

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

City of Kingsburg

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

City of Selma

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

OCT 05 2012

FRESNO COUNTY SUPERIOR COURT

By _____ DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court County of Fresno
1130 O Street, Fresno, CA 93721-2220

CASE NUMBER:
(Número del caso):

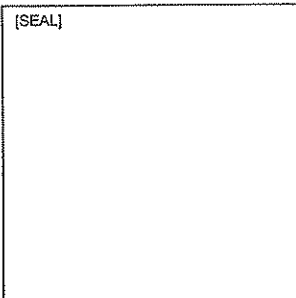
12 CE CG 03223

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Neal E. Costanzo 575 E. Locust Ave., Ste. 115, Fresno, CA 93720

DATE: October 5, 2012
(Fecha)

Clerk, by _____, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): City of Kingsburg
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☒ other (specify): public entity
- ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Neal E. Costanzo SBN 122352 Costanzo & Associates, PC 575 E. Locust Avenue, Suite 115 Fresno, CA 93720 TELEPHONE NO.: (559) 261-0163 FAX NO.: (559) 261-0706 ATTORNEY FOR (Name): City of Selma		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> OCT 05 2012 FRESNO COUNTY SUPERIOR COURT By _____ DEPUTY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Fresno STREET ADDRESS: 1130 O Street MAILING ADDRESS: 1130 O Street CITY AND ZIP CODE: Fresno 93721 BRANCH NAME: Civil		CASE NAME: City of Selma v. City of Kingsburg	
CIVIL CASE COVER SHEET <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">12 CE CG 03223</div>	
		JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 1
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 5, 2012

Neal E. Costanzo

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 Neal E. Costanzo SBN 122352
2 Costanzo & Associates
3 A Professional Corporation
4 575 E. Locust Avenue, Suite 115
5 Fresno, CA 93720
6 Telephone: (559) 261-0163
7 Facsimile: (559) 261-0706

8 Attorney for Respondent

FILED

OCT 05 2012

FRESNO COUNTY SUPERIOR COURT

By _____ DEPUTY

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

CITY OF SELMA, a municipal
corporation,

Petitioner,

v.

CITY OF KINGSBURG, a municipal
corporation, AND DOES 1-10, inclusive,

Respondent.

Case No. 12 CE CG 03223

REQUEST FOR PREPARATION OF
RECORD OF PROCEEDINGS [PUBLIC
RESOURCES CODE §21167.6]

Pursuant to Public Resources Code §21167.6, Petitioner, City of Selma, requests that Respondent, City of Kingsburg, prepare the record of the Respondent City of Kingsburg's proceedings relating to this action.

Petitioner requests that Respondent include in the record of proceedings all documents within the scope of Public Resources Code §21167.6(e), including all transcripts, minutes of meetings, notices, correspondences, emails, reports, studies, proposed decisions, final decisions, findings and any other documents or record relating to Respondent's resolution certifying the Mitigated Negative Declaration prepared for the Guardian/Sun Maid Annexation 2012-01 and Change of Zone (Pre-Zone) 2012-03, its adoption of an ordinance approving Change of Zone (Pre-Zone) 2012-02 and pre-zoning the proposed annexation territory to light industrial and highway commercial and adoption of a resolution initiating Annexation 2012-01 and requesting the Fresno County Local

1 Agency Formation initiate proceedings for a change of organization/reorganization.

2 Petitioner will pay the costs of preparation of the record on notice of the estimated
3 costs of preparation.

4 //

5 Dated: October 1, 2012

COSTANZO & ASSOCIATES

6
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8 By: 

9 Neal E. Costanzo

10 Attorneys for Respondent
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1 PROOF OF SERVICE

2 The undersigned declares:

3 I, Julia Sellers, the undersigned, declare that:

4 I am employed in the County of Fresno, State of California. I am over the age of
5 eighteen years, and am not a party to the within action. My business address is 575 E.
6 Locust Avenue, Suite 115, Fresno California 93720.

7 I am familiar with the regular mail collection and processing practice of said
8 business, and in the ordinary course of business the mail is deposited with the United
9 States Postal Service that same day.

10 On October 5, 2012, I served the foregoing document described as:

11 **REQUEST FOR PREPARATION OF RECORD OF PROCEEDINGS**

12 on all parties to this action by causing a true copy thereof to be:


- 13 ☐ Telecopied Via Facsimile
14 ☒ Placed in a sealed envelope with postage thereon fully prepaid in the
15 designated area for outgoing mail
16 ☐ Delivered by Hand
17 ☐ Sent Via Overnight Delivery (see below)

18 as addressed below:

19 Don Pauley
20 City Manager
21 City of Kingsburg
22 1401 Draper Street
23 Kingsburg, CA 93631

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Date: October 5, 2012

27 
28 Julia Sellers

1 Neal E. Costanzo SBN 122352
2 Costanzo & Associates
3 A Professional Corporation
4 575 E. Locust Avenue, Suite 115
5 Fresno, CA 93720
6 Telephone: (559) 261-0163
7 Facsimile: (559) 261-0706

8 Attorney for Petitioner, City of Selma

9 **NO FILING FEE REQUIRED,**
10 **GOV. CODE §6103**

FILED

OCT 05 2012

FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF FRESNO**

13 CITY OF SELMA, a municipal
14 corporation,

15 Petitioner,

16 v.

17 CITY OF KINGSBURG, a municipal
18 corporation, AND DOES 1-10, inclusive,

19 Respondent.

Case No. 12 CE CG 03223

PETITION FOR WRIT OF MANDATE
[CCP §1085, 1094.5, PUBLIC
RESOURCES CODE §§21168, 21168.5]

20 Petitioner, City of Selma, a municipal corporation, ("Petitioner" or "Selma") alleges:

21 **PARTIES AND VENUE**

22 1. Petitioner, Selma, is a common law city and a municipal corporation
23 organized and existing under the Constitution and laws of the State of California.

24 2. Respondent, City of Kingsburg, is a charter city duly organized and
25 existing under the Constitution and laws of the State of California. The City of
26 Kingsburg and the City of Selma are each situated in Fresno County, State of
27 California. Kingsburg is situated immediately South of the boundaries or city limits of
28 the City of Selma and the City of Selma, Petitioner, has a direct and substantial
beneficial interest in ensuring that the City of Kingsburg, Respondent, complies with the
law relating to environmental protection, particularly the California Environmental
Quality Act (CEQA), Public Resources Code §21000 et seq. As the city situated

1 directly North of the City limits or boundaries of the City of Kingsburg, Petitioner is
2 adversely affected by Respondent's failure to adequately consider or evaluate and
3 mitigate the significant environmental impacts of the project described below and
4 consisting generally of the annexation of approximately 430 acres to the City of
5 Kingsburg, detachment of the same territory from, among other public agencies, the
6 Fresno County Fire Protection District and the rezoning of the annexation area to
7 heavy industrial, light industrial and highway commercial (The "Project"). Kingsburg is
8 the lead agency, within the meaning of CEQA on the Project. Selma is affected directly
9 by Respondent's failure to adequately consider or evaluate environmental impacts of
10 the Project to the territory immediately West of the territory proposed to be annexed by
11 Kingsburg and the territory immediately North of the proposed annexation area, all of
12 which is territory within the Sphere of Influence of the City of Selma and, part of which
13 is territory THAT is the site of a proposed commercial project as to which the City of
14 Selma is lead agency within the meaning of CEQA.

15 3. Petitioner is unaware of the true names and identities of DOES 1 through
16 10, inclusive, and sues such unnamed Respondents by such fictitious names.
17 Petitioner is informed and believes, and based thereon alleges, that the fictitiously
18 named Respondents are also responsible for all acts or omissions described in this
19 petition. When the true identities and capacities of respondents DOES 1 through 10
20 have been determined, Petitioner will, with leave of court if necessary, amend this
21 petition to include such identities and capacities.

22 4. This court has jurisdiction over the matters alleged in this petition pursuant
23 to Code of Civil Procedure §1085, and Public Resources Code §21168.5. Alternatively,
24 the court has jurisdiction over the matters alleged in this petition pursuant to Code of
25 Civil Procedure §1094.5 and Public Resources Code §21168.

26 5. Venue in this action properly lies in the Superior Court of the State of
27 California, County of Fresno, pursuant to the provisions of Code of Civil Procedure
28 §394.

FACTUAL BACKGROUND

6. The Project, which is one initiated by the City of Kingsburg, Respondent, without any application or request from any person or developer, is the annexation of approximately 430 acres North of the existing City of Kingsburg boundaries or city limits and generally situated East of State Route 99 and South of Mountain View Avenue in the unincorporated territory of the County of Fresno, State of California.

7. The Project involves the following actions or approvals by the City Council of the City of Kingsburg (1) adoption of a resolution certifying a mitigated negative declaration for the project determining that the annexation and pre-zoning or change of zone of the property sought to be annexed will not result in impacts to the environment with the incorporated mitigation measures contained in the mitigated negative declaration; (2) adoption of an ordinance approving a change of zone (pre-zone) for the property sought to be annexed consisting of 247 acres of the proposed annexation territory by adoption of Ordinance No. 2003-16 and for the remaining 183 acres for change of zone and pre-zone of such territory to highway commercial or light industrial; and (3) adoption of a resolution requesting the Fresno County Local Agency Formation Commission to initiate proceedings for a change of organization/reorganization to approve the annexation.

8. On April 25, 2012, the City of Kingsburg released, for public review and comment, a "mitigated negative declaration" and a notice of intent to adopt that mitigated negative declaration for the project. The public review period closed on May 25, 2012, and prior thereto, Petitioner, and others, submitted written comments to the initial study and mitigated negative declaration identifying inadequacies of the mitigated negative declaration, flawed analysis of the indirect and cumulative environmental impacts acknowledged to exist by the mitigated negative declaration and pointing to and providing evidence supporting a fair argument that the project may have significant environmental impacts on, among other things, agricultural resources, air quality, greenhouse gas emissions, transportation and traffic, fire protection and identifying

1 inadequacies and inaccuracies with respect to assumptions made in the mitigated
2 negative declaration concerning the existence of cumulative impacts and the locations
3 of the spheres of influence for both cities. With respect to cumulative impacts, the
4 mitigated negative declaration expressly observes:

5 "In addition, the City of Selma has released a Notice of Preparation for a
6 proposed project directly adjacent to the annexation area to the north
7 called the Selma Crossings Project. The Selma Crossings Project
8 includes the following retail 2,092,203 square feet.

9 Office park 540,000 square feet.

10 Residential 250 dwelling units. 10.6 acre parcels

11 Auto Mall 400,000 square feet (103.6 acre parcels)

12 Hotels (2) 155,000 square feet

13 Water Park 10,000 square feet.

14 The addition of the Selma Crossings Project does create impacts that
15 could be cumulatively considerable. An Environmental Impact Report
16 (EIR) is being prepared by the City of Selma. It is anticipated that the EIR
17 will adequately evaluate cumulative impacts as a result of that project, an
18 evaluation for this project is not possible given the EIR has not been
19 released for public review".

20 9. On June 11, 2012, prior to the City of Kingsburg Planning Commission's
21 public hearing on the proposed annexation, Petitioner provided to the City of Kingsburg
22 a complete copy, with appendices, of the draft Environmental Impact Report for the
23 Selma Crossings Project that had been released May 31, 2012 which includes
24 numerous technical studies on the effects to air quality, agriculture, traffic, water supply
25 and other environmental concerns impacted both by the Selma Crossings Project and
26 the proposed annexation by the City of Kingsburg. At the June 14, 2012, hearing
27 before the Planning Commission, City staff requested and the Planning Commission
28 ordered that the public hearing be postponed and continued from June 14, 2012, to
July 19, 2012, to provide adequate time for City staff to develop responses to the
comments received from Petitioner, and others, on the inadequacy and inability of the
City to rely on a mitigated negative declaration for approval of the project given the

1 existence of substantial evidence supporting the fair argument of significant
2 environmental impacts.

3 10. On July 19, 2012, the City of Kingsburg Planning Commission held a
4 public hearing on the project. Notwithstanding the comments and criticism of Petitioner,
5 City of Selma, to the mitigated negative declaration and evidence of significant
6 environmental impacts from the project, the Planning Commission adopted a resolution
7 recommending certification of the mitigated negative declaration unchanged to the City
8 of Kingsburg City Council and further recommended, unchanged, approval of the
9 proposed annexation project and proposed change of zone (pre-zone).

10 11. On September 5, 2012, the Kingsburg City Council conducted a public
11 hearing on the project. Petitioner appeared and raised its objections to the
12 contemplated approval of the project based upon the mitigated negative declaration, its
13 comments on inadequacy of the environmental document and pointed to the evidence
14 contained in the mitigated negative declaration, the comments received prior to the
15 public hearing before the Kingsburg Planning Commission and the draft EIR for the
16 Selma Crossings Project as evidence which supports a fair argument of a significant
17 environmental impact from the Project. The City of Kingsburg City Council refused and
18 failed to consider any such objection, comment or evidence and, after closing the public
19 hearing, adopted a resolution determining that the annexation and "pre-zone" would
20 have no impact to the environment and certifying the mitigated negative declaration
21 prepared for the Project and a resolution initiating "Annexation No. 2012-01" requesting
22 the Fresno County Local Agency Formation Commission initiate proceedings for a
23 change of organization or reorganization to approve the annexation. The City Council,
24 further, waived the first reading and introduced an ordinance approving a change of
25 zone (pre-zone) and pre-zoning approximately 183 acres of the territory sought to be
26 annexed to light industrial and highway commercial for the properties identified as APN
27 No.'s 393-102-71, 393-112-58S, 393-240-28, 393-240-54, 393-112-48, 393-240-15,
28 393-240-12, 393-112-35S, 393-240-21 and 393-240-53. Thereafter, on September 19,

1 2012, the Kingsburg City Council approved the ordinance providing for the change of
2 zone (pre-zone) of those same 183 acres.

3 12. On September 6, 2012, the City of Kingsburg filed a Notice of
4 Determination with the County Clerk of the County of Fresno as provided for in Public
5 Resources Code §21152.

6 13. Petitioner is requesting preparation of the administrative record and
7 reserves the right to amend this petition to allege additional violations of law after
8 review of the administrative record, once prepared.

9 14. Petitioner has complied with the requirements of Public Resources Code
10 §12267.5 by mailing written notice of the commencement of this action to Respondent.
11 A copy of that written notice and proof of service are attached as Exhibit A.

12 15. Petitioner has complied with Public Resources Code §21167.6 by
13 concurrently filing a request that the Respondent, City of Kingsburg prepare the record
14 of the administrative proceedings relating to this action.

15 16. Petitioner has no plain, speedy or adequate remedy in the ordinary course
16 of the law unless this court grants the requested writ of mandate to require Respondent
17 to set aside its approval of the project, certification of the mitigated negative declaration,
18 the initiation of annexation 2012-01 and adoption of the ordinance pre-zoning the
19 annexation territory.

20 17. This action is brought within 30 days of the filing of the Notice of
21 Determination as required by Public Resources Code §21167(c).

22 **FIRST CAUSE OF ACTION**

23 **(Violation of CEQA)**

24 18. Petitioner realleges and incorporates herein by reference as though fully
25 set forth herein each and every allegation contained in paragraphs 1 through 17 of this
26 petition.

27 19. Respondent has abused its discretion and failed to act or proceed in the
28 manner required by law and by CEQA with respect to the Project because it has failed

1 to analyze the environmental impacts of the project, necessary or feasible mitigations,
2 and a reasonable range of, or any, alternatives to the project. Additionally, the
3 mitigation measures adopted by Respondents are insufficient to mitigate the impacts
4 that the City of Kingsburg knows will occur as a result of this project, as plainly reflected
5 by the mitigated negative declaration. Further, there is substantial evidence in the
6 administrative record to support a fair argument that Respondent's approval of the
7 project may result in significant impacts to the environment. Conversely, Respondent
8 has no evidence that these impacts will not be significant.

9 20. Substantial evidence in the administrative record supports a fair argument
10 that Respondent's approval of the project may result in significant impact to the
11 environment. The substantial evidence before Respondent demonstrates, at a
12 minimum, that there is significant environmental impacts to the following:

13 (A) Air Quality. The mitigated negative declaration relies on an EIR
14 prepared for the North Kingsburg Specific Plan (NKSP) to determine there is no
15 significant impact to air quality from the project. But, the MND acknowledges the
16 territory to be annexed is in a non-attainment area for various pollutants and fails to
17 determine, as required by Guidelines 15168(c)(2) whether there is any new
18 environmental effects that could occur or changes in any of the circumstances existing
19 at the time of the adoption of the NKSPEIR requiring an evaluation of new impacts.
20 The MND states there is no significant impact to air quality because the project -
21 consisting only of the annexation - has no indirect foreseeable or cumulative impacts
22 and will not result in emission of ozone precursors or PM 10 in excess of the volumes
23 established as thresholds of significance by the San Joaquin Valley Unified Air Pollution
24 Control District. The traffic study included within the MND observes that by 2025, as a
25 result of expected development, including development within the annexation area,
26 most road sections and intersections in the surrounding area will be operating at
27 unacceptable levels of service due to increased traffic volumes and acknowledges that
28 this increased traffic will result in increased emissions of pollutants in a non-attainment

1 area.

2 (B) Agricultural Resources. The MND acknowledges that a portion of
3 the annexation territory is prime farmland and that there are active, cultivated farms in
4 the area which the mitigated negative declaration assumes will be eventually eliminated
5 by development or expansion of existing industrial or commercial enterprises. The
6 MND concludes that farmland converted to non-farm use as a result of the Project is an
7 insignificant conversion of agricultural lands to urban uses notwithstanding its
8 acknowledgment of conversion of active agricultural uses to urban uses and the
9 conversion of prime farmland to urban uses.

10 (C) Greenhouse Gas Emissions. As with the evaluation of air quality,
11 the MND's conclusion is that since there is no development presently proposed as part
12 of the annexation project there is no "change in current operations" and consequently,
13 no additional greenhouse gasses will be created as a result of the proposed
14 annexation. The conclusion lacks basis and is contrary to the conclusions of the traffic
15 consultant appearing in the traffic report included with the MND that increased traffic will
16 result from this project and will cause an increase in pollutants including ozone
17 precursors or PM 10 in excess of the volumes established as thresholds of significance
18 by the San Joaquin Valley Unified Air Pollution Control District. Addition of any
19 pollutants identified in the MND as a result of foreseeable future development is a
20 significant environmental impact because the project is in a non-attainment area for
21 such pollutants, all of which will increase with the increased traffic resulting from
22 expectable development following annexation. (*Kings County Farm Bureau v. City of*
23 *Hanford* (1990) 221 Cal.App.3d 692, 712).

24 (D) Hydrology and Water Quality. The MND refers to "existing
25 development" within the proposed to be annexed territory and which includes two large
26 commercial uses (Guardian and Sun Maid) that obtain water by "two high producing
27 water wells" that draw water from the aquifer underlying the City of Kingsburg and of
28 Selma and there is nothing in the MND to indicate whether, when or even if the "existing

1 development" will be connected to the City's water system. Following the expansion of
2 both facilities that is expressly acknowledged in the mitigated negative declaration,
3 there is no analysis whatsoever of the amount of additional water that would be drawn
4 from the aquifer by the "two high producing water wells" as a result of that expansion.
5 The MND expressly acknowledges that "future development in the project area could
6 affect groundwater recharge and utilize groundwater supplies affecting the local water
7 table". No basis is offered for the conclusion in the mitigated negative declaration that it
8 is not possible to assess impacts associated with future projects particularly given the
9 fact that the MND acknowledges what the precise nature of the future development is
10 likely to be. The City cites an agreement between it and CID as the basis for having
11 satisfied mitigation measures to address groundwater overdraft of the aquifer (the
12 Upper Kings River Groundwater Basin), from which both cities derive their water supply
13 but the agreement has not resulted in any replenishment efforts or mitigation of the
14 groundwater overdraft and there is no basis for the conclusion in the MND that the City
15 is "mitigating groundwater overdraft", some of which will be caused by this project.

16 (E) Transportation/Traffic. The Selma Crossings Project and the
17 Northern Quadrant of the annexation territory are adjacent to the intersection of State
18 Route 99 and Mountain View Avenue which the traffic study included in the MND states
19 is functioning at a substandard level. The study indicates that an increase in traffic at
20 this particular intersection is a necessary consequence in the expected future
21 development both within the annexation area for the proposed project and the adjoining
22 Selma Crossings Project. The mitigation imposed by the mitigated negative declaration
23 is to increase traffic impact fees at an undisclosed, unspecified future time, presumably
24 to pay for necessary improvements to this particular intersection and others that will be
25 operating at substandard levels following approval of the annexation. The mitigation
26 measures included with the MND sets an arbitrary standard of significance of a project
27 generating 100 or more "trips" per day as being the only projects that would be subject
28 to any environmental analysis of their traffic impacts or mitigation of those impacts. The

1 intersection at Mountain View and 99 is currently operating at well below substandard
2 levels and is in need of immediate replacement to accommodate existing traffic loads,
3 according to the traffic study included within the MND and according to the comments
4 to the initial study and mitigated negative declaration submitted by the California
5 Department of Transportation (CalTrans).

6 (F) Fire Protection. The comments presented to the City Council on
7 September 5, 2012, included comments of the appointed fire chief for the City of
8 Kingsburg who acknowledged that without assistance from the neighboring fire
9 department in Selma, the Kingsburg Fire Department lacks the capacity to provide fire
10 suppression, protection or emergency response services to the annexed area which
11 include significant industrial structures. Because the City proposes to annex this
12 territory without making City water available in the annexed territory, the MND fails to
13 identify any water source sufficient for fire protection or fire suppression.

14 (G) Cumulative and Indirect Impacts. Although the MND expressly
15 acknowledges that industrial entities within the annexation territory have plans for
16 expansion, and that the Selma Crossings project gives rise to impacts from this project
17 that are cumulatively considerable, the MND concludes, with respect to most
18 environmental considerations addressed, that there is no significant impact from the
19 Project. The MND concludes that the project is a jurisdictional change only and does
20 not result in any actual development so that any future development would be subject
21 to a deferred review under CEQA if and when that development actually occurs. The
22 MND acknowledges that future development, expansion and intensified use of the
23 annexed territory will necessarily occur as a result of the Project, but fails to evaluate
24 any of the potential indirect or cumulative impacts. In addressing the multiple
25 environmental considerations referred to the MND invariably states that future
26 development that is expressly anticipated and expected to occur and expansions in the
27 annexation area are to be addressed only after the territory has been annexed, in direct
28 violation of the California Supreme Court's decision in *Bonzung v. LAFCO* (1975) 17

1 Cal.3d 263 holding that a lead agency approving an annexation project that does not
2 involve any immediate plans for development or intensified use is nevertheless required
3 to be analyze whether that development or intensified use necessarily encouraged by
4 the annexation might foreseeably have an indirect or cumulative and substantial
5 impact on the environment.

6 21. Respondent improperly refused to perform necessary investigations,
7 studies, and failed to make any inquiry with respect to known areas of conflicting expert
8 opinion and information suggesting that significant impacts would occur.

9 22. Respondent inappropriately and unlawfully relied on outdated and
10 inadequate studies and environmental documents to address the impacts of the Project
11 in the initial study and the mitigated negative declaration for the Project.

12 23. Respondent unlawfully and inappropriately deferred the performance of
13 necessary investigations, study, evaluation or inquiry with respect to the development of
14 mitigation measures and provided no performance standards, criteria or specific
15 guidance with respect to future studies used to develop mitigation measures.

16 24. Respondent failed to adequately consult with appropriate trustee
17 agencies, responsible agencies and other public agencies with jurisdiction over natural
18 resources affected by the project as required by CEQA and did not adequately respond
19 to comments made by those agencies that did, including Petitioner.

20 25. Respondent failed to provide an adequate project description, did not
21 adequately identify and contrast existing conditions with those of the proposed Project,
22 nor consider the context of the Project, in conjunction with other previously approved or
23 pending similar projects in the area, including but not limited to the Selma Crossings
24 Project as to which the City of Selma is the lead agency, and which the mitigated
25 negative declaration acknowledges to give rise to cumulatively considerable
26 environmental impacts from the Project.

27 26. Respondent violated its duty to prepare a legally adequate Environmental
28 Impact Report as required by CEQA.

27. Respondent inappropriately deferred the consideration, evaluation, or mitigation of direct, indirect, and cumulative impacts from the project and failed to adopt mitigation measures to assure the project impacts would be fully mitigated in accordance with CEQA. Respondent's unlawfully deferred the evaluation of potential direct, indirect and cumulative impacts from the project and inappropriately and unlawfully deferred development of mitigation measures necessary to mitigate impacts from the project that are shown by substantial evidence in the administrative record before the Respondent. Because Respondent has violated its duties under CEQA, as set forth above, Respondent's approval of the Project, including the mitigated negative declaration, must be set aside. Respondent failed to require the preparation of an Environmental Impact Report for the project despite the existence of a fair argument based upon substantial evidence in the record that the project may have a significant effect on the environment. As a result of the failure of Respondent to comply with CEQA a preemptory writ of mandate must issue ordering Respondent's to set aside its environmental findings and related decision, and directing Respondent's to comply with CEQA before considering re-approval of the Project.

PRAYER

Wherefore, Petitioner demands entry of judgment as follows:

1. For a temporary restraining order and preliminary injunction restraining Respondent from taking any action to carry out the project pending trial, including but not limited to proceeding with its resolution of application to the Fresno County Local Agency Formation Commission for commencement of any change of organization or reorganization proceeding before that entity;

2. For a preemptory writ of mandate directing Respondent to vacate and set aside its certification of the mitigated negative declaration, and adoption of resolutions initiating a change of organization/reorganization proceeding before the Fresno County Local Agency Formation Commission and its ordinance authorizing a change of zone (pre-zone) of the proposed territory to be annexed and to vacate and set aside all

1 project approvals on the grounds that the approvals violate CEQA.

2 3. For its cost of suit;

3 4. For an award of attorneys fees;

4 5. For other appropriate relief that the court considers just and proper.

5 //

6 Dated: October 5, 2012

COSTANZO & ASSOCIATES

By: 

Neal E. Costanzo

Attorneys for Respondent

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1 PROOF OF SERVICE

2 The undersigned declares:

3 I, Julia Sellers, the undersigned, declare that:

4 I am employed in the County of Fresno, State of California. I am over the age of
5 eighteen years, and am not a party to the within action. My business address is 575 E.
6 Locust Avenue, Suite 115, Fresno California 93720.

7 I am familiar with the regular mail collection and processing practice of said
8 business, and in the ordinary course of business the mail is deposited with the United
9 States Postal Service that same day.

10 On October 5, 2012, I served the foregoing document described as:

11 PETITION FOR WRIT OF MANDATE

12 on all parties to this action by causing a true copy thereof to be:

- 13 ☐ Telecopied Via Facsimile
14 ☒ Placed in a sealed envelope with postage thereon fully prepaid in the
15 designated area for outgoing mail
16 ☐ Delivered by Hand
17 ☐ Sent Via Overnight Delivery (see below)

18 as addressed below:

19 Don Pauley
20 City Manager
21 City of Kingsburg
22 1401 Draper Street
23 Kingsburg, CA 93631

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Date: October 5, 2012

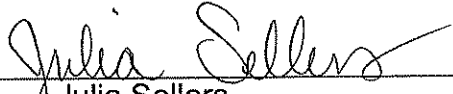
27 
28 Julia Sellers

EXHIBIT A

LAW OFFICES OF
COSTANZO & ASSOCIATES

NEAL E. COSTANZO
MICHAEL G. SLATER

A PROFESSIONAL CORPORATION
575 D. LOCUST AVENUE
SUITE 115
FRESNO, CALIFORNIA 93720-2928
(559) 261-0163

FAX (559) 261-0706
OUR FILE NO. 01236-503

October 4, 2012

Don Pauley
City Manager
City of Kingsburg
1401 Draper Street
Kingsburg, CA 93631

Michael Noland
City of Kingsburg
City Attorney
Kahn, Sores & Conway
219 N. Douty
Handford, CA 93230

**Re: Annexation 2012-01 and Change of Zone (Pre-zone 2012-02),
Guardian/Sun Maid Annexation**

Gentlemen:

This will serve as the written notice of the commencement of an action or proceeding as described in §21167 of the Public Resources Code required by §21167.5 of that same code. The City of Selma will file a Petition for Writ of Mandate in the Fresno County Superior Court under the provisions of the California Environmental Quality Act (CEQA), Public Resources Code §21000 et seq against the City of Kingsburg challenging the approval of a resolution certifying a mitigated negative declaration prepared for the referenced project and change of zone (Pre-zone) and the adoption of an ordinance pre-zoning the territory proposed to be annexed to light industrial and highway commercial and adoption of a resolution initiating the annexation by requesting the Fresno County Local Agency Formation Commission to initiate proceedings for a change of organization/reorganization.

The Petition for Writ of Mandate will request that the court direct the City of Kingsburg to vacate and rescind all of the aforementioned approvals and direct the City to comply with CEQA. Prior to initiating this action or proceeding, the City of Selma has made numerous proposals to the City of Kingsburg which would have eliminated the necessity for the filing and allowed for Kingsburg to annex this territory, so long as the City of Selma was permitted to retain control over all four corners of the intersection at highway 99 and Mountain View Avenue. It is imperative that control of the intersection be vested in a single

governmental entity if the mitigation measures necessary to develop anywhere in the area are to be implemented.

Very truly yours,

COSTANZO & ASSOCIATES

Neal E. Costanzo

NEC/js
C/C D-B Heusser

1 PROOF OF SERVICE

2 The undersigned declares:

3 I, Julia Sellers, the undersigned, declare that:

4 I am employed in the County of Fresno, State of California. I am over the age of
5 eighteen years, and am not a party to the within action. My business address is 575 E.
6 Locust Avenue, Suite 115, Fresno California 93720.

7 I am familiar with the regular mail collection and processing practice of said
8 business, and in the ordinary course of business the mail is deposited with the United
9 States Postal Service that same day.

10 On October 4, 2012, I served the foregoing document described as:

11 **RESPONDENT'S POST-HEARING BRIEF**

12 on all parties to this action by causing a true copy thereof to be:

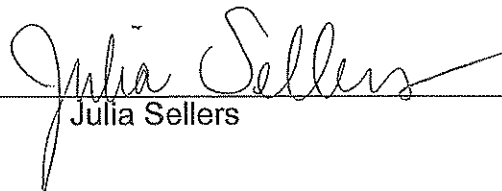
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18 as addressed below:

19 Don Pauley
20 City Manager
21 City of Kingsburg
22 1401 Draper Street
23 Kingsburg, CA 93631

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Date: October 4, 2012

27 
28 Julia Sellers