Wright Street
729203	November 1, 2008	160 Mark Randy Place
729209	November 10, 2008	140 Mark Randy Place
729473	November 14, 2008	4112 Madeline Street
729858	November 16, 2008	2821 Santa Teresa Drive
730855	December 1, 2008	1329 Lorry Avenue
730860	December 1, 2008	1333 Lorry Avenue
730126	December 2, 2008	120 Pleasant Street
unknown	December 2, 2008	114 Pleasant Street
unknown	December 10, 2008	1111 Hammond Street
730475	December 11, 2008	3200 Kathy Avenue

SSO Event ID	Start Date	Location
730595	December 12, 2008	2038 Vernon Avenue
730594	December 12, 2008	1530 LeMans Lane
730987	December 19, 2008	500 Morton Boulevard
730985	December 20, 2008	1016 Nantucket
730989	December 20, 2008	1011 Tully Road
731035	December 21, 2008	1311 E Street Street
731110	December 27, 2008	620 Paradise Road
731199	December 29, 2008	1147 Rose Avenue
731413	January 4, 2009	1626 Oakwood Drive
731497	January 7, 2009	928 South Street
731647	January 7, 2009	2416 Southridge Drive
731680	January 8, 2009	2609 Palomino Lane
731681	January 8, 2009	2800 Niabell Way
732003	January 13, 2009	2414 Counts Court
731996	January 14, 2009	2409 Counts Court
732106	January 16, 2009	1312 Ensanada Drive
732696	January 25, 2009	2112 Aloha Way
732699	January 25, 2009	1706 W. Rumble Road
732714	January 26, 2009	1002 Douglas Avenue
732711	January 26, 2009	1022 Douglas Avenue
732847	January 29, 2009	622 Chabot Avenue
733011	February 2, 2009	1334 Cypress Avenue
unknown	February 10, 2009	8224 West Grayson Road
733513	February 10, 2009	1813 Clayton Avenue
734197	February 24, 2009	901 Enslen Avenue
734436	March 1, 2009	3116 Clogston Way
734784	March 6, 2009	2700 Marlboro Place
734751	March 7, 2009	1216 Pinetree Lane
734752	March 7, 2009	2028 Riverpine Court
734855	March 10, 2009	201 S. McClure Road
734945	March 11, 2009	2036 Esther Avenue
735296	March 19, 2009	1909 Sage Court
735301	March 19, 2009	1924 Sage Court
735302	March 19, 2009	1924 Sage Court
735651	March 24, 2009	2821 Santa Teresa Drive
735656	March 24, 2009	2028 Applegate Drive
735917	April 1, 2009	1900 Standiford Avenue
736006	April 4, 2009	923 Oxford Way
736043	April 6, 2009	1241 Champ Avenue
736537	April 17, 2009	1217 Roselawn Avenue
736532	April 19, 2009	1928 Oostburg Court
736534	April 19, 2009	2012 Cadzand Court
736535	April 19, 2009	2016 Zeeland Court
736547	April 20, 2009	405 Coldwell Avenue
736904	April 26, 2009	1808 Fairfax Avenue
737055	May 1, 2009	1012 Muriel Avenue

SSO Event ID	Start Date	Location
737326	May 11, 2009	2504 Bahia Way
737896	May 22, 2009	601 W. Granger Avenue
738316	May 29, 2009	1829 Manzanita Drive
738404	May 29, 2009	1501 Ensanada Drive
738458	June 2, 2009	1224 Westland Drive
unknown	June 6, 2009	4000 Yosemite Blvd.
unknown	June 11, 2009	822 9th Street
unknown	June 26, 2009	2501 W. Hackett Road
740545	June 28, 2009	617 W. Granger Avenue
740547	June 28, 2009	1912 Hagstrum Court
740549	June 28, 2009	1812 Hagstrum Court
740868	July 2, 2009	1005 Sycamore Avenue
740987	July 12, 2009	405 Riverside Drive
unknown	July 14, 2009	2501 W. Hackett Road
741356	July 15, 2009	1312 Granada Way
741402	July 15, 2009	1408 Palomar Way
741504	July 17, 2009	1109 Salisbury Lane
742497	July 27, 2009	2052 Boulder Creek Drive
742743	August 8, 2009	1412 Solano Court
unknown	August 12, 2009	2030 Evergreen Drive
743087	August 12, 2009	1826 Conifer Drive
743588	August 21, 2009	2921 Rimrock Court
743698	August 24, 2009	1308 Grinnell Street
744547	September 8, 2009	2501 Liberty Court
744548	September 8, 2009	800 9th Street
745166	September 25, 2009	144 Lee Street
745363	October 2, 2009	1500 Floyd Ave.
745354	October 2, 2009	2613 Schulenburg Avenue
745365	October 3, 2009	1600 Floyd Avenue
745420	October 4, 2009	4018 Veranda Way
745421	October 4, 2009	1717 Legend Ct.
745641	October 10, 2009	1805 Applegate Drive
745985	October 17, 2009	625 W. Briggsmore Avenue
728484	October 23, 2009	148 Bonita Circle
746180	October 24, 2009	1212 Ojai Lane
746174	October 24, 2009	1120 Ojai Lane
746170	October 26, 2009	918 Sierra Drive
unknown	October 26, 2009	111 Jones Street
746707	November 10, 2009	301 Lakehead Lane
746937	November 21, 2009	1720 Woolston Way
747003	November 26, 2009	524 Needham Street
747202	November 26, 2009	1438 Kruger Drive
747201	November 29, 2009	1424 Queens Avenue
747357	December 4, 2009	3416 McHenry Avenue
747358	December 4, 2009	3320 McHenry Avenue
747409	December 8, 2009	3800 Windwood Place

SSO Event ID	Start Date	Location
747410	December 8, 2009	3733 Windwood Place
747643	December 17, 2009	1937 Coffee Road
747867	December 22, 2009	2307 Oakdale Road
747868	December 22, 2009	2307 Oakdale Road
747919	December 28, 2009	134 Magnolia Avenue
748022	December 29, 2009	3212 Inverness Street
748101	January 1, 2010	2101 Westview Court
748090	January 2, 2010	1432 Bandera Lane
748095	January 2, 2010	2529 Peseadero Place
748099	January 2, 2010	2705 Verano Avenue
748100	January 2, 2010	2613 Verano Avenue
756836	January 4, 2010	3512 Jonna Drive
748178	January 6, 2010	1704 Silvaire Drive
unknown	January 6, 2010	8224 West Grayson Road
748206	January 6, 2010	2013 Bridgewood Way
unknown	January 10, 2010	908 Cheatham Court
748343	January 13, 2010	1541 Morene Way
748963	January 23, 2010	1316 Buccaneer Court
748847	January 24, 2010	604 Duncan Avenue
749067	February 1, 2010	1500 Stetson Avenue
749375	February 12, 2010	1313 Granda Way
749377	February 12, 2010	1408 Falcon Way
749381	February 13, 2010	1920 Lafayette Avenue
749382	February 13, 2010	1832 Lafayette Avenue
749390	February 14, 2010	4100 Coffee Road
749383	February 14, 2010	1013 Athens Avenue
unknown	February 15, 2010	236 N. Riverside Drive
749385	February 15, 2010	637 El Vista Avenue
749462	February 17, 2010	1333 Lorry Avenue
749463	February 17, 2010	1328 Lorry Avenue
749464	February 17, 2010	1613 Duckart Way
749466	February 17, 2010	1513 Duckart Way
749570	February 20, 2010	1136 Springcreek Drive
750204	February 22, 2010	1018 Raube Court
750176	March 4, 2010	515 E. Orangeburg Avenue
751242	March 30, 2010	2419 W. Rumble Road
unknown	April 7, 2010	1111 Hammond Street
751615	April 12, 2010	1009 Roseburg Avenue
751760	April 17, 2010	1513 Pepper Tree Lane
751937	April 23, 2010	1516 East Orangeburg Avenue
751938	April 23, 2010	1620 East Orangeburg Avenue
751939	April 23, 2010	1428 Morene Way
752102	May 2, 2010	1829 Sky Lane Way
752169	May 4, 2010	2812 Bateman Lane
752236	May 5, 2010	3301 Ridgemont Court
752237	May 5, 2010	2801 Ashbrook Court

SSO Event ID	Start Date	Location
752328	May 7, 2010	806 Roselawn Avenue
755341	July 20, 2010	3700 Cheyenne Way
755343	July 20, 2010	2105 Cheyenne Way
755416	July 22, 2010	1313 Locke Road
unknown	August 15, 2010	409 Johnson Street
756287	August 23, 2010	645 Jeelu Way
756455	August 26, 2010	138 John Muir Court
757417	October 4, 2010	3801 Tenby Way
757418	October 4, 2010	1425 Clevenger Avenue
757410	October 5, 2010	2709 Palomino Lane
758104	October 13, 2010	601 Zeff Road
757866	October 16, 2010	1320 La Loma Avenue
757868	October 17, 2010	1105 McGuire Drive
758459	November 6, 2010	1146 Orchid Court
unknown	November 9, 2010	950 Oakldale Road
758911	November 23, 2010	3429 Wentworth Court
758914	November 24, 2010	3800 Amigo Drive
759148	December 1, 2010	1300 K Street
759461	December 13, 2010	2509 Jasmine Avenue
759640	December 19, 2010	1240 South Avenue
760436	January 6, 2011	101 North Emerald Avenue
760375	January 6, 2011	1116 Oakdale Road
762017	January 21, 2011	1201 Oakdale Road
762085	January 27, 2011	132 Drake Avenue
762504	February 2, 2011	812 Carmel Drive
762747	February 5, 2011	1113 Snead Drive
762787	February 5, 2011	1101 Avalon Drive
762733	February 5, 2011	1307 Witney Court
762842	February 5, 2011	1307 Witney Court
762728	February 8, 2011	1817 Devonshire Avenue
763197	February 14, 2011	136 John Muir Court
763203	February 14, 2011	114 John Muir Court
764423	March 15, 2011	200 S. Carpenter Road
764550	March 18, 2011	1809 Red Pine Drive
765025	March 30, 2011	801 Ramona Avenue
unknown	April 8, 2011	1121 Hammond Street
unknown	April 27, 2011	218 Patricia Lane
765965	April 28, 2011	1615 F Street
766444	May 1, 2011	1709 Mable Avenue
unknown	May 5, 2011	2201 Eicher Avenue
766262	May 5, 2011	3116 Wollam Drive
767292	June 6, 2011	1240 South Avenue
767439	June 10, 2011	1116 Oakdale Road
767440	June 10, 2001	1112 Hilo Lane
768262	July 2, 2011	2633 Portsmouth Drive
768263	July 2, 2011	2609 Portsmouth Drive

SSO Event ID	Start Date	Location
768256	July 7, 2011	1505 Vermouth Way
769421	July 26, 2011	2905 Hemminger Way
770396	August 21, 2011	1009 W. Granger Avenue
770395	August 21, 2011	1913 Margate Way
770870	September 6, 2011	1908 Bloxham Street
772176	October 18, 2011	2552 Beatrice Lane
772699	November 2, 2011	3125 Conant Avenue
773279	November 17, 2011	1213 I Street
773607	November 19, 2011	1012 Muriel Avenue
773605	November 20, 2011	701 Auburn Street
773610	November 28, 2011	710 Downey Avenue
774335	December 7, 2011	1213 Chacwick Court
774551	December 20, 2011	1312 Ensanada Drive
775809	December 23, 2011	1317 Palomar Way
775810	January 12, 2012	1408 Peppertree Lane
776576	January 24, 2012	1317 Oakdale Rd
776584	January 27, 2012	444 Maple Street
777049	January 31, 2012	921 Tully Road
777054	February 8, 2012	1212 Ojai Lane
778160	February 24, 2012	1839 Skylane Way
779682	April 3, 2012	1300 K Street
781202	May 9, 2012	142 Lee Street
781771	May 30, 2012	124 Helen Ave
782627	June 27, 2012	1706 W Rumble Rd
783568	July 11, 2012	905 Middlecoff Ave.
784383	July 28, 2012	720 Del Rey Ave
785336	August 19, 2012	2301 Coston Ave
785640	August 24, 2012	107 S Riverside Dr.
785885	September 2, 2012	1917 Mt Vernon Ave
786986	September 29, 2012	3112 Wollam Drive
786993	September 30, 2012	Behind 805 Tully Rd in the Alley
787294	October 11, 2012	446 Roselawn Ave
787356	October 11, 2012	3100 McGeary St
787363	October 16, 2012	810 Wright Street

EXHIBIT 4

SSO Event ID	Start Date	Location
706787	October 24, 2007	2804 Hemminger Way
706776	October 28, 2007	602 Muir Road
707993	October 29, 2007	1901 Carver Road
708348	November 1, 2007	1513 Peppertree Lane
707485	November 5, 2007	436 McClure Road
707996	November 8, 2007	160 Mark Randy Place
708336	November 22, 2007	601 Duncan Avenue
708345	November 25, 2007	2017 Westview Court
708875	November 30, 2007	1820 Serena Avenue
708876	December 2, 2007	2105 Cheyenne Way
709621	December 3, 2007	1800 Joann Avenue
708988	December 4, 2007	1920 Cindy Avenue
710475	December 13, 2007	109 River Road
710184	December 20, 2007	1310 Muirswood Way
710182	December 20, 2007	1812 Landini Way
710185	December 20, 2007	1804 Kruger Way
710479	December 24, 2007	2017 Girard Avenue
710483	December 25, 2007	1513 Roosevelt Way
710485	December 26, 2007	109 River Road
710484	December 26, 2007	437 Enslen Park Court
756693	January 1, 2008	1212 Valeriewood Way
756694	January 2, 2008	2517 Olympus Court
unknown	January 4, 2008	3200 Kathy Avenue
756831	January 4, 2008	1137 Lillian Drive
756832	January 4, 2008	1209 Ojai Lane
756833	January 4, 2008	3601 Woodbine Drive
756835	January 4, 2008	3409 Woodbine Drive
756695	February 4, 2008	600 Paradise Road
713199	February 15, 2008	2025 Celeste Drive
713092	February 18, 2008	1500 Stetson Avenue
714096	February 26, 2008	1420 Chapala Way
714112	February 26, 2008	1417 Chapala Way
714118	February 26, 2008	2320 Tampico Court
715240	March 3, 2008	2513 Hemminger Way
756697	March 17, 2008	1606 Cindi Avenue
756748	March 17, 2008	1712 Silverwood Avenue
756750	March 17, 2008	1900 Silverwood Avenue
715699	March 26, 2008	1321 Magolia Avenue
unknown	March 31, 2008	2213 Peppermint Dr / 1112 Hilo Lane
756773	March 31, 2008	2213 Peppermint Drive
756774	March 31, 2008	1112 Hilo Lane
716445	April 2, 2008	1928 Cindy Avenue
716072	April 8, 2008	2043 Celeste Drive
716083	April 8, 2008	2045 Celeste Drive
716086	April 8, 2008	1904 Sage Court
716136	April 11, 2008	925 Enslen Avenue

SSO Event ID	Start Date	Location
716443	April 18, 2008	546 High Street
756768	April 25, 2008	1920 Lafayett Avenue
716927	May 1, 2008	116 Athens Avenue
756767	May 5, 2008	2617 Jennifer Drive
unknown	May 6, 2008	1340 McHenry Avenue
717537	May 15, 2008	929 Roselawn Avenue
718132	May 24, 2008	1120 Ojai Lane
718133	May 24, 2008	1212 Ojai Lane
718130	May 25, 2008	920 Virginia Avenue
718136	May 26, 2008	1816 Bonanza Way
756770	June 1, 2008	3032 Darlene Lane
756769	June 1, 2008	1301 Satariano Lane
719112	June 7, 2008	807 High Street
719279	June 9, 2008	141 Morton Blvd.
724074	June 27, 2008	2200 San Lucas Court
721564	July 4, 2008	1404 Roosevelt Avenue
722496	July 9, 2008	2509 Springflower Way
722505	July 12, 2008	2904 Debbie Lane
756772	July 16, 2008	3708 Coffee Road
724891	July 19, 2008	620 El Camino Drive
756686	August 4, 2008	2309 Rivera Drive
724577	August 6, 2008	2021 Standiford Avenue
724767	August 14, 2008	126 Modesto Avenue
728227	October 17, 2008	1525 McHenry Avenue
728558	October 18, 2008	1816 Landini Way
728559	October 18, 2008	1804 Kruger Drive
729203	November 1, 2008	160 Mark Randy Place
729209	November 10, 2008	140 Mark Randy Place
729473	November 14, 2008	4112 Madeline Street
729858	November 16, 2008	2821 Santa Teresa Drive
730855	December 1, 2008	1329 Lorry Avenue
730860	December 1, 2008	1333 Lorry Avenue
730126	December 2, 2008	120 Pleasant Street
unknown	December 2, 2008	114 Pleasant Street
730475	December 11, 2008	3200 Kathy Avenue
730594	December 12, 2008	1530 LeMans Lane
730987	December 19, 2008	500 Morton Boulevard
730985	December 20, 2008	1016 Nantucket
730989	December 20, 2008	1011 Tully Road
731110	December 27, 2008	620 Paradise Road
731199	December 29, 2008	1147 Rose Avenue
731413	January 4, 2009	1626 Oakwood Drive
731497	January 7, 2009	928 South Street
731647	January 7, 2009	2416 Southridge Drive
731680	January 8, 2009	2609 Palomino Lane
731681	January 8, 2009	2800 Niabell Way

SSO Event ID	Start Date	Location
732003	January 13, 2009	2414 Counts Court
731996	January 14, 2009	2409 Counts Court
732106	January 16, 2009	1312 Ensanada Drive
732696	January 25, 2009	2112 Aloha Way
732699	January 25, 2009	1706 W. Rumble Road
732714	January 26, 2009	1002 Douglas Avenue
732711	January 26, 2009	1022 Douglas Avenue
732847	January 29, 2009	622 Chabot Avenue
733513	February 10, 2009	1813 Clayton Avenue
734197	February 24, 2009	901 Enslen Avenue
734436	March 1, 2009	3116 Clogston Way
734784	March 6, 2009	2700 Marlboro Place
734751	March 7, 2009	1216 Pinetree Lane
734752	March 7, 2009	2028 Riverpine Court
734855	March 10, 2009	201 S. McClure Road
734945	March 11, 2009	2036 Esther Avenue
735296	March 19, 2009	1909 Sage Court
735301	March 19, 2009	1924 Sage Court
735302	March 19, 2009	1924 Sage Court
735651	March 24, 2009	2821 Santa Teresa Drive
735656	March 24, 2009	2028 Applegate Drive
735917	April 1, 2009	1900 Standiford Avenue
736006	April 4, 2009	923 Oxford Way
736043	April 6, 2009	1241 Champ Avenue
736537	April 17, 2009	1217 Roselawn Avenue
736532	April 19, 2009	1928 Oostburg Court
736534	April 19, 2009	2012 Cadzand Court
736535	April 19, 2009	2016 Zeeland Court
736547	April 20, 2009	405 Coldwell Avenue
736904	April 26, 2009	1808 Fairfax Avenue
737055	May 1, 2009	1012 Muriel Avenue
737326	May 11, 2009	2504 Bahia Way
737896	May 22, 2009	601 W. Granger Avenue
738316	May 29, 2009	1829 Manzanita Drive
738404	May 29, 2009	1501 Ensanada Drive
738458	June 2, 2009	1224 Westland Drive
unknown	June 6, 2009	4000 Yosemite Blvd.
unknown	June 11, 2009	822 9th Street
740545	June 28, 2009	617 W. Granger Avenue
740547	June 28, 2009	1912 Hagstrum Court
740549	June 28, 2009	1812 Hagstrum Court
740868	July 2, 2009	1005 Sycamore Avenue
740987	July 12, 2009	405 Riverside Drive
741356	July 15, 2009	1312 Granada Way
741402	July 15, 2009	1408 Palomar Way
741504	July 17, 2009	1109 Salisbury Lane

SSO Event ID	Start Date	Location
742497	July 27, 2009	2052 Boulder Creek Drive
742743	August 8, 2009	1412 Solano Court
743087	August 12, 2009	1826 Conifer Drive
743588	August 21, 2009	2921 Rimrock Court
744547	September 8, 2009	2501 Liberty Court
744548	September 8, 2009	800 9th Street
745363	October 2, 2009	1500 Floyd Ave.
745354	October 2, 2009	2613 Schulenburg Avenue
745365	October 3, 2009	1600 Floyd Avenue
745420	October 4, 2009	4018 Veranda Way
745421	October 4, 2009	1717 Legend Ct.
745641	October 10, 2009	1805 Applegate Drive
746180	October 24, 2009	1212 Ojai Lane
746174	October 24, 2009	1120 Ojai Lane
unknown	October 26, 2009	111 Jones Street
746707	November 10, 2009	301 Lakehead Lane
746937	November 21, 2009	1720 Woolston Way
747003	November 26, 2009	524 Needham Street
747202	November 26, 2009	1438 Kruger Drive
747201	November 29, 2009	1424 Queens Avenue
747358	December 4, 2009	3320 McHenry Avenue
747409	December 8, 2009	3800 Windwood Place
747410	December 8, 2009	3733 Windwood Place
747643	December 17, 2009	1937 Coffee Road
747867	December 22, 2009	2307 Oakdale Road
747868	December 22, 2009	2307 Oakdale Road
747919	December 28, 2009	134 Magnolia Avenue
748022	December 29, 2009	3212 Inverness Street
748101	January 1, 2010	2101 Westview Court
748090	January 2, 2010	1432 Bandera Lane
748095	January 2, 2010	2529 Peseadero Place
748099	January 2, 2010	2705 Verano Avenue
748100	January 2, 2010	2613 Verano Avenue
756836	January 4, 2010	3512 Jonna Drive
748178	January 6, 2010	1704 Silvaire Drive
748206	January 6, 2010	2013 Bridgewood Way
unknown	January 10, 2010	908 Cheatham Court
748343	January 13, 2010	1541 Morene Way
748963	January 23, 2010	1316 Buccaneer Court
748847	January 24, 2010	604 Duncan Avenue
749067	February 1, 2010	1500 Stetson Avenue
749375	February 12, 2010	1313 Granda Way
749377	February 12, 2010	1408 Falcon Way
749381	February 13, 2010	1920 Lafayette Avenue
749382	February 13, 2010	1832 Lafayette Avenue
749390	February 14, 2010	4100 Coffee Road

SSO Event ID	Start Date	Location
749383	February 14, 2010	1013 Athens Avenue
unknown	February 15, 2010	236 N. Riverside Drive
749385	February 15, 2010	637 El Vista Avenue
749462	February 17, 2010	1333 Lorry Avenue
749463	February 17, 2010	1328 Lorry Avenue
749464	February 17, 2010	1613 Duckart Way
749466	February 17, 2010	1513 Duckart Way
749570	February 20, 2010	1136 Springcreek Drive
750204	February 22, 2010	1018 Raube Court
750176	March 4, 2010	515 E. Orangeburg Avenue
unknown	March 7, 2010	1018 Raube Court
751242	March 30, 2010	2419 W. Rumble Road
unknown	April 7, 2010	1111 Hammond Street
751615	April 12, 2010	1009 Roseburg Avenue
751760	April 17, 2010	1513 Pepper Tree Lane
751937	April 23, 2010	1516 East Orangeburg Avenue
751938	April 23, 2010	1620 East Orangeburg Avenue
751939	April 23, 2010	1428 Morene Way
752102	May 2, 2010	1829 Sky Lane Way
752169	May 4, 2010	2812 Bateman Lane
752236	May 5, 2010	3301 Ridgemont Court
752237	May 5, 2010	2801 Ashbrook Court
752328	May 7, 2010	806 Roselawn Avenue
755341	July 20, 2010	3700 Cheyenne Way
755343	July 20, 2010	2105 Cheyenne Way
755416	July 22, 2010	1313 Locke Road
unknown	August 15, 2010	409 Johnson Street
756287	August 23, 2010	645 Jeelu Way
756455	August 26, 2010	138 John Muir Court
757417	October 4, 2010	3801 Tenby Way
757418	October 4, 2010	1425 Clevenger Avenue
757410	October 5, 2010	2709 Palomino Lane
758104	October 13, 2010	601 Zeff Road
757866	October 16, 2010	1320 La Loma Avenue
757868	October 17, 2010	1105 McGuire Drive
758459	November 6, 2010	1146 Orchid Court
unknown	November 9, 2010	950 Oakldale Road
758911	November 23, 2010	3429 Wentworth Court
758914	November 24, 2010	3800 Amigo Drive
759148	December 1, 2010	1300 K Street
759461	December 13, 2010	2509 Jasmine Avenue
759640	December 19, 2010	1240 South Avenue
760436	January 6, 2011	101 North Emerald Avenue
760375	January 6, 2011	1116 Oakdale Road
762017	January 21, 2011	1201 Oakdale Road
762085	January 27, 2011	132 Drake Avenue

SSO Event ID	Start Date	Location
762504	February 2, 2011	812 Carmel Drive
762747	February 5, 2011	1113 Snead Drive
762787	February 5, 2011	1101 Avalon Drive
762728	February 8, 2011	1817 Devonshire Avenue
763197	February 14, 2011	136 John Muir Court
763203	February 14, 2011	114 John Muir Court
764423	March 15, 2011	200 S. Carpenter Road
764550	March 18, 2011	1809 Red Pine Drive
765025	March 30, 2011	801 Ramona Avenue
unknown	April 27, 2011	218 Patricia Lane
765965	April 28, 2011	1615 F Street
766444	May 1, 2011	1709 Mable Avenue
unknown	May 5, 2011	2201 Eicher Avenue
766262	May 5, 2011	3116 Wollam Drive
767292	June 6, 2011	1240 South Avenue
767439	June 10, 2011	1116 Oakdale Road
767440	June 10, 2001	1112 Hilo Lane
768262	July 2, 2011	2633 Portsmouth Drive
768263	July 2, 2011	2609 Portsmouth Drive
768256	July 7, 2011	1505 Vermouth Way
769421	July 26, 2011	2905 Hemminger Way
770396	August 21, 2011	1009 W. Granger Avenue
770395	August 21, 2011	1913 Margate Way
770870	September 6, 2011	1908 Bloxham Street
772176	October 18, 2011	2552 Beatrice Lane
772699	November 2, 2011	3125 Conant Avenue
773279	November 17, 2011	1213 I Street
773607	November 19, 2011	1012 Muriel Avenue
773605	November 20, 2011	701 Auburn Street
773610	November 28, 2011	710 Downey Avenue
774335	December 7, 2011	1213 Chacwick Court
774551	December 20, 2011	1312 Ensanada Drive
775809	December 23, 2011	1317 Palomar Way
775810	January 12, 2012	1408 Peppertree Lane
776576	January 24, 2012	1317 Oakdale Rd
777054	February 8, 2012	1212 Ojai Lane
778160	February 24, 2012	1839 Skylane Way
779682	April 3, 2012	1300 K Street
781771	May 30, 2012	124 Helen Ave
782627	June 27, 2012	1706 W Rumble Rd
783568	July 11, 2012	905 Middlecoff Ave.
784383	July 28, 2012	720 Del Rey Ave
785336	August 19, 2012	2301 Coston Ave
785640	August 24, 2012	107 S Riverside Dr.
785885	September 2, 2012	1917 Mt Vernon Ave
786986	September 29, 2012	3112 Wollam Drive

SSO Event ID	Start Date	Location
787356	October 11, 2012	3100 McGeary St
787294	October 11, 2012	446 Roselawn Ave
787363	October 16, 2012	810 Wright Street

VERIFICATION

I, Douglas J. Chermak, state that I am an attorney with Lozeau Drury LLP, the law firm representing Petitioner. I have read the foregoing Petition for Writ of Mandate and have personal knowledge that the matters set forth therein are true and correct, and on that basis allege them to be true and correct. I make this verification in accordance with California Civil Procedure Code section 446, subdivision (a) as Petitioner's counsel because the Petitioners are both absent from Alameda County, where I have my office, and the facts are within my knowledge.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification was executed on December 13, 2012, at Oakland, California.

Douglas J. Chermak